

**The following notice is pursuant to California Government Code  
Section 12956.1(b)(1))**

**Notice**

If this document contains any restriction based on age, race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, genetic information, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to Section 12956.2 of the Government Code by submitting a “Restrictive Covenant Modification” form, together with a copy of the attached document with the unlawful provision redacted to the county recorder’s office. The “Restrictive Covenant Modification” form can be obtained from the county recorder’s office and may be available on its internet website. The form may also be available from the party that provided you with this document. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.

## **Restrictive Covenant Modification**

Under current state law, including AB1466 effective January 1, 2022, homeowners can request to modify property documents that contain unlawful discriminatory covenants. Government Code Section 12956.2 allows a person who holds an ownership interest of record in property that the person believes is the subject of an unlawfully restrictive covenant to record a Restrictive Covenant Modification document to have the illegal language stricken. Unlawful restrictions include those restrictions based on race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, veteran or military status, national origin, source of income as defined in Government Code Section 12955 subdivision (p), ancestry, or genetic information.

### **To Record a Restrictive Covenant Modification, you must:**

- Complete a Restrictive Covenant Modification Form; this must be signed in front of a notary public.
- Attach a copy of the original document containing the unlawful restrictive language with the unlawful language stricken.
- Submit the completed document to the County Recorder.

### **This document requires the following:**

1. Name(s) of current owner(s)
2. Identification of document page number and language in violation
3. Recording reference of document with unlawful restrictive covenant
4. Copy of referenced document attached complete with unlawful restrictive language stricken out
5. Signature(s) of owner(s)
6. Signature(s) acknowledged
7. Approval by County Counsel provided to County Recorder

Upon receipt, the Recorder's office will submit the document to County Counsel who will determine whether the original document contains any unlawful restrictions, as defined in Government Code Section 12956.2 subdivision (b). Only those determined to be in violation of the law will be recorded and those that are not, will be returned to the submitter unrecorded.

Please note that the County Recorder is not liable for modification not authorized by law. This is the sole responsibility of the holder of ownership interest who caused the modified recordation per Government Code Section 12956.2 subdivision (f).

Pursuant to the requirements of AB1466, and no later than July 1, 2022, the Assessor-County Clerk-Recorder will post an implementation plan outlining our strategy to identify records with discriminatory restrictions.

Recording Requested By

When recorded mail document to

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Above Space for Recorder's Use Only

## RESTRICTIVE COVENANT MODIFICATION

I (We) \_\_\_\_\_ have an ownership interest of record in the property located at \_\_\_\_\_ that is covered by the document described below.

The following referenced document contains a restrictive covenant based on race, color, religion, sex, familial status, marital status, disability, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry that violates state and federal fair housing laws and that restriction is void. Pursuant to Section 12956.2 of the Government Code, this document is being recorded solely for the purpose of eliminating that restrictive

covenant as shown on page(s) \_\_\_\_\_ of the document recorded on \_\_\_\_\_ (date)

In book \_\_\_\_\_ and page \_\_\_\_\_, or Document No. \_\_\_\_\_ of the Official records of the County of \_\_\_\_\_, State of California.

The document referenced above was originally indexed in the following manner \_\_\_\_\_ and this document shall be indexed in like manner pursuant to Section 12956.2 (e).

The effective date of the terms and conditions of this modification document shall be the same as the effective date of the original document referenced above.

Dated \_\_\_\_\_



\_\_\_\_\_  
Printed Name(s)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA }  
COUNTY OF \_\_\_\_\_ }

On \_\_\_\_\_ before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/their/her authorized capacity(ies), and that by his/her/their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument. I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

#604903  
RECORDING REQUESTED BY  
AND WHEN RECORDED  
RETURN TO:

Lewis Investment Company, LLC  
c/o Lewis Operating Corp.  
Attn: Legal Department  
P. O. Box 670  
Upland, CA 91785-0670  
1156 North Mountain Avenue  
Upland, CA 91786

2000-00050405  
Recorded By:  
FATC

Official Records  
County of Solano  
Robert Biechschmidt  
Assessor/Recorder

13:46 22-JUN-00

41 RecFee 157.00  
SurMon  
NoFCOR  
IncFee 153.00  
DTTax  
Check \$ 310.00  
OvrSht

AR16 51 Pgs

DocuSigned by:

*Julie A. Broussard*

12/29/2023 | 5:38 AM PST

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**DECLARATION OF DEVELOPMENT COVENANTS, CONDITIONS,  
AND RESTRICTIONS**

This DECLARATION OF DEVELOPMENT COVENANTS, CONDITIONS, AND RESTRICTIONS ("Declaration") is made this 22<sup>nd</sup> day of June, 2000, by WOODLAKE, L.P., a Delaware limited partnership ("Owner"), with reference to the following facts and objectives:

**RECITALS**

- A. Lewis Investment Company, LLC, a California limited liability company ("Lewis"), has a legal or equitable interest in that certain real property (the "Benefitted Property") situated in the City of Fairfield ("City"), State of California, as described on Exhibit "A-1" attached hereto (the "Benefitted Property").
- B. Pursuant to that certain Purchase and Sale Agreement dated March 13, 2000, between Lewis and Owner (by assignment from William Lyon Homes, Inc.) (the "Purchase Agreement"), Owner has purchased certain real property adjacent to the Benefitted Property more particularly described in Exhibit "B" attached hereto (the "Covered Property"). The Benefitted Property and the Covered Property are part of Lewis' master plan of development for certain portions of the Tooby Ranch (the "Master Plan") as identified in Exhibit "A-2".
- C. Lewis conveyed the Covered Property to Owner for Owner's development and sale of a quality, single family residential project (the "Project") in conformance with a plan of development for the Project to be prepared by Owner and approved in writing by Lewis in accordance with the terms of this Declaration (the "Project Plan"). The Project Plan shall be in conformance with the General Description of the Project attached to this Declaration as Exhibit "C" and in conformance with the Tentative Map ("Tentative Map"), and Community Development Plan ("CDP") approved, or to be approved, by the City for the

Covered Property (collectively referred to herein as the "Master Approvals"). The individual single family residential units to be constructed by Owner in accordance with the Project Plan shall be referred to herein individually as a "Project Unit" and collectively as the "Project Units." The type and number of Project Units that Owner will construct on the Covered Property shall be limited to the type and number described in the Master Approvals.

- D. In order to ensure that the Covered Property and the Project are developed in a quality manner, consistent and in harmony with the high development standards utilized or to be utilized by Lewis in the development of its Master Plan, Lewis has required, as a prior condition to its conveyance to Owner of the Covered Property, that Owner execute and acknowledge this Declaration and submit it for recordation immediately upon Owner obtaining title to the Covered Property. Owner acknowledges that it is necessary for Lewis (i) to control the sale of land within the Master Plan to selected developers having the knowledge, expertise, good reputation, and financial capability to develop such land in an orderly, proper, and timely fashion, and (ii) to regulate the improvements made by such developers in order to enhance the coherence and value of the Master Plan and its component parts and achieve the orderly and integrated development of the Master Plan.

### DECLARATION

NOW THEREFORE, Owner hereby covenants, agrees, and declares that all of its interest, as the same may from time to time appear, in the Covered Property shall be held and conveyed subject to the following covenants, conditions, restrictions, and easements which shall run with the Covered Property or any portion thereof until released as provided herein and shall be binding upon all parties having or acquiring any right, title, or interest in the Covered Property, or any portion thereof, and which covenants, conditions, restrictions, and easements are hereby declared to be for the benefit of Lewis, its successors and assigns, and the Benefitted Property, as follows:

1. Preparation and Approval of Project Plans.

- 1.1 Construction Prohibited Prior to Project Plan Approval. No construction or alteration of any building, structure, or improvement (individually, an "improvement" and collectively, the "improvements") shall be commenced, completed, or maintained upon any phase of the Project (as such "Phases" are identified in Exhibit "B-3" attached hereto) of the Covered Property until Lewis has approved a Project Plan for that Phase in accordance with the terms of this Declaration. Each Project Plan shall describe four (4) separate elements of the Project (or Phase of the Project): (i) the Site Improvements, (ii) the Final Grading Improvements, (iii) the Landscape Improvements, and (iv) the Building Improvements. A separate Project Plan shall be prepared by Owner and submitted to Lewis for approval in accordance with this Section 1 for each Phase of the Project.

1.2 **Site Improvements.** The Site Improvements shall consist of those improvements identified in Exhibit "D" attached hereto and shall be described in (i) the Community Design Plan, (ii) the Preliminary Grading Plan, (iii) the Final Subdivision Maps, and (iv) the Site Improvement Plan.

1.2.1 **Community Design Plan.** The Community Design Plan ("CDP") shall include all of the following and shall be approved by Lewis and the City:

- (a) Conceptual landscape plan for all streetscapes, rights-of-way, and Common Areas;
- (b) Fencing/wall plan which specifies height, location, design, and materials for fencing and walls including interface fencing along the Lake;
- (c) The subdivision entry points off Clay Bank Road and Cement Hill Road shall be developed with decorative walls, community identification signs, special landscaping, and other design features. In addition, the minor entrance on Golf Drive from Dover Terrace shall receive special landscape treatment. Special gateway treatments should also occur at the intersection of Clay Bank Road and Manuel Campos and at the intersection of Cement Hill Road and Clay Bank Road.
- (d) An open space/landscaping plan which describes the development of the lands adjoining the Lake, including view points, wetland mitigation areas, and public or private trails. The CDP may address the provision of passive recreation areas, recreational equipment, and, if any, sports fields, as long as such facilities do not conflict with the primary purpose of preserving the quarry wetlands. The CDP shall also discuss potential connections, if any, to regional trails.
- (e) Architectural design theme for the Project as a whole. The intent is to establish general design concepts which will be followed throughout development. The theme may include, but not be limited to: design, roof pitch, materials, colors, fireplace detailing, trims, house numbering, and detailing of front doors. Architectural design theme shall incorporate colors (i.e., earth-tones or neutral colors) and building designs which are sensitive to off-site views to the Project;

- (f) Conceptual lighting plan including decorative street lighting and lighting of special features;
- (g) Conceptual mailbox plan;
- (h) Accent treatment to the driveways of individual homes.

**1.2.2 Preliminary Grading Plan.** The Preliminary Grading Plan shall clearly illustrate all of the following:

- (a) elevation of all building pads;
- (b) elevation and location of all drainage structures;
- (c) existing grade along perimeter of the Covered Property;
- (d) Lake and site features to be preserved;
- (e) proposed street gradients.

**1.2.3 Final Subdivision Maps.**

- (a) Owner shall not amend the Tentative Map without first obtaining Lewis' written approval thereof.
- (b) Except as otherwise provided herein or in the Purchase Agreement, Owner agrees to comply with all conditions to approval of the Tentative Map at Owner's sole cost and expense.
- (c) Prior to Recording any final subdivision map of the Property (a "Final Map") Owner shall submit such Final Map for Lewis' review and approval, which review shall be limited to Lewis' determination that the Final Map has been prepared in accordance with the Tentative Map. Owner shall not amend any Final Map without the prior written approval of Lewis.

**1.2.4 Site Improvements Plan.** The Site Improvement Plans shall clearly illustrate all of the following:

- (a) final grading;
- (b) grading details (including, without limitation, sections of typical corner lots steeper than 3:1 and drainage ways;
- (c) storm drain improvements;
- (d) potable water improvements;

- (e) sanitary sewer improvements;
- (f) street lighting improvements;
- (g) paving;
- (h) perimeter walls, with dimensions;
- (i) list of construction quantities;
- (j) Lake and wetlands improvements; and
- (k) common area improvements.

1.3 Final Grading Improvements. The Final Grading Improvements shall be described in the Final Grading Plan.

1.3.1 Final Grading Plan. The Final Grading Plan shall clearly illustrate the following:

- (a) final elevation and location of all lots and building pads (with dimensions);
- (b) final elevation and location of all drainage structures; and
- (c) final street gradients.

1.4 Landscape Improvements. The Landscape Improvements shall be described in (i) the Landscape Plan, (ii) the Landscape Materials Sample Board, and (iii) the Landscape Construction Drawings.

1.4.1 Landscape Plan. The Landscape Plan shall clearly illustrate all of the following:

- (a) street tree locations;
- (b) plant list;
- (c) typical lot landscapes including all corner lots;
- (d) model homes landscape;
- (e) section drawings through landscaped drainage ways; and
- (f) entry wall locations and identification signage.



**1.4.2 Landscape Materials Sample Board.** The Landscape Materials Sample Board shall include the following:

- (a) color chips;
- (b) manufacturer's cut sheets; and
- (c) photographs and/or material samples for all landscape (softscape and hardscape) materials including, without limitation, walls, fences, textured paving, gravel mulch, site furnishings, stucco, paint, stain, and any other visible exterior finishes.

**1.4.3 Landscape Construction Drawings.** The Landscape Construction Drawings shall consist of complete construction documents for all landscape and irrigation improvements to be constructed on or within the covered property, including the Project Entries and any Common Areas (as defined herein). The Landscape Construction Drawings shall be prepared with construction details sufficiently shown, with figured dimensions given and specifications stated, so as to enable prospective bidders to make accurate and reliable estimates of the quantity, quality, and character of the labor, materials, and equipment required to construct the proposed improvements and to enable workmen of ordinary skill and competence to construct such improvements.

**1.5 Building Improvements.** The Building Improvements shall be described in (i) the Architectural Concept Plan, (ii) the Architectural Materials Sample Board, (iii) the Plot/Site Plan, and (iv) the Marketing Signage Plan.

**1.5.1 Architectural Concept Plan.** The Architectural Concept Plan shall consist of:

- (a) photographs or sketches of front elevations (and side and rear elevations if visible from any street or the Benefitted Property) of each Project Unit; and
- (b) floor plan of each Project Unit.

**1.5.2 Architectural Materials Sample Board.** The Architectural Materials Sample Board shall include color chips, manufacturer cut sheets, photographs, and or material samples for all building materials including roofing, doors, windows, stucco, facades, trim, paint, stain, architectural walls, and other visible exterior features.

**1.5.3 Plot/Site Plan.** A Plot/Site Plan shall be prepared for each lot which includes:

- (a) Minimum setback dimensions and separation between adjacent buildings;
- (b) Building footprints;
- (c) Property lines;
- (d) Curb, gutter, sidewalk, driveway, and wall locations;
- (e) Unit model, number, and elevation type;
- (f) Color scheme.

**1.5.4 Marketing Signage Plan.** The Marketing Signage Plan shall illustrate the layout and design details for all informational, directional, temporary, and construction signs.

**1.6 Plan Submittals.** Each of the applications, plans, and sample boards referred to in Sections 1.2, 1.3, 1.4, and 1.5 is hereinafter referred to as a "Plan". All of such Plans collectively, as approved by Lewis in accordance with the terms of this Declaration for a Project, or Phase of a Project, shall constitute a "Project Plan". Lewis shall, within ten (10) business days after receipt of any such Plan either (i) approve such Plan as submitted or (ii) disapprove such Plan and advise Owner in reasonable detail of the reasons for such disapproval. Lewis shall take similar action on each resubmittal of a Plan following any disapproval. Lewis' failure to disapprove any such Plan within the time permitted above shall be deemed to constitute approval of such Plan.

**1.7 Project Plan Approval.** Lewis may, in its reasonable discretion, disapprove any or all portions of a Project Plan submitted for its approval, but Lewis' right of disapproval shall be limited to (i) the conformity of the Project Plan to the restrictions on use of the Covered Property as set forth in Exhibit "C" attached to this Declaration, (ii) the conformity of the Project Plan to the CDP and Tentative Map, and (iii) other matters that bear on the compatibility of the Project with the CDP and Tentative Map and with the existing development on, or future development planned for, the Benefitted Property. In any event, Lewis may condition its approval of the Project Plan upon such changes therein as are consistent with the scope of its review as set forth above and may require submission of additional plans or other information prior to approving or disapproving material submitted. Until receipt by Lewis of all required information, Lewis may postpone review of any Plan submitted for its approval.

- 1.8 **No Lewis Responsibility.** Approval of the Plans by Lewis is not a representation or warranty that the Plans are in compliance with the requirements of governmental authorities and it shall be Owner's responsibility to meet and comply with all Federal, State and local code requirements. Lewis' approval of the Plans does not further constitute assumption of any responsibility or liability by Lewis for the accuracy, sufficiency, completeness, or efficiency of the Plans and Owner shall be solely responsible for all such matters.
- 1.9 **Submittals to City.** Owner shall not submit any Plan or any amendment to any Master Approval to the City until such Plan or amendment has been approved by Lewis with a notation, signed by a representative of Lewis, that it is approved for submittal to the City.
2. **Construction of the Project.**
- 2.1 **Project Plan Work.** All construction work required or contemplated by the Project Plans is hereinafter referred to as the "Project Plan Work".
- 2.2 **Manner of Construction.** All of the Project Plan Work shall be performed or constructed by a duly licensed general contractor and duly licensed subcontractors in a good and workmanlike manner in accordance with: (i) a Project Plan approved by Lewis, (ii) all applicable laws, regulations, codes, and ordinances, (iii) all requirements of governmental authorities and other duly qualified bodies having jurisdiction with respect to each Improvement, and (iv) generally accepted engineering standards concerning geotechnical and soils conditions. Owner shall be solely responsible for all means, methods, techniques, sequences, and procedures used in the performance or construction of the Project Plan Work and shall diligently pursue the same to completion. Owner shall be responsible for the application for and the obtaining of all permits and approvals from governmental authorities required for the Project Plan Work.
- 2.3 **Commencement and Completion of Project Plan Work.** Upon the commencement of each discrete item of the Project Plan Work, Owner shall cause such item of the Project Plan Work to be diligently and continuously prosecuted to its completion. Each discrete item of the Project Plan Work shall be deemed to be completed upon the final acceptance of the same by the appropriate governmental authorities.
- 2.4 **Owner's Required Improvements.** Owner agrees to construct and complete all of the Improvements listed on Exhibit "E" attached hereto (the "Major Improvements") within the time periods identified in Exhibit "F".

**2.5 Failure to Complete Owner's Improvements.**

**2.5.1 Lewis' Right to Complete.** If Owner fails to complete any portion of Major Improvements within the time periods specified in Exhibit "F", Lewis shall have the right, upon thirty (30) days written notice, to cause any licensed contractor to complete such Major Improvements; provided, however, Lewis shall not exercise its right to prosecute such work pursuant to this Section 2.5.1, if prior to the expiration of such thirty (30) day period, Owner commences work on such Major Improvements, bonds or otherwise secures their completion in a manner reasonably satisfactory to Lewis, and thereafter diligently prosecutes such Major Improvements to completion.

**2.5.2 Owner's Obligation.** If Lewis undertakes construction of any portion of Major Improvements pursuant to this Section 2.5 because of Owner's failure to complete construction of such Improvements, Owner shall pay to Lewis an amount equal to one hundred ten percent (110%) of the actual costs incurred by Lewis in constructing such improvement or causing any licensed contractor to complete such improvement, which amount shall be due and payable to Owner within ten (10) days of receipt of (i) reasonable documentation evidencing such costs, and (ii) unconditional waivers of lien evidencing that no claim of any mechanic or materialman will become a lien on the Covered Property.

**2.6 Correction of Defects.** In the event of rejection by Lewis or by the appropriate governmental authority of any item of the Project Plan Work, except for the interior portions of a Project Unit, as being defective or as failing to conform to the Project Plans, whether or not completed, Owner shall promptly commence to correct such defect and diligently prosecute such correction to its completion.

**3. Maintenance of Perimeter Improvements, Project Entries, and Lake Improvements.** After Close of Escrow, Owner, or its successors and assigns, shall, to the extent not maintained by a City landscape and lighting district or other public agency, maintain, or cause a homeowner's association formed in accordance with Civil Code Section 1351, et. seq. ("Association") to maintain, (i) all perimeter walls, sidewalks, landscaping, and all related irrigation, drainage, and electrical systems installed or to be installed by Owner along the perimeter of the Project as identified in the CDP (the "Perimeter Improvements"), (ii) the Project entry monumentation ("Project Entries") as identified in the CDP, and (iii) the Lake (and related wetlands improvements) in accordance with the Wetlands Permits and Mitigation Plan (as defined in the Purchase Agreement), all in good condition and repair. Within thirty (30) days after completion of the construction of the Project Entries, any Perimeter Improvements, and the Lake

(and wetlands) (collectively the "Common Areas"), Owner shall convey such completed Common Areas to the Association free of all monetary encumbrances (other than taxes and assessments not then delinquent). The Association shall be formed by Owner in accordance with Civil Code Section 1351 et seq. prior to expiration of the aforementioned 30-day period but no later than conveyance of the first Project Unit. The covenants, conditions, and restrictions (the "HOA CC&R's") for the Association shall be prepared by Owner and approved by Lewis a minimum of thirty (30) days prior to close of escrow for the sale of the first Project Unit provided Seller's approval shall not be unreasonably withheld and shall be deemed given if written notice of disapproval is not delivered to Buyer within five (5) business days after Seller's receipt of the HOA CC&R's. Owner shall maintain the Common Areas, as provided above, until the Common Areas are conveyed to the Association. After the Common Areas are conveyed to the Association, the Association shall maintain the Common Areas in perpetuity. Owner's failure to form the "Association" and to convey such Common Areas to the Association as herein required shall be a default under the terms and conditions of this Declaration. If the Association fails to maintain such Common Areas as required by this Declaration, Lewis shall have the right, but not the obligation, after thirty (30) days prior written notice to Association, to enter the Covered Property and perform such work and the cost of such work, plus a liquidated penalty of fifteen percent (15%) shall be due and payable by Association to Lewis upon written demand. Notwithstanding conveyance of the Common Areas to the Association, Owner shall continue to be responsible for maintaining such facilities until the last Project Unit on the Covered Property has been conveyed to the general public. Lewis may assign Lewis' rights under this Section 3 to any other owner of the Benefitted Property, or any portion thereof. The terms and conditions of this Section 3 shall survive any termination of this Declaration. Lewis reserves the right and easement, until the last Project Unit is conveyed to the general public, in, over, and under the Covered Property, for the benefit of Lewis and its respective successors and assigns, without any obligation or duty to do so, to install, maintain, repair, replace and/or remove any Common Area Improvements. Owner shall not take or permit others to take any action that would damage, the Common Area Improvements during the term of this easement and shall not modify, damage, remove, relocate or otherwise tamper materially with the Common Area Improvements during the aforementioned easement term, without the written consent of Lewis.

4. Owner's Obligations With Respect To Construction of the Project.

- 4.1 Damage to Roads. Should Owner's construction activities in connection with the Project Plan Work cause any damage to any public or private rights-of-way or to any improvements within such rights-of-way or to any improvements within, or which serve or benefit, the Benefitted Property, whether completed or under construction by Lewis or others, Owner shall, upon demand from Lewis, promptly repair and restore such rights-of-way or improvements. If Owner fails to commence such repair work within five (5) business days after receipt

of such notice and diligently prosecute the same to its completion, then Lewis shall have the right to make such repairs, and Owner shall, upon demand, reimburse Lewis for Lewis' expenses incurred in repairing and restoring such rights-of-way or improvements.

4.2 **Additional Obligations.** If the City or any other governmental authority imposes any conditions, fees, or other obligations (in the broadest sense of that word) in connection with the Project, including, without limitation, construction of infrastructure, driveways, curb cuts, sidewalks, perimeter walls, retaining walls, irrigation and drainage systems, landscaping, monuments, and directional signs, the performance and satisfaction of such additional obligations shall be the sole and exclusive responsibility of Owner, and Lewis shall have no responsibility with respect thereto.

4.3 **Indemnity.** Without limiting the terms of Paragraph 9.D of the Purchase Agreement, Owner shall indemnify, defend, and hold harmless Lewis, its members and managers, and their respective officers, directors, shareholders, employees, and affiliated entities and persons from and against any and all claims, damages, losses, liabilities, demands, and expenses, including, but not limited to, attorneys' fees, court costs, and expenses of litigation (collectively, hereinafter referred to as "Liabilities"), arising out of or resulting from, or claimed to arise out of or result from, in whole or in part, any material violation of this Declaration by Owner, any contractor or subcontractor employed by it, anyone directly or indirectly employed by any of the foregoing entities, or anyone for whose acts any of the foregoing entities may be liable, in connection with the ownership, maintenance, development, construction, marketing, or sale of the Project or other use of the Covered Property, excepting any liabilities arising from the sole negligence or willful misconduct of Lewis.

4.4 **Insurance.** Owner shall, at all times during the term of this Declaration, maintain in effect (i) an occurrence policy of comprehensive commercial general liability insurance with respect to the Covered Property with a combined single limit of not less than One Million Dollars (\$1,000,000), (ii) a policy of workers' compensation insurance as required by law, together with employer's liability coverage, with a limit of not less than One Million Dollars (\$1,000,000), and (iii) a policy of "All Risk" builder's risk insurance covering the improvements with a limit amount reasonably satisfactory to Lewis but not less than One Million Dollars (\$1,000,000). All insurance policies required to be maintained pursuant to this Section, except the insurance described in clause (ii), shall name Lewis as an additional insured and shall be primary and non-contributing with respect to any insurance maintained by Lewis and all issuers of such insurance policies shall agree to provide not less than thirty (30) days' written notice to Lewis prior to the

cancellation or material amendment of any such insurance policy. Owner shall provide Lewis with a certificate of insurance evidencing such insurance coverage prior to commencement of construction.

4.5 Interference by Construction. Owner agrees that any construction work to be undertaken by it shall be performed (i) so as not to cause any increase in the cost of developing the Benefitted Property or any part thereof, (ii) so as not to unreasonably interfere with any construction work being performed on the Benefitted Property, or any part thereof, or (iii) so as not to unreasonably interfere with and to minimize disruptions of the use, occupancy or enjoyment of the Benefitted Property or any part thereof. Owner shall be responsible, at its sole cost and expense, for the repair of any damage occurring to any portions of the Benefitted Property as a result of construction work undertaken by Owner and shall promptly repair such portion of the Benefitted Property to the same condition as existed immediately prior to such work.

4.6 Rules and Regulations. During the period of construction of the Project, Owner shall observe the following rules and regulations:

- (a) No maintenance or construction work of any type shall be performed or conducted on the Covered Property between the hours of 8:00 p.m. and 6:00 a.m.
- (b) No temporary structures, including construction trailers or other temporary office or sales facilities, shall be placed or maintained on the Covered Property until the appearance and location of such facilities have received the approval of Lewis, which approval shall not be unreasonably withheld.
- (c) Portions of the Covered Property which are visible from the Benefitted Property shall be kept free of weeds and debris, and all waste materials generated by the construction activities shall be removed as soon as reasonably possible.
- (d) Owner shall provide adequate back enclosures for the Project while under construction. All construction debris shall be placed in these enclosures at the end of each day.
- (e) Owner shall take such action as may be prudent and use its best efforts to employ all commercially reasonable methods, equipment, techniques, and activities to control ambient dust and the accumulation of dust on the

Covered Property or dispersion of dust from the Covered Property; and

- (f) Owner shall take such action as may be prudent and use its best efforts to employ all commercially reasonable methods, equipment, techniques, and activities to abate noise, and to mitigate and abate noise pollution. Owner warrants that it will not use any equipment or undertake any activity in connection with the construction and development of the Project which will generate unreasonable noise.

5. Development Restrictions. Subject to Lewis' rights under this Declaration to approve the Project Plans, use of the Covered Property shall be restricted to the Project as identified on Exhibit "C" attached hereto.

5.1 Compliance With Zoning. Owner acknowledges and agrees that construction of the Project on the Covered Property pursuant to the Project Plans shall be in compliance with all applicable zoning and other governmental restrictions pertaining to the Covered Property. For a period of five (5) years from the recordation of this Declaration, Owner shall not seek to change any zoning or other governmental restrictions applicable to the Covered Property, including, without limitation, the Master Approvals, without the prior written consent of Lewis, which consent shall be in Lewis' sole and absolute discretion, provided Lewis' shall not unreasonably withhold its approval to nonmaterial modifications to any of the Master Approvals, including, without limitation lot line adjustments. All requests or applications together with all supporting documentation for governmental approvals or permits which require discretionary action on the part of a governmental agency, whether or not such approvals are specifically herein required to be obtained, shall be submitted to and coordinated and approved by Lewis prior to filing with the appropriate governmental agency. Lewis shall have a period of ten (10) days to disapprove any requests where application is so submitted by Owner, and in the event of disapproval, Lewis shall specify the reasons therefor. Failure to so disapprove within such time period shall be deemed approval thereof. Owner shall send Lewis copies of all written communications between Owner and the governmental agency processing such requests or applications.

5.2 No Waiver of Future Approvals. The approval by Lewis of any proposals, drawings, or specifications for any work done or proposed, or in connection with any other matter requiring the approval and consent of Lewis, shall not be deemed to constitute a waiver of any right whatsoever to withhold approval of or consent to any similar



proposals, drawings, specifications, or other matters subsequently or additionally submitted to Lewis for approval or consent.

- 5.3 Wetlands Mitigation Plan. Owner acknowledges and agrees to comply strictly with the terms and conditions of that certain Mitigation Plan for the Project wetlands attached hereto as Exhibit "G".

6. Easements for Benefitted Property.

- 6.1 Utility Easements. Owner hereby expressly grants and conveys to Lewis, its successors and assigns, together with the right to grant and transfer the same, a nonexclusive easement over, across, in, under, and through those areas of the Covered Property designated in the Community Development Plan or Project Plan as rights-of-way or Common Areas (the "Utility Areas"), for the installation, maintenance, removal, and replacement of roads, storm drains, sewers, water, electricity, gas, telephone, and cable television lines (collectively the "Utilities") necessary to service the Benefitted Property, or any portion thereof. Lewis and Owner shall cooperate with one another to locate such Utilities within the Utility Area so as not to materially interfere with the overall development and use of the Covered Property by Owner. Any such Utilities may be relocated by Owner, at the cost of Owner, if Owner deems necessary to avoid any material interference with the construction or operation of any Improvements on the Covered Property. The terms and conditions of this Section 6.1 shall survive any termination of this Declaration.
- 6.2 Easement for Inspection. Owner hereby expressly grants and conveys to Lewis, its successors and assigns, together with the right to grant and transfer the same, a temporary non-exclusive right-of-way, easement in gross, and interest in and across the Covered Property as is necessary for Lewis, or persons designated by Lewis, to inspect Improvements thereon for compliance with the Project Plans and these CC&R's. Any such inspections shall be conducted at a time, and in a manner, which does not unreasonably interfere with Owner's construction of the Project or the use and enjoyment thereof by any homeowners.
- 6.3 Signage Easements. Owner hereby expressly grants and conveys to Lewis, its successors and assigns, together with the right to grant and transfer the same, a temporary easement, in gross, to erect, maintain, remove, and replace marketing, informational, and/or directional signs within the Property concerning the Benefitted Property and/or any portion thereof, provided such signs shall be located only in the Common Areas, and provided such signs do not materially interfere with Owner's use or development of the Covered Property. This temporary easement shall terminate the earlier of (i) five (5) years from

the date of recordation of this Declaration, or (ii) the date Lewis ceases to own any portion of the Benefitted Property.

- 6.4 Drainage Easements.** Owner hereby grants to Lewis its successors and assigns, together with the right to grant and transfer the same, a nonexclusive easement for drainage of surface waters over, across, under, and through all Utility Areas and/or Common Areas within the Covered Property in accordance with drainage plans (the "Drainage Plans") approved by City or other public agencies having jurisdiction thereof. This drainage easement includes the right, but not the obligation, of such benefitted parties to enter any Common Areas to construct, maintain, and/or repair any drainage ways or facilities identified on the Drainage Plans.
- 6.5 Construction Easements.** Owner shall, upon thirty (30) days prior written notice from Lewis, grant to Lewis, its successors and assigns, temporary easements in gross on, over, under, or across the Covered Property, together with the right of ingress and egress thereto, at location(s) reasonably approved by Owner, for the purpose of disposing soil, rocks, and other materials generated by the development and construction of the Perimeter Improvements, including, but not limited to, materials generated by grading of the streets adjacent to and in the vicinity of the Covered Property, and the right to deposit and use equipment and materials thereon for such purposes, so long as Lewis' activity pursuant to this easement does not unreasonably interfere with Owner's construction of its Project on the Covered Property.
- 7. Governmental Approvals: Owner's Duty.** Owner shall obtain, at its sole expense, all governmental approvals and permits which may from time to time be required with respect to the construction or use of any Improvements upon the Covered Property.
- 8. Signs and Advertising Devices/Marketing Budget.**
- 8.1 Submission to Lewis.** Owner shall not place anywhere on the Covered Property any promotional or directional signs or advertising devices (collectively, "Signs") relating to the Project or the construction thereof without first submitting to Lewis a schedule and specifications showing the placement, design, size, material, color, typeface, and other similar information and receiving Lewis' prior written approval thereof, which approval shall not be unreasonably withheld or delayed and shall be deemed approved if written notice of disapproval is not delivered to Owner within ten (10) days after Lewis' receipt of the proposed Sign. Nothing herein shall be deemed to indicate that Lewis agrees to permit the use of any property owned by Lewis for any of Owner's Signs.

8.2 Project Name and Logos. Owner shall submit to Lewis, for Lewis' review and approval, which approval shall not be unreasonably withheld or delayed, the name or names it intends to use in connection with the development and marketing of the Project (the "Project Names") and any logos or marks to be used in connection therewith (the "Project Logos"). Owner shall not use in advertising or place on any sign, billboard, or entry monument, any Project Names or Project Logos without first obtaining the written consent thereof of Lewis, which consent shall not be unreasonably withheld. In the event Lewis fails to respond to a written request for approval of a Project Name or Project Logo within the (10) business days of receipt of such request, such Project Name or Project Logo shall be deemed approved.

9. General Restrictions.

9.1 Prohibited Uses/Compliance With Laws. No Improvements upon the Covered Property shall be used for any purpose other than as set forth in Exhibit "C" hereto, or reasonably incident thereto, and nothing shall be done or kept in or on the Property which would be in violation of any City, State or Federal laws.

9.2 Nuisances/Noise. No rubbish or debris of any kind shall be placed or permitted to accumulate anywhere upon the Covered Property, and no odor shall be permitted to arise therefrom so as to render the Covered Property or any portion thereof unsanitary, unsightly, offensive, or detrimental to any other property in the vicinity thereof or to its occupants. No noise or other nuisance, except normal construction noise, shall be permitted to exist or operate upon any portion of the Covered Property so as to be offensive or detrimental to any of the Benefitted Property or to its occupants.

9.3 Drainage. Owner's draining of water, grading activities, and the construction of Improvements upon the Covered Property shall not interfere with the established drainage pattern within the Benefitted Property. Owner shall not drain or discharge any water, including, without limitation, rain water, except into an established drainage way or facility approved by the City for such purpose.

9.4 No Hazardous Activities. No activities shall be conducted on any portion of the Covered Property and no Improvements shall be constructed on any portion of the Covered Property which are or might be unsafe or hazardous to any person or property.

9.5 No Mining or Drilling. No portion of the Covered Property shall be used for the purpose of mining, quarrying, drilling, boring, or exploring for or removing water, oil, gas, or other hydrocarbons, minerals, rocks, stones, gravel, or earth.

- 9.6 **Maintenance and Repair.** The Covered Property and all Improvements thereto shall at all times be maintained in good, safe condition and repair and in a neat and attractive condition. No Improvements, including, without limitation, perimeter walls or landscaping, shall be allowed to deteriorate to a dangerous, unsafe, unsightly, or unattractive condition or condition of disrepair.
- 9.7 **Flags and Banners.** No flags, flag poles, balloons, beacons, or banners shall be constructed, placed, or maintained upon the Covered Property without the written consent of Lewis, which consent shall not be unreasonably withheld.
- 9.8 **No Electrical Interference.** No electrical devices which may unreasonably interfere with television or radio reception within the Benefitted Property shall be located, used, or placed on any portion of the Covered Property.
10. **Enforcement by Lewis/Assignment.** Lewis shall have the right to enforce, by proceedings at law or in equity, all restrictions, covenants, and reservations in this Declaration or any amendment thereto, including the right to prevent the violation of any such restrictions, covenants, or reservations, and the right to recover damages or other amounts due for such violation. The failure by Lewis to enforce any condition, covenant, or restriction herein contained in any certain instance or on any particular occasion shall not be deemed a waiver of such right on any future breach of the same or any other condition, covenant, or restriction by Owner. Except as expressly provided in the written evidence of approval by Lewis of the Project Plans or any other plans, drawings, or specifications for the construction of any Improvement upon the Covered Property, such approval shall not constitute or be deemed a waiver of any requirement contained in this Declaration which relates to the conditions upon such construction, or the manner in which such construction shall be performed. All rights, options, and remedies of Lewis under the Declaration are cumulative, and no one of them shall be exclusive of any other, and Lewis shall have the right to pursue any one or all of such rights, options, and remedies or any other remedy or relief which may be provided by law or in equity, whether or not stated in this Declaration. In addition to and without limiting the foregoing, Lewis may assign any of its rights and powers under this Declaration to any person or entity in which Lewis, or any of its affiliates, owns a controlling interest, provided such assignee owns fifty percent (50%) or more of the Benefitted Property, and such entity in writing agrees to assume the duties of Lewis pertaining to the particular rights and powers assigned. Upon the recordation of such writing accepting such assignment and assuming such duties, such person or entity shall, to the extent of such assignment, have the same rights and powers and be subject to the same obligations and duties as are given to and assumed by Lewis herein. Without limiting the generality of the foregoing, Lewis may make such assignment as to the entire Covered Property, or any portion thereof.

11. Right to Approve Transferee/Right to Repurchase. Owner understands and acknowledges that the Project is part of an overall plan of development which includes certain other lands within the "Tooby Ranch" purchased or to be purchased by Lewis. As such, it is material to Lewis' decision to sell the Project to Owner that Owner develop the Property with quality single-family residential units and that Owner not resell any Lots prior to the completion of such Project Units. Owner acknowledges that Lewis has agreed to sell the Project to Owner based upon Owner's proven ability and experience as a builder of quality single family homes, and the importance to Lewis, by reason of Lewis' other development within the Tooby Ranch, that the Project be a quality development. As such, until Project Units are constructed on eighty percent (80%) of the Lots within each Neighborhood purchased by Owner, in the event Owner receives a bona fide offer to purchase, which Owner desires to accept, or otherwise desires to sell any of Owner's right, title, or interest in any such Lots, Owner shall give Lewis written notice (the "Transfer Notice") of such offer or intent to sell a minimum of thirty (30) days prior to executing any agreement which would transfer any of Owner's right, title, or interest in such Lots. Lewis shall then, within ten (10) days from Lewis' receipt of the Transfer Notice, notify Owner in writing whether Lewis elects to purchase such Lots (the "Repurchase Property"). Lewis shall have the right, but not the obligation, to repurchase any Lots not improved with a Project Unit from Owner (or its permitted assignee) for the Base Price (as defined in the Purchase Agreement) paid by Owner for the Lots, plus Owner's direct costs incurred to complete the subdivision and development of the Project (the "Project Costs") (unless any Project Improvements have been destroyed or damaged in which event the purchase price shall be reduced by the costs to repair and/or restore the Improvements to a first-class condition which costs shall be determined by a licensed contractor selected by Lewis, provided such reduction shall not exceed the amount of Owner's direct costs to originally construct the Improvements).

Within ten (10) days of Lewis notifying Owner of Lewis' election to repurchase the Repurchase Property, Lewis and Owner shall open an escrow (the "Escrow") with Escrow Holder and deliver a copy of this Agreement to Escrow Holder which shall constitute the purchase and sale agreement with respect to Lewis' purchase of the Repurchase Property. Said Escrow shall be scheduled to close no later than thirty (30) days after the opening thereof. Owner agrees to execute all such instruments and other documents reasonably requested by Lewis or Escrow Holder and to take all actions required to consummate the transaction contemplated hereby. Lewis and Owner shall promptly sign standard form escrow instructions supplied by Escrow Holder; provided, however, that in the event of a conflict between the escrow instructions and this Agreement the terms of this Agreement shall control. The terms of Lewis' option to purchase the Repurchase Property are as follows:

- 11.1 Purchase Price. The purchase price shall be the original Base Price paid by the Owner for the Lots, plus Owner's Project Costs as described above, less any costs to repair or restore the Improvements as described above. The Project Costs shall also include any costs

paid by Owner to Lewis at Close of Owner's escrow for Owner's purchase of the Covered Property or paid to Lewis under the Joint Improvement Agreement.

- 11.2 **Manner of Payment.** The purchase price shall be paid all in cash, provided that Lewis may, at its election, elect to assume any existing mortgages encumbering the Repurchase Property in lieu of paying all cash.
- 11.3 **Title.** Upon close of the escrow, Owner shall convey the Repurchase Property to Lewis by grant deed subject only to covenants, conditions, restrictions, easements and other matters of title (excluding, however, monetary encumbrances) existing as of the Close of Escrow for Owner's purchase of the Covered Property, together with any additional exceptions approved by Lewis, which approval shall not be unreasonably withheld.
12. **Amendments.** This Declaration may only be amended by a writing executed by Lewis and the record owner of the Covered Property which shall be recorded against the Covered Property.
13. **Miscellaneous.**
- 13.1 **Captions.** The captions used herein are for convenience only and are not a part of this Declaration and do not in any way limit or amplify the terms and provisions hereof.
- 13.2 **Interpretation: Governing Law.** This Declaration shall be construed as if prepared by both parties hereto. Each party acknowledges that it has had full benefit of legal counsel in the preparation and negotiation of this Declaration. This Declaration shall be governed by and construed under the laws of the State of California.
- 13.3 **Attorneys' Fees.** In the event any action shall be instituted in connection with this Declaration, the party prevailing in such action shall be entitled to recover from the other party all of its costs of action, including reasonable attorneys' fees as fixed by the court therein.
- 13.4 **Severability.** In the event that any phrase, clause, sentence, paragraph, section, article, or other portion of this Declaration shall become illegal, null, void, or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null, void, or against public policy, the remaining portions of this Declaration shall not be affected thereby and shall remain in force and effect to the full extent permissible by law.

- 13.5 Gender and Number. In this Declaration (unless the context requires otherwise), the masculine, feminine, and neuter genders and the singular and plural include one another.
- 13.6 Covenants to Run with the Land Term. The covenants, restrictions, and reservations of this Declaration shall run with and bind the Covered Property and shall inure to the benefit of and be enforceable by Lewis and any successors and assigns of Lewis so designated by Lewis in accordance with Section 10 herein, for the term of the Declaration. The term of this Declaration shall commence upon the recordation of this Declaration and shall, unless otherwise set forth in this Declaration, terminate on the later of (i) the fifth (5th) anniversary of that recordation, or (ii) the date Lewis ceases to own any fee interest in the Benefitted Property whereupon the encumbrance of this Declaration, except Sections 3, 4, 6, 7, 9, and 13 (the "Permanent Sections"), shall automatically terminate, without the execution and/or recordation of any further instrument, and cease to be of any further force or effect as to the Covered Property. The encumbrance of this Declaration shall continue as to the foregoing Permanent Sections listed above for a term of twenty (20) years from the date of this Declaration, unless earlier terminated by a Notice of Termination executed and recorded by Lewis. Notwithstanding the foregoing, (i) any portion of the Covered Property, upon dedication or conveyance to, and acceptance by, a public entity or public utility in accordance with a Project Plan approved by Lewis, and (ii) any Lot, upon the sale of such Lot with a completed Project Unit thereon to a member of the general public, shall be deemed automatically released from the encumbrance of this Declaration, without the necessity of executing or recording any instrument of release.
- 13.7 Notices. All notices or other communications between Lewis and Owner required or permitted hereunder shall be in writing and personally delivered, or sent by certified United States mail, postage prepaid, return receipt requested, or sent via overnight air courier (example, Federal Express) to the following addresses:

If to Lewis, to:

Attention: Douglas V. Mull  
 Lewis Investment Company, LLC  
 c/o Lewis Operating Corp.  
 9216 Klefer Boulevard  
 Sacramento, CA 95826  
 Teletypewriter: (916) 362-9472

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with copy to:                   Attn: General Counsel  
Lewis Operating Corp.  
P. O. Box 670  
Upland, CA 91785-0670  
1156 North Mountain Avenue  
Upland, CA 91786  
Telecopier: (909)948-6725

If to Owner, to:               Attention: Mr. Doug Bauer  
Woodlake, L.P.  
c/o William Lyon Homes, Inc.  
2603 Camino Ramon, Suite 150  
San Ramon, CA 94583-4289  
Telecopier: (925) 543-5501

with copy to:                   Nancy Herlan, Esq.  
William Lyon Homes, Inc.  
4490 Von Karman Avenue  
Newport Beach, CA 92660  
Telecopier: (949)262-2500

A notice shall be effective on the date of personal delivery if personally delivered, the next business day after deposit with the overnight air courier, or two (2) business days following the date the notice is postmarked, if mailed via certified mail as set forth above. Either party may change the address to which notice is to be given to it by giving notice of such change of address in the manner set forth above for giving notice.

- 13.8 Effect of Declaration. This Declaration is made for the purposes set forth in the Recitals to this Declaration, and Lewis makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of this Declaration or as to the compliance of any of these provisions with public laws, ordinances, and regulations applicable thereto.
- 13.9 Rights of Mortgagees. None of the restrictions and other provisions herein contained, including without limitation Section 11, shall affect or impair the lien or charge of any bona fide mortgage or deed of trust made in good faith and for value on any Lot or other portion of the Covered Property; provided, however, that if all or a portion of the Covered Property is sold under a foreclosure of any mortgage or under the provisions of any deed of trust, such purchaser at such sale, including, without limitation, the mortgagee or beneficiary of a deed of trust and the successors and assigns of such purchaser, shall hold any and all property so purchased subject to all of the restrictions and other provisions of this Declaration, provided Section 11 shall not apply to a sale of the Covered Property, or any portion thereof, by such



mortgagee or beneficiary of a deed of trust to a bona fide purchaser for value but shall survive such sale and thereafter continue to apply to any sale or transfer by such bona fide purchaser, and to the successors and assigns of such bona fide purchaser. The foregoing provision shall also apply to a deed in lieu of foreclosure and to the transferee of the lender after such deed in lieu. No mortgagee, beneficiary, or their successors or assigns (including any purchaser acquiring upon foreclosure or deed-in-lieu of foreclosure) shall, however, be liable for violations of this Declaration existing at the time of foreclosure or transfer by deed-in-lieu of foreclosure.

- 13.10 **Dispute Resolution.** Notwithstanding anything to the contrary set forth in this Agreement, in the event of any dispute between Owner and Lewis with respect to this Declaration, then the parties shall promptly and in good faith attempt to resolve such dispute by mutual agreement. In the event the parties are unable to resolve such dispute by mutual agreement, the matter shall be settled exclusively by a binding arbitration ("Arbitration"), conducted by a single arbitrator (the "Arbitrator") chosen by the parties as described below. Any party may initiate the Arbitration by written notice to the other and to the Arbitration Tribunal. The date on which the notice is given is called the "Arbitration Initiation Date". The fees and expenses of the Arbitration Tribunal and the Arbitrator shall be shared equally by the parties and advanced by them from time to time as required; provided, however, that at the conclusion of the Arbitration, the Arbitrator may award costs and expenses (including the costs of the Arbitration previously advanced and the fees and expenses of attorneys, accountants and other experts) to the prevailing party. Except as expressly modified herein, the Arbitration shall be conducted in accordance with the provisions of Section 1280 et seq. of the California Code of Civil Procedure or their successor sections ("CCP"), and shall constitute the exclusive remedy for the determination of any Claim, including whether the Claim is subject to arbitration; provided the following time periods in the CCP shall be shortened as follows: Sections 1284, 1288.4, 1290.2 and 1290.6 - halved, Section 1288 - 4 years to 30 days, and 100 days to 15 days; Section 1288.2 - 100 days to 30 days. The Arbitration shall be conducted under the procedures of the Arbitration Tribunal, except as modified herein. The Arbitration Tribunal shall be the Los Angeles Office of JAMS/ENDISPUTE ("JAMS"), unless the parties to the dispute cannot agree on a JAMS arbitrator, in which case the Arbitration Tribunal shall be the Los Angeles Office of the American Arbitration Association ("AAA"). The Arbitrator shall be a retired judge or other arbitrator employed by JAMS selected by mutual agreement of the parties to the dispute, and if they cannot so agree within thirty (30) days after the Arbitration Initiation Date, then the Arbitrator shall be selected from the Large and Complex Case Project ("LCCP") panel of

the AAA, by mutual agreement of the parties to the dispute. If the parties to the dispute cannot agree on the Arbitrator within sixty (60) days after the Arbitration Initiation Date, the Arbitrator shall be selected by the AAA, from its LCCP panel, through such procedures as the AAA regularly follows. In all events, the Arbitrator must have had not less than fifteen (15) years experience as a practitioner or arbitrator of complex business transactions. If, for any reason, the AAA does not so act, any party to the dispute may apply to the Superior Court in and for Los Angeles County, California, for the appointment of a single arbitrator. No pre-arbitration discovery shall be permitted, except that the Arbitrator shall have the power in his or her discretion, upon either party's motion but not on his or her own initiative, to order the parties to engage in pre-arbitration mediation for a period not exceeding thirty (30) days before a mediator mutually acceptable to the parties. The Arbitrator shall try any and all issues of law or fact and be prepared to make the award within ninety (90) days after the close of evidence in the Arbitration. When prepared to make the award, the Arbitrator shall first so inform the parties, who shall have ten (10) days to attempt to resolve the matter by a binding agreement between them. If the parties do not resolve the matter, the Arbitrator shall make the award on the eleventh day following his notice of being prepared to make the award. The Arbitrator's award shall dispose of all of the claims that are the subject of the Arbitration and the award shall include written statements of fact and conclusions of law. The Arbitrator shall be empowered to (i) enter equitable as well as legal relief, (ii) provide all temporary and/or provisional remedies, and (iii) enter binding equitable orders. The award rendered by the Arbitrator shall be final and not subject to judicial review, and judgment thereon may be entered in any court of competent jurisdiction. The prevailing party, as determined by the Arbitrator, shall be entitled to recover from the other party all actual fees, costs and expenses of enforcing any right of the prevailing party, including, without limitation, actual attorneys' fees and expenses, and the other costs of such arbitration. The Arbitrator shall award to the prevailing party: (i) the actual (rather than reasonable) attorneys' fees which the prevailing party has paid or is obligated to pay; and (ii) all actual (rather than reasonable) costs and expenses which the prevailing party has paid or is obligated to pay. The "prevailing party," for purposes of this Agreement, shall be the party who, in light of the issues litigated and the Arbitrator's decision on these issues, was more successful in the action. The party who is more successful need not be determined to be the party who receives the judgment in the action.

- 13.11 Profit Participation. Owner's covenants, conditions and restrictions concerning payment of the Profit Participation as set forth in Addendum 1 to the Purchase Agreement are incorporated herein and shall run with the Covered Property and until paid in full, be binding upon all parties having or acquiring any right, title or interest in the

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Covered Property. Owner's obligations under said Addendum 1 shall survive termination of this Declaration.

13.12 ~~Counterparts~~. This Declaration may be signed in multiple counterparts which together shall constitute the complete Declaration.

IN WITNESS WHEREOF, Owner has executed this instrument on the day and year first above written.

ACKNOWLEDGED AND ACCEPTED this 19th day of June, 2000.

LEWIS INVESTMENT COMPANY, LLC, a California limited liability company

By: John M. Goodman  
Name: JOHN M. GOODMAN  
Its: AUTHORIZED AGENT

WBF:km1947G2135D-CC&R  
081900

"OWNER"

WOODLAKE, L.P., a Delaware partnership

By: WILLIAM LYON HOMES, INC., a California corporation its General Partner

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

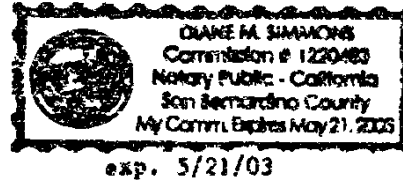
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF SAN BERNARDINO )

On June 19, 2000 before me, Diane M. Simmons, a Notary Public in and for said county and state, personally appeared John M. Goodman personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature *Diane M. Simmons*  
Diane M. Simmons



STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_  
Notary Public in and for said county and state, personally appeared \_\_\_\_\_

\_\_\_\_\_ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_  
Notary Public in and for said county and state, personally appeared \_\_\_\_\_

\_\_\_\_\_ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

CC&R's

Page 24

Covered Property. Owner's obligations under said Addendum 1 shall survive termination of this Declaration.

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IN WITNESS WHEREOF, Owner has executed this instrument on the day and year first above written.

ACKNOWLEDGED AND ACCEPTED this 19th day of June, 2000.

LEWIS INVESTMENT COMPANY, LLC,  
a California limited liability company


By:   
Name: John H. Goodman  
Its: Authorized Agent

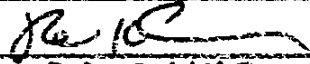
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"OWNER"

WOODLAKE, L.P.,  
a Delaware partnership

By: WILLIAM LYON HOMES, INC.,  
a California corporation  
its General Partner

By:   
Name: DONALD S. BAKER  
Its: PRESIDENT - N.O. CAL. DIV.

By:   
Name: ROBERT K. BAKER  
Its: VICE PRESIDENT

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

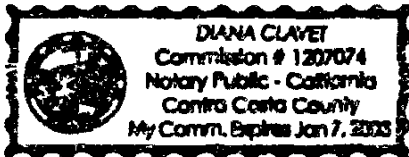
State of California

County of CONTRA COSTA } ss.

On JUNE 20, 2000, before me, DIANA CLAVET  
Date Name and Title of Officer (Is Not a Notary Public?)  
personally appeared DOUGLAS F. BAUER and ROBERT KNobel  
Name(s) of Signer(s)

personally known to me  
 proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) ~~is~~ are subscribed to the within instrument and acknowledged to me that ~~he~~ they executed the same in ~~his~~ their authorized capacity(ies), and that by ~~his~~ their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



exp. 1/7/03

Place Notary Seal Above

WITNESS my hand and official seal.

DIANA CLAVET  
Signature of Notary Public  
Diana Clavet

**OPTIONAL**

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

**Description of Attached Document**

Title or Type of Document: CC&RS

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer**

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

Signer is Representing: \_\_\_\_\_



**EXHIBIT "A-1"**  
**TO**  
**DECLARATION OF DEVELOPMENT, COVENANTS, CONDITIONS,**  
**AND RESTRICTIONS**

**DESCRIPTION OF BENEFITTED PROPERTY**

**Parcel A**

All that real property situate in the City of Fairfield, County of Solano, being a portion of the land described in Deed to Tooby, filed for record in Book 1974 of Official Records at Page 59471, in the Office of the Solano County Recorder and a portion of Lot 106 as shown on that certain Map entitled: "Paradise Valley North, Unit No. 2", filed for record September 27, 1980 in Book 59 of Maps, at Page 62, in said Recorder's Office, being more particularly described as follows:

Beginning at the Southeast corner of said Lot 106, said point of beginning being further described as a point on the Northerly line of Foothill Parkway as shown on said Map; thence Easterly along the Easterly projection of the North line of said Foothill Parkway, North 89° 10' 38" East, 295.32 feet; thence leaving said Easterly projection North 0° 51' 58" West, 399.97 feet; thence North 44° 21' 25" West, 42.81 feet to the beginning of a tangent curve concave Southerly having a radius of 489.00 feet; thence Westerly along the arc of said curve, 459.40 feet through a central angle of 56° 07' 23" to the beginning of a reverse curve having a radius of 500.00 feet; thence Westerly along the arc of said reverse curve 137.00 feet through a central angle of 15° 41' 55"; thence North 84° 46' 53" West, 75.11 feet to the beginning of a tangent curve concave Southerly having a radius of 20.00 feet; thence Westerly along the arc of said curve 22.29 feet through a central angle of 63° 50' 38" to a point on the Easterly line of Paradise Valley Road as shown on said Map, said Easterly line also being the Westerly line of said Lot 106; thence along the Westerly and Northerly lines of said Lot 106 the following courses and distances: thence North 31° 22' 28" East, 16.58 feet to the beginning of a tangent curve concave Westerly having a radius of 861.00 feet; thence Northerly along the arc of said curve 103.94 feet through a central angle of 7° 14' 59"; thence North 85° 32' 22" East, 561.08 feet; thence South 88° 58' 22" East, 145.58 feet; thence North 45° 41' 13" East, 212.67 feet; thence North 40° 38' 53" East, 80.01 feet; thence North 35° 55' 53" East, 152.44 feet; thence, leaving said Northerly line of said Lot 106, along the West line of said lands of Tooby, said West line being further described as the East line of Lots 25 through 37 as shown on said Map, North 0° 55' 22" West, 160.00 feet; thence North 1° 28' 22" West, 596.00 feet; thence North 0° 52' 22" West, 120.00 feet to the Northeast corner of said Lot 37; thence leaving said West line of Tooby, North 89° 07' 38" East, 40.00 feet; thence Southerly, lying 40 feet Easterly of and parallel with said West line of Tooby, South 0° 52' 22" East, 119.79 feet; thence South 1° 29' 22" East, 334.38 feet; thence leaving said parallel, North 72° 24' 17" East, 329.10 feet to a point on the City of Fairfield City Limit as shown on the Map entitled: "5th Annexation District of 1992 - Paradise Valley/Cement Hill Ranch" on file in the Office of the Solano County Assessor, said point being further described as a point on a non-tangent curve concave Northerly having a radius of 250.00 feet, from which point the radius bears North 64° 51' 04" East; thence Southerly and Easterly along said City Limits line, and the arc of said curve 431.42 feet, through a central angle of 96° 52' 29"; thence continuing along said City Limits line the following courses and distances: North 55° 58' 35" East, 360.00 feet; thence South 34° 01' 25" East, 580.00 feet; thence South 5° 58' 35" West, 225.00 feet to the beginning of a tangent curve concave Northerly having a radius of 250.00 feet; thence Southeasterly along the arc of said curve, 702.50 feet through a central angle of 161° 00' 00"; thence South 55° 01' 25" East, 300.00 feet; thence South 59° 01' 25" East, 131.20 feet; thence, leaving said City Limits line, South 30° 58' 35" West, 146.78 feet; thence South 82° 44' 42" West, 262.68 feet; thence South 7° 16' 18" East, 122.50 feet; thence South 01° 41' 55" West, 50.82 feet; thence south 07° 15' 18" East, 70.00 feet; thence south 21° 00' 51" East, 82.50 feet; thence south 66° 16' 19" West, 115.00 feet to a point on a non-tangent curve concave Northeasterly having a radius of 775.00 feet, from which point the radius bears North: 80° 15' 19" East; thence Southerly along the arc of said curve 138.18 feet through a central angle of 10° 12' 59"; thence

South 33° 58' 40" East, 200.19 feet; thence North 48° 28' 49" East, 25.44 feet; thence South 33° 58' 40" East, 65.85 feet to the beginning of a tangent curve concave Southwesterly having a radius of 660.00 feet; thence along the arc of said curve, 184.33 feet through a central angle of 16° 14' 53"; thence South 17° 41' 47" East, 456.84 feet to the beginning of a tangent curve concave Westerly having a radius of 660.00 feet; thence Southerly along the arc of said curve, 284.19 feet through a central angle of 23° 17' 17"; thence South 61° 27' 26" East, 732.01 feet to the beginning of a tangent curve concave Southwesterly having a radius of 700.00 feet; thence Southeastery along the arc of said curve 1060.58 feet through a central angle of 67° 32' 47" to a point on the Northerly line of the Putah South Canal as described in Deed filed for record in Book 1058 of Official Records, at Page 592 in said Recorder's Office; thence Westerly along said Northerly line the following courses and distances: North 80° 45' 26" West, 167.05 feet; North 46° 54' 25" West, 318.30 feet; thence North 85° 10' 26" West, 614.60 feet; thence North 26° 30' 25" West, 267.10 feet; thence North 47° 20' 25" West, 207.40 feet; thence North 72° 30' 25" West, 308.60 feet; thence North 87° 26' 26" West, 546.60 feet; thence North 48° 36' 25" West, 783.60 feet; thence North 77° 00' 25" West, 805.50 feet; thence North 63° 50' 26" West, 681.30 feet; thence North 88° 17' 26" West, 359.51 feet to a point from which the point of beginning bears North 1° 42' 27" West; thence North 1° 42' 27" West, 153.39 feet to the point of beginning.

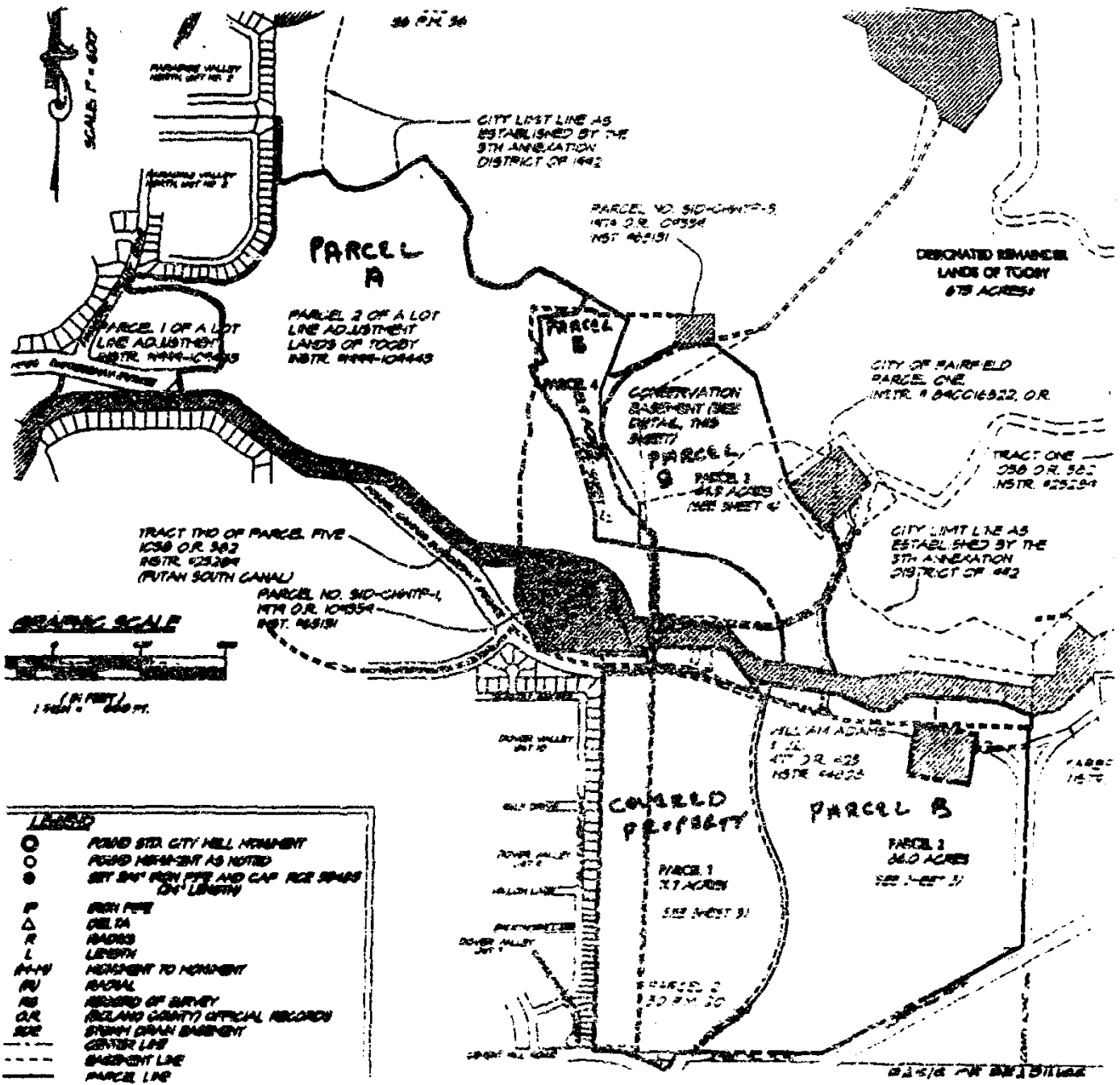
### **Parcel B**

Parcels 2, 3, and 4 of Parcel Map entitled "Parcel Map of Land of the Estate of Arthur H. Tooby" filed for record in the Office of the County Recorder of Solano County, California on January 19, 2000 in Book 41 of Parcel Maps, at Page 65.



**EXHIBIT "A-2"  
TO  
DECLARATION OF DEVELOPMENT, COVENANTS, CONDITIONS,  
AND RESTRICTIONS**

**MAP OF MASTER PLAN AREA**



**EXHIBIT "B"**  
**TO**  
**DECLARATION OF DEVELOPMENT, COVENANTS, CONDITIONS,**  
**AND RESTRICTIONS**

**DESCRIPTION OF COVERED PROPERTY**

**Parcel 1, as shown on that certain Map entitled: "Parcel Map of Land of the Estate of Arthur H. Tooby", filed for record in the Office of the County Recorder of Solano County, California on January 19, 2000 in Book 41 of Parcel Maps at Page 85.**

**Excepting therefrom Parcel X, as shown upon that certain Map entitled: "Parcel Map of Land of the Estate of Arthur H. Tooby", filed for record in the Office of the County Recorder of Solano County, California on January 19, 2000 in Book 41 of Parcel Maps, at Page 85.**

**EXHIBIT "C"**  
**TO**  
**DECLARATION OF DEVELOPMENT, COVENANTS, CONDITIONS,**  
**AND RESTRICTIONS**

**DESCRIPTION OF PROJECT**

**The Project shall consist of not more than two hundred twenty-three (223) Project Units; the Project shall consist of two distinct neighborhoods, Neighborhood A (102 lots), minimum 6,000 square foot lots in the RLMS Zoning District, and Neighborhood B (121 lots), minimum 5,000 square foot lots in the RLMS Zoning District, all as identified in Exhibit "1" attached hereto.**

**The Project shall include at least six (6) model homes which shall represent six (6) distinct floor plans for Project Units to be constructed on the Property.**

**All Project Units shall be single family residences with attached garages. Project Units in Neighborhood A shall have a minimum of 2,200 and a maximum of 3,400 square feet of floor space (excluding garages). Project Units in Neighborhood B shall have a minimum of 1,500 and a maximum of 2,800 square feet of floor space (excluding garage space).**

**EXHIBIT "1"  
TO  
EXHIBIT "C"**

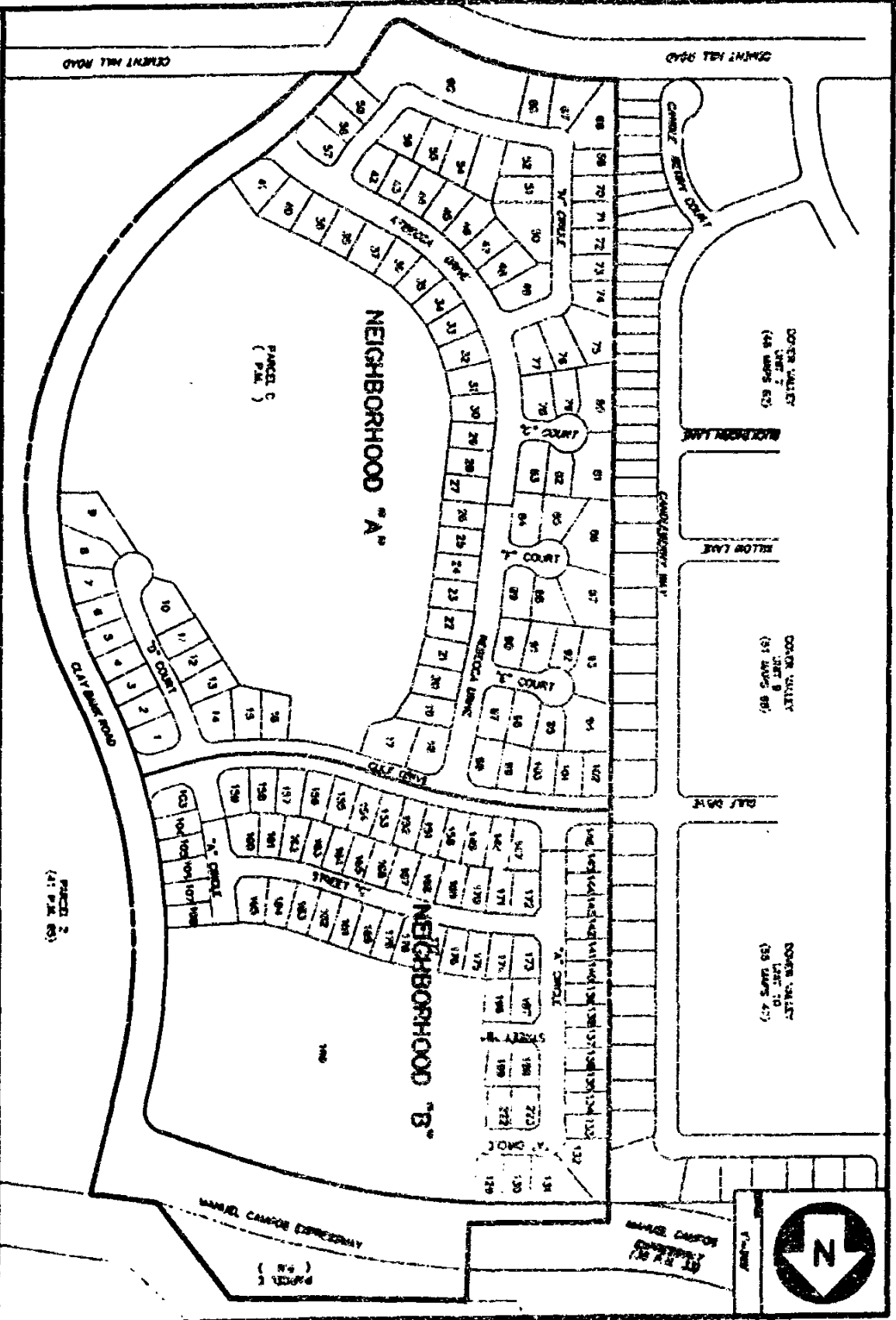
**MAP OF NEIGHBORHOODS**

**HORSESHOE LAKE ESTATES  
NEIGHBORHOOD EXHIBIT**

DESIGNED BY: APH  
 DRAFTED BY: TH  
 CHECKED BY: DJ  
 ISSUE DATE: 06/19/00  
 PROJECT NO.: 9903390  
 DWG FILENAME: 9903390EX116



**PHILLIPS ENGINEERING**  
 CIVIL ENGINEERS - LAND SURVEYORS  
 423 MERCANT STREET  
 P.O. BOX 8908  
 WACAVILLE, CA 95690  
 PHONE (707) 491-0938 FAX (707) 491-8333



**EXHIBIT "D"  
TO  
DECLARATION OF DEVELOPMENT, COVENANTS, CONDITIONS,  
AND RESTRICTIONS**

**SITE IMPROVEMENTS**

**DECLARATION OF DEVELOPMENT CC&R'S - HORSESHOE LAKE ESTATES**  
**EXHIBIT "D" - SITE IMPROVEMENTS (IN-TRACT) - based upon pre-approved plans**  
 \* Includes some Improvements Listed in Exhibit "E"

**ROUGH GRADING**  
**SITE CLEARING & GRUBBING**  
**MASS EXCAVATION**  
**FINISH LOTS**

QUANTITY EST.	UOM
48.5	AC
196000	CY
214	EA

**SEWER**  
**12" PIPE VCP**  
**10" PIPE VCP**  
**8" PIPE VCP**  
**MANHOLES**  
**LATERALS**  
**LATERALS**

1726	LF
1312	LF
6375	LF
33	EA
223	EA
223	EA

**WATER**  
**24" PIPE PVC**  
**12" PIPE PVC**  
**8" PIPE PVC**  
**12" VALVE ASSEMBLY**  
**8" VALVE ASSEMBLY**  
**FIRE HYDRANTS**  
**AIR/VAC RELEASE**  
**LATERALS**  
**REMOVE EXISTING 24" PIPE**

2835	LF
2835	LF
5790	LF
18	EA
28	EA
16	EA
5	EA
223	EA
2820	LF

**STORM DRAINAGE**  
**MAIN LINES**  
**60" RCP PIPE**  
**60" RCP PIPE**  
**54" RCP PIPE**  
**36" RCP PIPE**  
**24" RCP PIPE**  
**18" RCP PIPE**  
**18" RCP PIPE**  
**12" RCP PIPE**  
**CATCH BASIN**  
**SDMH**  
**WETLAND WIER**  
**OUTLETS TO LAKE**

694	LF
778	LF
268	LF
688	LF
805	LF
720	LF
315	LF
1330	LF
43	EA
3	EA
1	EA
8	EA

**ROADWAY AND STREET**  
**INTERIOR STREETS**  
**6" PCC CURB & GUTTER**  
**ATTACHED PCC SIDEWALK**  
**DETACHED PCC SIDEWALK**  
**STREET SIGNS W/POLE**  
**STRIPING**  
**MONUMENTS**

310134	SF
16760	LF
7360	LF
9380	LF
32	EA
1	LF
31	EA

**UTILITY SYSTEMS**  
**GAS INSTALLATION**  
**ELECTRIC INSTALLATION**  
**TRENCH STRUCTURE & CONDUIT**  
**STREET LIGHTS**  
**O.H. ELECT. CONVERSION**

223	EA
223	EA
223	EA
41	EA
1	LF

**AMENITIES & SPECIAL CONSTRUCTION**  
**COMMON AREA LANDSCAPE**  
**COMMON AREA IRRIGATION**  
**DECORATIVE FENCING**

18000	SF
18000	SF
290	LF



**EXHIBIT "E"  
TO  
DECLARATION OF DEVELOPMENT, COVENANTS, CONDITIONS,  
AND RESTRICTIONS**

**MAJOR IMPROVEMENTS**

**DECLARATION OF DEVELOPMENT CC&R'S - HORSESHOE LAKE ESTATES**  
**EXHIBIT "E" - MAJOR IMPROVEMENTS (OFF-SITE) - based upon pre-approved plans**  
 \* includes some improvements listed in Exhibit "D"

**ROUGH GRADING**  
**SITE CLEARING & GRUBBING**  
**MASS EXCAVATION**

QUANTITY EST.	UCM	
4	AC	
18000	CY	<Est. grading for Campos, Clay Bank & Cement Hill Rd.

**SEWER**  
 12" PIPE VCP  
 18" PIPE VCP  
 MANHOLES

3360	LF	<Rebecca to Campos
228	LF	<Clay Bank to Rebecca
16	EA	

**WATER**  
 18" PIPE PVC  
 16" VALVE ASSEMBLY  
 12" VALVE ASSEMBLY  
 FIRE HYDRANTS

500	LF	<Clay Bank Improvements
7	EA	<Clay Bank Improvements
2	EA	<Clay Bank Improvements
2	EA	<Clay Bank Improvements

**STORM DRAINAGE**

**MAIN LINES**  
 48" RCP PIPE  
 36" RCP PIPE  
 18" RCP PIPE  
 18" RCP PIPE  
**CATCH BASIN**  
 SDCM  
**OUTFALL STRUCTURES**

1470	LF	<Lake to linear park
1170	LF	<Lake to linear park
160	LF	<Lake to linear park
208	LF	<Lake to linear park
6	EA	<Lake to linear park
2	EA	<Lake to linear park
1	EA	<Lake to linear park

**ROADWAY AND STREET**  
 MANUA, CAMPOS PARKWAY  
 CLAY BANK & CEMENT HILL  
 8" PCC CURB & GUTTER  
 PCC SIDEWALK  
 STREET SIGNS W/POLE  
 STRIPING  
 MONUMENTS

58300	SS	
123165	SF	
8468	LF	
4580	LF	
10	EA	
1	LS	
11	EA	

**UTILITY SYSTEMS**  
**UNDERGROUND SYSTEM**  
**STREET LIGHTS**

4950	LF	<Clay Bank, Campos, Cement Hill Rd.
18	EA	<Clay Bank, Campos, Cement Hill Rd.

**AMENITIES & SPECIAL CONSTRUCTION**

**COMMON AREA LANDSCAPE**  
**COMMON AREA IRRIGATION**  
**DECORATIVE FENCING (LAKE)**  
**SOUNDWALLS**  
**POSSIBLE ADDITIONAL WALL**  
**WETLAND MITIGATION**

79000	SF	
73000	SF	
650	LF	
5185	LF	
750	LF	Ocean Hill to project boundary
1	LS	

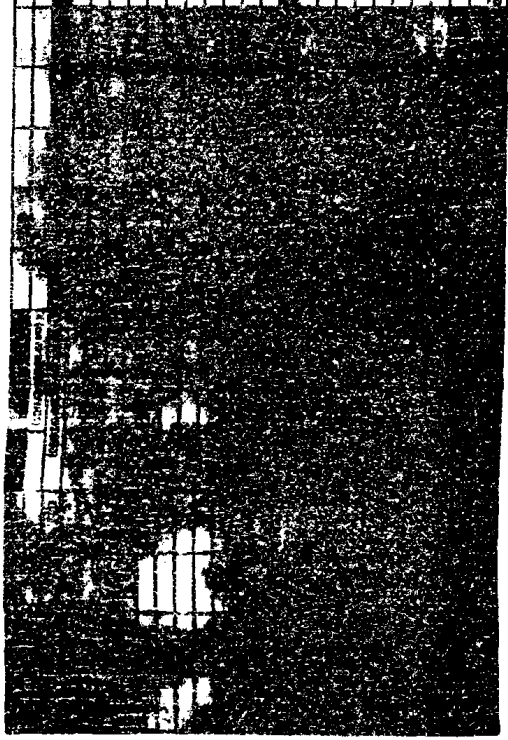
**EXHIBIT "F"  
TO  
DECLARATION OF DEVELOPMENT, COVENANTS, CONDITIONS,  
AND RESTRICTIONS**

**MAJOR IMPROVEMENT CONSTRUCTION SCHEDULE**

**RECALCULATION OF IMPROVEMENT COSTS - HORSeshOE LAne ENTITIES**  
**PROJECT "P" - SANJOSE IMPROVEMENT CONSTRUCTION SCHEDULE**

	Jan-03	Feb-03	Mar-03	Apr-03	May-03	Jun-03	Jul-03	Aug-03	Sep-03	Oct-03	Nov-03	Dec-03
<b>FIGURE 1 &amp; 2 IMPROVEMENTS &amp; EXPENSES</b>												
1st (plan-adopt) (year)												
2nd (plan-adopt) (year)												
3rd (plan-adopt) (year)												
4th (plan-adopt) (year)												
5th (plan-adopt) (year)												
6th (plan-adopt) (year)												
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29th (plan-adopt) (year)												
30th (plan-adopt) (year)												
31st (plan-adopt) (year)												

**FIGURE 2 & 3 APPROXIMATIONS**  
 1st (plan-adopt) (year)  
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 29th (plan-adopt) (year)  
 30th (plan-adopt) (year)  
 31st (plan-adopt) (year)



**EXHIBIT "G"  
TO  
DECLARATION OF DEVELOPMENT, COVENANTS, CONDITIONS,  
AND RESTRICTIONS**

**WETLANDS MITIGATION PLAN**

1. **Department of Army Nationwide Permit 28 (copy attached as Exhibit "1" hereto)**
2. **Project Information & Mitigation Plan - Horseshoe Lake Estates, Dated December, 1999/Revised April 2000, prepared by Gibson & Skordal (incorporated herein and made a part hereof by this reference.**



**DEPARTMENT OF THE ARMY**  
SAN FRANCISCO DISTRICT, CORPS OF ENGINEERS  
335 MARKET STREET  
SAN FRANCISCO, CALIFORNIA 94106-2197  
JUN 09 2000

REPLY TO  
ATTENTION OF:

Regulatory Branch

SUBJECT: File No. 234350N

EXHIBIT "1" TO EXHIBIT "G"  
TO

DECLARATION OF DEVELOPMENT, COVENANTS,  
CONDITIONS, AND RESTRICTIONS

**RECEIVED**  
**JUN 14 2000**  
**SACRAMENTO**

Mr. Douglas Mull  
Lewis Operating Corporation  
9216 Kiefer Boulevard  
Sacramento, California, 95826

Dear Mr. Mull:

This is in reference to a Pre-Construction Notification of January 5, 2000, submitted by Gibson and Skordal, concerning Department of the Army authorization to construct Horseshoe Lake Estates, a 71-acre residential subdivision (APNs 167-21-02, 167-18-04, 170-01-24), located north of the intersection of Cement Hill Road and Clay Bank Road and south of Putch South Canal, in the City of Fairfield, Solano County, California. The construction of 223 single-family housing units and infrastructure would require mass grading and leveling of the development parcel, necessitating the discharge of approximately 2,465 cubic yards (cys) of fill material into 0.76 acre of jurisdictional wetlands and the placement of approximately 15 cys of rock slope protection below the plane of ordinary high water to construct three outfall structures, a weir, and one inlet structure for drainage and mitigation purposes. Project construction would be in accordance with the drawing entitled, "Horseshoe Lake Estates, Development and Jurisdictional Map," in one sheet dated April 2000.

Based on a review of the information in your submittal and the current conditions of the site, as verified during field investigations of April 30, 1998, August 30, 1999, and June 6, 2000, the project qualifies for authorization under Department of the Army Nationwide Permit 26 for *Headwaters and Isolated Waters Discharges* (61 FR 65,874; Dec. 13, 1996), pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344).

The project must be in compliance with the General Conditions cited in Enclosure 1 and any Special Conditions specified in this letter for the nationwide permit authorization to remain valid. Non-compliance with any condition could result in the revocation of the nationwide permit for your project, thereby requiring you to obtain an individual permit from the U.S. Army Corps of Engineers. Upon completion of the project and all associated mitigation and monitoring requirements, you shall sign and return the statement cited in Enclosure 2, certifying all work complies with the terms and conditions of the permit. This nationwide permit authorization for your project does not obviate the need to obtain other State or local approvals required by law.

-2-

Project authorization will remain valid until February 11, 2002, unless the nationwide permit is modified, suspended, or revoked. If the project has commenced or is under contract to commence work prior to any modification, suspension, or revocation of the nationwide permit and the project could not comply with any newly issued nationwide permit, you shall have twelve (12) months from that date to complete the project under the present terms and conditions of this nationwide permit authorization.

Project authorization will not be effective until you have obtained Section 401 water quality certification or a waiver from the Regional Water Quality Control Board (RWQCB), San Francisco Bay Region. You shall submit a copy of the certification or waiver to the Corps prior to the commencement of work. You shall comply with any condition of certification required by the RWQCB and consider it to be an integral part of the nationwide permit authorization for your project. If the RWQCB fails to act on a valid request for certification within two (2) months after receipt, the Corps may presume a waiver of water quality certification has been obtained.

To ensure compliance with this nationwide permit authorization, the project is subject to the following Special Conditions:

1. To compensate for the loss of 0.76 acre of jurisdictional wetlands authorized by this permit, an array of mitigation measures shall be performed in the manner described in the "Project Information and Mitigation Plan," prepared by Gibson & Skordal and revised April 2000. This plan calls for the creation of 1.50 acres of seasonal wetlands at the south end of the existing lake, between the shoreline and the 100-foot wide buffer zone that encompasses the lake margin. The plan further specifies site preparation and planting procedures to be employed during wetland construction; identifies specific performance criteria to be used in evaluating created wetland habitat functions and values; establishes a minimum five-year maintenance and monitoring program to ensure compliance with the prescribed performance criteria; and establishes an endowment for long-term wetland maintenance funding.
2. Wetland construction shall commence concurrently with or in advance of any authorized wetland fill discharge associated with project construction and shall be completed within one (1) year, thereafter. Within ten (10) calendar days after each date, the Corps shall be notified in writing of the wetland construction start and completion dates. A wetland specialist shall supervise various construction activities to ensure compliance with the performance criteria of the mitigation plan.

-3-

3. Wetlands to be preserved on the development parcel shall be flagged or protected by other means to prevent disturbance during construction work.

Any construction work that must encroach into the preserved wetlands shall be performed on mats to minimize ground disturbance and vegetation loss.

4. Within three (3) months after completion of the wetland construction work, a Summary Report shall be submitted to the Corps which describes the "as-built" condition of all required mitigation elements. The Summary Report shall include a detailed plan and profile of the created wetlands, and identify wetland plant species and planting locations established in the field.

5. By October 15 for each year of the five-year monitoring period, an Annual Monitoring Report shall be submitted to the Corps and the RWQCB which describes the results of completed maintenance and monitoring activities; progress towards the attainment of the performance criteria; and proposed corrective measures, if required. Field data sheets and photo documentation of the created wetlands taken from permanent reference points shall be included with each Annual Monitoring Report. The first Annual Monitoring Report shall be submitted by October 15 of the year following the first growing season after planting.

6. Within three (3) months after completion of the mitigation construction work, a conservation easement, restrictive covenant, or similar land encumbrance shall be completed and filed with the County Recorder's Office, specifying the preservation in perpetuity of the created wetlands, the lake, and surrounding buffer zone as a wetland/open space preserve. A certified copy of the land encumbrance instrument shall be provided to the Corps.

7. A delineation of the created wetlands shall be performed at the conclusion of the five-year monitoring period, utilizing the evaluation procedures and parameters of vegetation, hydrology, and soils described in the "Corps of Engineers Delineation Manual" (January 1987). After completing a site inspection, the Corps will confirm in writing whether or not the performance criteria have been realized. If the required mitigation acreage has not been established at that time, the Corps may require additional corrective measures or other compensatory mitigation to be performed.

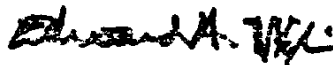
8. The buffer area encompassing the lake shall be fenced in its entirety to prevent encroachment.



9. Excavated material that can not otherwise be used as backfill on other portions of the development parcel shall be hauled off-site and disposed at a location not subject to Corps' regulatory authority. Prior to any off-site disposal, the Corps shall confirm that the disposal site does not contain jurisdictional waters.

You may refer any questions on this matter to Mr. Peter Fox of my staff at telephone 415-977-8454. All correspondence should be addressed to the Regulatory Branch, North Section, referencing the file number at the head of this letter.

Sincerely,



CS Calvin C. Fong  
Chief, Regulatory Branch

Enclosures

Copies Furnished:

Gibson & Skordal, Sacramento, CA  
US FWS, Sacramento, CA  
US EPA, San Francisco, CA  
CA DFG, Yountville, CA  
CA RWQCB, Oakland, CA

## Enclosure 1

**NATIONWIDE PERMIT CONDITIONS**  
**33 CFR Part 330 EFFECTIVE DATE: February 11, 1997**

**GENERAL CONDITIONS:**

The following general conditions must be followed in order for any authorization by a NWP to be valid:

1. **Navigation:** No activity may cause more than a minimal adverse effect on navigation.
2. **Proper Maintenance:** Any structure or fill authorized shall be properly maintained, including maintenance to ensure public safety.
3. **Erosion and Siltation Controls:** Appropriate erosion and siltation controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date.
4. **Aquatic Life Movements:** No activity may substantially disrupt the movement of those species of aquatic life indigenous to the waterbody, including those species which normally migrate through the area, unless the activity's primary purpose is to impound water.
5. **Equipment:** Heavy equipment working in wetlands must be placed on mats, or other measures must be taken to minimize soil disturbance.
6. **Regional and Case-by-Case Conditions:** The activity must comply with any regional conditions which may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the State or tribe in its Section 401 water quality certification.
7. **Wild and Scenic Rivers:** No activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system, while the river is in an official study status, unless the appropriate Federal agency, with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation, or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency in the area (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service).
8. **Tribal Rights:** No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.
9. **Water Quality Certification:** In certain states, an individual Section 401 water quality certification must be obtained or waived (see 33 CFR 330.4(c)).
10. **Coastal Zone Management:** In certain states, an individual state coastal zone management consistency concurrence must be obtained or waived (see Section 330.4(d)).
11. **Endangered Species:** No activity is authorized under any NWP which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act, or which is likely to destroy or adversely modify the critical habitat of such species. Non-federal permittees shall notify the District Engineer if any listed species or critical habitat might be affected or is in the vicinity of the project, and shall not begin work on the activity until notified by the District Engineer that the requirements of the Endangered Species Act have been satisfied and that the activity is authorized. Authorization of an activity by a nationwide permit does not authorize the take of a threatened or endangered species as defined under the Federal Endangered Species Act. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with incidental take provisions, etc.) from the U.S. Fish and Wildlife Service or the National Marine Fisheries Service, both lethal and non-lethal takes of protected species are in violation of the Endangered Species Act. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the U.S. Fish and Wildlife Service and National Marine Fisheries Service, or their world wide web pages at <http://endangered.fws.gov/endapp.html>, and <http://www.nmfs.gov/>, respectively.
12. **Historic Properties:** No activity which may affect historic properties listed, or eligible for listing, in the National Register of Historic Places is authorized, until the District Engineer has complied with the provisions of 33 CFR Part 325, Appendix C. The prospective permittee must notify the District Engineer if the authorized activity may affect any historic properties listed, determined to be eligible, or which the prospective permittee has reason to believe may be eligible for listing on the National Register of Historic Places, and shall not begin the activity until notified by the District Engineer that the requirements of the National Historic Preservation Act have been satisfied and that the activity is authorized. Information on the location and existence of historic resources can be obtained from the State Historic Preservation Office and the National Register of Historic Places (see 33 CFR 330.4(g)).

### 13. Notification:

(a) *Timing:* Where required by the terms of the NWP, the prospective permittee must notify the District Engineer with a Pre-Construction Notification (PCN) as early as possible and shall not begin the activity:

(1) Until notified by the District Engineer that the activity may proceed under the NWP with any special conditions imposed by the District or Division Engineer; or

(2) If notified by the District or Division Engineer that an individual permit is required; or

(3) Unless 30 days (or 45 days for NWP 26 only) have passed from the District Engineer's receipt of the notification and the prospective permittee has not received notice from the District or Division Engineer. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

(b) *Contents of Notification:* The notification must be in writing and include the following information:

(1) Name, address and telephone numbers of the prospective permittee;

(2) Location of the proposed project;

(3) Brief description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause; any other NWP(s), regional general permit(s) or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity; and

(4) For NWPs 14, 18, 21, 26, 29, 34, and 38, the PCN must also include a delineation of affected special aquatic sites, including wetlands (see paragraph 13(f));

(5) For NWP 21 - *Surface Coal Mining Activities*, the PCN must include an OSM or state approved mitigation plan.

(6) For NWP 29 - *Single-Family Housing*, the PCN must also include:

(i) Any past use of this NWP by the individual permittee and/or the permittee's spouse;

(ii) A statement that the single-family housing activity is for a personal residence of the permittee;

(iii) A description of the entire parcel, including its size, and a delineation of wetlands. For the purpose of this NWP, parcels of land measuring 0.5 acre or less will not require a formal on-site delineation. However, the applicant shall provide an indication of where the wetlands are and the amount of wetlands that exists on the property. For parcels greater than 0.5 acre in size, a formal wetland delineation must be prepared in accordance with the current method required by the Corps (See paragraph 13(f)); and

(iv) A written description of all land (including, if available, legal descriptions) owned by the prospective permittee and/or the prospective permittee's spouse, within a one-mile radius of the parcel, in any form of ownership (including any land owned as a partner, corporation, joint tenant, co-tenant, or as a tenant-by-the-entirety) and any land on which a purchase and sale agreement or other contract for sale or purchase has been executed.

(7) For NWP 31 - *Maintenance of Existing Flood Control Projects*, the prospective permittee must either notify the District Engineer with a Pre-Construction Notification (PCN) prior to each maintenance activity or submit a five year (or less) maintenance plan. In addition, the PCN must include all of the following:

(i) Sufficient baseline information so as to identify the approved channel depths and configurations and existing facilities. Minor deviations are authorized, provided that the approved flood control protection or drainages is not increased;

(ii) A delineation of any affected special aquatic sites, including wetlands; and

(iii) Location of the dredged material disposal site.

(8) For NWP 33 - *Temporary Construction Access, and Dewatering*, the PCN must also include a restoration plan of reasonable measures to avoid and minimize adverse effects to aquatic resources.

(c) *Form of Notification:* The standard individual permit application form (Form ENO 4345) may be used as the notification but must clearly indicate that it is a PCN and must include all of the information required in (b) (1)-(8) of General Condition 13. A letter may also be used.

(d) *District Engineer's Decision:* In reviewing the pre-construction notification for the proposed activity, the District Engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. The prospective permittee may, optionally, submit a proposed mitigation plan with the pre-construction notification to expedite the process and the District Engineer will consider any optional mitigation the applicant has included in the proposal in determining whether the net adverse environmental effects of the proposed work are minimal. If the District Engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse effects are minimal, the District Engineer will notify the permittee and include any conditions the District Engineer deems necessary.

Any mitigation proposal must be approved by the District Engineer prior to commencing work. If the prospective permittee elects to submit a mitigation plan, the District Engineer will expeditiously review the proposed mitigation plan, but will not commence a second 30-day (or 45-day for NWP 26) notification procedure if the net adverse effects of

the project (with the mitigation proposal) are determined by the District Engineer to be minimal, the District Engineer will provide a timely written response to the applicant stating that the project can proceed under the terms and conditions of the nationwide permit.

If the District Engineer determines that the adverse effects of the proposed work are more than minimal, then he will notify the applicant either:

(1) That the project does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit;

(2) That the project is authorized under the NWP subject to the applicant's submitting a mitigation proposal that would reduce the adverse effects to the minimal level; or

(3) That the project is authorized under the NWP with specific modifications or conditions.

(e) *Agency Coordination:* The District Engineer will consider any comments from Federal and State agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the project's adverse environmental effects to a minimal level.

(1) For NWP 14, 21, 26 (between 1 and 3 acres of impact), 29, 33, 37, and 38. The District Engineer will, upon receipt of a notification, provide immediately, e.g., first-class transmission, overnight mail or other expeditious manner, a copy to the appropriate offices of the Fish and Wildlife Service, State natural resource or water quality agency, EPA, State Historic Preservation Officer (SHPO), and, if appropriate, the National Marine Fisheries Service. With the exception of NWP 37, these agencies will then have 5 calendar days from the date the material is transmitted to telephone or fax the District Engineer notice that they intend to provide substantive, site-specific comments. If so contacted by an agency, the District Engineer will wait an additional 10 calendar days (16 calendar days for NWP 26 PCNs) before making a decision on the notification. The District Engineer will fully consider agency comments received within the specified time frame, but will provide no response to the resource agency. The District Engineer will indicate in the administrative record associated with each notification that the resource agencies' concerns were considered. Applicants are encouraged to provide the Corps multiple copies of notifications to expedite agency notification.

(2) *Optional Agency Coordination.* For NWPs 5, 7, 12, 13, 17, 18, 27, 31, and 34, where a Regional Administrator of EPA, a Regional Director of USFWS, or a Regional Director of NMFS has formally requested general notification from the District Engineer for the activities covered by any of these NWPs, the Corps will provide the requesting agency with notification on the particular NWPs. However, where the agencies have a record of not generally submitting substantive comments on activities covered by any of these NWPs, the Corps district may discontinue providing

notification to those regional agency offices. The District Engineer will coordinate with the resource agencies to identify which activities involving a PCN that the agencies will provide substantive comments to the Corps. The District Engineer may also request comments from the agencies on a case by case basis when the District Engineer determines that such comments would assist the Corps in reaching a decision whether effects are more than minimal either individually or cumulatively.

(3) *Optional Agency Coordination, 401 Denial.* For NWP 26 only, where the state has denied its 401 water quality certification for activities with less than 1 acre of wetland impact, the EPA regional administrator may request agency coordination of PCNs between 1/3 and 1 acre. The request may only include acreage limitations within the 1/3 to 1 acre range for which the state has denied water quality certification. In cases where the EPA has requested coordination of projects as described here, the Corps will forward the PCN to EPA only. The PCN will then be forwarded to the Fish and Wildlife Service and the National Marine Fisheries Service by EPA under agreements among those agencies. Any agency receiving the PCN will be bound by the EPA timeframes for providing comments to the Corps.

(f) *Wetlands Delineations:* Wetland delineations must be prepared in accordance with the current method required by the Corps. For NWP 29 see paragraph (b)(6)(iii) for parcels less than 0.5 acres in size. The permittee may ask the Corps to delineate the special aquatic site. There may be some delay if the Corps does the delineation. Furthermore, the 30-day period (45 days for NWP 26) will not start until the wetland delineation has been completed and submitted to the Corps, where appropriate.

(g) *Mitigation:* Factors that the District Engineer will consider when determining the acceptability of appropriate and practicable mitigation include, but are not limited to:

(1) To be practicable, the mitigation must be available and capable of being done considering costs, existing technology, and logistics in light of the overall project purposes; and

(2) To the extent appropriate, permittees should consider mitigation banking and other forms of mitigation including contributions to wetland trust funds, in lieu fees to organizations such as the Nature Conservancy, State or county natural resource management agencies, where such fees contribute to the restoration, creation, replacement, enhancement, or preservation of wetlands. Furthermore, examples of mitigation that may be appropriate and practicable include but are not limited to: reducing the size of the project; establishing wetland or upland buffer zones to protect aquatic resource values; and replacing the loss of aquatic resource values by creating, restoring, and enhancing similar functions and values. In addition, mitigation must address wetland impacts, such as functions and values, and cannot be simply used to offset the acreage of wetland losses that would occur in order to meet the acreage limits of some of the NWPs (e.g., for NWP 26, 5 acres of wetlands cannot be created to change a 6-acre loss of wetlands to a 1 acre loss).

however, 2 created acres can be used to reduce the impacts of a 3-acre loss.)

**14. Compliance Certification:** Every permittee who has received a Nationwide permit verification from the Corps will submit a signed certification regarding the completed work and any required mitigation. The certification will be forwarded by the Corps with the authorization letter and will include:

- (a) A statement that the authorized work was done in accordance with the Corps authorization, including any general and or special conditions;
- (b) A statement that any required mitigation was completed in accordance with the permit conditions; and
- (c) The signature of the permittee certifying the completion of the work and mitigation.

**15. Multiple Use of Nationwide Permits:** In any case where any NWP number 12 through 40 is combined with any other NWP number 12 through 40, as part of a single and complete project, the permittee must notify the District Engineer in accordance with paragraphs a, b, and c on the Notification General Condition number 13. Any NWP number 1 through 11 may be combined with any other NWP without notification to the Corps, unless notification is otherwise required by the terms of the NWPs. As provided at 33 CFR 330.6(c), two or more different NWPs can be combined to authorize a single and complete project. However, the same NWP cannot be used more than once for a single and complete project.

#### SECTION 404 ONLY CONDITIONS:

In addition to the General Conditions, the following conditions apply only to activities that involve the discharge of dredged or fill material into waters of the U.S., and must be followed in order for authorization by the NWPs to be valid:

**1. Water Supply Intakes:** No discharge of dredged or fill material may occur in the proximity of a public water supply intake except where the discharge is for repair of the public water supply intake structures or adjacent bank stabilization.

**2. Shellfish Production:** No discharges of dredged or fill material may occur in areas of concentrated shellfish production, unless the discharge is directly related to a shellfish harvesting activity authorized by NWP 4.

**3. Suitable Material:** No discharge of dredged or fill material may consist of unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.) and material discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).

**4. Mitigation:** Discharges of dredged or fill material into waters of the United States must be minimized or avoided to the maximum extent practicable at the project site (i.e., on-site), unless the District Engineer approves a compensation

plan that the District Engineer determines is more beneficial to the environment than on-site minimization or avoidance measures.

**5. Spawning Areas:** Discharges in spawning areas during spawning seasons must be avoided to the maximum extent practicable.

**6. Obstruction of High Flows:** To the maximum extent practicable, discharges must not permanently restrict or impede the passage of normal or expected high flows or cause the relocation of the water (unless the primary purpose of the fill is to impound waters).

**7. Adverse Effects from Impoundments:** If the discharge creates an impoundment of water, adverse effects on the aquatic system caused by the accelerated passage of water and/or the restriction of its flow shall be minimized to the maximum extent practicable.

**8. Waterfowl Breeding Areas:** Discharges into breeding areas for migratory waterfowl must be avoided to the maximum extent practicable.

**9. Removal of Temporary Fills:** Any temporary fills must be removed in their entirety and the affected areas returned to their preexisting elevation.

Enclosure 2

Permittee: Lewis Operating Corporation

File No. 234350N

**Certification of Compliance  
for  
Nationwide Permit**

"I hereby certify that the work authorized by the above referenced file number and all required mitigation have been completed in accordance with the terms and conditions of the nationwide permit."

\_\_\_\_\_  
(permittee)

\_\_\_\_\_  
(date)

Return to:

Regulatory Branch, North Section  
Department of the Army  
U.S. Army Engineer District, San Francisco  
333 Market Street, CESP-N-OR-RN  
San Francisco, CA 94105-2197

