

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROCKLIN
APPROVING AND AUTHORIZING EXECUTION
OF A SUBDIVISION LANDSCAPING AGREEMENT
UNIT 3 SIERRA PINE SUBDIVISION (SD2016-0005)

The City Council of the City of Rocklin does resolve as follows:

Section 1. The City Council of the City of Rocklin hereby finds as follows:

A. That a final subdivision map for a subdivision known as **UNIT 3 SIERRA PINE SUBDIVISION (SD2016-0005)** (the "Subdivision") has been submitted by that LEWIS MANAGEMENT CORP, A DELAWARE CORPORATION (the "Subdivider") for approval;

B. That certain subdivision landscaping improvements which were made conditions of the tentative subdivision map have not been completed and accepted, and Subdivider has executed and provided security for a subdivision landscaping agreement obligating Subdivider to complete the landscaping improvements within a specified period of time. Subdivider requests the City Council to accept the subdivision landscaping agreement in satisfaction of the tentative map condition.

Section 2. The subdivision landscaping agreement attached hereto as Exhibit A and by this reference incorporated herein is hereby approved and accepted as satisfaction of the tentative map subdivision landscaping improvement conditions, and the City Manager is authorized and directed to execute the agreement on behalf of the City.

Section 3. The City Clerk is directed to record the subdivision landscaping agreement when fully executed and notarized in the office of the Placer County Recorder.

PASSED AND ADOPTED this 10TH day of December, 2019, by the following roll call vote:

AYES: Councilmembers:
NOES: Councilmembers:
ABSENT: Councilmembers:
ABSTAIN: Councilmembers:

, Mayor

ATTEST:

, City Clerk

Recording Requested by
and Return to:

City Clerk
City of Rocklin
3970 Rocklin Road
Rocklin, CA 95677

Subdivision Name: **UNIT 3 SIERRA PINE SUBDIVISION**
Subdivision No.: SD2016-0005
Recorded at: Book _____ of Maps, at Page
_____, Placer County Recorder
Principal: LEWIS MANAGEMENT CORP, A DELAWARE
CORPORATION
Effective Date: _____

SUBDIVISION LANDSCAPING AGREEMENT

This Subdivision Landscaping Agreement is entered into by and between the City of Rocklin, hereinafter called "City," and LEWIS MANAGEMENT CORP, A DELAWARE CORPORATION, hereinafter called "Principal," on the 10TH day of December, 2019.

RECITALS

1. Principal has received approval from City of a tentative subdivision map commonly known as SIERRA PINE SUBDIVISION ("the subdivision").
2. Principal wishes to have filed for record a final subdivision map, ("the map"), in substantial conformity with the approved tentative map. A copy of this map is attached hereto as Exhibit A and by this reference incorporated herein.
3. City has approved the map, subject to the execution of this Agreement.
4. Principal is willing to execute this Agreement as a condition precedent to the recording of the map.
5. The authority for this Agreement is set forth in the Subdivision Map Act ("the Map Act") (Government Code section 66410 et seq.) and Title 16 of the Rocklin Municipal Code ("Title 16").

AGREEMENT

6. **Improvements.** Principal agrees to complete all the works of landscaping improvement ("the improvements") required for the subdivision as shown on the final landscaping plans for the subdivision submitted to and approved by the City Engineer and on file in the office of the City Engineer, in accordance with the requirements of the Map Act, Title 16, and the Standard Specifications of City in effect at the time of the installation of the improvements. Such work will be completed within TWELVE (12) months of the date of this Agreement.

7. **Acceptance of Improvements upon Completion.** Upon satisfactory completion of the improvements in accordance with the approved landscaping plans, the Standard Specifications and the conditions of approval of the tentative subdivision map, City agrees to accept for maintenance the improvements and any off-site easements accepted by City, subject to the provisions of Paragraph 9 hereof.

8. **Notice Regarding Construction.** Principal shall notify the City Engineer 48 hours prior to commencement of construction of the improvements.

9. **Warranty.** Principal agrees to remedy any defects in the improvements arising from faulty or defective design or construction of said improvements occurring within twelve (12) months after acceptance thereof has been given in writing by the City Council.

10. **Indemnity and Hold Harmless.** Principal agrees to and shall defend, indemnify and hold harmless City, its officers, employees, agents and volunteers from and against all claims, damages, losses and expenses, including attorneys fees and litigation costs and expenses, arising out of the performance of the work described herein, caused in whole or in part by any negligent act or omission of Principal, any subcontractor of Principal, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, except where caused by the active negligence, sole negligence or willful misconduct of City. Lack of insurance coverage does not negate Principal's obligation under this paragraph or this Agreement.

11. **Delay.** If the construction of the improvements shall be delayed without fault of Principal, the time for completion thereof may be extended by City for such period of time as City may deem reasonable.

12. **Security.** Principal shall furnish to City security to ensure the faithful performance of all duties and obligations of Principal herein contained. Such improvement security shall be in a form acceptable to the City Attorney. Such security shall be either a corporate surety bond, a letter of credit or other instrument of credit issued by a banking institution subject to regulation by the State or Federal government

and pledging that the funds necessary to carry out this Agreement are on deposit and guaranteed for payment, or a cash deposit made either directly with the City or deposited with a recognized escrow agent for the benefit of the City. Such security shall be in the following amounts for the following purposes:

(a) **Performance:** One hundred percent (100%) of the estimated cost of the improvements securing performance of this Agreement, which estimated cost is in the amount of: EIGHT HUNDRED FORTY SIX THOUSAND SEVEN HUNDRED FOUR dollars (\$846,704.00).

(b) **Payment of Labor and Materials:** One hundred percent (100%) of the estimated cost of the improvements, as set forth in Paragraph (a) immediately preceding, securing payment to the contractor of improvements, to his subcontractors, and to persons furnishing labor, materials, or equipment to them.

(c) **Warranty:** The amount of ONE HUNDRED SIXTY NINE THOUSAND THREE HUNDRED FORTY ONE dollars (\$169,341.00) to guarantee and warrant the improvements for a period of ONE (1) year following the completion and acceptance of the improvements against any defects in the improvement design, the work, or the labor done, or defects in materials furnished. This security need not be furnished prior to completion of the improvements, but must be provided prior to their acceptance.

13. **Irrevocability of Security.** The improvement security furnished pursuant to Paragraph 12 shall be irrevocable, shall not be limited as to time (except as to the TWELVE (12) MONTH year period specified in Paragraph 9), and shall provide that it shall be released, in whole or in part, only upon the written approval of the City Engineer or delegate.

14. **Actions.** At City's option, any action by any party to this Agreement, or any action concerning the security furnished pursuant to Paragraph 12, shall be brought in the appropriate court of competent jurisdiction within the County of Placer, notwithstanding any other provision of law which may provide that such action may be brought in some other location.

15. **Inspection; Release of Security for Faithful Performance.** Principal may, from time to time, request the City Engineer to inspect the improvements as they progress. The City Engineer may, if the work is found by City Engineer to be in accordance with the Standard Specifications, choose to accept so much of that work as is completed, and authorize a release pro tanto of the security provided pursuant to Paragraph 12(a); provided, however, that in no event shall the release of more than eighty (80%) of the improvement security be authorized until all the work has been completed and accepted.

16. **Release of Remaining Security For Faithful Performance: Warranty.** At the conclusion of the construction of the improvements, and upon written acceptance of them by the City Council and approval of a Notice of Completion, the City Engineer shall authorize the release of the security provided pursuant to Paragraph 12(a) upon the furnishing of the warranty security as required by Paragraph 12(c).

17. **Release of Security Where Other Agency Approval Required.** Notwithstanding paragraphs 15 and 16, where any portion of the improvements is subject to approval by another agency, no release of security equal to the value of those improvements shall be made until the work is completed to the satisfaction of such other agency. Such other agency shall have two (2) months after completion of the performance of the obligation in which to register satisfaction or dissatisfaction. If at the end of that period it has not registered satisfaction or dissatisfaction, it shall be conclusively deemed that the performance of the obligation was done to its satisfaction.

18. **Release of Labor and Materials Security.** Ninety (90) days after a notice of completion is filed with respect to the improvements, the City Engineer may authorize the release of the security given to secure payment for labor and materials as provided in Paragraph 12(b) of this agreement, in the event that no claims have been filed against said security. In the event that claims or actions are filed against the security, the City Engineer may release so much of such security as is in excess of the total of the claims made against it.

19. **Insurance.** Principal shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Principal, its agents, representatives, or employees.

A. MINIMUM SCOPE AND LIMIT OF INSURANCE

1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

2. **Automobile Liability:** Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if Principal has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than **\$1,000,000** per accident for bodily injury and property damage.

3. **Workers' Compensation** insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less

than **\$1,000,000** per accident for bodily injury or disease. ***(Not required if Principal provides written verification it has no employees)***

B. Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

1. **Additional Insured Status.** The City, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Principal including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Principal's insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 forms if later revisions used).

2. **Primary Coverage.** For any claims related to this contract, the Principal's insurance coverage shall be primary with coverage at least as broad as ISO CG 20 01 04 13 as respects the City, its officers, officials, employees, or volunteers, and shall be excess of the Principal's insurance and shall not contribute to it.

3. **Notice of Cancellation.** Each insurance policy required above shall not be canceled, except with notice to the City.

4. **Waiver of Subrogation.** Principal hereby grants to City a waiver of any right to subrogation which any insurer of said Principal may acquire against the City by virtue of the payment of any loss under such insurance. Principal agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

5. **Self-Insured Retentions.** Self-insured retentions must be declared to and approved by the City. The City may require the Principal to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City.

6. **Acceptability of Insurers.** Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City.

7. **Claims Made Policies.** If any of the required policies provide coverage on a claims made basis:

- i. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
- ii. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.
- iii. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Principal must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work.

8. **Verification of Coverage.** Principal shall furnish the City with original Certificate of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements to the City before work begins. However, failure to obtain the required documents prior to the work beginning shall not waive the Principal's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

9. **Subcontractors.** Principal shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Principal shall ensure that City is an additional insured on insurance required from subcontractors.

10. **Special Risks or Circumstances.** City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

20. **Failure of Performance.** In the event Principal fails to perform one or more of the conditions herein, City shall have recourse to the security given to guarantee the performance of such acts. City shall have recourse against so much of the security as is necessary to discharge the responsibility of Principal hereunder. City shall have recourse against Principal for any and all amounts necessary to complete the obligations of Principal in the event the security therefore is insufficient to pay such

amounts. All administrative costs incurred by the City, in addition to the costs of the improvements, shall be a proper charge against the security and/or Principal.

21. **Attorney's Fees.** If the services of any attorney are required by any party to secure the performance of this Agreement or otherwise upon the breach or default of another party, or if any judicial remedy or arbitration is necessary to enforce or interpret any provisions of this Agreement or the rights and duties of any person in relation to this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, costs and other expenses, in addition to any other relief to which such party may be entitled. Prevailing party includes (a) a party who dismisses an action in exchange for sums allegedly due; (b) the party that receives performance from the other party of an alleged breach of covenant or a desired remedy, if it is substantially equal to the relief sought in an action; or (c) the party determined to be prevailing by a court of law.

Whenever provision is made in this Agreement for the payment of attorney's fees, such fees shall be payable whether the legal services are rendered by a salaried employee for the party or by independent counsel and shall include such fees as are incurred in connection with any pretrial proceeding, trial or appeal of the action.

Any award of damages following judicial remedy or arbitration as a result of the breach of this Agreement or any of its provisions shall include an award of prejudgment interest from the date of the breach at the maximum amount of interest allowed by law.

22. **Agreement Binding on Successors, Etc.** This Agreement shall be binding upon all the heirs, successors, and assigns of either party, and the same shall be recorded in the office of the Recorder of Placer County upon its execution, and shall be a covenant running with the land and equitable servitude upon the parcel or parcels of real property subdivided by the map.

23. **Subdivision Map Act Controlling.** To the extent any provision of this Agreement conflicts with any provision of the Map Act, the applicable provision of such Act shall control, and no action taken pursuant to this Agreement which conflicts with any provision of the Map Act shall relieve the person taking such action from compliance with the provisions of the Map Act.

24. **Waiver.** Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Agreement thereafter.

25. **Other Provisions:** _____

WHEREFORE, the parties hereto have executed this Agreement on the day and in the year first above written.

CITY OF ROCKLIN

By: _____
Steven Rudolph, City Manager

PRINCIPAL
LEWIS MANAGEMENT CORP, A DELAWARE CORPORATION

By: _____
Phillip E. Rodriguez, Jr.

(Title)

APPROVED AS TO FORM:

Sheri Chapman
City Attorney

ATTEST:

City Clerk

**ATTACH CURRENT NOTARY
ACKNOWLEDGEMENT FORM
FOR CITY OF ROCKLIN**

**ATTACH CURRENT NOTARY
ACKNOWLEDGEMENT FORM
FOR PRINCIPAL**

EXHIBIT A

FINAL MAP