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DEVELOPMENT AGREEMENT

BY AND BETWEEN THE

CITY OF LAKE ELSINORE AND TRI POINTE HOMES IE-SD, INC.

(CANYON HILLS ESTATES TENTATIVE TRACT MAP NO. 34249)

TABLE OF CONTENTS [TO BE UPDATED]

Page

1. DEFINITIONS 3
2. PURPOSE AND ANALYSIS. 6
2.1 Vested Right in Existing Land Use Regulations. 6
2.2 Development of the Developer Property. 6
2.3 Public Park. 6
2.4 Uses. 6
2.5 Intensity 7
2.6 Size. 7
2.7 Tentative Subdivision Map Extensions. 7
2.8 Timing of Development. 7
3. RULES, REGULATIONS AND OFFICIAL POLICIES. 7
3.1 Effect of Agreement on Land Use Regulations. 7
3.2 New Rules. 8
3.3 Subsequent Actions and Approvals. 9
3.4 State and Federal Laws. 9
4. FEES, TAXES AND FINANCIAL RESPONSIBILITIES. 9
4.1 Development Impact Fees. 9
4.2 Development Agreement Fees. 10
4.3 General and Special Taxes. 10
4.4 Reservations, Dedications and Improvements Plan 10
5. DURATION OF AGREEMENT. 10
5.1 Term 10
5.2 Annual Review. 10
5.3 Operating Memoranda. 11
5.4 Amendment 11
6. COVENANT OF FURTHER ASSURANCES AND FAIR DEALING. 11
6.1 Further Assurances. 11
6.2 Covenant of Good Faith and Fair Dealing. 12
7. PERMITTED DELAYS. 12
8. ESTOPPEL CERTIFICATES. 12
9. RECORDATION BY CITY CLERK. 12
10. DEFAULT 12
10.1 Events of Default. 12
10.2 Remedies 13
10.3 No Waiver. 13
10.4 Effect of Termination. 13
11. INCORPORATION BY REFERENCE 13
11.1 Recitals 13
11.2 Attachments 14
12. APPLICABLE LAW. 14
13. NO JOINT VENTURE, PARTNERSHIP OR THIRD PARTY BENEFICIARY 14

TABLE OF CONTENTS
(continued)

Page

14. COVENANTS RUNNING WITH THE LAND. 14
15. TERMS AND CONSTRUCTION 14
15.1 Severability 14
15.2 Entire Agreement. 14
15.3 Signature Pages; Counterparts. 15
15.4 Time 15
15.5 Notices 15
16. ASSIGNMENT AND NOTICE. 16
17. ENCUMBRANCES AND RELEASES ON REAL PROPERTY 16
17.1 Discretion to Encumber. 16
17.2 Entitlement to Written Notice of Default. 16
17.3 Property Subject to Pro Rata Claims. 17
18. CONSTRUCTION, NUMBER AND GENDER. 17
19. INSTITUTION OF LEGAL ACTION. 17
20. INDEMNIFICATION 17

DEVELOPMENT AGREEMENT
BY AND BETWEEN THE
CITY OF LAKE ELSINORE AND TRI POINTE HOMES IE-SD, INC. (CANYON HILLS ESTATES TENTATIVE TRACT MAP NO. 34249)

(Pursuant To Government Code Sections 65864 -65869.5)

This Development Agreement ("**Agreement**") dated as of [insert date of first reading of Enabling Ordinance], 2022 ("**Approval Date**") is entered into by and between TRI POINTE HOMES IE-SD, Inc., a California corporation ("**Developer**"), and the City of Lake Elsinore, a California municipal corporation ("**City**"). Developer and City are sometimes singularly referred to herein as a "**Party**" and are collectively referred to herein as the "**Parties**."

RECITALS

A. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the legislature of the State of California adopted the "Development Agreement Act," Government Code Sections 65864 through 65869.5. The Development Agreement Act authorizes the City to enter into an agreement with any person having a legal or equitable interest in real property regarding the future development of such property.

B. Pursuant to the Development Agreement Act, the City adopted Ordinance No. 996 establishing procedures and requirements for consideration of development agreements as set forth in Lake Elsinore Municipal Code Chapter 19.12 (the "**Development Agreement Ordinance**").

C. Developer has a legal or equitable interest in that certain real property generally located within the southeast quadrant of the City, south of Canyon Hills Road, east and west of Cottonwood Canyon Road, that is more particularly described as Assessor Parcel Numbers 365-230-009, 365-230-012, 365-230-011, 365-230-006, 365-230-005 (the "**Developer Property**"). The parcels of land comprising the Developer Property are more particularly described in the Legal Description (**Attachment "A"**) and depicted in the Vicinity Map (**Attachment "B"**). The Developer Property is a portion of the property within the Canyon Hills Estates Specific Plan and a portion of the property under Tentative Tract Map No. 34249, as discussed further below.

D. The Developer Property is owned by (1) JOHN W. FLANIGAN, AS SUCCESSOR TRUSTEE OF THE FLANIGAN LIVING TRUST DATED AUGUST 24, 2004 – TRUST A, as to an undivided 56% interest, and JOHN W. FLANIGAN, AS SUCCESSOR TRUSTEE OF THE FLANIGAN LIVING TRUST DATED AUGUST 24, 2004 – TRUST B, as to an undivided 44% interest (collectively, the "**Flanigan Owner**"); and (2) as to "Parcel 1," THE FLYING BEE RANCH III, a California limited partnership ("**Flying Bee Owner**"), and as to "Parcel 2" as tenants in common: CARY SCHROEDER AND BRENDA L. SCHROEDER, TRUSTEES OF THE CARY SCHROEDER AND BRENDA L. SCHROEDER REVOCABLE TRUST DATED JUNE 30, 2006, as to an undivided 20% interest ("**Schroeder Owner**"); DIANA L. FOSTER, a married woman as her sole and separate property, as to an undivided 20% interest ("**Foster**

Owner"); LINDA M. BEAN, a married woman as her sole and separate property, as to an undivided 20% interest ("**Bean Owner**"); DAVID BEHRENS, a married man as his sole and separate interest, as to an undivided 20% interest; and RICHARD E. BEHRENS, a single man as to an undivided 20% interest (collectively, the "**Behrens Owner**"). The Flanigan Owner, Flying Bee Owner, Schroeder Owner, Foster Owner, Bean Owner and Behrens Owner are hereinafter referred to collectively as "**Property Owner**". The Property Owner has provided notarized written consent to the terms of this Agreement and the recordation thereof in the Property Owner Consents (**Attachment "D"**). **[****Drafting note: May need to add Gordon David Behrens, Trustee under Declaration of Trust dated July 17, 1989 for Flying Bee Property**]

E. On January 23, 2007, the City Council approved Environmental Impact Report No. 2006-02, General Plan Amendment No. 2006-04, Specific Plan No. 2006-01 and Tentative Tract Map No. 34249 for the subdivision of 246.41 acres into 302 single family residential lots, 12 open space lots, one (1) public park and two (2) tank sites. The Developer Property is approximately 81.32 acres of the larger, approximately 246 acre property previously entitled for Development. Environmental Impact Report No. 2006-02, General Plan Amendment No. 2006-04, Specific Plan No. 2006-01 and Tentative Tract Map No. 34249 are referred to collectively as the "**Existing Development Approvals**."

F. Developer desires to submit proposed revisions to Tentative Tract Map No. 34249 with a Phasing Plan designating the Developer Property as Phase 1 to include 132 single-family lots and 42.39 acres of open space, with access from Cottonwood Canyon Road. Developer also proposes to submit an application for Residential Design Review providing for Development of 132 detached single-family homes that range from approximately 1,793 to 3,291 square feet on the Developer Property. Preparation of the proposed revisions to Tentative Tract Map No. 34249, Phasing Plan, Residential Design Review and other Subsequent Approvals (as hereinafter defined) and the Development of the Developer Property require significant financial investment by Developer. In order to bring certainty and stability to the City's regulations applicable to the Subsequent Approvals and the Development of the Developer Property, the Developer and the City intend to vest the Existing Land Use Regulations and the development rights under the Existing Development Approvals and to memorialize the Parties' negotiated agreement regarding Developer's obligations to provide certain public benefits as set forth in this Agreement.

G. On _____, 2022, the City of Lake Elsinore Planning Commission held a duly noticed public hearing to consider Developer's application for this Agreement and recommended to the City Council approval of this Agreement.

H. On _____, 2022, the City Council held a duly noticed public hearing to consider this Agreement and found and determined that (a) this Agreement is compatible with the orderly development of the Developer Property and the surrounding area, including with the uses authorized in, and the regulations prescribed for, the land use district in which the real property is located; (b) this Agreement will have an overall positive effect on the health, safety and welfare of the residents of and visitors to the City, is in conformity with public convenience, general welfare and good land use practices and will not be detrimental to the health, safety and general welfare or adversely affect the orderly development of property or the preservation of property values; (c) this Agreement constitutes a lawful, present exercise of the City's police power and

authority under the Development Agreement Act and Development Agreement Ordinance; (d) this Agreement is entered into pursuant to and consistent with the requirements of the Development Agreement Act and the Development Agreement Ordinance; and (e) this Agreement is consistent with the objectives, policies, general land uses and programs specified in the General Plan and any applicable specific plan; and did therefore, in approving this Agreement introduce for first reading Ordinance No. 2022-____ (the "**Enabling Ordinance**"). On _____, 2022, the City Council conducted the second reading of the Enabling Ordinance thereby approving this Agreement, to become effective thirty (30) days thereafter which date is _____, 2022, (the "**Effective Date**").

I. The foregoing Recitals constitute a substantive part of this Agreement, and the Parties have materially relied upon them as such in their respective determinations to execute this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual terms, obligations, promises, covenants and conditions contained herein and for other valuable consideration, the sufficiency of which is hereby acknowledged, the Parties, and each of them, agree as follows:

1. DEFINITIONS.

All initially-capitalized words, terms and phrases used, but not otherwise defined, in the Recitals shall have the meanings assigned to them in Section 1 of this Agreement, unless the context clearly indicates otherwise.

1.1 "**Agreement**" means this Development Agreement, including the attached Exhibits. The term "Agreement" shall include any amendment properly approved and executed pursuant to Section 5.4 below.

1.2 "**Applicable Rules**" means this Agreement, the Existing Development Approvals, all Subsequent Approvals, the Existing Land Use Regulations, the Development Agreement Ordinance, and the Enabling Ordinance, as those terms are defined within this Agreement.

1.3 "**Building Codes**" shall mean such California standard, uniform, codes governing construction, including without limitation, the Building Code, Housing Code, Energy Code, Green Building Code, Plumbing Code, Electrical Code, Mechanical Code and Fire Code (including amendments thereto by the Riverside Fire Authority), as modified and amended by official action of the City as set forth in Title 15 of the Lake Elsinore Municipal Code as may be amended from time to time.

1.4 "**CEQA**" means the California Environmental Quality Act, Public Resources Code Section 21000, et seq. and the implementing regulations promulgated thereunder as the "CEQA Guidelines" (Title 14, California Code of Regulations Section 15000 et seq.) and the City's local guidelines.

1.5 "**City**" means the City of Lake Elsinore, a municipal corporation.

1.6 "**City Council**" means the duly elected City Council of the City.

1.7 "**City Manager**" means the City Manager of the City and authorized designees.

1.8 "**Conditions of Approval**" means the conditions imposed by the City in connection with the approval of Tentative Tract Map No. 34249, including the mitigation measures identified in Environmental Impact Report No. 2006-02 and its Mitigation Monitoring Program which are collectively attached as Attachment "E." Conditions of approval and any applicable mitigation measures imposed in connection with any Subsequent Approval shall be appended to Attachment "E" and shall prevail in the event of a conflict with the original Conditions of Approval in the Development of the Developer Property.

1.9 "**Day**" refers to a calendar day, unless otherwise specified.

1.10 "**Dedication**" shall mean Developer's grant of real property or an interest therein to the City or another governmental, public agency or non-profit entity for a public purpose.

1.11 "**Developer**" means TRI POINTE HOMES IE-SD, Inc., a California corporation and its successors in interest to all or any part of the Developer Property.

1.12 "**Developer Property**" means the real property which is the subject of this Agreement and which is described in Recital C, and more particularly described in Attachment "A" attached hereto and incorporated by this reference.

1.13 "**Development**" means the construction and/or installation of structures, improvements and facilities on the Developer Property as set forth in this Agreement including, without limitation, grading, the construction of infrastructure and public facilities (whether located within or outside the Developer Property), the construction of buildings and the installation of landscaping.

1.14 "**Development Agreement Act**" is defined in Recital A of this Agreement

1.15 "**Development Agreement Fee**" is defined in Section 4.2

1.16 "**Development Agreement Ordinance**" is defined in Recital B of this Agreement.

1.17 "**Development Fees**" means Development Impact Fees and Development Agreement Fees as set forth in Attachment "C".

1.18 "**Development Impact Fees**" means local or regional impact fees, linkage fees, or exactions, collected as a condition to issuance of grading and/or building permit, or otherwise, imposed by the City on and in connection with Development. Development Impact Fees do not include (a) Processing Fees and Charges; (b) impact fees, linkage fees, exactions, assessments or fair share charges or other similar fees or charges imposed by other governmental

entities regardless of whether the City is required to collect or assess such fees pursuant to applicable Laws (e.g., school district impact fees pursuant to Government Code Section 65995), or (c) general or special taxes and assessments.

1.19 "**Effective Date**" means the date this Agreement and the Enabling Ordinance approving this Agreement become effective as defined in Recital H.

1.20 "**Enabling Ordinance**" is defined in Recital H.

1.21 "**Existing Development Approvals**" means Environmental Impact Report No. 2006-02, General Plan Amendment No. 2006-04, Specific Plan No. 2006-01 and Tentative Tract Map No. 34249, as set forth in Recital E of this Agreement, including all Conditions of Approval and mitigation measures.

1.22 "**Existing Land Use Regulations**" means the City General Plan, the Canyon Hills Estates Specific Plan, Existing Development Approvals and the City's rules, regulations, ordinances, resolutions and official policies applicable to the Development and occupancy of the Developer Property which are in effect on the Approval Date, subject to the exceptions set forth in Section 3.2 et seq. Existing Land Use Regulations includes the categories of Development Impact Fees as provided in Section 4.1.

1.23 "**Government Code**" means the California Government Code.

1.24 "**Parties**" mean Developer and the City.

1.25 "**Processing Fees and Charges**" means all processing fees and charges required by the City in connection with the processing of an application for new construction, including, but not limited to, Subsequent Approvals application fees, plan-check and inspection fees, fees for monitoring compliance with any Existing Development Approval or Subsequent Development Approval or for monitoring compliance with environmental impact mitigation measures.

1.26 "**Project**" means the Development of the Developer Property for residential and related ancillary uses and open space uses, proposed by the Developer to include 132 detached single-family homes that range from approximately 1,793 to 3,291 square feet and 42.39 acres of open space, with access from Cottonwood Canyon Road as set forth in the Applicable Rules, including Conditions of Approval.

1.27 "**Subsequent Approvals**" shall mean all future land use and development entitlements, permits and plans that do not yet exist and are necessary for Development of the Developer Property, including any revisions to Tentative Tract Map No. 34249, residential design review, final subdivision maps, building permits, grading permits, encroachment permits, landscape and signage plans and other similar permits subject to and including all conditions of approval and any mitigation measures identified and adopted pursuant to the Existing Land Use Regulations and applicable CEQA review, if any, in accordance with the terms of this Agreement.

1.28 "**Term**" is defined in Section 5.1.

2. PURPOSE AND ANALYSIS.

2.1 Vested Right in Existing Land Use Regulations.

The City has determined that the proposed Project is consistent with the goals and objectives of the City's land use and housing policies by providing a mix of three-bedroom and five-bedroom quality residential housing opportunities to meet the needs of families, singles and retired households in the community in accordance with the Existing Land Use Regulations and eliminating uncertainty in the planning, entitlement and Development processes. The Project is a part of the northeast quarter of the Canyon Hills Estates Specific Plan and includes single family residential-1 (SF-1) and single family residential-2 (SF-2) homes, as well as the 5.4 acre public park. The Project is consistent with the Canyon Hills Estates Specific Plan, including the boundaries as well as the development standards, lots sizes and right of way requirements.

In exchange for the Project benefits and the Developer's obligations under this Agreement, the Developer wishes to receive the assurances permitted by the Development Agreement Act and the Development Agreement Ordinance such that the Developer will be deemed to have a vested interest in the applicability of the Applicable Rules to the Development and implementation of the Project and each portion thereof. As such, the Developer, if it chooses, may proceed to develop the Developer Property in accordance with the Applicable Rules, with certainty that Developer will have the ability to expeditiously and economically complete the Project.

2.2 Development of the Developer Property.

The Parties agree and acknowledge that this Agreement itself does not authorize Developer to undertake any Development of the Developer Property and that before any Development activity can occur, the Developer shall have satisfied the applicable Conditions of Approval of the Existing Development Approvals for the Developer Property and obtained any necessary Subsequent Approvals for the Developer Property pursuant to the Applicable Rules. Tentative Tract Map No. 34249 and the Conditions of Approval identify the reservations or Dedications of land for public purposes. Developer anticipates submittal to City of a Revised Tentative Tract Map 34249 and Phasing Plan. The City shall have the right to modify and impose conditions of approval applicable to the Developer Property and to control Development of the Project in accordance with the terms and conditions of the Applicable Rules.

2.3 Public Park.

Developer shall comply with all applicable Conditions of Approval, including without limitation, Conditions 120 through 131 relating to the Dedication, design and improvement of the 5.4 acre public park; provided however, that notwithstanding the timing of completion of construction of the park as set forth in Condition 131, Developer shall complete construction of the park site prior to the 100th building permit.

2.4 Uses.

The Developer Property may be used in accordance with the Existing Development Approvals, all Subsequent Approvals and the Existing Land Use Regulations.

2.5 Intensity.

Permitted density and intensity of use vested hereby shall be the maximum permitted by the Existing Development Approvals, all Subsequent Approvals and the Existing Land Use Regulations.

2.6 Size.

The maximum height and size of buildings vested hereby shall be as set forth in the Existing Development Approvals, all Subsequent Approvals and the Existing Land Use Regulations.

2.7 Tentative Subdivision Map Extensions.

In accordance with Government Code §66452.6(a)(1), Tentative Tract Map No. 34249 shall be granted an extension of time for the greater of the term of this Agreement (in which case no such extension application to extend the expiration date of the tentative map need be filed) or such time approved in accordance with State law or the Existing Land Use Regulations. The Parties agree that to the extent the Project includes an approved phasing plan, phased final maps may be processed and recorded consistent with the Subdivision Map Act.

2.8 Timing of Development.

There is always uncertainty in forecasting future market conditions. Consequently, phasing of development of the Project is difficult to predict or regulate. In order to avoid the result in Pardee Construction Co. v. City of Camarillo, 37 Cal.3d 465 (1984), the City and Developer agree that Developer shall have the right, without obligation, to develop the Project in such order and at such rate and times as Developer deems appropriate within the exercise of its subjective business judgment, subject only to the Existing Development Approvals. Furthermore, the City shall not (whether by City Council action, initiative or otherwise) limit the rate or timing of Development of the Developer Property except as expressly authorized by the Existing Development Approvals. Nothing in this section shall be construed to limit the City's right to require that Developer timely provide all improvements and exactions established in the Existing Development Approvals for the Developer Property consistent with the Existing Land Use Regulations and in accordance with the Existing Development Approvals for the Developer Property.

3. RULES, REGULATIONS AND OFFICIAL POLICIES.

3.1 Effect of Agreement on Land Use Regulations.

In connection with any Subsequent Approval with respect to the Developer Property, the City will exercise its discretion or take action in a manner which is as expeditious and which complies and is consistent with the Existing Land Use Regulations and this Section 3 et seq. In addition, the City shall use its reasonable, good faith efforts to make its staff available so as to expeditiously complete processing of all Subsequent Approvals for the Development or to allow Developer to pay for expedited processing by contract staff retained by the City.

3.2 New Rules.

Although the Existing Land Use Regulations will govern uses and Development of the Developer Property, this Agreement will not prevent and shall not be construed to limit the authority of City to apply new rules, regulations and policies set forth in this Section 3.2 et seq. on the Developer in connection with the Development of the Developer Property.

3.2.1 Processing Fees and Charges.

Processing Fees and Charges as defined in Section 1.25 shall be paid by Developer at the prevalent rate at the time of payment.

3.2.2 Procedural Regulations.

Procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals and any other matter of procedure.

3.2.3 Regulations Governing Construction Standards.

Regulations governing engineering and construction standards and specifications including without limitation, the Building Codes as defined in Section 1.3.

3.2.4 Non-Conflicting Regulations.

Written regulations approved by the City that are not in material conflict with the Applicable Rules and do not materially and adversely impact the Development of the Developer Property.

3.2.5 Certain Conflicting Regulations.

Written regulations approved by the City that are in material conflict with the Applicable Rules if Developer has given its written consent to the application of such regulations to Development of the Developer Property.

3.2.6 Regulations Needed to Protect the Health and Safety.

Any City ordinance, resolution, regulation, or official policy which is reasonably necessary to protect persons from conditions dangerous to their health and/or safety; provided that any such regulations must constitute a valid exercise of the City's police power, applied and enforced in a uniform, consistent and nondiscriminatory manner.

3.2.7 Regulation by Other Public Agencies.

The Parties acknowledge that other public agencies, not within the control of the City, possess authority to regulate aspects of the Development of the Project and the Developer Property separately from the City. This Agreement does not limit the authority of such other public agencies.

3.2.8 General and Special Taxes.

General and special taxes of general applicability citywide, including but not limited to, property taxes, sales taxes, and business taxes which do not burden the Developer Property disproportionately when compared to other properties within the City.

3.2.9 End Users.

Laws of the City that impose, levy, alter, or amend fees, charges, or regulations relating solely to the activities of consumers or end users of the Developer Property after completion of the Project, such as, without limitation, trash can placement, service charges, and limitations on vehicle parking, so long as those later enactments are applied citywide.

3.3 Subsequent Actions and Approvals.

The City shall accept and process with reasonable promptness all completed applications for any Subsequent Approval in accordance with the Existing Land Use Regulations; provided, however, this Agreement will not prevent the City, in subsequent actions applicable to the Developer Property, from applying new rules, regulations and policies which do not conflict with the Existing Land Use Regulations, nor will this Agreement prevent the City from denying or conditionally approving any Subsequent Approval on the basis of such Existing Land Use Regulations or such new rules, regulations or policies. Subsequent Approvals shall, upon approval and as may be amended from time to time, become part of the Applicable Rules and the Developer shall have a "vested right," as that term is defined under California law, in and to such Subsequent Approvals by virtue of this Agreement. Conditions of approval and any mitigation measures imposed by the City on Subsequent Approvals shall be appended to Attachment "E."

3.4 State and Federal Laws.

If State or Federal laws or regulations enacted after the Effective Date hereof, prevent or preclude compliance with one or more of the provisions of this Agreement, such provisions of this Agreement will be modified or suspended as may be necessary to comply with such State or Federal laws or regulations; provided, however that this Agreement will remain in full force and effect to the extent it is not inconsistent with such State or Federal laws or regulations and to the extent such laws or regulations do not render such remaining provisions impractical to enforce.

4. FEES, TAXES AND FINANCIAL RESPONSIBILITIES.

4.1 Development Impact Fees.

During the Term of this Agreement, City shall impose and Developer shall be required to pay only those Development Impact Fees existing as of the Approval Date as set forth in Attachment "C" in connection with the use or Development of the Developer Property, provided that the amount of such Development Impact Fees shall be at the prevalent rate in effect at the time of issuance of each building permit or other time of payment required by applicable City ordinance or resolution. No new categories of Development Impact Fees may be imposed on the Project during the Term of this Agreement.

4.2 Development Agreement Fees.

Upon the City's issuance of each building permit for each residential dwelling unit to be constructed within the Project by Developer, Developer shall pay to City a Development Agreement Fee in the amount of Five Thousand Five Hundred Dollars ($5,500) (each, a "**DAG Fee**" and collectively, "**DAG Fees**"). DAG Fees shall be deposited by City into a capital facilities fund to be used toward the construction of capital facilities as determined by City in its sole and absolute discretion. If a CFD special tax is requested by the Developer and approved by the City Council acting in its reasonable discretion and in accordance with applicable laws, DAG fees may be paid out of the CFD or reimbursed from the CFD. Developer's obligation to pay DAG Fees shall survive termination of this Agreement.

4.3 General and Special Taxes.

Developer shall pay general or special taxes, including but not limited to, property taxes, sales taxes, transient occupancy taxes, business taxes, which may be applied to the Developer Property or to businesses occupying the Developer Property; provided, however, that the tax is of general applicability Citywide and does not burden the Developer Property disproportionately when compared to the development of other residential uses within the City. Nothing in this Agreement prohibits the adoption and application of a CFD special tax requested by the Developer and approved by the City Council in accordance with applicable laws.

4.4 Reservations, Dedications and Improvements Plan.

Developer shall timely complete at Developer's cost and expense all reservations, Dedications and the provision of improvements and facilities for public purposes in accordance with the requirements of the applicable Conditions of Approval for Tentative Tract Map No. 34249 for Development of the Project on the Developer Property or revised conditions of approval applicable to the Subsequent Approvals for Development of the Project on the Developer Property.

5. DURATION OF AGREEMENT.

5.1 Term.

The Term of this Agreement shall commence as of the Effective Date and shall automatically expire on the fifth (5th) anniversary thereof.

5.2 Annual Review.

City shall review this Agreement annually ("**Annual Review**") on or before the anniversary of the Effective Date. During each Annual Review, Developer is required to demonstrate good faith compliance with the terms of this Agreement, and shall furnish such reasonable evidence of good faith compliance as the City, in the exercise of its reasonable discretion, may require. Such Annual Review shall be conducted administratively by the City Manager and any appropriate department heads designated by the City Manager to perform such Annual Review. The City Manager shall report the results of such Annual Review to the City Council within thirty (30) days after the conclusion thereof. No public hearing shall be held by

the City Manager or City Council with regard to such Annual Review; provided, however, that the City Council and/or the Developer shall have the right to appeal the City Manager's findings to the City Council, in which case Developer shall have the right to request a public hearing on the matter. City shall notify Developer in writing of the date for review at least thirty (30) days prior thereto. The City's failure to review the Developer's compliance with this Agreement, at least annually, will not constitute or be asserted by either Party as a breach by the other Party. The requirement for an Annual Review shall not be deemed to modify or restrict Developer's rights under Section 2.7 to develop the Project in such order and at such rate and times as Developer deems appropriate in view of market conditions and within the exercise of its subjective business judgment, subject only to the Existing Development Approvals.

5.3 Operating Memoranda.

The provisions of this Agreement require a close degree of cooperation between the City and the Developer. The Development of the Developer Property may demonstrate that clarifications to this Agreement and the Existing Land Use Regulations are appropriate with respect to the details of performance of the City and the Developer. To the extent allowable by law, the Developer shall retain a certain degree of flexibility as provided herein with respect to all matters, items and provisions covered in general under this Agreement, except for those which relate to the (i) term; (ii) permitted uses; or (iii) density or intensity of use. When and if the Developer finds it necessary or appropriate to make changes, adjustments or clarifications to matters, items or provisions not enumerated in (i) through (iii) above, the Parties shall effectuate such changes, adjustments or clarifications through operating memoranda (the "**Operating Memoranda**") approved by the Parties in writing which reference this Section 5.3. Operating Memoranda are not intended to constitute an amendment to this Agreement but mere ministerial clarifications; therefore public notices and hearings shall not be required. The City Manager shall be authorized, upon consultation with, and approval of, the Developer, to determine whether a requested clarification may be effectuated pursuant to this Section 5.3 or whether the requested clarification is of such character to constitute an amendment to this Agreement which requires compliance with the provisions of Section 5.4 below.

5.4 Amendment.

Subject to the notice and hearing requirements of the Government Code, this Agreement may be modified or amended from time to time only with the written consent of the Developer and the City or their successors and assigns in accordance with the provisions of the Development Agreement Ordinance and the Development Agreement Act.

6. COVENANT OF FURTHER ASSURANCES AND FAIR DEALING.

6.1 Further Assurances.

Each Party covenants on behalf of itself and its successors and assigns to take all reasonable actions and do all reasonable things, and to execute with acknowledgments or affidavits if required, any and all documents and writings that may be reasonably necessary or proper to achieve the purposes and objectives of this Agreement. Each Party will take all reasonably necessary measures to see that the provisions of this Agreement are carried out in full.

6.2 Covenant of Good Faith and Fair Dealing.

Except as may be required by law, neither Party will do anything which will have the effect of harming or injuring the right of the other Party to receive the benefits of this Agreement and each Party will refrain from doing anything which would render performance under this Agreement impossible or impractical. In addition, each Party will do everything which this Agreement describes that such Party will do.

7. PERMITTED DELAYS.

Any period of delay caused by acts of God; civil commotion; war; insurrection; riots; strikes; walk outs; picketing or other labor disputes; unavoidable shortages of labor, materials or supplies; damages to work in progress by reason of fire, flood, earthquake or other casualty; pandemics; epidemics; quarantine restrictions; litigation challenging the validity of this Agreement, the Project or any element thereof or which prohibits, delays or interferes with performance of the Agreement; moratoria; judicial decisions; governmental agency or entity (with the understanding that acts or failures to act of the City shall not excuse performance by the City) or utility; or any other cause which is not within the reasonable control of the Parties may extend the duration of the Agreement. Each Party will promptly notify the other Party of any delay hereunder as soon as possible after the same has been ascertained, and the term of this Agreement will be extended by the period of any such delay. Any claim for delay must be presented within ninety (90) days of knowledge of the cause of such delay or any entitlement to time extension will be deemed waived. Notwithstanding the foregoing, in no event shall Developer be entitled to a permitted delay due to an inability to obtain financing or proceed with development as a result of general market conditions, interest rates, or other similar circumstances that make development impossible, commercially impracticable, or infeasible.

8. ESTOPPEL CERTIFICATES.

Either Party may at any time, and from time to time, deliver written notice to the other Party, requesting that the other Party certify in writing to the knowledge of the certifying Party that: (a) this Agreement is in full force and effect and is a binding obligation of the certifying Party; (b) this Agreement has not been amended or modified, except as expressly identified; (c) no default in the performance of the requesting Party's obligations pursuant to Agreement exists, except as expressly identified. A Party receiving a request hereunder will execute and return the requested certificate within 30 days after receipt of the request.

9. RECORDATION BY CITY CLERK.

Pursuant to Government Code § 65868.5, the City Clerk will record a copy of the Agreement in the Records of the County Recorder.

10. DEFAULT.

10.1 Events of Default.

Subject to any written extension of time by mutual consent of the Parties or permitted delays pursuant to the provisions of Section 7, the uncured failure of either Party to

perform any material term or provision of this Agreement will constitute a default. On written notice to a Party of its failure of performance, such Party will have 30 days to cure such failure of performance; provided, however that if the nature of the failure of performance is such that it cannot be cured within such period, then the diligent prosecution to completion of the cure will be deemed to be cure within such period. Any notice of default given hereunder will be in writing and specify in detail the nature of the alleged default and the manner in which such default may be satisfactorily cured in accordance with this Agreement. During the time period herein specified for the cure of a failure of performance, the Party charged with such failure of performance will not be considered to be in default for purposes of termination of this Agreement or for purposes of institution of legal proceedings with respect thereto and, if the Developer is the Party that has failed to perform, then the City will not be excused from its performance under this Agreement during that period.

10.2 Remedies.

Upon the occurrence of a default under this Agreement and the expiration of any applicable cure period, the non-defaulting Party will have such rights and remedies against the defaulting Party as it may have at law or in equity including, without limitation, the right to terminate this Agreement.

10.3 No Waiver.

The failure by a Party to insist on the strict performance of any of the provisions of this Agreement by the other Party will not constitute a waiver of such Party's right to demand strict performance by such other Party in the future. All waivers must be in writing to be effective or binding on the waiving Party and no waiver will be implied from any omission by a Party to take action. No express written waiver of any default will affect any other default or cover any other period of time except that specified in such express waiver.

10.4 Effect of Termination.

Termination of this Agreement by one Party due to the default of the other Party in accordance with the provisions of Section 10 et seq. will not affect any right or duty emanating from any then-existing Development Approval and the Conditions of Approval related thereto with respect to the Developer Property, but the rights and obligations of the Parties will otherwise cease as of the date of such termination. If the City terminates this Agreement because of a default of the Developer, then the City will retain any and all benefits including, without limitation, money or land received by the City hereunder before termination. Notwithstanding the foregoing, the obligations of Developer to indemnify the City as set forth in Section 20 shall survive any termination of this Agreement.

11. INCORPORATION BY REFERENCE.

11.1 Recitals.

The Parties agree that the foregoing Recitals are true and correct and that the foregoing Recitals are a part of this Agreement and are hereby incorporated by reference herein as though set forth in full.

11.2 Attachments.

Each Attachment to this Agreement is incorporated herein by reference as though fully set forth herein.

12. APPLICABLE LAW.

This Agreement will be construed and enforced in accordance with the laws of the State of California.

13. NO JOINT VENTURE, PARTNERSHIP OR THIRD PARTY BENEFICIARY.

The City and the Developer hereby renounce the existence of any form of joint venture or partnership between them and expressly agree that nothing contained herein or in any document executed in connection herewith will be construed as making the City and the Developer joint venturers or partners. It is understood that the contractual relationship between the City and the Developer is such that the Developer is an independent contractor and not an agent of the City. Furthermore, this Agreement is not intended or construed to create any third party beneficiary rights in any person who is not a party to this Agreement.

14. COVENANTS RUNNING WITH THE LAND.

All of the terms, provisions, covenants and obligations contained in this Agreement will be binding upon the Parties and their respective successors and assigns, and all other persons or entities acquiring all or any part of the Developer Property, and will inure to the benefit of such Parties and their respective successors and assigns. All the provisions of this Agreement will be enforceable as equitable servitudes and constitute covenants running with the land pursuant to applicable law including, without limitation, California Civil Code § 1468. Each covenant to or refrain from doing some act on the Developer Property is expressly for the benefit of the Developer Property and is a burden upon the Developer Property, runs with the Developer Property and is binding upon each Party and each successive owner during its ownership of the Developer Property or any part thereof, and will benefit each Party and its property hereunder, and each Party succeeding to an interest in the Developer Property.

15. TERMS AND CONSTRUCTION.

15.1 Severability.

If any term, provision, covenant or condition of this Agreement is determined to be invalid, void or unenforceable by judgment or court order, than the remainder of this Agreement will remain in full force and effect, unless enforcement of this Agreement, as so invalidated, would be unreasonable or grossly inequitable under all the circumstances or would frustrate the stated purposes of this Agreement.

15.2 Entire Agreement.

This Agreement contains all the representations and constitutes the entire agreement between the City and the Developer. Any prior correspondence, memoranda,

agreements, warranties or representations, oral or written, are superseded in total by this Agreement.

15.3 Signature Pages; Counterparts.

For convenience, the signatures of the Parties may be placed and acknowledged on separate pages and, when attached to this Agreement, will constitute this document as one complete Agreement.

15.4 Time.

Time is of the essence of this Agreement and of each and every term and condition hereof.

15.5 Notices.

Any notice shall be in writing and given to the respective mailing addresses, as follows:

If to City:	City of Lake Elsinore 130 S. Main Street Lake Elsinore, CA 92530 Attn: City Manager Email: jsimpson@Lake-Elsinore.org
With a copy to:	Leibold McClendon & Mann, PC 9841 Irvine Center Drive, Suite 230 Irvine, CA 92618 Attn: Barbara Leibold, Esq. Email: barbara@ceqa.com
If to Developer:	Tri Pointe Homes IE-SD, Inc. 1250 Corona Pointe Court, Suite 600 Corona, CA 92879 Attn: Chris Willis Email: Chris.Willis@tripointehomes.com
With a copy to:	Jackson Tidus 2030 Main Street, 12th Floor Irvine, CA 92614 Attn: Michael Tidus, Esq., Sarah Kleinberg, Esq. Email: mtidus@jacksontidus.law; skleinberg@jacksontidus.law

Either City or Developer may change its mailing address at any time by giving written notice of such change to the other in the manner provided herein at least ten (10) days prior to the date such change is effective. All notices required or provided for under this Agreement shall be in writing

and delivered in person or sent by registered mail, postage prepaid to the person and address provided above. Delivery shall be presumed delivered upon actual receipt by personal delivery, electronic delivery (e-mail), or within three (3) days following deposit thereof in United States Mail, provided that if notice is by e-mail, then a copy of the notice shall also be contemporaneously sent by regular mail, postage prepaid to the person and address provided above.

16. ASSIGNMENT AND NOTICE.

The rights and obligations of Developer hereunder shall not be assigned or transferred, except that on thirty (30) days written notice to City, Developer, may assign all or a portion of Developer's rights and obligations thereunder to any person or persons, partnership, company or corporation who purchases all or a portion of Developer's right, title and interest in the Developer Property, provided such assignee or grantee assumes in writing each and every obligation of Developer hereunder yet to be performed, and further provided that Developer obtains the consent of City to the assignment, which consent shall not be unreasonably withheld, conditioned or delayed. Provided the Developer's thirty (30) day notice includes the assumption by the assignee or grantee, the consent of the City shall be deemed to occur upon the thirtieth (30th) day of the notice period unless within that period the City provides written notice withholding consent and explaining the reasons it is withholding consent. The notice to City shall include the identity of any such assignee and a copy of the written assumption of the assignor's obligations hereunder pertaining to the portion assigned or transferred. After such notice and the receipt of such consent or deemed consent, the assignor shall have no further obligations or liabilities hereunder.

17. ENCUMBRANCES AND RELEASES ON REAL PROPERTY.

17.1 Discretion to Encumber.

The Parties agree that this Agreement will not prevent or limit the Developer in any manner, at the Developer's sole discretion, from encumbering the Developer Property, or any part of the same including, without limitation, improvement thereon, by any mortgage, deed of trust or other security device securing financing with respect to the Developer Property or the Project. The City further agrees that it will not unreasonably withhold its consent to any modification requested by a lender so long as the modification does not materially alter this Agreement to the detriment of the City. Neither entering into this Agreement nor committing a default under this Agreement shall defeat, render invalid, diminish, affect the priority or impair the lien of mortgage, deed of trust or other security device securing financing with respect to the Project or on any portion of the Developer Property made in good faith and for value.

17.2 Entitlement to Written Notice of Default.

Any lender of the Developer which has filed a written request with the City for notice of default by Developer will be entitled to receive written notification from the City of any uncured default by the Developer in the performance of the obligations of the Developer under this Agreement.

17.3 Property Subject to Pro Rata Claims.

Any mortgagee or beneficiary which comes into possession of the Developer Property or any part thereof, pursuant to foreclosure of the mortgage or deed of trust, or deed in lieu of such foreclosure, will take the Developer Property or part thereof, subject to (i) any pro rata claims for payments or charges against the Developer Property or part thereof secured by such mortgage or deed of trust, which accrued prior to the time that such mortgagee or beneficiary comes into possession of the Developer Property or part thereof; and (ii) the terms and conditions of this Agreement.

18. CONSTRUCTION, NUMBER AND GENDER.

This Agreement will be construed as a whole according to its common meaning and not strictly for or against either Party in order to achieve the objectives and purposes of the Parties hereunder. Whenever required by the context of this Agreement, the singular will include the plural and vice versa, and the masculine gender will include the feminine and neuter genders. In addition, "will" is the mandatory and "may" is the permissive.

19. INSTITUTION OF LEGAL ACTION.

In addition to any other rights or remedies, either Party may institute legal action to cure, correct or remedy any uncured default, to enforce any covenants or agreements herein, to enjoin any threatened or attempted violation thereof or obtain any remedies consistent with the purpose of this Agreement. In the event of any such legal action involving or arising out of this Agreement, the prevailing Party will be entitled to recover from the losing Party, reasonable litigation expenses, attorneys' fees and costs incurred. The Parties acknowledge that if a breach of this Agreement by the City occurs, irreparable harm is likely to occur to the Developer and damages may be an inadequate remedy. Therefore, to the extent permitted by law, the Parties agree that specific enforcement of this Agreement by the Parties is an appropriate and available remedy, in addition to any and all other remedies which may be available to the Parties under law or at equity.

20. INDEMNIFICATION.

The Developer shall defend (with counsel acceptable to the City), indemnify, and hold harmless the City, its officers, agents, employees, consultants, officials, commissions, councils, committees, boards and representatives (collectively referred to individually and collectively as "Indemnities") harmless from liability for damage to any third party or claims for damage for personal injury to any third party, including death and claims for property damage to any third party which may arise out of the direct or indirect activities of the Developer with respect to the Development of the Developer Property except to the extent arising from the gross negligence or willful misconduct of one or more Indemnities. Developer agrees to and will defend the Indemnities from any third-party claim, action, or proceeding to attack, set aside, void, or annul an approval by Indemnitees concerning approval of this Agreement or the Existing Development Approvals in connection with the Development of the Developer Property or to determine the reasonableness, legality or validity of any condition attached thereto. The Developer's indemnification is intended to include, but not be limited to, damages, fees and/or costs awarded against or incurred by Indemnities and costs of suit, claim or litigation, including without limitation

reasonable attorneys' fees, penalties and other costs, liabilities and expenses incurred by Indemnities in connection with such proceeding. City shall promptly notify Developer of any such claim, action or proceeding, and City shall cooperate in the defense. Developer's obligation to indemnify City hereunder shall survive any termination of this Agreement.

IN WITNESS WHEREOF, City and Developer have executed this Agreement as of the date first hereinabove written.

"CITY"'

CITY OF LAKE ELSINORE,
a municipal corporation

By: _____
Tim Sheridan, Mayor

ATTEST:

_____
Candice Alvarez, MMC, City Clerk

APPROVED AS TO FORM:

_____
Barbara Leibold, City Attorney

"DEVELOPER"

TRI POINTE HOMES IE-SD, Inc., a
California corporation

By: _____

Name: _____

Title: _____

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, _____
(here insert name and title of the officer)

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/her/their authorized capacity(ies), and that by his/her/their signature(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 (Seal)

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, _____
(here insert name and title of the officer)

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/her/their authorized capacity(ies), and that by his/her/their signature(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 (Seal)

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, _____
(here insert name and title of the officer)

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/her/their authorized capacity(ies), and that by his/her/their signature(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 (Seal)

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, _____
(here insert name and title of the officer)

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/her/their authorized capacity(ies), and that by his/her/their signature(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 (Seal)

ATTACHMENT “A”

LEGAL DESCRIPTION OF THE DEVELOPER PROPERTY

VICINITY MAP

DEVELOPMENT FEES

DEVELOPMENT IMPACT FEES	AMOUNT AS OF THE APPROVAL DATE[1]
Traffic Impact Fees	$1,369.00
Library	$150.00
City Hall & Public Works Facilities	$809.00
Community Center	$545.00
Lakeside Facilities	$779.00
Animal Shelter	$348.00
Fire Facility	$751.00
Park Capital Improvement Fund Fees	To be satisfied by construction of park improvements (Section 2.3 of the Development Agreement) and consistent with Condition of Approval No. 130
Storm Drain	Fee based on location as shown on the City of Lake Elsinore's Drainage Facilities Plan Map
MSHCP	$1,515 (8-14 du/acre) $3,635 (less than 8 du/acre)
TUMF	$10,104 per unit (single family residential) $6,580 per unit (multifamily residential; greater than 8 du/acre)
SKR Fee	$500/acre

DEVELOPMENT AGREEMENT FEES	AMOUNT AS OF THE APPROVAL DATE[2]
DAG Fee	$5,500.00

[1] Dollar amounts provided for information only. The amount of Development Impact Fees shall be at the prevalent rate in effect at the time of issuance of each building permit or other time of payment required by applicable City ordinance or resolution.

[2].Amount fixed throughout the Term

ATTACHMENT “C”

PROPERTY OWNER CONSENTS

JOHN W. FLANIGAN, AS SUCCESSOR TRUSTEE OF THE FLANIGAN LIVING TRUST DATED AUGUST 24, 2004 – TRUST A, as to an undivided 56% interest, and JOHN W. FLANIGAN, AS SUCCESSOR TRUSTEE OF THE FLANIGAN LIVING TRUST DATED AUGUST 24, 2004 – TRUST B, as to an undivided 44% interest (collectively, "**Flanigan Owner**"), being the owners of the real property described in Exhibit A to this Development Agreement by and between the City of Lake Elsinore and TRI POINTE HOMES IE-SD, Inc., a California corporation, dated as of _____, 2022 (the "**Agreement**"), do hereby consent to and expressly authorize the recordation of said Agreement in the Official Records of the County of Riverside.

THE FLANIGAN LIVING TRUST DATED AUGUST 24, 2004 – TRUST A

By: _____
John W. Flanigan, Successor Trustee

THE FLANIGAN LIVING TRUST DATED AUGUST 24, 2004 – TRUST B

By: _____
John W. Flanigan, Successor Trustee

THE FLYING BEE RANCH III, a California limited partnership, as to Parcel 1 ("**Flying Bee**"); and CARY SCHROEDER AND BRENDA L. SCHROEDER, TRUSTEES OF THE CARY SCHROEDER AND BRENDA L. SCHROEDER REVOCABLE TRUST DATED JUNE 30, 2006, as to an undivided 20% interest; DIANA L. FOSTER, a married woman as her sole and separate property, as to an undivided 20% interest; LINDA M. BEAN, a married woman as her sole and separate property, as to an undivided 20% interest; DAVID BEHRENS, a married man as his sole and separate interest, as to an undivided 20% interest; and RICHARD E. BEHRENS, a single man as to an undivided 20% interest; all as tenants in common as to Parcel 2 (collectively, the "**Parcel 2 Owners**"), being the owners of the real property described in Exhibit A to this Development Agreement by and between the City of Lake Elsinore and TRI POINTE HOMES IE-SD, Inc., a California corporation, dated as of _____, 2022 (the "**Agreement**"), do hereby consent to and expressly authorize the recordation of said Agreement in the Official Records of the County of Riverside. **[**Drafting note: May need to add Gordon David Behrens, Trustee under Declaration of Trust dated July 17, 1989 for Flying Bee Property**]

THE FLYING BEE RANCH III, L.P.
a California general partnership

By: _____
Name: Brenda L. Schroeder
Title: General Partner

THE CARY SCHROEDER AND BRENDA L. SCHROEDER REVOCABLE TRUST DATED JUNE 30, 2006

By: _____
Cary Schroeder, Trustee

By: _____
Brenda L. Schroeder, Trustee

_____
DIANA L. FOSTER by Brenda L. Schroeder, Power of Attorney

_____
LINDA M. BEAN by Brenda L. Schroeder, Power of Attorney

_____
DAVID BEHRENS by Brenda L. Schroeder, Power of Attorney

_____
RICHARD E. BEHRENS by Brenda L. Schroeder, Power of Attorney

CONDITIONS OF APPROVAL