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ANNEXATION AGREEMENT

among

THE CITY OF CHULA VISTA

a California Municipal Corporation,

and

THE CITY OF SAN DIEGO

a California Municipal Corporation,

and

TRI POINTE HOMES IE-SD, INC,

a California Corporation,

[Dated as of _____, 2024 for reference purposes only]

For good and valuable consideration, including, but not limited to, the promises and mutual covenants set forth in this Annexation Agreement, the receipt and sufficiency of which is hereby acknowledged, the City of Chula Vista, the City of San Diego, and Tri Pointe Homes IE-SD, Inc. agree as follows:

ARTICLE 1

PARTIES AND EFFECTIVE DATE

1.1 **Parties.** This Annexation Agreement (“Agreement”) is entered into among: (i) the City of Chula Vista (“Chula Vista”), a municipal corporation and California charter city; (ii) the City of San Diego (“San Diego”), a municipal corporation and California charter city; and (iii) Tri Pointe Homes IE-SD, Inc. (“Tri Pointe Homes”), a California corporation. Chula Vista, San Diego and Tri Pointe Homes are sometimes referred to in this Agreement individually as a “Party” and collectively as the “Parties.” This Agreement is dated as of _____, 2024, for reference purposes only, and will become effective upon the “Effective Date” as defined in Section 1.2 below.

1.2 **Effective Date.** This Agreement will become effective on the first date (“Effective Date”) on which all the following have occurred: (i) this Agreement has been approved by Tri Pointe Homes, executed by its legally authorized officers, and delivered to Chula Vista and San Diego; (ii) this Agreement has been approved by City of Chula Vista City Council (“Chula Vista City Council”) and executed by its duly authorized representative as designated by the Chula Vista City Council; and (iii) this Agreement has been approved by the City of San Diego City Council (“San Diego City Council”) and executed by its duly authorized representative as designated by the San Diego City Council.

ARTICLE 2

RECITALS

2.1 Tri Pointe Homes owns 23.8 acres of uninhabited land (the “Project Property”), located in the undeveloped area of Chula Vista adjacent to the jurisdictional boundary of San Diego, as described and depicted in Exhibit A, attached hereto.

2.2 Tri Pointe Homes represents and warrants to the Parties that Tri Pointe Homes is the legal title holder and owner of record of the Project Property and that no other parties have a legal or equitable interest in the Project Property.

2.3 Tri Pointe Homes intends to develop the Nakano project (the “Project”), which, as approved by Chula Vista, consists of up to a 221-unit residential development on the Project Property. The details of the Project are described and depicted in exhibits to the Project’s vesting tentative map and its Environmental Impact Report (“EIR”), as approved and certified by Chula Vista, and are incorporated herein by this reference.

2.4 Although the Project Property is located within Chula Vista’s jurisdiction, it is situated adjacent to San Diego’s Ocean View Hills residential development to the east, Interstate 805 to the west, Kaiser Medical Center to the south and the Otay Valley River Park to the north,

as depicted in Exhibit A. The Project Property does not have direct access or connections to Chula Vista utilities, services and facilities, and, if developed, would need to be served by San Diego.

2.5 Prior to the Effective Date of this Agreement, Chula Vista, San Diego, and Tri Pointe Homes approved a memorandum of understanding (“MOU”) setting forth: (i) Chula Vista and San Diego’s reservation of rights to exercise their discretion as to all matters to negotiate or terminate negotiation of a binding annexation agreement; (ii) an understanding that Chula Vista would serve as the Lead Agency for purposes of compliance with the California Environmental Quality Act (Pub. Res. Code §§ 21000 *et seq.*) (“CEQA”) and include an independent analysis of the environmental impacts of a scenario where the Project Property would be annexed into San Diego; and (iii) an understanding that if Chula Vista approved the Project and an annexation agreement, then San Diego would independently evaluate whether to support the Reorganization, and if so, execute a binding annexation agreement and serve as the San Diego Local Agency Formation Commission (“LAFCO”) Applicant for LAFCO purposes in processing the Reorganization through LAFCO. The original term of this MOU has been extended upon the mutual agreement of the parties.

2.6 As provided in this Agreement, the Parties agree the Project Property on which Tri Pointe Homes will construct the Project will be detached from Chula Vista and annexed into the jurisdictional boundaries of San Diego. The process by which these jurisdictional changes will occur are collectively referred to in this Agreement as the “Reorganization.”

2.7 Pursuant to the authority to enter into annexation-related contracts (*Morrison Homes Corporation v. City of Pleasanton* (1974) 58 Cal. App.3d 724, 733), this Agreement sets forth the process for and the terms and conditions upon which the Project Property may be detached from Chula Vista and annexed into San Diego through the Reorganization, in the event Chula Vista approves the Project.

2.8 Due to the complexity and magnitude of the Project, as well as the substantial financial investment associated with the development, Tri Pointe Homes desires for Chula Vista and San Diego to provide a sufficient degree of certainty regarding the provision of municipal services to the Project Property after Chula Vista approves the Project. Pursuant to this Agreement, Chula Vista and San Diego provide assurances to Tri Pointe Homes that it will have the right to develop the Project in accordance with the Project Entitlements (as defined herein) on the terms and conditions provided in this Agreement.

ARTICLE 3

DEFINITIONS

3.1 “Affected Local Agency” has the definition provided in Government Code section 56014.

3.2 “Agreement” means this Annexation Agreement.

3.3 “Annexation” has the definition provided in Government Code section 56017 and, for this Agreement, means more specifically the addition of the Project Property to the jurisdictional boundaries of San Diego and any other Affected Local Agency.

3.4 “Application” has the definition provided in Section 4.1.2 of this Agreement.

3.5 “Approval of Reorganization” means LAFCO’s adoption of a resolution making determinations to approve the Reorganization pursuant to Government Code section 56880.

3.6 “Building Codes” means standard, uniform codes governing construction, as adopted in California and/or San Diego. Examples of Building Codes include the California Building Code, the National Electrical Code, the Uniform Plumbing Code, the Uniform Mechanical Code, the Uniform Housing Code, and the Uniform Code for the Abatement of Dangerous Buildings.

3.7 “CEQA” means the California Environmental Quality Act, Public Resources Code section 21000 *et seq.* and the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3 (“CEQA Guidelines”).

3.8 “Certificate of Completion” has the definition provided in Government Code section 56020.5.

3.9 “Chula Vista” means the City of Chula Vista, a California municipal corporation and charter city.

3.10 “Chula Vista Project Entitlements” means the discretionary approvals that may be issued by Chula Vista as part of the possible approval of the Project. The Chula Vista Project Entitlements include, but are not limited to, the certification of the EIR and related approvals required pursuant to CEQA, General Plan Amendment, Specific Plan, Vesting Tentative Subdivision Map, Rezone, Multiple Species Conservation Plan Subarea Plan Amendment, and Mitigation Monitoring and Reporting Program. Chula Vista retains and will exercise full authority, discretion, jurisdiction, and independent judgment regarding any and all discretionary decisions. Chula Vista shall not make or issue and ministerial approvals or permits regarding the Project, including but not limited to any grading permits, building permits, or certificates of occupancy or completion for the Project.

3.11 “Detachment” has the definition provided in Government Code section 56033, and, for this Agreement, means more specifically the removal of the Project Property from the jurisdictional boundaries of Chula Vista and the Otay Municipal Water District.

3.12 “Early Termination” has the definition provided in Section 8.6.2 of this Agreement.

3.13 “Effective Date” has the definition provided in Section 1.2 of this Agreement.

3.14 “EIR” means the Final Environmental Impact Report, SCH No. 2022060260, including the technical studies prepared in support of the EIR, for the Project as certified by Chula Vista, as the lead agency, and San Diego, as the responsible agency, pursuant to CEQA, and shall include, CEQA Findings of Fact, Statement of Overriding Considerations, and the Mitigation Monitoring and Reporting Program, as approved separately and independently by Chula Vista and San Diego.

3.15 “Executive Officer” has the definition provided in Government Code section 56038 and, for this Agreement, means the Executive Officer of LAFCO.

3.16 “Expiration” has the definition provided in Section 8.6.1 of this Agreement.

3.17 “Fiscal Impact Analysis” means the fiscal study required by Section 5.3 of this Agreement.

3.18 “Initiate” or “Initiation” has the definition provided in Government Code section 56047.

3.19 “LAFCO” means the Local Agency Formation Commission of the County of San Diego, or any successor entity thereto.

3.20 “LAFCO Final Decision” means when LAFCO has recorded the Certificate of Completion with the County of San Diego Recorder’s Office and: (i) any ordinances or resolutions with respect to the Certificate of Completion have taken effect; (ii) the time has passed for any request for reconsideration or appeal of LAFCO’s Approval of Reorganization or the Certificate of Completion to any administrative agency or court with appeal jurisdiction over such approvals or appeals in connection therewith; (iii) no notice of referendum or initiative with respect thereto has been published or publicized within the statutory timeframes; and (iv) any appeal or litigation with respect to the Certificate of Completion or LAFCO’s Approval of Reorganization has been prosecuted and resolved in a manner which is not subject to remand to lower courts or governmental agencies.

3.21 “Landowner” has the definition provided in Government Code section 56048 and, for this Agreement, is equivalent to Tri Pointe Homes.

3.22 “Lead Agency for CEQA” has the definition provided in Public Resources Code section 21067 and section 15050 of the CEQA Guidelines, and, unless otherwise indicated, refers to Chula Vista and its efforts to process the Chula Vista Project Entitlements.

3.23 “LAFCO Applicant” refers to San Diego and its efforts to process the Reorganization through LAFCO.

3.24 “MOU” means the memorandum of understanding, as amended from time to time, by and among Chula Vista, San Diego and Tri Pointe Homes as approved by the respective Parties.

3.25 “Otay Municipal Water District” means the Otay Municipal Water District, a water district established and organized pursuant to the California Water Code.

3.26 “Parties” means, collectively, Chula Vista, San Diego and Tri Pointe Homes.

3.27 “Party” means, individually, Chula Vista, San Diego or Tri Pointe Homes.

3.28 “Permit Condition” means a condition to be included in the Project Entitlements set forth by Chula Vista that reads substantially as follows:

“With payment of processing fees, Tri Pointe Homes may process and complete all requirements necessary for a final map. However, a final map shall for the Project only be approved by the City of San Diego upon the satisfaction of all requirements for obtaining a final map, including the payment of all applicable processing fees.”

3.29 “Project” means the Nakano Project proposed by Tri Pointe Homes for construction on the Project Property, as is more particularly defined in Section 2.3 of this Agreement.

3.30 “Project Build-Out” means the issuance of the last permit needed to occupy and use the last structure or facility identified in the Project Entitlements or an earlier time as the Parties may mutually agree in writing.

3.31 “Project Entitlements” shall mean, collectively, Chula Vista Project Entitlements and San Diego Project Entitlements.

3.32 “Project Property” has the definition provided in Section 2.1 of this Agreement and is described and depicted in Exhibit A, attached hereto.

3.33 “Reorganization” means the Detachment of the Project Property from Chula Vista and the Otay Municipal Water District and Annexation of the Project Property into the jurisdictional boundaries of San Diego and other Affected Local Agency, as provided in Government Code section 56073 and sections 56650 *et seq.*, as well as any required adjustments to the Chula Vista, San Diego and Otay Municipal Water District Spheres of Influence and related changes to the jurisdictional boundaries and/or Spheres of Influence of any other Affected Local Agency, as set forth in San Diego’s Resolution of Application for Reorganization.

3.34 “Reorganization Effective Date” has the definition provided in Section 5.1 of this Agreement.

3.35 “Resolution of Application for Reorganization” means the document that San Diego will approve in order to initiate the Reorganization, as provided in Government Code section 56073.1.

3.36 “San Diego” means the City of San Diego, a California municipal corporation and charter city.

3.37 “San Diego Project Entitlements” means the discretionary approvals issued by San Diego as part of the possible approval of the Project. The San Diego Project Entitlements include, but are not limited to, the review and consideration of the EIR and related approvals required pursuant to CEQA, Community Plan Amendment, General Plan Amendment, Pre-Zone, Multiple Species Conservation Plan Subarea Plan Amendment, Sewer Easement Vacation, City Council District Boundary Amendment, Resolution of Application to LAFCO, Site Development Permit for development areas currently in City of San Diego jurisdiction and Uncodified Ordinance for areas outside City of San Diego. San Diego retains and will exercise full authority, discretion, jurisdiction, and independent judgment regarding any and all discretionary decisions relating to the San Diego Project Entitlements and shall be responsible for the issuance of any related certificates.

3.38 “Sphere of Influence” has the definition provided in Government Code section 56076.

3.39 “Tri Pointe Homes” means Tri Pointe Homes IE-SD, Inc. a California corporation with its principal place of business located at Irvine, California.

ARTICLE 4

THE REORGANIZATION

4.1 **Initiation of Proceedings.** The Reorganization shall be processed in accordance with the timeline identified in Exhibit B.

4.1.1 **San Diego as Proponent of Reorganization.** San Diego, as the LAFCO Applicant, shall adopt a Resolution of Application for Reorganization, in substantially the form described in Exhibit C, attached hereto, within sixty (60) calendar days of the Effective Date of this Agreement. Tri Pointe Homes, Chula Vista and San Diego shall review and approve in writing all modifications to the attached Resolution of Application for Reorganization prior to adoption by San Diego and submission to LAFCO. For purposes of this paragraph only, the review and approval of modifications to the Resolution of Application may be made by the City Manager of Chula Vista, Mayor of San Diego, or their respective designees. San Diego shall process the Reorganization with LAFCO to obtain a Certificate of Completion for the Reorganization. Except as otherwise provided in this Agreement, San Diego hereby irrevocably consents to the Reorganization and agrees to not in any way object to, protest, delay, frustrate, or otherwise impede the Reorganization. Provided that Tri Pointe Homes and Chula Vista have fully complied with their obligations set forth in this Agreement, San Diego shall cooperate in every reasonable way with the requests of Tri Pointe Homes, Chula Vista, LAFCO and any other Affected Local Agency in any proceedings for the Reorganization. Notwithstanding any other provision herein, failure to adopt the applicable resolution within sixty (60) calendar days or obtain the Parties’ written mutual consent for an extension of time to adopt the applicable resolution will terminate this Agreement.

4.1.2 **Timing, Form and Content of Application.** San Diego shall submit an Application for Reorganization (“Application”) within sixty (60) calendar days of its approval of a Resolution of Application for Reorganization. The form and content of the Application shall be as provided in Government Code section 56652 and LAFCO policy, including any necessary information regarding an adjustment to San Diego’s Sphere of Influence or the Otay Water District Sphere of Influence, in order to serve the Project Property and shall be in substantially the form described in Exhibit D, attached hereto. Tri Pointe Homes, Chula Vista and San Diego shall review and approve in writing all modifications to the attached Application prior to submission to LAFCO. For purposes of this paragraph only, review and approval of modifications to the Application may be made by the City Manager of Chula Vista, Mayor of San Diego, or their respective designees. The Application will also include this Agreement. The Parties agree to jointly work to ensure that the Application satisfies the LAFCO form and content requirements.

4.1.3 **Chula Vista Resolution of Support.** Chula Vista shall adopt a Resolution of Support for San Diego’s Application within ten (10) calendar days of the Effective Date of this Agreement or concurrent with a hearing to approve this Agreement, whichever occur first. Except

as otherwise provided in this Agreement, Chula Vista hereby irrevocably consents to the Reorganization and agrees to not in any way object to, protest, delay, frustrate, or otherwise impede the Reorganization. Provided that Tri Pointe Homes and San Diego have fully complied with their obligations set forth in this Agreement, Chula Vista shall cooperate in every reasonable way with the requests of Tri Pointe Homes, San Diego, LAFCO and any other Affected Local Agency in any proceedings for the Reorganization. Notwithstanding any other provision herein, failure to adopt the applicable resolution within sixty (60) calendar days or obtain the parties' written mutual consent for an extension of time to adopt the applicable resolution will terminate this Agreement.

4.1.4 Purpose of Resolutions. It is the intent of the Parties that the resolutions called for in this Section 4.1 of the Agreement shall satisfy the provisions of Government Code sections 56751(d) and 56857(e) and make the provisions of Government Code sections 56751(a)-(c) and 56857(a)-(d) inapplicable to the Reorganization.

4.1.5 Compliance with Government Code section 56375(a)(7). Government Code section 56375(a)(7) provides that LAFCO "shall require, as a condition to annexation, that a city prezone the territory to be annexed *or present evidence satisfactory to the commission that the existing development entitlements on the territory are vested or are already at buildout, and are consistent with the city's general plan.*" (Emphasis added.) The Parties intend this Agreement to serve as satisfactory evidence that the Project Entitlements, as applied to the Project, are vested and consistent with San Diego's General Plan as of the Effective Date.

4.1.6 Landowner-Owner Consent Form; Irrevocable Consent. Within thirty (30) days of the Effective Date of this Agreement, Tri Pointe Homes shall execute and cause to be submitted to San Diego in connection with the Application a Landowner-Consent Form in support of the Reorganization in the form required by LAFCO. Except as otherwise provided in this Agreement, Tri Pointe Homes hereby irrevocably consents to the Reorganization and agrees to not in any way object to, protest, delay, frustrate, or otherwise impede the Reorganization. Provided that Chula Vista and San Diego have fully complied with their obligations set forth in this Agreement, Tri Pointe Homes shall cooperate in every reasonable way with the requests of Chula Vista, San Diego, LAFCO and any Affected Local Agency and any other public agency in any proceedings for the Reorganization. Tri Pointe Homes shall also cause to be prepared all legal descriptions, parcel/plan maps and other maps required by LAFCO for the Reorganization.

4.1.7 Plan For Providing Services. A Plan for Providing Services consistent with the requirements in Government Code section 56653, in substantially the form described in Exhibit E, attached hereto, shall be submitted as part of San Diego's Application. Tri Pointe Homes, Chula Vista and San Diego shall review and approve in writing all modifications to the attached Plan for Providing Services prior to submission to LAFCO. For purposes of this paragraph only, the review and approval of modifications to the Plan for Providing Services may be made by the City Manager of Chula Vista, Mayor of San Diego or their respective designees.

4.1.8 Environmental Document. The Parties intend that the EIR shall be the environmental documentation used by Chula Vista, San Diego, LAFCO, or other Affected Local Agency to comply with CEQA in the consideration of the Reorganization. Tri Pointe Homes shall be responsible for causing the appropriate number of copies of the EIR and related documents to be provided for the Application. If LAFCO requires additional information related to the

environmental documentation, the Parties shall make reasonable efforts to provide the information to LAFCO, and Tri Pointe Homes shall be solely responsible for such costs.

4.1.9 **LAFCO Processing Fees.** Tri Pointe Homes shall be solely responsible for providing all LAFCO processing fees pursuant to LAFCO's standard policies or as may otherwise be required to process the Reorganization.

4.1.10 **Complete Application.** The Parties anticipate that LAFCO may require additional information prior to deeming the Application complete. The Parties shall make reasonable efforts to provide the information to LAFCO.

4.2 **LAFCO Hearing and Decision.**

4.2.1 **Assistance of Parties to LAFCO Executive Officer and Staff.** The Parties shall make reasonable efforts to timely respond to requests for information from the Executive Officer and LAFCO staff as necessary for the processing of the Reorganization through the LAFCO hearing process.

4.2.2 **Participation in Hearing Process.** The Parties shall make reasonable efforts to ensure that their appropriate representatives prepare for and attend LAFCO meetings and public hearings as necessary for the processing of the Reorganization through the hearing process.

4.3 **Reorganization Processing Costs.**

4.3.1 **Tri Pointe Homes.** Tri Pointe Homes shall be solely responsible for all costs and fees, including attorney's fees or other obligations incurred by it for the Project, the EIR and the Reorganization. In addition, except as may otherwise be expressly provided in this Agreement, Tri Pointe Homes shall pay all costs and fees, including attorneys' fees associated with processing the Project, the EIR and the Reorganization and other obligations of Chula Vista, San Diego and the City in connection with processing the Project, the EIR and the Reorganization. However, such costs and fees shall not include any costs and fees related to any challenge initiated or joined in by Chula Vista or San Diego to the issuance of any Project permits or approvals. Tri Pointe Homes shall establish or maintain throughout the term of this Agreement refundable deposit accounts with Chula Vista and San Diego, respectively, against which Chula Vista and San Diego may draw its reasonable costs and fees, including attorneys' fees, and other monetary obligations. Within thirty (30) days of receipt of a written request, Tri Pointe Homes shall replenish the deposit account in accordance with Chula Vista and San Diego's respective published deposit requirements. Tri Pointe Homes acknowledges and agrees that its failure to replenish the deposit accounts will result in suspension of work by the Party requesting that the account be replenished.

4.3.2 **Chula Vista.** Chula Vista shall be entitled to be fully and timely reimbursed by Tri Pointe Homes as provided in Section 4.3.1 for its reasonable costs and fees incurred in connection with processing the Project, Chula Vista Project Entitlements and the Reorganization in accordance with its published fee schedules applicable throughout its territory, and other reasonable costs and fees, and will require deposits from Tri Pointe Homes for such costs and fees in accordance with Section 4.3.1. Except as may otherwise be expressly provided in this Agreement, Chula Vista shall have no obligation for the costs and fees incurred by Tri Pointe

Homes, or San Diego in connection with the Project, Chula Vista Project Entitlements or the Reorganization.

4.3.3 **San Diego.** San Diego shall be entitled to be reimbursed by Tri Pointe Homes as provided in Section 4.3.1 for its reasonable costs and fees incurred in connection with processing the Project, San Diego Project Entitlements and the Reorganization in accordance with its published fee schedules applicable throughout its territory. Except as may otherwise be expressly provided in this Agreement, San Diego shall have no obligation for the costs and fees incurred by Tri Pointe Homes, or Chula Vista in connection with processing the Project, San Diego Project Entitlements or the Reorganization.

ARTICLE 5

LAFCO TERMS AND CONDITIONS

5.1 **Effective Date of Reorganization.** In accordance with Government Code section 57202(a), the Parties agree, and shall include as a term and condition in the Application, a condition that the Reorganization Effective Date shall be upon the date of recordation of the Certificate of Completion with the County of San Diego Recorder's Office, which the Parties desire to occur as soon after LAFCO Approval of the Reorganization as is reasonable possibly.

5.2 **Processing of and Services to the Project**

5.2.1 **Role of San Diego.** San Diego shall process any and all approvals necessary or related to the Reorganization, including, but not limited to, the San Diego Project Entitlements. San Diego shall also take such actions that it would otherwise take regarding the Project after the Reorganization, including issuance of Certificates of Occupancy and recordation of a final map, except as may be modified by this Agreement. Following Reorganization, San Diego shall implement and monitor the conditions of approval included in the Chula Vista Project Entitlements to the extent feasible and consistent with San Diego regulations. In the instance a condition is found to be infeasible and/or inconsistent, San Diego shall meet and confer with Chula Vista in good faith to address satisfaction of said condition. For the avoidance of doubt, the right-of-entry permit, revegetation and trail construction that is anticipated to occur within the jurisdictional boundaries of Chula Vista shall be implemented in accordance with the Otay Valley River Park Guidelines. The processing of these approvals does not limit the City of San Diego's police powers, independent judgment, or discretion in considering these approvals.

5.2.2 **Role of Chula Vista.** Until the Reorganization, Chula Vista shall process the Chula Vista Project Entitlements, including the Permit Condition, in accordance with applicable policies and practices and this Agreement. Following Reorganization, Chula Vista shall process, permit and inspect any components of the Project (i.e., off-site mitigation) that are not subject to the Reorganization, in accordance with the Chula Vista Project Entitlements, including the Permit Condition, applicable codes, policies and practices and this Agreement. Chula Vista shall take such actions that it would otherwise take regarding the Project during and after the Reorganization except as may be modified by this Agreement.

5.2.3 Tri Pointe Home's Obligation; Property Maintenance. Tri Pointe Homes shall make reasonable efforts to process the Project with Chula Vista and San Diego to completion. At all times, Tri Pointe Homes shall maintain the Project Property in good condition and in compliance with reasonable maintenance standards sufficient to keep the Project Property free from fire hazards, visible defects, deterioration, dirt and debris.

5.3 Distribution of Processing Fees, Mitigation Fees, Credits, Open Space and Other Revenue from the Project and the Project Property.

5.3.1 General Intent of the Parties. The Parties intend that the Party that provides a particular service to the Project or the Project Property, or that will bear the impact for which a fee is imposed, should receive the fees or revenue associated with that service or impact. The Parties desire that this general intent guide the resolution of any future disputes about which Party should receive a fee or revenue associated with the Project on the Project Property, unless otherwise expressly provided in this Agreement. It is also the intent of the Parties to comply with Government Code sections 66000 - 66025 and not to duplicate fees charged to Tri Pointe Homes.

5.3.2 Allocation of Fees and Revenue. The Parties have agreed that San Diego will provide all services to the Project and shall receive all fees and or revenues associated with the services.

5.3.3 Fiscal Impact Analysis. The Parties have caused the preparation of a Fiscal Impact Analysis, described in Exhibit F, attached hereto, which identifies both the current and anticipated taxes, fees, assessments and other revenue associated with the Project and the Project Property and the anticipated costs for the provision of various municipal services to the Project and the Project Property. The Fiscal Impact Analysis does not identify either current or anticipated impact-related fees.

5.3.4 Distribution of Revenue and Other Items. The Parties have attempted to identify the known taxes, fees, assessments, credits, dedications and other revenue generated from the Project or the Project Property described in Exhibit G, attached hereto, and for each such item, the Parties have designated the Party entitled to receive the item.

5.3.5 Payment of Fees by Tri Pointe Homes. Prior to the issuance by San Diego of any permits for the Project, Tri Pointe Homes must pay the fees, assessments or other amount related to the Project Entitlements or permit and required to be paid prior to permit issuance to the Party entitled to receive the fee, assessment or payment. If the payment is due to Chula Vista, Tri Pointe Homes shall make such payment directly to Chula Vista. If the payment is due to San Diego, Tri Pointe Homes must make the payment directly to San Diego.

5.3.6 Payment of Local Share of Property Taxes. Tri Pointe Homes or future landowners (i.e., homeowners) within the Project Property shall satisfy their duty to pay tax revenue to the Parties identified in Exhibit G, attached hereto, through payment of applicable property taxes to the County of San Diego Assessor's Office through the Assessor's Office's proscribed means. If Chula Vista receives the local government share of property taxes for the Project Property after the Reorganization Effective Date, then Chula Vista shall transfer such property taxes to the Parties identified in Exhibit G, attached hereto, in accordance with the

percentage of time during the annual assessment period that services were required to be provided by such Parties pursuant to this Agreement.

5.3.7 Undesignated Government Revenue. In the event that government revenue is generated from the Project or the Project Property that are not identified, in whole or in part, in this Agreement, such revenue shall be distributed in a manner consistent with the general intent expressed in Section 5.3.1 above. The City Manager of Chula Vista, Mayor of San Diego, or their respective designees, as applicable, shall, within thirty (30) days of the identification of the revenue, meet and confer in good faith to mutually agree upon that should receive such revenue. If the Parties cannot mutually agree, Chula Vista and/or San Diego (“Revenue Disputing Parties”) as applicable, shall resolve the issue by participating in at least four (4) hours of mediation prior to filing any court action. The mediation shall be held in San Diego, California, before a mediator selected by the Revenue Disputing Parties. The mediation shall be commenced by any Revenue Disputing Party making a written demand for mediation to another party. Within fifteen (15) days after such demand is made, the Revenue Disputing Parties shall mutually select a mediator. If the Revenue Disputing Parties are unable to agree on a mediator, the administrator of JAMS in San Diego, California shall select an independent mediator. The Revenue Disputing Parties to the mediation shall equally share the costs of the mediation, however, no Revenue Disputing Party shall be required to pay more than \$10,000 in connection with any single mediation under this agreement unless such Revenue Disputing Party agrees to do so in writing. All applicable statutes of limitation and defenses based upon the passage of time shall be tolled until fifteen (15) days after the date of the mediation session. The Revenue Disputing Parties will take such action, if any, required to effectuate such tolling. California Evidence Code sections 1119 through 1128 shall apply to the mediation. If a Revenue Disputing Party fails to cooperate to commence and/or participate in a mediation session, then, notwithstanding anything above, the other Revenue Disputing Party shall be free to file a court action even if no mediation session has taken place. Upon resolution, the Parties shall execute an Annexation Agreement Operating Memorandum confirming the allocation. Such Annexation Agreement Operating Memorandum may be signed by the City Manager of Chula Vista, Mayor of San Diego or their respective designees.

5.3.8 Municipal Services Cost Neutrality. The provision of municipal services to the Project or Project Property is intended be on a cost neutral basis to San Diego. The Parties agree such cost neutrality is satisfied because the Parties caused the preparation of the Fiscal Impact Analysis, described in Exhibit F, attached hereto, that concludes that San Diego’s cost of services will be equal to or less than the revenue San Diego anticipates it will receive from the Project.

5.3.9 Housing Credits and Inclusionary Affordable Housing Fees. The Project shall comply with affordable housing requirements identified in the San Diego Municipal Code. San Diego shall be entitled to receive credit towards its share of the regional housing needs allocation for the number of qualifying units, if any, in the Project.

5.3.10 Mitigation of Biological Impacts, Open Space Deeds. The Parties agree that as part of the Project Entitlements, any impacts to biological resources, including to environmentally sensitive lands and wetland deviations as identified by the San Diego Municipal Code, have been analyzed and mitigated and conditioned by the Project Entitlements to the extent feasible and that no additional permits or approvals will be required from San Diego to mitigate

for biological impacts. San Diego shall accept a covenant of easement to the undeveloped portions of the Property identified in the Project Entitlements, in accordance with Project Entitlements, and Chula Vista shall have no obligation related to open space lands. In addition, notwithstanding any other term of this Agreement, San Diego shall be entitled to receive any and all mitigation fees related to the open space, if applicable.

5.4 **Provision of Municipal Services to the Annexation Property.**

5.4.1 **Water and Sewer.** Upon the Reorganization Effective Date, San Diego shall provide water and sewer services to the Project Property. Tri Pointe Homes shall construct or cause the construction of all on-site public improvements and off-site public improvements necessary to connect to San Diego's water and sewer services as required by the Project Entitlements and San Diego's standards and approved material requirements including but not limited to the standards adopted by San Diego, San Diego's rules and regulations, and the Contract to Make, Install and Complete Water and/or Sewer Facilities to be entered into by Tri Pointe Homes and San Diego prior to commencement of construction. All water and sewer facilities shall be inspected and tested in accordance with the standards adopted by San Diego. Tri Pointe Homes shall pay sewer and water capacity fees and other applicable fees, to San Diego in accordance and compliance with fee schedules in effect at the time of payment by Tri Pointe Homes to San Diego. San Diego shall recover all of its other expenses not associated with the sewer and water capacity fee through monthly water and sewer rates charged to users in accordance with rules and regulations applicable to San Diego. Upon the Reorganization Effective Date, San Diego shall provide water and sewer services to the Project Property at the same level of service and upon the same terms and conditions as provided to other properties within San Diego's service area and assess such users monthly water and sewer rates in accordance the rules and regulations applicable to San Diego.

5.4.2 **Fire and Life Safety.** Upon the Reorganization Effective Date, San Diego shall provide or cause to be provided fire and life safety services to the Project Property. San Diego shall provide primary fire and life safety services to the Project Property on the same level of service and upon the same terms and conditions as provided other areas of San Diego.

5.4.3 **Law Enforcement Services.** Upon the Reorganization Effective Date, San Diego shall provide or cause to be provided primary law enforcement services to the Project Property pursuant to a "Will Serve" letter or a Mutual Aid Agreement. San Diego shall provide law enforcement services to the Project Property on the same level of service and upon the same terms and conditions as provided other areas of San Diego.

5.4.4 **Other Municipal Services.** Upon the Reorganization Effective Date, San Diego shall provide or cause to be provided other municipal services to the Project Property, other than the permitting and inspection services provided by Chula Vista under this Agreement, pursuant to a "Will Serve" letter. San Diego shall provide municipal services to the Project Property on the same level of service and upon the same terms and conditions as provided other areas of San Diego.

5.5 Full Faith and Credit Given to Right to Develop the Project in Accordance with the Project Entitlements.

5.5.1 Full Faith and Credit of Development Rights. The Parties agree that Tri Pointe Homes shall have the right to develop the Project in accordance with the Project Entitlements, and San Diego agrees to give full faith and credit to the Chula Vista Project Entitlements on the terms and conditions as issued by Chula Vista. To the extent the Project Entitlements provide Tri Pointe Homes with vested rights to develop the Project in accordance with the Project Entitlements, San Diego agrees to give full faith and credit to those vested rights on the same terms and conditions as Chula Vista. The full faith and credit created herein is not intended to either expand or contract Tri Pointe Homes's right to develop the Project in accordance with the Project Entitlements. The full faith and credit created herein is intended to provide Tri Pointe Homes with the assurance that San Diego will honor Tri Pointe Homes's vested development rights in the same manner and under the same conditions as Chula Vista. The Term of this Agreement does not have any effect on any vesting of rights under the Project Entitlements or the length of time under which those rights, if any, are vested. Notwithstanding the foregoing, the Parties acknowledge that the Project's Vesting Tentative Map is tolled for five (5) years or until a LAFCO Final Decision on the Reorganization, whichever is earlier, because this Agreement prohibits Tri Pointe Homes from obtaining a final map until Approval of Reorganization. Furthermore, full faith and credit shall be extended for any extensions of the Project Entitlements which may exist or are granted in accordance with the Chula Vista Municipal Code, Subdivision Map Act (including, but not limited to legislatively granted extensions), or other state laws.

5.5.2 Post-Chula Vista Project Entitlements Approval Actions by Tri Pointe Homes. After Chula Vista's approval of the discretionary Chula Vista Project Entitlements, but before the Reorganization Effective Date, and with payment of processing fees, Tri Pointe Homes may concurrently process San Diego Project Entitlement applications and ministerial applications, and complete all requirements necessary for a final map. However, San Diego shall only approve a final map in accordance with the Subdivision Map Act as provided in the Permit Condition and after it and Chula Vista have received full and complete payment by Tri Pointe Homes of all applicable fees and costs conditioned upon final map approval.

5.5.3 Development of Project Property after Full Project Build-Out. Following the Reorganization Effective Date, development of the Project Property occurring after full Project Build-out that is not governed by the Project Entitlements shall conform to the then existing requirements of San Diego. San Diego shall treat any existing development that occurred in accordance with the Project Entitlements as legal non-conforming, except to the extent that compliance with San Diego requirements would not unreasonably interfere with such existing development and would be consistent with the requirements imposed by San Diego on existing development outside the Project Property.

5.5.4 Reserved Authority; Changes in Federal or State Law. Notwithstanding anything to the contrary in this Section 5.5, San Diego shall have the same rights as possessed by Chula Vista to apply land use or building requirements that may conflict with the Project Entitlements in the same manner and on the same conditions as Chula Vista, including: (a) the reasonable determination that compliance with the Project Entitlements would place the residents of the subdivision or the immediate community, or both, in a condition dangerous to their health

or safety; or (b) as necessary to comply with state or federal law or mandates. The action chosen to implement the authority reserved under this Section 5.5.4 shall be of the minimum scope, effect, and duration necessary to accommodate the health and safety issue or higher law.

5.6 **Additional Terms and Conditions.**

5.6.1 **Agreed to by Parties.** The Parties may agree to include additional terms and conditions as part of the Resolution of Application for Reorganization and/or Application or the LAFCO process through the Annexation Agreement Operating Memorandum process identified in Section 9.15 of this Agreement.

5.6.2 **Imposed by LAFCO.** The Parties acknowledge that LAFCO may impose additional terms and conditions on the Reorganization beyond those set forth in this Agreement. The Parties shall reasonably consider such terms and conditions and support them unless any such LAFCO imposed term or condition is in fundamental conflict with the terms and conditions of this Agreement.

ARTICLE 6

DEFAULT, BREACH, REMEDIES, MORTGAGEE PROTECTION

6.1 **Default by Tri Pointe Homes.** Tri Pointe Homes shall be in default of this Agreement if it does any or any combination of the following:

6.1.1 Fail to cure a material breach of this Agreement within the time set forth in a written notice of default from Chula Vista or San Diego.

6.1.2 Willfully violates any order, ruling or decision of any administrative or judicial body having jurisdiction over the Project Property or the Project. Tri Pointe Homes may contest any such order, ruling or decision by appropriate proceedings conducted in good faith, in which event no default of this Agreement shall be deemed to have occurred unless and until there is a final, non-appealable judicial decision that Tri Pointe Homes willfully violated such obligation.

6.2 **Default by Chula Vista or San Diego.** Chula Vista or San Diego shall be in default of this Agreement only if they fail to cure a material breach of this Agreement within the time set forth in a written notice of default as discussed in Section 6.3 below.

6.3 **Notice of Default.** A Party alleging a default by the other Party shall serve written notice thereof. Each such notice shall state with specificity all of the following:

6.3.1 It is given pursuant to this Agreement.

6.3.2 The nature of the alleged default.

6.3.3 The manner in which the alleged default may be satisfactorily cured.

6.3.4 A period of time in which the default may be cured. The notice of default shall allow at least sixty (60) calendar days to cure the default. If the default is of such a nature as

not to be susceptible of cure within said time using the allegedly defaulting Party's diligent efforts, then the allegedly defaulting Party shall only be deemed to have failed to cure the default if it fails diligently to commence such cure within said time or if it fails to reasonably diligently prosecute such cure to its conclusion.

6.4 Remedies for Default. The Parties acknowledge and agree that Chula Vista or San Diego would not have entered into this Agreement if they were to be liable in damages to any Party under this Agreement, or with respect to this Agreement or the application thereof. The Parties also acknowledge and agree that Tri Pointe Homes would not have entered into this Agreement without Chula Vista and San Diego's assurances set forth in this Agreement, and that Tri Pointe Homes will invest substantial money and effort in reliance upon Chula Vista and San Diego's assurances set forth in this Agreement. The Parties therefore acknowledge and agree that the nature of the Reorganization and the terms of this Agreement render ordinary remedies at law inadequate for a breach of this Agreement and that it would not be feasible or possible to restore the Project Property to its natural condition once implementation of the Agreement has begun. Therefore, the Parties agree that the remedies for breach of this Agreement shall be limited to one or more of the following:

6.4.1 In general, each of the Parties may pursue any remedy at law or equity available for any breach of any provision of this Agreement (including, but not limited to, obtaining letters of credit, performance bonds, and/or withholding certain approvals), except that Chula Vista or San Diego shall not be liable in monetary damages in any form to Tri Pointe Homes, any mortgagee or lender, or to any successor in interests of Tri Pointe Homes or mortgagee or lender, or to any other person, and Tri Pointe Homes covenants on behalf of all successors in interest in the Project Property or any portion thereof, not to sue Chula Vista or San Diego for monetary damages.

6.4.2 The Parties acknowledge that monetary damages and remedies at law will, however, generally be inadequate, and that specific performance and other non-monetary remedies are particularly appropriate remedies for the enforcement of this Agreement and should be available to the Parties because (a) money damages are unavailable against Chula Vista and San Diego as provided herein; and (b) given the size, nature and scope of the Project, it is not possible to determine the sum of money that would adequately compensate Tri Pointe Homes for development of the Project. Therefore, the Parties acknowledge and agree that specific performance is the preferred remedy for any default under this Agreement.

6.5 Mortgage Protection.

6.5.1 **Right to Mortgage.** Tri Pointe Homes may assign, pledge or otherwise encumber its rights and interests under this Agreement for security purposes to a Mortgagee. Nothing contained in this Agreement shall restrict Tri Pointe Homes from encumbering all or any portion of the Project Property with a mortgage, deed of trust, or other security device (collectively "Mortgage"). No breach of this Agreement shall default, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value. To the extent consistent with transferee's rights pursuant to bankruptcy and foreclosure laws, all of the terms and conditions of this Agreement shall be binding upon and effective against any person or transferee who acquires title

to all or any portion of the Project Property by foreclosure, trustee's sale, or deed in lieu of foreclosure.

6.5.2 Notice of Default. If Chula Vista or San Diego receives written notice from a Mortgagee requesting a copy of any notice of default given to Tri Pointe Homes hereunder and specifying the address for service thereof, then Chula Vista or San Diego shall deliver to such Mortgagee, concurrently with the delivery to Tri Pointe Homes, any notice given to Tri Pointe Homes with respect to any claim that Tri Pointe Homes is in default hereunder. If Chula Vista or San Diego subsequently makes a determination of noncompliance hereunder, concurrent with service to Tri Pointe Homes, Chula Vista or San Diego shall likewise serve notice of noncompliance on any Mortgagee who Tri Pointe Homes has identified in writing to Chula Vista or San Diego requires such notice. Each Mortgagee shall have the right, but not the obligations, during the same period available to Tri Pointe Homes hereunder, to cure or remedy, or to commence to cure or remedy, the event of default claimed or the areas of noncompliance set forth in the notice. But no Mortgagee shall have any claim, cause of action, remedy, or liability against Chula Vista or San Diego for monetary or compensatory damages, but for specific performance of this Agreement only. The failure of Chula Vista or San Diego to mail copies of said notice, or of the Mortgagee to receive such notice, shall not affect the validity of such notice or claim of default.

6.5.3 Statement of Compliance / Notice of Estoppel. Within thirty (30) calendar days after receipt of a written request from Tri Pointe Homes for a statement of compliance (or notice of estoppel), or for an additional reasonable period of time under the circumstances if Chula Vista or San Diego is diligently and in good faith pursuing compliance with the request, Chula Vista or San Diego shall execute and deliver a statement certifying: (a) that this Agreement is unmodified and in full force and effect (or identifying any modifications); (b) that there are no uncured defaults under this Agreement by the certifying Party or to the certifying Party's knowledge, by another other Party (or specifying any such defaults) if that is the case; and (c) any other information reasonably requested regarding the status of the Agreement and performance by the Parties. The failure of Chula Vista or San Diego to provide such statement within the 30-day period, or for a longer period under the circumstances identified in this Section above, shall be conclusively deemed to constitute a certification by the non-responding Party that: (a) this Agreement is in full force and effect without modification, except as may be represented by Tri Pointe Homes; and (b) that there are no uncured defaults under this Agreement. Such statement (or certification of estoppel) may be relied upon by any purchaser, transferee, lender, title company, governmental agency, or other person; however, nothing in this Agreement shall be construed to provide any non-Party with a cause of action.

ARTICLE 7

INDEMNITY AND TOLLING OF CLAIMS

7.1 Indemnity Against General Plan Litigation. Chula Vista and San Diego, as applicable, have determined that this Agreement is consistent with their respective General Plans and other applicable land use plans, and that those plans meet all requirements of law. Tri Pointe Homes has reviewed those General Plans and all other applicable land use plans and concurs with the determination of Chula Vista and San Diego. Chula Vista and San Diego shall have no liability under this Agreement for any failure to perform under this Agreement or the inability of Tri Pointe

Homes to develop the Project Property resulting from a judicial determination that the General Plan, applicable land use plans, or portions thereof, are, on the date each is approved, invalid or inadequate or not in compliance with law.

7.2 Indemnity Against Third Party Litigation Concerning the Agreement and the Project Entitlements and the Property Tax Exchange Agreement. Tri Pointe Homes shall fully and timely defend, with separate and independent counsel or counsels mutually acceptable to the Parties, at its sole expense, including any attorneys' fees and costs incurred by the Parties, indemnify, reimburse, and hold harmless Chula Vista and San Diego, their agents, officers and employees from any judgment, costs, (including any costs and expenses to prepare the administrative record for any challenge to the EIR, Project Entitlements, San Diego's approvals, and/or compiling a response to a California Public Records Act request(s) to provide the record of proceedings materials for the Project Entitlements and/or San Diego's approvals), fees, claim, action or proceeding against Chula Vista and San Diego, their agents, officers or employees to attack, set aside, void or annul the approval of this Agreement, the Project Entitlements, and/or San Diego's approvals or any subsequent approval or permit granted to Tri Pointe Homes pursuant to this Agreement, or regarding the Property Tax Sharing Agreement between Chula Vista and San Diego relating to the Annexation contemplated herein, regardless of whether such claim, action or proceeding is brought within the time period provided for in Government Code section 66499.37, Public Resources Code section 21167, or other applicable statute of limitations. Notwithstanding the foregoing, the indemnification obligations in this Section 7.2 shall not apply in judicially determined instances of Chula Vista or San Diego, gross negligence or willful misconduct. Chula Vista and San Diego shall promptly notify Tri Pointe Homes of any such claim, action or proceeding, and Chula Vista and San Diego shall cooperate fully in the defense. If Chula Vista or San Diego fail to cooperate fully in the defense, Tri Pointe Homes shall not thereafter be responsible to defend, indemnify, or hold Chula Vista or San Diego harmless. Counsel for the Parties will work closely and will coordinate their efforts to avoid unnecessary duplication of efforts, to reduce legal fees and costs and to present a joint defense that best uses the strengths of each Party. As the owner of the Project Property and the ultimate beneficiary of any future development of the Project, the Parties assume that Tri Pointe Homes's legal fees and costs will generally exceed the legal fees and costs incurred by Chula Vista and San Diego, reflecting Tri Pointe Homes's assumption of the greater legal workload in the defense. The Parties also assume, however, that Chula Vista and San Diego must, in consultation with Tri Pointe Homes, take prudent steps deemed necessary to protect their respective interests.

7.3 Environmental Assurances. Tri Pointe Homes shall fully and timely indemnify, reimburse, defend and hold Chula Vista and San Diego, their officers, agents, employees, subcontractors and independent contractors free and harmless from any liability, judgment, fees, costs, claim, action or proceeding based or asserted, upon any act or omission of Tri Pointe Homes, its officers, agents, employees, subcontractors, predecessors in interest, successors, assigns and independent contractors for any violation of any federal, state or local law, ordinance or regulation relating to industrial hygiene or to environmental conditions on, under or about the Project Property, including, but not limited to, soil and groundwater conditions, save and except liability or claims arising through the judicially determined instances, if any, of gross negligence or willful misconduct of Chula Vista, and San Diego, as applicable to that Party. Tri Pointe Homes shall defend, at its expense, including attorneys' fees, Chula Vista and San Diego, their officers, agents, employees, subcontractors and independent contractors in any action based or asserted upon any

such alleged act or omission, save and except liability or claims arising through the judicially determined instances, if any, of gross negligence or willful misconduct of Chula Vista and San Diego, as applicable.

7.4 General Indemnity. Tri Pointe Homes shall fully and timely indemnify, reimburse, defend and hold Chula Vista and San Diego, their officers, agents, employees, subcontractors and independent contractors free and harmless from any liability, judgment, fees (including attorneys' fees), costs, claim, action or proceeding whatsoever, based or asserted upon any act or omission of Tri Pointe Homes, its officers, agents, employees, subcontractors and independent contractors, for property damage, bodily injury, or death (Tri Pointe Homes's employees included) or any other element of damage of any kind or nature, relating to or in any way connected with or arising from the activities contemplated by this Agreement or the Project Entitlements, including, but not limited to, the Property Tax Exchange Agreement between Chula Vista and San Diego relating to the annexation contemplated herein, the study, design, engineering, construction, completion, failure and conveyance of private or public improvements for the Project, save and except for liability or claims arising through: (i) the judicially determined instances, if any, of gross negligence or willful misconduct of Chula Vista or San Diego as applicable to that Party; (ii) claims otherwise fully covered by the separate indemnity provided by Section 7.2 of this Agreement; (iii) claims otherwise fully covered by the separate indemnity provided by Section 7.3 of this Agreement; (iv) a Chula Vista or San Diego's breach of this Agreement; or (v) a challenge initiated or joined in by Chula Vista or San Diego regarding the approval of or issuance of permits for the Project. Tri Pointe Homes shall defend with separate counsel mutually acceptable to the Parties, at its expense, including attorneys' fees, Chula Vista and San Diego, their officers, agents, employees, subcontractors and independent contractors in any legal or equitable action based upon such alleged acts or omissions, save and except liability or claims arising through: (i) the judicially determined instances, if any, of gross negligence or willful misconduct of Chula Vista and San Diego, as applicable to that Party; (ii) claims otherwise fully covered by the separate indemnity provided by Section 7.2 of this Agreement; (iii) claims otherwise fully covered by the separate indemnity provided by Section 7.3 of this Agreement; (iv) a Chula Vista and San Diego material and uncured breach of this Agreement; or (v) a challenge initiated or joined in by Chula Vista and San Diego regarding the approval of or issuance of permits for the Project.

7.5 Tolling. The Parties agree to the tolling of all applicable limitation periods with respect to any claims or causes of action that could have been filed or asserted by Chula Vista and San Diego in connection with the discretionary approvals of the Project Entitlements. Such claims or causes of action include, without limitation, all legal or equitable challenge that San Diego could have filed or asserted in connection with Chula Vista's approval. Whether or not the applicable statute of limitations is longer or shorter, the Parties agree that all such claims shall be filed within thirty (30) days of the later of LAFCO's decision to deny the Reorganization or denial of a hearing to reconsider a denial of the Reorganization. The Parties agree that the term of the tolling period provided in this Section 7.5 may be extended by mutual written consent through an amendment, in the discretion of the parties, to the Annexation Agreement Operating Memorandum.

The Parties agree that this Agreement does not revive or expand any related claims which were time-barred or otherwise not available prior to the date of the discretionary approvals of the

Project Entitlements. The Parties do not intend this provision to toll applicable statutes of limitations for any person or entity not signatories to this Agreement.

ARTICLE 8

USE, DENSITY/INTENSITY, HEIGHT, TERM AND TERMINATION

8.1 **Permitted Uses.** The permitted uses of the Project Property shall be all the permitted uses allowed pursuant to the Project Entitlements and any applicable zoning, which are hereby incorporated by reference.

8.2 **Density/Intensity.** The permitted density or intensity of use shall be the density and intensity allowed pursuant to the Project Entitlements and any applicable zoning, which are hereby incorporated by reference.

8.3 **Maximum Height.** The maximum height and size of the proposed buildings shall be the maximum height and size allowed pursuant to the Project Entitlements and any applicable zoning, which are hereby incorporated by reference.

8.4 **Dedication of Land.** The reservation or dedication of land shall be those portions of the Project identified in the Project Entitlements as dedicated or reserved for public purposes, which are hereby incorporated by reference.

8.5 **General Site Plan.** The general site plan showing the arrangement of uses and circulation is the same as those identified in Exhibit A to Tentative Map No. PCS21-0001 on file at the City of Chula Vista, and is hereby incorporated by reference.

8.6 **Annexation Agreement Term.**

8.6.1 **Term Duration.** The Term of this Agreement shall commence upon the Effective Date and shall continue in full force and effect for ten (10) years thereafter or until Project Build-Out, whichever occurs first (“Expiration”), unless terminated earlier as provided below in Section 8.6.2 (“Early Termination”).

8.6.2 **Early Termination.** If LAFCO decides to deny the Reorganization and denies a hearing to reconsider a denial of the Reorganization, then this Agreement shall terminate thirty (30) days after LAFCO’s decision unless Tri Pointe Homes, the Mayor of San Diego, City Manager of Chula Vista, in its discretion, or their respective designees execute an Annexation Agreement Operating Memorandum extending the term of this Agreement.

8.6.3 **Effects of Early Termination; Survival.** Upon Early Termination of this Agreement, no Party shall have further rights or obligations under this Agreement, except those rights and obligations provided in Article 7 of this Agreement, all of which survive Early Termination. In addition, the Parties shall execute and record in the Official Records of the County of San Diego Recorder’s Office a document confirming termination of this Agreement and removing this Agreement as an exception to title to the Project Property.

8.6.4 **Effects of Expiration; Survival.** Upon Expiration of the Agreement, no Party shall have further rights or obligations under this Agreement, except those rights and obligations provided in Article 7, Section 4.3, and Section 5.5. San Diego and Chula Vista shall bear the general obligation of municipalities or special districts to provide services to residents within their jurisdictional boundaries and in accordance with LAFCO terms and conditions.

8.6.5 **Termination of Agreement With Respect to Individual Lots Upon Sale to Public.** Notwithstanding any other provision herein, the Agreement shall terminate, without the execution or recordation of any further document, but with written notice from Tri Pointe Homes to the Parties, with respect to any lot which meets the following conditions:

8.6.5.1 A lot has been finally subdivided; and

8.6.5.2 A lot has been individually (and not in “bulk”) transferred, sold or leased to a member of the public or other ultimate user.

ARTICLE 9

GENERAL PROVISIONS

9.1 **Relationship of Parties.** This Agreement is one of independent contractors and does not create an agency relationship between the Parties.

9.2 **Project as Private Undertaking.** It is specifically understood by the Parties that the Project is a private development and that Chula Vista, San Diego and the District do not have an interest in or responsibilities for or duty to third parties concerning the Project. The Parties make no guarantees regarding Project Build-Out or the profits related thereto. Nothing contained in this Agreement or in any document executed in connection with this Agreement shall be construed as making the Parties joint venturers or partners.

9.3 **No Third-Party Beneficiaries.** The Parties expressly acknowledge and agree that they do not intend, by their execution of this Agreement, to benefit any person or entities not signatory to this Agreement. No person or entity not a signatory to this Agreement will have any rights or causes of action against the Parties, or any combination thereof, arising out of or due to the Parties’ entry into this Agreement.

9.4 **Governing Law.** This Agreement shall be interpreted and enforced in accordance with the provisions of California law, without regard to conflicts of laws provisions.

9.5 **Notice.** Unless otherwise permitted by this Agreement, all notices to be given shall be in writing and may be made by personal delivery, certified mail, postage prepaid and return receipt requested. Mailed notices shall be addressed to the Parties at the addresses listed below, but each party may change the address by written notice in accordance with this paragraph. Receipt will be as follows: notices delivered personally will be deemed communicated as of actual receipt; mailed notices will be deemed communicated on receipt or rejection.

If to Chula Vista:

City of Chula Vista
276 Fourth Avenue
Chula Vista, California 91910
Attn: City Manager

With a Copy to:

Office of the City Attorney
City of Chula Vista
276 Fourth Avenue
Chula Vista, California 91910
Attn: City Attorney

If to City of San Diego:

Development Services Department
City of San Diego
1222 1st Avenue
San Diego, California 92101
Attn: Elyse Lowe, Director

With a Copy to:

Planning Department
City of San Diego
202 C Street, M.S. 413
San Diego, California 92101
Attn: Tait Galloway, Deputy Director – Community Planning & Housing

With a Copy to:

Office of the City Attorney
City of San Diego
1200 Third Avenue, Suite 1620
San Diego, California 92101
Attn: Corrine Neuffer, Esq.

If to Tri Pointe Homes:

13520 Evening Creek Drive North, Suite 300
San Diego, California 92128
Attn: Mike Taylor

With a Copy to:

Sheppard Mullin Richter & Hampton, LLP
501 West Broadway, 19th Floor
San Diego, California 92101
Attn: Whitney Hodges, Esq.

9.6 **Counterparts.** This Agreement may be executed in two (2) or more counterparts, each of which shall constitute an original.

9.7 **Entire Agreement.** This Agreement and the aforementioned MOU, incorporated herein by reference, contain the entire agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements, either written or oral, express or implied.

9.8 **Cooperation/Further Assurances/Further Acts.** Each Party: (a) shall deal fairly and in good faith with the other Party; (b) shall not impede the other Party's right to receive the benefits of this Agreement; (c) shall cooperate with and provide reasonable assistance to the other Party in the performance of this Agreement; and (d) shall execute such additional documents and to take such further actions as are reasonably necessary to accomplish the objectives and intent of this Agreement.

9.9 **Waiver.** The failure of any Party to insist upon strict compliance with any provision of this Agreement or to exercise any right or privilege provided herein, or any Party's waiver of any breach hereunder, unless in writing, shall not relieve any other Party of any of obligations hereunder, whether of the same or similar type. The foregoing shall be true whether the waiving Party's actions are intentional or unintentional.

9.10 **Authorization to Execute.** The signatories to this Agreement warrant that they have been lawfully authorized by their respective Parties to execute this Agreement on their behalf. Upon request, Tri Pointe Homes shall deliver to Chula Vista or San Diego copies of all applicable bylaws, resolutions or other documents evidencing the signatories' legal authority to execute this Agreement on behalf of the respective Parties.

9.11 **Binding On Heirs, Successors and Assigns; Covenant Running with the Property.** The benefits and obligations described herein will inure to the benefit of and be binding upon Tri Pointe Homes and any assignee or successor in interest to the Annexation Property; Chula Vista and its respective heirs, successors, grantees, transferees and permissible assigns; San Diego and its respective heirs, successors, grantees, transferees and permissible assigns. It is intended to be and shall be a covenant running with the Property.

9.12 **Recordation.** San Diego shall cause this Agreement or notice of this Agreement to be recorded with the County of San Diego Recorder's Office within ten (10) days of San Diego's receipt of the last signature required by this Agreement.

9.13 **Severability.** If any provision or clause of this Agreement or any application of it to any person, firm, organization, partnership or corporation is held invalid, such invalidity shall not affect other provisions of this Agreement which can be given effect without the invalid provision or application. To this end, the provisions of this Agreement are declared to be severable.

9.14 **Prohibition Against Assignment.** Tri Pointe Homes may not assign this Agreement or any interest in it without the prior written consent of Chula Vista and San Diego. Chula Vista and San Diego shall only withhold consent upon finding or determination that the proposed assignee is unwilling or unable to assume typical applicable conditions or commitments, financial and otherwise, related to the Project Entitlements, and/or financial obligations of performance bonds, including bonds required by the "Contract to Make, Install and Complete Water and/or Sewer Facilities" (or other substantially similar form) whether presently existing or subsequently issued, related to the construction of the Project. Upon assignment in accordance with this Section 9.14, Tri Pointe Homes shall be released of all liability and obligations related to the Project.

9.15 **Operating Memorandum.** The Parties acknowledge that the provisions of this Agreement require a close degree of cooperation between Chula Vista, San Diego and Tri Pointe homes, and that the refinements and further development of the Project hereunder may demonstrate that changes are appropriate with respect to the details of performance of the Parties hereunder. The Parties desire, therefore, to retain a certain degree of flexibility with respect to those items covered in general terms under this Agreement. If the Parties find that such changes or adjustments are necessary or appropriate from time to time during the term of this Agreement, then the Parties shall effectuate such changes or adjustments through an "Annexation Agreement Operating Memorandum" which, after execution, shall be attached hereto as addenda and become a part hereof, and may be further changed and amended from time to time as necessary with further approval by the Parties. No such Annexation Agreement Operating Memorandum shall require prior notice of hearing, or constitute an amendment to this Agreement; and approval of this Agreement authorizes the Mayor of San Diego, Chula Vista City Manager, or their respective designees to enter into an Annexation Agreement Operating Memorandum. Failure of the Parties to enter into any Annexation Agreement Operating Memoranda shall not affect or abrogate any of the rights, duties or obligations of the Parties hereunder or the provisions of this Agreement.

9.16 **Reservation of Discretion.** Nothing in this Agreement shall be interpreted as requiring the exercise of Chula Vista's or San Diego's police powers, independent judgment, or discretion in any particular manner.

9.17 **Force Majeure.** A Party shall not be deemed to be in default under this Agreement if the Party is prevented from performing an action or obligation due to causes beyond its reasonable control, such as labor unrest, epidemic, walkouts, riots, casualties, litigation, weather, war or acts of God.

9.18 **Construction/Interpretation.** This Agreement has been reviewed and revised by legal counsel for each Party, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement.

9.19 **Recitals and Exhibits.** All recitals and exhibits are incorporated into this Agreement by this reference. The following Exhibits are attached to this Agreement and incorporated herein:

- Exhibit A: Project Property
- Exhibit B: Annexation Application Schedule
- Exhibit C: Resolution of Application for the Reorganization
- Exhibit D: Application for Reorganization
- Exhibit E: Plan for Providing Services
- Exhibit F: Fiscal Impact Analysis
- Exhibit G: Distribution of Revenue and Other Items

[Signatures on following page]

**CITY OF SAN DIEGO,
a California municipal corporation**

By: _____
Mayor

Attest:

By: _____
Clerk of San Diego
City of San Diego

APPROVED AS TO LEGAL FORM:

San Diego City Attorney

**TRI POINTE HOMES, IE-SD, INC.,
a California corporation**

By: _____
Mike Taylor
Division President

**CITY OF CHULA VISTA,
a California municipal corporation**

By: _____
Maria V. Kachadoorian, City Manager

Attest:

By: _____
Kerry Bigelow
Clerk of the
City of Chula Vista

APPROVED AS TO LEGAL FORM:

Marco Verdugo, City Attorney

EXHIBIT A
Project Property

EXHIBIT B
Annexation Application Schedule

EXHIBIT C
Resolution of Application for the Reorganization

[Attached behind this page]

EXHIBIT D
Application for Reorganization

[Attached behind this page]

EXHIBIT E
Plan for Providing Services

[Attached behind this page]

EXHIBIT F
Fiscal Impact Analysis

[Attached behind this page]

EXHIBIT G
Distribution of Revenue and Other Items

[Attached behind this page]