

ORDINANCE NO. 446

AN UNCODIFIED ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ARVIN FOR A THIRD AMENDMENT TO THE DEVELOPMENT AGREEMENT WITH WESTMINSTER CAPITAL, INC.

WHEREAS, California Government Code Section 65864 *et seq.* authorizes cities to enter into development agreements with private property owners; and

WHEREAS, the City of Arvin City Council (the "City Council") previously entered into a Development Agreement with Sycamore Villas, LLC, pursuant to the authority of Government Code Sections 65864 through 65869.5, which was recorded on July 3, 2003, in the Kern County Official Records as Document Number 0203133456, ("Development Agreement"); and

WHEREAS, under the Development Agreement, Sycamore Villas, LLC, had the right to sell, assign or transfer the Development Agreement, and all of its rights, duties and obligation thereunder, to any person, including a portion thereof; and

WHEREAS, Sycamore Villas, LLC, sold a portion of the property subject to the Development Agreement to K. Hovnanian at Cielo, LLC, and transferred its obligations and rights to K. Hovnanian at Cielo, LLC, thereunder, and K. Hovnanian at Cielo, LLC, is a successor in interest to that portion of the property; and

WHEREAS, pursuant to Government Code Section 65868, development agreements may be amended; and

WHEREAS, the Development Agreement was subsequently amended, some amendments with Sycamore Villas, LLC, or K. Hovnanian at Cielo, LLC as a party (including a Third Amendment to Development Agreement referred to herein as the "Hovnanian Third Amendment"), and some without, depending on the portion of the property subject to the Development Agreement being affected; and

WHEREAS, LeOra LLC obtained a portion of the development rights previously held by Sycamore Villas, LLC, for Tract 5816, Phases 5, 9 and 10 along with the rights and obligations as established by the Development Agreement established for Tract 5816; and

WHEREAS, the City and LeOra LLC amended the Development Agreement ("LeOra Third Amendment"); and

WHEREAS, Westminster Capital, Inc., obtained a portion of the development rights previously held by Sycamore Villas, LLC, for Tract 5816, which is a portion of the property previously owned by Sycamore Villas, LLC that was not at any time owned by LeOra, LLC or K. Hovnanian at Cielo, LLC; and

WHEREAS, Westminster Capital, Inc., desires to clarify its status as a successor in

interest as to its portion of the former Sycamore Villas, LLC, property by entering into a Third Amendment to the Development Agreement as amended; and

WHEREAS, the City and Westminster Capital, Inc., desire to establish mutually beneficial obligations and benefits subject to the Third Amendment to the Development Agreement, and to do so by an amendment of the Development Agreement; and

WHEREAS, for the purposes of reference only, this amendment to the Development Agreement has been identified as the "Third Amendment to Development Agreement" ("Third Amendment") relating to Westminster Capital, Inc.; and

WHEREAS, neither the LeOra Third Amendment, nor the Hovnanian Third Amendment are subject to this Third Amendment, nor does this Third Amendment affect either the LeOra Third Amendment or the Hovnanian Third Amendment, as each involves separate property subject to the Development Agreement; and

WHEREAS, the City has environmentally assessed the Third Amendment, and determined that there is no possibility that the Third Amendment may have a significant physical effect on the environment, and is not subject to the California Environmental Quality Act ("CEQA"); and

WHEREAS, the City properly notified the April 4, 2018 Planning Commission special meeting to consider the proposed Amendment pursuant to Government Code sections 65090 and 65091 by publication in the newspaper and provided notice to all property owners within 300 feet of the proposed projects; and

WHEREAS, the City Planning Commission conducted a duly noticed public hearing on April 4, 2018, at which time all interested parties were given an opportunity to be heard and present evidence regarding the proposed Third Amendment, and after which the Planning Commission adopted Resolution 2018-03, recommending the City Council adopt this Ordinance; and

WHEREAS, the City properly noticed the May 1, 2018 hearing before the City Council for the proposed Amendment pursuant to Government Code sections 65090 and 65091 by publication in the newspaper and provided notice to all property owners within 300 feet of the proposed projects; and

WHEREAS, the City Council conducted a duly noticed public hearing on May 1, 2018, at which time all interested parties were given an opportunity to be heard and present evidence regarding the proposed Third Amendment, and after which this Ordinance was introduced by the City Council; and

WHEREAS, the City Council considered this matter on May 15, 2018, at which time all interested parties were given another opportunity to be heard and present evidence regarding the proposed Third Amendment.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ARVIN DOES

ORDAIN AS FOLLOWS:

Section 1. The City Council determines pursuant to CEQA Guidelines Section 15061(b)(3) that that it can be seen with certainty that there is no possibility that the Third Amendment will have a significant, adverse, physical effect on the environment, and is not subject to the California Environmental Quality Act (CEQA), as the Third Amendment does not modify any physical aspect of the previously approved project, and merely affirms the party's status under the previously adopted Development Agreement as amended.

Section 2. The City Council finds the proposed Third Amendment to the Development Agreement complies with the policies of the City's General Plan. Accordingly, the revision to the Development Agreement is consistent with all applicable provisions of the General Plan. The proposed land uses and the density are also compliant per this requirement.

Section 3. The City Council finds the proposed Third Amendment to the Development Agreement establishes mutual beneficial obligations and benefits for Westminster Capital, Inc., and the City.

Section 4. The City Council finds the proposed Third Amendment to the Development Agreement complies with the requirements of California Government Code Sections 65865 through 65869.5.

Section 5. The City Council finds proposed the Third Amendment to the Development Agreement will not be detrimental, or cause adverse effects, to adjacent property owners, residents, or the general public, since the Project will be constructed in accordance with the plans and entitlements that were approved previously by the City, and development of any future phases will be subject to further review and consistency with the Development Agreement as amended.

Section 6. The City Council finds the proposed Third Amendment to the Development Agreement does not alter the clear and substantial benefit to the residents of the City of the Project, since the proposed amendment makes no substantive changes to the Project or to the Development Agreement.

Section 7. For the foregoing reasons, and based on the information contained in any staff report, supporting documentation, minutes and other records of the proceedings, all of which are incorporated herein by this reference, the City Council hereby adopts this Ordinance and approves the proposed Third Amendment to the Development Agreement, which amendment is attached hereto as Exhibit "A" and incorporated herein by this reference.

Section 8. The City Clerk shall certify to the adoption of this Ordinance and cause it to be published, in accordance with Government Code, Section 36933, or as otherwise required by law.

Section 9. This ordinance shall take effect and be in full force and effect from and after thirty (30) days after its final passage and adoption.

I HEREBY CERTIFY that the foregoing Ordinance was introduced by the City Council after waiving reading, except by Title, at a regular meeting thereof held on the 01st day of May 2018, and adopted the Ordinance after the second reading at a regular meeting held on the 15th day of May 2018, by the following roll call vote:

AYES: CM Robles, CM Madrigal, CM Martinez, Mayor Gurrola

NOES: _____

ABSTAIN: _____

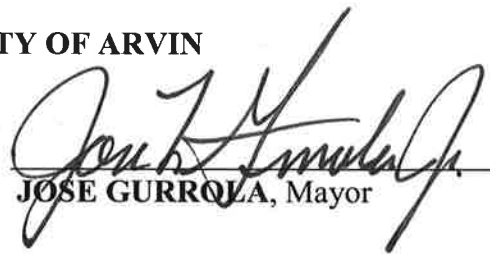
ABSENT: MPT Ortiz

ATTEST



CECILIA VELA, City Clerk

CITY OF ARVIN

By: 
JOSE GURROLA, Mayor

APPROVED AS TO FORM:

By: 
SHANNON L. CHAFFIN, City Attorney
Aleshire & Wynder, LLP

Exhibit A: Third Amendment To Development Agreement

I, _____, City Clerk of the City of Arvin, California, DO
HEREBY CERTIFY that the foregoing is a true and accurate copy of the Ordinance passed and
adopted by the City Council of the City of Arvin on the date and by the vote indicated herein.

EXHIBIT A

THIRD AMENDMENT TO DEVELOPMENT AGREEMENT

RECORDED AT THE REQUEST OF
AND WHEN RECORDED RETURN TO
(Document exempt from recording fees
pursuant to Cal. Gov. Code §27383)

CITY OF ARVIN
Attn: City Clerk
200 Campus Drive
Arvin, CA 93203

(Space Above This Line for Recorder's Office Use Only)

AGREEMENT NO. 2018-12

THIRD AMENDMENT TO DEVELOPMENT AGREEMENT

This Third Amendment to Development Agreement ("Third Amendment") is made and entered into effective as of March 20, 2018, and entered into by or between WESTMINSTER CAPITAL, INC., a Delaware corporation ("Developer"), and the CITY OF ARVIN, a municipal corporation ("the City"). Developer and the City are collectively referred to herein as ("Parties").

RECITALS

A. The City previously entered into a Development Agreement with Sycamore Villas, LLC, ("Sycamore") pursuant to the authority of Government Code Sections 65864 through 65869.5 which was recorded on July 3, 2003, in the Kern County Official Records as Document Number 0203133456, ("Development Agreement").

B. Thereafter, K. Hovnanian at Cielo LLC represented it acquired title for a certain portion of the property from Sycamore Villas, LLC that was subject to the Development Agreement on November 11, 2005 ("KHAC Property"). The KHAC Property is not subject to this Third Amendment.

C. The Development Agreement was subsequently amended effective July 24th, 2007, by document entitled "Amendment To The Development Agreement," Agreement No. 2007-18, which was recorded on October 9, 2007, in the Kern County Official Records as Document Number 0207204984 ("First Amendment").

D. The Development Agreement was again subsequently amended and entered into as the June 12, 2009, by document entitled "Second Amendment To Development Agreement," Agreement No. 2009-26, which was recorded on December 18, 2009, in the Kern County Official Records as Document Number 0209185187 ("Second Amendment").

E. Thereafter, Developer subsequently obtained the rights and obligations under the Development Agreement for all remaining portions of the property legally described in Exhibit "A" attached hereto ("Property"), which is a portion of the property previously owned by Sycamore Villas that was not was not at any time KHAC Property.

F. Effective November 1, 2016, the City and K. Hovnanian at Cielo LLC amended the Development Agreement by document entitled for the sake of reference "Third Amendment to Development Agreement," (Agreement No. 2016-42), which was recorded on December 8, 2016, in the Kern County Official Records as Document Number 0216176492 ("Hovnanian Third Amendment"). The Hovnanian Third Amendment is not subject to this Third Amendment, nor does this Third Amendment affect the Hovnanian Third Amendment, as each involves separate property subject to the Development Agreement.

G. Effective May 5, 2017, the City and LeOra LLC amended the Development Agreement by document entitled for the sake of reference "Third Amendment to Development Agreement,"

(Agreement No. 2017-06), which was recorded by the City on May 25, 2017, in the Kern County Official Records as Document Number 217066767, and recorded by LeOra LLC on June 13, 2017, in the Kern County Official Records as Document Number 217075798, ("LeOra Third Amendment"). The LeOra Third Amendment is not subject to this Third Amendment, nor does this Third Amendment affect the either the Hovnanian Third Amendment, as each involves separate property subject to the Development Agreement.

H. The Parties now desire to enter into this Third Amendment to the Development Agreement. For reference purposes only, the Parties have identified this amendment as the "Third Amendment to Development Agreement" ("Third Amendment" or "Westminster Third Amendment").

I. This Third Amendment specifically applies only to the real property legally described in Exhibit A to this Third Amendment.

J. The City has determined that this Third Amendment furthers the public health, safety and general welfare, and that the provisions of this Agreement are consistent with the goals and policies of the General Plan. For the reasons recited herein, the City and Developer have determined that the project is a development for which an amendment to the Development Agreement is appropriate. It is also the intent of the Parties to clarify obligations for the Property and to resolve any potential claims against the City.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual promises and covenants made by the Parties and contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the Parties agree as follows:

1. Recitals. The Recitals are incorporated into this Third Agreement as if set forth in full herein.

2. Fees. The total cost for all permits, inspections, checks, fees and other charges associated in any way with the development of real property or the construction of improvements on lots thereon (collectively, "Fees") for single family residential lots within the Property shall remain capped at \$2,300 per lot in accordance with Section 5 of the First Amendment and shall not be affected by this Third Amendment. To the extent fees have not been addressed by the First Amendment, such as those related to non-single family residential lots, the Fees shall remain as set forth in the Development Agreement, Paragraph 3.6 (Exactions).

3. Term. Section 2.2 of the Development Agreement shall be amended to extend the term by an additional three (3) year period to July 3, 2026. Should a moratorium or any similar restriction on the issuance of building permits be imposed by any municipal or government agency that is applicable to the Property, the term of the Development Agreement shall be extended for a period equal to the length of the moratorium or restriction.

4. Notices. Section 12.1 of the Development Agreement shall be amended to change the address of the Developer, as follows:

Developer: Westminster Capital, Inc.
233 Wilshire Boulevard, Suite 525
Santa Monica, CA 90401
Attention: Greg Belzberg

With a copy to: Keenan Behrle
233 Wilshire Boulevard, Suite 400
Santa Monica, CA 90401

5. Remainder Unchanged. Except as specifically modified and amended in this Third Amendment, the Development Agreement as amended by the Parties remains in full force and effect and is binding upon the Parties.

6. Release. Parties, individually, and on behalf of its successors, trustees, creditors, and assigns, completely releases, acquits, and forever discharges the other Party, its agents, officers, employees, attorneys, successors, predecessors, insurers, and members of the governing board or council,

from any and all claims, rights, demands, obligations, liabilities, claims or causes of action of any and every kind, nature and character, whether known or unknown, whether in law or in equity, which it may have had, or ever had, or could in the future have against the other Party for any act or omission that occurred prior to entering into the Third Amendment, and which are in any way related to the Development Agreement as amended. This release contained herein is made notwithstanding Section 1542 of the California Civil Code which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

The Parties expressly acknowledges that this release is intended to include without limitation, all claims and causes of action that a Party does not know or suspect to exist in his favor and that this release contemplates the extinguishment of all such claims and causes of action for any acts, omissions or events which are in any way related to the Development Agreement as previously amended and occurred prior to the effective date of the Third Amendment. To be clear, and notwithstanding any other language in this Third Amendment, this release only applies to claims, etc., related to i) the Development Agreement as amended; and ii) the Property. Further, no claims arising after the date of this Third Amendment (i.e., future claims) are being released by either Party.

7. No Default. The Parties each represent and warrant to the other that, as of the date of this Third Amendment, neither Party is aware of any breach or default (or with the giving of notice or the passage of time, of any event that could constitute a breach or default) of the other Party under the Development Agreement. Nothing in this Paragraph shall constitute a waiver of Developer's obligations to comply with the Development Agreement, including obligations to install any improvements that may be required by the Development Agreement as amended by the Parties, notwithstanding the passage of time.

8. Continuing Obligations. Developer shall comply with its Annual Review and other requirements of the Development Agreement as amended by the Parties.

9. No Admission of Liability. This Third Amendment and compliance with it, shall not operate or be construed as an admission by the City of any liability, misconduct, or wrongdoing whatsoever.

10. Counterparts. This Third Amendment may be executed in any number of counterparts, each of which shall be deemed to be an original, but all together shall constitute but one and the same agreement.

11. Successors. This Third Amendment shall be binding upon and inure to the benefit of the heirs, executors, successors and assigns of the Parties hereto.


IN WITNESS WHEREOF, the Parties have duly executed this Third Amendment on the day and year first above written.

CITY OF ARVIN,
a municipal corporation

By: 
Jose Gurrola, Mayor

5/21, 2018

ATTEST:


Cecilia Vela, City Clerk

WESTMINSTER CAPITAL, INC.,
a Delaware corporation

By: 
Gregory Belzberg, President and CEO

3/13, 2018

Note: Developer's signature shall be notarized, and appropriate attestations shall be included as may be required by the bylaws, articles of incorporation, or other rules or regulations

See attached for notary.

APPROVED AS TO FORM:

ALESHIRE & WYNDEE, LLP

By: 
Shannon Chaffin, City Attorney

applicable to developer's business entity.

APPROVED AS TO FORM:


By: 
Name: KEENAN BEHRKE
Title: Attorney at Law

Exhibit A
Legal Description of Developer Property

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF ARVIN, COUNTY OF KERN, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL A: APN 189-351-36 [PARCEL 1272 OF TRACT 5816]

PARCEL 1 AS SHOWN ON PARCEL MAP WAIVER NO. 1-00 AS EVIDENCED BY DOCUMENT RECORDED DECEMBER 21, 2000 AS INSTRUMENT NO. 00-162267 OF OFFICIAL RECORDS BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING A PORTION OF THE NORTHWEST QUARTER OF SECTION 35, TOWNSHIP 31 SOUTH, RANGE 29 EAST, M.D.M., IN THE CITY OF ARVIN, COUNTY OF KERN, STATE OF CALIFORNIA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID NORTHWEST QUARTER OF SECTION 35; THENCE NORTH 89° 49' 13" WEST ALONG THE NORTH LINE OF SAID NORTHWEST QUARTER OF SECTION 35 A DISTANCE OF 660.35 FEET; THENCE SOUTH 00° 10' 47" WEST PERPENDICULAR TO SAID NORTH LINE A DISTANCE OF 660.00 FEET; THENCE SOUTH 89° 49' 13" EAST PARALLEL TO SAID NORTH LINE A DISTANCE OF 660.00 FEET TO A POINT ON THE EAST LINE OF SAID NORTHWEST QUARTER OF SECTION 35; THENCE NORTH 00° 12' 38" EAST ALONG SAID EAST LINE A DISTANCE OF 660.00 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES IN AND UNDER SAID LAND AS EXCEPTED BY ANN DERBY TIPTON AND EVE DERBY STOCKTON IN DEED RECORDED MAY 24, 1960 IN BOOK 3269, PAGE 798 OF OFFICIAL RECORDS.

PARCEL B: APN 189-351-58 & 67 [CONSISTING OF 140 LOTS IN TRACT 5816, PHASE 11]

PARCEL 1 OF PARCEL MAP 11401 IN THE CITY OF ARVIN, COUNTY OF KERN, STATE OF CALIFORNIA AS PER MAP RECORDED MAY 16, 2006 IN BOOK 54, PAGES 192 THROUGH 194, INCLUSIVE, OF PARCEL MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THEREFROM ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES IN AND UNDER SAID LAND AS EXCEPTED BY ANN DERBY TIPTON AND EVE DERBY STOCKTON IN DEED RECORDED MAY 24, 1960 IN BOOK 3269, PAGE 798 OF OFFICIAL RECORDS.

PARCEL C: APN 189-351-37 [PARCEL 1273 OF TRACT 5816]

PARCEL 2 AS SHOWN ON PARCEL MAP WAIVER NO. 1-00 AS EVIDENCED BY DOCUMENT RECORDED DECEMBER 21, 2000 AS INSTRUMENT NO. 00-162267 OF OFFICIAL RECORDS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING A PORTION OF THE NORTHWEST QUARTER OF SECTION 35, TOWNSHIP 31 SOUTH, RANGE 29 EAST, M.D.M., IN THE CITY OF ARVIN, COUNTY OF KERN, STATE OF CALIFORNIA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID NORTHWEST QUARTER OF SECTION 35; THENCE NORTH 89° 49' 13" WEST ALONG THE NORTH LINE OF SAID NORTHWEST QUARTER OF SECTION 35 A DISTANCE OF 660.35 FEET TO THE POINT OF BEGINNING; THENCE NORTH 89° 49' 13" WEST ALONG SAID NORTH LINE A DISTANCE OF 305.08 FEET; THENCE SOUTH 00° 10' 47" WEST PERPENDICULAR TO SAID NORTH LINE A DISTANCE OF 965.00 FEET; THENCE SOUTH 89° 49' 13" EAST PARALLEL TO SAID NORTH LINE A DISTANCE OF 964.92 FEET TO A POINT ON THE EAST LINE OF SAID NORTHWEST QUARTER OF SECTION 35; THENCE NORTH 00° 12' 38" EAST ALONG SAID EAST LINE A DISTANCE OF 305.00 FEET TO A POINT WHICH LIES 660.00 FEET FROM THE NORTHEAST CORNER OF SAID NORTHWEST QUARTER OF SECTION 35; THENCE NORTH 89° 49' 13" WEST PARALLEL TO SAID NORTH LINE A DISTANCE OF 660.00 FEET; THENCE NORTH 00° 10' 47" EAST A DISTANCE OF 660.00 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES IN AND UNDER SAID LAND AS EXCEPTED BY ANN DERBY TIPTON AND EVE DERBY STOCKTON IN DEED RECORDED MAY 24, 1960 IN BOOK 3269, PAGE 798 OF OFFICIAL RECORDS.

ACKNOWLEDGMENT

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 Kern)

On May 21, 2018 before me, Cecilia Vela, Notary Public
(insert name and title of the officer)

personally appeared Jose Gurrola ,
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 *[Handwritten Signature]* (Seal)

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

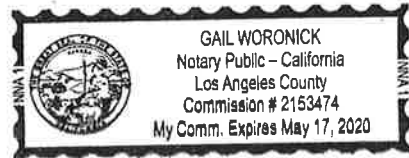
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Los Angeles)
On 3/13/18 before me, Gail Woronick, Notary Public
Date Here Insert Name and Title of the Officer
personally appeared Greggory Belzberg
Name(s) of Signer(s)

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 Gail Woronick
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____ Document Date: _____
Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____

Signer's Name: _____
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____