

CITY OF SANTA CLARA RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA,
AUTHORIZING THE CITY MANAGER TO ACCEPT AND EXECUTE
AN EASEMENT DEED FROM THE SANTA CLARA VALLEY WATER
DISTRICT CONVEYING TO THE CITY OF SANTA CLARA CERTAIN
INTERESTS IN REAL PROPERTY

BE IT RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:

WHEREAS, the City of Santa Clara ("City"), a chartered city and municipal corporation acting by and through its municipally owned utility, Silicon Valley Power ("SVP") is engaged in a continuing effort to upgrade and enhance its overhead and underground distribution and transmission systems to meet new customer demand and to maintain the reliability of SVP's systems. The 60 kV facilities for San Tomas Junction Substation Project ("Project") is one of the projects for this effort;

WHEREAS, a portion of the proposed Project is an approximately 0.2 mile long, new double circuit 60 kilovolt (kV) overhead transmission line will connect to SVP's Juliette-Central 60kV line heading east over San Tomas Aquino Creek adjacent U.S. Highway 101, with the primary objective to provide 60 kV service to the proposed San Tomas Junction Substation;

WHEREAS, the City requires an aerial easement from the Santa Clara Valley Water District ("Valley Water") to install, operate, and maintain aerial 60 kV Aerial Transmission Lines to serve the Project and other customers;

WHEREAS, Valley Water has offered to convey to the City the easement deed in substantially the form attached to this resolution as Exhibit "A" ("Easement Deed"); and

WHEREAS, based on the foregoing, the Santa Clara City Council does hereby find and determine it is in the best interests of the CITY to accept the Easement Deed.

NOW, THEREFORE, BE IT FURTHER RESOLVED BY THE CITY OF SANTA CLARA as follows:

1. The above recitals are true and correct and incorporated herein.
2. The City Council authorize the City Manager to accept the Easement Deed and the real property interests contained therein on behalf of the City of Santa Clara, and the City Council further approves the negotiated purchase price contained therein. The City Manager is authorized to execute the Easement Deed.
3. Nothing herein shall be construed to be an acceptance of any parcel or property into the City street system (Streets and Highways Code Section 1806).

4. The City Clerk is authorized and directed to cause the Easement Deed to be recorded in the Office of the County Recorder of the County of Santa Clara.

5. Effective date. This resolution shall become effective immediately.

I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF A RESOLUTION PASSED AND ADOPTED BY THE CITY OF SANTA CLARA, CALIFORNIA, AT A SPECIAL MEETING THEREOF HELD ON THE __TH DAY OF _____, 2024, BY THE FOLLOWING VOTE:

AYES: COUNCILORS:

NOES: COUNCILORS:

ABSENT: COUNCILORS:

ABSTAIN: COUNCILORS:

ATTEST: _____

_____, City Clerk

Exhibit “A”

Easement Deed

[ATTACHED BEHIND THIS PAGE]

AFTER RECORDING RETURN TO:
REAL ESTATE SERVICES UNIT
SANTA CLARA VALLEY WATER DISTRICT
5750 ALMADEN EXPRESSWAY
SAN JOSE, CALIFORNIA 95118

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

APN: 104-40-008 and 104-39-022

DOCUMENT NO.: 2019-11.2, 2019-41.1, 2019-104.1

AERIAL EASEMENT

This aerial easement ("Aerial Easement") is made by and between the Santa Clara Valley Water District, a Special District, created by the California Legislature (hereinafter referred to as "**Valley Water**" or "**Grantor**"), and the City of Santa Clara, a Chartered City (hereinafter referred to as "**Grantee**") (each referred to, singularly, as "**Party**" or, together, as "**Parties**").

RECITALS

WHEREAS, Valley Water owns property ("Valley Water Property"), APN 104-40-008 and 104-39-022 along and over San Tomas Aquino Creek; and

WHEREAS, Grantee seeks to install, operate, and maintain aerial 60 kV Aerial Transmission Lines ("Aerial Transmission Lines") to provide electrical service to its customers located in Santa Clara, CA. A portion of Aerial Transmission Lines will span over Valley Water-owned real property identified as a portion of Assessor's Parcel Nos. 104-40-008, and 104-39-022; and

WHEREAS, Grantee understands that Valley Water will continue to access and use Valley Water Property to perform flood protection, stream stewardship, and water management related maintenance and operational activities; and

NOW THEREFORE, in consideration of the mutual covenants set forth herein and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereto agree as follows:

1. **Incorporation of Recitals.** The recitals set forth above are incorporated herein into this Aerial Easement.
2. **Grant of Aerial Easement.** Subject to the terms and conditions specified in this Non-Exclusive Aerial Easement, Valley Water hereby GRANTS to Grantee, a non-exclusive Aerial Easement in gross, over, and above that portion of Valley Water Property described in Exhibit "A" and depicted in Exhibit "B", both of which are attached hereto and incorporated herein by this reference (the "Aerial Easement"), for purposes of installing, maintaining, repairing, renewing, replacing, protecting, inspecting, operating, and removing the Aerial Transmission Lines. Grantee shall ensure the Aerial

Transmission Lines maintain a vertical clearance of forty (40) feet to the top of the levee beneath the Aerial Easement. This Aerial Easement does not include the right to any ground access except to the extent necessary to exercise the rights contained in the preceding sentence. This Aerial Easement does not include the right to install any improvements on or in the ground or perform any ground disturbing activities without obtaining a Valley Water encroachment permit.

3. **Work within Aerial Easement.** Grantee's exercise of its rights as stated in Section 2 does not require a Valley Water encroachment permit; however, Grantee is responsible for complying with, including obtaining any necessary permits, any applicable local, state, and federal requirements and regulations. Grantee agrees to notify Valley Water in writing sixty (60) days in advance of activities that would obstruct or materially interfere with Valley Water's use of its levee/maintenance roads prior to commencement of any such activities. Notwithstanding the foregoing, such notice is not required in any emergency situation or in conducting routine maintenance activities; provided, (i) in the case of emergency activities, Grantee shall notify Valley Water as soon as possible but no later than five (5) business days of completing any such work; and (ii) in the case of routine maintenance activities, such work will not obstruct or materially interfere with Valley Water's use of its levee/maintenance roads. However, if Valley Water is conducting maintenance activities, Grantee shall defer its maintenance activities until Valley Water completes its work. It shall be Grantee's responsibility to coordinate with Valley Water to avoid any conflicts with our respective operational and maintenance activities.
4. **Restoration of Valley Water Facilities.** Within ten (10) days of the completion of any activity by Grantee that disturbs, alters, or damages the surface of the ground or any Valley Water owned or operated levee, structure, or facility, Grantee must remove any debris arising from, or in connection with Grantee's activities pursuant to this Aerial Easement and, as reasonably practicable, restore any Valley Water owned or operated levee, structure, or facility, to the condition which existed prior to the commencement of Grantee's work. If Grantee fails to do so after notification by Valley Water of such failure, Grantee agrees to reimburse Valley Water for the cost of the restoration undertaken by Valley Water.
5. **Liability.** Valley Water shall not be liable to Grantee for any damage to the Aerial Transmission Lines, except to the extent caused by the negligence or willful misconduct of Valley Water, its agents, contractors, or employees.
6. **Grantee's Operation and Maintenance.** This Aerial Easement is granted upon the condition that Grantee will be responsible for the operation and maintenance of any portion of the Aerial Transmission Lines constructed within the Aerial Easement in a lawful manner at no expense to Valley Water.
7. **Relocation Costs.**
 - (a) Subject to Sections 7(b) and 7(c), Grantee will relocate at Grantee's expense the Aerial Transmission Lines within seven hundred and twenty (720) days of receipt of written notice ("Notice to Relocate"), from Valley Water, to a site designated by Valley Water, in the event Aerial Transmission Lines shall at any time materially interfere with the operation, maintenance, replacement, or improvement of the Valley Water Property as reasonably determined by Valley Water. The foregoing time frame shall be extended on a day for day basis in the event of the following: (i) in spite of Grantee's reasonable efforts, Grantee requires additional time to complete the relocation; (ii) unavailability of

equipment, materials, and labor beyond the Grantee's reasonable control; or (iii) the inability to coordinate system outages.

- (b) Upon receipt of the Notice to Relocate, Grantee may request in writing an alternative location for the Aerial Transmission Lines. In such case, the Grantor shall provide Grantee with an alternative location on Grantor's property which is reasonably acceptable to Grantee. Upon Grantee's acceptance of such alternative location, the Parties agree that this Aerial Easement shall be amended to reflect the new easement area location and to quitclaim the easement area no longer encumbered by this Aerial Easement.
- (c) Notwithstanding anything to the contrary in this section, Valley Water shall not request the relocation of Aerial Transmission within five (5) years of the effective date of this Aerial Easement.

8. **Future Levee Raising.** Valley Water anticipates raising the levee on the Valley Water Property up to five (5) feet. Grantee will raise its Aerial Transmission Lines at Grantee's expense within five hundred and forty (540) days of receipt of written notice ("Notice of Levee Raising") from Valley Water in the event Valley Water needs to raise its levee within the Aerial Easement. The foregoing time frame shall be extended on a day for day basis in the event of the following: (i) in spite of Grantee's reasonable efforts, Grantee requires additional time to increase the height of the Aerial Transmission Lines; (ii) unavailability of equipment, materials, and labor beyond the Grantee's reasonable control; or (iii) the inability to coordinate system outages. If Valley Water determines that it needs to raise the levee more than five (5) feet, both Parties shall work together to determine a mutually acceptable solution.
9. **Temporary Adjustment.** In the event Grantor shall at any time or times require the temporary removal, raising of, or temporary de-energization of the Aerial Transmission Lines constructed by Grantee within the hereinabove described Valley Water Property, Grantee upon receiving written notice from Grantor to do so, will relocate, temporarily remove, raise, or temporarily de-energize, within sixty (60) days of receipt of said notice at Grantee's expense. The foregoing time frame shall be extended on a day for day basis in the event of the following: (i) in spite of Grantee's reasonable efforts, Grantee requires additional time to complete the relocation; (ii) unavailability of equipment, materials, and labor beyond Grantee's reasonable control; or (iii) the inability to coordinate system outages.
10. **Grantor's Operation and Maintenance.** Grantor has no obligation to perform maintenance activities to comply with California Public Utilities Commission's General Order 95 (GO 95). Grantor agrees to not plant any trees or vegetation which may grow within the GO 95 required clearance areas of the Aerial Transmission Lines.
11. **Notices.** All notices under this Aerial Easement shall be in writing, shall be directed as follows, and shall be considered delivered if delivered in person or three (3) days after deposit in the U.S. Mail, First Class postage prepaid. Notices delivered by electronic mail and subsequently acknowledged in writing by the recipient shall constitute written notice under this Section.

City of Santa Clara

Electric Department
City of Santa Clara Santa Clara
1500 Warburton Ave
Santa Clara, CA, 95050
And by e-mail at
SVPCContracts@santaclaraca.gov

Valley Water

Real Estate Services Unit
Valley Water District
5750 Almaden Expressway
San Jose, CA 95118
Attn. Unit Manager

With a copy to:

Watersheds Operations and Maintenance Unit
Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118
Attn. Unit Manager

12. **No waiver.** Valley Water and Grantee do not waive any rights they may have under Public Utilities Code section 10101 and any amendments thereto and its successor by Grantee's execution and acceptance of this Aerial Easement.
13. **Compliance with the Law.** GRANTEE shall, at its own cost and expense, comply with all applicable local, state, and federal laws, including but not limited to, statutes, governmental rules and regulations, zoning ordinances, and permit requirements in undertaking any of the activities within this Aerial Easement.
14. **Binding Obligation.** The terms and conditions of this Aerial Easement shall extend to and be binding upon the respective heirs, devisees, legal representatives, successors, and assigns of Valley Water and Grantee ("Successor Parties").
15. **Indemnification.** Notwithstanding any other provision of this Aerial Easement, Grantee agrees to indemnify, defend and hold harmless Valley Water, its agents, officers, directors, and employees from and against any and all demands, claims, damages, losses and reasonable expenses, including but not limited to liabilities, obligations, claims, costs, reasonable expenses (including without limitation interest, penalties and reasonable attorney's fees), fines, levies, assessments, demands, damages or judgments of any kind or nature, whether in law or equity (including without limitation, death or injury to any person, property damage, administrative and judicial orders and consents, or any other loss) (collectively, "Claims") arising out of, pertaining to, relating to, or in connection with: (i) the public use of the Aerial Easement; (ii) the public's use of real property adjacent to the Aerial Easement; or (iii) Grantee's construction, operation, maintenance, or use of the Aerial Transmission Lines or any of Grantee's activities within the Aerial Easement or adjacent Valley Water Property, whether such activities or performance thereof is by Grantee, its officers, agents, employees, or independent contractors, except to the extent any such Claim is caused by the negligence or willful misconduct of Valley Water. This promise to defend, indemnify, and hold harmless Valley Water will operate irrespective of the basis of the claim, liability, loss, damage, or injury and irrespective of whether the act, omission, or activity is a condition of the Aerial Easement or any other cause of any kind or nature. The rights, duties, and obligations of the Parties as set forth in this Section 15, Indemnification, shall survive termination, expiration, and suspension of this Aerial Easement.

- 16. Insurance.** For work within the Aerial Easement or adjacent Valley Water property, Grantee and Valley Water shall, throughout the duration of this Agreement, cause its contractors to maintain insurance coverage equivalent to those coverages the Parties normally require for similar work outside of the Aerial Easement.
- 17. Entire Agreement.** This Aerial Easement sets forth the entire agreement of the parties and supersedes all prior discussions, negotiations, understandings, or agreements relating to the easement right granted by this Aerial Easement.

WITNESS THE EXECUTION HEREOF the day and year first hereinabove set forth.

GRANTOR
Valley Water

GRANTEE
City of Santa Clara

By: _____
Nai Hsueh
Chair, Board of Directors

By: _____
Jovan D. Grogan
City Manager

Date: _____

Date: _____

Attest: Michele L. King, CMC

Approved as to Form:

By: _____
Clerk/Board of Directors

By: _____
Glen R. Googins
City Attorney

Date: _____

EXHIBIT A – Legal Description**EXHIBIT "A"**

SVP REF: SC _____

OVERHEAD ELECTRIC AERIAL EASEMENT ACROSS:
 SAN TOMAS AQUINO CREEK
 BAYSHORE FREEWAY
 SANTA CLARA, CALIFORNIA 95054
 104-40-008 & 104-39-022

DESCRIPTION: TOTAL EASEMENT AREA: 5,819 SQ. FT. ±

Portions of the San Tomas Aquino Creek, as included in that certain Deed recorded July 7th, 1965 as Instrument No. 2904545 in Book 7067 at Page 301, located in the City of Santa Clara, County of Santa Clara, State of California, and described as follows:

PART 1

COMMENCING at a monument located in the centerline of Laurelwood Road as shown on Page 2 of this exhibit; thence South 62°18'15" West 301.40 feet along said centerline of Laurelwood Road to a monument located at the centerline intersection of said Laurelwood Road and Juliette Lane; thence South 73°56'50" West 826.58 feet to the northerly right-of-way line of the Bayshore Freeway (U.S. Route 101); thence North 71°16'22" West 398.19 feet along said northerly right-of-way line of the Bayshore Freeway (U.S. Route 101); thence North 00°50'11" East 15.00 feet along an easterly line of the grantor's parcel of land to a line parallel with said Northerly right-of-way line of the Bayshore Freeway (U.S. Route 101) and the **POINT OF BEGINNING**; thence North 72°01'49" West 41.86 feet along said parallel line to a point herein after known as Point "A"; thence North 00°50'11" East 46.11 feet; thence South 67°57'27" East 42.90 feet; thence South 00°50'11" West 42.92 feet to the **POINT OF BEGINNING**.

PART 1 CONTAINING AN AREA OF: 1,781 square feet, more or less.

PART 2

COMMENCING at Point "A"; thence North 55°13'45" West 18.08 feet to a (different and distinct) line parallel with said Northerly right-of-way line of the Bayshore Freeway (U.S. Route 101) and the **POINT OF BEGINNING** of this description; thence North 72°57'16" West 93.73 feet along said parallel; thence North 00°50'11" East 48.23 feet; thence South 69°05'11" East 95.82 feet; thence South 00°50'11" West 41.50 feet to the **POINT OF BEGINNING**.

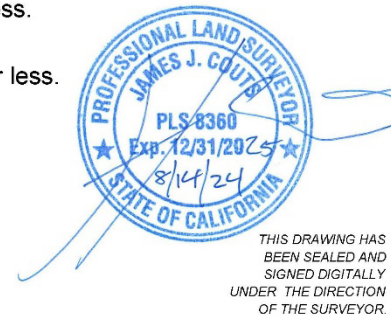
PART 2 CONTAINING AN AREA OF: 4,038 square feet, more or less.

CONTAINING IN TOTAL AN AREA OF: 5,819 square feet, more or less.

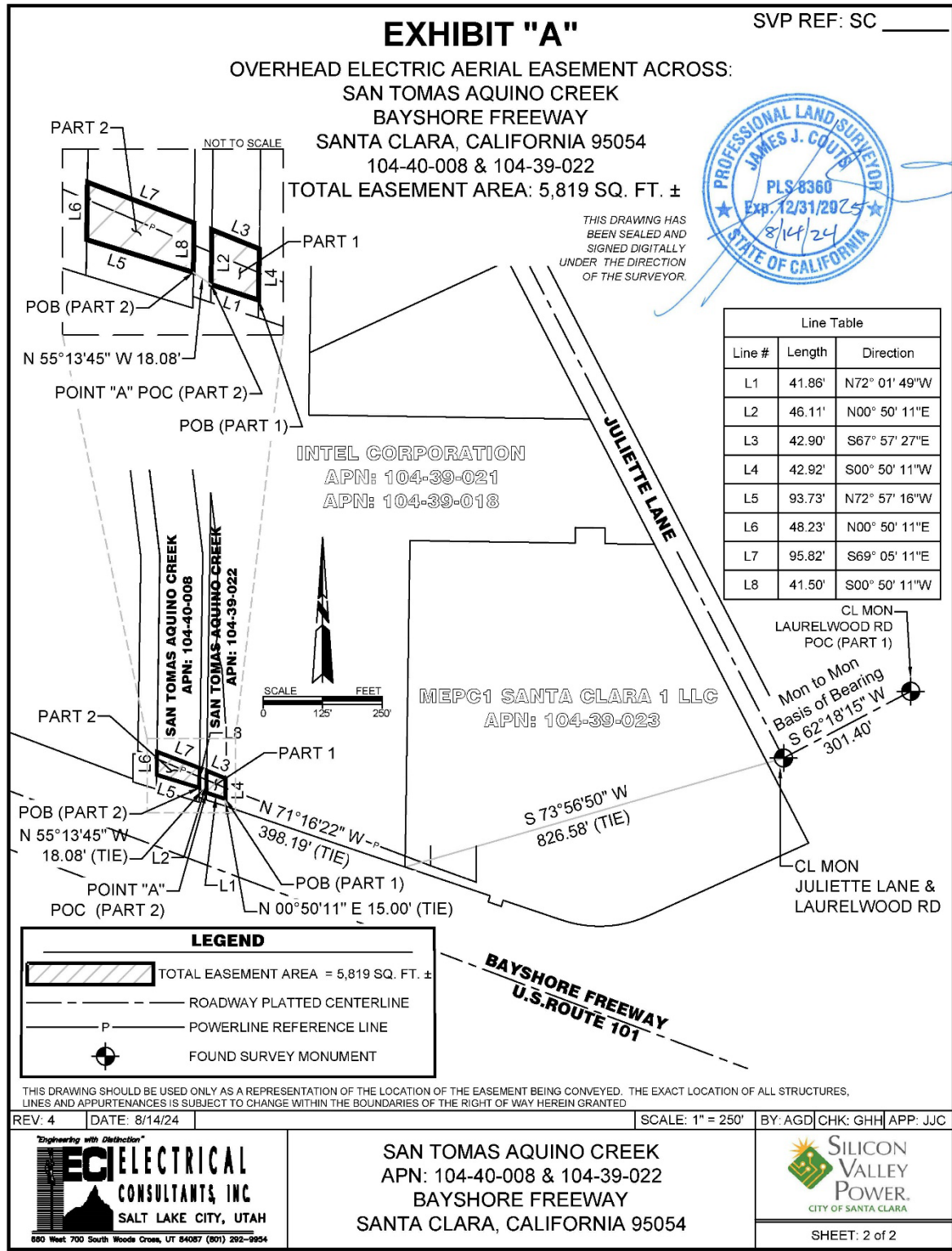
THE BASIS OF BEARINGS AND MONUMENTS SHOWN ON
 PAGE 2 ARE ATTACHED HERETO AND MADE A PART HEREOF.

PREPARED DIRECTLY BY: JAMES J. COUTS, PLS 8360

THIS DESCRIPTION IS NOT INTENDED FOR USE IN THE CONVEYANCE OF LAND
 IN VIOLATION OF THE SUBDIVISION MAP ACT OF THE STATE OF CALIFORNIA.



REV: 4	DATE: 8/14/24	SCALE: N/A	BY: AGD	CHK: GHJ	APP: JJC
		SAN TOMAS AQUINO CREEK APN: 104-40-008 & 104-39-022 BAYSHORE FREEWAY SANTA CLARA, CALIFORNIA 95054			
SHEET: 1 of 2					

EXHIBIT B – Plat

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

State of _____

County of _____

On _____ a _____ Notary Public, before _____ me,
_____, personally appeared _____, who proved to
me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to
the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument
the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____

Name: _____
(typed or printed)

(Seal)

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

State of _____

County of _____

On _____ before me,
_____ a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/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: _____

Name: _____
(typed or printed)

(Seal)