

RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:

City of Temecula  
41000 Main Street  
Temecula, CA 92590  
Attention: City Clerk

---

Exempt from Recording Fees pursuant to Government Code Section 27383  
(Space above for Recorder's use)  
APN:

**WATER QUALITY MANAGEMENT PLAN ALTERNATIVE  
COMPLIANCE AGREEMENT BETWEEN CITY OF TEMECULA AND  
TEMECULA HOTEL PARTNERS OLD TOWN, LLC, FOR THE TRUAX  
HOTEL PROJECT TO RUN WITH THE LAND**

**THIS AGREEMENT** is made and entered into as of August 27, 2019 between the City of Temecula, a municipal corporation ("City") and Temecula Hotel Partners Old Town, LLC, a California corporation ("Owner"). In consideration of the foregoing recitals of fact and the mutual covenants set forth in this Agreement, the parties agree as follows:

**1. Recitals.** The parties hereto acknowledge and agree that this Agreement is made with respect to the following facts and purposes that each agrees to be true and correct.

A. Owner is the owner of the described and depicted on Exhibit A, Property Description ("Property").

B. On September 5, 2017, the Planning Commission/City Council approved the Owner's project entitled "Truax Hotel" and adopted Resolution Nos. 17-33, and 17-02, approving the land use entitlements for the project on the Property ("Project"). The Project generally consists of 261,794 square feet of commercial space, and 513 parking spaces. Condition Nos. 90, 91, 92 for the Project requires the Owner to construct certain off-site public improvements.

C. The City is a co-permittee of the National Pollutant Discharge Elimination System (NPDES) and waste discharge requirements for discharges from the municipal separate storm sewer systems ("MS4s") draining the watersheds within the San Diego region; Order No. R9-2013-001, as amended by order Nos. R9-2015-0001 and R9-2015-0100; NPDES No. CAS0109266 ("MS4 Permit.")

D. Pursuant to the City's MS4 Permit, the City of Temecula BMP Design Manual and Municipal Code require the Owner to construct and install certain source control, site design, and structural "best management practices" improvements on the Property to manage storm water ("BMPs"). The City Engineer has reviewed and analyzed the Water Quality Management Plan and the proposed BMPs for the Project. The City Engineer has determined, however, that the Project Structural BMPs, including the BMPs for the off-site public improvements, are not feasible. The description of the Project Structural BMPs and the reasons why they are infeasible are set forth on Exhibit B, Project Structural BMPs; Infeasibility Analysis.

E. Owner has, therefore, requested that the City consider Alternative Compliance options to meet its MS4 Permit obligations. The Regional MS4 Permit Provision E.3.c(3)(a)-(e) specifies requirements for Alternative Compliance options.

1) The City currently has a program in place to design and construct Alternative Compliance Projects ("ACPs"). Priority Development Projects ("PDP") applicants may pay an in-lieu fee to fund, or partially fund City ACPs and the City will assign the funded portion of City ACPs to the PDP. The City Engineer and PDP applicant must agree to the appropriate fee, which must be paid by the PDP applicant to the City prior to project approval. In-Lieu fees are subject to availability of City ACPs and the discretion of the City Engineer.

2) Alternative compliance refers to off-site compliance activities conducted by choice or by necessity, or both, when the full Pollutant Control and Hydromodification Performance Standards are not met through Structural BMPs implemented within the PDP site or the off-site public improvement site. Figure 1-3 of the City of Temecula BMP Design Manual generally represents two potential pathways for participating in alternative compliance (i.e., offsite projects that supplement the PDPs onsite BMP obligations).

3) ACPs typically consist of implementing off-site projects in combination with the use of on-site "flow-thru" treatment control BMPs in lieu of some or all on-site Structural BMPs such that there is equal or greater benefit to water quality.

4) Section E.3.c(3)(a)-(e) of the MS4 Permit specifies requirements for Alternative Compliance options, including the use of approved Water Quality Equivalency calculations, WMAA Candidate Projects, and Project Applicant-Proposed Alternative Compliance Projects. The MS4 Permit also specifies requirements for development and implementation of an In-Lieu Fee Structure and a Water Quality Credit System for transfer, accounting, and verification of fees and credits for Alternative Compliance Projects. Additionally, this pathway is subject to all of the following criteria:

a) A voluntary agreement to implement the ACP must include reliable sources of funding for operation and maintenance of the applicant-proposed project.

b) The PDP applicant must provide adequate documentation in its Project Water Quality Management Plan, consistent with the Water Quality Equivalency Guidance Document and acceptable to the City, demonstrating that that pollutant control and/or hydromodification management within the proposed ACP are sufficient to mitigate for impacts caused by not implementing Structural BMPs fully on-site.

c) The ACP must satisfy all applicable trading area restrictions outlined in the MS4 Permit, the Water Quality Equivalency Guidance Document, the City of Temecula BMP Design Manual, and as required by the City Engineer.

d) Design of the ACP must be conducted under the direction of an appropriately qualified and licensed engineer, and competent and proficient in the fields pertinent to the candidate project design.

e) The ACP must be completed (constructed) prior to or concurrent with the first proposed PDP that will rely on it such that the ACP is operational prior to the certificate of occupancy of the first proposed PDP.

F. The City has designed and is constructing and installing an Alternate Compliance Project consisting of Turf Replacement located at Birdsall Sports Park, Meadows Park, Temecula Duck Pond, and Veteran's Park and is more fully described on Exhibit C ("Description of ACP No. 19-001"), which includes the documentation of the ACP No. 19-001 compliance with the requirements of the MS4 Permit obligations described in Paragraph 1.E.

1) ACP No. 19-001 serves the watershed that includes the Project.

2) ACP No. 19-001 will provide a greater overall water quality benefit for the Watershed Management Area than fully complying with the performance requirements of Provisions E.3.c.(1) and E.3.c.(2)(a) of the MS4 Permit onsite.

3) The City agrees to maintain ACP No. 19-001 following final inspection and acceptance by the Director of City Engineer of ACP No. 19-001.

## **2. Obligations of Owner**

A. In lieu of constructing the BMPs for the Project, including the BMPs for the Project's off-site public improvements, Owner shall pay to the City a fee of three hundred ten thousand seven hundred sixty four dollars and fifty seven cents (\$310,764.57) (the "In Lieu Fee"). The In Lieu Fee shall be paid to the City or placed in an approved escrow account prior to construction. If the Owner elects to use an escrow account to hold the In Lieu Fee, the City Manager, on behalf of the City, and the Owner shall enter into an escrow agreement in substantially.

B. Owner and City further acknowledge and agree that:

1) The fee represents the Owner's fair share of the costs of construction, installation and maintenance of ACP No. 19-001 with respect to the watershed in which the property is located.

2) Owner shall construct, install, and maintain in perpetuity, at its sole cost and expense, the on-site Source Control, Site Design, and Flow-Thru BMPs identified in the Project WQMP, but will not be required to construct and install the Structural BMPs set forth on Exhibit B., Project Structural BMPs; Infeasibility Analysis.

C. Prior to City granting occupancy, or intended use of any portion of the Project, or both the following shall occur: (1) ACP No. 19-001 shall be completed; (2) the In Lieu Fee shall have been paid to the City or released from Escrow to the City; and (3) the on-site improvements described in Paragraph 2.A.2) shall be installed. If these requirements are not fulfilled to the satisfaction of the City Engineer, the City shall be under no obligation to issue a certificate of occupancy or other final approval allowing use of the Project.

### **3. General**

A. Exhibits. The following Exhibits are attached to this Agreement and incorporated herein as though set forth in full:

- 1) Exhibit A Property Description
- 2) Exhibit B Project Structural BMPs; Infeasibility Analysis
- 3) Exhibit C Description of ACP No. 19-001
- 4) Exhibit D Lender's Consent

B. Notices. Any and all notices, requests or other communications required or permitted to be given under this Agreement or by reason of this Agreement shall be in writing and shall be deemed to have been given when: (i) delivered in person or by courier or overnight delivery service; or (ii) three (3) business days after mailing, by certified or registered mail, to the parties at the following addresses or any such other address or addresses as the parties may, from time to time, designate in writing in the manner herein specified:

CITY:

CITY OF TEMECULA  
41000 Main Street  
Temecula, CA 92589  
Attention: City Manager

With a copy to:

RICHARDS, WATSON & GERSHON  
355 South Grand Avenue, 40th Floor  
Los Angeles, California 90071-3101  
Attention: Mr. Peter M. Thorson, City Attorney

OWNER:

Temecula Hotel Partners Old Town, LLC  
41923 Second Street, Suite 401  
Temecula, CA 92590

C. Valid and Binding Agreement. Each party has participated in the development and drafting of this Agreement. Each party has had the opportunity to consult with technical experts and legal counsel as to the content of this Agreement. Each party agrees that this Agreement is legal, valid and binding against the party.

D. Further Cooperation. Each party to this Agreement agrees to cooperate by performing any further acts and by executing and delivering any and all additional monies, items, or documents which may be reasonably necessary to carry out the terms and provisions of this Agreement, and each party to this Agreement agrees that it will not act in any manner whatsoever which would hinder, impede, interfere or prohibit or make more onerous or difficult the performance of the other party hereto under this Agreement.

E. Amendment. No amendment to this Agreement shall be effective unless first provided in writing and executed by the parties hereto.

F. No Agency or Joint Venture. The terms and provisions of this Agreement shall not cause the parties hereto or any of each parties' agents, consultants, contractors or other providers of professional services to be construed in any manner whatsoever as partners, joint venturers or agents of each other in the performance of their respective duties and obligations under this Agreement, or subject either party to this Agreement to any obligation, loss, charge or expense of the other party to this Agreement.

G. Time of Essence. Time is expressly made of the essence of each and every provision of this Agreement.

H. Owner's Authority. Owner is entitled to enter into this Agreement and that all other persons, including without limitation, lenders, who may have some interests with respect to the Property have approved this Agreement as may be required by applicable law or agreements to which the Owner or its predecessors may be a party, and that by entering into this Agreement the Owner is not in violation or breach of any other agreement to which such Owner may be a party.

I. Lender's Consent. All persons who hold a deed of trust or other security interest on the Property have duly executed the Lender's Consent in the form of Exhibit D and said Lender's Consents are attached to this Agreement.

J. Successors and Assigns. The provisions of this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assignees.

K. Remedies. No remedy or election hereunder shall be deemed to be exclusive but shall, wherever possible, be cumulative with all other remedies at or in equity.

L. Venue. This Agreement shall be construed and interpreted in accordance with the laws of the State of California. Venue for any action arising directly or indirectly under this Agreement shall be in the Superior Court of Riverside County, California.

**IN WITNESS WHEREOF**, the parties hereof have executed and entered into this Agreement as of the date set forth above.

**OWNER**

Temecula Hotel Partners Old Town, LLC

\_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
Name:  
Title:

**[SIGNATURES OF TWO CORPORATE OFFICERS OR CORPORATE AUTHORITY  
RESOLUTION REQUIRED]**

**CITY OF TEMECULA, a municipal corporation**

---

Aaron Adams  
City Manager

Attest:

---

Randi Johl  
City Clerk

Approved as to form:

---

Peter M. Thorson  
City Attorney

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

State of California )  
County of \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_,  
(insert name and title of the officer)

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 \_\_\_\_\_ (Seal)



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

State of California )  
County of \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_,  
(insert name and title of the officer)

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 \_\_\_\_\_ (Seal)

**EXHIBIT A**  
**PROPERTY DESCRIPTION**

BEING A SUBDIVISION OF LOTS 17 THROUGH 32, INCLUSIVE, OF BLOCK 18 OF THE TOWN OF TEMECULA, LOTS 8 THROUGH 12, INCLUSIVE, OF BLOCK 19 OF THE TOWN OF TEMECULA, TOGETHER WITH THE NORTHWESTERLY 1/2 OF THE ALLEY ADJOINING LOTS 27 THROUGH 32, INCLUSIVE, OF BLOCK 18, AND A PORTION OF FRONT STREET ADJOINING SAID LOT 32 OF BLOCK 18, ALL SAID LAND BEING IN THE CITY OF TEMECULA, AS SHOWN ON MAP RECORDED IN BOOK 15, PAGE 726 OF MAPS, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA  
TOGETHER WITH THE NORTHWESTERLY HALF OF THIRD STREET ADJOINING SAID LOTS 8 THROUGH 12, IN BLOCK 19 AND THE SOUTHEASTERLY HALF OF THIRD STREET ADJOINING LOTS 17 THROUGH 32, IN BLOCK 18.

APN: 922-043-002  
922-043-003  
922-043-004  
922-043-015  
922-043-018  
922-043-023  
922-043-024  
922-043-025  
922-044-017  
922-044-020

## **EXHIBIT B**

### **PROJECT STRUCTURAL BMPs; INFEASIBILITY ANALYSIS**

It is not considered feasible to provide full pollutant control obligations via structural BMPs, including retention and/or biofiltration type BMPs. Therefore, the project will participate in the City of Temecula's Alternative Compliance In-Lieu Fee program. Constraints and limitations include the following:

- Infiltration is not considered feasible on the site.
- Harvest and Use is not considered feasible for the site.
- The nature of the proposed improvements have limited available footprint for retention or biofiltration type BMPs.

The project proposes flow-thru treatment control BMPs to satisfy pollutant control requirements.

The following BMPs are proposed:

BMP Name / ID	BMP Type / Description
BMP-1	Contech Storm Filter (Flow-thru)
BMP-2	Contech Storm Filter (Flow-thru)
BMP-3	Inlet Filter Insert (Flow-thru)
BMP-4	Inlet Filter Insert (Flow-thru)

**EXHIBIT C**  
**DESCRIPTION OF ACP NO. 19-001**

93,841 square feet of existing turf grass is proposed to be removed from four existing City parks; Birdsall Sports park, Temecula Duck Pond Park, Meadows Park, and Veterans Park. The drainage areas within the parks that are included in this ACP are currently covered with turf grass but are proposed to be sponge like planting beds with 6” deep amended soils, 3”shredded wood mulch, planted with drought-tolerant plants, and irrigated with drip irrigation. The areas chosen for turf replacement are primarily adjacent to existing concrete sidewalks and City streets. Years of mowing and foot traffic has compacted the soil resulting in increased potential for irrigation runoff. Turf grass is known to require regular applications of fertilizers and pesticides, as well as weekly mowing and significant irrigation. The proposed replacement landscape will require significantly less fertilizers and pesticides to maintain healthy plant growth as well as significantly less irrigation and no mowing at all. These factors will significantly reduce the discharge of nutrients, pesticides and bacteria from this 93,841 square foot site. Because of these factors the existing land use of these areas is considered comparable to Agricultural land use for the purpose of establishing water quality equivalence.

See attached letter: **Alternative Compliance In-Lieu Fee Calculation for the Truax Hotel (LD17-1236)**



# City of Temecula

41000 Main Street, Temecula, CA 92590  
Phone (951) 302-4144

August 8th, 2019

Temecula Hotel Partners Old Town, LLC  
41923 Second Street, Suite 401  
Temecula, CA 92590

## **Re: Alternative Compliance In-Lieu Fee Calculation for the Truax Hotel (LD17-1236)**

Dear Mr. Truax,

The WQMP for the subject project has identified 6,040 Ft<sup>3</sup> of Pollutant Control debits the Applicant wishes to purchase from the City of Temecula Fee In-Lieu program for Alternative Compliance. The Applicant's project consists of 1.17 acres of Transportation Land Use and 1.70 acres of Commercial Land Use.

The City agrees to allow the applicant to fund, or partially fund Citywide Turf Replacement Projects functionally equivalent to agriculturally zoned Land Restoration Projects. The land use factor for WQE pollutants of concern are attached on worksheet A.5. The lowest land use factor has been selected (1.84) producing the lowest Earned Stormwater Pollutant Control Volume which will ensure the greatest overall water quality benefit (per WQE Task 2-2d)

The resulting Earned Stormwater Pollutant Control Volume to be funded is  
 $6,040 \text{ Ft}^3 / 1.84 = 3,283 \text{ Ft}^3$

The City cost to develop these credits is currently \$94.67/ Ft<sup>3</sup>

**Therefore, the total Fee In-Lieu to be paid by the Applicant to the City for Alternative Compliance In-Lieu Fee fund is  $\$94.67/\text{Ft}^3 \times 3,283 \text{ Ft}^3 = \$310,764.57$ .**

Please remit this amount payable to "the City of Temecula" along with the completed and recorded WQMP Alternative Compliance Agreement to complete the WQMP review process for the subject project.

Sincerely,

Patrick Thomas, P.E.  
Director of Public Works  
Public Works Department  
City of Temecula

CC: Ron Moreno; Stuart Kuhn

Automated Spreadsheet Calculation for Worksheet A.5: Land Use Factor Determination (Version 1.0)

Land Use Designation	ACP Tributary Characteristics		Reference Tributary Characteristics <sup>2</sup>		Relative Pollutant Concentrations by Land Use <sup>3</sup>						
	Area (Acres)	Runoff Factor <sup>1</sup>	Area (Acres)	Runoff Factor <sup>1</sup>	TSS	TP	TN	TCu	TPb	TZn	FC
Agriculture	2.15	0.10		0.10	0.45	1.00	1.00	1.00	1.00	0.59	1.00
Commercial		0.80	1.70	0.80	0.13	0.16	0.16	0.56	0.48	1.00	0.87
Education		0.50		0.50	0.13	0.20	0.11	0.14	0.25	0.39	0.13
Industrial		0.90		0.90	0.13	0.19	0.15	0.54	0.68	0.89	0.49
Multi Family Residential		0.60		0.60	0.10	0.13	0.13	0.14	0.15	0.29	0.27
Orchard		0.10		0.10	0.18	0.17	0.67	1.00	1.00	0.59	0.11
Rural Residential		0.30		0.30	1.00	0.51	0.14	0.10	0.71	0.13	0.19
Single Family Residential		0.40		0.40	0.13	0.20	0.15	0.27	0.43	0.35	0.63
Transportation		0.90	1.17	0.90	0.11	0.26	0.12	0.53	0.31	0.62	0.12
Vacant / Open Space		0.10		0.10	0.16	0.10	0.10	0.12	0.10	0.10	0.10
Water		0.00		0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Total	2.15	-	2.86	-	-	-	-	-	-	-	-
Relative Pollutant Concentration for ACP Tributary <sup>4</sup>					0.45	1.00	1.00	1.00	1.00	0.59	1.00
Relative Pollutant Concentration for Reference Tributary <sup>4</sup>					0.12	0.20	0.14	0.55	0.41	0.83	0.54
Watershed Management Area					Santa Margarita River						
Hydrologic Unit					Santa Margarita (902.00)						
Land Use Factor <sup>5</sup>					-	4.91	7.01	-	-	-	1.84

**Notes:**

\* Applicants must provide user input for yellow shaded cells. Values for all other cells will be automatically generated.

1. Revisions to default runoff factors must be supported to the satisfaction of the applicable Copermittee.
2. Applicant-Implemented ACPs must identify reference tributary characteristics that are representative of their specific PDP. Independent ACPs must reference **Table 2-3** for appropriate area and runoff factor information applicable to their watershed management area.
3. Relative Pollutant Concentrations by Land Use have been identified through examination of available EMC data. Additional information on how these relative concentrations were developed is provided in **Appendix B**

**Example:** An ACP Tributary with 5.25 acres of Commercial, 1.63 Acres of Education, and 2.65 acres of Transportation land uses produces a relative pollutant concentration 0.12 for Total Suspended Solids (assumes default runoff factors are applied).

**Equation 2-2:**

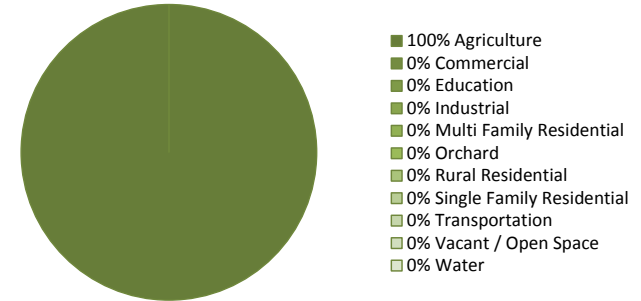
$$P_1 = \frac{\sum P_{1a}A_aC_a + P_{1b}A_bC_b + \dots P_{1k}A_kC_k}{\sum A_aC_a + A_bC_b + \dots A_kC_k}$$

**Equation 2-2 Applied to Example:**

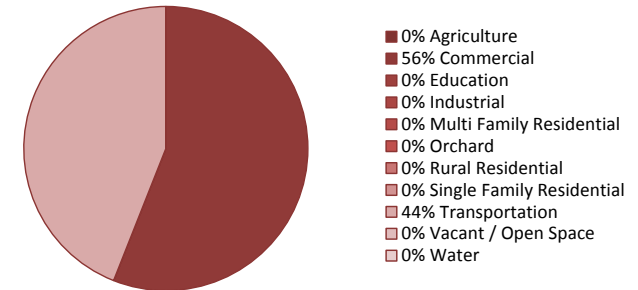
$$P_{TSS} = \frac{(0.13 \times 5.25 \times 0.80) + (0.13 \times 1.63 \times 0.50) + (0.11 \times 2.65 \times 0.90)}{(5.25 \times 0.80) + (1.63 \times 0.50) + (2.65 \times 0.90)} = 0.12$$

Effective area composition graphics are for illustrative purposes only.

**Effective Area Composition - ACP Tributary**



**Effective Area Composition - Reference Tributary**



**EXHIBIT D**  
**LENDER'S CONSENT**

**LENDER'S CONSENT AND SUBORDINATION TO AGREEMENT  
FOR PAYMENT OF WATER QUALITY MANAGEMENT PLAN  
ALTERNATIVE COMPLIANCE**

1. \_\_\_\_\_ ("Lender") holds a security interest in a portion of the Property described in the **"WATER QUALITY MANAGEMENT PLAN ALTERNATE COMPLIANCE AGREEMENT BETWEEN CITY OF TEMECULA AND \_\_\_\_\_ TO RUN WITH THE LAND"** ("Agreement") set forth above between \_\_\_\_\_, a California corporation, and \_\_\_\_\_, a California \_\_\_\_\_ ("Owner"), and the City Of Temecula, a municipal corporation ("City"), dated as of \_\_\_\_\_, 2019.

2. Lender acknowledges that the Agreement is an integral parts of the Owner's land use entitlements for the Property and provide significant benefits to the Owner and to the Property.

3. In consideration of the rights and benefits conferred upon the Owner by the terms of the Agreement and in recognition of the accrual of those benefits to the Lender in the event Lender takes possession of the Property, Lender hereby consents to the Agreement, its recordation and further agrees that Lender's interests in the Property are subject to, and made subordinate to, the rights and interests of the City as set forth in the Agreement.

4. The City agrees to provide notice of any default to Lender pursuant to Section 10 of the Agreement at the following address:

5. The individuals who have signed this document on behalf of Lender have the legal power, right, and authority approve this Consent and bind the Lender.

**IN WITNESS WHEREOF** the Lender has executed this Consent and Subordination as  
of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Name:

Title:

\_\_\_\_\_  
Name:

Title:



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

State of California )  
County of \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_,  
(insert name and title of the officer)

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 \_\_\_\_\_ (Seal)