



FORM VIRTUAL NET ENERGY METERING (NEM-V) SOLAR ENERGY SYSTEM EASEMENT AGREEMENT FOR CONDOMINIUM DEVELOPMENTS

Parties should review their homeowners association (HOA) governing documents, review all applicable laws, and engage their own attorneys before executing any easements or other legal documents. This form easement agreement is not legal advice and does not substitute for legal counsel. The facts and circumstances of a particular project may mandate substantial revision to this form or make this form inapplicable.

*This form easement agreement is intended to facilitate a **virtual net energy metering (NEM-V)** arrangement in which a group of condominium owners seeks to install a shared NEM-V solar energy system on common area of a condominium development and to receive their share of the benefits of that solar generation via electricity bill credits.*

Jurisdiction: *This form agreement assumes that the condominium development and solar energy system are located in one of California's investor owned utilities' service territories, but the form may be useful in similar arrangements with other utilities or in other states with NEM-V programs.*

Location of System: *This form agreement assumes the solar energy system and all associated system components will be installed on a portion of the common area of the condominium development, such as the roof or other common area property.*

Parties: *This form agreement assumes that the HOA would be the **grantor** of the easement. In doing so, it assumes that the HOA is authorized to act on behalf of the condominium owners in granting rights and interests in the common area, and that any express prior authorization required by the condominium owners has been or will be appropriately granted to the HOA. The form agreement assumes the **grantee** of the easement would be some of the condominium owners in the development, but not necessarily all of the owners. If all of the owners in a development would benefit from the solar system, then an alternative approach to this form agreement may be more appropriate. The form agreement does not make any assumptions about whether or not the owners are acting in their individual capacities or have organized as an entity of some kind. The form agreement provides that the rights and privileges of the owners may be exercised by the owners' consultants and contractors.*

Easement vs. License vs. Lease: *This form agreement provides for an easement, however parties are advised to consult with legal counsel to determine whether another form of agreement, such as a license or a lease, would be most appropriate to their circumstances, and, with assistance from an attorney, this form agreement may be modified as needed.*

Bracketed Text: *Text in brackets reflects a generic term and/or requires a specification of terms.*

Additional Resources: *This form agreement was prepared by the Interstate Renewable Energy Council, Inc. (IREC) as part of the **Virtual Net Metering Market Development Project** to advance solar adoption across the nation, funded by the U.S. Department of Energy Solar Energy Technologies Office. For more information about the project and additional NEM-V resources, visit <https://energycenter.org/solar-market-pathways>.*

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

[name and address]

Recording Fee \$[XXX]
Document Transfer Tax \$[XXX]

(Assessor's Parcel Numbers [_____])

(space above line for Recorder's use only)

VIRTUAL NET ENERGY METERING SOLAR ENERGY SYSTEM EASEMENT AGREEMENT

This VIRTUAL NET ENERGY METERING SOLAR ENERGY SYSTEM EASEMENT AGREEMENT (“**Agreement**”) is made, dated, and effective as of _____, 20____ (“**Effective Date**”) by and between [formal name of Homeowners’ Association (HOA)], a [entity information for HOA] (“**Grantor**”), and [participating Condominium unit owners, with names listed, OR Condominium unit owners’ entity, with entity information] ([collectively,]“**Grantee**”). Each of Grantor and Grantee are sometimes referred to individually as a “**Party**” and collectively as the “**Parties**.”

RECITALS

A. Grantor is the association formed to manage the condominium development generally located at _____, _____ County, California, including [a] condominium building[s] located thereon and the common areas therein (“**Common Area**”) (collectively, “**Condominium**”).

B. Grantee is comprised of a group of Condominium unit owners that own the following units: [list the address for each Condominium unit benefitting from the arrangement] (collectively, “**Benefitting Units**”). Grantee desires to install, operate, and maintain a solar photovoltaic system (together, with all appurtenances and connections, hereinafter referred to as the “**System**”) on a portion of the Common Area for the benefit of the Benefitting Units.

C. The value of the generation produced by the System shall be shared among the Benefitting Units via virtual net energy metering, as established and regulated by the California Public Utilities Commission pursuant to California Public Utilities Code Section 2827.1, and implemented by [serving utility] (“**NEM-V**” [or utility-specific acronym, e.g., NEM-V-ST (SDG&E), NEM-V-ST (SCE), or NEM2V (PG&E)]).

D. Grantee has submitted plans, specifications, a site survey, and any other required materials (collectively, “**Plans**”) for installation of the System on a portion of the Common Area to Grantor, which Plans have been approved by Grantor.

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E. Pursuant to state law and Grantor's governing documents, Grantor has authority to execute this Agreement, granting certain rights and privileges in the Common Area to Grantee for the System.

F. In furtherance of the NEM-V arrangement, Grantee desires to obtain from Grantor, and Grantor desires to grant to Grantee, an easement on the portion of the Common Area described and depicted on the attached **EXHIBIT 1** and incorporated herein by this reference ("**Premises**") together with a right of ingress to and egress from the Premises, and other ancillary rights, for purposes of solar energy generation by the System on the terms set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants and agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged; and intending to be legally bound hereby, Grantor and Grantee hereby agree as follows:

ARTICLE I

Grant of Easement; Purpose of Easement; Permitted Uses and Activities

1.1. Grant of Easement. For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Grantor, Grantor hereby grants an appurtenant, exclusive easement in, to, over, and across the Premises, together with a right of ingress to and egress from the Premises, and other ancillary rights as are reasonably necessary for Grantee to make good and full use of the easement for the purposes and activities set forth herein.

1.2. Purpose of Easement. The easement created by this Agreement is solely and exclusively for the purpose of solar energy generation, conversion, collection, and transmission by, to, and from the System to benefit the Benefitting Units via NEM-V.

1.3. Permitted Uses and Activities. The easement created by this Agreement permits Grantee to engage in all activities reasonably related to the purpose of the easement, including but not limited to:

- (a) locating, constructing, installing, owning, operating, maintaining, improving, repairing, replacing, relocating, and removing the System on and from the Premises;
- (b) making such penetrations and trenches in Common Area property as needed to run wires and conduit from the System to the electrical panel and other areas on and within the Premises;
- (c) parking in designated areas of the Condominium;

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(d) accessing the Premises and the System (including but not limited to access for lifting, rigging, and material-handling equipment) over and across the Common Area;

(e) locating, constructing, installing, owning, operating, maintaining, improving, repairing, replacing, relocating, and removing warning signs, closed and locked gates, fences, and such other security measures on the Premises as may be necessary or desirable in Grantee's sole determination, to protect against damage or destruction of the System or injury or damage to persons or property resulting from the System;

(f) locating, constructing, installing, owning, operating, maintaining, improving, repairing, replacing, relocating, and removing inverters, electrical wires, and cables on the Premises as may be necessary or desirable in Grantee's sole determination for the transmission of electrical energy.

1.4. Grantee Contractors. Grantee may permit its contractors, agents, assigns, and financial partners to exercise the permitted uses and activities under the easement on Grantee's behalf. All work shall be performed by a qualified and insured contractor, in a good and workmanlike manner, and pursuant to all applicable local, state, and federal law. If Grantee employs more than one contractor, this **Section 1.4** shall apply to each and every contractor employed by Grantee.

1.5. Covenant Running With the Land. This Agreement shall constitute a covenant running with the land and shall survive any conveyance of any fee or leasehold interest in or to any portion of the Condominium, including the Premises and the Benefiting Units. This Agreement shall inure to the benefit of, and be binding upon, any successors in title to the Parties, and may be amended only by an instrument in writing signed by both Parties.

ARTICLE II Easement Price

As consideration for the rights and interests granted by Grantor under this Agreement, Grantee shall pay Grantor \$_____.

ARTICLE III System Ownership, Maintenance, Security, and Removal

3.1. System Ownership. The System shall be and shall remain the personal property of Grantee (or Grantee's contractors, agents, assigns, or financial partners) at all times, and shall not be a fixture on the Condominium. The System may be removed by Grantee in accordance with the terms and conditions of this Agreement, including, but not limited to, **Section 3.4**. Neither the System nor any of its components may be sold, leased, assigned, mortgaged, pledged or otherwise alienated or encumbered by Grantor. Grantor shall not cause or permit the System or any part thereof to become subject to any lien, encumbrance, pledge, levy, or attachment

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arising by, under, or through Grantor. Grantor shall indemnify Grantee against all losses, claims, costs, and expenses (including attorneys' fees) incurred by Grantee in discharging and releasing any such lien, encumbrance, pledge, levy, or attachment arising by, under, or through Grantor.

3.2. System Maintenance. Grantee shall be solely responsible for maintaining, repairing, and replacing the System. The cost of such maintenance shall be borne by Grantee, except for damage caused by Grantor, its contractors, agents, employees, and assigns, which damage Grantor shall repair in a good and workmanlike manner within twenty (20) business days of being notified of such damage by Grantee.

3.3. System Security. Grantee shall be solely responsible for providing all security measures that Grantee determines are or may be reasonably necessary or desirable to secure the System. Such measures may, but will not necessarily, include warning signs, closed and locked gates, and other measures appropriate and reasonable to protect against damage or destruction of the System or injury or damage to persons or property resulting from the System. The cost of such security shall be borne by Grantee.

3.4. System Removal. Grantee shall be solely responsible for removing the System; provided, however, that: (a) Grantee shall provide Grantor with at least thirty (30) days' notice of such removal; and (b) Grantee shall restore the Premises to substantially the same condition as of the Effective Date, save and except for any damage caused by Grantor, its contractors, agents, employees, and assigns. The cost of such removal and restoration shall be borne by Grantee, except in the case of Grantor default, as described in **ARTICLE IX**.

ARTICLE IV Grantee's Representations, Warranties, and Covenants

4.1. Indemnity. Grantee shall defend, indemnify, and hold harmless Grantor, and its agents, employees, and assigns, and the other unit owners in the Condominium, from and against any and all claims, costs, damages, or loss to persons or property arising from exercise by Grantee, or Grantee's contractors, agents, assigns, and financial partners, of Grantee's rights under this Agreement, except to the extent caused by the negligence or willful misconduct of an indemnified party hereunder.

4.2. Hazardous Materials. Grantee shall not violate, and shall defend, indemnify, and hold harmless Grantor, and its agents, employees, and assigns, and the other unit owners in the Condominium, from and against any and all claims, costs, damages, or loss arising from a violation by Grantee, or Grantee's contractors, agents, assigns, and financial partners, of any federal, state, or local law, ordinance, order, or regulation relating to the generation, manufacture, production, use, storage, release or threatened release, discharge, disposal, transportation, or presence on or under the Premises of any substance, material, or waste related to the System that is now or hereafter classified as hazardous or toxic, or that is regulated under current or future federal, state, or local laws or regulations.

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4.3. Notification. Grantee has notified each unit owner in the Condominium that Grantee intends to install a solar energy system on the Common Area as required by California Civil Code Section 4746(a)(1).

ARTICLE V

Grantor's Representations, Warranties, and Covenants

5.1. Indemnity. Grantor shall defend, indemnify, and hold harmless Grantee, and its agents, assigns, and financial partners, from and against any and all claims, costs, damages, or loss to persons or property arising from exercise by Grantor, or Grantor's contractors, agents, employees, and assigns, of Grantor's obligations under this Agreement, except to the extent caused by the negligence or willful misconduct of an indemnified party hereunder.

5.2. Hazardous Materials. Grantor shall not violate, and shall defend, indemnify, and hold harmless Grantee, and its agents, assigns, and financial partners, from and against, any and all claims, costs, damages, or loss arising from a violation (past, present, or future) by Grantor, or Grantor's contractors, agents, employees, or assigns, of any federal, state, or local law, ordinance, order, or regulation relating to the generation, manufacture, production, use, storage, release or threatened release, discharge, disposal, transportation, or presence on or under the Premises of any substance, material, or waste that is now or hereafter classified as hazardous or toxic, or that is regulated under current or future federal, state, or local laws or regulations.

5.3. Authority; No Third-Party Rights; Subordination. Grantor represents and warrants to Grantee that there are no circumstances known to Grantor and no commitments to third parties that may damage, impair, or otherwise adversely affect Grantee's rights hereunder. When signed by Grantor, this Agreement constitutes a valid and binding agreement enforceable against Grantor and the Premises in accordance with its terms. Grantor represents and warrants to Grantee that all lienholders have consented to this Agreement, and all encumbrances, other than liens for taxes not yet due on the Premises, will be subordinate to this Agreement.

5.4. No Interference. Grantor hereby agrees, for itself, and its contractors, agents, employees, and assigns, that it will not initiate or conduct activities that it knows or reasonably should know may damage, impair, or otherwise adversely affect the System or its functions, including without limitation, activities that may adversely affect the System's exposure to sunlight, as further described in **Section 5.5**. Except as expressly set forth in **Section 6.1**, Grantor shall not adjust, modify, maintain, alter, or service the System. Without limiting the generality of **Section 6.1**, Grantor further covenants for itself and its contractors, agents, employees, and assigns that it will not take any action that will or may (a) materially interfere with or prohibit the free and complete use and enjoyment by Grantee of its rights granted under this Agreement, (b) materially interfere with the transmission of electrical energy to or from the Premises; or (c) impair Grantee's access to the Premises or any portion of the System for the purposes specified in this Agreement.

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5.5. Solar Access Covenant. Grantor hereby covenants to provide for the free passage of solar radiation to the System. Any obstruction to the passage of direct solar radiation across the Condominium to the System by Grantor, or its contractors, agents, employees, or assigns, is prohibited. Trees, structures, and improvements located on the Condominium as of the Effective Date shall be allowed to remain, and Grantee may not require their removal. Grantor shall not place or plant any trees, structures, or improvements on the Condominium after the Effective Date that may, in Grantee's sole judgment, impede or interfere with the passage of direct solar radiation to the System, unless Grantor has received prior written approval from Grantee for any such trees, structures, or improvements. Grantee and Grantor further agree to execute and record such instruments or addenda to this Agreement as may be required under applicable state or local law to evidence the solar covenant made in this **Section 5.5**.

ARTICLE VI

Emergencies; Access to System by Grantor

6.1. Emergencies. Upon Grantor's knowledge of an Emergency (as defined below) or potential Emergency, Grantor immediately shall provide telephonic notice to Grantee of the nature of such Emergency. Without limiting the foregoing, Grantor and Grantee each, as applicable, shall take such action as may be reasonable and necessary to prevent, avoid or mitigate injury, damage or loss to the System and any interruption, reduction or disruption of its proper operation, and shall, as soon as practicable, report telephonically any such incident, including such Party's response thereto, to the other Party. The term "**Emergency**" means an event occurring on the Condominium that: (a) poses actual or imminent risk of (i) material physical damage to the System or (ii) serious personal injury, if related to the System; and (b) requires, in the good faith determination of Grantor or Grantee, immediate preventative or remedial action.

6.2. Grantor Access. Upon not fewer than twenty-four (24) hours' written notice to Grantee, Grantor may access the Premises for purposes of performing routine maintenance, safety, and security activities on the Premises. Subject to **Section 6.1**, in the event of an Emergency, Grantor shall have immediate access to the Premises. Grantor shall ensure that the System and its operations are not damaged or disrupted as a result of any access to the Premises by Grantor, its designee(s) or invitees pursuant to this **Section 6.2**.

6.3. Grantee Access. Upon not fewer than twenty-four (24) hours' written notice to Grantor, Grantee may engage in the permitted uses and activities under the easement. Subject to **Section 6.1**, in the event of an Emergency, Grantor shall have immediate access to the Premises

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**ARTICLE VII
Taxes.**

7.1. Grantee Taxes. Grantee, or its contractors, agents, assigns, or financial partners, shall pay all personal property taxes and assessments related to and imposed on the System by the applicable taxing authority.

7.2. Grantor Taxes. Grantor shall pay all real property taxes and assessments related to and imposed on the Condominium by the applicable taxing authority, including any tax increase or assessment resulting from the installation of the System at the Condominium.

**ARTICLE VIII
Insurance**

8.1. Grantee Contractor's Insurance. For each and every contractor employed pursuant to **Section 1.4**, Grantee shall provide Grantor with a certificate of the contractor's insurance, in such form and amount reasonably satisfactory to Grantor, naming Grantor and its agents, employees, and assigns, as an additional insured.

8.2. Benefiting Unit Owners' Insurance. Each and every Benefitting Unit owner shall maintain a homeowner liability coverage policy at all times and shall provide Grantor with the corresponding certificate of insurance within fourteen (14) days after the effective date of this Agreement and annually thereafter, as required by California Civil Code Section 4746(a)(2).

8.3. Grantor's Insurance. Grantor shall maintain a general liability insurance policy at all times and shall name Grantee, and its agents, assigns, and financial partners, as an additional insured. Grantor's insurance policy shall have a limit of at least \$ _____ for each occurrence and aggregate occurrences per year.

**ARTICLE IX
Default and Termination; Rights Upon Termination; Remedies**

9.1. Right to Terminate Upon Default. Either Party shall have the right to terminate this Agreement after: (a) a material default in the performance of the other Party's obligations under this Agreement has occurred; and (b) the default has not been cured within thirty (30) days after the defaulting Party receives written notice, or, if cure will take longer than thirty (30) days, the defaulting Party has not begun diligently to undertake the cure within the relevant time period and thereafter diligently prosecutes the cure to completion.

9.2. Grantee Right to Terminate. In addition to its rights under **Section 9.1**, Grantee shall also have the right to terminate this Agreement at its sole discretion; provided, however,

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that Grantee shall provide Grantor with written notice of Grantee's intent to terminate the Agreement thirty (30) days in advance of such termination.

9.3. Grantor Right to Terminate. In addition to its rights under **Section 9.1**, if Grantee has removed the system pursuant to **Section 3.4**, Grantor shall also have the right to terminate this Agreement; provided, however, that Grantor shall provide Grantee with written notice of Grantor's intent to terminate the Agreement thirty (30) days in advance of such termination.

9.4. Effect of Termination. Upon the termination of this Agreement, Grantee shall surrender to Grantor all of Grantee's right, title, and interest in and to the Premises by executing and recording an instrument evidencing the termination of this Agreement. Grantee shall, no later than ninety (90) days after the termination of this Agreement, remove the System from the Premises and restore the Premises to substantially the same condition as of the Effective Date, save and except for any damage caused by Grantor, its contractors, agents, employees, or assigns. The cost of such removal and restoration shall be borne by (a) Grantee, if this Agreement terminates by mutual agreement or under **Section 9.2** or **9.3**; or (b) the defaulting Party, following any termination for default under **Section 9.1**.

9.5. Cumulative Remedies. Subject to the other terms and conditions of this Agreement, each party shall have all rights and remedies available at law and in equity for any breach of this Agreement by the other party.

ARTICLE X
Notice

Any written notice required, permitted, or contemplated hereunder shall be addressed to the Party to be notified at the address set forth below or at such other address or addresses as a Party may designate for itself from time to time by notice hereunder.

Notice to Grantor:

Attn: _____

Tel. _____

With a copy to:

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Attn: _____
Tel. _____

Notice to Grantee:

Attn: _____
Tel. _____

With a copy to:

Attn: _____
Tel. _____

Either Party may, by written notice given at any time or from time to time, require subsequent notices to be given to another person, whether a Party or an officer or representative, or to a different address, or both. Notices given before actual receipt of notice of change shall not be invalidated by the change.

ARTICLE XI Legal Matters

11.1. Governing Law; Dispute Resolution. This Agreement shall be governed by the laws of the State of California, without regard to any conflict of laws principals. If the Parties are unable to resolve amicably any dispute arising out of or in connection with this Agreement, they agree that such dispute shall be resolved in the court located in the county in which the Premises are situated, or if none, then a court nearest the county in which the Premises are situated.

11.2. Consequential Damages. Notwithstanding any provision in this Agreement to the contrary, neither Grantee nor Grantor shall be liable to the other for incidental, consequential, special, punitive, or indirect damages, arising out of this Agreement. The foregoing provision shall not prohibit Grantee or Grantor from seeking and obtaining general contract damages or equitable relief for a breach of this Agreement.

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ARTICLE XII
Rights of Mortgagees

This Agreement shall be binding upon and effective against any owner of all or any portion of the Benefitting Units or the Premises whose title thereto is acquired by foreclosure, trustee's sale, deed-in-lieu of foreclosure, or otherwise. No mortgagee shall be obligated or liable for the obligations and liabilities of the owners of all or any portion of the Benefitting Units or the Premises under this Agreement unless and until such mortgagee acquires fee title to all or a portion of such property. No breach of this Agreement shall defeat or render invalid or unenforceable the lien of any mortgagee made in good faith and for value affecting any portion of the Benefitting Units or the Premises.

ARTICLE XIII
Miscellaneous.

13.1. Further Assurances. Upon the receipt of a written request from the other Party, each Party shall execute such additional documents, instruments, and assurances and take such additional actions as are reasonably necessary and desirable to carry out the terms and intent hereof. Neither Party shall unreasonably withhold, condition, or delay its compliance with any reasonable request made pursuant to this **Section 13.1**.

13.2. Force Majeure. If performance of this Agreement or of any obligation hereunder is prevented or substantially restricted or interfered with by reason of an event of Force Majeure (defined below), the affected Party, upon giving written notice to the other Party, shall be excused from such performance to the extent of and for the duration of such prevention, restriction or interference. The affected Party shall use its reasonable efforts to avoid or remove such causes of nonperformance and shall continue performance hereunder whenever such causes are removed. "**Force Majeure**" means fire, earthquake, flood, or other casualty or accident; strikes or labor disputes; war, civil strife, or other violence; any law, order, proclamation, regulation, ordinance, action, demand or requirement of any government agency or utility; or any other act or condition beyond the reasonable control of a Party hereto.

13.3. Severability. In the event that any provisions of this Agreement are held to be unenforceable or invalid by any court or regulatory agency of competent jurisdiction, Grantor and Grantee shall negotiate an equitable adjustment in the provisions of this Agreement with a view toward effecting the purposes of this Agreement, and the validity and enforceability of the remaining provisions shall not be affected by it.

13.4. Headings. The headings in this Agreement are solely for convenience and ease of reference and shall have no effect on interpreting the meaning of any provision of this Agreement.

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13.5. Amendments. This Agreement may be amended only in writing signed by Grantee and Grantor, or their respective successors in interest.

13.6. Binding Effect. This Agreement and the rights, privileges, duties, and obligations of the Parties as set forth herein shall inure to the benefit of and be binding upon each of the Parties, together with their respective successors and assigns.

13.7. Entire Agreement. This Agreement represents the full and complete agreement between the Parties with respect to the subject matter contained herein and therein and supersedes all prior written or oral agreements between the Parties with respect to such subject matter.

13.8. Waivers. Any waiver of this Agreement must be in writing. Either Party's waiver of any breach or failure to enforce any term of this Agreement shall not affect or waive that Party's right to enforce any other term of this Agreement.

13.9. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

[SIGNATURE PAGES FOLLOW]

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IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

Grantor:

By: _____
Name: _____
Title: _____

Grantee:

By: _____
Name: _____
Title: _____

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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 _____)

County of _____)

On _____, 20____, 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 _____ (Seal)

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On _____, 20____, 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 _____ (Seal)

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EXHIBIT 1
Description of Premises

[To be inserted]

945714.7

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