



San Diego Unified
SCHOOL DISTRICT

Crown Castle/
Sublease

Georgiana Becker
Real Estate Specialist
Real Estate Management
P - 619 726.7242
F - 619 574.1487
gbecker@sandi.net

April 1, 2011

Mr. Kevin McGee
New Cingular Wireless PCS, LLC
5738 Pacific Center Boulevard, 2nd Floor
San Diego, California 92121

Dear Mr. McGee:

Subject: Temporary Permission to Encroach
Upon Property Owned by the San Diego Unified
School District Darnall Charter School Site
(6020 Hughes Street, San Diego, California 92115)

You have requested permission for New Cingular Wireless PCS, LLC (AT&T Mobility) and/or its contracting agents, the right of ingress and egress over and upon a portion of APN 472-650-17, owned by the San Diego Unified School District (District). AT&T Mobility, its officers, employees, agents, and contractors and subcontractors shall be collectively referred to as "Permitted Parties". This Temporary Encroachment Permit (Permit) shall provide AT&T Mobility and/or the Permitted Parties vehicular access and equipment mobilization across that portion of the Darnall Charter School campus as shown on the attached exhibit for the sole purpose of periodic maintenance of cellular antenna/equipment for cellular operations through the duration of this Permit on the adjacent City of San Diego (City) property.

For and in consideration of the mutual covenants and promises herein, the parties further agree as follows:

The District hereby grants permission to AT&T Mobility and/or the Permitted Parties the right to temporarily encroach on the above-referenced District-owned property (See Exhibit A for plat map and Exhibit B for legal description, both of which are attached and incorporated by reference) upon the following terms and conditions:

1. This Permit specifically addresses the scope of activities and encroachment area as described above, and no other, without prior written approval by District. The District does not object to such temporary encroachment over the aforementioned portion of District property for the sole purposes referenced above.
2. This Permit is granted from April 1, 2011 through March 31, 2012 or upon date of termination of AT&T Mobility's leasehold interest on the adjacent City property, with City dated on or about October 23, 2016, whichever shall first occur. An extension may be granted upon receipt of a written request from AT&T Mobility. A written request to extend the Permit must be made 30 days in advance and failure to do so for extensions shall result in a reinstatement fee of \$300.00 (equivalent to 1-month rent) to be charged, which may be subject to change, at the time of renewal/extension of the Permit.

3. All site visits and any other work by AT&T Mobility personnel, contractors and subcontractors conducted during the school operating hours of 8:00 am through 4:00 pm, will be required to check-in with front office and present ID prior to accessing the site. School Police will be called for any personnel that have not checked-in with the front office. AT&T Mobility and/or the Permitted Parties must make prior arrangements with City for access to lock/gate for entry. School staff will not provide access under any circumstances.

4. That prior to any work being performed, AT&T Mobility and/or the Permitted Parties shall notify in writing San Diego Gas & Electric, , and any and all franchise and municipal utility agencies to verify locations of underground facilities (active or abandoned) including District utility record as-builts presently in place, if any.

5. AT&T Mobility, its agents, contractors, and its successors in interest shall indemnify and hold harmless District, its officers, employees, and agents against all expenses including attorneys fees, liability, liens, encumbrances and claims for damage to property or injury or death of persons resulting from any act or omission of AT&T Mobility, its employees, and agents in connection with ingress to and egress from District property in association with this Permit as granted herein. Provided, however, that AT&T Mobility shall not indemnify any claims for liability arising from sole negligence or willful misconduct of the District, its agents, officers, or employees.

6. AT&T Mobility, its agents, contractors and its successors in interest shall indemnify and hold harmless the District, its officers, employees, and agents against all expenses, liability, and claims for damage to property or injury or death of persons resulting from AT&T Mobility's and/or the Permitted Parties performance of work hereunder or their failure to comply with any of its obligations contained in this Agreement, provided however, that AT&T Mobility's duty to indemnify shall not include any claims or liability arising from sole or active negligence or willful misconduct of the District, its agents, officers, or employees.

7. For the duration of the Permit, insurance must be maintained with an insurer admitted to write insurance in the State of California, rated A, minus VIII or better by the current A.M. Best Rating Guide or equivalent. If insurance is provided by a non-admitted carrier, it must be included in the most recent California List of Eligible Surplus Lines Insurer (LESLI list) and otherwise satisfy District insurance requirements. Any aggregates must be disclosed and approved by the District. In addition, any deductibles or self insured retentions in excess of twenty five thousand dollars (\$25,000) must be disclosed and approved by the District. The minimum accepted levels of insurance are:

- a. General Liability: Two million dollars (\$2,000,000) per occurrence and four million dollar (\$4,000,000) general aggregate.
- b. Automobile Liability: Two million dollars (\$2,000,000) combined single limit coverage including non-owned autos and four million dollar (\$4,000,000) general aggregate.
- c. Workers' Compensation as required by the California Labor Code. AT&T Mobility's coverage will be primary and include a waiver of subrogation.
- d. Pollution Liability: One million dollars (\$1,000,000) per occurrence.
- e. Additional Insured Endorsement: The San Diego Unified School District, its officials, employees, volunteers, and agents shall be included as additional insureds pursuant to a separate endorsement on all above policies except for workers' compensation.

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AT&T Mobility must provide certificates of insurance, and all required endorsements, evidencing the required coverage's prior to authorization.

Cancellation notice on required insurance policies shall provide: "Should any of the above described policies be canceled before the expiration dates thereof, the issuing company will mail thirty (30) days prior written notice to the certificate holder. In the case of cancellation for nonpayment of premium, the issuing company will mail ten (10) days prior written notice to the certificate holder."

The above insurance requirements may be satisfied, in whole or in part, by a letter of self insurance or statement of coverage signed on behalf of AT&T Mobility by an individual authorized or designated to do so.

8. AT&T Mobility shall provide District with a copy of State Contractor's license when contractor is selected and approved prior to execution of Permit.

9. AT&T Mobility and/or the Permitted Parties shall only be authorized to enter upon and traverse that portion of District property for the purpose of accomplishing work only as described herein. AT&T Mobility shall cause such work described herein to be accomplished in a workmanlike manner and, once said work has commenced, said work shall be pursued diligently so as to complete the work at the earliest possible date.

10. At all times when a school site is used or occupied for academic purposes or for other school-related functions, no employee or independent contractor to AT&T Mobility and/or the Permitted Parties shall be Permitted access to the school site or to perform any work at the school site unless: (a) such person has submitted her/his fingerprints to the California Department of Justice ("DOJ") pursuant to Education Code section 45125.1; (b) the DOJ has ascertained, based upon the submitted fingerprints, that the individual has not been convicted of a felony defined in Education Code section 45122.1 and has no criminal felony proceedings (as defined in Education Code section 45122.1) pending against her/him; (c) AT&T Mobility and/or the Permitted Parties engaging the individual for the work has received written or electronic verification from the DOJ of the absence of felony convictions and pending felony criminal proceedings; and (d) AT&T Mobility and/or the Permitted Parties engaging such individual as an employee or independent contractor has submitted a Fingerprint Certification to the District specifically identifying such individual as having been verified by the DOJ as not having been convicted of a felony and not having a criminal felony proceeding pending against her/him. The provisions of Education Code section 45125.2(a) notwithstanding, erection and maintenance of physical barriers and/or continuous supervision and monitoring are insufficient measures to comply with the requirements of this paragraph when a school site is being used or occupied for academic purposes or other school related functions. At all other times during the work, as appropriate, or as directed by the District, to limit contact between workers performing the work and students and for the safety of students, AT&T Mobility and/or the Permitted Parties shall: (i) erect a physical barrier around the work to limit contact between students and the individuals performing work; or (ii) designate an employee of AT&T Mobility and/or the Permitted Parties and require each subcontractor to designate an employee who shall be responsible for the continuous monitoring and supervision of the other employees of AT&T Mobility and/or the Permitted Parties, provided that the employee(s) designated for such monitoring and supervision has submitted her/his fingerprints to the DOJ under Education Code section 45125.1 for verification that she/he has not been convicted of a felony and does not have any criminal

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proceeding pending against her/him and AT&T Mobility's and/or the Permitted Parties' subcontractor employee has submitted a Fingerprint Certification attesting to such DOJ fingerprint verification and the absence of criminal convictions or pending criminal proceedings. The responsibility for complying with the requirements of Education Code section 45125.2 rests solely with AT&T Mobility; the District will not designate any District personnel for surveillance of AT&T Mobility's and/or the Permitted Parties' employees under Education Code section 45125.2(a)(3).

As a service to AT&T Mobility, the Live Scan Fingerprinting Unit of the District's School Police Services Division will undertake the fingerprinting, criminal record check, and DOJ clearance of AT&T Mobility's employees at AT&T Mobility's expense. AT&T Mobility and/or the Permitted Parties shall call the District Police Services Live Scan Unit (619) 725-7014 in advance to set up appointments for the fingerprinting of AT&T Mobility and/or the Permitted Parties' employees. The Live Scan Unit is located at the Education Center, 4100 Normal Street, Police Services Building, San Diego, CA 92103 and is open from 8:00 a.m. to 4:40 p.m. Monday through Friday, excluding holidays.

All records shall remain confidential and shall be retained by the District. Compliance with this requirement shall be done at AT&T Mobility's expense upon execution of Permit.

11. AT&T Mobility and/or the Permitted Parties shall maintain the site in serviceable condition to ensure the safety of the general public and prevent unauthorized ingress/egress through duration of project. At the completion of the project, all materials and construction-related debris shall be removed and any damage to District facilities associated with this activity shall be completed, according to District standards, and the damaged facilities shall be returned to the District in their original condition to their prior non-damaged state at no cost to the District.

12. Should AT&T Mobility or the Permitted Parties not return subject site to as near the original condition as practicable, District shall so restore property at the sole cost and expense of AT&T Mobility. The site shall be subject to inspection and approval by a District representative prior to release of conditions of this Permit.

13. If it is determined that contamination or hazardous materials, solid or liquid wastes, have been discharged or buried and are found present in the existing soil or surrounding soil solely as a result of AT&T Mobility's occupancy under this Permit, AT&T Mobility and/or the Permitted Parties shall be responsible for the removal of contaminated and/or hazardous materials as required by government agencies with jurisdiction (Agency) and in accordance with all applicable governmental regulations and restoration of the site to the satisfaction of the Agency at no cost to the District.

14. Vehicular access, including critical path for equipment mobilization and parking on the District's property shall be as noted on the attached Exhibit "A". Parking of work vehicles must be directly adjacent to the fence of the City property. The speed limit along the critical path shall be maintained at no more than 5 miles per hour at all times even after school operating hours, due to before and after school programs, with no exceptions. Any proposed realignment or modification of use or area limits is subject to prior approval and permission by the District in writing.

15. AT&T Mobility and/or the Permitted Parties and its successors in interest shall provide all approved traffic control plans delineating construction vehicular routes and shall coordinate with the District any impact to the school bus route drops and school site activities that relate to the construction schedule throughout the duration of the project and school year.

16. AT&T Mobility and/or the Permitted Parties and its successors in interest shall be responsible for all erosion control measures required for compliance with the general storm water Permit criteria for work associated with construction activities. All work and preventive storm water measures associated with this requirement shall be completed at the sole cost and expense of the Permitted Parties and must be approved by the District prior to start of installation of monitoring equipment.

17. In the event of a dispute arising out of this agreement, the prevailing party shall be entitled to its reasonable attorney's fees and costs to prosecute or defend such dispute. Such fees and costs include those from the inception of the dispute through final judgment and include attorneys fees (in-house or by independent contract), consultant fees and any and all other court, process, reporter, copying, postage, and other fees associated with the dispute.

18. Neither AT&T Mobility and/or the Permitted Parties shall use any pesticide, herbicide or any other such potentially toxic or hazardous material without prior written consent of the District.

19. This Permit is revocable at any time by the District. It is mutually agreed that the District shall not be obligated for any consequential damages, loss, financial or otherwise, collectively "claims" which may be incurred by AT&T Mobility and/or the Permitted Parties as a result of termination of this Permit, and further, that AT&T Mobility expressly waives any claims for which AT&T Mobility might incur as a result of termination of this Permit.

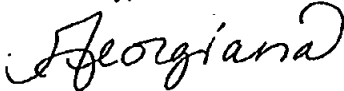
20. The consideration for said encroachment is \$300.00 per month in advance, for each month AT&T Mobility and/or the Permitted Parties occupy the site (\$3,600.00 for the 12-month period of this encroachment permit), plus a one-time initial nonrefundable payment of \$5,000.00. A check in the amount of \$8,600.00 is due and payable to the San Diego Unified School District prior to authorization and issuance of such permit.

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Please acknowledge your agreement with the foregoing terms and acceptance of items 1 through 20 inclusive by signature below. Return: 1) original signed Permit together with 2) a copy of your Certificate of Insurance and the applicable 3) State Contractor's License to this office prior to execution of this Permit 4) AT&T Mobility shall certify in writing that all of its employees and all subcontractor's employees, present or new hires, have not been convicted of a serious or violent felony (as defined in Education Code section 45122.1) or is awaiting adjudication of same. This certification shall be provided by AT&T Mobility to the District prior to any of AT&T Mobility's and/or the Permitted Parties coming in contact with any District pupils and 5) a check in the amount of \$8,600.00 made payable to San Diego Unified School District, for execution by the appropriate staff. A fully executed duplicate-original of the Permit will be returned to you for your files. If you have questions or need additional information about this agreement, please contact me at (858) 637-6242.

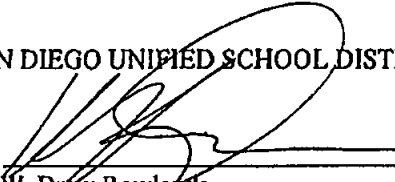
Sincerely,



Georgiana Becker
Real Estate Specialist

ACKNOWLEDGED AND ACCEPTED:

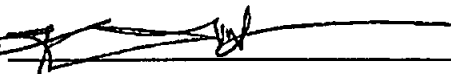
SAN DIEGO UNIFIED SCHOOL DISTRICT

By: 
W. Drew Rowlands
Executive Director, Auxiliary Services

Date: 4/18/11

AT&T MOBILITY
New Cingular Wireless PCS, LLC,
a Delaware limited liability company

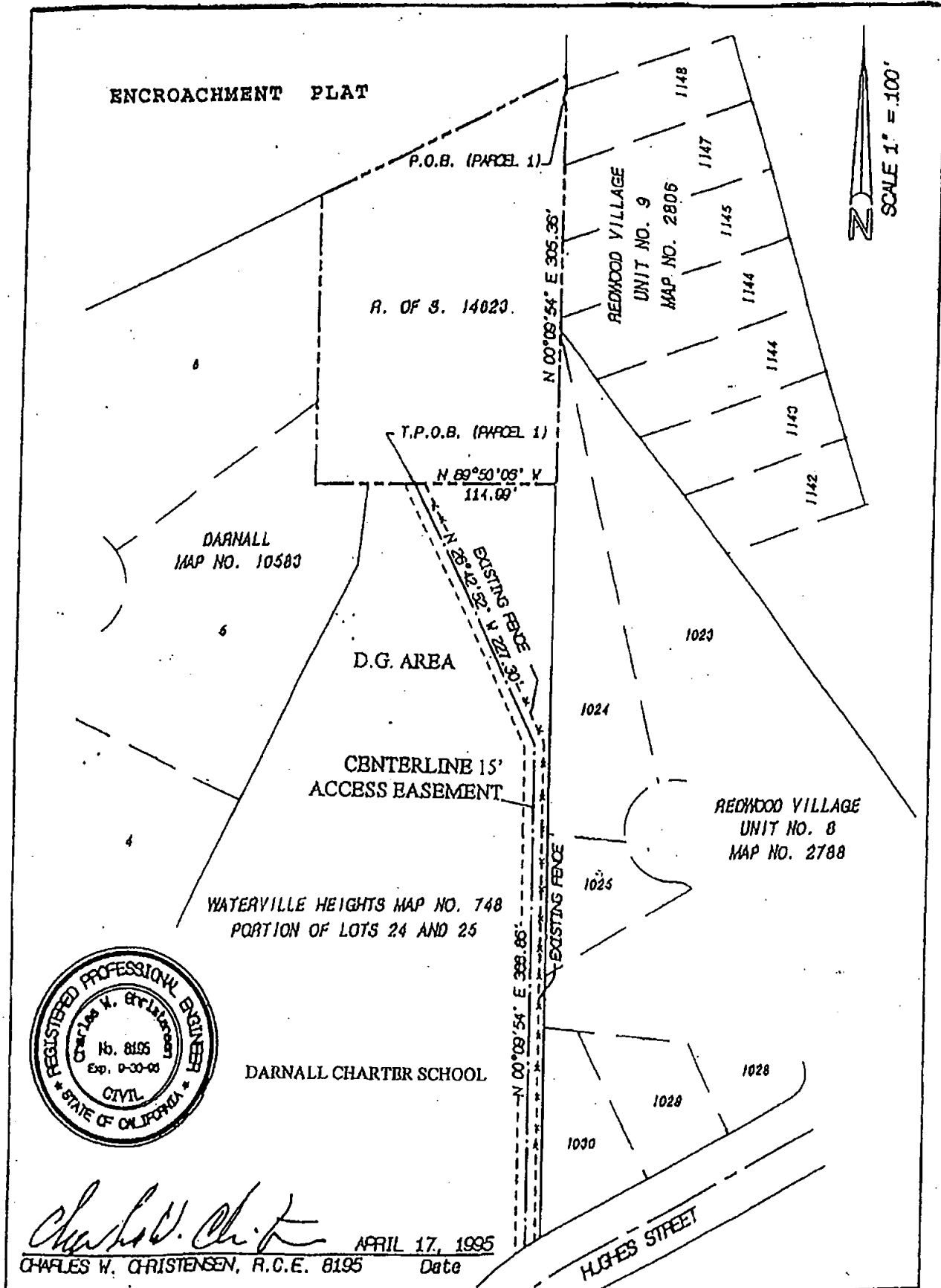
By: AT&T Mobility Corporation
Its: Managing Member

By: 

Date: 4/12/11

RE OB ENCROACHMENTS DARNALL AT&T

EXHIBIT A



Charles W. Christensen
 APRIL 17, 1995
 CHARLES W. CHRISTENSEN, R.C.E. 8195 Date



CHRISTENSEN
ENGINEERING
& SURVEYING

EXHIBIT B

7888 SILVERTON AVENUE, SUITE J
SAN DIEGO, CALIFORNIA 92126

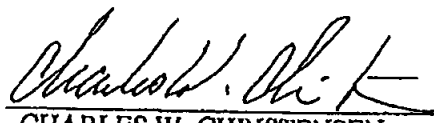
PHONE (858) 271-9901 • FAX (858) 271-8912

ENCROACHMENT PERMIT BETWEEN
NEW CINGULAR WIRELESS PCS LLC
AKA AT&T MOBILITY AND
SAN DIEGO UNIFIED SCHOOL DISTRICT

AN ACCESS AND UTILITY BASEMENT 15 FEET IN WIDTH LYING WITHIN ALL THOSE PORTIONS OF LOTS 24 AND 25 OF WATERVILLE HEIGHTS ACCORDING TO MAP NO. 748, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, FILED APRIL 22, 1893 IN THE OFFICE OF THE RECORDER OF SAN DIEGO COUNTY, CALIFORNIA, LYING WITHIN THE BOUNDARIES OF LANDS CONVEYED TO THE SAN DIEGO UNIFIED SCHOOL DISTRICT BY DEED RECORDED FEBRUARY 7, 1952 IN BOOK 4365, PAGE 428, OFFICIAL RECORDS IN SAID COUNTY RECORDERS OFFICE THE CENTERLINE OF SAID 15 FOOT BASEMENT WHICH IS DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EASTERLY LINE OF SAID MAP OF WATERVILLE HEIGHTS AT THE INTERSECTION OF LOTS 1148 AND 1149 OF REDWOOD VILLAGE UNIT NO. 9, ACCORDING TO MAP THEREOF NO. 2806 AS SHOWN ON RECORD OF SURVEY MAP 14623 FILED IN THE OFFICE OF THE COUNTY RECORDER AUGUST 23, 1994; THENCE SOUTH $00^{\circ} 09' 54''$ WEST 305.36 FEET; THENCE NORTH $89^{\circ} 50' 06''$ WEST 114.99 FEET TO THE TRUE POINT OF BEGINNING; THENCE SOUTH $26^{\circ} 42' 52''$ EAST 227.30 FEET; THENCE SOUTH $00^{\circ} 09' 54''$ WEST 388.86 FEET TO AN INTERSECTION WITH THE NORTHERLY LINE OF HUGHES STREET. THE SIDELINES OF SAID BASEMENT TO BE LENGTHENED OR SHORTENED TO TERMINATE IN THE SOUTH AT THE NORTHERLY LINE OF HUGHES STREET AND AT THE NORTH IN A LINE WHICH BEARS NORTH $89^{\circ} 50' 06''$ WEST AS SHOWN ON SAID RECORD OF SURVEY NO. 14625.




CHARLES W. CHRISTENSEN
R.C.E. 8195 (EXP 9/30/96)

ACKNOWLEDGMENT

State of California
County of San Diego)

On 4/12/2011 before me, A.B. Connolly, notary public
(insert name and title of the officer)

personally appeared Kevin Mc Gee
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

A.B. Connolly

(Seal)

