

IN THE BOARD OF SUPERVISORS  
COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA

\_\_\_\_\_ day \_\_\_\_\_, 20

PRESENT: Supervisors

ABSENT:

RESOLUTION NO. \_\_\_\_\_

RESOLUTION AUTHORIZING THE DIRECTOR OF THE DEPARTMENT OF PLANNING AND BUILDING TO EXECUTE AN AGREEMENT TO SUBORDINATE THE COUNTY'S AFFORDABLE HOUSING AGREEMENT FOR THE CIDER VILLAGE PROJECT IN NIPOMO, CONDITIONAL USE PERMIT DRC2005-00196, AS REQUIRED BY THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, TO ALLOW THE DEVELOPER TO REFINANCE ITS EXISTING LOAN

The following resolution is hereby offered and read:

**WHEREAS**, the County of San Luis Obispo ("County") sees a need to promote and protect decent and suitable housing and community development opportunities for the residents of this county; and

**WHEREAS**, on April 27, 2006, the San Luis Obispo County Planning Commission approved Conditional Use Permit DRC2005-00011 to Global Premier Development, Inc., to allow for the establishment of a 40-unit affordable housing project that includes a density bonus, and

**WHEREAS**, pursuant to the conditions of approval of the Conditional Use Permit for the Project and Section 22.12.070 of the County's Land Use Ordinance, on March 6, 2007 the County and Cider Village Associates, a California Limited Partnership (hereinafter referred to as "Cider Village"), through its general partners, Global Premier Development, Inc., and the Foundation for Affordable Housing V, Inc., executed "Agreement to Provide Housing Units for

Persons and Families of Very Low Income or Lower Income,” which was recorded in the County Clerk-Recorder’s Office as Document number 2009-016080 (Exhibit A); and

**WHEREAS**, Cider Village wishes to refinance its existing loan with a Section 207/223(f) loan secured by the Federal Housing Administration and U.S. Department of Housing and Urban Development, hereinafter “HUD,” to take advantage of lower interest rates and to pay for development-related expenses; and

**WHEREAS**, HUD requires all junior loans and recorded agreements on title to the subject property to subordinate their agreements to HUD’s loan; and

**WHEREAS**, the County wishes to continue to support the provision of affordable housing in the county by agreeing to subordinate its affordable housing agreement to HUD’s loan and allow the developer Global Premier to refinance their permanent loan with HUD for the Cider Village Affordable Apartments in Nipomo, CA.

**NOW, THEREFORE BE IT RESOLVED AND ORDERED** by the Board of Supervisors of the County of San Luis Obispo, State of California, as follows:

1. That the recitals listed above are true and correct.

2. On behalf of the County of San Luis Obispo, the Director of Planning and Building is hereby authorized to execute an agreement, in a form approved by County Counsel, to subordinate the March 6, 2007 Agreement to Provide Housing Units for Persons and Families of Very Low Income or Lower Income, entered into between the County and Cider Village Associates, a California Limited Partnership, recorded in the County Clerk-Recorder’s Office as Document number 2009-016080 and attached hereto as Exhibit A and incorporated herein by reference, to a Section 207/223(f) loan secured by Federal Housing Administration and the U.S. Department of Housing and Urban Development.

Upon motion of Supervisor \_\_\_\_\_, seconded by Supervisor \_\_\_\_\_, and  
on the following roll call vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAINING:

the foregoing resolution is hereby adopted.

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Chairman of the Board of Supervisors  
of the County of San Luis Obispo,  
State of California

ATTEST

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County Clerk and Ex-Officio Clerk  
of the Board of Supervisors,  
County of San Luis Obispo,  
State of California

[SEAL]

APPROVED AS TO FORM AND LEGAL EFFECT:

WARREN R. JENSEN  
County Counsel



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By: Whitney McDonald, County Counsel

Dated: March 5, 2012

EXHIBIT A

RECORDING REQUESTED BY:

County of San Luis Obispo

AND WHEN RECORDED MAIL TO:

Clerk of the Board of Supervisors  
County of San Luis Obispo  
County Government Center  
San Luis Obispo, California 93408

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APN 092-130-043

AGREEMENT TO PROVIDE HOUSING UNITS FOR  
PERSONS AND FAMILIES OF VERY LOW INCOME  
OR LOWER INCOME

THIS AGREEMENT is made and entered into this 6<sup>th</sup> day of March,  
2007, by and between CIDER VILLAGE ASSOCIATES, a California Limited  
Partnership, hereinafter referred to as "Developer," and the COUNTY OF SAN LUIS  
OBISPO, a political subdivision of the State of California, hereinafter referred to as  
"County."

WITNESSETH:

WHEREAS, Developer is record owner of that certain real property (hereinafter  
referred to as "Developer's Property") located in the County of San Luis Obispo, State  
of California, which is more particularly described in Exhibit A attached hereto and  
incorporated by reference herein as though set forth in full; and

WHEREAS, Developer proposes to develop a forty (40) unit residential  
development on Developer's Property known as Conditional Use Permit DRC2005-  
00011 (hereinafter referred to as the Project); and

ck. title rpt  
Revised February 8, 2007

EXHIBIT A

WHEREAS, Developer represents that is has received an allocation of federal tax credits from the California Tax Credit Allocation Committee under Internal Revenue Code Section 42 and pursuant to Internal Revenue Code Section 42(h)(6) will be required to enter into a regulatory agreement to maintain the residential units to be developed on Developer's property at affordable rent levels as described in paragraph 6 below for a period of fifty-five (55) years; and

WHEREAS, as proposed and agreed to by Developer in exchange for a density bonus or other incentives from the County and as a condition of approval of said conditional use permit by County, Developer is required by condition 12 of the conditions of approval of the conditional use permit to enter into an agreement with the County to provide forty (40) residential units within the Project (hereinafter referred to as the Affordable units) as new dwelling units which will be affordable housing for rental to persons and families of very low income or lower income as defined in Health and Safety Code sections 50105 or 50079.5, respectively, for a continuous period of fifty-five (55) years pursuant to the provisions of Sections 22.12.010 through 22.12.070 of the San Luis Obispo County Code and sections 65915 through 65918 of the California Government Code; and

WHEREAS, by the execution of this agreement by Developer and County, and the subsequent performance of the obligations of this agreement by Developer, Developer will have satisfied the requirement for an agreement set forth in the condition of approval of the conditional use permit.

NOW, THEREFORE, in consideration of County approval of a density bonus or other incentives for Conditional Use Permit DRC2005-00011, and the benefits

EXHIBIT A

conferred thereby on Developer and Developer's Property, and in further consideration of the mutual promises, covenants and conditions herein contained and the substantial public benefits to be derived therefrom, the parties hereto agree as follows:

1. Location of the residential units. Developer agrees to construct and place the forty (40) residential units to be provided and rented pursuant to this agreement within the residential development located on Developer's Property which is described in Exhibit A attached hereto and incorporated by reference herein as though set forth in full. Developer shall comply with all applicable County ordinances and regulations including those regulating land use and construction permits.

2. Developer to provide affordable units. Within the time period set forth in paragraph 9 below, Developer shall construct, provide, and rent all of the forty (40) residential units within the residential development on Developer's Property to persons and families of very low income or lower income as defined in sections 50105 or 50079.5, respectively, of the Health and Safety Code of the State of California, the provisions of which are incorporated by reference herein as though set forth in full.

3. Continued availability of residential units. The residential units provided as rentals under this agreement shall be subject to the long-term housing affordability provisions described in San Luis Obispo County Code Section 22.12.070D for a continuous period of fifty-five (55) years following the date of initial occupancy of each residential unit as required by the provisions of San Luis Obispo County Code Sections 22.12.040 and 22.12.070 and the conditional use permit referred to above.

4. Selection of tenants. The selection of tenants for the affordable units (household) shall be made from applicants on the Housing Authority of the City of San

Luis Obispo=s (hereinafter referred to as the AAuthority@) waiting list or from applicants the Developer has submitted to the Authority (or such other agency as may be designated in writing by the Director of Planning and Building) to be screened for eligibility and that are certified as income qualified pursuant to paragraph 2 above. As used in this agreement, the term Ahousehold@ shall mean the occupants (excluding minors) of each affordable unit who contribute to the household income.

5. Continuing eligibility of tenants. Tenant incomes shall be recertified once each year. Each tenant shall be notified in writing by Developer at least sixty (60) days in advance of the impending recertification. The notification shall require the tenant to submit to the certifying entity (as identified in paragraph 4 above) a declaration of income within thirty (30) days in a form approved by the Director of Planning and Building (hereinafter referred to as the "Planning Director"). The certifying entity shall verify the accuracy of the declaration, certify the tenant=s income accordingly and notify the tenant in writing of the certification.

6. Affordable rent. The rent level of the forty (40) affordable units to be developed on Developer=s Property shall be restricted as follows:

(a) Four (4) units shall be restricted to rent levels the U.S. Department of Housing and Urban Development (HUD) establishes as "affordable" only to persons with household incomes not exceeding 30% of the Area Median Income.

(b) Four (4) units shall be restricted to rent levels HUD establishes as "affordable" only to persons with household incomes not exceeding 40% of the Area Median Income.

(c) Twenty (20) units shall be restricted to rent levels HUD establishes as “affordable” only to persons with household incomes not exceeding 50% of the Area Median Income.

(d) Twelve (12) units shall be restricted to rent levels HUD establishes as “affordable” only to persons with household incomes not exceeding 60% of the Area Median Income.

7. Reporting. Developer shall report annually in writing to County, in a form acceptable to the Planning Director, on the occupancy of the affordable units. The report shall include at a minimum for each affordable unit the rent paid, the household income, and the household size. The adult members of the household shall be identified by name. The County shall maintain the confidentiality of such personal information to the extent permitted by law, and such information shall be used only for necessary audit and administrative purposes.

8. Maintenance of affordable units. The affordable units are to be maintained in a reasonable and habitable condition. The affordable units shall be maintained to no lesser standard than that which generally prevails in other housing units of the Project, and the tenants of the affordable units shall be entitled to no lesser degree of rent inclusive benefits, including without limitation parking privileges, storage privileges, utility services, recreational facilities, or other advantages, than tenants of other housing units in the Project.

9. Time for performance. Developer shall construct, provide, and rent all forty (40) residential units required by this agreement to persons and families of very low income or lower income within three (3) years after the date of execution of this

agreement. Time is of the essence in carrying out the terms of this agreement.

Provided, however, that in the event good cause is shown, the Planning Director may extend the time for completion and rental of the residential units under this agreement.

The Planning Director shall be the sole and final judge as to whether or not good cause has been shown to entitle Developer to an extension.

10. Indemnification. The Developer shall defend, indemnify and save harmless the County of San Luis Obispo, its officers, agents and employees from any and all claims, demands, damages, costs, expenses, judgments, or liability occasioned by the performance or attempted performance of the provisions hereof, or in any way arising out of this agreement, including, but not limited to, those predicated upon theories of violation of statute, ordinance or regulation, violation of civil rights, inverse condemnation, equitable relief, or any wrongful act or any negligent act or omission to act on the part of the Developer or of agents, employees, or independent contractors directly responsible to the Developer; providing further that the foregoing obligations to defend, indemnify and save harmless shall apply to any wrongful acts, or any passively negligent acts or omissions to act, committed jointly or concurrently by the Developer, the Developer's agents, employees, or independent contractors and the County, its agents, employees, or independent contractors. Nothing contained in the foregoing indemnity provisions shall be construed to require the Developer to indemnify the County against any responsibility or liability in contravention of Section 2782 of the Civil Code.

11. No assignment without consent. Developer shall not have the right to assign or transfer this agreement, or any part hereof, without the prior written consent of the County.

12. Binding on successors in interest. All provisions of this agreement shall be deemed an equitable servitude and covenants running with the land pursuant to California Civil Code Sections 1460 and 1468, and shall be binding on the parties hereto and their heirs, assigns and successors in interest. Any conveyance, transfer, or sale made by Developer of said property or any portion thereof shall be deemed to incorporate by reference, and be subject to, each of the provisions of this agreement.

13. Effect of waiver. County's waiver of the breach of any one term, covenant or provision of this agreement shall not be a waiver of a subsequent breach of the same term, covenant or provision of this agreement or of the breach of any other term, covenant or provision of this agreement.

14. Enforceability. If any term, covenant, condition or provision of this agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

15. Enforcement of provisions.

(a) In the event of a violation or an attempted violation of any of the terms, covenants, or restrictions of this agreement by Developer, the County shall give written notice thereof to Developer by United States first class mail.

(b) If such violation or attempted violation is not corrected to the satisfaction of the County within fifteen (15) days after the date such notice is mailed, or

within additional time approved by the Planning Director, the County may, without further prior notice, declare in writing a default under this agreement effective on the date of such declaration of default.

(c) Any such declaration of default may be cause for appropriate action to be taken by the County including, but not limited to, seeking an injunction against any violation or attempted violation of this agreement, requesting judicial appointment of a receiver to take over and operate Developer=s Property in accordance with the terms, covenants, and restrictions of this agreement, seeking specific performance of the terms and provisions of this agreement, or seeking such other relief as may be appropriate.

16. Law governing and venue. This agreement has been executed and delivered in, and shall be interpreted, construed, and enforced pursuant to and in accordance with the laws of the State of California. All duties and obligations of the parties created hereunder are performable in the County of San Luis Obispo, and such County shall be that venue for any action, or proceeding that may be brought, or arise out of, in connection with or by reason of this agreement.

17. Notices. Unless otherwise provided, all notices herein required shall be in writing, and delivered in person or sent by United States first class mail, postage prepaid. Notices required to be given to County shall be addressed as follows: Director of Planning and Building, County of San Luis Obispo, County Government Center, Room 300, San Luis Obispo, California 93408. Notices required to be given to Developer shall be addressed as follows: Cider Village Associates, A California Limited Partnership, 5 Park Plaza, Suite 980, Irvine, California 92614, Attention: Wayne Dietz, Global Premier Development, Inc.

Provided that any party may change such address by notice in writing to the other party and thereafter notices shall be addressed and transmitted to the new address.

18. Developer not agent of County. Neither Developer nor any of Developer's agents or contractors are or shall be considered to be agents of County in connection with the performance of Developer's obligations under this agreement.

19. Entire agreement and modifications. This agreement sets forth the full and entire understanding of the parties regarding the matter set forth herein, and any other prior or existing understandings or agreements by the parties, whether formal or informal, regarding such matters are hereby superseded or terminated in their entirety. No changes, amendments, or alterations to the provisions of this agreement shall be effective unless in writing and executed by the parties hereto or their assigns and successors in interest.

20. Regulatory Agreement. Developer shall enter into a recorded Regulatory Agreement with the California Tax Credit Allocation Committee to maintain the residential units at the affordable rent levels described in paragraph 6 above for a period of fifty-five (55) years within twelve (12) months after County issuance of a certificate of occupancy for the residential units.

21. Agreement to be recorded. Developer and County intend and consent to the recordation of this agreement in the office of the County Recorder of the County of San Luis Obispo, and such recordation of this agreement shall serve as constructive notice of the obligations contained herein to be performed by the Developer and the successors in interest to all or any portion of Developer=s Property.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of  
the day and year first above written.

DEVELOPER

CIDER VILLAGE ASSOCIATES,  
a California Limited Partnership

By: GLOBAL PREMIER DEVELOPMENT, INC.,  
a California corporation  
its General Partner

By:   
its President

By:   
its Senior Vice President

By: FOUNDATION FOR AFFORDABLE  
HOUSING V, INC.,  
a California tax exempt public benefit  
corporation  
its General Partner

By:   
its PRESIDENT

By:   
its SECRETARY | TREASURER

COUNTY OF SAN LUIS OBISPO

By: **JERRY LENTHALL**  
Chairman of the Board of Supervisors

ATTEST:

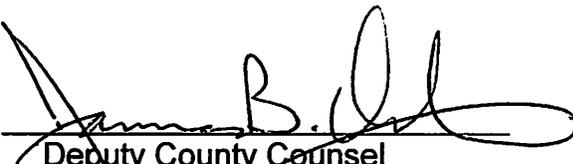
**JULIE L. RODEWALD**

\_\_\_\_\_  
Clerk of the Board of Supervisors

By: **C.M. CHRISTENSEN**  
\_\_\_\_\_  
Deputy Clerk

APPROVED AS TO FORM AND LEGAL EFFECT:

JAMES B. LINDHOLM, JR.  
County Counsel

By:   
\_\_\_\_\_  
Deputy County Counsel

Dated: February 13, 2007

APPROVED AS TO CONTENT:

VICTOR HOLANDA, AICP  
Director of Planning and Building

By:   
\_\_\_\_\_  
Dated: 2-15-07

[NOTE: This Agreement to Provide Housing Units for Persons and Families of Very Low Income or Lower Income will be recorded. All signatures to this agreement must be acknowledged by a notary.]

EXHIBIT A

STATE OF CALIFORNIA            )  
  ) ss.  
COUNTY OF SAN LUIS OBISPO)

On March 6, 2007, before me, **C.M. Christensen**, Deputy County Clerk-Recorder, County of San Luis Obispo, State of California, personally appeared **Jerry Lenthall**, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacities, and that by his signature on the instrument the person or the entity upon behalf of which the person acted, executed the instrument.

**WITNESS** my hand and official seal.

**JULIE L. RODEWALD**, County Clerk-Recorder and Ex-Officio Clerk of the Board of Supervisors

By:   
Deputy County Clerk-Recorder

(SEAL)

**EXHIBIT A**

THAT PORTION OF LOT 11 OF THE MESA GRANDE TRACT, IN THE COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA, ACCORDING TO MAP FILED FOR RECORD SEPTEMBER 19, 1887 IN BOOK A, PAGE 18 OF MAPS, IN THE OFFICE OF THE RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST WESTERLY CORNER OF SAID LOT; THENCE NORTH 55 ½ DEGREES EAST, ALONG THE NORTHWESTERLY LINE OF SAID LOT, 136.84 FEET TO THE MOST WESTERLY CORNER OF THE PROPERTY CONVEYED TO JACK R. DRUM, ET UX., BY DEED DATED AUGUST 10, 1964 AND RECORDED AUGUST 18, 1964 IN BOOK 1311, AT PAGE 146, OF OFFICIAL RECORDS; THENCE SOUTH 34 DEGREES 16' EAST, ALONG THE SOUTHWESTERLY LINE OF THE PROPERTY SO CONVEYED, 962.83 FEET TO THE MOST SOUTHERLY CORNER THEREOF; THENCE SOUTH 61 DEGREES 43' WEST (RECORD SOUTH 61 DEGREES 30' WEST) ALONG THE SOUTHEASTERLY LINE OF SAID LOT 11, 137.65 FEET TO THE SOUTHERLY CORNER OF SAID LOT; THENCE NORTH 34 DEGREES 16' WEST, ALONG THE SOUTHWESTERLY LINE OF SAID LOT, 947.92 FEET (RECORD BEARING AND DISTANCE, NORTH 34 ½ DEGREES WEST, 949.08 FEET) TO THE POINT OF BEGINNING.

State of California )  
County of ORANGE )

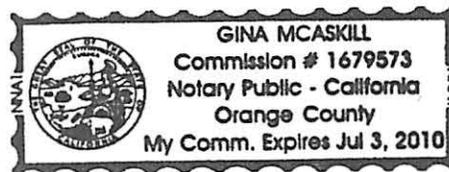
# CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

On FEBRUARY 8, 2007 before me, GINA MCASKILL, Notary Public,  
(here insert name and title of the officer)

personally appeared ANDREW HANNA

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) (s) 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.

WITNESS my hand and official seal.



Signature [Handwritten Signature]

(Seal)

### OPTIONAL INFORMATION

Although the information in this section is not required by law, it could prevent fraudulent removal and reattachment of this acknowledgment to an unauthorized document and may prove useful to persons relying on the attached document.

### Description of Attached Document

The preceding Certificate of Acknowledgment is attached to a document titled/for the purpose of \_\_\_\_\_

containing \_\_\_\_\_ pages, and dated \_\_\_\_\_.

The signer(s) capacity or authority is/are as:

- Individual(s)
- Attorney-in-Fact
- Corporate Officer(s) \_\_\_\_\_ Title(s)
- Guardian/Conservator
- Partner - Limited/General
- Trustee(s)
- Other: \_\_\_\_\_

representing: \_\_\_\_\_  
Name(s) of Person(s) or Entity(ies) Signer is Representing

### Additional Information

#### Method of Signer Identification

- Personally known to me
- Proved to me on the basis of satisfactory evidence:
  - form(s) of identification
  - credible witness(es)

Identification is detailed in notary journal on:

Page # \_\_\_\_\_ Entry # \_\_\_\_\_

Notary contact: \_\_\_\_\_

#### Other

- Additional Signer(s)
- Signer(s) Thumbprint(s)
- \_\_\_\_\_

State of California )  
County of ORANGE )

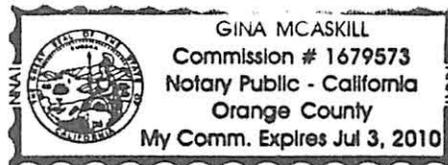
# CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

On FEBRUARY 8, 2007 before me, GINA MCASKILL, NOTARY PUBLIC,  
(here insert name and title of the officer)

personally appeared WAYNE DEITZ

personally known to me (or 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.

WITNESS my hand and official seal.



Signature [Handwritten Signature]

(Seal)

### OPTIONAL INFORMATION

Although the information in this section is not required by law, it could prevent fraudulent removal and reattachment of this acknowledgment to an unauthorized document and may prove useful to persons relying on the attached document.

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The preceding Certificate of Acknowledgment is attached to a document titled/for the purpose of \_\_\_\_\_

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The signer(s) capacity or authority is/are as:

- Individual(s)
- Attorney-in-Fact
- Corporate Officer(s) \_\_\_\_\_ Title(s)

- Guardian/Conservator
- Partner - Limited/General
- Trustee(s)
- Other: \_\_\_\_\_

representing: \_\_\_\_\_  
Name(s) of Person(s) or Entity(ies) Signer is Representing

#### Additional Information

##### Method of Signer Identification

- Personally known to me
- Proved to me on the basis of satisfactory evidence:
  - form(s) of identification
  - credible witness(es)

Identification is detailed in notary journal on:

Page # \_\_\_\_\_ Entry # \_\_\_\_\_

Notary contact: \_\_\_\_\_

##### Other

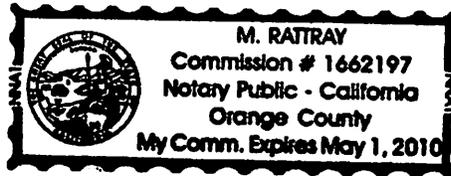
- Additional Signer(s)
- Signer(s) Thumbprint(s)

ACKNOWLEDGMENT

STATE OF CALIFORNIA

COUNTY OF ORANGE

On February 8, 2007, before me, M. Rattray, Notary Public, personally appeared Thomas E. Willard, personally known to me (~~or 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.



WITNESS my hand and official seal.

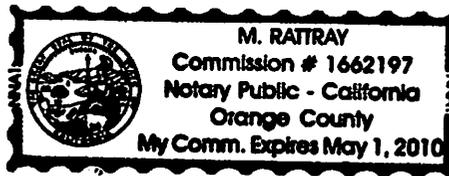
Signature M. Rattray \_\_\_\_\_ (Seal)

ACKNOWLEDGMENT

STATE OF CALIFORNIA

COUNTY OF ORANGE

On February 8, 2007 before me, M. Rattray, Notary Public, personally appeared Deborah A. Willard, personally known to me (~~or 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.



WITNESS my hand and official seal.

Signature

M. Rattray

(Seal)