

ORDINANCE NO. XXXX

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FULLERTON, CALIFORNIA, APPROVING THE FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT BETWEEN THE CITY OF FULLERTON AND GLC FULLERTON LLC CONCERNING GOODMAN LOGISTICS CENTER, FULLERTON PROJECT

PRJ2019-00173 – LRP-2019-0084

APPLICANT: GOODMAN LOGISTICS CENTER, FULLERTON LLC
PROPERTY OWNER: GOODMAN LOGISTICS CENTER, FULLERTON LLC

RECITALS

WHEREAS, the City approved an application and Parties entered into a Development Agreement on November 17, 2020 for the property at 2001 East Orangethorpe Avenue, more specifically described as: Orange County Assessor's Parcel Nos. 073-120-31 and 073-120-33.

WHEREAS, Government Code Section 65868 provides that the Parties may amend the Development Agreement upon mutual agreement following a Public Hearing before the Planning Commission and City Council.

WHEREAS, the Planning Commission and City Council of the City of Fullerton, in compliance with the requirements of Fullerton Municipal Code (FMC) Chapter 15.76, have each held a duly noticed public hearing for the First Amendment to the Development Agreement.

WHEREAS, the Planning Commission recommended approval to the City Council by adoption of Planning Commission Resolution No. PC-2021-17.

WHEREAS, the City of Fullerton previously certified Environmental Impact Report (EIR) (SCH No. 2020031172) pursuant to the requirements of the California Environmental Quality Act (CEQA) (California Public Resources Code, Sections 21000 et seq.) and the Guidelines for the Implementation of CEQA (State CEQA Guidelines) (Title 14, California Code of Regulations, Chapter 3, Section 15000 et seq.) which identified, analyzed and mitigated the potential environmental effects associated with the construction and implementation of the project. The EIR evaluated the overall project including the Development Agreement. The First Amendment to the Development does not cause any new or increased significant environmental effects nor does it identify new information of substantial importance.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF FULLERTON, ORDAINS AS FOLLOWS:

1. In all respects as set forth in the Recitals of the Ordinance.
2. The City Council, pursuant to Government Section 65867.5(b) finds as follows:
 - a. Finding: the legislative body shall not approve a development agreement amendment unless the legislative body finds that the provisions of the agreement, as amended, consistent with the general plan and any applicable specific plan.

Fact: The First Amendment to the Development Agreement reduces the extent of the area to be acquired by the City for the water well easement. The City's efforts with respect to the water well easement support The Fullerton Plan Goal 19 for "an adequate, safe, and reliable water supply" and Overarching Policy OAP4 to "seek opportunities for increased efficiency and effectiveness". Identification of technologies requiring a smaller footprint for operation will enable the City to continue its efforts at a reduced land acquisition cost.

THEREFORE, CITY COUNCIL DOES HEREBY APPROVE SAID FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT.

ADOPTED BY THE FULLERTON CITY COUNCIL ON JULY 20, 2021.

Bruce Whitaker
Mayor

ATTEST:

Lucinda Williams, MMC
City Clerk

Date

Attachment A: Draft First Amendment to the Development Agreement between City of Fullerton and GLC Fullerton LLC

**FIRST AMENDMENT
TO
DEVELOPMENT AGREEMENT**

THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT ("First Amendment") is made as of June ____, 2021 by the CITY OF FULLERTON ("City"), a California municipal corporation, and GLC FULLERTON LLC ("Developer"), collectively referred to herein as "Parties."

WHEREAS, Developer is fee simple owner of that certain real property located at 2001 E. Orangethorpe Avenue (Assessor Parcel Numbers 073-120-31 and -33) in the City of Fullerton, County of Orange, State of California; and

WHEREAS, the Parties entered into a Development Agreement on November 17, 2020 (the "Development Agreement"), which Development Agreement was subsequently recorded with the Office of the County Recorder of the County of Orange (Instrument No. 2021000378524); and

WHEREAS, the Parties now desire to amend the Development Agreement in order to (1) reduce the water well easement area as set forth in Exhibit E to the Development Agreement; and (2) reduce the fair market value of the water well easement area reflected in Exhibit C to the Development Agreement in order to correspond to the reduced size of the water well easement area.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. The fair market value of the water well easement area is hereby revised from \$590,739 to \$406,611. The revision to the fair market value of the water well easement area is reflected in underline/strikeout text in Exhibit C of this First Amendment. No other changes to Exhibit C are made as part of this First Amendment. Exhibit C to the Development Agreement is hereby replaced, in its entirety, with Exhibit C of this First Amendment.

2. Exhibit E to the Development Agreement showing the water well easement area is hereby replaced, in its entirety, with Exhibit E of this First Amendment.

3. Except as hereby amended, the Development Agreement is hereby ratified and confirmed, and continues in full force and effect.

[Signatures on Next Page]

“DEVELOPER”

GLC Fullerton LLC

By: _____

Name: _____

Title: _____

“CITY”

CITY OF FULLERTON, a municipal
corporation

Bruce Whitaker, Mayor

ATTEST:

Lucinda Williams, City Clerk

APPROVED AS TO FORM:

Richard D. Jones, City Attorney

Sean Matsler, Attorney for Developer

Exhibit C

Public Benefits

The Developer will provide to City the following:

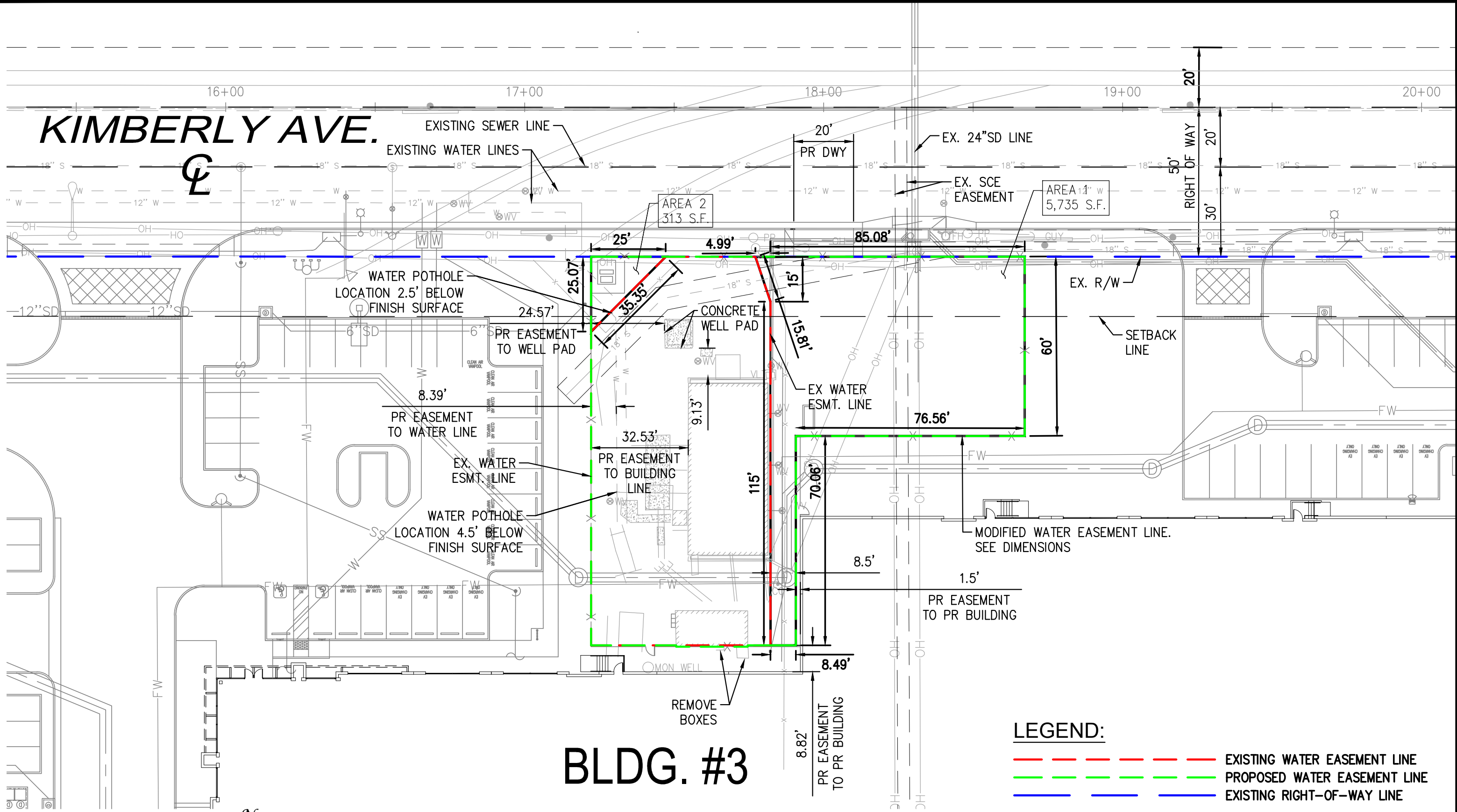
- **Tree Shading.** City of Fullerton Municipal Code (“FMC”) Section 15.40.040(F)(2)(b) provides that trees with a total shaded area equaling a minimum of 50% of the square footage of an open parking area must be provided and distributed throughout an open parking area. In satisfaction of FMC 15.40.040(F)(2)(b), Developer shall plant twelve (12) thirty-six-inch (36”) box trees in approximately the locations shown in Exhibit D just outside the Project’s truck court parking area. Developer may utilize the Project’s truck court area for automobile parking without the tree screening requirement.
- **Traffic Impact Fee Credit.** FMC Section 21.30.020 imposes Traffic Impact Fees for new industrial buildings. The City’s Traffic Impact Fee is assessed at \$0.35 per square foot for warehouse and \$0.98 per square foot for office space. In exchange for Developer’s construction of off-site transportation improvements and payment of those fair share traffic contributions set forth immediately below, the City agrees to provide Developer with a credit in the amount of 100% of Developer’s Traffic Impact Fee obligation.
- **Traffic Improvements.** The September 11, 2020 Traffic Analysis by Urban Crossroads identified certain improvements necessitated by the Project. Developer shall be responsible for constructing these improvements pursuant to the Engineer’s Letter dated October 14, 2020 subject to the following:
 - **New traffic signal at the intersection of State College Boulevard and Kimberly Avenue.** The Developer’s fair share shall not exceed \$400,000. The City shall reimburse Developer for Developer’s actual, reasonable, and documented costs to the extent these exceed \$400,000.
 - **Revisions to traffic signals at the intersection of Acacia Avenue and Orangethorpe Avenue.** Estimated cost of \$75,000.
 - **Revisions to traffic controls at the intersection of Kimberly Avenue and Acacia Avenue.** Estimated cost of \$35,000.
- **Improvements to Orangethorpe Avenue.** Developer shall make the improvements to Orangethorpe Avenue pursuant to the Engineer’s Letter dated October 14, 2020.
 - The parties agree to enter into an improvement and reimbursement agreement (the “Reimbursement Agreement”) whereby City will agree to establish a program in which there is the potential that Developer could be reimbursed for up to 100% of Developer’s actual, reasonable, and documented costs for the improvements made on (1) that portion of Orangethorpe Avenue south of the centerline between the intersections at Acacia on the western end, and the end of the property frontage on Orangethorpe Avenue on the eastern end, and (2) full width improvements between the eastern property corner on E. Orangethorpe Avenue and State College Blvd. (the “Improvements,” as shown on page four of this Exhibit C).

- The Reimbursement Agreement shall apply for ten years from the completion and acceptance by the City of the Improvements. Developer acknowledges that it might never be fully reimbursed, if at all.
 - The Reimbursement Agreement shall require the City to condition each discretionary action or applicable building permit application for the real property which abuts the Improvements to make a roughly proportionate payment to repay Developer's costs for the Improvements, provided that in no event shall the City be required to impose any payment requirement if doing so would constitute a "taking" or exceed any amount authorized by applicable law, including, but not limited to, the Mitigation Fee Act (Gov't Code § 66000 et seq.) or violate the takings clause of the United States or California Constitutions. *See Nollan v. California Coastal Comm'n*, 483 U.S. 825 (1987); *Dolan v. City of Tigard*, 512 U.S. 374 (1994). This requirement for a "roughly proportionate payment" would be satisfied if the City were to establish the amount of the repayment based upon either the lineal frontage of the real property or a methodology based on vehicle trips caused by the new development.
 - The parties will work cooperatively on the form and content of the Reimbursement Agreement such that it is executed prior to the completion and acceptance by the City of the Improvements.
- **Water Well Easement.** City currently has an easement over Developer's property which allows a water well. Developer agrees to increase the area covered by the easement. The additional easement area and the existing easement area are identified on Exhibit E. City agrees to pay Developer the fair market value of the additional easement area in five equal payments of 20% each, with the first such payment due no earlier than 30 days or later than 120 days after the final parcel map is recorded. Subsequent annual payments will be made on or before the anniversary date of the first payment. City and Developer agree that the fair market value of the additional easement area is ~~\$590,739~~\$406,611. The parties will work cooperatively on the form and content of the documentation to meet these requirements.
 - **Antenna Tower.** The parties acknowledge that the City currently owns a ground mounted tower which supports water well operations within the Easement and the Developer's proposed construction may negatively impact the successful continued operation of that antenna due to the height of the building adjacent to the tower. Developer will reimburse the City for up to \$27,000 of the City's reasonable costs in ensuring that the tower and communication facilities continue to serve their purposes. Such reasonable costs may include, but are not limited to, the cost to increase the height of the tower and/or moving the existing equipment to an alternate location, and related improvements.

- **Water Line Connections.** Developer will remove and replace the water lines and associated pipes, fittings, and valves between the City well and the water main within Kimberly Avenue. City shall design and Developer shall construct the pipeline connection.
- **Fire Department Contribution.** Developer will contribute \$750,000 to the City's Fire Department upon issuance of the first building permit for the Project.
- **Homage to KC Heritage.** Developer shall install a commemorative plaque or marker in the landscape area near the corner of Orangethorpe Avenue and Acacia Avenue or along the Orangethorpe frontage. This commemorative installation will include information about the manufacturing history of the site, which will be compiled in coordination with Fullerton Heritage.

Exhibit E

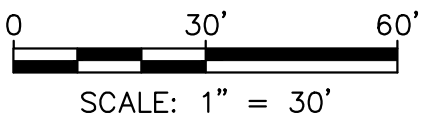
KIMBERLY AVE.



BLDG. #3

LEGEND:

- EXISTING WATER EASEMENT LINE
- PROPOSED WATER EASEMENT LINE
- EXISTING RIGHT-OF-WAY LINE



PROPOSED WATER EASEMENT EXHIBIT		<p>TAIT Since 1964</p>
GOODMAN LOGISTICS CENTER - FULLERTON FULLERTON, CA	PREPARED FOR: GOODMAN 5-25-2021	
701 N. Parkcenter Drive Santa Ana, CA 92705 p: 714/560/8200 f: 714/560/8211 www.tait.com		Los Angeles Rancho Cucamonga Sacramento Seattle
Boise Dallas Denver North Dakota		

EXHIBIT "A"

**LEGAL DESCRIPTION
FOR WATER EASEMENT PURPOSES**

THAT PORTION OF LAND, LYING WITHIN THE SOUTHEAST QUARTER OF SECTION 35, TOWNSHIP 3 SOUTH, RANGE 10 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE RANCHO SAN JUAN CAJON DE SANTA ANA, IN THE CITY OF FULLERTON, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 51, PAGE 7 OF MISCELLANEOUS MAPS, RECORDS OF THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ALONG THE SOUTHERLY RIGHT-OF-WAY LINE OF KIMBERLY AVENUE (50 FEET WIDE), SAID POINT BEING DISTANT NORTH 89°37'24" WEST 1581.98 FEET FROM THE INTERSECTION OF THE WESTERLY PROLONGATION OF SAID SOUTHERLY RIGHT-OF-WAY LINE OF KIMBERLY AVENUE AND THE NORTHERLY PROLONGATION OF THE EASTERLY RIGHT-OF-WAY LINE OF ACACIA STREET (80 FEET WIDE);

THENCE, CONTINUING ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE OF KIMBERLY AVENUE, SOUTH 89°37'24" EAST 145.07 FEET;

THENCE, LEAVING SAID SOUTHERLY RIGHT-OF-WAY LINE OF KIMBERLY AVENUE, SOUTH 00°22'36" WEST 60.00 FEET;

THENCE, NORTH 89°37'24" WEST 76.56 FEET;

THENCE, SOUTH 00°22'36" WEST 70.06 FEET;

THENCE, NORTH 89°37'24" WEST 8.49 FEET;

THENCE, NORTH 89°38'03" WEST 7.61 FEET;

THENCE, SOUTH 00°22'36" WEST 0.47 FEET;

THENCE, NORTH 89°37'24" WEST 23.93 FEET;

THENCE, NORTH 00°22'36" EAST 0.47 FEET;

THENCE, NORTH 89°38'03" WEST 28.46 FEET;

THENCE, NORTH 00°21'57" EAST 105.00 FEET;

THENCE, NORTH 00°22'36" EAST 25.07 FEET TO THE **POINT OF BEGINNING**.

CONTAINING A TOTAL AREA OF 13,514 SQUARE FEET, MORE OR LESS.

ALSO SHOWN IN EXHIBIT "B", ATTACHED HERewith AND MADE A PART HEREOF.

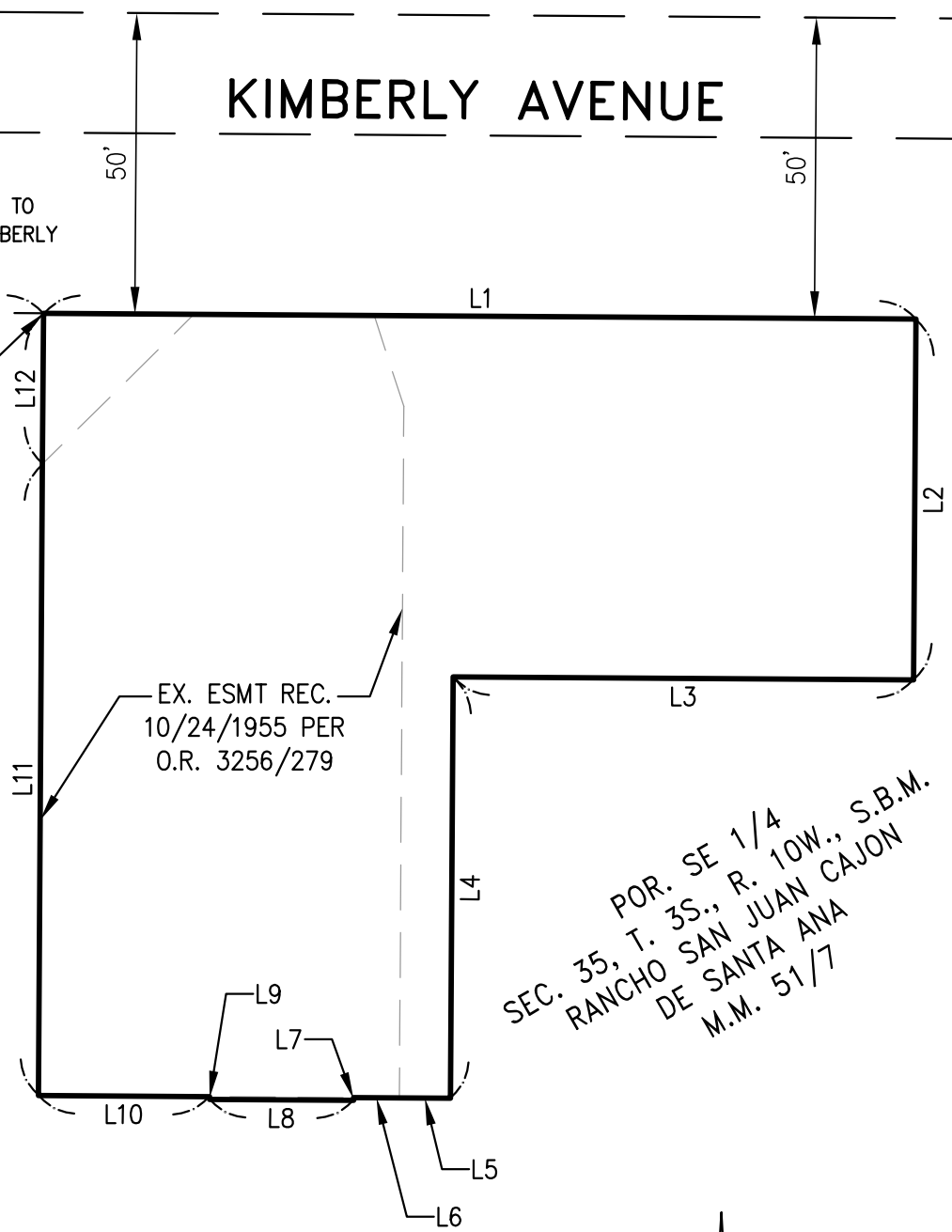
DATE

MICHAEL FURLONG, PLS 8899
LICENSE EXPIRES 12/31/2021

KIMBERLY AVENUE

← N 89°37'24" W 1581.98' TO
INT. S'LY R/W LINE KIMBERLY
AVE. & E'LY R/W LINE
ACACIA ST.


P.O.B.

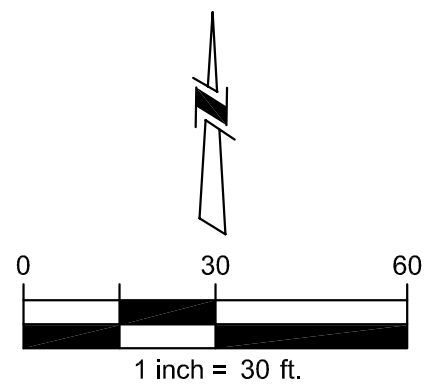


EX. ESMT REC.
10/24/1955 PER
O.R. 3256/279

SEC. 35, T. 3S., R. 10W., S.B.M.
RANCHO SAN JUAN CAJON
DE SANTA ANA
M.M. 51/7

LEGEND:

 PROPOSED WATER
EASEMENT PER THIS
INSTRUMENT
AREA=13,514 S.F.



LINE TABLE		
NUMBER	BEARING	LENGTH
L1	S89° 37' 24"E	145.07'
L2	S0° 22' 36"W	60.00'
L3	N89° 37' 24"W	76.56'
L4	S0° 22' 36"W	70.06'
L5	N89° 37' 24"W	8.49'
L6	N89° 38' 03"W	7.61'
L7	S0° 22' 36"W	0.47'
L8	N89° 37' 24"W	23.93'
L9	N0° 22' 36"E	0.47'
L10	N89° 38' 03"W	28.46'
L11	N0° 21' 57"E	105.00'
L12	N0° 22' 36"E	25.07'