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29-Jan-2020 2020-0005827
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TULARE COUNTY RECORDER

RECORDING REQUESTED BY:

AND WHEN RECORDED MAIL TO:

THIS SPACE FOR RECORDER'S USE ONLY

**THIS PAGE ADDED TO PROVIDE ADEQUATE SPACE FOR RECORDING INFORMATION
(ADDITIONAL RECORDING FEE APPLIES)**

12/04

**SECOND AMENDED AND RESTATED CONDITIONAL ZONING AGREEMENT
NO. 2005-02**

THIS SECOND AMENDED AND RESTATED AGREEMENT is made this 9th day of JAN 2020, by DIMELLO TOSCANA, LLC, hereinafter called "DiMello", and THEODORE CALDWELL, hereinafter called "Caldwell", and collectively referred to as the "First Parties" and the CITY OF VISALIA, a political subdivision of the State of California, hereinafter called the "City" or the "Second Party."

WITNESSETH

WHEREAS, on March 14, 2006, Fred Machado and the City entered into Conditional Zoning Agreement No. 2005-02 ("CZA No. 2005-02") which required certain conditions to the rezoning of certain property situated in the City of Visalia, hereinafter referred to as "the Property" which is more particularly described in Exhibit I of this Agreement; and

WHEREAS, prior to CZA No. 2005-02, the Property was zoned as specified in Item (a) of Exhibit I; and

WHEREAS, as part of the approval process and adoption of CZA No. 2005-02, the Property was rezoned to the classifications further specified in Item (a) of Exhibit I; and

WHEREAS, during the hearings held before the City Council of the City of Visalia, State of California, and after having considered the matter presented, certain conditions were imposed and included in CZA No. 2005-02 so as not to create any problems inimical to the health safety and the general welfare of the City of Visalia and its residents; and

WHEREAS, CZA No. 2005-02 was entered into between Fred Machado and the City of Visalia, and recorded with the Tulare County Recorder on March 21, 2006, as Document No. 2016-0029745; and

WHEREAS, subsequent to the adoption of CZA No. 2005-02, title to the commercial component of the Property was transferred to DiMello ("DiMello Property") and title to the residential component of the Property was acquired by Wathen Castanos Visalia 5516, LLC, ("Wathen Castanos") ("Wathen Castanos Property"); and

WHEREAS, in response to a development application submitted by Wathen Castanos to proceed with development of the Wathen Castanos Property, on May 13, 2016, CZA No. 2005-02 was required to be amended and restated in its entirety and all of the parties in interest entered into Amended And Restated Conditional Zoning Agreement No. 2005-02 ("Amended CZA 2005-02") in order to reflect then existing legal ownership of the separate Property components as well as address and revise certain conditions to accommodate Wathen Castanos and allow development of the Wathen Castanos Property to move forward; and

WHEREAS, the Amended CZA 2005-02 was entered into between DiMello Tuscan, LLC [sic], Wathen Castanos Visalia 5516, LLC, and the City of Visalia, and recorded with the Tulare County Recorder on May 20, 2016, as Document No. 2016-0028860; and

WHEREAS, development of the Wathen Castanos Property is now fully completed, sold and all obligations and conditions required by Amended CZA No. 2005-02 pertaining to Wathen Castanos and the Wathen Castanos Property have been satisfied and met; and

WHEREAS, with the completion of its development and transfer of all its interests in the Wathen Castanos Property, Wathen Castanos is no longer a party in interest to the Amended CZA No. 2005-02, and therefore no longer responsible for any further development of the Property; and

WHEREAS, DiMello, through its designated agent Caldwell, wishes to complete the remaining development of the Property and has submitted an application to revise certain conditions of Amended CZA No. 2005-02, including specific land uses, phasing and improvement requirements as set forth in Exhibit I, together with a request for a rezoning of the DiMello Property from its present classification to the classifications specified in Item (b) of Exhibit I; and

WHEREAS, as part of its application, DiMello has submitted a specific Development Plan for City review and approval in order to satisfy Item (e)(3) of Exhibit I, as illustrated in Exhibit "2" (site plan exhibit); and

WHEREAS, it is deemed necessary to execute this "Second Amended and Restated Conditional Zoning Agreement No. 2005-02" in order to properly reflect current ownership, conditions and remaining obligations for completing development of the Property, and more properly the DiMello Property.

NOW, THEREFORE, IT IS MUTUALLY UNDERSTOOD AND AGREED that inasmuch as the rezoning specified in Item (b) of Exhibit I has been granted subject to the conditions specified in the following paragraphs:


1. That this "Second Amended and Restated Conditional Zoning Agreement No. 2005-02 shall replace and supersede those portions of the Amended CZA No. 2005-02 dealing with the DiMello Property, and that those portions of the prior Amendment concerning the land identified as "Granville Property" in that prior Amendment are not intended to be altered or modified by this further Amendment.
2. That Exhibit I, as completed and attached hereto, is incorporated into and made a part of this Agreement with the same force and effect as if fully set forth herein.
3. That First Parties shall comply with the additional conditions, if any, specified in Item (e) of Exhibit I of this Agreement.
4. In the event First Parties, or any successor in interest to First Parties, or any person in lawful possession of the Property described in Item (d) of Exhibit I violates or fails to perform any of the conditions of this Agreement within, thirty (30) days after notice thereof has been provided in accordance with Section 5, the City Council of the Second Party may instruct the City Attorney of Second Party to institute legal proceedings to enforce the provisions of this Agreement.
5. Notice of violation of provisions of this Agreement shall be sent to First Parties at the addresses specified in Item (c) of Exhibit I. Any subsequent title holder, any lien holder, or party in possession of the Property shall also receive notice of such violation at an address other than as

specified in Item (c) of Exhibit I by which the notice is to be sent, with reference to this Agreement and the Resolution authorizing its execution.


6. Each and every one of the provisions of this Agreement herein contained shall bind and inure to the benefit of the successor in interest of each and every party hereto, in the same manner as if they had herein been expressly named.
7. Zoning of the Property as indicated in Item (b) of Exhibit I will be consummated when this "Second Amended and Restated Conditional Zoning Agreement No. 2005-02" is recorded in the office of the Tulare County Recorder.

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

DIMELLO TOSCANA, LLC

BY: 
KEVIN W. MCQUERTY
1/9/20

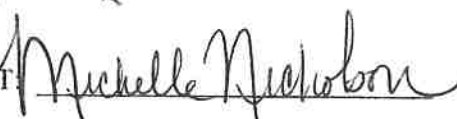
THEODORE CALDWELL


BY: 
see attached cal.
Notary certificate

CITY OF VISALIA, A political
subdivision of the State of California

SEE
ATTACHED

Mark Hermann
Notary Public Notary
1-9-20

ATTEST: 
Michelle Nicholson
Chief Deputy City Clerk

BY: 
City Manager

ALL-PURPOSE 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 California

County of San Luis Obispo } SS.

On January 9, 2020, before me, Mark Hermann, Notary Public,

personally appeared Kevin William McGurty, 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.

PLACE NOTARY SEAL IN ABOVE SPACE

NOTARY'S SIGNATURE

OPTIONAL INFORMATION

The information below is optional. However, it may prove valuable and could prevent fraudulent attachment of this form to an unauthorized document.

CAPACITY CLAIMED BY SIGNER (PRINCIPAL)

- ☐ INDIVIDUAL
- ☐ CORPORATE OFFICER
- ☐ PARTNER(S)
- ☐ ATTORNEY-IN-FACT
- ☐ GUARDIAN/CONSERVATOR
- ☐ SUBSCRIBING WITNESS
- ☐ OTHER:

DESCRIPTION OF ATTACHED DOCUMENT

Second Amended and Restated Conditional Zoning Agreement

TITLE OR TYPE OF DOCUMENT

3ps
NUMBER OF PAGES

1-9-20
DATE OF DOCUMENT

SIGNER (PRINCIPAL) IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)

RIGHT
THUMBPRINT
OF
SIGNER

OTHER

Top of thumbprint here

CALIFORNIA ACKNOWLEDGMENT

CIVIL CODE § 1189

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

State of California

County of Yolo

On Jan. 10, 2020

Date

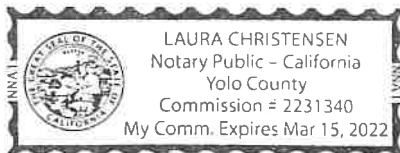
before me, Laura Christensen, Notary Public

Here Insert Name and Title of the Officer

personally appeared Theodore Caldwell

Name(s) of Signer(s)

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.



Place Notary Seal and/or Stamp Above

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

Laura Christensen

Signature of Notary Public

OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Zoning Agreement

Document Date: 1/9/2020

Number of Pages: 3

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: Theodore Caldwell

☐ Corporate Officer – Title(s): _____

☐ Partner – ☐ Limited ☐ General

☒ Individual

☐ Attorney in Fact

☐ Trustee

☐ Guardian or Conservator

☐ Other: _____

Signer is Representing: _____

Signer's Name: _____

☐ Corporate Officer – Title(s): _____

☐ Partner – ☐ Limited ☐ General

☐ Individual

☐ Attorney in Fact

☐ Trustee

☐ Guardian or Conservator

☐ Other: _____

Signer is Representing: _____

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 California
County of Tulare

On January 22, 2020 before me, Michelle E. Nicholson, Notary Public
(insert name and title of the officer)

personally appeared Randy Groom,
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 Michelle Nicholson (Seal)

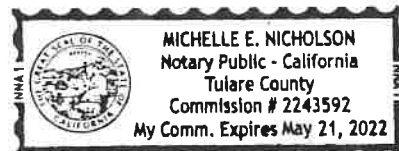


EXHIBIT I

SECOND AMENDED AND RESTATED CONDITIONAL ZONING AGREEMENT NO. 2005-02

- (a) The property described in Exhibit "A," was originally zoned Business Research Park prior to the entering of CZA No. 2005-02. Upon the entering into of CZA No. 2005-02, the zoning changed to Quasi-Public (QP), Professional / Administrative Office (PA) and Single-Family Residential, minimum 6,000 square-foot lot size (R-1-6).
- (b) The zoning reclassifications for a portion of property described in Exhibit "A," known herein as the DiMello Property, is from its present zoning to Service Commercial (C-S) and Single-Family Residential, minimum 5,000 square-foot lot size (R-1-5), in association with Change of Zone No. 2019-09.

- (c) Notice to First Parties shall be addressed to:

DiMello Toscana
Attn: Kevin McGurty
14002 San Antonio Road
Atascadero, California 93422

Theodore Caldwell
P.O. Box 38
Davis, California 95617

- (d) "Property" or "DiMello Property" as used in this Agreement, includes:

Land located on the north side of Goshen Avenue approximately 850 feet east of Shirk Street in the City of Visalia, County of Tulare, State of California, with the DiMello Property identified by Assessor Parcel Numbers (APNs) of 077-720-001 through 007, and 077-730-001 and 002, and also identified as the entire area associated with recorded Parcel Map No. 4869 (P.M. 49-74).

- (e) The additional conditions with which First Parties shall comply are as follows:

- 1) All noise attenuation features specified in Item (e)(1) of Amended CZA No. 2005-02, recorded with the Tulare County Recorder on May 20, 2016, as Document No. 2016-0028860, have been completed and accepted by the City, and shall remain in effect. In conjunction with First Parties' application for additional residential parcels, First Parties shall be responsible for noise mitigation features in the form of the following:
 - A 7-foot high concrete masonry unit block wall located along the western and southern boundaries of the proposed residential parcels, as illustrated in Exhibit "1" (block wall exhibit) and located on Parcel 9 and Lot D of recorded Parcel Map No. 4869 (P.M. 49-74).
- 2) No final occupancies for residences on the DiMello Property may be issued until the newly required noise features in Item 1) have been constructed, or until it can be demonstrated that exterior noise levels for any residential units for which a building permit is requested meet the Community Noise Standards enforced by Chapter 8.36 of the Visalia Municipal Code.
- 3) All requirements specified in Items (e)(3) and (e)(4) of Amended CZA No. 2005-02, recorded with the Tulare County Recorder on May 20, 2016, as Document No. 2016-0028860, have been completed and accepted by the City, and shall remain in effect.

- 4) The requirement for a public pedestrian trail circumnavigating Piano Basin specified in Item (e)(6) of Amended CZA No. 2005-02, recorded with the Tulare County Recorder on May 20, 2016, as Document No. 2016-0028860, has been completed and accepted by the City, and shall remain in effect. The portion of property rezoned as Service Commercial shall have a covered recreational vehicle (RV) storage facility and a self-storage facility as illustrated in Exhibit "2" (site plan exhibit) and no other Service Commercial-zoned uses, and the site shall develop in substantial conformance with the site plan illustrated in Exhibit "2" and conceptual landscape plan illustrated in Exhibit "3".
- 5) DiMello Toscana was required to dedicate to the City, at no cost, a public pedestrian trail with the recording of Parcel Map No. 4869 (P.M. 49-74). The existing trail access path located west of the constructed residence on Lot 58 of the recorded Di Mello Toscana Subdivision Map shall be relocated to the proposed maintenance/trail road between the proposed residential parcels & proposed covered RV storage facility as illustrated in Exhibit "2" (site plan exhibit). First Parties shall be responsible for constructing the relocated trail access path and dedicating the access path to the city.
- 6) First Parties shall be responsible for final construction of the public pedestrian trail located on the west side of El Cajon Street between Doe and Elowin Avenues, as specified in Item (e)(6) of Amended CZA No. 2005-02, prior to issuance of a certificate of occupancy on any portion of the proposed covered RV storage facility portion of the project area. The trail, along with all improvements within the dedicated area such as trees, landscaping, and irrigation, shall be constructed and maintained under a Landscape and Lighting Assessment District.
- 7) First Parties shall pay for the development and cost of and shall complete all public infrastructure affiliated with said covered RV storage facility, self-storage facility, and single family residential development on the DiMello Property. Public infrastructure shall include grading and drainage, underground public utilities (sanitary sewer and storm drain), private streets, and all improved parking surfaces located on the area that will contain the covered RV storage facility, self-storage facility, and single family residential development.
- 8) First Parties shall be responsible for procuring and finalizing an entitlement creating the three residential lots and relocated basin access as shown in Exhibit "2" (site plan exhibit). Such entitlement shall be approved and recorded with the Tulare County Recorder prior to any final certificate of occupancy being issued for the proposed covered RV storage facility.

Attachments:

Exhibit "1": Block wall exhibit

Exhibit "2": Site plan exhibit

Exhibit "3": Conceptual landscape plan exhibit

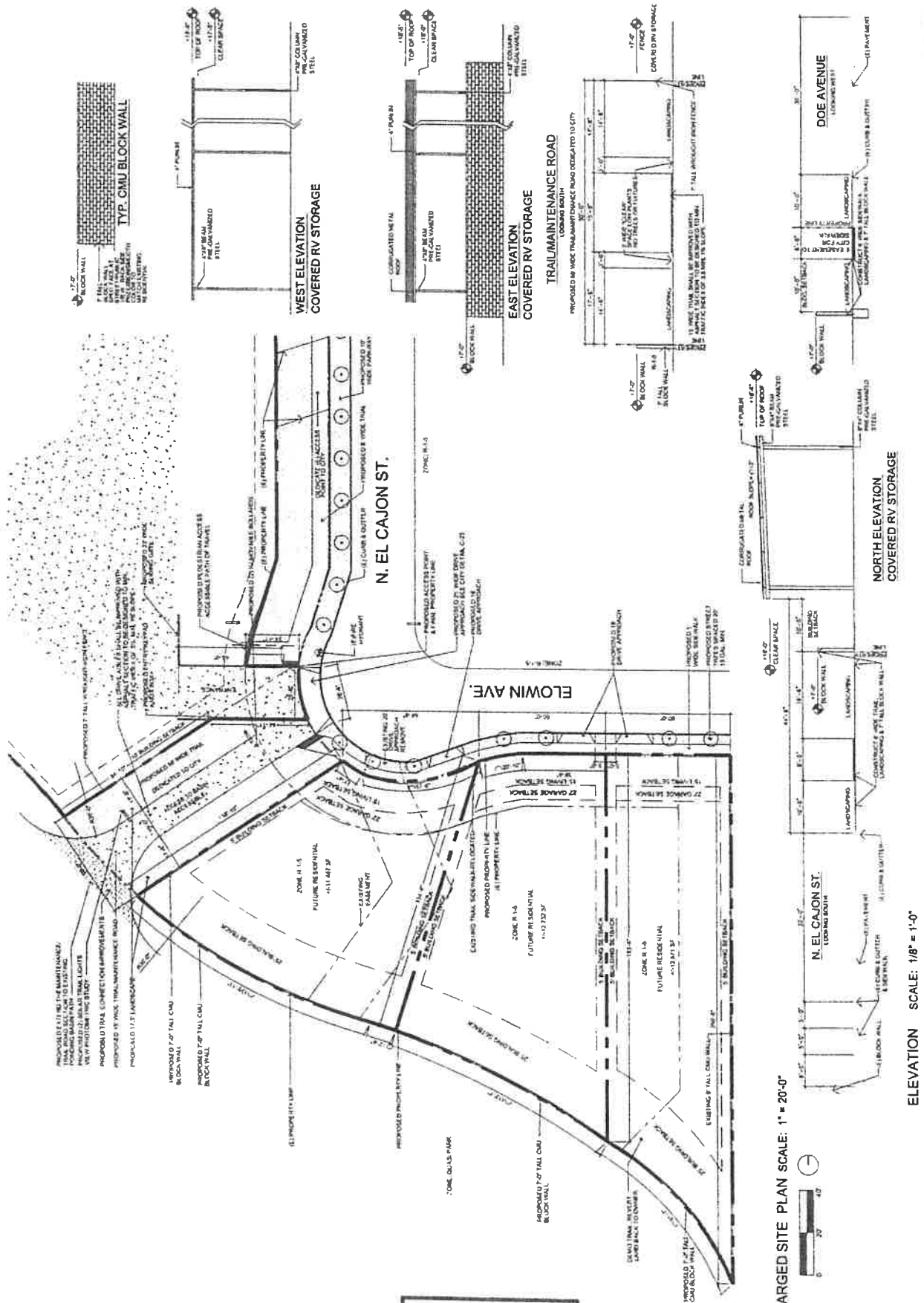


Exhibit "1"



Project: COVERED RV STORAGE
Location: SWC DOE & EL CAJON
VISALIA, CA

SITE PLAN & ELEVATIONS
A1.1
DATE: 04-18
BY: 10-18

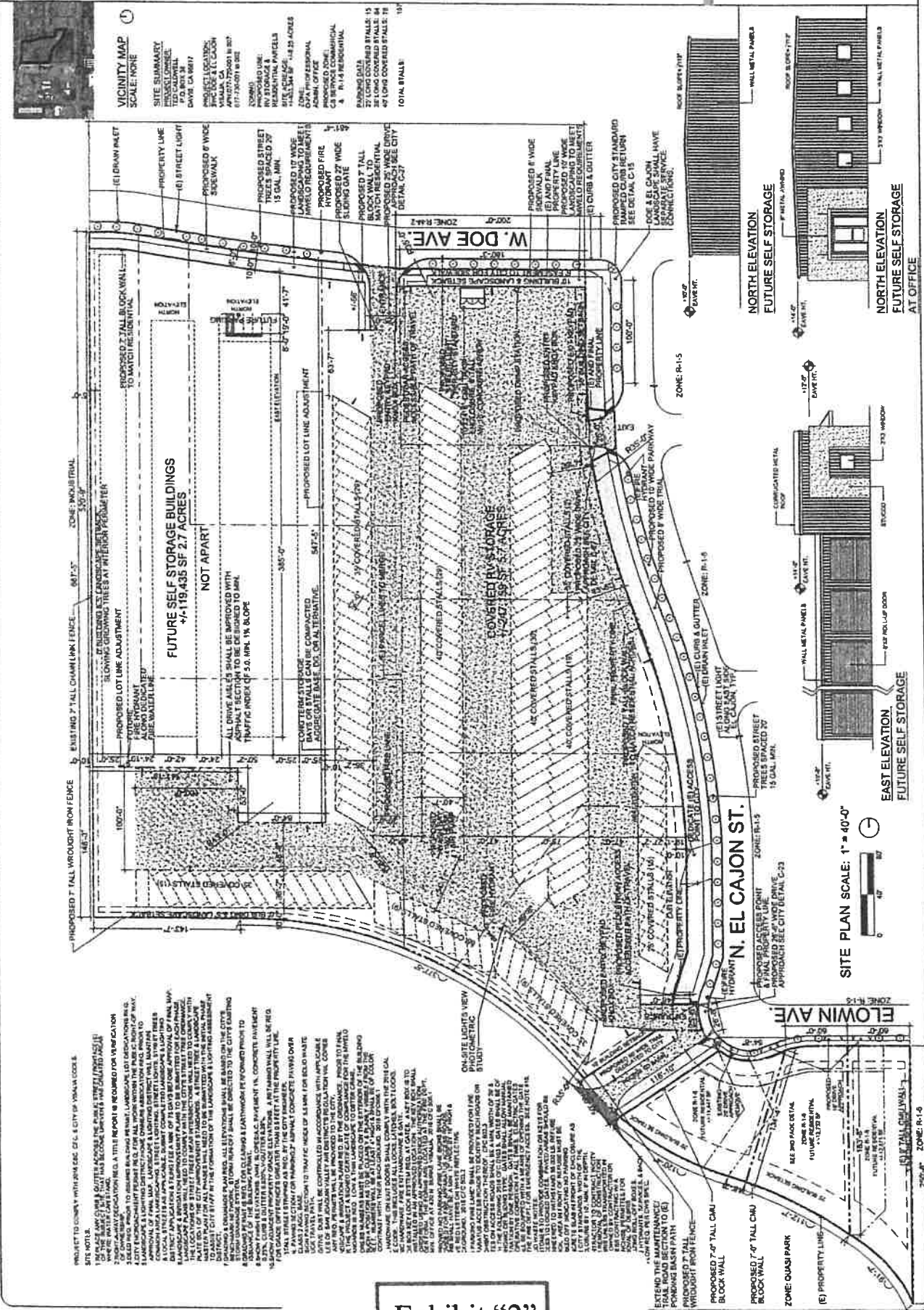


Exhibit "2"



Clerk-Recorders
County of Tulare
ROLAND P. HILL
Clerk Recorder

PAYNET
SM

Simple Way To Pay

-Government Payment Service

GovPayNet

7820 Innovation Boulevard Suite 250

Indianapolis, IN 46278

24hr. Customer Service #: 888-604-7888

2020-0005827 01/29/20 12:01PM

REC FEE	54.00
CONFORMED COPY	1.00

Total Charges	55.00
CREDIT/DEBIT	55.00
Total Tendered	55.00
Change	.00

Payment Confirmation (Ref #: 27796885)

Recorder's Office

Date: 01/29/2020 15:01 EST

Oney Boulevard

Indianapolis 46201

1/29/2020 12:01:54 PM 2020012900135

Printed: Jan 29 2020 12:02PM by CSREC116407

Thank you!

gh

Transaction Reference #:

27796885

Transaction Date/Time:

01/29/2020 15:01 EST



Requested By

Initials:

BILLING INFORMATION

Name:

Kimberly M Rumbaugh

Address:

Msr

Msr

City, State Zip:

Msr, AL 93221

Phone #:

(559)302-8828

Card #:

xxxx-xxxx-xxxx-4820

PAYMENT INFORMATION

Approval #:

65597D

Payment Amount:

\$55.00

Service Fee:

\$1.75

Total Amount:

\$56.75

The service fee is not refundable.

ATTENTION CARDHOLDER

If you have questions about the processing of your payment, please call GovPayNet at 888-604-7888.

Thank you for using GovPayNet