

City of Garden Grove

INTER-DEPARTMENT MEMORANDUM

To:	Matthew J. Fertal	From:	William E. Murray
Dept:	City Manager	Dept:	Public Works
Subject:	RIGHT OF ENTRY AND AGREEMENT REGARDING CAPITAL IMPROVEMENTS WITH CORNING GARDEN GROVE, LLC (11782 WESTERN AVENUE)		
		Date:	October 11, 2011

OBJECTIVE

To obtain Garden Grove City Council approval of a Right of Entry and Agreement Regarding Capital Improvements with Corning Garden Grove, LLC.

BACKGROUND

The subject property, located at 11782 Western Avenue, is presently served by nine individual 1-inch water services connected off of a 6-inch public water main that crosses through an adjacent property at 11762 Western Avenue. The 6-inch main is located within an existing 10-foot wide utility easement that extends into the 11762 Western Avenue property and along a driveway.

DISCUSSION

Water Services has contacted the owner of the Western Avenue property with a proposal to reconfigure the water services to have only one 1½ inch - water meter at the front of the adjacent property, 11762 Western Avenue. The construction of the capital improvements will be borne by the City, with the agreement that future maintenance of the capital improvements beyond the 1½ inch- water meter on and under the Western Avenue property will be the owner's sole responsibility. The one exception is the maintenance of the 6-inch water main, which will be maintained by Water Services. The City is acquiring an easement from the adjacent property (11762 Western Avenue) for ingress/egress and meter and service line maintenance purposes.

FINANCIAL IMPACT

Improvements will be made from the Water Fund and will have no impact to the General Fund.

RECOMMENDATION

It is recommended that the Garden Grove City Council:

- Approve the Right of Entry and Agreement Regarding Capital Improvements with Corning Garden Grove, LLC;
- Authorize the City Manager to execute the agreement, including minor modifications, on behalf of the City.



WILLIAM E. MURRAY, P.E.
Public Works Director/City Engineer



By: David E. Entsminger
Water Services Manager

Attachment: Right of Entry and Agreement Regarding Capital Improvements

Recommended for Approval



Matthew Ferial
City Manager

RIGHT OF ENTRY AND AGREEMENT REGARDING CAPITAL IMPROVEMENTS

This Right of Entry and Agreement Regarding Capital Improvements ("Agreement") is entered into by and between CORNING GARDEN GROVE, LLC, a California limited liability company ("Owner"), and the CITY OF GARDEN GROVE, a municipal corporation ("City").

RECITALS

A. Owner is the owner in fee of that certain real property commonly known as 11782 Western Avenue, situated in the City of Garden Grove, County of Orange, State of California, Assessor Parcel No. 131-601-20, and depicted on Exhibit "A" attached hereto and incorporated herein (the "Property").

B. The Property is adjacent to that certain real property commonly known as 11762 Western Avenue, situated in the City of Garden Grove, County of Orange, State of California, Assessor Parcel No. 131-601-21, which is also depicted on Exhibit "A" (the "Adjacent Property"), and shares a common parking lot with the Adjacent Property.

C. City is the owner of the public water system serving the Property and the Adjacent Property.

D. City currently provides water to the Property and the Adjacent Property through eighteen (18) separate water services and meters (nine serving each property) connected to a six inch water main owned by City and located within the existing ten foot easement area depicted on Exhibit "A."

E. Owner and the owner of the Adjacent Property have requested that City, and City has agreed, to install the necessary capital improvements so that the Property and the Adjacent Property are each provided water through one (1) water service and meter only, at City's sole cost and expense, subject to the terms of this Agreement.

NOW, THEREFORE, in consideration of the promises and mutual agreements contained herein, Owner and City agree as follows:

AGREEMENT

1. Right of Entry and Construction of Improvements.

A. Owner hereby grants to City and any contractor, agent or employees engaged by City, the right to enter upon and to pass and repass over and along the Property, and to deposit tools, implements, and other materials thereon (collectively, the "Right of Entry"), for the purpose of completing the following capital improvements and related activities, as depicted in the attached Exhibit "A" (collectively, the "Improvements").

**Right of Entry and Agreement
Regarding Capital Improvements
11782 Western Ave.**

- i. Potholing to determine existing site conditions.
- ii. Installing two 1 ½ inch water services to serve the Property and the Adjacent Property, respectively.
- iii. Installing two back flow devices and security cages in conjunction with the two 1 ½ inch water services.
- iv. Installing approximately 920 linear feet of 2 inch schedule 80 PVC water main feeder lines to serve the Property and the Adjacent Property, including disinfection and flushing of the lines.
- v. Severing the existing eighteen (18) one inch lateral service lines serving the Property and the Adjacent Property and reconnecting to the new schedule 80 feeder lines.
- vi. Making all necessary asphalt and concrete repairs related to the capital improvements.

B. Owner understands and acknowledges that water service will be interrupted and parking and access to the Property will be impaired during the period of construction and installation of the Improvements. Except for potholing and installation of the 1 ½ inch water services and back flow devices and security cages, which must be performed prior to commencement of construction and installation of the Improvements, City will endeavor and make best efforts to perform and complete construction and installation of the Improvements on a Saturday, Sunday, and Monday mutually acceptable to City, Owner, and the owner of the Adjacent Property. City shall coordinate all work with Owner's property manager. Owner shall be responsible for ensuring that the Property is not being used in a manner that interferes with City's construction and installation of the Improvements during the mutually agreed upon period, including, but not limited to, ensuring that no vehicles are parked in the center parking aisle of the parking lot or otherwise in a manner that interferes with City's construction and installation of the Improvements.

C. City will not permit any mechanics', materialmen's or similar liens or claims to stand against the Property in connection with any work, services or materials furnished in connection with the Improvements or any other work performed by City at the Property.

D. The City agrees to defend, indemnify and hold the Owner and its officers, employees, and agents harmless from any claims, damages, injuries or liabilities for personal injury, death or property damage arising out of the City's or its contractors', employees', agents' negligence or willful misconduct in conjunction or associated with (i) the construction and installation of the Improvements; or (ii) the use of the Property pursuant to this Right of Entry. The City shall restore said Property as nearly as practicable to the state in which it existed prior to the use of the Property by the City, its agents, employees, or contractors, with the exception of the Improvements. Notwithstanding the foregoing, Owner understands and agrees that City shall

Right of Entry and Agreement
Regarding Capital Improvements
11782 Western Ave.

have the right to permanently remove any landscaping or other things on the Property that interfere with the installation and future maintenance of the Improvements.

E. The Right of Entry shall automatically terminate and expire upon completion of construction of the Improvements.

2. Cost and Ownership of Improvements.

A. All the Improvements shall be constructed and installed at City's sole cost and expense.

B. Upon their completion, the 1 ½ inch water services and meters, including that portion of the two inch lines from the existing six inch water main to the meters, shall be the property of the City.

C. Upon their completion, that portion of the remaining Improvements serving the Property, including, without limitation, the back flow device and associated security cage, 2 inch PVC water main feeder line running from the back of the meter, and the one inch lateral service lines and connections, shall become the property of Owner and Owner shall assume all responsibility and liability for future maintenance and repair thereof. Owner acknowledges and agrees that a portion of the Improvements serving the Property will be located on the Adjacent Property and that Owner shall be solely responsible for securing from the owner(s) of the Adjacent Property any and all easements, licenses, agreements, and/or rights necessary to carry out its maintenance and repair obligations hereunder.

D. Upon their completion, that portion of the remaining Improvements serving the Adjacent Property, including, without limitation, the back flow device and associated security cage, 2 inch PVC water main feeder line running from the back of the meter, and the one inch lateral service lines and connections, shall become the property of the owner of the Adjacent Property, who shall assume all responsibility and liability for future maintenance and repair thereof.

3. Tenants.

A. Owner acknowledges that the Property is occupied by multiple tenants pursuant to rental or lease agreements, the terms of which are unknown to City. Owner hereby warrants and represents that it possesses the authority under such rental or lease agreements to grant the Right of Entry provided for in this Agreement and to authorize construction and installation of the Improvements by City.

B. Owner shall be solely responsible for providing all required advance notice to its tenants of City's work and ensuring that said tenants or their customers do not interfere with City's construction and installation of the Improvements.

Right of Entry and Agreement
Regarding Capital Improvements
11782 Western Ave.

C. Owner further agrees to defend, indemnify, and hold the City and its elected officials, officers, employees, and agents harmless from any and all claims of any nature by Owner's tenants relating to (i) City's exercise of its rights pursuant to the Right of Entry, (ii) City's construction and installation of the Improvements, or (iii) the resulting temporary interruption of water service to the Property and/or impairment of parking on and access to the Property, but excluding such claims arising out of the negligence or willful misconduct of City.

4. Waiver and Release.

A. In consideration of City's construction and Installation of the Improvements and other covenants and conditions set forth herein, Owner hereby forever waives, releases and fully discharges City, the Garden Grove Sanitary District, and their respective officers, directors, agents, employees, representatives, attorneys, successors, and assigns, and each of them, (collectively the "City Releasees") from any and all actual or potential claims, obligations, demands, and causes of action, known or unknown, which Owner has, may have, or may claim to have against the City Releasees which relate in any way or manner to amounts charged by City or the Garden Grove Sanitary District for water or sewer services provided to the Property and which arise before the completion of the Improvements.

B. Owner expressly waives and relinquishes all rights and benefits under Section 1542 of the California Civil Code, which provides:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

The Owner represents and warrants that he/she/it understands the effect of this waiver of section 1542 and has had the opportunity to discuss the effect of this waiver with counsel of their choice.

5. Entire Agreement; Modification. This instrument represents the complete and entire agreement between the parties hereto with respect to the subject matter herein. This Agreement may be modified only by a writing signed by both City and Owner.

6. Severability. If any section, phrase or term of this Agreement is found by a court of competent jurisdiction to be invalid, illegal, or unenforceable, that section, phrase or term shall be stricken and all other provisions of this Agreement shall remain in full force and effect.

7. California Law. Interpretation of this Agreement shall be governed by the laws of the State of California.

8. Authority. The persons executing this Agreement warrant and represent that they have the authority to execute this Agreement and represent that they have the authority to bind the parties for which they are signing to the performance of the obligations hereunder.

Right of Entry and Agreement
Regarding Capital Improvements
11782 Western Ave.

9. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same instrument and any executed counterpart may be delivered by facsimile transmission or other mutually agreed upon electronic means with the same effect as if an originally executed counterpart had been delivered.

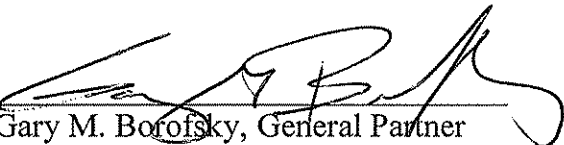
IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates set forth below.

"OWNER"

Corning Garden Grove, LLC, a California limited liability company

By: Corning Investment Company, a partnership,
its sole Member

Date: 9/11/11

By: 
Gary M. Borofsky, General Partner

Date: _____

By: _____
Stephen A. Seidman, Trustee of the
Stephen A. Seidman Living Trust dated
11/15/93, General Partner

Date: _____

By: _____
Michael Seidman, General Partner

Date: _____

By: _____
Joel H. Bennett, Special Trustee of the
Joel and Seraphina Bennett Living Trust
dated 5/24/99, General Partner

[signatures continued on next page]

Right of Entry and Agreement
Regarding Capital Improvements
11782 Western Ave.

9. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same instrument and any executed counterpart may be delivered by facsimile transmission or other mutually agreed upon electronic means with the same effect as if an originally executed counterpart had been delivered.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates set forth below.

"OWNER"
Corning Garden Grove, LLC, a California limited liability company

By: Corning Investment Company, a partnership,
its sole Member

Date: _____

By: _____
Gary M. Borofsky, General Partner

Date: 9/7/11

By: _____
Stephen A. Seidman, Trustee of the
Stephen A. Seidman Living Trust dated
11/15/93, General Partner

Date: _____

By: _____
Michael Seidman, General Partner

Date: _____

By: _____
Joel H. Bennett, Special Trustee of the
Joel and Seraphina Bennett Living Trust
dated 5/24/99, General Partner

[signatures continued on next page]

Right of Entry and Agreement
Regarding Capital Improvements
11782 Western Ave.

9. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same instrument and any executed counterpart may be delivered by facsimile transmission or other mutually agreed upon electronic means with the same effect as if an originally executed counterpart had been delivered.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates set forth below.

"OWNER"

Corning Garden Grove, LLC, a California limited liability company

By: Corning Investment Company, a partnership,
its sole Member

Date: _____

By: _____
Gary M. Borofsky, General Partner

Date: _____

By: _____
Stephen A. Seidman, Trustee of the
Stephen A. Seidman Living Trust dated
11/15/93, General Partner

Date: Sep 7, 2011

By: Michael Seidman
Michael Seidman, General Partner

Date: _____

By: _____
Joel H. Bennett, Special Trustee of the
Joel and Seraphina Bennett Living Trust
dated 5/24/99, General Partner

[signatures continued on next page]

Right of Entry and Agreement
Regarding Capital Improvements
11782 Western Ave.

9. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same instrument and any executed counterpart may be delivered by facsimile transmission or other mutually agreed upon electronic means with the same effect as if an originally executed counterpart had been delivered.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates set forth below.

"OWNER"
Corning Garden Grove, LLC, a California limited liability company

By: Corning Investment Company, a partnership,
its sole Member

Date: _____

By: _____
Gary M. Borofsky, General Partner

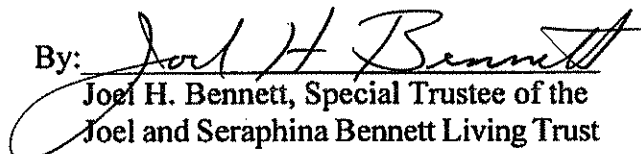
Date: _____

By: _____
Stephen A. Seidman, Trustee of the
Stephen A. Seidman Living Trust dated
11/15/93, General Partner

Date: _____

By: _____
Michael Seidman, General Partner

Date: Sep 1, 2011

By: 
Joel H. Bennett, Special Trustee of the
Joel and Seraphina Bennett Living Trust
dated 5/24/99, General Partner

[signatures continued on next page]

Right of Entry and Agreement
Regarding Capital Improvements
11782 Western Ave.

Date: _____

"CITY"
City of Garden Grove

By: _____
Matthew J. Fertal, City Manager

ATTESTED:

By: _____
City Clerk

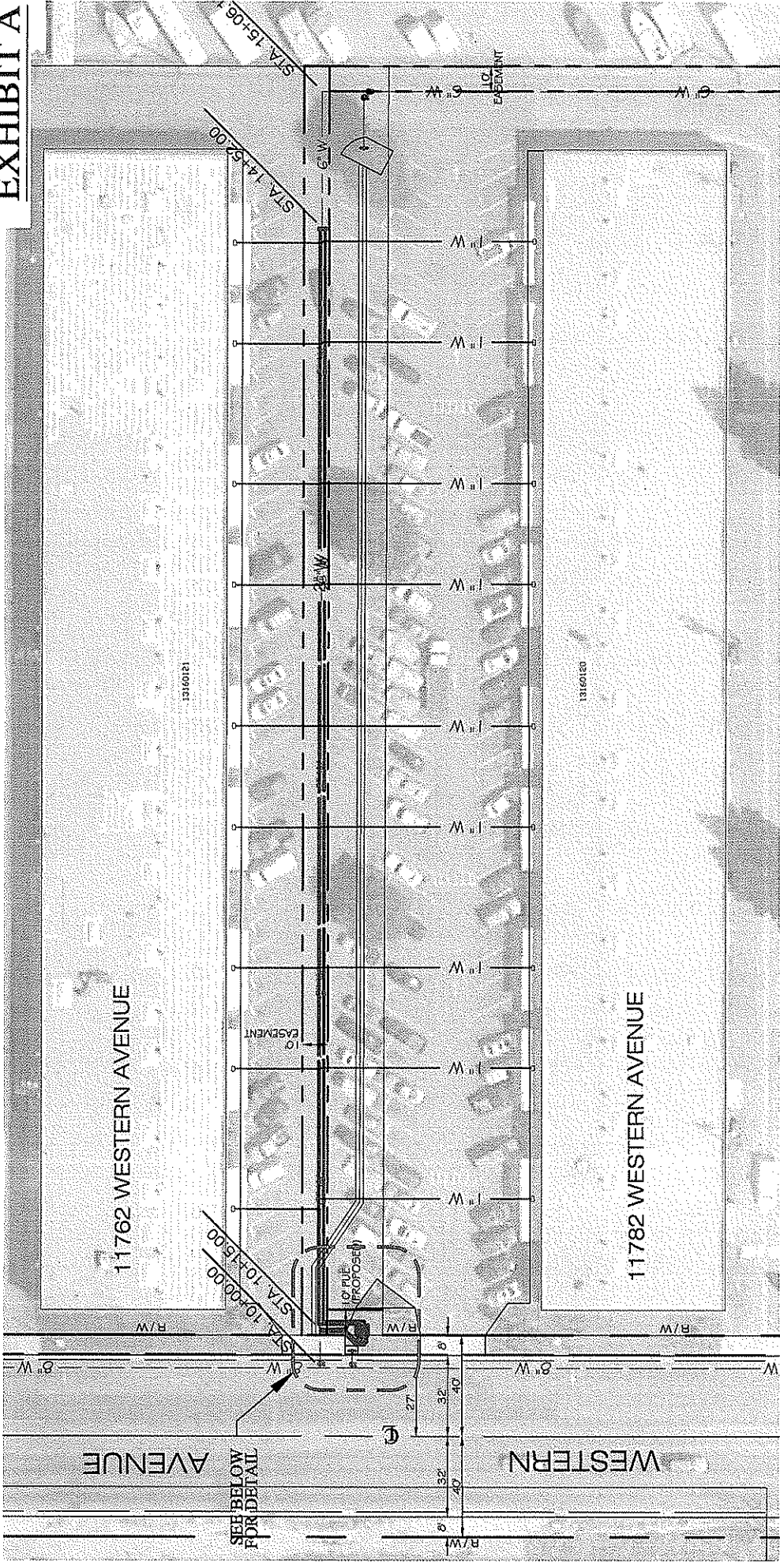
Date: _____

APPROVED AS TO FORM:

By:  _____
Garden Grove City Attorney

Date: 9/27/11

EXHIBIT A

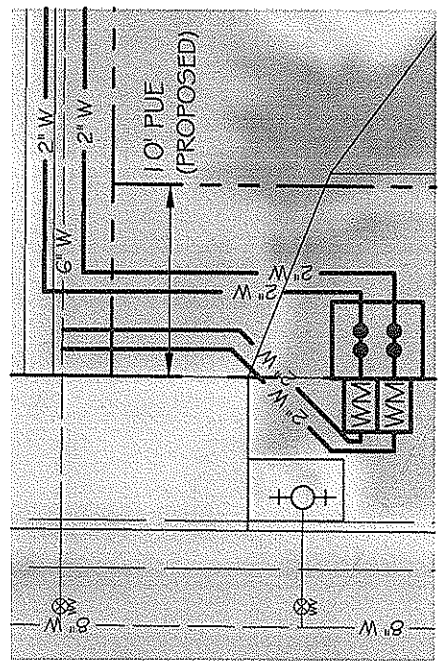


PROPOSED REPLACEMENT WATER MAIN ALIGNMENT

SCALE: 1" = 60'



- | | | | |
|------------------------------|------|----------------------------|----|
| 6" AC WATER MAIN (EXISTING) | 6" W | WATER METER (PROPOSED) | WM |
| 8" AC WATER MAIN (EXISTING) | 8" W | BACKFLOW DEVICE (PROPOSED) | BD |
| 1" WATER SERVICE (EXISTING) | 1" W | WATER VALVE (EXISTING) | WV |
| 2" PVC WATER MAIN (PROPOSED) | 2" W | FIRE HYDRANT (EXISTING) | + |



DETAIL SCALE: 1" = 10'



CHECKED BY: D.E.E.	PREPARED BY: M.C.	DRAWN BY: M.C.	SCALE: N.T.S.	PROJECT NO.	DATE: JUNE 7, 2011
 City of Garden Grove Department of Public Works			 CITY OF GARDEN GROVE WATER IMPROVEMENTS AT 11762 & 11782 WESTERN AVE.		

EXHIBIT "A"
PROPERTY AND CAPITAL IMPROVEMENT DESCRIPTION

EXHIBIT "A"

LEGAL DESCRIPTION:

Parcel "A":

That portion of the following described real property in the City of Garden Grove, County of Orange, State of California lying southerly of that real property described as Parcel 1 in grant deed recorded on September 10, 1963 in Book 6709 Page 766 records of said County and lying north of that real property described in Individual Quitclaim Deed recorded December 1, 2000 as Document No. 20000654452 records of said county described as follows:

The East 10.00 feet of the West 50.00 feet of the North 157.50 feet of the North 315 feet of the 21.074 acres in Section 26, lying East of Lot 14 of said Section 26, in the City of Garden Grove, County of Orange, State of California, as shown on a map showing resurvey of J.W. Bixby and Co's. subdivision of a part of the Rancho Los Alamitos, as per map recorded in Book 2, Page 43 of Record of Surveys, records of said County.

See Exhibit "B" attached hereto and made a part hereof.

B. Hall 6/7/11
Prepared by: Bruce Hall Land Surveyor
LS 4743
Exp. 9/30/11

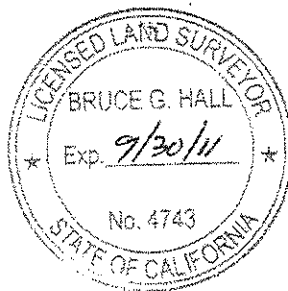


EXHIBIT "B"

NO SCALE

