



THE CITY OF SAN DIEGO
REPORT TO THE CITY COUNCIL

DATE ISSUED: April 23, 2013 REPORT NO: 13-038
ATTENTION: Council President and City Council
SUBJECT: Holly Drive Street Improvements Project – Eminent Domain
REFERENCE: Holly Drive Street Improvements Project, CIP No. S11033

REQUESTED ACTION:

Authorize the adoption of a Resolution of Necessity for the acquisition of five permanent public street easements over portions of Assessor's Parcel Numbers [APNs] 548-242-28, 548-242-29, 548-250-03, 548-250-13 and 548-242-03 [Easements], all necessary for the construction of the City's Holly Drive Street Improvements Project, CIP No. S11033 [Project]. Authorize the City Attorney's Office to commence an eminent domain proceeding to acquire the Easements found necessary for the Project and to seek an order for the immediate possession of the Easements to allow for the timely funding and completion of the Project. Authorize the Chief Financial Officer to expend funds in the amount of \$20,500.00 to acquire the Easements found necessary for the Project and for deposit into the State Treasury's State Condemnation Fund.

STAFF RECOMMENDATION:

Approve the requested action.

SUMMARY:

Background:

The Holly Drive Street Improvements Project will install curbs, gutters, sidewalks, street pavement, retaining walls, street lights, fences, curb ramps, driveways, on and off-site drainage, and traffic calming speed humps on Holly Drive between South Willie James Jones Avenue and South Euclid Avenue. In order to bring Holly Drive up to current City standards for a residential local street, the necessary right of way will impact seventeen properties fronting Holly Drive.

Of the seventeen individual properties that line Holly Drive, the City has acquired twelve of the required easements through prior dedications and/or recent acceptances of offers. To date, the City has not been able to come to an agreement with five property owners, two on the South side of Holly Drive and three on the North side of Holly Drive, with regard to the purchase price of the Easements required for the Project. The affected parcels are depicted in yellow and labeled by APN on Attachment 1. The Easements are necessary for the referenced improvements to Holly Drive.

The Easements to be acquired are as follows:

Over APN 548-242-28:

Approximately 1048.51 Square Feet of permanent public street easement on the south side of the existing Holly Drive right of way. The public street easement is described and depicted in Attachment 2.

Over APN 548-242-29:

Approximately 726.34 Square Feet of permanent public street easement on the south side of the existing Holly Drive right of way. The public street easement is described and depicted in Attachment 3.

Over APN 548-250-03:

Approximately 360.01 Square Feet of permanent public street easement on the north side of the existing Holly Drive right of way. This parcel is already encumbered by a public sewer easement granted to the City of San Diego and recorded in 1955. The public street easement is described and depicted in Attachment 4.

Over APN 548-250-13:

Approximately 300.01 Square Feet of permanent public street easement on the north side of the existing Holly Drive right of way. This parcel is already encumbered by a public sewer easement granted to the City of San Diego and recorded in 1961. The public street easement is described and depicted in Attachment 5.

Over APN 548-242-03:

Approximately 292.33 Square Feet of permanent public street easement on the north side of the existing Holly Drive right of way. The public street easement is described and depicted in Attachment 6.

City Staff will continue to negotiate with the five remaining property owners, however, authority to commence an eminent domain proceeding to acquire the Easements is requested to ensure possession of the Easements in advance of an award of the construction contract for the Project.

Discussion:

The Resolution of Necessity

California eminent domain law [Code of Civil Procedure §1230.010 et seq.] mandates before the City may commence a legal proceeding to acquire property for public use, the City Council must adopt a Resolution of Necessity by a two-thirds majority of the full City Council, describing the location of the property and the public necessity requiring the acquisition of the property, or property rights - in this case, the Holly Drive Street Improvements Project, CIP No. S11033. The City Council must make findings that 1) the public interest and necessity requires the Project

for which the property is being acquired; 2) the Project has been planned and located in a manner most compatible with the greatest public good and the least private injury; and 3) the Easements to be acquired are necessary for the Project. Offers to purchase the Easements have been made to the owners of the properties, but have not been accepted. Code Civ. Pro. §§1240.010, 1245.230, 1245.240.

The City Council may adopt a Resolution of Necessity only after the record owner(s) of the property to be acquired by eminent domain has been given notice and a reasonable opportunity to appear and be heard regarding: (a) the public interest and necessity requires the project; (b) the project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury; and (c) the property sought to be acquired is necessary for the project. The notice must be sent by first-class mail and inform the record owner(s) of the intent of the Council to adopt a Resolution of Necessity, the record owner(s)'s right to appear and be heard, and that failure to file a written request to appear and be heard within 15 days after the notice was mailed will result in waiver of the right to appear and be heard. Code of Civil Procedure section 1245.235. The resolution of necessity is an administrative determination that the statutory prerequisites for taking particular property have been met.

1. Does the public interest and necessity require the proposed Project?

Yes. Approval of the eminent domain action to acquire the Easements serves the public interest and is necessary to bring Holly Drive up to current City standards for a residential local street. This includes widening the street to a curb-to-curb width of 32 feet and installing sidewalks on both sides of the street. Adding sidewalks to Holly Drive will improve pedestrian safety and provide a safe route to school for students who attend Lincoln High School which is located directly across from Holly Drive on South Willie James Jones Avenue.

2. Is the proposed Project planned or located in a manner that will be most compatible with the greatest public good and least private injury?

Yes. The Project has been designed to minimize property impacts. The Project brings the street up to current City street standards while reducing impacts to private property by using a reduced parkway width of seven feet rather than the typical ten feet. The Project also utilizes retaining walls rather than slopes to reduce impacts to private property.

3. Is the property sought to be acquired necessary for the proposed Project?

Yes. The property sought is required so that the curb-to-curb width of Holly Drive can be brought up to current City standards for a residential local street as defined in the City of San Diego Street Design Manual Dated November 2002.

The Eminent Domain Lawsuit

An eminent domain proceeding is governed by the rules that govern all civil actions. Code Civ. Pro. §1230.040. An eminent domain proceeding is commenced by filing a complaint in the Superior Court. Thereafter, a summons and the complaint is served on the property owner and a

Notice of the pendency of the proceeding [a Lis Pendens] is filed in the Office of the County Recorder. Code Civ. Pro. §§1250.110, 1250.150.

The probable amount of compensation to be paid for the property rights to be acquired is determined by a competent appraisal and is then deposited with the State Treasury. Code Civ. Pro. §1255.010. At the time of the filing of the complaint and deposit of funds, the City may request an order for possession of the property from the court. Code Civ. Pro. §1255.410. The City may settle the matter at any time with the property owner and request the funds on deposit with the State Treasury be paid or returned. Code Civ. Pro. §1255.030.

FISCAL CONSIDERATIONS:

The appraised fair market value of the Easements to be acquired is \$20,500.00. This is the probable amount of compensation to be paid for the Easements to be acquired. All funds necessary for the acquisition of the required Easements are currently available within the existing CIP budget; specifically, in Fund No. 600001, State Grant No. 1000292-2010, Prop. 1B Grant Funds - Round 2.

EQUAL OPPORTUNITY CONTRACTING INFORMATION (if applicable)

Not Applicable.

PREVIOUS COUNCIL and/or COMMITTEE ACTIONS:

None.

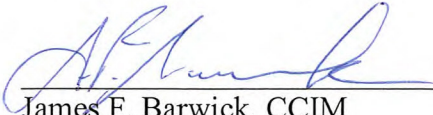
COMMUNITY PARTICIPATION AND OUTREACH EFFORTS:

Staff of the Engineering & Capital Projects Department first presented the Project to the Encanto Neighborhoods Community Planning Group (ENCPG) on September 20, 2010. The ENCPG voted unanimously to approve the conceptual design.

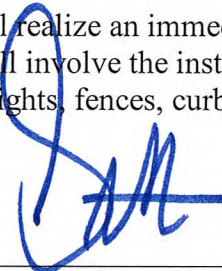
The Project was last presented to the ENCPG on January 31, 2013, as an information item; the Committee was pleased the Project was moving forward.

KEY STAKEHOLDERS AND PROJECTED IMPACTS

Each owner of a property with exposure to Holly Drive will realize an immediate benefit when Holly Drive is brought up to current City standards; this will involve the installation of curbs, gutters, sidewalks, street pavement, retaining walls, street lights, fences, curb ramps, driveways, on and off-site drainage and traffic calming speed humps.



James F. Barwick, CCIM
Director, Real Estate Assets



Scott Chadwick
Interim Chief Operating Officer

- Attachment:
1. Holly Drive Site Map - Affected Parcels
 2. APN 548-242-28 Public Street Easement Description and Drawing # 36743-B
 3. APN 548-242-29 Public Street Easement Description and Drawing # 36742-B
 4. APN 548-250-03 Public Street Easement Description and Drawing # 36737-B
 5. APN 548-250-13 Public Street Easement Description and Drawing # 36736-B
 6. APN 548-242-03 Public Street Easement Description and Drawing # 36734-B

Holly Drive Site Map - Affected Parcels

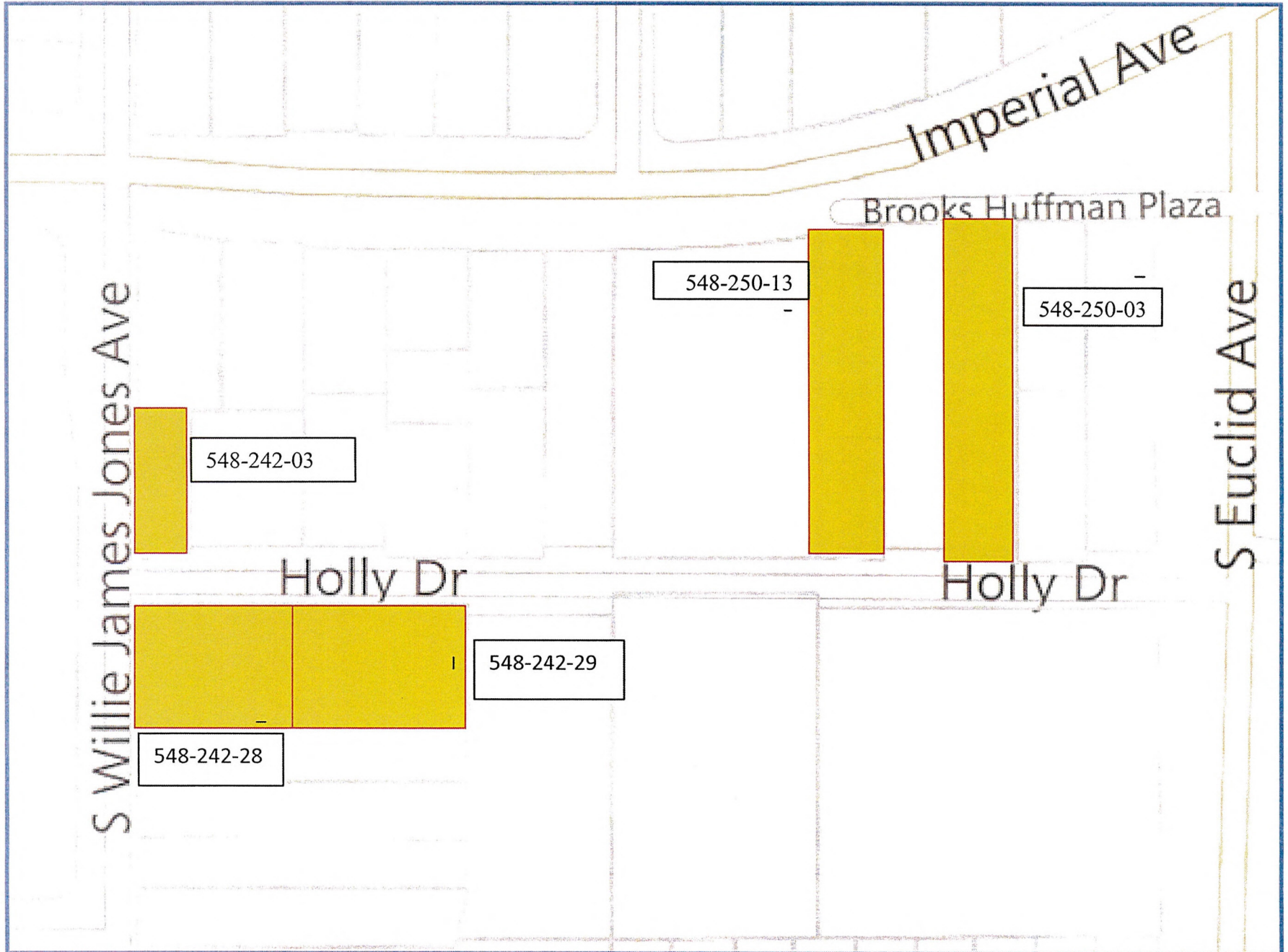


EXHIBIT "A"
STREET DEDICATION

APN: 548-242-28

All that portion of Lot 53 of Horton's Purchase, in the City of San Diego, County of San Diego, State of California, according to the Map thereof No. 283, filed in the Office of the County Recorder of said County of San Diego on March 9, 1878, being more particularly described as follows:

Beginning at a point on the easterly sideline of the westerly 5.00 feet as granted per deed recorded on January 27, 1982, as File/Page No. 82-22874 in the said Office of the County Recorder, said point also being on the northerly line of that certain deed granted to Belous recorded on April 15, 2004, as Document No. 2004-0328861 in the said Office of the County Recorder; Thence leaving the said easterly sideline and continuing along the said northerly line of Belous deed South 89°30'56" East 144.20 feet to a point on the east line of the said Belous deed; Thence continuing on the said east line of Belous deed South 00°43'42" West 7.00 feet; Thence leaving the said east line of Belous deed North 89°30'56" West 135.55 feet; Thence South 45°58'10" West 8.01 feet to the beginning of a tangent 10.00 foot radius curve, concave southeasterly; Thence southwesterly and southerly along the arc of said curve through a central angle of 45°14'28" a distance of 7.90 feet to a point of cusp, a radial bears North 89°16'18" West, said point being on the said easterly sideline of the westerly 5.00 feet; Thence continuing along the said easterly sideline of the westerly 5.00 feet North 00°43'42" East 19.70 feet to the **point of beginning**.

Above described street dedication containing 1048.51 Square Feet, 0.0241 Acres.

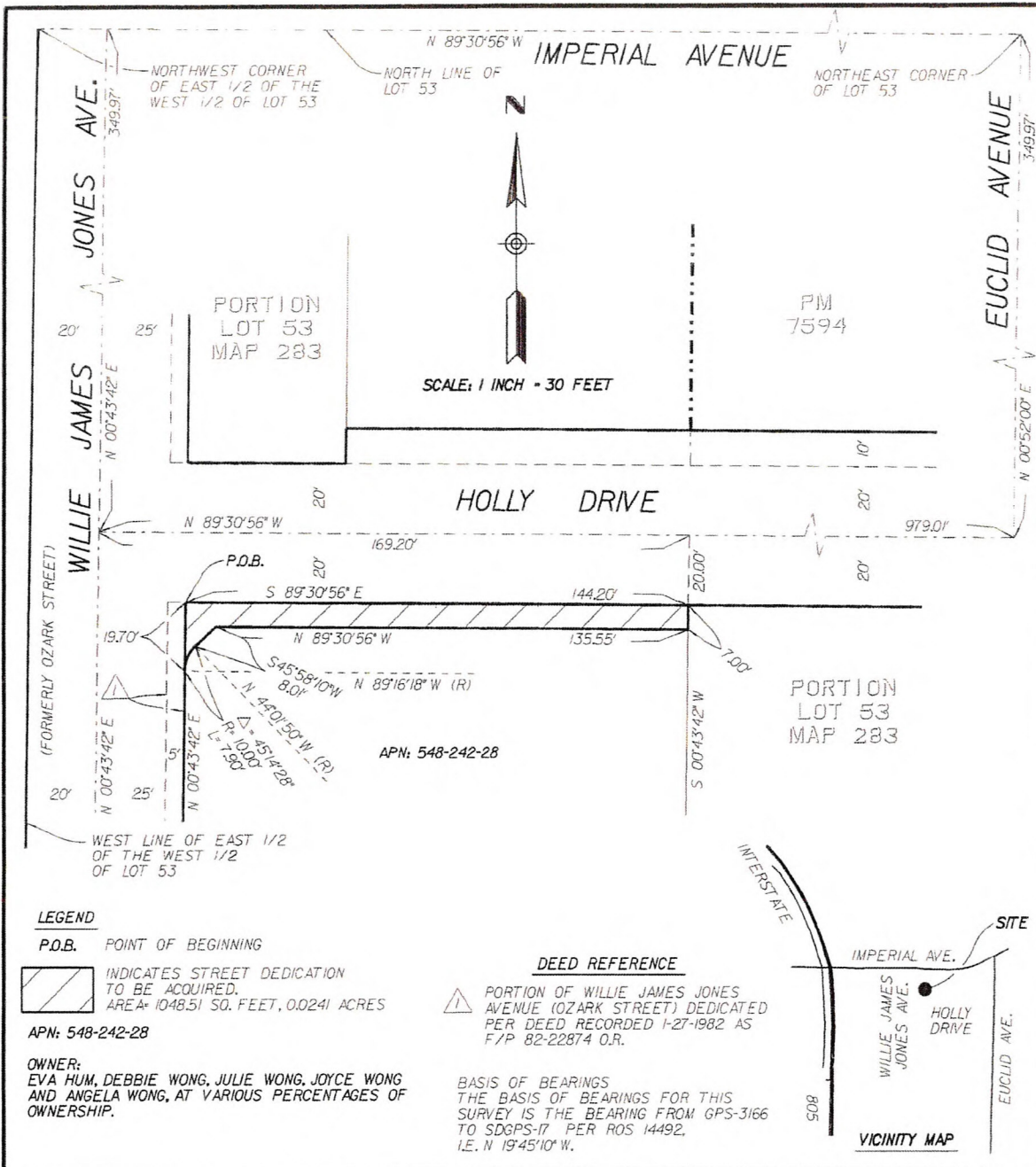
Exhibit 'B' (City of San Diego Drawing No. 36743-B) attached and by this reference is made a part hereto.

Richard T. McCormick 12-20-2011

Richard T. McCormick, LS 7450 Date
Associate Land Surveyor, Field Engineering
City of San Diego
My Registration Expires 12-31-2012

File: West of 4985 Holly_legal.doc
WBS S-11033.03.01- November 2011





PREPARED BY:
 CITY OF SAN DIEGO ENGINEERING DEPARTMENT,
 FIELD DIVISION - SURVEY SECTION, UNDER THE
 DIRECTION OF RICHARD T. MCCORMICK, LS 7450,
 ASSOCIATE LAND SURVEYOR.



Richard T. McCormick 12-22-2011
 RICHARD T. MCCORMICK, LS 7450 DATE

RESOLUTION No. _____
 ADOPTED: _____
 DOC. No. _____
 RECORDED: _____

**STREET DEDICATION (WEST OF #4985 HOLLY DRIVE):
 IN A PORTION OF LOT 53, MAP 283 HORTON'S PURCHASE**

| DESCRIPTION | BY | APPROVED | DATE | FILMED | CITY OF SAN DIEGO, CALIFORNIA | T.M. |
|-------------|------|----------|-------|--------|-----------------------------------|---------------------|
| ORIGINAL | RTMc | RJD | 11-11 | | SHEET 1 OF 1 SHEET | WBS S-11033.03.01 |
| | | | | | <i>Ronald J. Goble</i> 12-22-2011 | |
| | | | | | FOR CITY ENGINEER DATE | 196-1743 |
| | | | | | | LAMBERT COORDINATES |
| | | | | | | 36743-B |
| STATUS | | | | | | |

EXHIBIT "A"
STREET DEDICATION

APN: 548-242-29

All that portion of Lot 53 of Horton's Purchase, in the City of San Diego, County of San Diego, State of California, according to the Map thereof No. 283, filed in the Office of the County Recorder of said County of San Diego on March 9, 1878, being more particularly described as follows:

The northerly 5.00 feet of that certain parcel of land as described in deed recorded December 18, 1974, as File/Page No. 74-327635 in the said office of the County Recorder.

Together with the southerly 1.5 feet of the northerly 6.5 feet of the easterly 74.68 feet as described in said deed.

Excepting therefrom the easterly 67.68 feet.

Above described street dedication containing 726.34 Square Feet, 0.0167 Acres.

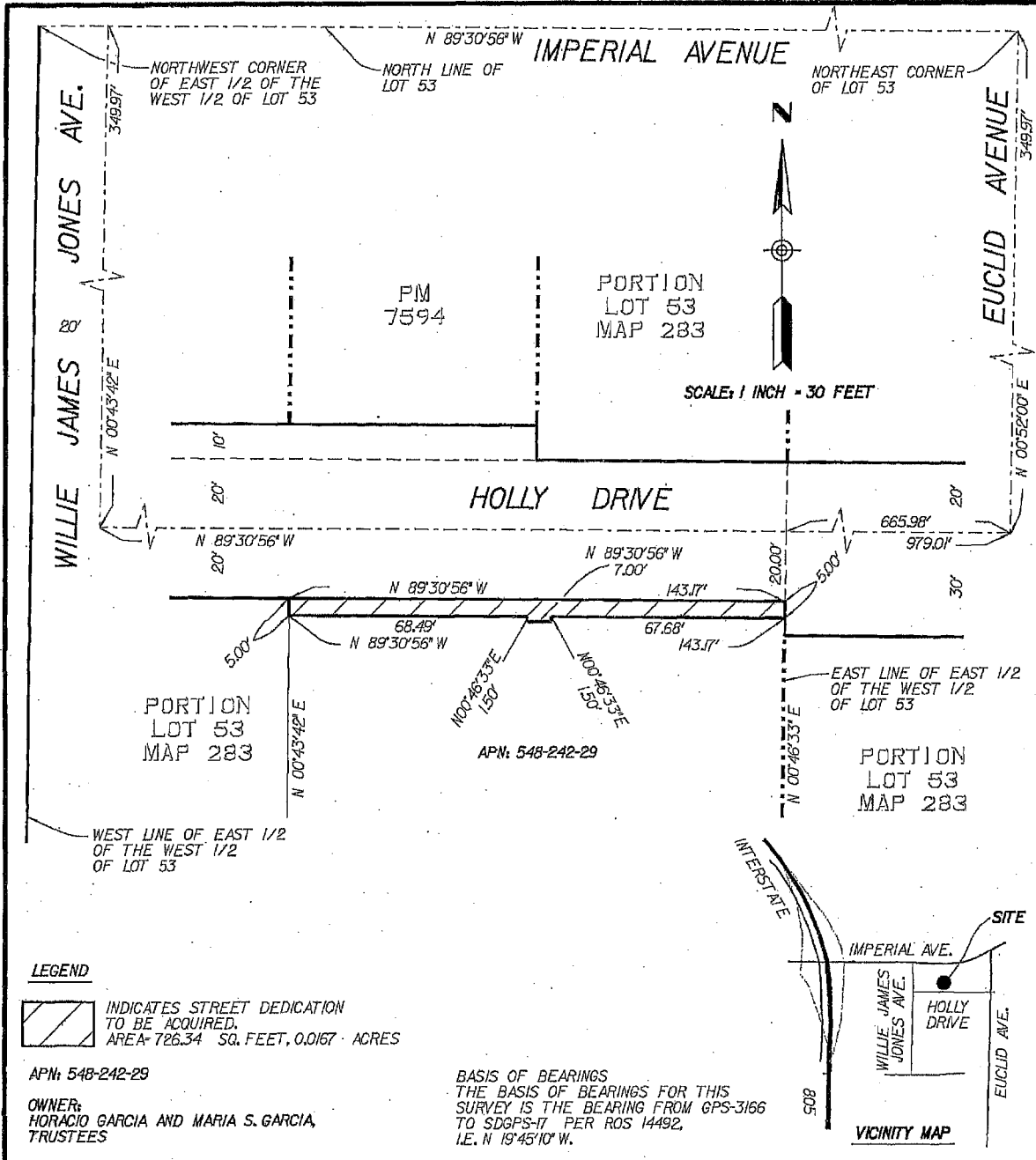
Exhibit 'B' (City of San Diego Drawing No. 36742-B) attached and by this reference is made a part hereto.

Richard T. McCormick 9-05-2012

Richard T. McCormick, LS 7450 Date
Associate Land Surveyor, Field Engineering
City of San Diego
My Registration Expires 12-31-2012



File: 4985 Holly_legal.doc
WBS S-11033.03.01-revised August 2012



PREPARED BY:
CITY OF SAN DIEGO ENGINEERING DEPARTMENT,
FIELD DIVISION - SURVEY SECTION, UNDER THE
DIRECTION OF RICHARD T. McCORMICK, LS 7450,
ASSOCIATE LAND SURVEYOR.



Richard T. McCormick 9-05-2012
RICHARD T. McCORMICK, LS 7450 DATE

RESOLUTION No. _____
ADOPTED: _____
DOC. No. _____
RECORDED: _____

**STREET DEDICATION (#4985 HOLLY DRIVE):
IN A PORTION OF LOT 53, MAP 283 HORTON'S PURCHASE**

| DESCRIPTION | BY | APPROVED | DATE | FILMED | CITY OF SAN DIEGO, CALIFORNIA | T.M. |
|-------------|------------------|------------------|--------|--------|---|---------------------------------|
| ORIGINAL | RTM _c | | 11-'11 | | SHEET 1 OF 1 SHEET | S-11033.03.01 |
| REVISED | RTM _c | RTM _c | 8-'12 | | <i>Richard T. McCormick</i> 9-05-2012 FOR CITY ENGINEER DATE | |
| STATUS | | | | | | 196-1743 LAMBERT COORDINATES |
| | | | | | | 36742-B |

EXHIBIT "A"
STREET DEDICATION

APN: 548-250-03

All that portion of Lot 53 of Horton's Purchase, in the City of San Diego, County of San Diego, State of California, according to the Map thereof No. 283, filed in the Office of the County Recorder of said County of San Diego on March 9, 1878, being more particularly described as follows:

The southerly 6.00 feet of that certain parcel of land as described in deed recorded September 7, 1989, as Doc. No. 89-0482196 in the said office of the County Recorder.

Above described street dedication containing 360.01 Square Feet, 0.0083 Acres.

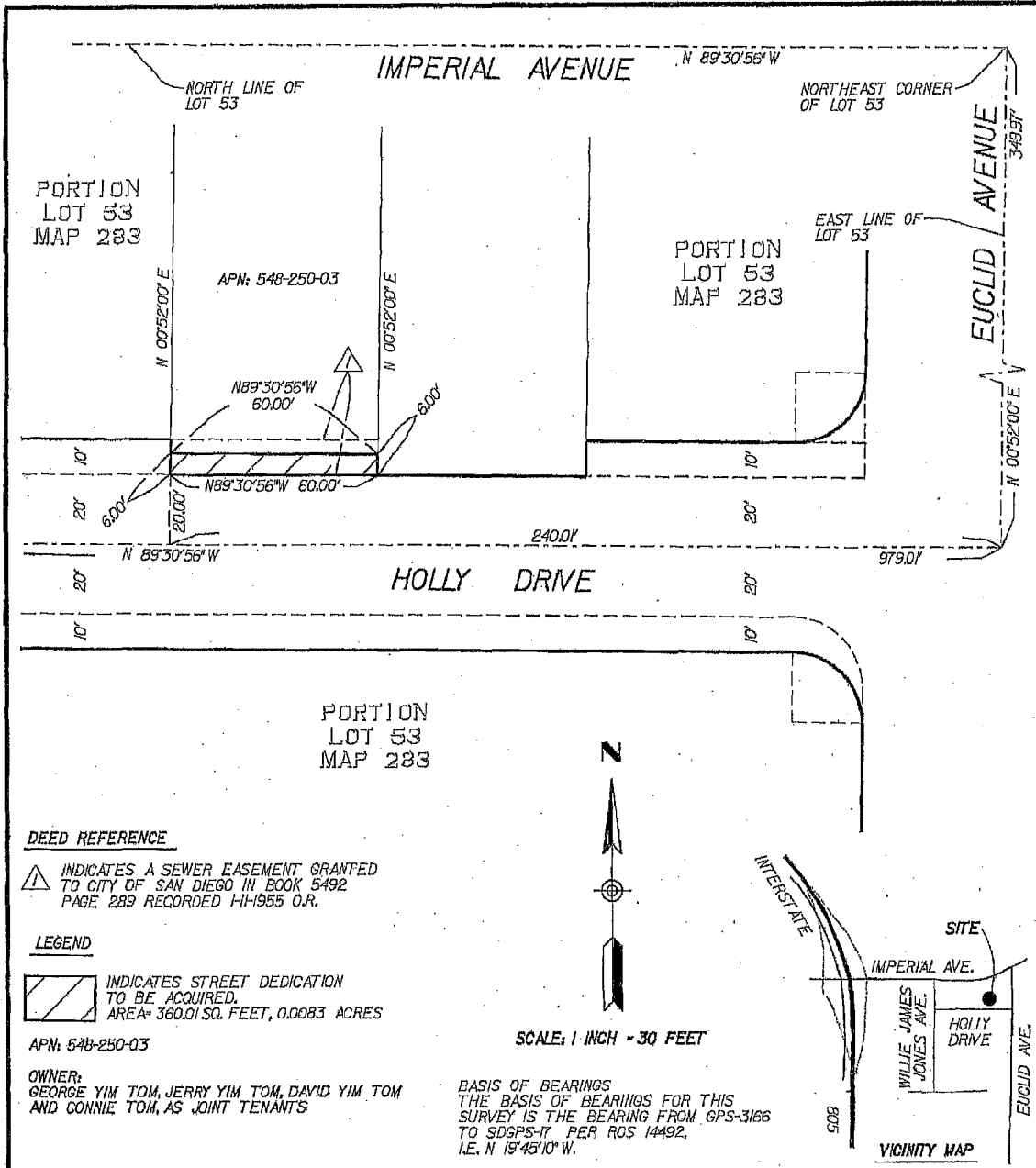
Exhibit 'B' (City of San Diego Drawing No. 36737-B) attached and by this reference is made a part hereto.

Richard T. McCormick 12-20-2011

Richard T. McCormick, LS 7450 Date
Associate Land Surveyor, Field Engineering
City of San Diego
My Registration Expires 12-31-2012

File: 5047 Churchward_legal.doc
WBS S-11033.03.01- November 2011





PREPARED BY:
 CITY OF SAN DIEGO ENGINEERING DEPARTMENT,
 FIELD DIVISION - SURVEY SECTION, UNDER THE
 DIRECTION OF RICHARD T. McCORMICK, LS 7450,
 ASSOCIATE LAND SURVEYOR.



Richard T. McCormick 9-05-2012
 RICHARD T. McCORMICK, LS 7450 DATE

RESOLUTION No. _____

ADOPTED: _____

DOC. No. _____

RECORDED: _____

**STREET DEDICATION (#5047 CHURCHWARD STREET):
 IN A PORTION OF LOT 53, MAP 283 HORTON'S PURCHASE**

| DESCRIPTION | BY | APPROVED | DATE | FILMED | CITY OF SAN DIEGO, CALIFORNIA | T.M. |
|-------------|------|----------|-------|--------|---|---------------------------------|
| ORIGINAL | RTMo | | 11-11 | | SHEET 1 OF 1 SHEET | WBS S-11033.03.01 |
| | | | | | <i>Richard T. McCormick</i> 9-05-2012 FOR CITY ENGINEER DATE | |
| | | | | | | 196-1743 LAMBERT COORDINATES |
| | | | | | | 36737-B |
| STATUS | | | | | | |

EXHIBIT "A"
STREET DEDICATION

APN: 548-250-13

All that portion of Lot 53 of Horton's Purchase, in the City of San Diego, County of San Diego, State of California, according to the Map thereof No. 283, filed in the Office of the County Recorder of said County of San Diego on March 9, 1878, being more particularly described as follows:

The southerly 5.00 feet of that certain parcel of land as described in deed recorded August 11, 1995, as Doc. No. 1995-0350925 in the said office of the County Recorder.

Above described street dedication containing 300.01 Square Feet; 0.0069 Acres.

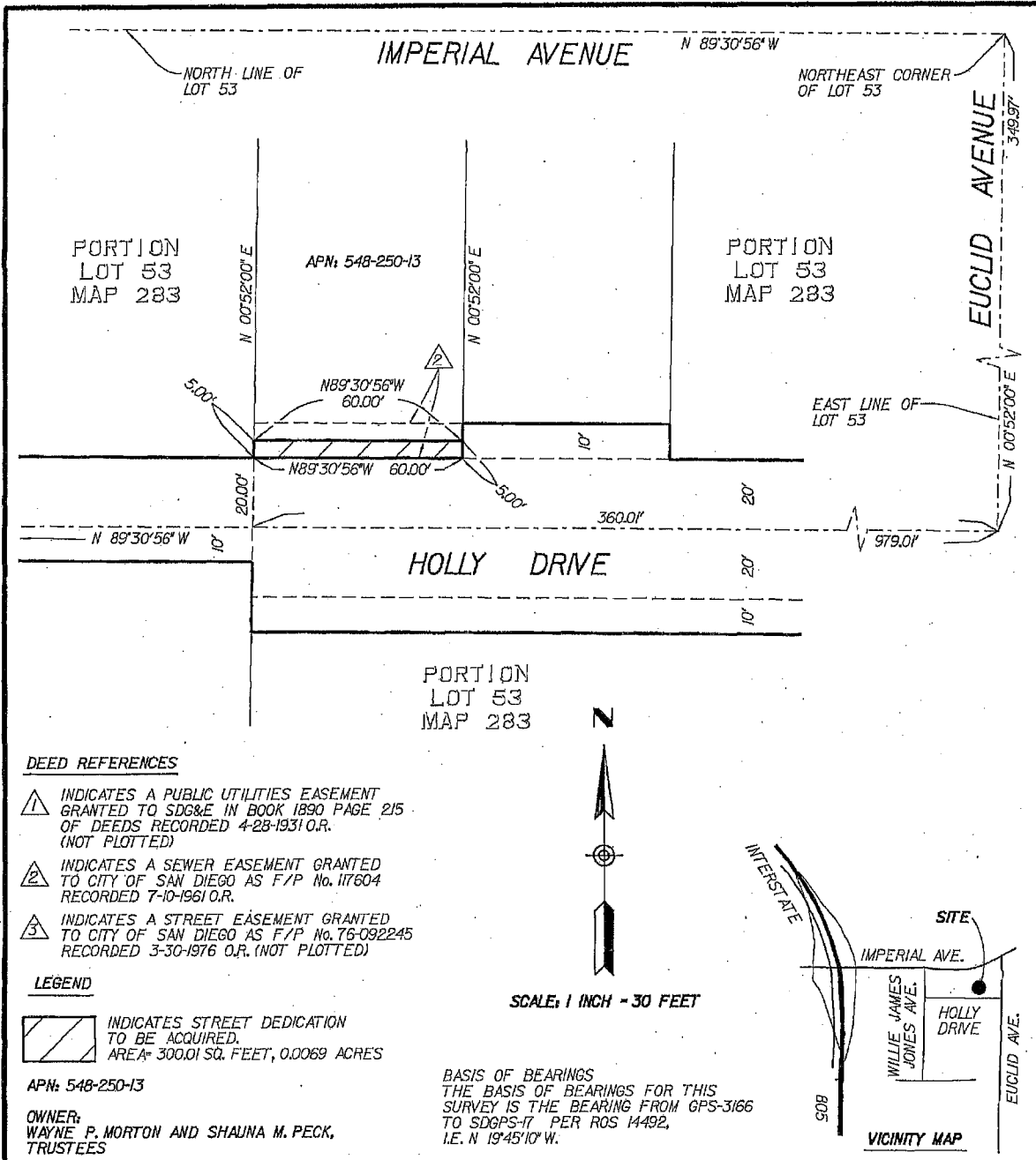
Exhibit 'B' (City of San Diego Drawing No. 36736-B) attached and by this reference is made a part hereto.

Richard T. McCormick 9-13-2012

Richard T. McCormick, LS 7450 Date
Associate Land Surveyor, Field Engineering
City of San Diego
My Registration Expires 12-31-2012



File: 5029 Imperial_legal.doc
WBS S-11033.03.01-- revised August 2012



PREPARED BY:
CITY OF SAN DIEGO ENGINEERING DEPARTMENT,
FIELD DIVISION - SURVEY SECTION, UNDER THE
DIRECTION OF RICHARD T. MCCORMICK, LS 7450,
ASSOCIATE LAND SURVEYOR.

Richard T. McCormick 9-05-2012
RICHARD T. MCCORMICK, LS 7450 DATE

LICENSED LAND SURVEYOR
RICHARD T. MCCORMICK
L.S. 7450
STATE OF CALIFORNIA

RESOLUTION No. _____
ADOPTED: _____
DOC. No. _____
RECORDED: _____

**STREET DEDICATION (#5029 IMPERIAL AVENUE):
IN A PORTION OF LOT 53, MAP 283 HORTON'S PURCHASE**

| DESCRIPTION | BY | APPROVED | DATE | FILMED | CITY OF SAN DIEGO, CALIFORNIA | T.M. |
|-------------|------------------|------------------|--------|--------|---|---------------------------------|
| ORIGINAL | RTM _o | | 11-'11 | | SHEET 1 OF 1 SHEET | S-11033.03.01 |
| REVISED | RTM _c | RTM _c | 8-'12 | | <i>Richard T. McCormick</i> 9-05-2012 FOR CITY ENGINEER DATE | |
| STATUS | | | | | | 196-1743 LAMBERT COORDINATES |
| | | | | | | 36736-B |

EXHIBIT "A"
STREET DEDICATION

APN: 548-242-03

All that portion of Lot 53 of Horton's Purchase, in the City of San Diego, County of San Diego, State of California, according to the Map thereof No. 283, filed in the Office of the County Recorder of said County of San Diego on March 9, 1878, being more particularly described as follows:

Beginning at a point on the south line of the north 120.00 feet of said Lot 53, said point being on the easterly sideline of the westerly 5.00 feet as granted per deed recorded on November 23, 1982, as Instrument No. 82-360659 in the said office of the County Recorder; Thence leaving the said south line of the north 120.00 feet and continuing along the said easterly sideline South 00°43'42" West 106.07 feet to the beginning of a non-tangent 16.50 foot radius curve, concave northeasterly, a radial bears South 66°54'00" West, said point being the **true point of beginning**; Thence leaving the said easterly sideline and continuing southeasterly along the arc of said curve through a central angle of 37°54'43" a distance of 10.92 feet to a point of non-tangency, a radial bears South 28°59'17" West; Thence South 89°30'56" East 37.71 feet to a point on the east line of that certain deed granted to Lawton, et al, recorded on June 25, 2010, as Doc. No. 2010-0320370 in the said office of the County Recorder; Thence along the said east line of Lawton deed South 00°43'42" West 6.00 feet to a point on the south line of said Lawton deed; Thence continuing along the said south line of Lawton deed North 89°30'56" West 45.00 feet to a point on the said easterly sideline of the westerly 5.00 feet; Thence leaving the said south line of Lawton deed and continuing along the said easterly sideline of the westerly 5.00 feet North 00°43'42" East 13.90 feet to the **true point of beginning**.

Above described street dedication containing 292.33 Square Feet, 0.0067 Acres.

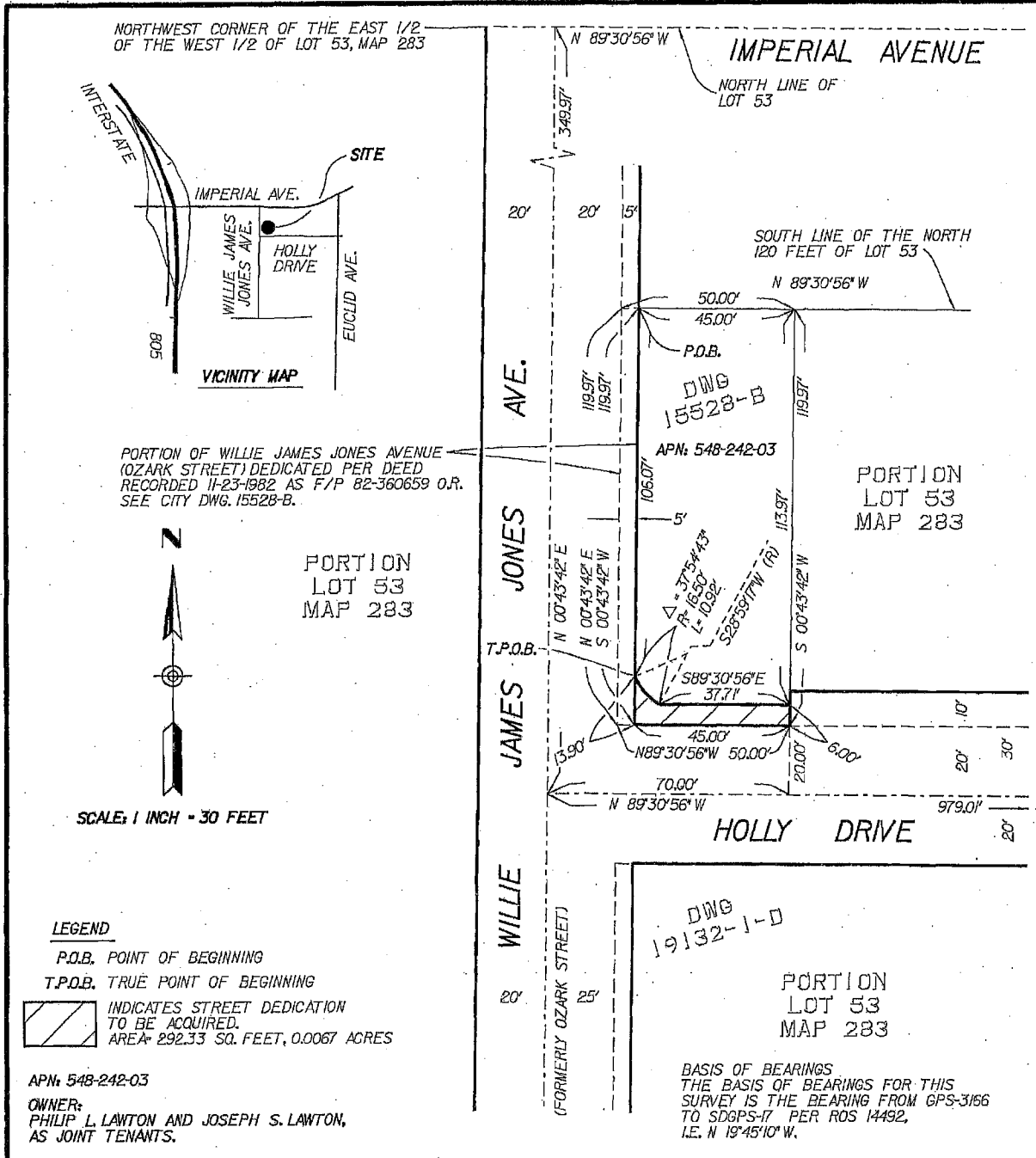
Exhibit 'B' (City of San Diego Drawing No. 36734-B) attached and by this reference is made a part hereto.

Richard T. McCormick 6-08-2012

Richard T. McCormick, LS 7450 Date
Associate Land Surveyor, Field Engineering
City of San Diego
My Registration Expires 12-31-2012

File: 4950 Holly_legal rev.doc
WBS S-11033.03.01- June 2012






LEGEND

P.O.B. POINT OF BEGINNING

T.P.O.B. TRUE POINT OF BEGINNING

 INDICATES STREET DEDICATION TO BE ACQUIRED. AREA: 292.33 SQ. FEET, 0.0067 ACRES

APN: 548-242-03

OWNER:
PHILIP L. LAWTON AND JOSEPH S. LAWTON,
AS JOINT TENANTS.

PREPARED BY:

CITY OF SAN DIEGO ENGINEERING DEPARTMENT,
FIELD DIVISION - SURVEY SECTION, UNDER THE
DIRECTION OF RICHARD T. MCCORMICK, LS 7450,
ASSOCIATE LAND SURVEYOR.



Richard T. McCormick 9-05-2012
RICHARD T. MCCORMICK, LS 7450 DATE

RESOLUTION No. _____

ADOPTED: _____

DOC. No. _____

RECORDED: _____

**STREET DEDICATION (#4950 HOLLY DRIVE):
IN A PORTION OF LOT 53, MAP 283 HORTON'S PURCHASE**

| DESCRIPTION | BY | APPROVED | DATE | FILMED | CITY OF SAN DIEGO, CALIFORNIA | T.M. |
|-------------|------|----------|-------|--------|---|---------------------------------|
| ORIGINAL | RTMo | | 10-11 | | SHEET 1 OF 1 SHEET | S-11033.03.01 |
| REVISED | RTMo | | 6-12 | | <i>RT McCormick</i> 9-05-2012 FOR CITY ENGINEER DATE | |
| STATUS | | | | | | 196-1743 LAMBERT COORDINATES |
| | | | | | | 36734-B |