

ORDINANCE NO. _____

AN ORDINANCE GRANTING A SPECIAL PRIVILEGE TO THE CENTRAL BUSINESS ASSOCIATION OF EL PASO, INC., TO PERMIT TEMPORARY SIDEWALK VENDING FOR PARTICIPATING MERCHANTS WITHIN CERTAIN PUBLIC RIGHTS-OF-WAY IN DOWNTOWN EL PASO FROM MAY 11, 2005 THROUGH JULY 3, 2005.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the Mayor be authorized to execute a Special Privilege on behalf of the City of El Paso, hereinafter referred to as "City," upon the following terms to the CENTRAL BUSINESS ASSOCIATION OF EL PASO, INC., hereinafter referred to as "Grantee:"

1. This Special Privilege shall be in a form that is attached and incorporated as Exhibit "A";
2. The Special Privilege is to permit Grantee the use of various City public rights-of-way within Downtown El Paso for sidewalk vending by participating merchants;
3. As consideration for this Special Privilege, Grantee shall pay the City of El Paso the sum set forth in Section 4 of Exhibit "A," subject to the terms and conditions of this ordinance; and
4. This Special Privilege shall be for a term commencing on May 11, 2005, through July 3, 2005.

PASSED AND APPROVED THIS 10th DAY OF MAY 2005.

THE CITY OF EL PASO

Joe Wardy
Mayor

ATTEST:

Richarda Duffy Momsen, City Clerk

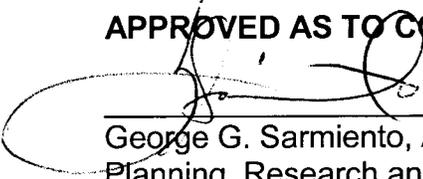
APPROVED AS TO FORM:



Matt Watson
Assistant City Attorney

Doc No. 11644

APPROVED AS TO CONTENT:



George G. Sarmiento, AICP, Director
Planning, Research and Development
Department

Doc No. 11644/Planning/Special Privilege SP-05007/MWAT

SP-05007

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- (a) The Grantee's use of the Premises shall be solely limited to sidewalk sales of merchandise of the type generally sold by the respective merchant; provided, however, that sales of food or beverage are hereby authorized for only those merchants whose principal business is the sale of food and beverage. Such sales of food or beverage as herein permitted shall be strictly limited to the sale of non-potentially hazardous commercially packaged food or beverage items that are bottled, canned, in a carton, or securely wrapped by a commercial food product establishment as defined by El Paso Municipal Code, Chapter 9.12; and
- (b) Keep a minimum clear width of five (5) feet of unobstructed sidewalk access for pedestrian use abutting the Premises; and
- (c) No equipment, tables, booths, electrical lines, or other structures shall be placed within fifteen (15) feet of any connections to sprinkler systems, water hydrants, water valves, or sanitary sewer manholes on or near the Premises; and
- (d) No equipment, tables, booths, electrical lines, or other structures shall be placed in such a manner that access is obstructed to any entrance or exit of any adjacent business; and
- (e) No advertising, except for displays of product cost, each sign measuring not more than one (1) square foot in size; and
- (f) Each participating merchant shall be allowed the number of vending areas paid for and which are shown on the attached plot plan, yet under no instances shall any individual merchant location be permitted more than a maximum of three (3) vending areas, and in all instances each location shall be included on a plot plan demonstrating spacing compliance;
- (g) Each vending area shall not exceed a three foot by nine foot (3' x 9') or six foot by nine foot (6' x 9') footprint, subject to all requirements stated herein, with all vending restricted to area;
- (h) Vending area size shall be divisible provided that the subdivisions do not exceed the maximum square footage permitted per location;
- (i) No stacking of merchandise shall be permitted above seven (7) feet;

- (j) Hanging of merchandise shall be allowed only within the vending area; and
- (k) Packaging or shipping cardboard shall be prohibited; all tables shall be skirted or otherwise adorned; display racks, tables and shelving shall be finished or painted; no storage permitted unless screened.

(l) Default Provisions.

- (a) A warning notice shall be issued to a participating merchant upon an initial finding of non-compliance with any condition of a special privilege license for sidewalk merchandise vending. After the initial warning notice, a citation may be issued for any additional violations. A citation shall additionally operate as a correction notice herein. Correction notices shall be forwarded from the Director for Building Permits and Inspections, or his designee, to the Grantee, and to the Director of Planning, Research and Development within five (5) working days from the date of issuance. The Director for Building Permits and Inspections, or his designee, shall maintain a written record of all correction notices issued for each participating merchant and event location. Written correction notice(s) received from any city enforcement agency may be appealed to the Director for Building Permits and Inspections by the respective participating merchant. The appeal must be made within ten (10) working days following the date of issuance of the written correction notice(s). If appeal is either not requested or is denied, the correction notice shall become a confirmed correction notice. Upon the issuance of a third confirmed correction notice on a respective location within the Premises, the particular location shall be subject to termination. Further, each respective participating merchant may be cited by appropriate authorities for non-compliance with the provisions of this Special Privilege and shall be subject to any and all legal penalties as set forth in the El Paso Municipal Code.
- (b) Upon the third confirmed correction notice for any event location, Grantee shall be mailed a letter of non-compliance from the Director for

Building Permits and Inspections or his designee. Upon issuance of a third letter of non-compliance, the City may revoke the special privilege license. This provision shall be interpreted as to allow additional remedies to the City in addition to those already provided elsewhere pursuant to the special privilege license granted or other applicable law.

- (c) Grantee shall retain the right to remove any participating merchant and event location at its discretion. Grantee shall provide notice to the City of El Paso to effectuate this provision. An event location is no longer part of the special privilege license premises at the time such a request from grantee is received by the city.

Except as provided in this Special Privilege, nothing herein shall grant any real property interest to the Grantee. This Special Privilege is granted only for the term stated and nothing herein shall be construed to vest any continuing right in the Grantee.

3. **TERM.** Grantee shall be permitted to use the Premises commencing on Wednesday, May 11, 2005 through Sunday, July 3, 2005, between the hours of 8:00 a.m. to 6:00 p.m. each day. The premises shall remain clear of all vending area items from 6:00 p.m. each day to 8:00 a.m. each day.

The Premises shall be completely vacated and all Events related structures, equipment, and other items should be removed from the Premises no later than 6:00 p.m. on Sunday, July 3, 2005.

4. **CONSIDERATION.** As consideration for the use of the Premises, the Grantee shall pay the City the prorated amount of Fourteen and 79/100 Dollars (\$14.79) for a vending area defined as three feet by nine feet (3' x 9'), for a total amount of One Hundred Thirty Three and 11/100 Dollars (\$133.11) which shall be due prior to the execution of this Special Privilege. Payment(s) shall be in the form of a cashier's check payable to "The City of El Paso" and delivered to the Office of the City Comptroller. If the El Paso City Council disapproves the Special Privilege, the Office of the City Comptroller shall make a full refund of payment(s) within fifteen (15) days following the date of denial. Any consideration paid shall not be refunded and any remaining balance shall be due and payable, not excluding other remedies under law, if this Special Privilege is terminated or canceled as a result of default with any requirement listed herein.

5. **COSTS.** This Special Privilege is granted on the condition that the Grantee pay for all costs associated with the Event.

6. **LEGAL RELATIONSHIP.** The Grantee assumes full responsibility for the planning, coordination, management and production of the Event. Nothing contained herein shall be construed as creating the relationship of employer and employee or principal and agent between the City and the Grantee, and the Grantee shall not be deemed to be an independent contractor. The City shall not be subject to any obligations or liabilities of the Grantee in the setup, operation, production, or take down of the Event. The City shall in no way construe the grant of this Special Privilege as co-sponsorship of the Event. Grantee shall ensure strict compliance by participating merchants of all requirements of this Special Privilege and shall provide for the routine enforcement of the Event.

7. **REPAIRS.** Grantee shall keep the Premises in good condition and repair and in a clean, orderly and attractive condition during the term of this Special Privilege. Grantee shall be responsible for all maintenance of the Premises and shall repair any damage to the Premises due to the operation of the Event, at the sole expense of the Grantee.

8. **IMPROPER USE.** This Special Privilege shall not permit or be construed to permit any other private use of the City's right-of-way that impairs its function as a right-of-way. Grantee shall not construct any additional improvements, or make any additions or alterations on or over the City right-of-way, without the prior written consent of the El Paso City Council.

9. **INDEMNITY.** As a condition of the Special Privilege, Grantee shall indemnify, defend and hold harmless the City, its officers, agents, servants and employees from any and all claims, losses, damages, causes of action, suits, and liability of every kind, including all expenses of litigation for injury or death of any person, or for damage to any property, arising out of or in connection with Grantee's use of the public right-of-way, regardless of whether such injuries, death, or damages are caused in whole or in part by the negligence of the City.

10. **TERMINATION.**

- (a) Without regard to any remedies located elsewhere in this special privilege, a violation by Grantee, or any participating merchant operating under Grantee, of any of the requirements specified in this Special Privilege or any violations of the code not specified in this Special Privilege shall be grounds for termination of the Special Privilege, even if no non-compliance letter has been sent. Termination of the Special Privilege is in addition to any other legal remedies available to the City, including, but not limited to those specified under Chapter 1.08; and
- (b) A respective location authorized under this Special Privilege which upon third citation is issued by City enforcement agency shall be subject to termination of their rights granted under this Special Privilege for the duration of the remaining term of this Special Privilege.
- (c) Permission for vending areas located on El Paso Street from the US/Mexican Border to Paisano Avenue (US 85) and Stanton Street from Paisano Avenue to the US/Mexican Border (US 62) is subject to Texas Department of Transportation's ("TxDOT") continued waiver of Paragraph Seven of General Conditions of the Municipal Maintenance Agreement between TxDOT and the City of El Paso regarding encroachment of vending areas on the aforementioned rights of way as stated in a letter from TxDOT dated June 27, 2002, attached as Exhibit "C". **Upon notification from TxDOT to the City that they will no longer waive Paragraph Seven of the Municipal Maintenance Agreement and require the enforcement of removal of encroachment on state or federally designated right of way, the rights granted under this Special Privilege shall be terminated immediately. Upon written notification from a representative of the City of El Paso, the Grantee shall remove all encroachments immediately without any claim of compensation or reimbursement of fees, costs incurred or other damage, whether economic or non-economic.**

11. **INSURANCE.** Grantee shall provide public liability insurance for personal injuries and death growing out of any one accident or other cause in a minimum amount

of Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) per person, and Five Hundred Thousand and No/100 Dollars (\$500,000.00) for two (2) or more persons in any one accident, and, in addition, shall provide property damage liability insurance in a minimum sum of One Hundred Thousand and No/100 Dollars (\$100,000.00) for property damage growing out of any one accident or other cause. These amounts are not a limitation upon the Grantee's agreement to indemnify and hold the City harmless.

Grantee shall maintain said insurance with a solvent insurance company authorized to do business in the State of Texas. The policy shall provide that the insurer will defend against all claims and lawsuits which arise and will pay any final judgment of a court of competent jurisdiction against the City, its officers, agents, servants or employees and Grantee, its officers, agents, servants or employees. All policies shall be in a form acceptable to the City and shall name the City of El Paso, its officers, agents, servants and employees as additional insureds. The Grantee shall file a copy of the policy or a certificate of insurance with the City Planning, Research and Development and Inspections Department, the City Clerk, and the City Attorney of the City of El Paso.

Prior to the execution of this Special Privilege by the City Council, the Grantee shall deliver to the City the required certificate of insurance. The policy shall provide that it may not be canceled or the amount of coverage reduced without ten (10) days written notice to the City. Failure to keep the policy in full force and effect throughout the term of the Special Privilege shall be grounds for cancellation of this Special Privilege.

12. **FORCE MAJEURE.** The Grantee understands and agrees that in the event of public necessity, acts of God, or other circumstances beyond the control of the City, it becomes necessary for the City to cancel this Special Privilege, the City may do so without liability of any type to the Grantee and the Grantee forever releases the City from any and all claims whatsoever occasioned by cancellation pursuant to this paragraph.

13. **CANCELLATION.** Should the City at any time or for any reason decide that the public right-of-way onto which the Event is encroaching is needed for a public use or facility, or due to a real or perceived threat to public safety or a violation of any provision listed herein, the City may upon ten (10) days written notice, cancel this Special Privilege at no cost to the City and may take possession of the public right-of-way. All rights of Grantee in the Premises shall then be terminated. Grantee may cancel this

Special Privilege, for any reason, upon ten (10) days prior written notice to the City, and all rights of Grantee shall then be terminated.

14. **LIENS AND ENCUMBRANCES.** The Grantee hereby agrees to defend and indemnify and hold harmless the City against any liability and loss of any type arising from any lien or encumbrance on the Premises, arising from the Grantee's use of the Premises, unless such lien or encumbrance arises from acts or omission of the City.

15. **NON-ASSIGNABILITY.** The rights of the Grantee and the City under this Special Privilege are not assignable. Neither Grantee nor any participating merchant shall be authorized to lease, rent, or otherwise allow the use of any portion of the Premises by any non-participating merchant or for the sale of merchandise not principally sold by a participating merchant.

16. **MISCELLANEOUS.**

A. **Law and Ordinances.** The Grantee shall comply with all statutes, laws, codes and ordinances applicable to Grantee's use or occupancy of the Premises.

B. **Notices.** All notices provided for herein shall be sufficient if sent by certified mail, return receipt requested, postage fully prepaid, addressed to the proper party at the following addresses:

City of El Paso
Attn: Mayor
#2 Civic Center Plaza
El Paso, Texas 79901-1196

with copy to:

City of El Paso
Attn: City Clerk
#2 Civic Center Plaza
El Paso, Texas 79901-1196

and:

CENTRAL BUSINESS ASSOCIATION
OF EL PASO, INC.
Attn: Alonso Flores
201 E. Main Street, Suite 1710
El Paso, Texas 79901

or to such other addresses as the parties may designate to each other in writing from time to time.

C. **Entire Agreement.** This document contains all of the agreements between the parties and may not be modified, except by an agreement in writing signed by both parties.

D. **Severability.** Every provision of this Special Privilege is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the Special Privilege.

E. **Law Governing.** The laws of the State of Texas shall govern the validity, performances and enforcement of this Special Privilege.

F. **Venue.** This Special Privilege shall be enforceable in El Paso, Texas, and if legal action is necessary to enforce it exclusive venue shall be in El Paso County, Texas.

17. **BINDING SPECIAL PRIVILEGE.** The individual signing this Special Privilege acknowledges that he or she is authorized to do so, that said individual further warrants that he or she is authorized to commit and bind Grantee to the terms and conditions of the Special Privilege, and that Grantee is a duly authorized and existing corporation that is authorized to do business in the State of Texas. Upon the City's request, Grantee shall provide evidence satisfactory to the City confirming these representations.

18. **RESTRICTIONS AND RESERVATIONS.** This Special Privilege is subject to all rights-of-way, easements, dedications, restrictions, reservations and other encumbrances of record and running with the land. If, at any time during the term of this Special Privilege, or any extension thereof, any such rights-of-way, easements, dedications, restrictions, reservations and other encumbrances of record and running with the land, preclude, interrupt or interfere with Grantee's use of the Premises, Grantee shall have the right to terminate this Special Privilege upon giving the City prior written notice of its intention to do so.

(Signatures on following page)

WITNESS the following signatures and seals:

THE CITY OF EL PASO:

Joe Wardy
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

Matt Watson
Assistant City Attorney

Doc No. 11644

APPROVED AS TO CONTENT:

George G. Sarmiento, AICP, Director
Planning, Research and Development
Department

ACCEPTANCE

The above instrument, with all conditions thereof, is hereby accepted this 22nd
day of April, 2005.

**GRANTEE: CENTRAL BUSINESS ASSOCIATION OF
EL PASO, INC.**

By: Alonso Flores

DIRECTOR OF OPERATIONS ALONSO FLORES
(Printed name/title)

(Signatures continue of following page)

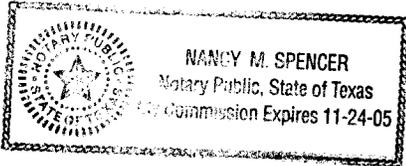
ACKNOWLEDGMENT

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the 22nd day of April, 2005, by ARONSO FLORES as DIRECTOR OF OPERATIONS, on behalf of **CENTRAL BUSINESS ASSOCIATION OF EL PASO, INC.**, as Grantee.

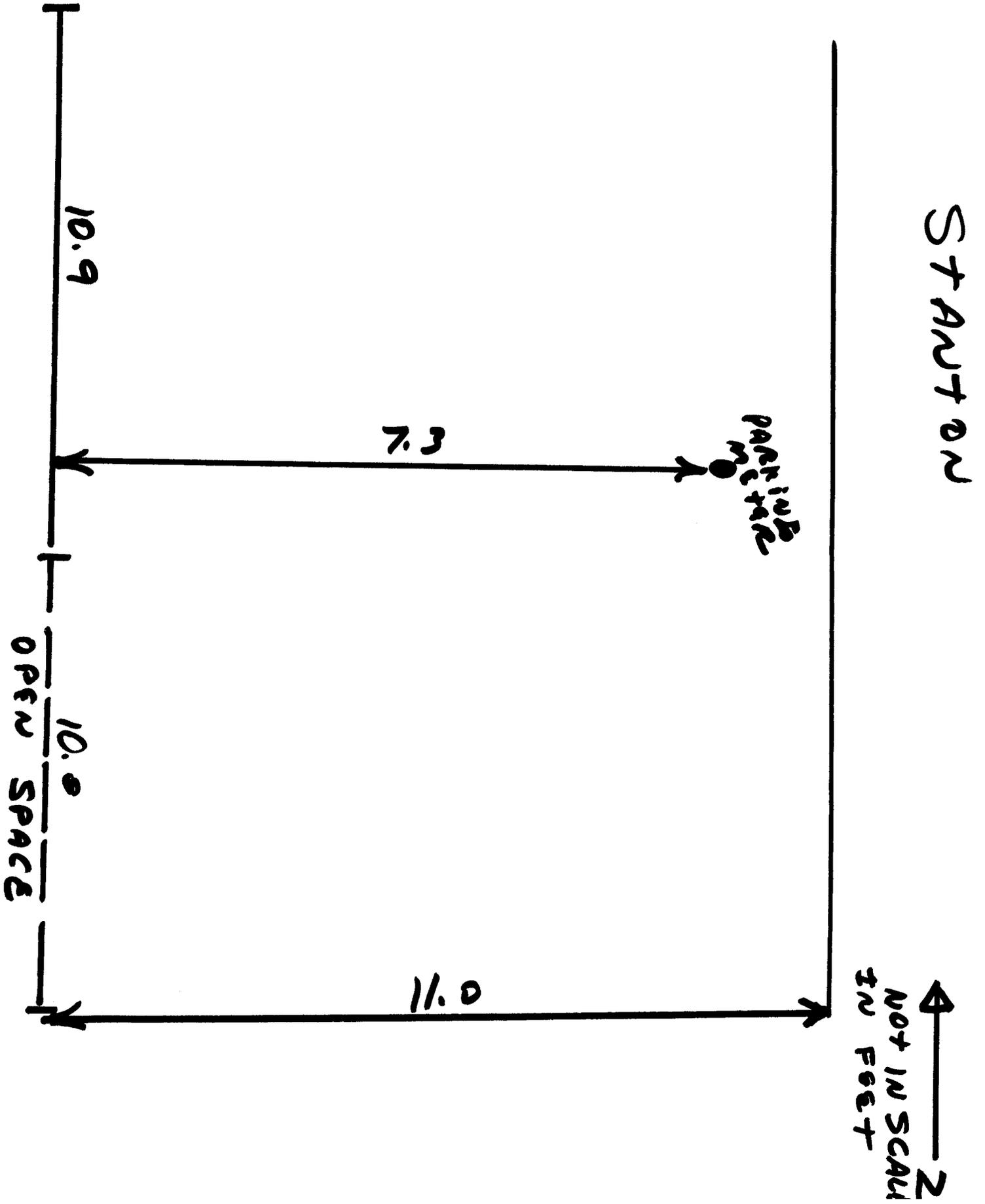
My Commission Expires:

Nancy M. Spencer
Notary Public, State of Texas

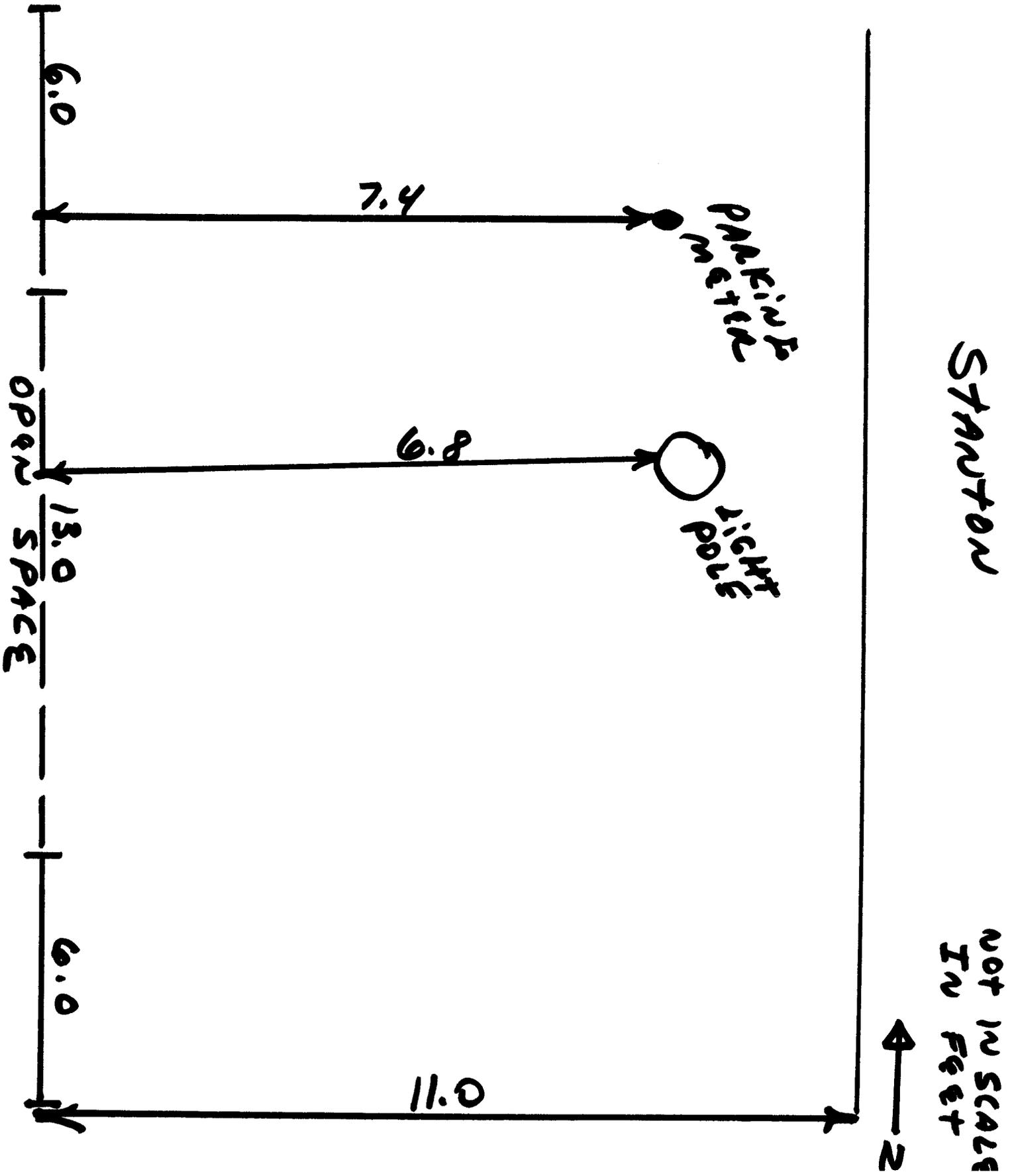


Notary's Printed or Typed Name:
Nancy M. Spencer

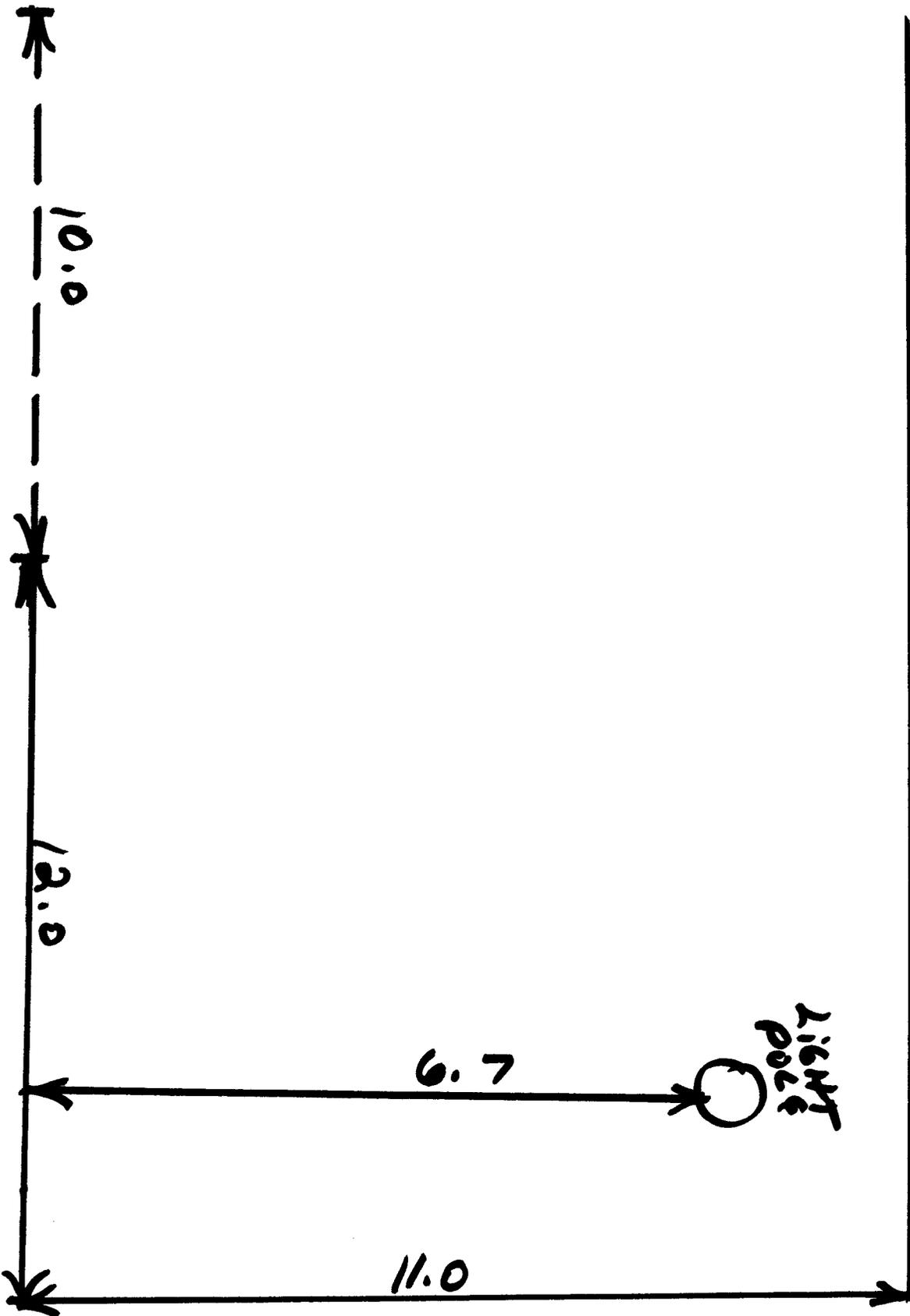
SUN COSMETICS
813 S. STANTON



CASA MONICA
607 S. STANTON



TINA'S FASHION
815 S. STANTON



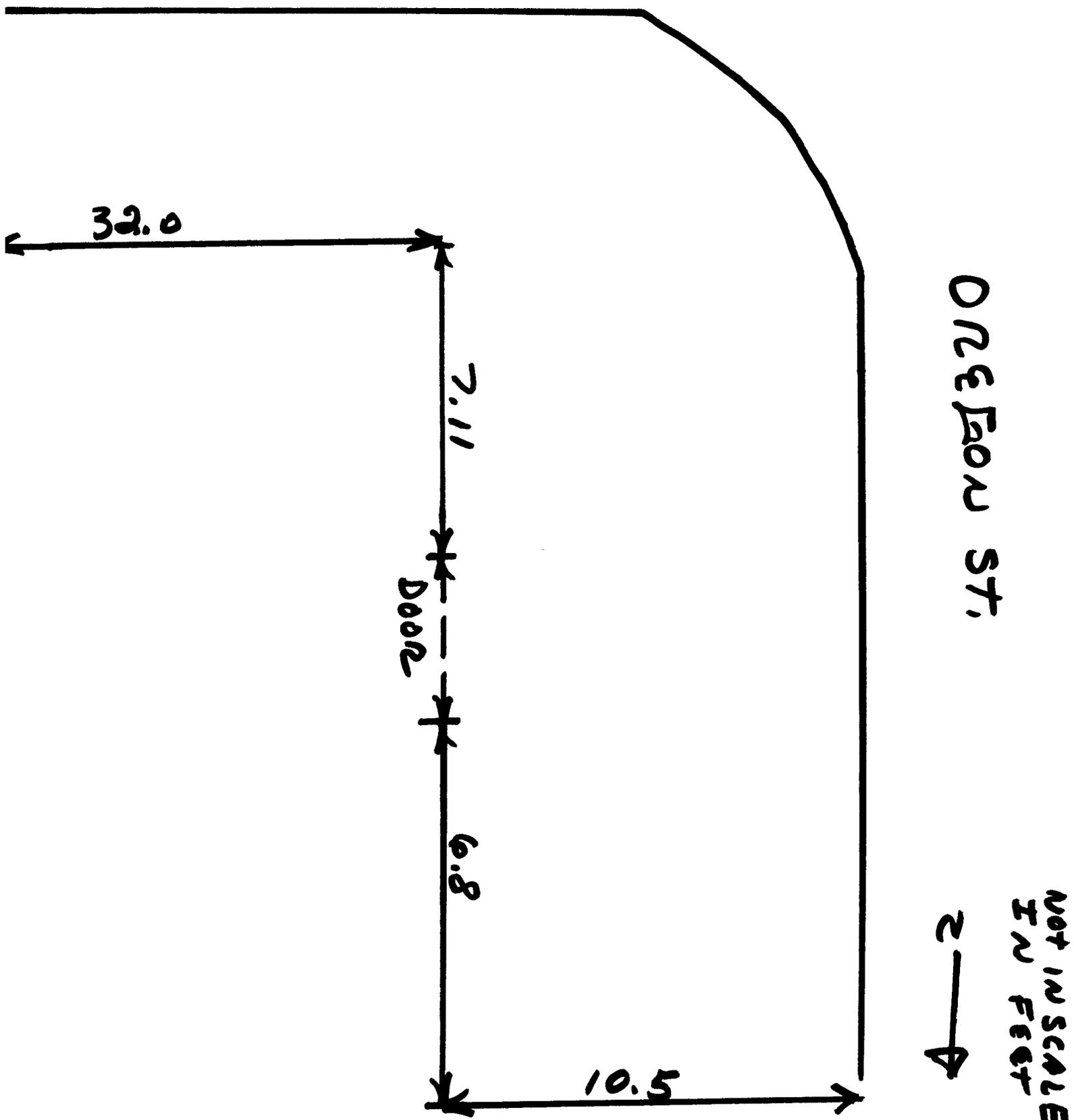
STANTON



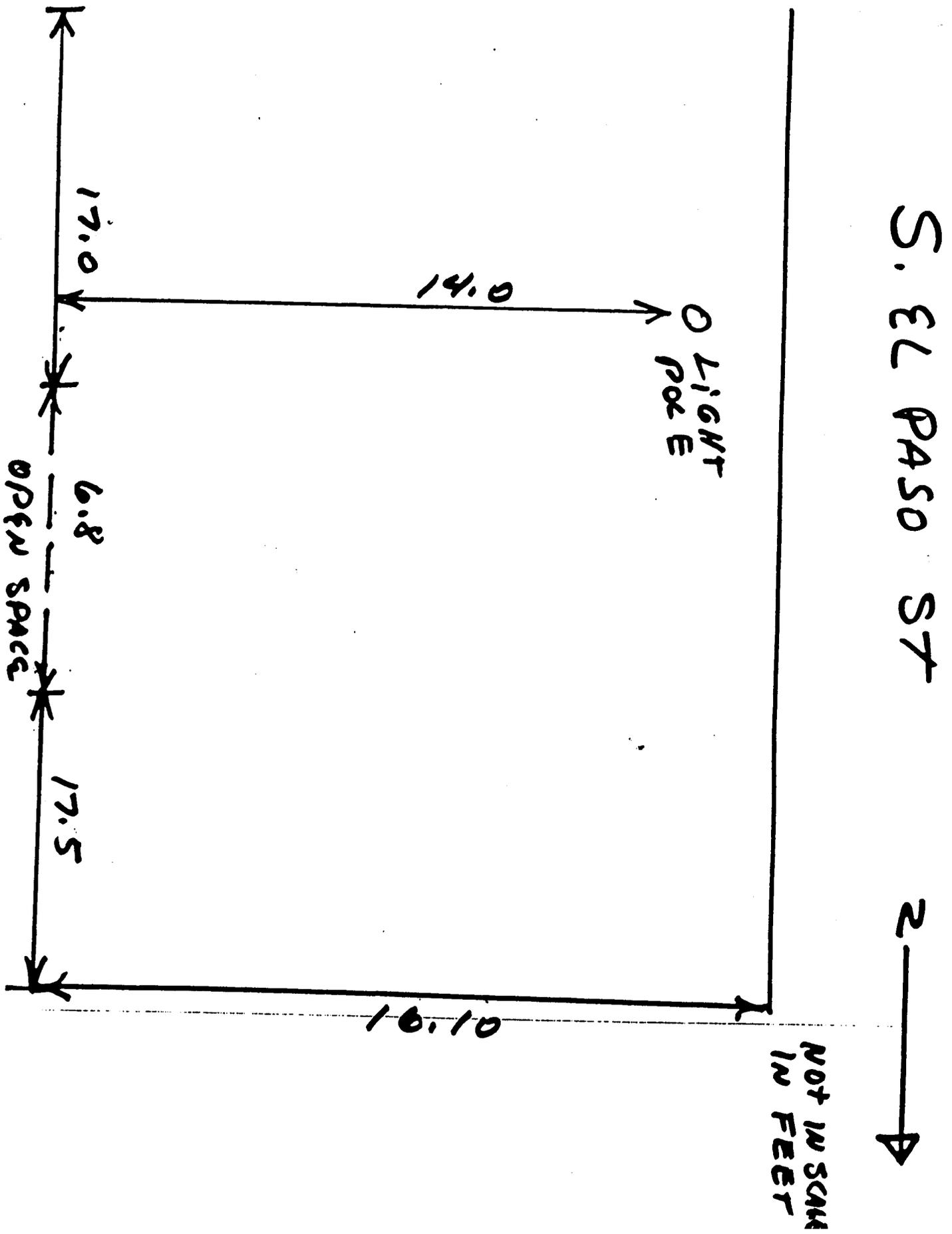
NOT IN SCALE
IN FEET

ROBERTO'S TENNIS SHOES
524 S. OREGON

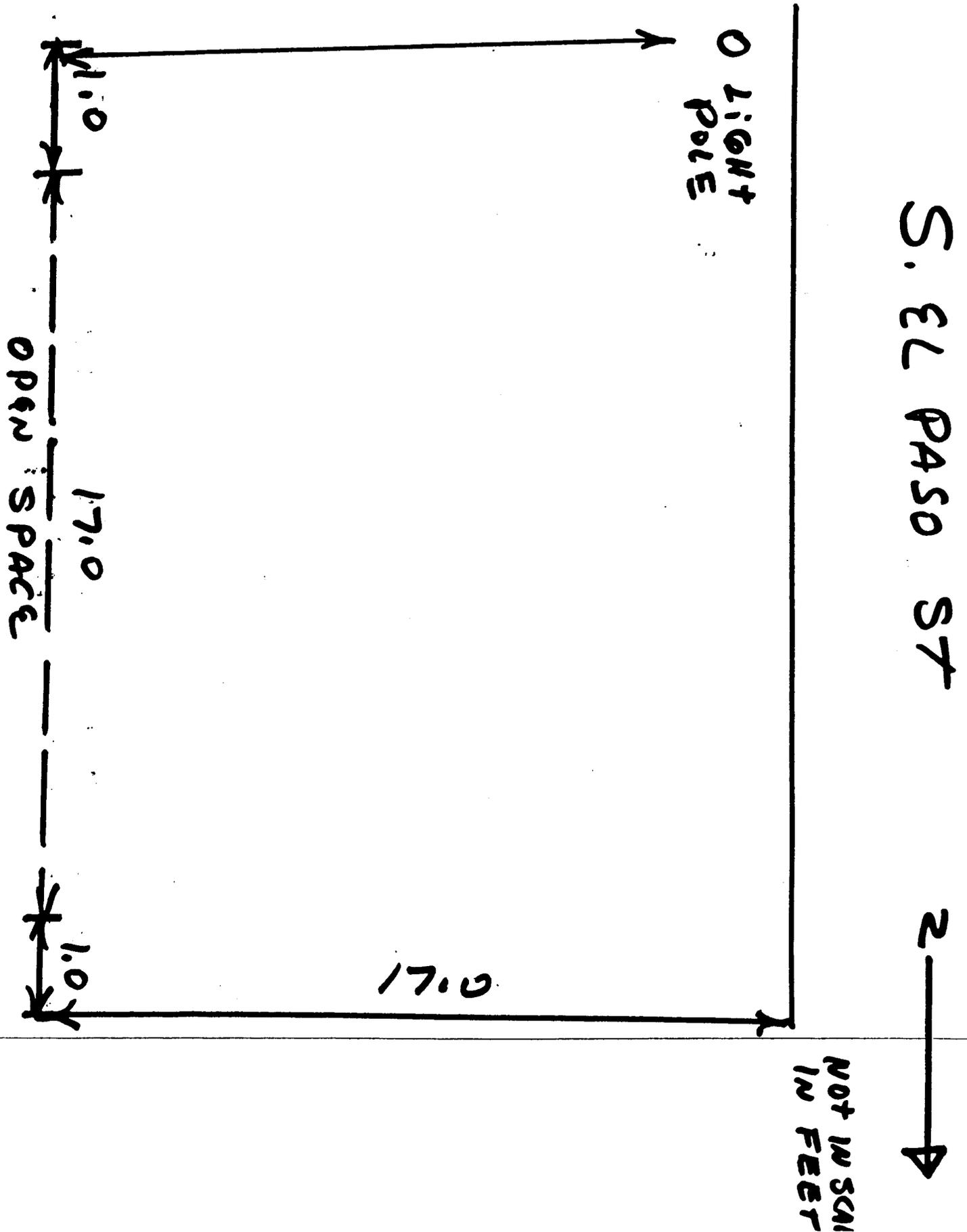
FOURTH AVENUE



BBB TRADING
606 S. EL PASO ST.

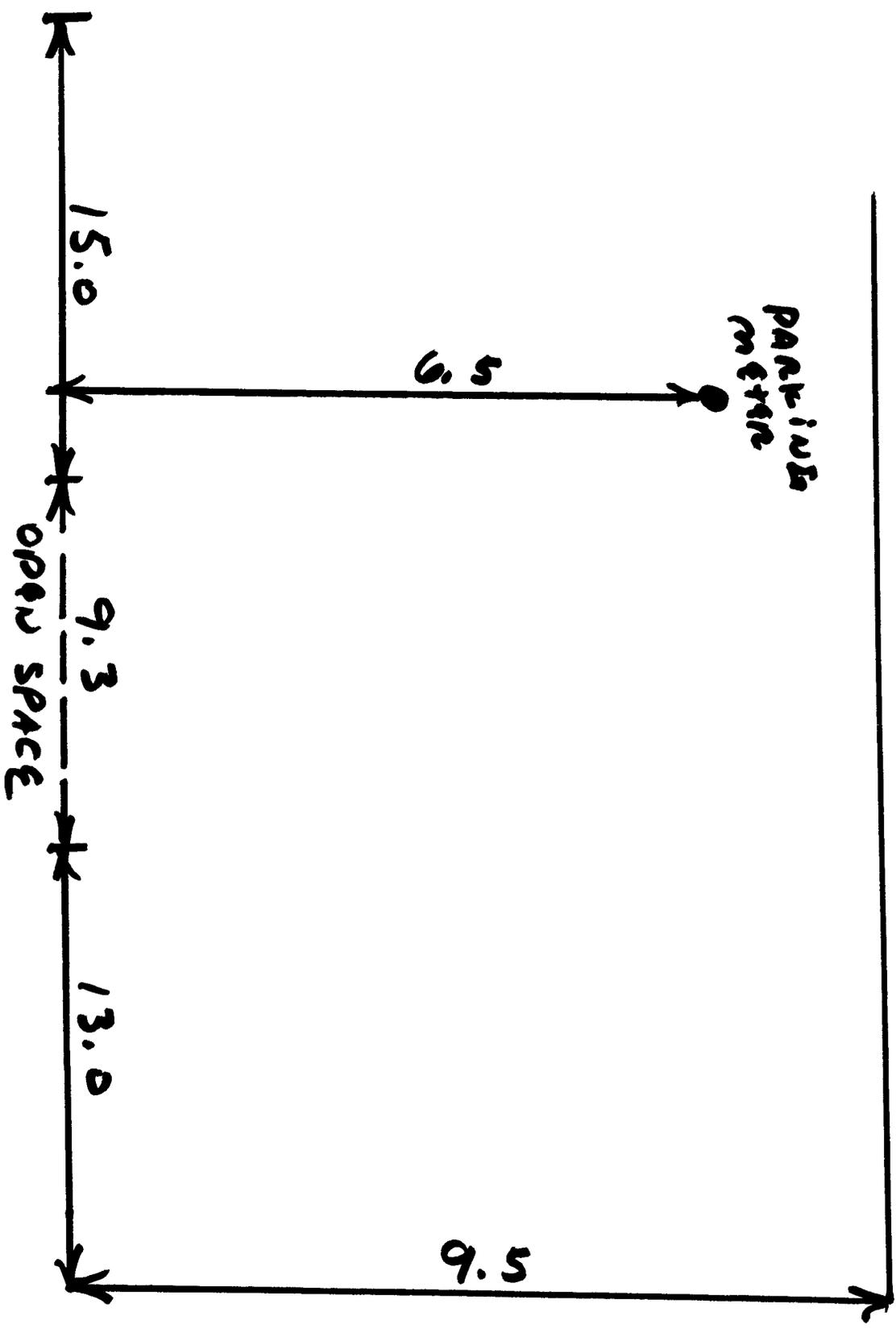


LA BONITA
708 1/2 S. EL PASO ST.



CASA BARATA
412 S. STANTON

S. STANTON



NOT IN SCALE
IN FEET

MEXICAN SOUND CORP.
221 S. EL PASO ST.

S. EL PASO ST.

NOT IN SCALE
IN FEET

