

**SPECIFIC DEVELOPMENT No. 54**  
**AMENDMENT APPLICATION 1031**  
**NS-2031**

ORDINANCE NO. NS-2031

AN ORDINANCE OF THE CITY OF SANTA ANA REZONING CERTAIN PROPERTY LOCATED ON THE EAST SIDE OF THE SANTA ANA FREEWAY BETWEEN FIRST AND FOURTH STREETS FROM THE P (PROFESSIONAL) DISTRICT TO THE SD (SPECIFIC DEVELOPMENT) DISTRICT, ADOPTING SPECIFIC DEVELOPMENT PLAN NO. 54 FOR SAID PROPERTY, AND APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF SANTA ANA AND BIRTCHER XEROX PARTNERS PERTAINING TO SAID PROPERTY.

WHEREAS, Amendment Application No. 1031 has been filed with the City of Santa Ana to change the zoning district designation of certain real property located generally on the east side of the Santa Ana Freeway between First and Fourth Streets in the City of Santa Ana, and more specifically delineated in Exhibit A, attached hereto and incorporated herein by reference, from the P (Professional) District to the SD (Specific Development) district, and to adopt a Specific Development Plan No. 54, in the form set forth in Exhibit B, attached hereto and incorporated herein by reference, for said property; and

WHEREAS, the applicant Birtcher Xerox Partners proposes to develop said property in accordance with Specific Development Plan No. 54 and in this regard has requested to enter into a Development Agreement in the form set forth in Exhibit C, attached hereto and incorporated herein, with the City of Santa Ana, in accordance with sections 65864-65869.5 of the Government Code of the State of California; and

WHEREAS, the Planning Commission of the City of Santa Ana held a duly noticed public hearing on August 14, 1989, on the said Amendment Application, Specific Development Plan, and the Development Agreement, and, based thereon, determined that the development as proposed therein is consistent with the general plan of the City of Santa Ana, and recommended that the City Council approve the Amendment Application, Specific Development Plan No. 54, and the Development Agreement; and

WHEREAS, prior to taking action on this ordinance, the City Council of the City of Santa Ana has reviewed and

ORDINANCE NO. NS-2031  
PAGE TWO

considered the information contained in that certain "Xerox Centre Environmental Impact Report" pertaining to the development of the abovesaid property in accordance with Specific Development Plan No. 54 and the Development Agreement, and, by its Resolution No. 89-100, has certified said environmental impact report as having been prepared in accordance with the California Environmental Quality Act and has adopted environmental findings regarding the Xerox Centre project; and

WHEREAS, this Council, prior to taking action on this ordinance, has held a duly noticed public hearing, on the said Amendment Application, Specific Development Plan No. 54, and Development Agreement;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SANTA ANA DOES ORDAIN AS FOLLOWS:

1. The SD (Specific Development) district designation and Specific Development Plan No. 54, as proposed in Amendment Application No. 1031, and the Development Agreement are hereby found and determined to be consistent with the general plan of the City of Santa Ana and otherwise justified by the public necessity, convenience and general welfare;

2. Those parcels of real property located generally on the east side of the Santa Ana Freeway between First and Fourth Streets and more specifically delineated in Exhibit A, attached hereto and incorporated herein, are hereby reclassified from the P (Professional) District to the SD (Specific Development) district.

3. Specific Development Plan No. 54, set forth in Exhibit B, attached hereto and incorporated herein, is hereby approved and adopted for the abovesaid property.

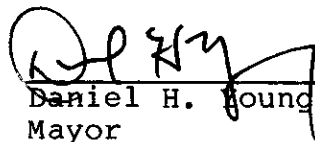
4. That certain Development Agreement between the City of Santa Ana and Birtcher Xerox Partners, in the form set forth in Exhibit C, attached hereto and incorporated herein, is hereby approved, and the Mayor is authorized to execute said Agreement on behalf of the City of Santa Ana following its execution by Birtcher Xerox Partners, and the Clerk of the Council to attest to the same.

5. The Clerk of the Council is directed to cause a copy of the said Development Agreement to be recorded in the official records of Orange County, California, within

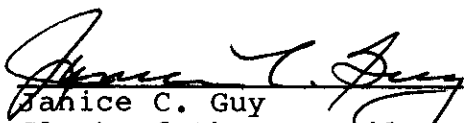
ORDINANCE NO. NS-2031  
PAGE THREE

ten days following its effective date. As use herein "effective date" means the date thirty days after the date of this ordinance.

ADOPTED this 6th day of November, 1989.

  
Daniel H. Young  
Mayor


ATTEST:

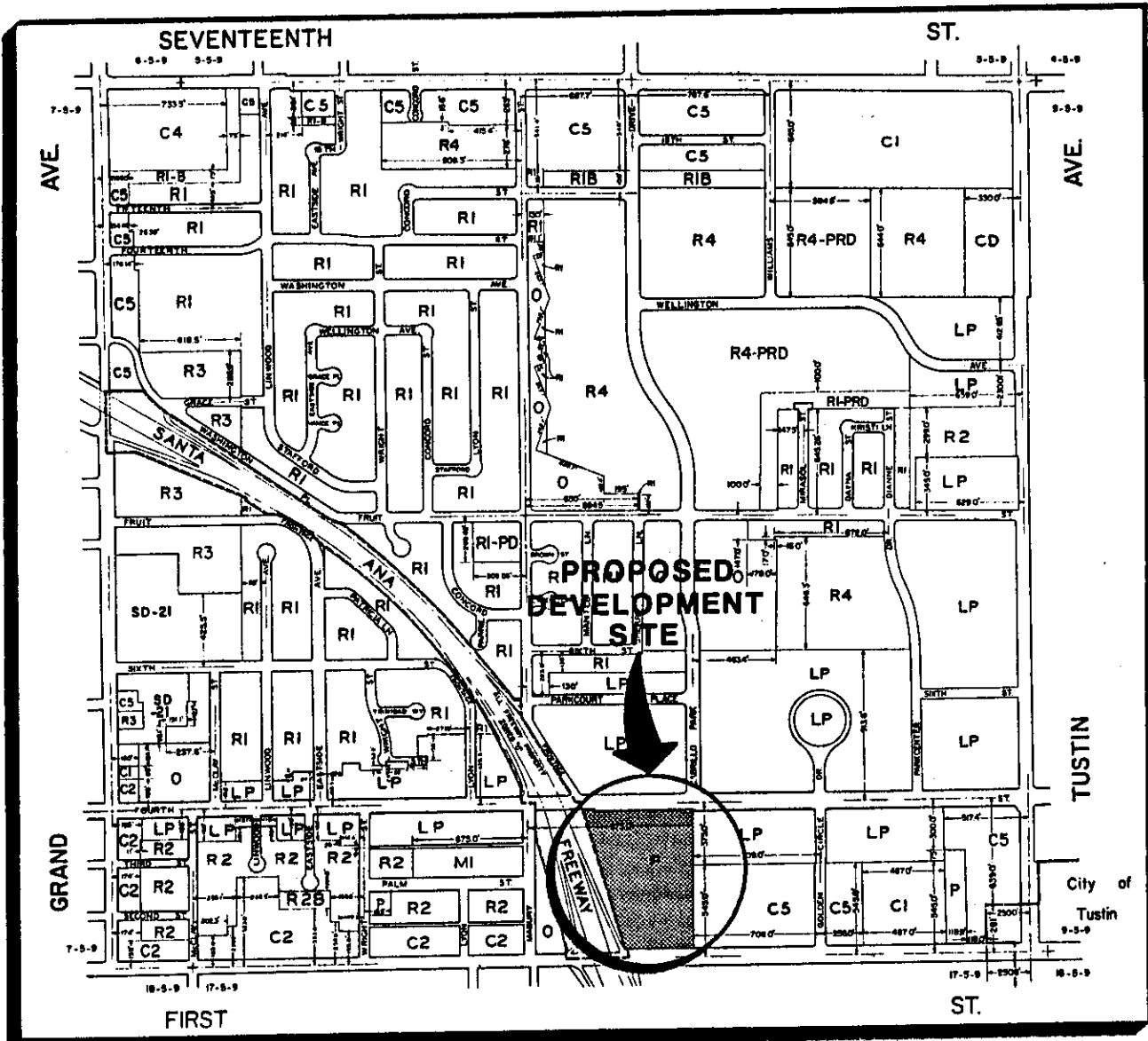
  
Janice C. Guy  
Clerk of the Council

COUNCILMEMBERS:

Young	<u>Aye</u>
Acosta	<u>Aye</u>
Griset	<u>Aye</u>
May	<u>Aye</u>
McGuigan	<u>Aye</u>
Norton	<u>Aye</u>
Pulido	<u>Aye</u>

APPROVED AS TO FORM:

  
for Edward J. Cooper  
City Attorney



**GENERAL PLAN AMENDMENT NO. 89-7**  
**SPECIFIC DEVELOPMENT PLAN NO. 54**  
**VESTING TENTATIVE PARCEL MAP NO. 88-102**



**EXHIBIT B**

**XEROX CENTRE**

**SPECIFIC DEVELOPMENT PLAN**

No. 54

**CITY OF SANTA ANA**

**June 8, 1989**

**Prepared  
for**

**BIRTCHEX XEROX PARTNERS  
27611 La Paz Road  
Laguna Niguel, California 92677-1078**

**by**

**STROCK ARCHITECTS, INC.  
3300 Irvine Avenue  
Newport Beach, California 92660**

**TABLE OF CONTENTS**

<b>Preamble</b>	3
<b>Introduction</b>	4
<b>Definitions</b>	6
<b>Development Criteria</b>	7
<b>Site Plan Approval and Modification Procedures</b>	12
<b>Exhibits</b>	13

**PREAMBLE**

This Specific Development (SD) Plan establishes development standards and constraints for future phases of Xerox Centre, a multi-phase, mixed-use commercial development now in the first phase of construction on a 10.6 acre site bounded by I-5, First Street, Fourth Street, and the future extension of Cabrillo Park Drive. The development resulting from the implementation of this text and its accompanying masterplan will realize the joint aspirations of the development partnership and the City to create a project of the very highest quality: Xerox Centre in all its aspects - architecture, landscaping, and public amenities and services - will establish an appropriate benchmark for Santa Ana's urban renaissance.



## INTRODUCTION

Specific Development Plans are authorized by the Santa Ana Municipal Code (Chapter 41, Division 46, Sections 41-593 et seq.) which, in its entirety, shall govern the development of the plan unless any of its specific provisions are waived or superseded by this ordinance.

In all cases the standards and regulations contained herein shall promote and protect the health, safety, and general welfare of the citizens of the City of Santa Ana. The application of this document shall also be made in the interests of the enhancement of property values and a logical, orderly sequence of development.

Specifically, this plan determines development criteria for the following:

1. Density
2. Phasing
3. Permitted Uses
4. Building Height
5. Setbacks
6. Site Coverage
7. Parking
8. Loading
9. Trash
10. Landscaping
11. Signing
12. Lighting
13. Public Transit

In addition, development of Xerox Centre will be subject to the companion development agreement by site plan review, by the review and issuance of building and associated permits, and by the General Plan of the City. Development shall be consistent with the conceptual plan attached hereto as Exhibit A.

As a significant addition to the urban "fabric" of the City of Santa Ana, Xerox Centre will realize the following:

1. The existing built commercial environment.
2. The enhancement of the employment base of the City of Santa Ana.
3. The architectural Identity of the City.
4. A mixture of land uses conveniently located in an attempt to reduce traffic for both Xerox Centre and the surrounding area.
5. Opportunities for the display and enjoyment of various forms of art.
6. A traffic management program supportive of the City's goal of improved traffic circulation on surface streets.

**DEFINITIONS**

The following definitions shall supersede and/or supplement those defined by city ordinance.

**Cultural Amenities:** Interior and exterior spaces and facilities utilized for the display and/or performance of visual, historic, musical, and theatrical arts; and for the presentation of zoological exhibits.

**EIR:** Environmental Impact Report for Xerox Centre.

**Free Access:** Unrestricted access, open to the public, to all "open air" areas of the site.

**Floor Area:** The total inhabitable floor area as measured within the perimeter walls of a building or structure (comparable to BOMA full floor rentable area).

**Gross Site Area:** The total area of the project site, including Phase I, and site area dedicated to public right-of-way.

**Hardscape:** Paved surfaces within and adjacent to landscape areas dedicated to pedestrian use.

**Masterplan:** A graphic exhibit or "map" defining, in concept, Xerox Centre at completion of all construction. Building types, sizes and locations; landscape and hardscape areas; points of site access, and truck circulation and loading areas are depicted.

**Public Amenities:** Including but not limited to seating, architectural walkways, retail services, fountains, art in various forms, food services, landscaping, and public gathering places.

**Site Coverage:** The percentage of the gross site area occupied, or covered, by structure (office towers, retail, restaurant(s), parking structure(s)).

**Site Plan Review:** A review of specific plans applicable to each phase of the project. This review, and subsequent comment and approval, are administered by the Planning and Building Agency of the City of Santa Ana.

## **DEVELOPMENT CRITERIA**

### **DENSITY**

The following densities shall represent maximum allowable areas. There shall be no minimums. Any future increases in these densities may be approved by the city subject to the certification of subsequent or supplemental environmental impact reports.

1. 1,100,000 square feet of office space.
2. 50,000 square feet of support retail/commercial/restaurant space.
3. Parking structures are not to be included in the calculation of density.

### **PHASING**

The development of the future phases of Xerox Centre will require certain mitigations and improvements to the off-site infrastructure. Such improvements are detailed in the EIR. Each successive phase of development must be accompanied by those on and off-site improvements specified in the EIR.

Although the accompanying Master Plan (Exhibit A) implies a sequence of phasing, the developer retains the right to modify the sequence in response to changing market conditions, given only that the requirements for mitigation and infrastructure improvements shall remain in full force for each phase.

### **PERMITTED USES**

#### **Professional and Business Offices**

1. General offices providing personal and professional services including, without limit, employment agencies; medical, financial, insurance, real estate, and travel services; trade contractors, architects, engineers, and other similar uses.

#### **Support Commercial/Retail Uses**

1. Restaurant and related food and beverage service facilities. One such use may occupy a freestanding structure on a separate, legal land parcel.
2. Retail/commercial uses including, but not limited to, stationers, travel services, copy centers, bookstores, news stands, barber shops and hair salons, auto detailers, florists, retail banking and other similar uses.

Conditional Use Permits shall not be required for any establishment which serves alcoholic beverages for on-site consumption, provided that a Land Use Certificate has been approved and granted by the City of Santa Ana.

#### Accessory Uses

Uses incidental to any permitted use will be allowed, subject only to applicable development standards.

#### BUILDING HEIGHT

No structure shall exceed 350 feet in height, as measured from adjacent finished grade. Flag poles and such incidental appurtenances as aircraft warning lights and beacons may exceed this height limit.

#### SETBACKS

Setbacks shall be measured from the ultimate right-of-way lines of adjoining public streets. There shall be no setbacks required from internal lot lines, nor, in accordance with city ordinance, shall such internal lot lines compromise the interconnection and freedom of movement between adjoining structures.

1. First Street: fifteen (15) feet
2. Cabrillo Park Drive: fifteen (15) feet
3. Fourth Street: fifteen (15) feet
4. Interstate 5: zero (0) feet

#### SITE COVERAGE

At buildout, site coverage shall not exceed 65% of gross site area. Individual parcels shall not be limited in site coverage.

**PARKING**

1. Parking adequate to serve the needs of Xerox Centre shall be provided on-site in structures. Such parking shall be safe, convenient, and accessible. The design of parking structures shall be complementary to the balance of the project.
2. Parking areas shall be commonly accessible to the tenants of Xerox Centre. Appropriate cross easements and/or parking agreements guaranteeing free access shall be recorded, with the approval of the City of Santa Ana.
3. All parking shall be designed and constructed in accordance with the existing applicable standards of the City of Santa Ana, as of the date of adoption of this plan.
4. Master on-site parking plan: The attached Master Plan (Exhibit A) shall serve as the master on-site parking plan. Detailed parking plans for specific phases shall be subject to Site Plan Review.
5. Parking Required: Each phase shall be self-sufficient in numbers of parking spaces provided. The following baseline standards shall be used to determine the minimum parking count for each use.
  - a. Office: One (1) space for each 333 1/3 square feet of floor area.
  - b. Restaurant: One (1) space for each two employees and one space for each 35 square feet of dining and drinking area.
  - c. Retail: Five (5) spaces per 1000 square feet.
  - d. The required number of off-street spaces may be reduced commensurate with the specific type of use and demonstrated hourly parking demand upon approval by the Planning Department in accordance with the provisions of Sections 41-632 and 41-638 of the Santa Ana Municipal Code.
6. Due to normal commercial office hour operation, adequate evening parking will be available to all non-office uses.

**LOADING**

Areas for the occasional loading and unloading of large trucks will be provided in accordance with the Master Plan. Such areas shall be located and architecturally treated so as to maintain the high design standards of Xerox Centre. Small delivery vehicles will be accommodated within the parking structures, concealed from public view and convenient to the areas and uses served.

**TRASH**

All trash and refuse shall be collected, compacted, and stored internally. Refuse will be picked up at truck loading areas in accordance with the City's vendor's schedule. Pick up times shall be scheduled so as to avoid a.m. and p.m. peak traffic hours.

**LANDSCAPING**

The open space of Xerox Centre shall be landscaped with a mix of plant material, architectural hardscape, and landscape furniture so as to reinforce the high quality of the project's design. The Xerox Centre Master Plan shall form the conceptual, thematic basis for the balance of the development.

Specifically, the landscaping shall meet the following criteria.

1. All planted areas shall be served by an automatic irrigation system.
2. The existing streetfront landscaping palette, as established by the City, shall be maintained and reinforced.
3. Plant material shall be of a size and type compatible with and supportive of the project's design concept.
4. Hardscape areas shall be finished to a level of high quality, and shall be chosen with an eye to both durability and compatibility with the project's architecture.
5. Plantings and landscape walls shall be used to screen utility equipment such as meters, backflow preventers, and detector checks. Such cosmetic devices shall also be used to screen loading areas.
6. Planting and hardscape areas in the various phases shall be coordinated so as to develop a unified theme, while at the same time providing the user a variety of outdoor experiences.
7. Landscape furniture (benches, trash receptacles, etc.) shall be chosen and sited so as to encourage the use of the project's open space.
8. All new landscape and hardscape areas shall be maintained to a high level of quality at all times.

Specific landscape plans for each phase will be submitted to the Planning Department of the City as part of the Site Plan Review process.

### SIGNING

All signing for Xerox Centre, except as noted below, shall be designed and installed in accordance with applicable city ordinance in effect at the time of approval of this plan. This fact, notwithstanding all signing, will be of a consistent design and shall support the overall architectural concept of Xerox Centre.

The following sign type, designated as the "Project Freeway Identification Sign", shall be permitted. This sign will be located at the westerly edge of Xerox Centre, adjacent to Interstate 5, and will serve to identify the project and its major tenants. The specific nature of this sign - its size, means of illumination, and nature of movement and color - is defined in Exhibit B (attached).

The Project Freeway Identification Sign must meet all applicable city standards for construction and maintenance.

"Eyebrow" signing, as defined by city ordinance, may be used to identify significant building tenants. The location of such tenant(s) within the building(s) shall not be determinant of eligibility for such signing.

All signing shall be maintained in an "as new" condition at all times.

### LIGHTING

All areas of Xerox Centre shall be lit in an architecturally appropriate manner, and all such lighting shall be supportive of the personal safety of the project's tenants and visitors. Lighting designs for each phase of development shall be reviewed and approved by the Police Department of the City of Santa Ana.

### PUBLIC TRANSIT

The master plan for Xerox Centre incorporates a bus stop on the south side of Fourth Street, west of The Cabrillo Park Drive Intersection. This stop will provide weather protection for waiting passengers, and is sized and located to serve the surrounding community as well as the tenants of Xerox Centre. The bus stop is supported by a dedicated bus lane so as to preclude the disruption of Fourth Street traffic.



## **SITE PLAN APPROVAL AND MODIFICATION PROCEDURES**

### **CONCEPTUAL PLAN APPROVAL**

The City hereby approves that certain Conceptual Site Plan for Xerox Centre prepared by Strock Architects, Inc., dated May \_\_\_\_, 1989 (hereinafter the "Conceptual Plan"). Notwithstanding the foregoing, no building permit shall be issued in connection with any Phase until further plans have been submitted to and approved or conditionally approved by the City for such Phase pursuant to the procedures set forth in Sections 41-668 through 41-674 of the Santa Ana Municipal Code, satisfying the following standards:

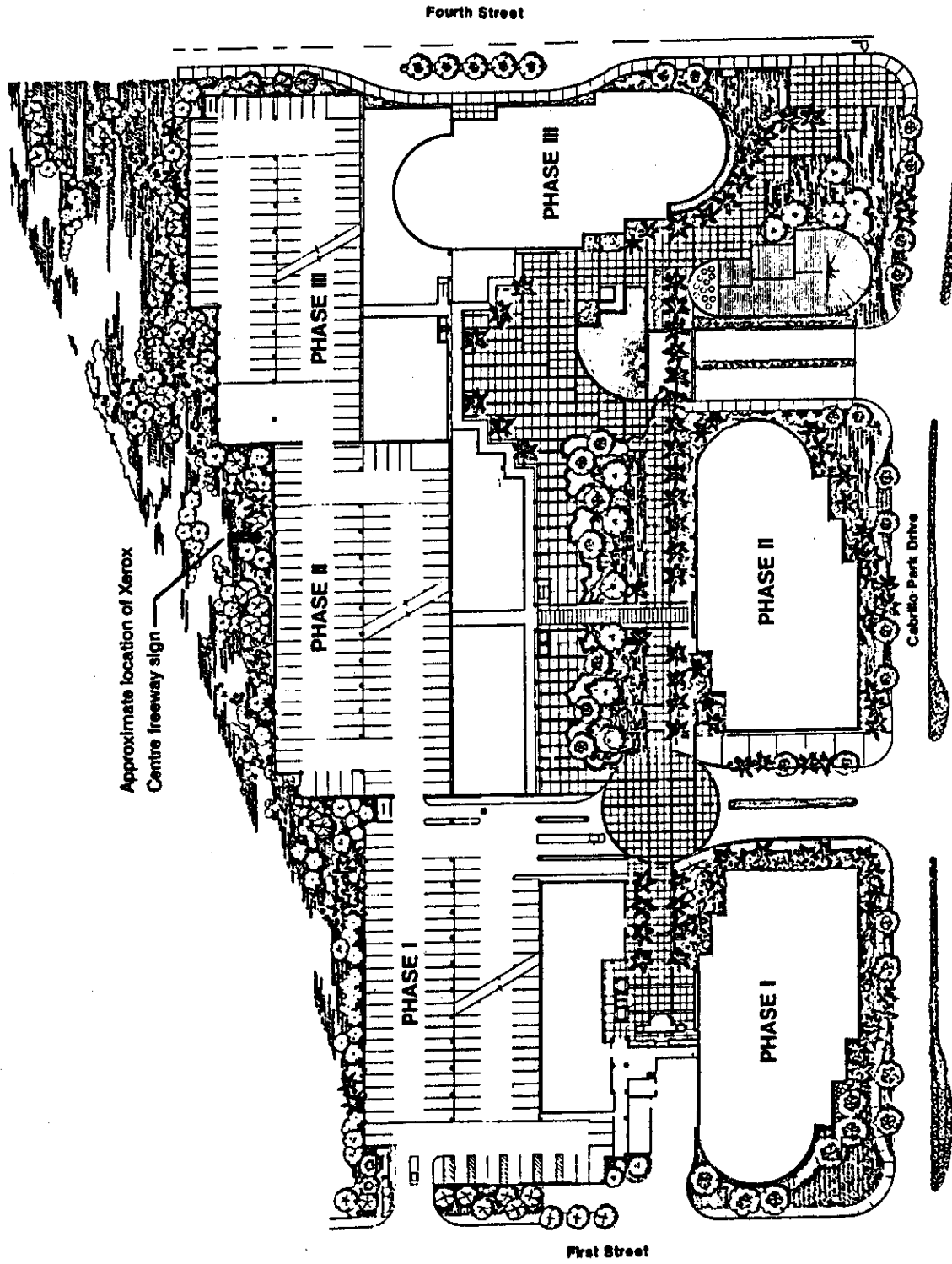
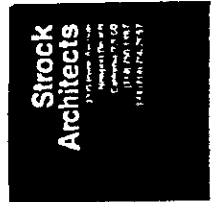
1. The plans for the Phase shall provide for adequate vehicular and pedestrian access and circulation and vehicular parking.
2. The plans for the Phase shall provide for adequate access for City emergency and service vehicles and equipment.
3. The plans for the Phase shall provide for adequate utility services.
4. The plans for the Phase shall comply with all applicable standards and regulations.

Any conditions imposed by the City in conjunction with such plan approval shall be reasonably related to the purpose of achieving compliance with the foregoing standards.

### **MODIFICATION TO SITE PLAN**

Approval(s) of non-material amendments or modifications to the Conceptual Plan or any final Plans approved by the City may be made by the City of Santa Ana Directors of Public Works and Planning. The Owner shall have the right to appeal any adverse decision, first to the Planning Commission and then, if necessary, to the City Council. A "non-material" change shall be deemed to consist of any change, modification or amendment to the Conceptual Plan which does not require a supplemental environmental impact report under the requirements of the California Environmental Quality Act.

XEROX CENTRE  
A HIGH-TECH INDUSTRIAL DEVELOPMENT

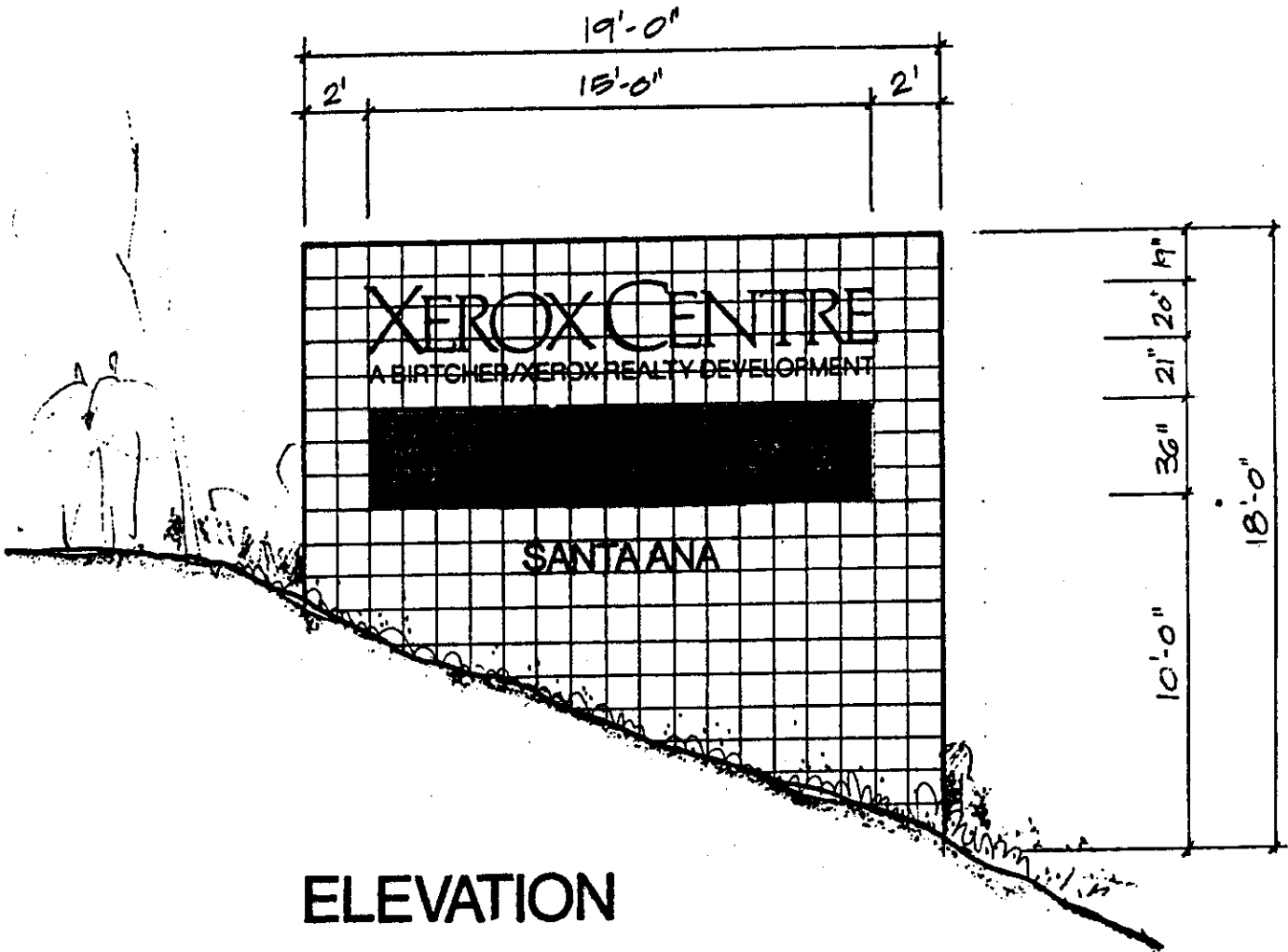


Approximate location of Xerox  
Centre freeway sign



### Xerox Centre Freeway Sign

The sign shall be clad in 12" x 12" granite tiles to match existing building. Sign copy shall be fabricated from stainless steel with polished faces and brushed finished returns. "Xerox Centre" logo type shall be internally illuminated to create a halo lighting effect. The sign shall include a changeable message center set into the sign structure, flush with the surface. The sign shall be double faced and be placed on the site perpendicular to the freeway.



ELEVATION

DAL/103089/20  
DDA-XER2

RECORDED IN OFFICIAL RECORDS  
OF ORANGE COUNTY, CALIFORNIA

RECORDING REQUESTED BY,  
AND WHEN RECORDED RETURN TO:

-2:10 PM JAN 4 '90

*Lee A. Branch* RECORDER

City Clerk  
City of Santa Ana  
Post Office Box 1988  
Santa Ana, CA 92702

EXEMPT  
C12

(Space Above This Line For Recorder's Use Only)

**DEVELOPMENT AGREEMENT**

BY AND BETWEEN

THE CITY OF SANTA ANA

AND

BIRTCHEX XEROX PARTNERS

FOR

XEROX CENTRE

EXHIBIT C

This is to certify that is presented for recording under Code Sec. 6103 *Agony*

TABLE OF CONTENTS

Development Agreement by and Between  
the City of Santa Ana and Birtcher Xerox Partners  
for Xerox Centre

1. Property and Phasing.....3  
2. Term.....3  
3. Use of the Property.....4  
4. Development Standards.....4  
5. Dedications of Land for Public Purposes.....4  
6. Subdivision.....4  
7. Coordination with Caltrans.....4  
8. Utility Capacity.....5  
9. Mitigation Measures.....5  
10. Costs of Mitigation Measures.....7  
11. Timing For Performance of Developer's Obligations.....9  
12. Subsequent Environmental Review.....10  
13. Vesting of Development Rights.....11  
14. Processing of Applications and Permits.....13  
15. Periodic Review and Monitoring of Compliance  
with Agreement.....14  
16. Amendment and Modification.....15  
17. Events of Default.....16  
18. Consequences of Default.....17  
19. Binding Effect of Agreement.....17  
20. Assignment.....17  
21. Notices.....18  
22. General Provisions.....18

DEVELOPMENT AGREEMENT BY AND BETWEEN  
THE CITY OF SANTA ANA AND BIRTCHER XEROX PARTNERS  
FOR XEROX CENTRE

THIS DEVELOPMENT AGREEMENT ("Agreement") is entered into as of this 11th day of November, 1989 by and between the CITY OF SANTA ANA, a municipal corporation ("City") and BIRTCHER XEROX PARTNERS, a California general partnership ("Developer").

RECITALS

This Agreement is entered into on the basis of the following facts, understandings, and intentions of the parties:

A. California Government Code Sections 65864 et seq. provide that the legislative Body of a City may enter into a development agreement for the development of real property in order to vest certain rights in the developer and to meet certain public purposes of the local government. Pursuant to California Government Code Section 65865, the City has adopted its Resolution No. 82-98, establishing procedures and requirements for the approval of development agreements. Developer has applied to City pursuant to California Government Code Sections 65864-65869.5, and pursuant to said Resolution for approval of the Development Agreement set forth herein.

B. The City desires to enter into this Development Agreement with the Developer in order to facilitate the development of certain property (the "Property") more fully described and depicted in Exhibit "A" attached hereto. Such development is to be in accordance with the Specific Development Plan No. 54 approved by the City pursuant to the City Ordinance by which this Agreement is approved and on file with the City Clerk and incorporated herein by reference (the "SD"). The City has given notice of its intention to adopt this proposed Development Agreement, has conducted public hearings thereon pursuant to Government Code Section 65867, and City's Resolution No. 82-98 and has found that the provisions of this Development Agreement and its purposes are consistent with the objectives, policies, general land uses and programs specified in the City's General Plan and the SD. Prior to or concurrently with the approval of this Agreement, the City Council of the City has also approved (a) a Final Environmental Impact Report (hereinafter "EIR") State Clearing House Number 87090908 consisting of the Xerox Centre Draft Environmental Impact Report and the Xerox Centre Response to Comments and Final Environmental Impact Report (hereinafter collectively "EIR"), (b) General Plan Amendment No. 89-007 pursuant to Resolution No. 89-101 (hereinafter the "General Plan Amendment"), and (c) Vesting Tentative Map No. 88-102, designed

for multiple phased final maps (authorized pursuant to Government Code Section 66456.1) (hereinafter the "Tentative Map").

C. The City has taken all steps necessary to achieve compliance with the California Environmental Quality Act including the circulation and adoption of the EIR. The City has specifically incorporated mitigation measures recommended by the EIR into the terms of this Agreement.

D. The development and use which Developer proposes in connection with the Property have been extensively reviewed and considered by the City and its officers, agencies and departments and such proposed development and use have been modified to accommodate the City's recommendations and suggestions in order to protect the public's interest and to enhance the desirability, from the public's perspective, of such proposed development and use. The terms and conditions of this Agreement have been found by the City to be fair, just and reasonable.

E. The development and use which Developer proposes in connection with the Property will provide substantial public benefits and help the City attain certain public objectives, including, without limitation: (a) the development of a major business center within the City which will provide a long-term source of employment opportunities and revitalization of the economic base of the community; (b) providing the City directly with additional revenue in the form of sales taxes, rental taxes, and increased real property taxes; (c) providing retail and service facilities for the business community in the area of the real property; (d) providing for the dedication and improvement of Cabrillo Park Drive connecting First Street through to 17th Street in conformance to the City's master plan; (e) the widening and improvement of drainage of public streets at First Street and Cabrillo Park Drive; and (f) the improvement of access to Interstate 5 from First and Fourth Streets.

F. Developer will be required to make substantial commitments and risks in developing the real property including, without limitation, dedication of real property, expenditures for construction of public improvements and expenditures for necessary predevelopment planning, engineering and design work and accordingly, Developer has requested the City to enter into this Agreement. If the City were to halt any part of the development at any time or if Developer were required to comply with some or all newly adopted land use ordinances, rules, regulations, policies, or moratoriums, Developer would incur substantial losses, including, without limitation, the diminution in the value of the real property and loss of anticipated revenues from the development of the real property. Due to the

magnitude of those development risks and uncertainties, Developer would not have agreed to commit itself to the development, unless the City had entered into this Agreement.

G. The City, by electing to enter into contractual agreements such as this one, acknowledges that the obligations of the City shall survive beyond the term or terms of the present City Council members, that such action will serve to bind the City and future councils to the obligations hereby undertaken and this Agreement shall limit the future exercise of certain governmental and proprietary powers of the City. By approving this Agreement, the City Council has elected to exercise certain governmental powers at the time of its entering into this Agreement rather than deferring its actions to some undetermined future date. Accordingly, the City and Developer desire to enter into this Agreement in order to vest in Developer certain development rights pursuant to the terms of this Agreement. Such development rights are intended to allow for the development of the real property in accordance with the terms of this Agreement pursuant to the land use ordinances, rules, regulations and policies applicable as of the Effective Date, except as otherwise specified in this Agreement.

WHEREFORE, in consideration of the foregoing and of their mutual and respective promises, and subject to the terms and conditions hereinafter set forth, the parties hereto do hereby agree as follows:

1. Property and Phasing. Developer and the City agree that the Property may be developed in one or more phases. The purpose of this Agreement is to form a binding agreement for the development of all such phases of the Property. For the purpose of this Agreement, "Phase I" shall mean the existing development depicted as Parcel 1 on Exhibit "B", attached hereto and incorporated herein. It is currently anticipated that the Property will be developed in three (3) subsequent phases, sometimes hereinafter referred to as "Phase II", as depicted on Exhibit "B" as Parcel 2, "Phase III", as depicted on Exhibit "B" as Parcel 3 and "Phase IV" as depicted on Exhibit "B" as Parcel 4. Developer, however, reserves the right to develop the Property in any number of phases, including without limitation, the ability to separately construct as separate phases, retail or restaurant improvements. The phrase "Project(s)" as used herein, shall be deemed to refer to any or all Phases of development.

2. Term. The term of this Agreement (hereinafter "Term") shall commence on the Effective Date of this Agreement, as set forth above, and shall continue for a period of fifteen (15) years from such date, unless sooner terminated pursuant to the provisions hereof.



3. Use of the Property. Developer agrees that the permitted and conditional uses of the Property shall be as specified in the SD. City agrees to allow such uses on the Property, subject to the right of the City to take appropriate action to abate any public nuisance and to enforce all laws designed for the protection of the public health and safety.

4. Development Standards. City agrees to allow development of the site in accordance with the development standards set forth in the SD including, without limitation, the provisions relating to the density and intensity of use and the maximum height and size of proposed buildings.

5. Dedications of Land for Public Purposes. Developer has dedicated to the City certain real property owned by Developer in connection with the development of Phase I. Developer will also be dedicating an easement for street purposes over a portion of real property owned by Developer adjacent to Fourth Street as set forth in the Tentative Map. It is understood and agreed that no other reservations or dedications of real property will be required by the City during the Term with respect to the Project(s) except for easements necessary for City maintenance of traffic signals and similar public street appurtenances.

6. Subdivision. The term of the Tentative Map or any resubdivision or amendment of the Tentative Map, including any lot line adjustment or merger of lots within the Tentative Map (or any other tentative map filed subsequent to the Effective Date of this Agreement as defined hereinbelow relating to the Project[s]) shall automatically be extended for the Term of this Agreement as permitted by Government Code Section 66452.6(a). The City agrees, upon application by Developer, to allow for the modification of the boundary lines between Phase I and Phase II, Phase II and Phase III, Phase III and Phase IV, or between any Phase and Parcel 5 depicted on Exhibit "B". The City agrees not to impose any new or additional requirement or condition upon any such subdivision or lot line adjustment other than those imposed upon the Tentative Map.

7. Coordination with Caltrans. The City and Developer each agree to use their best efforts to coordinate with Caltrans to facilitate the planned widening of the Interstate 5 Freeway. Developer agrees not to develop the portion of the Property designated as Parcel 5 on Exhibit "B" ("Offramp Site") so as to leave such real property available for condemnation by Caltrans. Caltrans' current plans provide for the widening of First Street at the Santa Ana Freeway. Upon completion of such work by Caltrans, the City agrees to permit Developer to construct a right turn only vehicular ingress and egress lane from the parking structure constructed on Phase I onto First Street. Developer agrees to install such lane at its sole cost and expense in accordance with City standards including, without limitation, providing a diversion restricting left turns from

such lane. Nothing herein is intended to limit Developer's right to receive full and fair compensation for any right-of-way or other taking by Caltrans of the Offramp Site nor to the limit the highest and best use of the Offramp Site for the purpose of determining the value of the site.

8. Utility Capacity. It is hereby agreed that the City will not undertake any action or fail to perform any action which would impair or restrict the availability of storm drain capacity, sanitary sewer capacity, water capacity, or cable services sufficient to service the Project(s).

9. Mitigation Measures.

(a) City's Obligations.

The City agrees to use its best efforts to construct or cause to be constructed all public improvements listed in the Traffic Study portion of the draft EIR on pages 3-63 through 3-68, as modified which are required by the EIR to be completed as "fair share" cumulative mitigation measures, "Areawide and Cumulative Roadway Improvements" or "Caltrans Improvement Program." In furtherance of this obligation, the City agrees to use its best efforts to enter into a joint exercise of powers agreement with the City of Tustin to provide for the implementation and the funding mechanisms for all such improvements. In the event the City is unable to reach such an agreement with the City of Tustin, the City shall nevertheless be responsible for the implementation and funding for all such improvements. In any event, the failure of the City, Caltrans, the City of Tustin or any third party to complete any of the public improvements set forth above shall not impact or in any manner restrict Developer's right to complete the Project(s) as provided in this Agreement. In the event such public improvements are not completed, the City may not withhold or delay any permits or approvals, including, without limitation, building permits or Certificates of Occupancy, so long as the Developer has otherwise satisfied its obligations under this Agreement as they relate to the particular Phase for which permits or approvals are being sought.

(b) Developer's Obligations.

(1) Cabrillo Park Drive. The Developer agrees that it will cause to be prepared and submitted to the City for approval plans and specifications for street improvements to complete Cabrillo Park Drive between First and Fourth Streets adjacent to Phase II, Phase III and Phase IV substantially in accordance with those

certain preliminary street improvement plans for Cabrillo Park Drive Phases II and III prepared by Greiner Engineering, Inc. If required, such plans and specifications shall also include the design of sewer and storm drain lines to be located within Cabrillo Park Drive between First and Fourth Streets. The improvement to be completed pursuant to the street improvement plans described above and the sewer and storm drain plans, if applicable, are hereinafter collectively referred to as the "Cabrillo Park Drive Improvements." Subject to the approval of such plans and specifications by the City and the acquisition of all necessary rights-of-way by the City at Birtcher's cost, the Developer agrees to commence construction of the Cabrillo Park Drive Improvements on or before the date twelve (12) months from the Effective Date of this Agreement and diligently process such construction to completion. In any event, subject to the approval of such plans and specifications and the acquisition of all necessary rights-of-way at Birtcher's cost, the Cabrillo Park Drive Improvements shall be completed on or before the date that the Developer is ready for the issuance of a Certificate of Occupancy or other equivalent approval for the first building constructed on the Property after the Effective Date of this Agreement. The City agrees, upon request of the Developer, to cooperate with the Developer to obtain a Cabrillo Park Drive mailing and street address for all Phases of the Project.

(2) First Street and Grand Avenue The Developer agrees that, prior to October 1990, it will cause to be prepared and submitted to the City for approval plans and specifications for the widening of the east side of Grand Avenue between First and Fourth Streets and a westbound right-turn lane at the intersection of First Street and Grand Avenue (hereinafter "First and Grand Improvements").

(3) Other Traffic-Related Public Improvements. The Developer agrees to construct or cause to be constructed all public improvements listed in the Traffic Study portion of the EIR on pages 3-63 as items 5 and 6 for Phase II, and items 8 and 9 for Phase III and to widen Fourth Street adjacent to the Property in accordance with the dedication specified in Section 5 of this Agreement. All such public improvements shall be completed prior to or upon issuance of a Certificate of Occupancy for the first building constructed on the Property after the Effective Date of this Agreement, except that items 8 and 9, referenced above, need not be completed until the completion of the Phase III building. If the traffic signal referenced in item 9

is needed, Developer shall install said traffic signal at Developer's expense.

(4) Transportation Demand Management Program. The Developer agrees to comply with the Transportation Demand Management Program as set forth in the draft EIR, as modified in the Response to Comments portion of the EIR.

(5) Non-Traffic Mitigation Measures. The Developer agrees to comply with the non-traffic mitigation measures of Developer as set forth in the draft EIR, as modified in the Response to Comments portion of the EIR.

10. Costs of Mitigation Measures.

(a) City's Obligations.

Except as expressly provided below, the Developer shall not be obligated to pay the cost for any public improvements required to be designed and constructed by the City as set forth above in Section 9(a). The cost of all such public improvements shall be the sole responsibility of the City or other applicable party.

(b) Developer's Obligations.

(1) Monorail Study. The Developer agrees to contribute Fifty Thousand and No/100 Dollars (\$50,000.00) towards the study of a monorail system for the City within forty-five (45) days after demand by the City. The obligation to make such contribution shall be subject to the requirement that the City initiate such a study and provide or obtain the balance of the funding necessary for such a study.

(2) Cabrillo Park Drive. The Developer shall be obligated to bear all costs and expenses in connection with the acquisition, design and construction of Cabrillo Park Drive between First and Fourth Streets including the portions previously constructed as well as portions required to be constructed pursuant to the terms of this Agreement. The City and Developer have established a benchmark for the total cost to acquire, design and construct the Cabrillo Park Drive Improvements so as to extend Cabrillo Park Drive to Fourth Street of One Million Five Hundred Seventy-Five Thousand and No/100 Dollars (\$1,575,000.00). This benchmark includes the cost of acquisition of the remaining right-of-way not previously dedicated and the design and construction costs for the Cabrillo Park Drive Improvements as defined in Section 9(b)(1) which includes the street improvements to complete Cabrillo Park Drive between First and Fourth Streets adjacent to

Phase II, Phase III and Phase IV of the Project. The benchmark does not include the complete cost of the sewer line. To the extent the Developer is actually able to acquire, design and construct the Cabrillo Park Drive Improvements for less than the benchmark amount, the Developer agrees that its contributions toward the First and Grand Improvements as required below shall be increased by such amount. Similarly, to the extent Developer's total costs to acquire, design and construct the Cabrillo Park Drive Improvements exceeds the benchmark, the amount of any such excess shall be deducted from the Developer's obligation to contribute toward the cost of the First and Grand Improvements.

(3) First Street and Grand Avenue. The Developer agrees to prepare the plans and specifications for the First and Grand Improvements at its sole cost and expense within one (1) year from the Effective Date of this Agreement. Further, the Developer agrees to contribute an amount equal to One Million Three Hundred Thirty-Two Thousand Five Hundred Thousand and No/100 Dollars (\$1,332,500.00) applicable toward the actual total cost of construction of the First and Grand Improvements. Such contribution shall be made by Developer to the City within ninety (90) days after demand by the City. In no event shall the City require such contribution sooner than such costs are actually incurred by the City in connection with the construction of the contemplated improvements or prior to March 1, 1991.

(4) Limitations on Development Fees and Developer Contributions. The City agrees that the amounts paid or contributed by the Developer defined below as "Developer Contributions" shall all be credited against any transportation fees required by the City pursuant to Section 8-44 of the Santa Ana Municipal Code or any other developer fee or other similar fee or charge now or hereinafter imposed by the City on the Property designed to fund infrastructure or traffic-related public improvements (hereinafter "Development Fees"). The term "Developer Contributions" shall mean:

- (i) amounts contributed pursuant to Section 10(b)(1) for the Monorail Study;
- (ii) the costs set forth in Section 10(b)(2) relating to the Cabrillo Park Drive Improvements;
- (iii) the cost of plans and specifications for the First and Grand Improvements and amounts contributed pursuant to Section 10(b)(3) for the First and Grand Improvements; and

- (iv) an agreed upon amount equal to Eight Hundred Six Thousand Eight Hundred Seventy-One and No/100 Dollars (\$806,871.00). (This agreed amount represents a partial credit for the cost previously incurred by Developer for the construction of Cabrillo Park Drive adjacent to Phase I and the dedication of the full length of Cabrillo Park Drive. The total costs were approximately Three Million One Hundred Twenty-Eight Thousand Seven Hundred Forty-Two and No/100 Dollars (\$3,128,742.00).

Items (i) through (iv), above, are hereinafter collectively referred to as the "Developer Contributions." The City hereby agrees that in no event will the total of all Development Fees for the Project exceed a total of Four Million Four Thousand Three Hundred Seventy-One and No/100 Dollars (\$4,004,371.00) and in no event will the Developer be obligated to make Developer Contributions as set forth in Items (i) through (iv) above that exceed a total of Four Million Four Thousand Three Hundred Seventy-One and No/100 Dollars (\$4,004,371.00).

(5) Other Mitigation Measures. The Developer agrees to pay all cost and expense associated with the performance of the "Other Traffic-Related Public Improvements," "Transportation Demand Management Program" and "Non-Traffic Mitigation Measures" as set forth in above Sections 9(b)(3), 9(b)(4) and 9(b)(5).

(6) Reimbursement for Water Line. The City shall require any developer of the vacant property across Fourth Street from the Property to reimburse the Developer for part of the cost of the water line installed by the Developer in Cabrillo Park Drive. Such reimbursement shall be on the basis of a fair share apportionment of the benefit of said water line between the development on the Property and the development to occur on said property to the north.

11. Timing For Performance of Developer's Obligations. The time for the performance of Developer's obligations as set forth in Sections 9(b) and 10(b), above, shall be extended by any period or periods of time that this Agreement is subject to legal challenge by any third party. Further, Developer's obligations as set forth above may be extended by the City Manager for periods of time up to ten (10) months. Such extension shall be warranted in the event of delays in the acquisition of necessary rights-of-way by the City. Further, the time for Developer's performance of its obligations relating to the preparation of

plans and specifications or the completion of construction shall also be extended for delays arising as a result of war or insurrection, riots, casualties, floods, earthquakes, adverse weather conditions, labor strikes, boycotts, lockouts, shortages in material or equipment, acts or omissions of the City, acts or omissions of third parties who are not parties to this Agreement, or other causes beyond the reasonable control of Developer.

12. Subsequent Environmental Review. In exercising its legislative discretion to enter into this Agreement and to commit the City to the completion of the Project(s), the City has reviewed and considered the potential adverse environmental impacts related to all aspects of the contemplated Project(s), including, without limitation, the potential demands the Project(s) will make on local and regional streets, highways, water capacity and water lines, sewer capacity and sewer lines, flood and storm drain systems, and energy conservation, traffic, pedestrian safety, shadowing, noise and air quality impacts, public health and safety, impacts on school facilities, cultural resources, geotechnical impacts, and visual aesthetics. The City has further reviewed and considered from a variety of perspectives, and has analyzed pursuant to a variety of assumptions, the projected future regional and cumulative area-wide environmental demands that will compete with the Project(s) for available capacities and cumulatively add to potential adverse impacts. In so doing, the City has considered among other things, the possibilities that:

(i) Federal, local, regional and state plans, if any, for provision of new infrastructure systems or expansion of existing infrastructure systems may be delayed, modified or abandoned;

(ii) The types, intensities, and amount of future regional development may exceed or otherwise be different from that currently being planned by the City and other local agencies; and

(iii) Regional and Project(s) generated demands on infrastructure and utility improvements to be constructed as a part of the Project(s) may exceed in either the short run or the long run the allocated capacities for such demands.

After assessing these and other potential adverse environmental impacts associated with the development of the Property, the City has imposed the mitigation measures set forth in paragraph 9, above, and in the EIR to the fullest extent the City considers feasible and necessary. The City has determined that the public benefits of the Project(s) override any potential adverse environmental impacts which may arise during the development period; therefore, the City agrees, consistent with California Public Resources Code Section 21166, that no subsequent or supplemental environmental impact report shall be required by the City for subsequent approvals except as otherwise required by Section 21166.

13. Vesting of Development Rights.

(a) General Statement. As a material inducement to Developer to continue with diligent efforts to promote the development of the Property, the City desires to cause all development rights which may be required to develop the Property with buildings and related improvements consistent with the SD to be deemed vested in Developer for the benefit of the Property, as of the Effective Date of this Agreement, to the fullest extent permitted by law, and to eliminate all rights of the City or any body or agency thereof to impose on the Project(s) any subsequent ordinances, rules, regulations, policies, or moratoriums which are inconsistent with the terms of this Agreement. Notwithstanding the foregoing, nothing set forth in this Agreement shall be deemed to require Developer to complete the Project(s).

(b) Vesting of Development Rights. Developer is hereby authorized and vested with the right to subdivide and construct works of improvement upon the Property in compliance with the density, intensity, height, size, access, parking and other components of the SD.

(c) Existing Rules to Govern. In accordance with the terms of Government Code Section 65866, the City and Developer agree that the ordinances, rules, regulations and official policies of the City, including the SD (collectively, the "Existing Development Regulations") in effect as of the Effective Date of this Agreement governing the design, density, permitted land uses, improvement and construction standards applicable to the Project(s) shall govern during the Term of this Agreement. Except as otherwise provided in this Agreement, no amendment to or revision of, or addition to any of the Existing Development Regulations without Developer's prior written approval, whether adopted or approved by the City Council or any office, board, commission or other Agency of the City, or by the people of the City through charter amendment, referendum or initiative measure or other vote, shall be effective or enforceable by the City with respect to the Project(s), its design, grading, construction, remodeling, use or occupancy, or schedule of development.

(d) Definition of "Existing Development Regulations". As used herein, "Existing Development Regulations" shall not include municipal ordinances, rules, regulations and policies which do not conflict with Developer's vested rights to develop and use the Property in accordance with the SD, the General Plan Amendment, the Tentative Map and this Agreement. Developer and its successors and assigns and all persons and entities in occupation of any portion of



the Property shall comply with such non-conflicting laws and regulations as may from time to time be enacted or amended. Specifically, but without limitation, such non-conflicting laws and regulations shall include the following:

(1) Except as otherwise provided herein, taxes, assessments, fees and charges;

(2) Building, electrical, mechanical, fire and similar codes based upon uniform codes incorporated by reference into the Santa Ana Municipal Code (other than Ordinance No. NS-1998 which shall be applicable regardless of any subsequent changes);

(3) Laws, including zoning code provisions, which regulate the manner in which business activities may be conducted or which prohibit any particular type of business activity on a City-wide basis; and

(4) Procedural rules of general City-wide application.

Conflicting laws and regulations shall include, without limitation, any matters which:

(1) shall limit, restrict or reduce the density or intensity of development or any component part of the development or otherwise require a reduction in the total square footage of the proposed buildings and improvements;

(2) shall limit the timing or phasing of the Project(s); or

(3) which are not uniformly applied on a City-wide, good faith and non-discriminatory basis to all substantially similar projects.

(e) Subsequent "Slow/No Growth" Measures. Consistent with (a) and (b), above, the City and Developer specifically agree that any subsequently enacted initiatives, referendums, or amendments to the City's General Plan and/or Zoning Code which contain "slow/no growth" measures or which by their terms are intended to, or by operation have such effect or which otherwise conflict with the terms of this Agreement or limit the timing and phasing of the Project(s) shall have no application to the Project(s). Notwithstanding any such measures, the mitigation measures required for the Project(s) are limited to those established by this Agreement.

(f) Rent Control and Condominium Conversion. During the Term of this Agreement, the City shall not impose or enact any ordinance, regulation, fee or condition which (i) directly or indirectly artificially controls or otherwise restricts commercial rents charged within the Project(s) or (ii) applies directly or indirectly to the conversion of office rental units to office condominiums within the Project(s).

14. Processing of Applications and Permits.

(a) Fees. The City agrees that any increase in the administrative fees, processing fees, permit fees and other similar fees and charges for the Project(s) above the amounts applicable as of the Effective Date (hereinafter "Fees") must be reasonably related to the purpose for which the fee was imposed, e.g., increased administrative overhead or increased cost of construction of public improvements. The term "Fees" shall not include "Development Fees" as defined and limited by Paragraph 10(b)(4) above. Further, the City agrees that in no event shall the total aggregate amount of the Fees imposed on the Developer for any Phase of the Project exceed the simple arithmetic average of the total aggregate Fees that would be charged for the applicable Phase of the Project based upon the schedule of Fees then being utilized by the cities of Anaheim, Irvine, Newport Beach, and Orange. In the event the average amount as calculated herein is less than the Fees that would otherwise be imposed on the Project by the City, the City agrees that the Developer shall only be required to pay fees up to the amount of the average.

(b) Processing. The City will accept for processing and review all applications for permits or other entitlements with respect to the Project(s) in accordance with this Agreement. Developer shall likewise have the right to apply for revisions to any approved site plan for the Project(s). Any such new site plan applications shall be reviewed in accordance with this Agreement and the SD. The City and its officers, agencies and departments agree to fully cooperate with Developer, consistent with the requirements of law, to process all applications, permits, and approvals necessary to complete the Project(s) in a reasonably expeditious manner, including (i) the processing of any and all approvals for the Project(s) requested by Developer, (ii) the scheduling, convening and conclusion of all required public hearings, if applicable, (iii) the processing of all maps, plans, land use permits, building plans and specifications and other plans relating to the development of the Project(s), including, but not limited

to, final site plans, tentative maps, parcel maps, final maps, resubdivisions, amendments to maps, lot line adjustments, encroachments, grading and building permits, sewer and water connection permits, business licenses, Land Use Certificates, and related matters as necessary for the completion and occupancy of the Project(s), and (iv) inspections and issuance of temporary and permanent certificates of occupancy when warranted. In addition, the City shall cooperate with Developer in its efforts to obtain any permits and approvals as may be required by other governmental or quasi-governmental agencies having jurisdiction over the Project(s) including, without limitation, the Air Quality Management District, Federal Aviation Administration, County of Orange, Caltrans, City of Tustin, County Sewer and Water Districts, State of California Alcoholic Beverage Control Board, and County Health Department.

(c) Development Review. Nothing set forth herein shall impair or interfere with the right of the City to require the processing of building permits as required by law and to conduct its development review of any specific improvements proposed for the Project(s) pursuant to the existing development regulations; provided, however, no such review shall authorize or permit the City to impose any condition and/or withhold approval to any proposed building the result of which would be inconsistent with any term or provision of this Agreement and it is hereby further agreed that the basis for the City's development review shall be limited to compatibility with the standards and specifications set forth in the SD.

15. Periodic Review and Monitoring of Compliance with Agreement.

(a) Periodic Review. The City shall review this Agreement at least once every twelve (12) months from the date this Agreement is executed. During each periodic review by the City, Developer shall demonstrate good faith compliance with the terms of this Agreement. Developer agrees to furnish such evidence of good faith compliance as the City in a reasonable exercise of its discretion may require. Developer shall be deemed to be in good faith compliance with this Agreement if the City is not entitled by the terms and provisions hereof, to terminate this Agreement.

(b) Monitoring. The Developer shall file a written report with the Executive Director of the Planning and Building Department of the City approximately once every (12) twelve months, beginning with the first periodic review of Developer's compliance with this Agreement as required in subsection (a), above. Subsequent written reports shall be filed concurrently

with each annual review of Developer's compliance with the Agreement. The written report shall briefly state the status in implementing each mitigation measure which is adopted as a condition of approval or which is incorporated into the Project. The Planning and Building Department staff shall review the written report and determine whether there is any unusual and substantial delay of over one (1) year in, or obstacle to, implementing the adopted or incorporated mitigation measures which requires action by Department staff. The result of this review will be provided to the Developer in writing. If the staff determines that action is required, the staff and the Developer shall consult and, if possible, agree upon additional actions to be taken to implement the mitigation measure(s) which are the subject of the delay or the obstacle. If, and only if, the staff and the Developer are unable to agree upon the additional actions to be taken, then either staff or the Developer may bring the matter before the Executive Director of the Planning and Building Department for a decision whether any action should be taken and what that action should be. Staff and the Executive Director of the Planning and Building Department shall be limited to imposing reasonable actions as permitted by law and by the terms of this Agreement and the EIR which will implement the existing mitigation measures in the time contemplated by the terms of this Agreement.

#### 16. Amendment and Modification

(a) General Provision. Except as otherwise set forth in this Paragraph, this Agreement may be amended or cancelled in whole or in part only by mutual consent of the parties or their successors-in-interest, in the manner provided for by California Government Code Sections 65865.1, 65867, 65867.5 and 65868.

(b) Modification of Agreement in the Event of Changes in State or Federal Law or Law of Other Governmental Entity. In the event that State or Federal laws, ordinances, rules, regulations, or policies or the laws, ordinances, rules, regulations, or policies of any other governmental or quasi-governmental entity enacted after the Effective Date of this Agreement prevents or precludes compliance with one or more of the provisions of this Agreement, or impose a requirement on the Project(s) materially different than as otherwise contemplated by this Agreement, the City agrees to:

(1) Provide Developer with written notice of such event and a statement of the conflict with the provisions of this Agreement; and

(2) Promptly meet and confer with Developer in good faith to modify this Agreement to comply with such law, ordinance, rule, regulation, or policy.

Thereafter, regardless of whether the parties reach agreement on the effect of such law, ordinance, rule, regulation, or policy upon this Agreement, the matter shall be scheduled for a hearing before the City Council, upon thirty (30) days notice, for the purposes of determining the exact modification required to this Agreement. It being the express intent of the parties to modify the Agreement to allow for the development of the Project(s) in as close conformity to the terms and conditions of this Agreement as reasonably possible.

17. Events of Default.

(a) Developer shall be deemed to be in default under this Agreement in the event that the City's City Council finds and determines, on the basis of substantial evidence, following a periodic review under the procedures provided under Government Code Section 65865.1 and Paragraph 15 hereof, that Developer has not complied in good faith with one or more of the material terms or conditions of this Agreement.

(b) The City shall be deemed to be in default under this Agreement upon the occurrence of one or more of the following events:

(i) The imposition by the City upon Developer of any ordinance, rule, regulation, policy or moratorium in conflict with Existing Development Regulations or the terms of this Agreement. The City shall not be deemed to be in default by reason of subsequent change of laws, rules, regulations, or policies of another local agency or governmental entity not created or controlled by City which prevents or precludes compliance by City or Developer with this Agreement; the City agrees not to initiate or promote any such changes without Developer's express written consent and will use its best efforts to oppose any such changes.

(ii) The failure by the City to perform any covenant or obligation required by this Agreement in the time and manner set forth herein, including, without limitation, the Public Improvements required to be constructed by the City as set forth above.

(c) In the event of a default as defined in subparagraph (a) or (b) of this Paragraph 17, the non-defaulting party shall issue to the other party a written "Notice of Default" specifying the grounds therefor and all facts demonstrating that a default has occurred. The party receiving the Notice of Default shall have thirty (30) days to respond in writing to the Notice of Default indicating

that the party is contesting the existence of the default. If a response to the Notice of Default has not been received in the offices of the party alleging the default within such thirty (30) day time period, the Notice of Default shall be conclusively presumed to be valid and the defaulting party shall have an additional thirty (30) days to cure such default. In the event that the default is not cured within the period set forth above, the non-defaulting party may pursue any remedy afforded by Paragraph 18. If a Notice of Default is contested, the parties shall have up to sixty (60) days from the date of written response to the Notice of Default to arrive at a mutually acceptable resolution of the matter(s) giving rise to the Notice of Default. If, after the expiration of such time, the parties are not able to arrive at a mutually acceptable resolution of the matter(s), the party alleging the default may elect to pursue any remedy afforded by Paragraph 16.

18. Consequences of Default. In the event of a default by either party which is not cured within the time prescribed by Paragraph 17, the non-defaulting party may undertake one or more of the following remedies:

(a) Terminate this Agreement by written notice stating the grounds for such action; or

(b) Institute an action for specific performance of this Agreement, injunction, or other equitable relief, it being expressly agreed that in the event of a breach of this Agreement, irreparable harm is likely to occur to the non-breaching party and damages are not an available remedy. In no event shall either party be entitled to damages against the other party based upon the other party's default under this Agreement.

19. Binding Effect of Agreement. The burdens of this Agreement shall bind, and its benefits inure to, all successors-in-interest to the parties hereto and constitute covenants which run with the land. City agrees to cause an original of this Agreement to be recorded with the County Recorder for the County of Orange in compliance with the requirements of Government Code §65868.5.

20. Assignment. Developer shall have the right to sell, assign, pledge as security or transfer all or any part of its interest in the Property along with all of its right, title and interest in and to all or any part of this Agreement to any person, firm or corporation at any time during the Term without the consent of City. The City agrees to execute any document reasonably required by an assignee, transferee, lender or other party confirming the rights of such party under this Agreement or providing notices of default and rights to cure for the benefit of such parties.

21. Notices. Unless otherwise specifically provided in writing, all notices, demands or other communications given hereunder shall be in writing and shall be deemed to have been delivered upon actual personal delivery or as of three (3) business days after mailing by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to City: Executive Director of the Planning  
and Building Department  
City of Santa Ana  
20 Civic Center Plaza  
P. O. Box 1988  
Santa Ana, CA 92702

With a copy to: City Attorney  
City of Santa Ana  
20 Civic Center Plaza, M-29  
P.O. Box 1988  
Santa Ana, CA 92702

If to Developer: Birtcher Xerox Partners  
c/o Birtcher  
27611 La Paz Road  
Laguna Niguel, CA 92656  
Attn: Brandon R. Birtcher

With a copy to: Voss, Cook, Casselberry & Thel  
840 Newport Center Drive  
Suite 700  
Newport Beach, CA 92658  
Attn: David A. Lurker

A party may change its address by giving notice in writing to the other party, and thereafter notices shall be delivered or sent to such new address.

22. General Provisions.

(a) Waiver. A waiver of any default or failure to enforce any provision of this Agreement by either party shall not constitute a waiver of any subsequent default or prevent the enforcement of the same or other provision at any subsequent time.

(b) Severability. In the event that any provision of this Agreement shall be held to be invalid by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof. Further, in the event any approval or action by the City in connection with this Agreement is held to be invalid by a court of competent jurisdiction, to the fullest extent permitted by





IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year set forth above.

"CITY"

"DEVELOPER"

CITY OF SANTA ANA,  
a municipal corporation

BIRTCHEX XEROX PARTNERS, a  
California general partnership

By:   
Dan Young,  
Mayor

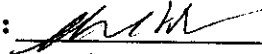
By: BIRTCHEX EQUITIES, a California  
general partnership, Partner

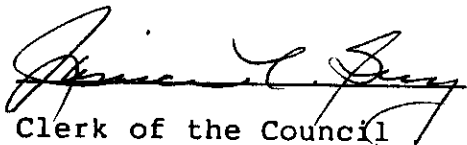
By: BIRTCHEX LIMITED, a California  
limited partnership, Partner

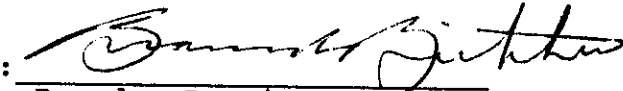
By: BIRTCHEX REAL ESTATE INC.,  
a California corporation,  
General Partner

11-  
DNL

ATTEST:


By:   
Its: President


  
Patricia C. Ferry  
Clerk of the Council

By:   
Brandon R. Birtcher  
Vice-President

APPROVED AS TO FORM:

By: XEROX REALTY CORPORATION  
(CALIFORNIA), a California  
corporation, Partner

  
Edward J. Cooper  
City Attorney

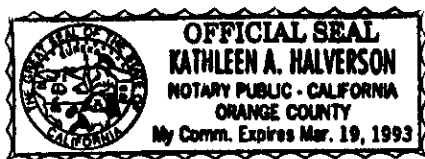
By:   
Its: Treasurer & CFO

ACKNOWLEDGMENT

STATE OF CALIFORNIA )  
                                  ) SS  
COUNTY OF ORANGE )

On November 27, 1989, before me, the undersigned, a Notary Public in and for said State, personally appeared Michael H. Voss, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument as President on behalf of BIRTCHER REAL ESTATE INC., a California corporation, the corporation therein named and acknowledged to me that said corporation executed the within instrument pursuant to its bylaws or a resolution of its board of directors, said corporation being known to me to be the general partner of BIRTCHER LIMITED, a California limited partnership, which partnership is known to me to be a partner of BIRTCHER EQUITIES, a California general partnership, which partnership is known to me to be a partner of BIRTCHER XEROX PARTNERSHIP, a California general partnership, the partnership that executed the within instrument, and acknowledged to me that he executed the within instrument on behalf of BIRTCHER REAL ESTATE INC., that said corporation executed the within instrument on behalf of BIRTCHER LIMITED, that said partnership executed the within instrument on behalf of BIRTCHER EQUITIES, that said partnership executed the within instrument on behalf of BIRTCHER XEROX PARTNERS, and that BIRTCHER XEROX PARTNERS executed the same.

WITNESS my hand and official seal.



Kathleen A. Halverson  
NOTARY PUBLIC

Kathleen A. Halverson  
Name (Typed or Printed)

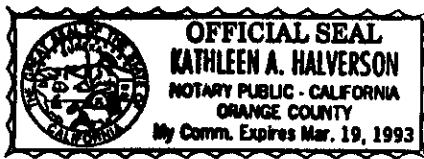
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ACKNOWLEDGMENT

STATE OF CALIFORNIA )
) SS
COUNTY OF ORANGE )

On November 27, 1989, before me, the undersigned, a Notary Public in and for said State, personally appeared BRANDON R. BIRTCHER, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument as Vice-President on behalf of BIRTCHER REAL ESTATE INC., a California corporation, the corporation therein named and acknowledged to me that said corporation executed the within instrument pursuant to its bylaws or a resolution of its board of directors, said corporation being known to me to be the general partner of BIRTCHER LIMITED, a California limited partnership, which partnership is known to me to be a partner of BIRTCHER EQUITIES, a California general partnership, which partnership is known to me to be a partner of BIRTCHER XEROX PARTNERSHIP, a California general partnership, the partnership that executed the within instrument, and acknowledged to me that he executed the within instrument on behalf of BIRTCHER REAL ESTATE INC., that said corporation executed the within instrument on behalf of BIRTCHER LIMITED, that said partnership executed the within instrument on behalf of BIRTCHER EQUITIES, that said partnership executed the within instrument on behalf of BIRTCHER XEROX PARTNERS, and that BIRTCHER XEROX PARTNERS executed the same.

WITNESS my hand and official seal.



Kathleen A. Halverson
NOTARY PUBLIC

Kathleen A. Halverson
Name (Typed or Printed)

(SEAL)



ACKNOWLEDGMENT

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF ORANGE )

On \_\_\_\_\_, 19\_\_\_\_, before me, the undersigned, a Notary Public in and for said state, personally appeared DAN YOUNG, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument as the Mayor of THE CITY OF SANTA ANA, a municipal corporation, organized and existing under the State of California, the municipal corporation that executed the within instrument, and acknowledged to me that he executed the within instrument on behalf of said municipal corporation, and said municipal corporation executed the same.

WITNESS my hand and official seal.

\_\_\_\_\_  
NOTARY PUBLIC

\_\_\_\_\_  
Name (typed or printed)

(SEAL)

State of California }  
County of Orange } ss.



On this 2nd day of January, in the year 1990, before me \_\_\_\_\_, Clerk of the Council or W. D. BARON, Deputy Clerk of the Council of the City of Santa Ana personally appeared DANIEL H. YOUNG, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed this instrument as the Mayor of the City of Santa Ana and acknowledged to me that the City of Santa Ana executed it.

*W. D. Baron*

## EXHIBIT "A"

LEGAL DESCRIPTION  
OF THE PROPERTY

The West 15.0 feet of lot 15 of the Mabury Tract, as shown on a map recorded in Book 36, Page 65 of Miscellaneous Records of Los Angeles County, California.

That portion of Lot 16 of the Mabury Tract, as shown on a map recorded in Book 36, Page 65 of Miscellaneous Records of Los Angeles County, California, described as follows:

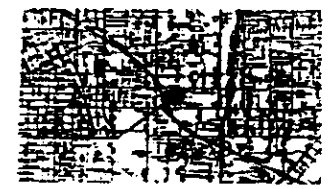
Beginning at a point on the north line of said lot, distant thereon North 89 degrees 13' 40" East 299.99 feet from the northwest corner thereof; thence continuing North 89 degrees 13' 40" East along said north line, 650.12 feet to the Northeast corner of said lot 16; thence South 0 degrees 35' 05" East 859.52 feet along the east line of said lot to the southeast corner thereof; thence South 89 degrees 07' 30" West 377.76 feet along the south line of said lot 16 to the southerly corner of the land described in the Director's Deed to Allstate Insurance Company, an Illinois corporation, Recorded October 24, 1966 in Book 3688, page 220 of Official Records; thence along the westerly line of said Deed, North 56 degrees 13' 44" West 33.35 feet; thence north 18 degrees 49' 13" West 491.00 feet; thence North 22 degrees 39' 48" West 403.54 feet to a point in the northerly line of lot 16, distant 60.50 feet westerly from the point of beginning; thence North 89 degrees 13' 40" East 60.50 feet to the point of beginning.

Except therefrom that portion of said lot 16 more particularly described in Director's Deed to Allstate Insurance Company, an Illinois corporation, recorded October 24, 1966 in Book 3688, Page 220 of Official Records, all minerals, oil, gases and other hydrocarbons by whatever name known that may be within or under said parcel of land, without, however, the right to drill, dig or mine through the surface therefor, as reserved by the State of California in the Deed above mentioned.

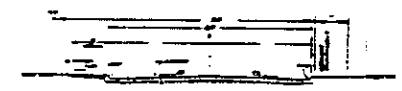
NOTE: Upon recordation of a Final Map in a accordance with Tentative Map No. 88-102, the legal description will thereafter be referenced as Parcels 1 through 5, inclusive, of Map No. 88-102.

**VESTING  
TENTATIVE PARCEL MAP  
88-102**

250.28

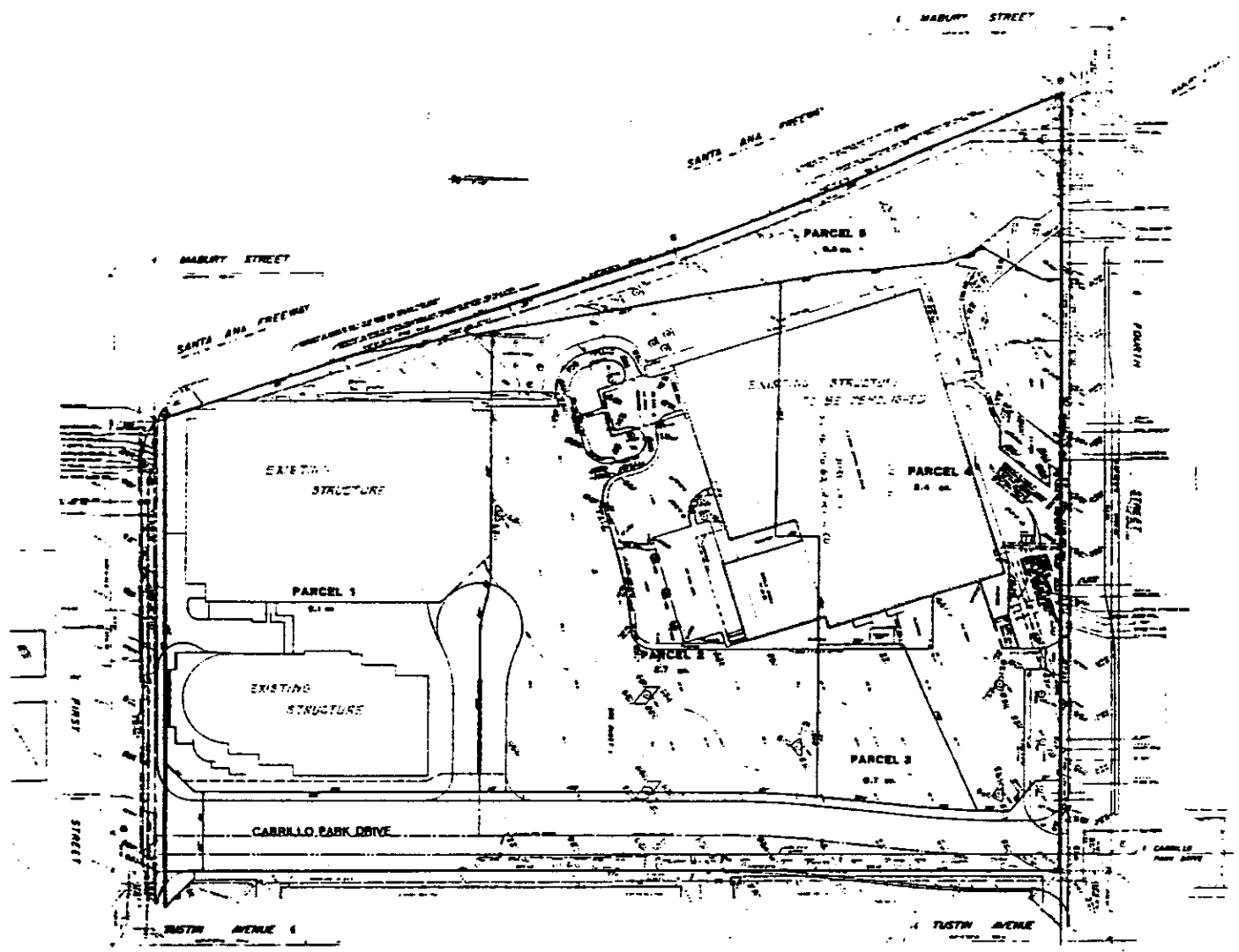


VICINITY MAP



TYPICAL SECTION CABRILLO PARK DRIVE

EXHIBIT "B"



**NOTES**

- 1. SEE SHEET 88-101
- 2. EXISTING STRUCTURES TO BE DEMOLISHED
- 3. EXISTING UTILITIES SHOWN AS PER RECORD DRAWINGS AND FIELD SURVEY
- 4. EXISTING UTILITIES TO BE MAINTAINED AS SHOWN
- 5. EXISTING UTILITIES TO BE DELETED AS SHOWN
- 6. EXISTING UTILITIES TO BE RELOCATED AS SHOWN
- 7. EXISTING UTILITIES TO BE RECONSTRUCTED AS SHOWN
- 8. EXISTING UTILITIES TO BE RECONSTRUCTED AND RELOCATED AS SHOWN
- 9. EXISTING UTILITIES TO BE RECONSTRUCTED AND DELETED AS SHOWN
- 10. EXISTING UTILITIES TO BE RECONSTRUCTED AND RELOCATED AND DELETED AS SHOWN

**OWNER'S STATEMENT**

I, the undersigned, being the owner of the above described parcel of land, do hereby certify that the information furnished herein is true and correct to the best of my knowledge and belief.

*Richard G. Greiner* 11/15/85

**LEGAL DESCRIPTION**

A certain parcel of land, to-wit: the parcel of land described as follows: ...

**OWNER/DEVELOPER**

Richard G. Greiner  
11111 N. TUSTIN AVE.  
DANA POINT, CALIFORNIA 92629  
(714) 261-1111

**MAP PREPARED BY:**

Greiner & Associates  
11111 N. TUSTIN AVE., SUITE 100  
DANA POINT, CALIFORNIA 92629  
(714) 261-1111