



PLANNING COMMISSION AGENDA REPORT

VI. 4

MEETING DATE: AUGUST 9, 2010

ITEM NUMBER:

SUBJECT: PLANNING APPLICATION PA-10-15 FOR A CONDITIONAL USE PERMIT FOR AN INTERMEDIATE AFTER-SCHOOL PROGRAM IN CHURCH FACILITY AT 3183 RED HILL AVENUE AND FOR POTENTIAL OFF-SITE PARKING AT 3187 RED HILL AVE.

DATE: JULY 28, 2010

FOR FURTHER INFORMATION CONTACT: MINOO ASHABI, SENIOR PLANNER
(714) 754-5610 or mashabi@ci.costa-mesa.ca.us

DESCRIPTION

The applicant is requesting approval of the following:

- A conditional use permit to establish an after school program (The Discovery School of Arts and Sciences) as an ancillary use within a new church facility at 3183 Red Hill Avenue.
- A conditional use permit for **potential** off-site parking for church use (Center for Spiritual Living) with weekend and one weeknight worship services requiring greater than 300 seats in the sanctuary, pursuant to a reciprocal shared access/parking agreement with 3187 Red Hill.

APPLICANT

The applicant is Scott vonKaenel on behalf of the owner of the property.

RECOMMENDATION

Adopt resolution to approve the Conditional Use Permit (including afterschool program and potential off-site parking), subject to conditions.

MINOO ASHABI, AIA
Senior Planner

KHANH NGUYEN
Asst. Development Services Director

BACKGROUND:***Project Site***

The property is located at 3183 Red Hill Ave., at the northwest corner of Red Hill Ave. and McCormick Ave. The property is zoned MP (Industrial Park) and has a General Plan Designation of Industrial Park (Attachment 3).

The property contains a 31,779 square-foot single story industrial building with shared parking and common access on McCormick Ave. with another office building located at 3187 Red Hill Ave. The parcel contains 86 parking spaces that are not separated from the adjacent property. There are 413 parking spaces provided on the two properties (Attachment 6).

The property was previously occupied by two businesses that manufactured circuit boards from 1996 to 2007. The applicant submitted an environmental assessment report prepared in 2010 that concluded no evidence of Recognized Environmental Condition (REC) associated with the previous uses. The last tenant submitted a closure plan including a subsurface investigation that was accepted by the Orange County Health Care Agency. The full environmental assessment report is available in the project file.

ANALYSIS***Project Description***

The Center for Spiritual Living is a church organization with approximately 300 members established in Costa Mesa. The church currently holds their worship services at the Costa Mesa Senior Center (695 W. 29th Street).

The proposed church facilities at 3183 Red Hill Avenue include the following:

- A sanctuary with 570 seats
(On-site parking for 258 seats / Off-site parking for any additional demand or seats)
- A social hall with 200 seats
- Six classrooms
- Seven offices and a conference room
- Kitchen, storage and restroom facilities
- A chapel
- A multi-purpose room
- A mezzanine with two storage areas (2,724 SF)
- An outdoor play area approximately 5,500 SF

The church is a permitted use in the MP zone subject to parking compliance; however, the proposed after school classes and off-site parking are subject to a conditional use permit. The church operations are summarized as follows:

Table A
Summary of Proposed Church Operations

Room	Area - SF	Days	Hours	Parking
Sanctuary	7,124	Sat. & Sunday One weeknight	8:00 a.m. to 1:00 p.m. 7:00 p.m. to 11:00 p.m.	300 seats, and up to potential 570 seats 1/3 seats = 190 spaces
Social Hall	1,803	M-F Sat. & Sunday One weeknight	9:00 a.m. to 2:00 p.m. 8:00 a.m. to 1:00 p.m. 7:00 p.m. to 11:00 p.m.	Potential 200 seats Ancillary to church use
Classrooms 150 students	5,028	M-Thurs Sunday School	3:30 p.m. to 6:30 p.m. 8:00 a.m. to 1:00 p.m.	10/1000 = 51
Multi-purpose Rm.	530	M-F	9:00 a.m. to 2:00 p.m.	Ancillary to church use
Admin. Offices	3,455	M-F	9:00 a.m. to 2:00 p.m.	Ancillary to church use
Kitchen	1,330	M-F Sat. & Sunday	9:00 a.m. to 5:00 p.m. 6:00 a.m. to 2:00 p.m.	Ancillary to church use
				Total required = 190 spaces (86 provided on-site)
				Provided = 413 Combined parking for 3183 and 3187 Red Hill Ave.

Planning Application PA-10-15 for Conditional Use Permit

The Conditional Use Permit request involves two components:

1. After School Program

The applicant is proposing to offer after school classes to a maximum of 150 intermediate students (6-8 grades) within six classrooms. The students will be picked up by a shuttle service from various schools and dropped off at the facility in the afternoon. The site plan refers to the shuttle's ingress and egress route to and from the project site (Attachment 5). The classes will be held from 3:30 p.m. to 6:30 p.m. Monday through Thursday.

Upon completion of the classes, the students are picked up by the parents by the same route. A loading/unloading area located along the main entrance is identified on the site plan.

2. Off-site Parking at 3187 Red Hill Avenue

The number of parking spaces required by code is 1 space for every 35 square feet of sanctuary area or 1 space per 3 seats when fixed seats are proposed. As a result, 190 parking spaces would be required for the sanctuary which is the most intensive use for parking. Other uses are considered ancillary to the church uses. The project site contains 86 parking spaces and a total of 413 parking spaces are available through a reciprocal parking agreement with 3187 Red Hill Ave. The required parking for the classroom is 51 spaces, which can be accommodated on-site. However, worship

services of more than 300 and up to full capacity of the sanctuary (570 seats) require up to 190 parking spaces, 104 spaces in excess of spaces provided on-site.

It should be noted that worship services are proposed mostly on the weekends when most businesses are not operating with potentially the greatest impact on the surrounding area in terms of traffic, noise and parking. Only one weekday worship service is proposed which will be held at 7:00 p.m. after school hours. The church currently holds about 300 members which can be accommodated with on-site parking and the maximum number of 770 seats is proposed for special gatherings that may occur a few times a year. The additional spaces could be accommodated on 3187 Red Hill Avenue which is located on the adjoining property during non-peak hours and subject to approval of the property owner. The current reciprocal access and parking agreement was executed in 1985 when both properties were developed with light industrial office uses and does not specify extensive use of the parking lot during non-peak hours.

Justification for Approval of Planning Application PA-10-15

Staff supports approval of the application for the following reasons:

- *The proposed after school program would not negatively impact parking or the surrounding properties.* The building will be occupied by a single tenant with exclusive use of the building and the immediate parking area. The students are dropped off by shuttle service on private property that will reduce traffic impacts. In addition, during the instructional hours of 3:30 p.m. to 6:30 p.m., no congregation services or social hall activities will take place. The church holds one nightly service that will be offered at 7:00 p.m. after school hours.

Condition of approval #13 requires that all loading and unloading occur on-site to provide safety to the youth with no disruption to vehicles on the public streets. The applicant will also be required to ensure no loitering occurs in the parking lot during class sessions with outdoor activities being restricted to the outdoor play area located on the east side of the building facing Red Hill Ave.

Condition of approval #11 requires that no congregation services or social hall activities be conducted during the hours of 3:30 p.m. to 6:30 p.m. when classes are in session.

The proposed use would provide after school classes for the benefit of the community. The classes are offered after school hours and with private transportation by a shuttle service that will be accommodating to working parents in the community. Condition of approval #10 requires submittal of a clearance from the Orange County Environmental Health Services before certificate of occupancy for the classrooms.

- *The proposed use will be ancillary to the church use which is a permitted use in MP zone.* The congregation includes approximately 300 members and holds regular services in Costa Mesa Senior Center with their offices at another location. This new location will contain all functions of the church within one facility.

- The availability of off-site parking is still subject to concurrence by adjacent property owner. There are 86 available on-site parking spaces at the 3183 Red Hill Avenue property. This accounts for 258 seats in the sanctuary (258 seats @ 1 parking spaces/3 fixed seats = 86 spaces). The existing church membership is about 300 members. The church is a permitted use, and given that there are multiple church services and that all services may not be fully attended, staff believes that there would be adequate on-site parking for 300 seats in the sanctuary.

However, potential off-site parking on the abutting property located at 3187 Red Hill Avenue may be available. A 1985 reciprocal access/parking agreement and CC&Rs were recorded to allow common ingress, egress, and parking of motor vehicles on both properties in perpetuity. The applicant indicated that there are no amendments to this 1985 agreement (Attachment 6).

Condition of approval #2 requires a signed memorandum of understanding (or other documentation as deemed appropriate by the Development Services Director) between the property owners of 3183 and 3187 Red Hill Avenue for off-site parking for more than 300 seats. The zoning authorization for off-site parking for services with more than 300 seats is not activated until this documentation is approved to the satisfaction of the Development Services Director. The agreement shall clearly specify the parking arrangements, including total number of additional off-site parking spaces available for the additional seating in the sanctuary, location of the parking spaces, and the specified timeframes (days/times) for required off-site parking.

Given that this request includes the potential for off-site parking to accommodate the growth of the church membership, compliance with this condition will be determined by the Development Services Director, and no further review by the Planning Commission is required.

ENVIRONMENTAL DETERMINATION

If approved, the use would be exempt from the provisions of the California Environmental Quality Act under Section 15301 for Existing Facilities. Denial of the request would be subject to statutory exemption from CEQA under Section 15270 for projects that are disapproved.

GENERAL PLAN CONFORMITY

Approval of the application for after school classes and potential off-site parking would be consistent with the General Plan, which permits educational uses if they are determined to be complementary to the industrial area. Based on the proposed schedule of classes, the institutional use will not generate significantly more vehicle trips to the site; however, the church use component of the project will generate a net increase of 68 additional trip ends that will be subject to the traffic impact fees.

ALTERNATIVES

The Commission has the following alternatives:

1. Approve PA-10-15 to establish afterschool classes and potential off-site parking subject to conditions and code requirements.
2. Deny PA-10-15 to establish afterschool classes and potential off-site parking. If the application is denied by the Planning Commission, the use would be prohibited on the property and the applicant could not submit a similar application for six months.

CONCLUSION

Staff supports approval of the proposed after school classes since the operational hours for the classes are during non-peak hours for the industrial uses; no parking impacts are anticipated and drop off services are provided by a shuttle during office hours of the adjacent properties. Staff recommends that the additional church services that would require off-site parking be subject to agreement from both property owners of 3183 and 3187 Red Hill Avenue. The applicant may also enter into an off-site parking agreement with neighboring properties to satisfy the additional off-site parking demand.

Attachments: 1. Planning Commission Approval and Denial Resolutions
 2. Applicant's Request Letter
 3. Location Map
 4. Submitted Photos
 5. Submitted Plans
 6. CC&Rs for Shared Parking

cc: Development Svs. Director
 Deputy City Attorney
 Public Services Director
 City Engineer
 Transportation Svs. Manager
 Fire Protection Analyst
 Staff (4)
 File (2)

Scott vonKaenel
 Lundstrom and Associates
 2923 Pullman Street, Suite A
 Santa Ana, CA 92705-5818

David Spiegel
 Spiegel Development, Inc.
 22801 Ventura Blvd. Suite 111
 Woodland Hills, Ca 91364

RESOLUTION NO. PC-10-

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY
OF COSTA MESA APPROVING PLANNING APPLICATION PA-10-15
FOR 3183 RED HILL AVE.**

THE PLANNING COMMISSION OF THE CITY OF COSTA MESA HEREBY RESOLVES AS FOLLOWS:

WHEREAS, an application was filed by Scott vanKaenel, authorized agent to the property owner of real property located at 3183 Red Hill Avenue for a conditional use permit for the following:

- To establish an after school program (The Discovery School of Arts and Sciences) as an ancillary use within a church facility at 3183 Red Hill Avenue.
- To allow potential off-site parking for church use (Center for Spiritual Living) with weekend and one weeknight worship services requiring greater than 300 seats in the sanctuary, pursuant to a reciprocal shared access/parking agreement with 3187 Red Hill Ave. or a neighboring property.

WHEREAS, the worship services shall occur as follows: Saturday and Sunday from 8:00 a.m. to 1:00 p.m. and one weeknight from 7:00 p.m. to 11:00 p.m.

WHEREAS, a duly noticed public hearing was held by the Planning Commission on August 9, 2010;

BE IT RESOLVED that, based on the evidence in the record and the findings contained in Exhibit "A", the Planning Commission hereby **APPROVES** PA-10-15 with respect to the property described above.

BE IT FURTHER RESOLVED that the Costa Mesa Planning Commission does hereby find and determine that adoption of this Resolution is expressly predicated upon the activity as described in the staff report for Planning Application PA-10-15 and upon applicant's compliance with each and all of the conditions contained in Exhibit "B" as well as with compliance of all applicable federal, state, and local laws. Any approval granted by this resolution shall be subject to review, modification or revocation if there is a material change that occurs in the operation, or if the applicant fails to comply with any of the conditions of approval.

PASSED AND ADOPTED this 9th day of August, 2010.

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James Righeimer, Chair
Costa Mesa Planning Commission

EXHIBIT "A"

FINDINGS – APPROVAL (PA-10-15)

- A. The proposed project complies with Costa Mesa Municipal Code Section 13-29(e) because:
1. The proposed use is compatible and harmonious with uses on surrounding properties.
 2. Safety and compatibility of the after school classes with the adjacent commercial uses, parking areas, landscaping, and other site features including functional aspects of the site development such as automobile and pedestrian circulation have been considered.
 3. The project, as conditioned, is consistent with the General Plan.
 4. The planning application is for a project-specific case and does not establish a precedent for future development.
- B. The information presented substantially complies with Costa Mesa Municipal Code Section 13-29(g)(2) in that the proposed after school classes are substantially compatible with developments in the area and would not be materially detrimental to other properties within the area since the proposed hours of operation for the church services and classes are during times that neighboring businesses are not operating. The proposed number of students can be accommodated within the existing building and the on-site parking available on 3183 Red Hill Avenue. In addition, the student shuttle drop-off and pick-up area is within the private property with more than 100 feet from the McCormick Ave. that is not anticipated impacting the traffic and circulation around the site.

With regard to the future growth of the church membership and services requiring more than 300 seats in the sanctuary, the off-site parking for the church use at 3178 Red Hill Ave. will be subject to agreement with the adjacent property owner or providing off-site parking on a neighboring property. The zoning authorization for potential off-site parking is not activated until compliance with all conditions of approval occurs.

- C. The project has been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA Guidelines; and the City environmental procedures, and has been found to be exempt from CEQA under Section 15301 for existing construction.
- D. The project is exempt from Chapter IX, Article 11, Transportation System Management, of Title 13 of the Costa Mesa Municipal Code.

EXHIBIT "B"CONDITIONS OF APPROVAL (PA-10-15 for 3183 Red Hill Ave.)

- Plng.
1. The afterschool classes shall be provided to a maximum of 150 middle school students (grades 6-8) from 3:30 p.m. to 6:30 p.m. Any increase in the number of students, and or any change in the hours of operation of the church, school and shuttle services that increases or intensifies the approved uses would require amendment of the conditional use permit by the Planning Commission.
 2. Seating in the main sanctuary is limited to 300 seats, until such time the applicant submits a signed memorandum of understanding (or other documentation as deemed appropriate by the City Attorney and Development Services Director) between the property owners of 3183 and 3187 Red Hill Avenue indicating that off-site parking is available to accommodate additional seating. The applicant may also enter into an off-site parking agreement with other neighboring properties to satisfy the additional parking demand.

The agreement shall clearly specify the parking arrangements, including total number of additional off-site parking spaces available for the additional seating in the sanctuary, location of the parking spaces, and the specified timeframes (days/times) for required off-site parking.

The zoning authorization for the conditional use permit for off-site parking is not activated until this documentation is approved to the satisfaction of the City Attorney and Development Services Director.

Given that PA-10-15 includes the request for potential for off-site parking to accommodate the growth of the church membership, compliance with this condition will be determined by the Development Services Director, and no further review by the Planning Commission is required.

3. The uses shall be conducted, at all times, in a manner to allow the quiet enjoyment of the surrounding neighborhood. The applicant shall institute whatever operational measures necessary to comply with this requirement.
4. If parking shortage or other parking-related problems arise, the applicant shall institute whatever measures necessary to minimize or eliminate the problem, including but not limited to reducing the number of students or church services.
5. There shall be no loitering of students within the parking area during class hours. The number of students on the playground at any one time; the hours of recess and outside play; the design and precise location of the outside play area; shall be subject to review and approval by the Development Services Director. Also, the Development Services Director may limit the number of students that may be engaged in outside play if it finds that outside play is causing a noise nuisance for the neighboring businesses. The outdoor play area is subject to the exterior noise standards of the City of Costa Mesa as

set forth in Section 13-280 of the zoning code.

6. All nighttime school activities in the outdoor play yard areas shall be subject to review and approval by the Development Services Director.
7. The outdoor play area shall be enclosed with a six-foot high fence or wall with a lock or latching device that is not accessible to children. All fences or walls shall provide for safety with controlled points of access.
8. All parking spaces shall be open and accessible at all times that the school and church are in operation to prevent parking on adjacent properties.
9. The landscape setback areas along Red Hill Avenue and McCormick Avenue shall be rehabilitated. All unhealthy or dead trees, shrubs, and ground cover shall be replaced with equal or larger size and similar species subject to review and approval of the Development Services Director. A landscape plan shall be submitted for approval and new landscaping installed within 90 days of approval of the CUP or prior to issuance of a building permit for any building alterations, whichever occurs first.
10. Prior to issuance of a Building Permit, the applicant shall submit clearance from the Orange County Environmental Health Care Agency for school occupancy.
11. The worship services shall occur after 7:00 p.m. on weekdays and not conflict with the hours of after school classes.
12. Hardscape plans for the outdoor play shall be submitted for review and approval of the Planning Division. All existing trees contained in the outdoor play area shall remain in place.
- Trans. 13. Student bus drop-off/pick-up shall only occur within designated area in parking lot. No staging or pick-up/drop-off shall occur on public right-of-way.

RESOLUTION NO. PC-10-

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY
OF COSTA MESA DENYING PLANNING APPLICATION PA-10-15
FOR 3183 RED HILL AVE.**

THE PLANNING COMMISSION OF THE CITY OF COSTA MESA HEREBY RESOLVES AS FOLLOWS:

WHEREAS, an application was filed by Scott vanKaenel, authorized agent to the property owner of real property located at 3183 Red Hill Avenue for a conditional use permit for the following:

- To establish an after school program (The Discovery School of Arts and Sciences) as an ancillary use within a church facility at 3183 Red Hill Avenue.
- To allow potential off-site parking for church use (Center for Spiritual Living) with weekend and one weeknight worship services requiring greater than 300 seats in the sanctuary, pursuant to a reciprocal shared access/parking agreement with 3187 Red Hill Ave. or a neighboring property.

WHEREAS, a duly noticed public hearing was held by the Planning Commission on August 9, 2010;

BE IT RESOLVED that, based on the evidence in the record and the findings contained in Exhibit "A, the Planning Commission hereby **DENIES** Planning Application PA-1016 with respect to the property described above.

PASSED AND ADOPTED this 9th day of August, 2010.

James Righeimer, Chair
City of Costa Mesa Planning Commission

EXHIBIT "A"

FINDINGS –(DENIAL)

- A. The proposed project does not comply with Costa Mesa Municipal Code Section 13-29(e) because:
 - 2. The project is not compatible and harmonious with uses on surrounding properties.
 - 3. The project is not consistent with the General Plan.
 - 4. The planning application is for a project-specific case and does not establish a precedent for future development.
- B. Granting the conditional use permit will be materially detrimental to the health, safety and general welfare of the public or otherwise injurious to property or improvements within the immediate neighborhood.
- C. The Costa Mesa Planning Commission has denied Planning Application PA-10-15. Pursuant to Public Resources Code Section 21080(b)(5) and CEQA Guidelines Section 15270(a), CEQA does not apply to this project because it has been rejected and will not be carried out.
- D. The project is exempt from Chapter IX, Article 11, Transportation System Management, of Title 13 of the Costa Mesa Municipal Code.



Wendy Shih
Associate Planner
City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92628

June 14, 20010

RE: Project Description

Dear Miss Shih,

We are pleased to introduce our design for the Center for Spiritual Living and The Discovery School of Arts and Sciences at 3183 Red Hill Ave. This project consists of a 31,776 s.f. single story tenant / site improvements with worship, educational and office uses.

This project is in an existing single story plus mezzanine concrete tilt-up warehouse building located at the Southwest corner of Red Hill Ave and McCormick Ave. The main sanctuary space will house worship services on weekends with one week night service with overflow seating on special occasions in the social hall. This social hall will also accommodate classes, conferences and business meetings to the local community. Additionally, the commercial kitchen will support the various functions throughout the week. The divisible classroom spaces support the after school program in an open classroom environment during the hours of 3:30pm to 6:30pm Monday thru Thursday. The secure play area facing Red Hill Ave. will also support the educational component of the program as required by the Title 22 CA Code of Regulations. The various uses will ensure a full time facility with a diverse program.

The project requires a conditional use permit (CUP) due to the educational component in the MP Industrial Park zone. The Discovery School of Art and Science is an intermediate after school program designed for grades 6-8 to awaken the student's passion for learning and expressing, to provide a place where life itself is a creative process and each student an artist. Here, students will receive and participate in an education for their whole self. The five integrated aspects of the school are academics, ethics, art, science, and math. This project is consistent with uses permitted in the general area by providing multiple services to the diverse local business community. The proposed uses would not be materially detrimental to the other properties in the area by the proper integration and coordination of the facility operations, hours and functions. The goal of the project is to provide a continuous-use program for a full functioning multi-purpose facility.

We look forward to working with you to achieve a successful project of which the City of Costa Mesa, the property ownership and the surrounding neighborhood can be proud. Please do not hesitate to contact me should you have any questions.

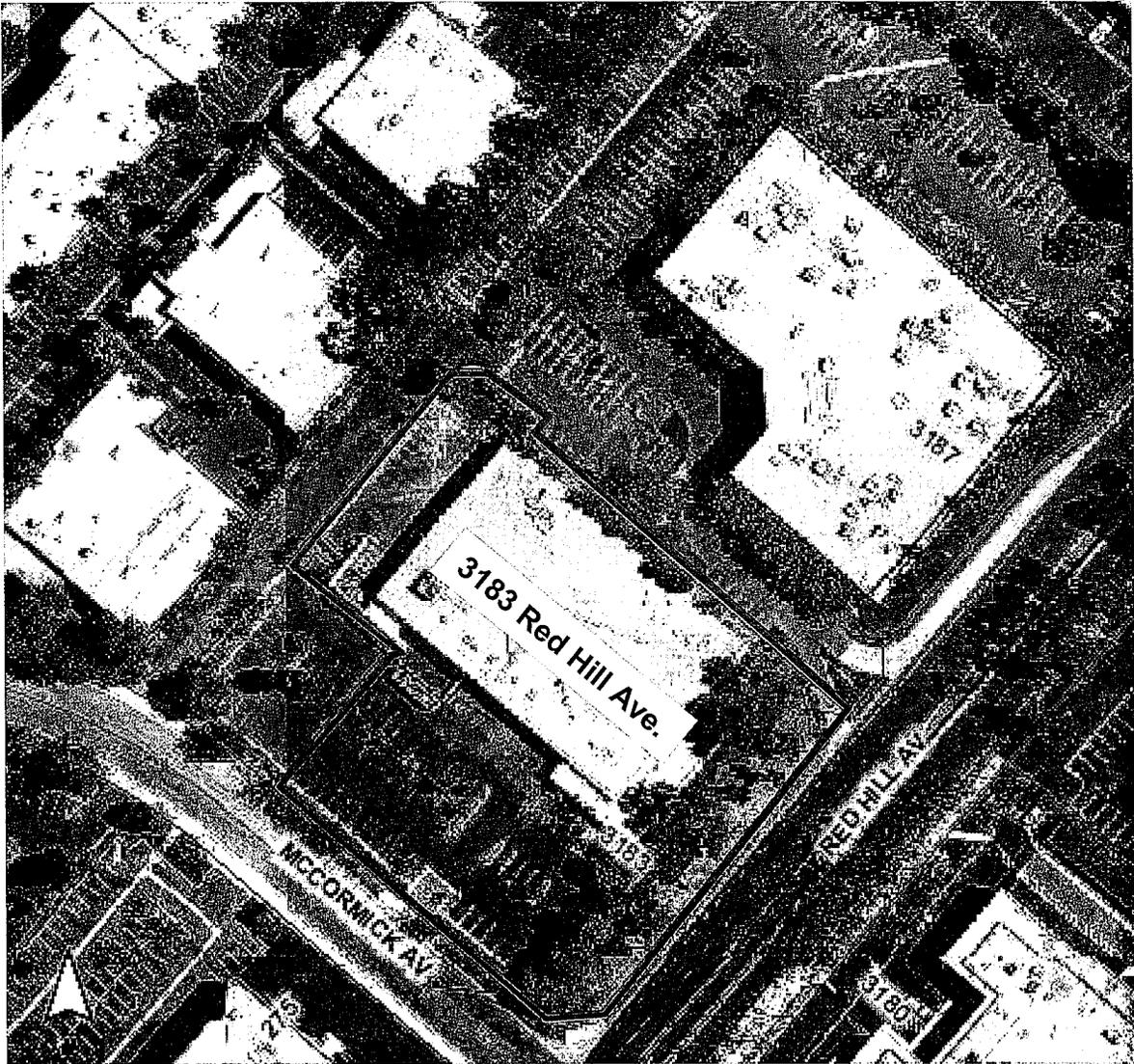
Sincerely,

Scott vonKaenel
Associate, Lundstrom & Associates

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Location Map

PA-10-15
3183 Red Hill Ave.



1027 Center for Spritual Living & Discovery School of Arts and Sciences - Costa Mesa

Photographs of Existing Exterior Building Elevations



1. Right portion of southwest elevation showing existing building office entrances.

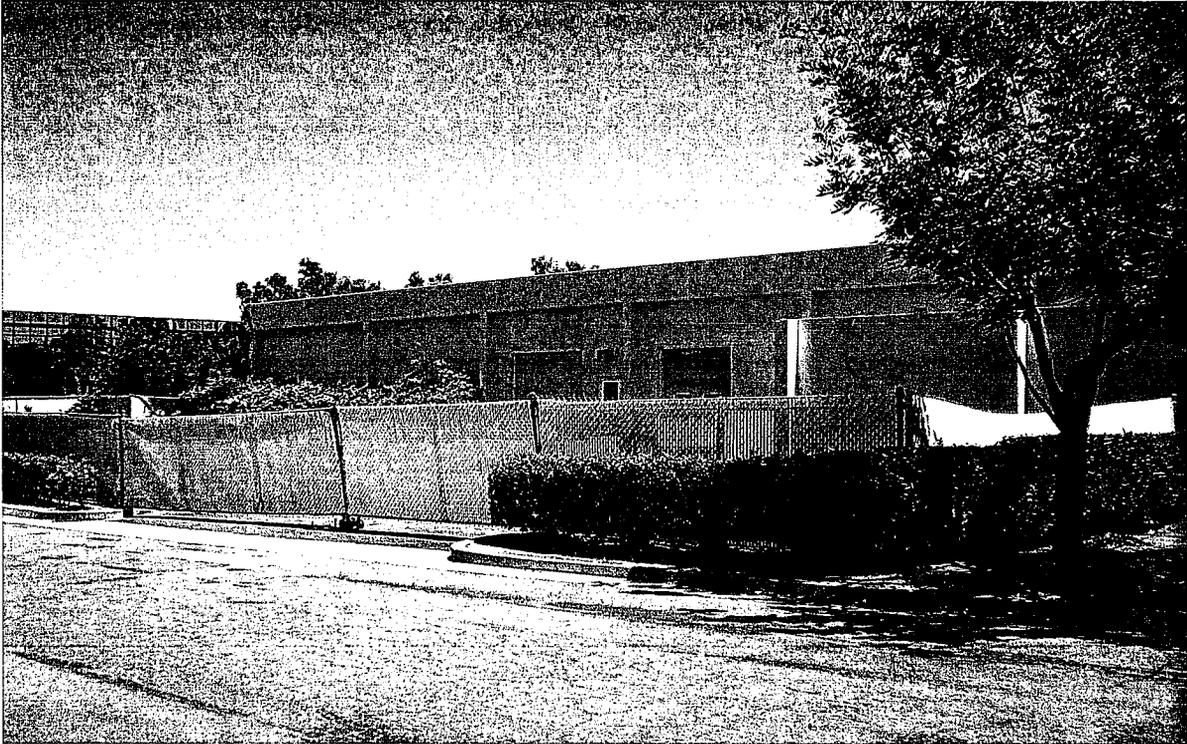


2. Left portion of southwest elevation showing warehouse.

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1027 Center for Spritual Living & Discovery School of Arts and Sciences - Costa Mesa

Photographs of Existing Exterior Building Elevations



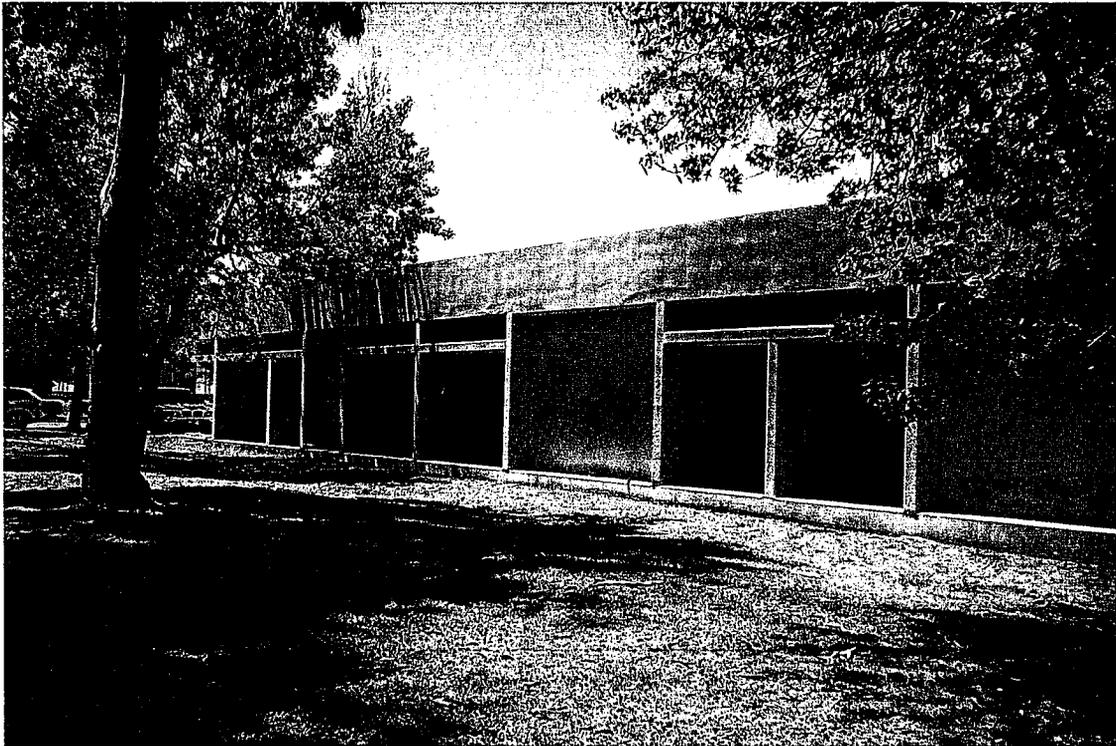
3. Northwest elevation showing warehouse loading / rear yard area.



4. Northeast elevation showing the warehouse portion of the building.

1027 Center for Spritual Living & Discovery School of
Arts and Sciences - Costa Mesa

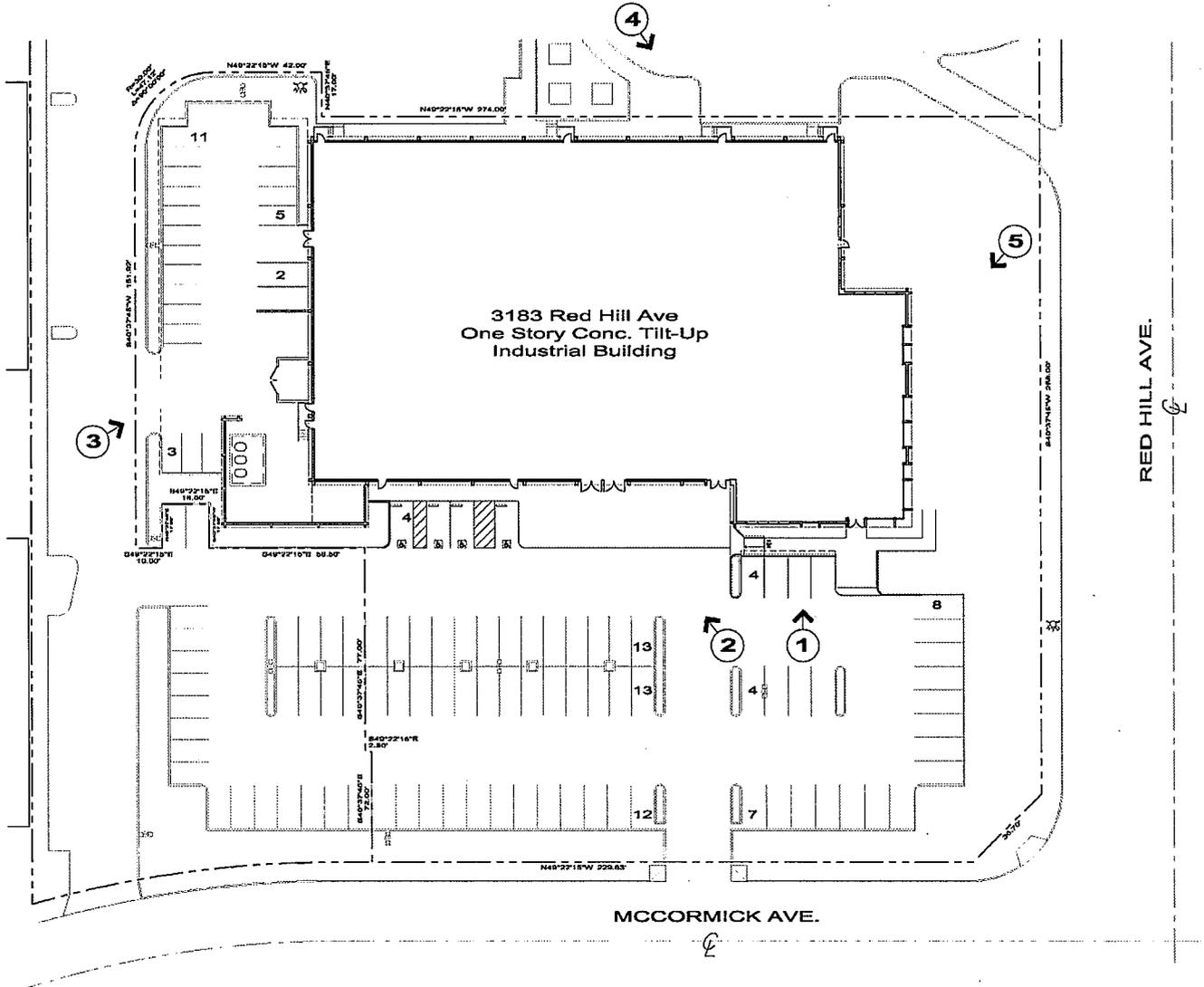
Photographs of Existing Exterior Building Elevations



5. Southeast elevation facing Red Hill Ave.

1027 Center for Spritual Living & Discovery School of Arts and Sciences - Costa Mesa

Photographs of Existing Exterior Building Elevations



Reference site plan

85-088494

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

RECORDING REQUESTED BY
TICOR TITLE INS. CO. OF CALIF.

RECORDED IN OFFICIAL RECORDS
OF ORANGE COUNTY, CALIFORNIA

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C18

Lee A. Branch COUNTY
RECORDER

DECLARATION ESTABLISHING PROTECTIVE COVENANTS, CONDITIONS
AND RESTRICTIONS AND RECIPROCAL EASEMENTS

THIS DECLARATION, is made this 8th day of March, 1985, by Carver Development Partnership Three, a limited partnership, hereinafter referred to as "Carver", owner of the hereinafter described property.

W I T N E S S E T H:

WHEREAS, Carver is the owner of that certain real property located in the City of Costa Mesa, County of Orange, State of California, which is more particularly described in the attached Exhibit "A", and which is referred to as the "Property", which is composed of two separate parcels improved with separate buildings as shown on Exhibit "B" attached hereto. Exhibit "B" depicts the building footprints for the existing buildings presently constructed on the Property. The areas within these footprints as well as areas within the building footprints of any new buildings constructed on the Property are herein referred to as "Building Areas".

WHEREAS, Carver desires to hereby subject each and every portion of the Property to the covenants, conditions and restrictions hereinafter set forth and to establish the appurtenant easements hereinafter described so as to provide a general plan for the mutual benefit of the owners of any and all portions thereof and their respective heirs, successors, assigns, grantees, mortgagees and tenants.

NOW, THEREFORE, Carver does hereby establish the covenants, conditions and restrictions hereinafter set forth, and grant and establish the easements hereinafter described as follows:

ARTICLE 1 - COMMON AREA

The Property, other than the Building Areas as they now or may hereafter exist and loading dock areas as shown on Exhibit "B", is hereafter referred to as Common Area. Carver hereby grants and establishes reciprocal easements over and upon the Common Area portions of parcels 1 and 2 of the Property for the purposes hereinafter set forth. Said Common Area shall be used only for the following purposes (but in no event shall the following rights be construed as creating any rights for the general public):

(a) The ingress and egress and parking of passenger motor vehicles of the owners and occupants of any portion of the Property and their customers, suppliers, licensees, invitees, employees, officers, agents and representatives;

(b) The pedestrian movement of the owners and occupants of any portion of the Property and their customers, suppliers, licensees, invitees, employees, officers, agents and representatives;

(c) The installation, maintenance and operation of necessary utility services serving the Building Areas. All utility lines shall be underground unless prohibited by the utility supplier in which case they shall be 20 feet or more in height;

(d) The maintenance, repair and replacement of Common Area improvements including parking lot lighting facilities, planting areas, traffic islands, and sidewalks;

(e) The erection and maintenance of monument signs with appropriate underground electrical connections provided (1) any such sign shall in all respects be

subject to the absolute approval of all governmental agencies having jurisdiction of such sign, and (2) shall be subject to the approval of the Maintenance Director hereinafter named, as to size and specific location, which approval shall not be unreasonably withheld. In no event shall any such monument sign be approved if as a condition to the granting of governmental approval thereof the applicable governmental agency requires a reduction in the number and /or size of other monument signs previously approved for the Property.

Notwithstanding the limitations on the use of the Common Areas as herein provided, it is expressly understood and agreed that the owners of the Property may encroach upon said Common Area for sidewalks and walkways, lighting and standards, planters, loading docks and rubbish and service areas at the rear of Building Areas. No charge, fee, toll, levy or expense shall ever be required, laid, assessed, or made to or received from any business guest, invitee, licensee, visitor, customer or patron of any business conducted on the Property without the written consent of all of the owners thereof unless such charges be ordered by a appropriate governmental authority, the cost and expense of the operation, management, maintenance and repair of the Common Area being borne and discharged only as provided for herein. To the extent permitted by the governmental authority any charge ordered by such governmental authority shall be pro rated to the occupants of the Property, but if the governmental authority does not permit such a treatment of the charge, but instead requires that it be collected directly from customers for the privilege of using the Common Area, then the Maintenance Director hereinafter described shall collect such charges and shall credit the amount received from customers, less collection expenses, against the operation and maintenance expense which is otherwise pro rated to the owners of the Property as provided hereinafter.

ARTICLE 2 - MAINTENANCE OF COMMON AREAS

A. Carver shall initially assume the role of Maintenance Director. So long as Carver owns any portion of the Property it shall be the Maintenance Director. In the event Carver no longer owns a portion of the Property the Maintenance Director shall be chosen by the owners of the Property by their unanimous agreement. In the absence of such agreement the Maintenance Director shall be the owner of Parcel 1 shown on Exhibit "B". The Maintenance Director shall maintain and repair the entire Common Area shown on Exhibit "B", (except loading docks which shall be the responsibility of the owner of the parcel upon which such facilities are located). The obligation of the Maintenance Director to maintain said Common Area in good condition and repair shall, without limiting the generality hereof, include the following:

- (1) Maintaining and repairing the surfaces in a level, smooth and evenly-covered condition with the type of surfacing and striping originally installed as shall in all respects be equal in quality, use and durability;
- (2) Removing all papers, debris, filth, and refuse and washing or thoroughly sweeping the Common Areas to the extent reasonably necessary to keep said areas in a neat, clean and orderly condition;
- (3) Placing, keeping in repair, and replacing any necessary appropriate directional signs, markers and lines; and operating, keeping in repair and replacing when necessary, such artificial lighting facilities as shall be reasonably required or originally installed;
- (4) Maintaining any perimeter walls in a good condition and state of repair;
- (5) Maintaining all landscaped areas making such replacement of shrubs and other landscaping as is necessary, and keeping said areas at all times adequately weeded, watered and fertilized.

B. As part of said operation, the Maintenance Director shall obtain and maintain general public liability insurance insuring and naming as insureds all persons who now or hereafter own or hold portions of the Property or any leasehold estate or other interest therein as their respective interests may appear, provided the Maintenance Director is notified in writing of such interest, against claims for personal injury, death or property damage occurring in, upon or about the Common Area; such insurance shall be written with a reputable insurance carrier licensed to do business in the State of California. The limits of liability of all such insurance shall be not less than One Million Dollars (\$1,000,000.00) combined single limit for personal injury and property damage.

C. Each and every owner of the Property or any portion thereof shall pay to the Maintenance Director its pro rata share of the expense of maintaining the Common Area which such share shall be determined by the ratio that the gross square footage of buildings constructed on such owner's parcel as shown on Exhibit "B" hereto bears to the total gross square footage of all buildings constructed on the Property.

D. The Maintenance Director is hereby authorized to contract for and pay for, on behalf of the owners of the Property all of the items enumerated as maintenance expense in paragraph (A) herein plus a service charge of fifteen percent (15%) of all such expenses (which shall include all capital and replacement items) to cover administration costs.

E. The fee owners of the Property shall be billed monthly for their pro rata share of repairs and maintenance costs. The Maintenance Director is authorized to estimate the amount of such expenses to be incurred during each year and to bill such estimates on a monthly basis to the owners of the Property. Said owners agree to reimburse the Maintenance Director for their pro rata share of such expenses within ten (10) days of receipt of billing. Such fee owners may be billed for their pro rata share of any capital expenses prior to the Maintenance Director's payment for such expenses.

F. In the event any owner fails or refuses at any time to pay his or its share of any of such maintenance costs or expense when due, then, after written demand, legal action may be instituted against the defaulting owner for reimbursement plus interest at the maximum rate permitted by law as well as a late charge equal to the greater of \$100.00 or 10% of the amount of the delinquent owner's share of the expenses billed. If any owner defaults under this Agreement, any other owner may institute legal action against the defaulting owner for specific performance, declaratory relief, damages or other suitable legal remedy. In addition to recovery of the sum or sums so expended in behalf of the defaulting owner the prevailing party shall be entitled to receive from the losing party such amount as the court may adjudge to be reasonable attorney's fees for the services rendered to the prevailing party in any such action.

G. It shall be lawful for any person or persons owning or holding any portion of the Property to prosecute any proceedings at law or in equity against any person violating, or attempting to violate, any of the covenants, conditions and restrictions herein and either prevent it, him or them from so doing and to recover damages from or on account of such violation.

H. The Maintenance Director may from time to time enact reasonable rules and regulations for the orderly and proper operation of said Common Area; such rules shall take into consideration the occupants of all Building Areas and may include but not be limited to the following:

- (1) The restricting of employee parking to limited or designated areas; and
- (2) The regulation of the removal, storage or disposal of refuse and other rubbish at the sole cost and expense of the fee owner of the property involved therein; and
- (3) The establishment of exclusive parking areas for the exclusive use of the occupants of a building on the Property and their licensees, customers, invitees, officers, agents and representatives.

ARTICLE 3 - REALTY TAXES AND ASSESSMENTS

It is intended that all real estate taxes and assessments relating to any portion of the Property or improvements thereon, or the ownership thereof, shall be paid prior to the delinquency by the respective fee owners thereof, and if not so paid may be paid by any other owner of the Property or any portion thereof and shall constitute a lien and charge on the property hereinabove described of the defaulting owner, subject and subordinate, however, to any bona fide mortgage or deed of trust made in good faith and for value then or thereafter outstanding against said property.

In the event any owner of the Property or portion thereof fails at any time to pay before delinquency its taxes or assessments on any portion of the Property described herein of which said owner owns a fee interest, and which may become a lien on any of the Common Area, except while the validity thereof is being contested by

judicial or administrative proceedings, then any other owner of any portion of the Property may pay such taxes and/or assessments, together with interest, penalties and cost, and in any such event the owners obligated to pay such taxes and/or assessments shall promptly reimburse such other owner for all such taxes and/or assessments, interest, penalties, and cost and other charges and until such reimbursement has been made the amount thereof shall constitute a lien and charge on the property hereinabove described of the defaulting owner, subject and subordinate, however, to any bona fide mortgage or deed of trust made in good faith and for value then or thereafter outstanding against said property.

ARTICLE 4 - INSURANCE MAINTENANCE

Each owner of any portion of the Property shall maintain extended coverage fire insurance, with full replacement cost endorsements, on improvements located on such portion of the Property. Each owner of the fee title to any portion of the Property shall maintain any buildings and other improvement on such owner's property (other than improvements required to be maintained by the Maintenance Director as herein provided) in good condition and repair and shall promptly repair or restore any improvement (i) damaged or destroyed by a casualty normally covered under an extended coverage policy of fire insurance in the State of California provided insurance proceeds are made available therefor (and if not such owner shall demolish the improvements and blacktop the Building Area thereof as hereinafter provided); or (ii) damaged or destroyed by any other casualty if the cost thereof does not exceed ten percent (10%) of the full replacement value of such improvements. If the cost in such latter event does exceed ten percent (10%) of such replacement value such owner shall have the option of either rebuilding such improvement or demolishing the same and placing the Building Area thereof in a neat and attractive condition by blacktopping or landscaping said area.

ARTICLE 5 - MISCELLANEOUS PROVISIONS

A. Each and all of the foregoing covenants, conditions and restrictions run with the land and shall apply to and bind each of the owners of any and all portions of the Property and each and all of their respective heirs, successors, assigns, grantees, mortgagees, tenants, and sub-tenants; and the same and each of them are hereby imposed pursuant to a general plan for the improvement and use of the Property and are designed for the mutual benefit of said owners, tenants and occupants of any and all portions thereof; and the same shall obligate, inure to and pass with each and every portion thereof.

B. Breach of any of the covenants or restrictions contained in this Declaration shall not defeat nor render invalid the lien of any mortgage or deed of trust made in good faith and for value as to the Property or any part thereof; but all of the foregoing provisions, restrictions, and covenants shall be binding and effective against any owner of any of the Property or any part thereof, whose title thereto is acquired by foreclosure, trustee's sale, or otherwise;

C. The covenants, conditions and restrictions herein contained and the easements herein established shall be perpetual;

D. Invalidation of any one of the covenants, conditions, restrictions or other provisions herein contained by judgment or court order shall in no way affect any of the other covenants, conditions, restrictions or provisions thereof, and the same shall remain in full force and effect:

E. In the event of condemnation by any duly constituted authority for a public or quasi-public use of all or any portion of the Property, that portion of the award attributable to the value of the land within the Common Area so taken shall be payable only to the owner in fee thereof and no claim thereon shall be made by other owners of any other portion of the Property, provided, however, that all other owners and lessees of the Property may file collateral claims with the condemning authority over and above the value of the land of the area so taken provided they do not diminish the owners' award and provided, further, however, that the owner of the fee of each portion of the Common Area so condemned shall promptly repair and restore the remaining portion of the Common Area so owned by such owner as near as practicable to the condition of the same immediately prior to such condemnation to the extent such award allows, and without contribution from any other owners;

F. In the event that suit is brought for the enforcement of this Declaration or as a result of any alleged breach thereof; the successful party or parties to such suit shall be entitled to be paid reasonable attorney's fees by the losing party or parties, and any judgment or decree rendered shall include an award thereof;

G. This Declaration may be amended or terminated only by written agreement of the fee owners of the Property, consented to in writing by any holder of a First Mortgage or First Deed of Trust encumbering the property. The consent of any such holder shall not be unreasonably withheld or delayed. Any such Amendment or Termination Agreement must be recorded in the Office of the County Recorder of Orange, California;

H. This Declaration shall create privity of contract and estate with and among all owners and grantees of all or any part of the Property, and their respective heirs, executors, administrator, successors and assigns. In the event of a breach, or attempted or threatened breach, by any owner of any part of the Property, of any of the terms, covenants and conditions hereof, any one of all such owners of the Property, and any one or more beneficiaries under a deed or deeds of trust covering any part of the Property shall be entitled forthwith to full and adequate relief by injunction and all other available legal and equitable remedies from the consequences of such breach. All costs and expenses of any suit or proceedings, including attorney's fees, as hereinafter provided, shall be assessed against the defaulting owner and shall constitute a lien against the real property of the defaulting owner until paid, effective upon recording notice thereof in the office of the county in which the Property is located, but any such lien shall be subordinate to any bona fide first mortgage or first deed of trust covering any portion of the Property, and any purchase at any foreclosure or trustee's sale (as well as any grantee of a deed in lieu of foreclosure or trustee's sale) under any such mortgage or deed of trust shall take title free from any such lien, but otherwise subject to the provisions hereof. The remedies permitted by law or equity of any one or all such owners specified herein shall be cumulative as to each and as to all.

ARTICLE 6 - TRANSFER OF INTEREST, RIGHTS, POWER AND OBLIGATIONS

A. In no event shall the powers conferred upon any fee owner pursuant to this Declaration be at any time transferred or assigned by any of such owner, except through a transfer of its interest in the Property, and then only to the extent hereinafter provided;

B. In the event of the conveyance of the whole of the interest of such owner in and to the property without retaining any beneficial interest other than under the terms of a deed of trust or mortgage, or without simultaneously acquiring a new interest by way of leasehold, life estate or any other similar interest, then the powers conferred upon and obligations of such owner shall be transferred and assigned with its interest.

C. In the event that the whole of the interest of a fee owner in and to the Property be transferred or conveyed but a new interest is created in such party simultaneously with the conveyance of such interest by way of leasehold or other similar arrangement, or in the event that such owner shall convey its interest in the Property, or any part thereof, by deed of trust or other security instrument as security for any obligations or indebtedness, then none of the powers conferred upon or obligations of such party pursuant to this Declaration shall be transferred or assigned with the transfer or conveyance of the interest transferred or conveyed by such owner, but all of the powers and obligations herein referred to shall remain in such owner, so long as it retains any interest in and to the Property other than as beneficiary under the terms of a deed of trust or mortgage. In the event that the interest of such owner referred to in this Section 6(C) shall terminate, then upon such termination, the powers and obligations of such owner shall vest in accordance with Sections 6 (B) or 10 (D) hereof, whichever is applicable as if said new interest created in such owner had never existed.

D. In the event that any fee owner shall transfer or convey its interest in the Property, or a portion of such interest, in such manner as to vest ownership of such interest in more than one person or entity, then and in the event, the several owners of such interest involved in such transaction shall designate one of their number to act on behalf of all such owners in the performance of the provisions of this Declaration. Any such designation must be in writing and served upon the Maintenance Director by

/bp-III

STATE OF CALIFORNIA)
) ss.
COUNTY OF ORANGE)

On March 8, 1985, before me, the undersigned, a Notary Public in and for said State, personally appeared Leroy L. Carver, III known to me to be the general partner of Carver Development Partnership Three, the partnership that executed the within instrument and acknowledged to me that such partnership executed the same.

WITNESS my hand and official seal.

Bonnie F. Peake
Notary Public



ILLEGIBLE NOTARY SEAL DECLARATION

GOVERNMENT CODE 27361.7

I certify under penalty of perjury that the notary seal on the document to which this statement is attached reads as follows:

Name of Notary Bonnie F. Peake
Date Commission Expires 6-14-85
County where bond is filed Orange
Place of Execution of this Declaration Santa Ana, California
Date 3/2/85

M. L. Smith
Signature (firm name if any)

EXHIBIT "A"

Description:

Lot 1 of Tract No. 6368, in the County of Orange, State of California, as per map recorded in Book 233 Pages 18 and 19, of miscellaneous maps, in the office of the County Recorder of said county.

Except all oil, oil rights, minerals, mineral rights, natural gas, natural gas rights, and other hydrocarbons by whatsoever name known that may be within or under the parcel of land hereinabove described, together with the perpetual right of drilling, mining, exploring, and operating therefor and storing in and removing the same from said land or any other land, including the right of whipstock or directionally drill and mine from lands other than those hereinabove described, oil or gas wells, tunnels and shafts into, through or across the subsurface of the land hereinabove described and to bottom such whipstocked or directionally drilled wells, tunnels and shafts under and beneath or beyond the exterior limits thereof, and to redrill, retunnel, equip, maintain, repair, deepen and operate any such wells or mines, without, however, the right to drill, mine, store, explore, and operate through the surface of the upper 500 feet of the subsurface of the land hereinabove described, as reserved in the deed from Irvine Industrial Complex, a California corporation, recorded June 21, 1971.

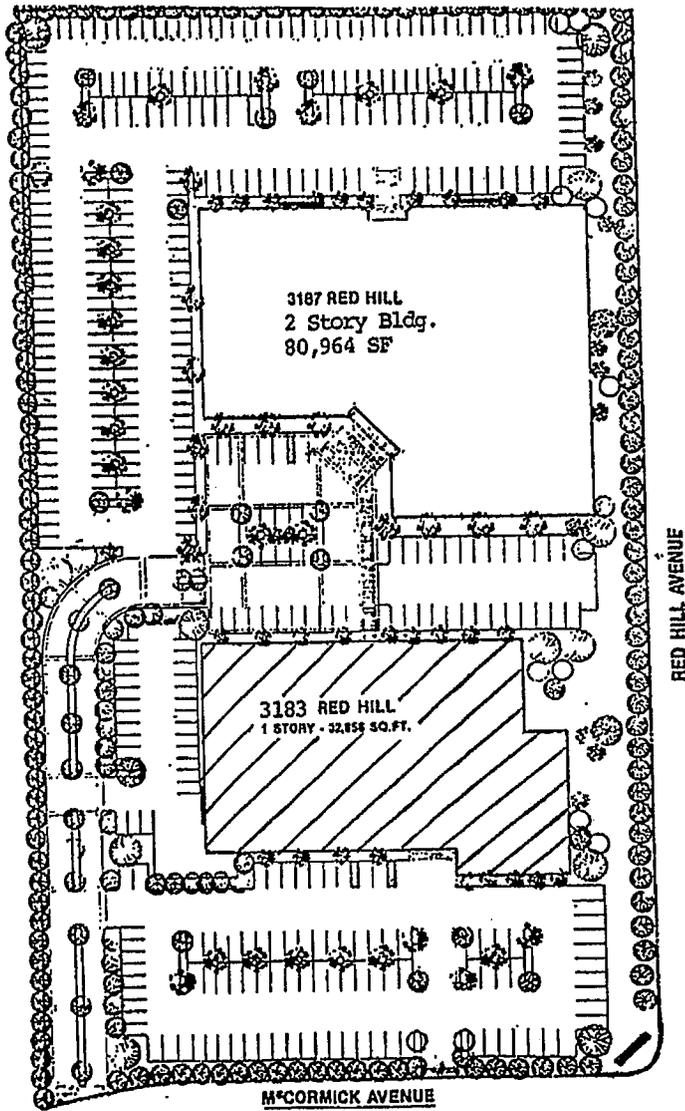


EXHIBIT "B"