



California Fair Political Practices Commission

March 25, 1988

Honorable Curtis J. Tunnell
Councilmember, City of Santa Maria
110 East Cook Street
Santa Maria, CA 93454-5190

Re: 88-123

Dear Mr. Tunnell:

Your letter requesting advice under the Political Reform Act was received on March 24, 1988 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Margarita Altamirano, an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

A handwritten signature in cursive script that reads "Diane M. Griffiths".

Diane M. Griffiths
General Counsel

DMG:plh



California Fair Political Practices Commission

April 20, 1988

Honorable Curtis J. Tunnel
Councilmember
City of Santa Maria
110 East Cook Street
Santa Maria, California 93454-5190

Re: Your Request for Advice
Our File No. I-88-123

Dear Mr. Tunnel:

You have requested advice about application of the conflict-of-interest provisions of the Political Reform Act (the "Act")^{1/} to your duties on the city council of the City of Santa Maria.

Pursuant to Regulation 18329(c)(4)(D) (copy enclosed), we are treating your request as one for informal assistance because you have asked for advice about general, hypothetical situations.^{2/}

QUESTIONS

You are a roofing contractor and a member of the city council, which also sits as the redevelopment agency.

1. May you bid for the roofing subcontract work on a building to be constructed pursuant to an agreement approved by the redevelopment agency?
2. If you subcontract to work on the building, may you participate in discretionary decisions about the redevelopment project area in which the building is situated?

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise noted. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

^{2/} Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

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3. If you subcontract to work on the building, may you participate in future decisions to modify development agreements for the redevelopment area in which the building is located or a contiguous area?

CONCLUSIONS

1. The Act does not prohibit you from doing subcontract work on a construction project approved by the redevelopment agency.

2. and 3. Based on the facts provided, the contractor with whom you subcontract would be a source of income to you if you subcontract to work on the building. Therefore, you would be disqualified from participating in any governmental decision that would have a foreseeable material financial effect on the contractor. For example, you would be disqualified from any decision to award a city contract to the contractor. In addition, if any decision before the redevelopment agency would be likely to increase or decrease the contractor's gross revenues by \$10,000 or more in a fiscal year, or would be likely to increase or decrease his expenses by \$2,500 or more in a fiscal year, you would be disqualified from participating in that decision.

Furthermore, you would be disqualified from participating in any decision that would foreseeably affect your own business' gross revenues by \$10,000 or more in a fiscal year or your business' expenses by \$2,500 or more in a fiscal year. For example, you may not participate in decisions to approve or disapprove a proposed redevelopment project if you have bid or are preparing to bid as a contractor or subcontractor on the proposed project and the project would produce \$10,000 or more in gross revenues for your business.

Nevertheless, the building owner would not be a source of income to you. You would not be disqualified from participating in a decision that would affect only the building owner.

FACTS

You are a member of the City of Santa Maria City Council. The whole city council sits as the redevelopment agency. You also own a roof contracting business in Santa Maria.

On October 14, 1987, the redevelopment agency executed a development and disposition agreement with a private developer. The agreement requires the private developer to construct a building in a redevelopment project area. Another development and disposition agreement with a different developer covers the contiguous project area.

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Early in 1988, Joe Morello, a concrete and frame contractor, asked you to submit a subcontractor's bid for a construction project. When you met with the building owner at the building site, you realized the construction project was the subject of the October development agreement.

In the past, you and Mr. Morello have worked as subcontractors on other building projects or Mr. Morello has been the general contractor with whom you subcontracted.^{3/} Mr. Morello is the construction manager for the present building project and will be choosing and contracting directly with the roofing subcontractor.

ANALYSIS

Section 87100 prohibits a public official from making, participating in making, or in any way attempting to influence a governmental decision in which an official knows or has reason to know the official has a financial interest.

An official has a disqualifying financial interest in a decision if it is reasonably foreseeable the decision will have a material financial effect, different from the effect on the general public, on (1) a business entity in which the official has an investment worth \$1,000 or more or (2) on a source of \$250 in income promised to or received by the official within 12 months before the decision. (Section 87103(a) and (c).)

You are a public official. (Section 82048.) The Act, however, does not prohibit you from subcontracting to put a roof on the building that is the subject of an already executed development and disposition agreement.^{4/} Your execution of a

^{3/} In a telephone conversation on April 11, 1988, Mr. Morello provided us with information about his contractual relationships with you, the building owner and subcontractors.

^{4/} The provisions of Government Code Section 1090 also may apply to a decision about a contract between the city and a source of income to you. The Commission does not administer this statute. State redevelopment law also may restrict your business activities in the project area. (See Health and Safety Code Section 33300, et seq.) We refer you to your city attorney for advice regarding Section 1090 and state redevelopment law.

Mr. Tunnel
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private contract would not be a governmental decision pursuant to Regulation 18700(b) and (c) (copy enclosed). Nevertheless, the Act prohibits you from participating in a city council or redevelopment agency decision that would have a reasonably foreseeable material financial effect on your business or on a source of income to you.

According to the facts you and Mr. Morello have provided, Mr. Morello alone asked you to bid on the project and alone will make the decision about which bid to accept. Moreover, he will contract directly with the roofing subcontractor. Under these circumstances, the contractor (i.e., Mr. Morello), not the building owner, would be a source of income to you.^{5/} (Schechtman Advice Letter, No. A-87-031; Hart Advice Letter, No. A-83-264, copies enclosed.)

Therefore, because the building owner would not be a source of income to you, you would be able to participate in decisions that might affect the building owner. Nevertheless, your economic relationship with Mr. Morello would disqualify you from decisions about project areas and development agreements that would have foreseeable and material effects on your business or on Mr. Morello. Presently, we do not have information about a specific decision and the possible effect on your business or on Mr. Morello. For this reason, we refrain from specifically advising you about future redevelopment agency decisions. We hope you will contact us should you have a specific question about a future decision.

In the meantime, I have enclosed copies of Regulations 18702.1 and 18702.2, which provide guidelines to determine when the effect of a governmental decision would be material. For example, since Mr. Morello would be a source of income to you, you could not participate in a decision to award a city contract to him. (Regulation 18702.1(a).)

There may be other decisions that you know or have reason to know would affect Mr. Morello's interests, such as a change in a development agreement that would affect a construction project on which Mr. Morello is working. For example, if it

^{5/} Over the telephone on April 11, 1988, you said you have worked with Mr. Morello in the past. Currently, Mr. Morello may be a source of \$250 or more in income to you, if he has paid \$250 or more to your business in the past 12 months. If Mr. Morello has already become a source of such income, you would be required to disqualify yourself from participating in the decisions described in the following paragraphs regardless of whether or not you contract with Mr. Morello on the new project.

Mr. Tunnel
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were likely that a change in a development agreement would increase or decrease Mr. Morello's gross business revenues by \$10,000 or more, or increase or decrease his business expenses by \$2,500 or more, that change would materially affect Mr. Morello.^{6/} (Regulation 18702.2(g).) If Mr. Morello becomes a source of income to you, you must disqualify yourself from such a decision.

In addition, you must disqualify yourself from any redevelopment decision which would foreseeably and materially affect your own business. For example, if a change in the development and disposition agreement on a project could increase or decrease your gross business revenues by \$10,000 or more in a fiscal year, or could increase or decrease your business expenses by \$2,500 or more, you must disqualify yourself from participating in the decision to change the agreement. (Regulation 18702.2(g).) Furthermore, you must disqualify yourself from participating in the decision to approve or disapprove any proposed redevelopment project on which you have submitted a bid, or are preparing to submit a bid, for a contract or subcontract worth \$10,000 or more in gross revenues to your business. (Regulation 18702.2(g); In re Thorner (1975) 1 FPPC Ops. 198, copy enclosed.)

I hope you now have the advice you requested. Please call me at (916) 322-5901 if you have any questions about this letter.

Sincerely,

Diane M. Griffiths
General Counsel

Margarita Altamirano
By: Margarita Altamirano
Counsel, Legal Division

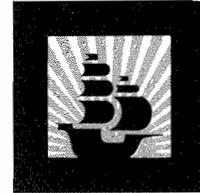
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^{6/} Regulation 18702.2(g) applies to small businesses which are not qualified for public sale. Please let us know if you believe a different subdivision of Regulation 18702.2 applies to Mr. Morello's business or to your own business.

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CITY OF SANTA MARIA • 110 EAST COOK STREET • SANTA MARIA, CALIFORNIA 93454-5190 • 805-925-0951

March 21, 1988

Ms. Spitz, Legal Division
California Fair Political Commission
428 "J" Street, Suite 800
Sacramento, CA 95804-0807

Dear Ms. Spitz:

This letter requests written advice from your office regarding my duties as a Santa Maria City Councilperson under the Political Reform Act (Government Code Sections 81000 to 91015). I understand you have already spoken informally with City Attorney Art Montandon on this matter; this letter will set out the facts and my questions in some detail.

I own a roof contracting business in Santa Maria. As a Councilmember, I am also a member of the Redevelopment Agency in Santa Maria. On October 14, 1987, we executed a development and disposition agreement. The D.D.A. sold real property conditioned on the construction of certain building. The escrow has closed on the sale. (The agreement is attached).

Early this year a general contractor approached me and asked if I would like to submit a subcontractor bid on a roofing project. I agreed to meet with the owner of the property on which the contractor was to build a building. At the meeting, I realized the owner was the party to the D.D.A.

The building is to be constructed on a parcel in the Redevelopment Project. The majority of this project is covered by another D.D.A. already approved by the Redevelopment Agency. The property subject to this other D.D.A. is contiguous to the property I was approached about.

My questions to you are as follows:

1. May I bid on the project, and perform work on the building subject to the D.D.A.?

Ms. Spitz, Legal Division
March 21, 1988
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2. The Redevelopment Agency may consider several discretionary approvals affecting the redevelopment project area in the future. If I bid on this project, may I participate in and vote on these matters?
3. If I bid and receive the contract, may I vote on subsequent agency decisions to modify either D.D.A.?

Your prompt advice and explanation will be much appreciated.

Sincerely,



CURTIS J. TUNNELL,
Councilmember, City of Santa Maria

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Attachment

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CITY CLERK'S OFFICE

DISPOSITION AND DEVELOPMENT
AGREEMENT REGARDING

SALE OF LAND FOR PRIVATE REDEVELOPMENT

By and Between

REDEVELOPMENT AGENCY OF
THE CITY OF SANTA MARIA

and

Charlotte A. Ruffoni

CONTRACT FOR
SALE OF LAND FOR PRIVATE REDEVELOPMENT

PART I

THIS AGREEMENT, consisting of this Part I and Exhibits A through E annexed hereto and made a part hereof (which this Part I and Exhibits A through E are together hereinafter called "Agreement"), made on or as of the day of , 1987, by and between the REDEVELOPMENT AGENCY OF THE CITY OF SANTA MARIA, a public body corporate (which, together with any successor public body or officer hereafter designated by or pursuant to law, is hereinafter referred to as "Agency"), as party of the first part, established pursuant to Part I (commencing with Section 33000) of Division 24 of Health and Safety Code of the State of California (hereinafter called "Community Redevelopment Law"), and having its office at 110 East Cook Street in the City of Santa Maria (hereinafter referred to as "City"), State of California, and CHARLOTTE A. RUFFONI, an unmarried woman, as her sole and separate property, as party of the second part, (hereinafter referred to as "Redeveloper")

W I T N E S S E T H:

WHEREAS, in furtherance of the objectives of the Community Redevelopment Law, the Agency has undertaken a program for the clearance, reconstruction and rehabilitation of slum and blighted areas in the City, and in this connection is engaged in carrying out an urban renewal project known as the "CENTRAL PLAZA NEIGHBORHOOD DEVELOPMENT PROJECT, CENTRAL CITY PROJECT, CALIFORNIA NDP-A-1-2," (hereinafter referred to as "Project

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Area") located in the City; and

WHEREAS, as of the date of the Agreement there has been prepared and approved by the Agency a Redevelopment Plan for the Project, consisting of the Redevelopment Plan, dated August 7, 1972, and approved by the City Council of the City on August 7, 1972, by City Ordinance No. 796, which Plan, as it may hereafter be amended from time to time, is, unless otherwise indicated by the context, hereinafter called "Redevelopment Plan"); and

WHEREAS, a copy of the Redevelopment Plan as constituted on the date of the Agreement has been recorded among the land records for the place in which the Project Area is situated, namely, in the office of the County Recorder of the County of Santa Barbara, in Book 2414 of the Official Records, at page 148, Document Number 30039; and

WHEREAS, in order to enable the Agency to achieve the objectives of the Redevelopment Plan and particularly to make the land in the Project Area available for redevelopment by private enterprise for and in accordance with the uses specified in the Redevelopment Plan, both the Federal Government and the City have undertaken to provide and have provided substantial aid and assistance to the Agency through a Contract for Loan and Capital Grant dated March 6, 1972, in the case of the Federal Government and a Cooperation Agreement, dated November 7, 1966, in the case of the City; and

WHEREAS, the Agency has offered to sell and the Redeveloper is willing to purchase certain real property located in the Project Area and more particularly described in Exhibit A and shown on the Preliminary Site Plan as Exhibit B, both of which

are annexed hereto and made a part hereof (which property as so described is hereinafter referred to as "Property"), and to redevelop the Property for and in accordance with the uses specified in the Redevelopment Plan and in accordance with the Agreement; and

WHEREAS, the Agency believes that the redevelopment of the Property pursuant to the Agreement, and the fulfillment generally of the Agreement, are in the vital and best interests of the City and the health, safety, morals, and welfare of its residents, and in accord with the public purposes and provisions of the applicable Federal, State and local laws and requirements under which the Project has been undertaken and is being assisted.

NOW, THEREFORE, in consideration of the premises and the mutual obligations of the parties hereto, each of them does hereby covenant and agree with the other as follows:

Section 1. Sale: Purchase Price.

(a) Subject to all the terms, covenants, and conditions of the Agreement, the Agency agrees to sell a parcel of property consisting of approximately 9600 square feet (hereinafter "the Pad) to Redeveloper and to cause to be leased to Redeveloper unrestricted parking rights (hereinafter "Parking Rights") in that certain parking facility which is being developed by the Agency in the Santa Maria Town Center West Shopping Center which facility is situated adjacent to the 9600 square feet parcel for a total consideration of Two-Hundred Forty Seven Thousand Five Hundred (\$247,500) Dollars, hereinafter referred to as purchase price. Said parking rights shall be deemed sufficient to support the 2 story, office/commercial building which Redeveloper plans

to construct on the Pad. The purchase price shall be allocated as follows:

(1) Ninety-One Thousand Two Hundred (\$91,200) Dollars as payment for the purchase of the Pad in fee to be paid by cash or certified check. The initial purchase price is based upon the payment of \$9.50 per square foot, and upon the Pad containing 9600 square feet. If the actual square footage of the Pad is greater or less than the square footage set forth in this Section, then the initial purchase price shall be adjusted accordingly.

(2) One Hundred Fifty Six Thousand Three Hundred (\$156,300) Dollars for the lease of the Parking Rights according to the terms and conditions of a lease to be executed and attached hereto prior to the final execution of this Agreement or subsequent to the final execution of this Agreement by amendment. In no event shall the lease interest payments obligation commence until Redeveloper is issued a first occupancy permit for the building which Redeveloper will construct upon the Pad and thereafter principal and interest payments shall commence on the fourth year after the occupancy with Redeveloper paying interest and principle for a thirty year term, interest at 6.35% in the first year of payment of interest and thereafter interest payable at the same rate as that rate established by the Bank of America Public Agency deposit rate for time certificates for one year \$100,000 minimum deposit. Notwithstanding anything to the contrary, the interest rate payable by Redeveloper cannot be increased or decreased by more than 1% per year with a maximum increase or decrease of no more than 5% over the life of the payment.

Redeveloper shall have the right to pay off the principle at any

time together with the unpaid interest accrued on the unpaid balance as of that date of principle payment without penalty.

(b) Purchase Price to be Paid Before Commencement of Construction. In any and all events, the Redeveloper shall pay to the Agency the full purchase price for the Pad prior to the commencement of construction thereon of Redeveloper's Improvements.

Section 2. Conveyance of Property.

(a) Form of Deed. The Agency shall convey to the Redeveloper title to the Pad by Grant Deed (hereinafter collectively called "Deed") in a form to be mutually agreed upon consistent with this Agreement. Such conveyance and title shall, in addition to the condition(s) subsequent provided for hereinafter, and to all other conditions, covenants, and restrictions set forth or referred to elsewhere in the Agreement, be subject to:

(i) The Redevelopment Plan, including any amendments thereto, as herein provided;

(ii) Applicable building and zoning laws, ordinances and regulations;

(iii) Easements, rights of way and encumbrances of record or in existence as of the date of recordation of the Deed agreed to by the parties and which are consistent with this Agreement;

(iv) Such easements, pedestrian access easements, parking easements, and other covenants and conditions as may be agreed to by the parties;

(v) Such retained rights in the Agency with respect

to parcels or portions of the Property to be devoted to public uses as shall be consistent with this Agreement;

(vi) This Agreement and any amendments thereto;

(b) Time, Place and Terms of Delivery of Deed and Deposit of Purchase Price.

(i) Opening Escrow and Deposit of Deed.

Upon execution of this Agreement, the Agency and the Redeveloper shall establish an escrow with the SAFECO Title Insurance company. Agency and Redeveloper shall furnish to such company appropriate instructions in conformity herewith to the end that the conveyance provided for herein shall be consummated no later than December 1st, 1987, unless extended by mutual agreement.

Within the time established by the aforesaid instructions, the Agency shall deposit the Deed into escrow and the Agency shall, upon instructions from the Redeveloper, within the same time, deposit in escrow Redeveloper's good faith deposit of \$19,800 as the purchase price for the Property. Within the same times the Agency and the Redeveloper shall deposit whatever fees, premiums, costs or other charges payable by either party under this Agreement.

The Deed shall be delivered by the Agency and recorded and title shall be conveyed to the Property within the time established in the escrow.

(c) Apportionment of Taxes.

(i) Current Taxes. The portion of the current taxes, if any, on the Property which are a lien on the date of delivery of the Deed to the Redeveloper allocable to buildings and other improvements which have been demolished or

removed from the Property by the Agency shall be borne by the Agency, and the portion of such current taxes allocable to the land shall be apportioned between the Agency and the Redeveloper as of the date of the close of Escrow. If the amount of the current taxes on the Property is not ascertainable on such date, the apportionment between the Agency and the Redeveloper shall be on the basis of the amount of the most recently ascertainable taxes on the Property, but such apportionment shall be subject to final adjustment within thirty (30) days after the date the actual amount of such current taxes is ascertained.

(d) Title Insurance and Costs of Escrow. The Agency shall pay the customary premium for a standard form C.L.T.A. Policy of title insurance in the amount of the purchase price of the Property purchased by and conveyed to the Redeveloper. The Redeveloper shall pay for any title insurance obtained by Redeveloper on Redeveloper's Improvements (as the term is herein defined) and for any special endorsements or other title insurance obtained by Redeveloper. The Agency shall bear the costs of preparing the Deed and obtaining signatures of the Agency thereto, recording fees and notary fees; the Redeveloper shall bear its costs of executing the Deed; the Redeveloper shall bear the cost of any state, county or city documentary stamps and any transfer tax.

Section 3. Good Faith Deposit.

(a) Amount. The Redeveloper has, prior to or

simultaneously with the execution of the Agreement by the Agency, delivered to the Escrow Agent a good faith deposit of cash or a certified check satisfactory to the Agency in the amount of NINETEEN THOUSAND EIGHT HUNDRED (\$19,800) DOLLARS hereinafter called "Deposit," as security for the performance of the obligations of the Redeveloper to be performed prior to the return of the Deposit to the Redeveloper, or its retention by the Agency as liquidated damages, or its application on account of the purchase price, as the case may be, in accordance with the Agreement. The Escrow Agent shall deposit said sum in an account of the Agency in a bank or trust company selected by it.

(b) Interest. The Agency shall invest the NINETEEN THOUSAND EIGHT HUNDRED DOLLAR (\$19,800) Deposit in its normal investment cycle and all interest, when received by the Agency, shall be the property of the Redeveloper and shall be reinvested by the Agency and shall be paid by the Agency to the Redeveloper on close of escrow.

(c) Application to Purchase Price. In the event the Redeveloper is otherwise entitled to return of the Deposit pursuant to paragraph (e) of this Section, upon written request of the Redeveloper the amount of the Deposit (and any interest earned thereon) shall be applied on account of the purchase price at the time payment of the purchase price is made. In the event interest earned on the Deposit is in excess of the purchase price, the said excess shall be paid by Agency to Redeveloper on close of escrow.

(d) Retention by Agency. Upon termination of the Agreement as provided herein, the Deposit or the proceeds of the Deposit, if not theretofore returned to the Redeveloper pursuant to

paragraph (e) of this Section, shall be retained by the Agency as provided in Section(s) ten (10) hereof.

(e) Return to Redeveloper. Upon termination of the Agreement as provided in Section _____ hereof, the Deposit (and any interest earned thereon) shall be returned to the Redeveloper by the Agency as provided in Section _____ hereof.

Section 4. Conveyance of Property.

(a) Form of Deed. The Redeveloper agrees that every conveyance of the Pad shall be by deed and every conveyance of the Parking Rights Lease shall be part of the deed and also by way of a lease assignment as set forth in the terms of the Lease to be attached hereto, and such conveyances and title shall, in addition to all other conditions, covenants, and restrictions set forth or referred to elsewhere in the Agreement, be subject to:

(1) The Redevelopment Plan, and all amendments thereto and any subsequent amendments made as herein provided;

The Declaration of Restrictions recorded in Book _____, Page _____ of Official Records of Santa Barbara County, and any amendments thereto or supplemental Declaration of Restrictions to be recorded prior to the recordation of any Deed to any Parcel.

(2) Applicable building and zoning laws and regulations;

(3) Easements, rights of way and encumbrances of record or in existence as of the date of recordation of the Deed;

(4) Such easements, pedestrian access easements,

parking easements, and other covenants and conditions as may be agreed to by the parties;

(5) Such retained rights in the Agency with respect to parcels or portions of the Property to be devoted to public uses as shall be consistent with this Agreement;

(6) This Agreement and any amendments thereto.

Section 5. Time For Certain Other Actions.

(a) Approval of Development Plan. Not later than 45 days after the execution of this Agreement, Redeveloper shall submit to Agency, for its approval, a "Preliminary Development Plan" for the development of the Property. Said Preliminary Development Plan to be attached hereto as Exhibit C and by this reference incorporated herein, shall provide for the construction of a 2 story retail/office building of approximately 15,684 square feet and delineate proposed lot plans, building layout, property plan and improvements.

No later than sixty (60) days following Agency's approval of the Preliminary Development Plan, Redeveloper shall submit to Agency for its review and approval a Development Plan for all Improvements to be constructed on the Property. Said submittal (hereinafter "Final Development Plan") shall be in accordance with the Redevelopment Plan, with the concepts for the Property shown in the Preliminary Development Plan and with this Agreement, and shall include all exhibits and procedures required pursuant to ordinance and procedure adopted by the City of Santa Maria. It is understood that coincident with the negotiation of this Agreement, Redeveloper has commenced processing the Plans for

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this development through the City of Santa Maria plan review and approval process and that Redeveloper shall conform to all requirements and conditions imposed as a consequence thereof.

If Agency determines that the Preliminary Development Plan is unacceptable, then the Redeveloper shall be given 14 days to modify and resubmit the Preliminary Development Plan for approval by Agency. The same procedure shall apply if Agency determines that the Final Development Plan is unacceptable.

When Redeveloper receives the approval of the City of Santa Maria, it shall be deemed that said Final Development Plan is approved by Agency and no further Agency approval will be required with respect to such process. Thereafter said approved Final Development Plan shall be attached hereto as Exhibit D and by this reference incorporated herein. Only upon approval by the City of Santa Maria of a Final Development Plan shall this condition be deemed met.

Notwithstanding any other provisions of this Agreement, it is mutually understood and agreed that a Final Development Plan must be approved by Agency no later than one hundred fifty (150) days next following the date of this Agreement, or, at the option of either party thereto, this Agreement shall be terminated.

Any material change, modification, revision or alteration of a Final Development Plan previously approved by the Agency and/or the City of Santa Maria must first be submitted to and approved by the Agency and/or City; if not so approved, the latest approved Final Development Plan shall continue to control.

(b) Final Construction Plans. As a further condition for performance of Agency obligations hereunder, Redeveloper shall not

later than ninety (90) days following Agency's acceptance of a Final Development Plan submit to Agency its Construction Plans. As used herein, "Construction Plans" means all construction upon which Redeveloper and Redeveloper's several contractors shall rely on building or constructing each and every improvement as set forth in the approved Final Development Plan, together with a detailed breakdown of the estimated cost of such construction and a schedule therefor including working drawings and specifications setting forth materials and finishes as well as structural, mechanical and electrical work to be designed and constructed. Said Construction Plans shall be based upon the Final Development Plan and shall not materially deviate therefrom without the express written consent of Agency.

Agency shall approve in writing such Construction Plans and no further filing by Redeveloper or approval by Agency shall be required except with respect to any material change, if the Construction Plans submitted conform to: (a) the provisions hereof (b) the latest approved Final Development Plan, and (c) the Redevelopment Plan. Unless rejected by Agency within thirty (30) days of submission, said Construction Plans shall be deemed accepted. It is understood that approval by the City of Santa Maria of said Construction Plans shall be deemed Agency approval as set forth herein in (a), above, provided all City approvals conform to the criteria set forth above.

(c) Building Permits. As a further condition of performance of Agency obligations hereunder, Redeveloper shall procure such building permit or permits from the City of Santa Maria as may be necessary to allow construction on the property

of the Improvements as contemplated herein. Redeveloper shall apply for building permits within ten (10) days after Agency's approval of Construction Plans.

Section 6. Period of Duration of Covenant of Use.

The covenant pertaining to the uses of the Property, set forth hereof, shall remain in effect from the date of the Deed until August 7, 2002, the period specified or referred to in the Redevelopment Plan, or until such date thereafter to which it may be extended by proper amendment of the Redevelopment Plan or the Declaration of Restrictions on which date, as the case may be, such covenant shall terminate.

Section 7. Notice and Demands.

A notice, demand or other communication under the Agreement by either party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, and

(i) In the case of the Redeveloper, is addressed to or delivered personally to CHARLOTTE A. RUFFONI at 117 South Broadway, Room 23, Santa Maria, California, 93454.

(ii) In the case of the Agency, is addressed to or delivered personally to the Agency at 110 East Cook Street, Santa Maria, California, 93454, or as such other address with respect to either such party as that party may, from time to time, designate in writing and forward to the other as provided in this Section.

Section 8. Special Provisions.

(a) Scope of Development. Redeveloper's Improvements are described in the "Scope of Development" incorporated herein and

attached hereto as Exhibit E. All of the Property shall be redeveloped in accordance with all the terms, covenants and conditions of this Agreement and in accordance with the Scope of Development.

In order to permit the redevelopment of Property thereto pursuant to this Agreement, the Agency agrees to initiate and use its best efforts to have the City grant the necessary approvals for the development of the Property so as to conform to this Agreement and the provisions of the Redevelopment Plan as it now exists or as it may be amended.

The Agency shall grant the Redeveloper all access, interests, easements or other rights, over the public rights of way adjacent to the Property when and if such access, interests, easements or other rights are necessary to commence, carry out or complete the construction of the Redeveloper's Improvements.

Information on Progress. After the date of this Agreement, the Redeveloper shall submit upon request of the Agency at intervals of ninety (90) days, progress reports advising the Agency of all progress made by the Redeveloper in the preparation of Construction Plans, general financing arrangements and all other matters pertaining to the Agreement as may reasonably be requested by the Agency. Said progress reports shall be in such detail as may reasonably be requested by the Agency, and may be submitted to the Executive Director.

(b) Substantial Changes. Redeveloper covenants and agrees that before and during the period of construction of Redeveloper's Improvements, Redeveloper shall not make or permit to be made any substantial changes in the Construction Plans, as

approved by the Agency, without first submitting such changes to the Agency for approval. Redeveloper shall have the responsibility of notifying his contractors, architects and engineers of the requirements of this subdivision and Redeveloper shall be responsible for compliance with said requirements. For purposes of this subdivision, substantial changes shall include (but not necessarily be limited to) the following and similarly important changes in the construction or in the approved Construction Plans.

(i) Changes in size or design materially affecting bulk, building coverage or floor area ratio or number of floors.

(ii) Material changes affecting off-street parking facilities.

(iii) Material changes in size or design or use of exterior finishing materials noticeably affecting architectural appearance or functional use and operation of the Improvements.

(iv) Material changes in size or placement of service facilities or in the number of elevators, stairs and ramps; and changes in general pedestrian or vehicular circulation in, around or through the Improvements.

(v) Any changes requiring approval of any City or State Board, body, commission or officer, or any change required by any City or State Board, body, commission or officer.

(vi) Material change in off-site and on-site

landscape planting, irrigation and related improvements.

(vii) Material change in number, size, placement, graphics, design or materials of all exterior signs, if any, shown in the Construction Plans, differing from those shown and specified in the approved Construction Plans.

(viii) Material changes in size or quality of exterior pavement, pedestrian malls, plazas, retaining walls, pools and fountains, exterior lighting and other site and entourage development of the Property other than that shown and specified in the approved Construction Plans.

(c) Liquidated Damages. If the Redeveloper should default upon its obligations as specified herein, making it necessary for the Agency to terminate this Agreement, then the damages suffered by the Agency by reason thereof would be uncertain. Such damages would involve such variable factors as follows: of interesting, and negotiating with, such parties; postponement of tax revenues therefrom to the community; the impact upon the progress of the redevelopment of the other properties in the area; and the failure of the Agency to effect its purposes and objectives within a reasonable time, resulting in additional immeasurable damage and loss to the Agency and the community. It is impracticable and extremely difficult to fix the amount of such damages to the Agency, but the parties are of the opinion, upon the basis of all information available to them, that such damages would approximately equal the amount of the Redeveloper's good faith deposit in the amount of \$19800 made herein; and the amount shall be paid to the Agency upon any such

occurrences as the total of all liquidated damages for any and all such defaults and not as a penalty. In the event that this subdivision (c) should be held to be void for any reason, the Agency shall be entitled to the full extent of damages otherwise provided by law.

(d) Racial Covenants. Redeveloper shall refrain from restricting the rental, sale, or lease of the Property or Parcels on the basis of sex, race, color, religion, ancestry, or national origin of any person. All such deeds, leases, or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

(i) In Deeds.

"The grantee herein covenants by and for himself, his heirs, executors, administrators and assigns, and all persons claiming under or through them, that there shall be no discrimination against, or segregation of, any person or group of persons on account of sex, race, color, creed, national origin or ancestry in the sale, lease, sub-lease, transfer, use, occupancy, tenure, or enjoyment of the land herein conveyed, nor shall the grantee himself or any person claiming under or through him establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the land herein conveyed. The foregoing covenants shall run with the land."

(ii) In Leases.

"The lessee herein covenants by and for himself, his heirs, executors, administrators and assigns, and all persons claiming under or through him, and this lease is made and accepted upon and subject to the following conditions:

"That there shall be no discrimination against or segregation of any person or group of persons on account of sex, race, color, creed, national origin or ancestry, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the land herein leased nor shall the lessee himself, or any person claiming under or through him, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants or vendees in the land herein leased."

(iii) In Contracts.

"There shall be no discrimination against or segregation of any person or group of persons on account of sex, race, color, creed, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the land, nor shall the transferee himself or any person claiming under or through him establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the land."

(e) Architectural Review. Subject to the terms of this Agreement, the Agency and, if applicable under City codes, the

City, shall have the right of reasonable architectural review of all plans and submissions, including any changes therein.

The Agency will use its best efforts to cooperate with the Redeveloper's efforts to cause said architectural review by others including the City to be accomplished within the times set forth in this Agreement for approval of plans by the Agency.

(f) Bodily Injury and Property Damage Insurance. The Redeveloper shall furnish or cause to be furnished to the Agency duplicate originals or appropriate certificates of bodily injury and property damage insurance policies in the amount of at least \$500,000.00 for any person, \$1,000,000.00 for any occurrence and \$300,000.00 for any property damage, naming the Agency, the City and other public agencies designated by the Agency as coinsureds.

(g) City and Other Governmental Permits. Before commencement of construction or development of any buildings, structures or other work of improvement upon the Property, the Redeveloper shall at its own expense secure or cause to be secured any and all permits which may be required by the City or any other governmental agency affected by such construction, development or work. Agency shall provide all proper assistance to the Redeveloper in securing these permits.

Section 9. Definitions and Miscellaneous.

(a) Defined Terms. In addition to those terms elsewhere defined in this Agreement, the following terms shall have the respective meanings, ascribed to them below, and unless the context otherwise requires, shall include the plural:

(i) "State Law" shall mean the Community Redevelopment Law of the State of California (Part

I of Division 24 of the Health and Safety Code, Sections 33000, et seq.).

(ii) "Redevelopment Project" shall mean and include the Central Plaza Neighborhood Development Project, Central City Project (California NDP A-1-2) Redevelopment Project in the City of Santa Maria, California, the areas of which are more particularly shown in Exhibit "F" attached hereto and by reference made a part hereof.

(iii) The terms "Redeveloper's Improvements" and "Improvements" shall mean and include those improvements to be developed and constructed on the Property under this Agreement by the Redeveloper.

(iv) "Preliminary Construction Plans" shall mean and include:

- (1) Site plan and general description of proposed Improvements;
- (2) Narrative description of proposed uses;
- (3) Floor plan of each of the building levels;
- (4) Typical elevations and cross-sections and sketches indicating architectural treatment of significant details;
- (5) Outline specifications;
- (6) Estimate of total square footage of basic structures and Improvements.

(v) The term "commencement of construction" shall mean substantial site preparation and shall include such activities as excavation and grading or,

where appropriate shall mean any work of construction of Redeveloper's Improvements undertaken by the Redeveloper.

(vi) "Complete Construction Plans" shall mean and include final working drawings and specifications. Such final working drawings and specifications shall set forth in detail the work to be done, materials, workmanship, finishes and equipment for architectural, structural, mechanical and electrical work, service connected equipment and site work.

(vii) The terms "date of this Agreement", "execution", "execution of this Agreement", and "effective date of this Agreement" shall mean in this Agreement (unless the context clearly indicates otherwise) the date of delivery of this Agreement to the Agency after it has been executed by the Agency and the Redeveloper.

(b) The Redevelopment of the Property pursuant to this Agreement is a private project and the Redeveloper shall have full power over and exclusive control of the Property subject only to the limitations and obligations of the Redeveloper under this Agreement, the Plan and the Restrictions.

(c) This Agreement shall inure to the benefit of, and be binding upon, the parties hereto, their respective heirs, successors, or assigns from the date of its execution.

(d) The provisions of this Agreement do not limit the right of obligees to foreclose or otherwise enforce any mortgage, deed of trust, or other encumbrance upon the Property, or the right of

obligees to pursue any remedies for the enforcement of any pledge or lien upon the Property; provided, however, that in the event of a foreclosure sale under any such mortgage, deed of trust, or other lien of encumbrance, or a sale pursuant to any power or sale contained in any such mortgage or deed of trust, the purchaser or purchasers, and their successors and assigns, and the Property shall be, and shall continue to be subject to all of the conditions, restrictions and covenants herein provided for.

Section 10. Default.

In the event of default or breach of this Agreement or any of its terms or conditions by the Redeveloper, and if the Redeveloper fails or refuses to correct or cure such default or breach within a reasonable time after written notice from the Agency, the Redeveloper acknowledges that the Agency may at its option exercise any remedy available to it by law to assure performance of this Agreement.

Section 11. Reciprocal Easement Agreement (REA).

Redeveloper understands that the property which is the subject of this Agreement will be a part of an overall shopping center which is being developed by and between the Agency and other Redevelopers, which operation will be governed by a Reciprocal Easement Agreement (hereinafter "REA") which will control the rights, duties and obligations of the parties involved in the development of the shopping center. Redeveloper further understands that Redeveloper must enter into and be bound by the provisions of the aforementioned REA.

Section 12. Power of Termination in Agency Upon Failure of Redeveloper's Compliance With Construction Schedule Subsequent to

Conveyance to Redeveloper.

(a) In the event that subsequent to conveyance of the Pad to the Redeveloper, the Redeveloper fails to commence construction of the improvements within one year from the date of the conveyance of the property and fails to complete the construction within one year thereafter the Agency shall have the right, at its option (provided the Agency is not in default of its obligation hereunder) to terminate the fee estate and the Lease of the Redeveloper conveyed by the Grant Deed and the Lease and revest such estate in Agency and take possession of the Pad and the "Parking Rights" area of the Redeveloper, it being the intent of this provision, together with other provisions of this Agreement, that the conveyance of the Pad and the leasing of the "Parking Rights" shall be made upon, and that the Grant Deed and the Lease shall contain, a condition subsequent to the effect that in the event of any default, failure, violation, or other action or inaction by the Redeveloper to comply with the construction schedule specified in this Section 12, the Agency, at its option, may declare a termination in favor of the Agency of the title, and of all the rights and interests in and to the Pad and to Parking Rights of Redeveloper conveyed by Redeveloper's Grant Deed, and that such title and all rights and interests of the Redeveloper, and any assigns or successors in interest to and in the Redeveloper's Pad and Parking Rights, shall revert to the Agency.

(b) Other Rights and Remedies of Agency; No Waiver by Delay.

8/6/87
10/7/87

The Agency's power of termination hereunder shall be exercised in accordance with and shall be subject to all of the provisions of California Civil Code Section 885.010, et seq., with respect to the creation, exercise, duration and termination of powers of termination; provided, however, that notwithstanding anything to the contrary contained in such Civil Code Sections, the Agency shall in all events perfect its right to revestment of title to the Pad and Parking Rights or portion thereof, under its power of termination hereunder pursuant to a judicial proceeding to quiet title or other appropriate proceeding at law or in equity, unless the Redeveloper waives in writing the requirement for such action or proceeding. Subject to the foregoing, the Agency shall have the right to institute such actions or proceedings as it may deem desirable for effectuating the purposes of Section 12, including the right to execute and record or file among the public land records in the office in which the Grant Deed is recorded a written declaration of the termination of all the rights, title, and interest of the Redeveloper, provided, that any delay by the Agency in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this Section 12 shall not operate as a waiver of such rights or to deprive it of or limit such rights in any way (it being the intent of this provision that the Agency should not be constrained [so as to avoid the risk of being deprived of or limited in the exercise of the remedy provided in this Section 12 because of concepts of waiver, laches, or otherwise] to exercise such remedy at a time when it may still hope otherwise to resolve the problems created by the default involved); nor shall any waiver

in fact made by the Agency with respect to any specific default by the Redeveloper under this Section 12 be considered or treated as a waiver of the rights of the Agency with respect to any other defaults by Redeveloper under this Section 12 or with respect to the particular default except to the extent specifically waived in writing.

Section 13. Enforced Delay in Performance for Causes Beyond Control of Party.

For the purposes of any of the provisions of this Agreement, no Party shall be considered in breach of, or default in, its obligations hereunder or have a right to terminate the escrow for non-satisfaction of conditions, or progress in respect thereto, as the case may be, as a result of enforced delay in the performance of such obligations due to unforeseeable causes beyond its control, without its fault or negligence and not due to financial inability (other than financial inability due to the wrongful acts of unaffiliated third Persons), including, but not restricted to, riots, earthquakes, wars, insurrection, lock-outs, litigation including delays beyond the reasonable control of the Agency in conducting eminent domain proceedings or related legal proceedings, inability to secure necessary materials or tools, acts of God, acts of the public enemy, acts of the Federal Government, acts of another Party, acts or the failure to act of any public or governmental agency or entity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and abnormal weather or delays of any contractor, subcontractor, or supplier or any other causes beyond the control or without the fault of the Party claiming an extension of time to perform; it

being the purpose and intent of this provision that in the event of the occurrence of any such enforced delay, the time or times for performance of the obligations of the Parties under this Agreement, shall be extended for the same period of the enforced delay; provided, that the Party seeking the benefit of the provisions of this Section 13 shall, within fifteen (15) days after first gaining knowledge of any such enforced delay, have first notified the other Parties thereof in writing, and of the cause or causes thereof, and requested an extension for the period of the enforced delay.

(a) The time within which any act, etc. is to be completed, etc. shall be calculated by working days, not calendar days. This provision relates to the entire document.

Section 14. Counterparts.

The Agreement is executed in three (3) counterparts, each of which shall constitute one and the same instrument.

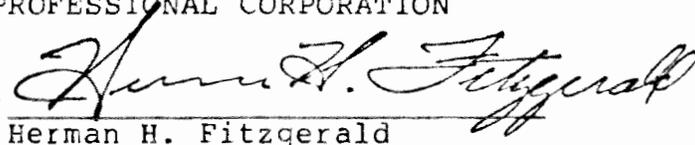
IN WITNESS WHEREOF, the Agency has caused the Agreement to be duly executed in its name and behalf by its Chairman and its seal to be hereunto duly affixed and attested by its Secretary, and the Redeveloper has caused the Agreement to be duly executed by Charlotte A. Ruffoni on or as of the day first above written.

DATED:

APPROVED AS TO LEGAL FORMALITY:

LAW OFFICES OF HERMAN H. FITZGERALD
A PROFESSIONAL CORPORATION

By:


Herman H. Fitzgerald

ATTEST:

REDEVELOPMENT AGENCY OF THE CITY
OF SANTA MARIA

Robert F. Jozan
Secretary

By: George Stoltz Jr
Chairman

Redeveloper Charlotte A. Ruffoni

DATED: Oct. 14, 1987

By: Charlotte A. Ruffoni

ATTEST:

Edna Hill

APPROVED AS TO LEGAL FORMALITY:

By: James H. Fitzgerald

EXHIBIT "E"

SCOPE OF DEVELOPMENT

I. GENERAL

The Property shall be developed consistent with the Town Center West Shopping Center (hereinafter "Shopping Center") Development Plan, if any, the Redevelopment Plan, this Agreement, and the Reciprocal Easement Agreement (REA) for the Shopping Center. The Parties shall work together to ensure the compatibility of design for all improvements developed or redeveloped with the Property.

The Parties will cooperate and direct their respective consultants, architects and engineers to cooperate so as to ensure the continuity and coordination vitally necessary for the proper and timely completion of the development of the Property.

II. PRIVATE DEVELOPMENT

A. Redeveloper's Building. The Redeveloper's Buildings shall consist of a 2-story retail/office building of approximately 15,684 square feet.

1. Redeveloper's Improvements. The Redeveloper shall construct or cause to be constructed on the Redeveloper's Property the buildings and associated landscape and elements for the Building, as described above. The Redeveloper has the right to build to the property line on the 9600 square foot pad.

a. Architecture and Design. The architectural character of the Redeveloper's Improvements shall be visually pleasing and consistent with the requirements of the City and its departments and commissions. The Redeveloper's Preliminary Development Plans submitted to the Agency for architectural

review shall describe in reasonable detail the architectural character intended for the Redeveloper's Improvements.

b. Signs. All signs on the exteriors of buildings and structures facing the street or parking areas developed as a part of the Redeveloper's Improvements shall comply with the sign program developed for the Shopping Center, City ordinances and City Code by the Redeveloper as approved by the Agency and City.

c. Landscaping. Landscaping within the Redeveloper's Parcel shall be provided as required by the City and is to integrate Redeveloper's Improvements with adjacent areas within the Shopping Center.

d. Perimeter Sidewalks. Perimeter sidewalks and landscaping adjacent to the front and side of Redeveloper's building shall be provided.

III. AGENCY RESPONSIBILITY

Redevelopment Agency shall provide survey of site boundaries and utility easements and locations to Redeveloper.

PALLER-ROBERTS ENGINEERING, INC.

CONSULTING CIVIL ENGINEERS

5701 SLAUSON AVENUE, SUITE 208, CULVER CITY, CALIFORNIA 90230

PHONE (213) 541-1853

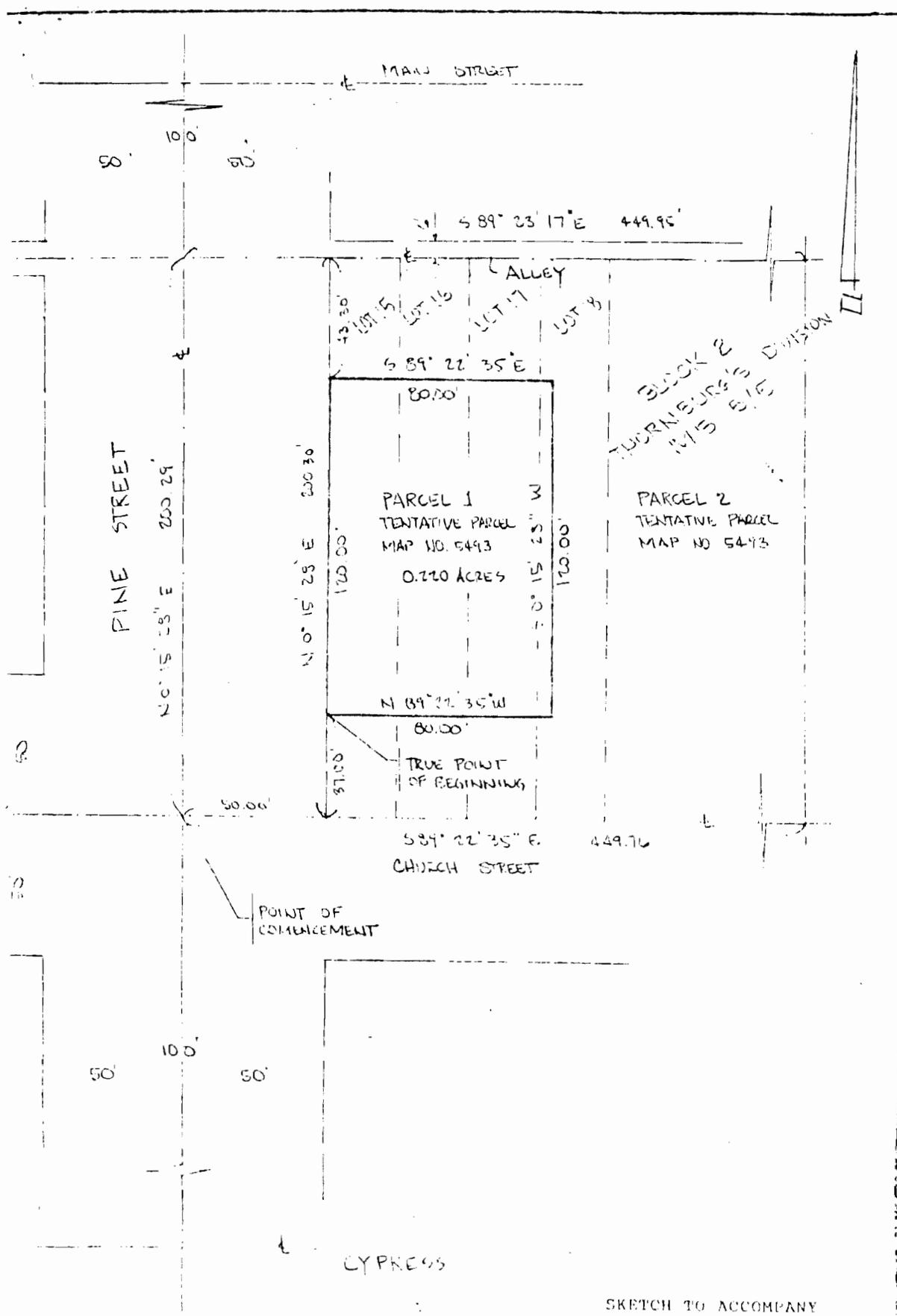
LEGAL DESCRIPTION

PARCEL 1, TENTIVE PARCEL MAP NO. 5497

That portion of Lots 15 through 18, Block 2 of Thornburgs Division to the City of Santa Maria, County of Santa Barbara, State of California, according to the map thereof recorded in Book 5 at Page 5 of Maps, in the Office of the County Recorder of said County described as follow:

Commencing at the centerline intersection of Pine Street and Church Street as shown on said map; thence South $89^{\circ}22'35''$ East 50.00 feet along the centerline of said Church Street to the Southerly prolongation of the Easterly line of said Pine Street, 100.00 feet in width; thence North $0^{\circ}15'28''$ East 37.00 feet along said prolongation to the TRUE POINT OF BEGINNING; thence continuing North $0^{\circ}15'28''$ East 120.00 feet along said prolongation and said Easterly line; thence South $89^{\circ}22'35''$ East 80.00 feet; thence South $0^{\circ}15'28''$ West 120.00 feet; thence North $89^{\circ}22'35''$ West 80.00 feet to the TRUE POINT OF BEGINNING.

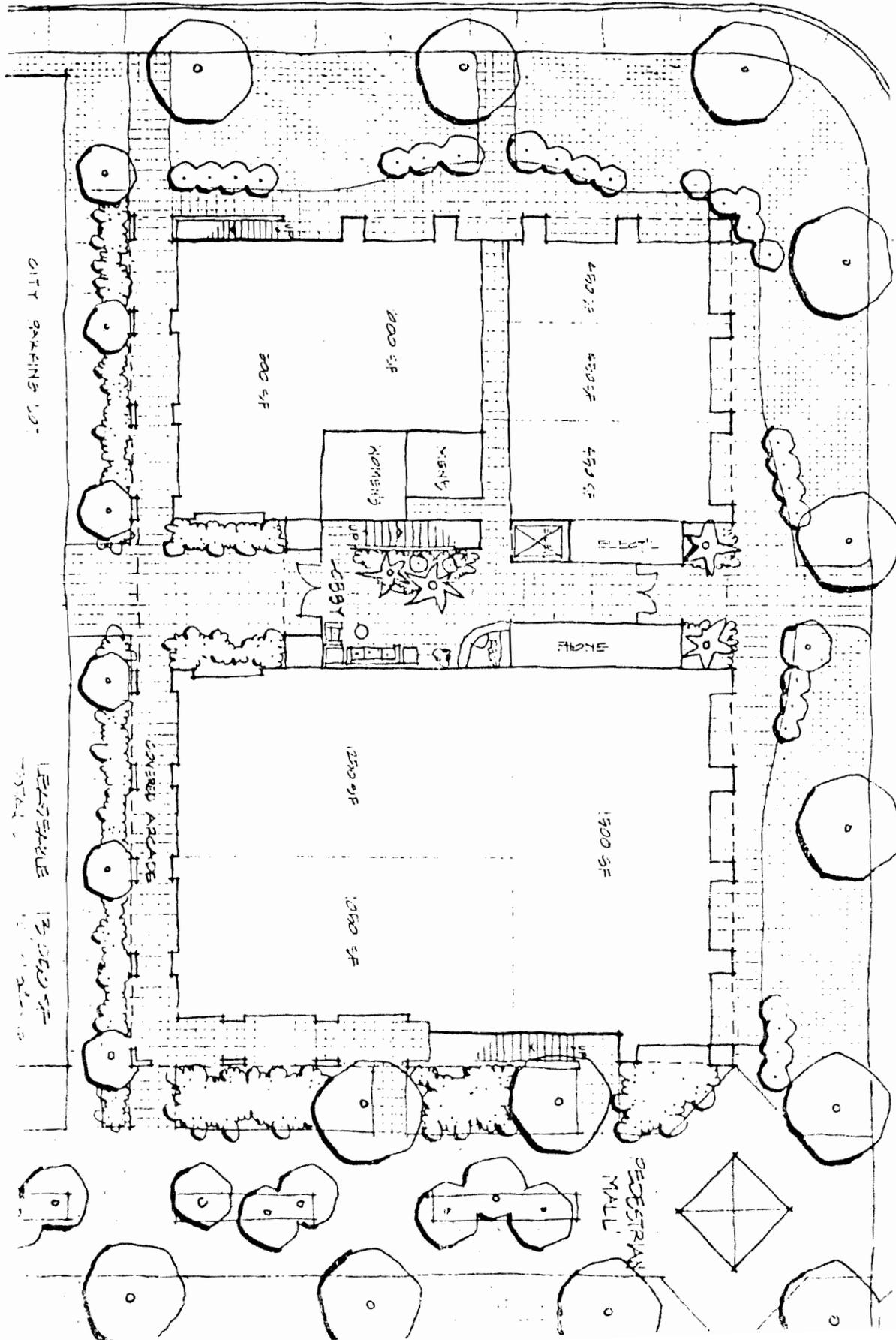
Containing an area of 0.220 acres, more or less.



SKETCH TO ACCOMPANY
LEGAL DESCRIPTION
PARCEL 1, TENTATIVE
PARCEL MAP NO. 5493

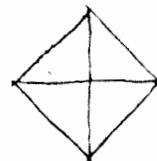
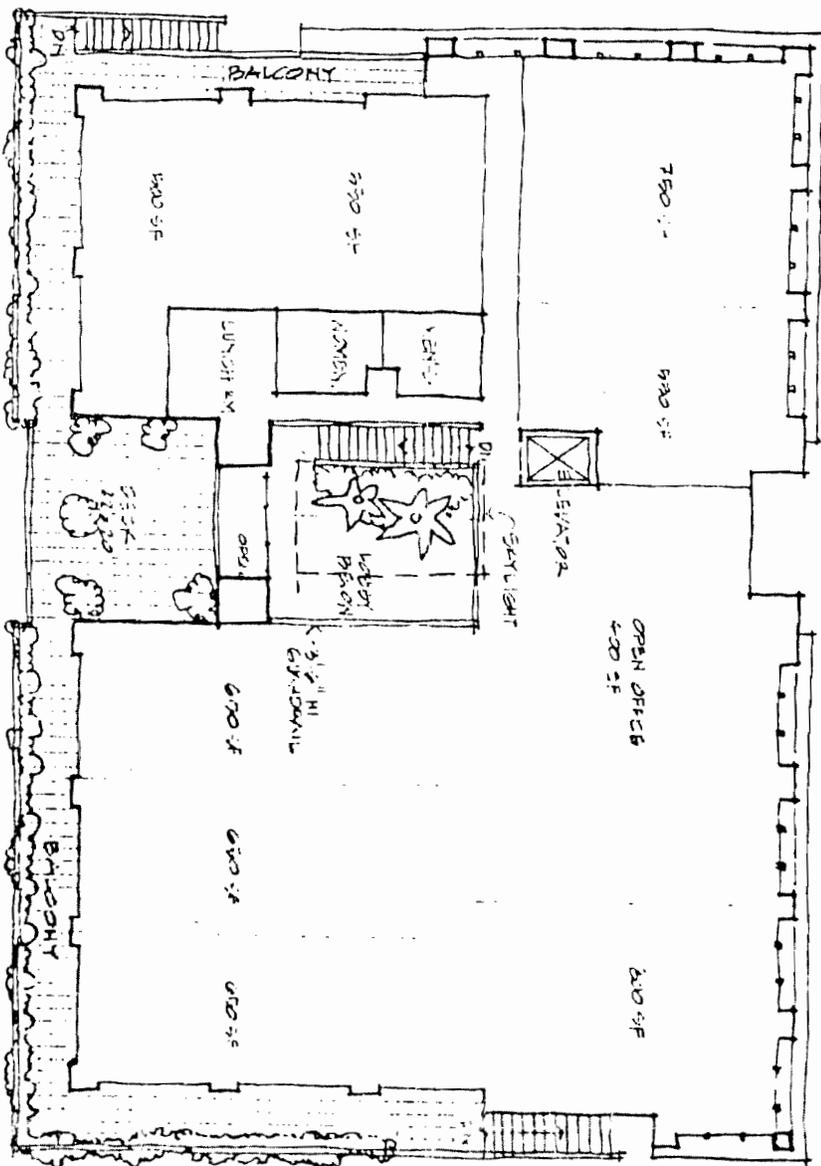
MAY 26, 1997

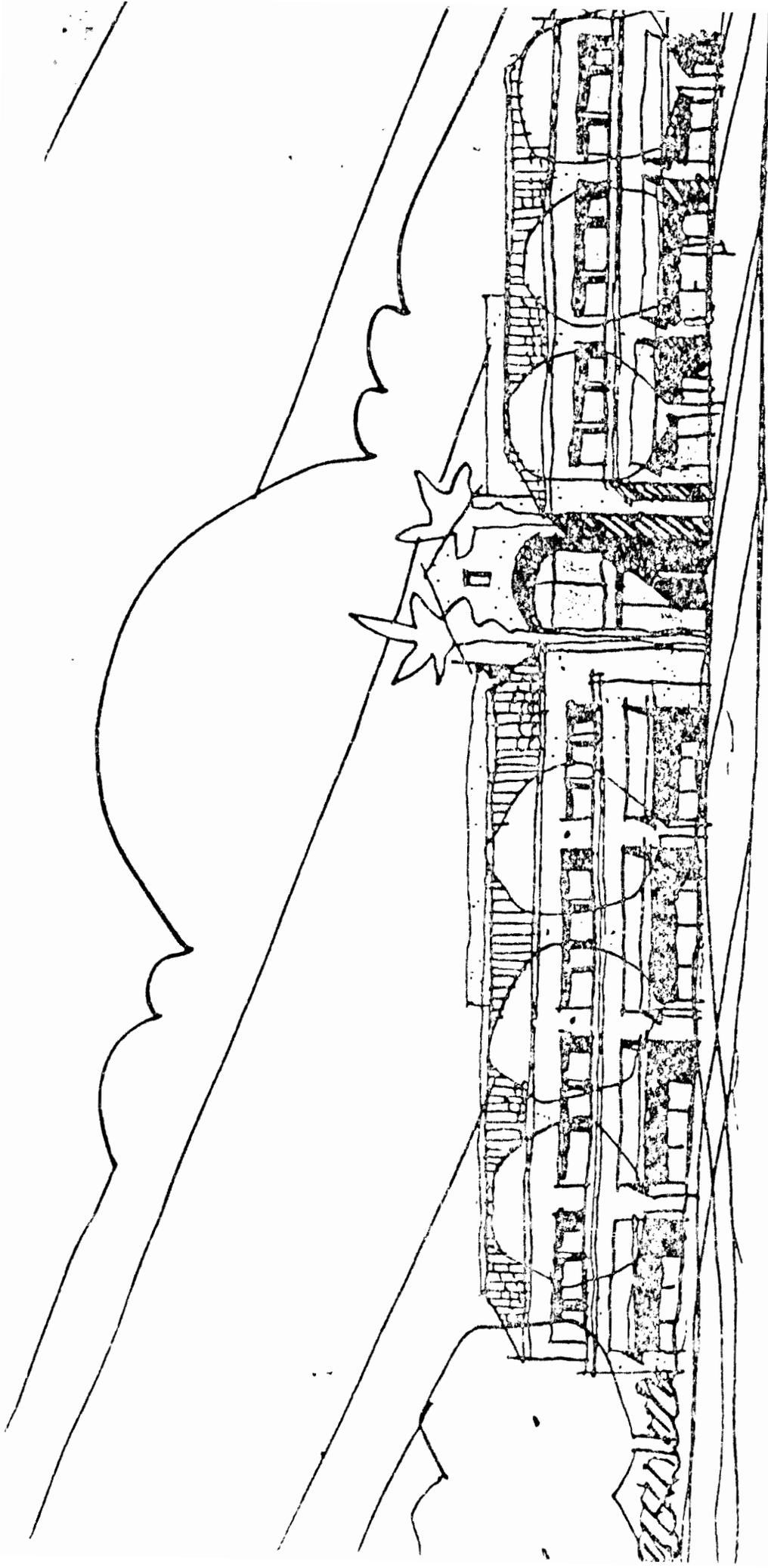
CHURCH STREET



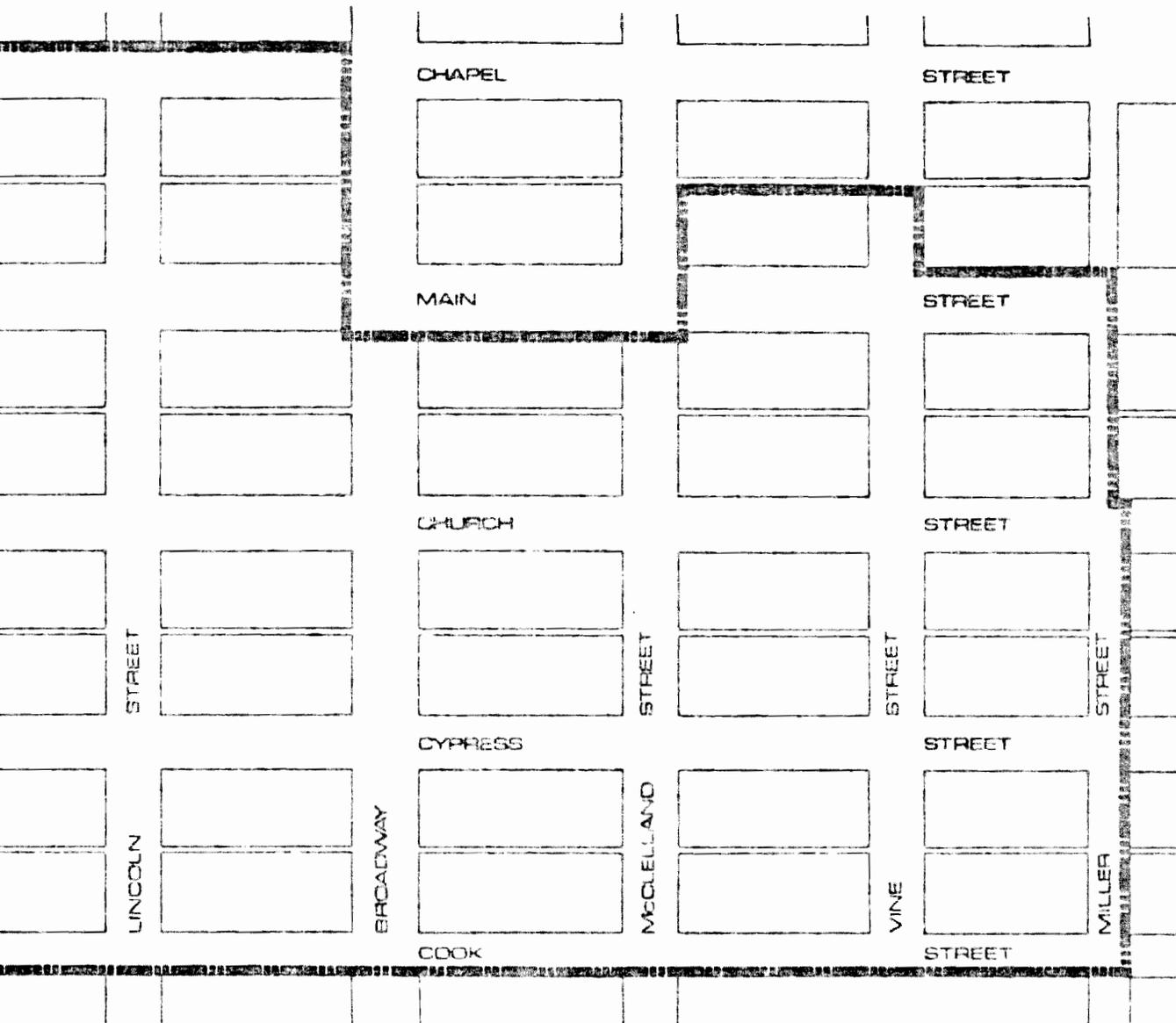
CHURCH STREET

1ST FLOOR





STREET ELEVATION
EXHIBIT "C", 3



BOUNDARY MAP



CENTRAL CITY REDEVELOPMENT PROJECT - CALIF. NDP A-1-2
 REDEVELOPMENT AGENCY OF THE CITY OF SANTA MARIA
 SANTA BARBARA COUNTY, CALIFORNIA