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TRANSFER AGREEMENT AND ESCROW INSTRUCTIONS

CATELLUS OPERATING LIMITED PARTNERSHIP

CITY OF SAN DIEGO

REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO

and

MUSEUM OF CONTEMPORARY ART, SAN DIEGO

Covering certain real property at the SANTA FE DEPOT SITE commonly known as the

BAGGAGE BUILDING SITE

and

REA SITE

Effective Date: The date on which this Agreement is signed by the last to sign as between the City or Agency, that date being July 1, 2004

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SAN DIEGO, CALIF.

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TRANSFER AGREEMENT AND ESCROW INSTRUCTIONS

This Transfer Agreement and Escrow Instructions (Agreement) is made as of the date described in Section 11.14 below, between CATELLUS OPERATING LIMITED PARTNERSHIP, a Delaware limited partnership, as successor by merger to Catellus Development Corporation, a Delaware corporation (Catellus), the CITY OF SAN DIEGO, a municipal corporation of the State of California (City), the REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO, a public body corporate and politic of the State of California (Agency), and the MUSEUM OF CONTEMPORARY ART, SAN DIEGO, a California non-profit public benefit corporation (Museum), and is intended both as an agreement concerning the transfer of the real property herein described (Property), and as escrow instructions to COMMONWEALTH LAND TITLE COMPANY (Escrow Agent). Catellus, the City, the Agency and the Museum agree as follows:

1.

FUNDAMENTAL PROVISIONS AND DEFINITIONS

1.1 Development Agreement or DA. Catellus entered into an Amended and Restated Development Agreement dated April 9, 1993 with the City, as amended by a First Amendment thereto dated March 5, 1996, a Second Amendment thereto dated December 4, 1997, and a Third Amendment thereto dated February 18, 2003, and a Fourth Amendment thereto to be approved by City concurrently with the approval of this Agreement (collectively, the DA).

1.2 Owner Participation Agreement or OPA. Catellus entered into an Amended and Restated Owner Participation Agreement dated April 9, 1993 with the Agency, as amended by a First Implementation Agreement thereto dated March 4, 1996, a Second Implementation Agreement thereto dated December 4, 1997, a Third Implementation Agreement thereto dated February 10, 2003, and a Fourth Implementation Agreement thereto to be approved by Agency concurrently with the approval of this Agreement (collectively, the OPA).

1.3 Escrow Agent. Commonwealth Land Title Company.

1.4 Escrow No. 10026120

1.5 Title Company. Commonwealth Land Title Company.

1.6 Purchase Price. None. Catellus is conveying the Baggage Building Site to the Museum (as the non-profit entity designated by City pursuant to Section 2.1.1) as required by the DA and OPA. Catellus also hereby agrees to convey the REA Site to the Museum concurrently with its conveyance of the Baggage Building Site, although not required to do so by the DA and OPA. The parties agree that the value of the REA Site shall be established by an independent appraisal to be obtained by Catellus. The parties acknowledge that such value shall not apply as a credit toward Catellus' commitment to a Fine Arts Program at the Santa Fe Depot Site, as set forth in Revised Attachment C-1 to the DA, and Revised Attachment No. 5 to the OPA, respectively (Obligations of Catellus, Paragraph A.10).

1.7 Close of Escrow. The actual Closing Date may be earlier than the Close of Escrow, as set forth in Article 7 below.

1.8 Address for Notices to Catellus.

Catellus Operating Limited Partnership
201 Mission Street
2nd Floor
San Francisco, California 94105
Attn: Tim Carey
Telephone: (415) 974-4500
Telecopier: (415) 974-4613

1.9 Address for Notices to City.

City Administration Building
202 C Street, M.S. 9B
San Diego, California 92101-4155
Attn: Will Griffith, Director of Real Estate Assets
Telephone: (619) 236-2237
Telecopier: (619) 236-7003
Email: wgriffith@sandiego.gov

1.10 Address for Notices to Agency.

Redevelopment Agency of the City of San Diego
Executive Director
202 C Street, 9th Floor
San Diego, California 92101
Attn: Hank Cunningham
Assistant Executive Director
Telephone: (619) 236-6550
Telecopier: (619) 533-6514
Email: hcunningham@sandiego.gov

1.11 Address for Notices to CCDC.

Centre City Development Corporation
225 Broadway, Suite 1100
San Diego, CA 92101-5074
Attn: Pamela M. Hamilton,
Senior Vice President
Telephone: (619) 235-2200
Telecopier: (619) 236-9148
Email: hamilton@ccdc.com

1.12 Address for Notices to Museum.

Museum of Contemporary Art, San Diego
700 Prospect Street
La Jolla, California 92037-4291
Attn: Charles Castle
Telephone: (858) 454-3541
Telecopier: (858) 454-6985
Email: cecastle@mcasd.org

1.13 Address for Notices to Escrow Agent.

Commonwealth Land Title Company
750 B Street, Suite 2350
San Diego, California 92101
Attn: Maureen Casey
Telephone: (619) 230-6340
Telecopier: (619) 233-4196
Email: mcasey@landam.com

1.14 Property. The real property (Property) is in the downtown area of San Diego, California, consisting of two fee parcels generally described as follows, and more particularly described on Exhibit A attached hereto:

1.14.1 Baggage Building Site; Baggage Building. The southerly fee parcel is commonly referred to as the Baggage Building Site, on which the Baggage Building is situated. The Baggage Building is to be upgraded by Catellus prior to the Close of Escrow as required by the DA and OPA.

1.14.2 REA Site; REA Building. The adjacent northerly fee parcel is commonly referred to as the REA Site, on which the REA Building was situated. The REA Site includes the southerly 50% of B Street adjacent to the REA Site which has previously been vacated by the City. As part of this transaction, the REA Building has been demolished by Catellus, at Catellus' expense, in connection with its upgrading of the Baggage Building.

1.15 Breezeway Easement. In addition to conveying fee title to the Property to the Museum, Catellus shall concurrently convey a non-exclusive easement to the City across the accessway located between the Baggage Building and the nearby building commonly referred to as the Depot Building, such easement being more particularly described on Exhibit B attached hereto (the Breezeway Easement).

1.16 **Definitions.** The following words and phrases have the following meanings:

- (a) New Museum Building – means the new building to be constructed by Museum on the REA Site.
- (b) Amtrak - means National Railroad Passenger Corporation, a corporation organized and existing under the National Rail Passenger Service Act and the laws of the District of Columbia.
- (c) Development Plan – means the plans to develop the Property in substantial accordance with the Basic Concept/Schematic Drawings submitted to and approved by City, as same may have been or may be modified with the consent of City.
- (d) City Option – means the Option Agreement between the Museum and the City in the form of Exhibit C.
- (e) Amtrak Lease – means the contemplated Lease between Museum and Amtrak substantially in the form of Exhibit D. The Amtrak Lease shall require the City's and the Agency's consent prior to its execution. With such consent City shall agree that City shall honor and be bound by the terms of the Lease if City becomes the owner of the New Museum Building during the Lease term.

2.

AGREEMENT TO TRANSFER AND ACKNOWLEDGMENTS

2.1 Agreement to Transfer.

2.1.1 **Baggage Building Site.** Catellus hereby reaffirms its obligation set forth in the DA and OPA to transfer fee title to the Baggage Building Site to the Museum (as the non-profit entity designated by the City), including the Baggage Building itself, pursuant to the Grant Deed attached as Exhibit E. See, Revised Attachment C-1 to the DA, and Revised Attachment No. 5 to the OPA, respectively (Obligations of Catellus, Paragraphs A.10 and A.11).

2.1.2 **REA Site.** Catellus hereby agrees also to transfer the REA Site to the Museum pursuant to this Agreement.

2.1.3 **Amtrak Lease.** City, Agency and Museum agree to negotiate in good faith for Amtrak's lease of approximately 2,725 sq. ft. within the New Museum Building. If the Amtrak Lease is not executed by Museum and by Amtrak in a form acceptable to the City and the Agency by September 1, 2004, the Museum shall use the contemplated Amtrak space for Museum purposes in accordance with Section 10.2. City, Agency and Museum may, if they so jointly decide, extend such date.

2.2 Catellus Acknowledgments.

2.2.1 Baggage Building. Catellus confirms its obligation under the DA and OPA to perform certain work as provided therein to upgrade the Baggage Building prior to transferring it to the Museum. Catellus also acknowledges that the Museum is the entity selected by the City to use the Baggage Building as a museum.

2.2.2 REA Site. Catellus acknowledges that (a) the Museum will have the right and ability to use the REA Site for constructing the New Museum Building on a portion thereof, (b) upon completion of the New Museum Building, that Building will be used by the Museum in conjunction with the Baggage Building and for similar purposes as described herein, (c) in the New Museum Building, the Museum may lease pursuant to Section 2.1.3 an area of approximately 2,725 square feet to Amtrak, and (d) the portion of the REA Site not devoted to the New Museum Building will be used for Museum or public access purposes as shown in Exhibit K Preliminary Plan for the B Street Pathway improvements, as agreed to between Museum and City. A Right of Entry Agreement shall be entered into between Museum and Agency concurrently with the Closing in the form of Exhibit M attached hereto.

3.

CLOSING DELIVERIES

3.1 Catellus' Closing Deliveries. Prior to the Close of Escrow, Catellus shall deliver the following documents or funds to the Escrow Agent, in time for delivery to Museum or to the City, or for use by Escrow Agent, as applicable, at the Closing:

3.1.1 Grant Deed. A grant deed to the Property (Grant Deed), from Catellus as grantor, to the Museum as grantee, duly executed and acknowledged by Catellus so as to be suitable for recording, substantially in the form attached hereto as Exhibit E.

3.1.2 Maintenance Covenant. A Maintenance Covenant under California Civil Code Section 1468 (Maintenance Covenant), by and between Catellus and the Museum, duly executed and acknowledged by Catellus so as to be suitable for recording, substantially in the form attached hereto as Exhibit F.

3.1.3 Breezeway Easement. A Breezeway Easement (Breezeway Easement), by and between Catellus as grantor, and the City as grantee, duly executed and acknowledged by Catellus so as to be suitable for recording, substantially in the form attached hereto as Exhibit G.

3.1.4 Façade Easement. A Façade Easement (Façade Easement), protecting the façade of Santa Fe Depot and the Baggage Building (but not the REA Building, which has been demolished) in accordance with the requirements of the DA and OPA, from Catellus as grantor, to the City as grantee, duly executed and acknowledged by Catellus so as to be suitable for recording, substantially in the form attached hereto as Exhibit H.

3.1.5 Non-Foreign Affidavit. An affidavit executed by Catellus to the effect that Catellus is not a "foreign person" within the meaning of Internal Revenue Code Section 1445 or successor statutes, and an equivalent affidavit with respect to the State of California. If

Catellus does not provide such affidavits in forms reasonably satisfactory to the Escrow Agent at least three (3) business days prior to the Close of Escrow, Escrow Agent may at the Closing deduct from Catellus's proceeds and remit to Internal Revenue Service and to the State of California, such sums as may be required by applicable Federal and California law with respect to purchases from foreign Sellers.

3.1.6 Closing Costs. Catellus's share of title, escrow and closing costs, as provided in Section 8, plus \$99,440 to be paid to Museum (as provided in Subsection 4.1.6).

3.2 City's Closing Deliveries. Prior to the Close of Escrow, the City shall deliver the following documents to the Escrow Agent, to which the Museum and Catellus hereby agree, in time for delivery to Seller or to the Museum or for use by Escrow Agent, as applicable, at the Closing:

3.2.1 City Option. Duplicate originals of an option in the form of Exhibit C with respect to the Property (City Option), from the Museum as Optionor to the City as Optionee, duly executed by the Museum and City. The City Option shall provide that the City may, if it so elects, become the owner of the Property on or after July 31, 2091, or earlier in the event of a Default by Museum as defined in the City Option.

3.2.2 Breezeway Easement. A Breezeway Easement Grant Deed, as described in Section 3.1.3.

3.2.3 Façade Easement. A Façade Easement, as described in Section 3.1.4.

3.2.4 Closing Costs. City's title costs (if any) as provided in Section 8.

3.3 Museum's Closing Deliveries. Prior to the Close of Escrow, Museum shall deliver the following documents or funds to the Escrow Agent, in time for delivery to Catellus or to the City, or for use by Escrow Agent, as applicable, at the Closing:

3.3.1 The Maintenance Covenant, as described in Section 3.1.2 duly executed and acknowledged by the Museum so as to be suitable for recording, substantially in the form attached hereto as Exhibit F.

3.3.2 Two executed originals of the Amtrak Lease, if such Lease has been executed by the Museum and Amtrak prior to the Close of Escrow.

3.3.3 Museum's share of title, escrow and closing costs, as provided in Section 8.

4.

CONDITIONS PRECEDENT

4.1 Conditions Precedent. The parties' obligations to proceed with the Closing with respect to the Property are subject to the satisfaction or waiver of each of the following conditions precedent, on or before the Close of Escrow unless otherwise stated:

4.1.1 City Council and Agency Approval. On or before the Close of Escrow, the City Council of the City, and the Board of the Agency shall both have approved this Agreement, the Fourth Amendment to the DA as referred to in Section 1.1, and the Fourth Implementation Agreement to the OPA as referred to in Section 1.2.

4.1.2 Condition of Title. The City and the Museum shall have given written approval of a current preliminary title report concerning the Property (PTR) issued by the Title Company, as well as all underlying documents (Underlying Documents) referred to in the PTR, and the Title Company shall be prepared to issue the title policies described in Section 7.3.3 below. Catellus has caused the PTR and all Underlying Documents to be delivered to the City and the Museum before the execution of this Agreement. The City's and the Museum's approval or disapproval thereof shall be given within ten days after their receipt of the PTR and Underlying Documents. The disapproval of any monetary encumbrance, which by the terms of this Agreement is not to remain against the Property after the Closing, shall not be considered a failure of this condition, for Catellus shall have the obligation, at its expense, to satisfy and remove any such disapproved monetary encumbrance at or before the Closing.

4.1.3 Baggage Building Improvements. Catellus, at its own cost, shall have completed the Improvements to the Baggage Building required by the DA.

4.1.4 Form of Façade Easement. Catellus, the City and the Museum shall have agreed on the form of the Façade Easement. The parties acknowledge that this condition precedent has now been satisfied by the approval of the form of Exhibit H attached hereto.

4.1.5 REA Building Demolition. Catellus, at its own cost, shall have completed the demolition of the REA Building. The parties acknowledge that this condition precedent has now been satisfied.

4.1.6 Baggage Building Additional Improvements. In accordance with a mutual understanding reached by Catellus and Museum, Catellus has completed additional improvements to the floor of the Baggage Building such that the floor is in a condition reasonably acceptable to the Museum at the Closing; certain additional improvements to the floor of the Baggage Building will be completed by the Museum after the Closing. Catellus shall have caused \$99,440 in immediately available funds to be deposited with the Escrow Agent to pay the costs associated with completing such additional improvements, which amount shall be released to the Museum concurrently with the Close of Escrow; the breakdown of how the \$99,440 was computed is shown on Exhibit O attached hereto. If the cost of completing such additional improvements exceeds \$99,440, or if the Museum elects to perform any additional

improvements beyond what was contemplated by Exhibit O, the cost thereof shall be borne solely by the Museum. Museum shall have the sole use of such \$99,440 and may spend such funds in its sole discretion in any manner it deems appropriate for the construction of its improvements on the Property and Catellus shall have no claim to such funds following the Closing.

4.2 Waivers, Approvals and Disapprovals. Any waiver of a condition precedent shall be effective only if it is (a) in writing, (b) signed by the appropriate waiving party or parties, and (c) delivered to Escrow Agent and the other parties on or before the Close of Escrow. If any party fails to approve or disapprove of any contingency within the applicable time specified for approval, it shall be presumed that the party has disapproved of the item, matter or document that is the subject of such contingency. A conditional approval shall constitute a disapproval.

5.

ENVIRONMENTAL PROVISIONS

5.1 Exculpation of Escrow Agent. Escrow Agent shall have no concern with, or liability or responsibility for this Article 5.

5.2 Environmental Definitions. For purposes of this Agreement:

5.2.1 **Hazardous Substance.** The term "Hazardous Substance" shall mean any chemical or substance whose nature or quantity of existence, use, manufacture, disposal or effect, render it subject to Federal, state or local regulation, investigation, remediation or removal as potentially injurious to public health or environment.

5.2.2 **Hazardous Substance Condition.** A "Hazardous Substance Condition" shall mean the existence of a Hazardous Substance on, under, or which originated on or under, and thereafter migrated off, the Property that requires remediation or removal under applicable Federal, state or local law.

5.2.3 **Contractual Response Requirements.** "Contractual Response Requirements" which Catellus or Museum (or both) are obligated to undertake pursuant to this Agreement are to prepare (to the mutual satisfaction of Catellus and the Museum) and implement a Soils Management Plan as defined and discussed below in Section 5.3, and to assess, remediate or remove, as appropriate, Hazardous Substance Conditions encountered at the Property during the course of construction of the New Museum Building, to the extent required in order to meet the Environmental Clean-Up Standard set forth in Section 5.3.2 below. In agreeing to assess, remediate or remove Hazardous Substance Conditions at the Property, to the extent required in order to meet the Environmental Clean-Up Standard set forth in Section 5.3.2 below, the parties hereto are not (a) limiting or expanding any environmental responsibility which Catellus may have independent of this Agreement, or (b) releasing or relieving Catellus from any statutory, legal or contractual obligation which Catellus may have independent of this Agreement, related to the remediation or removal of Hazardous Substances or Hazardous Substance Conditions, or

to the presence of any Hazardous Substances or Hazardous Substance Condition(s) on or about the Property (collectively, "Non-Contractual Response Requirements").

5.2.4 Response Costs. The term "Response Costs" shall mean all disbursements, expenses and costs of any kind or nature, including without limitation consultants', experts' and attorneys' fees, site assessment costs, governmental agency oversight costs, fines, penalties, permitting fees, costs of sampling, excavation and disposal of groundwater and soils containing Hazardous Substances, installation and removal of groundwater wells, monitoring costs, and any other costs related to the remediation or removal of Hazardous Substance Conditions, reasonably necessary in order to fulfill any Contractual Response Requirements, which Catellus or the Museum have under this Agreement or under applicable Federal, state or local law, as a result of the construction of the additional improvements to the floor in the Baggage Building described in Exhibit O and the completion of construction of The New Museum Building, including the receipt of a "no further action" letter to conclude any regulatory enforcement action (in the event there is a regulatory enforcement action that is expected to result in the issuance of a "no further action letter").

5.2.5 Qualified Environmental Professional. The term "Qualified Environmental Professional" shall mean an environmental consultant who: (i) shall be either a registered geologist, certified engineering geologist, or registered civil engineer; (ii) shall be licensed by the state of California; (iii) shall have experience in the assessment and remediation of petroleum hydrocarbons, volatile organic compounds including chlorinated solvents and BTEX, lead and other Title 22 metals, and PCBs; and (iv) shall have experience in the assessment and remediation of downtown San Diego properties (e.g., burn ash and burn ash-related compounds).

5.3 Catellus Report. Catellus has furnished to Museum and City the reports listed on Exhibit P attached hereto. Catellus does not warrant or represent that such reports are accurate.

5.4 Environmental Clean Up.

5.4.1 Preparation of Soils Management Plan. The Museum shall cause to be prepared a Soils Management Plan ("SMP") consistent with the principles outlined by the parties in this Section 5. The SMP shall be prepared by a Qualified Environmental Professional, engaged by the Museum, at the Museum's cost and expense (but Catellus agrees to reimburse Museum for any fees or costs of the Qualified Environmental Professional which relate to a Hazardous Substance Condition for which Catellus is responsible pursuant to this Section 5). The SMP shall provide a protocol to be followed by the Museum during the construction of the additional improvements to the floor in the Baggage Building described in Exhibit O, and by the Museum during the construction of the New Museum Building. The SMP shall include, but not be limited to, the performance of the following activities: (i) identification of potential constituents of concern, which shall include, but not be limited to, lead and other related Title 22 metals, chlorinated solvents and other volatile organic compounds, petroleum hydrocarbons, polynuclear aromatic hydrocarbons (PAHs), and PCBs; (ii) provide a methodology for soil screening (i.e. XRF, odor, staining, PID/OVA meters) to be conducted at the time of active

excavation and any other related activities that may justify real-time monitoring; (iii) provide a response and potential soil sampling plan for identified constituents of concern, and for which sampling shall occur during excavation and/or construction activities; (iv) identify mitigation or remedial options for any discovered Hazardous Substance Condition(s); (v) outline a protocol for the on-site soil management and profiling; (vi) provide parameters for on-site soil reuse; (vii) outline a protocol for off-site soil disposal and manifesting; (viii) preparation of a report detailing the activities undertaken as outlined in the SMP; (ix) documentation of the off-site disposal or reuse of soils containing Hazardous Substances; and (x) identify when reporting to any State or County Agency is required.

Subject to the reimbursement obligations of Catellus set forth in Section 5.4.1 (first paragraph above) and in Section 5.4.3 below, the Museum shall, at its sole cost and expense, be responsible for the day-to-day implementation of the SMP, including, but not limited to hiring a Qualified Environmental Professional to perform each of the tasks identified in the SMP, and to complete any necessary and/or required mitigation and remediation of Hazardous Substance Conditions at the Property, pursuant to Section 5 of this Agreement.

In the event that a Hazardous Substance Condition is detected at the Baggage Building Site or the REA Site which, in the opinion of the Qualified Environmental Professional pursuant to the Soils Management Plan, requires notice to, or oversight by, any governmental regulatory agency, the Museum shall give notice to the appropriate governmental regulatory agency with jurisdiction promptly and in accordance with all applicable laws. Furthermore, the Museum will obtain such agency's oversight, if required, of any potential mitigation, potential remediation or continued excavation efforts at the Baggage Building Site and/or the REA Site. Further, in the event that a Hazardous Substance Condition is discovered which, in the opinion of the Qualified Environmental Professional, may have the potential to negatively impact the health and safety of construction workers and/or future occupants of the Property, a health risk assessment shall be performed by the Qualified Environmental Professional, as defined above, to ensure that no unacceptable health risk exists from any discovered Hazardous Substance.

5.4.2 "No Further Action" Letter. If in the opinion of the Qualified Environmental Professional, circumstances indicate that it would be reasonable to expect the County of San Diego Department of Environmental Health or any other State or County agency administering environmental programs to respond to such a request, the Museum, using its reasonable best efforts and with the full cooperation of Catellus, shall diligently undertake all reasonable steps (including, if required, the submittal of a Voluntary Assistance Program application to the County of San Diego Department of Environmental Health, or to another equivalent State or County program) to obtain written confirmation in the form of a "no further action" letter (or confirmation of equivalent effect), stating in effect that the response actions taken by the Museum and/or Catellus, with agency oversight, to address Hazardous Substance Conditions encountered at the Baggage Building Site and/or REA Site (if applicable) are acceptable, using generally acceptable human health risk protocols, for allowing reuse of such Property as non-residential commercial/industrial property. The circumstances indicating that "it would be reasonable to expect [any such governmental agency] to respond to such a request" shall include an evaluation of whether there is any data known to, or that ought to be made

known to, any such agency, which would cause such an agency to commence any review or oversight, or require any action to be taken on an Hazardous Substance Condition. The "reasonable steps" referred to in the first sentence of this Section 5.4.2 shall include reasonable best efforts by the Museum to satisfy all conditions required under applicable law in order to obtain such agency concurrence or confirmation.

5.4.3 Catellus's Response Requirements: Catellus shall, at its sole cost and expense, reimburse the Museum for any and all Response Costs incurred as a result of any necessary and/or required remediation of the Property, necessitated by the construction of the additional improvements to the floor in the Baggage Building described in Exhibit O, and by the construction of the New Museum Building.

Catellus's Contractual Response Requirements shall be limited to the assessment, remediation and/or removal of Hazardous Substance Conditions, as required under applicable Federal, state or local law, encountered at the Property during the course of construction of the additional improvements to the floor in the Baggage Building, and during the construction of the New Museum Building, to the extent required to complete the new floor in the Baggage Building and the construction of the New Museum Building, or obtain a "No Further Action" letter to conclude any governmental regulatory action.

5.4.4 Environmental Clean-Up Standard. With respect to the work which Catellus and/or the Museum are to perform in order to fulfill the Contractual Response Requirements, and without limiting any legal liability or responsibility which Catellus or Museum may have independent of this Agreement under applicable Federal, state or local law to fulfill any Non-Contractual Response Requirements:

(a) All Applicable Legal Standards. Catellus's and/or the Museum's environmental clean-up of the Baggage Building and REA Site shall meet all applicable standards in effect as of the date on which such environmental cleanup is performed for properties to be redeveloped or used for non-residential commercial/industrial purposes.

(b) More Stringent Clean-Up Standard Left to City and/or Museum. The City, the Agency and the Museum recognize that more stringent standards of environmental clean-up exist, or may hereafter exist, than the Environmental Clean-Up Standard applicable to the reuse of the Property as non-residential commercial/industrial property (for example, a more stringent standard exists for property to be used as residential property). The City, the Agency and the Museum nevertheless agree that, once the Environmental Clean-Up Standard has been met, if the City, the Agency, the Museum or their successors or assigns (including, without limitation, Amtrak under any lease) wish to use all or any portion of the Property for any other purposes or activities to which a more stringent clean-up standard applies, it shall be the City's, the Agency's, the Museum's or their successors' or assigns' responsibility, and not Catellus's, to carry out any additional environmental clean-up required to achieve regulatory approval for such other purposes or activities.

(c) **Construction Work and Costs.** If more stringent standards of environmental clean-up have to be met for the protection of construction workers during the course of construction on the Property, the costs for meeting those more stringent standards will be recognized by the parties as a cost of construction, and not as Response Costs for which Catellus is responsible under the Contractual Response Requirements.

5.4.5 **Acceptance of Lead Based Paint Conditions.** The Museum acknowledges that lead based paints have been discovered within the Baggage Building, and that said lead based paints have previously been encapsulated upon the recommendation of Catellus's environmental consultants and with the concurrence of the Museum. The Museum is accepting the transfer of the Property with full knowledge of the encapsulated lead based paints, and releases Catellus from any future liability with respect to any assessment, remediation or removal of said lead based paints. The City and Agency acknowledge that they have been informed of the encapsulated lead based paint condition at the Baggage Building, and agree that while the City may consider the encapsulated lead based paint condition in deciding whether or not to exercise the City Option, Catellus shall have no future obligation to the City or the Agency to assess, remediate or remove any lead based paints from the Baggage Building.

5.4.6 **Disclaimer of Obligations by the City of San Diego.** The responsibility to prepare and implement the SMP rests entirely with Catellus and the Museum, and the City and Agency hereby disclaim any responsibility for the preparation, approval or implementation of the SMP, and neither the City nor the Agency shall participate in the development of the SMP, review or approve the contents of the SMP or the work performed thereto, or direct the implementation of the SMP. Catellus and the Museum agree to provide the City and Agency with copies of all SMPs, workplans, reports, studies, correspondence between Catellus and/or the Museum and any governmental regulatory agency, or any other documentation generated in the preparation of the SMP and the performance of the activities set forth in the SMP and this Section 5.4.

5.4.7 **Non-Contractual Response Requirements Remain.** Nothing in these Sections 5.2 or 5.4 is intended, or shall be construed, (a) to limit any Non-Contractual Response Requirements which Catellus may have independent of this Agreement, or (b) to release or relieve Catellus from any statutory, legal or contractual obligation which Catellus may have independent of this Agreement related to the remediation or removal of Hazardous Substances or Hazardous Substance Condition(s), or to the presence of any Hazardous Substances or Hazardous Substance Condition on or about the Property.

6.

REPRESENTATIONS, WARRANTIES, ETC.

6.1 Transferee Inspection. By the Close of Escrow, the City, the Agency and the Museum shall make or have waived all inspections of the Property which they believe are necessary to protect their own interests in, and their contemplated uses of, the Property.

6.2 No Brokers. Each party to this Agreement represents and warrants to each other party that it has had no dealings with any broker or finder in connection with the negotiation of this Agreement or the consummation of the transfer contemplated herein, and no broker or finder is entitled to any commission or fee in connection with this transaction as the result of any dealings or acts of such party. Each party hereby agrees to indemnify, defend, protect and hold the other parties harmless from and against any claims, losses and liabilities, including attorneys' fees, expert witness fees and costs, which may arise by reason of any alleged acts or dealings of the indemnifying party inconsistent with the representation and warranty made herein.

6.3 No Encumbrances. Museum may not encumber the property or any portion thereof to secure a promissory note or any other obligation of Museum.

7. THE CLOSING

7.1 Escrow. Upon execution hereof by the parties, this Agreement shall constitute not only the agreement of transfer among the parties, but also instructions to Escrow Agent for the consummation of this Agreement through an escrow (Escrow) administered by Escrow Agent.

7.2 General Provisions. Escrow Agent is authorized and instructed to conduct the Escrow in accordance with this Agreement, applicable law, custom and practice of the community in which Escrow Agent is located, including any reporting requirements of the Internal Revenue Code and California Revenue and Taxation Code. The parties shall execute such additional general provisions and other instructions as may reasonably be requested by Escrow Agent in order to consummate this transaction, provided that the same are not inconsistent with this Agreement, the DA or the OPA.

7.3 Closing. Escrow Agent shall close the Escrow on the Close of Escrow by (a) filing for record the Grant Deed and such other documents as may be necessary to procure the Title Policies described below, and (b) delivering funds and documents as set forth in this Agreement, WHEN AND ONLY WHEN each of the following conditions has been satisfied:

7.3.1 Documents and Funds. All documents and funds required by Article 3 have been delivered to Escrow Agent.

7.3.2 Conditions Precedent. Each of the conditions precedent set forth in Article 4 has been, or upon such closing will be, satisfied or waived.

7.3.3 Title Policies. Escrow Agent has procured, or can procure, the following title insurance policies for the City and the Museum, respectively:

(a) For the Museum, the Title Company's ALTA extended coverage owner's policy of title insurance (Owner's Policy), with liability in an amount of \$5,000,000, insuring that fee title to the Property all vests in Museum; and;

(b) A separate policy for City in the same amount insuring City's rights under the City Option (Optionee's Policy, and together with the Owner's Policy, the Title Policies).

7.4 Early Closing. If all of the conditions precedent set forth in Article 4 above become satisfied or waived at a date earlier than the July 20, 2004, then Escrow Agent shall close the Escrow at such earlier date.

7.5 Late Closing. If Escrow Agent cannot close the Escrow on or before July 20, 2004, it will, nevertheless, close the Escrow when all conditions have been satisfied or waived, notwithstanding that one or more of such conditions has not been timely performed unless Escrow Agent receives a written notice to terminate the Escrow and this Agreement from a party who, at the time such notice is delivered, is not in default hereunder. The right to terminate the Escrow and this Agreement shall be optional, not mandatory. No delay in the giving of such notice shall affect the rights hereunder of the party giving the same.

7.6 Termination Procedures. Escrow Agent shall have no liability or responsibility for determining whether or not a party giving a notice of termination is or is not in default hereunder. Within two (2) working days after receipt of such notice from a party, Escrow Agent shall deliver a copy of such notice to the other parties. Unless written objection to the termination of the Escrow is received by Escrow Agent within ten (10) days after Escrow Agent delivers such notice to the other parties, Escrow Agent shall forthwith terminate the Escrow and return all funds, documents and other items held by it to the party depositing same, except that Escrow Agent may retain such documents and other items usually retained by escrow agents in accordance with standard escrow termination procedures and practices, and may deduct from any cash or other funds held by it, a sum sufficient to pay its escrow termination charges in full. If written objection to the termination of the Escrow is delivered to Escrow Agent within such ten (10) day period, Escrow Agent is authorized to hold all funds, documents and other items delivered to it in connection with the Escrow and may, in Escrow Agent's sole discretion, take no further action until otherwise directed, either by the parties' mutual written instructions or final order of a court of competent jurisdiction.

7.7 Retention of Rights. Neither (a) the exercise of the right of termination, (b) delay in the exercise of such right, (c) the failure to object to a termination, nor (d) the return of funds, documents or other items, shall affect the right of any party to pursue legal remedies for any other party's breach of this Agreement (including, without limitation, damages for the payment of all or any portion of Escrow Agent's escrow termination charges). Nor shall the termination of the Escrow or this Agreement in any way constitute a termination or amendment of the DA or OPA or of any of the parties' rights or obligations thereunder.

7.8 Possession. Possession of the Property shall be given to Museum at the Closing, free and clear of all leases, tenancies and other rights of occupancy, and also free and clear of all liens and encumbrances other than those expressly permitted herein.

8.

PRORATIONS, FEES AND COSTS

8.1 Prorations. Escrow Agent shall prorate real property taxes and assessments as of the close of Escrow, based upon the latest available tax bills. The Museum and the City are both exempt from being subject to real property taxes.

8.2 Catellus' Charges. Catellus shall pay (a) the County Documentary Transfer Tax related to the Grant Deed, in the amount Escrow Agent determines to be required by law, (b) one-half of Escrow Agent's escrow fee or escrow termination charge, (c) usual transferor's charges related to the Grant Deed, and (d) 50% of any other costs, prorations, expenses and adjustments. Catellus is also responsible for the payment of 50% of the cost for the Title Policies (excluding any endorsements thereto).

8.3 Museum's Charges. The Museum shall pay (a) any County Documentary Transfer Tax related to the Amtrak Lease, in the amount determined to be required by law, (b) one-half of Escrow Agent's escrow fee or escrow termination charge, (c) 50% of the cost for the Title Policies, (d) the cost of any endorsements on the Owner's Policy requested by the Museum and (e) 50% of any other costs, prorations, expenses and adjustments.

8.4 City's Charges. The City shall pay the cost of any additional endorsements on the Optionee's Policy requested by the City. The parties acknowledge that the City does not currently expect to request any additional endorsements.

8.5 Utility Charges. Escrow Agent shall have no concern with, or liability or responsibility for, this Section 8.5. Charges for utilities (including, without limitation, water, sewer, electricity, gas and telephone charges) shall be prorated within sixty (60) days after the Close of Escrow, based on the most recent bills available for such services. Catellus shall pay for all such services to the Property for all periods before the Close of Escrow. The Museum shall pay for all such services to the Property for all periods from and after the Close of Escrow.

9.

**FURTHER REQUIREMENTS OF AMTRAK LEASE
AND EFFECT OF NO AMTRAK LEASE**

9.1 Notwithstanding any other provision of this Agreement, Amtrak, City and Agency have not yet concluded negotiations of the Amtrak Lease. Any Amtrak Lease to be executed by Museum and Amtrak must be substantially in the form of Exhibit D or otherwise acceptable to Museum, Amtrak, City and Agency, and shall be consistent with the other provisions of this Agreement. If the Amtrak Lease is not executed by Museum and Amtrak, then the following shall be effective with respect to the terms of this Agreement:

(i) The \$150,000 payment required to be paid by Museum to Agency pursuant to paragraph 2 of Section 10.22 shall be reduced to \$90,000; and

(ii) Museum (not Amtrak) shall be responsible for the maintenance of the 16' pathway described as an Amtrak obligation in the first paragraph of Section 10.22, except that the 16' pathway shall be used only for pedestrian purposes.

10.

MUSEUM OBLIGATIONS FOR BENEFIT OF CITY:

10.1 No Catellus or Escrow Agent Responsibility. Neither Escrow Agent nor Catellus shall have any concern with, or responsibility or liability for, the matters set forth in this Section 10.

10.2 Uses. Museum will continuously operate a contemporary art museum featuring exhibitions and public programs exploring contemporary art forms and media (consistent with the activities and events conducted at Museum's La Jolla or downtown facilities), and for such other purposes as may be approved in writing by the City and for no other purpose whatsoever. That portion of the New Museum Building to be constructed on the REA site which the City consents to be leased to Amtrak is exempted from this exclusive use provision during the term of Amtrak's lease.

10.3 Related Council Actions. Neither City nor the Council of City is obligating itself to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to development or operation of the Property, except that City has given permission, subject to Museum's compliance with the provision of the next sentence, to Museum to construct the New Museum Building on the REA site. Discretionary action includes but is not limited to issues which may be required for the development and operation of the premises in accordance with applicable laws or governmental regulations.

10.4 Competent Management. Museum shall provide competent management of the Property. For the purposes of this paragraph, "competent management" shall mean demonstrated ability in the management and operation of a contemporary art museum and the operation, maintenance and repair of the Baggage Building and the New Museum Building, and related activities in a fiscally responsible manner.

10.5 Operation of Property. A regular schedule of days and hours of operation shall be established by Museum to serve the public. The initial schedule is intended to provide for the Museum to be open to the public at least six days a week with evening hours at least four evenings per month, but this schedule is subject to modification by Museum. The Museum will feature an active and innovative program of contemporary art exhibitions, artists' residencies and commissioned projects, and educational activities for adults and children. Programming options will include changing installation of works from Museum's permanent collection or temporary exhibitions borrowed from other museums, large community-wide celebrations, film showings or poetry readings, musical performances and free tours for school children. Museum will engage in active, multi-disciplinary interpretive programs that include partnerships with local arts and education organizations. Docents will be available year-round to offer special tours of exhibitions, including labels and ancillary texts in English and Spanish. Museum anticipates that

there will be on-going, year-round series of special events, performances, educational programs, exhibition openings, and other well-publicized and well-attended activities to enliven the space and surrounding area, day and night, weekdays and weekends. Museum shall diligently and in a creditable manner furnish services to the public in conformity with all existing applicable rules and regulations of the City. These provisions do not apply to the premises leased to Amtrak.

10.6 Rates and Charges. Admission fees charged by Museum shall be reasonable in the opinion of the City and comparable with those charged at similar facilities in San Diego County. The current anticipated adult admission fee will be \$6.

10.7 Political Activities. The Property shall be used exclusively for the purposes specified herein. The Property shall not be used for working or campaigning for the nomination or election of any individual to any public office, be it partisan or nonpartisan. Provided, however, that Museum shall not be precluded from providing a forum for open public debate by candidates such as occurs at a "candidate forum" and similar events.

10.8 Public Use. Museum shall not discriminate with respect to the general public's access to the Property. Museum may develop reasonable restrictions for the facility use provided they are consistent with the rights of the general public and are designed to allow Museum to use the Property for the purposes specified herein. Museum agrees that all activities conducted on the Property will be consistent with the provisions of this Agreement.

10.9 Indemnity. Museum agrees to defend, indemnify, protect, and hold the City, Agency, CCDC and their agents, officers, and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to Museum's employees, invitees, guests, agents, or officers, which arise out of or are in any manner directly or indirectly connected with Museum's development or operation of the Property or the work and operations to be performed under this Agreement, and all expenses of investigating and defending against same; provided, however, that Museum's duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of the City, Agency, CCDC and their agents, officers, or employees.

10.10 Insurance. Museum shall take out and maintain at all times the following insurance at its sole expense:

- (1) Public liability and property damage insurance in the amount of not less than Three Million Dollars (\$3,000,000) Combined Single Limit Liability with an occurrence claims form. This policy shall cover all injury or damage, including death, suffered by any party or parties from acts or failures to act by City or Museum or by authorized representatives of City or Museum on or in connection with the use or operation of the Property.

(2) Fire, extended coverage, and vandalism insurance policy on all insurable property on the Property in an amount to cover 100 percent of the replacement cost. Any proceeds from a loss shall be payable jointly to City and Museum. The proceeds shall be placed in a trust fund to be reinvested as needed in rebuilding or repairing the damaged property. If there are excess proceeds (which Museum believes will not be the case), City shall be entitled to them.

Museum's responsibility to maintain said insurance also includes the following:

(1) Additional Insureds. All insurance policies will name City, Agency and CCDC as additional insureds, protect City, Agency and CCDC against any legal costs in defending claims, and will not terminate without sixty (60) days' prior written notice to City. All insurance companies must be satisfactory to City and licensed to do business in California. All policies will be in effect when the Museum opens, except "course of construction fire insurance" shall be in force on commencement of all authorized construction on the Property, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. A current copy of the insurance policy will remain on file with City during the entire period of Museum's ownership. At least thirty (30) days prior to the expiration of each policy, Museum shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets these requirements.

(2) Modification. City may require reasonable revisions of amounts and coverages at any time by giving Museum sixty (60) days' prior written notice. City's requirements shall be designed to assure protection from and against the kind and extent of risk existing on the Property. Museum also agrees to obtain any additional insurance required by City for new improvements, in order to meet the requirements of this Agreement.

(3) Accident Reports. Museum shall report to City any accident or event causing more than Ten Thousand Dollars (\$10,000) worth of property damage or any serious injury to persons on the Property. This report shall contain the names and addresses of the parties involved, a statement of the circumstances, the date and hour, the names and addresses of any witnesses, and other pertinent information.

(4) Failure to Comply. If Museum fails or refuses to take out and maintain the required insurance or fails to provide the proof of coverage, City has the right to obtain the insurance. Museum shall reimburse City for the premiums paid with interest at the maximum allowable legal rate then in effect in California. City shall give notice of the payment of premiums within thirty (30) days of payment stating the amount paid, names of the insurer(s), and rate of interest. Said reimbursement and interest shall be paid by Museum on the first (1st) day of the month following the notice of payment by City.

10.11 Waste, Damage, or Destruction. Museum agrees to give notice to City of any fire or other damage that may occur on the Property within ten (10) days of such fire or damage.

Museum agrees not to commit or suffer to be committed any waste or injury or any public or private nuisance, to keep the Property clean and clear of refuse and obstructions, and to dispose of all garbage, trash, and rubbish in a manner satisfactory to City. If the Property shall be damaged by any cause which puts the Property into a condition which is not decent, safe, healthy, and sanitary, Museum agrees to make or cause to be made full repair of said damage and to restore the Property to the condition which existed prior to said damage; or, at City's option, Museum agrees to clear and remove from the Property all debris resulting from said damage and rebuild the Property in accordance with plans and specifications previously submitted to City and approved in writing in order to replace in kind and scope the operation which existed prior to such damage, using for either purpose the insurance proceeds as set forth above.

Museum agrees that preliminary steps toward performing repairs, restoration, or replacement of the Property shall be commenced by Museum within thirty (30) days, and the required repairs, restoration, or replacement shall be completed within a reasonable time thereafter.

10.12 Entry and Inspection. City reserves and shall always have the right, but not the obligation, to enter Property for the purpose of viewing and ascertaining the condition of the same, or to inspect the operations conducted thereon. In the event that such entry or inspection by City discloses that Property is not in a decent, safe, healthy, and sanitary condition, City shall have the right, but not the obligation, after ten (10) days' written notice to Museum, to have any necessary maintenance work done at the expense of Museum, and Museum hereby agrees to pay promptly any and all costs incurred by City in having such necessary maintenance work done, in order to keep its Property in a decent, safe, healthy, and sanitary condition. Further, if at any time City determines that the Property is not in a decent, safe, healthy, and sanitary condition, City may at its sole option, without additional notice, require Museum (but not Amtrak, as the lessee) to file with City a faithful performance bond to assure prompt correction of any condition which is not decent, safe, healthy, and sanitary. Said bond shall be in an amount adequate in the opinion of City to correct the said unsatisfactory condition. Museum shall pay the cost of said bond. The rights reserved in this Section shall not create any obligations on City or increase obligations elsewhere in this Agreement imposed on City.

10.13 Maintenance. Museum agrees to assume full responsibility and cost for the operation and maintenance of the Property. Museum shall make all repairs and replacements necessary to maintain and preserve the Property in a decent, safe, healthy, and sanitary condition satisfactory to City and in compliance with the Development Plan described in Section 10.21, Development Plans, and with all applicable laws. The obligations imposed on Museum pursuant to this subsection shall include the maintenance of the exterior of the façade of the Baggage Building.

10.14 Facade Protection. Museum shall be required to maintain, preserve and protect the exterior facade of the Baggage Building (so as to preserve its historic appearance). This obligation shall remain in effect for a maximum of two years after the City becomes the fee owner of the Baggage Building, pursuant to the City Option Agreement to be entered into concurrently with the Close of Escrow, subject to the City's using its best efforts to obtain a new

tenant or occupant of the Baggage Building. The exterior facade shall be kept in good condition and repair, as an obligation running with the land and appurtenant to the fee ownership of Parcel 3. Nothing herein modifies or alters in any way the obligations of Catellus under Section A.6 of Revised Attachment C-1 to the DA, specifically including, without limitation, Catellus's agreement to guarantee the preservation and maintenance of the exterior facades of the Baggage Building.

10.15 Improvements/Alterations. No improvements, structures, or installations shall be constructed on the Property, and the Property may not be altered by Museum without prior written approval of the City. Further, Museum agrees that major structural or architectural design alterations to any improvements, structures, or installations (other than art) may not be made on the Property without prior written approval by the City and that such approval shall not be unreasonably withheld. This provision shall not relieve Museum of any obligation under this Agreement to maintain the Property in a decent, safe, healthy, and sanitary condition, including structural repair and restoration of damaged or worn improvements. City shall not be obligated by this Agreement to make or assume any expense for any improvements or alterations.

10.16 Utilities. Museum agrees to order, obtain, and pay for all utilities and service and installation charges in connection with the development and operation of the Property. All utilities will be installed underground.

10.17 Liens. Museum shall at all times save City free and harmless and indemnify City against all claims for labor or materials in connection with operations, improvements, alterations, or repairs on or to the Property and the costs of defending against such claims, including reasonable attorney's fees.

If improvements, alterations, or repairs are made to the Property by Museum or by any party other than City, and a lien or notice of lien is filed, Museum shall within five (5) days of such filing either:

- a. take all actions necessary to record a valid release of lien, or
- b. file with City a bond, cash, or other security acceptable to City sufficient to pay in full all claims of all persons seeking relief under the lien.

10.18 Taxes. Museum agrees to pay, before delinquency, all taxes, assessments, and fees assessed or levied upon Museum or the Property, including the land, any buildings, structures, machines, equipment, appliances, or other improvements or property of any nature whatsoever erected, installed, or maintained by Museum or levied by reason of the business or other Museum activities related to the Property, including any licenses or permits. Museum recognizes and agrees that it may be subject to a possessory interest subject to property taxation, and that Museum may be subject to the payment of taxes levied on such interest, and that

Museum shall pay all such possessory interest taxes. Museum is acknowledged by City to be a 501(c)(3) organization, and thus exempt.

10.19 Signs. Museum agrees not to erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising without complying with City's requirements; this provision does not, however, apply to works of art. If any such unauthorized item is found on the Property, Museum agrees to remove the item at its expense within 24 hours notice thereof by City, or City may thereupon remove the item at Museum's cost.

10.20 Unavoidable Delay. If the performance of any act required of City or Museum is directly prevented or delayed by reason of strikes, lockouts, labor disputes, unusual governmental delays, acts of God, fire, floods, epidemics, freight embargoes, or other causes beyond the reasonable control of the party required to perform an act, said party shall be excused from performing that act for the period equal to the period of the prevention or delay. In the event Museum or City claims the existence of such a delay, the party claiming the delay shall notify the other party in writing of such fact within ten (10) days after the beginning of any such claimed delay.

10.21 Development Plans. Museum agrees to develop the Property in substantial accordance with the Basic Concept/Schematic Drawings submitted to and approved by City and as documented in, and subject to the conditions of Centre City Development Permit/Local Coastal Permit No. 41-0560. Such Basic Concept/Schematic Drawings have been revised and may be further revised by mutual agreement of City and Museum, as long as such revisions are consistent with Centre City Development Permit/Local Coastal Permit No. 41-0560. Museum shall diligently pursue after the Close of Escrow the obtaining of all permits, and shall commence construction of its improvements on the Property within 60 days after the permits are obtained (but in all events within 180 days of the Close of Escrow) and shall proceed diligently to complete all improvements in accordance with Centre City Development Permit/Local Coastal Permit No. 41-0560 within 30 months of the Close of Escrow.

10.22 Public Access Improvements in B Street. The parties acknowledge that it is a goal of the Agency to install a public pathway and landscaping between Kettner Boulevard and the Transit Courtyard within the vacated B Street right of way. The parties acknowledge that each will cooperate with the Agency to achieve this objective (as will Amtrak, as required by the Amtrak Lease). The Preliminary Plan for the B Street Pathway improvements is attached hereto as Exhibit K. The Preliminary Plan illustrates a non-exclusive Public Pedestrian Easement granted to the City by the Museum over and across the northerly 8' of the Property and a non-exclusive Public Pedestrian Easement requested by the City from TWELVE O TWO KETTNER LLC, owner of Assessor's Parcel No. 533-395-02 (the "Adjacent Owner"), for the southerly 8' of such Adjacent Owner's property. Further, the Preliminary Plan illustrates a non-exclusive Limited Vehicular Access Easement which may be granted by the Adjacent Owner to Amtrak for the southerly 8' of such Adjacent Owner's property; Museum shall permit Amtrak, if Amtrak is its Lessee, to use the northerly 8' of its Property for non-exclusive limited vehicular access as

provided in the Amtrak Lease, and such Lease shall require that Amtrak maintain the combined 16' pathway (such maintenance to include sweeping, removal of trash, and cleaning [including the removal of oil stains and the like], repairing and reconstructing the pavers as necessary to keep the pathway in a safe, clean and attractive condition). Within the 16' of Public Pedestrian Easement area (if such 16' is secured in easement by the Agency) the Agency will install a 16' paved pathway and the Preliminary Plan illustrates additional paving and landscaping to be installed by the Agency adjacent to the 16' pathway within the Property and within Assessor Parcel No. 533-395-02.

Within ten days of the Agency's request, but in any event not sooner than the Close of Escrow, the Museum shall timely execute and deliver to the Agency the following documents (which shall be recorded by the Agency either at the conveyance of the Property from Catellus to the Museum or by separate instruments recorded subsequently), (1) the non-exclusive Public Pedestrian Easement which will be granted to the City substantially in the form attached hereto as Exhibit L affecting the northerly 8' of the Property, (2) a Right of Entry substantially in the form attached hereto as Exhibit M affecting the northerly 22' of the Property (but excluding the northerly 8' of the Property which is subject to the Easement) providing access to the Agency for the Agency's installation of the additional paving and landscaping implementing the B Street Pathway, and (3) a Covenant to Maintain Paving and Landscaping substantially in the form attached hereto as Exhibit N affecting the northerly 22' of the Property (but excluding the northerly 8' which is subject to the Easement). Museum shall also pay to Agency \$150,000 to assist Agency in the funding of the improvements as contemplated on Exhibit K; Agency shall fund all amounts required to construct and install such improvements.

The Agency intends to enter into an agreement with the Adjacent Owner providing for (1) the demolition of the existing exterior stairway and its reconstruction (and site improvements related thereto) within the northerly half of vacated B Street, without which the Agency would be unable to construct the B Street Pathway improvements, as they are shown on Exhibit K, (2) the Adjacent Owner's agreement to permit such demolition/reconstruction work in accordance with plans and a schedule approved by the Agency, and (3) the Adjacent Owner's execution and delivery to the Agency of documents substantially similar to Exhibits L, M and N but pertaining to the southerly 22' of Adjacent Owner's property, and (4) the Adjacent Owner's execution and delivery to Amtrak of a non-exclusive Limited Vehicular Access Easement substantially similar to Exhibit Q, if Amtrak is a Lessee of the Museum in the REA Site.

It shall be the responsibility of the Agency to develop the final construction drawings for the improvements and landscaping implementing the B Street Pathway in consultation with the Museum and Adjacent Owner (and Amtrak, if Amtrak is a Lessee of the Museum in the REA Site). If Agency is unsuccessful in its efforts to obtain the cooperation of Adjacent Owner as contemplated by the provisions of this section 10.22, or if Agency decides to proceed in some other manner with respect to the B Street Pathway improvements, Agency has the right to cause Museum to provide it with documents in recordable form similar to Exhibits N, O and P, but pertaining to other locations within the northerly 22' of the Property.

10.23 Hazardous/Toxic Waste. Museum will not allow the installation of additional underground storage tanks or release of hazardous substances in, on, under, or from the Property. For the purposes of this provision, a release shall include but not be limited to any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leeching, dumping, or otherwise disposing of hazardous substances. "Hazardous substances" shall mean those hazardous substances listed by the Environmental Protection Agency in regularly released reports and any other substances incorporated into the State's list of hazardous substances. A copy of the presently effective EPA and the State lists is on file in the Office of the City Clerk as Document 769704 and by this reference is incorporated herein.

In the event of any release of a hazardous substance, Museum shall be responsible for all costs of remediation and removal of such substances in accordance with all applicable rules and regulations of governmental authorities.

Museum agrees to assume the defense of, indemnify, and hold City and Agency harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from Museum's construction activities and operations on the Property, including but not limited to costs of environmental assessments, costs of remediation and removal, any necessary response costs, damages for injury to natural resources or the public, and costs of any health assessment or health effect studies.

If Museum knows or has reasonable cause to believe that any hazardous substance has been released on or beneath the Property, Museum shall give written notice to the City within ten (10) days of receipt of such knowledge or cause for belief. Provided, however, if Museum knows or has reasonable cause to believe that such substance is an imminent and substantial danger to public health and safety, Museum shall notify the City immediately upon receipt of this knowledge or belief and shall take all actions necessary to alleviate such danger. Museum will notify the City immediately of any notice of violation received or initiation of environmental actions or private suits relative to the Property. In addition, Museum and Museum's lessee shall not utilize or sell any hazardous substance on the property without the prior written consent of City.

10.24 Asbestos Disclosure. Catellus discloses to Museum that portions of the structural components of the Property may have contained asbestos, which Catellus has caused to be removed. Museum acknowledges having received notice from Catellus of the former presence of such asbestos in accordance with Health and Safety Code Section 25915. Museum shall, to the extent required, disclose the former existence of asbestos on the Property, as required by Health and Safety Code Section 25915. Museum agrees to indemnify and hold City and Agency harmless from any loss or claim which may result from the existence of asbestos on the Property.

10.25 Hazardous Materials Disclosure. Catellus discloses to Museum that portions of the structural components of the Property may have contained hazardous materials, which Catellus has removed or encapsulated. Museum acknowledges having received notice from Catellus of the former presence of such hazardous materials in accordance with Health and

Safety Code Section 25915. Museum shall, to the extent required, disclose the former existence of hazardous materials on the Property, as required by Health and Safety Code Section 25915. Museum agrees to indemnify and hold City and Agency harmless from any loss or claim which may result from the existence of hazardous materials on the Property.

10.26 Compliance with Law. Museum shall at all times in the construction, maintenance, occupancy, and operation of the Property comply with all applicable laws, statutes, ordinances, and regulations of City, county, state, and federal governments at Museum's sole cost and expense. In addition, Museum shall comply with any and all notices issued by the City or his authorized representative under the authority of any such law, statute, ordinance, or regulation.

10.27 Nondiscrimination. Museum agrees not to discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability in Museum's use of the Property, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.

10.28 Relocation Payments. Museum understands and agrees that it shall not be entitled to any relocation payment whatsoever upon termination of this Agreement.

10.29 Survival. The provisions of Section 10 survive the Closing.

11.

GENERAL PROVISIONS

11.1 Assignment.

11.1.1 **By Catellus.** This Agreement may not be assigned by Catellus without the prior written consent of all other parties hereto, except that Catellus may assign this Agreement, without any further consent, to a party to whom Catellus has assigned all or any relevant interest in the DA and OPA, in full compliance with the requirements for such an assignment under the DA and OPA (including, without limitation, any requirements therein for approval by the City and the Agency).

11.1.2 **By Other Parties.** Except as provided in Section 11.1.1 above, this Agreement may not be assigned by any party hereto without the prior written consent of all other parties hereto.

11.2 Force Majeure. The performance by any party under this Agreement shall not be deemed to be in default where delays are due to war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargos, lack of transportation, governmental restrictions or priority (other than that such restrictions or priority adopted by the City shall not excuse performance by the City, and such restrictions or priority adopted by the Agency shall not excuse performance by the

Agency), litigation, unusually severe weather, inability to secure necessary labor, materials or tools, delays of any contractor, subcontractor or suppliers, acts of the other parties, acts or failure to act of the City or Agency or any other public or governmental agency or entity (other than that acts or failure to act by the City shall not excuse performance by the City, and acts or failure to act by the Agency shall not excuse performance by the Agency), or any other causes beyond the control or without the fault of the party claiming an extension of time to perform.

11.3 Attorneys' Fees. In the event of any litigation or arbitration among the parties, or any of them, concerning this transaction, the prevailing party shall be entitled to recover from the other parties its reasonable attorneys' fees, expert witness fees and costs.

11.4 Prior Agreements. This Agreement supersedes any and all prior agreements between Catellus and the Museum regarding the Property. This Agreement does not, however, in any way supercede or amend the DA or OPA.

11.5 Amendments. No modification, waiver, amendment, discharge or change of this Agreement shall be valid unless the same is in writing and signed by all of the parties to this Agreement.

11.6 Pronouns. The use herein of (a) the neuter gender includes the masculine and the feminine, and (b) the singular number includes the plural, whenever the context so requires.

11.7 Captions. Captions in this Agreement are inserted for convenience of reference only and do not define, describe or limit the scope or intent of this Agreement or any of the terms hereof.

11.8 Exhibits. All exhibits referred to herein and attached hereto are incorporated herein by reference. The Exhibits are as follows:

Exhibit A	Legal Description of Baggage Building Site and REA Site
Exhibit B	Legal Description of Breezeway
Exhibit C	Form of City Option Agreement
Exhibit D	Amtrak Lease
Exhibit E	Form of Grant Deed
Exhibit F	Form of Maintenance Covenant
Exhibit G	Form of Breezeway Easement Grant Deed
Exhibit H	Form of Façade Easement
Exhibit I	Intentionally Deleted
Exhibit J	Intentionally Deleted
Exhibit K	Preliminary Plan for the Vacated B Street Pathway Improvements
Exhibit L	Form of Public Pedestrian Easement (affecting the northerly 8' of the Property)
Exhibit M	Form of Right of Entry (affecting the northerly 22' of the Property)
Exhibit N	Form of Covenant to Maintain Paving and Landscaping (affecting the southerly 14' of the northerly 22' of the Property)

IN WITNESS WHEREOF, this Agreement has been executed by the parties as of the date described in Section 11.14 above.

Date: 6-18-04, 2004

CATELLUS OPERATING LIMITED PARTNERSHIP, a Delaware limited partnership (as successor by merger to Catellus Development Corporation, a Delaware corporation)

By: Catellus Development Corporation, a Delaware corporation (formerly known as Catellus SubCo, Inc., a Delaware corporation), its sole general partner

By: Catellus Urban Development Corporation, a Delaware corporation, as its Agent

By: [Signature]
Name: Tim Carey
Executive Vice President,
Urban Development

Date: July 1, 2004

CITY OF SAN DIEGO, a municipal corporation of the State of California

By: [Signature]
Name: P. Lamont Ewell
Title: City Manager

APPROVED:

CASEY GWINN
City Attorney

By: [Signature]
Name: _____
Title: _____

Date: 7/2/04, 2004

REDEVELOPMENT AGENCY OF THE CITY OF
SAN DIEGO, a public body corporate and politic of the
State of California

By: [Signature]
Name: Mark C. Cuddipham
Title: Assistant Executive Director

APPROVED:

CASEY GWINN
~~City Attorney~~ General Counsel

By: [Signature]
Name: _____
Title: _____

APPROVED:

KANE, BALLMER & BERKMAN
Agency Special Counsel

By: [Signature]
Name: _____
Title: _____

Date: June 29, 2004

MUSEUM OF CONTEMPORARY ART, SAN
DIEGO, a California non-profit public benefit
corporation

By: [Signature]
Name: _____
Title: President

Exhibit "A"

All that certain real property situated in the County of San Diego, State of California, described as follows:

Parcel A: Baggage Building Fee Parcel

Being all of Parcel 3 of Parcel Map No. 19378, in the City of San Diego, County of San Diego, State of California, filed in the Office of the County Recorder of San Diego County, November 26, 2003 as File No. 2003-1418318 of Official Records, together with that portion of Kettner Boulevard (formerly Arctic Street) as said street is dedicated to Public use, which upon closing would revert, by operation of law, to the above described land.

Parcel B: REA Site Fee Parcel

Being all of Parcel 4 of Parcel Map No. 19378, in the City of San Diego, County of San Diego, State of California, filed in the Office of the County Recorder of San Diego County, November 26, 2003 as File No. 2003-1418318 of Official Records, together with that portion of Kettner Boulevard (formerly Arctic Street) as said street is dedicated to Public use, which upon closing would revert, by operation of law, to the above described land.

Assessor's Parcel Number: **[533-472-02] (Portion)**

Exhibit 'B'

LEGAL DESCRIPTION OF BREEZEWAY

BEING A PORTION OF PARCEL 2 OF PARCEL MAP NO. 19378, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

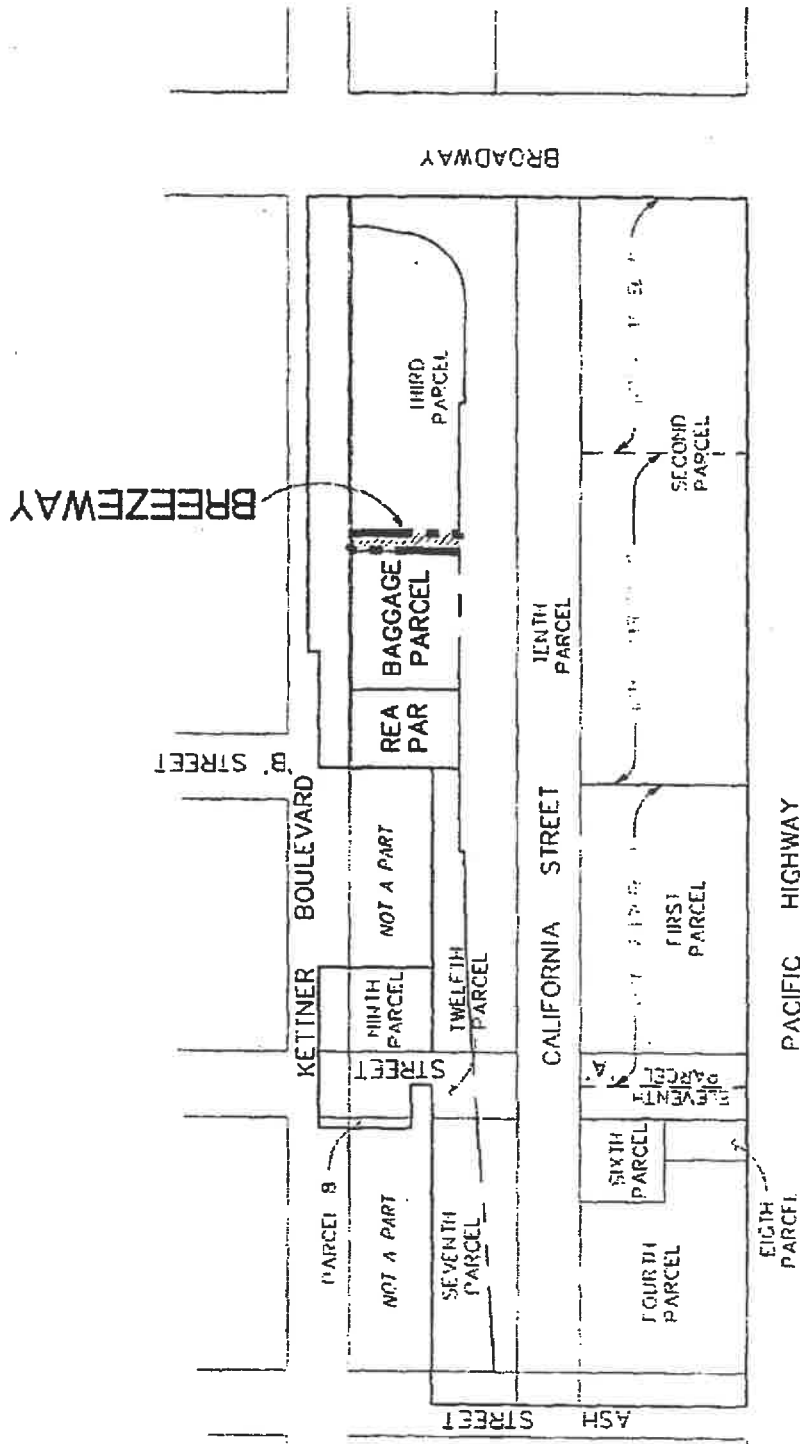
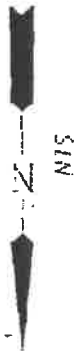
BEGINNING AT THE NORTHEAST CORNER OF SAID PARCEL 2; THENCE SOUTHERLY ALONG THE EASTERLY LINE THEREOF, SOUTH 00°32'19" WEST, 16.55 FEET, TO A LINE BEING THE EASTERLY PROJECTION OF THE NORTHERLY FACE OF THE EXIST DEPOT BUILDING; THENCE ALONG SAID LINE, NORTH 89°20'16" WEST, 128.32 FEET TO THE INTERSECTION WITH THE EASTERLY LINE OF THAT CERTAIN EASEMENT AGREEMENT BY AND BETWEEN CAPELLUS DEVELOPMENT CORPORATION AND THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY RECORDED JANUARY 9, 1991 AS FILE NO. 1991-0010998 OF OFFICIAL RECORDS, SAID EASTERLY LINE BEING THE COMMON LINE BETWEEN PARCEL 1 AND PARCEL 2 OF SAID PARCEL MAP NO. 19378; THENCE NORTHERLY ALONG SAID COMMON LINE, NORTH 00°32'19" EAST, 16.27 FEET TO THE NORTHWEST CORNER OF SAID PARCEL 2; THENCE ALONG THE NORTHERLY LINE THEREOF, SOUTH 89°27'50" EAST, 128.32 FEET TO THE POINT OF BEGINNING.

CONTAINS 0.048 ACRES, 2106 SQ.FT. MORE OR LESS.



Peter C. Golding 12-4-03
PETER C. GOLDING DATE
LS 4768
EXPIRATION DATE 03/31/04

EXHIBIT 'B'
 SANTA FE DEPOT
 BREEZEWAY EXHIBIT



PROJECT DESIGN CONSULTANTS
 PLANNING • ENVIRONMENTAL • ENGINEERING • SURVEYING
 701 N. Street, Suite 800, San Diego, CA 92101
 619-515-1471 FAX 619-515-0101

EXHIBIT C
CITY OPTION

THIS CITY OPTION (Option) is made as of July __, 2004 ("Effective Date"), between Museum of Contemporary Art, San Diego (Museum) and City of San Diego (City), who agree as follows:

1. Recitals. This Option is made with reference to and in contemplation of the following facts and circumstances:

1.1 Pursuant to a Transfer Agreement and Escrow Instructions among Catellus Operating Limited Partnership, City, Redevelopment Agency of the City of San Diego and Museum executed concurrently herewith (Transfer Agreement), Museum will become the owner of certain real property described on Exhibit I (Property).

1.2 City wants to reserve the right to acquire the Property (a) in the event Museum commits a Default (as defined in 1.3) under the Option; or (b) on or after July 31, 2091.

1.3 A Default is the failure of Museum to perform any substantive covenant or condition required by the Transfer Agreement to be performed by Museum, without curing such failure within thirty days following the receipt of written notice from City specifying such failure to perform (or if such failure to perform is not curable within thirty days, if Museum shall not commence the necessary actions to cure such failure within said thirty day period and thereafter diligently pursue such cure to completion). Any failure of Museum to continuously operate for 60 days shall constitute a default.

2. Grant of Option.

2.1 Museum hereby grants to City an exclusive option to acquire fee title to the Property upon the provisions and conditions set forth in this Option.

3. Museum's Covenants. Museum hereby agrees that Museum will perform all of its obligations pursuant to the Transfer Agreement.

4. Exercise of Option. City may exercise the Option if the Museum commits a Default, or on or after July 31, 2091 by delivering written notice of exercise of the Option ("Notice of Exercise") to Museum as set forth in Paragraph 6 below.

5. Escrow Instructions. Concurrently with its delivery of the Notice of Exercise to Museum, City shall also deliver a copy to such escrow company with the offices in the City of San Diego as City may select. The escrow company shall prepare escrow instructions to be signed by City and Museum consistent with the following:

a. The Property shall be conveyed by Museum to City subject only to matters of record as of the acquisition of the Property by Museum plus any other matters of record which may have been approved by City.

Facsimile: (619) 702-6688
Email: rcaplan@scmv.com

If to Escrow Agent: Commonwealth Land Title Company
750 B Street, Suite 2350
San Diego, California 92101
Attn: Maureen Casey
Telephone: (619) 230-6340
Telecopier: (619) 233-4196
Email: mcasey@landam.com

7. Governing Law and Venue. This Option shall be governed and construed in accordance with the laws of the State of California. Sole and proper venue for any action related to this Option shall be in San Diego, California.

8. Entire Agreement. This Option, together with the exhibits attached hereto, constitute the entire agreement between the parties concerning the Option and supercede all prior agreements or undertakings with respect thereto.

9. Amendments. This Option may not be modified except by the written agreement of the parties.

10. Severability. In the event any one or more of the provisions contained in this Option are held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect any other provisions hereof, and this Option shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein.

11. Attorneys' Fees. If an action is brought to enforce or interpret the provisions of this Option, the prevailing party shall be entitled to recover its actual attorneys' fees and costs.

12. Time of the Essence. Time is expressly made of the essence with respect to the performance hereof.

13. Captions. Any paragraph headings or captions contained in this Option shall be for convenience of reference only and shall not affect the construction or interpretation of any provisions of this Option.

14. Further Acts. Each party shall perform any further acts and execute and deliver any additional documents which may be reasonably necessary in the opinion of either party to carry out the provisions of this Option.

[Signatures on next page]

MUSEUM OF CONTEMPORARY ART, SAN DIEGO

By: _____

By: _____

CITY OF SAN DIEGO

By: _____

EXHIBIT "I"

LEGAL DESCRIPTION OF PROPERTY

O:\5950\53445\Trans\Exhibits to Museum Trans agrmt\Exhibit C Option Option 05.doc

EXHIBIT D

AMTRAK LEASE

This Amtrak Lease ("Lease") is executed as of _____, 2004, between the Museum of Contemporary Art, San Diego, a California non-profit public benefit corporation, ("Museum") and National Railroad Passenger Corporation, a corporation organized and existing under National Rail Passenger Service Act and the laws of District of Columbia ("Amtrak") who agree as follows:

RECITALS

A. On or about July 20, 2004, Museum is acquiring pursuant to a Transfer Agreement and Escrow Instructions ("Transfer Agreement") by and between Catellus Operating Limited Partnership, a Delaware corporation (Catellus), the City of San Diego, a municipal corporation of the State of California (City), the Redevelopment Agency of the City of San Diego, a public body corporate and politic of the State of California (Agency), and Museum, the real property as set forth in Exhibit "A", attached hereto and made a part hereof, with the existing baggage building (Baggage Building) adjacent to the railway depot in San Diego, California and real estate, adjacent to and located north of the Baggage Building, and commonly known as the "REA Site" as also set forth on Exhibit A, to construct and thereafter operate, for uses ancillary to a museum, a building on the REA Site (New Museum Building). The legal description of the REA Site is Parcel 4 of Parcel Map No. 19378 filed in the Official Records of San Diego County, California on November 26, 2003 as File No. 2003-1418318. A form of this Lease (but different from this executed Lease) is Exhibit D to the Transfer Agreement.

B. The New Museum Building shall contain approximately 13,563 square feet.

C. Museum desires to lease and Amtrak desires to lease for railroad uses a portion of the New Museum Building, such portion to consist of approximately 2,755 square feet as set forth in Exhibit "B" attached hereto and made a part hereof (Premises).

D. The New Museum Building shall be constructed in accordance with plans and specifications to be prepared for Museum ("Plans") and within the time period designated by Museum ("Construction Schedule"). Such Plans and Construction Schedule are set forth on Exhibit "C" attached hereto and made a part hereof. Museum shall be required to provide at its own separate expense within the Premises only such improvements and finish items as are so designated in the Plans, which will include separate utility services for the Premises.

1. LEASE OF PREMISES

Museum hereby leases, as of the date of substantial completion of the New Museum Building, to Amtrak, and Amtrak leases from Museum, upon the provisions and conditions set forth herein, the Premises which consist of the space shown on Exhibit B. In addition, Amtrak shall have a non-exclusive right with Museum to access to Museum's loading area in the New Museum Building as follows: Amtrak's use of the Museum loading area is anticipated to be primarily for regular garbage removal service. Parking, storage, engine idling, and garbage storage by Amtrak in the loading area, arcade, landscaped areas, and the Public Pedestrian Walkway (as referred to herein) are prohibited. Amtrak's access to the Museum loading area for other purposes will be reasonably accommodated by the Museum by prior arrangement with the Museum. The Museum shall not have access to the exclusive Amtrak loading area located on the west side of the building.

2. TERM

The term of this Lease ("Term") shall commence when Museum notifies Amtrak that the Premises are available for occupancy ("Effective Date"), and expire on July 31, 2091 ("Expiration Date"). Museum shall provide to Amtrak prior to the Effective Date a certificate of occupancy (or other appropriate permission for Amtrak to occupy the Premises) plus a certification that the Premises have been substantially completed pursuant to the Plans. Notwithstanding the Term, Amtrak may at any time, by the giving of written notice to Museum, elect to terminate the Lease ninety (90) days after the giving of such notice ("Early Termination"). In the event of an Early Termination, Amtrak shall not be entitled to the return of any amounts paid to Museum.

3. RENT AND OTHER FINANCIAL OBLIGATIONS OF AMTRAK

A. Amtrak shall pay \$850,000 to Museum, as rental for the entire Term as follows:
[AMTRAK AND MUSEUM TO AGREE ON PAYMENT SCHEDULE, AND THE AMOUNT MAY HAVE TO BE INCREASED BECAUSE OF "BUILD OUT" REQUESTS AND AMTRAK'S REQUESTED GARBAGE AREA].

B. If Amtrak fails to make any payment of rent to Museum according to the schedule described in 3.A. above, then Amtrak shall be in default of this Lease, this Lease shall terminate and Amtrak shall thereafter have no rights to use or occupy the Premises.

4. USE

The Premises shall be used for any lawful purpose reasonably related to the operation of a railroad and Amtrak's business operations including but not limited to storage, maintenance, and related railroad purposes, and for no other use without the prior written consent of Museum.

Amtrak shall not do or permit anything to be done which will invalidate or increase the cost of any fire, extended coverage or other insurance policy covering the New Museum Building or Museum's property located therein. Amtrak shall not do or permit anything to be done in or about the Premises which in any way unreasonably interferes with the use by the Museum of the remainder of the New Museum Building as a museum and related uses (which includes, without limitation, the generation of a level of noise, odors, or vibrations incompatible with the operation of a museum) or which in any way will violate any of the obligations imposed on Museum under the Transfer Agreement. The 22' area immediately north of the New Museum Building owned by Museum is intended to be improved by the City with the southerly 14' thereof to be a landscaped and paved area (generally as shown in Exhibit K to the Transfer Agreement), and with the northerly 8' thereof (in conjunction with the southerly 8' of the adjacent owner's property, if such arrangements can be made) to be a Public Pedestrian Pathway (such reference to include all 16' as indicated). The Public Pedestrian Pathway can be utilized by Amtrak for limited vehicular ingress and egress consistent with the following: (1) no vehicle (other than an emergency vehicle such as a fire truck) using such vehicular ingress and egress shall be larger than nine feet wide and twenty-two feet long; (2) the Public Pedestrian Pathway shall be maintained by Amtrak (such maintenance to include sweeping, removal of trash, an cleaning [including the removal of oil stains and the like], repairing and reconstructing the pavers as necessary to keep the pathway in a safe, clean and attractive condition); and (3) no vehicle may be parked, and nothing can be stored or maintained (including without limitation trash containers) on any portion of the Public Pedestrian Pathway (or any portion of the landscaped area south of the Public Pedestrian Pathway, or the arcade to the east of the Premises (which is an area owned by Museum which it intends to use primarily for sculpture, art exhibitions and other Museum purposes). Amtrak

agrees, as a condition to the effectiveness of this Lease, that it will cooperate with Museum and Agency in providing easements and other documents that may be required to accommodate the arrangements ultimately made by City with respect to the Public Pedestrian Pathway (and related landscaped areas), which arrangements Amtrak acknowledges may differ from those contemplated by the foregoing provisions.

5. UTILITIES, SERVICES, MAINTENANCE AND CONSTRUCTION

A. Amtrak shall pay for all utilities and services for the Premises; Museum will arrange for same to be separately metered. Museum shall have no obligations with respect thereto, except to provide the services to the Premises as required by the Plans.

B. With respect to the New Museum Building Amtrak shall only be required to maintain the interior of the Premises. Museum shall maintain the remainder of the New Museum Building including without limitation the roof, windows, structural elements, exterior walls, plumbing, drainage, and sewage systems, and the loading area.

6. LIMITATION OF LIABILITY

This Lease is made upon the express condition that Museum shall be free from all liability and claims for damages, except those damages solely caused by the gross negligence of Museum, by reason of any injury to any person(s) or property of any kind, from any cause(s) in any way connected with the Premises or their use or occupancy thereof during the Term of this sublease or any extensions. Museum shall not be liable for the conduct of any other visitor to the Premises or the New Museum Building. Museum shall not be liable under any circumstances for consequential damages or damages or injury to Amtrak's business or potential business. Amtrak

shall not be liable for damages or injuries to portions (including the loading area) of the New Museum Building, other than the Premises, except those caused by Amtrak's negligence.

7. INDEMNITY

A. With the exception that this Lease shall in no event be construed to require indemnification by Amtrak to a greater extent than permitted by the laws and the public policy of the State of California or any applicable Federal law, and without in any manner limiting Museum's rights and remedies in the event of a breach of this Lease by Amtrak, Amtrak agrees to indemnify, defend, and hold harmless Museum, City and Agency, and their respective officers, agents, employees, affiliated parent and subsidiary companies, lenders, members, managers, successors and assigns (individually, "Indemnified Party" and collectively the "Indemnified Parties") from and against any and all claims, causes of action, liabilities, losses, costs, damages and/or expenses in law or equity (including, without limitation, attorneys' fees and expenses) of every kind and nature whatsoever (collectively, "Claims") arising out of or in connection with this Lease, the Premises, the New Museum Building, the Public Pedestrian Pathway, or the arcade, provided that the Claim (i) is based upon or relating to personal or bodily injury to or death of any person or persons, or damage to or loss of property of any kind whatsoever, including, without limitation, loss of use thereof, or the violation of any California law or regulation or any Federal law, and (ii) is caused in whole or in part by any act or omission to act or any willful misconduct by Amtrak, anyone directly or indirectly employed by Amtrak or anyone for whose acts Amtrak may be liable, regardless of whether such injury, death or damage is caused or contributed to by any act or omission to act by any Indemnified Party, anyone directly or indirectly employed by any Indemnified Party, or anyone for whose acts any Indemnified Party may be liable. Amtrak's obligation to indemnify and hold the Indemnified

Parties harmless shall apply with full force and effect regardless of any active and/or passive negligent act or omission by any Indemnified Party or its agents or employees and regardless of any concurrent negligence, whether active or passive, primary or secondary, by any Indemnified Party, by anyone directly or indirectly employed by any Indemnified Party, or by anyone for whose acts any Indemnified Party may be liable. However, Amtrak shall have no obligation to indemnify any Indemnified Party against liability for death, injury or damage or other loss, damage or expense arising solely from the negligence or willful misconduct of such Indemnified Party.

B. Museum shall indemnify, defend, and hold Amtrak harmless from any and all expenses, demands, actions, causes of action, claims, liability, loss, cost, or obligations, including actual attorneys' fees, relating to use of the New Museum Building (other than the Premises) by Museum and its employees, agents, and invitees, or anything done or allowed to be done by Museum and its employees, agents, and invitees in the New Museum Building (other than the Premises).

8. IMPROVEMENTS AND ALTERATIONS

Museum has made no promise to alter or improve the Premises and has made no representations concerning the condition thereof, except that Museum will require its general contractor to construct the New Museum Building in substantial accordance with the Plans and the Construction Schedule. Amtrak shall maintain the Premises in good condition and repair (normal wear and tear excepted) and shall not make any penetrations through the walls of the Premises. Amtrak will not cause or permit the Premises (including, without limitation, the exterior of the New Museum Building) to be damaged or defaced in any manner whatsoever and Amtrak shall immediately repair any damage it causes to the New Museum Building, including,

without limitation, rebuilding the New Museum Building to its condition before damage caused by Amtrak, its employees, officers, directors, patrons, contractors or agents. Amtrak shall not make any material alterations or additions to the Premises without Museum's prior written consent, which consent will not be unreasonably withheld or delayed. Amtrak will return the Premises at the end of the Term in the same condition and repair as when Amtrak took possession, except for normal wear and tear.

9. DESTRUCTION OF PREMISES, EMINENT DOMAIN

A. In the event of destruction or substantial damage to the Premises during the Term which renders the Premises unusable to Amtrak, Museum shall have the option of:

(i) Within one hundred eighty days after such damage or destruction, replacing or rebuilding the New Museum Building, including the Premises, and in such manner and according to such plans and specifications which would restore the New Museum Building, including the Premises, to substantially the same condition as immediately before its destruction or substantial damage.

(ii) Declining to replace or rebuild, in which event Amtrak shall have the option of terminating this Lease by written notice. If Amtrak elects to terminate this Lease pursuant to this subsection 10.a. (ii) during the first fifteen (15) years of the Term and Museum receives casualty insurance proceeds related to the destruction of the New Museum Building, then Museum shall pay to Amtrak, in full compensation for all amounts paid by Amtrak hereunder, a portion of the insurance proceeds actually received by Museum related to the reconstruction of the New Museum Building (and not related to the personal property, including art displayed or stored in the New Museum Building)

equal to the percentage of the rental paid by Amtrak hereunder as related to the cost of the construction of the New Museum Building (e.g. if the cost of the New Museum Building is \$17,000,000 and Amtrak paid \$850,000 in rentals, then Amtrak would be entitled to received 5% of the insurance proceeds actually received by the Museum directly related to the New Museum Building structure, not to exceed \$850,000).

(iii) Museum shall notify Amtrak within thirty days after such damages or destruction of Museum's decision to rebuild the New Museum Building including the Premises or declining to rebuild. During the 180-day repair or replacement period identified in Subsection (a) above, Amtrak shall have no obligation to: (1) pay any costs or expenses associated with the Premises required under this Lease; or (2) provide any services to the Premises required under this Lease.

B. In the event that all or part of the Premises shall be taken under the power of eminent domain or sold under threat of such taking, this Lease shall terminate. The entire award of proceeds from such taking or sale of land and/or improvements, including severance damages, except for that portion related to the Premises for which Amtrak has paid, shall belong to Museum; Amtrak shall also be entitled to the portion of the award specifically allotted to its personal property which may be taken, and any relocation allowance actually paid by the condemning authority.

10. INSURANCE

A. Unless Amtrak makes the election permitted by b., Amtrak shall maintain at all times during the Term of this Lease a comprehensive commercial liability insurance policy covering the use of the Premises on an occurrence basis with a minimum coverage of \$3,000,000

(to be increased every five years consistent with increases in the national consumers price index) and a property insurance policy for the full replacement value of the Premises. The coverage shall be proportionate increases at least every five years to take into account cost of living increases occurring within such five year period. Prior to occupying the Premises, Amtrak shall furnish Museum with a Certificate of Insurance evidencing such coverage and showing Museum as additional insureds.

B. Amtrak may elect to self-insure its obligations as long as Amtrak has in place, nationwide, a comprehensive and properly funded self-insurance program. If Amtrak makes such election, it shall provide Museum the principal aspects of such self-insurance program upon Museum's written request.

11. ASSIGNMENT AND SUBLETTING

Amtrak may not transfer or assign this Lease, or sublet the Premises or any part thereof, without Museum's written approval. These prohibitions shall not apply to a transfer or assignment by Amtrak to a successor entity resulting from Congressional or judicial action. The rights and obligations of this Lease shall benefit and burden all successors and assigns of this Lease.

12. DEFAULTS

Neither party shall be deemed to be in default under this Lease unless and until it has failed to perform any obligation within thirty days after receipt of written notice from the other specifying the manner in which it has failed to perform such obligation; provided, however, that if the nature of such obligation is such that more than thirty days are required for its performance, then the party receiving such written notice shall not be deemed to be in default if

it shall commence performance within such thirty day period and thereafter diligently prosecute the same to completion.

13. MISCELLANEOUS

A. Amtrak shall permit Museum and its agents at all reasonable times to enter the Premises as may be necessary or desirable for the operation or improvement of the Premises or in order to comply with the laws, orders or requirements of governmental or other authorities.

B. Amtrak shall not affix, paint, erect or inscribe any sign, projection, awning, signal or advertisement of any kind to any part of the Premises, or the New Museum Building, including, without limitation, the inside or outside of windows or doors, without the written consent of Museum.

C. Museum acknowledges it is aware that pursuant to 494.S.C. § 2430, Amtrak is exempt from all State and local taxes, surcharge or fees.

D. The parties shall promptly take such actions and sign all documents reasonably requested to give effect to the provisions of this Lease.

E. As indicated in the Recitals, Museum is acquiring the Baggage Building and the REA Site pursuant to the Transfer Agreement. Amtrak acknowledges receipt of a copy of the Transfer Agreement.

F. This Lease shall be governed by and construed in accordance with the laws of the State of California. Proper venue for any action shall be in the federal courts of San Diego, California.

G. Time is of the essence with respect to the performance of every provision of this Lease.

H. If any condition or provision of this Lease shall be held invalid or unenforceable to any extent under any applicable law or by any court of competent jurisdiction, the remainder of this Lease shall not be affected thereby, and each condition and provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

I. This Lease, along with any Exhibits affixed hereto, constitutes the entire and exclusive agreement between Museum and Amtrak relative to the Premises.

J. Any notice required or permitted to be given hereunder shall be in writing and may be served personally or by United States mail, postage prepaid, addressed as follows:

Museum of Contemporary Art, San Diego
Attention: Dr. Hugh M. Davies
700 Prospect Street
La Jolla, California 92037

AMTRAK
National Railroad Passenger Corporation
30th Street Station
Fourth Floor, South Tower
Philadelphia, Pennsylvania 19104
Attention: Vice President Real Estate Development

AMTRAK
National Rail Passenger Corporation
530 Water Street
5th Floor
Oakland, California 94607
Attention: Project Director Real Estate Development

or, at such appropriate address designated in writing by the respective party.

K. Any party entitled or required to receive notice under this Lease may by like notice designate a different address to which notices shall be sent.

L. Amtrak shall not record this Lease or any short form memorandum referring to this Lease.

IN WITNESS WHEREOF, the parties hereto have affixed their signatures the day and year first above written.

MUSEUM:

MUSEUM OF CONTEMPORARY ART, SAN DIEGO,
a California non-profit public benefit
corporation

By: _____
Its: _____

AMTRAK:

NATIONAL RAILROAD PASSENGER CORPORATION,
a corporation organized and existing under National Rail
Passenger Service Act and the laws of District of Columbia

By: _____

O:\5\5950\53445\Trans\Lease (Amtrak) 11.doc

EXHIBIT E

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL THIS
GRANT DEED AND ALL TAX
STATEMENTS TO:

Museum of Contemporary Art,
San Diego
700 Prospect Street
La Jolla, California 92037-4291
Attn: Charles Castle

APN: _____

SPACE ABOVE THIS LINE FOR RECORDER'S USE

GRANT DEED

The undersigned grantor(s) declare(s):

Documentary transfer tax is \$ _____.

- computed on full value of property conveyed (open space lots), or
- computed on full value less value of liens and encumbrances remaining at time of sale.

1. **Grants from Grantor to Museum.**

1.1 **Grant of Property.** For valuable consideration, the receipt and sufficiency of which are hereby acknowledged, by this Grant Deed (the "Grant Deed"):

CATELLUS OPERATING LIMITED PARTNERSHIP,
a Delaware limited partnership, as successor by merger to Catellus
Development Corporation, a Delaware corporation ("Grantor"),

hereby grants to:

MUSEUM OF CONTEMPORARY ART, SAN DIEGO, a California non-
profit public benefit corporation ("Museum")

all of Grantor's right, title and interest (subject, however, to the terms, conditions and other provisions set forth below in this Grant Deed) in and to that certain real property (the "Property") located in the City of San Diego, County of San Diego, State of California, more particularly described in Exhibit I attached hereto and incorporated herein by this reference. As noted in Exhibit I, the Property consists of the "Baggage Building Site" and the "REA Site."

1.2 **Grant of Eaves Encroachment.** As an appurtenance to the Baggage Building Site conveyed by the grant set forth in Section 1.1 above, Grantor hereby also grants to the Museum, a right of encroachment for the Eaves of the Baggage Building (as those terms are hereinafter defined) which overhang the westerly boundary of the Property above Grantor's Land (as hereinafter defined), more particularly set forth as follows (the "Eaves Encroachment").

1.2.1 Grantor is the owner of certain real property also located in the City of San Diego, County of San Diego, State of California, lying westerly of the Property, commonly known as the "Transit Courtyard" (the "Grantor's Land").

1.2.2 There is an existing historic building on the Baggage Building Site, commonly known as the "Baggage Building." The easterly portion of the Baggage Building consists of an enclosed, roofed building space, and the westerly portion of the Baggage Building consists of an open air, roofed pedestrian arcade (the "Colonnade").

1.2.3 The westerly boundary of the Property is a straight line along the westerly base of the columns supporting the roof of the Colonnade. The westerly edge of the roof of the Colonnade overhangs those columns, encroaching over a portion of Grantor's Land. That portion of the roof of the Colonnade which encroaches over a portion of Grantor's Land will hereinafter be referred to as the "Eaves" of the Baggage Building.

1.2.4 Grantor hereby grants to the Museum a right of encroachment for the Eaves of the Baggage Building, within the air space coinciding with the location of the Eaves as they exist on the date of recordation of this Grand Deed, that is, with the underside of the Eaves at an elevation approximately eighteen feet (18) feet above grade, and extending out over Grantor's Land as more particularly described in Exhibit II attached hereto and incorporated herein by this reference.

1.2.5 The right of encroachment granted by this Section 1.2 is perpetual, subject, however, to earlier automatic termination if and when, as a result of damage, destruction or removal, the roof of the Colonnade ceases to exist in its present configuration, without a commencement of reconstruction, in substantially the same configuration as presently exists, within four (4) years after the date of such damage, destruction or removal.

2. **Limitation to Permitted Uses.**

2.1 **Museum, Cultural and Institutional Uses Only.** The Museum, its successors and assigns shall use and manage the Property only as a museum or for other Cultural or Institutional Uses (as hereinafter defined), together with certain ancillary uses of portions of the Property for a cafe, a gift shop, Public Pedestrian Pathway, landscaping, and similar supporting uses.

2.1.1 For purposes of this Grant Deed, the phrase "Cultural or Institutional Uses" shall mean uses by institutions displaying or preserving objects of interest in one or more of the arts and sciences, such as museums, libraries and art galleries.

2.1.2 In support of the uses specified in Subsection 2.1.1 above, the Museum, its successors and assigns may also allow ancillary uses of portions of the Property for a cafe, a gift shop, driveways, public access and similar supporting uses.

2.1.3 Notwithstanding Subsections 2.1.1 and 2.1.2 above, in any building hereafter constructed on the REA Site, the National Railroad Passenger Corporation (commonly known as "Amtrak"), or any successor to the railway interests of Amtrak, may lease or sublease and use approximately 2,755 useable square feet of space, and such a lease, sublease or use shall not constitute a breach of the limitations on use set forth in Subsections 2.1.1 and 2.1.2 above.

2.1.4 The uses of the Property permitted by this Section 2 will hereafter be referred to as the "Permitted Uses."

3. Successors and Assigns.

This Grant Deed shall be binding upon, and shall inure to the benefit of, Grantor, the Museum, their successors and assigns.

IN WITNESS WHEREOF, this Grant Deed has been executed by the Grantor on the date set opposite its name.

Date: _____, 2004

CATELLUS OPERATING LIMITED
PARTNERSHIP, a Delaware limited partnership (as
successor by merger to Catellus Development
Corporation, a Delaware corporation)

By: Catellus Development Corporation, a Delaware
corporation (formerly known as Catellus
SubCo, Inc., a Delaware corporation), its sole
general partner

By: Catellus Urban Development
Corporation, a Delaware corporation, as
its Agent

By: _____
Name: Timothy B. Carey
Title: Executive Vice President,
Urban Development

EXHIBIT I

LEGAL DESCRIPTION AND MAP OF THE PROPERTY

Baggage Building Site and REA Site

EXHIBIT II

LEGAL DESCRIPTION AND MAP OF THE EAVES ENCROACHMENT

EXHIBIT F

RECORDING REQUESTED BY:

Catellus Operating Limited Partnership

WHEN RECORDED MAIL TO:

LATHAM & WATKINS LLP
600 West Broadway, Suite 1800
San Diego, California 92101
Attn: Sarah Rosen, Esq.

(Space Above for Recorder's Use)

**MAINTENANCE COVENANT
UNDER CALIFORNIA CIVIL CODE SECTION 1468**

THIS MAINTENANCE COVENANT UNDER CALIFORNIA CIVIL CODE SECTION 1468 (the "Covenant") is made as of _____, 2004, by and between CATELLUS OPERATING LIMITED PARTNERSHIP, a Delaware limited partnership, as successor by merger to Catellus Development Corporation, a Delaware corporation ("Catellus" or "Covenantee"), and the MUSEUM OF CONTEMPORARY ART, SAN DIEGO, a California non-profit public benefit corporation (the "Museum" or "Covenantor").

Recitals

A. **Santa Fe Depot Site.** In the central business district in the City of San Diego, County of San Diego, State of California, there is a railway depot building (the "Santa Fe Depot" or "Depot Building") on a site which includes several adjacent blocks of land, commonly known as the "Santa Fe Depot Site," more particularly described on Exhibit I attached hereto. The Museum Site (as defined in Recital B below) and the Remaining Catellus Property (as defined in Recital C below) are both part of the Santa Fe Depot Site.

B. **Museum Site.** By Grant Deed recorded concurrently with this Covenant, Catellus, as grantor, has conveyed to the Museum, as grantee, certain real property (the "Museum Site"), constituting a portion of the Santa Fe Depot Site, consisting of two fee parcels generally described as follows, and more particularly described on Exhibit II attached hereto:

-- **Baggage Building Site; Baggage Building.** The southerly fee parcel is commonly referred to as the "Baggage Building Site," on which the existing "Baggage Building" is situated.

-- **REA Site; New Museum Building.** The adjacent northerly fee parcel is commonly referred to as the "REA Site," on which the Museum intends to construct a new Museum building (the "New Museum Building"). The REA Site includes the southerly 50% of B Street adjacent to the REA Site, which has previously been vacated by the City.

The Museum Site is the land of the Museum, as Covenantor, affected by this Covenant.

C. **Remaining Catellus Property.** As a result of the conveyance described in Recital B, Catellus is now the owner of the real property located in the City of San Diego, County of San Diego, State of California, constituting a portion of the Santa Fe Depot Site, more particularly described on Exhibit III attached hereto (the "Remaining Catellus Property"). The Remaining Catellus Property is the land of Catellus, as Covenantee, to be benefited by this Covenant.

D. **Purpose.** In consideration for Catellus's conveyance of the Museum Site to the Museum, the Museum, as Covenantor, enters into this Covenant with Catellus, in order to make the Museum responsible for maintenance and repair of the exterior skin of all Improvements (as hereinafter defined) now existing or hereafter constructed or installed on the Museum Site, and all other portions of the Museum Site exterior to such buildings (collectively, the "Museum Site Exterior Areas"), which are visible from the Remaining Catellus Property or from the public streets along the boundaries of the Santa Fe Depot Site (together, the "Exterior View Areas"). The provisions in this Covenant implementing the foregoing purpose are intended (a) to serve as agreements by the parties as owners of adjoining lands, and covenants by the Museum (as grantee of the Museum Site), with Catellus (as grantor of the Museum Site), to do or refrain from doing certain acts on the Museum Site, for the benefit of the Remaining Catellus Property, and (b) to run with the land of both the Museum and Catellus, pursuant to California Code of Civil Procedure Section 1468.

Agreement

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Limited Term.** The term of this Covenant shall commence upon the date of recordation hereof in the Office of the County Recorder of San Diego County, California, and shall expire on December 31, 2030; provided, however, that Section 4.10 hereof, entitled Legal Fees, shall survive such expiration.

2. **Maintenance, Repair and Replacement.**

2.1 **Museum Responsibility.**

(a) As used in this Covenant, "Improvement" means any structure or appurtenance thereto, constructed (or to be constructed), installed (or to be installed) or substantially altered (or to be substantially altered) on the Museum Site, which has (or upon construction, installation or substantial alteration will have) a physically imposing and material impact on the aesthetic appearance of the Museum Site, and which is (or upon construction, installation or substantial alteration will be) visible from the Exterior View Areas.

(b) The Museum shall maintain, repair or replace, as reasonably required, both (i) the facades of all Improvements on the Museum Site, and (ii) the Museum Site Exterior Areas (together, the "Facades and Exteriors"), in order to meet the Maintenance Standard set forth in Paragraph 2.4 below.

(c) At any time and from time to time, the Museum may delegate its responsibility to maintain, repair or replace the Facades and Exteriors to any tenant, subtenant or other person.

2.2 Maintenance Costs. The costs for maintenance, repair and replacements incurred by the Museum pursuant to this Covenant shall be borne solely by the Museum or its delegatee.

2.3 Remedies for Nonperformance. If the Museum fails to provide maintenance, repair or replacements of the Facades and Exteriors to the Maintenance Standard, then:

(a) Catellus shall have the right to notify the Museum in writing of such nonperformance, specifying the particulars thereof (a "Notice of Nonperformance").

(b) If the Museum fails to commence such remedy within ninety (90) days after its receipt of the Notice of Nonperformance, or if the Museum commences such remedy and thereafter fails diligently to prosecute the same to completion, then Catellus shall thereafter have the right to pursue any remedy at law or in equity against the Museum for any failure by the Museum to provide maintenance, repair or replacements of the Facades and Exteriors to the Maintenance Standard, pursuant to this Covenant.

2.4 Maintenance Standard. All maintenance, repair and replacement called for by this Covenant shall meet the following standards (together, the "Maintenance Standard"):

(a) Such maintenance, repair and replacement shall be comparable, in quality and in frequency of performance, to the maintenance, repair and replacement undertaken by the Museum at its "most favored" other prominent public venues (for purposes of this clause (a), the Museum's "most favored" venues shall be determined by references to the foregoing standards, i.e., quality and frequency of maintenance, repair and replacement activities, etc.);

(b) It shall serve to maintain the quality and condition of the Facades and Exteriors in a way that does not reflect adversely on the balance of the Santa Fe Depot Site;

(c) It shall serve to maintain the affected property in a safe, clean and orderly condition; and

(d) It shall comply with all applicable requirements of law.

2.5 Compliance with Obligations. All construction, maintenance, repair and replacements called for by this Covenant shall comply with any and all applicable covenants, conditions, restrictions, liens and encumbrances to which the Museum Site may be subject, if any.

2.6 Catellus Responsibility. Without in any way limiting the obligations of the Museum under Sections 2.1 through 2.5 above, Catellus shall abide by the maintenance, repair and replacement standards required of it pursuant to:

(a) Sections A.1 and B.4 of Revised Attachment C-1 to the Amended and Restated Development Agreement dated April 9, 1993 with the City of San Diego, a municipal corporation of the State of California, as amended by a First Amendment thereto dated March 5, 1996, a Second Amendment thereto dated December 4, 1997, and a Third Amendment thereto dated February 18, 2003 and a Fourth Amendment thereto dated [____], 2004 (collectively, the "DA");

(b) Section A.6 of Revised Attachment C-1 to the DA, specifically including, without limitation, Catellus's agreement to guarantee the preservation and maintenance of the exterior facades of the Baggage Building;

(c) Sections A.1 and B.4 of Revised Attachment No. 5 to the Amended and Restated Owner Participation Agreement dated April 9, 1993 with the Agency, as amended by a First Implementation Agreement thereto dated March 4, 1996, a Second Implementation Agreement thereto dated December 4, 1997, and a Third Implementation Agreement thereto dated February 10, 2003 and a Fourth Implementation Agreement thereto dated [____], 2004 (collectively, the "OPA");

(d) Section A.6 of Revised Attachment No. 5 to the DA, specifically including, without limitation, Catellus's agreement to guarantee the preservation and maintenance of the exterior facades of the Baggage Building; and

(e) Section 402 of the OPA.

3. Section 1468 Provisions.

3.1 Running with the Land. The Museum Site is the land of the Covenantor which is affected by this Covenant. The Remaining Catellus Property is the land of the Covenantee to be benefited by this Covenant (as more fully set forth in Section 3.1 below). This Covenant shall run with both the Museum Site and the Remaining Catellus Property. The Museum hereby covenants that the Museum Site shall be transferred, encumbered, hypothecated, used and improved subject to the covenants, conditions, restrictions, rights and reservations contained in this Covenant.

3.2 Successive Owners. Successive owners of the Museum Site are expressly bound by this Covenant, for the benefit of the Remaining Catellus Property.

3.3 **Acts Relate to Use.** Each act covenanted to be performed in this Covenant relates to the use, repair, maintenance or improvement of, or to the payment of taxes and assessments on, the Museum Site.

3.4 **Recordation.** This Covenant is entered into pursuant to California Civil Code Section 1468, and shall be recorded in the Office of the County Recorder of San Diego County, California.

3.5 **Allocation of Benefits among Successors.**

(a) **Catellus Corporate Successor.** As used in this Covenant, the phrase "Catellus Corporate Successor" means (i) any entity controlling, controlled by, or under common control with Catellus, and/or (ii) any successor to Catellus by merger, consolidation or acquisition of its corporate stock. A "Catellus Corporate Successor" need not be a corporation, but rather may be a corporation, a partnership, a limited liability company or any other form of legal entity.

(b) **When Catellus Owns Remaining Catellus Property.** If Catellus or any Catellus Corporate Successor (i) hereafter sells or otherwise transfers fee title to any portion of the Remaining Catellus Property to any third party (that is, to a person or entity other than Catellus or a Catellus Corporate Successor), but (ii) retains fee title to any other portion of the Remaining Catellus Property, then, effective upon the date of such transfer, this Covenant shall benefit only the portion of the Remaining Catellus Property then still owned by Catellus or by such Catellus Corporate Successor.

(c) **When Catellus Transfers Last Parcel.** At such time as Catellus or a Catellus Corporate Successor sells or otherwise transfers fee title to last portion of the Remaining Catellus Property owned by it (the "Last Parcel") to any third party (that is, to a person or entity other than Catellus or a Catellus Corporate Successor), then effective upon the date of such transfer, this Covenant shall benefit only the parcel upon which the Depot Building is located.

4. **Miscellaneous Provisions.**

4.1 **Enforcement.** This Covenant may be enforced by proceedings at law or in equity, including without limitation proceedings to recover damages and/or to restrain violations.

4.2 **Successors and Assigns.** This Covenant shall be binding upon and shall inure to the benefit of the successors and assigns of the parties hereto.

4.3 **No Obligations to Third Parties.** Except as otherwise expressly provided herein, this Covenant shall not be deemed to confer any rights upon, or obligate any of the parties to, any person or entity other than the parties hereto.

4.4 **Time of Essence.** Time is of the essence to this Covenant.

4.5 **Waiver.** The waiver or failure to enforce any provision of this Covenant shall not operate as a waiver of any future breach of any such provision or any other provision hereof.

4.6 **Severability.** If any portion of this Covenant, as applied to either party or to any circumstances, shall be adjudged by a court to be void or unenforceable, such portion shall be deemed severed from this Covenant and shall in no way effect the validity or enforceability of the remaining portions of this Covenant.

4.7 **Captions.** The captions in this Covenant are solely for the convenience of the parties hereto, and shall not be used for the interpretation or determination of the validity hereof.

4.8 **Exhibits.** The Exhibits attached hereto are hereby incorporated herein by this reference for all purposes.

4.9 **Applicable Law.** This Covenant shall be governed by and construed and enforced in accordance with the laws of the State of California.

4.10 **Legal Fees.** In the event that any legal action or other proceeding is brought by any party arising from or related to this Covenant, the prevailing party in such action or proceeding shall be entitled to recover from the other party all its costs and expenses, including without limitation reasonable attorneys' and experts' fees, and costs and expenses incurred in enforcing, perfecting and executing any judgment, including without limitation those incurred in post-judgment motions, contempt proceedings, garnishment, levy, debtor and third-party examinations, discovery and bankruptcy litigation.

4.11 **Amendments.** This Covenant may be amended or rescinded only in a writing executed by both of the parties hereto and recorded in the Office of the County Recorder of San Diego County, California.

IN WITNESS WHEREOF, the parties hereto have executed this Covenant as of the date first above written.

MUSEUM:

MUSEUM OF CONTEMPORARY ART, SAN
DIEGO,
a California non-profit public benefit corporation

By: _____
Name: _____
Title: _____

[Additional Signature on Next Page]

CATELLUS OPERATING LIMITED
PARTNERSHIP, a Delaware limited partnership (as
successor by merger to Catellus Development
Corporation, a Delaware corporation)

By: Catellus Development Corporation, a
Delaware corporation (formerly known as
Catellus SubCo, Inc., a Delaware
Corporation, its sole general partner

By: Catellus Urban Development
Corporation, a Delaware
corporation, as its Agent

By: _____
Name: Tim Carey
Title: Executive Vice President,
Urban Development

Table of Exhibits

Exhibit I	Santa Fe Depot Site
Exhibit II	Museum Site
Exhibit III	Remaining Catellus Property

EXHIBIT I
SANTA FE DEPOT SITE

EXHIBIT II
MUSEUM PROPERTY

Baggage Building Site and REA Site

EXHIBIT III
REMAINING CATELLUS PROPERTY



EXHIBIT G

RECORDING REQUESTED BY,
AND WHEN RECORDED MAIL TO:

The City of San Diego
1200 Third Avenue, Suite 1700
San Diego, California 92101
Attn: James A. Braun, Property Agent

APN: _____

SPACE ABOVE THIS LINE FOR RECORDER'S USE

BREEZEWAY EASEMENT

The undersigned grantor(s) declare(s):

Documentary transfer tax is \$ _____.

- computed on full value of property conveyed (open space lots), or
 computed on full value less value of liens and encumbrances remaining at time of sale.

Preamble

THIS BREEZEWAY EASEMENT (the "Agreement") is made as of _____, 2004, by and between CATELLUS OPERATING LIMITED PARTNERSHIP, a Delaware limited partnership, as successor by merger to Catellus Development Corporation, a Delaware corporation ("Grantor"), and the CITY OF SAN DIEGO, a municipal corporation of the State of California (the "City").

Recitals

A. Servient Tenement. Grantor is the owner of certain real property situated in the City of San Diego, County of San Diego, State of California, more particularly described on Exhibit 1 attached hereto (the "Servient Tenement").

B. Purpose. The City desires to acquire certain easement rights in the Servient Tenement.

Agreement

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Grant. Grantor hereby grants to the City an easement in gross as hereinafter described (the "Breezeway Easement").

2. Location. The Breezeway Easement is located upon, under, over and across the Servient Tenement (the "Breezeway Easement Area").

3. Uses.

3.1 The Breezeway Easement is for (a) public and private pedestrian and vehicular ingress and egress over and across the Breezeway Easement Area, and (b) public and private utility purposes, provided, however, that all utility lines installed, used or maintained within the Breezeway Easement pursuant to this Agreement shall be concealed from public view.

3.2 The City shall not cut, fill or otherwise change the grade of the Breezeway Easement Area, or place drainage or retaining structures on the Breezeway Easement Area, without the prior written consent of Grantor.

3.3 The City's right to install, use and maintain utilities is expressly made subject to Grantor's right to review and approve its plans therefor and to supervise the City's removal and replacement activities to ensure minimal disruption to the Breezeway Easement Area, to Grantor and to adjacent property owners, lessees and tenants. Upon reasonable request by Grantor, the City agrees to coordinate its construction schedule with Grantor in order to minimize the impact of such activities on Grantor and adjacent property owners, lessees and tenants.

3.4 In connection with any such work of installation, use and maintenance by the City, the City shall restore the pavement, sidewalk, surface and other improvements located or to be located within the Breezeway Easement Area now or in the future to substantially the same condition they were in immediately prior to such work, at the City's sole cost and expense.

4. Subsequent Conveyances. The Breezeway Easement includes a right and power in the City to convey the Breezeway Easement or any portion thereof, and all other rights herein conveyed, in the form of an easement or an irrevocable offer to dedicate real property, to any other governmental agency, and/or to grant an easement in gross to any public or private utility for public or private utility purposes, without necessity for further consent or documentation of any kind by Grantor. Grantor hereby consents to any such conveyance or grant by the City, and agrees to execute, acknowledge and deliver to and in favor of any governmental agency or public or private utility, any instrument reasonably necessary to implement the intentions expressed or implied herein, provided that such execution, acknowledgment and delivery shall be at no expense to Grantor.

5. Non-Exclusivity. The Breezeway Easement is not exclusive. Without limiting the generality of the foregoing, Grantor may also use the Breezeway Easement Area for the same purposes as the City's use thereof, and for other purposes which do not unreasonably interfere with such uses by the City, and/or convey easements appurtenant or in gross upon, under, over and across the Breezeway Easement Area to other persons,

public and private, for the same purposes as the City's use thereof, and for other purposes which do not unreasonably interfere with such uses by the City, without necessity for further consent or documentation of any kind by the City. The City hereby consents to any such conveyance or grant by Grantor, and agrees to execute, acknowledge and deliver to and in favor of any governmental agency or public or private utility, any instrument reasonably necessary to implement the intentions expressed or implied herein, provided that such execution, acknowledgment and delivery shall be at no expense to the City. No amount of uses of the Easement shall constitute an overburdening of the Easement.

6. Binding Effect. This Agreement shall be binding upon, and shall insure to the benefit of, the parties hereto and their successors and assigns.

7. Compliance with Laws. The City, at its expense, shall comply with all laws, statutes, ordinances, rules and regulations binding on the City and affecting the Breezeway Easement Area, now in force or hereafter adopted, with respect to the use by the City of the Breezeway Easement Area pursuant to this Agreement.

8. Liens.

8.1 The City shall promptly pay and discharge all claims for labor performed, supplies furnished and services rendered at the request of the City and shall keep the Breezeway Easement Area free of all mechanics' and material suppliers' liens in connection therewith; provided, however, that the City may contest the validity of any such lien so long as such lien is discharged by bond or otherwise (within thirty 30 days after notice thereof) without cost to Grantor.

8.2 The City shall provide at least ten (10) days' prior written notice to Grantor before any labor is performed, supplies furnished or services rendered on or at the Breezeway Easement Area which would give rise to a mechanic's lien or any other lien, and Grantor shall have the right to post on the Breezeway Easement Area notices of non-responsibility.

9. Burden on Land. The Breezeway Easement granted in this Agreement shall be a burden on the Servient Tenement, which burden shall run with the land and shall be binding on owners and encumbrances of the Servient Tenement, their successors and assigns.

10. Time. Time is of the essence of this Agreement and each and every part hereof.

11. Amendment. This Agreement may be amended or otherwise modified only in a writing signed and acknowledged by Grantor and the City, or their respective successors and assigns.

12. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

13. Severability. If any provision of this Agreement shall be held invalid or unenforceable to any extent, the remainder of this Agreement (or the application of such provisions to persons or circumstances other than those in respect of which it is invalid or unenforceable) shall not be affected thereby, and each provision of this Agreement, unless specifically conditioned upon such invalid or unenforceable provision, shall be valid and enforceable to the fullest extent permitted by law.

IN WITNESS WHEREOF, this Breezeway Easement has been executed by the parties on the dates set opposite their names.

Date: _____, 2004

CATELLUS OPERATING LIMITED
PARTNERSHIP, a Delaware limited partnership
(as successor by merger to Catellus Development
Corporation, a Delaware corporation)

By: Catellus Development Corporation,
a Delaware corporation (formerly known as
Catellus SubCo, Inc., a Delaware
corporation), its sole general partner

By: Catellus Urban Development
Corporation, a Delaware corporation,
as its Agent

By: _____
Name: Timothy B. Carey
Title: Executive Vice President,
Urban Development

Date: _____, 2004

CITY OF SAN DIEGO, a municipal
corporation of the State of California

By: _____
Name: _____
Title: _____

to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the within instrument.

WITNESS my hand and official seal:

SIGNATURE OF NOTARY PUBLIC

(S E A L)

EXHIBIT 1

LEGAL DESCRIPTION AND MAP OF SERVIENT TENEMENT
(WHICH ALSO CONSTITUTES THE BREEZEWAY EASEMENT AREA)

EXHIBIT 1

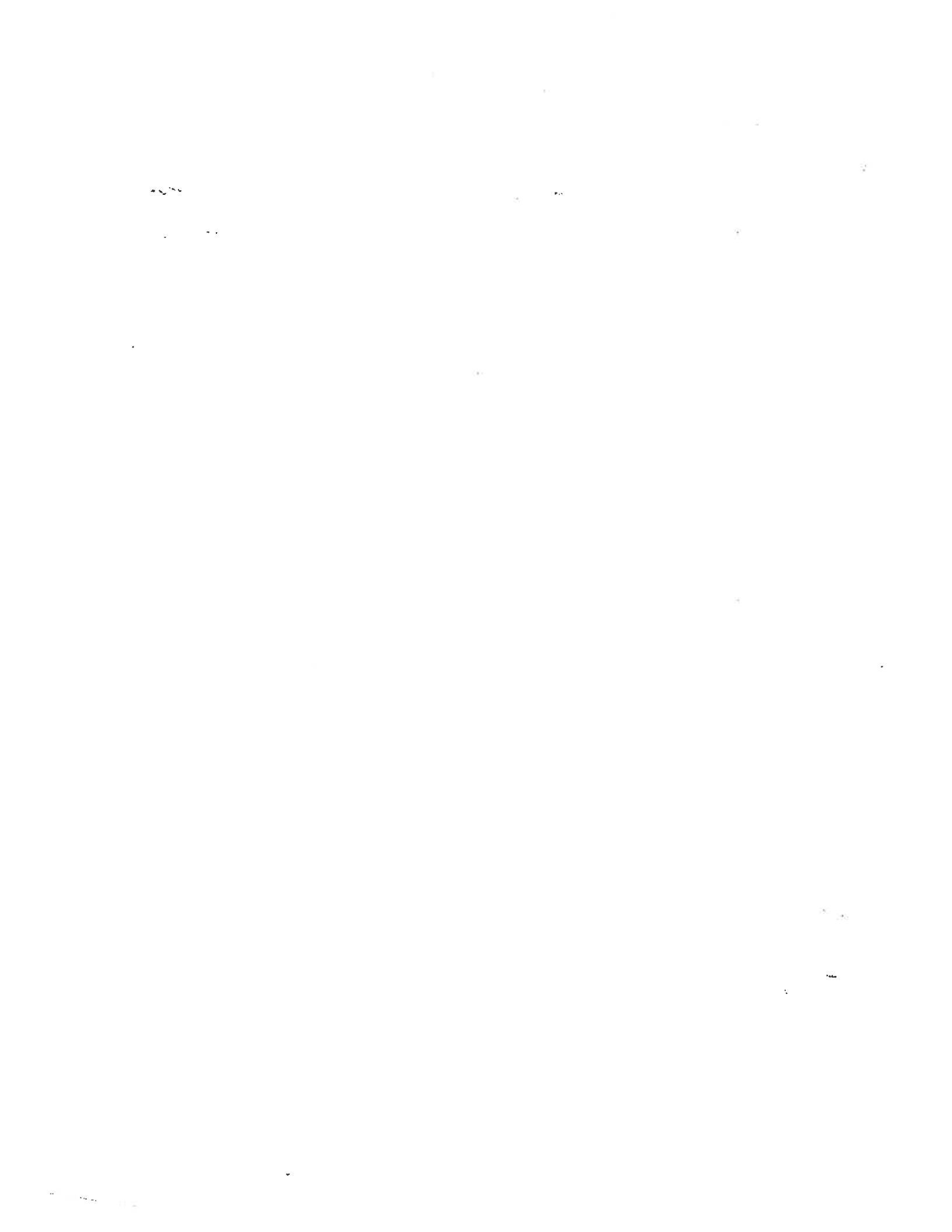


EXHIBIT H

RECORDING REQUESTED BY,
AND WHEN RECORDED MAIL TO:

The City of San Diego
1200 Third Avenue, Suite 1700
San Diego, California 92101
Attn: James A. Braun, Property Agent

APN: _____

SPACE ABOVE THIS LINE FOR RECORDER'S USE

FACADE EASEMENT

The undersigned grantor(s) declare(s):

Documentary transfer tax is \$ _____.

- computed on full value of property conveyed (open space lots), or
 computed on full value less value of liens and encumbrances remaining at time of sale.

Preamble

THIS FAÇADE EASEMENT (the "Agreement") is made as of _____, 2004, by and between CATELLUS OPERATING LIMITED PARTNERSHIP, a Delaware limited partnership, as successor by merger to Catellus Development Corporation, a Delaware corporation ("Grantor"), and the CITY OF SAN DIEGO, a municipal corporation of the State of California (the "City").

Recitals

A. Servient Tenement. Grantor is the owner of certain real property located in the City of San Diego, County of San Diego, State of California, more particularly described on Exhibit 1 attached hereto (the "Servient Tenement"). Two historic buildings, commonly referred to as the "Santa Fe Depot" and the "Baggage Building," are situated on the Servient Tenement.

B. Purpose. Grantor desires to convey to the City, and the City desires to acquire from Grantor, certain easement rights pertaining to the maintenance, preservation and protection of the exterior façades of the Santa Fe Depot and Baggage Building.

Agreement

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Grant. Grantor hereby grants to the City an easement in gross as hereinafter described (the "Façade Easement").

2. Location. The Façade Easement is located upon and across the exterior façades of the Santa Fe Depot and Baggage Building (the "Façade Easement Area").

3. Uses. The Façade Easement is for the purpose of preserving the historic exterior appearance of the Santa Fe Depot and Baggage Building.

4. Maintenance. By accepting this Façade Easement, the City, as grantee of the Façade Easement under this Agreement, assumes no duty to maintain, protect or preserve the Façade Easement Area. Rather, Grantor acknowledges and agrees, for itself and for its successors and assigns, that it shall be the duty of the fee owner of the Servient Tenement to maintain, protect and preserve the façades of the Santa Fe Depot and Baggage Building in good condition and repair, as an obligation running with the land and appurtenant to the fee ownership thereof.

5. Non-Merger. If the same person or entity ever comes to own both the Façade Easement and fee title to any portion of the Servient Tenement, such common ownership shall not effect a merger of the Façade Easement into the Servient Tenement, the intent of the parties being that the Façade Easement survive such common ownership, unless otherwise expressly elected in writing by such common owner. The parties acknowledge that the MUSEUM OF CONTEMPORARY ART, SAN DIEGO, a California non-profit public benefit corporation, has assumed the duty to maintain the Façade of the Baggage Building, if the City becomes fee owner of the Baggage Building, pursuant to the City Option Agreement dated [], 2004.

6. Binding Effect. This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their successors and assigns.

7. Burden on Land. The land or land area of the Grantor affected by the covenants in this Façade Easement is the Servient Tenement. The land or land area of the City to be benefited thereby is the Façade Easement Area. Successive owners of both the Servient Tenement and the Façade Easement Area are expressly bound hereby, for the benefit of the Façade Easement Area. This Façade Easement is intended to create covenants running with the land, and shall be recorded in the Office of the San Diego County Recorder, at the expense of Grantor.

8. Amendment. This Agreement may be amended or otherwise modified only in a writing signed and acknowledged by Grantor and the City, or by their respective successors or assigns.

9. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE.]

IN WITNESS WHEREOF, this Façade Easement has been executed by the parties on the dates set opposite their names.

Date: _____, 2004

CATELLUS OPERATING LIMITED
PARTNERSHIP, a Delaware limited partnership
(as successor by merger to Catellus Development
Corporation, a Delaware corporation)

By: Catellus Development Corporation,
a Delaware corporation (formerly known as
Catellus SubCo, Inc., a Delaware corporation),
its sole general partner

By: Catellus Urban Development Corporation,
a Delaware corporation, as its Agent

By: _____
Name: Timothy B. Carey
Title: Executive Vice President,
Urban Development

Date: _____, 2004

CITY OF SAN DIEGO, a municipal corporation of
the State of California

By: _____
Name: _____
Title: _____

APPROVED:

CASEY GWINN
City Attorney

By: _____
Name: _____
Title: _____

EXHIBIT 1

LEGAL DESCRIPTION AND MAP OF THE SERVIENT TENEMENT

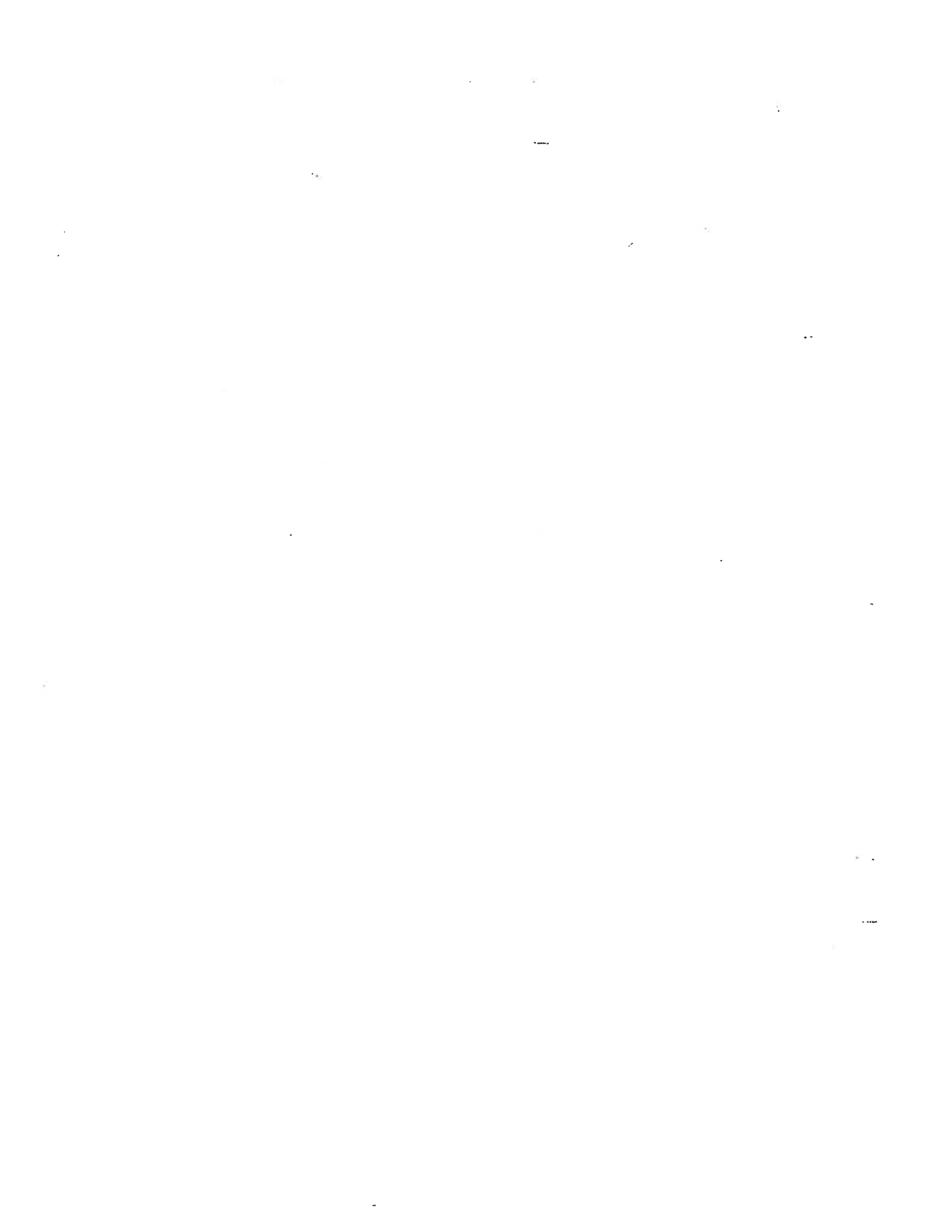


EXHIBIT I

Intentionally Deleted

EXHIBIT J

Intentionally Deleted

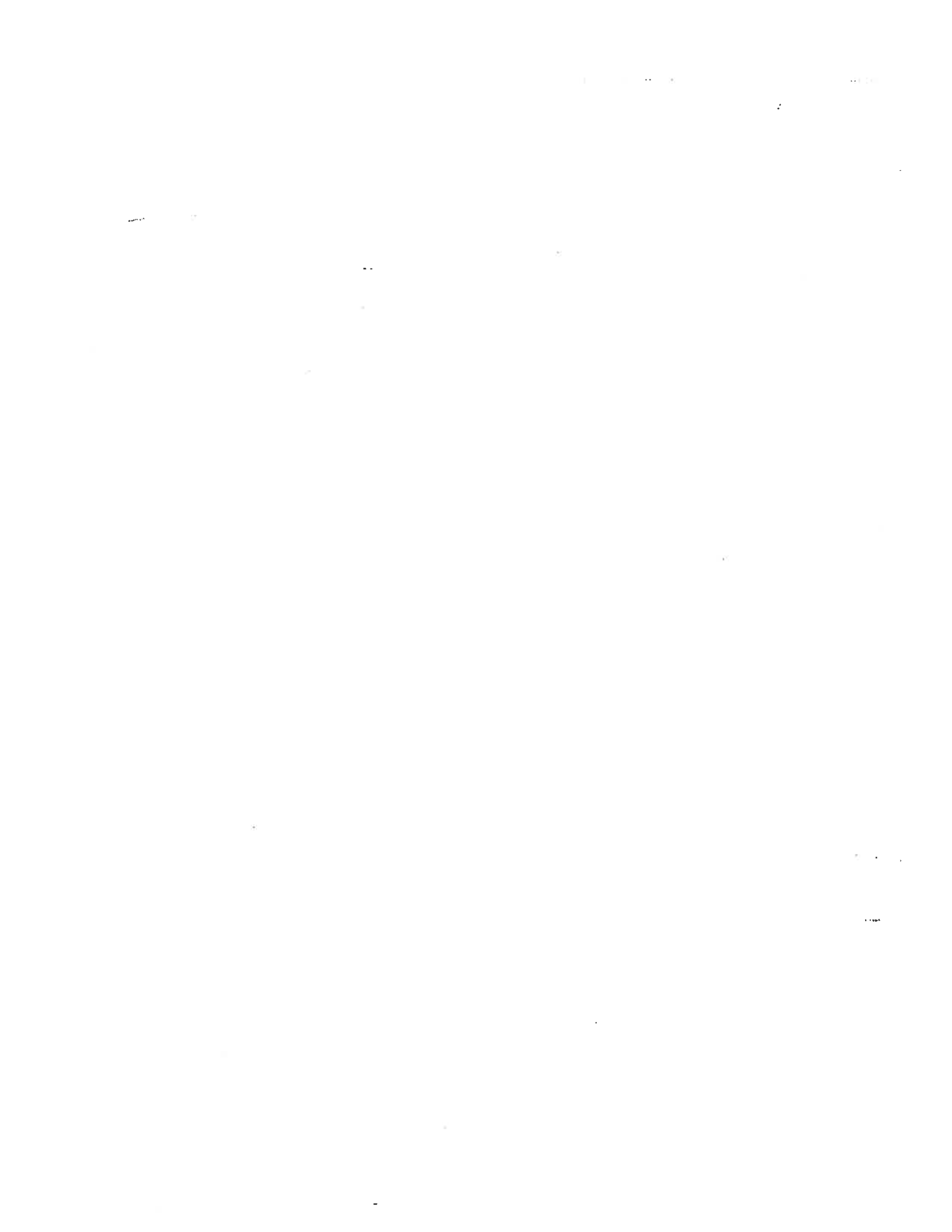
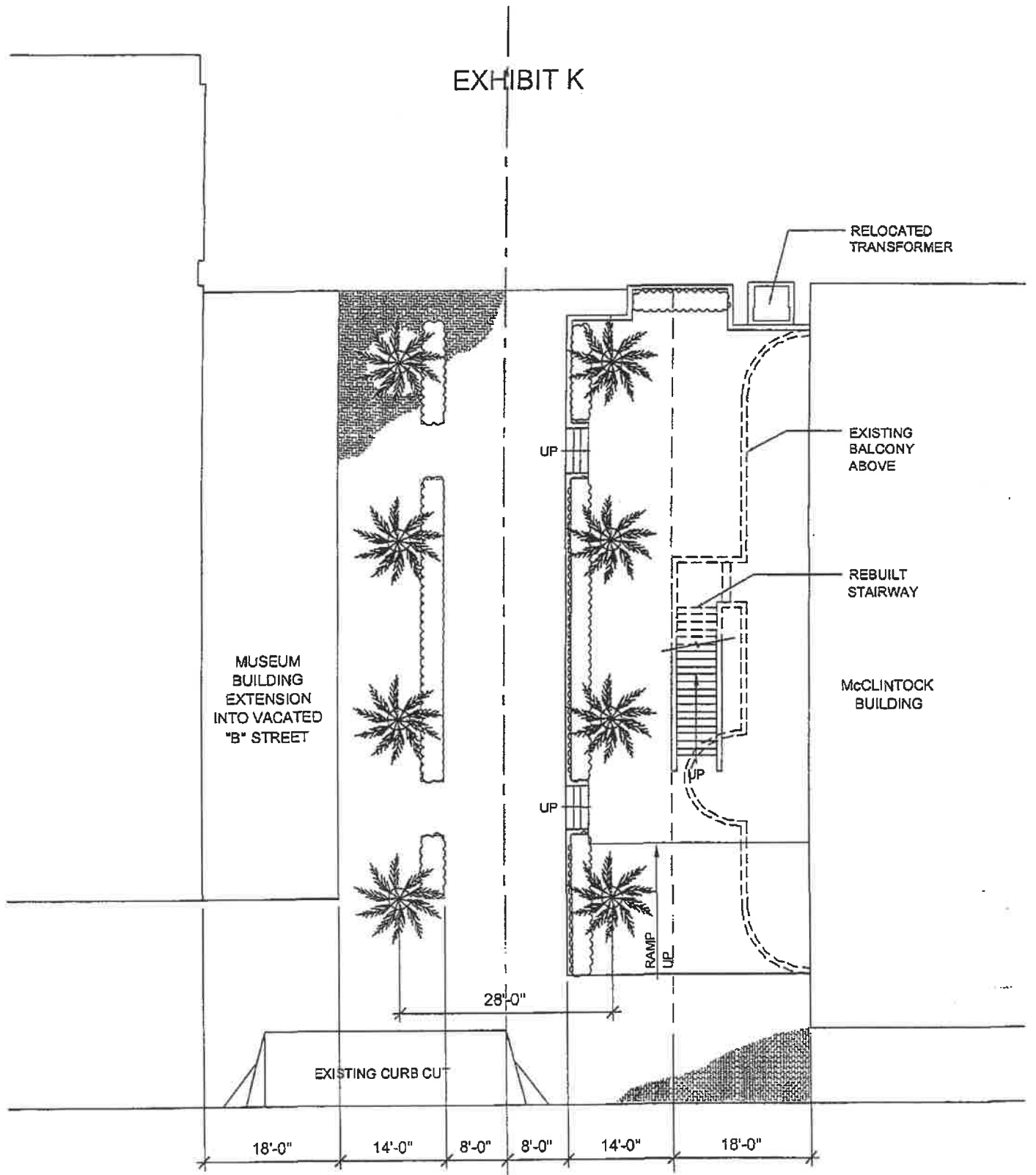


EXHIBIT K



KETTNER BOULEVARD
PRELIMINARY PLAN FOR VACATED "B" STREET
PATHWAY IMPROVEMENTS

MAY 5, 2004

EXHIBIT L

RECORDING REQUESTED BY AND
WHEN RECORDED, MAIL TO:

PROPERTY DEPARTMENT
CITY OF SAN DIEGO
1200 THIRD AVENUE
SUITE 1620
SAN DIEGO, CA 92101

FREE RECORDING REQUESTED
BY CITY OF SAN DIEGO (SEE
GOV'T CODE 6103)
NO DOCUMENTARY TAX DUE

R & T 11922 (Amended)

PUBLIC PEDESTRIAN EASEMENT

For valuable consideration, Museum of Contemporary Art, San Diego, a California non-profit public benefit corporation ("Grantor"), does hereby grant to the City of San Diego, a municipal corporation ("Grantee"), a perpetual non-exclusive public easement over, along and across the land of Grantor situated in the County of San Diego, State of California, more particularly described on Exhibit I and illustrated on Exhibit II, attached hereto and by this reference made a part hereof ("B Street Pathway"), for exclusive use of the City to operate the public pathway in accordance with City practices.

Grantee agrees to and shall defend, indemnify and hold Grantor, and its officers, employees, contractors and agents harmless from and against all claims, liability, loss, damage, costs or expenses (including reasonable attorneys' fees and court costs) arising from or as a result of the death of any person or any accident, injury, loss or damage whatsoever caused to any person or to the property of any person (including without limitation Grantor) which shall occur within the B Street Pathway or otherwise in connection with the activities of Grantee under this Grant of Public Pedestrian Easement.

This Grant of Public Pedestrian Easement is made by Grantor pursuant to that certain Transfer Agreement and Escrow Instructions dated _____, 2004, between Grantor, Grantee, Catellus Operating Limited Partnership, and Agency.

This Grant of Public Pedestrian Easement shall bind and enure to the benefit of the respective heirs, representatives, successors and assigns of the parties hereto.

IN WITNESS WHEREOF, this instrument is executed as of this _____ day of 2004.

MUSEUM OF CONTEMPORARY ART, SAN DIEGO, a California non-profit public benefit corporation

By: _____
Name: _____
Title: _____
(Grantor)

EXHIBIT M

RIGHT OF ENTRY AGREEMENT

This Right of Entry Agreement, made this ____ day of _____ 2004, by and between the Redevelopment Agency of the City of San Diego ("Agency") and Museum of Contemporary Art, San Diego, a California non-profit public benefit corporation ("Owner").

RECITALS

A. WHEREAS, the Agency desires to install improvements within the Site Area designated on Exhibit I, which is the property of Owner, in order to complete the B Street Pathway and related landscaping and other improvements within the Centre City Redevelopment Project; and

B. WHEREAS, the improvements to be installed have been designed in consultation with Owner and Owner has approved the construction drawings for such improvements.

NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES HERETO, as follows:

1. Permission is hereby granted by the Owner to Agency to enter onto the Site Area for the purposes of installing the improvements generally as depicted on Exhibit II.

2. This permission is effective as of the date hereof, and shall remain in effect until December 31, 2005.

3. Agency shall keep the Site Area free from all encumbrances and liens of whatever nature involved in its activities on the Site Area. Agency shall defend and hold harmless and indemnify Owner from any and all such encumbrances and/or liens (including all costs and attorneys' fees in defending any claim or liability in any way connected with Agency, or Agency's Contractor or subcontractors, failure to pay any person(s) referred to in Section 3181 of the California Civil Code, which claim or liability may be instituted or filed against the Site Area).

4. Agency hereby releases and agrees to protect, defend, hold harmless and indemnify Owner from and against all demands, claims, injury, liability, loss, damage, cost and expense, however same may be caused, including all costs and reasonable

attorneys' fees in providing the defense to any claim arising therefrom, for any loss of, or damage to property (real and/or personal), for personal injury to or death of any person or persons arising out of or occurring by reason of, Agency's activities within the Site Area. Single limit liability insurance in an amount not less than Two Million Dollars (\$2,000,000) in a form acceptable to Owner shall be provided prior to access to the Site Area.

5. It is agreed that Agency, and not Owner, shall bear the cost for any actual damage to and/or use of the Site Area. Agency agrees to protect, defend, hold harmless and indemnify Owner from any such costs, including all costs and reasonable attorneys' fees in providing the defense to any claim arising therefrom.

IN WITNESS WHEREOF, said parties have executed the Right of Entry on the day and year first above written.

AGENCY:

REDEVELOPMENT AGENCY OF THE CITY OF
SAN DIEGO, a public body corporate and politic of
the State of California

By: _____

Name: _____

Title: _____

Date: _____

OWNER:

MUSEUM OF CONTEMPORARY ART, SAN
DIEGO, a California non-profit public benefit
corporation

By: _____

Name: _____

Title: _____

Date: _____

APPROVED AS TO FORM AND LEGALITY
CASEY GWINN
Agency General Counsel

By: _____

Date: _____

O:\5\5950\33445\TRANS\EXHIBITS TO MUSEUM TRANS AGRMT\EXHIBIT N.DOC

EXHIBIT N

COVENANT TO MAINTAIN PAVING AND LANDSCAPING

This Covenant to Maintain Paving and Landscaping is made as of _____, 2004 between Museum of Contemporary Art, San Diego, a California non-profit public benefit corporation (Museum) and the City of San Diego, a municipal corporation (City), who agree:

1. Museum has provided to the Redevelopment Agency of the City of San Diego (Agency) the right to install improvements within the northerly twenty-two feet of Parcel 4 of Parcel Map No. 19378, in the City of San Diego, County of San Diego, State of California, filed in the Office of the County Recorder of San Diego County, November 26, 2003 as File No. 2003-1418318 of Official Records, together with that portion of Kettner Boulevard (formerly Arctic Street) as said street is dedicated to Public use, which upon closing would revert, by operation of law, to the above described land (Parcel 4); the northerly eight feet thereof will be improved by the Agency with a Public Pedestrian Pathway (sometimes referred to as the B Street Pathway, which will also encompass the southerly eight feet of the property to the north of Parcel 4) and the southerly fourteen feet of the northerly twenty-two feet of Parcel 4 will be improved by the Agency with landscaping and other improvements (such southerly fourteen feet being referred to as the Landscaped Area).

2. Museum shall, for the benefit of City and Agency, maintain, repair or replace the Landscaped Area, as reasonably required. Museum commits to the City that so long as it owns Parcel 4, the Landscaped Area will remain in as good condition as when the improvement of the Landscaped Area is completed by Agency.

3. The costs for such maintenance, repair and replacements shall be borne by Museum.

4. The obligations of Museum pursuant to this Covenant to Maintain Paving and Landscaping shall be subject to the provisions of the Transfer Agreement among the City, Agency, Museum and Catellus Operating Limited Partnership dated June __, 2004, pursuant to which Museum acquired Parcel 4.

MUSEUM OF CONTEMPORARY ART,
SAN DIEGO, a California non-profit public
benefit corporation

By: _____
Name: _____
Title: _____

CITY OF SAN DIEGO, a municipal
corporation of the State of California

By: _____
Name: _____
Title: _____

O:\5950\53445\Trans\Exhibits to Museum Trans agrmt\Exhibit O.doc

EXHIBIT O



CATELLUS

December 3, 2003

Mr. Ron Weatherford
H.R. Weatherford
600 West Broadway
Suite 310
San Diego, California 92101

RE: San Diego Santa Fe Depot-Baggage Building
Cost Transfer Approval Letter
Webcor Change Order No. 004

Dear Ron:

Webcor the Shell and Core Contractor executed all of the following items at the behest of the Tenant, the Museum of Contemporary Art (MCA). Per our telephone conversation today during the weekly Owner- Architect- Contractor meeting at approximately 10:00 am we settled on the following values as MCA's share of the cost.

Cost Catellus Owes to the Museum of Contemporary Art

Credit for fire sprinkler	\$+38,190
Credit for interior slab-on-grade (sog)	\$+91,820
Credit for back-flow preventer and 20' of piping	\$ +4,500

Cost the Museum of Contemporary Art Owes to Catellus

Shotcrete block-outs per RFI #4	\$ -2,541
Shift steel columns to building exterior	\$ - 750
Demo existing column footings	\$ - 804
Saw-cut existing interior walls	\$ -4,500
<u>Underground wet utilities to Museum</u>	
Installation of Baggage Bldg domestic water	\$ - 3,023
Installation of Baggage Bldg storm water	\$ - 154
Installation of Baggage Bldg fire service	\$ - 2,150
Installation of REA Bldg north sewer	\$ - 2,567
<u>Underground dry utilities to Museum</u>	
Installation of Baggage Bldg electrical	\$ - 1,000
Installation of Baggage Bldg gas	\$ - 9,000
Installation of Baggage Bldg electrical	\$ - 5,400
Installation of Baggage Bldg gas	\$ - 1,000
Webcor Soft Cost	\$ - 2,187

Total that Catellus Owes to the MCA \$99,440

Please indicate your acceptance by signing in the appropriate signature block below and returning two fully executed copies to Catellus Urban Development Corporation for our files.

Thank you in advance for your cooperation. If you have any questions please feel free to call me at (213) 473-3122 fax at (213) 626-0948 or e-mail at: van_buckner@catellus.com.



EXHIBIT P

ENVIRONMENTAL REPORTS Santa Fe Depot Baggage Building and REA site

San Diego, CA

1. Redevelopment Agency of the City of San Diego, 4/12/83: Final Environmental Impact Report for the Proposed Santa Fe Properties Development Plan
2. Woodward-Clyde Consultants, 3/26/85: Phase I Geotechnical Investigation, Santa Fe Depot Properties, San Diego, CA [*This report has appeared on some lists incorrectly dated 3/26/95*]
3. CTL Environmental Services, 9/9/88: Asbestos Report, 1020 and 1050 Kettner Blvd., CA0731752, San Diego, CA [*This report has appeared on some lists incorrectly dated 9/2/88*]
4. McLaren, 1/12/89: Property Transaction Environmental Assessment and Phase II Soil Sampling of ATSF Depot and Ace Parking, 1050 Kettner Blvd., Pacific Coast Highway and B Street, San Diego, CA (CA0731752 AND CA0731712)
5. Leroy Crandall, 5/26/89: Report of Preliminary Geotechnical Investigation, Santa Fe Depot Development Area, Between Kettner Blvd, Ash Street, Pacific Highway and Broadway, San Diego, CA
6. Woodard-Clyde Consultants, 5/22/91 (Revised 11/15/91): Environmental Site Assessment, Catellus Downtown San Diego Property
7. CTL Environmental Services, 4/93: Project Record, Asbestos Survey, 1050 Kettner Blvd., San Diego, CA, CA0731752
8. Weston, 6/93: Phase I Environmental Assessment, 1050 Kettner Blvd, San Diego, CA, CA0731752
9. Weston, 8/26/93: Letter Re: 1050 Kettner Blvd., San Diego, CA, CA0731752
10. CTL Environmental Services, 9/93: Project Manual, Asbestos Abatement for 1050 Kettner Blvd., San Diego, CA, CA0731752
11. CTL Environmental Services, 10/93: Asbestos-Abatement Air Monitoring and Contractor Observation Close-Out Report of 1050 Kettner Blvd., San Diego, CA, CA0731752
12. Weston, 12/29/93: Letter Re: 1050 Kettner Blvd. (CA0731752), Outstanding Issues
13. CTL Environmental Services, 9/94: Reinspection Report of 1050 Kettner Blvd., San Diego, CA, CA0731752

14. CTL Environmental Services, 3/95: Reinspection Report of 1050 Kettner Blvd., San Diego, CA, CA0731752
15. CTL Environmental Services, 9/95: Reinspection Report of 1050 Kettner Blvd., San Diego, CA, CA0731752
16. CTL Environmental Services, 1/96: Asbestos-Abatement Air Monitoring and Contractor Observation Close-Out Report of 1050 Kettner Blvd., San Diego, CA, CA0731752
17. CTL Environmental Services, 2/96: Reinspection Report of 1050 Kettner Blvd., San Diego, CA, CA0731752
18. CTL Environmental Services, 10/96: Reinspection Report of 1050 Kettner Blvd., San Diego, CA, CA0731752
19. CTL Environmental Services, 2/97: Reinspection Report of 1050 Kettner Blvd., San Diego, CA, CA0731752
20. CTL Environmental Services, 7/14/97: Suspect Lead-Based Paint Sampling at 1050 Kettner Blvd., San Diego, CA, CA0731752
21. CTL Environmental Services, 9/97: Reinspection Report of 1050 Kettner Blvd., San Diego, CA, CA0731752
22. Winzler & Kelly, 8/7/02: REA Building – Pre-Demolition Hazardous Materials Survey
23. Testing Engineers, 5/28/03: Geotechnical Evaluation, [proposed] Museum of Contemporary Art, 1050 Kettner Blvd., San Diego, CA
24. Winzler & Kelly, 11/23/03: Lead and Asbestos-Containing Material Removal Closeout Document for Santa Fe Depot Baggage Building Seismic and Shell Improvement, 1050 Kettner Blvd., San Diego, CA
25. Iris, 11/24/03: Phase I Environmental Site Assessment, Santa Fe Depot Baggage Building and Former REA Building, 1050 Kettner Boulevard, San Diego, CA

EXHIBIT Q

LIMITED VEHICULAR ACCESS EASEMENT

For valuable consideration, Museum of Contemporary Art, San Diego, a California non-profit public benefit corporation (Museum) does hereby grant to National Rail Passenger Corporation, a corporation organized and existing under National Rail Service Act and the laws of the District of Columbia (Amtrak) a non-exclusive easement (for so long as Amtrak occupies space as a tenant in the New Museum Building constructed or to be constructed on Parcel 4 of Parcel Map No. 19378, in the City of San Diego, County of San Diego, State of California, filed in the Office of the County Recorder of San Diego County, November 26, 2003 as File No. 2003-1418318 of Official Records, together with that portion of Kettner Boulevard (formerly Arctic Street) as said street is dedicated to Public use, which upon closing would revert, by operation of law, to the above described land (Parcel 4)) over and across the northerly eight feet of Parcel 4 for the purpose of ingress and egress to the space occupied by Amtrak in the New Museum Building to and from Kettner Avenue, subject to the following limitations:

(1) No vehicle (other than an emergency vehicle such as a fire truck) using such vehicular ingress and egress shall be larger than nine feet wide and twenty-two feet long;

(2) The Public Pedestrian Pathway (the combined 16 feet thereof, which includes the southerly 8 feet of the property adjacent to the northerly boundary of Parcel 4) shall be maintained by Amtrak (such maintenance to include sweeping, removal of trash, and cleaning [including the removal of oil stains and the like], repairing and reconstructing the pavers as necessary to keep the pathway in a safe, clean and attractive condition); and

(3) No vehicle may be parked, and nothing can be stored or maintained (including without limitation trash containers) on any portion of the Public Pedestrian Pathway (or any portion of the landscaped area south of the Public Pedestrian Pathway, or the arcade to the east of the Premises (which is an area owned by Museum which it intends to use primarily for sculpture, art exhibitions and other Museum purposes).

With the exception that this Limited Vehicular Access Easement ("Easement") shall in no event be construed to require indemnification by Amtrak to a greater extent than permitted by the laws and the public policy of the State of California or any applicable Federal law, and without in any manner limiting Museum's rights and remedies in the event of a breach of this Easement, Amtrak agrees to indemnify, defend, and hold harmless Museum, the City of San Diego, a municipal corporation (City), and the Redevelopment Agency of the City of San Diego (Agency), and their respective officers, agents, employees, affiliated parent and subsidiary companies, lenders, members, managers, successors and assigns (individually, "Indemnified Party" and collectively the "Indemnified Parties") from and against any and all claims, causes of action, liabilities, losses, costs, damages and/or expenses in law or equity (including, without limitation, attorneys' fees and expenses) of every kind and nature whatsoever (collectively,

"Claims") arising out of or in connection with this Easement, and any and all access and operations permitted hereunder, provided that the Claim (i) is based upon or relating to personal or bodily injury to or death of any person or persons, or damage to or loss of property of any kind whatsoever, including, without limitation, loss of use thereof, or the violation of any California law or regulation or any Federal law, and (ii) is caused in whole or in part by any act or omission to act or any willful misconduct by Amtrak, anyone directly or indirectly employed by Amtrak or anyone for whose acts Amtrak may be liable, regardless of whether such injury, death or damage is caused or contributed to by any act or omission to act by any Indemnified Party, anyone directly or indirectly employed by any Indemnified Party, or anyone for whose acts any Indemnified Party may be liable. Amtrak's obligation to indemnify and hold the Indemnified Parties harmless shall apply with full force and effect regardless of any active and/or passive negligent act or omission by any Indemnified Party or its agents or employees and regardless of any concurrent negligence, whether active or passive, primary or secondary, by any Indemnified Party, by anyone directly or indirectly employed by any Indemnified Party, or by anyone for whose acts any Indemnified Party may be liable. However, Amtrak shall have no obligation to indemnify any Indemnified Party against liability for death, injury or damage or other loss, damage or expense arising solely from the negligence or willful misconduct of such Indemnified Party.

Dated: _____, 2004

MUSEUM:

MUSEUM OF CONTEMPORARY ART,
SAN DIEGO, a California non-profit public
benefit corporation

By: _____

Name: _____

Title: _____

AMTRAK:

NATIONAL RAIL PASSENGER
CORPORATION, a corporation organized
and existing under National Rail Passenger
Service Act and the laws of District of
Columbia

By: _____

(RA-2004-138)

REDEVELOPMENT AGENCY OF
THE CITY OF SAN DIEGO
RESOLUTION NUMBER R- **03790**
ADOPTED ON JUN 29 2004

RESOLUTION OF THE REDEVELOPMENT AGENCY OF
THE CITY OF SAN DIEGO APPROVING THE
REPLACEMENT TRANSFER AGREEMENT AND ESCROW
INSTRUCTIONS BETWEEN THE REDEVELOPMENT
AGENCY OF THE CITY OF SAN DIEGO, THE CITY OF SAN
DIEGO, CATELLUS DEVELOPMENT CORPORATION AND
MUSEUM OF CONTEMPORARY ART, SAN DIEGO.

WHEREAS, the Redevelopment Agency of the City of San Diego [Agency] is engaged in activities necessary to carry out and implement the Redevelopment Plan for the Centre City Redevelopment Project [Project]; and

WHEREAS, the Agency and Catellus Development Corporation [Catellus] have entered into the Amended and Restated Owner Participation Agreement dated April 9, 1993, the First Implementation Agreement to Owner Participation Agreement dated March 5, 1996, the Second Implementation Agreement to Owner Participation Agreement dated December 4, 1997, and the Third Implementation Agreement dated February 10, 2003 [the Agreement] and propose to enter into a Fourth Implementation Agreement to Owner Participation Agreement for the development of certain property located in the Columbia Sub Area of the Centre City Redevelopment Project area as described in the Agreement [Site]; and

WHEREAS, the Third Implementation Agreement and Transfer Agreement and Escrow Instructions authorized by the Agency concurrently with the Third Implementation Agreement

(but not executed by the Agency) contemplated the transfer of the Baggage Building and the REA property within the site to the City of San Diego; and

WHEREAS, the Agreement provides that Catellus shall transfer the Baggage Building to the City or to any governmental agency or non-profit entity designated by the City and the City now desires to designate the Museum of Contemporary Art, San Diego [Designee] as transferee instead of the City of San Diego; and

WHEREAS, in order to carry out and implement such Redevelopment Plan, and the Agreement, the Agency proposes to enter into a replacement Transfer Agreement and Escrow Instructions with the City of San Diego, Catellus and the Museum of Contemporary Art, San Diego, in order to effectuate Catellus' obligation to transfer the Baggage Building within the Site to the Designee of the City of San Diego; and;

WHEREAS, Catellus also proposes to transfer the REA property within the Site to the Designee of the City of San Diego; and

WHEREAS, Catellus has submitted to the Agency copies of the proposed replacement Transfer Agreement and Escrow Instructions in a form desired by Catellus; and

WHEREAS, Centre City Development Corporation, Inc., has reviewed and discussed the proposed replacement Transfer Agreement and Escrow Instructions and has recommended that the Agency enter into such Transfer Agreement and Escrow Instructions; and

WHEREAS, the Agency has duly considered all terms and conditions of the proposed Transfer Agreement and Escrow Instructions and believes that the transfer of the Baggage Building and the REA property within the Site to Designee pursuant to the terms of the replacement Transfer Agreement and Escrow Instructions are in the 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 applicable State and local law and requirements; NOW, THEREFORE,

BE IT RESOLVED, by the Redevelopment Agency of the City of San Diego, as follows:


1. That the terms and conditions of the proposed replacement Transfer Agreement and Escrow Instructions are approved.

2. That the Executive Director of the Agency, or his designee, is authorized to execute for and on behalf of the Agency the replacement Transfer Agreement and Escrow Instructions. A copy of the replacement Transfer Agreement and Escrow Instructions is on file in the office of the Secretary to the Agency as Document No. 03790

3. That the Executive Director of the Agency, or his designee, is authorized on behalf of the Agency, to sign all documents necessary and appropriate to carry out and implement the replacement Transfer Agreement and Escrow Instructions.

APPROVED: CASEY GWINN, General Counsel

By



Elisa A. Cusato
Deputy Counsel

EAC:ai
06/09/04
Or.Dept:CCDC
Aud.Cert:n/a
RA-2004-138
Council:n/a

Passed and adopted by The Redevelopment Agency of The City of San Diego
by the following vote:

JUN 29 2004

Members	Yeas	Nays	Not Present	Ineligible
Scott Peters	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Michael Zucchet	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Toni Atkins	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Charles Lewis	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Brian Maienschein	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Donna Frye	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jim Madaffer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ralph Inzunza	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chair Murphy	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

AUTHENTICATED BY:

DICK MURPHY

Chair of The Redevelopment Agency of The City of San Diego, California

CHARLES G. ABDELNOUR

Secretary of The Redevelopment Agency of The City of San Diego, California

By



Deputy

(Seal)

Office of The Redevelopment Agency, San Diego, California

Resolution
Number

03790⁺

Adopted

JUN 29 2004

(R-2004-1370)

RESOLUTION NUMBER R- 299406

ADOPTED ON JUN 29 2004

A RESOLUTION OF COUNCIL OF THE CITY OF SAN DIEGO
APPROVING THE REPLACEMENT TRANSFER
AGREEMENT AND ESCROW INSTRUCTIONS BETWEEN
THE CITY OF SAN DIEGO, THE REDEVELOPMENT
AGENCY OF THE CITY OF SAN DIEGO, CATELLUS
DEVELOPMENT CORPORATION AND THE MUSEUM OF
CONTEMPORARY ART, SAN DIEGO.

WHEREAS, in 1993 the City and Agency executed an Amended and Restated Development Agreement and an Amended and Restated Owner Participation Agreement, respectively, with Catellus which revised development entitlements first granted in 1983 to Catellus's predecessor for the approximately 17 acres in the environs of the Santa Fe Depot. The 1993 Agreements revised the 1983 Agreements to accommodate transit related needs of MTDB and NCTD and updated the development entitlements to bring them into conformance with the Centre City Community Plan adopted in 1992; and

WHEREAS, under the terms of the Catellus Development/Owner Participation Agreements, as amended over time, Catellus was required, by December 7, 2003, to seismically retrofit and complete base building improvements to the Baggage Building and to then transfer title to the Baggage Building to the City or to any governmental agency or non profit entity designated by the City for use as a museum or other cultural use. Catellus was obligated to install new curb, gutter, sidewalks, etc. on the entire Kettner frontage; and

WHEREAS, the transfer of the Baggage Building for a cultural use at a minimum must include the building itself, its colonnade, the land under the building and the colonnade, an

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access easement through the Breezeway connecting the Baggage Building to the Depot itself, and street frontage along Kettner Boulevard for the length of the Baggage Building; and

WHEREAS, Catellus's obligations for the level of improvements to the Baggage Building include seismic retrofit for cultural use, and "shell improvements" including stub out of electricity, water, sewer and telephone to the interior; structurally sound walls and roof; curb, gutter and sidewalk improvements on the Kettner frontage; and repair of the facade. Obligations of the user of the Baggage Building, therefore, would be typical tenant improvements and specialized improvements for the new use; and

WHEREAS, on December 10, 2002, the City Council authorized a Transfer Agreement and Escrow Instructions with the City of San Diego, Catellus and the Museum of Contemporary Art, San Diego providing for the transfer for the Baggage Building (and Catellus' transfer of the REA property within the site) to the City of San Diego and the City's lease of the properties to the Museum of Contemporary Art, San Diego for a term ending July 31, 2091; and

WHEREAS, such Transfer Agreement and Escrow Instructions has not been executed by the parties and the City of San Diego now desires to designate the Museum of Contemporary Art, San Diego [Designee] as transferee of the properties instead of the City of San Diego; and

WHEREAS, Catellus has submitted to the City copies of a proposed replacement Transfer Agreement and Escrow Instructions providing for the transfer of the Baggage Building and REA property to Designee and providing for a City option for the City to acquire the properties at no cost on or after July 31, 2091, or earlier in the event of a default by Designee; and

WHEREAS, City staff has reviewed the proposed replacement Transfer Agreement and Escrow Instructions and recommends that the City enter into a replacement Transfer Agreement and Escrow Instructions; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, as follows:

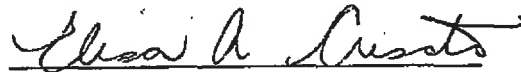
1. That the terms and conditions of the proposed replacement Transfer Agreement and Escrow Instructions are approved.

2. That the City Manager, or his designee, is authorized to execute for and on behalf of the City the replacement Transfer Agreement and Escrow Instructions. A copy of the replacement Transfer Agreement and Escrow Instructions is on file in the office of the City Clerk as Document No. 299406

3. That the City Manager, or his designee, is authorized on behalf of the City, to sign all documents necessary and appropriate to carry out and implement the replacement Transfer Agreement and Escrow Instructions.

APPROVED: CASEY GWINN, City Attorney

By



Elisa A. Cusato
Deputy City Attorney

EIC:ai
06/09/04
Or.Dept: CCDC
R-2004-1370

Passed and adopted by the Council of San Diego on June 29, 2004 by
the following vote:

YEAS: **PETERS, ZUCCHET, ATKINS, LEWIS, MAIENSCHIN, FRYE,
MADAFFER, INZUNZA, MAYOR MURPHY.**

NAYS: **NONE.**

NOT PRESENT: **NONE.**

AUTHENTICATED BY:

DICK MURPHY
Mayor of The City of San Diego, California

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California

(SEAL)

By: Mary A. Cepeda, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of
RESOLUTION NO. R- 299406, passed and adopted by the
Council of The City of San Diego, California on June 29, 2004.

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California

(SEAL)

By: Mary A. Cepeda Deputy
Mary A. Cepeda

