

**COUNTY OF SAN DIEGO  
COUNTYWIDE REDEVELOPMENT SUCCESSOR AGENCY OVERSIGHT BOARD**

**REGULAR MEETING  
October 16 2025, 10:00 A.M.  
AT 1600 PACIFIC HIGHWAY, SAN DIEGO, ROOM 402A  
AGENDA**

Attendance by Virtual Meeting made available.

[Zoom Link](#)

Phone Option: 1-669-444-9171; Meeting ID: 87893548493; Passcode (if prompted): 135246

- A. Call to Order
- B. Roll Call/Statement (just cause) and/or Consideration of a Request to Participate Remotely (emergency circumstances) pursuant to Assembly Bill 2449 by an Oversight Board Member (*if necessary and applicable*)
- C. Pledge of Allegiance
- D. Approval of Statement of Proceedings / Minutes of September 18, 2025 Regular Meeting
- E. Formation of Consent Calendar – Under this item, the Oversight Board may place action items under Section G on the consent calendar to be voted on in one motion.
- F. Public Communication Speakers: Members of the public may address the Oversight Board on subject matters within the Board’s jurisdiction, but not an item on this agenda. Comments on items on the agenda will be taken as each item comes up. Each speaker is limited to three minutes.
- G. Action Item(s)
  - 1. APPROVAL OF A RESOLUTION OF THE SAN DIEGO COUNTYWIDE REDEVELOPMENT SUCCESSOR AGENCY OVERSIGHT BOARD APPROVING AMENDMENT NUMBER 2 TO THE PROFESSIONAL SERVICES AGREEMENT BETWEEN THE SAN DIEGO SUCCESSOR AGENCY’S DESIGNATED AGENT AND KIMLEY-HORN AND ASSOCIATES, INC. FOR CIVIL ENGINEERING CONSULTING SERVICES ON THE B STREET PEDESTRIAN CORRIDOR PROJECT

H. Communications Received:

Supporting documentation and attachments for items listed on this agenda can be viewed online at <http://www.sdcounty.ca.gov/community/san-diego-county-oversight-board.html> or in the Office of Economic Development & Government Affairs, 1600 Pacific Highway, Room 152, San Diego, CA 92101.

**ASSISTANCE FOR THE DISABLED:**

Agendas and records are available in alternative formats upon request. Contact the Office of Economic Development & Government Affairs at (619) 531-5198 with questions or to request a disability-related accommodation. Individuals requiring sign language interpreters should contact the Americans with Disabilities Coordinator at (619) 531-4908. To the extent reasonably possible, requests for accommodation or assistance should be submitted at least 24 hours in advance of the meeting so that arrangements may be made. An area in the front of the room is designated for individuals requiring the use of wheelchair or other accessible devices.

1. Resignation of Oversight Board Seat 1 Member Brian Hagerty, effective after 10/16/2025.
  2. Appointment of Steve Lockett to Oversight Board Seat 1 by the San Diego County Board of Supervisors, effective 10/17/2025.
- I. Future Agenda Item(s):
1. Tentative item: National City Successor Agency, November 2025.
- J. Set Future Meeting Date(s): November 20, 2025 10:00 a.m., December 18th, 2025 10:00 a.m., January 15<sup>th</sup>, 2026 10:00 a.m., February 19<sup>th</sup>, 2026 10:00 a.m.
- K. Adjournment

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**COUNTY OF SAN DIEGO  
COUNTYWIDE REDEVELOPMENT SUCCESSOR AGENCY OVERSIGHT BOARD**

**REGULAR MEETING  
September 18 2025, 10:30 A.M.  
AT 1600 PACIFIC HIGHWAY, SAN DIEGO, ROOM 306A  
Minutes**

A. Call to Order **at 10:30am**

- B. Roll Call/Statement (just cause) and/or Consideration of a Request to Participate Remotely (emergency circumstances) pursuant to Assembly Bill 2449 by an Oversight Board Member (*if necessary and applicable*)

**PRESENT:** Brian Hagerty, Rebecca Jones, Jesse Robles, Scott Buxbaum, and Samuel Merrill

**ABSENT:** Daniel Troy, Corinne Wilson

C. Pledge of Allegiance

D. Approval of Statement of Proceedings / Minutes of July 17, 2025 Regular Meeting

On motion of Chair Buxbaum and seconded by Jones, THE COUNTYWIDE REDEVELOPMENT SUCCESSOR AGENCY OVERSIGHT BOARD approved the minutes of July 17, 2025 Regular Meeting. Oversight Board staff did a roll call vote of each OB member to indicate approval or non-approval. ***Motion passed.***

AYES: Hagerty, Jones, Robles, Buxbaum, and Merrill

- E. Formation of Consent Calendar – Under this item, the Oversight Board may place action items under Section H on the consent calendar to be voted on in one motion. ***No items were placed on the consent calendar.***

- F. Public Communication Speakers: Members of the public may address the Oversight Board on subject matters within the Board's jurisdiction, but not an item on this agenda. Comments on items on the agenda will be taken as each item comes up. Each speaker is limited to three minutes. ***No comments were received by the Board or were presented at the meeting.***

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G. Informational Item(s)

1. Introduction of new Seat 3 Oversight Board Member: Jesse Robles

***Board Member Jesse Robles introduced himself and presented professional background.***

2. Announcement of new Oversight Board Counsel: Steven T. Mattas, Redwood Public Law

***Counsel Steven T. Mattas introduced himself and presented professional background***

H. Action Item(s)

1. APPROVAL OF A RESOLUTION OF THE SAN DIEGO COUNTYWIDE REDEVELOPMENT SUCCESSOR AGENCY OVERSIGHT BOARD APPROVING THE PROPOSED AGREEMENT FOR PROFESSIONAL SERVICES FOR PROPERTY TAX CONSULTING AND AUDIT SERVICES TO THE IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY

**On motion of Chair Buxbaum and seconded by Hagerty, THE COUNTYWIDE REDEVELOPMENT SUCCESSOR AGENCY OVERSIGHT BOARD approved the APPROVAL OF A RESOLUTION OF THE SAN DIEGO COUNTYWIDE REDEVELOPMENT SUCCESSOR AGENCY OVERSIGHT BOARD APPROVING THE PROPOSED AGREEMENT FOR PROFESSIONAL SERVICES FOR PROPERTY TAX CONSULTING AND AUDIT SERVICES TO THE IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY. Oversight Board staff did a roll call vote of each OB member to indicate approval or non-approval. Motion passed.**

**AYES:** Hagerty, Jones, Robles, Buxbaum, and Merrill

2. APPROVAL OF A RESOLUTION OF THE SAN DIEGO COUNTYWIDE REDEVELOPMENT SUCCESSOR AGENCY OVERSIGHT BOARD APPROVING FISCAL YEAR 2025-2026 SPECIAL LIABILITY INSURANCE PROGRAM (SLIP) FOR THE COUNTYWIDE REDEVELOPMENT SUCCESSOR AGENCY OVERSIGHT BOARD

**On motion of Chair Buxbaum and seconded by Jones, THE COUNTYWIDE REDEVELOPMENT SUCCESSOR AGENCY OVERSIGHT BOARD approved the APPROVAL OF A RESOLUTION OF THE SAN DIEGO COUNTYWIDE REDEVELOPMENT SUCCESSOR AGENCY OVERSIGHT BOARD APPROVING**

Supporting documentation and attachments for items listed on this agenda can be viewed online at <http://www.sdcounty.ca.gov/community/san-diego-county-oversight-board.html> or in the Office of Economic Development & Government Affairs, 1600 Pacific Highway, Room 152, San Diego, CA 92101.

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FISCAL YEAR 2025-2026 SPECIAL LIABILITY INSURANCE PROGRAM (SLIP) FOR THE COUNTYWIDE REDEVELOPMENT SUCCESSOR AGENCY OVERSIGHT BOARD. Oversight Board staff did a roll call vote of each OB member to indicate approval or non-approval. ***Motion passed.***

**AYES:** Hagerty, Jones, Robles, Buxbaum, and Merrill

- I. Communications Received: ***No communications received.***
- J. Future Agenda Item(s): ***Introduction of new Seat 1 Board Member. To be determined pending Hagerty's retirement and resignation which is currently anticipated to be become effective October 16, 2025.***
- K. Set Future Meeting Date(s): October 16, 2025 10:00 a.m., November 20, 2025 10:00 a.m., December 18th, 2025 10:00 a.m.
- L. Adjournment **at 10:46am**

Supporting documentation and attachments for items listed on this agenda can be viewed online at <http://www.sdcounty.ca.gov/community/san-diego-county-oversight-board.html> or in the Office of Economic Development & Government Affairs, 1600 Pacific Highway, Room 152, San Diego, CA 92101.

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# COUNTY OF SAN DIEGO

## AGENDA ITEM

### COUNTYWIDE REDEVELOPMENT SUCCESSOR AGENCY OVERSIGHT BOARD

#### COUNTYWIDE REDEVELOPMENT SUCCESSOR AGENCY OVERSIGHT BOARD

BRIAN HAGERTY

REBECCA JONES

JESSE ROBLES

SCOTT BUXBAUM

DANIEL TROY

SAMUEL MERRILL

CORINNE WILSON

**DATE:** October 16, 2025

**01**

**TO:** Countywide Redevelopment Successor Agency Oversight Board

**SUBJECT:** APPROVAL OF A RESOLUTION OF THE SAN DIEGO COUNTYWIDE REDEVELOPMENT SUCCESSOR AGENCY OVERSIGHT BOARD APPROVING AMENDMENT NUMBER 2 TO THE PROFESSIONAL SERVICES AGREEMENT BETWEEN THE SAN DIEGO SUCCESSOR AGENCY'S DESIGNATED AGENT AND KIMLEY-HORN AND ASSOCIATES, INC. FOR CIVIL ENGINEERING CONSULTING SERVICES ON THE B STREET PEDESTRIAN CORRIDOR PROJECT

#### **SUMMARY:**

##### **Overview**

In September 2019, the Oversight Board and California Department of Finance approved a Civil Engineering Consulting Services Agreement ("Agreement") between Civic San Diego ("CivicSD"), acting as the contracting agent for the City of San Diego, in its capacity as the Successor Agency to the former Redevelopment Agency of the City of San Diego ("Successor Agency"), and Kimley-Horn and Associates ("Consultant") to provide civil engineering consulting services on a pedestrian corridor project ("Project") (described in greater detail below). In October 2021, the Oversight Board and California Department of Finance approved a first amendment to the Agreement (First Amendment), which expanded Consultant's Scope of Services and increased Consultant's compensation.

The construction documents and permit approvals for the Project are near complete. However, the Project has incurred delays due to design changes by unanticipated permitting requirements and coordination with stakeholders.

Under this proposed Second Amendment (Attachment B) ("Second Amendment"), the Parties seek to (1) modify the Scope of Services to complete the Project construction documents and obtain the necessary permits for bidding and construction, (2) increase Consultant's compensation by \$100,000, and (3) extend the Term of the Agreement to December 31, 2026.

**SUBJECT:** APPROVAL OF A RESOLUTION OF THE SAN DIEGO COUNTYWIDE REDEVELOPMENT SUCCESSOR AGENCY OVERSIGHT BOARD APPROVING AMENDMENT NUMBER 2 TO THE PROFESSIONAL SERVICES AGREEMENT BETWEEN THE SAN DIEGO SUCCESSOR AGENCY'S DESIGNATED AGENT AND KIMLEY-HORN AND ASSOCIATES, INC. FOR CIVIL ENGINEERING CONSULTING SERVICES ON THE B STREET PEDESTRIAN CORRIDOR PROJECT

The Consultant was originally selected through a qualification-based process and was the best qualified firm for the Project's requirements. This Agreement will complete the design and permitting phase and push the project into the construction phase so that the Successor Agency can continue to fulfill its recognized obligations.

**Recommendation(s)**

1. Adopt the resolution entitled, A RESOLUTION OF THE SAN DIEGO COUNTYWIDE REDEVELOPMENT SUCCESSOR AGENCY OVERSIGHT BOARD APPROVING AMENDMENT NUMBER 2 TO THE PROFESSIONAL SERVICES AGREEMENT BETWEEN THE SAN DIEGO SUCCESSOR AGENCY'S DESIGNATED AGENT AND KIMLEY-HORN AND ASSOCIATES, INC. FOR CIVIL ENGINEERING CONSULTING SERVICES ON THE B STREET PEDESTRIAN CORRIDOR PROJECT

**Fiscal Impact**

Funding from line item 164 in the Redevelopment Obligation Payment Schedule (ROPS) is available in the amount of \$3,000,000. The current ROPS 25-26 period "A" that ends December 31, 2025 has \$1,500,000 programmed to cover this agreement, along with \$1,500,000 programmed for period "B" that ends June 30, 2026. The Project has been previously recognized as an enforceable obligation and there are sufficient funds programmed in the current ROPS periods to cover the contract.

**BACKGROUND:**

In 1993, the Redevelopment Agency of the City of San Diego (the "Former RDA") executed an Amended and Restated Development Agreement and an Amended and Restated Owner Participation Agreement with Catellus Development Corporation (including its affiliates, "Catellus") which revised development entitlements first granted in 1983 to Catellus' predecessor for the approximate 17 acres in the environs of the Santa Fe Depot (together, the "Development/Owner Participation Agreements").

Under the terms of these Development/Owner Participation Agreements, Catellus was required to retrofit and complete base building improvements to the Santa Fe Depot Baggage Building ("Baggage Building") and to transfer title of the Baggage Building to the City of San Diego ("City"), or any other governmental agency or non-profit entity designated by the City, for use as a museum or other cultural use.

In December 2002, the Former RDA approved an agreement between the Former RDA, Catellus, and the Museum of Contemporary Art, San Diego ("Museum") in which Catellus transferred title of the Santa Fe Depot Baggage Building to the Museum, with an option for the Former RDA to acquire title from the earlier of (a) a Museum default and (b) July 31, 2091 ("Transfer Agreement") (Attachment C). Section 10.22 of the Transfer Agreement – Public Access

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Improvements in B Street, states "it is a goal of the [Former RDA] to install a public pathway and landscaping between Kettner Boulevard and the Transit Courtyard within the vacated B Street right of way" (the "B Street Pedestrian Corridor"). Also under Section 10.22, the Museum obligated itself to "pay to [the Former RDA] \$150,000 to assist [the Former RDA] in the funding of the improvements as contemplated on Exhibit K ..." (i.e., the B Street Pedestrian Corridor). Construction and development of the B Street Pedestrian Corridor, including all ancillary improvements related thereto, shall be referred to in this Staff Report as the "Project." And the \$150,000 that the Museum agreed to contribute towards the Project shall be referred to as the "Project Contribution."

In October 2024, the City, the Museum, and The Regents of the University of California (the "Regents") entered into an Agreement Satisfying and Terminating Obligations Under 2004 Transfer Agreement and Amending 2004 City Option ("2024 Agreement") as a condition precedent to the City's consent to the Museum's proposed sale of the Baggage Building to the Regents. The 2024 Agreement, among other things, transferred all obligations of the Museum under the Transfer Agreement to the Regents, including payment of the Project Contribution.

The Successor Agency has received from the Regents the Project Contribution, which is currently being held in a dedicated account for the Project.

The Successor Agency is responsible for the remaining funds to administer the Project, and the Transfer Agreement specifically states that the Former RDA "shall fund all amounts required to construct and install such improvements." Furthermore, the Transfer Agreement states that "[i]t shall be the responsibility of the [Former RDA] to develop the final construction drawings for the improvements and landscaping implementing" the B Street Pedestrian Corridor.

Pursuant to the Transfer Agreement, the Museum entered into a lease with AMTRAK in February 2006 for the use of an approximately 2,755-square foot portion of the Baggage Building ("AMTRAK Lease") (Attachment D). The AMTRAK Lease was amended on or about September 8, 2006. Section 4 of the AMTRAK Lease states that the "Museum will install a driveway and walkway...for pedestrian purposes; such driveway and walkway shall be deemed to and shall constitute the Public Pedestrian Pathway until the one desired by the [Former RDA], as above described is constructed."

The Development/Owner Participation Agreements, the Transfer Agreement, and the AMTRAK Lease (collectively, the Controlling Documents) obligate the Successor Agency to acquire those certain public pedestrian easements within the vacated B Street right-of-way and pay for the design, development and construction of the Project.

Consultant, in cooperation with the stakeholders adjacent to the B Street Pedestrian Corridor, including the Regents, AMTRAK, and the McClintock Building owner to the north have completely vetted the design for the B Street Pedestrian Corridor which would allow passage for



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pedestrians and limited access for stakeholder vehicles.

Throughout the coordination process, the permits required by the City of San Diego triggered additional building permits and surveys due to proposed improvements to existing walls. This 2<sup>nd</sup> Amendment with Kimley-Horn will continue the process to incorporate the input by the new and existing stakeholders, complete the construction drawings, and obtain permits through the City of San Diego.

Pursuant to Assembly Bill x1 26 ("AB 26") and Assembly Bill 1484, the Former RDA dissolved on February 1, 2012, at which time the Successor Agency assumed all of the Former RDA's assets, rights, and obligations under the California Community Redevelopment Law. In addition, CivicSD, formerly Centre City Development Corporation ("CCDC"), has replaced CCDC as the Successor Agency's representative for, among other duties, many aspects of the winding down of redevelopment in the City.

Section 34177.3(a) of California Health and Safety Code, as recently amended, states that successor agencies "shall lack the authority to, and shall not, create new enforceable obligations or begin redevelopment work, except in compliance with an enforceable obligation . . . that existed prior to June 28, 2011." Section 34177.3(b) permits successor agencies to "create enforceable obligations to conduct the work of winding down the redevelopment agency, including hiring staff, acquiring necessary professional administrative services and legal counsel, and procuring insurance." Section 34171(d)(1)(E) defines "enforceable obligation" to include "any legally binding and enforceable agreement or contract that is not otherwise void as violating the debt limit or public policy." Section 34171(d)(1)(F) further defines "enforceable obligation" to include "[c]ontracts or agreements for the administration or operation of the successor agency, in accordance with this part . . . ." Section 34177(a) requires the Successor Agency to continue to make payments due for enforceable obligations, and Section 34177(c) requires the Successor Agency to perform obligations required pursuant to any enforceable obligation.

Under Section 34177.3(b), a post-AB 26 contract or amendment thereto is warranted if it allows the Successor Agency to fulfill a pre-AB 26 enforceable obligation. The DOF issued a letter dated November 8, 2013 that requires the Oversight Board and the DOF to approve all post-AB 26 services contracts, management contracts and similar contracts, and post-AB 26 amendments to existing contracts of that nature, that will involve the Successor Agency's expenditure of funds in the ROPS 13-14B time period and beyond.

This Agreement should be permitted under Sections 34171(d)(1)(E), 34171(d)(1)(F), 34177(a), 34177(c), and 34177.3(b) as it will allow Successor Agency, through CivicSD, to utilize the Consultant to fulfill an enforceable obligation that existed prior to June 28, 2011. The enforceable obligation was created through the Controlling Documents that obligate the Former RDA to design, develop, and construct the B Street Pedestrian Corridor. To fulfill this pre-AB 26 enforceable obligation, CivicSD, on the Successor Agency's behalf, seeks to modify its Agreement

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with the Consultant to obtain the permits, complete the design, and move into the construction phase of the Project.

Project Description – Kimley-Horn utilized the previously approved schematic drawings developed by CivicSD and the stakeholders’ input to prepare construction drawings for the B Street Pedestrian Corridor improvements between Kettner Boulevard and the railroad tracks. Staff negotiated the 2<sup>nd</sup> Amendment amount to be \$100,000, which includes completing the design and obtaining permits through the City of San Diego.

Project Budget – The Preliminary Cost Estimate for the entire Project is \$3.1 million and as part of the amended scope of services, the Consultant will provide a new opinion of probable cost. Staff has estimated the contract is within the Project Budget.

Project Schedule of Performance – The following is a preliminary schedule for the proposed Project work.

Phase	Action	Dates
1	Obtain Permits	December 2025
2	Construction Phase	January 2026
3	Completion	Early 2027

Environmental Impact: This activity is not a “Project” for purposes of the California Environmental Quality Act (CEQA) because it does not fit within the definition of a “Project” set forth in Public Resources Code Section 21065 or State CEQA Guidelines Section 15378. Therefore, this activity is not subject to CEQA pursuant to State CEQA Guidelines Section 15060(c)(3).

Respectfully submitted,



STEVE LOCKETT  
Deputy Director, EDGA

**ATTACHMENT(S):**

- A – Resolution No. OB-2025-23
- B – Draft 2<sup>nd</sup> Amendment with Kimley Horn and Associates
- C – Transfer Agreement
- D – AMTRAK Lease

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### **AGENDA ITEM INFORMATION SHEET**

#### **PREVIOUS RELEVANT BOARD ACTIONS:**

On September 19, 2019, the Successor Agency Oversight Board approved a contract for consulting services with Kimley-Horn to prepare schematic design drawings and preliminary cost estimate for the B Street Pedestrian Corridor project.

On October 21, 2021, the Successor Agency Oversight Board approved the First Amendment for consulting services with Kimley-Horn to prepare construction documents for the subject Project.

#### **MANDATORY COMPLIANCE:**

Per the Controlling Documents, the Successor Agency is required and monetarily responsible for the completion of the B Street Pedestrian Corridor and associated activities to complete the subject Project.

#### **CONTACT PERSON(S):**

Steve Lockett

Name

619-984-0697

Phone

Steve.Lockett@sdcounty.ca.gov

E-mail

Matthew Ostlund

Name

619-929-6662

Phone

Matthew.Ostlund@sdcounty.ca.gov

E-mail

A RESOLUTION OF THE SAN DIEGO COUNTYWIDE  
REDEVELOPMENT SUCCESSOR AGENCY OVERSIGHT BOARD  
APPROVING AMENDMENT NUMBER 2 TO THE PROFESSIONAL  
SERVICES AGREEMENT BETWEEN THE SAN DIEGO  
SUCCESSOR AGENCY'S DESIGNATED AGENT AND KIMLEY-  
HORN AND ASSOCIATES, INC. FOR CIVIL ENGINEERING  
CONSULTING SERVICES ON THE B STREET PEDESTRIAN  
CORRIDOR PROJECT

WHEREAS, the former Redevelopment Agency of the City of San Diego (Former RDA) administered the implementation of various redevelopment projects, programs, and activities within designated redevelopment project areas throughout the City of San Diego (City); and

WHEREAS, under California's redevelopment dissolution laws, the Former RDA dissolved as of February 1, 2012, at which time the City, solely in its capacity as the designated successor agency to the Former RDA (Successor Agency), assumed the Former RDA's assets and obligations and commenced winding down the Former RDA's operations; and

WHEREAS, the Successor Agency is required to administer the winding down of the Former RDA's operations and to ensure compliance with the Former RDA's obligations in accordance with Assembly Bill x1 26 (AB 26), as subsequently amended (collectively, the Dissolution Laws); and

WHEREAS, the Dissolution Laws specify that the Oversight Board and the California Department of Finance (DOF) must review and approve certain actions and decisions of the Successor Agency, including the Successor Agency's approval of each Recognized Obligation Payment Schedule (ROPS); and

WHEREAS, among other things, each ROPS shows the estimated payments owed by the Successor Agency to third parties for enforceable obligations during the upcoming fiscal period and identifies the funding sources that will be used to make such payments; and

WHEREAS, California Health and Safety Code (Code) section 34177.3(a) states that successor agencies “shall lack the authority to, and shall not, create new enforceable obligations or begin redevelopment work, except in compliance with an enforceable obligation . . . that existed prior to June 28, 2011”; and

WHEREAS, Code section 34177.3(b) permits successor agencies to “create enforceable obligations to conduct the work of winding down the redevelopment agency, including hiring staff, acquiring necessary professional administrative services and legal counsel, and procuring insurance”; and

WHEREAS, Code section 34171(d)(1)(E) defines “enforceable obligation” to include “[a]ny legally binding and enforceable agreement or contract that is not otherwise void as violating the debt limit or public policy”; and

WHEREAS, Code section 34171(d)(1)(F)(i) further defines “enforceable obligation” to include “[c]ontracts or agreements for the administration or operation of the successor agency, in accordance with this part . . . .”; and

WHEREAS, Code section 34177(a) requires the Successor Agency to continue to make payments due for enforceable obligations, and Code section 34177(c) requires the Successor Agency to perform obligations required pursuant to any enforceable obligation; and

WHEREAS, the DOF issued a letter dated November 8, 2013 (November 2013 Letter) that effectively requires the Oversight Board and the DOF to approve all post-AB 26 services contracts, management contracts and similar contracts, and post-AB 26 amendments to existing contracts of that nature, that will involve the Successor Agency’s expenditure of funds in the ROPS 13-14B time period and beyond; and

WHEREAS, the DOF also issued a letter dated April 1, 2014 (April 2014 Letter), interpreting the Dissolution Laws to mean the Oversight Board must find that any post-AB 26 contract amendment for the provision of services is in the best interests of the local taxing entities in accordance with Code section 34181(e) or that the contract amendment, including any increase in compensation or scope of services, is necessary for the administration or operation of the Successor Agency in accordance with Code section 34171(d)(1)(F)(i); and

WHEREAS, Civic San Diego (CivicSD) performs certain administrative functions on the Successor Agency's behalf related to winding down the Former RDA's operations; and

WHEREAS, to comply with the November 2013 Letter and the April 2014 Letter, the Successor Agency is now presenting, for approval by the Oversight Board and the DOF, Amendment Number 2 to the Professional Services Agreement (Second Amendment) between CivicSD (the Successor Agency's designated agent) and Kimley-Horn and Associates, Inc. (Consultant), which involves the expenditure of ROPS-approved funds for civil engineering consulting services to prepare construction documents and obtain permits for the completion of certain pedestrian pathway and landscaping improvements in the B Street corridor in downtown San Diego (Project) pursuant to an enforceable obligation, as described further below; and

WHEREAS, in 1993, the Former RDA and Catellus Development Corporation (collectively with its affiliates, Catellus) entered into the Amended and Restated Development Agreement and the Amended and Restated Owner Participation Agreement (collectively, Development/Owner Participation Agreements), which revised development entitlements first granted in 1983 to Catellus' predecessor for approximately 17 acres of land near the Santa Fe Depot in downtown San Diego; and

WHEREAS, the Development/Owner Participation Agreements required Catellus to retrofit and complete base building improvements to the Santa Fe Depot Baggage Building (Baggage Building) and to transfer title of the Baggage Building to the City, or any other governmental agency or non-profit entity designated by the City, for use as a museum or other cultural use; and

WHEREAS, in 2004, the Former RDA, Catellus, and the Museum of Contemporary Art, San Diego (Museum) entered into the Transfer Agreement and Escrow Instructions (Transfer Agreement), by which Catellus transferred title of the Baggage Building to the Museum, with an option for the City to acquire title from the earlier of (a) a Museum default and (b) July 31, 2091; and

WHEREAS, Section 10.22 of the Transfer Agreement requires the Successor Agency, as successor to the Former RDA, to acquire certain public pedestrian easements within the vacated B Street right of way and, subject to a contribution of \$150,000 from the Museum (Project Contribution), to pay for the design, development, construction, and installation of the pedestrian pathway and landscaping improvements in the B Street corridor (i.e., the Project), as further described in the staff report accompanying this Resolution; and

WHEREAS, in 2024, the City, the Museum, and The Regents of the University of California (the Regents) entered into an Agreement Satisfying and Terminating Obligations Under 2004 Transfer Agreement and Amending 2004 City Option (2024 Agreement) as a condition precedent to the City's consent to the Museum's proposed sale of the Baggage Building to the Regents. The 2024 Agreement, among other things, transferred all obligations of the Museum under the Transfer Agreement to the Regents, including payment of the Project Contribution; and

WHEREAS, the City has received from the Regents the Project Contribution, which is currently being held in a dedicated account for the Project; and

WHEREAS, pursuant to Resolution No. OB-2019-025 adopted on September 19, 2019, the Oversight Board approved the original Professional Services Agreement between CivicSD and the Consultant, involving the maximum expenditure of \$49,600 in ROPS-approved funds for an initial phase of civil engineering consulting services, which included schematic design, preliminary cost estimate, and public outreach associated with the Project; and

WHEREAS, pursuant to Resolution No. OB-2021-020 adopted on October 21, 2021, the Oversight Board approved the First Amendment to the Professional Services Agreement between CivicSD and the Consultant, increasing the compensation by \$140,747.75 from the previous amount of \$49,600 for a total amount of \$190,347.75 to complete the second phase of civil engineering consulting services for the Project; and

WHEREAS, pursuant to Resolution No. OB-2025-12 adopted on January 16, 2025, the Oversight Board approved the Successor Agency's ROPS for the period of July 1, 2025 through June 30, 2026 (ROPS 25-26), which includes authorization to pay Consultant for services performed for the Project up to the total amount of \$3,000,000.00 (ROPS 25-26 Limit); and

WHEREAS, the proposed form of the Second Amendment is attached to the staff report accompanying this Resolution; and

WHEREAS, the Second Amendment will benefit the local taxing entities and will be in their best interests, in that it will permit the Successor Agency to carry out its contractual obligation under the Transfer Agreement, a pre-AB 26 contract, to complete the design, development, construction, and installation of the Project, and will avoid the Successor Agency's breach of its contractual obligations; and



WHEREAS, the Second Amendment involves an increase in the scope of services to encompass the Consultant's ongoing coordination with new and existing stakeholders and unforeseen permitting requirements to secure necessary permits for the Project; and

WHEREAS, the Second Amendment also involves an increase in compensation by \$100,000, from the previous amount of \$190,347.75 to the current amount of \$290,347.75, to allow the Consultant to complete the design, obtain permits, and finalize the construction documents for the Project; and

WHEREAS, the increased compensation is warranted in that it is directly attributable to the increased scope of services, is permissible under the Oversight Board-approved ROPS 25-26, and does not exceed the ROPS 25-26 Limit; and

WHEREAS, the Second Amendment is necessary for the operation or administration of the Successor Agency because it permits the Successor Agency to complete the final design, development, construction, and installation of the Project and thereby fulfill its contractual obligations under the Transfer Agreement related to the Project; and

WHEREAS, the Successor Agency, or CivicSD as the contracting agent on its behalf, will pay for the Consultant's services performed under the Second Amendment utilizing the funding sources shown in line item 164 of the ROPS 25-26.

NOW, THEREFORE, BE IT RESOLVED by the Oversight Board as follows:

1. The Board finds, in accordance with Code section 34181(e), that the Second Amendment is in the best interests of the local taxing entities.
2. The Board finds, in accordance with Code section 34171(d)(1)(F)(i), that the provision of services under the Second Amendment, including the increase in scope of services

Attachment A  
Resolution No: OB-2025-23  
Meeting Date: 10/16/2025

as well as the related increase in compensation by \$100,000, is necessary for the administration or operation of the Successor Agency.

3. The Second Amendment is approved.

**PASSED AND ADOPTED** by the Oversight Board at a duly noticed meeting of the Oversight Board held on October 16, 2025.

Approved as to Form and Legality  
By Steven T. Mattas, Oversight Board Counsel

---

Scott Buxbaum  
Chair, Oversight Board

**SECOND AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT BY AND  
BETWEEN CIVIC SAN DIEGO  
AND  
KIMLEY-HORN AND ASSOCIATES, INC.**

This Second Amendment (“Amendment”), dated this \_\_\_\_\_ day of \_\_\_\_\_, 2025, for reference purposes only, is entered into by and between Civic San Diego, a California nonprofit public benefit corporation, with its principal place of business at 8989 Rio San Diego Drive Suite 100, San Diego, California 92108 (“Civic”) and Kimley-Horn and Associates, Inc., a North Carolina corporation, with its principal place of business at 401 B Street, Suite 600, San Diego, California 92101, United States (“Consultant”). Civic and Consultant are sometimes referred to in this Amendment individually as a “Party” and collectively as the “Parties.” This Amendment is entered into in light of the following recited facts (each a “Recital”).

**RECITALS**

A. Civic is a nonprofit public benefit corporation organized under the California Nonprofit Public Benefit Corporation Law (Corp. Code § 5110 et seq.), for charitable purposes to raise capital for and engage in activities that promote economic growth and community development and provide project management, consulting, and other similar community development services to public and private entities or persons. Under the Professional Services Agreement dated August 22, 2019 (“Agreement”), Civic has retained the services of Consultant, a engineering firm, design firm, to provide professional services relating to B Street Pedestrian Corridor (the “Project”).

B. On December 3, 2021, Civic and Consultant amended the Agreement to add scope of work for B Street Pedestrian Corridor and increase the Time and Material Not to Exceed Amount by \$140,747.75 from the previous amount of \$49,600 (“First Amendment”).

C. The Parties now desire to enter into a Second Amendment and to amend the Agreement to add to the Scope of Services, increase the maximum compensation, and extend the term.

D. Amendment Authority. This Amendment is authorized pursuant to Section 14(h) of the Agreement.

NOW, THEREFORE, in consideration of the Recitals and the terms and conditions set forth in this Amendment, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties set forth their mutual covenants and understandings as follows:

**TERMS**

1. SCOPE OF SERVICES: The Scope of Services, Agreement Exhibit “A”, is hereby amended and supplemented by the Scope of Services (SUPPLEMENTAL), attached to this Amendment as Exhibit “A” and incorporated into the Agreement by this reference.

2. COMPENSATION: The Time and Materials Not to Exceed Amount defined in Section 2 “COMPENSATION” of the Agreement is hereby amended to increase by \$100,000.00, from the previous amount of \$190,347.75 to the current amount of \$290,347.75, attached to this Amendment as Exhibit “B”.

3. EXTENSION OF TERM: The Term of the Agreement is hereby extended through December 31, 2026.

4. CONTINUING EFFECT OF AGREEMENT. Except as amended by this Amendment, all other provisions of the Agreement as previously amended, remain in full force and effect. From and after the date of this Amendment, whenever the term “Agreement” appears in the Agreement, it shall mean the Agreement as amended by this Amendment and prior amendments.

5. AUTHORIZATION. The individual executing this Amendment on behalf of the Consultant represents and warrants they have the legal power, right and actual authority to bind Consultant to the terms and conditions of this Amendment.

6. ADEQUATE CONSIDERATION. The Parties stipulate and agree that they have each received adequate and independent consideration for the performance of obligations undertaken pursuant to this Amendment.

7. COUNTERPARTS. This Amendment may be executed in duplicate originals, each of which is deemed to be an original, but when taken together shall constitute one and the same instrument.

[SIGNATURES ARE ON THE FOLLOWING PAGE.]

IN WITNESS WHEREOF, the Parties have caused this Amendment to be executed and delivered by their respective representatives, thereunto duly authorized, as of the date first written above.

**CIVIC SAN DIEGO**

By: \_\_\_\_\_  
Andrew T. Phillips  
President & CEO

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 2025

**KIMLEY-HORN AND ASSOCIATES, INC.**

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Position/Title: \_\_\_\_\_

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 2025

APPROVED AS TO FORM:

**BEST BEST & KRIEGER LLP**  
CIVIC SAN DIEGO CORPORATE COUNSEL

By (Signature): \_\_\_\_\_  
Shawn Hagerty, Esq.  
Corporate Counsel

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 2025

## **EXHIBIT A**

### **SCOPE OF SERVICES (SUPPLEMENTAL)**

#### **Wall Mural Design**

Consultant will prepare a “paint-by-numbers” design for a new mural to be included on the existing wall on the north side of the corridor. This task includes up to three (3) design revisions based on Client and/or stakeholder comments.

#### **Right of Way Survey**

Consultant will perform a field survey and site investigation to establish a clear right of way boundary line based on visible monumentation and a review of available record documents. The right of way line will be added to the revised plans prior to City resubmittal.

#### **Building Permit Plans**

Consultant will prepare a separate Building Permit design package for submittal to the City. This additional design package was directed by City Staff and is to include all design items proposed outside of the existing easement.

#### **Building Permit Processing**

Consultant will assist Civic with submittal of the plans to the City of San Diego Building Department (DSD) for review. Consultant anticipates up to two (2) cycles of minor review comments prior to approval. Consultant will review comments upon receipt, coordinate with Civic and City staff regarding the comments, and prepare revisions to the Building Permit Plans and a comment response memo for each resubmittal.

#### **Revised Cost Estimate**

Consultant will revise the project Opinion of Probable Construction Cost (OPCC) for the revised design scope described herein. The OPCC will be for reference and City bond purposes.

#### **Bid Phase Assistance**

Consultant will assist Civic with limited bid phase services. This task assumes up to fifteen (15) hours of Consultant staff effort. Specifically:

1. Review and respond to contractor requests for information (RFI) related to the plans and contract documents during for bidding
2. Attend one (1) in-person pre-bid meeting with Civic and bidding contractors
3. Assist Civic with limited bid-related documentation and coordination.

## EXHIBIT B

### T&M Fee Schedule

Scope	Fee
Wall Mural Design	\$22,000
Right of Way Survey	\$10,000
Building Permit Plans	\$15,000
Building Permit Processing	\$13,000
Revised Design Plans	\$15,000
ROW Permit Processing	\$11,000
Revised Cost Estimate	\$5,000
Bid Phase Assistance	\$9,000
Total	\$100,000

**ORIGINAL  
DUPLICATE**

**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

DOCUMENT NO. RL-299406  
FILED JUN 29 2004  
OFFICE OF THE CITY CLERK  
SAN DIEGO, CALIFORNIA

DOCUMENT NO. D-03790/R-03790  
FILED JUL 09 2004  
OFFICE OF THE REDEVELOPMENT AGENCY  
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@sanidiego.gov](mailto:wgriffith@sanidiego.gov)

**1.10 Address for Notices to Agency.**

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

Exhibit O      Catellus letter dated December 3, 2003  
Exhibit P      List of reports provided by Catellus  
Exhibit Q      Form of Limited Vehicular Access Easement (affecting the northerly 8' of  
                    the Property)

**11.9 Further Documents and Assurances.** The parties shall each, diligently and in good faith, undertake all actions and procedures reasonably required to place the Escrow in condition for Closing as and when required by this Agreement.

**11.10 Time of Essence.** Time is of the essence of this Agreement.

**11.11 Governing Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of California.

**11.12 Construction of Agreement.** This Agreement and any document or instrument delivered pursuant to this Agreement shall be construed without regard to the identity of the person who drafted it. The parties agree that any rule of construction that a document is to be construed against the drafting party shall not be applicable to this Agreement or any document or instrument delivered pursuant to this Agreement.

**11.13 Time for Acceptance; Date of Agreement.** This Agreement, when executed by Catellus and the Museum and delivered to the City and Agency, must be authorized, executed and delivered by the City and Agency to Escrow Agent before the Outside Close of Escrow. The effective date of this Agreement shall be the date on which it is signed by the last to sign as between the City or Agency.

[Signatures on next page]

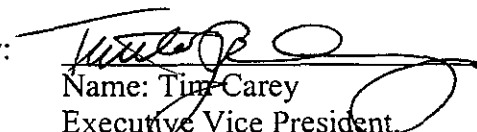
IN WITNESS WHEREOF, this Agreement has been executed by the parties as of the date described in Section 11.14 above.

Date: 6-18-04, 2004

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

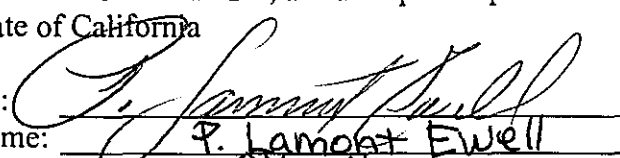
By: Catellus Development Corporation, a Delaware  
corporation (formerly known as Catellus  
SubCo, Inc., a Delaware corporation), its sole  
general partner

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

By:   
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:   
Name: P. Lamont Ewell  
Title: City Manager

APPROVED:

CASEY GWINN  
City Attorney

By:   
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. Pundipham  
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

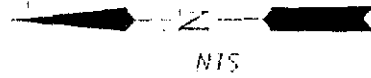
BEING A PORTION OF PARCEL 2 OF PARCEL MAP NO. 19378, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

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 CATELLUS 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, 15.27 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.

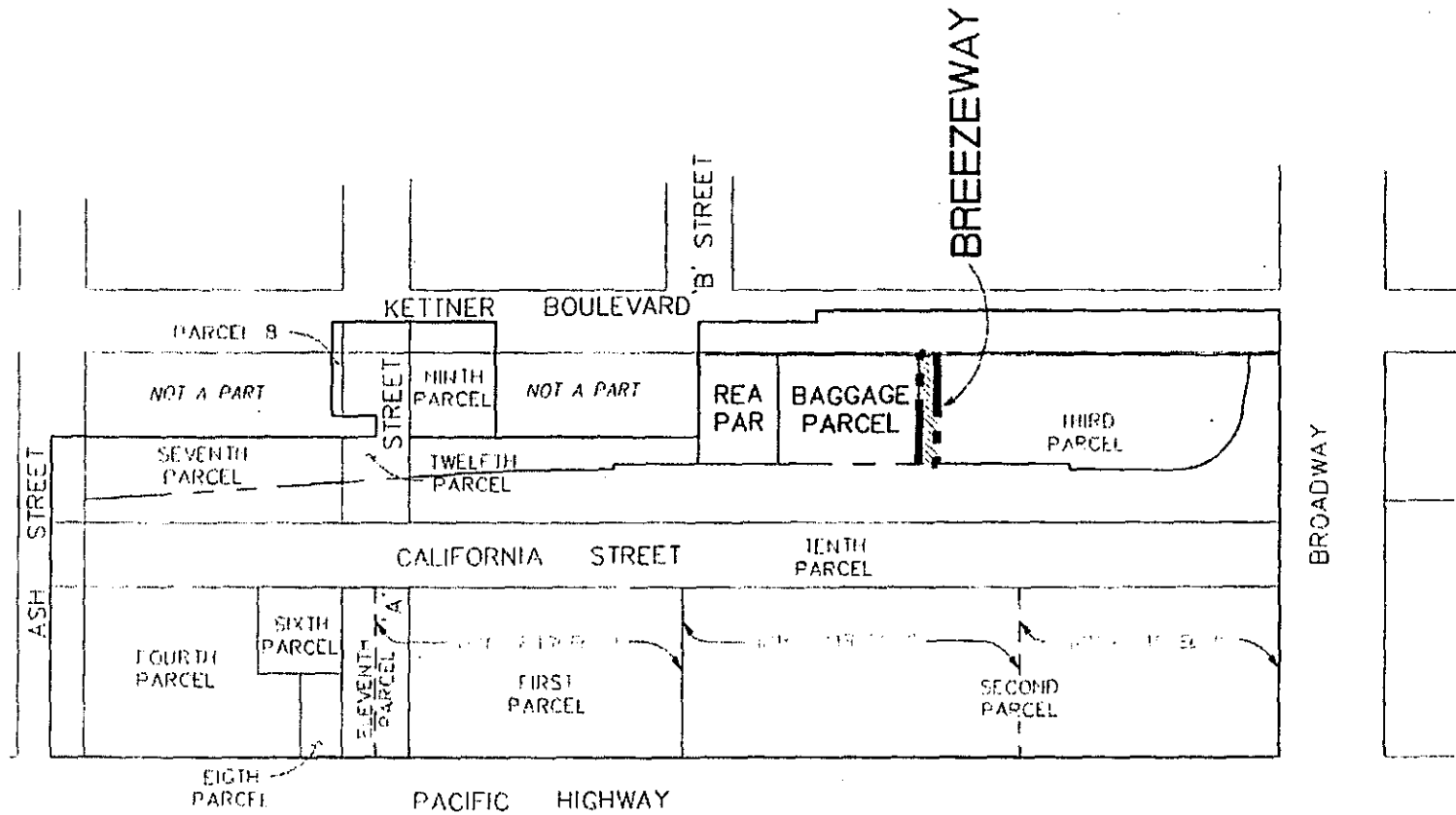
CONTAINS 0.048 ACRES, 2106 SQ.FT. MORE OR LESS.



*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 B Street, Suite 500, San Diego, CA 92101  
619-555-6171 FAX 619-555-6171

## 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.

- b. The Property shall be in the physical condition required by the Transfer Agreement.
- c. The escrow shall close within sixty days after the Notice of Escrow is delivered to Museum.
- d. All costs of escrow and title (City shall be entitled to obtain a policy of title insurance in the amount of \$10 million) shall be paid by Museum.
- e. City shall be entitled to possession of the Property as of the close of escrow.
- f. The obligations of Museum pursuant to Section 10.14 of the Transfer Agreement shall remain in effect after the close of escrow.

6. Notice. Any notice required or permitted hereunder shall be deemed to have been received either: (a) when delivered by hand and the party giving such notice has received a signed receipt thereof; or (b) one (1) day following the date deposited with Federal Express or other recognized overnight courier; or (c) when sent by telecopy machine or (d) on the day following the date deposited in the United States mail, postage prepaid, by registered or certified mail, return receipt requested, addressed as follows (or addressed in such other manner as the party being notified shall have requested by written notice to the other party):

If to the City:

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

If to the 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](mailto:cecastle@mcasd.org)

With a copy to:

Robert Caplan, Esq.  
Seltzer Caplan McMahon Vitek  
750 B Street, Suite 2100  
San Diego, California 92101  
Telephone: (619) 685-3070

Facsimile: (619) 702-6688  
Email: [rcaplan@scmv.com](mailto: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](mailto: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**



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## **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, 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). 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  
30<sup>th</sup> Street Station  
Fourth Floor, South Tower  
Philadelphia, Pennsylvania 19104  
Attention: Vice President Real Estate Development

AMTRAK  
National Rail Passenger Corporation  
530 Water Street  
5<sup>th</sup> 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: \_\_\_\_\_

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**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.

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*(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 "Covenantor"), 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: \_\_\_\_\_

APPROVED:

CASEY GWINN  
City Attorney

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF CALIFORNIA     )  
                                          ) ss.  
COUNTY OF SAN DIEGO    )

On \_\_\_\_\_, 2004, before me,  
\_\_\_\_\_, Notary Public, personally appeared  
\_\_\_\_\_

\_\_\_\_\_ Personally known to me  
Or  
\_\_\_\_\_ proved to me on the basis of satisfactory evidence

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:

(S E A L)

\_\_\_\_\_  
SIGNATURE OF NOTARY PUBLIC

STATE OF CALIFORNIA     )  
                                          ) ss.  
COUNTY OF SAN DIEGO    )

On \_\_\_\_\_, 2004, before me,  
\_\_\_\_\_, Notary Public, personally appeared  
\_\_\_\_\_

\_\_\_\_\_ Personally known to me  
Or  
\_\_\_\_\_ proved to me on the basis of satisfactory evidence

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 FACADE 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: \_\_\_\_\_

STATE OF CALIFORNIA     )  
                                          ) ss.  
COUNTY OF SAN DIEGO     )

On \_\_\_\_\_, 2004, before me,  
\_\_\_\_\_, Notary Public, personally appeared  
\_\_\_\_\_

\_\_\_\_\_ Personally known to me  
Or  
\_\_\_\_\_ proved to me on the basis of satisfactory evidence

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)

STATE OF CALIFORNIA     )  
                                          ) ss.  
COUNTY OF SAN DIEGO     )

On \_\_\_\_\_, 2004, before me,  
\_\_\_\_\_, Notary Public, personally appeared  
\_\_\_\_\_

\_\_\_\_\_ Personally known to me  
Or  
\_\_\_\_\_ proved to me on the basis of satisfactory evidence

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 THE SERVIENT TENEMENT



## **EXHIBIT I**

Intentionally Deleted



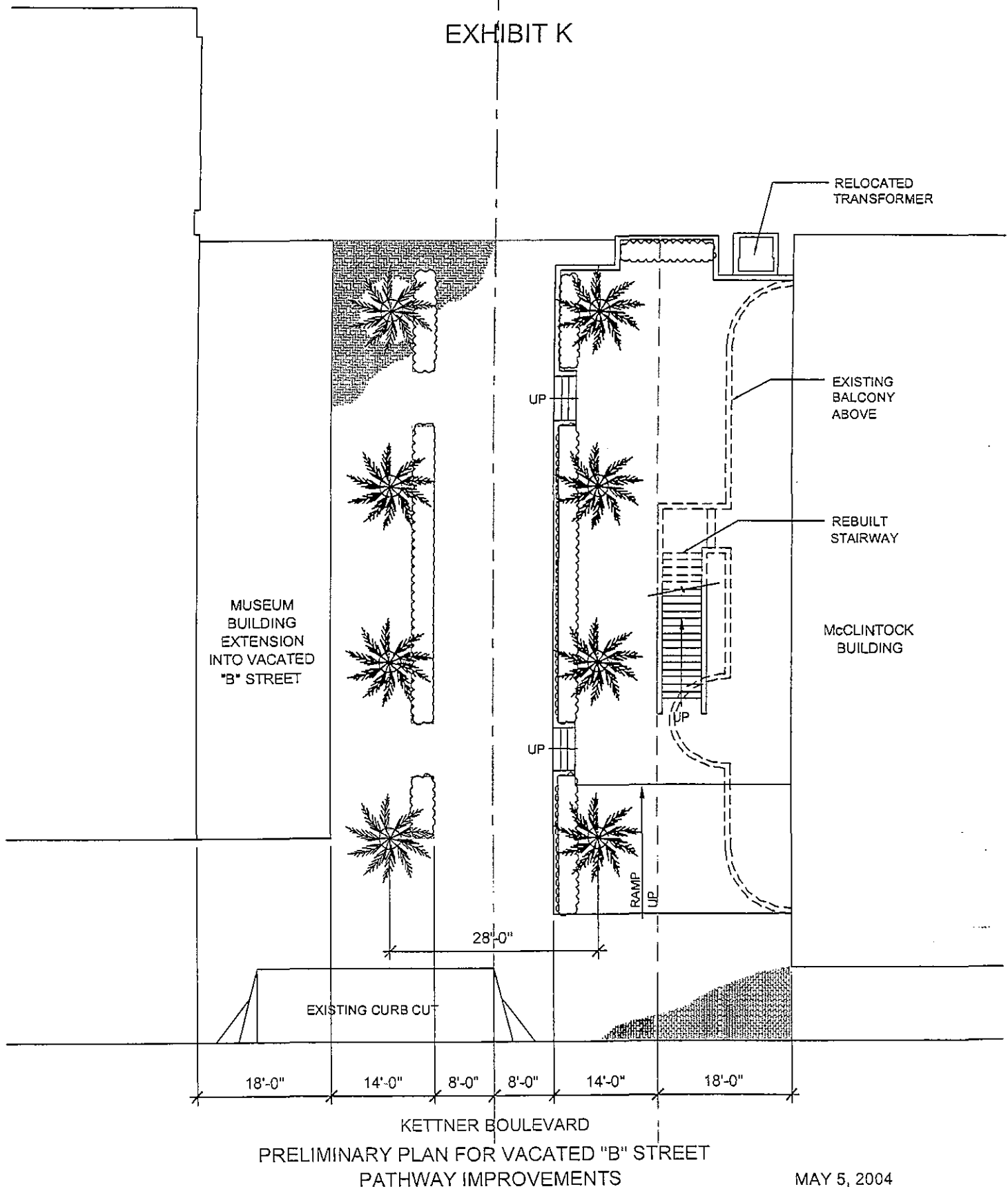


## **EXHIBIT J**

Intentionally Deleted



## EXHIBIT K





## 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)

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### 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)

\\THEMISO\_CLIENT\5\5950\53445\TRANS\EXHIBITS TO MUSEUM TRANS AGRMT\EXHIBIT L - PUBLIC PEDESTRIAN EASEMENT V2  
(OLD EXH M).DOC

## 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\53445\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:\5\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	\$ - 2,181

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

JUN 29 2004

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

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:

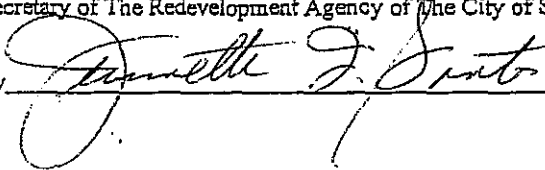
DICK MURPHY

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<sup>+</sup>**

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





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



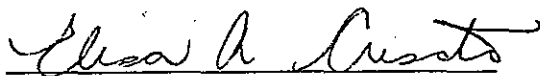
WHEREAS, City staff has reviewed the proposed replacement Transfer Agreement and Escrow Instructions and recommends that the City enter into a replacement Transfer Agreement and Escrow Instructions; NOW, THEREFORE,

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



September 8, 2006

The City of San Diego  
Office of the City Clerk  
San Diego, California 92101

Redevelopment Agency of  
The City of San Diego  
600 B Street, Fourth Floor  
San Diego, California 92101

Re: Amtrak Lease and First Amendment to Amtrak Lease  
Between Museum of Contemporary Art, San Diego, and  
National Railroad Passenger Corporation

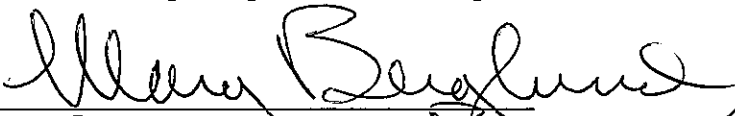
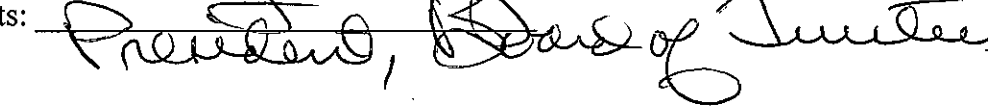
Pursuant to Section 1.16 (e) and Section 2.1.3 of that certain Transfer Agreement and Escrow Instructions made as of July 2, 2004, among Catellus Operating Limited Partnership, a Delaware limited partnership, as successor by merger to Catellus Development Corporation, a Delaware Corporation, the City of San Diego, a municipal corporation of the State of California, the Redevelopment Agency of the City of San Diego, a public body corporate and politic of the State of California, the Museum of Contemporary Art, San Diego, a California non-profit public benefit corporation (Museum), and Commonwealth Land Title Company, the undersigned, 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), hereby submit for your approval: (1) a duplicate original of Amtrak Lease executed as of February 1, 2006, between Museum and Amtrak, and (2) a copy of the First Amendment to Amtrak Lease.

MUSEUM:

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

By:

Its:

[Signatures continued on next page]



AMTRAK:

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

By: William G. Smith  
Its: Acting Vice President Real Estate Development

THE UNDERSIGNED HEREBY APPROVE AND CONSENT  
to the attached Lease and First Amendment to Amtrak Lease, and  
City agrees that City shall honor and be bound by the terms of the  
Lease, as amended, if City becomes the owner of the new museum  
building (the Copley Building) during the Lease term.

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

By: James J. Waring  
Name: JAMES J. WARING  
Title: Deo

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

By: James J. Waring  
Name: JAMES J. WARING  
Title: ASS'T EX DIR

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## FIRST AMENDMENT TO AMTRAK LEASE

This FIRST AMENDMENT TO AMTRAK LEASE (First Amendment) is made as of September 8, 2006, 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:

1. This First Amendment is made and entered into with reference to the following facts and circumstances:

a. Amtrak and Museum are parties to that certain Amtrak Lease executed as of February 1, 2006 ("Lease"), pursuant to which Museum has leased to Amtrak certain space in the Copley Building (currently under construction) (the "Premises") in San Diego, California. The Lease (including the exhibits attached thereto) is attached hereto as Exhibit A and made a part hereof.

b. The Lease was entered into prior to obtaining the approval of The City of San Diego, a municipal corporation of the State of California (City), and the Redevelopment Agency of The City of San Diego, a public body corporate and politic of the State of California (Agency), as required by Section 1.16 (e) and Section 2.1.3 of the Transfer Agreement and Escrow Instructions made as of July 2, 2004, among Catellus Operating Limited Partnership, a Delaware limited partnership, as successor by merger to Catellus Development Corporation, a Delaware Corporation, City, Agency, Museum, and Commonwealth Land Title Company (Transfer Agreement).

c. The City and Agency have requested revisions to the Lease to meet the requirements of the Transfer Agreement, and the Museum and Amtrak have agreed to make those revisions which are embodied in this First Amendment. This First Amendment and Lease have been submitted for City and Agency approval and by that letter attached hereto as Exhibit B, the City and Agency have approved this First Amendment and Lease.

d. This First Amendment is entered into by the Museum and Amtrak effective as of the date set forth above, and duplicate originals of the Lease and this First Amendment shall be provided to the City and Agency. Capitalized terms used herein which are not defined in this First Amendment shall have the definitions as set forth in the Lease.

2. The Lease is hereby amended in the following particulars only:

a. Paragraph 1 is deleted in its entirety and is replaced with the following:

## 1. LEASE OF PREMISES

Museum hereby leases the Premises, as of the date of substantial completion ("Substantial Completion") of the Copley Building ("Term Start Date"), to Amtrak, and Amtrak leases the Premises from Museum, upon the provisions and conditions set forth herein. Substantial Completion shall occur when Museum provides to Amtrak a certificate of occupancy (or other appropriate governmental permission for occupancy of the Premises) plus a certification from Museum's engineer or architect certifying to Amtrak that the Premises have been substantially completed pursuant to the Plans, and Amtrak, in its sole discretion, determines that the Premises are ready for Amtrak's "Use", as hereinafter defined, pursuant to the Plans. The Parties acknowledge that Amtrak has reviewed and approved the attached Plans, Exhibit "III" and Exhibit "IIIA", and that any amendment or modification, other than insignificant ones, to such Plans or Exhibits which affect the Premises must be approved by Amtrak. In addition, Amtrak shall have a non-exclusive right with Museum to access Museum's loading area in the Copley Building ("Loading Area") but not for its garbage removal service (which can be accomplished only through the arcade area). Amtrak shall not permit parking, storage, engine idling, or garbage in the Loading Area. Amtrak's access to the Museum Loading Area for other purposes will be reasonably accommodated by the Museum by prior arrangement with the Museum, or by Museum's successors in interest by prior arrangement with such successor. The Museum shall not have access to the Premises, but is entitled to vehicular access to the "Public Pedestrian Pathway", as hereinafter defined, for purposes related to maintenance of the arcade and outdoor sculpture.

b. Paragraph 4 is deleted in its entirety and is replaced with the following:

### 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 ("Use"), 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, fine arts insurance, or other insurance policy covering the Copley Building or Museum's property (or art in the possession of Museum by reason of an art loan agreement or similar arrangements) 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 or the remainder of the Copley 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). The 22' area immediately north of the Copley Building owned by Museum is intended to be improved by the City or Agency with the southerly 14' thereof to be a landscaped and paved area (generally as shown in Exhibit K to the Transfer Agreement, a copy of which is also attached

hereto as Exhibit K), 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) ("Public Pedestrian Pathway"). Agency has informed Museum that it is uncertain as to when the contemplated Public Pedestrian Pathway can or will be constructed, so Museum will install a driveway and walkway reasonably adjacent to the Copley Building to be utilized by Museum and Amtrak (and the public for pedestrian purposes); such driveway and walkway (Driveway) shall be deemed to and shall constitute the Public Pedestrian Pathway until the one desired by Agency, as above described, is constructed. The Driveway or Public Pedestrian Pathway can be utilized by Amtrak for 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 Driveway or Public Pedestrian Pathway shall be maintained by Amtrak with respect to sweeping; removal of trash; cleaning (which shall include only the removal of oil stains and the like caused by Amtrak's vehicles) and repairing and reconstructing the pavers as necessary and only if required due to use by Amtrak's vehicles (with the other aspects of maintenance of the Driveway or Public Pedestrian Pathway to be the responsibility of Museum or MTDB); and (3) no vehicle may be parked, and nothing can be stored or maintained (including without limitation trash containers) on any portion of the Driveway or Public Pedestrian Pathway (or any portion of the landscaped area south of the Driveway or 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 and Museum agree that the purpose of their respective performance of their maintenance obligations is to maintain the Driveway or Public Pedestrian Pathway in a safe, clean, and attractive condition. The Driveway or Public Pedestrian Pathway may be utilized by Museum for vehicular ingress or egress, and either or both may be constructed (if Museum so elects) in such manner as to preclude (with posts or other barriers) vehicular traffic other than Museum's or Amtrak's, providing that Museum shall indemnify Amtrak and pay for all damage to property or persons, including cleaning (which shall include the removal of oil stains and the like caused by Museum's vehicles) and repairing and reconstructing the pavers, due to Museum's use of the Driveway or Public Pedestrian Pathway. Museum and Amtrak shall, to the extent necessary, work out a lock or other mechanism arrangement to permit Amtrak to have temporary access for vehicular ingress and egress consistent with the foregoing, and Amtrak shall have priority (to the extent necessary) to use the Driveway or Public Pedestrian Pathway for Amtrak's regularly scheduled trash pick-up. No such posts or other barriers may be installed without the prior written consent of City. Amtrak acknowledges that the exact configuration of the Public Pedestrian Pathway may later differ from that described by the foregoing provisions, and that for an undetermined period of time the Driveway will be the only means of such access.

c. The incorrect reference (10.a<sup>(i?)</sup> in line three of paragraph 9.A.(ii)) is corrected to read "pursuant to this subsection 9.A.(ii). . ."

d. Subparagraph 9.B. is deleted.

e. Paragraph 14. Exhibit "I" is corrected as follows:

Exhibit "I" – Jacobs Building and REA Site Legal Description.

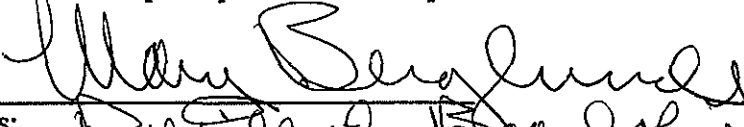
3. Except as expressly amended herein, the Lease shall remain in full force and effect. In the event of any inconsistencies between the provisions and conditions of the Lease and this First Amendment, the provisions and conditions of this First Amendment shall govern.

MUSEUM:

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

By: 

Its: 

  
President, Board of Trustees

AMTRAK:

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

By: 

William G. Sfida

Acting Vice President Real Estate Development



# ORIGINAL

## AMTRAK LEASE

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This Amtrak Lease ("Lease") is executed as of February 1, 2006 ("Effective Date"), 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 July 29, 2004, Museum acquired, pursuant to a Grant Deed recorded in the Official Records of the San Diego County Recorder as Document No. 2004-0711683 (as provided in the Transfer Agreement and Escrow Instructions ("Transfer Agreement") dated July 1, 2004 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 "I", attached hereto and made a part hereof. The real property consists of the existing baggage building ("Jacobs Building") located adjacent to the railway depot in San Diego, California and a lot, adjacent to and located north of the Jacobs Building commonly known as the "REA Site". Museum is constructed and will thereafter operate, for uses ancillary to a museum (which Museum will be primarily located in the Jacobs Building), a building on the REA Site ("Copley 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; said Parcel 4, on which the Copley Building will be located, includes a portion of the Arcade which runs parallel to the tracks located adjacent to Parcel 4.

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

C. Museum desires to let and Amtrak desires to lease for its exclusive use a portion of the Copley Building, such portion to consist of approximately 2,755 square feet as set forth in Exhibit "II" attached hereto and made a part hereof ("Premises").

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

1. LEASE OF PREMISES

Museum hereby leases the Premises, as of the date of substantial completion ("Substantial Completion") of the Copley Building ("Term Start Date"), to Amtrak, and Amtrak leases the Premises from Museum, upon the provisions and conditions set forth herein. Substantial Completion shall occur when Museum provides to Amtrak a certificate of occupancy (or other appropriate governmental permission for occupancy of the Premises) plus a certification from Museum's engineer or architect certifying to Amtrak that the Premises has been substantially completed pursuant to the Plans and Amtrak, in its sole discretion, determines that the Premises are ready for Amtrak's "Use", as herein after defined, pursuant to the Plans.



The Parties acknowledge that Amtrak has reviewed and approved the attached Plans, Exhibit III and Exhibit III A, and that any amendment or modification, other than insignificant ones, to such Plans or Exhibits which affect the Premises must be approved by Amtrak. In addition, Amtrak shall have a non-exclusive right with Museum to access Museum's loading area in the Copley Building ("Loading Area") but not for its garbage removal service (which can be accomplished only through the arcade area). Amtrak shall not permit parking, storage, engine idling, or garbage in the Loading Area. Amtrak's access to the Museum Loading Area for other purposes will be reasonably accommodated by the Museum by prior arrangement with the Museum. If at anytime the Copley Building is assigned, leased, subleased, sold or in any other manner transferred or used by any other entity or party other than the Museum, Amtrak shall have priority use of the Loading Area. The Museum shall not have access to the Premises, but is entitled to vehicular access to the "Public Pedestrian Pathway", as herein after defined, for purposes related to maintenance of the arcade and outdoor sculpture.

2. TERM

The term of this Lease ("Term") shall commence on the Term Start Date, which is anticipated to be March 1, 2007, and expire on July 31, 2091 ("Expiration Date"), but the Lease is effective as of the Effective Date. At any time during the Term, Amtrak may 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, except as provided in Paragraph 9, Amtrak shall not be entitled to the return of any amounts paid to Museum.

3. FINANCIAL OBLIGATIONS OF AMTRAK

A. Amtrak shall pay \$850,000 to Museum as Amtrak's agreed share of the costs of construction of the Copley Building as follows: After the construction commences, Museum

shall by the tenth of the following month send to Amtrak a certified statement (signed by an officer or executive of Museum) setting forth the total cost of construction and the dollar value of the construction work completed within the prior month. The certified statement shall show the total construction completed within the prior month, as a percentage of \$850,000. Amtrak shall be required to pay the amount so computed to Museum within thirty days after the certified statement is sent to Amtrak. In no event shall the total of all such payments requested of Amtrak exceed \$850,000.

B. If Amtrak fails to make any payment to Museum in accordance with the schedule described in 3.A. above, then Amtrak shall be in default of this Lease.

C. Amtrak and Museum have agreed that Museum shall install during the construction of the Copley Building the modifications specified on Exhibit IV, for an agreed cost (in addition to the amounts specified in Paragraph 3.A) not to exceed \$87,228.40 (but not to be less than \$79,848.95, the difference depending on the actual amount of the contingency which is needed), which shall be paid to Museum when such modifications have been installed.

#### 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 ("Use"), 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, fine arts insurance, or other insurance policy covering the Copley Building or Museum's property (or art in the possession of Museum by reason of an art loan agreement or similar arrangements) 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 or the remainder of the Copley 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). The 22' area immediately north of the Copley Building owned by Museum is intended to be improved by the City or Agency with the southerly 14' thereof to be a landscaped and paved area (generally as shown in Exhibit K to the Transfer Agreement, a copy of which is also attached hereto as Exhibit K), 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) ("Public Pedestrian Pathway"). Agency has informed Museum that it is uncertain as to when the contemplated Public Pedestrian Pathway can or will be constructed, so Museum will install a driveway and walkway reasonably adjacent to the Copley Building to be utilized by Museum and Amtrak (and the public for pedestrian purposes); such driveway and walkway (Driveway) shall be deemed to and shall constitute the Public Pedestrian Pathway until the one desired by Agency, as above described, is constructed. The Driveway or Public Pedestrian Pathway can be utilized by Amtrak for 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 Driveway or Public Pedestrian Pathway shall be maintained by Amtrak with respect to sweeping; removal of trash; cleaning (which shall include only the removal of oil stains and the like caused by Amtrak's vehicles) and repairing and reconstructing the pavers as necessary and only if required due to use by Amtrak's vehicles (with the other aspects of maintenance of the Driveway or Public Pedestrian Pathway to be the responsibility of Museum or MTDB); and (3) no vehicle may be parked, and nothing can be

stored or maintained (including without limitation trash containers) on any portion of the Driveway or Public Pedestrian Pathway (or any portion of the landscaped area south of the Driveway or 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). The Driveway or Public Pedestrian Pathway may be utilized by Museum for vehicular ingress or egress, and either or both may be constructed (if Museum so elects) in such manner as to preclude (with posts or other barriers) vehicular traffic other than Museum's or Amtrak's, providing that Museum shall indemnify Amtrak and pay for all damage to property or persons, including cleaning (which shall include the removal of oil stains and the like caused by Museum's vehicles) and repairing and reconstructing the pavers, due to Museum's use of the Driveway or Public Pedestrian Pathway. Museum and Amtrak shall, to the extent necessary, work out a lock or other mechanism arrangement to permit Amtrak to have temporary access for vehicular ingress and egress consistent with the foregoing, and Amtrak shall have priority (to the extent necessary) to use the Driveway or Public Pedestrian Pathway for Amtrak's regularly scheduled trash pick-up. Amtrak acknowledges that the exact configuration of the Public Pedestrian Pathway may later differ from that described by the foregoing provisions, and that for an undetermined period of time the Driveway will be the only means of such access.

5. UTILITIES, SERVICES, MAINTENANCE AND CONSTRUCTION

A. Amtrak shall pay for all utilities and services for the Premises commencing on the Term Start Date; 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 Copley Building Amtrak shall only be required to maintain the interior of the Premises. Museum shall maintain the remainder of the Copley Building including without limitation the roof, windows, structural elements, exterior walls, plumbing, drainage, and sewage systems, and the loading area. If Museum does not maintain the Copley Building as required by this Section and such lack of maintenance materially affects the Premises, Amtrak may, but shall not be obligated to (and only after giving thirty (30) days notice to Museum of its intention to do so and such maintenance not being accomplished by Museum within such thirty (30) day period), perform such maintenance for the Copley Building and bill Museum for all costs associated with such maintenance as long as such costs do not exceed \$5,000.. Museum shall reimburse Amtrak within thirty (30) days of receipt of the bill.

6. LIMITATION OF LIABILITY

A. This Lease is made upon the express condition that Museum shall have no liability for claims, causes of action, liabilities, losses, costs, damages and/or expenses in law or equity (including, without limitation, attorneys' fees and expenses) of any kind or nature whatsoever (collectively, "Claims") by reason of any injury to any person or property arising out of or in anyway connected with the Premises except those Claims that are caused by the negligence or willful misconduct of, or violation of any law or ordinance by Museum or any contractor, subcontractor, employee, guest or invitee of Museum, by reason of any injury to any person or property of any kind arising out of or in any way connected with the Premises, or their use or occupancy, during the Term of this Lease or any extensions. Museum shall not be liable under any circumstances for consequential damages or damages or injury to Amtrak's business or potential business.

B. This Lease is made upon the express condition that Amtrak shall have no liability for Claims by reason of any injury to any person or property of any kind arising out of or in any way connected with the Copley Building other than the Premises, and the Public Pedestrian Pathway when being used by Amtrak, except those Claims that are caused by the negligence or willful misconduct of Amtrak (or any of its employees or agents). Amtrak shall not be liable under any circumstances for consequential damages or damages or injury to Museum's business or potential business. Amtrak shall not be liable for damages or injuries to portions (including the loading area) of the Copley Building, other than the Premises, except those damages or injuries that are caused by the negligence or willful misconduct of Amtrak (or any of its employees or agents). Amtrak shall not be liable for the conduct of any visitor, passenger or invitee to the Premises, the Copley Building or the Public Pedestrian Pathway.

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 the 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 arising out of or in connection with this Lease, the Premises (including the loading area) the Public Pedestrian Pathway, to the extent and only to the extent Amtrak is responsible pursuant to the Lease, provided that the Claim (i) is based upon or relating to bodily injury to or death of any person, or damage to or loss of property

of any kind whatsoever, including, without limitation, loss of use thereof, and (ii) is caused by sole negligence or willful misconduct of an Amtrak employee or agent

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B. With the exception that this Lease shall in no event be construed to require indemnification by Museum 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 Amtrak's rights and remedies in the event of a breach of this Lease by Museum, Museum agrees to indemnify, defend, and hold harmless Amtrak, City, and the 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 arising out of or in connection with this Lease, the Premises (including the loading area) the Public Pedestrian Pathway, the landscaped areas, the arcade, or the Copley Building to the extent but only to the extent Museum is responsible pursuant to the Lease, provided that the Claim (i) is based upon or relating to bodily injury to or death of any person, or damage to or loss of property of any kind whatsoever, including, without limitation, loss of use thereof, and (ii) is caused by the negligence or willful misconduct of the Museum or any employee or agent of Museum.

#### 8. IMPROVEMENTS AND ALTERATIONS

Except for construction of the Copley Building pursuant to the Plans, Museum has made no promise to alter or improve the Premises, except that Museum will require its general contractor to construct the Copley Building in accordance with the Plans and the Construction Schedule. As provided in 5.B. Amtrak shall only be required to maintain the interior of the Premises which shall be maintained 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 the Premises (including, without limitation, the exterior of the Copley Building) to be damaged or defaced in any manner whatsoever (although Amtrak shall have the right to install one or more small signs for directional purposes only (if needed), with the design, size and location of such sign(s) to be subject to the reasonable approval of Museum), and Amtrak shall immediately repair any damage it solely causes to the Copley Building. 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, or destruction of the Premises because of an occurrence beyond Amtrak's control.

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) Museum shall notify Amtrak within thirty days after such damages or destruction of Museum's decision to rebuild the Copley Building including the Premises or declining to rebuild. During the 180-day repair or replacement period identified in Subparagraph A(iii) below, 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.

(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 Copley 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 Copley Building (and not related to the personal property, including art displayed or stored in the Copley Building ) equal to the amount paid by Amtrak hereunder as related to the cost of the construction of the Copley Building (e.g. if the cost of the Copley Building is \$17,000,000 and Amtrak paid \$850,000, then Amtrak would be entitled to received 5% of the insurance proceeds actually received by the Museum directly related to the Copley Building structure.

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

B. If by reason of the damage or destruction of the Copley Building, the City or any third party becomes the owner of the REA Site, Amtrak shall have the right to cause the Premises to be reconstructed. If the reconstruction does not occur within a reasonable period of time, to the extent Museum has the power to grant such rights, Amtrak shall have the right to occupy the land upon which the Premises were constructed so as to have a place to locate its necessary facilities for its operations. Museum shall have no involvement with such arrangements.

## 10. INSURANCE

A. Unless Amtrak makes the election permitted by 10.B., Amtrak shall, at its sole expense, obtain and maintain at all times during the Term of this Lease (1) commercial general liability insurance coverage, on "occurrence" type forms acceptable to Museum, specifically

relating to the Premises including without limitation the loading area, the Public Pedestrian Pathway, the landscaped areas, and that portion of the Arcade owned by the Museum, and providing annual limits of liability of at least \$3,000,000 per occurrence and \$3,000,000 in the aggregate; and (2) commercial property insurance coverage, on forms acceptable to Museum, for the full replacement value of the Premises as determined by an independent commercial property appraiser as of the effective date of this Agreement. Amtrak shall ensure that Museum is named as an Additional Insured on all general liability policies obtained pursuant to this requirement, and that all such policies are expressly endorsed to be primary and non-contributing with any coverage maintained by Museum. The coverage provided by such general liability and property insurance policies may be adjusted at least every five years, as market conditions may require. Prior to occupying the Premises, Amtrak shall furnish Museum with Certificates of Insurance and Additional Insured endorsements evidencing the above coverages. On written request of Museum, Amtrak shall also provide complete copies of all policies responding to the requirements herein.

B. Amtrak may elect to self-insure its obligations under this Lease provided Amtrak has in place, prior to its occupancy of the Premises, nationwide, a comprehensive and properly funded self-insurance program, provided that Amtrak has delivered to Museum an appropriate letter from Amtrak's risk-management department. If Amtrak makes such election, it shall, upon Museum's written request, provide Museum with documentation evidencing the existence and principal aspects of such self-insurance program insofar as they pertain to the Premises.

C. Prior to commencement of construction on the REA Site, Museum shall, at its sole expense, obtain and maintain at all times during construction, a builder's risk insurance policy covering the risk of direct physical loss of or damage to the Copley Building and all

materials, supplies, fixtures, and equipment to be used in or consumed during construction.

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Builder's risk coverage shall be provided on an "all-risk" policy form and shall include, without limitation, coverage for physical loss or damage due to fire, theft, collapse, vandalism, malicious mischief, faulty workmanship or materials, windstorm, explosion, mechanical or electrical breakdown or failure, delay, testing and startup. Coverage shall be provided on a replacement cost basis.

D. Museum shall, at its sole expense, obtain and maintain at all times during the term of this Lease (1) commercial general liability insurance coverage specifically relating to the Copley Building and providing annual limits of liability of at least \$3,000,000 per occurrence and \$3,000,000 in the aggregate; and (2) commercial property insurance coverage for the full replacement value of the Copley Building, less the value of the Premises as determined by Museum in its sole discretion. The coverage provided by such policies shall be increased within the sole discretion of Museum. Museum shall ensure that Amtrak is named as an Additional Insured on all general liability policies obtained pursuant to this requirement.

E. All insurance policies obtained pursuant to the above requirements shall, if possible, provide sixty (60) days' prior written notice to the Named Insured prior to any cancellation of substantive change in coverage. All such policies shall be in effect on or before the Effective Date of the Lease, except that the builder's risk policy shall be in force on commencement of construction on the REA Site.

## 11. ASSIGNMENT AND SUBLETTING

A. 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.

B. Museum may not transfer or assign this Lease, or sublet the Copley Building or any part thereof, without Amtrak's written approval. 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. Amtrak may, if the circumstances warrant such action, exercise self-help in resolving a default by Museum (in which event Amtrak must timely report to the Museum the circumstances and the actions taken).

## 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; an Amtrak employee must accompany the Museum representative except in an emergency situation.

B. Amtrak shall not affix, paint, erect or inscribe any sign (except as otherwise permitted), projection, awning, signal or advertisement of any kind to any part of the Premises, or the Copley 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 to give effect to the provisions of this Lease.

E. 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.

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

G. 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.

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

I. 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  
30<sup>th</sup> Street Station  
Fourth Floor, South Tower  
Philadelphia, Pennsylvania 19104  
Attention: Vice President Real Estate Development

National Railroad Passenger Corporation  
530 Water Street  
Oakland, California 94607  
Attention: Real Estate Department

CITY OF SAN DIEGO  
*Redevelopment Agency*  
*600 B Street*  
*San Diego, California 92101*

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

J. 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.

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

14. EXHIBITS.

Exhibit I - Jacobs Building and Rea Site Legal Description  
Exhibit II - Copley Building

Exhibit III and Exhibit IIIA -- Plans/Specifications and Construction Schedule

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Exhibit IV - Amtrak Modifications

Exhibit K - Copy of Exhibit K to Transfer Agreement

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: Mary L. Berglund  
Its: President

AMTRAK:

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

By: Sally J. Hunt

In consideration of the terms herein and for other valuable consideration which receipt is acknowledged, the undersigned acknowledges and agrees to be bound by the terms set forth in Paragraph 9B herein.

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

By: \_\_\_\_\_



O:\5\5950\53445\Trans\AMTRAK LEASE 3-17-06.DOC

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## **Exhibit "I"**

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

Parcel A: Baggage Building Fee Parcel (now known as Jacobs Building)

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 :

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 'II'**

---

### **COPLEY BUILDING**

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

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)**

A151

These books are placed under the heading of "Literature" and are not to be placed under the heading of "Reference".



## DRAWING LIST

Drawing Number	Drawing Title	Date
A000	Cover Sheet	8-Dec-04
A001	Drawing List	8-Dec-04
A002	Drawing Symbols and Abbreviations	8-Dec-04
BD001	General Notes	8-Dec-04
BD002	General Notes	8-Dec-04
BD101	Evacuation Plan - Baggage Building	8-Dec-04
BD151	Evacuation Plan - Addition	8-Dec-04
BD200	Accessibility Compliance Diagrams	8-Dec-04
C.1	Public Improvements	8-Dec-04
C.2	Public Improvements	8-Dec-04
C.3	Erosion Control Plan	8-Dec-04
D101	Ground Floor, Baggage Building	8-Dec-04
D102	Clerestory Level, Baggage Building	8-Dec-04
A010	Vicinity Plan	8-Dec-04
A020	Site Plan	8-Dec-04
A101	Plan - Ground Floor, Baggage Building	8-Dec-04
A102	Plan - Clerestory Level, Baggage Building	8-Dec-04
A104	Plan - Roof, Baggage Building	8-Dec-04
A111	Power and Signal Plan - Ground Floor, Baggage Building	8-Dec-04
A112	Power and Signal Plan - Clerestory, Baggage Building	8-Dec-04
A151	Plan - Ground Floor, Addition	8-Dec-04
A152	Plan - Second Floor, Addition	8-Dec-04
A153	Plan - Third Floor, Addition	8-Dec-04
A154	Plan - Roof, Addition	8-Dec-04
A161	Power and Signal Plan - Ground Floor, Addition	8-Dec-04
A162	Power and Signal Plan - Second Floor, Addition	8-Dec-04
A163	Power and Signal Plan - Third Floor, Addition	8-Dec-04
A121	Furniture Plan - Ground Floor, Baggage Building	8-Dec-04
A171	Furniture Plan - Ground Floor, Addition	8-Dec-04
A172	Furniture Plan - Second Floor, Addition	8-Dec-04
A173	Furniture Plan - Third Floor, Addition	8-Dec-04
A200	Elevation - East, Baggage Building	8-Dec-04
A201	Elevation - South, Baggage Building	8-Dec-04
A202	Elevation - West, Baggage Building	8-Dec-04
A250	Elevation - East, Addition	8-Dec-04
A251	Elevation - South, Addition	8-Dec-04
A252	Elevation - West, Addition	8-Dec-04
A253	Elevation - North, Addition	8-Dec-04
A300	Section, Looking North - Baggage Building	8-Dec-04
A301	Section, Looking North - Baggage Building	8-Dec-04
A302	Section, Looking West - Baggage Building	8-Dec-04
A350	Section, Looking South - Addition	8-Dec-04
A351	Section, Looking South - Addition	8-Dec-04
A352	Section, Looking West - Addition	8-Dec-04
A353	Section, Looking West - Addition	8-Dec-04
A420	Exterior Details - Baggage Building	8-Dec-04
A440	Entry - Baggage Building	8-Dec-04
A441	Entry Details - Baggage Building	8-Dec-04
A442	Clerestory Details - Baggage Building	8-Dec-04

A443	Clerestory Details - Baggage Building	8-Dec-04
A444	Clerestory Details - Baggage Building	8-Dec-04
A450	Exterior Wall Sections, North - Addition	8-Dec-04
A451	Exterior Wall Sections, East - Addition	8-Dec-04
A452	Exterior Wall Sections, South - Addition	8-Dec-04
A453	Exterior Wall Sections, West - Addition	8-Dec-04
A460	Exterior Wall Types - Addition	8-Dec-04
A470	Exterior Wall Details - Addition	8-Dec-04
A471	Exterior Wall Details - Addition	8-Dec-04
A472	Exterior Wall Details - Addition	8-Dec-04
A473	Exterior Wall Details - Addition	8-Dec-04
A474	Exterior Wall Details - Addition	8-Dec-04
A475	Exterior Wall Details - Addition	8-Dec-04
A476	Exterior Wall Details - Addition	8-Dec-04
A477	Exterior Wall Details - Addition	8-Dec-04
A478	Exterior Wall Details - Addition	8-Dec-04
A479	Exterior Wall Details - Addition	8-Dec-04
A480	Exterior Wall Details - Addition	8-Dec-04
A481	Exterior Wall Details - Addition	8-Dec-04
A482	Exterior Wall Details - Addition	8-Dec-04
A483	Exterior Wall Details - Addition	8-Dec-04
A484	Exterior Wall Details - Addition	8-Dec-04
A485	Exterior Wall Details - Addition	8-Dec-04
A490	Entry and Canopy - Addition	8-Dec-04
A491	Entry and Canopy Details - Addition	8-Dec-04
A492	Gate Details - Addition	8-Dec-04
A493	Loading Dock and Trash - Addition	8-Dec-04
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A501	Interior Elevations - Baggage Building	8-Dec-04
A502	Interior Elevations - Baggage Building	8-Dec-04
A503	Interior Elevations - Baggage Building	8-Dec-04
A504	Interior Elevations - Baggage Building	8-Dec-04
A505	Interior Elevations - Baggage Building	8-Dec-04
A506	Interior Elevations - Baggage Building	8-Dec-04
A507	Interior Elevations - Baggage Building	8-Dec-04
A508	Interior Elevations - Baggage Building	8-Dec-04
A509	Interior Elevations - Baggage Building	8-Dec-04
A550	Interior Elevations - Addition	8-Dec-04
A551	Interior Elevations - Addition	8-Dec-04
A552	Interior Elevations - Addition	8-Dec-04
A553	Interior Elevations - Addition	8-Dec-04
A554	Interior Elevations - Addition	8-Dec-04
A555	Interior Elevations - Addition	8-Dec-04
A556	Interior Elevations - Addition	8-Dec-04
A557	Interior Elevations - Addition	8-Dec-04
A558	Interior Elevations - Addition	8-Dec-04
A601	RCP, Ground Floor - Baggage Building	8-Dec-04
A602	RCP, Clerestory Level - Baggage Building	8-Dec-04
A651	RCP, Ground Floor - Addition	8-Dec-04
A652	RCP, Second Floor - Addition	8-Dec-04
A653	RCP, Third Floor - Addition	8-Dec-04
A700	Door Schedule - Baggage Building	8-Dec-04
A701	Door Schedule - Addition	8-Dec-04
A702	Window Schedule	8-Dec-04
A703	Finish Schedule	8-Dec-04

A704	Partition Types	8-Dec-04
A705	Partition Types	8-Dec-04
A710	Interior Details - Baggage Building	8-Dec-04
A711	Interior Details - Baggage Building	8-Dec-04
A712	Interior Details - Baggage Building	8-Dec-04
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A714	Interior Details - Baggage Building	8-Dec-04
A715	Interior Details - Baggage Building	8-Dec-04
A716	Interior Details - Baggage Building	8-Dec-04
A717	Interior Details - Baggage Building	8-Dec-04
A718	Interior Details - Baggage Building	8-Dec-04
A720	Interior Details - Baggage Building	8-Dec-04
A725	Interior Details - Baggage Building	8-Dec-04
A726	Interior Details - Baggage Building	8-Dec-04
A727	Interior Details - Baggage Building	8-Dec-04
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A750	Interior Details - Addition	8-Dec-04
A751	Interior Details - Addition	8-Dec-04
A755	Interior Details - Addition	8-Dec-04
A756	Interior Details - Addition	8-Dec-04
A757	Interior Details - Addition	8-Dec-04
A760	Interior Details - Addition	8-Dec-04
A761	Interior Details - Addition	8-Dec-04
A770	Interior Details - Addition	8-Dec-04
A771	Interior Details - Addition	8-Dec-04
A800	Stair 1 - Addition	8-Dec-04
A801	Stair 2 - Addition	8-Dec-04
A802	Stair Details - Addition	8-Dec-04
A803	Stair Details - Addition	8-Dec-04
A804	Stair Details - Addition	8-Dec-04
A805	Ramps - Addition	8-Dec-04
A806	Ramp Details - Addition	8-Dec-04
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DOCUMENT 00010

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<del>Section 00800</del>	<del>Supplementary Conditions</del>	<del>INCORPORATED INTO CONTRACTOR'S CONTRACT</del>
<del>Section 00815</del>	<del>Project Start-Up/Commissioning Program</del>	<del>NOT ISSUED</del>

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<del>Section 02220</del>	<del>Demolition</del>		
<del>Section 02240</del>	<del>De Watering</del>	<del>NOT ISSUED</del>	LMA/Civil
<del>Section 02250</del>	<del>Shoring + Underpinning</del>		ARUP/Structural
<del>Section 02315</del>	<del>Excavation, Filling and Grading</del>	<del>NOT ISSUED</del>	LMA/Civil
Section 02380	Drilled Piers		ARUP/Structural
<del>Section 02465</del>	<del>Bored Piles</del>		ARUP/Structural
<del>Section 02500</del>	<del>Utility Services</del>	<del>NOT ISSUED</del>	
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Section 05300	Metal Decking	ARUP/Structural
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Section 05500	Metal Fabrications	
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GMA

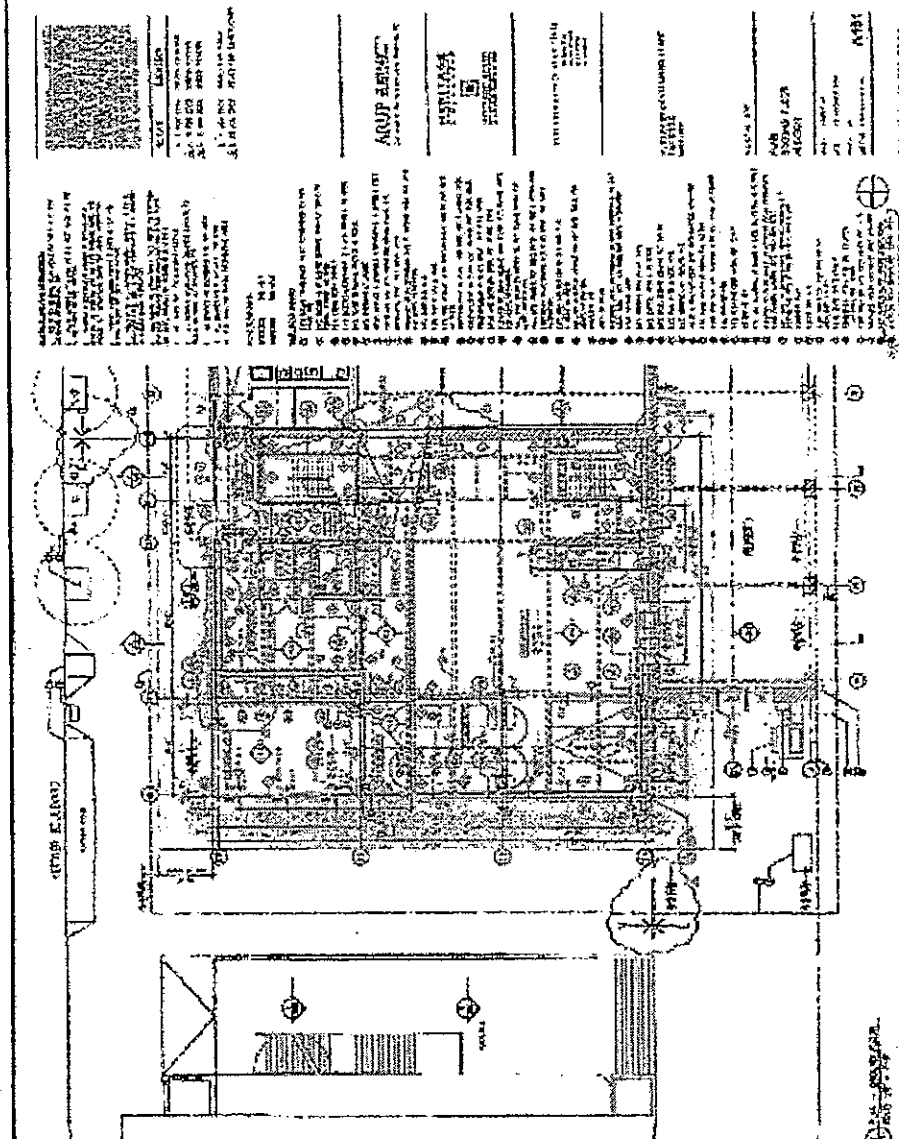
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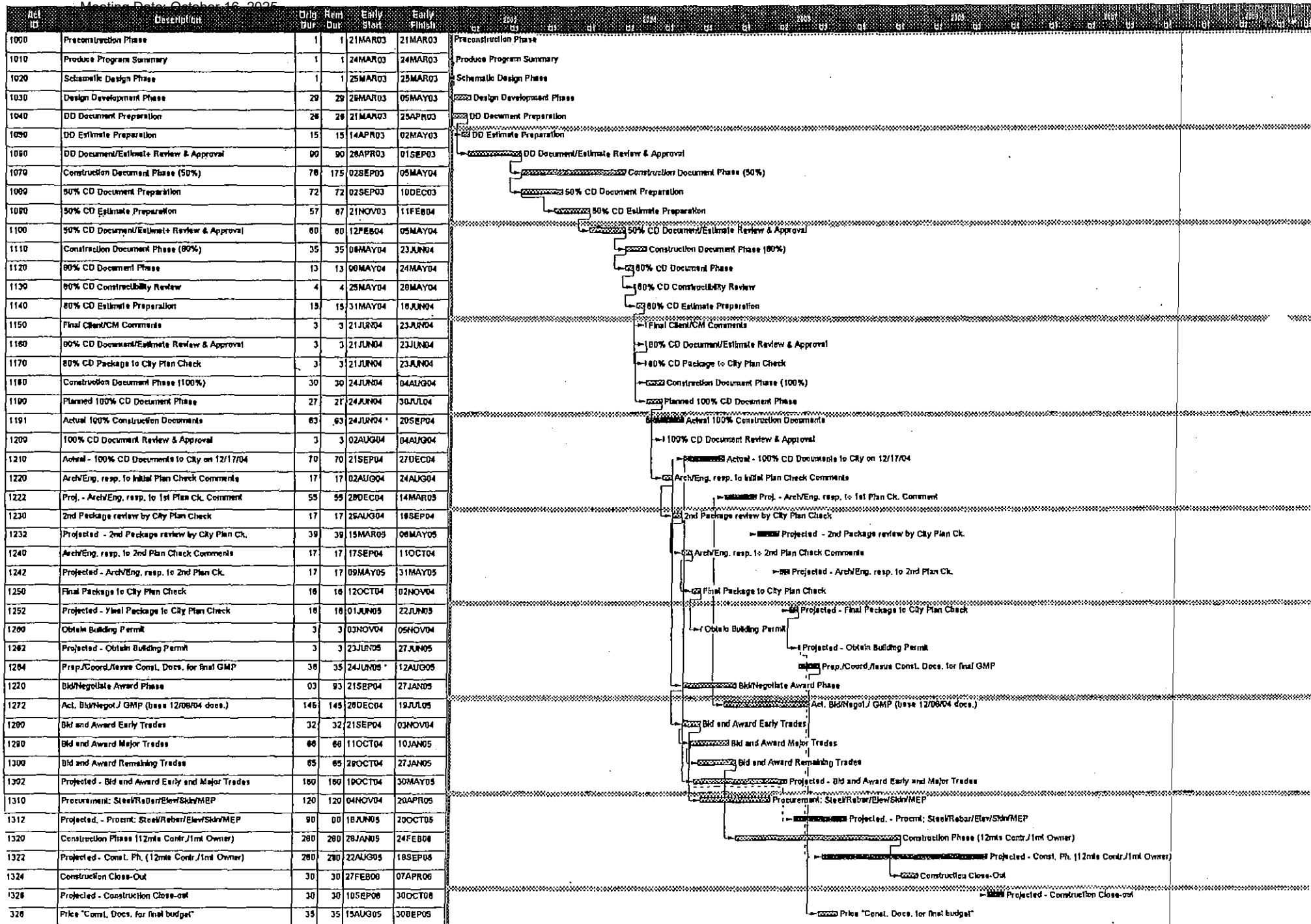
**Amtrak Space**

◀ Prev

Next ▶

☒ Close

# Exhibit IIIA

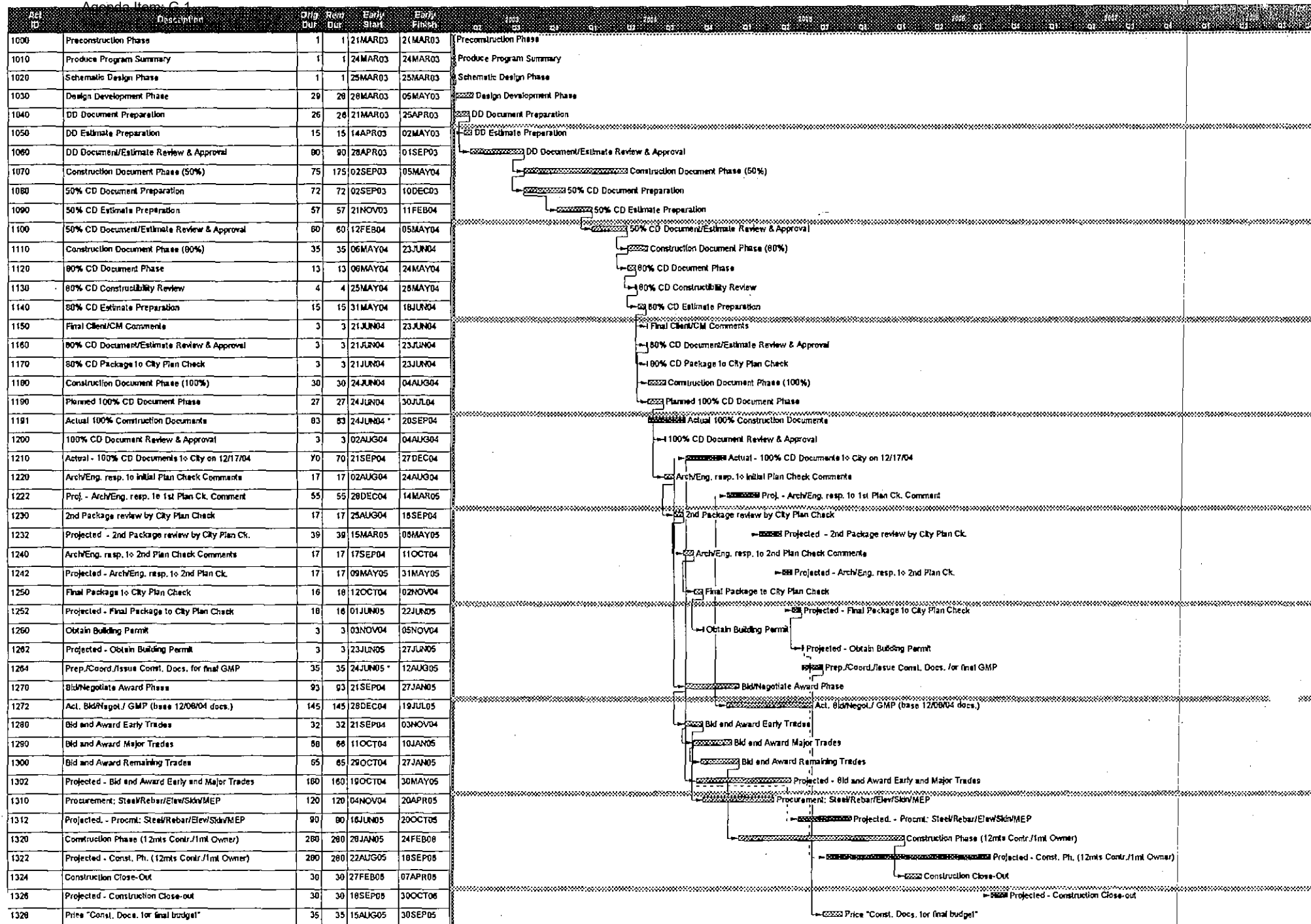


Start date 21MAR03  
Finish date 20OCT06  
Late date 21MAR03  
on date 01SEP05

HR Weatherford Company  
Museum of Contemporary Art San Diego

Early bar  
Progress bar  
Critical bar  
Summary bar  
Start milestone point

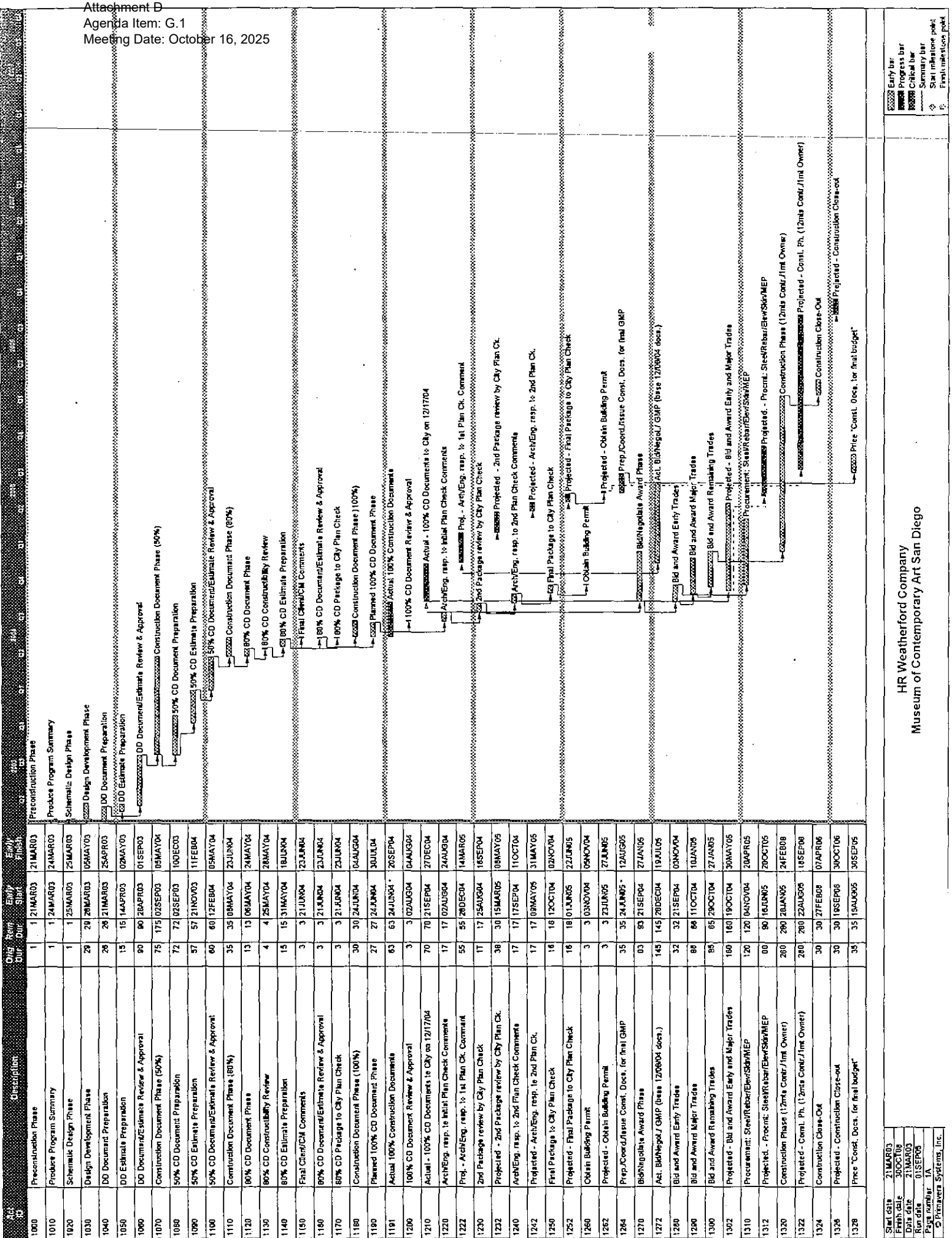
EXHIBIT IIIA  
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Start date 21MAR03  
 Finish date 30OCT08  
 Data date 21MAR03  
 Run date 01SEP05  
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HR Weatherford Company  
 Museum of Contemporary Art San Diego

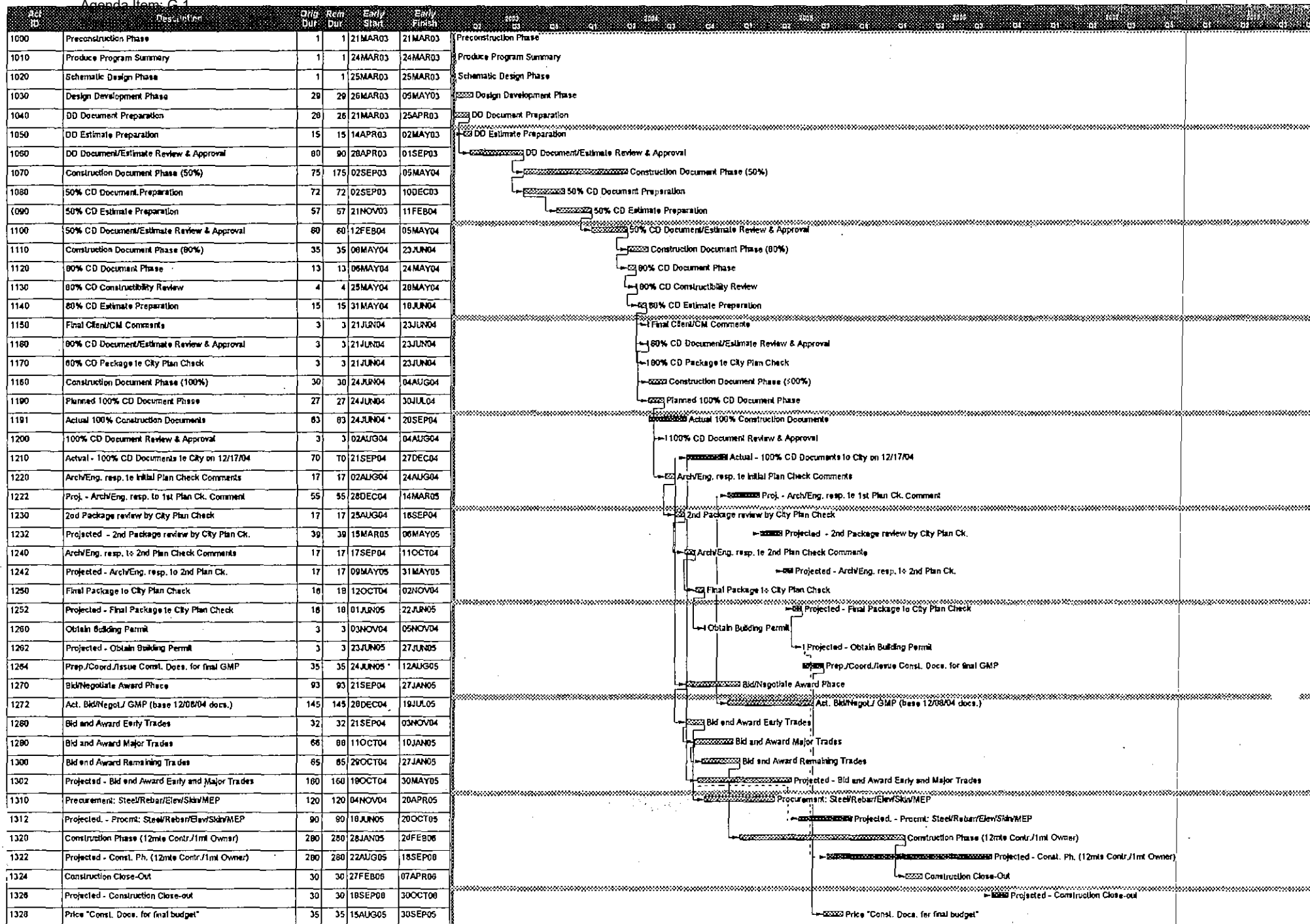
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HR Weatherford Company  
Museum of Contemporary Art San Diego

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Start date 21MAR03  
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HR Weatherford Company  
 Museum of Contemporary Art San Diego

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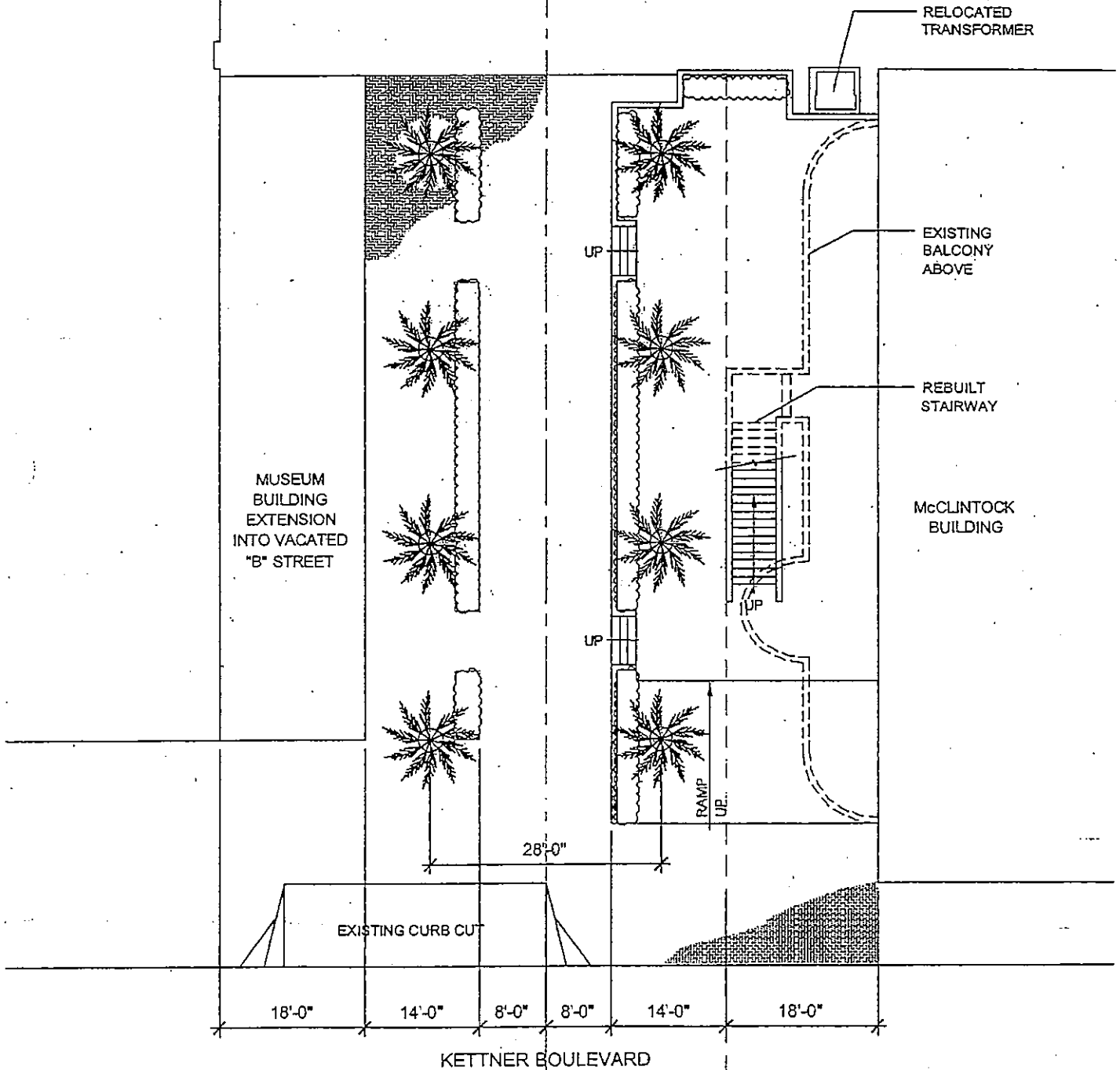
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Start date	21MAR03
Finish date	30OCT08
Date date	21MAR03
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Page number	1A
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HR Weatherford Company  
Museum of Contemporary Art San Diego

-  Early bar
-  Progress bar
-  Critical bar
-  Summary bar
-  Start milestone point
-  Finish milestone point

# EXHIBIT K



PRELIMINARY PLAN FOR VACATED "B" STREET  
 PATHWAY IMPROVEMENTS

MAY 5, 2004



\_\_\_\_\_, 2006

The City of San Diego  
Office of the City Clerk  
San Diego, California 92101

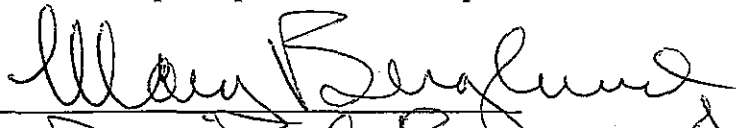
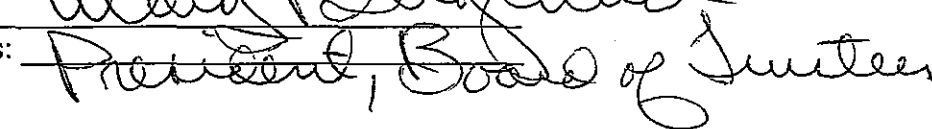
Redevelopment Agency of  
The City of San Diego  
600 B Street, Fourth Floor  
San Diego, California 92101

Re: Amtrak Lease and First Amendment to Amtrak Lease  
Between Museum of Contemporary Art, San Diego, and  
National Railroad Passenger Corporation

Pursuant to Section 1.16 (e) and Section 2.1.3 of that certain Transfer Agreement and Escrow Instructions made as of July 2, 2004, among Catellus Operating Limited Partnership, a Delaware limited partnership, as successor by merger to Catellus Development Corporation, a Delaware Corporation, the City of San Diego, a municipal corporation of the State of California, the Redevelopment Agency of the City of San Diego, a public body corporate and politic of the State of California, the Museum of Contemporary Art, San Diego, a California non-profit public benefit corporation (Museum), and Commonwealth Land Title Company, the undersigned, 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), hereby submit for your approval: (1) a duplicate original of Amtrak Lease executed as of February 1, 2006, between Museum and Amtrak, and (2) a copy of the First Amendment to Amtrak Lease.

MUSEUM:

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

By:   
Its: 

[Signatures continued on next page]

EXHIBIT B

AMTRAK:

---

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

By:   
Its: Acting Vice President Real Estate Development

THE UNDERSIGNED HEREBY APPROVE AND CONSENT  
to the attached Lease and First Amendment to Amtrak Lease, and  
City agrees that City shall honor and be bound by the terms of the  
Lease, as amended, if City becomes the owner of the new museum  
building (the Copley Building) during the Lease term.

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_