

MEMORANDUM

DATE ISSUED: June 23, 2004 REPORT NO. CCDC-04-23
CCDC-04-13

ATTENTION: Honorable Mayor and Members of the City Council
Honorable Chair and Members of the Redevelopment Agency
Docket of June 29, 2004

SUBJECT: PUBLIC HEARING of the City Council on the Proposed Fourth Amendment to the Development Agreement with Catellus Operating Limited Partnership; Consideration by the Redevelopment Agency of the Proposed Fourth Implementation Agreement to the Owner Participation Agreement with Catellus Operating Limited Partnership; and City Council and Redevelopment Agency Consideration of the Proposed Transfer Agreement between Catellus, the City of San Diego, the Redevelopment Agency and the Museum of Contemporary Art, San Diego--Matters Related to the Catellus Development Agreement and Owner Participation Agreement (and the Baggage Building and REA Site Located on the West Side of Kettner Boulevard Between C and B Streets)--Columbia Sub Area of the Centre City Redevelopment Project

REFERENCE: (1) Proposed Fourth Amendment to the Development Agreement between the City and Catellus
(2) Proposed Fourth Implementation Agreement to the Owner Participation Agreement between the Agency and Catellus
(3) Proposed Transfer Agreement and Escrow Instructions between Catellus, City, Agency and Museum

On December 10, 2002, the City Council and Redevelopment Agency authorized a Transfer Agreement and a Lease by the City of the Baggage Building and REA Site to the Museum "subject to City approval." Due to continuing concerns of the Real Estate Assets Department regarding soils contamination/remediation issues, the authorized documents were not executed. A "replacement" Transfer Agreement has been negotiated as described in this memorandum, along with a Fourth Amendment to the Development Agreement and Fourth Implementation Agreement to the Owner Participation Agreement between Catellus and the City and Agency, respectively.

STAFF CONTACT: Pamela M. Hamilton, Senior Vice President

SUMMARY

Issue - Should the City Council and Redevelopment Agency approve the subject documents providing for the transfer of the Baggage Building and REA Site to the Museum of Contemporary Art, San Diego and providing an Option to the City to acquire the properties at a later date, and making other modifications to the Catellus Development Agreement and Owner Participation Agreement?

Staff Recommendation -

That the City Council:

Introduce the Ordinance approving the Fourth Amendment to the Development Agreement with Catellus Operating Limited Partnership; and

Adopt the Resolution approving the Transfer Agreement and Escrow Instructions between the City, Agency, Catellus and Museum; and

That the Redevelopment Agency:

Adopt the Resolution approving the Fourth Implementation Agreement to the Owner Participation Agreement with Catellus Operating Limited Partnership; and

Adopt the Resolution approving the Transfer Agreement and Escrow Instructions between the City, Agency, Catellus and Museum.

Centre City Development Corporation (CCDC) Recommendation - The Board of Directors will consider these documents at the Board meeting of June 23, 2004 and an oral report will be provided at the Council/Agency meeting. At its meeting of June 9, the Projects Committee of the CCDC Board unanimously recommended approval of the documents.

Planning Commission Recommendation - The Planning Commission is scheduled to consider and make a recommendation to the City Council on the proposed Fourth Amendment to the Development Agreement at its meeting of June 24, and an oral report will be provided at the Council/Agency meeting.

Other Recommendations - None.

Fiscal Impact - Pursuant to the Development Agreement and Owner Participation Agreement, Catellus is required to transfer 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. The documents under consideration implement this obligation and other obligations of Catellus. There are no costs to the Agency or

City for the transfer of the Baggage Building and the REA Site to the Museum initially, nor for the subsequent transfer of the Baggage Building and REA Site by the Museum to the City, and all costs of the improvements to the Baggage Building are either Catellus costs ("base building improvements") or Museum costs ("tenant improvements") and construction of the new Museum Addition on the REA Site are Museum or Amtrak costs. Catellus is also obligated to transfer a Facade Easement to the City for the Santa Fe Depot and the Baggage Building, and such facade easements will be recorded concurrently with the transfer of the Baggage Building and REA Site. Maintenance of these historic building facades will be the obligation of the fee owners (Catellus for the Santa Fe Depot and the Museum for the Baggage Building). The City will assume the obligation to maintain the Baggage Building facade at the time the City exercises its Option, although the Museum has agreed to maintain the facade for up to two years after the Option is exercised. The Transfer Agreement provides for the Agency's installation of improvements to a "B Street Pathway" connecting Kettner Boulevard to the rail platforms through vacated B Street. Implementation of the Pathway will require the dedication of easements by the Museum and by the owner of McClintock Plaza for the movement of pedestrians (and potentially easements for limited vehicular access by Amtrak), the relocation of the stairway at McClintock Plaza and the installation of landscaping and paving. Agency costs to reconstruct these areas and create the B Street Pathway will not exceed \$650,000. These costs will be covered by Agency funds available in the FY 2004-2005 budget for this purpose and by a payment by the Museum to the Agency of \$90,000 (or a Museum payment to the Agency of \$150,000 if Amtrak is a Lessee of a portion of the new Museum Addition).

BACKGROUND

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. 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.

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, and street frontage along Kettner Boulevard for the length of the Baggage Building.

In early 2000, CCDC issued "A Solicitation of Letters of Interest for Use of the Baggage Building at the Santa Fe Depot". Among the respondents to the Solicitation was the Museum of Contemporary Art. On February 26, 2001 the Redevelopment Agency entered into an Exclusive Negotiation Agreement (ENA) for the Museum's occupancy of the Baggage Building. The ENA acknowledged that the Museum also planned to approach Catellus with respect to Catellus's donation of the adjacent REA Site to the Museum for its development in conjunction with the Baggage Building. The ENA further acknowledged that Amtrak had an on-going interest in the use of the Santa Fe Depot and the building to be constructed on the REA Site and that the Agency and the Museum would work cooperatively with Amtrak to determine if a portion of any new building constructed by the Museum on the REA Site could provide adequate long-term "back of the house" space needed by Amtrak.

Following the Agency's approval of the ENA, CCDC, the Museum, Catellus and Amtrak worked diligently and cooperatively to reach agreements which met each party's requirements with respect to the Museum's improvements, Amtrak's operational needs, Catellus's improvements within its property holdings in the immediate vicinity of vacated B Street, and providing attractive pedestrian access through vacated B Street as a connection between Kettner and the rail platforms and as an aesthetic termination of B Street. When these negotiations began to take the form of a Transfer Agreement and Lease, the City's Real Estate Assets Department and the City Attorney were involved in negotiation of the documents. The "final" documents were approved by the City Council/Redevelopment Agency on December 10, 2002, although the Transfer Agreement and Lease documents were stamped "Subject to City Approval." For more than a year, negotiations have continued in an attempt to secure the City's sign-off on the final language of these documents, with the primary unresolved issues related to potential soils contamination at the properties. All negotiating parties are in agreement that the Transfer Agreement should now provide for the direct transfer of the Baggage Building and REA Site to the Museum, with the City having the option to become the owner of the property on or after July 31, 2001, or earlier in the event of a Default by the Museum.

In addition to addressing the transfer by Catellus of the Baggage Building and REA Site directly to the Museum, the proposed Fourth Amendment to the Development Agreement and proposed Fourth Implementation Agreement to the Owner Participation Agreement address other changes brought about by the transfer or imminent transfer by Catellus of all of its property holdings in downtown to others (with the exception of the Depot and Transit Courtyard).

DEVELOPMENT TEAM

DEVELOPMENT TEAM/PRINCIPALS		
FIRM/ENTITY	ROLE	CONTACT
Catellus Development Corporation	Developer/Grantor	Tim Carey
Museum of Contemporary Art	Developer/Grantee	Charles Castle
Amtrak	Lessee	Richard Guy
Caltrans Rail	Financing Participant	Bill Bronte
McClintock Plaza	Adjacent Property Owner	Bud Fischer
Heritage Architecture and Planning	Coordinating Architect	Wayne Donaldson Stuart Sawasaki
Gluckman Mayner Architect	Museum Architect	Robert White
MTDB	Transit Operator	Jack Limber

OVERVIEW OF REVISIONS TO THE DECEMBER 2002 TRANSACTION/DOCUMENTS

The December, 2002 Transfer Agreement provided for Catellus's transfer of fee interest in both the Baggage Building and the REA Site to the City of San Diego and the Lease provided for the City's lease of the entire premises to the Museum until July 31, 2091 (a date co-terminus with the Museum's lease of its premises on the east side of Kettner Boulevard at America Plaza), with Amtrak a Sublessee to the Museum for a portion of the new Museum Addition. It is now proposed that the Baggage Building and REA Site be transferred by Catellus directly to the Museum with the City having an Option to acquire the properties at no cost on or after July 31, 2091, or earlier in the event of a Default by the Museum. Prior to December 7, 2003 and the transfer, Catellus was to have completed required seismic retrofit and base building improvements to the Baggage Building and the demolition and removal of surface and sub surface improvements on the REA Site. Catellus has completed these requirements. With respect to environmental contamination within the properties, Catellus was required to remediate any contamination sufficiently for the Museum improvements to be developed and constructed. Catellus has completed remediation as identified to date and the Museum, at Catellus's cost, will complete any additional remediation required during construction of its improvements pursuant to a Soils Management Plan.

The B Street Pathway was to be constructed by the Agency, although a new design for the improvements has since been developed (see the Attachment) together with a new financing plan which provides for the Museum's contribution of up to \$150,000 toward the Agency's reconstruction/construction of all B Street Pathway improvements. The area of the Agency's proposed reconstruction/construction extends 22' on either side of the centerline of vacated B Street (a total of 44'), with the center 16' devoted to a paved pedestrian pathway and potentially limited vehicular access for Amtrak, and the additional 14' on either side of the pathway devoted to paving and landscaping as enhancements to the pathway. Amtrak, pursuant to its Lease with the Museum and access easements granted by the Museum and the owner of McClintock Plaza, would maintain the 16' pathway, and the Museum and owner of McClintock Plaza will each maintain its property lying outside the pathway, including the 14' on either side which has been improved by the Agency with paving and landscaping. If Amtrak does not enter into a Lease with the Museum, the Museum would maintain the 16' pathway.

PROPOSED FOURTH AMENDMENT TO DEVELOPMENT AGREEMENT AND FOURTH IMPLEMENTATION AGREEMENT TO OWNER PARTICIPATION AGREEMENT

The proposed Fourth Amendment to the Development Agreement and Fourth Implementation Agreement to the Owner Participation Agreement (the "proposed Agreements") acknowledge the changes to the Transfer Agreement as outlined above and provide an extension of time for Catellus's transfer of the Baggage Building from "on or before December 7, 2003" to "on or before July 20, 2004." In addition, the proposed Agreements provide that the requirement of Catellus to maintain a local office will be met by the designation of a Catellus officer (who may not be based locally) who will serve as an authorized, responsible and direct point of contact for the City and the Agency with respect to Catellus's performance of its obligations under the Development Agreement and Owner Participation Agreement, respectively. The reason to address the local office requirement in this manner is that Catellus has transferred its development sites to other parties, as permitted by the Development Agreement and Owner Participation Agreement. Catellus has designated Tim Carey as its responsible officer. Mr. Carey, the Executive Vice President/Urban Development for Catellus, is located in Los Angeles.

With respect to the transfer of Catellus development sites, Bosa Development California, Inc. has purchased Parcels 2 through 4 of Catellus's Santa Fe Depot Site holdings, Bosa Development California II, Inc. has purchased Parcels 1 and 9 and is in escrow to purchase Parcel 5, AML Management, LLC has purchased Parcel 6 and the transit agencies have assumed certain Catellus maintenance obligations within the Transit Courtyard (Parcel 7 is the Baggage Building and REA Site and Parcel 8 is the Depot Site). The Attachment illustrates Parcels 1 through 9. While these purchasers/transit agencies are recognized as successors in interest to certain on-going or outstanding Catellus obligations under the

agreements, Catellus is not relieved of any of its obligations should its successors fail to perform. The outstanding obligations to be performed by Catellus or its successors include the Art Program; the construction of arcades surrounding the Transit Courtyard within each respective new development, or arcade connections between developments; maintenance obligations related to rail platforms; maintenance of the interior and exterior of the Depot and its Arcade, Broadway forecourt and fountain(s); the obligation to pay 50% of the costs to install medians in Pacific Highway from Ash to E Streets at the time the City/Agency constructs such improvements; and Catellus's obligation to file (by October 1 of each year) the Annual Report of its compliance (or compliance by acts of its successors) with the terms of the Development Agreement and Owner Participation Agreement.

SUMMARY/CONCLUSION

Approval of the "replacement" Transfer Agreement, the Fourth Amendment to the Development Agreement and the Fourth Implementation Agreement to the Owner Participation Agreement will implement the intent of the transaction which was approved by the City Council and Redevelopment Agency in 2002, and bring current all agreements between Catellus and the City and Agency.

Respectfully submitted,

Pamela M. Hamilton, Senior Vice President

Approved: Peter J. Hall
President

Attachments: Illustration of Revised B Street Pathway Design dated May 5, 2004
Map of Catellus Holdings--Parcels 1 through 9
Proposed Transfer Agreement and Escrow Instructions
Proposed Fourth Amendment to Development Agreement
Proposed Fourth Implementation Agreement to Owner Participation Agreement