



REPORT NO. CCDC-06-28

DATE ISSUED: September 6, 2006

ATTENTION: Honorable Chair and Members of the Redevelopment Agency
Docket of September 12, 2006

ORIGINATING DEPT.: Centre City Development Corporation

SUBJECT: Proposed First Amendment to Agreement Regarding Carnation
Block Condominiums (block bounded by J and K streets, Tenth
and Eleventh avenues) - East Village Redevelopment District of
the Expansion Sub Area of the Centre City Redevelopment Project

COUNCIL DISTRICT(S): District 2

REFERENCE: First Amendment to Agreement Regarding Carnation Block
Condominiums

STAFF CONTACT: Barbara Kaiser, Vice President-Real Estate Operations,
619-533-7118

REQUESTED ACTION: Approval of the proposed First Amendment to Agreement regarding Carnation Block Condominiums.

STAFF RECOMMENDATION: That the Redevelopment Agency approve the proposed First Amendment to Agreement Regarding Carnation Block Condominiums with ICON LLC.

SUMMARY: The Agreement Regarding Carnation Block Condominiums provided for the temporary relocation of Sushi Performance and Visual Art (“Sushi”) from, and the concurrent suspension of the Agency’s cultural arts covenant on, the Carnation Building, a historic property which had been rehabilitated with a \$536,000 loan from the Agency. The loan was to be forgiven if the Agency’s restrictive covenant was not breached. The temporary relocation was to facilitate the sale of the Carnation Building for adaptive re-use/redevelopment as the ICON residential development. The Developer and Sushi have determined that providing appropriate acoustic isolation within the completed development on the Carnation property will compromise the configuration of the performance space. The purpose of the First Amendment to Agreement Regarding the Carnation Block Condominiums is (1) to provide additional time (to October 6, 2008) for the Developer and Sushi to identify and implement a suitable alternative location acceptable to the Agency within the Centre City Redevelopment Project, or to accept and build-out the Carnation property; and (2) to memorialize the increase in, and the modification and extension of, the Letter of Credit which secures the Agency’s cultural arts covenant in lieu of the Deed of Trust and the Agreement Affecting Real Property which were formerly recorded on the Carnation property.

FISCAL CONSIDERATIONS: The Agency is holding a Letter of Credit and cash in the amount of \$3,780.11, to secure the Developer's obligations under the Agreement Regarding Carnation Block Condominiums. As of August 15, 2006 the Developer has increased the amount of the Letter of Credit from \$810,000 to \$939,000 and extended the expiry date to January 6, 2009.

CENTRE CITY DEVELOPMENT CORPORATION RECOMMENDATION: On July 26, 2006, the Centre City Development Corporation Board voted unanimously (4-0) to support the staff recommendation.

BACKGROUND

The approval of the ICON residential development in mid-2003 advanced the Visions and Goals of the Downtown Community Plan and the Objectives of the Centre City Redevelopment Project by:

- Substantially increasing the number of people living downtown;
- Creating a range of housing opportunities;
- Facilitating an economically and socially balanced population; and
- Encouraging the rehabilitation and upgrade of historical and architecturally significant structures.

The ICON residential development was made possible by the Agency agreeing to remove a cultural arts covenant on the Carnation Building, located on a portion of the block bounded by J and K streets, Tenth and Eleventh avenues. The Agency had provided a \$536,000 rehabilitation loan to the owner of the Carnation property. The Agency had recorded a Deed of Trust securing a Promissory Note in the amount of \$536,000 (with 8% simple interest accruing annually), and an Agreement Affecting Real Property, which required that a 6,050 SF portion of the Carnation Building be leased to Sushi, or to a substitute non-profit cultural arts use, at below-market rent until February 20, 2027. The rehabilitation "loan" would be forgiven if the non-profit rental covenant was not breached.

As part of the approval of the ICON development, the Agency agreed to accept a Letter of Credit in the amount of \$810,000, and cash in the amount of \$3,780.11, to serve (for a period of 36 months) as security for the Agency's cultural arts covenant in lieu of the recorded Agency Deed of Trust and Agreement Affecting Real Property. Those encumbrances were removed from title on the Carnation Building with the intention that these encumbrances would be recorded on the ICON development upon its completion, and the Letter of Credit and Cash Deposit released. Concurrently, ICON and Sushi amended Sushi's lease in the Carnation Building to provide for Sushi's vacation of their Carnation space with the intention that Sushi would enter into a new lease on the same terms for new space in the completed ICON development. The Agency's covenant in the Agreement Affecting Real Property and the term of Sushi's lease were co-terminus. The Agency and Sushi were required to agree on the replacement space either in the ICON development (the only location offered to, and approved by, the Agency in mid-2003) or in some other location which could be approved or disapproved by the Agency in its sole and absolute discretion. Once Sushi was in its replacement space, the Agency would record its Deed of Trust and Agreement Affecting Real Property on that space. The lease and the Agency's covenant would encumber the replacement space for a period equivalent to February 20, 2027

plus the period of time that the lease and covenant had been suspended from the Carnation Building.

These and other details of the ICON/Agency/Sushi arrangements were memorialized in an Agreement Regarding Carnation Block Condominiums which was executed by the Agency's Deputy Executive Director on October 6, 2003. When ICON's building permits were later presented for CCDC's approval, staff received Sushi's sign-off that the proposed space at the corner of K Street and Eleventh Avenue in the ICON development was suitable for Sushi. Nevertheless, Sushi has subsequently determined that providing appropriate acoustic isolation within the ICON development will compromise the configuration of the performance space. The ICON Developer and Sushi have been searching for an alternative location for several years as something preferred by Sushi; the 36 months provided to secure a replacement location is expiring on October 6, 2006. Completion of Phase I of the ICON development (the two towers along Eleventh Avenue) is anticipated on or about October 1, 2006.

DEVELOPMENT TEAM

ROLE/FIRM	CONTACT	OWNED BY
Developer: Levin Menzies & Associates	Richard Garcia Michael Carey	Paul Menzies Marvin Levin (Privately Owned)
Project Manager: Allegis Development	Kip Howard	Kip Howard (Privately Owned)
Architect: TannerHecht Architecture	Jim Tanner	Jim Tanner David Hecht (Privately Owned)
Lessee of Cultural Arts Space: Sushi Performance and Visual Art	Board of Directors: Edward Hunter Karyn Rovner-Sklar Ed Kojjane Barbara Measelle Vernon Franck Allyson Green Robert Musial Patricia Rincon Eddie Valtierra Honorary Board Members: Lynn Schuette Guillermo Gomez-Pena Rhodessa Jones Business Manager: Frances V. Carrillo	501(c)(3) Non-Profit

DISCUSSION

Proposed First Amendment

The proposed First Amendment would extend by 24 months the period of time during which the Agency would accept the Cash Deposit and the Letter of Credit as security for its cultural arts covenant, in lieu of a recorded Deed of Trust and Agreement Affecting Real Property, to permit the Developer and Sushi to identify and implement an alternative location acceptable to the Agency within the Centre City Redevelopment Project, or to accept and build-out the ICON space. The First Amendment also memorializes that, by August 15, 2006, the Developer extended, modified and increased the Letter of Credit from \$810,000 to \$939,000 to reflect the accrued interest on the \$536,000 Agency loan over the past 36 months. The Agency has the right to retain the \$3,780.11 Cash Deposit and to draw down on the full amount of the \$939,000 Letter of Credit if a replacement cultural arts space is not implemented within the Centre City Redevelopment Project by October 6, 2008. In such event, upon the Agency's issuance of a 30-day notice to the Developer of the Agency's intent to draw down on the Letter of Credit, the Developer is required to deliver to the Agency an Additional Accrued Interest Payment to fully pay-off the Promissory Note and all accrued interest through the date specified by the Agency for draw down of the Letter of Credit. In the event of the pay-off of the Promissory Note and all accrued interest, neither the Developer nor the Agency would have any further rights, liabilities or remedies against the other.

Environmental Impact – This activity is not a project, and therefore not subject to CEQA per CEQA Guidelines Section 15060(c)(2).

CONCLUSION

Approval of the proposed First Amendment would permit the Developer and Sushi to continue to exercise due diligence in identifying and implementing a suitable replacement space for the Sushi lease and the Agency's cultural arts covenant. Any alternative to the ICON space deemed suitable by the Developer and Sushi must be approved by the Agency in its sole and absolute discretion.

Respectfully submitted,

Concurred by:

Barbara Kaiser
Vice President - Real Estate Operations

Nancy C. Graham
President

Attachment: First Amendment to Agreement Regarding Carnation Block Condominiums