

Civic San Diego

DATE ISSUED: August 27, 2012 **REPORT NO.:** PC-12-096

ATTENTION: Planning Commission, Agenda of September 6, 2012

SUBJECT: Consideration of a Development Agreement between the City of San Diego, the Irvine Company LLC, and Bosa Development California II, Inc. – PROCESS 5

**OWNER/
APPLICANT:** The Irvine Company, LLC and Bosa Development California II, Inc.

SUMMARY

Issue: Should the Planning Commission recommend to the City Council approval of the proposed development agreement between the City of San Diego (“City”), the Irvine Company, LLC (“Irvine”), and Bosa Development California II, Inc. (“Bosa”) for completion of the three remaining undeveloped blocks within the area generally bound by Ash Street on the north, Kettner Boulevard on the east, E Street on the south, and Pacific Highway on the west (“2012 Development Agreement”)?

Staff Recommendation: Staff recommends that the Planning Commission recommend that the City Council (“Council”) approve the 2012 Development Agreement for the properties.

Community Planning Group Recommendation: The Centre City Advisory Committee (CCAC) will review the proposed 2012 Development Agreement at its September 12, 2012 meeting and make a recommendation to the Council. Due to the scheduling timeline associated with the expiration of the existing development agreement affecting these properties, the CCAC was not able to hear this proposal prior to the Planning Commission hearing.

Civic San Diego Board Recommendation: The Civic San Diego Board of Directors will consider the proposed 2012 Development Agreement on September 5, 2012 and staff will provide the results of its action at the Planning Commission hearing.

Other Recommendations: None.

Environmental Review: The proposed 2012 Development Agreement is covered under the Final Environmental Impact Report (FEIR) for the San Diego Downtown Community Plan, Centre City Planned District Ordinance, and 10th Amendment to the Centre City Redevelopment Plan, certified by the Redevelopment Agency (“Former Agency”) on March 14, 2006 (Resolution R-04001) and subsequent addenda to the FEIR certified by the Former Agency on August 3, 2007 (Former Agency Resolution R-04193), April 21, 2010 (Former Agency resolutions R-04508 and R-04510), and August 3, 2010 (Former Agency Resolution R-04544). The FEIR is a “Program EIR” prepared in compliance with State of California Environmental Quality Act (CEQA) Guidelines Section 15168. Civic San Diego staff has prepared a FEIR Consistency Evaluation for the proposed 2012 Development Agreement in accordance with CEQA, State, and local guidelines. The evaluation concluded that the 2012 Development Agreement is within the scope of the development program described in the FEIR and that the environmental impacts of the 2012 Development Agreement were adequately addressed in the FEIR; therefore, no further environmental documentation is required under CEQA.

Fiscal Impact Statement: None.

Code Enforcement Impact: None.

Housing Impact Statement: None.

BACKGROUND

Development agreements are authorized by the California Government Code Section 65865 et seq. The San Diego Land Development Code (LDC) provides additional regulations for the adoption of development agreements in Chapter 12 Article 4 Division 1. Development agreements are a Process 5 review under the LDC requiring a recommendation from the Planning Commission. Under LDC section 124.0104(c), a development agreement must be found consistent with the applicable land use plans, Local Coastal Program, and City policies.

Council Policy 600-37 provides policies related to the consideration and adoption of development agreements. The policy states that “in order to minimize the potential for legal challenges, the standards contained in any adopted development agreement policy should, 1) Be consistent with the Progress Guide and General Plan, relevant City ordinances, and policies; 2) Comply with California Government Code Section 65864 et seq., and San Diego Municipal Code Section 105.0101 (now 124.0101). As discussed below, the development agreement is consistent with the land use plans, policies, and regulations in effect for the site. Council Policy 600-37 also includes an “initial determination” on whether a development agreement is warranted. However, Policy B of Council Policy 600-37 states that developments which received their entitlements prior to 1989 when the policy went into effect are not required to go through this initial determination process. The original development agreement was approved in 1983, then amended in 1992 through 2004. Since the proposed development agreement acts as a vehicle to continue the applicable provisions of the original 1983 development agreement as amended over time, staff believes that it is unnecessary for the initial determination to be made. The 2012 Development Agreement will comply with the provisions of Section C of Council Policy 600-37, which allow for changes in fee programs to affect the property, require

construction of infrastructure in the immediate area, includes prohibitions on the City's ability to regulate growth, and provides the City with legal indemnities and benefits.

The proposed 2012 Development Agreement covers three blocks within the Columbia neighborhood of the Downtown Community Plan area. The blocks lies within what is commonly referred to as the "Catellus Development Agreement" area or "Santa Fe" properties. In 1983, the City entered into a development agreement with Catellus Development Corporation ("Catellus") for the redevelopment of the properties generally bounded by Ash Street on the north, Kettner Boulevard to the east, E Street to the south, and Pacific Highway to the west (does not include the block bounded by Broadway, Kettner Boulevard, E and California streets, now occupied by the Electra condominium project). Please see Attachment A for the boundaries of the Catellus Development Agreement and the proposed 2012 Development Agreement areas.

In 1992, the Council approved the Amended and Restated Development Agreement between the City and Catellus ("Catellus Development Agreement") which governs the site today. The Council and City Redevelopment Agency also approved an Owner Participation Agreement (OPA), which essentially mirrored the Catellus Development Agreement. The Catellus Development Agreement and OPA both expire on December 7, 2012. The Catellus Development Agreement and OPA were further amended four times in 1996, 1997, 2003 and 2004 to accommodate changing property ownership interests, timelines, and specific improvements. Over the past 20 years of the Catellus Development Agreement, Catellus has sold off most of the landholdings (mostly to Bosa) and has assigned numerous rights and responsibilities to a successor entity, FOCIL-SFD, LLC.

The Catellus Development Agreement provided for:

1. The orderly redevelopment of 17 acres in a consistent and coordinated manner to create a mixed-use center near downtown's waterfront, consistent with the certified Local Coastal Plan including the 1992 Centre City Community Plan and CCPDO. The Scope of Development and Design Guidelines essentially provided for the redistribution of the Community Plan density from the historic Santa Fe Depot property to the other redevelopment sites.
2. The installation of transit rail improvements to accommodate the San Diego Trolley, Amtrak/Coaster passenger trains, and freight trains which utilize former California Street.
3. The creation of a Transit Courtyard and ancillary improvements to create a more attractive transit facility.
4. The rehabilitation of the historic Santa Fe Depot and Baggage Building complex.
5. The conversion of the Baggage Building into a cultural use.
6. The dedication of rights-of-way and installation of public improvements within the area.
7. The installation of enhanced pedestrian improvements along the Transit Courtyard to provide for an extension of the Linear Park north of Broadway along both sides of the tracks.
8. The installation of landscaped medians within Pacific Highway with anticipated future street widening.
9. The provision of public art throughout the complex equivalent to a 1% fee based property and building evaluations.

As a result of the implementation of the Catellus Development Agreement, the following improvements have occurred:

1. The installation of the required transit rail improvements (\$7.8 million).
2. The construction of the Transit Courtyard with enhanced paving, shelters, and landscaping (\$3.1 million).
3. The construction of the Santa Fe Depot forecourt improvements including a water fountain.
4. The seismic retrofit and rehabilitation of the historic Santa Fe Depot and Baggage Building complex.
5. The conversion of the Baggage Building, including new construction at its north end, into the Museum of Contemporary Art San Diego (MCASD), including conveyance of the property and buildings to MCASD.
6. The construction of four projects: the Grande North/South and Bayside condominium towers (total of 675 residential units by a Bosa affiliate); and, the Sapphire condominium tower (96 units).
7. The installation of enhanced Linear Park pedestrian paving and landscaped trellises along the rail corridor.
8. The installation of public art as follows:
 - a. Baggage Building
 ‘Santa Fe Depot’ by Richard Serra (six forged steel cubes)
 ‘For MCASD’ by Jenny Holzer (LED light with scrolling Truisms)
 - b. MCASD (across from Santa Fe Depot and the Baggage Building
 ‘Border Crossing/Cruzando el rio bravo ‘ by Luis Jimenez
 - c. Bayside
 ‘Undoing the Knot’ by Shirazeh Houshiary
 - d. Sapphire Tower
 Sapphire Tower Glass and Metal Fin by Betsy Kopshina Shultz
 ‘The Tracks we leave behind’ (Tower Columns) by Betsy Kophsina Schultz

PROPERTY OWNERS

ROLE	FIRM/CONTACT	OWNERSHIP
Property Owners	The Irvine Company, LLC Tom Sullivan	Donald Bren
	Bosa Development California II, Inc. Richard Weir	Natale Bosa

LOCAL COASTAL PROGRAM

The Local Coastal Program (LCP) for the coastal areas within Downtown San Diego includes the 1992 Centre City Community and 1992 CCPDO, both as amended and certified by the Coastal Commission through 2004. The 2006 Downtown Community Plan and CCPDO and subsequent amendments are currently under review by the Coastal Commission at this time, but are not yet applicable. The 2006 Downtown Community Plan and CCPDO submitted by the City to the

Coastal Commission as a proposed amendment to the LCP will not apply to this 2012 Development Agreement as they are not part of the current LCP under which this agreement is being proposed or adopted. The 2012 Development Agreement will continue the land use regulations of the Catellus Development Agreement for the remaining undeveloped properties consistent with the existing LCP. If the Coastal Commission chooses to adopt the most recent proposed amendment to the LCP for the Centre City segment submitted by the City, the pending amendment to the LCP will not apply to the undeveloped properties because they are still subject to the Catellus Development Agreement, which remains in effect. Likewise, pursuant to the 2012 Development Agreement, this property will remain subject to the provisions of the existing LCP, which includes the 1992 CCPDO. The Coastal Commission staff previously determined that the Catellus Development Agreement was consistent with the 1992 CCPDO and the LCP, and these development regulations have been incorporated into the 2012 Development Agreement to ensure its consistency with the current LCP.

It should be noted that there are only a few minor changes between the 1992-2004 and later 2006 documents in that permitted uses, floor area ratio (FAR) limits, view corridors, and building bulk standards were kept almost identical between the various documents even though the remainder of the downtown area, outside of the coastal zone, received the potential to increase densities significantly. The only significant change was that, under the 2006 CCPDO, the properties fall under an "Employment Required" overlay zone, which requires new projects to develop with at least 50% of their building area occupied by employment (commercial) uses. Given that four mainly residential developments have been developed over the last ten years within the Catellus Development Agreement area and there continues to be a very challenging office market downtown, staff is not proposing to add this employment use requirement to the 2012 Development Agreement as it would then require that the proposed 2012 Development Agreement be subject to Coastal Commission approval as an amendment to the LCP due to inconsistency with the existing LCP including the 1992 CCPDO, and the fact that this overlay designation is under review in this area by staff.

In addition, the 1992 CCPDO Section 103.1904(b) states, "The requirements of this Division shall be subject to, and any conflicting requirements shall not apply to, any Disposition and Development Agreement or Owner Participation Agreement entered into by the Redevelopment Agency of the City of San Diego, or Development Agreement entered into by the City of San Diego, prior to May 11, 1992, along with any amendments made thereto, including those amendments made after May 11, 1992." The Development Agreement with Catellus was such an agreement and therefore any conflicting policies between the CCPDO and the Development Agreement are superseded by the regulations in the Development Agreement, thereby creating the regulatory program for the area. California Government Code Section 65866 states that, "Unless otherwise provided by the development agreement, rules, regulations, and official policies governing permitted uses of the land, governing density, and governing design, improvement, and construction standards and specifications, applicable to development of the property subject to a development agreement, shall be those rules, regulations, and official policies in force at the time of execution of the agreement." Therefore, because the proposed 2012 Development Agreement will be executed before the expiration of the Catellus Development Agreement expires on December 7, 2012, the land use rules applicable to the undeveloped sites at the time of execution will be the development regulations in the Catellus

Development Agreement and the 1992 Community Plan and CCPDO, which are currently in effect for the site.

DISCUSSION

The Catellus Development Agreement has achieved a majority of its goals with the rehabilitation of the historic buildings, the installation of public improvements including rail and pedestrian facilities, the opening of a cultural facility, the construction of four new projects, and the installation of public art. However, the Catellus Development Agreement expires on December 7, 2012 and any remaining public benefits from developer/property owner obligations, such as monetary contributions to the future installation of the Pacific Highway medians and the installation of additional public art, would also expire. For the developers/property owners, the development rights would also expire and future development projects would be subject to the current CCPDO land use and density provisions (individual sites would have less development potential).

Irvine approached Civic San Diego (formerly Centre City Development Corporation) staff earlier this year with a proposal to extend the Catellus Development Agreement for its site located at the northeast corner of Broadway and Pacific Highway. After discussions with Catellus, FOCIL-SFD, LLC (assigned successor to the Catellus Development Corporation with respect to some of the rights and obligations), Irvine, and Bosa, it was determined that a new development agreement covering the three undeveloped properties would be more appropriate than another amended and restated development agreement over the entire Catellus Development Agreement area for the following reasons:

1. Catellus and FOCIL-SFD, LLC do not desire to be potentially burdened by obligations associated with the future private developments (Pacific Highway and frontage improvements).
2. Catellus remains obligated to maintain the historic Santa Fe Depot property and improvements regardless of the expiration of the Catellus Development Agreement, and the City has been granted executed façade easements for the historic buildings.
3. The developed sites, now owned by condominium owners, should be free of any recorded agreements that no longer serve any purpose with respect to their sites.
4. The outstanding public improvement and public art obligations will be carried over into the new 2012 Development Agreement in their entirety.
5. The densities and building bulk criteria provided in both development agreements are desired to contribute to the residential and employment build-out goals of the Centre City Community Plan and 2006 Downtown Community Plan once certified by the Coastal Commission.
6. The new 2012 Development Agreement will allow for the build-out of the neighborhood as envisioned over the last 30 years, including the construction of the three remaining projects which have received Design Review and Coastal Development Permit approvals but have not been able to commence construction due to economic conditions.

The three remaining undeveloped blocks covered by the 2012 Development Agreement have all received development entitlements, including Design Review and Coastal Development Permits, as follows:

- “880 W. Broadway” (Irvine) – a 34-story, 470-foot tall office tower containing approximately 680,000 square feet of office space; 5,200 square feet of retail space; and, 675 parking spaces (see Attachment B).
- “Kettner and Ash” (Bosa) – a 36-story, 415-foot tall residential mixed-use tower containing 285 residential condominium units, 11,550 square feet of ground-floor retail space, and 533 parking spaces (see Attachment C).
- “Pacific and Broadway” (Bosa) – a 41-story residential mixed-use tower comprised of 232 residential condominium units, 16,000 square feet of ground-floor retail space, and 419 parking spaces (see Attachment D).

However, these permits all have expiration dates within the next three years and, if the projects have not commenced construction, the entitlements would expire (absent the approval of the 2012 Development Agreement, the land use density provisions of the CCPDO would not allow further extensions or new approvals of identical projects) due to the expiration of the Catellus Development Agreement.

DEVELOPMENT AGREEMENT

The following summarize the key components of the proposed 2012 Development Agreement:

Term – the 2012 Development Agreement’s term will be for 10 years.

Land Use – the 2012 Development Agreement will allow for a broad range of uses including office, retail, and residential consistent with the Commercial Office land use district of both the Centre City Community Plan and CCPDO. As mentioned earlier, the 2006 Downtown Community Plan and CCPDO (not yet certified by the Coastal Commission) identify this area as within the Employment Required overlay. Although the Catellus Development Agreement envisioned a mixed-use development consisting of Class A office development supported by hotel, retail, and residential uses, it permitted the development of any uses resulting from market conditions. As a result, the four main projects developed to date are either exclusively, or predominately, residential. However, to address staff concerns several years ago regarding the development of the two sites along Broadway, there are private restrictions between Bosa and Irvine put into place when Irvine purchased the 880 W. Broadway block from Bosa that requires that only office uses be developed prior to June 30, 2017. The 2012 Development Agreement includes this requirement with the consent of all parties as Irvine desires to construct the entitled office building as soon as market conditions permit, but wishes to have options after the 2017 date. The 2012 Development Agreement includes requirements that the ground floor of the two buildings fronting Broadway contain non-residential uses (office or hotel lobbies and commercial lease space) and that the Kettner and Ash site contain commercial lease space within at least 60% of its ground-floor frontage on Ash Street, in order to further activate these street frontages.

Permitted Building Area – the 2012 Development Agreement will continue to permit existing building area allowances for each of the three sites as permitted under the Catellus Development Agreement, consistent with the approved entitlements. These allowances resulted from the “transfer” of density from the historical Santa Fe Depot site.

A comparison of the building areas and FAR permitted under the development agreements and the underlying zoning which would be permitted under the 2006 land use documents (once certified by the Coastal Commission):

Site	Development Agreements	Underlying Zoning
880 W. Broadway Site	684,955 sq. ft. / 11.1	494,280 sq. ft. / 8.0
Kettner and Ash Site	585,000 sq. ft. / 12.8	343,110 sq. ft. / 7.5
Pacific and Broadway Site	515,533 sq. ft. / 8.6	420,791 sq. ft. / 7.5

As indicated, the failure to continue the allotted building area allowances would greatly decrease the anticipated developments on the three sites inconsistent with adjoining recent developments within the Catellus Development Agreement area.

Development Standards – the 2012 Development Agreement continues the development standards of the 1992 CCPDO and Catellus Development Agreement, with minor modifications in building height (increasing the two sites along Broadway from 480 and 450, respectively, to 500 feet above mean sea level (consistent with the 2004 CCPDO amendments certified by the Coastal Commission) and adding minimum parking standards consistent with the existing project approvals (the original 1992 CCPDO and the Catellus Development Agreement area did not have minimum parking standards).

Design Guidelines – the Catellus Development Agreement included a series of design guidelines and drawings that were difficult to implement as they were sometimes unclear and internally inconsistent. Therefore, for sake of clarity, the 2012 Development Agreement allows for the construction of existing entitlements, including minor alterations found to be in Substantial Conformance, throughout its 10-year term. Any new development proposals, including amended entitlements found not to be in Substantial Conformance with existing entitlements, will be subject to Design Review by the Civic San Diego Board (as with all projects in downtown) and be reviewed against the Downtown Design Guidelines adopted by the Council in 2011. All projects will be required to obtain and maintain Coastal Development Permits.

Pacific Highway Medians – under the Catellus Development Agreement, Catellus was to provide 50% of the funding for future landscaped medians between Ash and E streets, which the City would construct in the future when the North Embarcadero Visionary Plan (NEVP) improvements were constructed. Under the NEVP, the ultimate right-of-way along Pacific Highway increases to 130 feet based on right-of-way dedication along the street's western boundary on lands controlled by the San Diego Port District and the United States Navy. Because existing buildings conflict with this ultimate alignment, the right-of-way and street improvements will not be constructed until an undetermined date. As such, the median improvements cannot be constructed in the correct location at this time. Although only two of the blocks between Ash and E streets remain undeveloped, Irvine and Bosa have agreed to continue the 50% contribution obligation for the entire length for the term of the 2012 Development Agreement.

Public Art – while significant public art has been created for the area, there is still an outstanding obligation from the Grande North tower and future developments. The 2012 Development Agreement incorporates this outstanding obligation and continues the obligations for future art based on the valuation of land and physical improvements at the time of commencement of construction on each of the Undeveloped Sites. It should be noted that a previous \$3.2 million credit, based on previous improvements to the Baggage Building, have been previously pro-rated for each of the properties and are documented in Attachment E. It is anticipated that opportunities for public art along Broadway will be substantial as the remainder of the properties are built out.

Existing Parking Lots – all three undeveloped sites contain surface parking lots. The 2012 Development Agreement will provide for installation of landscaping (trees), lighting, and fencing if the sites do not proceed with development within the next two years, including submittal of construction drawings within one year.

As mentioned earlier, the LCP for the area is the 1992 Centre City Community Plan and CCPDO, as amended through 2004. In addition, the CCPDO recognizes that existing development agreements executed before, and amended after, 1992 govern their respective sites where conflicts with the CCPDO occur. The proposed 2012 Development Agreement is consistent with the Catellus Development Agreement, the Centre City Community Plan, and the CCPDO; therefore, it is consistent with the LCP currently in effect.

ENVIRONMENTAL REVIEW

The proposed 2012 Development Agreement is covered under the Final Environmental Impact Report (FEIR) for the San Diego Downtown Community Plan, CCPDO, and 10th Amendment to the Centre City Redevelopment Plan, certified by the Redevelopment Agency (“Former Agency”) on March 14, 2006 (Resolution R-04001) and subsequent addenda to the FEIR certified by the Former Agency on August 3, 2007 (Former Agency Resolution R-04193), April 21, 2010 (Former Agency Resolutions R-04508 and R-04510), and August 3, 2010 (Former Agency Resolution R-04544). The FEIR is a “Program EIR” prepared in compliance with State of California Environmental Quality Act (CEQA) Guidelines Section 15168. Civic San Diego staff has prepared a FEIR Consistency Evaluation for the proposed 2012 Development Agreement in accordance with CEQA, State and local guidelines. The evaluation concluded that the 2012 Development Agreement is within the scope of the development program described in the FEIR and that the environmental impacts of the 2012 Development Agreement were adequately addressed in the FEIR; therefore, no further environmental documentation is required under CEQA.

CONCLUSION

Staff recommends that the 2012 Development Agreement be approved by the Council in order for the 30-year vision for the area to be completed, as public benefits and development opportunities are still valid and desirable, including general consistency with the 2006 Downtown Community Plan yet to be certified by the Coastal Commission. The 2012 Development Agreement will preserve existing entitlements until the economy recovers to allow for their construction and the completion of public improvements in the area. Therefore, staff recommends that the Planning Commission recommend that the Council approves the 2012 Development Agreement.

ALTERNATIVE

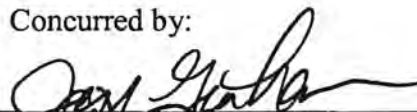
Recommend denial of the 2012 Development Agreement, allowing the permitted development of the properties to abide by existing underlying zoning for the area without the additional public benefits provided by the agreements.

Respectfully submitted,



Brad Richter
Assistant Vice President – Planning

Concurred by:



Jeff Graham
Vice President – Redevelopment



Eli Sanchez
Senior Project Manager

- Attachments: A – Catellus Development Agreement and 2012 Development Agreement
Boundaries
B – Existing 880 W. Broadway Entitlement Drawings
C – Existing Kettner and Ash Entitlement Drawings
D – Existing Pacific and Broadway Entitlement Drawings
E – Existing 1992 Catellus Development Agreement
F – Proposed 2012 Development Agreement
G – 2006 Final EIR Consistency Evaluation

Attachment A

Aerial Photograph of Development Agreement Areas



Boundary of Catellus Development Agreement



Undeveloped Sites under Proposed 2012 Development Agreement



ATTACHMENT B







ash street (looking southwest)



kettner blvd (looking southwest)



a street (looking northwest)



california street (looking northeast)

NOT FOR CONSTRUCTION



22 Mar 2011 Issued for CCDC Review
11 Dec 2010 Issued for Review
05 Nov 2010

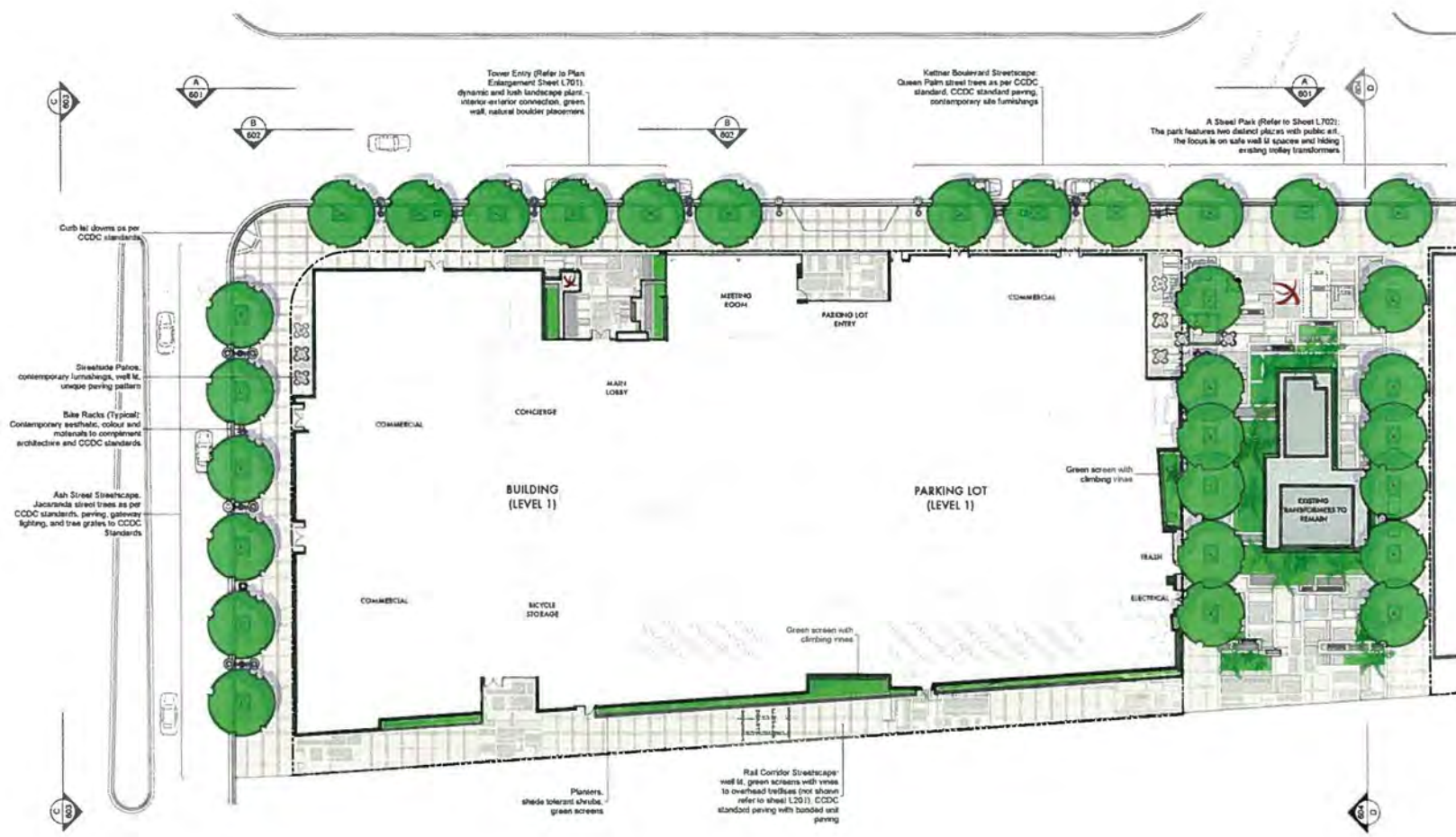
ASH & KETTNER

San Diego, California

Level 1 - Streetscape

Scale:	1:16" = 1'0"
Drawn:	Brant Hitchins
Checked:	David Stoyko
Revision:	22 Mar 2011
Project No.:	06-219
Sheet:	L 101

** Trees along rail corridor not shown, refer to sheet L201 for layout





OVERALL PERSPECTIVE - DAYTIME

SHEET 27



PACIFIC & BROADWAY
SAN DIEGO, CALIFORNIA

FIRST SUBMITTAL April 16, 2012
SECOND SUBMITTAL May 10, 2012
THIRD SUBMITTAL June 6, 2012

ATTACHMENT D



AERIAL PERSPECTIVE LOOKING WEST

SHEET 30



PACIFIC & BROADWAY
SAN DIEGO, CALIFORNIA

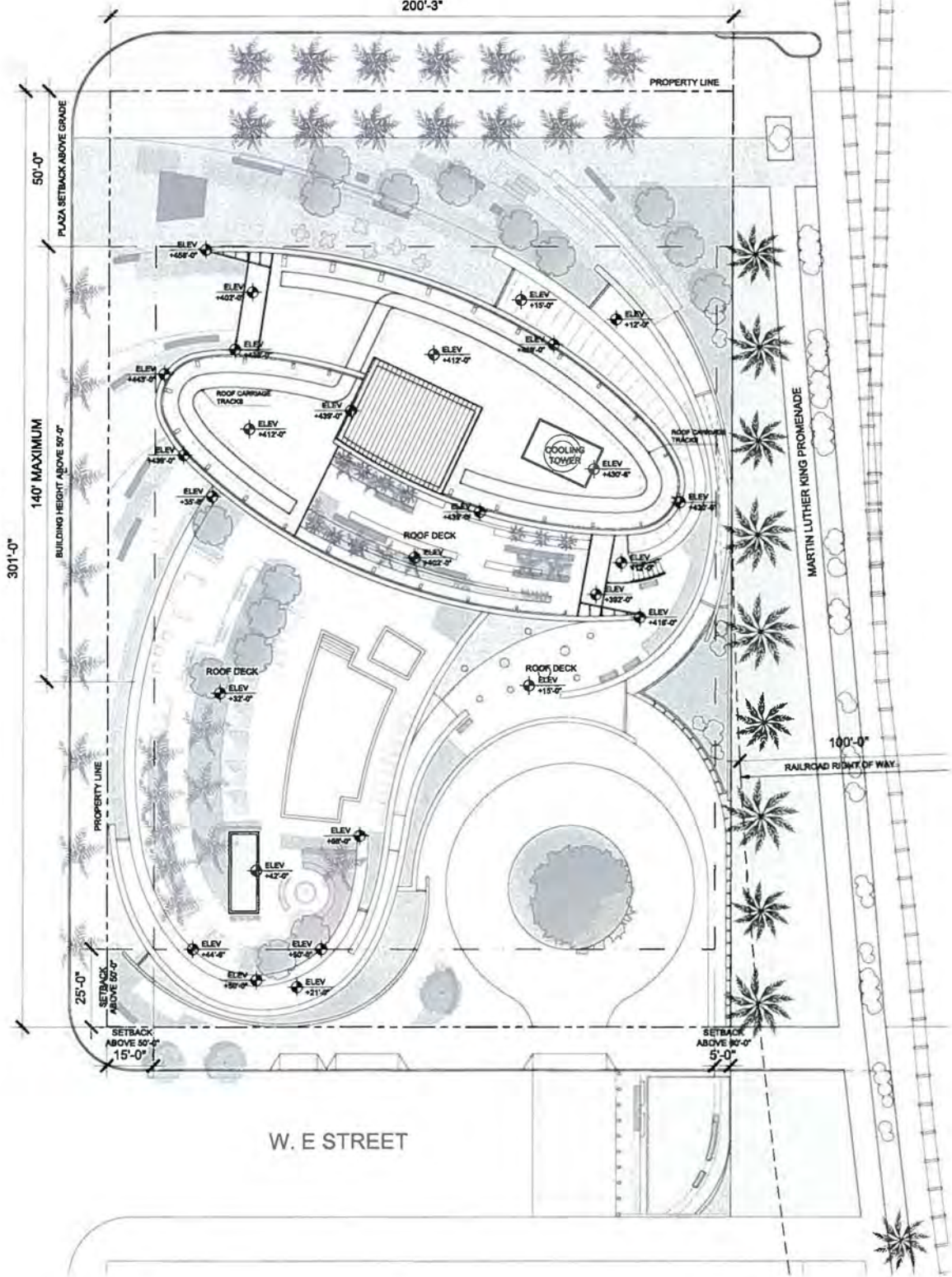
FIRST SUBMITTAL
SECOND SUBMITTAL
THIRD SUBMITTAL

April 16, 2012
May 10, 2012
June 6, 2012

W. BROADWAY

200'-3"

PACIFIC HIGHWAY



W. E STREET

SITE PLAN



SHEET 05



PACIFIC & BROADWAY
 SAN DIEGO, CALIFORNIA

FIRST SUBMITTAL
 SECOND SUBMITTAL
 THIRD SUBMITTAL

April 16, 2012
 May 10, 2012
 June 6, 2012

1632

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AMENDED AND RESTATED
DEVELOPMENT AGREEMENT

by and between

CITY OF SAN DIEGO,

city,

and

CATELLUS DEVELOPMENT CORPORATION,

Catellus

CENTRE CITY
DEVELOPMENT
CORPORATION

AUG 03 1993

Orig. To: Tell

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DOCUMENT NO. 00-17881

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12/2/92

OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

ATTACHMENT E

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Attachment B-2	Basic Concept Drawings
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Attachment C-2	Proposed Dedications and Improvements
Attachment C-3	Equal Opportunity Program

AMENDED AND RESTATED
DEVELOPMENT AGREEMENT

This Amended and Restated Development Agreement ("Agreement") is made and entered into this 9th day of April, 1993 by and between the CITY OF SAN DIEGO, a municipal corporation ("City"), and CATELLUS DEVELOPMENT CORPORATION, a Delaware corporation ("Catellus"), formerly known as Santa Fe Pacific Realty Corporation, a Delaware corporation, a successor by merger to Santa Fe Land Improvement Company, a California corporation ("Santa Fe"), with reference to the following facts:

A. Government Code Sections 65864-65869.5 were enacted to authorize local agencies to enter into binding development agreements with property owners for the development of their property in order to give assurances to property owners that upon approval of their development project they could proceed with their project in accordance with existing policies, rules and regulations.

B. Pursuant to Government Code Section 65865, the City has adopted Municipal Code Sections 105.0101 to 105.0111 which establish procedures and requirements for development agreements.

C. The City and Catellus, pursuant to Government Code Sections 65864, et seq. and San Diego Municipal Code Sections 105.0101, et seq., have heretofore entered into that certain Development Agreement dated as of April 25, 1983 (executed by Santa Fe, the predecessor in interest to Catellus, on May 31, 1983, and by the City on June 6, 1983) and recorded June 9, 1983 in Official

Records of San Diego County, California at File No. 83-193192, as amended by the First Amendment to Development Agreement dated as of December 16, 1985 and recorded December 30, 1985 in Official Records of San Diego County, California at File No. 85-492332, and as amended by the Second Amendment to Development Agreement dated as of April 20, 1987 and recorded May 6, 1987 in Official Records of San Diego County, California at File No. 87-249229, and as amended by the Third Amendment to Development Agreement dated as of November 1, 1991 and recorded November 25, 1991 in Official Records of San Diego County, California at File No. 91-607781, for the development of certain property located in the downtown area of San Diego generally bounded by Kettner Boulevard on the east, Pacific Highway on the west, Ash Street on the north, and E Street on the south as designated on the map attached hereto as Attachment A-1 and incorporated herein by reference ("Site") and as more particularly described in the legal description attached as Attachment A-2 and incorporated herein by reference.

D. Pursuant to the original Development Agreement, as heretofore amended, Catellus (or Santa Fe) has rehabilitated the exterior and interior of the Santa Fe Depot; cleaned up Parcel 1 by relocating a United States Navy rail spur line, removing certain railroad tracks, removing certain structures and facilities connected with maintenance and servicing of Amtrak passenger trains, and demolishing and removing certain structures (including billboards) from Parcel 1; installed a landscaped parking lot within Parcel 1; granted to MTDB a right-of-way for its trolley

tracks through Parcel 1 from Broadway to Ash Street; acquired from the County of San Diego and added to the Site the Ash/Pacific Parcel; and established a local office in San Diego to manage development of the Site.

E. The City and Catellus desire to provide for modifications, additions and deletions to the original Development Agreement, as heretofore amended, by entering into this Agreement.

F. The Site is within the area which was encompassed by the Redevelopment Plan for the Columbia Redevelopment Project adopted on December 29, 1976, as amended by the First Amendment to the Columbia Redevelopment Plan adopted August 4, 1980 (collectively the "Columbia Plan"), when the original Development Agreement was executed. The Site is currently within the Columbia Sub Area of the Centre City Redevelopment Project. Catellus desires to participate in the redevelopment of the Site to carry out the Centre City Redevelopment Project, but recognizing that such redevelopment shall be governed by the rules, regulations and policies of the Columbia Plan, as modified by the provisions of this Agreement.

G. Concurrently herewith, the Redevelopment Agency of the City of San Diego ("Agency") is adopting an Amended and Restated Owner Participation Agreement by and between the Agency and Catellus ("Owner Participation Agreement") which provides for the implementation of the Centre City Redevelopment Project (under the rules, regulations and policies of the Columbia Plan, as modified by the provisions of this Agreement), design standards, review of

the development of the Site, and the possible acquisition of property (the Ash/Kettner Parcel) by the Agency for conveyance to Catellus to be added to the Site. The parties agree that the City has no responsibilities, obligations or liabilities under the Owner Participation Agreement.

H. A substantial amount of time, effort and coordination was expended by the City Council of the City, the Agency and the various agencies and staff of the City and the Agency to develop and review this Agreement and the Owner Participation Agreement. All aspects of the entire development for the Site as described in this Agreement and the Owner Participation Agreement have been reviewed extensively and were the subject of public hearings. All impacts of the development plan for the Site were initially addressed in the Final Supplemental Environmental Impact Report certified for the original Development Agreement, and the changes in the development plan for the Site resulting from the modifications, additions and deletions incorporated in this Agreement were addressed in the Final Master Environmental Impact Report for the Centre City Redevelopment Project and Addressing the Centre City Community Plan and Related Documents, after thorough study by all appropriate agencies. The City deems the implementation of this Agreement to be in the public's best interest and intends that the adoption of this Agreement be considered an exercise of the City's police powers to regulate the development of the Site during the term of this Agreement.

I. Pursuant to the terms of this Agreement and the Owner Participation Agreement Catellus will provide substantial public improvements and benefits to the City and Agency. Catellus's development of the Site in accordance with the terms of this Agreement and the Owner Participation Agreement will provide public improvements and benefits greater than those that would normally be required for the development of the Site and Catellus will make expenditures to prepare the Site for development over a shorter period of time than would otherwise be required. In consideration of the improvements and benefits to be provided by Catellus pursuant to this Agreement and the Owner Participation Agreement, and in order to strengthen the public planning process and reduce the economic costs of development, by this Agreement the City intends to give Catellus assurance that Catellus can proceed with the development of the Site for the term of this Agreement, pursuant to this Agreement, in accordance with the City's rules, regulations and policies existing as of May 31, 1983. Catellus would not enter into this Agreement, or the Owner Participation Agreement, or agree to provide the public and private benefits and improvements as described in this Agreement and the Owner Participation Agreement, within the times specified in such agreements, if it were not for the agreement of the City that the Site can be developed in accordance with the City's rules, regulations and policies existing as of May 31, 1983, during the term of this Agreement, as set forth in this Agreement.

J. The City finds that this Agreement is consistent with the City of San Diego's Progress Guide and General Plan, the Centre City Community Plan existing as of May 31, 1983, and the Columbia Plan, and with any applicable specific plans and regulations for the Site existing as of May 31, 1983, and that the City has completed all necessary proceedings in accordance with the City's rules and regulations for its approval. The updated Centre City Community Plan, Centre City Redevelopment Plan and applicable specific plans and regulations for the Site adopted after May 31, 1983, provide that this Agreement shall govern the development of the Site where conflicts with such subsequent planning documents occur.

Now, therefore, with reference to the foregoing recitals and in consideration of the mutual promises, obligations and covenants herein contained, the parties hereto agree as follows:

1. Purpose. The purpose of this Agreement is to provide certain terms and conditions for how the Site may be developed by Catellus and to assure Catellus that the Site can be developed in accordance with the City's rules, regulations and policies existing as of May 31, 1983, during the term of this Agreement, as set forth in this Agreement. This Agreement incorporates modifications, additions and deletions to the original Development Agreement as amended by the First, Second and Third Amendments thereto. The original Development Agreement as amended, is amended by the execution of this Agreement to provide in its entirety as herein

set forth. This Agreement constitutes the entire agreement of the parties.

2. Site.

(a) Catellus represents that it is the legal owner of the property comprising the Site, subject to the fact that the fee ownership of certain property underlying a portion of California Street (described as the 550 feet of the 75-foot wide right-of-way located immediately north of the northerly right-of-way line of Broadway), which portion of the property underlying California Street is also covered by an easement for rail transportation purposes, is being contested by a third person or entity. Catellus agrees to carry out its obligations under this Agreement regardless of the outcome of the above-referenced dispute. Catellus also hereby agrees to defend, indemnify and hold harmless the City, the Agency, the Centre City Development Corporation, and their respective officers, employees, contractors and agents from and against any and all claims, liability, loss, damage, costs or expense (including attorneys' fees and court costs as they are incurred, which shall include any attorneys which the City, the Agency and/or the Centre City Development Corporation may engage, at their election, to defend the City, the Agency and/or the Centre City Development Corporation and their respective officers, employees, contractors and agents with respect to the matters hereunder), and including any other remedies, such as declaration, writ, injunction or otherwise, which may be sought by or owed to any person or entity claiming an interest in the above-referenced

property underlying California Street, and which is based upon the claimed interference by Catellus or its predecessors in interest to the Site, or by the City, the Agency, the Centre City Development Corporation, or their respective officers, employees, contractors and agents, whether by entering into the original Development Agreement as amended, or entering into this Agreement, or seeking to quiet title, or otherwise, with the ownership or use of the above-referenced property. Catellus shall pay to the City any amounts due hereunder within forty-five (45) days after receipt of written request therefor from the City, which may be presented by the City from time to time as obligations are incurred.

(b) The City and Catellus acknowledge that outside the perimeter of the Site is a parcel of property designated the "Ash/Kettner Parcel," shown on the map attached as Attachment A-1 and as more particularly described in the legal description attached as Attachment A-3 and incorporated herein by reference, which may be acquired by Catellus or acquired by the Agency and conveyed to Catellus pursuant to the terms of the Owner Participation Agreement. If Catellus acquires fee title to the Ash/Kettner Parcel, the City and Catellus agree to amend this Agreement to include such parcel as part of the Site to be covered by the terms of this Agreement. Neither the original Development Agreement, as heretofore amended, nor this Development Agreement, shall be construed to apply in any manner to the Ash/Kettner Parcel, but any references to the Ash/Kettner Parcel herein shall become effective if, and only if, the Ash/Kettner Parcel is

expressly made part of the Site consistent with the California Community Redevelopment Law.

3. Definitions. The terms used within this Agreement shall have the following meanings:

(a) "Agency" shall mean the Redevelopment Agency of the City of San Diego, California, a public body, exercising governmental functions and powers and organized under Chapter 2 of the Community Redevelopment Law of the State of California, and any entity that is the successor to its rights, powers and responsibilities;

(b) "Baggage Building" shall mean the building located immediately north of the Santa Fe Depot, excluding the non-original addition at the northerly end thereof which is sometimes referred to as the Railway Express Building;

(c) "Basic Concept Drawings" shall mean the basic concept plans, elevations and sections which shall serve as design guidelines for the development of the Site attached hereto as Attachment B-2;

(d) "CCDC" shall mean the Centre City Development Corporation, a California nonprofit corporation, which administers certain activities in the Centre City Redevelopment Project area for the Agency and City pursuant to a contract with the Agency and the City, and any entity that is the successor to its responsibilities and obligations;

(e) "City" shall mean the City of San Diego, a municipal corporation;

(f) "Commence Construction" shall mean the date grading is commenced after a building permit is issued or the date grading is commenced based upon an agreed upon fast track construction schedule between Catellus and the Agency;

(g) "Complete Construction" shall mean the date when a certificate of occupancy is issued for any improvement constructed on the Site pursuant to the terms of this Agreement;

(h) "County" shall mean the County of San Diego, a public body;

(i) "Design Standards" shall mean the design criteria and guidelines for the development of the private improvements on the Site as set forth in Attachment B-3;

(j) "Effective Date" shall mean the date of certification of the required Local Coastal Program ("LCP") applicable to the Site (including as part of the LCP the original Development Agreement as theretofore amended) by the California Coastal Commission ("Coastal Commission"), being April 5, 1988. The "Amendment Effective Date" shall mean the date of certification of this amended Agreement as an amendment to the LCP by the Coastal Commission. The parties agree that for purposes of Government Code Section 65869, the amendments hereby incorporated into this Agreement shall be deemed to have not been entered into until the Amendment Effective Date, provided that those matters herein relating to the date of execution, or another specific date, shall be controlled by the date of execution, or such other specific date.

(k) "Scope of Land Use" shall mean the uses, density, intensity and height of improvements permitted on the Site as set forth in Attachment B-1, and incorporated herein by reference;

(l) "MTDB" shall mean the Metropolitan Transit Development Board, a public body;

(m) "Port" or "Port District" shall mean the San Diego Unified Port District, a public corporation organized and existing pursuant to California Statute 1962 c.62, 1st Extraordinary Session, as amended, known as the San Diego Unified Port District Act;

(n) "Ash/Kettner Parcel" shall mean that certain real property located on the southwest corner of Ash Street and Kettner Boulevard as shown on Attachment A-1 and as more particularly described in Attachment A-3;

(o) "San Diego Trolley" shall mean the light rail transit operated by MTDB;

(p) "Santa Fe Depot" or "Depot" shall mean that portion of the building shown on Attachment B-2-A located on the Site;

4. Permitted Uses of Property. The City and Catellus hereby agree that, for the term of this Agreement, Catellus may develop the Site according to the Scope of Land Use (Attachment B-1).

5. Obligations of Catellus. Catellus agrees to perform the acts set forth in "Obligations of Catellus" (Attachment C-1) as part of its development of the Site.

6. Effect of Agreement on Regulations.

(a) The City and Catellus hereby agree that, for the term of this Agreement, the rules, regulations and official policies governing the permitted uses of land, density, design, improvement and construction standards and specifications applicable to the development of the Site shall be those rules, regulations and official policies in force on May 31, 1983, except Catellus shall be subject to changes in the building codes applicable to private improvements to be constructed on the Site and construction, engineering and design standards as applicable to public improvements to be constructed on the Site, occurring from time to time, provided that such changes: (i) are found by the City to be in the best interests of the health and safety of the citizens of the City of San Diego, (ii) are generally applicable to all other applicants in the City of San Diego, and (iii) do not prevent development of the Site in substantial accordance with the Scope of Land Use. This Agreement shall not prevent the City, in subsequent actions applicable to the Site from applying new rules, regulations and policies (not limited to the Site or discriminating against Catellus) which do not conflict with those rules, regulations and policies applicable to the Site on May 31, 1983, nor shall this Agreement prevent the City from denying or conditionally approving any subsequent development application on the basis of such rules, regulations and policies existing on May 31, 1983, or such new rules, regulations and policies, nor shall this Agreement be construed to limit the application to the Site of any developer or

impact fees or charges or assessments (not limited to the Site or discriminatory against Catellus);

(b) In the event that any subsequent changes in state or federal laws or regulations prevent or preclude compliance with one or more provisions of this Agreement such provision shall be modified or deleted. Any such modification or deletion shall be made only to the extent necessary to comply with any such new federal or state law or regulations and shall be made by the parties with the intent of carrying out the objectives of this Agreement and to construct the improvements described in the Scope of Land Use;

(c) In the event that the implementation of this Agreement is suspended by reason of a court order or for any other reason through no fault of the parties, Catellus may nonetheless, at its sole option, apply for and process permits and approvals under the City's land use planning process then in effect as applicable to the Site.

7. Subsequent Approvals and Permits and Acts of the City.

The City shall not require Catellus to obtain any further approvals or permits for the development of the Site in accordance with this Agreement during the term of the Agreement unless such permits or approvals are required by the rules, regulations and official policies of the City in force on May 31, 1983, or by the terms of this Agreement. In the event any further approvals or permits are required by the City for the development of the Site during the term of this Agreement, the City agrees to grant all

such approvals and permits to Catellus provided: (i) the development authorized by such permit or approval is in substantial conformance with this Agreement; and (ii) Catellus has complied with the rules regulations and official policies for obtaining such approvals or permits in force on May 31, 1983 and as otherwise provided in this Agreement. This paragraph shall not prevent the City from exercising such discretion as it may have as of May 31, 1983 under such then existing rules, regulations and official policies. The City agrees that the terms, conditions and requirements for such permits or approvals shall not prevent Catellus's development of the Site in substantial accordance with the terms of this Agreement.

8. Hold Harmless. Catellus agrees to indemnify, defend and hold harmless the City its officers, agents, employees and representatives from liability for damage or claims for damage for personal injury including death and claims for property damage which may arise from the direct and indirect operations of Catellus or those of its contractor, subcontractor, agent, employee or other person acting on its behalf which relate to the development of the Site. The provisions of this paragraph shall not apply to the extent such damage, liability or claim is proximately caused by the intentional or negligent act of the City its officers, agents, employees or representatives.

9. Amendments or Cancellation of This Agreement. Except as otherwise permitted herein, this Agreement may be amended or terminated in whole or in part only by the mutual consent of the

parties and only in the same manner as its adoption by an ordinance as set forth in Government Code Sections 65867, 65687.5 and 65868⁶⁸⁸. Any change, modification, revisions or alteration in the City of San Diego Progress Guide and General Plan, zoning, any specific plan or community plan, or the Columbia Plan by the City after May 31, 1983 shall not affect this Agreement, provided nevertheless that the provisions of this Agreement, including modifications, additions and deletions incorporated into this Agreement after May 31, 1983 shall govern the development of the Site even where they are more restrictive or conflict with the rules, regulations and official policies existing on May 31, 1983. Notwithstanding anything to the contrary herein, the City and Catellus agree that the Owner Participation Agreement may be amended from time to time and without the City's consent in accordance with the Community Redevelopment Law.

10. Periodic Review. The City shall review Catellus's performance pursuant to the terms of this Agreement at least once every twelve (12) months during the term hereof. The City may delegate its review to the CCDC. During each periodic review Catellus shall demonstrate good faith compliance with the terms hereof. In connection with such review, the City shall have a reasonable opportunity to assert matters which it believes have not been undertaken in accordance with the Agreement, to explain the basis for such assertion, and to receive from Catellus a justification of its position on such matters.

11. Performance by Catellus. Catellus shall perform the acts set forth in the Obligations of Catellus in accordance with the schedule set forth therein. Except as otherwise specifically provided in the Obligations of Catellus, Catellus may pursue development of the other private improvements on the Site in accordance with the Scope of Land Use when and as it deems appropriate, in its business judgment, in light of the market conditions and other similar factors influencing a business decision to commence and complete such development.

12. Default of Catellus.

(a) Catellus shall be in default under this Agreement upon a finding and determination by the City Council of the City that, upon the basis of substantial evidence, Catellus has not:

(1) continuously maintained a local office in San Diego in order to locally manage development of the Site, as described in paragraph A.9. of Attachment C-1; or

(2) continuously maintained in the required condition the Santa Fe Depot as described in paragraph A.1. of Attachment C-1; or

(3) continuously maintained in the required condition the parking lots installed on Parcel 1 and Parcel 2 as described in paragraph A.8.iii. of Attachment C-1; or

(4) on or before March 1, 1994, improved Parcel 2 west of the railroad tracks and south of Broadway as a parking lot as described in paragraph A.8.i. of Attachment C-1; or

(5) improved as a parking lot any land on Parcel 1 where improvements have been demolished as described in paragraph A.8.ii. of Attachment C-1 within the time required therein; or

(6) dedicated any segment of right of way as required by paragraphs A.5.ii. or A.5.ix. of Attachment C-1, within the times required by paragraphs A.5.iii and A.5.ix. of Attachment C-1; or

(7) undertaken and completed the public improvements along any segment of right of way as required by paragraphs A.5.iv., A.5.v., A.5.vi. or A.5.ix. of Attachment C-1, within the respective times required therein; or

(8) made any of the payments to the City or Agency toward the cost of improvements along and within Pacific Highway as described in paragraph A.5.vii. of Attachment C-1 within the time required therein; or

(9) preserved the Depot and Baggage Building and granted the facade easement in the Depot and Baggage Building to the City within the time required by and in accordance with paragraph A.6. of Attachment C-1; or

(10) on or before December 7, 1997, completed the seismic upgrade and base building improvements for the Baggage Building and transferred title thereto to the City (or its designee) as provided by paragraph A.11.i. of Attachment C-1; or

(11) negotiated in good faith with the Rail Museum as the City's initial designated proposed occupant of the Baggage Building to provide and improve a museum therein as described in

paragraph A.11.ii. of Attachment C-1 for the period required therein; or

(12) met, conferred and negotiated in good faith with the North County Transit Development Board to provide and improve a right-of-way for Commuter Rail within the Site as described in paragraph A.5.x.b. of Attachment C-1 for the period required therein; or

(13) on or before December 31, 1999, expended \$1,500,000 or more for the construction of Hardscape Improvements and for Relocated Items as described in paragraph A.5.x.a. of Attachment C-1; or

(14) submitted a master plan for the transit courtyard in the manner and within the time required by paragraph A.5.x.c. of Attachment C-1, or constructed any element of the transit courtyard improvements as required by paragraph A.3. of Attachment C-1 within the respective times required therein; or

(15) on or before December 7, 2003, improved the courtyard south of the Depot as described in paragraph A.1. of Attachment C-1; or

(16) demolished and removed all structures from the Ash/Kettner Parcel as described in paragraph A.2. of Attachment C-1 within the time required therein.

(a) Catellus shall be in default under this Agreement upon a finding and determination by the City Council of the City that, upon the basis of substantial evidence, Catellus has not complied in good faith with any one or more of the other terms or conditions of this Agreement.

(b) Nonperformance of Catellus hereunder shall not be deemed to be in default where delays are due to acts of God, war, strikes, riots, floods, earthquakes, fires, casualties, acts of public enemy, epidemics, freight embargoes, litigation, unusually severe weather, inability to obtain necessary labor, materials or tools, delays of any contractor, acts or omissions of the City, or acts or omissions of third parties which are not a party to this Agreement, including but not limited to other governmental agencies, or other causes beyond the reasonable control of Catellus. If performance by Catellus has been delayed by any such cause, an extension of time shall be granted Catellus for the period of the delay and such period shall commence to run from the time of the commencement of the cause, if notice by Catellus is sent to the City within thirty (30) days after the commencement of the cause. Times of performance under this Agreement may also be extended in writing by Catellus and the City.

13. Default of City.

(a) The City shall be in default under this Agreement if:

(1) it imposes upon Catellus rules, regulations or official policies governing the permitted uses of land, density, design, improvement and construction standards and specifications applicable to the development of the Site, which are not the same as those rules, regulations and official policies in effect on May 31, 1983 and which restrict, limit, prevent or preclude the

development of the Site in accordance with this Agreement, except as otherwise provided herein; or

(2) it has not complied in good faith with one or more of the terms or conditions of this Agreement;

(b) The City shall not be in breach of this Agreement by reason of any subsequent changes of laws or regulations of another public agency not controlled by the City or litigation which prevents or precludes compliance by the City or Catellus with the Agreement.

(c) The City shall not be deemed to be in default where delays are due to acts of God, war or other causes beyond the reasonable control of the City. If performance by the City has been delayed by any such cause, an extension of time shall be granted the City for the period of the delay and such period shall commence to run from the time of the commencement of the cause, if notice by the City is sent to Catellus within thirty (30) days after the commencement of the cause. Times of performance under this Agreement may also be extended in writing by Catellus and the City.

14. Procedure upon Default.

(a) Subject to subparagraphs (b) and (c) of this paragraph 14, upon default by Catellus, the City may, at its option, terminate or modify this Agreement in accordance with the procedures set forth herein, provided, however, that any such modification of this Agreement by the City or pursuant to this paragraph shall be done with the intent to carry out the objective

of this Agreement and to accomplish the plans for the development of the Site as set forth in the Scope of Land Use;

(b) Upon the occurrence of an event of default by either party, the party not in default (the "Nondefaulting Party") shall give the party in default (the "Defaulting Party") written notice of the default. The Defaulting Party shall have thirty (30) calendar days from the date of notice (subject to subparagraph (c) below) to cure the default if such default is curable within such thirty (30) days. If such default is so cured, then the Nondefaulting Party may not take any further action to enforce its rights.

If the Defaulting Party is the City and if such default is not so cured by the City, Catellus may seek such relief at law or in equity that may be available, including but not limited to specific performance or writ of mandate.

If the Defaulting Party is Catellus and if such default is not so cured by Catellus, the City may seek such relief at law or in equity that may be available, including but not limited to specific performance and termination, provided, however, that the City shall have no right to seek specific performance to require Catellus to undertake any of the tasks described in subparagraphs 12.(a)(1), (2), (3), (5), (6), (7), (8), (12), (13), (14), (15) or (16) of this Agreement or damages or any other remedy at law or equity, for failure to undertake any such tasks, but the City's sole remedy in the event of such a default by Catellus shall be termination of this Agreement. In addition to the City's right to terminate,

Catellus may, at its option, terminate this Agreement if: (1) Catellus deems it infeasible to obtain all necessary governmental approvals to permit the tasks described in subparagraphs 12.(a)(1), (2), (3), (5), (6), (7), (8), (12), (13), (14), (15) or (16) of this Agreement, (2) Catellus deems it infeasible to timely perform any one or more of the tasks described in said subparagraphs 12.(a)(1), (2), (3), (5), (6), (7), (8), (12), (13), (14), (15), or (16), or (3) the City is in default pursuant to paragraph 13(a) of this Agreement. It is the intent of the City and Catellus, that Catellus shall have the discretion to undertake the tasks described in said subparagraphs 12.(a)(1), (2), (3), (5), (6), (7), (8), (12), (13), (14), (15) or (16), but if Catellus undertakes any of such tasks, it shall be completed in accordance with the terms and conditions of this Agreement, and upon Catellus undertaking any such tasks, the City shall then have such remedies at law as are necessary to compensate the City for Catellus's failure to comply, and to the extent equitable remedies, such as injunctive relief or specific performance are appropriate to protect the City's interests, such remedies shall be available to the City. Notwithstanding the foregoing, if this Agreement is terminated by the City or Catellus under this paragraph, the obligations of Catellus referred to in subparagraphs 12.(a)(4), (9), (10) and (11) of this Agreement (and as described in the paragraphs of Attachment C-1 referenced therein) shall survive such termination and Catellus shall timely perform such obligations or the Agency may seek such relief at law or in equity that may be available.

(c) Should the default be of a nature which cannot be reasonably cured within such thirty- (30) day period, the Defaulting Party shall be entitled to commence to cure such default within said thirty- (30) day period and thereafter, diligently prosecute the cure to completion. If such Defaulting Party fails to commence to cure such default within said thirty- (30) day period and to thereafter diligently prosecute said cure to completion, the Non-Defaulting Party shall have the remedies set forth in paragraph (b) above.

15. Coastal Commission Approval.

(a) The City and Catellus acknowledge that, pursuant to Government Code Section 65869, the amendments hereby incorporated into this Agreement shall not be applicable to the Site until the Coastal Commission certifies this amended Agreement as an amendment to the LCP applicable to the Site, provided that those matters herein relating to the date of execution, or another specific date, shall be controlled by the date of execution, or such other specific date. The City agrees to use its reasonable good faith efforts to obtain such certification. The City and Catellus agree that in the event the Coastal Commission imposes conditions upon such certification, this Agreement may be modified accordingly by Catellus and the City. However, notwithstanding the above, in the event the conditions imposed by the Coastal Commission render performance under this Agreement infeasible or constitute a material change in the obligations of the terminating party under this Agreement, the party on whom the conditions are imposed may,

at its sole option, terminate the amendments hereby incorporated into this Agreement, and all obligations and rights of the parties hereunder shall continue to be governed by the original Development Agreement, as amended by the First, Second and Third Amendments thereto. The right to terminate the amendments hereby incorporated into this Agreement due to the imposition of conditions upon the LCP by the Coastal Commission must be exercised by giving notice in writing within sixty (60) days of the formal Coastal Commission action, or such right shall be deemed to have been waived.

(b) The parties agree that if the Coastal Commission fails to certify the amendments hereby incorporated into this Agreement as an amendment to the LCP applicable to the Site on or before December 7, 1993, then the amendments hereby incorporated into this Agreement may be terminated at the option of either party.

16. Assignment. The rights and obligations of Catellus under this Agreement may be transferred or assigned, provided such transfer or assignment is made as part of a transfer, assignment, sale or lease of all or any portion of the Site. Any such transfer or assignment shall be subject to the provisions of this Agreement and the controls and limitations contained herein, including but not limited to use, height, intensity and design review restrictions. During the term of this Agreement, any such assignee or transferee shall observe and perform all of the duties and obligations of Catellus contained in this Agreement as such duties and obligations pertain to the portion of the Site so transferred

or assigned, including but not limited to the making of required dedications and provision of onsite and offsite improvements.

In the event Catellus creates separate parcels within the Site by subdividing the Site as permitted by the Subdivision Map Act and applicable local law, Catellus may sell or lease all or any portion of such parcels or any interest in such parcels. The parties agree that at Catellus's sole option, each parcel may be developed by Catellus, by Catellus as part of a joint venture with other persons or entities, or by independent third persons or entities as assignees, transferees or lessees of Catellus.

17. Binding Effect of Agreement. This Agreement shall inure to the benefit of and be binding on the parties hereto and their respective successors, assigns or transferees. Whenever the term "Catellus" is used herein, such term shall include any assignee, transferee or successor.

18. Relationship of Parties. It is understood that Catellus is not an agent of the City and the City is not an agent of Catellus.

19. Notices. All notices required or provided for under this Agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid. Notice shall be effective on the date delivered in person, or the date when the postal authorities indicate that the mailing was delivered to the address of the receiving party indicated below.

Notice to Catellus shall be addressed as follows:

Catellus Development Corporation
550 West C Street, Suite 1810
San Diego, California 92101

Notice to the City shall be addressed as follows:

City Manager
City of San Diego
202 C Street
San Diego, California 92101

A party may change its address by giving notice in writing to the other party and thereafter notices shall be delivered or sent to such new address.

20. Attorneys' Fees. If any legal action is brought by any party to the Agreement as a result of any breach of this Agreement or to enforce any provision of this Agreement, the prevailing party shall be entitled to recover all expenses incurred therefor including reasonable attorneys' fees and court costs.

21. Severability. If any provisions of this Agreement shall be held to be invalid by a court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby, unless the court shall specifically find that the invalid part is so fundamental and essential to the understanding of the parties that the entire Agreement shall be invalidated.

22. Waiver. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. No waiver of any right or remedy in respect of any occurrence or event shall be deemed a waiver of any right or remedy in respect of any other occurrence or event.

23. Applicable Law. The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

24. Incorporation by Reference. All exhibits and attachments attached hereto are incorporated herein by reference as though set forth herein in their entirety.

25. Time of Essence. Time is of the essence for each provision of this Agreement of which time is an element.

26. Amendment Effective Date. The amendments hereby incorporated into this Agreement shall be approved by ordinance of the City pursuant to Government Code Section 65867.5. The amendments hereby incorporated into this Agreement shall be deemed in full force and effect on the Amendment Effective Date, provided that those matters herein relating to the date of execution, or another specific date, shall be controlled by the date of execution, or such other specific date.

27. Term of Agreement. The term of this Agreement shall commence on the Effective Date and shall continue, unless sooner terminated pursuant to the terms hereof, until December 7, 2003, provided, however, the term of this Agreement may be extended by an additional term ending December 7, 2012 at Catellus's option, if at the expiration of the term ending December 7, 2003, Catellus is not in default hereunder and has duly performed all of the following obligations as set forth in Attachment C-1, Obligations of Catellus:

(1) continuously maintained a local office in San Diego in order to locally manage development of the Site, as described in paragraph A.9. of Attachment C-1; and

(2) continuously maintained in the required condition the Santa Fe Depot as described in paragraph A.1. of Attachment C-1; and

(3) continuously maintained in the required condition the parking lots installed on Parcel 1 and Parcel 2 as described in paragraph A.8.iii. of Attachment C-1; and

(4) improved Parcel 2 west of the railroad tracks and south of Broadway as a parking lot as described in paragraph A.8.i. of Attachment C-1; and

(5) improved as a parking lot any land on Parcel 1 where improvements have been demolished as described in paragraph A.8.ii. of Attachment C-1; and

(6) dedicated each segment of right of way as required by paragraphs A.5.ii. or A.5.ix. of Attachment C-1; and

(7) undertaken and completed the public improvements along each segment of right of way as required by paragraphs A.5.iv., A.5.v., A.5.vi. or A.5.ix. of Attachment C-1; and

(8) made all of the payments to the City or Agency toward the cost of improvements along and within Pacific Highway as described in paragraph A.5.vii. of Attachment C-1; and

(9) preserved the Depot and Baggage Building and granted the facade easement in the Depot and Baggage Building to the City in accordance with paragraph A.6. of Attachment C-1; and

(10) completed the seismic upgrade and base building improvements for the Baggage Building and transferred title thereto

to the City (or its designee) as provided by paragraph A.11.i. of Attachment C-1; and

(11) negotiated in good faith with the Rail Museum as the City's initial designated proposed occupant of the Baggage Building as described in paragraph A.11.ii. of Attachment C-1; and

(12) met, conferred and negotiated in good faith with the North County Transit Development Board to provide and improve a right-of-way for Commuter Rail within the Site as described in paragraph A.5.x.b. of Attachment C-1; and

(13) expended \$1,500,000 or more for the construction of Hardscape Improvements and for Relocated Items as described in paragraph A.5.x.a. of Attachment C-1; and

(14) constructed each of the transit courtyard improvements as required by paragraph A.3. of Attachment C-1; and

(15) improved the courtyard south of the Depot as described in paragraph A.1. of Attachment C-1; and

(16) demolished and removed all structures from the Ash/Kettner Parcel as described in paragraph A.2. of Attachment C-1 if Catellus or the Agency has acquired the Ash/Kettner Parcel for development by Catellus.

In no event shall the term of this Agreement exceed December 7, 2012.

Catellus shall exercise the option provided for above by delivering to the City written notice of its election to do so at least thirty (30) days prior to the expiration of the term of this Agreement ending December 7, 2003. Such election shall be

effective only if the conditions precedent thereto have been met and notice timely given.

Notwithstanding any provisions herein to the contrary, this Agreement may be terminated at the option of either party in the event the Owner Participation Agreement is terminated.

28. Security Financing; Rights of Holders Generally.

(a) Subject to the terms and conditions of this Agreement, mortgages, deeds of trust, conveyances and leases-back, or any other form of conveyance required for any reasonable method of financing are permitted before the recordation of the Certificate of Completion on the Site or applicable portion thereof. Catellus shall notify the City in advance of any mortgage, deed of trust, conveyance and lease-back, or other financing, conveyance, encumbrance or lien that it proposes voluntarily to create or attach to the Site (or any portion thereof), or promptly after such creation or attachment if involuntarily created or attached to the Site (or any portion thereof), which occurs prior to the recordation of a Certificate of Completion on the Site or applicable portion thereof. A lender, about whom Catellus has given notice to the City pursuant to this subparagraph 28.(a), shall not be bound by any amendment, implementation or modification to this Agreement subsequent to such notice without such lender's giving its prior written consent.

The word "mortgage" as used in this paragraph 28 includes all other appropriate modes of financing real estate acquisition, construction and land development.

(b) The holder of any mortgage, deed of trust or other security interest authorized by this Agreement shall in no way be obligated by the provisions of this Agreement to construct or complete the improvements or to guarantee such construction or completion or to fulfill or be liable for any breach or default by Catellus hereunder. Nothing in this Agreement shall be deemed or construed to permit or authorize any such holder to devote the Site to any uses, or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Agreement.

(c) Whenever the City shall deliver any notice or demand to Catellus with respect to any breach or default by Catellus under this Agreement, the City shall at the same time deliver to each holder of any mortgage, deed of trust or other security interest, about whom the City has been notified under subparagraph (a) of this paragraph 28, a copy of such notice or demand. Each such holder shall (insofar as the rights of the City are concerned) have the right at its option within ninety (90) days after the receipt of the notice, to cure or remedy, or commence to cure or remedy, any such default and to add the cost thereof to the security interest debt and the lien of its security interest. If such default shall be a default which can only be remedied or cured by such holder upon obtaining possession, such holder shall seek to obtain possession with diligence and continuity through a receiver or otherwise, and shall remedy or cure such default within ninety (90) days after obtaining possession; provided that in the case of

a default which cannot with diligence be remedied or cured, or the remedy or cure of which cannot be commenced within such ninety-(90) day period, such holder shall have such additional time as reasonably necessary to remedy or cure such default with diligence and continuity; and provided further that such holder shall not be required to remedy or cure any non-curable default of Catellus. Nothing contained in this Agreement shall be deemed to permit or authorize such holder to undertake or continue the performance of the obligations of Catellus hereunder (beyond the extent necessary to conserve or protect the improvements or construction already made) without first having expressly assumed Catellus's obligations to the City by written agreement satisfactory to the City. The holder in that event must agree to complete, in the manner provided in this Agreement, the performance of the obligations of Catellus hereunder to which the lien or title of such holder related, and submit evidence satisfactory to the City that it has the qualifications and financial responsibility necessary to perform such obligations. Any such holder properly completing such improvements shall be entitled, upon written request made to the Agency, to a Certificate of Completion from the Agency.

(d) If at any time there is more than one mortgage constituting a lien on any portion of the Site, the lien of the mortgage prior in time to all others on that portion of the mortgaged property shall be vested with the rights under this paragraph 28 to the exclusion of the holder of any junior mortgage; provided, however, that if the holder of the senior mortgage fails

to exercise such rights, each holder of a mortgage junior in lien shall have the right to exercise such rights to the exclusion of more junior lienholders and, provided further, that each such junior lienholder shall succeed to such rights only if the holders of all senior mortgages have failed to exercise the same. Any failure by a senior mortgagee to exercise its rights under this Agreement, or any delay in the response of a mortgagee(s) to any notice by the City, shall not extend any other mortgagee's rights under this paragraph 28; that is, all such mortgagees together shall have no longer a period or periods of time hereunder as would be afforded were the Site (or portion thereof) encumbered by a single first mortgage. Notwithstanding the foregoing, unless it would be contrary to an order of a court of competent jurisdiction that is served on the City, the City may, during the cure period afforded hereunder, accept performance from any mortgagee(s) without incurring any liability therefor to any other mortgagee.

29. Effect of Invalidity. In the event the amendments hereby incorporated into this Agreement shall be declared invalid, illegal or unenforceable by a court or any official body with authority to do so, Catellus and the City mutually waive any right which either may have to seek or obtain from the other any damages arising out of such invalidity, illegality or unenforceability.

30. Runway 13-31. The City agrees to use reasonable efforts to cause Runway 13-31 to be abandoned or to have its threshold displaced so as not to affect the Site. Performance under this

paragraph is not a condition precedent to Catellus's performance of its obligations under this Agreement.

31. **Execution.** This Agreement shall be executed by the City and Catellus concurrently with execution by the Agency and Catellus of the Owner Participation Agreement.

IN WITNESS WHEREOF, the parties hereto have caused the Agreement to be executed as of the date and year first above written.

City:

CITY OF SAN DIEGO,
a municipal corporation

Dated: 4/9/93

By: 


Dated: _____

By: _____

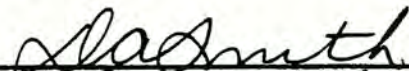
Catellus:

CATELLUS DEVELOPMENT CORPORATION,
a Delaware corporation


Dated: 2/12/93

By: 
PRESIDENT & CEO

Dated: 2/12/93

By: 
VICE PRESIDENT & CFO

APPROVED:
JOHN W. WITT
City Attorney

By: 
Allisyn L. Thomas, Deputy

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

No. 519

State of CALIFORNIA
County of SAN DIEGO

On 4/9/1993 before me, PAT E. BIRDSONG, NOTARY PUBLIC
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared MAUREEN A. STAPLETON-----
NAME(S) OF SIGNER(S)

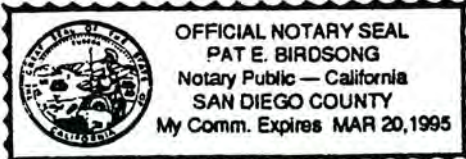
personally known to me - **OR** - proved to me on the basis of satisfactory evidence to be the person~~(s)~~ whose name~~(s)~~ is/~~are~~ subscribed to the within instrument and acknowledged to me that ~~he~~/~~she~~/~~they~~ executed the same in ~~his~~/~~her~~/~~their~~ authorized capacity~~(ies)~~, and that by ~~his~~/~~her~~/~~their~~ signature~~(s)~~ on the instrument the person~~(s)~~, or the entity upon behalf of which the person~~(s)~~ acted, executed the instrument.

OPTIONAL SECTION

CAPACITY CLAIMED BY SIGNER

Though statute does not require the Notary to fill in the data below, doing so may prove invaluable to persons relying on the document.

- INDIVIDUAL
- CORPORATE OFFICER(S)
- TITLE(S)
- PARTNER(S) LIMITED GENERAL
- ATTORNEY-IN-FACT
- TRUSTEE(S)
- GUARDIAN/CONSERVATOR
- OTHER: _____



WITNESS my hand and official seal.

Pat E. Birdsong
SIGNATURE OF NOTARY

SIGNER IS REPRESENTING:

NAME OF PERSON(S) OR ENTITY(IES)
CITY OF SAN DIEGO

OPTIONAL SECTION

THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED AT RIGHT:

Though the data requested here is not required by law, it could prevent fraudulent reattachment of this form.

TITLE OR TYPE OF DOCUMENT _____
NUMBER OF PAGES _____ DATE OF DOCUMENT _____
SIGNER(S) OTHER THAN NAMED ABOVE _____

STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

On February 12, 1993, before me, Barbara G. Zeyen, Notary Public, personally appeared Vernon B. Schwartz and David A. Smith personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Barbara G. Zeyen



APPROVED AND CONSENTED TO:

THE PRUDENTIAL INSURANCE
COMPANY OF AMERICA,
a New Jersey corporation
Mortgages

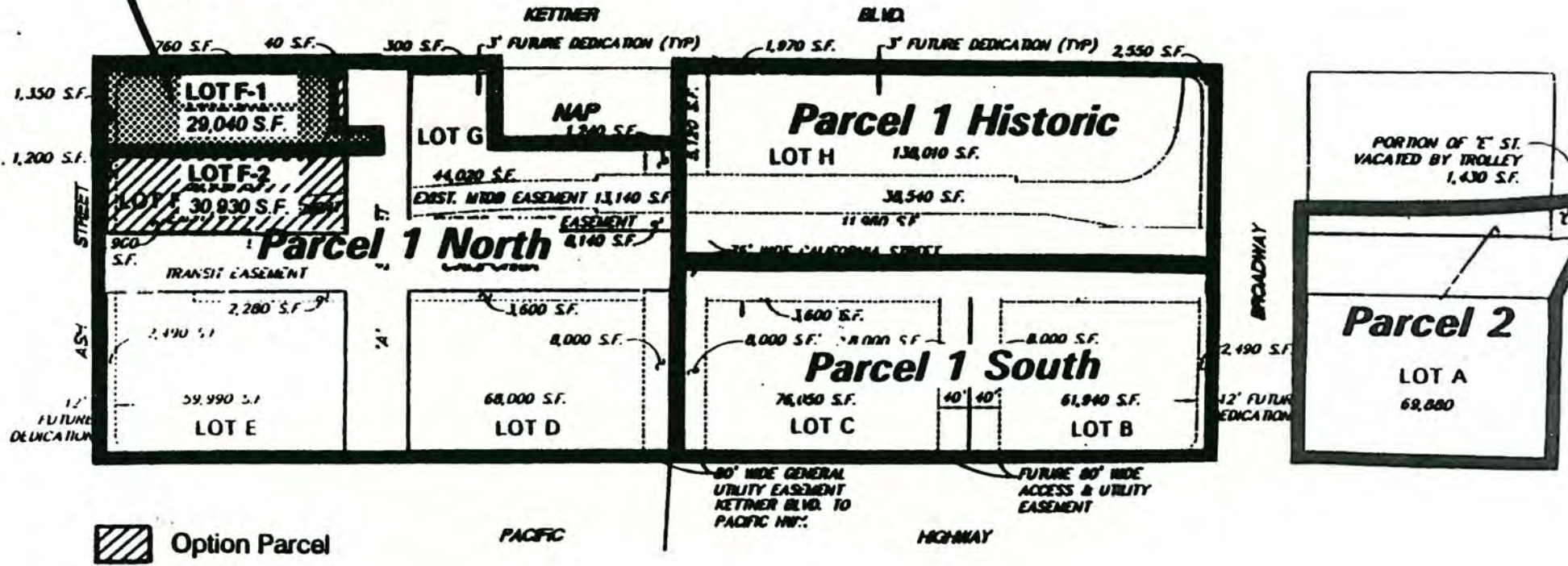
By:  PA

By: 

ASST. SECRETARY

k:\cg\sd\ccdc\catellus\devel3.agr

Ash / Kettner Parcel
(Not a Part of Site)



DESCRIPTION OF SITE

PARCEL 1

PARCEL 1-1

A parcel of land in the City of San Diego, County of San Diego, State of California, being that portion of Block 296 of MIDDLETOWN, according to Partition Map thereof made by J. E. JACKSON on file in the Office of the County Clerk of said County, and that portion of vacated "B" Street (80 feet wide) as said street is shown on said Map, described as follows:

BEGINNING at the Northeasterly corner of said Block; thence Southerly along the Easterly line of said Block and its Southerly prolongation 350.00 feet to a point in a line parallel with and distant Southerly 10.00 feet measured at right angles from the center line of said street; thence Westerly along said parallel line, 200.00 feet to a point in the Southerly prolongation of the Westerly line of said Block; thence Northerly along last said prolongation and said Westerly line, 350.00 feet to the Northwesterly corner of said Block; thence Easterly along the Northerly line of said Block, 200.00 feet to the Point of Beginning.

PARCEL 1-2

All that real property, in the City of San Diego, County of San Diego, State of California, being portions of Block 299, according to Map thereof by J. E. JACKSON on file in the Office of the County Recorder of San Diego County, as shown on the Map of MIDDLETOWN and that certain tract of land commonly known as GARDNER AND BLEEKER TRACT, also including a portion of "B" Street closed to public use, described as a whole as follows:

BEGINNING at the intersection of the North line of "D" Street, now Broadway, with the East line of Atlantic Street, now Pacific Highway; thence Northerly along the East line of said Pacific Highway to an intersection with a line parallel with and distant Southerly 10.00 feet measured at right angles from the center line of said "B" Street; thence Easterly along said parallel line, to a point in the Northerly prolongation of the Easterly line of said Block 299; thence Southerly along said prolongation to and along said Easterly line and its Southerly prolongation thereof to the Northerly line of said Broadway; thence Westerly along said Northerly line to the Point of Beginning.

PARCEL 1-3

Lots 1 through 6 in Block 295 and Lots 1, 2, 11 and 12 in Block 300 of MIDDLETOWN in the City of San Diego, County of San Diego, State of California, according to Partition Map thereof made by J. E. JACKSON on file in the Office of the County Clerk of said County, being a portion of the Depot Grounds as shown on said Map, together with that portion of the Northerly one-half of "B" Street adjoining said Lot 6 in Block 295 on the South and that portion of the Southerly one-half of "B" Street adjoining said Lots 1 and 12 in Block 300 on the North, as said "B" Street was closed to public use, together with all that real property in the City of San Diego, County of San Diego, State of California, being a portion of the Depot Grounds as shown on the Map of MIDDLETOWN, according to Map thereof made by J. E. JACKSON, on file in the Office of the County Clerk of said San Diego County, including that certain tract of land commonly known as Summers and Tremain Tract, described as follows:

BEGINNING at the Southwest corner of Lot 2 in Block 300 as shown on said Map of

MIDDLETOWN, thence Easterly along the Southerly line of said Lot 2 and the Easterly prolongation thereof, being along the Northerly line of said Summers and Tremain Tract 250.95 feet to the East line of the land described in deed to the CALIFORNIA SOUTHERN RAILROAD COMPANY recorded October 26, 1887 in Book 107, Page 53 of Deeds; thence South along said East line 550 feet to the North line of Broadway-formerly "D" Street-formerly Spring Avenue-; thence West along said North line 250.95 feet to the Southerly prolongation of the West line of said Lot 2 in Block 300; thence Northerly along said prolongation to the Point of Beginning.

Together with that portion of the West Half of Kettner Boulevard (formerly Arctic Ave) as street is shown on said Map adjoining Lots 11 and 12 in Block 300 and the South Half of "B" Street which upon closing would revert, by operation of law, to the above described land.

PARCEL 1-4

Lots 1 to 5 inclusive, and Lots 9 to 12 inclusive, in Block 293 of MIDDLETOWN, in the City of San Diego, County of San Diego, State of California, according to Partition Map made by J. E. JACKSON on file in the Office of the County Recorder of San Diego County.

Together with that portion of the South Half of Ash Street as street is shown on said Map adjoining the above described land which upon closing would revert, by operation of law, to the above described land.

PARCEL 1-5

Lot 6, in Block 293 of MIDDLETOWN, in the City of San Diego, County of San Diego, State of California, according to Partition Map thereof made by J. E. JACKSON on file in the Office of the County Clerk of said San Diego County.

PARCEL 1-6

Lots 7 and 8 in Block 293 of MIDDLETOWN, in the City of San Diego, County of San Diego, State of California, according to Map thereof made by J. E. JACKSON, filed in the Office of the County Clerk of San Diego County.

PARCEL 1-7

Lots 1 through 6 in Block 294 of MIDDLETOWN, according to Map thereof made by J. E. JACKSON on file in the Office of the County Clerk of said County, in the City of San Diego, County of San Diego, State of California.

Together with that portion of the South Half of Ash Street as street is shown on said Map adjoining the above described land which upon closing would revert, by operation of law, to the above described land.

PARCEL 1-8

The Southerly 12 1/2 feet of the Easterly 75 feet of Lot 7, in Block 294 of MIDDLETOWN, in the City of San Diego, County of San Diego, State of California, according to Partition Map thereof made by J.E. JACKSON, on file in the Office of the County Clerk of San Diego County.

Together with that portion of the West Half of Ketcher Boulevard (formerly Arctic Ave) as street is shown on said Map adjoining the above described land which upon closing would revert, by operation of law, to the above described land.

PARCEL 1-9

Lots 11 and 12 in Block 295 of MIDDLETOWN, in the City of San Diego, County of San Diego, State of California, according to Partition Map thereof made by JOHN S. JACKSON, on file in the Office of the County Recorder of San Diego County.

Together with that portion of the West Half of Ketcher Boulevard (formerly Arctic Ave) as street is shown on said Map adjoining the above described land which upon closing would revert, by operation of law, to the above described land.

PARCEL 1-10

A continuous strip of land being all that portion of California Street, in the City of San Diego, County of San Diego, State of California, lying within MIDDLETOWN, according to the Partition Map thereof made by J. S. JACKSON on file in the Office of the County Clerk of San Diego County and running through the Depot Grounds as shown on said Map of MIDDLETOWN and lying within a portion of that tract of land commonly known as GARDNER AND BLANCHER TRACT, lying northerly of the Northerly line of Broadway (formerly Spring Avenue) and lying southerly of the southerly line of Ash Street.

Together with that portion of the South Half of Ash Street as street is shown on said Map adjoining the above described land which upon closing would revert, by operation of law, to the above described land.

PARCEL 1-11

That portion of 'A' Street in MIDDLETOWN in the City of San Diego, County of San Diego, State of California, according to Partition Map thereof made by J. S. JACKSON, on file in the Office of the County Clerk of said County, lying easterly of the easterly line of Pacific Highway (formerly Atlantic Street) and lying westerly of the westerly line of California Street.

PARCEL 1-12

That portion of 'A' Street in MIDDLETOWN in the City of San Diego, County of San Diego, State of California, according to Partition Map thereof made by J. S. JACKSON on file in the Office of the County Clerk of said County, lying easterly of the easterly line of California Street and lying westerly of the westerly line of Ketcher Boulevard (formerly Arctic Street).

Together with that portion of the West Half of Ketcher Boulevard (formerly Arctic Ave) as street is shown on said Map adjoining the above described land which upon closing would revert, by operation of law, to the above described.

Excepting that portion of the North one-half of said 'A' Street which upon closing would revert by operation of law to the West 25 feet of Lot 7 in Block 294 of said MIDDLETOWN.

PARCEL 2

PARCEL 2

All of Block 50 and those portions of Lots A through F inclusive in Block 51 of NEW SAN DIEGO, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 456 by GRAY AND JOHNS on file in the Office of the County Recorder of San Diego County, lying within that certain 100.00 foot strip of land conveyed to THE CALIFORNIA SOUTHERN RAILROAD COMPANY, now THE ARCHISON, TOPSKA AND SAWTA TR RAILWAY COMPANY for railroad purposes, and that portion of California street lying between said Blocks 50 and 51 described as a whole as follows:

BEGINNING at the Northwest corner of said Block 50; thence Easterly along the North line of said Block 50 and the Easterly prolongation thereof to the Easterly line of said 100 foot strip; thence Southerly along said Easterly line to the South line of said Block 51; thence Westerly along said South line and the Westerly prolongation thereof, to the Southwest corner of said Block 50; thence Northerly along the West line of said Block to the Point of Beginning.

DESCRIPTION OF ASH/KETTNER PARCEL

ASH/KETTNER PARCEL

PARCEL ASH/KETTNER-1

All of Lot 3, the West 25 feet and the North 17 1/2 feet of the East 75 feet of Lot 7, being in Block 294 of MIDDLETOWN, in the City of San Diego, County of San Diego, State of California, according to the Partition Map thereof made by J. E. JACKSON on file in the Office of the County Clerk of said San Diego County.

Together with the North Half of 'A' Street and the West Half of Kettner Boulevard (formerly Arctic Ave) as streets are shown on said Map adjoining the above described land which upon closing would revert, by operation of law, to the above described land.

PARCEL ASH/KETTNER-2

Lots 9, 10, 11 and 12 in Block 294 of MIDDLETOWN, in the in the City of San Diego, County of San Diego, State of California, according to Partition Map thereof made by J. E. JACKSON on file in the Office of the County Clerk of said San Diego County.

Together with that portion of the South Half of Ash Street and the West Half of Kettner Boulevard (formerly Arctic Ave) as streets are shown on said Map adjoining the above described land which upon closing would revert, by operation of law, to the above described land.

OPTION PARCEL

PARCEL OPTION-1

Lots 1 through 6 in Block 294 of MIDDLETOWN, according to Map thereof made by J. E. JACKSON on file in the Office of the County Clerk of said County, in the City of San Diego, County of San Diego, State of California.

Together with that portion of the South Half of Ash Street as street is shown on said Map adjoining the above described land which upon closing would revert, by operation of law, to the above described land.

PARCEL OPTION-2

The Southerly 12 1/2 feet of the Easterly 75 feet of Lot 7, in Block 294 of MIDDLETOWN, in the City of San Diego, County of San Diego, State of California, according to Partition Map thereof made by J.E. JACKSON, on file in the Office of the County Clerk of San Diego County.

Together with that portion of the West Half of Kettner Boulevard (formerly Arctic Ave) as street is shown on said Map adjoining the above described land which upon closing would revert, by operation of law, to the above described land.

REVISED ATTACHMENT B-1

SCOPE OF LAND USE

I. Objectives of Development

The Site consists of approximately 16 acres in downtown San Diego. The proposed development plan for the Site entails a phased mixed use development. The development plan provides for offices, specialty retail, hotel, residential and other visitor oriented commercial activities. The development plan also includes plans for rehabilitation and adaptive reuse of the existing Santa Fe Depot and Baggage Building¹, and the integration of railroad and light rail transit tracks into the development in a transit courtyard.

The Site is divided into four separate areas as shown on the Site Map (Revised Attachment A-1), and described as Parcel 1 South (Broadway to B Street, exclusive of the Santa Fe Depot and Baggage Building), Parcel 1 North (B Street to Ash Street), Parcel 1 Historic Site (Depot and Baggage Building), and Parcel 2 (Broadway to E Street).

-
1. Wherever used in this Attachment B-1 and in the Development Agreement, references to the "Baggage Building" mean the Baggage Building excluding the non-original addition at the northerly end of the Baggage Building which is sometimes referred to as the Railway Express Building.

II. Land Use Categories

A. The Site may be developed for the following land uses:

Retail Commercial Use
Commercial Office Use
Transportation Use
Hotel Use
Residential Use
Parking Use
Cultural/Institutional Use

B. Retail Commercial Use shall mean the following land uses:

Antique stores
Art galleries, commercial
Artists' supply stores
Banks and other financial institutions
Beauty parlors
Book or card stores
Candy stores
Cigar or tobacco stores
Clothing or clothing accessory stores, with
no limitation on floor area per
establishment
Department stores
Eating or drinking places, including those
which provide outdoor table service or
incidental musical entertainment
Florist shops
Food stores, meat markets, or delicatessen
stores
Furrier shops, custom
Gift shops
Gymnasium and health centers
Jewelry shops
Leather goods or luggage stores
Millinery shops
Music shops
Newsstands, open or enclosed
Optician or optometrist establishments
Photograph equipment or supply stores
Record shops
Restaurants and bars, including live
entertainment
Shoe stores
Sporting or athletic stores
Stamp or coin stores
Stationery stores
Tailor or dressmaking shops, custom
Theaters

Revised Attachment B-1

Page 2 of 13

Toy stores
Travel bureaus
Variety stores
Watch or clock stores or repair shops

Any other uses similar in character to the above-described uses, including accessory uses and uses permitted in the Central Business District Zone (CBD) on May 31, 1983 or in the Centre City Planned District subsequent thereto.

C. Commercial Office Use shall mean those uses permitted in the CO Zone (Commercial Office Zone) on May 31, 1983 or in the Centre City Planned District subsequent thereto.

D. Transportation Use shall mean uses for a transit courtyard for the accommodation of Amtrak passenger services, Santa Fe freight services, the San Diego Trolley, Commuter Rail services (if applicable), and through railroad and light rail transit tracks and side railroad tracks. The transit courtyard may include a waiting area, ticket sales facilities, restrooms and service uses commonly associated with transit activities.

E. Hotel Use shall mean those uses permitted in the CR Zone (Commercial Recreation Zone) on May 31, 1983 or in the Centre City Planned District subsequent thereto.

F. Residential Use shall mean multiple family residential use in multi-story structures.

G. Parking Use shall mean space to accommodate automobiles at ground level and below and above ground level, located within structures or without structures. No permanent surface parking will be permitted at ground level.

H. Cultural Institutional Use shall mean use by institutions displaying or preserving objects of interest in one or more of the arts and sciences, such as museums, libraries and art galleries.

III. Permitted Development

The types of uses, density and intensity of private development and the maximum height of the proposed improvements which may be constructed and developed on the Site by Catellus is specified as follows:

A. Parcel 1 South (Broadway to B Street, exclusive of the Depot and Baggage Building)

1. Uses, Density and Intensity

Catellus may develop a maximum of 1,106,666 square feet of Commercial Office, Residential, Retail Commercial, Hotel, Cultural/Institutional, Transportation and related above-grade Parking Uses on Parcel 1 South, including both building square footage and above-grade parking square footage, as set forth below. In no event shall the combined building square footage and above-grade parking square footage of all such uses on Parcel 1 South exceed 1,106,666 square feet. In addition, Catellus may develop related below-grade Parking Use on Parcel 1 South.

Catellus may develop on Parcel 1 South:

a. Any combination of the above-mentioned land uses, based on an evaluation of market conditions for specific uses and other factors which may influence business

or land use decisions, subject to the maximum square footage permitted on Parcel 1 South as provided herein and to the principles expressed in the Design Standards set forth in Attachment B-3.

b. Parking Use space up to a maximum of 1,149 parking spaces (or more, if permitted by then applicable City ordinances). Catellus shall, however, be subject to such City fees as may then be applicable to the parking spaces permitted hereby.

2. Size

a. FAA Limitations. The height of the improvements on Parcel 1 South may not exceed that which would cause such improvements to be classified a hazard to Runways 9-13 or 27-31 by the Federal Aviation Administration ("FAA") at the time of development.

b. Height Step-Down from Broadway toward Ash Street. Within Parcel 1 as a whole, building heights shall not exceed 480 feet above mean sea level on Broadway, and while varied building heights are encouraged, building heights should generally decrease from Broadway to Ash Street. See Exhibits B-2-D and B-2-E to Attachment B-2.

c. Floor Plates.

-- For any building (i) that is not intended as one of a set of twin towers on Parcel 1 South, and (ii) that is between 125 feet and 350 feet in height, the floor plate of the tower shall not exceed a maximum of 21,000 square

feet. Floor plate criteria shall be consistent with stepback requirements in the Centre City Community Plan dated April 28, 1992 (the "Plan").

-- For any building (i) that is not intended as one of a set of twin towers on Parcel 1 South, and (ii) that exceeds 350 feet in height, the floor plate of the tower shall not exceed a maximum of 22,000 square feet. Floor plate criteria shall be consistent with stepback requirements in the Plan.

-- For any building that is intended as one of a set of twin towers on Parcel 1 South, those towers shall be separated by a minimum of 75 feet.

B. Parcel 1 North (B Street to Ash Street)

1. Uses, Density and Intensity

Subject to Paragraph III.B.2.a below, Catellus may develop a maximum of 1,712,373 square feet of Commercial Office, Residential, Hotel, Retail Commercial, Cultural/Institutional, Transportation and related above-grade Parking Uses on Parcel 1 North, including both building square footage and above-grade parking square footage, as set forth below. In no event shall the combined building square footage and above-grade parking square footage of all such uses on Parcel 1 North exceed 1,712,373 square feet. In addition, Catellus may develop related below-grade Parking Use on Parcel 1 North.

Catellus may develop on Parcel 1 North:

a. Any combination of the above-mentioned land uses, based on an evaluation of market conditions for specific uses and other factors which may influence business or land use decisions, subject to the maximum square footage permitted on Parcel 1 North as provided herein and to the principles expressed in the Design Standards set forth in Attachment B-3.

b. Parking Use space up to a maximum of 1,728 parking spaces (or more, if permitted by then applicable City ordinances). Catellus shall, however, be subject to such City fees as may then be applicable to the parking spaces permitted hereby.

2. Ash/Kettner Parcel

a. The figures in Paragraph III.B.1 above establishing a maximum number of developable square feet and a maximum number of parking spaces for Parcel 1 North, are figures for Parcel 1 North in its entirety, including the Ash/Kettner Parcel if it is added and developed as a part of the Site. In the event that the Ash/Kettner Parcel is not added and developed by Catellus or by a successor in interest to Catellus as a part of the Site, then the figures for the maximum number of developable square feet and for the maximum number of parking spaces that Catellus may develop on Parcel 1 North shall be reduced as follows:

-- If the Agency acquires the Option Parcel for redevelopment by a person other than Catellus or a successor in interest to Catellus, then (a) the maximum number of developable square feet that Catellus may develop on Parcel 1 North shall be reduced by 329,835 square feet, and (b) the maximum number of spaces that Catellus may develop on Parcel 1 North shall be reduced from 1,728 to 1,395 parking spaces (or more, if permitted by then applicable City ordinances).

-- If the Agency does not acquire the Option Parcel for redevelopment by a person other than Catellus or a successor in interest to Catellus, then (a) the maximum number of developable square feet that Catellus may develop on Parcel 1 North shall be reduced by 159,720 square feet, and (b) the maximum number of parking spaces that Catellus may develop on Parcel 1 North shall be reduced from 1,728 to 1,564 parking spaces (or more, if permitted by then applicable City ordinances).

b. In the event that the Ash/Kettner Parcel is not developed by Catellus or by a successor in interest to Catellus as part of its common plan of development of Parcel 1 North, alternatives to the monumental arch, building bulk, parking and other elements of the design on Ash Street shall be considered, in light of the overall Design Standards for the Site, and the design on Ash Street shall be amended as mutually

agreed by Catellus and the City. Such agreement shall not be unreasonably withheld.

3. Size

a. FAA Limitations. The height of the improvements on Parcel 1 North may not exceed that which would cause such improvements to be classified a hazard to Runways 9-13 or 27-31 by the FAA at the time of development.

b. Height Step-Down from Broadway toward Ash Street. Within Parcel 1 as a whole, building heights shall not exceed 480 feet above mean sea level on Broadway, and while varied building heights are encouraged, building heights should generally decrease from Broadway to Ash Street. See Exhibits B-2-D and B-2-E to Attachment B-2.

c. Floor Plates.

-- For any building (i) that is not intended as one of a set of twin towers on Parcel 1 North, and (ii) that is between 125 feet and 350 feet in height, the floor plate of the tower shall not exceed a maximum of 21,000 square feet. Floor plate criteria shall be consistent with stepback requirements in the Plan.

-- For any building (i) that is not intended as one of a set of twin towers on Parcel 1 North, and (ii) that exceeds 350 feet in height, the floor plate of the tower shall not exceed a maximum of 22,000 square feet. Floor plate criteria shall be consistent with stepback requirements in the Plan.

-- For any building that is intended as one of a set of twin towers on Parcel 1 North, those towers shall be separated by a minimum of 75 feet.

C. Parcel 1 Historic Site (Depot and Baggage Building)

Catellus may (a) use the existing 43,637 square feet² of the Parcel 1 Historic Site for Cultural/Institutional, Transportation, Commercial Office and Retail Commercial Uses, or for museum or other cultural facility purposes more particularly described in Paragraphs 10 and 11 of Attachment C-1, and (b) develop such additional mezzanine and plaza square footage as may be constructed consistent with the effective preservation and use of the Depot and Baggage Building. In no event shall the combined square footage of such uses on the Parcel 1 Historic Site exceed the sum of 43,637 feet plus such additional mezzanine and plaza square footage. The Santa Fe Depot and Baggage Building shall be preserved on the Parcel 1 Historic Site. Catellus shall have the right to develop the Santa Fe Depot through any combination of the above-mentioned land uses, based on an evaluation of market conditions for specific uses and other factors which may influence business or land use decisions, subject to the Design Standards set forth in Attachment B-3. (Such Design Standards require, among other provisions, that the transit courtyard be treated as a special place, unifying the design of the project, with hardscape improvements and plantings

2. 43,637 square feet represents the square footage of the Santa Fe Depot and the Baggage Building.

that soften the utilitarian nature of a rail yard, and with light and airy pedestrian arcades which complement the architecture of the Santa Fe Depot and serve as a unifying design theme.)

D. Parcel 2 (Broadway to E Street)

1. Uses, Density and Intensity

Catellus may develop a maximum of 515,533 square feet of Commercial Office, Residential, Retail Commercial, Hotel, Cultural/Institutional, Transportation and related above-grade Parking Uses on Parcel 2, including both building square footage and above-grade parking square footage. In no event shall the combined building square footage and above-grade parking square footage of all such uses on Parcel 2 exceed 515,533 square feet. In addition, Catellus may develop related below-grade Parking Use on Parcel 2. Catellus may develop on Parcel 2:

a. Any combination of the above mentioned land uses, based on an evaluation of market conditions for specific uses and other factors which may influence business or land use decisions, subject to the maximum square footage permitted on Parcel 2 as provided herein and the principles expressed in the Design Standards set forth in Attachment B-3.

b. Parking Use space up to a maximum of 705 parking spaces (or more, if permitted by then applicable City ordinances). Catellus shall, however, be subject to such City fees as may then be applicable to the parking spaces permitted hereby.

2. Size

a. FAA Limitations. The height of the improvements on Parcel 2 may not exceed that which would cause such improvements to be classified a hazard to Runways 9-13 or 27-31 by the FAA at the time of development.

b. Height. The building height on Parcel 2 shall not exceed 450 feet above mean sea level.

c. Floor Plates.

-- For any building (i) that is not intended as one of a set of twin towers on Parcel 2, and (ii) that is between 125 feet and 350 feet in height, the floor plate of the tower shall not exceed a maximum of 21,000 square feet. Floor plate criteria shall be consistent with stepback requirements in the Plan.

-- For any building (i) that is not intended as one of a set of twin towers on Parcel 2, and (ii) that exceeds 350 feet in height, the floor plate of the tower shall not exceed a maximum of 22,000 square feet. Floor plate criteria shall be consistent with stepback requirements in the Plan.

-- For any building that is intended as one of a set of twin towers on Parcel 1 North, those towers shall be separated by a minimum of 75 feet.

IV. Basic Concept Drawings

Attached hereto as Revised Attachment B-2 are Revised Basic Concept Drawings, consisting of plans, elevations and sections of private improvements which shall serve as design guidelines for the development of the Site. The Revised Basic Concept Drawings shall serve as guidelines for the development of and the construction on the Site with regard to the mass, size, design, location and scale of improvements. It is acknowledged that different Basic Concept Drawings could be formulated which would also conform to the Scope of Land Use and Design Standards. The City and Catellus agree that in formulating the details of the size, mass, design, location and scale of improvements, the City and Catellus may mutually agree to changes in the Revised Basic Concept Drawings, provided that any such changes are otherwise consistent with this Scope of Land Use and with the Design Standards (Revised Attachment B-3).

REVISED ATTACHMENT B-2

BASIC CONCEPT DRAWINGS

Following this covering page are copies of Basic Concept Drawings B-2-A through B-2-L, reduced to letter-sized paper. The unreduced, full-sized Drawings are attached to the Development Agreement that is on file in the Office of the City Clerk.

The Basic Concept Drawings are intended to serve as a guideline for the design of the Site with regard to mass, size, location and scale of improvements. The Basic Concept Drawings do not bind Catellus to submit these particular building designs, nor do they bind the City to approve these particular building designs.

The Basic Concept Drawings do accurately illustrate the required view corridors at A, B and C Streets and the setback and stepback requirements of the Centre City Community Plan dated April 28, 1992 (the "Plan") to which development of the Site shall conform. The Basic Concept Drawings also specify maximum heights for the buildings on the Broadway frontages of Parcel 1 South and Parcel 2, and illustrate other heights in a manner that conforms to the Plan. Floor plate configurations in the Basic Concept Drawings are illustrative only.

7 ROOF TOPS ON ALL LEVELS TO BE DESIGNED AS LANDSCAPED PEDESTRIAN-ORIENTED SPACES

DESIGN SUBJECT TO REMOVAL OF ALBER. & IMPROVEMENTS

DESIGN SUBJECT TO AGREEMENT WITH MICHINEVSK PLAZA

5 IMPROVEMENT OF CALIFORNIA ST. SHALL BE CO-ORDINATED FROM MARKET ST. TO BISH ST.

6 LOWRISO INCLUDE AS AN EXTENSION OF EXISTING REAR AT SANTA FE DEPOT AREA SHALL BE INCORPORATED IN ALL BUILDING IMAGES AND BE INTEGRATED W/ALL CUR-DE-SACS TO PROVIDE PED. SAFE ENVIRONMENT

6 ALL CUR-DE-SACS (A.D.C) ARE TO BE DESIGNED TO DEMPHASIZE VEHICLES & TO EMPHASIZE PEDESTRIANS

NOTE: THESE NOTES - TOGETHER WITH NOTATIONS ON EACH INDIVIDUAL SHEET APPLY TO ALL SHEETS IN THIS SET.

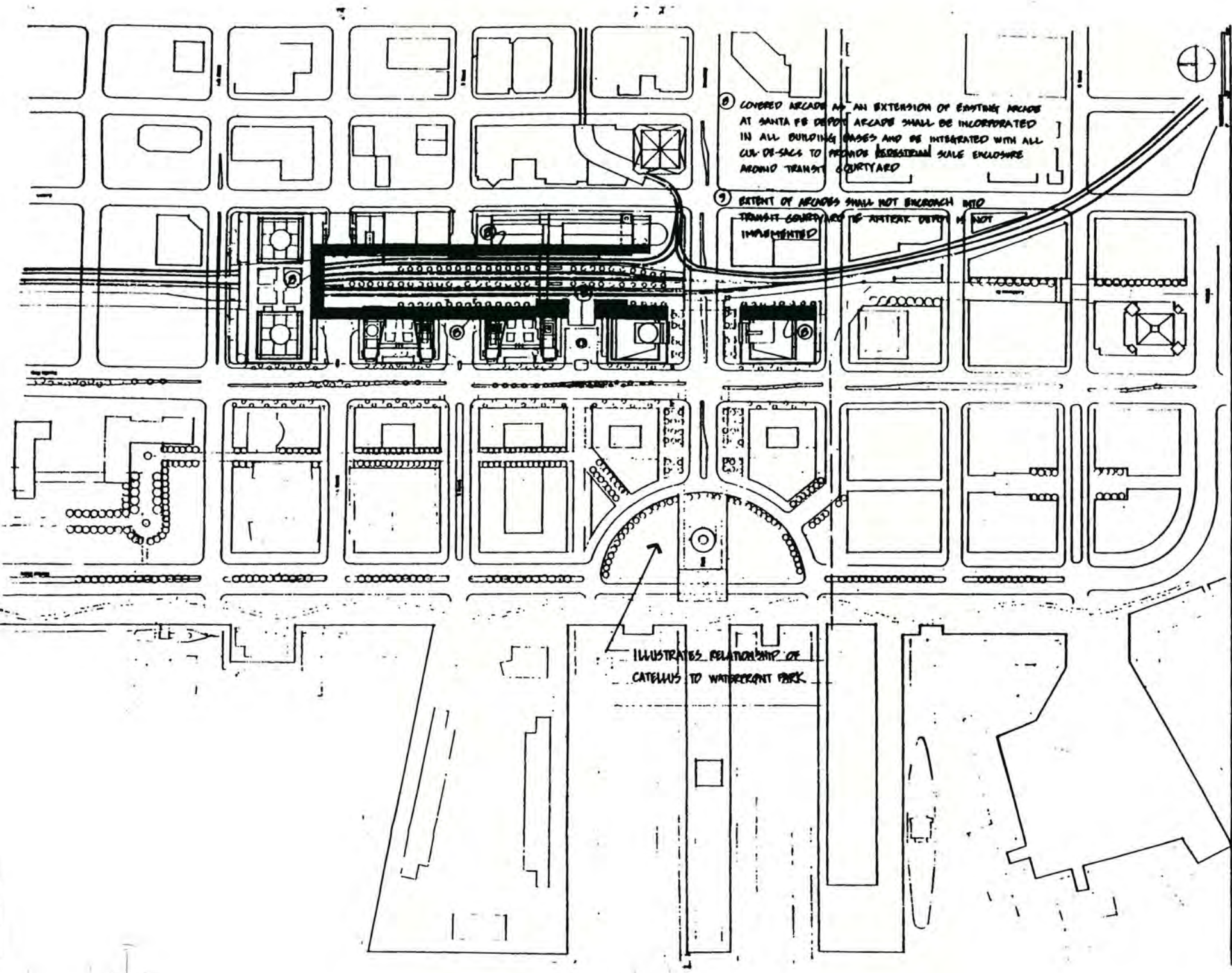
SUBJECT TO:

1. CENTER CITY PLAN DISTRICT ORDINANCE 5/11/92 EXCEPT SEC. 103.MHE PROPERTY DEV. REGULATIONS - ITEM 4-3. SEPARATELY PER. WALKWAYS
2. CENTER CITY STREETSCAPE MANUAL 4/20/92 & PACIFIC HIGHWAY CONSTRUCTION DRAWINGS
3. TRANSIT COURTYARD & RELATED IMPROVEMENTS - SUBJECT TO CONDITIONS CONTAINED IN ATT #5 OBLIGATIONS OF CATELLUS
4. DESIGN OF THE INTERSECTION OF BROADWAY & PACIFIC HIGHWAY SHALL BE COORDINATED ON ALL 4 CORNERS WITH THE PORT OF SAN DIEGO AND THE U.S. NAVY

Scale: 1/8" = 1'-0"
 Author: [illegible]
 Date: [illegible]
 Title: [illegible]

ILLUSTRATIVE Site Plan
Santa Fe Depot Master Plan
 San Diego, California

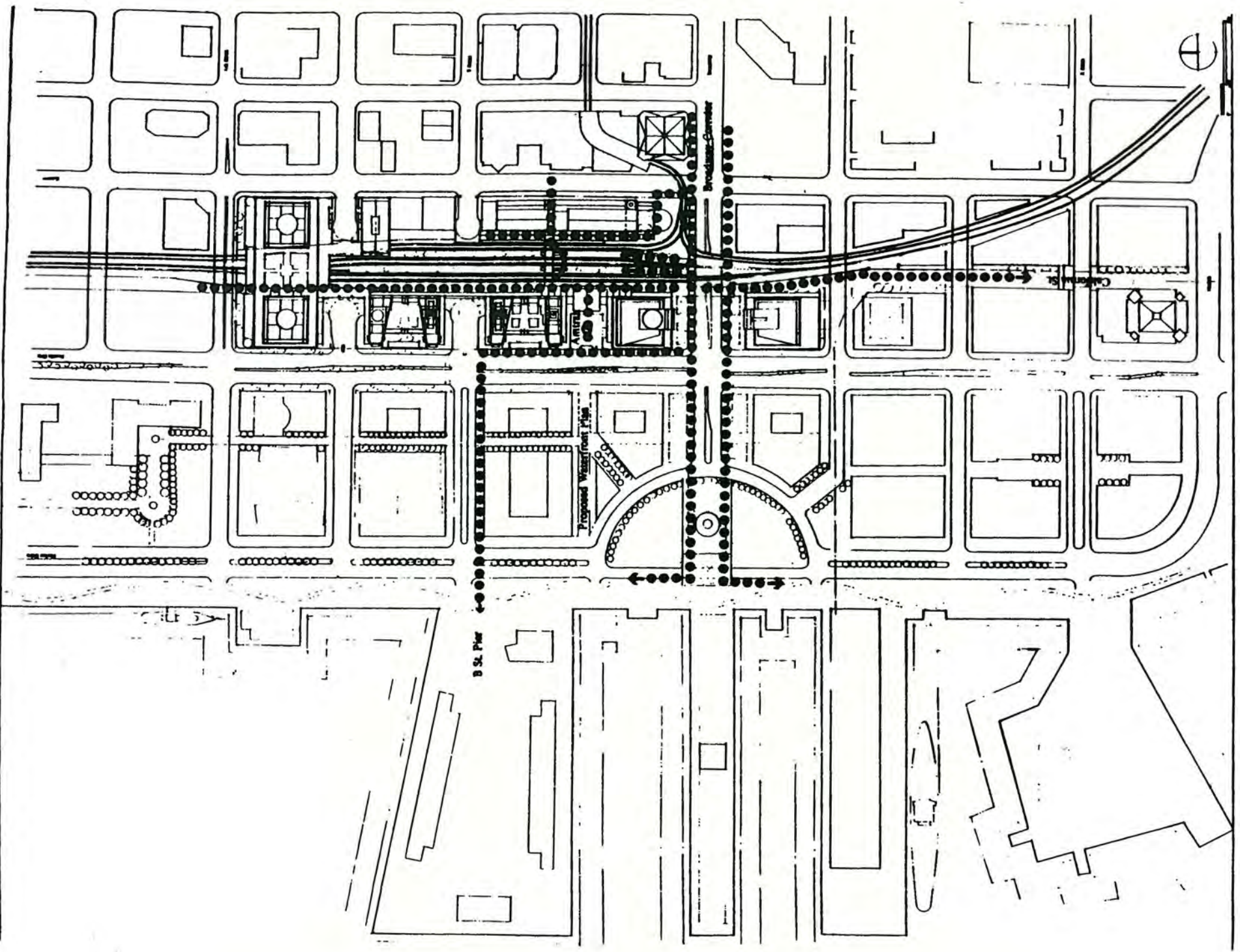
**ATTACHMENT B2
 B-2-A**



COVERED ARCADE AS AN EXTENSION OF EXISTING ARCADE AT SANTA FE DEPOT. ARCADE SHALL BE INCORPORATED IN ALL BUILDING BASES AND BE INTEGRATED WITH ALL CUR-DE-SACS TO PROVIDE PEDESTRIAN SCALE ENCLOSURE AROUND TRANSIT COURTYARD

EXTENT OF ARCADES SHALL NOT ENCROACH INTO TRANSIT CORRIDOR. IF EXISTENT DEPOT IS NOT IMPLEMENTED

ILLUSTRATES RELATIONSHIP OF CATELUS TO WATERFRONT PARK

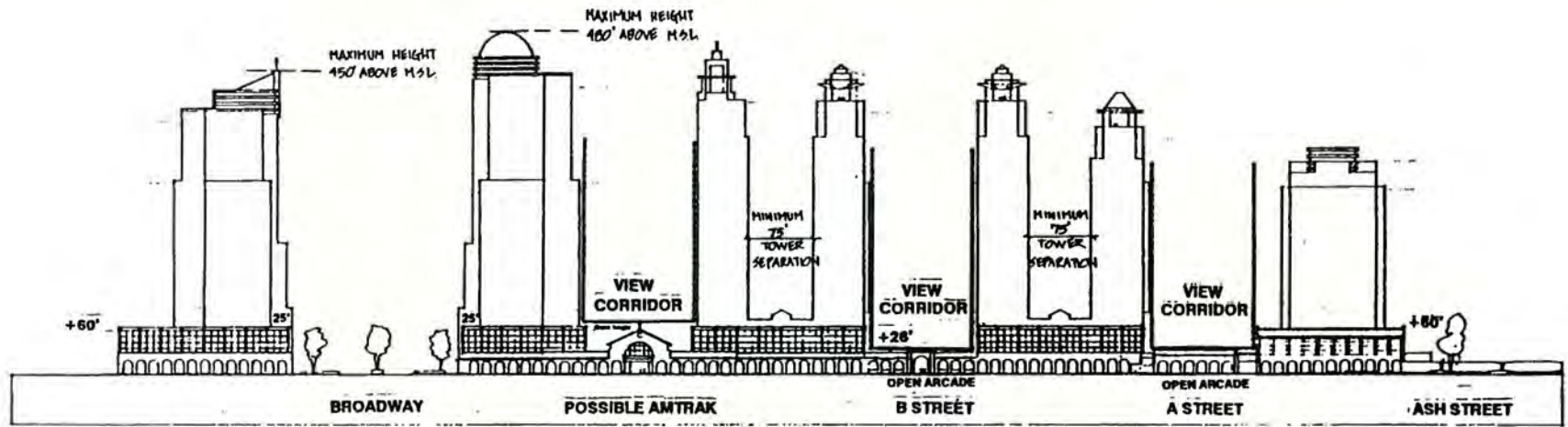


Castle Development Company
 100 West 4th Street
 San Diego, California

ILLUSTRATION of Pedestrian Routes
 Santa Fe Depot Master Plan
 San Diego, California

ILLUSTRATIVE EXAMPLE OF ROOF TOP DESIGN

ALSO ILLUSTRATES BUILDING STEP DOWN FROM BROADWAY - ASH STREET



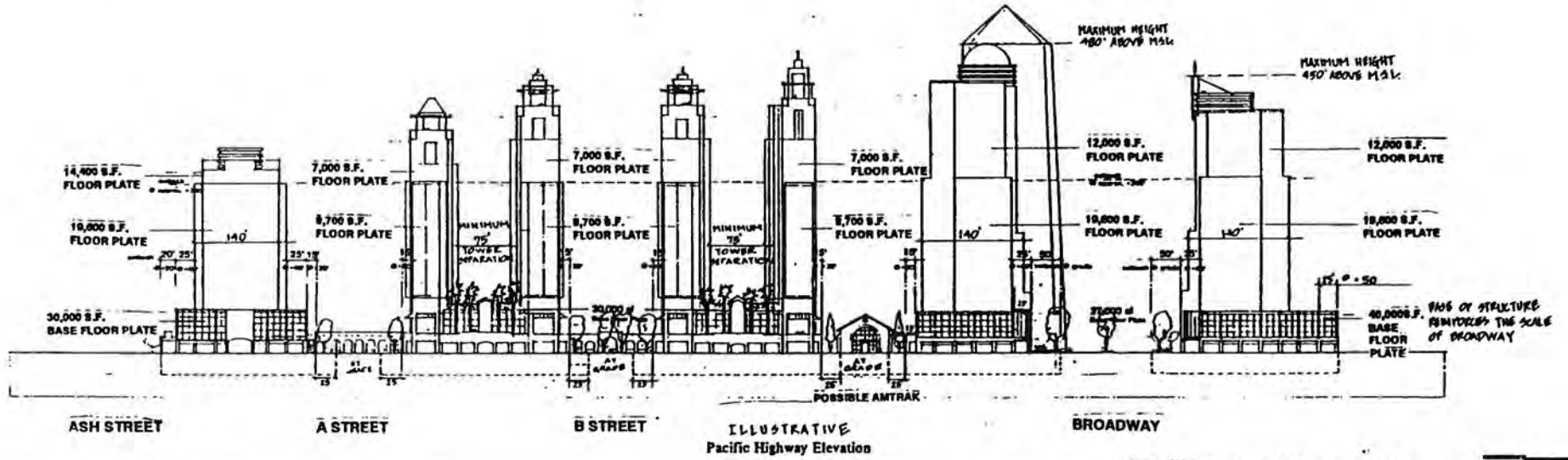
ILLUSTRATIVE
California Street Elevation

Santa Fe Depot Master Plan

See Page 20/21/22

ILLUSTRATIVE EXAMPLE OF ROOF TOP DESIGN

ALSO ILLUSTRATES BUILDING STEP-DOWN FROM BROADWAY TO ASH STREET

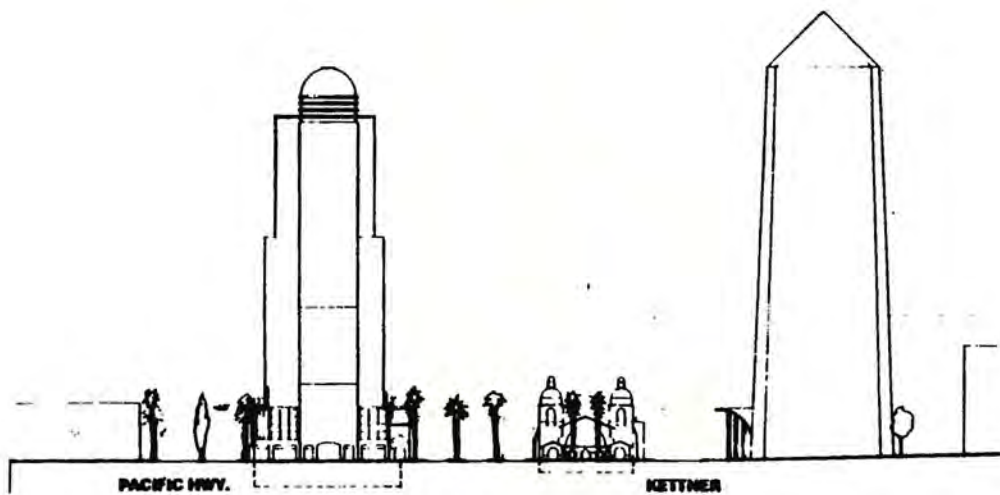


NOTE: ALL ELEVATIONS ARE ABOVE SITE GRADE

Santa Fe Depot Master Plan

San Diego, California

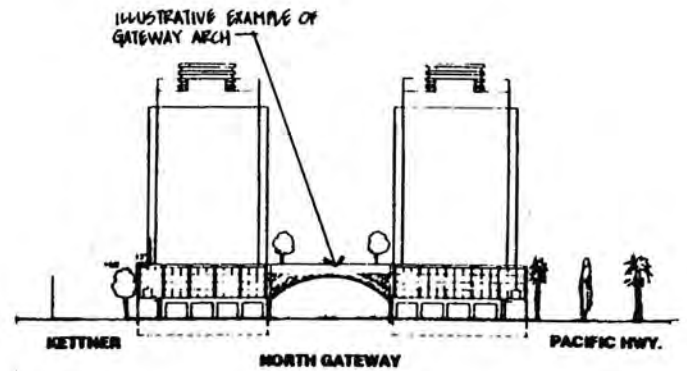
ATTACHMENT B2
B-2-E



PACIFIC HWY.

KETTNER

- ILLUSTRATIVE -
Broadway Elevation



ILLUSTRATIVE EXAMPLE OF
GATEWAY ARCH

KETTNER

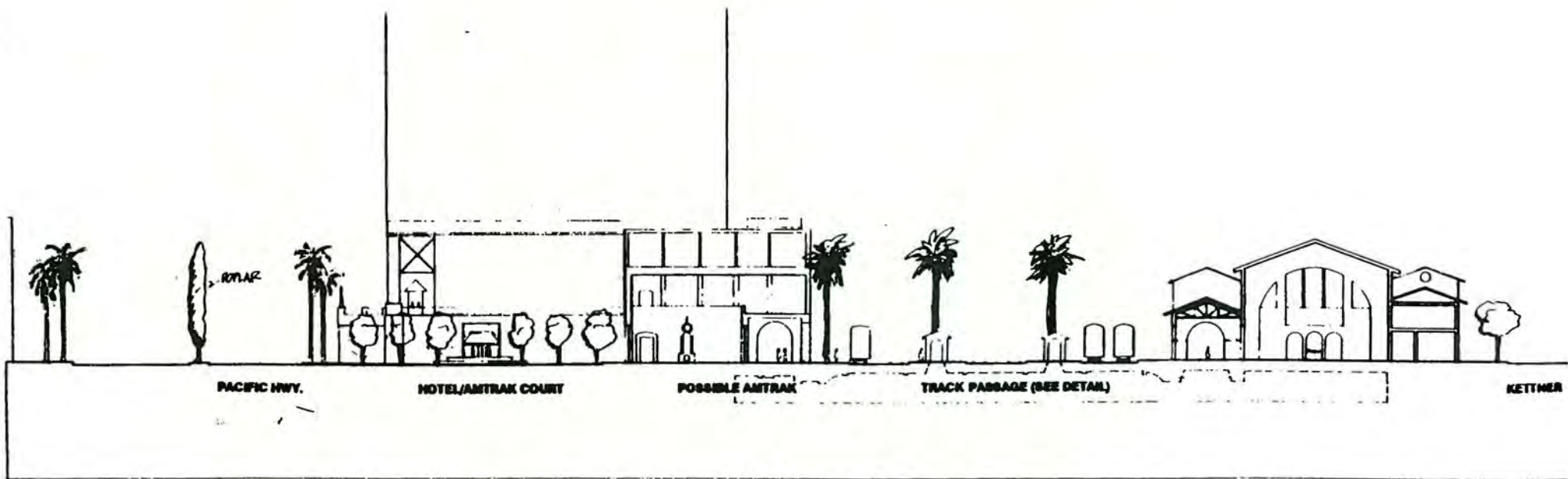
NORTH GATEWAY

PACIFIC HWY.

- ILLUSTRATIVE -
Ash Street Elevation

Santa Fe Depot Master Plan

San Diego, California



ILLUSTRATIVE

Cross Section A
at Amtrak

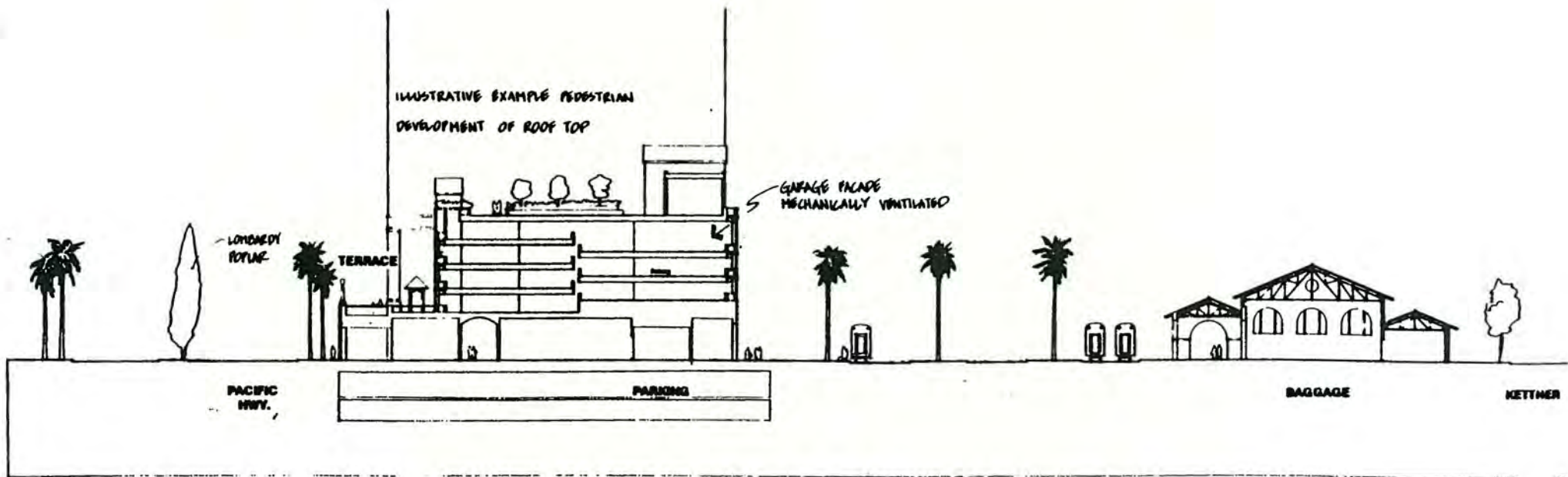


Santa Fe Depot Master Plan

San Diego, California

Project: Santa Fe Depot
Architect: [unreadable]
Date: [unreadable]

ATTACHMENT B2
B-2-G

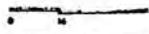


ILLUSTRATIVE

Cross Section B
at Residential

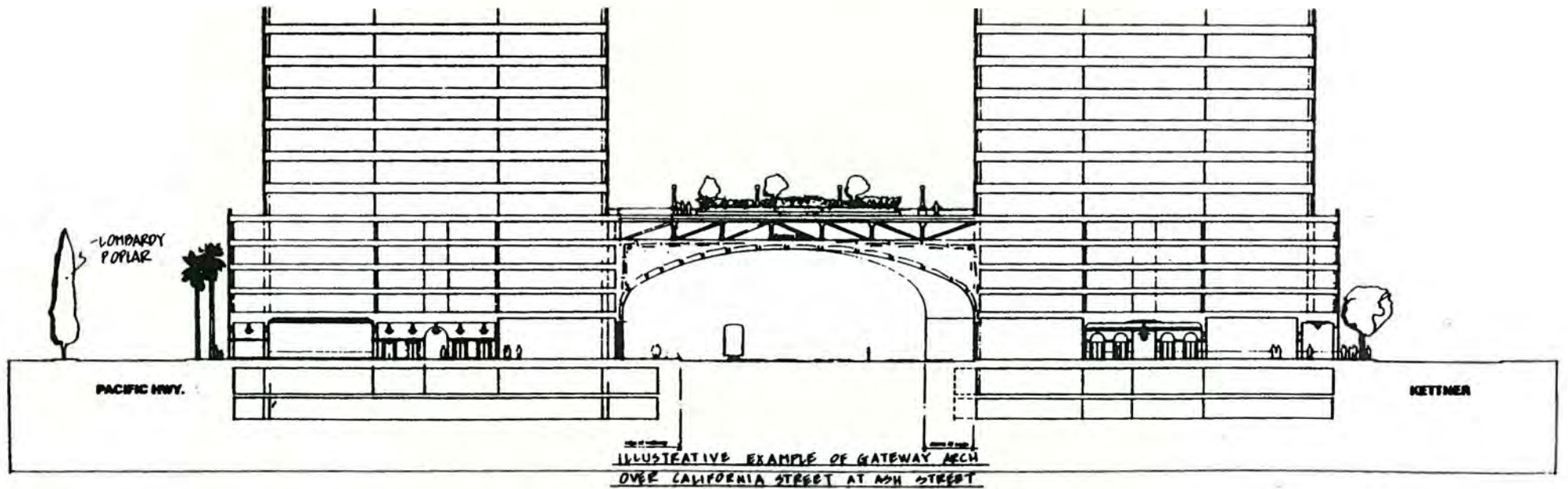
Santa Fe Depot Master Plan

San Diego, California



Project: Santa Fe Depot Master Plan
 Date: 10/15/03
 Scale: 1/8" = 1'-0"

ATTACHMENT B2
B-2-H



Cross Section C
at North Office

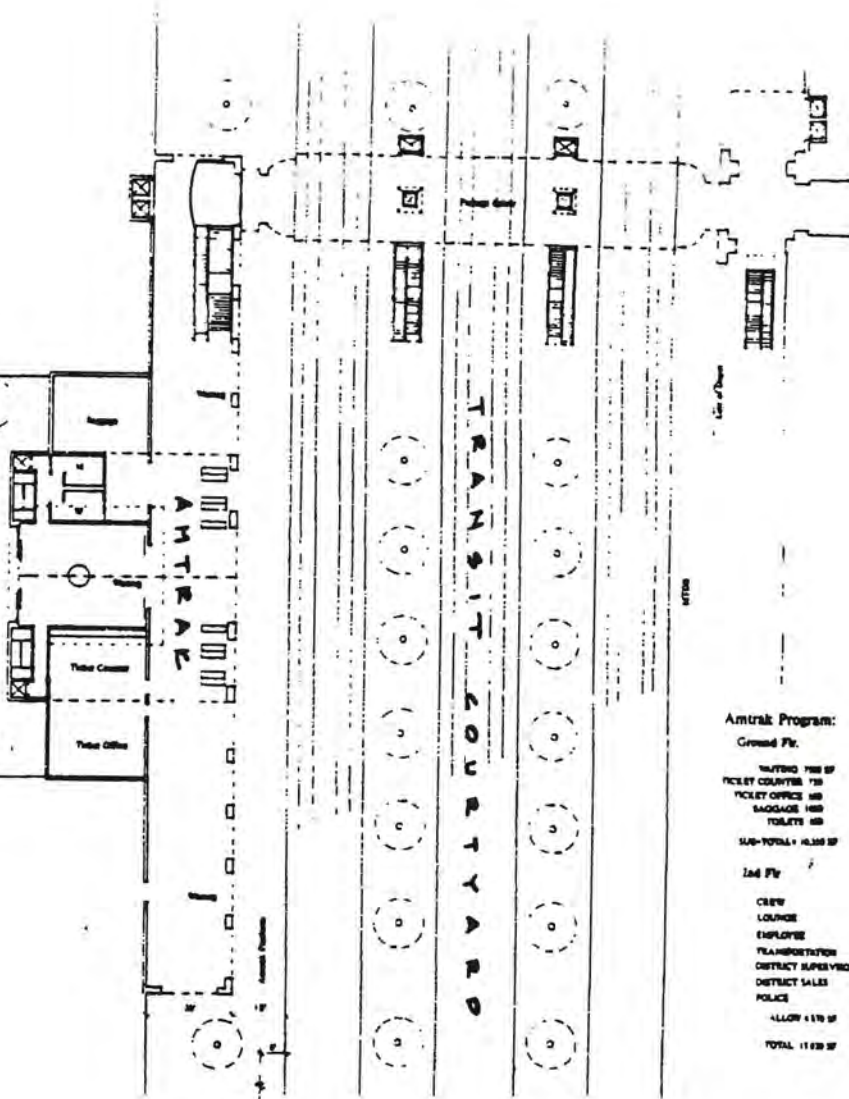
Santa Fe Depot Master Plan
San Diego, California



Design: Architecture & Planning
Engineering: Structural & Civil
Construction: Construction Management

PACIFIC HIGHWAY

ILLUSTRATIVE EXAMPLE
7.5' AT RAMP
ARTIST STATION



Amtrak Program:
Ground Fl.

- WAITING 700 SF
- TICKET OFFICE 100
- SAGGAGE 100
- TOILETS 50
- SUB-TOTAL 950 SF

2nd Fl.

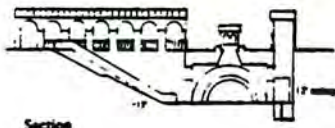
- CREW
- LOUNGE
- EMPLOYEE
- TRANSPORTATION
- DISTRICT SUPERVISOR
- DISTRICT SALES
- POLICE
- ALLOW 110 SF
- TOTAL 1100 SF

Amtrak Plan

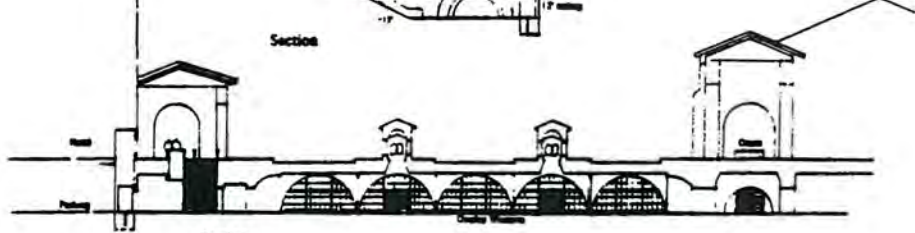
ILLUSTRATIVE EXAMPLE - BELOW GRADE
PASSAGE



Plan

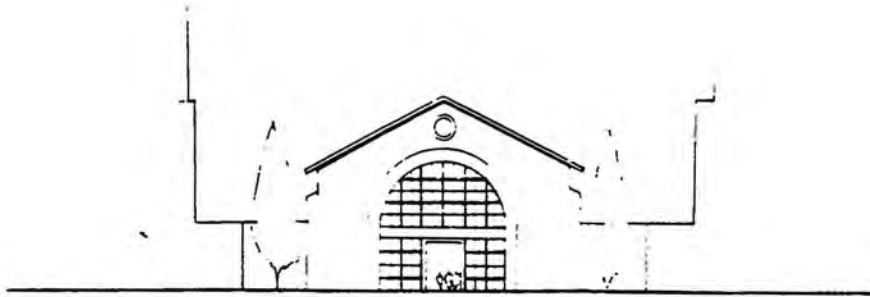


Section

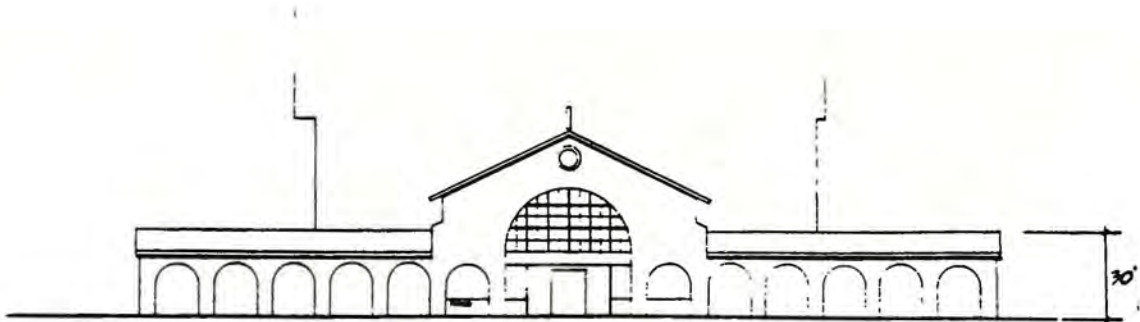


Section

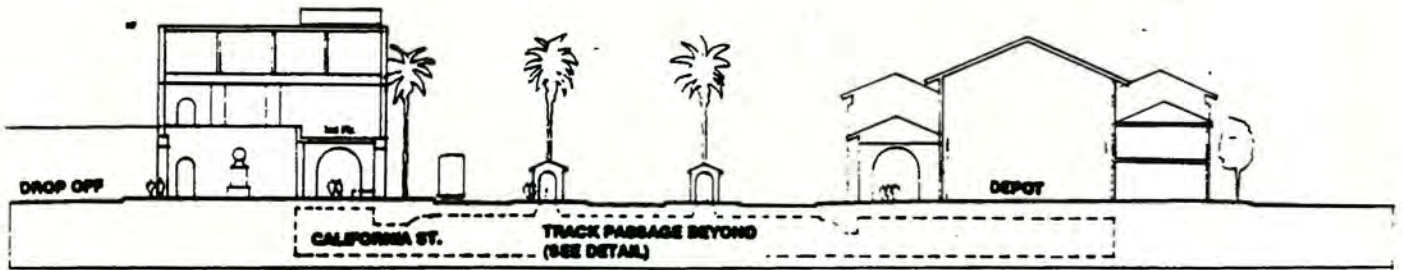
ILLUSTRATIVE
Track Passage



West Elevation
FACES PACIFIC HIGHWAY

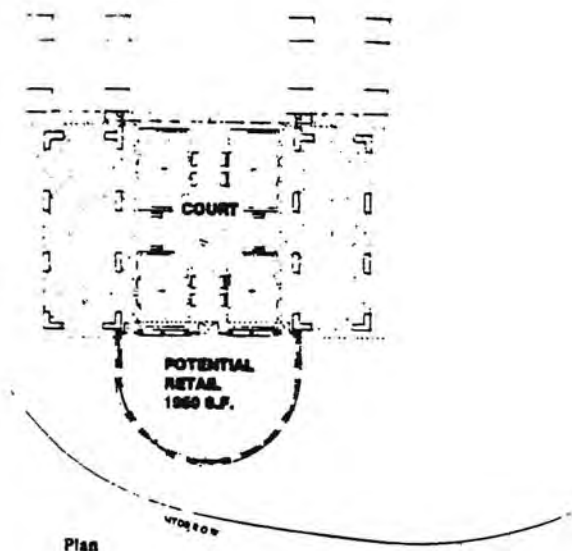


East/Track Elevation
FACES TRANSIT COURTYARD

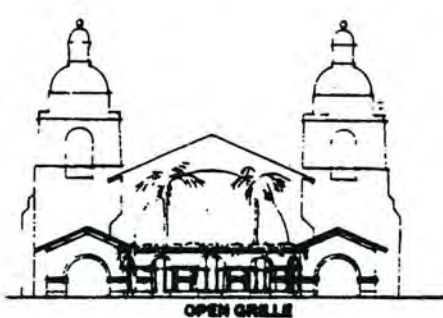


Section
1"=10'

ILLUSTRATIVE
Amtrak Facility



Plan



South Elevation



West Elevation

ILLUSTRATIVE
Depot Forecourt

REVISED ATTACHMENT B-3

DESIGN STANDARDS

I. Introduction

The intent of the Design Standards described in this Attachment is to enhance the quality of development. The Design Standards are intended as a guide for the development of the Site. The Design Standards have been carefully considered by the parties and shall be the principal guide to the design of the improvements on the Site; however, it is possible that different or additional design standards may be identified which achieve the intended urban design objectives. In such a case, the City and Catellus may mutually agree to alter certain design standards without amending this Agreement; however, any variance to the Design Standards is expected to be minimal.

Design review under this Agreement shall be in accordance with adopted procedures as set forth in the Owner Participation Agreement.

II. Overall Design Standards

Catellus shall conform to the following standards of design in establishing the architectural and landscaping features for the development of the Site, based on the following overall site urban design considerations:

1. Capitalize on the Site's unique characteristics -- namely, the historic Santa Fe Depot, the large size of the Site and

its proximity to the waterfront -- to establish an integrated development which provides an attractive edge to the downtown core, which incorporates a high urban design standard, and which provides a focus for transportation and public amenities.

2. Preserve the historic Santa Fe Depot and Baggage Building, (except the non-original addition at the north end of the Baggage Building), and adaptively reuse these facilities in a manner which encourages the use and enjoyment of these unique structures.
3. Treat the transit courtyard between Broadway and Ash as a special place, i.e., a public transit center for the region, which unifies the design of the project and continues the concept of the linear park from Market Street, by:
 - Architectural treatment that recalls and is compatible with the Santa Fe Depot; and
 - Hardscape improvements and plantings that soften the utilitarian nature of a rail yard.
4. Design and implement development of the Site to avoid the monotony of continuous facades, material or building forms (subject to the specific requirements for the transit courtyard set forth in paragraph III.A.4 below). Variety is encouraged within the proposed development, but with buildings having a compatibility with one another. Variety can be accomplished in the siting, form, height and architectural detail of the high-rise elements.

5. Design paving, furnishings and landscaping in the transit courtyard that relate to the interior of the Site (specifically to the area adjoining the Depot and Baggage Building) from Broadway to Ash Street, and that accommodate the alignments of the San Diego Trolley, Amtrak, Santa Fe freight and Commuter Rail (if applicable) lines.
6. Preserve existing transportation facilities and expand into new multi-modal mass transit uses.
7. Establish a mixed-use center with Class A office space supported by retail, hotel, residential and institutional uses. Consider an entire spectrum of people-generating activities such as night clubs, restaurants, recreation, health clubs, markets, exhibits, museums and public buildings. Design structures to encourage people-oriented activities.
8. Coordinate with the Port, the Navy and Coastal Commission on general waterfront design issues, including view corridors, and park configuration.
9. Site the development, locate plazas, art and activities, and provide landscaping to enhance the significance of Broadway and Pacific Highway as the City's most important streets.
10. Design and implement the most intense development of height, scale and FAR on either side of Broadway, and while varied building heights are encouraged, develop with generally decreasing intensity from Broadway to Ash Street.

11. Design and implement development of the Site as a "gateway" which provides a transition from the waterfront to the grid of the City.
12. Focus access, use and activities on perimeter street frontages and within the transit courtyard.
13. Provide grade-separated access with activities and amenities that encourage the use of safe and attractive crossings within the transit area. This will require the cooperation of all the rail entities.
14. Re *# 13 delete* transit facility functions as a configured as an "in-line" station. Be end-loading to the platforms from Br nse, along the north side of Broadway, that ~~is~~ the transit courtyard.
15. Organize a clearly defined public realm with streets and open space which relates inwardly to the transit plaza and outwardly to the adjoining streets and waterfront development.
16. Unify the entire development by providing an extension of the Martin Luther King, Jr. Promenade (the "Linear Park") adjacent to and along the rail corridor that traverses the Site, and recognize Broadway and Pacific Highway as "front doors" for the project, thereby coordinating with the improvement of nearby public rights-of-way. (Drawing B-2-B).
17. Provide parking to standards permitted by the City and encourage the use of public transit. Permit above-grade parking only when encapsulated, mechanically ventilated and

architecturally integrated into the Project, and accommodate all other parking below-grade.

18. Design the project to de-emphasize the presence of vehicles and to emphasize the pedestrian environment. Vehicle access shall not be permitted from Broadway. Pedestrian access shall be provided from perimeter streets and shall be emphasized from the transit courtyard.
19. Site and design structures to create a "postcard" City skyline from the water. Accordingly, design vertical elements of the Site in accordance with the following guidelines:
 - a. Vertical elements of the structures (towers) shall be sited to preserve significant views of water and sky to the extent reasonable, to preserve views through the A Street, B Street and C Street corridors, and to complement the relationships among towers. The Basic Concept Drawings illustrate one approach toward meeting this guideline. (Drawing B-2-E).
 - b. Grade-level improvements may be permitted across the A street, B Street and C Street corridors for pedestrian arcades to create the transit courtyard space, and at the end of the C Street cul-de-sac off Pacific Highway for a possible Amtrak passenger facility.
 - c. Impacts of sun, shadow and wind on adjoining development shall be considered in siting the towers.

- d. Tower heights, shapes and scale shall vary to create an interesting skyline. (Drawing B-2-D).
 - e. Tower elements shall be integrated with their parking structures.
 - f. The maximum north-south dimension of any tower shall be 140 feet. Twin towers shall be separated by a minimum of 75 feet.
20. The design for the project shall include standards for exterior signage to be applicable throughout the Site.
21. The design of the improvements for the project shall include, where feasible, appropriate energy conservation construction techniques and design.

III. Standards Applicable to Particular Parcels

The following design considerations apply to particular portions of the Site:

A. Parcel 1 (Broadway to Ash)

- 1. Objectives - Parcel 1 shall be designed to meet the following objectives:
 - a. An objective in the development of Parcel 1 is to design and improve Parcel 1 as an integrated group of buildings surrounding the train station. The term "integrated group of buildings" means that Parcel 1 shall be developed cohesively, so that buildings are complementary to each other and to existing surrounding uses, even though the development may proceed in phases or through the

efforts of different developers. The objective of integrating development is to ensure that when Parcel 1 is built out, the individual improvements or parts will complement one another and reinforce development which has occurred or will occur on the balance of the Site.

b. To integrate the development into the existing City fabric, the major pedestrian activity area shall be at street grade, with special above-grade or below-grade elements to facilitate movement across the track areas and buildings.

*A.l.b. amended
1st Amend*

c. The uses which occur at the street coordinated to provide easy connections

*A.l.e. 1st Amend
" "
A.l.e. " "*

buildings. The location of pedestrian access in an east/west direction across Parcel 1 shall be at grade on Broadway. At a future date, when warranted by pedestrian volume, but in no event later than December 7, 2003, Catellus or the transit providers shall install either a below-grade or above-grade east-west crossing. One possible example of a location for such a crossing appears in Drawings B-2-A, B-2-J and B-2-K, but the actual location for that crossing may be elsewhere between Broadway and Ash Street, as may be mutually agreed by the parties.

- d. Architectural detailing and materials for all buildings shall be complementary along a street face from street grade to the top of the building podium, and such detailing and materials shall be linked by one or more unifying elements, such as arches, landscaping, or similar materials. Buildings may, however, reflect individual architectural styling within the context of these design standards.
- e. The development of Parcel 1 is intended to surround the rail tracks between Broadway and Ash Streets and celebrate the transit courtyard. An objective in the development of Parcel 1 is to encourage passage through the railroad area and to establish a link to the bay, via the future above-grade or below-grade passage, and the view corridors through the Site. (Drawings B-2-A and B-2-J).
- f. Pedestrian arcades shall be used as a theme to unify the transit courtyard. These arcades shall be light and airy, with elements that borrow from the architectural vocabulary of the Santa Fe Depot, unify the bases of buildings, where applicable, create a sense of a "courtyard" for transit purposes, and give architectural integrity to the Site. (Drawings B-2-A, B-2-B, B-2-D, B-2-K and B-2-L).

- g. The new structures on Parcel 1 shall complement the existing Depot. (Drawings B-2-K and B-2-L).
- h. Structures located at the intersection of Broadway and Pacific Highway shall provide adequate public open space as illustrated in the Basic Concept Drawings, including 50-foot at-grade setbacks on Broadway, to reflect Broadway's character as the main street to the City. Similarly, there will be open areas between structures located along Pacific Highway as illustrated in the Basic Concept Drawings. (Drawing B-2-A).
- i. The architecture of all structures shall exhibit a high quality of architectural design.
- j. The structures on Parcel 1 shall be designed to implement the Centre City Community Plan dated April 28, 1992 (the "Plan"), except as modified by these design standards.
- k. An example of a design for the parking structures and the terrace which implements these design standards is illustrated in the Basic Concept Drawings. (Drawing B-2-H).

2. Street Level Design

The improvements on the street level of Parcel 1 shall be designed in accordance with the following guidelines:

- a. The design shall provide low-rise elements to buildings fronting on the Broadway and Pacific Highway intersection and adjacent to the Santa Fe

Depot as required by the Plan in order to reinforce the existing scale of development along Broadway. (Drawings B-2-D, B-2-E and B-2-F). If the Centre City Community Plan dated April 28, 1992 is either amended, superseded or interpreted so as to allow variations in setbacks or streetwalls along Pacific Highway, then the design by Catellus may provide such variations in setbacks or streetwalls along Pacific Highway.

- b. The vertical elements (towers) of the buildings shall be set back from both the Broadway and Pacific Highway frontages as required by the Plan. (Drawings B-2-A, B-2-E, B-2-F, B-2-G, B-2-H and B-2-I).
- c. The design shall provide adequate open space area at the intersection of Broadway and Pacific Highway as illustrated in the Basic Concept Drawings. (Drawings B-2-A, B-2-B).
- d. The design shall provide for pedestrian-oriented activities and pedestrian circulation at the street grade on the edge of the Site, particularly along Broadway, Pacific Highway and the transit area. An example of possible major pedestrian circulation at street grade is illustrated in the Basic Concept Drawings. (Drawing B-2-C).

- e. Parking on Parcel 1 may be subterranean, at street level, or above-grade. Parking at the street level shall be buffered by a commercial use or in some other manner permitted by ordinances then in effect, along the perimeter street frontage, unless such use is reasonably determined to be infeasible by the Agency and Catellus.
- f. Ingress and/or egress to the parking structures shall not occur from Broadway or Ash Street, and access to and from Pacific Highway shall be limited to the A, B and C Street intersections.
- g. Landscaping, street and pedestrian lighting, sidewalk and street furnishings (e.g. trees, benches, kiosks, trash receptacles, etc.) within the public rights-of-way shall implement the guidelines set forth in the following documents:
 - i. With respect to Ash Street, Broadway and Kettner, the Centre City Streetscape Manual dated April 1992, as it may hereafter be amended;
 - ii. With respect to Pacific Highway, the Centre City Streetscape Manual dated April 1992 and the Pacific Highway Master Plan concurrently being processed by the Agency, as they may hereafter be amended; and
 - iii. Within the Site, the Basic Concept Drawings set forth in Attachment B-2.

- h. Reflective or opaque glass shall not be permitted at the street level.
- i. The design of the improvements within Parcel 1 shall accommodate the alignment of the light rail transit as illustrated in the Basic Concept Drawings. (Drawings B-2-A and B-2-J).

3. Roofs and Monumental Arch

The roof of the parking structures and any structure covering the tracks north of A Street shall be designed in accordance with the following guidelines:

- a. Such areas shall be designed as a pedestrian space and as a setting for tall structures constructed in the air rights above the roof. An example of this design is illustrated in the Basic Concept Drawings. (Drawings B-2-H, B-2-I, B-2-A).
- b. Development of these levels shall emphasize an attractive relationship between interior and exterior spaces.
- c. A ceremonial monumental arch may span the rail tracks at the Ash Street frontage. This arch shall be designed as a gateway to the transit courtyard and shall complement the design of the courtyard arcades. Functionally, the arch would be a platform spanning the rail lines connecting development on either side of the corridor. Aesthetically, the monumental arch is considered

the entrance or gateway into the transit courtyard. The ceremonial arch has three parts:

- The surface area of the transit courtyard;
- The interior space which is enclosed by the archway;
- The structure of the archway.

These three parts are discussed in the subparagraphs that follow:

- i. The surface area is that portion of the transit courtyard located between A and Ash streets. The area covered by the monumental arch shall be designed as an integral part of the transit courtyard including hardscape, landscape, lighting and furnishings.
- ii. The space under the archway is conceptualized as the entrance to the transit courtyard. Passage through the space should be an aesthetic experience. Walls of the entrance shall be enhanced with attractive surfaces, color, lighting and artistic treatment. The interior space should be designed as an anteroom to the transit courtyard as contrasted to a tunnel.
- iii. The monumental arch (if built) shall emphasize the architecture of the Santa Fe Depot and the arcades framing the transit courtyard. Structurally, the arch may include an

enclosed vehicular passageway above the rail tracks between the buildings located on either side of the tracks, and a landscaped terrace above that may be used for pedestrian passage. The archway will serve as a symbolic entrance into the transit courtyard area and Centre City. The monumental arch should be designed to create an aesthetically pleasing interior space which emphasizes natural light during the day and special lighting during the night. In general, the design of the monumental arch should emphasize the aesthetic, rather than the utilitarian consideration of connecting buildings located on either side of the tracks. The structure should be designed as functional art.

- d. If the Ash/Kettner Parcel is not developed by Catellus or under controls established by Catellus, alternatives to the monumental arch, building bulk, parking and other elements of the design on Ash Street shall be considered, in light of overall Design Standards for the Site, and the design on Ash Street shall be amended as mutually agreed by Catellus and the City. Such agreement shall not be unreasonably withheld.

4. Transit Courtyard

The concept for the transit courtyard is to complement the utilitarian aspect of a transit rail yard with the aesthetic considerations of a walled garden surrounding the transit function. The transit courtyard shall be considered an extension of the Linear Park and shall be designed in accordance with the following guidelines:

- a. Hardscaping of the transit courtyard shall establish a strong design concept which unifies the Site. Permanent hardscape materials of a special design quality (as identified in the master plan for the transit courtyard and as approved by the Agency) may include stone, tile, brick, enhanced concrete or other suitable masonry material; asphalt may be used as an interim hardscape material (or for isolated longer-than-interim use, if reasonably approved by the Agency).
- b. Landscaping of the transit courtyard shall emphasize the linearity of the Site and establish a design concept which continues the landscape quality of the Linear Park and the landscaping of Pacific Highway.
- c. Furnishings within the transit courtyard shall be designed to visually complement the transit needs, and art may be placed throughout the transit

courtyard to enhance the enjoyment of transit users.

- d. Within the transit courtyard, pedestrian crossings shall be clearly delineated. If sub-grade, such crossings shall be designed to take advantage of the opportunity to create an exciting passage. Such passage should be partially opened to the sky, if feasible, taking into consideration the rail yard and its requisite mass and space. If above-grade, such crossing shall be designed to take advantage of the opportunity to overlook the transit courtyard. The design of the pedestrian crossings shall coordinate with the overall architectural character of the Santa Fe Depot and the Baggage Building.
- e. The transit courtyard shall be enclosed by a series of arches or covered walkways which contain the courtyard area on all sides, except the Broadway frontage. The character of the existing covered walkway located on the west frontage of the Depot and Baggage Building shall be used as the architectural prototype for new arches or covered walkways which may be free-standing or integrated into the adjoining structures beginning at the northerly end of the existing covered walkway fronting the Baggage Building. The covered walkway shall extend across the cul-de-sac

of A Street and B Street, both east and west of the transit courtyard, shall be integrated into the structures located on Parcel 1 South and Parcel 1 North, and shall extend across the portion of the Site between the MTDB easement and McClintock Plaza as well. The concept of the covered walkway may take a different form at the monumental arch, where it shall integrate into the design as an above-grade passage over the transit right-of-way (if the monumental arch is constructed). In the event the Amtrak Station is not relocated to the C Street cul-de-sac off Pacific Highway, a covered walkway shall be constructed across the C Street cul-de-sac. The transit courtyard and the concept for the location of the arches or covered walkways are illustrated in Exhibit B-2-B.

B. Parcel 2 (Broadway to E Street)

1. **Objectives** - Parcel 2 shall be designed to meet the following objectives:

- a. Parcel 2 is an important site on Broadway, Centre City's most important street. Maintaining the scale of physical improvements is an important concept in the design of Broadway. This scale is characterized by older buildings such as the San Diego Hotel, Armed Forces YMCA, SDG&E Substation B and the Santa Fe Depot. Improvements on Parcel 2,

especially the podium level, shall be designed and sited to complement this scale, with the exception that high-rise elements shall be permitted.

- b. An important siting objective is to maximize the opportunity of establishing the intersection of Broadway and Pacific Highway as an important entrance to both the waterfront and Centre City, and to accommodate the waterfront open space plan shown in the Basic Concept Drawings. (Drawing B-2-D).
- c. The improvements shall be set back from Broadway, and pedestrian activities shall be emphasized on the Broadway and Pacific Highway frontages. Furnishings of the street right-of-way shall complement the overall design theme for the Broadway frontage and the remainder of the Site.
- d. The siting of the improvements on Parcel 2 shall provide public open space at the intersection of Broadway and Pacific Highway recognizing its importance as a major entrance to the City. The treatment of the southeast corner of the Broadway/Pacific Highway intersection (on Parcel 2) shall also complement the treatment of the northeast corner of that intersection (on Parcel 1) and serve as a guide for the design quality of the remaining quadrants of this

intersection, including the corners of that intersection not owned by Catellus.

2. Design Criteria

The development on Parcel 2 shall be designed in accordance with the following guidelines:

- a. The design shall provide a setback from the property line on the Broadway frontage of 50 feet as shown in the Basic Concept Drawings. (Drawing B-2-A).
- b. The design shall provide low-rise elements to the building on the Broadway and Pacific Highway frontage not to exceed 60 feet in order to reinforce the scale of existing development along Broadway.
- c. The vertical element of the building on Parcel 2 shall be stepped back from the Broadway frontage and from the Pacific Highway frontage as required by the Plan. (Drawings B-2-A, B-2-D, B-2-E and B-2-F).
- d. Parking on Parcel 2 may be subterranean, at street level, or above-grade. Parking at the street level shall be buffered by a commercial use or in some other manner permitted by ordinances then in effect, along the Broadway and Pacific Highway frontage, unless such use is reasonably determined to be infeasible by the Agency and Catellus.

- e. Access to the structure shall be from E Street. No vehicular access shall be permitted from Broadway or Pacific Highway.
- f. Landscaping, street and pedestrian lighting, sidewalks and street furnishings (e.g. trees, benches, kiosks, trash receptacles, etc.) within the public right of way shall implement the guidelines set forth in the following documents:
 - i. With respect to Broadway and E Street, the Centre City Streetscape Manual dated April 1992, as it may hereafter be amended;
 - ii. With respect to Pacific Highway, the Centre City Streetscape Manual dated April 1992 and the Pacific Highway Master Plan concurrently being processed by the Agency, as they may hereafter be amended; and
 - iii. Within the Site, the Basic Concept Drawings set forth in Attachment B-2.
- g. A portion of the Site and the improvements thereon shall be devoted to pedestrian ways, landscaped areas and plazas for use for pedestrian oriented activities.
- h. Pedestrian activities shall be provided at the street grade.
- i. Reflective or opaque glass shall not be permitted at the first level of the structure(s).

REVISED ATTACHMENT C-1

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REVISED ATTACHMENT C-1
OBLIGATIONS OF CATELLUS

A. General Obligations

Catellus shall perform, or cause to be performed, the following acts on the terms, conditions and within the time periods set forth herein:

1. Maintenance and Improvement

Catellus shall maintain the exterior and interior of the Santa Fe Depot, including interior facilities such as restrooms, and exterior improvements such as landscaping on the property immediately surrounding the Depot, in the quality and condition required to be installed originally under this Agreement, ordinary wear and tear excepted. Further, by December 7, 2003, Catellus shall have completed the hardscape and landscape improvements to be located between the south facade of the Depot and Broadway that are described in paragraph A.5.vi. below.

2. Clean Up of Parcel 1

i. Relocation of Maintenance and Servicing Function

The parties will cooperate in an effort to cause Amtrak to relocate the existing maintenance and servicing of Amtrak passenger trains and all structures and facilities connected therewith which are located on Parcel 1 to new facilities

north of the Site or elsewhere in an area mutually acceptable to Catellus, the City and Amtrak. The City will assist Catellus in identifying such a site and in coordinating such relocation.

Performance under this paragraph is not a condition precedent to Catellus's performance of its other obligations under this Agreement.

ii. Removal of Structures

a. Catellus shall demolish and remove all structures on the Ash/Kettner Parcel within 90 days after ownership to the property where such structures are located is obtained by either (i) Catellus, or (ii) the Agency, unless obtained by the Agency for the purpose of conveying the same to a developer other than Catellus.

b. Catellus shall demolish and remove all structures on Parcel 1 except the Depot and the Baggage Building¹, as required for the development of Parcel 1. Catellus may remove all such structures, except for the Depot and

¹ Wherever used in this Attachment C-1 and in the Development Agreement, references to the "Baggage Building" mean the Baggage Building excluding the non-original addition at the northerly end of the Baggage Building which is sometimes referred to as the Railway Express Building.

the Baggage Building, at such earlier date as it deems appropriate.

3. Transit Courtyard

i. Regional Effect

The transit courtyard is a regional resource, rather than a site-specific amenity, and the transit courtyard requires a commitment of the Site in excess of the portion committed in the original Agreement (both in terms of land area and in intensity of use).

ii. Boundaries

The transit courtyard is that area bounded on the south by Broadway, on the west by the western edge of California Street, on the north by Ash Street, and on the east by the eastern edge of the MTDB easement, together with any adjacent areas on which the arcades or covered walkways framing the transit courtyard are to be located.

iii. Construction and Uses

In conjunction with its development of the Site, Catellus shall develop on Parcel 1 at or near a location as shown in the Revised Basic Concept Drawings, a transit courtyard for Amtrak passenger service, San Diego Trolley passenger service, Commuter Rail passenger service (if applicable), and Santa Fe freight service, in accordance with

mutual agreements regarding the granting of rights-of-way, funding of capital improvements, operations, maintenance and the fair sharing of the costs thereof between Catellus and the affected rail entities. The transit courtyard may include amenities such as ticket sale facilities, a waiting area and restrooms for use by Amtrak, San Diego Trolley and Commuter Rail (if applicable) passengers. If consistent with Catellus's agreements with affected rail entities, and if the City consents thereto, Catellus may terminate the use of the Santa Fe Depot property as a passenger station or depot or for any other railroad business, and thereafter use such property in accordance with the Scope of Land Use. In connection with such a termination of use of the Santa Fe Depot property, where a portion of the Site westerly of the transit courtyard is proposed as a substitute location for a passenger station or depot or for any other railroad business in place of the Santa Fe Depot property, a material factor in the City's granting or withholding of its consent will be the presence or absence of a below-grade or above-grade passageway to facilitate pedestrian movement across the Site.

iv. Cost

Catellus estimates that the cost of designing and constructing a transit courtyard will exceed \$15,000,000 in 1992 dollars, and that the annual cost of operating and maintaining the transit courtyard will exceed \$400,000 in 1992 dollars. Over time, with inflation, Catellus anticipates that these costs will increase.

v. City Cooperation in Financing Transit Area

Catellus and the City agree to cooperate in applying for public matching funds, for funds under the Intermodal Surface Transportation Efficiency Act of 1991 ("ISTEA"), and for funds under transportation-related and other appropriate local, state and federal programs that may be available to provide for public financing of the costs associated with the development, construction, operation and maintenance of the transit courtyard. Upon reasonable request by Catellus, the City shall submit applications for federal or state support under ISTEA or successor programs thereto, including but not limited to the Transportation Enhancement Program. In consideration therefor, Catellus shall make available on a reasonable basis professional and other support necessary to complete such

applications in a timely fashion. Nothing in this paragraph shall limit Catellus's obligations to install the transit courtyard improvements required by this Agreement.

vi. Improvements to Transit Area

Catellus shall construct or cause to be constructed the following improvements to the transit courtyard by the following dates:

- a. By December 7, 2003, hardscape improvements, which shall include paving between rails, between the tracks and on the perimeter of the tracks;
- b. By December 7, 2003, landscape improvements, which shall include palms, broad-leafed trees and flowering shrubs; and
- c. When warranted by pedestrian volume, but in no event later than December 7, 2003, a below-grade or above-grade crossing to facilitate pedestrian movement across the Site.

4. Removal of Track to B Street Pier

Catellus hereby consents to the City, Agency or Port removing and clearing or paving over the existing railroad tracks extending from Parcel 1 to B Street Pier at any time during the term of this Agreement at no cost to Catellus. Upon such removal, clearing or

paving over, Catellus shall release or otherwise relinquish any and all easements or rights of way relating to such railroad tracks that it may have in the property on which such tracks are located. Such tracks are shown in the original Basic Concept Drawings. The parties agree that subject to an agreement with the Port, Catellus may, at its option, remove such tracks at any time at its own cost and expense. In any event, Catellus shall retain the exclusive rights and ownership to such tracks once they are removed and may use and hold such tracks for any purpose including selling them for salvage value.

5. Public Improvements

i. General

The "General Conditions for Tentative Subdivision Maps" filed in the office of the City Clerk under Document No. 767688 on May 1, 1980, or as amended, shall be made a condition of any map approval. Only those exceptions to the General Conditions which are shown on the tentative map and covered in these special conditions will be authorized.

ii. Right of Way Dedication

If required by the City Engineer, Catellus shall dedicate rights of way on Catellus property adjacent to Parcel 1 as shown on Revised Attachment C-2 and as described below:

- a. Kettner Boulevard - Catellus shall dedicate 3 feet of right of way on Catellus property on the west side of Kettner Boulevard between Ash Street and Broadway. In addition, if required by the City Engineer, Catellus shall dedicate an additional 35 feet of right of way in the present Kettner Boulevard roadway adjacent to the Depot and Baggage Building, as shown in Revised Attachment C-2, in order to provide a total right of way width in Kettner Boulevard between Ash Street and Broadway of 78 feet adjacent to Catellus property.
- b. Pacific Highway - No dedication is required on Pacific Highway. (The curb-to-median width on the east side of Pacific Highway will be 39 feet in width, consisting of two 11-foot lanes and a 17-foot curb lane. To the east, also within the existing public easement or right of way, will be a 17-foot sidewalk area. Exclusive right-turn lanes will be evaluated on a parcel-by-parcel basis. Where exclusive right-turn lanes are to be provided, the curb lane will be widened to 20 feet at the intersection, with the

additional 3 feet needed for that widening to come from the sidewalk area.)

- c. Ash Street - Catellus shall dedicate 12 feet of right of way on Catellus property on the southerly side of Ash Street between Pacific Highway and Kettner Boulevard.
- d. Broadway - No dedication is required on Broadway, Catellus having already granted to MTDB the easement required for the San Diego Trolley on the northerly side thereof.

iii. Time for Dedication of Right of Way

- a. Concurrent with the commencement of the development of a building or structure for Commercial Office Use, Retail Use, Hotel Use or Residential Use, adjacent to a street which adjoins Parcel 1 (for purposes of this paragraph, "adjacent to a street which adjoins Parcel 1" means, with respect to Kettner Boulevard, that portion of Parcel 1 between Kettner Boulevard and the north-to-south centerline of Parcel 1, and with respect to Ash Street and Broadway, that portion of Parcel 1 immediately adjacent thereto) or concurrent with the sale of fee title ownership by Catellus of a parcel adjacent to a street which adjoins Parcel 1,

Catellus shall dedicate the required right of way for the entire length of such portion of the street which is adjacent to Parcel 1. For example, if Catellus commences development of a building for Commercial Office Use adjacent to Kettner Boulevard or sells fee title ownership of a parcel adjacent to Kettner, Catellus shall, at that time, dedicate the required right of way for all of Kettner Boulevard adjoining Parcel 1. Catellus shall make an earlier dedication of the right of way for such portion of streets adjacent to Parcel 1, without improvements, upon City request when necessary for City purposes. In any event, Catellus shall make such dedications of right of way as set forth in paragraph 5.ii. above no later than June 7, 1994.

iv. On-Site and Off-Site Improvements - Parcel 1

Catellus shall construct or cause to be constructed the following on-site and off-site improvements:

a. Kettner Boulevard from Broadway to Ash Street

- (1) (a) Paving and surfacing of the 3 feet of right of way Catellus is dedicating on the west side of Kettner, and of such

additional portions of Kettner lying easterly thereof that the City Engineer may reasonably require to be paved and surfaced, but not beyond the crowning at the centerline of the street; (b) curbs, gutters, sidewalks, street trees, fire hydrants, street lighting, and marked curbs, all within the area of such paving and surfacing; (c) other improvements required by the City Engineer to accommodate bus stops if and only if bus stops have been specifically designated at the time Catellus performs the paving and surfacing described in clause (a) above, within the area of such paving and surfacing; and (d) striping to the centerline of the entire roadway within the area of such paving and surfacing. Catellus shall not be responsible for the widening of Kettner Boulevard on its easterly side from Broadway to A Street, or for paving, surfacing, curbs, gutters or sidewalks adjacent thereto.

- (2) As necessary, Catellus shall construct an adequate drainage system to control

street drainage in the peripheral street and extending to adequate offsite drainage facilities.

- (3) Provide new signals or modify existing signals at major entrances and exits to Catellus property on Kettner Boulevard, as required by the City Engineer.

b. Pacific Highway from E Street to Ash Street

- (1) (a) Paving and surfacing of such additional portions of Pacific Highway that the City Engineer may reasonably require to be paved and surfaced (including any right-turn lane of the kind described in paragraph 5.ii.b. above), but not beyond the easterly curb of the median of the street; (b) curbs, gutters, sidewalks, street trees, fire hydrants, street lighting, and marked curbs, all within the area of such paving and surfacing; (c) other improvements required by the City Engineer to accommodate bus stops if and only if bus stops have been specifically designated at the time Catellus performs the paving and surfacing described in clause (a) above, within the area of

such paving and surfacing; and (d) striping to the easterly curb of the median of the street within the area of such paving and surfacing.

- (2) As necessary, Catellus shall construct an adequate drainage system to control street drainage in the peripheral street and extending to adequate offsite drainage facilities.
- (3) Provide new signals or modify existing signals at major entrances and exits to Catellus property on Pacific Highway, as required by the City Engineer.

c. Ash Street from Pacific Highway to Kettner Boulevard

- (1) (a) Paving and surfacing of the 12 feet of right of way Catellus is dedicating on the south side of Ash Street, and of such additional portions lying northerly thereof that the City Engineer may reasonably require to be paved and surfaced, but not beyond the crowning at the centerline of the street; (b) curbs, gutters, sidewalks, street trees, fire hydrants, street lighting, and marked curbs, all within the area of such

paving and surfacing; (c) other improvements required by the City Engineer to accommodate bus stops if and only if bus stops have been specifically designated at the time Catellus performs the paving and surfacing described in clause (a) above, within the area of such paving and surfacing; and (d) striping to the centerline of the entire roadway within the area of such paving and surfacing.

- (2) As necessary, Catellus shall construct an adequate drainage system to control street drainage in the peripheral street and extending to adequate offsite drainage facilities.

d. Broadway from Pacific Highway to Kettner Boulevard

- (1) (a) Paving and surfacing of such portions of the northerly side of Broadway that the City Engineer may reasonably require to be paved and surfaced, but not beyond the crowning at the centerline of the street and not including medians, and as to the portion adjacent to Parcel 2, paving and

surfacing of such portions of the southerly side of Broadway that the City Engineer may reasonably require to be paved and surfaced, but not beyond the crowning at the centerline of the street and not including medians; (b) curbs, gutters, sidewalks, street trees, fire hydrants, street lighting, and marked curbs, all within the area of such paving and surfacing; (c) other improvements required by the City Engineer to accommodate bus stops if and only if bus stops have been specifically designated at the time Catellus performs the paving and surfacing described in clause (a) above, within the area of such paving and surfacing; and (d) striping within the area of such paving and surfacing.

- (2) As necessary, Catellus shall construct an adequate drainage system to control drainage on street and runoff to storm drain.

e. Improvement Standards

The above-described improvements will be installed consistent with the Design

Standards and the engineering standards required by the City pursuant to the terms of this Agreement.

f. Timing of Improvements - Parcel 1

(1) With respect to Ash Street, Catellus shall construct or cause to be constructed the improvements described in paragraphs iv.c. and d. above within or adjacent to the easterly half of such street, or the westerly half of such street, as the case may be (for purposes of this paragraph, "adjacent to a street" means, with respect to Ash Street, that portion of Parcel 1 immediately adjacent thereto), in conjunction with the development of a new building or structure for Commercial Office Use, Retail Commercial Use, Hotel Use or Residential Use adjacent to that easterly or westerly half, as the case may be.

(2) With respect to Broadway, Catellus shall construct or cause to be constructed the improvements described in paragraphs iv. c. and d. above within or adjacent to the portion to Broadway (for purposes of

this paragraph, "adjacent to Broadway" means that portion of Parcel 1 immediately adjacent thereto), in conjunction with the development of a new building or structure for Commercial Office Use, Retail Commercial Use, Hotel Use or Residential Use, along the entire length of Broadway which is adjacent to Parcel 1 (between Pacific Highway and Kettner Boulevard).

- (3) With respect to Pacific Highway and Kettner Boulevard, Catellus shall construct or cause to be constructed the improvements described in paragraphs iv.a. and b. above within or adjacent to the portions of such streets described below (for purposes of this paragraph, "adjacent to a street" means, with respect to Pacific Highway and Kettner Boulevard, that portion of Parcel 1 between either such street and the north-to-south centerline of Parcel 1), in conjunction with the development of a new building or structure for Commercial Office Use, Retail Commercial Use, Hotel Use or Residential Use, along the length

of the frontage of such building or structure on Pacific Highway or Kettner Boulevard, as the case may be. For example, if Catellus is developing a building for Commercial Office Use on Parcel 1 adjacent to Pacific Highway, Catellus shall construct the required on-site and off-site improvements along the length of the frontage of such building or structure on Pacific Highway in conjunction with the construction of the building for Commercial Office Use.

- (4) By December 7, 2003, all remaining on-site and off-site improvements for Parcel 1 described in paragraphs iv.a., b., c. and d. above not yet constructed shall then be constructed, for Ash Street, Broadway, Pacific Highway and Kettner Boulevard in their entirety.

v. On-Site and Off-Site Improvements - Parcel 2

As required to be constructed by the City Engineer, Catellus shall construct or cause to be constructed, curbs, gutters, sidewalks, street trees, fire hydrants, drainage, and street lighting around the perimeter of Parcel 2, concurrent with the construction of a building or

structure for Commercial Office Use, Retail Commercial Use, or Residential Use on Parcel 2. Such improvements shall be installed consistent with the Design Standards and engineering standards required by the City pursuant to the terms of this Agreement. By December 7, 2003, all remaining on-site and off-site improvements for Parcel 2 described in this paragraph not yet constructed shall then be constructed, for Broadway, Pacific Highway and E Street.

vi. Depot Forecourt

Prior to the rehabilitation of the Depot, Catellus may submit plans to the Agency for the construction of an arcade structure (forecourt) located between the south facade of the Depot and Broadway as illustrated in the Basic Concept Drawings. Any such forecourt shall be modeled after the architecture of the Santa Fe Depot and shall respect the scale of the Depot, facade materials and its architectural detail. The plans shall be reviewed by the Agency and the Historic Sites Board for conformance with the Secretary of Interior's Standards for Rehabilitation of Historic Buildings and Guidelines for Rehabilitation of Historic Buildings.

vii. Additional Pacific Highway Improvements

Beginning on January 1, 1994, Catellus shall pay 50% of (a) the costs of relocating curbs, gutters, sidewalks, landscaping and related paving and resurfacing of the east side of Pacific Highway adjacent to the Site to accommodate medians on Pacific Highway, and (b) the costs of three (3) medians on Pacific Highway west of the Site (Ash to B Street, B Street to Broadway, and Broadway to E Street), to the extent that the City or the Agency has incurred, or contracted to incur, costs for those improvements as of the date the payment is due. For example, if the City or Agency has incurred only \$120,000 in such costs as of the January 1, 1994 payment date, then only \$60,000 would then be due. If less than the full amount has been incurred as of January 1, 1994, then additional 50% payments will become due within 30 days after the City or Agency provides Catellus with written notice that additional contracts for the work have been entered into by the City or the Agency. Neither the City nor the Agency shall solicit bids for the work described in this paragraph without first providing a copy of the proposed bid specifications to Catellus at least 15 days prior to the publication thereof, and

during such 15-day period, the City and Agency shall give good faith consideration to comments which Catellus may make regarding the proposed bid specifications. The parties estimate that the costs described in this paragraph may total approximately \$600,000, in which event Catellus's share would be approximately \$300,000. Catellus' sole obligation with respect to the improvements described in this paragraph shall be to provide the funds set forth in this paragraph. Catellus shall have no obligation to provide plans for such improvements and shall have no responsibility for their construction.

viii. Access to Site

The location and design of access to the Site shall be as follows:

a. Parcel 1

- (1) On Broadway and on Ash Street, no driveways shall be permitted;
- (2) On Pacific Highway and on Kettner Boulevard, driveways shall be located and designed satisfactory to the City Engineer.

b. Parcel 2

- (1) On Broadway and on Pacific Highway, no driveways shall be permitted;

(2) Driveways shall be permitted on E Street.

ix. Ash/Kettner Dedication and Improvements

If Catellus acquires ownership of the Ash/Kettner Parcel, Catellus shall offer to dedicate rights of way for Kettner Boulevard and Ash Street in accordance with paragraphs 5.ii.a. and c. above, within 30 days after the date of acquisition. In addition, if Catellus acquires ownership of the Ash/Kettner Parcel, Catellus shall make improvements on such Parcel in accordance with paragraphs 5.iv.a. and c. above and in accordance with the following schedule:

- a. If Catellus acquires the Ash/Kettner Parcel on or before September 7, 2003, and is not then or by December 7, 2003 in the process of developing it, Catellus shall complete the adjacent perimeter improvements by December 7, 2003.
- b. If Catellus acquires the Ash/Kettner Parcel after September 7, 2003, and is not then or within 120 days thereafter in the process of developing it, Catellus shall complete the adjacent perimeter improvements within 120 days after the date of acquisition.

c. If Catellus acquires the Ash/Kettner Parcel, and is, at the time of acquisition or before the deadlines in the preceding paragraphs a. and b., in the process of developing it, Catellus shall complete the adjacent perimeter improvements as part of its completion of the development, or if Catellus abandons such development, it shall complete such improvements by the later of December 7, 2003, or 120 days after the date of abandonment.

x. Area Wide Traffic Improvements

a. MTDB Easement

Catellus and MTDB have entered into (i) an Easement Agreement dated as of December 10, 1991, recorded in the office of San Diego County Recorder as Document No. 1992-0085963 on February 18, 1992 (the "Trolley Easement Agreement"), and (ii) a Construction, Operation and Maintenance Agreement dated as of December 10, 1991 (the "COM Agreement"), together providing for the construction, operation and maintenance of two (2) light rail transit lines across the Site for the San Diego Trolley. Catellus hereby commits to expend \$1,500,000 or more by December 31,

1999, for the construction of Hardscape Improvements within the Easement Area and for Relocated Items (as those terms are defined in the COM Agreement).

b. NCTDB Right-of-Way

With respect to any North County Transit Development Board ("NCTDB") proposals for a Commuter Rail alignment across the Site connecting with the Atchison, Topeka and Santa Fe Railway Company ("Railway Company") right of way north of Ash Street, Catellus shall, during a three (3) year period after execution of the Amendment incorporating this Revised Attachment C-1 into the Agreement, meet, confer and negotiate in good faith with NCTDB, as to:

- (1) The terms and conditions on which NCTDB may acquire a right of way within the transit courtyard;
- (2) Any pending actions by Catellus that should reasonably be the subject of notice to NCTDB, such as the construction of buildings and improvements upon, or sale or long term lease of, any portion of the Site which

may render the use of such right of way by NCTDB infeasible; and

- (3) Cost apportionments, if appropriate, for the capital improvements required for Commuter Rail passenger services and for their operation and maintenance.

Catellus and the City agree that any money paid to Catellus by NCTDB for its acquisition of a right of way across the Site (as distinguished from money paid for capital improvements, operating and maintenance costs) shall be spent by Catellus on hardscape, landscape or other improvements within the transit courtyard (not just NCTDB's portion thereof). Catellus and the City acknowledge that NCTDB payments may serve as matching funds for grants.

c. Transit Courtyard

Catellus shall prepare a master plan for the transit courtyard, which shall include:

- (1) The arches or covered walkways which contain the courtyard;
- (2) The pedestrian treatment of A, B and C Streets;
- (3) The landscaping, furnishings and art for the courtyard;
- (4) The palette of paving materials, coordinated with the materials used in the Linear Park and in the proposed treatment of A, B and C Streets;
- (5) The relationships of the foregoing to off-site improvements for perimeter streets adjoining the project, which shall be compatible in quality.

The master plan shall be submitted to the Agency prior to the first to occur of:

- (i) The sale of any portion of the Site;
- (ii) The commencement of construction of any new building on the Site;
- (iii) The installation of any improvements within the transit courtyard; or
- (iv) January 1, 2003.

In any event, construction of the improvements shown in the master plan, including without limitation all free-standing arches and covered walkways, shall be completed on or before December 7, 2003, except that, where arches or covered walkways that are shown in the master plan are integrated into the bases or podiums of new buildings to be constructed on the Site, such arches or covered walkways shall be constructed concurrently with the construction of the new buildings into which they are integrated (whether before or after December 7, 2003).

The master plan shall be approved by the Agency, to ensure that it is consistent with the Design Standards (Revised Attachment B-3) and conducive to convenient and efficient passenger services, including Amtrak, the San Diego Trolley and Commuter Rail (if applicable).

d. Assessment Districts

Catellus shall agree to participate in the formation of one or more assessment districts or other similar financing mechanisms. Such district(s) shall be for the purpose of

providing or maintaining landscape enhancement, park, open space, traffic, transportation, utilities or similar improvements in the downtown area of the City of San Diego. Catellus reserves the right to be heard and to present evidence regarding the amount of any assessment payment proposed to be levied on Catellus. Notwithstanding any provisions to the contrary in this paragraph, Catellus does not waive any legal right as may exist at law or in equity, whether established by statute or otherwise, to appear or otherwise protest the mechanisms for, the fairness of, or the amount of any fee, tax, levy, assessment or exaction proposed to be imposed upon Catellus's development of the Site or any portion thereof.

xi. Utilities

- a. Catellus and the City agree that neither City or Agency shall be responsible for the cost and expense of providing adequate public utility services (sewer, water, storm drain) to the Site.
- b. Catellus and the City agree that neither City or Agency shall be responsible for the cost

and expense of providing utilities (phone, electricity, gas, cable television) to the Site.

- c. Catellus and the City agree that Catellus shall not be responsible for the cost and expense of providing public utility services (sewer, water, storm drain) for the transit providers on the Site, to the extent that such services are uniquely required by the transit activities in which they engage.
- d. Catellus and the City agree that Catellus shall not be responsible for the cost and expense of providing franchised utilities (phone, electricity, gas, cable television) to the transit providers on the Site, to the extent that such utilities are uniquely required by the transit activities in which they engage.
- e. Catellus shall bear the cost and expense for all expenses for public utility (sewer, water, storm drain) abandonment and relocation occurring on the Site caused by Catellus's development of the Site.
- f. Undergrounding of existing and/or proposed public utility systems and service facilities

is required according to San Diego Municipal Code Section 102.0404, Subsection 2.

- g. As reasonably required by the City Engineer, Catellus shall bear the cost and cause the preparation of a sewer, drainage, and water utilities study to determine the adequacy and any necessary improvements to these utilities. The sewer, drainage, and water utilities study shall be submitted for approval to the City Engineer prior to City approval of the final map or prior to issuance of a building permit for the first building to be constructed on the Site by Catellus pursuant to the Scope of Land Use.
- h. The City shall reserve its right to refuse sewer and water services to any portion of the Site, on the same basis applicable to the Centre City area generally, where adequate capacity is not available and appropriate arrangements have not been made with the Agency for providing such adequate capacity.
- i. Catellus shall, to the satisfaction of the City Engineer, design and construct the improvements on Parcel 1 to accommodate the B Street Flume in either its existing location or in a new location with easements granted

to the City. Upon relocation of the Flume, current easements for the Flume burdening the Site that are no longer required for its new location shall be vacated by the City and Agency. Catellus shall reconstruct this flume from the western boundary line of Parcel 1 to the eastern boundary line of Kettner Boulevard. Suitable access to the flume shall be provided for maintenance and any future structural repair work.

xii. Other Dedications and Improvements

Nothing in this paragraph 5. shall be construed to limit the right of way dedications, including easements, or on-site and off-site improvements, nor the timing of dedications or improvements which the City may otherwise be permitted to impose in accordance with its exercise of discretion in applying to the Site the rules, regulations or policies that were in existence on May 31, 1983 (or amended or additional rules, regulations or policies if required to be followed by this Agreement) and that permit the exercise of such discretion, including but not limited to subdivision maps and building permits.

6. Facade Easement

By the earliest of (a) sixty (60) days after the Depot is opened for use as other than a passenger train station in accordance with the Scope of Land Use, or (b) the date on which Catellus completes the transfer of fee title to all or substantially all of the Baggage Building as provided in paragraph 11.i.c. below, or (c) December 7, 1997, Catellus shall grant architectural facade easements in the Depot and Baggage Building to the City or its designee, wherein Catellus shall guarantee the preservation and maintenance of the exterior facades of the Depot and Baggage Building (but if the Railway Express Building is not demolished by December 7, 1997, then the facade easement may exclude the north face of the Baggage Building). The easement for the Depot shall provide that Catellus shall be responsible for all normal maintenance and upkeep of the facade of the Depot in a manner which guarantees its continued preservation, subject to destruction by causes beyond the control of Catellus, and may make such alterations to said facade which preserve the architectural and historical integrity of the Depot and which facilitate a change of use of the Depot, as reasonably approved by the Agency. Catellus agrees that it will not substantially change the exterior facades of the Depot or Baggage Building prior to the granting of such easements. Any alteration of the facades at any time shall in any event be subject to design review and approval by the Agency to assure consistency with the Design Standards in this Agreement

and assure maintenance of the architectural and historical integrity of the Depot and Baggage Building. Catellus intends to preserve both the Depot and Baggage Building; however, the parties agree that as part of the adaptive reuse of the Depot and Baggage Building, Catellus may alter or remodel their interiors at any time during the term of this Agreement, subject to (i) prior review and approval by the Agency, (ii) prior preparation and approval of such supplemental environmental documentation as may be required by the California Environmental Quality Act and state and local regulations applicable thereto, and (iii) conformance with the Secretary of Interior's Standards for Rehabilitation of Historic Buildings and Guidelines for Rehabilitation of Historic Buildings.

7. Ash/Pacific Parcel

On March 27, 1985, Catellus acquired fee title to that certain property designated the "Ash/Pacific Parcel" as shown on the map attached to the original Agreement as Attachment A-1.

8. Parking Lot Use

i. Interim Improvement of Parcel 2

On or before March 1, 1994, Catellus shall complete the construction of parking lot improvements, and thereafter maintain the parking lot on Parcel 2 west of the railroad tracks and south of Broadway until such time as construction of improvements on Parcel 2 begins. The cost of such parking lot improvements is estimated to be approximately \$135,000.

The parking lot on Parcel 2 shall be improved according to the following standards, the plans for which shall be submitted to the Agency (or its designee) for review and approval, with more precise specifications to be reasonably agreed upon and approved by the parties, at least 30 days prior to the commencement of construction, and shall require Catellus to:

1. Repair or resurface the present parking lot, as reasonably required.
2. Repair the existing sidewalk on Broadway, as reasonably required, and install a temporary asphalt sidewalk on Pacific Highway.
3. Stripe and sign the parking site to provide for traffic control and parking distribution.
4. Plant trees on Broadway and Pacific Highway in accordance with design specifications approved by the parties, using species reasonably required by the Agency.
5. Provide an irrigation system where appropriate.

ii. Interim Improvement of Parcel 1

If any improvements now located on Parcel 1 become demolished and the portion of Parcel 1 so demolished is not otherwise then being developed or then the subject of an application for a permit to develop, Catellus shall improve the portion of Parcel 1 so demolished in a manner consistent with the

Centre City Planned District Ordinance, as hereafter amended or superseded, for parking lot purposes, including hardscape, landscape, striping, signage, parking control improvements, irrigation and the like, the plans for which shall be submitted to the Agency (or its designee) for review and approval. If such improvements are required on Parcel 1, the construction shall be completed within 120 days after the commencement of the demolition.

iii. Maintenance of Parking Lots

The parking lots described in this paragraph 8 shall be maintained on each part of the Site, until the earlier of (a) the expiration or termination of this Agreement, or (b) the date on which such part is needed for development, unless otherwise agreed by the Agency, which shall not be unreasonably withheld. Catellus agrees to provide interim parking to San Diego County within said parking lots as reasonably requested by the County, subject to terms acceptable to the County and Catellus.

9. Local Office

Catellus has established and shall maintain throughout the term of this Agreement a local office in San Diego in order to locally manage the development of the Site and has retained personnel with real estate development experience in order to develop and market the Site.

10. Fine Arts Program

As part of its development of the Site, a fine arts program shall be provided by Catellus. One percent (1%) of then current base building costs and land value for each increment of new development shall be expended by Catellus for the fine arts program. With the reasonable approval of the Agency, Catellus may combine the fine arts requirement for two or more increments or phases of development. The fine arts program may include the following expenditures made by Catellus after execution of the Amendment incorporating this Revised Attachment C-1 into the Agreement:

- (a) Various publicly accessible works of art such as sculptures, paintings, permanent murals, mosaics, stained glass works, tapestries, fountains or the inclusion of functional elements designed by artists in collaboration with the architect;
- (b) Costs of rehabilitation (excluding costs for adaptive reuse) and seismic upgrades to the Depot;
- (c) (1) Costs of rehabilitation, seismic upgrades and base building improvements for the Baggage Building, and (2) the agreed fair market value of the Baggage Building to be transferred by Catellus pursuant to paragraph 11.i.c. below (but excluding therefrom any costs already counted under clause (1) of this subsection (c), in order to avoid double-counting the same), which

the parties agree shall be deemed to be \$1,000,000 for purposes of this Agreement.

The costs and agreed fair market value in subsections (b) and (c) above will be incurred in connection with the Depot and Baggage Building, which do not constitute "increments of new construction" in the sense of this paragraph 10. Accordingly, to the extent that such costs are incurred and such fair market value is transferred by Catellus (but not if paid for with public grants or other public funds), the amounts attributable thereto shall be credited prorata toward the fine arts program expenditures that Catellus would otherwise have to make for any remaining increments of new development on the balance of the Site.

A fine arts consultant may be retained to advise and coordinate the program, or Catellus may rely on the Centre City Arts Advisory Board and the architect to make recommendations on the fine arts program. The consultant, the program and each work of fine art shall be subject to reasonable approval by the Agency.

11. Baggage Building and Possible Rail Museum

- i. On or before December 7, 1997 (or an earlier date if mutually agreed by both the City and Catellus), Catellus shall:
 - a. Complete, or cause to be completed, a seismic upgrade of the Baggage Building to meet requirements applicable to museum use.

- b. Complete, or cause to be completed, base building improvements to the Baggage Building, including:
- (1) Stubbing out of electricity, water, sewer and telephone to the interior walls of the shell Building;
 - (2) Structurally sound walls and roof;
 - (3) Curb, gutter and sidewalk improvements on the Kettner Boulevard frontage of the Baggage Building that are compatible with the streetscape improvements adjacent to the Depot; and
 - (4) Repair of the facade of the Baggage Building.
- c. Transfer fee title, unencumbered by monetary liens, to all or substantially all of the Baggage Building -- including at a minimum its colonnade, the land under the Baggage Building and under its colonnade, an access easement through the Breezeway, and street frontage along Kettner Boulevard for the length of the Baggage Building -- to the City or to any governmental agency or non-profit entity designated by the City, at no cost to the City, for use as a museum or for such other Cultural/Institutional Use as may be

permitted by the Scope of Land Use (Revised Attachment B-1); provided, however, that any such transfer may be made for a use other than a museum or similar Cultural/ Institutional Use only upon mutual agreement by both Catellus and the City.

- ii. Commencing upon execution of the Amendment incorporating this Revised Attachment C-1 into the Agreement, and continuing for one (1) year thereafter, Catellus shall negotiate in good faith with the City and Pacific Southwest Railway Museum Association, Inc. (the "Rail Museum"), in an effort to establish the Rail Museum as the City's designated occupant of the Baggage Building, on terms consistent with paragraph 11.i. above and reasonably acceptable to Catellus, the City and the Rail Museum, and in accordance with the following principles:
- a. The Rail Museum is to occupy space in the Baggage Building that is prominent, as to both visibility and access, and is to have the use of all or substantially all of the Baggage Building.
 - b. Exceptions to the Rail Museum's use of all of the Baggage Building may be necessary, however, if (a) such space is determined by

the City not to be needed, or (b) if Catellus establishes a critical need requiring the use of portions of the Baggage Building for transportation-related services.

B. Ongoing Development Obligations

Catellus shall perform, or cause to be performed, the following additional acts in conjunction with development activities and ongoing operation of the development according to the terms, conditions and time periods set forth herein:

1. Construction

Prior to commencing demolition, grading or construction on the Site for each phase or increment of development, Catellus shall prepare plans which address the following, and if required by the City Engineer, submit such plans to the City Engineer for approval:

- i. On-site accommodation of construction-related parking and construction staging, including the storage of construction materials and equipment. Said plan shall also include a schedule of the hours during the day when heavy construction equipment will be allowed to use City streets, and the

- placement of vehicular access points for the construction site;
- ii. A dust control plan which shall provide for minimizing fugitive dust emissions during demolition and construction, including methods such as watering, containing excavated soil on-site until it is hauled away, and periodically cleaning adjacent streets to remove accumulated materials;
 - iii. A noise control plan which includes provisions for limiting noise-producing activities to hours considered acceptable for the Project area, and for any necessary sound attenuation features for noise-producing equipment;
 - iv. An erosion control plan which shall include installation of appropriate on-site sediment transport control devices and implementation of appropriate grading techniques, drainage modification and control measures to prevent sedimentation in runoff from the construction site. The plan shall also include the provision that contractors shall be instructed to take reasonable

care that trucks do not deposit excessive amounts of spilled material on haul routes to and from the development site. The erosion control plan shall also be submitted to the Port of San Diego for review and comment;

- v. Design and installation of visual/public safety barriers around the construction site, and provision for safe pedestrian circulation and/or adequate directions for alternate pedestrian routes around the construction site.

2. Air Quality/Traffic

In order to reduce development-generated traffic congestion and thereby reduce associated incremental increases in vehicle emissions, Catellus shall cooperate with the City in considering in good faith the feasibility and applicability of the following programs for the development:

- i. Encourage employer incentive programs and active support of transportation systems management projects;
- ii. Adopt incentive programs to increase trips by rail, trolley, bus, bicycle or walking;

iii. Provide preferential vanpool/carpool and bicycle parking at a specified ratio for all new parking on the Site.

3. Noise

- i. At the time of specific development of residential or hotel uses on the Site and prior to completion of final construction drawings, Catellus shall measure actual noise levels from traffic on adjacent streets and/or railroad rights-of-way according to a measurement method acceptable to the City Engineer. The residential or hotel structures shall be designed to provide an interior sound level as required by then current State or local law;
- ii. Because single-event noise incidents from railroad operations and/or adjacent streets may be disruptive to residential uses, especially outdoors at the street grade level, the perimeter of any residential use and ancillary residential uses shall receive landscape and other physical barrier treatment capable of functioning as a secondary

noise buffer. Such improvements shall be consistent with the Design Standards.

4. Health and Safety

- i. Catellus shall provide adequate security on the Site and install lighting in all areas accessible to the public according to applicable building codes, and Catellus shall cooperate and submit such security and lighting plans to the City of San Diego Police Department for their review and reasonable approval.
- ii. Prior to issuance of any building permit, the final Construction Drawings shall be submitted to the City of San Diego Fire Department for review, and all on-site fire protection, including hydrants, Fire Department connections and fire suppression systems in all buildings on the Site, shall be approved by the Fire Department. Fire vehicle access to all buildings on the Site shall also be approved by the Fire Department for all public rights-of-way and easements improved by Catellus, and all building accesses (i.e., entrances,

exits, stairways) shall be approved by the Fire Department.

5. Geology and Soils

Prior to final Site planning and design, and prior to obtaining the first grading permit for the first increment of development, Catellus shall conduct a site specific geotechnical investigation of the development site which shall include, as a minimum, identification of the specific soil conditions on the Site, the location of the faults on the Site, and the depth and amount of ground water on the Site. The findings of the Site specific geotechnical investigations shall dictate the soils and structural engineering and site planning for the planned development to achieve the highest level of seismic safety possible. Said finding shall be submitted to the Agency along with Construction Drawings and plans.

6. Water Quality

In order to minimize the introduction of contaminants and sediment in runoff from the development site, the following measures shall be implemented for each increment of development:

- i. All surface parking areas and the exposed levels of all parking structures shall be maintained on a daily basis;
- ii. Routine maintenance of all surface parking areas and all levels of parking structures shall be accomplished primarily by mechanical sweeping, as preferred to washing, on a regular basis;
- iii. On-site retention basins (i.e., grease traps) shall be installed and maintained as necessary, as determined by the City Engineer, and the design of such shall be reviewed by the Port of San Diego prior to construction;
- iv. A landscape maintenance program shall be established which minimizes the use of fertilizers, pesticides and irrigation. The landscape maintenance program shall be described in conjunction with the submittal of landscape plans for each increment of development.

7. Cultural Resources

Any rehabilitation and renovation of the exterior and the interior of the Santa Fe Depot and Baggage Building under this Agreement shall be in

conformance with the Secretary of Interior's Standards for Rehabilitation of Historic Buildings and Guidelines for Rehabilitation of Historic Buildings.

8. Resource Conservation

- i. Catellus shall implement the following water conservation measures into the development on the Site.
 - a. The landscape plans will emphasize use of drought-resistant vegetation with low water requirements and be irrigated with a system designed to avoid surface runoff and overwatering;
 - b. Final design of structures and facilities on the development site will provide for use of watersaving fixtures in all lavatories and all other water-using facilities;
 - c. Grounds maintenance throughout the development site shall emphasize mechanical sweeping as opposed to washing for routine maintenance;
 - d. As the availability and delivery of reclaimed water becomes feasible in the future, Catellus shall consider use of

reclaimed water in the landscape and grounds maintenance program on the development site.

- ii. Catellus shall provide the following additional energy conservation features into the development of the Site:
 - a. The use of other alternative feasible energy sources which may become available and economically feasible for the development (i.e., chilled water, steam);
 - b. All construction on the Site shall incorporate such passive solar designs and active solar energy facilities as may be economically feasible;
 - c. All construction on the Site shall utilize energy conservative fixtures, including interior and exterior lighting and timers for security lighting, and provide for maximum access of natural light to interior living and working areas;
 - d. Implement City energy conservation policies, where feasible, and State energy conservation standards for new construction as required by law.

9. Environmental Mitigation

In implementing the development under this Agreement, Catellus shall comply with the environmental impact mitigation measures specified in the Environmental Impact Secondary Study for Proposed Amended and Restated Development Agreement by and between City of San Diego and Catellus Development Corporation and the Amended and Restated Owner Participation Agreement by and between the Redevelopment Agency of the City of San Diego and Catellus Development Corporation dated October 26, 1992.

10. Equal Opportunity Program

From and after the date of execution of the Amendment incorporating this Revised Attachment C-1 into the Agreement, Catellus shall comply with the Equal Opportunity Program set forth in Attachment C-3 hereto.

PROPOSED DEDICATIONS AND IMPROVEMENTS

1. KETTNER BOULEVARD

- * (A) KETTNER BLVD. ACROSS FRONTAGE OF ASH/KETTNER PARCEL: PROVIDE ADDITIONAL 3' OF R/W AND IMPROVEMENTS IF CATELLUS DEVELOPMENT CORPORATION ACQUIRES OWNERSHIP.
- (B) KETTNER BLVD. BETWEEN ASH/KETTNER PARCEL AND BROADWAY EXCLUDING LOTS 7-10 OF BLOCK 295: PROVIDE ADDITIONAL 3' OF R/W AND IMPROVEMENTS, AND OFFER TO DEDICATE UNDEDICATED PORTIONS WESTERLY OF THE STREET CENTERLINE ADJACENT TO DEPOT AND BAGGAGE BUILDING IF REQUIRED TO PRODUCE A HALF STREET R/W.

2. PACIFIC HIGHWAY

- (C) PACIFIC HIGHWAY BETWEEN "E" STREET AND ASH STREET: PROVIDE IMPROVEMENTS WITHIN THE EXISTING R/W EASTERLY OF THE PROPOSED MEDIAN IN ACCORDANCE WITH REVISED ATTACHMENT NO. 5.



3. ASH STREET

- * (D) ASH STREET ACROSS FRONTAGE OF ASH/KETTNER PARCEL: PROVIDE ADDITIONAL 12' OF R/W AND IMPROVEMENTS IF CATELLUS DEVELOPMENT CORPORATION ACQUIRES OWNERSHIP.
- (E) ASH STREET BETWEEN PACIFIC HIGHWAY AND ASH/KETTNER PARCEL: PROVIDE ADDITIONAL 12' OF R/W AND IMPROVEMENTS.

4. BROADWAY

- (F) BROADWAY BETWEEN PACIFIC HIGHWAY AND KETTNER BLVD.: PROVIDE IMPROVEMENTS WITHIN THE EXISTING R/W NORTHERLY OF THE EXISTING MEDIAN.
- (G) BROADWAY BETWEEN PACIFIC HIGHWAY AND CALIFORNIA STREET: PROVIDE IMPROVEMENTS WITHIN THE EXISTING R/W SOUTHERLY OF THE EXISTING MEDIAN.

LEGEND

-  PROPOSED R/W DEDICATIONS
-  PROPOSED IMPROVEMENTS WITHIN EXISTING R/W

* PROPERTY NOT PRESENTLY OWNED OR CONTROLLED BY CATELLUS DEVELOPMENT CORPORATION.

NOTE: THIS PLOT PLAN IS DESIGNED TO ILLUSTRATE DEDICATIONS AND IMPROVEMENTS REFERED TO IN THE PUBLIC IMPROVEMENTS SECTION OF THE AGREEMENT. IN CASE OF CONFLICT, THE TERMS OF THE AGREEMENT SHALL BE CONCLUSIVELY CONTROLLING.

REVISED ATTACHMENT C 2

R/W DEDICATIONS AND IMPROVEMENTS
CATELLUS DEVELOPMENT CORPORATION

 Project Design Consultants

JOB 596.00 10/19/92

HIGHWAY

PACIFIC

ASH

STREET * (D)

BOULEVARD

A

ST.

KETTNER

B ST.

PARCEL 1

CALIFORNIA STREET

LOTS 7-10
BLOCK 295

SANTA FE
BAGGAGE
BUILDING

SANTA FE
DEPOT

BROADWAY

PARCEL 2

E

STREET

0 100 200



ATTACHMENT C-3

EQUAL OPPORTUNITY PROGRAM

Catellus shall comply with the City of San Diego's Equal Opportunity Program, approved by the City Council as Document RR-262633, as described in this Agreement.

For purposes of this Agreement, the Equal Opportunity Program consists of four elements: 1) the Development and Implementation of an Equal Opportunity Plan; 2) Equal Opportunity Contracting for Consultants, Construction Contractors, and Vendors; 3) On-Site Equal Employment Opportunity for On-Site Construction Labor Forces; and 4) Reporting Requirements for Contracting of Consultants and Construction Services and for On-Site Construction Labor Forces.

Catellus shall provide opportunities for Minority Business Enterprises ("MBEs") and Women Business Enterprises ("WBEs") to provide design, construction, and vendor/supply services for all phases of work on the Site as consultants and contractors, subconsultants, subcontractors, and suppliers to consultants and contractors. Catellus shall also require that construction contractors provide opportunities for the inclusionary participation of women, African Americans, American Indians, Asians, Filipinos, and Latinos in their on-site labor forces.

The MBE and WBE contracting and on-site labor force goals identified herein shall be in effect as of the execution of the Amendment incorporating this Attachment C-3 into the Agreement. From time to time, the City Council of the City of San Diego may revise such goals. In meeting its requirements under this Equal Opportunity Program, Catellus shall adopt, as its goals for participation, those goals currently adopted by the City of San Diego.

Equal Opportunity Plan

Thirty days after execution of this Agreement, Catellus shall prepare and submit to the Agency, for review and approval, an Equal Opportunity Plan ("Plan") for the development of the Site. The Agency shall cooperatively assist Catellus in preparing a Plan and/or suggest appropriate revisions to the Plan. The Agency shall approve such Plan within fifteen (15) days of its submission and prior to commencement of design or construction work.

The Plan shall describe in reasonable detail the procedures which Catellus will follow to meet the requirements and goals of the Agency's Equal Opportunity Program. Such Plan

shall include the identification of a qualified consultant, a non-profit organization, or a designated qualified employee, who Catellus shall retain as its Equal Opportunity Officer at its expense, to implement its Plan. The Plan shall identify the affirmative actions to be taken by Catellus and its consultants and contractors to provide equal contracting opportunities for consultant, construction, and related vendor services at the time of bid solicitations as well as affirmative actions to ensure equal employment opportunities for on-site construction labor forces. Catellus shall revise and update its Plan as appropriate during the term of this Agreement.

Equal Contracting Opportunities for Consultants, Construction Contractors, and Vendors

Catellus agrees that MBEs and WBEs shall be used in design, construction and vendor/supply phases of work on the Site, including on-site and off-site improvements, as prime consultants and contractors, subconsultants, and/or subcontractors and direct vendors to the prime consultants and contractors.

An MBE is a business which is at least fifty-one percent (51%) owned by African Americans, American Indians, Asians, Filipinos, and/or Latinos and whose management and daily operation is controlled by members of the identified ethnic groups. In the case of a publicly-owned business, at least fifty-one percent (51%) of the stock must be owned by and the business operated by one or more members of the identified ethnic groups.

A WBE is a business which is at least fifty-one percent (51%) owned by one or more women and whose management and daily operation is controlled by the qualifying party(ies). In the case of a publicly-owned business, at least fifty-one percent (51%) of the stock must be owned by and the business operated by one or more women.

In order to be classified as MBEs and/or WBEs for purposes of this Agreement, MBEs and WBEs must be certified by either the City of San Diego or the State of California's Department of Transportation (CalTrans), or have an interim certification issued by members of the Joint Agency Contracting Opportunity Task Force (Metropolitan Transit Development Board [MTDB], the San Diego Unified Port District, the City of San Diego and the County of San Diego). Certified businesses may participate as consultants, construction contractors, subcontractors and suppliers.

The MBE/WBE participation goals are that, of total contract dollar amounts awarded, a percentage be awarded or legitimately attempted to be awarded to MBEs and WBEs as follows: CONSULTANT SERVICES - 12% MBE and 3% WBE or more; CONSTRUCTION - 20% MBE and 7% WBE or more; VENDORS/SUPPLIERS - 10% MBE and 10% WBE or more. Consultants and contractors may use vendors to supplement Consultant and Contractor goal attainment.

It shall be Catellus' responsibility to assure that a sufficient portion of the work on each discrete phase of rehabilitation or development of the Site, from and after the date of execution of the Amendment incorporating this Attachment C-3 into the Agreement, is made available to consultants, prime contractors, subcontractors and suppliers, and to select those portions of the work or material needs consistent with the available consultants, contractors, subcontractors and suppliers, in order to facilitate meeting the goals for MBE and WBE participation. Examples of a "discrete phase of rehabilitation or development of the Site" include the preparation of plans and drawings and the retention of contractors and subcontractors and the purchase of materials for rehabilitation of the Baggage Building or of the Depot; construction of interim improvements to the Site, or of a phase of commercial or residential development, or of off-site infrastructure improvements, or of the transit courtyard; or similar types of activities.

Catellus shall be responsible to ensure that MBE and WBE participation goals are met or legitimately attempted to be met and to ensure that good faith-efforts documentation is maintained by Catellus and its consultants and contractors during the solicitation for consultant services and during the bidding process for construction services.

In the event that consultant and/or construction goals are not met, evidence of good-faith efforts must be submitted by Catellus to the Agency. Catellus shall secure the Agency's "Good Faith Efforts Documentation" form for completion. Good-faith efforts are defined as those which, given all relevant circumstances, Catellus and its prime consultants and contractors will actively and aggressively make while seeking to meet consulting and contracting goals, along with the related vendor services. Efforts that are merely pro-forma are not good-faith efforts, even if they are sincerely motivated, if, given all relevant circumstances, they could not reasonably be expected to produce a level of participation to meet the goals. Good-faith efforts include evidence that:

- (1) Catellus and its contractors and consultants attended meetings scheduled by the Agency to discuss the City's Equal Opportunity Contracting Program goals and requirements;

- (2) Catellus and its contractors and consultants advertised in general circulation, trade association, and in media focused on reaching out to women and to members of the African American, American Indian, Asian, Filipino, and Latino populations concerning subcontracting in time to allow opportunities for effective participation by certified MBE/WBE businesses;
- (3) Catellus and its consultants contacted the City's Equal Opportunity Contracting Program (EOCP) office and CalTrans for list(s) of certified MBE/WBE firms of the Agency for assistance and guidance in securing MBE/WBE firms;
- (4) Catellus and its contractors and consultants effectively used the services of available community organizations and professional associations representing women, African Americans, American Indians, Asians, Filipinos, and Latinos; local, State and federal small business assistance offices; and other organizations that provide assistance in the recruitment and placement of MBEs and WBEs;
- (5) Catellus and its contractors and consultants provided written notice to a reasonable number of certified MBEs and WBEs in sufficient time to allow opportunity for effective participation in the contract;
- (6) Catellus and its contractors and consultants followed up initial solicitations of interest by contacting MBEs and WBEs to determine with certainty whether they were interested;
- (7) Catellus and its contractors and consultants selected portions of work to be performed by MBEs and WBEs in order to increase the likelihood of meeting the established goals, including, where appropriate, breaking down contracts into economically feasible units to facilitate MBE and WBE participation;
- (8) Catellus and its contractors and consultants provided interested, certified MBEs and WBEs with adequate information about the plans, specifications, and requirements of the contract;
- (9) Catellus and its contractors and consultants negotiated in good faith with interested, certified MBEs and WBEs, based solely on their qualification merits and track record and not on discriminatory biases;

- (10) Catellus and its contractors and consultants made efforts to assist interested, certified MBEs and WBEs in obtaining bonding, lines of credit, or insurance required by Catellus or its contractors; and other evidence to indicate compliance with the City of San Diego's Equal Contracting Opportunity Program.

On-Site Employment Opportunities for Construction Labor Forces

Catellus shall ensure that, for construction work on the Site, its prime contractor and each subcontractor shall affirmatively seek to employ at least sixteen and nine-tenths percent (16.9%) of the combined representation of African Americans, American Indians, Asians, Filipinos, and Latinos and six and nine-tenths percent (6.9%) of women in their respective construction trade labor forces.

Catellus shall ensure that its prime contractor and each subcontractor shall use affirmative actions to employ such percentages of their respective aggregate construction labor forces in each trade on all construction work by them on the Site and on off-site construction undertaken by Catellus. The hours of employment and training of women, African Americans, American Indians, Asians, Filipinos, and Latinos must be substantially uniform throughout the length of the contract, and in each trade. Catellus shall ensure that its prime contractor and subcontractors make good-faith efforts to employ, train and promote women and members of the identified ethnic groups. The transfer of employees and trainees from contract to contract or from project to project for the sole purpose of meeting the contractor's goals shall be a violation of this Section.

Reporting Requirements

A. Consultant and Construction Contracting

Prior to the commencement of any design or construction work for a discrete phase of rehabilitation and/or development on the Site, Catellus shall submit to the Agency two separate reports, as applicable, specifying the MBE/WBE percentage achieved in 1) the consultant category and 2) in the construction category. Certified MBE and WBE vendors may be utilized to supplement MBE/WBE goal attainment in each category. MBE and WBE goals are to be met or attempted to be made up-front for each category. If MBE and WBE goals are not met in a category, good-faith documentation must be submitted with Catellus' goal attainment for such category.

Following submission of the initial MBE/WBE utilization report, quarterly reports shall be submitted until the completion of all payments for the category of work for the discrete phase of rehabilitation and/or development on the Site. Quarterly

reports are due within thirty (30) days of the end of the quarter. The quarterly reports shall contain: 1) the total dollar amount paid for consulting or contractor services during the quarter; and 2) a listing of each MBE and WBE consultant, contractor, subconsultant, subcontractor, and/or vendor utilized in the work for the quarter, to include name, business address, telephone number, whether the reported firm is an MBE or a WBE firm (identifying the certifying entity), the area of service per firm, and the dollar amount paid during the quarter.

B. On-Site Construction Labor Force Employment

Catellus shall maintain:

(1) Monthly written reports containing (a) affirmative actions taken by its prime contractors and each subcontractor to recruit women, African Americans, Asians, American Indians, Filipinos, and Latinos for construction work on the Site, and (b) employment utilization reports for its prime contractors and subcontractors; and

(2) The Agency's employment utilization and employment identification forms.

Such reports shall be prepared by Catellus' contractors and subcontractors and provided to Catellus within thirty (30) days of the preceding month. It shall be Catellus' responsibility to ensure compliance with these reporting requirements.

The Agency may request copies of such reports, at Catellus' expense, at any time during construction work on the Site and may enter the Site at reasonable times during construction to monitor compliance with this Section.

Recording Requested by:

CITY OF SAN DIEGO

When Recorded Mail To:

CITY OF SAN DIEGO
c/o Civic San Diego
401 B. Street, Fourth Floor
San Diego, California 92101
Attention: Brad Richter

FREE RECORDING
GOVERNMENT CODE
SECTION 6103

DEVELOPMENT AGREEMENT

by and among

CITY OF SAN DIEGO,

THE IRVINE COMPANY LLC,

and

BOSA DEVELOPMENT CALIFORNIA II, INC.

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the "Agreement") is executed this ____ day of _____, 2012, by and among: (1) CITY OF SAN DIEGO ("City"), (2) THE IRVINE COMPANY LLC ("Irvine") and (3) BOSA DEVELOPMENT CALIFORNIA II, INC. ("Bosa"). Irvine and Bosa together shall be referred to as "Landowners." The Landowners and City collectively shall be referred to as "Parties".

RECITALS

- A. In 1983, the City and Catellus Development Corporation, a Delaware corporation, formerly known as Santa Fe Pacific Realty Corporation, a Delaware corporation, a successor by merger to Santa Fe Land Improvement Company, a California Corporation, entered into a Development Agreement dated as of April 25, 1983 and recorded June 9, 1983 for the development of certain property within the City of San Diego generally bordered by, but not all inclusive of, Ash Street to the north, Kettner Boulevard to the east, E Street to the south, and Pacific Highway to the west (the "Catellus Site").
- B. Catellus Development Corporation, predecessor in interest to Catellus Operating Limited Partnership, a Delaware limited liability company ("COLP"), and the City are the parties to that certain Amended and Restated Development Agreement dated April 9, 1993, adopted by the City Council on December 8, 1992, by Ordinance Number 0-17881 and recorded in the Office of the County Recorder of San Diego County, California, as Document No. 1993-0459374, on July 19, 1993, as amended by that certain First Amendment to Development Agreement, signed by Catellus Development Corporation on November 12, 1995, and signed by the City on March 5, 1996; that certain Second Amendment to Development Agreement, dated December 4, 1997, and recorded in the Office of the County Recorder of San Diego County, as Document No. 1998-0406402, on July 1, 1998; that certain Third Amendment to Development Agreement, dated February 18, 2003, and recorded in the Office of the County Recorder of San Diego County, as Document No. 2003-0190135, on February 19, 2003; and that certain Fourth Amendment to Development Agreement dated as of July 12, 2004, and recorded in the Office of the County Recorder of San Diego County, as Document No. 2004-0711679, on July 29, 2004, (as amended, the "Catellus Development Agreement").
- C. The Catellus Development Agreement applies to the Catellus Site, that being certain property owned by Catellus at the time of the Catellus Development Agreement. The parties to the Catellus Development Agreement decided in 1983 and reaffirmed in 1992 that special development regulations should apply to this unique property and that those regulations should be preserved so that the Catellus Site could be developed over a period of time in a consistent and organized manner, preserving certain design intensities, features, and characteristics that would apply throughout the Catellus Site.
- D. In 2003, Bosa purchased certain property described on Exhibit A attached hereto (the "880 W. Broadway Site") from Catellus and in connection therewith assumed certain obligations under the Catellus Development Agreement relating to the 880 W. Broadway Site pursuant to that certain Development Agreement Assignment and Assumption of Interest and Obligations dated December 1, 2003, by and between Bosa and Catellus.

- E. On January 11, 2007, Irvine acquired the 880 W. Broadway Site from Bosa pursuant to that certain Purchase Agreement and Joint Escrow Instructions dated September 5, 2006, by and between Bosa and Irvine, as amended. In connection therewith, Irvine assumed all of Bosa's rights, title, and interests in connection with the 880 W. Broadway Site pursuant to that certain Development Agreement Assignment and Assumption of Interests and Obligations, dated January 11, 2007, by and between Bosa and Irvine.
- F. On June 12, 2008, the Centre City Development Corporation issued Centre City Development Permit and Coastal Development Permit No. 2007-19 for a proposed office building on the 880 W. Broadway Site (the "880 W. Broadway Building").
- G. On August 15, 2003, Bosa acquired the "Pacific and Broadway Site," as described in Exhibit B, pursuant to that certain Agreement of Purchase and Sale and Joint Escrow Instructions for Santa Fe Depot Parcel 9, dated December 31, 2002, as amended from time to time, by and between Bosa and COLP, and in connection therewith Bosa assumed certain obligations under the Catellus Development Agreement relating to the Pacific and Broadway Site pursuant to that certain Development Agreement Assignment and Assumption of Interest and Obligations dated August 15, 2003, by and between Bosa and COLP.
- H. On August 7, 2012, the Centre City Development Corporation issued Centre City Development Permit and Coastal Development Permit No. 2012-23 for a proposed residential building on the Pacific and Broadway Site (the "Pacific and Broadway Building").
- I. Pursuant to that certain Assignment and Assumption of Sale Agreements (Santa Fe Depot) dated November 2004, by and between COLP and FOCIL-SFD, LLC, a Delaware limited liability company ("FOCIL"), COLP assigned to FOCIL all of COLP's right, title and interest in and to all existing purchase and sale contracts for all parcels comprising the Catellus Site. Thereafter, (i) Bosa acquired from FOCIL the "Option Parcel" described in the Catellus Development Agreement pursuant to that certain Agreement of Purchase and Sale and Joint Escrow Instructions for Santa Fe Depot Parcel 5, dated March 15, 2004, by and between Bosa and COLP, as amended from time to time, and in connection therewith Bosa assumed certain obligations under the Catellus Development Agreement relating to the Option Parcel pursuant to that certain Development Agreement Assignment and Assumption of Interest and Obligations dated October 17, 2005, by and between Bosa and FOCIL, and (ii) Bosa acquired from a third party the "Ash/Kettner Parcel" described in the Catellus Development Agreement. The Option Parcel and the Ash/Kettner Parcel (collectively hereinafter referred to as the "Kettner and Ash Site" and as described in Exhibit C) are being developed as a single project pursuant to the Catellus Development Agreement.
- J. On March 10, 2012, the Centre City Development Corporation issued Centre City Development Permit and Coastal Development Permit No. 2011-14 for a proposed residential building on the Kettner and Ash Site (the "Kettner and Ash Building").
- K. The Catellus Development Agreement expires on December 7, 2012. The Pacific and Broadway Site, the Kettner and Ash Site and the 880 W. Broadway Site (the "Undeveloped Sites," as illustrated in Exhibit D) remain undeveloped due to current market conditions, and it is uncertain when their development may occur. However, each of the Undeveloped Sites

have approvals for development that were issued under the rules and regulations contained in the Catellus Development Agreement, and the Landowners wish to ensure that certain development regulations contained in the Catellus Development Agreement that are in effect through December 7, 2012, continue to govern such approved developments. Additionally, the City desires to ensure that certain key development regulations in force for the Catellus Site through December 7, 2012, under the Catellus Development Agreement should continue in effect for the Undeveloped Sites to accomplish the original purposes of consistent and harmonious development such that the Undeveloped Sites will remain consistent with the previously developed portions of the Catellus Site. Among other things, this will insure appropriate and consistent development along the railroad corridor and Pacific Highway at a development pattern and intensity which complements these existing developed portions. At the same time, the City also desires to update certain development regulations and set forth all the regulations applicable to the Undeveloped Sites in a clear and consistent manner.

- L. The Parties intend to enter into a new and separate Agreement and do not wish to amend or extend the prior Catellus Development Agreement. By entering into a new and separate Agreement, the Parties intend to keep in place certain Development Regulations (defined below) which are now in force for the Undeveloped Sites and will be in effect for the Undeveloped Sites at the time that this new and separate Agreement is executed.
- M. The continuation of such entitlements and Development Regulations will not affect the Catellus Development Agreement. Pursuant to Government Code Section 65866, the parties to a development agreement may provide that, unless otherwise specified, "the rules, regulations and official policies governing permitted uses of the land, governing density, and governing design, improvement, and construction standards and specifications, applicable to development of the property subject to a development agreement, shall be those rules, regulations and policies in force at the time of execution of the agreement." The Parties intend that this Agreement shall be executed by the City on the Effective Date (as defined below), which Effective Date shall be during the term of the Catellus Development Agreement to continue without lapse those specified rules and regulations concerning development of the Undeveloped Sites originally set forth for such Undeveloped Sites in the Catellus Development Agreement.
- N. The City finds that this Agreement provides for significant benefits to the City that could not be derived or provided except through this Agreement including: the coordinated development of multiple, individually owned sites in conformance with the Centre City Community Plan's population and employment goals; monetary contributions for future installation of Pacific Highway median improvements to be constructed by the City; the completion of Transit Courtyard improvements; the provision of enhanced public plazas along Broadway; the inclusion of public art within the development projects; and the upgrading of existing parking lots with landscaping and lighting.
- O. The City finds that this Agreement is consistent with the City of San Diego's General Plan and Local Coastal Program including the Centre City Community Plan adopted in 1992, as amended through 2004, and that the City has completed all necessary proceedings in accordance with the City's rules and regulations for its approval. Additionally, the City finds that the 1992 Centre City Planned Development Ordinance, as amended through 2004 (and

also part of the City's Local Coastal Program), provides that the Catellus Development Agreement shall govern the development of the Undeveloped Sites where conflicts with the Centre City Planned District Ordinance occur. The City finds that this Agreement provides for the build-out of the Undeveloped Sites in the manner contemplated by the Catellus Development Agreement.

AGREEMENT

NOW, THEREFORE, City and Landowners agree as follows:

1. Purpose. The purpose of this Agreement is to accomplish the objectives set forth in the Recitals to this Agreement, to set forth the terms and conditions for how the Undeveloped Sites may be developed by the Landowners, and to assure the Landowners that the Undeveloped Sites can be developed in accordance with the Development Regulations described in this Agreement.
2. Property. This Agreement shall apply to the Undeveloped Sites.
3. Effective Date; Term. This Agreement shall not become effective and no Party shall have any rights or obligations hereunder until the "Effective Date," which for purposes of this Agreement shall mean the thirty-first (31st) day following the approval or adoption of this Agreement by the City Council and signature by the City. The term of this Agreement ("Term") shall commence on the Effective Date and shall continue thereafter until the earlier of the following: (i) the date that is ten (10) years after the Effective Date; or (ii) the date this Agreement is terminated pursuant to Section 15 or 17.1 of this Agreement. The Parties shall each execute this Agreement on or before the Effective Date.
4. Scope of Development.
 - 4.1. Land Uses. The land uses permitted within the Undeveloped Sites shall be those land uses contemplated by the City for the original development of the Catellus Site, including but not limited to office, retail, hotel, and residential uses, subject to the limitations stated in Sections 4.1.1, 4.1.2 and 4.1.3. For purposes of this section, commercial lease space shall contain commercial uses that are accessible to the general public, that generate walk-in clientele, and that contribute to a high-level of pedestrian activity including retail shops, restaurants, bars, theaters and the performing arts, commercial recreation and entertainment, personal and convenience services, banks, travel agencies, museums, and galleries.
 - 4.1.1. 880 W. Broadway Site Land Use. Any development of the 880 W. Broadway Site other than the 880 W. Broadway Building or a building that is in "Substantial Conformance" (as defined in the City's Development Services Information Bulletin 500, dated May 2012) with the 880 W. Broadway Building that is applied for before June 30, 2017, shall provide a minimum of fifty (50) percent of its gross floor area in commercial (non-residential) uses. No development permit application proposing less than fifty (50) percent commercial land uses on the 880 W. Broadway Site shall be submitted prior to this date without a proposed amendment to this Agreement. Any development of the 880 W. Broadway Site shall provide at least one hundred

(100) percent of the building ground floor frontage facing Broadway with commercial uses, including but not limited to office or hotel lobby or commercial lease space. Such commercial space shall maintain a minimum average depth of twenty-five (25) feet and a minimum ground floor height of twenty (20) feet, measured from the finished floor of the ground floor to the finished floor of the second floor.

4.1.2. Pacific and Broadway Site Land Use. Any development of the Pacific and Broadway Site shall provide that one hundred (100) percent of the building ground floor frontage facing Broadway shall be used only for commercial purposes, including but not limited to office or hotel lobby or commercial lease space. Such commercial space shall maintain a minimum average depth of twenty-five (25) feet and a minimum ground floor height of twenty (20) feet, measured from the finished floor of the ground floor to the finished floor of the second floor.

4.1.3. Kettner and Ash Site Land Use. Any development of the Kettner and Ash Site shall provide commercial lease space along at least sixty (60) percent of the building frontage along Ash Street. Such commercial lease space shall maintain a minimum average depth of twenty-five (25) feet and a minimum ground floor height of thirteen (13) feet, measured from the finished floor of the ground floor to the finished floor of the second floor.

4.2. Building Area. The following maximum building gross floor areas permitted for each of the Undeveloped Sites are as follows:

880 W. Broadway Site	684,955 square feet
Kettner and Ash Site	585,000 square feet
Pacific and Broadway Site	515,533 square feet

A minimum floor area ratio of 4.0 shall apply to the Undeveloped Sites.

4.3. Building Height. The following maximum building heights permitted for each of the Undeveloped Sites shall apply:

880 W. Broadway Site	500 feet above mean sea level (“ <u>msl</u> ”)
Kettner and Ash Site	420 feet above msl
Pacific and Broadway Site	500 feet above msl

4.4. View Corridor Setbacks. The following view corridor building setbacks, measured from the property line abutting existing or previously existing right of way lines, including linear extensions of right of ways existing to the east, shall apply to the Undeveloped Sites:

Broadway	50 feet at ground level
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C Street	25 feet at a height of 50 feet above grade
B Street	25 feet at a height of 50 feet above grade
A Street	25 feet at a height of 50 feet above grade
Ash Street	25 feet at a height of 50 feet above grade
Pacific Highway	15 feet at a height of between 45 and 130 feet above grade

4.5. Tower Standards. Any portion of a building tower constructed on the Undeveloped Sites located above a height of eighty-five (85) feet shall not exceed a north-south building dimension of one hundred forty (140) feet, measured in elevation drawings (not including balconies with glass railings). Any two towers on an individual Undeveloped Site shall be separated by a minimum dimension of seventy-five (75) feet.

4.6. Parking. The Catellus Development Agreement did not provide for any minimum requirements but did establish certain maximum parking requirements for the Undeveloped Sites. However, the parking maximums were voided when the Centre City Planned District Ordinance was amended in 1998 to delete any parking maximums within the Downtown area. The parking regulations, consistent with existing approvals for the Undeveloped Sites, shall be as follows:

4.6.1. There shall be no maximum parking requirements.

4.6.2. Minimum parking requirements shall be as follows:

4.6.2.1. Residential Use: One parking space per residential unit shall be required.

4.6.2.2. Hotel Use: 0.3 parking spaces per hotel room shall be required.

4.6.2.3. Commercial Office Use: One space per 1,000 square feet of gross commercial office space shall be required.

Ground floor retail space shall be considered accessory to the primary uses of the building and Landowners shall not be required to provide parking for ground floor retail space.

4.7. Design Guidelines. As of the Effective Date of this Agreement, each of the Undeveloped Sites have approved Centre City and Coastal Development Permits (individually, "Permit" and collectively "Permits") as listed in Recitals F, H, and J of this Agreement. These Permits, including the building designs approved with such permits, shall be valid for the time periods specified in each Permit, including any extensions approved under provisions of the City Municipal Code or other City ordinance, including any alterations determined to be in Substantial Conformance with any such approvals as provided for in the City Municipal Code. If such Permits expire, the Landowners shall be permitted to submit new Permit applications in Substantial Conformance with the previous approvals. The submittal of new development Permit applications not in Substantial Conformance with the previous approvals, including alterations to existing Permits found not to be in Substantial Conformance with previous

approvals, shall be required to obtain new or amended Permits. The design of such developments shall conform to the Scope of Development provisions set forth in Section 4 of this Agreement and the Downtown Design Guidelines approved by the City Council by Resolution R-307143 in November, 2011.

5. Interim Parking Lot Improvement Obligations. Each Landowner agrees to fund and construct with respect to its Undeveloped Site(s) the following interim parking lot improvements: (1) One tree, minimum thirty-six (36) inch container size, shall be planted for every twelve (12) parking stalls; (2) Along all public street frontages, a thirty-six (36) inch high black or green vinyl-coated chain link fence with pedestrian gaps of no more than every one hundred (100) feet; (3) Security lighting in compliance with City standards in effect on the Effective Date of this Agreement. The improvements described in this section shall be required to be installed at each Undeveloped Site (a) no later than twelve (12) months after the Effective Date of this Agreement unless a construction permit application (at minimum, grading and shoring) has been submitted to the City for plan check during such twelve (12) month period with respect to such Undeveloped Site; or (b) no later than twenty-four (24) months after the Effective Date of this Agreement if (a) above is satisfied unless a construction permit (at minimum, grading and shoring) has been issued by the City during such twenty-four (24) month period with respect to such Undeveloped Site.
6. Median Obligations. As part of the North Embarcadero Visionary Plan implementation, the City plans on constructing medians within Pacific Highway concurrently with installation of other street improvements. These street improvements are dependent on the acquisition of additional right-of-way on properties under the jurisdiction of the San Diego Port District and United States Navy and such dedication may not occur until after development on the Undeveloped Sites. Therefore, the Landowners agree to pay to City fifty (50) percent of the cost of installing a median on Pacific Highway between Ash Street and E Street within thirty (30) days after the City provides Landowners with written notice that contracts for the work have been entered into by the City. The payment shall be for the City's actual costs for plans, specifications, permits, and/or construction, as documented by the City in written notice to Landowners. Bosa shall pay eighty (80) percent, and Irvine shall pay twenty (20) percent, of the Landowners' obligation under this paragraph, and neither Bosa nor Irvine shall be liable for the portion owed by the other party. The City shall not solicit bids for the work described in this paragraph without first providing a copy of the proposed bid specifications to Landowners at least fifteen (15) days prior to the publication thereof, and during such fifteen (15) day period, the City shall give good faith consideration to comments which Landowners may make regarding the proposed bid specifications. Landowners' sole obligation with respect to the improvements described in this paragraph shall be to provide the funds set forth in this paragraph. Landowners shall have no obligation to provide plans for such improvements and shall have no responsibility for their construction. Each of the Landowners may separately agree with the City on a cash payment or other alternative performance to satisfy this condition.
7. Street Frontage Improvement Obligations. Each Landowner shall design and construct public improvements along the street frontages of each such Landowner's respective Undeveloped Site(s), including but not limited to, curbs, gutters, sidewalks, street trees, and street lighting to current City standards at the time of development of each Undeveloped Site.

8. Transit Courtyard/Linear Park Obligations. Bosa and Irvine shall each construct a minimum twelve-foot wide pedestrian pathway along the rail corridor (located along the west frontage of the Kettner and Ash Site and eastern frontage of the 880 W. Broadway Site, respectively) adjoining such Landowner's respective Undeveloped Site(s) compatible with adjoining pathways constructed by adjoining developments. The paving materials shall be concrete pavers to match existing adjoining materials. Each development shall incorporate a pedestrian arcade, building canopy projections, or other pedestrian coverings which complement those of adjoining developments and existing approvals. Bosa shall provide enhanced architectural treatment of the Pacific and Broadway Building along the Linear Park and design private improvements which complement the existing Linear Park improvements. The Parties agree that the approved Permits meet the requirements in this section. Irvine shall not be responsible for the transit corridor obligations of Bosa, and Bosa shall not be responsible for the transit corridor obligations of Irvine.
9. Public Art Obligations. Each Landowner shall develop a fine arts program that will result in the provision of publicly accessible works of public art with the development of each Undeveloped Site. The fine arts program shall provide for the provision of funds equivalent to one percent of the assessed value of land and proposed building at the time of issuance of building permits for each Undeveloped Site. The Parties agree that the approved Permits meet the requirements in this section. Each Landowner shall be required to provide the specifics of each piece of public art to be installed with each development to Civic San Diego and/or the City prior to the issuance of a construction permit for each Undeveloped Site. The public art for each development shall be installed at the completion of development prior to the issuance of a certificate of occupancy.

Irvine shall not be responsible for the public art obligations of Bosa, and Bosa shall not be responsible for the public art obligations of Irvine. Bosa has previously submitted and received approval of a Public Art Master Plan in 2007 for the properties currently and previously owned by Bosa and/or its affiliates (including the Pacific and Broadway and Kettner and Ash Sites, as well as the previously developed Grande North, Grand South and Bayside sites). However, Bosa or its affiliates have not met this obligation with respect to the Grande North development. Therefore, consistent with the previous Public Art Master Plan approval, Bosa shall expend, or cause its affiliates to expend, a minimum of \$563,805 for public art within, or adjacent to, the former Catellus Site, including but not limited to the Grande North site and the two Undeveloped Sites owned by Bosa. Bosa shall provide the specifics of the public art to be so installed to Civic San Diego and/or the City, and such plan shall be approved by Civic San Diego and/or the City, prior to the issuance of a construction permit for the next Undeveloped Site to be developed by Bosa. Such public art shall be installed at the completion of development of such Undeveloped Site prior to the issuance of a certificate of occupancy therefor.

The obligations for each Undeveloped Site under this section may be satisfied through the provision of public art on each Undeveloped Site or combined in a single or multiple locations within the area covered by this Agreement as approved by Civic San Diego and/or the City. The public art obligations set forth in this section shall be offset by the credits described in Exhibit E.

10. Development Regulations. The rules, regulations, and official policies governing the permitted uses of land, density, design, and improvement of the Undeveloped Sites (the "Development Regulations") shall be those set forth in Section 4 of this Agreement, and to the extent they are consistent with the terms of this Agreement, the 1992 Planned District Ordinance, as amended through 2004. These Development Regulations shall not be changed during the Term of this Agreement except upon mutual consent of the City and Landowners with respect to each Landowner's respective Undeveloped Site(s).
 - 10.1. Changes in Building and Fire Codes. Notwithstanding any provision of this Agreement to the contrary, development of the Undeveloped Sites shall be subject to changes which may occur from time to time in the California Building Standards and Fire Codes, as such Codes are adopted by the City of San Diego.
 - 10.2. Changes Mandated by Federal or State Law. This Agreement shall not preclude the application to development of the Undeveloped Sites of changes in, or additions to, state and federal laws and regulations. In the event state or federal laws or regulations prevent or preclude compliance with one or more provisions of this Agreement, such provisions shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations.
11. Subsequent Approvals and Permits and Acts of the City. Except as otherwise set forth in this Agreement, City shall not require Landowners to obtain any further approvals or permits for the development of the Undeveloped Sites in accordance with this Agreement during the term of the Agreement unless such permits or approvals are required by the Development Regulations or by the terms of this Agreement. As set forth in Section 4.7, Landowners shall be required to obtain Coastal Development Permits and Centre City Development Permits for new development of the Undeveloped Sites or development that is not in Substantial Conformance with the previous approvals. The procedures for obtaining such Permits shall be those procedures set forth in the City Municipal Code in effect on the Effective Date of this Agreement. Such developments shall also be required to undergo design review for conformance with the requirements of this Agreement. In the event any further approvals or permits are required by the City for the development of the Undeveloped Sites during the term of this Agreement, the City agrees to grant all such approvals and permits to Landowners provided: (1) the development authorized by such permit or approval is in substantial accordance with this Agreement; and (2) Landowners have complied with the rules, regulations, and official policies for obtaining such approvals or permits set forth in the Development Regulations and as otherwise provided in this Agreement. This paragraph shall not prevent the City from exercising such discretion as it may have under the Development Regulations. The City agrees that the terms, conditions, and requirements for such permits or approvals shall not prevent Landowners' development of the Undeveloped Sites in substantial accordance with the terms of this Agreement.
12. Police Power. In all respects not provided for in this Agreement, City shall retain full rights to exercise its police power to regulate the development of each Landowner's respective Undeveloped Site(s). Any uses or developments requiring a use permit, tentative tract map, or other discretionary permit or approval in accordance with the Development Regulations shall require a permit or approval pursuant to this Agreement, and, notwithstanding any other

provision set forth herein, this Agreement is not intended to vest Landowners' rights to the issuance of such permit or approval nor to restrict City's exercise of discretion with respect thereto, provided that pursuant to Government Code section 65865.2, "such conditions, terms, restrictions, and requirements for subsequent discretionary actions shall not prevent development of the land for the uses and to the density or intensity of development" set forth in this Agreement. Not by way of limitation of the foregoing, it is specifically understood that City reserves the right to amend, pursuant to procedures provided by law and this Agreement, City laws, rules, regulations, and policies applicable to the Undeveloped Sites as to which Landowners' rights are not expressly vested and such amendment or amendments shall be binding on the Undeveloped Sites except to the extent that the same conflict with the express provisions of this Agreement, which provide, inter alia, that no amendment to the Development Regulations shall be applicable if not agreed to by Landowner in writing pursuant to Section 15 of this Agreement or as authorized by Section 17.1 of this Agreement.

13. Tentative Subdivision Maps. City agrees that Landowners may file and process new and existing vesting tentative maps for any of the Undeveloped Sites consistent with California Government Code sections 66498.1-66498.9. Pursuant to the applicable provision of the California Subdivision Map Act (California Government Code section 66452.6(a)), any tentative subdivision map approved for any of the Undeveloped Sites, whether designated a "vesting tentative map" or otherwise, shall be extended for the Term of this Agreement.
14. No Third Party Beneficiaries. The only parties to this Agreement are City, Bosa, and Irvine. This Agreement does not involve any third party beneficiaries, and it is not intended and shall not be construed to benefit or be enforceable by any other person or entity.
15. Amendments or Cancellation of This Agreement. Except as otherwise permitted herein, this Agreement may be amended or terminated only by the mutual written and executed consent of the City and of the Landowner(s) whose property may be affected by the amendment and only in the same manner as its adoption by an ordinance as set forth in Government Code sections 65867, 65867.5, and 65868, and City Municipal Code sections 124.0104 and 124.0108. Notwithstanding the foregoing, this Agreement may be amended or terminated with respect to an Undeveloped Site, without affecting the rights and obligations of the Landowner(s) of the other Undeveloped Sites, by the mutual written and executed consent of the City and the Landowner of such Undeveloped Site, and in the same manner as its adoption by an ordinance as set forth in Government Code sections 65867, 65867.5, and 65868, and City Municipal Code sections 124.0104 and 124.0108.
16. Periodic Review. The City shall review Landowners' performance pursuant to the terms of this Agreement at least once every twelve months during the term hereof. The City may delegate its review to Civic San Diego. During each periodic review Landowners shall demonstrate good faith compliance with the terms hereof. In connections with such review, the City shall have a reasonable opportunity to assert matters which it believes have not been undertaken in accordance with the Agreement, to explain the basis for such assertion, and to receive from Landowners a justification of their positions on such matters.
17. Events of Default.

- 17.1. Default by Landowners. Pursuant to California Government Code section 65865.1, if the City determines following a noticed public hearing and on the basis of substantial evidence that one or both Landowners have not complied in good faith with their obligations pursuant to this Agreement, City shall by written notice to any such non-complying Landowner, specify the manner in which such party has failed to comply and state the steps that such party must take to bring itself into compliance. If the non-complying party does not commence all steps reasonably necessary to bring itself into compliance as required and diligently pursue steps to completion within thirty (30) days after receipt of the written notice from City specifying the manner in which such non-complying party has failed to comply (or, if such non-compliance cannot reasonably be cured within said thirty (30) day period, failed to commence such cure within said period and thereafter diligently pursued the same to completion), then such non-complying Landowner shall be deemed to be in default under the terms of this Agreement. City may then: (1) seek a modification of this Agreement as to such party; (2) terminate this Agreement as to such party; or (3) seek any other available remedies against such party as provided in this Agreement. Notwithstanding any of the foregoing or any other provision of this Agreement, neither Bosa nor Irvine shall be liable under this Agreement for a default by the other.
- 17.2. Default by City. If City has not complied in good faith with its obligations under this Agreement, Landowners shall by written notice to City specify the manner in which City has failed to comply and shall state the steps necessary for City to bring itself into compliance. If City does not commence all steps reasonably necessary to bring itself into compliance as required and diligently pursue steps to completion within thirty days after receipt of the written notice from Landowners specifying the manner in which City has failed to comply, then City shall be deemed to be in default under the terms of this Agreement. Landowners may then exercise any of all of the following remedies: (1) seek a modification of this Agreement; or (2) seek a specific performance or similar equitable remedy as provided in Section 17.3 of this Agreement.
- 17.3. Specific Performance and Damages Remedies. The Parties acknowledge that, except as provided in this Section 17.3 and in Section 17.4 of this Agreement, money damages and remedies at law generally are inadequate and that specific performance is appropriate for the enforcement of this Agreement. The remedy of specific performance or, in the alternative, a writ of mandate, shall be the sole and exclusive remedy available to either Party in the event of the default or alleged default by the other, with the exception that City shall be entitled to damages against a Landowner for such Landowner's breach of its obligations under Section 19 of this Agreement. The limitations on the remedy of damages in this Agreement shall not prevent City from enforcing a Landowner's monetary obligations hereunder.
- 17.4. Recovery of Legal Expenses by Prevailing Party in Any Action. If any legal action is brought by any party to this Agreement as a result of any breach of this Agreement or to enforce any provision of this Agreement, the prevailing party shall be entitled to recover all expenses incurred therefor including reasonable attorneys' fees and court costs.

18. Force Majeure. No party to this Agreement shall be deemed to be in default where failure or delay in performance of any of its obligations under this Agreement is caused, through no fault of the party whose performance is prevented or delayed, by floods, earthquakes, other acts of God, fires, wars, riots or similar hostilities, strikes or other labor difficulties, state or federal regulations, or court actions. Except as specified above, nonperformance shall not be excused because of the act or omission of a third person.
19. Hold Harmless. Each Landowner agrees to indemnify, defend, and hold harmless the City, its officers, agents, employees, and representatives from liability for damage or claims for damage for personal injury including death and claims for property damage which may arise from the direct and indirect operations of such Landowner or those of its contractors, subcontractors, agents, employees, or other persons acting on its behalf which relate to the development of such Landowner's Undeveloped Site(s). Such obligation shall not be joint and several, and each Landowner shall be liable only for its own actions, and those of its own contractors, agents, employees and other persons acting on its behalf in connection with its own Undeveloped Site(s). City shall have the right to select and retain counsel to defend any actions, and, subject to the foregoing sentence, Landowners shall pay the reasonable cost for this defense. The provisions of this paragraph shall not apply to the extent such damage, liability, or claim is proximately caused by the intentional or negligent act of the City or its officers, agents, employees, or representatives. The indemnity provisions in this paragraph shall survive termination of this Agreement.

Landowners shall defend, indemnify, and hold harmless the City, its agents, officers, and employees from any and all claims, actions, proceedings, damages, judgments, or costs, including attorney's fees, against the City or its agents, officers, or employees, relating to the issuance of this Development Agreement including, but not limited to, any action to attack, set aside, void, challenge, or annul this development approval and any environmental document or decision. The City will promptly notify Landowners of any claim, action, or proceeding and, if the City should fail to cooperate fully in the defense, the Landowners shall not thereafter be responsible to defend, indemnify, and hold harmless the City or its agents, officers, and employees. The City may elect to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification. In the event of such election, Landowners shall pay all of the costs related thereto, including without limitation reasonable attorney's fees and costs. In the event of a disagreement between the City and Landowners regarding litigation issues, the City shall have the authority to control the litigation and make litigation related decisions, including, but not limited to, settlement or other disposition of the matter. However, the Landowners shall not be required to pay or perform any settlement unless such settlement is approved by Landowners. The indemnity provisions in this paragraph shall survive termination of this Agreement.

20. Fees. This Agreement does not preclude the inclusion of and changes to facility benefit assessments, facility financing plans, development impact fees or other related fees adopted on a community or City-wide basis where such inclusion or change is caused by inflation, later more accurate cost estimation, later commonly accepted higher standards of construction or to address community facility deficiencies arising from and attributing to unforeseen circumstances in the development of the Undeveloped Sites.

21. Assignment. The rights and obligations of Landowners under this Agreement may be transferred or assigned, provided such transfer or assignment is made as part of a transfer, assignment, sale or lease of all of any portion of the Undeveloped Sites, provided that no partial transfer shall violate the Subdivision Map Act (California Government Code sections 66410-66499.58). Any such transfer or assignment shall be subject to the provisions of this Agreement and the controls and limitations contained herein, including but not limited to use, height, intensity, and design review restrictions. Any sale or transfer shall include the assignment and assumption of the rights, duties, and obligations arising from this Agreement to the transferee with respect to the part of the Undeveloped Sites transferred. Irvine or Bosa, as applicable, shall no longer be obligated under this Agreement for the part of the Undeveloped Sites that was sold or transferred if Irvine or Bosa, as applicable, is not in default under this Agreement at the time of the sale or transfer.
22. Agreement Binding on Successors and Assigns. The burdens of this Agreement are binding upon, and the benefits of this Agreement inure to, all successors of interest of the Parties to this Agreement, and constitute covenants that run with the Undeveloped Sites. In order to provide continued notice, the Parties will record this Agreement and any subsequent amendments.
23. Relationship of Parties. The Parties acknowledge that Landowners are not agents of the City and the City is not an agent of either or both the Landowners.
24. Notices. Any notice or demand that shall be required or permitted by law or any provision of this Agreement shall be in writing. If the notice or demand will be served upon a Party, it either shall be personally delivered to the Party; deposited in the United States mail, certified, return receipt requested, and postage prepaid; or delivered by a reliable courier service that provides a receipt showing date and time of delivery with courier charges prepaid. The notice or demand shall be addressed as follows:

TO CITY:

City of San Diego
Office of the City Attorney
1200 Third Avenue
Suite 1620
San Diego, California
Attn: City Attorney

TO IRVINE:

The Irvine Company LLC
550 Newport Center Drive
Newport Beach, California 92660-0015
Attn: General Counsel

TO BOSA:

Bosa Development California II, Inc.
#500 – 1901 Rosser Avenue
Burnaby B.C. V5C6S3
Canada
Attn: Richard Weir

25. Severability. If any provisions of this Agreement shall be held to be invalid by a court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby, unless the court shall specifically find that the invalid part of so fundamental and essential to the understanding of the Parties that the entire Agreement shall be invalidated.
26. Waiver. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. No waiver of any right or remedy in respect to any occurrence or event shall be deemed a waiver of any right or remedy in respect to any other occurrence or event.
27. Applicable Law. The laws of the State of California shall govern the interpretation and enforcement of this Agreement.
28. Time Is of the Essence. Time is of the essence regarding each provision of this Agreement in which time is an element.
29. Notice of Intention. In enacting this Agreement, the City has provided for public notice and hearing in the manner provided by California Government Code Section 65867.
30. Compliance with California Government Code Section 65867.5. California Government Code Section 65867.5 provides that a development agreement is a legislative act that shall be approved by ordinance and subject to referendum. A development agreement shall not be approved unless the legislative body finds that the provisions of the agreement are consistent with the general plan and any applicable specific plan. These requirements of California Government Code Section 65867.5 have been satisfied by the City's finding that this Agreement is consistent with the City's General Plan and certified Local Coastal Program including the Centre City Community Plan and Centre City Planned District Ordinance, and the City's approval of this Agreement by ordinance.
31. Section Headings. All section headings are inserted for convenience only and shall not affect construction or interpretation of this Agreement.
32. Incorporation of Exhibits. The following exhibits are attached to this Agreement and incorporated by this reference as follows:

EXHIBIT DESIGNATION	DESCRIPTION
A	Legal Description of the 880 W. Broadway Site
B	Legal Description of the Pacific and Broadway Site

EXHIBIT DESIGNATION	DESCRIPTION
C	Legal Description of the Kettner and Ash Site
D	Illustration of Undeveloped Sites
E	Arts Fee Summary

33. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be identical and may be introduced in evidence or used for any other purpose without any other counterpart, but all of which shall together constitute one and the same Agreement.
34. Authority to Execute. The persons executing this Agreement warrant and represent that they have the authority to execute this Agreement on behalf of the party for which they are executing this Agreement. They further warrant and represent that they have the authority to bind their respective party to the performance of its obligations under this Agreement.
35. Recordation. This Agreement and any amendment, modification, or cancellation to it shall be recorded in the Office of the County Recorder of the County of San Diego in the period required by California Government Code Section 65868.5 and City of San Diego Municipal Code Section 124.0105.
36. Date of Agreement. The date of this Agreement shall be the date when the Agreement shall have been executed by the City.

[SIGNATURE PAGE FOLLOWS]

**SIGNATURE PAGE TO
DEVELOPMENT AGREEMENT**

“IRVINE”

THE IRVINE COMPANY LLC

By: _____

Its:

“BOSA”

BOSA DEVELOPMENT CALIFORNIA II,
INC.

By: _____

Its:

“CITY”

CITY OF SAN DIEGO

By: _____

Its: Mayor

APPROVED AS TO FORM AND LEGALITY:
JAN GOLDSMITH
CITY ATTORNEY

BY: _____
Deputy City Attorney

State of California)
County of San Diego)

On _____ before me,

_____, personally

appeared _____

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

State of California)
County of San Diego)

On _____ before me,

_____, personally

appeared _____

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

State of California)
County of San Diego)

On _____ before me,

_____, personally

appeared _____

_____ ,

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT A TO DEVELOPMENT AGREEMENT

Description of Real Property – 880 W. Broadway Site

Real property in the City of San Diego, County of San Diego, State of California, described as follows:

Parcel A:

Parcel 1 of parcel Map No. 18898 filed in the Office of the County Recorder of San Diego County on February 1, 2002 as instrument no. 2002-0088451 of Official Records.

Together with that portion of Pacific Highway (formerly Atlantic Street) and the North Half of Broadway (formerly Spring Street) adjoining the above described land, as said streets are dedicated to public use, which upon closing would revert, by operation of law, to the above described land.

Excepting therefrom: All right, title, and interest in and to all water rights, coal, oil, gas and other hydrocarbons, geothermal resources, precious metals ores, base metal ores, industrial-grade silicates and carbonates, fissionable minerals of every kind and character, metallic or otherwise, whether or not presently known to Science or Industry, now known to exist or hereafter discovered upon, within or underlying the surface of said land regardless of the depth below the surface at which any such substance may be found; however, Grantor, or its successors and assigns, shall not have the right for any purpose whatsoever to enter upon, into or through the surface of the first 500 feet of the subsurface of the property in connection therewith.

Parcel B:

Those certain non-exclusive cross street and perimeter easements created by and defined in Amended and Restated Agreement Granting Street Cross-Easements and Covenants for Maintenance and Repair, recorded August 5, 2002 as instrument no. 2002-0659797 of Official Records.

Excepting therefrom any portion of said easement lying within Parcel A described above.

APN: 533-471-09-00

EXHIBIT B TO DEVELOPMENT AGREEMENT

Description of Real Property – Pacific and Broadway Site

Real property in the City of San Diego, County of San Diego, State of California, described as follows:

ALL OF PARCEL 1 OF PARCEL MAP NO. 19274, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, AS FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY ON JULY 11, 2003 AS FILE NO. 2003-0826597 OF OFFICIAL RECORDS.

TOGETHER WITH THAT PORTION OF PACIFIC HIGHWAY (FORMERLY ATLANTIC STREET), THE SOUTH HALF OF BROADWAY (FORMERLY 'D' STREET), AND THE NORTH HALF OF 'E' STREET, ADJOINING THE ABOVE DESCRIBED LAND, AS SAID STREETS ARE DEDICATED TO PUBLIC USE, WHICH UPON CLOSING WOULD REVERT, BY OPERATION OF LAW, TO THE ABOVE DESCRIBED LAND.

APN: 533-531-03-00

EXHIBIT C TO DEVELOPMENT AGREEMENT

Description of Real Property – Kettner and Ash Site

Real property in the City of San Diego, County of San Diego, State of California, described as follows:

Parcel A

Parcel 1 of Parcel Map No. 20582 in the City of San Diego, County of San Diego, State of California, filed in the Office of County Recorder of San Diego County, September 23, 2008 as Instrument No. 2008-0504099 and amended pursuant to that certain Certificate of Correction recorded December 8, 2010 as Instrument No. 2010-0677212 of Official Records.

EXHIBIT D TO DEVELOPMENT AGREEMENT

Illustration of Undeveloped Sites

EXHIBIT E TO DEVELOPMENT AGREEMENT

PUBLIC ART OBLIGATIONS

Under Section 9 of this Agreement, as was required under the Fine Art Program provisions of the previous Catellus Development Agreement applying to the Undeveloped Sites, each new development shall provide public art equivalent to 1% of the combined land value and building valuation at the time of the issuance of building permits for each development site. However, based on Catellus' previous building improvements to, and value of, the Baggage Building, there existed a \$3.2 million credit towards the future Fine Arts Program obligations. This credit was pro-rated among the development sites within the Catellus Development Agreement area. These pro-rated credits will continue to apply to the Public Art obligations of the Undeveloped Sites as follows:

880 W. Broadway	\$546,568
Kettner and Ash	\$482,741
Pacific and Broadway	\$413,361

2006 FEIR CONSISTENCY EVALUATION

FOR THE PROPOSED

**DEVELOPMENT AGREEMENT BY AND AMONG THE CITY OF SAN DIEGO, THE
IRVINE COMPANY LLC AND BOSA DEVELOPMENT CALIFORNIA II, INC.**

May 2012

Prepared by: Civic San Diego
401 B Street, Suite 400
San Diego, CA 92101

2006 FEIR CONSISTENCY EVALUATION

1. **PROJECT TITLE:** Development Agreement by and among the City of San Diego, the Irvine Company LLC and Bosa Development California II, Inc. ("Proposed DA")
2. **PARTIES TO THE DA:** City of San Diego, the Irvine Company LLC and Bosa Development California II, Inc.
3. **PROJECT LOCATION:** The Proposed DA covers three full blocks located within the Columbia neighborhood of the Centre City Planned District within the Centre City Community Plan (see map included with the Proposed DA). The blocks are more specifically described as:
 1. 880 W. Broadway – bounded by Broadway, Pacific Highway, C Street and California Street.
 2. Pacific and Broadway – bounded by Broadway, Pacific Highway, E Street and California Street.
 3. Kettner and Ash – bounded by Ash Street, Kettner Boulevard, A Street, and California Street.

The Downtown Community Plan Area encompasses approximately 1,500 acres of the metropolitan core of San Diego, bounded by Interstate 5 on the north and east and San Diego Bay on the south and southwest. Centre City is located 15 miles north of the United States International Border with Mexico.

4. PROJECT SETTING: The Final Environment Impact Report (FEIR) for the San Diego Downtown Community Plan, Centre City Planned District Ordinance (CCPDO), and 10th Amendment to the Centre City Redevelopment Plan, certified by the Redevelopment Agency on March 14, 2006 (Resolution R-04001) and subsequent addenda to the FEIR certified by the Agency on August 3, 2007 (Agency Resolution R-04193), April 21, 2010 (Agency Resolutions R-04508 and R-04510), and August 3, 2010 (Agency Resolution R-04544), and Redevelopment Plan for the Centre City Project Area describes the existing setting of Centre City including the East Village Redevelopment District. This description is hereby incorporated by reference.

Located in the highly urbanized Downtown environment, the Proposed DA applies to three separate full-block development sites (locations and lot sizes are described in the above section). All three blocks are currently paved and developed with surface parking lots. Development of the three sites (hereinafter referred to as the "Undeveloped Sites") is currently regulated under an existing development agreement, the Amended and Restated Development Agreement between the City of San Diego and the Catellus Development Corporation (the "Catellus DA"), which is set to expire on December 7, 2012. In addition to the Undeveloped Sites, the existing Catellus DA also covers 6 additional surrounding blocks which have been fully developed under the terms, conditions and regulations of the Catellus DA. These surrounding blocks include four high rise residential buildings the historic Santa Fe Depot and Baggage buildings (containing the train station/transit hub and the Museum of Contemporary art) and the historic McClintock Building (containing a mix of commercial and office uses).

5. PROJECT DESCRIPTION: The Proposed DA will establish the development standards for development of the Undeveloped Sites including, but not limited to, Maximum Building Areas; View Corridor Building Setbacks and Stepbacks; Height Limits; and Land Use requirements. The Proposed DA also contains requirements for the provision of Public Art in conjunction with future development and requirements for the provision of transit corridor improvements associated with the development of the 880 W. Broadway and Kettner and Ash blocks. A detailed description of specific development criteria and requirements is contained in the attached Proposed DA. The Proposed DA is consistent with the existing Catellus DA, and will ensure that key development regulations remain in effect for the Undeveloped Sites upon expiration of the Catellus DA. The proposed DA will ensure that the Undeveloped Sites are developed in a manner consistent with the intent of the Catellus DA and in harmony with the surrounding developments that were constructed under the Catellus DA.

It is envisioned that each of the Undeveloped Sites will be developed with high-rise structures containing one or more of the following uses: retail, office, hotel, residential or other similar commercial and residential uses. Each of the Undeveloped Sites has previously obtained Centre City and Coastal Development Permit approvals for development of the sites based on the standards and regulations of Catellus DA. The Proposed DA will allow for these existing entitlements to be constructed, or allow for the future review and approval of alternative developments if found consistent with the DA provisions. The term of the Proposed DA is ten years.

6. CEQA COMPLIANCE: The San Diego Downtown Community Plan, Centre City Planned District Ordinance, Redevelopment Plan for the Centre City Redevelopment Project, and related activities have been addressed by the following environmental documents, which were prepared prior to this Consistency Evaluation and are hereby incorporated by reference:

Final Environmental Impact Report (FEIR) for the San Diego Downtown Community Plan, Centre City Planned District Ordinance, and 10th Amendment to the Redevelopment Plan for the Centre City Project (State Clearinghouse Number 2003041001, certified by the Redevelopment Agency (Resolution No. R-04001) and the City Council (Resolution No. R-301265) on March 14, 2006.

Addendum to the FEIR for the 11th Amendment to the Redevelopment Plan for the Centre City Redevelopment Project, Amendments to the San Diego Downtown Community Plan, Centre City Planned District Ordinance, Marina Planned District Ordinance, and Mitigation, Monitoring and Reporting Program of the FEIR for the San Diego Downtown Community Plan, Centre City Planned District Ordinance, and the Redevelopment Plan for the Centre City Redevelopment Project certified by the former Redevelopment Agency by Resolution R-04193 and by the City Council by R-302932 on July 31, 2007.

Second Addendum to the FEIR for the proposed amendments to the San Diego Downtown Community Plan, Centre City Planned District Ordinance, Marina Planned District Ordinance, and Mitigation, Monitoring and Reporting Program certified by the former Redevelopment Agency by Resolution R-04508, with date of final passage on April 21, 2010.

Third Addendum to the FEIR for the Residential Emphasis District Amendments to the Centre City Planned District Ordinance certified by the former Redevelopment Agency by Resolution R-04510 with date of final passage on April 21, 2010.

Fourth Addendum to the FEIR for the San Diego Civic Center Complex Project certified by the former Redevelopment Agency by Resolution R-04544 with date of final passage on August 3, 2010.

The FEIR is a "Program EIR" as described in Section 15168 of the State CEQA Guidelines. The aforementioned environmental document is the most recent and comprehensive environmental document pertaining to the Proposed DA. The FEIR and subsequent amendments are available for review at the office of Centre City Development Corporation, 401 B Street, Suite 400, San Diego, CA 92101.

This Consistency Evaluation has been prepared for the Proposed DA to determine whether the potential impacts Proposed DA were anticipated in the FEIR. No additional documentation is required for subsequent proposed actions if the Consistency Evaluation determines that the potential impacts have been adequately addressed in the FEIR and subsequent proposed actions implement appropriate mitigation measures identified in the Mitigation Monitoring and Reporting Program (MMRP) that accompanies the FEIR.

If the Consistency Evaluation identifies new impacts or a substantial change in circumstances, additional environmental documentation is required. The form of this documentation depends upon the nature of the impacts of the subsequent action being proposed. Should a proposed action result in: a) new or substantially more severe significant impacts that are not adequately addressed in the FEIR, or b) there is a substantial change in circumstances that would require major revision to the FEIR, or c) that any mitigation measures or alternatives previously found not to be feasible or not previously considered would substantially reduce or lessen any significant effects of the project on the environment, a Subsequent or Supplement to the EIR would be prepared in accordance with Sections 15162 or 15163 of the State CEQA Guidelines (CEQA Statutes Section 21166).

If the lead agency under CEQA finds pursuant to Sections 15162 and 15163, no new significant impacts will occur or no new mitigation will be required, the lead agency can approve the subsequent proposed action as being within the scope of the project covered by the FEIR, and no new environmental document is required.

7. PROJECT-SPECIFIC ENVIRONMENTAL ANALYSIS: See attached Environmental Checklist and *Section 10 Evaluation of Environmental Impacts*.

8. MITIGATION, MONITORING AND REPORTING PROGRAM: As described in the Environmental Checklist and summarized in **Attachment A**, the following mitigation measures included in the MMRP, found in Volume 1.B.2 of the FEIR, will be implemented by future development projects that are constructed under the Proposed DA :

AQ-B.1-1; HIST-A.1-1; HIST-B.1-1; PAL-A.1-1; NOI-B.1-1; TRF-A.1.1-2

9. DETERMINATION: In accordance with Sections 15168 and 15180 of the CEQA Guidelines, the potential impacts associated with future development within the Centre City Redevelopment Project are addressed in the FEIR and the four subsequent addenda listed in Section 6 above. These documents address the potential environmental effects of future development within the Centre City Redevelopment Project based on buildout forecasts projected from the land use designations, density bonus, and other policies and regulations governing development intensity and density. Based on this analysis, the FEIR and its subsequent addenda, as listed in Section 6 above, concluded that build-out of the Downtown Community Plan would result in significant impacts related to the following issues (mitigation and type of impact shown in parentheses):

Significant but Mitigated Impacts

- Air Quality: Construction Emissions (AQ-B.1) (D)
- Paleontology: Impacts to Significant Paleontological Resources (PAL-A.1) (D/C)
- Traffic: Impact on Grid Streets (TRF-A.1.1) (D)

Significant and Not Mitigated Impacts

- Aesthetics/Visual Quality: Views of the Bay And Bay Bridge (VIS-B.1) (C)
- Air Quality: Mobile Source Emissions (AQ-A.1) (C)
- Historical Resources: Architectural (HIST-A.1) (D/C)
- Historical Resources: Archeological (HIST-B.1) (D/C)
- Water Quality: Urban Runoff (WQ-A.1) (C)
- Land Use: Physical Changes Related to Transient Activity (LU-B.6) (C)
- Noise: Exterior Traffic Level Increase on Grid Streets (NOI-A.1) (C)
- Noise: Exterior Traffic Noise in Residential Development (NOI-C.1) (D/C)
- Traffic: Impact on Surrounding Streets (TRF-A.1) (C)
- Traffic: Impact on Freeway Ramps and Segments (TRF-A.2) (C)
- Parking: Excessive Parking Demand (TRF-D.1) (C)

In certifying the FEIR and approving the San Diego Downtown Community Plan, CCPDO, and 10th Amendment to the Redevelopment Plan, the San Diego City Council and the former Redevelopment Agency adopted a Statement of Overriding Considerations which determined that the unmitigated impacts were acceptable in light of economic, legal, social, technological or other factors including the following.

Overriding Considerations

- Implement Downtown's Role As Primary Urban Center
- Relieve Growth Pressure On Outlying Communities
- Organize Balanced Mix Of Uses Around Neighborhood Centers
- Maximize Employment
- Capitalize On Transit Opportunities

The Proposed DA detailed and analyzed in this Consistency Evaluation is adequately addressed in the environmental documents noted above and there is no change in circumstance, substantial additional information, or substantial project changes to warrant additional environmental review. Because the prior environmental documents adequately covered this activity as part of the previously approved project, this activity is not a separate project for purposes of review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Sections 15060(c)(3), 15180, and 15378(c).

SUMMARY OF FINDINGS: In accordance with Public Resources Code sections 21166, 21083.3, and CEQA Guidelines sections 15168 and 15183, the following findings are derived from the environmental review documented by this Consistency Evaluation and the 2006 FEIR as amended:

1. No substantial changes are proposed in the Centre City Redevelopment Project (Project), or with respect to the circumstances under which the Project is to be undertaken as a result of the Proposed DA, which will require important or major revisions in the 2006 FEIR and the four subsequent addenda to the FEIR;
2. No new information of substantial importance to the Centre City Redevelopment Project has become available that shows the Project, including the Proposed DA, will have any significant effects not discussed previously in the 2006 FEIR or subsequent addenda to the FEIR; or that any significant effects previously examined will be substantially more severe than shown in the 2006 FEIR or subsequent addenda to the FEIR; or that any mitigation measures or alternatives previously found not to be feasible or not previously considered would substantially reduce or lessen any significant effects of Project on the environment;
3. No Negative Declaration, Subsequent EIR, or Supplement or Addendum to the 2006 FEIR, as amended, is necessary or required;
4. The Proposed DA will have no significant effect on the environment, except as identified and considered in the 2006 FEIR and subsequent addenda to the FEIR for

the Centre City Redevelopment Project. No new or additional project-specific mitigation measures are required for this project; and

5. The Proposed DA would not have any new effects that were not adequately covered in the 2006 FEIR or addenda to the FEIR, and therefore, the proposed project is within the scope of the program approved under the 2006 FEIR and subsequent addenda listed in Section 6 above.

Civic San Diego administered the preparation of this Consistency Evaluation.



Signature of Lead Agency Representative

August 28, 2012

Date

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ENVIRONMENTAL CHECKLIST

10. EVALUATION OF ENVIRONMENTAL IMPACTS

This environmental checklist evaluates the potential environmental effects of the Proposed DA consistent with the significance thresholds and analysis methods contained in the FEIR for the San Diego Downtown Community Plan, Centre City Planned District Ordinance, and Redevelopment Plan for the Centre City Project Area. Based on the assumption that the Proposed DA is adequately addressed in the FEIR, the following table indicates how the impacts of the Proposed DA relate to the conclusions of the FEIR. As a result, the impacts are classified into one of the following categories:

- Significant and Not Mitigated (SNM)
- Significant but Mitigated (SM)
- Not Significant (NS)

The checklist identifies each potential environmental effect and provides information supporting the conclusion drawn as to the degree of impact associated with the proposed project. As applicable, mitigation measures from the FEIR are identified and are summarized in **Attachment A** to this Consistency Evaluation. Some of the mitigation measures are plan-wide and not within the control of the proposed project. Other measures, however, are to be specifically implemented developments under the Proposed DA. Consistent with the FEIR analysis, the following issue areas have been identified as Significant and Not Mitigated even with inclusion of the proposed mitigation measures, where feasible:

- Aesthetics/Visual Quality: Views of the Bay And Bay Bridge (VIS-B.1) (C)
- Air Quality: Mobile Source Emissions (AQ-A.1) (C)
- Historical Resources: Architectural (HIST-A.1) (D/C)
- Historical Resources: Archeological (HIST-B.1) (D/C)
- Water Quality: Urban Runoff (WQ-A.1) (C)
- Land Use: Physical Changes Related to Transient Activity (LU-B.6) (C)
- Noise: Exterior Traffic Level Increase on Grid Streets (NOI-A.1) (C)
- Noise: Exterior Traffic Noise in Residential Development (NOI-C.1) (D/C)
- Traffic: Impact on Surrounding Streets (TRF-A.1) (C)
- Traffic: Impact on Freeway Ramps and Segments (TRF-A.2) (C)
- Parking: Excessive Parking Demand (TRF-D.1) (C)

The following Overriding Considerations apply directly to the Proposed DA:

- Implement Downtown's Role As Primary Urban Center
- Relieve Growth Pressure On Outlying Communities
- Organize Balanced Mix Of Uses Around Neighborhood Centers
- Maximize Employment
- Capitalize On Transit Opportunities

Issues and Supporting Information	Significant And Not Mitigated (SNM)		Significant But Mitigated (SM)		Not Significant (NS)	
	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
1. AESTHETICS/VISUAL QUALITY:						
<p>a) Substantially disturb a scenic resource, vista or view from a public viewing area, including a State scenic highway or view corridor designated by the San Diego Downtown Community Plan? Views of scenic resources such as San Diego Bay, San Diego-Coronado Bay Bridge, Point Loma, Coronado, Petco Park, and the downtown skyline are afforded by the public viewing areas within and around the downtown and along view corridor streets within the planning area. Additionally, Highway 163 is a State Scenic Highway entering downtown at 10th Avenue; however, this highway is not in close proximity to the proposed project and, therefore, the proposed project would not impact this scenic resource. Additionally, impacts to on-site scenic resources are not significant since the project site itself does not possess any significant scenic resources that could be impacted by the proposed project. Therefore, significant impacts associated with these issues would not occur.</p> <p>The Proposed DA would allow for the construction of building towers on the Undeveloped Sites. Maximum tower heights under the Proposed DA are 500 feet for the Pacific and Broadway and 880 W. Broadway sites, and 420 for the Kettner and Ash site. Tower developments on the Undeveloped Sites would have a noticeable affect on the Downtown skyline as viewed from multiple vantage points. It is the intent of CSD's extensive Design Review process to ensure that any proposed development project will be high quality and attractively designed, particularly when the</p>					X	X

	Significant And Not Mitigated (SNM)		Significant But Mitigated (SM)		Not Significant (NS)	
	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
Issues and Supporting Information						
<i>project will create a visible effect on the Downtown skyline. The Proposed DA also contains required view corridor setbacks and maximum tower dimensions that are intended to preserve important view corridors to the San Diego Bay and to lessen the visual impact of proposed building towers. Therefore, the Proposed DA's direct and cumulative impacts to scenic resources and vistas are considered less than significant.</i>						
(b) Substantially incompatible with the bulk, scale, color and/or design of surrounding development? The intent of the Proposed DA is to ensure that buildings constructed on the Undeveloped Sites are compatible and consistent with the <i>bulk, scale, and design of the surrounding developments that were constructed under the existing Catellus DA. Numerous tower developments have been constructed on adjacent sites, as well as sites in the surrounding Columbia neighborhood. Any proposed development of the Undeveloped Sites will be subject to CSD's Design Review process to ensure the project is conforms to the development regulations of the Proposed DA and is compatible with surrounding development. Therefore, project-level and cumulative impacts associated with this issue are considered less than significant.</i>					X	X
(c) Substantially affect daytime or nighttime views in the area due to lighting? <i>The proposed project would not involve a substantial amount of exterior lighting or include materials that would generate substantial glare. The City's Light Pollution Law (Municipal Code Section 101.1300 et seq.) also protects nighttime views (e.g., astronomical</i>					X	X

	Significant And Not Mitigated (SNM)		Significant But Mitigated (SM)		Not Significant (NS)	
	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
Issues and Supporting Information						
<i>activities) and light-sensitive land uses from excessive light generation by development in the downtown area. Therefore, conformance with existing lighting requirements will ensure that direct and cumulative impacts associated with development under the Proposed DA will be less than significant.</i>						
2. AGRICULTURAL RESOURCES:						
(a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland) to non-agricultural use? <i>The Downtown Community Plan area encompasses an urban downtown environment that does not contain land designated as prime agricultural soils by the Soils Conservation Service, nor does it contain prime farmlands designated by the California Department of Conservation. Therefore, no impact to agricultural resources would occur.</i>					X	X
(b) Conflict with existing zoning for agricultural use, or a Williamson Act contract? <i>The Downtown Community Plan area does not contain, nor is it near, land zoned for agricultural use or land subject to a Williamson Act Contract pursuant to Section 512101 of the California Government Code. Therefore, impacts resulting from conflicts with existing zoning for agricultural use or a Williamson Act Contract would not occur.</i>					X	X
3. AIR QUALITY:						
(a) Conflict with or obstruct implementation of an applicable air quality plan, including the County's Regional Air Quality Strategies or the State Implementation Plan? <i>Developments under the</i>					X	X

	Significant And Not Mitigated (SNM)		Significant But Mitigated (SM)		Not Significant (NS)	
	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
Issues and Supporting Information						
<i>Proposed DA would be consistent the Undeveloped Sites' underlying Commercial/Office Land Use District of the San Diego Centre City Community Plan and CCPDO, the land use policies and regulations of which are in accordance with those of the Regional Air Quality Strategy (RAQS). Thus, the proposed project would not conflict with, but would help implement, the RAQS with its compact, high intensity land use. No impact to the applicable air quality plan would occur.</i>						
(b) Expose sensitive receptors to substantial air contaminants including, but not limited to, criteria pollutants, smoke, soot, grime, toxic fumes and substances, particulate matter, or any other emissions that may endanger human health? <i>Development of the Undeveloped Sites could involve the exposure of sensitive receptors to substantial air contaminants during short-term construction activities and over the long-term operation of projects constructed under the Proposed DA. The potential for short-term, temporary impacts to sensitive receptors during construction activities would be mitigated to below a level of significance through compliance with the City's mandatory standard dust control measures and the dust control and construction equipment emission reduction measures required by FEIR Mitigation Measure AQ-B.1-1 (see Attachment A).</i> <i>Development of the Undeveloped Sites could involve the exposure of sensitive receptors to air contaminants over the long-term operation of the project, such as carbon monoxide exposure</i>			X			X

Issues and Supporting Information	Significant And Not Mitigated (SNM)		Significant But Mitigated (SM)		Not Significant (NS)	
	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
<p><i>(commonly referred to as CO "hot spots") due to traffic congestion near the project site. However, the FEIR concludes that development within the downtown would not expose sensitive receptors to significant levels of any of the substantial air contaminants. The allowed uses and development intensities allowed under Proposed DA are consistent with those contemplated in the FEIR analysis, the project would not expose sensitive receptors to substantial air contaminants beyond the level assumed by the FEIR. Additionally, the areas covered by the Proposed DA are not located close enough to any industrial activities to be impacted by any emissions potentially associated with such activities. Therefore, impacts associated with this issue would not be significant. Project impacts associated with the generation of substantial air contaminants are discussed below in Section 3.c.</i></p>						
<p><i>(c) Generate substantial air contaminants including, but not limited to, criteria pollutants, smoke, soot, grime, toxic fumes and substances, particulate matter, or any other emissions that may endanger human health? Construction of projects under the Proposed DA could result in potentially adverse air quality impacts related to the following air emission generators: construction and mobile-sources. Site preparation activities and construction of development projects would involve short-term, potentially adverse impacts associated with the creation of dust and the generation of construction equipment emissions. The clearing, grading, excavation and construction activities associated with the development projects would result in dust</i></p>		X	X			

	Significant And Not Mitigated (SNM)		Significant But Mitigated (SM)		Not Significant (NS)	
	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
Issues and Supporting Information						
<p><i>and equipment emissions that, when considered together, could endanger human health. Implementation of FEIR Mitigation Measure AQ-B.1-1 (see Attachment A) would reduce dust and construction equipment emissions generated during construction of the proposed project to a level below significance.</i></p> <p><i>The air emissions generated by automobile trips associated with development projects constructed under the Proposed DA would not exceed air quality significance standards established by the San Diego Air Pollution Control District. However, mobile source emissions, in combination with dust generated during the construction of the project, would contribute to the significant and unmitigated cumulative impact to air quality identified in the FEIR. Uses allowed under the Proposed DA would not significantly increase stationary-source emissions in the downtown planning area; therefore, impacts from stationary sources would be not significant.</i></p>						
4. BIOLOGICAL RESOURCES:						
(a) Substantially effect, either directly or through habitat modifications, any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by local, state or federal agencies? <i>Due to the highly urbanized nature of the Downtown Community Plan area, there are no sensitive plant or animal species, habitats, or wildlife migration corridors within the area. In addition, the ornamental trees and landscaping included in the proposed project are considered of no significant</i>					X	X

	Significant And Not Mitigated (SNM)		Significant But Mitigated (SM)		Not Significant (NS)	
	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
Issues and Supporting Information						
<i>value to the native wildlife in their proposed location. Therefore, no impact associated with this issue could occur.</i>						
(b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, and regulations by local, state or federal agencies? <i>As identified in the FEIR, the San Diego Downtown Community Plan area is not within a subregion of the San Diego County Multiple Species Conservation Program (MSCP). Therefore, impacts associated with substantial adverse effects on riparian habitat or other sensitive natural communities identified in local or regional plans, policies, and regulations by local, state or federal agencies would not occur.</i>					X	X
5. GEOLOGY AND SOILS:						
(a) Substantial health and safety risk associated with seismic or geologic hazards? <i>There are no known active or potentially active faults located on the Undeveloped Sites covered by the Proposed DA. However, the Undeveloped Sites are in a seismically active region and located within the Rose Canyon Fault Zone, which is designated as an Earthquake Fault Zone by the California Department of Mines and Geology. Within this fault zone a seismic event could cause significant groundshaking on the Undeveloped Sites. Therefore, the potential exists for substantial health and safety risks on the Undeveloped Sites associated with a seismic hazard.</i> <i>Although the potential for geologic hazards</i>					X	X

	Significant And Not Mitigated (SNM)		Significant But Mitigated (SM)		Not Significant (NS)	
	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
Issues and Supporting Information						
<i>(landslides, liquefaction, slope failure, and seismically-induced settlement) is considered low due to the site's moderate to non-expansive geologic structure, such hazards could nevertheless occur. Conformance with, and implementation of, all seismic-safety development requirements, including all applicable requirements of the Alquist-Priolo Zone Act, the seismic design requirements of the International Building Code (IBC), the City of San Diego Notification of Geologic Hazard procedures, and all other applicable requirements would ensure that the potential impacts associated with seismic and geologic hazards are not significant.</i>						
6. GREENHOUSE GAS EMISSIONS:						
(a) Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment? <i>California's Assembly Bill 32 (AB 32), the Global Warming Solutions Act of 2006, codified the State's greenhouse gas (GHG) emissions target by requiring the State's GHG emissions to be reduced to 1990 levels by 2020. To achieve these GHG reductions outlined in AB 32, there will have to be widespread reductions of GHG emissions across the California economy. Some of the reductions will come in the form of changes in vehicle emissions and mileage, changes in the sources of electricity, and increases in energy efficiency by existing facilities as well as other measures. The remainder of the necessary GHG reductions will come from requiring new development to have lower carbon intensity than "Business-as-Usual"</i>					X	X

	Significant And Not Mitigated (SNM)		Significant But Mitigated (SM)		Not Significant (NS)	
	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
<p>Issues and Supporting Information</p> <p><i>(BAU), or existing, conditions.</i></p> <p><i>Neither Civic San Diego nor the City of San Diego has adopted thresholds of significance for GHG emissions. However, according to the Technical Memorandum entitled "Addressing Greenhouse Gas Emissions from Projects Subject to CEQA", the City is utilizing, for the interim, the 900 metric ton (MT) threshold presented by CAPCOA (CAPCOA 2008). The memorandum identifies project types and project sizes that are estimated to emit 900 MT of GHGs per year ("900 MT Threshold"). Projects that are greater than or equal to the project sizes listed in the memorandum must perform a GHG analysis. The purpose of the analysis is to quantify the GHG emissions that would generated by the construction and operation of a project under a BAU scenario (i.e. the project without GHG reducing characteristics or design features), and then to quantify specific project characteristics and design features that will result in GHG emission reductions as compared to the BAU scenario. In order to reduce potential impacts to below a level of significance, projects exceeding the 900 MT Threshold must show a 28% reduction to the 2020 BAU model, which is consistent with the state-wide goals of AB 32.</i></p> <p><i>Downtown development projects enjoy significant GHG reductions over BAU due to a number of factors including, but not limited to:</i></p> <ul style="list-style-type: none"> <i>Reductions in number and length of vehicle trips due to Downtown's increased transit access/availability, walkability, and high</i> 						

Issues and Supporting Information	Significant And Not Mitigated (SNM)		Significant But Mitigated (SM)		Not Significant (NS)	
	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
<p><i>density mixed used neighborhood environment.</i></p> <ul style="list-style-type: none"> <i>Significant reductions in water usage due to relatively small amounts of landscaping and lack of residential yard space (compared to suburban projects).</i> <i>Compliance with title 24 energy conservation requirements and the CalGreen building code.</i> <p><i>As stated, the Undeveloped Sites have all received Centre City Development Permit and Coastal Development Permit approvals for projects that have yet to be constructed (two mixed-use residential buildings and an office building). GHG technical analyses were prepared for each individual project. The respective GHG analyses concluded that each project's GHG impacts would be less than significant. GHG analyses for numerous other Downtown development projects similar in size and scope to development projects that could be constructed under the Proposed DA have also concluded that project GHG impacts would be less than significant.</i></p> <p><i>The GHG impacts of any future projects proposed under the Proposed DA will be analyzed on a case-by-case basis to determine whether they exceed the City's existing 900 MT Threshold and whether a GHG analysis is therefore required. If feasible, GHG impacts of proposed projects will be reduced to a level of less than significant through project characteristics and/or design features. Based on the numerous studies conducted for downtown</i></p>						

	Significant And Not Mitigated (SNM)		Significant But Mitigated (SM)		Not Significant (NS)	
	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
Issues and Supporting Information						
<i>projects similar in size and scope to those that could be constructed under the Proposed DA's land use and density/intensity limits (including the existing projects entitled on the Undeveloped Sites), it is anticipated that the GHG impacts of any proposed development will have a less than significant impact.</i>						
(b) Conflict with any applicable plan, policy, or regulation of an agency adopted for the purpose of reducing the emissions of greenhouse gas? <i>As stated above in Section 6.a., construction and operation of the projects allowed under the Proposed DA would not result in a significant impact related to GHG emissions on the environment. The project complies with the City of San Diego interim reduction thresholds, which are based on the AB 32 reduction threshold, and the project would also be consistent with the recommendations within Policy CE-A.2 of the City of San Diego's General Plan Conservation Element. Therefore, the project does not conflict with any applicable plan, policy, or regulation adopted for the purpose of reducing the emissions of greenhouse gases. This impact is considered less than significant.</i>					X	X
7. HAZARDS AND HAZARDOUS MATERIALS:						
(a) Substantial health and safety risk related to onsite hazardous materials? <i>The FEIR states that contact with, or exposure to, hazardous building materials, soil and ground water contaminated with hazardous materials, or other hazardous materials</i>					X	X

	Significant And Not Mitigated (SNM)		Significant But Mitigated (SM)		Not Significant (NS)	
	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
Issues and Supporting Information						
<i>could adversely affect human health and safety during short-term construction or long term operation of a development. The proposed project is subject to federal, state, and local agency regulations for the handling of hazardous building materials and waste. Compliance with all applicable requirements of the County of San Diego Department of Environmental Health and federal, state, and local regulations for the handling of hazardous building materials and wastes would ensure that potential health and safety impacts caused by exposure to onsite hazardous materials are not significant during short term, construction activities. In addition, herbicides and fertilizers associated with the landscaping of the project could pose a significant health risk over the long-term operation of the project. However, any proposed development of the Undeveloped Sites will require adherence to existing mandatory federal, state, and local regulations controlling these materials will ensure that long-term health and safety impacts associated with onsite hazardous materials over the long-term operation any proposed development are not significant.</i>						
(b) Be located on or within 2,000 feet of a site that is included on a list of hazardous materials sites compiled pursuant to Government Code § 65962.5 and, as a result, would it create a significant hazard to the public or the environment? <i>The Undeveloped Sites covered by the DA are not located on or within 2,000 feet of a site on the State of California Hazardous Waste and Substances Sites List; however, there are sites</i>					X	X

Issues and Supporting Information	Significant And Not Mitigated (SNM)		Significant But Mitigated (SM)		Not Significant (NS)	
	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
<i>within 2,000 feet of the project site that are listed on the County of San Diego's Site Assessment Mitigation (SAM) Case Listing. The FEIR states that significant impacts to human health and the environment regarding hazardous waste sites would be avoided through compliance with mandatory federal, state, and local regulations as described in Section 7.a above. Therefore, the FEIR states that no mitigation measures would be required.</i>						
(c) Substantial safety risk to operations at San Diego International Airport? <i>The Undeveloped Sites that are subject to the Proposed DA are within the boundaries of the Airport Influence Area of the Airport Land Use Compatibility Plan (ALUCP) for San Diego International Airport (SDIA). Future projects will be required to obtain a Federal Aviation Administration (FAA) determination of no hazard to air navigation prior to issuance of any development permit. Therefore, impacts associated with this issue are not anticipated to occur.</i>					X	X
(d) Substantially impair implementation of an adopted emergency response plan or emergency evacuation plan? <i>Developments constructed under the Proposed DA will not contain design features that would affect an emergency response or evacuation plan. Therefore, no impact associated with this issue is anticipated.</i>					X	X
8. HISTORICAL RESOURCES:						
(a) Substantially impact a significant historical resource, as defined in § 15064.5? <i>The Undeveloped Sites contain surface parking lots. No</i>	X	X				

	Significant And Not Mitigated (SNM)		Significant But Mitigated (SM)		Not Significant (NS)	
	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
Issues and Supporting Information						
<i>historic or architectural resources are located on any of the three Undeveloped Sites. In addition, the FEIR does not list any of the Undeveloped Sites as a site that is listed or eligible to be listed on the National, State, or Local register of Historic Buildings or Structures. Therefore, no direct or cumulative impact associated with Historical Resources would occur.</i>						
(b) Substantially impact a significant archaeological resource pursuant to § 15064.5, including the disturbance of human remains interred outside of formal cemeteries? <i>The likelihood of encountering archaeological resources is greatest for projects that include grading and/or excavation of areas on which past grading and/or excavation activities have been minimal (e.g., surface parking lots). Since archaeological resources have been found within inches of the ground surface in the downtown planning area, even minimal grading activities can impact these resources. In addition, the likelihood of encountering subsurface human remains during construction and excavation activities, although considered low, is possible. Thus, the grading, excavation, and surface clearance activities associated with development of projects under the Proposed DA could have potentially adverse impacts to archaeological resources, including buried human remains. Implementation of FEIR Mitigation Measure HIST-B.1-1, (see Attachment A) would minimize, but not fully mitigate, these potential impacts. Since the potential for archaeological resources and human remains on the Undeveloped Sites cannot be confirmed until</i>	X	X				

	Significant And Not Mitigated (SNM)		Significant But Mitigated (SM)		Not Significant (NS)	
	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
Issues and Supporting Information						
<i>grading is conducted, the exact nature and extent of impacts associated with the proposed project cannot be predicted. Consequently, the required mitigation may or may not be sufficient to reduce these direct project-level impacts to below a level of significance. Therefore, project-level impacts associated with this issue remain potentially significant and not fully mitigated, and consistent with the analysis of the FEIR. Furthermore, project-level significant impacts to important archaeological resources would contribute to the potentially significant and unmitigated cumulative impacts identified in the FEIR.</i>						
(c) Substantially impact a unique paleontological resource or site or unique geologic feature? <i>The proposed project site is underlain by the Bay Point Formation, which has high paleontological resource potential. The FEIR concludes that development would have potentially adverse impacts to paleontological resources if grading and/or excavation activities are conducted beyond a depth of 1-3 feet. Development projects under the Proposed DA would involve excavation beyond the FEIR standard, resulting in potentially significant impacts to paleontological resources. However, implementation of FEIR Mitigation Measure PAL-A.1-1 (see Attachment A) would ensure that the proposed project's potentially direct impacts to paleontological resources are not significant. Furthermore, development projects under the DA would not impact any resources outside of the project site. The mitigation measures for direct impacts fully mitigate for paleontological impacts, therefore, the project's</i>			X	X		

	Significant And Not Mitigated (SNM)		Significant But Mitigated (SM)		Not Significant (NS)	
	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
Issues and Supporting Information						
<i>contribution to cumulative impacts to paleontological resources would be significant but mitigated because the same measures that mitigate direct impacts would also mitigate for any cumulative impacts.</i>						
9. HYDROLOGY AND WATER QUALITY:						
(a) Substantially degrade groundwater or surface water quality? <i>Development projects under the Proposed DA could propose soil excavation at a depth that may surpass known groundwater levels, therefore, groundwater dewatering could be required. Compliance with the requirements of either (1) the San Diego Regional Water Quality Control Board under a National Pollution Discharge Elimination System (NPDES) general permit for construction dewatering (if dewatering is discharged to surface waters), or (2) the City of San Diego Metropolitan Wastewater Department (if dewatering is discharged into the City's sanitary sewer system under the Industrial Waste Pretreatment Program), and (3) the mandatory requirements controlling the treatment and disposal of contaminated dewatered groundwater would ensure that potential impacts associated with construction dewatering and the handling of contaminated groundwater are not significant. In addition, Best Management Practices (BMPs) required as part of the local Storm Water Pollution Prevention Plan (SWPPP) would ensure that short-term water quality impacts during construction are not significant. Development projects under the Proposed DA would result in hard structure areas and other impervious surfaces that would generate urban runoff with the potential to</i>		X			X	

Issues and Supporting Information	Significant And Not Mitigated (SNM)		Significant But Mitigated (SM)		Not Significant (NS)	
	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
<p><i>degrade groundwater or surface water quality. However, implementation of BMPs required by the local Standard Urban Stormwater Mitigation Program (SUSMP) and Stormwater Standards would reduce the project's long-term impacts. Thus, adherence to the state and local water quality controls would ensure that direct impacts to groundwater and surface water quality would not be significant.</i></p> <p><i>Despite not resulting in direct impacts to water quality, the FEIR found that the urban runoff generated by the cumulative development in the downtown would contribute to the existing significant cumulative impact to the water quality of San Diego Bay. No mitigation other than adherence to existing regulations has been identified in the FEIR to feasibly reduce this cumulative impact to below a level of significance. Implementation of development under the Proposed DA would result in cumulative significant and unmitigated impacts as identified in the FEIR.</i></p>						
<p>(b) Substantially increase impervious surfaces and associated runoff flow rates or volumes? <i>The Undeveloped Sites are currently fully paved parking lots. Implementation development under the Proposed DA would result in impervious surfaces similar to or less than those that exist onsite (due to potential landscaping and other pervious surfaces). Future Development would also be required to comply with the City's stormwater pollution/prevention requirements and best management practices. Thus, the proposed project would not substantially increase</i></p>					X	X

	Significant And Not Mitigated (SNM)		Significant But Mitigated (SM)		Not Significant (NS)	
	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
Issues and Supporting Information						
<i>the runoff volume entering the storm drain system. Therefore, impacts associated with this issue are not significant. (Impacts associated with the quality of urban runoff are analyzed in Section 9.a.)</i>						
(c) Substantially impede or redirect flows within a 100-year flood hazard area? <i>The Undeveloped Sites are not located within a 100-year floodplain. Similarly, the development under the Proposed DA would not affect offsite flood hazard areas, as no 100-year floodplains are located downstream. Therefore, impacts associated with these issues are not significant.</i>					X	X
(d) Substantially increase erosion and sedimentation? <i>The Undeveloped Sites are currently developed with impervious surfaces. The hydrology of the sites would not be substantially altered by development under the Proposed DA as the sites would maintain a similar quantity of impervious surfaces and, therefore, developments would not substantially increase the long-term potential for erosion and sedimentation. However, the potential for erosion and sedimentation could increase during the short-term during site preparation and other construction activities. Compliance with regulations mandating the preparation and implementation of a SWPPP would ensure that impacts associated with erosion and sedimentation are not significant.</i>					X	X
10. LAND USE AND PLANNING:						
(a) Physically divide an established community? <i>The Proposed DA does not propose any features or structures that would physically divide an</i>					X	X

Issues and Supporting Information	Significant And Not Mitigated (SNM)		Significant But Mitigated (SM)		Not Significant (NS)	
	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
<i>establishment community. Impacts associated with this issue would not occur.</i>						
<p>(b) Substantially conflict with the City's General Plan, Centre City Community Plan or other applicable land use plan, policy, or regulation? <i>The Undeveloped Sites are located in the Columbia neighborhood of the Centre City Planned District of the Centre City Community Plan. The land uses and intensities proposed for the Undeveloped Sites by the Proposed DA are consistent with the goals and policies of the General Plan and Centre City Community Plan that seek to establish Downtown as the high-density urban core of the City. The Proposed DA is also consistent with the design and development regulations of the Centre City Community Plan that specify view corridor locations and setbacks and allowed uses.</i></p> <p><i>As discussed in Section 7.c above, the proposed project is within the jurisdiction of the Airport Land Use Compatibility Plan (ALUCP) for San Diego International Airport and is subject to FAA determination of no hazard to air navigation prior to issuance of any development permit. In addition, the proposed project would not conflict with other applicable land use plans, policies, or regulations. The Proposed DA complies with the goals and requirements of the Centre City Community Plan and General Plan Therefore, no significant direct or cumulative impacts associated with an adopted land use plan would occur.</i></p>					X	X
(c) Substantial incompatibility with surrounding land uses? <i>Sources of land use incompatibility include</i>					X	X

Issues and Supporting Information	Significant And Not Mitigated (SNM)		Significant But Mitigated (SM)		Not Significant (NS)	
	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
<p><i>lighting, shading, industrial activities, and noise. The Proposed DA would not result in, or be subject to, adverse impacts due to substantially incompatible land uses. Compliance with the City's Light Pollution Ordinance would ensure that land use incompatibility impacts related to the proposed project's emitting of, and exposure to, lighting are not significant. In addition, the FEIR concludes that existing mandatory regulations addressing land use compatibility with industrial activities would ensure that residents of, and visitors to, the proposed project are not subject to potential land use incompatibilities (potential land use incompatibilities resulting from hazardous materials and air emissions are evaluated elsewhere in this Consistency Evaluation). Similarly, the Undeveloped Sites are not directly adjacent to any major planned neighborhood parks that could be significantly impacted by shading from the project. Potentially significant impacts associated with traffic noise on adjacent grid streets are discussed in Sections 12.b and 12.c. No impacts associated with incompatibility with surrounding land uses would occur.</i></p>						
<p>(d) Substantially impact surrounding communities due to sanitation and litter problems generated by transients displaced by downtown development? Although not expected to be a substantial direct impact of Proposed DA because substantial numbers of transients are not known to congregate on the Undeveloped Sites, future projects developed under the proposed DA, in tandem with other downtown redevelopment activities, would have a significant cumulative</p>		X			X	

	Significant And Not Mitigated (SNM)		Significant But Mitigated (SM)		Not Significant (NS)	
	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
Issues and Supporting Information						
<i>impact on surrounding communities resulting from sanitation problems and litter generation by transients who are displaced from downtown into surrounding canyons and vacant land as discussed in the FEIR. Continued support of Homeless Outreach Teams (HOTs) and similar transient outreach efforts would reduce, but not fully mitigate, the adverse impacts to surrounding neighborhoods caused by the transient relocation. Therefore, the proposed project would result in cumulatively significant and not fully mitigated impacts to surrounding neighborhoods.</i>						
11. MINERAL RESOURCES:						
(a) Substantially reduce the availability of important mineral resources? <i>The FEIR states that the viable extraction of mineral resources is limited in Downtown due to its urbanized nature and the fact that the area is not designated as having high mineral resource potential. Therefore, no impact associated with this issue would occur.</i>					X	X
12. NOISE:						
(a) Substantial noise generation? <i>Developments and land uses allowed under the Proposed DA would not result in substantial noise generation from any stationary sources over the long-term. Short-term construction noise impacts would be avoided by adherence to construction noise limitations imposed by the City's Noise Abatement and Control Ordinance. However, the project would, in combination with other development in the downtown, contribute to the cumulatively significant traffic noise increases on nine street segments. This impact is consistent with the</i>		X			X	

	Significant And Not Mitigated (SNM)		Significant But Mitigated (SM)		Not Significant (NS)	
	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
Issues and Supporting Information						
<i>analysis of the FEIR and considered cumulatively significant and not mitigated.</i>						
(b) Substantial exposure of required outdoor residential open spaces or public parks and plazas to noise levels (e.g. exposure to levels exceeding 65 dBA CNEL)? <i>Outdoor residential open spaces, parks and plaza, are not required under the Proposed DA. There are, therefore, no direct or cumulative impacts associated with this issue.</i>					X	X
(c) Substantial interior noise within habitable rooms (e.g. levels in excess of 45 dBA CNEL)? <i>Traffic noise levels on the street segments and the railway corridor bordering the Undeveloped Sites could create interior noise levels within habitable rooms in excess of 45 dBA CNEL (the FEIR standard). Implementation of Mitigation Measure NOI-B.1-1 (see Attachment A), however, would reduce interior noise levels to below 45 dBA CNEL. Therefore, impacts associated with this issue would be mitigated to a level less than significant.</i>			X	X		
13. POPULATION AND HOUSING:						
(a) Substantially induce population growth in an area? <i>The Proposed DA establishes allowable land uses and densities/intensities of development for the Undeveloped Sites that are consistent with the allowable land uses and densisties/intensities that were analyzed in the FEIR. Adverse physical changes associated with the population growth generated by the proposed project would not exceed those analyzed throughout the FEIR and this Consistency Evaluation. Therefore, project-level and cumulative impacts associated with this</i>					X	X

Issues and Supporting Information	Significant And Not Mitigated (SNM)		Significant But Mitigated (SM)		Not Significant (NS)	
	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
<i>issue are not significant.</i>						
(b) Substantial displacement of existing housing units or people? <i>The Undeveloped Sites covered by the Proposed DA contain at-grade parking lots. No existing housing units are present on any of the Undeveloped Sites. Therefore, project-level and cumulative impacts associated with this issue are not significant.</i>					X	X
14. PUBLIC SERVICES AND UTILITIES:						
(a) Substantial adverse physical impacts associated with the provision of new schools? <i>The FEIR concludes that the additional student population anticipated at build out of the downtown area would require the construction of at least one additional school. In and of itself, the proposed project would not generate a sufficient number of students to warrant construction of a new school facility. However, the project would contribute, in combination with other development in downtown to the need for at least one additional school in downtown, consistent with the analysis of the FEIR. Nevertheless, as indicated in the FEIR, the specific future location of a new school is unknown at present time. Pursuant to Section 15145 of the California Environmental Quality Act (CEQA), analysis of the physical changes in the downtown planning area, which may occur from future construction of schools, would be speculative and no further analysis of their impacts is required. However, construction of new schools would be subject to CEQA. Environmental documentation prepared pursuant to CEQA would identify potentially significant impacts and appropriate</i>					X	X

	Significant And Not Mitigated (SNM)		Significant But Mitigated (SM)		Not Significant (NS)	
	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
Issues and Supporting Information						
<i>mitigation measures.</i>						
(b) Substantial adverse physical impacts associated with the provision of new libraries? <i>The FEIR concludes that, cumulatively, development in the downtown would generate the need for a new Main Library and possibly several smaller libraries within the downtown. In and of itself, the proposed project would not generate additional demand necessitating the construction of new library facilities. However, the proposed project would contribute to the cumulative need for new library facilities in the downtown identified in the FEIR. The new Main Library is currently under construction; however, the future location of potential smaller facilities is unknown at the present time. Pursuant to Section 15145 of the California Environmental Quality Act (CEQA), analysis of the physical changes in the downtown planning area, which may occur from future construction of these public facilities, would be speculative and no further analysis of their impacts is required (The environmental impacts of the Main Library were analyzed in a Secondary Study prepared by CCDC in 2001). Environmental documentation prepared pursuant to CEQA would identify potentially significant impacts and appropriate mitigation measures.</i>					X	X
(c) Substantial adverse physical impacts associated with the provision of new fire protection/emergency facilities? <i>The FEIR does not conclude that the cumulative development of the downtown would generate additional demand necessitating the construction of new fire</i>					X	X

	Significant And Not Mitigated (SNM)		Significant But Mitigated (SM)		Not Significant (NS)	
	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
Issues and Supporting Information						
<i>protection/emergency facilities. Since the land use designation of the proposed development is consistent with the land use designation assumed in the FEIR analysis, the project would not generate a level of demand for fire protection/emergency facilities beyond the level assumed by the FEIR. However, the FEIR reports that the San Diego Fire Department is in the process of securing sites for two new fire stations in the downtown area. Pursuant to Section 15145 of the California Environmental Quality Act (CEQA), analysis of the physical changes in the downtown planning area that may occur from future construction of this fire station facility would be speculative and no further analysis of the impact is required. However, construction of the second new fire protection facility would be subject to CEQA. Environmental documentation prepared pursuant to CEQA would identify significant impacts and appropriate mitigation measures.</i>						
(d) Substantial adverse physical impacts associated with the provision of new law enforcement facilities? <i>The FEIR analyzes impacts to law enforcement service resulting from the cumulative development of the downtown and concludes the construction of new law enforcement facilities would not be required. Since the land uses and intensities allowed under the Proposed DA are consistent with the land uses and intensities assumed in the FEIR analysis, the Proposed DA would not generate a level of demand for law enforcement facilities beyond the level assumed by the FEIR. However, the need for a new facility</i>					X	X

	Significant And Not Mitigated (SNM)		Significant But Mitigated (SM)		Not Significant (NS)	
	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
Issues and Supporting Information						
<i>could be identified in the future. Pursuant to Section 15145 of the California Environmental Quality Act (CEQA), analysis of the physical changes in the downtown planning area that may occur from the future construction of law enforcement facilities would be speculative and no future analysis of their impacts would be required. However, construction of new law enforcement facilities would be subject to CEQA. Environmental documentation prepared pursuant to CEQA would identify potentially significant impacts and appropriate mitigation measures.</i>						
(e) Substantial adverse physical impacts associated with the provision of new water transmission or treatment facilities? <i>The FEIR concludes that the new water treatment facilities would not be required to address the cumulative development of Downtown. In addition, water pipe improvements that may be needed are categorically exempt from environmental review under CEQA. Since the Proposed DA establishes allowable land uses and densities/intensities of development for the Undeveloped Sites that are consistent with the allowable land uses and densities/intensities that were analyzed in the FEIR, no significant impacts would be associated with implementation of the Proposed DA.</i>					X	X
(f) Substantial adverse physical impacts associated with the provision of new storm water facilities? <i>The FEIR concludes that the cumulative development of Downtown would not impact the existing downtown storm drain system. Since</i>					X	X

	Significant And Not Mitigated (SNM)		Significant But Mitigated (SM)		Not Significant (NS)	
	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
Issues and Supporting Information						
<i>development under the Proposed DA would result in an amount of impervious surfaces similar to or less than the existing parking lot uses of the Undeveloped Sites, the amount of runoff volume entering the storm drain system would not create demand for new storm water facilities. Direct and cumulative impacts associated with this issue are considered not significant.</i>						
(g) Substantial adverse physical impacts associated with the provision of new wastewater transmission or treatment facilities? <i>The FEIR concludes that new wastewater treatment facilities would not be required to address the cumulative development of Downtown. In addition, sewer improvements that may be needed to serve the proposed project are categorically exempt from environmental review under CEQA. Therefore, impacts associated with this issue would not be significant.</i>					X	X
(h) Substantial adverse physical impacts associated with the provision of new landfill facilities? <i>The FEIR concludes that cumulative development of Downtown would increase the amount of solid waste to the Miramar Landfill and contribute to the eventual need for an alternative landfill. Although the developments allowed under the Proposed DA would generate a higher level of solid waste than the existing uses on the Undeveloped Sites, implementation of a mandatory Waste Management Plan and compliance with the applicable provisions of the San Diego Municipal Code would ensure that both short-term and long-term project-level impacts are</i>					X	X

	Significant And Not Mitigated (SNM)		Significant But Mitigated (SM)		Not Significant (NS)	
	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
Issues and Supporting Information						
<i>not significant. However, developments allowed under the Proposed DA would contribute, in combination with other development activities in downtown, to the cumulative increase in the generation of solid waste sent to Miramar Landfill and the eventual need for a new landfill as identified in the FEIR. The location and size of a new landfill is unknown at this time. Pursuant to Section 15145 of the California Environmental Quality Act (CEQA), analysis from the physical changes that may occur from future construction of landfills would be speculative and no further analysis of their impacts is required. However, construction or expansion of a landfill would be subject to CEQA. Environmental documentation prepared pursuant to CEQA would identify potentially significant impacts of the proposed project and appropriate mitigation measures. Therefore, cumulative impacts of the proposed project are also considered not significant.</i>						
15. RECREATIONAL FACILITIES:						
(a) Substantial increase in the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated? <i>The FEIR discusses impacts to parks and other recreational facilities and the maintenance thereof and concludes that buildout of the Downtown Community Plan would not result in significant impacts associated with this issue. Since the Proposed DA establishes allowable land uses and densities/intensities of development for the Undeveloped Sites that are consistent with the allowable land uses and densities/intensities</i>					X	X

	Significant And Not Mitigated (SNM)		Significant But Mitigated (SM)		Not Significant (NS)	
	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
Issues and Supporting Information						
<i>that were analyzed in the FEIR analysis, the project would not generate a level of demand for parks and recreational facilities beyond the level assumed by the FEIR. Therefore, substantial deterioration of existing neighborhood or regional parks would not occur or be substantially accelerated as a result of the proposed project. No significant impacts with this issue would occur.</i>						
16. TRANSPORTATION/TRAFFIC:						
(a) Cause the LOS on a roadway segment or intersection to drop below LOS E? <i>To assess whether a proposed development project would have a direct significant impact on Downtown intersections or roadway segments, the FEIR contains Mitigation Measure TRF-A.1.1-2, (see Attachment A) which requires preparation of a traffic study for large projects that generate an excess of 2,400 daily trips. Projects under the Proposed DA that exceed this threshold would be required to conduct project-level traffic studies. If the traffic studies indicate that roadways and intersections substantially impacted by the project would operate at LOS F, the traffic study would then identify specific improvements to grid streets that would be required within the next five years to reduce congestion to the extent feasible. The needed improvements would be included in Downtown's 5-year capital improvement program to ensure they are completed within five years of project completion. At the discretion of CSD, project developers may be assessed a pro-rated share of the required improvements. Any potential direct impacts of development proposed under the</i>		X	X			

	Significant And Not Mitigated (SNM)		Significant But Mitigated (SM)		Not Significant (NS)	
	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
Issues and Supporting Information						
<p><i>Proposed DA would either be not significant or would be mitigated to a level of less than significant.</i></p> <p><i>The traffic study conducted for the FEIR identified a number of intersections that would be significantly impacted due the cumulative buildout of the Downtown Community Plan. With buildout of the Downtown Community Plan the FEIR determined that a total of 62 intersections are anticipated to operate at LOS F. The FEIR also identified a number of mitigation measures, including intersection and roadway improvements, that could partially mitigate the impacts of increased traffic generated by buildout of the Downtown Community Plan. However, even with these improvements and mitigation measures, development under the Downtown Community Plan would result in significant cumulative impacts to intersections and street segments within the Downtown area. Identified mitigation measures and intersection and roadway improvements measures may or may not be able to fully mitigate these cumulative impacts due to constraints imposed by bicycle and pedestrian activities and the land uses adjacent to affected roadways. Therefore, consistent with the analysis of the FEIR, the Proposed DA would contribute to significant cumulative impacts associated with this issue.</i></p>						
(b) Cause the LOS on a freeway segment to drop below LOS E or cause a ramp delay in excess of 15 minutes? <i>The FEIR concludes that buildout of the Downtown Community Plan would result in significant cumulative impacts to freeway</i>		X			X	

Issues and Supporting Information	Significant And Not Mitigated (SNM)		Significant But Mitigated (SM)		Not Significant (NS)	
	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
<p><i>segments and ramps serving the downtown planning area. Since the Proposed DA establishes allowable land uses and densities/intensities of development for the Undeveloped Sites that are consistent with the allowable land uses and densities/intensities that were analyzed in the FEIR, the Proposed DA would contribute on a cumulative-level to the substandard LOS F identified in the FEIR on all freeway segments in the downtown area and several ramps serving the downtown. FEIR Mitigation Measure TRF-A.2.1-1 would reduce these impacts to the extent feasible, but not to below the level of significance. This mitigation measure is not the responsibility of the developments constructed under the Proposed DA, and therefore is not included in Attachment A. The FEIR concludes that the uncertainty associated with implementing freeway improvements and limitations in increasing ramp capacity limits the feasibility of fully mitigating impacts to these facilities. Thus, the cumulative-level impacts to freeways would remain significant and unavoidable, consistent with the analysis of the FEIR. The proposed project would not have a direct impact on freeway segments and ramps.</i></p>						
<p>(c) Create an average demand for parking that would exceed the average available supply? <i>The Proposed DA establishes minimum parking requirements for each of the Undeveloped Sites that will satisfy the parking demands created by future developments under the Proposed DA. Therefore, development under the Proposed DA would not have a significant direct impact on</i></p>		X			X	

	Significant And Not Mitigated (SNM)		Significant But Mitigated (SM)		Not Significant (NS)	
	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)	Direct (D)	Cumulative (C)
Issues and Supporting Information						
<p><i>downtown parking.</i></p> <p><i>However, demand generated by cumulative downtown development would exceed the amount of parking provided by such development in accordance with the CCPDO. Implementation of FEIR Mitigation Measure TRF-D.1-1 would reduce, but not fully mitigate, the significant cumulative impact of excessive parking demand (this mitigation measure is not the responsibility of developments constructed under the Proposed DA, and is not included in Attachment A). The Proposed DA would contribute to the cumulatively significant and not mitigated shortfall in parking supply anticipated to occur throughout Downtown by the FEIR.</i></p>						
<p>(d) Substantially discourage the use of alternative modes of transportation or cause transit service capacity to be exceeded? <i>The Proposed DA does not include any features that would discourage the use of alternatives modes of transportation. In fact, the Proposed DA facilitates development on sites that are all located within two blocks of the Santa Fe Depot trolley/train station. The Proposed DA also requires the installation of transit courtyard improvements that will facilitate and enhance pedestrian access to the Santa Fe Depot. Additionally, SANDAG has indicated that transit facilities should be sufficient to serve the downtown population without exceeding capacity. Direct and cumulative impacts associated with this issue are less than significant</i></p>					X	X

17. MANDATORY FINDINGS OF SIGNIFICANCE:						
<p>(a) Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory? <i>As indicated in the FEIR, due to the highly urbanized nature of the downtown area, no sensitive plant or animal species, habitats, or wildlife migration corridors are located in the Centre City area. However, the project does have potential to eliminate important examples of major periods of California history or prehistory at the project level. No other aspects of the project would substantially degrade the environment. Cumulative impacts described in the Section 17.b below.</i></p>	X	X				
<p>(b) Does the project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)? <i>As acknowledged in the FEIR, implementation of the San Diego Downtown Community Plan, CCPDO, and Redevelopment Plan would result in cumulative impacts associated with: aesthetics, air quality, historical resources, paleontological resources, physical changes associated with transient activities, noise, parking, traffic, and water quality. This project would contribute to those impacts. Implementation of the mitigation measures identified in the FEIR would reduce some significant impacts; however, the impacts would remain significant and immitigable. Cumulative impacts would not be greater than those identified in the FEIR.</i></p>		X				
<p>(c) Does the project have environmental effects that will cause substantial adverse effects on human</p>	X	X				

<p>beings, either directly or indirectly? <i>As described elsewhere in this study, the proposed project would result in significant and unmitigated impacts. Those impacts associated with air and noise could have substantial adverse effects on human beings. However, these impacts would be no greater than those assumed in the FEIR. Implementation of the mitigation measures identified in the FEIR would mitigate many, but not all, of the significant impacts.</i></p>						
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SIGNIFICANT IMPACT(S)	MITIGATION MEASURE(S)	IMPLEMENTATION TIME FRAME	IMPLEMENTATION RESPONSIBILITY	VERIFICATION RESPONSIBILITY
AIR QUALITY (AQ)				
<p>Impact AQ-B.1: Dust and construction equipment engine emissions generated during grading and demolition would impact local and regional air quality. (Direct and Cumulative)</p>	<p><i>Mitigation Measure AQ-B.1-1:</i> Prior to approval of a Grading or Demolition Permit, the City shall confirm that the following conditions have been applied, as appropriate:</p> <ol style="list-style-type: none"> 1. Exposed soil areas shall be watered twice per day. On windy days or when fugitive dust can be observed leaving the development site, additional applications of water shall be applied as necessary to prevent visible dust plumes from leaving the development site. When wind velocities are forecast to exceed 25 miles per hour, all ground disturbing activities shall be halted until winds that are forecast to abate below this threshold. 2. Dust suppression techniques shall be implemented including, but not limited to, the following: <ol style="list-style-type: none"> a. Portions of the construction site to remain inactive longer than a period of three months shall be seeded and watered until grass cover is grown or otherwise stabilized in a manner acceptable to the CCDC. b. On-site access points shall be paved as soon as feasible or watered periodically or otherwise stabilized. c. Material transported offsite shall be either sufficiently watered or securely covered to prevent excessive amounts of dust. d. The area disturbed by clearing, grading, earthmoving, or excavation operations shall be minimized at all times. 3. Vehicles on the construction site shall travel at speeds less than 15 miles per hour. 4. Material stockpiles subject to wind erosion during construction activities, which will not be utilized within three days, shall be covered with plastic, an alternative cover deemed equivalent to plastic, or sprayed with a nontoxic chemical stabilizer. 5. Where vehicles leave the construction site and enter adjacent public streets, the streets shall be swept daily or washed down at the end of the work day to remove soil tracked onto the paved surface. Any visible 	<p>Prior to Demolition or Grading Permit (Design)</p>	<p>Developer</p>	<p>City</p>

SIGNIFICANT IMPACT(S)	MITIGATION MEASURE(S)	IMPLEMENTATION TIME FRAME	IMPLEMENTATION RESPONSIBILITY	VERIFICATION RESPONSIBILITY
	<p>track-out extending for more than fifty (50) feet from the access point shall be swept or washed within thirty (30) minutes of deposition.</p> <ol style="list-style-type: none"> 6. All diesel-powered vehicles and equipment shall be properly operated and maintained. 7. All diesel-powered vehicles and gasoline-powered equipment shall be turned off when not in use for more than five minutes, as required by state law. 8. The construction contractor shall utilize electric or natural gas-powered equipment in lieu of gasoline or diesel-powered engines, where feasible. 9. As much as possible, the construction contractor shall time the construction activities so as not to interfere with peak hour traffic. In order to minimize obstruction of through traffic lanes adjacent to the site, a flag-person shall be retained to maintain safety adjacent to existing roadways, if necessary. 10. The construction contractor shall support and encourage ridesharing and transit incentives for the construction crew. 11. Low VOC coatings shall be used as required by SDAPCD Rule 67. Spray equipment with high transfer efficiency, such as the high volume-low pressure (HPLV) spray method, or manual coatings application such as paint brush hand roller, trowel, spatula, dauber, rag, or sponge, shall be used to reduce VOC emissions, where feasible. 12. If construction equipment powered by alternative fuel sources (LPG/CNG) is available at comparable cost, the developer shall specify that such equipment be used during all construction activities on the development site. 13. The developer shall require the use of particulate filters on diesel construction equipment if use of such filters is demonstrated to be cost-competitive for use on this development. 14. During demolition activities, safety measures as required by City/County/State for removal of toxic or hazardous materials shall be utilized. 15. Rubble piles shall be maintained in a damp state to minimize dust generation. 16. During finish work, low-VOC paints and efficient transfer systems shall be utilized, to the extent possible. 			

SIGNIFICANT IMPACT(S)	MITIGATION MEASURE(S)	IMPLEMENTATION TIME FRAME	IMPLEMENTATION RESPONSIBILITY	VERIFICATION RESPONSIBILITY
	17. If alternative-fueled and/or particulate filter-equipped construction equipment is not feasible, construction equipment shall use the newest, least-polluting equipment, whenever possible.			
HISTORICAL RESOURCES (HIST)				
<p>Impact HIST-B.1: Development in downtown could impact significant buried archaeological resources. (Direct and Cumulative)</p>	<p><i>Mitigation Measure HIST-B.1-1:</i> If the potential exists for direct and/or indirect impacts to significant buried archaeological resources, the following measures shall be implemented in coordination with a Development Services Department designee and/or City Staff to the Historic Resources Board (HRB) ("City Staff") in accordance with Chapter 14, Article 3, Division 2, Historical Resources Regulations of the Land Development Code. Prior to issuance of any permit that could directly affect an archaeological resource, City Staff shall assure that all elements of the MMRP are performed in accordance with all applicable City regulations and guidelines by an Archaeologist meeting the qualifications specified in Appendix B of the San Diego Land Development Code, Historical Resources Guidelines. City Staff shall also require that the following steps be taken to determine: (1) the presence of archaeological resources and (2) the appropriate mitigation for any significant resources which may be impacted by a development activity. Sites may include residential and commercial properties, privies, trash pits, building foundations, and industrial features representing the contributions of people from diverse socio-economic and ethnic backgrounds. Sites may also include resources associated with pre-historic Native American activities. Archeological resources which also meet the definition of historical resources or unique archaeological resources under CEQA or the SDMC shall be treated in accordance with the following evaluation procedures and applicable mitigation program:</p> <p>Step I-Initial Evaluation</p> <p>An initial evaluation for the potential of significant subsurface archaeological resources shall be prepared to the satisfaction of City Staff as part of an Environmental Secondary Study for any activity which involves excavation or building demolition. The initial evaluation shall be guided by an appropriate level research design in accordance with the City's Land Development Code, Historical Resources Guidelines. The person completing the initial review shall meet the qualification requirements as set forth in the Historical Resources Guidelines and shall be approved by City Staff. The initial evaluation shall consist , at a minimum. of a review of the</p>	<p>Prior to Demolition or Grading Permit (Design)</p> <p>Prior to Certificate of Occupancy (Implementation)</p>	<p>Developer</p>	<p>City Staff</p>

SIGNIFICANT IMPACT(S)	MITIGATION MEASURE(S)	IMPLEMENTATION TIME FRAME	IMPLEMENTATION RESPONSIBILITY	VERIFICATION RESPONSIBILITY
	<p>following historical sources: The 1876 Bird's Eye View of San Diego, all Sanborn Fire Insurance Company maps, appropriate City directories and maps that identify historical properties or archaeological sites, and a records search at the South Coastal Information Center for archaeological resources located within the property boundaries. Historical and existing land uses shall also be reviewed to assess the potential presence of significant prehistoric and historic archaeological resources. The person completing the initial review shall also consult with and consider input from local individuals and groups with expertise in the historical resources of the San Diego area. These experts may include the University of California, San Diego State University, San Diego Museum of Man, Save Our Heritage Organization (SOHO), local historical and archaeological groups, the Native American Heritage Commission (NAHC), designated community planning groups, and other individuals or groups that may have specific knowledge of the area. Consultation with these or other individuals and groups shall occur as early as possible in the evaluation process.</p> <p>When the initial evaluation indicates that important archaeological sites may be present on a project site but their presence cannot be confirmed prior to construction or demolition due to obstructions or spatially limited testing and data recovery, the applicant shall prepare and implement an archaeological monitoring program as a condition of development approval to the satisfaction of City Staff. If the NAHC Sacred Lands File search is positive for Native American resources within the project site, then additional evaluation must include participation of a local Native American consultant in accordance with CEQA Sections 15064.5(d), 15126.4(b)(3) and Public Resources Code Section 21083.2.</p> <p>No further action is required if the initial evaluation demonstrates there is no potential for subsurface resources. The results of this research shall be summarized in the Secondary Study.</p> <p>Step 2-Testing</p> <p>A testing program is required if the initial evaluation demonstrates that there is a potential for subsurface resources. The testing program shall be conducted during the hazardous materials remediation or following the removal of any structure or surface covering which may be underlain by potential resources. The removal of these structures shall be conducted in a manner which minimizes disturbance of underlying soil. This shall entail a</p>			

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	<p>separate phase of investigations from any mitigation monitoring during construction.</p> <p>The testing program shall be performed by a qualified Historical Archaeologist meeting the qualifications specified in Appendix B of the San Diego Land Development Code, Historical Resources Guidelines. The Historical Archaeologist must be approved by City Staff prior to commencement. Before commencing the testing, a treatment plan shall be submitted for City Staff approval that reviews the initial evaluation results and includes a research design. The research design shall be prepared in accordance with the City's Historical Resources Guidelines and include a discussion of field methods, research questions against which discoveries shall be evaluated for significance, collection strategy, laboratory and analytical approaches, and curation arrangements. All tasks shall be in conformity with best practices in the field of historic urban archaeology. A recommended approach for historic urban sites is at a minimum fills and debris along interior lot lines or other areas indicated on Sanborn maps.</p> <p>Security measures such as a locked fence or surveillance shall be taken to prevent looting or vandalism of archaeological resources as soon as demolition is complete or paved surfaces are removed. These measures shall be maintained during archaeological field investigations. It is recommended that exposed features be covered with steel plates or fill dirt when not being investigated.</p> <p>The results of the testing phase shall be submitted in writing to City Staff and shall include the research design, testing results, significance evaluation, and recommendations for further treatment. Final determination of significance shall be made in consultation with City Staff, and with the Native American community, if the finds are prehistoric. If no significant resources are found and site conditions are such that there is no potential for further discoveries, then no further action is required. If no significant resources are found but results of the initial evaluation and testing phase indicates there is still a potential for resources to be present in portions of the property that could not be tested, then mitigation monitoring is required and shall be conducted in accordance with the provisions set forth in Step 4 - Monitoring. If significant resources are discovered during the testing program, then data recovery in accordance with Step 3 shall be undertaken prior to construction. If the existence or probable likelihood of Native American human remains or associated grave goods area discovered through the testing program, the</p>			

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	<p>Qualified Archaeologist shall stop work in the area, notify the City Building Inspector, City staff, and immediately implement the procedures set forth in CEQA Guidelines Section 15064.5 and the California Public Resources Code (PRC) Section 5097.98 for discovery of human remains. This procedure is further detailed in the Mitigation, Monitoring and Reporting Program (Step 4). City Staff must concur with evaluation results before the next steps can proceed.</p> <p>Step 3-Data Recovery</p> <p>For any site determined to be significant, a Research Design and Data Recovery Program (RDDR) shall be prepared in accordance with the City's Historical Resources Guidelines, approved by City Staff, and carried out to mitigate impacts before any activity is conducted which could potentially disturb significant resources. The archaeologist shall notify City Staff of the date upon which data recovery will commence ten (10) working days in advance.</p> <p>All cultural materials collected shall be cleaned, catalogued and permanently curated with an appropriate institution. Native American burial resources shall be treated in the manner agreed to by the Native American representative or be reinterred on the site in an area not subject to further disturbance in accordance with CEQA section 15164.5 and the Public Resources Code section 5097.98. All artifacts shall be analyzed to identify function and chronology as they relate to the history of the area. Faunal material shall be identified as to species and specialty studies shall be completed, as appropriate. All newly discovered archaeological sites shall be recorded with the South Coastal Information Center at San Diego State University. Any human bones and associated grave goods of Native American origin encountered during Step 2-Testing, shall, upon consultation, be turned over to the appropriate Native American representative(s) for treatment in accordance with state regulations as further outlined under Step 4-Monitoring (Section IV. Discovery of Human Remains).</p> <p>A draft Data Recovery Report shall be submitted to City Staff within twelve months of the commencement of the data recovery. Data Recovery Reports shall describe the research design or questions, historic context of the finds, field results, analysis of artifacts, and conclusions. Appropriate figures, maps and tables shall accompany the text. The report shall also include a catalogue of all finds and a description of curation arrangements at an</p>			

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	<p>approved facility, and a general statement indicting the disposition of any human remains encountered during the data recovery effort (please note that the location of reinternment and/or repatriation is confidential and not subject to public disclosure in accordance with state law). Finalization of draft reports shall be subject to City Staff review.</p> <p>Step 4 – Monitoring</p> <p>If no significant resources are encountered, but results of the initial evaluation and testing phase indicates there is still a potential for resources to be present in portions of the property that could not be tested, then mitigation monitoring is required and shall be conducted in accordance with the following provisions and components:</p> <p>I. Prior to Permit Issuance</p> <p>A. Construction Plan Check</p> <ol style="list-style-type: none"> 1. Prior to Notice to Proceed (NTP) for any construction permits, including but not limited to, the first Grading Permit, Demolition Permits and Building Permits, but prior to the first Precon Meeting, whichever is applicable, City Staff shall verify that the requirements for Archaeological Monitoring and Native American monitoring, where the project may impact Native American resources, have been noted on the appropriate construction documents. <p>B. Letters of Qualification have been submitted to City Staff</p> <ol style="list-style-type: none"> 1. The applicant shall submit a letter of verification to City Staff identifying the Principal Investigator (PI) for the project and the names of all persons involved in the archaeological monitoring program, as defined in the City of San Diego Historical Resources Guidelines (HRG). If applicable, individuals involved in the archaeological monitoring program must have completed the 40-hour HAZWOPER training with certification documentation. 2. City Staff will provide a letter to the applicant confirming that the qualifications of the PI and all persons involved in the archaeological monitoring of the project meet the qualifications established in the HRG. 3. Prior to the start of work, the applicant must obtain written approval from City Staff for any personnel changes associated with the monitoring program. 			

SIGNIFICANT IMPACT(S)	MITIGATION MEASURE(S)	IMPLEMENTATION TIME FRAME	IMPLEMENTATION RESPONSIBILITY	VERIFICATION RESPONSIBILITY
	<p>II. Prior to Start of Construction</p> <p>A. Verification of Records Search</p> <ol style="list-style-type: none"> 1. The PI shall provide verification to City Staff that a site-specific records search (1/4 mile radius) has been completed. Verification includes, but is not limited to a copy of a confirmation letter from South Coastal Information Center, or, if the search was in-house, a letter of verification from the PI stating that the search was completed. 2. The letter shall introduce any pertinent information concerning expectations and probabilities of discovery during trenching and/or grading activities. 3. The PI may submit a detailed letter to City Staff requesting a reduction to the ¼ mile radius. <p>B. PI Shall Attend Precon Meetings</p> <ol style="list-style-type: none"> 1. Prior to beginning any work that requires monitoring, the Applicant shall arrange a Precon Meeting that shall include the PI, Native American consultant/monitor (where Native American resources may be impacted), Construction Manager (CM) and/or Grading Contractor, Resident Engineer (RE), the Native American representative(s) (where Native American resources may be impacted), Building Inspector (BI), if appropriate, and City Staff. The qualified Archaeologist and the Native American consultant/monitor shall attend any grading/excavation related Precon Meetings to make comments and/or suggestions concerning the Archaeological Monitoring program with the Construction Manager and/or Grading Contractor. <ol style="list-style-type: none"> (a) If the PI is unable to attend the Precon Meeting, the Applicant shall schedule a focused Precon Meeting with City Staff, the PI, RE, CM or BI, if appropriate, prior to the start of any work that requires monitoring. 2. Archaeological Monitoring Plan (AMP) <ol style="list-style-type: none"> (a) Prior to the start of any work that requires monitoring, the PI shall submit an Archaeological Monitoring Plan (with verification that the AMP has been reviewed and approved by the Native American consultant/monitor when NA resources may be impacted) which describes how the monitoring would be accomplished for approval by City Staff and the Native American monitor. The 			

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	<p>AMP shall include an Archaeological Monitoring Exhibit (AME) based on the appropriate construction documents (reduced to 11x17) to City Staff identifying the areas to be monitored including the delineation of grading/excavation limits.</p> <p>(b) The AME shall be based on the results of a site-specific records search as well as information regarding existing known soil conditions (native or formation).</p> <p>(c) Prior to the start of any work, the PI shall also submit a construction schedule to City Staff through the RE indicating when and where monitoring will occur.</p> <p>(d) The PI may submit a detailed letter to City Staff prior to the start of work or during construction requesting a modification to the monitoring program. This request shall be based on relevant information such as review of final construction documents which indicate site conditions such as depth of excavation and/or site graded to bedrock, etc., which may reduce or increase the potential for resources to be present.</p> <p>III. During Construction</p> <p>A. Monitor(s) Shall be Present During Grading/Excavation/Trenching</p> <ol style="list-style-type: none"> 1. The Archaeological monitor shall be present full-time during all soil disturbing and grading/excavation /trenching activities which could result in impacts to archaeological resources as identified on the AME. The Construction Manager is responsible for notifying the RE, PI, and City Staff of changes to any construction activities. 2. The Native American consultant/monitor shall determine the extent of their presence during soil disturbing and grading/excavation/trenching activities based on the AME, and provide that information to the PI and City Staff. If prehistoric resources are encountered during the Native American consultant/monitor's absence, work shall stop and the Discovery Notification Processes detailed in Sections III.B-C, and IVA-D. shall commence. 3. The archeological and Native American consultant/monitor shall document field activity via the Consultant Site Visit Record (CSV). The CSV's shall be faxed by the CM to the RE the first day of monitoring, the last day of monitoring. 			

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	<p>monthly (Notification of Monitoring Completion), and in the case of ANY discoveries. The RE shall forward copies to City Staff.</p> <p>4. The PI may submit a detailed letter to City Staff during construction requesting a modification to the monitoring program when a field condition such as modern disturbance post-dating the previous grading/trenching activities, presence of fossil formations, or when native soils are encountered that may reduce or increase the potential for resources to be present.</p> <p>B. Discovery Notification Process</p> <p>1. In the event of a discovery, the Archaeological Monitor shall direct the contractor to temporarily divert all soil disturbing activities, including but not limited to, digging, trenching, excavating, or grading activities in the area of discovery and in the area reasonably suspected to overlay adjacent resources and immediately notify the RE or BI, as appropriate.</p> <p>2. The Monitor shall immediately notify the PI (unless Monitor is the PI) of the discovery.</p> <p>3. The PI shall immediately notify City Staff by phone of the discovery, and shall also submit written documentation to City Staff within 24 hours by fax or email with photos of the resource in context, if possible.</p> <p>4. No soil shall be exported off-site until a determination can be made regarding the significance of the resource specifically if Native American resources are encountered.</p> <p>C. Determination of Significance</p> <p>1. The PI and Native American consultant/monitor, where Native American resources are discovered, shall evaluate the significance of the resource. If Human Remains are involved, follow protocol in Section IV below.</p> <p>(a) The PI shall immediately notify City Staff by phone to discuss significance determination and shall also submit a letter to City Staff indicating whether additional mitigation is required.</p> <p>(b) If the resource is significant, the PI shall submit an Archaeological Data Recovery Program (ADRP) which</p>			

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	<p>has been reviewed by the Native American consultant/monitor when applicable, and obtain written approval from City Staff and the Native American representative(s), if applicable. Impacts to significant resources must be mitigated before ground disturbing activities in the area of discovery will be allowed to resume.</p> <p>(c) If the resource is not significant, the PI shall submit a letter to City Staff indicating that artifacts will be collected, curated, and documented in the Final Monitoring Report. The letter shall also indicate that that no further work is required.</p> <p>IV. Discovery of Human Remains If human remains are discovered, work shall halt in that area and no soil shall be exported off-site until a determination can be made regarding the provenance of the human remains; and the following procedures set forth in CEQA Section 15064.5(e), the California Public Resources Code (Sec. 5097.98) and State Health and Safety Code (Sec. 7050.5) shall be undertaken:</p> <p>A. Notification</p> <ol style="list-style-type: none"> 1. Archaeological Monitor shall notify the RE or BI as appropriate, City Staff, and the PI, if the Monitor is not qualified as a PI. City Staff will notify the appropriate Senior Planner in the Environmental Analysis Section (EAS) of the Development Services Department to assist with the discovery process. 2. The PI shall notify the Medical Examiner after consultation with the RE, either in person or via telephone. <p>B. Isolate discovery site</p> <ol style="list-style-type: none"> 1. Work shall be directed away from the location of the discovery and any nearby area reasonably suspected to overlay adjacent human remains until a determination can be made by the Medical Examiner in consultation with the PI concerning the provenance of the remains. 2. The Medical Examiner, in consultation with the PI, will determine the need for a field examination to determine the provenance. 3. If a field examination is not warranted, the Medical Examiner will determine with input from the PI, if the remains are or 			

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	<p>are most likely to be of Native American origin.</p> <p>C. If Human Remains are determined to be Native American</p> <ol style="list-style-type: none"> 1. The Medical Examiner will notify the Native American Heritage Commission (NAHC) within 24 hours. By law, ONLY the Medical Examiner can make this call. 2. NAHC will immediately identify the person or persons determined to be the Most Likely Descendent (MLD) and provide contact information. 3. The MLD will contact the PI within 24 hours or sooner after the Medical Examiner has completed coordination, to begin the consultation process in accordance with CEQA Section 15064.5(e) and the California Public Resources and Health & Safety Codes. 4. The MLD will have 48 hours to make recommendations to the property owner or representative, for the treatment or disposition with proper dignity, of the human remains and associated grave goods. 5. Disposition of Native American Human Remains will be determined between the MLD and the PI, and if: <ol style="list-style-type: none"> (a) The NAHC is unable to identify the MLD, OR the MLD failed to make a recommendation within 48 hours after being notified by the Commission; OR; (b) The landowner or authorized representative rejects the recommendation of the MLD and mediation in accordance with PRC 5097.94 (k) by the NAHC fails to provide measures acceptable to the landowner, THEN, (c) In order to protect these sites, the Landowner shall do one or more of the following: <ol style="list-style-type: none"> (1) Record the site with the NAHC; (2) Record an open space or conservation easement on the site; (3) Record a document with the County. 6. Upon the discovery of multiple Native American human remains during a ground disturbing land development activity, the landowner may agree that additional conferral with descendants is necessary to consider culturally appropriate treatment of multiple Native American human remains. Culturally appropriate treatment of such a discovery may be ascertained from review of the site utilizing cultural and archaeological standards. Where the parties are unable to agree 			

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	<p>on the appropriate treatment measures the human remains and buried with Native American human remains shall be reinterred with appropriate dignity, pursuant to Section 5.c., above.</p> <p>D. If Human Remains are not Native American</p> <ol style="list-style-type: none"> 1. The PI shall contact the Medical Examiner and notify them of the historic era context of the burial. 2. The Medical Examiner will determine the appropriate course of action with the PI and City staff (PRC 5097.98). 3. If the remains are of historic origin, they shall be appropriately removed and conveyed to the San Diego Museum of Man for analysis. The decision for internment of the human remains shall be made in consultation with City Staff, the applicant/landowner and the San Diego Museum of Man. <p>V. Night and/or Weekend Work</p> <p>A. If night and/or work is included in the contract</p> <ol style="list-style-type: none"> 1. When night and/or weekend work is included in the contract package, the extent and timing shall be presented and discussed at the Precon Meeting. 2. The following procedures shall be followed. <ol style="list-style-type: none"> (a) No Discoveries In the event that no discoveries were encountered during night and/or weekend work, the PI shall record the information on the CSVR and submit to City Staff via fax by 8 am of the next business day. (b) Discoveries All discoveries shall be processed and documented using the existing procedures detailed in Sections III - During Construction, and IV – Discovery of Human Remains. Discovery of human remains shall always be treated as a significant discovery. (c) Potentially Significant Discoveries If the PI determines that a potentially significant discovery has been made, the procedures detailed under Section III - During Construction and IV-Discovery of Human Remains shall be followed. (d) The PI shall immediately contact City Staff, or by 8 am of the next business day to report and discuss the 			

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	<p>findings as indicated in Section III-B, unless other specific arrangements have been made.</p> <p>B. If night and/or weekend work becomes necessary during the course of construction</p> <ol style="list-style-type: none"> 1. The Construction Manager shall notify the RE, or BI, as appropriate, a minimum of 24 hours before the work is to begin. 2. The RE, or BI, as appropriate, shall notify City Staff immediately. <p>C. All other procedures described above shall apply, as appropriate.</p> <p>VI. Post Construction</p> <p>A. Submittal of Draft Monitoring Report</p> <ol style="list-style-type: none"> 1. The PI shall submit two copies of the Draft Monitoring Report (even if negative) prepared in accordance with the Historical Resources Guidelines and Appendices which describes the results, analysis, and conclusions of all phases of the Archaeological Monitoring Program (with appropriate graphics) to City Staff, for review and approval within 90 days following the completion of monitoring. <ol style="list-style-type: none"> (a) For significant archaeological resources encountered during monitoring, the Archaeological Data Recovery Program shall be included in the Draft Monitoring Report. (b) Recording sites with State of California Department of Parks and Recreation The PI shall be responsible for recording (on the appropriate State of California Department of Park and Recreation forms-DPR 523 A/B) any significant or potentially significant resources encountered during the Archaeological Monitoring Program in accordance with the City's Historical Resources Guidelines, and submittal of such forms to the South Coastal Information Center with the Final Monitoring Report. 2. City Staff shall return the Draft Monitoring Report to the PI for revision or, for preparation of the Final Report. 3. The PI shall submit revised Draft Monitoring Report to City Staff for approval. 			

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	<ul style="list-style-type: none"> 4. City Staff shall provide written verification to the PI of the approved report. 5. City Staff shall notify the RE or BI, as appropriate, of receipt of all Draft Monitoring Report submittals and approvals. B. Handling of Artifacts and Submittal of Collections Management Plan, if applicable <ul style="list-style-type: none"> 1. The PI shall be responsible for ensuring that all cultural remains collected are cleaned and catalogued. 2. The PI shall be responsible for ensuring that all artifacts are analyzed to identify function and chronology as they relate to the history of the area; that faunal material is identified as to species; and that specialty studies are completed, as appropriate. 3. The PI shall submit a Collections Management Plan to City Staff for review and approval for any project which results in a substantial collection of historical artifacts. C. Curation of artifacts: Accession Agreement and Acceptance Verification <ul style="list-style-type: none"> 1. The PI shall be responsible for ensuring that all artifacts associated with the survey, testing and/or data recovery for this project are permanently curated with an appropriate institution. This shall be completed in consultation with City Staff and the Native American representative, as applicable. 2. The PI shall include the Acceptance Verification from the curation institution in the Final Monitoring Report submitted to the RE or BI and City Staff. 3. When applicable to the situation, the PI shall include written verification from the Native American consultant/monitor indicating that Native American resources were treated in accordance with state law and/or applicable agreements. If the resources were reinterred, verification shall be provided to show what protective measures were taken to ensure no further disturbance in accordance with section IV - Discovery of Human Remains, subsection 5.(d). D. Final Monitoring Report(s) <ul style="list-style-type: none"> 1. The PI shall submit one copy of the approved Final Monitoring Report to the RE or BI as appropriate, and one copy to City Staff (even if negative), within 90 days after notification from City Staff that the draft report has been approved. 			

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	2. The RE shall, in no case, issue the Notice of Completion until receiving a copy of the approved Final Monitoring Report from- City Staff which includes the Acceptance Verification from the curation institution.			
PALEONTOLOGICAL RESOURCES (PAL)				
Impact PAL-A.1: Excavation in geologic formations with a moderate to high potential for paleontological resources could have an significant impact on these resources, if present. (Direct)	<p><i>Mitigation Measure PAL-A.1-1:</i> In the event the Secondary Study indicates the potential for significant paleontological resources, the following measures shall be implemented as determined appropriate by CCDC.</p> <p>I. Prior to Permit Issuance</p> <p>A. Construction Plan Check</p> <ol style="list-style-type: none"> 1. Prior to Notice to Proceed (NTP) for any construction permits, including but not limited to, the first Grading Permit, Demolition Permits and Building Permits, but prior to the first preconstruction meeting, whichever is applicable, Centre City Development Corporation (CCDC) shall verify that the requirements for Paleontological Monitoring have been noted on the appropriate construction documents. <p>B. Letters of Qualification have been submitted to CCDC</p> <ol style="list-style-type: none"> 1. The applicant shall submit a letter of verification to CCDC identifying the Principal Investigator (PI) for the project and the names of all persons involved in the paleontological monitoring program, as defined in the City of San Diego Paleontology Guidelines. 2. CCDC will provide a letter to the applicant confirming the qualifications of the PI and all persons involved in the paleontological monitoring of the project. 3. Prior to the start of work, the applicant shall obtain approval from CCDC for any personnel changes associated with the monitoring program. <p>II. Prior to Start of Construction</p> <p>A. Verification of Records Search</p> <ol style="list-style-type: none"> 1. The PI shall provide verification to CCDC that a site-specific records search has been completed. Verification includes, but is not limited to a copy of a confirmation letter from San Diego Natural History Museum, other institution or, if the search was in-house, a letter of verification from the PI stating that the search was completed. 	Prior to Demolition, Grading or Building Permit (Design) Prior to Certificate of Occupancy (Implementation)	Developer	CCDC/City

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	<p>2. The letter shall introduce any pertinent information concerning expectations and probabilities of discovery during trenching and/or grading activities.</p> <p>B. PI Shall Attend Precon Meetings</p> <p>1. Prior to beginning any work that requires monitoring, the Applicant shall arrange a Precon Meeting that shall include the PI, Construction Manager (CM) and/or Grading Contractor, Resident Engineer (RE), Building Inspector (BI), if appropriate, and CCDC. The qualified paleontologist shall attend any grading/excavation related Precon Meetings to make comments and/or suggestions concerning the Paleontological Monitoring program with the Construction Manager and/or Grading Contractor.</p> <p>a. If the PI is unable to attend the Precon Meeting, the Applicant shall schedule a focused Precon Meeting with CCDC, the PI, RE, CM or BI, if appropriate, prior to the start of any work that requires monitoring.</p> <p>2. Identify Areas to be Monitored</p> <p>a. Prior to the start of any work that requires monitoring, the PI shall submit a Paleontological Monitoring Exhibit (PME) based on the appropriate construction documents (reduced to 11x17) to CCDC identifying the areas to be monitored including the delineation of grading/excavation limits. The PME shall be based on the results of a site specific records search as well as information regarding existing known soil conditions (native or formation).</p> <p>3. When Monitoring Will Occur</p> <p>a. Prior to the start of any work, the PI shall also submit a construction schedule to CCDC through the RE indicating when and where monitoring will occur.</p> <p>b. The PI may submit a detailed letter to CCDC prior to the start of work or during construction requesting a modification to the monitoring program. This request shall be based on relevant information such as review of final construction documents which indicate conditions such as depth of excavation and/or site graded to bedrock, presence or absence of fossil resources, etc., which may reduce or increase the potential for resources to be present.</p>			

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	<p>III. During Construction</p> <p>A. Monitor Shall be Present During Grading/Excavation/Trenching</p> <ol style="list-style-type: none"> 1. The monitor shall be present full-time during grading/excavation/trenching activities as identified on the PME that could result in impacts to formations with high and moderate resource sensitivity. The Construction Manager is responsible for notifying the RE, PI, and CCDC of changes to any construction activities. 2. The monitor shall document field activity via the Consultant Site Visit Record (CSVR). The CSVR's shall be faxed by the CM to the RE the first day of monitoring, the last day of monitoring, monthly (Notification of Monitoring Completion), and in the case of any discoveries. The RE shall forward copies to CCDC. 3. The PI may submit a detailed letter to CCDC during construction requesting a modification to the monitoring program when a field condition such as trenching activities that do not encounter formational soils as previously assumed, and/or when unique/unusual fossils are encountered, which may reduce or increase the potential for resources to be present. <p>B. Discovery Notification Process</p> <ol style="list-style-type: none"> 1. In the event of a discovery, the Paleontological Monitor shall direct the contractor to temporarily divert trenching activities in the area of discovery and immediately notify the RE or BI, as appropriate. 2. The Monitor shall immediately notify the PI (unless Monitor is the PI) of the discovery. 3. The PI shall immediately notify CCDC by phone of the discovery, and shall also submit written documentation to CCDC within 24 hours by fax or email with photos of the resource in context, if possible. <p>C. Determination of Significance</p> <ol style="list-style-type: none"> 1. The PI shall evaluate the significance of the resource. <ol style="list-style-type: none"> a. The PI shall immediately notify CCDC by phone to discuss significance determination and shall also submit a letter to CCDC indicating whether additional mitigation is required. The determination of significance for fossil discoveries shall be at the discretion of the PI. b. If the resource is significant, the PI shall submit a Paleontological Recovery Program (PRP) and obtain written approval from CCDC. Impacts to significant resources must 			

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	<p>be mitigated before ground disturbing activities in the area of discovery will be allowed to resume.</p> <ul style="list-style-type: none"> c. If resource is not significant (e.g., small pieces of broken common shell fragments or other scattered common fossils) the PI shall notify the RE, or BI as appropriate, that a non-significant discovery has been made. The Paleontologist shall continue to monitor the area without notification to CCDC unless a significant resource is encountered. d. The PI shall submit a letter to CCDC indicating that fossil resources will be collected, curated, and documented in the Final Monitoring Report. The letter shall also indicate that no further work is required. <p>IV. Night Work</p> <ul style="list-style-type: none"> A. If night work is included in the contract <ul style="list-style-type: none"> 1. When night work is included in the contract package, the extent and timing shall be presented and discussed at the precon meeting. 2. The following procedures shall be followed. <ul style="list-style-type: none"> a. No Discoveries <ul style="list-style-type: none"> (1) In the event that no discoveries were encountered during night work, The PI shall record the information on the CSVr and submit to CCDC via fax by 9am the following morning, if possible. b. Discoveries <ul style="list-style-type: none"> (1) All discoveries shall be processed and documented using the existing procedures detailed in Sections III - During Construction. c. Potentially Significant Discoveries <ul style="list-style-type: none"> (1) If the PI determines that a potentially significant discovery has been made, the procedures detailed under Section III - During Construction shall be followed. d. The PI shall immediately contact CCDC, or by 8AM the following morning to report and discuss the findings as indicated in Section III-B, unless other specific arrangements have been made. B. If night work becomes necessary during the course of construction <ul style="list-style-type: none"> 1. The Construction Manager shall notify the RE, or BI, as appropriate, a minimum of 24 hours before the work is to begin. 2. The RE, or BI, as appropriate, shall notify CCDC immediately. 			

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	<p>C. All other procedures described above shall apply, as appropriate.</p> <p>VI. Post Construction</p> <p>A. Submittal of Draft Monitoring Report</p> <ol style="list-style-type: none"> 1. The PI shall submit two copies of the Draft Monitoring Report (even if negative) which describes the results, analysis, and conclusions of all phases of the Paleontological Monitoring Program (with appropriate graphics) to CCDC for review and approval within 90 days following the completion of monitoring, <ol style="list-style-type: none"> a. For significant paleontological resources encountered during monitoring, the Paleontological Recovery Program shall be included in the Draft Monitoring Report. b. Recording Sites with the San Diego Natural History Museum <ol style="list-style-type: none"> (1) The PI shall be responsible for recording (on the appropriate forms) any significant or potentially significant fossil resources encountered during the Paleontological Monitoring Program in accordance with the City's Paleontological Guidelines, and submittal of such forms to the San Diego Natural History Museum with the Final Monitoring Report. 2. CCDC shall return the Draft Monitoring Report to the PI for revision or, for preparation of the Final Report. 3. The PI shall submit revised Draft Monitoring Report to CCDC for approval. 4. CCDC shall provide written verification to the PI of the approved report. 5. CCDC shall notify the RE or BI, as appropriate, of receipt of all Draft Monitoring Report submittals and approvals. <p>B. Handling of Fossil Remains</p> <ol style="list-style-type: none"> 1. The PI shall be responsible for ensuring that all fossil remains collected are cleaned and catalogued. 2. The PI shall be responsible for ensuring that all fossil remains are analyzed to identify function and chronology as they relate to the geologic history of the area; that faunal material is identified as to species; and that specialty studies are completed, as appropriate <p>C. Curation of fossil remains: Deed of Gift and Acceptance Verification</p> <ol style="list-style-type: none"> 1. The PI shall be responsible for ensuring that all fossil remains 			

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	<p>associated with the monitoring for this project are permanently curated with an appropriate institution.</p> <p>2. The PI shall include the Acceptance Verification from the curation institution in the Final Monitoring Report submitted to the RE or BI and CCDC.</p> <p>D. Final Monitoring Report(s)</p> <p>1. The PI shall submit two copies of the Final Monitoring Report to CCDC (even if negative), within 90 days after notification from CCDC that the draft report has been approved.</p> <p>2. The RE shall, in no case, issue the Notice of Completion until receiving a copy of the approved Final Monitoring Report from CCDC which includes the Acceptance Verification from the curation institution.</p>			
NOISE (NOI)				
<p>Impact NOI-B.1: Noise generated by I-5 and highly traveled grid streets could cause interior noise levels in noise-sensitive uses (exclusive of residential and hotel uses) to exceed 45 dB(A). (Direct)</p>	<p><i>Mitigation Measure NOI-B.1-1:</i> Prior to approval of a Building Permit for any residential, hospital, or hotel within 475 feet of the centerline of Interstate 5 or adjacent to a roadway carrying more than 7,000 ADT, an acoustical analysis shall be performed to confirm that architectural or other design features are included which would assure that noise levels within habitable rooms would not exceed 45 dB(A) CNEL.</p>	<p>Prior to Building Permit (Design)</p> <p>Prior to Certificate of Occupancy (Implementation)</p>	<p>Developer</p>	<p>CCDC/City</p>
TRAFFIC AND CIRCULATION (TRF)				
<p>Impact TRF-A.1.1: Increased traffic on grid streets from downtown development would result in unacceptable levels of service on specific roadway intersections and/or segments within downtown. (Direct)</p>	<p><i>Mitigation Measure TRF-A.1.1-2:</i> Prior to approval of any development which would generate a sufficient number of trips to qualify as a large project under the Congestion Management Program (i.e. more than 2,400 daily trips, or 200 trips during a peak hour period), a traffic study shall be completed as part of the Secondary Study process. The traffic study shall be prepared in accordance with City's Traffic Impact Study Manual. If the traffic study indicates that roadways substantially affected by the project would operate at LOS F with the addition of project traffic, the traffic study shall identify improvements to grid street segments and/or intersections which would be required within the next five years to achieve an acceptable LOS or reduce congestion, to the extent feasible. If the needed improvements are already included in CCDC's CIP, or the equivalent, no further action shall be required. If the any of the required improvements are not included in the CIP, or not expected within five years of project completion, CCDC shall amend the CIP, within one year of project approval,</p>	<p>Prior to Development Permit (Design)</p>	<p>Developer</p>	<p>CCDC/City</p>

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	to include the required improvements and assure that they will be implemented within five years of project completion. At CCDC's discretion, the developer may be assessed a pro-rated share of the cost of improvements.			