



# **CITY COUNCIL AGENDA REPORT**

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MEETING DATE: JULY 6, 2010

ITEM NUMBER:

**SUBJECT: ANNUAL REVIEW AND THIRD AMENDMENT TO HOME RANCH DEVELOPMENT AGREEMENT DA-10-01**

**DATE: JUNE 15, 2010**

**FROM: DEVELOPMENT SERVICES DEPT.**

**PRESENTATION BY: MINOO ASHABI, AIA, SENIOR PLANNER  
KIMBERLY BRANDT, DIRECTOR**

**FOR FURTHER INFORMATION CONTACT: MINOO ASHABI (714) 754-5610**

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## **RECOMMENDATION:**

Pursuant to Planning Commission's recommendation:

- 1) Adopt resolution finding the developer in compliance with the terms and conditions of the Home Ranch Development Agreement;
- 2) Introduce ordinance that adopts the third Amendment of the Home Ranch Development Agreement, for first reading, to be read by title only, and to waive further reading.

## **BACKGROUND:**

Segerstrom Home Ranch is generally located north of the Interstate I-405, east of Harbor Boulevard, and south of Sunflower Avenue (Attachment 2). The Home Ranch development project was approved in November 2001, and presently contains IKEA, Emulex, and the Providence Park residential development (143 units). The development of office uses in the southeast quadrant of Susan Street and South Coast Drive intersection is pending.

Development Agreement DA-00-01 for Home Ranch was adopted by City Council on December 3, 2001. The following two amendments have been approved since the original document was executed:

- First amendment approved in 2003 related to surplus transportation fees and the Huscroft House contribution; and,
- Second amendment approved in 2007 that excluded the approximate 1.3 acre-segment of the exit ramp between the I-405 North distributor road and the IKEA driveway intersection.

On May 10, 2010, the Planning Commission recommended approval of the proposed third amendment. The Planning Commission staff report, related attachments (Home Ranch Development Agreement and subsequent amendments) and minutes can be viewed at the following link: <http://www.ci.costa-mesa.ca.us/CMCalendar.htm>

## **ANALYSIS:**

The Home Ranch Development Agreement is subject to an annual review by the Planning Commission and City Council. The 2009 annual review was postponed since the developer requested an amendment; therefore the 2009/2010 annual review and the amendment have been consolidated into this single report.

### ***Annual Review of Development Agreement DA-00-01***

The purpose of the annual review is to determine if the developer and/or City have made good faith efforts to comply with the provisions and conditions of the development agreement. The following sections summarize the requirements:

#### **A. Circulation Improvements:**

##### *Improvements Required in Accordance with General Plan*

The developer has paid the City's and Transportation Corridor Agency's traffic impact fees as required.

##### *Site Access Improvements*

The developer has completed the improvements and signal modifications at the South Coast Drive and Susan Street intersection. Access to the Home Ranch site from South Coast Drive between Susan Street and Fairview Road will be implemented in conjunction with future development in the area. The Susan Street off-ramp improvements were completed in its entirety by private funds. There are no additional right-of-way needs specified in the agreement for public circulation improvements.

- B. Cultural Resources:** The proposed third amendment is intended to address the property owners' obligations related to cultural resources. The developer was required to dedicate land, form a nonprofit foundation with a \$250,000 endowment, and create a \$10,000 preservation plan to maintain the historic site by March 2007. Two one-year time extensions approved in 2007 and 2008 extended the time to fulfill this obligation to March 2009. The extensions were provided pending that the developer commits to making substantial progress in completing the Cultural Resources obligations by the 2009 annual review of the development agreement. In the mean time, the developer has maintained the site and designated buildings. This issue is further discussed in detail under the proposed amendment.
- C. Educational Advancement:** The required contribution has been paid by the applicant, and the education foundations have been established.
- D. High School Athletic Field Contribution:** The developer has paid the required contribution.
- E. Restoration of Huscroft House Contribution:** The developer has paid the required contribution.

**F. Residential Component:** The residential component of the project has been completed.

**G. Fire Station:** The developer has submitted all fire suppression impact fees in conjunction with building permit issuance, with an outstanding balance of \$264,210.83 based on the project's maximum entitlement allowed. The City has completed the fire suppression study. The proposed amendment is intended to specify the location, timing of dedication, and size of the future fire station site. This issue is further discussed in detail under the proposed amendment.

**H. Sales and Use Tax Guarantee:** The IKEA Home Furnishings opened May 28, 2003. All sales tax revenue has been monitored. The developer has met the cumulative sales tax requirements for the amount of \$5,000,000. This issue is further discussed in detail under the proposed amendment.

***Proposed Third Amendment to Development Agreement DA-00-01***

The amended language for the Home Ranch Development Agreement is provided as Attachment 4, and Council must find the amendment to the agreement consistent with the Costa Mesa General Plan, North Costa Mesa Specific Plan and the analyses and mitigation measures contained in the Final Environmental Impact Report for Segerstrom Home Ranch project.

The following is a summary of the Third Amendment as recommended for adoption by the Planning Commission:

1. ***20-YEAR TERM (APPROXIMATELY 13-YEAR TIME EXTENSION) FROM DATE OF AMENDMENT ADOPTION:*** The development agreement became effective in January 2002 for fifteen years. The time extension provides assurances that the Developer may proceed with development, in conformance with existing land use regulations for another 13 years until 2030.

***Analysis:*** Expiration of the Agreement would provide Council with an opportunity to consider different land uses for the remainder of the Segerstrom Home Ranch project site, should the site not be fully developed in the next 7 years. However, Staff believes the current General Plan designation and entitled development potential are appropriate given the site's location, surrounding land uses, and the circulation system's capacity, and therefore staff supports the time extension.

2. ***\$5 MILLION SALES TAX GUARANTEE FULFILLMENT:*** The Development Agreement includes a provision that requires a five-year cumulative amount of \$5 million in sales tax revenue with a progressive annual guarantee of \$750,000 to \$1,250,000.

***Analysis:*** As shown in Attachment 4, the sales tax guarantee for the individual third and fourth year obligations were not met; however, the overall required cumulative amount of \$5 million in sales tax revenue was met in year 2008 before the conclusion of the 5 years. Although, the "letter" of this requirement was not satisfied in terms of meeting the sales tax guarantee for an individual year; staff believes that the "intent" of this obligation has been met for the cumulative period.

The Development Agreement also notes that once the \$5 million in sales tax is achieved, no further guarantee payment is required.

3. **FIRE STATION AND FIRE IMPACT FEE:** The amendment increases the future Fire Station size from 30,000 to 40,000 square feet and identifies a location on South Coast Drive. With input from the City's Fire Chief, a 40,000 square-foot parcel (200 feet by 200 feet) with direct access from South Coast Drive is proposed for development of the future fire station. To accommodate the best fit for a fire station site, the developer has agreed to dedicate a parcel larger than the previously required 30,000 square-foot parcel. In addition, the Owner is proposing to prepay the remainder of the fire impact fee in the amount of \$264,210.83. The amendment also includes a time extension on the City's obligation to construct the fire station or the land must be conveyed back to the applicant.

**Analysis:** This amendment clearly notes provisions for a future fire station along South Coast Drive. It also satisfies the Fire Department's desire for an increased station size by 10,000 square feet in an acceptable location that has direct vehicular access to and from South Coast Drive. The prepayment of the fire impact fee will allow the City to accrue interest on the funds until such time the City constructs the station. A deed restriction requires the parcel to be only a fire station. The City also benefits from the time extension in respect to the obligation to construct the fire station.

4. **CULTURAL RESOURCES:** All of the existing provisions in the original agreement regarding historic resources are proposed to be replaced with the following:
  - a. **CHANGE IN HISTORIC SITE/STRUCTURES PRESERVATION TIMEFRAME FROM "PERPETUITY" TO 50 YEARS:** The amendment defers ultimate disposition of historic structures for 50 years, but any demolition and/or relocation of structures to another Costa Mesa location will require City approval and CEQA analysis. The proposed fifty-year historic term is consistent with terms imposed on preservation of California Scenario, Noguchi Garden.
  - b. **OWNER RETAINS MAINTENANCE RESPONSIBILITIES OF THE 1.5-ACRE HISTORIC SITE AND STRUCTURES IN CURRENT CONDITION FOR THE 50-YEAR PERIOD AS OPPOSED TO CURRENT REQUIREMENT TO TRANSFER TO A NONPROFIT ORGANIZATION OR CITY:** The \$250,000 anticipated to be used as seed money for the Non-profit organization, as required in the original agreement may be insufficient for proper maintenance of the four structures and other funding sources would be required. The Owner has been maintaining the structures since original construction and is well suited to continue maintenance.
  - c. **BEGINNING IN 2011, PUBLIC ACCESS TO HISTORIC SITE IS ALLOWED ONE DAY A YEAR WITH NO ACCESS TO THE INTERIOR OF THE HISTORIC STRUCTURES:** Although the original agreement anticipates that the site could be open to the public on a regular basis once it is transferred to a Nonprofit organization; it is unlikely that the \$250,000

would be sufficient for the necessary site and structure improvements, particularly in respect to ADA requirements, that would allow immediate public access to property.

- d. **OWNER DEPOSITS \$260,000 WITH CITY AS A "HISTORIC RESERVE ACCOUNT" TO BE TRANSFERRED TO A NEW OWNER IN THE EVENT THE PROPERTY IS TRANSFERRED DURING THE 50 YEARS:** Prior to any future ownership transfer, the amendment establishes provisions for the use of the Historic Reserve Account for extraordinary maintenance by the current owner during the 50 years, and that all expenditures from the account must be authorized by the City. Also, the fund could be used for the physical relocation of the structures, but not for any required processing application fees, studies, etc.
- e. **DISBURSEMENT OF HISTORIC RESERVE ACCOUNT.** After the 50-year Historic Period, should the site not have been transferred to a new owner, any remaining funds of the initial \$260,000, less any authorized expenses, shall be returned to the owner. The interest in the account shall be split on a 50/50 basis between the City and the Owner.
- f. **RECORDATION OF LAND USE RESTRICTION ON HISTORIC SITE REQUIRING MAINTENANCE AND PUBLIC ACCESS FOR 50 YEARS:** The land use restriction gives a 50-year guarantee of maintenance and public access at the current location.
- g. **RELOCATION OF STRUCTURES SUBJECT TO ALL APPLICABLE REQUIREMENTS INCLUDING APPROPRIATE APPLICATION, CEQA DOCUMENTATION, ETC:** The amendment is consistent with North Costa Mesa Specific Plan and Segerstrom Home Ranch EIR in that both documents refer to preservation of the historic structures on the project site. In case of a request to relocate the historic structures to an off-site location in Costa Mesa, all then applicable requirements will have to be met which may include additional expert analysis and environmental review.

The Final EIR requires a General Plan amendment to Public/Semi Public for the Historical site at the time the City approves the Final Master Plan for the "remainder of the project site." The proposed amendment reiterates the existing agreement language that transfers development rights from the historic site and fire station to the greater Home Ranch site.

## **ALTERNATIVES**

1. Find developer in compliance with development agreement and approve the proposed third amendment to agreement (with any modifications to the amended language).
2. Find developer in compliance with development agreement but recommend denial of proposed amendment.

**LEGAL REVIEW**

The City Attorney's office has approved as to form the resolution and ordinance.

**CONCLUSION**

Commission has reviewed the Agreement's terms and conditions and believes the Developer is in compliance. The proposed changes to the agreement are consistent with the Final EIR, North Costa Mesa Specific Plan and General Plan. The most significant is in respect to the Historic Resources with the timeframe change from "perpetuity" to 50 years. However, staff notes the City has not abdicated its land use control for the Historic site because the City will process a General Plan Amendment to Public/Semi-Public at the time of the final master plan review for the development of the remainder Home Ranch site. The proposed amendment updates the agreement with respect to the Owner's obligations and preservation terms of the historic structures, and guarantees preservation and public access for 50 years. Commission believes the proposed amendment is consistent with the intent of the original agreement and the mitigation program of the Home Ranch EIR.

  
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MINOO ASHABI, AIA  
Senior Planner

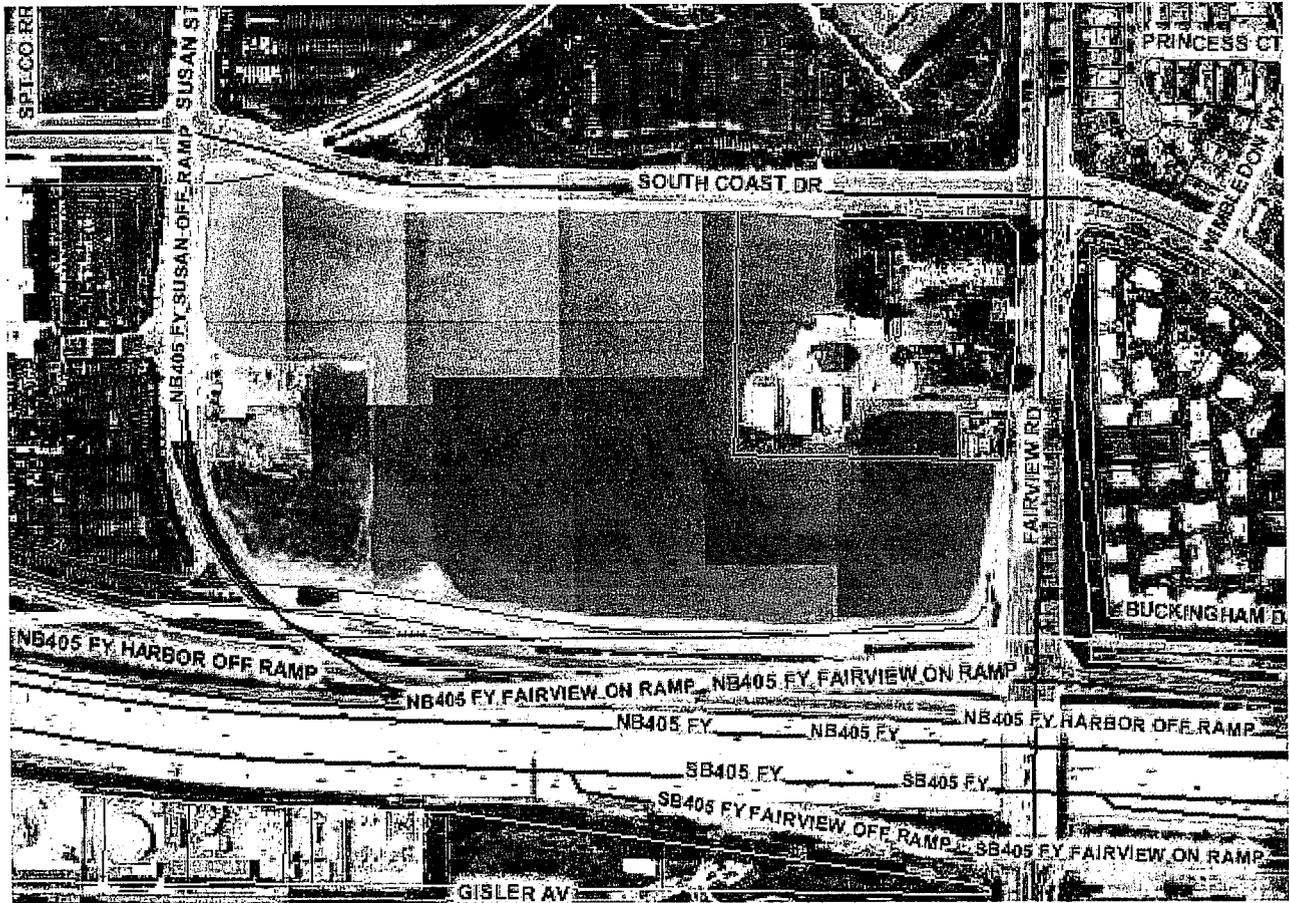
  
\_\_\_\_\_  
KIMBERLY BRANDT, AICP  
Development Services Director

- Distribution: City Manager  
Assistant City Manager  
City Attorney  
Historic Preservation Committee  
Public Services Director  
Fire Chief  
Fire Protection Analyst  
Transportation Manager  
Recreation Manager  
City Clerk (2)  
Staff (4)  
File (2)

Mr. Justin McCusker  
C.J. Segerstrom and Sons  
3315 Fairview Road  
Costa Mesa, CA 92626

- Attachment:           1.   Vicinity Map  
                          2.   City Council Resolution  
                          3.   City Council Ordinance  
                          4.   Sales Tax Spreadsheet

VICINITY MAP  
HOME RANCH DEVELOPMENT  
AGREEMENT  
DA-10-01



## RESOLUTION NO. 10-

**A RESOLUTION OF CITY COUNCIL OF THE CITY OF COSTA MESA FINDING DEVELOPER IN COMPLIANCE WITH HOME RANCH DEVELOPMENT AGREEMENT (DA-00-01)**

THE CITY COUNCIL OF THE CITY OF COSTA MESA HEREBY RESOLVES AS FOLLOWS:

WHEREAS, on December 3, 2001, the City Council of the City of Costa Mesa adopted Ordinance No. 01-29 approving Development Agreement DA-00-01 for the Segerstrom Home Ranch Project;

WHEREAS, on September 15, 2003, the City Council of the City of Costa Mesa adopted Ordinance No. 03-9 approving the first amendment to the Development Agreement DA-00-01 for the Segerstrom Home Ranch Project relating to surplus transportation fees and the Huscroft House contribution;

WHEREAS, on March 20, 2007, the City Council of the City of Costa Mesa adopted Ordinance No. 07-5 approving the second amendment to the Development Agreement for the Segerstrom Home Ranch Project relating to the Susan Street Exit Ramp Project;

WHEREAS, a duly noticed public hearing was held by the Planning Commission on May 10, 2010 pursuant to the procedures described in Council Resolution No. 88-53. At this hearing, the Planning Commission recommended that the City Council find the developer in compliance with the Home Ranch Development Agreement and approve the proposed third amendment to the agreement;

WHEREAS, a duly noticed public hearing was held by the City Council on July 6, 2010 pursuant to the procedures described in Council Resolution No. 88-53. At this hearing, the City Council considered the evidence, the testimony presented by the public regarding the annual review and proposed Third Amendment to Development Agreement DA-00-01 between the City of Costa Mesa and C.J. Segerstrom & Sons, Henry T. Segerstrom Properties LLC, a California limited liability company, and Ruth Ann Moriarty Properties LLC, a California limited liability company (collectively referred to as "CJS").

WHEREAS, an annual review of Development Agreement DA-00-01 provides analysis related to the Developer's compliance with the terms, conditions, and obligations as set forth in the agreement;

BE IT RESOLVED that the City Council finds the Developer in compliance with the terms, conditions, and obligations of Development Agreement DA-00-01.

**PASSED AND ADOPTED this 6<sup>th</sup> day of July, 2010.**

\_\_\_\_\_  
ALLAN R. MANSOOR  
Mayor of the City of Costa Mesa

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
City Clerk of the City of Costa Mesa

\_\_\_\_\_  
City Attorney

ORDINANCE NO. 10-

**AN ORDINANCE OF THE CITY COUNCIL OF COSTA MESA, CALIFORNIA ADOPTING THIRD AMENDMENT TO HOME RANCH DEVELOPMENT AGREEMENT DA-00-01 FOR HOME RANCH PROPERTY LOCATED NORTH OF THE INTERSTATE I-405, EAST OF HARBOR BOULEVARD, AND SOUTH OF SUNFLOWER AVENUE**

**THE CITY COUNCIL OF THE CITY OF COSTA MESA DOES HEREBY ORDAIN AS FOLLOWS:**

WHEREAS, a duly noticed public hearing was held by the City Council on July 6, 2010 pursuant to the procedures described in Council Resolution No. 88-53. At this hearing, the City Council considered the evidence, the testimony presented by the public regarding the annual review and proposed Third Amendment to Development Agreement DA-00-01 between the City of Costa Mesa and C.J. Segerstrom & Sons, Henry T. Segerstrom Properties LLC, a California limited liability company, and Ruth Ann Moriarty Properties LLC, a California limited liability company (collectively referred to as "CJS").

**SECTION 1: ADOPTION OF THIRD AMENDMENT TO HOME RANCH DEVELOPMENT AGREEMENT DA-00-01.**

The City Council **HEREBY ADOPTS** the Third Amendment to the Home Ranch Development Agreement DA-00-01, as shown in **EXHIBIT "1"**. The Third Amendment specifies the following changes to the terms and conditions of the Agreement:

- (1) The amendment extends the duration of Agreement for an additional 13 years, from January 2017 to January 2030.
- (2) The amendment clarifies that the \$5 million sales tax cumulative sales tax guarantee is satisfied.
- (3) The amendment increases the future Fire Station size from 30,000 to 40,000 square feet, identifies a parcel size of 200 feet by 200 feet, and specifies a location with direct access from South Coast Drive.
- (4) The amendment modifies provisions related to historic and cultural resources, including but not limited to: a change in the historic site/structures preservation period from "perpetuity" to "50 years", defining maintenance responsibilities, specifying public access to one day a year, and establishing provisions for the historic reserve account.

- (5) The amendment requires recordation of a land use restriction specifying a 50-year guarantee for maintenance and public access to the historic site/structures.
- (6) The amendment reiterates that future relocation of historic structures are subject to additional expert analysis and environmental review.

Council adoption of the Third Amendment to Home Ranch Development Agreement DA-00-01 is pursuant to the following findings:

- (1) The amendment is consistent with the 2000 General Plan and North Costa Mesa Specific Plan;
- (2) The amendment is compatible with the uses authorized in, and existing land uses prescribed for the zoning district in which the real property covered by the Third Amendment to the Development Agreement is located; and,
- (3) The amendment promotes the public necessity, public convenience, general welfare, and good land uses practices.
- (4) The amendment is not found to be detrimental to the public's health, safety and general welfare, or adversely affect the development of the property;
- (5) The amendment promotes and encourages the development of the proposed project by providing stability and certainty to the developer, and provide to the City and its citizens the public benefits promised in the Development Agreement and subsequently approved amendments to date;

**SECTION 2. ENVIRONMENTAL DETERMINATION.** The proposed third amendment was processed in accordance with the requirements of the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the City of Costa Mesa Environmental Guidelines, and is considered to be within the scope of the Final Program Environmental Impact Report SCH No. 2000071050 and the Mitigation Monitoring Program for Segerstrom Home Ranch Development project adopted on December 3, 2001;

**SECTION 3. INCONSISTENCIES.** Any provision of the Costa Mesa Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to that extent necessary to affect the provisions of this Ordinance.

**SECTION 4. SEVERABILITY.** If any provision or clause of this ordinance or the application thereof to any person or circumstances is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other provisions or clauses or applications of this ordinance which can be implemented without the invalid provision, clause or application; and to this end, the provisions of this ordinance are declared to be severable.

**SECTION 5. PUBLICATION.** This ordinance shall take effect and be in full force thirty (30) days from and after the passage thereof, and, prior to the expiration of fifteen (15) days from its passage, shall be published once in the ORANGE COAST DAILY PILOT, a newspaper of general circulation, printed and published in the City of Costa Mesa or, in the alternative, the City Clerk may cause to be published a summary of this Ordinance and a certified copy of the text of this Ordinance shall be posted in the office of the City Clerk five (5) days prior to the date of adoption of this Ordinance, and within fifteen (15) days after adoption, the City Clerk shall cause to be published the aforementioned summary and shall post in the office of the City Clerk a certified copy of this Ordinance together with the names of the members of the City Council voting for and against the same.

**PASSED AND ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_ 2010.

\_\_\_\_\_  
ALLAN R. MANSOOR  
Mayor of the City of Costa Mesa

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
City Clerk of the City of Costa Mesa

\_\_\_\_\_  
City Attorney

Home Ranch Development - Sales Tax Summary

	Period	Generated by IKEA and Emulex	Cumulative Sales Tax
<b>FIRST YEAR IKEA OPENED (2003)</b>			
Quarter 1			
Quarter 2			
Quarter 3	07/01/03-09/30/03	\$239,384	
Quarter 4	10/01/03-12/31/03	\$206,038	
	<b>TOTAL</b>	<b>\$445,422</b>	<b>\$445,422</b>
<b>SECOND YEAR IKEA OPENED (2004)</b>			
Quarter 1	01/01/04-03/31/04	\$206,718	
Quarter 2	04/01/04-06/30/04	\$204,839	
Quarter 3	07/01/04-09/30/04	\$255,547	
Quarter 4	10/01/04-12/31/04	\$220,239	
	<b>TOTAL</b>	<b>\$887,343</b>	<b>\$1,332,765</b>
<b>YEAR ONE (2005) PER DEVELOPMENT AGRMNT</b>			
\$750,000 Guaranteed			
Quarter 1	01/01/05-03/31/05	\$224,124	
Quarter 2	04/01/05-06/30/05	\$234,823	
Quarter 3	07/01/05-09/30/05	\$279,444	
Quarter 4	10/01/05-12/31/05	\$235,519	
	<b>TOTAL</b>	<b>\$973,910</b>	<b>\$2,306,675</b>
<b>YEAR TWO (2006) PER DEVELOPMENT AGRMNT</b>			
\$750,000 Guaranteed			
Quarter 1	01/01/06-03/31/06	\$231,333	
Quarter 2	04/01/06-06/30/06	\$235,449	
Quarter 3	07/01/06-09/30/06	\$278,491	
Quarter 4	10/01/06-12/31/06	\$233,652	
	<b>TOTAL</b>	<b>\$978,925</b>	<b>\$3,285,600</b>
<b>YEAR THREE (2007) PER DEVELOPMENT AGRMNT</b>			
\$1,000,000 Guaranteed			
Quarter 1	01/01/07-03/31/07	\$239,574	
Quarter 2	04/01/07-06/30/07	\$232,314	
Quarter 3	07/01/07-09/30/07	\$269,042	
Quarter 4	10/01/07-12/31/07	\$238,301	
	<b>TOTAL</b>	<b>\$979,231</b>	<b>\$4,264,831</b>
<b>YEAR FOUR (2008) PER DEVELOPMENT AGRMNT</b>			
\$1,250,000 Guaranteed			
Quarter 1	01/01/08-03/31/08	\$227,761	
Quarter 2	04/01/08-06/30/08	\$247,166	
Quarter 3	07/01/08-09/30/08	\$230,111	
Quarter 4	10/01/08-12/31/08	\$189,443	
	<b>TOTAL</b>	<b>\$894,481</b>	<b>\$5,159,312</b>
<b>*Note: Cumulative sales tax guarantee achieved in 2008</b>			
<b>YEAR FIVE (2009) PER DEVELOPMENT AGRMNT</b>			
\$1,250,000 Guaranteed			
Quarter 1	01/01/09-03/31/09	\$210,878	
Quarter 2	04/01/09-06/30/09	\$208,670	
Quarter 3	07/01/09-09/30/09	\$240,473	
Quarter 4	10/01/09-12/31/09	Not Available	
	<b>TOTAL</b>	<b>\$660,021</b>	
Total Cumulative Sales Tax After Opening in 2003	<b>Grand Total</b>	<b>\$5,819,333</b>	<b>\$5,819,333</b>
Difference in Annual Sales Tax Reporting based on Guaranteed Minimums for Year Three		\$20,769	
Difference in Annual Sales Tax Reporting based on Guaranteed Minimums for Year Four		\$355,519	
Difference in Annual Sales Tax Reporting based on Guaranteed Minimums for Year Five		Not available	

EXEMPT RECORDING PER GOVERNMENT CODE  
SECTION 6103

Recording Requested by CITY OF COSTA MESA

When Recorded Mail to:

CITY OF COSTA MESA  
ATTENTION: City Clerk  
P.O. BOX 1200  
COSTA MESA, CALIFORNIA 92628-1200

Title of the Document:

THIRD AMENDMENT TO THE DEVELOPMENT AGREEMENT FOR  
HOME RANCH

by and between

CITY OF COSTA MESA

and

C.J. SEGERSTROM & SONS, HENRY T. SEGERSTROM  
PROPERTIES LLC AND RUTH ANN MORIARTY PROPERTIES, LLC

DA-00-01  
Ordinance No. 01-29

REGARDING ORIGINAL DEVELOPMENT AGREEMENT FOR HOME RANCH (DA-00-01):

Recorded in Official Records, County of Orange  
Recording Number: 20020229863  
Recording Date: 3/20/2002

RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:

CITY OF COSTA MESA  
77 Fair Drive  
Costa Mesa, CA 92626  
Attn: CITY Clerk

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(Space Above This Line for Recorder's Use)

This Third Amendment to the Development Agreement for Home Ranch Development Property is recorded at the request and for the benefit of the CITY of Costa Mesa and is exempt from the payment of a recording fee pursuant to Government Code § 6103

CITY OF COSTA MESA

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Dated: \_\_\_\_\_

THIRD AMENDMENT TO THE  
DEVELOPMENT AGREEMENT FOR  
HOME RANCH

by and between

CITY OF COSTA MESA

and

C.J. SEGERSTROM & SONS, HENRY T. SEGERSTROM PROPERTIES LLC AND RUTH  
ANN MORIARTY PROPERTIES, LLC

DA-00-01  
Ordinance No. 01-29

THIRD AMENDMENT TO THE  
DEVELOPMENT AGREEMENT FOR HOME RANCH

THIS THIRD AMENDMENT TO THE DEVELOPMENT AGREEMENT FOR HOME RANCH (the "**Amendment**") is executed this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by and between The City of Costa Mesa, a Municipal Corporation of the State of California (the "**City**"), and C.J. Segerstrom & Sons, a California general partnership, Henry T. Segerstrom Properties, LLC, a California limited liability company, and Ruth Ann Moriarty Properties, LLC, a California limited liability company (collectively, "**CJS**"), with respect to the following:

RECITALS

A. City and CJS entered into that certain Development Agreement for Home Ranch dated as of December 3, 2001 (the "**Original Agreement**"), as amended by that certain First Amendment to the Development Agreement for Home Ranch effective October 15, 2003 (the "**First Amendment**"), and that certain Second Amendment to the Development Agreement for Home Ranch dated as of April 3, 2007 (the "**Second Amendment**"). The Original Agreement, First Amendment and Second Amendment are herein referred to as the "**Development Agreement**." The Development Agreement provides for construction of the Home Ranch Project, as defined in the Original Agreement.

B. Exhibit "F" to the Original Agreement sets forth certain community benefits to be provided by CJS, and City and CJS desire to memorialize that many of the community benefits have been provided by CJS. As to the remaining community benefits relating to cultural resources and fire station, City and CJS desire to provide more specificity and otherwise update and clarify these requirements.

C. Finally, City and CJS desire to extend the term of the Development Agreement.

AGREEMENT

IN CONSIDERATION OF the foregoing Recitals, and for good and valuable consideration, CJS and City agree as follows:

1. Duration of Agreement. The Development Agreement is hereby extended and shall be operative and continue until that date which is twenty (20) years from the date of this Amendment, subject to earlier termination upon the completion, performance and discharge of all obligations thereunder.

2. Community Benefits – Owner’s Obligations Fulfilled. City and CJS agree that all obligations of CJS set forth in the following provisions of Exhibit “F” to the Original Agreement (Community Benefits Provided by Owner) have been satisfied in full:

(a) The first four subheadings of Section A, entitled “Improvements Required in Accordance with the General Plan” (which called for CJS to pay City \$3,888,910), “Improvements Required by Project Beyond the General Plan” (which called for CJS to pay City \$4,578,400), “Site Access Improvements” and “Susan Street Offramp.”

(b) Section C entitled “Contribution to Educational Advancement for Costa Mesa Students” (which called for CJS to pay City \$2,000,000).

(c) Section D entitled “Contribution for High School Athletic Facilities” (which called for CJS to pay City \$250,000).

(d) Section E entitled “Contribution to Restoration of Huscroft House” (which called for CJS to pay City \$200,000).

(e) Section F entitled “Residential Component.”

(f) Section H entitled “Sales and Use Tax Guarantee” (which called for CJS to guarantee payment to City of \$5,000,000).

All obligations of CJS under the foregoing referenced provisions have been fulfilled and thus these provisions are of no further force or effect in the Development Agreement.

3. Cultural Resources.

a. Historic Structures. The Segerstrom Home, Garage, Tool Shed (formerly erroneously referred to as a guesthouse) and Barn (collectively, the “**Historic Structures**”) as shown on Exhibit “A” to this Amendment have been preserved since before the Effective Date and shall continue to be preserved for historic resource purposes from the date of this Amendment through that date which is fifty (50) years from the date of this Amendment (the “**Historic Term**”), in accordance with the following:

i. The Historic Structures and the 1.5 acre site on which the Historic Structures are located, as more specifically shown on Exhibit “A” (the “**Historic Site**”), shall be maintained in substantially the same condition as existing as of the date of this Amendment at the sole cost of the owner of the Historic Site (the “**Historic Site Owner**”), except as to costs funded through the Historic Reserve Account as provided below. Notwithstanding anything to the contrary in the foregoing, the Historic Site Owner, at its sole cost, may move the Barn to any location within the Historic Site as selected by the Historic Site Owner, subject to compliance with all mitigation measures for the Home Ranch Project and the City’s building codes and regulations, in each case as then applicable to relocation of the Barn.

ii. The boundary(s) of the Historic Site may be modified from that shown on Exhibit “A” by the Historic Site Owner with the approval of the City’s Development Services Director, which approval shall be granted so long as (A) the Historic Site continues to

include all of the Historic Structures (or will continue to include all the Historic Structures following relocation of the Barn as permitted above), (B) the Historic Site continues to include at least 1.5 acres, (C) the modification to the boundary(s) does not have a material adverse effect on the Historic Site, and (D) the modification to the boundary(s) comport with any approved Master Plan(s) for the adjoining, touching property.

iii. Commencing with the calendar year 2011, the Historic Site shall be open to the public by the Historic Site Owner at least one day per calendar year. Access on or inside the Historic Structures is not required.

b. Recorded Use Restrictions. Substantially concurrently with the execution of this Amendment, CJS shall execute and record on the Historic Site, for the benefit of the City, the Declaration of Historic Use Restrictions attached hereto as Exhibit "B" (the "**Use Restrictions**"). As more particularly set forth therein, the Use Restrictions shall run with the land and impose on CJS and each successive Historic Site Owner, during the period of its ownership, the requirements set forth above in paragraph 3(a) for the period of the Historic Term. As with the Use Restrictions, paragraph 3(a) above shall terminate and be of no further force or effect with the expiration of the Historic Term. During the Historic Term, as part of any subdivision map or any other entitlement process that is otherwise consistent with the City's requirements, City may not impose on CJS or any successive owner of the Property additional obligations or requirements with respect to permitted use, preservation, public access or maintenance of the Historic Structures or Historic Site. CJS acknowledges that City's adopted General Plan, zoning and Specific Plan for the Historic Site impose restrictions preventing alternative use of the site, and nothing herein is intended to in any way modify said General Plan, zoning or Specific Plan.

c. Historic Reserve Account. Within one year of the date of this Amendment, CJS shall fund a segregated reserve account with the City in the amount of \$260,000 (the "**Initial Fund**"). The Initial Fund shall be held by the City in an interest bearing deposit account, subject to the terms of this paragraph 3(c). The term "**Historic Reserve Account**" as used herein means all amounts in such interest bearing account. The Historic Reserve Account is intended to be utilized for purposes of providing financial support for the costs of maintaining, operating and preserving the Historic Structures and Site (including listing the Historic Site on the State Registry) as follows:

(i) For so long as the Historic Site is owned by CJS, the Historic Reserve Account shall be utilized solely for:

- A. Extraordinary costs incurred by CJS in maintaining the Historic Structures and Site, as requested by CJS and authorized by the City in accordance with a mutually agreed upon process. The Initial Fund shall be used first in its entirety to fund any extraordinary cost prior to City authorizing the use of any accrued interest in the Historic Reserve Account; and

- B. If the Historic Structures are relocated off the Historic Site as discussed in paragraph 3(f) below, costs incurred by CJS in the physical relocation of the Historic Structures. The Historic Reserve Account may not be used for application costs, processing fees, or legal or environmental documentation relating to relocation of the Historic Structures. Following relocation of the Historic Structures, any remaining balance of the Historic Reserve Account shall be transferred by the City to the then owner of the Historic Structures; and there shall no longer be a Historic Reserve Account with the City or any requirement hereunder for a Historic Reserve Account.
- C. If the Historic Reserve Account still exists as of the expiration of the Historic Term, then the Historic Reserve Account shall be disbursed by the City to CJS and the City as follows: any remaining balance of the Initial Fund shall first belong and be paid to CJS; any remaining balance, consisting of all accrued interest, shall be shared and paid evenly (50/50) between CJS and the City. Following such disbursements, there shall no longer be a Historic Reserve Account with the City or any requirement hereunder for a Historic Reserve Account.

(ii) If ownership of the Historic Site is transferred during the Historic Term as permitted in paragraph 3(e) below, the entire balance of the Historic Reserve Account shall be transferred by the City to the Permitted Transferee (as defined below); and there shall no longer be a Historic Reserve Account with the City or any requirement hereunder for a Historic Reserve Account.

The Historic Reserve Account may not be used for any purposes other than as described in this paragraph 3(c).

d. Mitigation Measure Fulfilled. Upon the last to occur of recordation of the Use Restrictions in the official records of Orange County, California, and funding of the Initial Fund by CJS to the City, all obligations and responsibilities of CJS with respect to the following portion of a mitigation measure for the Home Ranch Project (referenced in the Final Program EIR No. 1048 as mitigation measure 3.10.4(3)), with the exception of the identification of site buffering issues, shall be fully satisfied: "At such time that the applicant proposes a Master Plan for the balance of the project site, the precise boundaries of the preservation area, transfer of development rights, transfer of ownership to the City of Costa Mesa or a non-profit agency/organization, provisions for long-term preservation, and site buffering issues shall be identified."

e. Transfer of Historic Site. CJS may at CJS's election transfer ownership of the Historic Site, subject to the Use Restrictions, to any one of the following ("**Permitted Transferee**"): (i) any nonprofit entity (including without limitation a nonprofit entity owned or controlled by CJS), (ii) the City, (iii) another government agency or (iv) another private owner.

f. Relocation of Structures. Notwithstanding anything to the contrary above in this paragraph 3, CJS or any successive Historic Site Owner may apply to the City, at the sole cost of the Historic Site Owner, for a determination as to whether the Historic Structures may be relocated off the Historic Site to an alternative site which must be located in the City of Costa Mesa. Any proposal to relocate the Historic Structures must comport with all then applicable requirements which may include without limitation additional expert studies (at the Historic Site Owner's cost), additional public processing and new discretionary approval by the City. City is not hereby obligating itself to approve any relocation. In connection with any off-site relocation proposal, an ad hoc committee appointed by the City Council will be activated and charged with reviewing the proposed relocation plan for the Historic Structures and making recommendations to the City Council. The ad hoc committee will include a representative from each of the Costa Mesa Historic Preservation Committee, Costa Mesa Historical Society, City and Historic Site Owner. All off-site relocation plans must address maintenance obligations and preservation of the Historic Structures for the remainder of the Historic Term. No alternative site for the Historic Structures has been identified at this time. The alternative site may or may not be owned by CJS. If the Historic Structures are relocated to an alternative site as discussed in this paragraph, then the Historic Site shall be relieved of the obligations of paragraph 3(a) above and the Use Restrictions, but the alternative site shall be burdened by all such restrictions as may be imposed by the City in connection with the relocation.

g. Development Rights. All development rights for the Historic Site, including square footage and trip budget, are transferred and belong to the remainder of the Home Ranch Project south of South Coast Drive and east of Susan Street, excluding the Fire Station Site.

h. Original Agreement Amended. The entirety of Section B in Exhibit "F" to the Original Agreement (entitled "Cultural Resources") is hereby deleted from the Development Agreement and shall be of no further force or effect.

4. Fire Station.

a. Study Completed. The fire suppression study called for in Section G in Exhibit "F" to the Original Agreement (entitled "Fire Station") has been completed by the City and it has been determined that a new fire station is needed in the Home Ranch area. In addition, City's Fire Department has determined that its preferred fire station will require more square footage than the 30,000 square feet required under the Original Agreement.

b. Fire Station Site. The fire station shall be located on the Home Ranch on a square parcel consisting of 40,000 square feet (200 feet deep by 200 feet wide) fronting on South Coast Drive as more particularly shown on Exhibit "C" attached hereto (the "**Fire Station Site**"). City shall provide one year prior notice to CJS of City's intent to commence construction of a fire station on the Fire Station Site, and CJS shall convey the Fire Station Site to City upon notice from City that City has issued construction documents initiating the bidding process for the fire facility. The Fire Station Site shall be conveyed to City subject to a deed restriction providing that the Site may be used solely for fire station purposes. Costs of conveying the Fire

Station Site to the City shall be the sole responsibility of CJS. If construction of a fire facility has not commenced on the Fire Station Site before expiration of the Development Agreement (as extended in paragraph 1 above), the Fire Station Site shall be conveyed by City back to the original CJS owner. Costs of reconveying the Fire Station Site back to the original CJS owner shall be the sole responsibility of City. CJS's obligation to convey the Fire Station Site to the City terminates with expiration of the Development Agreement.

c. Owner's Development. Nothing contained in this paragraph 4 above shall be deemed or construed to preclude the exercise of all development rights granted or reserved to CJS in the Development Agreement. In other words, development of the Property, or any portion(s) thereof, shall not be conditioned upon construction by City of the fire station. In addition, prior to conveyance of the Fire Station Site to the City or subsequent to the conveyance of the site to the City but prior to construction of the fire station, the location of the Fire Station Site may be moved along South Coast Drive to accommodate development of the Property or any portion(s) thereof, subject to review and approval of the City.

d. Home Ranch Entrances. City expressly agrees that the remainder of the Home Ranch Project south of South Coast Drive and east of Susan Street shall be entitled to at least one dedicated full entrance (left and right turn in and out) on South Coast Drive between Fairview Road and Susan Street and one dedicated full entrance on Susan Street. Development of the fire station shall preserve these entrances for development of the remainder of the Home Ranch Project.

e. Fire Impact Fees. On or before 20 days after execution of this Amendment by all parties, CJS shall pay to City \$264,210.38 as the full and final payment due for any reason under Section G of Exhibit "F" to the Original Agreement (entitled "Fire Station"), including without limitation due for fire impact fees or for cost of building construction and site improvement costs. No other amounts whatsoever shall be due under said Section G.

f. Development Rights. All development rights for the Fire Station Site, including square footage and trip budget, are transferred and belong to the remainder of the Home Ranch Project south of South Coast Drive and east of Susan Street, excluding the Historic Site.

g. Original Agreement Amended. In the event of any conflict between the terms of this paragraph 4 and Section G in Exhibit "F" to the Original Agreement (entitled "Fire Station"), the provisions of this paragraph 4 shall control.

5. Exhibits. The Exhibits attached to this Amendment are incorporated herein by this reference.

6. Conflicts. Except as otherwise set forth herein to the contrary, all terms and provisions of the Development Agreement shall remain unamended and continue in full force and effect. This Amendment with the Development Agreement shall be construed together

and shall constitute one agreement. In the event of any inconsistency between this Amendment and the Development Agreement, the provisions of this Amendment shall prevail.

7. Defined Terms. All capitalized terms used herein and not defined herein shall bear the same meanings as set forth in the Development Agreement.

8. Counterparts. This Amendment may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which shall be deemed to constitute one instrument. It shall not be necessary that all signatories execute the same counterpart(s) of this Amendment for this Amendment to become effective.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have executed this Third Amendment to the Development Agreement for Home Ranch as of the date first above written.

CITY OF COSTA MESA,  
A municipal corporation

\_\_\_\_\_  
Mayor of Costa Mesa

ATTEST:

\_\_\_\_\_  
Deputy City Clerk and ex-officio Clerk  
of the City of Costa Mesa

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney, City of Costa Mesa

C.J. SEGERSTROM & SONS, a California general partnership

By Henry T. Segerstrom Management LLC, a California limited liability company, Manager

By \_\_\_\_\_  
Manager

OR

By \_\_\_\_\_  
Alternate Manager

AND

By HTS Management Co., Inc., a California corporation, Manager

By \_\_\_\_\_

Title: Senior Vice President

HENRY T. SEGERSTROM PROPERTIES LLC,  
a California limited liability company

By Henry T. Segerstrom Management LLC,  
a California limited liability company,  
Manager

By \_\_\_\_\_  
Henry T. Segerstrom, Manager

RUTH ANN MORIARTY PROPERTIES LLC,  
a California limited liability company

By \_\_\_\_\_

Its: \_\_\_\_\_

Exhibits

- A Historic Structures and Historic Site
- B Historic Use Restrictions
- C Fire Station Site

STATE OF CALIFORNIA )  
COUNTY OF ORANGE )

On \_\_\_\_\_, 2010 before me, \_\_\_\_\_, Notary Public, 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 ORANGE )

On \_\_\_\_\_, 2010 before me, \_\_\_\_\_, Notary Public, 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 ORANGE )

On \_\_\_\_\_, 2010 before me, \_\_\_\_\_, Notary Public, 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 ORANGE )

On \_\_\_\_\_, 2010 before me, \_\_\_\_\_, Notary Public, 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 ORANGE )

On \_\_\_\_\_, 2010 before me, \_\_\_\_\_, Notary Public, 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)

FAIRVIEW ROAD

SOUTH COAST DRIVE

Parcel 1 of  
Parcel Map 84-379

GARAGE  
TOOL SHED  
BARN

HISTORIC SITE  
1.5 ac

SEGERSTROM  
HOME

SAN DIEGO FREEWAY  
(ROUTE 405)

LEGEND:



Historic Site



Historic Structures

\*ALL BOUNDARIES ARE APPROXIMATE  
AND SUBJECT TO CHANGE.

# EXHIBIT A

PARCEL 2

PARCEL 1

SUSAN STREET

EXEMPT RECORDING PER GOVERNMENT CODE  
SECTION 6103

Recording Requested by CITY OF COSTA MESA

When Recorded Mail to:

CITY OF COSTA MESA  
ATTENTION: City Clerk  
P.O. BOX 1200  
COSTA MESA, CALIFORNIA 92628-1200

DECLARATION OF SPECIAL LAND USE RESTRICTIONS  
(Segerstrom Home Ranch Historic Site)

Exhibit B to Third Amendment to Development Agreement

DECLARATION OF SPECIAL LAND USE RESTRICTIONS  
(Segerstrom Home Ranch Historic Site)

THIS DECLARATION OF SPECIAL LAND USE RESTRICTIONS (“**Declaration**”) is executed this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by C.J. Segerstrom & Sons, a California general partnership (“**CJS**”), with reference to the following:

RECITALS

A. CJS together with its affiliates Henry T. Segerstrom Properties, LLC, a California limited liability company, and Ruth Ann Moriarty Properties, LLC, a California limited liability company (collectively, “**Owner**”) are parties with the City of Costa Mesa, a municipal corporation of the State of California (the “**City**”), to that certain Development Agreement for Home Ranch dated as of December 3, 2001, as amended by First Amendment to the Development Agreement for Home Ranch effective October 15, 2003, Second Amendment to the Development Agreement for Home Ranch dated as of April 3, 2007, and Third Amendment to the Development Agreement for Home Ranch dated \_\_\_\_\_ (collectively, the “**Development Agreement**”). The Development Agreement entitles Owner to develop certain property in Costa Mesa, California as more particularly described therein (the “**Property**”).

B. The Development Agreement sets forth certain community benefits to be provided by Owner with respect to the Segerstrom Home, Garage, Tool Shed and Barn (collectively the “**Historic Structures**”) located on a 1.5 acre portion of the Property (the “**Historic Site**”), all as more particularly shown on Exhibit A to this Declaration. Specifically, Owner has agreed to encumber the Historic Site with the specific covenants, conditions, restrictions and limitations set forth herein (collectively, the “**Restrictions**”) to provide for the preservation of the Historic Structures for the benefit of the City for a period of 50 years.

C. CJS is the current owner of the Historic Site and enters into this Declaration to encumber the Historic Site with the Restrictions as required under the Development Agreement.

DECLARATION

NOW, THEREFORE, in consideration of the foregoing Recitals, and for good and valuable consideration, CJS hereby declares as follows:

1. Term. This Declaration and all of the terms and provisions set forth herein shall continue in full force and effect from \_\_\_\_\_ [Date of Third Amendment to Development Agreement] \_\_\_\_\_ until \_\_\_\_\_ [Same Day and Month as Third Amendment] \_\_\_\_\_, 2060 (the “**Term**”).

2. Preservation of Historic Structures. The Historic Structures shall be maintained throughout the Term in substantially the same condition as existing as of the date of this Declaration at the sole cost of the owner of the Historic Site (the "**Historic Site Owner**"). Notwithstanding anything to the contrary in the foregoing, the Historic Site Owner, at its sole cost, may move the Barn to any location within the Historic Site as selected by the Historic Site Owner, subject to compliance with all mitigation measures and building code and regulations then applicable to relocation of the Barn.

3. Historic Site Boundary. The boundary(s) of the Historic Site may be modified from that shown on Exhibit A by the Historic Site Owner with the approval of the City's Development Services Director, which approval shall be granted so long as (a) the Historic Site continues to include all of the Historic Structures (or will continue to include all the Historic Structures following relocation of the Barn as permitted above), (b) the Historic Site continues to include at least 1.5 acres, (c) the modification to the boundary(s) does not have a material adverse effect on the Historic Site, and (d) the modification to the boundary(s) comport with any City approved master development plan(s) for the adjoining, touching property.

4. Public Access. Commencing with the calendar year 2011 and thereafter throughout the Term, the Historic Site shall be open to the public by the Historic Site Owner at least one day per calendar year. Access on or inside the Historic Structures is not required.

5. Relocation of Structures. Notwithstanding anything to the contrary above in this Declaration, the Historic Site Owner may apply to the City, at the sole cost of the Historic Site Owner, for a determination as to whether the Historic Structures may be relocated off the Historic Site to an alternative site which must be located in the City of Costa Mesa. Any proposal to relocate the Historic Structures must comport with all then applicable requirements which may include without limitation additional expert studies (at the Historic Site Owner's cost), public processing and new discretionary approval by the City. City is not obligated to approve any relocation. In connection with any off-site relocation proposal, an ad hoc committee appointed by the City Council will be activated and charged with reviewing the proposed relocation plan for the Historic Structures and making recommendations to the City Council. The ad hoc committee will include a representative from each of the Costa Mesa Historic Preservation Committee, Costa Mesa Historical Society, City and Historic Site Owner. All off-site relocation plans must address maintenance obligations and preservation of the Historic Structures for the remainder of the Historic Term. No alternative site for the Historic Structures has been identified at this time. The alternative site may or may not be owned by Owner. Notwithstanding anything to the contrary herein, if the Historic Structures are relocated to an alternative site as discussed in this paragraph and the alternative site is burdened by such restrictions as may be imposed by the City in connection with such relocation, then this Declaration shall automatically terminate and be of no further force or effect with respect to the Historic Site.

6. Restrictions for Benefit of City.

a. Remedies. This Declaration is entered into for the exclusive benefit of the City, and in the event of any breach of the Restrictions, City at its sole option and discretion

may enforce any and all rights and remedies to which City may be entitled in law or equity. City alone has the right to enforce the Restrictions, and City may not assign any of its rights and powers under this Declaration.

b. Right to Inspect. City or its authorized representatives may from time to time during reasonable business hours enter upon the Historic Site to ascertain compliance with the Restrictions; provided City shall give the Historic Site Owner at least five business days prior written notice of the date and time of its entrance.

c. Amendments. This Declaration may be amended only in writing executed by the City and the Historic Site Owner.

d. Right to Cure. The Historic Site Owner shall not be deemed in breach of the Restrictions unless and until City shall have provided the Historic Site Owner with written notice describing the breach and Historic Site Owner shall have failed to cure such breach within 30 days of receipt of such notice; provided that if the breach is not reasonably susceptible of cure within the 30 day period, then the Historic Site Owner shall have a reasonable time to cure same so long as Historic Site Owner has commenced such cure within the 30 day period and thereafter diligently prosecutes the cure to completion.

e. Waiver. No waiver of any breach of any of the Restrictions shall be implied from any omission by City to take any action on account of such breach, and no express waiver shall affect a breach or default other than as specified in said waiver.

f. Costs of Enforcement. If any action or proceeding shall be instituted by City to enforce any provision of this Declaration, the party prevailing in such action or proceeding shall be entitled to recover from the other party all of its costs, including without limitation court costs and reasonable attorneys' fees.

7. Covenants Run With Land. The Historic Site shall be held, conveyed, used and occupied during the Term subject to the Restrictions set forth in this Declaration. The Restrictions are for the benefit of the real property described on Exhibit B attached hereto (the "**Benefitted Property**") and are intended and shall be construed as covenants and conditions running with and binding the Historic Site and every part thereof during the Term. All and each of the Restrictions shall be binding upon and burden all persons having or acquiring any right, title or interest in the Historic Site, or any part thereof, for the period of their ownership during the Term, and shall inure to the benefit of the Benefitted Property and shall be enforceable by the City, all upon the terms and provisions set forth herein. The Restrictions shall cease to benefit any portion of the Benefitted Property conveyed by the City to a third party. Every person or entity who now or hereafter owns or acquires any right, title or interest in the Historic Site is and shall be conclusively deemed to have consented and agreed to every Restriction contained herein, whether or not any reference to this Declaration is contained in the instrument by which such person or entity acquired an interest in the Historic Site.

8. Notices. All notices hereunder shall be in writing and shall be deemed to have been duly given if and when personally served or 48 hours after being sent by United States

certified or registered mail, return receipt requested, postage prepaid, to the applicable party at the following address:

Historic Site Owner:

C.J. Segerstrom & Sons  
3315 Fairview Road  
Costa Mesa, CA 92626  
Attn: Managing Partner

with a copy to:

C.J. Segerstrom & Sons  
3315 Fairview Road  
Costa Mesa, CA 92626  
Attn: General Counsel

City:

City of Costa Mesa  
77 Fair Drive  
Post Office Box 1200  
Costa Mesa, CA 92628-1200  
Attn: City Manager

with a copy to:

City of Costa Mesa  
77 Fair Drive  
Post Office Box 1200  
Costa Mesa, CA 92628-1200  
Attn: City Attorney

or at such other address as Historic Site Owner or City may designate to the other in writing in accordance with the provisions of this paragraph.

9. Governing Law. This Declaration shall be governed by and construed under the laws of the State of California.

10. Severability. If any portion of this Declaration shall become or be held by any court of competent jurisdiction to be illegal, null or void or against public policy, for any reason, the remaining portions of this Declaration shall not be affected thereby and shall remain in force and effect to the full extent permitted by law.

11. Exhibits. The Exhibits attached to this Amendment are incorporated herein by this reference.

IN WITNESS WHEREOF, CJS has executed this Declaration as of the date first above written.

C.J. SEGERSTROM & SONS, a California general partnership

By Henry T. Segerstrom Management LLC, a California limited liability company, Manager

By \_\_\_\_\_  
Manager

OR

By \_\_\_\_\_  
Alternate Manager

AND

By HTS Management Co., Inc., a California corporation, Manager

By \_\_\_\_\_

Title: Senior Vice President

Exhibits

- A Historic Structures and Historic Site
- B Benefitted Property

State of California            )  
COUNTY OF ORANGE        )

On \_\_\_\_\_, 2010 before me, \_\_\_\_\_, Notary  
Public, personally appeared \_\_\_\_\_ and \_\_\_\_\_  
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)

FAIRVIEW ROAD

E SOUTH COAST DRIVE

Parcel 1 of  
Parcel Map 84-379

GARAGE  
TOOL SHED  
BARN

HISTORIC SITE  
1.5 ac.

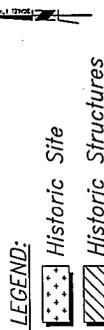
SEGERSTROM  
HOME

SAN DIEGO FREEWAY  
(ROUTE 405)

SUSAN STREET

PARCEL 2

PARCEL 1



\*ALL BOUNDARIES ARE APPROXIMATE  
AND SUBJECT TO CHANGE.

EXHIBIT A

EXHIBIT B  
DECLARATION OF SPECIAL LAND USE RESTRICTIONS  
(Segerstrom Home Ranch Historic Site)

BENEFITTED PROPERTY

The properties described below shall constitute the "Benefitted Property" for purposes of this Declaration, provided that any such property shall cease being part of the "Benefitted Property" at such time as fee title to such property ceases to be owned by the City of Costa Mesa, a municipal corporation of the State of California.

I. Legal Description of Property at 261 Monte Vista Avenue, Costa Mesa, CA

THE NORTHWESTERLY 165 FEET OF LOT 117 OF TRACT NO. 300 IN THE CITY OF COSTA MESA, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP THEREOF RECORDED IN BOOK 14, PAGES 11 AND 12 OF MISCELLANEOUS MAPS, RECORDS OF SAID ORANGE COUNTY.

EXCEPT THAT PORTION LYING SOUTHWESTERLY OF THE NORTHEAST LINE OF THE LAND CONVEYED TO THE CITY OF COSTA MESA BY GRANT DEED RECORDED JANUARY 7, 1976 IN BOOK 11614, PAGE 1894 OF OFFICIAL RECORDS OF SAID ORANGE COUNTY.

II. Other Properties

All other property owned by the City of Costa Mesa in the County of Orange, California, as of the date of recordation of this Declaration.

FAIRVIEW ROAD

E SOUTH COAST DRIVE

200'

FIRE STATION SITE

200'

Parcel 1 of  
Parcel Map 84-379

SAN DIEGO FREEWAY  
(ROUTE 405)

SUSAN STREET

PARCEL 2

PARCEL 1

\*ALL BOUNDARIES ARE APPROXIMATE  
AND SUBJECT TO CHANGE.

EXHIBIT C