ORDINANCE NO. 16-08

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COSTA MESA, CALIFORNIA, ADOPTING DA-16-03 APPROVING A FOURTH AMENDMENT TO THE SEGERSTROM HOME RANCH DEVELOPMENT AGREEMENT NO. DA-00-01

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

Section 1. The City Council of the City of Costa Mesa, California, does hereby find and declare as follows:

1. On or about 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;
2. Public hearings have been held before this City Council pursuant to the procedures described in Council Resolution No. 88-53. At these hearings, the City Council considered the evidence, the testimony presented by the public, and the Planning Commission's recommendation regarding the proposed Amendments to Development Agreement DA-00-02 between the City of Costa Mesa and South Coast Plaza, a California general partnership ("Owner")
3. 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;
4. 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;

5. On July 20, 2010, the City Council of the City of Costa Mesa adopted Ordinance No. 10-08 approving the third amendment to the Development Agreement for the Home Ranch Project relating to terms of the agreement and historic properties;

6. On September 6, 2016 pursuant to the procedures described in Council Resolution No. 88-53, a public hearing was conducted for the fourth amendment. At this hearing, the City Council considered the evidence, the testimony presented by the public regarding the proposed Fourth 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").

7. The proposed amendment was considered based on the following criteria:

   (a) Is consistent with the General Plan and the North Costa Mesa Specific Plan;

   (b) Is compatible with the uses authorized in, and the existing land use regulations prescribed for, the zoning districts in which the real property covered by the Amendment to the Development Agreement are located; and

   (c) Is in conformity with and will promote the public necessity, and public convenience, general welfare, and good land use practices.

8. The Fourth Amendment to the Development Agreement will not:

   (a) Be detrimental to the public's health, safety and general welfare; nor

   (b) Adversely affect the orderly development of the property.

9. The Fourth Amendment to the Development Agreement will promote and encourage the development of the proposed project by providing stability and certainty to the Owner, and will provide to the City and its citizens the public benefits promised in the Development Agreement and subsequent Amendments thereto.

10. The project has been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA Guidelines, and the City environmental procedures. The proposed changes to the agreement are consistent with the Segerstrom Home Ranch Environmental Impact Report, SCH No. 2000071050, November 2001, the North Costa Mesa Specific Plan and General Plan. Specifically, the majority of the changes involve clean up of inconsistencies. Additionally, the original EIR analyzed the entire property, including the 10,000 sq. ft. incorporated into this amendment. Finally, all traffic impacts have been reviewed with the City of Costa Mesa General Plan Environmental Impact Report, SCH No. 2015111053, June 2016. Therefore, the relevant environmental analysis contained in the previously-approved environmental documents is still valid, and no further environmental review is required.

Section 2. The City Council hereby approves, adopts and enters into the Fourth Amendment to the Development Agreement DA-001-01 (DA-16-03) in the form attached hereto and incorporates the First, Second and Third Amendment herein by this reference.

Upon execution of the Fourth Amendment by all parties, the City Clerk is directed to record the Fourth Amendment pursuant to the City of Costa Mesa Development Agreement Procedures and Requirements.

Section 3. Publication.

This Ordinance shall take effect and be in full force and effect thirty (30) days from and after its passage and, before the expiration of fifteen (15) days after its passage, shall be published once in the NEWPORT BEACH-COSTA MESA 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 _____, 2016

_____
Mayor of the City of Costa Mesa

STATE OF CALIFORNIA)
COUNTY OF COSTA MESA)
CITY OF COSTA MESA)

I, BRENDA GREEN, City Clerk of the City of Costa Mesa, California, do hereby certify that the foregoing Ordinance was introduced at the regular meeting of the City Council held on the ____ day of _____, 2016, and thereafter at the regular meeting of said City Council duly held on the _____ day of _____, 2016, was duly passed and adopted by the following vote, to wit:

AYES:
NOES:
ABSENT:
ABSTAIN:

_____
Brenda Green
City Clerk of the City of Costa Mesa

EXHIBIT 1
FOURTH AMENDMENT TO DEVELOPMENT AGREEMENT
DRAFT ORDINANCE

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

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

(Space Above This Line for Recorder's Use)

This Fourth 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

FOURTH 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

FOURTH AMENDMENT TO THE
DEVELOPMENT AGREEMENT FOR HOME RANCH

THIS FOURTH AMENDMENT TO THE DEVELOPMENT AGREEMENT FOR HOME RANCH (the "**Amendment**") is executed this _____ day of _____, 2016, 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 executed March 20, 2002 (the "**Original Agreement**"), as amended by that certain First Amendment to the Development Agreement for Home Ranch effective October 15, 2003 (the "**First Amendment**"), that certain Second Amendment to the Development Agreement for Home Ranch executed April 3, 2007 (the "**Second Amendment**"), and that certain Third Amendment to the Development Agreement for Home Ranch dated August 3, 2010 (the "**Third Amendment**"). The Original Agreement, First Amendment, Second Amendment and Third Amendment were recorded in the Official Records of Orange County, California (the "**County Records**") as Instrument Nos. 20020229863, 2007000267971, 2007000267970 and 2010000418498, respectively, and are herein referred to collectively as the "**Development Agreement**."

B. The Development Agreement covers certain Property as defined in Exhibits A and B to the Original Agreement. This original definition of the Property excluded land adjacent to the 405 Freeway conveyed by CJS to the State of California consisting of approximately 4.47 acres (the "**State Land**"). However, the acreage numbers and maximum allowable square footage given for the Office Portion of the Property in the Original Agreement, the Second Amendment, and the City's general plan in effect as of the date of the Original Agreement (as well as in the City's current general plan) included the State Land. The inconsistency in the Development Agreement creates uncertainty with respect to the development entitlements applicable to the State Land.

C. Approximately 10,000 square feet of land as more particularly described on Exhibit AA attached hereto (the "**Water District Parcel**") was not included in the Property covered by the Development Agreement because it was under a long term lease to the Mesa Consolidated Water District ("**MCWD**") and MCWD intended to acquire the Water District Parcel. The Original Agreement called for the development rights, including square footage and trip budget, for any portion transferred to MCWD to be utilized by the Office Portion of the Property south of South Coast Drive and east of Susan Street. The lease with MCWD has since terminated, MCWD has abandoned the Water District Parcel altogether, and CJS still owns the Water District Parcel.

D. CJS transferred the entire Industrial Portion to Emulex Corporation and, in connection therewith, transferred to Emulex 376 a.m. and 362 p.m. peak trips from the Trip Budget for the combined Office and Industrial Portions of the Home Ranch. This assignment is

reflected in that certain partial assignment executed by CJS, Emulex and the City, recorded as Instrument No. 2004000089554 in the County Records.

E. CJS transferred to IKEA Property, Inc. that portion of the Office Portion described as Parcel 2 of City of Costa Mesa Lot Line Adjustment No. LL - 02-01 recorded as Instrument No. 20020581758 in the County Records and consisting of approximately 2.07 acres. IKEA thereafter received a specific plan amendment (SP-03-02) reallocating said Parcel 2 out of the Office Portion and into the Retail Portion for use as a parking lot. With this reallocation, the entirety of the Office Portion is owned by CJS.

F. CJS requests this amendment to the Development Agreement to (i) correct the inconsistency and clear up the uncertainty related to the State Land, (ii) add the Water District Parcel to the Office Portion for all purposes, (iii) reflect the allocation in the Trip Budget between the Office Portion and the Industrial Portion, (iv) update the description of the Office Portion, and (v) otherwise ensure that the Development Agreement includes and references the changes to the Home Ranch Project approved by the City.

G. This Amendment was approved by City of Costa Mesa Ordinance No. _____, adopted by the City Council on _____, 2016, after the public notice and public hearings required by law. The parties have executed this Amendment on the date indicated above after the effective date of said Ordinance.

AGREEMENT

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

1. Effective Date. The effective date of this Amendment shall be the date this Amendment was executed by the parties as indicated in the first sentence of this Amendment.

2. State Land Development Rights. All development rights for the State Land, including without limitation square footage and trip budget, are transferred and belong to the Office Portion south of South Coast Drive and east of Susan Street.

3. Water District Parcel. The Water District Parcel shall for all purposes be a part of the Property and the Office Portion as those terms are used in the Development Agreement.

4. Definitions. The following terms in the Development Agreement shall have the definitions as set forth below, which shall replace any previous definitions of the same term in the Development Agreement:

A. "Property" shall mean that certain property on which the remainder of the Home Ranch Project is to be located as more fully described in Exhibit AA and shown in the map set forth on Exhibit BB both attached hereto, which reflects the property described in the Original Agreement as reduced by those portions which have been developed and are no longer included within the Project and as increased to include the Water District Parcel.

B. "Existing Land Use Regulations" shall mean all Land Use Regulations in effect as of the Effective Date of this Amendment and which are listed in Exhibit DD attached hereto, or if both City and CJS subsequently agree in writing to amend the Land Use Regulations at some future date, the term "Existing Land Use Regulations" shall mean the Land Use Regulations in effect as of the effective date of such subsequent amendment of the Land Use Regulations (which the parties shall endeavor to reflect in an updated Exhibit DD prepared and exchanged between the parties).

C. "Home Ranch Project" or "Project" means the development of the Property pursuant to the Existing Land Use Regulations, Existing Development Approvals, the Future Development Approvals, and the terms of the Development Agreement. The Project includes uses as more specifically described in the Existing Land Use Regulations.

5. Floor Area Ratio. The last sentence of Section 1.1(l) of the Original Agreement, as previously modified in the Second Amendment, is further amended to read, in its entirety, as follows:

> "Project lot area is the total area of a project excluding required dedications or reservations for public improvements such as, without limitation, parks, schools, and flood control channels. Notwithstanding anything to the contrary in the foregoing sentence, "project lot area" shall include (A) the dedications to the State of California, or to the City for ultimate conveyance to the State, provided for in paragraph 1 of the Second Amendment to this Agreement, (B) the grant of easements to the City for the City to operate and maintain that portion of Susan Street located to the South of South Coast Drive, (C) the Fire Station Site, as that term is defined in the Third Amendment to this Agreement, (D) the Historic Site, as that term is defined in the Third Amendment to this Agreement, (E) the State Land, as that term is defined in the Fourth Amendment to this Agreement, or (F) any internal circulation roads. In other words, in determining the permitted gross floor area of all buildings within a project, the areas described in clauses (A) through (F) above may be added to the project area under development as more fully described in Section 1.1(r) of this Agreement."

6. Office Portion. Section 1.1(r) of the Original Agreement, as previously modified in the Second Amendment, is further amended to read, in its entirety, as follows:

> "(r) The term "Office Portion" means that portion of the Project consisting of a number of office buildings ranging in size up to maximum of five (5) stories, as well as ancillary uses and parking structures, located south of South Coast Drive between Susan Street and Fairview Road, whose cumulative gross floor area for all buildings (excluding parking structures) will be approximately, but not exceed, 1,200,000 square feet, and whose combined FAR will not exceed 0.64 when applied to all buildings (excluding parking structures) comprising the Office Portion of the Project.

"In determining the permitted gross floor area of all buildings (excluding parking structures) within the Office Portion, the Office Portion shall be deemed to consist of 43.57 acres. Said acreage is derived by including in the Office Portion: (A) the Segerstrom Donation, as that term is defined in the Second Amendment to this Agreement, (B) all portions of the Office Portion subject to an easement in favor of the City for Susan Street, (C) the Fire Station Site, (D) the Historic Site, (E) the State Land, and (F) all internal circulation roads.

"Notwithstanding anything to the contrary herein, it is understood that the FAR for a project or parcel within the Office Portion may exceed 0.64 on the acreage actually developed, but in no event shall the cumulative gross floor area for all buildings (excluding parking structures) located within the Office Portion exceed 1,200,000 square feet.

"CJS may allocate the FAR and Trip Budget for the Office Portion disproportionately between different projects and parcels therein; provided that neither the overall FAR nor overall Trip Budget for the Office Portion exceeds its applicable maximum."

7. Trip Budget. The Trip Budget for the Office Portion shall be as provided in the Existing Land Use Regulations, and Exhibit G to the Development Agreement is amended to accord with the Existing Land Use Regulations as shown on the attached Exhibit GG.

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

9. 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.

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

11. 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 Pages Follow]

IN WITNESS WHEREOF, the parties hereto have executed this Fourth 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 _____

Title _____

RUTH ANN MORIARTY PROPERTIES LLC, a California limited liability company

By _____

Its: _____

EXHIBIT AA

LEGAL DESCRIPTION OF THE PROPERTY

The following described real property in the City of Costa Mesa, County of Orange, State of California:

Parcel A (Existing Corporate Offices Corner of Fairview and South Coast Drive)

Parcel 1 as shown on Parcel Map 84-379 recorded as Instrument Number 84-527385 in Book 194, Page 14 of Parcel Maps, in the office of the County Recorder of said County

Parcel B (Undeveloped)

Parcel 3, as shown on Lot Line Adjustment No. 02-01, recorded July 11, 2002 as Instrument No. 20020581758, Official Records.

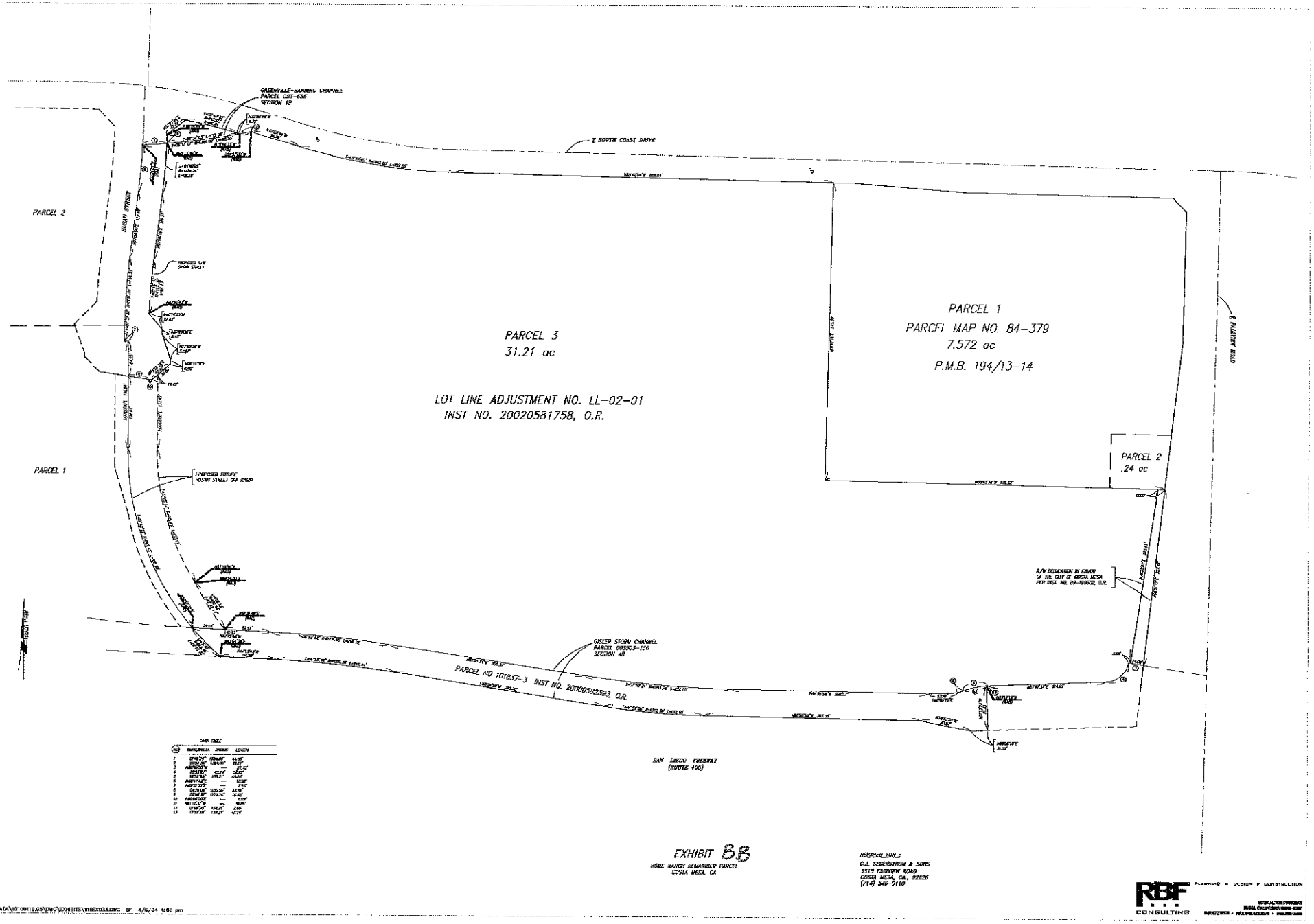
Excepting therefrom Parcels 102447-01, 102447-02 and 102447-03 as described in that certain Grant Deed to the State of California, recorded as Instrument Number 2008000145058 of Official Records, in the Office of the County Recorder of said County.

Parcel C/Water District Parcel (Undeveloped)

Parcel 2 as shown on Parcel Map 84-379 recorded as Instrument Number 84-527385 in Book 194, Page 14 of Parcel Maps in the office of the County Recorder of said County.

EXHIBIT BB

DEPICTION OF THE PROPERTY



DATA TABLE

NO	BARRELLA	RADIUS	LENGTH
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12	[illegible]	[illegible]	[illegible]
13	[illegible]	[illegible]	[illegible]

EXHIBIT BB

HOME RANCH REMAINDER PARCEL
COSTA MESA, CA

REPARED FOR:
C.J. SEGERSTROM & SONS
3315 FAIRVIEW ROAD
COSTA MESA, CA. 92626
(714) 546-0110

RBF CONSULTING
PLANNING • DESIGN • CONSTRUCTION

-25-

EXHIBIT DD

EXISTING LAND USE REGULATIONS

1. CITY of Costa Mesa General Plan

2. North Costa Mesa Specific Plan

3. Title 13 of the Costa Mesa Municipal Code (Planning, Zoning and Development Codes)

4. All other ordinances, resolutions, regulations, and official policies governing land use development and building construction.

5. Resolution No. 88-53, A Resolution of the CITY Council of the CITY of Costa Mesa, California Establishing Procedures and Requirements for Consideration of Development Agreements.

THE APPLICABLE VERSIONS OF THESE DOCUMENTS ARE THOSE IN EFFECT ON THE EFFECTIVE DATE OF THIS AMENDMENT. COPIES OF THE EXISTING LAND USE REGULATIOINS LISTED ABOVE ARE ON FILE IN THE CITY PLANNING DEPARTMENT.

EXHIBIT GG

PROJECT FAR AND TRIP BUDGET

PORTION OF PROJECT	FAR/DENSITY	TRIP BUDGET A.M.	TRIP BUDGET P.M.
RETAIL (IKEA)	0.37	43	431
OFFICE	0.64	1,860	1,788
INDUSTRIAL	0.40	376	362
RESIDENTIAL	12 DU/ACRE	102	130
TOTAL		2,381	2,711

COUNTY OF ORANGE)
STATE OF CALIFORNIA)

On _____, 20___ 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 _____, 20____ 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.

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Signature _____

(Seal)

STATE OF CALIFORNIA)
COUNTY OF ORANGE)

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Signature _____

(Seal)

STATE OF CALIFORNIA)
COUNTY OF ORANGE)

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Signature _____

(Seal)

STATE OF CALIFORNIA)
COUNTY OF ORANGE)

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WITNESS my hand and official seal.

Signature _____

(Seal)

STATE OF _____)
COUNTY OF _____)

On _____, 20____ 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.

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WITNESS my hand and official seal.

Signature _____

(Seal)