

LICENSE AGREEMENT

THIS LICENSE AGREEMENT (the “Agreement”) is made and entered into by and between the three entities collectively identified as “Segerstrom” on the signature pages here of and the CITY OF COSTA MESA, a municipal corporation (“CITY”), with respect to the following:

RECITALS

A. SEGERSTROM is the fee owner of certain real property located to the north of the 405 Freeway, to the west of Fairview Road, to the south of South Coast Drive and to the east of the southerly extension of Susan Street south of South Coast Drive. Such property is herein referred to as the “Home Ranch”. The CITY desires to use a portion of the Home Ranch as a staging area for materials and equipment for three projects to be constructed by the CITY.

B. SEGERSTROM has agreed to make available for CITY’S use that portion of the Home Ranch depicted on Exhibit A attached hereto as “4.0 acres” (the “License Area”). SEGERSTROM and CITY enter into this Agreement to set forth the terms and provisions upon which CITY shall be entitled to hold and use the License Area.

AGREEMENT

IN CONSIDERATION OF the foregoing recitals and the mutual covenants contained herein, SEGERSTROM and CITY agree as follows:

1. Grant of License. SEGERSTROM hereby grants to CITY a revocable license (the “License”) to use the License Area for the term and upon the terms and provisions set forth in this Agreement.

2. Consideration For License. CITY shall not be required to pay any rent, usage fee or other consideration to SEGERSTROM for the use of the License Area. CITY shall, however, (a) perform or observe all obligations of CITY pursuant to this Agreement and (b) cooperate with SEGERSTROM in the use of License Area.

3. Term. The term of this Agreement (“Term”) shall be for the period from the last execution and delivery of this Agreement by SEGERSTROM and CITY to and until termination of this Agreement pursuant to paragraph 4 below.

4. Use of License Area. CITY has advised SEGERSTROM that CITY will be undertaking three (3) construction projects: (1) construction of a northbound off-ramp from the northbound connector road to the 405 Freeway to connect with Susan Street (“Off Ramp”), (2) widening of the Fairview Road overpass over the 405 Freeway (“Overpass”) and (3) widening northbound Harbor Boulevard to the north of the 405 Freeway (collectively, “Projects”). CITY shall use the License Area solely as a staging and storage area for vehicles, equipment and materials for the Projects. In connection with such use of the License Area (“Permitted Use”), SEGERSTROM and CITY agree as follows:

(a) Persons permitted to exercise the License shall be limited to the CITY, its contractors, subcontractors and consultants and their respective employees, consultants and independent contractors (collectively, “CITY Parties”). .

(b) CITY OR CITY Parties may, at their sole expense, pave or place gravel on some or all of the License Area and may erect a fence around the License Area. Upon the termination of the Term, all such materials shall be removed by CITY Parties and the License Area shall, prior to return to SEGERSTROM of the License Area, return the License Area to approximately the same condition less reasonable wear and tear as when CITY or CITY Parties took possession thereof. No improvements other than those specifically permitted pursuant to this subparagraph shall permanently remain in or on the License Area by CITY Parties.

(c) Ingress to and egress from the License Area may, during construction of the Off-Ramp, be along the length of the westerly boundary of the License Area. Thereafter, ingress to and egress from the License Area shall be solely through the intersection depicted on Exhibit A and to be constructed with or as a part of the Off-Ramp. In addition, and subject to obtaining the right to do so from the owner of the Gisler flood control channel (“Channel”), CITY Parties may use the Channel for purposes of moving materials and equipment to and from the License Area and the Overpass. In such event, ingress to and egress from the License Area

may be from the Channel into the southerly boundary of the License Area. In no event shall CITY or CITY Parties have ingress to or egress from any other portion of the Home Ranch onto the License Area.

(d) CITY may subdivide the License Area based on the need as determined by CITY. CITY or CITY Parties may install one or more gates in the fencing provided for in subparagraph (b). Installation, operation and removal of such gates shall be the sole responsibility of CITY Parties. In no event shall SEGERSTROM have any responsibility to maintain, open or close any such gates or to secure or open any locks placed thereon.

(e) Prior to the termination of the Term, CITY Parties shall remove all vehicles, equipment and materials placed on the License Area. In no event shall any such items be abandoned on the License Area by CITY Parties.

(f) This Agreement shall terminate on (i) June 30, 2009 or (ii) the thirtieth (30th) day following completion of the last of the Projects, whichever occurs first. Prior to termination, CITY Parties shall perform all removal and restoration obligations of CITY pursuant to this paragraph and paragraph 6 below.

5. Compliance. In exercising the License, CITY shall comply and include provisions in its agreements with each general contractor that the general contractor shall comply and shall require its subcontractors to comply with:

(a) All terms and provisions of this Agreement and;

(b) All applicable laws, ordinances, rules and regulations of all governmental authorities with jurisdiction of the Permitted Use of CITY Parties pursuant to paragraph 4 above. Without limiting the generality of the foregoing, the requirements applicable to the Permitted Use include, but are not limited to:

(i) Compliance with all of the provisions of the Workers' Compensation Insurance and Safety in Employment Laws of the State of California, including

the applicable provisions of Divisions 4 and 5 of the California Labor Code and all amendments thereto, and all similar state, federal, or local laws applicable; and

(ii) Compliance with the Prevailing Wage Law as it applies to construction of the Projects. CITY shall ensure that the contracts between the CITY and its general contractors require that such contractor will pay, and require its subcontractors to pay prevailing wage rates to all the laborers involved, and to otherwise comply with California Labor Code Section 1770 *et seq.*, including the keeping of all records required by the provisions of Labor Code Section 1776 and the implementing administrative regulations.

6. Hazardous Materials.

(a) CITY shall not bring upon, maintain upon, generate, use, store, dispose of or release or discharge in or about the License Area any hazardous or toxic substances or hazardous waste (collectively, “hazardous materials”). The foregoing prohibition shall not extend to gasoline or diesel fueled vehicles and equipment so long as such gasoline or diesel fuel is not stored on the License Area separately from such vehicles and equipment and no such substances are released or discharged into or onto the License Area. CITY shall require a provision in its respective agreements with each general contractor prohibiting maintenance, generation, use, storage, disposal or release or discharge of any hazardous materials on the License Area.

(b) In the event that it is proven that CITY violated subparagraph (a) above, CITY shall be obligated, at CITY’S sole expense, to clean up and remove from the License Area all hazardous materials introduced into the License Area. CITY shall include a provision in its respective agreements with each general contractor requiring each general contractor to agree at its sole expense to clean up and remove from the License Area all hazardous materials introduced into the License Area by the general contractor or any of its subcontractors, employees, agents, employees, or suppliers. Such clean up and removal shall include all testing and investigation required by any governmental authorities having jurisdiction and preparation and implementation of any remedial action plan required by any governmental

authorities having jurisdiction. All such clean up and removal activities of CITY shall, in each instance, be conducted to the satisfaction of SEGERSTROM which shall not unreasonably be withheld and all governmental authorities having jurisdiction. If any governmental authority shall require testing for hazardous materials in or on the License Area by reason of the activities of CITY, then CITY shall be responsible to conduct and pay for all such testing activities.

(c) As used in this paragraph, “hazardous materials” shall include all asbestos, petroleum substances and all hazardous materials, hazardous wastes and hazardous or toxic substances as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. §§ 9601 *et seq.*), the Resource Conservation and Recovery Act, as amended (42 U.S.C. §§ 6901 *et seq.*), the Toxic Substances Control Act, as amended (15 U.S.C. §§ 2601 *et seq.*) and California Health and Safety Code Section 25316, including such hazardous or toxic substances or wastes as are identified, defined or listed elsewhere where such identifications, definitions or lists are incorporated into such acts or section by reference, as well as all products containing such hazardous substances.

7. Insurance and Indemnity.

(a) The CITY is self insured pursuant to state law. The CITY shall, at all times during the Term maintain such legal self-insured status, and shall require each general contractor retained by the CITY and exercising the Permitted Use to maintain during such exercise, for the protection of CITY and SEGERSTROM, as their interest may appear in full force and effect a policy or policies of insurance which afford the following coverages:

(i) Worker’s Compensation in the statutorily required amount, together with employer’s liability coverage in a liability amount not less than \$1,000,000 per occurrence.

(ii) Commercial General Liability Insurance with a liability amount not less than \$5,000,000 per occurrence for both bodily injury and property damage. Such \$5,000,000 limit may be maintained through a combination of primary and umbrella policies. The liability insurance policy required to be maintained pursuant to this clause shall be

on an occurrence (as opposed to a claims made) basis. Further, if such policy has a liability limit, not less than \$3,000,000 of such limit per annum shall be available for claims originating at the License Area.

CITY shall name SEGERSTROM as an additional insured under any insurance policies maintained by CITY and shall further require each general contractor retained by CITY to include SEGERSTROM and CITY as additional insureds pursuant to each Commercial General Liability Insurance policy maintained pursuant to this subparagraph (although they shall not have any obligations of “named” insureds therein). The insurance required by this Section shall be the primary insurance as respects SEGERSTROM and not contributory with any other available insurance. The policy or policies providing the coverage required by clause (b) above shall contain an endorsement providing, in substance, that “such insurance as is afforded hereby for the benefit of SEGERSTROM shall be primary and any insurance carried by SEGERSTROM shall not be contributory.” In addition, such policy shall contain a separation of insureds provision. In no event shall the limits of any coverage maintained pursuant to this Section be considered as limiting the liability of CITY Parties.

All insurance required to be carried hereunder shall be with companies rated A:VIII, or better, in the then most recent version of Best’s Key Rating Guide and licensed or otherwise permitted to provide the relevant insurance in the State of California. CITY shall require that each general contractor deliver to SEGERSTROM within fifteen (15) days after receipt of written request therefor, certificates as to each policy required under this paragraph evidencing such coverage. All certificates delivered pursuant to this subparagraph shall be on ACORD Form 28 or equivalent. All certificates delivered pursuant to this subparagraph shall contain liability limits not less than those set forth in (a) above, shall list the additional insureds, shall specify all endorsements and special coverages required thereby and shall be effective on or before the insured commences the Permitted Use. Each such policy shall contain provisions (by endorsement or otherwise) requiring not less than thirty (30) days written notice prior to any cancellation, non-renewal or material amendment thereof.

(c) Neither the CITY nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by SEGERSTROM under or in connection with any work authority or jurisdiction conferred upon SEGERSTROM and arising under this Agreement. It is understood and agreed that SEGERSTROMS shall fully defend, indemnify and save harmless the CITY and all of its officers and employees from all claims, suits or actions of every name, kind and description brought forth with respect to the work hereunder, including, but not limited to, tortious, contractual, inverse condemnation and other theories or assertions of liability occurring by reason of anything done or omitted to be done by SEGERSTROMS under this Agreement.

Neither SEGERSTROMS nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by the intentional misconduct, gross negligence or sole negligence of CITY or its employees under or in connection with any work, authority or jurisdiction conferred upon the CITY arising under this Agreement. It is understood and agreed that the CITY shall indemnify and save harmless SEGERSTROMS and all of their partners, officers and employees from all claims, suits or actions of every name, kind and description, for such injury, damage or liability. This indemnification provision expressly does not require CITY to indemnify SEGERSTROMS for the acts of contractors or subcontractors.

8. No Responsibility. It is understood and agreed that SEGERSTROM shall have no obligation to safeguard or insure any property placed by CITY on the License Area. All such obligations shall be solely those of the CITY Parties. The CITY shall not look to SEGERSTROM for any loss of, damage to or destruction of such property, except where the same is caused by the sole active negligence or willful misconduct of SEGERSTROM or its agents, employees or contractors. The CITY shall inform each general contractor retained by it and exercising the Permitted Use of the provisions of this paragraph.

9. No Brokers. Each of SEGERSTROM and CITY represents and warrants to the other that it has not retained or employed any broker, agent or finder in connection with this Agreement and that there is no broker, agent or finder entitled to a fee or commission in

connection with this Agreement through or under the indemnifying part. Each of SEGERSTROM and CITY agrees to indemnify, defend and hold the other harmless from and against all claims to a fee or commission with respect to this Agreement made by any broker, finder or agent claiming through or under the indemnifying party. Payment shall not be condition precedent to recovery upon any indemnification provision contained in this Agreement. Each indemnification provision contained in this Agreement shall include a covenant by the indemnifying party to defend the indemnified party(ies) against all claims for which indemnification is available hereunder with legal counsel selected by the primary liability insurance carrier for the indemnifying party, or where there is no insurance carrier on the risk, legal counsel selected by the indemnifying party(ies) which is reasonably satisfactory to the indemnified party(ies)..

10. Governing Laws. This Agreement shall be construed in accordance with the laws of the State of California. Venue and jurisdiction of any action arising out of this Agreement shall be exclusively in any state or federal court sitting in Orange County, California.

11. Severability. If any term, provision, covenant, or condition set forth in this Agreement is held by the final judgment of a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions, covenants, and conditions shall continue in full force and effect to the extent that the basic intent of the parties as express herein can be accomplished. In addition, in such event the parties shall cooperate in good faith in an effort to amend or modify this Agreement in a manner such that the purpose of the invalidated or voided provision, covenant, or condition can be accomplished to the maximum extent legally permissible; provided, however, that in no event shall either party be required to agree to an amendment or modification of this Agreement that materially adversely impacts its rights or materially increases its obligations or risks as set forth herein.

12. No Waiver. Failure to enforce any covenant, condition or restriction contained in this Agreement in any certain instance or on any particular occasion shall not be deemed a waiver of such right on any such future breach of the same or any other covenant, condition or restriction.

13. Counterparts. This Agreement may be signed in several counterparts, each of which shall be deemed an original, and all such counterparts shall constitute one and the same instrument. The signature of a party to any counterpart may be removed and attached to any other counterpart. Any counterpart to which is attached the signatures of both parties shall constitute an original of this Agreement.

14. Amendment. This Agreement may be modified or amended only by a writing executed by each of SEGERSTROM and the CITY. 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.

15. Exhibit. The Exhibit attached hereto is hereby incorporated herein by this reference for all purposes.

16. Litigation Expenses. In any judicial proceeding or arbitration (collectively, "Action") in any way connected with or arising out of the terms and provisions of this Agreement, the prevailing party(ies) in such Action shall be awarded all of its or their actual and reasonable costs and expenses, including but not limited to expert witness fees, attorneys' fees, and costs of investigation and preparation prior to the commencement of the Action. The right to recover such costs and expenses shall accrue upon commencement of the Action, regardless of whether the Action is prosecuted to a final judgment or decision.

17. Integration. This Agreement and the Exhibit hereto contain the entire understanding of the parties related to the use of the License Area. All prior or contemporaneous agreements, understandings, representations and statements, whether direct or indirect, oral or written, are merged into and superseded by this Agreement and shall be of no further force or effect. No parole evidence of any prior or other agreement shall be permitted to contradict or vary the terms of this Agreement.

18. Notices. All approvals, notices and other communications (collectively, "Notices") hereunder shall be in writing and may be served personally, by commercial delivery or private courier service, or by registered or certified mail, return receipt requested and postage

prepaid. Any Notice shall be effective (a) upon personal delivery or (b) when received or refused as indicated by the date on the return invoice or receipt showing delivery or refusal. Rejection or other refusal to accept or the inability to deliver because of changed address of which no Notice was given as provided hereunder shall be deemed to be receipt of the Notice. Notices to the parties shall be addressed as follows:

CITY: CITY CLERK – CITY OF COSTA MESA
P.O. Box 1200
Costa Mesa, CA 92628-1200

SEGERSTROM: C.J. Segerstrom & Sons
3315 Fairview Road
Costa Mesa, CA 92626
Attn: Chief Financial Officer

Notice of change of address shall be given by written Notice in the manner set forth in this Section.

19. Paragraph Headings. All paragraph headings and subheadings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

20. Authority to Execute. The persons executing this Agreement warrant and represent that they have the authority to execute this Agreement and represent that they have the authority to bind the parties for which they are signing to the performance of the obligations hereunder.

21. Assignment. This Agreement cannot be assigned by the CITY without the prior written consent of SEGERSTROM.

22. Effective Date. This Agreement shall be effective upon the last execution and delivery hereof by SEGERSTROM and CITY.

IN WITNESS WHEREOF, the parties have executed this License Agreement to be effective provided in paragraph 22 above.

SEGERSTROM:

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

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

By: _____
Henry T. Segerstrom
Its: Manager

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

By: _____
Name: _____
Its: Senior Vice President

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

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

By: _____
Henry T. Segerstrom
Its: Manager

RUTH ANN MORIARTY PROPERTIES
LLC, a California limited liability company

By: _____
Ruth Ann Moriarty
Its: Manger

IKEA:

IKEA PROPERTY, INC.,
a Delaware corporation

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

CITY:

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

Exhibit

A Depiction of License Area