

SOUTHEAST METRO STORMWATER AUTHORITY
acting by and through
SEMSWA WATER ACTIVITY ENTERPRISE

RESOLUTION 11-04
(Approval of a Revocable Drainage Improvement License Agreement)

WHEREAS, the City of Centennial (City) and the Southeast Metro Stormwater Authority (SEMSWA) have entered into an Implementing Intergovernmental Agreement (IIGA) allowing for the transfer of the Colorado Department of Public Health and Environment (CDPHE) issued National Pollution Discharge Elimination System (NPDES) for Municipal Separate Storm Sewer System – Phase II requirements permit from the City to SEMSWA; and

WHEREAS, the City has adopted the City of Centennial Stormwater Management Manual (Manual) that sets forth the criteria for the design of stormwater improvements and allowable connections to the public stormsewer system; and

WHEREAS, the Manual requires that any direct connection into the public stormsewer system enter into a Revocable Drainage Improvement License Agreement outlining the terms and conditions of the direct connection; and

WHEREAS, as part of IIGA, SEMSWA has assumed responsibility for reviewing and approving direct connections to the stormsewer in accordance with the Manual; and

WHEREAS, it will be necessary for SEMSWA to enter into a Revocable Drainage Improvement License Agreement with IKEA Property, Inc. for a direct connection into the public system; and

WHEREAS, a Revocable Drainage Improvement License Agreement has been prepared by SEMSWA staff and legal counsel and is attached hereto as **Exhibit A**; and

WHEREAS, the Revocable Drainage Improvement License Agreement meets the requirements of the Manual and SEMSWA staff and legal counsel have approved the **Exhibit A** Agreement and recommend that the same be approved by the Board of SEMSWA; and

WHEREAS, IKEA Property, Inc. has agreed to execute the **Exhibit A** Agreement.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The Board Approves the Revocable Drainage Improvement License Agreement hereto and authorizes the Executive Director to execute the Agreement attached hereto as **Exhibit A** on behalf of SEMSWA.

SOUTHEAST METRO STORMWATER AUTHORITY
acting by and through
SEMSWA WATER ACTIVITY ENTERPRISE

Date: _____

ATTEST:

Secretary

Chairperson

APPROVED AS TO FORM:

Attorney for
SOUTHEAST METRO STORMWATER AUTHORITY

By _____
Edward J. Krisor

REVOCABLE DRAINAGE IMPROVEMENT LICENSE AGREEMENT
(Direct Connection to Stormsewer)

This REVOCABLE DRAINAGE IMPROVEMENT LICENSE AGREEMENT (this "Agreement") is entered into this ____ day of _____, 20____, by and between IKEA PROPERTY, INC., a Delaware corporation, whose address is 420 Alan Wood Road, Conshohocken, Pennsylvania 19428 (together with its successors and assigns, "Owner") and the Southeast Metro Stormwater Authority, a political subdivision and a public corporation of the State of Colorado, 76 Inverness Drive East, Suite A, Centennial, CO 80112 (together with its successors and assigns, "SEMSWA").

WITNESSETH:

WHEREAS, Owner owns certain property located in the City of Centennial ("City"), as more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the "Owner Property"); and

WHEREAS, SEMSWA and/or the City owns and/or maintains a stormsewer facility and/or channel in Cottonwood Creek and Willow Creek (the "Stormsewer"), which Stormsewer collects and transmits stormwater and surface runoff to a point of discharge in the Cottonwood and Willow Creek drainageways; and

WHEREAS, Owner desires to make a direct connection to the Stormsewer and in connection therewith desires that SEMSWA grant a license to Owner setting forth, among other matters, the terms and conditions of a direct connection in accordance with Section 14.8.2 of the City Stormwater Management Manual ("SMM"); and

WHEREAS, Owner desires to utilize the Stormsewer as a conduit to transmit stormwater from the Owner Property into Cottonwood Creek and/or Willow Creek via a six-inch PVC pipe direct connection from the foundation drain for the structure(s) on the Owner Property as generally depicted in Exhibit B attached hereto and incorporated herein by this reference (the "Direct Connection"), as approved by the City and SEMSWA in the Phase III Drainage Report and construction drawings for the Owner Property; and

WHEREAS, the Direct Connection will not compromise the capacity of the Stormsewer; and

WHEREAS, SEMSWA is willing to grant Owner a license for such Direct Connection on the terms and conditions contained herein; and

WHEREAS, Owner acknowledges and agrees that the matters hereinafter set forth are reasonable conditions and requirements to be imposed by SEMSWA, and that such matters are necessary to protect, promote, and enhance the public welfare.

NOW THEREFORE, in consideration of the foregoing recitals and their mutual covenants and agreements hereinafter set forth, the sufficiency of which consideration is hereby acknowledged by both parties, the parties agree as follows:

1. Subject to the terms and conditions hereof, SEMSWA hereby permits and licenses Owner to release discharges from the Owner Property to the Stormsewer via the Direct Connection in accordance with and subject to the terms and conditions of City Ordinance No. 2004 –O-27, as amended from time to time.

2. Owner shall make reasonable commercial efforts not cause any interference with or allow blockage of the flow of water within the Stormsewer. In no event shall Owner make any cross-connection of the Stormsewer to any other facility not expressly authorized herein, or divert any water from the Stormsewer for any purpose. Owner shall comply with all applicable regulations and requirements of SEMSWA and any other governmental entities having jurisdiction over the Stormsewer, with respect to the Stormsewer.

3. Owner acknowledges that the Stormsewer is an established conveyance system of stormwater flows and is therefore subject to occasional surcharged flow conditions, along with silt, dirt, debris and other potential contaminants. SEMSWA does not provide Owner any assurance or guarantee of the water quality within the Stormsewer system. Owner agrees to accept any liabilities to their system associated with inundation of the system, surcharged pressure flow conditions, and the quality of the stormwater being conveyed within the Stormsewer. SEMSWA shall not perform maintenance of the Stormsewer in order to protect or facilitate Owner's use of the Stormsewer, nor should Owner rely on any maintenance of the Stormsewer by SEMSWA in Owner's maintenance of the foundation drain.

4. The initial term of this Agreement shall expire on December 31 of the year in which this Agreement is made, and shall be subject to renewal on these or such other generally applicable terms as may be imposed by SEMSWA pursuant to its regulations. If no notice of renewal or nonrenewal is recorded prior to the end of the initial term or any renewal term, this Agreement shall be automatically renewed for an additional one-year period without additional notice. Notwithstanding any contrary provision of this Agreement, this Agreement shall be automatically renewed for such one-year period from time to time without notice so long as, at the time of the commencement of the applicable renewal period, there is no uncured material breach of this Agreement after notice is given and the applicable cure period having expired in accordance with Paragraph 8. In the event of any nonrenewal pursuant to this Paragraph 4, SEMSWA shall provide 90 days prior written notice to Owner.

5. Owner shall, at its sole cost and expense, maintain the foundation drain and Direct Connection in proper operating condition and shall make such repairs and replacements thereto as may be necessary to keep all components of such drainage system in proper operating condition. Owner shall be responsible for all costs and liabilities relating to such maintenance and repair. Owner shall cause inspections of the Direct Connection to be conducted as follows:

A. Owner shall cause inspection of the connection to the Stormsewer, at the Owner's expense, by a person experienced in the inspection of stormwater facilities. Inspections shall occur at least once every calendar year.

B. An inspection report for the Direct Connection shall be submitted in writing to SEMSWA prior to May 31 of each year. The inspection report shall be in the form of the

inspection report attached hereto as Exhibit C and incorporated herein by this reference or such other form as mutually agreed upon by the parties (the “**Inspection Report**”).

C. Owner perform shall promptly all needed maintenance and shall report maintenance activities as set forth on the Inspection Report within 30 days of their completion.

6. In the event the Owner fails to repair the Direct Connection within 30 days after written notice by SEMSWA to Owner of a deficiency or defect with respect thereto, SEMSWA may enter upon the Owner Property and take whatever reasonable steps it deems necessary to repair the Direct Connection; provided, however, if such deficiency or defect is of a nature that it cannot reasonably be repaired within such 30-day period, so long as Owner diligently is pursuing the repair, Owner shall have such additional time as reasonably necessary to complete such repair. Notwithstanding the foregoing, if such deficiency or defect could cause damage to property, loss of life or a violation of a NPDES MS4 Permit, SEMSWA may take immediate action without prior written notice to the Owner to correct such deficiency or defect, provided that SEMSWA shall provide prompt notice to Owner of such action. It is expressly understood and agreed that SEMSWA is under no obligation to maintain or repair the Direct Connection and in no event shall this Agreement be construed to impose any such obligation on SEMSWA.

7. To the extent permitted by law, Owner hereby indemnifies, and agrees to defend and hold harmless, SEMSWA and its Board of Directors, employees, and agents, from and against any and all claims, enforcement actions, fines or penalties arising from the discharge of the stormwater from the foundation drain situated upon the Owner Property to the Stormsewer, provided that such indemnification does not extend to claims, enforcement actions, fines or penalties resulting from SEMSWA’s negligence or willful misconduct.

8. If SEMSWA determines in its reasonable discretion that Owner is in material breach of any provision of this Agreement, SEMSWA shall give Owner written notice of such breach and Owner shall have 30 days after such written notice to cure such breach; provided, however, if such breach is of a nature that it cannot reasonably be cured within such 30-day period, so long as Owner diligently is pursuing the cure, Owner shall have such additional time as reasonably necessary complete the cure. If Owner does not complete the cure within the foregoing period, SEMSWA shall have the right to terminate this Agreement and remove the Direct Connection without liability therefor. Nothing herein shall prevent or preclude SEMSWA, without liability to Owner, from removing such Direct Connection without giving 30 days’ prior written notice to Owner if SEMSWA reasonably determines that such disconnection is necessary for the public health, safety or welfare.

9. Owner shall maintain a policy of general liability insurance with respect to the Direct Connection. The amount of such insurance shall be no less than \$1,000,000.00. Such policy shall name SEMSWA as an additional insured and provide that it shall not be amended or terminated except upon at least 30 days’ prior written notice to SEMSWA. Owner shall provide to SEMSWA a certificate of insurance evidencing the above insurance coverage meeting the requirements of this Paragraph 9 within 30 days of written request therefor from SEMSWA to Owner.

10. Owner's rights under this Agreement may not be assigned or transferred to any person or entity without prior written consent of SEMSWA, which consent will not be unreasonably withheld, conditioned or delayed; provided, however, SEMSWA's consent shall not be required with respect to any assignment to a successor owner of the Owner Property or any portion thereof. If SEMSWA's consent to Owner's assignment is required pursuant to this Paragraph 10, SEMSWA shall grant such consent if such assignee or transferee executes a formal written assumption of all obligations and undertakings of Owner under this Agreement, without exception, and provided that, at the time such consent is requested in writing by Owner, there are no uncured material breaches of this Agreement (without regard to any applicable cure periods) by Owner for which written notice thereof previously was given by SEMSWA to Owner.

11. This Agreement constitutes the complete agreement between the parties hereto with respect to the subject matter hereof. No other promises or representations have been made to or relied upon by Owner or SEMSWA, and no other consideration than that specified herein is involved in this Agreement. Each of the undersigned signatories represents that he/she has authority to bind the party for whom he/she is signing, and that it is the intent of each party that this Agreement is binding upon the parties and their successors, agents, employees, and assigns, and is contractual, and not merely an understanding or recital.

[Signature Page Follows This Page]

IN WITNESS WHEREOF, this Agreement is signed by the parties as of the date above written.

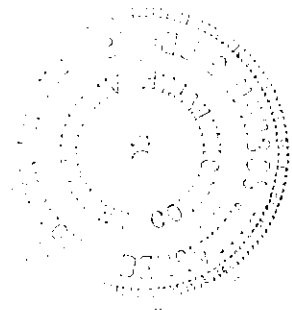
For the Board of Directors of the Southeast Metro Stormwater Authority
Centennial, Colorado

John McCarty, Executive Director

Authorization pursuant to Resolution No. ____:

Name: _____

Title: _____



IKEA PROPERTY, INC., a Delaware corporation

By: Gary Ternes
Name: Gary Ternes GARY TERNES
Title: President PRESIDENT

By: Charles E. Keller
Name: Charles Keller CHARLES E. KELLER
Title: Vice President VP

STATE OF Pennsylvania)
COUNTY OF Montgomery) ss.

The foregoing instrument was acknowledged before me this 17th day of December, 2010, by Gary Ternes as President of IKEA PROPERTY, INC., a Delaware corporation.

My commission expires:
04/10/2013

Benjamin Joseph Gibbons
Notary Public

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Benjamin Joseph Gibbons, Notary Public
Plymouth Twp., Montgomery County
My Commission Expires April 10, 2013
Member, Pennsylvania Association of Notaries

STATE OF Pennsylvania)
COUNTY OF Montgomery) ss.

The foregoing instrument was acknowledged before me this 17th day of December, 2010, by Charles E. Keller as Vice President of IKEA PROPERTY, INC., a Delaware corporation.

My commission expires:
04/10/2013

Benjamin Joseph Gibbons
Notary Public

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Benjamin Joseph Gibbons, Notary Public
Plymouth Twp., Montgomery County
My Commission Expires April 10, 2013
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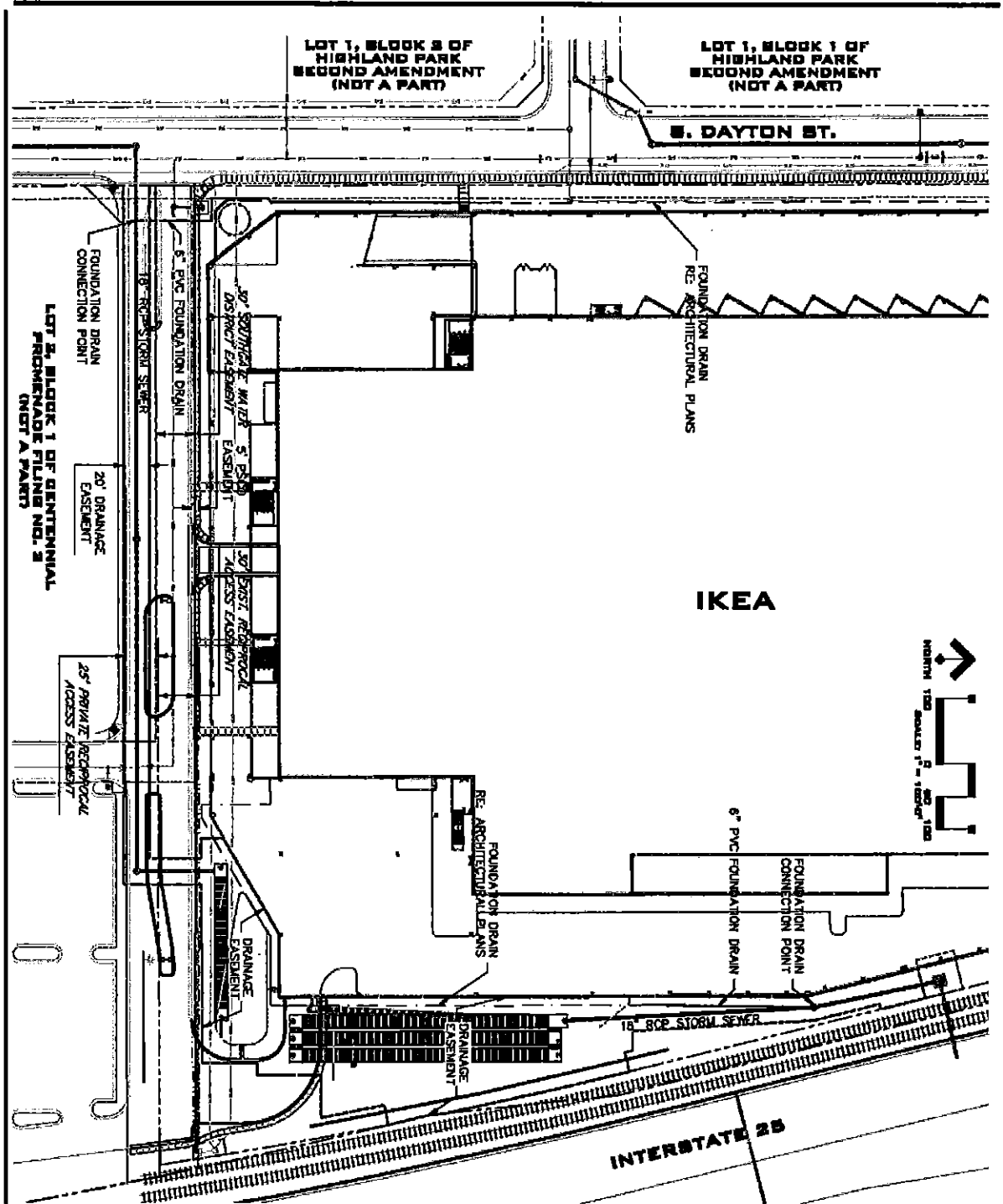
Exhibit A
Legal Description of the Owner Property

Lot 1, Block 1, Centennial Promenade Filing No. 5, according to the plat thereof recorded on December 23, 2008 at Reception No. B8138440;

TOGETHER WITH THE FOLLOWING PARCEL:

Parcel B, A Replat of Centennial - 25 Filing No. 2, according to the plat thereof recorded on January 9, 1990 at Reception No. 0002993.

Exhibit B
Depiction/Sketch of Direct Connection



PROJ # 08-0043
 DATE: 11/03/10

IKEA
 LOT 1, BLOCK 1 OF CENTENNIAL PROMENADE
 FILING NO. 4
 7950 S. DAYTON STREET
 CENTENNIAL, CO

CLC ASSOCIATES
 8480 E. BROADWAY RD.
 SUITE 1000
 GREENWOOD VILLAGE
 COLORADO 80011
 P 303 770 1500
 F 303 770 2525
 CLC@CLC.CO
 ARCHITECTURE
 ENGINEERING PLANNING
 LANDSCAPE ARCHITECTURE
 LAND SURVEYING



SHEET 1

EXHIBIT B - FOUNDATION DRAIN CONNECTION



Exhibit C

Annual Inspection and Maintenance Reporting Form
for
Direct Connections to the Stormsewer
(This form to be submitted to SEMSWA prior to May 31 of each year)

Date: _____

To: Southeast Metro Stormwater Authority
Attn: Stormwater Facility Operations and Maintenance Program
76 Inverness Drive East, Suite A
Englewood, CO 80112-5116

Re: Certification of Inspection and Maintenance; Submittal of forms

Property/Subdivision Name: _____

Property Address: _____

Contact Name: _____

I verify that the required stormwater facility inspections and required maintenance have been completed in accordance with the Revocable Drainage Improvement License associated with the above referenced property.

The required Direct Connection to the Stormsewer Inspection and Maintenance forms are hereby provided.

IKEA PROPERTY, INC.
Name of Party Responsible for Inspection
& Maintenance

IKEA PROPERTY, INC.
Property Owner

[Signature]
Authorized Signature

[Signature]
Signature

