

Land Use & Housing Committee of October 5, 2011
Sale of a Portion of Carlton Oaks Golf Course
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- Appraisal Abstract
- South Property plat & legal description (City property that would be sold to TY Investment, Inc.)
- West Property plat & legal description (TY Investment, Inc. property that would be conveyed to City)
- Letter from San Diego River Conservancy dated 9/8/10 waiving their right to purchase the property
- Option Agreement, Conservation & Trail Easement Deed, and Right of First Refusal (between San Diego River Conservancy and TY Investment, Inc.)
- William Anderson Memorandum dated 5/28/10
- Environmental Impact Statement
- Purchase & Sale Agreement (subject to obtaining City Council authorization)



THE CITY OF SAN DIEGO
REPORT TO THE CITY COUNCIL

DATE ISSUED: September 28, 2011

REPORT NO: 11-106

ATTENTION: Land Use and Housing Committee Chairman and Committee Members
Agenda of **October 5, 2011**

SUBJECT: Sale of a portion of Carlton Oaks Golf Course

REQUESTED ACTION:

1. Authorize the sale of approximately 68.9 acres of City-owned Water Fund real property comprising a portion of the Carlton Oaks Golf Course located on portions of APN 383-080-03 & 04 for \$3 million.
2. Authorize the acceptance by the City of approximately 2.6 acres of real property located on portions of APN 383-060-26 and APN 383-071-07 at no cost to the City.
3. Authorize the purchase and sale agreement between the City and TY Investment, Inc., at \$3 million.
4. Authorize the Comptroller to accept and deposit the proceeds of the sale of the property into the Capital Outlay Water Fund 400004.

STAFF RECOMMENDATION:

Authorize the requested actions.

BACKGROUND:

The City owns approximately 106 acres of Water Fund property ("City Property") in and around Carlton Oaks Golf Course. The City Property was acquired by the Water Fund in 1933 as part of the lands for Mission Reservoir, which was never built, and to allow the dredging of the San Diego River.

The northern portion of the City Property has been leased for golf course purposes since 1959. The lease is currently on holdover on a month-to month basis, generating annual revenue of \$237,869.76. TY Investment, Inc., a California corporation ("TY"), owns 105 acres of property on the north and east sides of the City Property and operates the Carlton Oaks Golf Course. The southern portion of the City Property not being leased for the golf course runs along and includes the San Diego River.

City staff negotiated a proposed sale, subject to City Council approval, of approximately 68.9 acres of the City Property (the "Sale Property;" i.e., that portion of the City Property used for the golf course) to TY for \$3 million, together with TY's conveyance of approximately 2.6 acres of its property to the City. The net acreage changing hands would be approximately 66.3 acres. The City would retain the balance of the City Property along and including the San Diego River. The proposed sale would generate capital outlay funds for the Water Fund.

The value of the Sale Property is \$3 million, as determined by a qualified MAI appraiser. The appraiser indicated that mitigation use could potentially achieve the highest achievable sale price, which is greater than the value in its present state. It was estimated that it would cost the City \$6.4 million to develop the property for use as a mitigation bank (assuming that 75% of the City property (49 acres) could be used for wetland/riparian creation). The appraiser investigated the revenue, cost, and absorption associated with establishing a mitigation bank and applied current rates of return to the net cash flows from the banking endeavor to calculate the present value. When all of these calculations were taken into account, the value of the property, in its current condition, was determined to be \$3 million as of the date of the appraisal.

The San Diego River Conservancy, an agency of the State of California ("SDRC"), once held a right of first refusal to purchase the Sale Property, but in September 2010 SDRC agreed to waive that right if TY purchases the Sale Property and: (1) provides SDRC with an easement to develop a public trail on the Sale Property and extinguishes TY's development rights for commercial, industrial, agricultural or residential development on the Sale Property; and (2) provides SDRC with a right of first refusal to purchase all of TY's property comprising the Carlton Oaks Golf Course.

If the Sale Property is sold to TY, the City will have the right to continue and complete a mitigation project already underway along the San Diego River, a temporary invasive plant control and restoration project easement, and an access easement. In addition, the City will reserve the right to record a public trail easement and environmental mitigation easements related to a public trail easement on that portion of the Sale Property adjacent to the San Diego River.

ENVIRONMENTAL IMPACT:

Per the Development Services Department: This activity is categorically exempt from CEQA pursuant to CEQA Guidelines Section 15312 (Surplus Government Property Sales). The sale does not propose or allow a change in use and/or development footprint from the existing golf course. The subject property is not located in areas of statewide, regional, or area wide concern identified in Section 15206(b)(4). Upon completion of the sale of the property, the San Diego River Conservancy will record a conservation easement over the Sale Property to ensure that no building occurs on the property and the land remains in its current state. Additionally, upon completion of the sale of the property, the City will reserve an environmental mitigation easement for the approved mitigation site for the old Mission Dam Dredging Project, and will have the right to record an easement on a portion of the property for a potential future trail. An

easement for the trail is not being recorded with this activity. Regardless of ownership, any change in use and/or development (including a trail) on the site will be subject to future CEQA review, due to the presence of environmentally sensitive lands.

FISCAL CONSIDERATIONS:

Proceeds of the sale, minus approximately \$33,000 in expenses related to the sale (for surveying, Phase I environmental report, appraisal, title and escrow fees, etc.), would be deposited into the Capital Outlay Water Fund 400004.

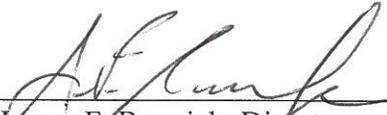
COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

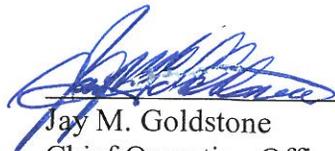
City staff attended and answered questions at the San Diego River Conservancy Meeting of September 2, 2010, when the San Diego River Conservancy approved Resolution 10-06B waiving its first right of refusal and rights under the surplus land statutes to acquire the property.

In addition to discussions with the San Diego River Conservancy, City staff has been in communication with various other interested groups such as the San Diego River Park Foundation, Citizens Coordinate for Century 3, and the City's Park and Recreation Department.

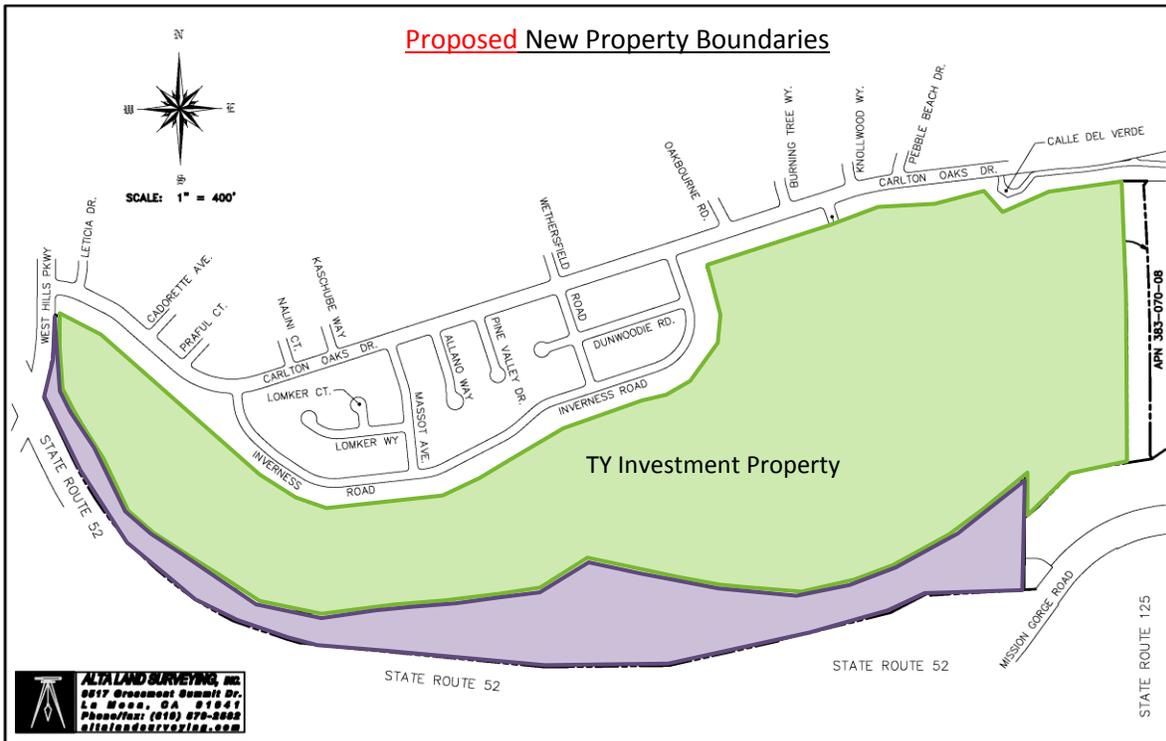
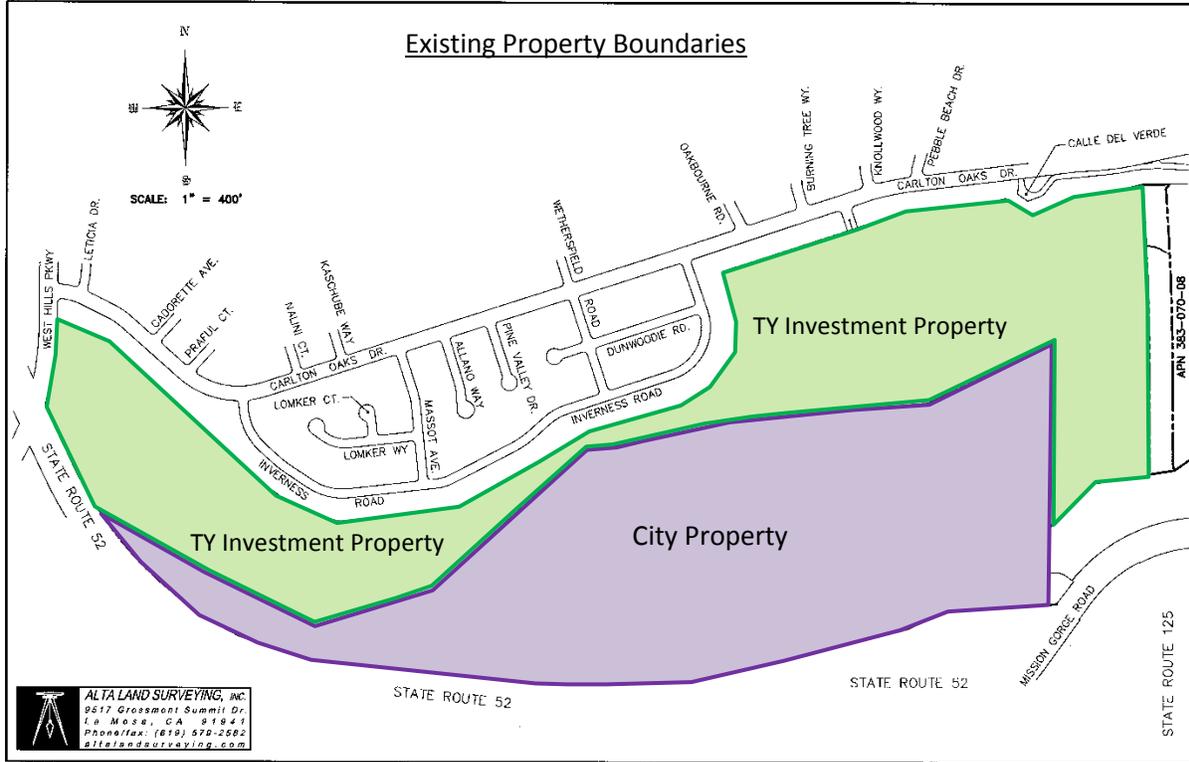
KEY STAKEHOLDERS AND PROJECTED IMPACTS:

The City of San Diego, the San Diego River Conservancy, and TY Investments, Inc., a California corporation.


James F. Barwick, Director
Real Estate Assets Department


Jay M. Goldstone
Chief Operating Officer

Carlton Oaks Existing and Proposed Property Boundaries



Carlton Oaks
Appraisal Abstract

Property: Portions of APN 383-080-03 & 04 consisting of approximately 65.4 gross acres, improved with a portion of Carlton Oaks Golf Course. The property is located in a flood plain and is highly constrained.

Date of Value: September 1, 2011
Jones, Roach & Caringella, Inc.

Highest and Best Use: The highest and best use of the Property was determined to be wetland mitigation. Appraisal assumes approximately 49 acres of the property would qualify for wetland and riparian habitat restoration credits.

Mitigation Bank Development Costs: The financial risk and liability of developing a mitigation bank is significant. The owner would bear all responsibility for the wetlands. Mitigation bank development costs are estimated to be in excess of \$6,460,230. Approximately 2' of soil would need to be removed and hauled from approximately 75% of site. CEQA review, grading, planting, five year maintenance and biological monitoring would also be required.

CEQA Preparation & Processing: CEQA preparation and processing is estimated to cost \$150,000-\$400,000. However, the appraisal assumes that CEQA review would not be required.

Appraisal Methodology: *Discounted Cash Flow Analysis:* The costs associated with establishing a mitigation bank were estimated (grading, habitat restoration, 5 years maintenance and biological monitoring and long term management endowment funding) to be absorbed over an eight year period. The required rate of return was applied to the net cash flow to calculate the present value of the Property.

Sales Comparison Approach: the Property's characteristics were compared with those of similar properties which have recently sold.

Conclusion: The Property was appraised at \$3,000,000.

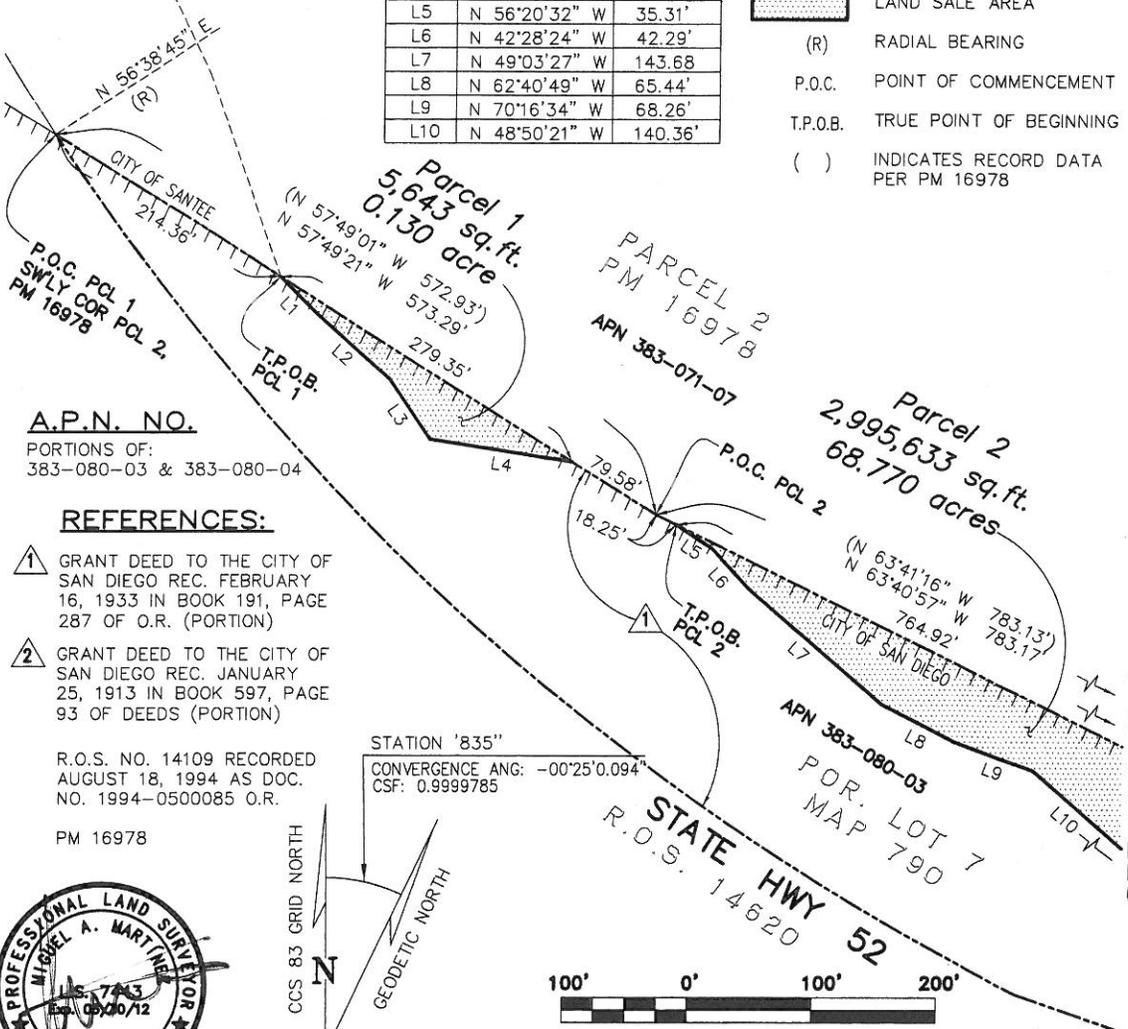
BASIS OF BEARINGS:

THE BASIS OF BEARINGS FOR THIS LAND SALE PLAT IS THE CALIFORNIA COORDINATE SYSTEM '83' ZONE 6, GRID BEARING BETWEEN STATIONS '885' AND '835' PER RECORD OF SURVEY MAP NO. 14492. IE. N 46°08'43" E

LINE	BEARING	LENGTH
L1	N 44°49'17" W	39.62'
L2	N 48°42'40" W	82.06'
L3	N 34°03'28" W	58.59'
L4	N 81°02'26" W	115.46'
L5	N 56°20'32" W	35.31'
L6	N 42°28'24" W	42.29'
L7	N 49°03'27" W	143.68'
L8	N 62°40'49" W	65.44'
L9	N 70°16'34" W	68.26'
L10	N 48°50'21" W	140.36'

LEGEND:

- INDICATES PROPERTY
- INDICATES CITY OF SAN DIEGO BOUNDARY PER PM 16978
- [Hatched Box] LAND SALE AREA
- (R) RADIAL BEARING
- P.O.C. POINT OF COMMENCEMENT
- T.P.O.B. TRUE POINT OF BEGINNING
- () INDICATES RECORD DATA PER PM 16978



A.P.N. NO.

PORTIONS OF:
383-080-03 & 383-080-04

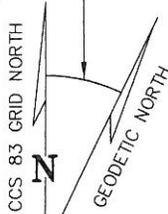
REFERENCES:

- 1 GRANT DEED TO THE CITY OF SAN DIEGO REC. FEBRUARY 16, 1933 IN BOOK 191, PAGE 287 OF O.R. (PORTION)
- 2 GRANT DEED TO THE CITY OF SAN DIEGO REC. JANUARY 25, 1913 IN BOOK 597, PAGE 93 OF DEEDS (PORTION)

R.O.S. NO. 14109 RECORDED AUGUST 18, 1994 AS DOC. NO. 1994-0500085 O.R.

PM 16978

STATION '835'
CONVERGENCE ANG: -00°25'0.094"
CSF: 0.9999785



SCALE: 1" = 100'

SEE SHEET 2



Alta Land Surveying

9517 GROSSMONT SUMMIT DR.
LA MESA, CA 91941
PHONE / FAX: (619) 579-2582
1930-B-SHT1.DWG J.N. 10-1930 DATE: 07/18/11

LAND SALE PLAT

PORTIONS OF LOT 7 TRACT 'T' OF FANITA RANCHO, MAP 790, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA.

DESCRIPTION	BY	APPROVED	DATE	FILMED	CITY OF SAN DIEGO, CALIFORNIA
ORIGINAL					SHEET 1 OF 4 SHEETS
					1884-6323
					CCS 83 COORDINATES
					244-1763
					LAMBERT COORDINATES
					36565-1-B

Handwritten signature and date: 8/17/11

Handwritten signature: Gregory P. Hopkins
FOR CITY ENGINEER DATE 8-18-2011

BASIS OF BEARINGS:

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LINE	BEARING	LENGTH
L5	N 56°20'32" W	35.31'
L6	N 42°28'24" W	42.29'
L7	N 49°03'27" W	143.68'
L8	N 62°40'49" W	65.44'
L9	N 70°16'34" W	68.26'
L10	N 48°50'21" W	140.36'
L11	N 72°44'45" W	128.34'
L12	N 80°33'38" W	111.54'
L13	N 81°25'50" W	138.72'
L14	N 84°49'51" E	82.64'
L15	N 79°08'42" E	112.34'
L16	N 82°08'32" E	216.39'
L17	N 89°05'29" W	200.13'
L18	N 85°08'59" E	142.97'
L19	N 82°50'24" E	122.70'

STATION '835"
CONVERGENCE ANG: -00°25'0.094"
CSF: 0.9999785

MAP 6973

PARCEL 2
PM 16978
APN 383-071-07

Parcel 2
2,995,633 sq. ft.
68.770 acres

POR. OF LOT 7
MAP 790

REFERENCES:

- ② 20-FOOT WIDE EASEMENT TO SANTEE COUNTY WATER DISTRICT, RECORDED JULY 1, 1964 AS FILE NO. 118613, O.R.
- ③ 10-FOOT WIDE EASEMENT TO SANTEE COUNTY WATER DISTRICT, RECORDED MAY 7, 1971 AS FILE NO. 95224, O.R.
- ④ 12-FOOT WIDE EASEMENT TO S.D.G.&E. RECORDED FEB. 18, 1959 IN BK. 7504, PG. 247, O.R.
- ⑤ 20-FOOT WIDE SEWER EASEMENT TO SANTEE COUNTY WATER DISTRICT PER DOC. RECORDED DEC. 11, 1958 IN BK. 7392, PG. 215, O.R.
- ⑥ 10-FOOT WIDE WATER EASEMENT TO CARLTON SANTEE CORP. PER DOC. RECORDED OCT. 4, 1962 AS FILE/PG. NO. 171434, O.R.
- ⚠ GRANT DEED TO THE CITY OF SAN DIEGO REC. FEBRUARY 16, 1933 IN BOOK 191, PAGE 287 OF O.R. (PORTION)

STATE HWY 52
R.O.S. 16019



SCALE: 1" = 200'



Alta Land Surveying

9517 GROSSMONT SUMMIT DR.
LA MESA, CA 91941
PHONE / FAX: (619) 579-2582
1930-B-SHT2.DWG J.N. 10-1930 DATE: 07/18/11

LAND SALE PLAT

PORTIONS OF LOT 7 TRACT 'T' OF FANITA RANCHO, MAP 790, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA.

DESCRIPTION	BY	APPROVED	DATE	FILMED	CITY OF SAN DIEGO, CALIFORNIA
ORIGINAL					
			8/17/11		
					SHEET 2 OF 4 SHEETS
					1884-6323
					CCS 83 COORDINATES
					244-1763
					LAMBERT COORDINATES
					36565-2-B

Gregory P. Hopkins 8-18-2011
FOR CITY ENGINEER DATE

BASIS OF BEARINGS:

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PARCEL 2
PM 16978
APN 383-071-07

MAP 6973

Parcel 2
2,995,633 sq. ft.
68.770 acres

LINE	BEARING	LENGTH
L19	N 82°50'24" E	122.70'
L20	N 85°34'14" E	137.37'
L21	N 81°27'01" E	152.38'
L22	N 67°58'13" E	132.62'
L23	N 61°59'55" E	88.39'
L24	N 55°57'27" E	84.96'
L25	N 63°22'33" E	77.76'
L26	N 83°49'25" E	85.56'
L27	N 77°10'21" W	209.10'
L28	N 74°04'03" W	126.83'
L29	N 81°39'31" W	200.09'
L30	N 85°32'56" W	76.47'
L31	N 78°53'08" W	235.08'
L32	N 82°51'55" W	181.98'
L33	N 86°51'43" W	96.46'

SEE SHEET 2

SEE SHEET 4

FANITA RANCHO
POR. OF
MAP 1703

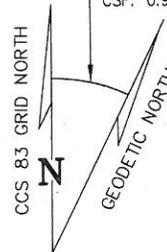
POR. OF LOT 7
MAP 790

STATE HWY 52
R.O.S. 16019



SCALE: 1" = 200'

STATION '835'
CONVERGENCE ANG: -00°25'0.094"
CSF: 0.9999785



Alta Land Surveying

9517 GROSSMONT SUMMIT DR.
LA MESA, CA 91941
PHONE / FAX: (619) 579-2582
1930-B-SHT3.DWG J.N. 10-1930 DATE: 07/18/11

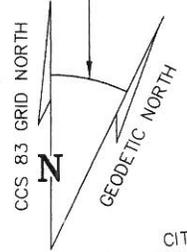
LAND SALE PLAT

PORTIONS OF LOT 7 TRACT 'T' OF FANITA RANCHO, MAP 790, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA.

DESCRIPTION	BY	APPROVED	DATE	FILMED	CITY OF SAN DIEGO, CALIFORNIA
ORIGINAL					SHEET 3 OF 4 SHEETS
	GH		8/17/11		<i>Gregory P. Hopkins</i> 8-18-2011 FOR CITY ENGINEER DATE
					1884-6323 CCS 83 COORDINATES
					244-1763 LAMBERT COORDINATES
					36565-3-B

STATION '835'
 CONVERGENCE ANG: -00°25'0.094"
 CSF: 0.9999785

BASIS OF BEARINGS:
 THE BASIS OF BEARINGS FOR THIS LAND SALE PLAT IS THE CALIFORNIA COORDINATE SYSTEM '83' ZONE 6, GRID BEARING BETWEEN STATIONS '885' AND '835' PER RECORD OF SURVEY MAP NO. 14492. I.E. N 46°08'43" E



PARCEL 2
 PM 16978
 APN 383-071-07

CITY OF SANTEE
 (N 83°58'49" E
 N 83°59'54" E)

998.74'
 998.87'

(N 64°09'56" E
 N 64°11'09" E)

APN 383-080-04

1,021.36'
 1,021.44'

LINE	BEARING	LENGTH
L32	N 82°51'55" W	181.98'
L33	N 86°51'43" W	96.46'
L34	N 86°51'59" E	68.24'
L35	N 80°40'30" E	72.02'
L36	N 75°30'50" E	182.84'
L37	N 67°47'03" E	203.11'
L38	N 69°19'04" E	89.48'
L39	N 66°21'01" E	157.19'
L40	N 65°56'17" E	97.76'
L41	N 51°56'14" E	132.14'
L42	N 53°15'50" E	108.24'
L43	N 51°35'54" E	87.13'
L44	N 53°32'20" E	78.43'
L45	N 45°25'46" E	76.52'
L46	N 52°28'16" E	44.65'
L47	N 44°24'31" E	56.94'
L48	N 61°57'19" E	27.74'

Parcel 2
 2,995,633 sq.ft.
 68.770 acres

FANITA RANCHO
 TRACT 'T'
 MAP 790

APN 383-080-03

LOT 1
 MAP 1703

POR. OF LOT 7
 MAP 790

APN 383-080-05

MISSION GORGE ROAD

STATE HWY 52
 ROS 16019

WEST RAMP



SCALE: 1" = 200'



REFERENCES:

- 1 GRANT DEED TO THE CITY OF SAN DIEGO, REC. FEBRUARY 16, 1933 IN BOOK 191, PAGE 287 OF O.R. (PORTION)
- 2 GRANT DEED TO THE CITY OF SAN DIEGO, REC. JANUARY 25, 1913 IN BOOK 597, PAGE 93 OF DEEDS (PORTION)



Alta Land Surveying
 9517 GROSSMONT SUMMIT DR.
 LA MESA, CA 91941
 PHONE / FAX: (619) 579-2582
 1930-B-SHT4.DWG J.N. 10-1930 DATE: 07/18/11

LAND SALE PLAT
 PORTIONS OF LOT 7 TRACT 'T' OF FANITA RANCHO, MAP 790, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA.

DESCRIPTION	BY	APPROVED	DATE	FILMED	CITY OF SAN DIEGO, CALIFORNIA	
ORIGINAL						
					SHEET 4 OF 4 SHEETS	
					<i>Gregory P. ...</i> 8-18-2011	1884-6323
					FOR CITY ENGINEER DATE	CCS 83 COORDINATES
						244-1763
						LAMBERT COORDINATES
						36565-4-B

EXHIBIT 'A'
LEGAL DESCRIPTION
LAND SALE PARCEL

PARCEL 1

THAT PORTION OF LOT 7 T-TRACT OF FANITA RANCHO, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 790, FILED IN THE OFFICE OF SAN DIEGO COUNTY RECORDER ON DECEMBER 21, 1894, CONVEYED TO THE CITY OF SAN DIEGO BY DEED RECORDED ON FEBRUARY 16, 1933 IN BOOK 191, PAGE 287 OF OFFICIAL RECORDS OF SAID COUNTY RECORDER (APN 383-080-03), MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT AN ANGLE POINT IN THE SOUTHWESTERLY LINE OF PARCEL 2 OF PARCEL MAP NO. 16978, IN THE CITY OF SANTEE, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, OCTOBER 19, 1992 AS INSTRUMENT NO. 1992-0665040 OF OFFICIAL RECORDS; BEING THE NORTHWESTERLY TERMINUS OF THAT CERTAIN COURSE (SOUTH 57°49'01"EAST, 572.93'); THENCE ALONG SAID SOUTHWESTERLY LINE

1. SOUTH 57°49'21" EAST 214.36 FEET **TO THE TRUE POINT OF BEGINNING**
(REC. SOUTH 57°49'01" EAST, PER PM 16978) ;THENCE LEAVING SAID SOUTHWESTERLY LINE
2. SOUTH 44°49'17" EAST 39.62 FEET ; THENCE
3. SOUTH 48°42'40" EAST 82.06 FEET ; THENCE
4. SOUTH 34°03'28" EAST 58.59 FEET ; THENCE
5. SOUTH 81°02'26" EAST 115.46 FEET TO THE SOUTHWESTERLY LINE OF SAID PARCEL 2; THENCE ALONG SAID LINE
6. NORTH 57°49'21" WEST 279.35 FEET **TO THE TRUE POINT OF BEGINNING.**

CONTAINS 5,643 SQUARE FEET (0.130 ACRES), MORE OR LESS.

PARCEL 2

THOSE PORTIONS OF LOT 7 T-TRACT OF FANITA RANCHO, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 790, FILED IN THE OFFICE OF SAN DIEGO COUNTY RECORDER ON DECEMBER 21, 1894, CONVEYED TO THE CITY OF SAN DIEGO BY DEED RECORDED ON FEBRUARY 16, 1933 IN BOOK 191, PAGE 287 OF OFFICIAL RECORDS OF SAID COUNTY RECORDER (APN 383-080-03), AND AS CONVEYED BY FANNIE MCKOON, ET AL TO NACKIE H. SCRIPPS, JANUARY 25, 1913 BY DEED RECORDED IN BOOK 597, PAGE 93 OF DEEDS (APN 383-080-04), MORE PARTICULARLY DESCRIBED AS FOLLOWS:

EXHIBIT 'A'
LEGAL DESCRIPTION (CONT'D)
LAND SALE PARCEL

COMMENCING AT AN ANGLE POINT IN THE SOUTHWESTERLY LINE OF PARCEL 2 OF PARCEL MAP NO. 16978, IN THE CITY OF SANTEE, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, OCTOBER 19, 1992 AS INSTRUMENT NO. 1992-0665040 OF OFFICIAL RECORDS; BEING THE SOUTHEASTERLY TERMINUS OF THAT CERTAIN COURSE (SOUTH 57°49'01"EAST, 572.93'); THENCE ALONG SAID SOUTHWESTERLY LINE

- | | | | |
|-----|----------------------------------------------------------------------|--------------|---------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. | SOUTH 63°40'57" EAST
(REC. SOUTH 63°41'16"
EAST, PER PM 16978) | 18.25 FEET | TO THE TRUE POINT OF BEGINNING
; THENCE CONTINUING ALONG THE
SOUTHERLY AND WESTERLY BOUNDARY
OF SAID PARCEL 2 THE FOLLOWING
COURSES: |
| 2. | SOUTH 63°40'57" EAST | 764.92 FEET | ; THENCE |
| 3. | NORTH 72°35'38" EAST | 694.93 FEET | ; THENCE |
| 4. | NORTH 46°56'54" EAST | 1131.79 FEET | ; THENCE |
| 5. | NORTH 79°58'54" EAST | 941.09 FEET | ; THENCE |
| 6. | NORTH 83°59'54" EAST | 998.87 FEET | ; THENCE |
| 7. | NORTH 64°11'09" EAST | 739.43 FEET | ; THENCE |
| 8. | SOUTH 00°29'09" WEST | 835.84 FEET | ; THENCE LEAVING SAID PARCEL 2
BOUNDARY |
| 9. | SOUTH 61°57'19" WEST | 27.74 FEET | ; THENCE |
| 10. | SOUTH 44°24'31" WEST | 56.94 FEET | ; THENCE |
| 11. | SOUTH 52°28'16" WEST | 44.65 FEET | ; THENCE |
| 12. | SOUTH 45°25'46" WEST | 76.52 FEET | ; THENCE |
| 13. | SOUTH 53°32'20" WEST | 78.43 FEET | ; THENCE |
| 14. | SOUTH 51°35'54" WEST | 87.13 FEET | ; THENCE |
| 15. | SOUTH 53°15'50" WEST | 108.24 FEET | ; THENCE |
| 16. | SOUTH 51°56'14" WEST | 132.14 FEET | ; THENCE |
| 17. | SOUTH 65°56'17" WEST | 97.76 FEET | ; THENCE |
| 18. | SOUTH 66°21'01" WEST | 157.19 FEET | ; THENCE |
| 19. | SOUTH 69°19'04" WEST | 89.48 FEET | ; THENCE |
| 20. | SOUTH 67°47'03" WEST | 203.11 FEET | ; THENCE |
| 21. | SOUTH 75°30'50" WEST | 182.84 FEET | ; THENCE |

22. SOUTH 80°40'30" WEST 72.02 FEET ; THENCE
23. SOUTH 86°51'59" WEST 68.24 FEET ; THENCE
24. NORTH 86°51'43" WEST 96.46 FEET ; THENCE
25. NORTH 82°51'55" WEST 181.98 FEET ; THENCE
26. NORTH 78°53'08" WEST 235.08 FEET ; THENCE
27. NORTH 85°32'56" WEST 76.47 FEET ; THENCE
28. NORTH 81°39'31" WEST 200.09 FEET ; THENCE
29. NORTH 74°04'03" WEST 126.83 FEET ; THENCE
30. NORTH 77°10'21" WEST 209.10 FEET ; THENCE
31. SOUTH 83°49'25" WEST 85.56 FEET ; THENCE
32. SOUTH 63°22'33" WEST 77.76 FEET ; THENCE
33. SOUTH 55°57'27" WEST 84.96 FEET ; THENCE
34. SOUTH 61°59'55" WEST 88.39 FEET ; THENCE
35. SOUTH 67°58'13" WEST 132.62 FEET ; THENCE
36. SOUTH 81°27'01" WEST 152.38 FEET ; THENCE
37. SOUTH 85°34'14" WEST 137.37 FEET ; THENCE
38. SOUTH 82°50'24" WEST 122.70 FEET ; THENCE
39. SOUTH 85°08'59" WEST 142.97 FEET ; THENCE
40. NORTH 89°05'29" WEST 200.13 FEET ; THENCE
41. SOUTH 82°08'32" WEST 216.39 FEET ; THENCE
42. SOUTH 79°08'42" WEST 112.34 FEET ; THENCE
43. NORTH 80°33'38" WEST 111.54 FEET ; THENCE
44. SOUTH 84°49'51" WEST 82.64 FEET ; THENCE
45. SOUTH 79°08'42" WEST 112.34 FEET ; THENCE
46. SOUTH 84°49'51" WEST 82.64 FEET ; THENCE
47. NORTH 81°25'50" WEST 138.72 FEET ; THENCE
48. NORTH 80°33'38" WEST 111.54 FEET ; THENCE
49. NORTH 72°44'45" WEST 128.34 FEET ; THENCE
50. NORTH 48°50'21" WEST 140.36 FEET ; THENCE
51. NORTH 70°16'34" WEST 68.26 FEET ; THENCE
52. NORTH 62°40'49" WEST 65.44 FEET ; THENCE
53. NORTH 49°03'27" WEST 143.68 FEET ; THENCE
54. NORTH 42°28'24" WEST 42.29 FEET ; THENCE
55. NORTH 56°20'32" WEST 35.31 FEET **TO THE TRUE POINT OF BEGINNING.**

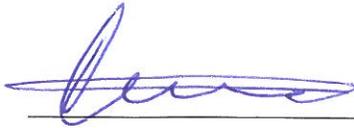
CONTAINS 2,995,633 SQUARE FEET (68.770 ACRES), MORE OR LESS.

EXHIBIT 'A'
LEGAL DESCRIPTION (CONT'D)
LAND SALE PARCEL

ATTACHED HERETO IS DRAWING NO. 36565-B LABELED AS EXHIBIT "B" AND BY THIS REFERENCE MADE A PART HEREOF.

PREPARED BY:

ALTA LAND SURVEYING, INC.



MIGUEL A. MARTINEZ

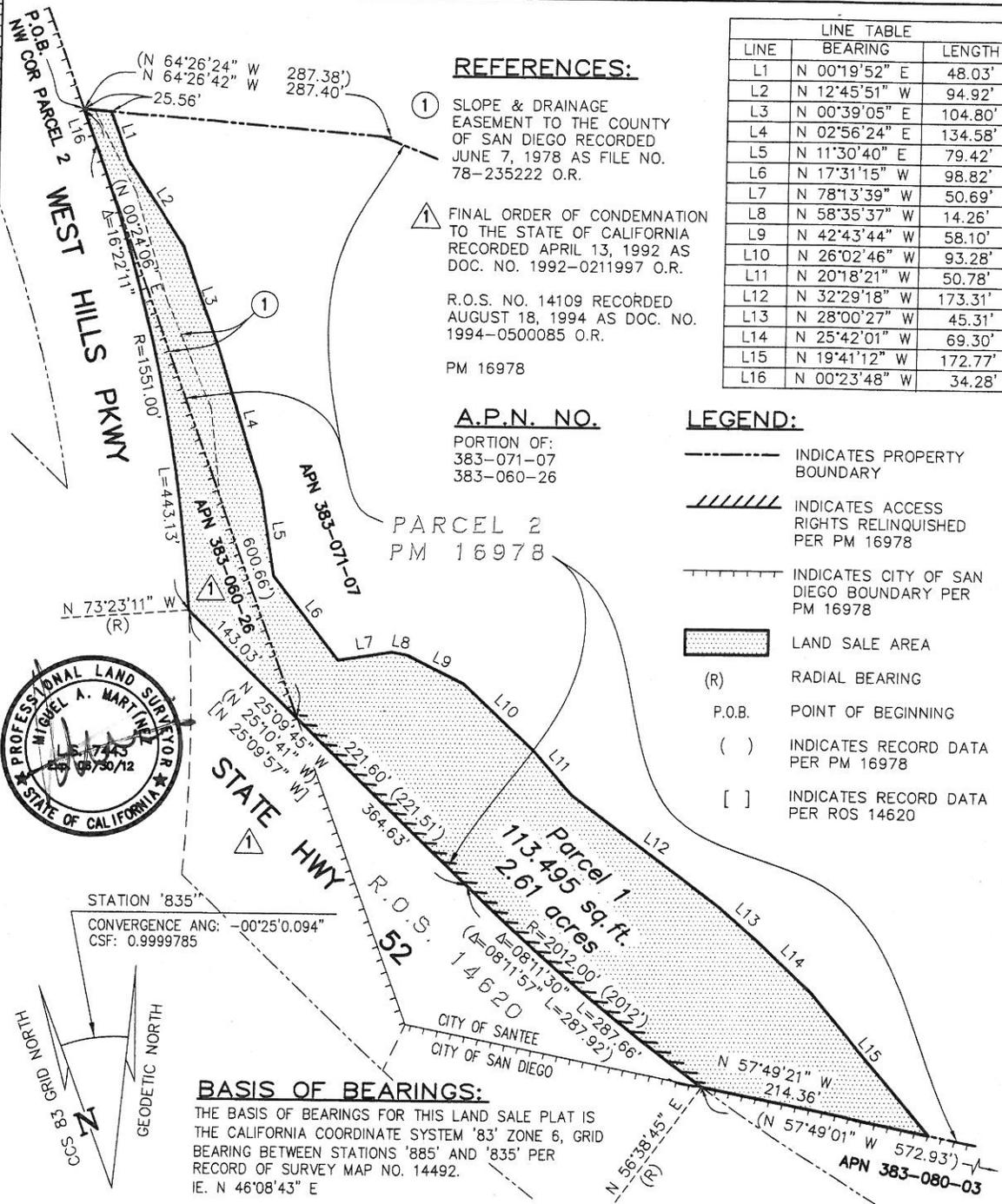
7/18/11

DATE

L.S. 7443

LIC. EXP. 06/30/12





LINE TABLE		
LINE	BEARING	LENGTH
L1	N 00°19'52" E	48.03'
L2	N 12°45'51" W	94.92'
L3	N 00°39'05" E	104.80'
L4	N 02°56'24" E	134.58'
L5	N 11°30'40" E	79.42'
L6	N 17°31'15" W	98.82'
L7	N 78°13'39" W	50.69'
L8	N 58°35'37" W	14.26'
L9	N 42°43'44" W	58.10'
L10	N 26°02'46" W	93.28'
L11	N 20°18'21" W	50.78'
L12	N 32°29'18" W	173.31'
L13	N 28°00'27" W	45.31'
L14	N 25°42'01" W	69.30'
L15	N 19°41'12" W	172.77'
L16	N 00°23'48" W	34.28'

REFERENCES:

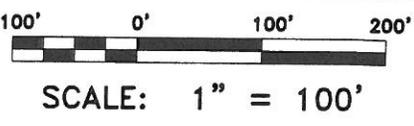
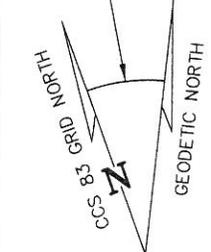
① SLOPE & DRAINAGE EASEMENT TO THE COUNTY OF SAN DIEGO RECORDED JUNE 7, 1978 AS FILE NO. 78-235222 O.R.

⚠ FINAL ORDER OF CONDEMNATION TO THE STATE OF CALIFORNIA RECORDED APRIL 13, 1992 AS DOC. NO. 1992-0211997 O.R.

R.O.S. NO. 14109 RECORDED AUGUST 18, 1994 AS DOC. NO. 1994-0500085 O.R.

PM 16978

A.P.N. NO.
PORTION OF:
383-071-07
383-060-26



Alta Land Surveying
9517 GROSSMONT SUMMIT DR.
LA MESA, CA 91941
PHONE / FAX: (619) 579-2582
1930-B-SHT.DWG J.N. 10-1930 DATE: 07/18/11

LAND SALE PLAT

PORTIONS OF PARCEL 2, PM 16978, IN THE CITY OF SANTEE, COUNTY OF SAN DIEGO, AND OF TRACT 'O' & 'T' OF RANCHO EL CAJON, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA.

DESCRIPTION	BY	APPROVED	DATE	FILMED	CITY OF SAN DIEGO, CALIFORNIA
ORIGINAL					SHEET 1 OF 1 SHEET
			08/17/11		Gregory P. Hollman 8-18-2011 FOR CITY ENGINEER DATE
					1886-6323 CCS 83 COORDINATES
					244-1763 LAMBERT COORDINATES
					36564-B

EXHIBIT 'A'
LEGAL DESCRIPTION
LAND SALE PARCEL

PARCEL 1

THOSE PORTIONS OF PARCEL 2 OF PARCEL MAP NO. 16978 IN THE CITY OF SANTEE, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, OCTOBER 19, 1992 AS INSTRUMENT NO. 1992-0665040 OF OFFICIAL RECORDS, AND TRACT "O" AND "T" OF RANCHO EL CAJON, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO PARTITION MAP THEREOF FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, CONVEYED IN PARCEL 3 OF A DEED IN MIDWEST TELEVISION, INC., AS CONVEYED TO THE STATE OF CALIFORNIA, IN FINAL ORDER OF CONDEMNATION RECORDED APRIL 13, 1992 AS INSTRUMENT NO. 1992-0211997, OF OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID PARCEL 2; THENCE ALONG THE NORTHERLY LINE THEREOF,

1. SOUTH 64°26'42" EAST 25.56 FEET ; THENCE LEAVING SAID NORTHERLY LINE
(SOUTH 64°26'24" EAST
PER PM 16978)
2. SOUTH 00°19'52" WEST 48.03 FEET ; THENCE
3. SOUTH 12°45'51" EAST 94.92 FEET ; THENCE
4. SOUTH 00°39'05" WEST 104.80 FEET ; THENCE
5. SOUTH 02°56'24" WEST 134.58 FEET ; THENCE
6. SOUTH 11°30'40" WEST 79.42 FEET ; THENCE
7. SOUTH 17°31'15" EAST 98.82 FEET ; THENCE
8. SOUTH 78°13'39" EAST 50.69 FEET ; THENCE
9. SOUTH 58°35'37" EAST 14.26 FEET ; THENCE
10. SOUTH 42°43'44" EAST 58.10 FEET ; THENCE
11. SOUTH 26°02'46" EAST 93.28 FEET ; THENCE
12. SOUTH 20°18'21" EAST 50.78 FEET ; THENCE

- 13. SOUTH 32°29'18" EAST 173.31 FEET ; THENCE
- 14. SOUTH 28°00'27" EAST 45.31 FEET ; THENCE
- 15. SOUTH 25°42'01" EAST 69.30 FEET ; THENCE
- 16. SOUTH 19°41'12" EAST 172.77 FEET TO THE SOUTHERLY LINE OF PARCEL 2 OF SAID PARCEL MAP 16978; THENCE ALONG SAID SOUTHERLY LINE
- 17. NORTH 57°49'21" WEST 214.36 FEET TO AN ANGLE POINT IN SAID SOUTHERLY LINE, BEING THE BEGINNING OF A NON-TANGENT 2,012.00-FOOT RADIUS CURVE CONCAVE NORTHWESTERLY, A RADIAL LINE TO SAID POINT BEARS SOUTH 56°38'45" WEST; THENCE ALONG THE SOUTHWESTERLY LINE OF SAID PARCEL 2 AND ARC OF SAID CURVE,
- 18. NORTHWESTERLY 287.66 FEET THROUGH A CENTRAL ANGLE OF 08°11'30"; THENCE TANGENT TO SAID CURVE
- 19. NORTH 25°09'45" WEST 364.63 FEET ALONG SAID SOUTHWESTERLY LINE OF PARCEL 2 AND ITS NORTHWESTERLY PROLONGATION TO A POINT ON A 1,551.00-FOOT RADIUS CURVE CONCAVE WESTERLY, A RADIAL LINE TO SAID POINT BEARS SOUTH 73°23'11" EAST, BEING ALSO THE WESTERLY LINE OF THAT CERTAIN PARCEL OF LAND AS DESCRIBED IN THE FINAL ORDER OF CONDEMNATION FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAID SAN DIEGO COUNTY APRIL 13, 1992 AS DOCUMENT NO 1992-0211197 OF O.R.; THENCE ALONG SAID WESTERLY LINE AND ARC OF SAID CURVE
- 20. NORTHERLY 443.13 FEET THROUGH A CENTRAL ANGLE OF 16°22'11" TO A POINT ON THE WESTERLY LINE OF PARCEL 2 OF SAID PARCEL MAP 16978

;THENCE NON-TANGENT ALONG SAID
WESTERLY LINE

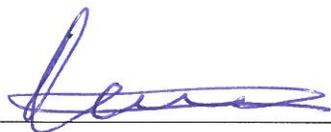
21. NORTH 00°23'48" WEST 34.28 FEET **TO THE POINT OF BEGINNING.**

CONTAINS 113,495 SQUARE FEET (2.61 ACRES), MORE OR LESS.

ATTACHED HERETO IS DRAWING NO. 36564-B LABELED AS EXHIBIT "B" AND BY THIS
REFERENCE MADE A PART HEREOF.

PREPARED BY:

ALTA LAND SURVEYING, INC.



MIGUEL A. MARTINEZ

7/18/11
DATE

L.S. 7443

LIC. EXP. 06/30/12





1350 Front Street, Suite 3024
San Diego, California 92101

September 8, 2010

Mary Carlson, Property Agent
Real Estates Assets
1200 Third Avenue, Suite 1700, MS 51A
San Diego, CA 92101-4199

Dear Ms. Carlson,

The purpose of this letter is to inform the City of San Diego that the San Diego River Conservancy will not be exercising its right to purchase the approximately 65.4-acre portion of the Carlton Oaks Golf Course from the City (the Property) under the Conservancy's enabling legislation (Public Resources Code, Division 22.9) and the Surplus Land Act (Gov. Code, §§ 54220-54232) *contingent upon the City's sale of the Property to TY Investment, Inc. (TY)*. Should the City offer the Property to any other person or entity or reoffer the property to TY, on alternate terms, we request that the City notify the Conservancy and provide the Conservancy an opportunity to exercise its right of first refusal and rights under the Surplus Land Act before such alternative offer is made.

The Conservancy appreciates the City's willingness to extend the deadlines to allow the Conservancy time to evaluate its desire to acquire the property. Those extensions allowed the Conservancy to consider various alternatives to acquiring the property and resulted in the development of an option to receive conservation and trail easements, copies of which are enclosed with this letter. TY will record the Notice of Option as soon as it receives title to the property. The Conservancy anticipates exercising the option and recording the conservation and trail easements as part of a second phase of the transaction between the City of San Diego and TY should the sale to TY be completed. The enclosed option agreement calls for a shared escrow for the transaction both to save public funds and to ensure the prompt and smooth recordation of the Conservancy's interests.

Mary Carlson, Property Agent
Real Estates Assets
Page 2

Please contact Michael Nelson, Executive Officer, San Diego River Conservancy, at (619) 645-3183 if you have any questions regarding this matter.

Sincerely,

Hayley Peterson

for Michael Nelson
Executive Officer
San Diego River Conservancy

Enclosure

Cc: Donna Frye, Chair, San Diego River Conservancy (w/o enc.)
Mary Small, California Coastal Conservancy (w/o enc.)
Jonathon Gurish, California Coastal Conservancy (w/o enc.)
Felix Tinkov, Counsel for TY Investment, Inc. (w/o enc.)

**OPTION AGREEMENT
FOR THE TRANSFER OF AN INTEREST IN REAL PROPERTY**

This option agreement (the "Agreement") is made this ____ day of September 2010 by and between the State of California, acting by and through its San Diego River Conservancy, a California State agency acting pursuant to its authority under Public Resources Code Section 32630 *et seq.* (the "Conservancy"), and TY Investment, Inc., a California corporation ("TY"), with reference to the following:

RECITALS

WHEREAS, TY operates the Carlton Oaks Country Club, located at 9200 Inwood Drive, in the City of Santee, State of California, and owns approximately one hundred four and ninety five hundredths (104.95) acres, comprising a portion of a golf course, a pro shop and dining facilities (the "TY Property") as further described in Exhibit "A" attached hereto, and currently leases approximately one hundred one and six tenths (101.6) acres of adjacent property, bounding a portion of the San Diego River and lying within Subarea 3 of the Mission Trails Design District and the East Elliot Community Plan, from the City of San Diego (the "City"), for golf course purposes (the "Leased Land") as further described in Exhibit "B" attached hereto;

WHEREAS, the City has offered to sell to TY and TY has agreed to purchase, for the sum of THREE MILLION DOLLARS (\$3,000,000.00), approximately sixty-five and four tenths (65.4) acres of the Leased Land, comprising the balance of the Carlton Oaks Country Club golf course (the "Subject Property"), as generally depicted in the attached Exhibit "C", with the City keeping the balance of the Leased Land;

WHEREAS, the Conservancy possesses a right of first refusal to purchase the Subject Property, pursuant to Public Resources Code Section 32646 (the "First Right"), as well as a right to negotiate in good faith for the purchase of surplus land, pursuant to Government Code Section 54222(b)(4) (the "Second Right"), relating to the Subject Property;

WHEREAS, in lieu of exercising the First Right and/or the Second Right (collectively, the "Rights") on the Subject Property, the Conservancy desires TY to purchase the Subject Property, to limit development and uses on the Subject Property, to provide an easement permitting the development of a public trail on the Subject Property and a portion of the TY Property generally depicted in Exhibit "2", and to provide the Conservancy with a right of first refusal over both the Subject Property and the TY Property (collectively, the "Entire Property"), upon TY's purchase of the Subject Property from the City;

WHEREAS, TY desires to ensure that the Conservancy does not exercise the Rights, so that TY may purchase the Subject Property directly from the City without interference from the Conservancy; and

WHEREAS, TY wishes to grant a conservation easement over the Subject Property a trail easement over the Subject Property and a portion of the TY Property as well as a right of first refusal over the Entire Property in consideration of the Conservancy waiving its First and Second Rights.

NOW THEREFORE, the parties agree as follows:

1. Option to Receive Property Interests. In consideration of an option price of ten dollars (\$10.00) (the "Option Price"), the Conservancy's waiver of the Rights, and other good and valuable consideration, TY grants to the Conservancy an option to receive, at no additional cost: (a) conservation and trail easements over the Subject Property, as described in the attached Exhibit "D", with attachments (the "Easement"), and (b) a right of first refusal, as further described in Exhibit "E" with attachments (the "Right of First Refusal Agreement"), over the Entire Property. It is understood by the parties that the Subject Property has not been surveyed and defined by a metes and bounds legal description, nor has the exact acreage been determined, at the time of the execution of this Agreement. A legal description of the Subject Property will be attached to Exhibit "D" and a legal description of the Entire Property will be attached to Exhibit "E" prior to recordation of said documents.

2. Option Commencement Date. The Conservancy and TY recognize that TY's successful completion of the purchase of the Subject Property from the City, signified by recording an executed grant deed (the "Deed") from the City, as grantor, to TY, as grantee, for fee simple title interest in the Subject Property, is a condition precedent to the Conservancy's ability to exercise its option to receive and record the Easement and Right of First Refusal Agreement (collectively, the "Gifts"). Upon the date this Agreement is executed (the "Effective Date"), the Conservancy shall pay the Option Price to TY, and TY shall:
 - a. open an escrow account which shall be used to: i) complete the purchase of the Subject Property from the City, ii) record the Deed, and iii) convey the Gifts to the Conservancy;

 - b. execute and place a Notice of Option, in the form attached as Exhibit "F", in the escrow account with instructions for recordation of same immediately after recordation of the Deed. The escrow instructions shall incorporate this Agreement and contain such other standard and usual provisions as may be requested by the escrow company and approved by TY and the Conservancy, in writing. The parties may submit separate escrow instructions provided that such escrow instructions shall not modify or amend any provision of this Agreement.

3. Closing Documents. The following shall be deposited in escrow prior to the close:
 - a. TY's Deliveries. TY shall deposit the following items:
 - (1) A duly signed and acknowledged Easement, in substantially the form attached as Exhibit "D";
 - (2) A duly signed and acknowledged Right of First Refusal Agreement, in substantially the form attached as Exhibit "E";
 - (3) A California state tax withholding certificate satisfying the requirements of California Revenue and Taxation Code Section 18805(d) and 26131;
 - (4) A non-foreign certification satisfying the requirements of Section 1445 of the Internal Revenue Code of 1986, as amended, and the regulations thereunder; and
 - (5) TY's form W-9, Request for Taxpayer Identification and Certification.

- c. refrain from marketing or listing the Subject Property to any other prospective purchaser during the term of the option;
 - d. not take any action with respect to the Subject Property, nor permit activities to occur on the Subject Property, during the term of the option, if within the reasonable control of TY, and excepting those conditions and activities currently on the Subject Property, that would diminish or adversely affect the Easement;
 - e. operate the Subject Property, or cause it to be operated, in substantially the same manner as it has been operated before the Effective Date and maintain and keep the Subject Property, such that at the close of escrow the Subject Property is in at least as good condition and repair as on the Effective Date, reasonable wear and tear excepted. TY shall not make any material alterations to the Subject Property during the term of the option without the Conservancy's prior written consent;
 - f. cooperate with the Conservancy in modifying this Agreement, and/or the terms of the Gifts, if reasonably necessary, in order to accommodate legal, regulatory and technical requirements of the State of California, so long as the intent of the parties and the substantial terms of the Agreement and the Gifts remain unchanged;
 - g. make available to the Conservancy, during the term of the option, all existing data in its possession regarding encroachments, boundary line matters, and prescriptive or adverse interests, copies of all subleases, rental or occupancy agreements, estoppel certificates, contracts, including without limitation any recorded agreements and unrecorded agreements, road maintenance agreements, correspondence, notices, studies, reports including without limitation, copies of any and all archeological, soils, geotechnical and environmental reports and materials, tests, surveys, maps, plans engineering drawings, permits, water rights certificates, permits, licenses, well and drilling reports, and filings and other information that would assist in the identification and transfer of water rights, applications for development and other entitlements, correspondence or reports from the County or other public agencies, and any and all other information or documents in possession or control of TY related to the title, condition, development, operation, or ownership of and relating to the Subject Property.
7. Term. The Conservancy shall have the right to exercise its option to receive the Gifts until ninety (90) days after the recordation of the Deed (the "Option Expiration Date").
8. Right of Inspection. Conservancy's representatives, agents, and designees shall have the right at reasonable times, until the close of escrow, to enter and verify the condition of the Subject Property and conduct such inspections, surveys, and other tests as are necessary to assess the Easement to be acquired.
9. Early Termination of Option. In the event: (a) TY does not purchase the Subject Property, or (b) the Conservancy determines that it will not accept the Gifts, for any reason, this Agreement shall immediately terminate, and neither party shall have any further obligation to the other under this Agreement, except that any cloud on title relating to the Subject Property, TY Property, or the Entire Property, shall be released by the Conservancy upon TY's written request.

10. Notice of Intent to Exercise Option. Pursuant to Section 15850 *et. seq.* of the Government Code (the "Property Acquisition Law"), the Conservancy may not enter into a contract for an interest in real property without approval by the Director of General Services and authorization from the State Public Works Board. Therefore, unless an assignment of the option to an entity not subject to the State Property Acquisition Law has been made pursuant to Section 14 of this Agreement, the provisions of this Section shall apply in the event the Conservancy elects to exercise the option. The Conservancy shall provide written notice to TY of its intent to exercise the option, and TY shall promptly execute and return all necessary documentation to the Conservancy for presentation to the Department of General Services/State Public Works Board and execution by the State. Said notice shall be a condition precedent to the Conservancy's receipt of the Gifts. In the event the Conservancy exercises its option to receive the Gifts, the parties expressly acknowledge and agree that the Property Acquisition Law and all regulations flowing therefrom shall be binding on both TY and the Conservancy.
11. Exercise of Option. The Conservancy may exercise its option to accept the Gifts by providing notice as permitted by Section 10. The Parties shall endeavor to close escrow within one year of the Conservancy's exercise of the option. The Conservancy shall pay for all escrow, recordation, and title insurance costs. The parties agree to work together in good faith to agree upon title exceptions to which the Gifts shall be subject and to develop mutually acceptable escrow instructions consistent with the terms of this Agreement so that the transfer of interests can be completed in a timely manner.
12. Warranties and Representations. Each representation and warranty in this section (a) is material and being relied on by the party to which the representation and warranty is made; (b) is true in all respects as of the Effective Date; (c) shall be true in all respects on the closing date; and (d) shall survive the close of escrow.
- a. TY warrants and agrees, to the best of its knowledge:
- i. that during the term of the option, upon TY's purchase of the Subject Property from the City of San Diego, TY will meet the terms of all liens, and pay all sums due against the Subject Property and thereby prevent the default and foreclosure of any such liens. This warranty shall not apply to liens against the Subject Property incurred by the Conservancy, or their agents or contractors. TY shall use reasonable commercial efforts, at the Conservancy's request, to subordinate all encumbrances upon the Subject Property to the Gifts;
 - ii. that documents that are to be delivered to the Conservancy at the close of escrow are (or on the closing date shall be) duly authorized, executed, and delivered by TY, and are (or at the closing date shall be) legal, valid, and binding obligations of TY, and do not violate any provision of any agreement or judicial order to which TY is a party or to which TY or the Subject Property is subject. No consent of any partner, shareholder, creditor, investor, judicial or administrative body, government agency, or other party is required for TY to enter into or to perform TY's obligations under this Agreement, except as has already been obtained. TY is a corporation organized, validly existing, in good standing and is qualified to do

business under the laws of the State of California;

- iii. that TY has not received notice of any currently outstanding violations of any federal, state, county, or municipal law, ordinance, order, regulation, or requirement with respect to the Subject Property;
- iv. that there is no action, suit, proceeding, litigation or arbitration pending or threatened against the Subject Property or any portion thereof relating to or arising out of the ownership or use of the Subject Property, or any portion thereof, in any court or before or by any federal, state, or county commission, board, bureau or agency;
- v. that except for such matters of record that may be disclosed in a preliminary title report: (i) there are no leases (except for the currently existing lease between the City and TY), licenses (except for the currently existing license agreement between TY and the Conservancy), easements, tenancies, parties in possession, rights of way, or other rights to use or occupy any portion of the Subject Property, prescriptive or otherwise, not of record with respect to the Property, and no disputes, claims or actions involving the location of any fence or other monumentation of the real property's boundary nor any claims or actions involving the location of any fences or boundaries; (ii) there are no outstanding contracts made by TY for any improvements to the Property that have not been fully paid for or will survive the close of escrow; (iii) there will be no actual or impending mechanics' or materialperson's liens arising from any labor or materials furnished to the Property and no unpaid bills or claims; and (iv) other than this Agreement, there are no rights (including option rights) to purchase or lease the Property or any portion thereof that are held or claimed by any person or entity;
- vi. that there are no construction, management, leasing, service, equipment, supply, maintenance or concession agreements with respect to the Subject Property, other than those matters of record as are disclosed in the preliminary title report;
- vii. that there are not now nor have there been any: (i) hazardous wastes, materials or substances (as said terms are defined in any applicable federal, state or county laws) (collectively, "Hazardous Materials") located on or within any portion of the Subject Property; (ii) enforcement, clean-up, removal or other governmental or regulatory actions instituted, contemplated or threatened pursuant to any applicable federal, state or local laws or ordinances relating to any Hazardous Materials and affecting the Subject Property, or any portion thereof; (iii) claims made or Purchase Agreement threatened by any person or entity against TY or the Subject Property, or any portion thereof, relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Materials; (iv) Hazardous Materials occurrence or condition on any real property adjoining the Subject Property and owned by TY; or (v) underground storage tanks located on the Subject Property and now or formerly used for the storage or containment of any Hazardous Materials, including any petroleum products or by-products;

viii. that TY is not a foreign person and is a “United States Person” as that term is defined in §7701(a)(30) of the Internal Revenue Code of 1986, as amended;

ix. that the Subject Property is not enrolled in an agricultural preservation program, a conservation or wetland reserve program or any other program of the United States Departments of Agriculture, Interior or Commerce or departments of the State of California. The Subject Property is not subject to any government cost-share contracts or other agreements that restrict either the use of the Subject Property or the modification of any improvements on the Subject Property, other than documents that may be shown in exceptions from coverage in the preliminary title report for the Subject Property.

b. The Conservancy warrants and represents that documents that are to be delivered to TY at the close of escrow are (or on the closing date shall be) duly authorized, executed, and delivered by Conservancy, and are (or at the closing date shall be) legal, valid, and binding obligations of state, and do not violate any provision of any agreement or judicial order to which the Conservancy is a party.

13. Notices. All notices required under this Agreement may be delivered via certified first class mail, return receipt requested, personal delivery, or a nationally recognized courier service via overnight delivery service. All notices to TY or the Conservancy shall be delivered at the following addresses:

TO TY: TY Investment, Inc.
Carlton Oaks Country Club
9200 Inwood Dr.
Santee, CA 92071
Attn: Toru “Ben” Mise, President

With a copy to: Felix M. Tinkov, Esq.
Lounsbery Ferguson Altona & Peak, LLP
401 West A Street, Suite 1825
San Diego, CA 92101

To The Conservancy: San Diego River Conservancy
1350 Front Street, Suite 3024
San Diego, CA 92101
Attn: Michael J. Nelson, Executive Officer

With a copy to: Hayley Peterson, Deputy Attorney General
Office of the California Attorney General
110 West A Street, 11th Floor
San Diego, CA 92101

14. Assignments. Conservancy may freely assign its interest in this Agreement or the underlying Gifts to any agency of the State of California or local public agency approved by the Conservancy upon written notice to TY. The Conservancy may also assign its rights under this

Agreement and the Easement to a nonprofit environmental corporation that is: (a) incorporated under the laws of the State of California as a tax-exempt public charity as described in Section 815.3 of the California Civil Code and IRC Sections 501(c)(3) and 509(a)(1); (b) organized to protect and conserve natural areas and ecologically significant land for scientific, ecological, scenic, aesthetic, charitable, recreational, and educational purposes; and (c) a “qualified organization” within the meaning of that term in IRC Section 170(h), qualified to acquire and hold conservation easements; provided that TY shall have the right to approve the assignment based upon a review of the nonprofit assignee’s: (a) financial condition; and (b) willingness to provide not less than \$1,000,000 in general commercial liability coverage for any claim or occurrence arising out of the construction, maintenance and use of the trail. TY’s approval of said assignment shall not be unreasonably denied withheld or delayed.

15. Time. Time is of the essence with respect to this Agreement and all of its terms.
16. Possession. Right of possession shall remain with TY, subject to Conservancy's right of reasonable entry for its employees, contractors, agents, and/or designees to conduct surveys or investigations only for purposes related to this Agreement.
17. Successors and Assigns. All of the terms, covenants, and conditions herein contained shall inure to the benefit of and be binding upon the heirs, successors, and assigns of the parties hereto. Once TY takes possession of the Subject Property, the terms of this Agreement shall be deemed covenants running with the land unless this Agreement is terminated.
18. Entire Agreement. This Agreement, together with all Exhibits hereto, constitute the final expression and contains the entire agreement between the Conservancy and TY with respect to the subject matter hereof, and supersedes and replaces any and all prior and contemporaneous understandings or agreements with respect thereto, including those understandings and agreements in letters, correspondence, memoranda or other expressions of intent from either party hereto or its agents that are prior to or contemporaneous in time to this Agreement. This Agreement may be modified only by a writing signed by both parties. All exhibits to which reference is made in this Agreement are deemed incorporated in this Agreement.
19. Partial Invalidity. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the Agreement shall continue in full force and effect and shall in no way be impaired or invalidated, and the parties agree to substitute for the invalid or unenforceable provision a valid and enforceable provision that most closely approximates the intent and economic effect of the invalid or unenforceable provision.
20. Choice of Law. This Agreement and each related document are to be governed by, and construed in accordance with, the laws of the State of California.
21. Covenants, Conditions or Remedies. The waiver by one party of the performance of any covenant, condition or promise, or of the time for performing any act, under this Agreement shall not invalidate this Agreement nor shall it be considered a waiver by such party of any other covenant, condition or promise, or of the time for performing any other act required, under this Agreement. The exercise of any remedy provided in this Agreement shall not be a waiver of any consistent remedy provided by law, and the provisions of this Agreement for any remedy shall

not exclude any other consistent remedies unless they are expressly excluded. Unless otherwise expressly provided, all covenants and obligations of the parties set forth in this Agreement shall survive the close of escrow.

22. Captions and Exhibits. The caption headings in this Agreement are for convenience only and shall be of no force and effect in construing terms. All Exhibits attached to this Agreement are hereby incorporated in the Agreement by reference.
23. Counterparts. This Agreement and any amendment may be executed in counterparts, and each such counterpart shall be considered as an original of the Agreement or any amendment upon all counterparts being so executed, and all counterparts shall be considered as one (1) agreement.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date and year first above written.

OPTIONOR:

TY Investment, Inc., a California corporation

By: 
Toru "Ben" Mise

Its: President

OPTIONEE:

STATE OF CALIFORNIA
SAN DIEGO RIVER CONSERVANCY

By: _____
Michael J. Nelson

Its: Executive Officer

List of Exhibits:

- A. TY Property description and map
- B. Leased Property description and map
- C. Subject Property description and map
- D. Conservation and Trail Easement Deed and Exhibit 1 (property description and map) and 2 (trail connection areas)
- E. Right of First Refusal Agreement and Exhibit 1 (Owner's property description)
- F. Notice of Option Form and Exhibit 1 (Conservation and Trail Easement Deed with exhibits)

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IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date and year first above written.

OPTIONOR:

OPTIONEE:

TY Investment, Inc., a California corporation

STATE OF CALIFORNIA
SAN DIEGO RIVER CONSERVANCY

By: _____
Toru "Ben" Mise

By: Hayley Peterson
for Michael J. Nelson

Its: President

Its: Executive Officer

List of Exhibits:

- A. TY Property description and map
- B. Leased Property description and map
- C. Subject Property description and map
- D. Conservation and Trail Easement Deed and Exhibit 1 (property description and map) and 2 (trail connection areas)
- E. Right of First Refusal Agreement and Exhibit 1 (Owner's property description)
- F. Notice of Option Form and Exhibit 1 (Conservation and Trail Easement Deed with exhibits)

EXHIBIT "A"

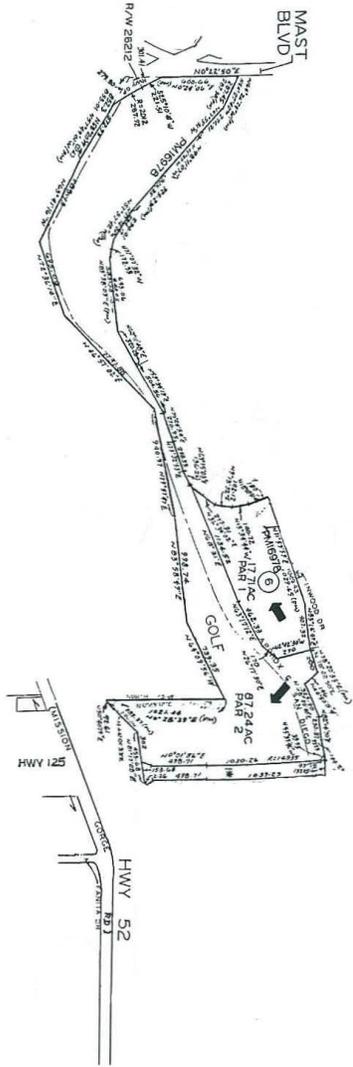
TY Property Description

PARCELS 1 AND 2 OF PARCEL MAP NO. 16978, IN THE CITY OF SANTEE, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, OCTOBER 19, 1992 AS FILE/PAGE NO. 1992-0665040 OF OFFICIAL RECORDS.

APNs: 383-071-06-00 and 383-071-07-00

TY Property Map

(TO FOLLOW ON THE NEXT PAGE)



MAP 1703 - FANITA RHO RESUB OF PART - POR LOT 1
 ROS 16019



EXHIBIT "B"

Leased Property Description

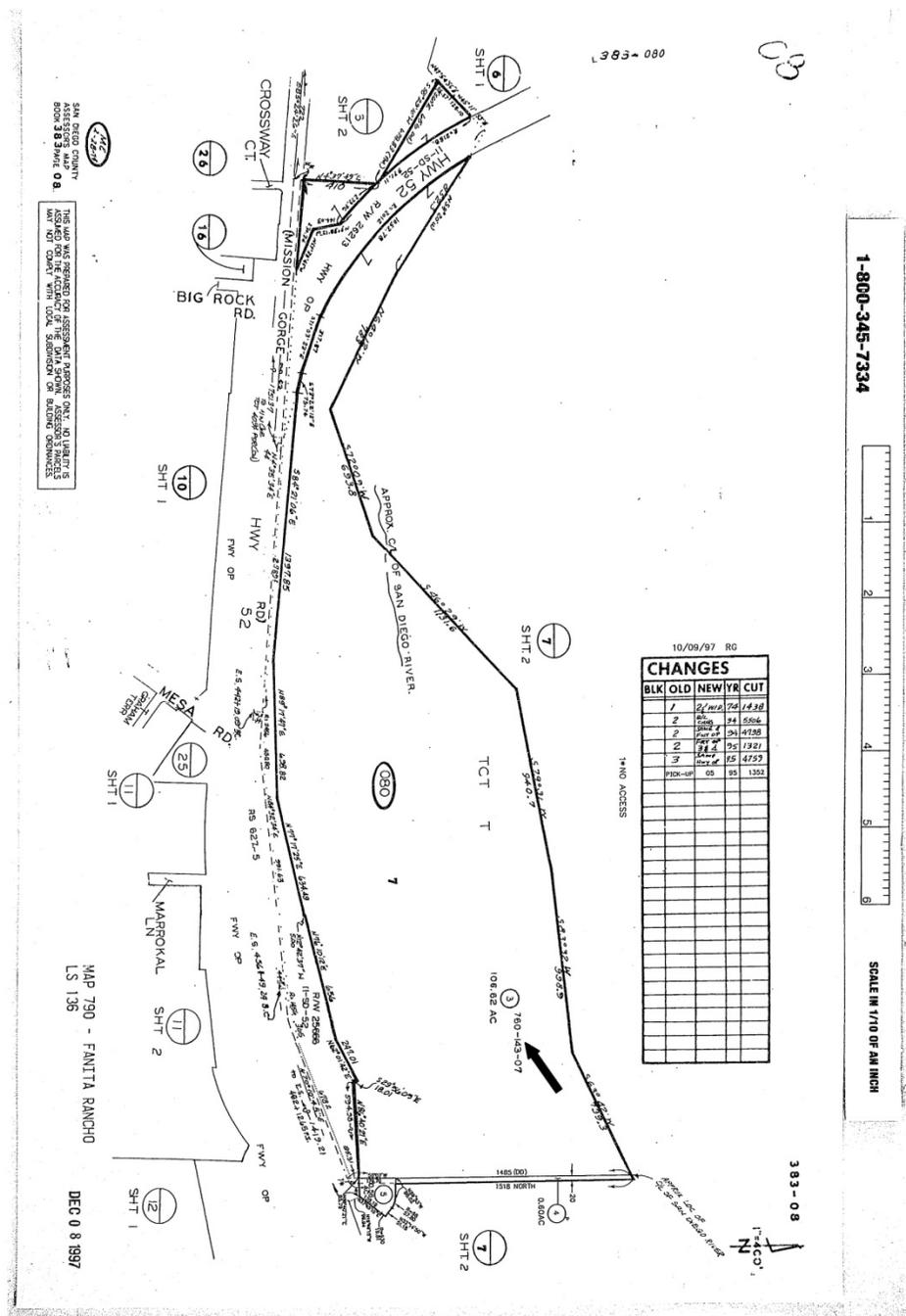
ALL THAT PORTION OF LOT 7 OF FANITA RANCHO, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 790, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, DECEMBER 21, 1984, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF LOT 1 OF THE RESUBDIVISION OF FANITA RANCHO, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 1703, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, FEBRUARY 28, 1918; THENCE SOUTH 0°22'50" WEST (RECORD SOUTH 0°04'00" EAST) 2430.50 FEET TO A POINT SAID POINT BEING CORNER 12 ON CITY OF SAN DIEGO ENGINEERING DEPARTMENT DRAWING NO. 3159-D; THENCE SOUTH 57°49'37" EAST, 852.67 FEET (RECORD SOUTH 58°20'00" EAST, 852.30 FEET) TO CORNER NO. 13 ON SAID DRAWING NO. 3159-D; THENCE SOUTH 63°41'37" EAST, 783.00 FEET (RECORD SOUTH 64°12'00" EAST) TO CORNER 14 ON SAID DRAWING, SAID POINT BEING THE TRUE POINT OF BEGINNING; THENCE NORTH 72°35'41" EAST, 694.93 FEET (RECORD NORTH 72°09'00" EAST, 693.80 FEET) TO CORNER 15; THENCE NORTH 46°56'57" EAST, 1131.79 FEET (RECORD NORTH 46°29'00" EAST, 1131.6 FEET) TO CORNER 16; THENCE NORTH 79°58'57" EAST, 941.09 FEET (RECORD NORTH 79°31'00" EAST, 940.70 FEET) TO CORNER 17; THENCE NORTH 83°59'57" EAST, 998.87 FEET (RECORD NORTH 83°32'00" EAST, 998.90 FEET) TO CORNER 18; THENCE NORTH 64°11'12" EAST, 739.43 FEET (RECORDED NORTH 63°42'00" EAST, 739.30 FEET) TO CORNER 19; THENCE SOUTH 0°29'12" WEST (RECORD-SOUTH) 1021.46 FEET; THENCE SOUTH 50°41'33" WEST, 335.67 FEET; THENCE SOUTH 60°28'33" WEST, 155.35 FEET; THENCE SOUTH 73°43'28" WEST, 302.71 FEET; THENCE SOUTH 63°13.08" WEST, 287.73 FEET; THENCE SOUTH 76°28'08" WEST, 245.28 FEET; THENCE NORTH 87°46'52" WEST, 676.62 FEET; THENCE NORTH 75°17'02" WEST, 626.26 FEET; THENCE SOUTH 86°57'48" WEST, 948.81 FEET; THENCE SOUTH 78°57'33" WEST, 670.25 FEET; THENCE NORTH 7°37'58" WEST, 5.28 FEET TO SAID CORNER 14 BEING THE TRUE POINT OF BEGINNING.

APN: 383-080-03-00 (PORTION)

Leased Property Map

(TO FOLLOW ON THE NEXT PAGE)



SAN DIEGO COUNTY
 ASSESSOR'S MAP
 BOOK 83 PAGE 08

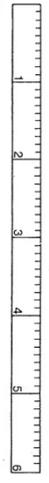
THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSES ONLY. NO WARRANTIES ARE MADE BY THE COUNTY OF SAN DIEGO AS TO THE ACCURACY OF THE INFORMATION HEREON. ANY USER OF THIS MAP SHALL BE RESPONSIBLE FOR OBTAINING NECESSARY SURVEY DATA AND FOR VERIFYING THE INFORMATION HEREON WITH LOCAL SURVEYORS OR BOUNDING DOCUMENTS.

10/09/97 RG

CHANGES				
BLK	OLD	NEW	YR	CUT
1	2	1	76	1438
2	1	2	76	1438
2	1	2	76	1438
2	1	2	76	1438
3	1	2	76	1438
100-UP	05	05	05	1302

1-NO ACCESS

1-800-345-7334



SCALE IN 1/10 OF AN INCH

383-08

EXHIBIT "D"

Conservation and Trail Easement Deed

(TO FOLLOW ON NEXT PAGE)

RECORDING REQUESTED BY AND)
WHEN RECORDED MAIL TO:)
)
State of California)
San Diego River Conservancy)
Attention: Michael Nelson)
1350 Front Street, Suite 3024)
San Diego, CA 92101-3604)

Space Above Line for Recorder's Use Only

CONSERVATION AND TRAIL EASEMENT DEED

THIS CONSERVATION AND TRAIL EASEMENT DEED (“Easement”) is made this _____ day of _____, 20____, by TY Investment, Inc., a California corporation, ("Grantor"), in favor of THE STATE OF CALIFORNIA, acting by and through its San Diego River Conservancy, a subdivision of the California Natural Resources Agency, ("Grantee") with reference to the following facts:

RECITALS

- A. Grantor is the sole owner in fee simple of certain real property in the County of San Diego State of California, as more particularly described in **Exhibits "1"** attached hereto and incorporated herein by this reference (the "Property"), currently operated as a portion of a golf course within the Carlton Oaks Country Club;
- B. The Property lies within the East Elliot Community Plan and the Mission Trails Design District and possesses scenic, aesthetic, recreational, and open space, historic, archaeological, hydrologic, wildlife habitat and ecological values, (collectively, "Conservation Values") of great importance to Grantee and the people of the State of California;
- C. Grantee has jurisdiction, pursuant to the Public Resources Code (commencing with Section 32630) over the San Diego River to acquire and manage lands within the San Diego River Area and provide recreational opportunities, open space, wildlife habitat and species restoration and protection as well as protection and maintenance of the waters and the Grantee is authorized to hold easements for these purposes pursuant to Public Resources Code Section 32645, and other provisions of California law; and
- D. The parties wish to extinguish and reserve certain development rights on the Property and preserve the Conservation Values of the Property in order to enhance the neighboring San Diego River riparian area pursuant to the enabling statute of the San Diego River Conservancy found as Public Resources Code Section 32630.
- E. As used in this document the following definitions apply:
 - 1. "Low-intensity commercial recreational use" means for profit, privately operated , low-intensity recreational and educational outdoor facilities and/or uses such as golfing, non-motorized boating, canoeing, swimming, bicycling, photography, hiking, gatherings, picnicking, panning,

athletics and sporting activities, running, wildlife viewing, camping, horseback riding, nature study, hunting, fishing, and other such uses similar in nature and intensity provided that such commercial activities do not impair the Conservation Values of the Subject Property. Activities such as motor home and RV camping, paint ball, shooting ranges, off-roading, motorized vehicle racing, or other activities that involve leaving debris or excessive noise are not low-intensity commercial recreational activities.

2. "Baseline Monitoring Report" means a detailed report (including a baseline map) prepared prior to Closing which documents the important existing Conservation Values to be protected and enforced under this Easement on the Property and the tentative alignment of an approximately east-west trail between Mast Park West to the east and parcels owned by Midwest Television, Inc. to the west as well as a north-south trail to Santee Lakes to the north over the Property and Parcel 2 as shown on Exhibit "2" of this Easement. In no case shall Grantor be responsible for the provision of additional land or other property rights beyond those described in this Easement in order to achieve connectivity of said trail areas.

NOW THEREFORE, the parties agree as follows:

COVENANTS, TERMS, CONDITIONS AND RESTRICTIONS

Pursuant to the common and statutory law of the State of California including the provisions of Civil Code sections 815 to 816, inclusive, Grantor hereby grants and conveys to Grantee for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and Grantee accepts a conservation easement in and over the Property in perpetuity and a trail easement in and over the Property and the property shown in Exhibit "2" in perpetuity. Grantor hereby irrevocably assigns to Grantee all development rights associated with the Property specified herein, except those rights which are specifically reserved by Grantor through this Easement and described herein.

1. Purpose. It is the purpose of this Easement to: (a) provide for the Grantee's right to construct and maintain a contiguous FOURTEEN FOOT (14') wide public path located on a portion of the Property and the property shown in Exhibit "2" in an area to be more specifically determined as described Section 2(g) below; and (b) preserve and protect the Conservation Values of the Property for the benefit of the public generally and to prevent any uses of the Property that will significantly impair or interfere with those Conservation Values through extinguishment of the development rights on the Property. The existing use of the Property as a golf course is consistent with the Conservation Values and it is the purpose of this Agreement to continue such use until the Grantor, or its successors in interest, determine otherwise, as permitted by the terms of this Easement.
2. Grantee's Rights. To accomplish the purposes of this Easement, Grantor hereby grants and conveys the following rights and interests to Grantee:
 - a) To identify and further refine the Conservation Values of the Property through the development of a Baseline Monitoring Report attached to this Easement. The Baseline Documentation Report which will be maintained on file with Grantee and is intended to serve as an objective baseline for monitoring compliance with the terms of this Easement. The parties agree to cooperate with one another, as may be necessary, to complete the

Baseline Monitoring Report. Prior to finalization of the Baseline Monitoring Report, each party shall approve in writing said report and agree that the Baseline Documentation Report provides an accurate representation of the Property at the time of the execution of this Easement. Neither party may unreasonably withhold, deny and delay such approval.

- b) To hold and utilize, consistent with the Easement, all mineral, air and water rights and interests, except as otherwise specified in this Easement;
- c) To prohibit the use of those development rights on the Property identified in Section 3;
- d) To enter upon the Property at reasonable times in order to monitor Grantor's compliance with and to otherwise enforce the terms of this Easement for the purposes of (i) identifying the current activities and uses thereon and the condition thereof, (ii) monitoring the activities and uses thereon to determine whether they are consistent with the terms of this Easement, (iii) enforcing the terms of this Deed, and (iv) exercising its other rights under this Easement. Such entry shall be permitted at reasonable times, upon twenty-four hours' prior written notice to Grantor, and shall be made in a manner that will not unreasonably interfere with Grantor's and its customers', agents', employees', independent contractors', consultants', representatives', attorneys', or other persons', under Grantor's control or sway, use and quiet enjoyment of the Property pursuant to the terms and conditions of this Easement. Each entry shall be for only so long a duration as is reasonably necessary to achieve the purposes of this Easement. The rights of entry provided by this subsection shall extend to the officers, agents, consultants, and volunteers of Grantee;
- e) To prevent any activity on or use of the Property that is inconsistent with the terms of this Easement by any legal means available to the Grantee and to require the party found to be at fault to restore such areas or features of the Property that may be damaged by any act, failure to act, or any use that is inconsistent with the terms of this Easement;
- f) To erect and maintain a sign or other appropriate marker in a location on the Property and the property depicted in Exhibit "2" acceptable to Grantor, visible from a public road, bearing information indicating the location of a trail and that the Property is protected by Grantee and acknowledging the sources of Grantee's funding for the acquisition of this Deed. The wording of the information shall be determined by Grantee, with Grantor's approval, which shall not be unreasonably withheld, delayed or denied, and Grantee shall be responsible for the cost of erecting and maintaining such sign or marker in an attractive, neat, and orderly fashion. Grantee shall be responsible for obtaining governmental approval for such signage, if necessary, at its sole cost; and
- g) To construct a public trail and related improvements such as utilities, fencing, signs, drainage and surfacing material, no greater than FOURTEEN FEET (14') in width, on the Property and on the adjoining land east and west of the Property in Grantor's control, within the areas depicted in Exhibit "2", such that said trail may connect and provide access on the eastern side of the Property with Mast Park West and on the western side of the Property with West Hills Parkway and run generally north-south towards Santee Lakes on the eastern side of the Property, subject to the following:

1. In no case shall pets, including, but not limited to dogs, be allowed on the trail or adjoining Property without being leashed and under the control of their owner. Further, no motorized vehicles or other conveyances are to be permitted on the trail at any time, excepting maintenance, fire, police, and emergency vehicles.
 2. Said trail shall be planned by Grantee, at its sole expense, and Grantee shall use best efforts to locate the trail in such a manner as not interfere with the utilization and enjoyment of the then-current use of the Property. No such trail plan shall be implemented without the prior written approval of Grantor, which approval shall not be unreasonably withheld, denied or delayed. It is agreed by the parties that in the event said trail cannot be located in such a manner as to not interfere with the utilization and enjoyment of the then-current use of the Property, planning for the trail shall be developed in cooperation with Grantor to minimize any such interference to the greatest extent possible and Grantee shall be required to pay Grantor for all costs, expenses, fees, and other expenditures relating to the reconfiguration, redesign, redevelopment and revision of the then-current use on the Property to suit the ultimate location of said trail.
 3. Grantee agrees to bear all costs and liabilities related to the operation, upkeep, and maintenance of the area of the trail. Grantee shall be liable for all lawsuits, claims, and damages, arising from the construction, maintenance and use of the trail and shall defend Grantor from same. Grantee shall use best efforts to minimize trespasses and nuisances on the balance of the Property and the adjoining Carlton Oaks Country Club, or the then-existing use, arising from the construction, maintenance and use of the trail. Grantee shall install and maintain safety features, devices and/or improvements (e.g. fencing or netting) to substantially reduce the risk of injury to users of the trail from golf balls traversing and/or landing on, in or near the trail concurrent with the construction of said trail.
 4. Any such trail constructed shall be built in accordance with all applicable local, state and federal regulations and laws and shall be maintained in an attractive, neat and orderly fashion, at the sole expense of the Grantee, for so long as the trail exists on the Property.
 5. Once said trail is constructed, Grantee's right to construct a public trail shall be deemed to have been executed and extinguished such that no additional trails may be constructed, nor can the existing trail be enlarged or modified without the prior written approval of the Grantor.
3. Grantor's Prohibited Uses. The following uses by Grantor, Grantor's agents, and third parties, are expressly prohibited on the Property:
- a) Unseasonal watering practices which would interfere with the maintenance and preservation of the Conservation Values of the Property;
 - b) The use of chemicals or products applied in a manner inconsistent with best management practices or which result in harm to the Conservation Values of the Property;

- c) Grazing or other agricultural activity of any kind;
- d) The removal of trees adjacent to the ultimate location of the trail;
- e) Construction, reconstruction or placement of any building, or other structure, except as permitted by Section 5(a), without the Grantee's prior approval, which approval shall not be unreasonably withheld, denied or delayed. Development for commercial, industrial, agricultural or residential uses, excepting low-intensity commercial recreational uses;
- f) Any legal or de facto division, subdivision or partitioning of the Property, unless required by threat or act of eminent domain or court order;
- g) Depositing or accumulation of trash, ashes, refuse, waste, or bio-solids;
- h) Excavating, removing, destroying or selling archaeological artifacts;
- i) The introduction or active propagation of invasive non-native plant species as defined by the California Invasive Plant Control Council, or its successor, or invasive non-native animal species as defined by the California Department of Fish and Game or the U.S. Fish and Wildlife Service;
- j) Extraction, excavation, dredging, drilling, mining, removing or exploration for/of minerals, sand, gravel, rock or other materials on or below the surface for any purpose outside of the Property boundary;
- k) Permanent outdoor storage, for more than six months, of any materials; and
- l) Use of off-road vehicles (excepting golf carts and similar conveyances), except on paved paths and roads.

4. Grantor's Duties. Grantor shall undertake all reasonable actions to prevent the unlawful entry and trespass by persons whose activities may degrade or harm the Conservation Value of the Property. In addition, Grantor shall undertake all necessary actions to perfect Grantee's rights under Section 3 of this Easement. Grantor agrees to bear all costs and liabilities of any kind related to the operation, upkeep, and maintenance of the Property, excepting the area of the trail. Without limiting the foregoing, Grantor agrees to pay any and all real property taxes, fees, exactions and assessments levied or imposed by local, state or federal authorities on the Property. Grantor shall be solely responsible for any costs related to the acquisition and maintenance of general liability insurance, flood insurance and any other insurance normally kept in the course of Grantor's business, covering acts on the Property, excepting the area of the trail. Grantee shall have no responsibility whatever for the operation of the Property or the monitoring of hazardous conditions thereon, except with respect to the public trail, as described in Section 2(g). For so long as the Property remains in use as a golf course, and upon Grantee's written demand, Grantor shall, within sixty (60) days, enroll the Property into, and use commercially reasonable efforts to acquire certification in the Audubon Cooperative Sanctuary Program for Golf Courses, or such other similar program for the environmentally sensitive management of golf course properties mutually acceptable to both the Grantor and Grantee, at Grantee's sole expense for all

such efforts involved in the certification and enrollment, including, but not limited to membership, certification and registration costs, site assessment, environmental planning, redesign and construction/development costs, increased maintenance costs, education and classes for a minimum period of FIVE (5) years, which period shall commence upon receipt of Grantee's written demand.

5. Grantor's Reserved Rights. Grantor explicitly reserves to itself, and to its personal representatives, heirs, successors, and assigns, all rights accruing from its ownership of the Property, including the right to engage in or to permit or invite others to engage in all uses of the Property that are consistent with the purposes of this Easement. The following uses by Grantor, Grantor's agents, and third parties, are allowed as follows:
 - a) Golf: Golf course use, including, but not limited to the maintenance, upkeep, renovation, installation, construction, development, replacement, design and redesign of the golf course and/or features, vegetation, paths, roads, areas, fixtures, structures, utilities, amenities and improvements on the Property, as deemed appropriate by the Grantor and/or other such recreational uses similar in nature and intensity to said golf course use, so long as such use or development does not significantly impair the Conservation Values of the Property. These uses and structures include small structures, features or improvements, such as benches, bathrooms, utilities, signs, poles, irrigation, golf ball cleaning stations, trees, plants, bushes, or such other features as would normally be found on a golf course or other low-intensity commercial recreational use.
 - b) Mitigation Banking: Development of the Property as a mitigation bank (or for other similar environmental or conservation purposes), where a mitigation bank is an operation in which wetlands, uplands and/or other natural habitat resources are restored, created, enhanced, or preserved by a mitigation bank operator, for the purpose of providing compensatory mitigation for disturbances to natural habitat including wetlands elsewhere, provided that mitigation banking does not significantly impair the existing Conservation Values of the Property. To create such a mitigation bank, Grantor reserves the right to undertake conservation and restoration of biotic and natural resources, including, but not limited to, bank and soil stabilization, practices to reduce erosion, enhancement of plant and wildlife habitat; and activities which promote biodiversity in accordance with sound, generally accepted practices and all applicable laws, ordinances and regulations and in accordance with sound, generally accepted biological and riparian enhancement practices.
 - c) Contouring: Use of soils, sand, and gravel found on or under the Property for fill or similar purposes for onsite development or revision of the topography of the golf course or the then-current use on the Property. Any such activities proposed by Grantor for onsite use shall not significantly alter the flow of water on or over the Property or materially impair the existing Conservation Values of the property.
6. Grantee's Remedies. If Grantee determines that Grantor is in violation of the terms of this Easement or that a violation is threatened, Grantee shall give written notice to Grantor of such violation and demand in writing the cure of such violation. If Grantor fails to cure the violation within SIXTY (60) days after receipt of written notice and demand from Grantee, or if the cure reasonably requires more than SIXTY (60) days to complete and Grantor fails to begin the cure

within the SIXTY (60) day period or fails to continue diligently to complete the cure, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce compliance by Grantor with the terms of this Easement, to recover any damages to which Grantee may be entitled for violation by Grantor of the terms of this Easement or for any injury to the Conservation Values of the Property, to enjoin the violation, ex parte as necessary, by temporary or permanent injunction without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies, or for other equitable relief, including, but not limited to, the restoration of the Property to the condition in which it existed prior to any such violation or injury. Without limiting Grantor's liability therefore, Grantee shall apply any damages recovered to the cost of undertaking any corrective action on the Property. Grantor agrees that Grantee's remedies at law for any violation of the terms of this Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in this Section, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement.

- a) Costs of Enforcement. The prevailing party in any action to enforce the terms of this Easement shall be entitled to the costs of suit and attorneys' and experts' fees, and any costs of restoration.
- b) Grantee's Discretion. Enforcement of the terms of this Easement by Grantee shall be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.
- c) Acts beyond Grantor's Control. Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from (i) any natural cause beyond Grantor's control, including, without limitation, fire not caused by Grantor, flood, erosion, storm, and earth movement, or any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes; or (ii) acts by Grantee or its employees.
- d) Conservancy Enforcement. All rights and remedies conveyed to Grantee under this Easement shall extend to and are enforceable by the Conservancy or its successor.

7. Access. This Easement does not convey a general right of access to the public over the entire Property or the balance of the Carlton Oaks Country Club or the then-existing use of this adjoining property.

8. Assignment. The Conservancy shall have the right to transfer or assign its right, title and interest in and to the Easement to a governmental entity or a nonprofit entity or organization authorized to acquire and hold conservation easements pursuant to California Civil Code Section 815.3 (or any successor provision then applicable) or qualified under the IRC to hold conservation easements and which agrees to enforce the terms of this Easement, provided that TY shall have the right to approve the assignment to a nonprofit entity based upon a review of the assignee's:

(a) financial condition; and (b) willingness to provide not less than \$1,000,000 in general commercial liability coverage for any claim or occurrence arising out of the construction, maintenance and use of the trail. TY's approval of said assignment shall not be unreasonably withheld, denied or delayed. Any such assignee shall record an assignment in the Official Records of San Diego County, California.

a) The nonprofit grantee shall be solely responsible for any costs related to the acquisition and maintenance of general liability insurance, flood insurance and such other insurance as may be desired by Grantee covering the area of the trail. In the event of an assignment to a nonprofit entity, Assignee shall indemnify and hold Grantee harmless from all lawsuits, claims, and damages arising from the construction, maintenance and use of the trail and shall defend Grantor from same, except for arising from Grantor's own fraud, or willful injury to the person or property of another, or violation of law.

b) After acceptance of the conservation and trail easement and before construction of the trail, the nonprofit grantee shall maintain liability insurance to cover claims and occurrences arising from the construction, maintenance and use of the trail commensurate with generally accepted levels of coverage for operations of a similar nature and intensity.

9. Notices. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and be served personally or sent by recognized overnight courier that guarantees next-day delivery or by first class mail, postage fully prepaid, addressed as follows:

To Grantor: TY Investment, Inc.
Carlton Oaks Country Club
9200 Inwood Dr.
Santee, CA 92071
Attn: Toru "Ben" Mise, President

With a copy to: Felix M. Tinkov, Esq.
Lounsbery Ferguson Altona & Peak, LLP
401 West A Street, Suite 1825
San Diego, CA 92101

To Grantee: San Diego River Conservancy
1350 Front Street, Suite 3024
San Diego, CA 92101
Attn: Michael J. Nelson, Executive Officer

With a copy to: Hayley Peterson
Office of the Attorney General
110 West A Street, Suite 1100
San Diego, CA 92101

or to such other address as either party shall designate by written notice to the other. Notice shall be deemed effective upon delivery in the case of personal delivery or delivery by overnight courier or, in the case of delivery by first class mail, five (5) days after deposit into the United States mail.

10. General Provisions.

- a) Controlling Law. The interpretation and performance of this Easement shall be governed by the laws of the State of California, disregarding the conflicts of law principles of such state.
- b) Severability. If a court of competent jurisdiction voids or invalidates on its face any provision of this Easement, such action shall not affect the remainder of this Easement.
- c) Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement.
- d) No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.
- e) Successors. The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall constitute a servitude running in perpetuity with the Property. All obligations, terms, conditions, and restrictions imposed by this offer shall be deemed covenants and restrictions running with the land, shall be effective limitations on the use of the real property from the date of recordation of this document, and shall bind the Grantor and all its successors and assigns.
- f) Termination of Rights and Obligations. A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.
- g) Condemnation. If all or any part of the Property is taken by exercise of the power of eminent domain, or acquired by purchase in lieu of condemnation, so as to terminate this Easement in whole or in part, Grantor and Grantee shall act jointly to recover the full value of their respective interests so taken or purchased, and all direct or incidental damages resulting therefrom. In any such event wherein the Grantee is entitled to receive any proceeds, whether by agreement or court order, Grantee shall provide to the Conservancy, or its successor, a share of the proceeds proportionate to the Conservancy's interest in the Easement. If only a portion of the Property is subject to such exercise of eminent domain, this Easement shall remain in effect as to all other portions of the Property.

- h) Valuation. This Easement constitutes a real property interest immediately vested in Grantee. The Parties stipulate that this Easement has a fair market value which may be determined by a qualified appraiser. This value may be used by Grantor to calculate any permissible deductions for federal income tax purposes allowable by reason of this Easement pursuant to Section 170(h) of the Internal Revenue Code of 1986, as amended, for property assessment and other tax purposes, as may be applicable, and for determination of sums required pursuant to Section 10(g) above. Grantee shall cooperate with Grantor's reasonable requests for provision of documents, statements and other materials, as necessary, relating to said appraisal and deductions, at Grantor's sole cost.
- i) Abandonment. If the Grantee should abandon the Easement without first transferring its interest to another entity pursuant to Section 8, or if any of the essential terms of this Easement are violated, except as permitted to be cured by the terms of this Easement, then Grantee's right, title and interest in the Easement shall automatically vest in the State of California for the benefit of the Coastal Conservancy or its successor, upon recordation of a certificate of acceptance of the Easement following approval by the Coastal Conservancy and the State Department of General Services and/or the State Public Works Board, if required by law, unless the executive officer of the Coastal Conservancy, or its successor, designates another public agency to accept the right, title and interest, in which case vesting shall be in that agency. In no case may this Easement vest in, or be conveyed in any manner, in part or wholly, to a nonprofit organization.
- j) Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon its construction or interpretation.
- k) Despite any contrary provision of this Easement, the parties do not intend this Easement to be, and shall not be, construed such that it creates in or gives to Grantee any of the following:
- i. The obligations or liabilities of an "owner" or "operator," as those terms are defined and used in Environmental Laws (defined below), including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601 *et seq.*; hereinafter, "CERCLA"); or
 - ii. The obligations or liabilities of a person described in 42 U.S.C. Section 9607(a)(3) or (4); or
 - iii. The obligations of a responsible person under any applicable Environmental Laws; or
 - iv. The right to investigate and remediate any Hazardous Materials associated with the Property; or
 - v. Any control over Grantor's ability to investigate, remove, remediate or otherwise clean up any Hazardous Materials associated with the Property.

- vi. The term "Hazardous Materials" includes, without limitation, (a) material that is flammable, explosive or radioactive; (b) petroleum products, including by-products and fractions thereof; and (c) hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in CERCLA, the Hazardous Materials Transportation Act (49 U.S.C. Section 6901 *et seq.*); the Hazardous Waste Control Law (California Health & Safety Code Section 25100 *et seq.*); the Hazardous Substance Account Act (California Health & Safety Code Section 25300 *et seq.*), and in the regulations adopted and publications promulgated pursuant to them, or any other applicable federal, state or local laws, ordinances, rules, regulations or orders now in effect or enacted after the date of this Easement.
- vii. The term "Environmental Laws" includes, without limitation, any federal, state, local or administrative agency statute, ordinance, rule, regulation, order or requirement relating to pollution, protection of human health or safety, the environment or Hazardous Materials. Grantor represents, warrants and covenants to Grantee that Grantor's activities upon and use of the Property will comply with all Environmental Laws.

l) Amendment. No change in this Easement shall be valid unless made in writing, signed by the Grantor and Grantee, and recorded in the Official Records of San Diego County, California.

IN WITNESS WHEREOF Grantor has executed this Easement the day and year first above written.

TY INVESTMENT, INC.:

BY: _____
Toru "Ben" Mise

ITS: President

State of California)
) ss.
County of _____)

On _____, 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.

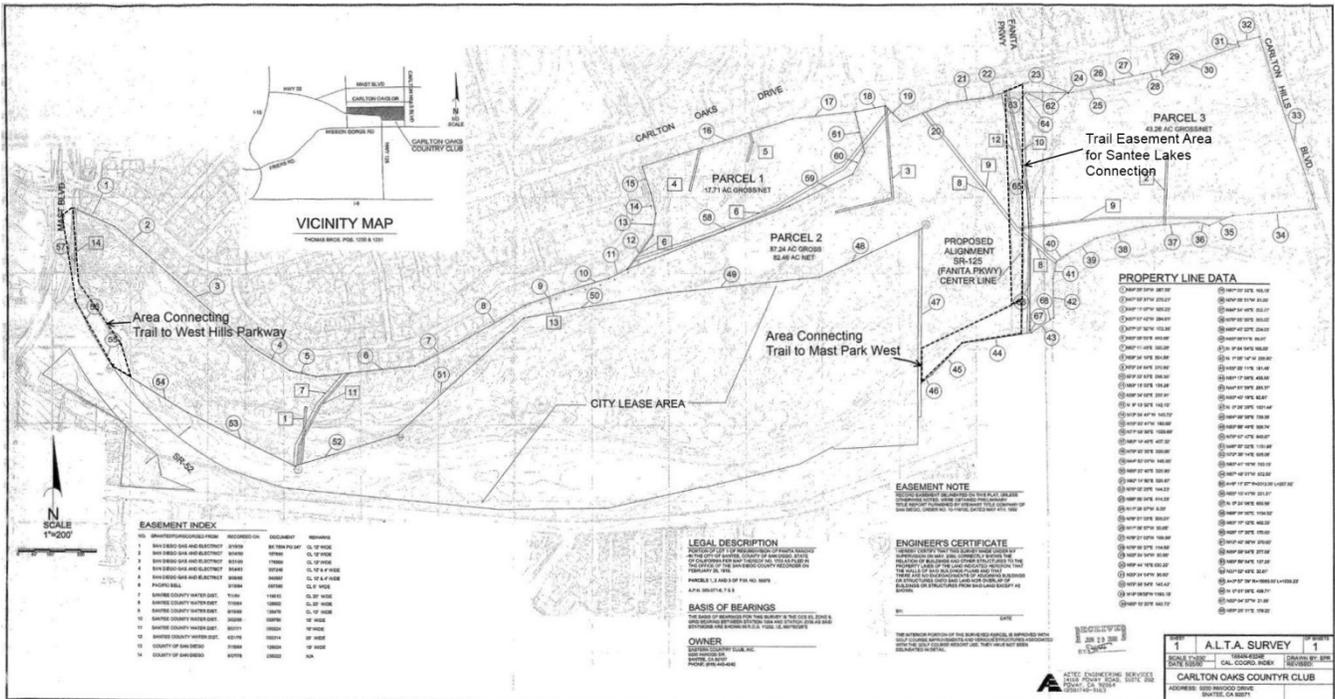
Notary Public in and for said State

[seal]

EXHIBIT "2"

Trail Connection Areas

MAP SHOWING THE APPROXIMATE LOCATIONS OF THE TRAIL EASEMENT FOR CONNECTING THE PUBLIC TRAIL ACROSS TY INVESTMENT, INC.'S "PARCEL 2" TO MAST PARK WEST ON THE EASTERN EDGE AND TO WEST HILLS PARKWAY ON THE WESTERN EDGE, AS WELL AS THE PUBLIC TRAIL AREA TO BE USED FOR CONNECTING TO SANTEE LAKES LAKES
(Not To Scale)



Note: The above map is only to be used for approximating the parties' goal of trail alignment in the area depicted as "Parcel 2". Prior to recordation, this page is to be replaced by a legal description and map of the trail areas on Parcel 2 connecting to Mast Park West and West Hills Parkway, as well as a trail area running on the eastern edge of Parcel 2, generally north-south towards Santee Lakes, defined by metes and bounds, pursuant to the terms of Section 2(g) of the attached Conservation and Trail Easement between TY Investment, Inc. and the San Diego River Conservancy. It is understood by the parties that there are intervening properties between "Parcel 2" and Santee Lakes not controlled or offered by TY Investment, Inc. in this transaction.

EXHIBIT “E”

Right of First Refusal Agreement

(TO FOLLOW ON NEXT PAGE)

RECORDING REQUESTED BY AND)
WHEN RECORDED MAIL TO:)
)
State of California)
San Diego River Conservancy)
Attention: Michael Nelson)
1350 Front Street, Suite 3024)
San Diego, CA 92101-3604)

Space Above Line for Recorder's Use Only

RIGHT OF FIRST REFUSAL AGREEMENT

THIS RIGHT OF FIRST REFUSAL AGREEMENT (the “**First Refusal Agreement**”) is made and entered into as of _____, 20__ by and between TY Investment, Inc., a California corporation (the “**Owner**”), and the State of California (the “**State**”), acting through the San Diego River Conservancy (the “**Conservancy**”).

RECITALS

- A. Owner possesses and controls approximately one hundred seventy and thirty-five hundredths (170.35) acres of property in both the Cities of Santee and San Diego, State of California as described in the attached Exhibit “1” (the “**Owner’s Property**”); and
- B. The Conservancy desires to obtain a right of first refusal over the Owner’s Property and Owner desires to grant the same to the Conservancy; and
- C. The Conservancy and Owner desire to enter into this First Refusal Agreement to set forth the terms of the right of first refusal for the Owner’s Property.

NOW, THEREFORE, in light of good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree to the above Recitals as follows:

1. Right of First Refusal. Owner shall not sell the Owner’s Property or any portion thereof to any person that is not an affiliate of Owner without first giving to the Conservancy a right of first refusal (the “**Right of First Refusal**”) to purchase the Owner’s Property on the following terms and conditions:

(a) Notice. Within five (5) business days after Owner enters into a sales agreement (or, alternatively, a term sheet specifying the conditions for a sales agreement) for the Owner’s Property, or any portion thereof, to a third party not affiliated with Owner (the “**Third-Party Purchase Agreement**”), Owner shall give the Conservancy written notice (the “**Sale Notice**”) of the execution thereof, together with a copy of the Third-Party Purchase Agreement.

(b) Exercise of Right of First Refusal. The Conservancy shall have the right to exercise the Right of First Refusal at any time on or before the last day of the Refusal Period. The “**Refusal Period**” shall be the period ending ninety (90) days after the date the Sale Notice is delivered. Exercise of the Right of First Refusal shall consist of authorization by the Conservancy at a noticed

public hearing and by the State Public Works Board, pursuant to provisions of law (specifically, Division 22.9 of the California Public Resources Code, and the Property Acquisition Law), subject to approval by the Director of General Services pursuant to Section 11005 of the California Government Code, and provision to Owner of written notice of exercise of the Right of First Refusal on or before the date of expiration of the Refusal Period (the **“Purchase Notice”**). Within five (5) business days after exercise of the Right of First Refusal (the **“Execution Period”**), the State (acting through the Conservancy with the approval of the Director of General Services) and Owner shall enter into a definitive purchase agreement on substantially the same terms and conditions as set forth in the Third-Party Purchase Agreement for sale of the Owner’s Property, or applicable portion thereof, to the Conservancy including, without limitation, purchase price, method of payment, good faith deposit(s), representations, warranties, closing conditions and closing date (the **“Definitive Agreement”**); provided, however, that the Definitive Agreement shall provide (i) the Conservancy with a due diligence period of no less than thirty (30) days, and (ii) the closing date shall be modified in the Definitive Agreement to the extent necessary to permit the Conservancy (A) to exercise its Right of First Refusal and execute the Definitive Agreement as provided above and (B) to have ten (10) business days to close the transaction after the end of the due diligence period.

Alternatively, the Conservancy, after it has timely exercised the Right of First Refusal, executed the Definitive Agreement, and executed any and all indemnities, releases, deeds and other documents, the execution of which are conditions to closing under the Definitive Agreement (collectively, the **“Closing Documents”**), may assign the rights under the Definitive Agreement and Closing Documents to a local public agency or nonprofit organization to which the Conservancy has authorized a grant for acquisition of the Owner’s Property in accordance with the requirements of Division 21 of the Public Resources Code (the **“Permitted Assignee”**); provided, however, that the State shall not be released from its obligations under the Definitive Agreement or Closing Documents. In that event, the Conservancy shall identify the Permitted Assignee in its Purchase Notice.

If the Right of First Refusal is not exercised as provided above within the Refusal Period, if the State does not execute and deliver the Definitive Agreement within the Execution Period, or if the State does not close on the Owner’s Property as required by the Definitive Agreement, the Conservancy’s rights under this Agreement shall expire and be of no further force or effect; provided, however, that such rights shall be revived and reinstated in favor of Conservancy if Owner does not consummate the sale of the Owner’s Property, or applicable portion thereof, on substantially the same terms and conditions as set forth in the Third-Party Purchase Agreement within one-hundred eighty (180) days after the later of (i) the expiration of the Conservancy’s rights hereunder and (ii) the latest date the buyer under the Third-Party Purchase Agreement has the right to consummate the purchase of the Owner’s Property, or applicable portion thereof; provided, however, that if there has been an extension of such date after the Third-Party Purchase Agreement was submitted to the Conservancy to determine whether to exercise the First Right of Refusal, such extension shall be ignored in establishing the date from which such 180-day period shall run.

At the end of the 180-day period provided above for consummation of the sale of the Property or applicable portion thereof, Owner shall provide the Conservancy with either (i) evidence that the sale has been consummated on substantially the same terms and conditions as set forth in the Third-Party Purchase Agreement, and subject to any environmental indemnity or release agreements required of the buyer under the Third-Party Purchase Agreement, or (ii) notice that the Conservancy’s

Right of First Refusal has been revived and reinstated as provided above. The Conservancy shall have the right to seek all remedies available at law or in equity (i) to require disclosure of any and all non-privileged documents necessary to establish whether a transaction has been consummated on substantially the same terms and conditions as set forth in the Third-Party Purchase Agreement in the event Owner fails to provide such evidence in a timely manner, and (ii) in the event a transaction is consummated on terms other than as permitted by this Agreement.

The Right of First Refusal shall not run with the land. The Right of First Refusal shall run solely with TY Investment, Inc.'s ownership (or an affiliate's ownership) of the Owner's Property. The Right of First Refusal shall be terminated upon the Conservancy's exercise, or failure to exercise, the Right of First Refusal pursuant to the terms of this Section. The Conservancy shall cooperate with Owner to remove the First Refusal Agreement from the title record upon such an occurrence.

The parties acknowledge that a portion of the Owner's Property may be conveyed, transferred, dedicated or otherwise removed from the Owner's possession and/or control to the Conservancy or its assignee prior to the exercise of the Right of First Refusal. In this event, the parties will cooperate with one another to revise the First Refusal Agreement to reflect an accurate description of the Owner's Property.

(c) Definitions. The term "**person**" shall mean any natural person, corporation, partnership, association, trust or other organization. The term "**affiliate**" shall mean any and all corporations, partnerships, individuals and other entities directly or indirectly controlled by, controlling, having a familial relationship, or subject to direct or indirect common control of an entity or person. The term "**local public agency**" shall mean a city, county, city and county, district, association of governments or joint powers agency (or other public entity eligible for a Conservancy grant pursuant to Division 22.9 of the Public Resources Code. The term "**nonprofit organization**" shall mean any private, nonprofit organization, that qualifies under Section 501(c)(3) of the United States Internal Revenue Code.

2. Addresses for Notices. All notices, demands, requests or replies provided for or permitted by this Agreement shall be in writing and may be delivered by any one (1) of the following methods: (1) by personal delivery; (2) by deposit with the United States Postal Service as certified or registered mail, return receipt requested, postage prepaid to the addresses stated below; (3) by prepaid telegram; or (4) by prepaid deposit with an overnight express delivery service. Notice deposited with the United States Postal Service in the manner described above shall be deemed effective three (3) business days after deposit with the Postal Service. Notice by telegram or overnight express delivery service shall be deemed effective one (1) business day after transmission to the telegraph company or after deposit with the express delivery service. Notice by personal delivery shall be deemed effective at the time of personal delivery. Notice also may be given by means of electronic facsimile transmission ("fax") however, that in order for a fax notice to be deemed effective, the party giving notice by fax shall provide a "hard copy" of the faxed notice thereafter to the other party pursuant to one (1) of the four (4) methods of "hard copy" delivery specified in this Section. The parties' addresses for notice under this Agreement are as follows:

Owner: TY Investment, Inc.
Carlton Oaks Country Club

9200 Inwood Dr.
Santee, CA 92071
Attn: Toru "Ben" Mise, President

With a copy to: Felix M. Tinkov, Esq.
Lounsbury Ferguson Altona & Peak, LLP
401 West A Street, Suite 1825
San Diego, CA 92101

Conservancy: San Diego River Conservancy
1350 Front Street, Suite 3024
San Diego, CA 92101
Attn: Michael J. Nelson, Executive Officer

With a copy to: Hayley Peterson, Deputy Attorney General
Office of the California Attorney General
110 West A Street, 11th Floor
San Diego, CA 92101

Each party shall have the right to designate a different address within the United States of America by the giving of notice to the other parties hereto in conformity with this Section.

3. Other Documents. Each of the parties agrees to execute any and all documents reasonably necessary to carry out the intention of this Agreement.

4. Amendment. No amendment or modification of this Agreement shall be valid unless that amendment or modification is in writing and signed by all parties.

5. Enforceability of any Provision. If any agreement, condition, obligation, covenant, warranty or other provision of this Agreement shall be determined to be unenforceable, invalid, or void, such determination shall not affect, impair, invalidate or render unenforceable any other agreement, condition, obligation, covenant, warranty, or other provision of this Agreement.

6. Attorneys' Fees. If any action, suit or proceeding is brought to enforce or interpret this Agreement, the prevailing party shall be entitled to receive from the losing party reasonable attorneys' fees and costs.

7. Counterparts. This Agreement and any amendment may be executed in counterparts, and each such counterpart shall be considered as an original of the Agreement or any amendment upon all counterparts being so executed, and all counterparts shall be considered as one (1) agreement.

8. Effect of Section Titles. The titles of the Sections of this Agreement are solely for the purpose of convenience and shall not be relied upon in construing any provision of this Agreement.

9. Applicable Law. The laws of the State of California shall be applied in interpreting and enforcing this Agreement.

10. Benefit of Agreement. Owner and the Conservancy and their respective successors and assigns are the only parties who shall benefit from this Agreement and there are no third party beneficiaries.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

STATE OF CALIFORNIA, acting by and through the SAN DIEGO RIVER CONSERVANCY	TY Investment, Inc.
By: _____ Name: Michael Nelson Title: Executive Officer	By: _____ Name: Toru "Ben" Mise Title: President

State of California)
) ss.
County of _____)

On _____, 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.

State of California)
) ss.
County of _____)

On _____, 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.

EXHIBIT "1"

Owner's Property Description

PARCELS 1 AND 2 OF PARCEL MAP NO. 16978, IN THE CITY OF SANTEE, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, OCTOBER 19, 1992 AS FILE/PAGE NO. 1992-0665040 OF OFFICIAL RECORDS.

AND

An approximately 65.4 acre portion of FANITA RHO TRACT T LT 7, located in the City of San Diego, State of California, exact size and location to be determined prior to recordation of this document.

APNs: 383-071-06-00, 383-071-07-00, and portion of 383-080-03-00

Note: This page is to be replaced by a legal description and map of the approximately 170.35 acre Owner's Property, pursuant to Recital A of the attached Right of First Refusal Agreement between TY Investment, Inc. and the San Diego River Conservancy.

EXHIBIT “F”

Notice of Option Form

(TO FOLLOW ON NEXT PAGE)

RECORDING REQUESTED BY AND)
WHEN RECORDED MAIL TO:)
)
State of California)
San Diego River Conservancy)
Attention: Michael Nelson)
1350 Front Street, Suite 3024)
San Diego, CA 92101-3604)

Space Above Line for Recorder's Use Only

NOTICE OF OPTION AGREEMENT TO TRANSFER REAL PROPERTY

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

TY Investment, Inc., a California corporation, as Optionor,

has granted to

THE STATE OF CALIFORNIA, acting by and through the San Diego River Conservancy, as Optionee

an option to receive certain real property interests in the County of San Diego, State of California, more particularly described in Exhibit 1, attached hereto and incorporated by reference. Said option is effective for a term starting on the date of recordation of this Notice, and it will expire ninety (90) days thereafter, unless said Optionee exercises the option before said time and date. If the option is exercised by the Optionee, the parties shall endeavor to close escrow within one year of the Optionee's exercise of the option. Unless a memorandum extending the option and/or close of escrow date is executed by the parties thereto or their successors in interest, and recorded on the public record on or before the date on which escrow shall close, this Notice of Option shall be considered invalid and shall not constitute a lien in any manner whatsoever on or against said real property.

Dated: September 7, 2010

TY Investment, Inc.:

BY: 
Tom "Ben" Mise
ITS: President

Exhibit 1 (Conservation and Trail Easement Deed with Exhibits)

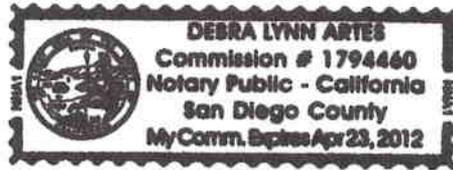
State of California)
) ss.
County of San Diego)

On September 7, 2010, before me, Debra Lynn Artes, Notary Public, personally appeared Toru Mise, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person 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.

Debra Lynn Artes
Notary Public in and for said State



[seal]

EXHIBIT "1"

(Conservation and Trail Easement Deed to follow on next page)



M E M O R A N D U M

DATE: May 28, 2010

TO: Jay Goldstone, Chief Operating Officer
James Barwick, Director, Real Estate Assets

FROM: William Anderson, Director, City Planning & Community Investment

SUBJECT: City Property Review for Carlton Oaks Golf Course
File Code: M801-WM

I've asked MSCP and Park Planning staff to review the Carlton Oaks Golf Course and comment on planning and regulatory issues related to its potential disposition. The following is the comments I've received.

Carlton Oaks Golf Course is one of the few city owned sites along the San Diego River that is mostly in the 100 year floodway, as mapped by FEMA. A golf course is an allowed use within the floodway. This site is considered a wildlife corridor and provides opportunities for wetland mitigation. Impacts to wetlands, such as storm water maintenance, dredging of the historic Mission Dam, or the repair of streets/bridges that cross the river, for example, are regulated by the Environmentally Sensitive Lands Regulations, M.C. 143.0141. This City regulation states that "State and federal law precludes adverse impacts to wetlands or listed non-covered species habitat."

All impacts shall confer with the U.S. Army Corps of Engineers, U.S. Fish & Wildlife, and/or California Department of Fish and Game for any development proposal. These resource agencies seek to minimize impacts to wetlands, determine wetland buffers, and prescribe mitigation requirements for impacts. Typically mitigation will be required in the same watershed of the impacts. Therefore this site along the San Diego River is ideal for a wetland mitigation bank for public and private projects. Our Grantville Redevelopment Project area, including associated private developments along the river, will be looking for mitigation opportunities to implement the City's Redevelopment Plan. For example, we have confirmed that the Superior Ready Mix property owner is looking for off-site mitigation lands along the San Diego River to enable their proposed new community, which will also generate tax increment for infrastructure improvements in Grantville.

The following plans, most of which are adopted, in advanced draft form, or are under contract with wildlife agencies have some bearing on the ultimate use of the property.

City's General Plan

The City's General Plan states two goals for wetlands: 1) Preservation of San Diego's rich biodiversity and heritage through the protection and restoration of wetlands resources and 2) Preservation of all existing wetland habitat in San Diego through a "no net loss" approach.

This site, which is within the 100 year floodway, is considered a potential wetland. It does provide for biodiversity, protects surface water quality by slowing down erosive forces, filters water, and therefore improves water quality. The golf course partially achieves these benefits, but less so than restored wetlands, and has the negative impact of nitrates and oil run-off from maintenance equipment.

East Elliot Community Plan

This city property is located in the East Elliot Community Plan and designated as Open Space. The following open space management guidelines are designed to foster preservation and enhancement of the natural open space:

- a. Natural open space areas should remain undeveloped with disturbance limited to trails and passive recreation uses such as walking, hiking, and nature study that are consistent with preservation of natural resources.
- b. More active recreation uses may be permissible if measures are taken to ensure biological values are not threatened.
- c. Additional recreational uses may be appropriate along the preserve edge or in relatively limited open space areas that do not contain sensitive habitat and wildlife.
- d. Disturbed areas designated for open space should be re-contoured where feasible, to recreate natural topography. These areas should also be restored or enhanced where feasible with natural vegetation to return these areas to a natural appearance.
- e. At locations where urban intrusions traverse open space corridors, provisions should be made to minimize habitat fragmentation and to provide for a continuous open space linkage.
- f. Transition areas should be established between urban uses and the open space system.

Multiple Species Conservation Plan (MSCP) Subarea A

The City's MSCP Subarea Plan was developed by the City in cooperation with the state and federal wildlife agencies to meet the requirements of the California Natural Communities Conservation Planning (NCCP) Act of 1992. This Subarea Plan forms the basis for the Implementing Agreement which is the contract between the City and the wildlife agencies that ensures implementation of the plan. Within the Land Use Considerations section of the MSCP, floodplains within the Multi-Habitat Preservation Area (MHPA) and upstream from the MHPA "should remain in a natural condition and configuration in order to allow for the ecological, geological, hydrological and other natural processes to remain or restored."

A portion of the property designated for potential sale is within the MSCP. The MSCP designation and its requirements run with the property. While the golf course is an allowed, grandfathered use, most discretionary permit applications in the future will require compliance with the MSCP.

Draft San Diego River Park Master Plan

This property is identified as a key site for the development of the San Diego River Park in the draft Master Plan, which was developed after an extensive public process in the mid-2000s, including a review by City Council in 2005. Since this site is City-owned, it had been seen as a future area to accommodate the San Diego River Pathway, a re-contoured river channel that allows for a longer river length that meanders to increase riparian habitat and the wildlife corridor. The Master Plan also states that if the golf course were to change in the future, the redevelopment of the site should look at opportunities for natural open space next to the river and include a public park as a gateway park to the City of San Diego.

As long as the land remains a golf course, the Master Plan recommends working with Carlton Oaks Golf Course to explore the potential to evolve the golf course edge into a naturalized landscape buffer with native plant species and a vegetation management plan that removes exotic plants. The draft plan also recommends a wetland buffer to provide habitat as well as filtration of the golf course water before it goes into the river.

Staff Comments

CPCI staff recommends that if this City owned land is to be sold for private use, it is important to disclose the obligations of the MSCP which covers a portion of the property to be sold. We have to be careful that a sale and transfer of ownership from the City to a private entity would not adversely affect our MHPA contract. The MHPA designation runs with the land ownership, so we don't believe the sale, per se, would present a problem. If the use does not change and the new private property owner maintains it as is, a boundary adjustment would probably not be needed at this time. If the land is redeveloped to a higher use, then a boundary adjustment would probably be required, at the private property owner's expense. These conditions should be disclosed to the buyer.

MSCP staff recommends consideration of removing the wetland buffer and wildlife corridor area from the parcel to be in conformance with the Environmentally Sensitive Lands Regulations, based on a Biology Survey Report that would determine the appropriate width of the wetland buffer and wildlife corridor to protect biological functions and values.

The San Diego River and existing habitat area narrows on the western side of the property adjacent to West Hills Parkway. The western end of the golf course typically floods each year due to the lack of an engineered flood channel and a wetland buffer between the golf course and the San Diego River. Implementation of the San Diego River Master Plan and the MSCP could be enhanced by broadening this corridor in this western area. The corridor could be widened by acquiring a portion of the western area currently owned by the Carlton Oaks private property

owner. MSCP staff believes acquisition of this area to broaden the river corridor would have a superior environmental benefit than retaining some of the MSCP lands in the eastern part of the property, which the City owns. One possibility that might be considered is to trade some of the City's land to the east for some of the private property owner's land to the west. The golf course would have to be reconfigured and the MSCP boundary would have to be adjusted. The benefits of this exchange would include:

- a. The Golf Course would acquire the larger area adjacent to their course and club house.
- b. The City would obtain land for open space that would provide for a wetland buffer and wildlife corridor and fulfill the Community Plan and the San Diego River Park Master Plan goals.
- c. The City could use this area to sell as a wetland land bank to other city departments or private land owners.

Please let us know if you would like a briefing from staff.

From: e1472@sandiego.gov
Sent: Monday, August 29, 2011 3:58 PM
To: Carlson, Mary
Subject: Change Requested by: McPherson, Anna

Item Subject:
Sale of a portion of Carlton Oaks Golf Course

Comments:

Please add the following language to the e1472 Environmental Impact Statement. Sorry, I am unable to add it myself. I will approve as soon as it is returned to my queue. This activity is categorically exempt from CEQA pursuant to CEQA Guidelines Section 15312 (Surplus Government Property Sales). The sale does not propose or allow a change in use and/or development footprint from the existing golf course. The subject property is not located in areas of statewide, regional, or area wide concern identified in Section 15206(b)(4). Upon completion of the sale of the property, the San Diego River Conservancy will record a conservation easement over the Sale Property to ensure that no building occurs on the property and the land remains in its current state. Additionally, upon completion of the sale of the property, the City will reserve an environmental mitigation easement for the approved mitigation site for the old Mission Dam Dredging Project, and will the right to record an easement on a portion of the property for a potential future trail. An easement for the trail is not being recorded with this activity. Regardless of ownership, any change in use and/or development (including a trail) on the site will be subject to future CEQA review, due to the presence of environmentally sensitive lands.

[Goto Workflow item](#)

REAL ESTATE PURCHASE AND SALE AGREEMENT

[Carlton Oaks]

THIS REAL ESTATE PURCHASE AND SALE AGREEMENT ("Agreement") is made by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), and TY INVESTMENT, INC., a California corporation ("BUYER"), to be effective as of the date of execution by CITY (the "Effective Date"), when signed by the parties and approved by the San Diego City Attorney, as follows:

RECITALS

- A. CITY owns certain real property consisting of approximately 106.6 acres of land along and including the San Diego River (the "106-Acre Tract"). Pursuant to this Agreement, CITY intends to sell to BUYER, and BUYER intends to purchase from CITY, a portion of the 106-Acre Tract consisting of approximately 68.9 acres (the "South Property") adjacent to and north of the San Diego River and located on portions of Assessor's Parcel Numbers 383-080-03 and 383-080-04, and as more particularly described in **Exhibit A: South Property Legal Description**, attached hereto. The South Property includes the southerly portion of the Carlton Oaks Golf Course located at 9200 Inwood Drive, Santee, California 92071. CITY intends to reserve from its grant of the South Property an environmental mitigation easement and a non-exclusive, temporary invasive plant control and restoration project easement on the South Property.
- B. As partial consideration for CITY'S conveyance of the South Property to BUYER, BUYER will grant to CITY certain easements and the right to place other easements on BUYER'S Post-Closing Property (defined below).
- C. BUYER owns the balance of the Carlton Oaks Golf Course, including an out-of-bounds area consisting of approximately 2.6 acres of land (the "West Property") on portions of Assessor's Parcel Numbers 383-060-26 & 383-071-07, and as more particularly described in **Exhibit B: West Property Legal Description**, attached hereto. Pursuant to this Agreement, BUYER intends to convey the West Property to CITY as partial consideration for CITY'S sale of the South Property to BUYER. BUYER intends to reserve from its grant of the West Property an access easement and the right to place a public trail easement on the West Property.
- D. The southerly portion of the South Property consists of a land feature commonly referred to as a berm (the "Berm") which serves to limit the flooding of the Carlton Oaks Golf Course. The parties have agreed that the southerly boundary of the South Property is defined by the south toe of the slope of the Berm so that the entire structure of the Berm will lie within BUYER'S Post-Closing Property.
- E. Initial negotiations between CITY and BUYER called for the transfer of approximately 65.4 acres of the South Property and did not include all of the property containing the Berm (the "Berm Property"), which consists of approximately 4.7 acres of land, and as more particularly described in **Exhibit C: Berm Property**, attached hereto. It was later determined that the South Property would include the entire portion of the Berm Property not already owned by BUYER. BUYER agreed to convey the West Property to CITY so the net

acreage changing hands will be approximately 66.3 acres, which BUYER and CITY agree reasonably satisfies the initial intent to transfer approximately 65.4 acres. BUYER and CITY also agree that the value of the West Property and the value of the additional Berm Property are identical.

- F. The West Property, together with the balance of the 106-Acre Tract being retained by CITY (approximately 37.7 acres) after the closing of the transactions contemplated by this Agreement (the "Closing") is referred to herein as "CITY'S Post-Closing Property." All real property owned by BUYER after the Closing and comprising the Carlton Oaks Golf Course and ancillary facilities and the Berm is referred to herein as "BUYER'S Post-Closing Property." CITY'S Post-Closing Property and BUYER'S Post-Closing Property are shown in the drawing attached hereto as **Exhibit D: Post-Closing Properties**.

FOR VALUABLE CONSIDERATION, the sufficiency of which is acknowledged, the parties agree as follows:

1. **City Council Action Required.** BUYER acknowledges and agrees that the Closing is expressly conditioned on the final passage of a resolution of the San Diego City Council approving and authorizing this Agreement ("Council Authorization") prior to the Closing, which may or may not be granted. CITY shall not be obligated for any loss, financial or otherwise, which may be incurred by BUYER as a result of the City Council's withholding of such Council Authorization. BUYER expressly waives any claim for expense or loss which BUYER might incur as a result of CITY'S failure to close the transactions contemplated by this Agreement if Council Authorization is not granted.
2. **Purchase and Sale; South Property.**
 - 2.1 Under the terms and conditions of this Agreement and subject to obtaining Council Authorization, CITY shall sell and convey the South Property to BUYER, and BUYER shall purchase the South Property from CITY, together with all rights and appurtenances thereto, excepting and reserving therefrom the following two easements:
 - 2.1.1 **ACOE Mitigation Easement.** CITY shall reserve from its grant of the South Property an environmental mitigation easement on, over, across, and through that certain portion of the South Property described in **Exhibit E: Existing Mitigation Area** for CITY'S continuing invasive plant removal and re-vegetation project pursuant to that certain Army Corps of Engineers Permit SPL-2005-1545-TCD issued on or about April 26, 2007 (the "ACOE Permit"). BUYER acknowledges and agrees that CITY currently utilizes BUYER'S irrigation system to accomplish its environmental mitigation under the ACOE Permit. BUYER shall allow CITY to continue utilizing BUYER'S irrigation system for at least five (5) years after the date the South Property Grant Deed is recorded in the Office of the San Diego County Recorder, and to the extent reasonably needed to accomplish the environmental mitigation pursuant to the ACOE Permit. CITY shall be solely responsible for the maintenance of its environmental mitigation work as well as any damage which may be caused by

its employees, agents, and representatives in performing its work under the ACOE Permit.

2.1.2 SDRC Plant Control Project Easement. CITY shall reserve from its grant of the South Property a non-exclusive, temporary invasive plant control and restoration project easement on, over, across, and through the South Property to allow the San Diego River Conservancy, an agency of the State of California (“SDRC”), and/or CITY to remove and control non-native plant species and restore natural habitat pursuant to that certain State of California Natural Resources Agency Grant Agreement (Agreement No. 40720-11) under the River Parkways Grant Program (Proposition 40) between the State of California and SDRC.

2.2 CITY’S Rights & Easements. As partial consideration for CITY’S conveyance of the South Property to BUYER, BUYER shall grant to CITY the following rights and easements (“CITY’S Rights & Easements”):

2.2.1 Right to a Public Trail Easement. BUYER shall grant to CITY the right to place a public multi-use trail easement on, over, across, and through BUYER’S Post-Closing Property within the Berm Property for public access and the development, construction, maintenance, repair, and restoration of a public multi-use trail, including without limitation the installation of interpretive signs, together with pedestrian and motorized vehicle use reasonably required therefor, and the staging of construction materials and equipment related thereto.

2.2.2 Right to Mitigation Easements. BUYER shall grant to CITY the right to place such environmental mitigation easements on, over, across, and through BUYER’S Post-Closing Property within the Berm Property as may be required by competent governmental authorities due to the CITY’s development, construction, maintenance, repair, and restoration of a public multi-use trail on the South Property and fencing related thereto. BUYER shall have the right to place mitigation easements within the Berm Property only after the completion of construction of a public multi-use trail and related fencing thereon.

2.2.3 Surface Easement. BUYER shall grant to CITY a non-exclusive, permanent surface easement on, over, across, and through BUYER’S Post-Closing Property within the area described in **Exhibit F: Surface Easement Area**, attached hereto, for CITY’S access to CITY’S Post-Closing Property and CITY’S use for staging materials and equipment to be used for both the maintenance of CITY’S Post-Closing Property and the construction, maintenance, repair, and restoration of a public multi-use trail on the Berm, together with pedestrian and motorized vehicle use reasonably required therefor.

2.2.4 CITY’S Access Easement. BUYER shall grant to CITY a fifteen (15)-foot wide non-exclusive, permanent pedestrian and motorized vehicle access easement on, over, across, and through BUYER’S Post-Closing Property for ingress and egress to and from Inwood Drive and both (i) CITY’S Post-Closing Property;

and (ii) such areas within BUYER'S Post-Closing Property that CITY may have easement rights to use, each by the most practicable route available at the time and from time to time, where such route shall not disrupt operations or activities on BUYER'S Post-Closing Property. If Inwood Drive is not then available, CITY'S access under the easement shall be to and from the closest public street adjoining BUYER'S Post-Closing Property.

3. Purchase and Sale; West Property. Under the terms and conditions of this Agreement and subject to obtaining Council Authorization, BUYER shall convey the West Property to CITY, and CITY shall accept the West Property from BUYER, together with all rights and appurtenances thereto, excepting and reserving therefrom the following two easements:
 - 3.1 BUYER'S Access Easement. BUYER shall reserve from its grant of the West Property a thirty (30)-foot wide non-exclusive, permanent pedestrian and motorized vehicle access easement ("BUYER'S Access Easement") on, over, across, and through the West Property for ingress and egress to and from West Hills Parkway and BUYER'S Post-Closing Property by the most practicable route available at the time and from time to time. If West Hills Parkway is not then available, BUYER'S access under the easement shall be to and from the closest public street adjoining the West Property. BUYER'S Access Easement and its use shall not unreasonably interfere with the development, construction, maintenance, repair, and restoration of a public multi-use trail on the West Property, and the staging of construction materials and equipment related thereto, or with the public's use thereof.
 - 3.2 San Diego River Conservancy Public Trail Easement. BUYER shall reserve from its grant of the West Property the right to place a public multi-use trail easement on, over, across, and through the West Property for public access and the development, construction, maintenance, repair, and restoration of a public multi-use trail, together with pedestrian and motorized vehicle use reasonably required therefor, and the staging of construction materials and equipment related thereto, to satisfy BUYER'S obligations under that certain OPTION AGREEMENT FOR THE TRANSFER OF AN INTEREST IN REAL PROPERTY, dated on or about September 7, 2010, by and between BUYER and SDRC, but only if the easement is required to extend a planned or existing public trail for which a related public trail easement has been recorded on BUYER'S Post-Closing Property. The foregoing reservation of the right to place a public trail easement on the West Property shall terminate upon the recording of any public trail easement on the West Property.
4. Purchase Price – South Property. The purchase price of the South Property (the "Purchase Price") shall be Three Million Dollars (\$3,000,000) ALL CASH, together with: (i) BUYER'S conveyance of the West Property to CITY by execution and delivery of a grant deed substantially as attached hereto as **Exhibit G: West Property Grant Deed**; and (ii) BUYER'S granting of the CITY'S Rights & Easements by execution and delivery of a grant of easement substantially as attached hereto as **Exhibit H: Grant of Easements**.

5. Purchase Price – West Property. The purchase price of the West Property shall be CITY'S inclusion in the South Property of that portion of the Berm Property not already owned by BUYER, to be delivered by CITY'S execution and delivery of a grant deed substantially as attached hereto as **Exhibit I: South Property Grant Deed.**
6. Escrow. BUYER shall open an escrow (the "Escrow") with Chicago Title Company (the "Escrow Holder") within three (3) business days after the Effective Date. The Escrow shall be open as of the date (the "Open Date") BUYER delivers to Escrow Holder both this Agreement, signed by the parties, and the Initial Deposit, defined below. Escrow Holder is located at 701 B Street, Suite 760, San Diego, CA 92101. The Escrow contact person is Renee Marshall (619-230-6356).
7. BUYER'S Due Diligence Period. BUYER shall have forty-five (45) days ("BUYER'S Due Diligence Period") after the Open Date to conduct BUYER'S due diligence, including without limitation examinations, reviews, and inspections of all matters pertaining to BUYER'S acquisition of the South Property. BUYER may terminate this Agreement for any reason whatsoever at any time during BUYER'S Due Diligence Period. BUYER may waive BUYER'S Due Diligence Period at any time and proceed to the Closing.
 - 7.1 BUYER'S Contingencies. If BUYER discovers any matters that, if not corrected, would cause BUYER to terminate this Agreement ("BUYER'S Contingencies"), BUYER shall notify CITY in writing of all such BUYER'S Contingencies before the expiration or waiver of BUYER'S Due Diligence Period. BUYER'S failure to so notify CITY within BUYER'S Due Diligence Period shall mean no BUYER'S Contingencies exist.
 - 7.2 Satisfaction of BUYER'S Contingencies. If BUYER notifies CITY that BUYER'S Contingencies exist, CITY shall have thirty (30) days to satisfy the BUYER'S Contingencies. If the BUYER'S Contingencies are not satisfied within such 30-day period, BUYER may either terminate this Agreement for non-satisfaction of the BUYER'S Contingencies or extend the time period within which CITY must satisfy the BUYER'S Contingencies to a date mutually agreed-upon by the parties. BUYER may waive the BUYER'S Contingencies at any time.
 - 7.3 Council Authorization. As soon as reasonably practicable after the end of both BUYER'S Due Diligence Period and CITY'S Due Diligence Period, defined below, CITY shall submit this Agreement to the San Diego City Council seeking the Council Authorization.
8. BUYER'S Due Diligence. BUYER may enter upon the South Property for the purpose of conducting environmental studies, surveys, and other examinations as BUYER shall reasonably deem necessary.
 - 8.1 Preliminary Title Report. CITY, at CITY'S expense, shall deliver to BUYER a Preliminary Title Report for the South Property.

9. CITY'S Due Diligence Period. CITY shall have forty five (45) days ("CITY'S Due Diligence Period") after the Open Date to conduct CITY'S due diligence, including without limitation examinations, reviews, and inspections of all matters pertaining to CITY'S acquisition of the West Property. CITY may terminate this Agreement for any reason whatsoever at any time during CITY'S Due Diligence Period. CITY may waive CITY'S Due Diligence Period at any time and proceed to the Closing.
- 9.1 CITY'S Contingencies. If CITY discovers any matters that, if not corrected, would cause CITY to terminate this Agreement ("CITY'S Contingencies"), CITY shall notify BUYER in writing of all such CITY'S Contingencies before the expiration or waiver of CITY'S Due Diligence Period. CITY'S failure to so notify BUYER within CITY'S Due Diligence Period shall mean no CITY'S Contingencies exist.
- 9.2 Satisfaction of CITY'S Contingencies. If CITY notifies BUYER that CITY'S Contingencies exist, BUYER shall have thirty (30) days to satisfy the CITY'S Contingencies. If the CITY'S Contingencies are not satisfied within such 30-day period, CITY may either terminate this Agreement for non-satisfaction of the CITY'S Contingencies or extend the time period within which BUYER must satisfy the CITY'S Contingencies to a date mutually agreed-upon by the parties. CITY may waive CITY'S Contingencies at any time.
10. CITY'S Due Diligence. CITY may enter upon the West Property for the purpose of conducting environmental studies, surveys, and other examinations as CITY shall reasonably deem necessary.
- 10.1 Preliminary Title Report. BUYER, at BUYER'S expense, shall deliver to CITY a Preliminary Title Report for the West Property.
11. Deposits.
- 11.1 Initial Deposit. BUYER shall deliver to Escrow Holder One Hundred Thousand Dollars (\$100,000; the "Initial Deposit") either in cash or by certified check. The Initial Deposit shall be applied to the Purchase Price if the Closing occurs. If at any time during BUYER'S Due Diligence Period BUYER decides to terminate this Agreement, the Initial Deposit shall be returned to BUYER. When no BUYER'S Contingencies exist, the Initial Deposit shall be non-refundable unless the Closing does not occur by reason of CITY'S default under this Agreement, or the failure to obtain Council Authorization.
- 11.2 Second Deposit. At the end of BUYER'S Due Diligence Period, BUYER shall deliver to Escrow Holder an additional Two Hundred Thousand Dollars (\$200,000; the "Second Deposit"), either in cash or by certified check. The Second Deposit shall be applied to the Purchase Price if the Closing occurs. The Second Deposit shall be non-refundable unless the Closing does not occur by reason of CITY'S default under this Agreement, or the failure to obtain Council Authorization.

12. Closing. The Closing shall be held at the Escrow Holder's offices on a date (the "Closing Date") that is mutually satisfactory to both BUYER and CITY, but no later than the thirtieth (30th) day after the effective date of Council Authorization.
- 12.1 Balance of Purchase Price. Prior to the Closing, BUYER shall deliver to Escrow Holder the balance of the cash portion of the Purchase Price, Two Million Seven Hundred Thousand Dollars (\$2,700,000), either in cash or by certified check.
- 12.2 Parties to Sign Documents. Prior to the Closing, the parties shall execute and deliver all instruments and documents reasonably required to effect the Closing.
- 12.3 Taxes. All ad valorem taxes and special taxes or assessments levied or assessed against the South Property and the West Property for the year of the Closing, if any, shall be prorated at the Closing, effective as of the Closing Date. If the Closing occurs before the tax rate or the assessed valuation is fixed for the then-current year, the prorating of ad valorem taxes shall use the tax rate and the assessed valuation for the preceding tax year. The prorating of ad valorem taxes shall be subject to later adjustment once the actual tax statements for the year of the Closing have been received, which agreement to re-prorate taxes shall survive the Closing. However, neither party shall be responsible to the other party for any increase in ad valorem taxes resulting from improvements made to their respective properties after the Closing Date.
- 12.4 BUYER'S Performance of Lease. CITY, as lessor, and BUYER, as lessee, are parties to that certain LEASE AGREEMENT dated January 30, 1959, and filed in the Office of the San Diego City Clerk as Document 586194 on February 10, 1959 (the "Lease"). Notwithstanding anything to the contrary in this Agreement, if BUYER, as lessee under the Lease, is in breach or default of the Lease on the Closing Date, the Closing Date shall be extended to the fifth (5th) business day after such breach is corrected and/or such default is cured.
13. Title to South Property. At the Closing, CITY shall convey good and indefeasible fee simple title to the South Property to BUYER (or to a nominee of BUYER'S, subject to CITY'S prior written approval, which may not be unreasonably withheld or delayed) by execution and delivery of the South Property Grant Deed, subject to all acts done or suffered by BUYER, or claims made by, through, or under BUYER. To the actual knowledge of CITY'S Real Estate Assets Department on the Effective Date, without further inquiry, there are no unrecorded liens, leases, or encumbrances against the South Property. After the Effective Date, CITY shall not enter into any contract for the use and occupancy of the South Property, or allow any liens or encumbrances to be placed on the South Property, without BUYER'S prior written consent, unless this Agreement is terminated pursuant to its terms.
14. Title to West Property. At the Closing, BUYER shall convey good and indefeasible fee simple title to the West Property to CITY by execution and delivery of the West Property Grant Deed, subject to all acts done or suffered by CITY, or claims made by, through, or under CITY. To the actual knowledge of BUYER on the Effective Date, without further inquiry, there are no unrecorded liens, leases, or encumbrances against the West Property.

After the Effective Date, BUYER shall not enter into any contract for the use and occupancy of the West Property, or allow any liens or encumbrances to be placed on the West Property, without CITY'S prior written consent, unless this Agreement is terminated pursuant to its terms.

15. Escrow Costs. CITY shall pay the following costs related to the South Property: (a) Preliminary Title Report fees; (b) all San Diego County documentary transfer taxes; (c) the fee for a standard-coverage California Land Title Association ("CLTA") Title Insurance Policy; (d) the incremental cost of any additional or extended-coverage title insurance requested by CITY for the West Property; (e) all charges for CITY'S document drafting and recording; and (f) one-half (1/2) of the Escrow Holder's fee. BUYER shall pay the following costs related to the West Property: (a) Preliminary Title Report fees; (b) all San Diego County documentary transfer taxes; (c) the fee for a standard-coverage CLTA Title Insurance Policy; (d) the incremental cost of any additional or extended-coverage title insurance requested by BUYER for the South Property; (e) all charges for BUYER'S document drafting and recording; and (f) one-half (1/2) of the Escrow Holder's fee. The Escrow Holder shall prorate fees and costs between the parties at the Closing.
16. Re-sale Limitation. If BUYER sells the South Property within thirty-six (36) months after the Closing, BUYER shall pay to CITY the net profit from the sale. The "net profit from the sale" shall mean the gross sale price less the direct and usual and customary costs of sale, and less: (a) the cash portion of the Purchase Price under this Agreement; (b) the actual reasonable costs, other than the Purchase Price and excluding attorney and consulting fees, incurred by BUYER in: (i) purchasing the South Property (such as due diligence and closing costs, financing costs, survey expenses, and entity-formation costs); (ii) owning, operating, and managing the South Property (such as, without duplication, interest and other financing costs, property taxes, insurance, and maintenance to the extent not reimbursed by tenants, and usual and customary management fees); (iii) improving or planning for improvement of the South Property (such as fees of architects and engineers, building permits and other governmental fees, direct and indirect construction costs, and usual and customary construction-management fees); and (iv) leasing the South Property (such as brokerage commissions and other marketing costs). "Usual and customary costs of sale" shall be those costs typically reflected in a closing statement associated with a sale similar to BUYER'S subsequent sale, such as title and escrow fees, documentary transfer taxes, and brokerage fees.
17. Loss or Damage Prior to Closing. Loss or damage to the South Property prior to the Closing shall be at BUYER'S risk, as the lessee under the Lease.
18. Acceptance of Property "As-Is".
 - a. South Property. BUYER acknowledges it is purchasing the South Property "as-is," excepting any claims or liability arising from the established gross negligence, recklessness, or intentional misconduct of CITY and its elected officials, officers, employees, representatives, and agents. BUYER is not relying on any representation or warranty of any kind, express or implied, oral or written, made by CITY or its elected

officials, officers, employees, representatives, and agents with respect to the physical condition of the South Property, or with respect to the existence or absence of hazardous substances in, on, under, or affecting the South Property. CITY has not and does not make any warranty or representation regarding the fitness of the South Property for any particular use, or as to its quality or merchantability. CITY shall not be liable or bound in any manner by any warranties, guarantees, promises, statements, representations, or information, either express or implied, pertaining to the South Property and made or furnished by any real estate agent, broker, employee, servant, or other person representing or purporting to represent CITY, except as made in this Agreement.

- b. West Property. CITY acknowledges it is purchasing the West Property “as-is,” excepting any claims or liability arising from the established gross negligence, recklessness, or intentional misconduct of BUYER and its officers, employees, representatives, and agents. CITY is not relying on any representation or warranty of any kind, express or implied, oral or written, made by BUYER or its officers, employees, representatives, and agents with respect to the physical condition of the West Property, or with respect to the existence or absence of hazardous substances in, on, under, or affecting the West Property. BUYER has not and does not make any warranty or representation regarding the fitness of the West Property for any particular use, or as to its quality or merchantability. BUYER shall not be liable or bound in any manner by any warranties, guarantees, promises, statements, representations, or information, either express or implied, pertaining to the West Property and made or furnished by any real estate agent, broker, employee, servant, or other person representing or purporting to represent BUYER, except as made in this Agreement.

18.1 Hazardous Substances Defined. “Hazardous substances” shall mean any hazardous liquid, solid, or gaseous material substances listed by the United States Environmental Protection Agency or the State of California as a hazardous substance, and any type of petroleum-related substances and their chemical constituents.

18.2 Indemnification and Hold Harmless: BUYER. BUYER shall protect, defend, indemnify, and hold CITY, its elected officials, officers, representatives, agents, and employees, harmless from and against any and all claims asserted or liability established which arise out of or are in any manner directly or indirectly connected with environmental liabilities resulting from BUYER’S use and occupancy of the West Property, and BUYER’S use and occupancy of that portion of the South Property subject to the Lease, at any and all times prior to the Closing and related to hazardous substances on, under, or affecting such property, including without limitation costs of environmental assessments, costs of remediation and removal, any necessary response costs, damages for injury to natural resources or the public, and costs of any health assessment or health-effect studies, and all reasonable costs and expenses of investigating and defending against same, including without limitation reasonable attorney fees and costs. BUYER’S duty to indemnify and hold harmless shall not include any claims or liability arising from the established gross negligence, recklessness, or intentional misconduct of CITY or its elected officials, officers,

employees, representatives, or agents. CITY may, at its election and at its expense, participate in the defense of any claim related in any way to this indemnification.

- 18.3 Indemnification and Hold Harmless: CITY. CITY shall protect, defend, indemnify, and hold BUYER, its officers, representatives, agents, and employees, harmless from and against any and all claims asserted or liability established which arise out of or are in any manner directly or indirectly connected with environmental liabilities resulting from CITY'S use and occupancy of any portion of the South Property not subject to the Lease at any and all times prior to the Closing and related to hazardous substances on, under, or affecting such property, including without limitation costs of environmental assessments, costs of remediation and removal, any necessary response costs, damages for injury to natural resources or the public, and costs of any health assessment or health-effect studies, and all reasonable costs and expenses of investigating and defending against same, including without limitation reasonable attorney fees and costs. CITY'S duty to indemnify and hold harmless shall not include any claims or liability to the extent arising from the acts or omissions of BUYER or its officers, employees, representatives, or agents. BUYER may, at its election and at its expense, participate in the defense of any claim related in any way to this indemnification.
- 18.4 Flooding. BUYER acknowledges and agrees that a river exists on CITY'S Post-Closing Property, and that the South Property lies within a Special Flood Hazard Area, and that flooding of BUYER'S Post-Closing Property may naturally occur from time to time.
- 18.5 Maintenance of the Berm. The parties acknowledge and agree that the southerly boundary of the South Property is defined by the south toe of the slope of the Berm, and that the entire structure of the Berm lies within the South Property. BUYER shall assume ownership and all responsibility for the Berm and its maintenance as of the Closing, but shall not be obligated to maintain the Berm. CITY shall have no responsibility for the Berm or its maintenance as of the Closing. BUYER acknowledges and agrees that the Berm serves to limit the flooding of BUYER'S Post-Closing Property. The parties acknowledge that the structure of the Berm may change over time due to erosion and other naturally-occurring forces. If in one or more instances the functionality of the Berm is diminished or reasonably threatened by such erosion or other forces and BUYER'S maintenance of the Berm reasonably requires the addition of reinforcing material to maintain or re-establish the stability of the Berm, and such action will create an encroachment onto CITY'S Post-Closing Property, CITY shall grant BUYER a license to enter upon CITY'S Post-Closing Property to install and maintain the encroachment, subject to such usual and customary terms and conditions applied by CITY at the time for similar licenses, and all applicable laws, rules, and regulations of competent governmental authority.
- 18.5.1 BUYER shall be fully responsible for the installation and maintenance of any and all such encroachments.

- 18.5.2 BUYER shall protect, defend, indemnify, and hold CITY and its elected officials, officers, employees, representatives, and agents harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to BUYER'S officers, employees, invitees, guests, agents, or contractors, which arise out of or are in any manner directly or indirectly connected with such encroachments or BUYER'S installation and maintenance thereof, and all reasonable expenses of investigating and defending against same, including without limitation attorney fees and costs; provided, however, that BUYER'S duty to indemnify and hold harmless shall not include any claims or liability arising from the gross negligence, recklessness, or intentional misconduct of CITY or its elected officials, officers, employees, representatives, and agents.
- 18.5.3 Notwithstanding any provision of this Agreement to the contrary, BUYER shall not be obligated to maintain the Berm. CITY shall hold BUYER and its officers, employees, representatives, and agents harmless for damages to a public trail, if any, on BUYER'S Post-Closing Property which result from or are in any manner directly or indirectly connected with BUYER'S maintenance or non-maintenance of the Berm; provided, however, that CITY'S obligation to hold BUYER harmless for such maintenance shall not include any claims or liability arising from the gross negligence, recklessness, or intentional misconduct of BUYER or its officers, employees, representatives, and agents.
19. Release. With the exception of any claims arising from CITY'S fraud, intentional misrepresentation, gross negligence, recklessness, or intentional misconduct, and effective from and after the Closing, BUYER, for itself, its officers, representatives, agents, employees, successors-in-interest, and assigns, releases and forever discharges CITY, its elected officials, officers, representatives, agents, employees, successors-in-interest, and assigns, of and from any and all past, present, or future claims, demands, obligations, actions, causes of action, rights, damages, costs, losses of service, expenses, and compensation of any nature whatsoever, whether based on tort, contract, violation of statutory duties, or other theory of recovery, and whether for compensation or punitive damages, injunctive relief or mandamus, or other equitable remedies which BUYER now has, or which may later accrue or be acquired, on account of, or in any way growing out of, or which are the subject of this Agreement, the South Property, or the condition of the South Property, including without limitation any and all known or unknown claims resulting from the alleged acts or omissions of CITY, its elected officials, officers, representatives, agents, or employees.
20. No Real Estate Commission. BUYER and CITY each represent, warrant, and acknowledge that no real estate commission, finder's fee, or broker's fee has been or will be incurred or paid in connection with the transactions contemplated by this Agreement. The rights and obligations of BUYER and CITY pursuant to this section shall survive the Closing or termination of this Agreement.
21. Default and Remedies. If CITY is in default of this Agreement prior to the Closing, BUYER may, at its sole option and as its exclusive remedy for such default either: (a) terminate this

Agreement by written notice to CITY and the Escrow Holder; or (b) if the default resulted from a failure to transfer possession and title to the South Property to BUYER at the Closing, seek and enforce specific performance of this Agreement. BUYER may seek and enforce any remedy available at law or in equity: (a) if CITY defaults on its obligations under this Agreement after the Closing; and (b) for any claim related to this Agreement arising from the established gross negligence, recklessness, or intentional misconduct of CITY or its elected officials, officers, employees, representatives, and agents. If BUYER is in default of this Agreement prior to the Closing, CITY may, at its sole option and as its exclusive remedy for such default either: (a) terminate this Agreement by written notice to BUYER and the Escrow Holder; or (b) if the default resulted from a failure to transfer possession and title to the West Property to CITY at the Closing, seek and enforce specific performance of this Agreement. CITY may seek and enforce any remedy available at law or in equity: (a) if BUYER defaults on its obligations under this Agreement after the Closing; and (b) for any claim related to this Agreement arising from the established gross negligence, recklessness, or intentional misconduct of BUYER or its officers, employees, representatives, and agents.

21.1 Limited Liability. Excepting any claims or liability arising from the established gross negligence, recklessness, or intentional misconduct of a party or its elected officials, officers, employees, representatives, and agents, a party's liability for damages resulting from or under this Agreement shall be limited to the real property such party is obligated to convey, or to monies received pursuant to this Agreement, without resort to any other assets of the parties.

22. Time of Essence. Time is of the essence to the performance of each and every obligation under this Agreement.

23. Interpretation. This Agreement shall be governed by the laws of the State of California. The section headings are for convenience only and shall not interpret, define or limit the scope or content of this Agreement. If any party is made up of more than one person or entity, then all are identified in the singular in this Agreement. If any right of approval or consent by a party is provided for in this Agreement, the party shall exercise the right promptly and reasonably, unless this Agreement expressly gives such party the right to use its sole discretion. The term "business day" shall mean Monday through Friday, excluding holidays recognized by the State of California and/or the City of San Diego.

24. CITY'S Consent, Approval. Except for the Council Authorization, whenever required under this Agreement, CITY'S consent or approval shall mean the written consent or approval of the Mayor of San Diego, or his or her designee.

25. Amendments. The terms and provisions of this Agreement may only be modified or amended pursuant to a written instrument signed by all parties hereto.

26. Successors and Assigns. The provisions of this Agreement shall inure to and bind the successors and assigns of the parties, except for a bona fide purchaser not affiliated in any way with BUYER.

27. Assignment. This Agreement may not be assigned in whole or in part by BUYER without CITY'S prior written consent.

28. Attorney Fees & Costs. If any party brings an action or proceeding against another party under this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party all reasonable costs and expenses thereof, including without limitation reasonable attorney fees and costs. The "prevailing party" shall be that party who obtains substantially the result sought, whether by settlement, dismissal, or judgment.

29. Notices. Any notice required or permitted to be given under this Agreement shall be in writing and may be served personally or delivered by United States Postal Service, postage prepaid, and addressed as follows:

CITY: THE CITY OF SAN DIEGO
Attn: Director, Real Estate Assets Department
1200 Third Avenue, Suite 1700, MS 51A
San Diego, CA 92101

With a copy by First Class Mail to:

San Diego City Attorney
Attn: Real Property Section
1200 Third Avenue, Suite 1100
San Diego, California 92101

BUYER: TY INVESTMENT, INC.
Attn: Toru Mise, President
Carlton Oaks Country Club
9200 Inwood Drive
Santee, California 92071

With a copy by First Class Mail to:

Lounsbury Ferguson Altona & Peak, LLP
Attn: Felix Tinkov, Esq.
401 West A Street, Suite 1825
San Diego, California 92101

30. Partial Invalidity. If any term, covenant, condition, or provision of this Agreement is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.

31. Waiver. The failure of either party to insist upon the strict performance of any of the other party's obligations under this Agreement, in one or more instance, shall not be construed as a waiver of any such obligation, and the same shall remain in full force and effect. A party's waiver of a breach or default shall not be a waiver of any other breach or default. Any

waiver of a breach or default must be in a writing executed by the waiving party to constitute a valid and binding waiver. A party's delay or failure to exercise a right or seek a remedy shall not be deemed a waiver of that or any other right or remedy under this Agreement, at law, or in equity. The exercise of any particular right or the use of any particular remedy for any breach or default shall not waive the use of any other right or remedy for the same breach or default or for another or later breach or default. A party's failure to discover a breach or default or take prompt action to require the correction of any breach or the cure of any default shall not result in an equitable estoppel, but either party may at any and all times require such correction or such cure.

32. No Affiliation. Nothing contained in this Agreement shall be deemed or construed to create a partnership, joint venture, or other affiliation between the parties, or between either party and any other entity or third party, or cause either party to be responsible in any way for the debts or obligations of the other party or any other entity or third party.
33. Survival. All rights and obligations accruing under this Agreement prior to its termination or the Closing shall survive such termination or the Closing.
34. Entire Agreement. This Agreement represents the entire agreement between the parties for the purchase and sale of the South Property and the conveyance of the West Property, and supersedes all prior negotiations, representations, or agreements, either oral or written.

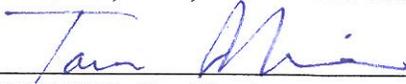
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35. Authority to Contract. Each individual executing this Agreement on behalf of another person or legal entity represents and warrants that they are authorized to execute and deliver this Agreement on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing agreement, and that this Agreement is binding upon such person or entity in accordance with its terms. Each person executing this Agreement on behalf of another person or legal entity represents and warrants that such entity is a valid, qualified corporation, limited liability company, partnership, or other unincorporated association in good standing in its home state and that such entity is qualified to do business in California.

IN WITNESS WHEREOF, this Agreement is executed to be effective as of the Effective Date.

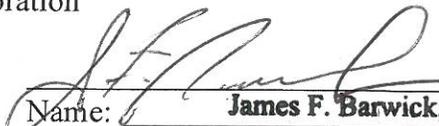
Date: 6/23/11

TY INVESTMENT, INC., a California corporation

BY: 
TORU MISE, President

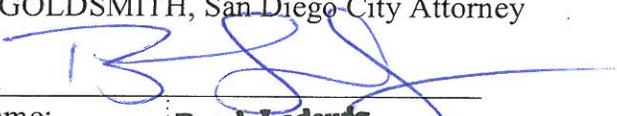
Date: 6/27/11

THE CITY OF SAN DIEGO, a California municipal corporation

BY: 
Name: James F. Barwick, CCIM
Title: Director, Real Estate Assets

Approved as to form and legality:

JAN I. GOLDSMITH, San Diego City Attorney

BY: 
Name: Brock Ladewig
Title: Deputy City Attorney

- Exhibit A: South Property Legal Description
- Exhibit B: West Property Legal Description
- Exhibit C: Berm Property
- Exhibit D: Post-Closing Properties
- Exhibit E: Existing Mitigation Area
- Exhibit F: Surface Easement Area
- Exhibit G: West Property Grant Deed
- Exhibit H: Grant of Easements
- Exhibit I: South Property Grant Deed