



Real Estate Assets Department

SDC003

CARLTON OAKS COUNTY CLUB
M801WM-001-B01

Document Type

31

LEGAL DOCUMENTS



Sub - Category

AGREEMENTS



Recording Requested by and
Upon Recordation, Please Return to:

EAST COUNTY ADVANCED WATER
PURIFICATION JOINT POWERS AUTHORITY
P.O. Box 719003
Santee, California 92072

EXEMPT FROM FILING FEES PURSUANT TO
GOVERNMENT CODE, SECTION 6103

-- This Space for Recorder's Use Only --

RIGHT OF ENTRY AND CONSENT TO USE OF SUBSURFACE EASEMENT

THIS RIGHT OF ENTRY AND CONSENT TO USE OF SUBSURFACE EASEMENT ("Right of Entry") is made as of Dec 20, 2022 ("Effective Date"), by and between Aliko LLC (assignee of TY Investment, Inc. d.b.a. Carlton Oaks Country Club), the lessee of Property described in **Exhibit 1** ("**Carlton Oaks**"), and East County Advanced Water Purification Joint Powers Authority ("**JPA**"). Carlton Oaks and JPA may be referred to herein individually as a "**Party**" and collectively as the "**Parties**."

RECITALS

A. Carlton Oaks is the lessee of certain real property owned by the City of San Diego, a California municipal corporation ("**City**"), and identified as APNs 383-080-03 and 383-080-04, described in **Exhibit 1** ("**Property**"). A Ground Lease for the Property dated as of January 1, 2012 was originally executed between the City, as lessor, and TY Investment, Inc., a California general corporation, as lessee ("**Lease**"), with a Memorandum of Ground Lease recorded June 18, 2014 as Instrument No. 2014-0252193 in the official records of the County of San Diego. The Lease was assigned to Carlton Oaks by TY Investment, Inc. on May 16, 2017; City consented to the assignment on April 17, 2018.

B. JPA has been granted or intends to be granted by the City certain subsurface easements located on the Property to access, construct, install, reconstruct, operate, maintain, repair, and replace conveyance and communications facilities ("**Subsurface Easements**"). The Subsurface Easement Grant Deed granting the Subsurface Easements shall be substantially in the form attached hereto as **Exhibit 2** ("**Subsurface Easement Grant Deed**").

C. The JPA has requested temporary surface access rights to the surface area above the Easement Area and 25 feet on the easterly and westerly sides of the surface area above the Easement Area ("**Temporary License Area**") to perform certain temporary construction-related activities as further described in Exhibit 2 and this Right of Entry.

D. By this Right of Entry, Carlton Oaks grants the JPA rights of entry to the Property under the terms and conditions stated below for Temporary Construction Access to the surface of the Property and consents to ongoing subsurface entry and access corresponding to terms and conditions contained in the Subsurface Easement Grant Deed.

AGREEMENT

The parties agree as follows:

1. **Right of Entry and Consent to Use.** Carlton Oaks grants to JPA and its agents, consultants, contractors and subcontractors ("**JPA Agents**") permission to enter upon the Property in order to perform certain activities, including but not limited to the installation of permanent subsurface improvements, pursuant to the terms and conditions described in the Subsurface Easement Grant Deed. The following provisions shall apply to the initial construction and installation of the permanent improvements proposed to be installed by the JPA within the first year following the Effective Date and the recording of the Subsurface Easement Grant Deed, whichever is later:

- a. The JPA and JPA Agents shall coordinate with Carlton Oaks regarding the times of access to the Property to perform work to ensure the JPA's activities do not unreasonably interfere with Carlton Oaks' operation of the Property as a golf course.
- b. Except as otherwise approved by Carlton Oaks in writing, JPA will, to the extent commercially feasible, use horizontal directional drilling or other subsurface construction methods for locating and maintaining JPA's permanent improvements in order to minimize or eliminate interference with Carlton Oaks' operation of the surface of the Property.
- c. Surveyors and other personnel acting on behalf of the JPA or JPA Agents may access the Property to perform surface monitoring, to place temporary equipment (specifically 10-gauge [approx. 1/2 inch] wires or similar small equipment flush with the surface over the Subsurface Easement and Temporary License Area). Placement of temporary equipment is anticipated to occur on approximately two occasions. The JPA or JPA Agents will remove the temporary equipment upon completion of its use in each instance. The JPA or JPA Agents will place the temporary equipment in such a manner as to not interfere with Carlton Oaks' operation of the Property as a golf course, specifically walking and passage of golf carts, and the JPA and Carlton Oaks will coordinate to ensure that the grass can be mowed, by either Carlton Oaks mowing around the temporary equipment or the JPA Agents temporarily moving the wire for mowing. No trucks or heavy equipment shall enter on the Property except in cases of any cleanup or restoration activities or as otherwise approved in advance by Carlton Oaks.

2. **Government Regulations.** JPA shall obtain, at its sole cost and expense, all governmental permits and authorizations required by any and all governmental agencies for performance of its Work on the Property.

3. **Term.** The term of this Right of Entry shall commence on the Effective Date and shall terminate and expire upon the termination or expiration of the Lease. The Parties acknowledge and agree that upon the termination or expiration of the Lease, the Subsurface Easement Grant Deed shall no longer be subject to the Lease as a superior interest. No additional instrument, consent or action by either party shall be required to terminate this Right of Entry after the termination or expiration of the Lease.

4. **Indemnification.** The JPA shall defend, indemnify and hold Carlton Oaks and the City free and harmless from any and all claims, damages, liens, demands, liabilities, judgments (including attorneys' fees, expert fees and costs) arising out of or encountered in connection with the use of the Subsurface Easements, including but not limited to claims of personal injury, property damage, or any losses or claims arising out of any actual or allegedly defective services, materials, workmanship, construction or storage of equipment, materials, or supplies, or for which any aspect of the use of the Subsurface Easements constitutes a proximate or legal cause. Such indemnification does not extend to liability arising from the willful misconduct or negligence of Carlton Oaks or the City or their employees, agents, attorneys, invitees, licensees and/or representatives.

5. **Insurance Requirements.** JPA shall purchase and maintain commercial general liability insurance or equivalent risk management coverage meeting the requirements of Section 7 of the Lease and include Carlton Oaks and the City as additional insureds on such policy. The JPA shall also cause the JPA Agents to purchase and maintain insurance meeting the requirements of Section 7 of the Lease related to their performance of work related to the use of the Subsurface Easements.

6. **Notice.** Any notice is to be sent to the persons and addresses stated below:

CARLTON OAKS

Alika, LLC
Attn: General Manager
9200 Inwood Dr.
Santee, CA 92071

JPA

East County Advanced Water
Purification Joint Powers Authority
Attn: JPA Administrator / Padre Dam
General Manager
P.O. Box 719003
Santee, CA 92072

7. **General Provisions.** This Right of Entry shall be construed in accordance with, and governed by, the laws of the State of California. In the event that any part of this Right of Entry shall become illegal, null or void, the remaining portions of the Right of Entry shall not be affected and shall remain in force and effect.

8. . . **Counterparts.** This Right of Entry may be executed in counterparts, each of which shall be an original, constituting one instrument.

9. **Right of Entry Runs with the Land; Recordation.** Subject to expiration and termination as provided in Section 3, the provisions of this Right of Entry shall run with the land and inure to the benefit of and bind the heirs, successors, and assigns of JPA and Carlton Oaks. JPA may record this Right of Entry in the official records of the County of San Diego at JPA's sole cost and expense.

SIGNATURES ON FOLLOWING PAGE(S)

IN WITNESS WHEREOF, this Right of Entry is executed by the Parties as set forth below.

**ALIKA, LLC, d.b.a. CARLTON OAKS
COUNTRY CLUB:**

By: [Signature]

Its: Manager

Dated: 12/20/2022

**EAST COUNTY ADVANCED WATER
PURIFICATION JOINT POWERS
AUTHORITY:**

By: [Signature]

Its: Acting CEO/General Manager

Dated: 12/20/2022

Approved as to Form:

By: [Signature]

Its: General Counsel

Dated: 12/20/2022

(Notary Acknowledgment Required for Each Signatory)

CALIFORNIA ACKNOWLEDGMENT

CIVIL CODE § 1189

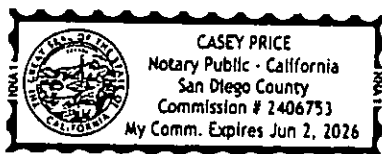
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of San Diego

On December 20, 2022 before me, Casey Price, Notary Public
Date Here Insert Name and Title of the Officer
 personally appeared John Hsiang Peng Chen
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

[Signature]

Signature of Notary Public

Place Notary Seal and/or Stamp Above

OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

☐ Corporate Officer – Title(s): _____

☐ Partner – ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: _____

Signer is Representing: _____

Signer's Name: _____

☐ Corporate Officer – Title(s): _____

☐ Partner – ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: _____

Signer is Representing: _____

CALIFORNIA ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of San Diego }

On December 20, 2022 before me, Casey Price, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Paul Clarke
Name(s) of Signer(s)

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.



Place Notary Seal and/or Stamp Above

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Signature]
Signature of Notary Public

OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

☐ Corporate Officer – Title(s): _____

☐ Partner – ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: _____

Signer is Representing: _____

Signer's Name: _____

☐ Corporate Officer – Title(s): _____

☐ Partner – ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: _____

Signer is Representing: _____

EXHIBIT 1

DESCRIPTION / MAP OF LEASED PROPERTY

Exhibit A: Premises Description

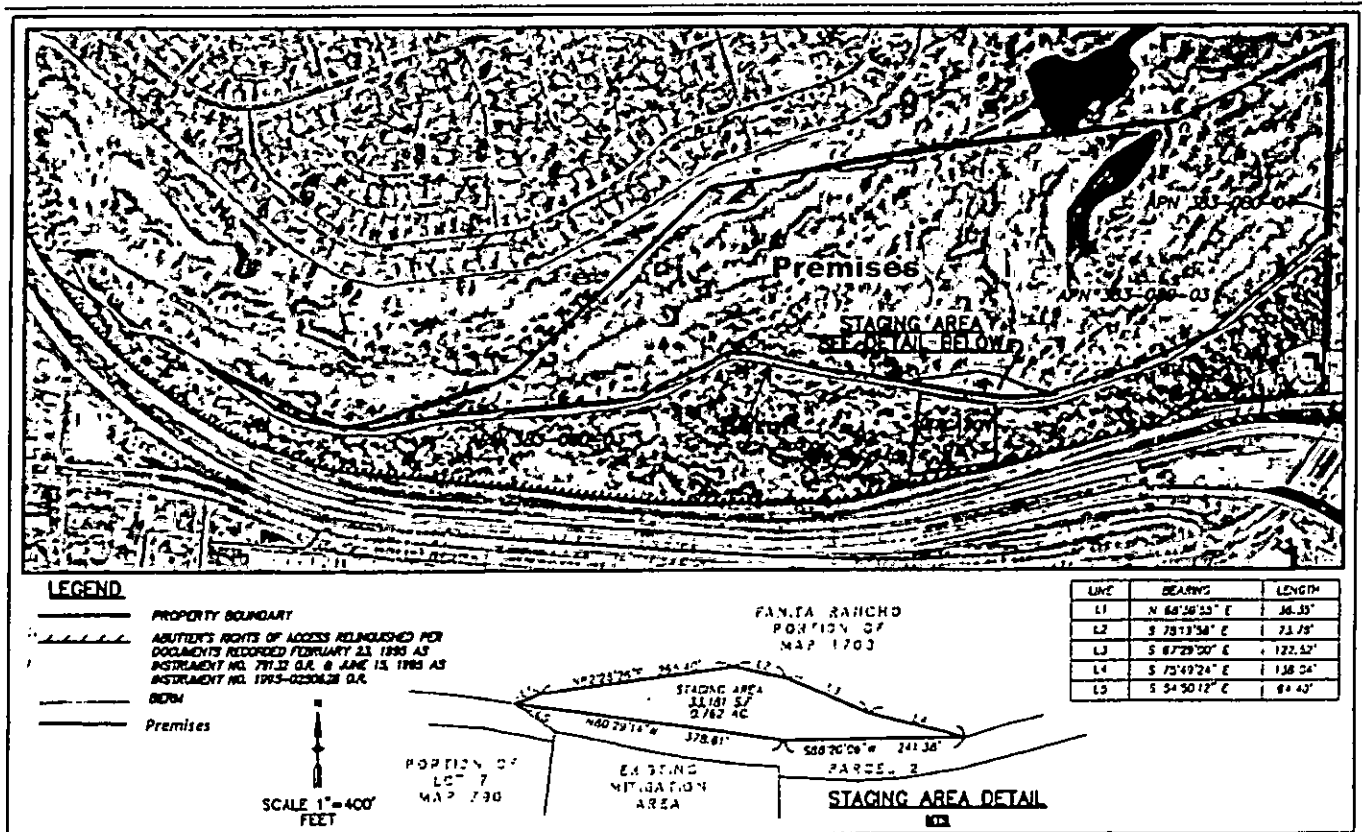


EXHIBIT 2

SUBSURFACE EASEMENT GRANT DEED, INCLUDING EXHIBITS

RECORDING REQUESTED BY

CHICAGO TITLE COMPANY

AND WHEN RECORDED MAIL TO:

East County Advanced Water
Purification Joint Powers Authority
PO Box 719003
Santee, CA 92072

Portions of APN 383-080-03 & 383-080-04

SPACE ABOVE FOR RECORDER'S USE ONLY
NO RECORDING FEE DUE: CALIF. GOV. CODE §6103

SUBSURFACE EASEMENT GRANT DEED

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, and subject to the terms and conditions in this Easement,

THE CITY OF SAN DIEGO,
A CALIFORNIA MUNICIPAL CORPORATION ("GRANTOR"),

HEREBY GRANTS TO

**EAST COUNTY ADVANCED WATER PURIFICATION JOINT POWERS
AUTHORITY**

a California joint powers agency ("GRANTEE"),

A PERMANENT SUBSURFACE EASEMENT AND RIGHT OF WAY (the "Easement") under and through that real property owned by GRANTOR ("Grantor's Property") to access, construct, install, reconstruct, operate, maintain, repair, and replace conveyance and communications facilities between East Mission Gorge Pump Station and any proposed or future advanced water purification facilities ("Easement Activities"), including improvements to be installed in the Easement Area, within that area of Grantor's Property (the "Easement Area") described in **Exhibit A: Legal Description** and depicted on **Exhibit B**.

1. GRANTEE shall have the right to use the Easement Area at GRANTEE's own risk for the Easement Activities, provided that such use is not inconsistent or incompatible with, and does not unreasonably conflict or interfere with the rights reserved by GRANTOR herein, and subject to the following:
 - (a) Physical access to the surface areas above the Easement Area, vegetation removal, installation of any structures, cleanouts, or landscaping on the surface, changing the grading, or any other activity that would require or alter the surface above the Easement Areas shall be prohibited without the written consent of both the GRANTOR and the operator of the golf course on Grantor's Property

("GRANTOR's Lessee") (provided that the Lease was originally entered into prior to the recordation of this Easement), in the GRANTOR and GRANTOR's Lessee's sole discretion, except as otherwise provided in subsection (b) below;

- (b) Subject to Section 3 below, GRANTEE may physically access the surface areas above the Easement Area as reasonably necessary to perform temporary non-excavating activities in furtherance of the Easement Activities, including but not limited to surface monitoring, the placement of minor temporary equipment to aid with the Easement Activities, and, if necessary, any cleanup or restoration activities related to the Easement Activities; provided that GRANTEE shall not substantially unreasonably interfere with GRANTOR Lessee's or GRANTOR's use of such surface areas, and that, except in cases of emergency, GRANTEE provides at least 10 days' prior written notice describing the proposed access and activities to both the GRANTOR and the GRANTOR's Lessee (provided that the Lease was originally entered into prior to the recordation of this Easement) and coordinates with GRANTOR and/or GRANTOR's Lessee to avoid any unreasonable conflict or interference with GRANTOR and/or GRANTOR's Lessee's use of such surface areas; and
 - (c) The installation of any other pipelines and underground utilities (other than those pursuant to the above-described Easement Activities) through the Easement Area shall be prohibited without GRANTOR's prior written consent in each instance, which consent shall be in the GRANTOR's sole discretion.
2. The Easement Area shall be kept clear of any buildings, major structures (that would potentially interfere with subsurface easement rights), or explosives, whether permanent or temporary, except with GRANTEE's prior written consent in each instance, which consent shall be in GRANTEE's sole reasonable discretion. Roads, fences, berms, irrigation ponds, trees, shrubs, landscaping, shade structures, pathways, benches, and other similar minor structures, materials or growth are permitted, provided that they do not unreasonably interfere with GRANTEE's facilities within the Easement Area or the Easement Activities. GRANTOR shall not increase or decrease the ground surface elevations within the Easement after installation of GRANTEE's improvements without prior written consent of GRANTEE. Such consent may be conditional upon the relocation of GRANTEE's facilities at no cost to GRANTEE.
3. This Easement is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, leases, permits, and licenses, easements, and rights-of-way, or other interests affecting or relating to the Easement Area, whether or not of record, existing on the date that the Easement Deed is recorded with the San Diego County Recorder's Office ("Superior Interests"). GRANTEE shall be solely responsible for obtaining all licenses, permits, agreements, or other authorizations required from holders of Superior Interests, as may be or become necessary or reasonably advisable to allow GRANTEE'S use of the Easement Area. GRANTEE acknowledges that the Easement Area is located below an operating golf course, and that the GRANTEE is aware that the Property in which the Easement Area is located is leased by the GRANTOR to the operator of the golf course.

By granting this Subsurface Easement, GRANTOR shall not be deemed to have granted GRANTEE any rights to use the surface areas of the Property above the Easement Areas, or to limit the use thereof by GRANTOR or GRANTOR's Lessee pursuant to Section 2, until GRANTEE obtains written consent from GRANTOR's Lessee as to this Easement or the surface-related terms hereof. If GRANTEE'S use of the Easement Area is or becomes inconsistent or incompatible with a Superior Interest, including the GRANTOR's Lessee, GRANTEE shall take such actions and pay all costs and expenses necessary to remove such inconsistency or incompatibility to the satisfaction of the holder of the Superior Interest.

4. GRANTEE, on behalf of its successors, assigns and successors-in-interest, shall indemnify, defend, protect, and hold City and City's successors, assigns, partners, affiliates and members and all their respective officers, directors, shareholders, participants, partners, affiliates, employees, representative, invitees, and agents, harmless from and against any and all claims, obligations, liabilities, cause of action, suits, debts, liens, damages, judgments, losses, demands, orders, penalties, settlements, costs and expenses (including without limitation, attorneys' fees and costs and any and all costs and expenses related to, whether directly or indirectly, any and all clean-up, remediation, investigations, monitoring, abatement, mitigation measures, fines or removal with respect hazardous materials of any kind or nature whatsoever), resulting from, related to, or based upon, whether directly or indirectly the grant of this Easement to the GRANTEE, or the GRANTEE's use of such Easement; provided, however, that GRANTEE's duty to defend, indemnify, and hold harmless shall not include any claims or liability to the extent arising from the sole negligence or intentional misconduct of GRANTOR or its elected officials, officers, employees, representatives or agents.
5. The provisions of this Grant Deed shall run with the land and inure to the benefit of and bind the respective successors and assigns of the parties and entities stated herein.

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, this Grant Deed is executed to be effective upon its recordation in the Official Records of San Diego County, California.

San Diego City Council Authorizing Resolution No. 314436

Date of Final Passage: November 28, 2022

GRANTOR:

THE CITY OF SAN DIEGO, a California municipal corporation

Approved as to form:

MARA W. ELLIOTT, City Attorney

BY: Penny Maus
Penny Maus (Mar 9, 2023 17:32 PST)

BY: _____
Name: _____
Title: _____
Date: _____

Penny Maus
Director, Department of Real Estate and Airport
Management

Date: Mar 9, 2023

[Additional signatures to follow on next page]

GRANTEE:

**EAST COUNTY ADVANCED WATER
PURIFICATION JOINT POWERS AUTHORITY**

BY: _____

**Kyle Swanson
General Manager/CEO of Padre Dam Municipal
Water District, Administrator of the East
County Advanced Water Purification Joint
Powers Authority**

CERTIFICATE OF ACCEPTANCE
(Government Code Section 27281)

This is to certify that the interest in real property conveyed by this Grant of Easement to the East County Advanced Water Purification Joint Powers Authority ("JPA"), a California joint powers agency organized and existing pursuant to Government Code section 6500, *et seq.*, is hereby accepted by the undersigned officer on behalf of the JPA pursuant to the authority granted to the undersigned by the JPA's Board of Directors pursuant to Resolution 2020-04, as may be amended.

East County Advanced Water Purification Joint
Powers Authority, a California joint powers agency

By: _____

CEO/General Manager of Padre Dam
Municipal Water District (Acting as
Administrator of the East County Advanced
Water Purification Joint Powers Authority)

Date: _____

Exhibit A: Description of Easement Areas

Permanent Easement

EXHIBIT A

ALL THAT PORTION OF TRACT 7 OF FANITA RANCHO ACCORDING TO MAP NO. 790, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY ON DECEMBER 21, 1894, O.R., MORE PARTICULARLY DESCRIBED AS FOLLOWS:

A STRIP OF LAND BEING 50 FEET IN WIDTH LYING 25 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE:

COMMENCING AT THE EASTERLY TERMINUS OF COURSE 43 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 NO. 92-0665040, O.R.; THENCE, SOUTH 64°09'19" WEST 304.58 FEET ALONG SAID COURSE 43 TO THE TRUE POINT OF BEGINNING, SAID TRUE POINT OF BEGINNING BEING A POINT ON A NON-TANGENT CURVE CONCAVE NORTHEASTERLY AND HAVING A RADIUS OF 2,786.58 FEET, A RADIAL LINE TO SAID TRUE POINT OF BEGINNING BEARS SOUTH 77°23'55" WEST; THENCE SOUTHERLY 113.11 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 2°19'33"; THENCE SOUTH 14°55'38" EAST 935.07 FEET TO A POINT ON COURSE 44A OF SAID PARCEL MAP NO. 16978.

THE SIDELINES OF SAID STRIP OF LAND SHALL BE LENGTHENED OR SHORTENED TO TERMINATE ON THE EAST AT SAID COURSE 44A OF PARCEL MAP NO. 16978, AND ON THE NORTH AT SAID COURSE 43 OF PARCEL MAP 16978.

AREA EQUALS 52,409 SQUARE FEET, MORE OR LESS.

APN: 383-080-03 (48,689 SQUARE FEET) AND 383-080-04 (3,720 SQUARE FEET)

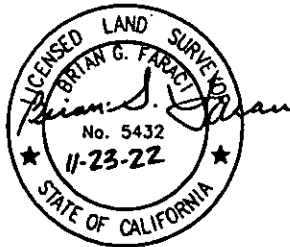
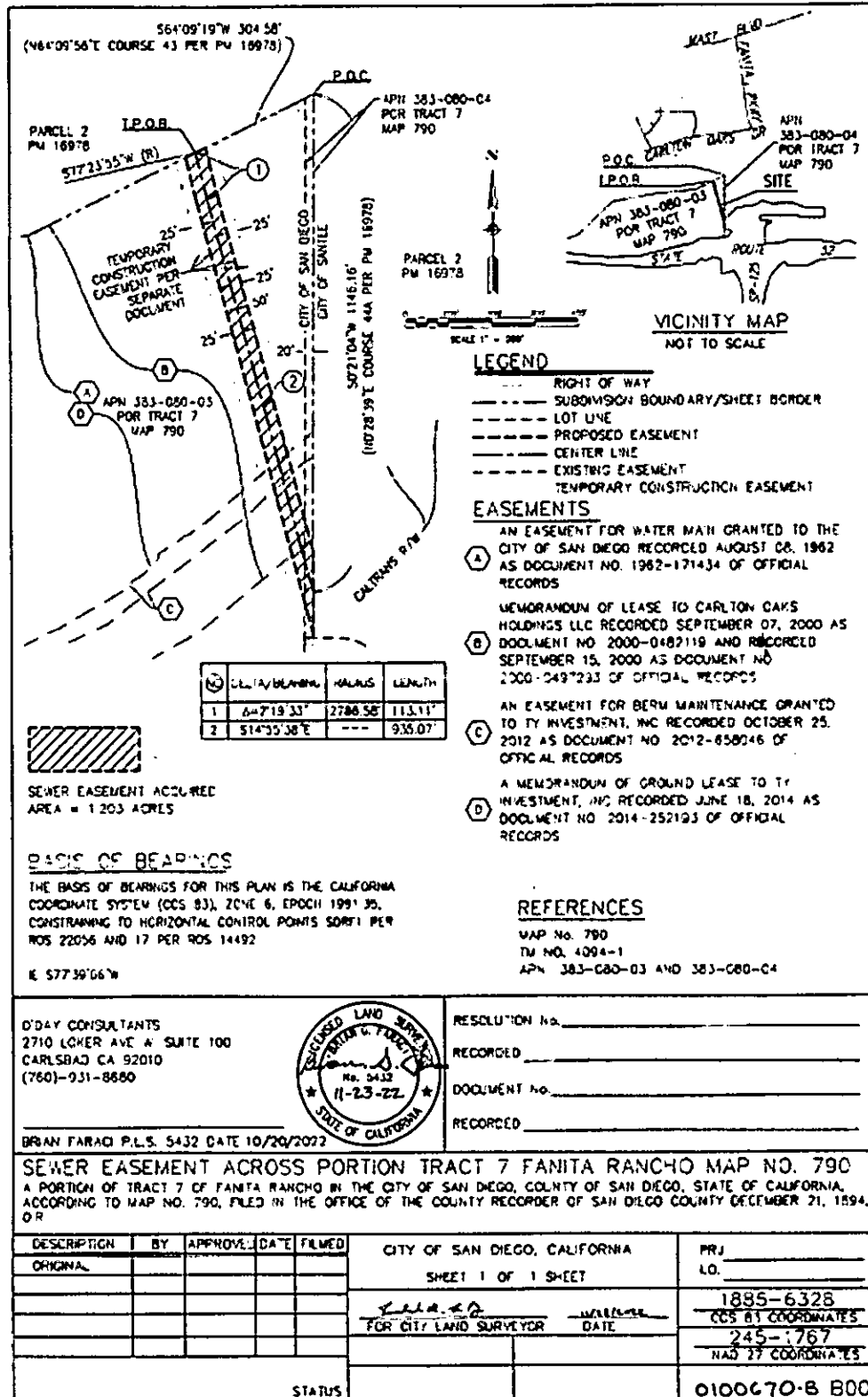


Exhibit B



[Subsurface Easement Deed]

NOTARY

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

COUNTY OF _____)

On _____ (date) before me, _____
(name and title of the officer) personally appeared _____

_____ (name(s) of signer(s)), who
proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to
the within instrument and acknowledged to me that he/she/they executed the same in his/her/their
authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity
upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
) ss.
County of _____)

On _____ before me, _____ (insert name and title of the officer) personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

11/15/22-
11/15/22-

(R-2023-246)

RESOLUTION NUMBER R- **314436**

DATE OF FINAL PASSAGE **NOV 28 2022**

A RESOLUTION OF THE COUNCIL OF THE CITY OF
SAN DIEGO AUTHORIZING THE SALE OF THE REAL
PROPERTY AT 8810 MISSION GORGE ROAD IDENTIFIED
AS ASSESSOR'S PARCEL NUMBER (APN) 383-080-05 AND
A PORTION OF APN 383-080-03 AND APN 383-080-04
COMMONLY KNOWN AS THE EAST MISSION GORGE
PUMP STATION AND RELATED ACTIONS.

WHEREAS, the City of San Diego (City) currently owns the real property located at
8810 Mission Gorge Road, Santee, California, identified as Assessor's Parcel Number (APN)
383-080-05, and portions of APN 383-080-03, and 383-080-04, (Real Property) which are
improved with wastewater collection and conveyance improvements and equipment commonly
known as the East Mission Gorge Pump Station (On-Site Improvements); and

WHEREAS, the On-Site Improvements, which do not include the East Mission Gorge
Force Main (Force Main), are fed by a 174-foot long, 48-inch diameter pipe (Off-Site
Improvements) which is also owned by the City; and

WHEREAS, the City also owns land adjacent to the Real Property, identified as a
different portion of APNs 383-080-04 and 383-080-03, which is leased by the City to the
operator of the Carlton Oaks Golf Course, under which the East County Advanced Water
Purification Joint Powers Authority (ECAWP JPA) needs to acquire a subsurface easement for
two pipelines required for conveyance and communication facilities between the East Mission
Gorge Pump Station and the proposed East County Advanced Water Purification facility
(Subsurface Easement); and

WHEREAS, the ECAWP JPA desires to purchase the Real Property, the On-Site
Improvements, the Off-Site Improvements and the Subsurface Easement, as well as all
appurtenances (collectively Property) in accordance with the Purchase and Sale Agreement and

Joint Escrow Instructions which is include in the staff materials accompanying this resolution (Purchase and Sale Agreement); and

WHEREAS, no City department has requested to use the Property, or retain the City's interest in the Property for a future municipal use, except that the Public Utilities Department identified the need for certain access and sewer pipeline easements to be reserved, as well as the need for covenants, conditions, and restrictions to be put in place regarding operation of the East Mission Gorge Pump Station to manage wet weather flows; and

WHEREAS, as part of the Purchase and Sale Agreement, the City will reserve a permanent access easement across the Real Property in order to ensure that the City can access City-owned adjacent land in the future, and the City will also reserve a sewer pipeline easement to access, operate, maintain and repair the City's Force Main, until such time as the Force Main is relocated by the ECAWP JPA off of the Real Property, at which time, the City will quitclaim its interest in the sewer pipeline easement back to the ECAWP JPA; and

WHEREAS, on September 21, 2021, the City Council adopted San Diego Resolution R-313714 (Oct. 1, 2021), declaring the Property exempt surplus land under the Surplus Land Act (as set forth in California Government Code sections 54220 through 54236), and the California Department of Housing and Community Development (HCD) confirmed its agreement with the City Council's declaration in an October 7, 2021, e-mail; and

WHEREAS, the Real Property, On-Site Improvements, and Off-Site Improvements were appraised by an independent Member Appraisal Institute (MAI) appraiser at \$1,872,000, which if the Purchase and Sale Agreement is approved, will be the purchase price paid by the ECAWP JPA to the City for those items (East Mission Gorge Pump Station Purchase Price); and

WHEREAS, the Subsurface Easements are currently being appraised by an MAI appraiser, and City staff is seeking authorization from the City Council to sell the Subsurface

Easement to the ECAWP JPA at the appraised value once determined (Subsurface Easement Purchase Price), as set forth in the Purchase and Sale Agreement; and

WHEREAS, the Council has determined that the sale of the Property is to another public agency because the Property is required for a public purpose, and that the sale is at a price and includes terms that are fair and equitable, and in the public interest; and

WHEREAS, all proceeds received from the sale of City-owned real property must be used exclusively for the acquisition and construction of permanent public improvements in accordance with San Diego Charter section 77; and

WHEREAS, the Office of the City Attorney has drafted this resolution based on the information provided by City staff, with the understanding that this information is complete, true, and accurate NOW, THEREFORE,

BE IT RESOLVED, by the City Council of the City of San Diego, as follows:

1. That the Mayor, or designee, is authorized to sell the Property at the appraised value as more specifically set forth in the Purchase and Sale Agreement, which once signed by all Parties will be on file with the City Clerk as Document No. RR- 314436, and to pay the City's proportionate share of the sale costs from the sale proceeds.

2. That the Mayor, or designee, is authorized to sign and deliver the Purchase and Sale Agreement, and any other documents including the grant deed, easement deed or escrow instructions required to complete the sale of the Property and comply with the City's obligations under the Purchase and Sale Agreement.

3. That the Mayor is authorized to sign and deliver a quitclaim deed to the ECAWP JPA quitclaiming all interest in the sewer pipeline easement reserved to the City in the grant deed to the ECAWP JPA once the conditions in the grant deed are satisfied.

4. That the Chief Financial Officer is authorized to accept and deposit the East Mission Gorge Pump Station Purchase Price, less costs related to the sale, into the Municipal Sewer CIP Fund 700008, and to deposit the Independent Consideration, if any, into the Municipal Sewer Revenue Fund 700000.

5. That the Chief Financial Officer is authorized to accept and deposit the Subsurface Easement Purchase Price, less any costs of sale, into the Municipal Sewer CIP Fund 700008 and Water Utility CIP Fund 700010, in proportion to the ownership interests of each fund in the land through which the Subsurface Easements are being granted.

APPROVED: MARA W. ELLIOTT, City Attorney

By /s/ Melissa D. Ables
Melissa D. Ables
Chief Deputy City Attorney

MDA:cw
October 30, 2022
Or. Dept: DREAM
Doc. No.: 3129298

(R-2023-246)

I certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of NOV 15 2022.

ELIZABETH S. MALAND
City Clerk

By Kristell Medina
Deputy City Clerk

Approved: 11/21/22
(date)

Todd Gloria
TODD GLORIA, Mayor

Vetoed: _____
(date)

TODD GLORIA, Mayor

Passed by the Council of The City of San Diego on NOV 15 2022, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Joe LaCava	☒	☐	☐	☐
Jennifer Campbell	☒	☐	☐	☐
Stephen Whitburn	☒	☐	☐	☐
Monica Montgomery Steppe	☒	☐	☐	☐
Marni von Wilpert	☒	☐	☐	☐
Chris Cate	☒	☐	☐	☐
Raul A. Campillo	☒	☐	☐	☐
Vivian Moreno	☐	☐	☒	☐
Sean Elo-Rivera	☒	☐	☐	☐

NOV 28 2022

Date of final passage _____

(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

AUTHENTICATED BY:

TODD GLORIA

Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California.

By Kristell Medina Deputy

Office of the City Clerk, San Diego, California

314436

Resolution Number R-_____

**CONSENT TO
RIGHT OF ENTRY AND CONSENT TO USE OF SUBSURFACE EASEMENT
(Carlton Oaks Country Club)**

THIS CONSENT TO RIGHT OF ENTRY AND CONSENT TO USE OF SUBSURFACE EASEMENT ("Consent") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("City"), and Alike LLC (assignee of TY Investment, Inc. d.b.a Carlton Oaks Country Club) ("Lessee"), to be effective upon the respective authorized representatives of City and Lessee all signing this Consent and the form of this Consent being approved by the San Diego City Attorney. This Consent is made and entered into in reference to the following recited facts:

RECITALS

- A. City and Ty Investment Inc., a California general corporation doing business as "Carlton Oaks Country Club", entered into that certain Ground Lease dated January 1, 2012 ("Lease"), relating to that certain City-owned real property described in Exhibit "A" attached to the Lease ("Premises Description").
- B. The Lease was assigned to Alike LLC on May 16, 2017. City consented to the assignment on April 17, 2018.
- C. City granted a Subsurface Easement to the East County Advanced Water Purification Joint Powers Authority ("JPA"), recorded in the Official Records of San Diego County as Document number 2022-0475763, on December 21, 2022 ("Subsurface Easement"), which is Exhibit 2 to the Right of Entry (defined in Recital D), attached to this Consent as **Exhibit A**.
- D. Lessee and the JPA desire to enter into a "Right of Entry and Consent to Use of Subsurface Easement" on a portion of the Premises for the purposes described in the Subsurface Easement, and for no other purpose or use. A true and correct copy of the Right of Entry and Consent to Use of Subsurface Easement between Lessee and JPA (subject to this Consent being effective) is attached to this Consent as **Exhibit A ("Right of Entry")**.
- E. Section 4 of the Lease requires Lessee to obtain City's consent prior to entering into any license of the Premises.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are acknowledged, City and Lessee agree as follows:

1. City Consent to Right of Entry. Subject to the terms and conditions of this Consent and the Lease, City consents to Lessee entering into the Right of Entry for the Premises (identified as the "Premises" in the Lease). All terms and conditions of the Lease shall control and supersede all inconsistent or contrary provisions in the Right of Entry. Lessee shall provide a copy of this Consent to the JPA, and obtain their signature on the Acknowledgment of Receipt of Consent to Right of Entry attached hereto as **Exhibit B**.

2. No Effect on Lease. Notwithstanding any provision of this Consent to the contrary, this Consent does not release, discharge, or modify any obligation of Lessee under the Lease.

3. Subsequent Subleasing. This Consent does not constitute City's consent to any subsequent assignment, Right of Entry, or license under the Lease or relating to the Premises and does not relieve Lessee or any person claiming under or through Lessee of the obligation to obtain City's consent to any future assignment, sublease, or license pursuant to the Lease.

4. Processing Fees. Lessee agrees to pay City a Nine Hundred Eighty Dollar (\$980.00) processing fee for processing this Consent.

5. Brokerage Commissions or Finder's Fees. Lessee acknowledges and agrees that City will not be liable for any brokerage commission or finder's fee in connection with the consummation of the Right of Entry. Lessee agrees to protect, defend, indemnify, and hold City harmless from any brokerage commission or finder's fee in connection with the consummation of the Right of Entry or this Consent, and from any cost or expense (including attorney fees) incurred by City in resisting any claim for any such brokerage commission or finder's fee. The provisions of this Section 5 shall survive the expiration or earlier termination of the Lease, the Right of Entry, or this Consent.

6. Subordination. The Right of Entry is subject to and subordinate to the terms, covenants and conditions of the Lease. The Right of Entry may only be in effect while the Lease is in effect. Nothing in this Consent modifies the expiration date of the Lease or Right of Entry. Lessee represents and warrants to City that Lessee provided Sublessee a true, correct, and complete copy of the Lease before JPA entered into the Right of Entry.

7. Lessee Estoppels. Lessee certifies the following to City as of the date of this Consent:

7.1 Lessee has not assigned its interest in the Lease or otherwise transferred its interest in the Lease;

7.2 The Lease is in full force and effect, there have been no amendments, modifications, changes, or additions to the Lease since its execution; and

7.3 Lessee is not in default or breach under the Lease and no event has occurred that would constitute a default or breach under the Lease by Lessee, without regard for any requirement to give notice and/or for the passage of time.

8. No Fee Title Encumbrance. Nothing in this Consent or any document referenced in this Consent is intended to create or authorize the creation of any transfer, lien, or encumbrance affecting the fee title to the Premises.

**SIGNATURE PAGE
TO
CONSENT TO RIGHT OF ENTRY
(Carlton Oaks Country Club)**

IN WITNESS WHEREOF, this Consent is made and entered into by and through the signatures of the respective authorized representative(s) of City and Lessee, as set forth below:

THE CITY OF SAN DIEGO, a California
municipal corporation

Date: Mar 9, 2023

By: 
Penny Maus (Mar 9, 2023 17:32 PST)
Penny Maus, Director
Department of Real Estate and Airport
Management

Approved as to form on Mar 10, 2023

MARA W. ELLIOTT
City Attorney

By: 
Melissa Ables (Mar 10, 2023 08:35 PST)
Melissa Ables
Chief Deputy City Attorney

ALIKA LLC, D.B.A. CARLTON OAKS
COUNTRY CLUB

Date: March 1, 2023

By: 
Name: John Chen
Title: Manager member

**EXHIBIT A
TO
CONSENT TO RIGHT OF ENTRY
(Carlton Oaks Country Club)**

RIGHT OF ENTRY

[Attached behind this cover page]

EXHIBIT B
TO
CONSENT TO RIGHT OF ENTRY
(Carlton Oaks Country Club)

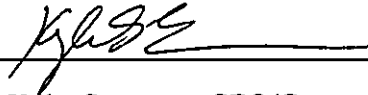
ACKNOWLEDGMENT OF RECEIPT OF CONSENT TO RIGHT OF ENTRY

(Carlton Oaks Country Club)

East County Advanced Water Purification Joint Powers Authority ("JPA"), makes the following acknowledgments, representations, and warranties for the benefit of The City of San Diego, a California municipal corporation ("**Landlord**"), as "Lessor" under that certain Ground Lease dated January 1, 2012 ("**Lease**"), relating to that certain City-owned real property described in Exhibit "A" attached to the Lease ("**Premises**"), originally entered into with Ty Investment Inc., a California general corporation doing business as "Carlton Oaks Country Club, and assigned to Alika LLC on May 16, 2017, as the "**Lessee**":

1. JPA acknowledges entering into that certain Right of Entry and Consent to use of Subsurface Easement, with Lessee, dated December 20, 2022 ("**Right of Entry**"), on a portion of the Premises for the purposes described in the Subsurface Easement and for no other purpose or use.
2. JPA acknowledges receipt of a copy of that certain Consent to Right of Entry and Consent to Use of Subsurface Easement dated December 20, 2022, between City and Lessee relating to the Right of Entry ("**Consent**").
3. JPA further acknowledges receipt of a copy of the Lease prior to entering into the Right of Entry.
4. JPA further acknowledges, represents, and warrants that a true and correct copy of the Right of Entry is attached as Exhibit "A" to the Consent.

East County Advanced Water Purification Joint
Powers Authority

By: 

Date: March 6, 2023

Name: Kyle Swanson, CEO/General Manager