

CITY OF SAN DIEGO

ORIGINAL

DUPLICATE ORIGINAL

THIRD AMENDMENT TO LEASE AGREEMENT

This Third Amendment, entered into this 26 day of December, 1995, to the lease filed February 10, 1959 (City Clerk's Document 58619) and as amended by City Clerk's Documents 636386, and 274366 between the Casablanca Country Club (LESSEE) and the City of San Diego (LESSOR). The LESSOR and LESSEE desire to amend and modify the above lease in the manner set forth below:

Section (C) last sentence of the first paragraph is deleted and the following is added in its place:

Rent shall be computed each year on an annual basis based on CPI increases as provided in this lease. However, the rent shall be payable on a quarterly basis with one fourth of the annual amount due on the 31st day of March, the 30th day of June, the 30th day of September and the 31st day of December of each lease year.

The remaining terms and conditions of the lease agreement shall continue to be in full force and effect and this agreement shall become effective upon execution by the City Manager of the City of San Diego.

CITY OF SAN DIEGO (LESSOR)

Dated 1/12/96

By Robert J. Collins for the
City Manager

LESSEE

Dated 12/26/95

By Susan R. [Signature]
General Manager

Approved as to form and legality this 17 day of January, 1996.

JOHN W. WITT, City Attorney

By [Signature]
City Deputy

SW:rc

12-13-95

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COPY

CITY OF SAN DIEGO

SECOND AMENDMENT TO LEASE AGREEMENT

This Second Amendment, entered into this 11th day of September, 1989, to the lease filed February 10, 1959 (City Clerk's Document 58619) and as amended by City Clerk's Document 636386, between the Carlton Santee Corporation (LESSEE) and the City of San Diego (LESSOR). The LESSOR and LESSEE desire to amend and modify the above lease in the manner set forth below:

Section (C) of the lease is deleted and the following is added in its place:

- (C) LESSEE shall pay to the City annually in advance rent in the initial sum of Fifty-eight Thousand Three Hundred Dollars (\$58,300.00) per year for the five-year period commencing January 1, 1989 through December 31, 1993, except that the rent for the period January 1, 1989 through December 31, 1989, shall be Twenty-nine Thousand One Hundred and Fifty Dollars (\$29,150.00). On the first day of each calendar year within said five-year period commencing January 1, 1990, rent shall be further adjusted to reflect changes during the previous calendar year in the Consumer Price Index for all items for Los Angeles/Anaheim/Riverside 1982-84 = 100. In no event shall the rent be reduced below the established base rent within said five-year period. Rent shall be payable annually on or before January 31, at the Office of the City Treasurer of the City of San Diego.

Regardless of the index publication dates, the effective date of the rent adjustment is as specified. Until the rent adjustment can be reasonably determined by the index method, LESSEE shall continue to make payments at the existing rental rate. When the adjustment is determined, the balance of rents due at the adjusted rate will be paid to CITY within thirty (30) days. In no event shall the adjusted rent as established by the Consumer Price Index be less than the established base rent of said five-year period.

Index Adjustment Computation. The rent for each rental period following the adjustment, until the next adjustment or other rental determination as provided herein, shall be determined prior to the date of adjustment by multiplying the rent which is effective immediately prior to said adjustment by the "adjustment figure" established as follows:

The "adjustment figure" shall be established by dividing the "current index" by the "base figure," both as defined herein:

The "base figure" for the first such adjustment shall be a three-month average of index figures published by said CPI using the fourth, fifth and sixth full months preceding the effective date of this agreement.

DOCUMENT NO. BR-274366

FILED SEP 11 1989
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

To illustrate, if the lease began in May, the CPI figures for November (sixth month), December (fifth month) and January (fourth month) preceding May would be averaged to establish the base figure (Example 1).

The "current index" shall be a three-month average of index figures published by said CPI. The three months to be used to establish said average shall be the fourth, fifth and sixth full months preceding the adjustment date.

The "base figure" for each successive adjustment shall be the "current index" figure used in the last preceding adjustment period (Examples).

Example 1

$$\frac{\text{Current Index } 121}{\text{Base Figure } 110} = 1.10 \text{ (Adjustment Figure)}$$

$$\text{Effective Rent} \times 1.10 = \text{Adjusted Rent}$$

Example 2

$$\frac{\text{Current Index } 138}{\text{Base Figure } 121} = 1.14 \text{ (Adjustment Figure)}$$

$$\text{Effective Rent} \times 1.14 = \text{Adjusted Rent}$$

The adjustment figure is then multiplied by the annual rent from the preceding adjustment period to determine the new rent. Using the foregoing examples, if the rent is now \$1,000 per month, after the first adjustment it will be \$1,100 per month (\$1,000 x 1.10). In the second adjustment, it will be \$1,254 per month (\$1,100 x 1.14).

For each of the remaining five-year periods in the term of the lease, beginning on January 1, 1994, 1999, and 2004, respectively, the annual rent shall be adjusted as follows:

- (1) The City shall prepare an appraisal of the unencumbered fee value of the leased property as if undeveloped, vacant and available for improvement to its highest and best use and present same to LESSEE at least 120 days before the end of each five-year period of the term of the lease.

LESSEE shall have the right to accept City's appraisal, or retain its own appraiser, in which event it shall present a written appraisal to the City at least sixty (60) days before the end of the five-year period of the lease term. If the two appraisals differ no more than ten percent (10%) of the amount of the smaller appraisal, the two appraisals shall be averaged and the average shall be the appraised value of the property for the purpose of

determining rent for the following five-year period of the lease term. If the two appraisals differ more than ten percent (10%), then the two appraisers shall select a third appraiser and the opinion of said third appraiser shall be final. Rent for the succeeding five-year period of the lease term shall be fixed at ten percent (10%) of the final appraisal of the leased property.

- (2) During each succeeding five-year period of the lease term, the rent will be subject to annual adjustments for changes in the Consumer Price Index in the same manner as during the first five-year period of the term set forth above.

- (D) (4) The following should be added to Paragraph (D)4:

LESSEE shall have the right to redesign and renovate the golf course portion lying on the leased premises in accordance with plans submitted and approved by the City Manager of the City of San Diego, and by execution of this modification to the lease the City Manager shall be deemed to have approved said plans, a copy of which are attached hereto. LESSEE shall obtain all necessary permits, approvals and licenses for the proposed golf course renovation.

- (D) (9) The following should be added to the end of Paragraph (D)9:

The consent of the City to any assignment of the lease shall not be unreasonably withheld.

Section (D)(17), entitled Insurance, is deleted and the following is added in its place:

- (D) (17) Insurance. LESSEE shall take out and maintain at all times during the term of this lease the following insurance at its sole expense:

- a. Public liability and property damage insurance in the amount of not less than ONE MILLION DOLLARS (\$1,000,000) Combined Single Limit Liability with an occurrence claims form. This policy shall cover all injury or damage, including death, suffered by any party or parties from acts or failures to act by CITY or LESSEE or by authorized representatives of CITY or LESSEE on or in connection with the use or operation of the premises.
- b. Fire, extended coverage, and vandalism insurance policy on all insurable property on the premises in an amount to cover 100 percent of the replacement cost. Any proceeds from a loss shall be payable jointly to CITY and LESSEE. The proceeds shall be placed in a trust fund to be reinvested in

rebuilding or repairing the damaged property. If there is a mortgage or trust deed on the leasehold, the proceeds may be paid to the approved mortgagee or beneficiary so long as adequate provision reasonably satisfactory to CITY has been made in each case for the use of all proceeds for repair and restoration of damaged or destroyed improvements on the premises.

- c. Conditions. All insurance policies will name CITY as an additional insured, protect CITY against any legal costs in defending claims, and will not terminate without sixty (60) days' prior written notice to CITY. All insurance companies must be satisfactory to CITY and licensed to do business in California. All policies will be in effect on or before the first day of the lease, except "course of construction fire insurance" shall be in force on commencement of all authorized construction on the premises, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. A copy of the insurance policy will remain on file with CITY during the entire term of the lease. At least thirty (30) days prior to the expiration of each policy, LESSEE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the terms of this lease.
- d. Modification. CITY, at its discretion, may require the revision of amounts and coverages at any time during the term by giving LESSEE sixty (60) days' prior written notice. CITY'S requirements shall be designed to assure protection from and against the kind and extent of risk existing on the premises, and LESSEE shall not be required to provide any further or different coverage than is required of other City LESSEE'S with similar types of properties. LESSEE also agrees to obtain any additional insurance required by CITY for new improvements on the leased premises, in order to meet the requirements of this lease.
- e. Accident Reports. LESSEE shall report to CITY any accident causing more than TEN THOUSAND DOLLARS (\$10,000) worth of property damage or any serious injury to persons on the premises. This report shall contain the names and addresses of the parties involved, a statement of the circumstances, the date and hour, the names and addresses of any witnesses and other pertinent information.
- f. Failure to Comply. If LESSEE fails or refuses to take out and maintain the required insurance, or fails to provide the proof of coverage, CITY has the right to obtain the insurance. LESSEE shall reimburse CITY for the premiums paid with

interest at the maximum allowable legal rate then in effect in California. CITY shall give notice of the payment of premiums within thirty (30) days of payment stating the amount paid, names of the insurer(s) and rate of interest. Said reimbursement and interest shall be paid by LESSEE on the first (1st) day of the month following the notice of payment by CITY.

Notwithstanding the preceding provisions of this Subsection f., if LESSEE fails or refuses to take out or maintain insurance as required in this lease, or fails to provide the proof of insurance thirty (30) days after notice and demand for same has been delivered to LESSEE, CITY has the right to declare this lease in default and CITY shall be entitled to exercise all legal remedies in the event of such default.

Section (D)(20) is deleted and the following is added in its place:

(D) (20) Waste, Damage, or Destruction. LESSEE agrees to give notice to CITY of any fire or other damage that may occur on the leased premises within ten (10) days of such fire or damage. LESSEE agrees not to commit or suffer to be committed any waste or injury or any public or private nuisance, to keep the premises clean and clear of refuse and obstructions, and to dispose of all garbage, trash, and rubbish to the reasonable satisfaction of the CITY. If the leased premises shall be damaged by any cause which puts the premises into a condition which is not decent, safe, healthy and sanitary, LESSEE agrees to make or cause to be made full repair of said damage and to restore the premises to the condition which existed prior to said damage; or, at CITY'S option, LESSEE agrees to clear and remove from the leased premises all debris resulting from said damage and rebuild the premises in accordance with plans and specifications previously submitted to CITY and approved in writing in order to replace in kind and scope the operation which existed prior to such damage, using for either purpose the insurance proceeds as set forth in Section (D)17, Insurance, hereof.

LESSEE agrees that preliminary steps toward performing repairs, restoration, or replacement of the premises shall be commenced by LESSEE within thirty (30) days, and the required repairs, restoration, or replacement shall be completed within a reasonable time thereafter. CITY may determine an equitable deduction in the minimum annual rent requirement for such period or periods that said premises are untenable by reason of such damage.

Paragraphs (D)21. and 23. are deleted.

Section D(24) entitled, Eminent Domain, is added:

(D) (24) Eminent Domain. If all or part of the premises are taken through condemnation proceedings or under threat of condemnation by any public authority with the power of eminent domain, the interests of CITY and LESSEE (or beneficiary or mortgagee) will be as follows:

- a. In the event the entire premises are taken, this lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
- b. In the event of a partial taking, if, in the reasonable opinion of CITY, the remaining part of the premises is unsuitable for the lease operation, this lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
- c. In the event of a partial taking, if, in the reasonable opinion of CITY, the remainder of the premises is suitable for continued lease operation, this lease shall terminate in regard to the portion taken on the date of the transfer of title or possession to the condemning authority, whichever first occurs, but shall continue for the portion not taken. The rent shall be equitably reduced to reflect the portion of the premises taken.
- d. Award. All monies awarded in any such taking which are reasonably allocable to the leased premises taken, or to the diminution in value of the leased premises taken shall belong to the CITY. LESSEE shall be entitled to any award attributable to the taking of or damages to LESSEE'S then remaining leasehold interest in installations or improvements of LESSEE, and the damages to LESSEE'S fee interest. CITY shall have no liability to LESSEE for any award not provided by the condemning authority.
- e. Transfer. CITY has the right to transfer CITY'S interests in the premises in lieu of condemnation to any authority entitled to exercise the power of eminent domain. If a transfer occurs, LESSEE shall retain whatever interest it may have to compensation which would otherwise be awarded to LESSEE in accordance with Subparagraph d. above.
- f. No Inverse Condemnation. The exercise of any CITY right under this lease shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon CITY for inverse condemnation.
- g. In no event shall this amendment be construed to increase the value of any condemnation award that the lessee might be entitled to under the original lease and first amendment.

STATE OF HAWAII

CITY AND COUNTY OF HONOLULU

)
) SS.
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On this 12th day of June, 1989, before me personally appeared ALLEN R. KUNIMOTO, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

lt

J. Ann O'Grady-Jacobs
Notary Public, State of Hawaii

My commission expires: 1/2/92

If any portion of the leased property is taken for the purpose of aligning the proposed freeway 52, the lessee shall not receive any award because of this amendment which it would otherwise not have been entitled to receive if this amendment was not entered into.

The remaining terms and conditions shall continue to be in full force and effect and this agreement shall become effective upon execution by the City Manager of the City of San Diego.

CITY OF SAN DIEGO (LESSOR)

Dated 9-11-89 By Kent Elmer
ASSISTANT TO THE City Manager

LESSEE
Dated 6/1/89 By [Signature]

Approved as to form and legality this 22 day of Sept, 1989
JOHN W. WITT, City Attorney

By [Signature]
Deputy City Attorney

CVS:JBC:st(62-9)
5-24-89

(R-90-311)

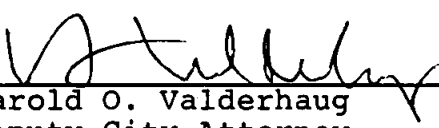
RESOLUTION NUMBER R- **274366**

ADOPTED ON **SEP 11 1989**

BE IT RESOLVED, by the Council of The City of San Diego, that the City Manager is hereby authorized and empowered to execute, for and on behalf of The City of San Diego, a second amendment to lease agreement with ALAN R. KUNIMOTO, owner and operator of Carlton Oaks Country Club, which amendment clarifies the method of rental adjustments for the lease premises for the balance of the lease term, under the terms and conditions set forth in that second amendment to lease agreement on file in the office of the City Clerk as Document No. RR-**274366** .

APPROVED: JOHN W. WITT, City Attorney

By


Harold O. Valderhaug
Deputy City Attorney

HOV:ps
08/11/89
Or.Dept:Prop.
Job:220585
R-90-311
Form=r.none

Passed and adopted by the Council of The City of San Diego on

SEP 11 1989 by the following vote:

YEAS: Wolfsheimer, Roberts, McColl, Struiksma, Henderson, McCarty, Filner,
Mayor O'Connor.

NAYS: None.

NOT PRESENT: Pratt.

AUTHENTICATED BY:

MAUREEN O'CONNOR
Mayor of The City of San Diego, California

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California

(SEAL)

By: MAYDELL L. PONTECORVO, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true
and correct copy of RESOLUTION NO. R- 274366, passed
and adopted by the Council of The City of San Diego, California
on SEP 11 1989.

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California

(SEAL)

By: Maydell L. Pontecorvo, Deputy

RESOLUTION No. 169872

ADOPTED ON MAR 13 1962

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

That the City Manager be, and he is hereby authorized and empowered to execute, for and on behalf of said City, an Amendment to lease Agreement with Carlton Santee Corporation leasing to said corporation a portion of Lot 7, in "T" Tract of Fanita Rancho, for construction and maintenance of a golf course and related installations, under the terms and conditions set forth in the form of amendment to lease agreement on file in the office of the City Clerk as Document No. 636177.

Presented by _____

APPROVED: ALAN M. FIRESTONE, City Attorney,

By _____
Chief Deputy.

M/3/1/62

IN WITNESS WHEREOF, this Amendment to lease agreement is executed by the City, acting by and through the City Manager of said City, under and pursuant to Resolution No. 169872 authorizing such execution, and the Lessee has caused this amendment to be executed and its corporate name and seal to be affixed by the proper officers, the day and year first above written.

CAULTON CARTER CORPORATION,
A California Corporation

By W.W. MAST, PRES.

By HAROLD BERNIS, SECY

THE CITY OF SAN DIEGO,

By T.W. FLETCHER
City Manager

I HEREBY APPROVE the form and legality of the foregoing Amendment to Lease Agreement this 2 day of March, 1960.

ALAN M. FREESTONE, City Attorney

By ROBERT S. TEALE

MAR 20 1962

FILED

OFFICE OF THE CITY CLERK

SAN DIEGO, CALIFORNIA

AMENDMENT TO LEASE AGREEMENT

THIS AMENDMENT, made and entered into this 15th day of March,

1962, by and between the CITY OF SAN DIEGO A municipal corporation hereinafter called "City" and CARLTON GARTHE CORPORATION, a California Corporation, whose address is Suite 100, 9399 Wilshire Blvd., Beverly Hills, California.

WITNESSETH

WHEREAS, the parties heretofore have entered into a lease agreement covering a portion of Ranita Rancho, which said Lease Agreement is filed in the office of the City Clerk as Document No. 586194, and

WHEREAS, said Lease Agreement provides for the leasing to Lessee for the purpose of: Construction, operation and maintenance of a golf course, golf course club house and appurtenant structures and installations, and for no other purpose, and

WHEREAS, City and Lessee now desire to amend and modify said Lease Agreement as more particularly hereinafter set forth; now THEREFORE:

In consideration of the mutual covenants and conditions herein contained, City and Lessee hereby agree to amend and modify said Lease Agreement to provide as follows:

THAT PART OF SECTION (A) SETTING FORTH THE LEGAL DESCRIPTION OF LEASED PREMISES IS DELETED IN ITS ENTIRETY AND THE FOLLOWING SUBSTITUTED:

That portion of Lot 7 in "T" Tract of Ranita 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 said County, December 21, 1894, more particularly bounded and described as follows:

Beginning at the North West corner of Lot 1 in the Resubdivision of Part of Ranita Rancho, Map No. 1703; thence along the following numbered courses and distances:

- (1) South 0°22'50" West (Record South 0°04' East), 2430.50 feet to Point 12;
- (2) South 57°49'37" East, 852.67 feet (Record South 58°20' East, 852.3 feet) to Point 13;
- (3) South 63°41'37" East (Record South 64°12' East), 783.00 feet to Point 14, said point being the TRUE POINT OF BEGINNING, THENCE CONTINUING;
- (4) North 72°35'41" East, 694.93 feet (Record North 72°09' East, 693.8 feet) to Point 15;
- (5) North 46°56'57" East, 1131.79 feet (Record North 46°29' East, 1131.6 feet) to Point 16;

- (6) North $79^{\circ}58'57''$ East, 941.00 feet (Record North $79^{\circ}31'$ East, 940.7 feet) to Point 17;
- (7) North $83^{\circ}59'57''$ East, 998.67 feet (Record North $83^{\circ}32'$ East, 998.9 feet) to Point 18;
- (8) North $64^{\circ}11'12''$ East, 739.43 feet (Record North $63^{\circ}42'$ East, 739.3 feet) to Point 19;
- (9) South $07^{\circ}29'12''$ West (Record due South) 1021.46 feet;
- (10) South $50^{\circ}41'33''$ West, 335.67 feet;
- (11) South $60^{\circ}28'33''$ West, 155.35 feet;
- (12) South $73^{\circ}43'28''$ West, 302.71 feet;
- (13) South $69^{\circ}13'08''$ West, 287.73 feet;
- (14) South $76^{\circ}28'08''$ West, 245.28 feet;
- (15) North $87^{\circ}46'52''$ West, 676.62 feet;
- (16) North $75^{\circ}17'02''$ West, 626.26 feet;
- (17) South $86^{\circ}57'48''$ West, 948.81 feet;
- (18) South $78^{\circ}57'33''$ West, 670.25 feet;
- (19) North $7^{\circ}37'58''$ West, 5.28 feet, to said Point 14, being also the TRUE POINT OF BEGINNING.

Reference Point Numbers 12 through 19 are located on City of San Diego Engineering Drawing No. 3159-D.

Record bearings and dimensions are according to said Map No. 1703.

Above described parcel contains 72.88 Acres.

THAT SECTION (B) BE DELETED IN ITS ENTIRETY AND THE FOLLOWING SUBSTITUTED:

(B) The term shall be Fifty (50) years beginning on the first day of January 1959 and ending on the 31st day of December, 2009, provided however, that this lease may be terminated at any time upon construction of Mission Gorge Dam (see Paragraph 21, ante) upon 365 days written notice, and if such notice is given by City exclusively pursuant to this paragraph, City shall also tender to the Lessee a proportional part of any rent paid in advance by Lessee.