

# ORIGINAL

## CITY OF SAN DIEGO CONSENT TO ASSIGNMENT OF LEASE

THIS CONSENT TO ASSIGNMENT OF LEASE ("Consent") is made by THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), to be effective as of the later date that this Consent is executed by City and approved by the San Diego City Attorney ("Effective Date").

### RECITALS

- A. WHEREAS, CITY, as lessor, and TY INVESTMENT, INC., a California general corporation, as lessee ("LESSEE"), entered into that certain Lease Agreement, dated January 1, 2012, filed in the Office of the City Clerk, San Diego, California, as Document No. 307498 ("Lease") relating to real property consisting of approximately 64.3 acres that are part of a larger 106-Acre tract 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 (Premises). The Premises include the southerly portion of the Carlton Oaks Golf Course located at 9200 Inwood Drive, Santee, California.

Adjacent to the southerly portion of the Premises consists of a land feature commonly referred to as a berm (Berm) which serves in part to limit the flooding of the Carlton Oaks Golf Course. The parties to said Lease have agreed that the southerly boundary of the Premises is defined by the north toe of the slope of the Berm so that the entire structure of the Berm will lie outside the Premises.

- B. WHEREAS, LESSEE and ALIKA, LLC a California limited liability company ("ASSIGNEE") entered into an Agreement of Purchase and Sale ("Agreement"), dated December 6, 2016, which was subsequently amended by LESSEE and ASSIGNEE. The Agreement includes the assignment of said Lease ("Assignment"), which was accomplished by an Assignment and Assumption Agreement dated May 16, 2017 wherein LESSEE assigns all of its rights, title and interest in, to and under the Lease to the ASSIGNEE, and ASSIGNEE assumes all of the LESSEE's obligations, duties, and covenants under the Lease. The Agreement and all amendments thereto are attached hereto as Exhibit "A," and the Assignment and Assumption Agreement are attached hereto as Exhibit "B."
- C. WHEREAS, Section 4.2 of the Lease requires that LESSEE obtain the CITY's consent to any assignment of any portion of LESSEE's right, title or interest in the Lease prior to any assignment being effective.

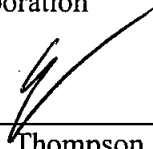
NOW, THEREFORE, CITY provides its consent, subject to and provided that the following are and remain true during the remainder of the Lease term:

1. Consent; Assumption of Obligations; and Lease Controls. In reliance upon ASSIGNEE's assumption of all obligations as "Lessee" under the Lease, CITY hereby consents to LESSEE's request to assign all of its right, title and interest in and to the Lease to ASSIGNEE. By giving this Consent, CITY is merely consenting to the Assignment. City is not bound by any term or condition in any asset purchase agreement, or other assignment agreement, between LESSEE and ASSIGNEE. All terms and conditions of the Lease shall

IN WITNESS WHEREOF, this Consent is executed by CITY acting by and through its Mayor, or his designee.

THE CITY OF SAN DIEGO, a California  
municipal corporation

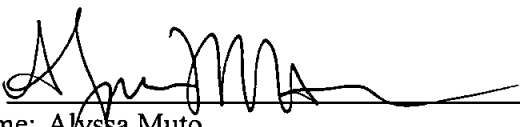
Date: 4/10/18

BY:   
Cybele L. Thompson, Director  
Real Estate Assets Department

*Environmental Analysis Section Environmental Clearance:*

This activity is Categorically Exempt from CEQA pursuant to CEQA Guidelines Section 15301 (Existing Facilities).

Date: 4/5/18

By:   
Name: Alyssa Muto,  
Title: Assistant Director, Environment and Policy  
Analysis, Planning Department

Approved as to form this \_\_\_\_\_ day  
of \_\_\_\_\_ 2018.

MARA W. ELLIOT, City Attorney

BY: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Approved As To Form**

Mara W. Elliott

BY: Melissa Ables Date: 4/17/18

NAME: Melissa Ables

TITLE: Deputy City Attorney

Exhibit "A"

Agreement of Purchase and Sale and Amendments

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## AGREEMENT OF PURCHASE AND SALE

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THIS AGREEMENT OF PURCHASE AND SALE (this "Agreement"), dated December 6, 2016 (the "Effective Date"), is made by and among TY INVESTMENT, INC., a California corporation, T INVESTMENT, INC., a California corporation, on the one hand (collectively, the "Seller"), and John Chen or his assignee, Alike LLC, on the other hand (the "Buyer").

### RECITALS

A. TY Investment, Inc. owns the property located at 9200 Inwood Drive, Santee, California, comprising approximately 103.5 acres (the "Fee Property"), Assessor Parcel Numbers 383-071-09-00, 383-071-06-00, 383-242-01-00, and 383-221-01 to -04, as more specifically described in Exhibit A.

B. TY Investment, Inc. also owns a leasehold interest to real property owned by the City of San Diego, comprising approximately 64.3 acres (the "Leasehold") under a lease dated January 1, 2012 between the City of San Diego and TY Investment, Inc. (the "Ground Lease"). The Fee Property, the Leasehold, and all structures and improvements, shall be referred to as the "Real Property".

C. Seller operates the Carlton Oaks Country Club aka the Carlton Oaks Golf Course, a golf, food and beverage, banquet and lodging business on the Real Property. Food, beverage, and banquet business operations on the Real Property are separately owned and managed by T Investment, Inc. T Investment, Inc. also holds liquor licenses (the "Licenses") from the State of California Department of Alcoholic Beverage Control (the "ABC"). This golf, lodging, food, beverage, and banquet operations shall be referred to as the "Business."

D. The Business is furnished and equipped with furniture, furnishings, fixtures, linen, uniforms, kitchen, and other equipment, vehicles, including golf carts, mowers, and tractors, and other nonconsumable items (collectively, "FFE"), an assortment of operating supplies consisting of housekeeping and laundry supplies, uniforms, utensils and wares, food and beverage inventories and supplies, paper and accounting supplies, golf supplies, and similar consumable items (collectively, the "Consumables") and inventory of tangible products for sale including clothing, golf clubs and balls, and similar golf course related items (collectively the "Inventory").

E. Seller owns the Real Property, the Consumables, the Inventory, and a portion of the FFE. The portion of the FFE not owned by Seller is held by Seller under leases. The Personal Property directly related to operation of the golf course is referred to as the "Golf Course Personal Property".

F. The Business rents and books for future private, retail or other commercial use, including, but not limited to, weddings, parties, lodgings, and golf tournaments (collectively, the "Reservations"). Seller has entered into various operating agreements for services beneficial to the Business. Seller's rights under the FFE leases, the Licenses, the operating agreements, and those Reservations that relate solely to the golf course operation and (if they extend beyond the Closing Date) are collectively called the "Golf Course Contract Rights."

G. Any goodwill and other intangible assets of the Golf Course Business are collectively called the "Golf Course Intangible Property."

H. The Real Property, the Golf Course Business, the Golf Course Personal Property, the Golf Course Contract Rights and the Golf Course Intangible Property, are collectively referred to as the "Subject Property."

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I. Seller desires to sell and assign to Buyer, and Buyer desires to purchase and acquire all of Seller's right, title and interest in and to the Subject Property.

### **AGREEMENT**

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Purchase of the Subject Property. Seller agrees to sell to Buyer all of Seller's right, title and interest in the Subject Property on or before March 10, 2017 for the price of Sixteen Million Dollars and Zero Cents (\$16,000,000.00) (the "Purchase Price"), subject to any adjustments and proration's as provided in this Agreement and allocated as follows:

(a) Ten Dollars and Zero Cents (\$10.00) for the Leasehold;

(b) Fifteen Million Nine Hundred Ninety-nine Thousand Nine Hundred and Ninety and Zero Cents (\$15,999,990.00) for the balance of the Subject Property. The allocation of this portion of the Purchase Price between the Real Property and the other non-Leasehold components of the Subject Property shall be as reasonably determined by the parties prior to the Closing Date.

(c) The Purchase Price shall be further allocated as follows:

A. T Investment, Inc. is to receive Three Million Dollars and Zero Cents (\$3,000,000.00); and

B. TY Investment, Inc. is to receive the balance of the Purchase Price.

2. Payment of Purchase Price. The Purchase Price shall be paid as follows:

(a) Deposited. Within thirty-three (33) days after the Effective Date, Buyer shall deposit with an escrow company to be determined (the "Escrow Agent"), the sum of two Million Dollars and Zero Cents (\$2,000,000.00) (the "Deposit"). Escrow Agent shall hold this Deposit until Closing with no obligation to place the funds in an interest bearing account. The Deposit is refundable and applicable towards the Purchase Price (i.e. the balance remaining on the Purchase Price shall be \$14,000,000.00). Seller and Buyer will provide Escrow Agent with agreed upon escrow instructions.

(b) Closing. Buyer has agreed to obtain a conventional loan in the amount of Eight Million Dollars (\$8,000,000.00) which shall be Deposit At or anytime before the Closing in addition Buyer shall deposit Six Million Dollars (\$6,000,000.00) to the Escrow At or anytime before the Closing, total sum bringing the total cash amount to Sixteen Million Dollars (\$16,000,000.00) in escrow at closing.

3. Liquidated Damages. Buyer and Seller have discussed that damages will be suffered by Seller if this Agreement is terminated by reason of Buyer's decision prior to Closing not to purchase the Subject Property. The parties recognize that it would be extremely difficult and impracticable, if not impossible, to ascertain with any degree of certainty the amount of damages which would be suffered by Seller. The parties agree that a reasonable estimate of Seller's damages in such an event is the amount of Ten Thousand Dollars (\$10,000.00). In the event this Agreement is terminated by reason of Buyer's determination to not purchase the Subject Property for any reason other than Seller's default, Seller shall receive and retain Ten Thousand Dollars (\$10,000.00) of the Deposit as liquidated damages and as Seller's sole remedy, at law or in equity, for Buyer's decision not to purchase. This section shall survive the termination of this Agreement.

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Seller's Initials

X  
Buyer's Initials

4. The Closing. The Closing shall occur on or before the Closing Date, but only after Buyer has submitted to the Escrow Agent the Eight Million Dollars (\$8,000,000.00). If Buyer fails to submit this amount in a timely manner before the Closing Date, then this Agreement shall terminate by its terms and neither party shall have any further rights or obligations except for those that survive termination of this Agreement.

5. Extensions. Buyer and Seller may extend the Closing Date by mutual agreement in writing signed by their respective authorized representatives

6. Title to the Property. At the Closing, Seller shall convey to Buyer:

(a) The Subject Property subject to all title exceptions.

(b) An assignment of Seller's interest in the Leaschold subject to approval and consent of transfer by the City of San Diego. Seller will cooperate with Buyer on obtaining the Leasehold transfer.

(c) Buyer shall obtain assignments of the Licenses from the California Department of Alcoholic Beverage Control at Buyer's sole expense. Seller shall cooperate with Buyer and the City of San Diego, at no expense to Seller, in order to accommodate said assignment.

7. Due Diligence. Buyer shall have a due diligence review period for sixty (60) days beginning on the Effective Date to conduct its investigation into the feasibility of the purchase of the Subject Property. At the conclusion of this due diligence period, the Buyer may terminate this Agreement for any reason, and all obligations, except for liquidated damages, shall have no further force and effect, and neither Seller nor Buyer shall any further obligations to each other.

8. Costs and Proration's.

(a) Costs. Buyer and Seller shall each pay one-half of the fees of the Escrow Agent, including any cancellation costs, and the costs of the Escrow. Buyer and Seller shall each pay their respective attorneys' fees.

(b) Customary Apportionment. All other costs, if any, shall be apportioned in the customary manner for real estate transactions in San Diego County, California.

(c) Proration's. All items of income and expense (including, without limitation, taxes and Ground Lease rentals), other than interest on any deed of trust or other lien to be paid off at or prior to the Closing shall be prorated between Buyer and Seller as of the Closing Date in the customary manner for real estate transactions in San Diego County, California.

9. AS IS Sale. Seller makes no representation or warranty of any kind whatsoever respecting the Subject Property, its parts or any portion thereof and none whatsoever for any purpose or intended use. Without limiting the generality of the foregoing, Buyer hereby acknowledges and accepts, knowingly and voluntarily, that it will be purchasing the Property in its "AS IS WITH ALL FAULTS" condition. Buyer further acknowledges and agrees that, by the Closing, Buyer will have had adequate opportunity to make its own independent investigations and studies of the Subject Property or any portion thereof, including, without limitation, a physical inspection including for the presence of hazardous materials at, on, under, around or otherwise associated with the Real Property or the transaction contemplated by this Agreement and that Buyer retained or had the opportunity to retain independent

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consultants to conduct such inspections and will be relying entirely thereon and on Buyer's own investigations as well as on the advice of its own consultants, legal counsel and other advisors concerning the transaction contemplated by this Agreement.

10. Representations and Warranties of Buyer. Buyer has not relied upon any statements, documents, or other materials provided by Seller in its acquisition of the Subject Property. Buyer waives all rights to sue, claim, or otherwise litigate, mediate, or arbitrate any issues relating to the Subject Property, this Agreement or the transaction contemplated therein, against Seller unless specifically permitted under this Agreement. Buyer accepts the Subject Property in its present state and condition and "AS-IS WITH ALL FAULTS".

11. Employment Matters. Seller shall terminate all current employees of the Business before the Closing, and Seller shall be solely responsible for its obligations to its employees. Buyer shall re-hire such employees needed for a smooth transition and in prompt and reasonable manner. Seller will deliver to Buyer all existing employee records prior to Closing to assist Buyer with his/its hiring process. No Seller employee is nor shall be construed as a third party beneficiary under this Agreement.

12. Miscellaneous.

(a) Assignment. Neither Buyer nor Seller shall assign to any person(s) any or all of its rights in this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld, denied, or delayed.

(b) Notices. All notices under the Agreement, must be made in writing.

(c) Brokers. Seller shall be responsible for the payment of any real estate brokerage commission owed relating to this transaction as required pursuant to a separate written agreement.

(d) California Law. This Agreement shall be construed under and in accordance with the laws of the State of California.

(e) Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereto, and the remainder of the provisions of this Agreement shall continue in full force and effect without impairment.

(f) Waiver. The waiver by either party of a breach of any provision of this Agreement shall not be deemed a waiver of any subsequent breach whether of the same or another provision of this Agreement.

(g) No Obligation to Third Parties. The execution and delivery of this Agreement shall not be deemed to confer any rights upon, nor obligate either of the parties hereto to, any person or entity not a party to this Agreement.

(h) Entire Agreement. This Agreement and the exhibits attached hereto constitute the entire agreement between the Parties hereto pertaining to the subject matter hereof and all prior and contemporaneous agreements, representations, negotiations and understandings of the Parties, oral or written. The provisions of this Agreement may not be amended or altered except by a written instrument duly executed by each of the Parties hereto.

(i) Attorneys' Fees. In the event of any breach of the Agreement or other claims or litigations relating to this Agreement as between Buyer and Seller, the prevailing party will be entitled to

an award of its attorney's fees and cost, including those of experts and consultants, in enforcing this Agreement.

(j) Counterparts. This Agreement may be signed in counterparts and taken together the counterparts when fully executed will constitute a single agreement. Facsimile or scanned signatures submitted by a Party will be accepted as originals on behalf of that Party.

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

**Seller: TY INVESTMENT, INC.**

By   
Hiroyuki Ota  
Authorized Officer and Representative

**Seller: T INVESTMENT, INC.**

By   
Hiroyuki Ota  
Authorized Officer and Representative

**Buyer: Alike LLC.**

By   
John Chen  
Authorized Officer and Representative

**EXHIBIT A**

**FEE PROPERTY LEGAL DESCRIPTION**

**PARCEL A:** (APN: 383-071-06-00 AND 383-071-09-00)

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.

EXCEPTING THEREFROM FROM PARCEL 2 A PORTION OF LAND CONVEYED TO THE CITY OF SAN DIEGO, A CALIFORNIA MUNICIPAL CORPORATION BY A DOCUMENT RECORDED OCTOBER 25, 2012 AS INSTRUMENT NO. 2012-0658044, OF OFFICIAL RECORDS.

**PARCEL B:** (APN: 383-221-01-00 THROUGH 383-221-04-00)

LOTS 10 THROUGH 13 INCLUSIVE, OF CARLTON COUNTRY CLUB ESTATES, UNIT NO. 1, IN THE CITY OF SANTEE, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 4402, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, NOVEMBER 25, 1959.

**FIRST AMENDMENT  
TO AGREEMENT OF PURCHASE AND SALE**

THIS FIRST AMENDMENT TO AGREEMENT OF PURCHASE AND SALE (the "Amendment") consisting of two (2) pages is entered into this 10th day of March, 2017 to amend the Agreement of Purchase and Sale dated December 6, 2016 between and among TY INVESTMENT, INC. and T INVESTMENT (collectively "Seller"), on the one hand, and Alika LLC (the "Buyer"), on the other hand.

A. Whereas, Seller and Buyer have agreed to amend the closing date of the transaction, increase the amount of liquidated damages to Seller and grant an extension to Buyer on the Closing; and

B. Whereas, both Seller and Buyer wish to state in writing this extension, the new amount of liquidated damages and the new Closing date, which amend the Agreement of Purchase and Sale dated December 6, 2016 (the "PSA"):

THEREFORE, in consideration of the mutual promises stated below, Seller and Buyer agree to the following provisions to amend the PSA:

1. Paragraph 1 of the PSA is amended to state the purchase date is now April 30, 2017 instead of March 10, 2017 and the Closing will take place on or before April 30, 2017.

2. The Deposit of Two Million Dollars (\$2,000,000) described in Paragraph 2 (a) is now **nonrefundable** and will be the amount of liquidated damages to Seller should Buyer fail to close the transaction on or before April 30, 2017 for any reason.

3. Paragraph 3 of the PSA is amended to change the amount of liquidated damages to Seller from Ten Thousand Dollars to Two Million Dollars (\$2,000,000), which is the amount equal to the Deposit described in the previous paragraph.

Seller's Initials: TO Buyer's Initials: AL

4. All other provisions of the PSA, except as amended by this Amendment, are unchanged and remain in full force and effect.

5. This Amendment shall inure to the benefit of and be binding upon the Parties and their respective heirs, representatives, successors and permitted assigns.

6. No promises, inducements or representations have been made by any Party relating to the foregoing subject matter other than those set forth in this Amendment. This Amendment supersedes all prior negotiations and understandings concerning the subject matter of this Amendment and contains all of the terms and provisions of the amendments

between the Parties. There are no oral understandings, statements, or stipulations bearing on the effect of the Amendment that have not been incorporated in this writing. The Amendment shall not be amended, supplemented, or abrogated other than by a written instrument executed by the Parties.

IN WITNESS WHEREOF, Seller and Buyer have executed this Amendment as of the day and year first above written.

"Seller"

TY INVESTMENT, INC.

By   
Hiroyuki Ota  
Authorized Officer and Representative

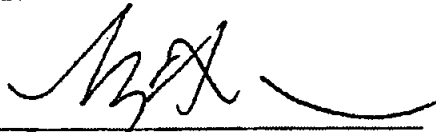
and

T INVESTMENT, INC.

By   
Hiroyuki Ota  
Authorized Officer and Representative

"Buyer"

Alika LLC

By   
John Chen  
Authorized Officer and Representative

**SECOND AMENDMENT  
TO AGREEMENT  
OF PURCHASE AND SALE**

THIS SECOND AMENDMENT TO AGREEMENT OF PURCHASE AND SALE (the "Second Amendment") consisting of two (2) pages is entered into this 25th day of April, 2017 to amend the Agreement of Purchase and Sale dated December 6, 2016 between and among TY INVESTMENT, INC. and T INVESTMENT (collectively "Seller"), on the one hand, and Alike LLC (the "Buyer"), on the other hand, and to also amend the First Amendment To Agreement of Purchase and Sale between Buyer and Seller dated March 10, 2017.

A. Whereas, Seller and Buyer have agreed to amend the closing date of the transaction and grant an additional extension to Buyer on the Closing; and

B. Whereas, both Seller and Buyer wish to state in writing this extension and the new Closing date, which amends the Agreement of Purchase and Sale dated December 6, 2016 (the "PSA") and the First Amendment to Agreement of Purchase and Sale dated March 10, 2017 (the "First Amendment"):

THEREFORE, in consideration of the mutual promises stated below, Seller and Buyer agree to the following provisions to amend the PSA and the First Amendment:

1. Paragraph 1 of the PSA is amended to state the purchase date is now May 19, 2017 and the Closing will take place on or before May 19, 2017, and Paragraph 1 of the First Amendment is deleted.

2. All other provisions of the PSA and the First Amendment (and specifically the liquidated damages and nonrefundable deposit of the First Amendment) are unchanged and remain valid and in full force and effect. The PSA, the First Amendment and the Second Amendment taken together contain the agreement between the Seller and Buyer.

3. This Second Amendment shall inure to the benefit of and be binding upon the Parties and their respective heirs, representatives, successors and permitted assigns.

4. No promises, inducements or representations have been made by any Party relating to the foregoing subject matter other than those set forth in this Amendment. This Amendment supersedes all prior negotiations and understandings concerning the subject matter of this Amendment and contains all of the terms and provisions of the amendments between the Parties. There are no oral understandings, statements, or stipulations bearing on the effect of the Amendment that have not been incorporated in this writing. The Amendment shall not be amended, supplemented, or abrogated other than by a written instrument executed by the Parties.

IN WITNESS WHEREOF, Seller and Buyer have executed this Amendment as of the day and year first above written.

"Seller"

TY INVESTMENT, INC.

By   
Hiroyuki Ota  
Authorized Officer and Representative

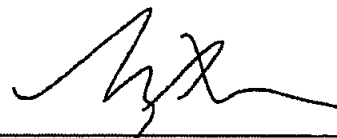
and

T INVESTMENT, INC.

By   
Hiroyuki Ota  
Authorized Officer and Representative

"Buyer"

Alika LLC

By   
John Chen  
Authorized Officer and Representative

**THIRD AMENDMENT  
TO AGREEMENT OF  
PURCHASE AND SALE**

THIS THIRD AMENDMENT TO AGREEMENT OF PURCHASE AND SALE consisting of two (2) pages (the "Third Amendment") is entered into this 28<sup>th</sup> day of April, 2017 to amend the Agreement of Purchase and Sale dated December 6, 2016 (the "PSA") between TY INVESTMENT, INC. AND T INVESTMENT (collectively, "Seller"), and ALIKA, LLC (the "Buyer"), and to also amend the First Amendment and the Second Amendment between Seller and Buyer.

A. Whereas, Seller and Buyer have agreed to amend the closing date of the transaction and other certain provisions relating to the payment of the Purchase Price; and

B. Whereas, both Seller and Buyer wish to state in writing their amendments, which amend the PSA, the First Amendment to Agreement of Purchase and Sale dated March 10, 2017 (the "First Amendment") and the Second Amendment to Agreement of Purchase and Sale dated April 25, 2017 (the "Second Amendment"):

THEREFORE, in consideration of the mutual promises stated below, Seller and Buyer agree to the following amendments to the PSA, the First Amendment and the Second Amendment:

1. Paragraph 1 of the PSA is amended to state the purchase date is now May 19, 2017 and the Closing will take place on or before May 19, 2017, and Paragraph 1 of the First Amendment is deleted and the Second Amendment extension date is also deleted. The Purchase Price remains unchanged.
2. Payment of Purchase Price in the PSA shall be amended as follows:
  - a. Buyer agrees to release the \$2,000,000 cash Deposit identified in paragraph 2 (a) of the PSA to the Seller within three (3) business days following execution of this Third Amendment. The Deposit shall be non-refundable and shall be applied to the Purchase Price at the time of Closing. Buyer shall fully cooperate with Seller and Escrow with any documentation and action necessary for the release of the Deposit to Seller and as may be requested by Seller or the Escrow Officer. Upon the release of the \$2,000,000 to Seller as provided, Buyer shall be deemed to have complied with the liquidated damages provision of the First Amendment.
  - b. Paragraph 2 (b) of the PSA shall be amended as follows: Buyer has agreed to obtain a conventional loan in the amount of \$3,000,000, the amount of which shall be paid into escrow at or before the time of Closing.
  - c. Seller agrees to subordinate \$3,000,000 of the Purchase Price which shall be secured by a Second Deed of Trust on the Property which shall be granted by the Buyer to TY Investment, Inc.

- d. Buyer shall pay to the Seller an amount equal to \$2,000,000 in personal funds which shall be paid into escrow before or at the time of Closing.
- e. The balance of the Purchase Price of \$6,000,000 shall be paid into escrow to the Seller before or at the time of Closing.

3. All other provisions of the PSA, First Amendment and Second Amendment, except as amended by this Third Amendment, shall remain in full force and effect.

4. This Third Amendment shall inure to the benefit of and be binding upon the Parties and their respective heirs, representatives, successors, and their permitted assigns.

5. No promises, inducements or representations have been made by any Party relating to the foregoing subject matter other than those set forth in this Third Amendment. This Third Amendment supersedes all prior negotiations and understandings concerning the subject matter of this Third Amendment and contains all of the terms and provisions of the amendments between the Parties. There are no oral understandings, statements, or stipulations bearing on the effect of the Amendment that have not been incorporated in this writing. The Third Amendment shall not be amended, supplemented, or abrogated other than by a written instrument executed by the Parties.

SELLER

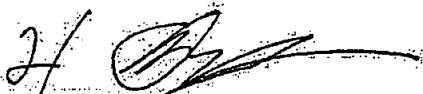
TY Investment, Inc.

By: 

Hiroyoki Ota  
Authorized Officer and Representative

and

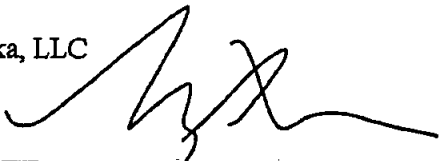
T Investment, Inc.

By: 

Hiroyoki Ota  
Authorized Officer and Representative

BUYER

Alika, LLC

By: 

John Chen  
Authorized Officer and Representative

## ASSIGNMENT AND ASSUMPTION OF LEASE AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION OF LEASE AGREEMENT ("Agreement") is made and entered into this 16<sup>th</sup> day of May, 2017, by and between **TY INVESTMENTS, INC.**, a California corporation ("Assignor") and **ALIKA, LLC**, a California limited liability company ("Assignee").

### RECITALS

WHEREAS, Assignor, as Tenant, and The City of San Diego, a California municipal corporation ("Landlord") entered into that certain Ground Lease Agreement dated January 1, 2012 (the "Lease") pursuant to which Landlord agreed to lease to Assignor certain Premises comprising approximately 64.3 acres within a certain 106-Acre Tract adjacent to and north of the San Diego River located on portions of Assessor's Parcel Numbers 383-080-03 and 383-080-04, as shown on the attached "**Exhibit A**"; and,

WHEREAS, this Agreement is subject to Landlord's written consent to an Assignment of said Lease by Assignor to Assignee; and,

WHEREAS, Assignor desires to assign all of its right, title and interest in the Lease to Assignee and Assignee desires to assume Assignor's obligations under the Lease.

### AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. **Assignment and Assumption.** Assignor hereby assigns all of its right, title, interest and obligations in and under the Lease to Assignee. Assignee hereby assumes all of Assignor's right, title, interest and obligations in and under the Lease. Borrower further assumes and agrees to perform all of the duties, obligation, covenants, agreements, promises, terms, conditions and provisions contained in the Lease to be observed, kept, performed or complied with by LESSEE, from and after the effective date of this Agreement. Notwithstanding the foregoing, City is not waiving any obligations under the Lease which are personal to Alika LLC.

2. **Assumption.** From and after the date hereof, Assignee hereby assumes, covenants and agrees to keep and perform each and every obligation of Assignor under the Lease. Assignee agrees to be bound by each and every provision of the Leases as if it had executed the same.

3. **Assignor's Representations and Warranties.** Assignor represents and warrants to Assignee that:

- (a) the Lease is in full force and effect, unmodified except as provided in this Agreement;
- (b) Assignor's interest in the Lease is free and clear of any liens, encumbrances or adverse interests of third parties;
- (c) Assignor possesses the requisite legal authority to assign its interest in the Lease as provided herein.
- (d) There are no sums due and owing by Assignor under the Lease as of the effective date hereof, and there exists no condition of default thereunder.

4. Indemnification. Assignor agrees to indemnify, defend and hold harmless Assignee from any and all claims, demands and debts due under the Lease prior to the Effective Date and Assignee agrees to indemnify, defend and hold harmless Assignor from any and all claims, demands and debts which may become due under the Lease after the Effective Date

5. Expenses. The parties hereto will bear their separate expenses in connection with this Agreement and its performance.

6. Entire Agreement. This Agreement embodies the entire understanding of the parties hereto and supersedes any previous drafts, agreements or understandings written or oral in effect between the parties relating to the subject matter hereof unless expressly referred to by reference herein. This Agreement may be amended or modified only by an instrument of equal formality signed by the parties or their duly authorized agents.

7. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California and each of the parties hereto submits to the non-exclusive jurisdiction of the courts of the State of California in connection with any disputes arising out of this Agreement.

8. Successors and Assigns. This Agreement and the provisions hereof shall be binding upon and shall inure to the benefit of the successors and assigns of the parties.

9. Attorneys' Fees. In the event of a dispute arising under this Agreement, the prevailing party shall be entitled to recover all reasonable attorneys' fees.

10. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Facsimile signatures shall be deemed the same as originals.

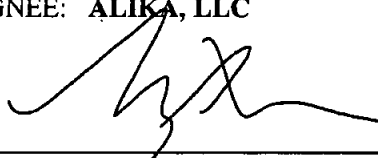
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written.

ASSIGNOR: TY INVESTMENTS, INC.

ASSIGNEE: ALIKA, LLC

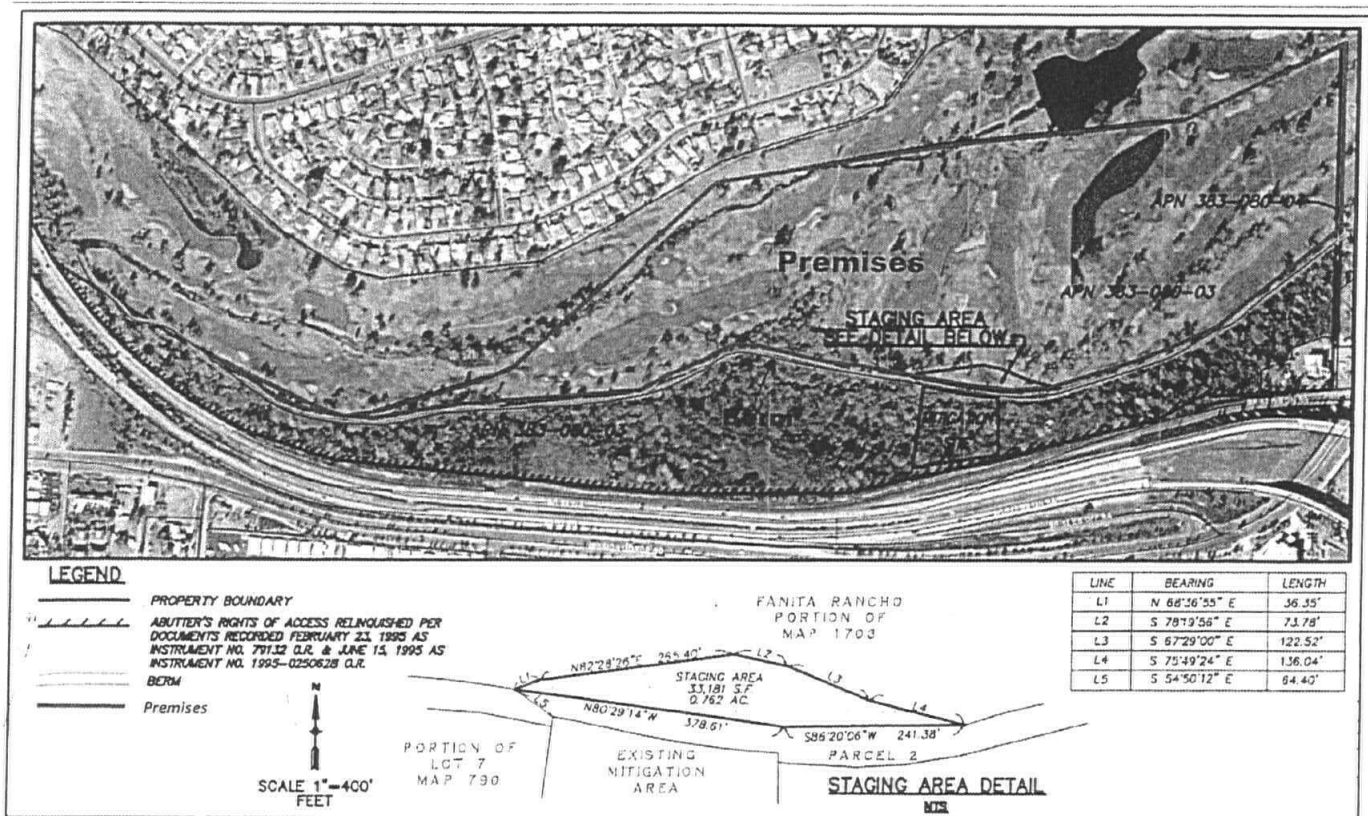


Hiroyuki Ota, President



John Chen, Managing Member

# Exhibit A: Premises Description



Issue: City cannot require Kinder Morgan Energy Partners, LP (KMP) to secure a payment bond for the Right of Entry (ROE) Permit at the SDCCU Stadium parking lot area (Property).

Paragraph 23 of ROE requires compliance with California Civil Code section 9550-9566 regarding payment bonds. These sections read in pertinent part:

**Section 9550 (a) A direct contractor that is awarded a public works contract involving an expenditure in excess of twenty-five thousand dollars (\$25,000) shall, before commencement of work, give a payment bond to and approved by the officer or public entity by whom the contract was awarded.**

**(b) A public entity shall state in its call for bids that a payment bond is required for a public works contract involving an expenditure in excess of twenty-five thousand dollars (\$25,000)**

Here the City has not awarded a contract to KMP. There is not any contract, let alone a public works contract, between the City and KMP for the work on the Property. In this instance, there is no expenditure of public funds by a public entity.

**Section 9554 (a) A payment bond shall be in an amount not less than 100 percent of the total amount payable pursuant to the public works contract.**

Again, there is no public works contract between the City and KMP, therefore, there is no amount upon which to base the bond.

**Section 9566 (a) A claimant does not have a right to recover on a payment bond unless the claimant provided work to the direct contractor either directly or through one or more subcontractors pursuant to a public works contract.**

There is no public works contract here and even if there was a payment bond, the claimant would not be able to recover because the work was not performed pursuant to a public works contract between the City and KMP.

And further, as outlined in other code sections that you referenced:

**California Labor Code Section 1720 (a) As used in this chapter, "public works" means:**

**(1) Construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds, . . . .**

Here it doesn't matter whether the City calls the project an alteration or demolition, there is no contract for these activities. The ROE is a permit to enter land. There are no public funds being paid to KMP, its contractor or any subcontractors, for any work done on the Property.

**San Diego Municipal Code Sections 22.3001-3020:**

**Section 22.3001: The purpose of this Division is to provide uniform definitions for Divisions 30, 31, 32, 33, 34, 35, 36 and 38 of Article 2, Chapter 2 of the Municipal Code; to establish general requirements that apply to contracts awarded under these Divisions and to provide clarity and consistency in the City's alteration of contracts (emphasis added).**

These provisions only apply to when specific Divisions within the City actually award contracts. This is clearly not the case here.

**Section 22.3003 Definitions: *City's Public Contracts Code* means the City's Charter, Municipal Code, Council policies, administrative regulations, past practices, current practices, or any portion of those laws, policies, regulations, or practices, pertaining to contracts or agreements between the City and other party (emphases added).**

As this only applies to City contracts and agreements, the other sections of this SD Municipal Code Article 2, Division 30 do not apply. Specifically, Section 22.3005 where the City can require "vendors, consultants and contractors to provide insurance and surety bonds for contracts" applies to City awarded contracts.

**California Public Contract Code Section 1100-1104;**

**Section 1100.7 This code is the basis of contracts between most public entities in this state and their contractors and subcontractors. . . .**

**Section 1101 "Public works contract," as used in this part, means an agreement for the erection, contraction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind (emphasis added).**

This only applies to agreements between the City and a contractor/subcontractor.

And lastly, even if State law requires the City to require a payment bond, which it doesn't, the SDMC Section 22.3002 Relationship to State Law states:

**Section 22.3002 (b) In the interest of ensuring an expeditious and fair procedure for administering the award of its public contracts, the City in its discretion may follow portions of the California Public Contract Code, but absent a judicial finding that a particular aspect of local public contracting is a matter of statewide concern, the City is not required to do so.**

It is clearly within the City's Charter to waive a requirement for a payment bond, if in fact, one were required.

In sum, there is no contract between the City and KMP to complete work on the Property. The ROE permit is a permit to enter the Property. The work that KMP is committed to perform is part of long-term continuing activities on the Property. It is the last phase of remediation activities that KMP completed pursuant to an order by the RWQCB. The City has previously

allowed KMP access to the Property for over a decade without the requirement of a payment bond. This is not a public works project. Therefore, there are no requirements for a payment bond for any of the work for which KMP requires access to the property to perform.

If the City is concerned about any liens placed on public property, please note that a contractor/subcontractor cannot lien public property. If a contractor/subcontractor working on a public project is not paid, the only thing they can do is file a stop payment notice with the public entity. The stop payment notice allows the City to withhold funds from the party to the public works contract. The contractor/subcontractor can then recover from the withheld funds. Here, the City does not have a public works contract with KMP, there is no expenditure of public funds and so there cannot be a stop payment notice. KMP's contractors have no rights against the City.