

## Notice of Public Meeting

### San Diego River Conservancy

A public meeting of the Governing Board of  
The San Diego River Conservancy  
will be held Thursday,

September 2, 2010  
1:30 pm – 4:30 pm

#### Meeting Location

San Diego City Hall 202 "C" Street  
Closed Session Committee Room, 12th Floor  
San Diego, California 92101

Tele-Conference Location: 1416 Ninth Street  
Resources Agency Conference Room 1305 Sacramento, CA 95814  
(877)287-0283/ Pass code 606349

Contact: Michael Nelson  
(619) 645-3183

#### Meeting Agenda

1. Roll Call
2. Approval of Minutes
3. Public Comment  
Any person may address the Governing Board at this time regarding any matter within the Board's authority. Presentations will be limited to three minutes for individuals and five minutes for representatives of organizations.
4. Chairperson's and Governing Board Members' Report
5. Executive Officer's Report  
The following topics may be included in the Executive Officers Report. The Board may take action regarding any of them:
  - San Diego River Trail: Status of Gaps Analysis
  - Walker Acquisition / Santee
  - Proposition 40 & 84 Project Status

## 6. City of San Diego – Carlton Oaks Golf Course: City of San Diego's Proposed Sale of Approximately 65.4 acres (Public and Closed Sessions)

The City of San Diego proposes to sell the approximately 65.4 acres the Public Utilities Department owns at Carlton Oaks Golf Course. The Conservancy has a first right of refusal under the SDRC Act and certain rights under the California Government Code (§§ 54220-54232; Surplus Land) to acquire the property. The City has set September 10, 2010 as the deadline for the Conservancy to exercise these rights. TY Investments, the golf course operator, is interested in purchasing the property. Following a presentation by the Executive Officer and the Chair, the Governing Board will consider whether to pursue acquisition of an interest in the property by purchase or donation. The Governing Board may meet in Closed Session to give instructions to its negotiators regarding the price and terms of payment of an acquisition or may discuss the matter in open session

Closed Session pursuant to Government Code section 11126, subdivision (c) (7)

Property Description: An approximately 65.4 acre portion of Assessor's Parcel Number 383-080-03 which is a portion of Carlton Oaks Golf Course

Negotiators: Michael Nelson, Executive Officer; Ann Van Leer SDRC Consultant, Hayley Peterson, Deputy Attorney General

### Presentation

Donna Frye, SDRC Chair

Michael Nelson, Executive Officer

Ann Van Leer SDRC Consultant

## 7. Adjournment

### Accessibility

If you require a disability related modification or accommodation to attend or participate in this meeting, including auxiliary aids or services, please call Michael Nelson at 619-645-3183

State of California  
San Diego River Conservancy

EXECUTIVE OFFICER'S SUMMARY REPORT  
**Meeting of September 2, 2010**

ITEM: 1

SUBJECT: **ROLL CALL AND INTRODUCTIONS**

State of California  
San Diego River Conservancy

EXECUTIVE OFFICER'S SUMMARY REPORT  
**Meeting of September 2, 2010**

ITEM: 2

SUBJECT: **APPROVAL OF MINUTES**  
The Board will consider adoption of the **July 8, 2010** and **August 10, 2010** public meeting minutes.

PURPOSE: The minutes of the **July 8, 2010** and **August 10, 2010** Board Meetings are attached for your review.

RECOMMENDATION: Approve minutes

**SAN DIEGO RIVER CONSERVANCY (SDRC)**  
**Minutes for July 8, 2010 Public Meeting**

(Draft Minutes for Approval on September 2, 2010)

Chairperson Donna Frye called the July 8, 2010 meeting of the San Diego River Conservancy to order at approximately 1:35 p.m.

**1. Roll Call**

**Members Present**

Donna Frye, Chair	Council Member, City of San Diego
Dianne Jacob	Supervisor, Second District
Bryan Cash	Natural Resources Agency, Alternate Designee (via phone)
Rob Schladale	Department of Finance, Alternate Designee (via phone)
Ruth Hayward	Public at Large
Andrew Poat	Public at Large
Anne Haddad	Public at Large
Dave Means	Wildlife Conservation Board (via phone)
David King	San Diego Regional Water Quality Control Board

**Absent**

Jerry Sanders	Mayor, City of San Diego
Ronie Clark	Department of Parks and Recreation, Alternate Designee
Ben Clay	Public at Large
Toni Atkins	Public at Large

**Staff Members Present**

Michael Nelson,	Executive Officer
Hayley Peterson,	Deputy Attorney General
Julia Richards,	Administrative Services Manager
Ann Van Leer,	Consultant, San Diego River Conservancy

**Attendees Present**

Robin Rierdan	Lakeside's River Park Conservancy
Robin Shifflet	City of San Diego, Planning and Community Investments
Kathy Keehan	San Diego County Bicycle Coalition
Jolynn Robbins	San Diego River Park Foundation
Gary Strawn	San Diego River Park Foundation
Mark Carpenter	KTU&A
Felix Tinker	TY Investments
Scott Alevy	TY Investments
Deanna Spehn	Policy Director, Senator Christine Kehoe
Megan Hamilton	County of San Diego, Department of Parks and Recreation
Jaime Campos	City of El Cajon

Mark Weston  
Chuck Muse  
Keith Till

Helix Water District  
Helix Water District, Director  
City of Santee, City Manager

## 2. Approval of Minutes

Ruth Hayward made a motion to approve the minutes for the May 6, 2010 public meeting. The motion was seconded by Ann Haddad and adopted unanimously.

## 3. Public Comment

Any person may address the Governing Board at this time regarding any matter within the Board's authority. Presentations will be limited to three minutes for individuals and five minutes for representatives of organizations. Submission of information in writing is encouraged.

Robin Rierdan, Executive Director Lakeside River Park thanked the Board for sponsorship of the River Days run for the San Diego River.

Donna Frye, Thanked Robin and LRPC for many years of their good work on river.

## 4. Chairperson's and Governing Board Members' Report

(No report)

## 5. Deputy Attorney's General Report

(No report)

## 6. SANDAG - Environmental Mitigation Program - 2010 Land Management Grant Awards (Partners: County of San Diego, the Cities of San Diego and Santee, Lakeside's River Park Conservancy)

### Presentation and Report:

Michael Nelson, Executive Officer  
Ann Van Leer, SDRC Consultant

### *Recommendation: Adopt Resolution 10-04*

Mike Nelson, has mentioned before the SANDAG Environmental Mitigation Program who distributes TransNet funding awarded SDRC \$527,000 for use amongst our partners based on the projects that were identified. He presented the Board with 2 Resolutions: One to allow us to accept the finds, and another to authorize sub-grants to our partners.

Ann Van Leer, said most of the work if for invasive control to restore the river per the SDRC statute,

but also includes access control, fencing, park patrols and land owner outreach. SDRC will retain the most of the money, but the work will be done by our partners, in Santee and Lakeside.

**Robin Rierdan** explained land owner outreach includes both large and small landowners along the trail. It is essentially a public education process so we can share the trail's detail and how they can participate and become part of the river park. The outreach is not planning but we looking at January this year including mailings, public workshops and facilitate good will so the community can understand how they can be part of the San Diego River.

**Hayley Peterson**, Explained there is no legal conflict with Supervisor Jacobs voting on the motion and resolution.

**Mike Nelson**, explained the projects came from the partners and their decision to do it as part of a collaboration with SDRC. The projects are also part of the SDRC Work Plan updated yearly.

**Robin Rierdan**, expressed thanks to SDRC staff putting together complex projects with multiple entities and various funding is show of good regional collaboration and great leadership and skill.

**Dianne Jacob** made a motion to approve Resolutions 10-04A and 10-04B. The motion was seconded by **Andrew Poat** and adopted unanimously.

## 7. San Diego River Trail: Gaps Analysis

### Presentation and Report:

Michael Nelson, Executive Officer  
Mark Carpenter, KTU+A

### *Recommendation: Adopt Resolution 10-05*

**Mike Nelson** reminded the Board of the establishment of an intergovernmental working group of the key officials in the jurisdiction and stakeholders group to identify an overview of what was planned, built and where the gaps exist and ground truthing for verification. Mark will explain where he is with that effort and associated problems wit the gaps. Hopefully after your staff members in the intergovernmental have vetting the report the Board would endorse as the capital strategy for the San Diego River Trail which this Board had placed emphasis on. After endorse we hope to go to organizations like SANDAG, the City of San Diego, County of San Diego, Santee or Sacramento and say here is what we have done but we have gaps that need to be filled.

**Mark Carpenter**, He reminded the Board the process began 9 months ago. This fall his team ground trotted the trail and spring was spent trying to identify where the planned and proposed projects were and how to fill the gaps. The main goal is off street recreational corridor. He said the main priority for the trail is how to connect the ocean to the El Capitan Reservoir. He presented the following maps: Existing Trail Facilities, 6 Existing Gaps, Physical Gaps, Functional Gaps, Proposed Trail Facilities, and Planned Trail Facilities. As a result 18.5 of the 30 miles of river trail are lacking some sort of recreational facility. There are currently 8 planned trail facilities with City of San Diego, Santee and El Monte Valley which add up to 13 miles and with that we should be able to connect some pieces

together. We provide a potential alignment of the trail. We will distribute to the working group a set of maps and add input to validate. Afterwards we will need to prioritize the gaps and introduce prioritization discussion into the plans itself, and for final will provide maps with existing conditions, proposed conditions with the priorities in place. I have been working closely with Mike Nelson at SDRC and Jim King at the Coastal Conservancy.

The final report has many maps at different scales so you understand the footprint of each segment and photos.

**Dianne Jacobs** stated this was a great presentation and she was excited about this project. To me this is a blueprint for the future. This document will enable us to go to SANDAG and other organizations to get the money need to implement the plan which we never had before. SANDAG has a whole pile of money sitting there for this exact purpose. A great example is Bayshore Bikeway.

**Dianne Jacob** made a motion to approve Resolution 10-05. The motion was seconded by Bryan Cash and adopted unanimously.

**Kathy Keehan**, Executive Director of the San Diego County Bicycle Coalition stated that the San Diego Regional Bike Plan has the San Diego River Trail as a component. The network maps have just been adopted. She was excited to see the bike plan move forward and gain momentum and support. SANDAG is in the middle updating the Regional Transportation Plan will incorporate the San Diego Regional Bike Plan, which would allow for state and federal funding opportunities.

**Mike Nelson** reminded the Board we should bring in the agencies with regulatory authorities because as we pursued segments of the trail we have run into difficulties for the resources agencies mitigation requirement such as Department of Fish and Game or Army Core of Engineers.

## **8. City of San Diego – Carlton Oaks Golf Course: City of San Diego’s Proposed Sale of Approximately 65.4 acres (Public and Closed Sessions)**

Property Description: An approximately 65.4 acre portion of Assessor’s Parcel Number 383-080-03 which is a portion of Carlton Oaks Golf Course

### **Presentation**

Michael Nelson, Executive Officer

**Recommendation: Adopt Resolution 10-06A or 10-06B**

**Donna Frye** introduced Item 8, announced that there were several individuals that wished to testify and asked the Executive Officer how he wished to proceed.

**Mike Nelson** said that there were a couple of procedural issues that the Board should consider. Since Item 8 involved real estate issues Item 8 met the requirements necessary to convene in closed session, the board could conduct either a closed or a public session for the Item or both. He suggested that one approach would be to allow an introduction and presentation by SDRC staff to be followed by



a presentation from TY Investments. He stated that TY Investments, as a prospective buyer of the property was willing to offer SDRC an Option Agreement to purchase a Conservation Easement if they acquired the property.

He said that after those presentations had been made, members of the public who have an expressed interest in the transaction could testify. Finally, he said SDRC could go into closed session, discuss the motions or resolutions that are before you, make a decision, and return to public session and announce any decision that had been made.

**Donna Frye** said the approach made sense and that it was important we have public participation be part of this meeting.

**Hayley Peterson**, Deputy Attorney General said that questions had been raised regarding the participation in the Board's deliberations on this matter, recognizing the role the Chair might play as a member of the City Council. She stated that her office reviewed the question and found that no issue involving a financial conflict of interest, but also reviewed it as an "incompatible offices" issue. She stated that the Attorney General's Office concluded that the legislature chose to override any common law "incompatibility of offices" concerns by designating a dual role for a City Council member, as well as the Mayor. Moreover their office examined issues involving Gov. Code 1090 and determined there was no problem.

**Donna Frye** said for the record that she had requested the analysis by the Attorney General's Office.

**Diane Jacob** asked for clarification of the reasons and purposes for going into closed session.

**Hayley Peterson** stated that real property negotiations and discussions regarding price and compensation were subjects that could justifiably be held in closed session.

**Diane Jacob** thanked Hayley and expressed her desire that a full discussion of the alternatives before the Board be held in open session.

**Hayley Peterson** said a closed session is authorized by the will of the Board, which could choose what they felt was appropriate to deliberate in closed or open session.

**Donna Frye** said that it was her intention to have as much of the Board's deliberation in open session as possible and only if there were difficult topics would she offer an opportunity to reconvene in closed session.

**Mike Nelson** emphasized that he recognized how important SDRC's relationships with its partners were to implementation of its statutory objectives, and regretted if the recommendation of staff had placed the Board in an awkward situation, but felt that it was important for one of the options considered to be one that best achieved the objectives of the San Diego Conservancy Act. He stated that a second option before the Board was to take advantage of the willingness of the current golf course operator and the potential buyer to allow SDRC to execute an option agreement to purchase a conservation easement from TY Investments that would address our objectives, if they successfully acquired the property.

He observed that the staff report included bullet points regarding the strengths and weaknesses of two potential options that he had characterized as the "Public Option" and the "Private Option".

He continued his presentation by summarizing the objectives of the San Diego River Conservancy. He stated that when the Conservancy was established by an act of the legislature to acquire land and manage it along San Diego River for purposes of restoration, open space, habitat, and to develop or follow as a guide the San Diego River Park Conceptual Plan the State had authorized the San Diego River Park Foundation to complete, which would guide the development of a River Park that would accomplish and address these statutory objectives and public benefits. A principle recommendation of this Plan was the principle that every effort should be made to take advantage of the open space areas that are already in public ownership and link those areas to achieve the objectives listed in the San Diego Conservancy Act.

The City's property at Carlton Oaks is one of those open space areas, one of those important pieces of public property strategically located on the San Diego River. He mentioned that SDRC had been working with agencies of City government, the Planning and Community Investments Group, who are leading the adoption of the River Park Plan (draft) as well as the City's Public Utilities Department, the owner or manager of this real estate. He reminded the Board that it had approved approximately \$900,000 to control invasives and restore habitat on the riparian strip that runs along this property.

**Donna Frye** asked that Mike Nelson explain a bit how this information was presented to him and establish a brief timeline.

**Mike Nelson**, explained that the Director of the Real Estate Assets Department and staff had approached him about a week before the May SDRC Board Meeting and advised that the City was contemplating the sale of 65.4 acres at the Carlton Oaks Golf Course, that of the 100 acres the City owns at this location there were two areas, a 36 acre riparian area, and a 65 acre area they proposed to sell to TY Investments, Inc, the current lessee. He said that the proposal as presented was to sell the 65.4, acres subject to certain contingencies that included the exercising or waiver of SDRC's First Right of Refusal that was found in our SDRC's enabling statute.

Moreover, they explained that when an agency disposes of property as surplus, they must comply with the Government Code for Surplus Land and that a 60 day notification period would be triggered to provide agencies like the San Diego River Park Foundation, the City of Santee, or SDRC to comment and/or submit a proposal or request that good faith negotiations begin to acquire or lease the property.

Though surprised by the Real Estates Office's decision, staff realized the Surplus Land Code and the right of first refusal provided SDRC with opportunities to intervene and influence the outcome of the sale. So as a consequence, he had asked the Board at the May meeting that if a notification occurred between meetings he could respond; a successful motion to that effect was approved by the Board. .

He stated that he had written a letter to the Mayor, as a member of the SDRC Board, asking that the he look into the sale and consider holding it in abeyance to make certain that the goals of the City's Draft River Park Master Plan had been met and that the intent and goals of the Multiple Species Conservation Program particularly the Multiple Habitat Planning Area were addressed. He stated that staff was aware that the Draft Master Plan as well as the Conceptual plan felt this public open space was a key linkage between City's Mission Trails Regional Park and Santee's Mast Park. He testified for

those reasons staff asked the City of San Diego to take a look at the impact this sale could have on those programs and plans before they conducted the sale; and, if there was a compelling reason for the sale, an attempt should be made to structure the sale in a way that when this property was transferred from public ownership to private ownership that protections were added that might extinguish the development rights on the property, and also to allow the River Park and the trail to be accommodated.

Although there was no formal response, he received communications from the Mayor's office that the City was not interested in restructuring the sale and it was going to proceed as planned. This decision meant SDRC had until July 12<sup>th</sup> to make two decisions: one, whether to intervene under the Surplus Land Code and/or two, exercise SDRC's statutory first right of refusal, since the City had brought both of the public processes together with a date certain deadline of July 12<sup>th</sup>.

Essentially, the only opportunity to present and request an action from the Board before the July 12<sup>th</sup> deadline was today's meeting on July 8. He said that is why he was presenting two options: one, the "public option" which would authorize staff to engage the City of San Diego and request that good faith negotiations begin, and two, if necessary exercise SDRC's first right of Refusal because of SDRC's interest in this important piece of open space and secondarily, the "private option" which allowed SDRC to execute an option agreement to purchase a conservation easement from TY Investments, if they successfully acquired the property.

He stressed that despite the circumstances of the proposed sale, SDRC had a good relationship with the City of Santee and TY Investments, who have allowed SDRC to do restoration and habitat improvements on their property. Recognizing the working relationship that existed between the parties, TY Investments set up a meeting with SDRC that included two Board Members, Ben Clay, Ann Miller Haddad and representatives from City of Santee.

TY Investments stated their willingness to sell SDRC a conservation easement that would reduce the development rights that would remain attached to the property after the sale. Additionally, they prepared an option agreement that would authorize SDRC to enter a binding agreement between SDRC and TY Investments to negotiate a conservation easement and seek the necessary approvals from the State Coastal Conservancy and Public Works Board to purchase the easement.

Unfortunately, TY Investment's willingness to execute an Option Agreement would be predicated on SDRC's waiver of its first right of refusal and participation in the Government Code for surplus land.

He said he was offering the Board two options and resolutions. One, the "private option" would require SDRC to waive its first right of refusal and its rights to intervene under the Surplus Land Code. Additionally it would necessitate the execution of an option agreement with TY Investments; or, secondarily, the "public option" which would allow SDRC to engage the City in good faith negotiations to acquire an interest in the property or if necessary to exercise its first right of refusal to acquire a fee simple interest.

Finally, he advised that some of the Board members have received communications from TY Investments which takes exception to the staff recommendation, as well as, the staff reports and statements about MSCP, MHPA and the City's River Park Plan.

**Bryan Cash** stated that telephone conferees in Sacramento hadn't seen the information.

**Donna Frye**, asked staff to attempt to forward this e-mail to them electronically, She explained that TY Investments communication suggested that the Board's decision could force TY Investments to shut down the golf course and force the closure of a 52-year old family owned business and put its 100 employees out of work.

**Mike Nelson** added that TY Investments would have an opportunity to address the Board but stated that TY Investments felt his characterization of the MSCP and the City's Draft master plan was inaccurate and misleading. He summarized by stating that each of the two options presented to the Board could provide significant protections to the property and reiterated that the options gave the Board an ability to negotiate directly with the City or pursue an Option Agreement with TY Investments to purchase a conservation easement. He added that Ann Van Leer had prepared a matrix and an analysis of the issues that should be considered for a fee simple or conservation easement purchase.

**Donna Frye** asked Mr. Alvey and Mr. Tinkov to make a presentation on behalf of TY Investments

**Ruth Hayward** asked if the 36.2 acres currently owned by the Water Department was also to be sold.

**Donna Frye** responded that it would remain with the Water Department, that only the 65.4 acres is proposed for sale.

**Ruth Hayward** stated that though Ben (Clay) was not present, Ann (Miller Haddad) was and that she would be interested in hearing any comments regarding the meeting they attended.

**Ann Haddad** said she would be happy to comment, but felt it best to first allow comments from the other speakers.

**Hayley Peterson** provided clarification that members present for the meeting with TY Investments was not a subcommittee of the SDRC Board; it was two Board members who met with TY Investments, not an official subcommittee that was created by Board action.

**Mr. Alvey** disputed the Executive Officer's presentation and stated that what really was at issue was to allow a business, who has been in business for 52 years, one of the oldest businesses in the City of Santee, one of your partners to literally stay in business. He continued and suggested TY Investments ownership was necessary to accomplish the proper development of the property so it continues to be viable as a golf course. He added that the golf course had hosted NCAA Regional Golf Tournaments that it is a public golf course that is affordable. He said that comments regarding possible closure of the golf course were a very real thing and not an idle threat. He said the reality of this economy was that if favorable funding to do improvements necessary to remain competitive was not available, the golf course will not remain open and more than 100 people could lose their jobs.

He stated that if the Conservancy did buy the land it would be difficult to gain access and would probably work on easement with the City of Santee because physical access does not exist through TY Investments private property.

He said the \$3 million offer was a result of two years of negotiations between TY Investment and the

City of San Diego. The original intent was to acquire 73 acres, instead of 65 acres for \$3 million. He stated that the \$3 million cost to purchase should be considered as a down payment, that would make another \$3-\$19 million investment in the golf course possible. He said that golf courses are excellent stewards of the environment and that you could not find a more benign land use next to a river than a golf course.

He testified that SDRC could achieve excellent protection of the river and its environment by going forward with the "private option", so TY could continue what it does, and has been doing for 52 years, which was consistent with SDRC's mission, that they were committed to ensuring optimal conditions around the river.

He concluded by stating that SDRC faced a difficult decision; do you value a 50-year business? Do you care about the employees who depend on that golf course for their livelihood? Do you want to establish a beach head here on the backs of the citizens who might lose their jobs and thousands of people who use the place for recreational relief? Is this the best use of some precious state funds? Can you open your minds and hearts to a solution that is going to meet your mission without having to spend all this extra money?

**Felix Tinkov** introduced himself as an attorney at Lounsbery Ferguson Altona & Peak LLP, representing TY Investments. Mr. Tinkov provided a Power Point presentation that delineated TY Investment's property ownership. He described a slide that delineated TY Investment's ownership of 105 acres, comprising three parcels which completely bounds the 65 acre property that the City proposed to sell to them on the north, east and west sides. The south side is bounded by the river and the 36 acres the City is planning to retain. He said that Mr. Alvey's statements regarding access referenced that SDRC would have no legal access through TY Investments property, though SDRC may actually gain legal access from the City of San Diego via their 36 acres, but they would never have physical access except through TY Investments property, short of building a bridge.

He observed that TY Investments had worked with the Conservancy, and allowed the SDRC on the property for its invasive removal program. He said they do this freely via a license we have given, that they do this as long as they have a golf course. Once a golf course is done, there really is no point for us permitting folks to walk on our property; it creates all sorts of issues from a legal stand point.

He added that what the Conservancy is looking to do is spend \$3 million, which is effectively the purchase price the City of San Diego has proposed for the 65 acres, but does not include the incidental costs associated with the acquisition such as appraisal and escrow costs. He said it doesn't really get into what is going to be done with the property once it was owned. He imagined that the Conservancy has all sorts of intentions of what to do with the property, but there is no approved plan at this point. He suggested the Conservancy would purchase a \$3 million property without a plan and no access.

He continued stating that the process the Conservancy must adhere to would probably take 6-9 months to get an appraisal, then another half year to negotiate terms with the City, while TY Investments and Carlton Oaks have been operating under a very oppressive lease with the City of San Diego. He explained that for 2 and ½ years they had attempted the Real Estate Assets Department to either re-lease the property at a significantly lower rate or sell it to them. He stated that they were actually paying \$250,000 a year, which was based upon a 2005 appraisal prepared at the height of the real estate market. He said the door was slammed in their face over and over and over. In April much to their

surprise they were informed that the City would sell it to TY Investments for \$3,000,000. ....that was almost the value of the property that we had an appraisal for...

**Donna Frye** asked who had told him that fact.

**Felix Tinkov**, said it was Jim Barwick, the Director of the Real Estate Assets Department. He said they have actually received an appraisal for the property and submitted it to the City not just for 65 acres, rather for the entire 102 acres, which includes the portion the City is going to keep for \$1.2 million. Instead, they proffered the offer of \$3 million to purchase of a smaller piece of property. He said that they had planned to give the Conservancy the 36 acres.

**Donna Frye** asked what 36 acres had they intended to donate.

**Felix Tinkov** replied that it was the 36 acres the City of San Diego was planning to retain.

**Donna Frye** clarified that the land that City plans to keep, TY Investments wanted to give that SDRC?

**Felix Tinkov** said that was correct that they had no real interest in it, it is riparian land – to be honest it is more of a hassle and a liability for us to maintain it and we were aware that the Conservancy has an interest in running a trail through it. He said that they had looked at it and felt it made sense, that there was actually riparian land that could be used for a trail.

**David King** asked how long TY Investments was in negotiations with the City of San Diego over the purchase of the property.

**Felix Tinkov** answered that his first letter to Mr. Barwick at Real Estate Assets was January of 2008.

**David King** then asked how long did Carlton Oaks Golf Course spend negotiating with the Conservancy on the arundo removal project....months?

**Felix Tinkov** said that SDRC and TY had actually worked quickly.

**David King** then asked how long SDRC been working together on trying to find a solution on this issue coupled with the fact that we have a first right of refusal to derail a deal that had been working here for a long time..... 30 days?

**Mike Nelson** replied that SDRC had been in serious discussions for 3 weeks.

**Donna Frye** said that it was her understanding that you began your discussions in 2008, but it was not until recently that Mr. Barwick actually said they might be interested in selling the property.

**Felix Tinkov** said that it wasn't a "might", we were given an offer which we accepted. We met in April of this year.

**Donna Frye** said that her point was that it was just this year, so it was not since 2008, it was actually 2010, and that this happened very, very quickly.

**Ruth Hayward** asked for clarification that lease negotiations began in 2008, but the sale was not until 2010.

**Felix Tinkov** answered that the statement was not exactly true. He said that when TY approached the City of San Diego, they approached them with the offer to either purchase the property or taking a ground lease for an extended term largely because it was the only way they could finance large scale improvements on their property. He said that when he said improvements he was not referring to the 65 acres, but rather banquet facilities, the Pro's shop, etc. ....

**Mike Nelson** said the term sheet from the City to Mr. Tinkov was dated May 10<sup>th</sup>.

**Donna Frye** said that meant that they had worked out a deal.

**Mike Nelson** noted that on May 24<sup>th</sup> SDRC was informed that it must notify the City by July 12<sup>th</sup> regarding our intentions to exercise or waive our first right of refusal.

**David King** said at some time in 2010 negotiations began and those negotiations led to a term sheet on May 10<sup>th</sup>.

**Felix Tinkov** said that they started negotiating in 2008 but they were not getting anywhere. It was a surprise to receive an offer in 2010.

**David King** asked whether there was any limitation placed on your development rights on this property, if the River Conservancy took no action what limitations are there on your development rights.

**Felix Tinkov** said that if the River Conservancy takes no action, there are no limitations on our rights, which is why we have offered to limit those rights via a conservation easement deed that can be triggered by an option agreement for \$10.

**David King** replied that the option is for \$10, but the actual exercise of it actually requires evaluation of what those rights are. If it is so variable, why you don't give away the limitation on your development rights to some extent, limit yourself to remaining a golf course, something that we don't have to exercise in the future, with something that is certainly worth more than \$3 million.

**Donna Frye** said she wasn't sure about tax right offs; because tax right offs require profits. She said what SDRC has is a rushed decision because of the timeline given to us by the City of San Diego.

**Felix Tinkov** agreed that the Chair was absolutely correct that we have been are given a very, very short set of timelines, which is why we have worked so hard with Conservancy to limit our development.

**Donna Frye**, We are going to look at that then I must move you so we can get the other testimony and then I will open it up to questions.

**Felix Tinkov** what TY Investments has done is offer an option agreement or agreeing today and for \$10, the Conservancy gets the opportunity to record immediately a notice of option that goes to the County Recorder's Office downstairs and gets recorded as a cloud; a cloud on that particular piece of

property that says should we ever purchase the property from the City of San Diego, that the Conservancy then has the right to review its options under the conservation easement deed; a conservation easement deed does a number of things: it says we can never have residential, agriculture or industrial uses on the property, there would be limitations that would be for a recreational use of equal or lesser intensity to the golf course. We have given away mineral, air and water rights. We have given away the right to sub divide the property.

He said that despite TY Investment offerings of development rights, they have come to the conclusion that what the Conservancy wants is to potentially put a trail on that property that is not certain. Though there is no plan, the 36 acres that the City of San Diego is looking to preserve follows the Draft Master Plan's recommendation for where the trail ought to be, it follows along the river. We understand the Conservancy has a potential interest in not putting the trail within that area and maybe moving further north into the 65 acres.

So what we have said is look, we don't know where we want to put that trail and you don't know where you want to put that trail. It would be nearly impossible to evaluate the appraised value of a right that you could not define. So what we will do is we'll give you an option which is part of the conservation easement.

Yes my client is looking for a value in return for the rights he's giving up and we don't know what those rights are nor does the Conservancy. The point is we are effectively being raked over the coals in order to purchase the property in the first place.

**Felix Tinkov** said in conclusion, one of the most important features we have put into the conservation easement and the option agreement is that it is malleable should the State determine that there is some portion of it that does not conform with their requirements. We understand we have to do this in all about three weeks. We know we could not meet all of the necessary requirements that the State would have. We are going to cooperate by the terms of the agreement and are bound by a recordable document that runs with the land. Long and short of this is that we think we are offering to the Conservancy everything it wants less the \$3 million, it seems to want to spend to purchase those same rights on a fairly worthless piece of property.

**Andrew Poat** asked if the purchase price in section 6 that we are going to come to up with after an appraisal is done would be less than \$3 million.

**Felix Tinkov** responded that it invariably it has to be; the fact of the matter is the City is offering to you the purchase of the property in fee for \$3 million, if you look at fee as a bundle of sticks you are only looking for a few sticks in this bundle in order to get this conservation easement deed.

**Bryan Cash** asked if the \$3 million price was based on a current appraisal.

**Felix Tinkov** said that they had asked Mr. Barwick at the Real Estate Assets Department for the appraisal and were told that they could not have it; but understand that the Conservancy does have a copy of this appraisal.

**Dianne Jacob** asked if there was a map of the proposed conservation easement or did it include the entire 65.4 acres.



**Felix Tinkov** replied that it is for the entirety of the 65.4 acre area.

**Donna Frye** said that looking at our time and I would like to in advance to determine whether this Board is inclined to extend the meeting beyond 3:30 p.m.

**Dianne Jacob** moved that the meeting be extended beyond 3:30 p.m. The motion was seconded by Ann Miller Haddad and approved unanimously.

**Michael Beck** introduced himself and stated that he was representing Endangered Habitats League, Endangered Habitats Conservancy and San Diego River Park Foundation on this issue, because it is so significant. His first comment was to express how incredibly disappointing it was that we are having this conversation. He stated that from their perspective the City of San Diego was deeply invested in the creation of the San Diego River Park. It is disappointing that they would not commit whatever energy was necessary to make these 65.4 acres in the urban section of the river part of the river park, part of the MSCP and appreciate this property's many benefits. The notion that we are apparently going to have to fight for these 65.4 acres in the urban section of the San Diego River for \$3 million is an incredible disappointment.

He said that his comments would key off some of the comments made by the TY Investments. He recognized that it was totally their prerogative, but that it was an illuminating presentation. One of their first comments was that we needed to look at the big picture. He said he couldn't agree more. The role of this organization, the role of all of the non-profits working along the river is that all of us are working toward a vision that extends beyond our time frame that looks at perpetuity. He related that the reason everyone was driven to do this is because when it became apparent to a number of people that we had channelized, turned our backs and built freeways along this incredibly historic resource for the State of California, the first European settlement was along the San Diego River; our next effort was to undo this to the degree we could.

He continued by saying that it was embarrassing that we are going to have to fight for these 65 acres, and believed at one time the San Diego River ran through the middle of these 65 acres. He asked Mike Nelson to show a slide of the river which contained a 1953 aerial photograph of the historic streambed on the property that would demonstrate the site's potential for restoration.

**Michael Beck** continued saying that we have sliced and diced the natural world into regulatory boxes and components that satisfy the way we look at the world; but in the process forgotten the value of the river and missed the ecology of the systems, the physical nature of it, its hydrology, the biological components, the ecotone. He said the river was all those things, but 90% had been removed from our urban San Diego River. He said that this property represents an opportunity to let the river breathe a little to move a little. He argued that the Conservancy should resist a transfer of this property from public ownership to private ownership and the loss of so many public benefits. He observed that we had heard how the river was viewed by the property owners; the riparian area along the river is a hassle, a liability, it is a problem; and if the property was purchased by this agency there would be—no access at all.

He closed by stating that the three organizations he represented will do everything they could to help SDRC find the \$3 million to purchase the property and that in his view buying a conservation

easement for \$1.5 million was an absurd use of public funds. He said they would help find the money to restore it and to provide access; \$3 million is nothing in the scheme of things. The acquisition of this property is something that fits right into your wheelhouse and the terms of the mission of this organization. We strongly support this property remaining in public ownership.

**Robin Rierdan** said that because of the short fuse on this issue she did not have time to get the permission of the Lakeside's River Park Conservancy Board to speak on this item, but intended to speak as a resident of Santee, California who was encouraging the SDRC Board to move forward with the "public option" and negotiate with the City to purchase the 65 acres. She stated that as we move forward with the development of a River Park in urban areas we are going to be confronted with problems like this at every turn. She said Lakeside's River Park was a case in point. Lakeside's River Park Conservancy purchased 100 acres that was zoned for heavy industry, we removed 40 acres out of the tax base, but the park today has become a tremendous amenity to the community, a real legacy.

**Keith Till**, City Manager for Santee said that he felt that staff had provided a fair representation of the issues; however he did not entirely agree with the recommendation. He stated that he was at the meeting because Santee wants the golf course to remain open and to do whatever maximizes the odds of that happening. He said that the City of Santee's vision for the property as well as the City's adjoining property was that it remains for park and open space usage. He said if this property went from public to private, if it remains a golf course, it effectively goes back to public. It is overwhelming how many issues have been introduced to this board in such a tight time frame for this board's decision, but he thought the Board could deal with them by entering into an agreement so you can protect this property in the event it ceases to be a golf course. He acknowledged that there were many details and monetary issues to be dealt with, but based on his review of this proposed agreement, I think you can do it.

He added that the "private option" would allow SDRC to reserve the right to obtain an easement, and effectively transfer these rights back to public use to preserve open space. He said that in the alternative, by possibly intervening, he felt there is a real possibility that SDRC would stop the golf course from being purchased by the operator. He thought Conservancy could use these funds for other acquisitions that are in much greater jeopardy of development than this property without spending a significant amount of money. Santee would like to see this golf course operating; it is a real asset to the community. He said he hoped SDRC would move forward with action to enter into an agreement to secure the right to obtain a conservation easement in the future, but not block the sale and the purchase.

**Kathy Keehan** was representing the San Diego County Bicycle Coalition and the San Diego River Coalition. She stated that the Coalition took an action at our last meeting to oppose the sale of the property and keep this land in public ownership.

She testified that she would like to take her River Coalition hat off and, put her bike trail hat on for a moment to explain and provide the Board with an understanding the importance of connections around the trail, that if SDRC was to negotiate a conservation easement that you look beyond the confines of this parcel, SDRC should also attempt to resolve those issues regarding access on either side of this particular parcel if SDRC gets to that point. She said she was pleased to hear that the Conservancy's interest regarding a conservation easement would extend beyond and possibly include the option for a trail alignment further away from the river. She said that there were some serious concerns about the

riparian habitat on the 36 acre parcel and though theoretically it was possible to thread an alignment through the 36 acre parcel, the issues the natural resource agencies might have with such an alignment could be enormous. She said that in her opinion, it is going to be very difficult for us to get the trail into such a contained area.

**Gary Strawn** introduced himself as a volunteer with the San Diego River Park Foundation. He began by asking how many Board members had actually been on or looked at this piece of property. He said that it was not clear to him where the alignment Kathy Keehan referenced would be located, because it was impossible to walk from one end to another without a machete and a chainsaw. He said there was however a natural berm that covered approximately 80% of the distance we are talking about and that's where the trail goes.

He stated that as a volunteer, he appreciate the golf course and that they have helped the Park Foundation haul trash out of there and have done a lot of good things, but I do take exception to the fact that you have been steward of that property. He said he felt the reason I can walk across the river is because the golf course takes a lot of water off at the top end and runs it down through the water hazards.

He said that he personally thinks that the golf course is a good use, and that he would like to see it back to a real natural habitat, but may not be realistic. He concluded that whether the parcel stays private or public, it is an extremely important piece of property, that you can't get a trail from Lakeside to Mission Trails without going through it.

**Deanna Spehn**, Policy Director for Senator Christine Kehoe testified that Senator Kehoe created the Conservancy and that SDRC's duties and responsibilities were to protect, enhance, conserve, and restore the river. She said that this was a difficult situation and that the Conservancy has not been faced with such a confrontational situation before. She said SDRC's partnerships up and down the river have been excellent, and your working relationships among each other have been good. She hoped there was a solution to this issue, that there was a win-win for everybody. She commented that since discussions regarding the property have been ongoing for two and a half years, but SDRC found out in April, maybe SDRC's deliberations could be extended.

**Donna Frye** asked Mr. Tinkov what was timeframe the City offered your client to purchase the property and why a particular date was chosen.

**Felix Tinkov** responded that he did not know how or why the date was chosen.

**Dianne Jacob** acknowledged that SDRC was in a very difficult situation and under a short time frame, but thought that with the information provided that we can at least layout a direction to take. She said that she liked what Deanna said. She agreed that in the past the Conservancy has been able to pursue the development of a river park along the San Diego River in a non-confrontational manner, that we have formed partnerships that have become very valuable in reaching the goals and the mission of the San Diego River Conservancy. She said that she would like to continue our discussions in a non-confrontational manner and with partners. She then asked the Executive Officer what was the Conservancy's main goal regarding this pieces of land, a trail?

**Mike Nelson** said a primary goal was the San Diego River Trail, but also an acknowledged of the

property's biological values. He said that the trail was a component of a River Park which brought benefits to water quality, habitat and recreation.

**Dianne Jacob** asked him if trail, River Park, habitat was basically correct.

**Mike Nelson** said that was accurate.

**Dianne Jacob** began by stating that a lot had been done and agreed with Michael Beck that freeways and other development have infringed tremendously on our efforts to create the trail and the River Park as we would have wanted; but, on the other hand, I don't think it is fair to fix the sins of the past on the backs of the golf course. She noted that the property Robin Rierdan referred to in Lakeside was vacant land, it was zoned industrial, but there was not an existing industrial development on the property that was eliminated, so there are some differences.

She continued and said that perhaps she sat in a bit of a unique position, because she represented this area and was very familiar with it but this was a very different situation and the key was to balance the interests that are present, adding that the Carlton Oaks Golf Course had been in institution in East County, as was stated for 52 years and a good steward of this property. She noted that roads had not been developed as intensely as Mission Valley and a lot of condos and development have not been built around it; they have preserved this piece of property and I think we should recognize that in our dealings.

She stated that she felt some interesting ideas had been presented and that she would like to consider the option of a conservation easement, because her understanding is that we can get everything we want out of that conservation easement, the trail, preserving the habitat in the River Park and maybe even more. She said she could understand that there is an interest in preserving this piece of property as public property; it is always difficult to make the decision private or public, but this piece of property has been in private use. She reiterated that she saw this property differently than other properties we have been looking at and pointed out that SDRC was certainly not going to get rid of some of the condos in Mission Valley that are infringing upon our ability to create and preserve habitat.

She said she looked at the golf course in a similar way, but thinks SDRC has a greater ability to achieve our goals with this piece of property. She said she believed I look at this are being developed as others such as Mission Valley along the river, I believe there is a win-win-win. The City of Santee has revegetated habitat along their section of the San Diego River and there is a trail on a portion of that of section and am sure Keith would be happy to talk about it. So the bottom line to me is being in a unique position of being very familiar and trying to balance the interests, I would like to not see us exercise our option to purchase it. I would rather see us try to work out a deal, are these the terms of the deal? Is this where we go into closed session to discuss if other members of the Board agree with what I am saying?

**Donna Frye** asked if other members of the board had question before the Board begins its discussions.

**Dianne Jacob** said she would rather see SDRC work out a deal or explore the ability to enter into a conservation easement, so it could be constructed in a way that would achieve goals of SDRC, preserve golf on the property, protect habitat, develop the River Park, and preserve our partnership

with the City of Santee and TY Investments. She stated that was her position.

**David King** asked counsel for both TY Investment and the Conservancy, if there was a legal prohibition on SDRC entering into a tolling agreement on the July 12<sup>th</sup> deadline for us to exercise our first right of refusal.

**Hayley Peterson** said the problem was that the tolling agreement would be between the City of San Diego and the San Diego River Conservancy, and the power to extend lies wholly with the City of San Diego. She said that she didn't believe there was a representative from the City present, who can bind the City.

**Andrew Poat** said that he had called the City of Santee to investigate circumstances behind the situation; Mr. Till was so kind as to return my call. He stated that he would like Mr. Till to return to the podium and explain the land use plan that exists for this area.

**Mr. Till** said the City of Santee's General Plan for the property contiguous to the property is park and open space zoning and that we also consider the property owned by the City of San Diego to be designated as park and open space.

**Donna Frye** said that we should be clear that Mr. Till is talking about the City of Santee and there are two cities in question.

**Andrew Poat** then asked what would be the required to use the land for something other purpose than park and open space.

**Mr. Till** responded that it would require a general plan amendment and a zoning change.

**Andrew Poat** asked if one of the anticipated restrictions on this sale is a restriction on the power to sub divide property and if it were to be removed from park and open space there would have to be substantial change in the land use plans for Santee.

**Mr. Till** clarified that the property was not within Santee's jurisdiction, but Santee's General Plan and Zoning map has a designation for this property which is in City of San Diego's jurisdiction.

**Donna Frye** wondered what bearing the City of Santee's zoning regulations would have to do with land owned by another jurisdiction.

**Ann Van Leer** state that the property is It is within the City of San Diego's land use authority, it is zoned RS-18, which is one house per 40,000 square feet which equates to about 71 potential units, however it is questionable if they could built 71, because it is also within the flood overlay zone. She said the property owner must go through a pretty onerous process in the City of San Diego, not Santee.

**Donna Frye** remarked that she appreciate hearing about what Santee would like to see there, particularly the open space portion of it. She said it was a very nice vision and tended to agree with it.

**Mr. Till** said the in the interim it is a great golf course.

**Ann Haddad** asked whether the Carlton Oaks Golf Course is considered to be an asset for your community and that and secondly whether a golf course, a river park and trail could reside next to each other.

**Mr. Till** said yes a river trail that is compatible with the golf course foot print.

**Ruth Hayward** expressed her desire that an extension would seem prudent.

**Donna Frye** said that she was trying to reach someone on the phone from the City's Real Estate Assets Department.

**Ruth Hayward** continued and said that she didn't think anyone wants to put a 52-year old golf course out of business, that it would be nice to bring it back to the way it used to be, but doubts that could happen, however, she did feel strongly that if the trail is to be aligned there and developed, it should not be within the riparian corridor, because there is not enough of riparian corridor now. She asked if SDRC did do a conservation easement agreement, a trail delineation would something has to be delineated about where the trail would go and how the bike riders and hikers would be protected from golf balls.

**Mike Nelson**, One of the unknowns that Felix speaks of is that we can't confirm that what has been identified as a riparian area, actually reflects the entire riparian area. He said the delineation that is being used to define the riparian area and what will be retained is simply the land that wasn't necessary for a golf course. He said what should occur would be a trail feasibility study that would begin with a biological delineation of the wetland and water resources that are present. Understandably, TY Investment is somewhat concerned about an exercise which might identify a trail alignment that would require a redesign of the golf course. TY Investments advised us that if a redesign was deemed necessary then SDRC would pay for the redesign of Carlton Oaks Golf Course

**Andrew Poat** asked if SDRC were to pursue the "public option" how would the acquisition proceed and the \$3 million cost be handled.

**Mike Nelson** stated that SDRC secured budget language for two fiscal on appropriations of Proposition 84 funding allocated to the State Coastal Conservancy, these set asides were for approximately \$5,935,000. If the public option were pursued SDRC would initiate good faith negotiations with the City of San Diego and present any agreement that was reached to the Governing Board to the State Coastal Conservancy for their approval. He emphasized that he should be clearly understood that SCC has fiduciary responsibility for the funding and the transaction must meet their standards, policies and requirements. He said that the acquisition of a conservation easement that was the result of the option contract SDRC would execute would also have to meet those same standards. Finally, if SDRC would accept title to the property it would also require the approval of the Public Works Board.

**Donna Frye**, asked if there was anything that would preclude SDRC were to approach the City of San Diego and say we want to exercise our option to purchase, and if so, would that preclude operation of the golf course.

**Felix Tinkov** responded that legally speaking it would not preclude the operation of the golf course; all things would remain the same, the 50-year lease with the City of San Diego expired on December 31,

2008 and they are presently in a month-month arrangement with the lease amounts which remain the same. He said the situation was quite onerous that his client was having a hard time maintaining operations because modern amenities and improvements are necessary, finally after 2 1/2 years we are at a point where we may actually be able to acquire the property and do what is necessary.

**Donna Frye** said "... Or getting a lease from the City of San Diego or another extended lease?"

**Felix Tinkov** responded that anything that would allow a financing, which was typically 30 years or more.

**Donna Frye** sought clarification that an additional 30-year a lease from the City of San Diego would resolve your client's problems, as far as their ability to finance the improvements.

**Felix Tinkov** said when we asked the City of San Diego, Real Estate Assets Department about a lease extension we were first were told no, then that it may be a possible and then advised that it is the City's policy to never reduce lease rates.

**Donna Frye** asked what TY Investment definition of "redeveloping the property" is meant.

**Felix Tinkov** said that at their last meeting in April with the Real Estate Assets Division they were seeking final resolution regarding what was to be done with the property, because there was no progress, we had no choice but to begin discussions with appraisers and brokers. Once we were told there was an offer on the table we stopped and have not looked at any redevelopment alternatives.

**Dianne Jacob** inquired about the improvements that had been mentioned and wondered what they included.

**Felix Tinkov** the improvements that have include the lodges which are subpar. Most recently we have expended close to \$200,000 to redo the bar and restaurant. The banquet facilities and the pro shop, virtually anything having to do notwithstanding the golf course itself need updated and improved.

**Dianne Jacob**, interpreted his answer to mean that TY Investment was updating existing facilities?

**Felix Tinkov** said yes and that there was no plan to redevelop the property. The golf course was redesigned by Pete Dye 15 years ago. All the improvements are in the northern 17 acre parcel, which lies next to road by the driving range.

**Ruth Hayward** said she was concerned that there are development rights on the property and whether TY Investment had any plans to develop this property.

**Donna Frye** interrupted and asked for a **5-minute recess** since she had the Mayor's Office on the line.

**Donna Frye** called the meeting back to order. She informed the Board that she had just got off the phone with the Real Estate Assets Department and a representative from TY Investments. She stated that she had informed them that, as a member and the Chair of SDRC, she felt the notice the Conservancy had been given was too short for a decision this important. She announced that she had requested and received an extension of time from the City until August 20<sup>th</sup>. I informed the Department

that SDRC would convene a special meeting to have discussion and work things out.

She stated that the members of the Board are very reasonable people and are not trying to put the golf course out of business, or harm any of its partners, particularly the City of Santee. We have an incredible opportunity here, but we must also realize that our enabling statute encourages SDRC to acquire land and develop the San Diego River Park.

**Dave Means (WCB), Bryan Cash, Robert Schladale** all agreed that the public option and lease back to the golf course was a good idea, which it could provide a steady stream of income SDRC could use to promote or make a trail possible along the river corridor. They stated that they were most concerned with walking away from an option to purchase that may never arise again; this opportunity is very unique and rare.

**Donna Frye** asked if the Conservancy would decide to purchase property, maybe you could work with the agency representatives in Sacramento.

**Mike Nelson** agreed and stated that the public option would allow the acquisition of the property, it might also provide an opportunity to facilitate a discussion with everyone: TY Investments, SDRC and the City of San Diego, which did not occur as the sale is presently structured. He added that staff never envisioned a management scenario that discontinued the use of the property as a golf course, if SDRC exercises its option to purchase the property. He addressed Dave and Rob's observation and stated that the SDRC Act did in fact contained a provision that would allow SDRC to utilize revenues from leases and established the San Diego River Conservancy Fund for this very purpose.

**Ruth Hayward** asked TY Investment what their lease rate was in 2008.

**Felix Tinkov**, responded that their rental rates have stayed the same from 2005 until now, and that rate was \$250,000. He reported that under the 50 year lease the City is to reappraise the property every 5 years, but unfortunately TY Investment has been unable to get the City to reappraise the land or consider a rate adjustment, because of their policy to never reduce rental rates.

**Dianne Jacob** asked if they had received a response from his clients regarding a waiver of development rights.

**Felix Tinkov** said he had, that his client had no problem, but he must speak with their investors.

**Dianne Jacob**, I think that is an important question to have answered, if you were willing to give away some of your development rights, maybe other concessions are possible. She said that she was aware that golf courses are not making money and are surviving by providing other amenities such as banquets and restaurants and bars.

**Donna Frye** said that since we have a time extension, she would like a board member to make a motion that would first secure the Board's approval for the time extension; second, to allow her to work with Mike Nelson, the City of San Diego and TY Investments to get your questions answered (should you have more just send them to Mike); and, third to schedule a special meeting of this Board prior to August 20<sup>th</sup> at which she would make a presentation and a recommendation that we could all agree to.



**Dianne Jacob** asked whether the Chair would you also include Ann and Ben.

**Donna Frye** responded that she could not agree to that, because she was very concerned about a collective concurrence outside a regular noticed and scheduled meeting.

**Dianne Jacob** stated that it would be a minority of the Board and would only include the two individuals who had been involved previously.

**Hayley Peterson** said that if the Governing Board creates a committee that includes three people then that committee would need to comply with public meeting requirements, so all of their meetings would have to be noticed. She summarized by saying that designating two people does not fall within the requirements of Bagley-Keene.

**Ruth Hayward** stated that if a meeting occurred that included two Board Members, why can't that same scenario happen again?

**Donna Frye** stated that two Board Members can, three cannot.

**Hayley Peterson** said that by taking an action to designate three individuals are more formal, two individuals doing some research before a meeting is different than a sub-committee that would report and make recommendations to the Board. She realized it was a grey area, but concluded that her office was OK with two. If the Board designates three and specifies what they are to do and requires that they return to the Board and make a report, it must be noticed and provide 10-days notification.

**Dianne Jacob** said she thought it would be advantageous for one or two of those involved in the prior discussions were included.

**Donna Frye** inquired about including Ann Miller Haddad?

**Dianne Jacob** said that she was not going to pick the person.

**Donna Frye** stated that since Ben is in Italy and we can select two. It will be myself and Ann. She then asked for someone to make that motion?

**Andrew Poat** moved for Item number 8 decisions be deferred to a special meeting on a date to be determined by the Executive Officer, designating Ann Haddad and Donna Frye talk and pursue an information gathering task.

**Ruth Hayward** seconded the motion.

**David King** said that though he could not make motion, he would like to make a suggestion that someone make a motion that we delegate to our Executive Officer further authority to enter into further tolling agreements with the City of San Diego and other parties as necessary to move deadlines a bit.

**Andrew Poat** said that he would accept that amendment to his motion.

**Ann Haddad** seconded the amended motion and it was approved unanimously.

**Felix Tinkov**, received agreement from his client for free development rights on that property.

**Donna Frye** asked if they were the only developmental rights that existed for the property?

**Ann Van Leer** stated that there are other issues to resolve as it relates to development, but it is significant that he is willing to give away those rights.

**Donna Frye** commented we appreciate that. She said the only other thing we need to know is what other development rights would go with this property if we were to accept that.

## **9. Executive Officer's Report**

(No report)

## **10. The meeting was adjourned at 4:20 p.m.**

## SAN DIEGO RIVER CONSERVANCY (SDRC)

### Minutes of August 10, 2010 Special Public Meeting (Draft Minutes for Approval on September 2, 2010)

Chairperson Donna Frye called the August 10, 2010 meeting of the San Diego River Conservancy to order at approximately 10:06 a.m.

#### 1. Roll Call

##### Members Present

Donna Frye, Chair	Council Member, City of San Diego
Dianne Jacob	Supervisor, Second District
Karen Scarborough	Natural Resources Agency, Alternate Designee (via phone)
Cynthia Bryant	Department of Finance, Alternate Designee (via phone)
Ruth Hayward	Public at Large
Andrew Poat	Public at Large (arrived 10:08 a.m.)
Ann Miller Haddad	Public at Large
Ronie Clark	Department of Parks and Recreation, Alternate Designee (via phone)
Ben Clay	Public at Large
David King	San Diego Regional Water Quality Control Board (arrived 10:11 a.m.)
John Donnelly	Wildlife Conservation Board (via phone)

##### Absent

Jerry Sanders	Mayor, City of San Diego
Toni Atkins	Public at Large

##### Staff Members Present

Michael Nelson,	Executive Officer
Hayley Peterson,	Deputy Attorney General
Ann Van Leer,	Consultant, San Diego River Conservancy
Julia Richards,	Administrative Services Manager

##### Attendees

Jim Barwick	Real Estate Assets Department, City of San Diego
Brian Matsumoto,	Carlton Oaks Golf Course
Bryce Daniels,	Carlton Oaks Golf Course
Maria Lauda,	Carlton Oaks Golf Course
Jose Gonzalez,	Carlton Oaks Golf Course
Raul Pedraza,	Carlton Oaks Golf Course

Kuastasia Pemeeited,	Carlton Oaks Golf Course
Oscar Zuloaga,	Carlton Oaks Golf Course
Brett Baylin,	Carlton Oaks Golf Course
Todd Clarke,	Carlton Oaks Golf Course
Scotte Prinz,	Carlton Oaks Golf Course
Adam Mora,	Carlton Oaks Golf Course
Colleen Tarantino,	Carlton Oaks Golf Course
Yvette Lynch,	Carlton Oaks Golf Course
Ben Mise,	Carlton Oaks Golf Course
Jerry Dremel,	Carlton Oaks Golf Course
Rick Boster,	Carlton Oaks Golf Course
Bryan Cash,	Natural Resources Agency (via phone)
Chris Pearson,	San Diego City Council Member – Marti Emerald
Michael Beck,	Endangered Habitat League
Warren Savage,	Santee Chamber of Commerce
Chuck Muse,	Helix Water District
Stephanie Gaines,	County of San Diego

**Hayley Peterson** administered the oath to Cynthia Bryant, the alternate for the Department of Finance.

**Donna Frye** called the Special Meeting to order.

## 2. Public Comment

Any person may address the Governing Board at this time regarding any matter within the Board's authority. Presentations will be limited to three minutes for individuals and five minutes for representatives of organizations.

**Rob Hutsel**, Executive Director, San Diego River Park Foundation invited the Governing Board to the Foundation's and the River Coalition's 9<sup>th</sup> Anniversary Celebration on September 23<sup>rd</sup> at the University of San Diego.

## 3. Chairperson's and Governing Board Members' Report

**Donna Frye** reported that she had received correspondence for the State Coastal Conservancy that informed her that their Board had approved \$220,000 for the San Diego River Tributary Canyons Project.

#### 4. City of San Diego – Carlton Oaks Golf Course: City of San Diego's Proposed Sale of Approximately 65.4 acres (Public and Closed Sessions)

**Donna Frye** recalled that the City of San Diego was proposing to sell approximately 65.4 acres at Carlton Oaks Golf Course. She said that SDRC, as a public agency, has a First Right of Refusal under the SDRC Act and certain rights under the California Government Code §§54220-54232, "Surplus Land" to acquire the property. She added that at the last meeting this Item was continued because there was additional information that the Board needed to make a decision. She stated that she would like to correct the record that on page 2 of the Board Book, as well as Item 4 on the first page where it indicates that Donna Frye and Ann Miller Haddad are negotiators. The record should reflect that their role was that of fact finders, not negotiators. She then asked Ben Clay, who was absent at the last meeting, whether he had a chance to acquaint himself with the actions at SDRC's last meeting and had reviewed the minutes.

**Ben Clay** said that he had reviewed the record and had prepared questions on the item.

**Donna Frye** asked Mike Nelson to begin the presentation and asked Mr. Tinkov how much time he would need.

**Mr. Tinkov** responded that he and Scott Alvey needed 10 minutes.

**Dianne Jacob** appreciated the extensive minutes but asked that they be revised to reflect that the TY Investments had agreed to waive development rights.

**Donna Frye** said that it was noted on Page 18.

**Dianne Jacob** recalled that Mr. Tinkov after speaking with his clients returned to the meeting and stated that TY Investments would waive their development rights.

**Mike Nelson** agreed to review the record and make the necessary changes.

**Donna Frye** welcomed Andrew Poat and David King.

**Mike Nelson** said that he had a conversation with Cynthia Bryant at the Department of Finance regarding the role of the Chair in negotiations. He said that while some clarification had already been provided, he felt that Hayley Peterson, Deputy Attorney General might discuss the analysis she had performed.

**Hayley Peterson** testified that in order to hold a Closed Session, it is necessary to identify the negotiators and I think as the Chair has pointed out at the last meeting the Board directed the Chair and Ann Miller Haddad not to negotiate, but to undertake a factual investigation. At this point the Board has not made a determination whether to acquire any interest in this property. If the Board does make a determination the Board may designate a negotiator on behalf of the Board. The resolutions for both the private and public option designate that the Executive Officer as the Board's negotiator. It is the prerogative of the Board to determine if they want to add or change the negotiator. She appreciated the Chair's clarification and the representative from the Department of Finance for bringing this matter to our attention. She recommended that to alleviate any confusion that the agenda

item be revised to remove the reference to Chair Frye and Ann Miller Haddad as being negotiators.

**Donna Frye asked** if there was a motion to correct the Record and make corrections on the Agenda page 2, as well as, for Item No. # 4 on Page 1.

**Ann Miller Haddad** moved the motion, which was seconded by Andrew Poat.

**Hayley Peterson** recommended that all of our motions be done by a roll call vote today.

**Donna Frye** called for roll call votes and the motioned passed unanimously.

**Mike Nelson** said that he hoped the Board could determine what, if any, interest in property, SDRC might have in the 65.4 acres the City proposes to sell at Carlton Oaks, to decide what interest in property best serves the objectives of SDRC. He said that he believed to reach a conclusion on the subject, it would be useful to review SDRC's statutory objectives and the connection their relationship to the Strategic plan and its projects. He suggested that he would also review SDRC's projects and particularly those within the subject area. He stated that his presentation would briefly touch upon the acquisition types and describe the attributes of a conservation easement and a fee simple purchase before returning to the actions that were deferred at the last meeting.

Before beginning his Power Point Presentation he stated that he was concerned that at the last meeting he had failed to effectively convey that the Conservancy is not inclined to discontinue golf at the Carlton Oaks, but to continue a successful public private partnership that had existed on the site with a ground lease of public property for more than 50 years.

Further he said that he regretted any misimpression that a vote to acquire the property and stand in the City's shoes was in fact a vote to force the closure of the golf course or in some way to jeopardize the jobs of 100 employees.

He began his presentation with a slide that located the approximately 100 acres the City of San Diego owns along the San Diego River at Carlton Oaks. It identified the City's proposed subdivision of this acreage, which would retain 36 acres and sell 65.4 acres.

His showed slides that demonstrated applicable public policy and related projects:

**San Diego River Conservancy Act:** one of the principal objectives and purposes of the SDRC's enabling statute was to acquire and manage lands along the San Diego River.

**SDRC Strategic and Infrastructure Plan:** identifies 4 programmatic areas and projects to implement the Act. *Land Conservation/* secure the preservation of 1,450 acres of land. *Recreation and Education/* complete or significantly advance at least 32 miles of River Park Trail. *Natural and Cultural Resources Preservation/* reduce, control, and where feasible, eradicate invasive non-native species while restoring habitats to native function. *Water Quality/* Promote and implement projects which maintain and improve the water quality and natural flood conveyance

**San Diego River Park Conceptual Plan:** connect existing recreational facilities, provide a continuous trail along the river, support natural stream processes, reserve and enhance riparian habitat.

**City of San Diego, Draft San Diego River Park Master Plan:** potential to accommodate a trail, potential for area to evolve as part of the river park, consider a redesign golf course to be sensitive to hydrology of the river, create habitat corridors, critical connection of City of San Diego and Santee.

**Multiple Species Conservation Program:**, critical biological resource area and habitat linkage.

**Multi-Habitat Planning Area:** conservation of existing public lands

**San Diego River Conservancy Projects:** invasives control and habitat restoration, land conservation, trail connections.

**Types of Acquisitions:** Conservation Easements vs. Fee Simple title.

**Mike Nelson** concluded his power point present and returned to the deferred resolutions He recalled that Resolution 10-06A would authorize the Executive Officer to use SDRC's statutory opportunities to engage the City of San Diego in good faith negotiations to acquire the property. He said it would also authorize exercising SDRC's Right of First Refusal by the August 20<sup>th</sup>, and authorizes us to request up to \$3 million. He stated that the City of San Diego offered to sell TY Investments the 65.4 acres for \$3 million. He emphasized that if the Board authorizes SDRC to engage the City it should be prepared to accept the \$3 million price that had been established.

He continued stating that this option was the recommended action, because it would address all of its statutory objectives: water quality, land conservation, recreation or habitat development. He said additionally it would also allow a lease-back to the present golf course operator.

**Mike Nelson** He said the second deferral Resolution 10-06B allowed SDRC to pursue the purchase of a conservation easement from TY Investments and require SDRC to notify the City of San Diego and waive its Right of First Refusal; and, its right to intervene in as an interested party in the City's proposed disposal of this property through the Government Code for Surplus Property. It also authorizes the Executive Officer to sign an option agreement with TY Investments that would be the vehicle to obtain the conservation easement once TY Investments owns the Property.

He testified SDRC appreciated TY Investments willingness to continue good faith negotiations, which as a consequence the SDRC has a better idea of what the private option includes. There are a number of reasons why SDRC did not recommend this option. Among them was TY Investments wanted to retain flexibility to define recreational development on the property. We were concerned about the how habitat restoration might, SDRC has no idea what an easement and development rights might cost, \$1.5 million, \$2 million until it has been appraised.

**Mike Nelson** concluded his presentation by stating that both options would provide additional protections to the property and staff will be committed to making the selected option work.

**Mr. Alvey** said that he realized that the Board was being asked to consider lots of things, but suggested that there were things that were not in the staff report and were glossed over by Mr. Nelson.

He asked the Board to first consider the Carlton Oaks employees, folks who can see that their jobs, careers and livelihood are in jeopardy. He suggested that the context for their decision was ideology versus economic reality. He added that the facility has been providing affordable recreation in a clean environment for more than 50 years. He said one of the aspects that had been glossed over was the strong reality that if this sale is not allowed to be consummated with the City of San Diego, TY Investments could close Carlton Oaks and he wanted the Board to look at the faces and think about their families.

He said the \$3 million price was really a down payment, TY estimates its investments at Carlton Oaks range from \$5 million - \$19 million. Moreover, that TY was willing to work with you to provide the protection and limit development.

He said he would like to leave the Board with a number of questions: Do you value a 50 + year business? Do you care about these employees who depend on this golf course for their livelihood? Is this the only place you should be spending your money? Can you open your minds and your hearts to this solution that meets your mission without having to spend substantial funding?

**Mr. Tinkov** provided a Power Point Presentations that began with a slide from the City of San Diego's Draft River Park Master Plan. He said the Plan placed its greatest emphasis on the 36 acres the City of San Diego proposed to retain, not the 65 acres they proposed to sell. He then presented a slide which showed TY's ownership of the acreage which surrounded the property to be sold.

He next pointed out that the Conservancy's statute also stated that SDRC is to provide for the public enjoyment and enhancement of recreational, educational experience and historic preservation on public lands in the territory in a manner consistent with the protection of land and natural resources, as well as, economic resources in the area. He said one of the things that was getting lost was the economic impact of the preferred option. He said that the Conservancy was considering the expenditure of 3 million while being told that the golf course may close, without a discussion regarding how the Conservancy would deal with the golf course, without a plan, that if Carlton Oaks is forced shut down, his client will ultimately have to redevelop the 105 acres owned by TY.

He stated that his client is now proposing the donation of a conservation easement that limits their development to golf and similar recreational uses. He suggested that if the language isn't what the Conservancy wants TY will work with you. He said that SDRC will have the ability to place a trail on the property and access to it. Carlton Oaks will stay open and these folks will stay employed. He said that it was the uncertainty that his client feared most, so, they have decided to give the Conservancy the conservation easement, there will be no requirement for an appraisal, you don't need to spend \$3 million and you can be assured that you will not have 105 acres of adjacent development.

**Mr. Tinkov** concluded his remarks by saying an additional aspect of his clients proposal was their willingness to give the Conservancy a Right of First Refusal not just for the 65 acres but rather a Right of First Refusal for 170 acres, the entirety of the County Club.

**David King** asked whether Mr. Tinkov had a draft of the revised option that was being offered.



**Mr. Tinkov** remarked that though they had not prepared one, there were 10 days before the August 20<sup>th</sup> deadline approved by the City of San Diego expired and that the record should reflect that the full option price for the conservation easement was \$10.

**Joe Gonzales** expressed how important his job was to him and his family.

**Yvette Lynch**, the Catering Director at Carlton Oaks emphasized the importance of the golf course to the City of Santee, felt that taking away the land would be detrimental, and that without the golf course could not improve their properties and keep their business operating in Santee.

**Colleen Tarantino**, said she had been employed at Carlton Oaks for 3 years and if it wasn't for the golf course, her family would have been displaced after the foreclosure she recently experienced. She said a golf course and a trashy river bed was undesirable and unsafe.

**Adam Mora**, the Food and Beverage Director at Carlton Oaks stated that as a ten year employee of Carlton Oaks he could attest to the value of TY Investments as a business and as a community asset. He said Carlton Oaks was more than just a golf course; it was a historical landmark in Santee that should continue.

**Jerry Dremel**, the Director of Golf at the Carlton Oaks Golf Courses told the Board that they would be displacing four golf teams; Santa West Hill High School use the golf course free and play and practice all year long and provide a place to practice for SDSU, UCSD, and USD. He stated that the golf course provided a lot for the community.

**Rick Boster**, said he was not an employee of Carlton Oaks that it is a destination that should not be lost, that it would be devastating to Santee.

**Warren Savage**, representing the Santee Chamber of Commerce testified the importance of the golf course to the business community, the schools and the people of Santee.

**Rob Hustel** representing the San Diego Coalition said how really disappointed he was to be here, but also wanted to applaud SDRC and recognize the awkward situation in which it had had been placed at the same time. He said, ideally what should have happened is the City of San Diego before they chose to move forward on this tract, would have sat down and set a long range vision for this piece of property. He said the Coalition sent a letter to the Mayor a month and a half ago and have not received a response. I understand the ultimate decision body is the City Council and it has not been placed on a docket. He said he would hope that everyone could to work together. Spending the \$3 million is a lot of money that could be used on other things, so it is really important we make a good decision.

**Keith Till**, City Manager of Santee said he thought the issue had been complicated more than was necessary. He said that at the end of the day Santee's only interest is that nothing interferes with Mr. Mise's ability to operate the golf course. He said that ideally, we should use the \$3 million towards improving the trails, because the trail is going to be a gem when completed. He said he believe we could accomplish everything we all hope by recording a deed restriction on the property through this easement. He said he didn't see the tangible benefits would justify purchasing the fee simple. He said if we were to acquire the property we should not squeeze them out by negotiating terms they could not bare.

**Deanna Spehn** Policy Director for State Senator Christine Kehoe advised the Board of a very important decision the Board must make and encouraged everyone to read Senator Kehoe's letter. I hope everyone has a chance to read it. She said that nobody wants to see the golf course close and that there are options and for you to do what are right, but SDRC has every ability to protect this land and retain it in public ownership.

**Gary Strawn** Friends of Santee River Park testified that as volunteer he had done detailed surveys, hauled trash, sampled the water quality of this area many, many time over the past six years. He said that the public may be better served by conserving that part of the river, but in his experience with the part owned by the golf course was well maintained. He said he hoped that whatever agreement is reached should provide access at both ends.

**Michael Beck** of the Endangered Habitat League and Conservancy asked what if the City of San Diego did not or had not put this property up for sale. The golf course would be operating as it is; it would be under public ownership and there would be conditions, there would be lease arrangements, essentially proceeding as they are today. He stated that a premise had been established that another public agency taking ownership and allowing those same activities under a lease agreement would somehow jeopardize the employees or the future of the golf course, is a false premise. I strongly support the potential of this property for river restoration, but also just as strongly support the continued use of the property as a golf course. He asked the Board to imagine 20 years from now, if and when the golf course decides to no longer operate. If SDRC, consistent with its statutory mission and obligations in my view, owned fee title to this property; all options remain open.

**Donna Frye** acknowledged that Jim Barwick from the City of San Diego's Real Estate Assets Department was present. She asked that he provide the Board and the public with a brief timeline. She further advised that since the last meeting as part of a fact finding mission she had spoken with representatives of the City of San Diego including Mr. Barwick, Jay Goldstone and the Mayor to understand exactly what the City's position was on this particular transaction. She then asked Mr. Barwick whether the original lease was executed in 1959.

**Jim Barwick** said that her statement was correct.

**Donna Frye** continued by asking whether the appraisal that established the \$250,000 annual lease payments was completed in 2005.

**Jim Barwick** said that he believes that the date was correct.

**Donna Frye** questioned whether transfer of the title and the assignment of the lease to TY Investments occurred around August of 2007.

**Jim Barwick** said he believed that to be correct that there was about 2 years to go on the lease.

**Donna Frye** advised the Board that she wanted to establish a chronological sequence. She then asked Mr. Barwick to explain to the Board briefly how this occurred and what happened when the City had been leasing this land from 1959-2007 to another company, not TY Investments.

**Jim Barwick** testified that he believed TY Investments bought the lease and the fee interest in 2007. He said their lease expired in the end of 2008 and that they entered into

negotiations with the City to either to purchase the property or extend the lease on a long term basis. Negotiations went back and forth for an extended period of time and in April of this year TY Investments came to us with a proposal to buy the property; and, at that point having a proposal in hand, we decided it was something we would make available for sale, pending City Council approval.

He advised that he had called Mr. Nelson and met with him at the end of April to make him aware of the fact there was a possible sale of property and conveyed the basic terms and what the price of the property might be. He reminded Mr. Nelson that the Conservancy had statutory rights, both a Right of First Refusal and their rights as other governmental agencies have for approval to exercise an option to purchase the property. He continued by saying that about two weeks later they responded in a letter to TY Investments, The letter stated the terms of which the City would be willing to sell the property, TY Investments came back to us after 10 days or so and accepted the terms. He said he sent a letter to TY and also started the clock rolling on informing the other public agencies in California. He said he informed Mr. Nelson of those rights and established a deadline that would terminate on July 12<sup>th</sup>.

**Donna Frye** asked whether City of San Diego first contacted TY to say it wanted to sell it, or did TY approach you.

**Jim Barwick** replied that during the course of the negotiations TY Investments expressed a preference for a sale.

**Donna Frye** asked if it was his understanding at that TY was aware of the last appraisal and what the costs would be prior to their purchasing it.

**Jim Barwick** answered affirmatively stating that when they were assigned the lease in 2007 those were the existing payments on the lease.

**Donna Frye** stated a conclusion that when TY assumed the lease they knew what the payments would be.

**David King**, who said that he dealt with Real Property transactions on a regular basis asked if he believed that the rights this Board had, meets the definition of a Right of First Refusal.

**Jim Barwick** answered that yes he believed so, as typically done as a standard real estate practice, but reminded the Board that it has two rights..

**David King** stated his belief that the Right of First Refusal would give us the right to buy at the price that has been negotiated currently by TY.

**Jim Barwick** said that was correct.

**David King** questioned counsel whether the Board actually had that right.

**Hayley Peterson** stated her belief that the Board does have that right that the \$3 million dollars was a ceiling subject to approval by the state agencies after an appraisal had been obtained. She said that if the appraisal came in at a value less than \$3 million, she felt that under the Surplus Land Code that good faith negotiations between the River Conservancy and the City of San Diego to attempt to reach a mutually agreeable price that might be less than \$3 million, so in her view the \$3 million is a ceiling not a floor.

**Jim Barwick** offered that it was a standard real estate practice that the Right of First Refusal was dictated by an accepted offer and that the Conservancy or someone holding a right of first refusal can step in and purchase the price under the same terms and conditions as the agreed upon in that offer.

**John Donnelly** made a statement about the appraisal process and stated that normally a State appraisal is done using comparables and lands sale. He said the existing offer would represent a comparables and that the appraiser would take into account the \$3 million dollar offer.

**Dianne Jacob** asked whether the \$3 million could be the floor not the ceiling that in the end it is the City of San Diego that would make the decision on what price you would accept or not accept.

**Jim Barwick** said The City Council would make the ultimate decision on the sale of the property and at which price.

**Dianne Jacob** questioned if an appraisal did come in higher that she imagined that he would not be recommending to his Council that they accept a lower number.

**Dianne Jacob** asked the City how long if we did go with the public option, how long would it take and what guarantee is there that we would get the money to buy the property.

**Karen Scarborough** said it would depend on the process that was taken, and ultimately the appraisal process takes own time. If the appraisal comes in with more money than we have then we would have to entertain other sources of funding. She said that though is conceivable that depending on the requirements of the Public Works Board that it could go quickly, but it could easily take two to six months. She added that the option that was just placed before us for the conservation easement along with the First Right of Refusal for the entire 170 acres seemed like an option that could potentially be entertained and I would be interested in reviewing

**Dianne Jacob** remarked that she was still not certain she received a clear answer to her question.

**Donna Frye** indicated that it seemed that the best estimate was less than a year.

**John Donnelly** said that another element to the funding part of this is the state's ability to make the cash available to move forward on an acquisition. He reminded everyone how difficult it was last year for state agencies to get cash.

**Dianne Jacob** asked whether the cash was available today.

**Mike Nelson** responded that was legislative language was placed on two fiscal years appropriations of Proposition 84 funding allocated directly to the Coastal Conservancy, that if the Board should decide to go with the public option to acquire the land, he would immediately get begin to work with the Coastal Conservancy, who in turn determine what bond funds would be available and when.

**Dianne Jacob** said it sounded as though the bottom line is, we don't know if the money would be available.

**Mary Small** from the Coastal Conservancy interjected that as Mike correctly said that there are two fiscal years of funding from Proposition 84 are designated for the San Diego River Conservancy. Unfortunately some of those funds had to be placed under contract by June 30<sup>th</sup> which did not happen, so, some of that money would have to be appropriated again before we would have access to it. She said she thought there is just under \$3 million presently available in current appropriations for the San Diego River Conservancy, but the additional funds could be reallocated through the budgetary process, which is a normal course of events.

**John Donnelly** inquired as to whether the re-appropriation could occur with the passage of this year's budget or next and that he assumed it would be next years.

**Mary Small** responded that was correct.

**John Donnelly** indicated that that meant it might be an additional year before the funds became available for expenditure.

**Ben Clay** stated that based on the testimony that both options would require Public Works Board approval and adherence to a process, so there would be a substantial time delay for either option, plus the full appropriation may not be available till next fiscal year.

**Dianne Jacob** stated that when weighing both the public and private option, TY Investments has brought for a pretty sweet deal today, but would like to get answers that Michael Beck raised regarding the fact that the golf course has existed for a long period of time on a lease agreement, so why wouldn't a lease agreement work for this owner when it worked for the others.

**Mr. Tinkov** responded that they had been working for 2 1/2 years before they received an offer.

**Dianne Jacob** asked Mr. Tinkov whether in his opinion the worst case scenario to him would be the "public option"

**Mr. Tinkov** said he didn't know if that was the case.

**Dianne Jacob** asked if it was a public option and this entity were to enter into a lease agreement with you, what would be wrong with proceeding down that path.

**Mr. Tinkov** answered that it was simply the uncertainty. He said that the timeline for the Conservancy to purchase this property is uncertain, and there will be a significant lag in funding to make that purchase and pursue an opportunity to actually negotiate a lease. If that lease turns out to be great for us, fantastic, no worries we are in a better position that we are today. However he said that there is nothing on the table from the Conservancy at this time, or specific terms. He said TY Investments was in dire straits with the economy as it is today and cannot afford to keep going like this.

**Mr. Poat** stated that regarding the City of San Diego and the Right of First Refusal since there is an offer on the table, it goes to whether you are going to meet that offer. He said that part of the challenge is that we cannot put an equivalent offer on the table for a couple of months.

**Donna Frye** read part of the letter from the Mayor of the City of San Diego which states if the Conservancy decides to purchase the property from the City he would support that decision and would instruct City staff to work with the Conservancy to make the sale happen as quickly as possible and that he recognizes that other state agencies that would have a role in making this transaction happen and the City would cooperate with them as well.

**Ben Clay** had questions regarding the proposal TY had just made and their complaints of uncertainty. He said that he had uncertainties regarding the proposal that they had just tossed on the table and how it works. He heard testimony that suggested that because of the instability of the market place these folks may lose their jobs, yet it sounded that blame was being placed on our backs. It just doesn't make sense that if the property goes from public ownership to public ownership these people are all going to lose their jobs, how can that happen.

**Mr. Tinkov** provided assurances that TY Investments has the authority to execute the agreement that they are proposing.

**Ben Clay** concluded that regarding whether it's a lease between the City and the River Conservancy or some other public entity the uncertainty is over the terms of the lease and the mechanics of this deal.

**Mr. Tinkov** said he agreed with Ben Clay's statement. He said they have put forward a proposal and in return have received a counter-proposal that we will take this property and then give you a lease which the Conservancy cannot do that until they have an appraisal and knows what it can and cannot do.

**Donna Frye** stated that because the time for the meeting would soon expire she asked if she could get a motion to extend the time of the meeting.

**Dianne Jacob made the motion, which was seconded and approved unanimously by a roll call vote.**

**Ann Miller Haddad** She also expressed her appreciation to Mr. Mise and TY Investments for putting forth this very generous offer which is a big deal and would have a significant impact on her thinking as well as others.

She asked Mr. Barwick if was possible to grant and an extension to determine the viability of the easement donation, since it would be unnecessary to spend \$3 million, which could be used to build out the trail on this property or pursue other projects equal importance.

**Jim Barwick** stated that that he could speak for the City, but not the buyer, and the City would have no problem.

**Donna Frye** asked Mr. Tinkov if he would have a problem extending the time period in order to have a discussion about the conservation easement that you offered.

**Felix Tinkov** stated that this was acceptable to TY Investments.

**Hayley Peterson** said that since no resolution had been prepared for this action that the Board spell out exactly what action is to be taken and to be as specific as possible.

**David King** asked if Mr. Tinkov had a copy of the option since it sounds that a simple modification to this document may be possible, if the Board was planning to take any action today. He asked whether there were a variety of different changes that would need to be made to this easement before that Board other than the price.

**Hayley Peterson** said there were changes that would need to be made to the option agreement and conservation easement as presently drafted.

**David King** asked Hayley Peterson to explain legal concerns she might have regarding the public option as discussed at the last meeting.

**Hayley Peterson** stated that while there were issues she didn't believe they would be obstacles.

**Mike Nelson** stated that the government code for surplus property basically says that we request of the disposing agency to enter into good faith negotiations. He added that when you consider the letter we have received from the Mayor, we should only assume that those good faith negotiations can take place.

**David King** stated that what the Executive Officer just described was not a Right of First Refusal.

**Hayley Peterson** said there are two options and one is the Right of First Refusal.

**David King** concluded that SDRC has three choices. We can take a Right of First Refusal, we can go into the surplus land code or we can we do this private option.

**Mike Nelson**, The resolution for the public option allows us to exercise both the Right of First Refusal as well as to request that good faith negotiations begin with the City of San Diego; it allows us to explore both of our statutory opportunities.

**David King concluded that** it would be a resolution to potentially pursue two different paths.

**Hayley Peterson** agreed stating that an appraisal has not been obtained because SDRC staff has not been authorized by the Board to do so. Essentially SDRC would be exercising both its options and determine which is most beneficial.

**Dianne Jacob** recalled that at last meeting, as many here have stated, it is a historic fact that the golf course has been there for over 50 years and employs a hundred employees, consequently she felt it was very important to consider the economic benefits of the golf course carefully. She said that she was confident that no one wishes to jeopardize the continued operation of that golf course on this property. She stated that she believe the public option has too much uncertainty to come to closure on this project, so she would like to propose is that we approve in concept the private option and designate our negotiators to work with TY investments.

She requested legally binding documents negotiated to reflect the terms that have been offered today by TY Investments that also will achieve the goals of the River Park.

**Dianne Jacob** said that she was asking for approval in concept of the private option and to appoint a team to negotiate with representatives of TY Investments, and possibly the City of

San Diego to develop a legally binding document with the terms offered up today by TY Investments and also the terms of a lease back arrangement that would meet the goals of the River Park.

**Donna Frye** stated that she was not clear on what she meant by a lease back arrangement?

**Dianne Jacob** then asked that a reference to the lease back be withdrawn and to focus on a conservation easement.

**Donna Frye** stated that the motion is for this Governing Board to approve the acceptance of a donation of a conservation easement to the San Diego River Conservancy and to work with the appropriate parties to facilitate and come to an agreement.

**Karen Scarborough** said she was not sure if that was exactly what Supervisor Jacob said. She heard approval in concept.

**Donna Frye** said yes as opposed to a legally binding agreement.

**Karen Scarborough** added that it might behoove us to see the concept written down first prior to approval in concept, because I think both things we noted have not been seen. TY has not seen the proposed lease agreement nor have we seen documentation for the new proposed conservation agreement.

**Dianne Jacob** clarified that there were two resolutions before the Board one is the “private option and one is the “public option” that when she said approve private option in concept she was referring to Resolution 10-06 and obviously the details need to be worked out.

**Donna Frye** stated that she felt that was what Ms. Scarborough was trying to point out. It would be difficult to approve a concept for which we nothing is in writing. Perhaps a better idea might be to do what we did before which was to continue fact finding to get this information the Board needs.

**Ann Miller Haddad** suggested that the answer might be somewhere in between. She said that two documents should be pulled together: one that clarifies that if we do the public option what as an entity would we be looking at, which would require providing TY Investments with information regarding what a lease from us would look like; and, likewise we would need to update option B, the private option to include the new terms of a conservation easement that was discussed today. All of those documents should be brought to us for review.

**Dianne Jacob** asked if what she meant was to have both options come back to this Board.

**Ann Miller Haddad** agreed and felt it was necessary to complete the circle of due diligence, but said that obviously, the private option is very attractive.

**Donna Frye** concluded that it was necessary to have the City of San Diego and Mr. Tinkov approach the podium, so we can discuss the time extension because of where I think this Board is heading.

**Donna Frye** asked that TY Investments and the City of San Diego both agree to another extension of time under the same terms and conditions as previously provided to include the



First Right of Refusal as well as the Surplus Land Code until September 10, 2010. She said this extension would allow a presentation or gathering of information regarding TY's offer and secondly to require the Executive Officer to provide more information about what the lease options could be if the SDRC decided to purchase the land. This task would also include how the lease would affect TY.

**Cynthia Bryant** asked that the presentation include a discussion of the financing issues associated with the public option, and should cover how SDRC would maintain the property as an owner of a golf course and how the proceeds would support other activities. This exercise would require working with the Coastal Conservancy and the Department of Finance about whether or not there is money there for the transaction

**Donna Frye** agreed to add that direction to the Executive Officer as part of the Supervisor's motion.

**Dianne Jacob** said the motion was no longer hers that her motion was for the private option.

**Ben Clay** made a motion to have the Executive Officer assemble a team with the Coastal Conservancy, the Department of Finance and Resources to assist him in a further analysis of both the public and private options, and particularly the offer placed on the table TY Investments. He should return to the Board with recommendation that include financing issues and costs.

**Andrew Poat** seconded the motion made by Ben Clay.

**Donna Frye** asked for to confirmation that the City of San Diego extends our time for fact finding purposes through September 10<sup>th</sup> and Mr. Tinkov representing TY also agrees to that extension.

**Jim Barwick**, Real Estate Assets, the City agreed to a September 10, 2010 extension.

**Donna Frye**, We are going to extend the time to September 10<sup>th</sup>. Our next meeting is September 2<sup>nd</sup> and will appear on the September 2<sup>nd</sup> agenda for this Board

**Mr. Tinkov** first sought clarification that September 10<sup>th</sup> would be the deadline. He then said he also sought clarification to avoid any misunderstanding whether we were just going to gather data or were in fact going to negotiate terms.

**Donna Frye** encouraged TY to provide terms, but would defer to Board members regarding negotiations; but she felt that before this Board can take action, what we are asking for are the terms and conditions in writing that we can review.

**Ann Miller Haddad** stated that it seemed reasonable that there is conversation and participation on both sides to work out some details if possible.

**Karen Scarborough** asked that it be brought back to the Board in context or in language that could be approved.

**Mr. Tinkov** said that was acceptable as long as TY was provided with a draft from which to work.

**Donna Frye** said she understood and that documents provided by Mr. Nelson and our legal counsel will be shared with you.

**Mr. Tinkov** stated that would mean that TY would be allowed to work with SDRC and SCC counsel in order to come to binding terms that would be available to the Board at the time we present in September.

**Ruth Hayward** suggests that the Board consider including other folks in the review the conservation easement.

**John Donnelly** said he would be willing to offer his office.

**Dianne Jacob**, I would just like to make sure that when we come back on September 2<sup>nd</sup> we are going to have document terms on both the private and public options that we can actually take an action on. She further stated that she would support the motion although she felt it was a waste of time for us to go down the public option road. She said she didn't think anything is going to change, however, I don't think it hurts us to look at it. She said she expected a lot of due diligence both sides and that our staff to make sure the private option and its terms are taken really seriously.

**Karen Scarborough** asked that Mary Small of the Coastal Conservancy to work with the Executive Officer.

**Ann Miller Haddad** thanked everyone who testified on both sides of the issue and acknowledged that a lot that a lot of energy had been invested.

**Donna Frye** also thanked everyone and reminded that the SDRC Governing Board did not encourage nor ask the City of San Diego to sell the property. The original interest in purchasing the land was proffered by TY Investments, not SDRC and added that there should be no misperception about the role of SDRC or how this process began.

**A roll call vote of Ben Clay's motion, which had been seconded by Andrew Poat was approved unanimously.**

**The meeting was adjourned at 2:24 p.m.**

State of California  
San Diego River Conservancy

EXECUTIVE OFFICER'S SUMMARY REPORT  
**Meeting of September 2, 2010**

ITEM: **3**

SUBJECT: **PUBLIC COMMENT**

PURPOSE: Any person may address the Governing Board at this time regarding any matter within the Board's authority which is not on the agenda. Submission of information in writing is encouraged. Presentations will be limited to three minutes for individuals and five minutes for representatives of organizations. Presentation times may be reduced depending on the number of speakers.

State of California  
San Diego River Conservancy

EXECUTIVE OFFICER'S SUMMARY REPORT  
**Meeting of September 2, 2010**

ITEM: **4**

SUBJECT: **CHAIRPERSON'S AND GOVERNING BOARD  
MEMBER'S COMMENTS**

PURPOSE: These items are for Board discussion only and the Board  
will take no formal action.

State of California  
San Diego River Conservancy

EXECUTIVE OFFICER'S SUMMARY REPORT  
**Meeting of September 2, 2010**

ITEM: **5**

SUBJECT: **EXECUTIVE OFFICER'S REPORT**

The following topics may be included in the Executive Officers Report.  
The Board may take action regarding any of them:

- San Diego River Trail: Status of Gaps Analysis
- Walker Acquisition / Santee
- Proposition 40 & 84 Project Status

EXECUTIVE OFFICER'S SUMMARY REPORT  
**Meeting of September 2, 2010**

ITEM: 6

SUBJECT: **CITY OF SAN DIEGO – CARLTON OAKS GOLF COURSE: CITY OF SAN DIEGO'S PROPOSED SALE OF APPROXIMATELY 65.4 ACRES (PUBLIC AND CLOSED SESSIONS)**

The City of San Diego proposes to sell the approximately 65.4 acres the Public Utilities Department owns at Carlton Oaks Golf Course. The Conservancy has a first right of refusal under the SDRC Act and certain rights under the California Government Code (§§ 54220-54232; Surplus Land) to acquire the property. The City has set September 10, 2010 as the deadline for the Conservancy to exercise these rights. TY Investments, the golf course operator, is interested in purchasing the property. Following a presentation by the Executive Officer and the Chair, the Governing Board will consider whether to pursue acquisition of an interest in the property by purchase or donation. The Governing Board may meet in Closed Session to give instructions to its negotiators regarding the price and terms of payment of an acquisition or may discuss the matter in open session

Closed Session pursuant to Government Code section 11126, subdivision (c) (7)

Property Description: An approximately 65.4 acre portion of Assessor's Parcel Number 383-080-03 which is a portion of Carlton Oaks Golf Course

Negotiators: Michael Nelson, Executive Officer; Ann Van Leer SDRC Consultant, Hayley Peterson, Deputy Attorney General

Presentation

Donna Frye, SDRC Chair

Michael Nelson, Executive Officer

Ann Van Leer SDRC Consultant

**SDRC  
RESOLUTION 10-07**

**Resolution No: 10-07**

**RESOLUTION OF THE GOVERNING BOARD OF THE SAN DIEGO RIVER  
CONSERVANCY**

**Instructs the Executive Officer to Assemble a Team to Look at Both the Public Option and Private Option and Provide Recommendation to Board; Accepts an Extension of Deadlines for Exercising First Right of Refusal and Responding to Government Code Sections 54220-54232 Notification; Approves the Executive Officer's Information Gathering ; and Allows the Executive Officer to Enter into Tolling Agreements with the City of San Diego and other Parties if Necessary.**

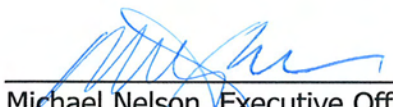
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At the August 10, 2010 "Special Meeting" of SDRC, the Governing Board unanimously approved a Resolution following a presentation and public testimony regarding Agenda Item 4, which addressed the City of San Diego's proposal to sell 65.4 acres at Carlton Oaks Golf Course to TY Investments.

The San Diego River Conservancy's Governing Board approved a Resolution which:

1. Authorizes the Executive Officer to assemble a team with the Coastal Conservancy, the Department of Finance and Resources and the Attorney General's Office to further refine both the "public" and "private" options, as well as the offer of a donation presented by TY Investments, Inc.; and, return with recommendations; and
2. Accepts an extension of deadlines requiring SDRC to exercise its first right of refusal and respond to a notification received pursuant to Government Code sections 54220-54232 until September 10, 2010; and,
3. Requests the Executive Officer gather information from TY Investments that addresses questions raised by the Governing Board and present them at the next meeting, as well as, written terms and conditions in a form that could be approved on September 2, 2010; and,
4. Allows the Executive Officer, as necessary, to execute Tolling Agreements with the City of San Diego and other parties if additional time should be required.

*I, Michael Nelson, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of a Resolution adopted by the San Diego River Conservancy on August 12, 2010.*

  
\_\_\_\_\_  
Michael Nelson, Executive Officer  
San Diego River Conservancy



**STAFF REPORT FOR  
SDRC'S RESOLUTIONS  
10-06A and 10-06B**

**EXECUTIVE OFFICER'S SUMMARY REPORT**  
**Meeting of September 2, 2010**

ITEM: Item 6  
(Resolutions 10-06A, 10-06B **REVISED**)

SUBJECT: **Authorizing the following:**

**NOTIFY THE CITY OF SAN DIEGO OF THE  
CONSERVANCY'S INTENT TO PURCHASE OR LEASE  
APPROXIMATELY 65.4-ACRES OF PROPERTY AT  
THE CARLTON OAKS GOLF COURSE AND  
EXERCISE ITS FIRST RIGHT OF REFUSAL TO  
ACQUIRE THE LAND; OR,**

**ACCEPT THE DONATION OF CONSERVATION AND  
TRAIL EASEMENT DEED AND RIGHT OF FIRST  
REFUSAL AGREEMENT.**

**APPROVES THE REQUEST TO USE FUNDS, IF  
NECESSARY FROM THE SAFE DRINKING WATER,  
WATER QUALITY AND SUPPLY, FLOOD CONTROL,  
RIVER AND COASTAL PROTECTION BOND ACT OF  
2006 (PROPOSITION 84)**

PURPOSE: The Board may consider the adoption of Resolution 10-06A or 10-06B to preserve the biological, open space and recreational values associated with the 65.4 acres the City of San Diego proposes to sell along the River, as well as the property's potential to implement the San Diego River Park Conceptual Plan and the City of San Diego's Draft San Diego River Park Master Plan.

STRATEGIC PLAN  
CONSISTENCY: This item addresses all programs of SDRC's Strategic Plan,  
Program 1: Land Conservation  
Program 2: Recreation and Education  
Program 3: Natural and Cultural Resources Preservation and Restoration  
Program 4: Water Quality and Natural Flood Conveyance

BACKGROUND: The City of San Diego has decided to sell 65.4 acres in the floodway of the San Diego River for \$3,000,000 to TY Investments, Inc, (TY) the current golf course operator and

[Item 6]

owner of the Carlton Oaks Country Club in Santee. The Carlton Oaks golf course is situated partially on lands owned by the City of San Diego (City) and leased to TY and partially on lands owned in fee by TY. It is SDRC understanding that rather than continuing protracted negotiations over lease terms, the City decided instead to offer the property for sale. The City owns approximately 100 acres of property along the river and proposes to sell 65.4 acres; retaining approximately 36.2 acres of the parcel nearest the river. This retained land is the area where SDRC and the City are working together to control invasive non-native plants and restore habitat.

The San Diego River Conservancy Act provides SDRC with a first right of refusal to purchase the property. The City formally notified SDRC on May 11, 2010 that it must submit a written response or offer to purchase or lease by September 10, 2010 and that unless it did so, the property would be considered cleared for sale by SDRC. Additionally, the City's Real Estate Assets Department notified SDRC on May 24, 2010 that it must submit a notice of its intent to exercise its first right of refusal by September 10, 2010 or the City would assume that SDRC has decided to waive its rights.

SDRC has considered intervening in the sale at its July 8, 2010 and its Special Meeting of August 10, 2010, to make certain the biological values of this key riverfront property were protected and that its importance to the development of San Diego River Park was addressed, including the ability to build the San Diego River Trail.

SDRC's deliberations have acknowledged the property's significance and its relationship to a number of adopted and proposed public policies and documents, which include the following:

**City of San Diego, Draft Master Plan, San Diego River Park** identifies the property as a key site that provides an opportunity to integrate the river experience with adjacent development and the City of Santee and which should focus on connecting Mission Trails Regional Park with Mast Park and Santee Lakes, that these points be linked by a multi-use path system integrated within a larger habitat corridor. Moreover, it suggests an examination of the long term potential for this area to evolve and become part of the San Diego River Park, and that consideration is given to redesigning the golf course to be more sensitive to the hydrology of the river and creating habitat corridors.

**Multiple Species Conservation Program** included the entire area as a core biological resource area and linkage.

**Multiple Habitat Planning Area** includes a portion of the land as a riparian and wetland resource and suggests that adjacent land uses be managed to ensure minimal impacts.

**San Diego River Park Conceptual Plan** encourages connection of existing faculties, promotes a continuous trail along the length of the River, supports natural stream process, preservation and enhancement of riparian habitat.

**Public Resources Code, Division 22.9 /San Diego River Conservancy Act** “...To acquire and manage public lands within the San Diego River area, and to provide recreational opportunities, open space, wildlife habitat and species restoration and protection, wetland protection and restoration, protection of historical and cultural resources, and protection, maintenance and improvements of the quality of the waters.” “...To provide for the public's enjoyment, and to enhance the recreational and educational experience and historic interpretation on public lands in the territory in a manner consistent with the protection of land and natural resources, as well as economic resources, in the area.

SDRC has conducted substantial negotiations in good faith with the prospective buyer, TY Investments, to develop a Letter of Intent regarding a lease agreement if SDRC were to purchase the property; and, to prepare a Conservation and Trail Easement and First Right of Refusal agreement that could be donated to SDRC.

TY Investments has offered to donate a first right of refusal for the entire Golf Course; donate a Conservation and Trail Easement that extinguishes development rights; and provides a trail easement for the 65.4 acres, as well as their properties east and west of the parcel, essentially a trail corridor between Mast Park to Mission Trails Regional Park. This donation would be contingent on SDRC waiving its first right of refusal and its ability to enter good faith negotiations with the City of San Diego to acquire the property subject to the Government Code for Surplus Land.

[Item 6]

SDRC is grateful for TY Investments' willingness to donate the Conservation and Trail Easement and attempts to address the issues and concerns staff has with their Agreement and Conservation Easement. They have also advised us that they would be willing to continue negotiations to make the documents acceptable to SDRC and agencies that must approve them. The Board must consider whether this agreement with the golf course operator best achieves SDRC's statutory objectives.

Staff has prepared two Resolutions, 10-06A and 10-06B which provide the Governing Board with two distinct options. We have characterized one as "public" and one as "private". Both attempt to mitigate the loss of present and future conservation benefits public ownership currently provides and the consequences of private ownership if the property is sold. We have listed general bullet points.

**Resolution 10-06B (Private Option)**

- Extinguishes residential, agricultural, industrial, and commercial development rights, preserving the golf course use or other "low intensity recreational" uses, at no expense to the Conservancy.
- Requires Conservancy to waive its right to purchase from the City.
- Provides Trail Easement that traverses the entire property from Mast Park to West Hills Parkway, at no expense to the Conservancy, but does pose financial constraints.
- Allows for the development of a trail alignment study and a biological study to determine Conservation Values of property, to restrict all future development to cause no harm to said Values.
- Provides a right of first refusal over 170 acres to the Conservancy, at no charge.
- Provides opportunity to establish wetlands and habitat mitigation project but type/design of project is determined by TY, not SDRC.

**Resolution 10-06A (Public Option) Preferred**

- Protects public ownership of one of the most significant open spaces below the El Capitan dam, while maintaining one of the most successful public private partnerships in the region.
- Guarantees opportunity to restore wetlands and establish new habitat should golf course cease by conserving existing natural resources on and adjacent to the Property.
- Protects the reclamation potential of one of few sites along the river where a major restoration could occur.
- Guarantees SDRC's ability to build the San Diego River Trail after planning and regulatory approvals are granted.
- Prevents the private sale and subdivision of 100 acres of public land in one of Southern California's most urbanized stream valleys.
- Allows for full consideration of SDRC's statutory objectives in negotiations between the City, TY, and SDRC that could achieve the principal objectives of the parties.
- Allows for future implementation of the goals of the San Diego River Park Master Plan, the San Diego River Conceptual Plan and the Conservancy's Strategic Plan;
- Allows a lease back to the current golf course owner that restructures lease agreement to addresses poor economic climate, while maintaining jobs in the City of Santee and providing revenues for the San Diego River Conservancy and jobs for Santee.
- Does not provide trail access connecting West Hills Parkway to Mast Park.
- If acquisition is not approved by Coastal Conservancy, and Public Works Board the sale offer returns to TY;
- Uncertainty regarding TY's ability to receive rent reduction from City while Conservancy's acquisition is processed.

**SDRC RESOLUTION  
10-06A PUBLIC OPTION**

**Resolution No: 10-06A**

**RESOLUTION OF THE GOVERNING BOARD OF THE SAN DIEGO RIVER CONSERVANCY**

**AUTHORIZING THE EXECUTIVE OFFICER TO NOTIFY THE CITY OF SAN DIEGO OF THE CONSERVANCY'S INTENT TO ACQUIRE/LEASE APPROXIMATELY 65.4 ACRES OF PROPERTY AT THE CARLTON OAKS GOLF COURSE; EXERCISING ITS FIRST RIGHT OF FIRST REFUSAL TO ACQUIRE/LEASE THE LAND; AND AUTHORIZING THE USE OF FUNDS FROM THE SAFE DRINKING WATER, WATER QUALITY AND SUPPLY, FLOOD CONTROL, RIVER AND COASTAL PROTECTION BOND ACT OF 2006 (PROPOSITION 84)**

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WHEREAS, the City of San Diego ("City") currently leases an approximately 65.4-acre portion of APN 383-080-03 ("the Property") to TY Investments, Inc., dba Carlton Oaks Holdings, LLC, ("TY Investments") for use as part of the Carlton Oaks golf course; and,

WHEREAS, the City submitted a letter of intent to TY Investments dated May 10, 2010 setting out the basic terms and conditions by which the City would be prepared to sell the Property to TY Investments; and,

WHEREAS, the terms and conditions include a sales price of \$3,000,000; and,

WHEREAS, the City's Real Estate Assets Department notified the San Diego River Conservancy (SDRC) subject to California Government Code Sections 54220-54232 on May 11, 2010 that it was considering the sale of the Property; and,

WHEREAS, the City's Real Estate Assets Department notified SDRC on May 24, 2010 that it must submit a notice of its intent to exercise its first right of refusal by September 10, 2010 or the City would assume that SDRC has decided to waive its right; and,

WHEREAS, California Public Resources Code Section 32633 states that SDRC is created to acquire and manage public lands within the San Diego River area to provide recreational opportunities, open space, wildlife habitat and species restoration and protection, wetland protection and restoration, protection of historical and cultural resources, and protection, maintenance and improvements of the quality of the waters in the San Diego River and its watershed, its tributaries and historic flumes emanating from the river for all beneficial uses, lands for educational uses within the area, and natural floodwater conveyance; and,

WHEREAS, California Public Resources Code Section 32632 defines the "San Diego River area" or "area" as those lands or other areas that are donated to, or otherwise acquired by, or operated by, SDRC, which are located within one-half mile on either side of the thread of the river and its tributaries including the historic flumes emanating from the river, from its headwaters near Julian to the Pacific Ocean at Dog Beach in San Diego, and other properties within the watershed of the San Diego River that meet the intent of this division as approved on a case-by-case basis by a two-thirds majority vote of the governing board; and,

WHEREAS, the Property is located with one-half mile of the thread of the San Diego River, is critical to the implementation of the City's San Diego River Park Master Plan, the Multiple Species Conservation Plan, and lies wholly within the floodplain and floodway of the River; and,



WHEREAS, California Public Resources Code Section 32646 provides that SDRC has the first right of refusal to acquire any public lands that are suitable for park and open space within SDRC's jurisdiction when those lands become available; and,

WHEREAS, California Government Code Sections 54220-54232 require an entity or association desiring to purchase or lease the surplus land to notify in writing the disposing agency of its intent to purchase or lease the land within 60 days after receipt of the agency's notification of intent to sell the land; and,

WHEREAS, the SDRC Governing Board finds the expenditure of funds to acquire/lease the Property is consistent with the San Diego River Conservancy Act and SDRC's Strategic Plan, Program 1: Land Conservation, and the SDRC Governing Board also seeks to implement the San Diego River Park Conceptual Plan and the City of San Diego's San Diego River Park Master Plan; and,

WHEREAS, the Legislature and Governor of the State of California have provided funds for the program shown above to the California Coastal Conservancy for projects approved by SDRC.

NOW, THEREFORE, BE IT RESOLVED that the San Diego River Conservancy's Governing Board:

1. Authorizes the Executive Officer to notify the City of San Diego's Real Estate Assets Department by September 10, 2010 of SDRC's intent to purchase or lease the approximately 65.4 acres the City of San Diego has proposed to sell at the Carlton Oaks Golf Course.
2. Authorizes the Executive Officer to submit a notice the City of San Diego's Real Estate Assets Department of SDRC's intent to exercise its first right of refusal by September 10, 2010 to purchase the 65.4 acres City of San Diego has proposed to sell at the Carlton Oaks Golf Course.
3. Authorizes the Executive Officer to request up to \$3,000,000 or appraised value from the State Coastal Conservancy from Proposition 84 funds appropriated to the Coastal Conservancy for projects authorized by the San Diego River Conservancy to acquire/lease a fee simple interest for the 65.4 acres the City of San Diego has proposed to sell at the Carlton Oaks Golf Course.
4. Appoints the Executive Officer, or designee, as agent to conduct all negotiations, execute and submit all documents including, but not limited to applications, agreements, and payment requests and so on, which may be necessary for the completion of the aforementioned Project.

Approved and adopted the 2<sup>nd</sup> day of September, 2010. I, the undersigned, hereby certify that the foregoing Resolution Number 10-06A was duly adopted by the San Diego River Conservancy's Governing Board.

Roll Call Vote:

Ayes: \_\_\_\_\_

Nos: \_\_\_\_\_

Absent \_\_\_\_\_

---

Michael J. Nelson, Executive Officer  
San Diego River Conservancy

**LETTER OF INTENT TO  
ENTER INTO LEASE  
NEGOTIATIONS**



Carlton Oaks Golf Course  
9200 Inwood Drive, Santee, CA  
c/o  
Felix M. Tinkov, Esq.  
Lounsbery, Ferguson, Altona & Peak, LLP  
401 West A Street, Suite 1825  
San Diego, CA 92101

**Non Binding Letter of Intent to Enter into Lease Negotiations for:**

**65.4 acres at the Carlton Oaks Golf Course, Santee, CA**

Dear Mr. Tinkov:

The purpose of this Letter of Intent (LOI) is to outline the terms on which the San Diego River Conservancy (SDRC) would be willing to pursue further lease negotiations for a lease with TY Investments, Inc. (TY), Santee, California. The following terms and conditions will serve as an outline of the proposed lease agreement and as the basis for preparation and negotiation of an interim and final lease agreement acceptable to TY and SDRC.

This LOI envisions a traditional approach to a public-private joint venture which contemplates a ground lease of public land to TY for the improvement and operation of its public golf course. The land would be leased for a term sufficient to obtain financing; enough time to generate a reasonable return on investment and amortize its capital outlay. TY would pay a fair market rent which considers gross revenues for golf course operations in the form of greens fees and golf cart rentals.

The goal of our negotiations is to create a public private partnership that preserves the ability to maintain a golf course in Santee accomplishes the goals of SDRC and produces achievements that neither party could accomplish alone.

If the Governing Board of the San Diego River Conservancy should decide to pursue the acquisition of the 65.4 acres at the Carlton Oaks Golf Course from the City of San Diego, it will be necessary to obtain an appraisal of the property. It is SDRC's intention to have an appraiser review the financial assumptions and formulas used to determine the Percentage Rent for this lease agreement to determine their validity.

**LANDLORD:**

San Diego River Conservancy  
1350 Front Street, Suite 3024  
San Diego, California, 92101

**TENANT:**

TY Investments, Inc.  
9200 Inwood Drive  
Santee, California, 92071

**TERM:** 30 Years

**INTERIM PERIOD:** 1 year

The interim period refers to that period of time during which TY Investments must adhere to the terms of the existing "holdover lease" executed with the City of San Diego as adjusted by SDRC.

**PREMISES:** Approximately 65.4 Acres

**USE:** Golf Course, and related activities

**SCHEDULE of CAPITAL INVESTMENT**

The 30 year lease which establishes a public private partnership between TY and SDRC would acknowledge capital investments made by TY and SDRC's efforts to develop the San Diego River Trail and deduct the cost of the investments made by TY from its annual rent until paid off in full.

**RENT:**

**BASE RENT:** The Fair Market Rent would be determined by calculating a Percentage Rent of 10% of gross revenues for the golf course (greens fees and golf cart rentals) portion of the property (approximately 152.64 acres) then multiplying it by the 42.85% (65.4 acres) which would represent the SDRC's portion of the total gross rent for the golf course, with a minimum rent to be no less than \$75,000 per year for the initial five year period.

Example:

<u>Gross Revenue</u>	<u>Percentage Rent</u>		<u>Annual Rent</u>
\$2,500,000	X	10%	= \$250,000

**(Total Gross Rent = \$250,000) X (SDRC Portion 42.85%) = \$107,125**

**RENT INCREASES:** The Fair Market Rent would be adjusted in five (5) year increments based upon changes in the Consumer Price Index for the San Diego Area in the intervening period.

This LOI does not constitute a binding contract and no lease or contract is intended to arise until the final lease is executed and fully approved by the State of California, which may include the other state agencies. Each party is free to terminate negotiations for any reason at any time prior to the approval and execution final lease.

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

**SDRC RESOLUTION  
10-06B PRIVATE OPTION**

**Resolution No: 10-06B**

**RESOLUTION OF THE GOVERNING BOARD OF THE SAN DIEGO RIVER CONSERVANCY**

**AUTHORIZING EXECUTION OF AN OPTION AGREEMENT WITH TY INVESTMENT, INC., TO  
ACCEPT THE DONATION OF A RIGHT OF FIRST REFUSAL AGREEMENT AND A  
CONSERVATION EASEMENT CONSERVATION AND TRAIL EASEMENT DEED  
ON APPROXIMATELY 65.4 ACRES OF PROPERTY AT THE CARLTON OAKS GOLF COURSE;  
WAIVING ITS FIRST RIGHT OF FIRST REFUSAL AND RIGHTS UNDER THE SURPLUS LAND  
STATUTES TO ACQUIRE THE PROPERTY.**

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WHEREAS, the City of San Diego's Real Estate Assets Department notified the San Diego River Conservancy (SDRC) subject to California Government Code Sections 54220-54232 on May 11, 2010 that it was considering the sale of 65.4 acres of property at the Carlton Oaks Golf Course; and,

WHEREAS, the City of San Diego's Real Estate Assets Department notified SDRC on May 24, 2010 that it must submit a notice of its intent to exercise its first right of refusal by September 10, 2010 or the City would assume that SDRC has decided to waive its right; and,

WHEREAS, California Public Resources Code, Division 22.9, Section 32633 states that SDRC is created to acquire and manage public lands within the San Diego River area to provide recreational opportunities, open space, wildlife habitat and species restoration and protection, wetland protection and restoration, protection of historical and cultural resources, and protection, maintenance and improvements of the quality of the waters in the San Diego River and its watershed, its tributaries and historic flumes emanating from the river for all beneficial uses, lands for educational uses within the area, and natural floodwater conveyance; and,

WHEREAS, California Public Resources Code, Division 22.9, Section 32632 defines the "San Diego River area" or "area" means those lands or other areas that are donated to, or otherwise acquired by, or operated by, the conservancy, which are located within one-half mile on either side of the thread of the river and its tributaries including the historic flumes emanating from the river, from its headwaters near Julian to the Pacific Ocean at Dog Beach in San Diego, and other properties within the watershed of the San Diego River that meet the intent of this division as approved on a case-by-case basis by a two-thirds majority vote of the Governing Board; and,

WHEREAS, the property that is proposed for sale is located with one-half mile of the thread of the San Diego River, is a critical to the implementation of the City's San Diego River Park Master Plan, the Multiple Species Conservation Plan, and lies wholly within the floodplain and floodway of the River; and,

WHEREAS, California Public Resources Code, Division 22.9, Section 32646, provides that SDRC has the first right of refusal to acquire any public lands that are suitable for park and open space within the conservancy's jurisdiction when those lands become available; and,

WHEREAS, California Government Code Sections 54220-54232, requires an entity or association desiring to purchase or lease the surplus land to notify in writing the disposing agency of its intent to purchase or lease the land by September 10, 2010 after receipt of the agency's notification of intent to sell the land; and,

WHEREAS, the Governing Board of the San Diego River Conservancy to accept the donation of a CONSERVATION AND TRAIL EASEMENT DEED on 65.4 acres of property and a RIGHT OF FIRST REFUSAL AGREEMENT for the entire Carlton Oaks Golf Course is consistent with the San Diego River Conservancy

Act, SDRC's Strategic Plan, Program 1: Land Conservation and, also seeks to implement the San Diego River Park Conceptual Plan and the City of San Diego's San Diego River Park Master Plan; and,

WHEREAS, the Legislature and Governor of the State of California have provided funds for the program shown above to the California Coastal Conservancy for projects approved by the San Diego River Conservancy; and,

NOW, THEREFORE, BE IT RESOLVED that the San Diego River Conservancy's Governing Board:

1. Authorizes the Executive Officer to notify the City of San Diego's Real Estate Assets Department by September 10, 2010 that SDRC does not intend to purchase or lease the 65.4 acres the City of San Diego has proposed to sell at the Carlton Oaks Golf Course and waives SDRC's first right of refusal, as well as its right to intervene in the City of San Diego's proposed disposal of the land under California Government Code Sections 54220-54232.
2. Authorizes the Executive Officer to sign the OPTION AGREEMENT FOR THE TRANSFER OF AN INTEREST IN REAL PROPERTY attached hereto as Exhibit A on behalf of the San Diego River Conservancy.
3. Appoints the Executive Officer, or designee, as agent to conduct all negotiations, execute and submit all documents including, but not limited to applications, agreements, and payment requests and so on, which may be necessary to complete the Option Agreement and obtain a conservation easement.

Approved and adopted the 2<sup>nd</sup> day of September, 2010. I, the undersigned, hereby certify that the foregoing Resolution Number 10-06B was duly adopted by the San Diego River Conservancy's Governing Board.

Roll Call Vote:

Ayes: \_\_\_\_\_

Nos: \_\_\_\_\_

Absent \_\_\_\_\_

---

Michael J. Nelson, Executive Officer  
San Diego River Conservancy



**OPTION AGREEMENT;  
CONSERVATION AND  
TRAIL EASEMENT DEED;  
RIGHT OF FIRST REFUSAL**

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

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

**RECITALS**

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

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

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

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

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

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

**NOW THEREFORE**, the parties agree as follows:

1. Option to Receive Property Interests. In consideration of an option price of ten dollars (\$10.00) (the "Option Price"), the Conservancy's waiver of the Rights, and other good and valuable consideration, TY grants to the Conservancy an option to receive, at no additional cost: (a) conservation and trail easements over the Subject Property, as described in the attached Exhibit "D", with attachments (the "Easement"), and (b) a right of first refusal, as further described in Exhibit "E" with attachments (the "Right of First Refusal Agreement"), over the Entire Property. It is understood by the parties that the Subject Property has not been surveyed and defined by a metes and bounds legal description, nor has the exact acreage been determined, at the time of the execution of this Agreement. A legal description of the Subject Property will be attached to Exhibit "D" and a legal description of the Entire Property will be attached to Exhibit "E" prior to recordation of said documents.
2. Option Commencement Date. The Conservancy and TY recognize that TY's successful completion of the purchase of the Subject Property from the City, signified by recording an executed grant deed (the "Deed") from the City, as grantor, to TY, as grantee, for fee simple title interest in the Subject Property, is a condition precedent to the Conservancy's ability to exercise its option to receive and record the Easement and Right of First Refusal Agreement (collectively, the "Gifts"). Upon the date this Agreement is executed (the "Effective Date"), the Conservancy shall pay the Option Price to TY, and TY shall:
  - a. open an escrow account which shall be used to: i) complete the purchase of the Subject Property from the City, ii) record the Deed, and iii) convey the Gifts to the Conservancy;
  - b. execute and place a Notice of Option, in the form attached as Exhibit "F", in the escrow account with instructions for recordation of same immediately after recordation of the Deed. The escrow instructions shall incorporate this Agreement and contain such other standard and usual provisions as may be requested by the escrow company and approved by TY and the Conservancy, in writing. The parties may submit separate escrow instructions provided that such escrow instructions shall not modify or amend any provision of this Agreement.
3. Closing Documents. The following shall be deposited in escrow prior to the close:
  - a. TY's Deliveries. TY shall deposit the following items:
    - (1) A duly signed and acknowledged Easement, in substantially the form attached as Exhibit "D";
    - (2) A duly signed and acknowledged Right of First Refusal Agreement, in substantially the form attached as Exhibit "E";
    - (3) A California state tax withholding certificate satisfying the requirements of California Revenue and Taxation Code Section 18805(d) and 26131;
    - (4) A non-foreign certification satisfying the requirements of Section 1445 of the Internal Revenue Code of 1986, as amended, and the regulations thereunder; and
    - (5) TY's form W-9, Request for Taxpayer Identification and Certification.

- b. Conservancy's Deliveries. The Conservancy shall deposit:
    - i. the Conservancy's share of closing costs and prorations as provided in Section 11; and
    - ii. A signed and acknowledged certificate of acceptance acknowledging the State's acceptance of the Easement and the Right of First Refusal Agreement, or an agreement assigning the Conservancy's rights under this Agreement, Easement, and Right of First Refusal Agreement to a nonprofit environmental organization qualified under IRC § 501(c)(3) pursuant to Section 14.
- 4. Additional Instruments. TY and Conservancy shall each deposit such other instruments as are reasonably required by the escrow company or otherwise required to proceed to the close of escrow and consummate the conveyance of the Gifts in accordance with the terms of this Agreement.
- 5. Covenants of the Conservancy. As partial consideration for the Agreement, the Conservancy acknowledges the desire and intention of TY to pursue the purchase of the Subject Property from the City without the direct involvement of the Conservancy or any of its agents, employees, independent contractors, consultants, attorneys, or other persons under its control or sway, except as necessary to ensure the conveyance of the Gifts. This covenant of non-involvement shall not apply to the City's Mayor or Councilmember(s) who sit on the Board of the Conservancy. The Conservancy further agrees to:
  - a. waive its Rights to the Subject Property;
  - b. not enter into any arrangements, discussions, dealings, or negotiations relating to any interest in the Subject Property directly with the City, except as required to hold open and closed Conservancy board meetings, or exercise its rights under this Agreement and as may be required in the Easement; and
  - c. upon TY's request, to cooperate, as reasonably necessary and in a timely fashion, with TY and all other entities, public and private agencies, including, but not limited to, federal, state, county and city bodies, and individuals involved in the determination of the economic value of the Gifts and the purchase of the Subject Property, at TY's sole expense.
- 6. Covenants of TY. TY hereby covenants and agrees to:
  - a. diligently and in good faith complete the negotiations and documents required to purchase the Subject Property from the City upon the Conservancy's waiver of the Rights;
  - b. refrain from entering into any agreements, encouraging or in any way supporting third parties to negotiate and/or purchase the Subject Property from the City without the Conservancy's prior approval, which approval shall not be unreasonably withheld, denied or delayed;

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

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

business under the laws of the State of California;

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

- viii. that TY is not a foreign person and is a “United States Person” as that term is defined in §7701(a)(30) of the Internal Revenue Code of 1986, as amended;
- ix. that the Subject Property is not enrolled in an agricultural preservation program, a conservation or wetland reserve program or any other program of the United States Departments of Agriculture, Interior or Commerce or departments of the State of California. The Subject Property is not subject to any government cost-share contracts or other agreements that restrict either the use of the Subject Property or the modification of any improvements on the Subject Property, other than documents that may be shown in exceptions from coverage in the preliminary title report for the Subject Property.
- b. The Conservancy warrants and represents that documents that are to be delivered to TY at the close of escrow are (or on the closing date shall be) duly authorized, executed, and delivered by Conservancy, and are (or at the closing date shall be) legal, valid, and binding obligations of state, and do not violate any provision of any agreement or judicial order to which the Conservancy is a party.
13. Notices. All notices required under this Agreement may be delivered via certified first class mail, return receipt requested, personal delivery, or a nationally recognized courier service via overnight delivery service. All notices to TY or the Conservancy shall be delivered at the following addresses:
- To TY: TY Investment, Inc.  
Carlton Oaks Country Club  
9200 Inwood Dr.  
Santee, CA 92071  
Attn: Toru “Ben” Mise, President
- With a copy to: Felix M. Tinkov, Esq.  
Lounsbery Ferguson Altona & Peak, LLP  
401 West A Street, Suite 1825  
San Diego, CA 92101
- To The Conservancy: San Diego River Conservancy  
1350 Front Street, Suite 3024  
San Diego, CA 92101  
Attn: Michael J. Nelson, Executive Officer
- With a copy to: Hayley Peterson, Deputy Attorney General  
Office of the California Attorney General  
110 West A Street, 11<sup>th</sup> Floor  
San Diego, CA 92101
14. Assignments. Conservancy may freely assign its interest in this Agreement or the underlying Gifts to any agency of the State of California or local public agency approved by the Conservancy upon written notice to TY. The Conservancy may also assign its rights under this



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

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

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

22. Captions and Exhibits. The caption headings in this Agreement are for convenience only and shall be of no force and effect in construing terms. All Exhibits attached to this Agreement are hereby incorporated in the Agreement by reference.

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

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

**OPTIONOR:**

TY Investment, Inc., a California corporation

By: \_\_\_\_\_  
Toru "Ben" Mise

Its: President

**OPTIONEE:**

STATE OF CALIFORNIA  
SAN DIEGO RIVER CONSERVANCY

By: \_\_\_\_\_  
Michael J. Nelson

Its: Executive Officer

List of Exhibits:

- A. TY Property description and map
- B. Leased Property description and map
- C. Subject Property description and map
- D. Conservation and Trail Easement Deed and exhibits
- E. Right of First Refusal Agreement

**EXHIBIT “A”**

TY Property Description

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

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

TY Property Map

(TO FOLLOW ON THE NEXT PAGE)

Replace with map of TY Property

## **EXHIBIT "B"**

### **Leased Property Description**

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

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

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

### **Leased Property Map**

(TO FOLLOW ON THE NEXT PAGE)

Replace with map of Leased Property

## EXHIBIT "C"

### Subject Property Description

LEGAL DESCRIPTION: Portion of FANITA RHO TRACT T LT 7

LOCATION: Property is located in the City of San Diego and is adjacent to 9200 Inwood Dr Santee, CA 92071

THOMAS BROS MAP: 1230 - J6

ACREAGE: Approximately 65.4 acres, exact size to be determined.

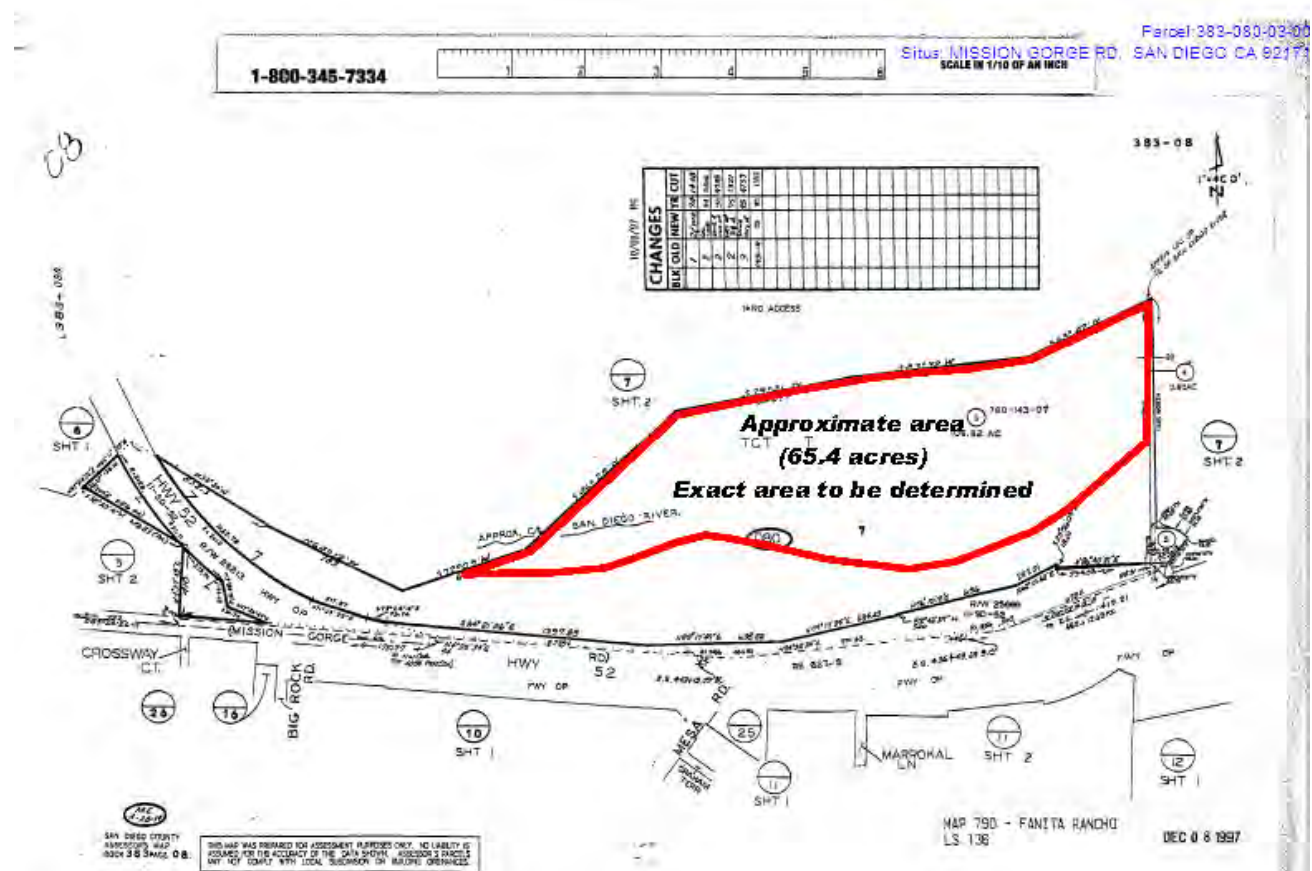
ASSESSOR'S PARCEL NO.: Portion of 383-080-03

EXISTING ZONING: R-1-40

IMPROVEMENTS: A portion of the Carlton Oaks Golf Course

COMMUNITY PLAN DESIGNATION: East Elliott

### MAP SHOWING APPROXIMATE PROPERTY BOUNDARIES IN RED INK (Not To Scale)



This page is to be replaced by a legal description and map of the Subject Property, defined by metes and bounds, pursuant to Section 1 of the attached Option Agreement for the Transfer of an Interest in Real Property between TY Investment, Inc. and the San Diego River Conservancy.

**EXHIBIT “D”**

Conservation and Trail Easement Deed

(TO FOLLOW ON NEXT PAGE)



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

*Space Above Line for Recorder's Use Only*

## CONSERVATION AND TRAIL EASEMENT DEED

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

### RECITALS

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

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

2. "Baseline Monitoring Report" means a detailed report (including a baseline map) prepared prior to Closing which documents the important existing Conservation Values to be protected and enforced under this Easement on the Property and the tentative alignment of an approximately east-west trail between Mast Park West to the east and parcels owned by Midwest Television, Inc. to the west, over the Property and other property owned by Grantor as shown on Exhibit "2" of this Easement.

**NOW THEREFORE**, the parties agree as follows:

### **COVENANTS, TERMS, CONDITIONS AND RESTRICTIONS**

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

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

provides an accurate representation of the Property at the time of the execution of this Easement. Neither party may unreasonably withhold, deny and delay such approval.

- b) To hold and utilize, consistent with the Easement, all mineral, air and water rights and interests, except as otherwise specified in this Easement;
- c) To prohibit the use of those development rights on the Property identified in Section 3;
- d) To enter upon the Property at reasonable times in order to monitor Grantor's compliance with and to otherwise enforce the terms of this Easement for the purposes of (i) identifying the current activities and uses thereon and the condition thereof, (ii) monitoring the activities and uses thereon to determine whether they are consistent with the terms of this Easement, (iii) enforcing the terms of this Deed, and (iv) exercising its other rights under this Easement. Such entry shall be permitted at reasonable times, upon twenty-four hours' prior written notice to Grantor, and shall be made in a manner that will not unreasonably interfere with Grantor's and its customers', agents', employees', independent contractors', consultants', representatives', attorneys', or other persons', under Grantor's control or sway, use and quiet enjoyment of the Property pursuant to the terms and conditions of this Easement. Each entry shall be for only so long a duration as is reasonably necessary to achieve the purposes of this Easement. The rights of entry provided by this subsection shall extend to the officers, agents, consultants, and volunteers of Grantee;
- e) To prevent any activity on or use of the Property that is inconsistent with the terms of this Easement by any legal means available to the Grantee and to require the party found to be at fault to restore such areas or features of the Property that may be damaged by any act, failure to act, or any use that is inconsistent with the terms of this Easement;
- f) To erect and maintain a sign or other appropriate marker in a location on the Property and the property depicted in Exhibit "2" acceptable to Grantor, visible from a public road, bearing information indicating the location of a trail and that the Property is protected by Grantee and acknowledging the sources of Grantee's funding for the acquisition of this Deed. The wording of the information shall be determined by Grantee, with Grantor's approval, which shall not be unreasonably withheld, delayed or denied, and Grantee shall be responsible for the cost of erecting and maintaining such sign or marker in an attractive, neat, and orderly fashion. Grantee shall be responsible for obtaining governmental approval for such signage, if necessary, at its sole cost; and
- g) To construct a public walking and/or bicycle trail and related improvements such as utilities, fencing, signs, drainage and surfacing material, no greater than FOURTEEN FEET (14') in width, on the Property and on the adjoining land east and west of the Property in Grantor's control, within the areas depicted in Exhibit "2", such that said trail may connect and provide access on the eastern side of the Property with Mast Park West and on the western side of the Property with West Hills Parkway, subject to the following:
  - 1. In no case shall pets, including, but not limited to dogs, be allowed on the trail or adjoining Property without being leashed and under the control of their owner.

Further, no motorized vehicles, horses or other conveyances are to be permitted on the trail at any time.

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

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

4. Grantor's Duties. Grantor shall undertake all reasonable actions to prevent the unlawful entry and trespass by persons whose activities may degrade or harm the Conservation Value of the Property. In addition, Grantor shall undertake all necessary actions to perfect Grantee's rights under Section 3 of this Easement. Grantor agrees to bear all costs and liabilities of any kind related to the operation, upkeep, and maintenance of the Property, excepting the area of the trail, Without limiting the foregoing, Grantor agrees to pay any and all real property taxes, fees, exactions and assessments levied or imposed by local, state or federal authorities on the Property, e. Grantor shall be solely responsible for any costs related to the acquisition and maintenance of general liability insurance, flood insurance and any other insurance normally kept in the course of Grantor's business, covering acts on the Property, excepting the area of the trail. . Grantee shall have no responsibility whatever for the operation of the Property or the monitoring of hazardous conditions thereon, except with respect to the public trail, as described in Section 2(g). For so long as the Property remains in use as a golf course, and upon Grantee's written demand, Grantor shall, within sixty (60) days, enroll the Property into, and use commercially reasonable efforts to acquire certification in the Audubon Cooperative Sanctuary Program for Golf Courses, or such other similar program for the environmentally sensitive management of golf course properties mutually acceptable to both the Grantor and Grantee, at Grantee's sole expense for all such efforts involved in the certification and enrollment, including, but not limited to membership, certification and registration costs, site assessment, environmental planning,

redesign and construction/development costs, increased maintenance costs, education and classes for a minimum period of FIVE (5) years, which period shall commence upon receipt of Grantee's written demand.

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

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

- a) Costs of Enforcement. The prevailing party in any action to enforce the terms of this Easement, shall be entitled to the costs of suit and attorneys' and experts' fees, and any costs of restoration.
  - b) Grantee's Discretion. Enforcement of the terms of this Easement by Grantee shall be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.
  - c) Acts beyond Grantor's Control. Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from (i) any natural cause beyond Grantor's control, including, without limitation, fire not caused by Grantor, flood, erosion, storm, and earth movement, or any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes; or (ii) acts by Grantee or its employees.
  - d) Conservancy Enforcement. All rights and remedies conveyed to Grantee under this Easement shall extend to and are enforceable by the Conservancy or its successor.
7. Access. This Easement does not convey a general right of access to the public over the entire Property or the balance of the Carlton Oaks Country Club or the then-existing use of this adjoining property.
8. Assignment. The Conservancy shall have the right to transfer or assign its right, title and interest in and to the Easement to a governmental entity or a nonprofit entity or organization authorized to acquire and hold conservation easements pursuant to California Civil Code Section 815.3 (or any successor provision then applicable) or qualified under the IRC to hold conservation easements and which agrees to enforce the terms of this Easement, provided that TY shall have the right to approve the assignment to a nonprofit entity based upon a review of the assignee's: (a) financial condition; and (b) willingness to provide not less than \$1,000,000 in general

commercial liability coverage for any claim or occurrence arising out of the construction, maintenance and use of the trail TY's approval of said assignment shall not be unreasonably withheld, denied or delayed. Any such assignee shall record an assignment in the Official Records of San Diego County, California.

- a) The nonprofit grantee shall be solely responsible for any costs related to the acquisition and maintenance of general liability insurance, flood insurance and such other insurance as may be desired by Grantee covering the area of the trail. In the event of an assignment to a nonprofit entity, Assignee shall indemnify and hold Grantee harmless from all lawsuits, claims, and damages arising from the construction, maintenance and use of the trail and shall defend Grantor from same, except for arising from Grantor's own fraud, or willful injury to the person or property of another, or violation of law.
- b) After acceptance of the conservation and trail easement and before construction of the trail, the nonprofit grantee shall maintain liability insurance to cover claims and occurrences arising from the construction, maintenance and use of the trail commensurate with generally accepted levels of coverage for operations of a similar nature and intensity.

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

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

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

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

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



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

10. General Provisions.

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

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

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

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

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

**TY INVESTMENT, INC.:**

BY: \_\_\_\_\_  
Toru "Ben" Mise

ITS: President

State of California     )  
  ) ss.  
County of \_\_\_\_\_)

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public,  
personally appeared \_\_\_\_\_,  
\_\_\_\_\_, who  
proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to

the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

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Notary Public in and for said State

[seal]

### Property Description

COMMUNITY PLAN DESIGNATION: East Elliott

[illegible]

28



**EXHIBIT “E”**

Right of First Refusal Agreement

(TO FOLLOW ON NEXT PAGE)

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

*Space Above Line for Recorder's Use Only*

## RIGHT OF FIRST REFUSAL AGREEMENT

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

### RECITALS

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

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

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

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

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



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

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

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

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

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

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

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

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

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

Owner: TY Investment, Inc.  
Carlton Oaks Country Club

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

State of California    )  
  ) ss.  
County of \_\_\_\_\_)

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

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

WITNESS my hand and official seal.

-----  
State of California    )  
  ) ss.  
County of \_\_\_\_\_)

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

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

WITNESS my hand and official seal.

**EXHIBIT “1”**

**Owner’s Property Description**

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

AND

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

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

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

**EXHIBIT "F"**

**Notice of Option Form**

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

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*Space Above Line for Recorder's Use Only*

**NOTICE OF OPTION AGREEMENT TO TRANSFER REAL PROPERTY**

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

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

has granted to

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

an option to receive certain real property interests in the County of San Diego, State of California, more particularly described in Exhibit 1, attached hereto and incorporated by reference. Said option is effective for a term starting on [the date of recordation of this [or original] Notice], and it will expire on \_\_\_\_\_, unless said Optionee exercises the option before said time and date. If the option is exercised by the Optionee, the transfer of the real property interests must be consummated through close of escrow on or before \_\_\_\_\_. Unless a memorandum extending the option and/or close of escrow date is executed by the parties thereto or their successors in interest, and recorded on the public record on or before the date on which escrow shall close, this Notice of Option shall be considered invalid and shall not constitute a lien in any manner whatsoever on or against said real property.

Dated: \_\_\_\_\_

**TY Investment, Inc.:**

BY: \_\_\_\_\_

Toru "Ben" Mise

ITS: President

**[Add Exhibit 1 (Conservation and Trail Easement with Exhibits)]**

State of California     )  
  ) ss.  
County of \_\_\_\_\_)

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public,  
personally appeared \_\_\_\_\_

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

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

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public in and for said State

[seal]



State of California  
San Diego River Conservancy

EXECUTIVE OFFICER'S SUMMARY REPORT  
**Meeting of September 2, 2010**

ITEM: 7

SUBJECT: ADJOURNMENT