



DATE: July 14, 2010

TO: Honorable Mayor and City Councilmembers

FROM: Economic & Community Development Department/ Property Management

SUBJECT: **PROPERTY LEASE AGREEMENT WITH PRO KIDS GOLF FOR A PORTION OF THE PROPERTY AT 825 DOUGLAS DRIVE**

SYNOPSIS

Staff recommends that City Council approve a thirty-year property lease agreement with Pro Kids Golf for their use of City-owned property located at 825 Douglas Drive, with compensation to the City in the form of construction of golf facilities and the value of programs, services, and activities provided to Oceanside's youth community; and authorize the City Manager to execute the agreement.

BACKGROUND

The City currently owns an approximate 5.52-acre parcel of real property at 825 Douglas Drive, City of Oceanside ("Property"). The Property is adjacent to the Oceanside Municipal Golf Course and is currently vacant.

Pro Kids Golf aims to provide after-school mentoring to underprivileged children with golf as the incentive to study, and currently has one location in Southeast San Diego. Pro Kids Golf currently has no facilities in the North County area. With a large number of underprivileged children in the North County area, Pro Kids Golf is desirous of having a second location within San Diego County. Pro Kids Golf provides a number of services for the youth community and is looking for a permanent North County facility.

ANALYSIS

Pro Kids Golf is desirous of leasing the Property in order to construct and operate a facility from which to provide a headquarters for the North County youth community ("Premises"). The proposed property lease agreement ("Agreement") is for a thirty-year term and provides for four successive five-year renewal option periods. The Agreement requires that Pro Kids Golf provide to the City for its approval a build-out schedule, which includes a conceptual development plan, development schedule and a financing plan. The Agreement, as a condition of occupancy, also gives Pro Kids Golf up to



twenty-one months from the date of Council approval to complete the improvements so that the Premises are fully operational and suitable for its intended use.

The proposed use of the Premises by Pro Kids Golf is for the utilization of a portion of the Property which is not currently used or planned for any public purpose. The proposed improvements to the Premises, consisting of an approximate 3,500-square-foot building, a six-hole par-3 golf facility and related improvements to be developed, constructed and operated by Pro Kids Golf, creates an opportunity for valuable community programs, services and activities that the City would otherwise not be able to provide to the community.

Pro Kids Golf's 3,500-square-foot building will include classrooms, a computer center, a library and a golf simulator, along with other various administrative rooms. The golf course will consist of the six par-3 holes, putting greens and a netted driving range. Pro Kids will also include common-area improvements, creating parking for the facility and way-finding signage at the entrance to the Municipal Golf Course complex.

FISCAL IMPACT

Pro Kids Golf will pay no rent. The programs, services and activities to be provided by Pro Kids Golf constitute the consideration to be paid by Pro Kids Golf for the use of the Property. Nonetheless, the terms of the Agreement requires Pro Kids Golf to pay for the maintenance and utility costs of the Premises and to share in the maintenance costs of the Property used in common with Oceanside Municipal Golf Course. Pro Kids Golf will spend no less than \$3,000,000 on constructing the facility and golf course. If in the future Pro Kids Golf generates significant income from operations or grants associated with payment of rent on the Property, Pro Kids Golf and the City will meet and discuss negotiating a fair and reasonable rent for use of the Property.

INSURANCE REQUIREMENTS

Pro Kids Golf will be required to maintain the City's standard insurance requirement over the term of the Agreement. The City's standard insurance requirements will be met prior to occupancy and possession of the premises by Pro Kids Golf.

COMMISSION OR COMMITTEE REPORT

This item was presented to the Parks and Recreation Commission as a information-only item on June 10, 2010.

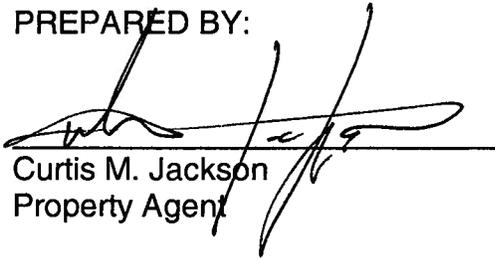
CITY ATTORNEY'S ANALYSIS

The referenced documents have been reviewed by the City Attorney and approved as to form.

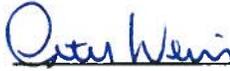
RECOMMENDATION

Staff recommends that City Council approve a thirty-year property lease agreement with Pro Kids Golf for their use of City-owned property located at 825 Douglas Drive, with compensation to the City in the form of construction of golf facilities and the value of programs, services, and activities provided to Oceanside's youth community; and authorize the City Manager to execute the agreement.

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SUBMITTED BY:

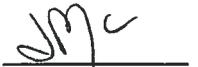

Peter A. Weiss
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager



Jane McVey, Economic & Community Development Director



Doug Eddow, Real Property Manager



Margery Pierce, Neighborhood Services Director



LEASE AGREEMENT
BY AND BETWEEN
THE CITY OF OCEANSIDE
AND
PRO KIDS GOLF ACADEMY, INC.

**Douglas Dr.,
Oceanside, CA 92054**

DATED
JULY 14, 2010

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EXHIBITS

Exhibit "A" -	Legal Description
Exhibit "A-1" -	Property Site Plan
Exhibit "B" -	Lessee Improvements
Exhibit "C" -	Commencement Date Memorandum
Exhibit "D" -	Construction Schedule
Exhibit "E" -	Common Areas Legal Description
Exhibit "E-1" -	Property Common Areas Site Plan
Exhibit "F" -	Improved Common Areas
Exhibit "G" -	Lease Memorandum

**PRO KIDS GOLF ACADEMY
LEASE AGREEMENT
Douglas Drive**

THIS LEASE AGREEMENT, dated July 14, 2010, hereinafter called "Lease," is executed between the **CITY OF OCEANSIDE**, a municipal corporation, hereinafter called "City," and **PRO KIDS GOLF ACADEMY, INC.**, a California non-profit corporation, hereinafter called "Lessee."

RECITALS

WHEREAS, City is the lawful owner of certain real property and improvements thereon, consisting of approximately 7 acres, whose Assessor Parcel number is 157-020-91-00, (the "Property"); and

WHEREAS, Lessee is a recognized non-profit public services organization within San Diego County; and

WHEREAS, Lessee desires to lease open space on the Property, in order to provide a permanent location for teaching activities, golf, and other events to benefit youths and the community; and

WHEREAS, City is willing to lease the Property to Lessee for the term and upon the covenants, conditions and provisions hereinafter set forth.

AGREEMENT

NOW THEREFORE, in consideration of the covenants, conditions and provisions contained herein, the parties hereto do mutually agree as follows:

SECTION 1: Property and Lessee Improvements

1.01 Property. City hereby leases to Lessee and Lessee hereby leases from City, in accordance with the terms, covenants, conditions and provisions of this Lease, the "Property," which shall consist of the exclusive use of 7 acres adjacent to the Oceanside Municipal Golf Course, as illustrated in **Exhibit "A"** ("Legal Description") and **Exhibit A-1** ("Property Site Plan"), and the non-exclusive use of the parking lot adjacent to the Property, including the parking lot, sidewalks, walkways, delivery areas, landscaped areas, access roads, and common areas as described in section 5.01.

a. Property Condition. The City shall deliver the Property to Lessee in an "as-is, where is" condition without any representation or warranties as to the suitability of the Property for Lessee's intended use. Lessee hereby accepts the Property in said "as-is, where is" condition and shall make any and all improvements to the Property thereto necessary for Lessee to occupy the Property for their intended use. It is expressly understood by the parties that Lessee, pursuant to section 6.01 herein, shall be responsible for all due diligence, planning, procurement of entitlements and improvements necessary to place the Property in a condition suitable for Lessee's uses permitted under this Lease. Lessee will be responsible for maintaining any improvements made to the Property, including, but not limited to any structures and installations made on Property.

b. Lessee Improvement Obligations. Lessee shall perform all of the work required to be performed by Lessee pursuant to the **Exhibit "D"** ("Construction Schedule") as described in section 2.01, and the scope of work more specifically set forth in **Exhibit "B"** ("Lessee

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Improvements”) attached hereto and by this reference made part of this Lease. Failure by Lessee to perform the work as scheduled shall be deemed a default under this Lease.

c. Parking Lot and Other Common Areas. It is expressly understood that Lessee shall have non-exclusive use of all Common Areas on the Property, which includes the entrance off Douglas Drive and the parking lot where Lessee will share spaces with the Municipal Course Operator, as described in section 5.02. The City shall have no obligation under this Lease to improve the parking lot to a paved and striped condition; Lessee may, at its sole cost, or in agreement with Bellows Golf Management, the Municipal Golf Course Operator, cause such improvements to be made to the parking lot, in compliance with all applicable laws and permitting requirements.

1.02 Uses. It is expressly agreed that the Property is leased to Lessee solely and exclusively for teaching programs and golf-related activity not open to the general public, scholarships, and other related services to benefit youths within the community of Oceanside and nearby communities. Permissible uses of the Property include: recreational facility, teaching, and golf. The Property may also be used for other related or incidental purposes as may be first approved in writing by the City and for no other purpose whatsoever. Under no circumstance shall Lessee make the Property available for recreational golf to the general public.

Lessee covenants and agrees to actively and continuously use and operate the Property for the above specified, limited and particular exclusive use and to diligently pursue said purposes throughout the term of this Lease, except for failure to so use caused by reasons or events beyond the reasonable control of Lessee and acts of God including but not limited to fire, flood or other casualty. Said active and continuous use and operation enhances the value of the public’s asset, provides needed public services, additional employment, taxes and other benefits to the general economy of the area. In the event that Lessee fails to continuously use the Property for said purposes, or uses the Property for purposes not expressly authorized herein, Lessee shall be deemed in default under this Lease. Lessee shall not use the Property in any manner that disrupts other occupants or users of the Property and surrounding property owners or their tenants in the use and quiet enjoyment of their property.

1.03 Related Discretionary Actions. By the granting of this Lease, neither City nor the City Council is obligating itself or any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to development or operation of the Property. Discretionary action includes, but is not limited to, issuance of building permits, rezoning, variances, conditional use permits, environmental clearances or any other governmental agency approvals which may be required for development and operation on the Property.

1.04 Quiet Possession. Lessee, paying the rent and performing the covenants and agreements herein, shall at all times during the term hereof peaceably and quietly have, hold and enjoy the Property. Lessee, shall at all times during the term hereof peaceably and quietly have, hold and enjoy the Premises. If during the term hereof Lessee is temporarily dispossessed through action or claim of a title superior to the City of Oceanside, then and in either of such events, this Lease shall not be voidable nor shall City be liable to Lessee for any loss or damage resulting therefrom. Notwithstanding the foregoing, in the event that such dispossession causes an extraordinary economic burden on Lessee, Lessee shall have the option to terminate this Lease by submitting to the City Manager a thirty (30) day written notice together with its justifications for such termination. The City Manager shall have the right to approve such termination and shall provide Lessee with a written determination thereof. Said approval shall not be unreasonably withheld.

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1.05 Reservation of Rights. City shall not unreasonably or substantially interfere with Lessee's use of the Property while Lessee is in possession of the Property; however, the City specifically retains the following rights:

a. Subsurface Rights. City hereby reserves all rights, title and interest in any and all subsurface natural gas, oil, minerals and water on or within the Property.

b. Easements. City shall retain the right to establish access or utility easements through the Premises; provided, however, City shall not unduly interfere with Lessee's use of the Premises. Reasonable notice shall be provided to Lessee and such installation of utilities shall be coordinated with the Lessee. Within thirty (30) days after the completion of the installation, the City shall in a timely manner begin and complete the restoration of the Premises to the condition existing prior to the installation of the easements at City's sole expense. Relocation of any existing utilities by Lessee shall be coordinated with, and prior written approval obtained from City. Said relocation, if requested by Lessee, shall be at the expense of Lessee. As-built drawings of all utility installations by Lessee shall be furnished to City. As-built drawings of all utility installations by City shall be furnished to Lessee upon request.

c. Right to Enter. City has the right to enter upon the Property for the purpose of performing maintenance, inspections, repairs or improvements, or developing municipal resources and services. City will reimburse the Lessee for damages to the Property or to the Lessee's personal property caused by the City resulting from the City's exercise of its rights herein. If City is required to make a repair caused by Lessee neglect, Lessee will be liable for costs associated for such repairs. City will pay the costs of the maintenance and repair of all City installations made pursuant to these reserved rights.

SECTION 2: TERM

2.01 Commencement. The term of this Lease ("Term") shall be for a period of thirty (30) years, commencing on the "Commencement Date," which is hereby defined as the earlier of (i) the date Lessee substantially completes Lessee Improvements, as evidenced by a notice of completion, or (ii) two (2) years from the date Tenant receives its conditional use permit relating to the Premises (the "CUP"). The date Tenant receives the CUP from the City is referred to herein as the "Effective Date." City anticipates the Commencement Date to be on or before April 14, 2012. Upon determination of the Commencement Date, Lessee shall execute a Commencement Date Memorandum confirming the actual date the Lease commences and terminates. A copy of the Commencement Date Memorandum is shown in **Exhibit "C"** ("Commencement Date Memorandum") attached hereto and by this reference made part of this Lease.

a. Build Outs and Improvements by Lessee. Lessee shall have two (2) years from the Effective Date to complete Lessee Improvements including the improvements to the Improved Common Areas (as defined herein) so that the Property is operational and suitable for use. If Lessee Improvements are not substantially completed within two (2) years from the Effective Date, Lessee may be in default of this Lease. Lessee shall provide City with a construction schedule as set forth in **Exhibit "D"** ("Construction Schedule") showing the anticipated progress of Lessee Improvements.

(i) Lessee shall be solely responsible to raise funds necessary for the design and construction of all Lessee Improvements.

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(ii) On or before nine (9) months after the Effective Date, Lessee shall have completed, with respect to Lessee Improvements: 1) all contracts with consultants; 2) the site and structure design; and 3) all engineering and soil investigations; 4) construction documents; 5) submission of documents to the city with cost estimates; 6) bid out plans; and 7) mobilization of work force to commence construction of project.

(iii) Prior to the execution of this Lease, Lessee has provided evidence to the City that Lessee has received commitments for funds relating to the Lessee Improvement work and Premises operations in the amount of Two Million Dollars (\$2,000,000.00) (the "Committed Funding").

(iv) Lessee agrees to demonstrate its ability to finance Lessee Improvements prior to each of the following phases of construction:

(1) In addition to the Committed Funding, funding of \$500,000.00 by the Effective Date + six (6) months to initiate the final bidding process; and

(2) In addition to the funding specified in Section 2.01.a(iv)(1), above, funding of \$500,000.00 by the Effective Date + 9 months to complete the bidding process and commence construction of project.

(v) Lessee shall not proceed with any construction without first accomplishing the related funding milestones. Should the Lessee fail to meet its funding obligation related to any particular phase of the project, the parties agree to meet to discuss another agreeable adjusted schedule. Notwithstanding the foregoing, in the event Lessee does not accomplish the funding milestone in 2.01a(iv)(1) above, Lessee shall have the right to terminate this Lease by providing written notice of such termination election to City.

(vi) Lessee agrees to pay all local and customary development permit processing and inspection fees necessary to entitle and construct the project. Lessee also agrees to pay all development impact fees associated with the construction of Pro Kids facility on the Property (i.e. Building Permits, Grading Permits, Conditional Use Permits, EIR reports, etc.).

(vii) City shall not provide funding of any kind to Lessee.

2.02 Extension Terms. Lessee may request four (4) successive five (5) year extensions of the Lease Term (each an "Extension Term") under the terms and conditions of this Lease, provided that the Lessee is not in default or breach of any term, condition, covenant or provision of this Lease. The extension request must be in writing and approved by the Oceanside City Council (the "City Council") as set forth below:

Lessee may request an extension of the term of this Lease provided that Lessee provides written notice to the City no later than **one hundred eighty (180) days** prior to the expiration of the initial term of this Lease as extended by any extension term above. City designee shall notify the Lessee not later than **sixty (60) days** after receipt of such request whether such request will be recommended to the City Council for approval, at which time the City shall provide Lessee with the terms and conditions for Lessee's use and occupation of the Property during the extension term.

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The City Council, at its sole discretion, may approve or deny the extension of the term of this Lease. In the event the City Council is unable to consider the extension request in sufficient time as to provide Lessee with **thirty (30) days** notice of termination in the case of denial, the Lease shall be extended for a period not to exceed **thirty (30) days**, to allow for such **thirty (30) day** notice of termination.

2.03 Termination Provisions. In the event that Lessee is not able to obtain sufficient funding from its funding sources during the term of this Lease to allow Lessee to continue to provide the services from the Property as set forth in Section 1.02 hereinabove, Lessee shall provide written notice to City and either party shall have the right to terminate this Lease upon providing **three hundred and sixty-five (365) days** prior written notice to either party. No other special termination options are available except those described elsewhere in this Lease.

2.04 Holdover. Any holding over by Lessee after expiration or termination shall not be considered as a renewal or extension of this Lease. The occupancy of the Property by Lessee or by Lessee's property after the expiration or termination of this Lease constitutes a month-to-month tenancy, and all other terms and conditions of this Lease, shall continue in full force and effect.

2.05 Abandonment by Lessee. Even if Lessee breaches the Lease and abandons the Property, this Lease shall continue in effect for so long as City does not terminate this Lease, and City may enforce all its rights and remedies hereunder, including but not limited to the right to recover the rent as it becomes due, plus damages.

2.06 Quitclaim of Lessee's Interest. On termination of this Lease for any reason, City may provide Lessee with, and Lessee shall deliver to City, a quitclaim deed in recordable form quitclaiming all its rights in and to the Property. Lessee or its successor in interest shall deliver the same within **five (5) days** after receiving written demand therefor. City may record such deed only on the expiration or earlier termination of this Lease. If Lessee fails or refuses to deliver the required deed, the City may prepare and record a notice reciting Lessee's failure to execute this Lease provision and the notice will be conclusive evidence of the termination of this Lease and all of Lessee's rights to the Property.

2.07 Surrender of Property. At the expiration or earlier termination of this Lease, Lessee shall surrender the Property to City free and clear of all liens and encumbrances created by Lessee, and as improved by Lessee, except those liens and encumbrances which existed on the date of the execution of this Lease by City. The Property, when surrendered by Lessee, shall be in a safe and sanitary condition and shall be in good condition, absent except for normal wear and tear.

2.08 Time is of Essence. Time is of the essence of all of the terms, covenants, conditions and provisions of this Lease.

SECTION 3: CONSIDERATION

3.01 Time and Place of Payment. The Lessee, if applicable, shall make any type of consideration payments annually on or before the **first (1st) day** of each lease year.

3.02 Consideration. City hereby agrees that the programs, services and activities provided by Lessee at the Property are valuable consideration received from Lessee, that the providing of such programs, services and activities shall constitute all the consideration to be paid by Lessee for its use of the Property in accordance with the terms, covenants, conditions and

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provisions of this Lease, and that Lessee shall not be required to make any monetary payments to City for its use and occupation of the Property, so long as such use is pursuant to Section 1.02 herein, except as hereinafter set forth.

3.03 Inspection of Records. Lessee shall maintain accurate financial books and records for the operation of its business provided at, or from, the Property. Said books and records shall be maintained on an accrual basis in accordance with normal business standards and good accounting practice. Lessee agrees to make any and all records and accounts available to the City for inspection at all reasonable times, so that the City can determine Lessee's compliance with this Lease. These records and accounts will be made available by Lessee at the Property or the City's offices, at City's sole discretion, and will be complete and accurate showing all income and receipts from Lessee's use of the Property. Lessee's failure to keep and maintain such records and make them available for inspection by the City is a default of this Lease. These records include but are not limited to federal quarterly and annual income tax statements, the California State Board of Equalization income statements, and all other generally accepted business books, documents, and records. Lessee shall maintain all such books, records and accounts for the term of this Lease. This provision shall survive the expiration or sooner termination of this Lease.

Any nonprofit corporation or association that enters into a contract or other agreement with the City, shall keep accurate and complete financial records of any moneys expended in relation to the performance of the services pursuant to such contract or agreement according to generally accepted accounting principles. Such contract or agreement and such financial records requested by City and submitted by Lessee to City shall be deemed to be public records. Failure to comply with this requirement shall be a material breach and will subject this Lease to termination by the City.

3.04 Annual Meeting with City. Notwithstanding Section 3.02 above, City and Lessee acknowledge that Lessee may have the opportunity throughout the Lease Term to seek grants to provide operating funds. Lessee agrees to make reasonable efforts to apply for available grants which would specifically allow or not restrict Lessee from utilizing a portion of the grant funds for operations on the Property (the "Operating Funds Grants") rather than solely on Lessee's programs.

With respect to any Operating Funds Grants actually received by Lessee, Lessee agrees to meet with City annually, within one hundred twenty (120) days after the end of Lessee's fiscal year, to discuss and provide information to the City on the Operating Funds Grants obtained by Lessee and Lessee's utilization of the funds provided by the Operating Funds Grants (the "Annual Meeting"). In the Annual Meeting, City and Lessee shall reasonably determine whether there are excess or sufficient funds in the Operating Funds Grants for the imposition of a fair and reasonable rental amount under this Lease during the period of time that funds are provided under the Operating Funds Grants. As part of the Annual Meeting, Lessee shall specifically indicate to City the allocation of any Operating Funds Grants to the Property and to other operations of Lessee, as reasonably determined by Lessee.

Although not currently Lessee's intention, Lessee may, during the term of this Lease Term, generate significant taxable profit from the operations on the Property. Additionally, Lessee agrees that in the event that Lessee at any time during the Lease Term generates significant taxable profit from operations on the Property under the Lease, as indicated on Lessee's Form 990-T return filed with the Internal Revenue Service, Lessee and City shall also discuss, at the Annual Meeting, the

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d. All insurance companies affording coverage shall endeavor to provide **thirty (30) days** written notice to the City should the policy be cancelled before the expiration date. For the purposes of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation.

e. Lessee shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance and applicable endorsements, in a form satisfactory to the City Attorney, concurrently with the submittal of this Lease.

f. Lessee shall provide a substitute certificate of insurance no later than **thirty (30) days** prior to the policy expiration date. Failure by the Lessee to provide such a substitution and extend the policy expiration date shall be considered a default by Lessee and may subject the Lessee to a termination of this Lease.

g. Maintenance of insurance by the Lessee as specified in this Lease shall in no way be interpreted as relieving the Lessee of any responsibility whatever and the Lessee may carry, at its own expense, such additional insurance as it deems necessary.

h. City shall not be responsible to insure Lessee's leasehold improvements and Lessee's personal property: Lessee shall be responsible for said items and for the insurance thereof.

i. If Lessee fails or refuses to take out and maintain the required insurance, or fails to provide the proof of coverage, City has the right to obtain the insurance. Lessee shall reimburse City for the premiums paid with interest at the maximum allowable legal rate then in effect in California. City shall give notice of the payment of premiums within **thirty (30) days** of payment stating the amount paid, names of the insurer(s) and rate of interest. Said reimbursement and interest shall be paid by Lessee on the later to occur of (x) the **first (1st) day** of the month following the notice of payment by City or (y) ten (10) days after receipt of notice from City.

Notwithstanding the preceding provisions of this Subsection, any failure or refusal by Lessee to take out or maintain insurance as required in this Lease, or failure to provide the proof of insurance, shall be deemed a default under this Lease.

j. City, at its discretion, may require reasonable and good faith revision of amounts and coverage at any time during the term of this Lease by giving Lessee **sixty (60) days** prior written notice. City's requirements shall be designed to assure protection from and against the kind and extent of risk existing on the Property. Lessee also agrees to obtain any additional insurance required by City for new improvements, in order to meet the requirements of this Lease.

4.03 Accident Reports. Lessee shall, within **seventy-two (72) hours** after occurrence, report to City any accident causing property damage or any serious injury to persons on the Property. This report shall contain the names and addresses of the parties involved, a statement of the circumstances, the date and hour, the names and addresses of any witnesses and other pertinent information.

SECTION 5: COMMON AREAS

5.01 Property Common Areas. "Property Common Areas" shall mean the existing property driveway, parking areas, sidewalks within the parking area, walkways within the parking

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area, delivery areas within the parking area, and landscaped areas within the parking area of the Municipal Golf Course Operator Property as illustrated in **Exhibit "E"** and **Exhibit "E-1"**. The Property Common Areas and the Improved Common Areas are sometimes collectively referred to herein as the "Common Areas."

5.02 Improved Common Areas. "Improved Common Areas" shall mean the Lessee extension to the entry driveway and parking areas on the property as illustrated in **Exhibit "F"** ("Improved Common Areas"), for the non-exclusive common use of Municipal Golf Course Operator and Lessee and their respective employees, agents and invitees.

5.03 Use Of Common Areas. Lessee, its employees, agents and invitees are, except as otherwise specifically provided in this Lease, authorized during the term of the Lease to the non-exclusive use of the Property Common Areas and Improved Common Areas, for their respective intended purposes in common with the Operator of the Municipal Golf Course at 825 Douglas Drive ("Municipal Golf Course Operator"). City shall have the right to use the Common Areas for promotions, exhibits, public gatherings and any other use which, in City's judgment, tends to benefit the golf activities and/or the public in general (the "City Common Area Use"). The City Common Area Use shall be subject to reasonable prior scheduling with Lessee and the Municipal Golf Course Operator and shall not interfere with the use of the Property by Lessee and the operation and use of the Municipal Golf Course by the Municipal Golf Course Operator.

5.04 Improved Common Areas Common Area Maintenance Costs. Common Area maintenance costs ("CAM Costs") means all reasonable and appropriate costs incurred for the best interest of the Property in connection with the operation, maintenance, repair and replacement of the Improved Common Areas as shown on Exhibit "E," including, but not limited to, the expense of: (i) maintenance, repair and replacement of drainage facilities, utility systems, lighting systems (including fixtures, poles and bulbs), directories, information and traffic markers and signs, conduits and similar items; (ii) cleaning, striping, painting, sweeping, repair and replacement of parking surfaces; (iii) maintenance, repair and replacement of the landscaping; and (iv) all costs associated with providing electricity, if any. City and Lessee understand and acknowledge that it is intended that the Improved Common Areas be maintained by the Municipal Golf Course Operator in connection with the maintenance of the Property Common Areas provided that in the event that the Municipal Golf Course Operator fails to appropriately complete any Common Area maintenance after written notice from Lessee and ten (10) days to cure the failure, Lessee shall have the right to complete such Common Area maintenance relating to the Improved Common Areas and to deduct any such reasonable costs incurred by Lessee from any future CAM Costs billed by Municipal Golf Course Operator.

5.05 Lessee's Share Lessee shall be required to pay Municipal Golf Course Operator fifty percent (50%) of the CAM Costs for the Improved Common Areas only,

b. Lessee shall pay Municipal Golf Course Operator on the Lease Commencement Date and on the **first (1st) day** of each calendar year of the term of the Lease, the amounts estimated by the Municipal Golf Course Operator to be payable yearly or portion thereof under section 5.04a above. Municipal Golf Course Operator may adjust said amounts at the end of any calendar year based on Municipal Golf Course Operator's reasonable anticipated costs.

c. Within ninety (90) days after the end of each calendar year or portion thereof, City shall direct the Municipal Golf Course Operator to furnish Lessee a statement covering such year or portion thereof, certified as correct by an authorized representative of City, showing

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actual CAM Costs, the amount payable by Lessee and payments by Lessee for such period. If Lessee's payment for such CAM Costs with respect to such period exceeds Lessee's share of such CAM Costs, the excess shall be credited against the next payment becoming due; if said payments are less than said share, Lessee shall pay the difference within **thirty (30) days** after demand therefor.

d. City shall direct the Municipal Golf Course Operator to make its CAM Costs records for the preceding year available for a reasonable time at Municipal Golf Course Operator's address, during normal business hours for inspection by Lessee's representative experienced in audit procedures, within **ten (10) days** after receiving Lessee's written request to inspect, provided Lessee has paid its share of CAM Costs for such year.

e. City agrees to meet with Lessee and Municipal Golf Course Operator on a regular basis to discuss future increases in CAM Costs and the benefit to the Property. City agrees to use reasonable efforts to keep increases to CAM Costs at a minimum.

5.06 Changes by City. City may determine reasonable alterations to the Improved Common Areas after initial construction, and make such changes from time to time as City, in its reasonable discretion, deems desirable or which are made as a result of the law.

5.07 Rules. City may establish and amend and enforce against Lessee such reasonable rules, as City deems necessary or advisable for proper and efficient use, operation and maintenance of the Improved Common Areas, provided rules do not interfere with Lessee operations on Property.

5.08 Maintenance and Control. City shall assist Lessee in working with Municipal Golf Course Operator at all times to cause the Improved Common Areas to be maintained and operated in a clean, safe and sanitary condition consistent with the ongoing maintenance of all other improvements on Lessee's Property. The rights of Lessee in the Improved Common Areas shall be subject to the rights of others to use them in common with Lessee, and it is Lessee's duty to keep all of the Improved Common Areas free of any obstructions created or permitted by Lessee or resulting from Lessee's operation.

SECTION 6: IMPROVEMENTS/ALTERATIONS/REPAIRS

6.01 Acceptance of Property. Lessee represents and warrants that it has independently inspected the Property and made all tests, investigations, and observations necessary to satisfy itself of the condition of the Property, including but not limited to an environmental assessment. Lessee acknowledges it is relying solely on such independent inspection, tests, investigations, and observations in making this Lease. Lessee further acknowledges that the Property is in the condition called for by this Lease and that Lessee does not hold City responsible for the Property.

6.02 Improvements/Alterations. The parties anticipate and expect that Lessee will complete improvements to the Property as described at Section 2.01a. Notwithstanding this expectation, no major structural improvements, structures, or installations shall be constructed on the Property, and Lessee may not make any structural alterations to the Property without prior written approval by the City Manager. Further, Lessee agrees that major structural or architectural design alterations to approved improvements, structures, or installations may not be made on the Property without prior written approval by the City Manager and that such approval shall not be

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unreasonably withheld. This provision shall not relieve Lessee of any obligation under this Lease to maintain the Property in a decent, safe, healthy, and sanitary condition. City shall not be obligated by this Lease to make or assume any expense for any improvements or alterations to, on or about the Property.

6.03 Lessee's Maintenance.

a. Lessee agrees to assume full responsibility and cost for the operation, maintenance, and repair of the Property, throughout the term of this Lease and without expense to City. Lessee will perform all maintenance, repairs and replacements necessary to maintain and preserve the Property in a decent, safe, healthy, and sanitary condition satisfactory to City and in compliance with all applicable laws. Lessee further agrees to provide approved containers for trash and garbage and to keep the Property free and clear of rubbish and litter, or any other fire hazards. Lessee waives all right to make repairs at the expense of City as provided in Section 1942 of the California Civil Code and all rights provided by Section 1941 of said code.

b. For the purpose of keeping the Property in a good, safe, healthy and sanitary condition, City shall always have the right, but not the duty, to enter, view, inspect, determine the condition of, and protect its interests in, the Property. In the event that City finds that the Property is not in a decent, safe, healthy, and sanitary condition, Lessee must perform the necessary maintenance, repair or replacement work within **thirty (30) days** after written notice from City. In the event Lessee fails to perform such work, City shall have the right, upon written notice to Lessee, to have any necessary maintenance work done at the expense of Lessee, and Lessee shall promptly pay any and all costs incurred by City in having such necessary maintenance work done, in order to keep said Property in a decent, safe, healthy, and sanitary condition. Lessee shall make payment no later than **ten (10) days** after City's written demand therefor. City shall not be required at any time to perform maintenance or to make any improvements or repairs whatsoever, on or for the benefit of the Property except as otherwise provided herein. The rights reserved in this section shall not create any obligations or increase obligations for City elsewhere in this Lease.

c. The City and Lessee agree that Lessee shall maintain the Property in accordance with, and shall follow maintenance standards generally accepted by, other municipal golf courses in San Diego County.

Examples of maintenance projects which may be included in the routine maintenance may include, but are not limited to the following:

- * Painting or repairs to the facilities;
- * Repairs of vandalism;
- * Regular maintenance and repairs to turf and golf course areas;
- * Regular maintenance and repairs of pumps or sprinklers; and
- * General maintenance of facilities and improvements to protect against disrepair or obsolescence.

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6.04 Waste, Damage, or Destruction.

a. Lessee shall give notice to City of any fire or other material damage that occurs on the Property within **seventy-two (72) hours** of such fire or damage. Lessee shall not commit or suffer to be committed any waste or injury or any public or private nuisance, Lessee agrees to keep the Property clean and clear of refuse and obstructions, and to dispose of all garbage, trash, and rubbish in a manner satisfactory to City.

b. Except as set forth below, if the Property shall be damaged by any cause which puts the Property into a condition which is not decent, safe, healthy and sanitary, Lessee agrees to make or cause to be made full repair of said damage and to restore the Property to the condition which existed prior to said damage; or, at City's option, and upon receipt of written demand thereof, Lessee agrees to clear and remove from the Property all debris resulting from said damage and rebuild the Property in accordance with plans and specifications previously submitted to City and approved in writing in order to replace in kind and scope the operation which existed prior to such damage to the extent that funds from insurance are available. Lessee shall be responsible for all costs incurred in the repair and restoration, or rebuilding of the Property to the extent of insurance proceeds received by Lessee as a result of the event necessitating the repair or restoration or to the extent that the City agrees to pay for the repairs or restoration at a rate and on terms mutually acceptable to the parties. Notwithstanding the foregoing, Lessee shall have the right to terminate this Lease if it determines in its sole judgment that it is not economically feasible to restore the Property by giving notice of termination within **thirty (30) days** after the event causing the destruction. Provided, however, should Lessee elect to terminate the Lease pursuant to this section 6.04b or section 2.03, Lessee shall not be entitled to reimbursement of its capital improvement investment.

c. If the Lease is not terminated under Section 6.04b above, the Agreement shall continue in full force and effect, except that the payment to City by Lessee may, to the extent not covered by insurance, be abated and/or other relief afforded to the extent that Lessee can demonstrate, and that City may corroborate, that the damage and/or restoration interferes with Lessee's operations. The aforesaid provisions for abatement and/or the relief shall also be applicable to a total or partial destruction of the Property by the aforementioned causes.

d. In the event that the Property is damaged as a result of flooding and Lessee does not reasonably determine that the Property is not capable of repair, the parties agree that the repair thereof shall be undertaken by Lessee with the costs associated therewith to be paid by Lessee.

6.05 Utilities. Lessee agrees to order, obtain, and pay for all utilities and service and installation charges in connection with the development, occupation and operation of the Property. The City requires a separate meter, sub-meter or other device be installed at the Property, which shall be at Lessee's sole cost and expense.

6.06 Taxes. Lessee shall pay, before delinquency, all taxes, assessments, and fees assessed or levied upon Lessee or the Property, including the land, any buildings, structures, machines, equipment, appliances, or other improvements or property of any nature whatsoever erected, installed, or maintained by Lessee or levied by reason of the business or other activities of Lessee related to the Property, including any licenses or permits.

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Lessee recognizes and agrees that this Lease may create a possessory interest subject to property taxation, and that Lessee may be subject to the payment of taxes levied on such interest, and that Lessee shall pay all such possessory interest taxes before they become delinquent.

6.07 Ownership of Improvements and Personal Property.

a. Any and all improvements, structures, and installations or additions to the Property constructed on the Property by Lessee consisting of buildings or other permanent improvements, shall at Lease expiration or termination be deemed to be part of the Property and shall become, at City's option, City's property, free of all liens and claims except as otherwise provided in this Lease.

b. If City elects not to assume ownership of all or any improvements, structures and installations, City shall so notify Lessee in writing **thirty (30) days** prior to expiration or termination of this Lease, and Lessee shall remove all such improvements, structures and installations as directed by City at Lessee's sole cost and expense on or before Lease expiration or termination. If Lessee fails to remove any improvements, structures, and installations as directed, Lessee agrees to pay City the full cost of any removal.

c. Lessee-owned machines, appliances, equipment, trade fixtures (including any items removable by Lessee) and other items of personal property shall be removed by Lessee by the date of the expiration or termination of this Lease. Any said items which Lessee fails to remove will be considered abandoned and become City's property free of all claims and liens, or City may, at its option, remove said items at Lessee's expense.

d. If any removal of such personal property by Lessee results in damage to the remaining improvements on the Property, Lessee shall repair all such damage at Lessee's sole cost and expense.

6.08 Liens. Lessee shall not, directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to all or any portion of the Property without the prior written consent of the City Manager. Lessee shall promptly, at its own expense, take such action as may be necessary to duly discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim on or with respect to all or any portion of the Property for which Lessee does not have the prior written consent of the City Manager.

6.09 Encumbrance. Upon receiving prior consent by the City Manager, Lessee may encumber this Lease, its leasehold estate and its improvements thereon by deed of trust, mortgage, chattel mortgage or other security instrument to assure the payment of a promissory note or notes of Lessee, upon the express condition that the net proceeds of such loan or loans be devoted exclusively to the purpose of developing and/or improving the Property. However, a reasonable portion of the loan proceeds may be disbursed for payment of incidental costs of construction, including but not limited to the following: offsite improvements for service of the Property; onsite improvements; escrow charges; premiums for hazard insurance, or other insurance or bonds required by City; title insurance premiums; reasonable loan costs such as discounts, interest and commissions; and architectural, engineering and attorney's fees and such other normal expenses incidental to such construction.

Any subsequent encumbrances on the Property or on any permanent improvements thereon, shall also have prior approval in writing of City Manager. Such subsequent encumbrances

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shall also be for the exclusive purpose of development of the Property or otherwise to the benefit of the City at the discretion of the City Manager. Any deed of trust, mortgage or other security instrument shall be subject to all of the terms, covenants and conditions of this Lease and shall not amend or alter any of the terms, covenants or conditions of this Lease. Within **sixty (60) days** of encumbering this Lease, Lessee shall give the City written notice of the name, address and contact person of any entity which has a lien on the Lease.

6.10 Signs. Lessee shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising without the prior written consent of the City, and any such device(s) shall conform to all City of Oceanside ordinances and regulations. If any unauthorized item is found on the Property, Lessee shall remove the item at its expense within **twenty-four (24) hours** of written notice thereof by City, or City may thereupon remove the item at Lessee's cost.

SECTION 7: CONDEMNATION

7.01 Eminent Domain. If all or parts of the Property are taken through condemnation proceedings or under threat of condemnation by any public authority with the power of eminent domain, the interests of City and Lessee (or beneficiary or mortgagee) will be as follows:

a. Total Taking. In the event the entire Property are taken, this Lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.

b. Partial Taking. In the event of a partial taking, if, in the opinion of Lessee, the remaining part of the Property is unsuitable for the lease operation, this Lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs, and the City shall have the obligations to Lessee upon termination as set forth in this Lease including but not limited to the Termination Provisions set forth in Section 2.03.

In the event of a partial taking, if, in the opinion of Lessee, the remainder of the Property is suitable for continued lease operation, this Lease shall terminate in regard to the portion taken on the date of the transfer of title or possession to the condemning authority, whichever first occurs, but shall continue for the portion not taken.

c. Award. All monies awarded in any such taking of the Property shall belong to City, whether such taking results in diminution in value of the leasehold or the fee or both; provided, however, Lessee shall be entitled to any award attributable to the taking of or damages to Lessee's then remaining leasehold interest in the improvements of Lessee.

d. Transfer. City has the right to transfer City's interests in the Property in lieu of condemnation to any authority entitled to exercise the power of eminent domain. If a transfer occurs, Lessee shall retain whatever interest it may have in the fair market value of any improvements placed by it on the Property in accordance with this Lease.

e. No Inverse Condemnation. The exercise of any City right under this lease shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon City for inverse condemnation so long as such rights do not unreasonably or substantially interfere with Lessee's operations.

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SECTION 8: DEFAULT BY LESSEE

8.01 Defaults and Termination. It is mutually understood and agreed that if any default be made in the payment of rental herein provided or in the performance of the covenants, conditions, or agreements herein (any covenant or agreement shall be construed and considered as a condition); or should Lessee fail to fulfill in any manner the uses and purposes for which the Property is leased as stated in this Lease, and such default is not cured within **five (5) days** after written notice thereof if default is in the submittal of rent as required in this Lease; or **ten (10) days** after written notice thereof if default is in the performance of the failure to use provisions pursuant to Section 1.02 of this Lease; or **thirty (30) days** after written notice thereof if default is in the performance of any other covenant, condition and agreements (any covenant or agreement shall be construed and considered as a condition), City shall have the right to immediately terminate this Lease; and that in the event of such termination, Lessee shall have no further rights hereunder and Lessee shall thereupon forthwith remove from the Property and shall have no further right to claim thereto, and City shall immediately thereupon, without recourse to the courts, have the right to reenter and take possession of the Property. City shall further have all other rights and remedies as provided by law, including without limitation the right to recover damages from Lessee in the amount necessary to compensate City for all the detriment proximately caused by the Lessee's failure to perform its obligations under the Lease or which in the ordinary course of things would be likely to result therefrom.

In the event City consents to an encumbrance of the Lease for security purposes in accordance with the terms of this Lease, it is understood and agreed that City shall furnish copies of all notices of defaults to the beneficiary or mortgagee under said encumbrance by certified mail contemporaneously with the furnishing of such notices to Lessee, and in the event Lessee shall fail to cure such default or defaults within the time allowed above, said beneficiary or mortgagee shall be afforded the right to cure such default at any time within **five (5) days**, if the default is for the failure to submit rent as required, or within **fifteen (15) days** following the expiration of the period within which Lessee may cure such default; provided, however, City shall not be required to furnish any further notice of default to said beneficiary or mortgagee.

In the event of the termination of this Lease pursuant to the provisions of this section, City shall have any rights to which it would be entitled in the event of the expiration or sooner termination of this Lease under the provisions of this Lease.

8.02 Bankruptcy. In the event Lessee becomes insolvent, makes an assignment for the benefit of creditors, becomes the subject of a bankruptcy proceeding, reorganization, arrangement, insolvency, receivership, liquidation, or dissolution proceedings, or in the event of any judicial sale of Lessee's interest under this Lease, City shall have the right to declare this Lease in default.

The conditions of this Section shall not be applicable or binding on Lessee or the beneficiary in any deed of trust, mortgage, or other security instrument on the demised Property which is of record with City and has been consented to by resolution of the City Council, or to said beneficiary's successors in interest consented to by resolution of the City Council, as long as there remain monies to be paid by Lessee to such beneficiary under the terms of such deed of trust, provided that such beneficiary or its successors in interest, continuously pay to City all rent due or coming due under the provisions of this Lease and the Property are continuously and actively used in accordance with Section 1.02 of this Lease.

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SECTION 9: GENERAL PROVISIONS

9.01 Notices. All notices, demands, requests, consents or other communications which this Lease contemplates or authorizes, or requires or permits either party to give to the other, shall be in writing and shall be personally delivered or mailed to the respective party as follows:

To City:

CITY OF OCEANSIDE
Property Management
300 North Coast Highway
Oceanside, CA 92054

To Lessee:

PRO KIDS GOLF ACADEMY
Attn: Martha Rimmell,
Chief Executive Officer
4085 52nd Street
San Diego, CA 92105

Either party may change its address by notice to the other party as provided herein. Communications shall be deemed to have been given and received on the first to occur of: i) actual receipt at the offices of the party to whom the communication is to be sent, as designated above; or (ii) **three (3) working days** following the deposit in the United States Mail of registered or certified mail, postage prepaid, return receipt requested, addressed to the offices of the party to whom the communication is to be sent, as designated above.

9.02 City Approval. The City Manager shall be the City's authorized representative in the interpretation and enforcement of all work performed in connection with this Lease. The City Manager may delegate authority in connection with this Lease to the City Manager's designee(s). For the purposes of directing Lessee in accordance with this Lease, which does not result in a change to this Lease, the City Manager delegates authority to the City's Supervising Property Agent.

9.03 Nondiscrimination. Lessee agrees not to discriminate in any manner against any person or persons on account of sex, race, color, religion, ancestry, national origin, disability, medical condition, marital status, sexual orientation, or age in Lessee's use of the Property.

9.04 Equal Opportunity. Lessee shall take affirmative action to assure applicants are employed and that employees are treated during employment without regard to sex, race, color, religion, ancestry, national origin, disability, medical condition, marital status, sexual orientation, or age. Lessee hereby certifies to City that Lessee is in compliance and throughout the term of this Lease will comply with Title VII of the Civil Rights Act of 1964, as amended, the California Fair Employment Practices Act, and any other applicable Federal, State and Local law, regulation and policy (including without limitation those adopted by City) related to equal employment opportunity and affirmative action programs, including any such law, regulation, and policy hereinafter enacted.

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Compliance and performance by Lessee of the equal employment opportunity and affirmative action program provision of this Lease is an express condition hereof and any failure by Lessee to so comply and perform shall be a default of this Lease and City may exercise any right as provided herein and as otherwise provided by law.

9.05 Entire Agreement. This Lease comprises the entire integrated understanding between City and Lessee concerning the use and occupation of the Property and supersedes all prior negotiations, representations, or Agreements. Each party has relied on its own examination of the Property, advice from its own attorneys, and the warranties, representations, and covenants of the Lease itself.

9.06 Interpretation of the Lease. The interpretation, validity and enforcement of the Lease shall be governed by and construed under the laws of the State of California. The venue of any judicial action brought to enforce any condition, covenant or provision of this Lease shall be in San Diego County, California. The Lease does not limit any other rights or remedies available to City.

The Lessee shall be responsible for complying with all Local, State, and Federal laws whether or not said laws are expressly stated or referred to herein.

Should any provision herein be found or deemed to be invalid, the Lease shall be construed as not containing such provision, and all other provisions, which are otherwise lawful, shall remain in full force and effect, and to this end the provisions of this Lease are severable.

This Lease shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, successors, and assigns.

9.07 Lease Modification. This Lease may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto.

9.08 Waiver. Any City waiver of a default is not a waiver of any other default. Any waiver of a default must be in writing and be executed by the City Manager in order to constitute a valid and binding waiver. City delay or failure to exercise a remedy or right is not a waiver of that or any other remedy or right under this Lease. The use of one remedy or right for any default does not waive the use of another remedy or right for the same default or for another or later default. City's acceptance of any rents is not a waiver of any default preceding the rent payment. City and Lessee specifically agree that the property constituting the Property is City-owned and held in trust for the benefit of the citizens of the City of Oceanside and that any failure by the City Manager or City staff to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but City shall at all times, subject to applicable statute of limitations, have the legal right to require the cure of any default when and as such defaults are discovered or when and as the City Council directs the City Manager to take action or require the cure of any default after such default is brought to the attention of the City Council by the City Manager or by any concerned citizen.

9.09 Dispute Resolution, Attorney's Fees. In the event any suit is commenced by either party to enforce any of the terms and conditions hereof, the prevailing party shall be entitled to an award of all costs expended, together with a reasonable attorney's fee to be fixed by the Court. Venue for enforcement of this Lease shall be in the Superior Court of San Diego County, North County Branch. The parties agree that before either party commences any legal or equitable

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action, action for the declaratory relief, suit, proceeding, or arbitration that the parties shall first attempt to resolve the dispute by submitting the dispute to mediation through a mutually acceptable professional mediator in San Diego County, or, if a mediator cannot be agreed upon, by a mediator appointed by the Judicial Arbitration and Mediation Service in San Diego County. The parties shall share the cost of mediation equally.

9.10 Assignment and Subletting - No Encumbrance. This Lease and any portion thereof shall not be assigned, transferred, or sublet, nor shall any of the Lessee's duties be delegated, without the express written consent of City. Any attempt to assign or delegate this Lease without the express written consent of City shall be void and of no force or effect. A consent by City to one assignment, transfer, sublease, or delegation shall not be deemed to be a consent to any subsequent assignment, transfer, sublease, or delegation.

9.11 Section Headings. The table of Contents and the section headings contained herein are for the convenience in reference and are not intended to define or limit the scope of any provision thereof.

9.12 Gender/Singular/Plural. The neuter gender includes the feminine and masculine, the masculine includes the feminine and neuter, and the feminine includes the masculine and neuter, and each includes corporation, partnership, or other legal entity when the context so requires. The singular number includes the plural whenever the context so requires.

SECTION 10: SPECIAL PROVISIONS

10.01 Standards of Operation. Lessee agrees that it shall operate and manage the services and facilities offered upon or from the Property in a manner consistent with other similar operations.

10.02 Hours of Operation. The Lessee agrees that it shall conduct business on the Property to conform to hours and days of operation as established, and in the best interest of the youth served by Lessee, unless otherwise approved in writing by the City.

10.03 Manner of Providing Service. Lessee shall provide an experienced and well-qualified "on-site" supervisor to oversee all operations conducted by Lessee on the Property. Said supervisor shall be empowered with authority to act on behalf of Lessee in response to reasonable requests from City to perform maintenance, repairs, and replacements on the Property as reasonably required relative to the public's health, safety, and welfare. All employees of Lessee shall at all times conduct themselves in a creditable and dignified manner, and they shall conform to all laws, rules, regulations and requirements, as well as all rules and regulations as hereafter may be promulgated, or put into operation by the City. Lessee shall maintain a staff in adequate size and number, to effectively operate, maintain and administer all services offered and facilities located on the Property.

10.04 Hazardous Substances. No goods, merchandise or material shall be kept, stored or sold in or on the Property which are in any way explosive or hazardous; and no offensive or dangerous trade, business or occupation shall be carried on therein or thereon, and nothing shall be done on said Property, which will cause an increase in the rate of or cause a suspension or cancellation of the insurance upon said or other Property and the improvements thereon.

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No machinery or apparatus shall be used or operated on or about the Property which will in any way injure the Property or improvements thereon, or adjacent or other Properties, or improvements thereon, or to persons; provided, however, that nothing contained in this Section shall preclude Lessee from bringing, keeping or using on or about the such materials, supplies, equipment and machinery as are appropriate or customary in carrying on its said business, or from carrying on its business in all usual respects.

Open flame burning, gasoline, or other fuel storage is expressly prohibited without prior written consent of the City.

10.05 Lessee Memorandum. Parties agree upon the Commencement Date of the lease, , a Memorandum of Lease, in the form attached to this Lease as **Exhibit "G"** (Memorandum of Lease), shall be executed by the City and Lessee and shall be recorded in the Official Records of the County of San Diego.

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SECTION 11: SIGNATURES

11.01 Signature Page. The individuals executing this Lease represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Lease on behalf of the respective legal entities of the Lessee and the City.

IN WITNESS WHEREOF the parties hereto for themselves, their heirs, executors, administrators, successors, and assigns do hereby agree to the full performance of the covenants herein contained and have caused this Lease to be executed on the day and year respectively written hereinbelow.

"City"

City of Oceanside, a municipal corporation

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

By: _____
City Manager

By: Brent A. Milton, ASST.
City Attorney

"Lessee"

Pro Kids Golf Academy, Inc.
a California non-profit corporation

By: [Signature]

By: [Signature]

Print Name: STEVEN C. McCracken

Print Name: BASSIA "BESSY" GLASKE

Title: VICE PRESIDENT

Title: SECRETARY

Dated: 07-02-10

Dated: 7.2.10

NOTARY ACKNOWLEDGMENTS OF LESSEE'S SIGNATURE(S) MUST BE ATTACHED

State of California, County of San Diego
On July 02, 2010 before me, Roman Cedillo, Notary Public,
Personally appeared Bassia Glaske
who proved to me on the basis of satisfactory evidence to be the person(s)
whose name(s) is/are subscribed to the within instrument and acknowledged
to me that he/she/they executed the same in his/her/their authorized capacity(ies),
and that by his/her/their signature(s) on the instrument the person(s), or the entity
upon behalf of which the person(s) acted, executed the instrument.
I certify under PENALTY OF PERJURY under the laws of the State of California
that the foregoing paragraph is true and correct.
WITNESS my hand and official seal.

[Signature]



ACKNOWLEDGMENT

State of California
County of San Diego)

On July 2, 2010 before me, Moira Garcia, Notary
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature Moira Garcia (Seal)

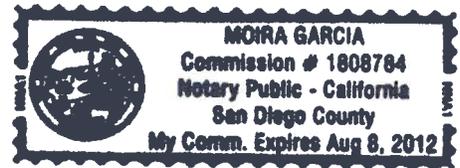


EXHIBIT "A"
GOLF COURSE LEASE PARCEL
LEGAL DESCRIPTION

APN 157-021-06

VESTING: CITY OF OCEANSIDE

THAT PORTION OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER AND THE EAST HALF OF THE NORTHWEST QUARTER OF FRACTIONAL SECTION 5, TOWNSHIP 11 SOUTH, RANGE 4 WEST, SAN BERNARDINO MERIDIAN, ACCORDING TO OFFICIAL PLAT THEREOF AND THAT PORTION OF PARCEL 4 OF PARCEL MAP NO. 8979 IN THE CITY OF OCEANSIDE, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, FILED IN THE OFFICE OF THE COUNTY RECORDER JULY 30, 1979 AS FILE NO 79-315351, DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST EASTERLY CORNER OF SAID PARCEL 4;

THENCE ALONG THE NORTHERLY BOUNDARY OF SAID PARCEL 4
NORTH 89°50'30" WEST 166.61 FEET TO THE **TRUE POINT OF BEGINNING;**

THENCE LEAVING SAID BOUNDARY NORTH 00°09'30" EAST 82.59 FEET;

THENCE NORTH 89°50'30" WEST 277.01 FEET;

THENCE NORTH 00°23'23" WEST 42.07 FEET;

THENCE SOUTH 46°46'29" WEST 441.61 FEET TO THE BEGINNING OF A TANGENT 140.00 FOOT RADIUS CURVE, CONCAVE SOUTHEASTERLY;

THENCE SOUTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 48°28'49" A DISTANCE OF 118.46 FEET;

THENCE SOUTH 01°42'20" EAST 387.64 FEET TO THE NORTHERLY BOUNDARY OF WHELAN RANCH UNIT NO. 1 ACCORDING TO MAP THEREOF NO. 9384 RECORDED SEPTEMBER 24, 1979 AS FILE NO. 79-399839;

THENCE ALONG SAID NORTHERLY BOUNDARY NORTH 89°37'24" EAST 225.38 FEET TO THE SOUTHWESTERLY PROLONGATION OF THE SOUTHEASTERLY BOUNDARY OF SAID PARCEL 4 AND A POINT ON A NON-TANGENT 842.00 FOOT RADIUS CURVE, CONCAVE SOUTHEASTERLY, A RADIAL FROM SAID POINT BEARS SOUTH 80°56'52" EAST;

THENCE LEAVING SAID NORTHERLY BOUNDARY, NORTHEASTERLY ALONG SAID PROLONGATION, SAID SOUTHEASTERLY BOUNDARY, AND SAID CURVE THROUGH A CENTRAL ANGLE OF 51°14'37" A DISTANCE OF 753.06 FEET TO A POINT ON A NON-

TANGENT 29.00 FOOT RADIUS CURVE, CONCAVE WESTERLY, A RADIAL FROM SAID CURVE BEARS NORTH 76°48'35" WEST;

THENCE LEAVING SAID SOUTHEASTERLY BOUNDARY, NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 30°29'25" A DISTANCE OF 15.43 FEET TO THE BEGINNING OF A REVERSE 172.00 FOOT RADIUS CURVE, CONCAVE EASTERLY;

THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 17°27'30" A DISTANCE OF 52.41 FEET;

THENCE NORTH 00°09'30" EAST 3.43 FEET TO THE **TRUE POINT OF BEGINNING**.

CONTAINING 6.296 ACRES MORE OR LESS.

ATTACHED HERETO AND MADE A PART HEREOF IS A PLAT LABELED EXHIBIT "A-1".

THIS REAL PROPERTY DESCRIPTION HAS BEEN PREPARED BY ME, OR UNDER MY DIRECTION, IN CONFORMANCE WITH THE PROFESSIONAL LAND SURVEYORS ACT.

ROBERT R. WALLACE, RLS 5207

DATE

EXHIBIT 'A-1'

NOTE: DATA SHOWN HEREON IS BASED ON RECORD INFORMATION.

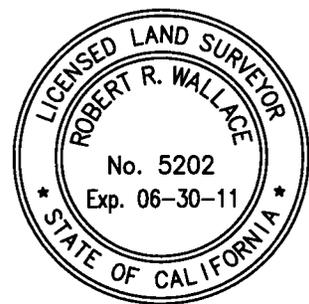
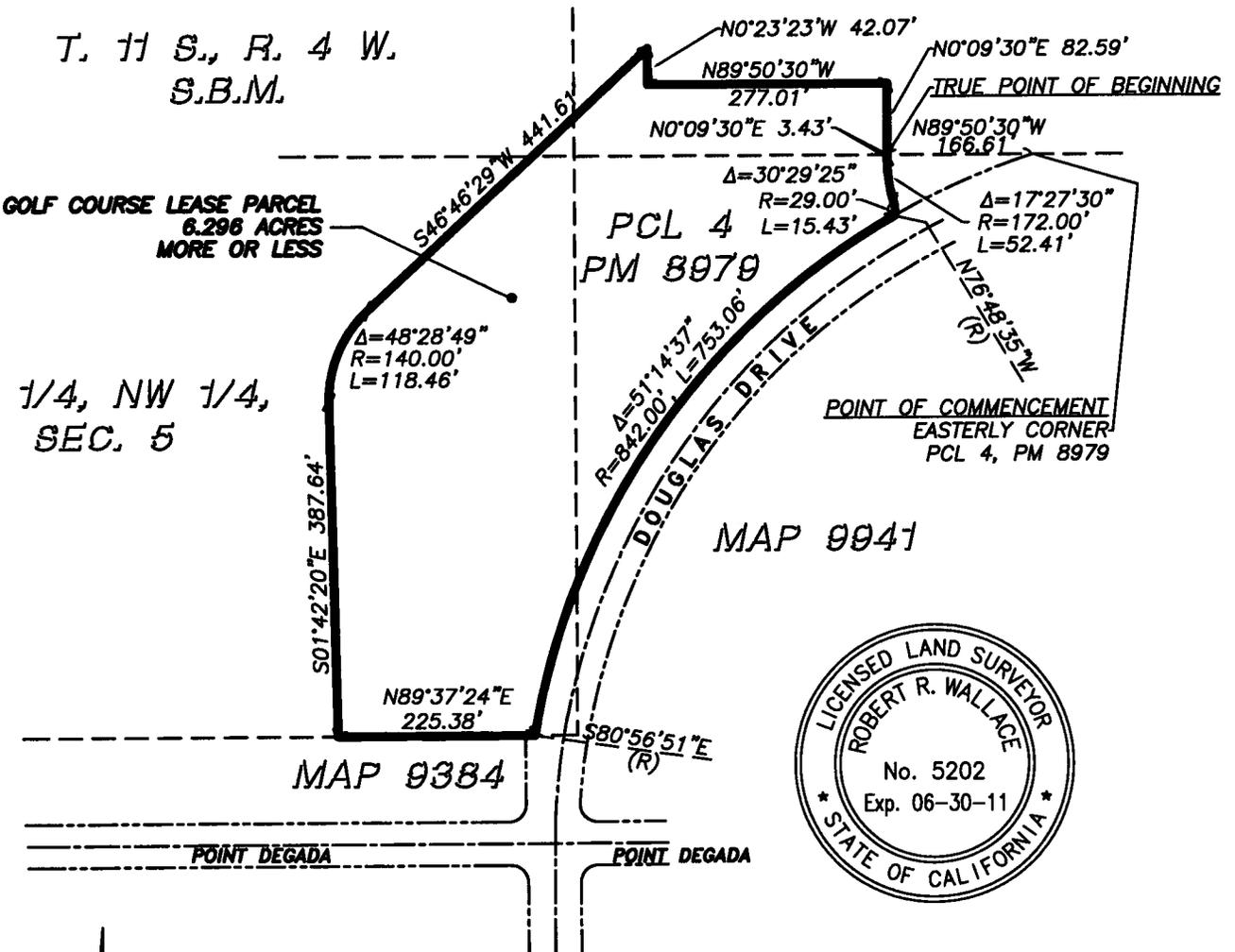
NE 1/4, NW 1/4,
SEC. 5

NW 1/4, NE 1/4,
SEC. 5

T. 11 S., R. 4 W.
S.B.M.

GOLF COURSE LEASE PARCEL
6.298 ACRES
MORE OR LESS

SE 1/4, NW 1/4,
SEC. 5



THIS PLAT WAS PREPARED BY ME OR UNDER MY DIRECTION IN CONFORMANCE WITH THE PROFESSIONAL LAND SURVEYOR'S ACT.

ROBERT R. WALLACE, RLS 5202

SCALE: 1"=200'

APN: 157-021-06

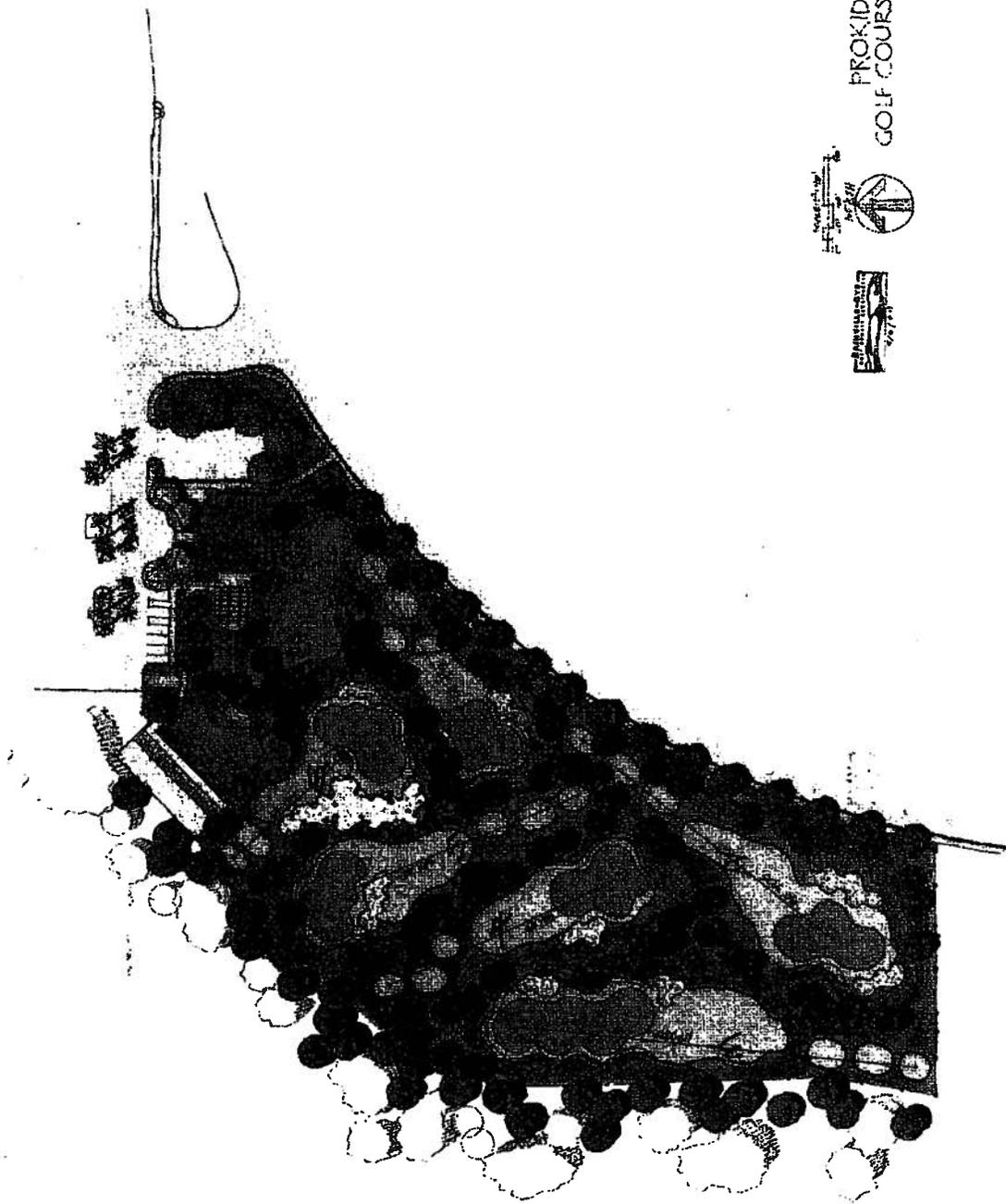
Tr-Dimensional Engineering, Inc.
ENGINEERING • PLANNING • SURVEYING
P.O. BOX 791 POWAY, CA 92074 (858)748-8333 FAX (858)748-8412

CITY OF OCEANSIDE	
VESTING: CITY OF OCEANSIDE	
JULY 5, 2010	SHEET 1 OF 1

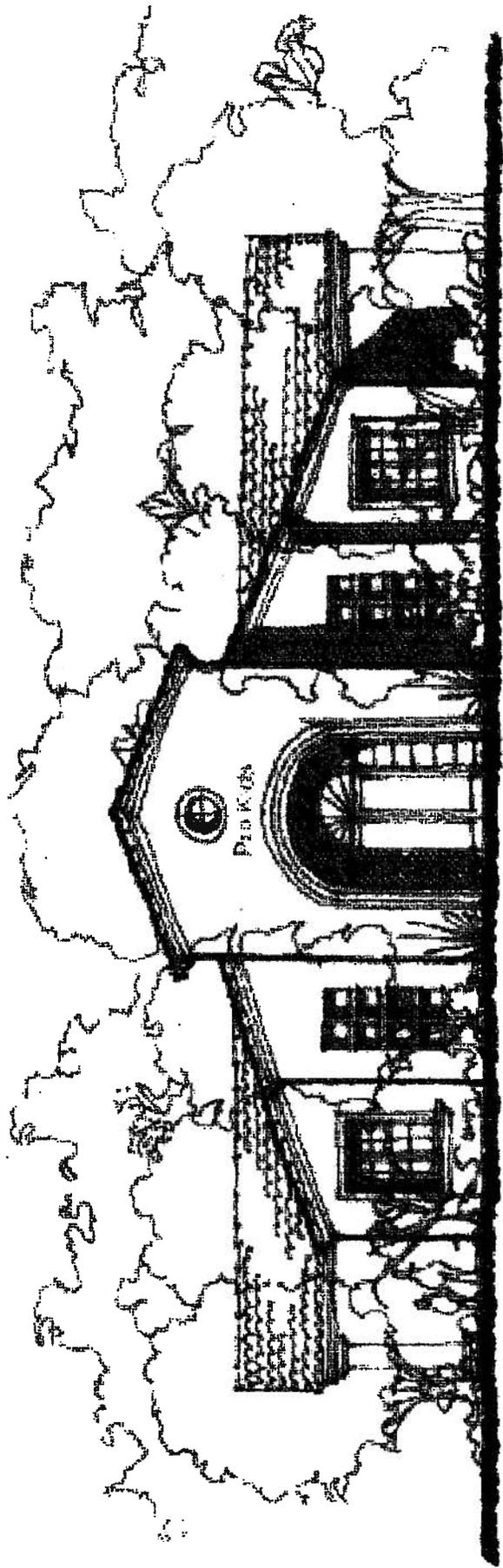
EXHIBIT "B"

DESCRIPTION OF LESSEE IMPROVEMENTS

1. A one story clubhouse measuring approximately 3500 square feet and associated improvements.
2. A six-hole par-3 golf course and associated improvements.
3. Parking and driveway improvements to the 'Improved Common Area' shown in Exhibit E.



PROKIDS
GOLF COURSE



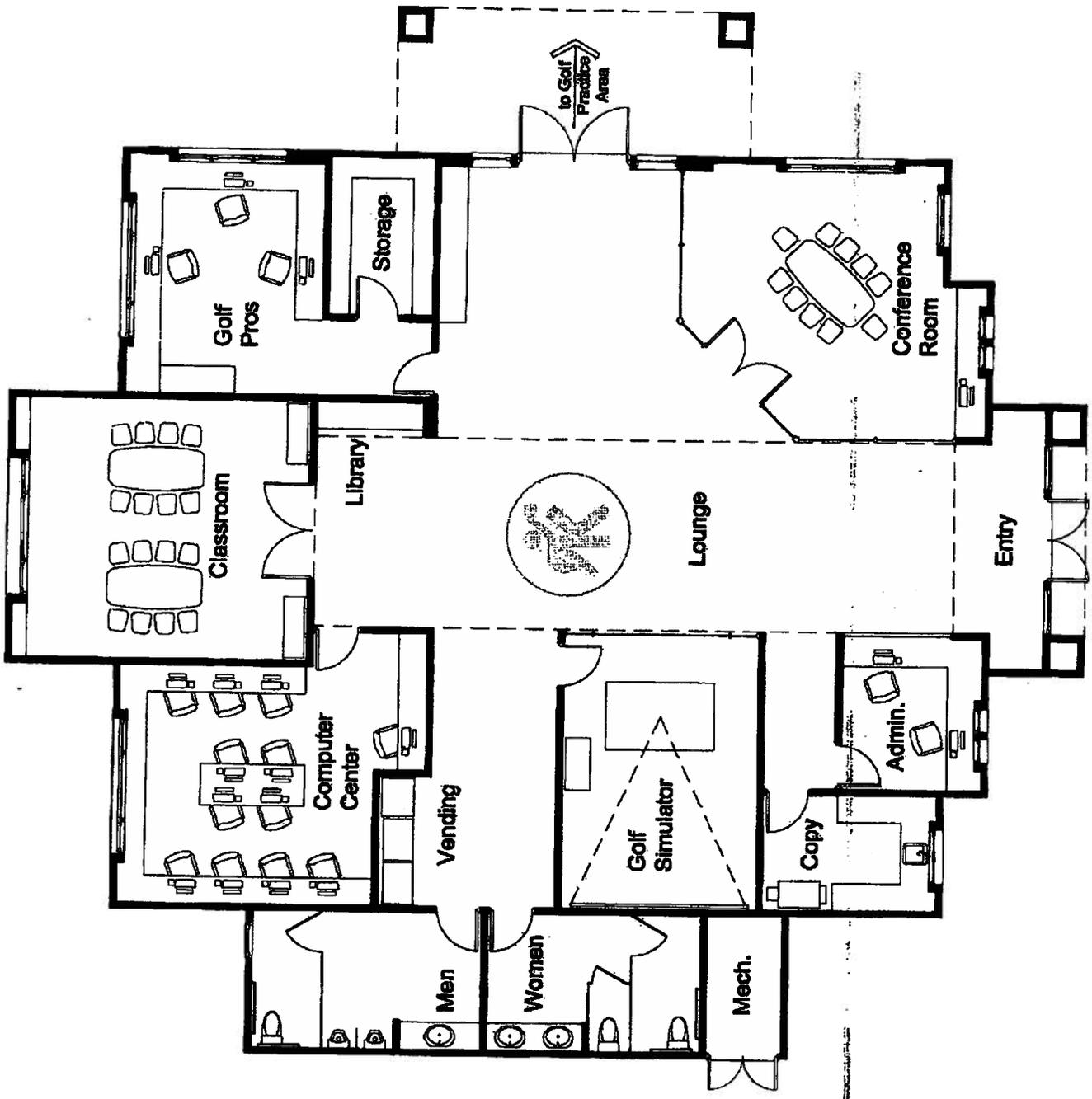


EXHIBIT "C"

COMMENCEMENT DATE MEMORANDUM

This Commencement Date Memorandum, dated as of _____ is executed between the City of Oceanside, a municipal corporation ("CITY") and Pro Kids Golf Academy, a California non-profit corporation ("LESSEE").

RECITALS

WHEREAS, CITY and LESSEE have entered into that certain Property Lease Agreement ("Lease") dated _____, 2010 for premises at 825 Douglas Road in the City of Oceanside, County of San Diego, State of California; and

WHEREAS, pursuant to the terms of the Lease the parties are to execute a memorandum to confirm the commencement date of the Lease.

NOW, THEREFORE, in consideration of the conditions and covenants contained herein, the parties hereto mutually agree as follows:

1. The CITY and LESSEE agree that the commencement date of the Lease is _____ and the termination date is _____.

IN WITNESS WHEREOF, the parties hereto for themselves, their heirs, executors, administrators, successors and assigns do hereby agree to the above, as of the day and year first written above.

"CITY"

City of Oceanside
a municipal corporation

By: _____
(name)

Title: City Manager

"LESSEE"

Pro Kids Golf Academy,
a California non-profit corporation

By: _____

Name: _____

Title: _____

EXHIBIT "D"
CONSTRUCTION SCHEDULE

<u>Scheduled Item</u>	<u>Anticipated Completion</u>
1. Construction Documents and Permit Processing	Effective Date plus 9 months
2. Occupancy	Effective Date plus 21 months

EXHIBIT "E"
PARKING LOT LEASE PARCEL
LEGAL DESCRIPTION

APN 157-021-06

VESTING: CITY OF OCEANSIDE

THAT PORTION OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF FRACTIONAL SECTION 5, TOWNSHIP 11 SOUTH, RANGE 4 WEST, SAN BERNARDINO MERIDIAN, ACCORDING TO OFFICIAL PLAT THEREOF AND THAT PORTION OF PARCEL 4 OF PARCEL MAP NO. 8979 IN THE CITY OF OCEANSIDE, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, FILED IN THE OFFICE OF THE COUNTY RECORDER JULY 30, 1979 AS FILE NO 79-315351, DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST EASTERLY CORNER OF SAID PARCEL 4;

THENCE ALONG THE NORTHERLY BOUNDARY OF SAID PARCEL 4
NORTH 89°50'30" WEST 166.61 FEET TO THE **TRUE POINT OF BEGINNING;**

THENCE LEAVING SAID BOUNDARY NORTH 00°09'30" EAST 82.59 FEET;

THENCE NORTH 89°50'30" WEST 277.01 FEET;

THENCE NORTH 00°23'23" WEST 42.07 FEET;

THENCE NORTH 38°53'06" EAST 170.52 FEET TO THE BEGINNING OF A TANGENT 28.00 FOOT RADIUS CURVE, CONCAVE SOUTHEASTERLY;

THENCE NORTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 52°25'30" A DISTANCE OF 25.62 FEET;

THENCE SOUTH 88°41'24" EAST 183.07 FEET;

THENCE SOUTH 00°23'23" EAST 21.06 FEET TO THE BEGINNING OF A TANGENT 67.00 FOOT RADIUS CURVE, CONCAVE NORTHEASTERLY;

THENCE SOUTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 90°00'00" A DISTANCE OF 105.24 FEET;

THENCE NORTH 89°36'37" EAST 31.48 FEET TO THE BEGINNING OF A TANGENT 42.00 FOOT RADIUS CURVE, CONCAVE SOUTHWESTERLY;

THENCE SOUTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 88°20'58" A DISTANCE OF 64.76 FEET;

THENCE SOUTH 02°02'25" EAST 106.14 FEET;

THENCE NORTH 89°50'30"WEST 110.10 FEET TO THE BEGINNING OF A TANGENT 29.00 FOOT RADIUS CURVE, CONCAVE SOUTHEASTERLY;

THENCE SOUTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 90°19'19" A DISTANCE OF 45.72 FEET;

THENCE SOUTH 00°05'34"EAST 14.87 FEET TO THE BEGINNING OF A TANGENT 31.00 FOOT RADIUS CURVE, CONCAVE NORTHEASTERLY;

THENCE SOUTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 59°58'20" A DISTANCE OF 37.86 FEET TO THE SOUTHEASTERLY BOUNDARY OF SAND PARCEL 4 AND A POINT ON A NON-TANGENT 842.00 FOOT RADIUS CURVE, CONCAVE SOUTHEASTERLY, A RADIAL FROM SAID POINT BEARS SOUTH 25°35'41"EAST;

THENCE SOUTHWESTERLY ALONG SAID BOUNDARY AND SAID CURVE THROUGH A CENTRAL ANGLE OF 4°06'27" A DISTANCE OF 60.36 FEET TO A POINT ON A NON-TANGENT 29.00 FOOT RADIUS CURVE, CONCAVE WESTERLY, A RADIAL FROM SAID POINT BEARS NORTH 76°48'35"WEST;

THENCE LEAVING SAID BOUNDARY, NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 30°29'25" A DISTANCE OF 15.43 FEET TO THE BEGINNING OF A REVERSE 172.00 FOOT RADIUS CURVE, CONCAVE EASTERLY;

THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 17°27'30" A DISTANCE OF 52.41 FEET;

THENCE NORTH 00°09'30"EAST 3.43 FEET TO THE **TRUE POINT OF BEGINNING.**

CONTAINING 1.761 ACRES MORE OR LESS.

ATTACHED HERETO AND MADE A PART HEREOF IS A PLAT LABELED EXHIBIT "E-1".

THIS REAL PROPERTY DESCRIPTION HAS BEEN PREPARED BY ME, OR UNDER MY DIRECTION, IN CONFORMANCE WITH THE PROFESSIONAL LAND SURVEYORS ACT.

ROBERT R. WALLACE, RLS 5207

DATE

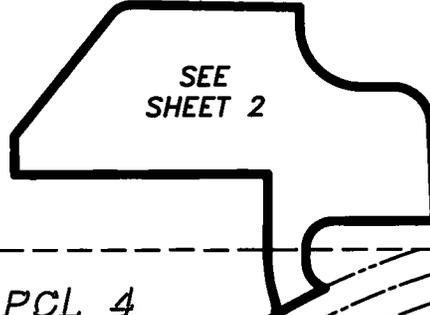
EXHIBIT 'E-1'

NOTE: DATA SHOWN HEREON IS BASED ON RECORD INFORMATION.

NE 1/4, NW 1/4,
SEC. 5

NW 1/4, NE 1/4,
SEC. 5

T. 11 S., R. 4 W.
S.B.M.

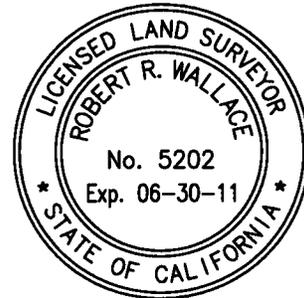


PCL 4
PM 8979

SE 1/4, NW 1/4,
SEC. 5

MAP 0941

DOUGLAS DRIVE



MAP 0384

POINT DEGADA

POINT DEGADA

THIS PLAT WAS PREPARED BY ME OR UNDER MY DIRECTION IN CONFORMANCE WITH THE PROFESSIONAL LAND SURVEYOR'S ACT.

SCALE: 1"=200'

ROBERT R. WALLACE, RLS 5202

APN: 157-021-06

CITY OF OCEANSIDE

VESTING: CITY OF OCEANSIDE

JULY 5, 2010

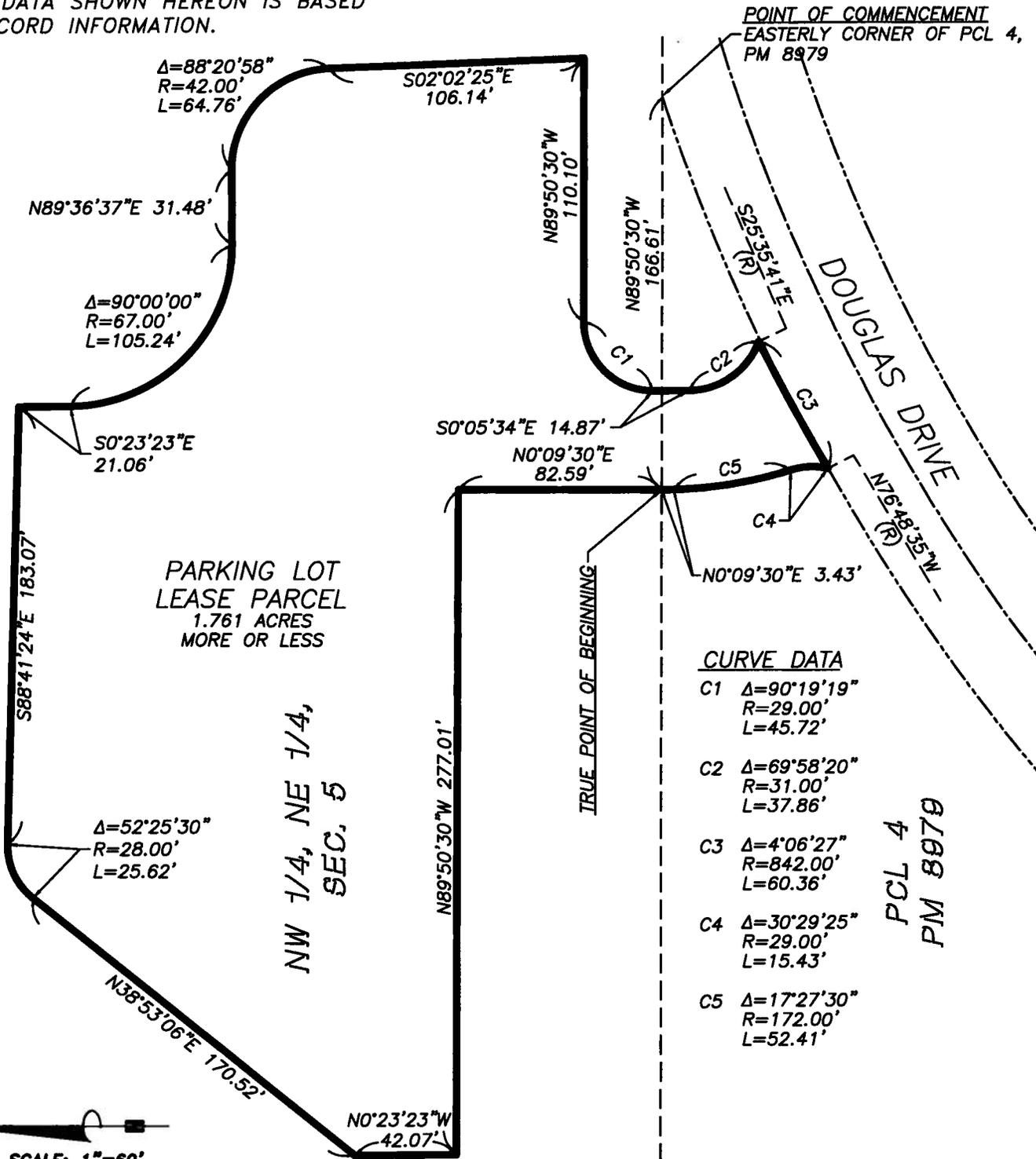
SHEET 1 OF 2



P.O. BOX 791 POWAY, CA 92074 (858)748-8333 FAX (858)748-8412

EXHIBIT 'E-1'

NOTE: DATA SHOWN HEREON IS BASED ON RECORD INFORMATION.



SCALE: 1"=60'

Tri-Dimensional Engineering, Inc.
ENGINEERING • PLANNING • SURVEYING
P.O. BOX 791 POWAY, CA 92074 (858)748-8993 FAX (858)748-8412

CITY OF OCEANSIDE	
VESTING: CITY OF OCEANSIDE	
JULY 5, 2010	SHEET 2 OF 2

EXHIBIT "F"
IMPROVED COMMON AREA

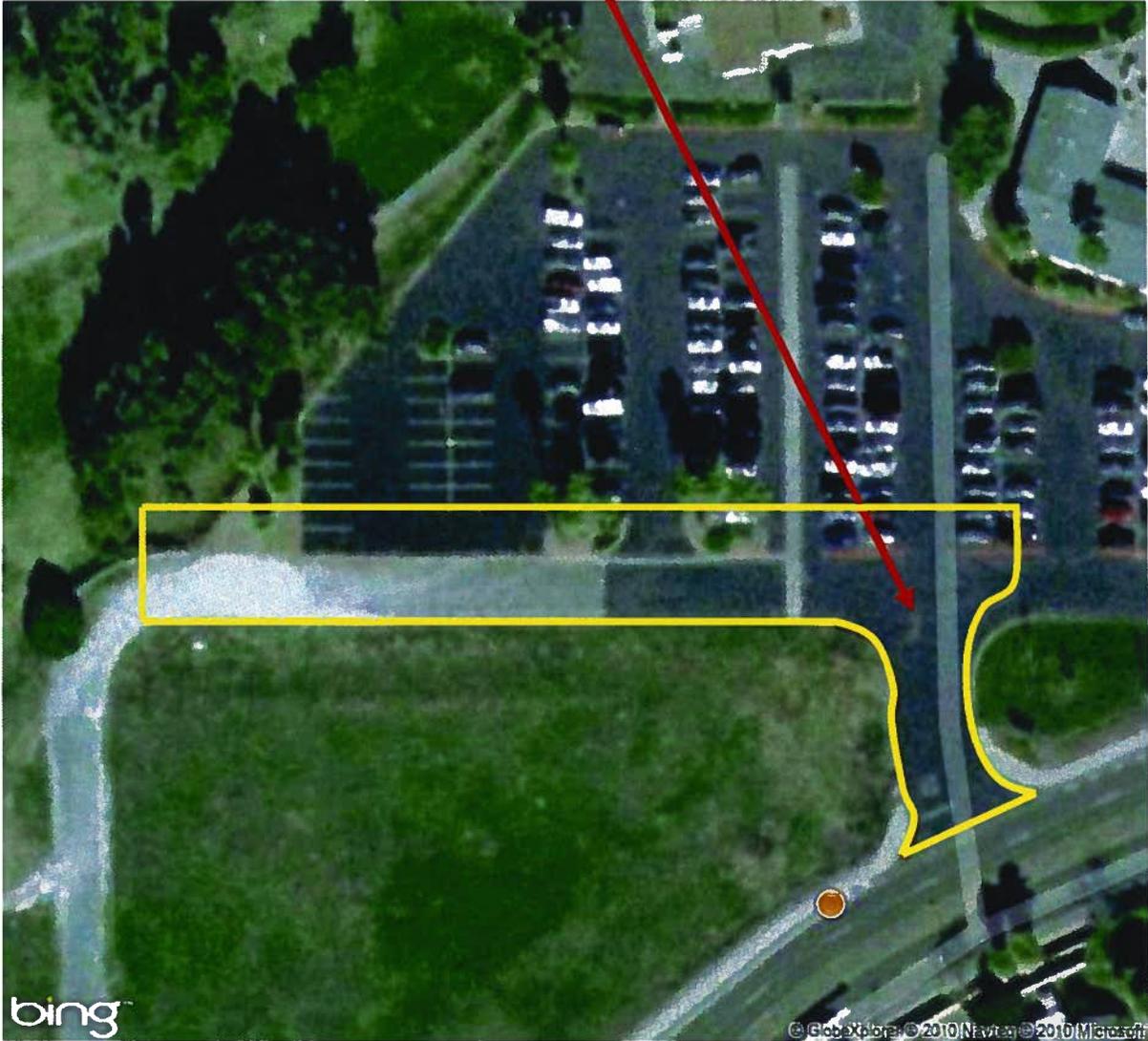


EXHIBIT "G"

Recording Requested by:
When Recorded Return to:

CITY CLERK, CITY OF OCEANSIDE
300 North Coast Highway
Oceanside, CA 92054

(For Recorder's Use)

MEMORANDUM OF LEASE

This Memorandum of Lease ("Memorandum") is made as of _____, 2010, by and between The City of Oceanside, a municipal corporation ("City") and Pro Kids Golf, LLC, a California limited liability company ("Lessee").

City and Lessee have entered into that certain Lease dated as of _____, 2010, ("Lease"), pursuant to which City has ground leased to Lessee, and Lessee has ground leased from City, that certain property located in the City of Oceanside, County of San Diego, State of California and more particularly described in Exhibit "A-1" (Property), which is attached and incorporated by this reference, all subject to the terms and covenants set forth in the Lease. The purpose of this Memorandum is to give notice of the existence of the Lease and the provisions thereof. To the extent that any provision of this Memorandum conflicts with any provision of the Lease, the Lease shall control.

This Memorandum may be executed in counterparts, each of which shall be an original, but all of which, together, shall constitute one and the same instrument.

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

"City"

The City of Oceanside, a municipal corporation

By: _____
Name: _____
Title: _____

"Lessee"

Pro Kids Golf, LLC, a California
limited liability company

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____