

*STAFF REPORT**CITY OF OCEANSIDE*

DATE: March 14, 2012

TO: Honorable Mayor and City Councilmembers

FROM: Property Management

SUBJECT: **AMENDMENT 1 TO THE LEASE AGREEMENT WITH PRO KIDS GOLF ACADEMY ADJUSTING THE LEGAL DESCRIPTION AND INCREASING THE COMPENSATION TO THE CITY**

SYNOPSIS

Staff recommends that the City Council approve Amendment 1 to the Lease Agreement with the Pro Kids Golf Academy for the youth golf facility located at 825 Douglas Road, adjusting the legal description and increasing the compensation to the City in the annual amount of \$3,000; and authorize the City Manager to execute the amendment.

BACKGROUND

On July 14, 2010, the City entered into a Lease Agreement ("Agreement") with Pro Kids Golf Academy ("Pro Kids") for the premises at 825 Douglas Road to develop a youth golf academy to serve the youth of Oceanside and North County. Construction is estimated to commence in the second quarter of 2012.

Pro Kids will develop a youth golf academy adjacent to the Oceanside Municipal Golf Course on approximately six acres. The estimated cost to develop and operate the facility over the first five years is \$3 million dollars.

Pro Kids is responsible for all phases of construction, from design through completion of the project. Pro Kids will have the responsibility of operating and maintaining the facility for the duration of the term.

ANALYSIS

During preliminary development of the plans, Staff and Pro Kids determined the legal description in the Agreement was incorrect, with the southeast corner of the property line long by ten (10) feet, leaving the property line in the City right-of-way on Douglas Drive. The revised legal description adjusts the property line out of the right-of-way, reducing the approximate acreage from 6.296 acres to 6.160 acres.

9

As a result of amending the Agreement, the City was able to require Pro Kids to determine whether there are sufficient funds available to impose a fair and reasonable rent to the City. Pro Kids determined, after examining its construction and operating costs, that it can provide the City with additional compensation on a monthly basis. Pro Kids currently is not required to pay rent under the Agreement. The proposed amendment adjusts the consideration from only programs, services and activities to \$3,000 annually, with an increase of \$1,000 per year every ten (10) years.

FISCAL IMPACT

The rent will be adjusted so that Pro Kids will pay \$250 per month. The amendment will result in revenue for the premises over the 30-year term in the minimum amount of \$120,000. Pro Kids will still be required to pay its own utilities and other costs to maintain and operate the facility.

INSURANCE REQUIREMENTS

The City's standard insurance requirements have been and will continue to be met.

CITY ATTORNEY'S ANALYSIS

The City Attorney has reviewed and approved all documents as to form.

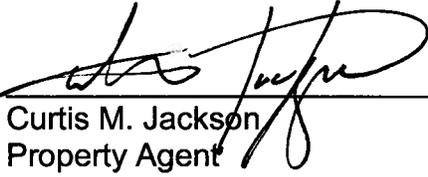
COMMISSION OR COMMITTEE REPORT

Does not apply.

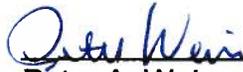
RECOMMENDATION

Staff recommends that the City Council approve Amendment 1 to the Lease Agreement with the Pro Kids Golf Academy for the youth golf facility located at 825 Douglas Road, adjusting the legal description and increasing the compensation to the City in the annual amount of \$3,000; and authorize the City Manager to execute the amendment.

PREPARED BY:


Curtis M. Jackson
Property Agent

SUBMITTED BY:


Peter A. Weiss
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager



Douglas E. Eddow, Real Property Manager



Attachment:

Lease Agreement
Amendment 1

**AMENDMENT NO. 1 TO LEASE AGREEMENT BETWEEN
THE CITY OF OCEANSIDE
AND
PRO KIDS GOLF ACADEMY, INC.**

This Amendment to the Lease Agreement ("Amendment"), dated _____, 2012 for identification purposes, is made by and between the **CITY OF OCEANSIDE**, a California Municipal Corporation, hereinafter called "City", and **PRO KIDS GOLF ACADEMY, INC.**, a California non-profit corporation, hereinafter called "Lessee."

R E C I T A L S

WHEREAS, City and Lessee are the parties to that certain Lease Agreement, dated July 14, 2010, ("the Lease"), wherein City, as landlord, permits Lessee to use and occupy that certain real property which shall consist of approximately 7 acres adjacent to the Oceanside Municipal Golf Course (the "Property");

WHEREAS, City and Lessee mutually desire to amend and modify of the description of the Property as set forth in the Lease to make a minor change in the south-easterly boundary line.

WHEREAS, City and Lessee mutually desire to amend and modify the Lease to include an annual rental consideration;

NOW, THEREFORE, in consideration of the covenants, conditions, terms and other valuable consideration as set forth herein, the parties hereto do mutually agree that the Lease be modified as follows:

A G R E E M E N T

1. SECTION 1: Property and Lessee Improvements, Subsection 1.01 Property of the Lease shall be amended by deleting Exhibit "A" ("Legal Description") and Exhibit "A-1" ("Property Site Plan") and replacing with Exhibit "A-2" ("Legal Description") and Exhibit "A-3" ("Property Site Plan") as attached hereto and incorporated herein by this reference.

2. SECTION 3: CONSIDERATION, of the Lease shall be modified by deleting subsections 3.01 and 3.02 and replacing them with the following:

3.01 Time and Place of Payment. The Lessee shall make all rental payments monthly on or before the **first (1st) day** of each lease month.

3.02 Consideration.

a. Subject to adjustments as set forth in Section 3.02.b. below, the monthly rent amount for the remaining term of this Lease shall be **two hundred Fifty Dollars and No/100 (\$250.00)** which shall be payable monthly in advance as set forth in Subsection 3.01 above.

- b. Rental Adjustment Date.** The amount of annual rent shall increase by **One Thousand Dollars and No/100 (\$1,000.00)** on every ten (10)-year anniversary of the Commencement Date of the Lease. In no event shall the rental rate be less than that required during the preceding annual term.
- c. Delinquent Payments.** If Lessee fails to pay any amount when due, Lessee will pay in addition to the unpaid amount, five percent (5%) of the delinquent rent. If said amount is still unpaid at the end of fifteen (15) days, Lessee shall pay an additional five percent (5%) [being a total of ten percent (10%)] which is hereby mutually agreed by the parties to be appropriate to compensate City for loss resulting from delinquency, including lost interest, opportunities, legal costs, and the cost of servicing the delinquent account. Acceptance of late charges and any portion of the late payment by City shall in no event constitute a waiver by City of Lessee default with respect to late payment, nor prevent City from exercising any of the other rights and remedies granted in this Lease.
- d. Additional Property Consideration.** City hereby agrees that: the social, cultural and educational benefits and related services to the general public provided by Lessee at the Property are valuable additional consideration received from Lessee; that the provision of such social, cultural and educational benefits and related services shall constitute additional consideration to be paid by Lessee for its use of the Property in accordance with the terms, covenants, conditions and provisions of this Lease.

3. Unless otherwise defined, or the context otherwise indicates, the terms as used herein have the meaning defined in the Lease. The provisions of this Amendment shall control over any inconsistent provisions of the Lease.

4. All provisions in the Lease that are not addressed and amended in this Amendment shall remain in full force and effect, and are hereby ratified and reaffirmed.

5. The individuals executing this Amendment represent and warrant that they have the right, power, legal capacity, and authority enter into and to execute this Amendment on behalf of the City and Lessee.

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 Amendment to be executed by setting hereunto their signatures on the day and year respectively written herein below.

"City"

City of Oceanside, a California Charter City

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

By: _____
City Manager

By: *Robert Hamilton, Esq.*
City Attorney

"Lessee"

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

By: *MR*

By: _____

Print Name: Martha Remmell

Print Name: _____

Title: CEO

Title: _____

Dated: 2-27-12

Dated: _____

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

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of San Diego

On 2-27-12 before me, Robert A Sanchez, Notary Public
(Here insert name and title of the officer)

personally appeared Martin Ramirez

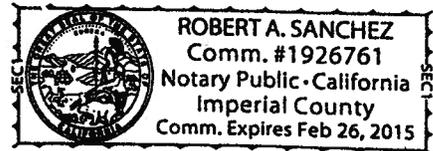
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she~~/they executed the same in his/~~her~~/their authorized capacity(~~ies~~), and that by his/~~her~~/their signature(s) on the instrument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

Robert A Sanchez
Signature of Notary Public

(Notary Seal)



ADDITIONAL OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT

(Title or description of attached document)

(Title or description of attached document continued)

Number of Pages _____ Document Date _____

(Additional information)

CAPACITY CLAIMED BY THE SIGNER

- Individual (s)
- Corporate Officer

(Title)

- Partner(s)
- Attorney-in-Fact
- Trustee(s)
- Other _____

INSTRUCTIONS FOR COMPLETING THIS FORM

Any acknowledgment completed in California must contain verbiage exactly as appears above in the notary section or a separate acknowledgment form must be properly completed and attached to that document. The only exception is if a document is to be recorded outside of California. In such instances, any alternative acknowledgment verbiage as may be printed on such a document so long as the verbiage does not require the notary to do something that is illegal for a notary in California (i.e. certifying the authorized capacity of the signer). Please check the document carefully for proper notarial wording and attach this form if required.

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. he/~~she~~/they- is /are) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
 - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
 - ❖ Indicate title or type of attached document, number of pages and date.
 - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document

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 Amendment to be executed by setting hereunto their signatures on the day and year respectively written herein below.

"City"

City of Oceanside, a California Charter City

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

By: _____
City Manager

By: _____
City Attorney

"Lessee"

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

By: _____
[Signature]

By: _____
[Signature]

Print Name: _____

Print Name: ANTHONY S. THORNEY

Title: _____

Title: Vice President & Director

Dated: _____

Dated: 2/27/12

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

ACKNOWLEDGMENT

State of California
County of San Diego)

On February 27, 2012 before me, Moira Garcia, Notary
(insert name and title of the officer)

personally appeared Anthony S. Thornley,
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-2"
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 156.77 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°35'56"EAST 215.54 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 52°04'47" A DISTANCE OF 765.34 FEET TO A POINT ON A NON-

TANGENT 29.00 FOOT RADIUS CURVE, CONCAVE WESTERLY, A RADIAL FROM SAID CURVE BEARS NORTH 87°48'06" WEST;

THENCE LEAVING SAID SOUTHEASTERLY BOUNDARY, NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 19°50'08" A DISTANCE OF 10.04 FEET TO THE BEGINNING OF A REVERSE 166.61 FOOT RADIUS CURVE, CONCAVE EASTERLY;

THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 17°47'44" A DISTANCE OF 51.75 FEET;

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

CONTAINING 6.160 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

ROBERT R. WALLACE, RLS 5207

2-20-2012

DATE

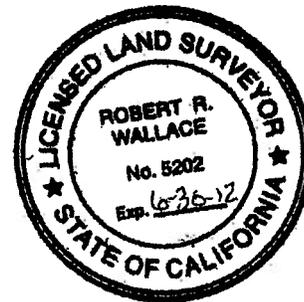


EXHIBIT "A-3"

NOTE: DATA SHOWN HEREON IS BASED ON RECORD INFORMATION.

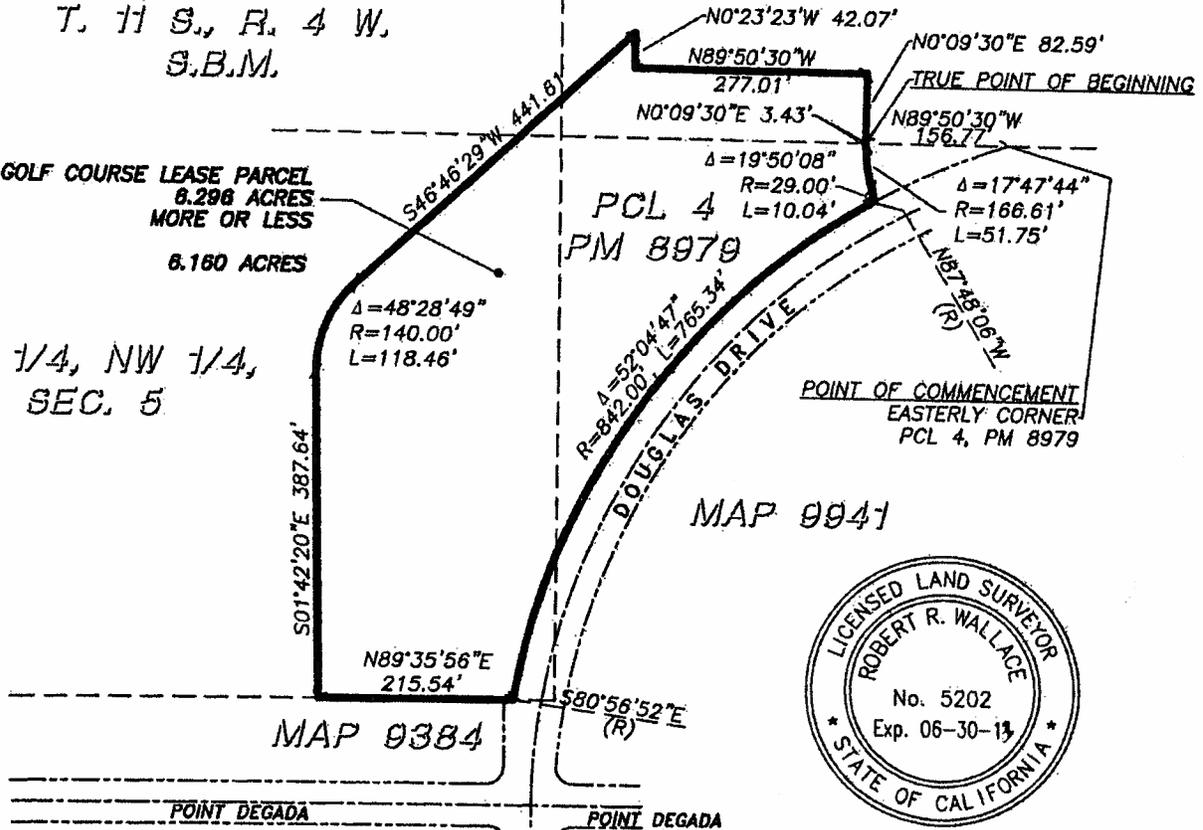
NE 1/4, NW 1/4,
SEC. 5

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

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

GOLF COURSE LEASE PARCEL
8.296 ACRES
MORE OR LESS
6.160 ACRES

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



PCL 4
PM 8979

MAP 9941

MAP 9384



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

Robert R. Wallace
ROBERT R. WALLACE, RLS 5202

SCALE: 1"=200'

APN: 157-021-06

Tri-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	
AUGUST 5, 2011	SHEET 1 OF 1