

RESOLUTION NUMBER R- 293311

ADOPTED ON JUN 19 2000

WHEREAS, the Pro Kids Golf Academy [Pro Kids] is the lessee/operator of City-owned property known as the Colina del Sol Golf Course, located in East San Diego [Golf Course]; and

WHEREAS, the lease for the Golf Course [Lease], which was assigned to Pro Kids in 1994 and terminates in 2013, provides for the operation and maintenance of a public 18-hole pitch-and-putt golf course, pro shop, snack bar, food facility, and golf instruction; and

WHEREAS, the mission of Pro Kids is to introduce golf to San Diego's inner city youth by providing them with instruction, knowledge, and appreciation of the game of golf, as well as with course management skills and the opportunity for tournament play, in order to help combat juvenile delinquency by providing the City's youth with an opportunity to learn skills and develop self confidence and self esteem; and

WHEREAS, because the existing 3,660 clubhouse at the Golf Course is at the end of its economic life, a new 7,067 square foot clubhouse [Project] has been designed by, and will be built by, Building Industry Association members who have and will donate their services as well as materials; and

WHEREAS, the City's Lease with Pro Kids requires Pro Kids to obtain a faithful performance bond before any construction can commence on the Project; and

WHEREAS, because the entire Project will be donated, and because Pro Kids is a 501(3)(c) nonprofit organization and lacks an asset base, it is unlikely that a performance bond would be issued by any surety company for this Project; NOW, THEREFORE,

BE IT RESOLVED, by the Council of The City of San Diego, that the City Manager is authorized to execute, for and on behalf of The City of San Diego, a Second Amendment to Percentage Lease with Pro Kids, which would eliminate the faithful performance bond requirement for the Project, under the terms and conditions set forth in that amendment on file in the office of the City Clerk as Document No. RR- 293311.

APPROVED: CASEY GWINN, City Attorney

By 
Lori W. Girard
Deputy City Attorney

LWG:cdk
05/23/00
Or.Dept:REA
Aud.Cert:N/A
R-2000-1433
Form=leaser.frm

COPY
SECOND AMENDMENT TO PERCENTAGE LEASE
CITY OF SAN DIEGO AND PRO KIDS GOLF ACADEMY INC. **COPY**

This Second Amendment to Percentage Lease [Second Amendment] is entered into between the City of San Diego [CITY] and Pro Kids Golf Academy Inc. [LESSEE] with reference to the following Recitals:

Recitals

- A. WHEREAS, CITY and National Golf & Tennis, Inc., entered into a percentage lease dated August 8, 1988, and filed in the office of the City Clerk as Document No. RR-271693, for the operation and maintenance of the Colina Park Public Golf Course; and
- B. WHEREAS, the Lease was subsequently assigned, with CITY's consent, to LESSEE, effective September 1, 1994; and
- C. WHEREAS, the Lease was subsequently amended by CITY and LESSEE, effective October 9, 1995, and filed in the office of the City Clerk as Document No. RR-286374 [as amended, the "Lease"]; and
- D. WHEREAS, LESSEE, a California non-profit corporation, provides a diversionary golf program to San Diego's inner city youth which helps combat juvenile delinquency; and
- E. WHEREAS, LESSEE desires to construct a new clubhouse on the leasehold [Project], which will be paid for entirely by donations of service and materials, and will become the property of CITY at the end of the Lease term; and
- F. WHEREAS, it is unlikely that LESSEE will be able to obtain a faithful performance bond for the construction of the Project.

NOW, THEREFORE, in consideration of the above Recitals and the mutual obligations of the Parties as herein expressed, CITY and LESSEE agree as follows:

1. Section 6.06 of the Lease, Construction Bond, is amended to include the following sentence at the end of the Section:

This bond requirement shall not, however, apply to the construction of the new clubhouse which will be designed and built entirely with donated services and materials.

2. Nothing in this Second Amendment is intended to modify or alter any other terms of the Lease. All other terms and conditions of the Lease shall remain in full force and effect.

3. This Second Amendment shall be effective on JUN 19 2000, 2000.

IN WITNESS WHEREOF, this Second Amendment is executed by CITY, acting by and through its City Manager pursuant to Resolution No. 02-293311, and by LESSEE, acting by and through its lawfully authorized officer.

CITY OF SAN DIEGO

Date: JUN 26 2000

By [Signature]
Director, Real Estate Assets

PRO KIDS GOLF ACADEMY, INC.

Date: 5-31-00

By [Signature]
Ernest Wright, Chairman

APPROVED AS TO FORM AND LEGALITY

CASEY GWINN, City Attorney

Date: 7-10-00

By [Signature]
Deputy City Attorney

(R-96-287)

RESOLUTION NUMBER R- 286374

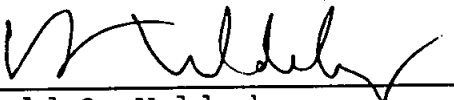
ADOPTED ON _____

BE IT RESOLVED, by the Council of The City of San Diego, that the City Manager is hereby authorized to execute a First Amendment to Percentage Lease with PRO KIDS GOLF ACADEMY, INC., a California nonprofit corporation, which First Amendment reduces the rent to \$600 per year in connection with the operation of the Colina del Sol Golf Course, and updates other standard provisions of the lease, under the terms and conditions set forth in that First Amendment to Percentage Lease on file in the office of the City Clerk as Document No. RR- 286374.

BE IT FURTHER RESOLVED, that the waiver of \$2,164 in past due rent from National Golf & Tennis, Inc., the previous operator of Colina del Sol Golf Course, is hereby authorized and approved.

APPROVED: JOHN W. WITT, City Attorney

By


Harold O. Valderhaug
Chief Deputy City Attorney

HOV:ps
09/13/95
Or.Dept:REA
Job:220589
R-96-287
Form=r-t

DUPLICATE

FIRST AMENDMENT
TO
PERCENTAGE LEASE
(CITY DOCUMENT RR-271693)

This First Amendment to Percentage Lease, ("Amendment") is executed by the City of San Diego, a California municipal corporation ("CITY") and Pro Kids Golf Academy Inc., a California nonprofit corporation, ("LESSEE") with reference to the following facts:

- A. CITY and National Golf & Tennis, Inc., a California corporation, executed a lease dated August 8, 1988 and filed in the office of the City Clerk as Document RR-271693 ("Lease") for the leasing of the Colina Park Public Golf Course located within the City of San Diego, California ("Premises"). National Golf & Tennis, Inc. assigned the Percentage Lease Agreement to LESSEE effective September 1, 1994 pursuant to an Assignment of Lease dated July 1, 1994.
- B. In consideration of LESSEE continuing to operate as a California nonprofit corporation, and continuing with their mission of introducing San Diego's youth to golf instruction, knowledge and appreciation for golf etiquette, the rules of the game, course management, and an opportunity for tournament play, CITY and LESSEE hereby agree to amend the Lease and to add new provisions as provided below in this Amendment :
1. Section 1.02 Uses is hereby deleted in its entirety and the following substituted therefore:

- 1.02 Uses. It is expressly agreed that the Premises are leased to LESSEE solely and exclusively for the purposes of operation and maintenance of a public 18-hole pitch-and-putt golf course; pro shop; snack bar; food facility including on-premises catering service; sale, rental, and repair of golf equipment and supplies; golf instruction; and for such other related or incidental purposes as may be first approved in writing by the City Manager and for no other purpose whatsoever. LESSEE shall also, as a major part of the public uses set forth above, utilize the premises for establishing and maintaining a nonprofit golf academy which is dedicated to introducing San Diego's youth to golf instruction, knowledge and appreciation for golf etiquette, the rules of the game, course management, and provide an opportunity for tournament play.

LESSEE covenants and agrees to use the premises throughout the term hereof for the above-specified purposes and to diligently conduct the California nonprofit corporation golf academy thereon, in a manner that will produce the most benefit to the general public and to San Diego's inner city youth that can reasonably be expected. Failure to continuously use the premises for said purposes, or the use thereof for purposes not expressly authorized herein, shall be grounds for termination by CITY.

RR-286374
DOCUMENT NO. _____
FILED _____
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

2. Section 3.02 is hereby deleted in its entirety and the following substituted therefore:

3.02 Rent. Annual rent is Six Hundred Dollars (\$600.00).

3. Section 3.03 Payment Procedure is hereby deleted in its entirety and the following substituted therefore:

3.03 Payment Procedure. On or before September 1 of each year, LESSEE shall pay CITY \$600.00.

4. Section 7.05, is hereby deleted in its entirety and the following substituted therefore:

7.05 Equal Opportunity. LESSEE shall submit to the Project Manager statistical information as requested in the City of San Diego Contract Activity Report indicating the amount of subcontracting provided by firms during the period covered by the report. This information should be accompanied by an invoice from each subconsultant/subcontractor/vendor/service provider listed in the report.

5. LESSEE will comply with Title VII of the Civil Rights Act of 1964, as amended, Executive Orders 11246, 11375, and 12086; the California Fair Employment Practices Act; and any other applicable federal and state laws and regulations hereinafter enacted. LESSEE will not discriminate against any employee or applicant for employment based on race, religion, color, ancestry, age, gender, sexual orientation, disability, medical condition, or place of birth.
6. Upon request by the City of San Diego, LESSEE will submit a current Work Force Report and, if required, an Equal Employment Opportunity (EEO) Plan which set forth the actions that LESSEE will take to achieve the CITY'S goals for the employment of African Americans, American Indians, Asians, Filipinos, Latinos, women and people with disabilities.
7. Further, LESSEE will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Agreement so that such provisions will be binding upon each subcontractor.
8. LESSEE acknowledges that the CITY seeks to promote employment and business opportunities for local residents and firms on all CITY contracts. LESSEE will, to the extent legally possible, solicit applications for employment, and bids and proposals for subcontracts, for work associated with this Agreement from local residents and firms as opportunities occur. LESSEE agrees to hire qualified local residents and firms whenever feasible.
9. LESSEE understands that failure to comply with the above requirements and/or submitting false information in response to these requirements may result in

termination of this Agreement and debarment from participating on CITY contracts for a period of not less than one (1) year.

10. The second paragraph of Section 6.12 Development Plan is deleted in its entirety and there is no replacement.

Exhibit 9.02 General Development Plan. The General Development Plan attached to the original Percentage Lease, is deleted in its entirety and a new General Development Plan is attached to this Amendment as Exhibit 9.06.

11. **The following provisions are hereby added to the Percentage Lease in sequence:**

7.19 CITY USE. The premises shall be available to CITY for civic events and special programs, free of charge, except where LESSEE has scheduled events or programs. After every CITY use, the premises shall be left in the same condition found, and LESSEE shall not be required to incur any additional costs by reason of CITY use.

7.20 Political Activities. The leased premises shall be used exclusively for the purposes specified in Section 1.2, Uses, hereof. The premises shall not be used for working or campaigning for the nomination or election of any individual to any public office, be it partisan or nonpartisan. Provided, however, that LESSEE shall not be precluded from providing a forum for open public debate by candidates such as occurs at a "candidate forum" and similar events.

7.21 Public Use. The general public shall not be wholly or permanently excluded from any portion of the premises. LESSEE may develop reasonable restrictions for the facility use provided they are consistent with the rights of the general public and are designed to allow LESSEE to use the premises for the purposes specified herein. LESSEE agrees that all activities conducted on the premises will be as stated in Section 1.02, Uses, hereof.

LESSEE shall, at all times during the lease term, maintain a CITY-approved sign identifying the property as City-owned and available for public use consistent with the terms of this lease. The sign shall be installed by LESSEE at a location agreeable to CITY.

7.22 Drug-free Workplace. LESSEE shall be required to abide by the omnibus drug legislation passed by Congress on November 18, 1988, by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:

1. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of controlled substances are prohibited on the leasehold and specifying the actions that will be taken against employees for violations of the prohibition.

2. Establishing a drug-free awareness program to inform employees about all of the following:
 - a. The dangers of drug abuse in the workplace.
 - b. The LESSEE'S policy of maintaining a drug-free workplace.
 - c. Any available drug counseling, rehabilitation, and employees assistance programs.
 - d. The penalties that may be imposed upon employees' for drug abuse violations.
3. LESSEE shall include in each sublease agreement language which indicates the sublessee's agreement to abide by the provisions of a drug-free workplace. LESSEE and sublessees shall be individually responsible for their own drug-free workplace programs.

7.23 Bylaws. Membership in LESSEE'S organization shall be open to anyone meeting the requirements of its rules and bylaws. All restrictions, rules, and fees, if any, and changes thereto proposed by LESSEE'S organization shall, before being put into effect, be submitted to and receive the written approval of the City Manager. Bylaws shall be on file in the office of the Real Estate Assets Department prior to CITY execution of this lease.

This amendment shall be effective retroactive to September 1, 1994.

12. Addresses for Notices. With reference to Lease Section 7.01 Notices, all notices delivered pursuant to the Lease may be delivered via recognized overnight courier or via telecopier. City's address for Notices shall be:

City Manager
Attention: Real Estate Assets Director
City Administration Building
202 "C" Street, M.S. 9B
San Diego, CA 92101-4155

Lessee's address for notices shall be:

Pro Kids Golf Academy, Inc.
c/o Pillsbury Madison & Sutro
101 West Broadway, Suite 1800
San Diego, CA 92101
Attn: P. Garth Gartrell, Esq.
FAX (619) 236-1995

Continued Effect. Except as specifically modified by this Amendment, all of the terms and conditions of the Lease shall remain in full force and effect. Unless otherwise specifically defined in this Amendment, terms with initial capital letters in this Amendment shall have the same meaning as such terms have in the Lease. The parties further acknowledge and agree that all of the remaining terms and conditions of the Terminated Leases have been incorporated into the Lease and that the Terminated Leases, by themselves, shall be of no further force and effect.

This amendment is hereby executed by the City and LESSEE on this 9TH day of OCTOBER, 1995.

THE CITY OF SAN DIEGO

Date 10/9/95

By Robert J. Collins
~~City Manager~~
Real Estate Assets Director

PRO KIDS GOLF ACADEMY,
INC.

Date 6-6-95

By Ernest Wright
Ernest Wright

APPROVED as to form and legality this 30 day of Oct, 19 95.

JOHN W. WITT
City Attorney

By [Signature]
Deputy City Attorney

JVN:rc
5-31-95

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R- 286374

Passed and adopted by the Council of the City of San Diego on OCT 08 1966 by the following vote:

YEAS: Mathis, Harvey, Kehoe, Stevens, Warden, Stallings, McCarty, Vargas.

NAYS: None.

NOT PRESENT: Mayor Golding.

AUTHENTICATED BY:

SUSAN GOLDING
Mayor of The City of San Diego, California

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

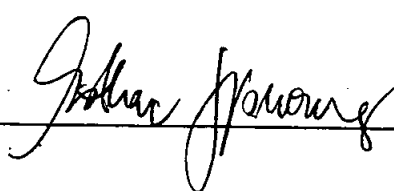
(SEAL)

By: Esther Woronicz, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of RESOLUTION
No. R- 286374, passed and adopted by the Council of The City of San Diego, California
on OCT 08 1966.

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

(SEAL)

By: , Deputy

PRO KIDS GOLF ACADEMY

DEVELOPMENT PLAN FOR COLINA PARK GOLF COURSE

A. Plan (Attached)

B. Development Schedule:

Pro Kids Golf Academy plans on providing the following:

1. Staff for the facility.
2. Provide the equipment necessary to operate and maintain the facility.
3. A ten year program of Capital Improvement Programs will be initiated with the proposed schedule as follows:

Lease Year Seven through Nine:

Renovate the existing clubhouse building of approximately 1,000 square feet, to include a heating system, new security system, installation of a new wall to create an instruction room and reinforce support beams for the roof.

Renovate the irrigation system, replacing pipes where needed, installing heads and valves to make the system function automatically.

Renovate the lighting system, replacing wiring, adjusting light positions, replacing poles in order to make the system fully functional.

Re-sod greens as necessary, replacing the subsoil and adding drainage to ensure good playing conditions. Add to the parking lot area perimeter curbing and landscaping, plus resurface where needed.

Add additional practice facilities.

Additional Capital Improvements after Lease Year Nine will be decided upon, and a schedule developed, after Year Nine.

C. Financial Plan

The expenditures for the Capital Improvements are anticipated to be as follows:

Lease Year Seven Through Nine	\$413,000
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JVN/dcj

5/16/95

I:\WPO\1995\VANNORMA\PK-DP.WPD

Passed and adopted by the Council of the City of San Diego on _____ by the following vote:

YEAS: Mathis, Harvey, Kehoe, Stevens, Warden, Stallings, McCarty, Vargas.

NAYS: None.

NOT PRESENT: Mayor Golding.

AUTHENTICATED BY:

SUSAN GOLDING

Mayor of The City of San Diego, California

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California

(SEAL)

By: Esther Woronicz, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of RESOLUTION

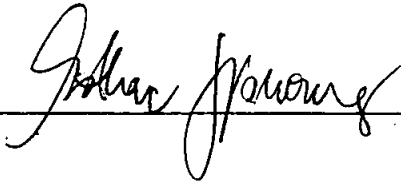
No. R- 286372, passed and adopted by the Council of The City of San Diego, California

on _____

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California

(SEAL)

By:  Deputy