

COMMERCIAL GROUND LEASE

THIS LEASE is made and entered into effective **April 1, 2019**, by and between the Board of Directors of the Texas Juvenile Justice Department, an administrative agency of the State of Texas, acting as Trustee of the John C. Wende Trust that was established to benefit the orphans of the State of Texas, 11209 Metric Boulevard, Building H, Suite A, Austin, Texas 78758, hereinafter referred to as "Lessor," and Wee St. Andrews Mini-Golf, Inc., dba Peter Pan Mini-Golf, [REDACTED] hereinafter referred to as "Lessee." Lessor and Lessee are each a "Party" or collectively referred to as "Parties."

1. **Description of Property.** Lessor, for and in consideration of the covenants hereinafter contained and made on the part of the Lessee, does lease unto Lessee, and Lessee does hereby lease from Lessor, for the period and on the terms and conditions hereinafter stated, the following described property:

Being 0.638 of one acre (27,773 square feet) of land, more or less, out of and a part of the Isaac Decker League, Survey No. 20, in Travis County, Texas, same being the tract conveyed to the Board of Control of the State of Texas, in Cause No. 1589 of the Probate Minutes of Travis County, Texas, said 0.638 of one acre tract of land being more particularly described by metes and bounds as shown by **Exhibit A** attached hereto, made a part hereof and incorporated herein as if copied verbatim and known locally as 1207 Barton Springs Road, Austin, Texas 78701.

Hereinafter the demised premises shall be referred to as the "Premises."

2. **Use of the Premises.** The Lessor is leasing the Premises to the Lessee and the Lessee is hereby agreeing to lease the Premises for the operation of Peter Pan Mini-Golf. Any change in use or purpose of the Premises other than as described shall be upon written consent of the Lessor only.
3. **Lease Term.** The term of this Lease shall be for five (5) years, beginning on April 1, 2019, and terminating March 31, 2024, at 12:00 PM midnight. A "Lease Year" is defined as April 1st through March 31st of the following year. Extension of the Lease term may be effected through Lease amendment.
4. **Lease Rate and Rent Payment.** The consideration for this Lease is the promise by Lessee to make certain payments to Lessor in monthly installments due and payable as follows:
 - a. The monthly Lease rate for the Lease Term is the greater of (a) \$5,500 per month, or (b) 9.5% of monthly gross receipts for the preceding month. Monthly gross receipts are the total amounts Lessee receives through operating income (i.e. golf and concession sales) during the monthly period without subtracting any costs or

- expenses except for sales tax.
- b. The monthly installments required under the terms of this Lease shall be due on or before the fifteenth (15th) day of each month.
 - c. Upon payment of the monthly installment, Lessee shall provide to Lessor a true and correct statement of the monthly gross receipts derived by Lessee from use of the Premises for the preceding month.
 - d. For the purposes of the accounting required herein, Lessee agrees to furnish Lessor no less often than quarterly, the Lessee's compiled financial reports and no less than annually, the Lessee's annual compiled report, and Lessee's annual tax return as submitted to the Internal Revenue Service.
 - e. Lessor agrees to reimburse Lessee through adjustment of Lease payment due for any documented overpayment submitted by Lessee.
 - f. All Lease payments due hereunder shall be made payable to the Texas Juvenile Justice Department and addressed as follows: Texas Juvenile Justice Department, Trustee of John C. Wende Trust, Attn: Finance/Accounting, P.O. Box 12757, Austin, Texas 78711-2757.
5. **Operating Expenses.** Lessor shall have no obligation to provide any services, perform any acts, or pay expenses, charges, obligations, or costs of any kind whatsoever with respect to the Premises. Lessee hereby agrees to pay one hundred percent (100%) of any and all Operating Expenses, defined hereafter, for the entire term of the Lease. The term "Operating Expenses" shall include all costs of operating and maintaining the Premises and any said use thereof, and shall include, but is not limited to, real estate and personal property taxes and assessments, management fee(s), heating, air conditioning, HVAC, electricity, water, waste disposal, sewage, operating materials and supplies, service agreements and charges, lawn care, snow removal, restriping, repairs, repaving, cleaning and custodial, security, insurance, the cost of contesting the validity or applicability of any governmental acts which may affect operating expenses, and all other direct operating costs of operating and maintaining the Premises and related parking areas.
6. **Lessee Accepts Premises.** Lessee accepts the Premises in its present condition, and agrees to make all repairs, alterations, and improvements at its own expense. LESSEE SPECIFICALLY AGREES THAT THE DEMISED PREMISES IS DESIGNATED ON THE NATIONAL REGISTER OF HISTORIC PLACES AND WILL ADHERE TO ALL LEGAL REQUIREMENTS INVOLVED WITH SAID DESIGNATION.
7. **Improvements.** Lessee shall notify Lessor of any significant improvements it plans to make on the Premises prior to implementation. Any improvements shall be made only in accordance with applicable federal, state, or local codes, ordinances, or regulations. It is understood and agreed that any and all improvements owned by Lessee placed on the Premises shall remain Lessee's property at the expiration or termination of this Lease and Lessee must remove all figures and may remove all other improvements related to the operation of Peter-Pan Mini Golf from the Premises prior to Lease end date.
8. **Taxes.** Lessee agrees to pay all taxes of whatsoever kind that may be levied and assessed upon the Premises and upon any improvements owned and placed by Lessee upon the

Premises.

9. **Compliance.** Lessee agrees to promptly comply with all laws, ordinances, and regulations of the city, county, state, and federal government that are applicable to the Premises and all laws, ordinances, and regulations imposed by local and state authorities that include, but are not necessarily limited to, the Texas Department of State Health Services and the Austin Police Department for the correction, prevention, and abatement of nuisances in, upon, or connected with said Premises.
10. **Licenses and Permits.** A copy of any and all local, state, or federal permits acquired by the Lessee which are required for the use of the Premises shall be kept on site at all times and shall be readily accessible and produced to the Lessor and/or their agents or any local, state, or federal officials upon demand.
11. **Lien, Charge, or Encumbrance.** Lessee covenants not to suffer the estate of Lessor in the Premises at any time during the term hereof to become subject to any lien, charge, or encumbrances; it being expressly agreed that Lessee shall have no authority, expressed or implied, to create any lien, charge, or encumbrance upon the estate of Lessor in the Premises. The Parties are wholly independent entities and no employment, joint venture, partnership, or agency exists or should be implied by execution of this Lease. In the event a lien is placed against the Premises, through actions of the Lessee, Lessee will promptly pay the same or bond against the same and take steps immediately to have such lien removed. If the Lessee fails to have the Lien removed, the Lessor shall take steps to remove the lien and the Lessee shall pay Lessor for all expenses related to the Lien and removal thereof and shall be in default of this Lease.
12. **Insurance.** At its own expense and at all times during the term of this Lease, Lessee shall maintain comprehensive general liability insurance in an insurance company licensed to do business in Texas in which the Premises are located and that that is satisfactory to the Lessor, properly protecting and indemnifying Lessor. Coverage shall be to insure property on the Premises, including, but not limited to, the improvements, building(s), or structures constructed by Lessee thereon against loss or damage by fire and by extended coverage for not less than eighty percent (80%) of their replacement. Subject to the terms of paragraph 14 hereof, such insurance to be made payable in case of loss to Lessee. During the term of this Lease, Lessee shall furnish Lessor with a copy(ies) of the policy(ies) so maintained by Lessee and naming Lessor as additional insured.
13. **Damage to Leased Premises.** It is further understood and agreed that in case the said Premises, or any part thereof, shall during the continuance of the Lease, through no neglect or fault of the Lessee, be destroyed or damaged by fire or otherwise, so that the same shall be rendered unfit for use and habitation, then and in that event, the rent or a just and proportionate part thereof, according to the nature and extent of the injury sustained shall be suspended or abated until the said Premises shall have been put in proper condition for full use and habitation by the Lessee. It is understood, however, in the event of total or substantial destruction to the Premises that this Lease may be terminated at the option of either Party and nothing contained in the Lease shall be construed to require that Lessee

- restore, replace, or rebuild in excess of the amount equal to the sum of the insurance proceeds available for reconstruction with respect to said damage.
14. If the improvements on the Premises shall be rendered untenable by fire or other casualty during the last Lease Year hereof, to the extent of fifty percent (50%) or more of the insurable value of the improvements, Lessee may, at Lessee's option, to be evidenced by notice in writing given to Lessor within thirty (30) days after the occurrence of such damage or destruction, elect to terminate this Lease as of the date of the damage or destruction. Whereupon, Lessee shall pay Lessor from the proceeds of its insurance an amount equal to the lesser of the then present value of the remaining reserved rental as of the date of the casualty or all of the proceeds of the insurance and the right of recovery against insurers on policies covering such damage or destruction.
 15. In the event the Premises or any improvements, building(s), or structures therein are damaged as a result of any neglect or negligence of Lessee, their employees, agents, business invitees, or any independent contractors serving Lessee or in any way as a result of Lessee's use and occupancy of the Premises, then the Lessee shall be responsible for seeing that the proper claims are placed with the Lessee's insurance company, or the damaging party's insurance company, and for seeing that proper notice and safeguards are in place with regard to said damage. Any damage that is not covered by an insurance company will be the liability of the Lessee.
 16. **Additional Insurance.** Lessee shall also maintain and keep in force for the mutual benefit of Lessor and Lessee general public liability insurance against claims for personal injury, death, or property damage occurring in, on, or about the Premises or sidewalk adjacent to the Premises to afford protection to the limit of not less than \$500,000 in respect to injury or death in a single occurrence and to the limit of \$100,000 in respect to the property damage. Lessee shall deliver to Lessor a copy of said insurance policy and renewals thereof from time to time during the term of this Lease.
 17. **Sublet/Assignment.** Lessee may not transfer or assign this Lease or any right or interest hereunder or sublet the Premises or any part thereof without first obtaining prior written consent and approval of Lessor.
 18. **Default and Possession.** In case of default by Lessee to carry out and perform any covenant, condition, or agreement contained herein, including, but not limited to, failure to pay rent, Lessor will issue notice of default to Lessee providing thirty (30) days to remedy the default, after which point Lessor may enforce performance thereof by any mode provided by law and at its option declare this Lease forfeited. In such event, Lessor or its agent or attorney shall have the right without further notice or demand, to reenter and remove all persons and property from the Premises without being deemed guilty of trespass and without being liable for damages for doing so and without prejudice to any right or remedy for the collection of rent or breach of contract; and Lessor may resume possession of the Premises and rent the same for the remainder of the term at the best rent obtainable for account of Lessee, who shall be liable for and pay any deficiency; and in this connection it is agreed and understood that failure of Lessor shall not be held or

construed as a waiver of any other failure or default on the part of the Lessee.

19. **Indemnification.** Lessee hereby covenants and agrees to indemnify, defend, and hold the Lessor harmless from any and all claims or liabilities which may arise from any cause whatsoever as a result of Lessee's use and occupancy of the Premises, and further shall indemnify the Lessor for any losses which the Lessor may suffer in connection with the Lessee's use and occupancy or care, custody, and control of the Premises. The Lessee also hereby covenants and agrees to indemnify and hold harmless the Lessor from any and all claims or liabilities that may arise from any latent defects in the subject Premises that the Lessor is not aware of at the signing of the Lease or at any time during the Lease term.
20. **Usage by Lessee.** Lessee shall comply with all rules, regulations, and laws of any governmental authority with respect to use and occupancy of the Premises. Lessee shall not conduct or permit to be conducted upon the Premises any business or permit any act which is contrary to or in violation of any law, rules, regulations, or requirements that may be imposed by any authority or any insurance company with which the Premises is insured, nor will the Lessee allow the Premises to be used in any way which will invalidate or be in conflict with any applicable insurance policies.
21. **Bankruptcy or Insolvency.** Lessee agrees that in the event all or a substantial portion of the Lessee's assets are placed in the hands of a receiver or a Trustee, and such status continues for a period of thirty (30) days, or should the Lessee make an assignment for the benefit of creditors or be adjudicated bankrupt; or should the Lessee institute any proceedings under the bankruptcy act or any amendment thereto, then such Lease or interest in and to the leased Premises shall not become an asset in any such proceedings and, in such event, and in addition to any and all other remedies of the Lessor hereunder or by law provided, it shall be lawful for the Lessor to declare the term hereof ended and to reenter the leased land and take possession thereof and all improvements thereon and to remove all persons therefrom and the Lessee shall have no further claim thereon.
22. **Estoppel Certificate.** Lessee at any time and from time to time, upon at least ten (10) days prior notice by Lessor, shall execute, acknowledge and deliver to Lessor, and/or to any other person, firm, or corporation specified by Lessor, a statement certifying that the Lease is unmodified and in full force and effect, or if the Lease has been modified, then that the same is in full force and effect except as modified and stating the modifications, stating the dates to which the fixed rent and additional rent have been paid, and stating whether or not there exists any default by Lessor under this Lease and, if so, specifying each such default.
23. **Waiver.** Waiver by Lessor of a default under this Lease shall not constitute a waiver of a subsequent default of any nature.
24. **Governing Law and Venue.** This Lease shall be governed by the laws of the State of Texas and venue shall be in a court of competent jurisdiction in Travis County, Texas.
25. **Notice.** Notices shall be addressed as follows:

Lessor:

Texas Juvenile Justice Department
Trustee of the John C. Wende Trust
Attn: Office of General Counsel
11209 Metric Blvd., Bldg. H, Ste. A
Austin, Texas 78758

Lessee:

Wee St. Andrew Mini-Golf, Inc.
Attn: Katherine Malm, President



Notices to be provided will be made via certified mail, return receipt requested. Lessee shall provide notice to Lessor immediately in advance of any significant change affecting Lessee, including, but not limited to, change of name or identity or change of ownership or control. Each Party will notify the other Party of any change of address.

26. **Termination.** Either Party may terminate its obligations under this Lease by giving the other Party at least 12 months' prior written notice of the Lease termination date.
27. **Holdover.** Should Lessee remain in possession of the Premises after the cancellation, expiration, or sooner termination of the Lease, or any extension thereof, without the execution of an amendment or a new Lease, such holding over in the absence of a written agreement or action by Lessor to the contrary shall be deemed, if Lessor so elects, to have created and be construed to be a tenancy from month to month, terminable upon thirty (30) days' notice by either Party.
28. **Amendment.** No amendment of this Lease shall be effective unless reduced to writing and subscribed by the Parties with all the formality of the original.
29. **Severability.** The provisions of this Lease are severable. If any provision of this Lease is determined by a court of law or other competent authority to be invalid and contrary to any federal, state, or local law, such invalidity shall not affect the other provisions or applications of this Lease, which can be given effect without the invalid provision or application.
30. **Headings for Convenience Only.** The headings of the various sections contained herein are for convenience only and shall not be used in interpreting this Lease.
31. **Binding Effect.** The signatories of this Lease represent and warrant that they have the authority to sign this document on behalf of their given Party and this Lease and any amendments thereto shall be binding upon the Lessor and the Lessee and/or their

respective successors, heirs, assigns, executors, and administrators.

32. **Execution of Lease.** This Lease may be executed in counterparts and, when all counterpart documents are executed, the counterparts shall constitute a single binding instrument.

IN WITNESS WHEREOF, the Parties have hereunto set their hands effective the 1st day of April, 2019.

LESSOR:

TEXAS JUVENILE JUSTICE DEPARTMENT
TRUSTEE OF JOHN C. WENDE TRUST
11209 Metric Boulevard, Building H, Suite A
Austin, Texas 78758

By: _____
The Honorable Wesley E. Ritchey
Chair, Texas Juvenile Justice Department

ACKNOWLEDGMENT OF NOTARY PUBLIC

STATE OF TEXAS
COUNTY OF Travis

Before me, The Honorable Wesley C. Ritchey, Chair of the Texas Juvenile Justice Department, on this day personally appeared as LESSOR of this Commercial Lease Agreement, proved to me through government issued photo identification to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for purposes and consideration therein expressed.

Given under my hand and seal of office this 15 day of March, 2019.

Notary Public's Signature

(Seal)



Jeannette M. Cantu
Printed Name of Notary

LESSEE:

WEE ST. ANDREWS MINI-GOLF INC., DBA PETER PAN MINI-GOLF
P.O. Box 162733
Austin, Texas 78716

By: _____

Katherine Malm
President, Wee St. Andrews Mini-Golf, Inc.

ACKNOWLEDGMENT OF NOTARY PUBLIC

STATE OF TEXAS

COUNTY OF TRAVIS

Before me, Katherine Malm, President of Wee St. Andrew Mini-Golf, Inc., a Texas Corporation, on this day personally appeared as LESSEE of this Commercial Lease Agreement, proved to me through government issued photo identification to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for purposes and consideration therein expressed.

Given under my hand and seal of office this 19th day of March,
2019. _____

Notary Public's Signature

Christian De La Fuente
Printed Name of Notary



Attachment: Exhibit A

EXHIBIT "A"

State of Texas
to
Peter Pan Mini Golf
(Ground Lease)

Field Notes

BEING 0.638 OF ONE ACRE (27773 S.F.) OF LAND, MORE OR LESS, OUT OF AND A PART OF THE ISAAC DECKER LEAGUE, SURVEY NO. 20, IN TRAVIS COUNTY, TEXAS, SAME BEING THE TRACT CONVEYED TO THE BOARD OF CONTROL OF THE STATE OF TEXAS, IN CAUSE NO. 15849 OF THE PROBATE MINUTES OF TRAVIS COUNTY, TEXAS; SAID 0.638 OF ONE ACRE TRACT OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

Beginning at a 1 inch iron pin set in the westerly line of the tract conveyed to Union Pacific Railroad (successor to International and Great Northern Railroad) by deed recorded in Volume 46, Page 542 of the Real Records of Travis County, Texas, and in the south line of Barton Springs Road, same being the most easterly corner of the tract conveyed to the Board of Control of the State of Texas, in Cause No. 15849 of the Probate Minutes of Travis County, Texas, for the Point of Beginning and the northeast corner of the herein described tract of land;

(1) THENCE, South 28°40'52" West, a distance of 298.06 feet, with the east line of said State of Texas tract and the west line of said Union Pacific tract, to a pk nail set at the most southerly corner of said State of Texas tract, same being the most easterly corner of lot 1, Bobby Lane Subdivision recorded in book 8, page 146 of the Plat Records of Travis County, Texas, for the southeast corner of the herein described tract of land;

(2) THENCE, North 53°42'11" West, a distance of 63.24 feet, with the northeast line of said lot 1 and the southwest line of said State of Texas tract, to pk nail set for the southwest corner of the herein described tract of land;

(3) THENCE, North 12°33'04" East, a distance of 262.01 feet, to a 1/2 inch iron pin set in the south line of Barton Springs Road, same being in the north line of said State of Texas tract, for the northwest corner the herein described tract of land,

(4) THENCE, South 76°58'58" East, a distance of 140.70 feet, with the south line of Barton Springs Road and the north line of said State of Texas tract, to the Point of Beginning and containing an area of 0.638 acres of land more or less.



Eduardo O. Mendez
Registered Professional Land Surveyor 5010

9/28/98
Date

Martinez, Wright & Mendez, Inc.
1106 Clayton Lane, Suite 400W
Austin, Texas 78723
(512) 453-0767

