

CITY COUNCIL MEETING
AUGUST 19, 1987

ACTION DEFERRED ON
PROPOSED AGREEMENT
BETWEEN CITY OF LODI
AND GEORGE SAKURAI
AND KEN WOLLENBERG
TO OPERATE THE GOLF
DRIVING RANGE LOCATED
AT 531 EAST LOCKEFORD
STREET, LODI

CC-27(a)

Agenda item e-1-N - "Approve Agreement between the City of Lodi and George Sukurai and Ken Wollenberg to operate the Golf Driving Range located at 531 East Lockeford Street" was removed from the Consent Calendar and discussed under the Regular Calendar. Council expressed concern regarding certain language in the proposed agreement and requested that the City Attorney amend the Agreement and bring back an amended draft for Council review at the Regular Council Meeting of September 2, 1987.

COUNCIL COMMUNICATION

| | | |
|---|-----------------|-----|
| TO THE CITY COUNCIL | DATE | NO. |
| FROM THE CITY MANAGER'S OFFICE | August 19, 1987 | |
| SUBJECT APPROVE AGREEMENT BETWEEN THE CITY OF LODI AND GEORGE SAKURAI AND KEN WOLLENBERG TO OPERATE THE GOLF DRIVING RANGE LOCATED AT 531 EAST LOCKEFORD STREET, LODI | | |

PREPARED BY: Director, Parks and Recreation

RECOMMENDED ACTION: That the City Council approve the attached agreement between George Sakurai/ Ken Wollenberg and the City of Lodi to sublease the Golf Driving Range property for the purpose of a Golf Driving Range operation.

BACKGROUND INFORMATION: The agreement between Sakurai/Wollenberg and the City of Lodi officially puts in writing the sublease agreement between the two parties to operate a Driving Range operation at the City-leased Golf Driving Range on the property of the Lodi Grape Festival and National Wine Show/ San Joaquin County facility.

The City has allowed Sakurai/Wollenberg to operate the present business for the last two years and approves the continued relationship from July 1, 1987, to June 30, 1990. The City has adjusted the monthly rental fee to \$350.00 per month beginning July 1, 1987, and gradually increasing the fee over the span of this agreement to \$400.00 per month July 1, 1988, and \$450.00 per month July 1, 1989. This would provide for a more reasonable rental fee agreement for the City to better cover its costs for general upkeep and maintenance of the Driving Range facilities. The 10% for ball rental (monthly gross) would remain the same with no increase required at this time.

Additionally, in this agreement we have cleaned up the language and understanding in relation to hours of operation, accounting/auditing, and procedures to address reassignment of this sublease should same occur.

Respectfully submitted,



Ronald W. Williamson
Parks and Recreation Director

RWW:jd

LAW OFFICES
HINTZ & HINTZ
COURT PLAZA BUILDING
901 H STREET, SUITE 301
SACRAMENTO, CALIFORNIA 95814

HAMILTON L. HINTZ, JR.
ERIC K. HINTZ

AUG 14 1987
City Attorney's Office
TELEPHONE
(916) 444-3100

August 14, 1987

Mr. Ronald M. Stein, Esq.
City Attorney
125 North Stockton St.
Lodi, CA 95240

Re: Sakurai and Wollenberg Sublease Agreement

Dear Ron:

This will memorialize and confirm our telephone conversation of August 12, 1987, wherein we discussed the revisions you made to the proposed sublease agreement following our meeting of July 6, 1987.

As I indicated to you in our telephone conversation, the revisions appear, for the most part, to have addressed the concerns raised in our meeting. As we discussed, however, I still am uncomfortable with paragraph 16 which does not, in my mind, clearly articulate our understanding regarding the possibility of an assignment or sublease.

Notwithstanding your assurances that the City of Lodi has no desire to prevent an assignment or sublease to a qualified prospective assignee/sublessee, I would feel more comfortable recommending that my clients sign the new lease with the following subtle change:

"(16) It is understood that Second Party shall be entitled to assign or sublease the property hereinabove referred to only with the prior written consent of First Party. First Party agrees that it will approve such an assignment or sublease in the absence of commercially reasonable objections to the proposed assignee or sublessee."

Following our conversation of August 12, I also discussed with my clients the language of paragraph 5 which appears to impose a new obligation to complete monthly records on forms provided by the City. I do not personally have a problem with this proviso, however, I have recommended that they discuss this issue with Ron Williamson in order to assess the additional burden, if any, this will place on their bookkeeping responsibilities.

Mr. Ronald M. Stein, Esq.
City Attorney
August 14, 1987
Page Two

If the proposed change to paragraph 16 is acceptable to you, and the question posed by paragraph 5 can be resolved, I would recommend that my clients execute the new sublease agreement in your office on August 19, 1987. It is also my understanding that the necessary insurance arrangements have been made and that appropriate proof of the same will be made available to you prior to execution of the new sublease.

Ron, based on our conversation, I am confident that my proposed change to paragraph 16 should not cause you any concern. If a question does arise, please do not hesitate to contact my office. I will personally be on vacation during the week of August 17-24, but my secretary can contact me if necessary.

Thank you very much for your continued courtesy and cooperation in this matter.

Very truly yours,

HINTZ & HINTZ

Eric H. Hintz
ERIC H. HINTZ

ehh/ny

cc Ken and Rose Wollenberg
George Sakurai w/enclosure
Phil Hiroshima, Esq. w/enclosure

CITY COUNCIL

EVELYN M. OLSON, Mayor
JOHN R. (Randy) SNIDER
Mayor Pro Tempore
DAVID M. HINCHMAN
JAMES W. PINKERTON, Jr.
FRED M. REID

CITY OF LODI

CITY HALL, 221 WEST PINE STREET
CALL BOX 3006
LODI, CALIFORNIA 95241-1910
(209) 334-5634
TELECOPIER (209) 333-6795

THOMAS A. PETERSON
City Manager

RECEIVED
ALICE M. REINICHE
City Clerk

AUG 21 10 04 AM '87
RONALD M. STEIN

ALICE M. REINICHE
CITY CLERK
CITY OF LODI

August 20, 1987

Eric H. Hintz
Hintz & Hintz
Court Plaza Building
901 H Street, Suite 301
Sacramento, CA 95814

Re: Sakurai and Wollenberg Sublease Agreement

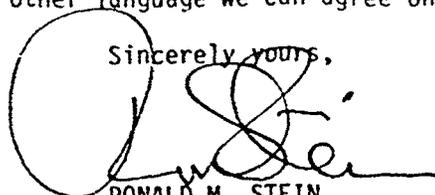
Dear Eric:

Your August 14, 1987 letter re adding additional language to the above-referenced Agreement was presented to the City Council at its regular meeting held August 19, 1987. The City Council felt uncomfortable with this language and would ask that the Lessees consider signing the lease agreement for the golf driving range as it was originally prepared.

The reason for the Council's concern was that they believe that the phrase "commercially reasonable objections" is too narrow. One council member suggested for example, that an individual who was a convicted child molester, could possibly be allowed to have the assignment or sublease, and the City could not, under the "commercially reasonable objections" phrase, object to a child molester having the assignment/sublease.

Perhaps you can think of other language we can agree on.

Sincerely yours,



RONALD M. STEIN
CITY ATTORNEY

RMS:vc

hintz/txta.01v

cc City Clerk

LAW OFFICES
HENTZ & HINTZ
COURT PLAZA BUILDING
901 H STREET, SUITE 301
SACRAMENTO, CALIFORNIA 95814



AUG 19 '87

City Attorney's Office

TELEPHONE
(916) 444-3100

HAMILTON L. HINTZ, JR.
ERIC H. HINTZ

August 14, 1987

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City Attorney
125 North Stockton St.
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City Attorney
August 14, 1987
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Very truly yours,

HINTZ & HINTZ

Eric H. Hintz
ERIC H. HINTZ

ehh/ny

cc Ken and Rose Wollenberg
George Sakurai w/enclosure
Phil Hiroshima, Esq. w/enclosure

RESOLUTION NO. 87-107

RESOLUTION ACCEPTING THE SUBDIVISION IMPROVEMENTS INCLUDED IN THE
SUBDIVISION AGREEMENT AND ADDENDUM FOR JOHNSON RANCH UNIT NO. 1

The City Council of the City of Lodi finds:

1. That all requirements of Chapter 16 of the Lodi Municipal Code have been complied with in connection with the improvements included in Johnson Ranch Unit No. 1, located along Century Boulevard west of Cherokee Lane, which map was filed on August 22, 1986, in Volume 27, Page 93, Book of Maps and Plats, San Joaquin County Records.

2. That the offer to dedicate the following streets has not been revoked.

| <u>STREET</u> | <u>LENGTH IN MILES</u> |
|-------------------|--|
| Cherokee Lane | 0.00 |
| Century Boulevard | 0.31 |
| Swallow Lane | 0.17 |
| Sandpiper Circle | 0.30 |
| Chickadee Lane | 0.04 |
| Thrush Court | 0.04 |
| Starling Way | 0.06 |
| Bluejay Way | <u>0.06</u> |
| | 0.98 (Total new miles of City streets) |

Dated: August 19, 1987

I hereby certify that Resolution No. 87-107 was passed and adopted by the City Council of the City of Lodi in a regular meeting held August 19, 1987, by the following vote:

Ayes: Councilmembers - Hinchman, Pinkerton, Reid, and Olson (Mayor)

Noes: Councilmembers - None

Absent: Councilmembers - Snider

Alice M. Reimche
ALICE M. REIMCHE
City Clerk

CITY OF LODI, GEORGE SAKURAI AND KEN WOLLENBERG AGREEMENT

SUBLEASE AGREEMENT TO OPERATE THE GOLF DRIVING RANGE

JULY 1, 1987 to JUNE 30, 1990

A G R E E M E N T

THIS AGREEMENT made and entered into as of the _____ day of _____, 19____. by and between the CITY OF LODI, a municipal corporation, hereinafter called First Party, and GEORGE SAKURAI and KEN WOLLENBERG, hereinafter called Second Party.

W I T N E S S E T H:

First Party does hereby grant to Second Party the exclusive right to operate the GOLF DRIVING RANGE located at 531 East Lockeford Street, Lodi, California, for a term commencing July 1, 1987, and terminating at midnight on June 30, 1990, on the following terms and conditions.

(1) If First Party renews its Master Lease entered into July 1, 1987 with the Lodi Grape Festival and National Wine Show, Second Party will have an option to renew this Agreement for a period of two (2) years upon expiration of this Agreement, upon giving to First Party 60 days prior to end of term, a written notice of intent to renew, at which time both parties hereto shall have the opportunity to evaluate this Agreement for continuance and/or adjustments and to negotiate monthly

rental rate, golf ball rental percentage rate, evaluate general operations and upkeep of driving range area.

(2) As consideration for this Agreement, Second Party agrees to pay First Party a monthly rental as follows:

(a) Beginning July 1, 1987 of \$350.00 per current month, due and payable by the 10th of each month.

(b) Beginning July 1, 1988, Second Party agrees to pay First Party a monthly rental of \$400.00 per current month, due and payable by the 10th of each month.

(c) Beginning July 1, 1989, Second Party agrees to pay First Party a monthly rental of \$450.00 per current month, due and payable by the 10th of each month.

(3) Second Party to pay to First Party commencing July 1, 1987 through June 30, 1990, ten percent (10%) of the gross revenue received for the rental of balls, which 10% payment is due the First Party, payable with the monthly rental payment on the 10th day of each month for the previous month's rental of balls. Should any other new operation become a part of said driving range, it shall require approval by the First Party's representative and will be up for negotiation as to rental fee or percentage return to First Party.

(4) Second Party to pay to First Party for any non-payment of rent beyond the 10th day of each month, and/or non-payment of the previous month's gross revenue of rental of balls, a service charge of five percent (5%) of any amount due and payable.

(5) Second Party shall keep and maintain accurate records and books of accounts of all receipts and disbursements and does hereby give to the City or its authorized agents, the right to examine and audit said records and books at any time City desires. Second Party will complete monthly records on forms provided by the City, which must accompany monthly gross receipts payment.

(6) Second Party agrees to maintain in full force during the term hereof a policy of general liability insurance which contains an Additional Named Insured Endorsement naming the City of Lodi as an Additional Insured, and under which the insurer agrees to indemnify and hold the City of Lodi harmless from and against all costs, expenses, and liability arising out of, or based upon, any and all property damage, or damages for personal injuries, including death, sustained in accidents occurring in or about the demised premises; where such accident, damage, or injury, including death, results or is claimed to have resulted, from any act or omission on the part of Second Party or Second Party's agents or employees, in the implementation of this Agreement. The minimum limits of such insurance shall be \$500,000/ \$1,000,000 Bodily Injury; \$50,000 Property Damage, or \$1,000,000 combined single limit. In addition to the Additional Named Insured Endorsement on Second Party's policy of insurance, said insurance policy shall be endorsed to include the following language:

"Such insurance as is afforded by the endorsement for the Additional Insureds shall apply as primary insurance. Any other insurance maintained by the City of Lodi or its officers and employees shall be excess only and not contributing with the coinsurance afforded by this endorsement."

A duplicate or certificate of said bodily injury and property damage insurance containing the above-stated required endorsements shall be in the City Attorney's hands on or before the time of the execution of this Agreement, with satisfactory evidence that each carrier is required to give the City of Lodi at least 30 days prior notice of the cancellation or reduction in coverage of any policy during the effective period of this Agreement. The insurance certificate must state on its face or as an endorsement, that the insurance certificate is an insurance certificate for the GOLF DRIVING RANGE. All requirements herein provided shall appear either in the body of the insurance certificate or as an endorsement and shall specifically bind the insurance carrier.

(7) Second Party shall not allow alcoholic beverages to be sold or consumed on the premises.

(8) Second Party shall provide and furnish, free of charge to patrons, necessary golf clubs.

(9) Second Party shall keep said GOLF DRIVING RANGE open to the public six days each week. Days of operation and times said Driving Range shall be open to the public will be determined by the First Party and

Second Party representatives who will consider operational hours for Spring/Summer and Fall/Winter seasons.

(10) Second Party shall post on the premises, daily hours of operation. Said daily hours of operation are to be as agreed upon between the City of Lodi City Manager or his designee, and Second Party. Second Party must adhere to agreed-upon posted hours of operation. Failure of Second Party to adhere to agreed-upon posted daily hours shall constitute grounds for First Party to terminate and cancel this Agreement.

(11) Second Party shall keep said premises in a clean and neat condition at all times and to properly and at seasonal times water the grass area of said GOLF DRIVING RANGE.

(12) First Party covenants and agrees to do the following:

- a) Cut grass at GOLF DRIVING RANGE, as per schedule mutually agreed upon
- b) Furnish utilities, install, and replace all necessary light bulbs
- c) Maintain general property and buildings.

(13) Second Party does hereby acknowledge that all improvements and structures located on said premises are the property of First Party. Second party will confer with and seek approval on any and all improvements to said property and/or buildings prior to rehabilitation or construction of same. It will be the financial responsibility of

Second Party to make adjustments or improvements to said property/building.

(14) Second Party does hereby acknowledge that he has read the Master Lease entered into July 1, 1987 and terminating June 30, 1990, attached hereto as Exhibit "A" and incorporated herein by reference, wherein Lodi Grape Festival and National Wine Show, Inc. is referred to as Lessor and First Party as Lessee, and which lease covers the property hereinabove referred to. Second Party does hereby agree to be bound by the terms of said Master Lease insofar as said terms affect his operation and use of said property by Second Party.

(15) In the event that Second Party fails to comply with any of the foregoing covenants and/or conditions, First Party shall then have the right to terminate and cancel this Agreement, it being understood and agreed that First Party shall be the sole judge as to whether the terms of this Agreement are being met.

(16) It is understood that Second Party shall have no right or authority to assign or sub-lease the property hereinabove referred to, and no such assignment or sub-lease will be permitted without the approval of the First Party. First Party agrees that its approval or denial must be on a reasonable basis.

(17) Upon the conclusion of the term of this Agreement, all conditions of this Agreement shall be reevaluated and/or renegotiated as to property rental rate, ball rental percentage rate and/or any other

conditions of this Agreement deemed requiring adjusting, reevaluation,
or agreement between the parties hereto.

IN WITNESS WHEREOF, the parties hereto have hereunto set their
hands the day and year first hereinabove written.

CITY OF LODI, a municipal corporation
First Party

THOMAS A. PETERSON
City Manager

KEN WOLLENBERG
Second Party

GEORGE SAKURAI
Second Party

ATTEST:

ALICE M. REIMCHE
City Clerk

Approved As To Form:



RONALD M. STEIN
City Attorney

agrgo1f2/txta.01v