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CITY COUNCIL MEETING
SEPTEMBER 2, 1987

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

CC-27(f)

Council received a report from the City Attorney regarding the status of the proposed agreement between the City of Lodi and George Sakurai and Ken Wollenberg to operate the Golf Driving Range located at 531 East Lockeford Street.

COUNCIL COMMUNICATION

TO: THE CITY COUNCIL

DATE:

NO.

FROM: THE CITY MANAGER'S OFFICE

September 2, 1987

SUBJECT:

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: City Attorney

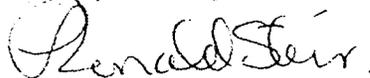
STATUS REPORT: The agreement between Sakurai/Wollenberg and the City for the sublease of the Golf Driving Range was before Council at its August 19, 1987 regular meeting. After the Council packet had been completed, staff received a letter from Sakurai/Wollenberg's attorney, asking for alternate language to be added to Item 16 of the prepared agreement, which language related to Lessee's ability to assign or sublease the leased property; and that letter was furnished to the Council at the August 19, 1987 meeting as additional information.

Council expressed concern regarding the requested alternate language and directed that the City Attorney contact the involved parties in an attempt to either have the agreement executed in the form as presented in the packet by the City Attorney, or to come up with other language acceptable to Council.

The City Attorney on August 20, 1987 wrote to Lessee's attorney, expressing Council's concerns regarding this matter and, pursuant to Council's direction, has been working with the Parks and Recreation Director and Lessees in an attempt to resolve the issue. The Wollenbergs have indicated that they desire to have the matter resolved by their attorney, and although it was anticipated that the agreement would be back before the Council for the September 2, 1987 Council meeting, it was learned on August 26, 1987 that Lessee's attorney is now on vacation.

Staff will bring an agreement and/or information regarding this matter back to Council at the very earliest possible date.

Respectfully submitted,



Ronald M. Stein
City Attorney

RMS:vc

cccgolftxta.01v

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
ALICE M. REIMCHE
City Clerk
RONALD M. STEIN
City Attorney

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

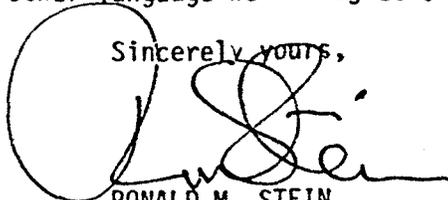
Dear Eric:

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
Parks and Recreation Director

LAW OFFICES
HINTZ & HINTZ
COURT PLAZA BUILDING
901H 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

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

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

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HINTZ & HINTZ

Eric H. Hintz
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ehh/ny

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