

CITY COUNCIL MEETING
SEPTEMBER 16, 1987

7

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

CC-27(b)

Council approved the 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, and authorized the City Manager and City Clerk to execute the subject agreement on behalf of the City.

COUNCIL COMMUNICATION

TO: THE CITY COUNCIL

FROM: THE CITY MANAGER'S OFFICE

DATE:

September 16, 1987

NO.

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

RECOMMENDED ACTION: That the City Council approve the Agreement with George Sakurai and Ken Wollenberg for the the operation of the Golf Driving Range as originally presented to Council by the City Attorney.

BACKGROUND INFORMATION: 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.

Again, this item was on the September 2, 1987 Council Agenda, and as I wrote in the Council Communication for that meeting, Eric Hintz, the Wollenberg's attorney was on vacation, and the Wollenbergs wanted to wait until his return to discuss the matter further with him. Attorney Hintz has returned from his vacation, and he called my office Friday, September 4, 1987 and advised that his clients have agreed to accept and execute the Golf Driving Range Agreement as originally prepared by my office.

Respectfully submitted,



Ronald M. Stein
City Attorney

RMS:vc

cccgolf/txta.01v

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