



APPROVED
BY THE CITY COUNCIL

MAR 9 1999

OFFICE OF THE
CITY CLERK

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ANN WEAVER
GOLF MANAGER

PH 916-433-6307
FAX 916-433-6317

CITY OF SACRAMENTO
CALIFORNIA

GOLF DIVISION

8325 RIVER ROAD
SACRAMENTO, CA
95832

February 22, 1999

AG 99-039

City Council
Sacramento, California

Honorable Members in Session:

SUBJECT: CHANGES TO GOLF COURSE RESTAURANT SERVICE LEASE AGREEMENTS WITH THE FETTERS COMPANY: AGREEMENT WITH KATHKEN CORPORATION

LOCATION AND COUNCIL DISTRICT: DISTRICT 2
HAGGIN OAKS GOLF COMPLEX

RECOMMENDATION:

It is recommended that Council authorize the City Manager to execute the **Agreement Re Assignment of Lease #91-191** between the City and The Feters Company for the Haggin Oaks Golf Course Restaurant Services to Kathken Corporation (Attachment A) and **Consent to Assignment of Lease** (Attachment B)..

CONTACT PERSON: Ann Weaver, Golf Manager 916-433-6307

FOR COUNCIL MEETING OF: March 9, 1999

SUMMARY:

The Feters Company is unable to continue restaurant service operations at Haggin Oaks Golf Course due to reported financial losses. The Feters Company and City staff recommend assigning City lease agreement #91-191 to Kathken Corporation effective March 15, 1999. All leasehold improvements will remain at Haggin Oaks Golf Course. Kathken Corporation has agreed to assume financial responsibility for The Feters Company's restaurant equipment leases at Haggin Oaks Golf Course.

COMMITTEE/COMMISSION ACTION:

None.

BACKGROUND INFORMATION:

In November 1998, Council approved the assignment of lease agreement #95-031 for the Bartley Cavanaugh Golf Course restaurant services from The Fetters Company to American Golf Corporation due to financial losses reported by Jay Fetters, owner of The Fetters Company. At that time, Mr. Fetters believed that he would be able to continue providing restaurant services at the City's Haggin Oaks Golf Complex.

Mr. Fetters is currently delinquent in his rent, penalties and interest payments to the City for the months of August, October, November, December of 1998 for the Haggin Oaks Golf restaurant services (lease agreement #91-191) in the amount of \$28,675. In addition, Mr. Fetters is delinquent in completing capital improvements required by lease #91-191 in the amount of \$30,182.

Mr. Fetters has notified City staff that he is unable to continue providing restaurant services at the Haggin Oaks Golf Complex. Mr. Fetters is cooperating with the City in our effort to avoid disruption in customer service, by agreeing to continue providing restaurant services until March 9, 1999 when a recommendation to assign the lease to a new operator can be heard by City Council.

Staff is recommending that Council approve the assignment of lease #91-191 for the Haggin Oaks Golf Complex restaurant services to Kathken Corporation. Mr. Ken Morton Sr., President of Kathken Corporation, is currently operating the Haggin Oaks golf shop services for the City. The City's other golf courses restaurant service providers, *Eurest Dining Services* and *American Golf Corporation*, declined interest in assuming the Haggin Oaks restaurant operation.

FINANCIAL CONSIDERATIONS:

Capital City Golf Division is an Enterprise Fund, supported entirely by golf user fees and concession revenues. There is no effect on the General Fund. If staff recommendations in this report are approved, the Golf Fund will be impacted by the loss of restaurant services contract fee revenue for the months of August, October, November and December of 1998 and January, February and the first week of March 1999. The impact to the Golf Fund is estimated to be \$50,000 in lost revenues. However, beginning March 15, 1999, restaurant concession rents for the Haggin Oaks Golf Complex will meet or exceed historical revenues from this operation.

If the assignment of the Haggin Oaks Golf Complex restaurant services lease is not approved, the City could experience significant additional losses due to interrupted food and beverage service for golf course customers as the Sacramento golf season starts in March 1999.

ENVIRONMENTAL CONSIDERATIONS:

This project has been determined to be exempt from the provisions of the California Environmental Quality Act (CEQA) under Section 15323. The project will allow for the Continued normal operation of certain public facilities for the purpose for which the facilities were designed.

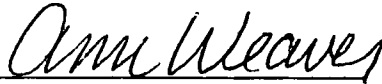
POLICY CONSIDERATIONS:

The proposed lease assignment is consistent with the City's recommendation to make all efforts to maintain the stability of the Golf Enterprise Fund while continuing to provide valuable leased services to the community.

MBE/WBE:

Kathken Corporation will adhere to all provisions or otherwise satisfy the City with regard to equal opportunity, fair hiring practices and affirmative action programs.

Respectfully submitted,



Ann Weaver, Golf Manager
Capital City Golf
Downtown & Regional Enterprise Department

RECOMMENDATION APPROVED:



Thomas V. Lee, Deputy City Manager
Downtown & Regional Enterprise Department

RECOMMENDATION APPROVED:



for William H. Edgar
City Manager

APPROVED
BY THE CITY COUNCIL

RESOLUTION NO. 99-106 MAR 9 1999

ADOPTED BY THE SACRAMENTO CITY COUNCIL
OFFICE OF THE
CITY CLERK

ON DATE OF _____

CHANGES TO GOLF COURSE RESTAURANT
SERVICE LEASE AGREEMENT WITH THE FETTERS
COMPANY

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SACRAMENTO:

1. That the City Manager is authorized to execute the attached Agreement Re Assignment of Lease #91-191 between the City and The Fetters Company for the Haggin Oaks Golf Complex restaurant services to Kathken Corporation, effective March 15, 1999.
2. That the City Manager is authorized to execute the Consent to Assignment of Lease #91-191 between the City and The Fetters Company for the Haggin Oaks Golf Complex restaurant services to Kathken Corporation, effective March 15, 1999.

MAYOR

ATTEST:

CITY CLERK

AGREEMENT RE ASSIGNMENT OF LEASE

This Agreement is made as of _____, 1999, by and between the City of Sacramento, a municipal corporation ("City") and the Kathken Corporation, a California corporation ("Kathken").

RECITALS

A. City and The Fetters Company ("Fetters") are parties to a restaurant services lease agreement for the provision of restaurant services at the Haggin Oaks Golf Complex, identified as City Agreement No. 91-191 (the "Lease"), which expires on August 31, 2001.

B. Fetters has requested permission to assign its rights and obligations under the Lease to Kathken. Kathken has agreed to assume Fetters' rights and obligations under the Lease, and City has agreed to permit the assignment and assumption, on the conditions contained in this Agreement re Assignment of Lease.

NOW, THEREFORE, City and Kathken agree as follows:

1. **Assumption of Lease.** Except as set forth in this Agreement, Kathken hereby assumes the rights and obligations of the Lessee in City Agreement No. 91-191 arising from and after the effective date of this Agreement and agrees to provide restaurant services at the Haggin Oaks Golf Complex as required by City Agreement No. 91-191, which is set forth in its entirety as **Exhibit 1**, and is by this reference incorporated herein. It is understood and agreed that Kathken shall not be responsible for, and shall have no liability with respect to, any of the obligations of Lessee arising or accruing prior to the effective date of this Agreement. In addition, the City agrees that Kathken shall not be responsible for any code violations existing as of the effective date of this Agreement.

2. **Payment of Contract Fee.** Kathken shall pay to the City's Capital City Golf Division, 8325 River Road, Sacramento, CA 95832, as a contract fee, a percent or percentages of the gross receipts as defined in Section 5 of the Lease from any activities under the contract on or before the twentieth (20th) day of each month on the receipts received during the preceding calendar month in the following amounts:

- (1) 25 percent of the first \$600,000 of the gross receipts from any activities under the Lease (except per plate catering described in Section 8c);
- (2) 20 percent of the gross receipts over \$600,000 from any activities under the Lease (except per plate catering described in Section 8c);
- (3) 15 percent of gross receipts from per plate catering services;
- (4) 15 percent of gross receipts from revenues generated from any new Food and Beverage Services provided at the Haggin Oaks driving range.

Lessee shall pay to the City, as a guaranteed minimum fee, the following amount for each separate year comprising the term of this contract: \$150,000. For the time period March 15, 1999 through August 31, 1999, Kathken shall pay percentage rent only. Beginning September 1, 1999, the guaranteed minimum fee shall also apply.

3. **Equipment.**
 - a. Kathken agrees to assume financial responsibility for all existing equipment leases for the restaurant operation at the Haggin Oaks Golf Complex.
 - b. Except as set forth in subsection (a) above, City shall provide, for Kathken's use, the equipment left on the premises by Fetters. The equipment is provided in "as is" condition and City makes no warranty concerning the condition of equipment or its usefulness for provision of restaurant services. Kathken shall be responsible for the cost of maintaining and repairing the City-provided equipment. At the expiration or sooner termination of the Lease, all equipment shall be in working order. Any equipment which, in Kathken's opinion, cannot be repaired at a reasonable cost, shall be replaced by Kathken at its cost with equipment of like quality. Kathken will be responsible to provide any other equipment which Kathken desires to use on the leased premises or which is necessary to provide the services contemplated by the Lease. Kathken agrees to assume responsibility for acquiring and maintaining a beer and wine license at the Haggin Oaks Golf Complex.
4. **Hours of Operation.** Kathken shall operate the restaurant services daily from 30 minutes before the first scheduled tee time until dusk. The hours of operation of the on-course snack bars (tee shacks) and driving range food service areas shall be set on a monthly basis by mutual agreement between City and Kathken, in accordance with customer demand for service. City and Kathken shall also agree on the provision of additional services such as roving beverage carts and barbecue service.
5. **Employee Uniforms and Nametags.** All Kathken employees providing restaurant services at Haggin Oaks Golf Complex shall be attired in uniforms with appropriate nametags at all times while on duty.
6. **Attendance at Monthly Meetings.** Kathken shall send a management-level representative who has the authority to make binding management decisions and commitments to City staff concerning the restaurant services operation to the monthly Capital City Golf Division Advisory Committee meetings as scheduled by City.
7. **Tenant Improvements Required.** The obligation set forth in Section 7(n) of the Lease to provide additional tenant improvements during the first 18 months of the extended term shall not apply to Kathken prior to August 31, 2001. Kathken agrees to submit a proposal by April 1, 1999 for approval by the City to offer food and beverage services at the Haggin Oaks driving range, provide BBQ services for tournament groups and improve the revenue and services at the Arcade Creek Golf Course.
8. **References to Community and Visitor Services.** All references in the Lease to the Department of Community and Visitor Services shall be changed to the Downtown and Regional Enterprise Department.
9. **Terms of Lease in Full Force and Effect.** Except as provided herein, all terms of the Lease shall remain in full force and effect.

10. Cooperation in City's Capital Spirit Sponsorship Program. "Capital Spirit" is the citywide sponsorship program that has been developed to generate new revenue to support refurbishment of facilities and upgrade the City's programs and services to the community. Through creation of marketing program attached in some cases to real business opportunities, the City is soliciting corporate partners to participate and support Sacramento's "Capital Spirit." Kathken will be expected to support the activities of the "Capital Spirit" sponsorship program to the extent reasonably feasible through supplier relationships and/or other opportunities. Other opportunities may include but are not limited to: promotional tie-ins, signage, facility usage for hospitality or events. These opportunities will be addressed on a case by case basis between the City and Kathken. If so directed by City, Kathken shall offer only Pepsi products for soft drink sales.

11. Conflict Between Lease and Agreement re Assignment of Lease. In the event of any conflict between the Lease and this Agreement re Assignment of Lease, the terms of this Agreement re Assignment of Lease shall control.

12. Entire Agreement: Amendment in Writing. This Agreement re Assignment of Lease and City Agreement No. 91-191 constitute the entire agreement between the parties concerning provision of restaurant services at the Haggin Oaks Golf Complex. The Agreement re Assignment of Lease and the Lease may be amended only by a writing signed by both parties.

CITY OF SACRAMENTO,
a municipal corporation

KATHKEN CORPORATION,
a California corporation

By: _____
Thomas V. Lee
Deputy City Manager

By: Kenneth E. Morton Sr.
Kenneth E. Morton Sr.
President

By: Kathleen Morton
Kathleen Morton
Secretary

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

By: Diane B. Bal
Deputy City Attorney

Attachment B

CONSENT TO ASSIGNMENT OF LEASE

This Consent to Assignment of Lease is made as of _____, 1999, by and among the City of Sacramento ("City"), The Fetters Company ("Fetters") and Kathken Corporation ("Kathken").

RECITALS

A. City and Fetters are parties to a restaurant services lease agreement for the provision of restaurant services at the Haggin Oaks Golf Complex, identified as City Agreement No. 91-191 (the "Lease").

B. Fetters has requested the City's permission to assign its rights and obligations under the Lease to Kathken.

C. City is willing to consent to the assignment on the terms and conditions herein.

NOW, THEREFORE, the Parties agree as follows:

1. Upon agreement between City and Kathken concerning desired changes to the Lease, City shall consent to an assignment of the Lease to Kathken.

2. Fetters shall remain liable for the performance of the covenants and conditions on its part to be performed under the Lease through August 31, 2001, notwithstanding this assignment is made with City consent. In addition, Fetters shall indemnify, defend and hold harmless Kathken for any loss, cost, claim or liability arising out of the Lease prior to the effective date of the assignment to Kathken.

3. Nothing contained herein shall relieve Fetters of any obligation or liabilities arising prior to the effective date of the assignment.

4. Kathken shall indemnify, defend and hold harmless Fetters from any loss, cost, claim or liability arising out of the Lease after the effective date of the assignment to Kathken.

5. Kathken and Fetters shall enter into a separate agreement pursuant to which Fetters shall transfer its liquor license for the leased premises to Kathken for an agreed upon amount.

Benjamin G. Lee, Jr.
CITY OF SACRAMENTO, *km*
a municipal corporation

THE FETTERS COMPANY

By: _____
Thomas V. Lee

By: *The Fetters Co*
Name: *Greg Fetters*
Title: *Owner*

ATTEST:

KATHKEN CORPORATION,
a California corporation

By: _____
City Clerk

By: *Kenneth E. Morton, Sr.*
Kenneth E. Morton Sr.
President

APPROVED AS TO FORM:

By: *Kathleen Morton*
Kathleen Morton
Secretary

By: *Diane B. Bal*
Deputy City Attorney

