



CITY OF GARDEN GROVE, CALIFORNIA

11391 ACACIA PARKWAY, P.O. BOX 3070, GARDEN GROVE, CALIFORNIA 92642

OFFICE OF THE CITY ATTORNEY

(714) 638-6881

August 7, 1986

Honorable Mayor and City Council
City of Garden Grove
California

Re: Amendment to Agreement between City
of Garden Grove and Donovan Golf
Courses Management, Inc. - Willowick

Gentlemen:

Since 1975, the City of Garden Grove has had a contract with an operator to run Willowick Golf Course. Presently, that contract also allows the operator to run the food and beverage concession. The contracting arrangement has provided a means for the City to cover its bonded indenture obligations, as well as provided revenue to the City and to the operator. Mr. William J. Donovan has been the operator through his corporation, Donovan Golf Courses Management, Inc., from the beginning and has proven to be highly successful in terms of his personal involvement in the golf course operation and maintenance. For personal reasons, however, he has requested that the existing agreement be modified to allow a transition to immediate members of his family in the event he is incapacitated from carrying out the duties or becomes deceased.

The agreement has been primarily structured around his physical participation because of his past proven experience and performance. The attached draft has been prepared with the thought in mind of allowing his immediate family assignment of his functions under certain circumstances, with the City's right and ability to terminate the agreement in the event they cannot perform at a level satisfactory to the City. In addition, for several months, the staff and Mr. Donovan have worked out a formula that both sides believe would fairly cover the situation of reimbursement in the event he makes substantial improvements in the golf course, based on contractual obligations to do so, and the reality that the City has the ability to terminate the agreement under certain circumstances as provided therein.

The balance of the agreement between the parties would remain in full force and effect except as noted herein. Mr. Donovan would be available to answer any questions regarding the proposed amendment and his present agreement with the City.

Respectfully yours,

A handwritten signature in dark ink, appearing to read "Eric", is written over the typed name.

ERIC LAUTERER
City Attorney

AMENDMENT TO AGREEMENT
(Donovan Golf Courses Management, Inc. - Willowick)

THIS AMENDMENT TO AGREEMENT is made and entered into this 18th day of August, 1986, by and between the CITY OF GARDEN GROVE, a Municipal corporation, hereinafter designated as "CITY," and DONOVAN GOLF COURSES MANAGEMENT, INC., a California corporation, hereinafter designated as "OPERATOR."

RECITALS

1. CITY and OPERATOR entered into an agreement dated April 1, 1980, concerning the operation of the "Willowick Golf Course" ("Agreement"), a copy of which Agreement is attached hereto as Exhibit "A" and incorporated herein by reference.

2. CITY and OPERATOR desire to amend said Agreement in certain particulars only as hereinafter provided.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

3. Paragraph 12 of the Agreement dated April 1, 1980, (Exhibit "A") shall be deleted and the following inserted:

"12. ASSIGNMENT AND TRANSFER:

OPERATOR shall not underlet or sublet the premises occupied by it or any part thereof or allow the same to be used or occupied by any other person or entity for any other use than that herein specified, nor assign said contract, without the written consent of CITY, nor shall the OPERATOR transfer, assign, or in any manner convey, any of the rights or privileges herein granted without the said written consent of CITY, or as otherwise provided herein. It is further provided that neither said contract nor the rights herein granted shall be assignable or transferable by any

1 process or proceedings in any court, or by attachment, execution,
2 proceedings and insolvency or bankruptcy, either voluntary or
3 involuntary, or receivership proceedings; and in the event of the
4 insolvency or bankruptcy, either voluntary or involuntary by
5 OPERATOR, CITY may at its option, terminate and cancel said
6 agreement, in which event all rights of OPERATOR thereunder shall
7 immediately cease and terminate and it or its representatives
8 shall immediately deliver up possession to CITY. OPERATOR shall
9 remain responsible to CITY for all obligations to CITY for periods
10 prior to termination.

11 The majority ownership of shares of OPERATOR's corporation
12 shall not be transferred without prior written consent of CITY,
13 except that, said majority interest, or any interest, in the
14 shares of OPERATOR corporation may be transferred upon the death
15 or incapacity of William J. Donovan to a related party without
16 such consent of CITY. In the event the transfer does take place
17 other than as provided herein without obtaining the consent of
18 CITY, CITY reserves the right to terminate this agreement without
19 further compensation due or payable to William J. Donovan, his
20 successors, or assigns in interest of DONOVAN GOLF COURSE
21 MANAGEMENT, INC., or any other party.

22 "Related party" is defined to only include a spouse, son or
23 daughter of William J. Donovan, President of Donovan Golf Course
24 Management, Inc., a California corporation.

25 In the event of the death or incapacity of William J.
26 Donovan, CITY reserves the right to review for one year, the
27 performance of any related party and, at its sole discretion,
28 terminate the agreement in the event said related party does not

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meet the agreement's requirements.

4. All other terms and conditions of said Agreement dated April 1, 1980 (Exhibit "A" attached) are hereby ratified and affirmed by CITY and OPERATOR.

5. CITY reserves the right to terminate the agreement at any time, for purposes of selling the property or developing the property for another use but not for the purpose of changing operators if operator is otherwise in compliance with the terms of this agreement. Calculations for determining amount due OPERATOR, should the CITY terminate shall be in accordance with Exhibit "B" attached hereto. If CITY sells the property to another owner or portions of the property for development, OPERATOR reserves the right to terminate the agreement under the terms in accordance with Exhibit "B".

The parties hereto have executed this Amendment to Agreement the day and year first appearing herein.

ATTEST:

Candace Monica
City Clerk

APPROVED AS TO FORM
Eric Lantieri
City Attorney

CITY OF GARDEN GROVE

Jonathan A. Connor
Mayor

DONOVAN GOLF COURSES MANAGEMENT, INC.,
a California corporation

By *William J. Donovan*
WILLIAM J. DONOVAN, President

8/18/86

#55,467

AMENDMENT TO AGREEMENT WITH DONOVAN GOLF COURSES MANAGEMENT, INC.
RELATING TO OPERATION OF THE WILLOWICK GOLF COURSE (F: 55.467)

Staff report dated August 7, 1986 was introduced, reviewing the proposed Amendment to the Agreement with Donovan Golf Courses Management, Inc., regarding the operation of Willowick Golf Course.

Mr. David Brubaker, 8702 Mac Kay Road, appeared before the Council and commented on the proposed extension of the contract. He stated, in his opinion, it appears that the City would be liberalizing the Agreement to the benefit of the operator and would be taking away the City's ability to take back the operation at an earlier date. He recommended that the City Council not reduce its options. He inquired if the City were to liquidate this property whether it would effect the Gann limitation or could this go towards other property. Mayor Cannon commented that if the funds derived from the sale of the property were invested and quite a lot of interest were received, that might trip the Gann limit.

Mr. Brubaker suggested that the Agreement be renewed at five-year increments, which would give the City Council more flexibility in its options. Mayor Cannon stated that the problem with this type of an option is that no lessee would want to improve the property under such a short lease.

Mayor Cannon stated that he is not really impressed with the way the golf course is being maintained. He reviewed the various ways a City-owned golf course can be operated. He stated that the City is about one-half way through the current lease, and the Management Corporation is requesting an Amendment so the City would be able to deal with other members of the operator's family rather than himself, if necessary.

Councilman Donovan stated that at the time the City entered into the original lease with Donovan Golf Courses Management, Inc., the City was losing money on this property and was faced with revamping the entire property. A lease was negotiated with Donovan Golf Courses Management, Inc.; and in his opinion, the lessee has more than fulfilled his obligations to the City. He stated that while he is not sure if the golf course is up to the specifications of some of the other golf courses, the operator is paying the debt service and the City is deriving some revenue from the course. He stated, in his opinion, this has been a good Agreement for both parties. He further disclosed that the operator is not a relative of his.

Councilman Krieger spoke in support of the Amended Agreement. He reviewed the clause in the Amendment that would give the City the right to review the new operation for one year and make changes. He stated, in his opinion, the golf course serves a need in this City.

Councilman Littrell stated that he was on the Parks and Recreation Commission at the time this Agreement was originally approved and he feels that the City has the best it can expect at this point. He stated, however, that he does agree somewhat with Mayor Cannon, as he feels that the parking lot needs some remedial care and he would like to see something done on this as soon as possible. Assistant City Manager Tindall advised that the Agreement provides that the operator do the improvements. He stated that some have been done, but not in the parking lot. He stated that staff has been working with the operator on this improvement.

Councilman Donovan moved, seconded by Mayor Cannon, that the Amendment to the Agreement by and between the CITY OF GARDEN GROVE and DONOVAN GOLF COURSES MANAGEMENT, INC., relating to operation of the Willowick Golf Course, be and hereby is approved, and the Mayor is authorized to execute the Amendment on behalf of the City, and the City Clerk is directed to attest thereto. Said motion carried by the following vote:

AYES: COUNCILMEMBERS: (5) DINSEN, DONOVAN, KRIEGER, LITRELL,
CANNON
NOES: COUNCILMEMBERS: (0) NONE
ABSENT: COUNCILMEMBERS: (0) NONE