

RAWHITI GOLF LINKS

LICENCE AGREEMENT AND MANAGEMENT CONTRACT

DATED

2002

PARTIES

(1) **THE CHRISTCHURCH CITY COUNCIL** (“the Council”)

(2)

TERMS OF THIS AGREEMENT

1. Pursuant to Section 54(1)(d) of the Reserves Act 1977 the Council grants to the Licensee the right to occupy the Premises for the Term and upon payment of the Licence Fee as set out in Part I of the First Schedule.
2. Pursuant to Section 247D(1)(b)(ii) of the Local Government Act 1974 the Council appoints the Licensee to provide the Management Services at the Course for the Term and at the Consideration as set out in Part II of the First Schedule.
3. The Council and the Licensee covenant with each other as set out in the Schedules to this agreement.

EXECUTION

THE COMMON SEAL of)
THE CHRISTCHURCH CITY COUNCIL)
was hereto affixed in the presence of:)

_____ Mayor / Councillor

_____ Administration Officer

SIGNED by)

as Licensee in the presence of:)
)

FIRST SCHEDULE

PART I

Premises	That part of the Club House on the Course marked "Existing Shop" on the attached plan.
Term Commencement Date	1 February 2002
Expiry Date	31 January 2004
Further term	One right of renewal of 2 years
Final Expiry Date	31 January 2006
Licence Fee	Refer clause 3.1 of the Second Schedule
Licence Fee Payment Dates	Monthly in arrears (refer clause 3.2 of the Second Schedule).
Default Interest Rate	A rate of interest per cent per annum equal to the Bank of New Zealand Base Rate at the date of default, plus 5%.
Business Use	The sale of golfing equipment snack foods and non-alcoholic beverages.
Hours of Operation	Summer (1 October - 31 March) - 7.00 am to 7.00 pm Winter (1 April - 30 September) - 8.00 am to 6.00 pm

PART II

The Course	The municipal links located within Rawhiti Park Christchurch and known as Rawhiti Golf Course.
Term Commencement Date	See Part I
Expiry Date	See Part I
Further Term	See Part I
Final Expiry Date	See Part I
The Management Services	Refer clause 10 of the Second Schedule
The Consideration	Refer clause 11 of the Second Schedule
Consideration Payment Dates	Monthly in arrears (refer clause 11.4 of the Second Schedule)

SECOND SCHEDULE

1. Definitions and Interpretations

- 1.1 “**The Club**” means the Rawhiti Golf Club (Inc.) or its successor.
- 1.2 “**The Club House**” means the building on the Course which is owned and occupied by the Club.
- 1.3 “**Green Fees**” means the charges to be made to persons using the Course as laid down by the Council from time to time.
- 1.4 Whenever words or phrases appear in this licence that also appear in the First Schedule then those words or phrases shall have the meaning (and include the details supplied after them) in the First Schedule.
- 1.5 Words importing the singular shall import the plural and vice versa.
- 1.6 Where there is more than one Licensee or Guarantor (if any) their liability shall be joint and several.

2. Term

- 2.1 This agreement shall commence on the Commencement Date and expire on the Expiry Date.
- 2.2 If the Licensee has given to the Council no later than 6 months prior to the Expiry Date (time being of the essence) notice of its wish to obtain a renewal of this licence the Council shall, subject to clause 2.3, renew this licence for the Further Term.
- 2.3 The Council shall only be obliged to grant a renewal of this licence if the Council is satisfied, in its sole and unfettered discretion that:
 - (a) Some other sport game or recreational activity should not have priority over the game of golf in respect of the Course, or any part of the Course; or
 - (b) The continued use of the Course is still necessary to enable the public to obtain the benefit and enjoyment of the Rawhiti Reserve; and
 - (c) The Licensee has faithfully complied with all of its obligations, or faithfully carried out all of its duties, under this agreement.
- 2.4 In no circumstances shall the Licensee have a right to renew this agreement beyond the Final Expiry Date.

3. Licence Fee

- 3.1 The Licence fee shall be a sum per annum equal to _____ of the Licensee’s gross sales (as that term is defined in the Third Schedule) plus GST.

- 3.2 Within 7 days of the last day of each month the Licensee shall:
- (a) Prepare and forward to the Council a certificate (in a form approved by the Council) signed by the Licensee setting out details of the Licensee's gross sales and such other information as the Council may reasonably require for the preceding month.
 - (b) Pay to the Council the Licence Fee for the preceding month.
- 3.3 The Licence Fee shall be paid, free of any deduction or set off, as the Council may direct including payment by way of direct credit.
- 3.4 If the Licensee fails to make payment of any part of the Licence Fee on the due date for payment then the Licensee shall pay interest on the amount so unpaid at the Default Interest Rate calculated on a daily basis from the due date for payment until actual payment. Interest at the default interest rate shall continue to accrue both before and after judgment.
- 4. Utility charges**
- 4.1 The Licensee shall pay, in addition to the Licence Fee, all charges for any utilities supplied to or consumed upon the Premises. In any case where utilities supplied to the Premises are not separately levied or assessed the Licensee shall pay a fair and reasonable charge.
- 4.2 For the purposes of clause 4.1 "utilities" means water electric power or gas, waste water disposal and rubbish removal.
- 5. Maintenance of Premises**
- 5.1 The Licensee shall, throughout the Term, at the Licensee's expense:
- (a) Keep the Premises in the same clean neat and tidy condition as they were in at the Term Commencement Date.
 - (b) Take all reasonable steps to prevent damage to the Premises.
 - (c) Promptly repair any damage to the Premises occasioned by the wilful reckless or negligent acts of the Licensee or any person for whom the Licensee is responsible.
 - (d) Comply with all lawful and reasonable directions of the Council in respect of the matters referred to subclauses (a) (b) and (c).
- 5.2 Nothing in clause 5.1 shall be construed so as to require the Licensee to repair damage to the Premises arising as a result of fair wear and tear or as a consequence of vandalism or arising out the use of the Premises by members of the public.

6. Additions and Alterations

6.1 The Licensee shall not:

- (a) Make any alterations, or affix any thing, to the Premises;
- (b) Bring, erect or place in or about the Premises any building, structure, fence or other improvement;

without the prior written consent of the Council.

6.2 The consent referred to in clause 6.1 may be given (with or without conditions) or refused by the Council in its absolute discretion.

6.3 Where a consent is given upon the condition that any alteration, building, structure, fence or other improvement be removed and/or the Premises reinstated to their original condition upon the expiry of the Term, the Licensee shall effect such removal and/or reinstatement at the Licensee's expense within 14 days of the expiry of the Term.

6.4 If the Licensee is in default of the obligations under clauses 6.3 the Council may, at its election:

- (a) Effect such removal and/or reinstatement and the costs and expenses so incurred (including any storage costs) shall be a debt immediately due and payable by the Licensee to the Council upon demand, together with interest thereon at the default interest rate from the date of expiry of the demand until actual payment (with interest at the default interest rate accruing both before and after judgment); or
- (b) By notice in writing to the Licensee waive its rights under clause 6.4(a), whereupon any such addition, alteration, building, structure, fence or other improvement shall vest in the Council without any right of payment or compensation to the Licensee by the Council.

7. Use of Premises

7.1 The Licensee shall use the Premises for the conduct of the Business Use and for no other purpose.

8. Conduct of the Business Use

8.1 The Licensee shall conduct the Business Use from the Premises during the Hours of Operation, or for such longer periods as the Licensee may elect, 7 days a week throughout the year including all statutory holidays, except Christmas Day.

8.2 The Licensee will at all times, at the Licensee's expense:

- (a) Conduct the Business Use to reasonable standards of good retailing practice.
- (b) Without limiting the generality of sub-clause (a) the Licensee shall:
 - (i) Keep the Premises adequately staffed and stocked at all times.

- (ii) Ensure that staff employed do not exceed 4 in number at any one time, are over the age of 18 years and adequately trained in the conduct of the Business Use.
 - (iii) Ensure that staff are suitably and neatly dressed at all times.
 - (iv) Encourage staff to be courteous and helpful to members of the public.
 - (v) Provide at least 20 sets of golf clubs, bags and trundlers in reasonable and serviceable condition for hire by members of the public at competitive hire rates approved by the Council in writing (such approval not to be unreasonably withheld).
 - (vi) Provide receptacles on the Premises in which the Licensee's staff and Course users may deposit rubbish, and remove any rubbish so deposited from the Premises on a daily basis.
- (c) Hold and maintain all necessary consents licences and permits that may be required for the lawful conduct of the Business Use and diligently comply with all or any conditions attaching to any such consent licence or permit.
 - (d) Comply with all Acts by-laws and regulations for the time being in force and relating to the conduct of the Business Use.

8.3 The Licensee shall not cause and shall use its best endeavours to ensure that its employees contractors and invitees shall not cause, any nuisance annoyance or danger to any person:

- (a) When gaining access to the Premises;
- (b) In the conduct of the Business Use;
- (c) Upon leaving the Premises;

but the carrying on of the Business Use in a reasonable manner in accordance with the provisions of clause 8.2 shall not constitute a breach of this clause.

9. Rights Reserved by the Council.

9.1 The Council shall have the right to enter upon the Premises with all necessary materials and equipment at all reasonable times:

- (a) To inspect the Premises.
- (b) To carry out repairs or other works on the Premises or any services to the Premises;
- (c) To undertake any work which it is the Licensee's duty to repair and in respect of which the Licensee has not within a reasonable period after the receipt of written notice from the Council taken steps to repair the same. All moneys expended by the Council in undertaking such works shall be payable by the Licensee to the Council upon demand together with interest thereon at the Default Interest Rate from the date of expiry of the demand until actual

payment (with interest at the default interest rate accruing both before and after judgment);

- (d) For the purposes of complying with the terms or requirements of any present or future legislation affecting the Premises or of any notice served on the Council or the Licensee by any competent authority for which the Licensee is not responsible.

10. The Management Services

10.1 The Licensee shall provide during the Term, at its own expense in a good efficient and timely manner the following services (“the Management Services”):

- (a) Collection of Green Fees from all persons who may use the Course (other than annual membership subscriptions paid by members of the Club, which subscriptions shall be collected by the Council) in accordance with the scale of charges laid down by the Council from time to time.
- (b) Banking of Green Fees collected to the Council’s nominated bank account, free of any deductions or set off, on a daily basis.
- (c) Policing of the Course to ensure that:
 - (i) The Course is used only during the hours of daylight.
 - (ii) All users of the Course have paid Green Fees or are financial members of the Club.
 - (iii) Course users conduct themselves in a manner which will not cause offence or injury to any other Course user or to green keeping staff or to any member of the public, or cause damage to the Course.

10.2 Without limiting the generality of clause 10.1, in the performance of the Management Services the Licensee shall:

- (a) Generally promote the Course, so as to maximise Course use and the generation of Green Fee revenues, in conjunction with Council and in accordance with the draft annual plans and budgets prepared and agreed under clause 10.2(p). (For the avoidance of doubt advertising costs incurred in accordance with an agreed annual plan and budget shall be borne by the Council.)
- (b) Operate a daily booking sheet in which is recorded the names of all persons, whether Green Fee payers or Club members, using the Course and make the same available to the Council for inspection or copying (at the Council’s expense) at any time and from time to time during the Hours of Operation.
- (c) Operate and maintain a Green Fees honesty box in accordance with any reasonable written directions given by the Council from time to time.
- (d) Keep such statistical and financial information in relation to course use, in a form approved by the Council, as the Council may from time to time direct and provide that information to the Council when requested to do so.

- (e) Ensure that gates to the Course are locked and unlocked at the times nominated by the Council and that when the Course is not in use all buildings are securely locked, and any alarms on the Premises are activated and regularly monitored once activated.
- (f) Ensure that any breaches of security of which the Licensee is aware are promptly reported to the Council, the Club and the Police, as appropriate.
- (g) Implement and carry out a system for random monitoring of course use which operates for at least 2 hours during each week day and for 3 hours on weekends and statutory holidays so as to discourage use of the Course without payment of Green Fees.
- (h) Be entitled, in the name of the Council and on its behalf, to remove from the Course any person who:
 - (i) Refuses, after being requested to do so, to pay Green Fees.
 - (ii) Is not suitably attired.
 - (iii) Is under the influence of drugs or alcohol.
 - (iv) Is causing or has caused damage to the Course (including any fittings equipment building tree or shrub in or about the Course).
 - (v) Is behaving in a manner which is causing or has caused offence to any green keeping staff, other course users or to any member of the public in or about the Course.
- (i) Liaise with the Council, through its green keeper so that both parties are fully informed as to the occurrence of Course development or maintenance and tournament bookings and attend at least 3 meetings in each year convened by the Council for that purpose.
- (j) Liaise with the Council's green keeper to ensure that the Course is not used, in whole or in part, when by reason of operational maintenance requirements, course conditions or climatic conditions the Council is satisfied that use of the Course would not be appropriate.
- (k) Ensure that members of the Club are able to exercise their rights to use the Course in accordance with the arrangements made between the Council and the Club, as notified to the Licensee by the Council in writing.
- (l) Liaise with the Club to arrange (to the greatest extent possible) for the Club House to be made available for use by Course users generally and for group bookings and tournaments in particular.
- (m) Deal with any complaints received by the Licensee in relation to the performance of the Management Services by the Licensee, or in relation to the Course, in a polite and courteous manner, investigate all complaints and take any remedial action that may be within the Licensee's power forthwith.

- (n) Ensure that a Complaints Register is maintained at all times which accurately and legibly records:
 - (i) The name address and phone number of the complainant and, if appropriate, the Council Officer referring the complaint.
 - (ii) The time date and method (ie. phone letter or fax) of notification of the complaint.
 - (iii) Brief details of the complaint.
 - (iv) The actions taken in response to the complaint and the time and date on which that occurred.
 - (v) Details of any follow up action.
 - (vi) The name of the person making the above entries.
- (o) Make the Complaints Register available for inspection (or copying at the Council's expense) at any time and from time to time during the Hours of Operation. For the purposes of this subclause any complaint letter or fax shall be deemed to be part of the Complaints Register.
- (p) Within 2 months of the Term Commencement Date, and no later than 30 April in each subsequent year of the Term, prepare and submit to the Council for approval a draft annual plan and budget in respect of the Licensee's proposals for the management, promotion and marketing of the Course. The parties shall consult in good faith with a view to agreeing the performance and budget targets specified in that plan within 2 months of its submission. Once the annual plan and budget has been approved by both parties, it shall form the basis upon which the Licensee's performance in relation to management (having regard also to all other terms of this agreement) promotion and marketing of the Course shall be measured.
- (q) Adopt and at all times perform the Management Services (and conduct the Business Use) in accordance with the Licensee's Health and Safety Management Plan, which plan shall be in a form and contain such reasonable provisions as may be approved by the Council from time to time.

11. The Consideration

- 11.1 In consideration of the Management Services to be provided by the Licensee, the Council shall pay to the Licensee the consideration set out in Clause 11.2 and grants to the Licensee the other benefits set out in clause 11.6.
- 11.2 The Council shall pay to the Licensee a management fee of:
 - (a) _____ of the value of Green Fees collected and banked up to the sum of \$200,000.00 (GST inclusive) in each year; plus
 - (b) _____% of the value of Green Fees collected and banked in excess of the sum of \$200,000.00 (GST inclusive) in each year; plus

- (c) GST.
- 11.3 For the purposes of clause 11.2:
- (a) The words “in each year” means the year commencing 1 July and finishing on 30 June.
 - (b) If during any year of the Term the scale of Green Fee charges is adjusted by the Council, either up or down, the monetary sum referred to in clauses 11.2(a) and (b) shall be correspondingly adjusted up or down.
 - (c) For any year current at the Term Commencement Date, the Term Expiry Date, the Final Expiry Date or the time of any adjustment of Green Fee charges under clause 11.3(b), an appropriate adjustment shall be made to the monetary sum for the number of days in that year.
- 11.4 The Licensee shall provide to the Council in a form approved by the Council on each Monday, details of all Green Fees collected by it over the preceding week. Within 7 days of the end of each month the Council shall pay the Consideration for that month to the Licensee.
- 11.5 If the Council fails to make payment of any part of the Consideration on the due date for payment then the Council shall pay interest on the amount so unpaid at the Default Interest Rate calculated on a daily basis from the due date for payment until actual payment. Interest at the default interest rate shall continue to accrue both before and after judgment.
- 11.6 During the Term the Licensee shall be entitled to occupy, free of all rental, the dwellinghouse adjacent to the Club House upon the following conditions:
- (a) The dwelling house may not be occupied by any person other than the Licensee (if the Licensee is a person) or an employee of the Licensee which employee is responsible for after hours monitoring of security of the Premises, the Green Fees honesty box and the locking and unlocking of the entrance gates to the Course.
 - (b) The provisions of clauses 4.1, 4.2, 5.1 and 6.1 - 6.4 inclusive shall apply to such occupation, substituting references to “the dwellinghouse” for references to “the Premises”.
 - (c) The Licensee, or any employee of the Licensee, occupying the dwellinghouse shall not assign sublet or otherwise part with possession of the dwellinghouse without the prior written approval of the Council, in its absolute discretion.
 - (d) Nothing in this clause shall be construed so as to require the Licensee to obtain the consent of the Council to the occupation of the dwellinghouse by the Licensee or an employee of the Licensee together with his or her spouse, domestic partner or their children.

12. Licensee's Acknowledgement, Insurance and Indemnity

- 12.1 The Licensee acknowledges that it has entered into this agreement in reliance upon its own judgment and not in reliance upon any representation or warranty by the Council.
- 12.2 The Licensee shall at all times during the Term maintain, in the joint names of the Licensee and the Council, Public Liability insurance in a sum not less than \$1,000,000.00 in an insurance company approved by the Council, and shall on the Commencement Date, and annually thereafter, produce to the Council such written evidence as the Council may reasonably require of the currency of that policy.
- 12.3 The Licensee agrees to occupy and use the Premises and to provide the Management Services at the Licensee's risk and releases to the fullest extent permitted by law the Council its servants and agents from all claims, costs (including legal costs as between solicitor and client), damages and demands of any kind and from all liability which may arise in respect of any accident, damage or injury occurring to any person or property upon the Premises or the Course attributable to any act error or omission on the part of the Licensee, or the Licensee's agents, employees or contractors in the conduct of the Business Use, or any other use, from the Premises or the provision of the Management Services.

13. Assignment and subletting

- 13.1 The Licensee shall not assign the licence to occupy nor sublet or otherwise part with possession of the Premises, nor assign or subcontract the performance of the Management Services in whole or in part during the Term.
- 13.2 If the Licensee is a company, any change in the legal or beneficial ownership of its shares, or the issue of new capital, which results in a change in the effective management or control of the company shall be deemed to be an assignment of this licence.

14. Sale of licensee's business

- 14.1 Without derogating from the provisions of clauses 13.1 and 13.2 if the Licensee wishes to sell the Licensee's business during the Term (but in no other circumstances) may give not less than two (2) months notice in writing to the Council of the Licensee's intention to surrender this agreement, which surrender shall take effect (subject only to the prior payment by the Licensee of the Licence Fee and all other amounts due under this agreement to the Council) on the date specified in the Licensee's notice.
- 14.2 Upon receipt of the Licensee's notice specified in clause 13.1, the Council in its absolute and unfettered discretion may (but shall not be obliged to) either:
- (a) Negotiate with the purchaser of the Licensee's business and grant to the purchaser a licence of the Premises and a contract to provide the Management Services for the balance of the Term at such Licence Fee and upon such other terms as the Council thinks fit; or

- (b) Offer for sale by public tender a licence of the Premises and a contract to provide the Management Services for such term and upon such other terms and conditions as the Council thinks fit; and
- (c) (In either case) impose, as a condition of any such new grant or tender, upon a new licensee the obligation to purchase the Licensee's business plant (if any) at a fair market value to be determined by agreement with the Licensee or, failing agreement, fixed by the Council in reliance upon the advice of a registered valuer.

15. Default by the Licensee

15.1 In any case where:

- (a) The annual Licence Fee or any other money payable to the Council under this licence has not been paid within 14 days of the due date for payment (time being of the essence); or
- (b) The Licensee shall be adjudged bankrupt or placed in receivership or be subject to a resolution or order for winding up; or
- (c) The Council is of the opinion that the Premises are not being used or sufficiently used for the Business Use; or
- (d) The Licensee is the subject of repeated complaints by users of the Course in relation to all or any of the matters listed in clause 8.2(b).
- (e) The Licensee consistently fails, over a period of not less than 12 months (except in circumstances of unanticipated Course closure for reasons beyond the control of the Licensee) to achieve the performance targets set by the annual plan and budget in accordance with clause 10.2(n).
- (f) The Licensee is in breach of any of the Licensee's other obligations under this agreement and fails to remedy that breach within any reasonable period specified by the Council in a written notice requiring the remedy of the breach;

THEN, it shall be lawful for the Council immediately, or at any time thereafter, without notice or further notice as the case may be by notice in writing to the Licensee to cancel this agreement in its entirety. The Licensee shall not however be released by such cancellation from liability to perform all of the Licensee's obligations under this agreement up to the date of cancellation.

16. Costs

- 16.1 The Licensee shall pay the Council's reasonable costs of and incidental to the preparation and execution of this agreement or any variation or renewal of this agreement (including any stamp duty payable) or the obtaining of any consents or approvals associated with this licence.
- 16.2 The Licensee shall pay all costs and expenses for which the Council shall become liable in consequence of or in connection with any breach or default by the Licensee in the performance or observance of any of the terms of this agreement, including costs

and expenses incurred by the Council in the enforcement or attempted enforcement by the Council of its remedies under this agreement.

- 16.3 For the purposes of clauses 16.1 and 16.2 the word “costs” extends to include reasonable legal costs as between solicitor and client and the Council’s reasonable internal administrative costs (including elected member payments).

17. Notices

- 17.1 Any notice under this agreement may be given as provided in the Property Law Act 1952 and in any event shall be deemed sufficiently served if:

- (a) It is actually received by the address or its authorised representative; or
- (b) Sent by post, fax or telex to the addressee’s last known service address in New Zealand; or
- (c) In the case of a body corporate sent to its registered office.

Any notice sent by post shall be deemed to have been served on the day following the posting.

- 17.2 Council’s service address:

Civic Offices
163-173 Tuam Street
Christchurch (P O Box 237)
Fax: 371 1267
Attention: Leisure and Community Services Manager

- 17.3 Licensee’s service address:

18. Dispute Resolution

- 18.1 Notice of Dispute

In the event of any dispute or difference arising between the parties at any time as to the interpretation of this agreement, or as to any matter or thing arising out of or in connection with this agreement, each party must provide to the other written notice adequately identifying the subject matter of that dispute or difference. The giving of this notice will be a condition precedent to the commencement by either party of proceedings (whether by way of mediation, arbitration or litigation) in respect of any dispute or difference. This clause does not, however, limit the right of either party to seek urgent interlocutory relief by way of Court proceedings.

- 18.2 Reference of Disputes

Within 14 days from the date of service of the notice referred to in clause 18.1 the party giving that notice may give written notice to the other party that it requires the dispute or difference to be referred to mediation. Upon receipt by the other party of that notice the dispute or difference (unless meanwhile settled) will then be referred to mediation pursuant to clause 18.3.

- 18.3 Mediation

- (a) Within 7 days of service of the notice referred to in clause 18.2 will agree upon the Mediator to be appointed. If the parties are unable to agree, either party may request the President of the Canterbury District Law Society to appoint a Mediator;
- (b) The dispute or difference will be the subject of mediation for a period of 28 days (or such longer period as agreed by the parties) from the date upon which the Mediator accepts appointment.
- (c) Neither party will be entitled to commence or maintain any action in respect of the dispute without the consent of the Mediator during that period.
- (d) Each of the parties will promptly carry out such reasonable steps as may be requested by the Mediator.
- (e) The parties acknowledge that the purpose of any exchange of information or documents or the making of any offer during mediation is to be taken only as an attempt to settle the dispute. No party may use any information or documents obtained during mediation for any purpose other than in an attempt to settle a dispute.
- (f) After the expiration of the time established by or agreed under clause 18.3(b), any party which has complied with the provisions of clauses 18.1-18.3 (inclusive) may in writing terminate the mediation and refer the dispute to arbitration or commence Court proceedings.

18.4 Costs of mediation

Each party shall bear their own costs in relation to any mediation. The costs of the Mediator shall be borne by the parties in equal shares.

18.5 Arbitration

A dispute referred to arbitration shall be conducted in accordance with the provisions of the Arbitration Act 1996.

THIRD SCHEDULE

GROSS SALES

1. Definitions
 - (a) “Cash Price” means the fair market value at the time of sale or supply.
 - (b) “Total Cost of Credit” has the same meaning ascribed to those words by Section 5 of the Credit Contracts Act 1981.
2. Sales
 - 2.1 The term “gross sales” means the aggregate of the Cash Price charged or chargeable and other remuneration received or receivable for all merchandise sold leased hired or otherwise disposed of, services sold and/or performed and all business of any nature whatsoever conducted or in any way emanating from the Premises. Without limiting the generality of the foregoing gross sales include:
 - (a) Orders which originated, or are accepted, at or from the Premises but delivery is made at or from any place other than the Premises;
 - (b) Orders which originated at any place other than the Premises but delivery is made at or from the Premises;
 - (c) Sales or other transactions made or effected as a result of solicitation of business off the Premises conducted by persons operating from or reporting to the Premises;
 - (d) Mail telephone or similar orders received or filled at or from the Premises or directed thereto;
 - (e) All deposits taken and not refunded to customers;
 - (f) All sales revenue generated from the operation of any gaming activities on the Premises, including the sale of tickets in lotteries or similar games of chance.
 - (g) Sales made or services provided by means of mechanical or vending devices at or from the Premises;
 - (h) Service finance or interest charges made by the Licensee;
 - (i) Sales made and/or services provided by any sublessee, concessionaire, licensee or other occupier at in from or upon the Premises.
 - 2.2 The term “gross sales” shall not include:
 - (a) The Total Cost of Credit included in sales of goods and services on a deferred payment basis to which the Credit Contracts Act 1981 applies.
 - (b) The net amount of reasonable and proper discounts actually allowed to any customer in the usual course of business.

- (c) Losses incurred in the resale or disposal of goods reasonably and properly purchased from customers as trade-ins in the usual course of business.
 - (d) Uncollectible credit accounts to the extent that the same are written off by the Licensee provided that if any such accounts are subsequently recovered then same shall be included as gross sales in the year in which they are recovered;
 - (e) The exchange of merchandise between stores of the Lessee where such exchange is made solely for the convenient operation of the Lessee's business and not for the purpose of consummating a sale made at in from or upon the Premises.
 - (f) Returns to shippers wholesalers or manufacturers.
 - (g) Sales of the Licensee's fixtures and fittings used in the conduct of business in the Premises.
 - (h) Refunds made upon transactions included within gross sales not exceeding the selling price of merchandise returned by the purchaser and accepted by the Lessee.
 - (i) GST paid or payable by the Licensee in respect of merchandise sold.
 - (j) Any fees, emolument or gratuity received by the Licensee as a result of any coaching appointment of the Licensee by a New Zealand or provincial Golf Association.
 - (k) Emolument received by the Licensee for golf coaching services provided by the Licensee in the capacity of an employee of any other company or business.
 - (l) Any Golf Club charges included within tuition fees paid to the Licensee for golf coaching services.
- 2.3 For the purposes of clause 2.1 each sale on an instalment basis including lay-bys hire purchase credit sales and any other sales on credit or terms shall be treated as a sale for the full price in the month during which such sale shall be made irrespective of the time of payment.
3. Records and Books
- 3.1 The Licensee will keep proper books of account and records relating to all transactions in the course of the business carried on in at or from the Premises. All supporting data including sales slips, sales records, sale docketts, computer records, hire purchase agreements and bank deposit records shall be kept available for at least 2 years from the expiration of each month.
4. Audit
- 4.1 The Council shall have the right at any time to inspect and audit all of the books of account statements documents records returns papers and files of the Licensee relating to gross sales and the Licensee at the request of the Council shall make the same available for inspection or audit.

- 4.2 If as a result of that audit it is established that the gross sales have been understated by more than 5% then the Licensee shall pay to the Council the cost of any such audit.
- 4.3 In the event of it being established by the Council's audit or otherwise that any statement of gross sales delivered by the Licensee to the Council is inaccurate an adjustment shall thereupon be made and either party shall pay to the other such sum as is due, forthwith upon demand.

CONTENTS

	PAGE NO
PARTIES	1
TERMS OF THIS AGREEMENT	1
EXECUTION	1
FIRST SCHEDULE	2
SECOND SCHEDULE	3
1. Definitions and Interpretations	3
2. Term	3
3. Licence Fee	3
4. Utility charges	4
5. Maintenance of Premises	4
6. Additions and Alterations	5
7. Use of Premises	5
8. Conduct of the Business Use	5
9. Rights Reserved by the Council.	6
10. The Management Services	7
11. The Consideration	9
12. Licensee's Acknowledgement, Insurance and Indemnity	11
13. Assignment and subletting	11
14. Sale of licensee's business	11
15. Default by the Licensee	12
16. Costs	12
17. Notices	13
18. Dispute Resolution	13
THIRD SCHEDULE	15

DATED

2002

THE CHRISTCHURCH CITY COUNCIL

("the Council")

("the Licensee")

LICENCE AGREEMENT AND MANAGEMENT CONTRACT
