

1993 NOVEMBER 03

TO : CITY MANAGER

FROM : DIRECTOR RECREATION & CULTURAL SERVICES

RE : 1994 GOLF CONTRACT - RICHARD LEISEN GOLF PROFESSIONAL LTD.

PURPOSE: To seek Council's approval for the awarding of a one year golf services contract (1994) with Richard Leisen Golf Professional Ltd.

RECOMMENDATION:

1. THAT a 1994 Golf Professional contract with Richard Leisen Golf Professional Ltd. be approved as outlined in this report.

REPORT

With Council approval, direction was provided to commence negotiations on a one year contract with Richard Leisen Golf Professional Ltd. The one year agreement would be in effect between the dates of 1994 January 01 and 1994 December 31. This direction was given because an organizational structure for delivering Burnaby's golf program (1995 - 1997) is still under review. For 1994 it is proposed that Leisen's company retain the current responsibilities for full management of Burnaby's golf program, including the management of the golf shops and driving ranges at both Riverway and Burnaby Mountain Golf Courses and the golf shops at the two pitch and putt facilities, Kensington Park and Central Park.

It is recommended that the 1994 contract remain similar to the agreement that is in place for 1993. In 1993, key aspects of the contract are as follows:

- * A staff allowance is provided by the City for both the operations at the Riverway and Burnaby Mountain Courses. In 1993 the annual staff allowance for Burnaby Mountain is \$51,251.00. The Riverway staff allowance is \$140.00/day for each day the course is open in 1993.
- * 25% of gross revenue derived from the rental of golf balls at both driving ranges is paid to the company.
- * A management fee of \$34.00/day is paid to the company for each day the pitch and putt facilities are open.

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* The company is responsible for hiring and supervising all non-maintenance related golf staff including golf shop personnel, driving range staff, instructional staff, course rangers and cashiers at the pitch and putt facilities. The salaries of all such staff are paid by the company, with the exception of the course rangers and the pitch and putt cashiers.

Significant changes to the proposed 1994 agreement would be as follows:

- * Staff allowances at Riverway and Burnaby Mountain Golf Courses to be increased by 2.5% at each course.
- * Management fee for the pitch and putt facilities to be increased from \$34.00/day to \$36.00/day (for each day the courses are open).
- * The percentage of gross driving range revenue paid to the company would remain at 25% for both the Riverway and Burnaby Mountain range areas. This percentage is recommended to continue as there are new range facilities coming into the marketplace (ie: three new driving ranges alone in North Vancouver). It is anticipated that Burnaby's range revenues may be impacted by the influx of these new facilities. 1993 has already been impacted it is assumed by the new ranges. Because 1993 also had poor weather conditions, it is difficult to track in one year the precise impact of the new ranges. A new range proposed in North Burnaby will probably have further impact.

Attachment #1 is a copy of the proposed 1994 contract with Richard Leisen Golf Professional Ltd.

The Parks and Recreation Commission has reviewed this proposal and recommends it for Council approval.



DENNIS GAUNT
DIRECTOR RECREATION &
CULTURAL SERVICES

BC/se0
Attachment
COMMISSION/0029

cc: Director Finance
City Solicitor

THIS AGREEMENT made this day of 199 .

ATTACHMENT #1

BETWEEN:

CITY OF BURNABY
4949 Canada Way
Burnaby, B.C. V5G 1M2

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(hereinafter called the "City")

OF THE FIRST PART

AND:

RICHARD LEISEN GOLF PROFESSIONAL LTD.
4820 Oaktree Court
Burnaby, B.C. V5G 4K9

(hereinafter called the "Company")

OF THE SECOND

PART

AND:

RICHARD FRANK LEISEN, Professional Golfer
4820 Oaktree Court
Burnaby, B.C. V5G 4K9

(hereinafter called the "Professional" or
the "Guarantor")

OF THE THIRD PART

WHEREAS the City owns or leases the following properties situate, lying and being in the City of Burnaby in the Province of British Columbia and more particularly described as follows:

- (1) Burnaby Mountain Golf Course together with the Driving Range and Pro Shop thereon at 7600 Halifax Street (hereinafter called the "Burnaby Mountain Course");
- (2) Riverway Golf Course together with the Driving Range and Pro Shop thereon at 9005 Royal Oak Avenue (hereinafter called the "Riverway Course");
- (3) Kensington Pitch and Putt Golf Course and the Golf Shop thereon, located at 5889 Curtis Street (hereinafter called the "Kensington Course");

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- (4) Central Park Pitch and Putt Golf Course and the Golf Shop thereon, located at 3883 Imperial Street (hereinafter called the "Central Park Course");

AND WHEREAS the City desires to enter into an agreement with the Company to operate a golf program at the said Golf Courses;

AND WHEREAS the Company has agreed to hire Richard Frank Leisen, Professional Golfer, and to appoint him the Golf Professional at the said Golf Courses;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the covenants and agreements herein contained and subject to the terms and conditions hereinafter set out the parties agree as follows:

DEFINITIONS

- 1. In this Agreement, unless the context otherwise requires:
 - (a) "Administrator" means the Director Recreation and Cultural Services of the City;
 - (b) "Driving Ranges" means the Burnaby Mountain Course Driving Range and the Riverway Course Driving Range;
 - (c) "Golf Courses" means the Burnaby Mountain Golf Course, the Riverway Golf Course, the Kensington Pitch and Putt Golf Course and the Central Park Pitch and Putt Golf Course;
 - (d) "Golf Shops" means the shops located at the Kensington Course and the Central Park Course;
 - (e) "Pro Shops" means the shops located at the Burnaby Mountain Course and the Riverway Course;
 - (f) "Treasurer" means the Director Finance of the City.

TERM

- 2. This Agreement shall continue in full force and effect from the 1st day of January 1994 to the 31st day of December, 1994, subject to the provisions as to termination hereinafter more fully set out.

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GOLF PROFESSIONAL: APPOINTMENT AND DUTIES

3. The Company covenants and agrees to hire at its own cost and expense, the Professional, and to appoint him Golf Professional for the Golf Courses.

The Company further covenants and agrees that the Professional shall carry out the duties and obligations set out in this Agreement on a full time basis and will not engage in any business or occupation not contemplated by and within the scope of this Agreement.

The City covenants and agrees that the Professional may play in golf tournaments if the Company first obtains the written consent of the Administrator. Such consent shall not be unreasonably withheld.

ADMINISTRATOR'S ORDERS

4. The Company shall carry out all reasonable orders and directions given to it by the Administrator. Neither the Company nor the Professional shall place any signs or advertising on or in any buildings at any of the Golf Courses or on the Golf Courses without first obtaining the written approval of the Administrator.

GREEN FEES AND BALL RENTALS

5. The Company shall collect green fees at the Burnaby Mountain Course and the Riverway Course, shall rent out golf balls at the Driving Ranges and shall keep an account of all such fees and rentals and remit the total revenue to the City.

The rates charged for green fees and golf ball rentals shall be approved by the Administrator.

PRO SHOPS, GOLF SHOPS AND DRIVING RANGES

6. (1) The Company shall operate the Pro Shops, Driving Ranges and Golf Shops and in so doing shall:

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- (a) install at its own expense all necessary furnishings, machinery and equipment;
 - (b) obtain the written consent of the Administrator before installing furnishings, machinery or equipment therein;
 - (c) ensure that the buildings are not damaged when furnishings, equipment or machinery are installed;
 - (d) provide and pay the costs for telephone service (excluding the initial installment charges), including telephone directory advertising, and a protective alarm system for the Pro Shops and submit a claim for one-half the said costs to the City each month.
- (2) The City shall:
- (a) provide and pay for heat, electricity, water, building maintenance and grounds maintenance to the Golf Courses;
 - (b) provide a cash register for each of the Pro Shops and for each of the Golf Shops;
 - (c) provide and pay for telephone service to each of the Golf Shops and pay one-half the cost of telephone service, including telephone directory advertising, and the protective alarm systems at the Pro Shops;
 - (d) supply the Driving Ranges with golf balls, tokens, automatic ball washers and dispensers, golf mats, tees, a ball picker and a tractor.

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COMPANY REVENUE

7. (1) The Company shall receive and retain the revenue from the following sales and services at the Golf Courses:

amount shall be paid on the last day of any month in which there is a closure);

(c) Sixty (\$60.00) Dollars per day for each day that the Riverway Course and Driving Range are closed by the City (such amount shall be paid on the last day of any month in which there is a closure).

- 8.
- (1) The Company covenants and agrees to employ at least three persons who are competent professional golfers at the Burnaby Mountain Course and Driving Range, and at least two persons as staff for the Pro Shop.
 - (2) The Company covenants and agrees to employ at least three persons who are competent professional golfers at the Riverway Course and Driving Range, and at least two persons as staff for the Pro Shop.
 - (3) The City agrees to pay to the Company in respect of the persons employed under subclause (1) of this Clause 8 on the last day of each month, the amount invoiced by the Company, which amount shall not exceed a total of Fifty-two Thousand Five Hundred Thirty-two (\$52,532.00) Dollars for the year.

No amounts shall be paid for periods when the Burnaby Mountain Course and Driving Range are closed.

- (4) The City agrees to pay to the Company in respect of the persons employed under subclause (2) of this Clause 8 on the last day of each month, the amount invoiced by the Company, which amount shall not exceed a total of Fifty-two Thousand Five Hundred Thirty-two (\$52,532) Dollars for the year.

No amounts shall be paid for periods when the Riverway Course and Driving Range are closed.

- (5) The City shall provide at its expense one Golf Course Ranger and at least one Cashier Attendant for each of the Central Park and Kensington Courses during the months when the said Courses are in operation.

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- (6) The Company agrees to supervise the work of the said Rangers and Attendants.
- (7) The Administrator shall determine the number of hours for which said Rangers and Attendants will be provided.

SEASONS AND HOURS OF OPERATION

- 9. (1) The Company shall unless otherwise authorized in writing by the Administrator keep the Golf Courses, including the Driving Ranges, Pro Shops and Golf Shops, open every day during the year. The Administrator may at any time because of inclement weather or poor ground conditions close any or all of the Golf Courses, including the Driving Ranges.
- (2) The normal hours of operation for the Golf Courses unless otherwise agreed by the Administrator and the Professional shall be:

Burnaby Mountain Course
(excluding Driving Range): sunup until sundown

Riverway Course
(excluding Driving Range): sunup until sundown

Driving Ranges:
- on weekends 6 a.m. till 10 p.m.
- on weekdays 7 a.m. till 10 p.m.

Central Park Course and
Kensington Course:
- on weekends 7 a.m. till sundown
- on weekdays 8 a.m. till sundown

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FINANCIAL RECORDS

10. The Company shall keep and properly maintain books of account and the related vouchers, documents and other records required to reflect the true and correct view of the operations of the Golf Courses, the Pro Shops and the Golf Shops and the gross revenue from all sources received by the Company under this Agreement. The Company shall permit such books and aforesaid records at all reasonable times to be inspected and audited by the Treasurer.

11. The Company shall deliver to the Treasurer on the 31st day of March of 1995, financial statements for the year ending the 31st day of December, 1994, prepared from the books of account which meet the requirements of the "Canada Business Corporations Act" and regulations. These statements shall be prepared by a "Public Accountant" (hereinafter called an "Accountant") who is a member in good standing of an institution or association of the accountants incorporated by or under the authority of the legislature of the Province of British Columbia. The income statement shall include details showing the amounts received by the Company under this Agreement.

GOOD REPAIR

12. The Company shall keep the said Pro Shops, Golf Shops and all furnishings, machinery and equipment, in good and sufficient repair, and the Pro Shops and Golf Shops in a clean and sanitary condition and will leave the said buildings in good repair, reasonable wear and tear and damage by fire, vandalism and damage not due to the negligence of the Company or the Professional, their or his agents or employees, only excepted.

OBSERVE LAWS, OBTAIN PERMITS

13. The Company shall acquire at its own cost and expense all permits and licences necessary for the carrying on of the business or supplying the services herein set out.

14. The Company shall observe and abide by all laws, bylaws and regulations of the City or other competent authority that in any manner relate to or affect the operation of the business or the supplying of the services herein set out.

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ASSUME RISK

15. The Company shall assume all risk of injury (including death) to any person and damage to any property whatsoever in any way arising out of or in connection with the supplying of the services herein set out or anything done or omitted to be done by the Company or the Professional, its or his servants, employees or agents.

INDEMNITY

16. The Company shall assume all liability for all damages of any nature whatsoever caused by any act or thing resulting from any error, omission or negligence on the part of the Company or the Professional, its or his employees, servants or agents, in the performance or purported performance of this Agreement and covenants to save the City harmless and keep it indemnified against all claims or demands that may be made against it by reason of all acts and things resulting from errors, omissions or negligence on the part of the Company or the Professional, its or his employees, servants or agents in the performance of this Agreement.

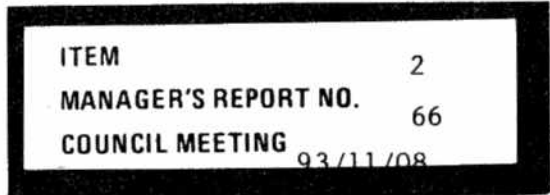
INSURANCE

17. The Company and the Professional shall at their own expense carry Professional Liability Insurance in the following minimum limits:

Each claim	\$250,000.00
Aggregate	\$500,000.00

The policy shall provide that it cannot be cancelled, lapsed or materially changed without at least 30 days' notice to the City by registered mail. Prior to the commencement of the services hereunder, the Company and the Professional shall file with the City a certified copy of said insurance policy. Such insurance shall be maintained until the 31st day of December, 1994.

18. **116** The Company shall insure and keep insured while this Agreement is in force, with such companies and on such forms as are acceptable to the City at the Company's expense, Comprehensive General Liability insurance coverage covering Premises and



Operations Liability, Contractual Liability and Automobile Liability Insurance (owned and non-owned or hired units). The limits of liability shall not be less than the following:

Bodily Injury Liability	\$2,000,000.00 \$2,000,000.00	each occurrence aggregate products and/or completed operations
Property Damage Liability	\$2,000,000.00 \$2,000,000.00	each occurrence aggregate products and/or completed operations
Owned & Non-Owned Automobile Liability Insurance. Bodily Injury and Property Damage Liability	\$2,000,000.00	any one accident

The City and the Professional shall be added as an additional named insured under the Comprehensive General Liability Insurance.

A cross liability clause shall be made part of the Comprehensive General Liability Insurance.

The Comprehensive General Liability Policy shall provide that it cannot be cancelled, lapsed or materially changed without at least thirty (30) days' notice to the City by registered mail.

Prior to the 2nd day of February, 1994, the Company shall file with the City a certified copy of its Public Liability Insurance Policy with the necessary endorsements attached. It shall also file certified copies of the certificates pertaining to its non-owned and owned automobile insurance coverage.

MUTUAL COVENANTS

19. It is mutually understood and agreed by and between the parties hereto: **117**
- (a) that the Company is an independent contractor and is in no sense a servant, employee or agent of the City and City shall in no manner be responsible for

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or the Golf Shops by the Company or acquired by the Company, at any time prior to or during the term of this Agreement, shall be and remain the Company's property and the Company shall have the right to remove any or all of the works within thirty (30) days after termination of this Agreement;

- (g) that in the event of termination of this Agreement for any reason whatsoever and the Company no longer requiring the works or any part thereof, the Company hereby grants to the City the right to purchase the works or any part thereof for a consideration to be fixed by agreement of the parties, and failing such agreement the Company shall remove the works as provided in Clause 19(h) hereof;
- (h) that in the event of termination of this Agreement for any reason whatsoever, the Company shall, within thirty (30) days after such termination, at the sole risk and expense of the Company, remove the works from the Golf Courses, the Pro Shops and the Golf Shops and return the Golf Courses, the Pro Shop and the Golf Shops, so far as it is practicable so to do, to the state and condition in which they were prior to the construction, installation or placement of the works. If the Company shall fail so to do within the said thirty (30) days, then the works shall become the property of the City and the City may remove the works at the risk of the Company and all costs and expense of such removal and the restoration of the Golf Courses, the Pro Shops and the Golf Shops as aforesaid shall be paid to the City by the Company upon demand;
- (i) that the City subject to Clause 19(e) hereof, may upon one hundred and twenty (120) days' notice in writing to the Company terminate this Agreement;
- (j) that the Company may, upon one hundred and twenty (120) days' notice in writing to the City, terminate this Agreement;
- (k) that any notice required or desired to be given under or in respect of any of the terms of this Agreement may be given by mailing the same by double registered mail addressed to the party to whom the same is to be given as

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follows:

If given to the City:

City of Burnaby
4949 Canada Way
Burnaby, B.C. V5G 1M2

If given to the Company or the Guarantor:

Richard Leisen Golf Professional Ltd.
4820 Oaktree Court
Burnaby, B.C. V5G 4K9

and any notice so given shall be deemed to have been given when, in the ordinary course of post, it should have been delivered;

- (l) that the City will give the Company not less than 180 days notice in advance of the expiration of the term of this contract regarding the City's intent to have the Company provide golf professional services to the City for an additional term.
- (m) that the expressions the "City", "Company" and "Guarantor" herein contained shall be deemed to include the heirs, executors, administrators, successors and assigns of such parties wherever the context so admits.

GUARANTOR

20. The Guarantor, in consideration of the City entering into this Agreement with the Company, doth hereby for himself, his heirs, executors, administrators, successors and assigns, covenant with the City that he will observe and perform or cause to be observed and performed, all the covenants, terms, provisos, stipulations and conditions herein contained on the part of the Company and he will be responsible for and indemnify and save harmless the City from and against all claims and demands, loss, costs, damages, actions, lien claims, suits, or other proceedings by whomsoever caused, in any manner based upon, occasioned by or attributable to the execution of performance of these presents, or any action taken or thing done or maintained by virtue or in consequence hereof or omitted to be so taken, done or maintained, or the exercise or purported exercise in any manner of rights arising hereunder.

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IN WITNESS WHEREOF the parties hereto have caused these presents to be executed as of the day and year first above written.

THE CORPORATE SEAL OF THE CITY OF BURNABY WAS HEREUNTO AFFIXED IN THE PRESENCE OF:

City Clerk-Authorized Signatory

THE CORPORATE SEAL OF RICHARD LEISEN GOLF PROFESSIONAL LTD. WAS HEREUNTO AFFIXED IN THE PRESENCE OF:

Authorized Signatory

Authorized Signatory

SIGNED, SEALED AND DELIVERED BY THE GUARANTOR IN THE PRESENCE OF:

Name

Richard Frank Leisen

Address

Occupation