

SECOND AMENDMENT TO LEASE

THIS SECOND AMENDMENT TO LEASE AGREEMENT ("Second Amendment") dated for reference purposes only as of June 16 2021 ("Effective Date") is entered into by and between the CITY OF ALAMEDA, a charter city and municipal corporation ("Landlord") and GREENWAY GOLF ASSOCIATES, INC., a California corporation ("Tenant"), with reference to the following:

RECITALS

A. WHEREAS, Landlord and Tenant entered into that certain Lease Agreement dated as of August 1, 2012, whereby Tenant leased from Landlord the Chuck Corica Golf Complex ("Golf Complex"), consisting of approximately 325 acres, including the 18-Hole North Course ("North Course"), the 18-Hole South Course ("South Course"), the 9-Hole Mif Albright par-three course ("9-Hole Course"), the driving and practice range ("Driving Range") and related facilities located in the City of Alameda, CA (collectively the "Original Premises") together with certain Personal Property, all as further described and depicted in the Lease; and

B. WHEREAS, Landlord and Tenant entered into that certain First Amendment to the Lease ("First Amendment") dated as of March 28, 2018 (the original Lease as amended by the First Amendment is referred to herein as the "Lease"); and

C. WHEREAS, having completed renovation of the 9-Hole Course, Driving Range, and South Course and nearing completion of the North Course, Tenant determined that it would be beneficial to its operation at the Golf Complex to renovate the fire tower and the surrounding area located outside the entryway at the corner of Island Drive and Clubhouse Memorial Road to provide a more aesthetic entry into the newly renovated Golf Complex; and

D. WHEREAS, Tenant understands that prior to making any improvements to the fire tower, Tenant will need to obtain a structural assessment and perform hazardous materials abatement; and

E. WHEREAS, Tenant has requested, and Landlord has agreed, to amend the Lease to expand the Original Premises covered by the Lease to add the land at the corner of Island Drive and Clubhouse Memorial Road including the fire tower located thereon, as depicted in Exhibit B attached hereto, upon the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the terms, covenants and conditions hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Landlord and Tenant hereby agree as follows:

AGREEMENT

1. Recitals. The Recitals set forth above are incorporated herein as though set forth in full herein.

2. Expansion. As of the Effective Date, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the approximately 0.5 acre property at the corner of Island Drive and Clubhouse Memorial Road, including the fire tower building ("Fire Tower") located thereon ("Fire Tower Premises"). The Original Premises and the Fire Tower Premises are hereinafter referred to collectively as the "Premises". No additional Minimum Rent shall be

payable with respect to the Fire Tower Premises. City shall be entitled to use the Fire Tower Premises to stage construction materials and equipment through August 31, 2021.

3. Uses. Tenant shall use the Fire Tower Premises to beautify the front entryway to the Premises and shall not, at any time, use the Fire Tower Premises for storage. Tenant's use of the Fire Tower Premises shall be consistent with how Tenant is permitted to use the Original Premises under the Lease.

4. Fire Tower Work. Tenant shall complete one of the following two processes on the Fire Tower Premises: (i) demolition and landscaping; or (ii) renovation and Beautification Work, as defined below. Tenant shall bear all costs and expenses for any actions it takes on the Fire Tower Premises pursuant to this Section.

- (a) On or before September 30, 2021, Tenant shall retain a professional engineer licensed in California to evaluate and assess the structural integrity of the Fire Tower and assess the presence of any hazardous materials on or within the Fire Tower. The hazardous materials assessment shall include, at minimum, but need not be limited to, lead, asbestos, and polychlorinated biphenyl (PCB). All findings for structural integrity and hazardous materials shall be provided to City within five (5) business days of Tenant's receipt of the same. Tenant and City shall jointly determine whether the Fire Tower shall be either demolished or renovated.
- (b) Should Tenant and City jointly determine that demolition of the Fire Tower is appropriate, Tenant shall submit a plan to City for approval to both demolish the Fire Tower and then landscape the Fire Tower Premises. Tenant shall complete demolition and landscaping on or before the first anniversary of the date of this Second Amendment subject to Permitted Delays as defined below.
- (c) Should Tenant and City jointly determine that renovation of the Fire Tower is appropriate, Tenant shall prepare a design review application for the renovation of the Fire Tower and the Beautification Work of the Fire Tower Premises. The design review application shall first be submitted to the City Golf Commission for its review and recommendation. The design review application shall then be submitted to the City Planning Board, no later than December 31, 2021, for review and approval.
"Beautification Work" shall mean the improvement of the Fire Tower's appearance by, among other things, painting a mural and installing landscaping substantially consistent with the conceptual "before and after" drawings attached hereto as **Exhibits H and I**, respectively. Subject to Permitted Delays, Tenant shall complete renovation and Beautification Work no later than June 30, 2022. Nothing herein shall be deemed to prohibit Tenant from demolishing or further renovating the Fire Tower following completion of the Beautification Work.
- (d) As used herein "**Permitted Delay**" means and includes delays due to: war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; acts of terror, epidemics; pandemics; quarantine restrictions; freight embargoes; unusually severe weather; government orders or other similar cause beyond the reasonable control of Tenant (but not including Tenant's financial inability).
- (e) If asbestos, or other Hazardous Materials (as defined at Section 13.3 of the Lease) are encountered during such demolition, renovation and/or beautification work,

Tenant, at its expense, shall be responsible for encapsulating, remediating and/or disposing of such Hazardous Materials as required by applicable law.

5. Amendment to Summary of Information. Section 2 (Leased Premises) of the Summary of Information is hereby deleted in its entirety and replaced with the following:

“2. Leased Premises	Chuck Corica Golf Complex (“ Complex ”) located in the City of Alameda, CA 94502, consisting of approximately 325.5 acres, including the 18-Hole South Course (“ South Course ”), the 9-hole Mif Albright par three course (“ 9-Hole /Course ”), the driving and practice range (“ Driving Range ”), excluding the restaurant and bar facility and outdoor patio and excluding the “ Snack Shack ” on the North Course (“ F/B Facilities ”), and excluding other Lease Areas Excluded (F/B Facilities, Lease Areas Excluded and City Areas Excluded are collectively, “ Excluded Area ”) on the Complex, as described with more specificity in Exhibit A Leased Premises. ”	Section 1
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6. Replacement of Exhibit A. Exhibit A to the Lease is hereby deleted and replaced with the new Exhibit A attached hereto.

7. Insurance and Indemnification. For avoidance of doubt, all of Tenant’s insurance and indemnity obligations, as described in Section 12 of the Lease, that apply to the Original Premises in the Lease, shall also apply to the Fire Tower Premises.

8. Reversion of Fire Tower Premises. In the event that City desires to construct housing on the Fire Tower Premises, Tenant and City shall enter into an amendment to the Lease transferring possession and control of the Fire Tower Premises back to City, provided that City first reimburses Tenant for all costs and expenses incurred by Tenant in its demolition and landscaping or renovation and Beautification Work as described in Section 3, above.

9. Ratification of Lease. The Lease as amended by this Second Amendment is hereby ratified, confirmed and approved in all respects. In the event of any inconsistency between the provisions of this Second Amendment and the provisions of the Lease, the provisions of this Second Amendment shall govern.

10. Entire Agreement. This Second Amendment sets forth the entire understanding of the parties in connection with the subject matter hereof.

11. Brokers. Neither party as dealt with any broker in connection with this Second Amendment. Each party agrees to defend, indemnify and hold the other party harmless from any claims of any brokers claiming to have represented it in connection with this Second Amendment.

12. Counterparts; Electronic Signatures. This Second Amendment may be executed in multiple counterparts each of which is deemed an original but together constitute one and the same instrument. The Second Amendment may be transmitted in “pdf” format and each party has the right to rely upon a pdf counterpart of this Second Amendment signed by the other party to the same extent as if such party has received an original counterpart.

**IN WITNESS WHEREOF, Landlord and Tenant have duly executed this
Second Amendment as of the Effective Date set forth above.**

LANDLORD:

**CITY OF ALAMEDA,
a charter city and municipal corporation**

By: 
Eric Levitt E4D11F2008054AE
City Manager 6/16/2021

TENANT:

**GREENWAY GOLF ASSOCIATES, INC., a
California corporation**

By: 

Name: Umesh Patel

Its: President & CFO

Approved as to Form

By: 
Elizabeth Mackenzie
Chief Assistant City Attorney

EXHIBIT A

**Replacement Diagram Depicting Entirety of Original
Premises and Fire Tower Premises**



EXHIBIT H

Fire Tower Before Photo



EXHIBIT I

Fire Tower After Conceptual Drawing





CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
06/09/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER CF&P Insurance Brokers 101 Ygnacio Valley Rd, Ste 200 Walnut Creek, CA 94596 Michael H. Crist	925-956-7700	CONTACT NAME: Elizabeth Ferguson	
		PHONE (A/C, No, Ext): 925-956-7700	FAX (A/C, No): 925-956-7777
	E-MAIL ADDRESS: elizabeth@cfpinsurance.com		
	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A: Great American Assurance Co.		26344
	INSURER B: Great American Alliance Ins.Co		26832
	INSURER C: Technology Insurance Company		42376
	INSURER D: Hartford Fire Insurance Co.		19682
	INSURER E:		
	INSURER F:		
INSURED Greenway Golf Associates, Inc. Todd Lee 1 Clubhouse Memorial Rd. Alameda, CA 94502			

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE		ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS		
A	X	COMMERCIAL GENERAL LIABILITY						EACH OCCURRENCE	\$	1,000,000
		CLAIMS-MADE	X	OCCUR				DAMAGE TO RENTED PREMISES (Ea occurrence)	\$	500,000
	X	Liquor Liability						MED EXP (Any one person)	\$	20,000
	GEN'L AGGREGATE LIMIT APPLIES PER:							PERSONAL & ADV INJURY	\$	1,000,000
	X	POLICY		PRO- JECT	X	LOC		GENERAL AGGREGATE	\$	2,000,000
	OTHER:							PRODUCTS - COMP/OP AGG	\$	2,000,000
								Liquor	\$	1,000,000
A	AUTOMOBILE LIABILITY							COMBINED SINGLE LIMIT (Ea accident)	\$	1,000,000
		ANY AUTO OWNED AUTOS ONLY		SCHEDULED AUTOS				BODILY INJURY (Per person)	\$	
	X	Hired AUTOS ONLY		X	NON-OWNED AUTOS ONLY			BODILY INJURY (Per accident)	\$	
								PROPERTY DAMAGE (Per accident)	\$	
									\$	
									\$	
B	X	UMBRELLA LIAB	X	OCCUR				EACH OCCURRENCE	\$	5,000,000
		EXCESS LIAB		CLAIMS-MADE				AGGREGATE	\$	5,000,000
	DED	X	RETENTION \$	10,000					\$	
									\$	
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY			Y / N				X	PER STATUTE	OTH-ER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)				N / A			E.L. EACH ACCIDENT	\$	1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below							E.L. DISEASE - EA EMPLOYEE	\$	1,000,000
								E.L. DISEASE - POLICY LIMIT	\$	1,000,000
A	Employee Benefits					MAC3651996-00	01/01/2021	01/01/2022	Occurr	1,000,000
D	Equipment Floater					57MSFP9820	01/01/2021	01/01/2022	Limit	2,804,663

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

The City of Alameda, its City Council, boards and commissions, officers, employees & volunteers are additional insured, coverage is primary and non-contributory and waiver of subrogation applies for work done on their behalf by the named insured.

DS

6/16/2021

CERTIFICATE HOLDER

CANCELLATION

<p>City of Alameda Public Works Department Alameda Point, Building 1 950 West Mall Square, Room 110 Alameda, CA 94501-7558</p>	<p>SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.</p>
	<p>AUTHORIZED REPRESENTATIVE </p>

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

COVERAGE PLUS COMMERCIAL GENERAL LIABILITY ENDORSEMENT

This endorsement modifies and is subject to the insurance provided under the following form:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

This is a summary of the various additional coverages and coverage modifications provided by this endorsement. For complete details on specific coverages, consult the actual policy wording.

Coverage	Limit of Insurance	Page
Non-Owned Aircraft	Included	2
Non-Owned Watercraft	Included	2
Property Damage Elevators	Included	3
Property Damage Liability - Borrowed Equipment	Included	3
Damage to Premises Rented to You	\$ 500,000	3
Contractual Personal and Advertising Injury	Included	4
Medical Payments Extension and Increased Limit	\$ 20,000	4
Supplementary Payments - Bail Bonds	\$ 2,500	5
Supplementary Payments - Loss of Earnings	\$ 500	5
Automatic Additional Insured - Owners, Lessees, and Contractors when Required in Written Contract or Agreement with you	Included	5
Broadened Named Insured	Included	7
Newly Formed or Acquired Organizations	Included	7
Knowledge of Occurrence, Claim or Suit	Included	7
Primary and Non-Contributory Additional Insured Extension	Included	8
Unintentional Failure to Disclose Hazards	Included	8
Amended Bodily Injury Definition	Included	8
Broadened Mobile Equipment	Included	8

The following extensions of coverage apply only if a YES is typed next to the coverage:

Coverage	Type YES below for coverage	Limit of Insurance	Page
Who Is an Insured - Fellow Employee Extension - Management Employees	YES	Included	9
Personal and Advertising Injury Definition Amendment of Discrimination or Humiliation	YES	Included	9
Incidental Malpractice Liability	YES	Included	9

A. Non-Owned Aircraft

Under paragraph **2. Exclusions of SECTION I - COVERAGE A - Bodily Injury and Property Damage Liability**, exclusion **g. Aircraft, Auto or Watercraft** does not apply to an aircraft provided:

1. it is not owned by any insured;
2. it is hired, chartered or loaned with a trained paid crew;
3. the pilot in command holds a currently effective certificate, issued by the duly constituted authority of the United States of America or Canada, designating him or her a commercial or airline pilot; and
4. it is not being used to carry persons or property for a charge.

However, the insurance afforded by this provision does not apply if there is available to the Insured other valid and collectible insurance, whether primary, excess (other than insurance written to apply specifically in excess of this Policy), contingent or on any other basis, that would also apply to the loss covered under this provision.

B. Non-Owned Watercraft

Under paragraph **2. Exclusions of SECTION I - COVERAGE A - Bodily Injury and Property Damage Liability**, subparagraph **(2)** of exclusion **g. Aircraft, Auto or Watercraft** is replaced by the following:

This exclusion does not apply to:

(2) A watercraft you do not own that is:

- (a)** less than 51 feet long; and
- (b)** not being used to carry persons or property for a charge.

However, the insurance afforded by this provision does not apply to watercraft 27 to 51 feet long if there is available to the Insured other valid and collectible insurance, whether primary, excess (other than insurance written to apply specifically in excess of this Policy), contingent or on any other basis, that would also apply to the loss covered under this provision.

C. Property Damage - Elevators

1. Under paragraph **2. Exclusions** of **SECTION I - COVERAGE A - Bodily Injury and Property Damage Liability**, subparagraphs (3), and (4) of exclusion j. **Damage to Property** do not apply if such "property damage" results from the use of elevators.
2. The following is added to **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS**, Condition **4. Other Insurance**, paragraph **b. Excess Insurance**:

The insurance afforded by this provision of this endorsement is excess over any property insurance, whether primary, excess, contingent or on any other basis.

D. Property Damage Liability - Borrowed Equipment

1. Under paragraph **2. Exclusions** of **SECTION I - COVERAGE A - Bodily Injury and Property Damage Liability**, subparagraph (4) of exclusion j. **Damage to Property** does not apply to "property damage" to borrowed equipment while not being used to perform operations at a job site.
2. The following is added to **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS**, Condition **4. Other Insurance**, paragraph **b. Excess Insurance**:

The insurance afforded by this provision of this endorsement is excess over any property insurance, whether primary, excess, contingent or on any other basis.

E. Damage to Premises Rented to You

If Damage to Premises Rented to You is not otherwise excluded from this Coverage Part:

1. Under paragraph **2. Exclusions** of **SECTION I - COVERAGE A - Bodily Injury and Property Damage Liability**:
 3. The last paragraph of paragraph **2. Exclusions** is deleted in its entirety and replaced by the following:

Exclusions **c.** through **n.** do not apply to damage by fire, lightning, or "explosion," to premises while rented to you or temporarily occupied by you with permission of the owner. A separate Limit of Insurance applies to this coverage as described in **SECTION III - LIMITS OF INSURANCE**.
2. Paragraph **6.** under **SECTION III - LIMITS OF INSURANCE** is deleted in its entirety and replaced with the following:
 6. Subject to paragraph **5.** above, the most we will pay under **Coverage A** for damages because of "property damage" to any one premises, while rented to you, or in the case of damage caused by fire, lightning, or "explosion," while rented to you or temporarily occupied by you with the permission of the owner, for all such damage caused by fire, lightning, or "explosion," proximately caused by the same event, whether such damage results from fire, lightning, or "explosion," or any combination of the three, is the higher of **\$ 500,000** or the amount shown in the Declarations for the Damage to Premises Rented to You Limit.
3. Under **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS**, subsection **4. Other Insurance**, paragraph **b. Excess Insurance** item **(ii) of the Occurrence Form and item (iii) of the Claims Made Form** where the words "Fire insurance" appear they are changed to "insurance for fire, lightning, or "explosion.""

4. As regards coverage provided by this provision **E. Damage to Premises Rented to You** - paragraph **9.a. of DEFINITIONS** is replaced with the following:

9.a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire, lightning, or "explosion," to premises while rented to you or temporarily occupied by you with the permission of the owner is not an "insured contract."

5. As regards coverage provided by this provision **E. DAMAGE TO PREMISES RENTED TO YOU**, **DEFINITIONS** is amended by the addition of the following definition:

"Explosion" means a sudden release of expanding pressure accompanied by a noise, a bursting forth of material and evidence of the scattering of debris to locations further than would have resulted by gravity alone.

Explosion does not include any of the following:

- (a) artificially generated electrical current including electrical arcing, that disturbs electrical devices, appliances or wires;
- (b) rupture or bursting of water pipes;
- (c) explosion of steam boilers, steam pipes, steam engines or steam turbines owned or leased by you, or operated under your control; or
- (d) rupture or bursting caused by centrifugal force.

F. Contractual Personal and Advertising Injury

Under paragraph **2. Exclusions** of **SECTION I - COVERAGE B - Personal and Advertising Injury Liability**, exclusion **e. Contractual Liability** is deleted in its entirety:

2. Exclusions

Exclusion **e.** is deleted in its entirety.

G. Medical Payments Extension and Increased Limits

If **Coverage C - Medical Payments** is not otherwise excluded, the Medical Payments provided by this Policy are amended as follows:

Under paragraph **1.a. Insuring Agreement** of **SECTION I - COVERAGE C - Medical Payments**, paragraph **1.a.(b.)** is amended as follows:

- (b.)** The expenses are incurred and reported to us within three years of the date of the accident; and

The Medical Expense Limit in paragraph **7.** of **SECTION III - LIMITS OF INSURANCE** is replaced by the following Medical expense Limit:

The Medical Expense Limit provided by this Policy shall be the greater of:

- a.** \$20,000; or
- b.** the amount shown in the Declarations for Medical Expense Limit.

This provision **7.** is subject to all the terms of **SECTION III - LIMITS OF INSURANCE**.

H. Supplementary Payments

1. In the **Supplementary Payments - Coverages A and B** provision, paragraph **1.b.** is replaced with:
 - b. Up to **\$2,500** for the cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.
2. In the **Supplementary Payments - Coverages A and B** provision, paragraph **1.d.** is replaced by the following:
 - d. All reasonable expenses incurred by the Insured at our request to assist us in the investigation or defense of the claim or "suit," including actual loss of earnings up to **\$ 500** a day because of time off work.

I. Automatic Additional Insured - Owners, Lessees, and Contractors when required in Written Contract or Agreement with You

A. **SECTION II - WHO IS AN INSURED**, paragraph **2.** is amended to include as an additional insured any person or organization who you are required to add as an additional insured on this Policy under a written contract or agreement;

but the written contract or agreement must be:

1. currently in effect or becoming effective during the term of this Policy; and
2. executed prior to the "bodily injury," "property damage," or "personal and advertising injury."

B. The insurance provided to the additional insured person or organization applies only to "bodily injury," "property damage" or "personal or advertising injury" covered under **SECTION I - COVERAGE A - Bodily Injury and Property Damage** and **SECTION I - COVERAGE B - Personal and Advertising Injury**, but only with respect to liability for "bodily injury," "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. your acts or omissions; or
2. the acts or omissions of those acting on your behalf, and resulting directly from your ongoing operations performed for the additional insured, which is the subject of the written agreement.

C. However, the insurance afforded to such additional insured described above:

1. only applies to the extent permitted by law; and
2. will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

A person's or organization's status as an additional insured under this endorsement ends when your operations for the additional insured are completed.

3. With respect to the insurance afforded to these additional insureds, the following is added to **SECTION III - LIMITS OF INSURANCE**:

The most we will pay on behalf of the additional insured is the amount of insurance:

- a. required by the contract or agreement you have entered into with the additional insured described in paragraph **A.**; or

b. available under the applicable Limits of Insurance shown in the Declarations;
whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

D. The insurance provided to the additional insured person or organization does not apply to "bodily injury," "property damage," or "personal and advertising injury" arising out of the rendering or failure to render any professional architectural, engineering or surveying services, including:

1. the preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders, drawings or specifications; and
2. supervisory, inspection, architectural or engineering services.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by the Insured, if the "occurrence" which caused the "bodily injury" or "property damage," or the offense which caused the "personal and advertising injury," involved the rendering of, or the failure to render, any professional architectural, engineering or surveying services.

E. The additional insured must see to it that:

1. we are notified as soon as practicable of an "occurrence" or offense that may result in a claim;
2. we receive written notice of a claim or "suit" as soon as practicable; and
3. a request for defense and indemnity of the claim or "suit" will promptly be brought against any policy issued by another insurer under which the additional insured may be an insured in any capacity. This provision does not apply to insurance on which the additional insured is a Named Insured; if the written contract or agreement requires that this coverage be primary and non-contributory.

F. For the coverage provided by this endorsement:

1. The following paragraph is added to paragraph 4.a. of the **Other Insurance Condition of SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS:**

This insurance is primary insurance with respect to our coverage to the additional insured person or organization, where the written contract or agreement requires that this insurance be primary and non-contributory. In that event, we will not seek contribution from any other insurance policy available to the additional insured on which the additional insured person or organization is a Named Insured.

2. The following paragraph is added to paragraph 4.b. of the **Other Insurance Condition of SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS:**

This insurance is excess over:

Any of the other insurance, whether primary, excess, contingent or on any other basis, available to an additional insured, in which the additional insured on our policy is also covered as an additional insured by attachment of an endorsement to another policy providing coverage for the same "occurrence," "claim or "suit." This provision does not apply to any policy in which the additional insured is a Named Insured on such other policy and where our policy is required by written contract or agreement, executed prior to the date of loss, to specifically require that this insurance provide coverage to the additional insured on a primary or non-contributory basis. When a written

contract or written agreement between you and an additional insured does not require this insurance to be primary or primary and non-contributory, this insurance is excess over any other insurance for which the additional insured is designated as a Named Insured.

G. This endorsement does not apply to an additional insured which has been added to this Policy by an endorsement showing the additional insured in a Schedule of additional insureds, and which endorsement applies specifically to that identified additional insured.

J. Broadened Named Insured

Under **SECTION II - WHO IS AN INSURED**, the following item **2.e.** is added:

e. Any subsidiary and subsidiary thereof, of yours which is a legally incorporated entity of which you own a financial interest of more than 50% of voting stock on the effective date of this Coverage Part. The insurance afforded herein for any subsidiary not named in this Coverage Part as a Named Insured does not apply to injury or damage with respect to which an insured under this Coverage Part is also an insured under another policy or would be an insured under such policy but for its termination or the exhaustion of its Limits of Insurance.

K. Newly Formed or Acquired organizations

Paragraph **3.** of **SECTION II - WHO IS AN INSURED** is replaced by the following:

3. Any organization you newly acquire or form and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

- a.** coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier;
- b.** coverage **A** does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization;
- c.** coverage **B** does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization; and
- d.** records and descriptions of operations must be maintained by the first Named Insured.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations or qualifies as an insured under this provision.

L. Knowledge of Occurrence, Claim or Suit

Under **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS**, the following is added to Condition **2. Duties in the Event of Occurrence, Offense, Claim or Suit:**

Knowledge of any "occurrence," claim, or "suit" by any agent, servant or "employee" of the Named Insured does not in itself constitute knowledge by the Insured unless notice of such "occurrence," claim or "suit" shall have been received by:

- a.** you, if you are an individual;
- b.** a partner, if you are a partnership; or
- c.** an executive officer or insurance manager, if you are a corporation.

M. Primary and Non-Contributory Additional Insured Extension

This provision applies to any person or organization who qualifies as an additional insured under any form or endorsement under this Policy.

Condition **4. Other Insurance** of **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS** is amended as follows:

a. The following is added to paragraph a. Primary Insurance:

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured under your policy provided that:

- (1) the additional insured is a Named Insured under such other insurance; and
- (2) you have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.

b. The following is added to paragraph b. Excess Insurance:

When a written contract or written agreement, other than a premises lease, facilities rental contract or agreement, an equipment rental or lease contract or agreement, or permit issued by a state or political subdivision between you and an additional insured does not require this insurance to be primary or primary and non-contributory, this insurance is excess over any other insurance for which the additional insured is designated as a Named Insured.

Regardless of the written agreement between you and an additional insured, this insurance is excess over any other insurance whether primary, excess, contingent or on any other basis for which the additional insured has been added as an additional insured on other policies.

N. Unintentional Failure to Disclose Hazards

Under **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS**, the following is added to Condition **6. Representations**:

Failure of the Insured to disclose all hazards existing as of the inception date of this Policy shall not prejudice the insurance with respect to the coverage afforded by this Policy, provided such failure or omission is not intentional on the part of the Insured.

O. Amended Bodily Injury Definition

Under **DEFINITIONS**, Definition **3. Bodily Injury** is replaced by the following:

3. **"Bodily injury"** means bodily injury, sickness, or disease sustained by a person, including death of a person. "Bodily Injury" also means mental anguish, mental injury, or shock, if directly resulting from physical injury, sickness, or disease to that person.

P. Broadened Mobile Equipment

Under **DEFINITIONS**, Definition **12. Mobile Equipment**, the following is added under **12.f.(1)**:

Provided that the vehicles have a Gross Vehicle Weight of 1,000 pounds or greater.

Q. Who Is an Insured - Fellow Employee Extension - Management Employees

1. The following is added to paragraph 2.a.(1) of SECTION II - WHO IS AN INSURED:

Paragraph (a) and (b) above do not apply to "bodily injury" or "personal and advertising injury" caused by a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business. However, none of these co-"employees" are insureds for "bodily injury" or "personal and advertising injury" arising out of their willful conduct, which is defined as the purposeful or willful intent to cause "bodily injury" or "personal and advertising injury," caused in whole or in part by their intoxication by liquor or controlled substances.

Paragraph (a) and (b) above do not apply to "bodily injury" or "personal and advertising injury" caused by an "employee" who is acting in a supervisory capacity for you. Supervisory capacity as used herein means the "employee's" job responsibilities assigned by you, including the direct supervision of other "employee" of yours. However, none of these "employees" are insureds for "bodily injury" or "personal and advertising injury" arising out of their willful conduct, which is defined as the purposeful or willful intent to cause "bodily injury" or "personal and advertising injury," caused in whole or in part by their intoxication by liquor or controlled substances.

This coverage is excess over any other valid and collectable insurance available to your "employee" or "volunteer worker."

R. Personal and Advertising Injury Definition Amendment of Discrimination or Humiliation

Under **DEFINITIONS**, Definition **14. Personal and Advertising Injury**, item **14.h.** is added:

- h. discrimination or humiliation that results in injury to the feelings or reputation of a natural person, but only if such discrimination or humiliation is:
 - (1) not done intentionally by or at the direction of:
 - (a) an insured; or
 - (b) any "executive officer" director, stockholder, partner or member of the Insured; and
 - (2) not directly or indirectly related to the employment, prospective employment or termination of employment of any person or persons by any insured.

S. Incidental Malpractice Liability

1. **SECTION II - WHO IS AN INSURED** is amended by deleting item **2.a.(1)(d)** in its entirety and replacing it with the following:
 - (d) Arising out of his or her providing or failing to provide professional health care services. However, this exclusion does not apply to nurses, emergency medical technicians or paramedics who are employed by you to provide medical or paramedical services.
2. Under **DEFINITIONS**, Definition **3. Bodily Injury** is replaced by the following:
 3. **"Bodily injury"** means bodily injury, sickness, or disease or "incidental medical malpractice" sustained by a person, including death of a person. "Bodily Injury" also means mental anguish, mental injury, or shock, if directly resulting from physical injury, sickness, or disease to that person.

3. Under **DEFINITIONS** is amended by the addition of the following definition:

"Incidental medical malpractice" means bodily injury arising out of the negligent rendering or failure to render medical or paramedical services to persons by any physician, dentist, nurse, emergency medical technician or paramedic who is employed by you to provide such services provided you are not engaged in the business or occupation of providing any services referred to in this definition.

All other policy terms and conditions remain unchanged.