

## SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (“**Agreement**”) is made by and between Greenway Golf Associates, Inc. (“**Greenway**”), Dialemi, Inc. (“**Dialemi**”) and the City of Alameda (“**City**”), and shall become binding and effective as of the date by which it has been executed below by all three parties hereto (“**Effective Date**”). This Agreement is made with reference to the following facts:

A. Greenway is the lessee and operator of the Chuck Corica Golf Complex (“**Golf Complex**”) located at One Clubhouse Memorial Drive in the City of Alameda, California, under a Lease Agreement with the City, as lessor, dated August 1, 2012, as amended by a First Amendment to Lease dated March 28, 2018 (as amended, the “**Greenway Lease**”). The premises which is the subject of the Greenway Lease, as proposed to be further amended by the Third Amendment to Greenway Lease, is referred to herein as the “**Greenway Premises**”.

B. Dialemi is the concessionaire under a Concession Agreement for Restaurant Operations with the City of Alameda dated March 2016, as amended by a First Amendment to Concession Agreement for Restaurant Operations dated December 28, 2017 and a Second Amendment Concession Agreement for Restaurant Operations dated April 19, 2019. The Concession Agreement as amended by the First and Second Amendments thereto is hereinafter referred to as the “**Dialemi Concession Agreement**”. Under the Dialemi Concession Agreement, the City provided to Dialemi the exclusive right to provide food and beverage service at the Golf Complex. As concessionaire, Dialemi operates a restaurant under the name “Jim’s on the Course” in the “Building and Patio Area” at the Golf Complex, as those terms are defined in the Dialemi Concession Agreement, as well as a food and beverage cart service on the two golf courses at the Golf Complex. The premises which is the subject of the Dialemi Concession Agreement, as proposed to be further amended by the Third Amendment to Third Amendment to Dialemi Concession Agreement, shall hereinafter be referred to in this Agreement as the “**Dialemi Premises**”.

C. Under the terms of the First Amendment to Concession Agreement, Dialemi agreed to construct a 4,000-square-foot event center and banquet facility (“**Event Center**”)

within the Golf Complex by June 30, 2018, later extended by City staff to December 31, 2018. Under the terms of the Second Amendment to Concession Agreement, the City agreed to further extend the deadline for completing the Event Center to December 31, 2019. As of the Effective Date of this Agreement, the Event Center has not been constructed.

D. On September 1, 2020, Greenway sent City a letter outlining a variety of contract and tort claims that Greenway is asserting against the City and Dialemi that are predicated on Greenway's allegations that City and Dialemi are in breach of certain contractual obligations related to the Event Center, and that Greenway's claim that it has suffered economic damages as a result of said alleged breaches. City and Dialemi deny that they have breached any such obligations to Greenway. Moreover, Dialemi has alleged that (i) it obtained the necessary permits from the City and purchased the structure that was to be used for the Event Center, but that its inability to construct the Event Center is a result of Greenway's failure to perform certain necessary grading and site preparation work that Greenway promised to perform, (ii) Greenway's and/or City's failure to disclose to Dialemi certain site conditions related to the landfill formerly located at the Golf Complex, and (iii) Greenway's and/or City's failure to disclose that other governmental agencies including the Alameda County Department of Environmental Health, the California Department of Resources Recycling and Recovery ("CalRecycle") and Federal Emergency Management Agency ("FEMA") have jurisdiction over the Golf Complex, which agencies exercised their jurisdiction to prohibit Dialemi from constructing the contemplated Event Center. Additionally, the City has contended that it has met all of its contractual obligations with respect to Greenway and Dialemi, Dialemi is solely responsible for its failure to construct the Events Center, and Greenway has no legal right to assert any claim for Dialemi's failure to construct the Events Center. City's, Greenway's and Dialemi's respective claims, allegations and asserted defenses related to the Event Center are collectively referred to herein as the "**Dispute**". Greenway, City and Dialemi each deny all of the allegations and contentions made by the other parties to the Dispute. On October 15, 2020, in accordance with the California Government Claims Act, Greenway presented City with a written claim for damages ("**Government Code Claim**") arising from the alleged Event Center breach. City rejected Greenway's Government Code Claim on October 23, 2020.

E. Greenway, Dialemi, and City have engaged in protracted settlement negotiations in an attempt to reach an amicable resolution of the Dispute and related issues without resort to litigation. As a result of those discussions, Greenway, Dialemi, and City have now reached a settlement, the effectiveness of which is subject to timely satisfaction of certain conditions precedent to effectiveness described below, and wish to memorialize the terms of the settlement in this Agreement, as set forth below.

### **AGREEMENT**

NOW, THEREFORE, in consideration of the mutual covenants set forth in this Agreement, and subject to timely satisfaction of the conditions precedent to effectiveness set forth in paragraph 1 below, Greenway, Dialemi, and City hereby agree to settle the Dispute on the terms and conditions set forth below.

1. **Conditions to Effectiveness.** Except as otherwise set forth in paragraph 8 below with respect to tolling of Greenway claims, The parties acknowledge and agree that this Agreement shall not become effective unless and until Final Approval (defined below) of both the Third Amendment to Greenway Lease and the Third Amendment to Dialemi Concession Agreement has occurred. **“Final Approval”** means the date on which (i) all applicable appeal periods for the filing of any administrative appeal or litigation challenging the approval or effectiveness of the Third Amendment to Greenway Lease and/or Third Amendment to Dialemi Concession Agreement, as applicable, shall have expired and no such appeal shall have been filed; (ii) in the event of any administrative appeal or litigation challenging one or more of such approvals, that the administrative appeal or litigation challenge is settled or there is a final determination or judgment upholding the approval(s), and the administrative appeal or litigation challenge is no longer subject to appeal; and (iii) in the event of a timely referendum petition certified by the elections official as compliant with the Elections Code, a majority of voters voting on the Third Amendment to Greenway Lease or Third Amendment to Dialemi Concession Agreement, as applicable, vote in favor of it and the election results are certified in accordance with the Elections Code. As set forth in paragraph 7 below, the parties agree to cooperate diligently and in good faith to cause the Third Amendment to Greenway Lease and Third Amendment to Dialemi Concession Agreement to be presented concurrently to the City Council for consideration of approval at the earliest reasonable time. The parties further agree that this Agreement shall automatically terminate if Final Approval of both the Third

Amendment to Greenway Lease and the Third Amendment to Dialemi Concession Agreement has not occurred by August 31, 2021, or such later date as the parties may mutually agree in writing each in its sole and absolute discretion (the “**Final Approval Outside Date**”).

2. **Food and Beverage Rights.** As of the later of the date on which Final Approval of the Third Amendment to Dialemi Concession Agreement and Final Approval of the Third Amendment to Greenway Lease has occurred, and from that date forward, Dialemi agrees to relinquish its exclusive right to provide food and beverage service at the Golf Complex, on the following, terms, limitations and conditions.

(a) **Jim’s on the Course.** Dialemi shall retain exclusive food and beverage service within the Dialemi Premises for the duration of the term of the Concession Agreement.

(b) **Special Events.** Greenway may at any time provide food and beverage service to participants in golf tournaments, corporate retreats, or other special events, such as weddings, private parties, or other social gatherings (each a “**Special Event**” and collectively, the “**Special Events**”), and to the guests of those participants, even if they are not golfing, anywhere on the Greenway Premises, including within the Jim’s Sight Lines (defined below). All Special Events must comply with City Ordinances, and City Park Rules and Regulation, including limitations on outdoor amplified sound. Greenway may cater such Special Events itself or hire others to do so, including Dialemi, but only for purposes of providing food and beverage services to Special Event participants and their guests on the days when such Special Events are taking place. For avoidance of doubt, Dialemi shall retain the exclusive right to use and occupy the Jim’s on the Course restaurant building and Greenway shall have no right to provide food and beverage service on the Dialemi Premises, except that Greenway may do so within Jim’s Patio Area (as that term is defined below) when Jim’s on the Course is not open for business.

(c) **Snack Carts.** Greenway may operate beverage or snack cart services anywhere on the Greenway Premises, with the exception of the Dialemi Premises itself, including within all of the Golf Complex’s golf courses, driving range(s), practice chipping green(s), and grass tee area(s), including within the Jim’s Sight Lines.

(d) **Snack Shacks.** Greenway may, subject to City approvals in both its proprietary and regulatory capacities, construct and operate, or contract with third parties

to construct and operate, snack shacks, including by reopening previously-existing snack shacks, anywhere on the Greenway Premises, including within all of the Golf Complex's golf courses, driving range(s), practice chipping green(s), and grass tee area(s), except that it will not open any new snack shacks within the Jim's Sight Lines. The "**Jim's Sight Lines**" means the portion of the Greenway Premises as delineated on the attached **Exhibit A**.

(e) **Take-Out.** Greenway may, subject to City approvals in both its proprietary and regulatory capacities, construct and operate, or contract with third parties to construct and operate, one or more take-out food and beverage service facilities anywhere on the Greenway Premises, except within the Jim's Sight Lines. For purposes of this Agreement, "take-out" means a counter service restaurant or food service facility.

(f) **Patio Areas.** Dialemi will continue to have the right to provide food and beverage services, through Jim's on the Course, on that portion of the adjacent patio area designated as "Jim's Patio Area" on the attached **Exhibit B ("Jim's Patio Area")**, during its regular business hours of 6:00 AM to 10:00 PM. Greenway will have the sole right to use and occupy the balance of the patio area designated on the attached **Exhibit B** as the "**Greenway Patio Area**". In addition, Greenway may use the Jim's Patio Area for special events outside of Jim's on the Course's regular business hours or whenever Jim's on the Course is closed, provided, however, that Greenway will provide Dialemi with forty-eight (48) hours' notice of its intent to use the Jim's Patio Area and will not locate or operate portable cooking stations or food or beverage service stations on the Jim's Patio Area.

(g) **Patio Maintenance.** Dialemi will maintain the Jim's Patio Area in a clean and safe condition, commensurate with the adjacent Greenway Patio Area, including emptying of refuse bins located in or along the patio boundary whenever they are full but no less than three times daily.

3. **New Golf Complex Restaurants.** At any time from and after the third anniversary of the Effective Date, Greenway may, subject to City approvals in both its proprietary and regulatory capacities, develop and/or operate, or contract with a third party to develop and/or operate, anywhere within the Golf Complex, except within the Jim's Sight Lines,

one or more restaurants or other food and beverage facilities providing dine-in sit-down table service or a combination of dine-in and take-out service to customers.

4. **Event Center.** As of the later of the date on which Final Approval of the Third Amendment to Dialemi Concession Agreement and Final Approval of the Third Amendment to Greenway Lease has occurred, and from that date forward, Dialemi shall be released from any further obligation to build the Event Center. Instead, Greenway, subject to City approvals in both its proprietary and regulatory capacities, shall have the exclusive right at its sole option, at any time during the term of the Greenway Lease, to develop and/or operate, or contract with a third party to develop and/or operate, anywhere on the Greenway Premises, except within the Jim's Sight Lines, an Event Center.

5. **Façade Improvements.** Greenway has partially upgraded the façade of its Golf Complex clubhouse building and anticipates completing upgrade of the balance of the clubhouse façade within approximately 24 months following the Effective Date of this Agreement. Greenway and City shall provide written notice ("**Greenway Completion Notice**") to Dialemi of Greenway's completion of the clubhouse façade work promptly following completion of such work. Within six (6) months following the date of the Greenway Completion Notice, Dialemi, at its sole cost, shall improve the building façade of Jim's on the Course to match as closely as possible the appearance of the Golf Complex clubhouse façade. Dialemi at its sole risk may delay replacement of the restaurant's existing glass windows and doors with safety glass until such time as they are broken, and Dialemi agrees that, in such case, any new or replacement glass will comply with all applicable building and safety codes and regulations. Dialemi waives and releases any and all claims it may have against City and/or Greenway arising from Dialemi's decision to delay replacement of the Jim's on the Course glass windows and doors.

6. **Screening and Gate.** Greenway, at its sole option but subject to City approvals in both its proprietary and regulatory capacities, shall have the right at any time after the Effective Date to install on the Greenway Premises a new gate ("**Gate**") across the paved access way providing vehicular and pedestrian access to the rear of the Jim's on the Course restaurant building, together with fencing, landscaping, and/or similar means of screening from view the back-of-the-house and side building areas of Jim's on the Course, in the approximate locations as shown on **Exhibit B** attached hereto. Greenway agrees that any screening improvements installed along the westerly edge of the Jim's Patio Area will be minimal so as not to impede

pedestrian access between the Jim's Patio Area and the Clubhouse walkway. In the event Greenway obtains City approval of a Gate, Dialemi shall pay to Greenway within 30 days of Greenway's written demand therefor, accompanied by copies of relevant invoices, Greenway's actual out-of-pocket costs incurred in connection with the design, purchase, fabrication and installation of such Gate, not to exceed a maximum of Three Thousand Five Hundred Dollars (\$3,500). For avoidance of doubt, Greenway shall be responsible for paying all Gate costs to the extent such costs exceed the maximum amount set forth above. Greenway may, at its option, include a Gate locking and/or automatic opening/closing mechanism to control access to the rear access way and, in such event, Greenway will ensure that Dialemi has keys and Gate codes, as applicable, at all times so that Dialemi and its employees, contractors, garbage service providers and delivery people can gain access to and from the rear of the restaurant building and the Jim's Patio Area.

**7. Amendment of Greenway Lease and Dialemi Concession Agreement.**

To implement the terms of this Agreement, Greenway and Dialemi agree to duly execute and deliver to City original counterparts of the Third Amendment to Greenway Lease in the form attached hereto as **Exhibit C** and the Third Amendment to Dialemi Concession Agreement in the form attached hereto as **Exhibit D**, respectively, and City agrees to present such amendments to the City Council at the earliest feasible time for consideration of approval. As set forth in paragraph 1 above, if Final Approval of the Third Amendments to Greenway Lease and Dialemi Concession Agreement is not obtained by the Final Approval Outside Date, or such later date as the parties may mutually agree in writing each in its sole and absolute discretion, this Agreement shall automatically terminate.

**8. Tolling of Limitation for Filing Suit.** To facilitate implementation of this Agreement by all parties and satisfaction of the conditions precedent to effectiveness, including consideration of the Third Amendment to Greenway Lease and Third Amendment to Dialemi Concession Agreement, City agrees to toll and extend through the date which is three months after the Final Approval Outside Date any and all deadlines for filing suit against the City for causes of action arising from Greenway's Government Code Claim, including the deadline under Government Code section 945.6, and Dialemi agrees to toll and extend through the same date, any and all limitations periods or other deadlines for Greenway to commence suit against Dialemi for causes of action related to the Dispute. The City's tolling of the limitations periods,

including under section 945.6, and Dialemi's tolling of the limitations period(s) applicable to causes of action related to the Dispute, both shall be effective immediately upon full execution of this Agreement and shall survive even if this Agreement terminates for any reason, including by operation of paragraphs 1 or 7 above. For avoidance of doubt, the parties agree that any mutually agreed upon extension of the Final Approval Outside Date under paragraph 1 above, shall also serve to automatically extend the tolling period by an equal number of days.

**9. Waiver and Release of All Claims.**

Subject to timely satisfaction of the conditions precedent to effectiveness set forth in paragraph 1 above, Greenway, Dialemi, and City each releases, acquits and forever discharges each other and their respective subsidiaries and affiliates, and its and their respective shareholders, members, managers, partners, heirs, successors, assigns, representatives, attorneys, insurers, and agents, and each of them, from any and all causes of action, actions, judgments, liens, indebtedness, damages, losses, claims, liabilities and demands, of whatever kind or character, that it may have against them, or any of them, whether presently known or unknown, suspected or unsuspected, arising from or in any way related to the Dispute.

**10. Waiver of Section 1542.** Greenway, Dialemi, and City each understands and agrees that this Agreement extends to all claims of every nature and kind, known or unknown, suspected or unsuspected, arising out of or accruing in connection with any act or omission occurring prior to the Reference Date that relates in any way to the Dispute, and that the parties to this Agreement expressly waive any and all rights granted under Section 1542 of the Civil Code of California, which reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS  
THAT THE CREDITOR OR RELEASING PARTY DOES NOT  
KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT  
THE TIME OF EXECUTING THE RELEASE AND THAT, IF  
KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY  
AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR  
OR RELEASED PARTY.

**11. Legal Expense.** Greenway, Dialemi, and City each agree that they shall bear their own costs and attorneys' fees incurred in connection with the Dispute, including the negotiation, preparation and approval of this Agreement.



12. **Amendment.** This Agreement may not be altered, amended, modified or otherwise changed in any respect except by a writing executed by all parties, or their authorized representatives and, thus, any oral or implied-by-conduct alteration or modification shall have no effect whatsoever.

13. **Severability.** If any term, provision, covenant, condition, or portion of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the terms, provisions, covenants and conditions or portions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

14. **Construction.** The terms of this Agreement have been negotiated by the parties, and no provision of this Agreement shall be construed against any other party as the drafter of the Agreement.

15. **Entire Agreement; Incorporation of Exhibit and Recitals.** This Agreement constitutes the entire agreement among Greenway, Dialemi, and City relating to the Dispute. This Agreement is the final embodiment of the parties' agreement, and all prior discussions relating to or in any way connected with the subject matter of this Agreement are merged into and superseded by the terms of this Agreement. The Recitals preceding this Agreement and the Exhibits attached hereto are incorporated herein by this reference.

16. **California Law.** This Agreement shall be construed in accordance with the laws of the State of California.

17. **Enforcement of Agreement.** In the event a legal action is brought by a party to this Agreement against City or against both City and the other party to enforce or interpret the terms of this Agreement, then each party shall bear its own attorneys' fees in connection with such action, In the event a legal action is brought by Dialemi against Greenway or Greenway against Dialemi to enforce or interpret the terms of this Agreement, then the prevailing party in such action shall be entitled to reimbursement of its legal expenses, including without limitation attorneys' fees and costs of suit.

18. **Counterparts.** This Agreement may be executed in any number of counterparts and via facsimile or electronically, each of which shall be an original, but all of which together shall constitute one instrument.

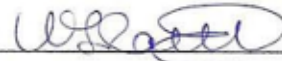
BY AFFIXING THEIR SIGNATURE BELOW, EACH OF THE PERSONS SIGNING THIS AGREEMENT REPRESENTS THAT THEY HAVE READ AND FULLY

UNDERSTAND THIS AGREEMENT, THAT THEY ARE AUTHORIZED TO SIGN THE AGREEMENT ON BEHALF OF THE PARTY INDICATED, AND THAT THE PARTY ON BEHALF OF WHOM THE AGREEMENT IS SIGNED AGREES TO BE BOUND BY ITS TERMS.

*[Remainder of page intentionally left blank]*

*[Signatures on next page]*

**GREENWAY GOLF ASSOCIATES, INC.**

By: 

Name: Umesh Patel

Title: President

Dated: April 16, 2021

**DIALEMI, INC.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: April \_\_, 2021

**CITY OF ALAMEDA**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: April \_\_, 2021 ("**Effective Date**")

**GREENWAY GOLF ASSOCIATES, INC.**

By: \_\_\_\_\_

Name: Umesh Patel

Title: President

Dated: April \_\_, 2021

**DIALEMI, INC.**

By: Tom Geanekos

Name: Tom Geanekos

Title: President

Dated: April 17, 2021

**CITY OF ALAMEDA**

By: Yibin Shen

Name: Yibin Shen

Title: City Attorney

Dated: April 19, 2021 (“Effective Date”)

## EXHIBIT A

### JIM'S SIGHT LINES DIAGRAM



## **EXHIBIT B**

### **PATIO AND PERMITTED SCREENING AREA DIAGRAM**



**EXHIBIT C**

THIRD AMENDMENT TO GREENWAY LEASE



### THIRD AMENDMENT TO GREENWAY LEASE AGREEMENT

THIS THIRD AMENDMENT TO LEASE AGREEMENT ("**Third Amendment**") dated for reference purposes only as of \_\_\_\_\_, 2021 ("**Amendment 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. Landlord and Tenant entered into that certain Lease Agreement dated August 1, 2012 (the "**Original Lease**"), whereby Tenant leased from Landlord the Chuck Corica Golf Complex, consisting of approximately 325 acres, including the 18-Hole North Course, the 18-Hole South Course, the 9-Hole Mif Albright par-three course, the driving and practice 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 Original Lease.

B. Landlord and Tenant entered into that certain First Amendment to the Lease ("**First Amendment**") dated as of March 28, 2018.

C. Landlord and Tenant entered into that certain Second Amendment to the Lease ("**Second Amendment**") dated as of \_\_\_\_\_, 2021 (the Original Lease as amended by the First Amendment and Second Amendment is referred to herein as the "**Agreement**").

D. Landlord entered into a Concession Agreement with Dialemi, Inc. ("**Dialemi**") dated March 2016, under which, *inter alia*, Landlord granted Dialemi the exclusive right to provide food and beverage service within the Golf Complex, including at the "**Jim's on the Course**" restaurant.

E. Landlord and Dialemi entered into a First Amendment to Concession Agreement, dated December 2017, under which Dialemi agreed to construct a 4,000-square-foot event center and banquet facility ("**Event Center**") within the Golf Complex by June 30, 2018, a date which, by a Second Amendment to Concession Agreement dated April 19, 2019, Landlord extended to December 31, 2019 (the Concession Agreement, as amended by the First and Second Amendments is hereinafter referred to as the "**Dialemi Concession Agreement**").

F. A dispute has arisen among Landlord, Tenant, and Dialemi over construction of the Event Center (the "**Event Center Dispute**").

G. Landlord, Tenant, and Dialemi have agreed to resolve the Event Center Dispute on the terms and conditions set forth in that certain Settlement and Release Agreement among the parties dated April \_\_\_, 2021 ("**Settlement Agreement**"). The Settlement Agreement contemplates, and its effectiveness is conditioned upon, Landlord and Tenant entering into this Third Amendment to the Lease, and Landlord and Dialemi



concurrently entering into a third amendment to the Dialemi Concession Agreement ("**Concession Agreement Third Amendment**") in the forms specified in the Settlement Agreement.

H. Consistent with the Settlement Agreement Landlord and Tenant now desire to amend the Agreement to, among other things, provide Tenant with the exclusive right to provide food and beverage services within the Golf Complex other than within the approximately 4,500 sq. ft. building which houses the Jim's on the Course restaurant and bar (the "Jim's on the Course Restaurant Building") and, during Jim's on the Course's regular business hours and when Jim's on the Course is open for business to the public, the Jim's Patio Area (as defined below).

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:

### **AGREEMENTS**

1. **Recitals and Exhibits; Capitalized Terms.** The Recitals set forth above and the Exhibits attached hereto are incorporated herein as though set forth in full herein. Capitalized terms not otherwise defined herein shall have the meanings set forth in the Agreement.

2. **Effective Date; Contingency.** The effective date of this Third Amendment ("**Third Amendment Effective Date**") shall be the date that is 30 days after the effectiveness of City Ordinance No. \_\_\_\_\_ approving this Third Amendment. This Third Amendment is also contingent upon City's approval of the Concession Agreement Third Amendment. If Final Approval (as defined in the Settlement Agreement) of the Concession Agreement Third Amendment has not occurred on or before the date that is 120 days following the Third Amendment Effective Date or such later date as Landlord and Tenant may mutually agree each in its sole discretion, then this Third Amendment shall automatically terminate.

3. **Amendment to Summary of Information.** Paragraphs 2 (Leased Premises) and 4 (Use) of the Summary of Information as set forth on pages i through v of the Original Lease are hereby deleted and replaced with the following:

"2. Leased Premises	That parcel of land commonly known as the Chuck Corica Golf Complex in the City of Alameda, State of California (" <b>Complex</b> "), consisting of approximately 330 acres, together with all buildings, fixtures and other improvements located on said land and all easements, covenants, water rights, licenses, permits, entitlements and other appurtenant rights, including all golf courses, driving ranges, patio areas,	Section 1
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	practice chipping greens, grass tee areas, clubhouse, parking lot areas, walkways, and associated facilities, including the 18-Hole North Course (" <b>North Course</b> "), the 18-Hole South Course (" <b>South Course</b> "), the 9-Hole Mif Albright par-three course (" <b>9-Hole Course</b> "), the driving and practice range (" <b>Driving Range</b> "), and the "Snack Shack" on the North Course, excluding only the Jim's on the Course Restaurant Building, the Jim's Patio Area and the City Areas Excluded (Jim's on the Course Restaurant Building, Jim's Patio Area, and City Areas Excluded are, collectively, the " <b>Excluded Areas</b> "), as described with more specificity on the attached Exhibit A to Third Amendment " <b>Exhibit A to Third Amendment</b> ".	
4. Use	Golf course, pro shop and other ancillary uses in keeping with the character of a similar class municipal or public golf course facility (including but not limited to Metropolitan and Monarch Bay Golf Courses), including exclusive food and beverage at the Complex, other than within the Jim's on the Course Restaurant Building and, during Jim's on the Course's regular business hours and when Jim's on the Course is open for business to the public, the Jim's Patio Area.	Section 3"

**4. Amendment of Section 1.** Section 1 of the Original Lease, entitled "Leased Premises", is deleted in its entirety and replaced with the following:

"1. **LEASED PREMISES.** City hereby leases to Tenant and Tenant hereby leases from City, for the term and upon the terms and conditions set forth in the Agreement the "**Premises**" described in the Summary of Information and depicted and designated on the attached **Exhibit A to Third Amendment.**"

**5. Amendment of Section 3.1.**

Section 3.1 of the Original Lease, entitled "Use", is deleted in its entirety and replaced with the following:

"3.1 Use. Tenant shall use the Premises for the operation of a premier daily fee golf course and other activities customarily associated with or incidental to the operation of a daily fee golf course, including without limitation, sale or rental of golf related merchandise at a golf professional's shop, furnishing of lessons by a golf professional, and operation of a driving range for the use of the general public, including both City of Alameda residents and non-residents. Commencing on the Third Amendment Effective Date and continuing thereafter throughout the term of the Agreement, Tenant shall have the exclusive rights to sell and serve food and beverages, including alcoholic beverages (hereinafter, "**Food and Beverage Service**"), at all portions of the Complex other than within the City Areas Excluded, the Jim's on the Course Restaurant Building, and, during Jim's on the Course's regular business hours and when Jim's on the Course is open for business to public, the Jim's Patio Area, in accordance with and subject to the following terms and conditions:

(a) Special Events. Tenant may at any time provide or cause to be provided Food and Beverage Service in connection with golf tournaments (including both tournament participants and their non-golfing guests), corporate retreats, and other special events, such as weddings, private parties, and other social gatherings (hereinafter, "**Special Events**"), provided that the Special Events comply with City Ordinances and City Park Rules and Regulations, including limitations on outdoor amplified sound.

(b) Snack Carts. Tenant may operate beverage and snack cart services anywhere on the Premises, including but not limited to all of the Complex's golf courses, driving ranges, practice chipping greens, and grass tee areas.

(c) Snack Shacks. Subject to the terms of this Agreement, and City's regular procedures for review and approval of such facilities, Tenant may construct and operate, or contract with third parties to construct and operate, snack shacks, including by reopening previously existing snack shacks, anywhere within the Premises, including but not limited to all of the Complex's golf courses, driving ranges, practice chipping greens, and grass tee areas.

(d) Take-Out. Subject to the terms of this Agreement, and City's regular procedures for review and approval of such facilities, Tenant may construct and operate, or contract with third parties to construct and operate, one or more take-out Food and Beverage Service facilities anywhere within the Premises other than within the Jim's Sight Lines (as defined in the Settlement Agreement). For purposes of this Agreement, "take-out" means a counter service restaurant or food service facility.

(e) Patio Areas. Subject to the terms of the Settlement Agreement, Tenant may provide Food and Beverage Service in connection with Special Events within the Jim's Patio Area outside of Jim's on the Course's regular business hours or when Jim's on the Course is closed. Tenant, at all times, shall have the exclusive right to use, including for purposes of providing Food and Beverage Service, the Greenway Patio Area.

(f) New Golf Complex Restaurants. Subject to the terms of this Agreement, and City's regular procedures for review and approval of such facilities, from and after the third anniversary of the Third Amendment Effective Date, Tenant shall have the right to develop and/or operate, or contract with third parties to develop and/or operate, anywhere within the Premises, other than within the Jim's Sight Lines (as defined in the Settlement Agreement), one or more restaurants or other Food and Beverage Service facilities providing either dine-in, sit-down table service or a combination of dine-in, sit-down and/or take-out Food and Beverage Service.

Pursuant to the terms of the Dialemi Concession Agreement, as further amended by the third amendment thereto, City has provided Dialemi Inc. a concession to operate the Jim's on the Course restaurant. City shall include in its contractual agreements with Dialemi reasonable limitations and commitments to avoid conflicts with Tenant's operation of the Complex under this Agreement. Tenant shall provide Dialemi and its Jim's on the Course customers with equivalent access to and parking for the Jim's on the Course restaurant as Tenant and Tenant's customers are provided to the clubhouse for the Complex which is located next to the Jim's on the Course restaurant. Tenant shall avoid material conflicts with Dialemi's operation of the Jim's on the Course restaurant under the Dialemi Concession Agreement as further amended by the third amendment thereto. In the event the Dialemi Concession Agreement terminates or expires, and provided the existing term of such agreement is not extended, City shall give Tenant the first right of refusal to take over operation of the Jim's on the Course Restaurant Building and Jim's Patio Area on terms and conditions reasonably acceptable to the parties. Tenant shall not use the Premises for any unlawful purpose and shall comply with all valid laws, rules and regulations applicable to the Premises or the business conducted on the Premises. Tenant shall obtain and comply with the requirements of all licenses and permits required for the permitted uses in the Premises, including but not limited to, any required California State Department of Agriculture Permit."

**6. Addition of New Subsections 3.7 and 3.8.** The following new Subsections 3.7 and 3.8 are hereby added to the Agreement to read as follows:

"**3.7 Event Center.** Subject to the terms of this Agreement, and City's regular procedures for review and approval of event center facilities Tenant shall have the exclusive right at its sole option, at any time from and after the Third Amendment Effective Date, to develop and/or operate, or contract with a third parties to develop and/or operate, anywhere within the Premises, an event center, subject to the terms and conditions of the Agreement, as amended by this Third Amendment.

**3.8 Screening and Gate.** Subject to the terms of this Agreement, and City's regular procedures for review and approval of gates and fences, Tenant, at its sole option, shall have the right, at any time from and after the Third Amendment Effective Date, to install on the Greenway Premises a new gate ("**Gate**") across the paved access way providing vehicular and pedestrian access to the rear of the Jim's on the Course restaurant building, together with fencing, landscaping and/or similar means of screening

from view the back-of-the-house and side building areas of Jim's on the Course, in the approximate locations depicted as the "**Greenway Screening Option**" on sheet two of the attached Exhibit A to Third Amendment. Greenway shall have the right to include a Gate locking and/or automatic opening/closing mechanism to better control access to the rear access way and in such event, Greenway shall ensure that Dialemi has keys and Gate codes, as applicable, at all times so that Dialemi and its employees, contractors, garbage service providers and delivery people can gain access to and from the rear of the restaurant building and the Jim's Patio Area.

7. **Replacement of Agreement Exhibit A.** Exhibit A to the Original Lease is hereby deleted and replaced with the attached **Exhibit A to Third Amendment**.

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

9. **No Effect on Rights or Obligations of Tenant or Dialemi under Settlement Agreement.** Nothing herein shall be deemed to modify the ongoing rights or obligations of Tenant to Dialemi or Dialemi to Tenant as set forth in the Settlement Agreement.

10. **No Effect on Nevez Litigation.** City and Greenway acknowledge and agree that this Third Amendment shall have no effect on the rights or obligations, if any, that Greenway and/or City may have to each other or to Abdul and Priscilla Nevez with respect to the ADA claims alleged by Abdul and Priscilla Nevez in United States District Court Case No. 20-cv-8302 TSH.

11. **Entire Agreement.** This Third Amendment together with the Settlement Agreement sets forth the entire understanding of the parties with respect to the subject matter hereof.

12. **Brokers.** Neither party as dealt with any broker in connection with this Third 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 Third Amendment.

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

*[Signatures on next page]*

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

**LANDLORD:**

CITY OF ALAMEDA,  
a charter city and municipal corporation

By: \_\_\_\_\_  
Eric Levitt  
City Manager

**TENANT:**

GREENWAY GOLF ASSOCIATES, INC.  
a California corporation

By: \_\_\_\_\_  
Umesh Patel  
Its: President

Approved as to Form:

By: \_\_\_\_\_  
Elizabeth Mackenzie  
Chief Assistant City Attorney

## **EXHIBIT A THIRD AMENDMENT**

### **Leased Premises**

*[2 sheet exhibit to be inserted]*

*Sheet 1 (City to provide) will depict all 325+/- areas of Premises and show the various "Excluded Areas".*

*Sheet 2 is Exhibit B to the Settlement Agreement depicting boundaries and interface areas between Greenway Premises and Jim's on the course.*

Exhibit A

**EXHIBIT D**

THIRD AMENDMENT TO JIM'S CONCESSION AGREEMENT



### **THIRD AMENDMENT TO CONCESSION AGREEMENT FOR RESTAURANT OPERATIONS AT THE CHUCK CORICA GOLF COMPLEX**

This Third Amendment to Concession Agreement For Restaurant Operations at the Chuck Corica Golf Complex ("Third Concession Agreement Amendment") is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2021 ("Third Amendment Date"), by and between the CITY OF ALAMEDA, a California municipal corporation ("City"), and DIALEMI INC., a California corporation ("Concessionaire"), who agree as follows:

#### **RECITALS**

A. As of March 2016, City and Concessionaire entered into that certain Concession Agreement for Restaurant Operations at the Chuck Corica Golf Complex ("Original Concession Agreement") by which Concessionaire is the sole provider of food and beverages at the Golf Complex. Capital terms not otherwise defined herein shall have the meanings given them in the Original Concession Agreement.

B. Under the terms of a First Amendment to Concession Agreement for Restaurant Operations at the Chuck Corica Golf Complex dated December 28, 2017 ("First Concession Agreement Amendment"), Concessionaire agreed to construct a 4,000-square-foot event center and banquet facility ("Event Center") within the Chuck Corica Golf Complex ("Golf Complex") by June 30, 2018, later extended by City staff to December 31, 2018.

C. Under the terms of a Second Amendment Concession Agreement for Restaurant Operations at the Chuck Corica Golf Complex dated April 19, 2019 ("Second Concession Agreement Amendment"), the City agreed to further extend the deadline for completing the Event Center to December 31, 2019. As of the Third Amendment Date, the Event Center has not been constructed. The Original Concession Agreement as amended by the First Concession Agreement Amendment and Second Concession Agreement is referred to herein as the "Concession Agreement".

D. On September 1, 2020, Greenway sent City a letter outlining a variety of contract and tort claims that Greenway is asserting against the City and Concessionaire that are predicated on Greenway's allegations that City and Concessionaire are in breach of certain contractual obligations related to the Event Center, and that Greenway's claim that it has suffered economic damages as a result of said alleged breaches. City and Concessionaire deny that they have breached any such obligations to Greenway. Moreover, Concessionaire has alleged that its inability to construct the Event Center is a result of Greenway's failure to perform certain necessary grading and site preparation work that Greenway promised to perform, Greenway's and/or City's failure to disclose to Concessionaire certain site conditions related to the landfill formerly located at the Golf Complex, and Greenway's and/or City's failure to disclose that other governmental agencies including the Alameda County Department of Environmental Health, the California Department of Resources Recycling and Recovery ("CalRecycle") and Federal Emergency Management Agency ("FEMA") have jurisdiction over the Golf Complex, which agencies exercised their jurisdiction to prohibit Concessionaire from constructing the contemplated Event Center. City's, Greenway's and Concessionaire's respective claims, allegations and asserted defenses related to the Event Center are collectively referred to herein as the "Dispute".

E. City, Concessionaire and Greenway have engaged in protracted settlement negotiations in order to reach an amicable and cost-effective resolution of the Dispute and

related issues without resort to litigation. As a result of those discussions, the City, Greenway, and Concessionaire have reached a settlement agreement ("Settlement Agreement") dated   April  , 2021, the terms of which call for Concessionaire to relinquish some of the food and beverage sales exclusivity rights that Concessionaire enjoyed at the Golf Complex pursuant to the terms of the Concession Agreement. The Settlement Agreement contemplates, and its effectiveness is conditioned upon, City and Concessionaire entering into this Third Concession Agreement Amendment, and City and Greenway concurrently entering into a third amendment to the Greenway Lease ("Third Lease Amendment") in the forms specified in the Settlement Agreement.

F. The City and Concessionaire, by way of this Third Concession Agreement Amendment, now wish to further amend the Concession Agreement to reflect, and make it consistent with, the terms and conditions that have been agreed to by City, Greenway and Concessionaire in the Settlement Agreement.

NOW, THEREFORE, in consideration of the mutual promises in the Concession Agreement, the Settlement Agreement, and this Third Concession Agreement Amendment, the parties agree as follows:

1. This Third Concession Agreement Amendment shall be effective upon approval by the City Council of the City and full execution of this Third Concession Agreement Amendment by the parties. This Third Concession Agreement Amendment is also contingent upon City's approval of the Third Lease Amendment. If Final Approval (as defined in the Settlement Agreement) of the Third Lease Amendment has not occurred on or before the date that is 120 days following the effective date of this Third Concession Agreement Amendment or such later date as City and Concessionaire may mutually agree each in its sole discretion, then this Third Concession Agreement Amendment shall automatically terminate.

2. Section 2.01, entitled "Definition of Premises", is hereby amended and restated in its entirety to read as follows:

"2.01. Definition of Premises. As used in the Original Concession Agreement, as amended by the First Concession Agreement Amendment, the Second Concession Agreement Amendment, and the Third Concession Agreement Amendment, the term "Premises" means and includes (a) the Building, which contains a restaurant and bar facility, of approximately four thousand five hundred (4,500) square feet in size (the "Building"), (b) the trash enclosure and storage lockers and containers at the rear of the Building, and (c) that portion of the outdoor patio adjacent to the Building depicted and labeled "Jim's Patio Area" in Exhibit "A" hereto (collectively, the "Building and Patio Area"). For avoidance of doubt, the Building and Patio Area does not include the paved access way at the rear of the Building that is part of the Greenway Premises but which Concessionaire shall have access to and from as set forth in the Settlement Agreement."

3. Section 2.03, entitled "Use", is hereby amended and restated in its entirety to read as follows:

"2.03. Use. Concessionaire shall maintain, operate and use the Building and Patio Area for a restaurant and bar, catering and banquet services. With the exception of tables, chairs and sun umbrella's used by Jim's on a daily basis during business hours for providing outdoor table service to patrons of the restaurant, no furniture, equipment, inventory or other personal property shall be stored on the Jim's Patio Area or outside

the footprint of the Building and Patio Area. Refuse shall be properly disposed of and stored within trash bins located inside the Building or in the trash container at the rear of the Building. To the extent that any food and beverage services are provided to patrons of the Golf Complex at the NC Snack Shack, the Food Truck, and/or the SC Snack Shack, as those terms are defined in the Concession Agreement, such food and beverage services shall, as of the date of this Third Concession Agreement Amendment, be provided by Greenway pursuant to the terms of the Third Lease Amendment between Greenway and the City."

4. Sections 6.02 (Event Center and Enclosed Patio), 6.03 (Financial Commitment), 6.08 (Property) and 6.09 (SC Snack Shack) are hereby deleted in their entirety.

5. Section 7.01 (Operations) is hereby amended and restated in its entirety to read as follows:

"7.01 Operations. Except as otherwise expressly provided in the Settlement Agreement with respect to Greenway's right to use the Jim's Patio Area when Jim's is not open for business to the public, Concessionaire shall have the exclusive right to provide food and beverage service within the Building and Patio Area. Such food and beverage service shall include the operation of a restaurant and bar facility and may include catering and banquet service within the Premises."

6. Exhibit A to the Concession Agreement is hereby deleted and replaced with the attached Exhibit A to this Third Concession Agreement Amendment.

7. Nothing herein shall be deemed to modify the ongoing rights or obligations of Greenway to Concessionaire or Concessionaire to Greenway as set forth in the Settlement Agreement.

8. Except as expressly amended by this Third Concession Agreement Amendment, the Concession Agreement shall continue in full force and effect, and is hereby reaffirmed.

9. This Third Concession Agreement Amendment, together with the Settlement Agreement, sets forth the entire understanding of the parties with respect to the subject matter hereof.

10. This Third Concession Agreement Amendment may be executed in multiple counterparts each of which is deemed an original but together constitute one and the same instrument. The Third Concession Agreement Amendment may be transmitted in "pdf" format and each party has the right to rely upon a pdf counterpart of this Third Concession Agreement Amendment signed by the other party to the same extent as if such party has received an original counterpart.

*\* Signatures on Next Page \**

IN WITNESS WHEREOF, the parties have caused this Third Concession Agreement Amendment to be executed on the day and year first written above.

DIALEMI, INC.,  
a California corporation

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: President

CITY OF ALAMEDA,  
a California municipal corporation

By: \_\_\_\_\_  
Print Name: Eric Levitt  
Title: City Manager

RECOMMENDED FOR APPROVAL:

By: \_\_\_\_\_  
Print Name: Amy Wooldridge  
Title: Recreation and Parks Director

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Print Name: Yibin Shen  
Title: City Attorney

## EXHIBIT A

