

FIRST AMENDMENT TO CONCESSION AGREEMENT FOR RESTAURANT OPERATIONS

AT THE CHUCK CORICA GOLF COMPLEX

THIS FIRST AMENDMENT to CONCESSION AGREEMENT FOR RESTAURANT OPERATIONS AT THE CHUCK CORICA GOLF COMPLEX ("First Concession Agreement Amendment") is made and entered into as of this ____ day of December, 2017 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 1, 2016, City and Concessionaire entered into that certain Concession Agreement for Restaurant Operations at the Chuck Corica Golf Complex ("Current Concession Agreement") by which Concessionaire is the sole provider of food and beverage services at the Golf Complex. Capital terms not otherwise defined herein shall have the meanings given them in the Current Concession Agreement.
- B. The Current Concession Agreement further provides that Concessionaire will either (a) be required to or (b) have the option to elect to make certain improvements to the existing restaurant facilities, including an enclosed patio for golf banquets and events.
- C. Following the approval of the Current Concession Agreement, the City, Concessionaire and the Golf Tenant, discussed revising the improvements to include an Event Center and a concept plan for the Event Center was thereafter developed and approved by the City's Golf Commission and Recreation and Parks Commission.
- D. The City's Golf Commission thereafter approved the final design for improvements to the patio area and the Event Center and the City's Planning Board has approved a use permit and design review for the improvements.
- E. City and Concessionaire now wish by the First Concession Agreement to amend the Current Concession Agreement to reflect the revisions to the improvements to be made by Concessionaire and a revised timetable for making such improvements.

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

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

"2.01. Definition of Premises. As used in this Agreement, as amended by this First Current Concession Agreement, the term "Premises" means and currently consists of (a) the Building, which contains a restaurant and bar facility, of approximately four thousand five hundred (4,500) square feet in size (the "Building") and (b) the exclusive rights to use (i) a portion of an outdoor patio adjacent to the Building (collectively, the "Building and Patio Area") and (ii) a Snack Shack located on the North Course (the "NC Snack Shack"). Concessionaire may, in its discretion, elect to add a food truck at the driving range (the "Food Truck") and may, in its discretion, elect to construct a Snack Shack on the South Course in the future (the "SC Snack Shack"), pending final approval of the City Manager's Designee (as defined in Section 3.04) and Concessionaire's having

obtained any required City permits. Concessionaire is (i) required to make improvements to the existing facility and construct an Event Center located approximately thirty (30) feet to the southwest of the Building (the "Event Center") and may elect to construct a new enclosed patio (the "Enclosed Patio"), both as provided in Section 6.02. After Concessionaire constructs the Event Center and, in the event Concessionaire elects, in its discretion, to construct the Enclosed Patio and/or the SC Snack Shack, each such construction shall become a part of and included in the definition of the Premises."

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

"2.03 Use. Concessionaire shall maintain, operate and use the Building, the Patio Area, the Event Center (once constructed) and, in the event Concessionaire elects in its discretion to construct the Enclosed Patio, (once constructed) for a restaurant and bar, catering and banquet services. Concessionaire shall use the NC Snack Shack (and the Food Truck, if added as provided in Section 2.01 and the SC Snack Shack, if constructed by Concessionaire as provided in Section 2.01 and Article 6) to provide food and beverage service to patrons of the Golf Course."

3. Section 4.03 is amended and restated in its entirety to read as follows:

"4.03 "Gross Revenues," as used in this Agreement, as amended, shall mean the entire amount of the actual sales price, whether for cash or otherwise, from all food and beverage sales and services (less credit card discounts or fees, employee meals, and no-fee promotional transactions) in, upon or from any part of the Premises including the Event Center (once constructed), the Enclosed Patio (in the event Concessionaire elects to construct the Enclosed Patio), and the Food Truck (if added by Concessionaire) and the SC Snack Shack (in the event Concessionaire elects to construct the SC Snack Shack). Gross Revenues shall include revenues from banquets and catering. Gross Revenues shall include receipts by electronic media; mail or telephone orders received or filled at the Premises; all deposits not refunded to purchasers; orders taken for food and beverage sales and services for Concessionaire's Golf Complex Business, although such orders may be filled, billed, or collected elsewhere; and sales upon installment, credit or lay-away, each of which shall be treated as a sale for the full price in the months during which such sale is made, irrespective of the time when Concessionaire shall receive payment from its customer. No deductions shall be allowed for uncollected or uncollectable credit accounts.

Gross Revenues shall not include: (i) any food and beverage and other sales and services filled, billed and collected in connection with Concessionaire's Other Business or, subject to the City's agreement, any other new business owned or operated by Concessionaire in the future; (ii) service charges (tips) which are collected by Concessionaire, except for the portion (if any) thereof retained by Concessionaire; (iii) any sums collected and paid out by Concessionaire for any sales or excise taxes imposed by and accounted for by Concessionaire to any duly constituted government authority; (iv) the exchange of merchandise between Concessionaire and its affiliates where such exchange of merchandise is made solely for the convenient operation of the business of Concessionaire and not for the purpose of consummating a sale; (v) the amount of returns to shippers, vendors or manufacturers; (vi) proceeds from the sale of fixtures, equipment or property that is not stock in trade; (vii) any sum received by Concessionaire in settlement of claims for loss or damage to merchandise; and (viii) "Bulk Sales" as such term is defined in Section 6102(a)(3) of the California Uniform Commercial Code. There shall be deductible from Gross Revenues the amount of any cash or credit refund made upon any sale in or from the Premises, previously

included in Gross Revenues hereunder, not to exceed the sum so previously included, where any goods or merchandise sold are thereafter returned by the purchaser and accepted by Concessionaire."

4. Section 6.02, Enclosed Patio, is amended and restated in its entirety to read as follows:

"6.02 Event Center and Enclosed Patio. In conjunction with Section 2.01, Concessionaire, at Concessionaire's sole expense, shall within ninety (90) days of the approval of this First Amendment, submit plans for an approximately four thousand (4,000) square feet Event Center, as generally shown on the attached **Exhibit A**, and shall complete construction of the Event Center by June 30, 2018. In the event Concessionaire elects to construct the Enclosed Patio and City authorizes Concessionaire in writing to construct the Enclosed Patio, Concessionaire shall complete construction thereof within twelve (12) months thereafter. Concessionaire shall pay all costs relative to the construction of the Event Center, and the Enclosed Patio in the event Concessionaire elects to construct the Enclosed Patio, including design, environmental review, permit processing, building permits and construction. If the City's Building Department determines that a fire sprinkler is required, the City will be responsible for and pay the fire meter installation costs and Concessionaire shall be responsible for the installation of a sprinkler system on the inside of the Event Center and to ensure there is appropriate fire pipe to connect to, from Island Drive to the Premises. "

5. Section 6.03, Financial Commitment, is amended and restated in its entirety to read as follows:

"6.03 Financial Commitment. To assure the City that the Event Center and, the Enclosed Patio, in the event Concessionaire elects, in its discretion, to construct the Enclosed Patio, are started and completed as provided in this Article 6, Concessionaire shall within fifteen (15) days of the approval of the plans for the Event Center provide to the City, in a form reasonably acceptable to the City Attorney, a letter of credit from a financial institution in the estimated amount to construct the Event Center and the Enclosed Patio, in the event Concessionaire elects to construct the Enclosed Patio. The letter of credit shall be in the favor of the City and shall provide that the City shall have the unilateral right to draw on the letter of credit if Concessionaire has failed either to start construction as provided in this Article 6 or has started construction but is not diligently pursuing such construction such that the construction of the Event Center and/or the Enclosed Patio, in the event Concessionaire elects to construct the Enclosed Patio, will not be completed as provided in this Article 6. In the alternative, Concessionaire may provide to the City, in a form acceptable to the City Attorney, payment, performance and warranty bonds from a surety company acceptable to the City. The Payment and performance bonds shall each be in the full amount of the estimated amount to construct the Event Center and Enclosed Patio, in the event Concessionaire elects to construct the Enclosed Patio, and the warranty bond shall be in the amount of ten percent (10%) of the estimated amount to construct the Event Center and Enclosed Patio, in the event Concessionaire elects to construct the Enclosed Patio."

6. Section 6.08, Property, is amended to read as follows:

"6.08 Property. City acknowledges that for Concessionaire to construct the Event Center and the Enclosed Patio (in the event Concessionaire elects to construct the Enclosed Patio) and, in the event Concessionaire elects to purchase the Food Truck and/or to construct the SC Snack Shack, Concessionaire will need to obtain a loan ("Concessionaire's Construction Loan") from a third

party lender ("Concessionaire's Lender") which will require Concessionaire to secure Concessionaire's Construction Loan by assigning and granting a security interest in Concessionaire's FF&E, which include the furniture, fixtures, materials, equipment and other personal property used in connection with the construction of the Event Center and in the event Concessionaire elects to construct the Enclosed Patio and/or the SC Snack Shack, the Enclosed Patio and/or SC Snack Shack (as applicable) and perfecting same by the filing of UCC-1 Financing Statements with the California Secretary of State and a UCC-1 Financing Statement "fixture filing" with the Alameda County Recorder, all pursuant to Division 9 of the California Uniform Commercial Code. Except for the foregoing purposes, Concessionaire shall not encumber, mortgage or transfer any City property and shall not permit any condition to exist which would then, or upon the passage of time, create any lien or encumbrance on any City property."

7. Section 8.02, Insurance, is amended to read as follows:

"8.02 Insurance. On or before the commencement of the Term, Concessionaire shall furnish City with certificates showing the type, amount, class of operations covered, effective dates and dates of expiration of insurance coverage in Concessionaire shall furnish City with certificates showing the type, amount, class of operations covered, effective dates of expiration of insurance coverage in compliance with paragraphs 8.02 A, B, C, and D. Such certificates, which do not limit Concessionaire's indemnification obligations as provided in Section 8.01, shall also contain substantially the following statement: "Should any of the above insurance covered by this certificate be canceled or coverage reduced before the expiration date thereof, the insurer affording coverage shall provide thirty (30) days' advance written notice to the City of Alameda by certified mail, Attention: Risk Manager." Concessionaire shall maintain in force at all times during the performance of this Agreement all appropriate coverage of insurance required by this Agreement with an insurance company that is acceptable to City and licensed to do insurance business in the State of California. Endorsements naming the City as additional insured shall be submitted with the insurance certificates.

City, its City Council, boards and commissions, officers, employees and volunteers, shall be named as additional insureds under all insurance coverages. The naming of the additional insureds shall not affect any recovery to which such additional insureds would be entitled under the policy if not named as such additional insureds. An additional insured shall not be held liable for any premium, deductible portion of any loss, or expense of any nature on the policy or any extension thereof. Any other insurance held by an additional insured shall not be required to contribute anything toward any loss or expense covered by the insurance provided by the policy.

A. Coverage

Concessionaire shall maintain the following insurance coverage:

Workers' Compensation and Employer's Liability:

- Statutory coverage as required by the State of California

Liability:

- Commercial general liability insurance and contractual liabilities for performance of indemnity obligations, for limits of liability not less than the following:
 - Bodily Injury and Property Damage:
 - \$2,000,000 each occurrence
 - \$4,000,000 annual aggregate
 - Personal Injury Liability:
 - \$2,000,000 each occurrence
 - \$4,000,000 annual aggregate
 - Liquor Liability:
 - \$2,000,000 each occurrence
 - \$4,000,000 annual aggregate
- ISO Special Form (formerly "All Risks") insurance covering the Premises (including the Event Center (once constructed), the Enclosed Patio (once constructed), the NC Snack Shack, the SC Snack Shack (if constructed), furniture, fixtures, and all other improvements, alterations and additions to the Premises.
- Business Interruption, loss of income and extra expense coverage for a period of one year.

Automotive

Comprehensive automotive liability coverage in the following minimum limits:

- \$1,000,000 each occurrence
- \$2,000,000 annual aggregate

"ISO Special Form" (formerly "All Risks") property insurance covering trade fixtures, merchandise and other personal property from time to time, on or upon the Premises, in an amount not less than one hundred percent (100%) of their actual replacement cost.

B. Subrogation Waiver. In the event of loss due to any of the perils for which Concessionaire has agreed to provide commercial general and automotive liability insurance, Concessionaire shall look solely to its insurance for recovery. Concessionaire will grant to City, on behalf of any insurer providing commercial general and automotive liability insurance to either Concessionaire or City with respect to the services of Concessionaire herein, a waiver of any right to subrogation which any such insurer of Concessionaire may acquire against City by virtue of the payment of any loss under such insurance.

C. Failure to Secure. If Concessionaire at any time during the Term should fail to secure or maintain the foregoing insurance, City shall, upon five (5) business days prior written notice to Concessionaire and Concessionaire's failure to secure such insurance within such time period, be permitted to obtain such insurance in the Concessionaire's name or as an agent of the Concessionaire and shall be compensated by the Concessionaire for the costs of the insurance premiums at the maximum rate permitted by law and computed from the date written notice is received that the premiums have not been paid.

D. Sufficiency of Insurance. The insurance limits required by City are not represented as being sufficient to protect Concessionaire. Concessionaire is advised to confer with Concessionaire's insurance broker to determine adequate coverage for Concessionaire."

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

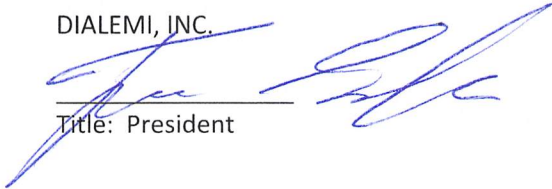
Signatures on Next Page

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

CITY OF ALAMEDA

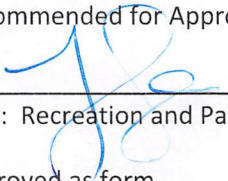
Title: City Manager

DIALEMI, INC.



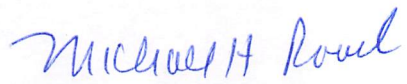
Title: President

Recommended for Approval



Title: Recreation and Parks Director

Approved as form

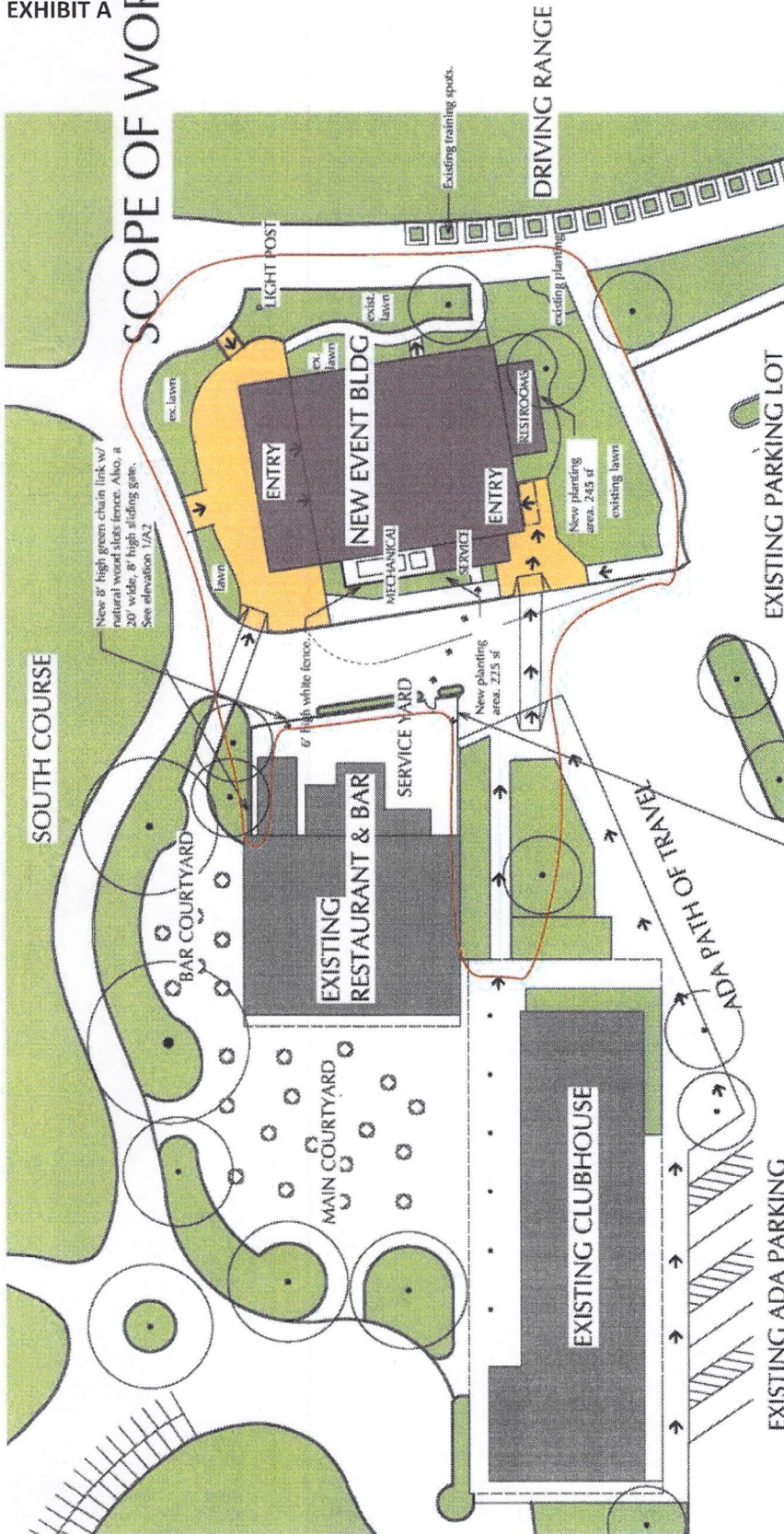


Michael H. Roush
Assistant City Attorney

Exhibit A Site Plan for the Event Center

EXHIBIT A

SCOPE OF WORK



PROPOSED SITE PLAN





CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
11/21/2017

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS 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 L Cua Insurance Agency, LLC 156 S. Spruce Avenue, Suite 207B South San Francisco, CA 94080 License #: 0K86648, 0H83125		CONTACT NAME: Lawrence John Cua PHONE (A/C, No, Ext): 650-571-8188 FAX (A/C, No): 650-571-0823 E-MAIL ADDRESS: lcua@farmersagent.com	
INSURED ATHANASIOS C GEANEKOS DIALEMI INC. 2333 LINCOLN AVE ALAMEDA, CA 94501		INSURER(S) AFFORDING COVERAGE INSURER A: Truck Insurance Exchange NAIC # 21709 INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:	

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	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:	Y	N	60300-27-59	01/01/2017	01/01/2018	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence)
	\$ 2,000,000						
	MED EXP (Any one person)						
	\$ 5,000						
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY			60300-27-59	01/01/2017	01/01/2018	PERSONAL & ADV INJURY
	\$ 2,000,000						
	GENERAL AGGREGATE						
	\$ 4,000,000						
	UMBRELLA LIAB EXCESS LIAB DED RETENTION \$						PRODUCTS - COMP/OP AGG
	\$ 4,000,000						
	\$						
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A				COMBINED SINGLE LIMIT (Ea accident)
	\$						
	BODILY INJURY (Per person)						
	\$						
A	Business Property	Y	N	60300-27-59	01/01/2017	01/01/2018	BODILY INJURY (Per accident)
	\$						
	PROPERTY DAMAGE (Per accident)						
	\$						
							EACH OCCURRENCE
	\$						
	AGGREGATE						
	\$						
							PER STATUTE
	OTH-ER						
	E.L. EACH ACCIDENT						
	\$						
							E.L. DISEASE - EA EMPLOYEE
	\$						
	E.L. DISEASE - POLICY LIMIT						
	\$						
A	Business Property	Y	N	60300-27-59	01/01/2017	01/01/2018	Limit
	\$74,600						

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

Location: 1 CLUBHOUSE MEMORIAL RD, ALAMEDA, CA 94502

Per attached endorsements, below Certificate Holder is listed as an Additional Insured and Loss Payee on policy.

CERTIFICATE HOLDER THE CITY OF ALAMEDA, ITS COUNCIL AND THEIR RESPECTIVE BOARD, COMMISSIONS, OFFICERS, EMPLOYEES, AGENTS, AND VOLUNTEERS 1 CLUBHOUSE MEMORIAL RD, ALAMEDA, CA 94502	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE Lawrence John Cua
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ENDORSEMENT

Effective

Date 01/01/17

60300-27-59

Policy Number
of the Company designated
in the Declarations

ADDITIONAL INSURED -BP04500197
OWNERS, LESSEES OR CONTRACTORS
THE CITY OF ALAMEDA, ITS
COUNCIL AND THEIR RESPECTIVE
BOARD, COMMISSIONS, OFFICERS, EMPLOYEES, AGENTS, AND VOLUNTEERS

This endorsement is part of your policy. It supersedes and controls anything to the contrary. It is otherwise subject to all other terms of the policy.

COUNTERSIGNED _____

(Date)