

FIRST AMENDMENT TO LEASE

THIS FIRST AMENDMENT TO LEASE AGREEMENT ("**First Amendment**") dated for reference purposes only as of _____, 2018 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 ("**Lease**") 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 "**Premises**") together with certain Personal Property, all as further described and depicted in the Lease; and

B. WHEREAS, in connection with implementing its Repairs and Rehabilitation obligations under article 9 of the Lease, Tenant determined that certain newly discovered conditions warrant a modification of its previous plans as specified in Lease Exhibit D, specifically the Drainage Improvement Plan; the Trees, Fairways, Roughs and Greens Improvement Plan and On Course Food and Beverage Service; and

C. WHEREAS, during the process of evaluating the North Course Plans, Tenant determined that it would be beneficial to its operation of the Golf Complex, to implement a more extensive scope of work on the North Course that originally anticipated, upgrade the clubhouse facility, replace the main water supply lines and install a dedicated fire line, as well as improving the property waterways; and

D. WHEREAS, revising the Plans and undertaking the additional scope of work as outlined above will be mutually beneficial to Landlord and Tenant; and

E. WHEREAS, Tenant has requested, and Landlord has agreed, to amend the Lease, 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. Effective Date. The Effective date of this First Amendment shall be the date that is 1 (one) business day after this First Amendment has been approved by the City Council, in its sole and absolute discretion, the date of which approval shall be deemed to be the effective date of an ordinance approving this First Amendment as required by the city charter.

3. Amendment to Summary of Information. Landlord and Tenant agree that the following sections of the Summary of Information as set forth on pages i – v of the Lease are hereby deleted and replaced with the following:

5.1	Length of initial Term:	Forty (40) years.
5.2	Commencement Date:	January 1, 2013
5.3	Expiration Date of initial Term:	December 31, 2053.
5.4	Tenant's Option to Extend:	One (1) option to extend for a ten (10) year term (" Option Period ").
6.2	Years 5-8:	Minimum rent of \$75,000 per Lease Year (as defined hereafter) in equal monthly payments commencing in Year 5 and continuing through Lease Year 8.
6.3	Years 9-10	Minimum rent of \$175,000 per Lease Year, in equal monthly payments commencing in Year 9 and continuing through Lease Year 10.
6.4	Years 11-20:	The greater of (a) Minimum Rent of \$300,000 per Lease Year in equal monthly payments or (b) Percentage Rent from the gross receipts received from the following rent categories (categories (a) + (b) = Gross Revenues as otherwise defined in the Lease) commencing in Lease Year 11, to be paid monthly through Lease Year 20 as follows: (a) 8% of golf related gross receipts, including green fees, cart rentals, range balls, retail merchandise, and ancillary items (includes clothing apparel, shoes, balls, accessories and golf equipment), tournament, membership fees and revenue from the Linksoul License (including License Fees and Percentage Fees) up to \$4,000,000 (adjusted annually by CPI) and 12% of amount above the \$4,000,000. (b) 3% for the sale of gross receipts from par 3 fees and club repair.

6.5	Years 21-40:	The greater of (a) Minimum Rent of \$350,000 per Lease Year, subject to adjustment each Lease Year based upon the Consumer Price Index – All Items for the San Francisco-Oakland-San Jose Area, All Urban Consumers, published by the Bureau of Labor Statistics of the United States Department of Labor (Base Year 2015=100), or such successor index as may be established to provide a measure of the current purchasing power of the dollar in the San Francisco Bay area, paid in equal monthly payments or (b) Percentage Rent from the gross receipts received from the rent categories (categories (a) and (b) = Gross Revenues) commencing in Lease Year 21, to be paid monthly through Lease Year 40 as follows: (a) 10% of golf related gross receipts (to include green fees, cart rentals, range balls, retail merchandise, and ancillary items (includes clothing apparel, shoes, balls, accessories and golf equipment) tournament and membership fees and revenue from the Linksoul License (including License Fees and Percentage Fees) up to \$4,000,000 (adjusted annually by CPI) and 12% of amounts above \$4,000,000. (b) 3% for the sale of gross receipts from par 3 fees, accessories, golf equipment, club repair).
6.6	Option Period:	Same as Years 21-40 above.
6.7	Capital Reserve Payments:	Capital Improvement Payments to City in the amount of 3% to be deducted from Gross Revenues and set aside in a Capital Improvement Reserve Fund to be used exclusively for capital improvements to the Golf Complex approved jointly by City and Tenant commencing on July 1, 2027 ("Capital Improvement Reserve Fund"). Capital Improvement Payments shall be made to the Capital Improvement Reserve Fund at all times that the Capital Improvement Reserve Fund balance is less than \$250,000 ("Capital Improvement Reserve Fund Maximum") or less. Capital Improvement Payments shall be based upon the prior year's annual Gross Revenues multiplied by 3% and paid by Tenant in twelve (12) equal monthly installments. The amount to be paid by Tenant to the Capital Improvement Reserve Fund shall be calculated on annual basis at the time of calculation of Percentage Rent and adjusted accordingly.

4. Lease Year Defined: The term "Lease Year" in Section 4.6 of the Lease means the one year period beginning on January 1 and ending on December 31 of each year during the term of the Lease, as amended by this First Amendment.

5. North Course Plan Revisions.

5.1 Course Drains and Contouring. To resolve continuing drainage problems on the North Course, Tenant will raise the elevation of the course to a level necessary to achieve effective drainage with approved import material, as available, regrade all holes and install new drainage pipes. A grading plan shall be developed by Tenant and submitted to the City and all governing or regulatory agencies from whom approval is required prior to commencement of work.

5.2 Golf Course Waterways. Tenant shall revise its Drainage Improvement Plans to include dredging of storm water retention and irrigation ponds to remove muck and debris, adding suitable water plants to improve appearance and reduce odors, enlarge ponds to increase capacity of storm water run-off and reshape banks to control erosion and improve appearance and improve water movement. Said revised plans will address needed improvement works in the storm water retention ponds, federal/state managed canals and waterways and the irrigation pond. Tenant shall obtain approvals from all governmental or regulatory agencies from whom such approval is required before commencement of work.

5.3 Trees, Fairways, Roughs and Greens Improvement Plan. Tenant shall fully repair and rebuild all greens, tees, fairways, roughs and sand bunkers to industry standards and to upgrade the underlying infrastructure and drainage to sustain and optimize quality playing surface year-round. Said repairs shall include: reshaping and contouring of each hole to allow for proper surface and subsurface drainage; reduce water use requirements; and, provide for a consistent year-round high quality surface. Said work shall be sequenced such that at all times nine-holes of the North Course shall be open and available for use by the public at all times.

5.4 Additional Improvements.

(a) Fire Sprinkler System and Main Water Supply Lines. Tenant shall install a dedicated fire sprinkler line to the new event center and a separate main water supply line from Island Drive Road to the Golf Complex.

(b) Entryway on Memorial Drive. In conjunction with the repair of the North Course, Tenant shall develop attractive rolling grass mounds adjacent to the entry road along the first hole on the North Course. Tenant shall work with the Golf Commission to establish a memorial fund for the purchase of trees to line the roadway along the mounds. The cost of building the mounds, grassing, planting and care for memorial trees shall be at Tenant's expense.

- (c) Clubhouse Updates. Tenant shall re-face walls, upgrade lights and tile walkways for the golf clubhouse exterior; update existing golf clubhouse landscaping; improve the restrooms with new fixtures, tiles and lighting; remodel the practice pro shop and paint the exterior; and refresh the pro shop with new windows, flooring, wall coverings, fixtures and lighting. The Parties agree that said work shall be contracted separately from and not considered a part of the North Course Plan Revisions as set forth herein above.

6. Parking Lot Resurfacing. Article 10 of the Lease notwithstanding, Landlord agrees to repair resurface and restripe the parking lot, on a one time basis, within twenty-four (24) months after the Effective Date of this First Amendment. Upon completion of said work, ongoing maintenance of the parking lot shall be the sole responsibility and obligation of Tenant.

7. Prevailing Wages and Related Requirements. This First Amendment has been drafted with the intention that construction of the North Course Plan Revisions, or any portion of the North Course, shall be subject to the requirement of payment of prevailing wages or related obligations set forth in Labor Code Section 1720 et seq., and Section 2-67 of the Alameda Municipal Code. Notwithstanding the foregoing, nothing in this First Amendment constitutes a representation or warranty by the City regarding the applicability of the provision of Labor Code Section 1720 et seq., and/or Section 2-67 of the Alameda Municipal Code to any other work in or about the Premises and the Tenant shall comply with any applicable laws, rules and regulations related to construction wages and other construction matters, if and to the extent applicable to any Tenant Improvements, Capital Improvements or other alterations made by or on behalf of Tenant to the Premises. With regard to any construction of the North Course Plan Revisions, or any portion of the North Course or any other work on the Premises performed after the Effective Date hereof, Tenant shall indemnify, defend (with counsel reasonably acceptable to the City), and hold harmless the City and its employees, officers, property managers and agents, against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including the Tenant and the Contractors) to pay prevailing wages as determined pursuant to Labor Code Sections 1720 et seq., to employ apprentices pursuant to Labor Code Sections 1777.5 et seq., or to comply with the other applicable provisions of Labor Code Sections 1720 et seq. and 1777.5 et seq., to meet the conditions of Section 1771.4 of the Labor Code, and the implementing regulations of the DIR in connection with the construction of the Project and to comply with any other requirements related to public contracting. The Tenant's obligation to indemnify, defend and hold harmless under this Section 8 shall survive termination of this Lease, and shall be interpreted broadly so as to apply to any legal or administrative proceeding, arbitration, or enforcement action.

8. Certified Access Specialist Disclosure. In accordance with Civil Code Section 1938, Landlord hereby discloses that the Premises have not undergone inspection by a Certified Access Specialist for purposes of determining whether the property has or does not meet all applicable construction related accessibility standards pursuant to Civil Code Section 55.53. A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on

the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the Premises. The forgoing notwithstanding, the parties agree that Tenant shall be solely responsible for the payment of all fees for the CASp inspection. The cost of making any repairs necessary to correct violations of construction-related accessibility standards within the Premises shall be negotiated by the Parties.

9. Miscellaneous

- 9.1 Entire Agreement. This First Amendment sets forth the entire agreement between the parties with respect to the matters set forth herein. There have been no additional oral or written representations or agreements.
- 9.2 Ratification of Lease. Except as herein modified or amended, the provisions, conditions and terms of the Lease shall remain unchanged and in full force and effect. In case of any inconsistencies between the provisions of the Lease and this First Amendment, the provisions of this First Amendment shall govern and control.
- 9.3 Defined Terms. Capitalized terms used in this First Amendment shall have the same definitions as set forth in the Lease to the extent that such capitalized terms are defined therein and not redefined in this First Amendment.
- 9.4 Brokers. Tenant represents to Landlord that it has dealt with no broker in connection with this First Amendment. Tenant agrees to defend, indemnify and hold Landlord harmless from all claims of any brokers claiming to have represented Tenant in connection with this First Amendment.
- 9.5 Counterparts. This First Amendment may be executed in multiple counterparts each of which is deemed an original but together constitutes one and the same instrument. This First Amendment may be transmitted in "pdf" format and each party has the right to rely upon a pdf counterpart of this First Amendment signed by the other party to the same extent as if such party had received an original counterpart.

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

LANDLORD:

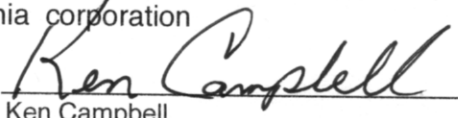
CITY OF ALAMEDA,
a charter city and municipal corporation

By: _____

Jill Keimach
City Manager

TENANT:

GREENWAY GOLF ASSOCIATES, INC., a
California corporation

By: 

Name: Ken Campbell

Its: Secretary

Approved as to Form

By:

Janet C. Kern
City Attorney