
CHUCK CORICA GOLF COMPLEX

LEASE AGREEMENT

CITY OF ALAMEDA, a California municipal corporation,

and

GREENWAY GOLF ASSOCIATES, INC., a California corporation.

Dated August 1, 2012

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EXHIBITS:

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Exhibit B-1	Personal Property
Exhibit B-2	Third Party Leases (Yamaha Municipal Master Lease Agreement dated August 1, 2011, between Yamaha Motor Corporation, U.S.A. and City of Alameda)
Exhibit C	Repairs and Rehabilitation
Exhibit D	Drainage and Irrigation Issues
Exhibit E	Tenant Improvements
Exhibit F	Maintenance Standards
Exhibit G	Title Report (North American Title Company Preliminary Report dated May 22, 2012, for 1 Maitland Drive, Alameda)

LEASE AGREEMENT

THIS LEASE AGREEMENT (this "**Agreement**"), dated as of the date set forth below in Summary of Information ("**Summary**") by and between CITY OF ALAMEDA, a California municipal corporation ("**City**"), and GREENWAY GOLF ASSOCIATES, INC., a California corporation ("**Tenant**").

Summary of Information

TERMS OF AGREEMENT	DESCRIPTION	SECTION
1. Date:		
1.1 Reference Date:	August July 1, 2012	
1.2 Effective Date:	The date that is the later of (i) the effective date of the ordinance authorizing this Agreement and (ii) the date of the City Attorney's approval of the form of this Agreement (" Effective Date ").	
2. Leased Premises:	Chuck Corica Golf Complex (" Complex "), located in the City of Alameda, CA 94502, 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 "), 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 and City 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
3. Personal Property:	Tenant shall pay City for the Personal Property it elects to purchase, as described in Exhibit B-1 Personal Property and Exhibit B-2 Third Party Leases , the sum of Ninety-Four Thousand Two Hundred Eighty-Eight Dollars (\$ 94,288.00), as consideration for the transfer and sale of the Personal Property (" Personal Property Consideration ") in equal monthly installments, plus interest of five percent (5%) per annum, over a period of forty-eight (48) months, commencing on the Commencement Date as defined below. The Personal Property Consideration may be adjusted slightly at the Commencement Date to reflect any adjustments in the actual Personal Property	Section 2

transferred on the Commencement Date, based on City's and Tenant's inspection at the Commencement Date.

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), and excluding food and beverage operations. Section 3

5. Agreement Term: Section 4

5.1 Length of Initial Term: Twenty (20) years.

5.2 Commencement Date: When City tenders possession of the Premises to Tenant, which is estimated to be thirty (30) days after the Effective Date, but in no event will the City deliver possession later than one hundred twenty (120) days after the Effective Date ("**Commencement Date**").

5.3 Expiration Date of Initial Term: Twenty (20) years after the Commencement Date.

5.4 Tenant's Option to Extend: One (1) option to extend for one five (5) year term ("**Option Period**").

6. Rent: Section 5

6.1 Years 1-4: Minimum Rent of \$75,000 per Lease Year (as defined hereinafter) in equal monthly payments commencing on the Commencement Date and continuing through Lease Year 4, and those number of months in Lease Year 5 equal to the number of months from July 1, 2012 to the Commencement Date.

6.2 Years 5-8: The greater of (a) Minimum Rent of \$300,000 per Lease Year in equal monthly payments or (b) Percentage Rent of 8% of Gross Revenues up to \$4,000,000 and 12% of Gross Revenues over \$4,000,000, commencing in Lease Year 5, to be paid monthly through Lease Year 8. Provided, however, Minimum Rent shall increase from \$75,000 per Lease Year to \$300,000 per Lease Year, and the payment of Percentage Rent shall commence in Lease Year 5 upon the expiration of the number of months referred to in Section 6.1 above.

The greater of (a) Minimum Rent of \$350,000 per Lease Year in equal monthly payments or (b)

6.3 Years 9-20:	Percentage Rent of 10% of Gross Revenues up to \$4,000,000 and 12% of Gross Revenues over \$4,000,000, commencing in Lease Year 9, to be paid monthly through Lease Year 20.	
	Same as Years 9-20 above.	
6.4 Option Period:	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 Complex approved jointly by City and Tenant commencing on July 1, 2017 (“ 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 \$500,000 (“ Capital Improvement Reserve Fund Maximum ”) or less. Capital Improvement Payments shall be based upon the prior year's annual Gross Revenue multiplied by 3% and paid by Tenant in 12 equal monthly installments. The amount to be paid by Tenant to the Capital Reserve Fund shall be calculated on an annual basis at the time of the calculation of Percentage Rent and adjusted accordingly.	Sections 5 and 9
6.5 Capital Improvement Payments:		
7. Tenant’s Improvement Fund:		Section 9 and Exhibits C, D and E
7.1 Repairs and Rehabilitation:	Tenant shall repair and rehabilitate the Driving Range and 9-Hole Course, including improvement of the Driving Range turf area, rebuilding select greens and tees and irrigation systems, and regrassing the 9-Hole Course, as more specifically described in Exhibit C Repairs and Rehabilitation . Tenant shall pay all costs for Repairs and Rehabilitation, including design, environmental review costs, permit processing fees, building permit fees, and construction.	
7.2 Tenant Improvement Fund:	Tenant shall deposit One Million Dollars (\$1,000,000) (“ Tenant Initial Contribution ”) on the Effective Date of this Agreement to an escrow account agreed to by the parties (“ Tenant Improvement Fund ”); City shall contribute One Million Dollars (\$1,000,000) (“ City Contribution ”) to Tenant Improvement Fund after Tenant completes the Repairs and Rehabilitation described on Exhibit C and after Tenant’s plans for the resolution of the Drainage and Irrigation Issues referred to in Section 7.3 below have been approved by City. Disbursements from Tenant Improvement Fund may be made to Tenant to resolve the Drainage and Irrigation Issues pursuant to the plans approved by in accordance	

	with a draw procedure reasonably approved by City.	
7.3 Drainage and Irrigation Issues:	Tenant shall submit proposed plans to resolve Drainage and Irrigation Issues identified in the National Golf Foundation Report, as described in the attached Exhibit D Drainage and Irrigation Issues , for City's review and approval, including design and environmental review, plans, permits and budgeting milestones to be established subject to City's review and approval. City's approval may not be unreasonably withheld. Tenant shall pay all costs to resolve the Drainage and Irrigation Issues, including design, environmental review costs, permit processing fees, building permit fees, and construction.	
7.4 City's Option to Terminate:	Subject to Section 4.3 hereinafter, City has option to terminate this Agreement on or after four (4) years from the Commencement Date if Tenant has not resolved Drainage and Irrigation Issues to the reasonable satisfaction of City with plans approved by City, at which time of termination \$50,000 plus any City Contribution to Tenant Improvement Fund will be immediately disbursed to City and any remaining balance will be disbursed to Tenant.	Sections 4 and 18.2
8. Address of City for Notice and Payment of Rent:	City of Alameda Office of City Manager, Room 323 2263 Santa Clara Avenue Alameda, CA 94501	Section 5 and Section 20.5
With copy of Notices to:	City Attorney 2263 Santa Clara Avenue, Room 280 Alameda, CA 94501	
Address of Tenant for Notices:	Premises Address: Chuck Corica Golf Course 1 Maitland Drive Alameda, CA 94502	
With a copy of Notices to:	George Kelley Greenway Golf 2700 Van Clief Road Stevinson, CA 95374 gkelley@greenwaygolf.com	
and	George J. Gregores Holland & Knight LLP 111 SW Fifth Avenue, Suite 2300 Portland, OR 97204	

EXHIBITS:

- Exhibit A Leased Premises (Greenway Lease Exhibit prepared by Ruggeri - Jensen - Azar dated July 2, 2012)
- Exhibit B-1 Personal Property
- Exhibit B-2 Third Party Leases (Yamaha Municipal Master Lease Agreement dated August 1, 2011, between Yamaha Motor Corporation, U.S.A. and City of Alameda)
- Exhibit C Repairs and Rehabilitation
- Exhibit D Drainage and Irrigation Issues
- Exhibit E Tenant Improvements
- Exhibit F Maintenance Standards
- Exhibit G Title Report (North American Title Company Preliminary Report dated May 22, 2012, for 1 Maitland Drive, Alameda)

AGREEMENT

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 this Agreement, the following (collectively, "**Premises**"): That parcel of land commonly known as Chuck Corica Golf Complex, in the City of Alameda, State of California, and excluding the restaurant and bar facility and outdoor patio and North Course "Snack Shack", and described with more specificity in **Exhibit A Leased Premises**, which is attached to this Agreement and made a part of this Agreement for all purposes, 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.

2. LEASES AND PERSONAL PROPERTY TO BE TRANSFERRED.

2.1 Leases. On the Commencement Date, City will assign and transfer to Tenant all of City's interest in certain golf carts leased by City from third parties and all leases in connection therewith ("**Third Party Leases**") utilized in the operation of the Premises, as described in **Exhibit B-2 Third Party Leases**, which is attached to this Agreement and made a part hereof. Tenant will assume and pay all rent, assumption charges and other charges due under the Third Party Leases which accrue during the Term. Any rent or other charges due under the Third Party Leases attributable to periods prior to the Commencement Date will be paid by City. The parties will make any necessary prorations of such rent and other charges pursuant to this Agreement.

2.2 Personal Property. On the Commencement Date, City agrees to sell, transfer, and convey to Tenant that certain personal property consisting generally of tools, ball dispensers and washers, mowers, vehicles (including utility vehicles and trucks), furniture, fixtures, equipment, machinery, pro shop inventory and other personal property utilized in the operation of the Premises that Tenant has agreed to purchase from City, including that personal property described in **Exhibit B-1 Personal Property**, which is attached hereto and made a part of this Agreement ("**Personal Property**"). City shall on the Commencement Date (i) execute and deliver to Tenant a bill of sale to convey title to the Personal Property to Tenant, and (ii) deliver possession of the Personal Property to Tenant at the Premises. Tenant will pay to City the amount stated in the Summary as the Personal Property Consideration in equal monthly installments plus interest over a period of 48 months commencing on the Commencement Date.

3. USE OF LEASED PREMISES.

3.1 Use. Tenant shall use the Premises for the operation of a first class municipal 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. Tenant may not use the Premises for sales of food and beverages and liquor. City agrees to provide a full service food and beverage operation at the Complex through a concessionaire with whom City has contracted during the Term of this Agreement to operate the F/B Facilities ("**F/B Concessionaire**"). City agrees that it will include in its contractual

arrangement with the F/B Concessionaire reasonable limitations and commitments to avoid material conflicts with the Tenant's operation of the Complex under this Lease. Tenant shall provide the F/B Concessionaire and its customers with equivalent access to and parking for the F/B Facilities as Tenant and Tenant's customers are provided to the Clubhouse for the Complex, which is located next to the F/B Facilities. Tenant shall avoid material conflicts with F/B Concessionaire's operation of the F/B Facilities under F/B Concessionaire's contract with the City. In the event the City's contract with the F/B Concessionaire terminates, City shall give Tenant the first right of refusal to take over operation of the F/B Facilities 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 businesses 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.

3.2 Tenant's Right to Control Business Operations. Tenant shall have the exclusive right and authority to operate and manage the Premises as Tenant deems appropriate. Without limiting the foregoing, Tenant shall have the right to:

(a) implement all policies and procedures and to perform any act deemed necessary or desirable for the operation and management of the Premises; provided that said policies and procedures are consistent with City ordinances and applicable laws and codes;

(b) determine all green fees, cart fees, driving range fees, annual fees (if any), initiation fees (if any), membership dues (if any) and all other charges associated with the operation of the Premises, except that Tenant shall provide (i) discounted rates to City residents, seniors, and students in accordance with a rate schedule reasonably approved by City, with such approval not being denied if the rates proposed by Tenant are commensurate to the discounted rates being charged to local residents, seniors, and students at the comparable golf facilities listed in Section 4 of the Summary; free golf for City's three public school golf teams at times reasonably necessary to accommodate the teams' practice schedule excluding peak days, peak periods and holidays; and (iii) one free tournament per year for the non-profit Friends of the Park ("**City Benefits**") on a date and time mutually agreeable with Tenant. City may request modified City Benefits to be provided during the Term that are reasonable and consistent with the City Benefits provided herein;

(c) determine all personnel requirements, recruitment schedules and compensation levels and shall employ, train, promote, discharge and supervise all personnel performing services in and about the Premises;

(d) purchase and/or lease all furnishings, equipment, and operating supplies which Tenant deems necessary or desirable for the operation of the Premises;

(e) enter into such contracts for the furnishing of utilities, maintenance, and other services to the Premises;

(f) incur such expenses as shall be necessary for the operation and maintenance of the Premises;

(g) apply for, and use, best efforts to obtain and maintain all permits and licenses required to operate and manage the Premises;

(h) establish accounting, cash collection and payroll procedures at the Premises; and

(i) establish advertising, sales and promotion plans with respect to the Premises.

3.3 City's Entry. City shall have the right to enter and inspect the Premises at any time the facility is open or at any time upon written notice served twenty-four (24) hours in advance.

3.4 Annual Plan. In connection with Tenant's operation and management of the Premises, Tenant shall, on or before January 31 of each year during the term of this Agreement, submit to City an annual sales and marketing plan and operating and capital improvement plan, including a quality control plan for the Premises ("**Annual Plan**"). City shall have the right to comment upon and make suggestions with respect to the Annual Plan, provided, however, while Tenant shall consider all of City's suggestions and comments, Tenant shall not be obligated to implement the same.

3.5 City's Representative. The City Council designates the City Manager or the City Manager's designee, as may be designated from time to time ("City Manager's Designee"), who is authorized, on behalf of the City, to administer this Agreement and monitor Tenant's compliance with the terms hereof. The City Manager is also authorized to amend the exhibits and schedules to this Agreement on behalf of the City. However, the City Council must approve any material amendment to this Agreement or the termination of this Agreement on behalf of the City. The City Manager's Designee as of the Commencement Date is the City's Recreation and Parks Director. Tenant shall meet with City Manager's Designee, at least monthly, to review operations and progress under the Annual Plan. Tenant shall consider in good faith the requests and recommendations of the City Manager's Designee to enhance maintenance and operation of the Premises. Since the Premises are owned by the City of Alameda, Tenant will be required to contribute to the betterment of the quality of life for the residents by utilizing, when feasible, local vendors, supporting junior golf programs and City charitable events.

3.6 Additional Limitations.

(a) Except during times when capital improvements are under construction and subject to weather conditions, the limitations imposed by tournaments and Force Majeure Events (as defined hereinafter), the Complex shall be open to the public for golf course play on a non-discriminatory basis from dawn until dusk every day of the year. Tenant will keep at least one of the golf courses open when capital improvements are under construction.

(b) Tenant shall interview all those persons who at the Commencement Date are current full and part time golf course maintenance employees and will consider them for

employment subject to Tenant's customary hiring practices and employment criteria. Tenant shall not be obligated to make any offer of employment under this Section.

(c) Tenant shall consider in good faith the use of reclaimed water for irrigation purposes.

(d) Tenant shall appoint as General Manager one of the following: (i) a Class A member of the PGA; or (ii) a Class A member of the LPGA; or (iii) a person who has a minimum of three years operating experience at a similar golf facility. Tenant shall appoint as a superintendent one of the following: (i) a course superintendent who has been a member of the Golf Course Superintendent's Association of America or the Northern California Golf Course Superintendent's Association for three years; or (ii) a person who has a minimum of three years operating experience at a similar golf facility.

(e) Tenant shall honor merchandise, green fee and range certificates sold to customers prior to the Commencement Date, as prorated pursuant to Section 8 of this Agreement.

(f) Tenant shall designate a Tenant representative who will prepare agendas, compile minutes, and attend bi-monthly meetings with City's Golf Commission, and other meetings as reasonably requested by City.

4. TERM.

4.1 Initial Term. The Initial Term of this Agreement shall be as stated in the Summary.

4.2 Option to Extend. Operator shall have the right and option to extend the term of this Agreement at the end of the Initial Term, under all of the terms, covenants and conditions contained in this Agreement, for the Option Period stated in the Summary. The right to exercise this option is dependent upon Tenant not being in material default under this Agreement (after the expiration of any applicable cure periods) on the date the Option Period is to commence. Tenant must give City written notice of its intention to exercise such option not less than one hundred eighty (180) days prior to the end of the Initial Term. In the event Tenant fails to timely exercise the option, City shall give Tenant notice and ten (10) days in which to exercise the option to extend.

4.3 City Option to Terminate. City has the option to terminate this Agreement four (4) years after the Commencement Date if Tenant has not resolved Drainage and Irrigation Issues with plans approved by City and in accordance with **Exhibit D** attached hereto (which provides for and assumes, among other things, normal rainfall conditions), at which time of termination Fifty Thousand Dollars (\$50,000.00) plus any City Contribution to Tenant Improvement Fund will be immediately disbursed to City and any remaining balance will be disbursed to Tenant. In the event City wishes to exercise its option to terminate this Agreement pursuant to this Section 4.3, it must first give Tenant written notice of such intent and a period of sixty (60) days in which to cure. Any dispute between the parties with respect to the City's Option to terminate this Agreement under this Section 4.3 ("**ADR Issue**") shall be resolved in mediation or arbitration in

accordance with Section 19 hereinafter and in accordance with the remedy limitation set forth in Section 18(d) hereof.

4.4 Surrender Upon Agreement Expiration. Upon the expiration or earlier termination of this Agreement, Tenant shall return the Premises to City in its equal or better condition than Tenant received at commencement of the Initial Term, subject to force majeure, casualty and condemnation.

4.5 Disposition of Personal Property. At the termination of this Agreement, City shall have the first right to purchase from Tenant the personal property used by Tenant in the operation of the Premises consisting generally of all tools, ball dispensers and washers, mowers, vehicles, including utility vehicles and trucks, furniture, fixtures, equipment, machinery, pro shop inventory and other personal property at a price to be agreed upon between City and Tenant. City must exercise its right to purchase more than thirty (30) days in advance of the effective date of the termination of this Agreement. If City and Tenant are unable to agree upon such price within thirty (30) days of the City's exercise of its right to purchase, then the price shall be the then value of the personal property as determined by a qualified appraiser selected by City and Tenant. In the event an agreement cannot be reached as to selection of an appraiser, City and Tenant shall each select an appraiser, and the two (2) chosen shall select a third. The agreed upon opinion of two (2) of the three (3) appraisers shall be the price to be paid by City. The costs and expenses of any appraisers shall be divided equally between City and Tenant.

4.6 Lease Year Defined. The term "Lease Year" means the one year period beginning on July 1 and ending on June 30 of each year during the term of this Agreement. The first Lease Year shall be a stub period from the Commencement Date to the next June 30. Each Lease Year will constitute a separate accounting period for the purpose of computing Percentage Rent, Minimum Rent and Gross Revenue (all as defined below) for any Lease Year. Percentage Rent and Minimum Rent shall not be carried forward or backward into any other Lease Year, except for Year 5, as set forth in the Lease Summary. If this Agreement expires or is terminated prior to the end of a Lease Year, Minimum Rent and Percentage Rent shall be subject to proration.

5. RENT. In consideration of City executing this Agreement and granting the rights provided in this Agreement, Tenant shall pay to City at the address listed for City in the Summary of this Agreement during the Initial Term and the Option Period, the Minimum Rent, Percentage Rent (in lieu of Minimum Rent if applicable) and Capital Improvement Payments set forth in the Summary. Minimum Rent shall be paid in equal monthly installments, in arrears, on the first day of each calendar month during the term of this Agreement.

5.1 Percentage Rent. In any Lease Year in which the amount of Percentage Rent set forth in the Summary exceeds the Minimum Rent set forth in the Summary, Tenant shall pay to City the Percentage Rent in lieu of payment of Minimum Rent, as provided in Section 5.5 hereinafter.

5.2 Capital Improvement Payments. In any Lease Year in which the Capital Improvement Reserve Fund is less than the Capital Improvement Reserve Fund Maximum stated in the Summary, Tenant shall pay to City the Capital Improvement Payments set forth in the

Summary, which City shall set aside as a Capital Improvement Reserve Fund, which shall be used as agreed to between City and Tenant for any capital improvements to be performed by Tenant on the Premises. When the Capital Improvement Reserve Fund Maximum is reached, no further Capital Improvement Payments are required. When disbursements from the Capital Improvement Reserve Fund are made so that the Capital Improvements Reserve Fund falls below the Capital Improvements Reserve Fund Maximum, Capital Improvements Payments shall recommence. Any disagreement between the City and Tenant as to the use of funds in the Capital Improvement Reserve Fund for capital improvements to be made by Tenant ("**ADR Issue**") shall be resolved in mediation or arbitration in accordance with Section 19 hereafter.

5.3 Annual Rent. As used herein, the term "**Annual Rent**" means, with respect to each Lease Year, the Minimum Rent paid by Tenant for that Lease Year, as applied against the Percentage Rent paid by Tenant attributable to such Lease Year.

5.4 Gross Revenue. For purposes of calculating Percentage Rent, the term "**Gross Revenue**" means all money received by Tenant as a result of the sale of goods or the provision of services from the operation of the Premises or its various components less Capital Improvement Payments made by Tenant pursuant to Section 5.2 hereinabove, but shall not include any of the following:

- (a) Cash refunds or credits allowed on returns by customers;
- (b) Sales taxes, excise taxes, gross receipts taxes, admissions taxes, use taxes and other similar taxes now or later imposed upon the sale of merchandise or services and paid by Tenant to the appropriate taxing authority, whether added to or included in the selling price;
- (c) Fees charged for golf lessons and instruction to the extent that such fees or any portion thereof are retained by the golf professionals giving lessons or instruction (including both instances where the fees, or portions thereof, are paid directly to the golf professionals and where the golf professionals receive bonuses or commissions based on the fees received from lessons or instruction);
- (d) The actual uncollectible amount of any check or bank draft received by Tenant as payment for goods or services and returned to Tenant from a customer's bank as being uncollectible (commonly "non-sufficient funds" checks);
- (e) The actual uncollectible amount of any charge or credit account (commonly "bad debts") incurred by Tenant for the sale of merchandise or services;
- (f) The actual uncollectible amount of any sale of merchandise or services for which Tenant accepted a credit card and charges paid to credit card providers;
- (g) Interest or other charges paid by customers for extension of credit;
- (h) Sales made by any tenant or licensee of Tenant, it being the intention of this Agreement that only Tenant's share of the receipts of such tenants or licensees, if and to the extent actually received by Tenant, are to be included in the calculation of Tenant's gross revenue;

- (i) Sales or trade-ins of machinery, vehicles, trade fixtures or Personal Property used in connection with Tenant's operation of the Premises;
- (j) The value of any merchandise, supplies or equipment exchanged or transferred from or to other locations of business of Tenant or any affiliate of Tenant where such exchange or transfer is not made for the purpose of (or does not have the practical effect of) avoiding a sale which would otherwise be made from or at the Premises;
- (k) Receipts in the form of refunds from or the value of merchandise, supplies or equipment returned to shippers, suppliers or manufacturers;
- (l) The amount of any cash or quantity discounts or rebates received from sellers, suppliers or manufacturers;
- (m) The amount of any gratuities paid or given by customers to or for employees of Tenant;
- (n) Receipts from the sales of uniforms or clothing required to be worn by employees;
- (o) Amounts attributed to meals served or provided to employees of Tenant;
- (p) The amount of any sales of merchandise discounted to employees;
- (q) Receipts from the sale of waste or scrap materials resulting from Tenant's operations;
- (r) Proceeds of any business interruption insurance maintained by Tenant;
- (s) Proceeds in connection with the payment of any claim under any property damage or liability insurance policy maintained by Tenant or City;
- (t) Proceeds in connection with the payment of any condemnation award;
- (u) Unredeemed gift card or gift certificate sales; and
- (v) Vending machine revenues to the extent not retained by Tenant.

5.5 Reporting and Payment of Percentage Rent. Within sixty (60) days after the end of each Lease Year, Tenant shall submit to City (i) a statement signed by Tenant or a person authorized by Tenant showing in reasonable detail the amount and type of Gross Revenue for the preceding year; (ii) a remittance, if appropriate, of the amount by which Percentage Rent exceeds the Minimum Rent for such Lease Year; and (iii) a remittance of the amount of the Capital Improvement Payment for such Lease Year for the City to set aside in the Capital Improvements Reserve Fund for every Lease Year that the Fund balance is Five Hundred Thousand Dollars (\$500,000.00) or less.

5.6 Maintenance and Examination of Records. Tenant shall maintain, at its principal offices, its financial records pertaining to Gross Revenue relating to the Premises during a period of four (4) years after the conclusion of any Lease Year. Further, all financial records pertaining to Gross Revenue at the Premises shall, upon at least three (3) business days' prior written request from City to Tenant, be open and available to City or City's representative for an examination at all reasonable times during business hours upon three (3) business days' notice. City shall be entitled at any time within four (4) years after the conclusion of a Lease Year to question the sufficiency of any rent payments or the accuracy of the report furnished by Tenant.

5.7 Audit. The City reserves the right to designate its representatives who shall have the right to audit Tenant's accounting procedures and internal controls of Tenant's financial systems and to examine any books, records, statements or supporting documentation as it relates to Gross Revenues from the operation of the Premises, or any other items set forth in this Agreement. All such audits shall be undertaken by City's representatives at reasonable times and in conformance with generally accepted auditing standards. Tenant agrees to fully cooperate with all such audits.

(a) The right to audit shall extend during the length of this Agreement and for a period of four (4) years, or longer if required by law, following the date of final payment under this Agreement. Tenant agrees to retain all necessary records/documentation for the entire length of this audit period.

(b) Internal controls on the receipt and recording of all cash receipts, and all other operational financial and accounting controls and procedures as they relate to Gross Revenues are subject to the approval of the City. At a minimum, the internal control of cash shall include an electronic cash register Point of Sale with an auditable daily tape, daily reconciliation of the cash deposit and sales, issuance of a physical dated receipt to every client, a daily activity report listing number of rounds, total collections, buckets of balls sold and a monthly summary report. The monthly summary report shall be submitted within twenty (20) days of each month end or twenty (20) days of the last day of each month. An annual financial statement prepared by a certified public accountant in accordance with GAAP detailing all income shall be submitted within thirty (30) days of the closing of the Lease Year.

(c) Similar POS equipment and detail must be installed with merchandise and instruction profit centers. All POS data should be easily related to Tenant's General Ledger.

(d) Tenant will be notified in writing of any exception taken as a result of an audit. Any adjustments and/or payments which Tenant agrees must be made as a result of any such audit or inspection of Tenant's invoices and/or records shall be made within thirty (30) days from presentation of City's findings to Tenant. If Tenant fails to make such payment, Tenant agrees to pay interest, accruing monthly, at the maximum legal rate. Interest will be computed from the date of written notification of exception(s) to the date Tenant reimburses City for any exception(s). If an audit inspection or examination in accordance with this section, discloses overcharges (of any nature) by Tenant to City in excess of one percent (1%) of the value of that portion of the contract that was audited, the actual cost of City's audit shall be reimbursed to City by Tenant. In the event the parties are unable to agree as to the results of any audit ("ADR

Issue”), the dispute shall be resolved in mediation or arbitration in accordance with Section 19 hereinafter.

6. **TAXES AND ASSESSMENTS.**

6.1 **Real Property Taxes.** Tenant shall pay directly to the appropriate taxing authorities, prior to delinquency (except in the case of contests of real estate taxes made in good faith), the actual Real Property Taxes (as defined below) assessed against the Premises which are attributable to the Premises during the term of this Agreement. The term “**Real Property Taxes**” as used herein means any fee, license fee, commercial rental tax, assessment, penalty or tax imposed by any taxing authority against the Premises. However, the Real Property Taxes do not include any special assessment imposed against the Premises for improvements made in connection with any adjacent property owned by City or any affiliate of City.

6.2 **Other Taxes.** Tenant shall pay all taxes, license fees or other governmental charges assessed or imposed on the Personal Property owned by Tenant located on the Premises or upon the business operations of Tenant conducted on the Premises.

6.3 **Assessments.** Tenant shall pay all charges and assessments associated with the Premises, including but not limited to the following:

(a) Annual assessment for maintenance of Harbor Bay Parkway, which is estimated to be Fourteen Thousand Dollars (\$14,000) per year.

(b) Annual charge for City Representative to administer this Agreement, which is estimated to be Fourteen Thousand Dollars (\$14,000) per year for a period of five (5) years or until such time as Drainage and Irrigation Issues are resolved to the satisfaction of the City in accordance with Section 9 of this Agreement, whichever occurs last.

7. **UTILITIES.** Tenant shall pay, before delinquency, all charges for utilities, including water, electricity, gas, heating, waste, stormwater discharge, cooling and telecommunications, used by Tenant in Tenant’s operation of the Premises. City agrees to waive the collection from Greenway of its stormwater utility fee for the Premises during the term of this Agreement.

8. **PRORATION OF INCOME AND EXPENSES.** As of the Commencement Date and as of the Expiration Date, or earlier termination of this Agreement, City and Tenant shall prorate the following items:

(a) All items of income relating to the operation of the Premises including, without limitation, membership dues, advance green fees, deposits for tournaments, gift certificates for merchandise in the pro shop which remain redeemable, and rain checks which remain redeemable; and

(b) All items of expenses relating to the operation of the Premises including, without limitation, real property taxes and other taxes, and utilities.

9. TENANT IMPROVEMENTS.

9.1 Repairs and Rehabilitation. Tenant at its sole cost and expense shall procure and pay all costs for Repairs and Rehabilitation, including design, environmental review costs, permit processing fees, building permit fees and construction, as generally described in the Summary, and in conformance with the milestones set forth and more specifically described in **Exhibit C Repairs and Rehabilitation** and **Exhibit E Tenant Improvements**.

9.2 Drainage and Irrigation Issues. Tenant at its sole cost and expense shall cause design drawings and plans and specifications to be prepared to resolve the Drainage and Irrigation Issues, as generally described in the Summary and more specifically described in **Exhibit D Drainage and Irrigation Issues**, for City's review and reasonable approval, including design and environmental review, plans, permits and budgeting milestones to be established subject to City's review and reasonable approval. Tenant shall pay all costs to resolve the Drainage and Irrigation Issues, including design, environmental review costs, permit processing fees, building permit fees and construction costs in accordance with **Exhibit E Tenant Improvements**. In the event of any dispute between the parties relating to the City's approval of the design drawings and plans and specifications submitted by Tenant to City pursuant to this Section 9.2 ("**ADR Issue**"), shall be resolved in mediation or arbitration conducted in accordance with Section 19 hereinafter.

9.3 Tenant Improvement Fund. As security for the performance of Tenant's obligations under this Agreement to resolve the Drainage and Irrigation Issues, Tenant shall deposit Tenant Initial Contribution as stated in the Summary on the Effective Date of this Agreement to an escrow account agreed to by Tenant and City, which shall constitute the "**Tenant Improvement Fund.**" City shall contribute City Contribution as stated in the Summary to Tenant Improvement Fund after Tenant completes the Repairs and Rehabilitation and after Tenant's plans for the resolution of the Drainage and Irrigation Issues have been approved by City. Disbursements from Tenant Improvement Fund shall be made to Tenant to resolve the Drainage and Irrigation Issues pursuant to the plans approved by City and subject to the draw procedure reasonably approved by City at the time of the approval of the plans and specifications, as set forth in **Exhibit D Drainage and Irrigation Issues** and **Exhibit E Tenant Improvements**.

9.4 Capital Improvement Reserve Fund. After Tenant completes the Repairs and Rehabilitation and resolved the Drainage and Irrigation Issues to City's reasonable satisfaction, and annually thereafter, Tenant will submit to City for its review and reasonable approval a proposed Capital Improvement Budget ("**CIP Budget**") for major capital improvements, refurbishment and enhancements for the Premises. Expenditures from the Capital Improvement Reserve Fund may be made only for capital improvement projects contained in any City approved CIP Budget. Any amounts remaining in the Capital Improvement Reserve Fund at expiration or termination of this Agreement will be paid to City. Any dispute between the parties relating to City's approval of the CIP Budget ("**ADR Issue**") shall be resolved in mediation or arbitration conducted in accordance with Section 19 hereinafter.

9.5 Trucking for Tenant Improvements and Capital Improvements. Tenant must submit a trucking route and scheduled hours for delivery to and removal from the Premises of

construction materials for Tenant Improvements and Capital Improvements (collectively, "Construction Deliveries"). All Construction Deliveries must be made through the Harbor Bay Parkway and not Island Drive. Tenant will be responsible for repairing any portion of any public road that is damaged due to the Construction Deliveries.

10. MAINTENANCE AND REPAIRS. Tenant shall, at its sole cost, maintain the Premises and keep the Premises in good order and in a condition comparable to the condition of other similar class municipal and public golf courses in the area surrounding the Premises with comparable (i) quality of physical improvements, (ii) maintenance standards, and (iii) green fee structure. Tenant shall at all times comply with the maintenance and repair standards set forth in **Exhibit F Maintenance Standards**, which is attached hereto and made a part of this Agreement. Except as provided in Section 11.3 of this Agreement, Tenant hereby accepts the Premises in its existing "as is" condition as of the Commencement Date, and subject to all applicable zoning, municipal, county and state laws, ordinances, and regulations governing and regulating the use of the Premises, and any covenants or restrictions of record set forth on **Exhibit G Title Report** attached hereto, and accepts this Agreement subject thereto.

11. ORDINANCES AND STATUTES

11.1 Municipal, County, State and Federal Regulations. Tenant shall comply with the requirements of all Municipal, County, State and Federal authorities now in force, or which may hereafter be in force, pertaining to the Premises, and shall faithfully observe in the use of the Premises all Municipal Ordinances and State and Federal Statutes now in force or which may hereafter be in force, including, but not limited to, the City's non-smoking ordinance. The judgment of any court of competent jurisdiction or the admission of Tenant in any action or proceeding against Tenant whether City is a party thereto or not, that Tenant has violated any such ordinance or statute in the use of the Premises, shall be conclusive of that fact as between City and Tenant.

11.2 Federal Americans With Disabilities Act and State of California Equivalent Statutes, Codes, Rules and Regulations. Tenant shall maintain the Premises in accordance with the Americans with Disabilities Act and any and all other California equivalent statutes, codes, rules and regulations.

11.3 Hazardous Materials Regulations. Tenant shall keep the Premises free of Hazardous Materials (as hereinafter defined); provided, however, that Tenant shall not be liable or responsible for government response obligations, third party claims, environment management or remediation costs necessitated by the Use of the Premises, caused by or arising out of Hazardous Materials existing in, on, or about the Premises prior to the Commencement Date, including but not limited to Recognized Environmental Conditions, as that term is defined by ASTM E1527 - 05, identified in the Phase I Environmental Site Assessment, Preliminary Soil Quality Investigation, & Asbestos and Lead-Based Paint Screening Survey prepared by Strategic Engineering & Science, Inc. dated October 18, 2010. Tenant shall not use, generate, manufacture, store, release, or dispose of Hazardous Materials in, on, or about the Premises, except for storage, handling and use of reasonable quantities and types of materials on the Premises in the ordinary course and the prudent conduct of Tenant's Use of the Premises. Tenant's storage, handling and use of such permitted Hazardous Materials must at all times

conform to all Governmental Requirements and to applicable fire, safety and insurance requirements. No Hazardous Materials shall be spilled or disposed of on, in, under or around the Premises or otherwise discharged from the Premises, except in accordance with Government Requirement; provided, however, that Tenant shall not be liable or responsible for Hazardous Materials that migrate on, in, under or around the Premises from a location outside the Premises. "Hazardous Materials" shall include, but not be limited to, substances defined as "hazardous substances" or "hazardous wastes" in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C.A §§9601, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C.A §§6901, et seq.; and those substances defined as "hazardous materials" in Section 25501 of the California Health & Safety Code or as "hazardous substances" in Section 25316 of the California Health & Safety Code; and in the regulations adopted and publications promulgated pursuant to said laws.

12. INSURANCE AND INDEMNIFICATION.

12.1 Insurance Coverage. Tenant shall maintain, at Tenant's sole cost and expense the following types of insurance coverage relating to the Premises and Tenant's operations of the Premises at all times throughout the term of this Agreement:

(a) Commercial General Liability Insurance covering the insured against claims of bodily injury, personal injury and property damage (including loss of use thereof) arising out of Tenant's operations, and contractual liabilities including a Broad Form endorsement covering the insuring provisions of this Agreement and the performance by Tenant of the Tenant's indemnity obligations set forth in this Agreement, for limits of liability not less than the following:

Bodily Injury and Property	\$2,000,000 each occurrence
Damage Liability	\$4,000,000 annual aggregate
Personal Injury Liability	\$2,000,000 each occurrence
	\$4,000,000 annual aggregate

(b) All Risk Property and Casualty Insurance covering the Premises, including the clubhouse and related buildings (excluding any improvements that constitute the F/B Facilities) with coverage limits not less than the full replacement cost of the Premises. Tenant shall also maintain insurance coverage on, or otherwise assume financial liability for, the Personal Property and the furnishings and equipment owned by Tenant and providing business interruption coverage for a period of one year in an amount equal to no less than the Minimum Rent and Percentage Rent for the immediately preceding year of this Agreement.

(c) Worker's Compensation and Employer's Liability or other similar insurance pursuant to all applicable state and local statutes and regulations.

(d) Comprehensive automotive liability coverage with combined single limit of \$2,000,000 each occurrence.

(e) Pollution Legal Liability insurance covering the insured against obligations or costs associated with third party environmental claims, remediation and

contaminated media management necessitated by the presence of unknown Hazardous Materials, or new regulatory requirement associated with the presence of Hazardous Materials on, under, about or threatening the Premises. Such Policy shall include terms and limits not less than the following:

Term: 10 years, to be renewed to provide coverage through the expiration or termination of this Agreement.

Coverage: \$5,000,000 each occurrence
\$5,000,000 annual aggregate

Self Insured Amount or retention cannot exceed: \$100,000

12.2 General Provisions. Tenant shall provide City with a current Certificate of Insurance, including the additional insured endorsement of the City for the insurance required by this Agreement evidencing coverage(s) and limits prior to the Commencement Date and naming the City, its City Council, boards and commissions, officers, employees and volunteers shall be named as an additional insured under all insurance coverages, except any professional liability insurance, required by this Agreement. The naming of an additional insured shall not affect any recovery to which such additional insured would be entitled under this policy if not named as such additional insured. An additional insured named herein shall not be held liable for any premium, deductible portion of any loss, or expense of any nature on this 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 this policy. All required policies shall remain in force throughout the life of this Agreement and shall be payable on a "per occurrence" basis unless City specifically consents in writing to a "claims made" basis. Should any of the required insurance policies in this Agreement be cancelled or non-renewed, it is Tenant's duty to notify City immediately upon receipt of the notice of cancellation or non-renewal. Failure to provide and maintain the insurance required by this Agreement will constitute a material breach of this Agreement.

12.3 Certificate of Coverage. Tenant shall submit a certificate of coverage and proof of payment of premiums to City annually and upon City's request. Any insurance required to be carried under this Agreement may be included as part of any blanket or other policy or policies of insurance, subject to the provisions of this Agreement.

12.4 Tenant Indemnification. Tenant shall indemnify, protect, defend and hold harmless City and its employees, contractors, and agents from and against any and all claims arising from Tenant's use, occupancy, and enjoyment of the Premises, or from the conduct of Tenant's business or from any activity, work, or things done, permitted, or suffered by Tenant in or about the Premises or elsewhere and shall further indemnify, protect, defend and hold harmless City from and against any and all claims arising from any breach or default in the performance of any obligation on Tenant's part to be performed under the terms of this Agreement, or arising from any act or omission of Tenant, or any of Tenant's agents, contractors, or employees, and from and against all costs, attorney's fees, expenses, and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon; and in case any action or proceeding be brought against City by reason of any such claim, Tenant upon notice

from City shall defend the same at Tenant's expense by counsel reasonably satisfactory to City, and City shall cooperate with Tenant in such defense. Except as provided in Section 11.3 of this Agreement, Tenant, as a material part of the consideration to City, hereby assumes all risk of damage to property of Tenant in, upon, or about the Premises arising from any cause and Tenant hereby waives all claims in respect thereof against City.

City shall not be liable for injury to Tenant's business or any loss of income therefrom or for damage to the goods, wares, merchandise, or other property of Tenant, Tenant's employees, invitees, customers, or any other person in or about the Premises. City shall not be liable for injury to Tenant, Tenant's employees, agents, or contractors, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water, or rain, or from the breakage, leakage, obstruction, or other defects of pipes, sprinklers, wires, appliances, plumbing, air conditioning, or lighting fixtures, or from any other cause, whether said damage or injury results from conditions arising upon the Premises or from other sources or places and regardless of whether the cause of such damage or injury or the means of repairing the same is inaccessible to Tenant. City shall not be liable for any damages arising from any act or neglect or any other Tenant, occupant, or user of the Premises.

12.5 City shall indemnify, protect, defend and hold harmless Tenant and its employees, contractors, and agents from and against any and all claims, remediation or other costs or obligations that are specifically arising from or associated with to the following known environmental conditions identified as of the Commencement Date, including (a) the closed leaking underground storage tank clean-up site identified as Alameda County Case Number RO0001043 and San Francisco Bay Regional Water Quality Control Board Case Number 01-0047; (b) the Alameda City Landfill identified as San Francisco Bay Regional Water Quality Control Board Case Number 2019122001; (c) sediment contained in water basin located on the Premises; (d) Hazardous Materials that migrate on, in, under or around the Premises from the Oakland International Airport; and (e) Recognized Environmental Conditions identified in the Phase I Environmental Site Assessment, Preliminary Soil Quality Investigation, & Asbestos and Lead-Based Paint Screening Survey prepared by Strategic Engineering & Science, Inc. dated October 18, 2010. This City indemnification obligation and hold harmless obligation shall not include damages, liabilities and/or claims arising out of or caused by willful misconduct or the negligence of Tenant.

13. DAMAGE AND RESTORATION

13.1 Total Destruction. If the buildings or other improvements on the Premises should be totally destroyed (i.e., damage in excess of partial destruction as defined below) by fire or other casualty or a force majeure occurrence, Tenant shall have the option, to be exercised in writing within thirty (30) days of such destruction, to either (a) terminate this Agreement in which event the parties shall have no further obligations hereunder, or (b) elect to repair and restore the Premises and thereafter diligently pursue such restoration to completion.

13.2 Partial Destruction. If the buildings or other improvements on the Premises under this Agreement should be partially damaged by fire or other casualty or a force majeure event, then Tenant shall, subject to the availability of insurance proceeds (it being understood and acknowledged that Tenant shall have no obligation to repair or restore any portion of the

Premises if insurance proceeds are not available to fully restore the same), restore the buildings and improvements in a good and workmanlike manner to a condition as good as or better than the condition in which the buildings and improvements existed prior to their damage or destruction. For purposes of this Agreement, the term "partially damaged" means (a) damage to the extent of one third or less of the full replacement cost of the buildings and improvements at the Premises or (b) damage to the extent that no more than eighteen (18) holes on the golf course at the Premises are rendered unplayable. If the insurance proceeds made available to Tenant are not sufficient to fully restore the Premises, then Tenant may either (a) terminate this Agreement upon written notice to City in which event the parties shall have no further liability hereunder, or (b) elect to restore the buildings and improvements with its own funds, in addition to the insurance proceeds available. In addition, notwithstanding anything in this Section to the contrary, if, as a result of the partial destruction of the Premises, Tenant is unable to make full and productive economic use of the Premises and, in Tenant's reasonable determination, the full and complete restoration of the Premises will take in excess of one hundred eighty (180) days, then Tenant may, upon written notice to City within sixty (60) days after the partial destruction occurs, terminate this Agreement, in which event the parties shall have no further obligations hereunder.

13.3 Damage During the Last Two Years of the Agreement Term. Notwithstanding the provisions of this Section to the contrary, if during the last two (2) years of the term of this Agreement, the buildings or other improvements on the Premises are damaged to the extent of ten percent (10%) or more of the full replacement cost of the buildings and improvements on the Premises, then Tenant shall have the option, to be exercised within thirty (30) days of such damage or destruction, to either (a) terminate this Agreement in which event the parties shall have no further obligations hereunder or (b) elect to repair and restore the Premises in accordance with the provisions of this Section above.

13.4 Rental Abatement and Term Extension. If Tenant is unable to make full and productive economic use of the Premises during repair, reconstruction or replacement as provided for in this Section, Tenant's rental obligations under Section 5 shall be abated until such time as Tenant is again fully able to do so.

13.5 Application of Insurance Proceeds Upon Termination. If, after the partial or total destruction of the Premises, this Agreement is terminated pursuant to the provisions of this Section, then all insurance proceeds made available on account of such destruction shall first be paid to City and to Tenant pro rata to reimburse City and Tenant for the value of any and all improvements made to the Premises by Tenant at City's and Tenant's expense prior to such destruction until such time as Tenant and City have received full reimbursement for all such improvements; then to Tenant for the value of any personal property at the Premises owned by Tenant; then to City until such time as City has received full reimbursement for the value of the improvements at the Premises which existed as of the first day of the Initial Term and the balance, if any, shall be paid to Tenant. In addition, any funds remaining in the Tenant Improvement Fund that were deposited by City and Tenant shall be disbursed first to reimburse City for the City Contribution and then to reimburse Tenant for Tenant's Contribution.

14. EMINENT DOMAIN.

14.1 Total Taking. If at any time during the term of this Agreement, use of all or a material portion of the Premises shall be taken by condemnation or by right of eminent domain, then this Agreement shall terminate on the date of such taking and all rental payments already made shall be apportioned as of the date of the taking. For purposes of this Section, a "material portion" shall be deemed to have been taken if the remaining portion cannot economically be used by Tenant, in Tenant's reasonable judgment, in the manner in which the Premises were used prior to such taking.

14.2 Partial Taking. In the event that use of less than all or a material portion of the Premises is taken by condemnation or by right of eminent domain, then this Agreement shall not terminate, but the Minimum Rent due during the remainder of the term of this Agreement shall be reduced as of the date of such partial taking in a proportion to the reduction in the Gross Revenues of the Premises attributable to such partial taking.

14.3 Condemnation Award. If there is a taking by right of eminent domain, the award shall belong to and be paid to City, except that Tenant shall receive from the award the following: (a) a sum attributable to the value of Tenant's leasehold estate; (b) a sum attributable to Tenant's loss of good will. In addition, if there is a termination due to a Total Taking, any funds remaining in the Tenant Improvement Fund that were deposited by City and Tenant shall be disbursed first to reimburse City for the City Contribution and then to reimburse Tenant for Tenant's Contribution.

15. REPRESENTATIONS, WARRANTIES AND COVENANTS.

15.1 Power and Authority. City hereby represents and warrants that it has the requisite right, power, legal capacity and authority to enter into this Agreement and to fully perform each and all of its obligations under this Agreement. Tenant hereby represents and warrants that it has the requisite right, power, legal capacity and authority to enter into this Agreement and to fully perform each and all of its obligations under this Agreement.

15.2 No Conflict. City represents and warrants that neither this Agreement nor the consummation of the transactions contemplated by this Agreement will result in a breach of or constitute a default under any other agreement, commitment or obligation to which City or the Premises is bound, nor will it violate any law, rule, regulation, restriction, judicial or administrative order, judgment or decree applicable to City or the Premises. Tenant represents and warrants that neither this Agreement nor the consummation of the transactions contemplated by this Agreement will result in a breach of or constitute a default under any other agreement, commitment or obligation to which Tenant is bound, nor will it violate any law, rule, regulation, restriction, judicial or administrative order, judgment or decree applicable to Tenant.

15.3 Encumbrances. City shall not (a) grant any easements, rights of way, licenses or other similar rights, (b) convey to the public or dedicate to the public all or any portion of the Premises, or (c) consent to the Premises being included as part of an assessment district.

15.4 City Representations and Warranties. City is not aware of and has not received notice of any current violation of any applicable federal, state or local statutes, regulations, or

ordinances, nor does it have actual knowledge of any threatened claim, action, demand, suit, proceeding, hearing, or governmental investigation against or involving the Premises, including but not limited to any matter relating to the fill material on the Premises, other than the Stipulated Order for Preliminary Relief in U.S. District Court, NDCA, Case # C09-05684 RS, *United States v. City of Alameda*, filed 9/6/11, and disclosed to Tenant.

16. **FRUSTRATION OF PURPOSE.** At any time during the term of this Agreement, (i) if the governing body of any political subdivision having competent jurisdiction over the Premises should enact any valid zoning or other ordinance, law or regulation (collectively, **"Use Law"**) which prohibits the use of the whole or a substantial part of the Premises for the purposes as provided in this Agreement; (ii) if an event of force majeure (collectively, **"Force Majeure Event"**) occurs, including without limitation, declared or undeclared war, sabotage, riot or other acts of civil disobedience, acts or omissions of government, labor disputes, shortages of fuel or other materials, accidents, fires, explosions, floods, earthquakes, or other acts of God, which substantially prevents Tenant's use of the Premises as provided for in this Agreement for a period of thirty (30) days or more; it is agreed that Tenant may elect, within one hundred twenty (120) days after the effective date of such Use Law or the occurrence of the Force Majeure Event, to (i) cancel this Agreement and surrender possession of the Premises; or (ii) in the event of a Force Majeure Event, extend the time of Tenant's performance hereunder by a reasonable period until Tenant's use of the Premises can be resumed. Any such cancellation and surrender shall act to release and discharge Tenant from any further obligation under this Agreement. In addition, it is agreed that during the period of any Force Majeure Event, City and Tenant shall be excused from performing their respective obligations under this Agreement whether or not Tenant exercises its right to terminate as provided herein. In addition, if there is a termination due to a Use Law or a Force Majeure Event, any funds remaining in the Tenant Improvement Fund that were deposited by City and Tenant shall be disbursed first to reimburse City for the City Contribution and then to reimburse Tenant for Tenant's Contribution.

17. **TRANSFER ARRANGEMENT.** Tenant shall not voluntarily or by operation of law assign, transfer, mortgage, sublet, or otherwise transfer or encumber all or any portion of Tenant's interest in this Agreement or in the Premises (each a **"Transfer Arrangement"**) without City's prior written consent, which City shall not unreasonably withhold or delay. Any attempted Transfer Arrangement without such consent shall be void, and shall constitute a breach of this Agreement. Any sale or other transfer, including by consolidation, merger, or reorganization, of a majority of the voting stock of Tenant, if Tenant is a corporation, or any sale or other transfer of a majority of the partnership interest in Tenant, if Tenant is a partnership, shall be a Transfer Arrangement for purposes of this Section. If Tenant desires City's consent to Transfer Arrangement, Tenant shall submit to City the documentation concerning the Transfer Arrangement and all other information which City may reasonably request including, without limitation, sufficient information to enable City to determine the character, quality, type of business, and financial responsibility of the proposed transferee. Tenant shall notify City of any request for consent to a Transfer Arrangement at least sixty (60) days prior to the proposed effective date of such Transfer Arrangement.

Regardless of City's consent, no Transfer Arrangement shall release Tenant of Tenant's obligations hereunder or alter the primary liability of Tenant to pay the Rent, and to perform all other obligations to be performed by Tenant hereunder. City may accept Rent from any person

other than Tenant pending approval or disapproval of such Transfer Arrangement. Any delay in the approval or disapproval of such Transfer Arrangement or the acceptance of Rent shall not constitute a waiver or estoppel of City's right to exercise its remedies for the breach of any of the terms or conditions of this Section. Consent to one Transfer Arrangement shall not be deemed consent to any subsequent assignment. In the event of default by any transferee of Tenant in the performance of any of the terms hereof, City may proceed directly against Tenant without the necessity of exhausting remedies against said transferee. City may consent to subsequent Transfer Arrangements of this Agreement or amendments or modifications to this Agreement with transferees of Tenant, without notifying Tenant, or any successor of Tenant, and without obtaining its or their consent thereto and such action shall not relieve Tenant of liability under this Agreement.

The following terms and conditions shall apply to any subletting by Tenant of all or any portion of the Premises (each a "**Subletting Arrangement**"):

(a) Tenant shall absolutely and unconditionally assign and transfer to City as security for the performance of Tenant's monetary obligations hereunder, all of Tenant's interest in all rentals and income arising from such Subletting Arrangement, and City may collect such rent and income and apply same toward Tenant's obligations under this Agreement, provided, however, that until a default shall occur beyond applicable notice and cure periods in the performance of Tenant's monetary obligations under this Agreement, Tenant shall have a license to receive, collect, and enjoy the rents accruing under such Subletting Arrangement. City shall not, by reason of the Subletting Arrangement or by reason of the collection of rents from any transferee, be deemed liable to the transferee for any failure of Tenant to perform and comply with any of Tenant's obligations to such transferee under such Subletting Arrangement. Tenant shall irrevocably authorize and direct any such transferees, upon receipt of a written notice from City stating that a default exists in the performance of Tenant's monetary obligations under this Agreement, to pay to City the rents due and to become due under the Subletting Arrangement. Tenant agrees that such transferee shall have the right to rely upon any such statement and request from City and that such transferee shall pay such rents to City without any obligation or right to inquire as to whether such default exists and notwithstanding any notice from or claim from Tenant to the contrary. Tenant shall have no right or claim against such transferee or City for any such rents so paid by said transferee to City.

(b) No Subletting Arrangement entered into by Tenant shall be effective unless and until it has been approved in writing by City. In entering into any Subletting Arrangement, Tenant shall use only such form of Subletting Arrangement as is satisfactory to City, and once approved by City, such Subletting Arrangement shall not be changed or modified without City's prior written consent. Any transferee shall, by reason of entering into a Subletting Arrangement under this Agreement, be deemed, for the benefit of City, to have assumed and agreed to confirm and comply with each and every obligation herein to be performed by Tenant other than such obligations as are contrary to or inconsistent with provisions contained in a Subletting Arrangement to which City has expressly consented in writing.

(c) The consent by City to any subletting shall not release Tenant from its obligations or alter the primary liability of Tenant to pay the Rent and perform and comply with all of the obligations of Tenant to be performed under this Agreement.

(d) Consent by City to any subletting shall not constitute a consent to any subsequent subletting by Tenant or to any assignment or subletting by the transferee. However, City may consent to subsequent sublettings and assignments of the Subletting Arrangement or any amendments or modifications thereto without notifying Tenant or anyone else liable on the Agreement or Subletting Arrangement and without obtaining their consent and such action shall not relieve such persons from liability.

(e) In the event of any default under this Agreement, City may proceed directly against Tenant or anyone else responsible for the performance of this Agreement, including the Transferee, without first exhausting City's remedies against any other person or entity responsible therefor to City, or any security held by City or Tenant.

(f) In the event Tenant shall default in the performance of its obligations under this Agreement, City, at its option and without any obligation to do so, may require any Transferee to attorn to City, in which event City shall undertake the obligations of Tenant under such Subletting Arrangement from the time of the exercise of said option to the termination of such Subletting Arrangement; provided, however, City shall not be liable for any prepaid rents or security deposit paid by such Transferee to Tenant or from any other prior defaults of Tenant under such Subletting Arrangement.

(g) Each and every consent required of Tenant under a Subletting Arrangement shall also require the consent of City.

(h) No Transferee shall further assign or sublet all or any part of the Premises without City's prior written consent.

(i) City's written consent to any subletting of the Premises by Tenant shall not constitute an acknowledgment that no default then exists under this Agreement of the obligations to be performed by Tenant nor shall such consent be deemed a waiver of any then-existing default, except as may be otherwise stated by City at the time.

(j) With respect to any subletting to which City consents, City agrees to deliver a copy of any notice of default by Tenant to the Transferee and such Transferee shall have the right to cure a default of Tenant within ten (10) days after service of said notice of default upon such Transferee, and the Transferee shall have a right of reimbursement from and against Tenant for any such defaults cured by the Transferee.

Notwithstanding anything to the contrary set forth herein, Tenant has the right, without obtaining City's consent, but upon prior written notice to City to: (a) assign this Lease or sublet all or any part of the Premises to (i) any person or entity which, directly or indirectly, controls, is controlled by, or is under common control with Tenant (an "Affiliate"), or (ii) to a successor of Tenant or an Affiliate by merger, reorganization, or consolidation, which directly or indirectly under common control with Tenant. "Control" (and variations thereof) means the ownership of not less than 50% of the equity or other ownership interests of the entity in question or the power to direct or control the management of such entity.

18. BREACH AND REMEDIES.

18.1 Conditions of Default. The occurrence of any one or more of the following events shall constitute a material default of this Agreement by Tenant:

(a) The vacating or abandonment of the Premises by Tenant for five (5) business days in any thirty (30) day period (other than a temporary vacation as a result of damage, casualty, or a Force Majeure Event.

(b) The failure by Tenant to make any payment of Minimum Rent or Percentage Rent or any other payment required to be made by Tenant hereunder as and when due where such failure shall continue for a period of five (5) days after written notice thereof from City to Tenant. In the event that City serves Tenant with a Notice to Pay Rent or Quit pursuant to applicable Unlawful Detainer statutes, such Notice to Pay Rent or Quit shall also constitute the notice required by this subsection.

(c) The failure by Tenant to observe or perform any of the covenants, conditions, or provisions of this Agreement where such failure shall continue for a period of thirty (30) days after written notice thereof from City, Tenant shall not be deemed to be in default if Tenant commences such cure within said thirty (30) day period and thereafter, diligently prosecutes such cure to completion. To the extent permitted by law, such thirty (30) day notice shall constitute the sole and exclusive notice required to be given to Tenant under applicable Unlawful Detainer statutes.

(d) The occurrence of any of the following events: (i) the making by Tenant of any general arrangement or general assignment for the benefit of creditors; (ii) Tenant becoming a "debtor" as defined in 11 U.S.C.A §101 or any successor statute thereto, or any action taken or suffered by Tenant under any insolvency, bankruptcy, reorganization, moratorium, or other debtor relief statute, whether now existing or hereinafter amended or enacted; (iii) the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Agreement, where possession is not restored to Tenant within ninety (90) days; or (iv) the attachment, execution, or other judicial seizure of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Agreement, where such seizure is not discharged within thirty (30) days. In the event that any provision of this Section is contrary to any applicable law, such provision shall be of no force and effect.

(e) The discovery by City that any financial statement given to City by Tenant was intentionally materially false at the time given.

18.2 Remedies. Upon the occurrence of any event of default by Tenant, City shall have, in addition to any other remedies available to City at law or in equity (all of which remedies shall be distinct, separate and cumulative), the option to pursue anyone or more of the following remedies, each and all of which shall be cumulative and nonexclusive, without any notice or demand whatsoever.

(a) Terminate this Agreement, in which event Tenant shall immediately surrender the Premises to City, and if Tenant fails to do so, City may, without prejudice to any

other remedy which it may have for possession or arrearages in Rent, enter upon and take possession of the Premises and expel or remove Tenant and any other person who may be occupying the Premises or any part thereof, without being liable for prosecution or any claim or damages therefor; and may recover from Tenant the following:

(i) the worth at the time of any unpaid Rent which has been earned at the time of such termination; plus

(ii) The worth at the time of award of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus

(iii) The worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus

(iv) Any other amount necessary to compensate City for all the detriment proximately caused by Tenant's failure to perform its obligations under this Agreement or which in the ordinary course of things would be likely to result therefrom, specifically including but not limited to, brokerage commissions and advertising expenses incurred, expenses of remodeling the Premises or any portion thereof for a new tenant, whether for the same or a different use, and any special concessions made to obtain a new tenant; and

(v) At City's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable law.

The term "**Rent**" as used in this Section shall be deemed to be and to mean all sums of every nature required to be paid by Tenant pursuant to the terms of this Agreement, whether to City or to others. The "worth at the time of award" shall be computed by allowing interest at the rate set forth in this Agreement, but in no case greater than the maximum amount of such interest permitted by law. The "worth at the time of award" shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

(b) City shall have the remedy described in California Civil Code Section 1951.4 (lessor may continue lease in effect after lessee's breach and abandonment and recover rent as it becomes due, if lessee has the right to sublet or assign, subject only to reasonable limitations). Accordingly, if City does not elect to terminate this Agreement on account of any default by Tenant, City may, from time to time, without terminating this Agreement, enforce all of its rights and remedies under this Agreement, including the right to recover all rent as it becomes due.

(c) City shall at all times have the rights and remedies (which shall be cumulative with each other and cumulative and in addition to those rights and remedies available under this Agreement), without prior demand or notice except as required by applicable law, to seek any declaratory, injunctive or other equitable relief, and specifically enforce this Agreement, or restrain or enjoin a violation or breach of any provision hereof.

(d) Notwithstanding anything contained herein to the contrary, in the event City terminates this Agreement pursuant to Section 4.3 hereinabove, City's sole monetary remedy shall be disbursement to City of the \$50,000 in the Tenant Improvement Fund deposited by Tenant plus any City Contribution to the Tenant Improvement Fund as specified in Section 4.3 plus two (2) years of Minimum Rent of \$75,000 per year. City shall have no right to recover any further monetary damages as provided for in Subsection 18.2(a) hereinabove.

19. DISPUTE RESOLUTION.

19.1 Resolution by the Parties. The parties hereto desire, pursuant to the provision of this Section 19, to establish procedures to facilitate the informal and inexpensive resolution of certain specified disputes as specifically referenced in this Agreement as an ADR Issue. All other defaults and disputes are subject to the Default and Remedies Section 18 of this Agreement, including but not limited to applicable summary proceedings, and are not subject to this Dispute Resolution Section 19.

To accomplish this objective, City and Tenant agree to follow the procedures set forth below for an ADR Issue. The complaining party shall write a description of the alleged ADR Issue ("**ADR Issue Notice**") and provide to the other party in accordance with provisions regarding Notice under this Agreement. The ADR Issue Notice shall explain the nature of the ADR Issue refer to the relevant sections of the Agreement upon which the ADR Issue is based. The complaining party shall also set forth a proposed solution to the problem, including a reasonably specific time frame within which the parties must act. The party receiving the letter must respond in writing within ten (10) days with an explanation, including references to the relevant parts of the Agreement and a response to the proposed solution. Within ten (10) days of receipt of this response, the parties must meet in person or by telecommunication and discuss options for resolving the ADR Issue. The complaining party must initiate the scheduling of this resolution meeting.

19.2 Mediation. If the dispute is not resolved informally, a settlement conference must be held within thirty (30) days of an unsuccessful resolution meeting. The settlement conference will be held at offices of the City. Within ten (10) days of an unsuccessful resolution meeting the parties must agree on an individual with substantial experience in the golf industry or a mediator on the American Arbitration Association's National Golf Industry Panel to act as the mediator at the settlement conference.

19.3 Arbitration. If the ADR Issue is not settled by the other resolution formats prescribed herein, the parties agree to submit the ADR Issue to AAA for binding arbitration in Alameda County, California. The aggrieved party may initiate arbitration by sending written notice of an intention to arbitrate in accordance with provisions regarding Notice under this Agreement to all parties and to AAA. The notice must contain a description of the ADR Issue, the amount involved, and the remedy sought. Either party may seek equitable relief from the arbitration in addition to monetary damages. Any ADR Issue shall be settled in accordance with AAA's Commercial Arbitration Rules before an arbitrator or arbitrators selected from the AAA's National Golf Industry Panel, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The arbitrator will have no authority to award punitive or other damages not measured by the prevailing party's actual damages, except as may

be required by statute. The arbitrators shall award to the prevailing party, if any, as determined by the arbitrators, all of its costs and fees. "**Costs and fees**" mean all reasonable pre-award expenses of the arbitration, including the arbitrators' fees, administrative fees, travel expenses, out-of-pocket expenses such as copying and telephone, court costs, witness fees, and attorneys' fees. The award shall include findings of fact and conclusions of law and shall be accompanied by a reasoned opinion. The award shall include a breakdown as to specific claims.

20. QUIET ENJOYMENT. Subject only to the terms of this Agreement, so long as Tenant complies with its obligations under this Agreement, City shall secure to Tenant the quiet and peaceful enjoyment of the Premises and the sole and exclusive possession of the Premises without objection or interference from City or any party claiming under City.

21. GENERAL PROVISIONS.

21.1 Entire Agreement. This Agreement contains all of the agreements of the parties with respect to the matters covered by this Agreement, and no prior agreements, oral or written, or understandings or representations of any nature whatsoever pertaining to any such matters shall be effective for any purpose unless expressly incorporated in the provisions of this Agreement. The provisions of this Agreement shall not be amended or altered except by an agreement in writing signed by both of the parties.

21.2 Waiver. Waiver by either City or Tenant of any breach by the other of any covenant, condition or obligation contained in this Agreement or failure by either City or Tenant to exercise any right of remedy in respect of any such breach shall not constitute a waiver of any such breach or of any subsequent breach of any covenant, condition or obligation, nor bar any right or remedy of City or Tenant in respect of any such subsequent breach.

21.3 Memorandum of Agreement. At City's request, City and Tenant agree to execute and deliver a short form memorandum of this Agreement in recordable form. The parties further agree, however, that the memorandum shall in no way be deemed or interpreted to amend, change, define, explain or add to the provisions of this Agreement.

21.4 Brokers. City and Tenant represent to each other that they are not obligated to any broker or finders in connection with this Agreement, and each party agrees to defend, indemnify and hold the other harmless from any claim, suit or demand made upon the other by any person, firm or corporation for brokerage fees or commissions or other similar compensation with respect to this Agreement arising out of any act or agreement of the indemnifying party.

21.5 Notices and Addresses. All notices, demands, requests or replies provided for or permitted by this Agreement shall be in writing and may be delivered by any one of the following methods: (1) by personal delivery with receipt acknowledged in writing; (2) by deposit with the United States Postal Service as certified or registered mail, return receipt requested, postage prepaid to the addresses stated below; or (3) by deposit with an overnight express delivery service with receipt acknowledged in writing. Notice deposited with the United States Postal Service in the manner described above shall be deemed effective three (3) business days after deposit with the Postal Service. Notice by overnight express delivery service shall be deemed effective one (1) business day after deposit with the express delivery service. Notice by

personal delivery shall be deemed effective at the time of personal delivery. Notice also may be given by means of electronic facsimile transmission ("fax"); provided, however, that in order for a fax notice to be deemed effective, the party giving notice by fax shall provide a "hard copy" of the faxed notice thereafter to the other party pursuant to one of the three (3) methods of "hard copy" delivery specified in this Section.

21.6 Governing Law; Partial Invalidity. This Agreement and the rights and liabilities of the parties to this Agreement shall be governed by the laws of the State of California. If any term or provision of this Agreement or application of this Agreement to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected by such invalidity or unenforceability, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

21.7 Attorney Fees. If either party brings an action to enforce the terms hereof or declare rights hereunder, the prevailing party in any such action shall be entitled to reasonable attorney's fees and costs as fixed by the court.

21.8 Holding Over. If Tenant does not vacate the Premises upon the expiration or earlier termination of this Agreement, Tenant's occupancy of the Premises shall be a "month-to-month" tenancy, subject to all the terms of this Agreement applicable to a month-to-month tenancy.

21.9 Estoppel Certificates. Upon City's or Tenant's written request, the other party shall execute, acknowledge and deliver to the requesting party, a written statement certifying: (a) that none of the terms or provisions of this Agreement have changed (or if they have been changed, stating how they have been changed); (b) that this Agreement has not been cancelled or terminated; (c) the last date of payment of the Minimum Rent and other charges and the time period covered by such payments; and (d) that the other party is not, to the best of the certifying party's knowledge, in default under this Agreement (or, if the other party is claimed to be in default, stating why). Such party shall deliver such statement to the requesting party within ten (10) days after the requesting party's request. Any such statement may be given by the requesting party to any prospective purchaser or encumbrancer of City or Tenant's interest in this Agreement.

21.10 Captions. Captions in this Agreement are included for convenience only and are not to be taken into consideration in any construction or interpretation of this Agreement or any of its provisions.

21.11 Exhibits. The Exhibits referred to in the Summary and attached to this Agreement are incorporated herein as if set forth in full.

21.12 Further Assurances. City and Tenant agree that at any time or from time-to-time after the execution of this Agreement, they shall, upon request of the other, execute and deliver such further documents and do such further acts and things as may be reasonable requested in order to fully effect the purpose of this Agreement.

21.13 No Joint Venture. Nothing contained in this Agreement shall be deemed or construed by the parties hereto or by any third party as creating the relationship of principal and agent, a partnership or joint ventures between City and Tenant. It is understood and agreed that neither any provisions contained in this Agreement nor any acts of City or Tenant shall be deemed to create any relationship between City and Tenant other than the relationship of landlord and tenant.

21.14 No Interpretation Against Draftsman. City and Tenant hereby agree that no provision of this Agreement shall be construed against either Tenant or City on the basis that the provision was drafted by such party or such party's counsel.

[Signature Page Follows]

IN WITNESS WHEREOF, this Agreement has been executed as of the date first set forth above.

CITY:

CITY OF ALAMEDA, a California municipal corporation

By: [Signature]
Name: ACTING CITY LISA GOLDMAN
Title: ACTING CITY MANAGER
Date: 8/1/12

Recommended for Approval:

Approved as to Form:

CITY ATTORNEY

By: [Signature]
Name: LISA GOLDMAN
Title: ASSISTANT CITY MANAGER
Date: 8/1/12

By: [Signature]
Name: JANET C. KERN
Title: CITY ATTORNEY
Date: 7-16-12

TENANT:

GREENWAY GOLF ASSOCIATES, INC., a California corporation

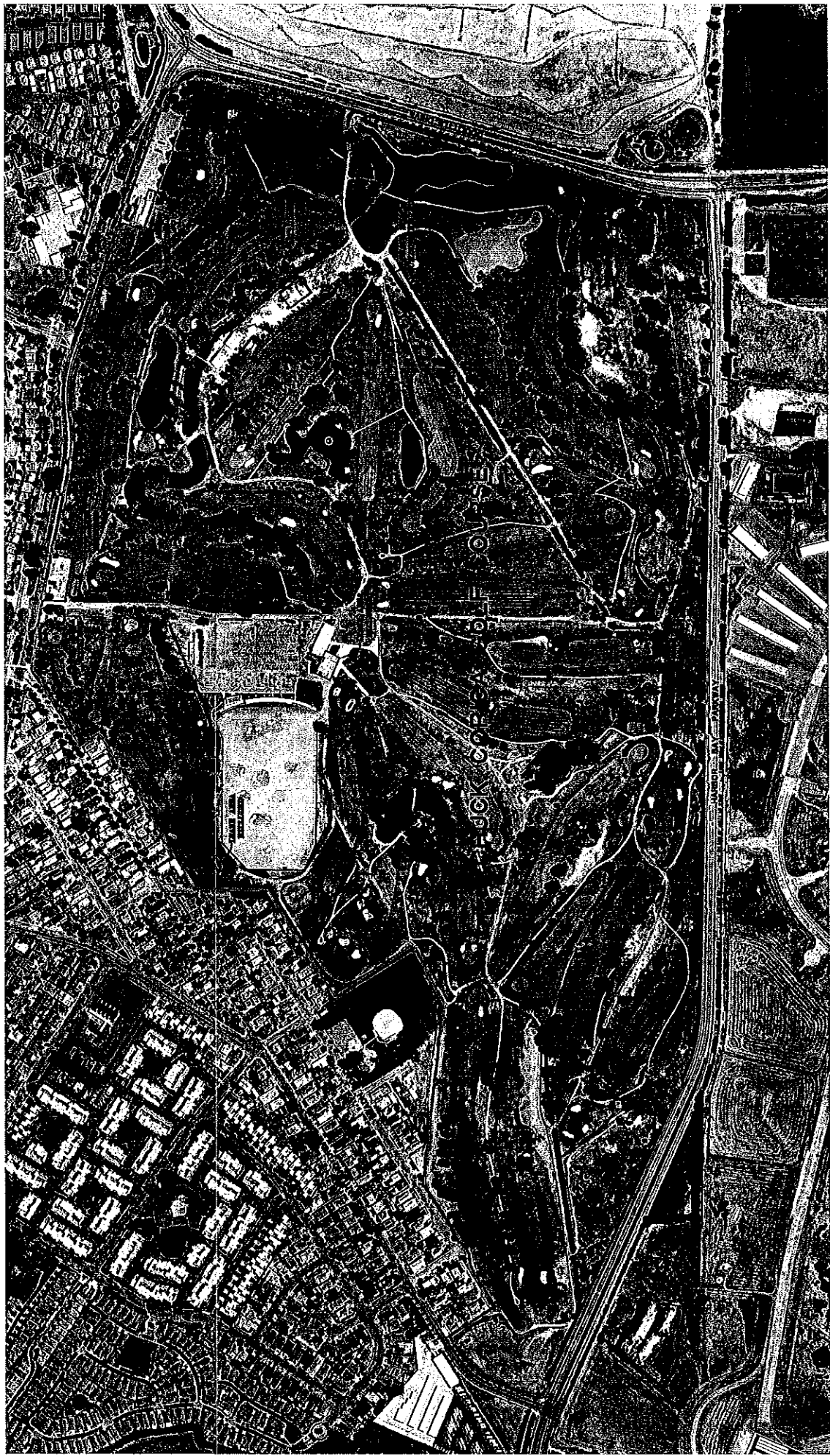
By: [Signature]
Name: George H. Kelley
Title: President
Date: 7/9/12

By: [Signature]
Name: Ken Campbell
Title: Secretary/Treasurer
Date: 7-09-12

Exhibit A

Leased Premises

(Greenway Lease Exhibit prepared by Ruggeri - Jenson Azar dated July 2, 2012 attached)



LEGEND
—— GOLF COURSE LIMITS
—— EXCLUDED AREAS

GREENWAY LEASE EXHIBIT
CITY OF ALAMEDA, CALIFORNIA

RJA
RUGGERI-JENSEN-AZAR
ENGINEERS • PLANNERS • SURVEYORS
4405 LINDSEY DRIVE, SUITE 200, ALAMEDA, CA 94606
(415) 762-1000 FAX (415) 762-1001

EXHIBIT B-1: Listing of Personal Property

EXHIBIT B-2: Third Party Leases between Yamaha and City of Alameda

Exhibit C

Repairs and Rehabilitation

(Luscious Bateman Driving Range & Mif Albright Golf Course Improvement Plan)

Description of Specific Work

1.0 Project Background

Tenant shall repair and rehabilitate the Driving Range and 9-Hole Course, including improvement of the Driving Range turf area, rebuilding select greens and tees and irrigation systems, and regrassing the 9-Hole Course, as more specifically described below. Tenant shall pay all costs for Repairs and Rehabilitation, including design, environmental review costs, permit processing fees, building permit fees, and construction.

2.0 Driving Range Scope of Work

The following improvements shall be completed to improve the physical conditions at the driving range:

- 1) Mobilization of staff and machinery for the Improvements.
- 2) Demolition of driving range landing areas and remove synthetic turf accordingly.
- 3) Perform shaping operations as necessary to maximize surface drainage suitable for turf grass.
- 4) Install Irrigation controller, install irrigation heads and PVC piping.
- 5) Install drain pipe and drainage inlets as needed.
- 6) Provide the necessary specialized finish work prior to grassing.
- 7) Seed/sprig the newly constructed driving range.
- 8) Seed target greens on range.
- 9) Grow-in the driving range

3.0 Nine Hole Course Scope of Work

The following improvements shall be completed to improve the physical conditions at the 9-Hole Course (Mif Albright):

- 1) Mobilization of staff and machinery for the Improvements.
- 2) Maximize Mif Albright Golf Course layout
- 3) Develop short game area (chipping green and bunker)
- 4) Improve drainage and irrigation on Mif Albright Golf Course
- 5) Provide the necessary specialized finish work prior to grassing

- 6) Re-grass Mif Albright Golf Course fairways
- 7) Grow-in Mif Albright Golf Course

4.0 General Conditions

Demolition:

Tenant shall remove necessary materials, vegetation, features and debris from the areas within the Work Limits in order to facilitate the improvements. Demolition shall extend to the removal of synthetic turf at the driving range and tree stumps and limbs that impede implementation of the improvements on the 9-hole course, Excess compost, and other debris which may impede successful completion of the Work as outlined and required shall also be removed from the site. Concrete and asphalt shall be removed where it interferes with the Work, or is to be replaced. Any existing culvert crossings shall remain unless specified otherwise.

Rough Shaping:

Tenant shall use available on-site materials to shape the areas when required. Material is generally available from the immediate areas within work Limits.

Install Irrigation & Drainage:

Tenant shall install irrigation & drainage improvements to all areas included in the scope of work. Drainage shall connect to existing facilities or daylight to existing lagoon system. This existing storm drainage system shall be protected by Tenant. This existing system will also be connected to and utilized as the carry-off drainage network for much of the new work.

Grassing:

Areas under scope of work are to be grassed. All areas of disturbance shall be repaired by Tenant.

Schedule: Work shall be completed by July 2013

5.0. Design Changes and Permits

Tenant shall be responsible for acquiring all necessary building and grading permits from the City of Alameda Permit Center prior to commencement of any part of the work.

Exhibit D

Drainage and Irrigation Issues

(North and South Course Improvement Plan)

The Tenant shall prepare a North and South Course Improvement Plan for review and approval by the City. The Improvement Plan shall include but not be limited to the following proposals.

1. An Irrigation System Improvement Plan

The irrigation system improvement plan shall include a plan for the replacement of the irrigation system on the South Course and improvements where necessary to the irrigation system on the north course. The plan shall determine the best technologies, systems, and improvements to minimize water use, maintain high quality playing surfaces, and minimize long term fertilizer and maintenance costs.

2. A Drainage Improvement Plan

The drainage improvement plan shall include proposed positive drainage measures and physical improvements to improve drainage, waterways, and lagoons on the North and South Courses and minimize or eliminate the periodic flooding under normal rainfall conditions, and the associated wet conditions, which contribute to poor turf quality, and poor playing conditions. The drainage plan must ensure that the waterways and lagoons continue to function for both off-site and on-site areas.

3. A Turf grass Improvement Plan

The turf grass improvement plans shall include a plan to replace the variety of existing grasses that cause difficulties for the maintenance of optimum playing conditions. The Plan will include a turf replacement recommendation to reduce water use, improve the quality of the playing surface, reduce fertilizer use and minimize long term maintenance costs.

4. Tees, Fairways, Roughs and Greens Improvement Plan

The Tees, fairways, roughs and greens improvement plan shall include proposals to improve or rebuild the tees, fairways, roughs, and greens to ensure consistent tee, fairway roughs, and greens quality on the North and South Courses. The improvement plan shall include strategies to reduce water use, maintenance costs, and ensure a consistently high quality playing experience.

5. A Cart Path Improvement Plan

The cart path improvement plan will include a proposal to rebuild, relocate, and or resurface the cart path system on the north and south courses to address the uneven surfaces caused by tree roots, poor drainage, cracks and used by heavy maintenance equipment. These poor quality cart paths

contribute to consistently damaging the electric cart fleets and poor quality fairways.

6. On Course Food and Beverage Service

The improvement plan will include strategies to mobile food and beverage carts roam the courses, which would replace the use of the snack bar facility.

7. Milestones:

A) Within 45 days after the Commencement Date, environmental consultant to be under contract. Tenant will recommend consultants for City's approval; City will contract with its approved consultant; Tenant will be responsible for paying for consultant services.

B) Within three months after the Commencement Date, Tenant to submit for City's review and comment: (1) a Preliminary Plan for **Exhibit D** improvements and (2) a proposed Community Engagement Plan for the purpose of achieving golf community support for proposed improvement plan in preparation for final City Council action on plan.

C) Within six months after the Commencement Date, Tenant will cause the completion of the following draft studies (to be utilized as part of the environmental review for the project): (1) a traffic study; (2) an air quality study; and (3) a bird assessment study. The parties acknowledge that the pattern of certain migratory birds can only be studied during certain periods of the year.

D) Upon completion of all of the above, City will determine, in consultation with Tenant, the type of environmental documentation which must be prepared (e.g. Environmental Impact Report, Mitigated Negative Declaration, etc.) and the parties will agree to a timetable for completion. (It is anticipated that entitlements will be cleared by the end of Year 1.)

E) Within one year after the Commencement Date (or within 18 months after the Commencement Date if EIR is required), Tenant will begin preparation of necessary construction document and begin applications for permits. (It is anticipated that permits for construction will be pulled by the end of Year 2.)

F) Two years from Commencement Date, construction begins.

G) The milestones set forth in this Section may be tolled for any period during which litigation or an appeal commenced by a third party is pending that prevents the project from moving forward.

Exhibit E

Tenant Improvements

1. Plans and Specifications

1.1 Tenant's Professionals. Tenant will submit the name of each landscaping, engineering, design and construction professional to City for approval (not to be unreasonably withheld) prior to commencement of any work by the professional, together with a copy of the professional's license to conduct business in the State of California and evidence of insurance. City's failure to object to any such professional within five (5) business days after Tenant's submittal will constitute approval of such professional.

1.2 Preparation of Preliminary Design Drawings for Tenant Improvements. Tenant will, at Tenant's expense, submit to Tenant's design team ("**Design Team**") complete information necessary for Design Team to prepare preliminary plans for any improvements to the Premises, including but not limited to the improvements required for the Repairs and Rehabilitation (which shall be performed in accordance with the scope of work and milestones set forth in **Exhibit C Repairs and Rehabilitation**) and any improvements for the resolution of the Drainage and Irrigation Issues (each and collectively, "**Tenant Improvements**") (hereinafter the "**Preliminary Design Drawings**") and will thereafter submit to City for City's approval, two (2) complete sets of the Preliminary Design Drawings. The Preliminary Design Drawings will describe Tenant's specific requirements for the Tenant Improvements to the Premises to be performed by Tenant. Tenant Improvements will comply with City's published building improvement standards as established by City from time-to-time and all applicable local, state and federal building codes, rules and regulations including without limitation the Americans With Disabilities Act.

1.3 Approval of Preliminary Design Drawings. City will approve or disapprove the Preliminary Design Drawings. If disapproved, City will state the reasons and/or corrections required for approval. In such event, City will require, and Tenant will make the changes necessary in order to correct the Preliminary Design Drawings and will return the same to City, which City will approve or disapprove after City receives the revised Preliminary Design Drawings. This procedure will be repeated until the Preliminary Design Drawings have been finally approved by City and written approval has been delivered to and received by Tenant. In the event of an impasse or dispute between the parties relating to the City's approval of the Preliminary Design Drawings, the impasse or dispute shall be resolved in accordance with Section 19 of this Agreement ("ADR Issue").

1.4 Tenant's Final Plans and Specifications. After City's approval of the Preliminary Design Drawings, Tenant will, at Tenant's expense, cause Design Team to submit to City for approval, three (3) complete sets of working drawings for Tenant Improvements (hereinafter "**Tenant's Final Plans**") and such other matters as are a part of Tenant Improvements as more particularly set forth in this Agreement. Tenant will also furnish as-built drawings to City after completion of the work described in Tenant's Final Plans.

1.5 Approval of Final Plans. City will review Tenant's Final Plans and reasonably approve or disapprove the same. If disapproved, City will state the reasons and/or corrections required for approval. In such event, City will require, and Tenant will make the changes necessary in order to correct Tenant's Final Plans and will return the same to City. City will approve or disapprove the revised Tenant's Final Plans after City receives the revised Tenant's Final Plans. This procedure will be repeated until the Tenant's Final Plans have been fully approved by City and written approval has been delivered to and received by Tenant. No construction of Tenant Improvements specified will commence until the Final Plans have been so approved by City. In the event of an impasse or dispute between the parties relating to the City's approval of the Tenant's Final Plans, the impasse or dispute shall be resolved in accordance with Section 19 of this Agreement ("ADR Issue").

1.6 City's Approval. City's approval of the Preliminary Design Drawings and Tenant's Final Plans is not an assumption of liability for design, engineering, or structural integrity or fitness for a particular purpose of any of the plans or any of the improvements set forth therein.

2. Construction of Improvements

2.1 Government Approvals. Following approval of the Tenant's Final Plans, Tenant will apply for all necessary approvals and permits from the appropriate governmental authorities (collectively the "**Government Approvals**") required for Tenant Improvements. Upon receipt of the Government Approvals, Tenant's contractor will begin construction. Tenant's failure to begin construction within sixty (60) days of Tenant's receipt of the Governmental Approvals will constitute a material Default under this Agreement and will entitle City to terminate this Agreement. Tenant or Tenant's contractor will provide City with at least five (5) days prior written notice of commencement of construction so that City may post appropriate Notices of Non-Responsibility within the Premises. Tenant agrees to pursue Tenant Improvements diligently to completion, and in compliance with all applicable local, State and Federal laws, ordinances, rules, codes and regulations and pursuant to a schedule for completion of the Tenant Improvements, which is subject to the City's approval.

2.2 Construction Schedule. Subject to a Force Majeure Event, Tenant shall complete the Tenant Improvements in accordance with a schedule to be submitted to City by Tenant and subject to City's review and approval, which shall include an estimated completion date for each category of work for the Tenant Improvements and detailed estimates of costs for each category of Tenant Improvements, ("**Construction Schedule**"). Tenant shall submit to City on a monthly basis evidence of the costs Tenant has incurred to construct Tenant's Improvements in accordance with the approved Construction Schedule.

2.3 Licensed Contractors. Tenant will use only qualified California licensed contractors and subcontractors to perform all work. Tenant will submit the name of each contractor and subcontractor to City for approval (not to be unreasonably withheld) prior to commencement of any work by the contractor and/or subcontractor together with a complete copy of each contract or subcontract

and a copy of the contractor or subcontractor's California contractor's license and evidence of insurance. City's failure to object to any such professional within five (5) business days after Tenant's submittal will constitute approval of such professional.

2.4 Change and Additions. No change, modification, or alteration in Tenant's Final Plans will be made without the prior written consent of City, which will not be unreasonably withheld.

2.5 Contractor's Warranty. Tenant will ensure that Tenant's contractor and each subcontractor used by Tenant's contractor to perform work hereunder, will guarantee that the portion thereof for which he is responsible, or which he performs, will be free from any defects in workmanship and materials for a period of not less than one (1) year from the date of completion of the Premises. The correction of such work will include, without limitation, all expenses and corrections to or in connection the Premises that may be damaged or affected by such defective work or by the repair or replacement of such defective work. All such warranties or guarantees as to materials or workmanship with respect to Tenant's Improvements will be contained in Tenant's agreement with each contractor, and Tenant will require each contractor to include such warranties or guarantees in each subcontract, and all such warranties or guarantees will be so written so that same will inure to the benefit of both Tenant and City, as their respective interests may appear. Tenant hereby covenants to give to City any assignment or other assurance necessary to perfect the right to direct enforcement by City.

2.6 City's Inspection. City's prior inspection and written approval will be a condition precedent to City's acceptance of Tenant Improvements as being complete and in accordance with Tenant's Final Plans. Said approval will be based upon the good faith determination of City's architect or engineer and will be conclusive as to Tenant. Tenant will give City at least five (5) business days prior written notice of the anticipated completion date of Tenant Improvements. As a condition precedent to City's approval, Tenant will be required to settle and/or bond against any mechanic's or material's liens, or other similar liens, filed against the Premises as a result of Tenant's Improvements in accordance with the provisions relating to such liens in this Agreement. Tenant will further reimburse City in full, and indemnify, defend and hold City harmless from and against, any liability, cost or expenses incurred by City in connection with any such liens.

2.7 Notices of Completion. Tenant will, within ten (10) business days after completion of Tenant Improvements, execute and file a Notice of Completion with respect thereto, in a form complying with the applicable provisions of the California Civil Code (and in particular specifying the name of Tenant's contractor and the kind of work done and/or materials furnished under the contract), and will furnish a copy thereof to City upon recordation.

2.8 Coordination of Work. Tenant Improvements will be coordinated under City's direction with all other work being performed or to be performed at or in connection with the Premises so that Tenant Improvements do

not interfere with or delay the completion of such other work and so that such work maybe coordinated to the maximum extent possible.

2.9 Material Storage. Each contractor and subcontractor retained by Tenant or by Tenant's contractor will obtain prior written approval from City to use any space outside of the Premises for storage, handling, or moving of materials or equipment.

2.10 Debris Removal. Each contractor and subcontractor retained by Tenant, or by Tenant's contractor, will remove and dispose of, at least once a week or more frequently as City may direct, or as will be required by OSHA standards or other applicable laws or regulations, all debris and rubbish caused by, or resulting from, or related to, Tenant's Improvements, and upon completion of such Tenant's Improvements, will remove all temporary structures, surplus materials, debris and rubbish remaining on the Premises, which has been brought in or created by or in connection with such work. If any contractor or subcontractor will neglect, refuse, or fail to remove any such debris, rubbish, surplus material or temporary structures within five (5) calendar days after notice to Tenant from City, City may remove or cause same to be removed, and Tenant will bear the expense of removal and hold City harmless therefore.

2.11 Utility Service. Tenant will obtain and transmit copies to City of all permits and/or approvals with respect to Tenant Improvements required to be given by any utility service, unless City will have already done so or elects to supply utility service itself.

2.12 Insurance - OSHA Compliance. In addition to the requirements of the this Agreement, and without any limitation thereof, each contractor and subcontractor retained by Tenant or by Tenant's contractor will, with respect to the work to be performed by each such contractor or subcontractor, (1) comply with all governmental rules and regulations, including applicable OSHA standards and (2) carry workers' compensation, public liability insurance (including property damage), builders risk insurance completed operations, with limits and in a form approved in advance by City and issued by insurance companies approved in advance by City. With the exception of Workers' Compensation insurance, City will be named as an additional insured on each policy. Prior to commencement of Tenant Improvements, Tenant and/or Tenant's contractor will deliver to City certificates evidencing all of the foregoing insurance coverage, together with endorsements evidencing that City has been added as an additional insured.

Bond. City will have the right, in City's sole discretion, to require Tenant to furnish a bond providing \$1,500,000 coverage or alternative adequate security for the same coverage, in form satisfactory to City, to assure the prompt, complete and faithful performance of the construction of the Tenant Improvements to resolve the Drainage and Irrigation Issues.

2.13 Structure. Any alterations, additions or reinforcements to any structure in the Premises required to accommodate Tenant Improvements will be Tenant's responsibility and will be subject to the prior written approval of City.

2.14 Roof. No load will be placed anywhere on the roof of any structure in the Premises without the prior written consent of City. Any load, penetration or installation, which is permitted by City, will be at Tenant's expense and engineered and installed in accordance with Tenant's Final Plans and approved in writing by City. Flashing, counter-flashing and roofing repairs will conform to the project roofing specifications. Such work will be paid for by Tenant.

2.15 Responsibility for Compliance With Applicable Laws. No approval by City of Tenant's drawings, or any work or installation of any character whatever to be made by Tenant will constitute a warranty or representation by City that Tenant's Preliminary Design Drawings, Tenant's Final Plans, work or installations comply with the requirements of any applicable governmental law, rule or regulation, or are safe, sound, merchantable or fit for any purpose. City will have no liability to Tenant in the event Tenant is required to change its Preliminary Design Drawings, Tenant's Final Plans, work or installation, after the approval thereof by City, on account of the failure of such Preliminary Design Drawings, Tenant's Final Plans, work or installations to meet applicable governmental requirements or in the event that such Preliminary Design Drawings, Final Plans, work or installation, directly or indirectly, are defective or cause injury to persons or property.

3. Description of Tenant Improvements. Tenant Improvements will be performed by Tenant in accordance with Tenant's Final Plans. Tenant Improvements will include, but will not be limited to the Repairs and Rehabilitation more specifically described in **Exhibit C Repairs and Rehabilitation** and the plans for the resolution of the Drainage and Irrigation Issues more specifically described in **Exhibit D Drainage and Irrigation Issues**.