

**CITY OF ALAMEDA**  
**CONCESSION AGREEMENT FOR RESTAURANT OPERATIONS**  
**AT THE CHUCK CORICA GOLF COMPLEX**

This Concession Agreement For Restaurant Operations at the Chuck Corica Golf Complex ("Agreement") is made and entered into as of this \_\_\_\_ day of December 2015, by and between the CITY OF ALAMEDA, a California municipal corporation ("City"), and Dialemi Inc., a California Corporation ("Concessionaire"), who agree as follows:

**ARTICLE 1 PARTIES**

- 1.01 City owns and operates the Chuck Corica Golf Complex in the City of Alameda, County of Alameda, California, located at 1 Clubhouse Memorial Drive, and more particularly described in Exhibit A which is attached to this Agreement and incorporated herein by this reference (the "Golf Complex"). Within the Golf Complex is an area defined in Section 2.01 as the "Premises".
- 1.02 Concessionaire acknowledges that City is leasing the Golf Complex, except for the Premises (as defined in Section 2.01), to Greenway Golf Associates, Inc., a California corporation ("Golf Tenant") that is operating the Golf Complex, including the Common Areas.
- 1.03 City acknowledges that an affiliate of Concessionaire owns and operates a coffee shop known as "Jim's Coffee Shop" and "Jim's Homestyle Diner" located at 2333 Lincoln Avenue, Alameda, California 94501 ("Concessionaire's Other Business") separate and independent of the restaurant and related concession business that Concessionaire will own and operate at the Golf Complex pursuant to the terms of this Agreement.
- 1.04 This Agreement shall replace and supersede in its entirety the current Concession Agreement between City and Concessionaire.

**ARTICLE 2 PREMISES AND USE**

- 2.01 Definition of Premises. As used in the Agreement, the term "Premises" means and currently consists of (a) the Building, which contains a restaurant and bar facility, of approximately four thousand five hundred (4,500) square feet in size (the "Building"), and (b) the exclusive rights to use (i) a portion of the outdoor patio adjacent to the Building (collectively, the "Building and Patio Area") and (ii) a Snack Shack located on the North Course (the "NC Snack Shack"). Concessionaire may add a food truck at the driving range ("Food Truck") and construct a Snack Shack on the South Course in the future (the "SC Snack Shack"), pending final approval of the City Manager's Designee (as defined in Section 3.03) and Concessionaire having obtained any required City permits. Concessionaire is required to make improvements to the existing facility and construct an enclosed Patio adjacent to the north and northeast edge of the Building, extending no more than thirty (30) feet from the Building (the

"Enclosed Patio") as provided in Section 6.03. After Concessionaire constructs the Enclosed Patio and in the event Concessionaire constructs the SC Snack Shack, each such construction shall become a part of and included in the definition of the Premises.

- 2.02 Concession. In consideration of the payment of concession fees and Concessionaire's performance of all the covenants and conditions of this Agreement, City hereby grants and licenses and provides to Concessionaire, and Concessionaire hereby accepts such grant and license, and the providing of the Premises for the operation of a concession business at the Premises ("Concessionaire's Golf Complex Business") for the Term (as defined in Section 3.01) and upon the terms, covenants and conditions set forth in this Agreement.
- 2.03 Use. Concessionaire shall maintain, operate and use the Building, Patio Area, and Enclosed Patio (once constructed) for a restaurant and bar, catering and banquet services. Concessionaire shall use the NC Snack Shack (and the Food Truck, if added as provided in Section 2.01 and the SC Snack Shack, if constructed by Concessionaire as provided in Section 2.01 and Article 6) to provide food and beverage service to patrons of the Golf Complex.
- 2.04 Business Operations. Concessionaire shall operate Concessionaire's Golf Complex Business at the Premises during the Term unless prevented from doing so because of an occurrence of a force majeure event as provided in Section 13.04. Concessionaire shall keep Concessionaire's Golf Complex Business open to the public and diligently operate Concessionaire's Golf Complex Business conducted therein, using sufficient number of trained personnel for service, each day of the year that the Golf Complex is open, so as to attract the maximum volume of trade or patronage available. Concessionaire shall conduct Concessionaire's Golf Complex Business at all times in a first-class manner consistent with all governmental and insurance requirements and reputable business standards and practices, in good faith and in such manner so Concessionaire's Golf Complex Business at the Premises is held in high reputation.
- 2.05 City's Entry. City and the City Manager Designee shall have the right to enter and inspect the Premises at any time the Premises are open or at any time upon written notice served twenty-four (24) hours in advance. City may enter Premises for business reasons, including, but not limited to (i) to determine whether the Premises are in good condition and whether Concessionaire is complying with Concessionaire's obligations under this Agreement; (ii) to serve, post or keep posted any notices required or allowed under this Agreement; and (iii) to show the Premises to prospective brokers, agents, buyers, tenants or persons interested in an exchange. City's exercise of its rights under this Section 2.05 shall be in a commercially reasonable manner, and City shall use its commercially reasonable efforts to minimize its interference with the business activity of Concessionaire.
- 2.06 Restrictions. Concessionaire shall not conduct or permit to be conducted any private or public nuisance on the Premises, nor conduct or permit any waste thereon. Concessionaire shall, at Concessionaire's expense, comply with all

laws, ordinances and regulations applicable to the Premises and the business conducted thereon, including City's non-smoking ordinance.

- 2.07 Concessionaire's operation of the NC Snack Shack, Food Truck (if added and the SC Snack Shack, if constructed) and Concessionaire's use of the Premises shall avoid material conflicts with Golf Tenant's operation of the Golf Complex under Golf Tenant's agreement with City.

### **ARTICLE 3 TERM**

- 3.01 The term of this Agreement is fifteen (15) years ("Term").
- 3.02 Option to Extend. In addition to the Initial Term defined in Section 3.01 above, Concessionaire shall have the option to extend the Agreement on the same terms and conditions as those contained herein for an additional period of ten (10) years provided that Concessionaire has satisfied the following standards:
- (1) Concessionaire has, at all times, complied with the terms of this Agreement, both for payment and performance. Performance may include, but is not limited to, timely payment of the Monthly Concession Fee, performance of its construction and other obligations, and satisfactory customer service at the restaurant, on-course, and tournament dinners.
  - (2) The physical condition of the Premises are in compliance with the requirements of this Agreement.

Concessionaire shall notify the City before December 2029 whether it elects to extend the Initial Term. The Agreement shall terminate at the end of the Initial Term unless both Parties have affirmatively agreed to the extension.

- 3.03 The Term will commence on the date that is the effective date of the City ordinance authorizing this Agreement between the City and Concessionaire ("Commencement Date").

Pursuant to Section 1.04, the current Concession Agreement between Concessionaire and the City will terminate and be of no further force or effect as of the Commencement Date.

- 3.04 City's Representative. The City Council designates the City Manager or the City Manager's designee, as may be designated from time to time (the "City Manager's Designee"), who is authorized, on behalf of the City, to administer this Agreement and monitor Concessionaire's compliance with the terms hereof. The City Manager's designee is also authorized to amend the Exhibits and Schedules to this Agreement on behalf of the City; provided, however, the City Council must approve any material amendment to this Agreement or the termination of this Agreement. The City Manager's Designee as of the Commencement Date is the City's Recreation and Parks Director. Concessionaire shall meet with the City Manager's Designee, at least monthly, to review operations. Concessionaire 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, Concessionaire will be required to contribute to the betterment of the quality of life for the residents by utilizing, when feasible, local vendors and supporting City charitable events.

#### **ARTICLE 4 FEES AND OTHER PAYMENTS**

4.01 Monthly Concession Fee. Concessionaire's monthly concession fee payable to City shall, except as provided below with respect to the construction of the Enclosed Patio as provided in Section 2.01, be a percentage of Gross Revenues (as such term is defined in Section 4.02) based on the following (the "Monthly Concession Fee"):

Years 1 – 6 5.0%

Years 7 – 25 7.5%

The City shall waive two (2) years of the Monthly Concession Fee (the "Waived Monthly Concession Fee") beginning the first full month after both of the following are completed:

- 1) The City issuing a certificate of occupancy for the Enclosed Patio.
- 2) Interior renovations, as required by this Agreement in Article 6.

During that two (2) year period of the Waived Monthly Concession Fee, Concessionaire will continue to be responsible for all utilities, including gas, water, electricity, and sewer. Notwithstanding the fact that the end of the two (2) year period of the Waived Monthly Concession Fee may occur prior to the end of the first six (6) years following the Commencement Date, at the end of the two (2) years of the Waived Monthly Concession Fee, the Monthly Concession Fee shall be five (5%) until the commencement of year seven (7), at which time the Monthly Concession Fee shall increase to seven and five tenths percent (7.5%) and continue at this rate through the remaining portion of the Term of this Agreement.

4.02 Capital Improvement Payments. Concessionaire shall make monthly payments to the City's Golf Course Capital Improvement Reserve Account in the amount of 0.5% of Gross Revenues ("the Capital Improvement Payment") and the amount of the Capital Improvement Payment, as calculated in this section, shall be deducted from the monthly Gross Revenues as that term is defined in Section 4.03 and before any deduction from the Gross Revenues pursuant to this Section. The Capital Improvement Payments are to be used exclusively for capital improvements to the Premises, which improvements are to be approved jointly by City and Concessionaire. The amount of the Capital Improvement Payments shall be based upon the prior year's annual Gross Revenues multiplied by 0.5% and paid by Concessionaire in 12 equal monthly installments. The City and the Concessionaire shall meet annually to discuss the use of the Capital Improvement Payments and the timing of the construction of capital improvements to the Premises with the Capital Improvement Payments. Any disagreement between the City and Concessionaire as to the use of the Capital

Improvement Payments or when the Capital Improvement Payments should be used for capital improvements to the Premises shall be resolved through the dispute resolution process (Article 13.).

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

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

- 4.04 Concessionaire shall pay the fees payable under this Article 4 for the applicable month during the Term based on Gross Revenues for such applicable month on the tenth (10<sup>th</sup>) day of the second month following such applicable month, and shall be deemed delinquent if not paid on or before such date. By way of example only, the fees payable under this Article 4 for the month of January 2016 shall be due and payable on March 10, 2016 and shall be delinquent if not paid by that date.. If the City does not receive the payment of the Monthly Concession Fee by the due date, Concessionaire will pay a penalty of 5% of the Monthly Concession Fee for that month for any delinquent payment amde within 30 days after the due date. After 30 days of delinquency, Concessionaire

will pay a penalty of 10% of the Monthly Concession Fee for that month until the Monthly Concession Fee and any applicable penalties are paid. The Concessionaire's failure to make timely payments of the Monthly Concession Fee also constitutes grounds for termination of this Agreement. Payment shall be made to City of Alameda, Finance Department, 2263 Santa Clara Avenue, Alameda, CA 94501.

- 4.05 Concessionaire shall pay before delinquency all taxes (including property taxes or possessory interest tax levied on or assessed against Concessionaire's interest in the Premises), assessments, license fees, including business license fees, and other charges ("taxes") that are levied and assessed against Concessionaire for the use of the Premises including Concessionaire's personal property installed or located in or on the Premises, and that become payable during the Term. On demand by City, Concessionaire shall furnish City with satisfactory evidence that Concessionaire has made these payments.

## **ARTICLE 5 OPERATION OF PREMISES**

- 5.01 Utilities. For the Premises, Concessionaire will pay at Concessionaire's sole cost and expense the following utilities: gas, water, electricity, sewer, garbage, and telecommunications, which utilities are separately metered solely for consumption at, or on, the Premises. Concessionaire shall, at Concessionaire's sole cost and expense, provide for cable television and grease removal services.
- 5.02 Operation and Maintenance. Concessionaire is responsible for the maintenance and repair of the entire Premises, including all structural elements and building systems. Concessionaire shall, at its sole cost and expense, maintain and operate the Premises in a clean, safe, wholesome, and sanitary condition, free of trash, garbage, or obstructions of any kind, and in compliance with any and all applicable present and future laws, general rules and regulations of any governmental authority in force now or at any time during the Term of this Agreement relating to sanitation, public health, safety, or welfare.
- 5.03 Repairs. Concessionaire shall remedy or repair without delay any defective, dangerous, or unsanitary conditions. Concessionaire shall correct such situation within reasonable time, or City may, at its option, do so at Concessionaire's sole cost and expense, payable upon demand, provided that City shall have first provided reasonable notice of such condition to Concessionaire, and Concessionaire shall have failed or refused to correct such situation within a reasonable period of time.
- 5.04 Non-Maintenance Repair and Replacement Obligations. Concessionaire shall not be responsible for the maintenance, repair, or replacement of landscaping in or around the Premises.
- 5.05 Equipment. Concessionaire shall supply at Concessionaire's sole expense, cash registers, utensils and dishes, and FF&E (as such term is hereinafter defined in Sec. 6.04) to be used on the Premises.

- 5.06 Signage. Concessionaire shall maintain, at Concessionaire's sole expense, signage identifying Concessionaire's Golf Complex Business.
- 5.07 Liquor License. Concessionaire shall maintain for the duration of this Agreement Concessionaire's Type 47 On Sale General Eating Place liquor license No. 47-435019 issued by the California Department of Alcoholic Beverage Control ("ABC"), which includes the authority to sell beer, wine and liquor at the Golf Complex, the Premises (including the Enclosed Patio), the NC Snack Shack and the Food Truck (if added) and the SC Snack if constructed ("Concessionaire's ABC License").

## **ARTICLE 6 IMPROVEMENTS**

- 6.01 Premises Improvements. Concessionaire accepts the Premises in the condition existing on the Commencement Date. Concessionaire, at its sole expense, shall make needed improvements to the aesthetics of the Premises, subject to City approval, which approval shall not be unreasonably withheld or delayed including, but not limited to, painting, new carpet, restroom, kitchen and exterior façade improvements. Concessionaire shall obtain and comply with all required City permits. Concessionaire shall consult with Golf Tenant to match color schemes and design styles for all improvements at the Premises to ensure consistency of style throughout the Golf Complex and City shall provide its approval with respect thereto, which approval shall not be unreasonably withheld.
- 6.02 Enclosed Patio. In conjunction with Section 2.01, Concessionaire, at Concessionaire's sole expense, shall within ninety (90) days of the Commencement Date, submit plans for an approximately three thousand (3,000) square feet Enclosed Patio and shall complete construction of the Enclosed Patio within twelve (12) months of the City's approval. Concessionaire shall pay all costs relative to the construction of the Enclosed Patio including design, environmental review, permit processing, building permits, and construction. If the City's Building Department determines that a fire sprinkler is required, the City will be responsible for and pay the fire meter installation costs and Concessionaire shall be responsible for and pay all other associated costs including the cost to install piping from the water meter located on Island Drive to the Premises. Concessionaire shall construct the Enclosed Patio adjacent to the north and northeast edge of the Premises.
- 6.03 Financial Commitment. To assure the City that that the Enclosed Patio is started and completed as provided in Article 6, Concessionaire shall within fifteen (15) days of the City's approval of the Enclosed Patio as set forth in Section 6.02, provide to the City, in a form reasonably acceptable to the City Attorney, a letter of credit from a financial institution acceptable to the City in the estimated amount to construct the Enclosed Patio. The letter of credit shall be in the favor of City and shall provide that the City shall have the unilateral right to draw on the letter of credit if Concessionaire has failed either to start construction as provided in this section or has started construction but is not diligently pursuing construction such that the construction of the Enclosed Patio will not be completed as provided in this section.

In the alternative, Concessionaire may provide to the City, in a form acceptable to the City Attorney, a payment, performance and warranty bonds from a surety company acceptable to the City. The payment and performance bond shall each be in the full amount of the estimated amount to construct the Enclosed Patio and the warranty bond shall be in the amount of 10% of the estimated amount to construct the Enclosed Patio.

6.04 Building Improvements. Concessionaire shall repair and rehabilitate the Building, including improvements to the kitchen, main dining area, snack bar, bar area and bar patio, as more specifically described in Section 6.04 (collectively, the "Building Improvements"). Concessionaire shall be responsible for and pay all costs for repairs and rehabilitation, including design, permit processing fees, building permit fees, and construction. Concessionaire shall complete the following interior improvements within twelve (12) to twenty-four (24) months, as described below, of the commencement of this Agreement (Sec. 3.02).

6.05 Description of the Building Improvements. The Building Improvements shall consist of the following:

To be completed within twelve (12) months of the commencement of this Agreement:

- Snack Bar
  - New flooring, wall covering, and paint
- Main Dining Area
  - Replace flooring, tables, wall covering, ceiling tiles, and lighting
  - Replace windows and window treatment
- Bar Area
  - Replace ceiling tiles, lighting, bar tables, flooring and liquor display
- Bar Patio
  - Define area with pavers
  - Add umbrellas, outdoor tables, chairs, and patio heaters

To be completed within twenty-four (24) months of the commencement of this Agreement:

- Kitchen
  - Electrical and plumbing upgrades
  - Convection oven and exhaust system
  - Work tables and banquet prep area
  - Expanded refrigeration and dishwashing
- Snack Bar
  - Plumbing upgrades
  - Replace counter area
- Bar Area
  - Upgrade refrigeration and dishwasher

6.06 Improvement Authorization. For the Enclosed Patio, Concessionaire's architectural and engineering plans, detailed cost estimates, and construction timeframe are subject to the approval of the City, including the City Golf



Commission, the City Planning Board, and the City Council. Concessionaire shall not, without City's prior written consent, which consent shall not be unreasonably withheld or delayed, make any structural alterations, improvements, or additions of a structural nature, or exterior design modifications (the "Alterations") in, on or about the Premises. Any such approved Alterations shall be at Concessionaire's sole expense. All work with respect to Alterations and utility installation must be done in a good and professional manner and diligently prosecuted to completion. Except as provided in Section 6.07, any such improvements shall be the property of City.

- 6.07 Ownership of Property. All furniture, fixtures, equipment, materials and other personal property which are installed by Concessionaire on the Premises or are otherwise brought upon the Premises ("Concessionaire's FF&E") are owned by Concessionaire. Upon termination of this Agreement, Concessionaire shall either (i) sell all or any portion of Concessionaire's FF&E to the new concessionaire at the Premises and/or (ii) remove any or all of Concessionaire's FF&E not so sold within thirty (30) days following such termination at Concessionaire's sole cost. Should Concessionaire fail to remove Concessionaire's FF&E within thirty (30) days from the date requested by City, then such improvements shall be deemed abandoned and City may dispose of such improvements and charge Concessionaire for the costs of such disposal.
- 6.08 Property. City acknowledges that for Concessionaire to construct the Enclosed Patio and, in the event Concessionaire elects to purchase the Food Truck and/or to construct the SC Snack Shack, Concessionaire will need to obtain a loan ("Concessionaire's Construction Loan") from a third party lender ("Concessionaire's Lender") which will require Concessionaire to secure Concessionaire's Construction Loan by assigning and granting a security interest in Concessionaire's FF&E, which include the furniture, fixtures, materials, equipment and other personal property used in connection with the construction of the Enclosed Patio and if constructed by Concessionaire, the SC Snack Shack and perfecting same by the filing of UCC-1 Financing Statements with the California Secretary of State and a UCC-1 Financing Statement "fixture filing" with the Alameda County Recorder, all pursuant to Division 9 of the California Uniform Commercial Code. Except for the foregoing purposes, Concessionaire shall not encumber, mortgage or transfer any City property and shall not permit any condition to exist which would then, or upon the passage of time, create any lien or encumbrance on any City property.
- 6.09 SC Snack Shack. Concessionaire may also, in Concessionaire's discretion, construct the SC Snack Shack.

## **ARTICLE 7 OPERATION OF FOOD AND BEVERAGE SERVICE**

- 7.01 Operations. Concessionaire shall have the exclusive right to provide food and beverage service at the Golf Complex. Such food and beverage service shall include the operation of a restaurant and bar facility, catering and banquet service, and on-course service and snack shacks, each of which shall provide food and beverage service to patrons of the Golf Complex, including at the driving range.

- 7.02 Hours. Concessionaire's business operations at the Premises shall be open for breakfast and lunch each day of the year that the Golf Complex is open, including limited food and beverage service during construction of the Enclosed Patio.

Concessionaire must open the Premises thirty (30) minutes prior to the first morning tee time and remain open until the golf course closes. The NC Snack Shack (and the SC Snack Shack if constructed) shall be open each day from 9:00 a.m. to 5:00 p.m.

- 7.03 Staffing. Concessionaire shall hire at Concessionaire's own expense a professional manager or combination of staff to manage and to conduct day-to-day operations on the Premises in order to serve adequately a significant number of restaurant, on-course, and tournament patrons with quality food and service. This manager shall be trained on service related to golfers by a City-approved golf professional.

- 7.04 Annual Plan. Concessionaire shall, on or before January 31 of each year during the Term, 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.

## **ARTICLE 8 INDEMNITY AND INSURANCE**

- 8.01 Indemnification. As to any loss arising from or in any manner connected with Concessionaire's use of the Premises and the Golf Complex or any default under this Concession Agreement, Concessionaire shall indemnify, hold harmless and defend City and its agents, officers and employees against each and every claim, demand, assertion of liability and action, including attorneys' fees incurred by City, as a result of any legal action whatsoever arising or alleged to arise from any act or omission, direct or indirect, passive or active, of Concessionaire or any agent, servant, employee or contractor of Concessionaire, or any subcontractor or employee of any of them, whether for death, personal injury or damage to property, including claims, demands, assertions of liability and actions by any agent, servant, employee or contractor of Concessionaire or of any subcontractor or employee of any of them or by any other person, unless such claim arises from the active negligence or willful acts or omissions to act or misconduct of City, Golf Tenant or any other tenants, licensees or other occupants of any portion of the Golf Complex.

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

during the performance of this Agreement all appropriate coverage of insurance required by this Agreement with an insurance company that is acceptable to City and licensed to do insurance business in the State of California. Endorsements naming the City as additional insured shall be submitted with the insurance certificates.

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

A. **COVERAGE:**

Concessionaire shall maintain the following insurance coverage:

(1) Workers' Compensation and Employer's Liability:

Statutory coverage as required by the State of California.

(2) Liability:

Commercial general liability insurance and contractual liabilities for performance of indemnity obligations, for limits of liability not less than the following:

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

ISO Special Form (formerly "All Risks") insurance covering the Premises (including the Enclosed Patio, once constructed), the NC Snack Shack, the SC Snack Shack (if constructed), furniture, fixtures, and all other improvements, alterations and additions to the Premises.

Business Interruption, loss of income and extra expense coverage for a period of one year.

(3) Automotive

Comprehensive automotive liability coverage in the following minimum limits:

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

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

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

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

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

## **ARTICLE 9 ASSIGNMENT AND TRANSFER**

- 9.01 Concessionaire shall not voluntarily or by operation of law assign, transfer, or sublet all or any portion of Concessionaire's interest in this Agreement or in the Premises, without City's prior written consent, which City shall not unreasonably withhold. Any attempted assignment, transfer or subletting without such consent shall be void, and shall constitute a breach of this Agreement. Any sale or other transfer, including by a sale of substantially all of Concessionaire's assets, a consolidation, merger, or reorganization, of a majority of the voting equity of Concessionaire, if Concessionaire is a corporation, limited liability company, partnership or other entity shall be deemed an assignment for purposes of this Article 9.
- 9.02 If Concessionaire desires City's consent to an assignment, transfer or sublet (each a "Transfer Arrangement" and collectively, the "Transfer Arrangements") of

all or any portion of the Premises, Concessionaire shall submit to City (a) the proposed Transfer Arrangement, and (b) 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 Transfer Arrangement. City shall respond to Concessionaire's request for consent hereunder in a timely manner.

- 9.03 Regardless of City's consent, no Transfer Arrangement shall release Concessionaire of Concessionaire's obligations hereunder or alter the primary liability of Concessionaire to pay the Monthly Concession Fee and to perform all other obligations to be performed by Concessionaire hereunder. City may accept a Monthly Concession Fee from any person other than Concessionaire pending approval or disapproval of such Transfer Arrangement. Neither a delay in the approval or disapproval of such Transfer Arrangement nor the acceptance of rent shall 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 Article 9 or this Agreement. Consent to one (1) Transfer Arrangement shall not be deemed consent to any subsequent Transfer Arrangement. In the event of default by any assignee of Concessionaire or any successor of Concessionaire, in the performance of any of the terms hereof, City may proceed directly against Concessionaire without the necessity of exhausting remedies against said assignee or transferee.

## **ARTICLE 10 FINANCIAL**

- 10.01 Concessionaire shall prepare and maintain an adequate set of financial records according to generally accepted accounting principles (GAAP), documenting all Concessionaire's Gross Revenues pursuant to this Agreement. If at any time the City deems Concessionaire's accounting practices or procedures inadequate or not in accordance with GAAP, Concessionaire shall make requested adjustments to its practices and procedures.
- 10.02 Concurrent with submission of the payment of the Monthly Concession Fee, Concessionaire shall submit to the City a written report of all Concessionaire's Gross Revenues at the Premises during the preceding accounting period. Such report shall include, without limitation, a daily breakdown of such Gross Revenues.
- 10.03 Financial Statement and Miscellaneous Reports. In addition to such other reports as may be required by this Agreement, Concessionaire shall submit the following reports to the City:
- (a) Financial Statement. Within sixty (60) days following the last day of each year hereunder, or at any early termination of this Agreement prior to the end of the Term, Concessionaire shall submit a financial statement prepared in accordance with GAAP covering all business transacted by it at the Premises during such period, and all Gross Revenues derived by Concessionaire therein.

Such financial statement shall be an internal statement, prepared by the Concessionaire, in accordance with GAAP.

Such accounting shall include a reconciliation of the fees paid and payable by Concessionaire for such period pursuant to Section 3.01, a balance sheet, income statement, statement of cash flow and any applicable footnotes.

- (b) Miscellaneous Reports. Concessionaire shall provide, without cost to the City and within a reasonable period of time, any other internally prepared financial or statistical reports reasonably requested by the City from time to time.
- (c) Confidentiality. To the extent permitted by law, City shall keep the financial reports and records referred to above confidential.

10.04 Retention of Records. Concessionaire shall retain all its books and records of account for not less than four (4) calendar years following the last day of each year of the Term. Such books and records of account shall show all Concessionaire's Gross Revenues, and other income derived from its operations pursuant to this Agreement, all deductions therefrom, supporting documents, and all other information required by this Agreement. Concessionaire shall retain such books and records of account, and such reports and records as may be required of it, or reasonably requested by City, pursuant to this Agreement, at a location within the City or at an approved location.

10.05 Audit and Access to Concessionaire's Records. Upon thirty (30) days advance written notification by City, but in no event more than once in any one (1) year period during the Term, Concessionaire shall make financial records available to City, or City's designated agent, at the business office of Concessionaire including general ledger, original entry journals, canceled checks, invoices, bank statements, sales and excise tax returns, and financial statements. Concessionaire shall provide such access to its records for City's purposes in verifying information submitted by Concessionaire in any report or financial statement required or requested of Concessionaire pursuant to this Agreement, and for City's purposes in verifying Concessionaire's compliance with the terms of this Agreement, but for no other purpose.

If any inspection and audit establish that additional fees are due City, or that Concessionaire has overpaid fees to City, then City and Concessionaire shall meet and confer in an effort to resolve any discrepancy. In the event of an unresolved discrepancy of more than five percent (5%) between Concessionaire's Gross Revenues established by such inspection and audit, and such Gross Revenues as reported by Concessionaire pursuant to any financial reports submitted by Concessionaire to City, or between fees found to be payable and fees actually paid, Concessionaire shall, upon demand, reimburse City for all reasonable costs in connection with such inspection, audit and copying.

## **ARTICLE 11 TERMINATION; EXPIRATION**

11.01 City warrants that the Golf Complex will continue to be used as a Golf Complex throughout the Term. Nevertheless, City shall have the right to sell the Golf Complex and assign its interest in this Agreement, provided that City shall give

Concessionaire six (6) months' notice prior to the close of escrow on any sale and assignment. Any such sale and assignment shall be made subject to the obligation of the purchaser to accept assignment of and assume and be fully bound by all of City's obligations under this Agreement.

11.02 City shall have the right to terminate this Agreement during the Term for cause which shall be defined as follows:

- (a) Failure to pay concession fees when due, which failure remaining uncured beyond the lapse of five (5) business days from written notice thereof by City to Concessionaire.
- (b) Failure to comply with any material term of this Agreement which failure remains uncured beyond the lapse of thirty (30) days from notice thereof by City to Concessionaire (unless such cure cannot be effected within thirty (30) days but Concessionaire has undertaken to cure within thirty (30) days and is diligently proceeding with a cure).
- (c) Failure to maintain the Premises, furnishings, and restrooms in a clean, attractive and sanitary fashion or failure to maintain the Premises in accordance with standards agreed upon by Concessionaire and City. Such standards will be established by Concessionaire and the City with reference to existing golf restaurant facilities. No attempted termination by City pursuant to this Section 11.02(c) shall be effective unless City shall have first given Concessionaire notice thereof and Concessionaire has not corrected the claimed failure within sixty (60) days of such notice, unless Concessionaire is diligently proceeding to correct such claimed failure and begins such corrections within sixty (60) day period.
- (d) If City determines, through the customer satisfaction survey (Section 7.06), that a significant number of patrons are dissatisfied with the service or the quality of the food at the Premises, failure within sixty (60) days to correct the conditions which gave rise to such dissatisfaction (unless such cure cannot be effected within sixty (60) days, but Concessionaire has undertaken to cure within sixty (60) days and is diligently proceeding with a cure).

11.03 Concessionaire's Duty to Surrender. At the expiration of the Term or at the earlier termination of this Agreement, Concessionaire shall surrender to City the possession of the Premises. If Concessionaire fails to surrender the Premises at the expiration of the Term or at the earlier termination of this Agreement, Concessionaire shall defend and indemnify City from all claims arising out of Concessionaire's failure to surrender.

11.04 Holding Over. If Concessionaire shall hold over the Premises after the expiration of the Term with the consent of City, such holding over shall be construed to be only an occupancy from month-to-month subject to all the covenants, conditions and obligations contained in this Agreement, and all amounts payable by Concessionaire calculated on a basis other than monthly shall be prorated on the basis of a year of thirteen (13) four-week periods. Concessionaire shall continue

payment of all pro-rated monetary sums (such as taxes, insurance, etc.) which are Concessionaire's obligation under this Agreement.

## ARTICLE 12 NOTICES

### 12.01 Notices

(a) Definition of Notice; Application of Provision.

As used in this Agreement, notice includes but is not limited to the communication of any notice, request, demand, approval, statement, report, acceptance, consent, or waiver. No notice of the exercise of any option or election is required unless the provision giving the election or option expressly requires notice. Unless the provisions of this Agreement on fees direct otherwise, fees shall be sent in the manner provided for giving notice.

(b) Writing. All notices must be in writing.

(c) Delivery. Notice is considered given (1) when delivered in person to the recipient named as below, (2) two (2) days after deposit in the United States mail in a sealed envelope or container, either registered or certified mail, return receipt requested, postage and postal charges prepaid, or (3) when delivered by reputable courier service (such as, but not limited to, DHL, UPS or Federal Express), addressed by name and address to the party or person intended as follows:

To City: City of Alameda  
2226 Santa Clara Avenue  
Alameda, California, 94501  
Attn: Recreation and Park Director

To Concessionaire: Dialemi, Inc.  
2333 Lincoln Avenue  
Alameda, California, 94501  
Attn: Tom Geanekos, President

(d) Change of Recipient or Address. Either party may, by notice given at any time or from time to time, require subsequent notices to be given to another individual person, whether a party or an officer or representative, or to a different address, or both. Notices given before actual receipt of notice of change shall not be invalidated by the change.

12.02 Estoppel Certificate. At any time and from time to time, within ten (10) days after notice of request by either party, the other party shall execute, acknowledge and deliver to the requesting party, or to such other recipient as the notice shall direct, a statement certifying that this Agreement is unmodified and in full force and effect, or, if there have been modifications, that it is in full force and effect as modified in the manner specified in the statement. The statement shall be such that it can be relied on by any auditor, creditor, commercial banker, and investment banker or either party and by any prospective purchaser or



encumbrancer of the Premises or of all or any part or parts of Concessionaire's or City's interests under this Agreement.

#### **ARTICLE 13 DISPUTE RESOLUTION PROCEDURES**

Disputes Concerning Use of Capital Improvement Payments. If City and Concessionaire cannot agree on the use of Capital Improvement Payments, and/or cannot agree as to timing of the use of the Capital Improvement Payments for capital improvements as to the Premises, as set forth in Section 4.02 of this Agreement, the Parties agree to engage in mediation to resolve the dispute. The Parties will engage the services of an agreed upon mediator who has knowledge and expertise in capital improvements for restaurants. If the Parties cannot agree on a mediator, they will request the Presiding Judge of the County of Alameda to appoint such a mediator with the requisite knowledge and expertise as set forth in the previous sentence. The expenses of the mediation, such as the fees of the mediator, shall be split equally between the City and the Concessionaire but each Party will bear its own costs and expenses, such as attorneys fees or travel, in connection with the such mediation. If the mediator is not able to resolve the dispute, one half of the Capital Improvement Payments shall be returned to the Concessionaire and one half of the Capital Improvement Payments shall be retained by the City.

#### **ARTICLE 14 MISCELLANEOUS TERMS**

- 14.01 Relationship of Parties. It is the express intention of City and Concessionaire that Concessionaire is an independent contractor and nothing in this Agreement shall in any way be construed to constitute Concessionaire as an agent, employee or representative of City.
- 14.02 Successors. Subject to the restrictions set forth herein regarding assignment, each of the terms, covenants and conditions of this Agreement shall extend to and be binding on and shall inure to the benefit of not only City and Concessionaire but to each of their respective heirs, administrators, executors, successors and assigns.
- 14.03 Agreement Effectiveness. This Agreement shall be effective on the date when executed by both Concessionaire and City.
- 14.04 Force Majeure. No party hereto shall be deemed to be in breach or in violation of this Agreement if it is prevented from performing any of its obligations hereunder (excepting only the payment of monies when due), for any reason beyond its reasonable control (each an "occurrence of force majeure"), including, without limitations, acts of God, riots, strikes, fires, storms or any regulation of any federal, state, local or foreign government or any agency therein; provided, however, that such excuse shall continue only during the pendency of the particular occurrence of force majeure.
- 14.05 Attorney Fees. Should any legal proceedings be brought to enforce this Agreement, or any provision hereof, the prevailing party shall be entitled to recover reasonable attorney's fees and other costs incurred in such proceedings, in addition to any other relief to which it may be entitled.

- 14.06 Severability. If any provision of this Agreement shall be determined in any circumstances to be invalid or unenforceable, such determination shall not affect or impair any other provision of this Agreement or the enforcement of such provision in other appropriate circumstances, and the remainder of the Agreement and of such provision shall be given effect, to the greatest extent lawful, so as to carry out the intention of the parties as manifested hereby.
- 14.07 Counterparts; Facsimile/Electronic Transmission Signatures. This Agreement may be executed in any number of counterparts, all of which together shall constitute a single agreement. In proving this Agreement, it shall not be necessary to produce or account for more than one counterpart signed by the party with respect to which proof is sought. The parties agree that the signature(s) of a party transmitted by facsimile or electronic transmission (email) shall be binding on such party as if they were original signatures.
- 14.08 Further Assurances. Upon request, City and Concessionaire shall execute any further documents or instruments necessary or desirable to carry out the purpose or intent of this Agreement.
- 14.09 Compliances. Consultant shall comply with all state or federal laws and all ordinances, rules and regulations enacted or issued by City.
- 14.10 Representation and Warranty by City. City represents and warrants, for the benefit of Concessionaire, that this Agreement, in the form hereof, when executed by an authorized person on behalf of City, is a valid and binding obligation of City, enforceable in accordance with its terms.
- 14.11 Entire Agreement. This Agreement and all exhibits, schedules and appendices hereto contain the entire and exclusive statements of the understanding of the Parties. Each Party has relied on its own examination of this Agreement, the counsel of its own advisors and the warranties, representations and covenants in the Agreement itself. The failure or refusal of either Party to inspect the Premises, to read this Agreement or other documents, or to obtain legal or other advice relevant to this transaction constitutes a waiver of any objection, contention or claim that might have been based on such reading, inspection or advice. This Agreement shall be varied and amended only by a written agreement signed by both parties.
- 14.12 Covenants and Conditions. Each term and each provision, including, without limitation, the obligation for the payment of fees, to be performed by Concessionaire or City as the case may be, shall be construed to be both a covenant and a condition of this Agreement.
- 14.13 Waiver. No waiver of any breach of any of the terms, covenants, agreements, restrictions or conditions of this Agreement shall be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions and conditions hereof.
- 14.14 Liens. Concessionaire shall promptly pay for, and indemnify and hold City harmless from any liability for, any work done or material furnished on behalf of Concessionaire in or about the Premises and will not permit or suffer any lien to


attach to the Premises and shall promptly cause any such lien or any claim therefore to be released; provided, however, that in the event Concessionaire contests any such claim, Concessionaire shall indemnify and secure City to City's satisfaction. City shall have the right at all reasonable times to go upon the Premises and post such notices of non-responsibility as City may deem necessary for the protection of City and title to the Premises from mechanic's and materialmen's liens. Concessionaire shall give City written notice of any intended construction, alteration or repair work at least ten (10) days before the commencement thereof to afford City an opportunity to post a notice of non-responsibility.

- 14.15 Prevailing Wages. Concessionaire is aware of the requirements of California Labor Code, sections 1720 et seq. and 1770 et seq., as well as California Code of Regulations, Title 8, section 16000 et seq. and Section 2-67 of the Alameda Municipal Code (collectively, "the Prevailing Wage Laws") that require the payment of prevailing wage rates and the performance of other requirements on certain "public works" projects. Construction of the Enclosed Patio and SC Snack Shack are public work projects and Concessionaire shall comply fully with such Prevailing Wage Laws. Concessionaire's failure to comply with the Prevailing Wage Laws may constitute a default under this Agreement that would entitle the City to terminate the Agreement or exercise other remedies as provided by law.
- 14.16 Consent. Wherever in this Agreement the consent of one party is required to an act of the other party, such consent shall not be unreasonably withheld or delayed.
- 14.17 Quiet Possession. Upon Concessionaire paying the Monthly Concession Fee for the Premises and observing and performing all of the covenants, conditions, and provisions on Concessionaire's part to be observed and performed hereunder, Concessionaire shall have quiet possession and enjoyment of the Premises for the entire Term hereof subject to all of the provisions of this Agreement.
- 14.18 Incorporation of Recitals and Exhibits. The Recitals hereunder and Exhibits attached hereto are incorporated herein by this reference and made a part hereof.
- 14.19 Time. Time shall be of the essence of this Agreement.


*\* Signatures on Next Page \**

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


Dialemi, Inc.  
A California Corporation

By:   
Title: President

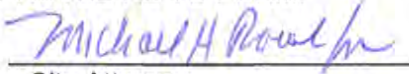
CITY OF ALAMEDA  
A Municipal Corporation

By:   
Title: City Manager

RECOMMENDED FOR APPROVAL:

By:   
Title: Recreation and Parks Director

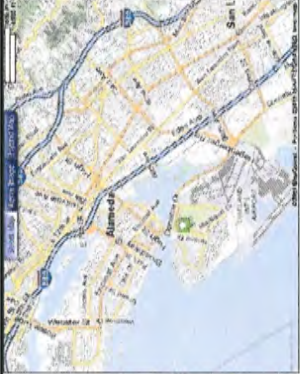
APPROVED AS TO FORM:

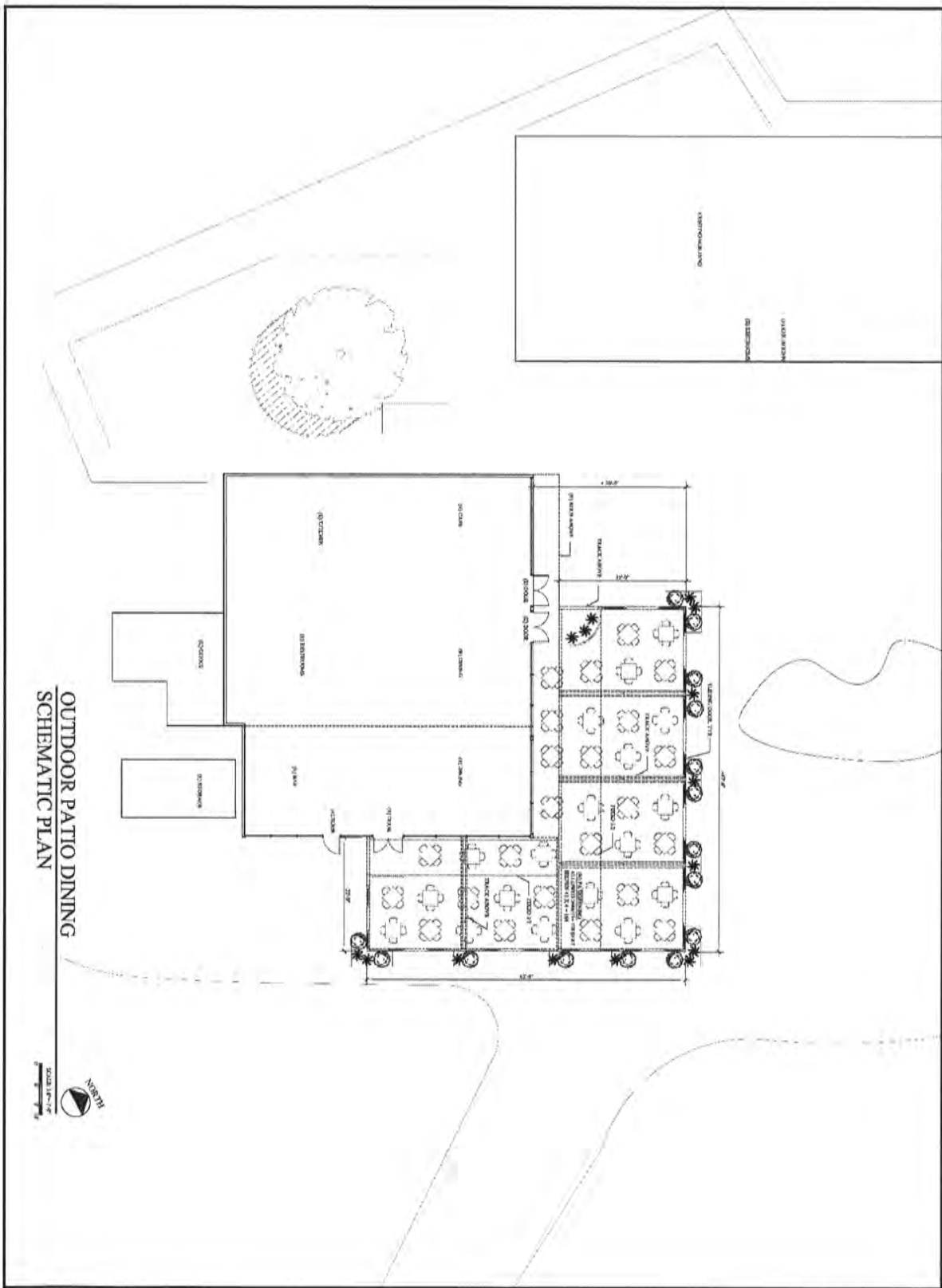
By:   
Title: City Attorney

## EXHIBIT A ENCLOSED PATIO AREA

# JIM'S ON THE COURSE



VICINITY MAP	BUILDING DATA	INDEX TO DRAWINGS																										
	<p><b>PROJECT ADDRESS:</b> 1 CLUBHOUSE MEMORIAL RD. ALAMEDA, CA 94602</p> <p><b>BUILDING INFO:</b> OCCUPANCY: U.S. ASSEMBLY WITHOUT FIXED SEATS - UNCONCENTRATED EXISTING BUILDING FOOTPRINT = + 4612 SQFT (NO CHANGE) NEW OUTDOOR PATIO SEATING CAPACITY = 284 SQFT/115 = 175 SEAT. SHOWN ON DRAWING = 154 SEAT</p>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 15%; text-align: center;">CS1</td> <td>COVER SHEET AND OVERALL SITE PLAN</td> </tr> <tr> <td style="text-align: center;">A1</td> <td>SCHEMATIC FLOOR PLAN</td> </tr> <tr> <td style="text-align: center;">A2</td> <td>PROPOSED EXTERIOR ELEVATIONS</td> </tr> <tr> <td style="text-align: center;">A3</td> <td>EXISTING EXTERIOR ELEVATIONS</td> </tr> <tr> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> </tr> </table>	CS1	COVER SHEET AND OVERALL SITE PLAN	A1	SCHEMATIC FLOOR PLAN	A2	PROPOSED EXTERIOR ELEVATIONS	A3	EXISTING EXTERIOR ELEVATIONS																		
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A3	EXISTING EXTERIOR ELEVATIONS																											



OUTDOOR PATIO DINING  
SCHEMATIC PLAN



**ADDENDUM**

**Jim's on the Course Concession Agreement  
Capital Improvements and Revenue Projections**

Capital Improvements – Required Per Concession Agreement

Enclosed Patio Design and Construction	\$500,000
Restaurant Interior Improvements	<u>\$250,000</u>
TOTAL	\$750,000

10-Year Projections – Rent Revenue to City

	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025
Minimum Rent Projections	61,750	0	0	77,188	77,188	77,188	115,781	115,781	115,781	115,781
Jim's on the Course Rent Projections	76,750	0	0	99,500	107,750	114,500	181,500	190,125	198,375	204,375

Years 1 - 6                    5% of gross revenue  
Years 7 - 25                7.5% of gross revenue  
*Years 2 and 3 fee waived to offset capital improvements*



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
03/09/2016

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

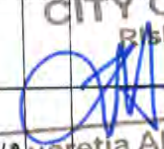
IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer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

PRODUCER <b>L Cua Insurance Agency</b> 851 Burlway Road, Suite 303 Burlingame, CA 94010 License: 0H83125	CONTACT NAME: <b>Lawrence John Cua</b>														
	PHONE (A/C, No, Ext): <b>650-571-8188</b> FAX (A/C, No): <b>650-571-0823</b> E-MAIL ADDRESS: <b>lcua@farmersagent.com</b>														
INSURED <b>Dialemi, Inc., a California Corporation</b> 2333 Lincoln Ave Alameda, CA 94501	<table border="1"> <thead> <tr> <th>INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> </thead> <tbody> <tr> <td>INSURER A: <b>Truck Insurance Exchange</b></td> <td><b>21709</b></td> </tr> <tr> <td>INSURER B:</td> <td></td> </tr> <tr> <td>INSURER C:</td> <td></td> </tr> <tr> <td>INSURER D:</td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> <tr> <td>INSURER F:</td> <td></td> </tr> </tbody> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A: <b>Truck Insurance Exchange</b>	<b>21709</b>	INSURER B:		INSURER C:		INSURER D:		INSURER E:		INSURER F:	
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INSURER C:															
INSURER D:															
INSURER E:															
INSURER F:															

**COVERAGES      CERTIFICATE NUMBER:      REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:	Y	N	60300-27-59	01/01/2016	01/01/2017	EACH OCCURRENCE \$ <b>2,000,000</b> DAMAGE TO RENTED PREMISES (Ea occurrence) \$ <b>250,000</b> MED EXP (Any one person) \$ <b>5,000</b> PERSONAL & ADV INJURY \$ <b>2,000,000</b> GENERAL AGGREGATE \$ <b>4,000,000</b> PRODUCTS - COMP/OP AGG \$ <b>4,000,000</b> \$
A	AUTOMOBILE LIABILITY  <input type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS ONLY			60300-27-59	01/01/2016	01/01/2017	COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	UMBRELLA LIAB      OCCUR EXCESS LIAB      CLAIMS-MADE  DED      RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A				PER STATUTE      OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A	Liquor Liability			60300-27-59	01/01/2016	01/01/2017	Limit of Insurance \$1,000,000 per Occurrence \$2,000,000 Aggregate

**CITY OF ALAMEDA**  
 Risk Management  
  
 Lucretia Akil, City Risk Manager      Date 3-10-16

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
1 Clubhouse Memorial Rd., Alameda, CA 94502

Below Certificate Holder is an Additional Insured of the above mentioned General Liability policy.  
30 days notice of policy cancellation and 10 days notice of cancellation due to non-payment.

CERTIFICATE HOLDER	CANCELLATION
The City of Alameda, its City Council, boards and commissions, officers, employees, and volunteers Alameda, CA 94501	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE Lawrence John Cua



**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**ADDITIONAL INSURED - OWNERS, LESSEES  
OR CONTRACTORS**

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS POLICY


**SCHEDULE\***

**Name Of Person Or Organization:**  
**THE CITY OF ALAMEDA, ITS**  
**SEE E0002**

\* Information required to complete this Schedule, if not shown on this endorsement, will be shown in the Declarations.

The following is added to Paragraph **C. Who Is An Insured** in the Businessowners Liability Coverage Form:

- 4. Any person or organization shown in the Schedule is also an insured, but only with respect to liability arising out of your ongoing operations performed for that insured.

**CITY OF ALAMEDA**  
 Risk Management  
  
 Date 3-10-16  
 Lucretia Akil, City Risk Manager

Attach to your policy with the same policy number shown on this endorsement.

**ENDORSEMENT**


Effective

Date 03/09/16

60300-27-59

Policy Number  
of the Company designated  
in the Declarations

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

**CITY OF ALAMEDA**  
Risk Management  
  
Date 3-10-16  
Lucretia Akil, City Risk Manager

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

COUNTERSIGNED \_\_\_\_\_

(Date)



FIRST AMENDMENT TO CONCESSION AGREEMENT FOR RESTAURANT OPERATIONS

AT THE CHUCK CORICA GOLF COMPLEX

THIS FIRST AMENDMENT to CONCESSION AGREEMENT FOR RESTAURANT OPERATIONS AT THE CHUCK CORICA GOLF COMPLEX ("First Concession Agreement Amendment") is made and entered into as of this 28<sup>th</sup> day of December, 2017 by and between the CITY OF ALAMEDA, a California municipal corporation ("City") and DIALEMI, INC., a California corporation ("Concessionaire") who agree as follows:

RECITALS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A. Coverage

Concessionaire shall maintain the following insurance coverage:

Workers' Compensation and Employer's Liability:

- Statutory coverage as required by the State of California

Liability:

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

Automotive

Comprehensive automotive liability coverage in the following minimum limits:

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

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

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

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

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

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


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*Signatures on Next Page*




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

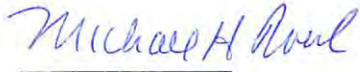
CITY OF ALAMEDA  
  
Title: City Manager

DIALEMI, INC.  
  
Title: President

Recommended for Approval

  
Title: Recreation and Parks Director

Approved as form

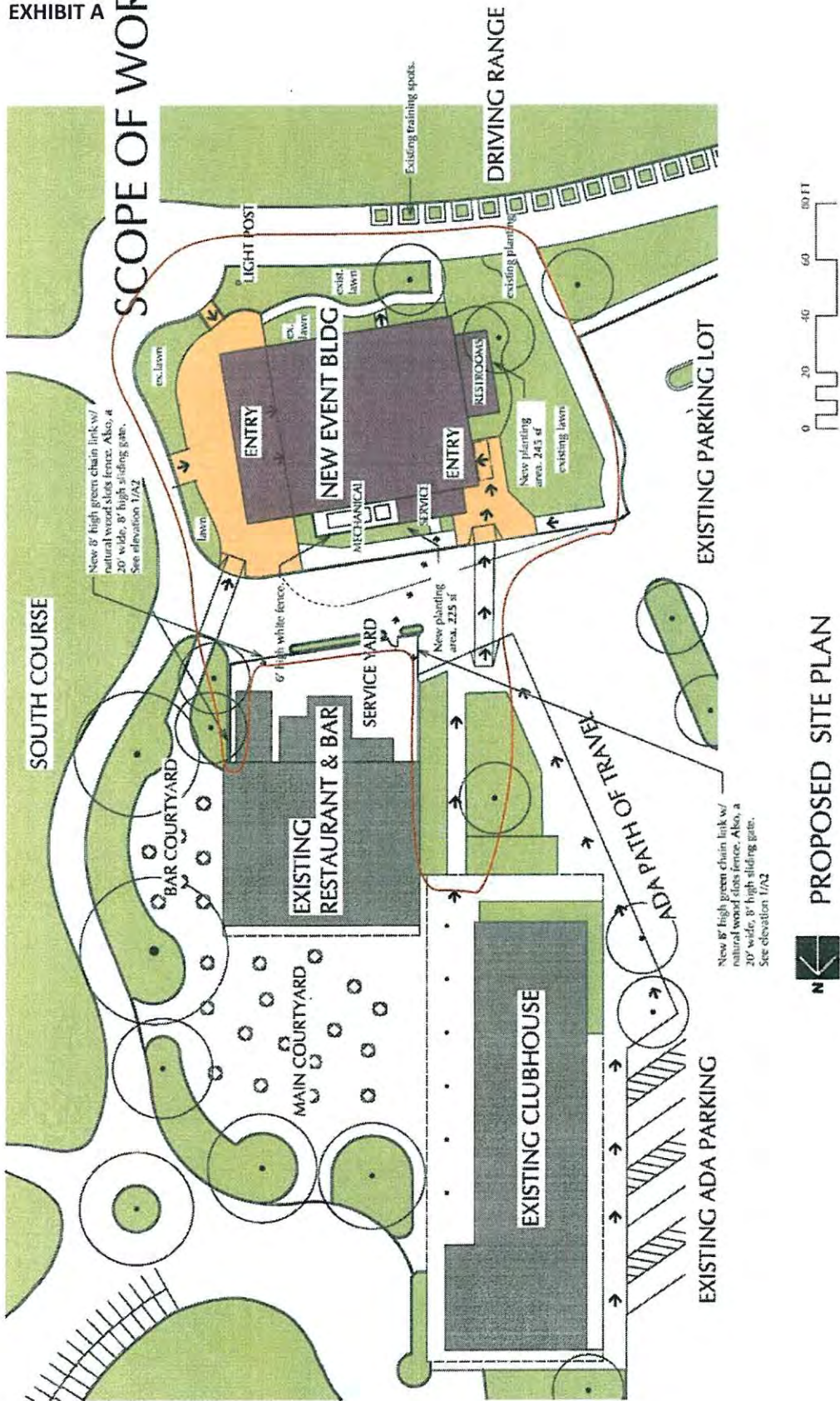


Michael H. Roush  
Assistant City Attorney

Exhibit A Site Plan for the Event Center

EXHIBIT A

SCOPE OF WORK



## SECOND AMENDMENT TO CONCESSION AGREEMENT FOR RESTAURANT OPERATIONS

### AT THE CHUCK CORICA GOLF COMPLEX

THIS SECOND AMENDMENT to CONCESSION AGREEMENT FOR RESTAURANT OPERATIONS AT THE CHUCK CORICA GOLF COMPLEX (“Second Concession Agreement Amendment”) is made and entered into as of this \_\_\_\_ day of March, 2019 by and between the CITY OF ALAMEDA, a California municipal corporation (“City”) and DIALEMI, INC., a California corporation (“Concessionaire”) who agree as follows:

#### RECITALS

- A. As of March 1, 2016, City and Concessionaire entered into that certain Concession Agreement for Restaurant Operations at the Chuck Corica Golf Complex (“Current Concession Agreement”) by which Concessionaire is the sole provider of food and beverage services at the Golf Complex. Capital terms not otherwise defined herein shall have the meanings given them in the Current Concession Agreement.
- B. The First Concession Agreement Amendment changed the requirement for the Concessionaire to build an Enclosed Patio to instead require construction of an Event Center and an option to construction the Enclosed Patio.
- C. The First Concession Agreement Amendment required completion of the Event Center by June 30, 2018.
- D. On May 30, 2018, City staff approved a deadline extension to complete the Event Center to December 31, 2018.
- E. The Concessionaire has met key milestones, including obtaining the Event Center building permit, purchasing the Event Center structure but has not completed construction by December 31, 2018.
- F. City and Concessionaire now wish by the Second Concession Agreement to amend the Current Concession Agreement further to reflect the revisions to the improvements to be made by Concessionaire and a revised timetable for constructing the Event Center.

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

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

“2.01. Definition of Premises. As used in the Current Concession Agreement, as amended by the First Concession Agreement Amendment and the Second Concession Agreement Amendment, the term “Premises” means and currently consists of (a) the Building, which contains a restaurant and bar facility, of approximately four thousand five hundred (4,500) square feet in size (the “Building”) and (b) the exclusive rights to use (i) a portion of the an outdoor patio adjacent to the Building (collectively, the “Building and Patio Area”) and (ii) a Snack Shack located on the North Course (the “NC Snack Shack”). Concessionaire may, in its discretion, elect to add a food truck at the driving range (the “Food Truck”) and may, in its discretion, elect to construct a Snack Shack on the South Course in the future (the “SC Snack Shack”), pending final approval of the City Manager’s Designee (as defined in Section 3.04) and Concessionaire’s having obtained any required City permits. Concessionaire is (i) required to make improvements to the existing facility and construct an Event Center located approximately thirty (30) feet to the southwest of the

Building (the “Event Center”) and (iii) is required to construct a new enclosed patio (the “Enclosed Patio”), both as provided in Section 6.02. After Concessionaire constructs the Event Center and the Enclosed Patio and/or the SC Snack Shack, each such construction shall become a part of and included in the definition of the Premises.”

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

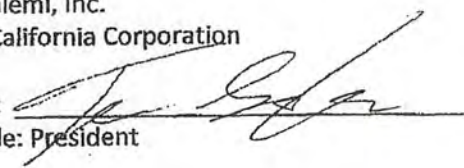
Section 6.02 Event Center and Enclosed Patio. In conjunction with Section 2.01, Concessionaire, at Concessionaire’s sole expense, shall complete construction of the Event Center by December 31, 2019. If there are utility installation delays due to the City or East Bay Municipal Utility District (EBMUD) that are not within Concessionaire control, then the construction deadline shall extend by the number of months delayed by these entities. This only includes the sewer, water and fire utilities being designed by the City and installed by Greenway and any meter installation by EBMUD. Concessionaire shall construct the Enclosed Patio within twenty-four (24) months of issuance of the Event Center Certificate of Building Occupancy. Concessionaire shall pay all costs relative to the construction of the Event Center and the Enclosed Patio, including design, environmental review, permit processing, building permits and construction. The City will be responsible for and pay the fire meter installation costs and Concessionaire shall be responsible for the installation of a sprinkler system on the inside of the Event Center and to ensure there is appropriate fire pipe to connect to, from Island Drive to the Premises.”

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*Signatures on Next Page*

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

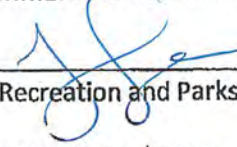
Dialemi, Inc.  
A California Corporation

By:   
Title: President


CITY OF ALAMEDA  
A Municipal Corporation

By: \_\_\_\_\_  
Title: Interim City Manager

RECOMMENDED FOR APPROVAL:

By:   
Title: Recreation and Parks Director

APPROVED AS TO FORM:

By:   
Title: Michael H. Roush  
Interim City Attorney



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

2/26/2019

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

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

<b>PRODUCER</b>		<b>CONTACT NAME:</b> Albert Connell	
Connell Insurance Agency		<b>PHONE (A/C, No, Ext):</b> (650) 571-8771	<b>FAX (A/C, No):</b> (650) 571-6341
One Waters Park Dr. #114		<b>E-MAIL ADDRESS:</b> al@connellinsuranceagency.com	
San Mateo CA 94403		<b>INSURER(S) AFFORDING COVERAGE</b>	
		<b>INSURER A:</b> Ohio Security Insurance Company	
		<b>INSURER B:</b> Technology Insurance Company, Inc	
		<b>INSURER C:</b>	
		<b>INSURER D:</b>	
		<b>INSURER E:</b>	
		<b>INSURER F:</b>	
<b>INSURED</b>		<b>NAIC #</b>	
Dialemi, Inc			
dba: Jims On The Course			
2333 Lincoln Ave			
Alameda CA 94501			

**COVERAGES**

CERTIFICATE NUMBER:

REVISION NUMBER:

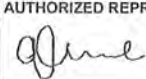
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE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

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	Y Y	BKS (20) 59200274	01/01/2019	01/01/2020	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 500,000 MED EXP (Any one person) \$ 15,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COMP/OP AGG \$ 4,000,000
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/>	Y	BAS (20) 59200274	01/01/2019	01/01/2020	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	<input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTIONS \$					EACH OCCURRENCE \$ AGGREGATE \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N Y N/A	TWC3758578	01/01/2019	01/01/2020	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
A	Liquor Liability		BKS (20) 59200274	01/01/2019	01/01/2020	Each Occurrence: 2,000,000 Aggregate Limit: 4,000,000

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

Covered Location: 1 Clubhouse Memorial Road, Alameda, CA 94502  
 City of Alameda, its City Council, boards and commissions, officers, employees and volunteers are named as additional insureds on the general liability and auto liability policies. Should any of the above insurance covered by this certificate be canceled or coverage reduced before the expiration date thereof, the insurer affording coverage shall provide thirty (30) days' advance written notice to the City of Alameda by certified mail, Attention: Risk Manager.

**CERTIFICATE HOLDER****CANCELLATION**

City of Alameda, its City Council, boards and commissions, officers, employees and volunteers  City Hall 2263 Santa Clara Avenue Alameda, CA 94501	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE 
--	--

**CITY OF ALAMEDA**  
 Risk Management  
 2-26-19

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

### COMMERCIAL GENERAL LIABILITY EXTENSION


This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

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CITY OF ALAMEDA  
Risk Management

  
Date 2-26-19  
Lucretia Akil, City Risk Manager

**CITY OF ALAMEDA**  
Risk Management

*[Handwritten Signature]*  
\_\_\_\_\_  
Lucy Aki, City Risk Manager

*[Vertical handwritten marks]*



With respect to coverage afforded by this endorsement, the provisions of the policy apply unless modified by the endorsement.

**A. NON-OWNED AIRCRAFT**

Under Paragraph 2. Exclusions of Section I - Coverage A - Bodily Injury And Property Damage Liability, exclusion g. Aircraft, Auto Or Watercraft does not apply to an aircraft provided:

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

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

**B. NON-OWNED WATERCRAFT**

Under Paragraph 2. Exclusions of Section I - Coverage A - Bodily Injury And Property Damage Liability, Subparagraph (2) of exclusion g. Aircraft, Auto Or Watercraft is replaced by the following:

This exclusion does not apply to:

- (2) A watercraft you do not own that is:
  - (a) Less than 52 feet long; and
  - (b) Not being used to carry persons or property for a charge.

**C. PROPERTY DAMAGE LIABILITY - ELEVATORS**

1. Under Paragraph 2. Exclusions of Section I - Coverage A - Bodily Injury And Property Damage Liability, Subparagraphs (3), (4) and (6) of exclusion j. Damage To Property do not apply if such "property damage" results from the use of elevators. For the purpose of this provision, elevators do not include vehicle lifts. Vehicle lifts are lifts or hoists used in automobile service or repair operations.
2. The following is added to Section IV - Commercial General Liability Conditions, Condition 4. Other Insurance, Paragraph b. Excess Insurance:

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

**D. EXTENDED DAMAGE TO PROPERTY RENTED TO YOU (Tenant's Property Damage)**

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

1. Under Paragraph 2. Exclusions of Section I - Coverage A - Bodily Injury and Property Damage Liability:

- a. The fourth from the last paragraph of exclusion j. Damage To Property is replaced by the following:

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire, lightning, explosion, smoke, or leakage from an automatic fire protection system) to:

- (i) Premises rented to you for a period of 7 or fewer consecutive days; or
- (ii) Contents that you rent or lease as part of a premises rental or lease agreement for a period of more than 7 days.

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" to contents of premises rented to you for a period of 7 or fewer consecutive days.

A separate limit of insurance applies to this coverage as described in Section III - Limits of Insurance.



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of 188

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- b. The last paragraph of subsection **2. Exclusions** is replaced by the following:

Exclusions c. through n. do not apply to damage by fire, lightning, explosion, smoke or leakage from automatic fire protection systems to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to Damage To Premises Rented To You as described in **Section III - Limits Of Insurance**.

2. Paragraph **6.** under **Section III - Limits Of Insurance** is replaced by the following:

6. Subject to Paragraph **5.** above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage **A** for damages because of "property damage" to:

- a. Any one premise:

(1) While rented to you; or

(2) While rented to you or temporarily occupied by you with permission of the owner for damage by fire, lightning, explosion, smoke or leakage from automatic protection systems; or

- b. Contents that you rent or lease as part of a premises rental or lease agreement.

3. As regards coverage provided by this provision **D. EXTENDED DAMAGE TO PROPERTY RENTED TO YOU (Tenant's Property Damage)** - Paragraph **9.a.** of **Definitions** is replaced with the following:

**9.a.** A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire, lightning, explosion, smoke, or leakage from automatic fire protection systems to premises while rented to you or temporarily occupied by you with the permission of the owner, or for damage to contents of such premises that are included in your premises rental or lease agreement, is not an "insured contract".

#### **E. MEDICAL PAYMENTS EXTENSION**

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

Under Paragraph **1. Insuring Agreement** of **Section I - Coverage C - Medical Payments**, Subparagraph **(b)** of Paragraph **a.** is replaced by the following:

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

#### **F. EXTENSION OF SUPPLEMENTARY PAYMENTS - COVERAGES A AND B**

1. Under **Supplementary Payments - Coverages A and B**, Paragraph **1.b.** is replaced by the following:

b. Up to **\$3,000** for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

2. Paragraph **1.d.** is replaced by the following:

d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to **\$500** a day because of time off from work.

#### **G. ADDITIONAL INSUREDS - BY CONTRACT, AGREEMENT OR PERMIT**

1. Paragraph **2.** under **Section II - Who Is An Insured** is amended to include as an insured any person or organization whom you have agreed to add as an additional insured in a written contract, written agreement or permit. Such person or organization is an additional insured but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused in whole or in part by:

a. Your acts or omissions, or the acts or omissions of those acting on your behalf, in the performance of your on going operations for the additional insured that are the subject of the written contract or written agreement provided that the "bodily injury" or "property damage" occurs, or the "personal and advertising injury" is committed, subsequent to the signing of such written contract or written agreement; or

- b. Premises or facilities rented by you or used by you; or
- c. The maintenance, operation or use by you of equipment rented or leased to you by such person or organization; or
- d. Operations performed by you or on your behalf for which the state or political subdivision has issued a permit subject to the following additional provisions:
- (1) This insurance does not apply to "bodily injury", "property damage", or "personal and advertising injury" arising out of the operations performed for the state or political subdivision;
  - (2) This insurance does not apply to "bodily injury" or "property damage" included within the "completed operations hazard".
  - (3) Insurance applies to premises you own, rent, or control but only with respect to the following hazards:
    - (a) The existence, maintenance, repair, construction, erection, or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoist away openings, sidewalk vaults, street banners, or decorations and similar exposures; or
    - (b) The construction, erection, or removal of elevators; or
    - (c) The ownership, maintenance, or use of any elevators covered by this insurance.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

With respect to Paragraph 1.a. above, a person's or organization's status as an additional insured under this endorsement ends when:

- (1) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
- (2) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

With respect to Paragraph 1.b. above, a person's or organization's status as an additional insured under this endorsement ends when their written contract or written agreement with you for such premises or facilities ends.

With respects to Paragraph 1.c. above, this insurance does not apply to any "occurrence" which takes place after the equipment rental or lease agreement has expired or you have returned such equipment to the lessor.

The insurance provided by this endorsement applies only if the written contract or written agreement is signed prior to the "bodily injury" or "property damage".

We have no duty to defend an additional insured under this endorsement until we receive written notice of a "suit" by the additional insured as required in Paragraph b. of Condition 2. **Duties In the Event Of Occurrence, Offense, Claim Or Suit** under **Section IV - Commercial General Liability Conditions**.

2. With respect to the insurance provided by this endorsement, the following are added to Paragraph 2. **Exclusions under Section I - Coverage A - Bodily Injury And Property Damage Liability:**

This insurance does not apply to:

- a. "Bodily injury" or "property damage" arising from the sole negligence of the additional insured.
- b. "Bodily injury" or "property damage" that occurs prior to you commencing operations at the location where such "bodily injury" or "property damage" occurs.
- c. "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:
  - (1) The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
  - (2) Supervisory, inspection, architectural or engineering activities.

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

- d. "Bodily injury" or "property damage" occurring after:
  - (1) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
  - (2) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.
- e. Any person or organization specifically designated as an additional insured for ongoing operations by a separate **ADDITIONAL INSURED -OWNERS, LESSEES OR CONTRACTORS** endorsement issued by us and made a part of this policy.

3. With respect to the insurance afforded to these additional insureds, the following is added to **Section III - Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

- a. Required by the contract or agreement; or
- b. Available under the applicable Limits of Insurance shown in the Declarations; whichever is less.

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

#### H. PRIMARY AND NON-CONTRIBUTORY ADDITIONAL INSURED EXTENSION

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

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

- a. The following is added to Paragraph a. **Primary Insurance:**

If an additional insured's policy has an Other Insurance provision making its policy excess, and you have agreed in a written contract or written agreement to provide the additional insured coverage on a primary and noncontributory basis, this policy shall be primary and we will not seek contribution from the additional insured's policy for damages we cover.

b. The following is added to Paragraph **b. Excess Insurance**:

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

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

**I. ADDITIONAL INSUREDS - EXTENDED PROTECTION OF YOUR "LIMITS OF INSURANCE"**

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

1. The following is added to Condition **2. Duties In The Event Of Occurrence, Offense, Claim or Suit**:

An additional insured under this endorsement will as soon as practicable:

- a. Give written notice of an "occurrence" or an offense that may result in a claim or "suit" under this insurance to us;
- b. Tender the defense and indemnity of any claim or "suit" to all insurers whom also have insurance available to the additional insured; and
- c. Agree to make available any other insurance which the additional insured has for a loss we cover under this Coverage Part.
- d. We have no duty to defend or indemnify an additional insured under this endorsement until we receive written notice of a "suit" by the additional insured.

2. The limits of insurance applicable to the additional insured are those specified in a written contract or written agreement or the limits of insurance as stated in the Declarations of this policy and defined in **Section III - Limits of Insurance** of this policy, whichever are less. These limits are inclusive of and not in addition to the limits of insurance available under this policy.

**J. WHO IS AN INSURED - INCIDENTAL MEDICAL ERRORS / MALPRACTICE  
WHO IS AN INSURED - FELLOW EMPLOYEE EXTENSION - MANAGEMENT EMPLOYEES**

Paragraph **2.a.(1)** of **Section II - Who Is An Insured** is replaced with the following:

**(1) "Bodily injury" or "personal and advertising injury":**

- (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;
- (b) To the spouse, child, parent, brother or sister of that co-"employee" or "volunteer worker" as a consequence of Paragraph **(1) (a)** above;
- (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs **(1) (a)** or **(b)** above; or
- (d) Arising out of his or her providing or failing to provide professional health care services. However, if you are not in the business of providing professional health care services or providing professional health care personnel to others, or if coverage for providing professional health care services is not otherwise excluded by separate endorsement, this provision (Paragraph **(d)**) does not apply.

Paragraphs **(a)** and **(b)** above do not apply to "bodily injury" or "personal and advertising injury" caused by an "employee" who is acting in a supervisory capacity for you. Supervisory capacity as used herein means the "employee's" job responsibilities assigned by you, includes the direct supervision of other "employees" of yours. However, none of these "employees" are insureds for "bodily injury" or "personal and



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advertising injury" arising out of their willful conduct, which is defined as the purposeful or willful intent to cause "bodily injury" or "personal and advertising injury", or caused in whole or in part by their intoxication by liquor or controlled substances.

The coverage provided by provision J. is excess over any other valid and collectable insurance available to your "employee".

#### **K. NEWLY FORMED OR ADDITIONALLY ACQUIRED ENTITIES**

Paragraph 3. of **Section II - Who Is An Insured** is replaced by the following:

3. Any organization you newly acquire or form and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:
  - a. Coverage under this provision is afforded only until the expiration of the policy period in which the entity was acquired or formed by you;
  - b. Coverage A does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
  - c. Coverage B does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.
  - d. Records and descriptions of operations must be maintained by the first Named Insured.

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

#### **L. FAILURE TO DISCLOSE HAZARDS AND PRIOR OCCURRENCES**

Under **Section IV - Commercial General Liability Conditions**, the following is added to Condition 6. **Representations**:

Your failure to disclose all hazards or prior "occurrences" existing as of the inception date of the policy shall not prejudice the coverage afforded by this policy provided such failure to disclose all hazards or prior "occurrences" is not intentional.

#### **M. KNOWLEDGE OF OCCURRENCE, OFFENSE, CLAIM OR SUIT**

Under **Section IV - Commercial General Liability Conditions**, the following is added to Condition 2. **Duties In The Event of Occurrence, Offense, Claim Or Suit**:

Knowledge of an "occurrence", offense, claim or "suit" by an agent, servant or "employee" of any insured shall not in itself constitute knowledge of the insured unless an insured listed under Paragraph 1. of **Section II - Who Is An Insured** or a person who has been designated by them to receive reports of "occurrences", offenses, claims or "suits" shall have received such notice from the agent, servant or "employee".

#### **N. LIBERALIZATION CLAUSE**

If we revise this Commercial General Liability Extension Endorsement to provide more coverage without additional premium charge, your policy will automatically provide the coverage as of the day the revision is effective in your state.

#### **O. BODILY INJURY REDEFINED**

Under **Section V - Definitions**, Definition 3. is replaced by the following:

3. "Bodily Injury" means physical injury, sickness or disease sustained by a person. This includes mental anguish, mental injury, shock, fright or death that results from such physical injury, sickness or disease.

**P. EXTENDED PROPERTY DAMAGE**

Exclusion a. of **COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY** is replaced by the following:

**a. Expected Or Intended Injury**

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property.

**Q. WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US - WHEN REQUIRED IN A CONTRACT OR AGREEMENT WITH YOU**

Under **Section IV - Commercial General Liability Conditions**, the following is added to **Condition 8. Transfer Of Rights Of Recovery Against Others To Us**:

We waive any right of recovery we may have against a person or organization because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard" provided:

1. You and that person or organization have agreed in writing in a contract or agreement that you waive such rights against that person or organization; and
2. The injury or damage occurs subsequent to the execution of the written contract or written agreement.



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