

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

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

RECITALS

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

B. Under the terms of the Original Concession Agreement, Concessionaire agreed, among other things, to 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 described, *inter alia*, in Sections 2.01 and 6.03 of the Original Concession Agreement. As of the Third Amendment Date, the Enclosed Patio has not been constructed.

C. Under the terms of a First Amendment to Concession Agreement for Restaurant Operations at the Chuck Corica Golf Complex dated December 28, 2017 ("First Concession Agreement Amendment"), Concessionaire agreed to construct a 3,000-square-foot event center and banquet facility ("Event Center") within the Chuck Corica Golf Complex ("Golf Complex") by June 30, 2018, later extended by City staff to December 31, 2018.

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

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

contemplated Event Center. City's, Greenway's and Concessionaire's respective claims, allegations and asserted defenses related to the Event Center are collectively referred to herein as the "Dispute".

F. City, Concessionaire and Greenway have engaged in protracted settlement negotiations in order to reach an amicable and cost-effective resolution of the Dispute and related issues without resort to litigation. As a result of those discussions, the City, Greenway, and Concessionaire have reached a settlement agreement ("Settlement Agreement") dated April 19, 2021, the terms of which call for Concessionaire to relinquish some of the food and beverage sales exclusivity rights that Concessionaire enjoyed at the Golf Complex pursuant to the terms of the Concession Agreement. The Settlement Agreement contemplates, and its effectiveness is conditioned upon, City and Concessionaire entering into this Third Concession Agreement Amendment, and City and Greenway concurrently entering into a third amendment to the Greenway Lease ("Third Lease Amendment") in the forms specified in the Settlement Agreement.

G. The City and Concessionaire, by way of this Third Concession Agreement Amendment, now wish to further amend the Concession Agreement to reflect, and make it consistent with, the terms and conditions that have been agreed to by City, Greenway and Concessionaire in the Settlement Agreement, and to incorporate some additional modifications to the Concession Agreement terms regarding the Enclosed Patio, Option to Extend (Section 3.02), and Monthly Concession Fee (Section 4.01) that have been agreed to by the City and Concessionaire.

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

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

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

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

3. Concessionaire is relieved of any obligation(s) to construct the Enclosed Patio as previously stated in the Concession Agreement.

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

"2.03. Use. Concessionaire shall maintain, operate and use the Building and Patio Area for a restaurant and bar, catering and banquet services. With the exception of tables, chairs and sun umbrella's used by Jim's on a daily basis during business hours for providing outdoor table service to patrons of the restaurant, no furniture, equipment, inventory or other personal property shall be stored on the Jim's Patio Area or outside the footprint of the Building and Patio Area. Refuse shall be properly disposed of and stored within trash bins located inside the Building or in the trash container at the rear of the Building. To the extent that any food and beverage services are provided to patrons of the Golf Complex at the NC Snack Shack, the Take-Out, and/or the SC Snack Shack, as those terms are defined in the Concession Agreement, such food and beverage services shall, as of the date of this Third Concession Agreement Amendment, be provided by Greenway pursuant to the terms of the Third Lease Amendment between Greenway and the City."

5. Section 3.02, entitled "Option to Extend", is hereby amended and restated in its entirety to read as follows:

" 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.
- (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 or else this Agreement shall terminate at the end of the Initial Term."

6. Section 4.01, entitled "Monthly Concession Fee", is hereby amended and restated in its entirety to read as follows:

" 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 – 10	2.5%
Years 11 – 15	5%
Years 16 – 25	7.5%"

7. Sections 6.02 (Event Center and Enclosed Patio), 6.03 (Financial Commitment), 6.06 (Improvement Authorization), 6.08 (Property) and 6.09 (SC Snack Shack) are hereby deleted in their entirety.

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

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

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

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

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

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

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

** Signatures on Next Page **

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

DIALEMI, INC.,
a California corporation

By: Tom Geanekos

Print Name: Tom Geanekos

Title: President

CITY OF ALAMEDA,
a California municipal corporation

By: _____

Print Name: Eric Levitt

Title: City Manager

RECOMMENDED FOR APPROVAL:

DocuSigned by:

By: Amy Wooldridge

Print Name: Amy Wooldridge

Title: Recreation and Parks Director

APPROVED AS TO FORM:

DocuSigned by:

By: Elizabeth Mackenzie

Print Name: Elizabeth Mackenzie

Title: Chief Assistant City Attorney

EXHIBIT A





CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

5/20/2021

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 Connell Insurance Agency 1710 S Amphlett Blvd #201 San Mateo CA 94402	CONTACT NAME: Albert Connell PHONE (A/C, No, Ext): (650) 571-8771 FAX (A/C, No): (650) 571-6341 E-MAIL: al@connellinsuranceagency.com ADDRESS:												
INSURER(S) AFFORDING COVERAGE													
INSURED Dialemi, Inc dba: Jims On The Course 2333 Lincoln Ave Alameda CA 94501	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 80%;">INSURER A : AmGuard Insurance Company</td> <td style="width: 20%;">NAIC # 42390</td> </tr> <tr> <td>INSURER B : Technology Insurance Company, Inc</td> <td>42376</td> </tr> <tr> <td>INSURER C : Scottsdale Insurance Company</td> <td>41297</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> </table>	INSURER A : AmGuard Insurance Company	NAIC # 42390	INSURER B : Technology Insurance Company, Inc	42376	INSURER C : Scottsdale Insurance Company	41297	INSURER D :		INSURER E :		INSURER F :	
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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 type="checkbox"/> COMMERCIAL GENERAL LIABILITY	Y	Y	DIBP202010	01/01/2021	01/01/2022	EACH OCCURRENCE \$ 2,000,000
	<input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 500,000
							MED EXP (Any one person) \$ 15,000
							PERSONAL & ADV INJURY \$ 2,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE \$ 4,000,000
	<input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC						PRODUCTS - COMP/OP AGG \$ 4,000,000
	OTHER:						\$
A	AUTOMOBILE LIABILITY	Y		DIBP202010	01/01/2021	01/01/2022	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
	<input type="checkbox"/> ANY AUTO						BODILY INJURY (Per person) \$
	<input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS ONLY						BODILY INJURY (Per accident) \$
	<input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/>						PROPERTY DAMAGE (Per accident) \$
							\$
	UMBRELLA LIAB						EACH OCCURRENCE \$
	EXCESS LIAB						AGGREGATE \$
	DED RETENTION \$						\$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	Y/N	N/A	TWC3928841	01/01/2021	01/01/2022	<input type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)						E.L. EACH ACCIDENT \$ 1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE \$ 1,000,000
							E.L. DISEASE - POLICY LIMIT \$ 1,000,000
A	Liquor Liability			DIBP202010	01/01/2021	01/01/2022	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	<p>SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.</p> <p>AUTHORIZED REPRESENTATIVE</p>
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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BLANKET ADDITIONAL INSURED – MANAGER OR LESSOR OF PREMISES, GRANTOR OF FRANCHISE, LESSORS OF LEASED EQUIPMENT

This endorsement modifies insurance provided under the following:

BUSINESSOWNER'S COVERAGE FORM

The following is added to Paragraph **C. Who Is An Insured** in **SECTION II – LIABILITY**:

A. Any person or organization, as described in paragraph **B.** of this endorsement, whom you are required to add as an additional insured on this policy under a written contract or written agreement is an additional insured; but the written contract or written agreement must be:

1. Currently in effect or becoming effective during the term of this policy; and
2. Executed prior to any "bodily injury", "property damage", or "personal and advertising injury".

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.

B. Additional Insureds

1. Managers or Lessors of Premises

Managers or Lessors of Premises are additional insureds, but only with respect to their liability arising out of the ownership, maintenance or use of that part of the premises leased to you, subject to the following additional exclusions:

This insurance does not apply to:

- a. Any "occurrence" which takes place after you cease to be a tenant in that premises; and
- b. Structural alterations, new construction or demolition operations performed by or on behalf of the person or organization with which you have a written contract or agreement.

2. Grantor of Franchise

Grantors of a Franchise are additional insureds, but only with respect to their liability as grantor of a franchise to you.

3. Lessors of Leased Equipment

Lessors of Leased Equipment are additional insureds, but only with respect to their liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person(s) or organization(s).

With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after the equipment lease expires.

C. With respect to the insurance afforded to these additional insureds, as described in paragraph **B.** of this endorsement, the following is added to Paragraph **D. Liability And Medical Expenses 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:

1. Required by the contract or agreement; or
2. 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.

This endorsement does not change the status of any person or organization that may already be an insured under the policy.