

THIRD AMENDMENT TO GREENWAY LEASE AGREEMENT

THIS THIRD AMENDMENT TO LEASE AGREEMENT ("**Third Amendment**") dated for reference purposes only as of _____, 2021 ("**Amendment Date**") is entered into by and between the CITY OF ALAMEDA, a charter city and municipal corporation ("**Landlord**") and GREENWAY GOLF ASSOCIATES, INC., a California corporation ("**Tenant**"), with reference to the following:

RECITALS

A. Landlord and Tenant entered into that certain Lease Agreement dated August 1, 2012 (the "**Original Lease**"), whereby Tenant leased from Landlord the Chuck Corica Golf Complex, consisting of approximately 325 acres, including the 18-Hole North Course, the 18-Hole South Course, the 9-Hole Mif Albright par-three course, the driving and practice range and related facilities located in the City of Alameda, CA (collectively, the "**Original Premises**") together with certain Personal Property, all as further described and depicted in the Original Lease.

B. Landlord and Tenant entered into that certain First Amendment to the Lease ("**First Amendment**") dated as of March 28, 2018.

C. Landlord and Tenant entered into that certain Second Amendment to the Lease ("**Second Amendment**") dated as of _____, 2021 (the Original Lease as amended by the First Amendment and Second Amendment is referred to herein as the "**Agreement**").

D. Landlord entered into a Concession Agreement with Dialemi, Inc. ("**Dialemi**") dated March 2016, under which, *inter alia*, Landlord granted Dialemi the exclusive right to provide food and beverage service within the Golf Complex, including at the "**Jim's on the Course**" restaurant.

E. Landlord and Dialemi entered into a First Amendment to Concession Agreement, dated December 2017, under which Dialemi agreed to construct a 4,000-square-foot event center and banquet facility ("**Event Center**") within the Golf Complex by June 30, 2018, a date which, by a Second Amendment to Concession Agreement dated April 19, 2019, Landlord extended to December 31, 2019 (the Concession Agreement, as amended by the First and Second Amendments is hereinafter referred to as the "**Dialemi Concession Agreement**").

F. A dispute has arisen among Landlord, Tenant, and Dialemi over construction of the Event Center (the "**Event Center Dispute**").

G. Landlord, Tenant, and Dialemi have agreed to resolve the Event Center Dispute on the terms and conditions set forth in that certain Settlement and Release Agreement among the parties dated April 19, 2021 ("**Settlement Agreement**"). The Settlement Agreement contemplates, and its effectiveness is conditioned upon, Landlord and Tenant entering into this Third Amendment to the Lease, and Landlord and Dialemi

concurrently entering into a third amendment to the Dialemi Concession Agreement ("**Concession Agreement Third Amendment**") in the forms specified in the Settlement Agreement.

H. Consistent with the Settlement Agreement Landlord and Tenant now desire to amend the Agreement to, among other things, provide Tenant with the exclusive right to provide food and beverage services within the Golf Complex other than within the approximately 4,500 sq. ft. building which houses the Jim's on the Course restaurant and bar (the "Jim's on the Course Restaurant Building") and, during Jim's on the Course's regular business hours and when Jim's on the Course is open for business to the public, the Jim's Patio Area (as defined below).

NOW, THEREFORE, in consideration of the terms, covenants and conditions hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Landlord and Tenant hereby agree as follows:

AGREEMENTS

1. **Recitals and Exhibits; Capitalized Terms.** The Recitals set forth above and the Exhibits attached hereto are incorporated herein as though set forth in full herein. Capitalized terms not otherwise defined herein shall have the meanings set forth in the Agreement.

2. **Effective Date; Contingency.** The effective date of this Third Amendment ("**Third Amendment Effective Date**") shall be the date that is 30 days after the effectiveness of City Ordinance No. _____ approving this Third Amendment. This Third Amendment is also contingent upon City's approval of the Concession Agreement Third Amendment. If Final Approval (as defined in the Settlement Agreement) of the Concession Agreement Third Amendment has not occurred on or before the date that is 120 days following the Third Amendment Effective Date or such later date as Landlord and Tenant may mutually agree each in its sole discretion, then this Third Amendment shall automatically terminate.

3. **Amendment to Summary of Information.** Paragraphs 2 (Leased Premises), 4 (Use) and 6.4 (Rent Years 11-20): and 6.5 (Rent Years 21-40) of the Summary of Information as set forth on pages i through v of the Original Lease are hereby deleted and replaced with the following:

"2. Leased Premises	That parcel of land commonly known as the Chuck Corica Golf Complex in the City of Alameda, State of California (" Complex "), consisting of approximately 330 acres, together with all buildings, fixtures and other improvements located on said land and all easements, covenants, water rights, licenses, permits, entitlements and other appurtenant rights, including all golf	Section 1
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	<p>courses, driving ranges, patio areas, practice chipping greens, grass tee areas, clubhouse, parking lot areas, walkways, and associated facilities, including the 18-Hole North Course ("North Course"), the 18-Hole South Course ("South Course"), the 9-Hole Mif Albright par-three course ("9-Hole Course"), the driving and practice range ("Driving Range"), excluding only the Jim's on the Course Restaurant Building, the Jim's Patio Area and the City Areas Excluded (Jim's on the Course Restaurant Building, Jim's Patio Area, and City Areas Excluded are, collectively, the "Excluded Areas"), as described with more specificity on the attached Exhibit A to Third Amendment "Exhibit A to Third Amendment".</p>	
4. Use	<p>Golf course, pro shop and other ancillary uses in keeping with the character of a similar class municipal or public golf course facility (including but not limited to Metropolitan and Monarch Bay Golf Courses), including exclusive food and beverage at the Complex, other than within the Jim's on the Course Restaurant Building and, during Jim's on the Course's regular business hours and when Jim's on the Course is open for business to the public, the Jim's Patio Area.</p>	Section 3"
6.4 Years 11-20:	<p>The greater of (a) Minimum Rent of \$300,000 per Lease Year in equal monthly payments or (b) Percentage Rent from the gross receipts received from the following rent categories (categories (a) + (b) + (c) = Gross Revenues as otherwise defined in the Lease) commencing in Lease Year 11, to be paid monthly through Lease Year 20 as follows:</p> <p>(a) 8% of golf related gross receipts, including green fees, cart rentals, range balls, retail merchandise, and ancillary items (includes clothing, apparel, shoes, balls, accessories and golf equipment),</p>	

	<p>tournament, membership fees and revenue from any sublease up to \$4,000,000 (adjusted annually by CPI) and 12% of amount above \$4,000,000.</p> <p>(b) 3% of gross receipts from par 3 fees and club fittings and repair.</p> <p>(c) 7.5% of gross receipts from the sale of food and beverage.</p>	
6.5 Years 21-40:	<p>The greater of (a) Minimum Rent of \$350,000 per Lease Year, subject to adjustment each Lease Year based upon the Consumer Price Index — All Items for the San Francisco-Oakland-San Jose Area, All Urban Consumers, published by the Bureau of Labor Statistics of the United States Department of Labor (Base Year 2015=100), or such successor index as may be established to provide a measure of the current purchasing power of the dollar in the San Francisco Bay area, paid in equal monthly payments or (b) Percentage Rent from the gross receipts received from the rent categories (categories (a), + (b) + (c) = Gross Revenues) commencing in Lease Year 21, to be paid monthly through Lease Year 40 as follows:</p> <p>(a) 10% of golf related gross receipts (to include green fees, cart rentals, range balls, retail merchandise, and ancillary items (includes clothing apparel, shoes, balls, accessories and golf equipment) tournament and membership fees and revenue from any sublease up to \$4,000,000 (adjusted annually by CPI) and 12% of amounts above \$4,000,000.</p> <p>(b) 3% of gross receipts from par 3 fees and club fittings and repair.</p> <p>(c) 7.5% of gross receipts from the sale of food and beverage.</p>	

4. **Amendment of Section 1.** Section 1 of the Original Lease, entitled "Leased Premises", is deleted in its entirety and replaced with the following:

"1. **LEASED PREMISES.** City hereby leases to Tenant and Tenant hereby leases from City, for the term and upon the terms and conditions set forth in the Agreement the "**Premises**" described in the Summary of Information and depicted and designated on the attached **Exhibit A to Third Amendment.**"

5. **Amendment of Section 3.1.**

Section 3.1 of the Original Lease, entitled "Use", is deleted in its entirety and replaced with the following:

"3.1 **Use.** Tenant shall use the Premises for the operation of a premier daily fee golf course and other activities customarily associated with or incidental to the operation of a daily fee golf course, including without limitation, sale or rental of golf related merchandise at a golf professional's shop, furnishing of lessons by a golf professional, and operation of a driving range for the use of the general public, including both City of Alameda residents and non-residents. Commencing on the Third Amendment Effective Date and continuing thereafter throughout the term of the Agreement, Tenant shall have the exclusive rights to sell and serve food and beverages, including alcoholic beverages (hereinafter, "**Food and Beverage Service**"), at all portions of the Complex other than within the City Areas Excluded, the Jim's on the Course Restaurant Building, and, during Jim's on the Course's regular business hours and when Jim's on the Course is open for business to public, the Jim's Patio Area, in accordance with and subject to the following terms and conditions:

(a) **Special Events.** Tenant may at any time provide or cause to be provided Food and Beverage Service in connection with golf tournaments (including both tournament participants and their non-golfing guests), corporate retreats, and other special events, such as weddings, private parties, and other social gatherings (hereinafter, "**Special Events**"), provided that the Special Events comply with City Ordinances and City Park Rules and Regulations, including limitations on outdoor amplified sound.

(b) **Snack Carts.** Tenant may operate beverage and snack cart services anywhere on the Premises, including but not limited to all of the Complex's golf courses, driving ranges, practice chipping greens, and grass tee areas.

(c) **Snack Shacks.** Subject to the terms of this Agreement, and City's regular procedures for review and approval of such facilities, Tenant may construct and operate, or contract with third parties to construct and operate, snack shacks, including by reopening previously existing snack shacks, anywhere within the Premises, including but not limited to all of the Complex's golf courses, driving ranges, practice chipping greens, and grass tee areas. Notwithstanding the foregoing, however, Tenant shall not open, operate nor contract with third parties to

construct or operate, any new snack shacks that are within Jim's Sight Lines (as defined in the Settlement Agreement).

(d) Take-Out. Subject to the terms of this Agreement, and City's regular procedures for review and approval of such facilities, Tenant may construct and operate, or contract with third parties to construct and operate, one or more take-out Food and Beverage Service facilities anywhere within the Premises other than within the Jim's Sight Lines (as defined in the Settlement Agreement). For purposes of this Agreement, "take-out" means a counter service restaurant or food service facility.

(e) Patio Areas. Subject to the terms of the Settlement Agreement, Tenant may provide Food and Beverage Service in connection with Special Events within the Jim's Patio Area outside of Jim's on the Course's regular business hours or when Jim's on the Course is closed. Tenant, at all times, shall have the exclusive right to use, including for purposes of providing Food and Beverage Service, the Greenway Patio Area.

(f) New Golf Complex Restaurants. Subject to the terms of this Agreement, and City's regular procedures for review and approval of such facilities, from and after the third anniversary of the Third Amendment Effective Date, Tenant shall have the right to develop and/or operate, or contract with third parties to develop and/or operate, anywhere within the Premises, other than within the Jim's Sight Lines (as defined in the Settlement Agreement), one or more restaurants or other Food and Beverage Service facilities providing either dine-in, sit-down table service or a combination of dine-in, sit-down and/or take-out Food and Beverage Service.

Pursuant to the terms of the Dialemi Concession Agreement, as further amended by the third amendment thereto, City has provided Dialemi Inc. a concession to operate the Jim's on the Course restaurant. City shall include in its contractual agreements with Dialemi reasonable limitations and commitments to avoid conflicts with Tenant's operation of the Complex under this Agreement. Tenant shall provide Dialemi and its Jim's on the Course customers with equivalent access to and parking for the Jim's on the Course restaurant as Tenant and Tenant's customers are provided to the clubhouse for the Complex which is located next to the Jim's on the Course restaurant. Tenant shall avoid material conflicts with Dialemi's operation of the Jim's on the Course restaurant under the Dialemi Concession Agreement as further amended by the third amendment thereto. In the event the Dialemi Concession Agreement terminates or expires and provided the existing term of such agreement is not extended, City shall give Tenant the first right of refusal to take over operation of the Jim's on the Course Restaurant Building and Jim's Patio Area on terms and conditions reasonably acceptable to the parties. Tenant shall not use the Premises for any unlawful purpose and shall comply with all valid laws, rules and regulations applicable to the Premises or the business conducted on the Premises. Tenant shall obtain and comply with the requirements of all licenses and permits required for the permitted uses in the Premises, including but not limited to, any required California State Department of Agriculture Permit."

6. Addition of New Subsections 3.7 and 3.8. The following new Subsections 3.7, 3.8 and 3.9 are hereby added to the Agreement to read as follows:

“3.7 Event Center. Subject to the terms of this Agreement, and City’s regular procedures for review and approval of event center facilities, Tenant shall have the exclusive right at its sole option, at any time from and after the Third Amendment Effective Date, to develop and/or operate, or contract with a third parties to develop and/or operate, anywhere within the Premises (except within Jim’s Sight Lines, as defined in the Settlement Agreement), an event center, subject to the terms and conditions of the Agreement, as amended by this Third Amendment.

3.8 Screening and Gate. Subject to the terms of this Agreement, and City’s regular procedures for review and approval of gates and fences, Tenant, at its sole option, shall have the right, at any time from and after the Third Amendment Effective Date, to install on the Greenway Premises a new gate (“**Gate**”) across the paved access way providing vehicular and pedestrian access to the rear of the Jim’s on the Course restaurant building, together with fencing, landscaping and/or similar means of screening from view the back-of-the-house and side building areas of Jim’s on the Course, in the approximate locations depicted as the “**Greenway Screening Option**” on sheet two of the attached Exhibit A to Third Amendment. Greenway shall have the right to include a Gate locking and/or automatic opening/closing mechanism to better control access to the rear access way and in such event, Greenway shall ensure that Dialemi has keys and Gate codes, as applicable, at all times so that Dialemi and its employees, contractors, garbage service providers and delivery people can gain access to and from the rear of the restaurant building and the Jim’s Patio Area.

3.9 Marketing Coordination with Jim’s on the Course. The parties acknowledge that the ability to offer golfers and non-golfer tournament and special event participants a wide-range of food and beverage options will substantially impact the long-term success of Tenant’s golf operations at Corica Park. To facilitate that goal, for so long as Jim’s on the Course is operating at Corica Park, Tenant agrees to include on its website (coricapark.com) a link to an appropriate Jim’s on the Course website page referencing Jim’s on the Course’s menu, food and beverage offerings and/or special event catering options so that members of the public and golf tournament and special event planners can gain a more thorough understanding of all food and beverage options available at Corica Park including the offerings available at Jim’s on the Course.”

7. Replacement of Agreement Exhibit A. Exhibit A to the Original Lease is hereby deleted and replaced with the attached **Exhibit A to Third Amendment**.

8. Ratification of Agreement. The Agreement, as amended by this Third Amendment, is hereby ratified, confirmed and approved in all respects. In the event of any inconsistency between the provisions of this Third Amendment and the provisions of the Agreement, the provisions of this Third Amendment shall govern.

9. No Effect on Rights or Obligations of Tenant or Dialemi under Settlement Agreement. Nothing herein shall be deemed to modify the ongoing rights or

obligations of Tenant to Dialemi or Dialemi to Tenant as set forth in the Settlement Agreement.

10. No Effect on Nevarez Litigation. City and Greenway acknowledge and agree that this Third Amendment shall have no effect on the rights or obligations, if any, that Greenway and/or City may have to each other or to Abdul and Priscilla Nevarez with respect to the ADA claims alleged by Abdul and Priscilla Nevarez in United States District Court Case No. 20-cv-8302 TSH.

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

12. Brokers. Neither party as dealt with any broker in connection with this Third Amendment. Each party agrees to defend, indemnify and hold the other party harmless from any claims of any brokers claiming to have represented it in connection with this Third Amendment.

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

14. Reservation of City Rights. The additional uses potentially contemplated by this Third Amendment, including but not limited to snack shacks, take-out Food and Beverage Service facilities, new Golf Complex restaurants, and event center facilities, are each subject to future City review and approvals both in its regulatory and proprietary capacities. This Third Amendment shall not be construed to limit the City's future discretion to approve, conditionally approve or deny such uses.

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[Signatures on next page]

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

LANDLORD:

CITY OF ALAMEDA,
a charter city and municipal corporation

By: _____
Eric Levitt
City Manager

Approved as to Form:

By: _____
Elizabeth Mackenzie
Chief Assistant City Attorney

TENANT:

GREENWAY GOLF ASSOCIATES, INC.
a California corporation

By: _____
Umesh Patel
Its: President

EXHIBIT A THIRD AMENDMENT

Leased Premises





PATIO AND PERMITTED SCREENING AREA DIAGRAM

