

LEASE AMENDMENT NO. 2

PREMISES 2701 Monarch Street, Alameda, CA consisting of approximately 63,972 rentable square feet, Bldg. 20

LANDLORD: CITY OF ALAMEDA, a charter city and municipal corporation

TENANT: Auctions by the Bay, Inc.

LEASE DATE: May 1, 2012 for reference purposes only

This Amendment No. 2 to the Lease (“Second Amendment”), is dated as of March 1, 2022 for reference purposes only, and is entered into by and between the CITY OF ALAMEDA, a charter city and municipal corporation (“Landlord” or “City”), and AUCTIONS BY THE BAY, INC., a California corporation (“Tenant”).

NOW, THEREFORE, in consideration of the foregoing, which is incorporated herein by reference, and of their mutual covenants contained herein, the parties hereby agree as follows:

1. Background.

A. Landlord and Tenant entered into that certain Lease Agreement dated May 1, 2012 for reference purposes only (the “Lease”), for certain premises described therein and referred to as 2701 Monarch Street, Alameda, CA consisting of approximately 63,972 square feet, Building 20 (“Premises”).

B. On October 6, 2020, the City Council approved that certain COVID-19 rent relief program for commercial tenants of City-owned property located on Spirits Alley and non-profit organizations (the “Program”).

C. Tenant has advised Landlord that it wishes to participate in the Program on the terms and condition described herein.

D. Capitalized terms used in this Second Amendment without definition shall have the same meaning given to such terms in the Lease. This Second Amendment shall be effective upon the last date set forth below the parties’ signatures.

2. Rent Deferral. Section 3.1 of the Lease regarding Tenant’s payment of Base Rent shall be modified as described below:

“(a) Tenant’s obligation to pay Base Rent, as described in Section 3.1 of the Lease, shall be deferred for a period of nine (9) months (“Deferred Base Rent”) commencing retroactively on April 2020 and ending on December 2020. The period during which Tenant shall repay Deferred Base Rent shall commence on March 1, 2022 and end on February 28, 2025 (“Repayment Period”). During each twelve (12) month period of the Repayment Period (“Year 1” as to the first twelve (12) months, “Year 2” as to



the second twelve (12) months, and “Year 3” as to the third twelve (12) months), Tenant shall repay no less than three (3) months of Deferred Base Rent (“Minimum Repayment Obligation”) either in a lump sum at the time Tenant makes its first Base Rent payment during Year 1, Year 2, or Year 3, as applicable, or in twelve (12) equal monthly payments on the date Tenant pays Landlord each Base Rent sum during Year 1, Year 2, or Year 3, as applicable. A schedule reflecting Tenant’s Minimum Repayment Obligation is set out below.

(b) During the Repayment Period, if Tenant pays all Deferred Base Rent: (i) prior to the last day of Year 1, Landlord will credit Tenant three (3) months of Base Rent to be applied to each of the next following months of Base Rent until the credit is exhausted; (ii) prior to the last day of Year 2, Landlord will credit Tenant two (2) months of Base Rent to be applied to each of the next following months of Base Rent until the credit exhausted; and (iii) prior to the last day of Year 3, Landlord will credit tenant one (1) month of Base Rent to be applied to each of the next following months of Base Rent until the credit exhausted.

(c) If during Year 1, Year 2, or Year 3 of the Repayment Period Tenant fails to pay the applicable Base Rent sum, plus the Minimum Repayment Obligation for any of those years, then following a written notice from Landlord to Tenant and a three (3) day period for Tenant to cure such Base Rent default and/or Minimum Repayment Obligation default, Tenant shall be in material default of the Lease entitling Landlord to exercise all rights and remedies available to it under the Lease and at law and in equity.

(d) If at any time during the period commencing on the date of this Second Amendment (as set out above) and the last day of the Repayment Period, Tenant is cited by a law enforcement authority (e.g. the County of Alameda, the City’s Police Department or code enforcement unit) for any violation of a health and safety regulation, code, or other directive related to COVID-19, the City may, upon the written approval of both the City Manager and City Attorney, in their sole and complete discretion, impose some or all of the following remedies:

1. Tenant shall be obligated to repay to Landlord, within ten (10) days of the date of written notice from City, all unpaid Deferred Base Rent.
2. Tenant shall return to the Landlord, within ten (10) days of the date of written notice from City, all previously earned “Rent Credit” (as described in the chart below).
3. Tenant shall not be entitled to any further benefits established by and described in this Second Amendment.

Tenant shall timely and fully comply with the remedies imposed by the City under this subsection. If Tenant fails to timely and fully comply with the remedies set forth in the subsection, then Tenant shall be in material default of the Lease entitling Landlord to exercise all rights and remedies available to it under the Lease and at law and in equity, including without limitation, termination of the Lease, as amended hereby, and taking all necessary legal actions to recover unpaid rent, including previously earned-but-forfeited Rent Credits or Deferred Base Rent.

DEFERRED RENT REPAYMENT SCHEDULE	
Months Deferred	Nine (9) (April 2020-December 2020)
Total Base Rent Deferred	\$ <u>247,833.00</u>
Maximum Possible Rent Credit	\$ <u>82,611.00</u>
Repayment Period	Payment Due
Year 1	Base Rent + <u>\$82,611.00</u> when first Base Rent payment of Year 1 is made or Base Rent + 12 equal, monthly payments of <u>\$6,884.25</u> at the time each Base Rent payment is made during Year 1
Year 2	Base Rent + <u>\$82,611.00</u> when first Base Rent payment of Year 2 is made or Base Rent + 12 equal, monthly payments of <u>\$6,884.25</u> at the time each Base Rent payment is made during Year 2
Year 3	Base Rent + <u>\$82,611.00</u> when first Base Rent payment of Year 3 is made or Base Rent + 12 equal, monthly payments of <u>\$6,884.25</u> at the time each Base Rent payment is made during Year 3

3. Delivery of Possession. Tenant agrees that the Premises shall continue to be leased in its "AS-IS" condition, and Landlord shall have no obligation to make any repairs or modifications to the Premises. Tenant acknowledges and agrees that Landlord has made no representations or warranties regarding the Premises, including, without limitation, its suitability for Tenant's proposed use.

4. CASp. Inspection by Certified Access Specialist. Landlord discloses that the Premises have not undergone inspection by a Certified Access Specialist as referenced in California Civil Code Section 1938 subsection (e) which provides: "A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the

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time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises.” Pursuant to the foregoing Section 1938(e), Tenant acknowledges and agrees that if Tenant wishes to have the Premises inspected by a CASp: (i) Tenant must notify Landlord on or before the date when Tenant executes this Second Amendment pursuant to the election below; (ii) the inspection will be at Tenant’s sole cost and expense; (iii) the inspection must be scheduled through Landlord and in coordination with the Building’s property manager; (iv) any repairs or modifications necessary to correct any violation of construction-related accessibility standards that is noted in the CASp report shall be Tenant’s responsibility; and (v) Tenant must provide a copy of the CASp report to Landlord on completion.

5. City’s Authority. Tenant acknowledges Landlord is entering into this Second Amendment modifying the Lease in Landlord’s proprietary capacity and not in its regulatory or governmental capacity. Nothing in this Second Amendment shall be construed as restraining, impairing or restricting the City in its regulatory capacity, or granting any rights upon the Tenant with respect to the use, occupancy or operation of the Premises in a manner inconsistent with any Laws or applicable requirements.

6. Ratification; Miscellaneous. Except as modified by this Second Amendment, in all other respects the Lease is hereby ratified and affirmed and remains in full force and effect. This Second Amendment may be executed in one or more counterparts.

A handwritten mark, possibly a signature or initials, consisting of a stylized letter 'A' with a horizontal line extending to the right from its top right corner.

IN WITNESS WHEREOF, the undersigned have executed this Amendment as of the day and year last set forth below.

LANDLORD:

TENANT:

CITY OF ALAMEDA,
a charter city and municipal corporation

AUCTIONS BY THE BAY, INC.
a California corporation

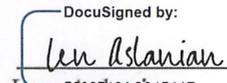
By: 
Eric J. Levitt
City Manager

By: 
Name: Allen Michaan
Title: President & CFO

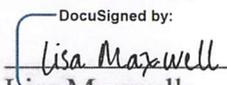
Date: 3/1/22

Date: FEB. 3, 2022

Approved as to Form

DocuSigned by:
By: 
Len Aslanian
Deputy Assistant City Attorney II

Recommended for Approval

DocuSigned by:
By: 
Lisa Maxwell
Community Development Director