

LEASE AMENDMENT NO. 3

<u>PREMISES</u>	Building 24, 2301 Monarch St., Alameda, CA
<u>LANDLORD:</u>	CITY OF ALAMEDA, a charter city and municipal corporation
<u>TENANT:</u>	ROCK WALL WINE COMPANY, INC., a California corporation
<u>LEASE DATE:</u>	August 1, 2008

This Amendment No. 3 to the Lease ("Amendment"), is dated as of December 14, 2020 for reference purposes only, and is entered into by and between the CITY OF ALAMEDA, a charter city and municipal corporation ("Landlord"), and ROCK WALL WINE COMPANY, INC., a California corporation ("Tenant").

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

1. Background.

A. Landlord's predecessor in interest the Alameda Reuse and Redevelopment Authority and Tenant entered into that certain Lease Agreement dated August 1, 2008, as amended by that certain First Amendment to Lease Agreement dated August 1, 2009, as further amended by that certain letter agreement dated June 16, 2014, as further amended by that certain Second Amendment to Lease dated February 19, 2019 (collectively, the "Lease"). The Lease concerns certain premises located at 2301 Monarch Street, Building 24, Alameda, California (the "Premises") as more particularly described in the Lease.

B. On January 31, 2012, the Governing Board of the Alameda Reuse and Redevelopment Authority assigned its rights, assets, liabilities and obligations to Landlord, including this Lease, and, on February 7, 2012, the City Council accepted the assignment.

C. Tenant represents and warrants to Landlord that Tenant's business income has substantially declined due to the novel coronavirus (COVID-19) pandemic, including due to subsequent closures mandated by the County of Alameda ("Coronavirus Pandemic").

D. Landlord has offered to defer Base Rent for a period of six (6) months, and to credit a maximum of \$156,090.00 of Base Rent on the terms and conditions set forth below.

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

2. Rent Deferral. Landlord agrees to Defer Base Rent on the terms and conditions set forth 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 six (6) months (“Deferred Base Rent”) commencing retroactively on April 2020 and ending on September 2020 (“Deferral Period”).

B. Tenant shall pay the Deferred Base Rent beginning six (6) months after Alameda County completely lifts restrictions on Tenant’s operations from the Premises, including, without limitation, in-person tastings and public assembly, and ending no later than August 1, 2023 (“Repayment Period”), subject to any applicable rent credit set forth in Section 5. 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, or portion thereof), Tenant shall repay no less than two (2) months of Deferred Base Rent (“Minimum Repayment Obligation”) 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 forth below:

DEFERRED RENT REPAYMENT SCHEDULE	
Months Deferred	Six (6) (*months deferred)
Total Base Rent Deferred	\$156,090.00
Maximum Possible Rent Credit (Defined Below)	\$156,090.00
Repayment Period	Payment Due
Year 1	Base Rent + \$52,030.00 when first Base Rent payment of Year 1 is made or Base Rent + 12 equal, monthly payments of \$4,335.83 at the time each Base Rent payment is made during Year 1
Year 2	Base Rent + \$52,030.00 when first Base Rent payment of Year 2 is made or Base Rent + 12 equal, monthly payments of \$4,335.83 at the time each Base Rent payment is made during Year 2

Year 3	Base Rent + \$52,030.00 when first Base Rent payment of Year 3 is made or Base Rent + 12 equal, monthly payments of \$4,335.83 at the time each Base Rent payment is made during Year 3
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3. Conditions of Rent Deferral. Except as otherwise specifically provided in this Amendment, no other amounts (other than Base Rent) due from Tenant under the lease shall be affected. Landlord's Agreement to provide the Deferred Base Rent is conditioned upon Tenant not being in Default until end of the current Lease term, Tenant not having assigned the Lease or sublet any part of the Premises, Tenant's representations and warranties in this Amendment being true and correct in all material respects, and Tenant abiding by this Amendment. Upon Tenant's default before end of the current Lease term, Landlord's agreement to provide the Deferred Base Rent or any Rent Credit (defined below) shall terminate, and Tenant shall immediately owe and pay to Landlord any Base Rent previously deferred and/or abated, together with late charges and interest due under the Lease.

4. COVID-19 Enforcement Violations. If at any time during the period commencing on the date of this 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 of Alameda's ("City") Police Department or the City of Alameda's 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 of Alameda's City Manager and City Attorney, in their sole and complete discretion, impose some or all of the following remedies:

(i) Tenant shall immediately owe and Pay to Landlord, all unpaid Deferred Base Rent, together with late charges and interest due under the Lease.

(ii) Tenant shall return to the Landlord, within ten (10) days of the date of written notice from City, all previously earned Rent Credits (defined below).

(iii) Tenant shall not be entitled to any further benefits established by and described in this Amendment.

(iv) 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 herein, 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.

5. Rent Credit/Rent Abatement. Tenant shall be eligible for a maximum rent credit of \$156,090.00 ("Maximum Rent Credit") upon satisfaction of the conditions set forth in this Section 5.

A. Tenant shall be eligible for a Rent Credit in the amount of \$78,045 (equal to three (3) months' Base Rent) after operating from the Premises for no less than six (6) months after reaching seventy-five percent (75%) of full time employment. For purposes of this Section 5.A, full-time employment shall be determined by dividing the number of Tenant's current full-time employees by the highest number of full time employees employed by Tenant during the previous three (3) years prior to the Coronavirus Pandemic. Tenant shall be responsible for furnishing written documentation, satisfactory to Landlord in Landlord's reasonable discretion, of its satisfaction of the condition set forth in this Section 5.A.

B. Tenant shall be eligible for a Rent Credit in the amount of \$26,015.00 (equal to one (1) month' Base Rent) for each Landlord-sponsored event hosted at the Premises until the lease expires.

C. If Tenant is prevented by an applicable order of the County of Alameda from resuming operations from the Premises before August 2023, Tenant shall receive the Maximum Rent Credit, regardless of its satisfaction of the conditions set forth in Sections 5A and 5B, above.

6. 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.

7. 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 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 Lease 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 Landlord'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. By initialing below, Tenant represents that:

Tenant wishes to have a CASp inspection of the Premises

Initials: _____

Tenant hereby waives its right to a CASp inspection of the Premises Initials:_____

8. Waivers. Tenant knowingly and intentionally waives and agrees not to assert or raise any current or future defenses, rights or claims, whether at law, equity or otherwise, based upon, arising from or in connection with (i) any moratorium, limits or conditions imposed by law due to the Coronavirus Pandemic on Landlord's rights and remedies, including, moratorium on unlawful detainer actions, and (ii) force majeure, acts of God, illegality, frustration, frustration of purpose, prevention of performance, duress, impossibility, emergency, unconscionability, absence or lack of control, rescission, and any other excuses or defenses of performance. Tenant certifies Landlord is not in breach or default and Tenant does not have any claims, defenses, offsets or credits against Landlord or the rent due under the Lease.

9. Landlord's Obligations. If Landlord's performance of any portion of the Lease is affected, prevented, delayed or stopped due to or caused by the Coronavirus Pandemic by law or other causes beyond the reasonable control of Landlord, then the time for such performance by Landlord shall be extended by the period of time that Landlord's performance is affected, prevented, delayed or stopped.

10. City's Authority. Tenant acknowledges Landlord is entering into this Amendment modifying the Lease in Landlord's proprietary capacity and not in its regulatory or governmental capacity. Nothing in this Amendment shall be construed as restraining, impairing or restricting the City of Alameda 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.

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

[SIGNATURES ON FOLLOWING PAGE]

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

LANDLORD:

CITY OF ALAMEDA,
a charter city and municipal corporation

By: _____
Name: Eric J. Levitt
Title: City Manager

Date: _____

TENANT:

ROCK WALL WINE COMPANY, INC.,
a California corporation

By: _____
Name: Shauna Rosenblum
Title: Winemaker, President

Date: _____

RECOMMENDED FOR APPROVAL

By: _____
Lisa N. Maxwell
Interim Community Development Director

Approved as to Form

By: _____
J. Aaron Duffy
Staff Counsel