

**ALAMEDA POINT
LEASE AGREEMENT**

Between

CITY OF ALAMEDA, a
charter city and municipal corporation

as

LANDLORD

and

AUCTIONS BY THE BAY, INC.,
a California corporation

as

TENANT



ALAMEDA POINT LEASE AGREEMENT

THIS ALAMEDA POINT LEASE AGREEMENT ("**Lease**"), dated for reference purposes as May 1, 2012 ("**Lease Execution Date**"), is made by and between the **CITY OF ALAMEDA**, a charter city and municipal corporation ("**Landlord**") and **AUCTIONS BY THE BAY**, a California corporation ("**Tenant**").

Recitals

- A. The United States of America, acting by and through the Department of the Navy ("**Government**"), is the owner of real and personal property commonly referred to as the former Naval Air Station Alameda ("**Station**" or "**Property**"), which was closed as a military installation and is subject to disposal pursuant to and in accordance with the Defense Base Closure and Realignment Act of 1991, as amended (Pub. Law No. 101-510).
- B. Landlord and Government have agreed upon a method of conveyance of said property as set forth in the Economic Development Conveyance Memorandum of Agreement ("**EDC MOA**") dated June 6, 2000.
- C. Prior to the conditions for a deed transfer of the property to Landlord being met, immediate possession of all or portions of the Station has been granted by Government to Landlord pursuant to a Lease in Furtherance of Conveyance ("**LIFOC**") dated June 6, 2000.
- D. Government has determined that it will be in the public interest to lease the Premises (as hereinafter defined) to Landlord upon the terms and conditions set forth in the LIFOC.
- E. Landlord and Tenant have agreed to make and enter into this Lease, whereby Tenant will lease from Landlord the Premises, which leasehold interest is junior to and subject to the provisions of the LIFOC. As a result thereof, this Lease is a "sublease" in accordance with applicable laws, statutes and ordinances.
- F. No individual premises on the Station has been surveyed and assigned an Assessor's Parcel Number (APN) by any State of California agency, including the County of Alameda and the City of Alameda. Any previously used Legal Description is not applicable to this or any future Agreements as they may pertain to any premises located on the Station. Tenant may, at its sole expense, have the premises surveyed by competent authority, in order to obtain a Legal Description of the Premises. Any survey shall be subject to review and approval by Landlord. Any approved Legal Description shall not be deemed to be a legally described parcel, nor shall it be assigned an identifying Assessor's Parcel Number.
- G. On Jan. 31, 2012, the Governing Board of the Alameda Reuse & Redevelopment Authority assigned its rights, assets, liabilities and obligations to the City of Alameda. On February 7, 2012, the City Council of the City of Alameda accepted assignment of the rights, assets, liabilities, and obligations of the Alameda Reuse & Redevelopment Authority. On March 9, 2012 the U.S. Department of Defense Office of Economic Adjustment (OEA) acknowledged the City of Alameda as the Local Reuse Authority (LRA) for the former Alameda Naval Air Station. On April 4, 2012, the Department of Navy acknowledged the City of Alameda had been recognized by the OEA as the LRA.

NOW, THEREFORE, in consideration of the terms, covenants and conditions hereinafter set forth, Landlord and Tenant hereby agree as follows:

Agreement

1. **PREMISES.** Landlord does hereby lease, rent, and demise to Tenant and Tenant does hereby hire and rent from Landlord, the following:

1.1. **Premises.** Those certain premises known as Building 20, located at 2701 Monarch Street, Alameda, California, containing approximately Sixty Three Thousand Nine Hundred Seventy Two (63,972) rentable square feet (which measurement is binding and conclusive on the parties), more particularly described on Exhibit A-1 attached hereto, together with the improvements and fixtures situated therein (the "**Premises**").

1.2. **Equipment.** [Intentionally Deleted].

1.3. **Land.** That certain Ninety Four Thousand Two Hundred Ninety Six (94,296) rentable square feet of real property ("**Land**") (which measurement is binding and conclusive on the parties), more particularly described on Exhibit A-3 attached hereto. The Land is not within the definition of "**Premises**" hereunder and Tenant is only granted a license to use the Land in accordance with and subject to the provisions of this Lease. Tenant's rights and obligations concerning the Premises as contained in this Lease shall be applicable to the Land and Landlord shall not interfere with Tenant's use of the Land except as otherwise provided in this Lease. The Land may only be utilized for the purposes set forth in Exhibit A-3 and the storage of any materials shall be subject to Landlord's fencing and screening requirements as such exist from time to time.

1.4. **Parking Areas.** In addition to the Premises, subject to the Rules and Regulations (as hereinafter defined), Tenant and Tenant's employees, agents, suppliers, customers and patrons, in common with Landlord and all other tenants of the Station and all such other persons to whom Landlord has previously granted, or may hereinafter grant, rights of usage, shall have the non-exclusive right to use, for parking purposes, the parking area ("**Parking Area**") identified in Exhibit A-4 attached hereto, as such may be adjusted from time to time by Landlord.

1.5. **Common Areas.** In addition to the Premises, subject to the Rules and Regulations, Tenant shall have the use of those certain common areas to be designated by Landlord from time to time on the Station (collectively, the "**Common Areas**"). The use of the Common Areas shall be for the non-exclusive use of Tenant and Tenant's employees, agents, suppliers, customers and patrons, in common with Landlord and all other tenants of the Station and all such other persons to whom Landlord has previously granted, or may hereinafter grant, rights of usage; provided that such nonexclusive use shall be expressly subject to such Rules and Regulations which may be amended by Landlord from time to time. Tenant shall not be entitled to use the Common Areas for storage of goods, vehicles, refuse or any other items. Landlord reserves the right to alter, modify, enlarge, diminish, reduce or eliminate the Common Areas from time to time in its sole discretion. If Tenant shall use any of the Common Areas for storage of any items, Tenant shall pay all fines and other charges imposed upon either Landlord or Tenant by any fire, building or other regulatory body, and Tenant shall pay all costs incurred by Landlord to clear and clean the Common Areas and dispose of such items, including but not limited to, a disposal fee of Twenty-Five and No/100ths Dollars (\$25.00) for each pallet or other container and Fifty and No/100ths Dollars (\$50.00) for each drum, together with any additional costs for testing and special disposal, if required.

1.6. **Sublease Status.** Notwithstanding anything otherwise stated herein, the obligation of Landlord to lease the Premises under this Lease, and to perform the covenants of Landlord under this Lease, and the obligation of Tenant to so hire and lease the Premises under this Lease, and to perform the covenants of Tenant under this Lease, are subject to and junior to the LIFOC. The parties hereto understand that Government, as Lessor, and Landlord, as Lessee, have entered into the LIFOC attached hereto as Exhibit B,

and Tenant acknowledges that Landlord's rights to the Premises arise solely under the LIFOC and the EDC MOA.

1.7. Compliance with LIFOC. Notwithstanding any provision of this Lease, Landlord and Tenant hereby agree as follows: (i) Tenant will not do or permit anything to be done in or on the Premises which will cause the occurrence of a default by Landlord under the LIFOC, (ii) if the LIFOC expires or is terminated for any reason, then this Lease shall thereupon terminate, without any liability to Landlord, as if such date were the scheduled expiration date of the Term, as defined in Section 2 below.

1.8. Default under LIFOC. Landlord shall have no liability to Tenant for Government's default under the LIFOC. Tenant agrees that Landlord shall not be obligated to perform any of Government's obligations under the LIFOC, except to the extent that such obligations are expressly made obligations of Landlord under this Lease. Tenant further agrees that neither this Lease nor any obligation hereunder, including the payment of Base Rent or Additional Rent, shall be affected by Government's default under the LIFOC, except to the extent that the LIFOC is terminated, or unless such default causes Landlord to breach the covenant of quiet enjoyment in favor of Tenant contained herein. Landlord reserves all rights to enforce the LIFOC, but agrees to make reasonable and diligent efforts to enforce Government's obligations under the LIFOC, to the extent that Tenant is a material beneficiary thereof.

1.9. Interpretation. In the event of any conflict in the rights of Tenant under this Lease and the rights of Landlord under the LIFOC, the terms, conditions and covenants of the LIFOC shall control.

1.10. LIFOC. Tenant represents that it received, read and is familiar with the terms of the copy of the LIFOC attached as Exhibit B and agrees to comply with all obligations of Lessee under the LIFOC as such relates to the Premises.

2. TERM.

2.1. Term. The term of the Lease shall be for twelve (12) months beginning on the Lease Commencement Date and Expiring on December 31, 2012 (the "**Term**"), unless extended or sooner terminated pursuant to the terms of this Lease. The term "**Lease Year**" as used herein shall mean any three hundred sixty-five (365) consecutive day period beginning on the Commencement Date or any anniversary thereafter.

2.2. Lease Commencement Date. The term "**Lease Commencement Date**" as used herein shall mean:

2.2.1. The Lease Commencement Date shall be January 1, 2012 ("**Lease Commencement Date**").

2.2.2. Within thirty (30) days after the Lease Commencement Date, Landlord and Tenant shall execute an amendment to this Lease ("**Declaration of Lease Commencement**") setting forth the Lease Commencement Date and the expiration date of the term of the Lease, which shall be in the form attached hereto as Exhibit D. For the purpose of this Lease, "**Force Majeure Events**" shall mean (i) any delays beyond the reasonable control of Landlord, such as acts of God, fire, earthquake, acts of a public enemy, riot, insurrection, unavailability of materials, governmental restrictions on the sale of materials or supplies or on the transportation of such materials or supplies, strike directly affecting construction or transportation of materials or supplies, shortages of materials or labor resulting from government controls, weather conditions, unavailability of possession of the Premises due to governmental action or inaction, or any other cause or events beyond the reasonable control of Landlord. The parties agree that if Landlord is unable to deliver possession of the Premises by the Anticipated Lease Commencement Date, plus any extension thereto due to a Force Majeure Event(s), this Lease shall not be void or voidable, nor shall Landlord be liable to Tenant for any loss or damage resulting therefrom, and the expiration date of the Term of this Lease shall be extended for such delay; but in such event, Tenant shall not be liable for any Rent until the Lease Commencement Date;

provided, however if such delays were caused or attributable to Tenant, Rent shall commence as of the scheduled Lease Commencement Date.

2.2.3. In the event that Landlord permits Tenant to occupy the Premises prior to the Lease Commencement Date, such occupancy shall be subject to all the provisions of this Lease.

2.2.4. Prior to the Lease Commencement Date, Landlord and Tenant shall conduct a walk-through inspection of the Premises and acknowledge the results of such inspection by signing a physical condition report ("**Condition Report**"), in a form prepared by Landlord, setting forth the agreed physical appearance and condition of the Premises as of such time. To the extent that the Condition Report approved by Landlord and Tenant requires Landlord to repair, replace or perform any maintenance obligations (provided that such report shall not create any obligations of Landlord except as expressly set forth in this Lease), Landlord shall complete such tasks within thirty (30) days thereafter; provided, however, to the extent such matters cannot be completed within such period, Landlord shall use its due diligence to complete such matters on an expeditious basis thereafter, subject to delays caused by Force Majeure Events.

3. CONSIDERATION.

3.1 Base Rent. Tenant shall pay to Landlord as "**Base Rent**" in the amount of Twenty Two Thousand Three Hundred Ninety and No/100th Dollars (\$22,390.00) per month.

Each monthly payment of Base Rent shall be paid in advance promptly on the first day of every calendar month of the Term beginning on the Lease Commencement Date. The Base Rent shall be paid without prior notice or demand, and without any setoff, counterclaim or deduction whatsoever. The Base Rent shall be paid to City of Alameda c/o PM Realty Group, L.P. located at 101 W. Atlantic Avenue, Alameda, CA 94501, or such other place as Landlord shall direct. If the Term commences on a day other than the first day of the calendar month or ends on a day other than the last day of the calendar month, Base Rent for any such partial month shall be prorated at the rate of one-thirtieth of the monthly Base Rent for each day of the period.

3.2 Equipment Rent. [Intentionally Deleted].

3.3 Security Deposit. Security Deposit shall be waived.

3.4 Default Rate. If any portion of Rent shall be due and unpaid for more than five (5) days, it shall thereafter bear interest at the per annum rate equal to 2% per annum greater than the prime rate of interest announced from time to time by the Wall Street Journal, as the same may change from time to time (the "**Default Rate**"), from the due date until the date of payment thereof by Tenant.

3.5 Late Charge. If any payment of Rent or any part thereof to be made by Tenant to Landlord pursuant to the terms of this Lease shall become overdue for a period in excess of five (5) days, a late charge of five cents for each dollar overdue shall be paid by Tenant for the purpose of defraying the expense incident to handling such delinquent payment, together with interest from the date such payment or part thereof was due, at the Default Rate. Nothing herein or in the imposition or acceptance of a late charge by Landlord shall be construed as a waiver of any rights of Landlord arising out of any default of Tenant; the right to collect any late charge or interest is separate and apart from any rights or remedies of Landlord relating to any default by Tenant.

3.6 Survival. The obligation of Tenant with respect to the payment of Rent shall survive the termination of this Lease.

3.7 Net Lease. Tenant hereby acknowledges and agrees that this Lease is intended to be a triple net lease to Landlord, as such term is commonly used for the leasing of industrial/commercial properties, except as expressly herein set out, such that Landlord is not responsible for any costs, charges, expenses and

outlays of any nature whatsoever arising from or relating to the Premises, or the use and occupancy thereof, or the contents thereof or the business carried on therein, and that Tenant shall pay all charges, impositions, costs and expenses of every nature and kind relating to the Premises except as expressly otherwise agreed herein. As set forth in this Lease, all costs of maintenance and repair of the Premises, all costs of insuring the Premises, and all taxes allocated to the Premises shall be paid by Tenant.

4. **USE OF PREMISES.** The sole purpose for which the Premises may be used, by Tenant or authorized contractors, subcontractors or licensees of Tenant, is for warehouse, pre-sale viewing of antiques, auctions, general office and indoor antique fairs and any other related uses permitted by the City of Alameda Use Permit and authorities having jurisdiction. ("**Permitted Use**").

4.1 **No Other Uses.** The Premises shall not be used for any other purposes other than the Permitted Use without the prior written approval of Landlord.

4.2 **Compliance With ROD and Other Governmental Documents.** Any use or uses of the Premises shall comply with all terms and conditions of the LIFOC and the Alameda Reuse and Redevelopment Plan, subject to the uses being consistent with the National Environmental Protection Act (NEPA) Record of Decision ("**ROD**") for the disposal and reuse of the former Naval Air Station Alameda, and all conditions expressed therein as well as all conditions expressed in any other environmental action with respect to the uses of the Premises prepared for compliance with the National Environmental Protection Act. A copy of the ROD is available for review at Landlord's offices during normal business hours.

4.3 **No Commitment for Future Conveyance.** Tenant understands and acknowledges that this Lease is not and does not constitute a commitment by Landlord or Government to create any priority with regard to the ultimate disposal of the Premises, in whole or in part, to Tenant.

4.4 **Compliance with Law.** Tenant shall comply with all laws, ordinances, rules, regulations and codes, which includes, but is not limited to, the Americans With Disabilities Act, of all municipal, county, state and federal authorities (collectively, "**Law**") pertaining to Tenant's use and occupation of the Premises. Tenant shall not commit, or suffer to be committed, any waste upon the Premises or any public or private nuisance, or other act or thing which disturbs the quiet enjoyment of any other tenant in the buildings, nor shall Tenant store any materials on the Premises which are visible from areas adjacent to the Premises, unless otherwise specifically set forth in this Lease. Tenant shall also specifically not permit any objectionable odor to escape or be emitted from the Premises and shall insure sanitation and freedom from odor, smell and infestation from rodents or insects. Tenant, at its expense, shall provide (and enclose if required by codes or Landlord) a dumpster or dumpsters for Tenant's trash in a location and manner approved by Landlord, and shall cause its trash to be removed at intervals reasonably satisfactory to Landlord. In connection therewith, Tenant shall keep the dumpster(s) clean and insect, rodent and odor free.

4.5 **Use Permit.** Tenant and any of its subtenants shall obtain a City of Alameda Use Permit and other applicable City permits and approvals for any intended use of the Premises (collectively, "**Use Permit**").

4.6 **Historic or Archeological Station.** Tenant shall not undertake any activity that may affect an identified historic or archeological property, including excavation, construction, alteration, maintenance or repairs of Premises, Historic Buildings, or sites in a manner that is inconsistent with the Memorandum of Agreement Among the United States Navy, the Advisory Council on Historic Preservation, the California State Historic Preservation Officer, and the City of Alameda regarding historic properties on the former Naval Air Station Alameda ("**Historic Preservation Agreement**"), set forth as Exhibit E to the EDC MOA. Buried cultural materials may be present on the Premises. If such materials are encountered, Tenant shall stop work immediately and notify Government and Landlord.

5. **ASSIGNMENT AND SUBLETTING.**

5.1 Tenant shall not, without Landlord's prior written consent, (i) assign, convey, mortgage, pledge, encumber or otherwise transfer (whether voluntarily or otherwise) this Lease or any interest under it; (ii) allow any transfer of or any lien upon Tenant's interest by operation of law; (iii) sublet the Premises or any part thereof; or (iv) permit the use or occupancy of the Premises or any part thereof by anyone other than Tenant and its employees.

5.2 Tenant's request for consent to any sublet or assignment shall be in writing and shall contain the name, address, and description of the business of the proposed assignee or subtenant, its most recent financial statement and other evidence of financial responsibility, its intended use of the Premises, and the terms and conditions of the proposed assignment or subletting. Within thirty (30) days from receipt of such request, Landlord shall either: (1) grant or refuse consent; or (2) elect to require Tenant to: (a) as to a proposed sublease, execute an assignment of Tenant's interest under this Lease to Landlord, upon terms and conditions reasonably required by Landlord, together with an assignment of Tenant's interest as landlord in any such proposed Lease, or (b) as to a proposed assignment, terminate this Lease and the term hereof effective as of the last day of the third (3rd) month following the month in which the request was received.

5.3 Without affecting any of its other obligations under this Lease, Tenant shall pay Landlord as additional rent one-half of any sums or other economic considerations that (a) are received by Tenant as a result of an assignment or subletting (other than the rental or other payments that are attributable to the amortization over the term of this Lease of the cost of non-building standard leasehold improvements that are part of the assigned or sublet portion of the Premises and have been paid for by Tenant), whether or not denominated rental under the assignment of sublease, and (b) exceed in total the sums which Tenant is obligated to pay Landlord under this Lease (prorated to reflect obligations allocable to that portion of the Premises subject to such assignment or sublease). The failure or inability of the assignee or subtenant to pay Tenant pursuant to the assignment of sublease shall not relive Tenant from its obligations to Landlord under this Section. Tenant shall not amend the assignment or sublease in such a way as to reduce or delay payment of amounts that are provided in the assignment or sublease approved by Landlord.

5.4 For purposes of this section, any transfer or change in control of Tenant by operation of law or otherwise shall be deemed an assignment hereunder, including, without limitation, any merger, consolidation, dissolution or any change in more than fifty percent (50%) of the interests of Tenant, whether in a single transaction or a series of related transactions.

5.5 If, with the consent of Landlord, this Lease is assigned or if the Premises or any part thereof is sublet or occupied by anybody other than Tenant, Landlord may, after default by Tenant, collect rent from the assignee, subtenant, or occupant, and apply the net amount collected to the Rent herein reserved. If Landlord consents to any such subletting or assignment, it shall nevertheless be a condition to the effectiveness thereof that a fully executed copy of the Lease or assignment be furnished to Landlord and that any assignee assumes in writing all obligations of Tenant hereunder. No consent to any assignment, subletting or occupancy shall be deemed a waiver of any of Tenant's covenants contained in this Lease nor the acceptance of the assignee, subtenant or occupant as Tenant, nor a release of Tenant from further performance of any covenants and obligations under this Lease.

5.6 Any consent given by Landlord to an assignment or subletting of this Lease shall not constitute a waiver of the necessity of such consent to any subsequent assignment or subletting. Tenant shall be allowed to assess storage fees to its auction customers as is standard practice in the industry.

5.7 Notwithstanding anything contrary to the provisions of Sections 5.2 and 5.3, Landlord shall not have the right to terminate this Lease as provided in Section 5.2 provided Landlord can determine the creditworthiness of the Assignee. Furthermore, Landlord shall not have the right to one-half (1/2) of the economic consideration as provided in Section 5.3, if the assignment is in connection with the sale of Tenant's

business (either asset sale or the sale of stock or other ownership interests), subsequent to Assignee's agreement in writing, to abide by the provisions in Sections 5.2 and 5.3 contained herein (as modified by this Section 5.7).

6. **CONDITION OF PREMISES.** The Premises are delivered to Tenant by Landlord "as is, where is," and, as such, Landlord makes no warranty as to such facilities and property either as to their usability generally or as to their fitness for any particular purpose. Upon the expiration or earlier termination of this Lease, Tenant shall turn over to Landlord the Premises in the same condition in which they were received, reasonable wear and tear excepted. Tenant's taking possession of the Premises shall be conclusive evidence that the Premises were in satisfactory condition when Tenant took possession. No promises of Landlord to alter, remodel, repair or improve the Premises and no representation respecting the condition of the Premises have been made by Landlord to Tenant, except as expressly stated in this Lease.

7. **ALTERATIONS.**

7.1. Tenant shall not make any alterations, improvements, or additions to the exterior or interior of the Premises (collectively the "**Alterations**"), without Landlord's prior written consent in each and every instance, which consent may be conditioned upon criteria and/or requirements deemed necessary by Landlord, which may include, but not be limited to, approval by the Government and compliance with the Alameda Use Documentation. Any Alterations which adds to, removes, or otherwise alters, the structural components of the Building, including the roof, any support structures, foundations, the exterior of the Building, and the fire retardant and other life safety systems of the Building, shall require Landlord's prior consent, which may be withheld in Landlord's sole discretion. In the event Tenant desires to perform any Alterations, Tenant shall first submit to Landlord a written description of the proposed Alterations, and, if Landlord requires, plans and specifications relating thereto, and obtain Landlord's written approval prior to commencing it. Approval of Alterations may be conditioned upon providing Landlord with a performance and payment bond satisfactory to Landlord in all respects in addition to other requirements deemed reasonably necessary to protect the interests of Landlord.

7.2. Prior to undertaking any Alterations, to the extent required by applicable laws, statutes and/or ordinances, Tenant agrees to submit an application to the applicable governmental authorities, for review and obtaining approval of such plans and proposals for such Alterations to the Premises. In addition, Tenant shall also submit to Landlord a narrative description of all proposed Alterations on the Premises, with the projected schedule and costs thereof, and an analysis as to how and why such Alterations will or will not be visible from the exterior of the Building, or affect any historically significant features, or be substantially likely to adversely affect the environmental cleanup of the Station, human health, or the environment, or adversely impact the structure of the Building. All Alterations shall be done at the expense of Tenant without any costs or obligation to Landlord. No Alterations shall be undertaken by Tenant on the Premises, unless such Alterations has been approved by all applicable governmental authorities and all requisite permits have been obtained.

7.3. In the event Tenant intends to perform Work requiring excavation below the surface of the Premises (whether inside or outside of the Building) or construction of a permanent structure on the Premises, Tenant must determine actual location of utilities using standard methods (i.e., potholing, metal fish line, etc.) and submit this information with an application to excavate or application to build a permanent structure to Landlord for approval (which shall also include the approval of applicable governmental authorities). The application should include a site plan showing the location of utilities and that construction will not take place above the utility line or within the utility easement, specifically showing that no permanent structures will be constructed in these areas. Tenant shall be responsible for complying with the provisions of the City of Alameda's Marsh Crust Ordinance, and if required, shall obtain a Marsh Crust Permit.

7.4. At the termination of this Lease, all improvements, whether temporary or permanent in character, made by Landlord or Tenant in or upon the Premises shall become Landlord's property upon conveyance of the Land and Premises to Landlord (or shall become the Government's property if the Land and Premises are not



conveyed to Landlord) and shall remain upon the Premises at the termination of this Lease without compensation to Tenant (excepting only Tenant's movable office furniture, trade fixtures, and manufacturing, office and professional equipment, and any Work approved by Landlord as to which, at the time of such approval, Landlord stated, in writing, that such Work had to be removed at the termination of the Lease).

7.5. The Government has provided to Landlord an asbestos survey for the Premises. Before Tenant undertakes any Alterations which will disturb any known friable or non-friable asbestos in the Premises, the Tenant, as part of its improvement plan submittal, shall set forth a plan stating how it will handle any such asbestos, which plan must be reviewed and approved by Landlord and the Government, before any such work which will disturb the asbestos in the Premises can commence. The Government's asbestos survey for the Premises is available for review by Tenant at Landlord's offices during normal business hours.

7.6. Landlord, at its option and without any form of representation or warranty, shall have the right to modify, repair, refurbish and/or repaint the exterior of the Premises (and the Building containing the Premises) as determined in Landlord's sole discretion. Such right shall not cause any form of eviction, constructive or otherwise, and Tenant shall not be entitled to any abatement of amounts owing under this Lease; provided, however, Landlord shall use its good faith efforts to minimize disruption to Tenant's building operations.

8. **ACCESS BY GOVERNMENT AND LANDLORD.** In addition to access provided by this Lease, Government and Landlord shall be allowed access to the Premises at all reasonable times throughout the term of this Lease, for any reasonable purposes upon prior written notice to Tenant. The Government and Landlord will normally give Tenant a minimum 24-hour prior notice of an intention to enter the Premises, unless the entry is required on an emergency basis for safety, environmental, operations or security purposes. Unless an emergency situation, all such entry by Government shall be accompanied by a representative of Tenant. Tenant shall ensure that a telephone roster is maintained at all times for on-call persons representing Tenant who will be available on short notice, 24 hours a day, 365 days per year, and possess and have authority to use all keys necessary to gain access to the Premises, to facilitate entry in time of emergency. Tenant shall ensure that Landlord has a current roster of such on-call personnel and their phone numbers. Tenant shall have no claim against Government or Landlord for exercise of their rights of access hereunder. Portions of the utilities systems serving the Station may be located within the Premises. Tenant agrees to allow Government, Landlord and their utility suppliers reasonable access to the Premises for operation, maintenance, repair and replacement of these utilities systems as may be required. In executing operation, maintenance, repair or replacement of these systems, Landlord agrees to take all reasonable steps to limit interference with the use of the Premises by Tenant.

9. **UTILITIES**

9.1. Utilities will not be furnished to Tenant by Landlord. The obtaining of such utility services is solely the responsibility of Tenant. Any separate metering of utilities required by any utility provider shall be the responsibility of Tenant. Tenant shall pay all service charges, and all initial utility deposits and fees, for water, electricity, sewage, janitorial, trash removal, gas, telephone, pest control and any other utility services furnished to the Premises and the improvements on the Premises during the entire term of this Lease ("**Utilities**"). Tenant shall pay for all Utilities in addition to rent. If any such Utilities are not separately metered or billed to Tenant for the Premises but rather are billed to and paid by Landlord, Tenant shall pay to Landlord, as Additional Rent, its pro rata share of the cost of such services, as reasonably determined by Landlord. If any Utilities are not separately metered, Landlord shall have the right to determine Tenant's consumption by either sub-metering, survey or other methods designed to measure consumption with reasonable accuracy. Landlord shall not be liable for any reason for any loss or damage resulting from an interruption of any of these services. Landlord may designate the provider of Utilities and in such event Tenant shall use such designated provider; provided that Tenant shall have no claim against Landlord, of any type, for any failure of such provider to provide such service, and Tenant's remedy, if any, shall be limited to such provider.

9.2. Tenant acknowledges that the Station's pre-existing steam heating facilities will not be operable for the Building during the entire Term of this Lease. Tenant acknowledges that Tenant will be responsible for providing heating to the Premises.

9.3. Tenant acknowledges that pursuant to the provisions of the LIFOC, Government in no way warrants the conditions or adequacy of its utility systems for the purposes intended by Tenant.

10. **NO INTERFERENCE WITH GOVERNMENT OPERATIONS.** Tenant shall not conduct operations, nor make any alterations, that would interfere with or otherwise restrict Government operations or environmental clean-up or restoration actions by Government, Environmental Protection Agency (EPA), State of California, or their contractors. Environmental clean-up, restoration, or testing activities by these parties shall take priority over Tenant's use of the Premises in the event of conflict. Government has agreed in the LIFOC to make every reasonable effort to develop a plan to conduct any remediation of environmental contamination in a manner that minimizes interference with Landlord's or Tenant's use of the Premises, and to provide reasonable and timely prior written notice of Government operations that may or will interfere with Landlord's or Tenant's use of the Premises. Any work by Landlord or Tenant in the proximity of operable units that are part of a National Priorities List (NPL) site may require written approval by Government's Remedial project Manager.

11. **MAINTENANCE SERVICES.**

11.1. **Repairs By Landlord.** Landlord shall maintain only the foundations and structural soundness of the exterior walls of the Buildings (exclusive of all glass and exclusive of all exterior doors) in good repair, except repairs rendered necessary by the negligence or intentional acts of Tenant, its employees, invitees or representatives which shall be repaired by Tenant. Tenant shall promptly report, in writing, to Landlord any defective condition known to Tenant to be defective which Landlord is required to repair and failure to so report such condition shall make Tenant responsible to Landlord for any liability incurred by Landlord by reason of such condition. Landlord shall be required to commence such repairs within a reasonable period of time from receipt of Tenant's notice.

11.2. **Repairs By Tenant.** Tenant accepts the Premises in its present "As-Is," "Where Is" condition, and specifically acknowledges that the Premises is suited for the uses intended by Tenant. Landlord shall not be liable for any latent or patent defects in the Premises. Except as expressly set forth in this Lease, Tenant acknowledges that Landlord has made no representation or warranty concerning the condition and state of repair of the Premises to the extent not constructed by Landlord. Tenant shall, at its own cost and expense, keep and maintain the Premises in good order and repair, promptly making all necessary repairs and replacements, including, but not limited to, the roof, all equipment and facilities and components thereof within the Premises, fixtures, walls (interior), finish work, ceilings, floors, lighting fixtures, bulbs and ballasts, utility connections and facilities within the Premises, windows, glass, doors, and plate glass, downspouts, gutters, air conditioning and heating systems, truck doors, dock levelers, bumpers, seals and enclosures, plumbing, electrical, termite and pest extermination, and damage to common areas caused by Tenant, excluding only those repairs expressly required to be made by Landlord hereunder. Any and all construction, maintenance and/or repairs to be done by Tenant, its agents, employees, contractors and/or subcontractors pursuant to this Section which would be deemed Alterations, as reasonably determined by Landlord, shall comply with the requirements of this Lease. Tenant, in keeping the Premises in good order, condition and repair, shall exercise and perform good maintenance practices. Tenant shall maintain, and shall provide Landlord with proof thereof, an annual service maintenance contract (which shall be upon a form acceptable to Landlord and with a service provider designated by Landlord (which may be an affiliate thereof)) and any and all required permits for the HVAC system, fire sprinkler system (if applicable), and any other such building systems and life-safety systems, in a form and with a contractor reasonably satisfactory to Landlord. Tenant shall maintain the grounds surrounding the Premises, including paving, the mowing of grass, care of shrubs and general landscaping. Tenant's obligations shall include restorations, replacements or renewals when

necessary to keep the Premises and all improvements thereon or a part thereof in good order, condition and state of repair.

11.3. The Equipment shall not be removed by Tenant, or any of its employees or agents, from the Premises, without the prior written consent of Government and Landlord. Tenant shall be responsible for preparing and maintaining an accurate and current inventory of all such Equipment. If Tenant desires to cease use of any Equipment during the Term of this Lease and cause it to be removed from the Premises, Tenant shall so advise Landlord in writing and shall obtain written approval for moving or disposing of such Equipment from Landlord.

11.4. At the termination of this Lease, the Equipment shall be returned to Landlord or, at Landlord's direction to Government, in as good condition as when Tenant took possession, ordinary wear and tear excepted; provided, however, that it is understood that Tenant shall not have any obligation to maintain or repair any personal property which has become functionally obsolete, or if such personal property is not reasonably capable of being repaired because of an inability to reasonably obtain parts, or the cost of such repair or maintenance is unreasonable.

11.5. Debris and unused materials shall be promptly removed from the Premises, and the area of work shall be kept reasonably clean and free of unused materials at all times. At completion of the Lease, the area of work and the Premises shall be left without containers, Tenant's equipment, and other undesirable materials, and in an reasonably acceptable clean condition.

11.6. Tenant shall provide for all security and safety within the Premises. Any crimes or other offenses, involving damage to or theft of Government property shall be reported to the appropriate authorities for their investigation and disposition and to Government and Landlord as property owner and lessor, respectively.

11.7. The Tenant shall be responsible, at its cost and expense, for obtaining and providing any and all other services which may be required in connection with Tenant's use or occupancy of the Premises.

12. ENVIRONMENTAL PROTECTION PROVISIONS.

12.1. Environmental Compliance\Hazardous Materials

12.1.1. "**Hazardous Materials**" shall mean any material, substance or waste that is or has the characteristic of being hazardous, toxic, ignitable, reactive, flammable, explosive, radioactive or corrosive, including, without limitation, petroleum, solvents, lead, acids, pesticides, paints, printing ink, PCBs, asbestos, materials commonly known to cause cancer or reproductive problems and those materials, substances and/or wastes, including wastes which are or later become regulated by any local governmental authority, the state in which the Premises are located or the United States Government, including, but not limited to, substances defined as "hazardous substances," "hazardous materials," "toxic substances" or "hazardous wastes" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §1801, et seq.; the Resource Conservation and Recovery Act; all environmental laws of the state where the Station is located, and any other environmental law, regulation or ordinance now existing or hereinafter enacted. "**Hazardous Materials Laws**" shall mean all present and future federal, state and local laws, ordinances and regulations, prudent industry practices, requirements of governmental entities (including without limitation the U.S. Navy) and manufacturer's instructions relating to industrial hygiene, environmental protection or the use, analysis, generation, manufacture, storage, presence, disposal or transportation of any Hazardous Materials, including without limitation the laws, regulations and ordinances referred to in the preceding sentence.

12.1.2. Except as permitted in this Section 12, Tenant hereby agrees that Tenant and Tenant's officers, employees, representatives, agents, contractors, subcontractors, successors, assigns, subtenants,

concessionaires, invitees and any other occupants of the Premises (for purposes of this Section 12, referred to collectively herein as "**Tenant Representatives**") shall not cause or permit any Hazardous Materials to be used, generated, manufactured, refined, produced, processed, stored or disposed of, on, under or about the Premises or Station or transport to or from the Premises or Station without the express prior written consent of Landlord, and Government, which consent may be limited in scope and predicated on strict compliance by Tenant of all applicable Hazardous Materials Laws and such other reasonable rules, regulations and safeguards as may be required by Landlord (or any insurance carrier, environmental consultant or lender of Landlord, or environmental consultant retained by any lender of Landlord) in connection with using, generating, manufacturing, refining, producing, processing, storing or disposing of Hazardous Materials on, under or about the Premises or the Station. In connection therewith, Tenant shall, at its own expense, procure, maintain in effect and comply with all conditions of any and all permits, licenses and other governmental and regulatory approvals required for the storage or use by Tenant or any of Tenant's Representatives of Hazardous Materials on the Premises or the Station, including without limitation, discharge of (appropriately treated) materials or wastes into or through any sanitary sewer serving the Premises or the Station.

12.1.3. If at any time during the Term, any contamination of the Premises by Hazardous Materials shall occur where such contamination is caused by the act or omission of Tenant or Tenant's Representatives ("**Tenant's Contamination**"), then Tenant, at Tenant's sole cost and expense, shall promptly and diligently remove such Hazardous Materials from the Premises or the groundwater underlying the Premises to the extent required to comply with applicable Hazardous Materials Laws. Tenant shall not take any required remedial action in response to any Tenant's Contamination in or about the Premises or enter into any settlement agreement, consent, decree or other compromise in respect to any claims relating to any Tenant's Contamination without first obtaining the prior written consent of Landlord, which may be subject to conditions imposed by Landlord as determined in Landlord's sole discretion. Such prior written consent shall not be required to the extent the delay caused by the requirement to obtain consent may increase the damage to the Premises or the risk of harm to human health, safety or security caused by the Tenant Contamination. Landlord and Tenant shall jointly prepare a remediation plan in compliance with all Hazardous Materials Laws and the provisions of this Lease. In addition to all other rights and remedies of Landlord hereunder, if Tenant does not promptly and diligently take all steps to prepare and obtain all necessary approvals of a remediation plan for any Tenant's Contamination, and thereafter commence the required remediation of any Hazardous Materials released or discharged in connection with Tenant's Contamination within thirty (30) days after all necessary approvals and consents have been obtained, and thereafter continue to prosecute such remediation to completion in accordance with the approved remediation plan, then Landlord, at its sole discretion, shall have the right, but not the obligation, to cause such remediation to be accomplished, and Tenant shall reimburse Landlord within fifteen (15) business days of Landlord's demand for reimbursement of all amounts reasonably paid by Landlord (together with interest on such amounts at the highest lawful rate until paid), when such demand is accompanied by proof of payment by Landlord of the amounts demanded. Tenant shall promptly deliver to Landlord, copies of hazardous waste manifests reflecting the legal and proper disposal of all Hazardous Materials removed from the Premises as part of Tenant's remediation of any Tenant's Contamination.

12.2. Tenant, its contractors, assigns or subtenants shall be solely responsible for obtaining, at their cost and sole expense, any environmental permits required for Tenant's operations under the Lease, independent of any existing permits held by Landlord or Government. Tenant shall not conduct operations or activities under any environmental permit that names Landlord or Government as a secondary discharger or co-permittee. Tenant shall provide prior written notice to Landlord and Government of all environmental permits and permit applications required for any of Tenant's operations or activities. Tenant acknowledges that neither Landlord nor Government will consent to being named a secondary discharger or co-permittee for any operations or activities of Tenant, its contractors, assigns or subtenants.

12.3. Tenant acknowledges that Government's rights under the LIFO specifically include the right for Government officials to inspect, upon reasonable notice, the Premises for compliance with environmental, safety and occupational health laws and regulations, whether or not Government is responsible for enforcing

them. Such inspections are without prejudice to the right of duly constituted enforcement officials to make such inspections. Landlord shall also have the right to inspect, upon reasonable notice, the Premises for compliance with environmental, safety, and occupational health laws and regulations, regardless of whether Government or Landlord is responsible for enforcing or complying with them. Government or Landlord normally will give Tenant twenty-four (24) hours' prior notice of its intention to enter the Premises unless it determines the entry is required for exigent circumstances related to health, safety, or security. Tenant shall have no claim against Landlord, Government, or any officer, agent, employee, contractor or subcontractor of Landlord or Government by reason of entrance of such Landlord or Government officer, agent, employee, contractor or subcontractor onto the Premises.

12.4. Tenant acknowledges that the Station has been identified as a National Priorities List (NPL) Site under the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) of 1980, as amended, and acknowledges that Landlord has provided Tenant with a copy of the Installation Federal Facility Agreement (FFA) entered into by the United States Environmental Protection Agency (EPA) Region, the state equivalent, and the Military Department. Landlord will provide Tenant with a copy of any amendments thereto. Tenant agrees that should any conflict arise between the terms of such agreement as it presently exists or may be amended ("**FFA**," "**Interagency Agreement**" or "**IAG**") and the provisions of this Lease, the terms of the FFA or IAG will take precedence. Tenant further agrees that notwithstanding any other provision of this Lease, Government assumes no liability to Tenant or its assigns or subtenants should implementation of the FFA interfere with Tenant's use of Premises. Tenant shall have no claim on account of any such interference against Landlord or Government or any officer, agent, employee, contractor or subcontractor thereof, other than for abatement of Rent, where applicable.

12.5. Government, EPA (for NPL sites), and the State (for non-NPL sites), and their officers, agents, employees, contractors and subcontractors have the right, upon reasonable notice to Landlord and to Tenant, to enter upon Premises for the purposes enumerated in this subparagraph and for such other purposes consistent with any provisions of the cleanup program (including, but not limited to, the BRAC Cleanup Plan, IRP, FFA, or IAG):

12.5.1. to conduct investigations and surveys, including, where necessary, drilling, soil and water sampling, testpitting, testing soil borings and other activities related to the cleanup program;

12.5.2. to inspect field activities of Government and its contractors and subcontractors in implementing the cleanup program;

12.5.3. to conduct any test or survey required by EPA or applicable state equivalent relating to the implementation of the cleanup program;

12.5.4. to construct, operate, maintain or undertake any other response or remedial action as required or necessary under the cleanup program, including but not limited to monitoring wells, pumping wells and treatment facilities.

12.6. Tenant agrees to comply with the provisions of any health or safety plan in effect under the IRP or the FFA during the course of any of the above-described response or remedial actions. Any inspection, survey, investigation or other response or remedial action will, to the extent practicable, be coordinated with representatives designated by Landlord and Tenant. Neither Landlord nor Tenant shall have any claim on account of such entries against Government or any officer, agent, employee, contractor or subcontractor thereof. In addition, Tenant shall comply with all applicable Federal, state and local occupational safety and health regulations.

12.7. Tenant shall provide to Landlord, in the event of any assignment or further Lease of the Premises, in order that Landlord may provide to EPA, and applicable state equivalent, by certified mail a copy of the agreement or Lease of Premises (as the case may be) within fourteen (14) calendar days after the

effective date of such transaction. Landlord and Tenant may delete the financial terms and any other proprietary information from the copy of any agreement of Lease furnished pursuant to this condition.

12.8. Tenant shall strictly comply with the hazardous waste permit requirements under the Resource Conservation and Recovery Act or its applicable state equivalent. Except as specifically authorized by Government in writing, Tenant must provide at its own expense such hazardous waste management facilities complying with all laws and regulations. Government hazardous waste management facilities will not be available to Tenant. Any violation of the requirements of this condition shall be deemed a material breach of this Lease.

12.9. DoD component accumulation points for hazardous and other waste will not be used by Tenant. Neither will Tenant permit its hazardous wastes to be commingled with hazardous waste of the DoD component.

12.10. Tenant shall be solely responsible for any dredging and/or dredge disposal requirements associated with the berthing of vessels under this Lease, including any permits required for dredging. Tenant shall be responsible for verifying the water depth prior to moving vessels to any berthing or pier facilities. Tenant shall periodically verify the depth of the water and consider the effects of siltation rates to insure that vessels can be safely berthed and removed from berthing space.

12.11. Tenant shall maintain copies of any permit applications made to any Federal, State or local regulatory agencies and shall provide copies to Landlord or Government on reasonable request. Tenant shall promptly notify Landlord and Government of any notices of violation or noncompliance received by Tenant from any such agency, concerning environmental matters or hazardous substances or hazardous waste on, about, or pertaining to the Premises.

12.12. Tenant shall not conduct or permit any subtenant, contractor, agent or employee to undertake any subsurface excavation, digging, drilling or other disturbance of the surface without the prior written approval of Landlord and Government, and compliance with the City of Alameda's Marsh Crust Ordinance, including a Marsh Crust Permit.

12.12.1. If Tenant intends to make any improvements or repairs that require the removal of asbestos, an appropriate asbestos disposal plan must be incorporated into the plans and specifications and submitted to Landlord and Government. The asbestos disposal plan will identify the proposed disposal site for the asbestos, or in the event the site has not been identified, will provide for disposal at a licensed facility authorized to receive it.

12.12.2. Asbestos containing materials ("ACM") which, since the commencement of the Lease, became damaged or deteriorated through the passage of time, as the result of a natural disaster or as a consequence of Tenant's activities under this Lease, including but not limited to any emergency, will be abated by Tenant at its sole cost and expense. In an emergency, Tenant will notify Landlord and Government as soon as practicable of its emergency ACM responses. Tenant shall be responsible for monitoring the condition of existing ACM on Premises for deterioration or damage and accomplishing repairs or abatement pursuant to the applicable conditions of this Lease.

12.12.3. Tenant is hereby advised that the buildings and other painted structures in the Premises are potentially painted with lead-based paints (LBP). Such buildings and structures shall not be suitable for occupancy for residential purposes until any inspections and abatement required by applicable law have been completed. Subject to Section 7 of this Lease, Tenant may, at its sole cost and expense, have a State Certified LBP Inspector complete a LBP inspection and abatement and provide an abated certification to Landlord and Government, at which time with written Landlord and Government approval, the specified premises can be used for residential purposes.

12.12.4. Subject to the provisions of Paragraphs 12.12.2 and 12.12.3, Tenant shall manage at its sole cost and expense any ACM and LBP, and comply with all applicable Federal, State and local laws.

12.13. Prior to the execution of this Lease, Tenant shall complete, execute and deliver to Landlord an Environmental Questionnaire Disclosure Statement (the "**Environmental Questionnaire**"), in the form of Exhibit F attached hereto. To the extent Tenant intends to store, use, treat or dispose of Hazardous Materials on the Premises, Tenant shall prepare and submit together with the Environmental Questionnaire a Hazardous Materials Handling Plan (the "**Hazardous Materials Handling Plan**"). For a period of fifteen (15) days following Landlord's receipt of the Environmental Questionnaire and Hazardous Materials Handling Plan, if applicable, Landlord and, to the extent required by Paragraph 12.14 or 10 U.S.C. Sec. 2692 the Government, shall have the right to approve or disapprove such documents. The failure of Landlord or Government to approve such documents shall be deemed Landlord's disapproval thereof. Landlord and Government's approval of the Environmental Questionnaire and the Hazardous Materials Handling Plan shall constitute approval for Tenant's use of the Hazardous Materials set forth therein in compliance with Hazardous Materials Laws and the Hazardous Materials Handling Plan. Following approval of the Hazardous Materials Handling Plan, Tenant shall comply therewith throughout the Term. To the extent Tenant is permitted to utilize Hazardous Materials upon the Premises, such use shall be limited to the items set forth in the Environmental Questionnaire, shall comply with Hazardous Materials Laws and the Hazardous Materials Handling Plan and Tenant shall promptly provide Landlord with complete and legible copies of all the following environmental items relating thereto: reports filed pursuant to any self-reporting requirements; permit applications, permits, monitoring reports, workplace exposure and community exposure warnings or notices and all other reports, disclosures, plans or documents relating to water discharges, air pollution, waste generation or disposal, and underground storage tanks for hazardous materials; orders, reports, notices, listing and correspondence of or concerning the release, investigation of, compliance, cleanup, remedial and corrective actions, and abatement of hazardous materials; and all complaints, pleadings and other legal documents filed by or against Tenant related to Tenant's use, handling, storage or disposal of hazardous materials. If, in conjunction with Tenant's Permitted Use of the Premises, Tenant desires to commence the use, treatment, storage or disposal of previously undisclosed Hazardous Materials, prior to such usage thereof, Tenant shall notify Landlord thereof, by written summary detailing the scope of such proposed usage and updating the Hazardous Materials Handling Plan to the extent required by such proposed usage. For a period of fifteen (15) days following Landlord's receipt of such notice, Landlord and, to the extent required by Paragraph 12.14 or 10 U.S.C. Sec. 2692 the Government, shall have the right to approve or disapprove of such documents. The failure of Landlord or the Government to approve of such documents within such time period shall be deemed Landlord's disapproval thereof.

12.14. Tenant shall at all times and in all respects comply with all Hazardous Materials Laws. All reporting obligations imposed by Hazardous Materials Laws are strictly the responsibility of Tenant. Tenant and Landlord have been informed that certain California judicial decisions have held that, notwithstanding the specific language of a lease, courts may impose the responsibility for complying with legal requirements and for performing improvements, maintenance and repairs on a landlord or tenant based on the court's assessment of the parties' intent in light of certain equitable factors. Tenant and Landlord have each been advised by their respective legal counsel about the provisions of this Lease allocating responsibility for compliance with laws and for performing improvements, maintenance and repairs between Tenant and Landlord. Tenant and Landlord expressly agree that the allocation of responsibility for compliance with laws and for performing improvements, maintenance and repairs set forth in this Lease represents Tenant's and Landlord's intent with respect to this issue.

12.15. In addition to any other provisions of this Lease, Tenant shall, and does hereby agree, to, indemnify and hold harmless Government and Landlord from any costs, expenses, liabilities, fines or penalties resulting from discharges, emissions, spills, storage or disposal arising from Tenant's occupancy, use or operations, or any other action by Tenant or its contractors, employees, agents, assigns, invitees, or subtenants giving rise to liability, civil or criminal, or any other action by Tenant or its contractors, employees, agents, assigns, or subtenants giving rise to responsibility under Federal, state or local environmental laws. Tenant's

obligations hereunder shall apply whenever Government or Landlord incurs costs or liabilities for Tenant's activities or for the activities of Tenant's contractors, employees, agents, assigns, invitees, or subtenants as provided hereunder. This provision shall survive the expiration or termination of this Lease.

12.16. Storage, treatment or disposal of toxic or hazardous materials on the Premises is prohibited excepted as authorized by Government in accordance with 10 U.S.C. § 2692.

12.17. The responsibility of Government to indemnify and hold harmless the Landlord and Tenant against toxic torts and other environmental claims shall be in accordance with Public Law 102-484, Section 330, as amended.

12.18. Tenant and Landlord are prohibited from interfering with any predator management or animal control activities.

13. TERMINATION.

13.1. Termination by Government of the LIFOC for Breach. The Government has the right to terminate the LIFOC on account of the breach by Tenant thereof of any of the terms and conditions of the LIFOC. In the event of a breach involving the performance of any obligation under the LIFOC, the LIFOC provides that Landlord, as the Tenant thereunder, shall be afforded thirty (30) days from the receipt of Government's notice of intent to terminate, to complete the performance of the obligation or otherwise cure the subject breach and avoid termination of the LIFOC. Landlord agrees to immediately, and in any event within 24 hours after Landlord's receipt, except when it arrives on a weekend or holiday, in which event it shall be delivered by the next business day, provide a copy of any such notice to Tenant. In the event that any such notice is delivered to Landlord as the Tenant under the LIFOC, for any such breach occasioned or caused by the action, negligence or inaction of Tenant, or any party acting on behalf of or through Tenant, for an obligation, covenant or undertaking of Tenant under this Lease, then Tenant shall complete the performance of the obligation or otherwise cure the subject breach and avoid termination of this Lease and the LIFOC. Tenant shall cure such breach within thirty (30) days from the date of receipt of Government's notice of intent to terminate by Landlord. If Tenant should fail to cure within the grace periods provided above, then Landlord shall have the option to terminate this Lease, without the necessity of providing further notice or rights of cure to Tenant.

13.2. In the event that Government shall elect to terminate the LIFOC on account of the breach by Tenant of any of the terms and conditions hereof or of the LIFOC to be performed by Tenant, Tenant shall indemnify Landlord against any claims Government may have against Landlord for any of the following under the LIFOC:

13.2.1. The costs incurred by Government in resuming possession of the Premises.

13.2.2. The costs incurred in performing by Government of any of Tenant's obligations under this Lease.

13.2.3. An amount equal to the aggregate of any maintenance obligations, and charges assumed hereunder and not therefore paid or satisfied, which amounts shall be due and payable at the time when such obligations, and charges would have accrued or become due and payable under this Lease.

13.3. Termination by Government for Other Than Breach. In addition to the right to terminate the LIFOC for breach, Government is entitled to terminate the LIFOC for its convenience under the following terms and conditions:

13.3.1. Upon reasonable determination that the interim uses of Tenant under the LIFOC or the interim uses of Tenant under this Lease for the remaining duration of the Lease term are incompatible with



Government's final disposal decision as embodied in the ROD, with respect to the required subsequent uses of the Premises, which subsequent uses must be effected during the balance remaining on the term of this Lease, and a finding is made that the continued use and occupation of the Premises through the end of the remaining Term cannot be permitted because of such irreconcilable incompatibility, unless the parties to this Lease make such modifications to this Lease as are reasonably required to make the uses compatible for the period of time remaining on the Lease term.

13.3.2. In the event of a National Emergency as declared by the President or the Congress of the United States and Government makes a reasonable determination that such National Emergency requires the use by the United States of America of the Premises, or such National Emergency otherwise necessitates the use of the Station and such use will materially interfere with Tenant's use under the LIFOC or any tenant's use of the Premises.

13.3.3. In the event of a termination for Government's convenience as set forth in the LIFOC, Landlord, as Tenant under the LIFOC, is to be provided with no less than thirty (30) days written notice of such termination and shall immediately provide Tenant with a copy of any notification it receives from Government relative to such termination. Landlord shall meet and confer with Tenant and Government to determine what is a reasonable time for Tenant to vacate the Premises, considering the factors of the nature of the exiting uses of Tenant, the consequences which would be affected if such termination is required and the losses and penalties which would be engendered if such termination is required. Landlord shall provide Tenant with as long and reasonable time as are under the facts and circumstances acceptable to Government relative to such termination. In the event of such termination, Tenant and Landlord, as Tenant under the LIFOC, shall have only such remedies as are otherwise available under the law with respect to compensation from Government for such termination. Tenant shall not seek and shall not have any claim against Landlord for any such termination for convenience by Government.

14. **VACATION OF PREMISES.** In the event environmental contamination is discovered on the Premises which creates, in Government's determination, an imminent and substantial endangerment to human health or the environment which necessitates evacuation of Premises, then notwithstanding any other termination rights and procedures contained in this Lease, Government may require Landlord to require that Tenant vacate the Premises immediately upon notice from Government of the existence of such a condition. The Government shall not be liable for the exercise of authority, which is in conformity with this subsection, except as detailed in Section 15 of the LIFOC. Government's exercise of this right herein to order the Premises immediately vacated does not alone constitute a termination of the LIFOC, but such right may be exercised in conjunction with any other termination rights provided for in the LIFOC or by law.

15. **INDEMNIFICATION BY TENANT.**

15.1. **Indemnification By Tenant of Landlord and Government.** Tenant shall indemnify, defend and save Landlord and Government harmless and shall pay all costs, expenses and reasonable attorneys' fees for all trial and appellate levels and post judgment proceedings in connection with any fines, suits, actions, damages, liability, causes of action of every nature whatsoever arising or growing out of, or in any manner connected with, the occupation or use of the Premises by Tenant and Tenant's employees, agents, servants, guests, invitees, contractors or sublessees. These include, but are not limited to, any fines, claims, demands and causes of action of every nature whatsoever which may be made upon, sustained, or incurred by Landlord and/or Government by reason of any breach, violation, omission or non-performance of any term, covenant or condition hereof on the part of Tenant or Tenant's employees, agents, servants, guests, invitees and sublessees. However, this indemnity shall not extend to damages due to the sole fault or negligence of Government or Landlord or their contractors. This covenant shall survive the termination of this Lease.

15.2. **Waiver.** Landlord shall not be liable to Tenant and Tenant hereby waives all claims against Landlord or its affiliates for any injury or damage to any person or property occurring or incurred in connection with or in any way relating to the Premises, the Building or the Station from any cause. Without



limiting the foregoing, neither Landlord nor any of its affiliates shall be liable for and there shall be no abatement of rent for (i) any damage to Tenant's property stored with or entrusted to affiliates of Landlord, (ii) loss of or damage to any property by theft or any other wrongful or illegal act, or (iii) any injury or damage to persons or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water or rain which may leak from any part of the Premises or Station or from the pipes, appliances, appurtenances or plumbing works therein or from the roof, street or subsurface or from any other place or resulting from dampness or any other cause whatsoever or from the acts or omissions of other tenants, occupants or other visitors to the Premises or Station or from any other cause whatsoever, (iv) any diminution or shutting off of light, air or view by any structure which may be erected on lands adjacent to the Premises, or (v) any latent or other defect in the Premises or the Station. Tenant agrees that in no case shall Landlord ever be responsible or liable on any theory for any injury to Tenant's business, loss of profits, loss of income or any other form of consequential damage. Tenant shall give prompt notice to Landlord in the event of (a) the occurrence of a fire or accident in the Premises or in the Station, or (b) the discovery of any defect therein or in the fixtures or equipment thereof.

16. **INSURANCE.**

16.1. **Tenant's Insurance.** Tenant shall procure and maintain for the duration of the Lease, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the Tenant's operation and use of the leased premises. The cost of such insurance shall be borne by the Tenant. Tenant shall maintain the following types of insurance with limits no less than the following as set forth below.

16.1.1. Commercial General Liability Coverage:

\$3,000,000 per occurrence for bodily injury, personal injury and property damage. The policy shall be endorsed to provide Fire Legal Liability or Damage to Rented Premises coverage, as well as for Products and Completed Operations;

16.1.2. Automobile Liability Coverage:

Coverage for owned, hired, leased and rented vehicles, with limits of not less than \$1,000,000.00 for combined bodily injury and property damage, on a per occurrence basis;

16.1.3. Property Insurance Coverage:

Coverage against all risks of loss (excluding flood and earthquake). Coverage shall include full replacement cost with no coinsurance penalties, and coverage shall extend to include any tenant improvements or betterments. The Landlord shall be listed on all settlement checks as the Loss Payee;

16.1.4. [Intentionally deleted]

16.1.5. Workers Compensation Coverage:

As required by law, with Employer's Liability coverage with limits of not less than \$1,000,000.

16.2. **Subrogation Waiver.** Tenant agrees that in the event of loss due to any of the perils for which it has agreed to provide comprehensive general and automotive liability insurance, Tenant shall look solely to its insurance for recovery. Tenant hereby grants to the Landlord, on behalf of any insurer providing insurance to either Tenant or Landlord with respect to the services of Tenant herein, a waiver of any right to subrogation which any such insurer of said Tenant may acquire against Landlord by virtue of the payment of any loss under such insurance. Tenant's insurance carriers shall provide endorsements to the insurance policies accordingly.

16.3. Additional Insured. The City of Alameda, Alameda Municipal Power, City of Alameda Housing Authority, Community Improvement Commission, the City Council, its Boards, Commissions, Officers, Employees, Agents and Volunteers, PM Realty Group, L.P., the United States Navy and any other party designated by Landlord (as determined in Landlord's sole discretion), and at Landlord's request any mortgagee of Landlord, shall be named as an additional insured under all insurance coverage's, except on worker's compensation and professional liability insurance policies. The naming of an additional insured shall not affect any recovery to which such additional insured would be entitled under this policy if not named as such additional insured. An additional insured named herein shall not be held liable for any premium, deductible portion of any loss, or expense of any nature on this 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 this policy.

16.4. Notice of Cancellation. Tenant's insurance policies shall be endorsed to require the insurer to provide the Landlord at least thirty days' written Notice of Cancellation.

16.5. Sufficiency of Insurance. The insurance limits required by the Landlord are not represented as being sufficient to protect Tenant. Tenant is advised to consult Tenant's insurance broker to determine adequate coverage for Tenant. Tenant's insurance policies shall be endorsed stipulating that Tenant's insurance is primary, and that the Landlord's self-insurance program and excess insurance policies shall not be called upon to contribute to a loss that should otherwise be paid by the Tenant's insurer.

16.6. Self-Insurance and Deductibles. Tenant's self-insurance programs and insurance deductibles or self-insurance retention's are subject to the approval of the Landlord's Risk Manager.

16.7. Insurer Acceptability. Tenant's insurers must be domiciled in the United States of America. They must meet a minimum A.M. Best & Co. rating of A:VII and a Standard and Poors Rating (if rated) of at least BBB. In the event that a proposed insurance company is not rated by A.M. Best & Co. or Standard and Poors, said insurance carrier must be domiciled in the State of California and approved by the Landlord's Risk Manager.

17. DESTRUCTION OF BUILDINGS

17.1 Partial Destruction. In the event of a partial destruction of the building containing the Premises during the Term of this Lease from any cause, Landlord may elect to (in its sole discretion) repair the same, provided such repair can reasonably be made within one hundred eighty (180) days from the happening of such destruction under applicable laws and regulations. During such period, Tenant shall be entitled to a proportionate reduction of Rent to the extent such repairs unreasonably interfere with the business carried on by Tenant in the Premises. If Tenant fails to remove its goods, wares or equipment within a reasonable time and as a result the repair or restoration is delayed, or if such damage or destruction is caused primarily by the negligence or willful act of Tenant, or its employees, invitees or agents, there shall be no reduction in rent during such delay. In the event that (i) Landlord elects not to make such repair, or (ii) such repair cannot reasonably be made within one hundred eighty (180) days from the happening of such destruction under applicable laws and regulations, Landlord shall have the right to terminate this Lease by notifying Tenant in writing.

17.2 Total Destruction. A total destruction of the building containing the Premises shall terminate this Lease. A total destruction of such building means the cost of repairing such building exceeds seventy-five percent (75.00%) of the replacement cost of such building.

18. LABOR PROVISIONS.

18.1. Equal Opportunity. During the Term of this Lease, and with respect only to employment or employees at the Premises, Tenant agrees as follows:

18.1.1. Tenant will not discriminate against any employee of Tenant or applicant for employment because of race, color, religion, sex, or national origin. The employees of Tenant shall be treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, selection for training, including apprenticeship. Tenant agrees to post in conspicuous places, notices to be provided by the applicable government agencies, setting forth the provisions of this nondiscrimination provision.

18.1.2. Tenant will, in all solicitations or advertisements for employees placed by or on behalf of Tenant, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

18.1.3. Tenant will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice to be provided by Government, advising the labor union or worker's representative of Tenant's commitments under this Equal Opportunity Clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

18.1.4. Tenant will comply with all provisions of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, and of the rules, regulations, and relevant orders of the Secretary of Labor of the United States of America.

18.1.5. Tenant will furnish all information and reports required by Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, and by the rules, regulations, and orders of the Secretary of Labor or pursuant thereto, and will permit access to its books, records, and accounts by Government and the Secretary of Labor for purposes of investigating to ascertain compliance with such rules, regulations, and orders.

18.1.6. In the event of Tenant's noncompliance with the Equal Opportunity Clause of this Lease or with any said rules, regulations, or orders, this Lease may be canceled, terminated or suspended in whole or in part and Tenant may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

18.1.7. Tenant will include the above provisions in every Lease or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, so that such provisions will be binding upon each sublessee or vendor. Tenant will take such action with respect to any sublessee or purchase order as Government may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event Tenant becomes involved in, or is threatened with, litigation with the sublessee or vendor as a result of such direction by Government, Tenant may request the United States to enter into such litigation to protect the interests of the United States.

18.2. Convict Labor. In connection with the performance of work required by this Lease, Tenant agrees not to employ any person undergoing a sentence of imprisonment at hard labor.

19. SUBMISSION OF NOTICES. All notices, demands, requests, consents, or approvals which may or are required to be given by either party to the other shall be in writing and shall be deemed given when sent by United States Certified or Registered Mail, postage prepaid, or by reputable overnight delivery service or personal delivery as follows:

19.1. If for Tenant, addressed to Tenant at the Building, or at such other place as Tenant may from time to time designate by notice to Landlord.

19.2. If for Landlord, addressed to Landlord at:

City Manager
City of Alameda
Alameda City Hall
2263 Santa Clara Avenue
Alameda, CA 94501-4566
Telephone: (510) 748-4505
Facsimile: (510) 748-4504

With a copy to:

Commanding Officer
Southwest Division
Engineering Field Division
Naval Facilities Engineering Command
1220 Pacific Highway
San Diego, CA 92132-5189
Facsimile: (619) 532-3830

19.3. If to Tenant, addressed to Tenant at:

Auctions By The Bay
P.O. Box 489
Alameda, CA 94501
Attention: Mr. Allen Michaan
Telephone: (510) 740-0220 EXT 103
Facsimile: (510) 749-0164

19.4. Notwithstanding the addresses provided in subsections 19.1 through 19.3 of this section, any party may from time to time designate an alternate and/or additional address by notice.

20. **AUDIT.** This Lease shall be subject to audit by Landlord and by any and all cognizant Government agencies. The Tenant shall make available to such agencies for use in connection with such audits all records, which it maintains with respect to this Lease and copies of all reports required to be filed hereunder. The Tenant will make these materials available for a period of three years after termination or expiration of this Lease.

21. **AGREEMENT.** This Lease agreement shall not be modified unless in writing and signed by both parties. No oral statements or representation made by, for, or on behalf of either party shall be a part of this Lease. Should a conflict arise between the provisions of this Lease and any exhibit hereto, or any other agreement between Landlord and Tenant, the provisions of this Lease shall take precedence.

22. **FAILURE TO INSIST ON COMPLIANCE.** The failure of Landlord to insist, in any one or more instances, upon performance of any of the terms, covenants, or conditions of this Lease shall not be construed as a waiver or relinquishment of Landlord's right to the future performance of any such terms, covenants, or conditions and Tenant's right to the future performance of any such terms, covenants, or conditions and Tenant's obligations in respect of such future performance shall continue in full force and effect.

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23. **DISPUTE RESOLUTION.** Any disputes arising under this Lease that involve or relate to Government or Government's interpretation of the LIFOC that are subject to resolution under the Contracts Disputes Act, 431 U.S.C. section 601 et seq. pursuant to the provisions of section 23 of the LIFOC shall be resolved under that Act. All other disputes that may arise under this Lease shall be resolved in accordance with the provisions of the laws of the State of California.

24. **COVENANT AGAINST CONTINGENT FEES.** Tenant warrants that no person or agency has been employed or retained to solicit or secure this Lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial agencies maintained by Tenant for the purpose of securing business. For breach or violation of this warranty, Landlord shall have the right to annul this Lease without liability or in its discretion to require Tenant to pay, in addition to the rental or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

25. **OFFICIALS NOT TO BENEFIT.** No member of or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this Lease or to any benefit to arise therefrom, but this proviso shall not be construed to extend to this Lease if made with a corporation for its general benefit.

26. **LIENS.** The Tenant shall promptly discharge or cause to be discharged any valid lien, right in claim, or demand of any kind on the Premises, except one in favor of Government, or Landlord, which at any time may arise or exist with respect to the Premises or materials or equipment furnished therefor, or any part thereof, and if the same shall not be promptly discharged by Tenant, or should Tenant be declared bankrupt or make an assignment on behalf of creditors, or should the leasehold estate be taken by execution, Landlord reserves the right to take immediate possession without any liability to Tenant or any subtenant thereof. If Tenant breaches the foregoing, Tenant and any subtenant thereof shall be responsible for any costs incurred by Government in securing clear title to its property.

27. **TAXES.** Tenant shall pay all Taxes (as hereinafter defined) levied or imposed against the Premises during the Term. Taxes shall mean all taxes, assessments and governmental charges, whether federal, state, county or municipal, and whether general or special, ordinary or extraordinary, foreseen or unforeseen, imposed upon the Rent, the Premises, the Building, any possessory interest therein, or their operation, whether or not directly paid by Landlord. Taxes shall not include income taxes, excess profit taxes, franchise taxes, or other taxes imposed or measured on or by the income of Landlord from the operation of the Premises; provided, however, that if, due to a future change in the method of taxation or assessment, any income, profit, franchise or other tax, however designated, shall be imposed in substitution, in whole or in part, for (or in lieu of) any tax, assessment or charge which would otherwise be included within the definition of Taxes, such other tax shall be deemed to be included within Taxes as defined herein to the extent of such substitution. There shall be added to Taxes the expenses of any contests (administrative or otherwise) of Taxes incurred during the taxing year, but only to the extent such contests result in a reduction of Taxes for such year or any other year during the Term. Tenant shall pay to the appropriate governmental authority any use, possessory interest, and/or occupancy tax applicable to the Premises. In the event that Landlord is required by law to collect such tax, Tenant shall pay such use and occupancy tax to Landlord as Additional Rent within ten days of demand and Landlord shall remit any amounts so paid to Landlord to the appropriate governmental authority.

27.1. The interest created by this Lease may at some time be subject to property taxation under the laws of the State of California. If property taxes are imposed, the party in whom the possessory interest is vested may be subject to the payment of the taxes levied on such interest. This notice is included in this Lease pursuant to the requirements of section 107.6 (a) of the Revenue and Taxation Code of the State of California.

27.2. Tenant shall pay the Taxes directly imposed upon it in accordance with the instructions of the taxing entity. Tenant shall pay the Taxes originally imposed upon Landlord, upon Landlord's election, either (i) annually within thirty (30) days after the date Landlord provides Tenant with a statement setting forth in reasonable detail such Taxes (which statement shall not be provided to Tenant more than sixty (60) days before

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such Taxes are due), or (ii) monthly in advance based on estimates provided by Landlord based upon the previous year's tax bill.

27.3. All Taxes originally imposed upon Landlord and payable by Tenant with respect to the Premises shall be prorated on a per diem basis for any partial tax year included in the Term. Tenant's obligation to pay Taxes during the last year of the Term shall survive the termination of this Lease.

28. **ADMINISTRATION.** Except as may be otherwise provided in the LIFOC or this Lease, Government shall, under the direction of the Command described in addendum (a) to the LIFOC, have complete charge of the administration of the LIFOC and any interests Government has under this Lease, and shall exercise full supervision and general direction thereof insofar as the interests of Government are affected.

29. **SURRENDER.** Upon the expiration of this Lease or its prior termination by Tenant, Tenant shall quietly and peacefully remove itself and its property from the Premises and surrender the possession thereof to Landlord. The Landlord or Government may, in its discretion, declare any property which has not been removed from the Premises upon termination provided for above, as abandoned property upon an additional thirty (30) calendar days' notice.

30. **QUIET POSSESSION.** Upon Tenant paying the Rent reserved hereunder and observing and performing all of the covenants, conditions and provisions on Tenant's part to be observed and performed hereunder, Tenant shall have quiet possession of the Premises for the entire Term hereof, subject to all the provisions of this Lease.

31. **CERTAIN RIGHTS RESERVED TO LANDLORD.** Landlord reserves the following rights:

31.1. To hold copies of all keys and passkeys to the Premises, other than to vaults, safes, or restricted areas within the Premises.

31.2. On reasonable prior written notice to Tenant, no less than 48 hours in advance, to show the Premises to prospective tenants during the last nine months of the Term, and to any prospective purchaser, mortgagee, or assignee of any mortgage or ground lease on the Premises and to others having a legitimate interest in the Premises at any time during the Term.

31.3. At any time in the event of an emergency, and otherwise at reasonable times, to take any and all measures, including making any inspections, repairs, alterations, additions, and improvements to the Premises, as may be necessary or desirable for the safety, protection, or preservation of the Premises, or Landlord's interests, or as may be necessary or desirable in the operation or improvement of the Premises, or in order to comply with all laws, orders, and requirements of governmental or other authorities, using reasonable efforts not to interfere with the use and occupancy of the Premises by Tenant. Landlord shall not be in default hereunder nor have any liability to Tenant, nor shall Tenant have any right to terminate this Lease or claim an offset against or reduction in Rent payable hereunder, due to any damage, annoyance or inconvenience resulting from any such inspections, repairs, alterations, additions or improvements, or the failure of Landlord to make any such inspections, repairs, alterations, additions or improvements; provided however that Landlord shall be liable for its gross negligence or willful misconduct. Tenant shall reasonably cooperate with Landlord or Landlord's agents or contractors in carrying out any such inspections, repairs, alterations, additions or improvements.

32. **COVENANTS OF TENANT**

32.1. **Use of the Premises.** Tenant shall not make or permit to be made any use of the Premises or any part thereof (i) which would directly or indirectly violate any federal, state or local law, ordinance, rule or governmental regulation; (ii) which would invalidate or unreasonably increase the premium cost of any policy of insurance carried on the Premises or covering its operation (unless such increase is paid for by Tenant); or

(iii) which will suffer or permit the Premises or any part thereof to be used in any manner or permit anything to be brought into or kept therein which, in the reasonable judgment of Landlord, shall unreasonably impair or interfere with any of the services required to be performed by Landlord, if any, for the Premises.

32.2. Locks. Tenant shall not change any existing locks, or attach any additional locks or similar devices to any door or window, change any locks, without providing to Landlord one set of keys therefore. All keys must be returned to Landlord at the expiration or termination of this Lease.

32.3. Overloading. Tenant shall not overload any floor.

32.4. Machinery. Tenant shall not install or operate any machinery, refrigerating or heating device or air-conditioning apparatus in or about the Premises which would impose unreasonable substantial additional loads on the facilities of the buildings.

32.5. No Obstruction. The exits, entrances, elevators and stairways of the Buildings shall not be obstructed by Tenant or used for any purpose other than for ingress to and egress from the Premises. Tenant and its employees or invitees shall not go upon the roof of the Building without Landlord's prior consent.

32.6. No Animals. Tenant shall not permit any animals, except those required to be allowed by law, such as guide dogs, to be brought in or kept in or about the Premises without Landlord's prior written consent.

32.7. Applicable Rules and Regulations. Tenant shall comply with all Federal, State and local laws, regulations and standards that are applicable or may become applicable to Tenant's activities on the Premises, including those rules and regulations promulgated by Landlord pursuant to Section 35 of this Lease. These include, but are not limited to, laws and regulations on the environment, construction of facilities, health, safety, food service, water supply, sanitation, use of pesticides, and licenses or permits to do business (e.g., wetlands [EO 11990] and floodplains [EO 11988], Section 106 consultation under the National Historic Preservation Act and air quality conformity determinations under the Clean Air Act). Tenant is responsible for obtaining and paying for permits required for its operations under the Lease.

32.8. Outside Storage Prohibited. Outside storage or activities are not permitted unless expressly authorized in writing by Landlord. Any outside storage authorized by Landlord shall be properly screened.

33. **DEFAULT**. It shall constitute an event of default ("**Event of Default**") under this Lease if any of the events describes in the following subsections occurs.

33.1. Tenant fails to pay when due Base Rent, Additional Rent, or other amounts due hereunder and such failure continues for a period of five (5) days after the due date.

33.2. Tenant assigns or sublets, or purports to assign or sublet the Premises or any part thereof other than in the manner and upon the conditions set forth herein.

33.3. Tenant fails to perform or observe any of its other obligations, covenants, or agreements hereunder within ten (10) working days after written notice of any such failure has been given by or on behalf of Landlord, or, if more than ten (10) working days is required to cure such failure, within said ten (10) working days, Tenant shall advise Landlord in writing of Tenant's intended course of action to cure and the estimated date as to when said action will be completed, and if Tenant fails to commence such cure as promptly as practical as stated in its notice to Landlord and thereafter diligently to pursue such cure and thereafter fails to diligently pursue such a cure and complete such cure within a reasonable time thereafter, or within the period of time as may be otherwise required under the LIFOC.

33.4. Tenant liquidates its business, becomes insolvent, makes an assignment for the benefit of creditors, files or has filed against it a petition of bankruptcy, bill in equity, or other proceedings for the

appointment of a receiver or other custodian for its property, or if proceedings for reorganization or composition with creditors under any law are instituted by or against Tenant or if any levy or sale or execution of any kind is made upon or of any property of Tenant in the Premises.

33.5. Tenant abandons or vacates the Premises or Tenant removes or attempts to remove or manifests an intention to remove Tenant's goods or property from or out of the Premises otherwise than in the ordinary and usual course of business.

33.6. Tenant fails to vacate the Premises at the end of the Term of this Lease unless this Lease is otherwise renewed or extended.

34. **LANDLORD'S REMEDIES**

34.1. If an Event of Default hereunder shall have occurred, Landlord may, at its option, exercise any one or more of the following remedies:

34.1.1. Terminate Tenant's right to possession of the Premises by written notice by any lawful means, in which case this Lease shall terminate and Tenant shall immediately surrender possession of the Premises to Landlord. In such event, Landlord shall be entitled to recover from Tenant:

(1) the worth at the time of the award of any unpaid rent which had been earned at the time of such termination; plus

(2) the worth at the time of the award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss which Tenant proves could have been reasonably avoided; plus

(3) the worth at the time of the award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss which Tenant proves could be reasonably avoided; plus

(4) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom (including, without limitation, the cost of recovering possession of the Premises, expenses of reletting including necessary renovation and alteration of the Premises, reasonable attorneys' fees, and real estate commissions actually paid and that portion of the leasing commission paid by Landlord and applicable to the unexpired portion of this Lease); plus

(5) such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable California law.

As used in Subsections (1) and (2) above, the **"worth at the time of the award"** shall be computed by allowing interest at the lesser of ten percent (10%) per annum, or the maximum rate permitted by law per annum. As used in Subsection (3) above, the **"worth at the time of award"** shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

34.1.2. Continue this Lease in full force and effect, and the Lease will continue in effect, as long as Landlord does not terminate Tenant's right to possession, and Landlord shall have the right to collect Rent when due. During the period Tenant is in default, Landlord may enter the Premises and relet them, or any part of them, to third parties for Tenant's account. Tenant shall be liable immediately to Landlord for all costs Landlord reasonably incurs in reletting the Premises, including, without limitation, brokers' commissions, expenses of remodeling the Premises required by the reletting, and like costs. Reletting can be for a period

shorter or longer than the remaining term of this Lease. Tenant shall pay to Landlord the Rent due under this Lease on the dates the Rent is due, less the rent Landlord receives from any reletting. In no event shall Tenant be entitled to any excess rent received by Landlord. No act by Landlord allowed by this paragraph shall terminate this Lease unless Landlord notifies Tenant in writing that Landlord elects to terminate this Lease. After Tenant's default and for as long as Landlord does not terminate Tenant's right to possession of the Premises, if Tenant obtains Landlord's consent, Tenant shall have the right to assign or sublet its interest in this Lease, but Tenant shall not be released from liability.

34.1.3. Cause a receiver to be appointed to collect Rent. Neither the filing of a petition for the appointment of a receiver nor the appointment itself shall constitute an election by Landlord to terminate the Lease.

34.1.4. Cure the default at Tenant's cost. If Landlord at any time, by reason of Tenant's default, reasonably pays any sum or does any act that requires the payment of any sum, the sum paid by Landlord shall be due immediately from Tenant to Landlord at the time the sum is paid, and if paid at a later date shall bear interest at the lesser of ten percent (10.00%) per annum, or the maximum rate an individual is permitted by law to charge from the date the sum is paid by Landlord until Landlord is reimbursed by Tenant. The sum, together with interest on it, shall be additional Rent.

34.2. The foregoing remedies are not exclusive; they are cumulative, in addition to any remedies now or later allowed by law, to any equitable remedies Landlord may have, and to any remedies Landlord may have under bankruptcy laws or laws affecting creditors' rights generally. The waiver by Landlord of any breach of any term, covenant or condition of this Lease shall not be deemed a waiver of such term, covenant or condition or of any subsequent breach of the same or any other term, covenant or condition. Acceptance of Rent by Landlord subsequent to any breach hereof shall not be deemed a waiver of any preceding breach other than a failure to pay the particular Rent so accepted, regardless of Landlord's knowledge of any breach at the time of such acceptance of Rent. Landlord shall not be deemed to have waived any term, covenant or condition unless Landlord gives Tenant written notice of such waiver.

34.3. No early expiration or termination of this Lease (except as expressly provided herein) and no repossession of the Premises or any part thereof shall relieve Tenant of its liabilities and obligations to pay Rent hereunder, all of which shall survive such expiration, termination or repossession, and Landlord may, at its option, sue for and collect all Rent and other charges due hereunder at any time as when such charges accrue.

34.4. In the event that Landlord commences suit for the repossession of the Premises, for the recovery of Rent or any other amount due under the provisions of this Lease, or because of the breach of any other covenant herein contained on the part of Tenant to be kept or performed, and a breach shall be established, Tenant shall pay to Landlord all expenses incurred in connection therewith, including reasonable attorneys' fees. In the event that Tenant commences suit because of the breach of any covenant herein contained on the part of Landlord to be kept or performed, and a breach shall be established, Landlord shall pay to Tenant all expenses incurred in connection therewith, including reasonable attorneys' fees.

35. **SEVERABILITY**. If any of the provisions of this Lease or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such provision or provisions to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and every provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

36. **HOLDING OVER**. Should Tenant hold over and remain in possession of the Premises after the expiration of this Lease, without the written consent of Landlord, such possession shall be as a month-to-month tenant. Unless Landlord agrees otherwise in writing, Base Rent during the hold-over period shall be payable in an amount equal to one hundred fifty percent (150.00%) of the Base Rent paid for the last

month of the term hereof until Tenant vacates the Premises and the Security Deposit shall increase to an amount equal to the increased monthly Base Rent. All other terms and conditions of this Lease shall continue in full force and effect during such hold-over tenancy, which hold-over tenancy shall be terminable by either party delivering at least one (1) month's written notice, before the end of any monthly period. Such hold-over tenancy shall terminate effective as of the last day of the month following the month in which the termination notice is given.

37. **RELOCATION.** [Intentionally deleted].

38. **ESTOPPEL CERTIFICATES AND FINANCIAL STATEMENTS**

38.1. **Estoppel Certificate.** Tenant shall, at any time and from time to time, upon not less than ten (10) days' prior request by Landlord, execute, acknowledge and deliver to Landlord, or to such other persons who may be designated in such request, a statement in writing certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications) and, if so, the dates to which the rent and any other charges have been paid in advance, and such other items requested by Landlord, including without limitation, the lease commencement date and expiration date, rent amounts, and that no offsets or counterclaims are present. It is intended that any such statement delivered pursuant to this Paragraph may be relied upon by any prospective purchaser or encumbrancer (including assignee) of the Premises.

38.2. **Financial Statements.** Upon the request of Landlord, Tenant shall deliver to Landlord such financial information regarding Tenant, as may reasonably be required to establish Tenants' creditworthiness. All financial information provided by Tenant to Landlord shall be held in confidence and may not be used or disclosed by the recipient except for the purpose of determining Tenants' creditworthiness in connection with Tenants' obligations under this Lease.

39. **SHORT FORM OF LEASE.** Tenant agrees to execute, deliver and acknowledge, at the request of Landlord, a short form of this Lease satisfactory to counsel for Landlord, and Landlord may in its sole discretion record this Lease or such short form in the County where the Premises are located. Tenant shall not record this Lease, or a short form of this Lease, without Landlord's prior written consent.

40. **SIGNS.** Tenant shall not place any sign upon the Premises without Landlord's prior written consent (all such signage shall comply with Landlord's signage design criteria, as such exists from time to time). In addition, the style, size, materials and attachment method of any such signage shall be subject to Landlord's prior written consent. The installation of any sign on the Premises by or for Tenant shall be subject to the provisions of this Lease. Tenant shall maintain any such signs installed on the Premises. Unless otherwise expressly agreed herein, Landlord reserves the right to install, and all revenues from the installation of, such advertising signs on the Premises, including the roof, as do not unreasonably interfere with the conduct of Tenant's business.

41. **RULES AND REGULATIONS.** Tenant shall faithfully observe and comply with the nondiscriminatory rules and regulations that Landlord shall from time to time promulgate. Landlord reserves the right from time to time to make all nondiscriminatory modifications to said rules. The additions and modifications to those rules shall be binding upon Tenant upon delivery of a copy to them to Tenant (a copy of the present Rules and Regulations is attached hereto as Exhibit G). Landlord shall use its reasonable efforts to enforce compliance with such rules, but shall not be responsible to Tenant for the nonperformance of any of said rules by other tenants or occupants.

42. **LIMITATION ON LIABILITY.** In consideration of the benefits accruing hereunder, Tenant and all successors and assigns covenant and agree that, in the event of any actual or alleged failure, breach or default hereunder by Landlord: (1) Tenant's sole and exclusive recourse shall be against Landlord's interest in the Premises and Tenant shall not have any right to satisfy any judgment which it may have against Landlord from



any other assets of Landlord; (2) no member, partner, stockholder, director, officer, employee, beneficiary or trustee (collectively, "**Partner**") of Landlord shall be sued or named as a party in any suit or action (except as may be necessary to secure jurisdiction over Landlord); (3) no service of process shall be made against any Partner of Landlord (except as may be necessary to secure jurisdiction over Landlord); (4) no Partner of Landlord shall be required to answer or otherwise plead to any service of process; (5) no judgment will be taken against any Partner of Landlord; (6) any judgment taken against any Partner of Landlord may be vacated and set aside at any time nunc pro tunc; (7) no writ of execution will ever be levied against the assets of any Partner of Landlord; and (8) these covenants and agreements are enforceable both by Landlord and also by any Partner of Landlord.

43. **ATTORNEYS' FEES.** If Tenant or Landlord shall be in breach or default under this Lease, such party (the "**Defaulting Party**") shall reimburse the other party (the "**Non-Defaulting Party**") upon demand for any costs or expenses that the Non-Defaulting Party incurs in connection with any breach or default of the Defaulting Party under this Lease, whether or not suit is commenced or judgment entered. Such costs shall include legal fees and costs incurred for the negotiation of a settlement, enforcement of rights or otherwise. Furthermore, if any action for breach of or to enforce the provisions of this Lease is commenced, the court in such action shall award to the party in whose favor a judgment is entered, a reasonable sum as attorneys' fees and costs. The losing party in such action shall pay such attorneys' fees and costs. Tenant shall also indemnify Landlord against and hold Landlord harmless from all costs, expenses, demands and liability Landlord may incur if Landlord becomes or is made a party to any claim or action (a) instituted by Tenant against any third party, or by any third party against Tenant, or by or against any person holding any interest under or using the Station by license of or agreement with Tenant; (b) for foreclosure of any lien for labor or material furnished to or for Tenant or such other person; (c) otherwise arising out of or resulting from any act or transaction of Tenant or such other person; or (d) necessary to protect Landlord's interest under this Lease in a bankruptcy proceeding, or other proceeding under Title 11 of the United States Code, as amended. Tenant shall defend Landlord against any such claim or action at Tenant's expense with counsel reasonably acceptable to Landlord, or at Landlord's election, Tenant shall reimburse Landlord for any legal fees or costs Landlord incurs in any such claim or action.

44. **COUNTERPARTS.** This Lease may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Each party may execute a facsimile counterpart signature page to be followed by an original counterpart. Each such facsimile counterpart signature page shall constitute a valid and binding obligation of the party signing such facsimile counterpart.

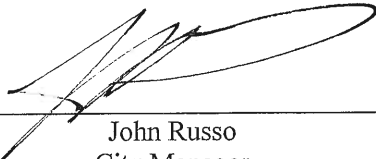
45. **EXECUTION.** Submission of this instrument for examination or signature by Tenant does not constitute a reservation of or an option for lease, and it is not effective as a lease or otherwise until execution and delivery by both Landlord and Tenant.

46. **DEVELOPMENT OF STATION.** Tenant acknowledges that, without any form of representation or warranty, Landlord (or its successor) may cause certain redevelopment activities to occur at the Station which may or may not include areas in or about the Premises. As a material inducement for Landlord to enter into this Lease, Tenant agrees not to take any actions, oral or in writing, in opposition to such activities (or the planning thereof) by Landlord (or its successor).

IN WITNESS WHEREOF, Landlord and Tenant have respectively signed and sealed this Lease as of the day and year first above written.

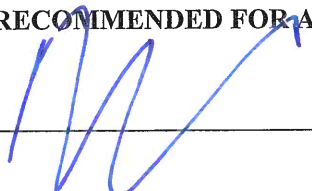
LANDLORD:

CITY OF ALAMEDA, a
Charter City and Municipal Corporation


By 
John Russo
City Manager

Date: 7/26/12

RECOMMENDED FOR APPROVAL:



Approved as to form:


Janet Kern
City Attorney

TENANT

AUCTIONS BY THE BAY, INC.
a California Corporation

By 

Name: Allen Michaan

Title: President Proven

Date: 5/18/12

EXHIBITS

- Exhibit A-1 – Premises
- Exhibit A-2 – Equipment [Intentionally Deleted]
- Exhibit A-3 – Land
- Exhibit A-4 – Parking
- Exhibit B – LIFO
- Exhibit C – Work Letter Agreement [Intentionally Deleted]
- Exhibit D – Declaration of Lease Commencement
- Exhibit E – Historic Preservation Agreement
- Exhibit F – Environmental Questionnaire
- Exhibit G – Rules and Regulations



EXHIBIT A-1

PREMISES

A

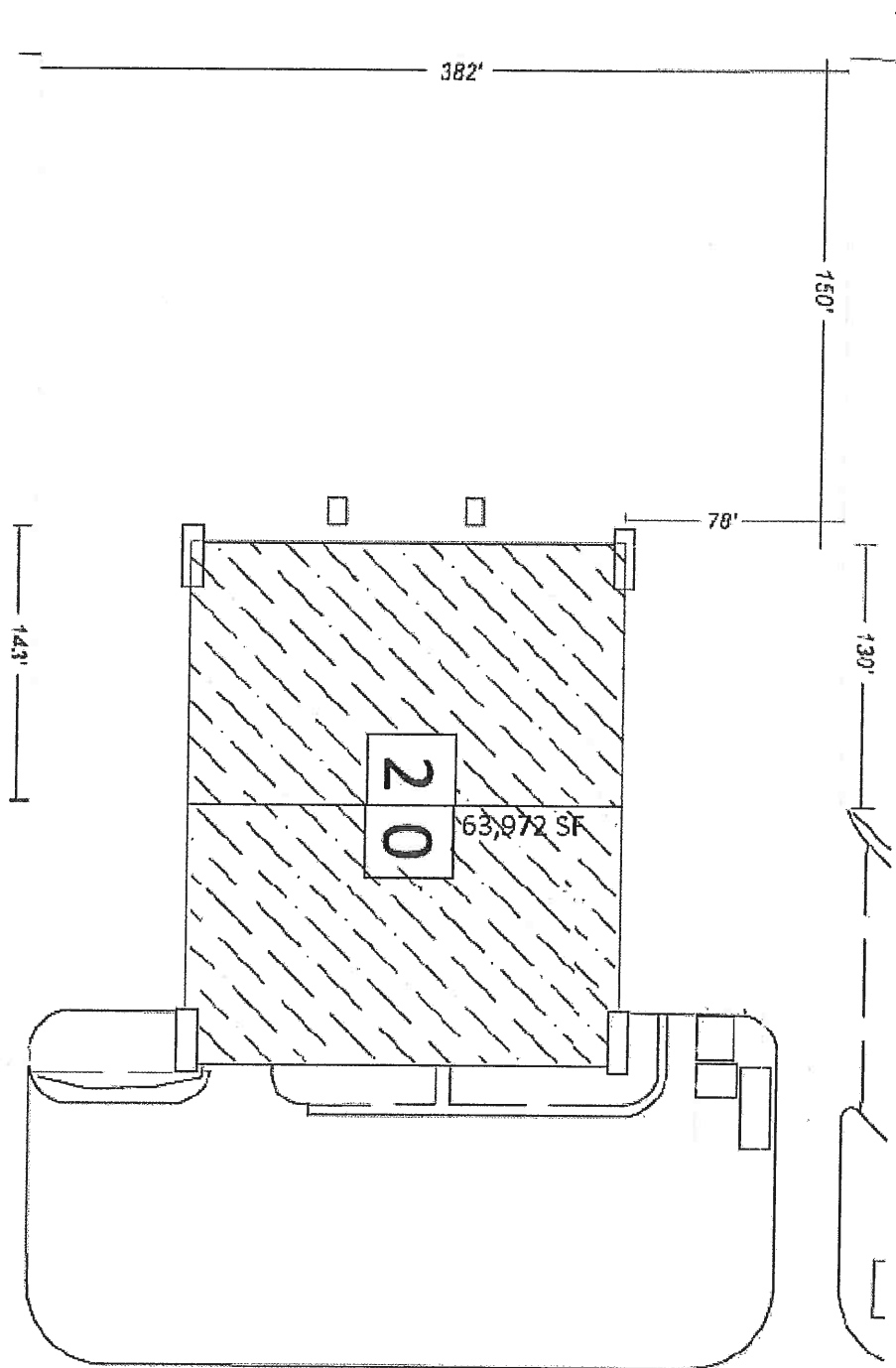


EXHIBIT A-1

2701 Monarch Street
Alameda, CA 94501

EXHIBIT A-2

EQUIPMENT

[Intentionally Deleted]

A

EXHIBIT A-3

LAND

A ✓

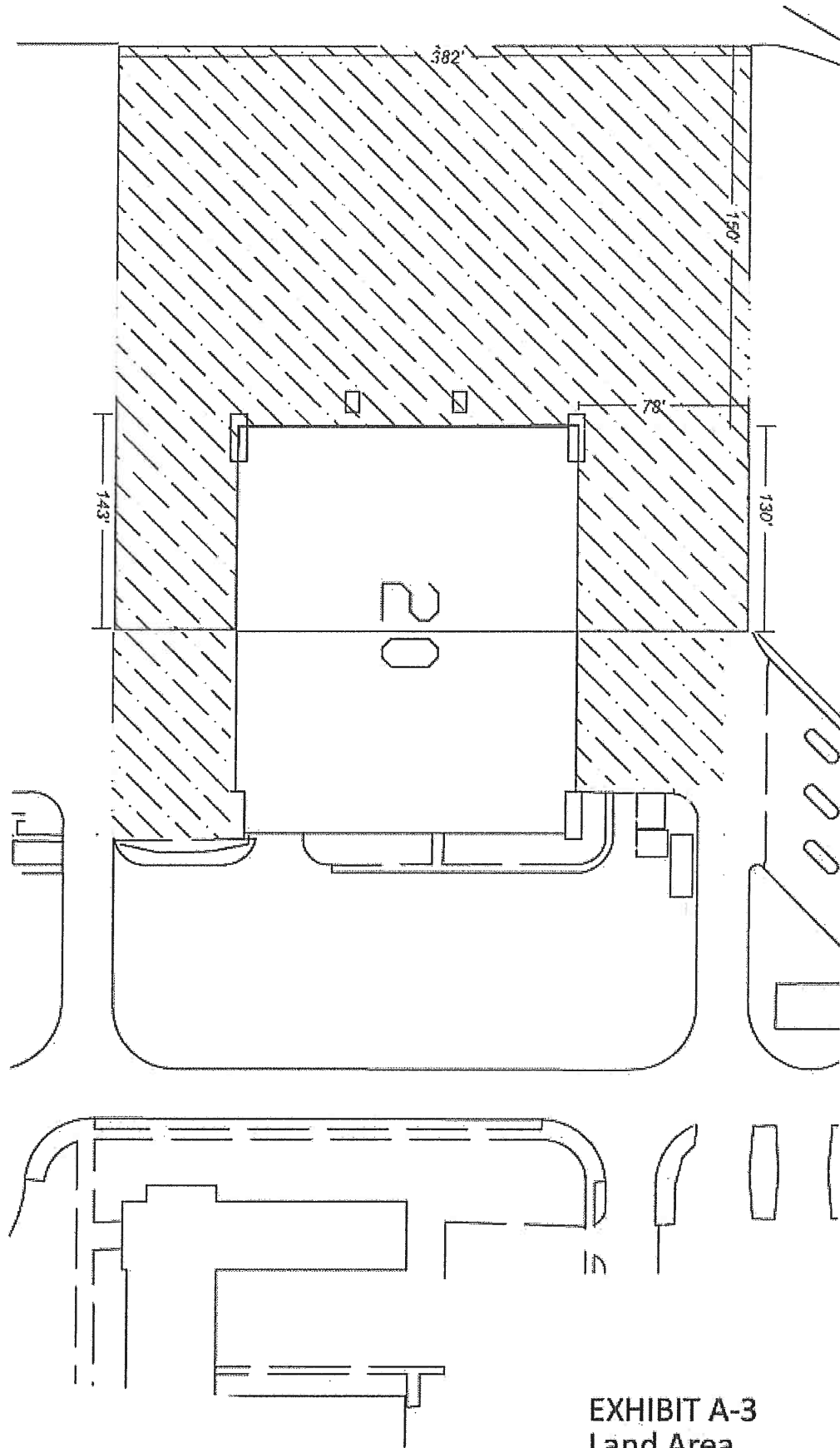


EXHIBIT A-3
Land Area

A ~

EXHIBIT A-4

PARKING



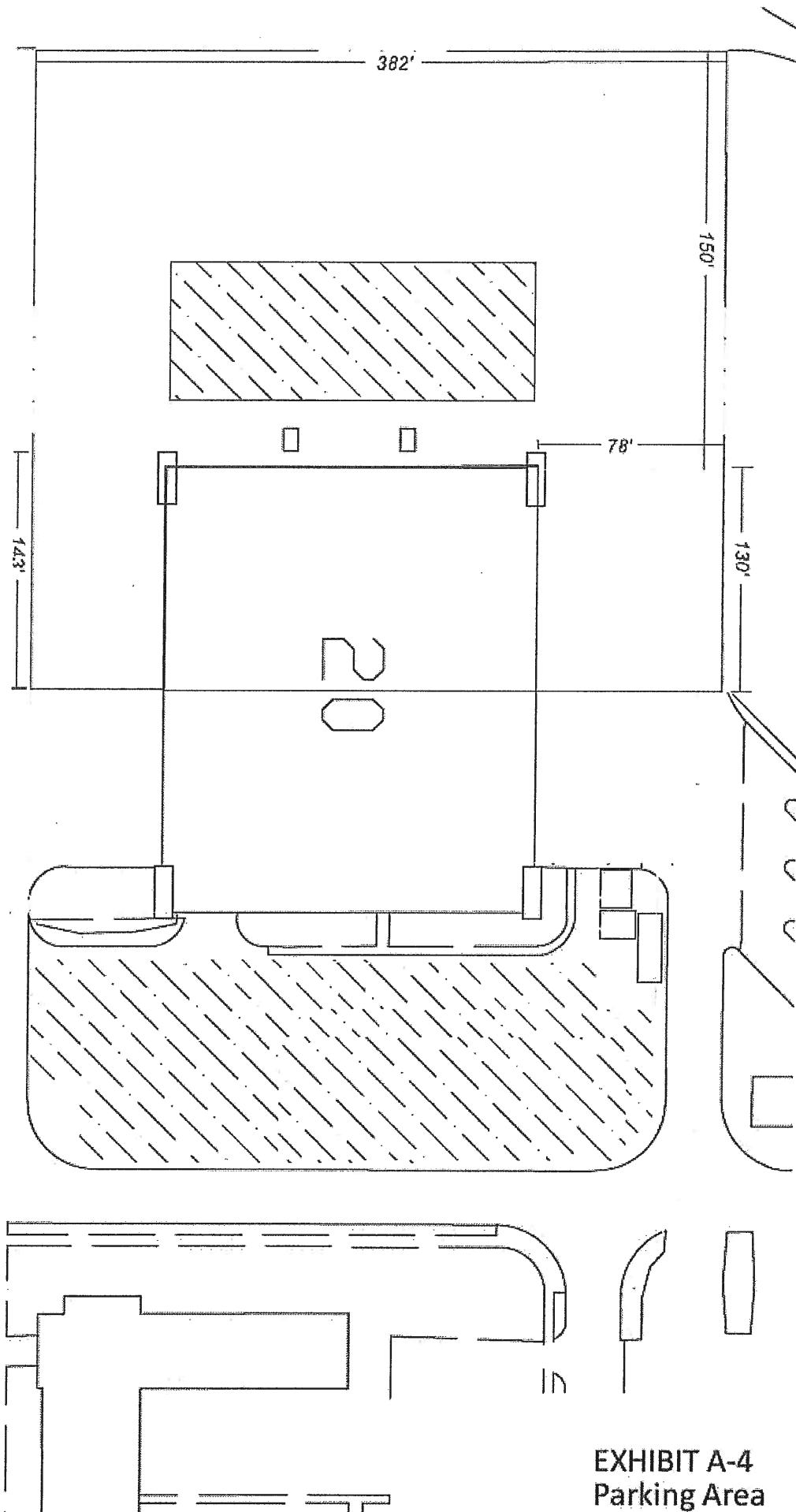


EXHIBIT A-4
Parking Area

A

EXHIBIT B

LIFO

[Attached]

Handwritten signature

EXHIBIT C

[Intentionally Deleted]



EXHIBIT D

DECLARATION OF LEASE COMMENCEMENT

This is to confirm that the Commencement Date, as defined in Section 2.2 of the attached lease, for the property commonly known as Building ___, and containing approximately _____ square feet pursuant to the lease dated _____, 20__ the **CITY OF ALAMEDA**, a Charter City and Municipal Corporation ("**Landlord**") and **AUCTIONS BY THE BAY, INC.** a California Corporation ("**Tenant**") is, for all purposes, agreed to be _____, 20__, and the Expiration Date of the Lease is agreed to be _____, 20__.

LANDLORD:

CITY OF ALAMEDA, a Charter City and
Municipal Corporation

By _____
John Russo,
City Manager

Date: _____

RECOMMENDED FOR APPROVAL:

Approved as to form:

Donna Mooney, Assistant General Counsel

TENANT

AUCTIONS BY THE BAY, INC.
a California Corporation

By _____

Name: Allen Michaan _____

Title: President _____

Date: _____

EXHIBIT E

HISTORIC PRESERVATION AGREEMENT

[Attached]



EXHIBIT F

ENVIRONMENTAL QUESTIONNAIRE

The purpose of this form is to obtain information regarding the use, if any, of hazardous substances in the process proposed on the premises to be leased. Any such use must be approved in writing by Landlord. Prospective tenants should answer the questions in light of their proposed operations on the premises. Existing tenants should answer the questions as they relate to ongoing operations on the premises and should update any information previously submitted. If additional space is needed to answer the questions, you may attach separate sheets of paper to this form.

Your cooperation in this matter is appreciated. Any questions should be directed to, and when completed, the form should be mailed to:

PM Realty Group
Attn: Property Manager
101 W. Atlantic Avenue
Alameda, California 94501
(510) 749-0304; (510) 749-1095 fax

1. General Information.

Name of Responding Company: AUCTIONS BY THE BAY INC.

Check the Applicable Status: _____

Prospective Tenant ☐

Existing Tenant ☒

Mailing Address: P.O. Box 489

ALAMEDA CA, 94501

Contact Person and Title: ALLEN MICHAEL, PRES.

Telephone Number: (510) 740 0220 EXT 103 - CELLULAR 510 3854783
HOME 510 521 4189

Alameda Point Address of Proposed Premises to be Leased: _____

2701 MONARCH ST.

Length of Lease Term: 1 YEAR, ADDITIONAL LEASE TO BE PREPARED

Your Standard Industrial Classification (SIC) Code Number: _____

Describe the proposed operations to take place on the property, including principal products manufactured, services and a brief process flow description to be conducted. Existing tenants should describe any proposed changes to ongoing operations.

NO CHANGES TO EXISTING OPERATIONS -
AUCTIONS, AUCTION PREVIEWS, PROPERTY RECEIVING,
STORAGE, OFFICES

2. Use and/or Storage of Hazardous Materials.

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2.1 Will any hazardous materials be used or stored onsite?

Hazardous Wastes Yes ☐ No ☒
Hazardous Chemical Products Yes ☐ No ☒

2.2 Attach the list of any hazardous materials/wastes to be used, stored, or generated the quantities that will be onsite at any given time, and the location and method of storage (e.g., 55-gallon drums on concrete pad).

2.3 Does your company handle hazardous materials in a quantity equal to or exceeding an aggregate of 500 pounds, 55 gallons, or 200 cubic feet?

Yes ☐ No ☒

If yes please provide Material Safety Data Sheets (MSDS) on such materials.

2.4 Has your business filed for a Consolidated Hazardous Materials Permit from the Alameda County Environmental Management Department?

Yes ☐ No ☒

If so, attach a copy of the permit application.

2.5 Are any of the chemicals used in your operations regulated under Proposition 65?

Yes ☐ No ☒

If so, describe the actions taken, or proposed to be taken, to comply with Proposition 65 requirements.

2.6 Do you store or use or intend to store or use acutely hazardous materials above threshold quantities requiring you to prepare a risk management plan (RMP)?

Yes ☐ No ☒

2.7 Describe the procedures followed to comply with OSHA Hazard Communication Standard requirements.

3. Storage Tanks and Pumps.

3.1 Are any above or below ground storage of gasoline, diesel, or other hazardous substances in tanks or pumps being used as a part of your present process or proposed for use on this leased premises?

Yes ☐ No ☒

If yes, describe the materials to be stored, and the type, size and construction of the pump or tank. Attach copies of any permits obtained for the storage of such substances.

3.2 If you have an above ground storage tank (AST), do you have a spill prevention containment and countermeasures (SPCC) plan?

Yes ☐

No ☐

Not Applicable ☒

3.3 Have any tanks, pumps or piping at you existing facilities been inspected or tested for leakage?

Yes ☐

No ☐

Not Applicable ☒

If so, attach the results.

3.4 Have any spills or leaks occurred from such tanks, pumps or piping?

Yes ☐

No ☐

Not Applicable ☒

If so, describe.

3.5 Were any regulatory agencies notified of any spills or leaks?

Yes ☐

No ☐

Not Applicable ☒

If so, attach copies of any spill reports filed, any clearance letters or other correspondence from regulatory agencies relating to the spill or leak.

3.6 Have any underground storage tanks, sumps or piping been taken out of service or removed at the proposed facility or facilities that you operate?

Yes ☐

No ☐

Not Applicable ☒

If yes, attach copies of any closure permits and clearance obtained from regulatory agencies relating to closure and removal of such tanks.

4. Spills.

4.1 During the past year, have any spills occurred on any site you occupy?

Yes ☐

No ☐

Not Applicable ☒

If so, please describe the spill and attach the results of any process conducted to determine the extent of such spills.

4.2 Were any agencies notified in connection with such spills?

Yes ☐

No ☐

Not Applicable ☒

If no, attach copies of any spill reports or other correspondence with regulatory agencies.

4.3 Were any clean-up actions undertaken in connection with the spills?

Yes ☐

No ☐

Not Applicable ☒

If so, briefly describe the actions taken. Attach copies of any clearance letters obtained from any regulatory agencies involved and the results of any final soil or

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groundwater sampling done upon completion of the clean-up work. _____

5. Waste Management.

5.1 Has your business filed a Hazardous Material Plan with the Alameda County Environmental Management Department?

Yes ☐

No ☒

5.2 Has your company been issued an EPA Hazardous Waste Generator I.D. Number?

Yes ☐

No ☒

If yes: EPA ID# _____

5.3 Has your company filed a biennial report as a hazardous waste generator?

Yes ☐

No ☒

If so, attach a copy of the most recent report filed.

5.4 Are hazardous wastes stored in secondary containments?

Yes ☐

No ☒

5.5 Do you utilize subcontractors for lighting/electrical, plumbing, HVAC, pest services, landscaping and/or building maintenance services?

Yes ☐

No ☒

If yes, do any of these subcontractors store, mix or utilize chemicals on site?

Yes ☐

No ☒

If yes, what types and quantities? _____

Attach the list of the hazardous waste, if any, generated or to be generated at the premises, its hazard class and the quantity generated on a monthly basis.

Describe the method(s) of disposal for each waste. Indicate where and how often disposal will take place. _____

Indicate the name of the person(s) responsible for maintaining copies of hazardous waste manifests completed for offsite shipments of hazardous waste. _____

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Is any treatment, processing and recycling of hazardous wastes currently conducted or proposed to be conducted at the premises:

Yes ☐

No ☒

If yes, please describe any existing or proposed treatment, processing or recycling methods. _____

Attach copies of any hazardous waste permits or licenses issued to your company with respect to its operations on the premises.

6. Wastewater Treatment/Discharge.

6.1 Will your proposed operation require the discharge of wastewater to (answer Yes or No to each of the following)?

NO storm drain

NO sewer

NO surface water

NO no industrial discharge

6.2 Does your business have a Sewer Use Questionnaire on file with Alameda County Sanitation District?

Yes ☐

No ☒

6.3 Is your wastewater treated before discharge?

Yes ☐

No ☐

Not Applicable ☒

If yes, describe the type of treatment conducted.

6.4 Does your business conduct operations outside the building or store materials outside?

Yes ☒

No ☐

Not Applicable ☐

6.5 Do you have a Storm Water Pollution Prevention Plan (SWPPP)?

Yes ☐

No ☐

Not Applicable ☒

6.6 Does your business have a General Permit for storm water discharge associated with industrial activity?

Yes ☐

No ☐

Not Applicable ☒

6.7 Does your business operate under a National Pollution Discharge Elimination System (NPDES) Permit?

Yes ☐

No ☐

Not Applicable ☒

Attach copies of any wastewater discharge permits issued to your company with respect to its operations on the premises.

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7. Air Discharges. 1

7.1 Do you have or intend to have any air filtration systems or stacks that discharge into the air?

Yes ☐

No ☒

7.2 Do you operate or plan to operate any of the following types of equipment, or any other equipment requiring an air emissions permit (answer Yes or No to each of the following)?

Spray booth

Yes ☐

No ☒

Dip tank

Yes ☐

No ☒

Drying oven

Yes ☐

No ☒

Incinerator

Yes ☐

No ☒

Other (please describe)

Yes ☐

No ☒

Boiler

Yes ☐

No ☒

I/C Engine

Yes ☐

No ☒

Emergency Backup Generator

Yes ☐

No ☒

Processes that apply coatings, inks, adhesives or use solvents

Yes ☐

No ☒

7.3 Do you emit or plan to emit any toxic air contaminants?

Yes ☐

No ☒

7.4 Are air emissions from your operations monitored?

Yes ☐

No ☒

If so, indicate the frequency of monitoring and a description of the monitoring results. _____

Attach copies of any air emissions permits pertaining to your operations on the premises.

8. Enforcement Actions, Complaints.

8.1 Has your company, within the past five years, ever been subject to any agency enforcement actions, administrative orders, or consent decrees?

Yes ☐

No ☒

If so, describe the actions and any continuing compliance obligations imposed as a result of these actions. _____

¹ NOTE: Businesses will have to comply with prohibitory rules regardless of whether they have or need a permit.

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8.2 Has your company ever received requests for information, notice or demand letters, or any other inquiries regarding its operations?

Yes ☐

No ☒

8.3 Have there ever been, or are there now pending, any lawsuits against the company regarding any environmental or health and safety concerns?

Yes ☐

No ☒

8.4 Has any environmental audit ever been conducted at your company's current facility?

Yes ☐

No ☒

If so, discuss the results of the audit. _____

8.5 Have there been any problems or complaints from neighbors at the company's current facility?

Yes ☐

No ☒

Please describe: _____

The undersigned hereby certifies that all of the information contained in this questionnaire is accurate and correct.

AUCTIONS BY THE BAY, INC.,

a California corporation _____

By: _____

Allen Michaan

Title: President

Date: _____

5/18/12

EXHIBIT G

RULES AND REGULATIONS

1. Landlord shall have the right to control and operate the public portions of the Building and the public facilities, as well as facilities furnished for the common use of the tenants, in such manner as it deems best for the benefit of the tenants generally. No tenant shall invite to the Premises, or permit the visit of, persons in such numbers or under such conditions as to interfere with the use and enjoyment of the entrances, corridors, elevators and facilities of the Building by other tenants.
2. Landlord reserves the right to close and keep locked all entrance and exit doors of the Building outside of normal business hours as Landlord may deem to be advisable for the protection of the property. Landlord may also require the provision of security systems or personnel to maintain security and safety within the Building.
3. Tenant shall not make any use of the Building or property which in any manner constitutes or results in any public or private nuisance within the meaning of California Civil Code Section 3479 *et seq.*
4. The entries, corridors, stairways and elevators shall not be obstructed by any tenant, or used for any other purpose than ingress or egress to and from its respective offices.
5. Freight, furniture, business equipment, merchandise and bulky matter of any description ordinarily shall be delivered to and removed from the demised Premises only in the designated freight elevator and through the service entrances and corridors, but special arrangements will be made for moving large quantities or heavy items of equipment and supplies into or out of the Building.
6. All entrance doors in the Premises shall be left locked when the Premises are not in use.
7. Tenant shall not attach or permit to be attached additional locks or similar devices to any door, transom or window of the Premises; change existing locks or the mechanism thereof; or make or permit to be made any keys for any door thereof other than those provided by Landlord, without providing to Landlord one set of keys therefore.
8. The drinking fountains, lavatories, water closets and urinals shall not be used for any purpose other than those for which they were installed.
9. No awnings or other projections over or around the windows or entrances of the Premises shall be installed by any tenant without the prior written consent of the Landlord.
10. Landlord is not responsible to any tenant for the non-observance or violation of the Rules and Regulations by any other tenant.
11. Landlord reserves the right by written notice to Tenant, to rescind, alter or waive any rule or regulation at any time prescribed for the Building when, in Landlord's reasonable judgment, it is necessary, desirable or proper for the best interest of the Building and its tenants.
12. The Tenant shall not exhibit, sell or offer for sale on the Premises or in the Building any article or thing except those articles and things essentially connected with the stated use of the Premises by the Tenant without the advance consent of the Landlord.
13. The Tenant shall never use any picture or likeness of the Building in any circulars, notices, advertisements or correspondence without the Landlord's consent

14. The Tenant shall cooperate fully with the Landlord to assure the effective operation of the Building's air conditioning system. If Tenant shall so use the Premises that noxious or objectionable fumes, vapors and odors exist beyond the extent to which they are discharged or eliminated by means of the flues and other devices contemplated by the various plans, specifications and leases, then Tenant shall provide proper ventilating equipment for the discharge of such excess fumes, vapors and odors so that they shall not enter into the air conditioning system or be discharged into other vents or flues of the Building or annoy any of the tenants of the Building or adjacent properties. The design, location and installation of such equipment shall be subject to Landlord's approval.

15. All loading and unloading of merchandise, supplies, materials, garbage and refuse shall be made only through such entryways and elevators and at such times as the Landlord shall designate. In its use of the loading areas in the basement, the Tenant shall not obstruct or permit the obstruction of said loading area and at no time shall park or allow its officers, agents or employees to park vehicles therein except for loading or unloading.

16. There shall not be used or kept anywhere in the Building by any tenant or persons or firms visiting or transacting business with a tenant any hand trucks, except those equipped with rubber tires and side guards.

17. No curtains, blinds, shades or screens shall be attached to or hung in, or used in connection with any window or door of the Premises without the prior written consent of the Landlord.

18. No sign, advertisement notice or other lettering shall be exhibited, inscribed, painted or affixed by Tenant on any part of the outside or inside of the Premises or of the Building, without the prior written consent of Landlord. In the event of any violation of the foregoing by Tenant, Landlord may remove same without any liability, and may charge the expense incurred by such removal to Tenant.

19. The sashes, sash doors, skylights, windows and doors that reflect or admit light or air into the halls, passageways or other public places in the Building shall not be covered or obstructed by Tenant, nor shall any bottles, parcels, or other articles be placed on the window sills, or in the public portions of the Building.

20. Tenant shall not mark, paint, drill into any part of the Premises or the Building without the prior written consent of the Landlord. No boring, cutting or stringing of wires shall be permitted, except with the prior written consent of Landlord, and as Landlord may direct.

21. No animal or bird of any kind shall be brought into or kept in or about the Premises or the Building without the prior written consent of the Landlord, but in no event in violation of the federal Fish & Wildlife Biological Opinion.

22. Tenant's contractors shall, while in the Building or elsewhere in the complex of which the Building forms a part, be subject to and under the control and direction of the Tenant.

23. If the Premises is or becomes infested with vermin as a result of the use or any misuse or neglect of the Premises by Tenant, its agents, servants, employees, contractors, visitors or licensees, Tenant shall forthwith at Tenant's expense cause the same to be exterminated from time to time to the satisfaction of Landlord and shall employ such licensed exterminators as shall be approved in writing in advance by Landlord

24. Excepting bottled water utilized by Tenant, no water cooler, air conditioning unit or system or other apparatus shall be installed or used by Tenant without the written consent of Landlord.



25. Tenant shall install and maintain, at Tenant's sole cost and expense, an adequate visibly marked (at all times properly operational) fire extinguisher next to any duplicating or photocopying machine or similar heat producing equipment, which may or may not contain combustible material, in the Premises.

26. Tenant shall not use the name of the Building for any purpose other than as the address of the business to be conducted by Tenant in the Premises, nor shall Tenant use any picture of the Building in its advertising, stationery or in any other manner without the prior written permission of Landlord. Landlord expressly reserves the right at any time to change said name without in any manner being liable to Tenant therefor.



AUCTIONS BY THE BAY, INC.DBA MICHAAN'S AUCTIONS
P.O. Box 489
Alameda, CA 94501
(510) 740-0220

LIBERTY

BAN...
500 Linden Avenue
South San Francisco, CA 94080
90-3912-1211

RECEIVED JUN 05 2012

11594

PAY Twenty-Two Thousand Four Hundred Forty and No/100 Dollars

DATE
5/18/12AMOUNT
\$22,440.00TO THE
ORDER
OF:ARRA-Alameda Reuse and Redevelopment Authority
c/o PM Realty Group
101 W. Atlantic Avenue
Alameda, CA 94501
AUTHORIZED SIGNATURE

Payment: ARRA-Alameda Reuse and Redevelopment Authority

⑈011594⑈ ⑆121139122001 324588⑈

AUCTIONS BY THE BAY, INC.

11594

ARRA-Alameda Reuse and Redevelopment

11594

5/18/12

\$22,440.00

Payment; ARRA-Alameda Reuse and Redevelopment Authority
In Payment For:

Vendor Inv	Purchase No.	Invoice Date	Invoice Amount	Discounts	Previous Payments	Current Payment
bldg 20	00001736	1/1/12	\$23,219.92	\$0.00	\$779.92	\$22,440.00

3627 AL0020 0200 \$22,440.00 RNT