

FIRST AMENDMENT TO LEASE

THIS FIRST AMENDMENT TO LEASE AGREEMENT ("**First Amendment**") dated for reference purposes only as of June __, 2016 is entered into by and between the CITY OF ALAMEDA, a charter city and municipal corporation ("**City**" or "**Landlord**") and AUCTIONS BY THE BAY, INC., a California corporation ("**Tenant**"), with reference to the following:

RECITALS

A. WHEREAS, Landlord and Tenant entered into that certain Lease Agreement dated for reference purposes as of February 1, 2013 (the "**Lease**") whereby Tenant leased from the Landlord certain premises located at the former Naval Air Station Alameda (the "**NASA**" or the "**Property**") which premises are located in Building 525, with an address of 2751 Todd Street, Alameda, California (the "**Premises**") together with appurtenant land and parking privileges as more particularly described in the Lease; and

B. WHEREAS, at the time of execution of the Lease, that portion of the Property upon which the Premises are located was owned by the United States of America, acting by and through the Department of the Navy ("**Government**"). The NASA was closed as a military installation and was subject to disposal pursuant to and in accordance with the Defense Base Closure and Realignment Act of 1990 (P.L. 101-510), as amended (the "**Act**"). In accordance with the Act, the authority of the Administrator of General Services under the Federal Property and Administrative Services Act of 1949, as amended, with respect to the disposal of surplus real property, and installations closing thereunder, was delegated to the Secretary of Defense and further delegated to the Secretary of the Navy. Pursuant to the power and authority provided by Section 2905(b)(4) of the Act, the Secretary of the Navy was authorized to convey surplus property at a closing installation to the local redevelopment authority at no cost for economic development purposes; and

C. WHEREAS, by application dated October, 1997 and amendment to that application dated December, 1998, Landlord's predecessor in interest, the Alameda Reuse and Redevelopment Authority ("**ARRA**") applied for a "No-Cost Economic Development Conveyance" ("**EDC**") for a portion of the Property (the "**EDC Application**"), to be used and developed in accordance with the "NAS Alameda Community Reuse Plan" (the "**Reuse Plan**") dated as of January 1996 as amended in September 1997 prepared by the ARRA and approved by the Department of Housing and Urban Development on April 23, 1996; and

D. WHEREAS, the Government approved the ARRA's EDC Application covering those portions of the Property including the land upon which the Premises are situated and agreed to convey the same to the ARRA; and

E. WHEREAS, prior to such conveyance, immediate possession of the Property was granted to the ARRA by that certain Lease in Furtherance of Conveyance dated as of June 6, 2000, as amended by that certain Amendment No. 1 dated as of November 28, 2000 and as further amended by that certain Amendment No. 2 dated March 30, 2009 between the Government and the ARRA (the "**LIFO**"); and

F. WHEREAS, on January 31, 2012, the Governing Board of the Alameda Reuse and Redevelopment Authority assigned its rights, assets, liabilities and obligations to the City of Alameda and, on February 7, 2012, the City Council of the City of Alameda accepted the assignment and on March 9, 2012 the U.S. Department of Defense, Office of Economic

Adjustment acknowledged the City of Alameda as the Local Reuse Authority for the former Alameda Naval Air Station and on April 4, 2012, the Department of the Navy acknowledged the City of Alameda as the Local Reuse Authority within the meaning of the Act; and

G. WHEREAS, the Property upon which the Premises are located was conveyed to the City by the United States of America, acting by and through the Department of the Navy by a quitclaim deed dated June 4, 2013, recorded June 6, 2013 as Series No. 2013-199810 of Official Records in the Office of the County Recorder, Alameda County, California ("**Quitclaim Deed**"). Upon the conveyance of the Premises from the Government to the City, the City became both the landowner and the Landlord under the Lease and the LIFO terminated as to the portion of the Property upon which the Premises are located; and

H. WHEREAS, the Quitclaim Deed conveyed the Premises to Landlord subject to certain covenants, conditions, restrictions, easements and encumbrances as set forth therein. The Premises are further encumbered by those certain restrictions set forth in the Declaration of Restrictions (Former Naval Air Station Alameda) dated June 4, 2013 and recorded June 6, 2013 as Series No.: 2013-199782 in the Office of the County Recorder of Alameda County ("**Declaration of Restrictions**"), and the Covenant to Restrict Use of Property also dated June 4, 2013 and recorded June 6, 2013 as Series No. 2013-199838 (the "**CRUP**"); and

I. WHEREAS, Tenant desires to expand its Permitted Use of the Premises to include the sale of antique firearms; and

J. WHEREAS, Landlord and Tenant desire to amend the Lease to amend Section 4 of the Lease and to otherwise amend and modify the Lease upon the terms and conditions set forth below.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein and in the Lease, and for other good and valuable consideration the receipt and sufficiency of which is acknowledged, it is hereby agreed as follows:

1. Recitals. The Recitals set forth above are incorporated herein as though set forth in full herein.

2. Effective Date. This First Amendment shall be effective (the "**Effective Date**") one (1) business day after it has been approved by the City Council, the date of which approval shall be deemed to be the effective date of an ordinance approving this First Amendment, adopted by the City Council in its sole and absolute discretion. Landlord shall notify Tenant of the Effective Date substantially in the form of **Exhibit C** attached hereto.

3. Use of Premises. Section 4 of the Lease is amended to include the sale of antique firearms as a Permitted Use but only subject to the terms and conditions specified in **Exhibit A** attached hereto and incorporated herein by this reference.

4. Compliance with Restrictions. Tenant acknowledges that copies of the Quitclaim Deed, Declaration of Restrictions and CRUP have been delivered to Tenant and, concurrently with the execution of this First Amendment, Tenant shall sign and return to Landlord the Acknowledgment of Receipt, attached hereto as **Exhibit B**.

5. Certified Access Specialist Disclosure. In accordance with Civil Code Section 1938, Landlord hereby discloses that the Premises have not undergone inspection by a Certified Access Specialist for purposes of determining whether the property has or does not meet all applicable construction related accessibility standards pursuant to Civil Code Section 55.53.

6. Notice. The address for notices to Landlord as specified at Section 19.2 of the Lease, is hereby amended as follows:

City of Alameda
Alameda City Hall
2263 Santa Clara Ave
Alameda, CA 94501
Tel: (510) 748-4509
Attn: City Manager

Notice Copy to:

PM Realty Group, L.P., as Agent for
City of Alameda
950 W. Mall Square, Suite 239
Alameda, CA 94501
Tel: (510) 749-0304

7. Miscellaneous.

(a) Entire Agreement. This First Amendment and the attached Exhibits, which are hereby incorporated into and made a part of this First Amendment, sets forth the entire agreement between the parties with respect to the matters set forth herein. There have been no additional oral or written representations or agreements.

(b) Defined Terms. Capitalized terms used in this First Amendment shall have the same definitions as set forth in the Lease to the extent that such capitalized terms are defined therein and not redefined in this First Amendment.

(c) Brokers. Tenant hereby represents to Landlord that Tenant has dealt with no broker in connection with this First Amendment. Tenant agrees to defend, indemnify and hold Landlord harmless from any and all claims of any brokers claiming to have represented Tenant in this First Amendment. Landlord hereby represents to Tenant that Landlord has dealt with no broker in connection with this First Amendment, other than Cushman & Wakefield, Landlord's broker. Landlord agrees to defend, indemnify and hold Tenant harmless from all claims of Cushman & Wakefield or any other brokers claiming to have represented Landlord in connection with this First Amendment.

(d) Authority. If Tenant is a corporation, partnership, trust, association or other entity, Tenant and each person executing this First Amendment on behalf of Tenant does hereby covenant and warrant that (a) Tenant is duly incorporated or otherwise established or formed and validly existing under the laws of the state or county of incorporation, establishment or formation, (b) Tenant has and is duly qualified to do business in California, (c) Tenant has full corporate, partnership, trust, association or other power and authority to enter into this First Amendment and to perform all of Tenant's obligations hereunder and

(d) each person (and all of the persons if more than one signs) signing this First Amendment on behalf of Tenant is duly and validly authorized to do so.

(e) OFAC Compliance. Tenant hereby represents to Landlord that Tenant is currently in compliance with and shall at all times through Term remain in compliance with the regulations of the Office of Foreign Asset Control of the Department of the Treasury and any statute, executive order (including the September 24, 2001 Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental actions relating thereto.

(f) Environmental and Planning Documents. Tenant acknowledges that any Alterations shall comply with the terms, conditions and requirements of: (a) the Environmental Impact Report for Alameda Point and the Mitigation Monitoring and Reporting Program adopted pursuant thereto; (b) the Master Infrastructure Plan; and (c) the Town Center and Waterfront Precise Plan (as applicable, except that any legal nonconforming uses on the Premises (e.g., parking) shall not be subject to the Precise Plan, unless such uses or structures are enlarged, extended, reconstructed or structurally altered per Alameda Municipal Code §30-20.4 or any successor ordinance). In addition, Tenant agrees to reasonably cooperate in good faith with Landlord and Landlord's transportation consultant in the development and implementation of a Compliance Strategy consistent with the Alameda Point Transportation Demand Management Plan.

(g) Relocation Benefits. Tenant acknowledges that upon the expiration or earlier termination of this Lease, for any reason other than a taking, Tenant shall not be a displaced person, and hereby does, waive any and all claims for relocation benefits, assistances and/or payments under Government Code Sections 7260 et seq., 25 California Code of Regulations Sections 600 et seq., 42 U.S.C. 4601 et seq., 29 C.F.R. Sections 121 et seq. and 49 C.F.R Sections 24.1 et seq. (collectively the "**Relocation Assistance Laws**"). Any Relocation of the Premises pursuant to Article 37 of this Lease shall be governed by the terms of said article and not the Relocation Assistance Laws. Tenant further acknowledges and agrees that upon the expiration or earlier termination of this Lease for any reason, other than a taking, no claim shall arise, nor shall Tenant assert any claim for loss of business goodwill (as that term is defined at CCP §1263.510) and no compensation for loss of business goodwill shall be paid by Landlord.

(h) Counterparts. This Second Amendment may be executed in multiple counterparts each of which is deemed an original but together constitutes one and the same instrument. This Second Amendment may be transmitted in "pdf" format and each party has the right to rely upon a pdf counterpart of this Second Amendment signed by the other party to the same extent as if such party had received an original counterpart.

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

LANDLORD:

CITY OF ALAMEDA,
a charter city and municipal corporation

By: _____
Jill Keimach
City Manager

TENANT:

AUCTIONS BY THE BAY, INC.,
a California corporation

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

Approved as to Form

By: _____
Janet Kern
City Attorney

EXHIBIT A

1. Gun and firearm sales shall be limited to antique firearm. Antique firearm shall be defined pursuant to 18 U.S.C., § 921(A)(16), as it may be amended from time to time, to mean (A) any firearm (including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system) manufactured in or before 1898; or (B) any replica of any firearm described in subparagraph (A) if such replica--(i) is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition, or (ii) uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade; or (C) any muzzle loading rifle, muzzle loading shotgun, or muzzle loading pistol, which is designed to use black powder, or a black powder substitute, and which cannot use fixed ammunition. For purposes of this subparagraph, the term "antique firearm" shall not include any weapon which incorporates a firearm frame or receiver, any firearm which is converted into a muzzle loading weapon, or any muzzle loading weapon which can be readily converted to fire fixed ammunition by replacing the barrel, bolt, breechblock, or any combination thereof.
2. Sale and storage of ammunition, including gun powder shall be prohibited.
3. Sale of assault rifles and firearms with high capacity magazines shall be strictly prohibited.
4. Testing or firing of fire arms on the Property or in Alameda is strictly prohibited.
5. All firearms shall be secured in a vault when not on public display.
6. Security cameras shall be provided within the Building and on the exterior of the Building. Tapes shall be recorded and preserved for a period of at least 60 days.
7. The applicant shall provide an inventory list of all firearms to the Police Department on a monthly basis.
8. All display and sales shall be conducted within the Building.
9. There shall be no signs on the outside of the Building advertising fire arms.
10. A security plan shall be submitted to the Alameda Chief of Police for review and approval prior to approval of this First Amendment.
11. The applicant shall comply with all Federal Firearms sales, storage and repair requirements as directed by U.S. Department of Justice and Bureau of Alcohol, Firearms, Explosives.
12. The applicant shall comply with all State firearms sales, storage and repair by the State of California Department of Justice and State Board of Equalization.
13. No more than five (5%) percent of the floor area of the Premises shall be devoted to uses relating to firearms.
14. Tenant shall notify the City in writing at least forty-five (45) days prior to the anniversary of the Effective Date of this First Amendment requesting an annual review of the conditions listed in this Exhibit A. To facilitate this review, Tenant shall submit a letter outlining its compliance with the terms of this Exhibit.

EXHIBIT B

ACKNOWLEDGMENT OF RECEIPT

Pursuant to that certain First Amendment to Lease entered into by and between City of Alameda, a charter city and municipal corporation ("Landlord") and Auctions by the Bay, Inc., a California corporation ("Tenant") dated as of June ___, 2016 ("First Amendment") Tenant hereby acknowledges that Landlord has provided it with copies of the following documents:

● Quitclaim Deed from the United States of America, acting by and through the Department of the Navy to the City of Alameda, dated June 4, 2013, recorded June 6, 2013 as Series No. 2013-199810 of Official Records in the Office of the County Recorder, Alameda County, California ("Quitclaim Deed");

● Declaration of Restrictions (Former Naval Air Station Alameda) dated June 4, 2013, recorded June 6, 2013 as Series No. 2013-199782 in the Office of the County Recorder of Alameda County ("Declaration of Restrictions").

● Covenant to Restrict Use of Property dated June 4, 2013, recorded June 6, 2013 as Series No. 2013-199838 in the Office of the County Recorder of Alameda County ("CRUP").

Pursuant to Section 4 of the First Amendment, Tenant acknowledges receipt of the above referenced documents, Tenant agrees that its use of the Premises (as defined in the Lease) shall comply with the restrictions set forth in said documents and any failure to do so that is not cured within the applicable cure period set forth in the Lease shall constitute a Default under the Lease.

Auctions by the Bay, Inc.,
a California corporation

By: _____

Its: _____

Date: _____

EXHIBIT C

CONFIRMATION OF EFFECTIVE DATE

Date: _____

Re: First Amendment to Lease for Building 525 dated as of June_____, 2016, by and between City of Alameda, as Landlord, and Auctions by the Bay, as tenant

Dear _____:

In accordance with Section 2 of the above reference First Amendment to Lease, This will confirm that the Effective Date, as defined in the First Amendment, is _____, 2016

Sincerely

Landlord: City of Alameda

By: _____

Name: _____

Title:

[Exhibit Do not sign]