

SECOND AMENDMENT TO LICENSE AGREEMENT

THIS SECOND AMENDMENT TO LICENSE AGREEMENT (“**Second Amendment**”) dated as of April 17, 2018 (the “**Effective Date**”) is entered into by and between the CITY OF ALAMEDA, a charter city and municipal corporation (“**City**” or “**Licensor**”) and AMBER KINETICS, INC., a California corporation (“**Licensee**”), with reference to the following:

RECITALS

A. Licensor and Licensee entered into that certain License Agreement dated as of April, 2014 whereby Licensor granted Licensee a license (the “**License**”) to occupy that certain unimproved lot located at 641 West Red Line Avenue, Alameda, California, consisting of approximately 10,000 square feet of land (the “**License Area**”) which License Area was expanded and the Term extended pursuant to that certain Second Amendment to License Agreement dated as of January, 2016 (collectively the “**License Agreement**”); and

B. Licensee has requested and Licensor has agreed to further extend the Term upon the terms and conditions and as otherwise as set forth in this Second Amendment.

NOW, THEREFORE, for good and valuable consideration, it is mutually agreed by and between the undersigned parties as follows:

AGREEMENT

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

2. Extended Term. The Term of the License shall be extended for twenty-four (24) months and shall terminate at midnight on May 4, 2020.

3. Amendment to License Fees. Commencing on May 5, 2018 the fee for use and occupancy of the License Areas shall be Three Thousand Six Hundred and 00/100 Dollars (\$3,600.00) per month, which shall be paid in accordance with Article 4 of the License Agreement (as amended) to Licensee’s property manager, RiverRock Real Estate Group, Inc., 950 West Mall Square, Room 239 Alameda, CA 94561.

4. Miscellaneous.

(a) This Second 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) Except as herein modified or amended, the provisions, conditions and terms of the License shall remain unchanged and in full force and effect.

(c) In case of any inconsistencies between the provisions of the License and this Second Amendment, the provisions of this Second Amendment shall govern and control.

(d) As of the Effective Date of this Second Amendment, Licensee represents and warrants to Licensor that: (a) there are no defaults on the part of Licensor under the License and there are no events currently existing (or with the passage of time, giving of notice or both, which would exist) which would be deemed a default of Licensor, and (b) there are no claims against Licensor, including without limitations, claims of credit, offset or deduction from or against the rent due under the License.

(e) Capitalized terms used in this Second Amendment shall have the same definitions as set forth in the License Agreement to the extent that such capitalized terms are defined therein and not redefined in this Second Amendment.

(f) Licensee hereby represents to Licensor that Licensee has dealt with no broker in connection with this Second Amendment, other than Cushman & Wakefield California, Inc. (representing Licensor). Licensee agrees to defend, indemnify and hold Licensor harmless from any and all claims of any brokers claiming to have represented Licensee in this Second Amendment. Licensor hereby represents to Licensee that Licensor has dealt with no broker in connection with this Second Amendment, other than Cushman & Wakefield California, Inc.. Licensor agrees to defend, indemnify and hold Licensee harmless from all claims of any brokers claiming to have represented Licensor in connection with this Second Amendment.

(g) If Licensee is a corporation, partnership, trust, association or other entity, Licensee and each person executing this Second Amendment on behalf of Licensee does hereby covenant and warrant that (a) Licensee 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) Licensee has and is duly qualified to do business in California, (c) Licensee has full corporate, partnership, trust, association or other power and authority to enter into this Second Amendment and to perform all of Licensee's obligations hereunder and (d) each person (and all of the persons if more than one signs) signing this Second Amendment on behalf of Licensee is duly and validly authorized to do so. At execution hereof and upon Licensor's request, Licensee shall provide Licensor with evidence reasonably satisfactory to Licensor confirming the foregoing representations and warranties.

(h) Licensor acknowledges that its use of the License Area and any Alterations thereto 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; (c) the Town Center and Waterfront Precise Plan (as applicable); and (d) the Alameda Point Transportation Demand Management Plan.

(i) 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, Licensor and Licensee have duly executed this Second Amendment as of the Effective Date set forth above.

LICENSOR:

CITY OF ALAMEDA,
a charter city and municipal corporation

By: 

Elizabeth D. Warmerdam
Acting City Manager

LICENSEE:

AMBER KINETICS, INC.
a California corporation

By: 

Name: Mark Stout

Its: Vice President, Project Development

By: 

Name: CHING PEI LOU

Its: Treasurer

Approved as to Form

By: 

for Janet C. Kern 2/14/18.
City Attorney