

**SECOND AMENDMENT TO
LEASE OF AIRPORT PREMISES
BETWEEN THE CITY OF SAN JOSE
AND
ALCLEAR, LLC**

This SECOND AMENDMENT TO LEASE OF AIRPORT PREMISES is entered into this ____ day of _____, 2019, by the CITY OF SAN JOSE, a municipal corporation of the State of California (“City”), and ALCLEAR, LLC, a Delaware limited liability company authorized to do business in the State of California (“Tenant”).

RECITALS

WHEREAS, on October 22, 2013, City and Tenant, entered into a lease entitled “LEASE OF AIRPORT PREMISES BETWEEN THE CITY OF SAN JOSE AND ALCLEAR, LLC” (“Lease”); and

WHEREAS, on August 3, 2016, City and Tenant entered into a First Amendment to the Lease to extend the term and to add provisions as required under federal law and regulations; and

WHEREAS, City and Tenant desire to further amend the amended Lease to extend the term and to add provisions required under the City of San José Municipal Code and federal law and regulations;

NOW, THEREFORE, the parties agree to further amend the amended Lease as follows:

SECTION 1. SECTION 1, “DEFINITIONS AND SUMMARY OF LEASE TERMS” is amended to read as follows:

“**Expiration Date**” shall mean October 21, 2022, subject to earlier termination as provided in this Lease.”

SECTION 2. SECTION 34, “AMERICANS WITH DISABILITIES ACT” is amended to add subsection 34.a to read as follows:

“34.a “Disability Access Disclosure

Pursuant to California Civil Code Section 1938, City states that, as of the Effective Date of this Second Amendment, the Premises has not undergone inspection by a Certified Access Specialist to determine whether the Premises meet all applicable construction-related accessibility standards under California Civil Code section 55.53. A Certified Access Specialist (CASp) can inspect the Premises and determine whether the Premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the Premises, the City may not prohibit the Tenant from obtaining a CASp inspection of the Premises for the occupancy or potential occupancy of the Tenant if requested by the Tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection. The parties mutually agree that Tenant shall be responsible for the payment of any fees for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the Premises.”

SECTION 3. SECTION 42, “GENERAL CIVIL RIGHTS PROVISIONS” is added to the Lease to read as follows:

“42 GENERAL CIVIL RIGHTS PROVISIONS

The (tenant/concessionaire/lessee) agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If the (tenant/concessionaire/lessee) transfers its obligation to another, the transferee is obligated in the same manner as the (tenant/concessionaire/lessor).

This provision obligates the (tenant/concessionaire/lessee) for the period during which the property is owned, used or possessed by the (tenant/concessionaire/lessee) and the airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.”

SECTION 4. SECTION 43, “TITLE VI CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE ACTIVITY, FACILITY OR PROGRAM” is added to the Lease to read as follows:

“43 TITLE VI CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE ACTIVITY, FACILITY OR PROGRAM”

A. The Tenant for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that:

1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this Lease for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the Tenant will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Pertinent List of Nondiscrimination Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

B. With respect to the Lease, in the event of breach of any of the above Nondiscrimination covenants, City will have the right to terminate the Lease and to

enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the Lease had never been made or issued.”

SECTION 5. SECTION 44, “TITLE VI CLAUSES FOR CONSTRUCTION / USE / ACCESS TO REAL PROPERTY ACQUIRED UNDER THE ACTIVITY, FACILITY OR PROGRAM” is added to the Lease to read as follows:

“SECTION 44. TITLE VI CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE ACTIVITY, FACILITY OR PROGRAM

A. The Tenant for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Tenant will use the premises in compliance with all other requirements imposed by or pursuant to the List of discrimination Acts And Authorities.

B. With respect to Lease, in the event of breach of any of the above nondiscrimination covenants, City will have the right to terminate the Lease and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said Lease had never been made or issued.”

SECTION 6. SECTION 47, “ENVIRONMENTALLY PREFERABLE PROCUREMENT POLICY” is added to the Lease to read as follows:

“47 ENVIRONMENTALLY PREFERABLE PROCUREMENT POLICY

Tenant shall perform its obligations under this Lease in conformance with City Council Policy 4-6, entitled “Environmentally Preferable Procurement Policy.” Tenant shall procure environmentally preferable products and services that meet environmental product standards established by governmental or other widely recognized authorities. Examples include the Green Seal 37 standard for janitorial products (www.greenseal.org), EPEAT for IT equipment, and GreenGuard for furniture.”

SECTION 7. All of the terms and conditions of the amended Lease not modified by this Second Amendment shall remain in full force and effect.

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WITNESS THE EXECUTION HEREOF on the day and year first written above.

“CITY”

APPROVED AS TO FORM:

CITY OF SAN JOSE, a municipal
corporation of the State of California

KEVIN FISHER
Chief Deputy City Attorney

TONI J. TABER, CMC
City Clerk

Date: _____

“TENANT”

ALCLEAR, LLC,
a Delaware limited liability company
authorized to do business in the State of
California

Signature

Print Name

Title

Date

CERTIFICATE OF LLC AUTHORITY

This Certificate of LLC Authority shall be executed by the manager of the limited liability company.

I, _____, certify that I am the manager of the
Name of Manager
limited liability company named in the attached agreement;

that _____ signed the agreement on behalf of the limited
Name of Person that Signed Agreement

liability company as the _____ of the limited liability
Title of Person that Signed Agreement

company; and that the agreement was duly signed for and on behalf of the limited liability company by authority of its members, and is within the scope of its limited liability company powers.

By: _____

Name: _____

Its: Manager

Date: _____