

EXHIBIT
"A"

ECONOMIC DEVELOPMENT PROGRAM AGREEMENT

This Economic Development Program Agreement ("Agreement") is entered into this ____ day of June, 2013, by and between the **City of Round Rock, Texas**, a Texas home rule municipal corporation ("City"), and **ClearCorrect Operating, LLC**, a Texas limited liability company ("ClearCorrect").

WHEREAS, the City has adopted Resolution No. _____, attached as Exhibit A ("City Resolution"), establishing an economic development program and authorizing the Mayor to enter into this Agreement with ClearCorrect in recognition of the positive economic benefits to the City through ClearCorrect's leasing space in the Chandler Creek Business Park in the City and locating one of its facilities ("Facility") in said lease space; and

WHEREAS, ClearCorrect will employ at least 100 employees in the Facility; and

WHEREAS, ClearCorrect will invest a minimum of \$1,500,000 in tenant improvements and real and personal property in the Facility within six (6) months of signing a lease for the Facility; and

WHEREAS, the purpose of this Agreement is to promote economic development as contemplated by Chapter 380 of the Texas Local Government Code whereby ClearCorrect will expend significant sums to construct and install improvements to the Facility and lease, occupy, and operate the Facility in conformance with the City's development approvals for the Facility; and

WHEREAS, the City agrees to provide performance based economic development grants to ClearCorrect to pay and/or reimburse ClearCorrect's expenses with respect to moving, and any other costs or expenses other than the Improvements;

NOW, THEREFORE, in consideration of the mutual benefits and promises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and ClearCorrect agree as follows:

- 1. Authority.** The City's execution of this Agreement is authorized by Chapter 380 of the Texas Local Government Code, and the City Resolution, and constitutes a valid and binding obligation of the City in the event ClearCorrect proceeds with the lease and occupation of the Facility. The City acknowledges that ClearCorrect is acting in reliance upon the City's performance of its obligations under this Agreement in making its decision to commit substantial resources and money to lease, improve and occupy the Facility.
- 2. Definitions.**
 - 2.1 "Economic Incentive Payment(s)" ("EIPs")** means the amount paid by the City to ClearCorrect under the Program.

- 2.2 **“Effective Date”** is the date this Agreement is executed to be effective by the City and ClearCorrect.
- 2.3 **“Facility”** means the lease space located in the Chandler Creek Business Park, Building H1, 21 Cypress Blvd., Round Rock, Texas.
- 2.4 **“Improvements”** means the finish out of and additions to the Facility, and personal property and equipment with a minimum cost of one million five hundred thousand dollars (\$1,500,000).
- 2.5 **“Program”** means the economic development program established by the City pursuant to Chapter 380 of the Texas Local Government Code and under the City Resolution to promote local economic development and stimulate business and commercial activity within the City.
- 2.6 **“Recapture Liability”** means the total amount of all EIP’s that are paid as a result of this Agreement that are subject to recapture by the City from ClearCorrect in the event of a ClearCorrect default.
3. **Term.** This Agreement shall become enforceable upon its Effective Date and shall terminate on December 31, 2023.
4. **Rights and Obligations of ClearCorrect.**
- 4.1 Lease of Facility. ClearCorrect agrees to provide City with documentation showing that it has leased the Facility until at least July 31, 2023.
- 4.2 Improvements. ClearCorrect agrees to spend at least one million five hundred thousand (\$1,500,000) to construct and finish out the Facility and/or install the Improvements. ClearCorrect agrees to provide City with documentation showing that this obligation has been satisfied. City shall have the right to audit ClearCorrect’s records to verify that this obligation has been satisfied.
- 4.3 Jobs.
- 4.3.1 Initial Jobs. Within one hundred eighty (180) days after it receives a Certificate of Occupancy from the City for the Facility, ClearCorrect agrees to employ in the Facility at least 100 full-time employees at an average annual salary of \$45,000, plus an industry standard benefit package.
- 4.3.2 Employee Reports. ClearCorrect agrees to provide to the City annual employee reports within sixty (60) days following the end of each calendar year during the term of this Agreement. City shall have the right to audit ClearCorrect’s records to verify that this obligation has been satisfied.

- 4.4 Compliance with regulations. ClearCorrect agrees that it will comply with the City's development approval processes and shall lease the Facility and construct and install the Improvements and occupy and operate the Facility consistent with City ordinances, development regulations and requirements.
- 4.5 Continuous operation. ClearCorrect agrees that it will continuously operate the Facility and employ at least 100 employees during the term of this Agreement, including any extensions.

5. Rights and Obligations of the City.

In consideration of ClearCorrect's compliance with this Agreement, the City agrees as follows:

5.1 Economic Incentive Payments ("EIP's").

5.1.1 Initial EIP. City shall, subject to ClearCorrect's satisfaction of its obligations set forth in Section 4 above and the other conditions set out herein, make an initial EIP to ClearCorrect in the amount of one hundred twenty thousand dollars (\$120,000). This initial EIP shall be made within thirty (30) days after ClearCorrect has executed a lease for the Facility and provided the documentation required by Section 4.1 above, but subject to the City receiving documentary evidence of expenses with respect to moving, and any other costs or expenses other than the Improvements at least equal to the initial EIP.

5.1.2 Additional EIP's for Job Creation. Thereafter, subject to ClearCorrect's satisfaction of its obligations set forth in Section 4 above and the other conditions set out herein, and subject to ClearCorrect not being in default of this Agreement, City shall pay an additional EIP of \$1,000 for each new employee in excess of 120. The total of additional EIP's for job creation shall not exceed \$30,000.00.

5.1.3 EIP's Subject to Future Appropriations. This Agreement shall not be construed as a commitment, issue or obligation of any specific taxes or tax revenues for payment to ClearCorrect. All EIP's by the City under this Agreement are subject to the City's appropriation of funds for such payments in the budget year for which they are made. The EIP's to be made to ClearCorrect, if paid, shall be made solely from annual appropriations from the general funds of the City or from such other funds of the City as may be legally set aside for the implementation of Article III, Section 52a of the Texas Constitution or Chapter 380 of the Local Government Code or any other economic development or financing program authorized by statute or home rule powers of the City under applicable Texas law, subject to any applicable limitations or procedural requirements. In the event that the City does not appropriate funds in any fiscal year for EIP's due under this Agreement, such failure shall not be considered a default under Section 7.3, and the City shall not be liable to ClearCorrect for such EIP's, however, (a) the City shall extend this Agreement until such time as appropriations are sufficient with respect thereto, and (b) ClearCorrect shall have

first priority in payment of any EIP's that may otherwise be due to any other party for which the City has become obligated after the Effective Date. The City does not foresee that appropriations will be insufficient with respect to the City's obligations to pay the EIP's. In addition, ClearCorrect shall have the right but not the obligation to rescind this Agreement. To the extent there is a conflict between this paragraph and any other language or covenant in this Agreement, this paragraph shall control.

5.2 Permitting.

5.2.1 Waiver of Fees. The City agrees to waive all building permit fees associated with the Improvements.

5.2.2 Expedited Review. The City shall cooperate with ClearCorrect to expeditiously process all City permit applications and City inspections.

6. EIP Recapture. In the event that ClearCorrect is in default of this Agreement, the City may recapture and collect from ClearCorrect the Recapture Liability after providing ClearCorrect written notice and a minimum period of thirty (30) days to cure such default, and the default has not been cured within said time. In the event ClearCorrect does not so cure, ClearCorrect shall pay to the City the Recapture Liability within thirty (30) days after the City makes demand for same, subject to any and all lawful offsets, settlements, deduction, or credits to which ClearCorrect may be entitled. The City shall have all remedies for the collection of the Recapture Liability as provided generally in the Tax Code for the collection of delinquent property taxes.

7. Miscellaneous.

7.1 Mutual Assistance. The City and ClearCorrect will do all things reasonably necessary or appropriate to carry out the terms and provisions of this Agreement.

7.2 Representations and Warranties. The City represents and warrants to ClearCorrect that the Program and this Agreement are within its authority, and that it is duly authorized and empowered to establish the Program and enter into this Agreement, unless otherwise ordered by a court of competent jurisdiction. ClearCorrect represents and warrants to the City that it has the requisite authority to enter into this Agreement.

7.3 Default. If either the City or ClearCorrect should default in the performance of any obligations of this Agreement, the other party shall provide such defaulting party written notice of the default, and a minimum period of thirty (30) days to cure such default, prior to instituting an action for breach or pursuing any other remedy for default. If the City remains in default after notice and opportunity to cure, ClearCorrect shall have the right to pursue any remedy at law or in equity for the City's breach. If ClearCorrect remains in default after notice and opportunity to cure, City shall have the right to pursue any remedy at law or in equity for ClearCorrect's breach, in addition to the right of EIP recapture set forth above.

- 7.4 Attorney's Fees. In the event any legal action or proceeding is commenced in a court of competent jurisdiction between the City and ClearCorrect to enforce provisions of this Agreement and recover damages for breach, the prevailing party in such legal action shall be entitled to recover its reasonable attorney's fees and expenses incurred by reason of such action, to the extent allowed by law.
- 7.5 Entire Agreement. This Agreement contains the entire agreement between the parties. This Agreement may only be amended, altered or revoked by written instrument signed by the City and ClearCorrect.
- 7.6 Binding Effect. This Agreement shall be binding on and inure to the benefit of the parties, their respective successors and assigns.
- 7.7 Assignment. ClearCorrect may not assign all or part of its rights and obligations to a third party without the express written consent of the City provided, however, that this Agreement may be assigned by either party without the consent of the other to an affiliate or to any third party who succeeds to substantially all of its business or assets.
- 7.8 Amendment. This Agreement may be amended by the mutual written agreement of the parties.
- 7.9 Termination. In the event ClearCorrect elects not to purchase the Facility as contemplated by this Agreement, ClearCorrect shall notify the City in writing, and this Agreement and the obligations on the part of both parties shall be deemed terminated and of no further force or effect.
- 7.10 Notice. Any notice and or statement required and permitted to be delivered shall be deemed delivered by actual delivery, facsimile with receipt of confirmation, or by depositing the same in the United States mail, certified with return receipt requested, postage prepaid, addressed to the appropriate party at the following addresses:

If to City: City of Round Rock
 221 E. Main Street
 Round Rock, TX 78664
 Attn: City Manager
 Phone: (512) 218-5400
 Email: snorewood@roundrocktexas.gov

With a required copy to:

Sheets & Crossfield
309 E. Main Street
Round Rock, TX 78664
Attn: Stephan L. Sheets
Phone: (512) 255-8877
Email: steve@scrllaw.com

If to ClearCorrect: ClearCorrect Operating, LLC
15151 Sommermeyer Street
Houston, TX 77041-5332
Attn: Jarrett Pumphrey
Phone: (713) 850-1036
Email: jpumphrey@clearcorrect.com

With required copies to:

Locke Lord LLP
2800 JPMorgan Chase Tower
600 Travis
Houston, TX 77002
Phone: (713) 226-1410
Attn: Kenneth J. Simon, Esq.
Phone: (713) 226-1410
Email: KSimon@lockelord.com

Either party may designate a different address at any time upon written notice to the other party.

- 7.11 Interpretation. Each of the parties have been represented by counsel of their choosing in the negotiation and preparation of this Agreement. Regardless of which party prepared the initial draft of this Agreement, this Agreement shall, in the event of any dispute, however its meaning or application, be interpreted fairly and reasonably and neither more strongly for or against any party.
- 7.12 Applicable Law. This Agreement is made, and shall be construed and interpreted, under the laws of the State of Texas and venue shall lie in Williamson County, Texas.
- 7.13 Severability. In the event any provisions of this Agreement are illegal, invalid or unenforceable under present or future laws, and in that event, it is the intention of the parties that the remainder of this Agreement shall not be affected. It is also the intention of the parties of this Agreement that in lieu of each clause and provision that is found to be illegal, invalid or unenforceable, a provision be added to this Agreement which is legal, valid or enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

- 7.14 Paragraph Headings. The paragraph headings contained in this Agreement are for convenience only and will in no way enlarge or limit the scope or meaning of the various and several paragraphs.
- 7.15 No Third Party Beneficiaries. This Agreement is not intended to confer any rights, privileges or causes of action upon any third party.
- 7.16 Force Majeure. Except as otherwise provided herein, an equitable adjustment shall be made for delay or failure in performing if such delay or failure is caused, prevented, or restricted by conditions beyond that Party's reasonable control (a "force majeure event"). A *force majeure* event for the purposes of this Agreement shall include, but not be limited to, acts of God, fire; explosion, vandalism; storm or similar occurrences; orders or acts of military or civil authority; litigation; changes in law, rules, or regulations outside the control of the affected Party; national emergencies or insurrections; riots; acts of terrorism; or supplier failures, shortages or breach or delay. Except as otherwise expressly provided, herein, there shall be an equitable adjustment allowed for performance under this Agreement as the result of any event of *force majeure*.
- 7.17 No Joint Venture. It is acknowledged and agreed by the parties that the terms hereof are not intended to and shall not be deemed to create any partnership or joint venture among the parties. The City, its past, present and future officers, elected officials, employees and agents of the City, do not assume any responsibilities or liabilities to any third party in connection with the development of the Facility or the design, construction or operation of any portion of the Facility.

EXECUTED to be effective as of the ____ day of _____, 2013 (the "Effective Date").

CITY OF ROUND ROCK, TEXAS,

By: _____
Alan McGraw, Mayor

APPROVED as to form:

Stephan L. Sheets, City Attorney

CLEARCORRECT OPERATING, LLC

By: _____

Its: _____

Date: _____

EXHIBIT “A” TO THE ECONOMIC DEVELOPMENT AGREEMENT

RESOLUTION NO. R-_____

WHEREAS, ClearCorrect Operating, LLC (“ClearCorrect”) has expressed to the City of Round Rock (“City”) its desire to locate a facility to the City which will provide jobs and additional tax base to the City, and

WHEREAS, §380.001 Local Government Code provides that a municipality may establish an economic development program (“Program”) to promote local economic development and to stimulate business and commercial activity in the municipality, and

WHEREAS, the City Council has determined that the Program described in Exhibit “A” will meet the goals set forth in said §380.001 and will be of mutual benefit to both parties, Now Therefore

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ROUND ROCK, TEXAS,

That the City offers to ClearCorrect a §380.001 Program in exchange for ClearCorrect locating a facility to the City, and

BE IT FURTHER RESOLVED

That the offer of the Program shall be as generally outlined in Exhibit “A” attached hereto and incorporated herein for all purposes.

The City Council hereby finds and declares that written notice of the date, hour, place and subject of the meeting at which this Resolution was adopted was posted and that such meeting was open to the public as required by law at all times during which this Resolution and the subject matter

hereof were discussed, considered and formally acted upon, all as required by the Open Meetings Act, Chapter 551, Texas Government Code, as amended.

RESOLVED this ___ day of _____, 2013.

ALAN MCGRAW, Mayor

City of Round Rock, Texas

ATTEST:

SARA L. WHITE, City Clerk

EXHIBIT A TO THE RESOLUTION
ECONOMIC DEVELOPMENT PROGRAM

The terms of the \$380,001 Economic Development Program to be offered to ClearCorrect Operating, LLC (“ClearCorrect”) in exchange for ClearCorrect's locating its existing process management facility to the City of Round Rock are as generally outlined below:

1. ClearCorrect’s obligations:
 - 1.1. ClearCorrect agrees to lease and occupy a building located at in the Chandler Creek Business Park, Building H1, 21 Cypress Blvd., Round Rock, Texas, (the “Facility”).
 - 1.2. ClearCorrect agrees to invest at least \$1.5 million in Facility improvements and personal property.
 - 1.3. ClearCorrect agrees to employ at least 100 full-time equivalent employees to the Facility.
2. City’s obligations:
 - 2.1. City agrees to waive City permit fees associated with building permits.
 - 2.2. City agree to expedite City approval of required permits.
 - 2.3. City agrees to make a payment to ClearCorrect of \$120,000 within 30 days of ClearCorrect’s obtaining the Certificate of Occupancy for the Facility.
 - 2.4. City agrees to make an additional payment of \$1,000 for each new employee over 120, such payments not to exceed \$30,000 total.
3. The terms and provisions of this Program will be set out in more detail in the Economic Development Program Agreement of even date herewith.