

CITY OF ONTARIO
CITY COUNCIL AND HOUSING AUTHORITY
AGENDA
DECEMBER 15, 2015, AT 6:30 P.M., BALLROOM A

Paul S. Leon
Mayor

Debra Dorst-Porada
Mayor pro Tem

Alan D. Wapner
Council Member

Jim W. Bowman
Council Member

Paul Vincent Avila
Council Member



Al C. Boling
City Manager

John E. Brown
City Attorney

Mary E. Wirtes, MMC
City Clerk

James R. Milhiser
Treasurer

WELCOME to a meeting of the Ontario City Council.

- All documents for public review are on file with the Records Management/City Clerk's Department located at 303 East B Street, Ontario, CA 91764.
- Anyone wishing to speak during public comment or on a particular item will be required to fill out a blue slip. Blue slips must be turned in prior to public comment beginning or before an agenda item is taken up. The Clerk will not accept blue slips after that time.
- Comments will be limited to 3 minutes. Speakers will be alerted when they have 1 minute remaining and when their time is up. Speakers are then to return to their seats and no further comments will be permitted.
- In accordance with State Law, remarks during public comment are to be limited to subjects within Council's jurisdiction. Remarks on other agenda items will be limited to those items.
- Remarks from those seated or standing in the back of chambers will not be permitted. All those wishing to speak including Council and Staff need to be recognized by the Chair before speaking.

ORDER OF BUSINESS The regular City Council and Housing Authority meeting begins with Closed Session and Closed Session Comment at 6:00 p.m., Public Comment at 6:30 p.m. immediately followed by the Regular Meeting and Public Hearings. No agenda item will be introduced for consideration after 10:00 p.m. except by majority vote of the City Council.

(EQUIPMENT FOR THE HEARING IMPAIRED AVAILABLE IN THE RECORDS MANAGEMENT OFFICE)

CALL TO ORDER (*OPEN SESSION*)

6:00 p.m.

ROLL CALL

Dorst-Porada, Wapner, Bowman, Avila, Mayor/Chairman Leon

CLOSED SESSION PUBLIC COMMENT The Closed Session Public Comment portion of the Council/Housing Authority meeting is limited to a maximum of 3 minutes for each speaker and comments will be limited to matters appearing on the Closed Session. Additional opportunities for further Public Comment will be given during and at the end of the meeting.

CLOSED SESSION

- GC 54956.9 (d)(1), CONFERENCE WITH LEGAL COUNSEL, EXISTING LITIGATION: *City of Ontario v. City of Los Angeles, Los Angeles World Airports, and Los Angeles Board of Airport Commissioners, RIC 1306498.*

In attendance: Dorst-Porada, Wapner, Bowman, Avila, Mayor/Chairman Leon

PLEDGE OF ALLEGIANCE

Mayor pro Tem Dorst-Porada

INVOCATION

Pastor Mike Urciuoli, Calvary Chapel Ontario

REPORT ON CLOSED SESSION

City Attorney

PUBLIC COMMENTS

6:30 p.m.

The Public Comment portion of the Council/Housing Authority meeting is limited to 30 minutes with each speaker given a maximum of 3 minutes. An opportunity for further Public Comment may be given at the end of the meeting. Under provisions of the Brown Act, Council is prohibited from taking action on oral requests.

As previously noted -- if you wish to address the Council, fill out one of the blue slips at the rear of the chambers and give it to the City Clerk.

AGENDA REVIEW/ANNOUNCEMENTS The City Manager will go over all updated materials and correspondence received after the Agenda was distributed to ensure Council Members have received them. He will also make any necessary recommendations regarding Agenda modifications or announcements regarding Agenda items to be considered.

CONSENT CALENDAR

All matters listed under CONSENT CALENDAR will be enacted by one motion in the form listed below – there will be no separate discussion on these items prior to the time Council votes on them, unless a member of the Council requests a specific item be removed from the Consent Calendar for a separate vote.

Each member of the public wishing to address the City Council on items listed on the Consent Calendar will be given a total of 3 minutes.

1. APPROVAL OF MINUTES

Minutes for the regular meeting of the City Council and Housing Authority of November 17, 2015, approving same as on file in the Records Management Department.

2. BILLS/PAYROLL

Bills October 18, 2015 through October 31, 2015 and **Payroll** October 18, 2015 through October 31, 2015, when audited by the Finance Committee.

3. A RESOLUTION ORDERING THE SUMMARY VACATION OF A PUBLIC SEWER EASEMENT

That the City Council adopt a resolution ordering the summary vacation of a 66-foot wide public sewer easement located within the property at 320 East D Street.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
ONTARIO, CALIFORNIA, ORDERING THE SUMMARY VACATION
OF A PUBLIC SEWER EASEMENT.

**4. A RESOLUTION AUTHORIZING SUBMITTAL OF GRANT APPLICATIONS TO THE
DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY (CALRECYCLE)
RUBBERIZED PAVEMENT GRANT PROGRAM PURSUANT TO SECTIONS 42872 AND 42873
OF THE PUBLIC RESOURCES CODE; AND AUTHORIZING THE CITY MANAGER TO
EXECUTE SAID APPLICATIONS**

That the City Council approve a resolution authorizing submittal of Grant Applications to the Department of Resources Recycling and Recovery (CalRecycle) Rubberized Pavement Program pursuant to Sections 42872 and 42873 of the Public Resources Code; and authorize the City Manager to execute said applications.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
ONTARIO, CALIFORNIA, APPROVING A \$250,000 GRANT
APPLICATION TO THE DEPARTMENT OF RESOURCES
RECYCLING AND RECOVERY RUBBERIZED PAVEMENT GRANT
PROGRAM PURSUANT TO SECTIONS 42872 AND 42873 OF THE
PUBLIC RESOURCES CODE.

**5. AWARD OF BIDS FOR THE PURCHASE OF REPLACEMENT FLEET
VEHICLES/LOS ANGELES TRUCK CENTER, LLC**

That the City Council take the following actions:

- (A) Award Bid No. 595 for the purchase and delivery of three (3) CNG Front Loading Refuse Trucks for the Solid Waste Department to Los Angeles Truck Centers, LLC of Whittier, CA in the amount of \$831,751 and rescind Bid No. 577 Item C10; and
- (B) Award Bid No. 596 for the purchase and delivery of two (2) 4000 Gallon CNG Water Trucks for the Parks and Maintenance Department to Los Angeles Truck Centers, LLC of Whittier, CA in the amount of \$403,597.

**6. AN ORDINANCE LEVYING SPECIAL TAXES WITHIN CITY OF ONTARIO COMMUNITY
FACILITIES DISTRICT NO. 34 (COUNTRYSIDE PHASE 1 NORTH - FACILITIES)**

That the City Council consider and adopt an ordinance authorizing the levy of special taxes within City of Ontario Community Facilities District No. 34 (Countryside Phase 1 North - Facilities).

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, LEVYING SPECIAL TAXES WITHIN THE CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 34 (COUNTRYSIDE PHASE 1 NORTH - FACILITIES).

7. ACCEPT WRITTEN PETITION TO CREATE A COMMUNITY FACILITIES DISTRICT; ADOPT A RESOLUTION OF INTENTION TO ESTABLISH CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 37 (PARK & TURNER NE SERVICES); AND TO AUTHORIZE THE ASSOCIATED LEVY OF SPECIAL TAXES

That the City Council:

- (A) Accept a written petition (on file with the Records Management Department) from Ontario Edison Holdings, LLC (the “Landowner”), to create a community facilities district (“CFD”), and to waive certain procedural matters, under the Mello-Roos Community Facilities Act of 1982; and
- (B) Adopt a Resolution of Intention to establish City of Ontario Community Facilities District No. 37 (Park & Turner NE Services); authorize the associated levy of special taxes therein; and set a public hearing for the formation of the CFD as part of the regularly scheduled City Council meeting scheduled for Tuesday, February 2, 2016.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, OF INTENTION TO ESTABLISH A COMMUNITY FACILITIES DISTRICT PROPOSED TO BE NAMED CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 37 (PARK & TURNER NE SERVICES) AND TO AUTHORIZE THE LEVY OF SPECIAL TAXES.

PUBLIC HEARINGS

Pursuant to Government Code Section 65009, if you challenge the City’s zoning, planning or any other decision in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City Council at, or prior to the public hearing.

8. PUBLIC HEARINGS REGARDING ECONOMIC DEVELOPMENT SUBSIDY REPORTS AND OPERATING COVENANT AGREEMENTS BETWEEN THE CITY OF ONTARIO AND (A) HENRY SCHEIN, INC., (B) STAPLES CONTRACT & COMMERCIAL, INC., AND (C) SIGMANET INTERNET, INC., PURSUANT TO GOVERNMENT CODE SECTION 53083; AND CONSIDERATION OF RESOLUTIONS ACCEPTING THE ECONOMIC DEVELOPMENT SUBSIDY REPORTS, APPROVING THE OPERATING COVENANT AGREEMENTS AND MAKING RELATED FINDINGS

That the City Council take the following actions with regard to:

(A) Operating Covenant Agreement between the City of Ontario and Henry Schein, Inc.

- (1) Hold the public hearing;
- (2) Adopt a resolution accepting the Economic Development Subsidy Report prepared pursuant to Government Code Section 53083 regarding an Operating Covenant Agreement (on file with the Records Management Department) by and between the City of Ontario and Henry Schein, Inc., a Delaware Corporation;
- (3) Adopt a resolution approving the Operating Covenant Agreement for no less than twenty years, with the option to exercise the unilateral right to extend the term of the Agreement for an additional twenty years, authorizing the City Manager to execute the Operating Covenant Agreement, and making related findings; and
- (4) Direct City staff to file a Notice of Determination based upon the City Council's finding that the impacts for this existing facility were previously analyzed in the Ontario Center Specific Plan Final Environmental Impact Report (SCH #89041009) that was certified by the City Council in March 1991.

(B) Operating Covenant Agreement between the City of Ontario and Staples Contract & Commercial, Inc.

- (1) Hold the public hearing;
- (2) Adopt a resolution accepting the Economic Development Subsidy Report prepared pursuant to Government Code Section 53083 regarding an Operating Covenant Agreement (on file with the Records Management Department) by and between the City of Ontario and Staples Contract & Commercial, Inc. ("Staples"), a Delaware Corporation;
- (3) Adopt a resolution approving the Operating Covenant Agreement, authorizing the City Manager to execute the Operating Covenant Agreement, and making related findings; and
- (4) Direct City staff to file a Notice of Determination based upon the City Council's finding that the impacts for this existing facility were previously analyzed in the California Commerce Center Final Environmental Impact Report (SCH #85061007) that was certified by the City Council in January 1983.

(C) Operating Covenant Agreement between the City of Ontario and SIGMANet Internet, Inc.

- (1) Hold the public hearing;
- (2) Adopt a resolution accepting the Economic Development Subsidy Report prepared pursuant to Government Code Section 53083 regarding an Operating Covenant Agreement (on file with the Records Management Department) by and between the City of Ontario and SIGMANet Internet, Inc. ("SIGMANet"), a California Corporation;

- (3) Adopt a resolution approving the Operating Covenant Agreement, authorizing the City Manager to execute the Operating Covenant Agreement, and making related findings; and
- (4) Direct City staff to file a Notice of Determination based upon the City Council's finding that the impacts for this existing facility were previously analyzed in the California Commerce Center Final Environmental Impact Report (SCH #85061007) that was certified by the City Council in January 1983.

Notice of public hearing has been duly given and affidavits of compliance are on file in the Records Management Department.

Written communication.

Oral presentation.

Public hearing closed.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ACCEPTING THE ECONOMIC DEVELOPMENT SUBSIDY REPORT PREPARED PURSUANT TO GOVERNMENT CODE SECTION 53083 REGARDING THE DEVELOPMENT OF A REGIONAL SALES OFFICE BY HENRY SCHEIN, INC. IN THE CITY OF ONTARIO.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING THE OPERATING COVENANT AGREEMENT BETWEEN THE CITY OF ONTARIO AND HENRY SCHEIN, INC. AND MAKING RELATED FINDINGS.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ACCEPTING THE ECONOMIC DEVELOPMENT SUBSIDY REPORT PREPARED PURSUANT TO GOVERNMENT CODE SECTION 53083 REGARDING AN OPERATING COVENANT AGREEMENT BY AND BETWEEN THE CITY OF ONTARIO AND STAPLES CONTRACT AND COMMERCIAL, INC.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING THE OPERATING COVENANT AGREEMENT BETWEEN THE CITY OF ONTARIO AND STAPLES CONTRACT AND COMMERCIAL, INC. AND MAKING RELATED FINDINGS.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ACCEPTING THE ECONOMIC DEVELOPMENT SUBSIDY REPORT PREPARED PURSUANT TO GOVERNMENT CODE SECTION 53083 REGARDING AN OPERATING COVENANT AGREEMENT BY AND BETWEEN THE CITY OF ONTARIO AND SIGMANET INTERNET, INC.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING THE OPERATING COVENANT AGREEMENT BETWEEN THE CITY OF ONTARIO AND SIGMANET INTERNET, INC. AND MAKING RELATED FINDINGS.

9. A PUBLIC HEARING TO CONSIDER A DEVELOPMENT CODE AMENDMENT TO REVISE SECTION 9-1.3176, BILLBOARD RELOCATION AGREEMENTS, TO INCLUDE AN "INTERAGENCY RELOCATION EXCEPTION" TO PERMIT THE RELOCATION OF BILLBOARDS WITHIN THE CITY OF ONTARIO, PROVIDED THE BILLBOARDS MEET CERTAIN LOCATIONAL CRITERIA AND FINDINGS AND INCLUDE THE ELIMINATION OF OTHER BILLBOARDS WITHIN THE CITY

That the City Council introduce and waive further reading of an ordinance approving File No. PDCA15-002, amending Section 9-1.3176, Billboard Relocation Agreements, to include an "Interagency Relocation Exception" to permit the relocation of billboards within the City of Ontario, provided the billboards meet certain locational criteria and findings and include the elimination of other billboards within the City.

Notice of public hearing has been duly given and affidavits of compliance are on file in the Records Management Department.

Written communication.

Oral presentation.

Public hearing closed.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PDCA15-002, A REQUEST TO AMEND SECTION 9-1.3176 (SECTION 4.02.010 OF THE DEVELOPMENT CODE UPDATE), BILLBOARD RELOCATION AGREEMENTS, TO INCLUDE AN "INTERAGENCY RELOCATION EXCEPTION" TO RELOCATE BILLBOARDS TO THE CITY OF ONTARIO, PROVIDED THE BILLBOARDS MEET CERTAIN

LOCATIONAL CRITERIA AND FINDINGS AND INCLUDE THE
ELIMINATION OF OTHER BILLBOARDS WITHIN THE CITY.

STAFF MATTERS

City Manager Boling

COUNCIL MATTERS

Mayor Leon
Mayor pro Tem Dorst-Porada
Council Member Wapner
Council Member Bowman
Council Member Avila

ADJOURNMENT

**CITY OF ONTARIO
CLOSED SESSION REPORT**

City Council // Housing Authority // Other // (GC 54957.1)
December 15, 2015

ROLL CALL: Dorst-Porada __, Wapner __, Bowman __, Avila __ Mayor / Chairman Leon __.

STAFF: City Manager / Executive Director __, City Attorney __

In attendance: Dorst-Porada __, Wapner __, Bowman __, Avila __, Mayor / Chairman Leon __

- GC 54956.9 (d)(1), CONFERENCE WITH LEGAL COUNSEL, EXISTING LITIGATION: *City of Ontario v. City of Los Angeles, Los Angeles World Airports, and Los Angeles Board of Airport Commissioners, RIC 1306498.*

No Reportable Action

Continue

Approved

/ /

/ /

/ /

Disposition: _____

Reported by: _____
City Attorney / City Manager / Executive Director

CITY OF ONTARIO

Agenda Report

December 15, 2015

SECTION:
CONSENT CALENDAR

SUBJECT: A RESOLUTION ORDERING THE SUMMARY VACATION OF A PUBLIC SEWER EASEMENT

RECOMMENDATION: That the City Council adopt a resolution ordering the summary vacation of a 66-foot wide public sewer easement located within the property at 320 East D Street.

COUNCIL GOALS: Regain Local Control of the Ontario International Airport
Invest in the City's Infrastructure (Water, Streets, Sewers, Parks, Storm Drains and Public Facilities)

FISCAL IMPACT: None. The City will not incur any cost by vacating this public easement. The applicant has paid the applicable processing fees to defray the City's cost to process this request.

BACKGROUND: The applicant, The University of La Verne has requested that the City vacate the 66-foot wide public sewer easement located in Parcel 1 of Parcel Map 15245 as shown on Exhibit 1 of this report. The subject easement was originally dedicated to the City for sewer purposes; however, the existing sewer line has been relocated. Therefore, the subject easement is not needed for any present or future utility purposes.


Sections 8333(c) of the California Streets and Highways Code authorize the City to summarily vacate (by resolution with no public hearing) a public service easement that has been superseded by relocation or determined to be excess and there are no other public facilities located within the easement.

STAFF MEMBER PRESENTING: Louis Abi-Younes, P.E., City Engineer

Prepared by: Bryan Lirley, P.E.

Department: Engineering

City Manager

Approval: 

Submitted to Council/O.H.A. 12/15/2015

Approved: _____

Continued to: _____

Denied: _____

D ST
C ST
B ST
EUCLID AVE
PLUM AVE
HOLT BLVD
CHERRY AVE
SULTANA AVE
SITE
N.T.S.
VICINITY MAP



RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO,
CALIFORNIA, ORDERING THE SUMMARY VACATION OF A PUBLIC
SEWER EASEMENT.

WHEREAS, the City Council of the City of Ontario, California, pursuant to Division 9, Part 3, Chapter 4, of the Streets and Highways Code, may summarily vacate an easement under certain conditions specified therein; and

WHEREAS, the public sewer easement over Parcel 1 of Parcel Map 15245 filed in Map Book 188, Pages 93 thru 95 of official records, in the City of Ontario, County of San Bernardino, State of California, in the County Recorder's Office of said County and located approximately 360-feet west of Sultana Avenue, has no public sewer due to the relocation of the public sewer line and is not needed for present or future sewer purposes; and

WHEREAS, Section 8333(c) of the California Streets and Highways Code authorize the City to summarily vacate (by resolution with no public hearing) a public service easement that has been superseded by relocation or determined to be excess and there are no other public facilities located within the easement; and

WHEREAS, the property owner, The University of La Verne, has requested a vacation of said easement.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Ontario, California:

1. That the above recitals are true and correct.
2. That title to the above-described said easement, more specifically described in Exhibit "A" and depicted on Exhibit "B", shall be vacated.
3. That the City Clerk of the City of Ontario, California, shall cause a copy of this Resolution to be recorded in the office of the County Recorder of San Bernardino County, California.

The City Clerk of the City of Ontario shall certify as to the adoption of this Resolution.

PASSED, APPROVED, AND ADOPTED this 15th day of December 2015.

PAUL S. LEON, MAYOR

ATTEST:

MARY E. WIRTES, MMC, CITY CLERK

APPROVED AS TO LEGAL FORM:

BEST BEST & KRIEGER LLP
CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF ONTARIO)

I, MARY E. WIRTES, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2015- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held December 15, 2015 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

The foregoing is the original of Resolution No. 2015- duly passed and adopted by the Ontario City Council at their regular meeting held December 15, 2015.

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

EXHIBIT A
LEGAL DESCRIPTION
V-268

THOSE PORTIONS OF THE PUBLIC SEWER EASEMENT RESERVED IN THE VACATION OF CHERRY AVENUE AND ALLEY PER CITY COUNCIL OF CITY OF ONTARIO RESOLUTION NO. 7853, RECORDED IN BOOK 8867, PAGE 1037 THROUGH 1039, ON FEBRUARY 20, 1976, WHICH IS ALSO SHOWN IN PARCEL 1 OF PARCEL MAP 15245, MAP BOOK 188, PAGES 93 THRU 95 OF OFFICIAL RECORDS, IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA; DESCRIBED AS FOLLOWS.

PARCEL A

THAT PORTION OF VACATED PORTION OF CHERRY AVENUE 66 FEET WIDE BETWEEN C STREET AND D STREET.

CONTAINING 25689 SQUARE FEET, MORE OR LESS.

PARCEL B

THE WEST 39.50 FEET OF THAT PORTION OF THE VACATED ALLEY 20 FEET WIDE BETWEEN THE EAST RIGHT OF WAY OF SAID VACATED CHERRY AVENUE AND THE WESTERLY LINE OF THE PUBLIC STORM DRAIN EASEMENT GRANTED TO THE CITY OF ONTARIO, AS RECORDED BOOK 9225, PAGE 1933 OF OFFICIAL RECORDS.:

CONTAINING 790 SQUARE FEET, MORE OR LESS.

SEE EXHIBIT B ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF.

THIS DESCRIPTION WAS PREPARED UNDER MY DIRECTION:

DATE: 11-5-2015

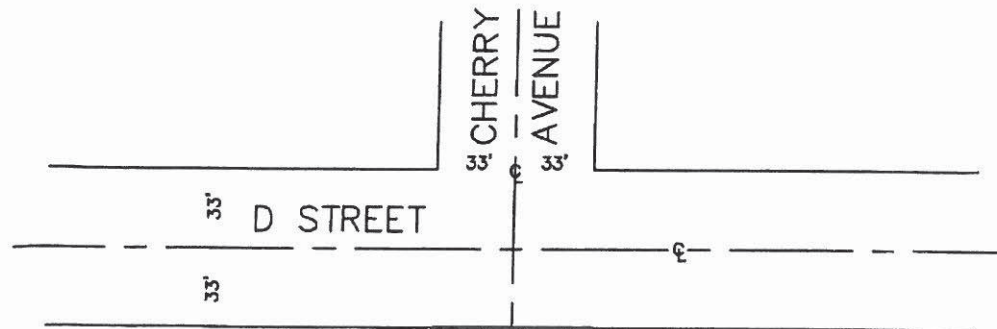


SATURNINO T. BASUIL, PLS 5398

REVIEWED FOR CITY OF ONTARIO BY HARRIS & ASSOCIATES



EXHIBIT "B"
PUBLIC SEWER EASEMENT VACATION
V-268

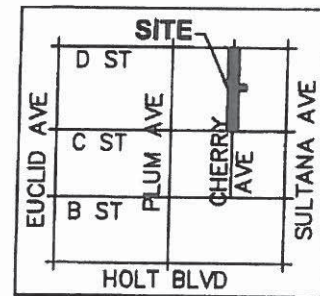


APN: 1048-541-15

PARCEL "1"

PARCEL MAP NO. 15245

P.M.B. 188 / 93 - 95



VICINITY MAP

LEGEND



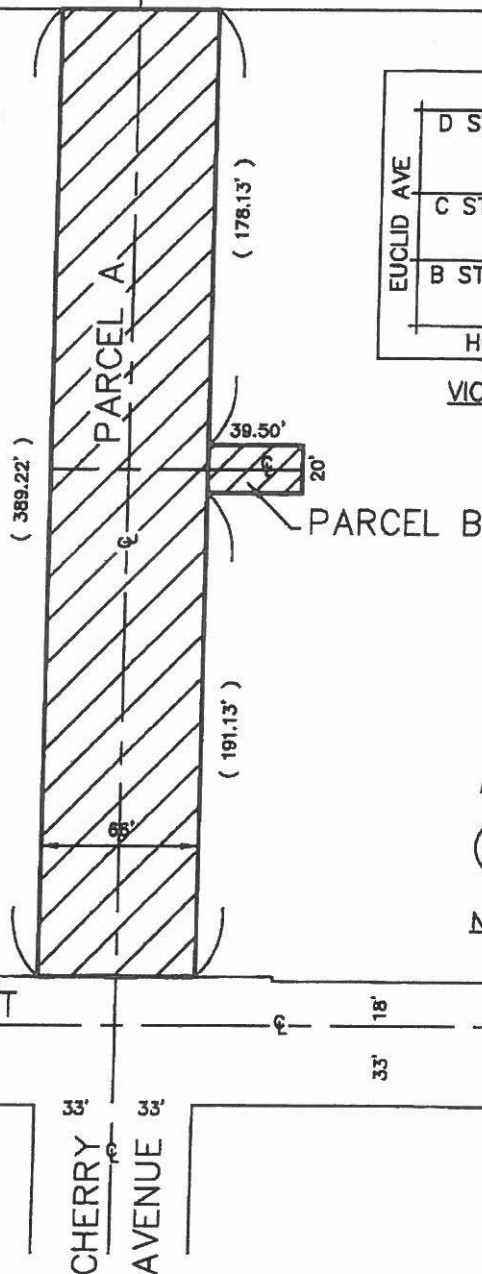
INDICATES PROPOSED VACATION
OF EXISTING PUBLIC SEWER
EASEMENT PER CITY RESOLUTION
NO. 7853, BK 8867/1037-1039

NOTE: ONLY VACATED AREAS OF
PARCELS A AND B ARE SHOWN
HEREON.

() RECORD DATA PER PM NO. 15245
MB 188/93-95

PARCEL A = 25,689 SF, MORE OR LESS

PARCEL B = 790 SF, MORE OR LESS



CITY OF ONTARIO

Agenda Report
December 15, 2015

SECTION:
CONSENT CALENDAR

SUBJECT: A RESOLUTION AUTHORIZING SUBMITTAL OF GRANT APPLICATIONS TO THE DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY (CALRECYCLE) RUBBERIZED PAVEMENT GRANT PROGRAM PURSUANT TO SECTIONS 42872 AND 42873 OF THE PUBLIC RESOURCES CODE; AND AUTHORIZING THE CITY MANAGER TO EXECUTE SAID APPLICATIONS

RECOMMENDATION: That the City Council approve a resolution authorizing submittal of Grant Applications to the Department of Resources Recycling and Recovery (CalRecycle) Rubberized Pavement Program pursuant to Sections 42872 and 42873 of the Public Resources Code; and authorize the City Manager to execute said applications.

COUNCIL GOALS: Regain Local Control of the Ontario International Airport
Invest in the Growth and Evolution of the City's Economy
Invest in the City's Infrastructure (Water, Streets, Sewers, Parks, Storm Drains and Public Facilities)

FISCAL IMPACT: The subject grant provides for reimbursement to the City for up to \$250,000 for FY 2015-16. The grant is to supplement the cost for usage of Rubberized Asphalt, which includes use of recycled tires. If the grant is awarded to Ontario, appropriations and corresponding revenue will be included in future quarterly budget reports for City Council approval.

BACKGROUND: The Department of Resources Recycling offers grant programs to promote markets for rubberized pavement products derived from one hundred percent (100%) recycled California-generated waste tires. The Rubberized Asphalt Concrete Project grant program is designed to encourage use of rubberized pavement, which utilizes crumb rubber from recycled tires. CalRecycle provides funding on a competitive basis to local governments and are paid on a reimbursement basis. Grant funds are determined by the amount of Rubberized Asphalt placed and cost differential for rubberized asphalt versus conventional asphalt. Matching funds are not required. It is noted that the City has been using Recycled Rubberized Asphalt for more than 10 years.

STAFF MEMBER PRESENTING: Louis Abi-Younes, P.E., City Engineer

Prepared by: Bill Braun
Department: Engineering

City Manager
Approval: 

Submitted to Council/O.H.A. 12/15/2015

Approved: _____

Continued to: _____

Denied: _____

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING A \$250,000 GRANT APPLICATION TO THE DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY RUBBERIZED PAVEMENT GRANT PROGRAM PURSUANT TO SECTIONS 42872 AND 42873 OF THE PUBLIC RESOURCES CODE.

WHEREAS, Public Resources Code sections 40000et seq. authorize the Department of Resources Recycling and Recovery (CalRecycle), to administer various Grant Programs (grants) in furtherance of the state of California's (State) efforts to reduce, recycle and reuse solid waste generated in the State thereby preserving landfill capacity and protecting public health and safety and the environment; and

WHEREAS, in furtherance of this authority CalRecycle is required to establish procedures governing the application, awarding, and management of the grants; and

WHEREAS, CalRecycle grant application procedures require, among other things, an Applicant's governing body to declare by Resolution certain authorizations related to the administration of CalRecycle grants.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Ontario authorizes the submittal of applications to CalRecycle for Rubber Asphalt Concrete grant program; and

BE IT FURTHER RESOLVED that the City Manager, or his designee is hereby authorized and empowered to execute in the name of the City of Ontario all grant documents, including but not limited to, applications, agreements and requests for payment, necessary to secure grant funds and implement the approved grant project; and

BE IT FURTHER RESOLVED that these authorizations are effective for five (5) years from the date of adoption of this resolution.

The City Clerk of the City of Ontario shall certify as to the adoption of this Resolution.

PASSED, APPROVED, AND ADOPTED this 15th day of December 2015.

PAUL S. LEON, MAYOR

ATTEST:

MARY E. WIRTES, MMC, CITY CLERK

APPROVED AS TO LEGAL FORM:

BEST BEST & KRIEGER LLP
CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF ONTARIO)

I, MARY E. WIRTES, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2015- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held December 15, 2015 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

The foregoing is the original of Resolution No. 2015- duly passed and adopted by the Ontario City Council at their regular meeting held December 15, 2015.

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

CITY OF ONTARIO

Agenda Report

December 15, 2015

SECTION: CONSENT CALENDAR

SUBJECT: AWARD OF BIDS FOR THE PURCHASE OF REPLACEMENT FLEET VEHICLES

RECOMMENDATION: That the City Council take the following actions:

- (A) Award Bid No. 595 for the purchase and delivery of three (3) CNG Front Loading Refuse Trucks for the Solid Waste Department to Los Angeles Truck Centers, LLC of Whittier, CA in the amount of \$831,751 and rescind Bid No. 577 Item C10; and
- (B) Award Bid No. 596 for the purchase and delivery of two (2) 4000 Gallon CNG Water Trucks for the Parks and Maintenance Department to Los Angeles Truck Centers, LLC of Whittier, CA in the amount of \$403,597.

COUNCIL GOALS: Regain Local Control of the Ontario International Airport
Maintain the Current High Level of Public Safety
Operate in a Businesslike Manner


FISCAL IMPACT: The Fiscal Year 2015-16 Adopted Budget includes appropriations in the amount of \$1,325,000 for the purchase of the replacement and additional vehicles listed above. The total cost of the vehicles recommended for purchase is \$1,235,348.

BACKGROUND: The vehicles recommended for replacement in this action have outlived their useful life and it is no longer cost effective to maintain them. They are between 10 and 18 years old and are scheduled for replacement pursuant to ongoing efforts to reduce expenses, maximize useful life expectancy and extend replacement cycles of fleet equipment while ensuring safe and reliable operation. The additional

On October 20, 2015, City Council awarded Bid No. 577, Item C10 for the purchase of three CNG Autocar Front Loaders to Los Angeles Truck Centers, LLC. After the award was made it was discovered the required bid documents were not attached and the bid amount did not include all required taxes. Staff

STAFF MEMBER PRESENTING: Brent Schultz, Housing and Municipal Services Director

Prepared by: Craig Grabow
Department: Fleet Services

City Manager
Approval: 

Submitted to Council/O.H.A. 12/15/2015

Approved: _____

Continued to: _____

Denied: _____

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Staff recommends rejecting Bid No. 577 from Los Angeles Truck Centers, LLC of Whittier, CA, as non-responsive.

In November 2015, the city issued a solicitation for Bid No. 595 and 596 and received one (1) response.

(A) Bid No. 595: Three (3) CNG Front Loading Refuse Trucks for the Solid Waste Department

Three (3) CNG Front Loading Refuse Trucks		
<u>Supplier</u>	<u>Location</u>	<u>Bid Amount</u>
Los Angeles Truck Center	Whittier, CA	\$831,751

Staff recommends award to Los Angeles Truck Center LLC, located in Whittier, CA, in the amount of \$831,751 as the lowest responsive bidder to meet specifications to procure required vehicles.

(B) Bid No. 596: Two (2) CNG Water Trucks for the Parks and Maintenance Department

Two (2) CNG Water Trucks		
<u>Supplier</u>	<u>Location</u>	<u>Bid Amount</u>
Los Angeles Truck Center	Whittier, CA	\$403,597

Staff recommends award to Los Angeles Truck Center LLC, located in Whittier, CA, in the amount of \$403,597 as the lowest responsive bidder to meet specifications to procure required vehicles.

CITY OF ONTARIO

Agenda Report
December 15, 2015

**SECTION:
CONSENT CALENDAR**

**SUBJECT: AN ORDINANCE LEVYING SPECIAL TAXES WITHIN CITY OF ONTARIO
COMMUNITY FACILITIES DISTRICT NO. 34 (COUNTRYSIDE PHASE 1
NORTH - FACILITIES)**

RECOMMENDATION: That the City Council consider and adopt an ordinance authorizing the levy of special taxes within City of Ontario Community Facilities District No. 34 (Countryside Phase 1 North - Facilities).

COUNCIL GOALS: Regain Local Control of the Ontario International Airport
Focus Resources in Ontario's Commercial and Residential Neighborhoods
Ensure the Development of a Well Planned, Balanced, and Self-Sustaining Community in the New Model Colony

FISCAL IMPACT: The use of Mello-Roos financing for facilities in the residential development of the Countryside Phase 1 North – Facilities project is estimated to generate approximately \$7.5 million, which will be used to help fund a portion of the public infrastructure improvements that will serve the project. Since Mello-Roos bonds are not a direct obligation of the City, and are paid from special taxes levied on each taxable parcel in the district, there is no general fund impact from the issuance of Mello-Roos bonds.

BACKGROUND: The Mello-Roos Community Facilities Act of 1982 provided local government, with the consent from a majority of the property owners, the authority to establish community facilities districts for the purpose of levying special taxes to fund governmental services and to finance various kinds of public infrastructure facilities. On October 20, 2015, the City Council, in accordance with the Act, took initial steps in the formation of Community Facilities District No. 34 with the adoption of Resolution No. 2015-109, declaring the City's intention to establish the district and to authorize the levying of special taxes to pay for public infrastructure facilities in the district. The Resolution of Intention set the public hearing on the establishment of the District for the regularly scheduled City Council meeting of December 1, 2015 to consider formation matters. On December 1, 2015, the City

STAFF MEMBER PRESENTING: Grant D. Yee, Administrative Services/Finance Director

Prepared by: Bob Chandler
Department: Management Services

City Manager
Approval: 

Submitted to Council/O.H.A. 12/15/2015
Approved: _____
Continued to: _____
Denied: _____

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Council conducted the public hearing, adopted the resolution of formation for the District, and introduced and waived further reading of the ordinance authorizing the levy of special taxes within City of Ontario Community Facilities District No. 34 (Countryside Phase 1 North – Facilities). Adoption of the ordinance will conclude the formation process for the district.

The Countryside Phase 1 North – Facilities project addresses the development of approximately 50 gross acres located generally east of the Cucamonga Creek Channel, generally west of Archibald Avenue, south of Riverside Drive, north of Chino Avenue. At build out, the development is projected to include 226 detached units.

Included, as part of the resolutions of intention and formation, is the Rate and Method of Apportionment of Special Tax for City of Ontario Community Facilities District No. 34 (Countryside Phase 1 North – Facilities). The term and structure of the Rate and Method of Apportionment of Special Tax are consistent with the City Council's adopted Mello-Roos Local Goals and Policies in all aspects, and are consistent with those of the previously adopted Rates and Methods of Apportionment for Ontario Ranch community facilities districts. This will ensure that the special tax rates levied on all residential property owners in community facilities districts in Ontario Ranch be developed in a consistent and equivalent manner. In addition, under the provisions of the Mello-Roos Act, to ensure that home buyers are making an informed decision, all residential builders in the Ontario Ranch community facilities districts will be required to disclose the maximum annual special tax amount to each homeowner before entering into a sales contract.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, LEVYING SPECIAL TAXES WITHIN THE CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 34 (COUNTRYSIDE PHASE 1 NORTH - FACILITIES).

WHEREAS, on October 20, 2015, the City Council (the "City Council") of the City of Ontario (the "City"), pursuant to the Mello-Roos Community Facilities Act of 1982 (the "Act"), adopted a resolution entitled "A Resolution of the City Council of the City of Ontario, California, of Intention to Establish a Community Facilities District, Proposed to be Named City of Ontario Community Facilities District No. 34 (Countryside Phase 1 North - Facilities), and to Authorize the Levy of Special Taxes" stating its intention to establish City of Ontario Community Facilities District No. 34 (Countryside Phase 1 North - Facilities) (the "Community Facilities District") and to finance certain public facilities (the "Facilities") and services (the "Services"); and

WHEREAS, on December 1, 2015, the City Council held said hearing on the establishment of the Community Facilities District, as required by the Act; and

WHEREAS, subsequent to the close of said hearing, the City Council adopted resolutions entitled "A Resolution of the City Council of the City of Ontario, California, of Formation of the City of Ontario Community Facilities District No. 34 (Countryside Phase 1 North - Facilities), Authorizing the Levy of a Special Tax within the Community Facilities District and Establishing an Appropriations Limit for the Community Facilities District" (the "Resolution of Formation"), "A Resolution of the City Council of the City of Ontario, California, Deeming it Necessary to Incur Bonded Indebtedness within City of Ontario Community Facilities District No. 34 (Countryside Phase 1 North - Facilities)" and "A Resolution of the City Council of the City of Ontario, California, Calling Special Election for City of Ontario Community Facilities District No. 34 (Countryside Phase 1 North - Facilities)", which resolutions established the Community Facilities District, authorized the levy of a special tax within the Community Facilities District and called an election within the Community Facilities District on the proposition of incurring indebtedness, levying a special tax within the Community Facilities District and establishing an appropriations limit for the Community Facilities District, respectively; and

WHEREAS, on December 1, 2015, an election was held in which the qualified electors of the Community Facilities District approved said proposition by more than the two-thirds vote required by the Act;

THE CITY COUNCIL OF THE CITY OF ONTARIO DOES ORDAIN AS FOLLOWS:

SECTION 1. The City Council hereby authorizes and levies special taxes within the Community Facilities District pursuant to Sections 53328 and 53340 of the Act, at the rate and in accordance with the method of apportionment set forth in Exhibit B to the Resolution of Formation (the "Rate and Method of Apportionment"). The special

taxes are hereby levied commencing in fiscal year 2015-16 and in each fiscal year thereafter until the last fiscal year in which such special taxes are authorized to be levied pursuant to the Rate and Method of Apportionment.

SECTION 2. The City Council may, in accordance with subdivision (b) of Section 53340 of the Act, provide, by resolution, for the levy of the special tax in future tax years at the same rate or at a lower rate than the rate provided by this Ordinance. In no event shall the special tax be levied on any parcel within the Community Facilities District in excess of the maximum tax specified therefor in the Rate and Method of Apportionment.

SECTION 3. The special tax shall be levied on all of the parcels in the Community Facilities District, unless exempted by law or by the Rate and Method of Apportionment.

SECTION 4. The proceeds of the special tax shall only be used to pay, in whole or in part, the cost of providing the Facilities and Services and incidental expenses pursuant to the Act.

SECTION 5. The special tax shall be collected in the same manner as ordinary *ad valorem* property taxes are collected and shall be subject to the same penalties and the same procedure, sale and lien priority in the case of delinquency as is provided for *ad valorem* taxes, unless another procedure is adopted by the City Council.

SECTION 6. If for any reason any portion of this Ordinance is found to be invalid, or if the special tax is found inapplicable to any particular parcel within the Community Facilities District, by a court of competent jurisdiction, the balance of this Ordinance and the application of the special tax to the remaining parcels within the Community Facilities District shall not be affected.

SECTION 7. This Ordinance shall take effect and shall be in force 30 days after the date of its adoption. The Mayor shall sign this Ordinance and the City Clerk shall certify as to the adoption and shall cause a summary thereof to be published at least once, in a newspaper of general circulation in the City of Ontario, California within fifteen (15) days of the adoption. The City Clerk shall post a certified copy of this ordinance, including the vote for and against the same, in the Office of the City Clerk, in accordance with Government Code Section 36933.

The City Clerk of the City of Ontario shall certify as to the adoption of this Ordinance.

PASSED, APPROVED, AND ADOPTED this 15th day of December 2015.

PAUL S. LEON, MAYOR

ATTEST:

MARY E. WIRTES, MMC, CITY CLERK

APPROVED AS TO FORM:

BEST BEST & KRIEGER LLP
CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF ONTARIO)

I, MARY E. WIRTES, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Ordinance No. 3036 was duly introduced at a regular meeting of the City Council of the City of Ontario held December 1, 2015 and adopted at the regular meeting held December 15, 2015 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

I hereby certify that the foregoing is the original of Ordinance No. 3036 duly passed and adopted by the Ontario City Council at their regular meeting held December 15, 2015 and that Summaries of the Ordinance were published on December 8, 2015 and December 22, 2015, in the Inland Valley Daily Bulletin newspaper.

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

CITY OF ONTARIO

Agenda Report
December 15, 2015

SECTION: CONSENT CALENDAR

SUBJECT: ACCEPT WRITTEN PETITION TO CREATE A COMMUNITY FACILITIES DISTRICT; ADOPT A RESOLUTION OF INTENTION TO ESTABLISH CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 37 (PARK & TURNER NE SERVICES); AND TO AUTHORIZE THE ASSOCIATED LEVY OF SPECIAL TAXES

RECOMMENDATION: That the City Council:

- (A) Accept a written petition (on file with the Records Management Department) from Ontario Edison Holdings, LLC (the "Landowner"), to create a community facilities district ("CFD"), and to waive certain procedural matters, under the Mello-Roos Community Facilities Act of 1982; and
- (B) Adopt a Resolution of Intention to establish City of Ontario Community Facilities District No. 37 (Park & Turner NE Services); authorize the associated levy of special taxes therein; and set a public hearing for the formation of the CFD as part of the regularly scheduled City Council meeting scheduled for Tuesday, February 2, 2016.

COUNCIL GOALS: Regain Local Control of the Ontario International Airport
Focus Resources in Ontario's Commercial and Residential Neighborhoods
Ensure the Development of a Well Planned, Balanced, and Self-Sustaining Community in the New Model Colony

FISCAL IMPACT: In accordance with the City Council's long standing direction that development of the New Model Colony generate sufficient revenues to fund its required City services without reliance on the existing financial resources of the Old Model Colony, the use of Mello-Roos financing in connection with the Park & Turner NE development is projected to generate approximately \$495,000 per year, at build-out, to fund City services. As proposed, the maximum annual tax rate on each of the project's 330 single-family detached units is \$1,500. The use of Mello-Roos financing is critical in achieving the City Council's goal of "Ensure the Development of a Well Planned, Balanced, and

STAFF MEMBER PRESENTING: Grant D. Yee, Administrative Services/Finance Director

Prepared by: Bob Chandler
Department: Management Services

City Manager
Approval: 

Submitted to Council/O.H.A. 12/15/2015
Approved: _____
Continued to: _____
Denied: _____

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Self-Sustaining Community in the New Model Colony.” The use of Mello-Roos financing for the Park & Turner NE development will not generate funds for facilities, and bonds will not be issued as part of this formation. The CFD is being formed pursuant to the provisions of the Landowner’s Development Agreement and Amendment, and the First Amended and Restated Construction Agreement between the City and NMC Builders.

BACKGROUND: The Mello-Roos Community Facilities Act of 1982 provides local government, with the consent from a majority of the property owners, the authority to establish community facilities districts for the purpose of levying special taxes to finance various kinds of public infrastructure facilities and government services. Government services that may be included in a community facilities district include police protection services, fire protection and suppression services, ambulance and paramedic services, maintenance and lighting of parks, parkways, streets, roads, open space and flood and storm drain protection services, and maintenance and operation of any real property or tangible property with an estimated useful life of five or more years that is owned by the governmental entity.

Ontario Edison Holdings, LLC, a member of NMC Builders, has provided a written petition to the City requesting formation of a community facilities district, along with a deposit pursuant to a deposit agreement, dated December 1, 2015, to fund their Park & Turner NE project. The Park & Turner NE project addresses the development of approximately 80 acres located north of Eucalyptus Avenue, generally south of Edison Avenue, east of Archibald Avenue and west of Haven Avenue. At build-out, the development is projected to include 330 single-family detached units.

Under the Mello-Roos Act, the initial steps in the formation of a community facilities district normally involve resolutions declaring the City’s intention to establish a community facilities district, levy special taxes, and issue bonds. As noted, the issuance of bonds is not being contemplated for this project at this time, so there is no resolution to issue bonds associated with this action. As proposed, the resolution of intention to establish the district and to levy special taxes will set the public hearing date on the formation of the CFD for the regularly scheduled City Council meeting on Tuesday, February 2, 2016 to consider formation matters.

Included, as part of the resolution of intention, is the proposed Rate and Method of Apportionment of Special Tax for City of Ontario Community Facilities District No. 37 (Park & Turner NE Services). The terms of the Rate and Method of Apportionment of Special Tax are consistent with the City Council’s adopted Mello-Roos local goals and policies, and City staff have presented and discussed the proposed Rate and Method of Apportionment of Special Tax with the landowner.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, OF INTENTION TO ESTABLISH A COMMUNITY FACILITIES DISTRICT PROPOSED TO BE NAMED CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 37 (PARK & TURNER NE SERVICES) AND TO AUTHORIZE THE LEVY OF SPECIAL TAXES.

WHEREAS, Section 53318 of the Mello-Roos Community Facilities Act of 1982 (the "Act") provides that proceedings for the establishment of a Community Facilities District shall be instituted by a legislative body of a local agency when a petition requesting the institution of the proceedings signed by the owners of not less than 10% of the area of land proposed to be included in the community facilities district and not proposed to be exempt from the special tax, describing the boundaries of the territory that is proposed for inclusion in the community facilities district and specifying the types of services to be financed by the community facilities district is filed with the clerk of the legislative body; and

WHEREAS, Section 53318 of the Act further provides that such a petition is not required to be acted upon until the payment of a fee in an amount that the legislative body determines, within 45 days of receiving such petition, is sufficient to compensate the legislative body for all costs incurred in conducting proceedings to create a community facilities district pursuant to the Act; and

WHEREAS, the City Council (the "City Council") of the City of Ontario (the "City") has received a written petition (the "Petition") from Ontario Edison Holdings LLC, a Delaware limited liability company (the "Landowner"), requesting the institution of proceedings for the establishment of a community facilities district (the "Community Facilities District"), describing the boundaries of the territory that is proposed for inclusion in the Community Facilities District and specifying the types of services to be financed by the Community Facilities District; and

WHEREAS, the Landowner has represented and warranted to the City Council that the Landowner is the owner of 100% of the area of land proposed to be included within the Community Facilities District not proposed to be exempt from the special tax; and

WHEREAS, the Landowner has previously submitted to the City the fee required by the City to be used to compensate the City Council and the City for all costs incurred in conducting proceedings to create the Community Facilities District, which the City Council has determined to be sufficient for such purpose;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Ontario as follows:

SECTION 1. The foregoing recitals are true and correct and the City Council so finds and determines.

SECTION 2. The City Council hereby finds that the Petition is signed by the requisite number of owners of land proposed to be included in the Community Facilities District.

SECTION 3. The City Council proposes to establish a community facilities district pursuant to the Act. The boundaries of the territory proposed for inclusion in the Community Facilities District are described in the map showing the proposed Community Facilities District (the "Boundary Map") on file with the City Clerk of the City (the "City Clerk"), which boundaries are hereby preliminarily approved and to which map reference is hereby made for further particulars. The City Clerk is hereby directed to sign the original Boundary Map and record, or cause to be recorded, the Boundary Map with all proper endorsements thereon in the office of the San Bernardino County Recorder within 15 days of the date of adoption of this Resolution, all as required by Section 3111 of the California Streets and Highways Code.

SECTION 4. The name proposed for the Community Facilities District is "City of Ontario Community Facilities District No. 37 (Park & Turner NE Services)."

SECTION 5. The services (the "Services") proposed to be financed by the Community Facilities District pursuant to the Act are described under the caption "Services" on Exhibit A hereto. The incidental expenses proposed to be incurred are described under the caption "Incidental Expenses" on Exhibit A hereto. No facilities are proposed to be financed by the Community Facilities District.

SECTION 6. Except where funds are otherwise available, a special tax sufficient to pay for all Services, secured by recordation of a continuing lien against all nonexempt real property in the Community Facilities District, will be annually levied within the Community Facilities District. The rate and method of apportionment of the special tax (the "Rate and Method"), in sufficient detail to allow each landowner within the proposed Community Facilities District to estimate the maximum amount that he or she will have to pay, is described in Exhibit B attached hereto, which is by this reference incorporated herein. The obligation to pay the special tax may not be prepaid and permanently satisfied. The special tax will be collected in the same manner as ordinary *ad valorem* property taxes or in such other manner as the City Council shall determine, including direct billing of the affected property owners.

The special tax may only finance the Services to the extent that they are in addition to those provided in the territory of the Community Facilities District before the Community Facilities District is created. The Services may not supplant services already available within that territory when the Community Facilities District is created.

SECTION 7. The City Council hereby fixes Tuesday, February 2, 2016, at 6:30 p.m., or as soon thereafter as the City Council may reach the matter, at 303 East B Street, Ontario, California, as the time and place when and where the City Council will conduct a public hearing on the establishment of the Community Facilities District.

SECTION 8. The City Clerk is hereby directed to publish, or cause to be published, a notice of said public hearing one time in a newspaper of general circulation

published in the area of the proposed Community Facilities District. The publication of said notice shall be completed at least seven days prior to the date herein fixed for said hearing. Said notice shall contain the information prescribed by Section 53322 of the Act.

SECTION 9. The levy of said proposed special tax shall be subject to the approval of the qualified electors of the Community Facilities District at a special election. The proposed voting procedure shall be by mailed or hand-delivered ballot among the landowners in the Community Facilities District, with each owner having one vote for each acre or portion of an acre such owner owns in the Community Facilities District.

SECTION 10. Each officer of the City who is or will be responsible for providing one or more of the proposed types of Services is hereby directed to study, or cause to be studied, the proposed Community Facilities District and, at or before said public hearing, file a report with the City Council containing a brief description of the Services by type which will in his or her opinion be required to adequately meet the needs of the Community Facilities District, and his or her estimate of the cost of providing the Services. Such officers are hereby also directed to estimate the fair and reasonable cost of the incidental expenses proposed to be paid. Such report shall be made a part of the record of said public hearing.

SECTION 11. The officers, employees and agents of the City are hereby authorized and directed to take all actions and do all things which they, or any of them, may deem necessary or desirable to accomplish the purposes of this Resolution and not inconsistent with the provisions hereof.

SECTION 12. This Resolution shall take effect immediately upon its adoption.

The City Clerk of the City of Ontario shall certify as to the adoption of this Resolution.

PASSED, APPROVED, AND ADOPTED this 15th day of December 2015.

PAUL S. LEON, MAYOR

ATTEST:

MARY E. WIRTES, MMC, CITY CLERK

APPROVED AS TO LEGAL FORM:

BEST BEST & KRIEGER LLP
CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF ONTARIO)

I, MARY E. WIRTES, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2015- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held December 15, 2015 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

The foregoing is the original of Resolution No. 2015- duly passed and adopted by the Ontario City Council at their regular meeting held December 15, 2015.

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

EXHIBIT A

SERVICES AND INCIDENTAL EXPENSES

Services

The types of services to be financed by the Community Facilities District are police protection services, fire protection and suppression services, ambulance and paramedic services, maintenance and lighting of parks, parkways, streets, roads and open space, flood and storm protection services and maintenance and operation of any real property or other tangible property with an estimated useful life of five or more years that is owned by the City.

Incidental Expenses

The incidental expenses proposed to be incurred include the costs associated with the creation of the Community Facilities District, determination of the amount of taxes, collection of taxes, payment of taxes, or costs otherwise incurred in order to carry out the authorized purposes of the Community Facilities District.

EXHIBIT B

PROPOSED RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX

CITY OF ONTARIO
COMMUNITY FACILITIES DISTRICT NO. 37
(PARK & TURNER NE SERVICES)

RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX

A Special Tax shall be levied on all Assessor's Parcels in the City of Ontario Community Facilities District No. 37 (Park & Turner NE Services) ("CFD No. 37") and collected each Fiscal Year commencing in Fiscal Year 2016-17, in an amount determined by the City Council of the City of Ontario through the application of the Rate and Method of Apportionment, as described below. All of the real property in CFD No. 37, unless exempted by law or by the provisions hereof, shall be taxed for the purposes, to the extent, and in the manner herein provided.

A. DEFINITIONS

The terms as may hereinafter be set forth have the following meanings:

"Act" means the Mello-Roos Community Facilities Act of 1982, as amended, being Chapter 2.5, Division 2 of Title 5 of the California Government Code.

"Administrative Expenses" means the following actual or reasonably estimated costs directly related to the administration of CFD No. 37: the costs of computing the Special Taxes and preparing the annual Special Tax collection schedules (whether by the City or CFD No. 37 or both); the costs of collecting the Special Taxes (whether by the County or otherwise); the costs associated with preparing Special Tax disclosure statements and responding to public inquiries regarding the Special Taxes; the costs of the City or CFD No. 37 related to an appeal of the Special Tax; the City's administration fees and third party expenses; the costs of City staff time and reasonable overhead related to CFD No. 37; and amounts estimated or advanced by the City or CFD No. 37 for any other administrative purposes of CFD No. 37, including attorney's fees and other costs related to commencing and pursuing to completion any foreclosure of delinquent Special Taxes.

"Assessor's Parcel" means a lot or parcel shown on an Assessor's Parcel Map with an assigned Assessor's Parcel Number.

"Assessor's Parcel Map" means an official map of the Assessor of the County designating parcels by Assessor's Parcel Number.

"Assessor's Parcel Number" means, with respect to an Assessor's Parcel, that number assigned to such Assessor's Parcel by the County for purposes of identification.

"CFD Administrator" means an official of the City responsible for determining the Special Tax Requirement, providing for the levy and collection of the Special Tax, and performing the other duties provided for herein.

“CFD No. 37” means City of Ontario Community Facilities District No. 37 (Park & Turner NE Services).

“City” means the City of Ontario, California.

“City Council” means the City Council of the City, acting as the legislative body of CFD No. 37.

“County” means the County of San Bernardino.

“Fiscal Year” means the period starting July 1 and ending on the following June 30.

“Gated Apartment Community Dwelling Unit” means a Multiple Family Dwelling Unit within a gated community that, within such community, is primarily served by private interior streets.

“Land Use Class” means any of the classes listed in Table 1 below.

“Maximum Special Tax” means, with respect to an Assessor’s Parcel of Taxable Property, the maximum Special Tax determined in accordance with Section C below that can be levied in any Fiscal Year on such Assessor’s Parcel of Taxable Property.

“Multiple Family Dwelling Unit” means a Unit within any residential building containing two or more dwelling units, including attached condominiums, townhomes, duplexes, triplexes, and apartments, but excluding Gated Apartment Community Dwelling Units.

“Non-Residential” means any buildings that are for commercial lodging use, commercial retail use, institutional use (e.g., churches, private schools), commercial restaurant use, office use, or industrial use.

“Non-Residential Property” means, for each Fiscal Year, an Assessor’s Parcel for which a building permit for new construction was issued after January 1, 2015, and before May 1 of the prior Fiscal Year, for a Non-Residential use.

“Property Owner Association Property” means, for each Fiscal Year, property within the boundaries of CFD No. 37 that was owned by a property owner association, including any master or sub-association, as of January 1 of the prior Fiscal Year.

“Proportionately” means that the ratio of the actual Special Tax levy to the Maximum Special Tax is equal for all Assessor's Parcels of Taxable Property.

“Public Property” means, for each Fiscal Year, property within the boundaries of CFD No. 37 that is (a) owned by, irrevocably offered to, or dedicated to the federal government, the State, the County, the City, or any local government or other public agency or (b) encumbered by an easement for purposes of public right-of-way that makes impractical its

use for any purpose other than that set forth in such easement, provided that any property leased by a public agency to a private entity and subject to taxation under Section 53340.1 of the Act shall be taxed and classified according to its use.

“Rate and Method of Apportionment” means this Rate and Method of Apportionment of Special Tax.

“Residential Property” means, for each Fiscal Year, an Assessor’s Parcel for which a building permit for new construction of one or more Units was issued after January 1, 2015, and before May 1 of the prior Fiscal Year.

“Services” means the services authorized to be financed, in whole or in part, by CFD No. 37: police protection services, fire protection and suppression services, ambulance and paramedic services, maintenance and lighting of parks, parkways, streets, roads, and open space, flood and storm protection services, and maintenance and operation of any real property or other tangible property with an estimated useful life of five or more years that is owned by the City.

“Special Tax” means the special tax authorized by the qualified electors of CFD No. 37 to be levied within the boundaries of CFD No. 37.

“Special Tax Requirement” means the amount necessary in any Fiscal Year to pay the cost of the Services, Administrative Expenses, and an amount equal to Special Tax delinquencies based on the historical delinquency rate for Special Taxes, as determined by the CFD Administrator.

“Single Family Detached Dwelling Unit” means any residential building containing only one Unit on one legal lot, including single family residences and single family detached residential condominium units.

“Square Footage” or **“Sq. Ft.”** means, with respect to a building, the gross floor area square footage reflected on the original construction building permit for such building, plus any square footage subsequently added to a building after issuance of a building permit for expansion or renovation of such building.

“State” means the State of California.

“Taxable Property” means, for each Fiscal Year, all Assessor’s Parcels of Residential Property and Non-Residential Property within the boundaries of CFD No. 37 which are not exempt from the Special Tax pursuant to law or Section E below.

“Unit” means an individual single-family detached home, townhome, condominium, apartment unit, or other residential dwelling unit, including each separate dwelling unit within a half-plex, duplex, triplex, fourplex, or other residential building.

B. ASSIGNMENT TO LAND USE CATEGORIES

Each Fiscal Year, beginning with Fiscal Year 2016-17, all Taxable Property within CFD No. 37 shall be classified as Residential Property (Single Family Detached Dwelling Unit, Multiple Family Dwelling Unit, or Gated Apartment Community Dwelling Unit) or Non-Residential Property and shall be subject to Special Taxes in accordance with the Rate and Method of Apportionment as determined pursuant to Sections C and D below.

C. MAXIMUM SPECIAL TAX

The Maximum Special Tax for each Assessor's Parcel classified as Taxable Property shall be determined by reference to Table 1 below.

**TABLE 1
MAXIMUM SPECIAL TAX**

Land Use Class	Maximum Special Tax Fiscal Year 2016-17
Residential Property:	
Single Family Detached Dwelling Unit	\$1,500 per Unit
Multiple Family Dwelling Unit	\$1,300 per Unit
Gated Apartment Community Dwelling Unit	\$1,090 per Unit
Non-Residential Property	\$0.28 per Sq. Ft.

On January 1 of each Fiscal Year, commencing January 1, 2017, the Maximum Special Tax to be applied in the next Fiscal Year shall be subject to an automatic increase at a rate equal to 4.0% of the amount in effect for the prior Fiscal Year.

In some instances an Assessor's Parcel of Taxable Property may contain more than one Land Use Class. The Maximum Special Tax levied on an Assessor's Parcel shall be the sum of the Maximum Special Tax for all Units of Residential Property and Square Footage of Non-Residential Property (based on the applicable final subdivision map, parcel map, condominium plan, or other recorded County map) located on that Assessor's Parcel.

D. METHOD OF APPORTIONMENT OF THE SPECIAL TAX

Each Fiscal Year, beginning with Fiscal Year 2016-17, the CFD Administrator shall determine the Special Tax Requirement. The Special Tax shall then be levied Proportionately on each Assessor's Parcel of Taxable Property up to 100% of the applicable Maximum Special Tax for such Assessor's Parcel, until the Special Tax Requirement is satisfied. However, the Special Tax levied in any Fiscal Year shall not increase by more than 4.0% of the amount of the Special Tax levied in the prior Fiscal Year.

E. EXEMPTIONS

Notwithstanding anything in this Rate and Method of Apportionment to the contrary, no Special Tax shall be levied on Public Property or Property Owner Association Property.

F. APPEALS

Any property owner may file a written appeal of the Special Tax with CFD No. 37 claiming that the amount or application of the Special Tax is not correct. The appeal must be filed not later than one calendar year after having paid the Special Tax that is disputed, and the appellant must be current in all payments of Special Taxes. In addition, during the term of the appeal process, all Special Taxes levied must be paid on or before the payment date established when the levy was made.

The appeal must specify the reasons why the appellant claims the Special Tax is in error. The CFD Administrator shall review the appeal, meet with the appellant if the CFD Administrator deems necessary, and advise the appellant of its determination.

If the property owner disagrees with the CFD Administrator's decision relative to the appeal, the owner may then file a written appeal with the City Council, whose subsequent decision shall be final and binding on all interested parties. If the decision of the CFD Administrator or subsequent decision by the City Council requires the Special Tax to be modified or changed in favor of the property owner, then the CFD Administrator shall determine if sufficient Special Tax revenue is available to make cash refund. If a cash refund cannot be made, then an adjustment shall be made to credit future Special Tax levy(ies).

This procedure shall be exclusive and its exhaustion by any property owner shall be a condition precedent to filing any legal action by such owner.

G. MANNER OF COLLECTION

The Special Taxes shall be collected in the same manner and at the same time as ordinary *ad valorem* property taxes; provided, however, that the Special Taxes may be collected in such other manner as the City Council shall determine, including direct billing of affected property owners.

H. TERM OF SPECIAL TAX

The Special Tax shall continue to be levied indefinitely on an annual basis on all Taxable Property in CFD No. 37.

CITY OF ONTARIO

Agenda Report

December 15, 2015

SECTION:
PUBLIC HEARINGS

SUBJECT: PUBLIC HEARINGS REGARDING ECONOMIC DEVELOPMENT SUBSIDY REPORTS AND OPERATING COVENANT AGREEMENTS BETWEEN THE CITY OF ONTARIO AND (A) HENRY SCHEIN, INC., (B) STAPLES CONTRACT & COMMERCIAL, INC., AND (C) SIGMANET INTERNET, INC., PURSUANT TO GOVERNMENT CODE SECTION 53083; AND CONSIDERATION OF RESOLUTIONS ACCEPTING THE ECONOMIC DEVELOPMENT SUBSIDY REPORTS, APPROVING THE OPERATING COVENANT AGREEMENTS AND MAKING RELATED FINDINGS

RECOMMENDATION: That the City Council take the following actions with regard to:

(A) Operating Covenant Agreement between the City of Ontario and Henry Schein, Inc.

- (1) Hold the public hearing;
- (2) Adopt a resolution accepting the Economic Development Subsidy Report prepared pursuant to Government Code Section 53083 regarding an Operating Covenant Agreement (on file with the Records Management Department) by and between the City of Ontario and Henry Schein, Inc., a Delaware Corporation;
- (3) Adopt a resolution approving the Operating Covenant Agreement for no less than twenty years, with the option to exercise the unilateral right to extend the term of the Agreement for an additional twenty years, authorizing the City Manager to execute the Operating Covenant Agreement, and making related findings; and
- (4) Direct City staff to file a Notice of Determination based upon the City Council's finding that the impacts for this existing facility were previously analyzed in the Ontario Center Specific Plan Final Environmental Impact Report (SCH #89041009) that was certified by the City Council in March 1991.

STAFF MEMBER PRESENTING: John P. Andrews, Economic Development Director

Prepared by: Nicholas Gonzalez
Department: Economic Development

City Manager
Approval: _____



Submitted to Council/O.H.A. 12/15/2015

Approved: _____

Continued to: _____

Denied: _____

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(B) Operating Covenant Agreement between the City of Ontario and Staples Contract & Commercial, Inc.

- (1) Hold the public hearing;
- (2) Adopt a resolution accepting the Economic Development Subsidy Report prepared pursuant to Government Code Section 53083 regarding an Operating Covenant Agreement (on file with the Records Management Department) by and between the City of Ontario and Staples Contract & Commercial, Inc. (“Staples”), a Delaware Corporation;
- (3) Adopt a resolution approving the Operating Covenant Agreement, authorizing the City Manager to execute the Operating Covenant Agreement, and making related findings; and
- (4) Direct City staff to file a Notice of Determination based upon the City Council’s finding that the impacts for this existing facility were previously analyzed in the California Commerce Center Final Environmental Impact Report (SCH #85061007) that was certified by the City Council in January 1983.

(C) Operating Covenant Agreement between the City of Ontario and SIGMAnet Internet, Inc.

- (1) Hold the public hearing;
- (2) Adopt a resolution accepting the Economic Development Subsidy Report prepared pursuant to Government Code Section 53083 regarding an Operating Covenant Agreement (on file with the Records Management Department) by and between the City of Ontario and SIGMAnet Internet, Inc. (“SIGMAnet”), a California Corporation;
- (3) Adopt a resolution approving the Operating Covenant Agreement, authorizing the City Manager to execute the Operating Covenant Agreement, and making related findings; and
- (4) Direct City staff to file a Notice of Determination based upon the City Council’s finding that the impacts for this existing facility were previously analyzed in the California Commerce Center Final Environmental Impact Report (SCH #85061007) that was certified by the City Council in January 1983.

**COUNCIL GOALS: Regain Local Control of the Ontario International Airport
Invest in the Growth and Evolution of the City’s Economy
Operate in a Businesslike Manner**

FISCAL IMPACT:

(A) Operating Covenant Agreement between the City of Ontario and Henry Schein, Inc.

The operating covenant payment between the City and Henry Schein is calculated based on Henry Schein’s sales tax revenue during a computation quarter in an amount equal to the sum of fifty percent (50%) of Henry Schein’s sales tax revenues attributable to annual taxable sales for the computation quarter. Entering into the Agreement ensures that local sales tax revenue generated by Henry Schein, will remain in the City for the twenty (20) year contract term with the potential to extend for an additional twenty (20) year period.

(B) Operating Covenant Agreement between the City of Ontario and Staples Contract & Commercial, Inc.

Effective January 1, 2016 through January 1, 2020, provided Staples remains opens for business in the City (at its current or an alternative location) and the City receives from Staples sales activities no less than One Million Two Hundred Thousand Dollars (\$1,200,000) in sales tax revenue, the City will provide Staples an operating covenant payment of Six Hundred Thousand Dollars (\$600,000) annually. Effective January 1, 2020, the City will make an annual operating covenant payment to Staples equal to fifty percent (50%) of the local sales tax revenue received by the City. This payment will be capped annually at One Million Eight Hundred Thousand Dollars (\$1,800,000). Entering into the Agreement ensures that local sales tax revenue generated by Staples, will continue to remain in the City until the date upon which the City stops receiving sales tax revenue from Staples.

(C) Operating Covenant Agreement between the City of Ontario and SIGMANet Internet, Inc.

The operating covenant payment between the City and SIGMANet is calculated based on SIGMANet's sales tax revenue during a computation quarter in an amount equal to the sum of fifty percent (50%) of SIGMANet's sales tax revenues attributable to the location in excess of the base, \$180,000 per year, sales tax amount for each computation quarter during the eligibility period. Entering into the Agreement ensures that local sales tax revenue generated by SIGMANet, will continue to remain in the City until the date upon which the City stops receiving sales tax revenue from SIGMANet.

BACKGROUND: The Bradley-Burns Uniform Local Sales and Use Tax Law authorizes counties and cities to impose local sales and use taxes in conformity with the Sales and Use Tax Law. That law provides that for the purpose of a local sales tax adopted pursuant to that law, all retail sales are consummated at the place of business of the retailer unless otherwise specified. In October 2015, Senate Bill 533 passed, which prohibits a local agency from entering into any form of agreement that would result, directly or indirectly, in the payment, transfer, diversion or rebate of Bradley-Burns local tax revenues to any person, as defined, for any purpose, if the agreement results in a reduction in the amount of Bradley-Burns local tax revenues beginning January 1, 2016.

(A) Operating Covenant Agreement between the City of Ontario and Henry Schein, Inc.

Henry Schein is a global retail vendor of medical equipment and merchandise, such as health care products and services to office-based dental, animal health and medical practitioners with worldwide distribution. Henry Schein intends to establish a Regional Sales Office in the City for the purpose of creating a market-based, specialized function related to the sustenance and future generation of revenues by support of taxable Ontario sales.

Henry Schein does not currently have a warehouse, sales office or other physical presence in the State of California for merchandise. The expansion into California serves Henry Schein's best interest, and the City serves as the advantageous location for Henry Schein to operate more efficiently and effectively to better serve its customers. This may also provide the company an avenue for future expansion in the Western United States.

The City is proposing to enter into an Operating Covenant Agreement to assist Henry Schein with establishing the regional sales office within the City, expand its operations within the City as

appropriate and remain in the City for not less than twenty years. In the nineteenth year, the City and Henry Schein have the option to exercise the unilateral right to extend the term of the agreement for an additional twenty years. By entering into this Operating Covenant Agreement, it is intended that Henry Schein will generate substantial revenue for the City through additional local sales tax revenues that would not be available to the City without the location of Henry Schein. By having a company like Henry Schein establish a physical presence in California, and particularly the City, the City will be adding diversity to and generating new opportunities for economic growth. Henry Schein is a socially and environmentally responsible company that works to expand access to health care for underserved and at-risk populations around the world by promoting wellness, prevention, treatment and education; providing emergency preparedness and relief; and building health care capacity. Additionally, Henry Schein embraces the principles of environmental stewardship by minimizing its consumption of resources and reducing negative environmental impacts. Through the additional revenue, the City can fund necessary public services and facilities, including but not limited to, public safety services and facilities, public improvements and recreation opportunities that otherwise may not be available to the community for many years.

The establishment of the new regional sales office serves the additional public purpose of fostering a business and civic environment that may attract additional businesses and investment in the community due to the availability of the increased public and private services and economic activity resulting there, which assists the City in its goal of furthering the development of the community. To incentivize Henry Schein to remain in the City, the City and Henry Schein will enter into an Operating Covenant Agreement. The Agreement provides for certain covenant payment which are calculated based upon certain sales tax generation. The City may use any funds legally available to it, to satisfy the covenant payments.

If approved, the operating covenant payments between the City and Henry Schein will be calculated based on Henry Schein's sales tax revenue during a computation quarter in an amount equal to the sum of fifty percent (50%) of Henry Schein's sales tax revenues attributable to annual taxable sales for the computation quarter. Computation quarters means each calendar quarter beginning on January 1, April 1, July 1, or October 1, as applicable. If approved, January 1, 2016 will be known as Computation Quarter 1, with each succeeding Computation Quarter within the eligibility period being consecutively numbered.

Henry Schein will lease about 5,000 square feet of office space, located at 3633 East Inland Empire Boulevard, to open a regional sales office for merchandise in California. The office location will be staffed initially with two persons but is expected to increase to seven persons over time. Additionally, new field salespersons will be added. This will ensure the immediate creation of high paying/management jobs and provide opportunity for additional job growth throughout the term of the Agreement. The office will be used for sales meetings, display of merchandise, managerial meetings and other sales functions.

(B) Operating Covenant Agreement between the City of Ontario and Staples Contract & Commercial, Inc.

Staples is a retailer of consumer products with worldwide distribution. The company currently operates a distribution center and warehouse facility located at 1500 South Dupont Avenue in the City of Ontario. The former Redevelopment Agency ("RDA") and Staples entered into an

Operating Covenant Agreement on June 16, 2009. The RDA Agreement was assumed by the Successor Agency to the RDA following the dissolution of redevelopment agencies in 2012. The terms of the RDA Agreement include a potential facility upgrade loan of \$3,000,000 or 50% of the cost of the project to update equipment at the facility and an annual operating covenant payment from the RDA (now the Successor Agency to the RDA) to Staples, which is currently capped at \$900,000. The RDA Agreement expires on January 5, 2020.

In light of Staples importance to the community, including job opportunities and civic involvement, the City recommends an additional Operating Covenant Agreement to incentivize Staples to remain in the City and continue to expand the operations well past the quickly approaching expiration of the RDA Agreement. The term of the proposed Agreement shall commence on January 1, 2016 and continue in effect until the date upon which the City stops receiving sales tax revenue from Staples.

The proposed Operating Covenant Payment will become effective January 1, 2016 and will run through January 1, 2020, provided Staples remains open for business in the City (at its current or an alternative location) and the City receives from Staples, sales activities no less than One Million Two Hundred Thousand Dollars (\$1,200,000) in sales tax revenue, the City will provide Staples an operating covenant payment of \$600,000 annually. Effective January 1, 2020, the City will make an annual operating covenant payment to Staples equal to fifty percent (50%) of the local sales tax revenue received by the City. This payment will be capped annually at One Million Eight Hundred Thousand Dollars (\$1,800,000). The City Agreement will commence on January 1, 2016 and continue in effect until the later of January 1, 2020 or the date upon which the City stops receiving sales tax revenue from Staples. Staples may relocate the Ontario facility from the current property to another location within the City at any time during the term, as long as Staples provides for recordation of the covenants under the City Agreement against Staples' interest in such new location in a manner reasonably satisfactory to the City.

By entering into this Operating Covenant Agreement, it is intended that Staples will generate substantial revenue for the City through additional local sales tax revenues that would not be available to the City without the location of Staples. Through the additional revenue, the City can fund necessary public services and facilities, including but not limited to, public safety services and facilities, public improvements and recreation opportunities that otherwise may not be available to the community for many years. To incentivize Staples to remain in the City, the City and Staples will enter into an Operating Covenant Agreement. The Agreement provides for certain covenant payment which are calculated based upon certain sales tax generation. The City may use any funds legally available to it, to satisfy the covenant payments.

If approved, the operating covenant payments between the City and Staples will be calculated based on Staples' sales tax revenue during a computation quarter in an amount equal to the sum of fifty percent (50%) of Staples sales tax revenues attributable to annual taxable sales for the computation quarter. Computation quarters means each calendar quarter beginning on January 1, April 1, July 1, or October 1, as applicable. If approved, January 1, 2016 will be known as Computation Quarter 1, with each succeeding Computation Quarter within the eligibility period being consecutively numbered.

(C) Operating Covenant Agreement between the City of Ontario and SIGMAnet Internet, Inc.

SIGMAnet is one of the largest Information Technology consulting, solutions and managed services providers in California and currently operates its corporate headquarters and sales office out of an approximately 70,121 square foot building located at 4290 East Brickell Street in the City. SIGMAnet had previously entered into a location agreement with the City that expired in August 2014. Due to the company's desire to expand its operations, SIGMAnet considered relocating its corporate headquarters and sales office to a new location outside of the City of Ontario. The recommended Operating Covenant Agreement assists in the retention of SIGMAnet's corporate headquarters and sales office to remain in the City.

The City recommends entering into an Operating Covenant Agreement to assist SIGMAnet with the expansion of their current operations by increasing the size of its sales office to 95,000 square feet and increasing the sales force by 100-150 new employees by no later than January 1, 2017. The term of the proposed Agreement shall commence on January 1, 2016 and continue in effect until the date upon which the City stops receiving sales tax revenue from SIGMAnet.

By entering into this Operating Covenant Agreement, it is intended that SIGMAnet will generate substantial revenue for the City through additional local sales tax revenues that would not be available to the City without the location of SIGMAnet. Through the additional revenue, the City can fund necessary public services and facilities, including but not limited to, public safety services and facilities, public improvements and recreation opportunities that otherwise may not be available to the community for many years. To incentivize SIGMAnet to remain in the City, the City and SIGMAnet will enter into an Operating Covenant Agreement. The Agreement provides for certain covenant payment which are calculated based upon certain sales tax generation. The City may use any funds legally available to it, to satisfy the covenant payments.

If approved, the operating covenant payments between the City and SIGMAnet will be calculated based on SIGMAnet's sales tax revenue during a computation quarter in an amount equal to the sum of fifty percent (50%) of SIGMAnet's sales tax revenues attributable to annual taxable sales for the computation quarter. Computation quarters means each calendar quarter beginning on January 1, April 1, July 1, or October 1, as applicable. If approved, January 1, 2016 will be known as Computation Quarter 1, with each succeeding Computation Quarter within the eligibility period being consecutively numbered.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ACCEPTING THE ECONOMIC DEVELOPMENT SUBSIDY REPORT PREPARED PURSUANT TO GOVERNMENT CODE SECTION 53083 REGARDING THE DEVELOPMENT OF A REGIONAL SALES OFFICE BY HENRY SCHEIN, INC. IN THE CITY OF ONTARIO.

WHEREAS, the City of Ontario ("City") and Henry Schein, Inc. ("Henry Schein") have negotiated an Operating Covenant Agreement ("Agreement") for the establishment of a Regional Sales Office within the City; and

WHEREAS, pursuant to that Agreement Henry Schein is committed to opening and operating a Regional Sales Office in the City for not less than 20 years; and

WHEREAS, Henry Schein is also covenanted to, among other things, designate the City as the point of sale for certain merchandise transactions; and

WHEREAS, the City has agreed to purchase those covenants through quarterly payments equal to fifty percent (50%) of the sales tax generated by transactions which the regional sales office participates; and

WHEREAS, based on information provided by City staff, and other such written and oral evidence as presented to the City, the City finds and determines that the allocation of funds to Henry Schein pursuant to the Agreement is reasonably related to a legitimate governmental purpose in that the establishment of the Regional Sales Office will provide numerous public benefits including:

- Generating substantial revenue for the City through additional Local Sales Tax Revenue which may be used by the City for the funding of necessary public services and facilities, including but not limited to, public safety services and facilities, public improvements and recreational opportunities that otherwise may not be available to the community for many years; and
- The creation of high paying/management jobs and provide opportunity for additional job growth throughout the term of this Agreement; and
- Helping the City achieve the building blocks set forth in The Ontario Plan (adopted by the City Council in 2010) including taking actions that help to achieve a "Dynamic Balance" that enables the community to confront the continued dynamic growth of the region and technological change with confidence and a sense of opportunity and a "Prosperous Economy" that sustains prosperity across our entire community; and
- Entering into this Agreement and ensuring the establishment of the Regional Sales Office may attract additional businesses and investment in the community due to increased services and economic activity in the area.

WHEREAS, in accordance with Government Code Section 53083, the City provided certain information in written form to the public and on its website, a copy of which is attached hereto as Exhibit A and incorporated herein by this reference, and held a noticed public hearing on December 15, 2015 to consider all written and oral comments on the Economic Development Subsidy Report; and

WHEREAS, all other legal prerequisites to the adoption of this Resolution have occurred.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Ontario as follows:

SECTION 1. Incorporation of Recitals. The foregoing recitals are true and correct, and are incorporated herein and made an operative part of this Resolution.

SECTION 2. Findings. The City Council additionally finds and determines that (a) there are identifiable public purposes fulfilled by the Agreement, as set forth in the Recitals, that outweigh the benefit to private persons; and (b) the findings set forth in this Resolution are based upon substantial written and oral evidence presented to the City Council.

SECTION 3. CEQA. The City Council hereby finds that pursuant to the California Environmental Quality Act ("CEQA") (Pub. Res. Code, § 21000 et seq.) and the State CEQA Guidelines (Cal. Code Regs, tit. 14 § 15000 et seq.), approval of the Agreement and acceptance of the Economic Development Subsidy Report is not a "project" for purposes of CEQA and therefore is not subject to CEQA review. The Agreement and acceptance of the Economic Development Subsidy Report is not a project pursuant to State CEQA Guidelines section 15378(b)(4), which states that government fiscal activities which do not involve any commitment to any specific project which may result in a potentially significant environmental impact are not subject to CEQA. Further, the Agreement and acceptance of the Economic Development Subsidy Report is not a project under State CEQA Guidelines section 15061(b)(3), which states that CEQA does not apply where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

In addition, the City Council has finds that the environmental impacts for this existing facility were previously analyzed in the Ontario Center Specific Plan Final Environmental Impact Report (SCH #89041009), certified by the City Council in March 1991.

SECTION 4. Acceptance of Economic Development Subsidy Report. The City Council finds and determines that this Economic Development Subsidy Report is in compliance with applicable law and specifically Government Code Section 53083.

SECTION 5. Severability. If any provision of this Resolution is held invalid, the remainder of this Resolution shall not be affected by such invalidity, and the provisions of this Resolution are severable.

SECTION 6. Effective Date. This Resolution shall become effective immediately upon its adoption.

The City Clerk of the City of Ontario shall certify as to the adoption of this Resolution.

PASSED, APPROVED, AND ADOPTED this 15th day of December 2015.

PAUL S. LEON, MAYOR

ATTEST:

MARY E. WIRTES, MMC, CITY CLERK

APPROVED AS TO LEGAL FORM:

BEST BEST & KRIEGER LLP
CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF ONTARIO)

I, MARY E. WIRTES, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2015- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held December 15, 2015 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

The foregoing is the original of Resolution No. 2015- duly passed and adopted by the Ontario City Council at their regular meeting held December 15, 2015.

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

EXHIBIT A
ECONOMIC DEVELOPMENT SUBSIDY REPORT

[Attached behind this cover page]

**ECONOMIC DEVELOPMENT SUBSIDY REPORT
PURSUANT TO GOVERNMENT CODE SECTION 53083**

**FOR AN OPERATING COVENANT AGREEMENT
BY AND BETWEEN
CITY OF ONTARIO
AND
HENRY SCHEIN, INC.**

Pursuant to Government Code Section 53083, the City Council of the City of Ontario must hold a noticed public hearing and, prior to the public hearing, provide all of the following information in written form and available to the public and through the City's website, regarding a proposed economic development subsidy to be provided by the City pursuant to an Operating Covenant Agreement by and between the City of Ontario and Henry Schein, Inc. ("Agreement"). Notice was published in the local newspaper for a public hearing to be held on December 15, 2015.

The purpose of this report is to provide the information required pursuant to Government Code Section 53083 in regards to the Agreement. This report shall remain available to the public and posted on the City's website until the end date of the economic development subsidy, as further described in number 2 below.

1. The name and address of all corporations or any other business entities, except for sole proprietorships, that are the beneficiary of the economic development subsidy.

The Agreement is with Henry Schein, Inc., a Delaware corporation. Henry Schein, Inc. is the sole beneficiary of the economic development subsidy.

Henry Schein, Inc.
135 Duryea Road
Melville, NY 11747

2. The start and end dates and schedule, if applicable, for the economic development subsidy.

If the Agreement is approved by the City Council, the start date of the economic development subsidy will be on the first day of Computation Quarter 1, as defined in the Agreement, which is anticipated to occur on January 1, 2016. The end date will be no later than 20 years after the start date, on or around December 31, 2035, unless extended pursuant to the terms of the Agreement. If the extended term is exercised, the subsidy shall continue for an additional 20 years and will end no later than December 31, 2055.

The economic development subsidy will be paid quarterly (every 3 months), within 120 days of the end of each Computation Quarter. Computation Quarters run from January 1 to March 31, April 1 to June 30, July 1 to September 30, and October 1 to December 31.

3. A description of the economic development subsidy, including the estimated total amount of the expenditure of public funds by, or of revenue lost to, the local agency as a result of the economic development subsidy.

The economic development subsidy is calculated based on Henry Schein, Inc.'s sales tax revenue received by the City during a Computation Quarter in an amount equal to the sum of fifty percent (50%) of the Sales Tax Revenues attributable to annual taxable sales.

The City estimates that the total amount of the expenditure of public funds as a result of the economic development subsidy will be approximately \$28,000,000.

4. A statement of the public purposes for the economic development subsidy.

Henry Schein, Inc., is a worldwide retailer of health care equipment and merchandise to office-based dental, animal health and medical practitioners. Henry Schein, Inc. does not currently have a warehouse, sales office or other physical presence in California for their merchandise. Through this Agreement, Henry Schein, Inc., will be committed to opening and operating a Regional Sales Office in the City for transacting merchandise sales.

The public purpose of the economic development subsidy includes, but is not limited to, having a company with international distribution establish a physical presence in the City and California which will create jobs and stimulate the economic recovery of the Inland Empire. Henry Schein, Inc. has agreed to establish a new sales office within the City, expand its operations within the City over the term of the Agreement and remain in the City for a period of not less than 20 years. The City has determined that the establishment of the sales office within the City will generate substantial revenue for the City, create new jobs, revitalize an area of the City which has suffered a loss of jobs and businesses during the economic downturn of the mid-2000's, and result in community and public improvements that might not otherwise be available to the community for many years. Additionally, by having a company like Henry Schein, Inc. establish a physical presence in California, and particularly the City, we will be adding diversity to and generating new opportunities for economic growth. Henry Schein, Inc., is a socially and environmentally responsible company that works to expand access to health care for underserved and at-risk populations around the world by promoting wellness, prevention, treatment and education; providing emergency preparedness and relief; and building health care capacity. Additionally, Henry Schein, Inc., embraces the principles of environmental stewardship by minimizing its consumption of resources and reducing negative environmental impacts. They also promote environmental sustainability among their customers by encouraging the "greening" of health professionals' offices.

Further, the establishment of the new sales office serves the additional public purpose of fostering a business and civic environment that may attract additional businesses and investment in the community due to the availability of the increased public and private services and economic activity resulting therefrom, thereby assisting the City in its goal of furthering the development of the community. The increased economic activity resulting from the sales office and Henry Schein's commitment to hold their sales

meetings in the City will improve the economic and social viability and vitality of the local community.

Entering into this Covenant Agreement will also ensure the immediate creation of high paying/management jobs and provide opportunity for additional job growth throughout the term of this Agreement. In 2010, the City Council adopted the Ontario Plan which included certain building blocks for the economic growth and improvement of the community. The Plan called upon the City to take actions that help to achieve a “Dynamic Balance” that enables the community to confront the continued dynamic growth of the region and technological change with confidence and a sense of opportunity and a “Prosperous Economy” that sustains prosperity across our entire community. The establishment of the Regional Sales Office is another step in achieving those goals.

5. The projected tax revenue to the local agency as a result of the economic development subsidy.

The City anticipates that the establishment and operation of a new Regional Sales Office within the City will result in an approximate increase of sales tax revenue by \$2.8 million per year, minus the covenant payments to be paid to Henry Schein, Inc., as set forth in number 2 above.

There will also be an increase in other taxes including business license tax and real property taxes in an approximate amount of \$5,000 - \$10,000.

6. The estimated number of jobs created by the economic development subsidy, broken down by full-time, part-time, and temporary positions.

The construction and operation of the Regional Sales Office within the City is anticipated to result in approximately up to 40 new jobs over the term of the Agreement, as follows:

- 15-25 full-time jobs
- 5-10 part-time jobs
- 10 temporary positions

Henry Schein will be leasing a facility and completing certain tenant improvements that are anticipated to create up to 10 temporary jobs. Additionally, upon opening the Regional Sales Office, the company will assign the current sales staff to the Ontario office. To support that staff, the company will immediately begin staffing the office with management and sales assisting related positions. It is anticipated that Henry Schein will employ up to 25 full time people out of the Ontario location during the term of the Agreement. As the business develops and expands in the region, it is anticipated that there may be up to an additional 10 part-time positions created at the Regional Sales Office.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO,
CALIFORNIA, APPROVING THE OPERATING COVENANT
AGREEMENT BETWEEN THE CITY OF ONTARIO AND HENRY
SCHEIN, INC. AND MAKING RELATED FINDINGS.

WHEREAS, Henry Schein, Inc. ("Henry Schein"), a Delaware Corporation and a retailer of office-based dental, animal health and medical merchandise and equipment worldwide, is considering locating a new Regional Sales Office within the City of Ontario ("City"); and

WHEREAS, Henry Schein operates a retail component of the company which sells medical office, surgical, and exam supplies, among other products, to its customers through direct sales, phone sales, and over the internet; and

WHEREAS, Henry Schein does not have a warehouse, sales office or other physical presence in California for merchandise and the expansion into California serves Henry Schein's business purposes in that the advantageous location of the City and its business conducive environment will permit Henry Schein to operate more efficiently and effectively, better serve its customers, and may provide an avenue for business expansion in the Western United States in the future; and

WHEREAS, entering into this Operating Covenant Agreement ("Agreement") is intended to generate substantial revenue for the City through additional Local Sales Tax Revenue which may be used by the City for the funding of necessary public services and facilities, including but not limited to, public safety services and facilities, public improvements and recreational opportunities that otherwise may not be available to the community for many years; and

WHEREAS, entering into this Agreement will also ensure the immediate creation of high paying/management jobs and provide opportunity for additional job growth throughout the term of this Agreement. It will also help the City achieve the building blocks set forth in The Ontario Plan (adopted by the City Council in 2010) including taking actions that help to achieve a "Dynamic Balance" that enables the community to confront the continued dynamic growth of the region and technological change with confidence and a sense of opportunity and a "Prosperous Economy" that sustains prosperity across our entire community; and

WHEREAS, entering into this Agreement and ensuring the establishment of the Regional Sales Office may attract additional businesses and investment in the community due to increased services and economic activity in the area; and

WHEREAS, the Regional Sales Office will operate out of an existing office building, and no new land use entitlements are needed for operation of the Regional Sales Office to commence, nor are any land use entitlements granted through the Agreement; and

WHEREAS, the environmental impacts of the existing office building wherein the Regional Sales Office will be located were previously reviewed in as part of the Ontario Center Final Environmental Impact Report (SCH #89041009) certified by the City Council in March 1991; and

WHEREAS, the incentives provide in the Operating Covenant Agreement ("Agreement"), a copy of which is attached to this Resolution as Exhibit A, are intended to ensure Henry Schein establishes a new Regional Sales Office within the City, expands its operation with the City as appropriate and remains in the City for not less than twenty (20) years; and

WHEREAS, the City has determined that the establishment of the new Henry Schein Regional Sales Office within the City will generate substantial revenue for the City, create new jobs, revitalize an area of the City which has suffered a loss of jobs and businesses during the economic downturn of the mid-2000's, and result in community and public improvements that might not otherwise be available to the community for many years; and

WHEREAS, on December 15, 2015, the City Council of the City of Ontario conducted a public hearing to consider the Agreement and concluded said hearing on that date; and

WHEREAS, all legal prerequisites to the adoption of this Resolution have occurred.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Ontario as follows:

SECTION 1. Recitals. The Recitals set forth above are true and correct and are incorporated into this Resolution by this reference.

SECTION 2. Findings. The City Council hereby finds that:

(a) Entering into this Agreement will serve the following public purposes:

(1) Henry Schein, Inc., is a worldwide retailer of health care equipment and merchandise to office-based dental, animal health and medical practitioners. Through this Agreement, Henry Schein, Inc., will be committed to opening and operating a Regional Sales Office in the City for transacting merchandise sales.

(2) Having a company with international distribution establish a physical presence in the City and California which will create jobs and stimulate the economic recovery of the Inland Empire.

(3) The establishment of the Regional Sales Office within the City will generate substantial revenue for the City, create new jobs, revitalize an area of

the City which has suffered a loss of jobs and businesses during the economic downturn of the mid-2000's, and result in community and public improvements that might not otherwise be available to the community for many years.

(4) By having a company like Henry Schein, Inc. establish a physical presence in California, and particularly the City, the City will be adding diversity to and generating new opportunities for economic growth.

(5) Henry Schein, Inc., is a socially and environmentally responsible company that works to expand access to health care for underserved and at-risk populations around the world by promoting wellness, prevention, treatment and education; providing emergency preparedness and relief; and building health care capacity. Bringing a company to the community which will work to expand access to health care is an additional public purpose.

(6) Further, the establishment of the new sales office serves the public purpose of fostering a business and civic environment that may attract additional businesses and investment in the community due to the availability of the increased public and private services and economic activity resulting therefrom, thereby assisting the City in its goal of furthering the development of the community. The increased economic activity resulting from the sales office and Henry Schein's commitment to hold their sales meetings in the City will improve the economic and social viability and vitality of the local community.

(7) Entering into this Covenant Agreement will also further the City's efforts to achieve certain goals set forth in the 2010 Ontario Plan. The Ontario Plan included certain building blocks for the economic growth and improvement of the community. The Plan called upon the City to take actions that help to achieve a "Dynamic Balance" that enables the community to confront the continued dynamic growth of the region and technological change with confidence and a sense of opportunity and a "Prosperous Economy" that sustains prosperity across our entire community. The establishment of the Regional Sales Office is another step in achieving those goals.

(b) Based upon these and other public benefits the public purposes of the Agreement outweigh any private benefit to private persons or entities.

(c) Contingent Obligations. The City finds that each City obligation is contingent upon separate consideration by Henry Schein including but not limited to quarterly sales tax generation.

SECTION 3. CEQA Compliance. The City Council hereby finds that pursuant to the California Environmental Quality Act ("CEQA") (Pub. Res. Code, § 21000 et seq.) and the State CEQA Guidelines (Cal. Code Regs, tit. 14 § 15000 et seq.), approval of the Agreement is not a "project" for purposes of CEQA and therefore is not subject to CEQA review. The Agreement is not a project pursuant to State CEQA Guidelines section 15378(b)(4), which states that government fiscal activities which do not involve any commitment to any specific project which may result in a potentially significant environmental impact are not subject to CEQA. Further, the Agreement is not a project

under State CEQA Guidelines section 15061(b)(3), which states that CEQA does not apply where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

In addition, the City Council finds that the environmental impacts of the existing office building within which the Regional Sales Office will be located were previously analyzed in the Ontario Center Specific Plan Final Environmental Impact Report (SCH #89041009), certified by the City Council in March 1991.

SECTION 4. Approve Agreement. The City Council hereby approves the Operating Covenant Agreement in the form attached to this Resolution as Exhibit A. The City Council hereby authorizes the City Manager, with the concurrence of the City Attorney, to execute said Agreement. City Manager is hereby authorized to take any additional steps necessary to facilitate the intent of this action. .

SECTION 5. Implementation. The City Manager or his or her designee is hereby authorized and directed to, on behalf of the City, execute any and all documents in accordance with this Resolution and applicable law.

SECTION 6. Severability. If any provision of this Resolution or the application of any such provision to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Resolution that can be given effect without the invalid provision or application, and to this end the provisions of this Resolution are severable. The City declares that it would have adopted this Resolution irrespective of the invalidity of any particular portion of this Resolution.

SECTION 7. Certification. The City Clerk shall certify to the adoption of this Resolution.

SECTION 8. Effective Date. This Resolution shall become effective immediately upon its adoption.

PASSED, APPROVED, AND ADOPTED this 15th day of December 2015.

PAUL S. LEON, MAYOR

ATTEST:

MARY E. WIRTES, MMC, CITY CLERK

APPROVED AS TO LEGAL FORM:

BEST BEST & KRIEGER LLP
CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF ONTARIO)

I, MARY E. WIRTES, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2015- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held December 15, 2015 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

The foregoing is the original of Resolution No. 2015- duly passed and adopted by the Ontario City Council at their regular meeting held December 15, 2015.

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

EXHIBIT A
OPERATING COVENANT AGREEMENT

[Attached behind this cover page]

SCHEIN OCA

OPERATING COVENANT AGREEMENT

between

THE CITY OF ONTARIO
a California municipal corporation,

and

HENRY SCHEIN, INC.
a Delaware corporation

[Dated as of December 15, 2015, for reference purposes only]

SCHEIN OCA

RECITALS

WHEREAS, Henry Schein, Inc., a retailer of equipment and also merchandise such as health care products and services to office-based dental, animal health and medical practitioners with distribution worldwide (hereinafter, “Owner” in accordance with Section 1.3. 10 hereof) is considering locating a new Regional Sales Office (as defined below) within the City of Ontario (hereinafter, the “City” in accordance with Section 1.3.1 hereof); and

WHEREAS, Owner operates a retail component of the company which sells medical office, surgical, and exam supplies, among other products, to its customers through direct sales, phone sales, and over the internet. Owner intends to establish the Regional Sales Office in the City for the purpose of creating a market-based, specialized function related to the sustenance and future generation of revenues by facilitating support and processing of Taxable Ontario Sales (as defined below).

WHEREAS, Owner does not have a warehouse, sales office or other physical presence in California for merchandise and the expansion into California serves Owner’s business purposes in that the advantageous location of the City and its business conducive environment will permit Owner to operate more efficiently and effectively, will better serve its customers, and may provide an avenue for business expansion in the Western United States in the future.

WHEREAS, the incentives provided in this Covenant Agreement are intended to assist Owner with establishing the Regional Sales Office within the City, expands its operations within the City as appropriate and remain in the City for not less than 20 years; and

WHEREAS, entering into this Covenant Agreement is intended to generate substantial revenue for the City through additional Local Sales Tax Revenue which may be used by the City for the funding of necessary public services and facilities, including but not limited to, public safety services and facilities, public improvements and recreational opportunities that otherwise may not be available to the community for many years.

WHEREAS, entering into this Covenant Agreement will also ensure the immediate creation of high paying/management jobs and provide opportunity for additional job growth throughout the term of this Agreement. It will also help the City achieve the building blocks set forth in the Ontario Plan (adopted by the City Council in 2010) including taking actions that help to achieve a “Dynamic Balance” that enables the community to confront the continued dynamic growth of the region and technological change with confidence and a sense of opportunity and a “Prosperous Economy” that sustains prosperity across our entire community.

WHEREAS, entering into this Covenant Agreement and ensuring the establishment of the Regional Sales Office may attract additional businesses and investment in the community due to increased services and economic activity in the area.

NOW, THEREFORE, in consideration of the mutual promises contained herein, and for such other good and valuable consideration, the receipt of which is hereby acknowledged, the

City and Owner agree as follows:

ARTICLE 1. EFFECTIVE DATE; PARTIES; DEFINITIONS

1.1 Effective Date of Covenant Agreement. This Operating Covenant Agreement (“Covenant Agreement”) is dated December 15, 2015, for reference purposes only. This Covenant Agreement will not become effective until the date (“Effective Date”) on which all of the following are true:

1.1.1 This Covenant Agreement has been approved and executed by the appropriate authorities of Owner, as defined herein, and delivered to the City;

1.1.2 Following all legally required notices and hearings, this Covenant Agreement has been approved by the City Council;

1.1.3 This Covenant Agreement has been executed by the appropriate authorities of the City and delivered to Owner; and

If all of the foregoing conditions precedent have not been satisfied by December 31, 2015, then this Covenant Agreement may not thereafter become effective and any prior signatures and approvals of the Parties will be deemed void and of no force or effect.

1.2 Parties to Covenant Agreement.

1.2.1 The City. The address of the City is 303 East B Street, Ontario, California 91764, Attention: Al C. Boling; telephone (909) 395-2396; with copies to John Brown, City Attorney, 2855 East Guasti Road, Suite 400, Ontario, CA 91761, Telephone: (909) 989-8584.

The City represents and warrants to Owner that, to the City’s actual current knowledge:

(a) The City is a public body, corporate and politic, exercising governmental functions and powers and organized and existing under the laws of the State of California;

(b) The City has taken all actions required by law to approve the execution of this Covenant Agreement;

(c) The City’s entry into this Covenant Agreement and/or the performance of the City’s obligations under this Covenant Agreement does not violate any contract, agreement or other legal obligation of the City;

(d) The City’s entry into this Covenant Agreement and/or the performance of the City’s obligations under this Covenant Agreement does not constitute a violation of any state or federal statute or judicial decision to which the City is subject;

(e) There are no pending lawsuits or other actions or proceedings which would prevent or impair the timely performance of the City's obligations under this Covenant Agreement;

(f) The City has the legal right, power and authority to enter into this Covenant Agreement and to consummate the transactions contemplated hereby, and the execution, delivery and performance of this Covenant Agreement has been duly authorized and no other action by the City is requisite to the valid and binding execution, delivery and performance of this Covenant Agreement, except as otherwise expressly set forth herein; and

(g) The individual executing this Covenant Agreement is authorized to execute this Covenant Agreement on behalf of the City.

The representations and warranties set forth above are material consideration to Owner and the City acknowledges that Owner is relying upon the representations set forth above in undertaking Owner's obligations set forth in this Covenant Agreement.

As used in this Covenant Agreement, the term "City's actual current knowledge" shall mean, and shall be limited to, the actual current knowledge of the City Manager as of the Effective Date, without having undertaken any independent inquiry or investigation for the purpose of making such representation or warranty and without any duty of inquiry or investigation.

All of the terms, covenants and conditions of this Covenant Agreement shall be binding on and shall inure to the benefit of the City and its nominees, successors and assigns. Wherever the term "City" is used herein, such term shall include any permitted nominee, assignee or successor of the City.

1.2.2 Owner. The address of Owner for purposes of this Covenant Agreement is 135 Duryea Road, East Building, Melville, New York 11747, Attention: Christopher Peraino, Tax Director, Henry Schein, Inc., telephone (631) 454-3111, email: Christopher.Peraino@henryschein.com, .

Owner represents and warrants to the City that, to its actual current knowledge:

(a) Owner is a duly formed Delaware corporation, qualified and in good standing to do business under the laws of the State of California;

(b) The individual(s) executing this Covenant Agreement is/are authorized to execute this Covenant Agreement on behalf of Owner;

(c) Owner has taken all actions required by law to approve the execution of this Covenant Agreement;

(d) Owner's entry into this Covenant Agreement and/or the performance of its obligations under this Covenant Agreement does not violate any contract, agreement or other legal obligation of Owner;

(e) Owner's entry into this Covenant Agreement and/or the performance of its obligations under this Covenant Agreement does not constitute a violation of any state or federal statute or judicial decision to which Owner is subject;

(f) There are no pending lawsuits or other actions or proceedings which would prevent or impair the timely performance of Owner's obligations under this Covenant Agreement;

(g) Owner has the legal right, power and authority to enter into this Covenant Agreement and to consummate the transactions contemplated hereby, and the execution, delivery and performance of this Covenant Agreement have been duly authorized and no other action by Owner is requisite to the valid and binding execution, delivery and performance of this Covenant Agreement, except as otherwise expressly set forth herein; and

(h) Owner and its managerial personnel possess sufficient experience and qualifications necessary to conduct Owner's Sales Activities (hereinafter defined) as required by this Covenant Agreement.

The representations and warranties set forth herein are material consideration to the City and Owner acknowledges that the City is relying upon the representations set forth above in undertaking the City's obligations set forth above.

As used in this Covenant Agreement, the term "actual current knowledge of Owner" shall mean, and shall be limited to, the actual current knowledge of Robert Ponzo, Vice President, Global Taxes at Henry Schein Inc, as of the Effective Date, without having undertaken any independent inquiry or investigation for the purpose of making such representation or warranty and without any duty of inquiry or investigation.

All of the terms, covenants and conditions of this Covenant Agreement shall be binding on and shall inure to the benefit of Owner and its permitted nominees, successors and assigns. Wherever the term "Owner" is used herein, such term shall include any permitted nominee, assignee or successor of Owner.

The qualifications and identity of Owner are of particular concern to the City, and it is because of such qualifications and identity that the City has entered into this Covenant Agreement with Owner. No voluntary or involuntary successor-in-interest of Owner shall acquire any rights or powers under this Covenant Agreement except as expressly set forth herein.

1.2.3 The City and Owner are sometimes individually referred to as "Party" and collectively as "Parties."

1.3 Definitions.

1.3.1 "City" means the City of Ontario, a California municipal corporation, and any nominee, assignee of, or successor to, its rights, powers and responsibilities.

1.3.2 "Computation Quarter" means each calendar quarter beginning on

January 1, April 1, July 1, or October 1, as applicable, and ending on the succeeding March 31, June 30, September 30, or December 31, as applicable. The first Computation Quarter within the Eligibility Period shall commence on January 1, 2016, and is referred to herein as “Computation Quarter 1,” with each succeeding Computation Quarter within the Eligibility Period being consecutively numbered, concluding with Computation Quarter 80.

1.3.3 “Covenant Payment(s)” means those contingent payments to be made by the City to the Owner pursuant to Section 3.2 of this Covenant Agreement for the purchase of the Covenants and Owner’s timely and faithful performance thereunder.

1.3.4 “Covenant Term” means, a period of no less than twenty (20) years following the Effective Date (unless terminated sooner or extended pursuant to specific provisions of this Covenant Agreement). The Covenant Term may be unilaterally extended by Owner for an additional twenty (20) year period provided that:

(a) Owner is not in breach of the Covenants in this Covenant Agreement; and

(b) Owner provides City with written notice of Owner’s intent to extend the term not less than ninety (90) days prior to the expiration of the original Covenant Term. The notice shall be in substantially the form of Exhibit A.

1.3.5 “Covenants” means those six (6) covenants described in Section 3.1 herein.

1.3.6 “Eligibility Period” means the period commencing as of the first (1st) day of Computation Quarter 1 and ending the last day of Computation Quarter 80 (i.e., December 31, 2035) or the last day of Computation Quarter 160 (i.e., December 31, 2055) if the Covenant Term is extended as provided in Section 1.3.4.

1.3.7 “Liquidated Damages” means, for purposes of Section 3.6, as follows:

(a) If the breach occurs during Computation Quarters 1 through 20, an amount equal to the previous five (5) Computation Quarter Covenant Payments paid to Owner at any time prior to the Computation Quarter in which the breach occurs.

(b) If the breach occurs during Computation Quarters 21 through 40, an amount equal to the previous three (3) Computation Quarter Covenant Payments paid to Owner at any time prior to the Computation Quarter in which the breach occurs.

(c) If the breach occurs during Computation Quarter 40 through 60, an amount equal to the previous Computation Quarter Covenant Payment paid to Owner prior to the Computation Quarter in which the breach occurs.

1.3.8 “Merchandise” means any and all medical office, surgical, exam room or other supplies, excluding equipment, which is offered for sale or lease by Owner for delivery to a California customer.

1.3.9 “Owner” means and refers to Henry Schein, Inc., a Delaware corporation, and its successors and assigns, and any subsidiary, parent, or affiliate conducting Owner Sales Activities within the Property. The terms “subsidiary,” “parent” or “affiliate” for purposes of this Section 1.3.9 means any entity included or accounted for in the Owner’s financial statements.

1.3.10 “Owner’s Sales Activities” means the commercially reasonable business practices and activities associated with retail and wholesale sale of Merchandise in California. “Owner’s Sales Activities” also include any of the above-described activities which are conducted by a parent, subsidiary or wholly or partially owned affiliate of Owner, provided that such parent, subsidiary or affiliate did not previously conduct such activities in the City.

1.3.11 “Penalty Assessments” means and refers to penalties, assessments, collection costs and other costs, fees or charges resulting from late or underpaid payments of Sales Tax and which are levied, assessed or otherwise collected from Owner.

1.3.12 “Property” means that certain real property commonly known as 3633 Inland Empire Blvd, Ontario, CA, or any other property within the City of Ontario to which Owner may elect to relocate the Regional Sales Office during the term of this Covenant Agreement.

1.3.13 “Regional Sales Office” means that certain corporate sales/administrative office and related functions operated on the Property by Owner which shall serve as the point of sale for Owner’s Sales Activities from which Owner shall conduct or conclude all internet, telephonic, or direct Taxable Ontario Sales of Merchandise to California customers.

1.3.14 “Sales Tax” means and refers to all sales and use taxes levied under the authority of the Sales Tax Law attributable to the Regional Sales Office and Owner’s Sales Activities excluding that which is to be refunded to Owner because of an overpayment of such tax.

1.3.15 “Sales Tax Law” means and refers to: (a) California Revenue and Taxation Code Section 7200 et seq., and any successor law thereto; (b) any legislation allowing City or other public agency with jurisdiction in City to levy any form of local Sales Tax on the operations of Owner; and (c) regulations of the California State Board of Equalization (“BOE”) and other binding rulings and interpretations relating to (a) and (b) of this Section 1.3.15.

1.3.16 “Sales Tax Revenues” means the net Sales Tax actually received by the City from the BOE pursuant to the application of the Sales Tax Law (as such statutes may hereafter be amended, substituted, replaced, re-numbered, moved or modified by any successor law) attributable to the Regional Sales Office in a particular Computation Quarter. Sales Tax Revenues shall not include: (i) Penalty Assessments; (ii) any Sales Tax levied by, collected for or allocated to the State of California, the County of San Bernardino, or a district or any entity (including an allocation to a statewide or countywide pool) other than City; (iii) any administrative fee charged by the BOE; (iv) any Sales Tax subject to any sharing, rebate, offset or other charge imposed pursuant to any applicable provision of federal, state or local (except City’s) law, rule or regulation; (v) any Sales Tax attributable to any transaction not consummated within the Eligibility Period; or (vi) any Sales Tax (or other funds measured by Sales Tax)

required by the State of California to be paid over to another public entity (including the State) or set aside and/or pledged to a specific use other than for deposit into or payment from the City's general fund.

1.3.17 “Taxable Ontario Sales” means Owner's taxable sales transactions to California customers, including, but not limited to, sales through an internet website or phone sales, that result from (i) Owner's Sales Activities attributable to the Regional Sales Office or (ii) for Merchandise sold from the Regional Sales Office to addresses located in California.

ARTICLE 2. ADDITIONAL RECITALS

2.1 The previously stated Recitals are incorporated herein and made a part hereof as though fully set forth.

2.2 The City has determined that the long-term operation of the Regional Sales Office will result in substantial benefits to the City, and its citizens including, without limitation, the creation of new employment opportunities, property tax revenues, sales tax revenues and other ancillary benefits. Accordingly, the City has also determined that its entry into this Covenant Agreement and its purchase of the Covenants serve a significant public purpose, while providing only incidental benefits to a private party.

ARTICLE 3. COVENANTS RUNNING WITH THE LAND; COVENANT PAYMENTS; REMEDIES FOR BREACH.

3.1 Covenants Running with the Land.

3.1.1 Operating and Use Covenant. Owner covenants and agrees that for the Covenant Term Owner shall operate, or cause to be operated upon the Property, the Regional Sales Office in a commercially reasonable business manner, consistent with all applicable provisions of federal, state and local laws and regulations. Owner covenants and agrees that for the Covenant Term, Owner shall operate the Regional Sales Office in the City as Owner's only sales office in California for the sale of Merchandise and Merchandise shipped to California customers shall be sold from the Regional Sales Office and shipped FOB Destination with title passing in California.

3.1.2 Covenant to Designate City as Point of Sale. Owner covenants and agrees that, for the Covenant Term, Owner shall maintain such licenses and permits as may be required by any governmental agency to conduct Owner's Sales Activities related to the Regional Sales Office and the conveyance of Merchandise in California. Except as otherwise provided by applicable Law, Owner shall use commercially reasonable efforts to designate City as a “point of sale” and consummate at the Regional Sales Office all Taxable Ontario Sales. and the Owner shall identify the City as such in its reports to the BOE in accordance with the Bradley-Burns Uniform Local Sales and Use Tax Law (Revenue and Taxation Code 7200, et seq.), as it may be amended or substituted. Owner shall use commercially reasonable efforts to facilitate product sales to California residents from the Regional Sales Office. The Owner shall consummate all Taxable Ontario Sales transactions for Owner's Sales Activities at the Regional Sales Office, consistent with all applicable statutory and BOE regulatory requirements applicable to Owner's Sales Activities and the designation of the City as the “point of sale” for all such

Taxable Ontario Sales.

3.1.3 Owner's Additional Obligations Regarding Repairs and Alterations to Regional Sales Office. Owner covenants and agrees that, for the Covenant Term, the Owner shall maintain, or cause to be maintained, the Regional Sales Office in good condition, ordinary wear and tear excepted, and free from the accumulation of trash or other debris and agrees to promptly remove, or cause the removal of, all graffiti upon the Regional Sales Office. It is anticipated that Owner will be leasing the Property for the operation of the Regional Sales Office, however, if Owner, during the Covenant Term, relocates to another property or acquires the Property from which the Regional Sales Office will be located, Owner shall also maintain or cause to be maintained the landscaping upon the Property in first class condition.

3.1.4 Covenant Against Solicitation and Acceptance of Economic Incentives During the Term of the Operating Use Covenant. Owner covenants and agrees that, for the Covenant Term, Owner will not directly or indirectly solicit or accept any "Financial Assistance" from any other public or private person or entity, if such Financial Assistance is given for the express or implied purpose of causing or would result in Owner's breach of any of the Covenants. For purposes of this Section 3.1.4 the term "Financial Assistance" means any direct or indirect payment, subsidy, rebate, or other similar or dissimilar monetary or non-monetary benefit, including, without implied limitation, payment of land subsidies, relocation expenses, public financings, property or sales tax relief, rebates, exemptions or credits, relief from public improvement obligations, and payment for public improvements to or for the benefit of Owner.

3.1.5 Use of Property. Owner covenants and agrees that the Property shall be put to no use other than those uses specified in the City's General Plan, the Specific Plan, zoning ordinances, and this Covenant Agreement as the same may be amended from time to time. Nothing in this Section 3.1.5 shall limit, expand, modify or otherwise affect any right of the Owner to continue any legal nonconforming use upon the Property following changes in the City's General Plan or zoning ordinances.

3.1.6 Jobs Creation Covenant and Operational Covenant. Owner covenants and agrees that the establishment of the Regional Sales Office shall result in the creation of not less than 3 permanent jobs in the City and Owner shall use its best commercially reasonable efforts to expand the workforce at the Property each year of the Covenant Term. Owner also covenants and agrees that, to the extent Owner holds sales team meetings for sales employees in California, those sales team meetings shall be held in the City. Owner covenants and agrees that local sales staff shall be assigned to work from the Regional Sales Office. All California field salespersons of merchandise shall be permanently and exclusively assigned to the California Regional Sales Office. Customer meetings related to Merchandise Sales that do not take place at the customer's location shall take place at the California Regional Sales Office.

3.2 Covenant Payments.

3.2.1 Statement of Intent. The consideration to be paid to the Owner in exchange for the Covenants and Owner's performance of its obligations set forth in this Covenant Agreement, and subject to satisfaction of all conditions precedent thereto, shall consist of City's payment to the Owner for each Computation Quarter during the Eligibility Period that

the City receives Sales Tax Revenue, an amount equal to the sum of fifty percent (50%) of the Sales Tax Revenues attributable to annual taxable sales. The City's obligations under this Section 3.2 are contingent on a Computation Quarter-to-Quarter basis and, for each Computation Quarter, City's obligations to make any payments hereunder are expressly contingent upon the Owner having, for the entirety of such Computation Quarter, completely fulfilled its material obligations under this Covenant Agreement, including, without limitation, the Covenants. Should such condition precedent not be satisfied for each Computation Quarter, then City shall have no obligation under this Section 3.2 to make any Covenant Payments to Owner in such Computation Quarter.

3.2.2 Computation Quarter Covenant Payments. Within thirty (30) days following the end of each Computation Quarter, Owner shall submit to City certified copies of its quarterly reports to the BOE which sets forth the amount of sales taxes paid to the BOE during the Computation Quarter arising from Owner's Sales Activities conducted at the Regional Sales Office. Within one hundred twenty (120) days following the end of each Computation Quarter, City shall pay to Owner any Computation Quarter Covenant Payment due for such Computation Quarter.

3.2.3 No Carry Forward or Back. The determination of the Covenant Payment(s) shall be determined and calculated on a Computation Quarter to Computation Quarter basis. Except as provided in Section 3.2.4, no Sales Tax Revenue which is generated in a Computation Quarter other than the Computation Quarter for which the Covenant Payment is being determined shall be used or considered in the calculation of any Covenant Payment which may be due for that Computation Quarter.

3.2.4 Adjustments to Covenant Payment Amounts. If after City makes a Covenant Payment to Owner hereunder City or Owner determines that the Covenant Payment has been overpaid or underpaid and that an adjustment to a prior payment amount is warranted, City or Owner, as the case may be, shall have the right to provide a written notice to the other Party itemizing the information supporting the adjustment and either (a) requiring the City or Owner to pay the amount of the underpayment or overpayment, as applicable, within thirty (30) days from the date such notice is delivered or (b) deduct the amount of the overpayment from the next Covenant Payment otherwise owing to Owner. The Parties shall cooperate with one another and share such information as may be reasonably required to ensure that any required adjustments (either an additional payment to Owner or a refund or credit to City) can be promptly made. If the Party receiving the notice disagrees with the request for adjustment, the Parties shall meet in good faith to resolve any dispute.

3.2.5 BOE Determination of Improperly Allocated Local Sales Tax Revenues. If, at any time during or after the Eligibility Period of this Covenant Agreement, the BOE determines that all or any portion of the Sales Tax Revenues received by the City were improperly allocated and/or paid to the City, and if the BOE requires repayment of, offsets against future sales tax payments, or otherwise recaptures from the City those improperly allocated and/or paid Sales Tax Revenues, then Owner shall, within thirty (30) calendar days after written demand from the City, repay all Covenant Payments (or applicable portions thereof) theretofore paid to Owner which are attributable to such repaid, offset or recaptured Sales Tax Revenues. If Owner fails to make such repayment within thirty (30) calendar days after the

City's written demand, then Owner shall be in breach of this Covenant Agreement and such obligation shall accrue interest from the date of the City's original written demand at the then-maximum legal rate imposed by the California Code of Civil Procedure on prejudgment monetary obligations, compounded monthly, until paid. Additionally, the City may deduct any amount required to be repaid by Owner under this Section 3.2.5 from any future Covenant Payments otherwise payable to Owner under this Covenant Agreement. This Section 3.2.5 shall survive the expiration or termination of this Covenant Agreement. The City will, within five (5) business days, contact Owner regarding any communication from the BOE pertaining to tax allocations associated with Owner's business. The City and Owner agree that, should the BOE question the correctness of the allocation or otherwise determine that there has been an improper allocation to the City, the City will engage legal counsel to use his or her best efforts to defend such allocation in all BOE administrative proceedings. Any cost or expense associated with such efforts will be borne by the Owner and the City equally. For purposes of this paragraph, administrative proceedings include all BOE meetings, conferences and appeals before BOE. Owner shall reasonably cooperate with the City and its attorney. Additionally, Owner shall have the right, but not the obligation, to participate in any such administrative proceedings and may engage its own legal counsel or consultant, at its own cost.

3.2.6 Not a Pledge of Sales Tax. Owner acknowledges that the City is not making a pledge of Sales Tax Revenues, or any other particular source of funds; the definition of Sales Tax Revenues, as used herein, is used merely as a measure of the amount payment due hereunder and as means of computing the City's payment in consideration for the Covenants. It is acknowledged by Owner that the City's obligation to make payments is specifically contingent upon receipt by the City of the Sales Tax Revenues derived from operation of the Regional Sales Office.

3.3 Default.

3.3.1 Owner Default. City shall provide Owner with written notice of Owner's failure ("Owner Default") to perform any material provision of this Covenant Agreement, including, without limitation, the Covenants. Owner shall have thirty (30) days from the date of such notice to either cure such Owner Default, or, if such Owner Default cannot be reasonably cured during such thirty (30) day period, to commence to cure within said thirty (30) day period and diligently prosecute such cure to completion thereafter.

3.3.2 City Default. Owner shall provide City with written notice of City's failure ("City Default") to perform any material provision of this Covenant Agreement. City shall have thirty (30) days from the date of such notice to either cure such City Default, or, if such City Default cannot be reasonably cured during such thirty (30) day period, to commence to cure within said thirty (30) day period and diligently prosecute such cure to completion thereafter.

3.4 General Remedies for Default. Except as provided in Section 3.6, upon either a City or an Owner Default (as defined in Section 3.3), Owner or City (as applicable) shall have the right to seek all available legal and equitable remedies, including, without implied limitation, general and consequential damages, unless otherwise expressly provided to the contrary herein. Unless prohibited by law or otherwise provided by a specific term of this Covenant Agreement,

the rights and remedies of the City and the Owner under this Covenant Agreement are nonexclusive and all remedies hereunder may be exercised individually or cumulatively, and each Party may simultaneously pursue inconsistent and/or alternative remedies. Either Party may, upon the Default of the other Party and in addition to pursuing all remedies otherwise available to it, terminate this Covenant Agreement and all of its obligations hereunder without cost, expense or liability to itself.

3.5 The City's Rights to Terminate its Obligations under Section 3.2. The City's obligations under Section 3.2 shall automatically terminate without cost, expense, or liability to City, upon the occurrence of any one or more of the following: (i) Owner Default; or (ii) the end of the Eligibility Period.

3.6 Liquidated Damages.

3.6.1 Owner Default With Respect to Obligations Under Sections 3.1.1 and 3.1.2. The Parties acknowledge that the consideration to the City for its entry into this Covenant Agreement and the performance of its obligations hereunder include the City's receipt of Sales Tax Revenues, employment and other payroll taxes, property taxes, and other direct and indirect financial and non-financial benefits arising from the operation of the Owner's Sales Activities and the location of the Regional Sales Office in the City in accordance with Article 3 of this Covenant Agreement. Owner agrees that the City will suffer damages if Owner commits any Owner Default with respect to any of its obligations arising under Sections 3.1.1 and 3.1.2. The Parties agree that the exact determination of such damages would be impracticable and extremely difficult to quantify. Accordingly, the Parties have determined that Liquidated Damages (as determined pursuant to Section 1.3.7) represents a reasonable estimate of the damages which would be suffered by the City if Owner commits any Owner Default with respect to any of its obligations set forth in Sections 3.1.1 and 3.1.2. Accordingly, as its sole and exclusive monetary remedy for an Owner Default with respect to any of its covenants and obligations set forth in Sections 3.1.1 and 3.1.2, the City shall be entitled to (1) terminate this Covenant Agreement and the entirety of its obligations hereunder, including any accrued and unpaid Covenant Payments, and (2) receive from Owner the applicable amount of Liquidated Damages as provided by Section 1.3.7.

3.6.2 ACKNOWLEDGEMENT OF REASONABLENESS OF LIQUIDATED DAMAGES. UPON AN OWNER DEFAULT WITH RESPECT TO ANY OF ITS OBLIGATIONS SET FORTH IN SECTIONS 3.1.1 AND 3.1.2, FOLLOWING NOTICE AND OPPORTUNITY TO CURE PURSUANT TO SECTION 3.3.1, THE CITY AND OWNER ACKNOWLEDGE AND AGREE THAT IT WOULD BE EXTREMELY DIFFICULT AND IMPRACTICAL TO ASCERTAIN THE AMOUNT OF DAMAGES THAT WOULD BE SUFFERED BY THE CITY WITH RESPECT TO SUCH DEFAULT. HAVING MADE DILIGENT BUT UNSUCCESSFUL ATTEMPTS TO ASCERTAIN THE ACTUAL DAMAGES THE CITY WOULD SUFFER, THE PARTIES AGREE THAT THE LIQUIDATED DAMAGES AMOUNT AS DETERMINED IN ACCORDANCE WITH SECTION 1.3.7 REPRESENTS A REASONABLE ESTIMATION OF THOSE DAMAGES. THEREFORE, UPON AN OWNER DEFAULT WITH RESPECT TO ANY OF ITS OBLIGATIONS SET FORTH IN SECTIONS 3.1.1 AND 3.1.2, AS ITS SOLE AND EXCLUSIVE REMEDY FOR SUCH DEFAULT, THE CITY SHALL BE ENTITLED TO (1)

RECEIPT OF THE LIQUIDATED DAMAGES AMOUNT CALCULATED IN ACCORDANCE WITH SUBSECTION 1.3.7, WHICH OWNER SHALL PAY WITHIN TEN (10) DAYS FOLLOWING WRITTEN DEMAND FROM THE CITY, AND (2) TERMINATE THIS AGREEMENT AND THE ENTIRETY OF ITS OBLIGATIONS HEREUNDER, INCLUDING ANY ACCRUED BUT YET UNPAID COVENANT PAYMENTS.

Initials of Authorized
City Representative

Initials of Authorized
Owner Representative

ARTICLE 4. GENERAL TERMS

4.1 Tax Consequences. Owner acknowledges that it may experience tax consequences as a result of its receipt of the payments provided for in this Covenant Agreement and agrees that it shall bear any and all responsibility, liability, costs, and expenses connected in any way therewith.

4.2 Rights Not Granted Under Covenant Agreement This Covenant Agreement is not, and shall not be construed to be, a Development Agreement under Government Code Section 65864 et seq. This Covenant Agreement is not, and shall not be construed to be, an approval or an agreement to issue permits or a granting of any right or entitlement by the City concerning the Regional Sales Office, Owner's Sales Activities or any other project, development, or construction by the Owner in the City. This Covenant Agreement does not, and shall not be construed to, exempt Owner from the application and/or exercise of the City's power of eminent domain or its police power, including, but not limited to, the regulation of land uses and the taking of any actions necessary to protect the health, safety, and welfare of its citizenry.

4.3 Consent. Whenever consent or approval of any party is required under this Covenant Agreement, that party shall not unreasonably withhold, delay or condition such consent or approval unless otherwise allowed by a specific provision of this Covenant Agreement.

4.4 Notices and Demands. All notices or other communications required or permitted between the City and Owner under this Covenant Agreement shall be in writing, and may be (i) personally delivered, (ii) sent by United States registered or certified mail, postage prepaid, return receipt requested, (iii) sent by telecopier, or (iv) sent by nationally recognized overnight courier service (e.g., Federal Express), addressed to the Parties at the addresses provided in Article 1, subject to the right of either party to designate a different address for itself by notice similarly given. Any notice so given by registered or certified United States mail shall be deemed to have been given on the second business day after the same is deposited in the United States mail. Any notice not so given by registered or certified mail, such as notices delivered by telecopier or courier service (e.g., Federal Express), shall be deemed given upon receipt of the same by the party to whom the notice is given.

4.5 Nonliability of the City or City Officials and Employees. No board member, official, contractor, consultant, attorney or employee of the City shall be personally liable to Owner, any voluntary or involuntary successors or assignees, or any lender or other party

holding an interest in the Property, in the event of any default or breach by the City, or for any amount which may become due to the Owner or to its successors or assignees, or on any obligations arising under this Covenant Agreement.

4.6 Conflict of Interests. No board member, official, contractor, consultant, attorney or employee of the City or City shall have any personal interest, direct or indirect, in this Covenant Agreement nor shall any such board member, official or employee participate in any decision relating to this Covenant Agreement which affects his/her personal interests or the interests of any corporation, partnership or association in which he/she is directly or indirectly interested.

4.7 Pledge or Hypothecation of Covenant Payments. Owner may assign any Covenant Payment(s) due in accordance with the terms of this Covenant Agreement (but not any other right or obligation of this Covenant Agreement) upon thirty (30) days' prior written notice to City as collateral for any loan or financing obtained by the Owner in connection with the Regional Sales Office; provided that nothing in this Section 4.7 shall be deemed to limit the operation of Section 4.16. Without limiting the general applicability of the foregoing, Owner acknowledges that Owner's lender and any transferee of Owner's lender shall be subject to the transfer restrictions of Section 4.16.

4.8 Entire Agreement; Good Faith Negotiations. This Covenant Agreement contains all of the terms and conditions agreed upon by the Parties and supersedes any previous agreements between the Parties concerning the subject matter of this Covenant Agreement. No other understanding, oral or otherwise, regarding the subject matter of this Covenant Agreement shall be deemed to exist or to bind any of the parties hereto. All prior written or oral offers, counteroffers, memoranda of understanding, proposals and the like are superseded by this Covenant Agreement.

The Parties acknowledge that this Covenant Agreement is the product of mutual arms-length negotiations and that each party has been, or has had the opportunity to have been, represented by legal counsel in the negotiation and drafting of this Covenant Agreement. Accordingly, the rule of judicial construction which provides that ambiguities in a document are to be construed against the drafter of that document shall have no application to the interpretation or enforcement of this Covenant Agreement.

4.9 Time Deadlines Critical; Extensions and Delays; No Excuse Due to Economic Changes. Time is of the essence in the performance of the City's and Owner's obligations under this Covenant Agreement. In addition to specific provisions of this Covenant Agreement providing for extensions of time, times for performance hereunder shall be extended where delays or defaults are due to war; insurrection; any form of labor dispute; lockouts; riots; floods; earthquakes; fires; acts of God or of third parties; third party litigation; acts of a public enemy; referenda; acts of governmental authorities (except that the failure of the City to act as required hereunder shall not excuse its performance); moratoria; epidemics; quarantine restrictions; and freight embargoes (collectively, "Enforced Delays") provided, however, that the Party claiming the extension notify the other Party of the nature of the matter causing the default; and, provided further, that the extension of time shall be only for the period of the Enforced Delays. However,

deadlines for performance may not be extended as provided above due to any inability of the Owner to obtain or maintain acceptable financing for the operation of the Regional Sales Office.

ANYTHING IN THIS COVENANT AGREEMENT TO THE CONTRARY NOTWITHSTANDING, OWNER AND CITY, AND EACH OF THEM, EXPRESSLY ASSUMES THE RISK OF UNFORESEEABLE CHANGES IN ECONOMIC CIRCUMSTANCES AND/OR MARKET DEMAND/CONDITIONS AND WAIVES, TO THE GREATEST LEGAL EXTENT, ANY DEFENSE, CLAIM, OR CAUSE OF ACTION BASED IN WHOLE OR IN PART ON ECONOMIC NECESSITY, IMPRACTICABILITY, FRUSTRATION OF PURPOSE, CHANGED ECONOMIC CIRCUMSTANCES OR SIMILAR THEORIES.

OWNER AND CITY, AND EACH OF THEM, EXPRESSLY AGREES THAT ADVERSE CHANGES IN ECONOMIC CONDITIONS, EITHER OF THE OWNER SPECIFICALLY, OR OF THE CITY SPECIFICALLY, OR THE ECONOMY GENERALLY, OR CHANGES IN THE MARKET CONDITIONS OR DEMANDS, SHALL NOT OPERATE TO EXCUSE OR DELAY THE STRICT OBSERVANCE OF EACH AND EVERY OF THE OBLIGATIONS, COVENANTS, CONDITIONS AND REQUIREMENTS OF THIS COVENANT AGREEMENT. OWNER AND CITY, AND EACH OF THEM, EXPRESSLY ASSUMES THE RISK OF SUCH ADVERSE ECONOMIC OR MARKET CHANGES, WHETHER OR NOT FORESEEABLE AS OF OWNER'S EXECUTION OF THIS COVENANT AGREEMENT.

OWNER'S INITIALS _____ CITY'S INITIALS _____

4.10 Attorneys' Fees. In the event of the bringing of an arbitration, action or suit by a Party hereto against another Party hereunder by reason of any breach of any of the covenants or agreements or any intentional inaccuracies in any of the representations and warranties on the part of the other Party arising out of this Covenant Agreement or any other dispute between the Parties concerning this Covenant Agreement or the Property, then, in that event, the prevailing party in such action or dispute, whether by final judgment or arbitration award, shall be entitled to have and recover of and from the other Party all costs, expenses and disbursements of suit or claim, including actual attorneys' fees and expert witness' fees. Any judgment, order or award entered in any final judgment or award shall contain a specific provision providing for the recovery of costs, expenses and disbursements of suit or claim, including actual attorneys' fees and expert witness' fees (collectively, the "Costs") incurred in enforcing, perfecting and executing such judgment or award. For the purposes of this Section 4.10, "Costs" shall include, without implied limitation, attorneys' and experts' fees, costs and expenses incurred in the following: (i) post judgment motions and appeals, (ii) contempt proceedings, (iii) garnishment, levy and debtor and third party examination, (iv) discovery; and (v) bankruptcy litigation. This Section 4.10 shall survive any termination of this Covenant Agreement.

4.11 Amendments to This Covenant Agreement. Any amendments to this Covenant Agreement must be in writing and signed by the appropriate authorities of both the City and Owner. The City Manager is authorized on behalf of the City to approve and execute minor

amendments to this Covenant Agreement, including, but not limited to, the granting of extensions of time to Owner, not to exceed ninety (90) days in the aggregate.

4.12 Jurisdiction and Venue. Any legal action or proceeding concerning this Covenant Agreement shall be filed and prosecuted in the appropriate California state court in the County of San Bernardino, California. Both Parties hereto irrevocably consents to the personal jurisdiction of that court. The City and Owner each hereby expressly waive the benefit of any provision of federal or state law or judicial decision providing for the filing, removal, or change of venue to any other court or jurisdiction, including, without implied limitation, federal district court, due to any diversity of citizenship between the City and Owner, due to the fact that the City is a party to such action or proceeding or due to the fact that a federal question or federal right is involved or alleged to be involved. Without limiting the generality of the foregoing, the City and Owner specifically waive any rights provided to it pursuant to California Code of Civil Procedure Section 394. Owner acknowledges that the provisions of this Section 4.12 are material consideration to the City for its entry into this Covenant Agreement, in that the City will avoid the potential cost, expense and inconvenience of litigating in a distant forum

4.13 .Counterpart Originals; Integration. This Covenant Agreement may be executed in duplicate originals, each of which is deemed to be an original, but when taken together shall constitute but one and the same instrument. This Covenant Agreement and any exhibits represent the entire understanding of the Parties and supersedes all negotiations, letters of intent, memoranda of understanding or previous agreements between the parties with respect to all or any part of the subject matter hereof.

4.14 No Waiver. Failure to insist on any one occasion upon strict compliance with any of the terms, covenants or conditions hereof shall not be deemed a waiver of such term, covenant or condition, nor shall any waiver or relinquishment of any rights or powers hereunder at any one time or more times be deemed a waiver or relinquishment of such other right or power at any other time or times.

4.15 Successors and Assigns. The terms, covenants and conditions of this Covenant Agreement shall be binding upon and inure to the benefit of the Parties hereto and their successors and assigns. Except as provided in this Section 4.16, Owner shall neither transfer nor convey Owner's interest in the Property or the Regional Sales Office without the express written consent of the City, which shall not be unreasonably withheld, conditioned or delayed. In determining whether to approve of such a sale, transfer, conveyance or assignment of the Owner's interest in the Property or Regional Sales Office, the City shall evaluate: (i) the financial ability of the proposed transferee to own and operate the Regional Sales Office, or portion so transferred, and to meet the Owner's obligations under this Covenant Agreement; (ii) the fitness and experience of the proposed transferee and its managerial personnel to own and operate the Regional Sales Office or portion so transferred thereof; and (iii) the ability of the proposed transferee to maintain a level of quality and service comparable to that maintained by the Owner for the Regional Sales Office. Upon the permitted sale, transfer or conveyance by Owner of its interest therein, such owner shall thereupon be relieved of its obligations under this Covenant Agreement from and after the date of sale, transfer or conveyance except with respect to any defaults in the performance of its obligations hereunder or thereunder which occurred prior to such sale, transfer or conveyance, and the transferee shall thereafter be solely responsible

for the performance of all of the duties and obligations of Owner under this Covenant Agreement. To the extent Owner is acquired by another company which results in the frustration of the intent of this Covenant Agreement, Owner shall compensate City consistent with the Liquidated Damages set forth in Section 1.3.7.

4.16 No Third Party Beneficiaries. The performance of the respective obligations of the City and Owner under this Covenant Agreement are not intended to benefit any party other than the City or Owner, except as expressly provided otherwise herein. No person or entity not a signatory to this Covenant Agreement shall have any rights or causes of action against any party to this Covenant Agreement as a result of that party's performance or non-performance under this Covenant Agreement, except as expressly provided otherwise herein.

4.17 No Effect on Eminent Domain Authority. Nothing in this Covenant Agreement shall be deemed to limit, modify, or abridge or affect in any manner whatsoever the City's eminent domain powers with respect to the Property, the Regional Sales Office, or any other property owned or leased by Owner.

4.18 Warranty Against Payment of Consideration for Covenant Agreement. Owner warrants that it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Covenant Agreement. Third parties, for the purposes of this Section 4.19, shall not include persons to whom fees are paid for professional services if rendered by attorneys, financial consultants, accountants, engineers, architects and the like when such fees are considered necessary by Owner.

4.19 Severability. The City and Owner declare that the provisions of this Covenant Agreement are severable. If it is determined by a court of competent jurisdiction that any term, condition or provision hereof is void, voidable, or unenforceable for any reason whatsoever, then such term, condition or provision shall be severed from this Covenant Agreement and the remainder of the Covenant Agreement enforced in accordance with its terms.

4.20 Further Acts and Releases. The City and Owner each agree to take such additional acts and execute such other documents as may be reasonable and necessary in the performance of their obligations hereunder.

4.21 Estoppels. At the request of Owner or any holder of a mortgage or deed of trust secured by all or any portion of the Property, the City shall promptly execute and deliver to Owner or such holder a written statement of the City as to any of the following matters as to which Owner or such holder may inquire: (i) that no default or breach exists, or would exist with the passage of time, or giving of notice, or both, by Owner pursuant to this Covenant Agreement, if such be the case; (ii) the total amount of Covenant Payments made by the City to Owner pursuant to this Covenant Agreement prior to the date of such written statement; (iii) the amount of any Covenant Payments earned by or due and owing to Owner pursuant to this Covenant Agreement as of the date of such written statement; (iv) the Covenant Payments for a particular Computation Quarter, if known; (v) if the City has determined that Owner is in default or breach hereunder, the nature of such default and the action or actions required to be taken by Owner to cure such default or breach; and (vi) any other matter affecting the rights or obligations of Owner hereunder as to which Owner or such holder may reasonably inquire. The form of any estoppel

letter shall be prepared by Owner or such holder at its sole cost and expense and shall be reasonably acceptable in form and content to the City and Owner. The City may make any of the representations described above based on the actual current knowledge of the then-current City Manager.

4.22 Indemnity By Owner. Owner shall defend (using counsel of City's choosing), indemnify and hold harmless the City, its elected officials, officers, employees and agents from and against any and all third party claims, losses, proceedings, damages, causes of action, liability, cost and expense (including reasonable attorney's fees) arising from, in connection with or related to this Covenant Agreement or the functions or operations of the Regional Sales Office (other than to the extent arising as a result of the City's negligence or willful misconduct). The City shall fully cooperate in the defense of any such actions and upon written request of Owner shall provide to Owner such documents and records in possession of the City that are relevant to such actions and not otherwise protected by law. Notwithstanding the foregoing, should any third party bring any such action or proceeding Owner shall have the right to terminate this Covenant Agreement, and as of such date of termination, all unaccrued liabilities of the parties under this Covenant Agreement shall cease except for Owner's obligation of indemnity owed to the City as provided in this Section 4.22. For purposes of clarification, should Owner exercise its termination right as provided in this Section 4.22, the same shall not be considered a Default and the City shall have no claims against Owner for such termination.

4.23 State of California Legislation Impact on Covenant Payment. Owner acknowledges that the California legislature has in the past adopted certain legislation which diverted to the State of California a portion of the Sales Tax Revenues which were otherwise payable to the City. Owner acknowledges that it is possible that the legislature may enact similar legislation in the future which would cause a corresponding reduction of and/or delay in the payment of the Sales Tax Revenues and that such reduction will cause Owner a corresponding reduction and/or delay in the payment of the Covenant Payments due to Owner during such time as such legislation is in effect. Furthermore, Owner acknowledges that it is possible that the legislation described above, or some variant thereof, may be enacted and effective during one or more subsequent times during the Eligibility Period and may materially and negatively impact the amount of Sales Tax Revenues and, accordingly, Covenant Payments. The City does not make any representation, warranty or commitment concerning the future actions of the California legislature with respect to the allocation of Sales Tax Revenues to the City. Owner agrees that it is undertaking its obligations under this Covenant Agreement after having considered, and is expressly assuming the risk of, the possibility of the enactment of such legislation.

The foregoing paragraph notwithstanding, City acknowledges that the California legislature may provide for the payment to City of other revenues for the purpose of offsetting any losses in Sales Tax Revenues resulting from the enactment of legislation of the type described in the immediately preceding paragraph. City agrees that, should the California legislature provide for such offsetting revenues, then for purposes of this Covenant Agreement and the computation of any Covenant Payments which may become due to Owner hereunder, City will consider any such offsetting revenues which are (i) indexed to Sales Tax and offset the loss of Sales Tax Revenues to the City on a dollar for dollar basis, (ii) actually received by the City, and (iii) not subject to any restrictions on use beyond those which are otherwise generally

applicable to sales tax revenues received by California municipalities, to be Sales Tax Revenues within the meaning of this Covenant Agreement.

[Signatures on the following pages]

**SIGNATURE PAGE TO THE
HENRY SCHEIN, INC.
OPERATING COVENANT AGREEMENT**

CITY OF ONTARIO
a California municipal corporation

By: _____
Al C. Boling, City Manager

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

By: _____
John Brown
City Attorney

**SIGNATURE PAGE TO THE
HENRY SCHEIN, INC.
OPERATING COVENANT AGREEMENT**

HENRY SCHEIN, INC.
a Delaware Corporation

By: _____
Signature

Robert J. Ponzo (Print)
Vice President – Global Taxes

EXHIBIT A
HENRY SCHEIN, INC.
OPERATING COVENANT AGREEMENT
NOTICE OF INTENT TO EXERCISE OPTION

(To be placed on Henry Schein, Inc. letterhead)
MUST BE DELIVERED TO CITY NOT LESS THAN
90 DAYS BEFORE EXPIRATION OF ORIGINAL AGREEMENT

Date

City Manager
City of Ontario
303 East B Street
Ontario, CA 91764

Dear _____,

The City of Ontario and Henry Schein, Inc. entered into that certain Operating Covenant Agreement, effective December __, 2015, which is scheduled to expire on December __, 2035. Pursuant to Section 1.3.4 of that Agreement, Henry Schein Inc. does hereby exercise the unilateral right to extend the term of that Agreement for an additional 20 years. Pursuant to this notice, the termination date of the Agreement will be December __, 2055.

Sincerely,

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ACCEPTING THE ECONOMIC DEVELOPMENT SUBSIDY REPORT PREPARED PURSUANT TO GOVERNMENT CODE SECTION 53083 REGARDING AN OPERATING COVENANT AGREEMENT BY AND BETWEEN THE CITY OF ONTARIO AND STAPLES CONTRACT AND COMMERCIAL, INC.

WHEREAS, the City of Ontario ("City") and Staples Contract & Commercial, Inc. ("Staples") have negotiated an Operating Covenant Agreement ("Agreement") for the retention of a warehouse and distribution center within the City; and

WHEREAS, pursuant to that Agreement Staples is committed to continue operating a warehouse and distribution center in the City indefinitely; and

WHEREAS, Staples is also covenanted to, among other things, designate the City as the point of sale for certain transactions; and

WHEREAS, the City has agreed to purchase those covenants through quarterly payments equal to fifty percent (50%) of the sales tax, above a base sales tax amount, generated by transactions allocated to the warehouse and distribution center; and

WHEREAS, based on information provided by City staff, and other such written and oral evidence as presented to the City, the City finds and determines that the allocation of funds to Staples pursuant to the Agreement is reasonably related to a legitimate governmental purpose in that the retention of the warehouse and distribution center will provide numerous public benefits including:

- Generating substantial revenue for the City through additional local sales tax revenue which may be used by the City for the funding of necessary public services and facilities, including but not limited to, public safety services and facilities, public improvements and recreational opportunities that otherwise may not be available to the community for many years; and
- Staples is a worldwide retailer who will be committed to maintaining the warehouse and distribution center in the City of Ontario which will ensure the retention and creation jobs and provide opportunity for additional job growth throughout the term of this Agreement; and
- Entering into this Agreement and retaining the warehouse and distribution center may attract additional businesses and investment to the community due to increased services and economic activity in the area; and
- Retaining this business within the City will create jobs, maintain economic diversity in the community and stimulate the economic recovery of the

Inland Empire by generating new opportunities for economic growth within the region; and

- Retaining and expanding Staples's operations within the City will generate substantial revenue for the City, allow for the retention of jobs, revitalize an area of the City which has suffered a loss of jobs and businesses during the economic downturn of the mid-2000's, and result in community and public improvements that might not otherwise be available to the community for many years; and

WHEREAS, in accordance with Government Code Section 53083, the City provided certain information in written form to the public and on its website, a copy of which is attached hereto as Exhibit A and incorporated herein by this reference, and held a noticed public hearing on December 15, 2015 to consider all written and oral comments on the Economic Development Subsidy Report; and

WHEREAS, all other legal prerequisites to the adoption of this Resolution have occurred.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Ontario as follows:

SECTION 1. Incorporation of Recitals. The foregoing recitals are true and correct, and are incorporated herein and made an operative part of this Resolution.

SECTION 2. Findings. The City Council additionally finds and determines that (a) there are identifiable public purposes fulfilled by the Agreement, as set forth in the Recitals, that outweigh the benefit to private persons; and (b) the findings set forth in this Resolution are based upon substantial written and oral evidence presented to the City Council.

SECTION 3. CEQA. The City Council hereby finds that pursuant to the California Environmental Quality Act ("CEQA") (Pub. Res. Code, § 21000 et seq.) and the State CEQA Guidelines (Cal. Code Regs, tit. 14 § 15000 et seq.), approval of the Agreement and acceptance of the Economic Development Subsidy Report is not a "project" for purposes of CEQA and therefore is not subject to CEQA review. The Agreement and acceptance of the Economic Development Subsidy Report is not a project pursuant to State CEQA Guidelines section 15378(b)(4), which states that government fiscal activities which do not involve any commitment to any specific project which may result in a potentially significant environmental impact are not subject to CEQA. Further, the Agreement and acceptance of the Economic Development Subsidy Report is not a project under State CEQA Guidelines section 15061(b)(3), which states that CEQA does not apply where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

In addition, the City Council has finds that the environmental impacts for this existing facility were previously analyzed in the California Commerce Center Final

Environmental Impact Report (SCH #85061007), certified by the City Council in January 1983.

SECTION 4. Acceptance of Economic Development Subsidy Report. The City Council finds and determines that this Economic Development Subsidy Report is in compliance with applicable law and specifically Government Code Section 53083.

SECTION 5. Severability. If any provision of this Resolution is held invalid, the remainder of this Resolution shall not be affected by such invalidity, and the provisions of this Resolution are severable.

SECTION 6. Effective Date. This Resolution shall become effective immediately upon its adoption.

The City Clerk of the City of Ontario shall certify as to the adoption of this Resolution.

PASSED, APPROVED, AND ADOPTED this 15th day of December 2015.

PAUL S. LEON, MAYOR

ATTEST:

MARY E. WIRTES, MMC, CITY CLERK

APPROVED AS TO LEGAL FORM:

BEST BEST & KRIEGER LLP
CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF ONTARIO)

I, MARY E. WIRTES, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2015- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held December 15, 2015 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

The foregoing is the original of Resolution No. 2015- duly passed and adopted by the Ontario City Council at their regular meeting held December 15, 2015.

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

EXHIBIT A
ECONOMIC DEVELOPMENT SUBSIDY REPORT

[Attached behind this cover page]

**ECONOMIC DEVELOPMENT SUBSIDY REPORT
PURSUANT TO GOVERNMENT CODE SECTION 53083**

**FOR AN OPERATING COVENANT AGREEMENT
BY AND BETWEEN
CITY OF ONTARIO
AND
STAPLES CONTRACT AND COMMERCIAL, INC.**

Pursuant to Government Code Section 53083, the City Council of the City of Ontario must hold a noticed public hearing and, prior to the public hearing, provide all of the following information in written form and available to the public and through the City's website, regarding a proposed economic development subsidy to be provided by the City pursuant to an Operating Covenant Agreement by and between the City of Ontario and Staples Contract and Commercial, Inc. ("Agreement"). Notice was published in the local newspaper for a public hearing to be held on December 15, 2015.

The purpose of this report is to provide the information required pursuant to Government Code Section 53083 in regards to the Agreement. This report shall remain available to the public and posted on the City's website until the end date of the economic development subsidy, as further described in number 2 below.

- 1. The name and address of all corporations or any other business entities, except for sole proprietorships, that are the beneficiary of the economic development subsidy.**

The Agreement is with Staples Contract and Commercial, Inc., a Delaware corporation. Staples Contract and Commercial, Inc. is the sole beneficiary of the economic development subsidy.

Staples Contract and Commercial, Inc.
500 Staples Drive,
Framingham, MA 01702

- 2. The start and end dates and schedule, if applicable, for the economic development subsidy.**

If the Agreement is approved by the City Council, the Initial Subsidy (as defined in #3 below) shall start on January 1, 2016 through December 31, 2019, provided certain conditions precedent are met. The Continuing Subsidy (as defined in #3 below) shall commence on January 1, 2020 and continue until terminated by either party pursuant to the Agreement.

The economic development subsidy will be paid quarterly (every 3 months), within 120 days of the end of each Computation Quarter. Computation Quarters run from January 1 to March 31, April 1 to June 30, July 1 to September 30, and October 1 to December 31.

3. A description of the economic development subsidy, including the estimated total amount of the expenditure of public funds by, or of revenue lost to, the local agency as a result of the economic development subsidy.

The Initial Subsidy, for the period of January 1, 2016 through December 31, 2019, provided City receives not less than One Million Two Hundred Thousand (\$1,200,000) ("Base Sales Tax Amount") from Owner's sales attributable to the Property, shall be an amount of Six Hundred Thousand Dollars (\$600,000) annually.

The Continuing Subsidy, for the period commencing January 1, 2020 and continuing until the Covenant Agreement is terminated, provided City receives not less than the Base Sales Tax Amount from Owner's sales attributable to the Property, shall be an amount equal to Fifty percent (50%) of the Sales Tax Revenues attributable to annual taxable sales above the Base Sales Tax Amount. The payment to Owner for the Continuing Subsidy shall not exceed One Million Eight Hundred Thousand Dollars (\$1,800,000) annually.

The City estimates that the total amount of the expenditure of public funds as a result of the Initial Subsidy will be Two Million Four Hundred Thousand Dollars (\$2,400,000). The City estimates the total amount of the expenditure of public funds as a result of the Continuing Subsidy will be not more than One Million Eight Hundred Thousand Dollars (\$1,800,000) annually until the Agreement is terminated by either party.

4. A statement of the public purposes for the economic development subsidy.

Staples Contract & Commercial, Inc. a retailer of consumer products with distribution in worldwide has an existing distribution center and warehouse located in the City of Ontario. Because of changing market trends and business development issues, Staples Contract and Commercial is considering relocating the existing distribution center and warehouse out of the City of Ontario. The loss of this business would mean the loss of approximately 200 jobs in the City and the loss of substantial tax revenue to the City.

Entering into this Agreement will result in Staples maintaining the existing warehouse and distribution center within the City and expands its operations within the City as appropriate. By entering into this Agreement, the City will be maintaining approximately 200 jobs, and creating potential for new jobs continuing to stimulate the economy in an area of the City which has suffered a loss of jobs and businesses during the economic downturn of the mid-2000's, and result in community and public improvements that might not otherwise be available to the community for many years.

The public purpose of the economic development subsidy includes, but is not limited to, maintaining and creating jobs and stimulating the economic recovery of the Inland Empire. Additionally, by having a company like Staples Contract and Commercial, Inc.

remain in the City, we will be adding diversity to and generating new opportunities for economic growth.

Further, the commitment to stay in Ontario and expand operations serves the additional public purpose of fostering a business and civic environment that may attract additional businesses and investment in the community due to the availability of the increased public and private services and economic activity resulting therefrom, thereby assisting the City in its goal of furthering the development of the community.

5. The projected tax revenue to the local agency as a result of the economic development subsidy.

The City anticipates that the retention and potential expansion of the distribution and warehouse center within the City will result in an approximate increase of sales tax revenue by \$1 million per year, minus the covenant payments to be paid to Staples Contract and Commercial, Inc., as set forth in number 2 above.

There will also be an increase in other taxes including business license tax and real property taxes, in an approximate amount of \$50,000.

6. The estimated number of jobs created by the economic development subsidy, broken down by full-time, part-time, and temporary positions.

The retention of the distribution and warehouse center within the City is anticipated to result in the retention of approximately 200 jobs and the potential creation of new jobs over the term of the Agreement, as follows:

- 50 full-time jobs
- 50 part-time jobs

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING THE OPERATING COVENANT AGREEMENT BETWEEN THE CITY OF ONTARIO AND STAPLES CONTRACT AND COMMERCIAL, INC. AND MAKING RELATED FINDINGS.

WHEREAS, Staples Contract & Commercial, Inc. ("Staples"), a retailer of consumer products with distribution worldwide, and the Redevelopment Agency of City of Ontario ("Redevelopment Agency") have previously entered into an Operating Covenant and Location Agreement ("Location Agreement"); and

WHEREAS, following the expiration of that Location Agreement, Staples may consider relocating its existing distribution center and warehouse out of the City of Ontario ("City"); and

WHEREAS, the Redevelopment Agency was dissolved pursuant to AB 1X 26 and can no longer enter into such agreements; and

WHEREAS, to ensure that Staples remains in the City and continues to expand its business in the City after the expiration of the Location Agreement, Staples and the City have negotiated an Operating Covenant Agreement ("Agreement") which provides incentives to ensure Staples maintains the existing warehouse and distribution center within the City and expands its operations within the City as appropriate; and

WHEREAS, the City has determined that the retention of the Staples distribution center within the City will generate substantial revenue for the City, allow for the retention of and the creation of new jobs, revitalize an area of the City which has suffered a loss of jobs and businesses during the economic downturn of the mid-2000's, and result in community and public improvements that might not otherwise be available to the community for many years; and

WHEREAS, entering into this Agreement and ensuring the retention of the warehouse and distribution center may attract additional businesses and investment to the community due to increased services and economic activity in the area; and

WHEREAS, the environmental impacts of this existing facility were previously reviewed as part of the California Commerce Center Final Environmental Impact Report (SCH #85061007) certified by the City Council in January 1983; and

WHEREAS, on December 15, 2015, the City Council of the City of Ontario conducted a public hearing to consider the Agreement and concluded said hearing on that date; and

WHEREAS, all legal prerequisites to the adoption of this Resolution have occurred.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Ontario as follows:

SECTION 1. Recitals. The Recitals set forth above are true and correct and are incorporated into this Resolution by this reference.

SECTION 2. Findings. The City Council hereby finds that:

(a) Entering into this Agreement will serve the following public purposes:

(1) Staples is a worldwide retailer who will be committed to maintaining the warehouse and distribution center in the City of Ontario.

(2) Retaining this business within the City will create jobs, maintain economic diversity in the community and stimulate the economic recovery of the Inland Empire by generating new opportunities for economic growth within the region.

(3) Retaining and expanding Staples's operations within the City will generate substantial revenue for the City, allow for the retention of jobs, revitalize an area of the City which has suffered a loss of jobs and businesses during the economic downturn of the mid-2000's, and result in community and public improvements that might not otherwise be available to the community for many years.

(4) Entering into this Agreement and ensuring the retention of warehouse and distribution center may attract additional businesses and investment in the community due to increased services and economic activity in the area.

(b) Based upon these and other public benefits the public purposes of the Agreement outweigh any private benefit to private persons or entities.

(c) Each City obligation is contingent upon separate consideration by Staples including but not limited to quarterly sales tax generation.

SECTION 3. CEQA Compliance. The City Council hereby finds that pursuant to the California Environmental Quality Act ("CEQA") (Pub. Res. Code, § 21000 et seq.) and the State CEQA Guidelines (Cal. Code Regs, tit. 14 § 15000 et seq.), approval of the Agreement is not a "project" for purposes of CEQA and therefore is not subject to CEQA review. The Agreement is not a project pursuant to State CEQA Guidelines section 15378(b)(4), which states that government fiscal activities which do not involve any commitment to any specific project which may result in a potentially significant environmental impact are not subject to CEQA. Further, the Agreement is not a project under State CEQA Guidelines section 15061(b)(3), which states that CEQA does not apply where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

In addition, the City Council finds that the environmental impacts of this existing facility were previously analyzed in the California Commerce Center Final Environmental Impact Report (SCH #85061007), certified by the City Council in January 1983.

SECTION 4. Approve Agreement. The City Council hereby approves the Operating Covenant Agreement in the form attached to this Resolution as Exhibit A. The City Council hereby authorizes the City Manager, with the concurrence of the City Attorney, to execute said Agreement. City Manager is hereby authorized to take any additional steps necessary to facilitate the intent of this action.

SECTION 5. Implementation. The City Manager or his or her designee is hereby authorized and directed to, on behalf of the City, execute any and all documents in accordance with this Resolution and applicable law.

SECTION 6. Severability. If any provision of this Resolution or the application of any such provision to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Resolution that can be given effect without the invalid provision or application, and to this end the provisions of this Resolution are severable. The City declares that it would have adopted this Resolution irrespective of the invalidity of any particular portion of this Resolution.

SECTION 7. Certification. The City Clerk shall certify to the adoption of this Resolution.

SECTION 8. Effective Date. This Resolution shall become effective immediately upon its adoption.

PASSED, APPROVED, AND ADOPTED this 15th day of December 2015.

PAUL S. LEON, MAYOR

ATTEST:

MARY E. WIRTES, MMC, CITY CLERK

APPROVED AS TO LEGAL FORM:

BEST BEST & KRIEGER LLP
CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF ONTARIO)

I, MARY E. WIRTES, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2015- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held December 15, 2015 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

The foregoing is the original of Resolution No. 2015- duly passed and adopted by the Ontario City Council at their regular meeting held December 15, 2015.

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

EXHIBIT A
OPERATING COVENANT AGREEMENT

[Attached behind this cover page]

[STAPLES 2015]

OPERATING COVENANT AGREEMENT

BETWEEN

THE CITY OF ONTARIO

A CALIFORNIA MUNICIPAL CORPORATION,

AND

STAPLES CONTRACT & COMMERCIAL, INC.,

A DELAWARE CORPORATION

[Dated as of December __, 2015 for reference purposes only]

RECITALS

THIS OPERATING COVENANT AGREEMENT (the “Covenant Agreement”) is made this ___ day of December, 2015 (“Effective Date”), by and between **The City of Ontario**, a California municipal corporation (“City”) and Staples Contract & Commercial, Inc., a Delaware corporation (“Owner”).

WHEREAS, Owner, a retailer of consumer products with distribution worldwide is considering relocating its existing distribution center and warehouse out of the City of Ontario; and

WHEREAS, the incentives provided in this Covenant Agreement are intended to ensure Owner, maintains the existing warehouse and distribution center within the City of Ontario and expands its operations within the City of Ontario as appropriate; and

WHEREAS, entering into this Agreement and giving Owner an incentive to continue to conduct operations in the City of Ontario will generate substantial revenue for the City, enable the Owner to retain the existing workforce on the Property subject to future market forces and possibly create the potential for additional, job growth on the Property, and continue to stimulate the economy in an area of the City of Ontario which has suffered a loss of jobs and businesses during the economic downturn of the mid-2000’s, and result in community and public improvements that might not otherwise be available to the community for many years.

NOW, THEREFORE, in consideration of the mutual promises contained herein, and for such other good and valuable consideration, the receipt of which is hereby acknowledged, the City and Owner agree as follows:

ARTICLE 1. EFFECTIVE DATE; PARTIES; DEFINITIONS

1.1 Effective Date of Covenant Agreement. This Staples Contract & Commercial, Inc. Operating Covenant Agreement (“Covenant Agreement”) is dated December 15, 2015, for reference purposes only. This Covenant Agreement will not become effective until the date (“Effective Date”) on which all of the following are true:

1.1.1 This Covenant Agreement has been approved and executed by the appropriate authorities of Owner, as defined herein, and delivered to the City;

1.1.2 Following all legally required notices and hearings, this Covenant Agreement has been approved by the City Council;

1.1.3 This Covenant Agreement has been executed by the appropriate authorities of the City and delivered to Owner; and

If all of the foregoing conditions precedent have not been satisfied by December 31, 2015, then this Covenant Agreement may not thereafter become effective and any prior signatures and approvals of the Parties will be deemed void and of no force or effect.

1.2 Parties to Covenant Agreement.

1.2.1 The City. The address of the City is 303 East B Street, Ontario, California 91764, Attention: Al C. Boling; telephone _____; facsimile _____; with copies to John Brown, City Attorney, 2855 East Guasti Road, Suite 400, Ontario, CA 91761, Telephone: (909) 989-8584.

The City represents and warrants to Owner that, to the City's actual current knowledge:

(a) The City is a public body, corporate and politic, exercising governmental functions and powers and organized and existing under the laws of the State of California;

(b) The City has taken all actions required by law to approve the execution of this Covenant Agreement;

(c) The City's entry into this Covenant Agreement and/or the performance of the City's obligations under this Covenant Agreement does not violate any contract, agreement or other legal obligation of the City;

(d) The City's entry into this Covenant Agreement and/or the performance of the City's obligations under this Covenant Agreement does not constitute a violation of any state or federal statute or judicial decision to which the City is subject;

(e) There are no pending lawsuits or other actions or proceedings which would prevent or impair the timely performance of the City's obligations under this Covenant Agreement;

(f) The City has the legal right, power and authority to enter into this Covenant Agreement and to consummate the transactions contemplated hereby, and the execution, delivery and performance of this Covenant Agreement has been duly authorized and no other action by the City is requisite to the valid and binding execution, delivery and performance of this Covenant Agreement, except as otherwise expressly set forth herein; and

(g) The individual executing this Covenant Agreement is authorized to execute this Covenant Agreement on behalf of the City.

The representations and warranties set forth above are material consideration to Owner and the City acknowledges that Owner is relying upon the representations set forth above in undertaking Owner's obligations set forth in this Covenant Agreement.

As used in this Covenant Agreement, the term "City's actual current knowledge" shall mean, and shall be limited to, the actual current knowledge of the City Manager as of the Effective Date, without having undertaken any independent inquiry or investigation for the

purpose of making such representation or warranty and without any duty of inquiry or investigation.

All of the terms, covenants and conditions of this Covenant Agreement shall be binding on and shall inure to the benefit of the City and its nominees, successors and assigns.

1.2.2 Owner. The address of Owner for purposes of this Covenant Agreement is 500 Staples Drive, Framingham, MA 01701-9271. Attention: Lease Administrator with a copy to Attention: Legal Department. Reference # #4692 ; telephone [***INSERT TELEPHONE NUMBER***]; facsimile [***INSERT FACSIMILE NUMBER***].

Owner represents and warrants to the City that, to its actual current knowledge:

- (a) Owner is a duly formed Delaware corporation, qualified and in good standing to do business under the laws of the State of California;
- (b) The individual(s) executing this Covenant Agreement is/are authorized to execute this Covenant Agreement on behalf of Owner;
- (c) Owner has taken all actions required by law to approve the execution of this Covenant Agreement;
- (d) Owner's entry into this Covenant Agreement and/or the performance of its obligations under this Covenant Agreement does not violate any contract, agreement or other legal obligation of Owner;
- (e) Owner's entry into this Covenant Agreement and/or the performance of its obligations under this Covenant Agreement does not constitute a violation of any state or federal statute or judicial decision to which Owner is subject;
- (f) There are no pending lawsuits or other actions or proceedings which would prevent or impair the timely performance of Owner's obligations under this Covenant Agreement;
- (g) Owner has the legal right, power and authority to enter into this Covenant Agreement and to consummate the transactions contemplated hereby, and the execution, delivery and performance of this Covenant Agreement have been duly authorized and no other action by Owner is requisite to the valid and binding execution, delivery and performance of this Covenant Agreement, except as otherwise expressly set forth herein; and
- (h) Owner and its managerial personnel possess sufficient experience and qualifications necessary to conduct Owner's Sales Activities (hereinafter defined in Section 1.3.11) as required by this Covenant Agreement.

The representations and warranties set forth herein are material consideration to the City and Owner acknowledges that the City is relying upon the representations set forth above in undertaking the City's obligations set forth above.

As used in this Covenant Agreement, the term "actual current knowledge of Owner" shall mean, and shall be limited to, the actual current knowledge of Staples Contract & Commercial, Inc., as of the Effective Date, without having undertaken any independent inquiry or investigation for the purpose of making such representation or warranty and without any duty of inquiry or investigation.

All of the terms, covenants and conditions of this Covenant Agreement shall be binding on and shall inure to the benefit of Owner and its permitted nominees, successors and assigns. Wherever the term "Owner" is used herein, such term shall include any permitted nominee, assignee or successor of Owner.

The qualifications and identity of Owner are of particular concern to the City, and it is because of such qualifications and identity that the City has entered into this Covenant Agreement with Owner. No voluntary or involuntary successor-in-interest of Owner shall acquire any rights or powers under this Covenant Agreement except as expressly set forth herein.

1.2.3 The City and Owner are sometimes individually referred to as "Party" and collectively as "Parties."

1.3 Definitions.

1.3.1 "Base Sales Tax Amount" means One Million Two Hundred Thousand Dollars (\$1,200,000).

1.3.2 "City" means the City of Ontario, a California municipal corporation, and any nominee, assignee of, or successor to, its rights, powers and responsibilities.

1.3.3 "Computation Quarter" means each calendar quarter beginning on January 1, April 1, July 1, or October 1, as applicable, and ending on the succeeding March 31, June 30, September 30, or December 31, as applicable. The first Computation Quarter within the Eligibility Period shall commence on January 1, 2016 and is referred to herein as "Computation Quarter 1," with each succeeding Computation Quarter being consecutively numbered.

1.3.4 "Covenant Payment(s)" means those contingent payments to be made by the City to the Owner pursuant to Section 3.2 of this Covenant Agreement as consideration for the Covenants and Owner's timely and faithful performance thereunder.

1.3.5 "Covenant Term" means, a period of time from the Effective Date until this Covenant Agreement is terminated pursuant to specific provisions of this Covenant Agreement.

1.3.6 "Covenants" means collectively those six (6) covenants described in Section 3.1 herein.

1.3.7 “Distribution Center and Warehouse” means that certain corporate sales/administrative office and fulfillment/distribution center operated on the Property by Owner which shall serve as the point of distribution for all Owner’s Sales Activities conducted at the Property.

1.3.8 “Eligibility Period” means the period commencing as of the first (1st) day of Computation Quarter 1 and continuing until last day of the Computation Quarter in which this Covenant Agreement is terminated pursuant to the specific provisions of this Covenant Agreement.

1.3.9 “Liquidated Damages” means, for purposes of Section 3.5, as follows:

(a) If the breach occurs during Computation Quarters 1 through 20, an amount equal to Fifty percent (50%) of the Covenant Payments paid to Owner at any time prior to the Computation Quarter in which the breach occurs.

(b) If the breach occurs during Computation Quarters 21 through 40, an amount equal to Thirty percent (30%) of the Covenant Payments paid to Owner at any time prior to the Computation Quarter in which the breach occurs.

(c) If the breach occurs during Computation Quarter 41 through 60, an amount equal to the Covenant Payments paid to Owner for the six (6) Computation Quarters immediately preceding the Computation Quarter in which the breach occurs.

(d) If the breach occurs after Computation Quarter 61 there shall be no damages owed to the City, including without limitation, pursuant to the Liquidated Damages provision, Section 3.5

1.3.10 “Owner” means and refers to Staples Contract & Commercial, Inc., a Delaware corporation, and its successors and assigns, cumulatively and, including for purposes of calculating Sales Tax, all affiliated entities to Owner that correctly report Sales Tax Revenues relating to personal property shipped or distributed from or through the Property.

1.3.11 “Owner’s Sales Activities” means the commercially reasonable business practices and activities associated with retail and wholesale sale of Owner’s products (“Sales”) shipped or distributed from or through the Property, including, including sales of Quill Corporation, a Delaware Corporation, and any other affiliate of Owner whether on the Property or on another Property leased or owned by Owner, over the internet, world wide web, telephone sales or otherwise that result in Sales Tax Revenues relating to personal property which is shipped or distributed from or through the Property. “Owner’s Sales Activities” also include any of the above-described activities which are conducted by a parent, subsidiary or wholly or partially owned affiliate of Owner, provided that such parent, subsidiary or affiliate did not previously conduct such activities in the City and such Sales are shipped or distributed from or through the Property.

1.3.12 “Penalty Assessments” means and refers to penalties, assessments,

collection costs and other costs, fees or charges resulting from late or underpaid payments of Sales Tax and which are levied, assessed or otherwise collected from Owner.

1.3.13 “Property” means that certain real property commonly known as 1500 South Dupont Street, Ontario, CA, or any other property within the City of Ontario to which Owner may elect to relocate the Distribution Center and Warehouse during the term of this Covenant Agreement.

1.3.14 “Sales Tax” means and refers to all sales and use taxes levied under the authority of the Sales Tax Law attributable to the Distribution Center and Warehouse and Owner’s Sales Activities excluding that which is to be refunded to Owner because of an overpayment of such tax.

1.3.15 “Sales Tax Law” means and refers to: (a) California Revenue and Taxation Code Section 7200 et seq., and any successor law thereto; (b) any legislation allowing City or other public agency with jurisdiction in City to levy any form of local Sales Tax on the operations of Owner; and (c) regulations of the BOE and other binding rulings and interpretations relating to (a) and (b) of this Section 1.3.15.

1.3.16 “Sales Tax Revenues” means the net Sales Tax actually received by the City from the BOE pursuant to the application of the Sales Tax Law (as such statutes may hereafter be amended, substituted, replaced, re-numbered, moved or modified by any successor law) attributable to the Distribution Center and Warehouse in a particular Computation Quarter. Sales Tax Revenues shall not include: (i) Penalty Assessments; (ii) any Sales Tax levied by, collected for or allocated to the State of California, the County of San Bernardino, or a district or any entity (including an allocation to a statewide or countywide pool) other than City; (iii) any administrative fee charged by the BOE; (iv) any Sales Tax subject to any sharing, rebate, offset or other charge imposed pursuant to any applicable provision of federal, state or local (except City’s) law, rule or regulation; (v) any Sales Tax attributable to any transaction not consummated within the Eligibility Period; or (vi) any Sales Tax (or other funds measured by Sales Tax) required by the State of California to be paid over to another public entity (including the State) or set aside and/or pledged to a specific use other than for deposit into or payment from the City’s general fund.

ARTICLE 2. ADDITIONAL RECITALS

2.1 The previously stated Recitals are incorporated herein and made a part hereof as though fully set forth.

2.2 The City has determined in its sole discretion without input from Owner that the long-term operation of the Distribution Center and Warehouse will result in substantial benefits to the City, and its citizens including, without limitation, the opportunity to retain existing jobs and, potentially, create the opportunity for additional job growth in the long term, property tax revenues, sales tax revenues and other ancillary benefits. Accordingly, the City has also determined that its entry into this Covenant Agreement and its purchase of the Covenants serve a significant public purpose, while providing only incidental benefits to a private party.

ARTICLE 3. COVENANTS RUNNING WITH THE LAND; COVENANT PAYMENTS; REMEDIES FOR BREACH.

3.1 Covenants Running with the Land.

3.1.1 Operating and Use Covenant. Owner covenants and agrees that for the Covenant Term Owner shall operate, or cause to be operated upon the Property, the Distribution Center and Warehouse in a commercially reasonable business manner, consistent with all applicable provisions of federal, state and local laws and regulations. Subject to Section 4.9, the Distribution Center and Warehouse shall be operated in accordance with the reasonable and customary practices in surrounding communities. Owner will operate its business in a commercially reasonable and prudent manner. Owner shall exercise commercially reasonable efforts to maximize the amount of Sales Tax Revenue, provided, however, Owner shall be under no obligation or requirement to change, modify, revise or amend its business practices or procedures existing as of the Effective Date that take place in other jurisdictions. Owner's obligations pursuant to the immediately preceding sentence include, without limitation, the obligation to obtain all federal, state and local licenses and permits required for the operation of the business and to advertise, market and promote the business in a commercially reasonable fashion. The foregoing notwithstanding, Owner shall be under no obligation or requirement to change, modify, revise or amend its business practices or procedures existing as of the Effective Date that take place in other jurisdictions. For the term of this Operating Covenant, the Owner may use the Property only for the purposes of the operation of the Distribution Center and Warehouse and conducting Owner's Sales Activities in accordance with this Covenant Agreement.

3.1.2 Covenant to Designate City as Point of Sale. Owner covenants and agrees that, for the term of the Operating and Use Covenant as described in Section 3.1.1, Owner shall maintain such licenses and permits as may be required by any governmental agency to conduct Owner's Sales Activities related to the Distribution Center and Warehouse and shall consummate at the Distribution Center and Warehouse all taxable sales transactions resulting from Owner's Sales Activities and identify the City as such in all reports to the California State Board of Equalization ("BOE") in accordance with the Bradley-Burns Uniform Local Sales and Use Tax Law (Revenue and Taxation Code 7200, et seq.), as it may be amended or substituted. The foregoing notwithstanding, Owner shall be under no obligation or requirement to change, modify, revise or amend its business practices or procedures existing as of the Effective Date that take place in other jurisdictions. The City acknowledges that Owner currently and may in the future operate additional sale and distribution centers in the State of California and Owner's activities from such other sale and distribution centers are not intended to be included in the scope of this Covenant Agreement. Owner shall maintain the appropriate master sales permits applicable to and required for the operation of the Distribution Center and Warehouse. The Owner shall consummate all taxable sales transactions for Owner's Sales Activities at the Distribution Center and Warehouse, consistent with all applicable statutory and BOE regulatory requirements applicable to Owner's Sales Activities and the designation of the City as the "point of sale" for all Owner's taxable sales occurring as a result of Owner's Sales Activities.

3.1.3 Owner's Additional Obligations Regarding Repairs and Alterations to Distribution

Center and Warehouse. Subject to the terms of that certain Agreement of Lease dated by and between Owner as tenant and Majestic-CCC IV, LLC as Landlord, Owner covenants and agrees that, for the term of the Operating and Use Covenant as described in Section 3.1.1, the Owner shall maintain, or cause to be maintained, the Distribution Center and Warehouse in good condition, ordinary wear and tear excepted, and free from the accumulation of trash or other debris and agrees to promptly remove, or cause the removal of, all graffiti upon the Distribution Center and Warehouse. Owner shall also maintain or cause to be maintained the landscaping upon the Property in a good condition.

3.1.4 Covenant Against Solicitation and Acceptance of Economic Incentives During the Term of the Operating Use Covenant. Owner covenants and agrees that, for the term of the Operating and Use Covenant as described in Section 3.1.1, Owner will not directly or indirectly solicit or accept any “Financial Assistance” from any other public or private person or entity, if such Financial Assistance is given for the purpose of causing or would result in either Owner’s breach of any of the Covenants. The parties acknowledge and agree that the foregoing sentence shall not apply to the terms of that certain Operating Covenant and Facility Upgrade Loan Agreement dated as of June 16, 2009 by and between Owner and the Ontario Redevelopment Agency. For purposes of this Section 3.1.4 the term “Financial Assistance” means any direct or indirect payment, subsidy, rebate, or other similar or dissimilar monetary or non-monetary benefit, including, without implied limitation, payment of land subsidies, relocation expenses, public financings, property or sales tax relief, rebates, exemptions or credits, relief from public improvement obligations, and payment for public improvements to or for the benefit of Owner and relating solely to the Property and/or the Distribution and Warehouse Center.

3.1.5 Use of Property. Owner covenants and agrees that the Property shall be put to no use other than those uses specified in the City’s General Plan, the Specific Plan, zoning ordinances, and this Covenant Agreement as the same may be amended from time to time. Nothing in this Section 3.1.5 shall limit, expand, modify or otherwise affect any right of the Owner to continue any legal nonconforming use upon the Property following changes in the City’s General Plan or zoning ordinances.

3.1.1 Jobs Creation Covenant and Operational Covenant. Owner covenants and agrees that entering into this Agreement will enable the Owner to retain the existing workforce on the Property subject to future market forces and possibly create the potential for additional job growth on the Property.

3.2 Covenant Payments.

3.2.1 Statement of Intent. The consideration to be paid to the Owner in exchange for the Owner’s satisfaction of the Covenants set forth in this Covenant Agreement, and subject to satisfaction of all conditions precedent thereto, shall consist of City’s payment to the Owner for each Computation Quarter during the Eligibility Period that the City receives Sales Tax Revenue, as follows:

(a) For the period of January 1, 2016 through December 31, 2019, provided City receives not less than the Base Sales Tax Amount from Owner's sales attributable to the Property, City shall pay to Owner an amount of Six Hundred Thousand Dollars (\$600,000) annually to be paid within one hundred twenty (120) days following the end of each calendar year during the period..

(b) For the period commencing January 1, 2020 and continuing until this Covenant Agreement is terminated, provided City receives not less than the Base Sales Tax Amount from Owner's sales attributable to the Property, City shall pay to Owner an amount equal to Fifty percent (50%) of the Sales Tax Revenues attributable to annual taxable sales paid quarterly in accordance with Section 3.2.3 below. The payment to Owner required by this Section 3.2.1(b) shall not exceed One Million Eight Hundred Thousand Dollars (\$1,800,000) per tax year.

3.2.2 Contingent Obligation. The City's obligations under this Section 3.2 are contingent on a Computation Quarter-to-Quarter basis and, for each Computation Quarter, City's obligations to make any payments hereunder are expressly contingent upon the Owner having, for the entirety of such Computation Quarter, completely fulfilled its material obligations under this Covenant Agreement, including, without limitation, the Covenants. Should such condition precedent not be satisfied for each Computation Quarter, then City shall have no obligation under this Section 3.2 to make any Covenant Payments to Owner in such Computation Quarter.

3.2.3 Computation Quarter Covenant Payments. Within thirty (30) days following the end of each Computation Quarter, Owner shall submit to City certified copies of its quarterly reports to the California State Board of Equalization ("BOE") which sets forth the amount of sales taxes paid to the BOE during the Computation Quarter arising from Owner's Sales Activities conducted at the Distribution Center and Warehouse. Within one hundred twenty (120) days following the end of each Computation Quarter, City shall pay to Owner any Computation Quarter Covenant Payment due for such Computation Quarter. The City's obligation to pay Owner the Computation Quarter Covenant Payment due for any period prior to the expiration or earlier termination of this Covenant Agreement shall survive such expiration or termination provided all conditions precedent to payment have been satisfied.

3.2.4 No Carry Forward or Back. The determination of the Covenant Payment(s) shall be determined and calculated on a Computation Quarter to Computation Quarter basis. Except as provided in Section 3.2.4, no Sales Tax Revenue which is generated in a Computation Quarter other than the Computation Quarter for which the Covenant Payment is being determined shall be used or considered in the calculation of any Covenant Payment which may be due for that Computation Quarter.

3.2.5 BOE Determination of Improperly Allocated Local Sales Tax Revenues. If, at any time during or after the Eligibility Period of this Covenant Agreement, the BOE determines that all or any portion of the Sales Tax Revenues received by the City were improperly allocated and/or paid to the City, and if the BOE requires repayment of, offsets against future sales tax payments, or otherwise recaptures from the City those improperly allocated and/or paid Sales Tax Revenues, then Owner shall, within thirty (30) calendar days

after written demand from the City, repay all Covenant Payments (or applicable portions thereof) theretofore paid to Owner which are attributable to such repaid, offset or recaptured Sales Tax Revenues. If Owner fails to make such repayment within thirty (30) calendar days after the City's written demand, then Owner shall be in breach of this Covenant Agreement and such obligation shall accrue interest from the date of the City's original written demand at the then-maximum legal rate imposed by the California Code of Civil Procedure on prejudgment monetary obligations, compounded monthly, until paid. Additionally, the City may deduct any amount required to be repaid by Owner under this Section 3.2.4 from any future Covenant Payments otherwise payable to Owner under this Covenant Agreement. This Section 3.2.4 shall survive the expiration or termination of this Covenant Agreement.

3.2.6 Not a Pledge of Sales Tax. Owner acknowledges that the City is not making a pledge of Sales Tax Revenues, or any other particular source of funds; the definition of Sales Tax Revenues, as used herein, is used merely as a measure of the amount payment due hereunder and as means of computing the City's payment in consideration for the Covenants. It is acknowledged by Owner that the City's obligation to make payments is specifically contingent upon receipt by the City of the Sales Tax Revenues derived from operation of the Distribution Center and Warehouse.

3.3 Default.

3.3.1 Owner Default. City shall provide Owner with written notice of Owner's failure ("Owner Default") to strictly abide by any material provision of this Covenant Agreement, including, without limitation, the Covenants. Owner shall have thirty (30) days from the date of such notice to either cure such Owner Default, or, if such Owner Default cannot be reasonably cured during such thirty (30) day period, to commence to cure within said thirty (30) day period and diligently prosecute such cure to completion thereafter.

3.3.2 City Default. Owner shall provide City with written notice of City's failure ("City Default") to strictly abide by any material provision of this Covenant Agreement. City shall have ten (10) days from the date of such notice to either cure such City Default, or, if such City Default cannot be reasonably cured during such thirty (30) day period, to commence to cure within said ten (10) day period and diligently prosecute such cure to completion thereafter.

3.3.3 General Remedies for Default. Except as provided in Section 3.6, upon either a City or an Owner Default (as defined in Section 3.3), Owner or City (as applicable) shall have the right to seek all available legal and equitable remedies, including, without implied limitation, general and consequential damages, unless otherwise expressly provided to the contrary herein. Unless prohibited by law or otherwise provided by a specific term of this Covenant Agreement, the rights and remedies of the City and the Owner under this Covenant Agreement are nonexclusive and all remedies hereunder may be exercised individually or cumulatively, and the City may simultaneously pursue inconsistent and/or alternative remedies. Either Party may, upon the Default of the other Party and in addition to pursuing all remedies otherwise available to it, terminate this Covenant Agreement and all of its obligations hereunder without cost, expense or liability to itself.

3.4 The City's Rights to Terminate its Obligations under Section 3.2 The City's obligations under Section 3.2 shall automatically terminate without cost, expense, or liability to City, upon the occurrence of any one or more of the following: (i) Owner Default beyond applicable notice and cure periods; (ii) the end of the Eligibility Period; (iii) upon the final determination by a court of competent jurisdiction that any one or more of the Covenants are void, voidable, invalid, or even unenforceable for any reason whatsoever, including, without limitation, legal infirmity, or (iv) Owner termination of this Agreement pursuant to Section 4.25. Upon termination of the City's obligations under Section 3.2 in accordance with this Section 3.4 shall operate to forgive, modify, and discharge or excuse Owner's obligations arising under this Covenant Agreement.

3.5 Liquidated Damages.

3.5.1 Owner Default With Respect to Obligations Under Sections 3.1.1 and 3.1.2. The Parties acknowledge that the consideration to the City for its entry into this Covenant Agreement and the performance of its obligations hereunder include the City's receipt of Sales Tax Revenues, employment and other payroll taxes, property taxes, and other direct and indirect financial and non-financial benefits arising from the operation of Owner's Sales Activities and the location of the Distribution Center and Warehouse in the City of Ontario in accordance with Article 3 of this Covenant Agreement. Owner agrees that the City will suffer damages if Owner commits any Owner Default beyond applicable notice and cure periods with respect to any of its obligations arising under Sections 3.1.1 and 3.1.2. The Parties agree that the exact determination of such damages would be impracticable and extremely difficult to quantify. Accordingly, the Parties have determined that Liquidated Damages (as determined pursuant to Section 1.3.9) represents a reasonable estimate of the damages which would be suffered by the City if Owner commits any Owner Default with respect to any of its obligations set forth in Sections 3.1.1 and 3.1.2. Accordingly, as its sole and exclusive monetary remedy for an Owner Default with respect to any of its covenants and obligations set forth in Sections 3.1.1 and 3.1.2, the City shall be entitled to (1) terminate this Covenant Agreement and the entirety of its obligations hereunder, including any accrued and unpaid Covenant Payments, and (2) receive from Owner the applicable amount of Liquidated Damages as provided by Section 1.3.9.

3.5.2 ACKNOWLEDGEMENT OF REASONABLENESS OF LIQUIDATED DAMAGES. UPON AN OWNER DEFAULT WITH RESPECT TO ANY OF ITS OBLIGATIONS SET FORTH IN SECTIONS 3.1.1 AND 3.1.2, FOLLOWING NOTICE AND OPPORTUNITY TO CURE PURSUANT TO SECTION 3.3.1, THE CITY AND OWNER ACKNOWLEDGE AND AGREE THAT IT WOULD BE EXTREMELY DIFFICULT AND IMPRACTICAL TO ASCERTAIN THE AMOUNT OF DAMAGES THAT WOULD BE SUFFERED BY THE CITY WITH RESPECT TO SUCH DEFAULT. HAVING MADE DILIGENT BUT UNSUCCESSFUL ATTEMPTS TO ASCERTAIN THE ACTUAL DAMAGES THE CITY WOULD SUFFER, THE PARTIES AGREE THAT THE LIQUIDATED DAMAGES AMOUNT AS DETERMINED IN ACCORDANCE WITH SECTION 1.3.6 REPRESENTS A REASONABLE ESTIMATION OF THOSE DAMAGES. THEREFORE, UPON AN OWNER DEFAULT WITH RESPECT TO ANY OF ITS OBLIGATIONS SET FORTH IN SECTIONS 3.1.1 AND 3.1.2, AS ITS SOLE AND EXCLUSIVE REMEDY FOR SUCH DEFAULT, THE CITY SHALL BE ENTITLED TO (1)

RECEIPT OF THE LIQUIDATED DAMAGES AMOUNT CALCULATED IN ACCORDANCE WITH SUBSECTION 1.3.9, WHICH OWNER SHALL PAY WITHIN THIRTY (30) DAYS FOLLOWING WRITTEN DEMAND FROM THE CITY, AND (2) TERMINATE THIS AGREEMENT AND THE ENTIRETY OF ITS OBLIGATIONS HEREUNDER.

Initials of Authorized
City Representative

Initials of Authorized
Owner Representative

ARTICLE 4. GENERAL TERMS

4.1 Tax Consequences. Owner acknowledges that it may experience tax consequences as a result of its receipt of the payments provided for in this Covenant Agreement and agrees that it shall bear any and all responsibility, liability, costs, and expenses connected in any way therewith.

4.2 Rights Not Granted Under Covenant Agreement. This Covenant Agreement is not, and shall not be construed to be a Development Agreement under Government Code Section 65864 et seq. This Covenant Agreement is not, and shall not be construed to be, an approval or an agreement to issue permits or a granting of any right or entitlement by the City concerning the Distribution Center and Warehouse, Owner's Sales Activities or any other project, development, or construction by the Owner in the City. This Covenant Agreement does not, and shall not be construed to, exempt Owner from the application and/or exercise of the City's or City's power of eminent domain or its police power, including, but not limited to, the regulation of land uses and the taking of any actions necessary to protect the health, safety, and welfare of its citizenry.

4.3 Consent. Whenever consent or approval of any party is required under this Covenant Agreement, that party shall not unreasonably withhold, delay or condition such consent or approval unless otherwise allowed by a specific provision of this Covenant Agreement.

4.4 Notices and Demands. All notices or other communications required or permitted between the City and Owner under this Covenant Agreement shall be in writing, and may be (i) personally delivered, (ii) sent by United States registered or certified mail, postage prepaid, return receipt requested, or (iii) sent by nationally recognized overnight courier service (e.g., Federal Express), addressed to the Parties at the addresses provided in Article 1, subject to the right of either party to designate a different address for itself by notice similarly given. Any notice so given by registered or certified United States mail shall be deemed to have been given on the second business day after the same is deposited in the United States mail. Any notice not so given by registered or certified mail, such as notices delivered by courier service (e.g., Federal Express), shall be deemed given upon receipt of the same by the party to whom the notice is given.

4.5 Nonliability. No board member, official, contractor, consultant, attorney or employee of the City of Ontario or City shall be personally liable to Owner, any voluntary or

involuntary successors or assignees, or any lender or other party holding an interest in the Property, in the event of any default or breach by the City, or for any amount which may become due to the Owner or to its successors or assignees, or on any obligations arising under this Covenant Agreement. No board member, official, contractor, consultant, attorney or employee of Owner shall be personally liable to the City, any voluntary or involuntary successors or assignees, or any lender or other party holding an interest in the Property, in the event of any default or breach by Owner, or for any amount which may become due to the City or to its successors or assignees, or on any obligations arising under this Covenant Agreement.

4.6 Conflict of Interests. No board member, official, contractor, consultant, attorney or employee of the City or City shall have any personal interest, direct or indirect, in this Covenant Agreement nor shall any such board member, official or employee participate in any decision relating to this Covenant Agreement which affects his/her personal interests or the interests of any corporation, partnership or association in which he/she is directly or indirectly interested.

4.7 Pledge or Hypothecation of Covenant Payments. Owner may assign any Covenant Payment(s) due in accordance with the terms of this Covenant Agreement (but not any other right or obligation of this Covenant Agreement) upon thirty (30) days' prior written notice to City as collateral for any loan or financing obtained by the Owner in connection with the Distribution Center and Warehouse; provided that nothing in this Section 4.7 shall be deemed to limit the operation of Section 4.16. Without limiting the general applicability of the foregoing, Owner acknowledges that Owner's lender and any transferee of Owner's lender shall be subject to the transfer restrictions of Section 4.16.

4.8 Entire Agreement; Good Faith Negotiations. This Covenant Agreement contains all of the terms and conditions agreed upon by the Parties and supersedes any previous agreements between the Parties concerning the subject matter of this Covenant Agreement. No other understanding, oral or otherwise, regarding the subject matter of this Covenant Agreement shall be deemed to exist or to bind any of the parties hereto. All prior written or oral offers, counteroffers, memoranda of understanding, proposals and the like are superseded by this Covenant Agreement.

The Parties acknowledge that this Covenant Agreement is the product of mutual arms-length negotiations and that each party has been, or has had the opportunity to have been, represented by legal counsel in the negotiation and drafting of this Covenant Agreement. Accordingly, the rule of judicial construction which provides that ambiguities in a document are to be construed against the drafter of that document shall have no application to the interpretation or enforcement of this Covenant Agreement. In any action or proceeding to interpret and/or enforce this Covenant Agreement, the trier of fact may refer to extrinsic evidence not in conflict with any specific provision of this Covenant Agreement to ascertain and give effect to the intent of the Parties hereto.

4.9 Time Deadlines Critical; Extensions and Delays; No Excuse Due to Economic Changes. Time is of the essence in the performance of the City's and Owner's obligations under this Covenant Agreement. In addition to specific provisions of this Covenant Agreement providing for extensions of time, times for performance hereunder shall be extended where delays or defaults are due to war; insurrection; any form of labor dispute; lockouts; riots; floods; earthquakes; fires; acts of God or of third parties; third party litigation; acts of a public enemy; referenda; acts of governmental authorities (except that the failure of the City to act as required hereunder shall not excuse its performance); moratoria; epidemics; quarantine restrictions; and freight embargoes (collectively, "Enforced Delays") provided, however, that the Party claiming the extension notify the other Party of the nature of the matter causing the default; and, provided further, that the extension of time shall be only for the period of the Enforced Delays. However, deadlines for performance may not be extended as provided above due to any inability of the Owner to obtain or maintain acceptable financing for the operation of the Distribution Center and Warehouse.

ANYTHING IN THIS COVENANT AGREEMENT TO THE CONTRARY NOTWITHSTANDING, OWNER EXPRESSLY ASSUMES THE RISK OF UNFORESEEABLE CHANGES IN ECONOMIC CIRCUMSTANCES AND/OR MARKET DEMAND/CONDITIONS AND WAIVES, TO THE GREATEST LEGAL EXTENT, ANY DEFENSE, CLAIM, OR CAUSE OF ACTION BASED IN WHOLE OR IN PART ON ECONOMIC NECESSITY, IMPRACTICABILITY, FRUSTRATION OF PURPOSE, CHANGED ECONOMIC CIRCUMSTANCES OR SIMILAR THEORIES.

OWNER EXPRESSLY AGREES THAT ADVERSE CHANGES IN ECONOMIC CONDITIONS, EITHER OF OWNER SPECIFICALLY OR THE ECONOMY GENERALLY, OR CHANGES IN THE MARKET CONDITIONS OR DEMANDS, SHALL NOT OPERATE TO EXCUSE OR DELAY THE STRICT OBSERVANCE OF EACH AND EVERY OF THE OBLIGATIONS, COVENANTS, CONDITIONS AND REQUIREMENTS OF THIS COVENANT AGREEMENT. OWNER EXPRESSLY ASSUMES THE RISK OF SUCH ADVERSE ECONOMIC OR MARKET CHANGES, WHETHER OR NOT FORESEEABLE AS OF OWNER'S EXECUTION OF THIS COVENANT AGREEMENT.

OWNER'S INITIALS _____

4.10 Attorneys' Fees. In the event of the bringing of an arbitration, action or suit by a Party hereto against another Party hereunder by reason of any breach of any of the covenants or agreements or any intentional inaccuracies in any of the representations and warranties on the part of the other Party arising out of this Covenant Agreement or any other dispute between the Parties concerning this Covenant Agreement or the Property, then, in that event, the prevailing party in such action or dispute, whether by final judgment or arbitration award, shall be entitled to have and recover of and from the other Party all actual and reasonable costs and expenses of suit or claim, including actual and reasonable attorneys' fees. Any judgment, order or award entered in any final judgment or award shall contain a specific provision providing for the recovery of all actual and reasonable costs and expenses of suit or claim, including actual and reasonable attorneys' fees (collectively, the "Costs") incurred in enforcing, perfecting and

executing such judgment or award. For the purposes of this Section 4.10, "Costs" shall include, without implied limitation, attorneys' and experts' fees, costs and expenses incurred in the following: (i) post judgment motions and appeals, (ii) contempt proceedings, (iii) garnishment, levy and debtor and third party examination, (iv) discovery; and (v) bankruptcy litigation. This Section 4.10 shall survive any termination of this Covenant Agreement.

4.11 Amendments to This Covenant Agreement. Any amendments to this Covenant Agreement must be in writing and signed by the appropriate authorities of both the City and Owner. The City Manager is authorized on behalf of the City to approve and execute minor amendments to this Covenant Agreement, including, but not limited to, the granting of extensions of time to Owner, not to exceed ninety (90) days in the aggregate.

4.12 Jurisdiction and Venue. Any legal action or proceeding concerning this Covenant Agreement shall be filed and prosecuted in the appropriate California state court in the County of San Bernardino, California. Both Parties hereto irrevocably consents to the personal jurisdiction of that court. The City and Owner each hereby expressly waive the benefit of any provision of federal or state law or judicial decision providing for the filing, removal, or change of venue to any other court or jurisdiction, including, without implied limitation, federal district court, due to any diversity of citizenship between the City and Owner, due to the fact that the City is a party to such action or proceeding or due to the fact that a federal question or federal right is involved or alleged to be involved. Without limiting the generality of the foregoing, the City and Owner specifically waive any rights provided to it pursuant to California Code of Civil Procedure Section 394. Owner acknowledges that the provisions of this Section 4.12 are material consideration to the City for its entry into this Covenant Agreement, in that the City will avoid the potential cost, expense and inconvenience of litigating in a distant forum.

4.13 Interpretation. The City and Owner acknowledge that this Covenant Agreement is the product of mutual arms-length negotiation and drafting and that both Parties have been represented by legal counsel in the negotiation and drafting of this Covenant Agreement. Accordingly, the rule of construction which provides that ambiguities in a document shall be construed against the drafter of that document shall have no application to the interpretation and enforcement of this Covenant Agreement. In any action or proceeding to interpret or enforce this Covenant Agreement, the finder of fact may refer to any extrinsic evidence not in direct conflict with any specific provision of this Covenant Agreement to determine and give effect to the intention of the Parties.

4.14 Counterpart Originals; Integration. This Covenant Agreement may be executed in duplicate originals, each of which is deemed to be an original, but when taken together shall constitute but one and the same instrument. This Covenant Agreement and any exhibits represent the entire understanding of the Parties and supersedes all negotiations, letters of intent, memoranda of understanding or previous agreements between the parties with respect to all or any part of the subject matter hereof.

4.15 No Waiver. Failure to insist on any one occasion upon strict compliance with any of the terms, covenants or conditions hereof shall not be deemed a waiver of such term, covenant or condition, nor shall any waiver or relinquishment of any rights or powers hereunder

at any one time or more times be deemed a waiver or relinquishment of such other right or power at any other time or times.

4.16 Successors and Assigns. The terms, covenants and conditions of this Covenant Agreement shall be binding upon and inure to the benefit of the Parties hereto and their successors and assigns. Except as provided in this Section 4.16, Owner shall neither transfer nor convey Owner's interest in the Property or the Distribution Center and Warehouse without the express written consent of the City, which shall not be unreasonably withheld, conditioned or delayed; provided, however, the provision of this Section 4.16 shall not be applicable in connection with (a) any transfer of equity interests in Owner, or (b) any assignment to (1) any Affiliate (as hereinafter defined) of Owner, (2) the surviving entity resulting from a merger or consolidation of Owner or (3) the acquirer of substantially all of Owner's assets. The term "Affiliate" means any person or entity that now or hereafter directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, a party. The term "control" (including the terms "controlling", "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person or entity, whether through the ownership of voting securities, by contract or otherwise, in each case as such terms are interpreted under Rule 12b-2 of the Securities Exchange Act of 1934, as amended. In determining whether to approve of such a sale, transfer, conveyance or assignment of the Owner's interest in the Property, the City shall evaluate: (i) the financial ability of the proposed transferee to own and operate the Distribution Center and Warehouse, or portion so transferred, and to meet the Owner's obligations under this Covenant Agreement; (ii) the fitness and experience of the proposed transferee and its managerial personnel to own and operate the Distribution Center and Warehouse or portion so transferred thereof; and (iii) the ability of the proposed transferee to maintain a level of quality and service comparable to that maintained by the Owner for the Distribution Center and Warehouse. Upon the permitted sale, transfer or conveyance by Owner of its interest therein, such owner shall thereupon be relieved of its obligations under this Covenant Agreement from and after the date of sale, transfer or conveyance except with respect to any defaults in the performance of its obligations hereunder or thereunder which occurred prior to such sale, transfer or conveyance, and the transferee shall thereafter be solely responsible for the performance of all of the duties and obligations of Owner under this Covenant Agreement.

4.17 No Third Party Beneficiaries. The performance of the respective obligations of the City and Owner under this Covenant Agreement are not intended to benefit any party other than the City and/or Owner, except as expressly provided otherwise herein. No person or entity not a signatory to this Covenant Agreement shall have any rights or causes of action against any party to this Covenant Agreement as a result of that party's performance or non-performance under this Covenant Agreement, except as expressly provided otherwise herein.

4.18 No Effect on Eminent Domain Authority. Nothing in this Covenant Agreement shall be deemed to limit, modify, or abridge or affect in any manner whatsoever the City's or City's eminent domain powers with respect to the Property, the Distribution Center and Warehouse, or any other property owned by Distribution Center and Warehouse.

4.19 Warranty Against Payment of Consideration for Covenant Agreement.

Owner warrants that it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Covenant Agreement. Third parties, for the purposes of this Section 4.19, shall not include persons to whom fees are paid for professional services if rendered by attorneys, financial consultants, accountants, engineers, architects and the like when such fees are considered necessary by Owner.

4.20 Severability. The City and Owner declare that the provisions of this Covenant Agreement are severable. If it is determined by a court of competent jurisdiction that any term, condition or provision hereof is void, voidable, or unenforceable for any reason whatsoever, then such term, condition or provision shall be severed from this Covenant Agreement and the remainder of the Covenant Agreement enforced in accordance with its terms.

4.21 Further Acts and Releases. The City and Owner each agree to take such additional acts and execute such other documents as may be reasonable and necessary in the performance of their obligations hereunder.

4.22 Estoppels. At the request of Owner or any holder of a mortgage or deed of trust secured by all or any portion of the Property, the City shall promptly execute and deliver to Owner or such holder a written statement of the City as to any of the following matters as to which Owner or such holder may inquire: (i) that no default or breach exists, or would exist with the passage of time, or giving of notice, or both, by Owner pursuant to this Covenant Agreement, if such be the case; (ii) the total amount of Covenant Payments made by the City to Owner pursuant to this Covenant Agreement prior to the date of such written statement; (iii) the amount of any Covenant Payments earned by or due and owing to Owner pursuant to this Covenant Agreement as of the date of such written statement; (iv) the Covenant Payments for a particular Computation Quarter; (v) if the City has determined that Owner is in default or breach hereunder, the nature of such default and the action or actions required to be taken by Owner to cure such default or breach; and (vi) any other matter affecting the rights or obligations of Owner hereunder as to which Owner or such holder may reasonably inquire. The form of any estoppel letter shall be prepared by Owner or such holder at its sole cost and expense and shall be reasonably acceptable in form and content to the City and Owner. The City may make any of the representations described above based on the actual current knowledge of the then-current City Manager.

Indemnity. Owner shall defend (using reasonably acceptable counsel of City's choosing), indemnify and hold harmless the City, its elected officials, officers, employees and agents from and against any and all third party claims, losses, proceedings, damages, causes of action, liability, cost and expense (including reasonable attorney's fees) arising from, in connection with or related to this Agreement or the functions or operations of the Distribution Center and Warehouse (other than to the extent arising as a result of the City's negligence or willful misconduct). The City shall fully cooperate in the defense of any such actions and upon written request of Owner shall provide to Owner such documents and records in possession of the City that are relevant to such actions and not otherwise protected by law. Notwithstanding the foregoing, should any third party bring any such action or proceeding Owner shall have the right to terminate this Agreement, and as of such date of termination, all unaccrued liabilities of the

parties under this Agreement shall cease except for Owner's obligation of indemnity owed to the City as provided in this Section 4.23. For purposes of clarification, should Owner exercise its termination right as provided in this Section 4.23, the same shall not be considered a Default and the City shall have no claims against Owner for liquidated damages.

4.23 State of California Legislation Impact on Covenant Payment. Owner acknowledges that the California legislature has in the past adopted certain legislation which diverted to the State of California a portion of the Sales Tax Revenues which were otherwise payable to the City. Owner acknowledges that it is possible that the legislature may enact similar legislation in the future which would cause a corresponding reduction of and/or delay in the payment of the Sales Tax Revenues and that such reduction will cause Owner a corresponding reduction and/or delay in the payment of the Covenant Payments due to Owner during such time as such legislation is in effect. Furthermore, Owner acknowledges that it is possible that the legislation described above, or some variant thereof, may be enacted and effective during one or more subsequent times during the Eligibility Period and may materially and negatively impact the amount of Sales Tax Revenues and, accordingly, Covenant Payments. The City does not make any representation, warranty or commitment concerning the future actions of the California legislature with respect to the allocation of Sales Tax Revenues to the City. Owner agrees that it is undertaking its obligations under this Covenant Agreement after having considered, and is expressly assuming the risk of, the possibility of the enactment of such legislation.

The foregoing paragraph notwithstanding, City acknowledges that the California legislature may provide for the payment to City of other revenues for the purpose of offsetting any losses in Sales Tax Revenues resulting from the enactment of legislation of the type described in the immediately preceding paragraph. City agrees that, should the California legislature provide for such offsetting revenues, then for purposes of this Covenant Agreement and the computation of any Covenant Payments which may become due to Owner hereunder, City will consider any such offsetting revenues which are (i) indexed to Sales Tax and offset the loss of Sales Tax Revenues to the City on a dollar for dollar basis, (ii) actually received by the City, and (iii) not subject to any restrictions on use beyond those which are otherwise generally applicable to sales tax revenues received by California municipalities, to be Sales Tax Revenues within the meaning of this Covenant Agreement.

4.24 Termination for Convenience. Commencing on the first day of the sixty-first (61st) Computation Quarter, either Party may terminate this Covenant Agreement for convenience provided that the following conditions precedent to termination have been satisfied.

4.24.1 The Terminating Party is not in breach or default of this Covenant Agreement.

4.24.2 The Terminating Party provides written notice to the Non-Terminating Party not less than one full Computation Quarter prior to the date of termination.

[Signatures on the following pages]

**SIGNATURE PAGE TO THE
Staples Contract & Commercial, Inc.
OPERATING COVENANT AGREEMENT**

CITY OF ONTARIO
a California municipal corporation

By: _____

ATTEST:

By: _____

APPROVED AS TO FORM:

By: _____
John Brown
City Attorney

**SIGNATURE PAGE TO THE
Staples Contract & Commercial, Inc.
OPERATING COVENANT AGREEMENT**

Staples Contract & Commercial, Inc.
a _____ Corporation

By: _____
Signature

Name (Print)

Title (Print)

By: _____
Signature

Name (Print)

Title (Print)

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ACCEPTING THE ECONOMIC DEVELOPMENT SUBSIDY REPORT PREPARED PURSUANT TO GOVERNMENT CODE SECTION 53083 REGARDING AN OPERATING COVENANT AGREEMENT BY AND BETWEEN THE CITY OF ONTARIO AND SIGMANET INTERNET, INC.

WHEREAS, the City of Ontario ("City") and SIGMAnet Internet, Inc. ("SIGMAnet") have negotiated an Operating Covenant Agreement ("Agreement") for the retention of a headquarters and sales office within the City; and

WHEREAS, pursuant to that Agreement, SIGMAnet is committed to continue operating a headquarters and sales office in the City indefinitely; and

WHEREAS, SIGMAnet is also covenanted to, among other things, designate the City as the point of sale for certain transactions; and

WHEREAS, the City has agreed to purchase those covenants through quarterly payments equal to fifty percent (50%) of the sales tax, in excess of a base sales tax amount, generated by transactions allocated to the headquarters and sales office; and

WHEREAS, based on information provided by City staff, and other such written and oral evidence as presented to the City Council, the City finds and determines that the allocation of funds to SIGMAnet pursuant to the Agreement is reasonably related to a legitimate governmental purpose in that the retention of the headquarters and sales office will provide numerous public benefits including:

- Generating substantial revenue for the City through additional local sales tax revenue which may be used by the City for the funding of necessary public services and facilities, including but not limited to, public safety services and facilities, public improvements and recreational opportunities that otherwise may not be available to the community for many years; and
- SIGMAnet's commitment to maintaining the headquarters and sales office in the City of Ontario which will ensure the retention and creation of jobs and provide opportunity for additional job growth throughout the term of this Agreement; and
- Entering into this Agreement and retaining the headquarters and sales office may attract additional businesses and investment to the community due to increased services and economic activity in the area; and
- Retaining this business within the City will create jobs, maintain economic diversity in the community and stimulate the economic recovery of the Inland Empire by generating new opportunities for economic growth within the region; and

- Retaining and expanding SIGMAnet's operations within the City will generate substantial revenue for the City, allow for the retention of jobs, revitalize an area of the City which has suffered a loss of jobs and businesses during the economic downturn of the mid-2000's, and result in community and public improvements that might not otherwise be available to the community for many years; and

WHEREAS, in accordance with Government Code Section 53083, the City provided certain information in written form to the public and on its website, a copy of which is attached hereto as Exhibit A and incorporated herein by this reference, and held a noticed public hearing on December 15, 2015 to consider all written and oral comments on the Economic Development Subsidy Report; and

WHEREAS, all other legal prerequisites to the adoption of this Resolution have occurred.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Ontario as follows:

SECTION 1. Incorporation of Recitals. The foregoing recitals are true and correct, and are incorporated herein and made an operative part of this Resolution.

SECTION 2. Findings. The City Council additionally finds and determines that (a) there are identifiable public purposes fulfilled by the Agreement, as set forth in the Recitals, that outweigh the benefit to private persons; and (b) the findings set forth in this Resolution are based upon substantial written and oral evidence presented to the City Council.

SECTION 3. CEQA. The City Council hereby finds that pursuant to the California Environmental Quality Act ("CEQA") (Pub. Res. Code, § 21000 et seq.) and the State CEQA Guidelines (Cal. Code Regs, tit. 14 § 15000 et seq.), approval of the Agreement and acceptance of the Economic Development Subsidy Report is not a "project" for purposes of CEQA and therefore is not subject to CEQA review. The Agreement and acceptance of the Economic Development Subsidy Report is not a project pursuant to State CEQA Guidelines section 15378(b)(4), which states that government fiscal activities which do not involve any commitment to any specific project which may result in a potentially significant environmental impact are not subject to CEQA. Further, the Agreement and acceptance of the Economic Development Subsidy Report is not a project under State CEQA Guidelines section 15061(b)(3), which states that CEQA does not apply where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

In addition, the City Council has finds that the environmental impacts for this existing facility were previously analyzed in the California Commerce Center Final Environmental Impact Report (SCH #85061007), certified by the City Council in January 1983.

SECTION 4. Acceptance of Economic Development Subsidy Report. The City Council finds and determines that this Economic Development Subsidy Report is in compliance with applicable law and specifically Government Code Section 53083.

SECTION 5. Severability. If any provision of this Resolution is held invalid, the remainder of this Resolution shall not be affected by such invalidity, and the provisions of this Resolution are severable.

SECTION 6. Effective Date. This Resolution shall become effective immediately upon its adoption.

The City Clerk of the City of Ontario shall certify as to the adoption of this Resolution.

PASSED, APPROVED, AND ADOPTED this 15th day of December 2015.

PAUL S. LEON, MAYOR

ATTEST:

MARY E. WIRTES, MMC, CITY CLERK

APPROVED AS TO LEGAL FORM:

BEST BEST & KRIEGER LLP
CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF ONTARIO)

I, MARY E. WIRTES, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2015- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held December 15, 2015 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

The foregoing is the original of Resolution No. 2015- duly passed and adopted by the Ontario City Council at their regular meeting held December 15, 2015.

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

EXHIBIT A
ECONOMIC DEVELOPMENT SUBSIDY REPORT

[Attached behind this cover page]

**ECONOMIC DEVELOPMENT SUBSIDY REPORT
PURSUANT TO GOVERNMENT CODE SECTION 53083**

FOR AN OPERATING COVENANT AGREEMENT

BY AND BETWEEN

CITY OF ONTARIO

AND

SIGMAnet INTERNET, INC.

Pursuant to Government Code Section 53083, the City Council of the City of Ontario must hold a noticed public hearing and, prior to the public hearing, provide all of the following information in written form and available to the public and through the City's website, regarding a proposed economic development subsidy to be provided by the City pursuant to an Operating Covenant Agreement by and between the City of Ontario and SIGMAnet Internet, Inc. ("Agreement"). Notice was published in the local newspaper for a public hearing to be held on December 15, 2015.

The purpose of this report is to provide the information required pursuant to Government Code Section 53083 in regards to the Agreement. This report shall remain available to the public and posted on the City's website until the end date of the economic development subsidy, as further described in number 2 below.

- 1. The name and address of all corporations or any other business entities, except for sole proprietorships, that are the beneficiary of the economic development subsidy.**

The Agreement is with SIGMAnet Internet, Inc., a California corporation. SIGMAnet Internet, Inc. is the sole beneficiary of the economic development subsidy.

SIGMAnet Internet, Inc.
4290 E. Brickell Street
Ontario, CA 91761

- 2. The start and end dates and schedule, if applicable, for the economic development subsidy.**

If the Agreement is approved by the City Council, the economic development subsidy shall start on January 1, 2016 and continue until terminated by either party pursuant to the terms of the Agreement.

The economic development subsidy will be paid quarterly (every 3 months), within 120 days of the end of each Computation Quarter. Computation Quarters run from January 1 to March 31, April 1 to June 30, July 1 to September 30, and October 1 to December 31.

3. A description of the economic development subsidy, including the estimated total amount of the expenditure of public funds by, or of revenue lost to, the local agency as a result of the economic development subsidy.

The economic development subsidy shall commence on January 1, 2016 and continue until the Covenant Agreement is terminated. Provided all conditions precedent to payment have occurred, including City receives not less than the Base Sales Tax Amount from Owner's sales attributable to the Property, City shall pay to Owner an amount equal to Fifty percent (50%) of the Sales Tax Revenues in excess of the Base Sales Tax Amount.

The City estimates that the total amount of the expenditure of public funds as a result of the Subsidy will be approximately \$200,000 annually until the Agreement is terminated by either party.

4. A statement of the public purposes for the economic development subsidy.

SIGMAnet Internet, Inc. a California corporation has an existing distribution center and warehouse located in the City of Ontario. Because of changing market trends and business development issues, SIGMAnet is considering relocating the existing distribution center and warehouse out of the City of Ontario. The loss of this business would mean the loss of approximately 250 jobs in the City and the loss of substantial tax revenue to the City.

Entering into this Agreement will result in SIGMAnet maintaining the existing headquarters and sales office within the City and expands its operations within the City as appropriate. By entering into this Agreement, the City will be maintaining 250 jobs, and creating approximately 100-150 jobs, including 20 temporary and 80 permanent jobs, continuing to stimulate the economy in an area of the City which has suffered a loss of jobs and businesses during the economic downturn of the mid-2000's, and result in community and public improvements that might not otherwise be available to the community for many years.

The public purpose of the economic development subsidy includes, but is not limited to, maintaining and creating jobs and stimulating the economic recovery of the Inland Empire. Additionally, by having a company like SIGMAnet Internet, Inc. remain in the City, we will be adding diversity to and generating new opportunities for economic growth.

Further, the commitment to stay in Ontario and expand operations serves the additional public purpose of fostering a business and civic environment that may attract additional businesses and investment in the community due to the availability of the increased public and private services and economic activity resulting therefrom, thereby assisting the City in its goal of furthering the development of the community.

5. The projected tax revenue to the local agency as a result of the economic development subsidy.

The City anticipates that the retention and potential expansion of the headquarters and sales office within the City will result in an approximate increase of sales tax revenue by \$250,000 per year, minus the covenant payments to be paid to SIGMAnet Internet, Inc., as set forth in number 2 above.

There will also be an increase in other taxes including business license tax, and real property taxes, and in an approximate amount of \$20,000.

6. The estimated number of jobs created by the economic development subsidy, broken down by full-time, part-time, and temporary positions.

The retention of the distribution and warehouse center within the City is anticipated to result in the retention of approximately 250 jobs and the potential creation of 100-150 new jobs over the term of the Agreement, as follows:

- 80 full-time jobs
- 20 part-time jobs

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING THE OPERATING COVENANT AGREEMENT BETWEEN THE CITY OF ONTARIO AND SIGMANET INTERNET, INC. AND MAKING RELATED FINDINGS.

WHEREAS, SIGMAAnet Internet, Inc. ("SIGMAAnet"), and the City of Ontario ("City") have previously entered into a Location Agreement ("Location Agreement"); and

WHEREAS, following the expiration of that Location Agreement, SIGMAAnet may consider relocating its existing headquarters and sales office out of the City; and

WHEREAS, to ensure that SIGMAAnet remains in the City and continues to expand its business, SIGMAAnet and the City have negotiated an Operating Covenant Agreement ("Agreement") which provides incentives to ensure SIGMAAnet maintains the existing headquarters and sales office within the City and expands its operations within the City as appropriate; and

WHEREAS, the City has determined that the retention of SIGMAAnet within the City will generate substantial revenue for the City, allow for the retention of and the creation of new jobs, revitalize an area of the City which has suffered a loss of jobs and businesses during the economic downturn of the mid-2000's, and result in community and public improvements that might not otherwise be available to the community for many years; and

WHEREAS, entering into this Agreement and ensuring the retention of the headquarters and sales office may attract additional businesses and investment to the community due to increased services and economic activity in the area; and

WHEREAS, the environmental impacts of this existing facility were previously reviewed as part of the California Commerce Center Final Environmental Impact Report (SCH #85061007) certified by the City Council in January 1983; and

WHEREAS, on December 15, 2015, the City Council of the City of Ontario conducted a public hearing to consider the Agreement and concluded said hearing on that date; and

WHEREAS, all legal prerequisites to the adoption of this Resolution have occurred.

NOW, THEREFORE, IT IS HEREBY FOUND, DETERMINED, AND RESOLVED, by the City Council of the City of Ontario, as follows:

SECTION 1. Recitals. The Recitals set forth above are true and correct and are incorporated into this Resolution by this reference.

SECTION 2. Findings. The City Council hereby finds that:

(a) Entering into this Agreement will serve the following public purposes:

(1) SIGMAnet will be committed to maintaining the headquarters and sales office in the City of Ontario; and

(2) Retaining this business within the City will create jobs, maintain economic diversity in the community and stimulate the economic recovery of the Inland Empire by generating new opportunities for economic growth within the region; and

(3) Retaining and expanding SIGMAnet's operations within the City will generate substantial revenue for the City, allow for the retention of jobs, revitalize an area of the City which has suffered a loss of jobs and businesses during the economic downturn of the mid-2000's, and result in community and public improvements that might not otherwise be available to the community for many years; and

(4) Entering into this Agreement and ensuring the retention of headquarters and sales office may attract additional businesses and investment in the community due to increased services and economic activity in the area; and

(b) Based upon these and other public benefits the public purposes of the Agreement outweigh any private benefit to private persons or entities.

(c) Each City obligation is contingent upon separate consideration by SIGMAnet including but not limited to quarterly sales tax generation.

SECTION 3. CEQA Compliance. The City Council hereby finds that pursuant to the California Environmental Quality Act ("CEQA") (Pub. Res. Code, § 21000 et seq.) and the State CEQA Guidelines (Cal. Code Regs, tit. 14 § 15000 et seq.), approval of the Agreement is not a "project" for purposes of CEQA and therefore is not subject to CEQA review. The Agreement is not a project pursuant to State CEQA Guidelines section 15378(b)(4), which states that government fiscal activities which do not involve any commitment to any specific project which may result in a potentially significant environmental impact are not subject to CEQA. Further, the Agreement is not a project under State CEQA Guidelines section 15061(b)(3), which states that CEQA does not apply where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

In addition, the City Council has finds that the environmental impacts for this existing facility were previously analyzed in the California Commerce Center Final Environmental Impact Report (SCH #85061007), certified by the City Council in January 1983.

SECTION 4. Approve Agreement. The City Council hereby approves the Operating Covenant Agreement in the form attached to this Resolution as Exhibit A. The City Council hereby authorizes the City Manager, with the concurrence of the City Attorney, to execute said Agreement. City Manager is hereby authorized to take any additional steps necessary to facilitate the intent of this action.

SECTION 5. Implementation. The City Manager or his or her designee is hereby authorized and directed to, on behalf of the City, execute any and all documents in accordance with this Resolution and applicable law.

SECTION 6. Severability. If any provision of this Resolution or the application of any such provision to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Resolution that can be given effect without the invalid provision or application, and to this end the provisions of this Resolution are severable. The City declares that it would have adopted this Resolution irrespective of the invalidity of any particular portion of this Resolution.

SECTION 7. Certification. The City Clerk shall certify to the adoption of this Resolution.

SECTION 8. Effective Date. This Resolution shall become effective immediately upon its adoption.

PASSED, APPROVED, AND ADOPTED this 15th day of December 2015.

PAUL S. LEON, MAYOR

ATTEST:

MARY E. WIRTES, MMC, CITY CLERK

APPROVED AS TO LEGAL FORM:

BEST BEST & KRIEGER LLP
CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF ONTARIO)

I, MARY E. WIRTES, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2015- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held December 15, 2015 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

The foregoing is the original of Resolution No. 2015- duly passed and adopted by the Ontario City Council at their regular meeting held December 15, 2015.

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

EXHIBIT A
OPERATING COVENANT AGREEMENT

[Attached behind this cover page]

[SIGMANET 2015]

OPERATING COVENANT AGREEMENT

BETWEEN

THE CITY OF ONTARIO

A CALIFORNIA MUNICIPAL CORPORATION,

AND

SIGMANET-INTERNET, INC.

A CALIFORNIA CORPORATION

[Dated as of December 15, 2015 for reference purposes only]

RECITALS

WHEREAS, SIGMAnet Internet, Inc. (“SIGMAnet”) currently operates its corporate headquarters and a sales office out of an approximately 70,121 square feet building located at 4290 Brickell Street, Ontario (“Ontario Facility”); and

WHEREAS, SIGMAnet had previously entered into a Location Agreement with the City of Ontario (“City”) that expired in 2014; and

WHEREAS, the City desires for SIGMAnet to remain in the City and expand their operations; and

WHEREAS, the incentives provided in this Agreement are intended to ensure SIGMAnet maintains the existing facility within the City, expands its operations by increasing the size of its sales office to 95,000 square feet and increasing the sales force by 100-150 new employees; and

WHEREAS, entering into this Agreement will generate substantial revenue for the City, create 100-150 new jobs, including approximately 20 temporary and approximately 80 permanent jobs, maintain 250 jobs, continue to stimulate the economy in an area of the City which has suffered a loss of jobs and businesses during the economic downturn of the mid-2000’s, and result in community and public improvements that might not otherwise be available to the community for many years.

NOW, THEREFORE, in consideration of the mutual promises contained herein, and for such other good and valuable consideration, the receipt of which is hereby acknowledged, the City of Ontario and SIGMAnet agree as follows:

ARTICLE 1. EFFECTIVE DATE; PARTIES; DEFINITIONS

1.1 Effective Date of Covenant Agreement. This SIGMAnet Operating Covenant Agreement (“Covenant Agreement”) is dated December 15, 2015, for reference purposes only. This Covenant Agreement will not become effective until the date (“Effective Date”) on which all of the following are true:

1.1.1 This Covenant Agreement has been approved and executed by the appropriate authorities of Owner, as defined herein, and delivered to the City;

1.1.2 Following all legally required notices and hearings, this Covenant Agreement has been approved by the City Council;

1.1.3 This Covenant Agreement has been executed by the appropriate authorities of the City and delivered to Owner; and

If all of the foregoing conditions precedent have not been satisfied by December 31, 2015, then this Covenant Agreement may not thereafter become effective and any prior signatures and approvals of the Parties will be deemed void and of no force or effect.

1.2 Parties to Covenant Agreement.

1.2.1 The City. The address of the City is 303 East B Street, Ontario, California 91764, Attention: Al C. Boling; telephone 909-395-2396; facsimile: 909-395-2189; with copies to John Brown, City Attorney, 2855 East Guasti Road, Suite 400, Ontario, CA 91761, Telephone: (909) 989-8584.

The City represents and warrants to Owner that, to the City's actual current knowledge:

(a) The City is a public body, corporate and politic, exercising governmental functions and powers and organized and existing under the laws of the State of California;

(b) The City has taken all actions required by law to approve the execution of this Covenant Agreement;

(c) The City's entry into this Covenant Agreement and/or the performance of the City's obligations under this Covenant Agreement does not violate any contract, agreement or other legal obligation of the City;

(d) The City's entry into this Covenant Agreement and/or the performance of the City's obligations under this Covenant Agreement does not constitute a violation of any state or federal statute or judicial decision to which the City is subject;

(e) There are no pending lawsuits or other actions or proceedings which would prevent or impair the timely performance of the City's obligations under this Covenant Agreement;

(f) The City has the legal right, power and authority to enter into this Covenant Agreement and to consummate the transactions contemplated hereby, and the execution, delivery and performance of this Covenant Agreement has been duly authorized and no other action by the City is requisite to the valid and binding execution, delivery and performance of this Covenant Agreement, except as otherwise expressly set forth herein; and

(g) The individual executing this Covenant Agreement is authorized to execute this Covenant Agreement on behalf of the City.

The representations and warranties set forth above are material consideration to Owner and the City acknowledges that Owner is relying upon the representations set forth above in undertaking Owner's obligations set forth in this Covenant Agreement.

As used in this Covenant Agreement, the term "City's actual current knowledge" shall mean, and shall be limited to, the actual current knowledge of the City Manager as of the Effective Date, without having undertaken any independent inquiry or investigation for the purpose of making such representation or warranty and without any duty of inquiry or investigation.

All of the terms, covenants and conditions of this Covenant Agreement shall be binding on and shall inure to the benefit of the City and its nominees, successors and assigns.

1.2.2 Owner. The address of SIGMAnet (“Owner”) for purposes of this Covenant Agreement is 4290 E. Brickell Street, Ontario, CA 91761; telephone (909) 230-7007.

Owner represents and warrants to the City that, to its actual current knowledge:

(a) Owner is a duly formed California corporation, qualified and in good standing to do business under the laws of the State of California;

(b) The individual(s) executing this Covenant Agreement is/are authorized to execute this Covenant Agreement on behalf of Owner;

(c) Owner has taken all actions required by law to approve the execution of this Covenant Agreement;

(d) Owner’s entry into this Covenant Agreement and/or the performance of its obligations under this Covenant Agreement does not violate any contract, agreement or other legal obligation of Owner;

(e) Owner’s entry into this Covenant Agreement and/or the performance of its obligations under this Covenant Agreement does not constitute a violation of any state or federal statute or judicial decision to which Owner is subject;

(f) There are no pending lawsuits or other actions or proceedings which would prevent or impair the timely performance of Owner’s obligations under this Covenant Agreement;

(g) Owner has the legal right, power and authority to enter into this Covenant Agreement and to consummate the transactions contemplated hereby, and the execution, delivery and performance of this Covenant Agreement have been duly authorized and no other action by Owner is requisite to the valid and binding execution, delivery and performance of this Covenant Agreement, except as otherwise expressly set forth herein; and

(h) Owner and its managerial personnel possess sufficient experience and qualifications necessary to conduct Owner’s Sales Activities (hereinafter defined) as required by this Covenant Agreement.

The representations and warranties set forth herein are material consideration to the City and Owner acknowledges that the City is relying upon the representations set forth above in undertaking the City’s obligations set forth above.

As used in this Covenant Agreement, the term “actual current knowledge of Owner” shall mean, and shall be limited to, the actual current knowledge of Stephen Monteros, as of the Effective Date, without having undertaken any independent inquiry or investigation for

the purpose of making such representation or warranty and without any duty of inquiry or investigation.

All of the terms, covenants and conditions of this Covenant Agreement shall be binding on and shall inure to the benefit of Owner and its permitted nominees, successors and assigns. Wherever the term “Owner” is used herein, such term shall include any permitted nominee, assignee or successor of Owner.

The qualifications and identity of Owner are of particular concern to the City, and it is because of such qualifications and identity that the City has entered into this Covenant Agreement with Owner. No voluntary or involuntary successor-in-interest of Owner shall acquire any rights or powers under this Covenant Agreement except as expressly set forth herein.

1.2.3 The City and Owner are sometimes individually referred to as “Party” and collectively as “Parties.”

1.3 Definitions.

1.3.1 “Base Sales Tax Amount” means Forty-five Thousand Dollars (\$45,000) quarterly.

1.3.2 “City” means the City of Ontario, a California municipal corporation, and any nominee, assignee of, or successor to, its rights, powers and responsibilities.

1.3.3 “Computation Quarter” means each calendar quarter beginning on January 1, April 1, July 1, or October 1, as applicable, and ending on the succeeding March 31, June 30, September 30, or December 31, as applicable. The first Computation Quarter within the Eligibility Period shall commence on January 1, 2016 and is referred to herein as “Computation Quarter 1,” with each succeeding Computation Quarter being consecutively numbered.

1.3.4 “Covenant Payment(s)” means those contingent payments to be made by the City to the Owner pursuant to Section 3.2 of this Covenant Agreement for the purchase of the Covenants and Owner’s timely and faithful performance thereunder.

1.3.5 “Covenant Term” means, a period of time from the Effective Date until this Covenant Agreement is terminated pursuant to specific provisions of this Covenant Agreement.

1.3.6 “Covenants” means those six (6) covenants described in Section 3.1 herein.

1.3.7 “Eligibility Period” means the period commencing as of the first (1st) day of Computation Quarter 1 and continuing until last day of the Computation Quarter in which this Covenant Agreement is terminated pursuant to the specific provisions of this Covenant Agreement.

1.3.8 “Liquidated Damages” means, for purposes of Section 3.5, as

follows:

(a) If the breach occurs during Computation Quarters 1 through 20, an amount equal to Sixty-six percent (66%) of the Covenant Payments paid to Owner at any time prior to the Computation Quarter in which the breach occurs.

(b) If the breach occurs during Computation Quarters 21 through 40, an amount equal to Forty percent (40%) of the Covenant Payments paid to Owner at any time prior to the Computation Quarter in which the breach occurs.

(c) If the breach occurs during Computation Quarter 41 through 60, an amount equal to the Covenant Payments paid to Owner for the eight (8) Computation Quarters immediately preceding the Computation Quarter in which the breach occurs.

(d) If the breach occurs after Computation Quarter 61 there shall be no damages owed to the City pursuant to the Liquidated Damages provision, Section 3.5

1.3.9 “Owner” means and refers to SIGMAnet, a California corporation, and its successors and assigns, cumulatively and, including for purposes of calculating Sales Tax, all affiliated entities to Owner that correctly report Sales Tax Revenues relating to personal property shipped or distributed from or through the Ontario facility.

1.3.10 “Owner’s Sales Activities” means the commercially reasonable business practices and activities associated with retail and wholesale sale of Owner’s products, all activities of Owner, Quill Corporation, a California Corporation, and any other affiliate of Owner whether on the Property, or on another Property leased or owned by Owner, over the internet, world wide web, telephone sales or otherwise that result in Sales Tax Revenues relating to personal property shipped or distributed from or through the Property, including all personal property sold through an internet site operated by Owner or an affiliate. “Owner’s Sales Activities” also include any of the above-described activities which are conducted by a parent, subsidiary or wholly or partially owned affiliate of Owner, provided that such parent, subsidiary or affiliate did not previously conduct such activities in the City.

1.3.11 “Penalty Assessments” means and refers to penalties, assessments, collection costs and other costs, fees or charges resulting from late or underpaid payments of Sales Tax and which are levied, assessed or otherwise collected from Owner.

1.3.12 “Property” means that certain real property commonly known as 4290 E. Brickell Street, Ontario, CA 91761, or any other property within the City of Ontario to which Owner may elect to relocate the Sales Office during the term of this Covenant Agreement.

1.3.13 “Sales Office” means and refers to means that certain corporate headquarters and administrative office and related functions operated on the Property by Owner which shall serve as the point of sale for Owner’s Sales Activities from which Owner shall conduct or conclude all internet, telephonic, or direct Owner’s Sales Activities to California customers.

1.3.14 “Sales Tax” means and refers to all sales and use taxes levied under the authority of the Sales Tax Law attributable to the Sales Office and Owner’s Sales Activities excluding that which is to be refunded to Owner because of an overpayment of such tax.

1.3.15 “Sales Tax Law” means and refers to: (a) California Revenue and Taxation Code Section 7200 et seq., and any successor law thereto; (b) any legislation allowing City or other public agency with jurisdiction in City to levy any form of local Sales Tax on the operations of Owner; and (c) regulations of the BOE and other binding rulings and interpretations relating to (a) and (b) of this Section 1.3.15.

1.3.16 “Sales Tax Revenues” means the net Sales Tax actually received by the City from the BOE pursuant to the application of the Sales Tax Law (as such statutes may hereafter be amended, substituted, replaced, re-numbered, moved or modified by any successor law) attributable to the Sales Office in a particular Computation Quarter. Sales Tax Revenues shall not include: (i) Penalty Assessments; (ii) any Sales Tax levied by, collected for or allocated to the State of California, the County of San Bernardino, or a district or any entity (including an allocation to a statewide or countywide pool) other than City; (iii) any administrative fee charged by the BOE; (iv) any Sales Tax subject to any sharing, rebate, offset or other charge imposed pursuant to any applicable provision of federal, state or local (except City’s) law, rule or regulation; (v) any Sales Tax attributable to any transaction not consummated within the Eligibility Period; or (vi) any Sales Tax (or other funds measured by Sales Tax) required by the State of California to be paid over to another public entity (including the State) or set aside and/or pledged to a specific use other than for deposit into or payment from the City’s general fund.

ARTICLE 2. ADDITIONAL RECITALS

2.1 The previously stated Recitals are incorporated herein and made a part hereof as though fully set forth.

2.2 The City has determined that the long-term operation of the Sales Office will result in substantial benefits to the City, and its citizens including, without limitation, the creation of significant new numbers of employment opportunities, property tax revenues, sales tax revenues and other ancillary benefits. Accordingly, the City has also determined that its entry into this Covenant Agreement and its purchase of the Covenants serve a significant public purpose, while providing only incidental benefits to a private party.

ARTICLE 3. COVENANTS RUNNING WITH THE LAND; COVENANT PAYMENTS; REMEDIES FOR BREACH.

3.1 Covenants Running with the Land.

3.1.1 Operating and Use Covenant. Owner covenants and agrees that for the Covenant Term Owner shall operate, or cause to be operated upon the Property, the Sales Office in a commercially reasonable business manner, consistent with all applicable provisions of federal, state and local laws and regulations. Subject to Section 4.9, the Sales Office shall be operated in accordance with the reasonable and customary practices in surrounding communities. Owner will operate its business in a commercially reasonable and

prudent manner, with the objective of generating the greatest feasible amount of Sales Tax Revenues. Owner's obligations pursuant to the immediately preceding sentence include, without limitation, the obligation to obtain all federal, state and local licenses and permits required for the operation of the business and to advertise, market and promote the business in a commercially reasonable fashion, once again consistent with the objective of maximizing the amount of Sales Tax Revenues. For the term of this Operating Covenant, the Owner may use the Property only for the purposes of the operation of the Sales Office and conducting Owner's Sales Activities in accordance with this Covenant Agreement. Owner covenants to expand the Sales Office from its existing 70,121 square feet to approximately 95,000 square feet no later than January 1, 2017.

3.1.2 Covenant to Designate City as Point of Sale. Owner covenants and agrees that, for the term of the Operating and Use Covenant as described in Section 3.1.1, Owner shall maintain such licenses and permits as may be required by any governmental agency to conduct Owner's Sales Activities related to the Sales Office and shall consummate at the Sales Office all taxable sales transactions resulting from Owner's Sales Activities and identify the City as such in all reports to the California State Board of Equalization ("BOE") in accordance with the Bradley-Burns Uniform Local Sales and Use Tax Law (Revenue and Taxation Code 7200, et seq.), as it may be amended or substituted. Owner shall fulfill all product sales to California residents from the Sales Office. Owner shall designate City as the sole point of sale for all of Owners products sold, including but limited to, through an internet website or phone sales which are designated for any location within California. Owner shall maintain the appropriate master sales permits applicable to and required for the operation of the Sales Office. The Owner shall consummate all taxable sales transactions for Owner's Sales Activities at the Sales Office, consistent with all applicable statutory and BOE regulatory requirements applicable to Owner's Sales Activities and the designation of the City as the "point of sale" for all Owner's taxable sales occurring as a result of Owner's Sales Activities.

3.1.3 Owner's Additional Obligations Regarding Repairs and Alterations to Sales Office. Owner covenants and agrees that, for the term of the Operating and Use Covenant as described in Section 3.1.1, the Owner shall maintain, or cause to be maintained, the Sales Office in good condition, ordinary wear and tear excepted, and free from the accumulation of trash or other debris and agrees to promptly remove, or cause the removal of, all graffiti upon the Sales Office. Owner shall also maintain or cause to be maintained the landscaping upon the Property in a good condition.

3.1.4 Covenant Against Solicitation and Acceptance of Economic Incentives During the Term of the Operating Use Covenant. Owner covenants and agrees that, for the term of the Operating and Use Covenant as described in Section 3.1.1, Owner will not directly or indirectly solicit or accept any "Financial Assistance" from any other public or private person or entity, if such Financial Assistance is given for the purpose of causing or would result in either Owner's breach of any of the Covenants. For purposes of this Section 3.1.4 the term "Financial Assistance" means any direct or indirect payment, subsidy, rebate, or other similar or dissimilar monetary or non-monetary benefit, including, without implied limitation, payment of land subsidies, relocation expenses, public financings, property or sales tax relief, rebates, exemptions or credits, relief from public improvement obligations, and

payment for public improvements to or for the benefit of Owner.

3.1.5 Use of Property. Owner covenants and agrees that the Property shall be put to no use other than those uses specified in the City's General Plan, the Specific Plan, zoning ordinances, and this Covenant Agreement as the same may be amended from time to time. Nothing in this Section 3.1.5 shall limit, expand, modify or otherwise affect any right of the Owner to continue any legal nonconforming use upon the Property following changes in the City's General Plan or zoning ordinances.

3.1.6 Jobs Creation Covenant and Operational Covenant. Owner covenants and agrees that the continued operation of the Sales Office shall result in retention of not less than 250 jobs in the City and Owner shall use its best commercially reasonable efforts to expand the workforce at the Property by 100-150 employees during the Covenant Period.

3.2 Covenant Payments.

3.2.1 Statement of Intent. The consideration to be paid to the Owner in exchange for the Covenants and Owner's performance of its obligations set forth in this Covenant Agreement, and subject to satisfaction of all conditions precedent thereto, shall consist of City's payment of an amount equal to Fifty percent (50%) of the Sales Tax Revenues attributable to the Property in excess of the Base Sales Tax Amount for each Computation Quarter during the Eligibility Period.

3.2.2 Contingent Obligation. The City's obligations under this Section 3.2 are contingent on a Computation Quarter-to-Quarter basis and, for each Computation Quarter, City's obligations to make any payments hereunder are expressly contingent upon the Owner having, for the entirety of such Computation Quarter, completely fulfilled its material obligations under this Covenant Agreement, including, without limitation, the Covenants. Should such condition precedent not be satisfied for each Computation Quarter, then City shall have no obligation under this Section 3.2 to make any Covenant Payments to Owner in such Computation Quarter.

3.2.3 Computation Quarter Covenant Payments. Within thirty (30) days following the end of each Computation Quarter, Owner shall submit to City certified copies of its quarterly reports to the California State Board of Equalization ("BOE") which sets forth the amount of sales taxes paid to the BOE during the Computation Quarter arising from Owner's Sales Activities conducted at the Sales Office. Within one hundred twenty (120) days following the end of each Computation Quarter, City shall pay to Owner any Computation Quarter Covenant Payment due for such Computation Quarter.

3.2.4 No Carry Forward or Back. The determination of the Covenant Payment(s) shall be determined and calculated on a Computation Quarter to Computation Quarter basis. Except as provided in Section 3.2.4, no Sales Tax Revenue which is generated in a Computation Quarter other than the Computation Quarter for which the Covenant Payment is being determined shall be used or considered in the calculation of any Covenant Payment which may be due for that Computation Quarter.

3.2.5 BOE Determination of Improperly Allocated Local Sales Tax Revenues. If, at any time during or after the Eligibility Period of this Covenant Agreement, the BOE determines that all or any portion of the Sales Tax Revenues received by the City were improperly allocated and/or paid to the City, and if the BOE requires repayment of, offsets against future sales tax payments, or otherwise recaptures from the City those improperly allocated and/or paid Sales Tax Revenues, then Owner shall, within thirty (30) calendar days after written demand from the City, repay all Covenant Payments (or applicable portions thereof) theretofore paid to Owner which are attributable to such repaid, offset or recaptured Sales Tax Revenues. If Owner fails to make such repayment within thirty (30) calendar days after the City's written demand, then Owner shall be in breach of this Covenant Agreement and such obligation shall accrue interest from the date of the City's original written demand at the then-maximum legal rate imposed by the California Code of Civil Procedure on prejudgment monetary obligations, compounded monthly, until paid. Additionally, the City may deduct any amount required to be repaid by Owner under this Section 3.2.4 from any future Covenant Payments otherwise payable to Owner under this Covenant Agreement. This Section 3.2.4 shall survive the expiration or termination of this Covenant Agreement.

3.2.6 Not a Pledge of Sales Tax. Owner acknowledges that the City is not making a pledge of Sales Tax Revenues, or any other particular source of funds; the definition of Sales Tax Revenues, as used herein, is used merely as a measure of the amount payment due hereunder and as means of computing the City's payment in consideration for the Covenants. It is acknowledged by Owner that the City's obligation to make payments is specifically contingent upon receipt by the City of the Sales Tax Revenues derived from operation of the Sales Office.

3.3 Default.

3.3.1 Owner Default. City shall provide Owner with written notice of Owner's failure ("Owner Default") to strictly abide by any material provision of this Covenant Agreement, including, without limitation, the Covenants. Owner shall have thirty (30) days from the date of such notice to either cure such Owner Default, or, if such Owner Default cannot be reasonably cured during such thirty (30) day period, to commence to cure within said thirty (30) day period and diligently prosecute such cure to completion thereafter.

3.3.2 City Default. Owner shall provide City with written notice of City's failure ("City Default") to strictly abide by any material provision of this Covenant Agreement. City shall have thirty (30) days from the date of such notice to either cure such City Default, or, if such City Default cannot be reasonably cured during such thirty (30) day period, to commence to cure within said thirty (30) day period and diligently prosecute such cure to completion thereafter.

3.3.3 General Remedies for Default. Except as provided in Section 3.6, upon either a City or an Owner Default (as defined in Section 3.3), Owner or City (as applicable) shall have the right to seek all available legal and equitable remedies, including, without implied limitation, general and consequential damages, unless otherwise expressly provided to the contrary herein. Unless prohibited by law or otherwise provided by a specific

term of this Covenant Agreement, the rights and remedies of the City and the Owner under this Covenant Agreement are nonexclusive and all remedies hereunder may be exercised individually or cumulatively, and the City may simultaneously pursue inconsistent and/or alternative remedies. Either Party may, upon the Default of the other Party and in addition to pursuing all remedies otherwise available to it, terminate this Covenant Agreement and all of its obligations hereunder without cost, expense or liability to itself.

3.4 The City's Rights to Terminate its Obligations under Section 3.2 The City's obligations under Section 3.2 shall automatically terminate without cost, expense, or liability to City, upon the occurrence of any one or more of the following: (i) Owner Default; or (ii) upon the final determination by a court of competent jurisdiction that any one or more of the Covenants are void, voidable, invalid, or even unenforceable for any reason whatsoever, including, without limitation, legal infirmity. Termination of the City's obligations under Section 3.2 in accordance with subsection (i) of this Section 3.4 shall not operate to forgive, modify, discharge or excuse Owner's obligations arising under this Covenant Agreement.

3.5 Liquidated Damages.

3.5.1 Owner Default With Respect to Obligations Under Sections 3.1.1 and 3.1.2. The Parties acknowledge that the consideration to the City for its entry into this Covenant Agreement and the performance of its obligations hereunder include the City's receipt of Sales Tax Revenues, employment and other payroll taxes, property taxes, and other direct and indirect financial and non-financial benefits arising from the operation Owner's Sales Activities and the location of the Sales Office in the City in accordance with Article 3 of this Covenant Agreement. Owner agrees that the City will suffer damages if Owner commits any Owner Default with respect to any of its obligations arising under Sections 3.1.1 and 3.1.2. The Parties agree that the exact determination of such damages would be impracticable and extremely difficult to quantify. Accordingly, the Parties have determined that Liquidated Damages (as determined pursuant to Section 1.3.6) represents a reasonable estimate of the damages which would be suffered by the City if Owner commits any Owner Default with respect to any of its obligations set forth in Sections 3.1.1 and 3.1.2. Accordingly, as its sole and exclusive monetary remedy for an Owner Default with respect to any of its covenants and obligations set forth in Sections 3.1.1 and 3.1.2, the City shall be entitled to (1) terminate this Covenant Agreement and the entirety of its obligations hereunder, including any accrued and unpaid Covenant Payments, and (2) receive from Owner the applicable amount of Liquidated Damages as provided by Section 1.3.6.

3.5.2 ACKNOWLEDGEMENT OF REASONABLENESS OF LIQUIDATED DAMAGES. UPON AN OWNER DEFAULT WITH RESPECT TO ANY OF ITS OBLIGATIONS SET FORTH IN SECTIONS 3.1.1 AND 3.1.2, FOLLOWING NOTICE AND OPPORTUNITY TO CURE PURSUANT TO SECTION 3.3.1, THE CITY AND OWNER ACKNOWLEDGE AND AGREE THAT IT WOULD BE EXTREMELY DIFFICULT AND IMPRACTICAL TO ASCERTAIN THE AMOUNT OF DAMAGES THAT WOULD BE SUFFERED BY THE CITY WITH RESPECT TO SUCH DEFAULT. HAVING MADE DILIGENT BUT UNSUCCESSFUL ATTEMPTS TO ASCERTAIN THE ACTUAL DAMAGES THE CITY WOULD SUFFER, THE PARTIES AGREE THAT THE LIQUIDATED DAMAGES AMOUNT AS DETERMINED IN ACCORDANCE WITH

SECTION 1.3.6 REPRESENTS A REASONABLE ESTIMATION OF THOSE DAMAGES. THEREFORE, UPON AN OWNER DEFAULT WITH RESPECT TO ANY OF ITS OBLIGATIONS SET FORTH IN SECTIONS 3.1.1 AND 3.1.2, AS ITS SOLE AND EXCLUSIVE REMEDY FOR SUCH DEFAULT, THE CITY SHALL BE ENTITLED TO (1) RECEIPT OF THE LIQUIDATED DAMAGES AMOUNT CALCULATED IN ACCORDANCE WITH SUBSECTION 1.3.6, WHICH OWNER SHALL PAY WITHIN TEN (10) DAYS FOLLOWING WRITTEN DEMAND FROM THE CITY, AND (2) TERMINATE THIS AGREEMENT AND THE ENTIRETY OF ITS OBLIGATIONS HEREUNDER, INCLUDING ANY ACCRUED BUT YET UNPAID COVENANT PAYMENTS.

Initials of Authorized
City Representative

Initials of Authorized
Owner Representative

ARTICLE 4. GENERAL TERMS

4.1 Tax Consequences. Owner acknowledges that it may experience tax consequences as a result of its receipt of the payments provided for in this Covenant Agreement and agrees that it shall bear any and all responsibility, liability, costs, and expenses connected in any way therewith.

4.2 Rights Not Granted Under Covenant Agreement This Covenant Agreement is not, and shall not be construed to be a Development Agreement under Government Code Section 65864 et seq. This Covenant Agreement is not, and shall not be construed to be, an approval or an agreement to issue permits or a granting of any right or entitlement by the City concerning the Sales Office, Owner's Sales Activities or any other project, development, or construction by the Owner in the City. This Covenant Agreement does not, and shall not be construed to, exempt Owner from the application and/or exercise of the City's or City's power of eminent domain or its police power, including, but not limited to, the regulation of land uses and the taking of any actions necessary to protect the health, safety, and welfare of its citizenry.

4.3 Consent. Whenever consent or approval of any party is required under this Covenant Agreement, that party shall not unreasonably withhold, delay or condition such consent or approval unless otherwise allowed by a specific provision of this Covenant Agreement.

4.4 Notices and Demands. All notices or other communications required or permitted between the City and Owner under this Covenant Agreement shall be in writing, and may be (i) personally delivered, (ii) sent by United States registered or certified mail, postage prepaid, return receipt requested, (iii) sent by telecopier, or (iv) sent by nationally recognized overnight courier service (e.g., Federal Express), addressed to the Parties at the addresses provided in Article 1, subject to the right of either party to designate a different address for itself by notice similarly given. Any notice so given by registered or certified United States mail shall be deemed to have been given on the second business day after the same is deposited in the United States mail. Any notice not so given by registered or certified mail, such as notices

delivered by telecopier or courier service (e.g., Federal Express), shall be deemed given upon receipt of the same by the party to whom the notice is given.

4.5 Nonliability of the City or City Officials and Employees No board member, official, contractor, consultant, attorney or employee of the City or City shall be personally liable to Owner, any voluntary or involuntary successors or assignees, or any lender or other party holding an interest in the Property, in the event of any default or breach by the City, or for any amount which may become due to the Owner or to its successors or assignees, or on any obligations arising under this Covenant Agreement.

4.6 Conflict of Interests. No board member, official, contractor, consultant, attorney or employee of the City or City shall have any personal interest, direct or indirect, in this Covenant Agreement nor shall any such board member, official or employee participate in any decision relating to this Covenant Agreement which affects his/her personal interests or the interests of any corporation, partnership or association in which he/she is directly or indirectly interested.

4.7 Pledge or Hypothecation of Covenant Payments. Owner may assign any Covenant Payment(s) due in accordance with the terms of this Covenant Agreement (but not any other right or obligation of this Covenant Agreement) upon thirty (30) days' prior written notice to City as collateral for any loan or financing obtained by the Owner in connection with the Sales Office; provided that nothing in this Section 4.7 shall be deemed to limit the operation of Section 4.16. Without limiting the general applicability of the foregoing, Owner acknowledges that Owner's lender and any transferee of Owner's lender shall be subject to the transfer restrictions of Section 4.16.

4.8 Entire Agreement; Good Faith Negotiations. This Covenant Agreement contains all of the terms and conditions agreed upon by the Parties and supersedes any previous agreements between the Parties concerning the subject matter of this Covenant Agreement. No other understanding, oral or otherwise, regarding the subject matter of this Covenant Agreement shall be deemed to exist or to bind any of the parties hereto. All prior written or oral offers, counteroffers, memoranda of understanding, proposals and the like are superseded by this Covenant Agreement.

The Parties acknowledge that this Covenant Agreement is the product of mutual arms-length negotiations and that each party has been, or has had the opportunity to have been, represented by legal counsel in the negotiation and drafting of this Covenant Agreement. Accordingly, the rule of judicial construction which provides that ambiguities in a document are to be construed against the drafter of that document shall have no application to the interpretation or enforcement of this Covenant Agreement. In any action or proceeding to interpret and/or enforce this Covenant Agreement, the trier of fact may refer to extrinsic evidence not in conflict with any specific provision of this Covenant Agreement to ascertain and give effect to the intent of the Parties hereto.

4.9 Time Deadlines Critical; Extensions and Delays; No Excuse Due to Economic Changes. Time is of the essence in the performance of the City's and Owner's obligations under this Covenant Agreement. In addition to specific provisions of this Covenant Agreement

providing for extensions of time, times for performance hereunder shall be extended where delays or defaults are due to war; insurrection; any form of labor dispute; lockouts; riots; floods; earthquakes; fires; acts of God or of third parties; third party litigation; acts of a public enemy; referenda; acts of governmental authorities (except that the failure of the City to act as required hereunder shall not excuse its performance); moratoria; epidemics; quarantine restrictions; and freight embargoes (collectively, "Enforced Delays") provided, however, that the Party claiming the extension notify the other Party of the nature of the matter causing the default; and, provided further, that the extension of time shall be only for the period of the Enforced Delays. However, deadlines for performance may not be extended as provided above due to any inability of the Owner to obtain or maintain acceptable financing for the operation of the Sales Office.

ANYTHING IN THIS COVENANT AGREEMENT TO THE CONTRARY NOTWITHSTANDING, OWNER EXPRESSLY ASSUMES THE RISK OF UNFORESEEABLE CHANGES IN ECONOMIC CIRCUMSTANCES AND/OR MARKET DEMAND/CONDITIONS AND WAIVES, TO THE GREATEST LEGAL EXTENT, ANY DEFENSE, CLAIM, OR CAUSE OF ACTION BASED IN WHOLE OR IN PART ON ECONOMIC NECESSITY, IMPRACTICABILITY, FRUSTRATION OF PURPOSE, CHANGED ECONOMIC CIRCUMSTANCES OR SIMILAR THEORIES.

OWNER EXPRESSLY AGREES THAT ADVERSE CHANGES IN ECONOMIC CONDITIONS, EITHER OF OWNER SPECIFICALLY OR THE ECONOMY GENERALLY, OR CHANGES IN THE MARKET CONDITIONS OR DEMANDS, SHALL NOT OPERATE TO EXCUSE OR DELAY THE STRICT OBSERVANCE OF EACH AND EVERY OF THE OBLIGATIONS, COVENANTS, CONDITIONS AND REQUIREMENTS OF THIS COVENANT AGREEMENT. OWNER EXPRESSLY ASSUMES THE RISK OF SUCH ADVERSE ECONOMIC OR MARKET CHANGES, WHETHER OR NOT FORESEEABLE AS OF OWNER'S EXECUTION OF THIS COVENANT AGREEMENT.

OWNER'S INITIALS _____

4.10 Attorneys' Fees. In the event of the bringing of an arbitration, action or suit by a Party hereto against another Party hereunder by reason of any breach of any of the covenants or agreements or any intentional inaccuracies in any of the representations and warranties on the part of the other Party arising out of this Covenant Agreement or any other dispute between the Parties concerning this Covenant Agreement or the Property, then, in that event, the prevailing party in such action or dispute, whether by final judgment or arbitration award, shall be entitled to have and recover of and from the other Party all costs and expenses of suit or claim, including actual attorneys' fees. Any judgment, order or award entered in any final judgment or award shall contain a specific provision providing for the recovery of all costs and expenses of suit or claim, including actual attorneys' fees (collectively, the "Costs") incurred in enforcing, perfecting and executing such judgment or award. For the purposes of this Section 4.10, "Costs" shall include, without implied limitation, attorneys' and experts' fees, costs and expenses incurred in the following: (i) post judgment motions and appeals, (ii) contempt proceedings, (iii) garnishment, levy and debtor and third party examination, (iv) discovery; and (v) bankruptcy litigation. This Section 4.10 shall survive any termination of this Covenant Agreement.

4.11 Amendments to This Covenant Agreement. Any amendments to this Covenant Agreement must be in writing and signed by the appropriate authorities of both the City and Owner. The City Manager is authorized on behalf of the City to approve and execute minor amendments to this Covenant Agreement, including, but not limited to, the granting of extensions of time to Owner, not to exceed ninety (90) days in the aggregate.

4.12 Jurisdiction and Venue. Any legal action or proceeding concerning this Covenant Agreement shall be filed and prosecuted in the appropriate California state court in the County of San Bernardino, California. Both Parties hereto irrevocably consents to the personal jurisdiction of that court. The City and Owner each hereby expressly waive the benefit of any provision of federal or state law or judicial decision providing for the filing, removal, or change of venue to any other court or jurisdiction, including, without implied limitation, federal district court, due to any diversity of citizenship between the City and Owner, due to the fact that the City is a party to such action or proceeding or due to the fact that a federal question or federal right is involved or alleged to be involved. Without limiting the generality of the foregoing, the City and Owner specifically waive any rights provided to it pursuant to California Code of Civil Procedure Section 394. Owner acknowledges that the provisions of this Section 4.12 are material consideration to the City for its entry into this Covenant Agreement, in that the City will avoid the potential cost, expense and inconvenience of litigating in a distant forum.

4.13 Interpretation. The City and Owner acknowledge that this Covenant Agreement is the product of mutual arms-length negotiation and drafting and that both Parties have been represented by legal counsel in the negotiation and drafting of this Covenant Agreement. Accordingly, the rule of construction which provides that ambiguities in a document shall be construed against the drafter of that document shall have no application to the interpretation and enforcement of this Covenant Agreement. In any action or proceeding to interpret or enforce this Covenant Agreement, the finder of fact may refer to any extrinsic evidence not in direct conflict with any specific provision of this Covenant Agreement to determine and give effect to the intention of the Parties.

4.14 Counterpart Originals; Integration. This Covenant Agreement may be executed in duplicate originals, each of which is deemed to be an original, but when taken together shall constitute but one and the same instrument. This Covenant Agreement and any exhibits represent the entire understanding of the Parties and supersedes all negotiations, letters of intent, memoranda of understanding or previous agreements between the parties with respect to all or any part of the subject matter hereof.

4.15 No Waiver. Failure to insist on any one occasion upon strict compliance with any of the terms, covenants or conditions hereof shall not be deemed a waiver of such term, covenant or condition, nor shall any waiver or relinquishment of any rights or powers hereunder at any one time or more times be deemed a waiver or relinquishment of such other right or power at any other time or times.

4.16 Successors and Assigns. The terms, covenants and conditions of this Covenant Agreement shall be binding upon and inure to the benefit of the Parties hereto and their successors and assigns. Except as provided in this Section 4.16, Owner shall neither transfer nor convey Owner's interest in the Property or the Sales Office without the express written consent

of the City, which shall not be unreasonably withheld, conditioned or delayed. In determining whether to approve of such a sale, transfer, conveyance or assignment of the Owner's interest in the Property, the City shall evaluate: (i) the financial ability of the proposed transferee to own and operate the Sales Office, or portion so transferred, and to meet the Owner's obligations under this Covenant Agreement; (ii) the fitness and experience of the proposed transferee and its managerial personnel to own and operate the Sales Office or portion so transferred thereof; and (iii) the ability of the proposed transferee to maintain a level of quality and service comparable to that maintained by the Owner for the Sales Office. Upon the permitted sale, transfer or conveyance by Owner of its interest therein, such owner shall thereupon be relieved of its obligations under this Covenant Agreement from and after the date of sale, transfer or conveyance except with respect to any defaults in the performance of its obligations hereunder or thereunder which occurred prior to such sale, transfer or conveyance, and the transferee shall thereafter be solely responsible for the performance of all of the duties and obligations of Owner under this Covenant Agreement.

4.17 No Third Party Beneficiaries. The performance of the respective obligations of the City and Owner under this Covenant Agreement are not intended to benefit any party other than the City or Owner, except as expressly provided otherwise herein. No person or entity not a signatory to this Covenant Agreement shall have any rights or causes of action against any party to this Covenant Agreement as a result of that party's performance or non-performance under this Covenant Agreement, except as expressly provided otherwise herein.

4.18 No Effect on Eminent Domain Authority. Nothing in this Covenant Agreement shall be deemed to limit, modify, or abridge or affect in any manner whatsoever the City's or City's eminent domain powers with respect to the Property, the Sales Office, or any other property owned by Sales Office.

4.19 Warranty Against Payment of Consideration for Covenant Agreement. Owner warrants that it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Covenant Agreement. Third parties, for the purposes of this Section 4.19, shall not include persons to whom fees are paid for professional services if rendered by attorneys, financial consultants, accountants, engineers, architects and the like when such fees are considered necessary by Owner.

4.20 Severability. The City and Owner declare that the provisions of this Covenant Agreement are severable. If it is determined by a court of competent jurisdiction that any term, condition or provision hereof is void, voidable, or unenforceable for any reason whatsoever, then such term, condition or provision shall be severed from this Covenant Agreement and the remainder of the Covenant Agreement enforced in accordance with its terms.

4.21 Further Acts and Releases. The City and Owner each agree to take such additional acts and execute such other documents as may be reasonable and necessary in the performance of their obligations hereunder.

4.22 Estoppels. At the request of Owner or any holder of a mortgage or deed of trust secured by all or any portion of the Property, the City shall promptly execute and deliver to Owner or such holder a written statement of the City as to any of the following matters as to

which Owner or such holder may inquire: (i) that no default or breach exists, or would exist with the passage of time, or giving of notice, or both, by Owner pursuant to this Covenant Agreement, if such be the case; (ii) the total amount of Covenant Payments made by the City to Owner pursuant to this Covenant Agreement prior to the date of such written statement; (iii) the amount of any Covenant Payments earned by or due and owing to Owner pursuant to this Covenant Agreement as of the date of such written statement; (iv) the Covenant Payments for a particular Computation Quarter; (v) if the City has determined that Owner is in default or breach hereunder, the nature of such default and the action or actions required to be taken by Owner to cure such default or breach; and (vi) any other matter affecting the rights or obligations of Owner hereunder as to which Owner or such holder may reasonably inquire. The form of any estoppel letter shall be prepared by Owner or such holder at its sole cost and expense and shall be reasonably acceptable in form and content to the City and Owner. The City may make any of the representations described above based on the actual current knowledge of the then-current City Manager.

4.23 Indemnity. Owner shall defend (using counsel of City's choosing), indemnify and hold harmless the City, its elected officials, officers, employees and agents from and against any and all third party claims, losses, proceedings, damages, causes of action, liability, cost and expense (including reasonable attorney's fees) arising from, in connection with or related to this Agreement or the functions or operations of the Sales Office (other than to the extent arising as a result of the City's active negligence or willful misconduct). The City shall fully cooperate in the defense of any such actions and upon written request of Owner shall provide to Owner such documents and records in possession of the City that are relevant to such actions and not otherwise protected by law. Notwithstanding the foregoing, should any third party bring any such action or proceeding Owner shall have the right to terminate this Agreement, and as of such date of termination, all unaccrued liabilities of the parties under this Agreement shall cease except for Owner's obligation of indemnity owed to the City as provided in this Section 4.23. For purposes of clarification, should Owner exercise its termination right as provided in this Section 4.23, the same shall not be considered a Default and the City shall have no claims against Owner for liquidated damages.

4.24 State of California Legislation Impact on Covenant Payment. Owner acknowledges that the California legislature has in the past adopted certain legislation which diverted to the State of California a portion of the Sales Tax Revenues which were otherwise payable to the City. Owner acknowledges that it is possible that the legislature may enact similar legislation in the future which would cause a corresponding reduction of and/or delay in the payment of the Sales Tax Revenues and that such reduction will cause Owner a corresponding reduction and/or delay in the payment of the Covenant Payments due to Owner during such time as such legislation is in effect. Furthermore, Owner acknowledges that it is possible that the legislation described above, or some variant thereof, may be enacted and effective during one or more subsequent times during the Eligibility Period and may materially and negatively impact the amount of Sales Tax Revenues and, accordingly, Covenant Payments. The City does not make any representation, warranty or commitment concerning the future actions of the California legislature with respect to the allocation of Sales Tax Revenues to the City. Owner agrees that it is undertaking its obligations under this Covenant Agreement after having considered, and is expressly assuming the risk of, the possibility of the enactment of such legislation.

The foregoing paragraph notwithstanding, City acknowledges that the California legislature may provide for the payment to City of other revenues for the purpose of offsetting any losses in Sales Tax Revenues resulting from the enactment of legislation of the type described in the immediately preceding paragraph. City agrees that, should the California legislature provide for such offsetting revenues, then for purposes of this Covenant Agreement and the computation of any Covenant Payments which may become due to Owner hereunder, City will consider any such offsetting revenues which are (i) indexed to Sales Tax and offset the loss of Sales Tax Revenues to the City on a dollar for dollar basis, (ii) actually received by the City, and (iii) not subject to any restrictions on use beyond those which are otherwise generally applicable to sales tax revenues received by California municipalities, to be Sales Tax Revenues within the meaning of this Covenant Agreement.

4.25 Termination for Convenience. Commencing on the first day of the sixty-first (61st) Computation Quarter, either Party may terminate this Covenant Agreement for convenience provided that the following conditions precedent to termination have been satisfied.

4.25.1 The Terminating Party is not breach or default of this Covenant Agreement.

4.25.2 The Terminating Party provides written notice to the Non-Terminating Party not less than one full Computation Quarter prior to the date of termination.

[Signatures on the following pages]

**SIGNATURE PAGE TO THE
SIGMA_{net}
OPERATING COVENANT AGREEMENT**

CITY OF ONTARIO
a California municipal corporation

By: _____

ATTEST:

By: _____

APPROVED AS TO FORM:

By: _____
John Brown
City Attorney

**SIGNATURE PAGE TO THE
SIGMAnet
OPERATING COVENANT AGREEMENT**

SIGMAnet
a California Corporation

By: _____
Signature

Name (Print)

Title (Print)

By: _____
Signature

Name (Print)

Title (Print)

CITY OF ONTARIO

Agenda Report
December 15, 2015

SECTION:
PUBLIC HEARINGS

SUBJECT: A PUBLIC HEARING TO CONSIDER A DEVELOPMENT CODE AMENDMENT TO REVISE SECTION 9-1.3176, BILLBOARD RELOCATION AGREEMENTS, TO INCLUDE AN "INTERAGENCY RELOCATION EXCEPTION" TO PERMIT THE RELOCATION OF BILLBOARDS WITHIN THE CITY OF ONTARIO, PROVIDED THE BILLBOARDS MEET CERTAIN LOCATIONAL CRITERIA AND FINDINGS AND INCLUDE THE ELIMINATION OF OTHER BILLBOARDS WITHIN THE CITY

RECOMMENDATION: That the City Council introduce and waive further reading of an ordinance approving File No. PDCA15-002, amending Section 9-1.3176, Billboard Relocation Agreements, to include an "Interagency Relocation Exception" to permit the relocation of billboards within the City of Ontario, provided the billboards meet certain locational criteria and findings and include the elimination of other billboards within the City.

COUNCIL GOALS: Regain Local Control of the Ontario International Airport
Operate in a Businesslike Manner
Pursue City's Goals and Objectives by Working with Other Governmental Agencies

FISCAL IMPACT: None.

BACKGROUND: Dating back to the 1980's, the City has prohibited the placement of new billboards. In 2003, the City Council approved provisions for billboard relocation agreements wherein a billboard company could agree to remove two billboards in the City in exchange for the placement of one new billboard. The potential relocation sites were limited to a small portion of the community. Through this process, two new billboards have been constructed at the entry to the Ontario International Airport and four billboards along major arterials were removed.

SANBAG, the regional transportation authority, recently approached the City about the relocation of a billboard to the City from a location outside City limits to facilitate needed freeway interchange improvements. While the City recognizes that billboard acquisition and/or relocation can be a very

STAFF MEMBER PRESENTING: Scott Murphy, Planning Director

Prepared by: Scott Murphy
Department: Planning

City Manager
Approval: _____

Submitted to Council/O.H.A. 12/15/2015
Approved: _____
Continued to: _____
Denied: _____

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expensive, the City needed to ensure that there was a benefit to the City. As a result, criteria was established that would allow for an “Interagency Relocation Agreement”, under very specific terms, through the addition of Development Code Section 9-1.376(F)(3)(f) that would read as follows:

(f) Notwithstanding the foregoing, a billboard may be relocated from outside the City to any location within the City pursuant to an agreement, approved at the discretion of the City Council, between the City and another public agency so long as the following findings can be met:

(1) A minimum of six (6) existing, legal nonconforming billboards shall be removed, at least five (5) of which must be currently located within the City.

(2) The billboard’s relocation is necessitated by work being performed on the same freeway as the planned new site for the billboard.

(3) The public health, safety, and welfare are not impaired by the relocation.

If approved by City Council, the Development Code Amendment would provide the foundation for an agreement to be approved by City Council with another public agency. The agreement would include such things as the identification of the billboards to be removed and the location, height, area, and design of a new billboard pursuant to an Interagency Relocation Agreement,

On November 24, 2015, the Planning Commission conducted a public hearing on the application and unanimously recommended approval of the application. The Planning Commission felt that the removal of at least five billboards from City streets in exchange for one new freeway billboard would have a positive aesthetic impact to the City. The narrow crafting of the ordinance would also limit the number of billboard relocation opportunities.

ENVIRONMENTAL REVIEW: The project is categorically exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to § 15601(b)(3) (General Rule) of the CEQA Guidelines based on the fact that it is not known whether an interagency billboard relocation agreement will be proposed, where the location of any new relocation might occur, and the total number and locations of billboards proposed for removal as part of such an agreement might be.



PLANNING COMMISSION STAFF REPORT

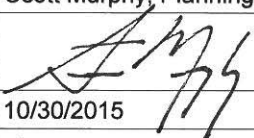
November 24, 2015

SUBJECT: A Development Code Amendment request (File No. PDCA15-002) to amend Section 9-1.3176 (Section 4.02.010 of the Development Code Update), Billboard Relocation Agreements, to include an "Interagency Relocation Exception" to relocate billboards to the City of Ontario, provided the billboards meet certain locational criteria and findings and include the elimination of other billboards within the City; **City Initiated.** City Council action is required.

RECOMMENDED ACTION: That the Planning Commission recommend approval of File No. PDCA15-002 to the City Council, pursuant to the facts and reasons contained in the staff report and attached resolution.

PROJECT ANALYSIS:

- [1] Background — Going back several decades, the City began prohibiting the construction of new billboard signs. In 2003, the City approved an amendment to the Development Code Sign Section that would allow for the construction of a new billboard as part of a billboard relocation agreement. The intent of the billboard relocation agreement was "to reduce the overall number of legal nonconforming billboards within the city by allowing relocated billboards in more suitable locations and provide more attractive, aesthetically pleasing billboard designs through a Billboard Relocation Agreement. A further purpose is to reduce or eliminate the City's obligation to pay compensation for the removal of legal nonconforming billboards. Billboard Relocation Agreements are part of the demonstrated commitment of the City of Ontario to improve the aesthetic appearance of the City. The consideration and execution of Billboard Relocation Agreements shall be at the sole discretion of the City of Ontario." The provisions require the removal of at least two existing billboards for every new, relocated billboard sign. Since adoption of the billboard relocation agreement provisions, one agreement has been approved, facilitating the construction of the billboards on Archibald Avenue at the entry to Ontario International Airport.
- [2] Analysis: — Recently, the City has been involved in several discussions with SANBAG, the regional transportation planning agency (of which the City is a part), regarding the relocation of billboards necessary to complete freeway improvement projects. Because most cities in the regional prohibit new billboards, the ability to relocate billboards is minimal. In cases where billboards cannot be relocated, SANBAG is placed in a position of having to purchase the billboard and compensate the billboard companies for lost revenue potential – these costs can be substantial.

Case Planner:	Scott Murphy, Planning Director	Hearing Body	Date	Decision	Action
Planning Director Approval:		DAB			
Submittal Date:	10/30/2015	ZA			
Hearing Deadline:	n/a	PC	11/24/15	Approved	Recommend
		CC			Final

SANBAG is placed in a position of having to purchase the billboard and compensate the billboard companies for lost revenue potential – these costs can be substantial. To assist SANBAG and other public agencies in relocating billboards, the staff is proposing to provide an amendment to the billboard relocation agreement that would allow billboards to be relocated within the City, under very specific criteria, through an “Interagency Relocation Exception” added to Section 9-1.3176(F)(3)(f) [Development Code Update Section 4.02.010(D)(2)(f)]. The exception would read:

Notwithstanding the foregoing, a billboard may be relocated from outside the City to any location within the City pursuant to an agreement, approved at the discretion of the City Council, between the City and another public agency so long as the following findings can be met:

[1] A minimum of six (6) existing, legal nonconforming billboards shall be removed, at least five (5) of which must be currently located within the City.

a. *Staff comment: This provision would have a direct benefit to the City in the removal of at least five billboards in exchange for allowing one billboard to be relocated into the City. This will have a positive effect of removing billboards from major arterials within the City.*

[2] The billboard’s relocation is necessitated by work being performed on the same freeway as the planned new site for the billboard.

a. *Staff comment: This will provide for a sign relocation only when freeway improvements necessitate relocation of a sign and provide a relocation on the same freeway for which the improvements are being performed. For example, a sign on Interstate 10 would have to be relocated to a location along Interstate 10 – it could not be relocated to Interstate 15 or State Route 60.*

[3] The public health, safety, and welfare are not impaired by the relocation.

COMPLIANCE WITH THE ONTARIO PLAN: The proposed project is consistent with the principles, goals and policies contained within the Vision, Governance, Policy Plan (General Plan), and City Council Priorities components of The Ontario Plan (TOP). More specifically, the goals and policies of TOP that are furthered by the proposed project are as follows:

[1] City Council Priorities

Primary Goal: Regain Local Control of the Ontario International Airport

Supporting Goals:

- Invest in the Growth and Evolution of the City's Economy
- Operate in a Businesslike Manner

[2] Policy Plan (General Plan)

[a] *Land Use – Compatibility*

- Goal LU2: Compatibility between wide ranges of uses.

➤ LU2-5 *Regulation of Uses*. We regulate the location, concentration and operations of uses that have impacts on surrounding land uses.

➤ LU2-7 *Inter-jurisdictional Coordination*. We maintain an ongoing liaison with IEUA, LAWA, Caltrans, Public Utilities Commission, the railroads and other agencies to help minimize impacts and improve the operations and aesthetics of their facilities.

[b] *Land Use – Flexibility*

- Goal LU3: Staff, regulations and processes that support and allow flexible response to conditions and circumstances in order to achieve the Vision.

COMPLIANCE WITH THE AIRPORT LAND USE COMPATIBILITY PLAN: The project site is located within the Airport Influence Area of LA/Ontario International Airport and has been found to be consistent with the policies and criteria set forth within the LA/Ontario International Airport Land Use Compatibility Plan (ALUCP).

ENVIRONMENTAL REVIEW: The project is categorically exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to § 15601(b)(3) (General Rule) of the CEQA Guidelines based on the fact that it is not known whether an interagency billboard relocation agreement will be proposed, where the location of any new relocation might occur, and the total number and locations of billboards proposed for removal as part of such an agreement might be.

RESOLUTION NO. PC15-066

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ONTARIO, CALIFORNIA, RECOMMENDING THAT THE CITY COUNCIL APPROVE FILE NO. PDCA15-002, A REQUEST TO AMEND SECTION 9-1.3176 (SECTION 4.02.010 OF THE DEVELOPMENT CODE UPDATE), BILLBOARD RELOCATION AGREEMENTS, TO INCLUDE AN "INTERAGENCY RELOCATION EXCEPTION" TO RELOCATE BILLBOARDS TO THE CITY OF ONTARIO, PROVIDED THE BILLBOARDS MEET CERTAIN LOCATIONAL CRITERIA AND FINDINGS AND INCLUDE THE ELIMINATION OF OTHER BILLBOARDS WITHIN THE CITY

WHEREAS, THE CITY OF ONTARIO ("Applicant") has initiated an Application for the approval of a revision to Development Code, File No. PDCA15-002, as described in the title of this Resolution (hereinafter referred to as "Application" or "Project"); and

WHEREAS, in 2003, the City recognized the benefit of allowing billboard relocations as a method of achieving an overall reduction in the number of billboards within the City; and

WHEREAS, public agencies occasionally encounter the need to remove a billboard in order to complete necessary public infrastructure; and

WHEREAS, the removal of billboards in order to install necessary infrastructure improvements can be very costly when considering the anticipated future revenue of a billboard; and

WHEREAS, the City understands the public benefit in reducing the costs of public infrastructure; and

WHEREAS, the City recognizes an opportunity to reduce public infrastructure costs while, at the same time, reducing the overall number of billboards located within the City; and

WHEREAS, the proposed project is located within the Airport Influence Area of Ontario International Airport (ONT), and was evaluated and found to be consistent with the policies and criteria of the Airport Land Use Compatibility Plan (ALUCP) for ONT; and

WHEREAS, the Application is a project pursuant to the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) ("CEQA") and an initial study has been prepared to determine possible environmental impacts; and

WHEREAS, the Application is exempt from the requirements of CEQA pursuant to Section 15601(b)(3) (General Rule) based on the fact that it is not known whether an interagency billboard relocation agreement will be proposed, where the location of any new relocation might occur, and the total number and locations of billboards proposed for removal as part of such an agreement might be.; and

WHEREAS, on November 24, 2015, the Planning Commission of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date; and

WHEREAS, all legal prerequisites to the adoption of this Resolution have occurred.

NOW, THEREFORE, IT IS HEREBY FOUND, DETERMINED, AND RESOLVED by the Planning Commission of the City of Ontario, as follows:

SECTION 1. As the recommending body for the Project, the Planning Commission has reviewed and considered the information contained in the administrative record for the Project. Based upon the facts and information contained in the administrative record, including all written and oral evidence presented to the Planning Commission, the Planning Commission finds as follows:

- a. The Project is exempt from environmental review pursuant to Section 15601(b)(3) (General Rule) of the CEQA Guidelines; and
- b. The application of the categorical exemption is not barred by one of the exceptions set forth in CEQA Guidelines Section 15300.2; and
- c. The determination of CEQA exemption reflects the independent judgment of the Planning Commission.

SECTION 2. Based upon the substantial evidence presented to the Planning Commission during the above-referenced hearing and upon the specific findings set forth in Section 1 above, the Planning Commission hereby concludes as follows:

- a. The proposed Development Code Amendment is consistent with the goals, policies, plans and exhibits of the Vision, Policy Plan (General Plan), and City Council Priorities components of The Ontario Plan; and
- b. The proposed Development Code Amendment is consistent with the goals and policies of the Development Code; and

c. The proposed Development Code Amendment would not be detrimental to the public interest, health, safety, convenience, or general welfare of the City.

SECTION 3. Based upon the findings and conclusions set forth in Sections 1 and 2 above, the Planning Commission hereby **recommends City Council approval** of the amendment to Development Code adding Section 9-1.3176(F)(3)(f) (Section 4.02.010(D)(2)(f) of the Development Code Update) to read as follows:

- (f) Interagency Relocation Exception. Notwithstanding the foregoing, a billboard may be relocated from outside the City to any location within the City pursuant to an agreement, approved at the discretion of the City Council, between the City and another public agency so long as the following findings can be met:
- (1) A minimum of six (6) existing, legal nonconforming billboards shall be removed, at least five (5) of which must be currently located within the City.
 - (2) The billboard's relocation is necessitated by work being performed on the same freeway as the planned new site for the billboard.
 - (3) The public health, safety, and welfare are not impaired by the relocation.

SECTION 4. The documents and materials that constitute the record of proceedings on which these findings have been based are located at the City of Ontario City Hall, 303 East "B" Street, Ontario, California 91764. The custodian for these records is the City Clerk of the City of Ontario.

SECTION 5. The Secretary shall certify to the adoption of the Resolution.


The Secretary Pro Tempore for the Planning Commission of the City of Ontario shall certify as to the adoption of this Resolution.

I hereby certify that the foregoing Resolution was duly and regularly introduced, passed and adopted by the Planning Commission of the City of Ontario at a regular meeting thereof held on the 24th day of November 2015, and the foregoing is a full, true and correct copy of said Resolution, and has not been amended or repealed.



Jim Willoughby
Planning Commission Chairman

ATTEST:



Scott Murphy
Planning Director/Secretary of Planning
Commission

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF ONTARIO)

I, Marci Callejo, Secretary Pro Tempore of the Planning Commission of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. PC15-066 was duly passed and adopted by the Planning Commission of the City of Ontario at their regular meeting held on November 24, 2015 by the following roll call vote, to wit:

AYES: Delman, Downs, Gage, Gregorek, Mautz, Ricci, Willoughby

NOES: None

ABSENT: None

ABSTAIN: None



Marci Callejo
Secretary Pro Tempore

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PDCA15-002, A REQUEST TO AMEND SECTION 9-1.3176 (SECTION 4.02.010 OF THE DEVELOPMENT CODE UPDATE), BILLBOARD RELOCATION AGREEMENTS, TO INCLUDE AN "INTERAGENCY RELOCATION EXCEPTION" TO RELOCATE BILLBOARDS TO THE CITY OF ONTARIO, PROVIDED THE BILLBOARDS MEET CERTAIN LOCATIONAL CRITERIA AND FINDINGS AND INCLUDE THE ELIMINATION OF OTHER BILLBOARDS WITHIN THE CITY.

WHEREAS, THE CITY OF ONTARIO ("Applicant") has initiated an Application for the approval of a revision to Development Code, File No. PDCA15-002, as described in the title of this Resolution (hereinafter referred to as "Application" or "Project"); and

WHEREAS, in 2003, the City recognized the benefit of allowing billboard relocations as a method of achieving an overall reduction in the number of billboards within the City; and

WHEREAS, public agencies occasionally encounter the need to remove a billboard in order to complete necessary public infrastructure; and

WHEREAS, the removal of billboards in order to install necessary infrastructure improvements can be very costly when considering the anticipated future revenue of a billboard; and

WHEREAS, the City understands the public benefit in reducing the costs of public infrastructure; and

WHEREAS, the City recognizes an opportunity to reduce public infrastructure costs while, at the same time, reducing the overall number of billboards located within the City; and

WHEREAS, the proposed project is located within the Airport Influence Area of Ontario International Airport (ONT), and was evaluated and found to be consistent with the policies and criteria of the Airport Land Use Compatibility Plan (ALUCP) for ONT; and

WHEREAS, the Application is a project pursuant to the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) ("CEQA") and an initial study has been prepared to determine possible environmental impacts; and

WHEREAS, the Application is exempt from the requirements of CEQA pursuant to Section 15601(b)(3) (General Rule) based on the fact that it is not known whether an

interagency billboard relocation agreement will be proposed, where the location of any new relocation might occur, and the total number and locations of billboards proposed for removal as part of such an agreement might be.; and

WHEREAS, on November 24, 2015, the Planning Commission of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date. After considering all public testimony, the Planning Commission adopted their Resolution No. PC15-066, unanimously recommending approval of the project; and

WHEREAS, on December 15, 2015, the City Council of the City of Ontario conducted a public hearing and concluded said hearing on that date; and

WHEREAS, all legal prerequisites to the adoption of this Resolution have occurred.

NOW, THEREFORE, IT IS HEREBY FOUND, DETERMINED, AND ORDAINED by the City Council of the City of Ontario, as follows:

SECTION 1. As the approval body for the Project, the City Council has reviewed and considered the information contained in the administrative record for the Project. Based upon the facts and information contained in the administrative record, including all written and oral evidence presented to the City Council, the City Council finds as follows:

a. The Project is exempt from environmental review pursuant to Section 15601(b)(3) (General Rule) of the CEQA Guidelines; and

b. The application of the categorical exemption is not barred by one of the exceptions set forth in CEQA Guidelines Section 15300.2; and

c. The determination of CEQA exemption reflects the independent judgment of the City Council.

SECTION 2. Based upon the substantial evidence presented to the City Council during the above-referenced hearing and upon the specific findings set forth in Section 1 above, the City Council hereby concludes as follows:

a. The proposed Development Code Amendment is consistent with the goals, policies, plans and exhibits of the Vision, Policy Plan (General Plan), and City Council Priorities components of The Ontario Plan; and

b. The proposed Development Code Amendment is consistent with the goals and policies of the Development Code

c. The proposed Development Code Amendment would not be detrimental to the public interest, health, safety, convenience, or general welfare of the City.

SECTION 3. Based upon the findings and conclusions set forth in Sections 1 and 2 above, the City Council hereby approves the amendment to Development Code adding Section 9-1.3176(F)(3)(f) (Section 4.02.010(D)(2)(f) of the Development Code Update) to read as follows:

(f) Interagency Relocation Exception. Notwithstanding the foregoing, a billboard may be relocated from outside the City to any location within the City pursuant to an agreement, approved at the discretion of the City Council, between the City and another public agency so long as the following findings can be met:

(1) A minimum of six (6) existing, legal nonconforming billboards shall be removed, at least five (5) of which must be currently located within the City.

(2) The billboard's relocation is necessitated by work being performed on the same freeway as the planned new site for the billboard.

(3) The public health, safety, and welfare are not impaired by the relocation.

SECTION 4. If any section, subsection, paragraph, sentence, clause or phrase of this ordinance is for any reason held to be invalid, unconstitutional or otherwise struck-down by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this ordinance and each section, subsection, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more portions of this ordinance might be declared invalid.

SECTION 5. The Applicant shall agree to defend, indemnify and hold harmless, the City of Ontario or its agents, officers, and employees from any claim, action or proceeding against the City of Ontario or its agents, officers or employees to attack, set aside, void or annul this approval. The City of Ontario shall promptly notify the applicant of any such claim, action or proceeding, and the City of Ontario shall cooperate fully in the defense.

SECTION 6. Custodian of Records. The documents and materials that constitute the record of proceedings on which these findings have been based are located at the City of Ontario City Hall, 303 East "B" Street, Ontario, California 91764. The custodian for these records is the City Clerk of the City of Ontario.

SECTION 7. Severability. If any section, sentence, clause or phrase of this Ordinance or the application thereof to any entity, person or circumstance is held for any reason to be invalid or unconstitutional, such invalidity or unconstitutionality shall

not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. The People of the City of Ontario hereby declare that they would have adopted this Ordinance and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

SECTION 8. Effective Date. This Ordinance shall become effective 30 days following its adoption.

SECTION 9. The Mayor shall sign this Ordinance and the City Clerk shall certify as to the adoption and shall cause a summary thereof to be published at least once, in a newspaper of general circulation in the City of Ontario, California within 15 days of the adoption. The City Clerk shall post a certified copy of this ordinance, including the vote for and against the same, in the Office of the City Clerk, in accordance with Government Code Section 36933.

PASSED, APPROVED, AND ADOPTED this ____ day of _____, 201__.

PAUL S. LEON, MAYOR

ATTEST:

MARY E. WIRTES, MMC, CITY CLERK

APPROVED AS TO FORM:

BEST BEST & KRIEGER LLP
CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF ONTARIO)

I, MARY E. WIRTES, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Ordinance No. _____ was duly introduced at a regular meeting of the City Council of the City of Ontario held December 15, 2015, and adopted at the regular meeting held _____, 201____, by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

I hereby certify that the foregoing is the original of Ordinance No. _____ duly passed and adopted by the Ontario City Council at their regular meeting held _____ and that Summaries of the Ordinance were published on _____ and _____, in the Inland Valley Daily Bulletin newspaper.

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)