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ECONOMIC DEVELOPMENT AGREEMENT FOR TAX REBATE

By and Among

City of Signal Hill,
a California municipal corporation

and

City of Long Beach,
a California municipal corporation

and

Office Depot, Inc.,
a Delaware corporation

ECONOMIC DEVELOPMENT AGREEMENT

THIS ECONOMIC DEVELOPMENT AGREEMENT FOR TAX REBATE (the "Economic Development Agreement" or the "Agreement") is entered into by and among (i) CITY OF SIGNAL HILL, a California municipal corporation and charter law city ("City" or "Signal Hill"), (ii) the CITY OF LONG BEACH, a California municipal corporation and charter law city ("Long Beach," with the two cities being collectively referred to as the "Cities"), and (iii) OFFICE DEPOT, INC., a Delaware corporation ("Office Depot"). Cities and Office Depot are sometimes individually referred to herein as "Party" and collectively as "Parties." For purposes of this Economic Development Agreement, the reference to Office Depot includes any and all subsidiaries of Office Depot, Inc.

ARTICLE 1. RECITALS OF FACT.

The Parties enter into this Economic Development Agreement on the basis of the following facts, understandings and intentions:

R E C I T A L S

1.1 Office Depot leases as a tenant on property owned by LBSH PARCEL I LLC, a California corporation and/or its affiliates ("Lessor"), that certain, improved real property located at the southwest corner of Willow and Redondo, which property is commonly referred to as 3366 E. Willow in the City of Signal Hill, County of Los Angeles, State of California (the "SH Site"). Office Depot also leases that certain improved real property located at the southeast corner of Willow and Redondo commonly referred to as 3500 E. Willow in the City of Long Beach (the "LB Site"). The Sites are leased from Lessor and/or its affiliates and are utilized as one distribution center. Office Depot currently leases and occupies the SH Site pursuant to the "Office Depot Lease" originally executed on August 30, 1985, and including all amendments thereto.

1.2 Lessor leases the SH Site to Office Depot, which SH Site contains a 440,000 square foot facility (the "SH Facility"). Office Depot currently leases and occupies the SH Site pursuant to the Office Depot Lease. Office Depot also currently leases the LB Site pursuant to a separate lease with an affiliate of Lessor. The LB Site contains a 187,500 square foot facility. The SH and LB Sites are utilized together as one distribution center that consists of some 600,000 sq. ft. on approximately 8.15 acres.

1.3 On September 19, 1996, the Spring Street Corridor Joint Powers Authority, a California joint powers authority ("Authority" or "JPA") and its member agencies City of Signal Hill, Signal Hill Redevelopment Agency ("SH Agency"), City of Long Beach and the Redevelopment Agency of the City of Long Beach ("LB Agency") (collectively "JPA and Member Agencies") on the one hand, and Office Depot, as tenant of Lessor, on the other hand, entered into an Owner Participation and Implementation Agreement ("1996 OPA") to provide Office Depot with certain incentives from the JPA and its members to encourage Office Depot and Lessor to continue leasing the SH Site, construction of a new facility and leasing same to Office Depot. The financing assistance and revenue sharing with Office Depot was described in Exhibit "J" of the 1996 OPA (the "1996 OPA Assistance").

1.4 In late 2010, Lessor commenced lease renegotiations with Office Depot and requested that Signal Hill continue its assistance through the 1996 OPA to Office Depot. Moreover, the Cities learned that Office Depot may desire to relocate its operations from both the SH Site and LB Site to another community unless it received continued financial assistance, such as that provided under the 1996 OPA. The SH Agency negotiated an extension of the 1996 OPA and, on March 4, 2011, the 1996 OPA Assistance was extended for another fifteen (15) years until March 16, 2027 (the "OPA Extension").

1.5 The Parties believe that it is in the public interest to retain the operations of Office Depot at the SH and LB Sites for the following reasons: (i) the project is expected to retain at least 500 jobs in the City of Signal Hill and in the City of Long Beach; (ii) the project will retain the City of Signal Hill's most significant tax-generating business; (iii) the project will retain a joint use at the SH and LB Sites which otherwise may be difficult to utilize, (iv) the Project will consolidate all Long Beach and Signal Hill sales by Office Depot at a single site, and will increase such sales through developing an e-commerce center, and (v) the Project avoids a potentially destructive competition between Long Beach and Signal Hill to capture all potential sales by fostering a cooperative sharing arrangement through the auspices of the JPA for the joint use of these two sites. This Economic Development Agreement is in accord with applicable state and federal laws and is in the vital and best interests of the community, will serve the health, safety, and general welfare of the Cities and their citizens, will serve to strengthen the Cities' land use and social structure, and alleviate economic and physical blight within the Cities.

1.6 Due to the elimination of redevelopment in California pursuant to the adoption of AB1x 26 and the decision of the California Supreme Court in *CRA v. Matosantos* in December 2011, Signal Hill determined that it must develop an Economic Development Assistance Program. Redevelopment has played a vital role in transforming a 2 square mile community which was a leading oil producer in the United States for much of the 20th Century producing over a billion barrels of oil, and now left with a legacy of thousands of abandoned wells, obsolete oil field facilities, and significant soil contamination, geotechnical conditions, including, fault structures, and complex title issues. The City needed a new economic development strategy to replace redevelopment and, on April 3, 2012, adopted a new economic development program which includes, among other measures, sales tax rebate strategies for qualifying businesses. These strategies will permit City to provide additional assistance to meet the thresholds needed by Office Depot to remain in Signal Hill.

1.7 On April 3, 2012, the City enacted an ordinance adding Chapter 3.32 to the Signal Hill Municipal Code adopting a comprehensive set of economic development incentives and programs to promote the development of Signal Hill in the face of unique environmental constraints, to create jobs and to preserve the sound fiscal basis of the City in light of the elimination of redevelopment in California. To accomplish the purposes provided in the ordinance, the City and its associated and subordinated entities shall have the power to carry out policies, plans and programs, to enact measures, to enter into agreements, and to loan, grant, fund, or finance projects which will provide public benefit and protect the public health, safety and welfare of the community. These programs may be carried out singly or in combination in a manner to promote the economic development objectives of Chapter 3.32, with Section 3.32.030(F) specifically providing for the use of "Economic Development Agreements" for sales taxes, transient occupancy taxes, utility taxes or other taxes to be shared with the generator, and

rebates or waivers of franchise fees, business license fees, development impact fees, or other revenue sources but any such tax may only be imposed in accordance with law.

1.8 Based upon the foregoing understandings, the specific purpose of this Economic Development Agreement is to provide Office Depot with financial assistance consistent with Chapter 3.32 of the Signal Hill Municipal Code via rebates of local sales tax payable by Office Depot to Signal Hill for the purpose of facilitating Office Depot's operation of a Retail Sales Office (hereinafter defined) on the SH Site to centralize and streamline Office Depot's e-commerce sales function. The Retail Sales Office also may engage in sales and leases to affiliated companies and other third-parties. More specifically, City shall pay inducements to Office Depot based on a percentage of the Local Sales Tax Revenues (as defined herein) to be generated for the City by the Retail Sales Office in the City. In consideration for City's rebate of Local Sales Tax Revenues to Office Depot, Office Depot shall locate and maintain its Retail Sales Office within the City of Signal Hill.

1.9 The JPA already provides Office Depot with a rebate of Local Sales Tax Revenues under the 1996 OPA. Specifically, the 1996 OPA provides a rebate of Local Sales Taxes pursuant to a formula set forth in Exhibit "J" to the 1996 OPA. The Economic Development Agreement is intended to provide further incentives to Office Depot by supplementing the payment amounts already paid to Office Depot under the 1996 OPA, such that the City's total rebate of Local Sales Tax Revenues to Office Depot will be 70% of all Local Sales Tax Revenues generated by Office Depot operations in Signal Hill and Long Beach. The rebate of 70% Local Sales Tax Revenues from Signal Hill shall be from the combination of incentives from the Economic Development Agreement and the 1996 OPA.

1.10 The City of Long Beach considered providing its own assistance program to Office Depot pursuant to its sales tax sharing program. The City of Signal Hill approached Long Beach and the Cities determined to work cooperatively. City of Signal Hill's economic assistance program in Section 3.32.060(D) of the Signal Hill Municipal Code encourages cooperative agreements with other cities and this Agreement is consistent with such requirements. Long Beach will be a Party hereto with the right to enforce the provisions hereof. Long Beach is agreeing to the relocation of its retail sales to Signal Hill in exchange for Signal Hill rebating certain sales taxes to Long Beach pursuant to a cooperation agreement between the parties.

1.11 This Economic Development Agreement has been reviewed with respect to applicability of the California Environmental Quality Act ("CEQA"), the State CEQA Guidelines (California Code of Regulations, Title 14, §§ 15000 *et seq.*, hereafter the "Guidelines"), and the environmental guidelines of the respective parties. This Agreement is not a "project" for purposes of CEQA, as that term is defined by Guidelines §15378, because this Agreement is an organizational or administrative activity that will not result in a direct or indirect physical change in the environment, per §15378(b)(5) of the Guidelines.

ARTICLE 2. DEFINITIONS.

2.1 Definitions. Unless the context otherwise requires, the terms defined in this Article 2 shall for all purpose hereto, and of any amendment hereof, and of any opinion or report or other document mentioned herein or therein, have the meanings defined herein, the following definitions to be equally applicable to both the singular and plural forms of any of the terms defined herein.

2.1.1 “Business Day” means a day which is not a Saturday, Sunday or legal holiday on which banking institutions in the State or the City are closed.

2.1.2 “Claims or Liabilities” include, but are not limited to, actions where (i) the Cities and/or any of, their officers, agents or employees are made a party to any action or proceeding filed or prosecuted against Office Depot for any such Claims or Liabilities, or (ii) Office Depot and/or any of, its directors, officers, agents or employees are made a party to any action or proceeding filed or prosecuted against either Signal Hill or Long Beach for any such Claims or Liabilities, or (iii) the City and/or Long Beach are made a party to any action or proceeding. “Claims or Liabilities” includes any claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities, whether actual or threatened, that may be asserted in any judicial, administrative or other proceeding, claimed or asserted by any person, firm or entity, governmental or otherwise, and arising out of or in connection with the performance of any term, provision, covenant or condition of this Agreement, the 1996 OPA, the Sales Tax Sharing Agreement between the cities and/or as related to the tax sharing arrangements established thereby.

2.1.3 “City Payment” means, for each Payment Period in which Office Depot has its Retail Sales Office located in the City, the following amount: For all years commencing with the Effective Date and throughout the Term of this Agreement, an amount equal to seventy percent (70%) of each dollar of Local Sales Tax Revenues attributable to Office Depot operations in the City of Signal Hill. The 70% rebate provided hereunder shall be reduced by any amounts paid or payable under the 1996 OPA. The City Payment is the remainder of: 70% of each dollar of Local Sales Tax Revenues attributable to Office Depot operations in the City of Signal Hill, minus any payment made to Office Depot under the 1996 OPA.

2.1.4 “Effective Date” means March 1, 2013.

2.1.5 “Execution Date” means the date that this Agreement was fully executed by the Parties as evidenced on the signature pages attached hereto.

2.1.6 “Fiscal Year” means January 1 through December 31.

2.1.7 “Fiscal Quarter” means one calendar year quarter commencing on January 1, April 1, July 1, or October 1, and ending on, as applicable, the immediately following March 31st, June 30th, September 30th, or December 31st, respectively. As an example, the Fiscal Quarter commencing January 1st shall end on the immediately following March 31st, the Fiscal Quarter commencing on April 1st shall end on the immediately following June 30th, and so on.

2.1.8 “Payment Period” means each six-month period occurring twice per Fiscal Year from (i) January 1 through June 30 and (ii) July 1 through December 31. Office Depot is paid the City Payment after the end of each Payment Period as detailed herein.

2.1.9 “Local Sales Tax Revenues” means that portion of the Sales and Use Tax, if any, paid by Retail Sales Office upon taxable sales and uses attributable to the operations of Retail Sales Office and allocated and actually paid to, and received by, the City under the Uniform Local Sales and Use Tax Law (Part 1.5, Division 2 of the California Revenue and Taxation Code). Local 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 Los Angeles, a district or any entity (including an allocation to a statewide or countywide pool) other than the City, (iii) any administrative fee charged by the SBE, (iv) any Sales or Use Tax subject to any sharing, rebate, offset or other charge imposed pursuant to any applicable provision of federal, state or local (except the City’s) law, rule, or regulation, (v) any Sales Tax attributable to any transaction not consummated within the Term, 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 Signal Hill’s general fund including retroactively.

2.1.10 “Minimum SH Tax Amounts” means the anticipated minimum amount of Sales Tax to be allocated to Signal Hill as further described in Section 3.2.2(c) of this Agreement. The Minimum SH Tax Amounts are based on the Sales Tax share actually receivable to Signal Hill after the City Payment is made (i.e., the Minimum SH Tax Amounts pertain to the Cities’ 30% of each dollar of Local Sales Tax Revenues attributable to Office Depot operations in Signal Hill).

2.1.11 “Penalty Assessments” means penalties, assessments, collection costs and other costs, fees or charges resulting from late or delinquent payment of Sales or Use Tax and which are levied, assessed or otherwise collected from Office Depot.

2.1.12 “Retail Sales” means all sales of tangible personal property to any person or entity which is subject to the Sales and Use Tax Law and which generates Local Sales Tax Revenues.

2.1.13 “Retail Sales Office” means any form of entity affiliated with Office Depot that maintains a retail sales operation within Signal Hill on the SH Site and at which Retail Sales transactions are consummated pursuant to the Sales and Use Tax Law. Sales from distribution centers, warehouses, field sales offices and other e-commerce sales are intended to be included as appropriate under the Sales and Use Tax Law. Notwithstanding the above, for clarity, physical retail store locations of Office Depot ordinarily open to the public and operated within either City are not intended to be included within the definition of Retail Sales Office.

2.1.14 “SBE” means the California State Board of Equalization, and any successor agency.

2.1.15 “Sales and Use Tax Law” means (i) Part 1 of Division 2 of the California Revenue and Taxation Code, commencing with Section 6001, and any successor law thereto, (ii) any legislation allowing the City or other public agency with jurisdiction in the City to levy any form of sales and use tax on the operations of Office Depot, and (iii) regulations of the SBE and other binding rulings and interpretations relating to (i) and (ii) hereof.

2.1.16 “Sales Tax” means all sales and use taxes levied under the authority of the California Sales and Use Tax Law, excluding any Sales Tax that is to be refunded to Office Depot because of an overpayment of Sales Tax.

2.1.17 “Sales Tax Sharing Agreement” means the agreement between the Cities of even date herewith specifying each of their respective rights and obligations pertaining to the sharing of the Sales Tax from the retail sales operations of the Retail Sales Office.

2.1.18 “Term” shall mean the Term of this Economic Development Agreement, which commences at the Effective Date and ends on the same date that the 1996 OPA expires (or March 16, 2027). The Term of this Agreement is intended to be coterminous with the 1996 OPA.

ARTICLE 3. GENERAL TERMS

3.1 Location and Operation of Office Depot Within City; Scope of Operations. Office Depot has agreed to consolidate certain California retail sales operations, including those sales currently generated at the LB Site, and including certain new Internet sales activity, in a Retail Sales Office within the City. Office Depot shall continue to operate in the City on the SH Site until this Agreement expires or is terminated by any Party as provided herein. Office Depot shall combine the Retail Sales Office operations from the LB Site and Signal Hill into one location on the SH Site, but shall retain its other Long Beach operations. Moreover, it is acknowledged that Office Depot currently maintains in Signal Hill and Long Beach certain physical retail store locations open to the public and operated within City (the “Existing Public Retail Operations”). The Existing Public Retail Operations located in Signal Hill shall remain in Signal Hill and the Signal Hill jurisdiction shall remain as the situs for all purposes of Sales Tax generated by the Existing Public Retail Operations throughout the Term hereof. Existing Public Retail Operations located in Long Beach that are not on the LB Site shall remain in Long Beach and the Long Beach jurisdiction shall remain as the situs for all purposes of Sales Tax generated by such existing retail operations throughout the Term hereof.

Unless otherwise permitted in writing by the Cities, Office Depot will ensure the Retail Sales Office will generate the Minimum SH Tax Amounts, pursuant to Section 3.2.2(c).

3.1.1 Office Depot and/or Retail Sales Office, as applicable, shall obtain, and will maintain, a retail sales tax permit from the SBE. Office Depot will take all reasonable actions to maximize Signal Hill sales and assure that transactions occurring in the Signal Hill facility will be qualifying retail sales in accordance with the rules and regulations of the SBE. Except as otherwise provided in Section 3.1.2 below, Office Depot will act and cause Retail Sales Office to conduct its business so that, unless otherwise agreed to by Cities, the place

of sale for all Retail Sales made by Retail Sales Office during the term of this Agreement will be the City pursuant to the Sales and Use Tax Law. In all sales reports filed by Office Depot with the SBE, relating to Retail Sales, where such a designation is permitted or required under the Sales and Use Tax Law, Office Depot shall advise the Retail Sales Office to specify the City as the place of sale for all of its Retail Sales, with the exception of Retail Sales from a location other than the City, as permitted by Section 3.1.2 below.

3.1.2 Notwithstanding Section 3.1.1 of this Agreement, and subject to Section 3.1.3 of this Agreement, the place of sale for Retail Sales made by the Retail Sales Office during the term of this Agreement is not required to be the City if Office Depot makes a business determination that certain sales activities will not be relocated to the City, and as a result such sales activities continue to be conducted where they were conducted prior to the Effective Date of this Agreement or be relocated elsewhere. Retail Sales Office may make Retail Sales from a location that is not within the City, and/or move and/or transfer sales operations from its Retail Sales Office in the City to an additional location to the extent that any one or more of the following circumstances applies:

(a) The building in the City in which Retail Sales Office is located is damaged, destroyed, or condemned, or access to the property is lost or materially interfered with, or Retail Sales Office is otherwise prevented from using and occupying the property for any reason beyond the reasonable control of Office Depot;

(b) The lease for the property underlying the Retail Sales Office terminates or expires by its terms or is terminated for a reason not at the fault of Office Depot, and Office Depot is unable to obtain replacement space suitable for Office Depot's needs (taking into account the quality, size and location of any such replacement space, and other commercially reasonable criteria) within the City on commercially reasonable terms;

(c) City is in default under this Agreement; or

(d) City is no longer legally authorized or permitted to pay the City Payment to Office Depot.

3.1.3 In the event of the occurrence of an event described in Section 3.1.2 above, Office Depot will refrain from relocating its Retail Sales Office to a location that is not within the City unless it first notifies City in writing of its difficulty in finding suitable replacement space within Signal Hill. Signal Hill shall have sixty (60) days within which to identify or provide replacement space within Signal Hill suitable for Office Depot's needs (taking into account the quality, size and location of any such replacement space, and other commercially reasonable criteria) on commercially reasonable terms. Notwithstanding compliance with this Section, Signal Hill (in cooperation with Long Beach) has the right to terminate this Agreement where the Minimum SH Tax Amounts are not maintained. This shall be the Cities' sole remedy for such breach.

3.2 Payment of the City Payment. As consideration for Retail Sales Office's continued location and operation in the City, City shall pay to Office Depot the City Payment. Such payments will be made to Office Depot subject to the conditions precedent in Section 3.2.2.

For each Payment Period for the Term hereof, the City Payment to Office Depot shall be paid by the City no later than the sixtieth (60th) calendar day following receipt by the City from the SBE of all Data and Documentation (as defined in Section 3.2.3 below) and payments of its share of Local Sales Tax Revenue for that Payment Period. Concurrent with the City Payment, City shall notify Office Depot of the date and amount of any City Payment.

3.2.1 *First City Payment.* Regardless of when this Agreement is formally executed by the Parties, the first City Payment under this Economic Development Agreement shall accrue in the Payment Period of January 1, 2013, through June 30, 2013, and no earlier.

3.2.2 *Conditions Precedent to City Payment.* Except as described in Section 3.2.2(c) below, City's obligations under Section 3.2 are contingent on a Payment Period to Period basis and, for each Payment Period within the Term, upon the satisfaction of the following conditions precedent in each Payment Period:

- (a) Retail Sales Office having, for the entirety of such Payment Period, fulfilled its material obligations under Section 3.1 of this Agreement;
- (b) City's receipt and reasonable approval of the Data and Documentation; and
- (c) That Office Depot's operations attributable to the SH Site shall meet the Minimum SH Tax Amounts. This shall require that Office Depot's operations on the SH Site shall generate Local Sales Tax Revenues allocable to Signal Hill of no less than the following: (i) No minimum requirement for the first Payment Period [i.e., January 1, 2013 through June 30, 2013]; (ii) At least Two Million Dollars (\$2,000,000) in any four consecutive Fiscal Quarters preceding the end of the 2013 Fiscal Year; (iii) At least Three Million Dollars (\$3,000,000) in any four consecutive Fiscal Quarters preceding the end of the 2014 and 2015 Fiscal Years; and (iv) At least Four Million Dollars (\$4,000,000) in any four consecutive Fiscal Quarters by the end of the 2016 Fiscal Year and every Fiscal Year thereafter. In the event Office Depot's Local Sales Tax Revenues do not reach these Minimum SH Tax Amounts by the end of a Payment Period, the amount of the City Payment otherwise due will be reduced proportionately by the amount of the shortfall. For example, if the amount of Local Sales Tax Revenues by the end of the 2016 Fiscal Year is Three Million Dollars (\$3,000,000) rather than Four Million Dollars (\$4,000,000), the City Payment will be seventy-five percent (75%) of the amount otherwise due. (The 75% was derived by dividing the actual amount of Local Sales Tax Revenues for the respective Fiscal Year by the target amount of Local Sales Tax Revenues.) Per this example, Office Depot

would only get 75% of its normal 70% tax rebate, or 52.50%, as its City Payment, with the remaining 47.5% of the Sales Taxes going to Signal Hill.

3.2.3 *Data and Documentation.* For the purposes of this Agreement, the term "Data and Documentation" means any and all sales and use tax returns, bills, invoices, schedules, vouchers, receipts, cancelled checks, statements and other documents reasonably required by City to evidence Local Sales Tax Revenues paid by Retail Sales Office.

3.2.4 *Adequate Consideration.* The Parties have determined and agreed that the City Payment due and payable during each Payment Period represents fair consideration to Office Depot for its covenants and obligations hereunder. Except as may be provided by and through the 1996 OPA and the OPA Extension, Office Depot will receive no compensation under this Economic Development Agreement other than the City Payment. Office Depot will not be entitled to any reimbursement or other compensation from the Cities for any costs incurred by Office Depot in performing, preparing to perform or continuing its obligations under this Economic Development Agreement or the 1996 OPA for the Terms thereof.

3.2.5 *City Business License and Permits.* Office Depot acknowledges that Retail Sales Office is solely responsible for any and all City business license fees and any applicable permits. The City warrants that it will only increase its applicable business license taxes or fees in accordance with applicable law, including without limitation, Article XIII D of the California Constitution, Government Code Sections 66000, *et seq.*, and any requirements of the Signal Hill Charter or Code of Ordinances.

3.2.6 *Source of City Payments.* It is contemplated that the City shall meet its City Payment obligations to Office Depot from one or both of two (2) sources of funds. These sources are as follows:

(a) The first source of funds for the City Payment may be those monies already obligated to Office Depot under the 1996 OPA, up to a maximum rebate of 50% of Office Depot's Local Sales Tax Revenues allocable to the City of Signal Hill from Office Depot's existing operations in the City. (See, Exhibit "J" to 1996 OPA for further details on 1996 OPA tax formula and sources of funds therefor).

(b) The second available source of funds for the City Payment shall be limited to the actual Local Sales Tax Revenues allocable to the City of Signal Hill from Office Depot's Retail Sales Office in the City. For example, if the source of funds referenced in Section 3.2.6(a) becomes unavailable, then the actual Local Sales Tax Revenues allocable to the City of Signal Hill from Office Depot's Retail Sales Office shall be the sole source of City Payments.

3.2.7 *Changes in Law; No Guaranty of Availability of Certain Funding Sources.* Changes in law that materially undermine the intent and purposes of this Economic Development Agreement and the Sales Tax Sharing Agreement between the Cities may be a basis for termination or negotiated modification of this Agreement.

(a) The Cities and Office Depot acknowledge that prior to the Execution Date of this Agreement, the California legislature adopted certain legislation commonly known as the "triple-flip" which could divert to the State of California up to one-quarter (1/4) of the Sales and Use Tax Revenue that would be otherwise be payable to the City pursuant to the Sales Tax and Use Tax Law as it existed prior to enactment of the above-referenced legislation.

(b) The Cities and Office Depot acknowledge that such legislation could cause a reduction of up to approximately twenty-five percent (25%) of the Local Sales Tax Revenues which would otherwise be attributable to sales by the Retail Sales Office and that such reduction would cause a corresponding effect. Furthermore, the Cities acknowledge that it is possible that the legislation described above, or some alternative legislation (whether or not similar to the "triple flip"), may be enacted and effective during one or more subsequent years during the Term hereof and may materially and negatively impact the amount of Local Sales and Use Tax Revenues and, accordingly, City Payments. If future actions of the California legislature with respect to the allocation of Local Sales Taxes to the Cities will detrimentally impact Local Sales Taxes such that the Cities of Signal Hill and/or Long Beach are no longer feasibly able to meet their respective baseline levels of sharing revenues under this Agreement, then the Cities shall have the right to terminate this Economic Development Agreement without further obligation hereunder, except as set forth herein with respect to obligations of the Parties existing prior to such termination. Alternatively, the Cities collectively may provide written notice to Office Depot that, prior to terminating this Agreement, the Cities elect to first enter into good faith negotiations for a period of not-to-exceed sixty (60) Business Days to modify the terms of this Agreement in such a manner as to reasonably address shortfalls in Local Sales and Use Tax Revenues as a result of new State legislation. Reasonable revisions to this Economic Development Agreement that may be negotiated by the Parties include, without limitation, changes in the percentage of Local Sales and Use Tax Revenues allocable to Office Depot, changes/increases in the scope of Office Depot's Local Sales Tax generating operations in the Cities, or an amendment to the terms of the 1996 OPA, and/or some contribution of revenues by Office Depot to either Signal Hill or Long Beach.

(c) If at any time the Cities fail to have the legal right to retain and control the disposition of their portion of the Local Sales Tax Revenues, or the obligation of City to pay the City Payment is held to be void or unenforceable, any Party will have the right, upon written notice to the other, to terminate this Agreement without any liability hereunder.

(d) The foregoing subparagraphs (a) and (b) notwithstanding, the City acknowledges that the California Legislature may provide for the payment to the City of other revenues for the purpose of offsetting any losses in Local Sales and Use Tax Revenues resulting from the enactment of State legislation of the type described in the immediately preceding two paragraphs. The City agrees that, should the California Legislature provide for such offsetting revenues, then for purposes of this Agreement and the computation of any City Payments which may become due to Office Depot hereunder, any such offsetting revenues which are (i) intended to offset the loss of sales tax revenues to the City, (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, will be deemed to be "Local Sales Tax Revenues" within the meaning of this Agreement.

(e) In addition to, and without waiving or limiting the foregoing, Office Depot shall pay 70% of all reasonable attorney fees incurred by the Cities, foreseeable or unforeseeable, directly or indirectly, arising from other changes in law, all as further described in Section 5.2 hereof.

3.2.8 *Recapture of City Payments.* If at any time during or after the Term of this Agreement, the SBE determines that all or any portion of the Local Sales Tax Revenues received by the Cities were improperly allocated and/or paid to the Cities (an "improper allocation"), and if the California State Board of Equalization's (the "SBE") requires repayment of, offsets against future Sales Tax payments, or otherwise recaptures from the Cities those improperly allocated and/or paid Local Sales Tax Revenues, then Office Depot shall, except as provided below, within sixty (60) Business Days of receipt of notice from Signal Hill, repay all City Payments (or applicable portions thereof) theretofore paid to Office Depot which are attributable to such repaid, offset or recaptured Local Sales Tax Revenues. If Office Depot fails to make such repayment within sixty (60) Business Days after the receipt of Signal Hill's notice, then such obligation shall accrue interest from the date of Signal Hill'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.

3.2.9 *Withholding City Payment for Indemnification.* City may deduct from any City Payment any amount payable to Office Depot (i) any amounts which are necessary to compensate the Cities for any losses, costs, liabilities, or damages suffered by the Cities including due to Office Depot's failure to perform its indemnity obligations hereunder, and/or (ii) any and all amounts for which the Cities may be liable to third-parties, by reason of Office Depot's acts or omissions in performing or failing to perform Office Depot's obligation under this Agreement. In the event that any claim is made by a third-party or otherwise, or any indebtedness shall exist which shall appear to be the basis for a claim of lien, City may withhold from any payment due an amount sufficient to cover such claim. Said withheld monies will be held in a separate account accruing interest at the same rate as Signal Hill's investments (without liability because of such withholding or interest rate). The failure of City to exercise such right to deduct or to withhold shall not, however, affect the obligations of Office Depot to insure, indemnify, and protect Cities as elsewhere provided herein. In the event City becomes aware of any such claim, it shall give Office Depot written notice of the basis of such claim including any documentation in connection therewith, and Office Depot shall have 20 days to provide a written response and City shall have 10 days thereafter to advise Office Deposit of its action on such claim prior to withholding any amount. If Office Depot continues to dispute the withholding, City shall retain the funds until the dispute can be resolved. The claim must be actual and not merely potential or speculative, for example the filing of an action before the SBE, the filing of a lawsuit, the failure to pay legal fees which have been incurred pursuant to the indemnity obligation, or similar matter is considered "actual." Upon resolution of any such dispute, City shall promptly pay the withheld funds in accordance with such resolution.

3.3 Audit of Books and Records. The Parties shall, upon no less than five (5) Business Days prior written request from another Party, make the entirety of its books and records relating to the calculation and determination of such Party's rights and obligations under this Agreement available at no cost to the requesting Party and/or its designees (including its accountants and/or attorneys) and shall direct its accountants, other consultants and contractors

in possession of its books and records to do likewise; provided, however, that nothing herein shall be deemed to abridge or constitute a waiver of any Party's evidentiary rights and privileges arising pursuant to any provision of law, hereof or as otherwise ordered by any court of competent jurisdiction and, provided further, that the requesting Party shall conduct the audit during normal business hours and in a manner reasonably calculated to minimize the impact on the other Party's business operations. Each Party shall bear the costs of its own auditors, experts and other consultants it may engage to complete its investigation of the other Party's books and records hereof, or as otherwise ordered by the court, may be recovered as an item of litigation expense pursuant to Section 5.2.

3.3.1 The Cities' Review of Office Depot's Operations. The Cities either jointly or severally, but not more than once per year, may conduct a review of Retail Sales Office's operations in Signal Hill, upon reasonable notice to Retail Sales Office and Office Depot during normal business hours and in a manner that is not disruptive in any way to the Retail Sales Office's operation, to verify that Retail Sales Office is conducting its sales operation in a way that requires the California Local Sales Tax to be allocated to City or as otherwise may be required to assure that the terms of this Agreement are being fulfilled.

3.3.2 Office Depot's Review of City Records and Participation in SBE Proceedings. In order to further the goals of this Economic Development Agreement, upon reasonable written notice, each City shall allow Office Depot and its representatives to review records of the receipt of Local Sales Tax Revenues by the City, including information received from the SBE relating to Retail Sales Office. In the event of an underpayment of Local Sales Tax Revenue by the SBE, the City will promptly use its reasonable good faith efforts to pursue its available administrative remedies against the SBE. Office Depot and/or any of its Representatives, shall have the right to be present at and participate in all SBE administrative proceedings, at Office Depot's cost and expense. The reasonable attorney and consultant fees and costs incurred by City and Office Depot in connection with such proceedings will be shared and borne 70% by Office Depot and 30% by City [City share split with Long Beach is 57/43].

3.4 Confidentiality. In the performance of or otherwise in connection with this Agreement, Office Depot may disclose to the Cities certain Confidential Information. "Confidential Information" as used in this Agreement shall mean all information obtained by the Cities from Office Depot that is not generally known to the public and that a reasonable business person would deem confidential. The Cities hereby agree to keep such Confidential Information confidential to the extent allowed by California law, including, but not limited to, Revenue and Tax Code section 7056, during the Term and for a period of two (2) years thereafter and will: (a) use the Confidential Information of Office Depot solely for the purposes set forth in this Agreement; and (b) take suitable precautions and measures to maintain the confidentiality of the Confidential Information.

3.4.1 Office Depot acknowledges and agrees that information submitted to Cities pursuant to this Agreement may be subject to compulsory disclosure by Cities upon request from a member of the public under the California Public Records Act, Government Code Section 6250, *et seq.* Cities acknowledge and agree that certain information which may be disclosed by Office Depot or which Office Depot may be required to submit pursuant to the Agreement may be considered as confidential, proprietary, or a trade secret by

Office Depot. Cities agree to protect the confidentiality of materials submitted to it to the extent permitted by applicable law including the Public Records Act. Office Depot shall specifically and clearly designate all materials as "CONFIDENTIAL" which they wish Cities to treat in confidence and withhold from public disclosure to the extent permitted by applicable law, including the Public Records Act. Cities agree not to voluntarily disclose any materials so designated to persons other than officers, attorneys, employees and consultants of Cities.

If either City receives a request from a third-party to review and/or copy material designated as "CONFIDENTIAL" it will inform Office Depot and will permit Office Depot to present arguments and facts in support of the position that the material is entitled to an exemption from disclosure under the Public Records Act and should not be released. Office Depot acknowledges that Cities have only ten (10) days to respond to any public records request and that any such argument and facts in support of Office Depot's assertion of an exemption must be delivered early enough to be considered by the City subject to the request and incorporated by that City in its response to the party requesting documents.

If the City subject to the request determines that the material is not entitled to an exemption and that it must be released, it will advise Office Depot of such determination prior to releasing the material so that Office Depot may seek a court order enjoining its release. If the City subject to the request determines that the material is entitled to an exemption, and the person who requested the information files a legal action seeking its release, such City will advise Office Depot and will not oppose a motion by Office Depot to intervene in the action. Further, in such situation, Office Depot shall intervene in the action and indemnify and hold the City subject to the request harmless from all legal expenses incurred in defending the action as well as any attorneys' fees which may be awarded to such third-party, and the City subject to the request shall tender its defense to Office Depot.

Notwithstanding the foregoing, neither City shall have any liability for damages to Office Depot due to the disclosure of any information which Office Depot believes to be confidential or a trade secret, provided that each such City shall have acted in accordance with the provisions of this Section 3.4.

ARTICLE 4. DEFAULTS & ENFORCEMENT

4.1 Event of Default. A Non-Defaulting Party in its discretion may elect to declare a default under this Economic Development Agreement in accordance with the procedures hereinafter set forth for any failure or breach of another Party ("Defaulting Party") to perform any material duty or obligation of said Defaulting Party under the terms of this Economic Development Agreement. However, the Non-Defaulting Party must provide written notice to the Defaulting Party setting forth the nature of the breach or failure and the actions, if any, required by Defaulting Party to cure such breach or failure. The Defaulting Party shall be deemed in "Default" under this Agreement, if said breach or failure can be cured, but the Defaulting Party has failed to take actions to cure such breach or failure within thirty (30) calendar days after the date of such notice ("Cure Period"). However, if such non-monetary breach or failure cannot be cured within such Cure Period, and if, as long as the Defaulting Party does each of the following:

(a) Notifies the Non-Defaulting Party in writing with a reasonable explanation as to the reasons the asserted Default is not curable within the thirty (30) calendar day period;

(b) Notifies the Non-Defaulting Party of the Defaulting Party's proposed cause of action to cure the Default;

(c) Promptly commences to cure the Default within the thirty (30) calendar day period;

(d) Makes periodic reports to the Non-Defaulting Party as to the progress of the program of cure; and

(e) Diligently prosecutes such cure to completion,

then the Defaulting Party shall not be deemed in breach of this Agreement.

4.2 Legal Actions.

4.2.1 *Institution Of Legal Actions.* In addition to any other rights or remedies, and subject to the requirements of Section 4.1, a Party may institute legal action to cure, correct or remedy any Default, to recover damages for any Default, or to obtain any other legal or equitable remedy consistent with the purpose of this Economic Development Agreement, including the remedy of specific performance, in accordance with Section 5.2.6 of this Agreement.

4.2.2 [Intentionally Omitted]

4.2.3 *Acceptance Of Service of Process.* In the event that any legal action is commenced by Office Depot against either City, service of process on such City shall be made by personal service upon the City Clerk, or in such other manner as may be provided by law. In the event that any legal action is commenced by either City against Office Depot, service of process on Office Depot shall be made in such manner as may be provided by law and shall be valid whether made within or without the State of California.

4.3 Rights & Remedies Are Cumulative. Except as otherwise expressly stated in this Economic Development Agreement, the rights and remedies of the Parties are cumulative, and the exercise by a Party of one or more of its rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same Default or any other Default by the other Party.

4.4 No Waiver. Except as otherwise provided in this Economic Development Agreement, waiver by a Party of the performance of any covenant, condition, or promise shall not invalidate this Economic Development Agreement, nor shall it be considered a waiver of any other covenant, condition, or promise. Waiver by a Party of the time for performing any act shall not constitute a waiver of time for performing any other act or an identical act required to be performed at a later time. The delay or forbearance by a Party in exercising any remedy or right as to any Default shall not operate as a waiver of any Default or of any rights or remedies or to

deprive such Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.

4.5 Termination. Upon receiving a Default Notice, should the Defaulting Party fail to cure any Default within the Cure Period, or fail to diligently pursue such cure as prescribed above, the Non-Defaulting Party may, in its discretion, provide the Defaulting Party with a written notice of intent to terminate this Agreement and other related agreements ("Termination Notice"). The Termination Notice shall state that the Non-Defaulting Party will elect to terminate this Economic Development Agreement and such other related agreements (i.e., the 1996 OPA) as the Non-Defaulting Party elects to terminate within thirty (30) calendar days and state the reasons therefor (including a copy of any specific charges of Default) and a description of the evidence upon which the decision to terminate is based. Once the Termination Notice has been issued, the Non-Defaulting Party's election to terminate this Agreement and any other related agreement will only be waived if (i) the Defaulting Party fully and completely cures all defaults prior to the date of termination, or (ii) pursuant to Section 4.5.1, below.

4.5.1 Except as otherwise provided herein, upon such termination, all executory obligations under this Economic Development Agreement that accrue or arise subsequent to the date of termination shall also terminate, but obligations that have accrued or arisen prior to such termination shall remain in full force and effect. Without limiting the generality of the foregoing, no termination of this Economic Development Agreement shall operate to release or discharge Office Depot from any obligation to refund to Signal Hill any overpaid City Payment(s). In addition, in the event that a court of competent jurisdiction determines the Local Sales Tax Revenues were improperly received by the Cities and orders the Cities to pay such improperly received Local Sales Tax Revenues as damages to a third-party, and Office Depot received City Payments attributable to such improperly received Local Sales Tax Revenues, Office Depot shall repay such City Payments to Cities within sixty (60) calendar days after written demand by Cities.

4.6 Enforced Delays; Extension Of Times of Performance. Time is of the essence in the performance of this Economic Development Agreement. Notwithstanding the foregoing, in addition to specific provisions of this Agreement, performance by any Party hereunder shall not be deemed to be in Default where delays or Defaults are due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; supernatural causes; acts of the "public enemy"; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority litigation; unusually severe weather; inability to secure necessary labor, materials or tools; acts of the other Party; acts or the failure to act of a public or governmental agency or entity (except that acts or the failure to act of a City shall not excuse performance by that City); or any other causes beyond the reasonable control or without the fault of the Party claiming an extension of time to perform. In the event of such a delay (herein "Enforced Delay"), the Party delayed shall continue to exercise reasonable diligence to minimize the period of the delay. An extension of time for any such cause shall be limited to the period of the Enforced Delay, and shall commence to run from the time of the commencement of the cause, provided notice by the Party claiming such extension is sent to the other Party within ten (10) calendar days of the commencement of the cause. Failure to provide such notice shall constitute a waiver of the claim. The following shall not be considered as events or causes beyond the control of Office Depot, and shall not entitle Office Depot to an extension of time to

perform: (i) Office Depot's ability to negotiate in good faith, or (ii) conditions outside the control of Office Depot that decrease the profitability of Office Depot operations within the City, or (iii) any inability of Office Depot to obtain or maintain financing for its operations. Times of performance under this Agreement may also be extended by mutual written agreement by Office Depot and the Cities.

The Parties hereto expressly acknowledge and agree that changes in either general economic conditions or changes in the economic assumptions of any of them which may have provided a basis for entering into this Economic Development Agreement, and which occur at any time after the execution of this Agreement, are not Enforced Delays and do not provide any Party with grounds for asserting the existence of a delay or excuse in the performance of any covenant or undertaking which may arise under this Agreement. Each Party expressly assumes the risk that changes in general economic conditions, or changes in such economic assumptions relating to the terms and covenants of this Agreement could impose an inconvenience or hardship on the continued performance of such Party under this Agreement, but that such inconvenience or hardship is not an Enforced Delay and does not excuse the performance by such Party of its obligations under this Agreement.

ARTICLE 5. REPRESENTATIONS & WARRANTIES; INDEMNIFICATION & DEFENSE OF ACTIONS; RESTRICTIONS ON TRANSFER.

5.1 City and Office Depot Representations and Warranties. All of the foregoing representations and warranties are made according to the actual current knowledge as of the Execution Date, of each Party, 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.

5.1.1 City Representations and Warranties.

(a) Each City is a California municipal corporation and charter law city and has full legal right, power and authority to enter into this Agreement and to carry out and consummate all transactions contemplated hereby and, thereby, and by proper action. Each City has duly authorized the execution and delivery of this Agreement.

(b) The representatives of each City executing this Agreement are fully authorized to execute the same pursuant to official action taken by each City.

5.1.2 Office Depot's Representations and Warranties.

(a) To the extent this Economic Development Agreement imposes a duty or obligation upon Office Depot and Office Depot will comply with the terms, intents and purposes of this Agreement. Office Depot shall be solely responsible for compliance herewith.

(b) Office Depot is authorized to do business in California, has full legal right, power and authority to enter into this Economic Development Agreement and to carry out and consummate all transactions contemplated hereby and, thereby, and by proper action Office Depot has duly authorized the execution and delivery of this Agreement.

(c) The representatives of Office Depot executing this Agreement are fully authorized to execute the same pursuant to official action taken by Office Depot.

5.2 Indemnification and Defense of Third-Party and SBE Actions; 70% / 30% Allocation of Such Indemnity Costs. The Parties shall mutually defend and indemnify each other, their officers, directors and employees from Claims or Liabilities arising from this Economic Development Agreement including, but not limited to, (i) those concerning the validity or enforceability of this or any related agreement between the Parties, (ii) those arising from the performance of any Party of the terms of this or any related agreement between the Parties, and (iii) those brought by any third-party and arising hereunder. The responsibility of each Party will be to pay their respective share as provided in Sections 5.2.3 and 5.2.4 and 5.2.5 of the "Indemnity Costs" hereunder. Indemnity Costs include all costs of defense, including without limitation, reasonable attorneys' fees and costs as described in Section 6.10. Such costs include reasonable costs of necessary experts including appraisers, financial analysis, tax analysis, audits, and all other necessary consultants. Such costs further include the costs of any settlement or judgment concerning Claims or Liabilities. The foregoing shall not apply to Claims or Liabilities caused by the sole negligence or willful misconduct of the Parties, or their respective officers, directors or employees, as applicable. This Section 5.2 is only applicable to third-party Claims or Liabilities brought against either City and/or Office Depot; the provisions of this Section 5.2 are not applicable to any Claims or Liabilities which either City and/or Office Depot may have against each other.

5.2.1 *Defense of SBE Proceedings.* The Cities and Office Depot agree that, should the SBE question the correctness of the allocation or determine that there has been an improper allocation to the Cities, Cities shall defend such allocation in all SBE administrative proceedings. For purpose of this paragraph, administrative proceedings include all SBE meetings, conferences and appeals before SBE Board Members. Office Depot will cooperate fully with the Cities and their attorneys or any other designated representative thereof, and shall have the right to be present at and participate in all SBE administrative proceedings.

5.2.2 *Indemnity/Defense of Other Legal Actions.* The indemnity obligations of the Parties hereunder extend to the Indemnity Costs of all other Claims or Liabilities arising hereunder of any nature whatsoever arising out of or in connection with this Economic Development Agreement, the 1996 OPA and/or any changes in law as they may apply to this Agreement.

5.2.3 *Appointment of Counsel; Deposit for Indemnity Costs.* The City shall provide Office Depot with notice of the pendency of any third-party action initiated to challenge the rights and obligations established under this Agreement. Depending on the nature of the proceeding, the Parties may utilize each City's City Attorney's office or may elect to retain separate legal counsel. The Parties may mutually agree on a budget and may assign differing roles to legal counsel. Based on a mutually agreed-upon budget for the proceedings, the Parties may establish a defense fund and require the deposit of funds with the Cities in accordance with their shares under Section 5.2.4 and 5.2.5 so that generally legal costs shall be covered for a period of at least 60 days in advance of the need for such expenditure. The Parties will continue to make deposits as needed. If any Party shall fail to make its deposit, the action may be abandoned by the performing Parties without liability to the defaulting Party. The

obligation to pay the cost of the action, including judgment, shall extend until judgment. After judgment in a trial court, the Parties must mutually agree as to whether any appeal will be taken or defended.

Each Party shall have the right, within the first 30 days of the service of the complaint, in its sole and absolute discretion, to determine that it does not want to defend any litigation attacking this Economic Development Agreement, in which case the Party not wishing to abandon the case shall be responsible for the full costs of the action. In the event of an appeal, or a settlement offer, the Parties shall confer in good faith as to how to proceed. In that event, Office Depot shall be liable for its portion of the costs incurred by the Cities up to the date of settlement, but shall have no further obligation to either City beyond the payment of those costs. Notwithstanding Office Depot's indemnity for Claims or Liabilities, the Cities retain the right to settle any claims or litigation brought against them in their sole and absolute discretion and Office Depot shall remain liable for its portion of the costs, except where Office Depot opposes the settlement. In such case where Office Depot opposes the settlement, the Cities may still settle the litigation but shall then be responsible for their own expenses and Office Depot shall have no obligation to pay any cost or expense of such litigation or settlement.

5.2.4 *Office Depot's Share of Indemnity Costs.* Office Depot's share of indemnity costs are 70% of the Indemnity Costs.

5.2.5 *City's Share of Indemnity Costs.* The Cities' share of Indemnity Costs under this Section 5.2 are collectively hereunder 30% of the total Indemnity Costs. The City's share of Indemnity Costs hereunder are shared with Long Beach on a 57/43 ratio (SH/LB) pursuant to the Sales Tax Sharing Agreement. Notwithstanding such agreement, the City is responsible for paying the 30% share hereunder irrespective of the performance of Long Beach of its obligations under the Sales Tax Sharing Agreement.

5.2.6 *Enforcement.*

(a) California Law. This Agreement shall be construed and interpreted both as to validity and to performance of the Parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Los Angeles, State of California, or any other appropriate court in such county, and the Parties covenant and agree to submit to the personal jurisdiction of such court in the event of such action.

(b) Legal Action. In addition to any other rights or remedies, any Party may take legal action, in law or in equity, to cure, correct or remedy any Default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement.

(c) Rights and Remedies are Cumulative. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the Parties are cumulative and the exercise by any Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same Default or any other Default by the other Party.

(d) Damages Limitation. Notwithstanding anything else to the contrary, with respect to remedies, nothing herein shall permit the recovery of any form of consequential or punitive damages. The Parties shall be entitled to injunctive or declaratory relief or specific performance to compel the performance of the Agreement in accordance with its terms. The Parties may sue to compel the making of the City Payment, or to compel the making of payments required to pay legal defense costs, or to pay sums due upon termination, but not to pay future or anticipated damages after termination of the Agreement.

5.2.7 Survival. All indemnity provisions set forth in this Agreement shall survive termination of this Agreement for any reason.

5.3 Rights not Granted under Agreement. This Agreement is not, and shall not be construed to be, a statutory development agreement under Government Code Section 65864 *et seq.* or a disposition and development agreement under Health and Safety Code Section 33000 *et seq.* This Agreement is not, and shall not be construed to be, an approval of or an agreement to issue permits or a granting of any right or entitlement by the City concerning any project, development, or construction by Office Depot or Retail Sales Office in the City. This Agreement does not, and shall not be construed to, exempt Office Depot or Retail Sales Office in any way from the requirement to obtain permits and/or other discretionary or non-discretionary approvals as may be necessary for the development, maintenance and operation of any project, development of construction of Office Depot or Retail Sales Office within the Cities. This Agreement does not, and shall not be construed to, exempt Office Depot or Retail Sales Office from the application and/or exercise of the Cities' 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.

5.4 No Financial Assistance To Be Accepted from Other Agencies for Relocation. Unless otherwise agreed by Cities, Office Depot covenants and agrees for the period beginning on the Effective Date and continuing until and including the termination of this Agreement, Office Depot will not, directly or indirectly, solicit or accept any Financial Assistance (as defined below) from any other public or private person or entity, to the extent such Financial Assistance is given for the purpose of causing or would result in either (i) Retail Sales Office's relocation from the Cities to another location within California or (ii) termination of this Agreement. For purposes of this Section 5.4, 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 or rebates, relief from public improvement obligations, and payment from public improvement obligations, and payment for public improvements to or for the benefit of Office Depot.

5.5 Restrictions on Transfer. The qualifications and identity of Office Depot are of particular concern to the City, and it is because of such qualifications and identity that City has entered into this Economic Development Agreement with Office Depot. The City has considered the experience and financial capability of Office Depot and its affiliates, and return on City's investment in Office Depot operations in the City. Based upon these considerations, the City imposes the following restrictions on Transfer (as defined below).

As used in this Section 5.5, the term "Transfer" shall include any assignment, hypothecation, mortgage, pledge, conveyance, or encumbrance of this Economic Development Agreement, or the interests therein. A Transfer shall also include the Transfer to any person or group of persons acting in concert of more than fifty percent (50%) of the present ownership and/or control of Office Depot in the aggregate taking all Transfers into account on a cumulative basis. In the event Office Depot or its successor is a corporation or trust, such Transfer shall refer to the Transfer of the issued and outstanding capital stock of Office Depot, or of beneficial interests of such trust; in the event that Office Depot is a limited or general partnership, such Transfer shall refer to the Transfer of more than fifty percent (50%) of the limited or general partnership interest; in the event that Office Depot is a joint venture, such Transfer shall refer to the Transfer of more than fifty percent (50%) of the ownership and/or control of any such joint venture partner, taking all Transfers into account on a cumulative basis.

5.5.1 *Transfers Require Approval.* Office Depot shall not Transfer this Economic Development Agreement or any of Office Depot's rights hereunder, or any interests in this Economic Development Agreement, directly or indirectly, voluntarily or by operation of law, except as provided below, without the prior written approval of the Cities which consent shall not be unreasonably withheld. In considering whether it will grant written approval to any assignment by Office Depot of its interests in either of the Sites, which assignment requires City approval, the Cities shall consider factors such as (i) whether Office Depot's operations within Signal Hill would be jeopardized; (ii) the financial strength, reputation and capability of the proposed assignee to perform Office Depot's obligations hereunder; and (iii) the proposed assignee's ability to generate a similar fiscal return to City.

No assignment or transfer by Office Depot of all or any portion of its interest in this Economic Development Agreement (including without limitation an assignment or transfer not requiring City approval hereunder) shall be deemed to relieve Office Depot or any successor party from any obligations under this Agreement with respect to the performance hereof. In addition, no attempted assignment of any of Office Depot's obligations hereunder shall be effective unless and until the successor party executes and delivers to the other Parties an assumption agreement in a form reasonably approved by such other Parties.

5.5.2 *Exceptions.* The foregoing restrictions on Transfers shall not apply to any of the following:

(a) The conveyance or dedication of any portion of the SH Site to the City or other appropriate governmental agency, or the granting of any easements or permits needed to facilitate the Site's development.

(b) A sale or Transfer resulting from or in connection with a reorganization as contemplated by the provisions of the Internal Revenue Code of 1986, as amended or otherwise, in which the ownership interests of a corporation are assigned directly or by operation of law to a person or persons, firm or corporation which acquires the control of the voting capital stock of such corporation or all or substantially all of the assets of such corporation.

(c) A conveyance of this Economic Development Agreement to any entity that is an Office Depot Affiliate. "Office Depot Affiliate" shall mean any entity which owns or controls Office Depot, to any entity owned or controlled by Office Depot, to any entity owned or controlled by or affiliated with any entity which owns or controls Office Depot, or to any entity resulting from a consolidation, or to the surviving entity in case of a merger, to which consolidation or merger Office Depot shall be a party, or to an entity to which all or substantially all of the assets of Office Depot have been sold.

5.5.3 *Release Of Office Depot.* The Cities' consent to a Transfer shall not be deemed to release Office Depot of liability for performance under this Economic Development Agreement unless such release is specific and in writing executed by the Cities, which release shall not be unreasonably withheld. Upon the written consent of the Cities to the complete assignment of this Economic Development Agreement and the express written assumption of the assigned obligations of Office Depot under this Agreement by the assignee, Office Depot shall be relieved of its legal duty from the assigned obligations under this Agreement, except to the extent Office Depot is in Default under the terms of this Economic Development Agreement prior to said Transfer.

5.5.4 *Office Depot To Pay Transfer Costs.* Office Depot will pay Cities their reasonable expenses for attorneys' fees and investigation costs necessary to investigate the suitability of any proposed assignee, and to review and finalize any documentation required as a condition for approving any Transfer.

ARTICLE 6. MISCELLANEOUS

6.1 Amendment of Economic Development Agreement. At any time the Parties may determine that this Economic Development Agreement should be amended for the mutual benefit of the Parties, or for any other reason, including an amendment to induce Office Depot to maintain its operations in the Cities when this Agreement could otherwise be terminated. Any such amendment to this Agreement shall only be by written agreement between the Parties. The Parties agree to consider reasonable requests for amendments to this Agreement which may be made by any of the Parties hereto. Any amendments to this Agreement must be in writing and signed by the appropriate authorities of the Parties.

6.2 Execution in Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

6.3 Business Days. Any act or thing required to be done or exist on any date set forth herein which does not constitute a Business Day in any year shall be deemed to be done or to exist on such date if such Act or thing is done or exists on the next date, which constitutes a Business Day.

6.4 Tax Consequences. Office Depot shall be responsible for federal, state and/or local income taxes resulting from its receipt of the City Payments.

6.5 Consent. Whenever consent or approval of any Party is required under this Agreement, that Party shall not unreasonably withhold, delay or condition such consent or

approval unless a different standard is otherwise provided by a specific provision of this Economic Development Agreement.

6.6 Notices and Demands. All notices or other communications required or permitted between the Parties under this 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), and addressed to the Parties at the following addresses:

To Signal Hill:	2175 Cherry Ave. Signal Hill, California 90755 Attn: City Manager
Copy to:	Aleshire & Wynder Attn: David J. Aleshire 18881 Von Karman Ave., 1700 Irvine, CA 92612
To Long Beach:	333 Ocean Blvd., 13 th Floor Long Beach, CA 90802 Attn: City Manager
Copy to:	Office of City Attorney 333 Ocean Blvd., 11 th Floor Long Beach, CA 90802 Attn: Robert E. Shannon
To Office Depot:	Office Depot, Inc. 6600 N. Military Trail Boca Raton, FL 33496 Attn: Office of the General Counsel and VP, Tax
To: Sales Center Development Concepts, LLC:	3475 Lenox Road Suite 710 Atlanta, GA 30326 Attn: Charles F. Barnwell, Jr.

Any notice not so given by registered or certified United States mail shall be deemed to have been received 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 telecopy or courier service (e.g., Federal Express) shall be deemed received upon actual receipt of the same by the Party to whom the notice is given.

6.7 Nonliability of City Officials and Employees. No board member, official, contractor, consultant or other designated representative, attorney or employee of Cities shall be personally liable to Office Depot, any voluntary or involuntary successors or assignees, in the event of any default or breach by Cities, or for any amount which may become due to Office Depot or to its successors or assignees, or on any obligations arising under this Agreement.

6.8 Nonliability of Office Depot Officials and Employees. Except as otherwise specified in this Agreement, no board member, official, contractor, consultant or other representative, attorney or employee of Office Depot shall be personally liable to either City, any voluntary or involuntary successors or assignees, in the event of any default or breach by Office Depot, or for any amount that may become due to either City or to its successors or assignees, or on any obligations arising under this Agreement.

6.9 Entire Agreement. This Agreement contains all of the terms and conditions agreed upon by the Parties. No other understanding, oral or otherwise, indirect conflict with this 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 Agreement.

6.10 Attorney's 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 any intentional inaccuracies in any of the representations and warranties on the part of the other Party arising out of this Agreement or any other dispute between the Parties concerning this Agreement 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 reasonable costs and expenses 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 all costs and expenses 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 6.10, Costs shall include, without limitation, attorneys' and experts' fees, costs and expenses incurred in the following: (i) post judgment motions and appeals, (ii) contempt proceedings, (iii) administrative proceedings, (iv) garnishment, levy and debtor and third-party examination; (v) discovery; and (vi) bankruptcy litigation. This Section 6.10 shall survive any termination of this Agreement.

6.11 Interpretation. The Parties acknowledge that this Agreement is the product of mutual arms-length negotiation and drafting and that the Parties have been represented by legal counsel in the negotiation and charting of this 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 Agreement. In any action or proceeding to interpret or enforce this Agreement, the finder of fact may refer to any extrinsic evidence not in direct conflict with any specific provision of this Agreement to determine and give effect to the intention of the Parties with respect to any ambiguities in this Agreement.

6.12 Successors and Assigns. The terms, covenants and conditions of this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their voluntary and involuntary successors and assigns.

6.13 Third-Party Beneficiaries. The performance of the respective obligations of the Parties under this Economic Development Agreement are not intended to benefit any party other than the Cities and Office Depot. Except as provided otherwise, no other person or entity

not a signatory to this Agreement shall have any rights or causes of action against any Party to this Economic Development Agreement as a result of that Party's performance or non-performance under this Agreement.

6.14 Warranty Against Payment of Consideration for Agreement. Office Depot 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 Agreement. Third-parties, for the purposes of this Section 6.14, shall not include persons to whom fees are paid for professional services if rendered by attorneys, financial and tax consultants, accountants, engineers, architects and the like when such fees are considered necessary by Office Depot.

6.15 Severability. City and Office Depot declare that the provisions of this 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 Agreement and the remainder of the Agreement enforced in accordance with its terms.

6.16 Further Acts and Releases. City and Office Depot 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.

6.17 Relationship of Parties. The Parties shall not be deemed in a relationship of partners or joint ventures by virtue of this Economic Development Agreement, nor shall any Party be an agent, representative, trustee or fiduciary of the other. No Party shall have any authority to bind any other Party to any agreement.

6.18 Corporate Authority. The persons executing this Agreement on behalf of the Parties hereto warrant to the best of their knowledge that (i) such Party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said Party, (iii) by so executing this Agreement, such Party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said Party is bound. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the Parties.

[Remainder of Page Intentionally Left Blank. Signatures Follow.]

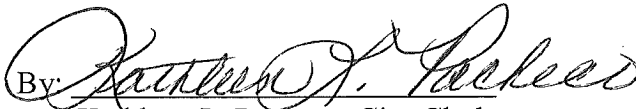
IN WITNESS WHEREOF, the Parties hereto have executed this Economic Development Agreement as of the date set forth above.

DATED: _____, 2012


CITY:
CITY OF SIGNAL HILL,
a California municipal corporation

By: 
Kenneth C. Farfsing, City Manager

ATTEST:

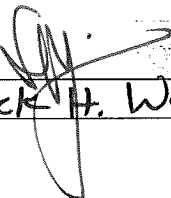
By: 
Kathleen L. Pacheco, City Clerk

APPROVED AS TO FORM:


David J. Aleshire, City Attorney


DATED: _____, 2012

CITY:
CITY OF LONG BEACH,
a California municipal corporation

By:  Assistant City Manager
Patrick H. West, City Manager


EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER.

ATTEST:

By: 
City Clerk

APPROVED AS TO FORM:

_____, City Attorney

APPROVED AS TO FORM
12-19, 2012
ROBERT E. SHANNON, City Attorney

AMY R. WEBBER
DEPUTY CITY ATTORNEY

[Signature page continued]

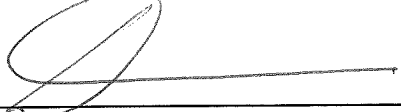
DATED: December 17, 2012

OFFICE DEPOT:
OFFICE DEPOT, INC., a Delaware corporation

By: S. Sellathurai
Name: Siva Sellathurai
Its: VP, Tax



APPROVED AS TO FORM:



Darlene Quashie Henry, Attorney

[End of Signatures]

