

MEMORANDUM OF UNDERSTANDING

**CITY OF SIGNAL HILL, CITY OF LONG BEACH AND
SPRING STREET CORRIDOR JOINT POWERS AUTHORITY**

RELATING TO A SALES TAX SHARING ARRANGEMENT

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is made this _____ day of _____, 2012, between the Charter Cities of the CITY OF SIGNAL HILL, a municipal corporation ("Signal Hill") and THE CITY OF LONG BEACH, a municipal corporation (Long Beach), to be implemented through the SPRING STREET CORRIDOR JOINT POWERS AUTHORITY ("Authority"). Signal Hill, Long Beach and Authority are each individually referenced herein as a "party" and collectively as the "parties". This MOU pertains to the following Recitals:

R E C I T A L S

The parties enter into this MOU on the basis of the following facts, understandings and intentions:

A. OFFICE DEPOT, INC., a Delaware Corporation ("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 Inc. 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. Office Depot currently leases and occupies the SH Site pursuant to the "Office Depot Lease" originally executed on _____, and including all amendments thereto.

B. 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 and the Sites together consist of some 600,000 sq. ft. on approximately 8.15 acres.

C. 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") members 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").

D. 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, it was 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. In fact, Office Depot had an undisclosed, potential understanding with another community to this effect. The SH Agency negotiated an extension of the 1996 OPA and, after holding a properly-noticed public hearing on March 16, 2011, the 1996 OPA Assistance was extended for another fifteen (15) years until March 16, 2027.

E. The specific purposes of this MOU are to memorialize (i) the manner in which the parties will provide Office Depot with further incentives (in addition to the 1996 OPA Assistance) for, and a method for implementing, Office Depot's continued occupation of business operations at the SH Site, and (ii) the general understandings of Signal Hill, Long Beach and the Authority as to how local sales tax revenues generated by the SH Site may be shared amongst the parties. Additionally, Office Depot shall combine its sales offices from Long Beach and Signal Hill into one location on the SH Site such that Long Beach and Signal Hill sales are conglomerated in Signal Hill to the maximum extent reasonably possible. If Office Depot relocates its existing operations away from Long Beach or Signal Hill, the SH and LB Sites and Facilities will be difficult to utilize and will be left vacant. This will perpetuate the existence of blight within the parties' jurisdictions, serving to hinder private development. Office Depot's continued use and maintenance of the SH Facility and LB Facility is economically infeasible without continued and/or further financial assistance. Moreover, due to AB1x 26, the redevelopment agencies of each City have ceased to exist, and this MOU provides an implementation mechanism accounting for the fact that the LB Agency and SH Agency are now dissolved.

F. 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.

G. 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 "F" 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 cumulative as between the Economic Development Agreement and the 1996 OPA.

H. The location of Retail Sales Office and/or Buying Company in the City will provide significant public benefits to the City, in that the additional Local Sales Tax Revenues to be paid by Retail Sales Office represent a substantial and significant source of additional public revenue for the City, which may be used by the City for the funding of necessary public services and facilities, including, without implied limitation, public safety services and facilities.

I. This MOU 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 MOU is not a "project" for purposes of CEQA, as that term is defined by Guidelines §15378, because this MOU 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.

NOW THEREFORE, IN FURTHERANCE OF THE FOREGOING, and in consideration of the mutual covenants, conditions, representations, warranties and agreements contained herein, and for other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto agree as follows:

DEFINITIONS

1996 OPA. Shall mean that certain Owner Participation and Implementation Agreement between the Spring Street Corridor Joint Powers Authority, a joint powers authority, the City of Signal Hill, the SH Agency, Long Beach, and the LB Agency on the one hand and Office Depot, Inc., on the other hand, dated September 19, 1996.

1996 OPA Assistance. Shall mean that certain financing assistance provided under the 1996 OPA, the summary of which is attached as Exhibit "J" to the 1996 OPA.

City Manager. Shall mean the City Manager of the respective municipal parties to this MOU, and/or any person designated and authorized by the City Manager to act in the City Manager's capacity with regard to this MOU.

Default. Shall mean the failure of a party to perform any material action or covenant required by and within the time periods provided herein following notice and opportunity to cure.

Economic Development Agreement. Shall mean that contract for the sharing of local tax revenues with Office Depot as described in Section 3.03 of this MOU.

Force Majeure. Shall mean an event preventing, wholly or partially, Office Depot from performing obligations under this MOU because of unforeseeable causes beyond the reasonable control of, and without the fault or negligence of, Office Depot.

Joint Powers Cooperation Agreement. Shall mean that contract by which the City of Signal Hill, through the Authority, will pay to Long Beach a share of local sales taxes inuring to Signal Hill as a result of Office Depot's operations on the SH Site, as described in Section 3.04.

Lessor. Shall mean LBSH Parcel I, LLC, a California limited liability company. The term "Lessor" shall include any assignee of, or successor to, the rights and responsibilities of the Lessor under this MOU provided such assignment or transfer is permitted under this MOU. If, at any time during the term of this MOU, Lessor forms another business entity to own or lease the SH Site, then such business entity shall become a party to this MOU. Notwithstanding the foregoing, Lessor shall not be released from its responsibilities, obligations, and liabilities under the MOU except as provided in this MOU.

Local Regulations. Shall mean all the regulations of the City of Signal Hill or Long Beach, as the case may be, including without limitation the General Plan, the cities' Municipal Codes (including but not limited to all zoning, development, and building standards, regulations, and procedures, and all uniform codes incorporated therein), any applicable specific plan, the conditions of any applicable map approved under the Subdivision Map Act (Government Code §66410, *et seq.*), any mitigation measures imposed as a result of Environmental Review for the Project contemplated hereunder, all as they exist on the date of this MOU or as they may thereafter be amended, repealed and reenacted, or otherwise modified.

Long Beach. Shall mean the City of Long Beach, a chartered municipal corporation formed and existing under the laws of the State of California. The term "Long Beach" shall also include any assignee of, or successor to, its rights, powers, and responsibilities hereunder.

MOU. Shall mean this Memorandum of Understanding.

Office Depot. Shall mean Office Depot, Inc., a Delaware corporation and participant/party to the 1996 OPA.

Office Depot Lease. Shall mean that certain lease entered into by and between Office Depot (or its predecessor in interest) and Lessor, dated August 30, 1985, as such Office Depot Lease may be extended or amended.

Project. Shall mean continued leasing and operation of Office Depot at the SH Site and LB Site and concurrent provision of continued or additional financial assistance to Office Depot pursuant to the 1996 OPA and the Economic Development Agreement.

Project Jobs. Shall mean those jobs created or maintained as a result of this MOU.

LB Site. Shall mean that certain parcel of real property consisting of approximately 8.15 acres, (with Assessor's Parcel Number 7218-002-040), in which the Lessor and Office Depot have legal or equitable interests, and which is leased for and additional fifteen (15) years for the continued operation of Office Depot as described in this MOU.

SH Site or Site. Shall mean that certain parcel of real property consisting of approximately 12.73 acres (with Assessor's Parcel Number 7217-002-912), in which the Lessor and Office Depot have legal or equitable interests, and which is leased for the continued

operation of Office Depot as described in this MOU. The SH Site is more particularly described in Exhibit "A" attached hereto and incorporated herein by reference.

Signal Hill. Shall mean the City of Signal Hill, a chartered municipal corporation formed and existing under the laws of the State of California. The term "Signal Hill" shall also include any assignee of, or successor to, its rights, powers, and responsibilities.

Article 1.0 General

1.01 Recitals. The foregoing recitals are true and correct and are substantive part of this Resolution.

1.02 Purpose. The fundamental purpose of this MOU is to establish a mechanism for the continuation of Office Depot's business, which has been located partially on the SH Site in a 440,000 sq. ft. facility and partially on the LB Site in a 187,500 sq. ft. facility since 1996. The Cities cooperated previously through the Authority by providing pledges of sales tax rebates to Office Depot, with Signal Hill acting through its Redevelopment Agency pursuant to the 1996 OPA. Notwithstanding the extension of the 1996 OPA Assistance granted on March 6, 2011, Office Depot is still considering relocating to a different community. The loss of some 500 jobs and local revenues from such a major facility of over 600,000 sq. ft. would leave a vacant facility that, due to its size, location and configuration, would be very difficult to for Lessor to utilize by any other tenant and would be devastating to both Signal Hill and Long Beach. Extending and supplementing the financial assistance previously provided through the 1996 OPA is critical to retaining Office Depot and in the best interests of the parties hereto. Moreover, Office Depot would like to consolidate sales from Long Beach and Signal Hill into the Signal Hill facility, so in order to avoid Long Beach and Signal Hill being drawn into a destructive competition for retaining the Office Depot business, this MOU states the general understanding that, if Office Depot is retained on the SH Site, local sales tax revenues generated by the SH Site will be shared amongst Signal Hill, Office Depot and Long Beach.

1.03 Implementation. The general understandings of this MOU shall be implemented in greater detail by the parties entering into the following agreements:

(a) 1996 OPA: Extension of the 1996 OPA for a period of fifteen (15) years was approved on March 16, 2011. Therefore, this step in implementation is complete. Notably, the SH Agency ceased to exist on February 1, 2012 pursuant to AB1x26, however the OPA is recognized as an existing obligation on the Successor Agency's EOPS schedule pursuant to Health & Safety Code 34170(d).

(b) Economic Development Agreement: An agreement between the City of Signal Hill and Office Depot whereby the City of Signal Hill pursuant to its "Economic Development Assistance Program" adopted by Ordinance 2012-04-1446 on April 20, 2012, agrees to provide the rebate of sales tax payments to Office Depot to supplement payments made under the 1996 OPA and in accordance with the formula herein. The tax rebate mechanism is one form of assistance permitted under the Economic Development Assistance Program.

(c) Joint Powers Cooperation Agreement: An agreement approved by the Authority and between the cities of Long Beach and Signal Hill whereby Signal Hill will commit to pay to Long Beach certain sales tax revenues collected from Office Depot operations on the SH Site to Long Beach.

It is intended that the foregoing agreements shall be negotiated and entered into within 90 days from the date of approval of this MOU by all parties hereto.

Article 2.0 Understandings of the Parties.

This MOU is entered into on the basis of the following understandings by the Parties:

(a) Office Depot, in planning future business operations, has the ability to centralize and streamline its e-commerce sales function and/or implement a Buying Company to centralize and streamline purchasing functions, including for overseas operations (“E-Commerce Operations”).

(b) Office Depot has the capacity to locate the e-commerce operations in a different geographic area and obtain a similar or larger rebate.

(c) The e-commerce operations could be located at either the Long Beach or Signal Hill facility.

(d) If Office Depot were to continue its operations in Signal Hill and Long Beach for business efficiency, it would prefer to locate all operations at one location, generally at its larger facility in Signal Hill.

(e) Through the creating of the Authority in 1995, the Cities of Long Beach and Signal Hill resolved that economic competition between the cities for businesses and development might have negative implications for each, and instead that a cooperative approach to developing the Spring Street Corridor, including the Office Depot locations, would be a superior approach and in better accord with State policy.

(f) Historically, since 1996, sales taxes derived from Office Depot’s operations have been split between Signal Hill and Long Beach with the majority of the revenue going to the benefit of Signal Hill.

(g) Long Beach will forego taking any further actions to negotiate and process its own location agreement with Office Depot for Office Depot operations otherwise to be located in Long Beach.

(h) Given the foregoing circumstances, the carrying out of this MOU through the implementation agreements outlined above is in the best interests of the parties hereto.

Article 3.0 New Sales Tax Sharing Arrangement.

3.01 E-Commerce Operations in Signal Hill. Rather than operate from two different locations in Long Beach and Signal Hill, all Office Depot's e-commerce operations as described will be located in Signal Hill.

3.02 Effect of OPA. Signal Hill, pursuant to the March 6, 2011, extension of the 1996 OPA, will continue to make the payments of tax increment funds to Office Depot in lieu of sales taxes as provided in the 1996 OPA. This amounts to 50% of sales tax revenues received, in accordance with the terms of the 1996 OPA.

3.03 Effect of Economic Development Agreement. In addition to the payments provided in the 1996 OPA, Signal Hill shall pay to Office Depot 20% of sales taxes semi-annually for a total equivalent to a rebate of 70% of the total local sales taxes generated by Office Depot's operations in Signal Hill, all as to be more particularly defined in the terms of a Economic Development Agreement.

3.04 Effect of Joint Powers Cooperation Agreement. Through the Authority, Signal Hill will pay to Long Beach a share of the local sales taxes actually received by Signal Hill in excess of those paid directly or indirectly to Office Depot per the 1996 OPA and Economic Development Agreement. More specifically, sales tax revenue is initially collected by Signal Hill based on its 1% share. Net revenue remaining with Signal Hill after it has paid whatever amounts are directly paid to Office Depot under the 1996 OPA and Economic Development Agreement shall be shared between Signal Hill and Long Beach as follows:

- (a) Up to \$1 Million: 60% to Signal Hill and 40% to Long Beach;
- (b) Between \$1 Million and \$2.5 Million: 50% to Signal Hill and 50% to Long Beach;
- (c) Above \$2.5 Million: 60% to Signal Hill and 40% to Long Beach.

Article 4.0 Miscellaneous.

4.01 Brokerage Commissions. The parties represent that they have engaged no broker, agent, or finder in connection with this transaction, and each party agrees to hold the other harmless from any claim by any broker, agent, or finder. Subject to the accuracy of the parties' representation set forth in the preceding sentence, neither party hereto shall be liable to pay any real estate commission or any broker's fees which may arise in relation to the Project.

4.02 Purpose of Contract. It is expressly understood and agreed by the parties that this is an agreement regarding the conduct of contract negotiations only and does not convey any interest in real property whatsoever. It is further agreed and understood that this MOU does not imply any obligation on the part of a city to enter into any agreement that may result from negotiations contemplated herein.

- (a) The parties' acceptance of this MOU is merely an agreement to enter into a period of good faith negotiations according to the terms hereof,

reserving final discretion and approval by each city as to any actions required of it.

(b) Nothing contained herein shall constitute a waiver, amendment, promise or agreement by either city (or any of their departments or boards) as to the granting of any approval, permit, consent or other entitlement in the exercise of any approval, permit, consent or other entitlement in the exercise of such city's regulatory capacity or function.

4.03 Amendment. This MOU may only be amended by a document in writing signed by the parties.

4.04 Notices. All notices, including without limitation all approvals and consents, required or permitted under this MOU shall be delivered in person or by facsimile, by messenger, by overnight mail courier, or by registered or certified mail, postage prepaid, return receipt requested, to each party at its address shown below, or to any other notice address designated in writing by such party:

Signal Hill: City of Signal Hill
2175 Cherry Avenue
Signal Hill, CA 90806
Attn: City Manager

Long Beach: City of Long Beach
333 Ocean Blvd., 13th Floor
Long Beach, CA 90802
Attn: City Manager

Copy To: Aleshire & Wynder, LLP
18881 Von Karman Ave.,
Ste. 1700
Irvine, CA 92612
Attn: David J. Aleshire, Esq.

Copy To: Office of City Attorney
333 Ocean Blvd., 11th Floor
Long Beach, CA 90802
Attn: Robert E. Shannon

Authority: Spring Street Corridor Joint Powers Authority
Same contacts as for Long Beach

4.05 Default. Any party may terminate this MOU if the other party should fail to comply with and perform in a timely manner any material obligation to be performed by such other party under this MOU, provided the party seeking to terminate this MOU shall provide ten (10) days written notice to the other party of such failure or nonperformance and such other party shall have such 10-day period within which to cure such failure or nonperformance (or such longer period as may be reasonably necessary to cure such failure or nonperformance if such failure or nonperformance cannot reasonably be cured with such 10-day period). Termination shall be the sole remedy for default. In no event shall any party be liable for monetary damages, attorney fees and costs, or any other cost or expense for the default or termination of this MOU, and any such right to recover damages is expressly waived. Notwithstanding the foregoing, in no event shall any cure period hereunder extend the term of this MOU.

4.06 Good Faith and Indemnity.

(a) Parties work together in good faith to carry out agreement.

(b) In the event of any challenge to the agreements of the parties contained herein (including (i) any challenge by adjacent owners, a citizens group or any other third parties to the legality, validity, or adequacy of this MOU, and any (ii) claim for personal injury or damage to the property in connection with the rehabilitation, maintenance, or operation of the LB and SH Sites), either in an administrative or judicial proceeding, the parties will cooperate to the fullest extent necessary to uphold the validity of such agreements. The costs of such proceedings shall be shared in proportion to the parties' respective interests, generally as follows: Office Depot 70%; Signal Hill 17%; Long Beach 13%.

4.07 General Provisions. This MOU and all terms and conditions hereof shall be governed by and construed and enforced in accordance with the laws of the State of California, with venue in any action in the Superior Court of Los Angeles County. Any term herein can be waived only by a written waiver signed by the party against whom such waiver is to be asserted. This MOU may be executed in counterparts, each of which when so executed shall be deemed an original, and all of which, together, shall constitute one and the same instrument

4.08 Corporate Authority. The persons executing this MOU on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this MOU on behalf of said party, (iii) by so executing this MOU, such party is formally bound to the provisions of this MOU, and (iv) entering into this MOU does not violate any provision of any other agreement to which said party is bound.

[SIGNATURES ON FOLLOWING PAGE]

Dated: April __, 2012

CITY OF SIGNAL HILL, a chartered
municipal corporation

By: _____
Tina Hansen, Mayor

Attest:

City Clerk

APPROVED AS TO FORM:

David J. Aleshire, City Attorney

Dated: May __, 2012

CITY OF LONG BEACH, a chartered
municipal corporation

By: _____
Patrick H. West, City Manager

Attest:

City Clerk

APPROVED AS TO FORM:
Robert E. Shannon, City Attorney

By: _____, Deputy

Dated: May __, 2012

**SPRING STREET CORRIDOR JOINT
POWERS AUTHORITY**, a California
Joint Powers Authority

By: _____
Chair

Attest:

Authority Secretary