

**RECORDING REQUESTED BY
and WHEN RECORDED RETURN TO:**

CITY OF ONTARIO
CITY CLERK / RECORDS MANAGEMENT
303 EAST "B" STREET
ONTARIO, CA 91764-4196



DENNIS DRAEGER
ASSESSOR - RECORDER - CLERK
631 City of Ontario City Clerk

Doc #: **2013-0545878**

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Other .00

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Exempt Recording Fees per Government Code Sections 6103 and 27383

SPACE ABOVE FOR RECORDER'S USE ONLY**AGREEMENT****DECLARATION OF BUSINESS OPERATION COVENANTS AND SIGN EASEMENT
(Mercedes Benz)**

The City of Ontario

and

Jones Ontario Acquisition, LLC DBA Mercedes-Benz of Ontario

December 1, 2013

**RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:**

City of Ontario
303 E. B Street
Ontario, California 91764
Attn: Economic Development Director

Space above line for Recorder's use only
Exempt from recording fees per Govt. Code § 27383
Exempt from Documentary Transfer Tax per Rev. &
Tax. Code § 11911

CITY OF ONTARIO

**DECLARATION OF BUSINESS OPERATION COVENANTS AND
SIGN EASEMENT
(Mercedes Benz)**

THIS DECLARATION OF BUSINESS OPERATION COVENANTS AND SIGN EASEMENT (Mercedes Benz) (this "**Covenant**") is dated as of December 1st, 2013 ("**Effective Date**"), and is entered into by and between the CITY OF ONTARIO, a California municipal corporation ("**City**"), and JONES ONTARIO ACQUISITION, LLC, DBA MERCEDES-BENZ OF ONTARIO, a California limited liability company ("**Owner**"). City and Owner enter into this Covenant with reference to the following recited facts (each a "**Recital**"):

RECITALS

A. Owner owns that certain real property located at 3787 E Guasti Road, in the City of Ontario, California ("**Property**"), as further described in Exhibit "1" attached to this Covenant and incorporated herein by this reference, on which Owner owns and operates a Mercedes Benz automobile dealership and service business ("**Business**").

B. Owner desires, and City agrees, for Owner to install on the Property a new electronic reader board sign ("**Sign**") and to grant an easement to City for thirty-three percent (33%) of each hour that the Sign is in use for the first five (5) years of the Operating Period, as such term is defined in Section 1.27, and fifteen percent (15%) of each hour that the Sign is in use for years six (6) through ten (10) of the Operating Period, which may be used by City at City's sole discretion for any public purpose which may include, but is not limited to, advertising or public service announcements ("**Easement**").

C. Owner anticipates that the construction and installation of the Sign will cost approximately Four Hundred Thirty Eight Thousand Seven Hundred Eighty Four Dollars (\$438,784). In consideration for the Easement, City agrees to reimburse Owner an amount equal to fifty percent (50%) of the construction and installation costs of the Sign, not to exceed Two Hundred Nineteen Thousand Three Hundred Ninety Two Dollars (\$219,392), which amount shall be paid in equal annual installments over a five (5) year period.

D. Owner and City additionally desire for Owner to maintain a minimum of 75 (Seventy-Five) full-time jobs at the Business during the term of this Covenant as a way to improve the community and eliminate economic blight through the provision of increased job opportunities for City residents.

E. City and Owner enter into and record this Covenant to provide for Owner's covenant and agreement to install the Sign on the Property, continuously operate the Business on the Property for a specified minimum time period, with a minimum number of full-time employees, and with specified minimum performance standards that shall run with the land of the Property and bind successive owners and tenants of the Property, all as set forth in this Covenant, and to create an easement over the Sign for the benefit and use of City.

AGREEMENT

NOW, THEREFORE, IN CONSIDERATION OF THE PROMISES AND COVENANTS SET FORTH IN THIS COVENANT, CITY AND OWNER AGREE, AS FOLLOWS:

1. DEFINITIONS. All initially capitalized terms used in this Covenant shall have the meanings set forth in this Section 1 or, if not set forth in this Section 1, where such term first appears in this Covenant, unless the context of usage clearly requires another meaning.

1.1 Affiliate. Any other Person, directly or indirectly, Controlling or Controlled by or under common Control with the specified Person.

1.2 Approval. Any license, permit, approval, consent, certificate, ruling, variance, authorization, conditional use permit, or amendment to any of the foregoing, as shall be necessary or appropriate under any Law to commence, perform or complete the construction of the Sign on the Property or operate the Business on the Property.

1.3 Base Jobs. No less than 75 (Seventy-Five) full time jobs, which are to be maintained at the Business for the Operating Period.

1.4 Business. That Mercedes Benz automobile sales and service business operated by the Owner under the business name "Mercedes-Benz of Ontario" as of the Effective Date, or a successor name for such business, without any material change in the primary business.

1.5 Business Day. Any weekday on which the City is open to conduct regular municipal functions with regular City personnel.

1.6 City. The City of Ontario, a California municipal corporation, and any assignee of or successor to the rights, powers or responsibilities of the City of Ontario.

1.7 City Manager. The City Manager of City or his or her designee or successor in function.

1.8 City Parties. Collectively, City, the City Council and City's elected officials, employees, agents and attorneys.

1.9 Claim. Any claim, loss, cost, damage, expense, liability, lien, action, cause of action (whether in tort, contract, under statute, at law, in equity or otherwise), charge, award, assessment, fine or penalty of any kind (including consultant and expert fees and expenses and investigation costs of whatever kind or nature, and, if an Indemnitor improperly fails to provide a defense for an Indemnitee, then Legal Costs of the Indemnitee) or any judgment.

1.10 Control. Possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether by ownership of Equity Interests, by contract or otherwise.

1.11 County. The County of San Bernardino, California.

1.12 Covenant Payment. Two Hundred Nineteen Thousand Three Hundred Ninety Two Dollars (\$219,392), to be paid in five (5) equal annual installments of Forty Three Thousand Eight Hundred Seventy Eight Dollars and Forty Cents (\$43,878.40).

1.13 Default. Defined in Section 17.

1.14 Default Interest. Interest at an annual rate equal to the lesser of: (a) eight percent (8%) per annum; or (b) the Usury Limit.

1.15 Easement. Defined in Section 4.

1.16 Environmental Claim. Any and all claims, demands, damages, losses, liabilities, obligations, penalties, fines, actions, causes of action, judgments, suits, proceedings, costs, disbursements or expenses, including Legal Costs and fees and costs of environmental consultants and other experts, and all foreseeable and unforeseeable damages or costs of any kind or of any nature whatsoever, directly or indirectly, relating to or arising from any actual or alleged violation of any Environmental Law or Hazardous Substance Discharge.

1.17 Environmental Law. All Federal, State, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees or requirements of any government authority, in effect on or enacted after the Effective Date, regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Substance, the regulation or protection of the environment, including ambient air, soil, soil vapor, groundwater, surface water, or land use or pertaining to occupational health or industrial hygiene or occupational or environmental conditions on, under or about the Property, as now or may at any later time be in effect, including the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA") [42 USC Section 9601 et seq.]; the Resource Conservation and Recovery Act of 1976 ("RCRA") [42 USC Section 6901 et seq.]; the Clean Water Act, also known as the Federal Water Pollution Control Act ("FWPCA") [33 USC Section 1251 et seq.]; the Toxic Substances Control Act ("TSCA") [15 USC Section 2601 et seq.]; the Hazardous Materials Transportation Act ("HMTA") [49 USC Section 1801 et seq.]; the Insecticide, Fungicide, Rodenticide Act [7 USC Section 6901 et seq.] the Clean Air Act [42 USC Section 7401 et seq.]; the Safe Drinking Water Act [42 USC Section 300f et seq.]; the Solid Waste Disposal Act [42 USC Section 6901 et seq.]; the Surface Mining Control and Reclamation Act [30 USC Section 101 et seq.] the Emergency Planning and Community Right to Know Act [42 USC Section 11001 et seq.]; the Occupational Safety and Health Act [29 USC Section 655 and 657]; the California Underground

Storage of Hazardous Substances Act [California Health and Safety Code Section 25288 et seq.]; the California Hazardous Substances Account Act [California Health and Safety Code Section 25300 et seq.]; the California Safe Drinking Water and Toxic Enforcement Act [California Health and Safety Code Section 24249.5 et seq.]; or the Porter-Cologne Water Quality Act [California Water Code Section 13000 et seq.]; together with any regulations promulgated under the authorities referenced above.

1.18 Equity Interest. All or any part of any direct equity or ownership interest(s) (whether stock, partnership interest, beneficial interest in a trust, membership interest in a limited liability company, or other interest of an ownership or equity nature) in any entity, at any tier of ownership, that directly owns or holds any ownership or equity interest in a Person.

1.19 Government. Any and all courts, boards, agencies, commissions, offices or authorities of any nature whatsoever of any governmental unit (Federal, State, County, district, municipal, City or otherwise) whether now or later in existence.

1.20 Indemnify. Where this Covenant states that any Indemnitor shall “indemnify” any Indemnitee from, against or for a particular Claim, the Indemnitor shall indemnify the Indemnitee and defend and hold the Indemnitee harmless from and against such Claim (alleged or otherwise). “Indemnified” shall have the correlative meaning.

1.21 Indemnitee. Any Person entitled to be Indemnified under the terms of this Covenant.

1.22 Indemnitor. A Party that agrees to Indemnify any other Person under the terms of this Covenant.

1.23 Laws. Every law, ordinance, requirement, order, proclamation, directive, rule or regulation of any Government applicable to the Property or the Sign, in any way, including relating to any development, construction, use, maintenance, taxation, operation, occupancy of or environmental conditions affecting the Property or the Sign or otherwise relating to this Covenant or any Party’s rights, obligations or remedies under this Covenant, or any Transfer of any of the foregoing, whether in force on the Effective Date or passed, enacted, modified, amended or imposed at some later time, subject in all cases, however, to any applicable waiver, variance or exemption.

1.24 Legal Costs. In reference to any Person, all reasonable costs and expenses such Person incurs in any legal proceeding (or other matter for which such Person is entitled to be reimbursed for its Legal Costs), including reasonable attorneys’ fees, court costs and expenses and consultant and expert witness fees and expenses.

1.25 Liability Insurance. Commercial general liability insurance against claims for bodily injury, personal injury, death or property damage occurring upon, in or about the Property, the Sign or adjoining streets or passageways, at least as broad as Insurance Services Office Occurrence Form CG0001, with a minimum liability limit of Two Million Dollars (\$2,000,000) for any one occurrence and Four Million Dollar (\$4,000,000) aggregate (may be provided through a combination of primary and excess or umbrella insurance policies). If commercial general liability insurance or other form with a general aggregate limit is used, either

the general aggregate limit shall apply separately to the Sign and the Property, collectively, or the general aggregate limit shall be twice the required minimum liability limit for any one occurrence.

1.26 Notice. Any approval, consent, demand, designation, election, notice, or request relating to this Covenant, including any Notice of Default or termination of this Covenant. All Notices must be in writing and shall be delivered and shall become effective only in accordance with Section 26.

1.27 Operating Period. The time period commencing on the first July 1 following the date of final permit sign off by City for the Sign and ending at 5:00 PM Pacific Time on the tenth (10th) anniversary of such date.

1.28 Owner. Jones Ontario Acquisition, LLC, DBA Mercedes-Benz of Ontario, a LLC, and any assignee of or successor to the rights, powers or responsibilities of Owner under this Covenant.

1.29 Owner Parties. Collectively, Owner and Owner's directors, shareholders, partners, members, managers, employees, agents and attorneys.

1.30 Parties. Collectively, City and Owner.

1.31 Party. Individually, City or Owner, as applicable.

1.32 Person. Any association, corporation, Government, individual, joint venture, joint-stock company, limited liability company, partnership, trust, unincorporated organization or other entity of any kind.

1.33 Prevailing Wage Action. Any of the following: (a) any determination by the State Department of Industrial Relations or its successor for enforcement of State prevailing wage laws that prevailing wage rates should have been paid, but were not; (b) any determination by the State Department of Industrial Relations or its successor for enforcement of State prevailing wage laws that higher prevailing wage rates than those paid should have been paid; (c) any administrative or legal action or proceeding arising from any failure to comply with any of California Labor Code Sections 1720 through 1781; or (d) any administrative or legal action or proceeding to recover wage amounts, at law or in equity, including pursuant to California Labor Code Section 1781.

1.34 Prohibited Use. Any of the following uses: (a) any sale or display of any Pornographic Materials on or from the Property or the Sign; (b) use by any Person, Government or other entity that is immune from civil process, whether automatically or at the election of such Person, Government or other entity; or (c) bars or businesses with "on-sale" alcoholic beverage sale licenses (other than as part of a hotel, restaurant or theater concession); (d) coin laundries or laundromats (other than such facilities provided as part of a hotel); (e) used clothing stores; (f) used appliance sales or service as the primary or dominant operation of the Business or any other business or activity conducted on or from the Property or the Sign; (g) used furniture stores or rummage stores; (h) churches or other religious institutions; (i) massage parlors; (j) swap meet or flea market; or (k) gambling. "Pornographic materials" means any written or pictorial matter

with prurient sexual appeal or any objects or instruments that are primarily concerned with lewd or prurient sexual activity, as reasonably determined by City.

1.35 Property. That certain real property specifically described in Exhibit “1” attached to this Covenant.

1.36 Property Insurance. Insurance providing coverage for the Property, the Sign and all other improvements on or to the Property against loss, damage, or destruction by fire or other hazards encompassed under the broadest form of property insurance coverage then customarily used for like properties in the County, in an amount equal to one hundred percent (100%) of the replacement value (without deduction for depreciation) of the Sign and all other improvements on or to the Property (excluding excavations and foundations) and in any event sufficient to avoid co-insurance and with no co-insurance penalty provision, with “ordinance or law” coverage. To the extent customary for like properties in the County at the time, such insurance shall include coverage for explosion of steam and pressure boilers and similar apparatus located on the Property, an “increased cost of construction” endorsement and an endorsement covering demolition and cost of debris removal.

1.37 Real Estate Taxes. All general and special real estate taxes (including taxes on furniture, fixtures, equipment, and the like), supplemental taxes, possessory interest taxes, taxes payable pursuant to California Health and Safety Code Section 33673, special taxes imposed pursuant to the Mello-Roos Community Facilities District Act or other special taxing district, assessments, excises, levies, fines, penalties and other governmental charges and any interest or costs with respect thereto, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind or nature whatsoever that may be assessed, levied, imposed upon, or become due and payable out of or in respect of, or charged with respect to or become a lien on, the Property, or any vault, passageway or space in, over or under any street that constitutes a portion of the Property, or any furniture, fixtures, equipment, building equipment or other facility used in the operation of the Property, or the rent or income received from the Property, or any use or occupancy of the Property.

1.38 Sign. A new electronic reader board sign with the specifications set forth in Exhibit “2” attached to this Covenant.

1.39 State. The State of California.

1.40 Third Person. Any Person that is not a Party, an Affiliate of a Party or an elected official, officer, director, manager, shareholder, member, principal, partner, employee or agent of a Party.

1.41 Transfer. Regarding any property, right or obligation, any of the following, whether by operation of Law or otherwise, whether voluntary or involuntary and whether direct or indirect: (a) any assignment, conveyance, grant, hypothecation, mortgage, pledge, sale, or other transfer, whether direct or indirect, of all or any part of such property, right or obligation, or of any legal, beneficial, or equitable interest or estate in such property, right or obligation or any part of it (including the grant of any easement, lien, or other encumbrance); (b) any conversion, exchange, issuance, modification, reallocation, sale, or other transfer of any Equity

Interest(s) in the owner of such property, right or obligation by the holders of such Equity Interest(s); or (c) any transaction that is in substance equivalent to any of the foregoing. A transaction affecting Equity Interests, as referred to in clauses “(b)” or “(c)” of this Section 1.41, shall be deemed a Transfer by Owner, even though Owner is not technically the transferor. A “Transfer” shall not, however, include any of the following (provided that the other Party has received Notice of such occurrence) relating to the Property or any Equity Interest: (i) a mere change in form of ownership with no material change in beneficial ownership and constitutes a tax-free transaction under Federal income tax law and the State real estate transfer tax law; (ii) a conveyance only to member(s) of the immediate family(ies) of the transferor(s) or trusts for their benefit; or (iii) a conveyance only to any Person that, as of the Effective Date, holds an Equity Interest in the entity whose Equity Interest is being transferred.

1.42 Unavoidable Delay. A delay in either Party performing any obligation under this Covenant arising from or on account of any cause whatsoever beyond the Party’s reasonable control, including strikes, labor troubles or other union activities, casualty, war, acts of terrorism, riots, litigation, governmental action or inaction, regional natural disasters or inability to obtain required materials. Unavoidable Delay shall not include delay caused by a Party’s financial condition or insolvency.

1.43 Usury Limit. The highest rate of interest, if any, that Law allows under the circumstances.

2. **USES.** Owner acknowledges and agrees for itself, its successors, and its assigns that, from and after the Effective Date and throughout the entire Operating Period, the Property and the Sign shall be and remain developed, used and reserved solely for use and occupancy by Owner for operation of the Business, and not for any Prohibited Use. The use restriction established in this Section 2 shall run with the Property as a covenant running with the land and binding on all successive owners or occupants of the Property, until the expiration of the Operating Period.

3. **CONSTRUCTION OF SIGN.** Owner covenants to and for the benefit of City that Owner shall cause, at Owner’s sole cost and expense, completion of construction and installation of the Sign on the Property and final building permit sign off by City for the Sign within ninety (90) calendar days following the Effective Date.

4. **GRANT OF SIGN USE EASEMENT.** Owner hereby grants to City a non-exclusive easement over the Property and the Sign for the purpose of using the Sign to display messages and information regarding public events and other matters of public interest, in accordance with California Civil Code Section 801, subparagraph 6, including an easement over the Property for the existing line-of-site visibility for the Sign and access to such property and equipment belonging to Owner as is necessary or convenient to the exercise of City’s rights pursuant to such easement and this Covenant regarding the Sign (“**Easement**”). The Easement is an easement in gross in favor of City and City’s successors and assigns and the Easement shall run with the land of the Property and bind successive owners of the Property throughout the Operating Period. The Easement shall be effective at all times during the Operating Period. All City messages and information to be displayed on the Sign shall be prepared by City and shall not be subject to edit or modification by Owner. City shall not be entitled to display messages or other information on

the Sign that is of a purely political nature. City shall submit all City messages and information in writing to the Owner and the Owner shall cause such messages and information to appear on the Sign within two (2) Business Days following the date of submission. All City messages and information shall appear on the Sign for a period of days, as specified by City, and during all hours of operation of the Sign. Commencing with the first date of the Operating Period through the fifth anniversary of the commencement of the Operating Period, City messages and information shall be allocated up to but shall not use more than thirty-three percent (33%) of the operational time of the Sign during each hour of operation of the Sign. Commencing on the day after the fifth anniversary of the commencement of the Operating Period through the end of the Operating Period, City messages and information shall be allocated up to but shall not use more than fifteen percent (15%) of the operational time of the Sign during each hour of operation of the Sign.

5. USE, OPERATION AND MAINTENANCE OF SIGN. In addition to the covenants of Owner in Section 10, Owner covenants and agrees that, at all times during the Operating Period: (1) the Sign shall not be materially altered (except in the ordinary course of maintenance) or removed from the Property; (2) the Sign shall be maintained in a first class condition and shall be promptly repaired or replaced, if damaged or destroyed by any cause whatsoever; (3) the Sign shall be continuously operated twenty-four (24) hours of each day of the year for the benefit of Owner and City; and (4) Owner shall not take or permit any action that would obstruct the visibility of the Sign.

6. COVENANT PAYMENT.

6.1 Covenant Payment. In consideration for Owner granting the Easement to City and Owner's performance of Owner's covenants and other obligations pursuant to this Covenant, City shall pay the Covenant Payment to Owner in five (5) equal annual installments, with the first payment to be paid to Owner within thirty (30) calendar days following Owner's completion of construction and installation of the Sign on the Property pursuant to Section 3, and each additional payment to be made within thirty (30) calendar days of the anniversary of Owner's completion of construction and installation of the Sign. City's obligation to make the Covenant Payment is expressly conditioned upon City's prior receipt of a title insurance policy in form and substance reasonably acceptable to City and issued by a title insurer reasonably acceptable to City insuring the Easement in the Property, subject to only non-delinquent property taxes or assessments, with coverage in the amount of the Covenant Payment. If for any reason, Owner does not complete construction and installation of the Sign on the Property and final building permit signoff by City for the Sign within one hundred eighty (180) calendar days following the Effective Date, then this Covenant shall automatically terminate and City shall have no obligation to pay any or all of the Covenant Payment to Owner.

6.2 Annual Appropriation Limit. City's obligations under Section 6.1 are contingent on a fiscal year-to-fiscal year basis for each fiscal year during the Operating Period. City agrees to reasonably consider such actions, as may be necessary, to include all payments potentially owed under this Covenant during each fiscal year during the Operating Period in its annual budget for such fiscal year. Nothing in this Covenant is intended nor shall be construed to limit the discretion of the City Council regarding annual budget appropriations for the City.

7. CONTINUOUS OPERATION OF BUSINESS. Owner further covenants to and for the benefit of City, throughout the entirety of the Operating Period, to cause the Business to be continuously operated (no period of inoperation of more than forty-five (45) consecutive days) from and within the Property and to maintain, at a minimum, the Base Jobs at the Business at all times during the Operating Period. Owner's covenants set forth in the immediately preceding sentence shall include, at Owner's sole cost and expense, all costs associated with obtaining and maintaining all franchises, permits, contractual arrangements, licenses, and registrations necessary for the conduct of the Business, causing the Business to be operated in accordance with reasonable and customary practices of similar businesses and in a commercially reasonable and prudent manner, including the obligation to advertise, market and promote the Business in a manner consistent with other similar businesses (including other business locations of Owner).

8. MAINTENANCE OF JOBS.

8.1 Owner hereby covenants and agrees to maintain no less than the Base Jobs at the Business during the Operating Period.

8.2 An employee may be classified as holding a Base Job when each of the following conditions exist:

8.2.1 the employee is paid an hourly wage of at least Ten Dollars (\$10.00) per hour or an equivalent salary or commission;

8.2.2 the employee is hired as a full-time employee, i.e., is assigned to work (or is eligible to work) at least One Thousand Seven Hundred and Fifty (1,750) hours per year, subject to time off for vacation, illness, disability or other permitted absence; and

8.2.3 the employee is based at the Property.

8.3 Within thirty (30) days of the Effective Date and on each anniversary of the Effective Date thereafter during the Operating Period, Owner shall file a written affidavit with the City Manager certifying, under penalty of perjury under the laws of the State of California, the total number of full-time jobs that exist at the Business as of the Effective Date. Owner's affidavit shall include a description of the types of jobs at the Business as of the Effective Date and the number of persons employed in each type of job. The affidavit need not identify any employee by name.

8.4 Owner agrees to allow City or its agents access to inspect the payroll accounting records of Owner relating to the Base Jobs and the confirmation by City of the information included in each annual affidavit of Owner, at reasonable times, upon reasonable prior written notice, and without cost charged by Owner to City.

9. LIQUIDATED DAMAGES PAYMENT. FOLLOWING A DEFAULT BY OWNER IN PERFORMANCE OF THE COVENANTS SET FORTH IN SECTIONS 7 OR 8 AT ANY TIME DURING THE OPERATING PERIOD (AS DESCRIBED IN SECTION 17(b)), WHERE SUCH FAILURE IS NOT CURED WITHIN THIRTY (30) CALENDAR DAYS FOLLOWING NOTICE OF SUCH DEFAULT FROM CITY, THEN OWNER SHALL PAY TO CITY, AS LIQUIDATED DAMAGES FOR OWNER'S DEFAULT IN PERFORMANCE OF SUCH

COVENANTS, TWO HUNDRED NINETEEN THOUSAND THREE HUNDRED NINETY TWO DOLLARS (\$219,392) PLUS DEFAULT INTEREST ACCRUED ON SUCH AMOUNT FROM THE DATE OF DEFAULT, UNTIL OWNER PAYS SUCH AMOUNT AND ALL ACCRUED DEFAULT INTEREST TO CITY. OWNER ACKNOWLEDGES AND AGREES THAT CITY HAS SPECIFICALLY BARGAINED FOR OWNER'S PERFORMANCE OF THE COVENANTS SET FORTH IN SECTIONS 7 AND 8 IN ENTERING INTO THIS COVENANT AND THAT CITY WILL BE SUBSTANTIALLY AND IRREPARABLY DAMAGED BY ANY FAILURE OF OWNER TO PERFORM SUCH COVENANTS DURING THE OPERATING PERIOD. FURTHER, THE PARTIES ACKNOWLEDGE AND AGREE THAT THE AMOUNT OF SUCH DAMAGE TO CITY IS EXTREMELY DIFFICULT AND IMPRACTICAL TO DETERMINE. AFTER DILIGENT, BUT UNSUCCESSFUL ATTEMPTS TO DETERMINE THE AMOUNT OF DAMAGES TO CITY ARISING FROM ANY FAILURE OF OWNER TO PERFORM THE COVENANTS SET FORTH IN SECTIONS 7 OR 8, THE PARTIES AGREE THAT , TWO HUNDRED NINETEEN THOUSAND THREE HUNDRED NINETY TWO DOLLARS (\$219,392) PLUS DEFAULT INTEREST ACCRUED ON SUCH AMOUNT FROM THE DATE OF DEFAULT, UNTIL OWNER PAYS SUCH AMOUNT AND ALL ACCRUED DEFAULT INTEREST TO CITY, REPRESENTS A REASONABLE ESTIMATE OF SUCH DAMAGES TO CITY. THE MAXIMUM AMOUNT OWNER SHALL BE REQUIRED TO PAY AS A RESULT OF FAILING TO PERFORM THE COVENANTS IN SECTIONS 7 OR 7 OVER THE COURSE OF THE ENTIRE OPERATING PERIOD SHALL NOT EXCEED, TWO HUNDRED NINETEEN THOUSAND THREE HUNDRED NINETY TWO DOLLARS (\$219,392) PLUS DEFAULT INTEREST ON SUCH AMOUNT ACCRUED FROM THE DATE OF DEFAULT UNTIL OWNER PAYS THE ENTIRE AMOUNT AND ALL ACCRUED DEFAULT INTEREST TO CITY.


INITIALS OF AUTHORIZED CITY
REPRESENTATIVE(S)

MB Ontario by 
INITIALS OF AUTHORIZED OWNER
REPRESENTATIVE(S)

10. NO TRANSFER TO TAX EXEMPT ENTITY. Owner covenants to and agrees with City that, throughout the entire Operating Period, neither Owner nor Owner's successors or assigns, shall participate in, cause or allow any Transfer or use of all or any portion of the Property that results in all or any portion of the Property being partially or wholly exempt from the payment of Real Estate Taxes; provided, however, that said covenant shall not apply to either of the following: (i) dedication of a public service easement on, over, or under any portion of the Property to any Government or private utility company consistent with the Approvals for the Sign; or (ii) a Transfer resulting from the exercise by any Government or any other entity with eminent domain powers of its power of eminent domain, including a Transfer under threat of the use of such eminent domain power (as evidenced by adoption of a resolution of necessity pursuant to Code of Civil Procedure Section 1245.210 *et seq.*, by the threatening Government).

11. OPERATION AND MAINTENANCE COVENANT. Owner, for itself and Owner's successors and assigns, covenants to and agrees with City that:

11.1 Maintenance Standard. Owner shall operate and maintain the Property, including the Sign, in a commercially reasonable manner and condition, including maintenance, repair, reconstruction and replacement of any and all asphalt, concrete, landscaping, utility systems,

irrigation systems, drainage facilities or systems, grading, subsidence, retaining walls or similar support structures, foundations, signage, ornamentation and all other improvements on or to the Property, now existing or made in the future, as necessary to maintain the appearance and character of the Property, including all of the following, all at Owner's sole cost and expense: (a) maintaining surfaces in a level, smooth and evenly covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal in quality, use and durability; (b) removing all papers, mud, sand, debris, filth and refuse and thoroughly sweeping areas to the extent reasonably necessary to keep areas in a clean and orderly condition; (c) removing or covering graffiti with the type of surface covering originally used on the affected area, (d) placing, keeping in repair and replacing any necessary and appropriate directional signs, markers and lines; (e) installing, operating, keeping in repair and replacing where necessary, such artificial lighting facilities as shall be reasonably required; (f) maintaining, mowing, weeding, trimming and watering all landscaped areas and making such replacements of plants and other landscaping material as necessary to maintain the appearance and character of the landscaping; (g) properly maintaining windows, structural elements and painted exterior surface areas of structures in a clean and presentable manner; and (h) arranging and paying for all fuel, gas, light, power, water, sewage, garbage disposal, telephone and other utility charges, and the expenses of installation, maintenance, use and service in connection with all of the foregoing (collectively, "**Maintenance Standard**"). Notwithstanding the foregoing, to the extent that the Maintenance Standard applies to physical conditions of the Property, the Maintenance Standard shall not apply during any period after a fire or other casualty loss, as long as Owner is diligently taking reasonable steps to obtain available insurance proceeds and repair, Restore or remove any improvements or conditions that violate the Maintenance Standard. City shall have absolutely no responsibility for any cost or performance associated with any matter that is the responsibility of Owner pursuant to the Maintenance Standard.

11.2 Maintenance Deficiency. If there is an occurrence of an adverse condition within the Property in contravention of the Maintenance Standard (each such occurrence being a "**Maintenance Deficiency**"), then City may Notify Owner of the Maintenance Deficiency. If a Maintenance Deficiency is not cured within thirty (30) calendar days following Notice to Owner of such Maintenance Deficiency, City shall have the right, but not the obligation, to perform all acts necessary to cure the Maintenance Deficiency or take any other action at law or in equity that may then be available to City to accomplish the abatement of the Maintenance Deficiency. Any amount expended by City for the cure or abatement of a Maintenance Deficiency pursuant to this Section 11.2 (including Legal Costs) shall be reimbursed to City by Owner within thirty (30) calendar days after Notice to Owner of the amount expended. If any amount becoming due to City under this Section 11.2 is not reimbursed to City by Owner within thirty (30) calendar days after Notice to Owner of the amount owed, the amount shall accrue Default Interest from the thirtieth (30th) calendar day after Notice of the amount owed until all of the unpaid principal and accrued Default Interest are paid in full. Nothing in this Section 11.2 is intended to limit or otherwise restrict any right or authority of City outside of this Easement Agreement to abate a condition that is or may be a Maintenance Deficiency.

12. CONDEMNATION. Any and all compensation or awards regarding any condemnation of the Property or the Sign shall be paid to City and Owner, as their respective interests appear.

13. TAXES AND ASSESSMENTS. Owner shall pay, without abatement, deduction or offset, any and all Real Estate Taxes and other charges (including any increase caused by a change in the tax rate or by a change in assessed valuation) of any description levied or assessed by any Government on or against the Property or personal property located on or in the Property. Any and all taxes and assessments and installments of taxes and assessments required to be paid by Owner shall be paid by Owner before each such tax, assessment or installment of tax or assessment becomes delinquent. Owner, at Owner's own cost and expense, shall have the right, at any time, to contest or seek a reduction in the assessed valuation attributable to the Property, or to contest any taxes or assessments attributable to the Property, provided Owner undertakes all proceedings necessary to prevent the sale of the Property for such taxes or assessments (including payment of the full contested amount subject to such contest or possible reduction, if required by applicable law), and promptly upon termination of such proceedings (but in any event prior to the sale of the Property to satisfy the contested tax or assessment) pays in full the taxes or assessments determined to be due and owing, plus all interest, penalties and other costs with respect to such contest. Owner shall Indemnify City regarding any liability, loss or damage resulting from any taxes, assessments or other charges required by this Covenant to be paid by Owner and from all interest, penalties, and other sums imposed thereon and from any sales or other proceedings to enforce collection of any such taxes, assessments, or other charges.

14. INSURANCE.

14.1 Types. Owner shall maintain at the sole cost and expense of Owner, all of the following insurance (or, if unavailable, its then reasonably available equivalent): (a) Liability Insurance; (b) Automobile Liability Insurance; (c) Property Insurance; and (d) Workers Compensation Insurance. All Liability Insurance, Automobile Liability Insurance, Property Insurance and Workers Compensation Insurance policies this Easement Agreement requires shall be issued by carriers that: (a) are listed in the then current "Best's Key Rating Guide—Property/Casualty—United States & Canada" publication (or its equivalent, if such publication ceases to be published) with a minimum financial strength rating of "A-" and a minimum financial size category of "VII" (exception may be made for the State Compensation Insurance Fund, when not specifically rated); and (b) are authorized to do business in the State by the State Department of Insurance. Owner may provide any insurance under a "blanket" or "umbrella" insurance policy, provided that: (i) such policy or a certificate of such policy shall specify the amount(s) of the total insurance allocated to the Property, which amount(s) shall equal or exceed the amount(s) required by this Covenant; and (ii) such policy otherwise complies with the requirements of this Covenant regarding such insurance. All insurance obtained and maintained by Owner in satisfaction of the requirements of this Covenant shall be fully paid for and non-assessable.

14.2 Insured. Liability Insurance and Automobile Liability Insurance policies shall name the City Parties as "additional insured." Property Insurance policies shall name City as a "loss payee." The coverage afforded to the City Parties shall be at least as broad as that afforded to Owner regarding the Parking Improvements and the City Property and may not contain any terms, conditions, exclusions, or limitations applicable to the City Parties that do not apply to Owner. All Liability Insurance and Automobile Liability Insurance shall provide for separation of insured for Owner and the City Parties. Insurance policies obtained in satisfaction of or in accordance with the requirements of this Covenant may provide a cross-suits exclusion for suits

between named insured Persons, but shall not exclude suits between named insured Persons and additional insured Persons. Any insurance or self-insurance maintained by the City Parties shall be excess of all insurance required to be maintained by Owner under this Covenant and shall not contribute with any insurance required to be maintained by Owner under this Covenant. Owner shall not carry separate or additional insurance concurrent in form or contributing in the event of loss with insurance coverage required by this Covenant, unless the City Parties are made additional insured or loss payee, as applicable, under such insurance coverage, consistent with the provisions of this Covenant applicable to such form of insurance or insurance covering the same type(s) of loss.

14.3 Deductibles and Self-Insured Retentions. Any and all deductibles or self-insured retentions under insurance policies required to be maintained by Owner under this Covenant shall be declared to and approved by City. Owner shall pay all such deductibles or self-insured retentions regarding the City Parties. Each insurance policy issued in satisfaction of the requirements of this Covenant shall provide that, to the extent that Owner fails to pay all or any portion of a self-insured retention under such policy regarding an otherwise insured loss, City may pay the unpaid portion of such self-insured retention, in City's sole and absolute discretion. All amounts paid by City toward self-insured retentions regarding insurance policies covering the City Parties pursuant to this Covenant shall be reimbursable to City by Owner in the same manner that insurance costs are reimbursable to City from Owner pursuant to Section 14.6.

14.4 Deliveries to City. Evidence of Owner's maintenance of all insurance policies required by this Covenant shall be delivered to City prior to the Effective Date. No later than three (3) days before any insurance required by this Covenant expires, is cancelled or its liability limits are reduced or exhausted, Owner shall deliver to City evidence of Owner's maintenance of all insurance required by this Covenant. Each insurance policy required by this Covenant shall be endorsed to state that coverage shall not be cancelled, suspended, voided, reduced in coverage or in limits, except after thirty (30) calendar days' advance written notice of such action has been given to City by certified mail, return receipt requested; provided, however, that only ten (10) days' advance written notice shall be required for any such action arising from non-payment of the premium for the insurance. Phrases such as "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company" shall not be included in the cancellation wording of any certificates or policies of insurance applicable to the City Parties pursuant to this Covenant.

14.5 Waiver of Certain Claims. Owner shall cause each insurance carrier providing any Liability Insurance, Property Insurance, Worker's Compensation Insurance or Automobile Liability Insurance coverage under this Covenant to endorse their applicable policy(ies) with a Waiver of Subrogation with respect to the City Parties, if not originally in the policy. To the extent that Owner obtains an insurance policy covering both the Owner and the City Parties and containing a Waiver of Subrogation, the Parties release each other from any Claims for damage to any Person or property to the extent such Claims are paid pursuant to such insurance policy.

14.6 City Option to Obtain Coverage. During the continuance of an Event of Default arising from the failure of Owner to carry any insurance required by this Covenant, City may, in City's sole and absolute discretion, purchase any such required insurance coverage. City shall be entitled to immediate payment from Owner of any premiums and associated reasonable costs

paid by City to obtain such insurance coverage. Any amount becoming due and payable to City under this Section 14.6 that is not paid within fifteen (15) calendar days after written demand from City for payment of such amount, with an explanation of the amounts demanded, will accrue Default Interest from the date of the demand, until paid in full. Any election by City to purchase or not to purchase insurance coverage otherwise required by the terms of this Covenant to be carried by Owner shall not relieve the Owner of Owner's Default or Owner's obligation to obtain and maintain any insurance coverage required by this Covenant.

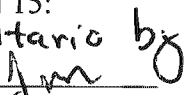
15. PREVAILING WAGES.

15.1 OWNER AGREES WITH CITY THAT OWNER SHALL ASSUME ANY AND ALL RESPONSIBILITY AND BE SOLELY RESPONSIBLE FOR DETERMINING WHETHER OR NOT LABORERS EMPLOYED RELATIVE TO THE CONSTRUCTION OR INSTALLATION OF THE SIGN MUST BE PAID THE PREVAILING PER DIEM WAGE RATE FOR THEIR LABOR CLASSIFICATION, AS DETERMINED BY THE STATE, PURSUANT TO LABOR CODE SECTION 1720 *ET SEQ.*

15.2 OWNER, ON BEHALF OF ITSELF, ITS SUCCESSORS, AND ASSIGNS, WAIVES AND RELEASES CITY FROM ANY RIGHT OF ACTION THAT MAY BE AVAILABLE TO ANY OF THEM PURSUANT TO LABOR CODE SECTION 1781. OWNER ACKNOWLEDGES THE PROTECTIONS OF CIVIL CODE SECTION 1542 RELATIVE TO THE WAIVER AND RELEASE CONTAINED IN THIS SECTION 15, WHICH READS AS FOLLOWS:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

15.3 BY INITIALING BELOW, OWNER KNOWINGLY AND VOLUNTARILY WAIVES THE PROVISIONS OF SECTION 1542 SOLELY IN CONNECTION WITH THE WAIVERS AND RELEASES OF THIS SECTION 15:

MB of Ontario by

INITIALS OF AUTHORIZED OWNER
REPRESENTATIVE(S)

16. ADEQUATE CONSIDERATION.

16.1 Exchange of Consideration. The Parties agree that: (1) the payment of the Covenant Payment to Owner represents fair consideration to Owner for granting the Easement to City and performing Owner's covenants and other obligations under this Covenant; and (2) Owner granting the Easement to City and Owner's performance of Owner's covenants and other obligations under this Covenant represent fair consideration to City for City's payment of the

Covenant Payment to Owner and performance of City's other obligations under this Covenant (if any).

16.2 No Unstated Consideration. Owner acknowledges and agrees that Owner will receive no consideration under this Covenant other than the payment of the Covenant Payment to Owner. Owner shall not be entitled to any other reimbursement or compensation from City regarding this Covenant.

17. **DEFAULTS.** Subject to any extensions of time provided for in this Covenant for Unavoidable Delay, the occurrence of any of the following events shall constitute a "**Default**": (a) the failure of Owner to complete construction and installation of the Sign on the Property in accordance with Section 3; (b) the failure of Owner to cause the continuous operation of the Business pursuant to Section 7, if such failure is not cured within thirty (30) calendar days after Notice from City to Owner that such obligation was not performed; (c) the failure of Owner to maintain, at a minimum, the Base Jobs at the Business pursuant to Section 8, if such failure is not cured within thirty (30) calendar days after Notice from City to Owner that such obligation was not performed; (d) the failure of Owner to correct each and every Maintenance Deficiency or reimburse City for amounts expended by City (including accrued Default Interest on such amounts) to correct such Maintenance Deficiencies; (e) Owner's breach of the covenants set forth in Section 10; (f) Owner's failure to provide insurance in accordance with Section 14; (g) Owner's breach of the representation and warranty made in Section 37; (h) the failure of Owner to perform Owner's indemnity obligation, if such failure is not cured within ten (10) calendar days after Notice from City that such obligation was not performed; or (i) any other action or failure to act by Owner that, with the giving of Notice or the passage of time or neither, would constitute a material breach of this Covenant.

18. **CITY'S REMEDIES.** Subject to the express Notice and opportunity to cure provisions of this Covenant regarding a specific Default, City shall have the following remedies regarding a Default by Owner:

18.1 Recovery of Amounts Due. Upon the occurrence of a Default by Owner under this Covenant, City may pursue recovery of all liquidated damages or other amounts due and payable to City under this Covenant through any legal means and recover any damages arising from failure of Owner to perform Owner's obligations under this Covenant.

18.2 Right to Cure Defaults. During the continuance of a Default by Owner under this Covenant, City shall have the right, but not the obligation, following five (5) days advance Notice to Owner, to cure the subject Default(s). Any sum expended by City to cure any Default of Owner pursuant to this Section 18.2 shall be reimbursed to City by Owner, within fifteen (15) calendar days after Notice to Owner of the amount. Any amount expended by City to cure any Default of Owner pursuant to this Section 18.2 that is not reimbursed to City by Owner within such fifteen (15) calendar days after Notice to Owner of such amount, shall accrue Default Interest, until paid in full.

18.3 Enforcement of Indemnity Obligations. Upon the occurrence of a Default by Owner described in Section 17(g), City may enforce the indemnity obligations of Owner arising

under this Covenant through any legal means and recover any damages arising from failure of Owner to perform such indemnity obligations.

18.4 Other Rights. Nothing in this Covenant is intended to prevent or limit City's exercise of any other right or remedy of City under this Covenant or under law or in equity following or arising from a breach or Default by Owner under this Covenant.

19. OWNER'S REMEDIES. If City fails to make any portion of the Covenant Payment, as and when due pursuant to Section 5, if such failure is not cured within thirty (30) calendar days after Notice from Owner to City that such obligation was not performed, Owner's sole and exclusive remedies for such failure shall be: (a) institute a legal action to seek specific performance of City's obligation to pay the Covenant Payment to Owner under this Covenant; or (b) terminate this Covenant. Under no circumstances shall City be liable to Owner for any lost profits, speculative or consequential damages arising from any failure of City to perform City's obligations under this Covenant or any other Claim relating to this Covenant.

20. NO LIMITATION ON CITY AUTHORITY. Nothing in this Covenant shall be deemed to limit, modify or abridge the governmental police power or other legal authority (whether direct or delegated) of City under applicable Law regarding the Property, the Sign or Owner.

21. INDEMNIFICATION.

21.1 Owner Indemnity Obligations. Owner shall Indemnify the City Parties against any Claim related to this Covenant or the Sign to the extent such Claim arises from: (a) any wrongful intentional act or negligence of the Owner Parties; (b) any agreements that Owner (or anyone claiming by or through Owner) makes with a Third Person regarding the Property or the Sign; or (c) any workers compensation claim or determination relating to any employee of Owner Parties or their contractors; (d) any Prevailing Wage Action relating to this Covenant or the Sign; or (e) any Environmental Claim attributable to any action or failure to act by the Owner Parties.

21.2 Independent Insurance and Indemnity Obligations. Owner's insurance or indemnification obligations under this Covenant are independent of each other and shall not in any way satisfy restrict, limit or modify the other obligation.

21.3 Survival of Obligation to Indemnify. The obligation of Owner to Indemnify the City Parties pursuant to this Covenant shall survive the termination of this Covenant, until any and all actual or prospective Claims regarding any matter subject to such obligation to Indemnify the City Parties pursuant to this Covenant are fully, finally, absolutely and completely barred by applicable statutes of limitations.

22. CITY CONTRACT ADMINISTRATION. The City Manager shall administer this Covenant on behalf of City. Except as otherwise expressly provided in this Covenant, the City Manager has the authority to approve or consent to those matters in this Covenant requiring City's approval or consent and to make all other decisions on behalf of City, subject to the City Manager's retained and reserved sole and absolute discretion to seek City Council's approval of any such matter.

23. GOVERNING LAW. The substantive and procedural laws of the State shall govern the interpretation and enforcement of this Covenant, without application of conflicts or choice of laws statutes or principles.

24. NO EFFECT ON EMINENT DOMAIN AUTHORITY. Nothing in this Covenant shall be deemed to limit, modify, abridge or affect in any manner whatsoever City's eminent domain powers with respect to the Property or any improvements on the Property.

25. NON-LIABILITY OF CITY OFFICIALS AND EMPLOYEES. No member of the governing body, elected official, officer, contractor, consultant, attorney, employee or agent of City shall be personally liable to Owner, any voluntary or involuntary successor or assign of Owner, or any lender or other Person holding an interest in Owner, the Property or the Sign in the event of any breach of this Covenant by City, or for any amount that may be or become due to Owner or its successors or assigns from City under this Covenant, or on any obligations arising under this Covenant.

26. NOTICES.

26.1 Delivery. Any and all Notices submitted by any Party to another Party pursuant to or as required by this Covenant shall be proper, if in writing and sent by messenger for immediate personal delivery, nationally recognized overnight (one Business Day) delivery service (i.e., United Parcel Service, Federal Express, etc.) or by registered or certified United States mail, postage prepaid, return receipt requested, to the address of the recipient Party, as designated in Section 26.2. Notices may be sent in the same manner to such other addresses as either Party may from time to time designate by Notice in accordance with this Section 26. Notice shall be deemed received by the addressee, regardless of whether or when any return receipt is received by the sender or the date set forth on such return receipt, on the day that the Notice is sent by messenger for immediate personal delivery, one Business Day after delivery to a nationally recognized overnight delivery service or three (3) calendar days after the Notice is placed in the United States mail in accordance with this Section 26. Any attorney representing a Party may give any Notice on behalf of such Party.

26.2 Addresses. The following are the authorized addresses for the submission of Notices to the Parties under this Covenant, as of the Effective Date:

To Owner: Fletcher Jones III
7300 W. Sahara
Las Vegas, NV 89117

With Copy to: Underwood & Roberts, LLC
Jeffrey G. Roberts
3110 Edwards Mill Rd., Suite 100
Raleigh, NC 27612

To City: City of Ontario
303 E. B Street
Ontario, CA 91764
Attn: Economic Development Director

With Copy to: Best Best & Krieger LLP
18101 Von Karman Ave, Suite 1000
Irvine, CA 92612
Attention: Elizabeth W. Hull

27. JURISDICTION AND VENUE. The Parties each acknowledge and agree that this Covenant is entered into and is to be fully performed in the City of Ontario, County of San Bernardino, State of California, and that all legal actions arising from this Covenant shall be filed in the Superior Court of the State of California in and for the County of San Bernardino, California, or the United States District Court with jurisdiction in the County of San Bernardino, California.

28. LEGAL CHALLENGES. In the event of any challenge to the validity of this Covenant, at the option of City, in City's sole and absolute discretion, either: (a) Owner shall indemnify City regarding such challenge, including employment of legal counsel reasonably acceptable to City for the defense of City regarding such challenge; or (b) City may terminate this Covenant, without liability to Owner or any other Person.

29. PRINCIPLES OF INTERPRETATION. No inference in favor of or against any Party shall be drawn from the fact that such Party has drafted any part of this Covenant. The Parties have both participated substantially in the negotiation, drafting and revision of this Covenant, with advice from legal counsel and other advisers of their own selection. A term defined in the singular in this Covenant may be used in the plural, and vice versa, all in accordance with ordinary principles of English grammar, which also govern all other language in this Covenant. The words "include" and "including" shall be construed to be followed by the words: "without limitation." Each collective noun in this Covenant shall be interpreted as if followed by the words "(or any part of it)," except where the context clearly requires otherwise. Every reference in this Covenant to any document, including this Covenant, refers to such document as modified from time to time (excepting any modification that violates this Covenant), and includes all exhibits, schedules, addenda and riders to such document. The word "or" includes the word "and." Every reference in this Covenant to a law, statute, regulation, order, form or similar governmental requirement refers to each such requirement as amended, modified, renumbered, superseded or succeeded, from time to time.

30. COUNTERPART ORIGINALS; INTEGRATION. This Covenant may be signed in multiple counterpart originals, each of which is deemed to be an original, but all of which taken together shall constitute one and the same instrument. This Covenant, the exhibit(s) attached to this Covenant and the documents (including maps) referenced in this Covenant represent the entire understanding of the Parties and supersede all previous negotiations, letters of intent, memoranda of understanding or agreements between the Parties with respect to all or any part of the subject matter of this Covenant.

31. SEVERABILITY. If any term or provision of this Covenant or application of any term or provision of this Covenant to any Person or circumstance shall to any extent be invalid or unenforceable, then the remainder of this Covenant or the application of such term or provision to Persons or circumstances, except those as to which the term or provision is invalid or unenforceable, shall not be affected by such invalidity or unenforceability. All remaining terms and provisions of this Covenant shall be valid and shall be enforced to the fullest extent allowed by Law.


32. NO WAIVER. Failure to insist on any one occasion upon strict compliance with any of the terms, covenants, conditions, restrictions or agreements contained in this Covenant shall not be deemed a waiver of such term, covenant, condition, restriction or agreement, nor shall any waiver or relinquishment of any rights or powers under this Covenant at any one time or more times be deemed a waiver or relinquishment of such right or power at any other time or times.

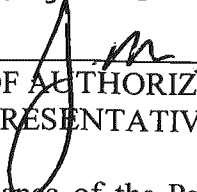
33. TIME IS OF THE ESSENCE. Time is of the essence in the performance of the Parties' obligations under this Covenant.

34. UNAVOIDABLE DELAY; EXTENSION OF TIME FOR PERFORMANCE.

34.1 Notice. Performance by either Party under this Covenant shall not be deemed or considered to be in Default or breach, where such Default or breach is due to an Unavoidable Delay. Any Party claiming Unavoidable Delay shall Notify the other Party: (a) within twenty (20) days after such Party knows of such Unavoidable Delay; and (b) within twenty (20) days after such Unavoidable Delay ceases to exist. To be effective, any Notice of an Unavoidable Delay must describe the Unavoidable Delay in reasonable detail. The extension of time for an Unavoidable Delay shall commence on the date of occurrence of the Unavoidable Delay and shall continue until the end of the condition causing the Unavoidable Delay. The Party seeking to be excused from performance shall exercise reasonable efforts to cure the condition causing the Unavoidable Delay, within a reasonable time.

34.2 Assumption of Economic Risks. ANYTHING IN THIS COVENANT TO THE CONTRARY NOTWITHSTANDING, THE PARTIES EXPRESSLY ASSUME THE RISK OF UNFORESEEABLE CHANGES IN ECONOMIC CIRCUMSTANCES AND/OR MARKET DEMAND/CONDITIONS AND WAIVE, TO THE GREATEST LEGAL EXTENT, ANY DEFENSE, CLAIM, OR CAUSE OF ACTION BASED IN WHOLE OR IN PART ON ECONOMIC NECESSITY, IMPRACTICABILITY, CHANGED ECONOMIC CIRCUMSTANCES, FRUSTRATION OF PURPOSE OR SIMILAR THEORIES. EACH PARTY AGREES THAT ADVERSE CHANGES IN ECONOMIC CONDITIONS, EITHER OF SUCH PARTY SPECIFICALLY OR THE ECONOMY GENERALLY, OR CHANGES IN MARKET CONDITIONS OR DEMANDS, SHALL NOT OPERATE TO EXCUSE OR DELAY THE STRICT OBSERVANCE OF EACH AND EVERY ONE OF THE OBLIGATIONS, COVENANTS, CONDITIONS AND REQUIREMENTS OF THIS COVENANT. THE PARTIES EXPRESSLY ASSUME THE RISK OF SUCH ADVERSE ECONOMIC OR MARKET CHANGES, WHETHER OR NOT FORESEEABLE AS OF THE EFFECTIVE DATE.


INITIALS OF AUTHORIZED CITY
REPRESENTATIVE(S)

Mercedes Benz of Ontario

INITIALS OF AUTHORIZED OWNER
REPRESENTATIVE(S)

35. NO THIRD PARTY BENEFICIARIES. The performance of the Parties' respective obligations under this Covenant are not intended to benefit any Person other than City and Owner, except as may be expressly provided otherwise in this Covenant. No Person not a signatory to this Covenant shall have any rights or causes of action against any Party to this Covenant as a result of that Party's performance or non-performance under this Covenant, except as otherwise expressly provided in this Covenant.

36. NO OTHER REPRESENTATIONS OR WARRANTIES. Except as expressly set forth in this Covenant, no Party makes any representation or warranty material to this Covenant to any other Party.

37. WARRANTIES AGAINST PAYMENT OF CONSIDERATION FOR COVENANT. Owner represents and warrants to City that: (a) Owner has not employed or retained any Person to solicit or secure this Covenant upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees of Owner; and (b) no gratuities, in the form of entertainment, gifts or otherwise have been or will be given by Owner or any of its agents, employees or representatives to any elected or appointed official or employee of City in an attempt to secure this Covenant or favorable terms or conditions for this Covenant. Breach of the representations or warranties of this Section 37 shall entitle City to terminate this Covenant upon seven (7) days Notice to Owner and recover damages in the total amount of the Covenant Payment.

38. RELATIONSHIP OF PARTIES. The Parties agree and intend that City and Owner are independent contracting entities and do not intend by this Covenant to create any partnership, joint venture, or similar business arrangement, relationship or association between them.

39. SURVIVAL OF COVENANT. All of the provisions of this Covenant shall be applicable to any dispute between the Parties arising from this Covenant, whether prior to or following expiration or termination of this Covenant, until any such dispute is finally and completely resolved between the Parties, either by written settlement, entry of a non-appealable judgment or expiration of all applicable limitations periods and all terms and conditions of this Covenant relating to dispute resolution and limitations on damages or remedies shall survive any expiration or termination of this Covenant.

40. RECORDING. The Parties intend that this Covenant be recorded in the official records of the Recorder for the County. Owner authorizes City to cause this Covenant to be recorded in the official records of the Recorder for the County on or after the Effective Date. City shall pay any and all costs (if any) associated with recording this Covenant in the official records of the Recorder for the County.

[Signatures on the following page]

**SIGNATURE PAGE
TO
DECLARATION OF BUSINESS OPERATION COVENANTS AND
SIGN EASEMENT
(Mercedes Benz)**

Owner and City sign and enter into this Covenant by and through the signatures of their authorized representatives set forth below:

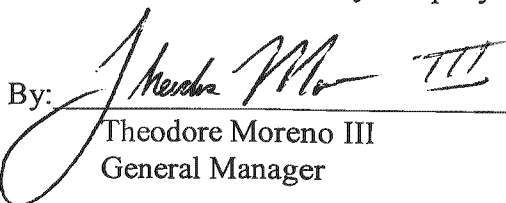
CITY:

CITY OF ONTARIO,
a California municipal corporation

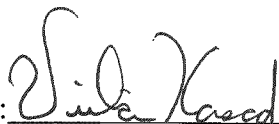
By: 
Chris Hughes
City Manager

OWNER:

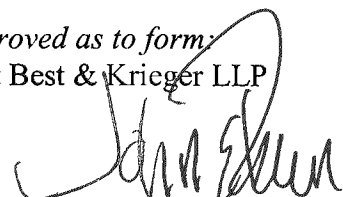
JONES ONTARIO ACQUISITION, LLC, DBA
MERCEDES-BENZ OF ONTARIO,
a California limited liability company

By: 
Theodore Moreno III
General Manager

Attest:

By: 
Sila Kased
Asst. City Clerk

Approved as to form:
Best Best & Krieger LLP

By: 
John Egan
City Attorney

ACKNOWLEDGMENT

State of California
County of San Bernardino

On December 20, 2013 before me, Eva M. Buice,
(insert name and title of the officer)

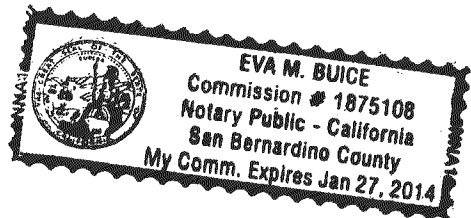
Notary Public, personally appeared Theodore Moreno III

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Eva M Buice (Seal)



OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Agreement – Declaration of Business Operation Covenants & Sign Easement (Mercedes Benz)

Document Date: December 1, 2013 Number of Pages: _____

Signer(s) Other than Name Above: Chris Hughes, City of Ontario

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- ☐ Individual
- ☐ Corporate Officer Title(s): _____
- ☐ Partner - ☐ Limited ☐ General
- ☐ Attorney in Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: _____

☐ Signer is Representing: _____

Right Thumbprint
of Signer

Signer's Name: _____

- ☐ Individual
- ☐ Corporate Officer Title(s): _____
- ☐ Partner - ☐ Limited ☐ General
- ☐ Attorney in Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: _____

☐ Signer is Representing: _____

Right Thumbprint
of Signer

EXHIBIT "1"
TO
DECLARATION OF BUSINESS OPERATION COVENANTS AND
SIGN EASEMENT
(Mercedes Benz)

Property Legal Description

The subject property on which the sign is located is 3787 E Guasti Rd, Ontario, CA 91761

APN # 21021255

**EXHIBIT “2”
TO
DECLARATION OF BUSINESS OPERATION COVENANTS AND
SIGN EASEMENT
(Mercedes Benz)**

Sign Specifications

The subject sign is a freestanding, two-sided freeway oriented monument sign containing at LED screen used for the purpose of dealership advertisement and messaging. The sign is located along the north frontage of the property adjacent to the Interstate 10 San Bernardino Freeway frontage.