

**OPERATING COVENANT AGREEMENT**  
**between**  
**THE CITY OF ONTARIO,**  
**a California municipal corporation,**  
**and**  
**RUSNAK/ONTARIO**  
**a California corporation**

## OPERATING COVENANT AGREEMENT

This Operating Covenant Agreement (“Covenant Agreement”) is dated October 3, 2023, for reference purposes only and is entered into by and between the CITY OF ONTARIO, a California municipal corporation (“City”), and RUSNAK/ONTARIO, a California corporation, dba Genesis of Ontario (“Owner or Genesis”). City and Owner enter into this Covenant Agreement with reference to the following recited facts (each a “Recital”):

### RECITALS

**WHEREAS**, Owner is a retailer of vehicles in the United States of America and its territories is considering operating a car dealership within the City of Ontario, California; and

**WHEREAS**, in consideration of the new and additional local sales tax revenues, property taxes, employment benefits, and other tangible and intangible benefits that are expected to be received by City arising from the Owner’s business within the City, City agrees to provide certain payments to Owner to assist with the operation of Owner’s business within the City; and

**WHEREAS**, the incentives provided in this Agreement are intended to ensure Owner establishes a business location that participates in the sales process within the City, expands its operations within the City as appropriate and remains in the City for not less than eight (8) years; and

**WHEREAS**, as an incentive for the development and operation of Owner’s dealership location, Owner has requested from the City assistance for development and operation costs associated with the Owner’s dealership in an amount equal to fifty percent (50%) of all sales tax revenue above \$100,000 annually for years 1-4 and \$125,000 annually for years 5-8 that is generated by the Owner’s dealership for a period of up to eight (8) years or a maximum amount of eight hundred thousand dollars (\$800,000), subject to the limitations set forth in this Agreement; and

**WHEREAS**, the City has further determined that the covenanted operation of Owner’s dealership serves the additional public purpose of fostering a business and civic environment that may attract additional businesses and investment in the community due to the availability of the increased public and private services and economic activity resulting therefrom. Accordingly, the City has also determined that its entry into this Agreement serves a significant public purpose, while providing only incidental benefits to a private party.

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





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

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

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

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

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

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

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

(c) As used in this Covenant Agreement, the term "actual current knowledge of Owner" shall mean, and shall be limited to, the actual current knowledge of Paul Rusnak, CEO, as of the Effective Date, without having undertaken any independent inquiry or investigation for the purpose of making such representation or warranty and without any duty of inquiry or investigation.

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

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

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

### **1.3 Definitions.**

**1.3.1 “Affiliate”**, as defined by the Internal Revenue Code (IRC) Section 1504, means any corporation included in Owner’s affiliated group conducting ecommerce sales in the City.

**1.3.2 “CDTFA”** means the California Department of Tax and Fee Administration.

**1.3.3 “City”** means the City of Ontario, a California municipal corporation, and any nominee, assignee of, or successor to, its rights, powers and responsibilities.

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

**1.3.5 “Covenant Term”** means, a period of eight (8) years following the Effective Date (unless terminated sooner).

**1.3.6 “Covenants”** means those covenants described in Section 3.1 herein.

**1.3.7 “Dealership”** means that certain car dealership operated on the Property by Owner.

**1.3.8 “Eligibility Period”** means the period commencing as of the first (1st) day of Operating Year 1 and ending on the last day of Operating Year 8.

**1.3.9 “Governmental Authority”** means any nation or government, any federal, state, local, municipal or other political subdivision thereof or any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

**1.3.10 “Law”** means any law (including common law), constitution, statute, treaty, regulation, rule, ordinance, opinion, release, ruling, order, injunction, writ, decree, bond, judgment, authorization or approval, lien or award by or settlement agreement with any Governmental Authority.

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

(a) If the breach occurs during Operating Years 1 through 4, an amount equal to sixty-six percent (66%) of the Covenant Payments paid to Tenant at any time prior to the Operating Year in which the breach occurs.

(b) If the breach occurs during Operating Years 5 through 8, an amount equal to thirty-three percent (33%) of the Covenant Payments paid to Tenant at any time prior to the Operating Year in which the breach occurs.

**1.3.12 “Operating Year”** means and refers to the twelve (12) month period starting on the Effective Date and each consecutive subsequent twelve (12) month period until the 8th anniversary of the Effective Date. Each Operating Year may be referred to in this Covenant Agreement in numerical succession as “Operating Year 1,” “Operating Year 2” and so on up to “Operating Year 8.”

**1.3.13 “Owner”** means and refers to Rusnak/Ontario, a California corporation and its successors and assigns, cumulatively.

**1.3.14 “Owner’s Sales Activities”** means the commercially reasonable business practices and activities associated with Owner’s retail and wholesale sale of consumer products.

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

**1.3.16 “Property”** means that certain real property commonly known as 2100 Inland Empire Blvd, Ontario CA 91764 or any other property within the City of Ontario to which Owner may elect to relocate the Dealership during the term of this Covenant Agreement. Owner represents that the Property falls outside the current Genesis market area where the Dealership was previously located and that it shares market area with another Genesis dealership.

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

**1.3.18 “Sales Tax Law”** means and refers to: (a) California Revenue and Taxation Code Section 7200 et seq., and any successor law thereto; (b) any legislation allowing City or other public agency with jurisdiction in City to levy any form of local Sales Tax on the operations of Owner; and (c) regulations of the CDTFA and other binding rulings and interpretations relating to (a) and (b) of this Section 1.3.19.

**1.3.19 “Sales Tax Revenues”** means the net Sales Tax actually received by the City from the CDTFA pursuant to the application of the Sales Tax Law (as such statutes may hereafter be amended, substituted, replaced, re-numbered, moved or modified by any successor law) attributable to the Business Activities in a particular Operating Year. Sales Tax Revenues shall not include: (i) Penalty Assessments; (ii) any Sales Tax levied by, collected for or allocated to the State of California, the County of San Bernardino, or a district or any entity (including an allocation to a statewide or countywide pool); (iii) any administrative fee charged by the CDTFA; (iv) any Sales Tax subject to any sharing, rebate, offset or other charge imposed pursuant to any applicable provision of federal, state or local (except City’s) law, rule or regulation; (v) any Sales Tax attributable to any transaction not consummated within the Eligibility Period; (vi) the Transactions and Use Tax approved by the passage of Measure Q in 2022; or (vii) any Sales Tax (or other funds measured by Sales Tax) required by the State of California to be paid over to another public entity (including the State) or set aside and/or pledged to a specific use other than for deposit into or payment from the City’s general fund.”

**1.3.20 “Taxable Ontario Sales”** means Owner’s taxable California sales

transactions, including, but not limited to, sales through an Internet website or phone sales, that result from either Owner's Sales Activities or for products shipped from the Ontario location to addresses located in California.

**ARTICLE 2. RESERVED.**

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

**3.1 Covenants Running with the Land.**

**3.1.1 Operating and Use Covenant.** Subject to Section 4.9, Owner covenants and agrees that for the Covenant Term Owner shall operate, or cause to be operated upon the Property, the Dealership in a commercially reasonable business manner, consistent with all applicable Law. Owner will operate its business in a commercially reasonable and prudent manner. Owner's obligations pursuant to the immediately preceding sentence include, without limitation, the obligation to obtain all federal, state and local licenses and permits required for the operation of the business and to advertise, market and promote the business in a commercially reasonable fashion.

**3.1.2 Covenant to Designate City as the Point of Sale.** Owner covenants and agrees that, for the term of the Operating and Use Covenant as described in Section 3.1.1, Owner shall maintain such licenses and permits as may be required by any governmental agency to conduct Owner's Sales Activities related to the Business Location that Participates in the Sales Process. Except as otherwise provided by applicable Law, including but not limited to Government Code Section 53084.5, Owner shall use commercially reasonable efforts to designate City as the "point of sale" and consummate at the Business Location that Participates in the Sales Process, all Taxable Ontario Sales and the Owner shall identify the City as such in its reports to the CDTFB in accordance with the Bradley-Burns Uniform Local Sales and Use Tax Law (Revenue and Taxation Code 7200, et seq.), as it may be amended or substituted. Owner shall use commercially reasonable efforts to conduct product sales to California residents from the Business Location that Participates in the Sales Process, including but not limited to assigning appropriate sales staff to the Property and conducting negotiations of sales from the Business Location that Participates in the Sales Process. The Owner shall consummate all Taxable Ontario Sales transactions for Owner's Sales Activities at the Business Location that Participates in the Sales Process, consistent with all applicable statutory and CDTFB regulatory requirements applicable to Owner's Sales Activities and the designation of the City as the "point of sale" for all such Taxable Ontario Sales.

**3.1.3 Owner's Additional Obligations Regarding Repairs and Alterations to Business Location that Participates in the Sales Process.** Owner covenants and agrees that, for the term of the Operating and Use Covenant as described in Section 3.1.1, the Owner shall maintain, or cause to be maintained, the Dealership in good condition, ordinary wear and tear excepted, and free from the unreasonable accumulation of trash or other debris and agrees to promptly remove, or cause the removal of, all graffiti upon the Business Location that Participates in the Sales Process. Owner shall also maintain or cause to be maintained the landscaping upon the Property in a good condition.



**3.1.4 Covenant Against Solicitation and Acceptance of Economic Incentives During the Term of the Operating Use Covenant.** Owner covenants and agrees that, for the term of the Operating and Use Covenant as described in Section 3.1.1, Owner will not directly or indirectly solicit or accept any “Financial Assistance” from any other public or private person or entity, if such Financial Assistance is given for the purpose of causing or would result in either Owner’s breach of any of the Covenants. For purposes of this Section 3.1.4, the term “Financial Assistance” means any direct or indirect payment, subsidy, rebate, or other similar or dissimilar monetary or non-monetary benefit, including, without implied limitation, payment of land subsidies, relocation expenses, public financings, property or sales tax relief, rebates, exemptions or credits, relief from public improvement obligations, and payment for public improvements to or for the benefit of Owner.

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

## **3.2 Covenant Payments.**

**3.2.1 Owner’s Covenant Regarding the Opening and Operation the Business.** Owner covenants to the City to open the Dealership and to continuously operate the Dealership on the Property throughout the entirety of the Eligibility Period. For purposes of this Section 3.2 “continuously operate” means not ceasing operation for a time period in excess of ninety (90) consecutive calendar days.

**3.2.2 Designation of City as Point of Sale.** Owner shall designate the City as the “point of sale” in all reports to the CDTFA for all Owner’s Sales Activities. Owner shall, for the full Eligibility Period, at its sole cost and expense, maintain all permits, contractual arrangements, licenses, and registrations necessary for it to lawfully conduct the Owner’s Sales Activities and to designate the City as the “point of sale” in all reports and returns submitted to the CDTFA regarding the Owner’s Sales Activities by the Business Location that Participates in the Sales Process. The provisions of this Section 3.2.2 shall survive any Default by Owner.

**3.2.3 Covenant Payment Amount.** In consideration of Owner’s performance of its obligations set forth in this Agreement, and subject to satisfaction of all conditions precedent thereto, the City shall, for each Operating Year during the Eligibility Period that the City receives Local Sales Tax Revenues, pay to Owner: (1) for Operating Years 1-4, an amount equal to the sum of fifty percent (50%) of the Local Sales Tax Revenues received above the annual base amount of One Hundred Thousand Dollars (\$100,000); and (2) for Operating Years 5-8, an amount equal to the sum of fifty percent (50%) of the Local Sales Tax Revenues received above the annual base amount of One Hundred and Twenty Five Thousand Dollars (\$125,000) annually (collectively, the “Covenant Payment”). Owner understands and agrees that the increased sales tax revenue created by the passage of Measure Q shall not be included in the

calculation of the Covenant Payment, meaning that the calculations provided in this Section shall be calculated with a sales tax rate of 7.75%. The cumulative total of any and all Covenant Payments paid by the City pursuant to this Agreement shall not exceed Eight Hundred Thousand Dollars (\$800,000) (“Maximum Covenant Payment Amount”).

**3.2.4 Owner Sales Tax Information.** Owner acknowledges and agrees that the sales and use tax reporting and payment information related to sales and use taxes attributable to business activities by the Owner may become a public record as a result of the covenants of Owner contained in Section 3 and the Covenant Payments to be made by the City to Owner (as further described in Section 3.2.3). Owner hereby authorizes the City to use the sales and use tax reporting and payment information related to the Owner’s Sales Activities by the Dealership to allow the City to perform its obligations under this Agreement and to disclose such information when, in the City Attorney’s reasonable opinion, such disclosure is required by law.

**3.2.5 State of California Legislation Impact on Covenant Payment.** Owner acknowledges that the State of California legislature has in the past adopted certain legislation which diverted to the State of California a portion of the Local Sales Tax Revenues which were otherwise be payable to the City. Owner acknowledges that it is possible that the State of California legislature may enact similar legislation in the future which would cause a corresponding reduction of and/or delay in the payment of the Local Sales Tax Revenues and that such reduction will cause Owner a corresponding reduction and/or delay in the payment of the Covenant Payments due to Owner during such time as such legislation is in effect. Furthermore, Owner acknowledges that it is possible that the legislation described above, or some variant thereof, may be enacted and effective during one or more subsequent times during the Eligibility Period and may materially and negatively impact the amount of Local Sales Tax Revenues and, accordingly, the Covenant Payments. The City does not make any representation, warranty or commitment concerning the future actions of the State of California legislature with respect to the allocation of Local Sales Tax Revenues to the City. Owner agrees that they are undertaking their obligations under this Agreement after having considered, and is expressly assuming the risk of, the possibility of the enactment of future legislation. The City acknowledges that the State of California legislature may provide for the payment to City of other revenues for the purpose of offsetting any losses in Local Sales Tax Revenues resulting from the enactment of legislation of the type described in the immediately preceding paragraph. City agrees that, should the California legislature provide for such offsetting revenues, then for purposes of this Agreement and the computation of any Covenant Payments which may become due to Owner hereunder, City shall treat any such offsetting revenues which are: (a) indexed to Sales Tax and offset the loss of Sales Tax revenues to the City on a dollar for dollar basis; (b) actually received by the City; and (c) not subject to any restrictions on use beyond those which are otherwise generally applicable to sales tax revenues received by California municipalities, to be Local Sales Tax Revenues within the meaning of this Agreement.

**3.2.6 City’s Notice of Determination of Operating Year Local Sales Tax Revenues and Covenant Payment.** Within one hundred twenty (120) calendar days following an Operating Year within the Eligibility Period, the City will determine the Local Sales Tax Revenues applicable to that Operating Year and send the Covenant Payment due for that Operating Year to Owner (“Notice of Determination”).

**3.2.7 Owner's Notice of Appeal; Negotiation Period.** Notwithstanding any other provision of law, including, without implied limitation, any statutes of limitation provided therefore in the California Government Code or the California Code of Civil Procedure, the City's determination of each Covenant Payment shall be deemed final, conclusive, and non-appealable unless, within sixty (60) calendar days from the receipt of the Covenant Payment by Owner, Owner notifies the City in writing that Owner appeals the Covenant Payment, which notice must specifically identify the matter appealed and all of the bases for such appeal and include the following documentation: (i) copies of quarterly reports to the CDTFA which set forth the amount of sales tax paid to the CDTFA during the Operating Year in connection with Owner's Sales Activities; (ii) any and all bills, invoices, schedules, vouchers, statements, receipts, cancelled checks, and any other documents evidencing the amount of sales tax paid by Owner during such Operating Year; and (iii) any and all invoices, and inventory records for such Operating Year, certified as accurate and complete by an authorized official of the party submitting such records ("Notice of Appeal"). Any Covenant Payment that is not appealed in the manner and within the time limits set forth above, shall be final and conclusive as against Owner and all others claiming by or through Owner. The provisions of this Section 3.2.7 shall be strictly construed and Owner waives, to the maximum legal extent, any statutory or judicially created right to institute any administrative or judicial proceeding to contest any matter set forth in a Notice of Appeal that is not timely appealed in strict accordance with this Section 3.2.7. If Owner files a timely Notice of Appeal with the City, the City and Owner shall negotiate in good faith to resolve their dispute for a Negotiation Period. If, by the end of the Negotiation Period, the City and Owner are unable to resolve the dispute set forth in the Notice of Appeal, each of them may exercise any judicial remedy available to them pursuant to this Agreement for the resolution of such dispute; provided, however, that any provision of law to the contrary notwithstanding, such judicial remedy must be instituted (defined as the filing of an action in a court of competent jurisdiction in strict accordance with the terms of this Agreement) within one hundred twenty (120) calendar days following the end of the Negotiation Period or be barred forever. In connection therewith, the City and Owner irrevocably consent to the appointment of a referee to resolve such dispute in accordance with California Code of Civil Procedure Section 638, et seq., and to pay equal amounts of the cost of such referee.

**3.2.8 No Accrual of Interest for Disputed Covenant Payment(s).** The City and Owner agree that any disputed amount shall not accrue interest during the pendency of any Negotiation Period or subsequent legal proceeding (including any appeals filed in connection therewith), unless the court makes a determination upon recommendation of the referee that the City acted in bad faith with regard to the dispute, in which case, any amount ultimately adjudged to be owing by the City shall be deemed to have accrued interest at the rate of six percent (6%) simple interest per annum, commencing on the ninetieth (90th) calendar day following the end of the Negotiation Period and continuing thereafter until paid. Owner hereby waives, to the maximum legal extent, the right to the imposition of any different rate of interest in accordance with any provision of law.

**3.2.9 Covenant Payment Paid From Any Source of City Funds.** Any Covenant Payment due under Section 3.2.3 may be payable from any source of any funds of the City legally available for such purpose. The City covenants to reasonably consider such actions as may be necessary to include all payments owed hereunder in each of its annual budgets during

the Eligibility Period and to reasonably consider the necessary annual budgetary appropriations for all such payments.

**3.2.10 Making Covenant Payment Is A Contingent Obligation of City.** The City's obligations under Section 3.2.3 are contingent on a fiscal year to fiscal year basis and, for each Operating Year within the Eligibility Period, the City's obligations to make any payments to Owner under this Agreement are expressly contingent upon Owner, for the entirety of such Operating Year, completely fulfilling its material obligations under this Agreement. If for any reason Owner fails to authorize the release or use of all or any part of sales tax information regarding the Dealership in a manner satisfactory to the CDTFA or provide any information reasonably required by the City to perform the City's obligations under this Agreement, or if all or any part of the sales tax information of Owner is unavailable to the City or the City is not legally authorized to use such information for the purposes of performing its obligations under this Agreement, the Covenant Payment shall be based solely upon the information so received, if any.

**3.2.11 CDTFA Determination of Improperly Allocated Local Sales Tax Revenues.** If, at any time during or after the Eligibility Period of this Agreement, the CDTFA determines that all or any portion of the Local Sales Tax Revenues received by the City were improperly allocated and/or paid to the City, and if the CDTFA requires repayment of, offsets against future sales tax payments, or otherwise recaptures from the City those improperly allocated and/or paid Local Sales Tax Revenues, then Owner shall, within thirty (30) calendar days after written demand from the City, repay all Covenant Payments (or applicable portions thereof) theretofore paid to Owner which are attributable to such repaid, offset or recaptured Local Sales Tax Revenues. If Owner fails to make such repayment within thirty (30) calendar days after the City's written demand, then Owner shall be in breach of this Agreement and such obligation shall accrue interest from the date of the City's original written demand at the then-maximum legal rate imposed by the California Code of Civil Procedure on prejudgment monetary obligations, compounded monthly, until paid. This Section 3.2.11 shall survive the expiration or termination of this Agreement.

**3.2.12 Covenants Run With the Property.** The covenants of this Section 3.2 shall run with the Property and shall remain in effect at all times during the Eligibility Period.

### **3.3 Default.**

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

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

to cure within said thirty (30) day period and diligently prosecute such cure to completion thereafter.

**3.4 General Remedies for Default.** Upon either a City Default, after expiration of all applicable notice and grace periods, or an Owner Default, after expiration of all applicable notice and grace periods (as defined in Section 3.3), Owner or City (as applicable) shall have the right to seek all available legal and equitable remedies, unless otherwise expressly provided to the contrary herein. Notwithstanding anything in this Covenant Agreement to the contrary, (a) neither Party shall be liable to the other Party for consequential damages and (b) in no event shall the City have the right of specific performance or other mandatory injunctive relief to compel the Owner to operate the Business Location that Participates in the Sales Process. Unless prohibited by law or otherwise provided by a specific term of this Covenant Agreement, the rights and remedies of the City and the Owner under this Covenant Agreement are nonexclusive and all remedies hereunder may be exercised individually or cumulatively, and either Party may simultaneously pursue inconsistent and/or alternative remedies. Either Party may, upon the Default of the other Party, after expiration of all applicable notice and grace periods, and in addition to pursuing all remedies otherwise available to it, terminate this Covenant Agreement and all of its obligations hereunder without cost, expense or liability to itself.

**3.5 The City's Rights to Terminate its Obligations under Section 3.3.** The City's obligations under Section 3.2 shall automatically terminate without cost, expense, or liability to City, upon the occurrence of any one or more of the following: (a) Owner Default, as to which any applicable cure period provided for herein has expired; or (b) the end of the Eligibility Period; or (c) upon the final determination by a court of competent jurisdiction that any one or more of the Covenants are void, voidable, invalid, or even unenforceable for any reason whatsoever, including, without limitation, legal infirmity.

### **3.6 Liquidated Damages.**

**3.6.1 Owner Default with Respect to Obligations Under Sections 3.1.1 and 3.1.2.** The Parties acknowledge that the consideration to the City for its entry into this Covenant Agreement and the performance of its obligations hereunder include the City's receipt of Sales Tax Revenues, employment and other payroll taxes, property taxes, and other direct and indirect financial and non-financial benefits arising from Owner's Sales Activities and the operation and location of the Dealership in the City in accordance with Article 3 of this Covenant Agreement. Owner agrees that the City will suffer damages if Owner commits any Owner Default with respect to any of its obligations arising under Sections 3.1.1 and 3.1.2. The Parties agree that the exact determination of such damages would be impracticable and extremely difficult to quantify. Accordingly, the Parties have determined that Liquidated Damages (as determined pursuant to Section 1.3.11) represents a reasonable estimate of the damages which would be suffered by the City if Owner commits any Owner Default with respect to any of its obligations set forth in Sections 3.1.1 and 3.1.2. Accordingly, as its sole and exclusive monetary remedy for an Owner Default with respect to any of its covenants and obligations set forth in Sections 3.1.1 and 3.1.2, the City shall be entitled to (1) terminate this Covenant Agreement and the entirety of its obligations hereunder, including any accrued and unpaid Covenant Payments, and (2) receive from Owner the applicable amount of Liquidated Damages as provided by Section 1.3.11.

**3.6.2 ACKNOWLEDGEMENT OF REASONABLENESS OF LIQUIDATED DAMAGES.** UPON AN OWNER DEFAULT WITH RESPECT TO ANY OF ITS OBLIGATIONS SET FORTH IN SECTIONS 3.1.1 AND 3.1.2, FOLLOWING NOTICE AND OPPORTUNITY TO CURE PURSUANT TO SECTION 3.3.1, THE CITY AND OWNER ACKNOWLEDGE AND AGREE THAT IT WOULD BE EXTREMELY DIFFICULT AND IMPRACTICAL TO ASCERTAIN THE AMOUNT OF DAMAGES THAT WOULD BE SUFFERED BY THE CITY WITH RESPECT TO SUCH DEFAULT. HAVING MADE DILIGENT BUT UNSUCCESSFUL ATTEMPTS TO ASCERTAIN THE ACTUAL DAMAGES THE CITY WOULD SUFFER, THE PARTIES AGREE THAT THE LIQUIDATED DAMAGES AMOUNT AS DETERMINED IN ACCORDANCE WITH SECTION 1.3.11 REPRESENTS A REASONABLE ESTIMATION OF THOSE DAMAGES. THEREFORE, UPON AN OWNER DEFAULT WITH RESPECT TO ANY OF ITS OBLIGATIONS SET FORTH IN SECTIONS 3.1.1 AND 3.1.2, AS ITS SOLE AND EXCLUSIVE REMEDY FOR SUCH DEFAULT, THE CITY SHALL BE ENTITLED TO (1) RECEIPT OF THE LIQUIDATED DAMAGES AMOUNT CALCULATED IN ACCORDANCE WITH SUBSECTION 1.3.11, WHICH OWNER SHALL PAY WITHIN TEN (10) DAYS FOLLOWING WRITTEN DEMAND FROM THE CITY, AND (2) TERMINATE THIS AGREEMENT AND THE ENTIRETY OF ITS OBLIGATIONS HEREUNDER, INCLUDING ANY ACCRUED BUT YET UNPAID COVENANT PAYMENTS.

SO  
\_\_\_\_\_  
Initials of Authorized  
City Representative

PR  
\_\_\_\_\_  
Initials of Authorized  
Owner Representative

**ARTICLE 4. GENERAL TERMS**

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

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

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

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

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

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

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

**4.8 Intentionally Omitted.**

**4.9 Time Deadlines Critical; Extensions and Delays; No Excuse Due to Economic Changes.** Time is of the essence in the performance of the City's and Owner's obligations under this Covenant Agreement. In addition to specific provisions of this Covenant Agreement providing for extensions of time, times for performance hereunder shall be extended where delays or defaults are due to war; insurrection; any form of labor dispute; lockouts; riots; floods; earthquakes; fires; acts of God or of third-parties; third-party litigation; acts of a public enemy;

initiative or referenda; acts of governmental authorities (except that the failure of the City to act as required hereunder shall not excuse its performance); moratoria (except those imposed or enacted by the City); epidemics; quarantine restrictions; and freight embargoes (collectively, “Enforced Delays”) provided, however, that the Party claiming the extension notify the other Party of the nature of the matter causing the default; and, provided further, that the extension of time shall be only for the period of the Enforced Delays. However, deadlines for performance may not be extended as provided above due to any inability of the Owner to obtain or maintain acceptable financing for the operation of the Business Location that Participates in the Sales Process.

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

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

**OWNER’S INITIALS**           <sup>DS</sup>  
*PK*

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



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

**4.12 Addition of Affiliates.** At such time as an Affiliate of Owner desires to locate at the Property, Owner shall request approval in writing from the City to locate the Affiliate at the Property and have any sales tax generated by the Affiliate included in the Sales Tax Revenues attributable to Owner for calculation of the Covenant Payment. Said written request shall be submitted to the City Manager for review and consideration by the City Council, following any legally required noticing and public hearings. Said review shall be in the City's sole and unfettered discretion. As condition precedent to the City consideration of the request, Owner and the Affiliate shall make and attest to all representation and warranties required by this Agreement, including but not limited to that inclusion of the Affiliate in this Agreement or the implementation thereof will not violate Government Code Section 53084.5. Additionally, City shall only make a Covenant Payment to Owner. Owner shall be prohibited from sharing the Covenant Payment with Affiliate and Affiliate shall be prohibited from requesting the City enter into a separate Operating Covenant Agreement with Affiliate directly. City shall have no liability to Affiliate for the distribution of Covenant Payments.

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

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

**4.15 Counterpart Originals; Integration.** This Covenant Agreement may be executed in duplicate originals, each of which is deemed to be an original, but when taken

together shall constitute but one and the same instrument. This Covenant Agreement and any exhibits represent the entire understanding of the Parties and supersedes all negotiations, letters of intent, memoranda of understanding or previous agreements between the parties with respect to all or any part of the subject matter hereof.

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

**4.17 Successors and Assigns.** The terms, covenants and conditions of this Covenant Agreement shall be binding upon and inure to the benefit of the Parties hereto and their successors and assigns. Except as provided in this Section 4.16, Owner shall neither transfer nor convey Owner's interest in the Property or the Dealership without the express written consent of the City, which shall not be unreasonably withheld, conditioned or delayed. In determining whether to approve of such a sale, transfer, conveyance or assignment of the Owner's interest in the Property, the City shall evaluate: (i) the financial ability of the proposed transferee to own and operate the Business Location that Participates in the Sales Process, or portion so transferred, and to meet the Owner's obligations under this Covenant Agreement; (ii) the fitness and experience of the proposed transferee and its managerial personnel to own and operate the Dealership or portion so transferred thereof; and (iii) the ability of the proposed transferee to maintain a level of quality and service comparable to that maintained by the Owner for the Business Location that Participates in the Sales Process. Notwithstanding anything to the contrary contained in this Covenant Agreement, however, Owner may assign, without the City's consent, this Covenant Agreement, its interest in the Property and/or the Dealership to any assignee provided that: (a) such assignment is pursuant to a sale of all or substantially all of Owner's assets; and (b) the applicable assignee has a credit rating (as determined by Moody's Investor Service) equal to or better than Owner's as of the time of the Effective Date. Upon the permitted sale, transfer or conveyance by Owner of its interest therein, such owner shall thereupon be relieved of its obligations under this Covenant Agreement from and after the date of sale, transfer or conveyance except with respect to any defaults in the performance of its obligations hereunder or thereunder which occurred prior to such sale, transfer or conveyance, and the transferee shall thereafter be solely responsible for the performance of all of the duties and obligations of Owner under this Covenant Agreement.

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

**4.19 No Effect on Eminent Domain Authority.** Nothing in this Covenant Agreement shall be deemed to limit, modify, or abridge or affect in any manner whatsoever the City's or City's eminent domain powers with respect to the Property, the Business Location that

Participates in the Sales Process, or any other property owned by Business Location that Participates in the Sales Process.

**4.20 Warranty Against Payment of Consideration for Covenant Agreement.**

Owner warrants that it has not paid or given, and will not pay or give, any third-party any money or other consideration for obtaining this Covenant Agreement. Third-parties, for the purposes of this Section 4.20, shall not include persons to whom fees are paid for professional services if rendered by attorneys, financial consultants, accountants, engineers, architects and the like when such fees are considered necessary by Owner.

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

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

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

**4.24 Indemnity.** The Parties hereby agree to indemnify and save and hold one another harmless from and against any third party claims for “damages” (which term shall mean actual cash expenditures arising out of, resulting from, or relating to any damage, liability, loss, cost or deficiency, including, but not limited to, reasonable attorneys’ fees and other costs and expenses incident to proceedings or investigations for the defense of any claim) brought against a Party arising out of, or resulting from any failure by the indemnifying Party to duly perform and observe any term, provision or covenant to be performed by that Party pursuant to this Agreement.

**[Signatures on the following pages]**

**SIGNATURE PAGE TO THE  
OPERATING COVENANT AGREEMENT**

CITY OF ONTARIO  
a California municipal corporation

By: DocuSigned by:  
*Scott Ochoa*  
943ADB3C46DD448...

ATTEST:

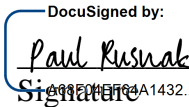
By: DocuSigned by:  
*Claudia Y. Isbell*  
CFCFD83BA5A44F7...

APPROVED AS TO FORM:

By: DocuSigned by:  
*Ryan Guiboa*  
15FBBA5D8E204E7...  
Best Best & Krieger LLP  
City Attorney

**SIGNATURE PAGE TO THE  
OPERATING COVENANT AGREEMENT**

**RUSNAK/ONTARIO, a California corporation**

By:  \_\_\_\_\_  
Signature

Paul Rusnak  
\_\_\_\_\_  
Name (Print)

President  
\_\_\_\_\_  
Title (Print)

**Certificate Of Completion**

Envelope Id: D69814CCDF7C400B91B2BCEF5673A4B3	Status: Completed
Subject: Complete with DocuSign: Final Operating Covenant Agreement - Genesis.pdf	
Source Envelope:	
Document Pages: 21	Signatures: 3
Certificate Pages: 5	Initials: 3
AutoNav: Enabled	Envelope Originator:
Envelopeld Stamping: Enabled	Karla Tavera
Time Zone: (UTC-08:00) Pacific Time (US & Canada)	303 E B St
	Ontario, CA 91764
	KTavera@ontarioca.gov
	IP Address: 162.218.234.2


**Record Tracking**

Status: Original	Holder: Karla Tavera	Location: DocuSign
11/1/2023 9:45:58 AM	KTavera@ontarioca.gov	
Security Appliance Status: Connected	Pool: StateLocal	
Storage Appliance Status: Connected	Pool: Carahsoft OBO City of Ontario	Location: DocuSign

**Signer Events**

Paul Rusnak  
 prusnak@rusnakautogroup.com  
 President  
 Security Level: Email, Account Authentication (None)

**Signature**

  
 Signature Adoption: Pre-selected Style  
 Using IP Address: 69.178.191.124

**Timestamp**

Sent: 11/1/2023 9:50:10 AM  
 Viewed: 11/1/2023 10:44:40 AM  
 Signed: 11/1/2023 10:46:19 AM

**Electronic Record and Signature Disclosure:**

Accepted: 9/22/2023 4:31:59 PM  
 ID: e105fda0-27a6-400c-aaae-dae39429192b

Scott Ochoa  
 SOchoa@ontarioca.gov  
 City Manager  
 City of Ontario  
 Signing Group: City Manager  
 Security Level: Email, Account Authentication (None)

  
 Signature Adoption: Pre-selected Style  
 Using IP Address: 162.218.234.2

Sent: 11/1/2023 10:46:20 AM  
 Viewed: 11/1/2023 11:04:46 AM  
 Signed: 11/1/2023 11:05:10 AM

**Electronic Record and Signature Disclosure:**

Accepted: 8/4/2023 11:56:01 AM  
 ID: 10802c31-b229-4062-97d5-9867a935bb5a

Ryan Guiboa  
 ryan.guiboa@bbklaw.com  
 Signing Group: Best Best & Krieger  
 Security Level: Email, Account Authentication (None)

  
 Signature Adoption: Pre-selected Style  
 Using IP Address: 174.193.131.5  
 Signed using mobile

Sent: 11/1/2023 11:05:12 AM  
 Viewed: 11/1/2023 1:57:41 PM  
 Signed: 11/1/2023 1:58:02 PM

**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

Claudia Y. Isbell  
 cisbell@ontarioca.gov  
 Security Level: Email, Account Authentication (None)

  
 Signature Adoption: Pre-selected Style  
 Using IP Address: 162.218.234.2

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 Signed: 11/1/2023 2:29:32 PM

**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

<b>In Person Signer Events</b>	<b>Signature</b>	<b>Timestamp</b>
<b>Editor Delivery Events</b>	<b>Status</b>	<b>Timestamp</b>
<b>Agent Delivery Events</b>	<b>Status</b>	<b>Timestamp</b>
<b>Intermediary Delivery Events</b>	<b>Status</b>	<b>Timestamp</b>
<b>Certified Delivery Events</b>	<b>Status</b>	<b>Timestamp</b>
<b>Carbon Copy Events</b>	<b>Status</b>	<b>Timestamp</b>
<b>Witness Events</b>	<b>Signature</b>	<b>Timestamp</b>
<b>Notary Events</b>	<b>Signature</b>	<b>Timestamp</b>
<b>Envelope Summary Events</b>	<b>Status</b>	<b>Timestamps</b>
Envelope Sent	Hashed/Encrypted	11/1/2023 9:50:10 AM
Certified Delivered	Security Checked	11/1/2023 2:29:03 PM
Signing Complete	Security Checked	11/1/2023 2:29:32 PM
Completed	Security Checked	11/1/2023 2:29:32 PM
<b>Payment Events</b>	<b>Status</b>	<b>Timestamps</b>
<b>Electronic Record and Signature Disclosure</b>		

## **ELECTRONIC RECORD AND SIGNATURE DISCLOSURE**

From time to time, Carahsoft OBO City of Ontario (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through the DocuSign system. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to this Electronic Record and Signature Disclosure (ERSD), please confirm your agreement by selecting the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

### **Getting paper copies**

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. You will have the ability to download and print documents we send to you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

### **Withdrawing your consent**

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

### **Consequences of changing your mind**

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

### **All notices and disclosures will be sent to you electronically**



Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

### **How to contact Carahsoft OBO City of Ontario:**

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: [rsigler@ontarioca.gov](mailto:rsigler@ontarioca.gov)

### **To advise Carahsoft OBO City of Ontario of your new email address**

To let us know of a change in your email address where we should send notices and disclosures electronically to you, you must send an email message to us at [rsigler@ontarioca.gov](mailto:rsigler@ontarioca.gov) and in the body of such request you must state: your previous email address, your new email address. We do not require any other information from you to change your email address.

If you created a DocuSign account, you may update it with your new email address through your account preferences.

### **To request paper copies from Carahsoft OBO City of Ontario**

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an email to [rsigler@ontarioca.gov](mailto:rsigler@ontarioca.gov) and in the body of such request you must state your email address, full name, mailing address, and telephone number. We will bill you for any fees at that time, if any.

### **To withdraw your consent with Carahsoft OBO City of Ontario**

To inform us that you no longer wish to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an email to [rsgler@ontarioca.gov](mailto:rsgler@ontarioca.gov) and in the body of such request you must state your email, full name, mailing address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

### **Required hardware and software**

The minimum system requirements for using the DocuSign system may change over time. The current system requirements are found here: <https://support.docusign.com/guides/signer-guide-signing-system-requirements>.

### **Acknowledging your access and consent to receive and sign documents electronically**

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please confirm that you have read this ERSD, and (i) that you are able to print on paper or electronically save this ERSD for your future reference and access; or (ii) that you are able to email this ERSD to an email address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format as described herein, then select the check-box next to ‘I agree to use electronic records and signatures’ before clicking ‘CONTINUE’ within the DocuSign system.

By selecting the check-box next to ‘I agree to use electronic records and signatures’, you confirm that:

- You can access and read this Electronic Record and Signature Disclosure; and
- You can print on paper this Electronic Record and Signature Disclosure, or save or send this Electronic Record and Disclosure to a location where you can print it, for future reference and access; and
- Until or unless you notify Carahsoft OBO City of Ontario as described above, you consent to receive exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by Carahsoft OBO City of Ontario during the course of your relationship with Carahsoft OBO City of Ontario.