

QVC OPERATING COVENANT AGREEMENT
between
THE CITY OF ONTARIO,
a California municipal corporation,
and
QVC, INC.,
a Delaware corporation

Dated as of [June 16, 2015], for reference purposes only

RECITALS

WHEREAS, QVC, Inc. (“QVC”), a Delaware corporation, a retailer of consumer products with distribution in the United States of America and its territories is considering locating and leasing a new distribution center and warehouse within the City of Ontario, California; and

WHEREAS, the incentives provided in this Agreement are intended to ensure QVC establishes a new warehouse and distribution center within the City, expands its operations within the City as appropriate and remains in the City for not less than 41 years; and

WHEREAS, the City has determined that the establishment of the new QVC warehouse and distribution center within the City will generate substantial revenue for the City, create new jobs, revitalize an area of the City which has suffered a loss of jobs and businesses during the economic downturn of the mid-2000’s, and result in community and public improvements that might not otherwise be available to the community for many years.

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 QVC agree as follows:

ARTICLE 1. EFFECTIVE DATE; PARTIES; DEFINITIONS

1.1 Effective Date of Covenant Agreement. This QVC Operating Covenant Agreement (“Covenant Agreement”) is dated June 16, 2015, for reference purposes only. This Covenant Agreement will not become effective (the “Effective Date”) until the later of (a) July 1, 2015 or (b) the date on which all of the following are true:

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

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

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

If all of the foregoing conditions precedent have not been satisfied by August 1, 2015, then this Covenant Agreement shall not thereafter become effective and any prior signatures and approvals of the Parties will be deemed void and of no force or effect.

1.2 Parties to Covenant Agreement.

1.2.1 The City. The address of the City is 303 East B Street, Ontario, California 91764, Attention: Al C. Boling, City Manager, 303 East B Street, Ontario, CA 91764;

telephone (909) 395-2396; facsimile (909) 395-2189; with copies to John Brown, City Attorney, 2855 East Guasti Road, Suite 400, Ontario, CA 91761, Telephone: (909) 989-8584.

The City represents and warrants to Owner that:

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

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

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

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

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

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

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

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

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

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

1.2.2 Owner. The address of QVC (“**Owner**”) for purposes of this Covenant Agreement is 1200 Wilson Drive MC 131, West Chester, PA 19380; telephone (484) 701-8084; facsimile (484) 701-1551.

Owner represents and warrants to the City that:

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

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

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

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

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

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

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

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

As used in this Covenant Agreement, the term “actual current knowledge of Owner” shall mean, and shall be limited to, the actual current knowledge of James Reid, Vice President of Distribution/Operations, and Bryce C. Mason, Vice President of Work Place Services, as of the Effective Date, without having undertaken any independent inquiry or investigation for the purpose of making such representation or warranty and without any duty of inquiry or investigation.

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

assignee or successor of Owner.

The qualifications and identity of Owner are of particular concern to the City, and it is because of such qualifications and identity that the City has entered into this Covenant Agreement with Owner. No voluntary or involuntary successor-in-interest of Owner shall acquire any rights or powers under this Covenant Agreement except as expressly set forth herein. Notwithstanding the foregoing, Owner may voluntarily assign the rights, duties, and obligations under this Covenant Agreement subject to the consent of the City, which said consent shall not be unreasonably withheld, and/or as provided in Section 4.16 hereof.

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

1.3 Definitions.

1.3.1 “BOE” means the California State Board of Equalization.

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

1.3.3 “Computation Quarter” means each calendar quarter beginning on January 1, April 1, July 1, or October 1, as applicable, and ending on the succeeding March 31, June 30, September 30, or December 31, as applicable. The first Computation Quarter within the Eligibility Period, expected to commence on July 1, 2015, shall be referred to herein as “Computation Quarter 1,” with each succeeding Computation Quarter within the Eligibility Period being consecutively numbered, concluding with Computation Quarter 164.

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 forty-one (41) years following the Effective Date (unless terminated sooner pursuant to specific provisions of this Covenant Agreement).

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

1.3.7 “Distribution Center and Warehouse” means that certain QVC corporate sales/administrative office and fulfillment/distribution center operated on the Property by Owner. For purposes of clarification, the Distribution Center and Warehouse shall primarily serve as a warehouse but may include all ancillary uses in support of QVC’s warehousing of consumer products for distribution and sales including, but not limited to, office and administrative uses, digital photography and/or television broadcast studio operations, QVC’s marketing activities, corporate meetings and employee appreciation events, and incidental services and uses for the benefit of QVC’s employees, such as fitness facilities, cafeteria/food service operations, and an “employee store” for the purchase of QVC’s consumer products by QVC’s employees and, from time to time, members of the general public.

1.3.8 “Eligibility Period” means the period commencing as of the first (1st) day of Computation Quarter 1 and ending the last day of Computation Quarter 164 (i.e., ~~Sept. 30, 2056~~).

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 Computation Quarters 1 through 20, an amount equal to the previous three (3) Computation Quarter Covenant Payments paid to Owner prior to the Computation Quarter in which the breach occurs.

(b) If the breach occurs during Computation Quarters 21 through 40, an amount equal to the previous two (2) Computation Quarter Covenant Payments paid to Owner prior to the Computation Quarter in which the breach occurs.

(c) If the breach occurs during Computation Quarters 41 through 164, an amount equal to the previous Computation Quarter Covenant Payments paid to Owner prior to the Computation Quarter in which the breach occurs.

1.3.12 “New Distribution Center and Warehouse” means a corporate sales/administrative office and fulfillment/distribution center operated outside of the City of Ontario but within the State of California by Owner.

1.3.13 “New Tax” means, after the effective date of this Covenant Agreement, any increase in tax adopted or imposed by the City which is payable directly to the City, or indirectly to the extent the City receives a direct financial benefit, as a result of any of the following: (a) the adoption or taking effect of any Law; (b) any change in any Law or in the administration, interpretation, implementation or application thereof by the City; or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of Law) by the City.

1.3.14 “Owner” means and refers to QVC, a Delaware corporation, and its successors and assigns, cumulatively.

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

1.3.16 “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.

1.3.17 “Property” means that certain real property commonly known as 853 Del Rio Place, Ontario, CA 91764, or any other property within the City of Ontario to which Owner may elect to relocate the Distribution Center and Warehouse during the term of this Covenant Agreement.

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

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

1.3.20 “Sales Tax Revenues” means the net Sales Tax actually received by the City from the BOE pursuant to the application of the Sales Tax Law (as such statutes may hereafter be amended, substituted, replaced, re-numbered, moved or modified by any successor law) attributable to Owner’s Sales Activities and/or the Distribution Center and Warehouse in a particular Computation Quarter, inclusive of any offsetting revenues described in the last paragraph of Section 4.23 hereof. Sales Tax Revenues shall not include: (i) Penalty Assessments; (ii) any Sales Tax levied by, collected for or allocated to the State of California, the County of San Bernardino, or a district or any entity (including an allocation to a statewide or countywide pool) other than City; (iii) any administrative fee charged by the BOE; (iv) any Sales Tax subject to any sharing, rebate, offset or other charge imposed pursuant to any applicable provision of federal, state or local (except City’s) law, rule or regulation; (v) any Sales Tax attributable to any transaction not consummated within the Eligibility Period; or (vi) any Sales Tax (or other funds measured by Sales Tax) required by the State of California to be paid over to another public entity (including the State) or set aside and/or pledged to a specific use other than for deposit into or payment from the City’s general fund.

1.3.21 “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 both (i) Owner’s Sales Activities and (ii) for products shipped from the Distribution Center and Warehouse to addresses located in California.

1.3.22 “Trigger Event” means the adoption or implementation by the City of Ontario of a New Tax assessed to 10 or fewer persons or entities which results in an increase in tax paid by Owner to the City in excess of One Hundred Thousand Dollars (\$100,000) in any calendar.

ARTICLE 2. ADDITIONAL RECITALS; CITY COVENANTS

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

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

2.3 The Parties agree and acknowledge that Owner will be leasing and operating within the City a new facility of approximately 1,053,234 square feet. The facility will primarily operate for the warehousing of goods for future distribution with ancillary support, distribution and administrative services, all as described in Section 1.3.7 hereof. Based upon the currently described and intended use of the Distribution Center and Warehouse, the City Council has found that the new facility is a warehouse for purposes of assessing business license taxes pursuant to the Ontario Municipal Code provisions regarding the licensing of businesses and that the intended use is "warehousing" for purposes of Section 3-1.216 of the City of Ontario Municipal Code.

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 Distribution Center and Warehouse 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 a Point of Sale. Owner covenants and agrees that, for the term of the Operating and Use Covenant as described in Section 3.1.1, Owner shall maintain such licenses and permits as may be required by any governmental agency to conduct Owner's Sales Activities related to the Distribution Center and Warehouse. Except as otherwise provided by applicable Law, Owner shall use commercially reasonable efforts to designate City as a "point of sale" and consummate at the Distribution Center and Warehouse all Taxable Ontario Sales. and the Owner shall identify the City as such in its reports to the BOE in accordance with the Bradley-Burns Uniform Local Sales and Use Tax Law (Revenue and Taxation Code 7200, *et seq.*), as it may be amended or substituted. Owner shall use commercially reasonable efforts to fulfill product sales to California residents from the Distribution Center and Warehouse. The Owner shall consummate all Taxable Ontario Sales transactions for Owner's Sales Activities at the Distribution Center and Warehouse, consistent with all applicable statutory and BOE regulatory requirements applicable to Owner's Sales

Activities and the designation of the City as the “point of sale” for all such Taxable Ontario Sales.

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

3.1.4 Covenant Against Solicitation and Acceptance of Economic Incentives During the Term of the Operating Use Covenant. Owner covenants and agrees that, for the term of the Operating and Use Covenant as described in Section 3.1.1, Owner will not directly or indirectly solicit or accept any “Financial Assistance” from any other public or private person or entity, if such Financial Assistance is given for the purpose of causing or would result in either Owner’s breach of any of the Covenants. 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 Distribution Center and Warehouse and conducting Owner’s Sales Activities in accordance with this Covenant Agreement.

3.2 Covenant Payments.

3.2.1 Statement of Intent. The City’s obligations under this Section 3.2 are contingent on a Computation Quarter-to-Quarter basis and, for each Computation Quarter (hereinafter described), City’s obligations to make any payments hereunder are expressly contingent upon the Owner having, for the entirety of such Computation Quarter, completely fulfilled its material obligations under this Covenant Agreement, including, without limitation, the Covenants. The Parties hereto each acknowledge and agree that the intent of each such Party is that any payment made pursuant to Sections 3.2.2 shall be made from any available funds designated for payment by the City and shall not be a rebate, refund or abatement of the Taxes payable by Owner. Any reference to percentage of Sales Tax Revenues is for purposes of calculation and not a commitment of a specific revenue source.

3.2.2 Covenant Payment Amount. The consideration to be paid to the Owner in exchange for the Covenants and Owner's performance of its obligations set forth in this Covenant Agreement, and subject to satisfaction of all conditions precedent thereto, shall consist of City's payment to the Owner for each Computation Quarter during the Eligibility Period that the City receives Sales Tax Revenue, an amount equal to (a) an amount equal to the sum of (1) fifty-five percent (55%) of the Sales Tax Revenues attributable to annual taxable sales for the calendar year which includes such Computation Quarter up to five hundred million dollars (\$500,000,000.00), as determined on a cumulative basis for such calendar year, and (2) sixty percent (60%) of the Sales Tax Revenues attributable to annual taxable sales for the calendar year which includes such Computation Quarter over five hundred million dollars (\$500,000,000.00), as determined on a cumulative basis for such calendar year, plus (b) provided that the business license tax payable by Owner exceeds the amount due in the previous calendar year by ten percent (10%) or more, an amount equal to any increase in business license taxes payable to City by Owner as a result of City imposing an aggregate business license tax on Owner in an amount greater than the applicable business license taxes computed as if Owner's operations solely consisted of "warehousing" activities within the meaning of Section 3-1.216 of the City of Ontario Municipal Code (and any successor law thereto, plus (c) an amount equal to sixty percent (60%) of the Sales Tax Revenues attributable to Owner's self-accrual of use tax which is directly allocated to the City, including, without limitation, in connection with Owner's purchase of machinery and equipment from outside of California during such Computation Quarter; plus (d) an amount equal to sixty percent (60%) of the Sales Tax Revenues attributable to Sales Tax generated as a result of the development and construction of the Distribution Center and Warehouse in the City of Ontario; plus (e) after the occurrence of a Trigger Event, an amount equal to any New Taxes payable by Owner in respect of such Computation Quarter. Any such payment due pursuant to this Section shall not be due unless Owner has completely fulfilled its material obligations under this Covenant Agreement, including, without limitation, the Covenants. Should such condition precedent not be satisfied for each Computation Quarter, then City shall have no obligation under this Section 3.2 to make any Covenant Payments to Owner in such Computation Quarter.

3.2.3 Computation Quarter Covenant Payments. Within thirty (30) days following the end of each Computation Quarter, Owner shall submit to City copies of its quarterly reports to the BOE for the applicable Computation Quarter which sets forth the amount of Sales Taxes paid to the BOE during the Computation Quarter arising from Owner's Sales Activities and/or attributable to the Distribution Center and Warehouse. Within one hundred twenty (120) days following the end of each Computation Quarter, City shall pay to Owner any Computation Quarter Covenant Payment due for such Computation Quarter.

3.2.4 No Carry Forward or Back. The determination of the Covenant Payment(s) shall be determined and calculated on a Computation Quarter to Computation Quarter basis. Except as provided in Section 3.2.5 or 3.2.6, no Sales Tax Revenue which is generated in a Computation Quarter other than the Computation Quarter for which the Covenant Payment is being determined shall be used or considered in the calculation of any Covenant Payment which may be due for that Computation Quarter.

3.2.5 Adjustments to Covenant Payment Amounts. If after City makes a Covenant Payment to Owner hereunder City or Owner determines that the Covenant Payment

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

3.2.6 BOE Determination of Improperly Allocated Local Sales Tax Revenues. If, at any time during or after the Eligibility Period of this Covenant Agreement, the BOE determines that all or any portion of the Sales Tax Revenues received by the City were improperly allocated and/or paid to the City, and if the BOE requires repayment of, offsets against future sales tax payments, or otherwise recaptures from the City those improperly allocated and/or paid Sales Tax Revenues, then Owner shall, within thirty (30) calendar days after written demand from the City, repay all Covenant Payments (or applicable portions thereof) theretofore paid to Owner which are attributable to such repaid, offset or recaptured Sales Tax Revenues. If Owner fails to make such repayment within thirty (30) calendar days after the City's written demand, then Owner shall be in breach of this Covenant Agreement and such obligation shall accrue interest from the date of the City's original written demand at the then-maximum legal rate imposed by the California Code of Civil Procedure on prejudgment monetary obligations, compounded monthly, until paid. Additionally, the City may deduct any amount required to be repaid by Owner under this Section 3.2.6 from any future Covenant Payments otherwise payable to Owner under this Covenant Agreement. This Section 3.2.6 shall survive the expiration or termination of this Covenant Agreement. The City immediately will contact Owner regarding any communication from the BOE pertaining to tax allocations associated with Owner's business. The City and Owner agree that, should the BOE question the correctness of the allocation or otherwise determine that there has been an improper allocation to the City, the City will engage legal counsel to use his or her best efforts to defend such allocation in all BOE administrative proceedings. Any cost or expense associated with such efforts will be borne by the Owner and the City equally. For purposes of this paragraph, administrative proceedings include all BOE meetings, conferences and appeals before BOE Board Members. Owner will reasonably cooperate with the City and its attorney. Additionally, Owner shall have the right, but not the obligation, to participate in any such administrative proceedings and may engage its own legal counsel or consultant, at its own cost.

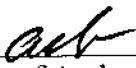
3.2.7 Not a Pledge of Sales Tax. Owner acknowledges that the City is not making a pledge of Sales Tax Revenues, or any other particular source of funds; the definition of Sales Tax Revenues, as used herein, is used merely as a measure of the amount payment due hereunder and as means of computing the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

QVC OPERATING COVENANT AGREEMENT
between
THE CITY OF ONTARIO,
a California municipal corporation,
and
QVC, INC.,
a Delaware corporation


Dated as of [June 16, 2015], for reference purposes only

location of the Distribution Center and Warehouse 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.



Initials of Authorized
City Representative



Initials of Authorized
Owner Representative

3.7 LIQUIDATED DAMAGES FOR LOSS OF SALES TAX. The Parties acknowledge and agree that that the consideration to the City for its entry into this Covenant Agreement and the performance of its obligations hereunder include the City's receipt of Sales Tax Revenues, employment and other payroll taxes, property taxes, and other direct and indirect financial and non-financial benefits arising from the operation Owner's Sales Activities and the location of the Distribution Center and Warehouse in the City. During the three (3) year period following the Effective Date, Owner shall not acquire, lease or construct any New Distribution Center and Warehouse. Notwithstanding the foregoing, Owner may acquire an operating business with a pre-existing fulfillment/distribution center provided the Sale Tax Revenue

received by the City is Three Million Two Hundred Fifty Thousand Dollars (\$3,250,000) by the third anniversary of the Effective Date or City shall be entitled to receipt of the Liquidated Damages amount calculated in accordance with Section 1.3.11, which owner shall pay within thirty (30) days following written demand from the City. If, after the third anniversary of the Effective Date, Owner acquires, leases constructs, owns or operates a New Distribution Center and Warehouse and Owner's Sales Tax Revenue received by City from annual taxable sales attributable to the Distribution Center and Warehouse is less than Three Million Two Hundred Fifty Thousand Dollars (\$3,250,000), the City shall be entitled to receipt of the Liquidated Damages amount calculated in accordance with Subsection 1.3.11, which Owner shall pay within thirty (30) days following written demand from the City. For the avoidance of doubt, the Liquidated Damage amount payable pursuant to this Section 3.7 shall be (1) a one-time payment, (2) the sole remedy for City arising from, or with respect to, Owner's acquisition, construction, ownership or operation of any New Distribution Center and Warehouse and (3) not entitle the City to terminate this Covenant Agreement and its obligations hereunder.

ARTICLE 4. GENERAL TERMS

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

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

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

4.4 Notices and Demands. All notices or other communications required or permitted between the City and Owner under this Covenant Agreement shall be in writing, and may be (i) personally delivered, (ii) sent by United States registered or certified mail, postage prepaid, return receipt requested, (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 Distribution Center and Warehouse; provided that nothing in this Section 4.7 shall be deemed to limit the operation of Section 4.16. Without limiting the general applicability of the foregoing, Owner acknowledges that Owner's lender and any transferee of Owner's lender shall be subject to the transfer restrictions of Section 4.16.

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

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

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

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

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

OWNER'S INITIALS



4.10 Attorneys' Fees. In the event of the bringing of an arbitration, action or suit by a Party hereto against another Party hereunder by reason of any breach of any of the covenants or agreements or any intentional inaccuracies in any of the representations and warranties on the part of the other Party arising out of this Covenant Agreement or any other dispute between the Parties concerning this Covenant Agreement or the Property, then, in that event, the prevailing party in such action or dispute, whether by final judgment or arbitration award, shall be entitled to have and recover of and from the other Party all costs and expenses of suit or claim, including actual attorneys' fees. Any judgment, order or award entered in any final judgment or award shall contain a specific provision providing for the recovery of all costs and expenses of suit or claim, including actual attorneys' fees (collectively, the "**Costs**") incurred in enforcing, perfecting and executing such judgment or award. For the purposes of this Section 4.10, "**Costs**" shall include, without implied limitation, attorneys' and experts' fees, costs and expenses

incurred in the following: (i) post judgment motions and appeals, (ii) contempt proceedings, (iii) garnishment, levy and debtor and third party examination, (iv) discovery; and (v) bankruptcy litigation. This Section 4.10 shall survive any termination of this Covenant Agreement.

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

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

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

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

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

4.16 Successors and Assigns. The terms, covenants and conditions of this Covenant Agreement shall be binding upon and inure to the benefit of the Parties hereto and their successors and assigns. Except as provided in this Section 4.16, Owner shall neither transfer nor convey Owner's interest in the Property or the Distribution Center and Warehouse 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 Distribution Center and Warehouse, or portion so transferred, and to meet the Owner's obligations under this Covenant Agreement; (ii) the fitness and experience of the proposed transferee and its managerial personnel to own and operate the Distribution Center and Warehouse or portion so transferred thereof; and (iii) the ability of the proposed transferee to maintain a level of quality and service comparable to that maintained by the Owner for the Distribution Center and Warehouse. 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 Distribution Center and Warehouse 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.

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

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

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

4.20 Severability. The City and Owner declare that the provisions of this Covenant Agreement are severable. If it is determined by a court of competent jurisdiction that any term, condition or provision hereof is void, voidable, or unenforceable for any reason whatsoever, then

such term, condition or provision shall be severed from this Covenant Agreement and the remainder of the Covenant Agreement enforced in accordance with its terms.

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

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

4.23 Indemnity. Each Party shall defend, indemnify and hold harmless the other Party, its elected officials, officers, employees and agents from and against any and all third party claims, losses, proceedings, damages, causes of action, liability, cost and expense (including reasonable attorney's fees) arising from, in connection with or related to this Agreement or the functions or operations of the Distribution Center and Warehouse (other than to the extent arising as a result of the other Party's active negligence or willful misconduct). The Party's shall fully cooperate in the defense of any such actions and upon written request of the other Party shall provide such documents and records that are relevant to such actions and not otherwise protected by law. Notwithstanding the foregoing, should any third party bring any such action or proceeding Owner shall have the right to terminate this Agreement, and as of such date of termination, all unaccrued liabilities of the parties under this Agreement shall cease except for Owner's obligation of indemnity owed to the City as provided in this Section 4.23. For purposes of clarification, should Owner exercise its termination right as provided in this Section 4.23, the same shall not be considered a Default and the City shall have no claims against Owner for liquidated damages. Notwithstanding the foregoing, any costs, including reasonable attorney fees and related litigation costs, incurred by the City to defend from or against any and all third party claims, losses, proceedings, damages, causes of action, liability, cost and expense arising from, in connection with, or related to this Agreement or the functions or operations of the Distribution Center and Warehouse shall be shared equally by the Parties.

4.24 State of California Legislation Impact on Covenant Payment. Owner acknowledges that the California legislature has in the past adopted certain legislation which diverted to the State of California a portion of the Sales Tax Revenues which were otherwise


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

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

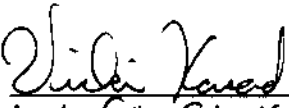
[Signatures on the following pages]

**SIGNATURE PAGE TO THE
QVC OPERATING COVENANT AGREEMENT**

CITY OF ONTARIO
a California municipal corporation

By:  _____

ATTEST:


By:  _____
Asst. City Clerk

APPROVED AS TO FORM:

By:  _____
 John Brown
City Attorney

**SIGNATURE PAGE TO THE
QVC OPERATING COVENANT AGREEMENT**

QVC, INC.,
a Delaware Corporation

By: 

Signature
BRYCE MASON

Name (Print)
VICE PRESIDENT

Title (Print)