

SEVENTEENTH AMENDMENT TO OPTION TO PURCHASE AGREEMENT

This Seventeenth Amendment to Option to Purchase Agreement ("Seventeenth Amendment") is made as of December 18, 2023 ("Effective Date"), by and between the County of San Diego, a political subdivision of the State of California ("County") and the Parking Authority of the City of National City, a public body corporate and politic created pursuant to the Parking Law of 1949 ("Optionee") with reference to the following facts:

RECITALS

1. Optionee owns a 15.08-acre parcel of land at the southwest corner of Sweetwater Road and Bonita Center Road in National City, California, identified as County Assessor Parcel Number 564-4 71-11 ("Property").
2. In 1978, Optionee conveyed to County an easement for open space and/or park and recreational purposes ("Easement") over the Property.
3. Optionee wishes to purchase the Easement from County.
4. On April 3, 2007, County and Optionee entered into an Option to Purchase Agreement ("Option Agreement") setting forth the terms of an option whereby Optionee could purchase the Easement from County.
5. On December 13, 2007, Optionee exercised its option to purchase the Easement, and on March 12, 2008, Optionee and County opened escrow pursuant to the terms of the Option Agreement. The escrow was subsequently cancelled in 2011.
6. Optionee was unable to meet the 90-day deadline for closing escrow and requested that the date for close of escrow be extended to December 31, 2008.
7. On July 2, 2008, County and Optionee executed the First Amendment, which extended the deadline for close of escrow and the term of the Option Agreement to December 31, 2008.
8. Optionee was unable to meet the December 31, 2008 deadline. On October 14, 2008, County and Optionee executed the Second Amendment, which extended the deadline for close of escrow and the term of the Option Agreement to December 31, 2009.
9. Optionee was unable to meet the December 31, 2009 deadline and requested that the deadline for close of escrow and the term of the Option Agreement be extended for one additional year. On December 8, 2009, the parties executed the Third Amendment, which extended the deadline for close of escrow and the term of the Option Agreement to December 31, 2010.
10. Optionee was unable to meet the December 31, 2010 deadline and requested that the deadline for close of escrow and the term of the Option Agreement be extended for one additional year. On January 1, 2011, County and Optionee executed the Fourth Amendment, which extended the deadline for close of escrow and the term of the Option Agreement to December 31, 2011.
11. Optionee was unable to meet the December 31, 2011 deadline and requested that the deadline for close of escrow and the term of the Option Agreement be extended for one additional year.

On March 6, 2012, County and Optionee executed the Fifth Amendment, which extended the deadline for close of escrow and the term of the Option Agreement to December 31, 2012.

12. Optionee was unable to meet the December 31, 2012 deadline and requested that the deadline for close of escrow and the term of the Option Agreement be extended for one additional year. On November 1, 2013, County and Optionee executed the Sixth Amendment, which extended the deadline for close of escrow and the term of the Option Agreement to December 31, 2013.

13. Optionee was unable to meet the December 31, 2013 deadline and requested that the deadline for close of escrow and the term of the Option Agreement be extended for one additional year. On December 3, 2014, County and Optionee executed the Seventh Amendment, which extended the deadline for close of escrow and the term of the Option Agreement to December 31, 2014.

14. Optionee was unable to meet the December 31, 2014 deadline and requested that the deadline for close of escrow and the term of the Option Agreement be extended for one additional year. On April 21, 2015, County and Optionee executed the Eighth Amendment, which extended the deadline for close of escrow and the term of the Option Agreement to December 31, 2015.

15. On October 21, 2014, the Board of Optionee approved an Exclusive Negotiating Agreement ("ENA") between Optionee and CarMax Auto Superstores California, LLC ("CarMax") to allow Optionee and CarMax to negotiate the potential sale to CarMax of approximately 9.5 acres of the Property.

16. On August 18, 2015, the Board of Optionee approved an Option Agreement ("CarMax Option") between Optionee and CarMax to grant CarMax the right to purchase at least 9.5 acres for not less than \$3,500,000 and additional compensation for each square foot in excess of 9.5 acres of the Property.

17. Pursuant to Section 9 of the CarMax Option, a condition precedent to the close of escrow under the CarMax Option between Optionee and CarMax is Optionee's completion of the purchase of the Easement from the County.

18. Optionee was unable to meet the December 31, 2015 deadline and requested that the deadline for close of escrow and the term of the Option Agreement be extended for an additional year. Therefore, on December 28, 2015, the parties executed the Ninth Amendment, which extended the deadline for close of escrow and the term of the Option Agreement to December 31, 2016.

19. Optionee was unable to meet the December 31, 2016 deadline and requested that the deadline for close of escrow and the term of the Option Agreement be extended for one additional year. On December 6, 2016, County and Optionee executed the Tenth Amendment, which extended the deadline for close of escrow and the term of the Option Agreement to December 31, 2017.

20. Optionee was unable to meet the December 31, 2017 deadline and requested that the deadline for close of escrow and the term of the Option Agreement be extended for one additional year. On December 26, 2017, County and Optionee executed the Eleventh Amendment, which extended the deadline for close of escrow and the term of the Option Agreement to December 31, 2018.

21. Optionee was unable to meet the December 31, 2018 deadline and requested that the deadline for close of escrow and the term of the Option Agreement be extended for one additional year.

On December 4, 2018, County and Optionee executed the Twelfth Amendment, which extended the deadline for close of escrow and the term of the Option Agreement to December 31, 2019.

22. Optionee was unable to meet the December 31, 2019 deadline and requested that the deadline for close of escrow and the term of the Option Agreement be extended for one additional year. On December 16, 2019, County and Optionee executed the Thirteenth Amendment, which extended the deadline for close of escrow and the term of the Option Agreement to December 31, 2020.

23. Optionee was unable to meet the December 31, 2020 deadline and requested that the deadline for close of escrow and the term of the Option Agreement be extended for one additional year. On October 19, 2020, County and Optionee executed the Fourteenth Amendment, which extended the deadline for close of escrow and the term of the Option Agreement to December 31, 2021.

24. Due to the change in circumstances, the developable area of the Property was reduced. On December 1, 2020, County and Optionee executed the Fifteenth Amendment, which reduced the Purchase Price of the Easement from \$3,000,000 to \$2,100,000 to be paid by the Optionee to County in accordance with the Option Agreement.

25. Optionee was unable to meet the December 31, 2021 deadline and requested that the deadline for close of escrow and the term of the Option Agreement be extended for two additional years. On December 31, 2021, County and Optionee executed the Sixteenth Amendment, which extended the deadline for close of escrow and the term of the Option Agreement to December 31, 2023.

26. On September 13, 2022, County's Board of Supervisors ("Board") conditionally vacated the Easement and adopted a Resolution of the Board of Supervisors of the County of San Diego Conditionally Vacating Open Space Easement ("Resolution"). The Resolution will be recorded by the Clerk of the Board upon the satisfaction of the following conditions by Optionee: (i) Optionee exercising the option in accordance with the Option Agreement; (ii) Optionee paying County \$2.1 million as the purchase price for the Easement; and (iii) Optionee delivering an executed acknowledged deed conveying title to the Walkway Area as provided in the Option Agreement.

26. Optionee is unable to meet the December 31, 2023 deadline and requests, among other things, that the term of the Option Agreement be extended for thirty additional days and that the deadline for close of escrow be extended for six months after the opening of escrow.

AGREEMENT

Now, therefore, County and Optionee agree to amend the Option Agreement as follows:

1. Optionee shall pay County \$1.00 as consideration for this Seventeenth Amendment. The payment shall be made as specified in paragraph 3B of the Option Agreement.
2. Paragraph 2 of the Option Agreement is amended to read as follows:
 2. Term. The term ("Term") of this Option shall be from the Effective Date through January 31, 2024.
3. Paragraph 3(B) is amended by deleting the address specified therein and replacing it with the following address:

Director, Department of General Services
c/o: Real Estate Services Division
County of San Diego
5560 Overland Avenue, Suite 410
San Diego, CA 92123

4. Paragraph 9(A) of the Option Agreement is amended by deleting the last sentence of the paragraph.
5. Paragraph 9(C)(1) is amended to read as follows:

9(C)(1) Opening of Escrow. Provided Optionee has fulfilled the conditions precedent outlined in Paragraph 4, the parties shall open escrow ("Escrow") with Chicago Title Company ("Escrow Holder") within ninety (90) days of the date that Optionee exercises the Option ("Escrow Deadline"). Escrow shall be deemed opened on the date that a fully executed copy of this Option Agreement is delivered to Escrow Holder ("Opening of Escrow"). Escrow Holder shall notify County and Optionee in writing of the date of the Opening of Escrow promptly following the opening of Escrow. If Escrow is not opened by the Escrow Deadline or if Optionee fails to deposit the \$2.1 million purchase price into Escrow by the Escrow Deadline as provided in Section 9(C)(5), this Option Agreement shall automatically terminate and Paragraph 9(B) shall be applicable.

6. Paragraph 9(C)(2) of the Option Agreement is amended to read as follows:

9(C)(2) Close of Escrow; Closing Date. Escrow shall close within six (6) months of the Opening of Escrow ("Close of Escrow" or "Closing Date"), unless extended by the mutual agreement of both parties. The terms "Close of Escrow" and/or "Closing Date" shall mean the date the Resolution and title to the Walkway Area are recorded in the Office of the County Recorder of the County of San Diego and the \$2.1 purchase price is transferred to County. The Close of Escrow is expressly conditioned on and subject to CarMax obtaining all reasonably necessary resource agency regulatory approvals that are conditions precedent to the exercise of CarMax's option agreement with Optionee (the "CarMax Option") and closing of escrow on the CarMax Option ("Condition of Closing"). Failure to satisfy the aforementioned condition by the Closing Date shall result in the cancellation of Escrow and return of any funds deposited into Escrow by Optionee pursuant to paragraph 9C(5) to Optionee.

7. Paragraph 9(C)(5) of the Option Agreement is amended to read as follows:

9C(5) Deposits into Escrow. On the Opening of Escrow, Optionee shall deposit or cause to be deposited into Escrow the \$2.1 million purchase price for the Easement. On or before 1:00 pm on the last business day preceding the scheduled Closing Date, Optionee shall deposit or cause to be deposited with Escrow Holder the following: (i) any and all escrow fees and closing costs; (ii) an executed and acknowledged deed conveying title to the Walkway Area to County in a form approved by County ("Walkway Deed"); (iii) notice stating that the Condition of Closing has been satisfied; and (vi) any and all additional instruments or other documents required from Optionee

(executed and acknowledged if appropriate) as may be necessary in order to effect the vacation of the Easement and the transfer of the Walkway Area to County. On or before 1:00 p.m. on the last business day preceding the scheduled Closing Date, County shall deposit or cause to be deposited with Escrow Holder any additional instruments or other documents required from County (executed and acknowledged if appropriate), as may be necessary in order to effect the vacation of the Easement and transfer of the Walkway Area to County.

8. Paragraph 9(C)(6) of the Option Agreement is amended to read as follows:

9(C)(6) Closing, Recording and Disbursement. On or before the Closing Date, and when Escrow Holder has received all documents and funds listed in subparagraph (5) and Escrow Holder is in a position to cause the Title Policy referred to in subparagraph (4) to be issued to Optionee, Escrow Holder shall close the Escrow by taking the following actions: (1) recording the Walkway Deed in the Office of the Official Records of the County of San Diego, CA and delivering the recorded Walkway Deed to County; (ii) causing the Title Policy to be issued to Optionee; (iii) delivering the \$2.1 million purchase price to County; (iv) notifying the County Clerk of the Board that the conditions outlined in the Resolution have been met by Optionee.

9. As of the Effective Date, Paragraph 13.7 is hereby amended to read as follows:

13.7 Notices. Unless otherwise specifically provided herein, any notice or notices required or permitted to be given pursuant to this Option Agreement, may be (i) personally served on the other party by the party giving notice, in which event it shall be deemed delivered at the time of personal service; (ii) served by regular mail, in which event it shall be deemed delivered three (3) business days after delivery to the United States postal carrier; (iii) served by overnight courier, in which case it shall be deemed delivered the next business day; or (iv) by electronic mail with a copy of the notice sent to the other party by any means specified in (i) through (iii) in this paragraph and such notice shall be deemed delivered when the party sending the electronic mail receives verification of receipt by the receiving party. Any such notice shall be delivered to the addresses set forth below:

To County:

Director, Department of General Services
c/o Real Estate Services Division
County of San Diego
5560 Overland Avenue, Suite 410
San Diego, CA 92123
dgsassetmanagement@sdcounty.ca.gov

To Optionee:

Executive Director
Community Development Commission
of the City of National City
1243 National City Boulevard
National City, CA 91950
CMO@nationalcityca.gov

10. As of the Effective Date, Paragraph 13.10 Counterparts is hereby amended to read:

13.10 Counterparts: "This Seventeenth Amendment (along with any future amendments) may be executed in counterparts, and each counterpart shall constitute one agreement binding on all parties hereto, notwithstanding that all of the parties are not signatory to an original or same

counterpart. The parties agree that signatures transmitted electronically via pdf attachment shall be binding as if they were original signatures.”

11. As of the Effective Date, Paragraph 13.12 Regular Updates is hereby added to the Option Agreement, to read in its entirety as follows:

13.12 Regular Updates: As soon as reasonably practicable after the Effective Date, Optionee shall provide County with Optionee’s and CarMax’s schedule for the development of the Property and for meeting the obligations outlined in the Option Agreement. Optionee shall also provide regular updates to County specifying the progress CarMax has made in obtaining resource agency regulatory approvals. County shall have the right to request that Optionee and all stakeholders, including, but not limited to CarMax, meet to discuss any outstanding items.

12. All other terms and conditions of the Option Agreement remain in full force and effect.

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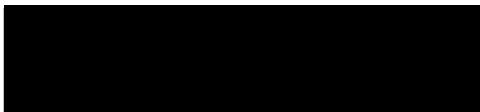
SIGNATURE PAGE TO FOLLOW

SIGNATURES


IN WITNESS WHEREOF, County and Optionee have executed this Seventeenth Amendment effective as of the date first written above.

OPTIONEE

Parking Authority of the City of National City,
a public body of corporate and politic created
pursuant to the Parking Law of 1949


By: 
Benjamin A. Martinez, Secretary

Approved as to form and legality:


By: 
Barry J. Schulz, City Attorney

COUNTY

County of San Diego,
a political subdivision of the State of California

By: 
Marko Medved, P. E., CEM, Director
Department of General Services

Approved as form and legality:

By: 
Inna Zazulevskaya,
Senior Deputy County Counsel