

EIGHTEENTH AMENDMENT TO OPTION TO PURCHASE AGREEMENT

This Eighteenth Amendment to Option to Purchase Agreement ("Eighteenth Amendment") is made as of ~~October 2024~~, October 2024, 2024 ("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 was unable to meet the December 31, 2023 deadline and requested, 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. On December 18, 2023, County and Optionee executed the Seventeenth Amendment, which extended the term of the Option Agreement for thirty days and extended the deadline for close of escrow to six months after the opening of escrow.

27. On January 30, 2024, Optionee timely exercised its option under the Option Agreement and opened escrow on April 24, 2024, but is unable to meet the conditions for closing of escrow. Optionee requests that the deadline for close of escrow be extended for an additional six months.

AGREEMENT

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

1. 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 twelve (12) 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 processing and recording a final parcel map, a condition 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.

2. 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 Eighteenth 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. Schultz, 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







18th Amendment with County - City signatures (CC executed)

Final Audit Report

2024-10-23

Created:	2024-10-23 (Pacific Daylight Time)
By:	Steven Johnson (Steven.Johnson@sdcounty.ca.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAACAnRI0-69YCzKJvufKonN_ybk1bl5_

"18th Amendment with County - City signatures (CC executed)" History

-  Document created by Steven Johnson (Steven.Johnson@sdcounty.ca.gov)
2024-10-23 - 2:36:25 PM PDT- IP address: 162.199.186.57
-  Document emailed to Krista Ellis (Krista.Ellis3@sdcounty.ca.gov) for signature
2024-10-23 - 2:37:44 PM PDT
-  Email viewed by Krista Ellis (Krista.Ellis3@sdcounty.ca.gov)
2024-10-23 - 3:25:42 PM PDT- IP address: 76.88.32.114
-  Krista Ellis (Krista.Ellis3@sdcounty.ca.gov) has agreed to the terms of use and to do business electronically with
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