

**Agenda of Special Parking Authority Meeting  
of the City of National City**

**City Council Chambers  
Civic Center  
1243 National City Boulevard  
National City, California**

**Tuesday – August 18, 2015 - 6:00 P.M.**

**Open To the Public**

**ROLL CALL**

**CONSENT CALENDAR**

Consent Calendar: Consent calendar items involve matters, which are of a routine or noncontroversial nature. All consent calendar items are adopted by approval of a single motion by the City Council. Prior to such approval, any item may be removed from the consent portion of the agenda and separately considered, upon request of a Councilmember, a staff member, or a member of the public.

1. Approval of the Minutes of the Adjourned Regular Meeting of the Parking Authority of the City of National City of August 19, 2014 and Special Meetings of the Parking Authority of the City of National City of October 21, 2014, November 18, 2014 and April 21, 2015. (City Clerk)
2. Resolution of the Parking Authority of the City of National City amending the by-laws to change the date of the Annual Regular Meeting of the Parking Authority of the City of National City from the third Tuesday in July to the third Tuesday in August. (City Clerk)

**NON CONSENT RESOLUTION**

3. Resolution of the Parking Authority of the City of National City authorizing the Chairman to execute an Option Agreement with CarMax Auto Superstores California, LLC, a Virginia limited liability company, for the purchase of approximately 9.5 to 11 acres, with the option of up to 15.08 acres, of a Parking Authority-owned 15.08 acre vacant parcel of land located at the southeast corner of Highways 805 and 54 in National City in an amount no less than \$3,500,000 for the first 9.5 acres and additional compensation for each square foot in excess of 9.5 acres. (Housing, Grants and Asset Management)

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## **ADJOURNMENT**

**Adjourn to the Regular Parking Authority Meeting – Tuesday, August 16, 2016 – 6:00 p.m., Council Chambers, Civic Center.**

### **Council Requests That All Cell Phones and Pagers Be Turned Off During City Council Meetings**

Upon request, this agenda can be made available in appropriate alternative formats to persons with a disability in compliance with the Americans with Disabilities Act. Please contact the City Clerk's Office at 336-4228 to request a disability-related modification or accommodation. Notification 24 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting.

Item # 1  
08/18/15

**APPROVAL OF THE MINUTES OF THE ADJOURNED  
REGULAR MEETING OF THE PARKING AUTHORITY OF  
THE CITY OF NATIONAL CITY OF AUGUST 19, 2014 AND  
SPECIAL MEETINGS OF THE PARKING AUTHORITY OF  
THE CITY OF NATIONAL CITY OF OCTOBER 21, 2014,  
NOVEMBER 18, 2014 AND APRIL 21, 2015.**

(City Clerk)

DRAFT      DRAFT      DRAFT

**MINUTES OF THE ADJOURNED REGULAR MEETING OF THE  
PARKING AUTHORITY OF THE CITY OF NATIONAL CITY, CALIFORNIA**

**August 19, 2014**

The Adjourned Regular Meeting of the Parking Authority of the City of National City, was called to order at 9:34 p.m. by Chairman Morrison.

**ROLL CALL**

Members Present: Cano, Morrison, Natividad, Rios.

Member Absent: Sotelo-Solis.

Administrative Officials Present: Dalla, Deese, Rauiston, Silva.

**APPROVAL OF MINUTES**

1. Approval of the Minutes of the Adjourned Regular Meeting of the Parking Authority of August 20, 2013, and the Special Meetings of October 15, 2013, February 4, 2014, and March 4, 2014.

**ACTION:** Motion by Rios, seconded by Cano, to approve the minutes. Carried by the following vote, to-wit: Ayes: Cano, Morrison, Natividad, Rios. Nays: None. Absent: Sotelo-Solis. Abstain: None.

**ADJOURNMENT**

The meeting was adjourned to the next Regular Meeting of the Parking Authority to be held on Tuesday, July 21, 2015, at 6:00 p.m., in the Council Chambers, Civic Center, 1243 National City Boulevard, National City.

The meeting closed at 9:34 p.m.

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City Clerk  
Recording Secretary

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Secretary  
Parking Authority

The foregoing Minutes were approved at the Special Meeting of August 18, 2015.

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Chairman  
Parking Authority

DRAFT      DRAFT      DRAFT

**MINUTES OF THE SPECIAL MEETING OF THE  
PARKING AUTHORITY OF THE CITY OF NATIONAL CITY**

**October 21, 2014**

The Special Meeting of the Parking Authority, of the City of National City, was called to order at 5:05 p.m. by Chairman Morrison.

**ROLL CALL**

Members Present: Cano, Morrison, Natividad, Sotelo-Solis.

Members Absent: Rios.

Administrative Officials Present: Dalla, Deese, Raulston, Silva.

**OPEN SESSION**

**PARKING AUTHORITY ADMIN (406-3-1)**

1. Real Property Transaction – Former Costco Site  
APN: 559-086-03-00  
Agency Negotiator: Don Mosier  
Under Negotiation: Price and Terms of Payment  
**TESTIMONY:** None.  
**ACTION:** None

Members retired into Closed Session at 5:06 p.m.

**CLOSED SESSION**

**PARKING AUTHORITY ADMIN (406-3-1)**

1. Real Property Transaction – Former Costco Site  
APN: 559-086-03-00  
Agency Negotiator: Don Mosier  
Under Negotiation: Price and Terms of Payment

The meeting reconvened at 10:15 p.m.

Members present: Cano, Morrison, Natividad, Sotelo-Solis. Members absent: Rios.

**NON CONSENT RESOLUTION**

**PARKING AUTHORITY ADMIN (406-3-1)**

2. Resolution No. 2014-1. RESOLUTION OF THE PARKING AUTHORITY OF THE CITY OF NATIONAL CITY APPROVING AN EXCLUSIVE NEGOTIATING AGREEMENT BY AND BETWEEN THE PARKING AUTHORITY OF THE CITY OF NATIONAL CITY, A PUBLIC BODY CORPORATE AND POLITIC, (THE "AUTHORITY") AND CARMAX AUTO SUPERSTORES CALIFORNIA, LLC, A VIRGINIA LIMITED LIABILITY COMPANY ("CARMAX"). (City Manager)

**RECOMMENDATION:** Adopt the Resolution authorizing the Chairman to execute the Agreement on behalf of the Authority.

**TESTIMONY:** None.

**ACTION:** Motion by Cano, seconded by Sotelo-Solis, to adopt the Resolution. Carried by the following vote, to-wit: Ayes: Cano, Morrison, Natividad, Sotelo-Solis. Nays: None. Absent: Rios. Abstain: None.

**CLOSED SESSION REPORT**

Legal Counsel Claudia Silva stated there was nothing to report from the Closed Session.

**ADJOURNMENT**

Motion by Cano, seconded by Natividad, to adjourn the meeting to the next Regular Meeting of the Parking Authority of the City of National City to be held on Tuesday, July 21, 2015, at 6:00 p.m., in the Council Chambers, Civic Center, National City, California. Carried by the following vote, to-wit: Ayes: Cano, Morrison, Natividad, Sotelo-Solis. Nays: None. Absent: Rios. Abstain: None.

The meeting closed at 10:17 p.m.

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City Clerk  
Recording Secretary

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Secretary  
Parking Authority

The foregoing Minutes were approved at the Special Meeting of August 18, 2015.

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Chairman  
Parking Authority

DRAFT      DRAFT      DRAFT

**MINUTES OF THE SPECIAL MEETING OF THE  
PARKING AUTHORITY OF THE CITY OF NATIONAL CITY, CALIFORNIA**

**November 18, 2014**

The Special Meeting of the Parking Authority, of the City of National City, was called to order at 8:09 p.m. by Chairman Morrison.

**ROLL CALL**

Members Present: Cano, Morrison, Natividad, Rios, Sotelo-Solis  
Administrative Officials Present: Dalla, Deese, Raulston, Silva.

**ACTION ITEM**

1. Resolution No. 2014-2. RESOLUTION OF THE PARKING AUTHORITY OF THE CITY OF NATIONAL CITY AUTHORIZING THE CHAIRMAN TO EXECUTE THE SEVENTH AMENDMENT TO THE OPTION TO PURCHASE AGREEMENT WITH THE COUNTY OF SAN DIEGO FOR THE PURCHASE OF AN OPEN-SPACE EASEMENT ON A 15.08 ACRE PARCEL OF LAND AT THE SOUTHWEST CORNER OF SWEETWATER ROAD AND BONITA CENTER ROAD THAT EXTENDS THE TERM OF SAID OPTION FOR ONE YEAR AND PAYS THE COUNTY OF SAN DIEGO \$1.00 AS CONSIDERATION FOR THE EXTENSION. (Housing and Grants)

**RECOMMENDATION:** Adopt the Resolution

**TESTIMONY:** None.

**ACTION:** Motion by Rios, seconded by Cano, to adopt the Resolution. Carried by unanimous vote.

**ADJOURNMENT**

The meeting was adjourned to the next Regular Meeting of the Parking Authority to be held on Tuesday, July 21, 2015, at 6:00 p.m., in the Council Chambers, Civic Center, 1243 National City Boulevard, National City.

The meeting closed at 8:10 p.m.

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City Clerk  
Recording Secretary

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Secretary  
Parking Authority

The foregoing Minutes were approved at the Special Meeting of August 18, 2015.

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Chairman  
Parking Authority

DRAFT



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**MINUTES OF THE SPECIAL MEETING OF THE  
PARKING AUTHORITY OF THE CITY OF NATIONAL CITY**

**April 21, 2015**

The Special Meeting of the Parking Authority of the City of National City, was called to order at 8:15 p.m. by Chairman Morrison.

**ROLL CALL**

Members Present: Cano, Mendivil, Morrison, Rios, Sotelo-Solis  
Administrative Officials Present: Dalla, Deese, Raulston, Silva.

**PARKING AUTHORITY ADMIN (406-3-1)**

1. Resolution No. 2015-1. RESOLUTION OF THE PARKING AUTHORITY OF THE CITY OF NATIONAL CITY AUTHORIZING THE CHAIRMAN TO EXECUTE THE EIGHTH AMENDMENT TO THE OPTION TO PURCHASE AGREEMENT WITH THE COUNTY OF SAN DIEGO FOR THE PURCHASE OF AN OPEN-SPACE EASEMENT ON A 15.08 ACRE PARCEL OF LAND AT THE SOUTHWEST CORNER OF SWEETWATER ROAD AND BONITA CENTER ROAD THAT EXTENDS THE TERM OF SAID OPTION FOR ONE YEAR AND PAYS THE COUNTY OF SAN DIEGO \$1.00 AS CONSIDERATION FOR THE EXTENSION. (Housing, Grants, & Asset Management)

**ACTION:** Motion by Rios, seconded by Cano, to adopt the Resolution. Carried by unanimous vote.

**ADJOURNMENT**

Motion by Sotelo-Solis, seconded by Mendivil, to adjourn the meeting to the next Regular Meeting of the Parking Authority of the City of National City to be held on Tuesday, July 21, 2015, at 6:00 p.m., in the Council Chambers, Civic Center, National City, California. Carried by unanimous vote.

The meeting closed at 8:15 p.m.

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City Clerk  
Recording Secretary

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Secretary  
Parking Authority

The foregoing Minutes were approved at the Special Meeting of August 18, 2015.

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Chairman  
Parking Authority

DRAFT

**CITY OF NATIONAL CITY, CALIFORNIA  
PARKING AUTHORITY AGENDA STATEMENT**

**MEETING DATE:** August 18, 2015

**AGENDA ITEM NO.** 2

**ITEM TITLE:**

Resolution of the Parking Authority of the City of National City amending the by-laws to change the date of the Annual Regular Meeting of the Parking Authority of the City of National City from the third Tuesday in July to the third Tuesday in August. (City Clerk)

**PREPARED BY:** Michael R. Dalla

**DEPARTMENT:** City Clerk

**PHONE:** 619-336-4226

**APPROVED BY:** 

**EXPLANATION:**

The Annual Regular Meeting for the Parking Authority was established by Resolution to be on the third Tuesday in July. In recent years, that date has conflicted with the Summer Legislative Recess. In order to avoid potential future conflicts, it is recommended that the Annual Regular Meeting date be changed to the third Tuesday in August. That would also make in consistent with the Annual Regular Meeting date for the Joint Powers Financing Authority which is also scheduled on that date.

**FINANCIAL STATEMENT:**

**ACCOUNT NO.**

**APPROVED:** \_\_\_\_\_ **Finance**

**APPROVED:** \_\_\_\_\_

**ENVIRONMENTAL REVIEW:**

**ORDINANCE:** INTRODUCTION:  FINAL ADOPTION:

**STAFF RECOMMENDATION:**

- Adopt the Resolution. |

**BOARD / COMMISSION RECOMMENDATION:**

N/A

**ATTACHMENTS:**

1. Resolution

RESOLUTION NO. 2015 –

RESOLUTION OF THE PARKING AUTHORITY OF THE CITY OF NATIONAL CITY  
AMENDING THE BY-LAWS TO CHANGE THE DATE OF THE ANNUAL REGULAR  
MEETING OF THE PARKING AUTHORITY OF THE CITY OF NATIONAL CITY  
FROM THE THIRD TUESDAY IN JULY TO THE THIRD TUESDAY IN AUGUST

WHEREAS, on July 12, 1977, the City Council of the City of National City National City adopted Resolution No. 12,402, establishing the Parking Authority of the City of National City; and

WHEREAS, on August 2, 1977, the Parking Authority adopted Resolution No. 77-2 to adopt the By-Laws of the Parking Authority, which includes Article Iii, "Meetings"; and

WHEREAS, from time to time the day(s) of the month, time, and location for regular meetings have been changed to reflect the needs of the Parking Authority; and

WHEREAS, the Annual Regular Meeting for the Parking Authority was established by Resolution to be on the third Tuesday of July, but in recent years, that date has conflicted with the Summer Legislative Recess; and

WHEREAS, to avoid potential future conflicts, it is recommended that the Annual Regular Meeting date be changed to the third Tuesday in August, making it consistent with the Annual Regular Meeting date for the Joint Powers Financing Authority, which is also scheduled on that date.

NOW, THEREFORE, BE IT RESOLVED by the Parking Authority of the City of National City that the By-Laws of the Parking Authority are amended in Article III, "Meetings", to change the Annual Regular Meeting from the third Tuesday in July to the third Tuesday in August.

PASSED and ADOPTED this 18<sup>th</sup> day of August, 2015.

ATTEST:

\_\_\_\_\_  
Ron Morrison, Chairman

\_\_\_\_\_  
Leslie Deese, Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
Claudia Gacitua Silva  
Legal Counsel

**CITY OF NATIONAL CITY, CALIFORNIA  
PARKING AUTHORITY AGENDA STATEMENT**

MEETING DATE: August 18, 2015

AGENDA ITEM NO. 3

**ITEM TITLE:**

Resolution of the Parking Authority of the City of National City authorizing the Chairman to execute an Option Agreement with CarMax Auto Superstores California, LLC, a Virginia limited liability company, for the purchase of approximately 9.5 to 11 acres, with the option of up to 15.08 acres, of a Parking Authority-owned 15.08 acre vacant parcel of land located at the southeast corner of Highways 805 and 54 in National City in an amount no less than \$3,500,000 for the first 9.5 acres and additional compensation for each square foot in excess of 9.5 acres.

**PREPARED BY:** Carlos Aguirre 

**DEPARTMENT:** Housing, Grants, & Asset Management

**PHONE:** (619) 336-4391

**APPROVED BY:** 

**EXPLANATION:**

On October 21, 2014, pursuant to Resolution No. 2014-1, the Parking Authority of the City of National City approved an Exclusive Negotiation Agreement ("ENA") between the Authority and CarMax Auto Superstores California, LLC ("Optionee"). A copy of the ENA is attached to the Option Agreement as Exhibit "A". The purpose of the Option Agreement is to ensure that the Parking Authority of the City of National City retains its discretion to approve or disapprove the sale of the Property until after CEQA review is completed. In addition, the purpose of this Option Agreement is also to ensure that the City Council of the City of National City retains its total discretion to make modifications to the proposed discretionary approvals, adopt alternatives, impose mitigations measures, or disapprove the Project until after CEQA review is completed. The total purchase price will not be less than \$3,500,000 for 9.5 acres ("Minimum Acreage"). If the Optionee elects to purchase more than 9.5 acres, Section 6 on Page 7 of the Option Agreement describes how the purchase price for additional acreage will be calculated.

**FINANCIAL STATEMENT:**

**APPROVED:**  Finance

**ACCOUNT NO.** N/A

**APPROVED:** \_\_\_\_\_ MIS

The Parking Authority will receive no less than \$3,500,000 and use part of the proceeds to purchase an open space easement encumbering the subject parcel from the County of San Diego for \$3,000,000.

**ENVIRONMENTAL REVIEW:**

This action is not considered a project as defined by the California Environmental Quality Act (CEQA), and is therefore not subject to CEQA. The Optionee may exercise the option to purchase the property only upon the City certifying compliance with CEQA.

**ORDINANCE:** INTRODUCTION:  FINAL ADOPTION:

**STAFF RECOMMENDATION:**

Adoption of the Resolution

**BOARD / COMMISSION RECOMMENDATION:**

Not Applicable

**ATTACHMENTS:**

Attachment No. 1 Option Agreement

**OPTION AGREEMENT  
(CarMax, National City, California)**

THIS OPTION AGREEMENT ("Agreement") is made as of this 18th day of August, 2015 by and between the Parking Authority of the City of National City, a public body corporate and politic ("the Authority") and CarMax Auto Superstores California, LLC, a Virginia limited liability company ("the Optionee").

RECITALS

A. On October 21, 2014, pursuant to Resolution No. 2014-1, the Parking Authority of the City of National City approved an Exclusive Negotiation Agreement ("ENA") between the Authority and the Optionee. A copy of the ENA is attached to this Agreement as Exhibit "A".

B. Recitals "A" through "I" of the ENA are incorporated into this Agreement by this reference.

C. The Authority is willing to grant to the Optionee an option to purchase the Property pursuant to the terms and conditions of this Agreement.

D. The purpose of this Option Agreement is to ensure that the Parking Authority of the City of National City retains its discretion to approve or disapprove the sale of the Property until after CEQA review is completed. In addition, the purpose of this Option Agreement is to ensure that the City Council of the City of National City retains its total discretion to make modifications to the proposed discretionary approvals, adopt alternatives, impose mitigations measures, or disapprove the Project until after CEQA review is completed.

AGREEMENT

NOW, THEREFORE, the parties agree as follows:

1. Option. The Authority grants to the Optionee the right and option to purchase the Property from the Authority subject to all the terms and conditions set forth in this Agreement.

2. Option Consideration. The Optionee has made a Deposit in the amount of Twenty-Five Thousand Dollars (\$25,000.00) as consideration for this Option.

3. Conditions Precedent. The Optionee may exercise the option to purchase the Property only after the following conditions have been met:

A. The Optionee has completed any necessary environmental studies, has prepared any necessary environmental document, including but not limited to a supplemental or subsequent environmental document to the FEIR SCH #2003111073, and has submitted the final environmental document to the City for certification; and

B. The City Council of the City of National City has certified that the environmental document has been completed in compliance with CEQA and that the environmental document reflects its independent judgment and analysis.

4. Purchase and Sale. The Authority owns fee simple title to the Property. In consideration of the mutual covenants set forth in this Agreement, the Optionee will acquire all of the Property on the terms and conditions set forth herein, provided the Conditions Precedent in Section 3 above are satisfied.

(a) Sale of the Property. The Authority agrees to sell the Property to the Optionee, and the Optionee agrees to purchase the Property from Authority, on the terms and conditions set forth herein. At Closing, the Authority shall convey the fee interest in the Property to the Optionee by recordation of the Grant Deed (as defined below). The Escrow Agent shall issue the Title Policy (as defined below) to the Optionee at Closing.

(b) Possession of the Property. The Authority shall deliver possession of the Property to the Optionee at Closing, subject only to the Title Exceptions, all as defined below.

5. Definitions. As used in this Agreement, the following terms shall have the following meanings:

“Additional Acreage” means that portion of the Entire Site, if any, in excess of the Minimum Acreage which the Optionee elects to purchase pursuant to Section 7(h) of this Agreement. By way of illustration, if the Optionee elects to purchase eleven (11.0) acres, then the Additional Acreage shall be comprised of one and one-half (1.5) acres.

“Agreement” means this Option Agreement between the Authority and the Optionee.

“Applicable Environmental Law” means all laws applicable to the presence of any Hazardous Materials (as defined below) on or within the Property, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §9601, *et seq.*); the Resource Conservation and Recovery Act (42 U.S.C. §6901, *et seq.*); the Clean Water Act of 1972 (33 U.S.C. §1251, *et seq.*); the Safe Drinking Water Act (42 U.S.C. §300f, *et seq.*); the Hazardous Materials Transportation Act (49 U.S.C. §5101, *et seq.*); the Toxic Substances Control Act (15 U.S.C. §2601, *et seq.*); the Insecticides and Environmental Pesticide Control Act (7 U.S.C. §136, *et seq.*); the Atomic Energy Act (42 U.S.C. §2011, *et seq.*); the Nuclear Waste Policy Act (42 U.S.C. §10101, *et seq.*); the Clean Air Act (42 U.S.C. §7401, *et seq.*); the California Hazardous Waste Control Act (California Health and Safety Code §25100, *et seq.*); the Carpenter-Presley-Tanner Hazardous Substance Account Act (California Health and Safety Code §25300, *et seq.*); the Safe Drinking Water and Toxic Enforcement Act (“Proposition 65”) (California Health and Safety Code §25249.5, *et seq.*); and the Porter-Cologne Water Quality Control Act (California Water Code §13000, *et seq.*); and any similar federal, state or local laws, all regulations and publications implementing or promulgated pursuant to the foregoing, as any of the foregoing may be amended or supplemented from time to time.

“Approvals” means all approvals required for the Optionee’s construction of the Project and use of the Property, including without limitation, a General Plan Amendment, Planned Development Permit and Conditional Use Permit, Tentative Parcel Map, and all of the development standards in the City of National City Land Use Code (National City Municipal Code Title 18).

“Authority” means the Parking Authority of the City of National City.

“Authority’s Affiliates” shall have the meaning set forth in Section 11(j) of this Agreement.

“Authority’s Parties” shall have the meaning set forth in Section 11(k) of this Agreement.

“Business Day” means any day except for a Saturday, Sunday or holiday. In the event any date, deadline or due date set forth in this Agreement falls on a day that is not a Business Day, then such deadline or due date shall automatically be extended to the next Business Day.

“CEQA” means the California Environmental Quality Act, California Public Resources Code sections 21000 *et. seq.*

“City” means the City of National City.

“City Council” means the City Council of the City.

“Claim” or “Claims” shall have the meaning set forth in Section 11(i) of this Agreement.

“Close” or “Closing” means the close of Escrow as provided in this Agreement.

“Closing Date” means the date on which the Closing occurs, pursuant to Section 10 of this Agreement.

“Deposit” shall have the meaning set forth in Section 6(b)(1) of this Agreement.

“Due Diligence Studies” means all studies, tests, evaluations, and investigations, including, but not limited to, soil borings, percolations tests, test pits, water pressure tests, surveys, Phase I and Phase II environmental studies, and other related investigations performed by, or on behalf of, the Optionee to determine the suitability of the Property for the Project.

“Easement” means the easement for open space and park purposes conveyed to the County by the Authority in accordance with a Cooperation Agreement between the Authority, the City of National City and the County of San Diego for the development of the Plaza Bonita Shopping Center, the construction of Plaza Bonita Road, and the funding of improvements to portions of Sweetwater Regional Park.



“Effective Date” means the date on which both the Authority and the Optionee have fully executed this Agreement and have delivered the Agreement to the Escrow Agent.

“Entire Site” means the approximately 15.08-acre parcel identified as County Assessor’s Parcel Number 564-471-11.

“Escrow” means the escrow depository and disbursement services to be performed by the Escrow Agent pursuant to the provisions of this Agreement.

“Escrow Agent” means Amy D. Hiraheta at Chicago Title Company, National Projects Division, 725 South Figueroa St., Suite 200, Los Angeles, CA 90017.

“FEIR” means the Final Environmental Impact Report for the National City Costco Wholesale Project, SCH #2003111073, November 2007, including the Mitigation Monitoring and Reporting Program and the Statement of Overriding Considerations, certified by the City Council of the City of National City on November 20, 2007 pursuant to Resolution No. 2007-259.

“Grant Deed” means a duly executed and acknowledged grant deed conveying fee simple title to the Property from the Authority to the Optionee, in a form reasonably acceptable to the Authority and the Optionee.

“Hazardous Materials” means:

(1) Those substances included within the definitions of “hazardous substance,” “hazardous waste,” “hazardous material,” “toxic substance,” “solid waste,” “pollutant” or “contaminant” in the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §9601 *et seq.*); the Resource Conservation and Recovery Act (42 U.S.C. §6901, *et seq.*); the Clean Water Act of 1972 (33 U.S.C. §1251, *et seq.*); the Toxic Substances Control Act (15 U.S.C. §2601, *et seq.*); the Hazardous Materials Transportation Act (49 U.S.C. §5101, *et seq.*); or under any other Applicable Environmental Laws.

(2) Those substances included within the definitions of “Extremely Hazardous Waste,” “Hazardous Waste,” or “Restricted Hazardous Waste,” under §§25115, 25117, or 25122.7 of the California Health and Safety Code, or listed or identified pursuant to §§25140 or 44321 of the California Health and Safety Code.

(3) Those substances included within the definitions of “Hazardous Material,” “Hazardous Substance,” “Hazardous Waste,” “Toxic Air Contaminant” or “Medical Waste” under §§25281, 25316, 25501, 117690, or 39655 of the California Health and Safety Code.

(4) Those substances included within the definitions of “Oil” listed or identified in the Clean Water Act of 1972, 33 U.S.C. §1321, as well as any other hydrocarbonic substance or by-product.

(5) Those substances included within the definitions of "Hazardous Waste," "Extremely Hazardous Waste" or an "Acutely Hazardous Waste" pursuant to Chapter 11 of Title 22 of the California Code of Regulations.

(6) Those substances listed by the State of California as a chemical known by the State to cause cancer or reproductive toxicity pursuant to §25249.8 of the California Health and Safety Code.

(7) Any material which due to its characteristics or interaction with one or more other substances, chemical compounds, or mixtures, damages or threatens to damage, health, safety, or the environment, or is required by any law or public agency to be remediated, including remediation which such law or public agency requires in order for the property to be put to any lawful purpose.

(8) Any material whose presence would require remediation pursuant to the guidelines set forth in the State of California Leaking Underground Fuel Tank Field Manual, whether or not the presence of such material resulted from a leaking underground fuel tank.

(9) Pesticides regulated under the Insecticides and Environmental Pesticide Control Act (7 U.S.C. §136, *et seq.*).

(10) Asbestos, PCBs, and other substances regulated under the Toxic Substances Control Act (15 U.S.C. §2601 *et seq.*).

(11) Any radioactive material including, without limitation, any "source material," "special nuclear material," "by-product material," "low-level wastes," "high-level radioactive waste," "spent nuclear fuel" or "transuranic waste" and any other radioactive materials or radioactive wastes, however produced, regulated under the Atomic Energy Act (42 U.S.C. §2011 *et seq.*), or the Nuclear Waste Policy Act (42 U.S.C. §10101 *et seq.*).

(12) Any material regulated under the Occupational Safety and Health Act, (29 U.S.C. §651 *et seq.*), or the California Occupational Safety and Health Act (California Labor Code §6300 *et seq.*).

(13) Any material regulated under the Clean Air Act (42 U.S.C. §7401 *et seq.*) or pursuant to Division 26 of the California Health and Safety Code.

(14) Those substances listed in the United States Department of Transportation Table (49 CFR Part 172.101), or by the Environmental Protection Agency, or any successor agency, as hazardous substances (40 CFR Part 302).

(15) Other substances, materials, and wastes that are or become regulated or classified as hazardous or toxic under federal, state or local laws or regulations.

(16) Any material, waste or substance that is a petroleum or refined petroleum product, asbestos, polychlorinated biphenyl, designated as a hazardous substance pursuant to 33 U.S.C. §1321 or listed pursuant to 33 U.S.C. §1317, a flammable explosive or a radioactive material.

“Immediately Available Funds” means a bank wire transfer or a certified bank or cashier’s check.

“Improvements” means collectively: (i) any and all buildings, structures and improvements, of any kind whatsoever, located at or affixed to the Property; (ii) all rights, privileges and easements appurtenant to the Property, if any, including, without limitation, all minerals, oil, gas and other hydrocarbon substances on and under the Property, if any; and (iii) all development rights, air rights, and water rights if any, relating to the Property.

“Minimum Acreage” means that portion of the Entire Site comprised of 9.5 acres, the general location of which is shown on the site map attached as Exhibit “B”.

“Option to Purchase Agreement” means the Option to Purchase Agreement between the Authority and the County of San Diego, approved by the Board of the Parking Authority of the City of National City pursuant to Resolution No. 2007-5 on March 20, 2007, which sets forth the terms of an option whereby the Authority could purchase the Easement from the County.

“Optionee” means CarMax Auto Superstores California, LLC, a Virginia limited liability company; provided, however, if it assigns its interest in this Agreement pursuant to Section 15 of this Agreement, then the term “Optionee” shall mean such assignee.

“Permits” means all permits required for the Optionee’s construction of the Project and use of the Property, including without limitation, all Federal, State, and local permits, permits required by the United States Army Corps of Engineers, the Regional Water Quality Control Board, the California Department of Fish and Wildlife, the Federal Emergency Management Agency, the California Department of Transportation, and the National City Municipal Code.

“Permitted Exceptions” means collectively, the (i) the printed exceptions and exclusions in the Title Policy; (ii) real property taxes and assessments which are a lien but not yet payable; and (iii) all applicable building, zoning and use restrictions and/or regulations of the City, San Diego County or the State of California.

“Project” means the construction and operation of a CarMax Superstore with related parking and landscaping.

“Property” means that certain real property located at the southwest corner of Sweetwater Road and Bonita Center Road, in the City of National City, California, comprised of the Minimum Acreage and, if applicable, the Additional Acreage, and the Improvements, if any, located thereon. The Parties acknowledge that for the purposes of this Agreement, the term “Property” means all or that portion of the Entire Site the Optionee elects to purchase pursuant to Section 7(h) of this Agreement. Optionee shall provide the Authority with an updated site plan and specific, legal description of the Property at the time it submits its complete application as set forth in the Schedule of Performance.

“Purchase Price” shall have the meaning set forth in Section 6(a) of this Agreement.

“Residual Parcel” means the remainder of the Entire Site which is not included in the Property.

“Title Policy” is defined in Section 7(d) of this Agreement.

6. Purchase Price.

(a) Total Purchase Price. The purchase price to be paid by the Optionee for the Property (the “Purchase Price”) shall be the sum of (i) Three Million Five Hundred Thousand Dollars (\$3,500,000.00) for the Minimum Acreage, (ii) Five and 91/100 Dollars (\$5.91) per square foot for up to one and one-half (1.5) acres of Additional Acreage, and (iii) Seven and 15/100 Dollars (\$7.15) per square foot for any Additional Acreage in excess of one and one-half (1.5) acres. By way of illustration, (1) if the Property is comprised of eleven (11.0) acres, then the Purchase Price for the Property shall be Three Million Eight Hundred Eighty-Six Thousand One Hundred Fifty-Nine and 40/100 Dollars (\$3,886,159.40) (i.e., \$386,159.40 for the Additional Acreage), and (2) if the Property is comprised of twelve (12.0) acres, then the Purchase Price for the Property shall be Four Million One Hundred Ninety-Seven Thousand Six Hundred Thirteen and 40/100 Dollars (\$4,197,613.40) (i.e., \$386,159.40 for the first one and one-half (1.5) acres of Additional Acreage and \$311,454.00 for the next one (1.0) acre of Additional Acreage).

(b) Deposit; Liquidated Damages.

(1) Deposit. The Optionee has made a deposit (the “Deposit”) into Escrow of Immediately Available Funds in the amount of Twenty-Five Thousand Dollars (\$25,000.00). The Deposit shall be credited against the Purchase Price. If the Optionee elects to terminate this Agreement prior to the expiration of the Permitting Period pursuant to Section 8(b), then the Deposit shall be immediately returned by Escrow Agent to the Optionee. At Closing, the Deposit shall be released by Escrow Agent to the Authority. The Deposit, and any interest earned on the Deposit, shall be credited in favor of the Optionee against the Purchase Price as set forth in Section 6(c), below.

(2) LIQUIDATED DAMAGES. THE DEPOSIT SHALL BE REFUNDABLE TO THE OPTIONEE AS MAY BE EXPRESSLY PROVIDED FOR IN THIS AGREEMENT. IF ESCROW FAILS TO CLOSE AS A RESULT OF THE OPTIONEE’S DEFAULT HEREUNDER, THE SOLE REMEDY OF THE AUTHORITY SHALL BE TO TERMINATE THIS AGREEMENT BY GIVING WRITTEN NOTICE THEREOF TO THE OPTIONEE AND ESCROW AGENT, WHEREUPON THE AUTHORITY SHALL RETAIN THE DEPOSIT(S) ACTUALLY DEPOSITED BY THE OPTIONEE INTO ESCROW AS LIQUIDATED DAMAGES (AND THE AUTHORITY WAIVES ANY RIGHT TO SPECIFICALLY ENFORCE THIS AGREEMENT SET FORTH IN CALIFORNIA CIVIL CODE SECTION 1680 OR 3389). THEREAFTER, NO PARTY HERETO SHALL HAVE ANY FURTHER LIABILITY OR OBLIGATION TO ANY OTHER PARTY HERETO EXCEPT FOR: (i) THE AUTHORITY’S RIGHT TO RECEIVE AND RETAIN SUCH LIQUIDATED DAMAGES; AND (ii) THE OBLIGATION OF THE PARTIES TO PAY AMOUNTS INTO ESCROW TO PAY A PORTION OF THE FEES AND COSTS OF

ESCROW AS SET FORTH IN SECTIONS 6 AND 7 BELOW. THE PARTIES HERETO ACKNOWLEDGE AND AGREE THAT THE AUTHORITY'S ACTUAL DAMAGES IN THE EVENT OF THE OPTIONEE'S DEFAULT HEREUNDER ARE UNCERTAIN IN AMOUNT AND DIFFICULT TO ASCERTAIN, AND THAT SUCH AMOUNT OF LIQUIDATED DAMAGES IS REASONABLE UNDER THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1671 ET SEQ., CONSIDERING ALL OF THE CIRCUMSTANCES EXISTING ON THE DATE HEREOF INCLUDING, WITHOUT LIMITATION, THE RELATIONSHIP OF SUCH AMOUNT TO THE RANGE OF POTENTIAL HARM TO THE AUTHORITY THAT CAN REASONABLY BE ANTICIPATED AND THE ANTICIPATION THAT PROOF OF ACTUAL DAMAGES RESULTING FROM SUCH DEFAULT WOULD BE COSTLY AND INCONVENIENT. IN PLACING ITS INITIALS IN THE SPACE BELOW, EACH PARTY HERETO SPECIFICALLY CONFIRMS THE ACCURACY OF THE FOREGOING AND THE FACT THAT SUCH PARTY HAS BEEN REPRESENTED BY COUNSEL WHO EXPLAINED THE CONSEQUENCES OF THIS LIQUIDATED DAMAGES PROVISION.

THE PROVISIONS OF THIS SECTION 3(b)(2) SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

\_\_\_\_\_  
Authority's Initials

\_\_\_\_\_  
Optionee's Initials

(c) Delivery of Remainder of Purchase Price into Escrow. Not less than one (1) Business Day prior to the Closing Date, the Optionee shall cause Immediately Available Funds to be delivered to the Escrow Agent in an amount of equal to the Purchase Price, minus the Deposit.

(d) Disbursement to the Authority. Immediately after the Closing, the Escrow Agent shall disburse to the Authority the funds that the Authority is entitled to receive under this Agreement.

7. Due Diligence Period.

(a) Investigations. Commencing on the Effective Date, the Optionee shall have 270 days in which to conduct Due Diligence Studies. The Authority grants to the Optionee the right to enter onto the Property for the sole purpose of conducting the Due Diligence Studies. The Optionee agrees to defend, indemnify and hold harmless the Authority and the City of National City, and their respective officials, officers and employees, against and from any and all liability, loss, injuries to, or death of any person or persons, and all claims, demands, suits, actions, proceedings, reasonable attorneys' fees, and defense costs, of any kind or nature, including workers' compensation claims, of or by anyone whomsoever, resulting from or arising out of the Optionee's, or the Optionee's officers, employees, or agents, entry onto the Property and the performance of the Due Diligence studies; provided, however, that this indemnification and hold harmless shall not include any claims or liability arising from the established sole negligence or willful misconduct of the Authority, the City, their respective agents, officers, or employees. These indemnity, defense, and hold harmless obligations shall survive the termination of this Agreement for any alleged or actual omission, act, or negligence that occurred

during the Due Diligence Period. The Optionee shall not be liable for any release of Hazardous Materials that may occur as a direct result of the Due Diligence Studies, provided that there is no negligence or willful misconduct of the Optionee or the Optionee's officers, employees, or agents in performing the Due Diligence Studies.

If the Optionee does not purchase the Property, the Optionee shall restore the Property substantially to its condition existing immediately prior to the Due Diligence Studies, except for minor clearing of vegetation reasonably necessary for the performance of the Due Diligence Studies.

At the expiration of the Due Diligence Period, the Optionee shall have the right, in its sole and absolute discretion, to terminate this Agreement by written notice given to the Authority and the Escrow Agent on or before the expiration the Due Diligence Period. If the Optionee terminates the Agreement at this time, the Optionee shall be entitled to the return of the Deposit from the Escrow Agent, and the parties shall be relieved of liability to each other except as specifically set forth herein.

The Optionee acknowledges that the Entire Site has been unused and unfenced for an unknown period of time preceding its ownership by the Authority. The Optionee acknowledges that there have been reports of illegal transient encampments, and there is a possibility that unpermitted dumping or release of substances, including, without limitation, Hazardous Materials, may have occurred. The Authority has no knowledge of any such activities, but the Optionee shall undertake sufficient Due Diligence Studies and investigations as necessary to fully satisfy itself of the condition of the Entire Site.

(b) Environmental Document(s). The Optionee shall, at its expense, but subject to reimbursement as set forth herein, prepare, or cause to be prepared, any necessary environmental document(s), including but not limited to a new environmental impact report if applicable, deemed necessary or desirable by the Optionee in order to comply with the provisions of CEQA. Promptly following the preparation thereof, the Optionee shall submit the CEQA document(s) to the City. If the Property is less than the Entire Site, the Optionee shall include as a part of its CEQA document(s) the proposed development on the Residual Property, and the Authority shall fully cooperate with the Optionee to provide the necessary information with respect thereto when and as needed. The Authority shall reimburse the Optionee for the Authority's pro rata share of the costs incurred by the Optionee to prepare the CEQA document(s) pursuant to this provision, which reimbursement shall be made through a credit at Closing, and the Authority shall defend such reimbursement against any challenges. If any challenge is made in part or solely with respect to the proposed development on just the Residual Property, the Authority will defend such partial or sole challenge against the Residual Property, as the case may be, at the Authority's sole cost and expense. Other than as set forth in the immediately preceding sentence, Optionee shall, at its sole cost and expense, defend any challenge to the CEQA document(s) prepared. For purposes of the reimbursement, the Authority's pro rata share shall be deemed to be a fraction, the numerator of which shall be the number of square feet comprising the Residual Parcel and the denominator of which shall be the number of square feet comprising the Entire Site. The Parties acknowledge that inclusion of a proposed development on the

Residual Property in the CEQA document(s) adds value to the Authority's Residual Property beyond the cost of the CEQA document(s) preparation.

(c) Survey. The Optionee shall, at its expense, obtain a current survey of the Property, prepared by a surveyor or civil engineer duly licensed in the State of California.

(d) Title Policy. The Authority shall pay the cost of a CLTA Owner's Policy of Title Insurance in the amount of the Purchase Price, insuring that title to the fee interest in the Property is vested in the Optionee subject only to the Permitted Exceptions. The Title Policy shall be obtained through Chicago Title Company. The Optionee may obtain an ALTA Owner's Policy of Title Insurance, in which event the Optionee shall pay the cost difference between the cost of the ALTA Owner's Policy of Title Insurance and the cost of a CLTA Owner's Policy of Insurance.

(e) Concept Plans. The Optionee shall work with the Authority to develop prototypical building elevations and conceptual site plans, including parking and pedestrian circulation in relation to its surrounding. The Concept Plans shall identify building design features, including signage.

(f) Sustainability. The Optionee shall deliver to the Authority a narrative which outlines sustainability and green building concepts that may be incorporated into the Project through the design, construction and operation phases. The Optionee shall comply with National City Municipal Code Chapter 15.78; provided, however, that notwithstanding the foregoing, there is no requirement that the Project be LEED certified or certifiable.

(g) Schedule of Performance. Exhibit "C" attached hereto sets forth the agreed upon Schedule of Performance. The Schedule of Performance may be revised from time to time as may be mutually agreed upon in writing between the Optionee and the Authority. The City Manager, or designee, shall have the authority to approve revisions to the Schedule of Performance on behalf of the Authority.

(h) Size and Dimensions of the Property. Prior to the expiration of the Due Diligence Period, the Optionee shall deliver to the Authority an exhibit depicting the size and dimensions of the Property, and, if applicable, the Residual Parcel to be used to develop the Tentative Parcel Map. The size and dimensions of the Property shall be determined by the Optionee based upon its good faith determination of the total size of the property needed to accommodate and support the Project which it intends to construct on the Property (including without limitation, any property required for detention or retention ponds), but without including any additional or surplus property which would not be needed for the Project; provided however that (i) the Property shall be comprised of not less than the Minimum Acreage, and (ii) the Planning Commission, as the sole decision-making body for the Tentative Parcel Map, has complete discretion to make modifications to, or to disapprove, the Tentative Parcel Map.

8. Permitting Period.

(a) The Optionee shall have 365 days after the expiration of the Due Diligence Period in which to obtain all necessary Permits, Approvals, and the Tentative Parcel Map. Notwithstanding the foregoing, if the Optionee is pursuing the Permits, Approvals, and the Tentative Parcel Map in good faith but is unable to obtain the Permits, Approvals, and the Tentative Parcel Map prior to the expiration of the Permitting Period, the Optionee shall have the right to extend the Permitting Period by up to three (3) successive thirty (30) day periods, upon prior written notice to the Authority.

(b) If the Optionee is unable to obtain all the necessary Permits, Approvals, and the Tentative Parcel Map prior to the expiration of the Permitting Period, the Optionee shall have the right, in its sole and absolute discretion, to terminate this Agreement by written notice given to the Authority and the Escrow Agent on or before the expiration the Permitting Period, provided that the Optionee has diligently and in good faith worked to obtain the Permits, Approvals, and the Tentative Parcel Map . If the Optionee terminates the Agreement at this time and the Optionee has diligently and in good faith worked to obtain the Permits, Approvals, and the Tentative Parcel Map, the Optionee shall be entitled to the return of the Deposit from the Escrow Agent, and the parties shall be relieved of liability to each other except as specifically set forth herein. If, following the expiration of the Permitting Period, the Optionee elects not to proceed with the purchase of the Property, the Authority shall retain the Deposit as liquidated damages as its sole and absolute remedy pursuant to Section 6(b)(2) of this Agreement.

(c) The Optionee shall be liable for the costs of obtaining all of the Permits and Approvals, except as may be specifically set forth herein.

(d) The Authority represents to the Optionee that the sole decision-making body for the Permits and Approvals to be issued by the City is the City Council (it being understood that certain of the Permits and Approvals may be issued by federal or state agencies). The Authority staff will assist the Optionee in obtaining the Permits and Approvals by responding to inquiries from the Optionee, attending meetings, providing information to the Optionee and providing staff's recommendations to the Optionee. However, notwithstanding the previous sentence, the City Council has complete discretion to make modifications to the Permits and Approvals, adopt alternatives, impose mitigations measures, or disapprove the Permits and Approvals. The Authority staff's role is that of a facilitator in the process.

(e) The Authority represents to the Optionee that the sole decision-making body for the Tentative Parcel Map is the Planning Commission. The Authority staff will assist the Optionee in obtaining the Tentative Parcel Map by responding to inquiries from the Optionee, attending meetings, providing information to the Optionee and providing staff's recommendations to the Optionee. However, notwithstanding the previous sentence, the Planning Commission has complete discretion to make modifications to the Tentative Parcel Map or disapprove the Tentative Parcel Map. The Authority staff's role is that of a facilitator in the process.

9. Obligation to Close. The Parties' obligation to close shall be conditioned upon the satisfaction of all of the conditions set forth in this Section 9.



- (a) The completion of the purchase by the Authority of the Easement from the County;
- (b) This Agreement being formally approved by a resolution of the Parking Authority of the City of National City after a duly noticed public hearing;
- (c) The certification of an environmental document by the City Council;
- (d) The issuance of all Permits by the City Council and other appropriate authorities, and the expiration of any applicable appeal period;
- (e) The approval by the City Council of all of the Approvals;
- (f) The approval by the Planning Commission of the Tentative Parcel Map;
- (g) The Optionee not being in default of any of its representations or warranties under this Agreement, or any other material terms or conditions related to the Optionee;
- (h) The Optionee not having made an assignment for the benefit of creditors, filed a bankruptcy petition, been adjudicated insolvent or bankrupt, petitioned a court for the appointment of any receiver of, or trustee for, the Optionee, or commenced any proceeding relating to the Optionee under any reorganization, arrangement, readjustment of debt, dissolution, or liquidation law or statute of any jurisdiction, whether now or later in effect;
- (i) The Escrow Agent being prepared and obligated to issue the Title Policy in the Optionee's favor upon the recordation of the Grant Deed and there are no exceptions to the Title Policy, except for Permitted Exceptions;
- (j) The Authority not being in default under this Agreement, or any other material terms or conditions related to the Authority;
- (k) There exists no lease, tenancy or occupancy agreement affecting the Property; and
- (l) There is no pending, or threatened to be pending, any action or proceeding by any person or before any government authority, the outcome of which could prohibit the use of the Property as intended by the Optionee.

10. Closing. Closing shall occur thirty days after the expiration of the Permitting Period. The City Manager, or designee, has the authority to extend the date of Closing for two thirty-day periods.

(a) At least one Business Day prior to Closing, the Authority shall deposit into Escrow the following:

(1) the Grant Deed, duly executed and acknowledged, conveying fee simple title to the Property to the Optionee;

(2) a duly executed certificate containing the Authority's taxpayer identification number and a statement that the Authority is not a foreign person pursuant to United States Internal Revenue Code section 1445. The affidavit shall be substantially in the form attached to this Agreement as Exhibit "D";

(3) a duly executed California Form 593(c) or other evidence that withholding of any portion of the Purchase Price is not required by the Revenue and Taxation Code of California; and

(4) all additional documents and instruments as are reasonably required by the Optionee and/or Escrow Agent to complete the Closing.

(b) At least one Business Day prior to Closing, the Optionee shall deposit into Escrow the following:

(1) the Deposit, as set forth in Section 6(b)(1), above;

(2) Immediately Available Funds in the amount required by Section 6(c), above; and

(3) all other documents and instruments required by this Agreement or reasonably required by the Authority and/or Escrow Agent to complete the Closing.

At Closing, the Authority shall deliver the Property to the Optionee as one legally platted parcel, and the Property shall be free and clear of all tenants or occupants or any other party claiming any rights in or to the Property.

11. Representations and Warranties; Waivers and Releases. When making the representations and warranties set forth in this Section 11, each party making a representation and/or warranty represents that the same are true, correct and complete as of the Effective Date and shall be and are true, correct and complete as of the Closing Date. The representations and warranties shall survive the Closing.

(a) Representations and Warranties Regarding Authority. The Authority and the Optionee each represents and warrants to the other that this Agreement and all documents or instruments executed by them which are to be delivered at or prior to the Closing are, or on the Closing Date will be, duly authorized, executed and delivered by the Authority or the Optionee, as applicable.

(b) Representations and Warranties Regarding Enforceability of Agreement. The Authority and the Optionee each represents and warrants to the other that this Agreement and all documents required to be executed by them shall be valid, legally binding obligations of, and enforceable against, the Authority or the Optionee, as applicable, in accordance with their terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws

affecting the rights of creditors generally and general principles of equity (whether enforcement is sought in equity or at law).

(c) The Authority's Representations and Warranties Pertaining to Legal Matters. The Authority represents and warrants to the Optionee that:

(1) As of the Effective Date and the Closing Date, the Authority is the sole owner of the fee title interest to the Property.

(2) There is no pending or threatened proceeding in eminent domain or otherwise, which would affect the Property, or any portions thereof, nor any facts which might give rise to such action or proceeding.

(d) The Authority's Representations and Warranties Pertaining to Options. The Authority represents and warrants to the Optionee that no person has any option or right of first refusal to purchase the Property or any parts thereof.

(e) Material Adverse Changes. If the Authority receives any notice or knowledge of anything materially adversely affecting the Authority's representations or warranties after the Effective Date, then the Authority shall immediately notify the Optionee in writing of such fact or circumstance.

(f) The Authority's Representation and Warranty Pertaining to Tenants. The Authority represents and warrants to the Optionee that no person has any lease or other lawful right to occupy the Property or any parts thereof.

(g) The Authority's Representation Regarding the Option to Purchase Agreement. The Authority represents that the obligations of the Authority as the Optionee in the Option to Purchase Agreement, including but not limited to the obligation to install a vegetated buffer along the north side of the trail/walkway pursuant to Section 7 of the Option to Purchase Agreement, shall become obligations of the Optionee. A copy of the Option to Purchase Agreement is attached to this Agreement as Exhibit "E".

(h) The Authority's Representation and Warranty Regarding Operation of the Property. Other than the representation in Section 11(g) above, the Authority represents and warrants to the Optionee that there are no other oral or written agreements or understandings concerning the Property by which the Optionee would be bound following the Closing.

(i) The Authority's Representation Regarding Hazardous Materials. The Authority has not knowingly (i) caused or permitted to be stored, disposed of, transferred, produced or processed on the Property any Hazardous Materials; (ii) received notification of any enforcement, cleanup, removal or other governmental or regulatory actions being instituted, contemplated or threatened against it or the Property; and (iii) received notification of any claims made against the Authority by any third party or other person with respect the Property relating to damage, contribution, cost recovery, compensation, loss or injury resulting from Hazardous Materials.

(j) AS IS CONDITION. THE OPTIONEE ACKNOWLEDGES, REPRESENTS, WARRANTS, COVENANTS AND AGREES THAT AS A MATERIAL INDUCEMENT TO THE AUTHORITY TO EXECUTE AND ACCEPT THIS AGREEMENT AND IN CONSIDERATION OF THE PERFORMANCE BY THE AUTHORITY OF ITS DUTIES AND OBLIGATIONS UNDER THIS AGREEMENT THAT, EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT AND SUBJECT TO THE AUTHORITY'S EXPRESS REPRESENTATIONS AND WARRANTIES SET FORTH IN SECTION 11 OF THIS AGREEMENT, THE SALE OF THE PROPERTY HEREUNDER IS AND WILL BE MADE ON AN "AS IS, WHERE IS" BASIS. THE AUTHORITY HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY NEGATES AND DISCLAIMS ANY REPRESENTATIONS, WARRANTIES OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT, FUTURE OR OTHERWISE, OF, AS TO, CONCERNING OR WITH RESPECT TO: (1) THE EXISTENCE OF HAZARDOUS MATERIALS OR MOLD UPON THE PROPERTY OR ANY PORTION THEREOF; (2) GEOLOGICAL CONDITIONS, INCLUDING, WITHOUT LIMITATION, SUBSIDENCE, SUBSURFACE CONDITIONS, WATER TABLE, UNDERGROUND WATER RESERVOIRS, LIMITATIONS REGARDING THE WITHDRAWAL OF WATER AND FAULTING; (3) WHETHER OR NOT AND TO THE EXTENT TO WHICH THE PROPERTY OR ANY PORTION THEREOF IS AFFECTED BY ANY STREAM (SURFACE OR UNDERGROUND), BODY OF WATER, FLOOD PRONE AREA, FLOOD PLAIN, FLOODWAY OR SPECIAL FLOOD HAZARD; (4) DRAINAGE; (5) SOIL CONDITIONS, INCLUDING THE EXISTENCE OF INSTABILITY, PAST SOIL REPAIRS, SOIL ADDITIONS OR CONDITIONS OF SOIL FILL, OR SUSCEPTIBILITY TO LANDSLIDES, OR THE SUFFICIENCY OF ANY UNDERSHORING; (6) USES OF ADJOINING PROPERTIES; (7) THE VALUE, COMPLIANCE WITH THE PLANS AND SPECIFICATIONS, SIZE, LOCATION, AGE, USE, DESIGN, QUALITY, DESCRIPTION, DURABILITY, STRUCTURAL INTEGRITY, OPERATION, TITLE TO, OR PHYSICAL OR FINANCIAL CONDITION OF THE PROPERTY OR ANY PORTION THEREOF, OR ANY RIGHTS OR CLAIMS ON OR AFFECTING OR PERTAINING TO THE PROPERTY OR ANY PART THEREOF, INCLUDING, WITHOUT LIMITATION, WHETHER OR NOT THE IMPROVEMENTS COMPLY WITH THE REQUIREMENTS OF TITLE III OF THE AMERICANS WITH DISABILITIES ACT OF 1990, 42 U.S.C. §§ 12181-12183, 12186(B) – 12189 AND RELATED REGULATIONS; (8) THE PRESENCE OF HAZARDOUS MATERIALS IN OR ON, UNDER OR IN THE VICINITY OF THE PROPERTY; (9) THE SQUARE FOOTAGE OF THE PROPERTY OR THE IMPROVEMENTS THEREON; (10) IMPROVEMENTS AND INFRASTRUCTURE, INCLUDING, WITHOUT LIMITATION, THE CONDITION OF THE ROOF, FOUNDATION, FIXTURES, AND PERSONAL PROPERTY, IF ANY; (11) DEVELOPMENT RIGHTS AND EXTRACTATIONS; (12) WATER OR WATER RIGHTS; (13) THE DEVELOPMENT POTENTIAL FOR THE PROPERTY; (14) THE ABILITY OF THE OPTIONEE TO REZONE THE PROPERTY OR CHANGE THE USE OF THE PROPERTY; (15) THE ABILITY OF THE OPTIONEE TO ACQUIRE ADJACENT PROPERTIES; (16) THE EXISTENCE AND POSSIBLE LOCATION OF ANY UNDERGROUND UTILITIES; (17) THE EXISTENCE AND POSSIBLE LOCATION OF ANY ENCROACHMENTS; (18) WHETHER THE IMPROVEMENTS ON THE PROPERTY WERE BUILT, IN WHOLE OR IN PART, IN COMPLIANCE WITH APPLICABLE

BUILDING CODES; (19) THE STATUS OF ANY LIFE-SAFETY SYSTEMS IN THE IMPROVEMENTS ON THE PROPERTY; (20) THE CHARACTER OF THE NEIGHBORHOOD IN WHICH THE PROPERTY IS SITUATED; (21) THE CONDITION OR USE OF THE PROPERTY OR COMPLIANCE OF THE PROPERTY WITH ANY OR ALL PAST, PRESENT OR FUTURE FEDERAL, STATE OR LOCAL ORDINANCES, RULES, REGULATIONS OR LAWS, BUILDING, FIRE OR ZONING ORDINANCES, CODES OR OTHER SIMILAR LAWS; (22) THE MERCHANTABILITY OF THE PROPERTY OR FITNESS OF THE PROPERTY FOR ANY PARTICULAR PURPOSE (THE OPTIONEE AFFIRMING THAT THE OPTIONEE HAS NOT RELIED ON THE AUTHORITY'S SKILL OR JUDGMENT TO SELECT OR FURNISH THE PROPERTY FOR ANY PARTICULAR PURPOSE, AND THAT THE AUTHORITY MAKES NO WARRANTY THAT THE PROPERTY IS FIT FOR ANY PARTICULAR PURPOSE); AND/OR (23) ANY OTHER MATTER CONCERNING THE PROPERTY. NOTWITHSTANDING THE FOREGOING OR ANYTHING TO THE CONTRARY SET FORTH IN THIS AGREEMENT, THE AUTHORITY IS NOT RELEASED FROM ANY LIABILITY TO THE OPTIONEE FOR FRAUD OR BREACH OF ANY COVENANT, REPRESENTATION OR WARRANTY SET FORTH IN THIS AGREEMENT. Notwithstanding anything to the contrary set forth in this Agreement, including without limitation, this Section 11(j), any right waived by the Optionee and any release by the Optionee, shall only release or waive the Optionee's right to enforce any judgment (including without limitation, damages, attorneys' fees, costs, expenses or any other compensation of any type whatsoever) personally against only the Authority and Authority's successors, assigns, officials, officers, directors, shareholders, participants, partners, affiliates, employees, representatives, invitees and agents (collectively, the "Authority's Affiliates") or any of them. The Optionee is not waiving any right to bring any action against any of the "Non-Released Parties" (defined below) or waiving recovery against or otherwise releasing or agreeing to forego the Optionee's rights with respect to any insurance policy, or any other person (other than the right to enforce a judgment personally against any of the Authority's Affiliates, including without limitation persons obligated to the Authority's Affiliates, by right of subrogation or otherwise, prior owners or occupants of the Property, the tenants, persons performing work at the Property and/or any insurance policies held by any or all such persons (collectively, the "Non-Released Parties").

THE OPTIONEE ACKNOWLEDGES THAT THE OPTIONEE SHALL HAVE COMPLETED ALL PHYSICAL AND FINANCIAL EXAMINATIONS RELATING TO THE ACQUISITION OF THE PROPERTY AND WILL ACQUIRE THE SAME SOLELY ON THE BASIS OF SUCH EXAMINATIONS AND THE TITLE INSURANCE PROTECTION FOR THE PROPERTY AFFORDED BY THE TITLE POLICY, EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT AND SUBJECT TO THE AUTHORITY'S EXPRESS REPRESENTATIONS AND WARRANTIES SET FORTH IN SECTION 11 OF THIS AGREEMENT. THE OPTIONEE FURTHER ACKNOWLEDGES AND AGREES THAT ANY INFORMATION PROVIDED OR TO BE PROVIDED WITH RESPECT TO THE PROPERTY WAS OBTAINED FROM A VARIETY OF SOURCES AND THAT THE AUTHORITY HAS NOT MADE ANY INDEPENDENT INVESTIGATION OR VERIFICATION OF SUCH INFORMATION AND MAKES NO REPRESENTATIONS AS TO THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION, EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT AND SUBJECT TO THE

AUTHORITY'S EXPRESS REPRESENTATIONS AND WARRANTIES SET FORTH IN SECTION 11 OF THIS AGREEMENT. THE AUTHORITY SHALL NOT BE LIABLE FOR ANY NEGLIGENT MISREPRESENTATION OR FAILURE TO INVESTIGATE THE PROPERTY NOR SHALL THE AUTHORITY BE BOUND IN ANY MANNER BY ANY VERBAL OR WRITTEN STATEMENTS, REPRESENTATIONS, APPRAISALS, ENVIRONMENTAL ASSESSMENT REPORTS, OR OTHER INFORMATION PERTAINING TO THE PROPERTY OR THE OPERATION THEREOF, FURNISHED BY THE AUTHORITY, OR ANY REAL ESTATE BROKER, AGENT, REPRESENTATIVE, EMPLOYEE, SERVANT OR OTHER PERSON ACTING ON THE AUTHORITY'S BEHALF EXCEPT FOR REPRESENTATIONS AND WARRANTIES EXPRESSLY PROVIDED IN SECTION 11 OF THIS AGREEMENT. IT IS ACKNOWLEDGED AND AGREED THAT THE PROPERTY IS SOLD BY THE AUTHORITY AND PURCHASED BY THE OPTIONEE SUBJECT TO THE FOREGOING. NOTWITHSTANDING THE FOREGOING OR ANYTHING TO THE CONTRARY SET FORTH IN THIS AGREEMENT, THE AUTHORITY IS NOT RELEASED FROM ANY LIABILITY TO THE OPTIONEE FOR FRAUD OR BREACH OF ANY COVENANT, REPRESENTATION OR WARRANTY SET FORTH IN THIS AGREEMENT.

THE OPTIONEE ACKNOWLEDGES AND AGREES THAT THE OPTIONEE IS FULLY AWARE OF THE AGE OF THE PROPERTY, THAT OVER TIME VARIOUS EVENTS MAY HAVE OCCURRED ON THE PROPERTY WHICH EVENTS MAY BE TYPICAL AND (OR) ATYPICAL OF EVENTS OCCURRING TO OTHER PROPERTIES OF SIMILAR AGE TO THE PROPERTY AND SIMILARLY LOCATED IN THE CITY OF NATIONAL CITY AND (OR) THE COUNTY OF SAN DIEGO, CALIFORNIA, AND THAT SUCH EVENTS MAY INCLUDE, WITHOUT LIMITATION, SLAB LEAKS, MOLD, FIRE, SHIFTING, AND VIOLATIONS OF LAWS, ORDINANCES, RULES, REGULATIONS, PERMITS, APPROVALS, LICENSES AND (OR) ORDERS OF GOVERNMENTAL AGENCIES WITH JURISDICTION OVER THE PROPERTY.

THE CLOSING OF THE PURCHASE OF THE PROPERTY BY THE OPTIONEE SHALL BE CONCLUSIVE EVIDENCE THAT: (A) THE OPTIONEE HAS FULLY AND COMPLETELY INSPECTED (OR HAS CAUSED TO BE FULLY AND COMPLETELY INSPECTED) THE PROPERTY; AND (B) THE OPTIONEE ACCEPTS THE PROPERTY AS BEING IN GOOD AND SATISFACTORY CONDITION AND SUITABLE FOR THE OPTIONEE'S PURPOSES.

WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, EXCEPT FOR RELIANCE ON REPRESENTATIONS AND WARRANTIES EXPRESSLY PROVIDED IN SECTION 11 OF THIS AGREEMENT, THE OPTIONEE SHALL PERFORM AND RELY SOLELY UPON ITS OWN INVESTIGATION CONCERNING ITS INTENDED USE OF THE PROPERTY, AND THE PROPERTY'S FITNESS THEREFOR. THE OPTIONEE FURTHER ACKNOWLEDGES AND AGREES THAT THE AUTHORITY'S COOPERATION WITH OPTIONEE WHETHER BY AUTHORIZING THE RIGHT OF OPTIONEE TO ENTER ON THE PROPERTY, PROVIDING DOCUMENTS RELATING TO THE PROPERTY, OR PERMITTING INSPECTION OF THE PROPERTY, SHALL NOT BE CONSTRUED AS ANY WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, OF ANY KIND WITH

RESPECT TO THE PROPERTY, OR WITH RESPECT TO THE ACCURACY, COMPLETENESS, OR RELEVANCE OF THE DOCUMENTS PROVIDED TO OPTIONEE BY THE AUTHORITY IN RELATION TO THE PROPERTY, PROVIDED THAT THE FOREGOING SHALL NOT BE A LIMITATION OR MODIFICATION OF THE REPRESENTATIONS AND WARRANTIES EXPRESSLY PROVIDED FOR IN SECTION 8 OF THIS AGREEMENT.

\_\_\_\_\_  
AUTHORITY'S INITIALS

\_\_\_\_\_  
OPTIONEE'S INITIALS

(k) Indemnity and Waiver.

(1) Indemnity. For the purposes of this Section 11(k), the term "Claims" shall mean any and all claims, obligations, liabilities, causes of action, suits, debts, liens, damages, judgments, losses, demands, orders, penalties, settlements, costs and expenses (including, without limitation, attorneys' fees and costs) of any kind or nature whatsoever. The definition of "Claims" shall also include, without limitation, Claims under contract law or tort law. The Optionee acknowledges that but for the Optionee's agreement to each and every provision of these Sections 11(j and k), the Authority would not have entered into the Agreement.

The Optionee, on behalf of itself, its successors, assigns and successors-in-interest ("Successors"), shall indemnify, defend, protect and hold the Authority, the City of National City, and their successors, assigns, partners, affiliates and members and all their respective officials, officers, directors, shareholders, participants, partners, affiliates, employees, representatives, invitees and agents (collectively, "Authority Parties") harmless from and against all liability, loss, damages to property, injuries to, or death of any person or persons, including liability for response to environmental regulatory claims, and any and all Claims resulting from, related to, or based upon, whether directly or indirectly: (i) the breach by the Optionee of any representation, warranty, covenant or obligation contained in the Agreement, or in any other agreement, document, exhibit or instrument related hereto or referenced herein; (ii) any Claim or Claims, if the basis of such Claim or Claims arose on or after the Closing, except as noted in subparagraph (iv) below, and if the basis of such Claim or Claims arose from, is based upon, relates to or pertains to, whether directly or indirectly, the operation, management and use of the Property; (iii) any Claim or Claims which Claim or Claims (or the basis for which) arose from, is based upon, relates to or pertains to, whether directly or indirectly, any act or omission of the Optionee or any of its employees, agents or representatives; and (iv) (A) any Claim or Claims that relate to the condition of the Property on or after the Close of Escrow, including any judgment, order or settlement under or otherwise pursuant to a lawsuit, and (B) any Claim or Claims that relate to defects in the Property (including, without limitation, patent and latent construction defects), regardless of whether said defects or the cause of the same arose either before or after the Close of Escrow, including any judgment, order or settlement under or otherwise pursuant to the lawsuit; provided however, that this indemnification shall not include any Claims arising from the established sole negligence or willful misconduct of the Authority or the Authority Parties. Any defense of any or all of the Authority Parties referenced in this Section 11(k)(1) shall be at the Optionee's sole cost and expense and by counsel selected by the Optionee, subject to the reasonable approval of the indemnified person, which counsel may,

without limiting the rights of any of the Authority Parties pursuant to the next succeeding sentence of this Section 11(k)(1), also represent the Optionee in such investigation, action or proceeding. If any of the Authority Parties that is being indemnified determines reasonably and in good faith that its defense by the Optionee is reasonably likely to cause a conflict of interest or is being conducted in a manner which is prejudicial to such persons interests, such indemnified person may elect to conduct its own defense through counsel of its own choosing, subject to the reasonable approval of the Optionee, and at the expense of the Optionee.

It is specifically intended that each of the Authority Parties shall be third party beneficiaries of this Section 11(k).

(2) Survival. The provisions of this Section 11(k) shall survive the Closing and, as applicable, the termination of this Agreement.

(l) Waiver of Hazardous Materials Claims. Upon Closing, the Optionee and its Successors waive any and all future Claims by the Optionee against the Authority or the Authority Parties regarding any aspect of the condition of the Entire Site, physical or environmental.

(m) Waiver of Subrogation; Survival. The Optionee waives any right of subrogation as to the Authority or the Authority's Parties. Each and every provision of this Section 11 shall, except as may be expressly limited in this Section 11, survive the Closing and, as applicable, the termination of this Agreement, and, but for the Optionee's agreement to each and every provision of this Section 11, the Authority would not have executed this Agreement.

12. National Pollutant Discharge Elimination System Municipal Permit. The Optionee agrees and warrants that it will comply with the National Pollutant Discharge Elimination System Municipal Permit and the Water Quality Improvement Plan pursuant to the Municipal Permit during construction and operation of the Project. To the extent applicable to the Property the uses conducted thereon, the Optionee agrees and warrants that it will comply with Chapter 14.22 of the National City Municipal Code titled "Storm Water Management and Discharge Control".

13. Condemnation of the Property.

(a) If between the Effective Date and the Closing Date, any condemnation or eminent domain proceeding is commenced that will result in the taking of any part of the Property, the Optionee may, at the Optionee's election, either:

(1) Terminate this Agreement by giving written or emailed notice to the Authority and the Escrow Agent in which event all remaining funds or other things deposited in Escrow by the Optionee, including without limitation, the Deposit, shall be returned to the Optionee immediately from Escrow, together with any interest earned thereon and all fees and costs charged by the Escrow Agent shall be paid one-half (1/2) by the Authority and one-half (1/2) by the Optionee; or



(2) Proceed with the Closing with no reduction in the Purchase Price, in which event the Authority shall assign to the Optionee all of the Authority's rights, titles and interests to any award made for the condemnation or eminent domain action.

(b) Notice. If the Authority obtains notice of the commencement of or the threatened commencement of eminent domain or condemnation proceedings with respect to all of any portion of the Property, the Authority shall notify the Optionee in writing.

14. Broker's Commission. The Authority and the Optionee represent that there are no real estate brokers or agents of record in this transaction, other than Don Moser of Retail Insite Commercial Real Estate, and the Authority shall pay the Don Moser a commission pursuant to a separate written agreement, a copy of which shall be furnished to the Optionee. The Authority and the Optionee each agree that, to the extent any other real estate commission, brokerage commission or finder's fee shall be earned or claimed in connection with this Agreement or the Closing, the payment of such fee or commission, and the defense of any action in connection therewith, shall be the sole and exclusive obligation of the party who requested (or is alleged to have requested) the services of the broker or finder. In the event that any claim, demand or cause of action for any such commission or finder's fee is asserted against the party to this Agreement who did not request such services (or is not alleged to have requested such services), the party through whom the broker or finder is making the claim shall indemnify, defend (with an attorney of the indemnitee's choice), protect and hold harmless the other from and against any and all such claims, demands and causes of action and expenses related thereto, including, without limitation, attorneys' fees and costs. The provisions of this Section 11 shall survive the Closing or termination of this Agreement.

15. Assignment. The Optionee shall not assign any of its rights or delegate any of its duties under this Agreement without the prior written consent of the Authority, which consent may be withheld or granted in the Authority's sole and absolute discretion; provided, however, the Optionee may assign this Agreement to an entity in which the Optionee has a controlling or majority interest without the prior written consent of the Authority provided the Optionee and such assignee execute an assignment agreement in form and substance reasonably acceptable to the Authority.

16. Notices. All notices under this Agreement shall be in writing and sent (a) by certified or registered mail, return receipt requested, in which case notice shall be deemed delivered three (3) Business Days after deposit, postage prepaid in the United States Mail, (b) overnight by a nationally recognized overnight courier such as UPS Overnight, or FedEx, in which case notice shall be deemed delivered one (1) Business Day after deposit with that courier, (c) by personal delivery, in which case notice shall be deemed delivered upon the actual date of delivery, or (d) by email, in which case notice shall be deemed delivered upon the actual date of delivery. All notices shall be delivered to the following addresses:

If to the Optionee: CARMAX AUTO SUPERSTORES CALIFORNIA, LLC,  
a Virginia limited liability company  
12800 Tuckahoe Creek Parkway  
Richmond, Virginia 23238-1115  
Attention: K. Douglass Moyers, VP of Real Estate  
Email: Jason\_D\_Pruitt@carmax.com  
Phone: (804) 935-4552  
Fax: (804) 935-4547

and a copy to: Matthew I. Lamishaw, Esq.  
Kennerly, Lamishaw & Rossi LLP  
707 Wilshire Blvd., Suite 1400  
Los Angeles, California 90017  
Phone: (213) 312-1250  
Fax: (213) 312-1266

If to the Authority: Parking Authority of the City of National City  
City Manager's Office  
1243 National City Boulevard  
National City, CA 91950-4301  
Attn: Brad Raulston  
Tel: (619) 336-4250  
Fax: (619) 336-4327  
Email: braulston@nationalcityca.gov

The addresses above may be changed by written notice to the other party; provided however, that no notice of a change of address shall be effective until actual receipt of the notice.

17. Risk of Loss. The risk of loss or damage to the Property until the Closing will be borne by Optionee, due to the right of Optionee to enter onto the Property for the purpose of conducting the Due Diligence Studies. If prior to the Closing there is damage to or destruction of the Property, Optionee shall nevertheless close Escrow with the Property in such damaged condition, and the Purchase Price shall not be reduced. The Authority shall not be obligated to repair or restore the Property. Optionee may elect not to proceed with the purchase of the Property at any time following the expiration of the Permitting Period. In the event Optionee elects not to proceed post Permitting Period but prior to Closing, the Authority shall retain the Deposit as liquidated damages as its sole and absolute remedy pursuant to Section 6(b)(2) of this Agreement.

18. Proration. Real property taxes and assessments and utility costs, and other expenses of operating the Property (provided, however, no proration shall be made with regard to any capital improvements) shall be prorated as of the Closing. The Authority shall pay all documentary transfer taxes. The Authority shall pay all real property taxes and assessments applicable to the period prior to the Closing, and if any such taxes are unpaid after the Closing, then the Authority shall pay them promptly and in any event within ten (10) days after Optionee's request (which shall include a copy of the relevant tax bill). Except as otherwise provided herein, in accordance with southern California custom, each party hereto shall pay all of its own costs and expenses in

connection with this transaction, with the Authority to pay any transfer tax, all recording fees at Closing (except as provided herein), all costs related to clearing title objections, and one half (1/2) of any escrow fees charged by the Escrow Agent. The Optionee shall pay for the cost of the Survey and one half (1/2) of any escrow fees charged by the Escrow Agent.

19. General Provisions.

(a) Governing Law. This Agreement shall be interpreted and construed in accordance with California law, without regard to any choice of law principles.

(b) Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

(c) Captions. The captions in this Agreement are inserted for convenience of reference and in no way define, describe or limit the scope or intent of this Agreement or any of the provisions of this Agreement.

(d) Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties and their respective legal representatives, successors, heirs and permitted assigns.

(e) Modifications and Amendments. No modification, amendment, or change to this Agreement shall be valid unless it is in writing and signed by the Authority and the Optionee.

(f) Entire Agreement. This Agreement contains the entire agreement between the parties relating to Optionee's acquisition of the Property from the Authority and all prior or contemporaneous agreements, understandings, representations or statements, oral or written, are superseded.

(g) Partial Invalidity. Any provision of this Agreement which is unenforceable, invalid, or the inclusion of which would adversely affect the validity, legality, or enforcement of this Agreement shall have no effect, but all the remaining provisions of this Agreement shall remain in full effect.

(h) Survival. Provisions of this Section 19 shall survive the Closing or the termination of this Agreement.

(i) No Third-Party Rights. Nothing in this Agreement, express or implied, is intended to confer upon any person, other than the parties to this Agreement and their respective successors and assigns, any rights or remedies.

(j) Time of Essence. Time is of the essence in this Agreement.

(k) Attorneys' Fees. The parties agree that the prevailing party in litigation for the breach and/or interpretation and/or enforcement of the terms of this Agreement shall be entitled to their expert witness fees, if any, as part of their costs of suit, and attorneys' fees as may be

awarded by the court, pursuant to California Code of Civil Procedure (“CCP”) Section 1033.5 and any other applicable provisions of California law, including, without limitation, the provisions of CCP Section 998. All claims, disputes, causes of action or controversies shall be subject solely to the jurisdiction of the San Diego Superior Court, Downtown Branch.

(l) Relationship. Nothing contained in this Agreement shall be deemed or construed by the parties or by any third person to create a relationship of principal and agent or partnership or a joint venture between the Optionee and the Authority or between any of them and any third party.

(m) Recording. Neither this Agreement nor a memorandum hereof shall be recorded.

(n) The Authority’s Approval. Where this Agreement refers to an action or approval of the Authority, it shall mean the approval of the Authority, or designee, unless otherwise provided.

(o) Exhibits and Recitals Incorporated. All exhibits referred to in this Agreement are incorporated in this Agreement by this reference, regardless of whether or not the exhibits are actually attached to this Agreement. The Recitals to this Agreement are incorporated in this Agreement by this reference.

(p) Independent Counsel. The Authority and the Optionee each acknowledge that: (a) they have been given the opportunity to be represented by independent counsel in connection with this Agreement; (b) they have executed this Agreement with the advice of such counsel, if such counsel was retained; and (c) this Agreement is the result of negotiations between the Authority and the Optionee and the advice and assistance of their respective counsel, if such counsel was retained. The fact that this Agreement was prepared or negotiated by the Authority’s counsel as a matter of convenience shall have no import or significance. Any uncertainty or ambiguity in this Agreement shall not be construed against the Authority due to the fact that the Authority’s counsel prepared or negotiated this Agreement in its final form.

(q) Tolling of Deadlines. Any periods of time, deadlines or time or day limitations set forth in this Agreement, including without limitation, the deadline for Closing and the deadline for making the Deposit, shall all be automatically extended by one (1) Business Day for each Business Day that the Authority fails to timely provide any notice, report, materials, studies, documentation or other information required by this Agreement.

(r) Capacity and Authority. All individuals signing this Agreement for a party which is a corporation, limited liability company, partnership or other legal entity, or signing under a power of attorney, or as a trustee, guardian, conservator, or in any other legal capacity, represent and warrant that they have the necessary capacity and authority to act for, sign and bind the respective entity or principal on whose behalf they are signing.

[Signatures continued on next page]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

**OPTIONEE:**

**CarMax Auto Superstores California, LLC,**  
a Virginia limited liability company

By: \_\_\_\_\_  
K. Douglass Moyers, Vice President

**AUTHORITY:**

**Parking Authority of the City of National City**

By: \_\_\_\_\_  
Ron Morrison, Chairman

Approved as to Form:

By: \_\_\_\_\_  
Claudia Silva  
Legal Counsel for the Parking Authority  
of the City of National City

LIST OF EXHIBITS

<u>EXHIBIT</u>	<u>DESCRIPTION</u>
"A"	Exclusive Negotiation Agreement
"B"	General Site Map of Minimum Acreage
"C"	Schedule of Performance
"D"	Internal Revenue Code Section 1445 Certification
"E"	Option to Purchase Agreement between the Authority and the County of San Diego

EXHIBIT "A"

EXCLUSIVE NEGOTIATION AGREEMENT

**EXCLUSIVE NEGOTIATING AGREEMENT  
BY AND BETWEEN  
PARKING AUTHORITY OF THE CITY OF NATIONAL CITY  
AND  
CARMAX AUTO SUPERSTORES CALIFORNIA, LLC**

This Exclusive Negotiating Agreement ("Agreement" or "ENA"), dated as of this 21st day of October, 2014 ("Effective Date"), is made by and between the PARKING AUTHORITY OF THE CITY OF NATIONAL CITY, a public body corporate and politic, (the "Authority") and CARMAX AUTO SUPERSTORES CALIFORNIA, LLC, a Virginia limited liability company ("CarMax"). In consideration of the mutual covenants and promises set forth below, the Authority and CarMax (collectively, the "Parties") agree as follows:

**RECITALS**

This Agreement is entered into with reference to the following facts:

- A. In 1977, pursuant to Resolution No. 12,402, the City of National City (the "City") created the Parking Authority of the City of National City in accordance with the Parking Law of 1949.
- B. The Authority is the owner of a 15.08 acre parcel of land at the southwest corner of Sweetwater Road and Bonita Center Road, in the City of National City, State of California, identified as County Assessor's Parcel Number 564-471-11, as more particularly described in Exhibit A, attached hereto and incorporated herein by this reference (the "Overall Site").
- C. In 1978, the Authority conveyed to the County of San Diego an easement for open space and park purposes over the Overall Site (the "Easement") in accordance with a Cooperation Agreement between the City of National City and the County of San Diego (the "County") for the development of the Plaza Bonita Shopping Center, the construction of Plaza Bonita Road, and the funding of improvements to portions of Sweetwater Regional Park.
- D. On April 3, 2007, the Authority and the County entered into an Option to Purchase Agreement (the "Option Agreement") setting forth the terms of an option whereby the Authority could purchase the Easement from the County.
- E. In the past, County staff have represented that they will exercise their best efforts to relinquish the Easement over the Overall Site for a fee of \$3,000,000 and that they will use the fee to purchase replacement open space property within the Sweetwater Valley Regional Park and the Sweetwater Summit Camping Area.
- F. The Option Agreement has been amended six times, most recently on October 15, 2013 pursuant to Resolution No. 2013-2, to extend the term of the Option Agreement.



G. The City Council of the City of National City ("City Council") adopted the Mitigation Monitoring and Reporting Program, adopted and made a Statement of Overriding Considerations, and certified the Final Environmental Impact Report for the National City Costco Wholesale Project, SCH #2003111073, November 2007 ("FEIR") for the Overall Site on November 20, 2007, pursuant to Resolution No. 2007-259.

H. The City Council amended the Combined General Plan/Zoning Map for the Overall Site from Open Space Reserve (OSR) to General Commercial-Planned Development (CG-PD) on November 20, 2007, pursuant to Resolution No. 2007-259. The CG-PD zone was renamed the MXD-2 zone in 2012.

I. CarMax desires to acquire approximately 9.5 acres of the Overall Site from the Authority (the "Property"), on which it intends to construct and operate a CarMax Superstore with related parking and landscaping (collectively, the "Project"), all in accordance with plans and specifications subject to approval by the Authority.

J. The Authority and CarMax desire to enter into this Agreement to initiate exclusive negotiations to allow CarMax to undertake its due diligence activities regarding the Property and to allow the Authority to work with the County for the release of the Easement on the Overall Site, with the objective of subsequently entering into a mutually acceptable purchase and sale agreement for the Property.

#### Section 1. Exclusive Negotiating Period

The Exclusive Negotiating Period begins on the Effective Date noted above and shall cover the Initial Negotiation Period, the Due Diligence Period and the Permitting Period as set forth herein.

(a) Initial Negotiation Period. During the first 120 days following the Effective Date ("Initial Negotiation Period") (i) Authority staff shall work with County staff to attempt to negotiate a reduction in the price for release of the Easement, and (ii) Authority and CarMax shall negotiate, in good faith, the terms of a Purchase and Sale Agreement for the Property. During the Initial Negotiation Period, CarMax shall meet with Authority staff and its consultants to develop a conceptual plan of the Project.

(b) Due Diligence Period. If the parties have entered into a mutually acceptable Purchase and Sale Agreement at the conclusion of the Initial Negotiation Period, then during the first 120 days following the execution of the Purchase and Sale Agreement by Authority and CarMax ("Due Diligence Period"), CarMax shall perform its due diligence to determine if the Property is suitable for the Project.

(c) Permitting Period. Commencing upon the expiration of the Due Diligence Period, CarMax shall have the right to an additional period of time (the "Permitting Period"), not to exceed a total of 365 days thereafter, in which to satisfy its obligations under Section 5; provided that if

CarMax and the Authority determine in good faith that CarMax cannot satisfy its obligations under Section 5 within a reasonable period of time, it shall have the right to extend the Permitting Period for up to two additional thirty day periods.

**Section 2. Purchase Price**

The purchase price for the Property is Three Million Five Hundred Thousand Dollars (\$3,500,000.00) in gross (the "Purchase Price").

**Section 3. Conditions Precedent to Close of Escrow**

(a) As conditions precedent to the close of escrow under the Purchase and Sale Agreement, Car Max shall:

(i) Obtain a parcel map from the City in compliance with National City Municipal Code Title 17 and the Subdivision Map Act (California Government Code sections 66410 - 66499.58);

(ii) Obtain all City, State, and Federal Permits ("Permits") required for CarMax's construction of the Project and use of the Property;

(iii) Obtain all City approvals of the development standards in the City of National City Land Use Code (National City Municipal Code Title 18) ("Approvals") required for CarMax's construction of the Project and use of the Property;

(iv) Complete and obtain certification of, to the satisfaction of the Authority, all environmental documents in compliance with Section 9 below; and

(v) Process an amendment to the City of National City Land Use Code to allow used automobile sales in the MKD-2 zone.

(b) As a condition precedent to the close of escrow under the Purchase and Sale Agreement, the Authority shall complete the purchase of the Easement from the County.

**Section 4. Obligations of Authority**

(a) During the Exclusive Negotiating Period, the Authority shall use its good faith efforts to undertake the following actions, provided that the Authority shall not incur any liability for costs or expenses incurred by CarMax to third parties in connection with the Project:

(i) Work with County staff to negotiate a reduction in the cost to release the Easement from the County pursuant to the Option Agreement;

(ii) Enter into an amendment to the Option Agreement with the County so that the close of escrow on the Option Agreement occurs simultaneously with the close of escrow on the Purchase and Sale Agreement;

(iii) Furnish CarMax with any documents in its possession or control to assist CarMax with its due diligence;

(iv) Respond in a timely manner on all submittals made by CarMax pursuant to Section 5; and

(v) Work with CarMax to establish a reasonable time schedule for the negotiation of a Purchase and Sale Agreement and the completion of all necessary Approvals and Permits to implement the Project.

(b) The Authority, its staff, consultants and agents agree, and such parties shall so notify any and all other parties, that during the Exclusive Negotiating Period, the Authority and its staff, consultants and/or agents shall not negotiate, discuss, or otherwise communicate with any person or entity, other than CarMax, regarding entering into a Purchase and Sale Agreement, the transactions contemplated by this ENA, the availability of the Property for development, or any other matter related to the foregoing.

(c) Throughout the Exclusive Negotiating Period, Authority staff shall be available to meet with CarMax to discuss the Project and any issues pertinent to the preparation and implementation of a Purchase and Sale Agreement for the acquisition of the Property and the construction and development of the Project.

(d) The land use authority is the City and the sole decision-making body for the Permits and Approvals is the City Council. The Authority will take an active role in assisting CarMax in working with the City to obtain Permits and Approvals. The Authority's role will be that of a facilitator in the process.

#### **Section 5. Obligations of CarMax**

(a) During the Due Diligence, CarMax shall work with Authority staff to develop prototypical building elevations and conceptual site plans, including parking and pedestrian circulation in relation to its surroundings (collectively, "Concept Plans"). The Concept Plans shall identify building design features, including signage.

(b) During the Due Diligence Period, CarMax shall deliver to the Authority a narrative which outlines sustainability and green building concepts that may be incorporated into the Project through the design, construction and operation phases. CarMax shall comply with National City Municipal Code Chapter 15.78; provided, however, that notwithstanding the foregoing, there is no requirement that the Project has to be LEED certified or certifiable.

(c) During the Due Diligence Period, CarMax shall perform, or cause to be performed, the necessary studies to determine what environmental documents, if any, are necessary to comply with the California Environmental Quality Act ("CEQA") in compliance with Section 9 below. CarMax is responsible for the costs of the studies.

(d) During the Permitting Period, CarMax shall use due diligence in its effort to obtain a parcel map for the Overall Site and shall keep the Authority apprised of its progress. CarMax is responsible for all costs associated with the parcel map.

(e) During the Permitting Period, CarMax shall use due diligence in its effort to obtain all required Permits and Approvals and shall keep the Authority apprised of its progress. CarMax is responsible for all costs associated with the Permits and Approvals relating to the Property and the Project.

(f) During the Permitting Period, CarMax shall, if applicable, apply to other federal and state agencies for all required permits including, but not limited to, the United States Army Corps of Engineers, the Regional Water Quality Control Board, the California Department of Fish and Game, the Federal Emergency Management Agency, and the California Department of Transportation. CarMax is responsible for all costs associated with required federal and state permits.

(g) During the Permitting Period, CarMax shall complete and obtain certification of, to the satisfaction of the Authority, all environmental documents in compliance with Section 9 below.

#### **Section 6. Purchase and Sale Agreement**

Within the first sixty days of the Initial Negotiation Period, the Authority shall deliver to CarMax a draft Purchase and Sale Agreement. The Parties acknowledge and agree that during the term of this Agreement, the Parties shall use their respective good faith efforts to negotiate and enter into a Purchase and Sale Agreement, which shall include, but not be limited to, the following:

(a) A provision conveying the Property from the Authority to CarMax;

(b) A provision stating that the Authority will convey the Site to CarMax in its "as-is" condition and that CarMax will defend and indemnify the Authority and its respective agents and representatives with respect to the physical condition of the Property, including any environmental contamination;

(c) A provision requiring CarMax, at its sole cost, to (i) cause any environmental remediation of the Property as may be required for the construction and operation of the Project and (ii) obtain all Permits and Approvals relating to the construction and operation of the Project; and

(d) A provision ensuring that CarMax will comply with the National Pollutant Discharge Elimination System ("NPDES") Municipal Permit and the Water Quality Improvement Plan ("WQIP") pursuant to the Municipal Permit.

#### **Section 7. CarMax Deposit**

Within ten days after full execution of this ENA by the Authority, CarMax shall deposit into escrow a deposit in the amount of Twenty-Five Thousand Dollars (\$25,000.00) in the form of a wire payment, ACH, or any other form that is acceptable to the Authority ("Good Faith Deposit"). The purposes of the Good Faith Deposit are (i) as consideration to the Authority for exclusively negotiating with CarMax for the Property, and (ii) to ensure that CarMax proceeds diligently and in good faith to perform all of CarMax's obligations under this ENA. The Good Faith Deposit may be applied towards the Purchase Price. Any interest accrued on the Good Faith Deposit shall be the property of the Authority and shall be retained by the Authority.

The Good Faith Deposit shall be returned to CarMax at the time and in the event of any of the following:

- (a) At the expiration of the Due Diligence Period; provided that CarMax has diligently performed and has completed all of its applicable obligation in the ENA;
- (b) During the Permitting Period if CarMax is denied the Permits, Approvals or the parcel map, or if CarMax is unable to obtain certification of the environmental document required pursuant to Section 9, after diligently pursuing the certification; or
- (c) In the event the ENA is terminated pursuant to Section 10 due to a breach by the Authority.

#### **Section 8. No Acquisition**

CarMax acknowledges and agrees that it has not acquired, nor will it acquire, by virtue of the terms of this Agreement, any legal or equitable interest in the Property from the Authority.

#### **Section 9. Environmental**

CarMax shall be responsible to perform any necessary studies and to prepare, and cause to be certified, any necessary supplemental or subsequent environmental documents to the FEIR for the Project in full compliance with CEQA. CarMax shall be responsible for all reasonably necessary costs associated with carrying out the obligations under CEQA.

#### **Section 10. Termination**

(a) Either Party may terminate this Agreement if the other Party fails to comply with and perform in a timely manner in any material respect the provisions to be performed by that Party. The Party wishing to terminate shall give thirty days written notice to the other Party

specifying any such failure to comply with the terms of this Agreement. The Party wishing to terminate shall not terminate this Agreement if the other Party cures the deficiency(ies) specified in the notice within thirty days after delivery of the notice.

(b) If CarMax determines that either the Property or the Project are not suitable or feasible for any reason, on or before the last day of the Due Diligence Period, or if CarMax is unable to obtain Permits or Approvals, after diligently working to obtain the Permits and Approvals, as it deems necessary in its sole discretion within the Permitting Period, or in the event that the closing conditions set forth in the Purchase and Sale Agreement have not been satisfied, then CarMax may send written notice of such determination to the Authority, and this Agreement shall immediately terminate, except for those provisions that expressly survive termination.

#### **Section 11. Effect of Agreement**

Notwithstanding any other provision of this ENA, the Parties expressly acknowledge and agree as follows:

Except for the Authority's obligations in Sections 4, and its obligation to negotiate the terms of the Purchase and Sale Agreement in good faith, none of the matters described in this Agreement as a purported commitment or obligation of the Authority shall have any effect unless and only to the extent such matters are expressly set forth in a Purchase and Sale Agreement or other written agreement duly authorized and approved by the Parties. Notwithstanding any provision of this Agreement to the contrary, CarMax acknowledges and expressly agrees as follows:

(a) That this Agreement does not obligate the Authority in any way to approve, in whole or in part, any of the matters described in this Agreement, including, without limitation, matters pertaining to the conveyance of land, land use entitlements or approvals, permits, waivers, or reduction of fees, development or financing of the Property, or any other matters to be acted on by the Authority, as applicable;

(b) That all such matters shall be considered and processed by the Authority in accordance with all otherwise applicable Authority and City requirements and procedures;

(c) Except as may be expressly set forth in this Agreement, that the Authority reserves all rights to approve, disapprove, or approve with conditions, all such matters in its sole discretion;

(d) Upon the execution of a Purchase and Sale Agreement by the Parties, this Agreement shall be null and void and of no effect and shall be superseded by the terms and conditions of the Purchase and Sale Agreement;

(e) The Parties shall promptly commence the good faith negotiation of a Purchase and Sale Agreement upon execution of this Agreement by the Authority.

**Section 12. Governing Law**

This Agreement and the legal relations between the Parties shall be governed by and construed and enforced in accordance with the laws of the State of California.

**Section 13. Entire Agreement**

This ENA constitutes the entire agreement of the Parties with respect to the Property and the Project. There are no agreements or understandings between the Parties and no representations by either Party to the other as an inducement to enter into this Agreement, except as expressly set forth in this Agreement. All prior negotiations between the Parties are superseded by this Agreement. This Agreement may not be altered, amended, or modified except by a writing executed by both Parties. Notwithstanding anything provided to the contrary, whether expressed or implied, neither Party shall have any obligation to enter into a Purchase and Sale Agreement. Neither Party, nor its officers, members, staff, or agents have made any promises to the other Party to this Agreement other than to exclusively negotiate in good faith during the Exclusive Negotiating Period, and no statements of either Party or its officers, members, staff, or agents as to future obligations shall be binding upon the Parties until a Purchase and Sale Agreement has been approved by CarMax and the governing body of the Authority, after a noticed public hearing, and has been duly executed by the Parties.

**Section 14. Prohibition against Assignment**

CarMax shall not assign all or any part of this Agreement without the prior written approval of the Chairman of the Authority. Such approval shall be within the reasonable discretion of the Chairman of the Authority in light of financial and other pertinent considerations.

**Section 15. Notices**

Any notice which is required or which may be given pursuant to this Agreement may be delivered or mailed to the Party to be notified, as follows:

(a) To CarMax:

CarMax Auto Superstores California, LLC, or its assignee  
12800 Tuckahoe Creek Parkway  
Richmond, VA 23238  
Attn: JM Dixon  
Phone: 804-747-0422 x4326  
Fax: 804-935-4547  
Email: [jm\\_dixon@carmax.com](mailto:jm_dixon@carmax.com)

**(b) To the Authority:**

City of National City Parking Authority  
City Manager's Office  
1243 National City Boulevard  
National City, CA 91950-4301  
Attn: Brad Raulston  
Phone: 619-336-4250  
Fax: 619-336-4327  
Email: [braulston@nationalcityca.gov](mailto:braulston@nationalcityca.gov)

All notices required or permitted hereunder shall be sent by certified mail, return receipt requested, postage prepaid, Federal Express or other comparable overnight delivery service, or by facsimile (provided that confirmation thereof is delivered by certified mail or overnight delivery service providing for delivery against receipt).

**Section 16. Public Hearing**

Any Purchase and Sale Agreement that may be negotiated between the Parties, and any related matters pertaining to the Property or the Project, are subject to consideration at a public hearing by the Authority. Nothing in this Agreement shall commit or be construed as committing the Authority to approve any Purchase and Sale Agreement or any other matter pertaining to the Property or the Project.

**Section 17. Counterparts**

This Agreement may be executed in counterparts, each of which when so executed shall be deemed an original, and all of which, together, shall constitute one and the same instrument.

**Section 18. Force Majeure**

Neither Party shall be in default of this Agreement if its performance hereunder is delayed, prohibited, or prevented because of conditions beyond such Party's control, including without limitation, acts of God, governmental restriction, strike, war, insurrection, litigation or administrative proceedings or the threat thereof, initiatives, referenda, environmental conditions, riots, floods, earthquakes, fires, casualties, severe weather or acts of the other Party ("Force Majeure Delay"). At such Party's option, (a) the Exclusive Negotiating Period may be extended for each day of the Force Majeure Delay with the other Party's consent, in its reasonable discretion, or (b) this Agreement shall terminate, except for those obligations that expressly survive termination.



#### **Section 19. Specific Performance**

Subject to CarMax's right to terminate this Agreement pursuant to Section 10, CarMax's exclusive remedy for an uncured Authority default under this Agreement is to institute an action for specific performance of the terms of this Agreement. In no event shall CarMax have the right, and CarMax expressly waives the right, to seek monetary damages of any kind, including but not limited to actual damages, economic damages, consequential damages, or lost profits, from the Authority in the event of a default by the Authority under this Agreement or any action related to this Agreement.

#### **Section 20. Indemnity**

CarMax agrees to defend, indemnify and hold harmless the Authority and the City of National City, their officers, employees, members, agents, and representatives against and from any and all liability, loss, damages to property, injuries to, or death of any person or persons, and all claims, demands, suits, actions, proceedings, reasonable attorneys' fees, and defense costs, of any kind or nature, including workers' compensation claims, of or by anyone whatsoever, resulting from or arising out of CarMax's performance or other obligations under this Agreement; provided, however, that this indemnification and hold harmless shall not include any claims or liability arising from the established sole negligence or willful misconduct of the Authority or the City, their agents, members, officers, or employees. The indemnity, defense, and hold harmless obligations contained herein shall survive the termination of this Agreement for any alleged or actual omission, act, or negligence under this Agreement that occurred during the term of this Agreement.

#### **Section 21. No Obligation by Authority of the City of National City**

Nothing in this Agreement shall obligate or be deemed to obligate the Authority or the City to approve or execute a Purchase and Sale Agreement, or to convey any interest in any portion of the Overall Site to CarMax. The parties understand and agree that the Authority and the City cannot be obligated to approve or execute a Purchase and Sale Agreement or to convey any interest in any portion of the Overall Site to CarMax unless and until, among other legal requirements and as applicable, (i) CEQA requirements are met, and (ii) a Purchase and Sale Agreement satisfactory to the Authority is first negotiated, executed by CarMax, approved by the Authority and/or the City Council, in each of their sole discretion, after duly noticed public hearing, and executed by the Authority and/or the City, as appropriate.

#### **Section 22. Limitations of this Agreement**

Nothing contained in this Agreement shall constitute a waiver, amendment, promise or agreement by the Authority or the City (or any of its departments or boards) as to the granting of any approval, permit, consent or other entitlement in the exercise of the Authority's or the City's regulatory capacity or function. CarMax acknowledges and agrees that no Authority or City staff, consultant, agent, or member of the Authority Board or the City Council has the authority

to bind the Authority or the City. The final form of any proposed Purchase and Sale Agreement to be negotiated may contain matters not contemplated by this Agreement, including, but not limited to, matters necessary to accommodate compliance with the law, including without limitation CEQA.

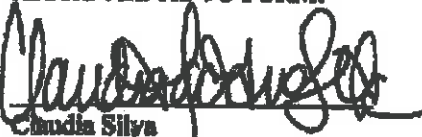
IN WITNESS WHEREOF, the duly authorized representatives of the Parties have executed this Agreement as of the Effective Date. The later date on which the duly authorized representative(s) of each Party (excluding their legal counsel) has executed this Agreement shall be inserted as the Effective Date in the Preamble of this Agreement.

**PARKING AUTHORITY OF  
THE CITY OF NATIONAL CITY**

**CARMAX AUTO SUPERSTORES  
CALIFORNIA, LLC**  
a Virginia limited liability company

By:   
Ron Morrison, Chairman

By:   
K. Douglas Moyers  
Vice President

APPROVED AS TO FORM:  
  
Claudia Silva  
Legal Counsel for the Parking Authority  
of the City of National City

**Exhibit A**

**Legal Description**

**"LOT 14 OF THE PLAZA BONITA SHOPPING CENTER, IN THE CITY OF NATIONAL CITY, IN THE COUNTY OF SAN DIEGO, IN THE STATE OF CALIFORNIA, ACCORDING TO THE MAP THERE OF MAP 10337 FILED IN OFFICE OF THE COUNTY RECORDER OF THE COUNTY OF SAN DIEGO IN THE STATE OF CALIFORNIA ON 24 FEBRUARY 1982".**

EXHIBIT "B"

GENERAL SITE MAP OF THE MINIMUM ACREAGE

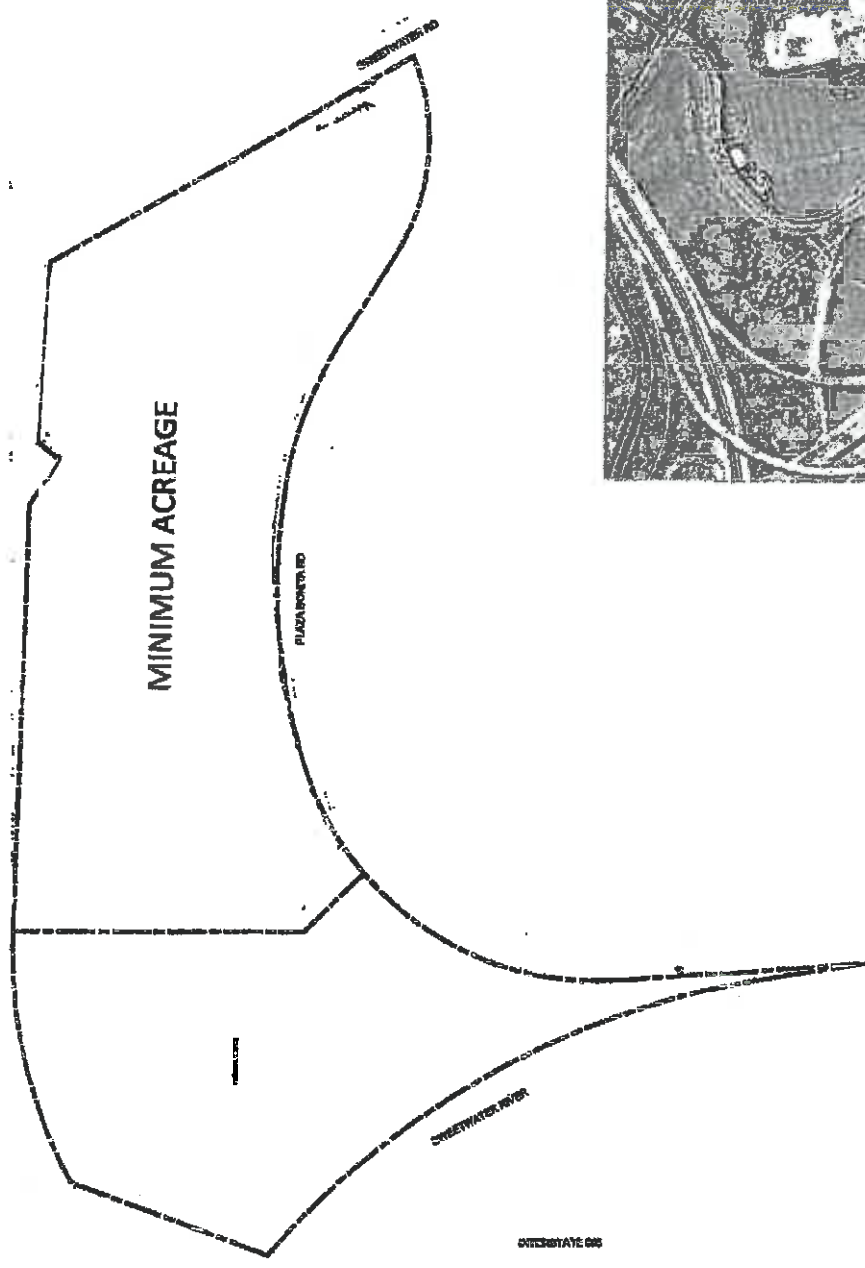


EXHIBIT "C"SCHEDULE OF PERFORMANCE

<u>Opening of Escrow.</u> The Parties shall open escrow with Chicago Title Company.	Completed.
<u>CarMax Deposit.</u> The Optionee shall deposit the Deposit into Escrow.	Completed.
<u>Receipt – Preliminary Title Report.</u> The Optionee shall obtain and deliver to the Authority the Preliminary Title Report and underlying documentation.	Completed.
<u>Receipt – Survey.</u> The Optionee shall prepare and submit to the Authority a Survey.	
<u>Approval – Preliminary Title Report/Survey.</u> The Optionee shall approve or inform the Authority of any title and/or survey exceptions that are not acceptable to the Optionee by delivery of a "title/survey objection letter."	
<u>Approval – Preliminary Title Report/Survey.</u> The Authority shall notify the Optionee whether it will cure the title and/or survey exceptions that are not acceptable to the Optionee.	Within five (5) business days after receipt by the Authority of the "title/survey objection letter" from the Optionee.
<u>Submission – Environmental Consultant.</u> The Optionee shall submit to the Authority and the City the name of the environmental consultant responsible for preparing the Environmental Document that it intends to use for the Authority's approval, which approval shall not be unreasonably withheld, delayed or conditioned.	Within thirty (30) days after execution of this Option Agreement ("Agreement").
<u>Approval – Environmental Consultant.</u> The Authority and the City shall approve or disapprove the environmental consultants.	Within five (5) business days after receipt by the Authority and the City.
<u>Submission – Draft Environmental Document to Authority.</u> The Optionee shall prepare or cause to be prepared, and shall submit to the Authority and the City, the Draft Environmental Document for comment by City.	
<u>Comment – Draft Environmental Document.</u> The City shall comment on the Draft	Within ten (10) business days after receipt by the City and the Authority.

Environmental Document and submit the comments to Optionee.	
<u>Submission – Final Draft Environmental Document to the Public.</u> The Optionee shall cause the Final Draft Environmental Document to be circulated for comments in compliance with the California Environmental Quality Act (“CEQA”).	
<u>Respond – Comments on Final Draft Environmental Document.</u> The Optionee shall prepare or cause to be prepared responses to all comments received on the Final Draft Environmental Document.	
<u>Review – Responses to Comments on Final Draft Environmental Document.</u> The City shall review the responses to the comments on the Final Draft Environmental Document and shall submit its comments to Optionee.	Within ten (10) business days after receipt by the Seller.
<u>Submission – Complete Application.</u> The Optionee shall prepare and submit to the City a complete application for the necessary General Plan Amendment, Zoning Map Amendment, Municipal Code Amendment, Tentative Parcel Map, and Conditional Use Permit including all back-up information requested by Planning Staff.	Within ninety (90) days following the expiration of the Due Diligence Period.
<u>Notice of Complete Application.</u> The applications for necessary project entitlements are determined by the City to be complete.	Within thirty (30) days following submission of the Complete Application.
<u>Submission – Sustainability Narrative.</u> The Optionee shall submit to the Authority a sustainability narrative pursuant to Section 7(f).	

EXHIBIT "D"

INTERNAL REVENUE CODE SECTION 1445 CERTIFICATION

Section 1445 of the Internal Revenue Code provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. For U.S. tax purposes (including section 1445), the owner of a disregarded entity (which has legal title to a U.S. real property interest under local law) will be the transferor of the property and not the disregarded entity. To inform the transferee that withholding of tax is not required upon the disposition of a U.S. real property interest by the Parking Authority of the City of National City, the undersigned certifies the following on behalf of the Parking Authority of the City of National City:

1. The Parking Authority of the City of National City is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);
2. The Parking Authority of the City of National City is not a disregarded entity as defined in § 1.1445-2(b)(2)(iii) of the Code of Federal Regulations;
- 3 The Parking Authority of the City of National City's U.S. employer identification number is \_\_\_\_; and
4. The Parking Authority of the City of National City's office address is \_\_\_\_\_.

CarMax Auto Superstores California, LLC understands that this certification may be disclosed to the Internal Revenue Service by transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalties of perjury I declare that I have examined this certification and to the best of my knowledge and belief it is true, correct, and complete, and I further declare that I have authority to sign this document on behalf of the Parking Authority of the City of National City.

Parking Authority of the City of National City

By: \_\_\_\_\_  
Ron Morrison, Chairman

Date: \_\_\_\_\_



EXHIBIT "E"

OPTION TO PURCHASE AGREEMENT  
BETWEEN THE AUTHORITY AND THE  
COUNTY OF SAN DIEGO

## OPTION TO PURCHASE AGREEMENT

(Open Space Easement on 15.08-acre parcel  
Sweetwater Road, National City, CA)

**THIS OPTION TO PURCHASE AGREEMENT** ("Option Agreement") is made as of April 3, 2007 ("Effective Date"), by and between the **COUNTY OF SAN DIEGO**, a political subdivision of the State of California ("County"), and buyer, **PARKING AUTHORITY of the CITY of NATIONAL CITY**, a public body corporate and politic created pursuant to the Parking Law of 1949, ("Optionee").

### RECITALS

A. 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's Parcel Number 564-471-11 and more particularly described in Exhibit A ("Property").

B. In 1978 Optionee conveyed to County an easement for open space and park purposes ("Easement") over this 15.08-acre parcel. A copy of the deed conveying the Easement is attached hereto as Exhibit B.

C. Optionee wishes to purchase the Easement from County and to convey to County title to a strip of land along the south end of the parcel that contains a trail/walkway.

D. Except for the trail/walkway along the south end of the parcel, the 15.08-acre parcel has not been improved with park or recreational facilities and remains undeveloped. County has determined that the Easement is not required for County use.

E. County is willing to grant to Optionee an exclusive option to purchase the Easement from County pursuant to the terms and conditions set forth in this Option to Purchase Agreement ("Option Agreement").

### AGREEMENT

**NOW, THEREFORE**, the parties hereto agree as follows:

1. **Option.** County hereby grants to Optionee the right and option to purchase the Easement from County subject to all of the terms and conditions set forth in this Option Agreement.

2. **Term.** The term ("Term") of this Option shall be from the Effective Date through December 31, 2007, or through December 31, 2008 if Optionee gives notice of a legal challenge pursuant to paragraph 9D.

3. **Option Consideration.**

- A. Within 10 days of the Effective Date, Optionee shall pay to County \$100 as consideration for this Option.
- B. The payment shall be made payable to the County of San Diego and sent or delivered to:

**Director, Department of General Services  
c/o Real Estate Services Division  
5555 Overland Avenue, Suite 210  
Building 2, Room 110  
San Diego, CA 92123-1294**

**4. Conditions Precedent.**

Optionee may exercise this Option to purchase the Easement only after all of the following conditions have been met:

- A. Optionee has completed and certified an environmental impact report ("EIR") for a commercial development project on the 15.08-acre parcel that is subject to the Easement. Optionee has prepared the EIR as the lead agency under the California Environmental Quality Act, Public Resources Code Section 21000, et seq. County, a responsible agency under CEQA, has fulfilled its duties as a responsible agency as set forth in CEQA Guidelines section 15096 by, among other things, approving the sale of the Easement after County considers the EIR for the commercial development project;
- B. Optionee has provided County with a copy of the final EIR, the action certifying the EIR for the commercial development project (CEQA Guidelines section 15090), the findings of significant effects for the project (CEQA Guidelines section 15091), and the Statement of Overriding Considerations, if any (CEQA Guidelines section 15093);
- C. Optionee has provided County with a letter confirming that the City of National City changed the General Plan land use designation on the Property to a commercial designation, that the sale of the Easement is consistent with the City's open-space plan and that the transfer of title to the Walkway Area is consistent with National City's General Plan; and
- D. Optionee has sent via certified mail a copy of the Notice of Determination (consistent with CEQA Guidelines section 15094) to the Director of General Services at the address listed in paragraph 3B, and, at its next reasonably available meeting, as determined by County, the Board of Supervisors has confirmed that Optionee completed and certified an EIR for a commercial

development project on the Property, which confirmation will not be unreasonably withheld.

5. **Purchase Price.** During the Term of this Option Agreement, Optionee herein shall have the exclusive right and option to purchase the Easement from County for the price listed below, subject to the conditions precedent listed in paragraph 4.

The purchase price is \$3 million. Optionee may, at its sole discretion, either pay the \$3 million in full upon conveyance of the Easement to Optionee or pay pursuant to the terms set forth below:

- A. \$2 million to be paid upon conveyance of the Easement to Optionee;
- B. \$1 million to be paid within four years after County conveys the Easement to Optionee, \$500,000 of which shall be paid within the first two years. The remaining \$500,000 plus all interest due shall be paid within the second two years; and
- C. The outstanding balance of the \$1 million specified in subparagraph B above shall accrue simple interest at the rate of 5% per year starting on the date County conveys the Easement to Optionee.

All payments shall be made as specified in paragraph 3B.

6. **Enhancements and/or Improvements to Sweetwater Regional Park.** County agrees to use the \$3 million paid for the Easement for enhancements, expansion, and/or improvements to the Sweetwater Regional Park, including bicycle/recreational trails adjacent to the Park and within one mile of the Park that serve the Park (collectively, "Sweetwater Improvements"), to provide recreational opportunities consistent with open space and park uses. County agrees that use of the monies for the Sweetwater Improvements is consistent with the County's intent in accepting the Easement in 1978 for open space and park purposes. County agrees that the Sweetwater Improvements would serve the purpose of lessening any incompatibility between the Plaza Bonita Shopping Center and the Sweetwater Regional Park, and that the Sweetwater Improvements to provide passive and/or active recreational uses would serve the region in a manner similar to that originally intended by the conveyance of the Easement on the 15.08-acre parcel.

7. **Buffer for Walkway.**

- A. A trail/walkway is located on the south side of the Property. Optionee shall install or cause to be installed a vegetated buffer along the north side of the trail/walkway to screen it from the parking lot for the proposed commercial development on the Property. The buffer shall be fully installed/planted before the

proposed commercial development is open to the public. The vegetated buffer shall meet the following specifications:

1. The vegetated buffer shall be at least five feet wide and shall consist of a combination of distance and low-level screening to separate the walkway from the adjacent parking lot and commercial development.
  2. Vegetation shall be of sufficient height and density to provide a visual barrier between the trail and the adjacent parking lot and commercial development.
  3. Vegetation in the buffer shall consist of a combination of drought tolerant vegetation and native plant material.
  4. Optionee shall provide a copy of the proposed planting plan to the County's Department of Parks and Recreation for its review and written approval before Optionee plants vegetation in the buffer.
  5. The vegetated buffer shall include an irrigation system with water provided by Optionee.
- B. The parties will execute the Right of Entry Agreement attached hereto as Exhibit C to allow the Parking Authority or its agents, assigns, contractors or successors in interest to enter the Walkway Area to install the vegetated buffer as required by this paragraph 7, to install, monitor and maintain the retaining wall, and to monitor and remove graffiti from the retaining wall.
- C. If Optionee exercises this Option and Escrow closes as specified subparagraph 9C (6), this paragraph 7 shall survive the termination of this Agreement.
- D. A retaining wall may be constructed adjacent to the vegetated buffer as part of the proposed commercial development. Any such retaining wall will be located on the property proposed for commercial development. The retaining wall and vegetated buffer will be constructed so that plants in the buffer, such as vines, will grow on the wall. If a retaining wall is constructed, the owner of the property on which the wall is located will be responsible for maintaining the wall and removing any graffiti. Optionee shall ensure that the permit for the proposed commercial development includes a condition that requires the developer to identify a graffiti removal contractor who will be responsible for removing any and all graffiti from the retaining wall within 24-hours of its observance and/or notification by the City of National City Code

**Enforcement Officer.** In addition, it is unlawful for property in the City of National City to remain defaced with graffiti. Specifically, Municipal Code section 10.54.050 states, in relevant part, that "it is unlawful for any responsible party to permit property which is defaced with graffiti to remain so defaced for a period of seventy-two hours after notice of same by the city . . ."

8. **Transfer Title to Walkway Area to County.** As part of the conveyance described in paragraph 9 below, Optionee shall transfer to County title to the area along the south end of the Property that contains the walkway and buffer ("Walkway Area"). The description of the Walkway Area is in Exhibit D attached hereto.

9. **Exercise of Option.** Prior to the expiration of the Term and subject to the conditions precedent in paragraph 4, Optionee may exercise the Option by taking the following actions:

A. **Exercise of Option.** Optionee shall provide written notice of Optionee's exercise of this Option to the Director, Department of General Services at the address specified herein. Within 10 business days after receiving the written notice from Optionee, the Director of General Services shall determine whether all conditions precedent to the exercise of this Option, as set forth in paragraph 4 above, have been fulfilled. Upon the Director's determination that all conditions precedent have been fulfilled, he shall execute a deed conveying the Easement to the Optionee on behalf of County, and shall deposit the deed with the Escrow Holder as specified below.

B. **Failure to Exercise Option.** In the event Optionee does not exercise the Option prior to the expiration or earlier termination of the Term, or any extension thereof, or if Optionee cancels Escrow or Escrow does not close, Optionee shall execute, acknowledge, and deliver to County, within thirty (30) days after County makes demand therefor, a good and sufficient quitclaim deed whereby all right, title, and interest of Optionee in the Easement is quitclaimed to County. Should Optionee fail or refuse to deliver said quitclaim deed to County, County may prepare and record a notice reciting the failure of Optionee to execute, acknowledge, and deliver such deed, and said notice shall be conclusive evidence of the termination of this Option and all right of Optionee or those claiming under Optionee in and to the Easement.

C. **Conveyance.**

1) **Opening of Escrow.** Within five (5) business days after the Director makes the determination specified in paragraph 9A above, County and Optionee shall open an escrow ("Escrow") with First American Title Company, Escrow Division, or such other escrow company as may be

mutually approved in writing by County and Optionee ("Escrow Holder") for the conveyance of the Easement by County to Optionee and the Walkway Area by Optionee to County. 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.

2) Close of Escrow; Closing Date. Escrow shall close either on or before the date that is ninety (90) days after the Opening of Escrow, or five (5) business days after Optionee's notice to County and escrow company requesting to close escrow, whichever is sooner, ("Close of Escrow" or "Closing Date"), provided that: (i) Optionee has not given written notice pursuant to paragraph 9D rescinding the exercise of the Option and cancelling Escrow; and (ii) the Closing Date shall occur before the expiration of the Term. The terms "Close of Escrow" and/or "Closing Date" shall mean the date the deeds conveying title to the Easement and title to the Walkway Area are recorded in the Office of the County Recorder of the County of San Diego, California.

3) Escrow Instructions. This Option Agreement, together with a standard instruction of Escrow Holder, mutually acceptable to County and Optionee, shall constitute the joint escrow instructions of County and Optionee to Escrow Holder, as well as an agreement between County and Optionee. In the event of any conflict between the provisions of this Option Agreement and Escrow Holder's standard instructions, this Option Agreement shall prevail.

4) Escrow Fees, Title Charges, and Closing Costs. Optionee shall be responsible for any and all escrow fees, recording fees, and any other costs and expenses of escrow. As a condition to the closing of this transaction, Optionee may obtain an ALTA extended owners policy of title insurance in form and substance acceptable to Optionee ("Title Policy"). Optionee shall pay for the ALTA policy.

5) Deposits into Escrow. On or before 1:00 p.m. on the last business day preceding the scheduled Closing Date, Optionee shall deposit or cause to be deposited with Escrow Holder the following: (i) funds as provided in

paragraph 5 hereof; (ii) any and all escrow fees and closing costs; (iii) a promissory note for \$1 million with payment and interest terms as specified in paragraph 5B and C above in a form approved by County, if full payment is not made; (iv) an executed and acknowledged deed conveying title to the Walkway Area to County in a form approved by County ("Walkway Deed"); and (v) 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 transfer of the Easement to Optionee and 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 the following: (i) an executed and acknowledged deed conveying the Easement to Optionee in a form approved by Optionee ("Quitclaim Deed"); and (ii) any additional instruments or other documents required from County (executed and acknowledged if appropriate), as may be necessary in order to effect the transfer of the Easement to Optionee and the Walkway Area to County.

6) Closing, Recording and Disbursement. On or before the Closing Date, and when Escrow Holder has received all of the documents and funds listed in subparagraph 5) immediately above, and Escrow Holder is in a position to cause the Title Policy referred to in subparagraph 4) above to be issued to Optionee, Escrow Holder shall close the Escrow by taking the following actions: (1) recording the Quitclaim Deed and Walkway Deed in the Office of the Official Records of the County of San Diego, California, and delivering the recorded Quitclaim Deed to Optionee and the Walkway Deed to County; (ii) causing the Title Policy to be issued to Optionee; (iii) delivering the Purchase Price as provided in paragraph 5 hereof to County; and delivering the \$1 million promissory note described above to County, if the Purchase Price is to be paid over time.

D. Legal Challenges. If a legal challenge to this Option Agreement, to the EIR for the commercial development of the 15.08-acre parcel or to any other approval related to the commercial development of the 15.08-acre parcel is filed, Optionee may: (i) give written notice to County of the legal challenge, whereupon the Term shall be deemed to be extended to December 31, 2008; and (ii) by written notice to County rescind the exercise of the Option and cancel Escrow. If Optionee rescinds the Option and cancels Escrow, Optionee shall be entitled to a refund of all funds



Optionee deposited in Escrow without penalty. Any time thereafter, but before the expiration of the Term, Optionee may re-exercise the Option by again providing the notice specified in paragraph 9A above. If Optionee re-exercises the Option, the parties shall comply with paragraphs 9A, 9B and 9C above.

10. **Mitigation.** County shall not be responsible for mitigating any impact related to the commercial development of the Property that is identified in the EIR for the commercial development, including any impact for the loss of open space, if any, or any impact to biological resources, if any.

11. **Defense and Indemnity.** Optionee shall defend and indemnify County and its agents, officers and employees (collectively, "County Parties") from any claim, action, liability or proceeding against County Parties to attack, set aside, void or annul this Option Agreement or any proceedings, acts or determinations taken, done or made pursuant to this Option Agreement. Optionee's obligation to defend and indemnify County Parties shall apply to any claim, lawsuit, action or challenge against County Parties alleging failure to comply with the California Environmental Quality Act or failure to comply with any other federal, state or local laws. Optionee's obligation to defend and indemnify County Parties shall include, but not be limited to, payment of all court costs and attorneys' fees, judgments and awards against County Parties, and/or settlement costs, which arise out of or are related to County's approval of this Option Agreement and/or any proceedings, acts or determinations related thereto. County shall promptly notify Optionee of any such claim, lawsuit, action or challenge and shall cooperate fully in the defense.

12. **Property Disclosures by County and Optionee.** County is selling this Easement in an "as-is" condition, but hereby declares to Optionee that County has no knowledge of the presence of hazardous materials, soil contamination, or underground storage tanks on the Property. Optionee is transferring title to the Walkway Area in an "as-is" condition, but hereby declares to County that Optionee has no knowledge of the presence of hazardous materials, soil contamination, or underground storage tanks on the Walkway Area.

13. **General Provisions.**

13.1 **Administration.** This Option Agreement shall be administered on behalf of County by the Director, Department of General Services, and on behalf of Optionee by the Executive Director of the Community Development Commission of the City of National City.

13.2 **Assignment.** Optionee shall not voluntarily or involuntarily assign, mortgage, encumber, or otherwise transfer all or any portion of Optionee's interest in this Option without County's prior written consent. To be effective, the assignee or transferee must assume Optionee's obligations hereunder.

13.3 **Binding Effect.** Subject to any provisions concerning assignment contained in this Option Agreement, this Option Agreement shall be binding upon and inure to the benefit of the respective heirs, personal representatives, successors and assigns of the parties hereto.

13.4 **Brokers and Finders.** Neither County nor Optionee has engaged the services of a real estate broker, and neither shall be required to pay a brokerage commission or finder's fee with regard to the execution of this Option Agreement. Neither County nor Optionee has been represented in this transaction by a Broker or finder (collectively, "Brokers") in connection with this Option Agreement, and neither has acted in a way that would entitle any Brokers to any commission. Optionee and County agree to defend, indemnify and hold each other harmless from all claims, losses, damages, costs and expenses, including reasonable attorneys' fees, arising from or related to any assertion by any Broker contrary to the foregoing clauses where the assertion is based on the acts or alleged acts of the other party.

13.5 **Entire Agreement.** This Option Agreement, including Exhibits A, B, C and D and, if Optionee pays over time, the related \$1 million promissory note, contain the entire agreement between the parties relating to the transactions contemplated hereby and all prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged herein.

13.6 **Governing Law.** The Option Agreement shall be construed and enforced in accordance with the laws of the State of California.

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) may be served by regular mail, in which event it shall be deemed delivered three (3) business days after delivery to the United States postal carrier; or (iii) may be served by overnight courier, in which case it shall be deemed delivered the next business day. Any such notices 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  
5555 Overland Avenue, Suite 210  
Building 2, Room 110  
San Diego, CA 92123-1294

**To Optionee:**

Executive Director  
Community Development Commission  
of the City of National City  
1243 National City Boulevard  
National City, CA 91950-3312

13.8 **Time of Essence.** Optionee and County hereby acknowledge and agree that TIME IS STRICTLY OF THE ESSENCE with respect to each and every term, condition, obligation and provision herein and the Option relating hereto, and the failure


to TIMELY AND FULLY perform or satisfy any of the terms, conditions, obligations or provisions of this Option Agreement shall constitute a non-curable default hereunder.


13.9 **Further Assurances.** County and Optionee agree to execute such other documents and take such further actions as may be needed or required to effectuate the terms, conditions, covenants, and provisions of this Option Agreement. As a responsible agency, County will, in good faith: (a) review and comment on the EIR for the commercial development project; and (b) work with Optionee to resolve any differences the parties may have as to the adequacy of the EIR, its findings, conclusions, mitigation measures and statement of overriding considerations, if any.

IN WITNESS WHEREOF, the parties hereto have executed this Option Agreement effective as of the day and year first above written.

**OPTIONEE:**

Approved as to form and legality  
City Attorney

By:   
Claudia Gacitua Silva,  
Senior Assistant City Attorney

By:   
RON MORRISON, Chairman  
Parking Authority of the City of  
National City

By:   
CHRIS ZAPATA, Secretary

**COUNTY OF SAN DIEGO**

Approved as to form and legality  
County Counsel

By:   
Senior Deputy

By:   
JOHN J. MCFIGUE, Director  
Department of General Services  
APRIL F. HEINZE, P.E., Director

## EXHIBIT A

## DESCRIPTION OF REAL PROPERTY

Being a portion of Quarter Section 109, Rancho De La Nacion, Map No. 166 in the City of National City, County of San Diego, State of California, said portion being more particularly described as follows:

Beginning at the most Northerly corner of Parcel 1 of Parcel Map No. 6149 on file in the Office of the Recorder of said County; thence along the Northeasterly boundary of said Parcel Map South  $66^{\circ}00'06''$  East (South  $65^{\circ}55'21''$  East per Parcel Map 6149) 544.06 feet to the beginning of a tangent 20.00 foot radius curve concave Westerly; thence leaving said Northeasterly boundary Southerly along said curve through a central angle of  $101^{\circ}26'37''$  an arc distance of 35.41 feet to a point of compound curvature with a 295.00 foot radius curve concave Northwesterly; thence Southwesterly along said curve through a central angle of  $53^{\circ}21'00''$  an arc distance of 274.68 feet; thence along a nontangent line South  $85^{\circ}23'37''$  West 101.21 feet to the beginning of a nontangent 499.00 foot radius curve concave Southeasterly, a radial line to said point bears North  $01^{\circ}12'29''$  West; thence Southwesterly along said curve through a central angle of  $26^{\circ}44'49''$  an arc distance of 232.92 feet to a point of compound curvature with a 849.00 foot radius curve concave Southeasterly; thence Southwesterly along said curve through a central angle of  $24^{\circ}00'00''$  an arc distance of 355.63 feet to a point of compound curvature with a 419.13 foot radius curve compound Easterly; thence Southerly along said curve through a central angle of  $78^{\circ}50'07''$  an arc distance of 576.70 feet; thence tangent to said curve South  $40^{\circ}47'16''$  East 339.82 feet; thence North  $45^{\circ}25'10''$  West 109.80 feet to the beginning of a tangent 1205.00 foot radius curve concave Southwesterly; thence Northwesterly along said curve through a central angle of  $38^{\circ}45'55''$  an arc distance of 815.28 feet to a point in the Westerly boundary of said Parcel Map No. 6149; thence along said Westerly and Northwesterly boundary of said Parcel Map the following courses: North  $16^{\circ}48'32''$  West (North  $17^{\circ}18'45''$  West record) 286.06 feet to a point in the arc of a nontangent 637.00 foot radius curve concave Southeasterly, a radial line to said point bears North  $65^{\circ}24'02''$  West; thence Northeasterly along said curve through a central angle of  $30^{\circ}35'03''$  an arc distance of 340.03 feet; thence tangent to said curve North  $55^{\circ}11'01''$  East (North  $54^{\circ}40'48''$  East record) 582.29 feet; thence North  $84^{\circ}24'59''$  East (North  $83^{\circ}54'46''$  East record) 75.49 feet; thence North  $01^{\circ}09'59''$  West (North  $01^{\circ}40'12''$  West record) 32.85 feet; thence North  $56^{\circ}38'16''$  East (North  $56^{\circ}08'03''$  East record) 246.33 feet to the Point of Beginning.

Containing 15.080 acres.

RECORDING REQUESTED BY 1820

EXHIBIT B

FILE/VIC# 182-468779

RECORDS REQUEST OF  
County of San Diego  
Department of Real Property  
Oct 30 1 55 PM '78

OFFICE: ROOM 1  
SAN DIEGO COUNTY, CALIF.

DATE WHEN RECORD IS MADE THIS DEED AND, SHALL  
BY THE TIME SHOWN BELOW, MAIL TAX STATEMENTS TO:

NAME: County of San Diego  
REAL PROPERTY DEPARTMENT  
ADDRESS: 3555 Overland Avenue  
San Diego, California  
CITY: San Diego  
STATE: CA  
ZIP: 92108

Title Order No. \_\_\_\_\_ Deed No. \_\_\_\_\_

Tax Parcel No. \_\_\_\_\_

This space for Recorder's use

NO FEE

GRANT DEED

THE UNDERSIGNED GRANTOR(S) DECLARE(S)

DOCUMENTARY TRANSFER TAX is \$ \_\_\_\_\_  
 computed on full value of property conveyed, or  
 computed on full value less value of encumbrances remaining at time of sale,  
 Unincorporated Area       City of National City and

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

THE PARKING AUTHORITY OF THE CITY OF NATIONAL CITY

hereby GRANT(S) to The County of San Diego

an easement for open space and park purposes over

the following described real property in the City of National City County of San Diego,  
State of California:

The property described on Exhibit "A" hereof, and as shown  
as Parcel "A" on Exhibit "B" hereof, subject to the conditions  
as set forth on Exhibit "C" hereof.

PARKING AUTHORITY OF THE CITY OF NATIONAL CITY

Dated OCTOBER 25, 1978

By: [Signature]  
City of National City

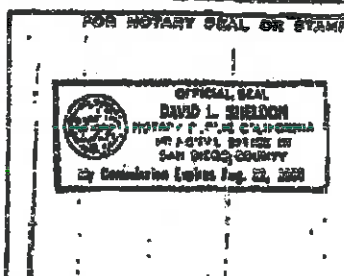
By: [Signature]  
Arnold A. Peterson, Secretary



STATE OF CALIFORNIA  
County of San Diego } ss.  
On October 25, 1978 before me, the under-  
signed, a Notary Public in and for said County and State,  
personally appeared Kirk Haggan  
and Arnold A. Peterson

\_\_\_\_\_ knows to me  
to be the person(s) whose name(s) \_\_\_\_\_  
inducted to the within instrument and acknowledged that  
they executed the same.

[Signature]  
Signature of Notary



NO 468779

NOTE: THE STATEMENTS TO PARTY SHOWN ON FOLLOWING LINE IF SO PARTY IS SHOWN, MAIL AS DIRECTED ABOVE

Name \_\_\_\_\_ Street Address \_\_\_\_\_ City & State \_\_\_\_\_

RECORDING REQUESTED BY 1820

AND WHEN RECORDED MAIL THIS DEED AND, UNLESS OTHERWISE SHOWN IN LOW, MAIL TAX STATEMENTS TO:

County of San Diego  
Real Property Department  
5555 Overland Avenue  
San Diego, California

FILE # 78-468779

RECEIVED REQUEST OF  
County of San Diego  
Department of Real Property  
OCT 30 1 55 PM '78

GRANT DEED  
SAN DIEGO COUNTY, CALIF.

Title Order No. \_\_\_\_\_

Fee Parcel No. \_\_\_\_\_

This space for Recorder's use

NO FEE

### GRANT DEED

THE UNDERSIGNED GRANTOR(S) DECLARE(S)

DOCUMENTARY TRANSFER TAX is \$ \_\_\_\_\_

- computed on full value of property conveyed, or
- computed on full value less value of liens or encumbrances remaining at time of sale,
- Unincorporated Area of City of NATIONAL CITY, and

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

THE PARKING AUTHORITY OF THE CITY OF NATIONAL CITY

hereby GRANT(S) to The County of San Diego

an easement for open space and park purposes over

the following described real property in the City of National City County of San Diego,  
State of California:

The property described on Exhibit "A" hereof, and as shown as Parcel "A" on Exhibit "B" hereof, subject to the conditions as set forth on Exhibit "C" hereof.

1821

This is to certify that the interest in real property conveyed by the foregoing deed or grant to the County of San Diego, a political corporation, is hereby accepted on behalf of the Board of Supervisors of said County of San Diego pursuant to authority conferred by Resolution of said Board adopted on October 12, 1976 and the Grantee consents to recordation thereof by its duly authorized officer.

Date OCTOBER 30, 1978

By Joseph P. Peterson  
JOSEPH P. PETERSON  
Supervising Real Property Agent  
Acquisition and Relocation Division  
Department of Real Property

CITY OF CALIFORNIA )  
COUNTY OF SAN DIEGO ) SS.

On this 25<sup>th</sup> day of October, 1978, before me, the undersigned, a Notary Public in and for said County and State, personally appeared KILE MORGAN known to me to be CHAIRMAN and AROLD A. PETERSON known to me to be the SECRETARY of the Parking Authority of the City of National City, California, a public body corporate and politic, the public body that executed the within instrument and known to me to be the persons who executed the same on behalf of said public body and acknowledged to me that said public body executed the same, pursuant to its bylaws or a resolution of its board of directors.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year in this instrument expressed above.

SEAL



David L. Sheldon  
Notary Public in and for said County and State

LEGAL DESCRIPTION  
**PARCEL "A" - OPEN SPACE  
 EASEMENT TO COUNTY OF SAN DIEGO**

Being a portion of Quarter Section 109, Rancho De La Nacion, Map No. 166 in the City of National City, County of San Diego, State of California, said portion being more particularly described as follows:

Beginning at the most Northerly corner of Parcel 1 of Parcel Map No. 6149 on file in the Office of the Recorder of said County; thence along the Northeastly boundary of said Parcel Map South  $65^{\circ}00'05''$  East (South  $65^{\circ}55'31''$  East per Parcel Map 6149) 344.96 feet to the beginning of a tangent 20.00 foot radius curve concave Westerly; thence leaving said Northeastly boundary Southwesterly along said curve through a central angle of  $101^{\circ}26'37''$  an arc distance of 25.41 feet to a point of compound curvature with a 205.00 foot radius curve concave Northwestly; thence Southwesterly along said curve through a central angle of  $53^{\circ}21'00''$  an arc distance of 274.68 feet; thence along a nontangent line South  $85^{\circ}23'37''$  West 101.21 feet to the beginning of a nontangent 499.00 foot radius curve concave Southeastly, a radial line to said point bears North  $01^{\circ}12'29''$  West; thence Southwesterly along said curve through a central angle of  $26^{\circ}44'40''$  an arc distance of 232.92 feet to a point of compound curvature with a 849.00 foot radius curve concave Southeastly; thence Southwesterly along said curve through a central angle of  $24^{\circ}00'08''$  an arc distance of 355.63 feet to a point of compound curvature with a 419.13 foot radius curve compound Easterly; thence Southerly along said curve through a central angle of  $78^{\circ}30'07''$  an arc distance of 576.70 feet; thence tangent to said curve South  $40^{\circ}47'18''$  East 339.82 feet; thence North  $45^{\circ}25'10''$  West 109.80 feet to the beginning of a tangent 1205.00 foot radius curve concave Southwesterly; thence Northwestly along said curve through a central angle of  $38^{\circ}45'55''$  an arc distance of 815.28 feet to a point in the Westerly boundary of said Parcel Map No. 6149; thence along said Westerly and Northwestly boundary of said Parcel Map the following courses; North  $16^{\circ}48'32''$  West (North  $17^{\circ}12'45''$  West record) 286.06 feet to a point in the arc of a nontangent 637.00 foot radius curve concave Southeastly, a radial line to said point bears North  $65^{\circ}24'02''$  West; thence Northeastly along said curve through a central angle of  $30^{\circ}35'03''$  an arc distance of 340.03 feet; thence tangent to said curve North  $55^{\circ}11'01''$  East (North  $54^{\circ}40'48''$  East record) 502.29 feet; thence North  $84^{\circ}24'59''$  East (North  $83^{\circ}56'46''$  East record) 75.49 feet; thence North  $01^{\circ}09'59''$  West (North  $01^{\circ}40'12''$  West record) 32.85 feet; thence North  $56^{\circ}38'16''$  East (North  $56^{\circ}08'03''$  East record) 246.33 feet to the Point of Beginning.

Containing 28.080 acres.

NO. 468719

EXHIBIT "A"

1823

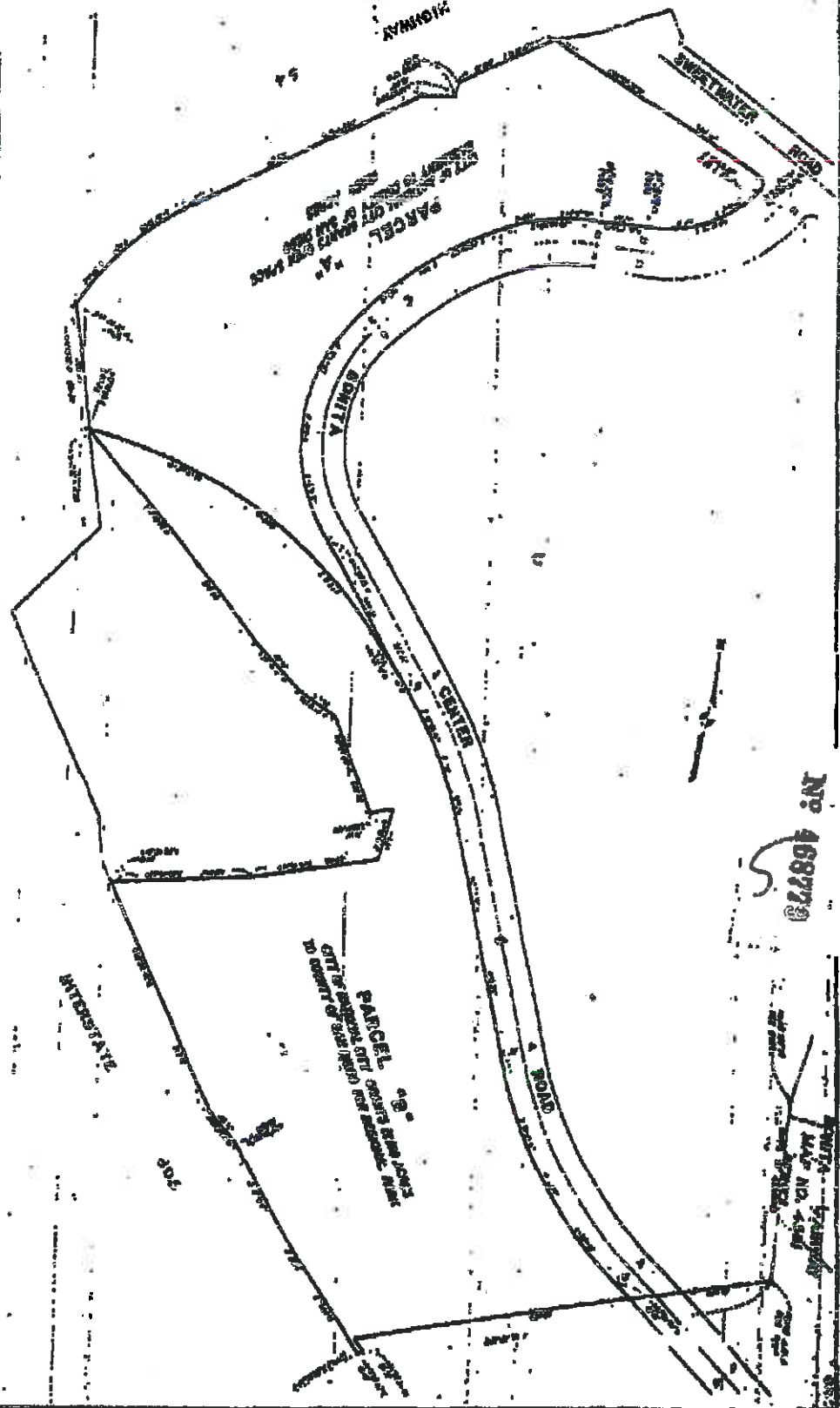
RICK ENGINEERING COMPANY

1000 N. 10th St., Suite 100, Lincoln, NE 68502

PLAT OF OPEN SPACE EASEMENT & DESIGNATION FOR REGIONAL PARK, RIVERSIDE NATURAL CITY & COUNTY OF SAN DIEGO

DATE: 11/15/11  
SCALE: AS SHOWN  
SHEET NO. 1

EXHIBIT 'B'



No. 468773

Map No. 454



1824

PARCEL "A", EASEMENT FOR OPEN SPACE AND PARK PURPOSES

CONDITIONS OF EASEMENT

WHEREAS,

- 1. The PARKING AUTHORITY OF THE CITY OF NATIONAL CITY, CALIFORNIA warrants that it is the owner of the 'PER' SIMPLE ESTATE in and to the land in the County of San Diego, State of California, described in Exhibit "A" attached hereto ("The Subject Land"); which estate is or may be subject to real estate taxes, assessments, conditions, restrictions and easements all as the same may be of record, and
- 2. It is the desire of the Grantor and the County of San Diego, a political subdivision of the State of California (hereinafter referred to as "COUNTY"), that the Subject Land remain OPEN and/or PARK and RECREATIONAL SPACE.

NOW, THEREFORE,

- 1. The GRANTOR grants to the County,
  - (A) A perpetual easement for OPEN SPACE and/or PARK and RECREATIONAL purposes over, upon, across and under the Subject Land, and no building, structure or other thing whatsoever shall be constructed, erected, placed or maintained on the Subject Land except as exists. Grantor however reserves the right to grade Subject Land and to develop Subject Land for public park and recreational purposes subject to County approval of such development prior to the construction thereof by Grantor.
  - (B) The perpetual right, but not the obligation to enter upon the Subject Land and remove any buildings, structures or other things whatsoever constructed, erected, placed or maintained on the Subject Land contrary to any term, covenant or condition of this easement and to do any work necessary to eliminate the effects of any excavation or placement of sand, soil, rock or gravel or any other material done or placed on the Subject Land contrary to any term, covenant or conditions of this easement.
- 2. GRANTOR covenants and agrees for himself and his successors and assigns as follows:
  - (A) That he shall not erect, construct, place or maintain, or permit the erection, construction, placement or maintenance of any building or structure or other thing whatsoever on the Subject Land other than such buildings, structures and other thing as may be permitted pursuant to paragraph 1.(A) immediately hereinabove.
  - (B) That he shall not use the Subject Land for any purpose except as OPEN SPACE and/or PARK and RECREATIONAL purposes.
  - (C) That he shall not excavate or grade or permit any excavating or grading to be done, or place or allow to be placed any sand, soil, rock, gravel or other material whatsoever on the Subject Land without the written permission of the County or its successors or assigns; provided, however, that Grantor may excavate, grade or place sand, soil, rock, gravel or other material on the Subject Land as may be permitted by the County pursuant to paragraph 1.(A) hereinabove.
  - (D) That the terms, covenants and conditions set forth herein may be specifically enforced or enjoined by proceedings in the Superior Court of the State of California.

This Easement shall bind the Grantor and his successors and assigns.

Executed this 25<sup>th</sup> day of OCTOBER, 1979.

TEST:  
  
 Mark A. Peterson, Secretary

PARKING AUTHORITY OF THE CITY OF NATIONAL CITY, CALIFORNIA  
  
 Rita Morgan, Chairman

NO 468779

EXHIBIT "C"

**EXHIBIT C**

**RIGHT OF ENTRY AGREEMENT**

**This Right of Entry Agreement ("Agreement") is effective this \_\_\_\_\_ of \_\_\_\_\_, 20\_\_ by and between the COUNTY OF SAN DIEGO, ("County"), a political subdivision of the State of California, and the PARKING AUTHORITY OF THE CITY OF NATIONAL CITY, a public body corporate and politic created pursuant to the Parking Law of 1949, ("Parking Authority") with reference to the following facts:**

**RECITALS**

- A. County owns a strip of land just west of Bonita Center Road in National City, California that includes a trail/walkway.**
- B. Parking Authority is obligated to install, or cause to be installed, a vegetated buffer along the north side of the trail/walkway adjacent to a retaining wall that will be installed as part of the commercial development to be constructed just north of the trail/walkway.**
- C. To allow Parking Authority or its agents, assigns, contractors or successors in interest, to enter onto County property to install the and monitor the buffer and to monitor and repair the retaining wall and to remove graffiti from it, County and Parking Authority are entering into this Agreement.**

**NOW, THEREFORE, FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:**

- 1. Authority to Enter. Subject to the terms and conditions set forth below, the County hereby grants Parking Authority a right of entry over that property defined as a portion of Assessor's Parcel Number 564-471-111 as further described in Exhibit "1" attached hereto ("Walkway Area"), solely for the following purposes:**
  - a. To install, monitor and repair a vegetated buffer on the north side of the trail/walkway as specified in paragraph 7 of the Option to Purchase Agreement between the County and the Parking Authority of the City of National City;**
  - b. To monitor the retaining wall and, if necessary, repair it; and**

- c. To remove graffiti from the retaining wall.
2. **Strict Construction.** This Agreement shall be strictly construed, and no work other than that specifically stated herein is authorized. This Agreement is not transferable.
  3. **Term.** This Agreement shall commence \_\_\_\_\_, 20\_\_\_, and shall terminate on \_\_\_\_\_, 20\_\_\_. The Assistant Director of the Department of General Services may extend the Term of this Agreement at any time by giving written notice to Parking Authority.
  4. **Notice Prior to Starting Work.** Before starting to install the vegetated buffer, Parking Authority shall notify the Assistant Director, Department of General Services or designee in writing. Such notice shall be given at least three days in advance of the date the work is to commence.
  5. **Permit on Site.** This Agreement shall be kept at the work site and must be shown on demand to any representative of the Department of General Services.
  6. **Permits From Other Agencies.** Parking Authority shall secure all other permits and approvals, if any, needed to install the vegetated buffer.
  7. **Access.** Parking Authority shall not unreasonably obstruct the flow of pedestrians or others using the Walkway Area or impede access to the Walkway Area.
  8. **Supervision of County.** All work associated with this Agreement shall be done subject to the supervision of, and to the satisfaction of, the County.
  9. **Compliance With Stormwater Laws.** Parking Authority's entry on to the Walkway Area is subject to federal, state and local laws regarding the discharge into the stormwater conveyance system of pollutants. Compliance with these laws may require Parking Authority to develop, install, implement and maintain pollution prevention measures, source control measures and Best Management Practices ("BMPs"). BMPs can include operational practices; water or pollutant management practices; physical site features; or devices to remove pollutants from stormwater, to affect the flow of stormwater or to infiltrate stormwater to the ground. BMPs applicable to Parking Authority's work on the Walkway Area may include a requirement that all materials, wastes or equipment with the potential to pollute urban runoff be stored in a manner that either prevents contact with rainfall and stormwater, or contains contaminated runoff for treatment and disposal. Parking Authority shall use, operate, maintain, develop, redevelop and retrofit the property, as necessary, in accordance with all applicable federal, state and local laws restricting the discharge

of non-stormwater at or from the property; and all such laws, regulations, or local guidance requiring pollution prevention measures, source control measures, or the installation or use of BMPs. Parking Authority shall develop, install, implement and/or maintain at Parking Authority's sole cost and expense, any BMPs or similar pollution control devices required by federal, state and/or local law and any implementing regulations or guidance.

Parking Authority understands and acknowledges that the stormwater and non-stormwater requirements applicable to Parking Authority's work on the Walkway Area may be changed from time to time by federal, state and/or local authorities, and that additional requirements may become applicable based on changes in Parking Authority's activities or development or redevelopment by Parking Authority or County. Parking Authority shall develop, install, implement, and maintain such additional BMPs and/or other pollution control practices at the Walkway Area at Parking Authority's sole cost and expense. To the extent there is a conflict between any federal, state or local law, Parking Authority shall comply with the more restrictive provision. If County receives any fine or fines from any regulatory agency as a result of Parking Authority's failure to comply with applicable stormwater laws as set forth in this Agreement, Parking Authority shall reimburse County for the entire fine amount.

10. **Care of Drainage.** If the proposed work interferes with the established drainage, ample provision shall be made by Parking Authority to provide for the drainage as may be directed by the County.
11. **Repair.** Parking Authority shall ensure that access through and work in the Walkway Area is done in a safe and prudent manner. Parking Authority shall promptly repair and make good any damage Parking Authority causes to any portion of the Walkway Area.
12. **Insurance.** Parking Authority is fully self-insured for damage resulting from liability of Parking Authority or any of Parking Authority's agents or employees. If Parking Authority ceases to be self-insured during the Term of this Agreement, Parking Authority shall furnish to County proof of insurance in a form and amounts satisfactory to County. The County's requirements shall be reasonable, but shall be designed to insure protection from risks that exist when Parking Authority ceases to be self-insured. If Parking Authority enters into a contract to have any of the work that is listed in paragraph 1 above done by a third party, Parking Authority shall require the third party to have in effect for the duration of the project: (a) Commercial General Liability Insurance written on an "occurrence basis" in an amount of at least \$1 million per occurrence and \$2 million aggregate with the County of San Diego

named as an "additional insured;" and (b) statutory amount of workers' compensation insurance for the benefit of the third party's employees.

13. Defense and Indemnity.

- a. The County shall defend and indemnify the Parking Authority, its agents, officers and employees (collectively, referred to in this paragraph as "Parking Authority"), from any claim, action or proceeding against Parking Authority, arising solely out of the acts or omissions of County in relation to this Agreement. At its sole discretion, Parking Authority may participate at its own expense in the defense of any claim, action or proceeding, but such participation shall not relieve County of any obligation imposed by this Agreement. Parking Authority shall notify County promptly of any claim, action or proceeding and cooperate fully in the defense.
- b. The Parking Authority shall defend and indemnify the County, its agents, officers and employees (collectively referred to in this paragraph as "County") from any claim, action or proceeding against County, arising solely out of the acts or omissions of the Parking Authority in relation to this Agreement. At its sole discretion, County may participate at its own expense in the defense of any such claim, action or proceeding, but such participation shall not relieve Parking Authority of any obligation imposed by this Agreement. County shall notify Parking Authority promptly of any claim, action or proceeding and cooperate fully in the defense.
- c. The County shall defend itself, and the Parking Authority shall defend itself, from any claim, action or proceeding arising out of the concurrent acts or omissions of County and Parking Authority. In such cases, County and Parking Authority agree to retain their own legal counsel, bear their own defense costs, and waive their right to seek reimbursement of such costs, except as provided in subparagraph c below.
- d. Notwithstanding subparagraph c above, in cases where County and Parking Authority agree in writing to a joint defense, County and Parking Authority may appoint joint defense counsel to defend the claim, action or proceeding arising out of the concurrent acts or omissions of County and Parking Authority. Joint defense counsel shall be selected by mutual agreement of County and Parking Authority. County and Parking Authority agree to share the costs of such joint defense and any agreed settlement in equal amounts, except as provided in subparagraph e below. County and Parking Authority further agree that neither party may bind the other to a settlement agreement

without the written consent of both County and Parking Authority.

- e. Where a trial verdict or arbitration award allocates or determines the comparative fault of the parties, County and Parking Authority may seek reimbursement and/or reallocation of defense costs, settlement payments, judgments and awards, consistent with such comparative fault.

14. **Hazardous Substances.** Parking Authority shall be solely responsible for fully complying with all present or future rules, regulations, restrictions, ordinances, statutes, laws and orders of any governmental entity regarding contaminated soils, hazardous materials or environmental clean-up, regardless of whether or not the obligation to comply is on the land owner.

If any hazardous substance spills, leaks or is discharged from any equipment or facility that Parking Authority brings to or installs, parks or drives on to the Walkway Area, Parking Authority shall immediately make all repairs necessary to prevent further spills, leaks or discharges and shall immediately clean up and promptly dispose of the spilled hazardous substance and any soil contaminated by the spill. If the Parking Authority fails to make the required repairs, to clean up the spill or to properly dispose of any contaminated soil, County may after written notice to Parking Authority take all steps County deems necessary to make the necessary repairs, to clean up the spill and to dispose of any contaminated soil. The Parking Authority shall reimburse the County for the cost of all repair and clean up work that the County does. The Parking Authority shall reimburse the County for this expense within 30 days of receiving a bill for this work from the County.

The Parking Authority shall be solely responsible for paying all fines, damages and penalties imposed by any governmental agency regarding the Parking Authority's production, storage, distribution, processing, handling, disposing, spilling, leaking or discharging of any hazardous substance on the Walkway Area.

Parking Authority shall indemnify, defend, reimburse and hold harmless County, its employees, officers and agents from any and all liability, claims, damages or injuries to any person, including injury to the County or any of County's employees, officers, agents, representatives, guests, licensees, invitees, patrons, or of any other person whomsoever, and all expenses of investigating and defending against same, arising from or alleged to have arisen from or in connection with hazardous or toxic materials or waste Parking Authority brings to or spills or discharges on the Walkway Area or migrating to or from the Walkway Area or arising in any manner whatsoever out of the violation of any governmental regulation pertaining to hazardous or toxic materials or waste which condition exists after the execution of

this Agreement.

- 15. **No Implied Easement.** Nothing in this Agreement shall be construed to grant Parking Authority an easement by implication, prescription, or other operation of law, or to extend the Term of the Agreement past its expiration date as stated herein.
- 16. **Effective.** This Agreement shall not be effective until it is signed by Parking Authority in the space provided below and executed by the Assistant Director, Department of General Services, of the County of San Diego.

Date: \_\_\_\_\_

**PARKING AUTHORITY OF THE  
CITY OF NATIONAL PARKING**

By: \_\_\_\_\_  
Name

\_\_\_\_\_  
Title

Date: \_\_\_\_\_

**COUNTY OF SAN DIEGO**

By: \_\_\_\_\_  
**Ken Bitar, Assistant Director,  
Department of General Services**

**EXHIBIT "D"**  
**NATIONAL CITY PARCEL**  
**LEGAL DESCRIPTION**

PAGE 1 OF 3

THE LAND DESCRIBED HEREIN IS A PORTION OF LOT 14 OF THE NATIONAL CITY TRACT OF THE PLAZA BONITA SHOPPING CENTER, ACCORDING TO MAP THEREOF NO. 10337 FILED IN THE OFFICE OF THE SAN DIEGO COUNTY RECORDER FEBRUARY 24, 1982, LOCATED IN THE CITY OF NATIONAL CITY, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWESTERLY MOST CORNER OF SAID LOT 14, THENCE ALONG THE GENERAL WESTERLY BOUNDARY THEREOF NORTH  $16^{\circ}48'07''$  WEST 2.46 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE SOUTHERLY, HAVING A RADIUS OF 1085.00 FEET, A LINE RADIAL TO SAID POINT BEARS NORTH  $00^{\circ}13'26''$  EAST; THENCE LEAVING SAID WESTERLY BOUNDARY, EASTERLY ALONG SAID CURVE 267.27 FEET THROUGH A CENTRAL ANGLE OF  $14^{\circ}06'49''$ ; THENCE SOUTH  $75^{\circ}39'45''$  EAST 27.25 FEET TO THE BEGINNING OF A CURVE, CONCAVE SOUTHERLY, HAVING A RADIUS OF 760.17 FEET; THENCE EASTERLY ALONG SAID CURVE 45.05 FEET THROUGH A CENTRAL ANGLE OF  $3^{\circ}23'44''$  TO THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE SOUTHERLY, HAVING A RADIUS OF 675.00 FEET, A LINE RADIAL TO SAID POINT BEARS NORTH  $11^{\circ}24'49''$  EAST; THENCE EASTERLY ALONG SAID CURVE 141.91 FEET THROUGH A CENTRAL ANGLE OF  $12^{\circ}02'46''$  TO A POINT OF NON-TANGENCY, A RADIAL LINE TO SAID POINT BEARS NORTH  $23^{\circ}27'35''$  EAST; THENCE NORTH  $69^{\circ}50'11''$  EAST 56.68 FEET TO THE GENERAL NORTHEASTERLY BOUNDARY OF SAID LOT 14 AND THE GENERAL SOUTHWESTERLY RIGHT-OF-WAY OF PLAZA BONITA ROAD, 98.80 FEET WIDE, SAID POINT BEING THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 419.13 FEET, A LINE RADIAL TO SAID POINT BEARS SOUTH  $63^{\circ}30'11''$  WEST; THENCE SOUTHEASTERLY ALONG SAID CURVE 104.50 FEET THROUGH A CENTRAL ANGLE OF  $14^{\circ}17'05''$ ; THENCE SOUTH  $40^{\circ}46'54''$  EAST 339.82 FEET; THENCE NORTH  $45^{\circ}24'52''$  WEST 109.80 FEET TO THE BEGINNING OF A CURVE, CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 1205.00 FEET; THENCE NORTHWESTERLY ALONG SAID CURVE 814.87 FEET THROUGH A CENTRAL ANGLE OF  $38^{\circ}44'45''$  TO A POINT OF NON-TANGENCY, A RADIAL LINE TO SAID POINT BEARS NORTH  $05^{\circ}50'23''$  EAST, SAID POINT BEING THE POINT OF BEGINNING.

CONTAINS 26,103 SQUARE FEET OR 0.5992 ACRES OF LAND, MORE OR LESS.



RESOLUTION NO. 2015 –

RESOLUTION OF THE PARKING AUTHORITY OF THE CITY OF NATIONAL CITY AUTHORIZING THE CHAIRMAN TO EXECUTE AN OPTION AGREEMENT WITH CARMAX AUTO SUPERSTORES CALIFORNIA, LLC, A VIRGINIA LIMITED LIABILITY COMPANY, FOR THE PURCHASE OF APPROXIMATELY 9.5 TO 11 ACRES, WITH THE OPTION OF UP TO 15.08 ACRES, OF A PARKING AUTHORITY-OWNED 15.08 ACRE VACANT PARCEL OF LAND LOCATED AT THE SOUTHEAST CORNER OF HIGHWAYS 805 AND 54 IN NATIONAL CITY IN AN AMOUNT **NO LESS THAN \$3,500,000** FOR THE FIRST 9.5 ACRES AND ADDITIONAL COMPENSATION FOR EACH SQUARE-FOOT IN EXCESS OF 9.5 ACRES

WHEREAS, the Parking Authority of the City of National City ("Parking Authority") is the owner of a 15.08-acre parcel of land ("Entire Site") located at the southwest corner of Sweetwater Road and Bonita Center Road (Parcel No. 564-471-11) and Carmax Auto Superstores California, LLC ("CarMax") is desirous of acquiring approximately 9.5 acres to 11 acres of the site, with the option of up to 15.08 acres ("Property"), on which it intends to construct and operate a CarMax Superstore, in accordance with plans and specifications subject to approval by the Authority; and

WHEREAS, on October 21, 2014, pursuant to Resolution No. 2014-1, the Parking Authority of the City of National City approved an Exclusive Negotiation Agreement ("ENA") between the Authority and CarMax; and

WHEREAS, in 1978, the Authority conveyed to the County of San Diego an easement for open space and park purposes over the Entire Site (the "Easement") in accordance with a Cooperation Agreement between the City of National City and the County of San Diego (the "County") for the development of the Plaza Bonita Shopping Center, the construction of Plaza Bonita Road, and the funding of improvements to portions of Sweetwater Regional Park; and

WHEREAS, on April 3, 2007, the Authority and the County entered into an Option to Purchase Agreement setting forth the terms of an option whereby the Authority could purchase the Easement from the County; and

WHEREAS, in the past, County staff have represented that they will exercise their best efforts to relinquish the Easement over the Entire Site for a fee of \$3,000,000 and that they will use the fee to purchase replacement open space property within the Sweetwater Valley Regional Park and the Sweetwater Summit Camping Area; and

WHEREAS, the Option Agreement has been amended seven times, most recently on November 18, 2014 pursuant to Resolution No. 2014-1, to extend the term of the Option Agreement; and

WHEREAS, the purchase of the Easement by the Parking Authority is a condition to close on the sale of the Property to CarMax; and

WHEREAS, the City Council of the City of National City ("City Council") adopted the Mitigation Monitoring and Reporting Program, adopted and made a Statement of Overriding Considerations, and certified the Final Environmental Impact Report for the National City Costco Wholesale Project, SCH #2003111 073, November 2007 ("FEIR") for the Overall Site on November 20, 2007, pursuant to Resolution No. 2007-259; and

WHEREAS, the City Council amended the Combined General Plan/Zoning Map for the Overall Site from Open Space Reserve (OSR) to General Commercial-Planned Development (CG-PD) on November 20, 2007, pursuant to Resolution No. 2007-259. The CG-PD zone was renamed the MXD-2 zone in 2012; and

WHEREAS, the purpose of the Option Agreement is to ensure that the Parking Authority of the City of National City retains its discretion to approve or disapprove the sale of the Property until after CEQA review is completed; and

WHEREAS, the purpose of this Option Agreement is also to ensure that the City Council of the City of National City retains its total discretion to make modifications to the proposed discretionary approvals, adopt alternatives, impose mitigations measures, or disapprove the Project until after CEQA review is completed; and

WHEREAS, the purchase price to be paid by CarMax for the Property shall be the sum of (i) Three Million Five Hundred Thousand Dollars (\$3,500,000.00) for 9.5 acres, (ii) Five and 91/100 Dollars (\$5.91) per square foot for up to one and one-half (1.5) acres of additional acreage, and (iii) Seven and 15/100 Dollars (\$7.15) per square foot for any additional acreage in excess of one and one-half (1.5) acres.

NOW, THEREFORE, BE IT RESOLVED that the Parking Authority of the City of National City hereby authorizes the Chairman to execute an Option Agreement by and between the Parking Authority and CarMax Auto Superstores California, LLC., for a 9.5 acre parcel located at the southwest corner of Sweetwater Road and Bonita Center Road (Parcel No. 564-471-11). The Option Agreement is on file in the Office of the City Clerk.

PASSED and ADOPTED this 18<sup>th</sup> day of August, 2015.

\_\_\_\_\_  
Ron Morrison, Chairman

ATTEST:

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Leslie Deese, Secretary

APPROVED AS TO FORM:

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Claudia Gacitua Silva  
Legal Counsel