

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City of El Cajon
200 Civic Center Way
El Cajon, California 92020
Attn: City Manager

This document is exempt from the payment of a recording
fee pursuant to Government Code section 27383

OPERATING COVENANT

THIS OPERATING COVENANT (“Operating Covenant”) is made this 27th day of September, 2023 (the “Effective Date”), by and between the **CITY OF EL CAJON**, a charter city and municipal corporation (the “City”), and **CARMAX AUTO SUPERSTORES, INC.**, a Virginia corporation (the “Operator” or “CarMax”), with reference to the following:

A. 1100 Wagner Drive, LLC, a California limited liability company and Operator are, respectively, the landlord and tenant of that certain Ground Lease, dated as of October 6, 2017 (“Original Lease”), which Original Lease has been amended by a First Amendment to Ground Lease, dated as of December 4, 2017 (“First Amendment”), and by a Second Amendment to Ground Lease, dated as of May 31, 2020 (“Second Amendment”), and by a Consent to Assignment, Estoppel, and Amendment of Lease dated September 21, 2022 (the “Consent to Assignment and Amendment”). The Original Lease, the First Amendment, the Second Amendment, and the Consent to Assignment and Amendment, will be collectively referred to in this Agreement as the “Lease”. By means of the Lease, Landlord currently leases to the Operator, and the Operator currently leases from Landlord, the real property located in San Diego County, California, more particularly described in the Lease (the “Property”). The Property includes, among other things, an easement over a strip of land owned by the City of San Diego (such city, the “City,” and such strip of land, the “SD Property”). Operator represents and warrants to the City that Operator’s leasehold interest under the Lease is in effect as of the date of this Agreement, and expires September 30, 2052.

B. The Operator is the applicant and permittee of a first-class CarMax automobile dealership on the Property (the “CarMax Dealership”), said construction conducted at the sole cost and expense of Operator with no financial or other assistance from the City, and the City has agreed to provide the Operator with certain financial incentives in consideration of Operator agreeing to use and operate the Property and the CarMax Dealership, all in accordance with this Operating Covenant.

C. The Operating Covenant shall be recorded against the Property to memorialize certain covenants, conditions and restrictions regarding the use and operation of the Property by the Operator and the Operator’s successors and assigns as tenant under the Lease.

D. The City has a fee interest in parks, City Hall, and in various streets, sidewalks, and other property within the City, more particularly described in Exhibit B (collectively, the “Benefited Public Property”), and is responsible for planning of land uses within the City in such a manner as to provide for the health, safety and welfare of the residents of the City.

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein as if fully set forth, and for other good and valuable consideration, Operator hereby covenants, agrees and declares by and for itself and its successors and assigns that the Property shall be held, assigned, subleased, hypothecated, encumbered, used, occupied, and improved subject to the following covenants, conditions and restrictions (sometimes collectively referred to hereinafter as the “Covenants”). These Covenants shall run with the Property and shall be binding on all parties having or acquiring any right, title or interest in the Property or any part thereof and shall inure to the benefit of the City and its successors and assigns regardless of whether the City holds any interest in any real property benefited thereby.

1. Covenant Regarding Specific Uses.

(a) Operation of the CarMax Dealership. For a term (the “Term”) commencing upon the date of the City’s issuance of a certificate of occupancy (the “Occupancy Permit”) allowing the commencement of operations of the CarMax Dealership, which shall commence no later than March 31, 2027, provided that the City has issued the Occupancy Permit for the CarMax Dealership, and continuing until the earlier of (x) the conclusion of the eighth (8th) Operating Year (as defined in Exhibit C attached hereto), (y) the date of expiration or earlier termination of the Lease (as applicable, the “Operating Covenant Termination Date”), or (z) redistribution to CarMax exceeds Two Million Dollars (\$2,000,000.00), the Operator hereby covenants and agrees to devote the Property for the exclusive purpose, use and operation of the CarMax Dealership, and will comply with other obligations contained herein. Notwithstanding anything herein to the contrary, the nondiscrimination covenants contained in subdivision (a) of Section 3 hereof shall run with the Property throughout the term of the Lease, and shall not terminate on the Operating Covenant Termination Date. Except as provided below, or with the prior written consent of the City for each instance, which shall not be unreasonably withheld, conditioned or denied, the failure of the Operator (or its subtenant or assignee) to operate any portion of the CarMax Dealership on the Property as required herein for thirty (30) or more days in any forty-five (45) day period shall, at the City’s option, constitute default hereunder; provided, however, that the Operator shall for purposes of this Section 1 be deemed to be operating such portion of the CarMax Dealership during any period that the Operator is prevented from operating such portion due to: (i) required or necessary rehabilitation of such portion CarMax Dealership (provided that the period during which such portion of the CarMax Dealership is not operated as a result of the rehabilitation shall in no event exceed sixty (60) days), unless the rehabilitation cannot reasonably be completed within such sixty-day period, in which case the period may extend as necessary for completion, provided such rehabilitation was commenced within the 60-day period and is diligently pursued to completion, but in no event shall rehabilitation efforts exceed 180 days; or (ii) war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of public enemy; epidemics; quarantine restrictions; freight embargos; lack of transportation; governmental restrictions or priority; litigation; unusually severe weather; inability to secure necessary labor, materials or tools; or acts or failures of the City or other public or governmental entity. Notwithstanding anything to the contrary herein, (a) an extension of time for any cause listed in romanette (ii) above shall be for the period of the enforced delay and shall commence to run (A) from the time of the commencement of the cause, if notice (“Force Majeure Notice”) by Operator is sent to the City within fifteen (15) days of the commencement of the cause, or (B) from the time Operator gives the Force Majeure Notice, if Force Majeure Notice is not given by Operator to City within fifteen (15) days of the commencement of the cause, and (b) Operator is not entitled,

pursuant to this Section 1, to an extension of time to perform because of the past, present or future difficulty in obtaining financing necessary to operate the CarMax Dealership because of economic or market conditions.

(b) Subject to Section 1(a), in operating the CarMax Dealership during the Term, Operator:

(1) Shall operate in accordance with all requirements of CarMax (or another dealer approved by City), which shall include operating in the dealership as a first-class motor vehicle dealership in compliance with all facility and image requirements of CarMax;

(2) Shall use all chemicals, unhealthful substances, and pesticides in strict accordance with all governing regulations, and shall employ precautionary measures recognizing that areas are open to public access;

(3) Shall keep all sidewalks, paths and other paved areas of the CarMax Dealership in a clean and reasonably weed-free condition, free of excess dirt and mud, trash, debris or other matter which is unsafe or unsightly; remove all trash, litter and other debris from improvements and landscaping of the CarMax Dealership prior to mowing; ensure that all cuttings, weeds, leaves, and other debris at the of the CarMax Dealership are properly disposed of; and

(4) Shall, in performing the foregoing, conform to all applicable federal and state Occupational Safety and Health Act standards and regulations for the performance of the same.

2. Failure to Operate Property.

(a) In the event the Operator does not operate the Property in the manner set forth herein and in accordance with Section 1(a) above (the "Operation Standards"), the City shall notify the Operator in writing if the operation of the CarMax Dealership or Property does not meet with the Operation Standards ("Deficiency"). City's notice of Deficiency must specify the deficiencies and the actions required to be taken by the Operator to cure deficiencies. Upon notification of any operation deficiency, the Operator shall have thirty (30) days within which to correct, remedy or cure the deficiency. If the written notification states the problem is urgent relating to the public health and safety of the City, the Operator shall have seventy-two (72) hours to rectify the problem.

(b) In the event the Operator fails to correct, remedy or cure (or for deficiencies which cannot reasonably be corrected, remedied or cured with thirty (30) days has failed to commence correcting, remedying or curing such operation deficiency and diligently pursue such correction, remedy or cure to completion) after notification and after the period of correction has lapsed, then the parties agree that the Operator shall be required to reimburse any portion of sales taxes generated from the Property (as set forth in Section 6 below and Exhibit C hereof) during the period of the Operator's default in its covenant to comply with the Operation Standards and any subsequent calculation for reimbursement shall treat any such sales as having not occurred.

(c) In the event the Operator closes the CarMax Dealership for business and does not intend to re-open the CarMax Dealership during the Term of this Operating Covenant,

the Operator shall so notify the City (“Closing Notice”). Upon the giving of Closing Notice (i) the Operator will repay the City for any sales tax reimbursements received by the Operator during the Operating Year (as defined in Exhibit C) that resulted in the greatest reimbursement from the City (the “Store Closing Fee”), and (ii) notwithstanding the provisions of Section 8, the City will have no right to initiate an action to force the Operator to operate the CarMax Dealership, the collection of the Store Closing Fee being the City’s exclusive remedy for the closure of the CarMax Dealership.

3. Compliance with Law. The Operator shall comply with all local, state and federal laws relating to the uses of or condition of the Property and the CarMax Dealership. The operation of the CarMax Dealership shall be in compliance with the requirements of any entitlements issued by the City for the CarMax Dealership, including, as applicable, a site development plan and specific plan.

(a) Nondiscrimination Covenants. The Operator covenants, by and for itself, and any successor-in-interest to all or any portion of the Property, that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, sexual preference, marital status, national origin or ancestry in (1) its recruiting, hiring, and retention of employees, contractors, and consultants; (2) its commercial operations in dealing with the public; and (3) the assignment, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall the Operator, itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, assignees, subtenants or vendors of the Property. The foregoing covenants run with the Property.

The Operator shall refrain from restricting employment opportunities, commercial transactions with public, as well as the assignment of the Property or the sublease of the Property, or any portion thereof, on the basis of race, color, religion, sex, sexual preference, marital status, ancestry or national origin of any person. All such assignments, subleases, or instruments for the transfer of any interest in the Property entered into after the Effective Date shall contain or be subject to the following nondiscrimination clauses:

(1) In assignments: “The assignee herein covenants, by and for itself, and any heirs, executors, administrators and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, sexual preference, marital status, national origin or ancestry in (1) its recruiting, hiring, and retention of employees, contractors, and consultants; (2) its commercial operations in dealing with the public; and (3) the assignment, sublease, transfer, use, occupancy, tenure or enjoyment of the Property herein assigned, nor shall the assignee or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of assignees, subtenants, sublessees or licensees of the Property. The foregoing covenants shall run with the Property.”

(2) In subleases: “The sublessee herein covenants, by and for itself, and any heirs, executors, administrators and assigns, and all persons claiming under or through them, and this sublease is made and accepted upon and subject to the condition that there shall be no

discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, sexual preference, marital status, national origin or ancestry in (1) its recruiting, hiring, and retention of employees, contractors, and consultants; (2) its commercial operations in dealing with the public; and (3) the assignment, subleasing, transferring, use, occupancy, tenure or enjoyment of the premises herein leased, nor shall the lessee or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of assignees, subtenants, sublessees or licensees of the premises herein leased.”

(3) In licenses: “There shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, sexual preference, marital status, national origin or ancestry in the use, occupancy, tenure or enjoyment of the Property, nor shall the licensee or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to (1) its recruiting, hiring, and retention of employees, contractors, and consultants; (2) its commercial operations in dealing with the public; and (3) the selection, location, number, use, or occupancy of the Property. The foregoing covenants shall run with the Property.”

(b) No Violations of Statutes Relating to Direct Assistance by City. The Operator represents and warrants that it is using the City financial assistance for the sole and exclusive purpose of operation costs and the stabilization of operational costs of the CarMax Dealership, and for no other purpose. The Operator further agrees to indemnify, defend and hold harmless the City from and against any claims, proceedings, losses, costs or expenses incurred as a result of any third-party claims or proceedings resulting from such violation arising out of actions by the Operator related to the provision of the financial assistance.

4. Sales and Use Tax Covenant. From the date of this Operating Covenant is recorded against the Property until the Operating Covenant Termination Date, to the extent allowed by applicable law, the Operator shall designate the Property as the point of sale for sales tax purposes for all goods and services sold or leased on the Property, or whose sales and leases originate from, or relate back to the CarMax Dealership on, the Property.

5. Covenant to Pay Taxes and Assessments. From the date this Operating Agreement is recorded against the Property until the Operating Covenant Termination Date, the Operator shall pay or cause to be paid, prior to delinquency, all ad valorem real estate taxes (including possessory interest taxes), special taxes, and assessments levied against the Property and any improvements thereon, subject to the Operator’s right to contest any such tax or assessment in good faith. During such period, the Operator shall remove or have removed, any levy or attachment made on the Property or any part thereof or assures the satisfaction thereof within a reasonable time and prior to the sale of the Property.

6. City Reimbursement of Portion of Sales Taxes Generated. In consideration of the use and operation of the CarMax Dealership as set forth in this Operating Covenant, and in recognition of the significant commitment of capital and other resources by the Operator for the CarMax Dealership, City hereby agrees to provide, as an incentive, the reimbursement of a portion of sales taxes generated from the Property for a limited period of time. The precise calculation of

reimbursement by the City, to Operator, is set forth in the City Reimbursement Schedule, attached to this Operating Covenant as Exhibit C and incorporated herein by reference.

7. Defaults.

(a) Failure or delay by either party to perform any term or provision of this Operating Covenant, subject to applicable cure periods, constitutes a default under this Operating Covenant. A party claiming a default shall give written notice of default to the other party, specifying the default complained of and the actions required to correct such default.

(b) Unless otherwise provided by this Operating Covenant, the claimant shall not institute proceedings against the other party if the other party, within thirty (30) days from the receipt of such notice, immediately and with due diligence, commences to cure, correct or remedy such failure or delay and completes such cure, correction or remedy as soon as reasonably practicable after receipt of such notice, but in no event shall the cure, correction or remedy occur more than 180 days after notice.

8. Legal Actions.

(a) In addition to any other rights or remedies, and subject to notice and cure provisions in Section 1(a) and Section 7 above, and subject to the provisions of Section 2(c) any party may institute legal action to seek specific performance of the terms of this Operating Covenant, or to cure, correct or remedy any default, or to obtain any other legal equitable remedy consistent with the purpose of this Operating Covenant. The parties shall also have the right to pursue damages for the other party's defaults, but in no event shall the City or Operator be entitled to special damages of any kind from the other party, including, without limitation, damages for economic loss, lost profits, or any other economic or consequential damages of any kind. Such legal actions must be instituted in the Superior Court of the County of San Diego, State of California or in the Federal District Court in the Southern District of California located in San Diego. In the event of any litigation between the parties hereto, the prevailing party shall be entitled to receive, in addition to the relief granted, its reasonable attorneys' fees and costs and such other reasonable costs incurred in investigating the action and prosecuting the same, including costs for expert witnesses, costs on appeal, and for discovery. CarMax hereby waives any right to remove any such action from San Diego County as is otherwise permitted by California Code of Civil Procedures section 394.

(b) The internal laws of the State of California shall govern the interpretation and enforcement of this Operating Covenant, without regard to conflict of laws.

(c) In the event that any legal action is commenced by the Operator against the City in connection with this Operating Covenant, service of process on the City shall be made by personal service upon the City Clerk of the City in addition to such other manner as may be provided by law.

(d) In the event that any legal action is commenced by the City against the Operator, service of process on the Operator shall be made by personal service upon any officer or director of the Operator, whether made within or outside the State of California, or in such other manner as may be provided by law.

(e) Except as otherwise expressly stated in the Operating Covenant, the rights and remedies of the parties are cumulative, and the exercise by either party of the one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

(f) Any failures or delays by either party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies, or deprive either such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

9. Effect of Violation of the Terms and Provisions of this Operating Covenant.

The covenants established in this Operating Covenant shall, without regard to technical classification and designation, be binding for the benefit and in favor of the City, and its successors and assigns, as to those covenants which are for its benefit. The covenants contained in this Operating Covenant shall remain in effect for the periods of time specified therein. The City is deemed the beneficiary of the terms and provisions of this Operating Covenant and of the covenants running with the Property, for and in their own rights and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit this Operating Covenant and the covenants running with the land have been provided. Subject to the provisions of Section 2I, the City shall have the right, if the Operating Covenant or covenants are breached, to exercise all rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which they or any other beneficiaries of this Operating Covenant and covenants may be entitled. Pursuant to applicable law, including, but not limited to, California Civil Code sections 1462, 1465 and 1468, all provisions of this Operating Covenant shall run with the Property and be binding upon and inure to the benefit of the Benefited Public Property and the Property and each and every portion thereof or interest therein, and all parties having or acquiring any right, title or interest in the Property or any portion thereof, and their successors and assigns.

10. Transfer Restrictions.

(a) The qualifications and identity of the Operator are of particular concern to the City. It is because of these qualifications and identity that the City has entered into this Operating Covenant with the Operator. Accordingly, commencing on the Effective Date and continuing throughout the Term: (i) no voluntary or involuntary successor-in-interest of the Operator shall acquire any rights or powers under this Operating Covenant; (ii) the Operator shall not make any total or partial transfer, assignment, sublease (except subleases to subtenants who will operate a portion of the CarMax Dealership while Operator continues to be the primary operator of the CarMax Dealership), further encumbrance, or refinancing of the whole or any part of the Property or the CarMax Dealership; and (iii) no changes shall occur with respect to the majority ownership and/or control of the Operator, including, without limitation, stock transfers, sales of issuances, or transfers, sales of membership or ownership interests, or statutory conversions (with each of the actions in clauses in (i), (ii) and (iii) above to herein as a "Transfer"), without the prior written approval of the City, which approval shall not be unreasonably withheld or delayed. Any purported Transfer, voluntarily or by operation of law, except with the prior written consent of the City, shall be null and void and shall confer no rights whatsoever upon any purported assignee or transferee. Notwithstanding the other provisions of this Section 10(a), for

so long as Operator is a publicly traded corporation, transfers of Operator's stock will not be deemed Transfers under this Section 10(a).

(b) Notwithstanding any other provision of this Operating Covenant to the contrary, the City's approval of a Transfer shall not be required in connection with any of the following:

(1) Any Transfer by the Operator to a Related Person or Entity (as defined below).

(2) A Transfer consisting of the conveyance or dedication of any portion of the Property to the City or other appropriate governmental agency, including public utilities, where the granting of such permits or facilitates the development of the Property and the CarMax Dealership.

(3) Any Transfer for (i) financing purposes to the holder of a mortgage or (ii) any refinancing or permanent financing of the mortgage.

(4) Any Transfer to any person or entity pursuant to foreclosure, or deed in lieu of foreclosure of any such mortgage referred to Section 10(b)(3), and any Transfer to Landlord arising from the exercise of Landlord's remedies under the Lease.

In the event of a Transfer by Operator not requiring the City's prior approval, Operator nevertheless agrees that promptly after such Transfer, Operator shall give written notice to the City of such Transfer. In the case of a Transfer pursuant to Section 10(b)(1), Operator agrees that at least thirty (30) days prior to such Transfer it shall provide satisfactory evidence that the transferee has assumed or, upon the effective date of the transfer, will assume, in writing through an assignment and assumption agreement, in a form reasonably acceptable to the City, all of the obligations of the Operator under this Operating Covenant which remain unperformed as of such Transfer or which arise from and after the date of the Transfer.

As used in this Operating Covenant, a "Related Person or Entity" shall mean an entity in which Operator, or an entity in which Operator or any of Operator's corporate parents, own a greater than fifty percent (50%) ownership and management interest; provided, however, that such Related Person or Entity shall demonstrate that such person or entity has been approved in writing by Operator to operate the CarMax Dealership thereon.

(c) If the Operator desires to cause a Transfer of any of its interests in this Operating Covenant or the Property, and such Transfer requires the City's approval under Section 10(a), Operator shall submit a written request to the City that it consent to the Transfer, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding any other provision set forth in this Operating Covenant, a transfer which satisfies the following conditions shall automatically be deemed approved by the City if: (i) the proposed assignee expressly assumes, in writing, the unexecuted obligations hereunder of the transferor/assignor, as applicable, as to times following the effective dates of the assignment; and (ii) the proposed assignee demonstrates to the reasonable satisfaction of the City that such person or entity has adequate financial capacity to operate the CarMax Dealership on the Property and that such person or entity has been approved in writing by Operator to operate the CarMax Dealership thereon.

Notwithstanding any other provision set forth in this Operating Covenant to the contrary, upon the effective date of a permitted or approved Transfer, and provided that the transferor/assignor shall be delivered to the City an executed assignment and assumption agreement in a form reasonably acceptable to City's legal counsel, the transferor/assignor shall be released from all further liabilities and obligations hereunder and the Operating Covenant that have been so transferred and assigned.

(d) All of the terms, covenants and conditions of this Operating Covenant shall run with the Property and be binding upon the Operator and the City and their permitted successors and assigns. Whenever the term "Operator" or "City" is used in this Operating Covenant, such term shall include any other permitted successor and assigns.

11. Miscellaneous Provisions.

(a) If any provision of this Operating Covenant or portion thereof, or the application to any person or circumstance, shall to any extent be held invalid, inoperative or unenforceable, the remainder of this Operating Covenant, or the application of such provision or portion thereof to any such invalid provision affects all the consideration of this Operating Covenant; and each provision of this Operating Covenant shall be valid and enforceable to the fullest extent permitted by law.

(b) This Operating Covenant shall be construed in accordance with the internal laws of the State of California without regard to conflict of law principles.

(c) This Operating Covenant shall be binding upon and inure to the benefit of the successors and assigns of the Operator as tenant under the Lease, but any Transfer shall be subject to the requirements and provisions of Section 10 of this Operating Covenant.

(d) The Operator recognizes that the City is a party to this Operating Covenant solely for the purpose of providing the Operator incentives that will foster economic development in its community with the intent that it has a positive impact on the Benefited Public Property, which will (in turn) improve the public health, safety, and welfare of its residents. The Operator further recognizes, however, that the City is responsible for developing sound land use regulations applicable throughout the community, such that nothing in this Operating Covenant shall be interpreted as a contract that requires the City's legislative body and planning agency to approve the location, design, or permission of the intended CarMax Dealership and the City retains all discretion in any approvals or conditions of approvals related to the CarMax Dealership, this Operating Covenant notwithstanding.

12. Notices. All notices under this Operating Covenant shall be effective: (i) upon personal delivery; (ii) upon delivery by reputable overnight courier that provides a receipt with the date and time of delivery; or (iii) via facsimile or electronic mail, so long as the sender receives confirmation of successful transmission from the sending machine or computer; provided that a copy of the notice is also concurrently sent by first class mail, and addressed to the respective parties as set forth below or as to such other address as the parties may from time to time designate in writing:

To City: City of El Cajon
200 Civic Center Way
El Cajon, California 92020
Attn: City Manager
Telephone: 619.441.1716
Email: gmitchell@elcajon.gov

With a copy to: El Cajon City Attorney
200 Civic Center Way
El Cajon, California 92020
Attn: Morgan L. Foley
Telephone: 619.441.1798
Email: mfoley@elcajon.gov

To Operator: CarMax Auto Superstores, Inc.
12800 Tuckahoe Creek Parkway
Richmond, Virginia 23238
Attn: K. Douglass Moyers
Telephone: 804-747-0422
Email: douglass_moyers@carmax.com

With a copy to: Sheppard, Mullin, Richter & Hampton LLP
501 W. Broadway, 19th Floor
San Diego, California 92101
Attn: Whitney Hodges, Esq.
Telephone: 619.338.6542
Email: whodges@sheppardmullin.com


[Signatures on Following Page]

IN WITNESS WHEREOF, the parties hereto has executed this Operating Covenant as of the Effective Date as first hereinabove identified.

OPERATOR

Date: Sept 27, 2023

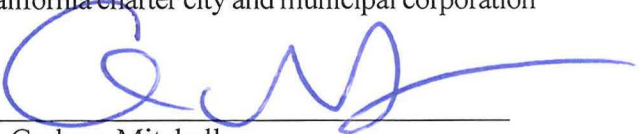
CARMAX AUTO SUPERSTORE, INC.,
a Virginia corporation

By: 
K. Douglass Moyers
Vice President of Real Estate

CITY

Date: Sep 27, 2023


CITY OF EL CAJON,
a California charter city and municipal corporation

By: 
Graham Mitchell
Its: City Manager

ATTEST:


Angela L. Cortez, CMC, City Clerk

APPROVED AS TO FORM:


Morgan L. Foley, City Attorney

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

Commonwealth of Virginia)
City/County of GOOCITLAND)

On October 10, 2023, before me, Cheri L. Hancock, a Notary Public, personally appeared K. Douglass Moyers, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Cheri L. Hancock



My commission expires: 1/31/2024

Registration No: 7888180

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of San Diego)

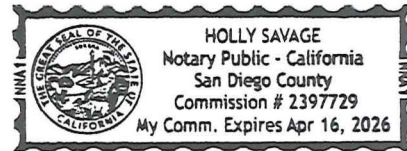
On September 27, 2023, before me, Holly Savage, a Notary Public, personally appeared Graham Mitchell, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Holly Savage



**EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY**

Real property in the City of El Cajon, County of San Diego, State of California, described as follows:

PARCEL A:

ALL OF LOTS 8 AND 9 IN BLOCK 28 OF FLETCHER HILLS, UNIT NO. 2, IN THE CITY OF EL CAJON, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 2122, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, JULY 31, 1928.

EXCEPTING FROM SAID LOTS 8 AND 9, THE WESTERLY 100 FEET THEREOF.

ALSO EXCEPTING FROM SAID LOT 8, THAT PORTION LYING NORTH OF THE WESTERLY PROLONGATION OF THE SOUTHERLY LINE OF BLOCK 29 OF SAID FLETCHER HILLS, UNIT NO. 2.

ALSO EXCEPTING THEREFROM, THE SOUTHERLY 27.49 FEET OF SAID LOT 9.

ALSO EXCEPTING FROM SAID LOTS, THOSE PORTIONS LYING WITHIN A DEED TO THE CITY OF SAN DIEGO DATED MAY 21, 1946, RECORDED IN THE OFFICE OF THE COUNTY RECORDER, SAN DIEGO COUNTY, AUGUST 19, 1946 IN BOOK 2214, PAGE 182 OF OFFICIAL RECORDS.

ALSO EXCEPTING ALL THAT PORTION OF SAID LOTS 8 AND 9 LYING NORTHEASTERLY OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT THE CENTERLINE INTERSECTION OF MARSHALL AVENUE AND ARNELE AVENUE AS SHOWN ON MAP 5484, FILED AT THE OFFICE OF SAID COUNTY RECORDER, THENCE WESTERLY ALONG THE CENTERLINE OF SAID ARNELE AVENUE NORTH 89° 36' 56" WEST (BEARINGS ARE BASED ON NAD 27 CALIFORNIA STATE PLANE COORDINATE SYSTEM) (SOUTH 89° 59' 20" WEST PER RECORD) 30.00 FEET TO A POINT ALSO BEING THE NORTHEAST CORNER AS DESCRIBED IN A GRANT DEED RECORDED JULY 13, 1953 PER BOOK: 4918, PAGE: 347, OF OFFICIAL RECORDS;

THENCE ALONG THE EASTERLY BOUNDARY LINE OF SAID GRANT DEED SOUTH 0° 19' 18" WEST 547.69 FEET TO THE BEGINNING OF A 20.00 FEET RADIUS CURVE CONCAVED NORTHWESTERLY; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 90° 00' 00", DISTANCE OF 31.42 FEET;

THENCE NORTH 89° 40' 42" WEST 15.00 FEET; TO THE TRUE POINT OF BEGINNING,

THENCE NORTH 0° 19' 18" EAST 238.12 FEET;

THENCE NORTH 16° 22' 40" WEST 10.44 FEET;

THENCE NORTH 0° 19' 18" EAST 20.00 FEET;

THENCE NORTH 17° 01' 15" EAST 10.44 FEET;

THENCE NORTH 0° 19' 18" EAST 239.61 FEET;

THENCE NORTH 89° 36' 56" WEST 7.00 FEET;

THENCE NORTH 0° 19' 18" EAST 50.00 FEET TO A POINT ON THE NORTHERLY BOUNDARY LINE OF SAID GRANT DEED, SAID POINT ALSO BEING DESCRIBED HEREIN AS POINT "A"; THENCE ALONG SAID NORTHERLY BOUNDARY LINE SOUTH 89° 36' 56" EAST 42.00 FEET TO THE POINT OF COMMENCEMENT.

EXCEPTING THEREFROM ALL PERCOLATING AND SUBTERRANEAN WATERS LYING BENEATH THE SURFACE OF THE LAND CONVEYED HEREBY TOGETHER WITH THE SOLE AND EXCLUSIVE RIGHT TO REMOVE SAME BY CUSTOMARY MEANS, BUT EXCLUDING ANY RIGHT TO ENTER UPON THE SURFACE OF SAID LANDS FOR SUCH PURPOSE, AS RESERVED BY THE ED FLETCHER CO. BY DEED RECORDED JULY 13, 1953 IN BOOK 4918, PAGE 347 OF OFFICIAL RECORDS.

PARCEL B:

THE RESERVED RIGHT AT THEIR OWN RISK TO USE THE SURFACE OF THE PROPERTY CONVEYED BY GRANT DEED RECORDED AUGUST 19, 1946 IN BOOK 2214 PAGE 182 OF OFFICIAL RECORDS, FOR AGRICULTURAL USES EXCEPT FOR THE PLANTING AND GROWING OF TREES, SHRUBS AND BUSHES: THE RIGHT TO FENCE WITH GATES SO AS NOT TO RESTRICT ENTRY BY THE CITY, AND THE RIGHT TO CROSS OR MAKE USE OF THE SURFACE IN A MANNER NOT DETRIMENTAL TO THE INSTALLATION, CONSTRUCTION, OPERATION, REPAIR, MAINTENANCE AND REPLACEMENT OF A PIPE LINE OR PIPE LINES, OR TO ANY OTHER PURPOSES AND USES AS ARE OR MAY BE NECESSARY OR INCIDENTAL TO THE CONSTRUCTION, MAINTENANCE AND OPERATION OF THE CITY'S PROPOSED PIPE LINE OR PIPE LINES.

APN: 482-190-45-00

EXHIBIT B
DESCRIPTION OF BENEFITTED PUBLIC PROPERTIES IN EL CAJON

City Hall, 200 Civic Center Way
APN: 488-111-30

El Cajon Public Safety Building, 100 Civic Center Way
APN: 488-072-42

Fire Station No. 6, 100 East Lexington Ave.
APN: 488-192-09

Heartland Fire Training Facility, 1301 North Marshall Ave.
APN: 482-131-16

Fletcher Hills Center and Pool, 2345 Center Place
APN: 481-430-47 & 481-430-44

Hillside Center and Park, 840 Buena Terrace
APN: 481-521-01 & 481-520-12

Judson Park, NW corner of Magnolia and Park Avenues
APN: 487-172-67

Kennedy Center and Park, 1675 East Madison Avenue
APN: 511-210-13

Renette Center and Park, 935 South Emerald Avenue
APN: 492-320-01 & 492-320-02

Wells Center and Park, 1153 East Madison Avenue
APN: 489-140-63

EXHIBIT C
CITY REIMBURSEMENT SCHEDULE

1. **Reimbursement Payments.** Starting in the first Operating Year (as defined below), following issuance of the Occupancy Permit as defined in the Operating Covenant, and each Operating Year thereafter for the Term of the Operating Covenant, the City shall reimburse the Operator each year of the Operating Year in the amount equal to:

Seventy-five percent (75%) of the “Net Sales Taxes from the Property” generated on the Property during Operating Year 1, inclusive; and

Seventy percent (70%) of the “Net Sales Taxes from the Property” generated on the Property during Operating Year 2, inclusive; and

Sixty-five percent (65%) of the “Net Sales Taxes from the Property” generated on the Property during Operating Year 3, inclusive; and

Sixty percent (60%) of the “Net Sales Taxes from the Property” generated on the Property during Operating Year 4, inclusive; and

Fifty-five percent (55%) of the “Net Sales Taxes from the Property” generated on the Property during Operating Year 5, inclusive; and

Fifty percent (50%) of the “Net Sales Taxes from the Property” generated on the Property during Operating Years 6 through 8, inclusive

Such payments shall be made to Operator no later than thirty (30) days following the quarter disbursement from the California Department of Tax and Fee Administration to the City for its local sales and use tax for that Operating Year.

a. As used herein, the term “Net Sales Taxes from the Property” shall mean the “Sales Taxes from the Property” in excess of Three Hundred and Fifty Thousand Dollars (\$350,000.00) in each Operating Year (the anticipated current annual sales level), as defined below.

b. Operating Year shall, for Operating Year 1, shall mean the twelve (12) full months following the issuance of the Occupancy Permit. Operating Year for each subsequent year following Operating Year 1 shall mean each twelve (12) full months following the anniversary of the issuance of the Occupancy Permit. Calendar quarters shall be calculated by the State Board Equalizer.

c. As used herein, the term “Sales Taxes from the Property” means the amount equal to the sales and use taxes that are generated from sales occurring on the Property on which sales or use taxes are imposed pursuant to applicable California law in each Operating Year, which are actually received by the City from the State Board of Equalization. In connection therewith:

i. The Operator shall timely report, and shall cause its tenants (if any) to report all sales and use taxes from the Property to the State Board of Equalization in accordance with the laws, rules and regulations applicable to such reporting.

ii. Sales Taxes from the Property shall be deemed to have been paid by the State Board of Equalization to the City if and to the extent the State Board of Equalization elects to offset the payment of any such Sales Taxes from the Property against any other obligations of the City.

iii. The Operator acknowledges that the State Board of Equalization makes payments to the City based on both actual and anticipated sales and use tax revenues and that the State Board of Equalization makes periodic reconciliations. The determination of Sales Taxes from the Property for any annual, quarterly or other period shall be subject to the timing and reconciliation process related to the processing by the State Board of Equalization of payments of such Sales Taxes from the Property to the City. Any adjustments resulting from any interim or estimated determination of Sales Taxes from the Property for any annual, quarterly or other period shall be reconciled by the parties as soon as practicable without inclusion of, or any obligation to pay, interest.

iv. Sales Tax from the Property shall be determined based on actual amounts received by the City based only on the City's share of the States sales and use tax applicable to the Property (which, as of the Effective Date, is one percent [1%] of the taxable amount) within each Operating Year. Sales Taxes from the Property shall not include amounts paid to the City by the State Board of Equalization derived from any sales tax overrides or special tax amount received by the City, nor shall include any administrative fees or charges imposed by the State Board of Equalization that will reduce the actual amounts of sales and use taxes received by the City.

v. The Operator shall, and shall cause its tenants (if any) to, keep full and accurate books of account, records and other pertinent data showing all gross income earned upon the Property that is reportable for California sales and tax purposes, including all documents required to be maintained by the State of California for sales and use tax purposes.

2. **Reimbursement Prepayment.** The City shall have the right to prepay all or any portion of its obligations for reimbursement at any time without penalty.