

AMENDMENT TO ANNEXATION AGREEMENT

THIS AMENDMENT TO ANNEXATION AGREEMENT (the “Amendment”) is made this 20th day of May, 2025 by and between **THE CITY OF GAITHERSBURG, MARYLAND**, a municipal corporation of the State of Maryland (“Gaithersburg” or “City”), and **CARMAX AUTO SUPERSTORES, INC.**, a Virginia corporation (“Carmax”).

RECITALS:

A. Gaithersburg and Sears, Roebuck and Co., a New York Corporation (“Sears”), entered into an Annexation Agreement (X-184) dated August 14, 2012 that was recorded among the Land Records of Montgomery County, Maryland (“Land Records”) in Book 44922 on Page 3 (“Agreement”). Under the Agreement, certain property was annexed by the City to include such property within the corporate limits of the City, including approximately 13.66 acres owned by Sears (“Subject Property”). The Subject Property is further described in the Agreement.

B. Carmax is the current owner of the Subject Property that was annexed by the Agreement, having acquired such parcel from Sears by deed dated June 19, 2013 and recorded among the Land Records in Book 47051 at page 97. As part of the conveyance, Sears assigned all of its right, title and interest under the Agreement to Carmax.

C. In addition to providing for the annexation of the Subject Property, the Agreement set forth detailed terms and conditions regarding the zoning and development of the Subject Property, and recommended that, upon annexation, the Subject Property be placed in the MXD (Mixed-Use Development) zone, consistent with the recommendation of the City’s 2009 Land Use Plan.

D. In recognition of the fact that, at the time of the Agreement, Montgomery County was operating the Shady Grove Processing and Transfer Facility, a public solid waste station (“Transfer Station”), immediately to the south of the Subject Property, as part of the annexation process a Declaration of Use Restriction, dated July 24, 2012 and recorded in the Land Records in Book 44493 at page 190, was placed on the Property that provided, among other things, that no portion of the Property “shall be developed, leased, rented or occupied for residential use...for so long as the Transfer Station remains in operation on the County Land for the benefit of the general public” (“Use Restriction”). At that time, it was envisioned that the Transfer Station would ultimately be replaced with mixed-use development at some point in the then-foreseeable future.

E. On April 2, 2013, the City approved Sketch Plan No. ASK-1746-2013 (“Sketch Plan”) allowing for an approximately 12,904 square foot Automobile Sales Establishment (“Dealership”), a future 225,000 square foot Office/ Commercial/ Restaurant building, and associated surface parking on the Subject Property. On that same day, the City also approved Schematic Development Plan SDP-1747-2013 (“SDP”) for a lot containing the Dealership and an outlot for the future commercial building.

F. On February 19, 2014, the City approved Site Plan No. SP-3173-2013 (“Site Plan”) permitting the Dealership.

MONTGOMERY COUNTY CIRCUIT COURT (Land Records) KAB 69254, p. 0001, MSA_CE63_69211. Date available 06/10/2025. Printed 06/11/2025. NO FEE

G. Since the time of the Agreement in 2012, it has become apparent that the development and use of the area, including the Subject Property, has not proceeded as predicted when recommending the Subject Property for the MXD zone. The area immediately surrounding the Subject Property has remained largely unchanged, and, instead of redevelopment of the Transfer Station, Montgomery County has now indicated it wants to expand, rather than eliminate, the operations of the Transfer Station at this location. As such, the Use Restriction will remain in place for the foreseeable future, precluding redevelopment of the Subject Property with the mixed-use development the MXD zone was designed to encourage and accommodate.

H. Other changes in the development and use of the immediate area surrounding or including the Subject Property include the construction of a surface parking lot on the adjacent property located at 16251 Frederick Road and the construction of a myriad of industrial uses near the intersection of Shady Grove Road and Crabbs Branch Way, including the Montgomery County Division of Fleet Management Services and the Maryland Transportation Authority, showing that the C-2 zone, given these changes, would be the more appropriate zone for the Subject Property.

I. Additionally, with the July 15, 2024 adoption of a new Zoning Ordinance by the City, Automobile Sales Establishments are no longer a permitted use in the MXD zone, making the existing Carmax use non-conforming.

J. Gaithersburg and Carmax have agreed that it is in the best interest of all parties concerned that certain of the terms and conditions of the Agreement be modified. Accordingly, Gaithersburg and Carmax are entering into this Amendment to Modify the Agreement in a number of respects.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, Gaithersburg and Carmax agree as follows:

1. Unless otherwise defined in this Amendment, capitalized terms used in this Amendment shall have the same meanings as set forth for them in the Agreement.
2. Paragraph 2 of the Agreement is deleted and the following inserted in its place:

As was contemplated in the Agreement, upon annexation into the City, the Subject Property was placed in the MXD zone. With the adoption of the City's 2024 Zoning Ordinance, however, the MXD zone no longer permits by right Automobile Sales Establishments, making the existing use of the Subject Property non-conforming. The City understands that Carmax will therefore be seeking a rezoning of the Property to the C-2 zone. While this rezoning will occur as part of a separate Zoning Map Amendment application to follow the execution of this Amendment, the City acknowledges that such a rezoning is appropriate for the reasons stated herein.

3. Paragraph 3(a) and Exhibit "C" to the Agreement are deleted and the following is inserted as a replacement of Paragraph 3(a):

- (a) Carmax and the City agree that upon the rezoning of the Property to the C-2 zone, the Sketch Plan will thereafter be treated as a Concept Plan, and the SDP and Site Plan validated under the C-2 zone with no further reviews or action to be taken, or separate approval needed, for the continued use of the Existing Improvements for the Dealership, including, but not limited to, forest conservation, stormwater management, and adequate public facilities review and approvals. The existing improvements depicted on the approved Site Plan (the "Existing Improvements") on the Subject Property may be retained as-is.

4. Paragraphs 3(b) and 3(c) of the Agreement, as well as the first sentence of Paragraph 3(d) of the Agreement, are deleted.
5. The ten (10) year time periods outlined in Paragraph 4 to the Agreement are hereby modified to restart and run from the date of this Amendment.
6. Paragraph 6 of the Agreement is deleted.
7. Carmax and the City acknowledge that the provisions of Paragraphs 7 and 8 have been satisfied, no longer apply, and are therefore deleted from the Agreement.
8. Paragraph 7 is replaced with the following:

REZONING FEES AND PROCESSING. The City agrees to waive any and all fees associated with the processing of a Zoning Map Amendment application otherwise payable to the City in connection with the future rezoning of the Property from the MXD to the C-2 zone. The City further agrees to process the Zoning Map Amendment application expeditiously and with no unreasonable delays.

9. Paragraph 8 is replaced with the following:

TEMPORARY USE PERMIT. The portion of the Subject Property located at 16383 Shady Grove Road is currently subject to a Temporary Use Permit for vehicle storage. Temporary Use Permit U-9627-2023 was originally approved by Mayor and Council Resolution No. R-45-23 on September 18, 2023, and was extended by Planning Commission Resolution No. PCR-U-9911-2024 on September 4, 2024 ("Temporary Use Approval"). Under the standard provisions of Section 24-12.11 of the Gaithersburg City Code, the Temporary Use Approval is set to expire on September 4, 2025. The City hereby agrees, however, to extend the validity period for the Temporary Use Approval to now expire on September 4, 2030 without the need for any further action or application by Carmax. Prior to the expiration of the Temporary Use Approval, Carmax may apply to further extend the Temporary Use Approval pursuant to the provisions of Section 24-12.11, as such may be amended from time to time.

10. The following is inserted as new Paragraph 17:

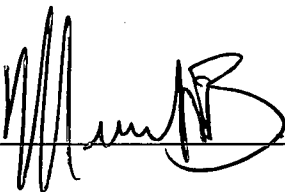
In the event of any inconsistency between the Agreement and this Amendment, this Amendment shall govern. Any Paragraph references in the Agreement which are incorrect, or no longer applicable shall be corrected or disregarded, as the case may be, so that all Paragraph referenced in the Agreement shall be read to be in conformity with this Amendment. The terms of this Amendment shall be binding upon and inure to the benefit of Gaithersburg, Carmax, and their respective successors and assigns. The Agreement is in full force and effect and good standing and, except as expressly provided in the Amendment, is unmodified. No default by Carmax exists under the Agreement, as modified by this Amendment, and no event has occurred which would constitute such a default. The Recitals set forth in this Amendment are incorporated in and made a part of this Amendment. This Amendment may be executed in counterparts, all of which together shall constitute a single instrument. Electronic signatures on this Amendment shall be as valid and effective as original signatures.


[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties have signed, sealed and delivered this Amendment on the date first written above.

WITNESS:

CITY OF GAITHERSBURG, MARYLAND
a municipal corporation of the State of Maryland



By: 

Tanisha Briley
City Manager

STATE OF MARYLAND

*

*

to wit:

*

COUNTY OF Montgomery

I HEREBY CERTIFY that on this 4th day of June, 2025, before me, a Notary Public for the State and County aforesaid, personally appeared Tanisha Briley, who acknowledged herself to be the City Manager of the City of Gaithersburg, a municipal corporation, and that she, as City Manager, being authorized to do so, executed the foregoing and annexed instrument on behalf of the corporation for the purposes therein contained, and acknowledged the same to be the act and deed of the corporation by signing the name of the City of Gaithersburg by herself as City Manager.

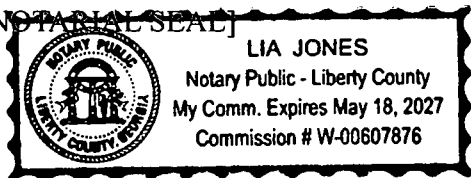
IN WITNESS WHEREOF, I hereunto set my hand and official seal.



Notary Public

My Commission Expires: 05/18/2027

[NOTARIAL SEAL]



WITNESS:

CARMAX AUTO SUPERSTORES, INC
A Virginia Corporation

Melissa D. Hall

By: K. Moyers *cfp*
Name: K. Douglass Moyers
Title: Vice President, Real Estate

STATE OF VIRGINIA

*

* to wit:

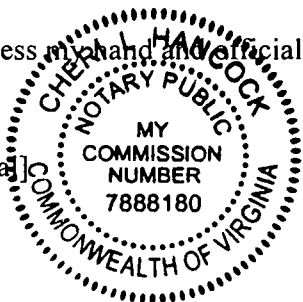
COUNTY OF GOOCHLAND

*

I HEREBY CERTIFY that on this 20th day of May, 2025, before me, a Notary Public for the State and County aforesaid, personally appeared K. Douglass Moyers, who acknowledged himself/ herself to be the Vice President of the Carmax Auto Superstores, Inc, a Virginia corporation, and that he/she, as Vice President, being authorized to do so, executed the foregoing and annexed instrument on behalf of the corporation for the purposes therein contained, and acknowledged the same to be the act and deed of the corporation by signing the name of the Carmax Auto Superstores, Inc. by himself/ herself as Vice President.

Witness my hand and official seal this 20th day of May, 2025.

[Notarial Seal]



Cheryl L. Hancock

Notary Public

My commission expires: 11/31/2028

INFORMATION FOR RECORDING

The City of Gaithersburg, a municipality within the State of Maryland, is exempt from recordation fees under § 3-603(a) of the Real Property Article of the Code of Maryland.

Tax Account Number	<u>09-03749440, 09-03749438</u> <u>(former tax account 09-00768845)</u>
Record Legal Description	<u>Carmax subdivison, Plat 24895</u>
Lot/Block or Parcel Number	<u>Lot 1 and Lot 2, Plat 24895</u>
Street Address of Parcel	<u>16411 Shady Grove Road and</u> <u>16383 Shady Grove Road</u>

When recording is complete, please return to:

City Attorney's Office
City of Gaithersburg
31 Summit Avenue
Gaithersburg, MD 20877-2098

LR - Government
Instrument 0.00
Agency Name: City of
Gaithersburg
Instrument List:
Agreement / Easement
Describe Other:
Ref:
=====

Total: 0.00
06/05/2025 03:01
CC15-CP
#18077152 CC0602 -
Montgomery
County/CC06.02.06 -
Register 06



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KAREN A. BUSHELL
Clerk of the Circuit Court for Montgomery County
50 Maryland Avenue
Rockville, Maryland 20850
Recording and Licensing
(240) 777-9470

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