

**FIRST AMENDMENT TO THE
AMENDED AND RESTATED OPERATING COVENANT AGREEMENT**

This Amendment to the Amended and Restated Operating Covenant Agreement ("Agreement"), dated for purposes of identification only as of November 14, 2023, is made and entered into by and between the CITY OF GARDEN GROVE, a California municipal corporation (the "City"), and AAA OIL, INC., dba California Fuels and Lubricants, a California corporation ("Company"). City and Company are sometimes referred to in this Agreement collectively as "Parties," and individually as a "Party."

RECITALS

A. The Parties previously entered into that certain Operating Covenant Agreement, dated August 13, 2013 (the "Original Agreement"), as amended by that certain Amended and Restated Operating Covenant Agreement, dated January 26, 2016 (the "2016 Agreement") pertaining to operations of the Company occupying a portion of that certain real property located at 11621 and 11671 Westminster Avenue in the City of Garden Grove (the "Site"), on which Company currently operates a petroleum products distribution business (the "Business") and which is the current point of sale for the Business for purposes of the Bradley Burns Uniform Local Sales and Use Tax Law (the "Sales and Use Tax Law"). Company's Business is one of the largest sales tax generators in the City.

B. The Parties desire to amend the 2016 Agreement to provide for an additional capital investment in the Business by the Company, to extend the length of the Covenants Consideration Accrual Period and Operating Period, and to revise the method of calculating the Covenants Consideration.

C. Pursuant to the Original Agreement and the 2016 Agreement, Company agreed to invest over ten million dollars (\$10,000,000) in working capital for the Business and to expand the scope of the Business's operations. In order to further expand the Business's operations, Company intends to invest at least ten million dollars (\$10,000,000) in the Business in addition to the commitment made in the Original Agreement and the 2016 Agreement. Company and City anticipate that Company's expanded Business, as operated in accordance with this Amended 2016 Agreement, will generate additional Sales Tax Revenues and will also create significant employment opportunities and other tangible and intangible benefits to the City.

D. The City previously determined that the imposition of certain operating covenants and restrictive covenants with respect to the Business and the Site constitutes a valid public purpose, and therefore the City desires to extend the term of such operating covenants and restrictive covenants with respect to the Business and the Site and, subject to the terms hereof, Company is willing to enter into and be bound by such operating covenants and restrictive covenants.

E. In consideration for Company's agreement to be bound by such operating covenants and restrictive covenants, and of the additional Sales Tax Revenues to be paid by the Company for the benefit of the City, which the City would not otherwise realize, and in order to induce the Company to retain the Business in Garden Grove, the City has agreed to make certain

payments to the Company (referred to herein as "Covenants Consideration") through June 30, 2056. The City and the Company agree the amount of each payment required to be made by the City hereunder is a fair exchange for the consideration actually furnished pursuant to this Agreement by Company during each fiscal year of the City in which payment is made, that each payment to be made by the City hereunder has been calculated so that it will not exceed the resources available to make such payment, and further that in no event shall the City be immediately indebted to Company for the aggregate payments herein provided.

F. The purpose and intention of the City in paying the Covenant Consideration is solely to induce Company to make the above-described capital investment in order to expand its Business within the City, and to continue to locate and operate the expanded Business on the Site until at least June 30, 2056, so as to increase the amount of Local Sales Tax Revenues generated in the City, to further the continued maintenance of the Site and the well-being of the citizens at large, and to increase local employment opportunities.

G. The Covenants Consideration to be paid by the City is solely the result of arms-length negotiations by and between the City and the Company, and apart from such negotiations and this Agreement, which is the result thereof, is not otherwise required to be provided.

H. The Company anticipates and expects that the Covenants Consideration to be paid by the City pursuant hereto foreseeably will result in benefits to the Company in an amount commensurate with its value at the time of each payment.

NOW THEREFORE, in consideration of the foregoing Recitals that are a substantive part hereof and the covenants herein contained, and in consideration of the terms and conditions of this Agreement, City and Company agree as follows:

1. Section 1. Definitions. Subsections l. and x. are amended as follows:

l. Covenants Consideration Accrual Period. "Covenants Consideration Accrual Period" means the period commencing on the Effective Date and continuing until and expiring on June 30, 2056 or upon the earlier termination of this Agreement.

x. Operating Period. "Operating Period" means the period commencing on the Effective Date and continuing until and expiring on June 30, 2056 or upon earlier termination of this Agreement.

2. Section 4. Operating Covenants and Restrictive Covenants. Subsection a. is rescinded in its entirety and replaced as follows:

a. Additional Investment to Expand Business. Company hereby covenants and agrees that, between the period that commenced on November 1, 2023 and continuing up and through December 31, 2033, it will make an Additional Capital Investment of no less than Ten Million Dollars (\$10,000,000) for purposes of expanding the Business on the Site, excluding funds spent by Company, if any, on construction and/or development on the Site. Such Additional Capital Investment shall be wholly in addition to the Ten Million Dollar (\$10,000,000) investment in the Business required pursuant to the Original Agreement and 2016 Agreement, which

Company represents has already been made. Company hereby agrees that it will not allocate or use any Covenant Consideration paid to Company by City for construction and/or development on the Site. Upon request of City, Company shall provide documents evidencing its compliance with this Subsection 4.a.

3. **Section 5. Covenants Consideration. Subsections a. and b.** are rescinded in their entirety and replaced as follows:

a. **Covenants Consideration; Determined on an Annual Basis.** In consideration of Company's compliance with the Covenants, subject to availability and appropriation by the Garden Grove City Council of sufficient funds, commencing as of January 1, 2024, City agrees to pay Company Covenants Consideration in an amount, calculated as illustrated in Table 1, below, and determined on an annual basis, equal to a portion of all Sales Tax Revenues generated by the Business during each Fiscal Year in excess of Three Hundred Twelve Thousand Dollars (\$312,000) (the "Annual Covenants Consideration Amount"). In the event there is insufficient Sales Tax Revenues to trigger the payment of Covenants Consideration in any Fiscal Year, such insufficiency shall not carry forward to any future years.

Table 1

Portion of Annual Sales Tax Revenues Generated by Business	Percentage Payable to Company as Covenants Consideration
Amount in Excess of \$312,000	75%

b. **Covenants Consideration; Quarterly Payments.** For each Fiscal Year, the City shall pay the Annual Covenants Consideration Amount to Company in four (4) separate quarterly Covenants Consideration payments corresponding to the amount of Sales Tax Revenues generated during each Quarter of the Fiscal Year (the "Quarterly Payments"). The amount of each Quarterly Payment for the first three (3) quarters of any Fiscal Year shall be determined by the City by multiplying (i) the amount of Sales Tax Revenues generated by the Business during the applicable Quarter by (ii) the percentages set forth in Table 2, below (the product of which is referred to herein and in Exhibit "B" as the "Quarterly Covenants Consideration Amount").

Table 2

Portion of Quarterly Sales Tax Revenues Generated by Business	Percentage Payable to Company as Covenants Consideration
First \$78,000	0%
Amount in Excess of \$78,000	75%

If Sales Tax Revenues for the applicable Quarter are less than or equal to seventy-eight thousand dollars (\$78,000), then no Quarterly Payment attributable to such Quarter is due. However, if, and to the extent that, the aggregate sum of the previous Quarterly Payments for the Fiscal Year made by the City exceeds the Annual Covenant Consideration Amount for such Fiscal Year, then the City shall recapture such sum from the Company as provided in Subsection 5.g. More specific computational steps for computing the Annual Covenants Consideration Amount and the amount of the Quarterly Payments are set forth in Exhibit "B," which is attached hereto and incorporated herein by reference. Payment of the Covenants Consideration payment determined by City to be owing to Company for each Quarter shall be made by City within thirty (30) days after the City and/or the sales tax consultant retained by the City verifies that the City has received all Sales Tax Revenues for the applicable Quarter. Company expressly understands that nothing contained in this Agreement shall obligate or otherwise commit City to pay the Covenant Consideration for the applicable period unless and until City receives reasonably satisfactory verification that City has received all Sales Tax Revenues for such period.

4. **Exhibit B** is rescinded in its entirety and replaced with a new Exhibit B attached hereto and incorporated herein by this reference.

5. **Exhibit C** is rescinded in its entirety and replaced with a new Exhibit C attached hereto and incorporated herein by this reference.

[SIGNATURES FOLLOW ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the respective dates set forth below.

CITY:

CITY OF GARDEN GROVE, a municipal corporation

Dated: _____, 2023

By: _____
Lisa L. Kim
City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

Omar Sandoval
City Attorney

COMPANY

AAA OIL, INC., a California corporation

Dated: _____, 2023

By: _____
Jaime Duenas
President

By: _____
Efrain Davalos, Jr.
Secretary

CONSENT BY OWNER OF THE SITE

The undersigned hereby represent and warrant that Duenas Management, LLC is the sole, fee simple Owner of the Site described in Exhibit "A" hereto, and that they are the sole owners, members, and officers of Duenas Management, LLC, and hereby consent to the entering into of this Agreement by AAA Oil, Inc. and the recordation of the Memorandum of Agreement against the Site in the official records of the County of Orange.

Dated: _____, 2023

By: _____
Jaime Duenas

Dated: _____, 2023

By: _____
Rogelio Duenas

EXHIBIT "B"

**QUARTERLY COVENANTS CONSIDERATION PAYMENTS
COMPUTATIONAL STEPS**

Step for Calculating Quarterly Payments for Quarters 1-3

STEP 1: Determine and verify the amount of Sales Tax Revenues for Quarter.

STEP 2: As illustrated in the following table, multiply the applicable portion of the Sales Tax Revenues for Quarter by the corresponding percentage and add the resulting amounts together to determine the Quarterly Covenants Consideration Amount.

Portion of Quarterly Sales Tax Revenues		Percentage		
First \$78,000	x	0%	=	A
Amount in Excess of \$78,000	x	75%	=	B
				A+B = Quarterly Covenants Consideration Amount

STEP 3: If the Quarterly Covenants Consideration Amount is greater than zero, then Quarterly Payment equals the Quarterly Covenants Consideration Amount.

[If Quarterly Covenants Consideration Amount > 0, then Quarterly Payment = Quarterly Covenants Consideration Amount]

If the Quarterly Covenants Consideration Amount is zero, then no Quarterly Payment is due.

[If Quarterly Covenants Consideration Amount = 0, then Quarterly Payment = 0]

Steps for Calculating Quarterly Payments for Quarter 4

STEP 1: Determine and verify the amount of Sales Tax Revenues for the entire Fiscal Year.

STEP 2: As illustrated in the following table, multiply the applicable portion of the Sales Tax Revenues for the Fiscal Year by the corresponding percentage and add the resulting amounts together to determine the Annual Covenants Consideration Amount.

Portion of Quarterly Sales Tax Revenues		Percentage		
First \$312,000	x	0%	=	A
Amount in Excess of \$312,000	x	75%	=	B
				A+B = Annual Covenants Consideration Amount

STEP 3: Subtract the aggregate sum of the Quarterly Payments from Quarters 1, 2 and 3 from the Annual Covenants Consideration Amount to determine the Quarter 4 Quarterly Covenants Consideration Amount.

[Annual Covenants Consideration Amount – Quarter 1 Quarterly Payment – Quarter 2 Quarterly Payment – Quarter 3 Quarterly Payment = Quarter 4 Quarterly Covenants Consideration Amount]

STEP 5: If the Quarter 4 Quarterly Covenants Consideration Amount is greater than zero, then the Quarter 4 Quarterly Payment equals the Quarter 4 Quarterly Covenants Consideration Amount.

[If Quarter 4 Quarterly Covenants Consideration Amount > 0, then Quarterly Payment = Quarter 4 Quarterly Covenants Consideration Amount]

If the Quarter 4 Quarterly Covenants Consideration Amount is less than or equal to zero, then (i) no Quarterly Payment is due, and (ii) any Overpayment for Fiscal Year will be recaptured from Company by either invoicing Company or offsetting future Quarterly Payments.¹

[If Quarter 4 Quarterly Covenants Consideration Amount ≤ 0, then Quarterly Payment = 0]

¹ In the event the Sales Tax Revenues for any Fiscal Year are less than Three Hundred Twelve Thousand Dollars (\$312,000), resulting in a negative Annual Covenants Consideration Amount, such negative amount is *not* carried forward to future Fiscal Years. However, if a negative Annual Covenants Consideration Amount results in an Overpayment for the Fiscal Year, the Overpayment shall be recaptured from the Company as described in Step 5.

EXHIBIT "C"

MEMORANDUM OF AGREEMENT

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Garden Grove
11222 Acacia Parkway
Garden Grove, California 92840
Attention: City Clerk

This document is exempt from the payment of a recording fee pursuant to Government Code Sections 6103 and 27383.

MEMORANDUM OF AGREEMENT

This **MEMORANDUM OF AGREEMENT** (the "Memorandum") is entered into as of _____ by and between the **CITY OF GARDEN GROVE**, a municipal corporation (the "City"), **AAA OIL, INC., dba California Fuels and Lubricants**, a California corporation ("Company"), and **DUENAS MANAGEMENT, LLC** (the "Owner of the Site").

RECITALS

A. The Owner of the Site is the fee simple owner of that certain real property located at 11621 and 11671 Westminster Avenue in the City of Garden Grove (the "Site"). The Site is commonly known as Assessors Parcel Number 100-130-38, and is more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference.

B. The Company owns and operates a petroleum products distribution business (the "Business") on the Site, and has a leasehold interest in the Site pursuant to a lease agreement between the Company and the Owners of the Site.

C. The City and the Company have entered into that certain Amended and Restated Operating Covenant Agreement, dated January 26, 2016 (the "2016 Agreement") and the Amended 2016 Agreement, dated _____ (collectively, the "Agreement"), pursuant to which, in exchange for certain Covenants Consideration to be paid by the City, the Company is required to comply with certain specified Covenants affecting the Site for the duration of the Operating Period (which includes the period through and including June 30, 2056). The Owner of the Site has expressly consented to entry into the Agreement by the Company and to execution and recordation of this Memorandum. A copy of the Agreement, as it may be amended from time to time, is available for review at the Office of the City Clerk of the City.

D. City, Company, and the Owner of the Site desire to execute this Memorandum to provide notice of the existence of the Agreement and all rights and obligations under the Agreement to all appropriately interested persons, including without limitation any and all future

owners and/or lessees of the Site or any part thereof or any interest therein, and this Memorandum in no way modifies the provisions of the Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the City, the Company, and the Owner of the Site hereby agree and confirm as follows:

1. Definitions. All capitalized words used herein, unless otherwise defined, shall have the meanings ascribed to them in the Agreement.

2. Effect of Agreement. The Agreement imposes certain Covenants on Company, which pertain to or affect the Site, and which are intended to be equitable servitudes running with the Site for the benefit of, and enforceable by, the City, and binding on upon all persons having any right, title or interest in the Site, or any part thereof, and their heirs, successors, and assigns, as further set forth below, including without limitation the following:

a. Investment to Expand Business. As more specifically set forth in Section 4 of the Agreement, Company is required to make an Additional Capital Investment of no less than Ten Million Dollars (\$10,000,000) for purposes of expanding the Business on the Site.

b. Operating Covenant; Continuous Operation. As more specifically set forth in Section 4 of the Agreement, Company is required to continuously conduct and operate, or cause to be conducted and operated, the Required Operations on the Site during the entire Operating Period (which means the period commencing on March 1, 2016 and continuing until and expiring on June 30, 2056). "Required Operations" means, collectively, the following on and with respect to the Site: (i) Company retaining and continuing to own a leasehold and/or ownership interest in all or such lesser portion of the Site sufficient to allow the Business to be conducted; (ii) Company's operation of the Business on the Site; and (iii) Company not transferring or otherwise relocating all or any portion of the retail sales operation or the point of sale as reported to the SBE for the Business to another facility or location outside of the City. Failure of Company to continuously conduct and operate, or cause to be conducted and operated, the Required Operations on the Site during the entire Operating Period shall entitle City to terminate the Agreement and demand repayment by Company of all previously paid Covenants Consideration in accordance with Subsection 6.b. of the Agreement.

c. Designation of Site as Point of Sale. As more specifically set forth in Section 4 of the Agreement, at all times during the Operating Period, Company is required to designate the Site as the point of sale for Sales Tax purposes in all Business and related sales.

d. Payment of Taxes. As more specifically set forth in Section 4 of the Agreement, Company is required to pay or cause to be paid any and all taxes applicable to or arising out of Company's operation of the Business and ownership, lease, operation and/or use of the Site and/or equipment and facilities on the Site (including, without limitation, all taxes attributable to sales occurring on the Site), except Company retains its right to protest and contest County of Orange decisions related to the value of its interest in the Site and/or SBE decisions related to the amount of Sales Tax due; and Company is required to make or cause to be made timely Sales Tax payments to the SBE.

e. Maintenance of Site. As more specifically set forth in Section 4 of the Agreement, during the Operating Period, Company is required, at no cost to the City, to keep and maintain, or cause to be kept and maintained, the Site, including all landscaping on the Site and all facilities and equipment pertaining to the Business that are located on the Site, in a first class condition, free from accumulation of debris, weeds, graffiti and waste materials, in good order and repair, and in a safe condition.

f. Compliance With Governmental Requirements. As more specifically set forth in Section 4 of the Agreement, subject to Company's right to contest the same, Company is required to, at all times, comply with all applicable laws, ordinances, statutes, codes, rules, regulations, orders and decrees of the United States, the State of California, the County of Orange, the City or any other political subdivision in which the Site is located, and of any other political subdivision, agency or instrumentality exercising jurisdiction over the City, the Company, or the Site, including all applicable federal, state and local occupation, safety and health laws, rules, regulations and standards, applicable federal and state labor standards, applicable prevailing wage requirements, the City zoning and development, building, plumbing, mechanical and electrical codes, and all other provisions of the City of Garden Grove and its Municipal Code, and all applicable disabled and handicapped access requirements, including, without the limitation, the Americans With Disability Act, 42 U.S.C. §12101 et seq., Government Code §4450 et seq., and the Unruh Civil Rights Act, Civil Code §51 et seq. ("Governmental Requirements").

3. Agreement and Memorandum Run with the Site. The Site and Company's interest therein shall be held, sold, conveyed, hypothecated, encumbered, used, occupied, leased and improved subject to the Covenants set forth in the Agreement and the provisions of this Memorandum, which are intended to be covenants running with the land and enforceable by the City, and its successors and assigns, as equitable servitudes against the Site for the benefit of the City, and binding on upon all persons having any right, title or interest in the Site, or any part thereof, and their heirs, successors, and assigns. All covenants, without regard to technical classification or designation shall be binding for the benefit of City and such covenants shall run in favor of City for the entire period during which such covenants shall be in force and effect, without regard to whether City is or remains an owner of any land or interest therein to which such covenants relate.

4. Provisions. To the extent of any inconsistency between the Agreement and this Memorandum, the Agreement shall control.

5. Successors and Assigns. This Memorandum shall be binding upon and inure to the benefit of each of the parties hereto and their respective successors and assigns.

6. Governing Law. This Memorandum shall be governed in accordance with the laws of the State of California.

7. Recordation. City, Company, and the Owner of the Site hereby confirm and acknowledge that this Memorandum shall be recorded in the Official Records of Orange County, California, following execution. Upon recordation of this Memorandum, this Memorandum shall replace that certain Memorandum of Agreement executed by City, Company, Jaime Duenas, and Rogelio Duenas, dated January 26, 2016, and recorded May 12, 2016, as document number

2016000212465 (the “2016 Memorandum”), and the 2016 Memorandum shall be of no further force and effect.

8. Counterparts. This Memorandum may be executed in counterparts, each of which shall be deemed an original and which together shall constitute a single agreement.

IN WITNESS WHEREOF, the City, the Company, and the Owner of the Site have executed this Memorandum as of the date first written above.

[SIGNATURES FOLLOW ON NEXT PAGE]

IN WITNESS WHEREOF, the undersigned have executed this Memorandum of Agreement on the respective dates set forth below.

CITY:
CITY OF GARDEN GROVE , a municipal corporation

Dated: _____, 2023

By: _____
Lisa L. Kim
City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

Omar Sandoval
City Attorney

COMPANY
AAA OIL, INC., a California corporation

Dated: _____, 2023

By: _____
Jaime Duenas
President

Dated: _____, 2023

By: _____
Efrain Davalos, Jr.
Secretary

OWNER OF THE SITE
DUENAS MANAGEMENT, LLC, a California limited liability company

Dated: _____, 2023

Jaime Duenas, Member

Dated: _____, 2023

Rogelio Duenas, Member

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 ORANGE) ss.

On _____ before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose names(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 OF NOTARY PUBLIC

EXHIBIT "A"

LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF ORANGE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE SOUTH LINE OF SECTION 4, TOWNSHIP 5 SOUTH, RANGE 10 WEST, IN THE RANCHO LAS BOLSAS, AS SHOWN ON A MAP RECORDED IN BOOK 51, PAGE 12 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA, DISTANT THEREON NORTH 89 DEG. 14R45" EAST 351 FEET FROM THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF SAID SECTION AND RUNNING THENCE NORTH 0 DEG. 49' 15" WEST PARALLEL WITH THE WEST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 4, 495 FEET; THENCE EASTERLY PARALLEL WITH THE SOUTH LINE OF SAID SECTION 4, 529 FEET, MORE OR LESS, TO THE EASTERLY LINE OF THE WEST 20 ACRES, OF THE SOUTH 30 ACRES OF THE SOUTH WEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION; THENCE SOUTHERLY ALONG SAID EASTERLY LINE 495 FEET TO THE SOUTH LINE OF SAID SECTION; THENCE WESTERLY ALONG SAID SOUTH LINE 529 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM THE WEST 320 FEET.

APN: **100-130-38**