

MEMORANDUM OF COVENANTS AND CONDITIONS



0020480805

MAIL TO:

*prepared by Michael Krouse*  
CARMAX AUTO SUPERSTORES, INC.  
c/o Jane Byers, Esquire  
Chicago Title Insurance Company  
171 N. Clark Street  
Chicago, Illinois 60601

THIS MEMORANDUM OF COVENANTS AND CONDITIONS is dated as of the 18th day of April, 2002, by and between the VILLAGE OF GLENCOE, an Illinois municipal corporation ("Glencoe") and CARMAX AUTO SUPERSTORES, INC., a Virginia corporation ("CarMax").

*D-1 7900028*  
*J Byers* *6 Jan*

Recitals

By Special Warranty Deed dated April 16, 2002, Glencoe conveyed to CarMax certain real property containing approximately 5.405 acres located in Cook County, Illinois, and known as Lot 1 of a Resubdivision of Lot 2 of the Village Frontage Subdivision (the "Property").

The Property is the historic site of an incinerator and landfill operated by Glencoe, and Glencoe has applied to the Illinois Department of Environmental Protection ("IEPA") for approval of a focused "No Further Remediation" Letter ("NFR Letter") for the Property. The parties have agreed to certain indemnities regarding the environmental condition of the Property.

CarMax has furthermore agreed to certain covenants regarding CarMax's intended development of the Property.

Covenants and Conditions

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, the parties hereto agree that the Property will be owned, held, transferred, leased, conveyed, and mortgaged subject to the following conditions and covenants:

- 1. CarMax's Use. CarMax agrees that the Property will initially be developed and used for an automobile dealership conducting on-site sales of motor vehicles.

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CarMax further agrees that it will not sell the Property undeveloped unless (i) the purchaser shall use the Property for an automobile dealership, or (ii) Glencoe otherwise agrees.

2. **CarMax's Development.** CarMax agrees to develop, or cause to be developed, the Property for use as an automobile dealership (the "Development"). CarMax agrees to complete the Development and to be open for business within two (2) years after the date of conveyance of the Property to CarMax, or within eighteen (18) months after the completion of any remediation required for the issuance of the NFR Letter, whichever is later. CarMax shall bear all costs relating to the Development, except to the extent, if any, CarMax may be entitled to reimbursement of development costs pursuant to a separate agreement of the parties. Upon satisfaction of the requirements of Paragraph 1 and this Paragraph 2, the Village agrees at the request of CarMax to record an instrument evidencing satisfaction of the terms of Paragraph 1 and Paragraph 2 hereof.

3. **Maintenance of Engineered Barrier.** CarMax agrees to maintain without expense or liability to Glencoe any engineered barrier installed on the Property as a condition of the NFR Letter, including repair of any pavement areas affected by settling, subsidence, sinkholes, or similar conditions, except that breaches in the engineered barrier may be undertaken in conformity with the NFR Letter, or an amendment thereto.

4. **Glencoe Indemnifications.** Glencoe shall indemnify, defend, and hold harmless CarMax, its officers, officials, agents, employees, attorneys, representatives, beneficiaries, and/or assigns ("CarMax's Related Indemnitees") from and against any and all claims for liability or damages arising as a result of any condition on the Property as may exist as of the date of conveyance of the Property to CarMax and arising from the presence of hazardous or toxic substances or any other condition constituting contamination under federal or state laws and regulations applicable to the Property at the time of conveyance of the Property to CarMax ("Existing Contamination"), including but not limited to (i) third party claims relating to the existence or migration of Existing Contamination, (ii) clean-up or mitigation obligations required by IEPA (or any other governmental agency with jurisdiction over environmental contamination) with respect to Existing Contamination not covered by the NFR Letter, and (iii) clean-up and mitigation obligations arising from changes in conditions on the Property unrelated to the actions, omissions, or failures by the CarMax or any other of CarMax's Related Indemnitees to perform proper maintenance of any engineered barrier or the failure of CarMax or any other of CarMax's Related Indemnitees to satisfy the terms and conditions of the NFR Letter. However, Glencoe's indemnification hereunder shall not extend to any liability arising from: (y) a change in use of the Property from the ownership and operation of a facility for the sale, lease, exchange, service, maintenance, and repair of automobiles or another commercial use consistent with the terms and conditions of the NFR Letter; or (z) any noncompliance with any terms or conditions of, or failure to maintain the engineered barrier required by, the NFR Letter (except breaches in the engineered barrier undertaken in conformity with the NFR Letter, or an amendment thereto). These provisions shall not extend to any unrelated persons to whom CarMax may transfer title unless such transferee operates an automobile dealership on the Property and enters into an agreement with Glencoe to assume all responsibilities of CarMax under this Agreement and the Reimbursement Agreement dated April 18, 2002 between Glencoe and CarMax, and any surviving obligations of CarMax under the Purchase and Sale Agreement dated September 19,

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2001, as amended, between Glencoe and CarMax. Notwithstanding the limitations of the foregoing sentence, the foregoing indemnities shall extend to a transferee that (a) acquires fee title to the Property and (b) simultaneously leases the Property back to CarMax for a period of at least ten (10) years for use as an automobile dealership, throughout the term of such lease.

5. **CarMax Indemnifications.** CarMax shall indemnify, defend, and hold harmless Glencoe, its officers, officials, agents, employees, attorneys, representatives, beneficiaries, and/or assigns ("Glencoe's Related Indemnitees") from and against any and all claims for liability or damages arising as a result of: (i) the presence of hazardous substances brought to the Property after conveyance of the Property to CarMax by anyone other than Glencoe's Related Indemnitees; (ii) any such liability or damages arising from any change in use of the Property from the ownership and operation of a facility for the sale, lease, exchange, service, maintenance, and repair of automobiles, or another commercial use consistent with the terms and conditions of the NFR Letter; (iii) any failure of CarMax or its officers, officials, agents, employees, attorneys, representatives, beneficiaries, and/or assigns to adhere to, or to comply with, the terms and conditions of the NFR Letter, or the provisions of Paragraph 3 of this Agreement.

6. **Covenants Run With Land.** The rights and obligations of CarMax hereunder shall run with the Property and shall burden and benefit the successors and assigns of CarMax as owner of the Property, except to the extent that the application of certain indemnity provisions may be limited by Paragraph 4 hereof. In the event of a transfer of the Property by an owner thereof, such owner shall have no obligations hereunder with respect to liability or damages arising from events, actions, or inaction occurring after the date of such transfer.

7. **Miscellaneous.**

(a) **Applicable Law.** This Agreement shall be governed by the laws of Illinois.

(b) **Amendments.** This Agreement may only be amended, supplemented or terminated in writing, signed by Glencoe and by CarMax or its successor as owner of the Property.

(c) **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed and delivered pursuant to due authority.

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CARMAX AUTO SUPERSTORES, INC.,  
a Virginia corporation

By: K. Douglass Moyers  
K. Douglass Moyers  
Assistant Vice President, Real Estate

COMMONWEALTH OF VIRGINIA

CITY RICHMOND  
COUNTY OF HENRICO

The foregoing instrument was acknowledged before me this 18<sup>th</sup> day of April, 2002, by K. Douglass Moyers, Assistant Vice President, Real Estate, of CarMax Auto Superstores, Inc., a Virginia corporation, on behalf of the corporation.

Cherish H. Hancock  
Notary Public

My commission expires: 11/31/2004

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## CHICAGO TITLE INSURANCE COMPANY

ORDER NUMBER: 1401 007900028 D1

STREET ADDRESS:

CITY: GLENCOE

COUNTY: COOK

TAX NUMBER: 04-13-112-003-+000

### LEGAL DESCRIPTION:

PARCEL 1: LOT 1 AS SHOWN ON THAT CERTAIN PLAT ENTITLED "RESUBDIVISION OF LOT 2 OF VILLAGE FRONTAGE SUBDIVISION", A RESUBDIVISION IN THE SOUTH HALF OF THE NORTH HALF OF SECTION, 13, TOWNSHIP 42 NORTH RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINOIS RECORDED AS DOCUMENT NUMBER 0011209603.

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