

After recording, return to:

James D. Thornton, Esquire
Troutman Sanders, LLP
1111 East Main Street
P. O. Box 1122
Richmond, Virginia 23218-1122

DECLARATION OF RESTRICTIVE COVENANTS

THIS DECLARATION OF RESTRICTIVE COVENANTS (the "Declaration") is made as of this 11th day of September, 2002, by **CARMAX AUTO SUPERSTORES, INC.**, a Virginia corporation (to be indexed as a grantor and to be hereinafter referred to as "CarMax") and Mary Will **LOTT** (to be indexed as a grantee and to be hereinafter referred to as the "Lott")

W I T N E S S E T H:

Recitals

A. CarMax is the owner of a parcel of land in the City of Hoover, Shelby County, Alabama, containing 9 acres, more or less, and being more particularly described on Exhibit A attached hereto as a part hereof (the "Property").

B. CarMax is in the process of developing a parcel of land adjoining the Property to the north, and in connection with such development, CarMax desires to provide assurance to Lott that the Property will be maintained as a buffer between Lott's property and the CarMax development, subject to the terms and conditions contained herein.

Declaration

NOW, THEREFORE, CarMax hereby declares that the Property shall each be held, conveyed, sold, leased, mortgaged, and otherwise dealt with subject to the conditions, covenants, and restrictions set forth in this Declaration, all of which (i) are created for the benefit of Lott in order to protect the character and value of the land with Lott's adjacent property, and (ii) shall run with and burden title to the Property, and shall benefit Lott.

1. Restrictive Covenants.

(a) Without the express written consent of Lott, or her heirs or successors as owner of the land adjoining the Property to the south (collectively, the "Lott Owners"), the Property shall not be improved or developed, and shall remain in its natural state. The foregoing shall be deemed to prevent the harvesting of trees from the Property, but shall not be deemed to prevent the selective removal of trees and underbrush as necessary to maintain the health of the vegetation on the Property in accordance with good silvicultural or horticultural practice. In

addition, Purchaser agrees that, for a period of twenty (20) years after conveyance of the Property to Purchaser, Purchaser will not convey the Property to the City of Hoover, except as may be necessary for the widening of adjoining public rights of way or for the transmission of utilities to the Property.

2. **Notices.** All notices required or permitted hereunder shall be sent by certified mail, return receipt requested, or Federal Express or other comparable overnight delivery service, and shall be initially addressed as follows:

AS TO MARY WIL LOTT: Mary Will Lott
 c/o Watts Realty Company, Inc.
 P. O. Box 11425
 Birmingham, Alabama 35202
 Attention: W.A. Watts, III

AS TO CARMAX: CARMAX AUTO SUPERSTORES, INC.
 4900 Cox Road
 Glen Allen, Virginia 23060
 Attention: Asst. Vice President, Real Estate

Any party may change its notice address by giving fifteen (15) days advance written notice to the other party or parties. Upon sale of the Property, notice to the successor owner of the Property shall be sent to the address set forth in the Shelby County, Alabama, real estate tax records for such property, absent written notice of an alternate address by the successor owner. Any request for consent shall be deemed received on the date of delivery shown on the return receipt (or, if delivery was rejected, on the date delivery was rejected), or one day after the delivery thereof, postage prepaid and properly addressed, to the overnight courier, as applicable.

3. **Enforcement.** The terms and conditions contained in this Declaration shall run with the Property and any portion thereof and shall bind the same in the hands of the successors and assigns of CarMax, and shall be enforceable against all and every one of them, all to the intent and purpose that the CarMax, and every subsequent successor in title to CarMax, shall be obligated to comply with the same. In the event CarMax shall violate any of the terms and provisions hereof, Lott shall have the right, thirty (30) days after written notice and the failure of CarMax to remove or otherwise remedy such violation, to seek all remedies available at law or in equity, including but not limited to an action to compel compliance by CarMax with the terms and conditions hereof. All expenses incurred by Lott in attempting to enforce compliance with the terms and conditions hereof (including court costs and including attorneys' fees reasonably incurred), shall be the responsibility of CarMax. Failure by Lott to enforce its rights hereunder with respect to any violation of the terms and conditions of this Declaration shall not be deemed a waiver of the right to compel the correction of any subsequent violation or violations of the terms and conditions hereof, or to otherwise enforce the terms hereof. Notwithstanding the foregoing, however, any party bound by the terms of this Declaration shall only be bound during

the period such party is the fee owner of the Property, or any portion thereof, except as to obligations, liabilities and responsibilities that accrue during such period.

4. **Term.** This Declaration shall continue in full force and effect and be binding on the Property for a period of twenty five (25) years from the date hereof, with such period automatically extended for additional periods of ten (10) years each unless Lott elects to terminate this Declaration by instrument filed in the land records of Shelby County, Alabama.

5. **Miscellaneous.**

(a) This instrument may be executed in two or more counterparts, all of which taken together shall constitute a single instrument.

(b) This Declaration shall be construed and enforced in accordance with the laws of the State of Alabama. The paragraph headings contained herein are for ease of reference only, and shall not be used in the interpretation of this Declaration.

(c) If any provision or provisions of this Declaration shall be found to be unenforceable, the remainder of this Declaration shall be construed and enforced as if the unenforceable provision or provisions were not included in the Declaration.

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

CARMAX AUTO SUPERSTORES, INC.,
a Virginia corporation

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

COMMONWEALTH OF VIRGINIA

HENRICO COUNTY

This instrument was acknowledged before me by the said K. Douglass Moyers, Assistant Vice President of Real Estate of CarMax Auto Superstores, Inc., a Virginia corporation, on this 11th day of September, 2002.

Leslie D. Frame
Notary Public in and for the Commonwealth of Virginia

Printed Name: Leslie D. Frame
My Commission Expires: September 30, 2006

EXHIBIT A

DESCRIPTION OF PROPERTY

ALL that certain lot, piece or parcel of land, with the improvements thereon and appurtenances thereunto belonging, lying and being in the Northwest $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 26, Township 19 South, Range 3 West, Shelby County, Alabama, known and designated as all of Lot 2 on the subdivision plat by Sain Associates, Inc., dated July 24, 2002, entitled "CarMax Auto Super Store."