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2010R32737

STATE OF ILLINOIS  
MADISON COUNTY

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## COVENANTS AND RESTRICTIONS

### FAIROAKS SUBDIVISION

KNOW ALL MEN BY THESE PRESENTS, That Whereas, Fair Oaks Development Corporation, is the owner of the following described real estate, to wit:

Lots 1-87 of Fair Oaks Subdivision, as the same is shown in Plat Cabinet, 57 at Page 132 in the Madison County, Illinois Recorder's Office, and situated in the Northeast Quarter of the Northeast Quarter of Section 16, Township 3 North, Range 7 West of the Third Principal Meridian, in the City of Troy, Madison County, Illinois.

NOW, THEREFORE, in consideration of the premises and of the benefits accrued and to accrue to the undersigned by reason of the Covenants, Conditions, and Restrictions imposed upon said real estate as hereinafter set forth and as part of a plan for the use, improvement, development, sale and purchase of said real estate, the undersigned do hereby stipulate, agree, and declare that they, their heirs, executors, administrators, successors, and assigns, do hereby subject and bind the aforesaid real estate to the following covenants, conditions, and restrictions, and do hold each and every Lot above described, or portion thereof, for use and sale, subject to the following covenants, conditions, and restrictions, and do declare that no Lot or Lots above described, or portion thereof, shall be sold, used, or conveyed by them, their heirs, executors, administrators, successors, or assigns, except subject to the following covenants, conditions, and restrictions, whether expressly stated in the deed or conveyance or not to wit:

1. TIME PERIOD AND ENFORCEMENT OF RESTRICTIONS. These Covenants and Restrictions are to run with the land and shall be binding on all parties, and all parties and all persons claiming under them, until December 31, 2010, at which time said Covenants and Restrictions shall be automatically extended for successive period of 10 years, unless by a vote of all of the owners of at least 67% of the lots, it is agreed to change said Covenants and Restrictions in whole or in part. Thereafter, these Covenants and Restrictions may be rescinded or amended at any time prior to December 31, 2010, or thereafter, by approving vote of all of the owners of at least 67% of the Lots, which shall be effective upon recording of said rescission or amendment, together with an affidavit certifying said vote by the secretary of Fair Oaks Development Corporation or the Homeowners Association, in the Recorder's Office of Madison County, Illinois. If the parties hereto, or their heirs, successors, personal representatives, or assigns shall violate or attempt to violate any of the Covenants and Restrictions herein, it shall be lawful, power and authority is hereby given, to any other person or person owning any of the above described real property, or for the Homeowners Association, without further authority or direction, to enforce, or to prosecute any proceedings law in equity to enforce these Covenants and Restrictions, or to prevent any violation thereof, or to recover damages resulting directly or consequently from such violation, together with expensed, court costs, and attorneys' fees incurred in such proceedings. Invalidation of any one of



these Covenants or Restrictions, or any portion thereof, by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

1A. PROCEDURES OF ENFORCEMENT OF COVENANTS AND RESTRICTIONS (C&R). The Board of Directors will assign one board member for the purpose of recording complaints regarding violations to the Covenants & Restrictions at the first regular meeting of the Board of Directors of the Fiscal Year.

A complaint may be submitted in written form to any Board member. All complaints are to be forwarded to the board member responsible for recording complaints in a complaint log. This Board member will record the date and time the complaint was received and how it was received (i.e., letter, e-mail, during regular board meetings, etc.).

A Board member will be assigned by the President to verify whether the activity or property modification is indeed a valid violation of the C&R. (A) If there is no violation found, a notation will be made in the complaint log with a short explanation, the person filing the complaint will be notified in written form, and no further action will be taken. (B) If the assigned Board member determines that a violation is occurring, the Board of Directors may proceed as stated below.

#### Informal Contact

If there is a violation, the Board member assigned to the area will make an informal contact with the property owner in the form of a personal visit, a phone call, or a handwritten note left at the home. The Board member will state the violation and the particular provision of the Covenants and Restrictions that is being violated.

The Member is considered to be on notice with an open violation with an assigned complaint number in the complaint log maintained by the Board of Directors. This violation and the complaint number associated with it will remain open until the violation has been corrected at which time the complaint log will reflect the violation as being closed.

The President or the assigned Board member will allow up to fourteen (14) days or, if necessary, another mutually agreed-to timeframe for the member to comply. If the property owner does not correct the violation, formal notification procedures will then be instituted.

The President or the assigned Board member will monitor member responses to the informal contacts by verifying, within 14 days (or other agreed-to time frame), that the violation(s) has been either corrected or not corrected. To that end, the Board member responsible for recording complaints will record the date that the verification took place.

No informal contact is required if the President determines that a homeowner has made changes to his/her property without prior approval from the Architectural Control Committee (ACC) in those instances where approval is required by the Covenants and Restrictions. Informal contact is also not required for cases in which the homeowner was denied approval by the ACC for proposed changes to his/her property, but decided to make the proposed changes anyway.



### Formal Contact

The Association's first formal notice of citation shall be issued in writing and delivered by hand or by certified mail, return receipt requested, to the member at his/her address listed in the Association's records, as well as to the address of the property within the Association if the Board member's address is different from the property address. The Association will deem notification effective if any member fails or refuses to sign for any certified mailing from the Association.

In the first formal notice of citation, the Association shall advise the member of the nature of the violation, cite the specific provision of the Covenants and Restrictions that the member has allegedly violated, specify the remedy required, and state that within fourteen (14) days the member must complete corrective action or request a hearing before the Board of Directors.

A member may request a hearing before the Board of Directors in writing by or before the remedy deadline stated in the letter. The President shall set the time, date, and place of the hearing at its discretion.

The Board of Directors shall deliver written notice of the time, date, and place of the hearing to the member by hand or by certified mail, return receipt requested, at least 7 days in advance of the hearing date. The written notice of hearing will also include a statement of charges or other sanctions that may be imposed. The possible charges and sanctions are: (a) a one-time assessed charge of fifty dollars (\$50.00) for each single violation; (b) an assessed charge of ten dollars (\$10.00) per day for up to ninety (90) days for a continuing violation; and (c) the commencement of a suit against a violator to enjoin the violation(s) or to recover monetary damages or both. The date of the assessment will start on the date corrective action(s) should have been completed as specified in the first formal notice of citation, unless the Board waives the assessment as a result of the hearing.

At the hearing, the Board of Directors shall provide the member with a reasonable amount of time to present any and all defenses to the citation. The member may be represented by counsel at the hearing. The Board will provide the member with a notice of the hearing result, either by hand delivery or certified mail, return receipt requested.

If no hearing is requested and the property owner does not remedy the violation, the Board of Directors may issue a second and final formal citation that shall follow the basic format of the first formal notice of citation and shall include any additional information deemed important by the Board of Directors concerning the offense. The Board of Directors shall deliver the second and final formal written notice of citation by hand or by certified mail, return receipt requested, to the member at his/her address listed in the Association's records, as well as to the property address, if the member's address is different from the property address. The Board of Directors will deem notification effective if any member fails or refuses to sign for any certified mailing from the Association.

The second and final formal citation will state that the member is not in compliance with the C&R stating the specific provision in the C&R that is being violated, and that assessment charges will commence with: (a) a one-time assessed charge of fifty dollars (\$50.00) for each single violation; (b) an assessed charge of ten dollars (\$10.00) per day for up to ninety (90) days for a continuing violation; and (c) the commencement of a suit against a violator to enjoin the violation(s) or to recover monetary damages or



both. The date of the assessment will start on the date corrective action(s) should have been completed as specified in the first formal notice of citation, unless the Board waives the assessment as a result of the hearing.

Any assessment charges will have a due date of 120 days from the date that corrective actions should have been completed as specified in the first formal notice of citation. Assessment charges unpaid thirty (30) days after the due date may be subject to penalties including the filing of liens against the property for which the assessment is not paid.

If a member is in violation of the same violation within 6 months of a similar violation recorded as closed in the complaint log, the Board of Directors reserves the right to move directly to the procedures for Formal Contact in the enforcement of the C&R.

#### Legal Action

If the member does not remedy the violation after the final formal notice, the Board of Directors reserves the right to turn the entire matter, with all written documentation, over to the Association's attorney for appropriate legal action.

The Board of Directors reserves the right to hold members legally responsible for ensuring that their tenants comply with the provisions of the Covenants and Restrictions. To that end, the Board encourages members who lease out their property to provide a copy of the Covenants and Restrictions to the Lessee of the property.

2. LAND USE AND BUILDING TYPE. No Lot shall be used except for residential purposes. No building shall be erected, altered, placed or permitted to remain on any Lot other than one detached single family dwelling, not to exceed two stories in height, excluding the basement, plus an attached garage.

3. BUILDING LOCATION. No building shall be located on any Lot nearer than 30 feet to the front (street) property line, or nearer than 30 feet to any side street line. No building shall be located nearer than 10 feet to any interior Lot Line. No dwelling shall be located on any interior Lot nearer than 30 feet to the rear Lot Line. For purposes of these Covenants and Restrictions, eaves, steps and open porches shall not be considered a part of the building, provided, however, that this shall not be construed to permit any portion of a building, or a Lot, to encroach upon another Lot. All buildings and structures shall meet all requirements of the building codes, ordinances, and regulations of the City of Troy.

4. ARCHITECTURAL CONTROL COMMITTEE. The Architectural Control Committee shall have absolute discretion in the approval and disapproval of any structure in the Subdivision pursuant to these Covenants and Restrictions. The Architectural Control Committee shall serve without pay and, in discharging the duties imposed upon them hereunder, is hereby granted an easement prior to, and during construction of any structure, and in discharging their duties hereunder, to enter upon any Lot in the Subdivision and will not be deemed to be trespassers thereby, and may enter into contracts, and employ agents, servants and counsel as they deem necessary in the



performance of their duties. No member of the Architectural Control Committee shall be held personally liable for negligence or for injury to person or damage to property, or for any other act or omission in the absence of willful and deliberate misconduct. The Homeowners Association Board of Directors shall elect the members of the Architectural Control Committee at the first board meeting of the fiscal year. The President of the Homeowners Association shall appoint a replacement member for any member of the Architectural Control Committee who fails to remain in office.

5. DWELLING SIZE AND MISCELLANEOUS. No one story dwelling shall be permitted, on any Lot less than 1200 square feet of livable floor space, excluding garages, any space below ground level, and open porches and balconies; no one and one-half story or two-story dwelling shall be permitted, on any Lot which has less than 1600 square feet of such floor space, with at least 800 square feet of such space on the first floor. The character and design of garages must conform to the character and design of the dwelling structure.

At least 50% of the front of all dwelling shall be brick or stone. All dwellings will contain basements where feasible. Where basements are not feasible, the dwellings will be built over crawl space and not slabs according to generally accepted construction practice.

No recreational apparatus will be permitted in any front yard, or side yard, next to a platted street. Recreational apparatus, including swing sets, swimming pools, playground equipment or similar devices shall not be located at any point toward the front Lot Line, past a line drawn parallel with and intersecting the front of the dwelling structure. Portable basketball units will be permitted to be stored outside of the dwelling structure on the Lot when not in use. No above ground swimming pools will be permitted. The Architectural Control Committee shall have absolute discretion to decide what is a front or side yard, and to approve or disapprove of any recreational constructions or apparatus pursuant to the Covenants and Restrictions.

No noxious or offensive trade or activity shall be carried on upon any Lot nor shall anything be done thereon which may be or become any annoyance or nuisance to the neighborhood.

No Lot driveway, outside the exterior walls of the main residential structure or garage, shall be used for the purpose of blocking or jacking automobiles or other vehicles for repair, or for repairing any one or more automobiles, for any period of time.

No shed, trailer, recreational vehicle, tent, shack, garage, barn, or outbuilding erected on any Lot shall at any time be used as a residence, temporarily or permanently, nor shall any structure of a temporary character be used as a residence.

No trucks, trailer, or commercial vehicles will be allowed to stand upon any Lot, other than service vehicles making deliveries and light pick-up and panel trucks. No



campers, trucks, mobile equipment, vans, motor homes or recreational vehicles will be permitted to be stored outside the dwelling or garage on any Lot in the Subdivision.

Any accessory parking will be restricted to operable automobiles, and such parking space will be provided in the rear yard of the Lot, or the side yard of the Lot if the garage and accessory parking and turnaround is in the side yard.

Each Lot shall have a garage fully capable of housing a minimum of two automobiles. All buildings, including garages, shall be attached to the dwelling structure.

Any and all mechanical work, or vehicle maintenance, will be performed in the garage of each residence. No inoperable vehicles shall be parked for an indefinite time period on the Lot driveway of a property owner or along any street curb in the Subdivision.

No structure of any kind shall be allowed on any Lot, except the dwelling house and the attached garage, and nothing shall be stored in the open, outside said dwelling or garage, with exception of neatly stacked firewood, for use in the residence on that Lot, except during the period of construction of the dwelling house, it being the intent that, among other things, no lawn buildings, garage cans, or visible clothes lines be allowed.

All exterior lighting, including but not limited to directional lighting, shall be so located, shaded, and of such intensity so as not to become a visual nuisance to any adjoining or nearby Lot owners, and shall be subject to approval of the Architectural Control Committee.

No business of any kind shall be permitted in the Subdivision, except any such home occupation as is permitted under the ordinance of the City of Troy.

No wall, fences or fencing of any kind shall be allowed in the front yard of any Lot. No wall, fences, or fencing over 6 feet in height shall be allowed on any Lot. All walls, fences and fencing shall be wood construction and be compatible with the natural surroundings, subject to the conditions herein below set out for materials. No chain link, wire or metal wall, fence or fencing shall be permitted, except that professionally constructed wrought iron fences and vinyl fences, may be approved. All walls, fences, and fencing including location must be submitted to and approved by the Architectural Control Committee prior to construction, and must be continually maintained to present an attractive appearance, or such walls, fences and fencing will be removed at the expense of the Lot owner.

Each Lot owner shall comply strictly with the set-back and building lines shown on the aforesaid Plat of the Subdivision.



The undersigned, and the Homeowners Association, shall have the right, but not the obligation, to install amenities in the Subdivision, including but not limited to, tennis, badminton, volleyball, racquetball, handball courts, swimming pool and fountains.

6. LIVESTOCK AND PETS. No animals, livestock, or poultry of any kind shall be raised, bred, or kept in any Lot. (With the exception of dogs and cats). No animals of any kind may be kept, bred or maintained for any commercial purpose.

7. CONSTRUCTION OF RESIDENCE, MAINTENANCE OF PROPERTY. During the construction, maintenance or refurbishment of any dwelling house or Lot, any littering or damage to the public and private roadways and easements in the Subdivision, and any cleanup of the Lots, shall be the responsibility of the owner of any Lot upon which such work is being performed. Any debris deposited on a Lot shall be cleared and removed by the Lot owner. If after the debris is not removed and notice is given by Fair Oaks Homeowners Association, Inc., then Fair Oaks Homeowners Association, Inc. shall remove the debris and the responsible party shall reimburse Fair Oaks Homeowners Association, Inc. within 30 days.

Each property owner shall be responsible for mowing and landscape maintenance, of Lot up to the property line of such Lot, and up to the street curb or curbs, including the removal of yard debris and grass clippings from the street such that the Lot will always present a neat and attractive appearance.

The burning of any material outside any dwelling house shall be prohibited, except the burning of leaves and commercial grade fire pits in conformity with the Statutes of the State of Illinois and Ordinances of the City of Troy.

Each Lot owner shall install, at their expense, a sidewalk across the street frontage of their Lot within 30 days of completion of their home. Each sidewalk shall be approved by the Architectural Control Committee and shall be in conformance with the specifications of the City of Troy.

8. OIL AND MINING OPERATIONS. No oil drilling, oil development operations, oil refining, gas storage, quarrying or mining operations of any kind for any mineral or minerals, shall be permitted on any Lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted on any Lot. No derrick or other structure designed for use in boring for oil or natural gas or minerals be erected, maintained or permitted on any Lot.

9. GARBAGE AND REFUSE DISPOSAL. No Lot shall be used or maintained as a dumping ground for rubbish, trash or garbage. Trash, rubbish and garbage, or other wastes, shall not be kept, except in sanitary containers located either inside the garage of a dwelling house or out of site in containers protected from the weather elements and animals, except on collection days, when said sanitary containers may be placed near the platted streets for collection.



10. SIGNS. No signs of any kind shall be displayed to the public view on any Lot, except one sign of not more than six square feet, advertising the property for sale or rent, or signs used by a builder to advertise the property during construction and sales of Lots and residences, or signs used by the undersigned to identify the Subdivision and to advertise sales of Lots and residences in the Subdivision.

11. EASEMENTS. Easements for installation, construction, reconstruction and maintenance of utilities and drainage facilities are reserved, as shown on the above mentioned recorded plat of the Subdivision. No building or any other structure of any kind shall be placed on, in, or over any such easement; any such building or structure shall be removed at the expense of the Lot owner.

12. DUES AND ASSESSMENTS. Annual and special assessments may be established or levied against each Lot and its owners for maintenance of street and entrance landscaping, Subdivision fence, berms, drainage and entrance improvements, any amenities in the Subdivision for the use of the Lot owners and for any other duties, powers, and responsibilities of the Homeowners Association. Dues and Assessments shall be established per Article X of the By-Laws of Fair Oaks Homeowners Association, Inc.. Any unpaid dues or special assessments against a Lot at the time of assessment shall be the personal obligation of each Lot owner, jointly and severally, and shall also become a lien against that Lot upon filing a notice thereof in the Recorder's office of Madison County, Illinois; if such notice is not so filed on or before March 1 of the following year, said right to a lien shall expire. Any purchaser, lender, or title company shall have the right to rely upon any statement or assurance by any officer of the Homeowners Association, of the amount of payment status of any such lien.

Prior to the formation of the Homeowners Association, each Lot owner shall pay an annual maintenance fee of \$75 per Lot. Each Lot owner who is the owner of record on June 30 of each year shall be responsible for said maintenance fee. Said fee shall be due and payable to Fair Oaks Development Corporation on or before October 1. Any unpaid fee against a Lot shall be the personal obligation of each owners of that Lot, jointly and severally, and shall also become a lien against that Lot upon filing of a notice thereof in the Recorder's office of Madison County, Illinois; of such notice is not so filed on or before March 1 of the following year, said right to a lien shall expire.

Said \$75 maintenance fee will cease and no longer be due after all Lots in the Subdivision are sold.

13. HOMEOWNERS ASSOCIATION. After 67% of the total Lots in the Subdivision have been sold and/or upon absolute discretion of Thomas Baker by the undersigned, the "Fair Oaks Association" may establish as a not-for-profit corporation, herein called the "Homeowners Association" which shall be vested with all powers, duties, and responsibilities of that Homeowners Association set out in these Covenants and Restrictions and as provided by law; the title to all amenities, landscaping,



subdivision appurtenances shall be conveyed by the undersigned to the Homeowners Association. The owners of each Lot shall collectively own one share in the Homeowners Association. The Homeowners Association shall from time to time adopt By-Laws for its constitution, operation and deliberations, in conformity with these Covenants and Restrictions. It shall be the duty of the Homeowners Association to enforce these Covenants and Restrictions, majority rules shall prevail except as otherwise set out herein, and Robert Rules of Order are hereby adopted for conducting any and all meetings of the Homeowners Association, except as set out herein or in the By-Laws adopted by the Homeowners Association.

Hereby releasing and waiving all rights under by virtue of the Homestead Exemption Laws of the State of Illinois in the foregoing.



STATE OF ILLINOIS     )  
  )SS.  
COUNTY OF MADISON    )

IN WITNESS WHEREOF the undersigned have set their hands this  
20<sup>th</sup> day of August, 2010 A.D.

FAIROAKS HOMEOWNERS ASSOCIATION, INC.

By: *Nina Miller*  
NINA MILLER

8/20/10 Secretary

By: *Edward Foppe*  
EDWARD FOPPE

8/20/10 PRESIDENT

-----  
I, the undersigned, a Notary Public in and for the County and State  
aforesaid,

**DO HEREBY CERTIFY THAT NINA MILLER AS SECRETARY OF  
FAIROAKS HOMEOWNERS ASSOCIATION, INC., AND EDWARD FOPPE AS  
PRESIDENT OF FAIROAKS HOMEOWNERS ASSOCIATION, INC.,**  
personally known to me to be the same persons whose names are subscribed to  
the foregoing instrument, as having executed the same, appeared before me this  
day in person and acknowledged that they signed, sealed and delivered the said  
instrument as their free and voluntary act, and the free and voluntary act of said  
Corporation, for the uses and purposes therein set forth, including the release  
and waiver of the right of homestead.

Given under my hand and Notary Seal this 20<sup>th</sup> day of  
August, 2010.



*Debora K Callahan*  
Notary Public

**Document Prepared by:**

Edward Foppe  
1513 Fair Oaks Drive  
Troy, IL 62294

**Return Document To:**

Edward Foppe  
1513 Fair Oaks Drive  
Troy, IL 62294