

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF CIRCLE OAKS HOMES ASSOCIATION  
(As Restated in 2004)**

Passed by a majority vote of the Members present at a verified quorum in a Special Meeting called as required on: August 9, 2004.

Adopted by the Board of Directors on August 11, 2004.

Recorded as Document #: 2004-0034248 in the County of Napa,

State of California on: August 12, 2004

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**Declaration Of Covenants, Conditions And Restrictions  
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The Declaration of Covenant, Conditions, and Restrictions for Circle Oaks Homes Association, made and executed by CIRCLE OAKS SALES COMPANY, INC. dated June 9, 1964 and recorded June 9, 1964 in Volume 700, pages 198 to 200 of the Records of Napa County; and

- a. Amendment dated June 8, 1978 by CIRCLE OAKS HOMES ASSOCIATION, INC., recorded June 8, 1978 at Volume 1084, page 157, Napa County Records;
- b. Amendment dated March 18, 1980 by CIRCLE OAKS HOMES ASSOCIATION, INC., recorded March 18, 1980 at Volume 1158, page 207, Napa County Records;
- c. Amendment dated March 17, 1981 by CIRCLE OAKS HOMES ASSOCIATION, INC., recorded March 17, 1981 at Volume 1195, page 889, Napa County Records;
- d. Amendment dated April 6, 1982 by CIRCLE OAKS HOMES ASSOCIATION, INC., recorded April 6, 1982 at Volume 1236, page 228, Napa County Records;
- e. Amendment dated February 6, 1984 by CIRCLE OAKS HOMES ASSOCIATION, INC., recorded February 6, 1984 at Volume 1328, page 633, Napa County Records;
- f. Amendment dated May 23, 1986 by CIRCLE OAKS HOMES ASSOCIATION, INC., recorded May 23, 1986 at Volume 1444, page 964, Napa County Records;
- g. Amendment dated April 17, 1990 by CIRCLE OAKS HOMES ASSOCIATION, INC., recorded April 17, 1990 at Volume 1732, page 870, Napa County Records;
- h. Amendment dated April 16, 1993 by CIRCLE OAKS HOMES ASSOCIATION, INC., recorded April 16, 1993 at Volume 1771, page 383-387, Napa County Records shall be collectively referred to as the "Original Declaration", which affect all of the Properties described and commonly known as Circle Oaks Homes Association, and is amended, and restated in its entirety to read as follows:

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RECITALS

- 1) **LEGAL DESCRIPTION.** This Declaration governs all of the real property and improvements thereon, described as all that real Property situated in the County of Napa, State of California, commonly known as CIRCLE OAKS ESTATES, also known as CIRCLE OAKS SUBDIVISION. CIRCLE OAKS ESTATES and CIRCLE OAKS SUBDIVISION shall mean the real property included within any final map filed for record and made subject hereto which property is within the bounds of all that certain real property in the County of Napa, State of California, described in Exhibit A below.
- 2) **THE PROPERTY.** There are 339 Lots (some improved with residential structures, and some not improved) in a Planned Unit Development (PUD) project within the meaning of the provisions of the California Davis-Stirling Common Interest Development Act.
- 3) **THIS DECLARATION.** The Association determined that its Original Declaration is completely outdated. Therefore the Members caused this Declaration to revoke and supersede the Original Declaration. This Declaration is for the purpose of enhancing and protecting the value, enjoyment, desirability and attractiveness of Circle Oaks Homes Association.
- 4) **On August 9, 2004**, at least a majority of Members as governed by the By-Laws Article III of the Corporation for voting, have voted to amend, restate and replace the Original Declaration. It is the intention of said MEMBERS to replace the Original Declaration, in its entirety, with the recordation of this Declaration. The MEMBERS' action to amend and restate the Original Declarations as set forth herein, and the fact that the requisite percentage of affirmative votes required was achieved, is attested by the execution of this First Restated Declaration by duly authorized officers of the Association, as required by California Civil Code Section 1355(a). As so restated, the easements, covenants, restrictions and conditions set forth herein shall run with the Properties and shall be binding upon all parties having or acquiring any right, title or interest in the Properties or any portion thereof, and shall inure to the benefit of each Owner thereof.
- 5) It was the intention of the Original Developer to sell and convey residential lots to the owners, subject to the protective covenants, conditions, restrictions, limitations, reservations, grants of easements, rights, rights-of-way, liens, charges and equitable servitudes between Original Developer and such owners which are set forth in this Declaration and which are intended to be a furtherance of a general plan for the subdivision, development, sale and use of the Properties as a "planned development" as that term is defined in section 1351(k) of the California Civil Code. Finally, it was the intention of Original Developer that the "Common Areas" be owned and maintained by the Association, but reserved exclusively for the use and enjoyment of the members of the Association, their

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tenants, lessees, guests and invitees, all subject to the terms and conditions of the governing documents.

- 6) Properties within CIRCLE OAKS SUBDIVISION are subject to certain easements, protective covenants, conditions, restrictions, reservations, liens and charges as set forth in the Original Declarations referred to above, all of which are for the purpose of enhancing and protecting the value, desirability, and attractiveness of the Properties and all of which shall run with the Properties and be binding on all parties having or acquiring any right, title or interest in the Properties, or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.
  
- 7) The provisions of these Covenants, Conditions and Restrictions (CC&Rs) are intended to comply with the requirements of the California Civil Code 1350 through 1376 in effect as of January 1, 2004, and as thereafter amended. Except where allowed by law for more restrictive language within these CC&Rs, if sections where the code is cited are amended or rescinded in any manner, the provisions for those sections automatically shall be amended or rescinded in the same manner.

**ARTICLE I  
Definitions**

**Section 1.01. "Articles"** shall mean the Articles of Incorporation of Circle Oaks Homes Association, which are filed in the Office of the Secretary of State of the State of California, and as may be amended from time to time.

**Section 1.02. "Assessment"** means an assessment made or assessed against an Owner and his or her Lot in accordance with the provisions of California Civil Code Section 1366.

**Section 1.03. "Association"** shall mean and refer to Circle Oaks Homes Association, Inc., a California non-profit mutual benefit corporation, its successors and assigns.

**Section 1.04. "Board of Directors" or "Board"** shall mean the Board of Directors of the Association.

**Section 1.05. "Bylaws"** shall mean the Bylaws of the Association, as such Bylaws may, from time to time, be amended.

**Section 1.06. "Common Area and/or Greenbelt"** shall mean all real property owned by the Association for the common use, enjoyment and/or benefit of the members.

**Section 1.07. "County"** means the County of Napa, State of California.

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**Section 1.08. "Original Developer"** shall mean and refer to the project developers of the Properties, namely, CIRCLE OAKS SALES COMPANY, INC., a corporation, their successors and assigns.

**Section 1.09. "Declaration"** shall mean this Declaration of Covenants, Conditions and Restrictions (as Restated in 2004) as such Declaration may, from time to time, be amended. The "Original Declarations" shall mean the documents referenced in the preamble to this Declaration.

**Section 1.10. "Governing Documents"** shall refer collectively to this Declaration, the Articles, the Bylaws, the Rules, the Policies, and to any amendments to such documents.

**Section 1.11. "Lot"** shall mean and refer to each plot of land depicted on or described in those subdivision maps identified in Exhibit A, including any residence or other improvements, but excluding the Common Areas.

**Section 1.12. "Map"** means all or any of those maps pertaining to Circle Oaks Estates Subdivision, Lots No.1 through 938, inclusive, and that certain map entitled "Circle Oaks Estates" recorded in the Office of the County Recorder of Napa County, California as specified in Exhibit A attached hereto.

**Section 1.13. "Member"** shall mean and refer to every person or entity who holds a membership in the Association and whose rights as a Member are not suspended pursuant to California Corporations Code Section 7341, below. As more particularly described in Article III of the bylaws, the Association's membership is limited to Owner Members. The rights, preferences and privileges of all classes of membership shall be governed by this Declaration, the Articles and the Bylaws.

**Section 1.14. "Mortgage"** means any security device encumbering all or any portion of the Properties, including a deed of trust. "Mortgagee" means and refers to a beneficiary under a deed of trust as well as a mortgagee in the conventional sense.

**Section 1.15. "Owner"** means any person, firm, corporation or other entity which owns a fee simple interest in any Lot (including contract sellers, but excluding those having such interest merely as security for the payment of a debt or the performance of an obligation). For purposes of determining the validity of an ownership interest, an interest of record in the chain of title shall be prima facie evidence of ownership. If not of record, the Owner shall have the burden of satisfying the Association that they do hold a proper interest.

**Section 1.16. "Owner of Record"** includes an Owner and means any person, firm, corporation or other entity in which title to a Lot is vested as shown by the official records of the Office of the County Recorder.

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**Section 1.17. "Properties"** shall mean and refer to all that certain real property described in the Recitals to this Declaration and such additions thereto as may thereafter be brought within the jurisdiction of the Association.

**Section 1.18. "Residence"** shall mean the improvements situated on a Lot and used for Residential purposes.

**Section 1.19. "Residential Use"** shall mean occupation and use of a Residence for dwelling purposes in conformity with this Declaration and the requirements imposed by applicable zoning laws or other state, county or municipal rules and regulations. In no event shall a residence be occupied by more individuals than permitted by applicable zoning law, building code, or governmental regulation.

## **ARTICLE II**

### **Maintenance of Common Areas**

**Section 2.01. Maintenance, Repair and Upkeep of Common Areas.** The Association shall solely be responsible for the maintenance, repair, upkeep, replacement, and preservation of all common areas including greenbelt between the Lots so long as such areas are controlled by the Association.

No person other than the Association or its duly authorized agents shall construct, reconstruct, refinish, alter or maintain any Improvement upon, or shall create any excavation or fill or change the natural or existing drainage of any portion of the Common Area without express approval of the Association.

In addition, no person shall remove, or plant any tree or shrub upon the Common Area without express approval of the Association.

The County of Napa shall be responsible for the maintenance, repair, upkeep and preservation of streets and drainage systems as provided for by Napa County Board of Supervisor's Resolution #72-3, as recorded in the Clerk's office of the County of Napa, record book, on January 11, 1972.

**Section 2.02. Common Areas.** The Common Areas shall be preserved as open space and used for recreational purposes and other purposes incidental and ancillary to the use of Lots. Such use shall be limited to the private use for aesthetic and recreational purposes by the Association's Members, their tenants, families and guests, subject to the provisions of the Governing Documents. All work, which in any way alters any Common Area or Common Facility from its natural or existing state, shall only be performed by the Association and then only in strict compliance with the provisions of this Declaration.

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**ARTICLE III  
Property Rights**

***Section 3.01. Members' Non-Exclusive Easements of Enjoyment.***

Members shall have a non-exclusive right and easement of enjoyment in and to the Common Area, which shall include ingress and egress to and from their Lots, which shall be appurtenant to and shall pass with the title to every Lot. All such rights shall be subject to the following provisions:

- 1) **Conveyance and Revocation of Easements.** The Association, acting by a two-thirds affirmative vote of all of the Board of Directors, shall have the power, but not the duty, to grant and convey to any person or entity easements, licenses or rights-of-way in, on, over or under the Common Area for purposes consistent with the terms of this Declaration, including without limitation constructing, installing, operating, maintaining or conducting thereon, therein and there under any improvements, facilities or uses consistent with the use of such property pursuant to this Declaration. Notwithstanding the foregoing grant of authority, no conveyance of Common Area shall be made which will result in the elimination or material change in the use and enjoyment of any recreational Common Facility or which will impede the ingress and egress from any Lot.
  - i) Pursuant to the authority granted by this subparagraph (2), the Association, acting on a two-thirds affirmative vote of its directors, may also grant easements, licenses, or designate exclusive use common areas (as defined in Civil Code section 1351) in order to permit Owners to care for, maintain and landscape portions of Common Areas adjacent to the Owner's Lot consisting of slope areas, drainage areas or other areas that the Board determines to be unsuitable for general use and enjoyment by the members as a whole and which will be enhanced in appearance or stabilized to prevent damage from erosion or subsidence by such Owner maintenance. This grant of easement or license shall only be allowed if the Association and the Owner enter into an agreement, that must be recorded in the Office of the Napa County Recorder, specifically providing that the Owner shall assume all maintenance and repair obligations for the area and shall indemnify, defend, and hold harmless, the Association, its Board and its Members from any and all liability.
- 2) **Driveway.** The Board of Directors reserves the right for itself and its successors and assigns to grant to each lot owner in CIRCLE OAKS SUBDIVISION a right-of-way for driveway purposes from a public street across "open space" to each residential lot at such location as may be determined by the Board. The Board shall have the obligation to grant such rights-of-way as are reasonably necessary for ingress and egress to and from the residential lots. Such driveways, where appropriate, may be common driveways for more than one lot. All proposed driveways should be surveyed and engineered by a registered Civil Engineer. The construction will comply with the Civil Engineer's recommendations and the information contained in the Geotechnical and Geologic Investigation Reports.

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Upon completion of the driveway the Civil Engineer will sign a "Final Inspection and Record of Compliance". All Napa County and Department of Forestry and Fire Protection Regulations will be complied with. The Board as deemed necessary to preserve the "open space" areas might impose further restrictions. Professional engineering fees will be at the member's expense.

- 3) **Authority to Abandon Easements and Rights-of-Way.** The Association shall have the power, but not the duty, to abandon any easements, licenses or rights-of-way in, on, over or under any Lot within the Properties which are for the benefit of the Association, to the extent such easements, licenses, or rights-of-way no longer serve the Association's interests or are no longer consistent with the terms of this Declaration.
  
- 4) **Additional Easements covered in Article X.**

**ARTICLE IV  
Sale or Lease of Lots**

***Section 4.01. Rental or Lease of Residence.*** Any rental or lease of an Owner's Residence may only be for Residential Use. It is the intent of the restrictions imposed by this section to protect, enhance and maintain the residential atmosphere which exists within the Properties, and to avoid the occupancy of Residences for short periods of time or by an unreasonable number of individuals. Any rental or lease of a Residence shall be subject to the provisions of all Governing Documents, each of which shall be deemed to be incorporated in the lease or rental agreement. Each Owner who leases or rents his or her Residence within the Properties shall be obligated to provide the tenant, at the inception of the lease or rental, with a current copy of all Governing Documents or with a summary. It shall be the obligation of all Owner-lessors to ensure that their tenants or lessees comply at all times with the Governing Documents.

***Section 4.02. Delegation of Use and Leasing of Lots.*** Any Member may delegate the Member's rights to use and enjoy the Common Area to members of the Member's family or to the Member's tenants, renters, lessees or contract purchasers who reside in the Owner's Lot, provided that any rental or lease may only be for Residential Use. The Owner shall be responsible for any damage caused by the tenant, lessee or guest to Association property.

***Section 4.03. Obligations of Owners.*** Owners of Lots within the Properties shall be subject to the following:

- 1) **Contract Purchasers.** A contract seller of a Lot must delegate his or her voting rights as a Member of the Association and his or her right to use or enjoy the Common Area to any contract purchaser in possession of the property. The contract seller shall remain liable for any default in the payment of assessments by the contract purchaser until title to the property sold has been transferred to the purchaser.

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**2) Notification Regarding Governing Documents.**

Notification shall be provided in accordance with Section 1368 of the California Civil Code.

**Section 4.04. Termination of Obligations.** Upon the conveyance, sale, assignment or other transfer of a Lot to a new Owner, the transferor-Owner shall not be liable for any assessments levied with respect to such Lot after the date of recording of the deed evidencing said transfer and upon such recording all Association membership rights possessed by the transferor by virtue of the ownership of said Lot shall cease.

**Section 4.05. Notice of Acquisition.** A purchaser or other person or entity acquiring an ownership interest to a Lot shall notify the Association not more than thirty (30) days after the date of acquisition and provide

- (i) the name(s) of all persons or entities with an ownership interest as listed on the recorded title transfer documents,
- (ii) a mailing address for the Owner(s),
- (iii) day and evening telephone number and
- (iv) the effective date of acquisition of each ownership interest.

**ARTICLE V**

**Membership in Association**

**Section 5.01. Owner Member.**

The names of persons who are on the Title of Record for a Lot within the Association shall each be an "Owner Member" of the Association.

**Section 5.02. Persons Subject to Governing Documents.** All present and future Members within these Properties shall be subject to, and shall comply with, each and every provision of the Governing Documents, as the same or any of them shall be amended from time to time, unless a particular provision is specifically restricted in its application to one or more of such classes of persons (i.e., Owners, tenants, invitees, etc.). The acceptance of a deed to any Lot or the occupancy of any Lot shall constitute the consent and agreement of such Member that each and all of the provisions of this Declaration, as the same or any of them may be amended from time to time, shall be binding upon said person and that said person will observe and comply with the Governing Documents. Members are jointly and severally liable for the acts and omissions of other Members with an interest in the same Lot.

**Section 5.03. Assessments.** Owner Members of the Association shall be obligated to pay the assessments imposed by the Board in accordance with California Civil Code Section 1366.

**Section 5.04. Transfer of Memberships.** Membership in the Association shall not be transferred, encumbered, pledged or alienated in any way, except upon the sale or encumbrance of the Lot to which such membership is appurtenant. In the

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case of a sale, membership passes automatically to the purchaser upon transfer of title to the Lot. In the case of an encumbrance of such Lot, a mortgagee does not have membership rights until he or she becomes an Owner by foreclosure or deed in lieu thereof. Any attempt to make a prohibited transfer is void. In the event the Owner of any Lot should fail or refuse to transfer the membership registered in his or her name to the purchaser of his or her Lot, the Association shall have the right to record the transfer upon its books and thereupon any other membership outstanding in the name of the seller shall be null and void. The Association shall have the right to impose and collect a reasonable fee to process a change of Lot ownership and Association membership on its books and to furnish the new Lot Owner with copies of the Articles, Bylaws, Declaration, the Rules and/or Policies of the Association when requested by the Member.

**ARTICLE VI**

**Association Duties**

**Section 6.01. Powers, Obligations and Responsibilities of the Association Board of Directors.** The board of directors shall have the Powers and Duty to conduct business for the Association as stated in the By-Laws of the corporation, and as allowed by the laws of the State of California. The board shall not have authority to enter individual lots of Members without written permission from the Member for any reason except when an emergency issue may cause harm to the greenbelt or to other Member's property.

**Section 6.02. Meetings.** Any meeting construed by the board to be necessary, may be convened within a convenient distance outside the project but within the County of Napa.

**Section 6.03. Policies set by the Board.** All policies set by the board of directors that affect the members directly must be approved by a majority vote of the members as set forth in Article III of the By-Laws before they may be enforced.

**Section 6.04. Independent Business Providers.** The board shall not be allowed to hire employees nor subcontractors for compensation for any purposes. Only independent business providers will be hired for work in, or for, Circle Oaks. These providers must be independently licensed, provide evidence of self-insurance with the Association named as coinsured, and shall operate only by contract with the Association. All financial dealings will be on a fee-for-service basis with the Association bearing no responsibility for tax withholding, social security, workers' compensation, unemployment insurance, etc. All such responsibilities rest with the provider of service.

**ARTICLE VII**

**Assessments**

It is the Board's responsibility to establish and levy assessments to meet the Association's operating costs and reserve/replacement requirements. The nature of this responsibility is addressed in Bylaws Article VII. This provision in this Declaration addresses implementation.

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**Section 7.01. Assessments Generally.** Each Owner, by acceptance of a deed, whether or not it shall be so expressed in such deed, is deemed to covenant and agrees to pay to the Association assessments, together with interest, late charges, costs, and attorney's fees, which shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment and charge shall also be a joint and several personal obligation of each person who was the Owner of such property at the time when the assessment fell due.

- 1) **Regular Assessments.** Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors; unless otherwise provided, the regular assessment shall be due and payable on January 1st of each year. The regular assessment shall be delinquent if not received by the Association thirty days after it becomes due.
- 2) **Special Assessments.** Purposes for which special assessments may be levied are governed by California Civil Code Section 1366. It is the responsibility of the Board to review the Association's annual Budget to ascertain if there are any areas within the Annual Budget which may be over-funded or where funds may not be needed on an urgent basis during that fiscal year, and upon making such determinations, to reallocate any such funds for use in making up any budget shortfalls which may have occurred during the current fiscal operating year prior to imposing a Special Assessment on the membership.
- 3) **Special Individual Assessments and Reimbursement Assessments.**
  - a) **Circumstances Giving Rise to Special Individual Assessments and Reimbursement Assessments.** In addition to the Special Assessments levied against all Owners in accordance with section 2, above, the Board of Directors may impose Special Individual Assessments or Reimbursement Assessments against an Owner in any of the circumstances described in subparagraphs (i) through (v) below, provided that no Special Individual Assessment or Reimbursement Assessment may be imposed against an Owner pursuant to this section 3, until the Owner has been afforded the notice and hearing rights to which the Owner is entitled and, if appropriate, has been given a reasonable opportunity to comply voluntarily with the Association's Governing Documents. Subject to the foregoing, the acts and circumstances giving rise to liability for Special Individual Assessments and Reimbursement Assessments include the following:
    - i) **Damage to Common Area or Common Improvements.** In the event that any damage to, or destruction of, any portion of the Common Area or the Common Improvements, which the Association is obligated to repair and maintain is caused by the misconduct or any other act or omission of any Owner, any member of his or her family, or any of his or her tenants, guests, servants, employees, licensees or invitees, the Board shall cause

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the same to be repaired or replaced, and all costs and expenses incurred in connection therewith (to the extent not compensated by insurance proceeds) shall be assessed and charged solely to and against such Owner as a Reimbursement Assessment.

- ii) **Required Maintenance on Lots.** If any Lot is maintained so as to become a nuisance, fire or safety hazard for any reason, including without limitation, the accumulation of trash, automobiles that are inoperable or not used for more than 90 days, or improper weed or vegetation control, or if a Lot is maintained so as to cause a wasting of association funds, the Association shall have the right to enter said Lot, correct the offensive, or hazardous condition and recover the cost of such action through imposition of a Reimbursement Assessment against the offending Owner.
  - iii) **Fines and/or Penalties.** In the event that an Owner, Renter, Lessee, Occupant or Invitee's conduct causes the Association to bring the Owner and/or his or her Lot into compliance with any provision of the Governing Documents, the amount of any appropriately imposed fines and penalties duly imposed hereunder shall be assessed and charged solely to and against such Owner as a Special Individual Assessment.
  - iv) **Expenses Incurred in Gaining Member Compliance.** In the event that the Association incurs any costs or expenses, to accomplish (A) the payment of delinquent Assessments, (B) any repair, maintenance or replacement to any portion of the Properties that the Owner is responsible to maintain under the Governing Documents but has failed to undertake or complete in a timely fashion, or (C) to otherwise bring the Owner and/or his or her Lot into compliance with any provision of the Governing Documents, the reasonable amount incurred by the Association (including, but not limited to: title company fees, accounting fees, court costs and reasonable attorneys' fees) shall be assessed and charged solely to and against such Owner as a Reimbursement Assessment.
  - v) **Levy of Reimbursement Assessments and/or Special Individual Assessment and Payment.** Once a Reimbursement Assessment and/or Special Individual Assessment have been levied against an Owner for any reason described, and subject to the conditions imposed, in this section, such Assessment shall be recorded on the Association's Assessment roll, notice thereof shall be mailed to the affected Owner and the Special Individual Assessment and/or Reimbursement Assessment shall thereafter be due as a separate debt of the Owner payable in full to the Association within thirty days after the mailing of notice of the Assessment.
- 4) **Purpose and Reasonableness of Assessments.** Each Assessment made in accordance with the provisions of this Declaration is hereby declared and agreed

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to be for use exclusively (a) to promote the recreation, health, safety and welfare of individuals residing within the Properties; (b) to promote the enjoyment and use of the Properties by the Owners and their families, tenants, invitees, licensees, guests and employees; and (c) to provide for the repair, maintenance, replacement and protection of the greenbelt. Each and every Assessment levied hereunder is further declared and agreed to be a reasonable Assessment, and to constitute a separate, distinct and personal obligation (with respect to which a separate lien may be created hereby) of the Owner of the Lot against which the Assessment is imposed that shall be binding on the Owner's heirs and assigns.

**Section 7.02. Consolidation of Lots.** Due to the nature of each Lot being a  $\frac{1}{4}$  acre circle with greenbelt in between each Lot, no lot shall be consolidated with another Lot under any circumstance.

**Section 7.03. Assessment Limitations.** The Association shall be governed by California Civil Code 1366 through 1367 on all matters relating to limitation on increases, delinquent assessments, interest on assessments, excessive assessments, collection of assessments, disputes over assessments, and liens for delinquent assessments.

**Section 7.04. Grantee Liability.**

- 1) Voluntary Conveyance. Where an owner voluntarily conveys part or all of that owner's interest in a Lot, the person or entity acquiring the interest is subject to all assessments and charges (delinquent or not) outstanding against the Lot at the time of the conveyance. Both parties are jointly and severally liable for the full amount. Upon request of a prospective purchaser, the Association shall provide a true statement in writing from an authorized representative of the Association as to any assessments and/or other charges levied upon the Owner's lot which are unpaid on the date of the statement. The statement shall also include true information on late charges, interest, and costs of collection which, as of the date of the statement, are or may be made a lien upon the Owner's Lot. The Association's recourse for such amounts to the date of the statement and against the Lot or the purchaser shall be limited to the amount so specified.
- 2) Conveyance by Foreclosure. Where the Mortgagee of the first mortgage of record or other purchaser of a Lot obtains title as a result of foreclosure of any such first mortgage, the person acquiring title, his successors and assignees, shall not be liable for the assessments by the Association chargeable to such Lot which became due prior to the acquisition of title to such Lot by such acquirer.
- 3) Priorities. Unless otherwise provided by California law, when a notice of assessment has been recorded, such assessment shall constitute a lien on each respective Lot prior and superior to all other liens except (a) all taxes, bonds, assessments and other levies which by law would be superior thereto, and (b) the lien or charge of any first mortgage of record made in good faith and for value; provided, however, that such subordination shall apply only to the decree

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of foreclosure of any such mortgage or deed of trust or pursuant to a power of sale in such mortgage or deed of trust. Such foreclosure shall not relieve such property from liability for any assessments thereafter becoming due or from the lien of any such subsequent assessment.

**Section 7.05. No Waiver of Offset.** No Owner or Member may exempt himself or herself from personal liability or release his or her Lot from liens and charges thereof by waiver of the use and enjoyment of any Lot, or improvements maintained or services provided by the Association or by abandonment or non-use of any Lot. Each Owner, to the extent permitted by law, waives the benefit of any homestead or exemption law of California in effect at that time any assessment or installment hereof becomes delinquent or any lien is imposed. No offsets against any assessment shall be permitted for any reason, including, without limitation, any claim that the Association is not properly discharging its duties.

**Section 7.06. Exemption of Certain Properties From Assessments.** The following real property subject to this Declaration shall, unless devoted to use as a residential dwelling, be exempt from the Assessments and the lien thereof provided herein:

- 1) The Common Area and Common Improvements; and
- 2) Any Lot owned by the Association.

**ARTICLE VIII  
Environmental Control**

**Section 8.01. Architectural and Environmental Control of Improvements to Real Property and Alterations.** The Association shall have the authority to regulate construction, modification and/or alterations to the exterior of all structures on any Lot as outlined in this Article VIII.

**Section 8.02. Submittal and Review of Plans.** To obtain Board approval of any proposed changes and/or improvements, plans and specifications shall be submitted to the Board in writing in accordance with the then current Rules and/or Policies. The Board may approve, require additional information, impose conditions, require changes and/or reject any proposed architectural changes or improvements if they do not meet the spirit of this declaration as defined in the Articles of Incorporation of the Circle Oaks Homes Association, Article II. *(To maintain, improve and protect CIRCLE OAKS SUBDIVISION, Napa County, California, by joint community action, as a desirable residential neighborhood.)*

**Section 8.03. Submission of Plans; Action by Board or Committee.** A set of conceptual plans may be submitted for initial approval to meet with the architectural spirit of this Association and be in compliance with this document. At which time conceptual plans will be reviewed for general compliance only. No

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decision on conceptual plans will be binding. Completed plans and specifications for the proposed Improvement are to be submitted to the Board by certified mail or delivered in person at a meeting of the board of directors.

In the event the Board or Committee fails to approve or disapprove such design and location within sixty (60) days after complete plans and specifications have been submitted to it, the request shall be deemed approved. Approval of the Board or Committee can contain conditions or requests for modification of particular aspects of the Owner's plan. This sixty (60) day period commences upon receipt of complete plans and specifications by the Association.

***Section 8.04. Common Area Control Deposit.***

A greenbelt control deposit may be required upon approval of all building or project plans in the amount to be determined by the Board of Directors, such deposit to be refunded upon completion of the construction, if debris is disposed of and the greenbelt is restored to its natural state to the satisfaction of the Board of Directors.

***Section 8.05. Proceeding With Work.***

- 1) Approval. Upon receipt of approval from the Board, the Owner shall, as soon as practicable, satisfy all conditions hereof and diligently proceed with the commencement and completion of all construction, reconstruction, refinishing, alterations and excavation pursuant to said approval. Unless the Board grants a variance, noise producing construction activities shall not start before 7:00 a.m. and must cease at or before sunset on weekdays. No construction shall take place on Saturday and Sunday.
- 2) Clearing of Lots. When a lot is being cleared for construction, no Madrone, Maple, Manzanita or Oak tree (excluding Scrub Oak) in excess of nine (9) inches in circumference at breast height (cbh), nor any other tree in excess of twenty four (24) inches in circumference at breast height (cbh) shall be removed from the Lot without first obtaining the written consent of the Board. All rubbish and debris must be promptly removed to prevent the occurrence of any property or health hazard. Tree removal must be shown on building plans and on the plans and specifications submitted to the Association for approval.

***Section 8.06. Construction Materials And Architectural Style.*** All structures constructed or placed on any Lot shall be constructed with a substantial quantity of new material and no used structures shall be relocated or placed on any such Lot. Mobile homes, pre-built, modular and/or pre-manufactured homes, including so called "Kit Homes" are prohibited.

***Section 8.07. Size and Placement of Residences and Structures.***

- 1) Minimum Area of Dwellings. Subsequent to the adoption of this Declaration, every residential dwelling constructed on a Lot after October 2, 1990, shall contain 1,700 minimum square feet, calculated by using outside dimensions of

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walls. (Exclusive of roofed or unroofed porches, terraces, garages and other outbuildings.)

- 2) Height and Size Limitations. The Board shall have the authority to impose rules and/or policies as to the height and size requirements for all types of buildings and structures, including fences, walls, chimneys, copings, flagpoles, etc.
- 3) Garage and Driveway. A two car garage shall be required for each dwelling, with a paved driveway from street to garage and shall be consistent with the architecture of the main structure and of a minimum size of 400 sq. ft. Temporary garages are not permitted.
- 4) Fences and Pet Runs. In order to preserve the natural quality and aesthetic appearance of the existing geographic areas within the Properties, no fences or pet runs shall be allowed on any Lot without permission from the Board. A fence, pet run or other enclosure must contribute to and be consistent with such Lot and area surrounding such Lot or the nature of the Lot such that the pet run or other enclosure does not unreasonably interfere with the view shed of other members.

**Section 8.08. Elevation and Setback Requirements.** Each Lot has a natural and dimensioned area, which limits the extent of the portion thereof upon which any improvement can be constructed. All construction, except fences or walls, where approved or required by the Board shall be governed by the restrictions set forth by the County of Napa.

**Section 8.09. Cleanup During Construction.** Debris from construction shall be removed weekly from the site or placed in a dumpster or similar receptacle. Any debris container must be removed or emptied when full. Dumpsters or similar size receptacles are not to remain after construction is completed. Debris containers are not allowed in road or on greenbelt except for special circumstances approved by the board.

**Section 8.10. Temporary Structures.** The Board may grant permission for temporary structures to be used exclusively for storage of materials and/or construction management during construction. Additionally, from the onset of construction, the Lot Owner or the general contractor shall provide a portable toilet approved by the Napa County Health Department for construction workers until construction is completed. The temporary power pole and/or portable toilet are to be placed on the lot, except when the board approves their placement elsewhere.

**Section 8.11. Completion of Construction.** The construction or placement of every building, dwelling or other improvement, which is begun on any Lot, shall be completed within eight months after the beginning of such construction or placement. Upon request from the member, the Board may extend the time limit. In the event of cessation of construction for 90 consecutive days not caused by act of God or otherwise beyond the reasonable control of the Lot Owner shall be deemed to be a nuisance and the Association shall have the right to remove the incomplete

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work or complete the work at the cost of the Owner. The cost of completion by the Association shall become a lien upon said Lot subject to foreclosure in the manner provided by law for foreclosure of mortgages and/or trust deeds. No residence shall be occupied until the construction has been substantially completed in accordance with its plans and specifications and the County of Napa issues a certificate of occupancy.

**Section 8.12. Model Homes.** No Owner of any Lot shall build or permit the building thereon of any dwelling house that is to be used as a model house or exhibit unless prior written permission to do so shall have been obtained from the Board.

**Section 8.13. Landscaping.** Appropriate landscaping will be completed within one (1) year of the occupancy on new construction and within one (1) year following major reconstruction. Appropriate landscaping is defined as landscaping which is conducive to an individual lot. The Board may require a plan to address the utilitarian aspects of landscaping such as erosion control, drainage patterns, fire resistance, privacy between neighbors and the location of underground utilities.

**Section 8.14. Ultimate Authority Vested in Board of Directors.** The Board of Directors shall have the ultimate authority to determine the interpretation of the environmental control guidelines contained in this Declaration, the Rules, Policies and other governing instruments of the Association. The decision of the Board rendered on any such appeal may be challenged by alternative dispute resolution as set forth in California Civil Code Section 1354.

**Section 8.15. No Waiver.** Approval by the Board of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring the approval of the Board under this Declaration, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification or matter subsequently submitted for approval.

**Section 8.16. Notice of Architectural or Environmental Violation.** In addition to any other enforcement options the Association may have, in the event of a violation of the Declaration and/or Rules and/or Policies, the Board may cause to be filed with title to the nonconforming Lot a notice of Architectural or Environmental Violation which shall constitute notice to and be binding on all ownership interests of the Lot and their successors in interest of a continuing nuisance.

**Section 8.17. Variances.** The Board may allow reasonable variances and adjustments of this Declaration in order to overcome practical difficulties and prevent unnecessary hardships in the application of the provisions contained herein; provided, however, that variances shall only be granted hereunder which are in conformity with the intent and purposes hereof, and provided further that in every instance such variance or adjustment will not be materially detrimental or injurious to other property or, improvements in the neighborhood or the Properties. Approval of a variance must be by a majority decision of the Board. If any dispute arises between

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any person or persons and the Board or other hearing body relative to the intent and purposes of the Declaration, the Board of Directors shall make the final interpretations of said intent and purposes.

***Section 8.18. Liability.***

- 1) Neither the Board nor any member thereof shall be liable to the Association or to any Owner for any damage, loss or prejudice suffered or claimed on account of:
  - a) the approval or disapproval of any plans, drawings and specifications, whether or not defective;
  - b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications; or
  - c) the development of any property within the Properties, provided, however, that such member has acted in good faith based on such information as may be possessed by him or her.
  
- 2) The Association's approval of home plans is for the express purpose of checking compliance with the Declaration and applicable Rules and/or Policies. Association plan approval is not for structural, code or other areas of governmental responsibility. Neither the Board nor any agent thereof shall be responsible in any way for any defects in any plans and/or specifications submitted, revised or approved under the Rules and/or Policies, or for any structural or other defects in any work done according to such plans and/or specifications.

***Section 8.19. Architectural Enforcement.***

- 1) Notice and Opportunity for Hearing. If the Association has determined that a Lot Owner has not constructed and/or properly maintained an improvement consistent with the specifications of the approval granted or has failed to obtain approval, and if the Owner fails to remedy such non-compliance in accordance with the provisions of the notice of non-compliance, then after the expiration of thirty (30) days from the date of such notification, the Association shall offer an opportunity for hearing to consider the Owner's continuing non-compliance and place the affirmative burden on the Owner to request a hearing upon such reasonable terms as the Association may impose.
  
- 2) Determination. At the hearing or when the Association otherwise addresses the matter, if the Association finds that there is no valid reason for the continuing non-compliance, the violation shall be deemed a continuing nuisance. The Association shall then notify the owner in writing to require the Owner to remedy or remove the same within a period, of not more than forty-five (45) days from the date of the Association's determination.
  
- 3) Association Options for Continuing Nuisance. If the Owner does not comply with the Association's ruling within such period or within any extension of such period as the Association, in its discretion, may grant, the Association may

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- a) remove the non-complying improvement,
- b) remedy the non-compliance, or
- c) record a Notice of Noncompliance against the property, which shall also be conclusive as to all Owners and any successors in interest. The costs of any such action(s) shall be assessed against the Owner as a Special Individual Assessment (see Section 7.01, above). These powers of enforcement shall be in addition to the general enforcement provisions of this Declaration.

**Section 8.20. Water, Oil and Mineral Exploration.** No owner shall drill or excavate for water, oil, minerals, or other natural resources.

**ARTICLE IX  
Use of Properties and Restrictions**

The following general prohibitions and requirements shall prevail as to the construction or activities conducted or, any Lot within the subdivision:

**Section 9.01. Use of Lots.** The use of Lots within the Properties (except Common Area) is hereby restricted to residential use.

**Section 9.02. Use of Common Areas.** The use of Common Areas shall be limited to the private use for aesthetic purposes by the Association's membership, their invitees, families and guests. Motorized vehicles used for recreational purposes are prohibited from use in all areas of the common area. Hunting is prohibited at all times in the subdivision, including all common areas.

**Section 9.03. Temporary Structures Trailers and Motor Homes.** No structure of a temporary character, trailer, mobile home, camper, basement, tent, shack, garage, barn or other outbuilding shall be erected, placed or used on any Lot at any time as a residence, either temporarily or permanently.

**Section 9.04. Sewer Facilities.** No outside toilets shall be constructed on any Lot. All plumbing fixtures, dishwashers and sewage disposal systems shall be connected to the Circle Oaks County Water District's sewage system and approved by the Napa County Health Department and the Environmental Health Department.

**Section 9.05. Business Activities.** No business activities of any kind whatsoever shall be conducted in any building or in any portion of any Lot, except as provided herein.

- 1) The foregoing covenants shall not apply to the activities, signs or the maintenance of structures or improvements by the Association or its successors and assigns in furtherance of its powers and purposes as set forth herein.
- 2) Notwithstanding the foregoing, no restrictions contained in this Article IX shall be

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construed in such a manner as to prohibit the Owner from

- a) maintaining his/her personal library or "tools of the trade" therein;
  - b) keeping his/her personal business records or accounts therein;
  - c) construction vehicles rated at 1-Ton or smaller used for transportation to and from an off-premises business activity;
  - d) handling his/her personal or professional telephone calls or correspondence there from; or
  - e) conducting any other activities on the Lot otherwise compatible with residential use and the provisions of this Declaration that are permitted under applicable zoning laws or governmental regulations without the necessity of first obtaining a special use permit or similar specific governmental authorization. Such uses are expressly declared to be customarily incidental to the property's principal residential use and not in violation of any provision of this Article IX.
- 3) Contractors or Sub-contractors who operate their businesses from their residences in conformance with Section 9.05 Paragraph (2) above are permitted. No other construction vehicles, equipment or materials may be parked or stored in the open anywhere on the Properties.
- 4) The Association shall have the authority to grant variances to allow certain business activities in accordance with Section 8.17, above, and subject to such terms and conditions as the Association deems reasonable.

***Section 9.06. Pets and Animals.***

- 1) Maintenance of Pets on Privately Owned Lots. The Board may adopt reasonable restrictions related to the keeping of domestic pets.
- 2) "Wild" Animals. Capture, confinement, injury or killing of resident "wild" game animals, birds, or reptiles, by anyone is prohibited. The only exceptions that will be recognized are where appropriate governmental approvals and/or permits have been obtained and the Association board notified of the same.
- 3) Control of Pets. All household pets and animals belonging to Members and their guests and invitees, contractors, builders, or vendors must be effectively confined within the Member's lot or leashed so as not to be able to run free within the subdivision. Such pets or animals must not molest deer or any other resident, animals, birds, or reptiles.
- 4) Nuisance. The Board may prohibit keeping within the Properties any animal that constitutes a nuisance (whether due to its size, viciousness, unreasonable noise or otherwise) to any other Members.
- 5) Animals not allowed. Animals that are considered agricultural are not allowed. Animals specifically not allowed include, but are not limited to: Cattle, fowl, horses, hogs or cloven-footed animals. Any kind of animal that are raised for any other purpose than household pets are not allowed. The Board may allow exceptions to this restriction provided it benefits the Association's Vegetation Management Plan, and/or does not violate any other restriction within these CC&Rs.

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**Section 9.07. Signs.** Signs advertising a Lot or Residence for sale or rent shall be in accordance with the provisions below. All other signs, billboards, or advertising of any kind are prohibited, except upon application to and written permission from the Board.

1. Signs of customary and reasonable dimensions may be displayed on any Lot or Residence when advertising the same for sale or rent. The following specifications have been established by the Board of Directors for allowed signs:
  - a. Maximum size: Standard Real Estate advertising signage and standard political view signage.
  - b. Signs must not be affixed to trees, telephone or power poles.

**Section 9.08. Parking or Storage of Vehicles and Trailers.**

1. Recreational Vehicles. No boats, recreational vehicles or similar type vehicles, shall be stored in view of the road.
2. Commercial and Unused Vehicles. No commercial vehicles, unused vehicles, flat bed tractor-trailers, or stripped down, partially wrecked, or junk motor vehicles, or sizable part thereof, shall be permitted to be parked on any Association common area or streets within the Properties or on any Lot in such manner as to be visible to the occupants of other Lots within the Properties or to the users of any street; provided, however, that this paragraph shall not apply to emergency vehicle repairs or to commercial vehicles providing services for any Lot or the Association, and in that event only for the duration reasonably necessary to provide such service. The definition of "street" shall include the unpaved "rights of way" that exists between Lots.

**Section 9.10. Maintenance of Lots.** All Lots, whether occupied or unoccupied, and any improvements placed thereon shall at all times be maintained in such a manner as to prevent their becoming unsightly by reason of vegetation overgrowth on such Lot or the accumulation of rubbish or debris thereon, or to prevent the occurrence of any fire or health hazard.

**Section 9.11. Removal of Trees.** No Madrone, Maple, Manzanita or Oak tree (excluding Scrub Oak) in excess of nine (9) inches in circumference at breast height (cbh), nor any other tree in excess of twenty four (24) inches in circumference at breast height (cbh) shall be removed from the Lot without first obtaining the written consent of the Board.

**Section 9.12. Radios and Antennas.** No radio or other transmitter that will interfere with radio or television reception shall operate from any Lot or Residence.

**Section 9.13. Trash.** No trash, garbage or other refuse shall be dumped or stored on any Lot in other than appropriate refuse containers, nor be thrown into or left on any of the common area. There shall be no burning of trash or garbage,

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whether by outside burning or from interior woodstoves or fireplaces.

**Section 9.14. Repair of Damaged Improvements.** No improvement on any Lot which has been partially or totally destroyed by fire, earthquake, or otherwise deemed to be uninhabitable for health and/or safety reasons shall be allowed to remain in such state for more than six months from the time of such damage. The Board may grant an exception to this limit if the member can show evidence that reasonable efforts have been made to conform to this section.

**Section 9.15. Machinery and Equipment.** No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot except such machinery or equipment as is usual or customary in connection with the use, maintenance or construction of a private Residence or appurtenant structures within the Properties and no such machinery or equipment shall be operated in a manner that causes an unreasonable interference with the quiet enjoyment of the Owners or occupants of neighboring Lots.

**Section 9.16. Diseases and Pests.** No Owner shall permit any thing or condition to exist upon his or her Lot which shall induce, breed, or harbor infectious plant diseases, pests, rodents or noxious insects. Insofar as this section pertains to poison ivy, poison oak, sumac and star thistle, members are required to abate these noxious plants to the extent possible to prevent their spread throughout the subdivision, but shall not be cited for a violation of this section if an effort is made to abate the plants at least one time each calendar year in accordance with the Association's Vegetation Abatement Policy.

**Section 9.17. Restriction on Further Subdivision and Severability.** No Lot shall be further subdivided nor shall less than all of any such Lot be conveyed by an Owner thereof and no Owner of a Lot within the Properties shall be entitled to sever that Lot from the Common Area portion of the Properties. No easement or other interest in a Lot shall be given without the prior written approval of the Association.

**Section 9.18. Use of Streets within the Properties.** Streets within the Properties shall not be used for recreational purposes, including "joy riding", racing, etc. Motorized recreational vehicles including so called mini-bikes and go-carts, and any other vehicle that is not licensed for use on a public road are prohibited. A non-licensed driver per California Law shall not operate licensed off-road motorcycles. All violations shall be reported to the County Sheriff or Highway Patrol.

**Section 9.19. Variance.** The Board of Directors and/or the Board may allow reasonable variances and adjustments to this Declaration as more specifically described in Section 8.16, above. In the event of any request for a variance to any requirement of this Declaration, and where notice has been given to those other members potentially affected and a member fails to object to the proposed variance (according to the terms of the notice), shall be final.

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**Section 9.20. Unlawful Acts.** Any unlawful act shall also constitute a breach of the Governing Documents and may, at the option of the Association, be enforced as such.

**ARTICLE X  
Easements**

**Section 10.01. Easements Applicable to the Circle Oaks Home Owner's Lots.**

- 1) **Utilities.** The Original Developer dedicated to Napa County and Circle Oaks County Water District rights-of-way and easement areas for the installation and maintenance of public utilities over strips of land five feet in width along side, front and rear property lines and ten feet in width along the subdivision boundary as contained in the offer of dedication set forth on Sheet 1 of the Map, reserving therefrom the easements and/or rights-of-way relating to radio or television transmission cables.
- 2) **Maintenance.** On each Lot, the right-of-way and easement areas dedicated to public utilities purposes shall be maintained continuously by the Lot Owner but no structures, plantings or other material shall be placed or permitted to remain or other activities undertaken which may damage or interfere with the installation or maintenance of utilities; which may change the direction of flow of drainage channels in the easements; which may obstruct or retard the flow of water through drainage channels in the easements; or which damage or interfere with established slope ratios or create erosion or land subsidence problems. Improvements within such areas shall also be maintained by the respective lot Owner except for those for which a public authority or utility company is responsible.
- 3) **Dedicated Easements.** The Original Developer dedicated to Napa County rights-of-way and easement areas as follows:
  - a) For drainage ditches, pipes and conduits, on, over, under and across those certain strips of land shown and designated as "drainage easements" (D.E.) together with the right to trim or remove only necessary trees, limbs or brush.
  - b) Rights-of-way and easements for water, gas, sewer and drainage pipes, conduits and ditches and for poles and overhead and underground wires and conduits for electrical and telephone services together with all appurtenances thereto, on, over, under and across all those parcels shown as streets or roads and named in subsection 1 above and those strips of land lying 5 feet on each side of all sides and rear lot lines and 10 feet contiguous to the outer subdivision boundary throughout, together with the right to trim or remove only necessary trees, limbs and brush.
  - c) Additional Easements: It shall be expressly permissible for the providing utility company to erect and maintain the necessary equipment and underground utilities on the Common Area. Notwithstanding the foregoing, no

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sewer, electrical lines, water lines, or other utilities may be installed or relocated on said Properties except as initially designed and approved by the Developer or thereafter approved by the Association's Board of Directors. The easements provided for in this paragraph shall in no way effect any other recorded easement on the Properties.

**ARTICLE XI  
Insurance**

**Section 11.01. Liability Insurance.** Insurance for the Association shall comply with California Civil Code and California Corporations Code as required for Homes Associations, including, but not limited to, Liability Insurance, Errors & Omissions Insurance, and Officers Indemnity Insurance in the minimum amounts stated in the Code.

**Section 11.02. Coverage Not Available.** In the event any insurance policy, bond, or any endorsement thereof, required by Section 11.01 hereof are for any reason unavailable or prohibitively expensive, then the Association shall obtain such other or substitute policy or endorsement or bond as may be available, which, at the discretion of the Board, provides as nearly as possible the coverage described.

- 1) In certain circumstances a risk may not be reasonably covered by insurance or bond. By a vote of the Membership as governed in Article III of the By-Laws, the Association may be indemnified from liability claims by Member Owners against the Association for that specific risk.
- 2) Circle Oaks Subdivision is known to the County of Napa to be located on a land subsidence zone. Each Member Owner accepts the liability for his or her own property in relation to land subsidence issues and may not hold the Association liable for naturally occurring subsidence on Common Area property adjacent to his or her Lot.

**Section 11.03. Copies of Policies.** Copies of all insurance policies (or certificates thereof showing the premiums thereof to have been paid) shall be retained by the Association and shall be available for inspection by Owners at any reasonable time.

**Section 11.07. Owner's Insurance.** The Association shall have no responsibility or obligation to provide any insurance coverage whatsoever on behalf of any Owner.

**ARTICLE XII  
Amendment of Declaration**

**Section 12.1. Amendment.**

- 1) Amendment in General. This Declaration may be amended or revoked in any

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respect by the affirmative vote by written ballot of the Members as stated in Article III of the By-Laws.

- 2) Effective Date of Amendment. The amendment shall be effective upon the recordation of the Office of the Recorder of Napa County of an instrument setting forth the terms thereof duly certified and executed by the President and Secretary of the Association. Notwithstanding anything to the contrary herein contained, no such amendment shall affect the rights of the holder of any first deed of trust or mortgage recorded prior to the recordation of such amendment.

**ARTICLE XIII  
Remedies and Waivers**

**Section 13.01. Nuisance.** The result of every act or omission whereby any covenant contained in this Declaration is violated in whole or in part is hereby declared to be a nuisance, and every remedy against such nuisance, either public or private, shall be applicable against every such act or omission.

**Section 13.02. Costs and Attorneys' Fees.** In any action brought because of any alleged breach or default of any Owner or other party hereto under this Declaration, the court shall award to the prevailing party in any such action such attorneys' fees and other costs, as the court deems just and reasonable.

**Section 13.03. Cumulative Remedies.** The respective rights and remedies provided by this Declaration or by law shall be cumulative, and the exercise of any one or more of such rights or remedies shall not preclude or affect the exercise, at the same or at different times, of any other such rights or remedies for the same or any different default or breach or for the same or any different failure of any Owner or others to perform or observe any provision of this Declaration.

**Section 13.04. Failure Not a Waiver.** The failure of any Owner, the Board of Directors, the Association or its officers or agents to enforce any of the covenants, conditions, restrictions, limitations, reservations, grants or easements, rights, rights-of-way, liens, charges or equitable servitudes contained in this Declaration shall not constitute a waiver of the right to enforce the same thereafter, nor shall such failure result in or impose any liability upon the Association or the Board, or any of its officers or agents.

**ARTICLE XIV  
Notices**

**Section 14.01. Mailing Addresses.** Any communication or notice of any kind permitted or required herein shall be in writing and may be served, as an alternative to personal service, by mailing the same as follows:

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**If to any Member:**

To the street address of the Member's Lot or to such other address as the Member may from time to time designate in writing to the Association. Members shall be responsible to maintain their correct address information with the Association. The Association must receive notification of a Change of address within (10) days of such change. The Homes Association will rely upon its written record of a Member's addresses unless mail is returned by the Post Office, in which event, the Association will send mail to the last address of record on file with the Office of the Napa County Assessors tax rolls or forwarding information provided by the United States Postal Service. COHA assumes no responsibility for the accuracy of this information.

**If to the Association:**

Business Address:

Circle Oaks Homes Association, PO BOX 4151, Napa, CA 94558

Legal Address:

The address on record for the "Agent for service of process" as published with the California Secretary of State. Since this address may change periodically, the Association shall publish this address to Members either at the time the Pro Forma Budget is distributed or when the association mails or delivers it as a part of a newsletter, magazine or other document regularly sent to members.

**Section 14.02. Personal Service Upon Co-Owners and Others.** Personal service of a notice or demand to one of the co-owners of any Lot, to any general partner of a partnership which is the Owner of Record of the Lot, or to any officer or agent for service of process of a corporation which is the Owner of Record of the Lot, shall be deemed delivered to all such co-owners, to such partnership, or to such corporation, as the case may be.

**Section 14.03. Deposit in U.S. Mails.** Notices and/or demands served by registered, certified or priority mail, with postage prepaid, shall be deemed delivered 72 hours after deposit in the United States mail in Napa County, California. Notices and/or demands served by first class of United States mail shall be deemed delivered five (5) days after deposit in the United States mail to addresses within the County of Napa, and in ten (10) days to members whose address is outside of Napa, California.

**ARTICLE XV**

**Miscellaneous**

- Section 15.01. Construction and Severability: Singular and Plural Titles**
- 1) **Construction and Severability.** If any portion of this Declaration is determined to be unenforceable it does not constitute a waiver of the right to enforce that provision in a subsequent application or any other provision hereof.

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- a) Restrictions Severable. The covenants, conditions and restrictions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision.
  - b) Singular Includes Plural. The singular shall include the plural and the plural the singular unless the context requires the contrary, and the masculine, feminine or neuter gender shall each include the masculine, feminine and neuter gender as the context requires.
  - c) Captions. All captions or titles used in this Declaration are intended solely for convenience of reference and shall not affect the interpretation or application of that which is set forth in any of the terms or provisions of the Declaration.
- 2) Term of Declaration. This Declaration shall affect and run with the land and shall exist and be binding upon all parties and persons claiming under it until January 1, 2014, after which time the same shall be extended for successive periods of ten (10) years, unless an instrument amending the Declaration in whole or in part has been approved by the appropriate percentage of the voting power of Members and has been recorded in the Official Records of Napa County, California.

**Section 15.02. No Public Rights in the Properties.** Nothing contained in this Declaration shall be deemed to be a gift or a dedication of all or any portion of the Properties to the general public or for any public use or purpose whatsoever.

**Section 15.03 Condemnations.** In the event of any taking by eminent domain of any Lot within the Properties, the Owner of such Lot shall be entitled to receive the award for such taking after all mortgages and liens on the Lot have been satisfied or otherwise discharged, including any portion of such award as may have been received as a result of loss of membership in the Association or the loss of taking of easements over property of the Association. After acceptance thereof, if the Owner shall vacate his/her Lot as a result of such taking, the Owner shall be divested of membership in the Association and the Owner and his/her mortgagees shall be divested of all interest in the properties of the Association.

In the event of any taking by eminent domain, in whole or in part, of the Common Area or any other property of the Association, the Association itself shall receive the entire award for such taking, unless the taking results in the loss of easement rights of ingress and egress or parking rights for one or more of the Lots, in which event the award shall be apportioned among the Owners of such Lots and the Association.

In such event, the Association shall direct the negotiations and shall propose the method of division of the proceeds of condemnation, where such rights are not valued separately by the condemning authority or the Court. In the event any Lot Owner disagrees with the proposed allocation, such Owner may have the matter submitted to arbitration under the rules of the American Arbitration Association.

**Declaration Of Covenants, Conditions And Restrictions  
Of Circle Oaks Homes Association  
(Restated in 2004)**

**EXHIBIT A**

Description of Property in the County of Napa, State of California, commonly known as CIRCLE OAKS ESTATES, also known as CIRCLE OAKS SUBDIVISION. CIRCLE OAKS ESTATES and CIRCLE OAKS SUBDIVISION shall mean the real property included within any final map filed for record and made subject hereto which property is within the bounds of all that certain real property in the County of Napa, State of California described below.

All that real property situated in the County of Napa, State of California that lies within the exterior boundary of Circle Oaks Subdivision, filed May 15, 1964 in Book 7 of Maps at pages 60 through 69 including but not limited to:

1. All those residential building lots identified as Assessor Parcel Number 032-250-001 through 032-340-031 inclusive, excepting therefrom the parcels identified in paragraph 2. below;
2. The common area also known as the greenbelt which is owned by the Circle Oaks Homes Association including but not limited to Assessor's Parcel Numbered: 032-250-040; 032-260-030; 032-270-056; 032-270-057; 032-280-041; 032-320-023; 032-330-034; 032-330-035; and 032-240-032

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**AUTHORIZATION:**


Authorization of the Board of Directors of the Circle Oaks Homes Association to adopt the Declaration of Covenants, Conditions and Restrictions of the Circle Oaks Homes Association (Restated in 2004).

The undersigned, Officers and Directors of the above-named corporation,

**RESOLVE**, that by the power and authority created within the governing documents of the aforesaid Homes Association as well as applicable statutes of the State of California, the Circle Oaks Homes Association do hereby approve the above stated Declaration of Covenants, Conditions and Restrictions of the Circle Oaks Homes Association (Restated in 2004), and shall be effective as of: August 11, 2004

The undersigned, expressly approve the action taken as described above and direct that this document be filed, as required by law, with the Clerk of the County of Napa, California.

By:   
\_\_\_\_\_  
David D. Horobin,  
President

By:   
\_\_\_\_\_  
Thomas J. Sedlack  
Vice President, and Secretary



**Declaration Of Covenants, Conditions And Restrictions  
Of Circle Oaks Homes Association  
(Restated in 2004)**

**ATTACHMENT # 1 – BY Laws.**

By-Laws of the Circle Oaks Homes Association, INC. Approved & Amended as of June 13, 2004.