

BY-LAWS  
RULES AND REGULATIONS  
OF  
EVERGREEN ESTATES PROPERTY OWNERS' ASSOCIATION

PREAMBLE

These By-Laws Rules and Regulations are promulgated for the common ownership, use and enjoyment of certain common areas (as hereinafter defined) situate in EVERGREEN ESTATES TRACT NO. 731 Santa Cruz County, a Planned Unit Development. Each legal owner of record of a lot in EVERGREEN ESTATES TRACT NO. 731 Santa Cruz County, whether improved with residence, or unimproved, shall be automatically entitled to membership in this Association and shall be considered a member thereof. This Association is unincorporated and shall be known as "EVERGREEN ESTATES PROPERTY OWNERS' ASSOCIATION." The Association may, at its option, incorporate as a non-profit corporation under the laws of the State of California.

Article I. Office

Section 1. Principal Office. The initial principal office of the Association shall be maintained at the address of its project at 500 Chestnut Street, Santa Cruz, California.

Section 2. Place of Meetings. Meetings of the Association members shall be held within the subdivision or at a meeting place as close thereto as possible.

Article II. Association of Lot Owners

Section I. Annual Meeting. The annual meeting of the Association shall be held on the first Tuesday of the Second calendar month following the close of the Association's fiscal year.

The first meeting of the Association, whether a regular or special meeting, shall be held within 45 days after the closing of the sale of the subdivision interest which represents the 51st percentile interest authorized for sale under the first public report for the subdivision but in no event shall the meeting be held later than six months after the closing of the sale of the first subdivision interest.

Section 2. Special Meetings. A special meeting of the members of the Association shall be promptly called by the governing body upon:

(1) The vote for such a meeting by a majority of a quorum of the governing body.

(2) Receipt of a written request for a special meeting signed by members representing at least five percent (5%) of the total voting power of the Association. Upon receipt of such call in writing, the Secretary shall send out notices of the meeting to all members of the Association.

Section 3. Notice of Meetings. A written or printed notice of every meeting of the Association stating whether it is an annual meeting, regular meeting or special meeting, the authority for the call of the meeting, the place, day and hour thereof,

and the purpose therefor shall be given by the Secretary or the person or persons calling the meeting. This notice shall be given not less than 10 days nor more than 90 days before the date set for such meeting. Such notice shall be given to each member in any of the following ways: (a) by leaving the same with him personally, or (b) by leaving the same at the residence or usual place of such member, or (c) by mailing it, postage prepaid, addressed to such member at his address as it appears on the records of the Association and by posting notice at a prominent place or places in the common area. If notice is given pursuant to the provisions of this section, the failure of any member to receive actual notice of the meeting shall in no way invalidate the meeting or any proceedings thereat.

Section 4. Waiver of Notice. The presence of all the members, in person or by proxy, at any meeting shall render the same a valid meeting, unless any member shall, at the opening of such meeting, object to the holding of the same for noncompliance with the provisions of Section 3 of this Article II. Any meeting so held without objection shall, notwithstanding the fact that no notice of meeting was given, or that the notice given was improper, be valid for all purposes, and at such meeting any general business may be transacted and any action may be taken.

Section 5. Quorum. A quorum for the transaction for the transaction of business at a meeting of members of the Association through presence in person or by proxy shall be established at a percentage of not less than 25% and not more than 66 2/3% of

the total voting power of the Association.

In the absence of a quorum at a members' meeting, a majority of those present in person or by proxy may adjourn the meeting to another time, but may not transact any other business. An adjournment for lack of a quorum by those in attendance shall be to a date not less than five days and not more than 30 days from the original meeting date. The quorum for an adjourned meeting may be set by the governing instruments at a percentage less than that prescribed for the regular meeting, but it shall not be less than 25 percent of the total voting power of the Association. If a time and place of the adjourned meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for the adjourned meeting after adjournment, notice of the time and place of the adjourned meeting shall be given to members in the manner prescribed for regular meetings.

Section 6. Voting Rights. The Association shall have two (2) classes of voting membership:

Class A. Class A members shall be all Owners, with the exception of Declarant, and shall be entitled to one (1) vote for each lot owned by such Owner on all matters properly submitted for vote to the members of the Association.

Class B. The Class B members shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. Class B membership shall cease and shall be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) when total votes outstanding in Class A membership equal the total votes outstanding in the Class B

membership; or

(b) on the second anniversary of the original issuance of a Subdivision Public Report by the California Department of Real Estate. Every member entitled to vote at any election of the members of the Board may cumulate his votes and given any one or more candidates a number of votes equal to the number to which such member is entitled for each Lot multiplied by the number of governors to be elected. The right to vote may not be severed or separated from any Lot, and any sale, transfer or conveyance of any Lot to a new Owner, including foreclosure sale, shall operate to transfer the appurtenant vote without the requirement of any express reference thereto.

Any member entitled to vote may attend and vote at meetings in person, or by proxy holder duly appointed by a written proxy shall be for a term not to exceed eleven (11) months unless otherwise expressly provided therein and may be revoked at any time by written notice to the Secretary. It shall be deemed revoked when the Secretary shall receive actual notice of the death or judicially declared incompetence of such member or upon termination of such member's status by transfer or conveyance of any Lot to a new Owner. All votes cast in the election of the Board of Governors shall be by secret written ballot.

Any action by the Association which must have the approval of the Association membership before being taken shall expressly require the vote or written assent of the majority of the votes of each class of membership during the time when there are two

(2) classes of membership. Where the vote or written assent of each class of membership is made a prerequisite to the initiation of action by the Association, any requirement that the vote of Declarant be excluded is not applicable.

Section 7. Adjournment. Any meeting of the Association may be adjourned from time to time to such place and time as may be determined by majority vote of the members present, whether a quorum be present or not, without notice other than the announcement at the meeting. At any adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted by a quorum at the meeting as originally called.

### Article III. Board of Directors

Section 1. Number and Qualification. The affairs of the Association shall be governed by a Board of Directors initially composed of five persons, and as increased or decreased at any annual meeting by a majority vote, subject to the provision regarding the intent and purpose expressed in Section 5 of this Article, and all such directors shall be owners of lots in EVERGREEN ESTATES.

Section 2. Powers and Duties. The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the Association and may do all such acts and things as are not by law or by these Rules directed to be exercised and done by the owners.

Section 3. Other Duties. In addition to duties imposed by

these Rules; or by approval of the Association, the Board of Directors shall be responsible for the following:

- (a) Care, upkeep and surveillance of the common areas and facilities and Recreational Vehicle Area;
- (b) Collection of monthly assessments from the owners;
- (c) Designation and dismissal of the personnel necessary for the maintenance and operation of the common grounds and facilities and Recreational Vehicle area.

Section 4. Governing Body Powers and Limitations, Manager or Management Agent, Employees, Generally.

(a) The powers and duties of the governing body of the Association shall include, but shall not be limited to, the following.

(1) Enforcement of applicable provisions of the CC&R's, Articles, Bylaws and other instruments for the ownership, management and control of the subdivision.

(2) Payment of taxes and assessments which are, or could become, a lien on the common area or a portion thereof.

(3) Contracting for casualty, liability and other insurance on behalf of the Association.

(4) Contracting for goods and/or services for the common areas, facilities and interests or for the Association subject to the limitations set forth below.

(5) Delegation of its powers to committees, officers or employees of the Association as expressly authorized by the

governing instruments.

(6) Preparation of budgets and financial statements for the Association as prescribed in the governing instruments.

(7) Formulation of rules of operation of the common areas and facilities owned or controlled by the Association.

(8) Initiation and execution of disciplinary proceedings against members of the Association for violations of provisions of the governing instruments in accordance with procedures set forth in the governing instruments.

(9) Entering upon any privately-owned subdivision interest as necessary in connection with construction, maintenance or emergency repair for the benefit of the common area or the owners in common.

(10) Election of officers of the governing body.

(11) Filling of vacancies on the governing body except for a vacancy created by the removal of a governing body member.

(b) The governing body of the Association shall be prohibited from taking any of the following actions, except with the vote or written assent of a majority of the voting power of the Association residing in members other than the subdivider:

(1) Entering into a contract with a third person wherein the third person will furnish goods or services for the common area or the owners' Association for a term longer than one year with the following exceptions:

(A) A management contract, the terms of which



have been approved by the Federal Housing Administration or Veterans Administration.

(B) A contract with a public utility company if the rates charged for the materials or services are regulated by the Public Utilities Commission provided, however, that the term of the contract shall not exceed the shortest term for which the supplier will contract at the regulated rate.

(C) Prepaid casualty and/or liability insurance policies of not to exceed three years duration provided that the policy permits short rate cancellation by the insured.

(2) Incurring aggregate expenditures for capital improvements to the common area in any fiscal year in excess of 5% of the budgeted gross expenses of the Association for that fiscal year.

(3) Selling during any fiscal year property of the Association having an aggregate fair market value greater than 5% of the budgeted gross expenses of the Association for that fiscal year.

(4) Paying compensation to members of the governing body or to officers of the Association for services performed in the conduct of the Association's business provided, however, that the governing body may cause a member or officer to be reimbursed for expenses incurred in carrying on the business of the Association.

(5) Filling of a vacancy on the governing body created

by the removal of a governing body member.

(c) The Board of Directors may employ for the Association a management agent or manager, at a compensation established by the Board to perform such duties and services as the Board shall authorize including, but not limited to, the duties listed in Section 3 of this Article. The duties conferred upon the management agent or manager by the Board of Directors may be at any moment revoked, modified, or amplified by the majority of owners in a duly constituted meeting. The Board of Directors may employ any other employee or agents to perform such duties and at such salaries as the Board of Directors may establish. However, no personal service contract shall extend for more than one year in duration without approval (vote) of a majority of the Association members.

Section 5. Election and Term of Office. The directors shall be elected by a majority of the owners. At the first annual meeting of the Association, which shall be held no later than 180 days from and after the sale of the first lot in EVERGREEN ESTATES TRACT NO. 731, the term of office of three (3) directors shall be fixed for two (2) years and the term of office of two (2) directors shall be fixed at one year. At the expiration of the initial term of office of each representative director, his successor shall be elected to serve a term of two (2) years. The directors shall hold office until their successors have been elected and hold their first meeting, the intent and purpose being that the term of office of at least one-third of the directors shall expire annually. Each member of the Association

shall be entitled to one vote for each lot owned of record and as defined in Section 6, Article II, of these Rules.

Section 6. Vacancies. Vacancies in the Board of Directors caused by any reason other than the removal of a Director by a vote of the Association shall be filled by vote of the majority of the remaining directors constituting a quorum; and, each person so elected shall be a director until a successor is elected at the next annual meeting.

Section 7. Removal of Directors. At any regular meeting or special meeting duly called, any one or more of the directors may be removed with or without cause by a majority of the owners, and a successor may then and there be elected to fill the vacancy thus created. Any director whose removal has been proposed by the owners shall be given an opportunity to be heard at the meeting.

Section 8. Compensation. No compensation shall be paid to directors for their services as directors. No remuneration shall be paid to a director for services performed by him for the Association in any other capacity, unless a vote of approval authorizing such remuneration shall have been unanimously adopted by the Board of Directors before the services are undertaken. A director may not be an employee of the Association.

Section 9. Organization meeting. The first meeting of a newly elected Board of Directors shall be held within one week of election at such place as shall be fixed by the directors at the meeting at which such directors were elected, and no notice shall be necessary to the newly elected directors in order legally to constitute a meeting, providing a majority of the whole

Board shall be present.

Section 10. Regular meetings. Regular meetings of the Board of Directors shall be held quarterly, or more frequently and at such time and place as shall be determined, from time to time, by a majority of the directors. Notice of regular meetings of the Board of Directors shall be given to each director, personally or by mail, addressed to his residence, at least four (4) days prior to the day named for such meeting. Notice of the meeting shall also be posted in conspicuous places within the common area not less than seven days prior to the meeting.

Section 11. Special meetings. Special meetings of the Board of Directors may be called by the President on three days' written notice to each director, given personally or by mail, addressed to his residence, which notice shall state the time, place (as hereinabove provided), and purpose of the meeting. Special meetings of the Board of Directors shall be called by the President or Secretary in like manner and on like notice on the written request of at least two (2) directors other than the President. Notice of said special meetings shall be posted at conspicuous places in the common area at least two (2) days prior to said meeting.

Regular and special meetings of the governing body shall be open to all members of the Association provided, however, that Association members who are not on the governing body may not participate in any deliberation or discussion unless expressly so authorized by the vote of a majority of a quorum of the governing body.

The governing body may, with the approval of a majority of a quorum of its members, adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Association is or may become involved and orders of business of a similar nature. The nature of any and all business to be considered in executive session shall first be announced in open session.

Section 12. Waiver of Notice. Before or at any meeting of the Board of Directors, any director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a director at any meeting of the Board shall be a waiver of notice by him of the time and place thereof. If all the directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

Section 13. Board of Directors' Quorum. At all meetings of the Board of Directors, a majority of the directors shall constitute a quorum for the transaction of business, and the acts of the majority of the directors present at a meeting at which a quorum is present shall be the acts of the Board of Directors. If, at any meeting of the Board of Directors, there be less than a quorum present, the majority of those present may adjourn the meeting from time to time. At any such adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

Section 14. Bonds of Officers and Employees. The Board of Directors may require that all officers and employees of the Association handling or responsible for Association funds shall furnish adequate bonds. The premiums on such bonds shall be paid by the Association.

#### Article IV. Officers

Section 1. Designation. The principal officers of the Association shall be a President, a Vice-President, a Secretary, and a Treasurer, all of whom shall be elected by and from the Board of Directors. The directors may appoint such other officers as in their judgment may be necessary.

Section 2. Election of Officers. The officers of the Association shall be elected annually by the Board of Directors at the organization meeting of each new Board and shall hold office at the pleasure of the Board.

Section 3. Removal of Officers. Upon an affirmative vote of a majority of the members of the Board of Directors, any officer may be removed, either with or without cause, and his successor elected at any regular meeting of the Board of Directors, or at any special meeting of the Board of Directors called for such purpose.

Section 4. President. The President shall be the chief executive officer of the Association. He shall preside at all meetings of the Association and of the Board of Directors. He shall have all of the general powers and duties which are usually vested in the office of the president of an association,

including but not limited to the power to appoint committees from among the owners from time to time as he may in his discretion decide is appropriate to assist in the conduct of the affairs of the Association.

Section 5. Vice-President. The Vice-President shall take the place of the President and perform his duties whenever the President shall be absent or unable to act. If neither the President nor the Vice-President is able to act, the Board of Directors shall appoint some other member of the Board to do so on an interim basis. The Vice-President shall also perform such other duties as shall from time to time be imposed upon him by the Board of Directors.

Section 6. Treasurer. The Treasurer shall have the responsibility for Association funds and securities and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association. He shall be responsible for the deposit of all monies and other valuable effects in the name, and to the credit, of the Association in such depositories as may from time to time be designated by the Board of Directors.

Section 7. Secretary. The Secretary shall attend and keep the minutes of all meetings of the Board of Directors or of the Association; shall give all notices as provided by these By-Laws, and shall have other powers and duties as may be incidental to the office of the Secretary, given him by these rules or assigned to him from time to time by the directors. If the secretary shall not be present at any meeting, the presiding officer shall appoint

a secretary pro tempore who shall keep the minutes of such meeting and record the time in the books provided for that purpose.

Section 8. Auditor. The Association may at any meeting appoint some person, firm, or corporation engaged in the business of auditing to act as auditor of the Association and to perform such audits and fiscal duties as may be requested of him by the Association.

#### Article V. Obligations of the Owners

Section 1. Expenses, Assessments. Every owner of a lot in said tract shall contribute pro rata toward the expense of administration of said Association, including but not limited to all types of insurance, the costs of operation, maintenance, repair and replacement of common structures and improvements thereof, according to his percentage interests appurtenant to each lot. The Association shall fix a monthly charge for each lot in an amount sufficient to provide for its pro rata share of all such current expenses, reasonable reserves for future expenses of administration, and such other expenses as the Association may deem proper, subject to adjustment from time to time as the Association may deem necessary, and subject to those conditions hereinafter provided. Such monthly charge shall be due and payable to advance on the first day of every month.

Section 2. Use of Common Areas. Common areas and Recreational Vehicle area shall be utilized in accordance with the provisions



of the Association Ground Rules and Regulations, as promulgated.

Section 3. Association Ground Rules. In order to assure the peaceful and orderly use and enjoyment of the common areas and the Recreational Vehicle area, the Association may from time to time adopt, modify and revoke in whole or in part by a vote of the members present in person or represented by proxy, whose aggregate interest in the common elements constitutes 70 percent, at any meeting duly called for the purpose, such reasonable rules and regulations, to be called Association Ground Rules, governing the use of common areas and the Recreational Vehicle area and the conduct of persons upon said common areas as it may deem necessary. Such rules upon adoption, and every amendment, modification, and revocation thereof, shall be delivered promptly to each owner and shall be binding upon all members of the Association.

#### Article VI. Annual Assessments

Section 1. Purpose of Annual Assessments. The annual assessments levied by the Association shall be used exclusively for the improvements and maintenance of the common area and commonly owned facilities of EVERGREEN ESTATES. As herein provided, said annual assessments shall include and the Association shall acquire and pay for out of the funds derived from said annual assessments the following:

- a. Water, sewer, garbage, electrical, lighting, and gas, and other necessary utility service for the common area;

- b. Painting, maintenance, repair, replacement and expansion as needed of storm drains, sanitary sewers, water lines and services, landscaping, and parking spaces and other elements located in the common area;
- c. Fire insurance covering the full insurable replacement value of the improvements to the common area with extended coverage of amounts to be determined by the Board of Directors;
- d. Liability insurance insuring the Association against any liability to the public or to any owner, their invitees or tenants incident to their occupation and/or use of the common area and the lots in a combined personal injury and property damage coverage of liability not less than \$1,000,000.00 for each occurrence (such limits and coverage to be reviewed at least annually by the Association and increased or decreased at its discretion);
- e. Workmen's Compensation Insurance to the extent necessary to comply with any applicable laws, and any other insurance deemed necessary by the Board of Directors of the Association;
- f. Standard fidelity bond covering all members of the Board of Directors of the Association in the minimum sum of \$10,000.00 or in such greater amounts as the Board of Directors may determine from time to time;
- g. Personnel employed in connection with common area facilities as necessary or proper for the use thereof.

The Association shall have the exclusive right and duty to employ the same;

- h. Any other materials, supplies, furniture, labor, services maintenance, repairs, structural alterations, insurance, but not to include hazard insurance for the lots or improvements thereon, taxes or assessments which the Association is required to secure or pay for pursuant to the terms of these restrictions or by law or which in the opinion of the Association's Board of Directors shall be necessary or proper for the operation of the common area, or for the benefit of the lot owners, or for the enforcement of these restrictions.

Section 2. Maximum Annual Assessment. The Board of Directors of the Association will fix the annual assessment in an amount sufficient to cover the required minimum expenses for owning, operating and maintaining the common areas and the Recreational Vehicle area and once the initial annual assessment is fixed for the first year of operation, that any increase thereafter in excess of 20 percent above the regular assessment for the immediate preceding fiscal year shall require the vote or written consent of the 51 percent of the voting power of the Association residing in members other than the subdivider.

Section 3. Special Assessments. In any fiscal year, the governing body of the Association may not, without the vote or written assent of a majority of the voting power of the Association residing in members other than the subdivider, levy special

assessments to defray the costs of any action or undertaking on behalf of the Association which in the aggregate exceed 5% of the budgeted gross expenses of the Association for that fiscal year.

Except as provided herein, every special assessment shall be levied upon the same basis as that prescribed for the levying of regular assessments.

The provisions hereof with respect to special assessments do not apply in the case where the special assessment against a member is a remedy utilized by the governing body to reimburse the Association for costs incurred in bringing the member and his subdivision interest into compliance with provisions of the governing instruments for the subdivision.

Section 4. Notice and Quorum for Any Action Authorized

Under Sections 2 and 3. Written notice of any meeting called for the purpose of taking any action by the members authorized under Sections 2 and 3 shall be sent by regular United States mail, or personally delivered to all members not less than 15 days, nor more than 40 days in advance of the meeting; such notice to be sent to the address of owner's lot or such other address designated in writing by said owner. If the proposed action is favored by a majority of the votes cast at such meeting, but such vote is less than the requisite percentage of members, members who were not present in person or by proxy may make their vote in writing, provided the same is obtained by the appropriate officers of the Association not later than 15 days from the date of such meeting.

Section 5. Uniform Rate of Assessment. Both annual and special assessments must be fixed at uniform rate for all lots and may be collected on a monthly basis..

Section 6. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to all lots on the first day of the month following the date of the first lot sale by the declarant. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment period. Written notice of the annual assessment shall be sent to every owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified lot have been paid.

Section 7. Effect of Nonpayment of Assessments; Remedies of the Association. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of twelve percent (12%) per annum. In the event of a default or defaults in payment of any assessment and in addition to any other remedies herein or by law provided, the Association may enforce each such obligation as follows:

- a. The Association may submit the matter for arbitration or it may commence a suit or suits at law to enforce each assessment obligation. Any decision arising

out of arbitration or any judgment rendered in such action shall include, where permissible under any law, a sum for reasonable attorney's fees in such amount that the court may adjudge against such defaulting owner. Upon full satisfaction of any such award by arbitration or any judgment, it shall be the duty of the Association by any authorized officer thereof to execute and deliver to the judgment debtor an appropriate satisfaction thereof.

- b. At any time within ninety (90) days after the delinquency of any assessment, the Association may give a notice to the defaulting owner, which said notice shall state the date of the delinquency, and make a demand for payment thereof. If such delinquency and interest is not paid within ten (10) days after delivery of such notice, the Association may elect to file a claim of lien against the loss of such delinquent owner. Such claim of lien shall state (1) the name of the delinquent owner or reputed owner, (2) a description of the lot against which claim of lien is made, (3) the amount claimed to be due and owing (with any proper offset allowed), (4) that the claim of lien is made by the Association pursuant to the terms of these restrictions (giving the date of execution and the date, book and page reference of the recording thereof in the office of the

Recorder of the County of Santa Cruz), and (5) that a lien is claimed against said described lot in an amount equal to the amount of the stated delinquency plus interest. Any such claim of lien shall be signed and acknowledged by an authorized officer of the Association. Upon recordation of a duly executed original or copy of such claim of lien by the Recorder of the County of Santa Cruz, the lien claimed therein shall immediately attach and become effective subject only to limitations hereinafter set forth. Each delinquency shall constitute a separate basis for a claim of lien or a lien. Any such lien may be foreclosed by appropriate action in court or in the manner provided by law for the foreclosure of a mortgage under power of sale. In the event such foreclosure is by action in court, reasonable attorney's fees shall be allowed to the extent permitted by law. In the event the foreclosure is as in the case of a mortgage under power of sale, any authorized officer of the Association conducting said sale shall be entitled to actual expenses and such fees as may be allowed by law or as may be prevailing at the time the sale is conducted. A certificate of sale shall be executed and acknowledged by any authorized officer of the Association or by the person conducting the sale. A deed upon foreclosure shall be executed

in like manner.

- c. The Association shall, once a year, record a list of delinquent assessments as of December 31st of the preceeding eyar. No owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the common area or abandonment of his lot.

#### Article VII. Insurance

Section 1. Fire and Extended Coverage. The Board on behalf of the Association, at its expense, shall at all times keep all common area improvements insured against loss or damage by fire with extended coverage in an insurance company authorized to do business in the State of California, in an amount as near as practicable to the full replacement value thereof without deduction for depreciation, in the name of the Association and payable in case of loss to such bank or trust company authorized to do business as the Board shall designate for the custody and disposition as herein provided of all proceeds of such insurance. In every case of such loss or damage, all insurance proceeds shall be used as soon as reasonably possible by the Association for rebuilding, repairing, or otherwise reinstating the same improvements in a good and substantial manner according to the original plan and elevation thereof or such modified plans conforming to laws and ordinances then in effect as shall be first approved by the Association, and the Association at its common expense shall make up any deficiency in such insurance



proceeds by a special assessment levied as provided in Article VI, Section 3. Every such policy of insurance shall:

(1) Provide that the liability of the insurer thereunder shall not be affected by, and that the insurer shall not claim any right of set-off, counterclaim, apportionment, proration, contribution by reason of any other insurance obtained by or for any lot owner;

(2) Contain no provision relieving the insurer from liability for loss occurring while the hazard to such building is increased, whether or not within the knowledge or control of the Board, or because of any breach of warranty or condition or any other act or neglect by the Board or any owner or any other person under either of them;

(3) Provide that such policy may not be cancelled (whether or not requested by the Board) except by the insurer giving at least thirty days' prior written notice thereof to the Board and every other person in interest who shall have requested such notice of the insurer;

(4) Contain a waiver by the insurer of any right of subrogation to any right of the Board or owners against any of them or any other person under them;

(5) Contain a standard mortgage clause which shall (a) provide that any preference to a mortgagee in such policy shall mean and include all holders of mortgages upon improvements within the common area, in their respective order and preference, whether or not named therein;

(b) provide that such insurance as to the interest of any mortgagee shall not be invalidated by any act or neglect of the Board or owners or any persons under any of them; (c) provide that without affecting any protection afforded by such mortgage clause, any proceeds payable under such policy shall be payable to said bank or trust company designated by the Board.

Section 2. Liability Insurance. The Board, on behalf of the Association, at its common expense, shall also effect and maintain at all times comprehensive general liability insurance covering the Association and its members with respect to the common areas, in a responsible insurance company with minimum limits of not less than one million dollars total coverage for personal injuries to individuals or to more than one person in any accident or occurrence, including property damage.

#### Article VIII. General Provisions

##### Section 1. Suspension of Voting Rights and Use of Facilities.

In the event any lot owner shall remain delinquent in payment of assessments for a period in excess of 90 days, the Board of Directors shall have the right to suspend all voting rights and the rights of said delinquent lot owner and said lot owner's family to use of the common areas until such time as assessments are brought current. In the event any lot owner shall continue to commit an infraction of published rules and regulations of the Association after first being given a written notice by the Board of such infraction, the Board may suspend said lot owner's

voting rights and rights to use the common areas for a period not to exceed 90 days. However, said penalty shall not be imposed until said lot owner shall first have the opportunity for an informal hearing before the Board.

There can be no purported power in the Association to cause a forfeiture or abridgement of an owner's rights to the full use and enjoyment of his individually owned subdivision interest on account of a failure by the owner to comply with provisions of the governing instruments or of duly-enacted rules of operation for common areas and facilities except where the loss or forfeiture is the result of the judgment of a court or a decision arising out of arbitration or on account of a foreclosure or sale under a power of sale for failure of the owner to pay assessments levied by the Association.

Section 2. Dedication of common areas or portions thereof.

The Association shall have the right to cause rezoning, dedication or transfer of all or any portion of the common areas to any public agency, public authority or utility for such purposes as shall be agreed upon by all of the membership; similarly, the Association may dedicate or transfer all or any portion of the common areas to any tax-exempt nonprofit organization so long as said dedication or transfer is likewise approved by all of the membership, provided, however, the Association shall, upon written request of the Santa Cruz County Board of Supervisors, convey to the County of Santa Cruz, a political subdivision of the State of California, title to that certain area within EVERGREEN ESTATES TRACT NO. 731 Subdivision shown upon the subdivision map as a

park area, to be used by the County of Santa Cruz, as a public park. There shall be no charge to the County of Santa Cruz for such conveyance, however, from and after the date of any such conveyance the maintenance of said park area shall be the responsibility of the County of Santa Cruz, California, and not the responsibility of the Association.

Section 3. Delegation of Membership Privileges. Any lot owner shall have the right to include his immediate family as members for the purpose of using and enjoying the common area facilities. "Immediate family" shall include children having their principal resident in EVERGREEN ESTATES, but who may be attending school elsewhere.

Section 4. Easements. The Association shall maintain any and all easements where required, whether by operation of law or of record appurtenant to the common areas, and shall allow no structures to be placed thereon which may interfere with said easements.

Section 5. Entry on private lots. The Association, through its designated agents, shall have the right, where necessary, to enter upon any privately owned lot in connection with any construction, maintenance or repair for the benefit of the common areas and improvements situate thereon. The Association shall be responsible for any damage done to any private lot.

Section 6. Budgets and Financial Statements. Financial statements for the Association shall be regularly prepared and copies shall be distributed to each member of the Association as follows:

(1) A pro forma operating statement (budget) for each fiscal year shall be distributed not less than sixty (60) days before the beginning of the fiscal year.

(2) A balance sheet -- as of an accounting date which is the last day of the month closest in time to six (6) months from the date of closing of the first sale of an interest in the subdivision, and an operating statement for the period from the date of the first closing to the said accounting date, shall be distributed within sixty (60) days after the accounting date. This operating statement shall include a schedule of assessments received and receivable identified by the number of the subdivision interest and the name of the entity assessed.

(3) An annual report consisting of the following shall be distributed within 120 days after the close of the fiscal year.

(a) A balance sheet as of the end of the fiscal year.

(b) An operating (income) statement for the fiscal year.

(c) A statement of changes in financial position for the fiscal year.

(d) Any information required to be reported under Section 8322 of the Corporations Code.

(4) Incurring aggregate expenditures for capital improvements to the common area in any fiscal year in excess of 5% of the budgeted gross expenses of the Association for that

fiscal year.

(5) The membership register, books of account and minutes of meetings of the members, of the governing body and of committees of the governing body of the Association shall be made available for inspection and copying by any member of the Association or by his duly appointed representative at any reasonable time and for a purpose reasonably related to his interest as a member, at the office of the Association or at such other place within subdivision as the governing body shall prescribe. The governing body shall establish reasonable rules with respect to:

(a) Notice to be given to the custodian of the records by the member desiring to make the inspection.

(b) Hours and days of the week when such an inspection may be made.

(c) Payment of the cost of reproducing copies of the documents requested by a member.

Every director shall have the absolute right at any reasonable time to inspect all books, records and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make extracts and copies of documents.

#### Article IX. Execution of Instruments

Section 1. Instruments Generally. All checks, drafts, notes, bonds, acceptances, contracts, and all other instruments

except conveniences shall be signed by such person or persons as shall be provided by general resolution applicable thereto. Such instruments shall be signed by the President or the Vice-President and by the Treasurer or Secretary.

#### Article X. Liability of Officers

Section 1. Exculpation. No director or officer of the Association shall be liable for acts or defaults of any other officer or member or for any loss sustained by the Association or any member thereof, unless the same has resulted from his own willful misconduct or negligence.

Section 2. Indemnification. Every director, officer, and member of the Association shall be indemnified by the Association against all reasonable costs, expenses, and liabilities (including counsel fees) actually and necessarily incurred by or imposed upon him in connection with any claim, action, suit proceeding, investigation or inquiry of whatever nature in which he may be involved as a party or otherwise by reason of his having been an officer or member of the Association, whether or not he continues to be such director, officer or member of the Association at the time of incurring or imposition of such costs, expenses, or liabilities, except in relation to matters as to which he shall be adjudged in such action, suit, proceeding, investigation or inquiry to be liable for willful misconduct or negligence toward the Association in the performance of his duties, or in the absence of such final adjudication, any determination of such liability by the opinion of legal counsel selected by the Association. The foregoing right of indemnification

shall be in addition to and not in limitation of all rights to which such persons may be entitled as a matter of law and shall inure to the benefit of the legal representatives of such persons.

#### Article XI. Fiscal Year

Section 1. Fiscal Year. The fiscal year of the Association shall be such as may from time to time be established by the Association.

#### Article XII. Amendment

Section 1. Amendment. (a) These By-Laws and Regulations may be amended, from time to time, by vote of not less than a majority of the voting power of the Association and at least a majority of the votes of members other than the subdivider at a meeting duly called for the purpose. (b) If a two-class voting structure was originally provided in the governing instruments, none of the governing instruments may be amended without the vote or written assent of a prescribed percentage of the voting power of each class of membership or a prescribed percentage of a quorum of members of each class. PROVIDED, HOWEVER, that the contents of these By-Laws and Regulations shall always contain those particulars which are required to be contained herein by the Declaration of Restrictions. All members shall receive written copies of any amendments by mail as soon thereafter as can be practically accomplished.

Section 2. Conflict. In the event of any conflict between these By-Laws and the Declaration of Restrictions, duly made or



record and binding upon all lot owners, the latter shall govern and apply.

Section 3. Original Adoption of Rules. These rules may be originally adopted by a majority (51%) vote of those members present at the first meeting held for this Association.

KNOW ALL MEN BY THESE PRESENTS:

That we, the undersigned, being all of the persons appointed to act as the first Board of Directors of EVERGREEN ESTATES PROPERTY OWNERS' ASSOCIATION hereby assent to the foregoing Rules, and adopt the same as the governing rules and regulations for EVERGREEN ESTATES PROPERTY OWNERS' ASSOCIATION.

IN WITNESS WHEREOF, we have hereunto set our hands this 9th day of December, 1980.

[Handwritten Signature]  
[Handwritten Signature]  
[Handwritten Signature]

DIRECTORS

THIS IS TO CERTIFY:

That I am the duly elected, qualified and acting Secretary of EVERGREEN ESTATES PROPERTY OWNERS' ASSOCIATION and the above and foregoing Rules were adopted on the 9th day of December, 1980, by the persons appointed

to act as the first directors of this Association.

IN WITNESS WHEREOF, I have hereunto set my hand this  
9th day of December, 1980.

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SECRETARY