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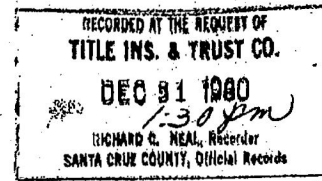
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Lloyd Manson
111 Centennial
Santa Cruz, CA 95060

(134644-CM)

APN No. 102-401-1 through 45, inclusive



DECLARATION OF RESTRICTIONS

EVERGREEN ESTATES, TRACT NO. 731

THIS DECLARATION made and dated this 9th day of
December, 1980 by EVERGREEN ESTATES LIMITED PARTNERSHIP, a Limited
Partnership, LLOYD MANSON, JUDY MANSON, ROBIN HILLIARD and LAUREN G. HILLIARD,
WITNESSETH:

WHEREAS the declarant is the owner of that certain
real property situate in the County of Santa Cruz, State of
California, and as shown upon that certain map entitled, "Ever-
green Estates, Tract No. 731," which map was filed for record
in the Office of the County Recorder of Santa Cruz County,
State of California, on the 19th day of December, 1979 in Book
68 of Maps, Page 29, (hereinafter referred to as "the map")
and to which said map and the said record thereof reference is
hereby made, and

WHEREAS, it is declarant's intention of subjecting
said real property to certain covenants, conditions and re-
strictions and of developing said real property pursuant to a
general plan and scheme in order to carry out a uniform plan of
development. Declaration desires and intends to subdivide the
hereinbefore described real property by means of deeds similar
in form to the one attached hereto, marked Exhibit "A" (here-
inafter called "the Deed") and to impose thereon mutually bene-
ficial restrictions under a general plan or scheme of improve-
ment for the benefit of all such lots, the structures thereon
and the future owners there.

NOW, THEREFORE, it is declared that all of the real
property hereinbefore described is held and shall be held,
conveyed, hypothecated, encumbered, leased, rented, used, oc-
cupied and improved subject to and restricted for the benefit of

all said real property to the covenants, conditions, restrictions and easements hereinafter set forth which are made for the purpose of enhancing and protecting the value, attractiveness and desirability of all of the lands within said subdivision and which said covenants, conditions, restrictions and easements shall constitute mutual equitable servitudes and rights which shall run with said real property for the benefit of all of said real property hereinbefore described and shall be binding upon and inure to the benefit of all parties having any right, title or interest in and to the said real property hereinbefore described, or any part thereof, including, their heirs, successors, assigns, executors and personal representatives.

1. DEFINITIONS:

A. "Association" shall mean and refer to EVERGREEN ESTATES PROPERTY OWNERS ASSOCIATION, an unincorporated association, its successors and assigns. The Association may hereafter be incorporated as a California Non-Profit Corporation for the purpose of facilitating the legal means and purposes for which the Association is formed.

B. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, owning title in fee simple to any lot as shown on the recorded map of said EVERGREEN ESTATES TRACT NO. 731 and shall include owners of equitable title to any lot evidenced by recorded agreement or contract of sale for said lot wherein said equitable owner is in possession of said lot. "Owner" shall not include persons having security interests against any lot held for the purpose of securing performance of an obligation to pay money.

C. "Properties" shall mean and refer to that certain real property hereinbefore described and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

D. "Common Area" shall mean all real property owned

by the Association for the common use and enjoyment of the Owners. The common area to be owned by the Association at the time of the conveyance of the first lot is described as follows: Parcel Nos. 1, A and B as shown upon the said subdivision map of EVERGREEN ESTATES TRACT NO. 731.

E. "Lot" shall mean and refer to any plot, or corresponding numbered plots of land shown on any recorded subdivision map of the properties with the exception of the common area.

F. "Committee" shall mean and refer to the EVERGREEN ESTATES Architecture and Use Control Committee.

G. "Mortgage" shall mean and include a Deed of Trust as well as a mortgage in the conventional sense.

H. "Mortgagee" shall mean and include a beneficiary owner or holder of a Deed of Trust as well as a Mortgage.

I. "Member" shall mean and refer to every person or entity who holds membership in the Association.

J. "Recreational Vehicle Area" shall mean Parcel 1 as shown upon subdivision map of EVERGREEN ESTATES TRACT NO. 731 and which shall be used for the parking and storage of recreational vehicles.

K. "Recreational Vehicle" shall mean any camper, trailer, camper-trailer, travel trailer, truck-camper, motor home, mini-motor home, van with sleeping facilities herein, or boat or other vehicle of any kind or character with or without motive power designed primarily for recreational use.

2. ARCHITECTURE AND USE CONTROL COMMITTEE:

All plans for residences, private accessory structures, and open space vegetation removal, changes in the natural land form, open space structures and facilities and use within EVERGREEN ESTATES TRACT NO. 731 shall be submitted for review and approval, by a majority vote, to the EVERGREEN ESTATES ARCHITECTURAL AND USE CONTROL COMMITTEE. The Committee approval

or disapproval shall be in writing and any disapproval shall specify the reasons therefor. In the event that the Committee fails to approve or disapprove within 30 days after appropriate plans and specifications have been submitted to it, approval will be deemed given and compliance with the terms of this paragraph shall be conclusively presumed.

Said Committee shall consist of not less than three and no more than five members. The Declarant may appoint all the original members of the Committee and all replacements until the first anniversary of the issuance of a public report for the subdivision. The Declarant reserves to itself the power to appoint a majority of the members of the Committee until Ninety percent (90%) of all the lots within the subdivision have had residential dwellings constructed thereon or until the fifth anniversary of the issuance of the final public report for the subdivision, whichever first occurs.

After one year from the date of the sale of the first subdivision lot, the Board of Directors of the Association shall have the power to appoint one member to the Architecture and Use Control Committee until Ninety percent (90%) of all the residential lots within the subdivision have had residential dwellings constructed thereon or until the fifth anniversary date of the issuance of the final public report for the subdivision, whichever first occurs. Thereafter the Board of Directors of the Association will have the power to appoint all of the members of the Architecture and Use Control Committee.

Members appointed to the Architecture and Use Control Committee by the Board shall be from the membership of the Association. Members appointed to the Committee by Declarant need not be members of the Association.

3. USE OF LOTS AND THE COMMON AREA:

The lots and the common area shall be occupied and used as follows:

A. Each lot shall be used for the construction therein of a single family dwelling and for no other purpose and no commercial public business or enterprise shall be carried on in any of the dwelling units. Lots owned by Declarant or its nominees may be used as models and sales offices and constructions offices for the purpose of selling dwellings in the subdivision until all of the dwellings thereon constructed by Declarant have been sold;

B. There shall be no obstruction of the Common Area. No owner shall allow to be placed in the Common Area any furniture, packages, or objects of any kind except temporarily in connection with mail or freight deliveries or when residents are moving in or out of lots. The Common Area shall not be used for the storage of supplies, personal property, trash or refuse of any kind, nor shall the exterior of lots or other Common Area be used in any way for the drying, shaking or airing of clothing or other fabrics. Nothing shall be stored in the Common Area without prior consent of the Board of Directors of the EVERGREEN ESTATES PROPERTY OWNERS' ASSOCIATION.

C. Nothing shall be done nor kept in any residence or in the Common Area which will increase the rate of insurance without prior written consent of the Board of Directors of EVERGREEN ESTATES PROPERTY OWNERS' ASSOCIATION. No owner shall permit anything to be done or kept in his residence or in the Common Area which would result in the cancellation of insurance on any residence, or any part of the Common Area or which would be in violation of any law. No waste shall be committed in the Common Area;

D. No sign of any kind shall be displayed to the public view on any lot or on the Common Area, except customary name and address signs and a lawn sign of not more than four square feet in size advertising the property for sale or rent.

E. No owner shall install clotheslines, awnings, wiring for electrical or telephone installations, television

antennae, or cables, or other machines or devices, on the exterior of the buildings of the project or that protrude through the walls or the roof of the building, except as authorized by the Board of Directors of EVERGREEN ESTATES PROPERTY OWNERS ASSOCIATION.

F. No owner shall store any dangerous explosive or inflammable liquids in or on his lot or in the Common Area;

G. No animals, livestock, or poultry of any kind shall be raised, bred or kept in any lot or in any Common Area, except that one (1) dog and one (1) cat or other ordinary household pet may be kept provided that it is not kept, bred, or maintained for any commercial purpose and shall have such care and restraint so as not to be obnoxious or offensive on account of noise, odor or unsanitary conditions and provided the size of the pet is reasonable considering the size of the EVERGREEN ESTATES TRACT NO. 731 Subdivision and the proximity of the residences. Owners shall prevent their pet from running loose upon the Common Area. Owners shall prevent their pet from making excessive noise and from soiling walks, paths, patios, courtyards and all portions of the Common Area where other persons customarily walk. Each owner shall be financially responsible for any damage caused by his or her pet and in the event of a dispute as to the liability of an owner only a court of law shall have the jurisdiction to determine an owner's liability for any such alleged damages. All dogs shall be leashed while in the front yard area or on the Common Area.

H. No immoral, improper, unlawful, noxious, or offensive activity shall be carried on within any lot or in the Common Area nor shall anything be done therein which may be or become any annoyance or nuisance to the other owners;

I. No owner shall plant or place any landscaping of any kind or character in his front yard area or alter the grade of the land within his lot without having first submitted a landscaping and/or grading plan for approval by the Board of

Directors of EVERGREEN ESTATES PROPERTY OWNERS' ASSOCIATION or approval by the Architectural Control Committee and such approval shall be necessary before any planning and/or landscaping is done in the front yard area of any lot purchased by an owner. Front yard area is defined herein as all of the lot area within 20 feet of the front boundary line of each lot.

J. Each owner shall keep his garage area in a neat and orderly condition and shall keep the garage door closed except for entering or leaving. Garages shall not be used for storing or parking recreational vehicles or trucks if such use would prevent the owner from closing his garage door or from parking his passenger vehicles in the garage; such vehicles may be stored in the owner's garage only if it can be fully enclosed therein and the garage door can be completely closed and does not necessitate leaving passenger vehicles outside of the garage. For overnight parking, owner shall park his passenger vehicles in his garage. Except for loading and unloading, or as permitted by the Association, no vehicles of an owner shall be parked or stored on the streets or in driveways; provided, however, that the provisions of this paragraph shall not apply to vehicles while being used in the construction or repair of any of the improvements on the properties;

K. None of the rights and obligations of the owners created herein, or by the deed creating the lots, shall be altered in any way by encroachments due to the settlement or shifting of structures or any other cause. There shall be valid easements for the maintenance of said encroachments for as long as they shall exist; provided, however, that in no event shall a valid easement for encroachment be created in favor of an owner or owners if said encroachment occurred due to the willful conduct of said owner or owners;

L. Each owner, tenant or occupant of a residence shall comply with the provisions of these restrictions, the Articles

of Association and By-Laws of the Association, rules and regulations promulgated and adopted by the Association, decisions, rules, regulations or resolutions of the Association or its duly authorized representative, all as lawfully amended from time to time and failure to comply with any such provisions, decisions, rules, regulations or resolutions, these restrictions and/or Articles of Association and By-Laws of the Association shall be grounds for an action to recover sums due for damages, or for injunctive relief;

M. The administration of all property within the EVERGREEN ESTATES TRACT NO. 731 Subdivision shall be in accordance with these restrictions, the Articles of Association, the By-Laws of the Association and rules and regulations promulgated by the Association pursuant to the authority of its By-Laws. In the event of any inconsistency, the By-Laws of the Association shall prevail over the rules and regulations promulgated and/or adopted by the Association, the Articles of Association and By-Laws of the Association.

N. Regulations concerning the use of the Common Area within EVERGREEN ESTATES TRACT NO. 731 Subdivision shall be promulgated and adopted by the Board of Directors of EVERGREEN ESTATES Property Owners Association and such regulations shall be binding on all owners unless duly amended by a majority of the voting power of the Association;

O. An easement for pedestrian egress and ingress to and from each lot over the footpath located in the Southwesterly portion of Common Area is reserved for the non-exclusive use of each lot;

P. An easement for pedestrian ingress and egress to and from each lot or the sidewalks, paths and private streets in the Common Area is reserved for the non-exclusive use of each lot;

Q. Nothing shall be altered or constructed in or

removed from the Common Area without prior written consent of the Board of Directors of the Association.

R. Declarant reserves the exclusive right to design and construct residences on lots owned by Declarant within EVERGREEN ESTATES TRACT NO. 731 Subdivision, the landscaping, private paths, driveways, roads and all the amenities in the Common Area. The Association will not exercise its power in a manner which will impede Declarant's construction program. Declarant reserves the right to use unsold residences as sales models and to display "For Sale" signs on all unsold lots;

S. Nothing shall be done in or to any residence or in the Common Area which will impair the structural integrity of any residence and no exterior structural changes shall be made on any residential dwelling within the subdivision without prior written approval of Declarant or EVERGREEN ESTATES Property Owners Association. No garage shall be converted into a living area;

T. No business or practice of any profession shall be conducted on any residential lot which is not allowed by the Santa Cruz County Code and which has not been approved by the Association;

U. No rubbish, trash, garbage, or other waste material shall be kept or permitted upon any lot or Common Area except in sanitary containers located in appropriate areas screened and concealed from view;

V. Outside television antennae shall not be allowed. No mast, tower, pole, aerial, radio pole, or similar device shall be erected, constructed or maintained on any lot where it is visible from the street, common space or adjacent properties;

W. No residents shall operate outdoor loud speakers, machines, noise-producing devices or vehicles within the limits of EVERGREEN ESTATES TRACT NO. 731 Subdivision, which produces a

noise level sufficiently high to disturb and cause annoyance to the other residents of said subdivision. The maximum allowable noise produced under this limitation shall be 30 decibels measured at 100 feet from the noise source;

X. No owner or resident shall plant, fence, or in any way block or deny access to, any part of the open space, street right of way or a pedestrian-bicyclist's right of way which may be located on his property;

Y. No open fires shall be allowed on any lot or in the Common Area without the written consent of the Association;

Z. Firearms, pellet guns, or B-B guns shall not be discharged within the boundaries of EVERGREEN ESTATES TRACT NO. 731 Subdivision and no hunting, trapping, molesting or killing of any wildlife shall be allowed unless it is necessary to protect the health, safety, or general welfare of the property owners or general public.

(zz) All exterior painting on any structures shall be done with non-gloss materials and finishes and the color shall be compatible with the color of other structures in the subdivision and shall be subject to prior approval of the Architectural Control Committee. The Architectural Control Committee shall not unreasonably withhold approval.

4. PROPERTY RIGHTS:

A. The Association shall be the owner of all of the Common Area within EVERGREEN ESTATES TRACT NO. 731 and as said Common Area is shown upon the final map of said subdivision filed for record in the Office of the Santa Cruz County Recorder, Santa Cruz, California, and the Association shall also be the owner of the Recreational Vehicle Area shown upon said map. Said ownership shall be evidenced by a deed to the Common Area and Recreational Vehicle Area properties from the Declarant to the Association;

B. The Association shall have the right to impose upon all owners, assessments and charges for maintenance and

improvements of the Common Area and the Recreational Vehicle Area;

C. The Association shall have the right to charge reasonable fees for the storage and/or parking or recreational vehicles in the Recreational Vehicle Area and the Association shall establish rules and regulations and fee schedules for use of the Recreational Vehicle Area and which said rules and regulations shall limit the use of the Recreational Vehicle Area to Owners of lots within the Subdivision and the Association shall have sole discretion to determine priorities with respect to the use of the Recreational Vehicle Area;

D. The Association shall have the right to suspend the voting rights of any owner for any period for which any assessment against his lot remains unpaid; and for a period not to exceed thirty (30) days for any infraction of its published rules and regulations, after hearing by the Board of Directors of the Homeowners Association;

E. The Association shall have the right to rezone, dedicate or transfer all or any part of the common area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by the Association members representing two-thirds of the voting control, agreeing to such rezoning, dedication or transfer has been recorded, provided however, notwithstanding the provisions hereinabove set forth, 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 Parcel B , 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;

F. Every owner shall have the right to the use of the Common Area with compliance with rules and regulations for the use thereof promulgated and adopted by the Association.

5. EASEMENTS:

Domestic water supply service to each lot and the Common Area and Recreational Vehicle Area is provided by the Soquel Creek County Water District and sanitary sewer services are furnished to the lots and Common Area by Santa Cruz County Sanitation District. Public utility services are furnished to the subdivision and the lots and the Common Area therein by Pacific Gas & Electric Company, Pacific Telephone Company and it is contemplated that Telescription Services will be available to the properties within the subdivision and in order to insure and assure that said districts and said public utilities and any Telescription company providing telescription services to the properties within the subdivision shall have such easements across and in all lots and the Common Area and Recreational Vehicle Area within the subdivision as are reasonably required in order to install, maintain, operate and repair their respective services and facilities. For the provisions of fire and police protection, the Association shall keep all access ways, roadways, appurtenances thereto on the subdivided property in a state of good condition and repair, consistent with the standard of quality of said roadways and appurtenances upon original installation and all such repairs shall be made at the expense of the Association except to the extent that any of the access ways have been offered for dedication for public use and said offer of dedication has been duly accepted and by reason thereof said access ways or roadways become part of the Santa Cruz County road system, in which event responsibility for the repair and maintenance of

said access ways and roadways shall be the responsibility of the County of Santa Cruz, California.

Within any such easements, no structure, planting, or other materials shall be placed or be permitted to remain which may damage or interfere with the installation and maintenance of utilities or which may damage, interfere or change the direction of flow of drainage facilities in any easements. The easement area of each lot and improvements in it shall be maintained continuously by the owner of the lot, or if in a common area by the Association, except for those improvements for which a public authority or utility company is responsible.

No dwelling unit and/or other structure of any kind shall be built, erected or maintained upon any recorded easement, reservation, or right of way, and said easements, reservations and rights of way shall at all times be open and accessible to the public and quasi-public utility corporations and other person erecting, constructing, or servicing such utilities and quasi-utilities, and to Declarant, its successors or assigns, all of whom shall have the right to ingress and egress thereto and therefrom and the right and privilege of doing whatever may be necessary in, under, and upon said location for the carrying out of any of the purposes for which said easements, reservations, and rights of way shall, at all times, be open and accessible to the public and quasi-public utility corporations and other persons erecting, constructing, or servicing such utilities, and to Declarant its successors or assigns, all of whom shall have the right to ingress or egress thereto and therefrom and the right and privilege of doing whatever may be necessary in, under, and upon said locations for the carrying out of any of the purposes for which said easements, reservations, and rights of way are hereby reserved and may hereafter be reserved.

6. NO PARTITION:

There shall be no judicial partition of the Common Area nor shall Grantor or any person acquiring any interest in the properties or any part thereof seek any judicial partition thereof, provided,

however, that if any lot shall be owned by two or more co-tenants, as tenants in common, or as joint tenants, nothing herein contained shall be deemed to prevent a judicial partition as between such co-tenants.

7. MEMBERSHIP & VOTING RIGHTS IN ASSOCIATION

All owners shall be members of the Evergreen Estates Property Owner's Association and which said Association is for the purpose of regulating and conducting the business affairs of the Evergreen Estates Tract No. 731 Subdivision. The Association shall be formed as either an unincorporated association or it may be incorporated as a California non-profit corporation for the purpose of facilitating the legal means and purposes for which the Association is formed. The Association shall adopt By-laws which shall govern the management and operation of the Association.

Each owner, including Declarant, by virtue of being an owner, and for so long as he is an owner, shall be a member of the Association, or, in the event of its dissolution a member of any non-profit corporation succeeding to the Association. Where there is more than one record owner to a lot, any or all of such persons may attend any meeting of the owners, but it should be necessary for those present to act unanimously in order to cast the votes to which they are entitled.

In the event that the Association is formed as an unincorporated Association or in the event that it is formed as a non-profit California corporation and such corporation is subsequently dissolved, each member of the unincorporated Association shall have an equal, underlying beneficial interest in all of the Associations' property transferred to or for the account or benefit of said Association in direct proportion to the number of lots owned by such member; provided, however, that there shall be no judicial partition of such property, or any part thereof, nor shall any such member or any other person acquiring any interest in said property, or any part thereof, seek such judicial partition.

A. Voting Rights

The Association shall have two (2) classes of voting membership:

Class A. Class A owners 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 to vote to the members of the Association.

Class B. 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 the total votes outstanding in Class A membership equal the total votes outstanding in Class B membership; or

b) On the second anniversary of the original issuance of a Subdivision Report by the California Department of Real Estate.

Every member entitled to vote at any election of the members of the Board of Directors of the Association may accumulate his votes and give any one or more candidates a number of votes equal to the number to which said member is entitled for each lot multiplied by the number of directors to be elected. The right to vote may not be severed or separated from a 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 written proxy signed by the member and filed with the Secretary of the Association. Any 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 of the Association. 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 Directors 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 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.

B. 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:

- 1) Real property taxes assessed by the County of Santa Cruz or any other taxing entity authorized to impose real property tax on land and improvements upon the common areas.
- 2) Water, sewer, garbage, electrical, lighting, and gas, and other necessary utility service for the common area.
- 3) Painting, maintenance, repair, replacement and expansion as needed of storm drains, sanitary sewers, water lines and services, paths, landscaping and other elements located in the Common Area.
- 4) 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.
- 5) 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).

6) 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.

7) Standard fidelity bond covering all members of the Board of Directors of the Association and all other employees 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.

8) Personnel to work in common areas and recreational area and areas as necessary or proper for the use thereof. The Association shall have the exclusive right and duty to employ the same.

9) 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.

C. 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 recreational vehicle area.

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, impose a regular annual assessment per subdivision interest which is more than 20% greater than the regular assessment for the immediately preceding fiscal year.

D. Special Assessments for Capital Improvements

In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the common area.

1) 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 growth expenses of the Association for the fiscal year.

2) Except as provided in (3) hereof, every special assessment shall be levied upon the same basis as that prescribed for the levying of regular assessments.

3) 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.

E. Notice and Quorum for any Action Authorized under Sections C and D.

Written notice of any meeting called for the purpose of taking any action by the members authorized under Sections C and

D 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.

F. 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.

G. 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 the annual assessment against each lot at least thirty (30) days in advance of each 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.

H. 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:

1) By suit or suits at law to enforce each such assessment obligation. Any judgment rendered in any 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 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.

2) 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 a 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 lot 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.

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

I. Subordination of the Lien to Mortgages.

The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. A sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof.

8. GENERAL PROVISIONS:

A. Enforcement.

The Association, or any owner, shall have the right to

enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this declaration. Failure by the Association or by any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

B. Severability.

Invalidation of any one of these covenants or restrictions by variance, judgment or court order shall in no way effect any other provisions which shall remain in full force and effect.

C. Amendment.

The covenants and restrictions of this Declaration shall run with and bind the land, and shall constitute equitable servitudes upon those individual lots comprising Evergreen Estates Tract No. 731, and shall inure to the benefit of and be enforceable by the Association or the owner of any lot, their respective legal representatives, heirs, successors and assigns. These covenants, and restrictions, including use controls and provisions with respect to the rights, duties and obligations of the Association, may be amended by an instrument duly executed by no less than 75% of the Class A voting power and 75% of the Class B voting power and duly acknowledged and recorded. At such time as there shall become only one class of voting rights, Amendments to the covenants and restrictions of this declaration shall require the affirmative vote or written assent of 75% of the total voting power of the Association, and at least a bare majority of the votes of members other than the subdivider.

D. Subordination.

It is further provided that a breach of any of the conditions contained herein or any re-entry by reason of such breach, shall not defeat or render invalid the lien of any Mortgage or Deed of Trust made in good faith and for value as to said premises or any part hereof, but said conditions shall be binding upon and

effective against any owner of said premises whose title thereto is required by foreclosure, trustee's sale or otherwise.

9. ANNEXATION OF PROPERTY TO THE SUBDIVISION

The annexation of real property to the existing subdivision shall require the vote or written assent of not less than 66-2/3% of the total votes residing in Association members other than the subdivider.

10. COMMON AREA IMPROVEMENTS.

Declarant (sub-divider), shall furnish to the Association, as obligee, a surety bond, sufficient in amount to cover the cost of all labor and materials required for the completion of any common area improvements included in the "Evergreen Estates, Tract No. 731", sub-division offerings which are not completed prior to the issuance of the Subdivision Public Report.

The governing body of the Association shall be directed to consider and vote on the question of action by the Association to enforce the obligations under the bond with respect to any improvement for which a Notice of Completion date specified for that improvement in the Planned Construction Statement appended to the bond. If the Association has given an extension in writing for the completion of any common area improvement, the governing body shall be directed to consider and vote on the aforesaid question if a Notice of Completion has not been filed within 30 days after the expiration of the extension.

A special meeting of members for the purpose of voting to override a decision by the governing body not to initiate action to enforce the obligations under the bond or on the failure of the governing body to consider and vote on the question. The meeting shall be required to be held not less than 15 days nor more than 30 days after receipt by the governing body of a petition for such a meeting signed by members representing a prescribed percentage of not less than 5% nor more than 10% of the total voting power of the Association.

A vote by members of the Association other than the sub-

divider at the special meeting called for the purpose set forth in the paragraph written above.

A vote of a majority of the voting power of the Association residing in members other than the subdivider to take action to enforce the obligations under the bond shall be deemed to be the decision of the Association and the governing body shall thereafter implement this decision by initiating and pursuing appropriate action in the name of the Association.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand this 9th day of December, 1980.

EVERGREEN ESTATES LIMITED PARTNERSHIP,
a limited partnership

by: MANSON BROS., INC.,
a California corporation
general partner

by Lloyd Manson
LLOYD MANSON - President

Lloyd Manson
LLOYD MANSON

Judy Manson
JUDY MANSON

Robin Hilliard
ROBIN HILLIARD

Lauren G. Hilliard
LAUREN G. HILLIARD