

**Declaration Imposing Covenants Restrictions, Easements And Agreements
Affecting
Tract No. 3772, Evergreen Woods, Unit 130
Which Is Situate In The City Of San Jose, County Of Santa Clara, State Of California**

KNOW ALL MEN BY THESE PRESENTS:

THAT WHEREAS, the undersigned is the owner of a certain tract of land situate in the City of San Jose, County of Santa Clara, State of California, shown on a Map entitled, Tract No. 3772, Evergreen Woods, Unit No. 2, Being a portion of Lots 3, 4 and 5 of the Lantz Partition and a portion of the Rancho Yerba Buena, lying within the City of San Jose, which Map was recorded in the office of the Recorder of the County of Santa Clara, State of California, on August 4 1964 in Book ??? (maybe 123) of Maps, at pages: ? and ?.

All of which property they desire to and intend by these presents to subject to certain conditions, covenants and charges between them and all subsequent purchasers of said property, or any part thereof.

NOW THEREFORE, said owner hereby declares that said property and each and every part hereof is held and shall be conveyed subject to the conditions, covenants and charges set forth in the various clauses and subdivisions of this Declaration, to wit.

Clause I – Use and Improvement

No buildings other than one detached single family private residence, a private garage for use of the occupants of such residence and other usual and appropriate outbuildings, strictly incident and appurtenant to a private residence, shall be erected or maintained on any of said lots, and no use whatsoever except in connection with its use and improvement as the site and grounds of a private residence shall be made of any of said lots.

The term "private residence" is intended to exclude every form of multi-family dwelling, boarding or lodging house, sanitarium, hospital and like, but is not intended to exclude a proper "guest house" for the entertainment of social guests nor servants quarters for servants or other employees employed upon the premises.

The term "use as a private residence" is intended to exclude every form of business, commercial, manufacturing, or storage enterprises or activity and/or the exploration for or production of mineral or other natural resources.

Clause II – Minimum Area and Cost of Residences

The principal residence building on any lot or plot shall be constructed thereon and not be moved on from some other location and shall not cover a ground floor area of less than 1200 square feet. Ground floor area shall exclude any attached garage, open porch, terrace, stoop, steps and like appurtenances not enclosed by the proper walls of the residence building. Should a split-level or 2 story house be built, 200 square feet, or more of the above ground floor area may be in said second story.

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Clause III – Set-Back Lines

No building shall be erected on any residential building plot nearer than 25 feet to the front line, nor nearer than 12 ½ feet to any side street line, nor nearer than 5 feet to the side lot line except a garage which is located behind a line 30 feet from the front set-back line does not have to be 5 feet from the side line.

Clause IV – Easements

Easements, as indicated upon the recorded Map of this subdivision, are reserved for the installation and maintenance of sewers, pole lines, utilities, rights of way and other uses for public or quasi-public good. No buildings shall be placed upon such easements or interference be made with the free use of the same for the purposes intended.

Clause V – Signs

No billboards or other advertising device shall be erected or placed upon any lot or plot in this subdivision. No more than one "For Sale, Lease or Rent" sign shall be displayed upon any single lot or plot and such sign shall not be larger than 18 inches by 24 inches; provided, however, during the Subdivision and sale of lots in this tract the owner or his agent may erect and display larger signs, and construct a sale's office.

Clause VI – Oil and Mining Operations

No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any lot.

Clause VII – Sight Distance at Intersections

No fence, hedge or other screening shall be permitted. constructed placed or located on any lot closer than 15 feet to the front property line thereof, nor closer than 8 feet to the side property line of corner lots; nor shall any such fence, hedge or other screening, wherever constructed, placed or located on any lot, have a greater height than 6 feet above the finished graded surface of the ground upon which the same is constructed, placed or located. No fence, wall hedge or shrub planting which obstructs sight lines at elevations between 2 and 6 feet above the roadways shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and the line connecting them at points 25 feet from the intersection of the street lines, or in the case of a rounded property corner from the intersection of the street property lines extended. The same sight line limitations shall apply on any lot within 10 feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

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Clause VIII – Lot Area and Width

No dwelling shall be erected or placed on any lot having a width of less than sixty feet at the minimum building setback line nor shall any dwelling be erected or placed on any lot having an area of less than 8000 square feet, except that any lot shown upon the recorded Map may be built upon.

Clause IX – Nuisances

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

Clause X – Care Of Properties

All vacant lots in this subdivision shall at all times be kept free of rubbish and litter, weeds and grass shall be disked out or kept well mown so as to present a tidy appearance. The yards and grounds in connection with all improved properties shall be at all times kept in a neat and sightly condition and shall be cultivated and planted to any extent sufficient to maintain an appearance not out of keeping with that of typical improved properties in this subdivision.

Clause XI – Temporary Dwellings

No structure or building other than a completed proper residence designed as such, shall be used or occupied as a dwelling place on any lot or plot in this subdivision. No tents, trailers, or other temporary habitation are to be used.

Clause XII – Completion of Construction

Any residence or other building in this Subdivision the construction of which has been started, shall be completed without delay, except when such delay is caused by acts of God, strikes, actual inability of the owner to procure delivery of necessary material, or by interference by other persons or forces beyond the control of the owner to prevent. Financial inability of the owner or his contractor to secure labor or materials or discharge liens or attachments shall not be deemed a cause beyond his control.

Clause XIII – Keeping Of Fowl Animals, Etc.

No chickens, rabbits or livestock of any kind shall be kept, bred or raised upon any lot. Nothing herein contained shall be construed as restricting the right to keep household pets upon said premises.

Clause XIV – Approval of Plans

a. No building, fence, wall or other permanent structure shall be erected, altered or placed on any lot or plot in this subdivision until building plans, specifications, and plot plan showing the location of the lot or plot have been submitted to and approved in writing as to conformity and harmony of external design, and as not interfering with the reasonable enjoyment of any other lot or plot, by a Committee composed of Evergreen Building Co. and John C. Mackay & Associates, Inc.

This committee will not approve the plans of any structure which is not artistic and of are architectural type suitable to a rural suburb.

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b. Failure by said Committee or its designated representative to approve or disapprove such plans and specifications within 30 days after receipt of a proper presentation, approval of such plans and specifications will be deemed to have been made, provided such proposed construction complies with all other provisions of this Declaration.

c. In the event any member of said Committee resigns or is unable to act, the remaining member or members shall appoint his successor. Pending his appointment, the remaining member or members shall discharge the functions of the Committee.

d. At any time said Committee shall by appropriate stationery recorded in the office of the County Recorder of Santa Clara County relinquish the right hereinabove reserved to appoint and maintain said Architectural Committee, or be unable so to, act, the then, record owners of 51% or more of the lots in this subdivision may elect and appoint a Committee of 3 or more of such owners to assume and exercise all the powers and functions of the Committee hereinabove provide for in paragraphs a, b, and c of this Clause.

No member of any Architectural Committee, however created, shall receive any compensation or make any charge for his services as such.

Clause XV – Failure to Enforce

The various restrictive measures and provisions of this Declaration are declared to constitute mutual equitable covenants and servitudes for the protection and benefit of each property in the said Subdivision, and failure by the Declarant or any other person or persons entitled so to do to enforce any measure or provision upon violation thereof shall not stop or prevent enforcement thereafter or be deemed a waiver of the right so to do.

Clause XVI – Severability

The various measures and provisions of this Declaration are declared to be severable, and the holding invalid of any one measure or provision shall not affect any other measure or provision.

Clause XVII – Subordination to Mortgages and Deeds of Trust

Nothing contained in this declaration shall impair or defeat the lien of any Mortgage or Deed of Trust, but title to any property subject to this Declaration obtained through sale in satisfaction of any Mortgage or Deed of Trust shall thereafter be held subject to all of the measures and provisions thereof.

Clause XVIII – Terms Of Restriction

These covenants, restrictions and agreements are to run with the land and shall continue in full force and effect until date of August 1, 2001. Thereafter the same shall be automatically renewed for successive periods of 10 years, unless by a properly executed and recorded statement of the then owners of a majority or more of the lots in said subdivision, said owners elect to terminate or amend said restrictions in whole or in part.

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Clause XIX – Enforcement and Remedy

Each grantee of a conveyance or purchaser under a Contract or Agreement of Sale by accepting a Deed or a Contract of Sale or Agreement of Purchase, accepts the same subject to all of the covenants, restrictions, easements and agreements set forth in this Declaration and agrees to be bound by the same.

Damages for any breach of the measures and provisions of this Declaration are hereby declared not to be adequate compensation, but such breach and/or the continuation thereof maybe enjoined or abated by appropriate proceedings by the Declarant, or by an owner or owners of any other lot or lots in said subdivision.

Clause XX – Creekside Cabaña Club

Each beneficial owner (as distinguished from a security owner: of single family residential unit in said subdivision (other than declarant) shall, in accordance with and subject to the laws of the State of California governing non-profit corporations, be a proprietary member of Creekside Cabana Club, a corporation organized and incorporated pursuant to the General Nonprofit Corporation Law of the State of California on March 4, 1964, and there shall be no other qualification for such membership, provided that if any such single family residential unit shall be owned by two or more persons, only one of such persons, as they may elect, shall be a member. Each such person shall, in accordance with and subject to the laws of the state of California governing non-profit corporations, have all of the rights and privileges of a proprietary member, in accordance with the bylaws of said non-profit corporation, on filing with the Secretary of said non-profit corporation proof of his qualification therefore, and on payment of any dues or assessments then payable. All such dues and assessments, in the amount fixed as provided in said bylaws, shall accrue and be payable by such proprietary member from the date title to such residential unit is conveyed to him or the date on which he first occupied such unit, whichever is the earlier, and all such dues and assessments, if not paid within 30, days after the same become due and payable, shall, upon the recording at any time thereafter of a claim of lien by said non-profit corporation, be and become a lien on the said proprietary member's residential unit, and said non-profit corporation shall then have the right to enforce the payment of said dues and assessments in accordance with the laws of the State of California governing foreclosure and enforcement of liens.

Nothing contained in this Clause XX shall impair or defeat the lien of any Mortgage or Deed of Trust, but title to any property subject to this Clause XX obtained through sale in satisfaction of any Mortgage or Deed of Trust shall be free of the lien created by this Clause XX for all charges that have accrued up to the time of such sale, but subject to the lien created by this Clause XX for all charges accruing thereafter.

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IN WITNESS WHEREOF, the party hereto has executed and sealed this 4th day of August, 1964.

EVERGREEN BUILDING CO., a
Texas Corporation

By *[Signature]*

By *[Signature]*

The foregoing is hereby consented to and approved by:

Western Title Insurance Company
A corporation, as Trustee

By *[Signature]*
Vice-President

By *[Signature]*
Assistant Secretary

