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COMPANY

550 Newport Center Drive, 2nd Floor

Newport Beach, California 92660

Attention: Lee Milligan

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**DECLARATION OF DEVELOPMENT COVENANTS,
CONDITIONS AND RESTRICTIONS**111.303\ESCRINST.V1
JEP June 12, 1997Declaration of CC&R's
Lewis/Lower Peters Canyon
Master Parcel 1A

9167579-124

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**DECLARATION OF DEVELOPMENT COVENANTS,
CONDITIONS AND RESTRICTIONS**

THIS DECLARATION OF DEVELOPMENT COVENANTS, CONDITIONS AND RESTRICTIONS (hereinafter "**Development Declaration**") is made this 17th day of June, 1997, by IRVINE COMMUNITY DEVELOPMENT COMPANY, a Delaware corporation. Irvine Community Development Company, its successors and assigns shall hereinafter be referred to as "**Declarant**."

RECITALS

A. Declarant is the owner of the real property in the unincorporated territory of the County of Orange, State of California, described on Exhibit "A" attached hereto and by this reference made a part hereof, which shall be the initial Covered Property made subject to this Development Declaration, and the real property which may from time to time be annexed to this Development Declaration and become a part of the Covered Property.

B. Declarant intends to convey the Covered Property or portion thereof to LEWIS HOMES ENTERPRISES, a California general partnership (herein termed "**Developer**"), for the purpose of developing on the Covered Property residential projects for sale to the public.

C. Declarant desires to subject the Covered Property to this Development Declaration setting forth certain obligations owing to Declarant from Developer concerning the activities of Developer on and in connection with the Covered Property which will constitute a general scheme for the development of the Covered Property for the purpose of enhancing and protecting the value, desirability and attractiveness of the Covered Property.

DECLARATION

NOW, THEREFORE, Declarant hereby covenants, agrees and declares that all of its interest as the same may from time to time appear in the Covered Property shall be held and conveyed subject to the following covenants, conditions and restrictions. These covenants, conditions and restrictions shall run with the Covered Property or any portion into which it may be divided until released as provided herein and shall be binding upon all parties having or acquiring any right or title in the Covered Property or any part thereof, and subject to subsection 28(a) below, shall inure to the benefit of the fee owners of the Benefitted Property and are imposed upon the Covered Property and every part thereof as a servitude in favor of the Benefitted Property and every portion thereof as the dominant tenement or tenements.

Section 1. Definitions. All of the definitions contained in the Development Documents (as such term is hereinafter defined) are, unless stated otherwise in this document, incorporated herein by reference. The following additional terms shall have the following

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meaning whenever used in this Development Declaration or in any other Development Document, except where the context clearly indicates otherwise.

(a) The term "**Benefitted Property**" shall mean the real property in Orange County, California described on Exhibit "C" attached hereto and by this reference made a part hereof.

(b) The term "**Community Facilities**" shall mean and refer to all real property and the improvements constructed thereon owned by the nonprofit corporation, membership in which shall be appurtenant to the ownership of the Residences ("**Association**"), for the common use and enjoyment of its members, and to recreational facilities owned in common by the members of the Association and maintained or otherwise managed by the Association.

(c) The term "**Covered Property**" shall mean and refer to all of the real property described on Exhibit "A" hereto together with any real property which may become subject to this Development Declaration pursuant to the Section hereof entitled "Annexation of Additional Property."

(d) The term "**Declarant**" shall mean and refer to Irvine Community Development Company, a Delaware corporation, its successors and any person or entity to whom Irvine Community Development Company assigns its rights under this Development Declaration.

(e) In this Development Declaration, the term "**Developer**" shall mean and refer to Lewis Homes Enterprises, a California general partnership, its successors and assigns as to the Covered Property. If Developer leases all or any of its interest in the Covered Property, the lessee thereunder shall also be deemed to be a Developer and both the lessor and the lessee under such lease shall be responsible as principals (and not sureties) for compliance with all of the terms and provisions of this Development Declaration and the Development Documents.

(f) The term "**Development Documents**" shall mean and refer collectively to all of the written agreements between Declarant and Developer, recorded and unrecorded, concerning the development of the Covered Property, and shall include without limitation any of the following instruments executed by Declarant and Developer:

- (i) Development Agreement ("**Development Agreement**");
- (ii) Payment and Performance Agreement (the "**PAPA**");
- (iii) Entry Permit;
- (iv) Deed of Trust;
- (v) Option Agreement;
- (vi) Agreement and Right of First Refusal;
- (vii) Development Declaration; and
- (viii) Grant Deed.

(g) The term "**Increment**" shall mean and refer to each construction phase which Developer employs in the development of the Covered Property. Unless Developer informs Declarant otherwise, each separate Parcel (as defined in the Development Documents) for which

Developer has an option to purchase shall be deemed to be an Increment; provided, however, in the event that Developer constructs Residences on the Covered Property in Increments which do not correspond thereto, Developer shall so inform Declarant in writing upon submission of Developer's improvement and construction schedules pursuant to the Section hereof entitled "Schedules." In any event, at such time Developer shall submit to Declarant a map depicting the actual physical configuration of the Increments Developer plans to employ. Upon receipt of such notice by Declarant, the term "**Increments**" as used in this Development Declaration shall mean the areas of Development designated in such notice and map, and Developer shall not develop the Covered Property by use of different Increments except upon written notice to Declarant, whereupon such new phases shall control the meaning of Increments as used in this Development Declaration.

(h) The term "TIC" shall mean Declarant's parent company, The Irvine Company.

Section 2. Unavoidable Delay. Any prevention, delay or stoppage in the work of subdivision and building of Residences as provided for in this Declaration caused by acts of God, war, riot, civil insurrection, inability to obtain labor or materials or reasonable substitutes therefor, or other similar matters or causes beyond the reasonable control of Developer shall be considered an "unavoidable delay" and shall extend the time within which this Development Declaration requires certain acts to be performed for a period or periods equal to any period of such prevention, delay or stoppage, but not to exceed in the aggregate one (1) year; provided, however, that nothing in this Section shall excuse the prompt payment of any and all amounts due from Developer to Declarant as required herein or in any of the Development Documents or the performance of any act rendered difficult solely because of the financial condition of Developer. Without limiting the generality of the foregoing, in no event shall Developer's inability to obtain construction or permanent financing for development of the Covered Property, or a portion thereof, constitute an unavoidable delay pursuant to this Section. Furthermore, in no event shall any extension of any period of time be deemed to have occurred unless Developer shall have given written notice to Declarant within fifteen (15) days following the commencement of any such delay, setting forth the facts giving rise to such extension.

Section 3. Continuous Operations. Developer shall proceed continuously and diligently in accordance with the terms and conditions of this Development Declaration and in accordance with the improvement and construction schedules approved by Declarant as referenced in the Section hereof entitled "Schedules." If Developer does not proceed continuously and diligently, such failure to so proceed may, at the option of Declarant, be considered an event of default herein, except as such failure is excused by reason of any unavoidable delay as set forth in the Section hereof entitled "Unavoidable Delay."

Section 4. Grading Plans. Prior to the commencement of any grading, terracing, filling or other similar work on the Covered Property, Developer shall submit to Declarant for Declarant's approval two (2) copies of all plans and specifications for grading, terracing and filling of the Covered Property and for construction of other similar improvements in, on or about the Covered Property, and four (4) copies of construction plans and specifications for all Community Facilities on the Covered Property. Declarant shall not unreasonably withhold its

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approval of any plan or change thereto.

Declarant shall approve or disapprove such plans and specifications within fifteen (15) business days after receipt thereof. If approved by Declarant, such approval shall be endorsed on such plans and specifications and one set of such documents bearing Declarant's approval shall be returned to Developer within such fifteen (15) day period. If Declarant does not approve such plans and specifications, Declarant shall within said fifteen (15) day period notify Developer of its reasons for not approving such plans and specifications and Developer shall within fifteen (15) business days after receiving notice of Declarant's disapproval, resubmit new plans and specifications for Declarant's approval. Failure of Declarant to approve or disapprove said plans and specifications within fifteen (15) business days shall be deemed approval thereof. The approval by Declarant of such plans and specifications shall be approval only as to their conformity with the master utility or circulation plan and general aesthetic plan for the area and shall not be deemed to be a representation or warranty by Declarant as to the adequacy or sufficiency of such plans and specifications or the grading, improvements or construction contemplated thereby for any use or purpose. By its approval thereof, Declarant assumes no liability or responsibility therefor or for any defect in any grading, improvements or construction made pursuant thereto.

If Developer proposes to export more than two thousand five hundred (2,500) cubic yards of soil from the Covered Property ("**Export Soil**"), Developer shall give Declarant not less than ten (10) business days written notice ("**Availability Notice**") of the approximate amount of such Export Soil and the approximate date on which Developer intends to commence removal of the Export Soil from the Covered Property. Declarant shall have the option, exercisable by delivery of written notice to Developer on or before ten (10) business days after Developer's delivery of the Availability Notice, to acquire all or such portions of the Export Soil as Declarant may desire, without charge to Declarant. However, Declarant shall be solely responsible for providing, at its own cost, transport of the Export Soil from the Covered Property to such site or sites as Declarant shall deem appropriate. Such transport shall be furnished by Declarant in a timely manner so as not to impede Developer's grading or other operations on the Covered Property. Developer shall be solely responsible for loading the Export Soil into the transport facilities furnished by Declarant.

Section 5. Schedules. Pursuant to the Development Documents, Developer shall submit to Declarant for Declarant's approval schedules, in a form provided or approved by Declarant, as follows:

(a) Builder Profitability Report. A profitability report showing the costs and expenses Developer estimates it will incur in connection with the construction and sale of the Residences on the Covered Property shall be submitted on an incremental basis at each of the following times:

- (i) When the first Residence is offered for sale for each Increment;

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(ii) Within thirty (30) days following the close of escrow for the sale of the last Residence on a Parcel or within ninety (90) days after the close of escrow of ninety percent (90%) of the Residences on a Parcel, whichever occurs first; and

(iii) Within thirty (30) days following close of escrow for the sale of the last Residence on a Parcel; and

(iv) Any other time as reasonably requested by Declarant.

(b) Sale and Closing Forecast. A sale and closing forecast schedule showing the estimated timetables for the sale and close of Residences on the Covered Property shall be submitted at the times reasonably requested by Declarant.

(c) Improvement and Construction Schedules. Improvement and construction schedules setting forth the improvements to be constructed by Developer on the Covered Property or on the adjacent or nearby real property owned by Declarant and timetables for such construction shall be submitted within fifteen (15) days after execution of the Development Agreement. After such schedules have been approved by Declarant and Developer has commenced construction of improvements on the Covered Property, Developer shall furnish to Declarant, at Declarant's request, and in a timely manner, improvement and construction schedules in a form reasonably satisfactory to Declarant indicating the manner, if any, in which the approved improvement and construction schedules do not reflect the actual schedules for improvement and construction which have been experienced and which are anticipated for future improvements to be constructed pursuant this Development Declaration.

Section 6. Site Improvement.

(a) In addition to its other obligations under this Development Declaration and the Development Documents, Developer, at its expense, shall cause all streets, walks, alleys and other public ways shown on the Final Subdivision Map or Maps of the Covered Property and accesses thereto to be improved and all necessary access roads and facilities for water, drainage, sewage, telephone, electricity, CATV, and other utility services for the Covered Property to be constructed and installed therein and thereto in the manner and within the time required by all public laws, ordinances and regulations applicable thereunder and the improvement schedules approved by Declarant. Without limiting any provision of the Development Documents, Developer shall be responsible for payment of all agency and governmental assessments and connection charges on the Covered Property and to the centerline of abutting streets. Notwithstanding the foregoing, nothing in this paragraph shall obligate Developer to construct any improvements which are specifically made the obligation of Declarant under the other Development Documents.

(b) No improvements which have not first received the written approval of Declarant or which do not comply with the approved plans and specifications provided for in this Development Declaration or the Development Documents, shall be made or constructed in, about

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or upon the Covered Property.

(c) It is contemplated that Developer may cause the improvements required under this Section to be carried out and completed in Increments as may be mutually agreed upon by Declarant and Developer.

(d) Before the commencement of any of the work under this Section, Developer shall furnish to Declarant true copies of any and all labor and material bonds and faithful performance bonds required of Developer concerning such work.

(e) Upon the completion of the improvements provided for in this Section and in accordance with approved improvement schedules, Developer shall cause all streets and other public ways offered for dedication on said Subdivision Map or Maps to be accepted by such governmental entity having jurisdiction thereof for public use, to the extent such entity is willing to accept such dedication, and shall cause to be conveyed all easements for all of said public utility services.

Section 7. Other Development Requirements. Developer shall satisfy the obligations of Developer under the Article of PAPA entitled "Other Construction Requirements," including, without limitation, the obligation to install the Developer's Improvements (as defined therein). Developer shall also satisfy the obligations of Developer under the following Sections of the Development Agreement: Section 1.4 entitled "Approval Conditions," Section 1.5 entitled "Annexation to City of Irvine," Section 3.3 entitled "Acquire Land 'AS IS'," Section 3.5 entitled "Development Costs, Taxes and Assessments," Section 3.9 entitled "Maintenance," Section 3.11 entitled "Water Service Agreement," Section 3.12 entitled "Mass Grading and Other Improvements," Section 3.13 entitled "Street Maintenance," Section 3.14 entitled "Storm Drain Facilities," and Section 5.2 entitled "Subdivision."

Section 8. Building of Residences.

(a) As soon as practical after the filing for record of the "B" Final Map and concurrently with or after the construction of the site improvements to be made by a Developer under the Section hereof entitled "Site Improvement," the Developer shall, at its sole cost and expense, improve the Covered Property with the construction of Residences pursuant to plans and construction schedules submitted to and approved by Declarant; provided, however, that such construction shall in any event be commenced to make such Residences available for sale (other than models) within the period of time set forth in the Development Documents. In no event shall Developer subdivide the Covered Property to provide for, or construct on the Covered Property, Residences in excess of the Anticipated Density for the Covered Property stated in the Development Agreement, unless and until such additional units have been approved by Declarant in writing in its sole discretion. Declarant may condition its approval to any additional units on receipt of a proportionate additional purchase price for the Covered Property as contemplated in the Development Agreement in Section 2.3 thereof entitled "Adjusted Basic Purchase Price." All Residences on the Covered Property shall be completed in compliance with the terms of this Section.

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(b) Such Residences shall be constructed in accordance with the Builder Profitability Reports and the improvement and construction schedules as set forth in the Section hereof entitled "Schedules."

(c) Developer has made or, prior to the construction of any improvements on the Covered Property, including without limitation grading, will make its own tests to ascertain the amount and extent of the present fill and/or any subsurface or soil condition upon or in connection with the Covered Property and there shall be no liability to Declarant because of or resulting from any fill or any subsurface or soil condition upon or in connection with the Covered Property, including without limitation subsurface geologic or ground water conditions.

(d) Before Developer commences the construction of any Residences or any part thereof, Developer shall deliver to Declarant for its approval two (2) sets of construction plans and specifications for said Residences, including but not limited to two (2) sets of plot plans showing the proposed location of said Residences and appurtenances and all utility and service connections. Without limiting the generality of the foregoing, said plans and specifications shall indicate the standard amenities package Developer proposes to offer with each Residence. Declarant shall either endorse said plans and specifications as approved or shall notify Developer that such plans and specifications are disapproved within fifteen (15) business days after the receipt thereof. Failure of Declarant to approve or disapprove such plans and specifications within such fifteen (15) day period shall be deemed approval thereof. If Declarant disapproves such plans and specifications, Declarant shall, at the time of notifying Developer of such disapproval, indicate Declarant's reasons for not approving such plans and specifications, and within thirty (30) days of Developer's receipt of such notice of disapproval, Developer shall submit revised plans and specifications for Declarant's approval as aforesaid. Developer understands and agrees that Declarant has the right to approve, among other things, the square footage for the Residences proposed for the Covered Property and Declarant may base its disapproval of Developer's plans and specifications for any Residence on the failure of the proposed square footage to comply with the restrictions contained in EXHIBIT "B".

(e) Developer shall install such gutters, subdrains and other drainage facilities on the Covered Property as are necessary to fulfill the requirements established for the Covered Property by Declarant's project soils engineer. Developer shall also install such positive drainage improvements, including, without limitation, guttering, downspouts and subdrains, as may be required by Declarant to connect into the backbone storm drain system serving the Covered Property.

(f) Simultaneously with the submission of the plans and specifications to Declarant as provided above in this Section, Developer shall deliver to Declarant a list of the items for which Developer proposes to charge Extra and Option Prices.

(g) No Residences or other improvements, the plans, specifications and proposed location of which have not first received written approval of Declarant, or which do not comply with the approved plans and specifications, shall be constructed on the Covered Property.

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(h) The approval by Declarant of any plans and specifications or improvement shall be approval only to the conformity of such plans and specifications to the master plan or general architectural plan for the Covered Property and neighboring lands of Declarant and shall not be deemed approval for architectural or engineering design nor a representation or warranty as to the adequacy or sufficiency of such plans and specifications or the construction contemplated thereby for any use or purpose. By approving such plans and specifications, Declarant assumes no liability or responsibility therefor or for any defect in any structure constructed from such plans and specifications.

(i) All Residences and other improvements constructed on the Covered Property shall comply with all public laws, ordinances and regulations applicable thereto and shall, except regarding those improvements specifically required to be constructed by Declarant hereunder or under the other Development Documents, be constructed and completed at the sole cost and expense of Developer and without any cost, liability or expense to Declarant.

(j) It is contemplated that Developer may cause the improvements required under this Section to be carried out and completed in Increments as may be mutually agreed upon by Declarant and Developer, subject, however, to the time requirements above-referred to in this Section, the improvement and construction schedules between Declarant and Developer, the Section hereof entitled "Continuous Operation" and the other provisions of this Development Declaration and the Development Documents.

(k) Except as expressly provided for in the Development Agreement, Developer shall be responsible for all costs of developing the Covered Property, including without limitation, the payment of all fees and charges associated with developing the Covered Property. If any of the foregoing fees (including but not limited to any Areawide Transit Fee Program fees) are, pursuant to the terms of any written agreement between Declarant or TIC and the City or County in which the Covered Property is located or any school district having jurisdiction or any ordinance, administrative procedure or other regulation adopted by such City or County, charged to and paid by Declarant or TIC, then upon request Developer shall promptly reimburse Declarant or TIC for the portion of such fees allocable to the Land and/or the Residences or other improvements to be constructed thereon. In the event that pursuant to any written agreement between Declarant or TIC and such City or County or any such school district, Declarant or TIC is required to pay or cause developers to pay school or any other fees notwithstanding (i) the repeal, invalidation, termination or revocation of any law or ordinance authorizing or imposing such fee, whether such repeal, invalidation, termination or revocation arises by initiative, referendum, court action, legislative action, or any other reason or (ii) any other legal action or other occurrence prohibiting such City, County or school district from levying and/or collecting such fees, then in such event Developer shall upon written request from Declarant pay such fees in the amounts which would have been collected from Developer but for such repeal, invalidation, termination, revocation, legal action or other occurrence.

(l) Developer shall not sell any individual lot or estate in the Covered Property unless and until the same is improved with a Residence. Developer shall conduct reasonable marketing efforts to sell all of the Residences constructed on the Covered Property, and Developer shall

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not operate a rental apartment or for-lease community on the Covered Property or any portion thereof. Declarant shall deliver to Declarant, promptly after issuance, a copy of the Certificate of Use and Occupancy issued by the applicable governmental agency for each Residence constructed on the Covered Property.

(m) No Residence constructed on the Covered Property, and no addition or option for more habitable square footage for such Residence, shall contain more square feet of habitable living space than shown for such Residence and its options on Exhibit "B" attached hereto and by this reference made a part hereof. Furthermore, no Residence constructed on the Covered Property shall contain more square feet of habitable living space than shown for such Residence on the plans and specifications therefor approved by Developer. For purposes of the foregoing, garages, subterranean basements, atriums, patios and the like shall not be included in "habitable living space."

(n) Except as may from time to time be specifically agreed in writing by Declarant (i) Developer shall not release for sale to the public in one sales release more than ten (10) Residences in the Covered Property, and (ii) Developer shall not release a second or later sales release of Residences within twenty (20) days of the immediately prior sales release.

Section 9. Governmental Approvals and Community Associations. As provided in the Development Documents:

(a) Developer shall obtain, at its sole expense, all governmental approvals and permits which may from time to time be required with respect to the performance by Developer as contemplated under this Development Declaration or the Development Documents including, as applicable and without limitation, the "A/B" Tentative Map and the "B" Final Map referred to in Article I of the Development Agreement, a Final Subdivision Public Report from the Department of Real Estate (if required), FHA/VA approvals (if required), a Property Report from the Office of Interstate Land Sales Registration (if required), appropriate zoning, building permits and the like. In obtaining such approvals and permits, Developer shall prepare as necessary and without limitation, environmental impact reports, tentative maps and subdivision maps, engineering studies and the like.

(b) All requests or applications to be submitted by or for Developer together with all supporting documentation for governmental approvals or permits which require discretionary action on the part of a governmental agency shall be submitted to and coordinated and approved by Declarant prior to filing with the governmental agency. Declarant shall have a period of fifteen (15) days after receipt to disapprove any requests or applications so submitted by Developer, and in the event of disapproval shall specify the reasons therefor. Failure to disapprove within such fifteen (15) day period shall be deemed approval thereof. Declarant shall receive copies of all written communications between Developer and the governmental agencies processing such requests or applications.

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(c) Developer shall and shall cause any person or entity holding any interest in the Covered Property under Developer (including but not limited to any trustee, beneficiary or mortgagee under a deed of trust or mortgage executed by Developer and encumbering the Covered Property or any part thereof or interest therein) to (i) execute all Master CC&R's or annex the Covered Property to all Master CC&R's and otherwise comply with Developer's obligations concerning Master CC&R's as required in the Section of the Development Agreement entitled "Conditions to Exercise of Option," (ii) comply with Developer's obligations concerning the offer for dedication or transfer of certain landscape and/or monument areas to a homeowner's association, Public Maintenance District, landscape maintenance district or other governmental entity as required in the Section of the Development Agreement entitled "Subdivision" and (iii) satisfy the obligations of Developer under (A) the Sections of the PAPA entitled "Master Association" and "Formation of Association," including, without limitation, the organization, if requested by Declarant, of a nonprofit community association with jurisdiction over the Covered Property, (B) the Section of the PAPA entitled "Construction and Conveyance of Community Facilities," including, without limitation, the construction of the Community Facilities shown on Schedule 4 attached to the PAPA, and (C) the Section of the PAPA entitled "Maintenance Responsibilities," including, without limitation, the obligation to maintain the real or personal property or easement areas described on Schedule 5 attached to the PAPA.

(d) Upon request by Declarant, Developer shall grant directly to a public utility or other entity any easement or other right of the nature of the easements and rights reserved by Declarant in the grant deed pursuant to which Declarant deeded the Covered Property to Developer.

Section 10. Signs. Developer shall be entitled to place on the Covered Property such advertising signs as it deems necessary or proper for the sale of Residences constructed thereon and which Declarant deems to be in compliance with the marketing program for the Covered Property; provided, however, that (a) all such signs shall be in good taste and in accordance with the usual practices of advertising in the house-building business in and around Southern California, (b) Developer shall first obtain written consent of Declarant as to the location and design of such signs, and (c) only the name of the original named Developer may be shown and no other person's or entity's name shall appear on the sign except with the prior written consent of Declarant which consent may be withheld in Declarant's sole discretion. Without limiting the generality of the foregoing, Declarant may withhold such approval in the event such signs do not comply with Declarant's marketing program for the Covered Property or with the statutes, ordinances or regulations of any governmental entity or agency having jurisdiction thereover. Developer may install directional signs on other property belonging to Declarant so as to direct prospective customers for the purchase of dwelling units constructed by Developer, provided Developer first obtains the written consent of Declarant as to the location and design of such signs. Except regarding the names permitted to be on such signs, Declarant's approvals pursuant to this Section shall not be unreasonably withheld.

Section 11. Insurance and Indemnification.

(a) **Insurance Types.** Developer shall, at its sole cost and expense until this Development Declaration has been fully released and reconveyed from all of the Covered Property, maintain in full force and effect with companies acceptable to Declarant, the following insurance:

(i) **Workers' Compensation Insurance.** Developer shall maintain Workers' Compensation Insurance, including Employer's Liability (at a minimum limit of One Million Dollars (\$1,000,000.00)) for all persons whom it employs in carrying out any work required under or relating to any Development Document, including waiver of subrogation by the insurance carrier with respect to Declarant and TIC. Such insurance shall be in strict accordance with the requirements of the most current and applicable workers' compensation insurance laws in effect from time to time.

(ii) **Comprehensive General Liability Insurance.** Developer shall maintain Comprehensive or Commercial and General Liability Insurance on an "occurrence" basis, with reasonably acceptable deductibles, with a combined single limit for bodily injury and property damage of Ten Million Dollars (\$10,000,000.00) or an amount equal to the limit from time to time carried by Developer, if greater, covering the following:

- (A) Operations, Independent Contractors, Products and Completed Operations which Developer shall maintain in effect on an annual renewal basis for at least ten (10) years following final completion in operations in, on or about the Covered Property;
- (B) Owners' and Contractors' Protective Liability;
- (C) Severability of Interest and Cross Liability clauses;
- (D) Contractual Liability, including without limitation coverage for Developer's contractual indemnities in this Agreement;
- (E) Personal Injury and Explosions, Collapse and Underground Hazards (X, C, U); and
- (F) Broad Form Property Damage Liability, including completed operations.

If excessive risks are involved specific higher limits of liability may be required by Declarant, all as determined in Declarant's reasonable discretion. The limits of liability of the insurance coverage specified in this division (ii) may be provided by any combination of primary and excess liability insurance policies.

(iii) **Automobile Liability Insurance.** Developer shall maintain owned, hired

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and non-owed automobile liability insurance covering all use of all automobiles, trucks and other motor vehicles utilized by Developer in connection with any Development Document with a combined single limit for bodily injury and property damage of Ten Million Dollars (\$10,000,000.00) or in an amount equal to the limit from time to time carried by Developer if greater.

(iv) Builder's Risk Property Insurance. Upon commencement of construction by Developer on or about the Covered Property, a standard "all risk" Builders Risk Policy (which shall be the Course of Construction insurance required under the Deed of Trust) for not less than the full replacement cost of improvements constructed by Developer on or about the Covered Property, including improvements constructed off the Covered Property pursuant to the Schedules attached to the PAPA, and shall include a replacement cost endorsement. Declarant and TIC shall each be included as an additional insured under the coverage specified in this subsection 11(a)(iv).

(b) Waiver of Subrogation. Developer hereby waives all rights against Declarant and the Indemnitees (as that term is defined below) for damages caused by fire and other perils and any other risk to the extent covered by Developer's policies of insurance or required to be covered by Developer's policies of insurance as set forth above.

(c) Additional Insured. Declarant and TIC shall each be included as an additional insured under the coverage specified in subsections 11(a)(ii) and (iii) above with the following provisions included within each applicable policy: "It is understood and agreed that coverage afforded by this Policy shall also apply to Irvine Community Development Company, a Delaware corporation, and The Irvine Company, and each of their divisions, subsidiaries, partners, shareholders and affiliated companies and all of their respective officers, directors, shareholders, agents, representatives, employees and professional consultants, and all of their respective successors and assigns, as additional insureds, but only with respect to legal liability or claims caused by, arising out of or resulting from the acts or omissions of the named insured or others performing acts on behalf of the named insureds or the ownership and development of the project in the _____ [City or County] _____ referred to as _____ [insert name and location of project] _____. This insurance is primary and any other insurance by such additional insureds is non-contributing with this insurance as respects claims or liability arising out of or resulting from the acts or omissions of the named insured, or of others performed on behalf of the named insured."

(d) Insurance Policies. Each insurance policy required under this Section shall:

(i) Be issued by insurance carriers licensed and approved to do business in California, having a general policyholders rating of, except as may be specifically agreed in writing by Declarant, not less than an "A" and financial rating of not less than "X" in the most current Best's Insurance Report. Declarant hereby approves Reliance Insurance Company as an acceptable carrier so long as Reliance maintains a general policyholders rating of not less than "A-" and a financial rating of not less than "X;"

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(ii) Contain a provision that the policy shall not be subject to material alteration to the detriment of Declarant, TIC or Developer or cancellation without at least thirty (30) days prior written notice be given to Declarant by registered mail;

(iii) Provide that such policy or policies and the coverage evidenced thereby are primary and Declarant's insurance is noncontributing with such primary coverage; and

(iv) Contain severability of interest and cross liability clauses.

Developer may provide the insurance described in this Section 11 in whole or in part through a policy or policies covering other liabilities and projects of Developer; provided, however, that any such policy or policies shall (A) allocate to this Development Declaration the full amount of insurance required hereunder (provided, however, that this subpart (A) shall not apply so long as the insurance required under Sections 11(a)(ii) and (iii) are maintained by Developer in an amount not less than \$40,000,000 or such other collective amount as may be specifically agreed in writing by Declarant) and (B) contain, permit or otherwise unconditionally authorize the waiver contained in subsection 11(b) above, and provided further that any such policy or policies shall not otherwise impair the rights of Declarant or negate the requirements of this Development Declaration.

(e) Evidence of Insurance. As evidence of specified insurance coverage, Declarant will accept certificates issued by Developer's insurance carrier acceptable to Declarant showing such policies in force for the specified period. Declarant has the right to review certified policies as reasonably necessary. Except for the Builders Risk Insurance, such evidence shall be delivered to Declarant promptly upon execution of the Development Agreement. The evidence of the Builders Risk Insurance shall be provided prior to commencement of any construction on the Covered Property. Evidence of any renewal insurance shall be delivered to Declarant not less than thirty (30) days prior to the expiration date on the term of the policy. Each policy and certificate shall be subject to reasonable approval by Declarant. Should any policy expire or be cancelled before the full release of this Development Declaration, or such later period as Developer is required to carry such insurance as set forth herein, and Developer fails immediately to procure other insurance as specified, Declarant shall have the right, but shall have no obligation, to procure such insurance and to charge Developer with one hundred ten percent (110%) of the cost to Declarant of procuring such insurance. Developer shall pay Declarant any such amount within ten (10) days of written demand therefor.

(f) Damages. Nothing contained in these insurance requirements is to be construed as limiting the type, quality or quantity of insurance Developer should maintain or the extent of Developer's responsibility for payment of damages resulting from its operations.

(g) Declarant's Election to Insure. Declarant reserves the right, but shall have no obligation, to procure the insurance, or any portion thereof, for which Developer is herein responsible and which is described in this Section 11. Declarant shall notify Developer if Declarant exercises its right, whereupon Developer's responsibility to carry such duplicative

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insurance shall cease. Declarant further reserves the right at any time, with thirty (30) days notice to Developer, to require that Developer resume the maintenance of any insurance for which Declarant has elected to become responsible pursuant to this subsection 11(g). Further, in the event that Declarant elects to maintain any insurance insuring against defects in grading or construction of related infrastructure improvements on or adjacent to the Covered Property, Declarant shall have the right from time to time to enter upon the Covered Property for purposes of performing inspections and geotechnical or soils tests; provided, however, that (i) Declarant shall use reasonable efforts to minimize interference with Developer's activities on the Covered Property, and (ii) Declarant shall be responsible for any damage done to the Covered Property by reason of such entry or testing, and (iii) declarant shall repair and restore portions of the Covered Property affected by any such entry or testing.

(h) Contractors. Developer shall not permit any architect, engineer or contractor to commence work on or relating to the Covered Property until such parties have complied with Developer's normal insurance requirements. Developer shall cause each such party to name Declarant and TIC as an additional insured to such party's General Liability Insurance policies. Developer shall also include Declarant and TIC in any indemnity provisions with such parties for defense and indemnification to the same extent Developer is defended and indemnified.

(i) Indemnity. To the maximum extent permitted by law, Declarant and TIC, and each of their divisions, subsidiaries, partners and affiliates, and all of their respective employees, officers, directors, shareholders, agents, representatives and professional consultants and all of their respective successors and assigns (collectively, the "**Indemnitees**") shall not be liable for any loss, damage, injury or claim of any kind or character to any person or property arising from, caused by or relating to, with or without fault, (a) the Covered Property, the development or use of the Covered Property and/or the construction, use or sale or other conveyance of Residences or other improvements thereon including, without limitation, any loss, damage, injury or claim arising from or caused by or alleged to have arisen from or have been caused by (i) use of the Land by Developer or any of "**Developer's Representatives**" (as that term is defined in Section 33 below), (ii) a defect in the design or construction of or material in any structure or other improvement on the Covered Property or in any other work performed by Developer or any of Developer's Representatives, (iii) the condition of the Covered Property, including any defect in soils or in the preparation of soils or in the design and accomplishment of grading or other work on the Covered Property (including any mass grading or other work performed on the Covered Property prior to the date hereof by Declarant or any other party or any other fact referenced in Section 3.3 of the Development Agreement), (iv) the presence or existence of any hazardous or toxic substances, materials or waste in, on or near the soil or groundwater of the Covered Property, whether known or unknown and whether resulting from occurrences prior to or after the date hereof, including without limitation any liability under the Comprehensive Environmental Response, Compensation and Liability Act, the California Environmental Quality Act or any other law, (v) an act or omission of Developer or any of Developer's Representatives, (vi) an accident, casualty or other event on the Covered Property, (vii) a representation by Developer or any of Developer's Representatives, (viii) a violation or alleged violation by Developer or any of Developer's Representatives of any law now or hereinafter enacted, (ix) a slope erosion, sluffing or failure or subsurface geologic or

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groundwater condition on, adjacent to or near the Covered Property, including the effect of such slope or subsurface conditions on the Covered Property and the Residences constructed on the Covered Property, as well as the effect on such slopes and subsurface areas of Developer's development on the Covered Property and use of the Residences on the Covered Property (including watering), (x) the construction or other work on the Covered Property and design, engineering and other work related thereto provided or performed by or for Declarant either before or after the date hereof, (xi) the act or failure to act of any homeowner association or committee, officer, agent, or representative thereof relating to any of the Residences or other portions of the Covered Property (whether or not any of the Indemnitees are on the board of directors of such association or are on a committee thereof or are an officer, agent or representative thereof), (xii) the application of the principles of strict liability with respect to any act or omission of Developer, Declarant or TIC or their respective affiliates, agents, representatives, employees, licensees, invitees or contractors in connection with the Covered Property or in observing, inspecting or testing any work or improvement on the Covered Property, including without limitation the grading thereof and/or the existence of any contaminants or hazardous materials in or on the soil or groundwater, (xiii) the presence of any meal catering truck and/or its personnel on or near the Covered Property, (xiv) any act or failure to act of Declarant or any other Indemnatee in reviewing, approving, disapproving, consenting to or joining in any plans, specifications, application, permit, map or other document relating to the Covered Property or in observing, inspecting or testing any work or improvement on the Covered Property, or (xv) any other cause whatsoever in connection with the Covered Property, Developer's use of the Land or any other property or Developer's performance under this Development Declaration or the Entry Permit; (b) the negligence or willful misconduct of Developer or any of Developer's Representatives in any other development, construction, grading or other work performed off the Covered Property by Developer pursuant to the PAPA, or otherwise in connection with the development of the Covered Property, or any defect in any such work; or (c) the breach by Developer of any of its obligations under this Development Declaration or any other Development Document.

Developer hereby releases the Indemnitees from and waives on its behalf and on behalf of its successors and assigns, all claims, demands and causes of action against the Indemnitees for any such loss, damage, injury or claim and agrees to indemnify, defend and hold harmless Declarant and all of the Indemnitees and their property from all loss, liability, damages, costs and expenses (including attorneys' fees) arising from or related to any such loss, damage, injury or claim whether incurred or made by Developer, Declarant, any Indemnatee or any third person(s). The foregoing release, waiver, indemnity and obligation to defend and hold harmless shall apply to any claim or action brought by a private party or by a governmental agency or entity under any statute or common law now or hereinafter in effect and is intended to apply with respect to loss, damage, injury or claim arising before or after the conveyance of all of the Residences on the Covered Property. The foregoing release, waiver, indemnity and obligation to defend and hold harmless, and all of Developer's similar covenants herein, are intended to apply to losses, damages, injuries and claims incurred directly by Declarant or any Indemnatee, or their property, as well as by Developer or any third party or their property. With respect to design, construction methods, materials, locations and other matters for which Declarant has given or will give its approval, recommendation or other direction, the foregoing

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release, waiver, indemnity and obligation to defend and hold harmless shall apply irrespective of Declarant's approval, recommendation or other direction. Notwithstanding anything to the contrary above, except with regard to those losses, damages, injuries and claims described in clause 11(i)(a)(xiv) above for which the Indemnitees shall have absolutely no liability, nothing contained in this Section shall operate to relieve any Indemnatee from any loss, damage, injury or claim found by a court of competent jurisdiction to have been caused solely by the gross negligence or willful misconduct of such Indemnatee (and the acts or failures to act of any consultant, contractor or other agent or representative of any Indemnatee shall not be attributed to such Indemnatee). In addition, nothing in this subsection is intended or shall be deemed to override the last sentence of subsection 34(c) hereof.

DEVELOPER ACKNOWLEDGES THAT IT HAS BEEN ADVISED BY ITS LEGAL COUNSEL AND IS FAMILIAR WITH THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1542, WHICH PROVIDES AS FOLLOWS:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."

DEVELOPER BEING AWARE OF SAID CODE SECTION, HEREBY EXPRESSLY WAIVES ANY RIGHT IT MAY HAVE THEREUNDER, AS WELL AS UNDER ANY OTHER STATUTE OR COMMON LAW PRINCIPLE OF SIMILAR EFFECT.

(j) Survival of Covenants. All of Developer's indemnification, defense and hold harmless covenants in any of the Development Documents, including without limitation the covenants in the Sections hereof entitled "Indemnity" and "No Hazardous Wastes," and Developer's obligation to maintain completed operations coverage insurance pursuant to subsection 11(a)(ii)(A) above, shall survive the conveyance of all or any of the Residences built on the Covered Property and shall be binding on Developer until the last to occur of (a) such date as action against Declarant is absolutely barred by the applicable statute of limitations or (b) such date as any claim or action for which indemnification may be claimed under said Section is fully and finally resolved and, if applicable, any compromise thereof or judgment or award thereon is paid in full by Developer and Declarant is reimbursed by Developer for any amounts paid by Declarant in compromise thereof or upon a judgment or award thereon and in defense of such action or claim, including attorneys' fees. Neither payment nor a finding of liability or of an obligation to defend or indemnify shall be a condition precedent to the enforcement of any indemnity or duty to defend provision herein or elsewhere in any Development Document, and if any action or proceeding shall be brought against any Indemnatee alleging any fact or circumstance for which Developer is to provide indemnification, Developer upon notice from Declarant shall defend the same at Developer's expense by counsel approved in writing by Declarant. Developer waives as defenses to its obligations hereunder the pleading or defense of any statute of limitations.

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Section 12. Assessment and Improvement Districts.

(a) Developer acknowledges that (i) the Covered Property lies within the boundaries of Community Facilities District No. 97-1 of Tustin Unified School District, Community Facilities District No. 1 of Irvine Ranch Water District, and (ii) in connection with the annexation of the Covered Property to the City of Irvine, the Covered Property may be or has been annexed into the City's other existing Districts. Each of these existing districts (collectively, the "**Districts**") will require the assessment of liens, taxes and assessments against the Covered Property. Developer hereby expressly agrees not to oppose the levying of assessments and taxes through any of the Districts. Without limiting the generality of the foregoing, Developer shall not in any event file any written or oral protest or opposition of any kind to the levying of assessments or taxes through any of the Districts, and Developer shall consent to or, if an election is called, cast its vote in favor of all the Districts and the levying of assessments and taxes through the Districts. Developer further agrees that if the Covered Property lies within the boundaries of any District or any other new assessment district or community facilities district imposing liens, taxes and/or assessments against the Covered Property, Developer shall (A) grant such reasonable non-interfering easements over the Covered Property as necessary or desirable to permit the construction, installation or maintenance of the improvements funded thereby and (B) pay all assessments, special taxes and other charges made in connection with such district and levied against the Covered Property. Developer shall not take any action which would in any way interfere with the operation of the Districts or decisions made or actions taken by Declarant with respect to the Districts or the bond financing relating thereto, including, without limitation, the timing of commencement of assessments or special taxes, the amount of assessments or special taxes, the spreading of assessments or special taxes, and the use of the assessments or special taxes so collected by the Districts.

Developer further acknowledges that Irvine and the Tustin Unified School District intend to form a new community facilities district(s) with jurisdiction over the Covered Property to fund the construction of school facilities, and Irvine and the County and/or city of Irvine intend to form (or have formed) a new assessment district to fund installation of and to maintain street, trail and drainage improvements, landscaping, parks and certain other infrastructure improvements (collectively, the "**New Districts**"). In the alternative with regard to landscaping, Irvine and the City of Irvine may elect to annex the Covered Property into that property subject to the Irvine Landscaping and Lighting District and the Irvine Landscape Maintenance District, and in such event, such districts shall be considered part of the "**New Districts**." Developer hereby expressly agrees (i) not to oppose the formation of any such New District or the levying of assessments and taxes through any such New District, (ii) not to in any event file any written or oral protest or opposition of any kind to the formation of any such New District, and (iii) to consent to, or if an election is called, cast its vote in favor of the New Districts (including any annexation thereto) and the levying of assessments and taxes through the New Districts. It shall be a condition precedent to Developer's obligation to cooperate in the formation of the New Districts that either (A) Declarant shall have delivered to Developer evidence reasonably satisfactory to Developer that at the time of sale of Residences on the Covered Property that the annual assessments of the New Districts will not increase the effective average tax rate for all Residences on the Covered Property above 2.0% of the greater of (x) \$327,128 or (y) the

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"Second Estimated Average" (as defined in the PAPA) for the Covered Property (the "**Maximum Allowable Tax**"), or (B) Declarant shall either have bought down the lien of the New Districts, entered into a separate agreement with the applicable governmental agency or otherwise taken such steps as may be necessary to assure that the effective average annual assessments of all Residences in the Covered Property do not exceed the Maximum Allowable Tax. Such New District(s), together with the Districts described above, are referred to herein, collectively, as "**All Existing and Future Districts.**"

The assessments, taxes or other charges levied by the Districts (and any other new assessment district or community facilities district imposing liens, taxes and/or assessments against the Covered Property) shall most likely be levied annually against the Covered Property and shall constitute a charge against the Covered Property which shall survive conveyance of Residences constructed on the Covered Property to members of the home-buying public (unless Developer elects, at its sole cost and expense, to pay such assessments, special taxes or other charges if permitted under the provisions of the applicable district or the regulations or laws relating thereto). Developer shall be responsible for satisfying all assessments, taxes and other charges levied by the County, City, Districts or any other governmental authority for each Residence for the period occurring after the date hereof and prior to the close of escrow for the sale of such Residence to a member of the home-buying public.

All portions of the Covered Property which are lettered lots as shown on the Subdivision Map shall be transferred to and accepted by a Master Association, Developer's Association, a Public Maintenance District, a landscape maintenance district, or any other association, district or governmental entity as directed by Declarant, by a deed (fee or easement as directed by Declarant) in form approved by Declarant restricting the use to street, landscape or similar purposes as applicable. In addition, Developer shall grant maintenance easements to a Master Association, Developer's Association, a landscape maintenance district, or any other association, district or governmental entity as directed by Declarant to provide for the maintenance of any community wall located on individual Lots and for the maintenance of certain landscaped areas on individual Lots (e.g., those areas, if any, adjacent to the sidewalks, between the sidewalks and adjacent streets or between the sidewalks and adjacent private fences or walls).

(b) Declarant shall, for those fees regarding which Developer is obligated and has made payment to Declarant under Section 2.2 of the Development Agreement, pay to the County of Orange (or, if the Covered Property is annexed to the City of Irvine, to the City of Irvine) or such other governmental entity as may be applicable, all Foothill/Eastern Transportation Corridor Fees, Santiago Road Fees, Fire Station Fees, Library Fees and Sheriff Substation Fees due for the Covered Property, and/or Declarant shall cause any credit available to Declarant or TIC to be applied to such fees for each Residence on the Covered Property; provided, however, that Developer shall pay to Declarant that amount by which each such actual fee exceeds the amount per Residence for such fee previously paid by Developer to Declarant with respect to the Covered Property, for each Residence on the Covered Property up to the anticipated density for which Developer paid said fees to Declarant, and all such fees for any Residence constructed on the Covered Property in excess of such anticipated density (collectively, the "**Excess Fees**"). If and to the extent the Santiago Road Fees are to be paid by Developer directly to the County

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of Orange as provided in Section 2.2 of the Development Agreement, then such fees shall not be included within the purview of this paragraph but Developer shall be solely obligated to pay to the County of Orange any increases in such fees from the amounts specified in Section 2.2 of the Development Agreement or shall be obligated to pay such fees directly to Declarant as provided in said Section 2.2 of the Development Agreement. Except regarding Foothill/Eastern Transportation Corridor Fees, Santiago Road Fees and Sheriff Substation Fees, other increases and decreases in fees payable to Declarant under Section 2.2 of the Development Agreement which would result in Excess Fees payable to Declarant under this paragraph shall, among themselves, be netted increases (costs) against decreases (savings) to result in a net "Excess Fees." Developer shall make payment of the Excess Fees to Declarant at least ten (10) business days prior to the date payment of the total fees is required by the City or other applicable governmental entity, but in no event later than the close of escrow for the sale of the Residence by Developer. Developer agrees that all such fees shall be payable by Developer whether or not the applicable enabling ordinance or other legislation is repealed, invalidated, terminated or revoked or if the City's or other applicable governmental entity's participation in funding or constructing such facilities is prohibited. Declarant shall make payment of such total fees or cause credits to be applied so as to satisfy such total fees not later than the last to occur of (i) ten (10) business days after receipt of notice that fees are due or (ii) ten (10) business days after receipt of the Excess Fees from Developer. Developer shall be solely responsible for payment of all Excess Fees, as well as all other street, transportation, or similar types of fees. In no event shall Developer be entitled to a refund of any portion of any such fees or any portion of the purchase price paid by Developer to acquire the Covered Property under the Development Documents due to a failure by the City or other applicable governmental entity, to actually collect said fees or to construct the facilities relating thereto or for any other reason. Refunds or payments by the City or other applicable governmental entity, if any, of any portion of the fees paid by Developer shall be paid to and retained by Declarant.

Section 13. CATV. Developer, at its own expense, agrees to pre-wire and install a complete cable television (CATV) system for each Residence in accordance with specifications furnished to Developer by Community Cablevision Company (or its successors or assigns) (collectively, "CCC") and to install on the Covered Property whatever other CATV facilities as are necessary to bring CATV service to Residences on the Covered Property. It is expressly understood that such system including all components thereof as so installed, shall become the property of CCC without the payment of any consideration therefor, and that Developer shall execute and deliver to CCC upon demand a bill of sale for such system in the form provided by CCC in accordance with the provisions of this Section. Developer shall reserve ownership of such system in the grant deed of each such Residence, such reservation to be in form provided or approved by CCC. The parties acknowledge that CCC is a third party beneficiary of the covenants set forth in this Section with the right to enforce the same.

Section 14. OSHA. Developer shall at all times while on the Covered Property comply with the requirements of the Occupational Safety and Health Act of 1970, 29 U.S.A. Section 651 et seq. and any analogous legislation in California (collectively, the "Act"), to the extent that the Act applies to the Covered Property and any activities thereon. Without limiting the generality of the foregoing, Developer shall maintain all working areas, all machinery,

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structures, electrical facilities and the like upon the Covered Property in a condition that fully complies with the requirements of the Act including such requirements as would be applicable with respect to agents, employees or contractors of Declarant who may from time to time be present upon the Covered Property. Developer shall indemnify and hold harmless Declarant from any liability, claims or damages arising as a result of a breach of the foregoing covenant and from all costs, expenses and charges arising therefrom including, without limitation, attorneys' fees and court costs incurred by Declarant in connection therewith. This indemnity shall survive the release of this Development Declaration and shall not require payment as a condition precedent.

Section 15. Recording of Salesmen's Conversations. Upon written request by Declarant, Developer shall obtain consent forms, in a form supplied by Declarant, from its salesmen, employees and other agents engaged in the sale of Residences on the Covered Property wherein such salesmen, employees or other agents consent in advance to the recording of their sales presentations for Residences located on the Covered Property. If Declarant shall so request, Developer shall not permit its salesmen, employees or other agents to sell or attempt to sell Residences on the Covered Property without first delivering to Declarant such advance consent on forms supplied by Declarant.

Section 16. Magnuson-Moss and Other Statutes; No Warranties.

(a) Without limiting the application of any other provision of this Development Declaration or the Development Documents, it is understood that it shall be the responsibility of Developer at its sole expense to comply with all of the requirements of the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act (hereinafter the "**Magnuson-Moss Act**") and any rules promulgated thereunder by the Federal Trade Commission to the extent said statute and rules apply to the sale or other conveyance of Residences and consumer goods sold in conjunction therewith, including without limitation any provisions of said statute and rules relating to the pre-sale availability of warranty terms. Also without limitation, it is further understood that it shall be the responsibility of Developer at its sole cost and expense to comply with any other federal, state or local statute, ordinance, rule or regulation enacted or promulgated for the protection of consumers or persons purchasing or leasing real or personal property, as such legislation or rules apply to the sale or other conveyance of Residences and consumer goods sold in conjunction therewith. The provisions of any indemnity given by Developer under the Development Documents shall apply to any loss, claim, demand, action, injury or other charge arising under any of the aforesaid statutes and regulations.

(b) Certain adverse consequences may result under the Magnuson-Moss Act and other statutes if Declarant or Developer is deemed to have made an express warranty for any consumer goods sold in conjunction with the Residences or to have adopted any express warranty of the manufacturer thereof. Developer shall not make or adopt any such warranty and shall clearly and conspicuously disclose the same to the purchasers of such consumer goods. As used in this Section, "consumer goods" shall include any tangible personal property normally used for personal, family or household purposes, including any such property which is intended to be or actually is installed in a Residence.

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(c) Developer shall maintain records reasonably satisfactory to Declarant documenting Developer's compliance with its responsibilities under this Section. Said records shall be available for inspection by Declarant, its agents or representatives at any reasonable time during business hours.

Section 17. Audits and Statements.

(a) Developer shall keep and maintain, or cause to be kept and maintained, accurate financial books and records in accordance with generally accepted accounting principles as modified by the provisions of the Development Agreement and the PAPA with respect to the development of each Increment of the Covered Property.

(b) Developer shall furnish to Declarant annually a copy of Developer's certified financial statement, or, if Developer does not in its regular course of business prepare certified financial statements then Developer shall submit financial statements with a representation by Developer's chief financial officer that such financials have been prepared according to generally accepted accounting principles and accurately and fairly reflect the financial condition of Developer.

(c) Declarant, at Developer's expense, shall have the right at all reasonable times to inspect and audit Developer's books and records for the purpose of verification of the Purchase Price and Extra and Option Prices received by Developer for Residences on the Covered Property as well as allowable deductions therefrom for purposes of establishing Net Profits.

Section 18. Removal of Trees. Developer shall not remove any trees presently on the Covered Property, including without limitation eucalyptus, oak and sycamore trees, without the prior written consent of Declarant. If Declarant gives such approval, Developer shall not remove any trees until it obtains the prior written approval of any applicable governmental entity or agency, including without limitation compliance with applicable ordinances and regulations of the city or county having jurisdiction over the Covered Property. Developer shall indemnify and hold Declarant harmless from any and all liability arising from Developer's failure to obtain any required governmental approval or to comply with any applicable statute, ordinance or regulation. In addition to such indemnity, if Developer fails to obtain Declarant's consent for removal of a tree from the Covered Property, or if Developer removes a tree after Declarant has withheld such consent, or if Developer substantially damages or destroys a tree on the Covered Property, Developer shall pay to Declarant Five Thousand Dollars (\$5,000) for each tree so damaged, destroyed or removed, no later than ten (10) days after written notification of such destruction, damage or removal from Declarant. It would be impractical or extremely difficult to fix actual damages in case of Developer's damage to or removal of such trees, and the amount set forth above is a reasonable estimate of Declarant's damage in such event. In the event of damage to or removal of a tree, such sum shall constitute liquidated damages and shall represent Declarant's sole right to money damages for such default by Developer.

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Section 19. Annexation of Additional Property.

(a) All or any part of any real property located in Orange County, California, now or hereafter owned by Declarant, may be annexed to and become subject to this Development Declaration without the approval, assent or vote of Developer, provided that a Supplementary Development Declaration covering the portion of the real property to be annexed, shall be executed and recorded by Declarant. The recordation of said Supplementary Development Declaration shall constitute and effectuate the annexation of the said real property described therein, making said real property subject to this Development Declaration, and thereafter said annexed real property shall be part of the Covered Property.

(b) A Supplementary Development Declaration shall be a writing in recordable form which annexes real property to the plan of this Development Declaration and which incorporates by reference all of the covenants, conditions, restrictions and other provisions of this Development Declaration. A Supplementary Development Declaration may contain such complementary additions and modifications of the covenants, conditions and restrictions contained in this Development Declaration as may be necessary to reflect the different character, if any, of the annexed property and as are not inconsistent with the plan of this Development Declaration. In no event, however, shall any such Supplementary Development Declaration revoke, modify or add to the covenants established by this Development Declaration with respect to the existing property.

(c) Nothing provided herein shall in any way obligate Declarant to annex any real property to this Development Declaration or to impose any similar or dissimilar covenants, conditions or restrictions on any of its other real property, and such real property shall not become part of the Covered Property unless and until Declarant shall have recorded a Supplementary Development Declaration as aforesaid.

Section 20. Amendments. Except as provided in this Development Declaration concerning (a) annexation of property to the Covered Property, (b) release of property from the Covered Property, (c) assignment by Declarant of its rights under this Development Declaration, (d) reacquisition of the Covered Property by Declarant, and (e) addition of descriptions and/or depictions of Benefitted Property, this Development Declaration may only be amended by a writing executed by Declarant and Developer, which amendment shall be recorded against the Covered Property.

Section 21. Release.

(a) Declarant may release any portion of the Covered Property from this Development Declaration at any time and for any reason without the approval of Developer.

(b) Upon the sale of a Residence by Developer to a member of the home-buying public, but not upon the sale of one or more Residences to any person or entity for resale to the public, Declarant shall, upon written request from Developer, release such Residence from the encumbrance of this Development Declaration if Developer shall not then be in breach of any

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of the terms and provisions of this Development Declaration or of the Development Documents. Such release shall be evidenced by a writing in recordable form, and upon the recordation thereof a Residence shall no longer be deemed a part of the Covered Property and shall be free of all of the terms and provisions of this Development Declaration. Declarant shall also, upon written request from Developer, so release any portion of the Covered Property dedicated or otherwise conveyed to and accepted by a public entity or public utility. Declarant shall also, upon written request from Developer, so release any Community Facilities concurrently with conveyance thereof to the Association.

Section 22. Enforcement: Assignment By Declarant.

(a) Declarant and the "Successor Declarants" (as that term is defined below) and their successors alone shall have the right to enforce by proceedings at law or in equity, all restrictions, conditions, covenants and reservations, now or hereafter imposed by the provisions of this Development Declaration or any amendment thereto, including the right to prevent the violation of any such restrictions, conditions, covenants, or reservations and the right to recover damages or other dues for such violation. Failure by Declarant to enforce any covenant, condition, or restriction herein contained in any certain instance or on any particular occasion shall not be deemed a waiver of such right on any future breach of the same or any other covenant, condition or restriction by Developer. All rights, options and remedies of Declarant under this Development Declaration are cumulative, and no one of them shall be exclusive of any other, and Declarant shall have the right to pursue any one or all of such rights, options and remedies or any other remedy or relief which may be provided by law, whether or not stated in this Development Declaration.

(b) Declarant may assign any of its rights and powers under this Development Declaration to any one or more of the following (a "Successor Covenantee") so long as such person or entity in writing agrees to assume the duties of Declarant pertaining to the particular rights and powers assigned: (i) Declarant's parent company, TIC, so long as TIC owns any portion of the Benefitted Property or has acquired a Transferred Parcel, or (ii) any other person or entity who has acquired a Transferred Parcel. Upon the recordation of such writing accepting such assignment and assuming such duties, such assignee ("Successor Declarant"), to the extent of such assignment, shall have the same rights and powers and be subject to the same obligations and duties as are given to and assumed by Declarant herein and Declarant shall be released and relieved of such rights and obligations. Without limiting the generality of the foregoing, Declarant may make such assignments as to the entire Covered Property or to any portion thereof. If and to the extent specifically assigned in writing as provided in this subsection, the Successor Declarant shall be a third party beneficiary of this Declaration.

Section 23. Captions. The captions used herein are for convenience only and are not a part of this Development Declaration and do not in any way limit or amplify the terms and provisions hereof.

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Section 24. Governing Law and Venue. This Development Declaration shall be governed by and construed under the laws of the State of California. In the event of any legal action to enforce or interpret this Development Declaration, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California; and Developer shall submit to the jurisdiction of such court.

Section 25. Attorneys' Fees. In the event any action shall be instituted in connection with this Development Declaration, the party prevailing in such action shall be entitled to recover from the other party all of its costs and expenses incurred therein, including without limitation reasonable attorneys' fees.

Section 26. Severability. In the event that any portion of this Development Declaration shall become illegal, null or void or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining portions of this Development Declaration shall not be affected thereby and shall remain in force and effect to the full extent permissible by law.

Section 27. Gender and Number. In this Development Declaration (unless the context requires otherwise), the masculine, feminine and neuter genders and the singular and the plural include one another.

Section 28. Covenants to Run with the Land; Term.

(a) The Covered Property shall be held, developed, conveyed, hypothecated, encumbered, leased, rented, used and occupied subject to the covenants, conditions, restrictions and other limitations set forth in this Development Declaration (collectively, the "**Restrictions**"). The Restrictions are intended and shall be construed as covenants and conditions running with and binding the Covered Property and equitable servitudes upon the Covered Property and every part thereof, and all and each of the Restrictions shall be binding upon and burden all persons having or acquiring any right, title or interest in the Covered Property (during their ownership of such interest), or any part thereof, and their successors and assigns. Subject to subsection 28(d) below, the Restrictions shall inure to the benefit of the Benefitted Property and the owners of the Benefitted Property, and their successors and assigns; and the Restrictions shall be enforceable by Declarant and its successors and assigns, all upon the terms, provisions and conditions set forth herein.

(b) This Development Declaration shall continue in full force and effect for a term of sixty (60) years from the date it is recorded in the Office of the County Recorder, Orange County, California.

(c) Notwithstanding the foregoing, this Development Declaration shall, upon recordation in the Office of the County Recorder of Orange County, California of a notice of termination executed by Declarant, automatically terminate and be of no further force or effect as to any portion of the Covered Property reacquired by Declarant (as to which Declarant has not assigned its rights and obligations hereunder to a Successor Declarant), whether by grant

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deed, lot line adjustment or otherwise, but the Restrictions shall continue to apply as to the remainder of the Covered Property.

(d) Also notwithstanding anything to the contrary in the foregoing, in the event that any portion of the Benefitted Property is conveyed by Declarant or TIC to a third party (each parcel of the Benefitted Property so transferred is hereinafter referred to as a "**Transferred Parcel**"), the Restrictions shall cease to benefit such Transferred Parcel unless Declarant expressly assigns to the transferee of the Transferred Parcel the benefits of all or a portion of the Restrictions, either concurrently with conveyance of the Transferred Parcel or at any time thereafter, in either case, by a recorded assignment document executed by Declarant and specifically referencing this Development Declaration (general references to appurtenances or rights related to the acquired land will not suffice). Any merger of Declarant or TIC with or into another entity or any acquisition of all or a portion of the stock or equity of Declarant or TIC by a third party will not be deemed a transfer of the Benefitted Property triggering the applicability of this subsection 28(d).

Section 29. Notices. Any notice or other document to be given under the provisions of this Development Declaration shall be in writing and may be delivered by any party to the other or others hereunder in person to an officer of any party, or may be delivered by Federal Express, private commercial delivery or courier service for next business day delivery, or may be deposited in the United States mail in the County of Orange, State of California, duly certified or registered, return receipt requested, with postage prepaid, and addressed to the party for whom intended at the address specified for the delivery of notices in the Development Documents. Notice may also be given by facsimile transmission ("**Fax**") to any party at the respective Fax number given in the Development Documents and marked "**RUSH - PLEASE DELIVER IMMEDIATELY,**" provided receipt of such transmission shall be confirmed by follow-up notice within seventy-two (72) hours by another method authorized above. If any notice or other document is sent by mail as aforesaid, the same shall be deemed served or delivered at the time specified in such Development Documents. Notice by any other method shall be deemed served on or delivered upon actual receipt at the address or Fax number listed in the Development Documents.

Section 30. Effect of Declaration. This Development Declaration is made for the purposes set forth in the Recitals to this Development Declaration and Declarant makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of this Development Declaration, or as to the compliance of any of these provisions with public laws, ordinances and regulations applicable thereto.

Section 31. Rights of Mortgagees. The breach of any covenants, conditions or restrictions herein contained shall not defeat, invalidate nor impair the obligation or priority of any mortgage or deed of trust now or hereafter executed and constituting a lien upon the Covered Property or any portion thereof, which is made in good faith and for value; provided, however, that any party, including the holder of the mortgage or deed of trust, who acquires title through private or judicial foreclosure, trustee's sale or deed in lieu of foreclosure (a "**Foreclosure-Purchaser**") and all successors and assigns of such Foreclosure-Purchaser shall

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take title subject to all of the covenants, conditions and restrictions contained in this Development Declaration. Such Foreclosure-Purchaser shall not be liable for damages arising from the breach of any covenants, conditions or restrictions performed or which were to have been performed prior to the time such Foreclosure-Purchaser acquires title to all or any portion of the Covered Property, and the Foreclosure-Purchaser shall have until the later of (a) six (6) months after acquisition of title to all or a portion of the Covered Property, or (b) the times reasonably required under the construction/inventory schedules contained in the Development Documents to commence or continue construction of improvements required under the Development Documents and/or to repair or replace any improvements which were constructed in violation of any of the requirements under the Development Documents. The schedules and time limitations contained in the Development Documents for construction of improvements shall be extended as reasonably necessary to be consistent with the foregoing sentence. Any improvements commenced or continued by Foreclosure-Purchaser after acquisition of title to all or any portion of the Covered Property shall be diligently pursued once commenced.

Section 32. Maintenance. Developer shall, at its sole expense, (a) maintain the Covered Property in a clean, sanitary, orderly and attractive condition free of weeds, debris and pests, (b) upon completion of any improvements including without limitation grading and streets on the Covered Property by Developer, Declarant or any other entity, maintain such improvements in the same condition as they existed upon completion and otherwise as directed by Declarant (this obligation shall include all necessary erosion and sediment control), (c) perform all dust, erosion and sediment control on the Covered Property as necessary or as directed by Declarant, (d) if requested by Declarant, install a chain-link security fence with ninety percent green fabric mesh around all or any part of the Covered Property, and (e) after installation of any landscaping on the Covered Property by Developer, Declarant or any other entity, continually plant and maintain all such landscaped areas in good condition and appearance. Without limiting the generality of the foregoing, all such areas shall at all times be fully landscaped with landscaping of the same or equal quality as originally installed and Developer shall provide, maintain and repair all sprinklers and other maintenance equipment as necessary to so continually maintain such landscaped areas. Except in the case of an emergency (when no notice shall be required), if Declarant fails to so maintain the Covered Property and fails to cure such breach within thirty (30) days after notice from Declarant, Declarant reserves the right to enter upon any portion of the Covered Property to so maintain the Covered Property when necessary. Failure by Developer to so maintain the Covered Property, or failure to reimburse Declarant within ten (10) days of a request from Declarant for amounts expended in correcting a failure to maintain the Covered Property, shall be a default hereunder.

Section 33. No Hazardous Wastes.

(a) Developer shall not engage in any "Hazardous Substance Activity" (as hereinafter defined) or allow its contractors or its or their respective subcontractors, agents, employees, licensees, invitees or representatives, or any other parties directly or indirectly employed by any of the foregoing, or reasonably under control of any one of the foregoing or for whose acts any of the foregoing may be liable (collectively, "**Developer's Representatives**") to do so in violation of any "Environmental Law" (as hereinafter defined).

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(b) Developer shall keep and maintain, and cause Developer's Representatives to keep and maintain, the Covered Property in compliance with, and not to cause or permit the Covered Property to be in violation of, any Environmental Law.

(c) Developer shall immediately advise Declarant in writing of (i) any and all "Hazardous Substance Claims" (as hereinafter defined) against Developer or the Covered Property; (ii) any remedial action taken by Developer in response to any (1) "Hazardous Substance" (as hereinafter defined) in, on, under or about the Covered Property or (2) Hazardous Substance Claims; (iii) Developer's discovery of any occurrence or condition on the Covered Property that could cause the Covered Property to be subject to any restrictions on the ownership, occupancy, transferability or use of the Covered Property under any Environmental Law; and (iv) Developer's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Covered Property that could cause the Covered Property or any part thereof to be classified as "border-zone property" under the provisions of California Health and Safety Code Sections 25220 et seq., or any regulation adopted in accordance therewith, or to be otherwise subject to any restrictions on the ownership, occupancy, transferability or use of the Covered Property under any Environmental Law. Developer will provide Declarant with copies of all communications with federal, state and local governments or agencies relating to Hazardous Substance Claims.

(d) In the event any investigation, site monitoring, containment, cleanup, removal, restoration or other remedial work of any kind or nature (the "**Remedial Work**") is required under any Environmental Law, any judicial order, by any governmental entity, or in response to any Hazardous Substance claims because of, or in connection with, the breach by Developer of any of its obligations under the Development Documents or the current or future presence, suspected presence, threatened or existing release or suspected release of a Hazardous Substance in or into the air, soil, groundwater, surface water or soil vapor at, on or under the Covered Property or any portion thereof, or transportation of a Hazardous Substance to or from the Covered Property, Developer shall, within such period of time as may be required under applicable law, regulation or order, commence to perform, or cause to be commenced, and thereafter diligently prosecute to completion all such Remedial Work.

(e) Should Developer at any time default in or fail to perform or observe any of its obligations under this Section entitled "No Hazardous Wastes," Declarant shall have the right but not the obligation, without limitation to any of Declarant's other rights hereunder, upon twenty (20) days' written notice to Developer, to perform the same, and Developer shall pay to Declarant, immediately upon demand, all costs and expenses incurred by Declarant in connection therewith, including without limitation actual attorneys' fees.

(f) Without limiting the generality of any Section of any of the Development Documents entitled "Indemnity" or "Irvine Not Liable," Developer agrees to indemnify, defend and hold harmless Declarant and all of the Indemnitees and their property, from and against any claim, action, suit, proceeding, loss, cost (including any clean-up costs), damage (including, without limitation, any consequential damage), liability, deficiency, fine, penalty, punitive damage or expense (including, without limitation technical consulting fees and attorneys' fees),

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(collectively, the "**Environmental Losses**") directly or indirectly, resulting from, arising out of, or based upon (i) the presence, release, use, generation, discharge, storage or disposal of any Hazardous Substance to, on, in or from the Covered Property or any residual contamination therefrom affecting any natural resource or the environment, (ii) the violation or alleged violation by Developer or any of Developer's Representatives of any statute, ordinance, order, rule, regulation, permit, judgment or license relating to the use, generation, release, discharge, storage, disposal or transportation of any Hazardous Substance in, on, under or about, to or from the Covered Property or (iii) any breach of the agreements and obligations of Developer under this Section entitled "No Hazardous Wastes;" provided, however that no Indemnitee shall be entitled to indemnification under this paragraph for any Environmental Loss established by a court of competent jurisdiction to have been caused solely by the gross negligence or willful misconduct of such Indemnitee (and the acts or failure to act of any consultant, contractor or other agent or representative of any Indemnitee shall not be attributed to such Indemnitee). This waiver, indemnity and obligation to defend and hold harmless shall include, without limitation, any damage, liability, fine, penalty, punitive damage, cost or expense arising from or out of any claim, action, suit or proceeding for personal injury (including sickness, disease or death), tangible or intangible property damage, compensation for lost wages, business income, profits or other economic loss, damage to the natural resources or the environment, nuisance, pollution, contamination, leak, spill, release or other adverse effect upon the environment.

(g) Secured Environmental Indemnity. Without limiting the generality of any Section of any of the Development Documents entitled "Indemnity" or "Irvine Not Liable," and without limiting the generality of subsection 33(f) above, Developer agrees to indemnify, defend and hold harmless Declarant and all of the Indemnitees who are "secured lenders" as that term is used in Section 736 of the California Code of Civil Procedure and their property, from and against any and all claims, costs and damages that a secured lender is authorized and allowed to bring and recover pursuant to said Section 736 of the California Code of Civil Procedure. Developer shall not indemnify the Indemnitees under this subsection 33(g) and the Indemnitees shall not proceed against Developer under this subsection 33(g) with respect to any claims or costs Indemnitees are not authorized or allowed to recover from Developer under Section 736 of the California Code of Civil Procedure. All rights of Indemnitees under this subsection 33(g) are secured by the Deed of Trust; provided, however, that such rights and obligations shall survive and be unsecured following the foreclosure of the Deed of Trust or any other deed of trust, the repurchase of any Parcel or any portion thereof by Declarant pursuant to the Option Agreement or Right of First Refusal, the repayment of any sums payable pursuant to the PAPA or any promissory note, or which are secured by the Deed of Trust or any other deed of trust, the reconveyance or termination of the Development Declaration as an encumbrance upon any Parcel, and Developer's transfer of any Parcel to and until the last to occur of the dates specified in subsection 11(j) above.

(h) Notwithstanding anything contained herein or in any other Development Document to the contrary, except to the extent set forth in subsection 33(g) above entitled "Secured Environmental Indemnity," the obligations and agreements of Developer under this Section entitled "No Hazardous Wastes" (i) shall not be secured by the Deed of Trust or any other deed of trust and shall not be subject to California Code of Civil Procedure Sections 580(a), 580(d),

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726, or any other anti-deficiency laws and (ii) shall survive the foreclosure of the Deed of Trust or any other deed of trust, the repurchase of any Parcel or any portion thereof by Declarant pursuant to the Option Agreement or Right of First Refusal, and the repayment of any sums payable pursuant to the PAPA or any promissory note, or which are secured by the Deed of Trust or any other deed of trust, the reconveyance or termination of the Development Declaration as an encumbrance upon any Parcel, and Developer's transfer of any Parcel to and until the last to occur of the dates specified in subsection 11(j) above.

(i) As used in this Section entitled "No Hazardous Wastes" the following terms shall have the following meanings:

"Environmental Laws" means any and all present and future federal, state or local laws (whether under common law, statute, rule, regulation or otherwise), permits, orders and any other requirements of governmental authorities relating to the environment or to any Hazardous Substance or Hazardous Substance Activity (including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Sections 9601 *et seq.*), as heretofore or hereafter amended from time to time, and the applicable provisions of the California Health and Safety Code and the California Water Code).

"Hazardous Substance" means (i) any chemical, compound, material, mixture or substance that is now or hereafter defined or listed in, or otherwise classified pursuant to, any Environmental Law as a "hazardous substance," "hazardous material," "acutely hazardous material," "restricted material," "hazardous waste," "extremely hazardous waste," "infectious waste," "toxic substance," "toxic pollutant" or any other formulation intended to regulate, define, list, or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity, or "EP toxicity" and (ii) petroleum, petroleum by-product, natural gas, natural gas liquids, liquefied natural gas, synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas), ash produced by a resource recovery facility utilizing a municipal solid waste stream, and drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil, natural gas, or geothermal resources.

"Hazardous Substance Activity" means any actual, proposed or threatened storage, use, holdings, existence, release, emission, discharge, generation, processing, abatement, removal, disposition, handling or transportation of any Hazardous Substance from, under, into or on the Covered Property or surrounding property; provided, however, that the use, installation, storage and maintenance by Developer in compliance with all applicable laws, ordinances, orders and regulations, of materials reasonably necessary and normally used in the development of the Covered Property as contemplated in the PAPA, shall not be considered a Hazardous Substance Activity.

"Hazardous Substance Claims" shall mean any and all enforcement, investigation, clean-up, removal or other governmental or regulatory notices, actions or orders threatened, instituted or completed pursuant to any Environmental Law, together with all claims made or threatened by any third party against Developer, Declarant, the other Indemnitees or

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the Covered Property, relating to damage, construction, cost recovery compensation, loss or injury resulting from any Hazardous Substance.

Section 34. Marketing Program.

(a) Developer shall not offer Residences for sale to the public unless and until Developer shall have obtained Declarant's written approval of Developer's marketing and merchandising program for the Covered Property which shall include, without limitation, marketing goals, objectives, strategies, buyer reinforcement methods and such other items required by Declarant.

(b) Upon request from Declarant, Developer shall submit to Declarant for its approval all advertisements which Developer intends to use in marketing Residences in the Covered Property. In no event shall Developer use any advertisements for Residences which have been disapproved in writing from Declarant to Developer.

(c) By approving Developer's marketing and merchandising program for the Covered Property and/or advertisements for Residences in the Covered Property, Declarant assumes no liability for the accuracy of any representations made therein. Developer expressly agrees that it shall indemnify Declarant and hold it harmless from all liability arising from Developer's marketing and merchandising program for the Covered Property, including without limitation all advertising, and that such indemnity shall be included within the provisions of the Section hereof entitled "Insurance and Indemnification;" provided, however, that if Developer requests in writing to Declarant that Declarant provide statements concerning the Covered Property or the neighborhood or village of which it is a part, and if Developer expressly states in such request that such statements will be used in Developer's marketing, Declarant shall indemnify Developer against any liability arising out of any misrepresentations contained in the written information or statements provided by Declarant to Developer in response to such a request.

Section 35. WAIVER OF JURY TRIAL. AS SET FORTH IN THE DEVELOPMENT AGREEMENT, DECLARANT AND DEVELOPER HAVE EACH ACKNOWLEDGED THAT IT HAS HAD THE ADVICE OF COUNSEL OF ITS CHOICE WITH RESPECT TO RIGHTS TO TRIAL BY JURY UNDER THE CONSTITUTIONS OF THE UNITED STATES AND THE STATE OF CALIFORNIA. BOTH DECLARANT AND DEVELOPER EXPRESSLY AND KNOWINGLY WAIVE AND RELEASE ALL SUCH RIGHTS TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER PARTY AGAINST THE OTHER ON ANY MATTERS ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS DEVELOPMENT DECLARATION, DEVELOPER'S USE OR DEVELOPMENT OF THE COVERED PROPERTY OR ANY ADJOINING PROPERTY AND/OR ANY CLAIM FOR INJURY OR DAMAGE.

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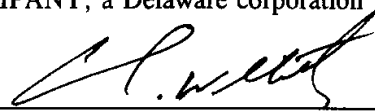
Section 36. No Partnership.

(a) Developer and Declarant are not joint venturers or partners, and do not have fiduciary duties with respect to one another, in any manner whatsoever, in the acquisition, development or conveyance of the Covered Property. Neither anything in this Development Declaration or in any other Development Document, nor any communication or other action by or between the parties relating to the Covered Property, is intended or shall be construed to create a joint venture, partnership or fiduciary relationship between Developer and Declarant or their respective owners.

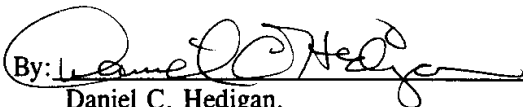
(b) Without limiting the generality of the foregoing subsection 36(a), Declarant shall not be liable to any contractor, subcontractor, supplier, laborer, architect, engineer, purchaser, or any other party for services performed or materials supplied or for any causes of action arising out of or in connection with construction, sale or other conveyance of improvements on the Covered Property by Developer or the sale or use of the Covered Property after acquisition by Developer. Declarant shall not be liable for any debts or claims accruing in favor of any such parties against Developer or others or against the Covered Property. Developer is not and shall not be an agent of Declarant for any purposes. Declarant shall not be deemed to be in privity of contract with any contractor or provider of services on the Covered Property or any purchaser or transferee of the Covered Property or any portion thereof, nor shall any payment of funds directly to a contractor, subcontractor or provider of services be deemed to create any third party beneficiary status or recognition of same by Declarant. Approvals granted by Declarant for any matters covered under this Development Declaration or any Development Document shall be construed to be solely for the benefit of Developer. Reviews, observations, inspections and testing of any work or improvement on the Covered Property by Declarant or Declarant's consultant(s) or insurance carrier(s) shall be solely for the benefit of Declarant and shall not be deemed to create any third party beneficiary status for any purchaser or transferee of the Covered Property, for Developer's insurance carrier(s) or for any other third party.

IN WITNESS WHEREOF, Declarant has executed this instrument the day and year first hereinabove written.

IRVINE COMMUNITY DEVELOPMENT
COMPANY, a Delaware corporation

By: 

Chick C. Willette,
Executive Vice President,
Land Sales and Management

By: 

Daniel C. Hedigan,
Assistant Secretary

"Declarant"

State of California)
)
County of Orange)

On June 18, 1997 before me, Cynthia M. Ptak, Notary Public
personally appeared CHICK C. WILLETTE and DANIEL C. HEDIGAN, personally known to
me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s)
is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the
same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the
instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the
instrument.

WITNESS my hand and official seal.

Signature Cynthia M. Ptak

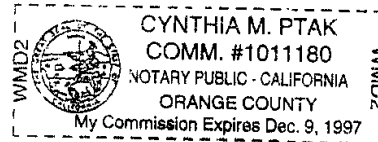


EXHIBIT "A"

COVERED PROPERTY

That certain real property in the unincorporated territory of the County of Orange, State of California described as Lots 1 to 4, inclusive, 30 to 35, inclusive, 61 to 63, inclusive, 123 to 129, inclusive, and Lettered Lots D, E and G of Tract No. 15432 as shown on a map recorded in Book 750, Pages 43 to 50, inclusive, of Miscellaneous Maps in the Office of the County Recorder of said County.

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EXHIBIT "B"**MAXIMUM PERMITTED HABITABLE SQUARE FEET FOR EACH FLOOR PLAN.**

Plan	Master Parcel I
Plan 1	2992
Plan 2	3340
Plan 3	3683

See Section 8(m) of this Declaration.

EXHIBIT "C"

BENEFITTED PROPERTY

The properties described below shall constitute the "**Benefitted Property**" for purposes of this Development Declaration, provided that any such property shall cease being part of the "Benefitted Property" at such time as fee title to such property ceases to be owned by either TIC, Declarant or a Successor Covenantee, as provided in and subject to Section 28(d) of this Development Declaration.

V. PROPERTIES LOCATED IN CITY OF IRVINE.A. (Westpark Village)

Lot 16 of Tract No. 12355, in the City of Irvine, County of Orange, State of California, as per map recorded in Book 556, Pages 15 to 36, inclusive, of Miscellaneous Maps, in the Office of the County Recorder of said County

B. (Harvard Place)

Parcel 1, in the City of Irvine, County of Orange, State of California, of Lot Line Adjustment 86-LL-0042, recorded on May 20, 1987, as Instrument No. 87-282634 of Official Records of Orange County.

C. (Crossroads Shopping Center)

Parcels 3 through 7, inclusive, and A and B of Parcel Map No. 86-138 recorded in Book 215, Pages 18 through 21, inclusive, of Parcel Maps, Official Records of Orange County, California; and Parcels 1, 2, 8, 9, 10, A, B, C, D and E as shown on Exhibit A to that certain Lot Line Adjustment No. 87-LLA-0068 recorded on November 16, 1987 as Instrument No. 87-64803, Official Records of Orange County, California.

D. (Home & Garden Center)Parcel D-1:

Parcels 6, 7 and 11 as shown on Parcel Map No. 81-608, in the City of Irvine, County of Orange, State of California, as per Map filed in Book 165, Pages 9 to 14 of Parcel Maps, in the Office of the County Recorder of said County.

Parcel D-2:

Those portions of Parcels 1 and 13 of Parcel Map 81-608, in the City of Irvine, County of Orange, State of California, as shown on a Map filed in Book 165, Pages 9 through 14, inclusive, of Parcel Maps, in the Office of the County Recorder of said County, lying within the land described as Parcel 2 of that certain Lot Line Adjustment No. LL-83-0008, recorded February 15, 1983 as Instrument No. 83-072186, Official Records of said County.

Parcel D-3:

Parcel 1, as shown on Parcel Map 81-608, in the City of Irvine, County of Orange, State of California, as per Map filed in Book 165, Pages 9 through 14 of Parcel Maps, in the Office of the Recorder of the County of Orange, together with the easterly 5.00 feet of Parcels 12, 13 and 14, as shown on said Map, excepting therefrom that portion of said Parcel 1 described as follows:

Beginning at the southeasterly terminus of the westerly line of Parcel 13, as shown in said above-mentioned Parcel Map, said line having a bearing and distance of north 15 degrees 33' 12" west 196.00 feet; thence along the southeasterly prolongation of said line south 15 degrees 33' 12" east 19.79 feet to the beginning of a tangent curve, concave to the northeast and having a radius of 15 feet; thence southeasterly along said curve through a central angle of 42 degrees 28' 23", a distance of 11.12 feet to the beginning of a reverse curve concave to the southwest and having a radius of 66.00 feet; thence southeasterly along said curve through a central angle of 33 degrees 14' 42", a distance of 38.30 feet to the beginning of a reverse curve concave to the northeast and having a radius of 15.00 feet; thence southeasterly along said curve through a central angle of 80 degrees 46' 20", a distance of 21.15 feet; thence non-tangent south 67 degrees 58' 02" east 18.03 feet to the most southerly corner of the above-mentioned Parcel 13; thence north 15 degrees 33' 12" west, 38.00 feet and north 60 degrees 33' 12" west, 70.00 feet along the southwesterly boundary of said Parcel 13 to the point of beginning.

Said land is described in Parcel 4 of that certain Lot Line Adjustment 82-LL-0008, recorded February 15, 1983 as Instrument No. 83072186 of Official Records of said County.

Except therefrom Parcels 2, 3 and 4 of Parcel Map No. 85439, as per Map filed in Book 220, Pages 14 to 20 inclusive of Parcel Maps of said Orange County.

Parcel D-4:

Parcels 2, 3 and 4 of Parcel Map No. 85439, in the City of Irvine, County of Orange, State of California, as shown on a Map filed in Book 220, Pages 14 to 20 inclusive of Parcel Maps, in the Office of the County Recorder of said

County.

Parcel D-5:

Parcels 8, 9 and 10 of Parcel Map No. 81068, in the City of Irvine, County of Orange, State of California, as shown on a Map filed in Book 165, Pages 9 to 14 inclusive, of Parcel Maps, in the Office of the County Recorder of said County.

Parcel D-6:

That portion of Parcel 12 of Parcel Map No. 81-608, in the City of Irvine, County of Orange, State of California, as shown on a Map filed in Book 165, Pages 9 to 14 inclusive of Parcel Maps, in the Office of the County Recorder of said County, lying within the land described as Parcel 1 of that certain Lot Line Adjustment No. 82-LL-0008, recorded February 15, 1983 as Instrument No. 83-072186, Official Records of said County.

Parcel D-7:

Parcel "D" of Parcel Map No. 81-608, in the City of Irvine, County of Orange, State of California, as shown on a Map filed in Book 165, Pages 9 to 14 inclusive of Parcel Maps, in the Office of the County Recorder of said County.

E. (Alton Square)

Parcel 9, as per map filed in Book 135, Pages 11 to 15, inclusive, of Parcel Maps, Records of Orange County.

F. (Property Adjacent to I-5 Freeway)

That portion of the following property which is owned by Irvine Community Development Company or The Irvine Company as of the date hereof: the real property located in the unincorporated area of Orange County, California bounded on the northeast by the proposed extension of Portola Parkway, on the northwest by Jamboree Road, on the southwest by the I-5 Freeway, and on the southeast by Culver Drive and the proposed extension thereof, as such property is shown on the map attached as Exhibit "i" hereto.

G. (Oak Creek)

That portion of the following property which is owned by Irvine Community Development Company or The Irvine Company as of the date hereof: the real property located in the City of Irvine, County of Orange, California, bounded on the northeast by the I-5 (Santa Ana) Freeway, on the southeast by Sand Canyon Road, on the southwest by the I-405 (San Diego) Freeway, and on the northwest by Jeffrey Road, as such property is shown on the map attached as Exhibit "ii"

hereto.

VI. PROPERTIES LOCATED IN THE CITY OF TUSTIN.

A. (Tustin Market Place)

Lot 1 and 7 of Tract No. 13556, in the City of Tustin, County of Orange, State of California, as per Map recorded in Book 616, Pages 10 to 17, inclusive, of Miscellaneous Maps, in the Office of the County Recorder of said County, together with Parcels 1 through 8 of that certain Lot Line Adjustment No. 89-2, recorded on November 15, 1989 as Instrument No. 89-614872, in the Office of the County Recorder of said County; and

Lots 1 to 7, inclusive, of Tract No. 13557, in the City of Tustin, County of Orange, State of California, as per Map recorded in Book 639, Pages 31 to 37, inclusive, of Miscellaneous Maps, in the Office of the County Recorder of said County.

VII. PROPERTIES LOCATED IN UNINCORPORATED PORTIONS OF COUNTY.

A. (Property leased by Hines Horticulture, Inc.)

Those portions of Blocks 106, 107 and 120 of Irvine's Subdivision in the County of Orange, State of California, as per map recorded in Book 1, Page 88 of Miscellaneous Record Maps in the Office of the County Recorder of Orange County, California, described in that certain Memorandum of Lease recorded in Official Records of said County on December 2, 1996 as Instrument No. 19960609836.

VIII. OTHER DEVELOPMENT PROPERTIES.

A. (Lower Peters Canyon)

That portion of the following property owned by Irvine Community Development Company as of the date hereof: Parcel 3 as shown on "Exhibit B" attached to that certain Lot Line Adjustment No. LL96-048, recorded December 20, 1996, as Instrument No. 19960642200 of Official Records of Orange County, California.

B. (Planning Area 10)

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That portion of the following property owned by Irvine Community Development Company as of the date hereof:

Parcel B-1:

Lot 1 through 87, inclusive and Lettered Lots A through J, inclusive of Tract No. 15233 as shown on a Map filed in Book 746, Pages 32 to 37, inclusive of Miscellaneous Maps, Records of Orange County, California.

Parcel B-2:

Lots 1 through 83, inclusive and Lettered Lots A through J, inclusive of Tract No. 15234 as shown on a Map filed in Book 746, Pages 38 to 42, inclusive of Miscellaneous Maps, Records of Orange County, California.

C. (Phase II of Northwood V-A Map)

That portion of the following property owned by Irvine Community Development Company as of the date hereof; Lots 2 through 6, inclusive, 8, 10, 12 and 13, and Lettered Lots A through Z, inclusive of Tract No. 14540 as shown on a Map filed in Book 723, Pages 19 to 29, inclusive of Miscellaneous Maps, Records of Orange County, California.

D. (School and Church Site - Westpark II)

That portion of the following property owned by Irvine Community Development Company as of the date hereof: Lots 23 and 24 of Tract No. 13465 as shown on a Map filed in Book 687, Pages 22 to 37, inclusive, of Miscellaneous Maps, Records of Orange County, California.

IX. OTHER PROPERTIES.

All other property owned by Declarant or TIC in the County of Orange, California, as of the date of recordation of this Development Declaration.

Declarant shall have the right by duly recorded amendment(s) to this Development Declaration executed only by Declarant to unilaterally provide further descriptions and/or depictions of all or portions of the Benefitted Property described above.

DESCRIPTION OF
PROPERTY ADJACENT TO I-5 FREEMAY

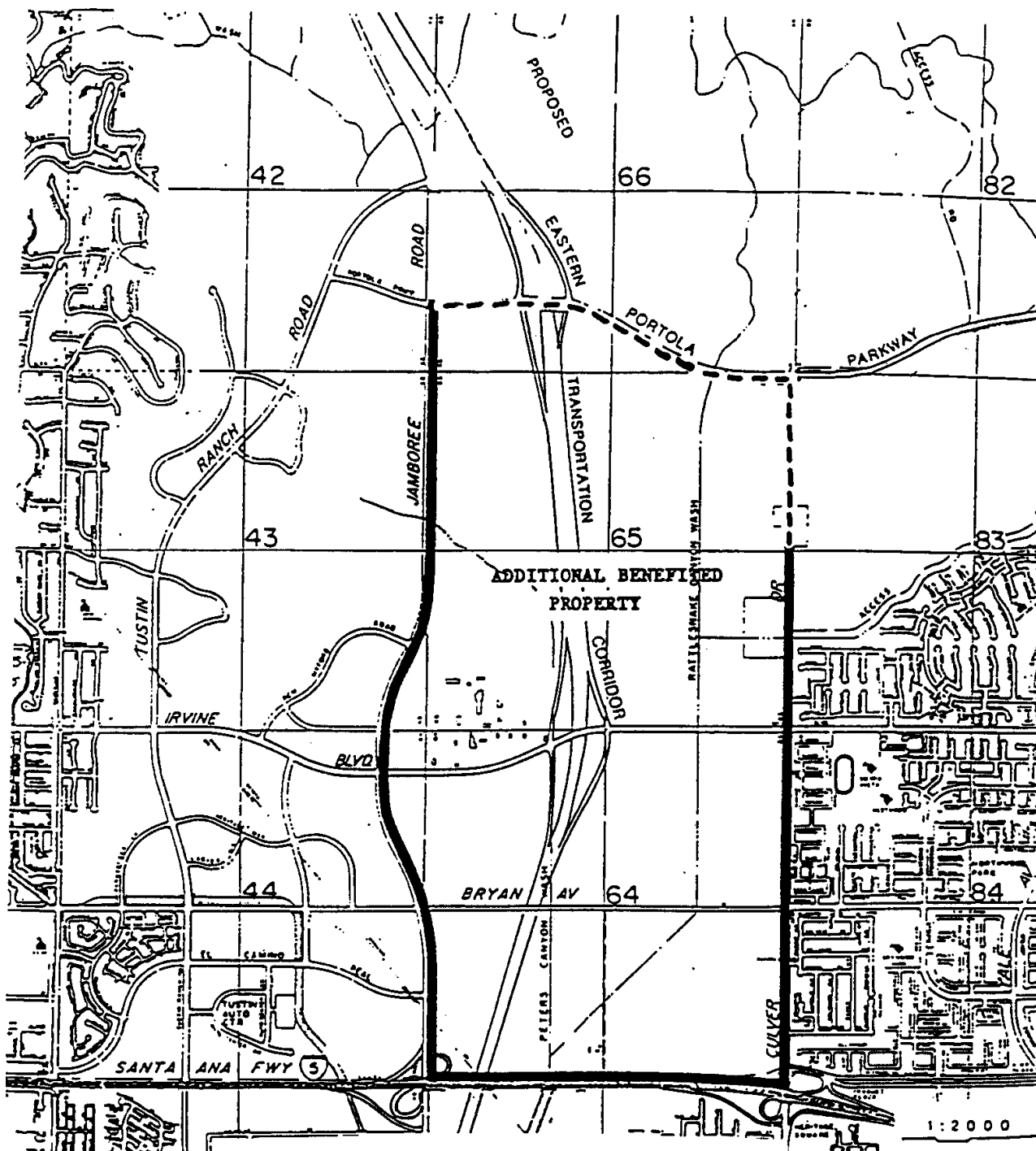


Exhibit "i"
to EXHIBIT C

Declaration of CC&R's
Exhibit C
Lewis/Lower Peters Canyon

