

**CUSTOM LOT DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
SHADY CANYON  
IRVINE, CALIFORNIA**

THIS CUSTOM LOT DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR SHADY CANYON (the "Custom Lot Declaration") is made this 6th day of March, 2001, by IRVINE COMMUNITY DEVELOPMENT COMPANY, a Delaware corporation ("Declarant"), with reference to the following facts:

**RECITALS**

A. Declarant is the fee owner of the real property located in the City of Irvine, Orange County, California, described as:

Lots 33, 39, 45, 46, 47, 50, 51, 53, 64, 65, 74 through 79, inclusive, 87, 95, 96, 100, 105, 106 and 107 of Tract No. 15941, filed in Book 809, Pages 13 through 32, inclusive, Miscellaneous Maps, records of Orange County, California.

Said property shall be the initial Covered Property under this Custom Lot Declaration.

B. Declarant is also concurrently recording against the initial Covered Property that certain Master Declaration of Covenants, Conditions and Restrictions, and Reservation of Easements for Shady Canyon, dated March 6, 2001 (the "Master Declaration").

C. This Custom Lot Declaration imposes covenants, conditions and restrictions upon that portion of the Community (as that term is used in the Master Declaration) selected by Declarant to be developed as custom homes (*i.e.*, the Covered Property). This Custom Lot Declaration imposes covenants, conditions and restrictions upon the Covered Property in addition to those imposed over the entire Community by the Master Declaration and is a "Custom Lot Declaration" as that term is used in the Master Declaration. In the event of any inconsistency between this Custom Lot Declaration and the Master Declaration, with respect to the Covered Property, the provisions of this Custom Lot Declaration shall prevail.

D. It is the desire and intention of Declarant to establish the Community as a multi-phase residential planned development commonly known as "Shady Canyon," and to establish covenants, conditions and restrictions which will constitute a general scheme for the management, use, occupancy and enjoyment of the Community, all for the purpose of enhancing and protecting the value, desirability and attractiveness of the Community and enhancing the quality of life within the Community.

E. Subject to Declarant's right to deannex property from this Custom Lot Declaration as described below, Declarant has deemed it desirable for the efficient preservation and enhanced desirability and attractiveness of the Covered Property to establish the additional covenants, conditions and restrictions provided herein upon the Covered Property. As of the date of this Custom Lot Declaration, the initial Covered Property together with a portion of the Annexation Property is intended to be a multi-phase custom home project consisting of approximately 350 custom lots and related common areas.

NOW, THEREFORE, Declarant hereby covenants, agrees and declares that all of the Covered Property shall be held and conveyed subject to the following covenants, conditions and restrictions (as well as those set forth in the Master Declaration) which are hereby declared to be for the benefit of the Covered Property and the owners thereof, their successors and assigns. These covenants, conditions and restrictions shall run with the land and shall be binding upon all parties having acquired any right or title in the Covered Property or any part thereof, and shall inure to the benefit of each owner thereof and are imposed upon the Covered Property and every part thereof as a servitude in favor of each and every portion of the Covered Property as the dominant tenement or tenements.

#### **ARTICLE 1. DEFINITIONS**

All terms capitalized in this Custom Lot Declaration and not defined herein shall be as defined in the Master Declaration. Certain of those terms defined in the Master Declaration and used herein are set forth below for convenience in reading this Custom Lot Declaration. In addition, certain additional terms used only in this Custom Lot Declaration are also defined below.

1.1 **"Annexation Property"** shall mean that certain real property described and/or shown on Exhibit B attached hereto. It is understood that the Community may include a variety of residential housing products, including custom, semi-custom and production homes, and that portions of the Annexation Property may be annexed to and become subject to the Master Declaration (which will be imposed on the Community) but not be annexed to and become subject to this Custom Lot Declaration (which may be imposed only on a portion of the Community as determined by Declarant).

1.2 **"Buildable Pad"** shall mean that portion of a Custom Lot, as established by Declarant, shown as the "Buildable Pad" on Exhibit A which is attached hereto or which will be attached to a Supplementary Custom Lot Declaration. The Buildable Pad is generally the flat portion of the Custom Lot.

1.3 **"Building Envelope"** shall mean that portion of a Custom Lot, as established by Declarant, within which the Owner thereof may construct a Residential Dwelling. The Building Envelope is defined by reference to the applicable Setback Areas and Height Limits for the Custom Lot. The Building Envelope is either a Single Story Building Envelope or is divided into a Single Story Building Envelope and a Second Story Building Envelope, each of which have a different Setback Area and a different Height Limit. The Setback Areas for each

Custom Lot are shown on Exhibit A which is attached hereto or which will be attached to a Supplementary Custom Lot Declaration. The Height Limits for the Building Envelopes are as set forth in Section 2.5.1 below or as will be set forth in a Supplementary Custom Lot Declaration. The Building Envelope may be adjusted pursuant to Section 2.4.5 of this Custom Lot Declaration.

1.4 “CDFG” shall mean State of California Department of Fish and Game.

1.5 “Covered Property” shall mean all of the real property described in Recital A to this Custom Lot Declaration and any real property which may become subject to or which remains subject to this Custom Lot Declaration, all subject to the annexation or deannexation thereof pursuant to Article 3 of this Custom Lot Declaration.

1.6 “Custom Lot” shall mean a Lot which is (a) subject to this Custom Lot Declaration, (b) originally sold by Declarant in an unimproved condition and (c) improved or to be improved by the Owner with a custom home pursuant to plans and specifications approved by the Design Review Committee.

1.7 “Design Guidelines” shall mean those certain architectural standards, landscape standards, guidelines, procedures and criteria initially established by Declarant for the Community for use by a Custom Lot Owner in the preparation of plans and specifications for Improvements to be built, constructed, erected, planted or otherwise installed on his Custom Lot and for use by the Design Review Committee as a basis for its review of such plans and specifications. The Design Guidelines may be revised from time to time as provided in the Master Declaration. A copy of the Design Guidelines may be obtained from the Design Review Committee.

1.8 “Design Review Committee” shall mean the committee formed by the Board for purposes, among other things, of reviewing and approving plans and specifications for Improvements built, constructed, erected, planted or otherwise installed by any Owner in the Community.

1.9 “Dwelling” shall mean a Residential Dwelling, together with all appurtenant roof overhangs, chimneys, exterior stairways, decks, balconies, bay windows, architectural enhancements and mechanical equipment.

1.10 “Excavation” shall mean any grading of the Lot which results in the removal of earth or rock to a depth of more than six (6) inches.

1.11 “Fill” shall mean any added soil, rock or other materials to the surface of the Lot which increases the existing elevation of such surface by more than six (6) inches.

1.12 “First Floor” shall mean the floor surface of a First Story. The First Floor is synonymous with the ground floor.

1.13 “Garage” shall mean the building or portion of a building in which motor vehicles are stored.

1.14 "**Height Limit**" as to any given Lot, Master Association Property or Common Area shall mean a plane parallel to the Rough Grade of such property at that certain height established by Declarant. The Height Limit for a Custom Lot is established by reference to the elevation at particular points of Rough Grade for the Custom Lot set forth on Exhibit A for the particular Custom Lot attached either to the grant deed which transfers the Lot from Declarant to the initial Owner or a supplement thereto executed by Declarant, as said points may be modified as set forth in such grant deed or supplement. The Height Limits for the initial Covered Property as established by Declarant are set forth in Section 2.5 below.

1.15 "**Improvement**" shall mean:

1.15.1 all structures and appurtenances thereto of every kind whatsoever, including but not limited to, buildings, outbuildings (e.g., guest or caretaker units, sheds, etc.), tennis courts, swimming pools, spas and other recreational facilities, gazebos, barbecues, garages, carports, open parking areas, roads, driveways, streets, mechanical entry gate systems and related equipment, lights, landscaped parkways and medians, sidewalks, walkways, pavements and other hardscape, trails, fences, screens, awnings, patio and balcony covers, stairs, decks, planters, trellises, sunshades, screening walls, wind screens, screen doors, skylights, poles, signs, retaining walls, other walls, footings, columns, gates, decorative or informative signs, mail kiosks, private utility lines and connections, storm drains and catch basins and sewer lines and laterals, antennas, signs, solar or windpowered energy systems or equipment, and water softener or heater or air conditioning and heating fixtures and equipment, landscaped slopes, trees, shrubs, hedges, flowers and other landscaping and all landscape irrigation systems;

1.15.2 all exterior modifications to any of the foregoing, including but not limited to, the painting of the exterior of any home or other exterior surface of any visible structure; changing the roof material, windows or exterior doors of any home or other structure; the building, constructing or erecting any additions and/or demolishing or conducting any exterior remodeling;

1.15.3 the demolition or destruction by voluntary action of any structure or appurtenance thereto of every type and kind;

1.15.4 the grading, excavation, filling, or similar disturbance to the surface of the land, including, without limitation, change of grade, change of ground level, change of drainage pattern or change of streambed;

1.15.5 all trees and other landscaping, planting, vines, clearing, or removal thereof; and

1.15.6 any change or alteration of the foregoing including any change of exterior appearance, color or texture.

1.16 "**Invasive Exotic Plants**" shall mean all species listed on Lists A & B of the California Exotic Pest Plant Council's list of "Exotic Pest Plants of Greatest Ecological Concern in California as of August 1996," as the same may be updated and amended from time

to time (which Lists are set forth in the Design Guidelines), and African sumac, California pepper tree and European olive tree.

1.17 “Lot” shall mean a lot shown on a final map or a parcel shown on a parcel map filed for record in Orange County, California, which lot or parcel is described in this Custom Lot Declaration or any Supplementary Custom Lot Declaration as part of the Covered Property, as such lot or parcel may be adjusted from time to time by any lot line adjustment, parcel map or other governmental approval for the purpose of merging portions thereof into adjacent property. The term “Lot” shall not mean or include the Master Association Property or Common Area.

1.18 “Master Association” shall mean Shady Canyon Community Association, a California nonprofit mutual benefit corporation, established for the purpose of administering, implementing and enforcing the provisions of the Master Declaration.

1.19 “Maximum Allowable Square Footage” shall mean the maximum square footage which may be constructed on a Custom Lot as established by Declarant. Each Custom Lot shall have a Maximum Allowable Square Footage for each of the First Floor, the Second Floor and the total Dwelling on such Custom Lot. For purposes of determining the square footage of the First Floor (and the total Dwelling), the First Floor shall include any Garage located on the First Floor. The square footage of subterranean Garages, basements, attics and other exclusions as set forth in and to the extent permitted in the Design Guidelines shall not be included in the square footage of the Dwelling for purposes of determining the Maximum Allowable Square Footage. The Maximum Allowable Square Footage for each of the First Floor, Second Floor and total Dwelling for each Custom Lot is shown on Exhibit A which is attached hereto or which will be attached to a Supplementary Custom Lot Declaration. The Maximum Allowable Square Footage may be adjusted pursuant to Section 2.4.5 of this Custom Lot Declaration.

1.20 “NCCP” shall mean the Natural Communities Conservation Plan and Habitat Conservation Plan developed for the Central/Coastal Orange County Subregion pursuant to the California Natural Community Conservation Planning Act of 1991.

1.21 “Residential Dwelling” shall mean the Improvements on the Custom Lot intended for occupancy as a residence. “Residential Dwelling” shall include the enclosed, habitable residence together with its Garages and Tower. Residential Dwelling shall not include roof overhangs, chimneys, exterior stairways, decks, balconies, bay windows, architectural enhancements, mechanical equipment and other elements, if any, as set forth in the Design Guidelines.

1.22 “Rough Grade” shall mean the rough grade elevation for a Lot, as initially established by Declarant and set forth on the rough grading plans for the property or any portion thereof, which plans have been or will be approved by the applicable governmental entity. Rough Grade is said graded elevation prior to final grading for a particular home or other structure on the property. The points of Rough Grade for each Custom Lot will be set forth on Exhibit A for the particular Custom Lot attached either to the grant deed which transfers the Lot

from Declarant to the initial Owner or a supplement thereto executed by Declarant. The points of Rough Grade set forth on such Exhibit may be modified as set forth in such grant deed or supplement.

1.23 “Second Floor” shall mean the floor surface of a second Story.

1.24 “Second Story Building Envelope” shall mean that portion of the Building Envelope for a Custom Lot within the second story envelope for such Custom Lot as shown on Exhibit A which is attached hereto or which will be attached to a Supplementary Custom Lot Declaration, and located between a plane parallel to the Rough Grade of the Custom Lot at a height of twenty (20) feet above the Rough Grade and the maximum Height Limit for the Custom Lot. Not all Custom Lots will have a second story envelope but will be limited to a Single Story Building Envelope.

1.25 “Setback Area” shall mean all portions of a Custom Lot other than the Building Envelope and includes the front yard, rear yard and side yard areas. The Setback Area for each Custom Lot is depicted on Exhibit A which is attached hereto or which will be attached to a Supplementary Custom Lot Declaration. If the Building Envelope for a Custom Lot includes a Second Story Building Envelope, the Setback Area for the Single Story Building Envelope and the Second Story Building Envelope on such Lot will vary. The installation of Improvements in the Setback Area is restricted as described in Article 2 hereof and in the Design Guidelines. The Setback Area may be adjusted pursuant to Section 2.4.5 of this Custom Lot Declaration.

1.26 “Single Story Building Envelope” shall mean that portion of the Building Envelope for a Custom Lot not included in the Second Story Building Envelope for such Custom Lot. If the Custom Lot does not have a second story envelope as shown on Exhibit A for such Custom Lot which is attached hereto or will be attached to a Supplementary Custom Lot Declaration, then the term “Building Envelope” and “Single Story Building Envelope” are synonymous for such Custom Lot.

1.27 “Story” shall mean that portion of a building included between the upper surface of any floor and the surface of the floor above or ceiling of the roof above. The First Story is the lowest Story in a building that qualifies as a Story. Usable or unusable floor space qualifies as a Story (as opposed to a basement) if the floor surface above such space is higher than Rough Grade by three feet or more at any point.

1.28 “Supplementary Custom Lot Declaration” shall mean an instrument which annexes additional property to the Covered Property and extends the plan of this Custom Lot Declaration to such additional property as provided in Article 3 hereof.

1.29 “Tower” shall mean an attached but distinct vertical building element that is roofed independently from adjacent roofs and separated from the first or second (as applicable) Story of the building.

1.30 “USFWS” shall mean United States Fish and Wildlife Service.