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POINTE MARIN  
DECLARATION  
OF  
RESTRICTIONS (CC&Rs)

If this document contains any restriction based on race, color, religion, sex, familial status, marital status, disability, national original, or ancestry, that restriction violates state and federal fair housing laws and is void and may be removed pursuant to Section 12956.1 of the Government Code. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.

Covenants and restrictions, if any, based on race, color, religion, sex, handicap, familial status, or national origin are deleted unless and only to the extent that said covenant (a) is exempt under Chapter 42, Section 3607 of the United States Code or (b) relates to handicap but does not discriminate against handicapped persons.

provide this information provided the fee shall not exceed the Association's reasonable cost to prepare and reproduce the requested items.

## ARTICLE 7 - Architectural Review

7.1 Architectural Committee. An Architectural Committee may be established by Declarant or by the Board. The Committee shall consist of three members. Declarant may appoint all of the original members of the Committee and all replacements until the first anniversary of the issuance of the original final subdivision public report for the Development. Declarant's appointees need not be Members of the Association. Declarant shall have the right to appoint a majority of the members of the Committee until 90% of all the Lots in the Development have been sold or until the fifth anniversary of the issuance of the final public report for the first phase of the Development, whichever occurs first. On the first anniversary date of the issuance of the original public report for the first phase of the Development, the Board shall have the power to appoint one member to the Committee until 90% of the Lots of the Development have been sold or until the fifth anniversary date of the issuance of the final public report for the first phase of the Development, whichever first occurs. Thereafter, the Board shall have the power to appoint all of the members of the Committee. The Board appointees shall be Members of the Association. The term of the members shall be as designated by Declarant or by the Board. If a member is removed from the Committee for any reason, the person appointing the member immediately shall appoint a replacement for the balance of the removed member's term. Until a replacement is named, the remaining members of the Committee shall have full authority to act on behalf of the Committee. No member of the Committee shall be entitled to any compensation for serving as a member, provided that member shall be entitled to be reimbursed by the Committee for any expenses incurred by the member in performing its duties, provided the member received prior authorization for the incurrence of the expense. All actions of the Committee shall be governed by a majority vote of the members. The Committee shall meet at such times and places as it shall designate. Meetings of the Committee shall be open to all Members of the Association.

The Committee may adopt guidelines regarding the type, location, quality, size, height and other matters relating to any Improvements or landscaping to be constructed or installed on the Lots and may establish a procedure for reviewing all plans and specifications submitted to it for prior approval and shall be responsible for periodic review and modification of the guidelines. The guidelines shall comply with the use restrictions described in **Article 3** and with the design guidelines for boundary fencing approved by the City. Factors that shall be considered in approving proposed plans and specifications shall include without limitation: (i) conformity and harmony of external design with other Lots in the Development; (ii) effect of the proposed location on neighboring Lots; (iii) relation of the topography, grade and finished ground elevation to that of adjoining Lots; (iv) proper facing of elevations with respect to nearby streets and adjoining Lots; (v) overall conformity with the general purpose of the Development and the restrictions in this Declaration; and (vi) the guidelines.

7.2 Approval Requirements. None of the following actions shall take place anywhere within the Development without the prior written approval of the Committee:

- (i) any construction, installation, addition, repair (including exterior painting), replacement, alteration or removal of any building, outbuilding, structure, exterior wall, windows, exterior doors, exterior stairs, fence, sign, garage, trash enclosure, storage area, berms, utilities, fixtures (gas, electricity, telephone, water, or otherwise) or other Improvements visible from any other Lot or Common Area;
- (ii) any planting or landscaping (including the removal of any tree);
- (iii) any grading, excavation or site preparation; or

(iv) any placement or storage of building materials or temporary structures (including trailers, tents, mobile homes, offices or vehicles).

Notwithstanding anything herein to the contrary, any Owner may repaint the exteriors of any Improvements on the Owner's Lot in the same colors, remove and replace any siding or roofing materials with the same material and in the same color, and remove and replace vegetation of the same or substantially similar type as originally constructed or installed by Declarant or as previously approved by the Committee. In addition, any Owner may repaint the interior of the Owner's residence in any color the Owner desires or remodel the interior, provided the remodeling does not in any manner alter the exterior appearance of the building.

7.3 Architectural Rules. The Committee, from time to time, may adopt, amend and repeal rules and regulations to be known as "Architectural Rules". Pending adoption of the Architectural Rules, the provisions of this **Section 7.3** shall control the actions of the Committee and shall bind all Owners. The Architectural Rules shall interpret and implement the provisions of this **Article 7** and shall contain the following mandatory elements and such other elements as the Committee considers necessary or advisable:

(i) Application Requirements. The Architectural Rules shall set forth the necessary documents to be submitted by the applicant. Unless otherwise waived in writing by the Committee, or an authorized representative thereof, the application shall include plans and specifications prepared by an architect or a licensed building designer which adequately describe the proposed work and shall include the following to the extent applicable to the proposed work: plot layout; location of all existing and proposed Improvements; setbacks from Lot lines of all existing and proposed Improvements; proposed drainage; exterior designs; roofing and siding materials; elevations; of all Improvements; floor plans; location of all heating or cooling equipment; decking; screening devices; bearing walls and retaining walls; materials and colors; landscaping plans; construction schedule; and such other information as the Committee shall reasonably require. Landscaping plans shall include a complete and professionally prepared plan including the name, location and sizes of all proposed trees, sodding, shrubbery, lawn areas, hardscape and irrigation system. The plans shall identify any trees scheduled for removal and describe the plans for replanting trees and vegetation.

If the proposed work does not merit extensive plans and specifications, the Committee may, but shall not be obligated to, waive or modify any of the above requirements upon receipt of a written request from the applicant to do so.

An application shall not be considered a "complete application" for purposes of **Section 7.4** until the Committee has received all the required documents. After the submission of an application, the applicant may request in writing from the Committee confirmation that the application is complete. The initial confirmation request may be made no sooner than seven calendar days after the initial application has been received by the Committee. If the Committee fails to respond within 30 days of receipt of the request, the application shall be considered complete for purposes of **Section 7.4** only. The foregoing does not preclude the Committee from requesting additional documentation unless the application has been deemed approved pursuant to the provisions of **Section 7.4**. If a timely request for additional documentation is received, this documentation or the failure to receive the documentation can be considered by the Committee in rendering its decision on the proposed work.

The application, any request for confirmation of a complete application, any additional documents requested by the Committee, and any other notices or documents given to the Committee under the provisions of this **Article 7** shall be considered received by the Committee in accordance with the "receipt" procedures described in the Architectural Rules or, if there are no such procedures, on the date of personal delivery to the Association's manager, the President of the Association, or the Chair of the Committee or, if mailed, on the date receipt is acknowledged on the return receipt when mailed certified mail, return receipt requested, addressed to the President of the Association or Chair of the Committee and mailed to the principal office of the Association.

(ii) Application Fee. The Architectural Rules may require that the application be accompanied by a reasonable application fee to pay for any out-of-pocket costs incurred by the Committee in reviewing any plans and specifications. This fee may include the cost of retaining outside consultants for purposes of assisting the Committee in reviewing the plans and specifications. If, during the review process, the Committee determines that additional fees will be necessary to cover additional out-of-pocket costs, the Committee may require the applicant to advance any additional fees before the review can be completed. The proposed work can be denied for the sole reason that the applicant has failed to pay the required fees.

(iii) Guidelines and Variances. The Architectural Rules may include guidelines for any proposed work that are not inconsistent with any use restriction contained in this Declaration. The guidelines can apply to structures and/or landscaping. The guidelines may set forth specific standards regarding color, height, quality, setbacks, materials, size and such other standards as the Committee may adopt from time to time that are consistent with the approval conditions described in **Section 7.4**. The Committee, from time to time and upon request from the applicant, may grant variances from any guidelines established by the Committee. Under no circumstances shall the Committee have any authority to grant any variance that would result in violation of any use restrictions contained in this Declaration.

(iv) Hearings (Optional). If the Committee, in its sole discretion, elects to conduct a hearing on an application, reasonable notice of the time, place and proposed agenda for the Committee's hearing shall be distributed prior to the date of a hearing to any applicant whose application is scheduled to be heard. The applicant shall be entitled to appear at the hearing, shall be entitled to be heard on the matter, and may be accompanied by the applicant's architect, engineer and/or contractor. Notice also shall be given to such adjoining or nearby Lot Owners that the Committee reasonably believes could be affected by the proposed work. These Owners shall be entitled to attend the hearing and given reasonable opportunity to present their views on the proposed work.

(v) Preliminary Approval Procedures. The Committee may adopt procedures for preliminary approval. This would enable applicants who are proposing to make Improvements an opportunity to obtain guidance and comments from the Committee prior to the expenditure of substantial sums on completed plans and specifications. Preliminary approval shall be granted if the Committee, in its sole discretion, determines that it would approve final plans as described in **Section 7.4**. Pending or denying preliminary approval, the Committee may give the applicant such directions or recommendations concerning the form and substance of the final application for approval as it may deem proper or desirable for guidance of the applicant. Any preliminary approval granted by the Committee shall be effective for a period of 90 days from the date of issuance or such longer period as, in the Committee's discretion, may be granted. During this period, any application for final approval that presents complete plans and specifications for the proposed Improvements, consistent with the provisions of preliminary approval and otherwise acceptable under the terms of this Declaration and the Architectural Rules, shall be approved by the Committee. In no event shall any preliminary approval of a proposed Improvement constitute final approval authorizing construction of the Improvement. The purpose of the preliminary review procedure is to give the applicant a measure of security in proceeding with the proposed Improvement, committing funds thereto. Final approval shall be based on a complete submittal conforming to the requirements of this **Section 7.3**.

7.4 Basis for Approval. The Committee shall not approve the application unless the Committee, in its sole discretion, finds all of the following conditions have been satisfied:

(i) the applicant has complied with the application procedures described in **Section 7.3** and any additional procedures adopted by the Committee;

(ii) the proposed work is in compliance with the use restrictions contained in the Declaration, the Architectural Rules, and, unless a variance is granted, any guidelines established

by the Committee under **Section 7.3(iii)** in effect at the time the application was submitted to the Committee;

(iii) the proposed work is in compliance with all governmental laws and ordinances (the Committee shall have no duty to independently confirm such compliance);

(iv) if the proposed work involves any exterior modifications or additions, the work is in harmony with the external design of other structures and/or landscaping within the Development and is consistent with the architectural and aesthetic standards prevailing within the Development and with the overall general plan and scheme of the Development; and

(v) if the residence immediately abuts the wall of an adjoining residence, the proposed work will not unreasonably increase the sound transmissions, resonances or reverberations to the other residence.

The Committee shall be entitled to determine that the proposed work is unacceptable even if the same or similar work previously had been approved for another Lot as long as the Committee finds that reasonable factors exist to distinguish this application from the approved work. The Committee shall be entitled to make subjective judgments and to consider the aesthetics of a proposal when the proposed work will result in Improvements and/or landscaping that can be seen from any other Lot, Common Area, or public right-of-way as long as the Committee acts in good faith and not arbitrarily or capriciously.

In approving any proposed work, the Committee may grant conditional approval on the adoption of modifications to the proposed work that in the Committee's judgment are necessary to bring the proposed work into compliance with the approval conditions contained in this **Section 7.4**. In addition, the Committee may impose reasonable construction restrictions, such as construction hours, dust controls, noise abatement measures, and such other conditions as the Committee may reasonably require, to minimize the interference with the quiet use and enjoyment of the surrounding residences during the course of construction.

In reviewing and approving plans, the Committee shall comply with the restrictions contained in **Article 3** and with all federal, State and local laws regulating the rights of handicapped persons.

If the Committee fails to approve or disapprove any application or fails to request additional information within 60 days of receipt of either the complete application or any advance payments required by the Committee, whichever shall occur later, the application shall be deemed approved unless a written extension is executed by the Person submitting the application and by the Committee. The burden shall be on the applicant to establish that the Committee did receive the completed application and/or advance payments and to establish the date of receipt.

**7.5 Completion of Work.** On receipt of approval, the Owner shall commence the work as soon as reasonably practicable and shall diligently pursue the completion of the work. If the work is not commenced within 90 days after receipt of approval or completed within 180 days or such later date as the Committee shall approve in writing, the approval automatically shall be deemed revoked and no further work shall be done without again obtaining the written approval of the Committee as described herein. The work shall be done in strict compliance with the approved plans except for minor non-material changes as may be necessary during the course of construction.

**7.6 Non-liability.** The Association, the Committee, Declarant, or the other Lot Owners, or their respective successors or assigns, shall not be liable to any Person submitting plans to the Committee for approval or to any other Lot Owners or occupants by reason of any act or omission arising out of or in connection with the approval or disapproval of any plans or specifications. Approval shall not constitute any warranty or representation by the Committee or its members that the plans satisfy any applicable governmental law, ordinance or regulation or that any Improvement constructed in accordance with the plan shall be fit for the use for which it was intended and safe

for use and occupancy. Applicants shall make their own independent verifications of the foregoing and shall not rely on the Committee or its members in any manner in this regard.

7.7 Enforcement. If any Owner or occupant violates the provisions of this **Article 7**, any Declarant or the Association, in addition to any other remedy available at law or equity, may bring an action to compel compliance, including an action for a court order mandating the removal of any Improvement or other property constructed or installed in violation of the provisions of this **Article 7**. In such action, the prevailing party shall be entitled to recover costs and reasonable attorneys' fees.

7.8 Board's Authority. If for any reason the Committee is not established or not active, the Board shall perform the duties and shall have the rights of the Committee as described in this **Article 7**. Notwithstanding anything herein to the contrary, modifications, changes or additions to any Common Area Improvements authorized by the Board shall not require approval from the Committee.

7.9 Governmental Approval. Before commencement of any alteration or Improvement approved by the Committee, the Owner shall comply with all the appropriate governmental laws and regulations. Approval by the Committee does not satisfy the appropriate approvals that may be required from any governmental entity with appropriate jurisdiction.

7.10 Declarant Exemption. Declarant, or its successor or assign, shall not be subject to the approval requirements of this **Article 7** in connection with the construction or alteration of any Improvement within the Development or the installation of any landscaping, provided that this exemption shall expire on the third anniversary date of the recordation of the declaration of annexation annexing the last phase into the Development.

## ARTICLE 8 - Insurance

8.1 Liability Insurance. The Association shall obtain and maintain a commercial general liability insurance policy insuring the Association, any manager, Declarant, the Association's directors and officers, and the Owners and occupants of the Residential Lots and their respective family members against any liability incident to: (i) the ownership or use of the Common Area or any other Association owned or maintained real or personal property; and (ii) the performance or nonperformance of any of the Association's duties under this Declaration. The policy shall include, if obtainable, a cross liability or severability of interest endorsement insuring each insured against the liability to each other. The limits of such insurance shall not be less than \$1,000,000 covering all claims for death, personal injury and property damage arising out of a single occurrence. Such insurance shall include coverage against water damage liability, liability for non-owned and hired automobiles, liability for property of others, and other liability or risk customarily covered with respect to projects similar in construction, location and use and shall require at least 30 days' written notice to the Association before the policy can be cancelled or substantially modified unless the policy is being replaced with a policy of equivalent coverage. The policy shall be primary and noncontributing with any other liability policy covering the same liability.

8.2 Association Property Insurance. The Association, in the sole discretion of the Board, may obtain and maintain a property insurance policy on the Common Area Improvements and Association personal property in such amounts and containing such terms and conditions as the Board from time to time may select.

8.3 Cancellation. All of the policies of insurance maintained by the Association shall contain a provision that such policy or policies shall not be cancelled or terminated, or expired by their terms, or not renewed without 60 days' prior written notice to the Board, the Owners and their