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RECORDING REQUESTED BY  
FIRST AMERICAN TITLE INSURANCE COMPANY

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

Redevelopment Agency of the City of  
Huntington Beach  
2000 Main Street  
Huntington Beach, California 92648  
Attn: ~~Executive Director~~ *City Clerk*

DOC # 94-0018299  
10-JAN-1994 08:00 AM

Recorded in Official Records  
of Orange County, California  
Lee A. Branch, County Recorder  
Page 1 of 21 Fees: \$ 0.00  
Tax: \$ 0.00

[Space above for recorder.]

This Agreement is recorded at the  
request and for the benefit of the  
Agency and is exempt from the  
payment of a recording fee pursuant  
to Government Code Section 6103.

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OF

REDEVELOPMENT AGENCY OF  
THE CITY OF HUNTINGTON  
BEACH

DECLARATION OF COVENANTS, CONDITIONS,  
AND RESTRICTIONS

THIS DECLARATION OF COVENANTS, CONDITIONS, AND  
RESTRICTIONS (the "Declaration") is entered into this 20<sup>th</sup> day of October, 1993, by and  
between the REDEVELOPMENT AGENCY OF THE CITY OF HUNTINGTON BEACH, a  
public body corporate and politic (the "Agency"), and FIVE POINTS SENIORS, L.P., a  
California limited partnership (the "Developer").

RECITALS

A. The Developer is fee owner of record of that certain real property (the "Site")  
located in the City of Huntington Beach, County of Orange, State of California legally described  
in the attached Exhibit "A". The Site is the subject of an Affordable Housing Agreement (the  
"Agreement") for the development, operation and maintenance of a senior citizen housing  
project.

B. The Agreement provides for the execution and recordation of this document.  
Except as otherwise expressly provided in this Declaration, all terms shall have the same  
meanings as set forth in the Agreement.

NOW, THEREFORE, THE AGENCY AND THE DEVELOPER AGREE AS FOLLOWS:

1. Affordable Housing

A. Number of Units. The Developer covenants and agrees to develop a total of one hundred sixty-four (164) multifamily housing units on the Site in conformance with the Scope of Development (Attachment No. 6 to the Agreement). The Developer agrees to make available, restrict occupancy to, and rent thirty-two (32) of the units to "Very Low Income Households" and sixteen (16) additional units to "Persons and Families of Low and Moderate Income," all at an "Affordable Rent" (the "Affordable Units"). However, the Developer shall be obligated to make available, restrict occupancy to, and rent sixteen (16) of the units to "Very Low Income Households," sixteen (16) additional units to "Lower Income Households," and sixteen (16) additional units to "persons and families of Low and Moderate Income," in lieu of the requirements of the preceding sentence, for the duration of the "Affordability Period" (as defined in paragraph B of this Section 1), upon the occurrence of all three of the following events: (a) the "Qualified Development Period" (as defined in the Regulatory Agreement and Declaration of Restrictive Covenants by and among the City, Developer and Dai-Ichi Kangyo Bank of California, dated as of December 1, 1991) shall have elapsed; and (b) the "Section 8 Program" (as defined in paragraph G of this Section 1) or a reasonably similar successor or replacement federal rental subsidy or voucher program no longer exists; and (c) neither the City nor the Agency has instituted a rental subsidy or voucher program designed to subsidize the rents of Very Low Income Households. The location of the Affordable Units shall be dispersed throughout the Developer Improvements and shall be reasonably acceptable to the Agency. The distribution of sizes (in terms of number of bedrooms) of the Affordable Units shall be in the same proportion as the distribution of sizes of all units within the Developer Improvements. There shall be not less than six (6) and not more than ten (10) Affordable Units on each floor of the Developer Improvements. Those Affordable Units located on the first floor of the Developer Improvements shall each be not less than Five Hundred Seventy (570) square feet.

"Very Low Income Household" shall mean a household earning not greater than fifty percent (50%) of Orange County median income, as determined by the United States Department of Housing and Urban Development, as set forth in Health and Safety Code Section 50105.

"Lower Income Household" shall mean a household earning not greater than eighty percent (80%) of Orange County median income, as determined by the United States Department of Housing and Urban development, as set forth in Health and Safety Code Section 50079.5.

"Persons and Families of Low and Moderate Income" shall mean a household earning not greater than one hundred twenty percent (120%) of Orange County median income, as determined by the United States Department of Housing and Urban Development, as set forth in Health and Safety Code Section 50093.

"Affordable Rent" shall have the meaning set forth in Health and Safety Code Section 50053, as further defined in subparagraph E of this Section 1.

B. Duration of Affordability Requirements. The Affordable Units shall be subject to the requirements of this Section 1 for thirty (30) years, beginning on the date of the City's issuance of a certificate of occupancy for the Developer Improvements, July 30, 1993 (the "Commencement Date"). The duration of this requirement shall be known as the "Affordability Period." All tenants residing in the Affordable Units during the last two (2) years of the Affordability Period shall be given notice at least once every six (6) months of the expiration date of this requirement, and that the rent payable on the Affordable Unit may be raised to a market rate rent at the end of the Affordability Period. The Developer consents to the recording of this Declaration in the official records of Orange County, California.

C. Selection of Tenants. The Developer shall give notice to the Agency of the City's issuance of the certificate of occupancy for the Developer Improvements and the Affordable Units, and shall give notice of the vacancy of each and any Affordable Unit thereafter. The Agency shall have five (5) working days from the receipt of such notice to deliver to the Developer a list of prospective tenants for such vacancy. The Developer shall send written notice of such vacancy to each person on such list. Such notice shall notify the recipient that he or she must directly contact the Developer or its designated leasing agent within fifteen (15) working days to apply for tenancy of such vacant Affordable Unit. The Developer shall not rent or lease such Affordable Unit during such fifteen (15) day period to any tenant not notified of such vacancy by the Agency. In the event that no tenant which is reasonably acceptable to the Developer applies for tenancy of the vacant unit within such time period, the Affordable Unit may be leased to another tenant selected by the Developer who meets all of the other requirements provided herein.

D. Income of Tenants. Prior to the rental or lease of any Affordable Unit to a tenant, and annually thereafter within thirty (30) days of the anniversary date of the tenant's occupancy of the Affordable Unit, the Developer shall submit to the Agency a completed income computation and certification form, in the form of Attachment No. 9 to the Agreement or such other form as may be provided by the Agency. The Developer shall certify that to the best of its knowledge each tenant leasing an Affordable Unit is a Very Low Income Household, Lower Income Household, or a Person or Family of Low and Moderate-Income, whichever is applicable, and meets the eligibility requirements established for the Affordable Unit. The Developer shall obtain an income certification from the tenant of each Affordable Unit and shall certify that, to the best of the Developer's knowledge, the income of the tenant is truthfully set forth in the income certification form. The Developer shall verify the income certification of the tenant in one or more of the following methods as specifically requested by the Agency:

- (1) obtain two (2) paycheck stubs from the tenant's two (2) most recent pay periods.
- (2) obtain a true copy of an income tax return from the tenant for the most recent tax year in which a return was filed.
- (3) obtain an income verification certification from the employer of the tenant.

(4) obtain an income verification certification from the Social Security Administration and/or the California Department of Social Services if the tenant receives assistance from such agencies.

(5) obtain an alternate form of income verification reasonably requested by the Agency, if none of the above forms of verification is available to the Developer.

A person or family who at the time of income certification qualified as a Very Low Income Household, Lower Income Household, or Person or Family of Low and Moderate-Income or shall continue to be deemed so qualified, until such time as the person or family's income is redetermined and the person or family is determined by the Agency to no longer be so qualified, even if such person or family's income has subsequently increased to an amount above the applicable income level. Upon the Agency's determination that the tenant is no longer qualified as a Very Low Income Household, Lower Income Household, or Person or Family of Low and Moderate-Income, the next available unit of comparable size must be rented to (or held vacant and available for immediate occupancy by) a Very Low Income Household, Lower Income Household, or Person or Family of Low and Moderate-Income, whichever is applicable. Such new tenant shall then constitute a Very Low Income Household, Lower Income Household or Person or Family of Low and Moderate-Income for the purposes of this Section 1, and until such next available unit is rented to such tenant, the former Very Low Income Household, Lower Income Household, or Person or Family of Low and Moderate-Income who has ceased to qualify as such shall be deemed to continue to be a Very Low Income Household, Lower Income Household, or Person or Family of Low and Moderate-Income for the purposes of this Section 1. In addition, the Developer shall annually submit to the Agency a certification of the number of Affordable Units actually occupied by Very Low Income Households, Lower Income Households, and Persons or Families of Low and Moderate-Income, and the ages of all tenants residing in the Developer Improvements, in the form of Attachment No. 10 to the Agreement or such other form as may be provided by the Agency.

E. Determination of Affordable Rent for the Affordable Units. Each Affordable Unit shall be rented at an "Affordable Rent" to be established by the Agency as provided herein. The maximum monthly rental amount for the Affordable Units required to be rented to Very Low Income Households shall be established at one-twelfth (1/12) of thirty percent (30%) of fifty percent (50%) of Orange County median income. The maximum monthly rental amount for the Affordable Units required to be rented to Lower Income Households, if any, shall be established at one-twelfth (1/12th) of thirty percent (30%) of sixty percent (60%) of Orange County median income for tenants earning more than fifty percent (50%) and not more than sixty percent (60%) of Orange County median income, and one-twelfth (1/12th) of thirty percent (30%) of such tenant's annual income for tenant earning more than sixty percent (60%) and not more than eighty percent (80%) of the Orange County median income. The maximum monthly rental amount for the sixteen (16) Affordable Units required to be rented to Persons of Low and Moderate Income shall be established at one-twelfth (1/12) of thirty percent (30%) of one hundred ten percent (110%) of Orange County median income for tenants earning more than eighty percent (80%) and not more than one hundred ten percent (110%) of Orange County median income, and one-twelfth (1/12th) of thirty percent (30%) of such tenants' annual income for tenants earning more than one hundred ten percent (110%) and not more than one hundred twenty percent (120%) of Orange County median income.

The maximum monthly rental amount for each Affordable Unit rented to Persons of Low- and Moderate-Income shall be based upon the actual household size of the persons occupying the Affordable Unit. The maximum monthly rental amount for each Affordable Unit to be rented to Very Low Income Households and Lower Income Households shall be based upon the assumed household size of two (2) persons for each one (1) bedroom unit and three (3) persons for each two (2) bedroom unit, except as hereinafter provided. Upon the rental of any Affordable Unit to a Very Low Income Household which is a "Section 8 Recipient", as defined in Paragraph G hereof ("Section 8 Unit"), the maximum monthly rental amount for the next Affordable Unit rented to a Very Low Income Household which is not a Section 8 Recipient shall be based upon the actual household size of the person or persons occupying such Affordable Unit ("Actual Household Size Unit"). In the event any such Section 8 Unit is vacated and rereanted to a Very Low Income Household which is not a Section 8 Recipient, then upon the next vacation of an Actual Household Size Unit, such vacated Actual Household Size Unit shall no longer be an Actual Household Size Unit and the maximum monthly rental amount for such Affordable Unit shall be based upon the assumed household size of two (2) persons if it is a one (1) bedroom unit and three (3) persons if it is a two bedroom unit. In no event, however, shall the rereenting of a Section 8 Unit to a Very Low Income Household which is not a Section 8 Recipient authorize the Developer to increase the rental amount charged to an existing tenant of an Actual Household Size Unit. Furthermore, the maximum number of Actual Household Size Units required at any one time shall be limited to sixteen (16).

THE DEVELOPER UNDERSTANDS AND KNOWINGLY AGREES THAT THE MAXIMUM RENTAL PRICE TO BE ESTABLISHED BY THIS FORMULA IS NOT NECESSARILY EQUAL TO THE FAIR MARKET RENT AMOUNT OF THE AFFORDABLE UNITS, AND IS PROBABLY ESTABLISHED AT A PRICE WHICH IS SUBSTANTIALLY BELOW THE FAIR MARKET RENT AMOUNT.

Developer Initials: DPH

The maximum monthly rental amount for the Affordable Units shall be determined by the Agency not earlier than ninety (90) days after the date of issuance of building permits and not later than the Commencement Date. The maximum monthly rental amount of the Affordable Units shall be adjusted annually by the formula set forth above upon the publication of revised Orange County median income figures by the United States Department of Housing and Urban Development.

F. Senior Citizen Units. All of the units in the Developer Improvements, including without limitation the Affordable Units, shall be independent living apartments specially designed for the physical and social needs of "Senior Citizens" (persons fifty-five (55) years or older, subject to applicable law) in accordance with the requirements set forth in the Scope of Development (Attachment No. 6 to the Agreement). The units shall be comprised of one and two bedroom units, each with a private balcony or patio.

The Developer shall state, in a prominent location in all advertising and marketing materials, that the Developer Improvements are designed for use and occupancy by Senior Citizens. Furthermore, the Developer shall restrict occupancy to Senior Citizens and "Qualified Permanent Residents" (as that term is defined in California Civil Code Section 51.3), in the

rental of both the Affordable Units and the other units in the Developer Improvements. Except as otherwise provided herein, at least one person in residence in each dwelling unit must be a Senior Citizen, and other residents in the same dwelling unit who are not Senior Citizens must be Qualified Permanent Residents. Temporary guests of a Senior Citizen or Qualified Permanent Resident shall be allowed for a period of not more than sixty (60) days in any twelve (12) month period. Upon the death, dissolution of marriage, hospitalization or other prolonged absence of the Senior Citizen in a dwelling unit, any Qualified Permanent Resident who has continuously resided in the dwelling unit with such Senior Citizen shall be permitted to continue as a resident of that dwelling unit. "Permitted Health Care Residents" (as that term is defined in California Civil Code Section 51.3) shall be permitted to occupy any dwelling unit during any period that such person is actually providing live-in, long-term or hospice health care to a Senior Citizen tenant or Qualified Permanent Resident tenant for compensation.

G. Federal Housing Subsidies. The Agency shall use its best reasonable efforts to assist the Developer to secure as tenants of the Affordable Units dedicated to Very Low Income Households persons who are recipients of federal certificates or vouchers for rent subsidies pursuant to the existing program under Section 8 of the United States Housing Act of 1937, or its successor ("Section 8 Recipients"). For purposes of calculating the rent payable by the tenant pursuant to Paragraph E of this Section, the amount paid to the Developer as a result of such certificates or vouchers shall not be deemed the payment of rent by the tenant.

H. Operations. For a period of thirty (30) years beginning on the date of the City's issuance of certificate of occupancy or temporary certificate of occupancy for the Developer Improvements, the Developer shall provide a full-time activities director, an on-site apartment manager and a van shuttle service which are available exclusively to and for the benefit of the tenants of the Developer Improvements. Such activities director shall be employed on the Site at least forty (40) hours per week, and such van shuttle service shall be available for the use of the residents of the Developer Improvements at least thirty (30) hours per week.

For a period of ten (10) years beginning on the date of the City's issuance of a certificate of occupancy or temporary certificate of occupancy for the Developer Improvements, the Developer shall annually expend not less than the amounts set forth in each category of the "Operating Budget" attached to the Agreement as Attachment No. 11 and incorporated herein. The amount in each category of the Operating Budget shall be adjusted annually by the percentage change in the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index for Urban Wage Earners and Clerical Workers, Los Angeles-Anaheim-Riverside Average, Subgroup "All Items" (1982/84=100). The Developer shall annually submit to the Agency a detailed report of its Operating Budget expenditures, with such costs itemized in the categories contained in the Operating Budget, not less than thirty (30) days prior to the anniversary of the issuance of the certificate of occupancy for the Developer Improvements. In accounting for such costs, the Developer shall use generally accepted accounting principles (GAAP), including applicable Financial Accounting Standards Board (FASB) Pronouncements. In the event any of the payments in any category or the Operating Budget is made to the Developer or a party which owns or is owned by the Developer or any of the partners of the Developer or the Guarantors or is otherwise affiliated with the Developer, such payment shall be deemed not to exceed a payment commensurate with industry standards for the service or product provided.

The Executive Director of the Agency may, in his or her sole discretion, cause the audit of the Operating Budget expenses not more often than once each year by a public accounting firm reasonably satisfactory to the Agency. The parties agree to accept the results of such audit as the conclusive and final determination of actual Operating Budget expenditures. The Developer shall make available to the auditor all books and records pertaining to the Operating Expenses. The cost of the audit shall be borne by the Agency; provided, however, that the cost shall be borne solely by the Developer if the audit determines that actually incurred Operating Budget expenditures are at least five percent (5%) less than the expenditures reported by the Developer to the Agency. In addition, the Agency shall have the right at any time during normal business hours upon not less than two business days prior notice, but not more than two times each year during the period of this Declaration to examine and inspect all books and records pertaining to the Operating Expenses.

2. Non-Discrimination

The Developer, on behalf of itself and its successors, assigns, and each successor in interest to the Site or any part thereof, hereby covenants and agrees:

(a) To use, devote, operate and maintain the Site and each part thereof, for the purposes and the residential uses specified in the Agreement.

(b) Not to discriminate upon the basis of sex, marital status, race, color, creed, religion, national origin, or ancestry in the sale, lease, sublease, transfer or rental, or in the use, occupancy, tenure, or enjoyment of the Site or any improvements thereon, or of any part thereof. Each and every deed, lease, and contract entered into with respect to the Site shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

- (1) In deeds: "The grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of any person or group of persons on account of sex, marital status, race, color, creed, religion, national origin, or ancestry in the sale, lease, rental, sublease, transfer, use occupancy, tenure, or enjoyment of the land herein conveyed, nor shall the grantee itself or any persons claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the land herein conveyed. The foregoing covenants shall run with the land."
- (2) In leases: "The lessee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, and this lease is made and accepted upon and subject to the following conditions:

That there shall be no discrimination against or segregation of any person or group of persons, on account of sex, marital status, race, color, creed, religion, national origin, or ancestry, in the leasing, renting, subleasing, transferring, use, occupancy, tenure, or enjoyment of the land herein leased nor shall the lessee itself, or any person claiming under or through it, establish or permit such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the land herein leased."

- (3) In contracts: "There shall be no discrimination against or segregation of, any persons, or group of persons on account of sex, marital status, race, color, creed, religion, national origin, or ancestry in the sale, lease, rental, sublease, transfer, use, occupancy, tenure or enjoyment of the land, nor shall the transferee itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the land."

3. Use Restrictions.

The Site shall be occupied, used and maintained as follows:

- a. Each dwelling unit shall be used only for private apartment dwelling purposes, with appurtenant facilities, and for no other purposes.
- b. No sign of any kind shall be displayed to the public view on or from any unit without the approval of the Agency. All signs otherwise permitted under this section shall conform with all ordinances and other regulations of the City.
- c. The Developer and the occupants shall not permit or suffer anything to be done or kept upon said premises which will increase the rate of insurance on any building, or on the contents thereof, or impair the structural integrity thereof or which will obstruct or interfere with the rights of other occupants, or annoy them by unreasonable noises or otherwise, nor shall any occupant commit or permit any nuisance on the premises or fail to keep the premises free of rubbish, clippings and trash or commit or suffer any illegal act to be committed thereon. The Developer shall comply with all of the requirements of all governmental authorities with respect to the premises. If by reason of the occupancy or uses of the premises the rate of insurance on the Site shall be increased, the Developer shall become personally liable for the additional insurance premiums.
- d. There shall be no structural alteration, construction or removal of any building, fence or other structure on the Site (other than repairs or rebuilding permitted herein) without the approval of the City or the Agency and in accordance with the City Code.

e. The Developer shall not permit the parking, storing or keeping of any vehicle except wholly within the parking areas designated therefor. The Developer shall not permit the parking, storing or keeping of any large commercial type vehicle (dump truck, cement mixer truck, oil or gas truck, etc.), or any recreational vehicle (camper unit, camper shell detached from a private passenger vehicle, motor home, trailer, boat trailer, mobilehome or other similar vehicle, except when parked within an enclosed parking space), boats over twenty (20) feet in length or any vehicle other than a private passenger vehicle or the passenger van required by Section 1(G) hereof upon any portion of the Site, including parking spaces. The Developer shall not permit major repairs or major restorations of any motor vehicle, boat, trailer, aircraft or other vehicle to be conducted upon any portion of the Site, including parking spaces, except for emergency repairs thereto and then only to the extent necessary to enable movement thereof to a proper repair facility. No inoperable vehicle shall be stored or kept anywhere on the Site. The Developer shall have the right to remove, at the tenant's expense, any vehicle parked, stored or kept in violation of the provisions of this Declaration. In addition, all provisions of the Huntington Beach Municipal Code, including amendments thereto, shall apply.

5. Occupancy.

Occupancy of each dwelling unit shall be restricted to occupancy standards set forth in the Huntington Beach Municipal Code or state standards, as are effective or as may be effective or amended. The Developer shall not be permitted to lease or rent any dwelling unit thereon for transient or hotel purposes. Any lease or rental agreement covering an apartment shall provide that the terms of the lease or rental agreement shall be subject in all respects to the provisions of this Declaration of Conditions, Covenants and Restrictions and that any failure by the lessee to comply with the terms of such documents shall be a default under the lease or rental agreement. All leases and rental agreements shall be in writing. All prospective tenants/ occupants of the Site shall make application through the Developer.

6. Inspection.

To the extent permitted by law, the City of Huntington Beach and the Agency shall have the right of entry, at reasonable business hours and upon no less than twenty-four (24) hours advance notice, onto the Site to inspect for the need for repairs or maintenance. Entry onto the Site or into any unit for other than emergency repairs may be made only after such advance notice and request for entry. If request for entry is denied or the Site or any applicable unit is unoccupied, the City or Agency may apply for an appropriate warrant or other order from a court of appropriate jurisdiction.

7. Subdivision.

No part of the Site shall at any time be owned by a cooperative housing corporation, nor shall the Developer take any steps in connection with a conversion to such ownership or uses. Other than obtaining a final subdivision map on the Site and a final subdivision public report from the California Department of Real Estate, the Developer shall not take any steps in connection with a conversion of the Site to a condominium ownership, or with a conversion of the Site to "timeshare" ownership.

8. Exterior Maintenance.

The exterior areas of the Site shall be kept free of rubbish, debris and other unsightly or unsanitary materials.

a. Project Improvement, Maintenance and Repair

(1) Land Use Areas and Improvements

(a) Exterior yard areas and parking areas shall be kept free of deterioration, including:

(i) Potholes

(ii) Cracks in asphalt so as to become uneven, unsightly surface conditions

(iii) Weeds growing through asphalt.

(b) Perimeter fencing, landscaping and irrigation system shall be routinely inspected and maintained in good condition.

b. Each occupant of the Site shall have the affirmative obligation to prevent what might be considered a fire hazard or a condition dangerous to the public health, safety and general welfare; or constitute an unsightly appearance or otherwise detract from the aesthetic and property values of neighboring dwelling units and properties. The following minimum performance standards for the maintenance of buildings, yards, and landscaping shall be adhered to by the Developer:

(1) Landscaping on the Site shall be absent of the following:

(a) Lawns with grasses in excess of six (6) inches in height.

(b) Untrimmed hedges.

(c) Trees, shrubbery, lawns and other plant life dying from lack of water or other necessary maintenance.

(d) Trees and shrubbery grown uncontrolled without proper pruning.

(e) Vegetation so overgrown as to be likely to harbor rats or vermin.

(f) Dead, decayed or diseased trees, weeds and other vegetation.

(g) Inoperative irrigation system(s).

(2) Yard areas shall be maintained so as to be absent of the following:

(a) Broken or discarded furniture, appliances and other household equipment stored in yard areas for periods exceeding one (1) week.

(b) Packing boxes, lumber, trash, dirt and other debris stored in yards for unreasonable periods in areas visible from public property or neighboring properties.

(c) Unscreened trash cans, bins or containers stored for unreasonable periods in areas visible from public streets and common areas.

(3) No building, wall or fence may be left in an unmaintained condition so that any of the following exist:

(a) Buildings abandoned, boarded up, partially destroyed or left unreasonably in a state of partial construction.

(b) Unpainted buildings or buildings with peeling paint in such a condition as to:

i. Cause dry rot, warping and termite infestation; or

ii. Constitute an unsightly appearance that detracts from the aesthetic or property values of neighboring properties.

(c) Broken windows, constituting hazardous conditions and/or inviting trespassers and malicious mischief.

(d) Damaged garage doors that may become inoperative or unsafe to operate.

(e) Graffiti remaining on any portion of the property for a period exceeding fifteen (15) days.

(f) Building interiors and exteriors shall be maintained to meet standards of similar residential property in the City of Huntington Beach.

9. Agency and City Right of Review and Enforcement

The City of Huntington Beach ("City") and the Agency shall be made parties to this Declaration for the limited purpose as specified herein as follows:

a. Changes or amendments to this Declaration must be submitted for City and Agency review and approval.

b. In the event of inaction by the Developer, the City and Agency are hereby granted expedient power to enforce all provisions of this Declaration including, but not limited to, the maintenance of the Improvements and all yards, buildings and landscaping areas within the Site.

c. The City and Agency are hereby granted the express power to enforce all laws and ordinances of the State of California and/or the City on yards, structures, and private parking areas within the Site. Nothing within this Declaration, however, shall be construed as imposing an obligation or requiring the City or Agency to enforce any provision thereof.

d. The City and the Agency shall be given prior written notice of any proposed amendment to this Declaration. Such notice shall be given by mailing a copy of the precise language of the proposed amendment to the City of Huntington Beach, c/o City Clerk, together with a letter of transmittal explaining the proposed change in general terms. The City and the Agency shall have an opportunity to review and comment upon the proposed amendment for a period of not less than forty-five (45) days prior to the effective date of any such proposed amendment. If the City or Agency fail to respond within forty-five (45) days, the proposed change(s) and amendment(s) shall be deemed approved, unless that time period is extended by mutual agreement of all parties.

10. City of Huntington Beach Right of Entry for Code Enforcement, Repair and Traffic Regulation

(a) Right of Entry. To the extent permitted by law, Developer hereby acknowledges and intends and thus grants to the City, through the City's duly authorized agents or employees, the right to enter upon the Site for the following purposes:

- (1) Inspection, maintenance and repair of the Site.
- (2) Enforcement of local traffic and/or parking regulations.

(b) Reimbursements of City Expenditures. All costs and expenses incurred by the City arising out of its inspection, maintenance and repair of the Site, as provided hereinabove ("City Maintenance Costs"), shall be charged as an expense of the Developer and shall be paid within ten (10) days of receipt of an invoice for same.

(c) Assessments and Lien Rights of the City. If City Maintenance Costs are not paid within thirty (30) days from the date due, said unpaid costs and expenses shall become a special assessment against the Site and, upon confirmation by the City Council, shall be

collected in the same manner as real property taxes and shall be subject to the same penalties, procedures and sale in case of delinquency as is provided for real property taxes.

11. Mortgage Protection

Notwithstanding any and all provisions elsewhere in this Declaration to the contrary, in order to induce lenders and investors to participate in the financing of the Improvements, the following provisions are added hereto, and to the extent these added provisions conflict with any other provisions of this Declaration, these added provisions shall control:

(a) Any first mortgagee or third party foreclosure purchaser who comes into possession or who obtains title to the Site pursuant to the remedies provided in the mortgage or foreclosure of the mortgage, or by deed or assignment in lieu of foreclosure, will not be liable for such Site's unpaid charges which accrue prior to such possession or acquisition of title. The assessment liens provided for herein shall be subordinate to the lien or equivalent security interest of any first mortgage recorded prior to the date any such charges become due, and no violation of this Declaration shall invalidate such lien or security interest. Such subordination shall apply only to assessments which accrue prior to a sale or transfer of such Site pursuant to a decree of foreclosure or trustee's sale. Such sale or transfer shall not relieve such Site from liability for any assessments thereafter becoming due or from the lien of any such subsequent assessment.

(b) First mortgagees shall have the right to examine the books and records of the Developer during normal business hours.

(c) In the event of substantial damage to or destruction of the Site or any portion thereof, the mortgagee of any first mortgage on the Site shall be entitled to timely written notice of any such damage or destruction, and no provision in this Declaration shall be interpreted to entitle the Developer or any other party to priority over any rights of the first mortgagee of the Site pursuant to its mortgage in the case of a distribution to such Developer of insurance proceeds or condemnation awards for losses to or a taking of the Site.

(d) If the Site or portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, then the mortgagee of any first mortgage will be entitled to timely written notice of any such proceeding or proposed acquisition, and no provision in this Declaration shall be interpreted to entitle the Developer or any other party to priority over such mortgagee with respect to the distribution to such lot of the proceeds of any award or settlement.

(e) As used in this Section 11, "first mortgagee" means any mortgagee under a mortgage which is a first lien of record made in good faith and for value, or a junior lien of record made in good faith and for value by the City, the Agency or an institutional lender in order to assist in the financing of the construction of the Improvements.

12. Miscellaneous Provisions

a. If any provision of this Declaration or portion thereof, or the application to any person or circumstances, shall to any extent be held invalid, inoperative or unenforceable, the remainder of this Declaration, or the application of such provision or portion thereof to any other persons or circumstances, shall not be affected thereby; it shall not be deemed that any such invalid provision affects the consideration for this Declaration; and each provision of this Declaration shall be valid and enforceable to the fullest extent permitted by law.

b. This Declaration shall be construed in accordance with the laws of the State of California.

c. In the event action is instituted to enforce any of the provisions of this Declaration, the prevailing party in such action shall be entitled to recover from the other party thereto as part of the judgment, reasonable attorney's fees and costs.

d. The Developer shall be required to take all reasonable steps necessary to insure that each tenant and all assignees, and transferors have knowledge of all terms and conditions of this Declaration.

13. Runs with the Land

The covenants and agreements established in this Agreement shall, without regard to technical classification and designation, be binding on the Developer and any successor in interest to the Site, or any part thereof, for the benefit of and in favor of the Agency, its successor and assigns, and the City of Huntington Beach. The covenants contained in paragraphs 2(a) and 4 through 12 of this Agreement shall remain in effect for the Affordability Period, and shall automatically terminate and be of no further force or effect after such time. The covenants against discrimination contained in paragraphs 2b and 3 shall remain in effect in perpetuity.

IN WITNESS WHEREOF, the Agency and the Developer have executed this Declaration of Conditions, Covenants and Restrictions.

REDEVELOPMENT AGENCY OF THE CITY OF HUNTINGTON BEACH, a public body corporate and politic

Dated: 10/20/93

Dated: 10-20-93

Dated: 10-23, 1993

By: *Michael J. ...*  
Executive Director

By: *Barbara A. ...*  
Deputy Executive Director

"AGENCY"

ATTEST:

*Lorrie Brochery*  
Agency Clerk: 10/20/93

APPROVED AS TO FORM:

*Jim ...*  
Stradling, Yocca, Carlson & Rauth,  
Agency Special Counsel

*Neil ...*  
City Attorney,  
Agency General Counsel 8-10-6-93

*10-11-93*

State of California )  
 ) ss.  
County of Orange )



On October 20, 1993, before me, Maybrice L. Johnson, Notary Public  
(name, title of officer, e.g., Jane Doe, Notary Public)  
personally appeared Michael T. Uberuaga and Connie Brockway  
(name(s) of signer(s))

- 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 person(s) acted, executed the instrument.

Witness my hand and official seal.

Maybrice L. Johnson  
(Signature of Notary)

Capacity claimed by signer:

(This section is OPTIONAL.)

- Individual
- Corporate Officer(s): Huntington Beach Redevelopment Agency
- Partner(s): Executive Director and Agency Clerk
  - General
  - Limited
- Attorney-in-fact
- Trustee(s)
- Guardian/Conservator
- Other: \_\_\_\_\_

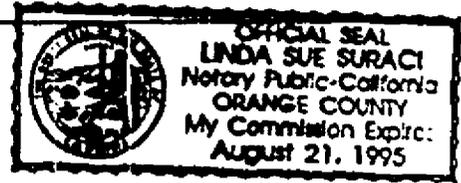
Signer is representing: City of Huntington Beach Redevelopment Agency  
(name of person(s) of entity(ies))

Attention Notary: Although the information requested below is OPTIONAL, it could prevent fraudulent attachment of this certificate to an unauthorized document.

**THIS CERTIFICATE  
MUST BE ATTACHED  
TO THE DOCUMENT  
DESCRIBED AT RIGHT:**

Title or Type of Document Declaration of Covenants,  
Conditions and Restrictions  
Number of Pages 22 Date of Document 10/20/93  
Signer(s) Other than Named Above Karin Stradling  
Hutton/Michaelson

State of California )  
County of Orange ) ss.



On October 23, 1993, before me, Linda S. Suraci  
(name, title of officer, e.g., Jane Doe, Notary Public\*)  
personally appeared Barbara A. Kaiser  
(name(s) of signer(s))

- 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 person(s) acted, executed the instrument.

Witness my hand and official seal.

Linda S. Suraci  
(Signature of Notary)

Capacity claimed by signer: (This section is OPTIONAL.)

- Individual
- Corporate Officer(s): Deputy Executive Director / Redevelopment Director
- Partner(s):
  - General
  - Limited
- Attorney-in-fact
- Trustee(s)
- Guardian/Conservator W
- Other: W

Signer is representing: City of Huntington Beach  
(name of person(s) or entity(ies))

Attention Notary: Although the information requested below is OPTIONAL, it could prevent fraudulent attachment of this certificate to an unauthorized document.

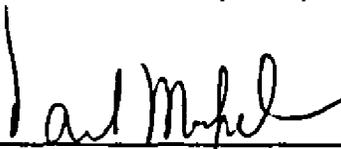
**THIS CERTIFICATE  
MUST BE ATTACHED  
TO THE DOCUMENT  
DESCRIBED AT RIGHT:**

Title or Type of Document CC & R's (Five Pts)  
Number of Pages 16 Date of Document 10/20/93  
Signer(s) Other than Named Above \_\_\_\_\_

FIVE POINTS SENIORS, L.P., a California limited partnership

By: Michelson Family Trust, dated as of December 12, 1984, as amended March 1, 1985, its general partner

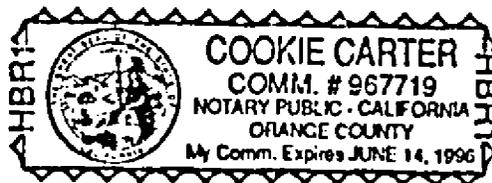
Dated: 12/4/93

By:   
David Michelson, Trustee

"DEVELOPER"



State of California )  
County of ORANGE ) ss.



On DECEMBER 6, 1993, before me, COOKIE CARTER  
*(name, title of officer, e.g., Jane Doe, Notary Public)*

personally appeared DAVID MICHELSON  
*(name(s) of signer(s))*

- 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 person(s) acted, executed the instrument.

Witness my hand and official seal.

*Cookie Carter*  
*(Signature of Notary)*

Capacity claimed by signer: *(This section is OPTIONAL.)*

- Individual
- Corporate Officer(s): \_\_\_\_\_
- Partner(s):
  - General
  - Limited
- Attorney-in-fact
- Trustee(s)
- Guardian/Conservator
- Other: \_\_\_\_\_

Signer is representing: FIVE POINTS SENIORS, L.P., A CALIFORNIA LIMITED PARTNERSHIP BY: MICHELSON FAMILY TRUST, DATED AS OF DECEMBER 12, 1984, AS AMENDED MARCH 1, 1985, ITS GENERAL PARTNER  
*(name of person(s) or entity(ies))*

Attention Notary: Although the information requested below is OPTIONAL, it could prevent fraudulent attachment of this certificate to an unauthorized document.

**THIS CERTIFICATE  
MUST BE ATTACHED  
TO THE DOCUMENT  
DESCRIBED AT RIGHT:**

Title or Type of Document DECLARATION OF COVENANTS,  
CONDITIONS, AND RESTRICTIONS  
Number of Pages 16 Date of Document OCTOBER 20, 1993  
Signer(s) Other than Named Above \_\_\_\_\_

COPIES OF THIS INSTRUMENT

EXHIBIT "A"

ALL THAT CERTAIN LAND SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF ORANGE, CITY OF HUNTINGTON BEACH, DESCRIBED AS FOLLOWS:

PARCELS 1 AND 2, AS SHOWN ON A MAP FILED IN BOOK 134, PAGE 22 OF PARCEL MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA.

EXCEPTING FROM THAT PORTION (HEREINAFTER CALLED THE "SUB-500 PORTION") OF SAID REAL PROPERTY LYING BELOW A DEPTH OF 500 FEET BENEATH THE SURFACE THEREOF, ALL OIL, GAS, ASPHALTUM AND OTHER HYDROCARBONS AND ALL OTHER MINERALS, WHETHER SIMILAR OR DISSIMILAR TO THOSE HEREIN SPECIFIED, AND INCLUDING ALL FISSIONABLE MATERIALS WITHIN OR THAT MAY BE PRODUCED FROM OR EXTRACTED OR TAKEN FROM THE SUB-500 PORTION OF THE SAID REAL PROPERTY, WHICH SAID OIL, GAS, ASPHALTUM, HYDROCARBONS AND MINERALS SHALL BE HEREINAFTER COLLECTIVELY CALLED THE "SUB-500 MINERALS", AS RESERVED IN DEED FROM HUNTINGTON BEACH COMPANY, A CORPORATION, RECORDED JUNE 21, 1979 IN BOOK 13195, PAGE 1898 OF OFFICIAL RECORDS.

ALSO EXCEPTING FROM THAT PORTION (HEREINAFTER CALLED THE "SUB-200 PORTION") OF SAID REAL PROPERTY LYING BELOW A DEPTH OF 200 FEET BENEATH THE SURFACE THEREOF, THE FOLLOWING:

- (A) THE SOLE AND EXCLUSIVE RIGHT, FROM TIME TO TIME, TO LOCATE AND TO MAINTAIN SUBSURFACE PORTIONS OF OIL AND GAS WELLS IN THE SUB-200 PORTION OF SAID REAL PROPERTY, AND THE RIGHT TO DRILL FOR, PRODUCE, EXTRACT AND TAKE THE SUB-500 MINERALS FROM THE SUB-500 PORTION OF SAID REAL PROPERTY, AND THE RIGHT TO EXERCISE ALL OF THE RIGHTS AND PRIVILEGES NECESSARY FOR SUCH DRILLING, PRODUCING, EXTRACTING AND TAKING; AND,
- (B) THE SOLE AND EXCLUSIVE RIGHT TO USE THE SUB-200 PORTION OF SAID REAL PROPERTY TO CONDUCT OPERATIONS, FROM TIME TO TIME, BY METHODS NOW KNOWN OR UNKNOWN, WHICH, IN THE OPINION OF THE HUNTINGTON BEACH COMPANY, ARE REASONABLY DESIGNED TO BENEFIT OR FACILITATE THE DRILLING FOR, OR PRODUCTION, EXTRACTION OR TAKING OF THE SUB-500 MINERALS FROM THE SUB-500 PORTION OF SAID REAL PROPERTY, OR ANY MINERALS FROM OTHER LANDS OTHER THAN SAID REAL PROPERTY (HEREIN CALLED THE "OTHER LANDS"), TOGETHER WITH THE RIGHT TO DRILL A WELL OR WELLS OR USE ANY EXISTING WELLS IN, INTO OR THROUGH THE SUB-200 PORTION OF SAID REAL PROPERTY, FOR THE PURPOSE OF INJECTING INTO THE SUB-500 PORTION OF SAID REAL PROPERTY OR INTO OTHER LANDS, OIL, GAS, AIR, WATER OR OTHER LIQUID OR GASEOUS SUBSTANCES, INCLUDING THE RIGHT, FROM TIME TO TIME, TO IGNITE OR OTHERWISE ACTIVATE ANY

OR ALL OF SUCH SUBSTANCES SO INJECTED, OR ANY OR ALL OF THE SUB-500 MINERALS WITHIN THE SUB-500 PORTION OF SAID REAL PROPERTY, OR ANY MINERALS FROM OTHER LANDS; AND,

- (C) THE SOLE AND EXCLUSIVE RIGHT, FROM TIME TO TIME, TO DRILL INTO AND THROUGH THE SUB-200 PORTION OF SAID REAL PROPERTY FROM OTHER LANDS, BY MEANS OF A WELL OR WELLS DRILLED FROM THE SURFACE OF OTHER LANDS, TOGETHER WITH THE SOLE AND EXCLUSIVE RIGHT TO REPAIR, REDRILL, DEEPEN, MAINTAIN, REWORK AND OPERATE SUCH WELLS AND PRODUCE ANY MINERALS FROM OTHER LANDS BY MEANS OF SUCH WELLS, OR PRODUCE ANY MINERALS FROM OTHER LANDS BY MEANS OF SUCH WELL OR WELLS, THROUGH THE SUB-200 PORTION OF SAID REAL PROPERTY; AND,
- (D) THE SOLE AND EXCLUSIVE RIGHT, FROM TIME TO TIME, TO LOCATE, OPERATE AND MAINTAIN SUBSURFACE PORTIONS OF WELLS IN, INTO OR THROUGH THE SUB-200 PORTION OF SAID REAL PROPERTY, AND THE RIGHT, FROM TIME TO TIME, TO INJECT, STORE, PRESSURIZE AND REMOVE THE SUB-500 MINERALS OR ANY MINERALS FROM OTHER LANDS FOR THE PURPOSE OF STORING THE SAME IN THE SUB-500 PORTION OF SAID REAL PROPERTY, OR IN OTHER LAND.

NOTHING HEREINABOVE SET FORTH SHALL BE DEEMED TO RESERVE ANY INTEREST IN THE SURFACE OR IN ANY PORTION OF SAID REAL PROPERTY LYING WITHIN 200 FEET MEASURED VERTICALLY DOWNWARD FROM THE SURFACE OF SAID REAL PROPERTY, ALL AS RESERVED IN DEED FROM HUNTINGTON BEACH COMPANY, A CORPORATION, RECORDED JUNE 21, 1979 IN BOOK 13195, PAGE 1898 OF OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM, ALL WATER RIGHTS OF, OR RELATED TO, OR APPURTENANT TO SAID REAL PROPERTY, INCLUDING, BUT NOT LIMITED TO, ALL RIGHT TO PERCOLATING WATER, ARTESIAN WATERS AND UNDERGROUND STREAMS, BUT EXCLUDING THE RIGHT OF SURFACE ENTRY, AS RESERVED IN DEED FROM HUNTINGTON BEACH COMPANY, A CORPORATION, RECORDED JUNE 21, 1979 IN BOOK 13195, PAGE 1898 OF OFFICIAL RECORDS.

\* \* \* \* \*

RO:MS