

RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:

Five Points Seniors, L.P.  
4 White Cliff  
Laguna Niguel, CA 92677

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**FIRST AMENDMENT TO  
DECLARATION OF COVENANTS,  
CONDITIONS, AND RESTRICTIONS**

THIS FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (the "Amendment") is entered into as of \_\_\_\_\_, 2020 by and among the HUNTINGTON BEACH HOUSING AUTHORITY as successor agency to the REDEVELOPMENT AGENCY OF THE CITY OF HUNTINGTON BEACH, a public body corporate and politic organized and existing under the laws of the State of California, ("Authority") the City of Huntington Beach (the "City") and FIVE POINTS SENIORS, L.P., a California limited partnership (the "Developer") and amends that certain Declaration of Covenants, Conditions, and Restrictions dated as of October 20, 1993, and recorded January 10, 1994 in the Orange County Recorder's Office as Document Number 94-0018299, by and between the Authority and the Developer (the "Agreement").

WHEREAS, the Agreement concerns that certain real property located in the City of Huntington Beach, County of Orange, State of California as more particularly described on Exhibit A hereto; and

WHEREAS, the affordability set-aside restrictions of the Agreement are due to expire on or about July 30, 2023; and

WHEREAS, it is in the mutual beneficial interests of the Authority, City and the Developer to continue to provide suitable affordable housing to qualifying senior citizens beyond the current expiration date by extending the expiration date of such set-aside restrictions.

WHEREAS, the City's consent is required to amend this Agreement pursuant to Section 9.a of the Agreement.

NOW, THEREFORE, for good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

Section 1. Amendment. The first sentence of Section 1.B of the Agreement is amended and restated in its entirety to read "The Affordable Units shall be subject to the requirements of this Section 1 until July 30, 2026."

Section 2. Execution in Several Counterparts. This Amendment may be executed in any number of counterparts, and each of such shall for all purposes be deemed to be an original, and all such counterparts shall together constitute but one and the same instrument.

Section 3. No Other Modifications. Except as expressly set forth herein, the rest and remainder of the provisions of the Agreement shall remain in full force and effect in

accordance with its respective terms. From and after the date hereof, references to the “Agreement” shall mean the Agreement as amended by this Amendment.

Section 4. Governing Law. This Amendment shall be governed by and construed in accordance with the laws of the State of California..

Section 5. Interpretation. In the event of any conflict between the provisions of the Agreement and the provisions of the Amendment, the provisions of the Amendment shall control.

Section 6. Severability. If any provision of this Amendment shall be held or deemed to be or shall, in fact, be illegal, inoperative or unenforceable, the same shall not affect any other provision or provisions herein contained or render the same invalid, inoperative or unenforceable to any extent whatever.

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IN WITNESS WHEREOF, the Authority, City and the Developer have executed this Amendment as of the date first written above.

HUNTINGTON BEACH HOUSING AUTHORITY

By: \_\_\_\_\_

Its: \_\_\_\_\_

CITY OF HUNTINGTON BEACH

By: \_\_\_\_\_

Its: \_\_\_\_\_

IN WITNESS WHEREOF, the Authority, City and the Developer have executed this Amendment as of the date first written above.

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

By: FPSGP, LLC, a California  
limited liability company  
Its: General Partner

By: \_\_\_\_\_  
Melissa L. Ward-Koehrer  
Its: Chief Administrative Officer

## EXHIBIT A

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF HUNTINGTON BEACH, IN THE COUNTY OF ORANGE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PORTIONS OF LOTS 3 AND 4 IN BLOCK G OF TRACT NO. 7, AS SHOWN ON A MAP RECORDED IN BOOK 9, PAGE 8 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA, DESCRIBED AS FOLLOWS:

PARCELS 1 AND 2. AS SHOWN ON A MAP FILED IN BOOK 134, PAGE 22 OF PARCEL MAPS, IN THE CITY OF HUNTINGTON BEACH, COUNTY OR ORANGE, STATE OF CALIFORNIA, 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-400 PORTION OF THE SAID REAL PROPERTY, WHICH SAID OIL, GAS, ASPHALTUM, HYDROCARBONS AND MINERALS SHALL BE HEREINAFTER COLLECTIVELY CALLED THE "SUB-500 MINERALS", 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

(C) 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.

APN: 159-092-07