

## **Smoke-Free / Fire Safety Lease Addendum**

The undersigned Resident is a party to a written lease (the Lease) with The Henderson Senior Residence (“Landlord”). This Smoke-Free / Fire Safety Lease Addendum (this “Addendum”) includes the following additional terms, conditions and rules which are hereby incorporated into the Lease and are effective as of the date signed by Resident or for residents that are already under Lease upon notification to residents of adoption of this Smoke-Free / Fire Safety Lease Addendum as part of the building rules for the rental community or building. Unless otherwise defined herein, capitalized terms shall have the meaning given to them in the Lease. A breach of this Lease Addendum shall give each party all the rights contained herein, as well as the rights in the Lease.

**1. Purpose of No-Smoking/ Fire Safety Policy.** The parties desire to (i) mitigate the irritation and known health effects of secondhand smoke; (ii) mitigate the increased maintenance, cleaning, and redecorating costs from smoking; (iii) mitigate the increased risk of fire from smoking; (iv) mitigate the higher costs of fire insurance for a non-smoke-free building; (v) to improve the enforcement of this Smoke-Free / Fire Safety Addendum and policy by broadly defining and prohibiting any sources of smoke, odors, or fire safety risks whether or not from smoking of a tobacco product or similar, so as to provide a living environment free from smoke odors or particles and reduce fire safety risks from any source; and (vi) prohibit and prevent currently unknown and uncertain adverse health or addiction effects associated with electronic cigarettes.

**2. Definitions:**

**Smoking, No “lit” Items.** The term “smoking” refers to any use or possession of a cigar, cigarette, e-cigarette, hookah, or vaporizer containing tobacco or a tobacco product while that tobacco product is burning, lighted, vaporized, or ignited, regardless of whether the person using or possessing the product is inhaling or exhaling the smoke from such a product. Smoking also refers to use or possession of burning, lighted, vaporized, or ignited non-tobacco products including but not limited to any lit product that may emit smoke, whether or not inhaled, such as incense, sage, marijuana, including medical cannabis, candles, scented candles, lamps, or lanterns. Resident acknowledges that many tenants choose a smoke-free building because they are very sensitive to any perceived smoke odors or smoke particles. Whether it is burning incense, or some other product, Management need not prove such smoking or burning item is inhaled or is unsafe or unhealthy. If it is a source of smoke, odors or smoke particles that is perceptible to other tenants or could be upsetting to persons that have intentionally chosen to live at a “smoke-free” rental property, it is not permitted under this Addendum. Resident is advised that this Addendum is broadly intended to promote fire safety at the premises in addition to providing a smoke-free living environment. With those goals in mind, all forms of “lit” items, other than a stove burner that is furnished as part of the appliances for the unit, are prohibited. For purposes of this Addendum the definition of smoking shall broadly include anything that is “lit” and could produce any smoke odors, smoke particles, or present a fire safety risk.

**Electronic Cigarette or Vaping Devices.** The term “electronic cigarette/Vaping Devices” means any electronic device (such as e-cigarettes, e-cigars, and e-pipes, or any vaping

device, etc.) that provides a vapor of liquid nicotine or any other substances to the user to simulate smoking, to allow inhalation of a vaporized substance, or to emit smoke or vapor into the air.

**3. Smoke-Free Community and Fire Safety.** Resident agrees and acknowledges that the premises to be occupied by Resident and members of Resident's household have been designated as a smoke-free living environment. Smoking as broadly defined herein, is strictly prohibited. Resident and members of Resident's household shall not smoke anywhere inside the Apartment rented by Resident or the interior of an apartment, including any patios, decks or balconies attached to adjacent to the Premises, or the building where the Resident's Apartment is located or in any of the common areas including all adjoining grounds, parking areas, green spaces, management leasing office, building interiors and hallways, club house, exercise or spa facility, swimming pools, commercial shops, businesses and spaces, work areas, and outdoor areas of the Apartment Community, nor shall Resident permit any guests or visitors under the control of Resident to do so. Smoking, as broadly defined above, is prohibited in and on all areas of the rental community unless Landlord has specifically designated an outdoor area as a smoking area, although Landlord has no duty or obligation to create or designate any area as a smoking area. *Smoking as broadly defined above includes any "lit" or burning item and is prohibited in any portion of the apartment community.*

**4. Resident to Promote No-Smoking Policy and to Alert Management of Violations.** Resident shall inform Resident's occupants, guests, family, and invitees of the no-smoking policy and for ensuring compliance. Further, Resident shall promptly give Landlord a written statement of any incident where smoke is migrating into the Resident's Apartment from sources outside of the Resident's Apartment.

**5. Landlord Not a Guarantor of Smoke-Free Environment.** Resident acknowledges that Landlord's adoption of a Smoke-Free/Fire-Safety Policy and Lease Addendum, and the efforts to designate the rental community as smoke-free, do not make Landlord or any of its managing agents the guarantor of Resident's health or of the smoke-free condition of the Resident's Apartment and the common areas. There is no warranty or guaranty of any kind that Resident's Apartment or the Apartment Community is smoke free. Landlord is not required to take steps in response to smoking unless Landlord has actual knowledge of smoking or has been given written, verifiable notice of said smoking.

**6. Other Residents are Third-Party Beneficiaries of Resident's Agreement.** Resident agrees that the other Residents at the community are the third-party beneficiaries of Resident's smoke-free addendum agreements with Landlord. Therefore, Resident's agreements in this Addendum are made to the other Residents as well as to Landlord. Resident may sue another resident for an injunction to prohibit smoking or for damages, but Resident does not have the right to evict another resident. Any suit between Residents herein shall not create a presumption that Landlord breached this Addendum.

**7. Effect of Breach and Right of Landlord to Terminate Lease.** Resident agrees and acknowledges that the entire premises to be occupied by Resident and members of Resident's household, and guests, have been designated as smoke-free and that smoking as defined herein, is

expressly prohibited by Resident, members of Resident's household, and guests. Resident acknowledges that a breach of this Addendum by Resident or Resident's household members or guests, shall be considered a material breach of lease and grounds for termination of Resident's lease agreement or other legal action deemed appropriate by Landlord. In the event that Landlord incurs any fees, fines, or other damages as a result of, or in connection with, a violation of this Addendum by Resident or Resident's household members or guests, and in addition to any other remedies available to Landlord, and without waiving any rights of Landlord hereunder, Landlord may charge Resident for the damages incurred, which damages shall be paid immediately by Resident upon demand by Landlord, and Landlord's acceptance of such amount from Resident shall not constitute of waive of such violation. Landlord shall not be obligated to commence any court action or avail itself of any remedy for immediate relief of any violation of this Addendum, and Landlord's failure to do so shall not constitute a waiver of any breach.

**8. Resident's Responsibility for Damages and Cleaning.** Resident is responsible for payment of all costs and damages to the Apartment, other resident's apartments, or any other portion of the Apartment Community for repair, replacement, or cleaning due to smoking, smoke or fire related damage caused by Resident, Resident 's household members, guests, or invitees. The definition of Smoking above is intended to promote fire safety and prevent accidents or injuries that could occur due to any lit object such as a candle, incense, or lantern. The lighting of any object or allowing any lit object in the rental unit or otherwise at the property, that results in any fire or smoke damage shall be the strict responsibility and liability of Resident for violations of this Addendum. Any costs or damages incurred by Landlord related to repairs, replacement, and cleaning due to Smoking as defined above by Resident, Resident's household members, guests, or invitees, or due to violation of the no-smoking provisions of this Addendum and the Lease by Resident, Resident's household members, guests, or invitees, are in excess of normal wear and tear. Smoke-related damage, including but not limited to, odors, discoloration of walls and carpeting, odors that permeate sheetrock, carpeting, wood, insulation or other components of the Apartment or the Apartment Community is in excess of normal wear and tear. Resident shall be responsible for all costs incurred by Landlord to restore the Apartment, or portions of the Apartment Community, to a smoke-free condition, including the costs of repainting and treating any surfaces of the Apartment and any carpet replacement associated with Resident's violation of this Addendum.

**9. Resident's Responsibility for Loss of Rental Income and Economic Damages regarding Other Residents.** Resident is responsible for payment of all lost rental income or other economic and financial damages or loss to Landlord due to smoking or smoke-related damage caused by Resident, Resident's household members, guests, or invitees, which results in or causes other residents to be constructively evicted or vacate their apartments, results in disruption of other residents enjoyment, or adversely affects the health, safety, or welfare of other residents. Resident's responsibility for damages, cleaning, loss of rental income, and loss of other economic damages under this Addendum are in addition to, and not in lieu of, Resident's responsibility for other damages or loss under the lease contract or any other addendum.

**10. Lease Termination for Violation.** Landlord has the right to terminate the Lease and Resident's right to occupancy of the Apartment for any violation of this Addendum. Any violation of the Smoke-Free Lease Addendum is a material and substantial violation of this Addendum and

the Lease. Despite the termination of the Lease or eviction from the premises, Resident will remain liable for the rent through the end of the Lease Term.

**11. Disclaimer by Landlord.** Resident acknowledges that Landlord’s adoption of a smoke-free living environment and the efforts to designate the rental community as smoke-free do not in any way change the standard of care that Landlord or managing agent would have to Resident’s household to render buildings and premises designated as smoke-free any safer, more habitable, or improved in terms of air quality standards than any other rental premises. Landlord specifically disclaims any implied or express warranties that the building, common areas, or Resident’s premises will have any higher or improved air quality standards than any other rental property. Landlord cannot and does not warranty or promise that the rental premises or common areas will be free from secondhand smoke, and Landlord shall not be liable for any personal injuries or property damage caused by secondhand smoke. Resident acknowledges that Landlord’s ability to police, monitor, or enforce the agreements of this Addendum is dependent in significant part on voluntary compliance by Resident and Resident’s guests. Residents with respiratory ailments, allergies, or any other physical or mental condition relating to smoke are put on notice that Landlord does not assume any higher duty of care to enforce this Addendum than any other Landlord obligation under the Lease.

Resident:

\_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_

Landlord:

\_\_\_\_\_

Date: \_\_\_\_\_