



**AGREEMENT BETWEEN BROWARD COUNTY AND PINNACLE 441, LLC
PROVIDING STATE HOUSING INITIATIVES PARTNERSHIP FUNDING FOR
MULTI-FAMILY RENTAL CONSTRUCTION STRATEGY FOR FISCAL YEAR
2021-2022**

This Agreement ("Agreement") is made and entered by and between Broward County, a political subdivision of the State of Florida ("County"), and Pinnacle 441, LLC, a Florida limited liability company ("Sponsor"). County and Sponsor are individually referred to as a "Party," and collectively as the "Parties."

RECITALS

- A. The State Housing Initiatives Partnership ("SHIP") program provides funds to eligible local governments as an incentive to create partnerships that produce and preserve affordable homeownership and multifamily housing for very low, low, and moderate income families.
- B. County is a recipient of SHIP funds pursuant to Chapter 420, Part VII, Florida Statutes.
- C. Sponsor is a private entity that applied for an award under County's Local Housing Assistance Plan for the purpose of constructing multi-family housing for Eligible Households (as defined in this Agreement).
- D. County desires to enter into this Agreement to provide SHIP Funds (as defined in this Agreement) to Sponsor for the purpose of completing the Project (as defined in this Agreement), pursuant to the terms and conditions contained herein.

Now, therefore, in consideration of the mutual terms and conditions, promises, covenants, and payments hereinafter set forth, the Parties agree as follows:

ARTICLE 1. DEFINITIONS

- 1.1 **Affordability Period** means the thirty (30) year period of time following issuance of the Certificate of Occupancy to Sponsor for the Project wherein Sponsor is required to provide affordable multi-family housing units to be occupied by Eligible Households pursuant to the terms of this Agreement and the SHIP Rules and Regulations.
- 1.2 **Agreement** means this Agreement inclusive of Articles 1 through 13, the exhibits, and documents that are expressly incorporated herein by reference.

- 1.3 **AMI** means Area Median Income.
- 1.4 **Board** means the Broward County Board of County Commissioners.
- 1.5 **Contract Administrator** means the Director of the Housing Finance Division, or such other person designated by same inwriting.
- 1.6 **County Administrator** means the administrative head of County appointed by the Board.
- 1.7 **County Attorney** means the chief legal counsel for County appointed by the Board.
- 1.8 **Division** means the Broward County Housing Finance Division.
- 1.9 **FHFC** means the Florida Housing Finance Corporation, which operates under the governance of Chapter 420, Part V, Florida Statutes.
- 1.10 **Eligible Household or Eligible Person** means one or more natural persons or a family determined by County to be of very low (at or below 50% of AMI), or low (at or below 80% of AMI) income according to the income limits adjusted to family size published annually by the United States Department of Housing and Urban Development based upon the annual gross income of the household.
- 1.11 **Project** means the project provided and implemented by Sponsor, as described in **Exhibit A** to this Agreement.
- 1.12 **SHIP** means the State Housing Initiatives Partnership ("SHIP") program, pursuant to the State Housing Initiatives Partnership Act set forth in Sections 420.907-420.9079, Florida Statutes, Chapter 67-37, Florida Administrative Code, Sections 760.20-760.37, Florida Statutes, and County's SHIP Local Housing Assistance Plan, which are incorporated herein by this reference.
- 1.13 **SHIP Funds** means the SHIP Program funds provided to Sponsor under this Agreement.
- 1.14 **SHIP Rules and Regulations** means the applicable rules and regulations set forth in Sections 420.907-420.9079, Florida Statutes, Chapter 67-37, Florida Administrative Code, and the SHIP Local Housing Assistance Plan, which are incorporated herein by reference. The SHIP Local Housing Assistance Plan is the document that governs the housing strategies and is approved by the Florida Housing Finance Corporation.

- 1.15 **Subcontractor or Subconsultant** means a firm, partnership, corporation, independent contractor (including 1099 individuals), or any combination thereof providing services for County through Sponsor for all or any portion of the Project. The term “Subconsultant” shall include all “Subcontractors” and the term “Subcontractor” shall include all “Subconsultants.”

ARTICLE 2. EXHIBITS

- EXHIBIT A PROJECT DESCRIPTION
- EXHIBIT B BUDGET
- EXHIBIT C TIMELINE
- EXHIBIT D FORM OF MORTGAGE AND PROMISSORY NOTE
- EXHIBIT E DECLARATION OF RESTRICTIVE COVENANTS
- EXHIBIT F REQUEST FOR PAYMENT FORM
- EXHIBIT G QUARTERLY PROGRESS REPORT FORM
- EXHIBIT H INSURANCE
- EXHIBIT I-1 SUBORDINATION AGREEMENT (BofA)
- EXHIBIT I-2 SUBORDINATION AGREEMENT (NLP)

ARTICLE 3. PROJECT

- 3.1 Sponsor shall provide and implement the design, finance, and construction of multi-family rental units as outlined in **Exhibit A**, attached hereto. Two of the units included in the Project shall be a SHIP funded unit.
- 3.2 Sponsor must comply with the Affordability Period provided in Section 1.1 of this Agreement, and as further detailed in the Mortgage, Promissory Note, and Declaration of Restrictive Covenants, attached hereto.
- 3.3 Sponsor shall comply with the Budget and Timeline set forth in **Exhibit B** and **Exhibit C**, respectively, attached hereto. If Sponsor fails to maintain the implementation schedule within sixty (60) days of the deadlines identified in **Exhibit C**, the Division may conduct a full review of Sponsor and the Project, including for purposes of ensuring compliance with expenditure rates for the SHIP program year. In the event Sponsor fails to maintain the implementation schedule within ninety (90) days of the deadlines identified in **Exhibit C**, County may terminate this Agreement in accordance with Article 11, and all uncommitted and unexpended funds will remain with County and may be committed to other SHIP projects or used by County for other purposes, as allowed by the SHIP Rules and Regulations.
- 3.4 No extensions of time shall be granted for delays resulting from normal weather conditions prevailing in the area as defined by the average of the last ten (10) years of weather data recorded in the Fort Lauderdale-Hollywood International Airport

Weather Station.

- 3.5 In the event the work on the Project is not being performed substantially in accordance with **Exhibits A-C**, or when, in County's reasonable judgment, Sponsor or its Subcontractors, have violated any SHIP Rules and Regulations, or any other provisions of this Agreement, the Division may, after giving effect to the notice and cure provisions, issue a stop order, which shall halt all work, services, or activities for the Project. Failure to comply with any of the aforementioned shall constitute a default of this Agreement and shall give the right to County to, in addition to issuing a stop order, terminate this Agreement in accordance with Article 11.
- 3.6 Sponsor shall provide County with quarterly progress reports in substantially the form provided in **Exhibit G**, attached hereto, or such other form as may be provided to Sponsor by County, in County's reasonable discretion ("Quarterly Progress Reports"). The Quarterly Progress Reports must be submitted to County no later than the tenth (10th) calendar day following the end of the preceding quarter, provided that, if such date is a Saturday, Sunday, or legal holiday, the Quarterly Progress Report may be submitted on the business day immediately following such Saturday, Sunday, or legal holiday. For purposes of the Quarterly Progress Reports, the quarters shall be as follows: First quarter – October 1 through December 31; Second quarter – January 1 through March 31; Third quarter – April 1 through June 30; Fourth quarter – July 1 through September 30.
- 3.7 In addition to the Quarterly Progress Reports, Sponsor shall submit upon the written request of the Contract Administrator, information and status reports required by County or the FHFC on forms approved by the Contract Administrator.
- 3.8 Sponsor shall ensure that all services to be performed under this Agreement are performed by State or locally licensed and/or certified, as applicable, Subcontractors in compliance with all applicable codes, ordinances, statutes, and any other regulations imposed by any regulatory body or authority governing the Project.
- 3.9 Sponsor shall provide County, upon County's request, with a copy of all contracts and correspondence between Sponsor and any Subcontractors, design professionals, or contractors it utilizes to complete the Project.

ARTICLE 4. TERM

The term of this Agreement shall commence retroactively on July 1, 2021 ("Effective Date") and shall end on June 30, 2024, unless extended or terminated earlier as provided for herein ("Term"). Sponsor may submit a written request for an extension to the term of

this Agreement to the Contract Administrator no less than ninety (90) calendar days prior to the expiration date. In the event the Contract Administrator agrees to an extension to the term of this Agreement, the Parties shall enter into an amendment as provided in Section 13.10 of this Agreement.

ARTICLE 5. FUND AND METHOD OF PAYMENT AND PROVISIONS RELATING TO THE USE OF THE FUNDS

- 5.1. The maximum amount payable to Sponsor under this Agreement shall be One Hundred Thousand Dollars (\$100,000). This Agreement is subject to the availability of SHIP Funds. No County funds shall be payable under this Agreement.
- 5.2. If Sponsor is in compliance with the applicable SHIP Rules and Regulations, the terms of this Agreement, including the procedures for invoices and payments set forth in this article, County shall provide to Sponsor SHIP Funds in the maximum amount listed in Section 5.1, in the form of a "lump sum" payment within ninety (90) days of the execution of this Agreement, unless a suspension of payment as provided in Section 10.1 of this Agreement has occurred. At no time shall County distribute SHIP Funds to Sponsor if Sponsor is not in compliance with the terms of this Agreement or the applicable SHIP Rules and Regulations.
- 5.3. Prior to the disbursement of SHIP Funds, Sponsor must:
 - 5.3.1. Execute this Agreement in addition to a Mortgage, Promissory Note, and Declaration of Restrictive Covenants in substantially the forms attached hereto as **Exhibit D** and **Exhibit E**, respectively. The Mortgage, Promissory Note, and Declaration of Restrictive Covenants shall be recorded at Sponsor's expense by the Division, which payment for recordation is required prior to the disbursement of any SHIP Funds. County agrees to execute and deliver to Sponsor's first mortgage lender, Bank of America, N.A. ("BofA"), a subordination agreement in substantially the form attached hereto as Exhibit "I-1". County acknowledges that Sponsor may elect to refinance the first priority construction loan with a permanent first mortgage loan from Neighborhood Lending Partners of Florida, Inc. ("NLP") the upon the Project's satisfaction of the conditions for conversion as set forth in that certain forward commitment for the Permanent Loan dated on or about the date hereof ("Conversion"). Notwithstanding anything contained herein to the contrary, if NLP provides the permanent first mortgage loan at Conversion, County shall execute and deliver a subordination agreement in substantially the same form attached as Exhibit "I-2" with such modifications as may be required by NLP to conform to NLP's then current form of subordination agreement at the time of Conversion.

- 5.3.2. All reports due under this Agreement, including any pending Quarterly Progress Reports, must be submitted to the Division.
- 5.3.3. Intentionally Deleted.
- 5.3.4. Provide proof of payment of the line items as provided in **Exhibit B**, for which SHIP Funds are to be utilized.
- 5.3.5. Confirm expenditure of the line items pursuant to Section 5.3.4.
- 5.4. In addition to the documentation and confirmations listed in Section 5.3, Sponsor shall provide upon request of County a copy of all Subcontractor invoices for the Project indicating the work, services, or activities rendered or materials purchased and the dates for same, certified by Sponsor's administrator or manager of the Project, as applicable.
- 5.5. Sponsor shall invoice County utilizing the request for payment form attached hereto as **Exhibit F**.
- 5.6. Following receipt of invoices and supporting documentation, as described in Section 5.3, County shall review the invoices and supporting documentation and conduct an on-site inspection to determine whether the items invoiced have been received or completed and that the invoiced items are proper for payment. County may, in its discretion, withhold payment to Sponsor if Sponsor fails to provide any of the documentation required in this article until such time as the required documentation is provided to the County.
- 5.7. Invoices shall not be honored if received by County more than sixty (60) calendar days after expiration or earlier termination of this Agreement.
- 5.8. County shall pay Sponsor within (30) calendar days after receipt of Sponsor's request for payment in accordance with County's Prompt Payment Ordinance, Section 1-51.6, Broward County Code of Ordinances. To be deemed proper, all invoices must comply with the requirements set forth in this Agreement, including the requirements of this article. Payment may be withheld for failure of Sponsor to comply with any term, condition, or requirement of this Agreement or the SHIP Rules and Regulations.
- 5.9. Intentionally Deleted.
- 5.10. Intentionally Deleted.
- 5.11. All SHIP Funds not expended by Sponsor in accordance with this Agreement shall remain in the custody and control of County. The Board may reallocate

unexpended SHIP Funds to other projects, in its own discretion.

- 5.12. If any SHIP Funds paid to Sponsor are in excess of the amount to which Sponsor is determined to be entitled to under this Agreement, Sponsor shall repay to County such funds within thirty (30) calendar days after demand by County.
- 5.13. Notwithstanding any provision in this Agreement to the contrary, County shall not be required to pay any SHIP Funds under this Agreement if County is not able to obtain such funding from the FHFC for payment of these costs, and County may withhold, in whole or in part, payment to Sponsor to the extent necessary to protect itself from loss on account of inadequate or defective work that has not been remedied or resolved in a manner satisfactory to the Contract Administrator, or due to Sponsor's failure to comply with this Agreement. The amount withheld shall not be subject to payment of interest by County.

ARTICLE 6. REPRESENTATIONS AND WARRANTIES

- 6.1. Sponsor must comply with all applicable federal, state, and county laws, ordinances, codes, and regulations, including, but not limited to, the SHIP Rules and Regulations.
- 6.2. Sponsor must comply with the Fair Housing Act, Title VII of the Civil Rights Act of 1968, as amended in 1988.
- 6.3. Sponsor must comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352), as amended in 1988, which states that no person in the United States will, on the grounds of race, color, or national origin, be excluded from participation, be denied benefits, or be subjected to discrimination under any program or activity that receives federal financial assistance.
- 6.4. Sponsor shall comply with Sections 503 and 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990, in addressing any problems of discrimination against individuals with disabilities in such areas as employment, housing, public accommodations, education, and transportation.
- 6.5. Sponsor must treat each Eligible Household equally and must not discriminate against any Eligible Household on the basis of race, color, religion, sex/gender, familial status, national origin, handicap, marital status, or age.
- 6.6. Representation of Authority. Sponsor represents and warrants that this Agreement constitutes the legal, valid, binding, and enforceable obligation of Sponsor, and that neither the execution nor performance of this Agreement constitutes a breach of any agreement that Sponsor has with any third party, or violates any law, rule, regulation, or duty arising in law or equity applicable to Sponsor. Sponsor further represents and warrants that execution of this Agreement is within Sponsor's legal

powers, and each individual executing this Agreement on behalf of Sponsor is duly authorized by all necessary and appropriate action to do so on behalf of Sponsor and does so with full legal authority.

- 6.7. Public Entity Crime Act. Sponsor represents that it is familiar with the requirements and prohibitions under the Public Entity Crime Act, Section 287.133, Florida Statutes, and represents that its entry into this Agreement will not violate that Act. Sponsor further represents that there has been no determination that it committed a “public entity crime” as defined by Section 287.133, Florida Statutes, and that it has not been formally charged with committing an act defined as a “public entity crime” regardless of the amount of money involved or whether Sponsor has been placed on the convicted vendor list.
- 6.8. Discriminatory Vendor and Scrutinized Companies Lists. Sponsor represents that it has not been placed on the “discriminatory vendor list” as provided in Section 287.134, Florida Statutes, and that it is not a “scrutinized company” pursuant to Sections 215.473 or 215.4725, Florida Statutes. Sponsor represents and certifies that it is not, and for the duration of the Term will not be, ineligible to contract with County on any of the grounds stated in Section 287.135, Florida Statutes. Sponsor represents that it is, and for the duration of the Term will remain, in compliance with Section 286.101, Florida Statutes.
- 6.9. Claims Against Sponsor. Sponsor represents and warrants that there is no action or proceeding, at law or in equity, before any court, mediator, arbitrator, governmental or other board or official, pending or, to the knowledge of Sponsor, threatened against or affecting Sponsor, the outcome of which may (a) affect the validity or enforceability of this Agreement, (b) materially or adversely affect the authority or ability of Sponsor to perform its obligations under this Agreement, or (c) have a material or adverse effect on the consolidated financial condition or results of operations of Sponsor or on the ability for Sponsor to conduct its business as presently conducted or as proposed or contemplated to be conducted.
- 6.10. Breach of Representations. In entering into this Agreement, Sponsor acknowledges that County is materially relying on the representations and warranties of Sponsor stated in this article. County shall be entitled to recover any damages it incurs to the extent any such representation or warranty is untrue. In addition, if any such representation or warranty is false, County shall have the right, at its sole discretion, to terminate this Agreement without any further liability to Sponsor, to deduct from SHIP Funds due to Sponsor under this Agreement the full amount of any value paid in violation of a representation or warranty, or to recover all SHIP Funds paid to Sponsor under this Agreement.

ARTICLE 7. INDEMNIFICATION

- 7.1. Sponsor shall indemnify, hold harmless, and defend County and all of County's current, past, and future officers, agents, and employees (collectively, "Indemnified Party") from and against any and all causes of action, demands, claims, losses, liabilities, and expenditures of any kind, including attorneys' fees, court costs, and expenses, including through the conclusion of any appellate proceedings, raised or asserted by any person or entity not a party to this Agreement, and caused or alleged to be caused, in whole or in part, by any intentional, reckless, or negligent act or omission of Sponsor, its officers, employees, or agents, arising from, relating to, or in connection with this Agreement (collectively, a "Claim"). If any Claim is brought against an Indemnified Party, Sponsor shall, upon written notice from County, defend each Indemnified Party with counsel satisfactory to County or, at County's option, pay for an attorney selected by the County Attorney to defend the Indemnified Party. The obligations of this section shall survive the expiration or earlier termination of this Agreement. If considered necessary by the Contract Administrator and the County Attorney, any sums due Sponsor under this Agreement may be retained by County until all Claims subject to this indemnification obligation have been settled or otherwise resolved. Any amount withheld shall not be subject to payment of interest by County.
- 7.2. In the event Sponsor contracts with a Subcontractor or any third party to perform any of the work or activities for the Project, any contract with such Subcontractor or third party shall include an indemnification in substantially the form provided below:

Subcontractor shall indemnify, hold harmless, and defend Broward County ("County") and all of County's current, past, and future officers, agents, and employees (collectively, "Indemnified Party") from and against any and all causes of action, demands, claims, losses, liabilities, and expenditures of any kind, including attorneys' fees, court costs, and expenses, including through the conclusion of any appellate proceedings, raised or asserted by any person or entity not a party to this Agreement, and caused or alleged to be caused, in whole or in part, by any intentional, reckless, or negligent act or omission of Subcontractor, its officers, employees, or agents, arising from, relating to, or in connection with this Agreement (collectively, a "Claim"). If any Claim is brought against an Indemnified Party, Subcontractor shall, upon written notice from County, defend each Indemnified Party with counsel satisfactory to County or, at County's option, pay for an attorney selected by the County Attorney to defend the Indemnified Party. The obligations of this section shall survive the expiration or earlier termination of this Agreement. If considered necessary by the Contract Administrator and the County Attorney, any sums due Subcontractor under this Agreement may be

retained by County until all Claims subject to this indemnification obligation have been settled or otherwise resolved. Any amount withheld shall not be subject to payment of interest by County.

- 7.3. In order to ensure the indemnification obligation noted above in Section 7.2, Sponsor shall ensure that Subcontractor or third party shall, at a minimum, provide, pay for, and maintain in force at all times during the term of this Agreement (unless otherwise provided), the insurance coverage set forth in Article 8.

ARTICLE 8. INSURANCE

- 8.1. For the duration of the Agreement, Sponsor shall, at its sole expense, maintain the minimum insurance coverages stated in Exhibit H in accordance with the terms and conditions of this article. Sponsor shall maintain insurance coverage against claims relating to any act or omission by Sponsor, its agents, representatives, employees, or Subcontractors in connection with this Agreement. County reserves the right at any time to review and adjust the limits and types of coverage required under this article, which right must be exercised in a commercially reasonable manner.
- 8.2. Sponsor shall ensure that "Broward County" is listed as an additional insured on all policies required under this article.
- 8.3. Within fifteen (15) days after the full execution of this Agreement, Sponsor shall provide County with a copy of all Certificates of Insurance or other documentation sufficient to demonstrate the insurance coverage required in this article. If and to the extent requested by County, Sponsor shall provide complete, certified copies of all required insurance policies and all required endorsements within thirty (30) days after County's request.
- 8.4. Sponsor shall ensure that all insurance coverages required by this article shall remain in full force and effect for the duration of this Agreement and until all performance required by Sponsor has been completed, as determined by Contract Administrator. Sponsor or Insurer shall provide notice to County of any cancellation or modification of any required policy at least thirty (30) days prior to the effective date of cancellation or modification, and at least ten (10) days prior to the effective date of any cancellation due to nonpayment and shall concurrently provide County with a copy of its updated Certificates of Insurance evidencing continuation of the required coverage(s). Sponsor shall ensure that there is no lapse of coverage at any time during the time period for which coverage is required by this article.
- 8.5. Sponsor shall ensure that all required insurance policies are issued by insurers: (1) assigned an A. M. Best rating of at least "A-" with a Financial Size Category of at least Class VII; (2) authorized to transact insurance in the State of Florida; or (3)

a qualified eligible surplus lines insurer pursuant to Section 626.917 or 626.918, Florida Statutes, with approval by County's Risk Management Division.

- 8.6. If Sponsor maintains broader coverage or higher limits than the minimum insurance requirements stated in Exhibit H County shall be entitled to any such broader coverage and higher limits maintained by Sponsor. All required insurance coverages under this article shall provide primary coverage and shall not require contribution from any County insurance, self-insurance or otherwise, which shall be in excess of and shall not contribute to the insurance required and provided by Sponsor.
- 8.7. Sponsor shall declare in writing any self-insured retentions or deductibles over the limit(s) prescribed in Exhibit H and submit to County for approval within fifteen (15) days after the full execution of this Agreement, shall be solely responsible for and shall pay any deductible or self-insured retention applicable to any claim against County. County may, at any time, require Sponsor to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. Sponsor agrees that any deductible or self-insured retention may be satisfied by either the named insured or County, if so elected by County, and Sponsor agrees to obtain same in endorsements to the required policies.
- 8.8. Unless prohibited by the applicable policy, Sponsor waives any right to subrogation that any of Sponsor insurer may acquire against County and agrees to obtain same in an endorsement of Sponsor's insurance policies.
- 8.9. Sponsor shall require that each Subcontractor maintains insurance coverage that adequately covers the services provided by that subcontractor on substantially the same insurance terms and conditions required of Sponsor under this article. Sponsor shall ensure that all such Subcontractors comply with these requirements and that "Broward County" is named as an additional insured under the subcontractors' applicable insurance policies.
- 8.10. In the event Sponsor or any Subcontractor fails to maintain the insurance required by this Agreement, County may pay any costs of premiums necessary to maintain the required coverage and deduct such costs from any payment otherwise due to Sponsor. Sponsor shall not permit any Subcontractor to provide services, work, or activities to be performed for the Project under this Agreement unless and until the requirements of this article are satisfied. If requested by County, Sponsor shall provide evidence of each Subcontractor's compliance with this article.
- 8.11. If any of the policies required under this article provide claims-made coverage: (1) any retroactive date must be within fifteen (15) days after the full execution of this

Agreement; (2) the required coverage must be maintained after termination or expiration of the Agreement for at least the duration stated in Exhibit H, and (3) if coverage is canceled or nonrenewed and is not replaced with another claims-made policy form with a retroactive date within fifteen (15) days after the full execution of this Agreement, Sponsor must obtain and maintain "extended reporting" coverage that applies after termination or expiration of the Agreement for at least the duration stated in Exhibit H.

ARTICLE 9. FINANCIAL RESPONSIBILITY

- 9.1. Sponsor shall have an adequate financial system and internal fiscal controls in accordance with County's requirements under this Agreement.
- 9.2. Sponsor shall provide to County annual financial statements prepared in accordance with generally accepted accounting principles and audited by an Independent Certified Public Accountant licensed by the State of Florida. Sponsor shall comply with the requirements of 24 CFR Part 200, "Audit Requirements," Chapter 10.550 Rules of the Auditor General, State of Florida, and Statement of Financial Accounting Standards No. 116 and No. 117, and any revisions, to the extent they are applicable. The financial statements shall include a statement of financial position, a statement of activities, and a statement of cash flows. All SHIP Funds from County should be shown via explicit disclosure in the annual financial statements and/or the accompanying notes to the financial statements. Such financial disclosure information and management letters, if any, shall be filed with County within ninety (90) calendar days after the close of Sponsor's fiscal year or expiration or earlier termination of this Agreement. Sponsor shall be responsible for costs associated with the above-mentioned audit.
- 9.3. Any late submission of financial statements and management letters required in Section 9.2 above shall result in suspension of any payments due Sponsor under the terms of this Agreement, until such time as the financial statements and management letters are received by County and are in compliance with this Article 9. However, during suspension of any payment as provided for in this section 9.3, Sponsor shall not be excused from continuing to perform the Scope of Services under this Agreement.
- 9.4. Sponsor shall use SHIP Funds provided under this Agreement only for eligible Project activities as specified in **Exhibit A** and in accordance with the Budget set forth in **Exhibit B**.
- 9.5. SHIP Funds loaned to Sponsor will not be funded or subsidized, in whole or in part, by the proceeds of any obligation the interest on which is exempt from tax under Section 103 of the Internal Revenue Code of 1986, as amended.

ARTICLE 10. SUSPENSION OF PAYMENTS AND REPAYMENT

- 10.1. In addition to County's right to terminate this Agreement in accordance with Article 11, in the event of any of the following, County shall provide notice and an opportunity to cure to Sponsor in accordance with Article 12, Notices, identifying the breach and suspend payments and require repayment of the SHIP Funds, in whole or in part, until such time as Sponsor comes into compliance as reasonably determined by County.
 - 10.1.1. Ineligible use of SHIP Funds by Sponsor as determined by County's Contract Administrator.
 - 10.1.2. Failure to comply with the terms of this Agreement.
 - 10.1.3. Failure to submit reports and documents as required under this Agreement, including a favorable audit report.
 - 10.1.4. Submittal of incorrect, incomplete, or fraudulent reports in any material respect.
 - 10.1.5. Until all of County's claims for indemnification pursuant to this Agreement have been settled or otherwise resolved.
 - 10.1.6. Sponsor breaches the Affordability Period required under this Agreement and the Mortgage, Note, and Declaration of Restrictive covenants attached hereto.
- 10.2. In the event County elects to suspend payment to Sponsor pursuant to this Article 10, County shall specify the actions that must be taken by Sponsor as a condition precedent to resumption of payments and specify a reasonable date by which Sponsor must take such actions.
- 10.3. In the event County determines Sponsor does not, or is not able to, come into compliance with the terms of this Agreement as referenced in this Article 10, County may elect to terminate this Agreement as provided in Article 11 and seek all available remedies available to County, including repayment of SHIP Funds as provided for in this Agreement.
- 10.4. In the event Sponsor is required to repay County any SHIP Funds pursuant to this article, Sponsor shall repay such within thirty (30) calendar days after the notice provided by County, and if not paid, County may, in its sole discretion, elect to withhold payment on any subsequent request for payment by Sponsor, or reduce Sponsor's obligation to repay County by making an administrative offset against any request for payment. County, in its sole discretion, may allocate any funds Sponsor repays to County pursuant to the terms in this Agreement to other eligible

- 10.5. SHIP program projects or other uses by County for other purposes, as allowed by the SHIP Rules and Regulations.

ARTICLE 11. TERMINATION

- 11.1. This Agreement is subject to the availability of SHIP program funding from the FHFC. In the event that the FHFC terminates, suspends, discontinues, or substantially reduces the SHIP Funds available for the Project under this Agreement, as determined in County's sole discretion, County may terminate this Agreement upon Sponsor's receipt from County of no less than twenty-four (24) hours' notice.
- 11.2. Termination for Cause. This Agreement may be terminated for cause by County, at the discretion of and through the County Administrator, if Sponsor fails to comply with any terms under this Agreement and has not corrected the breach within fifteen (15) calendar days after receipt of written notice from County identifying the breach. If the breach is not susceptible to being cured within fifteen (15) days notwithstanding Sponsor's diligent efforts to cure same, then the cure period may, in County's reasonable discretion, be extended for a fifteen (15) day period, provided that Sponsor provides County evidence demonstrating Sponsor's continuing diligent efforts to cure such default. In the event this Agreement is terminated by County for cause, Sponsor shall repay to County any SHIP Funds determined by County to be due as provided in this Agreement.
- 11.3. Termination for Convenience. This Agreement may be terminated for convenience by the Board. Termination for convenience by the Board shall be effective on the termination date stated in the written notice provided by County to Sponsor, which termination date shall be not less than thirty (30) calendar days after the date of such written notice.
- 11.4. Termination by County Administrator. This Agreement may also be terminated by the County Administrator upon any such notice as the County Administrator deems appropriate under the circumstances in the event the County Administrator determines that termination is necessary to protect the public health, safety, or welfare.
- 11.5. If County erroneously, improperly, or unjustifiably terminates for cause, such termination shall be deemed a termination for convenience, which termination shall be effective thirty (30) calendar days after such notice of termination for cause is provided.
- 11.6. In the event Sponsor is under investigation or charged with any violation of any State or Federal law with respect to and directly related to this Agreement,

Sponsor's rights and County's obligations under this Agreement shall terminate immediately upon written notice from County. In the event Sponsor is ultimately cleared of wrongdoing, and upon receipt of a Request for Payment, utilizing the form provided in **Exhibit F**, County shall pay Sponsor for any documented and eligible Project expenses to which Sponsor would have been entitled to under this Agreement. However, if Sponsor is found to have violated any State or Federal law directly related to this Agreement, Sponsor shall be required to repay County all SHIP Funds that have been paid to Sponsor under this Agreement in accordance with Section 10.4.

- 11.7. Notice of suspension or termination of this Agreement shall be provided in accordance with Article 12 of this Agreement. Except that, termination by the County Administrator under Section 11.4 may be verbal notice that shall be promptly confirmed in writing in accordance with Article 12.

ARTICLE 12. NOTICES

Notice and Payment Address. In order for a notice to a Party to be effective under this Agreement, notice must be sent via U.S. first-class mail, hand delivery, or commercial overnight delivery, each with a contemporaneous copy via email, to the addresses listed below and shall be effective upon mailing or hand delivery (provided the contemporaneous email is also sent). Payments shall be made to the noticed address for Sponsor. Addresses may be changed by the applicable Party giving notice of such change in accordance with this section.

FOR COUNTY:

Ralph Stone
Broward County Housing Finance
Division
110 N.E. 3rd Street – Third Floor
Fort Lauderdale, Florida 33301
Email address: rstone@broward.org

FOR SPONSOR:

Pinnacle 441, LLC
c/o Pinnacle Communities LLC
9400 S. Dadeland Blvd, Suite #100
Miami, FL 33156
Email address: david@pinnaclehousing.com

With copy to:
Shutts & Bowen LLP
200 S. Biscayne Blvd.
Miami, FL 33131
Email: RCheng@shutts.com

FOR INVESTOR MEMBER:

Bank of America, N.A.
MA5-100-04-11
100 Federal Street
Boston, MA 02110
Attention: Asset Manager – Pinnacle 441
Telephone: (617) 341-3868
Email: LIHTCreporting@bofa.com

With copy to:
Holland & Knight LLP
10 St. James Avenue
Boston, MA 02116
Telephone: (503) 243-5860
Email: sara.heskett@hklaw.com

FOR CONSTRUCTION LENDER:

Bank of America, N.A.
101 E. Kennedy Blvd., 6th Floor
Tampa, FL 33602
Attention: Nicole Baldon
Email: Nicole.baldon@bofa.com

ARTICLE 13. MISCELLANEOUS

13.1. Public Records. To the extent Sponsor is acting on behalf of County as stated in Section 119.0701, Florida Statutes, Sponsor shall:

- 13.1.1. Keep and maintain public records required by County to perform the services under this Agreement;
- 13.1.2. Upon request from County, provide County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time and at a cost that does not exceed that provided in Chapter 119, Florida Statutes, or as otherwise provided by law;

- 13.1.3. Ensure that public records that are exempt or confidential and exempt from public record requirements are not disclosed except as authorized by law for the duration of this Agreement and following completion or termination of this Agreement if the records are not transferred to County; and
- 13.1.4. Upon completion or termination of this Agreement, transfer to County, at no cost, all public records in possession of Sponsor or keep and maintain public records required by County to perform the services. If Sponsor transfers the records to County, Sponsor shall destroy any duplicate public records that are exempt or confidential and exempt. If Sponsor keeps and maintains the public records, Sponsor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to County upon request in a format that is compatible with the information technology systems of County.

A request for public records regarding this Agreement must be made directly to County, who will be responsible for responding to any such public records requests. Sponsor will provide any requested records to County to enable County to respond to the public records request.

Any material submitted to County that Sponsor contends constitutes or contains trade secrets or is otherwise exempt from production under Florida public records laws (including Chapter 119, Florida Statutes) ("Trade Secret Materials") must be separately submitted and conspicuously labeled "EXEMPT FROM PUBLIC RECORD PRODUCTION – TRADE SECRET." In addition, Sponsor must, simultaneous with the submission of any Trade Secret Materials, provide a sworn affidavit from a person with personal knowledge attesting that the Trade Secret Materials constitute trade secrets under Section 812.081, Florida Statutes, and stating the factual basis for same. In the event that a third party submits a request to County for records designated by Sponsor as Trade Secret Materials, County shall refrain from disclosing the Trade Secret Materials, unless otherwise ordered by a court of competent jurisdiction or authorized in writing by Sponsor. Sponsor shall indemnify and defend County and its employees and agents from any and all claims, causes of action, losses, fines, penalties, damages, judgments and liabilities of any kind, including attorneys' fees, litigation expenses, and court costs, relating to the nondisclosure of any Trade Secret Materials in response to a records request by a third party.

IF SPONSOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO SPONSOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (954) 357-4900, RSTONE@BROWARD.ORG, 110 N.E. 3RD STREET, THIRD FLOOR, FORT LAUDERDALE, FLORIDA 33301.

- 13.2. Assignment. Except for approved subcontracting, neither this Agreement nor any right or interest in it may be assigned, transferred, subcontracted, or encumbered by Sponsor without the prior written consent of the County, which consent shall not be unreasonably withheld, conditioned, or delayed. As a condition of the County's approval of any contemplated transfer of the property, any proposed transferee will be required to expressly assume all of Sponsor's obligations under this Agreement and, upon the transferee's execution of an assignment and assumption agreement to the reasonable satisfaction of the County, Sponsor shall be released from any further obligations pursuant to this Agreement. County also reserves the right to condition its approval of any assignment, transfer, encumbrance, or subcontract upon further due diligence and an additional fee paid to County to reasonably compensate it for the performance of any such due diligence. Any assignment, transfer, encumbrance, or subcontract in violation of this section shall be void and ineffective, constitute a breach of this Agreement, and permit County to immediately terminate this Agreement, in addition to any other remedies available to County at law or in equity. In connection with any transfer of the property in which Sponsor pays off any remaining balance under this Agreement and/or the Note, the transferee would take title to the property subject to the Declaration of Restrictions attached as Exhibit E, and no approval, assignment or assumption would be required under this Agreement.
- 13.3. Conflicts. Neither Sponsor nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with Sponsor's loyal and conscientious exercise of judgment and care related to its performance under this Agreement. During the Term, none of Sponsor's officers or employees shall serve as an expert witness against County in any legal or administrative proceeding in which he, she, or Sponsor is not a party, unless compelled by legal process. Further, such persons shall not give sworn testimony or issue a report or writing as an expression of such person's expert opinion that is adverse or prejudicial to the interests of County in connection with any such pending or threatened legal or administrative proceeding unless compelled by legal process. The limitations of this section shall not preclude Sponsor or any persons in any way from representing themselves, including giving expert testimony in support of such representation, in any action or in any administrative or legal proceeding. If Sponsor is permitted pursuant to this Agreement to utilize Subcontractors to perform any Project activities required by

this Agreement, Sponsor shall require such Subcontractors, by written contract, to comply with the provisions of this section to the same extent as Sponsor.

- 13.4. Materiality and Waiver of Breach. Each requirement, duty, and obligation set forth in this Agreement was bargained for at arm's-length and is agreed to by the Parties. Each requirement, duty, and obligation set forth in this Agreement is substantial and important to the formation of this Agreement, and each is, therefore, a material term. County's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of this Agreement. To be effective, any waiver must be in writing signed by an authorized signatory of the Party granting the waiver.
- 13.5. Severability. If any part of this Agreement is found to be unenforceable by any court of competent jurisdiction, that part shall be deemed severed from this Agreement and the balance of this Agreement shall remain in full force and effect.
- 13.6. Joint Preparation. This Agreement has been jointly prepared by the Parties and shall not be construed more strictly against either Party.
- 13.7. Interpretation. The titles and headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as "herein" refer to this Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a section or article of this Agreement, such reference is to the section or article as a whole, including all subsections thereof, unless the reference is made to a particular subsection or subparagraph of such section or article. Any reference to "days" means calendar days, unless otherwise expressly stated.
- 13.8. Priority of Provisions. If there is a conflict or inconsistency between any term, statement, requirement, or provision of any document or exhibit attached to, referenced by, or incorporated in this Agreement and any provision of Articles 1 through 13 of this Agreement, the provisions contained in Articles 1 through 13 shall prevail and be given effect.
- 13.9. Law, Jurisdiction, Venue, Waiver of Jury Trial. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. The exclusive venue for any lawsuit arising from, related to, or in connection with this Agreement shall be in the state courts of the Seventeenth Judicial Circuit in and for Broward County, Florida. If any claim arising from, related to, or in

connection with this Agreement must be litigated in federal court, the exclusive venue for any such lawsuit shall be in the United States District Court or United States Bankruptcy Court for the Southern District of Florida. **EACH PARTY HEREBY EXPRESSLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT. IF A PARTY FAILS TO WITHDRAW A DEMAND FOR A JURY TRIAL AFTER WRITTEN NOTICE BY THE OTHER PARTY, THE PARTY MAKING THE DEMAND FOR JURY TRIAL SHALL BE LIABLE FOR REASONABLE ATTORNEYS' FEES AND COSTS OF THE OTHER PARTY TO CONTEST THE DEMAND FOR JURY TRIAL, AND SUCH AMOUNTS SHALL BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION.**

- 13.10. Amendments. Unless expressly authorized herein, no modification, amendment, or alteration of any portion of this Agreement is effective unless contained in a written document executed with the same or similar formality as this Agreement and by duly authorized representatives of County and Sponsor.
- 13.11. Compliance Monitoring. Sponsor agrees that, in consideration of the SHIP funds provided for the Project, Sponsor shall engage the compliance monitoring firm assigned to this Project by FHFC to also monitor for compliance with the set-aside requirements for the SHIP funded units. The term for compliance monitoring will be concurrent with the Affordability Period.
- 13.12. Right-of-Way Dedications. The Parties acknowledge and agree that, in connection with the development of the Project, certain right-of-way dedications may be required by the State of Florida Department of Transportation, the County, and/or the City of Hollywood (the "ROW Dedication(s)"). Notwithstanding anything in this Agreement to the contrary, Sponsor shall not be required to obtain the County's consent in connection with the ROW Dedication(s). Additionally, because any such ROW Dedication(s) would alter the legal description of the property subject to this Agreement and related instruments (e.g., the Mortgage and Declaration of Restrictive Covenants), the County expressly agrees to execute such documentation as is reasonably requested by Sponsor to amend the legal description to account for the ROW Dedication(s) and to release the portions of the property subject to such ROW Dedication(s) from the lien and effect of such instruments.
- 13.13. Prior Agreements. This Agreement represents the final and complete understanding of the Parties regarding the subject matter of this Agreement and supersedes all prior and contemporaneous negotiations and discussions regarding same. All commitments, agreements, and understandings of the Parties concerning the subject matter of this Agreement are contained herein.

13.14. Payable Interest.

13.14.1. Payment of Interest. County shall not be liable to pay any interest to Sponsor for any reason, whether as prejudgment interest or for any other purpose, and in furtherance thereof Sponsor waives, rejects, disclaims, and surrenders any and all entitlement it has or may have to receive interest in connection with a dispute or claim arising from, related to, or in connection with this Agreement. This subsection shall not apply to any claim for interest, including for post-judgment interest, if such application would be contrary to applicable law.

13.14.2. Rate of Interest. If the preceding subsection is inapplicable or is determined to be invalid or unenforceable by a court of competent jurisdiction, the annual rate of interest payable by County under this Agreement, whether as prejudgment interest or for any other purpose, shall be, to the full extent permissible under applicable law, one quarter of one percent (0.25%) simple interest (uncompounded).

13.15. Incorporation by Reference. Any and all Recital clauses stated above are true and correct and are incorporated in this Agreement by reference. The attached Exhibits are incorporated into and made a part of this Agreement.

13.16. Counterparts and Multiple Originals. This Agreement may be executed in multiple originals, and may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

13.17. Use of County Logo. Sponsor shall not use County's name, logo, or otherwise refer to this Agreement in marketing or publicity materials without prior written consent from County.

13.18. Drug-Free Workplace. To the extent required under Section 21.31(a)(2), Broward County Administrative Code, or Section 287.087, Florida Statutes, Sponsor certifies that it has and will maintain a drug-free workplace program throughout the Term.

13.19. Survival. Either party's right to monitor, evaluate, enforce, audit and review, any obligations to indemnify and insure, any assurances and certifications, and items of financial responsibility shall survive the expiration or earlier termination of this Agreement. Any provision of this Agreement which contains a restriction or requirement which extends beyond the date of termination or expiration set forth

herein shall survive expiration or earlier termination of this Agreement and be enforceable.

- 13.20. Force Majeure. If the performance of this Agreement, or any obligation hereunder is prevented by reason of hurricane, earthquake, or other casualty caused by nature, or by labor strike, war, or by a law, order, proclamation, regulation, pandemic, or ordinance of any governmental agency, the party so affected, upon giving prompt notice to the other party, shall be excused from such performance to the extent of such prevention, provided that the party so affected shall first have taken reasonable steps to avoid and remove such cause of non-performance and shall continue to take reasonable steps to avoid and remove such cause, and shall promptly notify the other party in writing and resume performance hereunder whenever such causes are removed; provided, however, that if such non-performance exceeds sixty (60) days, the party that is not prevented from performance by the force majeure event shall have the right to terminate this Agreement upon written notice to the party so affected. This section shall not supersede or prevent the exercise of any right the Parties may otherwise have to terminate this Agreement.
- 13.21. Further Assurance. The Parties shall execute, acknowledge, deliver, and cause to be done, executed, acknowledged, and delivered all such further documents and perform such acts as shall reasonably be requested of them to carry out this Agreement and give effect hereto, and as may be required to comply with the SHIP Rules and Regulations or any other applicable federal, state, or local laws, regulations, directives, and objectives. Accordingly, without in any manner limiting the specific rights and obligations set forth in this Agreement, the Parties intend to cooperate with each other in effecting the terms of this Agreement.
- 13.22. County Administrator. The County Administrator is authorized to exercise the County's rights and obligations necessary to carry out this Agreement including, but not limited to, executing amendments to the loan documents required under this Agreement, when applicable.

IN WITNESS WHEREOF, the Parties have made and executed this Agreement: BROWARD COUNTY, through the County Administrator, authorized to execute same by action of the Board on the ___ day of _____, 2022 (Board Agenda Item No. __), and Pinnacle 441, LLC, signing by and through its President, duly authorized to execute same.

BROWARD COUNTY

BROWARD COUNTY, by and through
its County Administrator

By _____
County Administrator

____ day of _____, 20__

Approved as to form by
Andrew J. Meyers
Broward County Attorney
115 South Andrews Avenue, Suite 423
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600

By Christina A. Blythe Digitally signed by Christina A. Blythe
Date: 2022.07.20 09:42:39 -04'00'
Christina A. Blythe (Date)
Assistant County Attorney

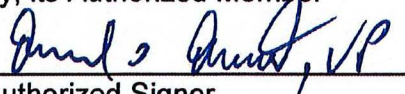
By Annika E. Ashton Digitally signed by Annika E. Ashton
Date: 2022.07.20 09:42:53 -04'00'
Annika E. Ashton (Date)
Deputy County Attorney

CAB/sr
SHIP FY Multi-family 21-22
Pinnacle 441.doc
07/18/2022
#610966

**AGREEMENT BETWEEN BROWARD COUNTY AND PINNACLE 441, LLC PROVIDING
STATE HOUSING INITIATIVES PARTNERSHIP FUNDING FOR MULTI- FAMILY RENTAL
CONSTRUCTION STRATEGY FOR FISCAL YEAR 2021- 2022**

SPONSOR

Pinnacle 441, LLC, a Florida
limited liability company
By PC 441, LLC, a Florida limited liability
company, its Authorized Member

By: 
Authorized Signor

David O. Deutch, Vice President
Print Name and Title

18 day of July, 2022

WITNESS/ATTEST:

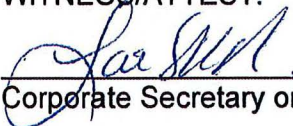

Corporate Secretary or other witness

EXHIBIT A

PROJECT DESCRIPTION

Project Address: 890 N. State Road 7, Hollywood, Florida 33024

Pinnacle 441 is a catalytic mixed-use development delivering critically-needed affordable housing on the State Road 7 corridor. Located a mile south of the Hard Rock Casino, Pinnacle 441 will offer a variety of 1, 2, & 3 bedroom floor plans. Units will be affordable at 60% of the area-wide median income or less, with an additional 3 market-rate units, one of which will be a ground floor live/work space. **2 units shall be a SHIP Units, low income restricted (at or below 80% AMI).** Pinnacle 441 will also contain 6,760 square feet of commercial development fronting the active and heavily-trafficked State Road 7/US441 corridor. Pinnacle 441 will offer easy convenience to transit, employment and services in an area primed for redevelopment by the City of Hollywood. Pinnacle 441 will commence construction in early 2022.

Required Accessibility Features in all Units:

- Primary entrance doors on an accessible route shall have a threshold with no more than a ½-inch rise
- All door handles on primary entrance door and interior doors must have lever handles
- Lever handles on all bathroom faucets and kitchen sink faucets
- Mid-point on light switches and thermostats shall not be more than 48 inches above finished floor level; and Cabinet drawer handles and cabinet door handles in bathroom and kitchen shall be lever or D-pull type that operate easily using a single closed fist.

Green Building Features:

- Low or No-VOC paint for all interior walls (Low-VOC means 50 grams per liter or less for flat; 150 grams per liter or less for non-flat paint)
- Low-flow water fixtures in bathrooms—WaterSense labeled products or the following specifications:
 - Toilets: 1.28 gallons/flush or less
 - Urinals: 0.5 gallons/flush
 - Lavatory Faucets: 1.5 gallons/minute or less at 60 psi flow rate
 - Showerheads: 2.0 gallons/minute or less at 80 psi flow rate
- Energy Star certified refrigerator
- Energy Star certified dishwasher
- Energy Star certified ventilation fan in all bathrooms
- Water heater minimum efficiency specifications:
 - Residential Electric:
 - Up to 55 gallons = 0.95 EF or 0.92 UEF; or
 - More than 55 gallons = Energy Star certified; or

- Tankless = 0.97 EF and Max GPM of ≥ 2.5 over a 77° rise or 0.87 UEF and GPM of ≥ 2.9 over a 67° rise
- Residential Gas (storage or tankless/instantaneous): Energy Star certified
- Commercial Gas Water Heater: Energy Star certified
- Energy Star certified ceiling fans with lighting fixtures in bedrooms
- Air Conditioning (in-unit or commercial)
 - Air-Source Heat Pumps – Energy Star certified:
 - ≥ 8.5 HSPF/ ≥ 15 SEER/ ≥ 12.5 EER for split systems
 - ≥ 8.2 HSPF ≥ 15 SEER/ ≥ 12 EER for single package equipment including gas/electric package units
 - Central Air Conditioners – Energy Star certified
 - ≥ 15 SEER/ ≥ 12.5 EER* for split systems
 - ≥ 15 SEER/ ≥ 12 EER* for single package equipment including gas/electric package units.
- NOTE: Window air conditioners and portable air conditioners are not allowed. Package Terminal Air Conditioners (PTACs) / Package Terminal Heat Pumps (PTHPs) are allowed in studio and 1 bedroom units.

Legal Description

Parcel 1:

Lot 12, Less the South 100 feet, in Block 2, PINE RIDGE ESTATES, according to the Plat thereof, recoded in Plat Book 24, Page 10, of the Public Records of Broward County, Florida; and also the East 30 feet of Lot 11, Less the South 100 feet in Block 2, PINE RIDGE ESTATES, according to the Plat thereof, recoded in Plat Book 24, Page 10, of the Public Records of Broward County, Florida; Less that portion of Lot 12 conveyed to State of Florida Department of Transportation by Deeds recorded in Instrument Numbers 112853176 and 112853177.

Together with:

Parcel 2:

The South 100 feet of Lot 12, in Block 2, PINE RIDGE ESTATES, according to the Plat thereof, recorded in Plat Book 24, Page 10, of the Public Records of Broward County, Florida.

And together with:

Parcel 3:

Lot 11, Less the West 220 feet and Less the North 230 feet of the East 30 feet in Block 2, PINE RIDGE ESTATES, according to the Plat thereof, recorded in Plat Book 24, Page 10, of the Public Records of Broward County, Florida.

EXHIBIT "B"
COSTS/BUDGET FOR PROJECT

PINNACLE 441

Hollywood, FL

Itemized Costs	Total Cost	COUNTY Grant	Source A Loan	Source B Tax Credit	Source C Def. Fees	Source D Other
A. Acquisition Cost						
1. Land	3,600,000		3,600,000			
2. Existing Structures	116,450		116,450			
3. Other						
B. Site Work						
1. Site Work (not included in construction contract costs)						
2. Other						
C. Construction/Rehabilitation (Construction contract costs)						
1. Site Work	750,000			750,000		
2. New Building	27,774,123		5,483,550	22,290,573		0
3. Rehabilitation						
D. Architectural and Engineering Fees						
1. Architect Fee-Design	466,000			466,000		
2. Architect Fee-Supervision	50,000			50,000		
3. Consultant or Processing Agent	0			0		
4. Engineering Fees	426,000			426,000		
5. Other (inspection fees, soft cost contingency, green cert fees)	288,160			288,160		
E. Other Owner Costs						
1. Appraisal	12,000			12,000		
2. Building Permits	561,706			561,706		
3. Tap Fees	343,133			343,133		
4. Soil Borings/Environmental Survey	69,500			69,500		
5. Real Estate Attorney (incl. in title)						
6. Construction Loan Legal	280,000			280,000		
7. Title and Recording	140,000			140,000		
8. Impact Fees	297,223	100,000		197,223		
9. Accounting Fees	75,000			75,000		
10. LIHTC Fees	570,934			570,934		
F. Interim Costs						
1. Construction Insurance	240,812			240,812		
2. Construction Interest	2,023,362			2,023,362		
3. Const. Loan Origination Fee	170,750			170,750		
G. Permanent Financing Fees/Expen.						
1. Credit Report						
2. Perm Loan Origination Fee	170,750			170,750		
3. Title and Recording	60,000			60,000		
4. Counsel's Fee	120,000			120,000		
H. Developer's Fees	5,663,984		0	1,732,942	3,931,042	
I. Project Reserves						
1. Rent-Up Reserves						
2. Operating Reserve & Repl. Reserve Capitaliz	354,776			354,776		
J. Tenant Relocation	0			0		
K. Project Administration/Management						
1. Marketing /Management	50,000			50,000		
2. Operating Expenses	50,000			50,000		
3. Taxes	222,000			222,000		
4. Insurance -- permanent	72,000			72,000		
L. TOTAL	45,018,663	100,000	9,200,000	31,787,621	3,931,042	0

EXHIBIT C

PROJECT TIMELINE

<u>Date</u>	<u>Task</u>
February 3, 2021	Invitation to Credit Underwriting
July 8, 2021	FHFC Carryover
November 30, 2021	Closing on Property Acquisition
March 7, 2022	10% Test Satisfied
July 22, 2022*	Closing on Debt & Equity
July 23, 2022*	Construction Commencement**
August 25, 2022*	Execution of SHIP Funding Agreement
September 30, 2022*	Funding of SHIP Funds
September 30, 2023*	Initiate Leasing
December 31, 2023*	Construction Complete
March 15, 2024*	Lease-Up Complete
April 15, 2024*	Submit Project Completion Report to County
October 30, 2024*	Stabilized Operations
December 31, 2024*	Conversion to Permanent Debt

***Dates in the future reflect estimates**

**** Initial foundation work and site work began 6/7/22; demolition work was started 4/15/22 and was completed on 6/1/22. Full construction start is 7/23/22 and all previous Notices of Commencement will be extinguished concurrent with debt and equity closing and issuance of NOC for full construction start.**

EXHIBIT D

FORM OF MORTGAGE AND PROMISSORY NOTE

Return recorded document to:
Broward County
Housing Finance and Community Redevelopment Division
110 N.E. 3rd Street, Suite 203
Fort Lauderdale, Florida 33301

Document prepared and
Approved as to form by:
Christina A. Blythe
Assistant County Attorney
Broward County, Florida
115 S. Andrews Avenue, Room 423
Fort Lauderdale, FL 33301

**AMENDED AND RESTATED MORTGAGE TO SECURE SHIP FINANCING FOR
MULTI-FAMILY RENTAL CONSTRUCTION STRATEGY OPTION**

THIS AMENDED AND RESTATED MORTGAGE TO SECURE STATE HOUSING INITIATIVE PROGRAM ("SHIP") FINANCING FOR MULTI-FAMILY RENTAL CONSTRUCTION STRATEGY OPTION ("Mortgage") is made this ___ day of ___, 2022, between Pinnacle 441, LLC, a Florida limited liability company whose address is 9400 S. Dadeland Blvd. Suite 100, Miami, FL 33156 (hereinafter referred to as "Mortgagor"), and BROWARD COUNTY, a political subdivision of the State of Florida, whose address is 115 South Andrews Avenue, Fort Lauderdale, FL 33301 (hereinafter referred to as "Mortgagee").

A. Mortgagor executed that certain Mortgage Deed in favor of Pinnacle Communities, LLC, a Florida limited liability company ("PC"), dated as of July ___, 2022, and recorded _____, 2022, as Instrument No. _____ of the Public Records of Broward County, Florida (the "Prior Mortgage"), which secures a promissory note dated July ___, 2022 from Mortgagor to the order of PC in the original principal amount of \$10,000 (the "Prior Note").

B. PC assigned all of PC's right, title and interest in the Prior Note and the Prior Mortgage pursuant to that certain Assignment of Note and Mortgage of even date herewith to be recorded in the Public Records of Broward County, Florida.

C. Mortgagor and Mortgagee desire to amend and restate the Prior Mortgage and the Prior Note secured thereby.

D. This Mortgage amends and restates the Prior Mortgage in its entirety.

E. Mortgagor is indebted to Mortgagee in the principal sum of **One Hundred Thousand Dollars (\$100,000.00)** ("Loan"), which indebtedness is evidenced by Mortgagor's Amended and Restated Promissory Note of even date herewith ("Note"), attached hereto as Exhibit A, providing for a deferred payment Loan.

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, Mortgagor does hereby mortgage, grant, and convey to Mortgagee the property described in Attachment A of the Note, located in the County of Broward, State of Florida, together with all improvements now or hereafter erected on the property, and all easements, rights, appurtenances, rents, royalties,

mineral, oil and gas rights and profits, water, water rights, and water stock, and all fixtures now or hereafter attached to the property, all of which, including replacements and additions thereto, shall be deemed to be and remain a part of the property covered by this Mortgage; and all of the foregoing, together with said property are herein referred to as the "Property."

This Mortgage shall be a [second] mortgage on the Property.

This Mortgage is expressly made subject and subordinate to the terms and conditions specified in (i) that certain Mortgage, Assignment of Rents, Security Agreement, and Fixture Filing from Mortgagor to Bank of America, N.A. ("First Mortgage"), dated as of _____, 2022, recorded in the Public Records of Broward County, Florida ("First Mortgage"), securing that certain Promissory Note dated as of _____, 2022, in the original principal amount of [Twenty Eight Million Eight Hundred Four Thousand Three Hundred Eighty and No/100 Dollars (\$27,800,000.00)] issued by Mortgagor and payable to First Mortgagee ("First Note") and (ii) upon Conversion as defined in that certain Construction Loan Agreement dated as of _____, 2022 between Mortgagor and First Mortgagee, that certain [Mortgage, Assignment of Rents and Leases, Security Agreement, and Fixture Filing] from Mortgagor to Neighborhood Lending Partners of Florida, Inc. ("Permanent Mortgagee"), recorded in the Public Records of Broward County, Florida ("Permanent Mortgage"), securing that certain Promissory Note in the original principal amount of [Nine Million 00/100 Dollars (\$9,200,000.00)], dated _____, 2022 (collectively, the "Permanent Loan"), made by Mortgagor payable to the Permanent Mortgagee.

Mortgagor hereby further covenants and agrees as follows:

1. **Payment of Debt.** Mortgagor shall pay the debt under the Note at the end of the term stated in Section 2 of this Mortgage. Payment due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Mortgagee as payment under the Note, or this Mortgage is returned to Mortgagee unpaid, Mortgagee may require that any, or all subsequent payments due under the Note and this Mortgage be made in one or more of the following forms, as selected by Mortgagee: (a) cash; (b) money order; (c) certified check; (d) bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) electronic funds transfer.

Mortgagee may return any payment or partial payment if the payment or partial payment is insufficient to bring the loan current. Mortgagee may accept any payment or partial payment insufficient to bring the loan current, without waiver of any rights, or prejudice to its rights to refuse such payment or partial payment in the future, but Mortgagee is not obligated to apply such payments at the time such payments are accepted.

2. **Term of Mortgage.** The term of this Mortgage shall be thirty (30) years from the date the Certificate of Occupancy is issued for the Property.

3. **Affordability.** Mortgagor must provide affordable housing to eligible families for the term of this Mortgage as specified in Section 2. The debt under the Note shall be deferred until the end of the term of this Mortgage as long as Mortgagor complies with the affordability requirements under this section. If at any time during the term of this Mortgage, Mortgagor fails to provide affordable housing to eligible families, the debt under the Note shall become immediately due, in addition to any payments of interests and/or fees and charges, if applicable.

4. **Charges.** Mortgagor shall pay, prior to becoming delinquent, all taxes, assessments and other charges, fines and impositions attributable to the Property which may attain a priority over this Mortgage, and leasehold payments or ground rents, if any, when due, directly to the payee thereof. Mortgagor shall promptly furnish to Mortgagee receipts evidencing such payments.

5. **Insurance.**

(a) Mortgagor shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards, including but not limited to floods, for which Mortgagee requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Mortgagee requires.

(b) The insurance carrier providing the insurance shall be chosen by Mortgagor subject to Mortgagee's right to disapprove Mortgagor's choice, which right shall not be exercised unreasonably. All premiums on insurance policies shall be paid by Mortgagor, when due, directly to the insurance carrier.

(c) All insurance policies required by Mortgagee and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Mortgagee as mortgagee and/or an additional loss payee. Mortgagee shall have the right to hold the policies and renewals thereof, and Mortgagor shall promptly furnish to Mortgagee all rental notices and all receipts of paid premiums.

(d) In the event of loss, Mortgagor shall give prompt notice to the insurance carrier and the Mortgagee. Mortgagee may make proof of loss if not made promptly by Mortgagor. Unless Mortgagee and Mortgagor otherwise agree in writing, any insurance proceeds shall be applied to restoration or repair of the Property damaged, provided such restoration or repair is economically feasible and the security of this Mortgage is not thereby impaired. If such restoration or repair is not economically feasible or if the security of this Mortgage would be impaired, the insurance proceeds shall be applied to the sums secured by this Mortgage with the excess, if any, paid to Mortgagor.

(e) If Mortgagor abandons the Property, Mortgagee may file, negotiate, and settle any available insurance claim and related matters. If Mortgagor does not respond within thirty (30) days to a notice from Mortgagee that the insurance carrier has offered to settle a claim, then Mortgagee may settle the claim. In either event, Mortgagee is authorized to collect and apply the insurance proceeds at Mortgagee's option either to restoration or repair of the Property or to the sums secured by this Mortgage.

(f) If, under Section 16 hereof, the Property is acquired by Mortgagee, all right, title, and interest of Mortgagor in and to any insurance policies and in and to the proceeds thereof resulting from damage to the Property, prior to the sale or acquisition shall pass to Mortgagee to the extent of the sums secured by this Mortgage immediately prior to such sale or acquisition.

6. **Purpose of Mortgage.** It is expressly agreed and understood that this Mortgage secures the indebtedness and the obligation of the Mortgagor with respect to the Loan, as the same is evidenced by the Note, and all renewals, extensions, and modifications thereof. This Mortgage shall not be deemed released, discharged, or satisfied until the entire indebtedness

evidenced by the Note is satisfied in full.

7. **Representations and Warranties.** Mortgagor represents and warrants that: (a) there are no actions, suits, or proceedings pending or threatened against or affecting Mortgagor or any portion of the Property, or involving the validity or enforceability of this Mortgage or the priority of its lien, (b) Mortgagor is not in default under any other indebtedness or with respect to any order, writ, injunction, decree, judgment or demand of any court or any governmental authority; and (c) in connection with the Loan, Mortgagor has not made any material misrepresentations of fact relating to Mortgagor's income and eligibility for the Loan.

8. **Care of Property.**

(a) No building or other structure or improvement, fixture or personal property mortgaged hereby shall be removed or demolished without the prior written consent of Mortgagee. Mortgagor will not make, permit, or suffer any alteration or addition to any building or other structure or improvement now or which may hereafter be erected or installed upon the mortgaged property, or any part thereof, except the improvements, if any, required to be made with the proceeds of the Loan, nor will Mortgagor use, or permit or suffer the use of, any of the Property for any purpose other than the purpose or purposes for which the same is now used, without the prior written consent of Mortgagee.

(b) Mortgagor will maintain the Property in good condition and state of repair and will not suffer or permit any waste to any part thereof, impairment, or deterioration of the Property, or make or permit to be made to the Property any alterations or additions that would have the effect of materially diminishing the value thereof or take or permit any action that will in any way increase any ordinary fire or other hazard arising out of the construction or operation thereof and will promptly comply with all of the requirements of federal, state, and local governments, or of any departments, divisions or bureaus thereof, pertaining to such property or any part thereof. If all or any part of the Property shall be damaged by fire or other casualty, the Mortgagor shall promptly restore the Property to the equivalent of its original condition regardless of whether or not there shall be any insurance proceeds therefore. If the Property or any part thereof is damaged by fire or any other cause, the Mortgagor shall give immediate written notice of same as soon as practicable to Mortgagee. If a part of the Property shall be physically damaged through condemnation, the Mortgagor shall promptly restore, repair, or alter the remaining property in a manner satisfactory to the Mortgagee. Mortgagee's approval of such restorations, repairs, or alterations shall not be unreasonably withheld.

9. **Transfer of the Property; Assumption.**

A. No part of the Property or an interest therein shall be sold or transferred by Mortgagor without the written consent of Mortgagee. If Mortgagor sells or transfers any interest in the Property, the outstanding principal amount of the Note secured by this Mortgage shall become immediately due and payable. If the outstanding principal amount of the Note becomes due and payable, Mortgagee shall provide Mortgagor notice of acceleration, in accordance with Section 16 hereof. Mortgagor shall pay the sums declared due and payable within thirty (30) days after the date of the notice. If Mortgagor fails to timely pay such sums, Mortgagee may, without further notice or demand on Mortgagor, invoke any remedies permitted by Section 17 hereof.

B. Mortgagee may, at Mortgagee's option, waive its option to accelerate if, prior to the sale or transfer, Mortgagee and the person to whom the Property is to be sold

or transferred to reach an agreement in writing that the credit of such person is satisfactory to Mortgagee, that the interest payable, if any, on the sums secured by the Mortgage shall be at such rate as Mortgagee shall request, and that all applicable income and affordability restrictions are met. Mortgagee shall release Mortgagor from the obligations under this Mortgage and the Note only if (i) Mortgagee waives its option to accelerate pursuant to this paragraph, and (ii) Mortgagor's successor in interest has executed a written assumption agreement, in form and substance satisfactory to Mortgagee, pursuant to which the successor in interest acquires all of Mortgagor's obligations under the Mortgage and the Note.

10. **Hazardous Substances.** Mortgagor shall not use, generate, store, or dispose of Hazardous Materials on the Property. Mortgagor shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental Laws. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property. Mortgagor shall promptly give Mortgagee written notice of any investigation, claim, demand, lawsuit, or other action, of which the Mortgagor has actual knowledge, by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Laws. If Mortgagor learns, or is notified by any governmental or regulatory authority, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Mortgagor shall promptly take all necessary remedial actions in accordance with Environmental Laws, and provide Mortgagee notice thereof. As used in this section, "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental Laws, including but not limited to the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this section, "Environmental Laws" means federal, state, and local laws of the jurisdiction where the Property is located that relate to health, safety, or environmental protection, including but not limited to the Federal Resource Conservation and Recovery Act and the Federal Comprehensive Environmental Response, Compensation and Liability Act.

11. **Compliance with Laws.** Mortgagor shall comply with all federal, state, and local laws applicable to the Loan and the Property, including all requirements of the Florida Housing Finance Corporation, Chapter 420, Florida Statutes, and Chapter 67-37, Florida Administrative Code, as may be amended from time to time.

12. **Protection of Mortgagee's Security.** If Mortgagor fails to perform the covenants or agreements contained in this Mortgage, or if any action or proceeding is commenced which materially affects Mortgagee's interest in the Property, including but not limited to eminent domain, insolvency, code enforcement, or arrangements or proceedings involving a bankruptcy, Mortgagee, at Mortgagee's option, upon notice to Mortgagor, may make such appearances, disburse such sums and take such action as is necessary to protect Mortgagee's interest, including but not limited to disbursement of reasonable attorneys' fees and entry upon the Property to make repairs.

13. **Inspection.** Mortgagee may make or cause to be made reasonable entries upon and inspections of the Property, provided that Mortgagee shall give Mortgagor reasonable notice prior to any such inspection.

14. **Condemnation.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to

Mortgagee. The proceeds referred to in this paragraph shall be applied to the sums secured by this Mortgage with the excess, if any, paid to Mortgagor. If the Property is abandoned by Mortgagor or, if after notice by Mortgagee to Mortgagor that the condemner offers to make an award or settle a claim for damages, Mortgagor fails to respond to Mortgagee within thirty (30) days after the date of such notice, Mortgagee is authorized to collect and apply the proceeds, at Mortgagee's option, either to restoration or repair of the Property, or to the sums secured by this Mortgage.

15. **Event of Default.** The term "Event of Default," wherever used in this Mortgage, shall mean any one or more of the following events:

A. Failure by Mortgagor to duly keep, perform, and observe any other covenant, condition, or agreement in the Note or this Mortgage, including the covenants to pay when due any sums secured by this Mortgage, for a period of ten (10) days after Mortgagor gives written notice specifying the breach.

B. If Mortgagor or any endorser or guarantor of the Note shall file a voluntary petition in bankruptcy or shall be adjudicated bankrupt or insolvent, or shall file any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, wage earner's plan, assignment for the benefit of creditors, receivership, dissolution, or similar relief under any present or future Federal Bankruptcy Act or any other present or future applicable federal, state, or other statute or law, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver, or liquidator of the Mortgage for all or any of the properties of Mortgagor or of any guarantor or endorser of the Note; or if within thirty (30) days after commencement of any proceeding against Mortgagor or any guarantor or endorser of the Note, seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, debtor relief, or similar relief under any present or future federal, state, or other statute or law, such proceeding shall not have been dismissed or stayed on appeal; or if within the thirty (30) days after appointment without the consent or acquiescence of Mortgagor or of any endorser or guarantor of the Note, of any trustee, receiver, or liquidator of Mortgagor or any endorser or guarantor of the Note, or of all or any portion of the Property, such appointment shall not have been vacated or stayed on appeal or otherwise; or if within ten (10) days after the expiration of any such stay, such appointment shall not have been vacated.

C. The entry by any court of last resort of a decision that an undertaking by the Mortgagor as herein provided to pay taxes, assessments, levies, liabilities, obligations or encumbrances is legally inoperative or cannot be enforced, or in the event of the passage of any law changing in any way or respect the laws now in force for the taxation of mortgages or debts secured thereby for any purpose or the manner of collection of any such taxes, so as to effect adversely this Mortgage or the debt secured hereby unless Mortgagor can and does in a proper and legal manner, pay any and all sums of whatever kind which may be incurred or charged under such new or modified law.

D. If foreclosure proceedings should be instituted on any mortgage inferior or superior to the Mortgage, or if any foreclosure proceeding is instituted on any lien of any kind which is not dismissed or transferred to bond within thirty (30) days after the service of foreclosure proceedings on Mortgagor.

E. Any default under any mortgage that is superior or inferior to the Mortgage. Mortgagor shall have the affirmative obligation to immediately notify Mortgage in writing of the occurrence or existence of any such default.

F. Any breach of any warranty or material untruth of any representation of Mortgagor contained in the Note or this Mortgage related to the funding assistance provided.

G. Any action prohibited herein.

H. The transfer or lease of the Property to a third party, other than leases of individual apartment units or other space within the improvements located or to be located on the Property.

I. The abandonment or vacation of the Property by Mortgagor.

16. **Acceleration; Remedies.** Except as provided in Section 9(b) hereof, upon the occurrence of an Event of Default, Mortgagee, prior to acceleration, shall mail notice to Mortgagor as provided in Section 20 hereof specifying: (1) the Event of Default; (2) the action required to cure such Event of Default; (3) a date, not less than thirty (30) days after the date the notice is received by Mortgagor, by which such Event of Default must be cured to the satisfaction of Mortgagee; and (4) that failure to cure such Event of Default on or before the date specified in the notice may result in any action in law or equity, as Mortgagee determines to be most effectual to enforce Mortgagor's obligations, including an action for specific performance, acceleration of the sums secured by this Mortgage, foreclosure by judicial proceeding, and sale of the Property. The notice shall further inform Mortgagor of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of an Event of Default or any other defense of Mortgagor to acceleration and foreclosure. If the Event of Default is not cured on or before the date specified in the notice, Mortgagee at its option may require immediate payment in full of all sums secured by this Mortgage without further demand and may foreclose this Mortgage by judicial proceeding. Mortgagee shall be entitled to collect all expenses incurred in pursuing the remedies provided in this paragraph, including but not limited to reasonable attorneys' fees and costs of title evidence.

17. **Remedies Cumulative.** All remedies provided in this Mortgage are separate, distinct, and cumulative to any other right or remedy under this Mortgage or afforded by law or equity, and may be exercised concurrently, independently, or successively. No act of Mortgagee shall be construed as an election to proceed under any provision or covenant herein to the exclusion of any other, notwithstanding anything herein to the contrary.

18. **Mortgagor's Right to Reinstate.** Notwithstanding the Mortgagee's right to acceleration of the sums secured by this Mortgage, Mortgagor shall have the right to have any proceedings initiated by Mortgagee to enforce this Mortgage discontinued at any time prior to entry of a judgment enforcing this Mortgage if: (a) Mortgagor pays Mortgagee all sums which would be then due under this Mortgage had no acceleration occurred; (b) Mortgagor cures all breaches of this Mortgage; (c) Mortgagor pays all reasonable expenses incurred by Mortgagee in enforcing the covenants and agreements of Mortgagor contained in this Mortgage, including but not limited to reasonable attorneys' fees; and (d) Mortgagor takes such action as Mortgagee may reasonably require to assure that the lien secured by this Mortgage, Mortgagee's interest in the Property and Mortgagor's obligation to pay the sums secured by this Mortgage shall remain in full force and effect as if no acceleration had occurred. Upon such payment and cure by Mortgagor, this Mortgage and the obligations secured hereby shall remain in full force and effect as if no

acceleration had occurred.

19. **Rider to Mortgage.** Attached as **Exhibit B** to this Mortgage is a Rider to be executed by Mortgagor and Mortgagee. The Rider provides Mortgagor's Investor Member, Bank of America, N.A., together with its successors and assigns, an opportunity to cure a default under this Mortgage.

20. **Recordation.** This Mortgage and the Note shall be recorded in the Public Records of Broward County, Florida by the Mortgagee at the expense of Mortgagor.

21. **Notice.** Except for any notice required under applicable law to be given in another manner, any notice to Mortgagor or Mortgagee provided for in this Mortgage shall be given by mailing such notice by certified mail, return receipt requested, addressed to the party for whom it is intended at such party's respective address set forth above in the introductory paragraph to this Mortgage.

22. **Governing Law.** This Mortgage shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. The exclusive venue for any lawsuit arising from, related to, or in connection with this Mortgage shall be in the state courts of the Seventeenth Judicial Circuit in and for Broward County, Florida. If any claim arising from, related to, or in connection with this Mortgage must be litigated in federal court, the exclusive venue shall be in the United States District Court or United States Bankruptcy Court for the Southern District of Florida. All meetings to resolve said dispute, including voluntary arbitration, mediation, or other alternative dispute resolution mechanism, will take place in this venue. The parties both waive any defense that the venue in Broward County is not convenient. **BY ENTERING INTO THIS MORTGAGE, MORTGAGOR AND MORTGAGEE HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS MORTGAGE.**

23. **Attorneys' Fees and Costs.** As used in this Mortgage and in the Note, "attorney's fees" shall include those fees and costs, if any, which may be awarded by a trial or appellate court.

24. **Heirs, Successors, and Permitted Assigns; No Oral Modifications.** This Mortgage shall be binding upon and shall extend to the benefit of the parties hereto and their respective heirs, successors, and permitted assigns. This Mortgage is not subject to modification other than by a written document or instrument executed by Mortgagor and Mortgagee.

25. **Jointly and Severally Bound.** Mortgagor and others who may become liable for all or any part of the obligations under this Mortgage, hereby agree to be jointly and severally bound by this Mortgage and jointly and severally waive demand, protest, notice of nonpayment, and any and all lack of diligence or delays in collection or enforcement hereof, and specifically consent to any extension of time, release of any party liable for this obligation, including any maker, or acceptance of other security therefor. Any such extension or release may be made without notice to said party and without in any way affecting the liability of such party.

26. **No Waiver; Mortgagor Not Released.** It is expressly agreed and understood that a waiver by Mortgagee (which waiver shall only be valid if given in writing) of any right or rights conferred to it hereunder with regard to any one transaction or occurrence shall not be deemed a waiver of such right or rights to any subsequent transaction or occurrence. It is further agreed that any forbearance or delay by Mortgagee in enforcement of any right or remedy hereunder shall not constitute or be deemed a waiver of such right or remedy. The procurement of insurance or the payment of taxes or other liens or charges by Mortgagee shall not be a waiver of Mortgagee's right to accelerate the maturity of the indebtedness secured by this Mortgage. An

extension of time for payment or a modification of the amortization of the sums secured by this Mortgage granted by Mortgagee to Mortgagor or any successor in interest of Mortgagor shall not operate to release, in any manner, the liability of Mortgagor or Mortgagor's successor in interest. Mortgagee shall not be required to commence proceedings against such successor or refuse to extend time for payment or otherwise modify the amortization of the sums secured by this Mortgage by reason of any demand made by the Mortgagor or Mortgagor's successor in interest.

27. **Severability.** If any provision, or part thereof, contained in this Mortgage is, for any reason, held to be invalid, illegal, unenforceable in any respect, or in conflict with applicable law, such invalidity, illegality, unenforceability, or conflict shall not affect any other provision (or remaining part of the affected provision) of this Mortgage, but this Mortgage shall be construed as if such invalid, illegal, unenforceable, or conflicting provision (or part thereof) had never been contained herein, but only to the extent it is invalid, illegal, unenforceable, or in conflict with applicable law.

28. **Captions.** The captions and headings of the paragraphs of this Mortgage are for convenience only and are not to be used to interpret or define the provisions hereof.

29. **Further Assurances.** Mortgagor shall cooperate with County to modify and re-record this Mortgage and/or the Note to the extent modification is required (i) to correct any defect or error in the Mortgage and/or Note, or (ii) for compliance with applicable federal, state, or local law.

30. **Right of Way Dedications.** Mortgagee acknowledges that Mortgagor will be required to dedicate certain portions of the Property to the Florida Department of Transportation and the City of Hollywood, Florida, for purposes of establishing right of ways (the "ROW Dedications"). The proposed legal descriptions of the ROW Dedications, which remain subject to adjustment by the Florida Department of Transportation and the City of Hollywood, Florida, as applicable, are more particularly described on Exhibit C to this Mortgage. Any adjustment to the legal descriptions as acknowledged in the preceding sentence shall not alter the obligations of Mortgagee set forth in this section, provided that such adjustment does not materially and adversely affect the value of Mortgagee's collateral hereunder. By acceptance of this Mortgage, and with no additional consideration to be required, Mortgagee hereby agrees to execute documentation required to release from the lien of this Mortgage the portions of the Property to be dedicated pursuant to the ROW Dedications (the "ROW Releases"). Upon notice from Mortgagor, Mortgagee shall deliver the ROW Releases at the time that the ROW Dedications are being conveyed by Mortgagor. Nothing in this section shall alter, in any way, Mortgagor's obligations in this Mortgage.

31. **Non-Recourse.** Notwithstanding any contrary provision contained herein, payment and performance of the obligations set forth in this Mortgage, the Note, and the SHIP Multi-Family Rental Construction Agreement executed by Mortgagee and Mortgagor on _____, 2022 (collectively, the "Loan Documents"), shall be non-recourse to Mortgagor and Mortgagor's successors and assigns, and Mortgagee's sole recourse with respect to the Loan shall be the right to foreclose under the Loan Documents and other collateral forming part of the Loan Documents.

IN WITNESS WHEREOF, MORTGAGOR, Pinnacle 441, LLC, has executed this Mortgage

WITNESSES:

MORTGAGOR

Pinnacle 441, LLC, a Florida limited liability company

Sign Name: _____

By PC411, LLC, a Florida limited liability company, its Authorized Member

Print Name: _____

By: _____

Sign Name: _____

David O. Deutch, Vice President
(Print or Type Name)

Print Name: _____

____ day of _____, 2022

STATE OF FLORIDA)
) SS
County of Miami-Dade)

The foregoing instrument was acknowledged before me, by means of physical presence or online notarization, this ____ day of _____, 2022, by _____, as _____ of PC411, LLC, a Florida limited liability company, Authorized of Pinnacle 441, LLC, a Florida limited liability company, on behalf of the companies, who is personally known to me or who has produced _____ as identification.

Print Name: _____

Notary Public, State of Florida at Large
Commission No. _____

My Commission Expires:

IN WITNESS WHEREOF, MORTGAGEE, Broward County, a political subdivision of the State of Florida ("County"), has executed this Mortgage

BROWARD COUNTY, by and through
its County Administrator

By _____
County Administrator

____ day of _____, 20__

Approved as to form by
Andrew J. Meyers
Broward County Attorney
115 South Andrews Avenue, Suite 423
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600

By _____
Christina A. Blythe (Date)
Assistant County Attorney

By _____
Annika E. Ashton (Date)
Deputy County Attorney

EXHIBIT A TO MORTGAGE

AMENDED AND RESTATED SHIP PROMISSORY NOTE

\$100,000.00 _____, 2022

This Amended and Restated SHIP Promissory Note (this "Note") amends, restates and renews in its entirety that certain Promissory Note dated July ____, 2022, made by Maker (as hereinafter defined) to Pinnacle Communities, LLC, a Florida limited liability company, in the original principal amount of \$10,000.

FOR VALUE RECEIVED, the undersigned Pinnacle 441, LLC, a Florida limited liability company ("Maker"), whose address is 9400 S. Dadeland Blvd. Suite 100, Miami, FL 33156, promises to pay to the order of BROWARD COUNTY, a political subdivision of the State of Florida, hereof ("Holder") at Governmental Center, 115 South Andrews Avenue, Fort Lauderdale, Florida 33301, or such other location or address as Holder may from time to time designate in writing, the principal sum of _One Hundred Thousand Dollars (\$100,000.00) ("Loan") to be paid in lawful U.S. currency.

1. The real property ("Property") securing this Loan is legally described as set forth in Attachment A attached hereto. This SHIP Promissory Note ("Note") is secured by an Amended and Restated Mortgage to Secure SHIP Financing for Multi-family Rental Construction Strategy Option ("Mortgage") of even date herewith executed in favor of Holder, and recorded simultaneously therewith in the Public Records of Broward County, Florida, encumbering the Property, subject to no exceptions.
2. Holder is a recipient of Florida State Housing Initiatives Partnership ("SHIP") funds from the Florida Housing Finance Corporation ("FHFC") pursuant to Section 420.907, Florida Statutes.
3. The Loan provided under this Note is a zero percent (0%) interest rate, deferred payment loan. The amount due under this Note shall become due and payable at the end of the thirty (30) years after the date of the issuance of a Certificate of Occupancy for the Property, but in no event later than December 31, 2056 (the "Maturity Date"). If, however, Maker (i) sells or transfers title to the Property used to secure this Note prior to the Maturity Date; (ii) fails to utilize the Property as provided for in Section 3 of the Mortgage; or (iii) fails to comply with the terms and conditions of the Mortgage, the Note shall immediately become due and payable to Holder. Notwithstanding anything contained herein to the contrary, any and all amounts due on the Maturity Date may be forgiven in the sole and absolute discretion of Holder.
4. Upon full payment of all amounts due hereunder, if any, and provided that Maker complies with all other covenants and conditions of the Mortgage and this Note, then this Note and the Mortgage shall terminate and, upon request of Maker, Holder shall execute a Satisfaction of Mortgage.
5. The indebtedness evidenced by this Note is and shall be subordinate in right of payment to the prior payment of any amounts then due and payable in connection with the indebtedness evidenced by the following (the "Superior Debt"): (i) that certain Promissory Note dated as of _____, 2022, in the original principal amount of [\$27,800,000.00] issued by Maker and payable to Bank of America, N.A. ("BofA"), and (ii) upon Conversion as defined in that certain Construction Loan Agreement dated as of _____, 2022 between Maker and BofA, that

certain Promissory Note dated as of Conversion, in the original principal amount of [\$9,200,000.00] issued by Maker and payable to Neighborhood Lending Partners of Florida, Inc. ("NLP"), its successors and/or assigns as their interests may appear (the "Permanent Loan").

6. In the event the Maker refinances a loan secured by a senior lien, such refinancing shall not require the consent of the Holder or trigger a default or event of default hereunder and Holder shall take all steps and execute all documents which may be reasonably necessary to subordinate the applicable mortgage to the lien securing such new loan.

7. If this Note is reduced to judgment, such judgment shall bear the statutory interest rate on judgments.

8. In the event of default in the terms or conditions of this Note, and if the same is enforced by an attorney at law, Maker hereby agree(s) to pay all costs of collection, including reasonable attorney's fees. Notwithstanding any of the preceding provisions, Holder shall be entitled to collect a late fee on any principal amount due and payable by Maker, in such amount as may have been adopted by Resolution of the Broward County Board of County Commissioners and set forth in the Broward County Administrative Code, at the time of the execution of this Note.

9. Except for any notice required under applicable law to be given in another manner, all notices under this Note shall be provided as specified in Section 20 of the Mortgage.

10. No delay or omission on the part of Holder in the exercise of any right hereunder shall operate as a waiver of such right or of any other right under this Note. No waiver of any of Holder's rights under this Note shall be binding upon Holder unless Holder approves such waiver in writing. A waiver by Holder of any right or remedy conferred to it hereunder on any one occasion shall not be construed as a bar to, or waiver of, any such right or remedy as to any future occasion.

11. This Note shall be interpreted and construed in accordance with and governed by the laws of the state of Florida. The exclusive venue for any lawsuit arising from, related to, or in connection with this Note shall be in the state courts of the Seventeenth Judicial Circuit in and for Broward County, Florida. If any claim arising from, related to, or in connection with this Promissory Note must be litigated in federal court, the exclusive venue for any such lawsuit shall be in the United States District Court or United States Bankruptcy Court for the Southern District of Florida. **BY ENTERING INTO THIS NOTE, MAKER AND HOLDER HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS NOTE.**

12. In the event that any provision of this Note is held to be unenforceable under the law, all remaining provisions of this Note shall be binding, valid, and enforceable.

13. The Loan provided under this Note shall be nonrecourse. It is expressly acknowledged that neither Maker, its successors, assigns, nor any existing or future partners of Maker shall have any personal liability under the Note, and Holder's recovery for sums due under the Note shall be limited to the collateral pledged under the Mortgage.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, MAKER, Pinnacle 441, LLC, has executed this Note.

WITNESSES:

MAKER - Pinnacle 441, LLC,
a Florida limited liability company

Sign Name: _____

By: PC411, LLC, a Florida limited liability company, its
Authorized Member

Print Name: _____

By: _____

Sign Name: _____

David O. Deutch, Vice President
(Print or Type Name)

Print Name: _____

____ day of _____, 2022

ACKNOWLEDGMENT

STATE OF FLORIDA)
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me, by means of physical presence or onlinenotarization, this _____ day of _____, 20____, by David O. Deutch, as President of PC411, LLC, a Florida limited liability company, its Authorized Member who is personally known to me or who has produced _____ as identification.

Notary Public:
Signature: _____
Print Name: _____

State of Florida
My Commission Expires: _____ Commission Number: _____ (Notary Seal)

ATTACHMENT A [to Promissory Note]
LEGAL DESCRIPTION

Parcel 1:

Lot 12, Less the South 100 feet, in Block 2, PINE RIDGE ESTATES, according to the Plat thereof, recoded in Plat Book 24, Page 10, of the Public Records of Broward County, Florida; and also the East 30 feet of Lot 11, Less the South 100 feet in Block 2, PINE RIDGE ESTATES, according to the Plat thereof, recoded in Plat Book 24, Page 10, of the Public Records of Broward County, Florida; Less that portion of Lot 12 conveyed to State of Florida Department of Transportation by Deeds recorded in Instrument Numbers 112853176 and 112853177.

Together with:

Parcel 2:

The South 100 feet of Lot 12, in Block 2, PINE RIDGE ESTATES, according to the Plat thereof, recorded in Plat Book 24, Page 10, of the Public Records of Broward County, Florida.

And together with:

Parcel 3:

Lot 11, Less the West 220 feet and Less the North 230 feet of the East 30 feet in Block 2, PINE RIDGE ESTATES, according to the Plat thereof, recorded in Plat Book 24, Page 10, of the Public Records of Broward County, Florida.

EXHIBIT B TO MORTGAGE

RIDER TO MORTGAGE TO SECURE SHIP FINANCING FOR MULTI-FAMILY RENTAL CONSTRUCTION STRATEGY OPTION DATED _____, 2022 FROM PINNACLE 441, LLC (THE "BORROWER") IN FAVOR OF BROWARD COUNTY (THE "LENDER"), CONCERNING PROPERTY LOCATED IN BROWARD COUNTY, FLORIDA (THE "PROJECT")

Notwithstanding anything to the contrary set forth in any one or more of the documents (the "Loan Documents") evidencing or securing the Lender's \$100,000 loan to the Borrower (the "Loan"), the Lender makes the covenants and representations set forth in this Rider.

1. If a default is incapable of being cured within the time provided pursuant to the Loan Documents, the Lender will give Bank of America, N.A., together with its successors and assigns, (the "Investor Member") an additional ninety (90) days to cure such default provided Investor Member has commenced to cure such default and is diligently proceeding to cure such default.
2. The Lender will permit the Investor Member to transfer its non-authorized member interest to any person or entity at any time, subject to the terms of that Amended and Restated Operating Agreement of Pinnacle 441, LLC, dated _____, 20____.
3. The Lender will permit the Investor Member to remove the authorized member of the Borrower in accordance with the Borrower's Amended and Restated Operating Agreement dated as of _____, 2022, without the prior consent of Lender.
4. Investor Member is intended to be a direct beneficiary of the covenants set forth in this Rider and shall be entitled to bring an action to enforce the same independent of any rights of the Borrower.
5. This Rider may be executed in multiple counterparts, each of which shall be deemed to be an original.

[NO FURTHER TEXT]

[SIGNATURE PAGE FOLLOWS]

LENDER

Broward County

By: _____
Broward County Administrator

BORROWER

PINNACLE 441, LLC, a Florida limited liability company,

By: PC411, LLC, a Florida limited liability company, its Authorized Member

By: _____
Name: David O. Deutch
Title: Vice President

EXHIBIT C TO MORTGAGE

ROW Dedications:

[see attached]

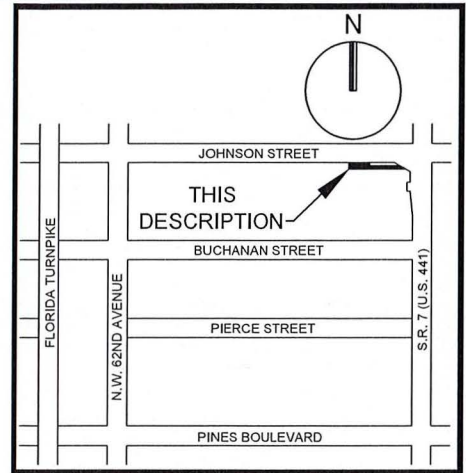
LEGAL DESCRIPTION (RIGHT-OF-WAY DEDICATION):

A PORTION OF LAND LYING WITHIN LOTS 11 AND 12 OF BLOCK 2, PINE RIDGE ESTATES, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 24, PAGE 10 OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA.

SAID PORTION BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 11; THENCE SOUTH 02°28'37" EAST ALONG THE EAST LINE OF SAID LOT 11, A DISTANCE OF 3.65 FEET TO A POINT ON THE EXISTING SOUTH RIGHT-OF-WAY LINE OF JOHNSON STREET AS DESCRIBED IN INSTRUMENT NUMBERS 112853176 AND 112853177 OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA; THENCE ALONG SAID SOUTH RIGHT-OF-WAY LINE THE FOLLOWING TWO COURSES; (1) NORTH 88°10'35" EAST, A DISTANCE OF 255.19 FEET AND (2) SOUTH 55°31'47" EAST, A DISTANCE OF 2.28 FEET; THENCE DEPARTING SAID SOUTH RIGHT-OF-WAY LINE, AND SOUTH 88°10'35" WEST ALONG A LINE BEING 5.00 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF SAID BLOCK 2, A DISTANCE OF 367.01 FEET; THENCE NORTH 02°28'38" WEST, A DISTANCE OF 5.00 FEET TO A POINT ON SAID SOUTH RIGHT-OF-WAY LINE; THENCE NORTH 88°10'35" EAST ALONG SAID SOUTH RIGHT-OF-WAY LINE, A DISTANCE OF 110.00 FEET TO THE POINT OF BEGINNING.

SAID LANDS LYING AND BEING WITHIN THE NORTHWEST ONE-QUARTER (NW ¼) OF SECTION 13, TOWNSHIP 51 SOUTH, RANGE 41 EAST, CITY OF HOLLYWOOD, BROWARD COUNTY, FLORIDA, CONTAINING 896 SQUARE FEET MORE OR LESS.



LOCATION MAP:
NOT TO SCALE

SURVEY NOTES:

1. THE LEGAL DESCRIPTION SHOWN HEREON WAS PREPARED BY THE SURVEYOR.
2. NOT VALID WITHOUT THE ORIGINAL SIGNATURE AND SEAL OR AN ENCRYPTED DIGITAL SIGNATURE OF A FLORIDA PROFESSIONAL SURVEYOR AND MAPPER.
3. IT IS A VIOLATION OF THE STANDARDS OF PRACTICE RULE 5J-17 OF THE FLORIDA ADMINISTRATIVE CODE, TO ALTER THIS SKETCH AND DESCRIPTION WITHOUT THE EXPRESSED PRIOR WRITTEN CONSENT OF THE SURVEYOR. ADDITIONS AND DELETIONS MADE TO THE FACE OF THIS SKETCH AND DESCRIPTION WILL MAKE THIS DOCUMENT INVALID.
4. THIS SKETCH AND DESCRIPTION DOES NOT CONSTITUTE A BOUNDARY SURVEY.
5. BEARINGS SHOWN HEREON ARE BASED THE NORTH AMERICAN HORIZONTAL DATUM OF 1983 WITH THE NATIONAL SPATIAL REFERENCE SYSTEM 2011 ADJUSTMENT APPLIED (83/NSRS11) TRANSVERSE MERCATOR, FLORIDA EAST ZONE HAVING A BEARING OF NORTH 88°10'35" EAST ALONG THE NORTH LINE OF BLOCK 2, PINE RIDGE ESTATES, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 24, PAGE 10 OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA.
6. LANDS SHOWN HEREON WERE ABSTRACTED FOR RIGHTS-OF-WAY, EASEMENTS, OWNERSHIP, OR OTHER INSTRUMENTS OF RECORD PER FIDELITY NATIONAL TITLE INSURANCE COMPANY, WITH AN EFFECTIVE DATE OF OCTOBER 14, 2021 @ 11:00 P.M..
7. THE INTENDED DISPLAY SCALE FOR THIS SKETCH IS 1" = 100' OR SMALLER.

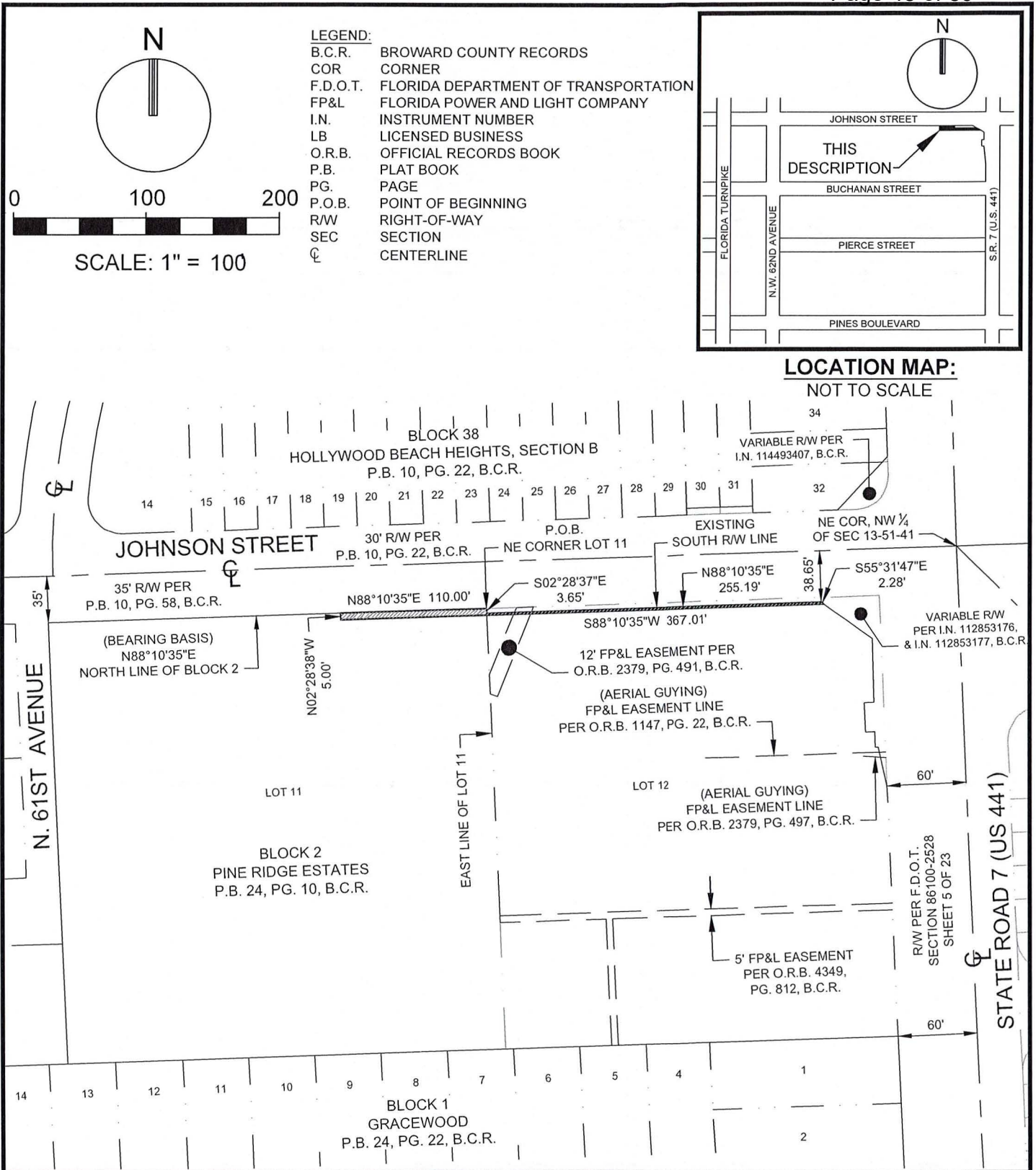
CERTIFICATION:

I HEREBY CERTIFY THAT THE ATTACHED SKETCH & DESCRIPTION OF THE HEREON DESCRIBED PROPERTY IS DEPICTED TO THE BEST OF MY KNOWLEDGE AND BELIEF AND THE INFORMATION AS WRITTEN UNDER MY DIRECTION ON MARCH 7, 2022 MEETS THE STANDARDS OF PRACTICE RULE 5J-17 OF THE FLORIDA ADMINISTRATIVE CODE, PURSUANT TO SECTION 472.027, FLORIDA STATUTES, SUBJECT TO THE QUALIFICATIONS NOTED HEREON.

KEITH & ASSOCIATES, INC.
CONSULTING ENGINEERS

TIMOTHY H. GRAY
PROFESSIONAL SURVEYOR AND MAPPER
REGISTRATION NO. 6604
STATE OF FLORIDA

<p>SKETCH & DESCRIPTION</p> <p>RIGHT-OF-WAY DEDICATION</p> <p>PORTIONS OF LOTS 11 AND 12, BLOCK 2 PINE RIDGE ESTATES, P.B. 24, PG. 10, B.C.R.</p> <p>HOLLYWOOD BROWARD COUNTY FLORIDA</p>	 <p>301 EAST ATLANTIC BOULEVARD POMPANO BEACH, FLORIDA 33060-6643 (954) 788-3400 FAX (954) 788-3500 EMAIL: mail@KEITHteam.com LB NO. 6860</p> <p>SHEET <u>1</u> OF <u>2</u></p> <p>DRAWING NO. <u>11074.01 - JOHNSON STREET</u></p>	DATE <u>3/7/2022</u>	DATE	REVISIONS
		SCALE <u>NONE</u>		
		FIELD BK. <u>N/A</u>		
		DWNG. BY <u>S.M.</u>		
		CHK. BY <u>T.G.</u>		



SKETCH & DESCRIPTION
 RIGHT-OF-WAY DEDICATION
 PORTIONS OF LOTS 11 AND 12, BLOCK 2
 PINE RIDGE ESTATES,
 P.B. 24, PG. 10, B.C.R.

HOLLYWOOD BROWARD COUNTY FLORIDA

KEITH

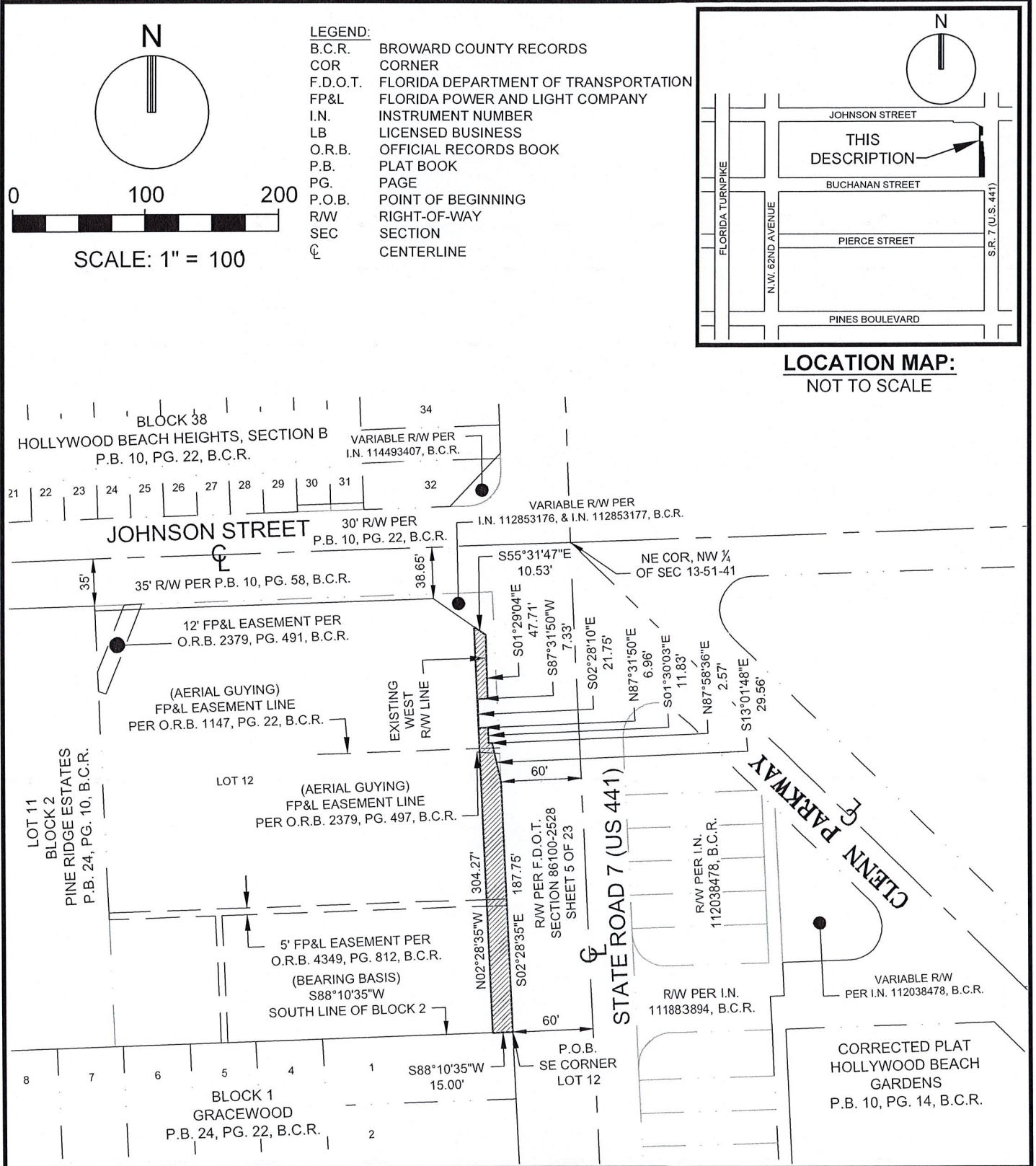
301 EAST ATLANTIC BOULEVARD
 POMPANO BEACH, FLORIDA 33060-6643
 (954) 788-3400 FAX (954) 788-3500
 EMAIL: mail@KEITHteam.com LB NO. 6860

SHEET 2 OF 2

DRAWING NO. 11074.01 - JOHNSON STREET

DATE	3/7/2022
SCALE	AS SHOWN
FIELD BK.	N/A
DWNG. BY	S.M.
CHK. BY	T.G.

DATE	REVISIONS



LOCATION MAP:
NOT TO SCALE

SKETCH & DESCRIPTION

RIGHT-OF-WAY DEDICATION
A PORTION OF LOT 12, BLOCK 2,
PINE RIDGE ESTATES,
P.B. 24, PG. 10, B.C.R.

HOLLYWOOD BROWARD COUNTY FLORIDA



301 EAST ATLANTIC BOULEVARD
POMPANO BEACH, FLORIDA 33060-6643
(954) 788-3400 FAX (954) 788-3500
EMAIL: mail@KEITHteam.com LB NO. 6860

SHEET 2 OF 2

DRAWING NO. 11074.01 - STATE ROAD 7

DATE 3/8/2022

SCALE AS SHOWN

FIELD BK. N/A

DWNG. BY S.M.

CHK. BY T.G.

DATE	REVISIONS

EXHIBIT E

DECLARATION OF RESTRICTIVE COVENANTS

Return recorded document to:

Broward County
Housing Finance and Community Redevelopment Division
110 N.E. 3rd Street, Suite 203
Fort Lauderdale, Florida 33301

Document prepared and
Approved as to form by:
Christina A. Blythe
Assistant County Attorney
Broward County, Florida
115 S. Andrews Avenue, Room 423
Fort Lauderdale, FL 33301

**DECLARATION OF RESTRICTIVE COVENANTS
SHIP MULTI-FAMILY RENTAL CONSTRUCTION STRATEGY OPTION**

This Declaration of Restrictive Covenants ("Declaration") is made this ____ day of _____, 2022, by Pinnacle 441, LLC, a Florida limited liability company, and its successors and assigns ("Declarant").

WITNESSETH:

- A. Declarant is the subgrantee of State Housing Initiatives Partnership ("SHIP") Program funds provided by Broward County, Florida, a political subdivision of the State of Florida ("County"), which funds are being used to fund the project, as described in Exhibit A of this Declaration attached hereto and made a part hereof ("Project").
- B. The SHIP funds are being expended to make improvements to real property located in Broward County, as described in Exhibit B of this Declaration attached hereto and made a part hereof ("Property").
- C. Declarant and County desire to ensure that the Property is and shall be held, transferred, sold, conveyed, leased, mortgaged, used, and improved subject to certain covenants, restrictions, and other requirements, as set forth in this Declaration.

NOW, THEREFORE, this Declaration declares that the Property and any portion thereof shall be held, transferred, sold, conveyed, leased, mortgaged, used and improved only subject to these covenants and restrictions, which run in favor of County, and other requirements, all as set forth in this Declaration.

- 1. The foregoing recitations are true and correct and are hereby incorporated herein by this reference.
- 2. Restrictive Covenants. The Property shall be used solely for the purpose of constructing and providing affordable multi-family rental housing as more particularly described in Exhibit A.

3. Affordability Period. This Declaration shall remain in effect for thirty (30) years from the date the Declarant is issued the Certificate of Occupancy for the Property. This Declaration shall be extinguished and released by Broward County in accordance with the terms contained herein at the expiration of the Affordability Period.
4. At all times during the Affordability Period, Declarant shall ensure that all units located on the Property, as described in Exhibit A, comply with the income restrictions prescribed by the Florida Housing Finance Corporation and the Agreement between Broward County and Declarant Providing State Housing Initiatives Partnership Funding for Multi-family Rental Construction Strategy, executed between County and Declarant on _____, 2022.
5. County is a beneficiary of these covenants and restrictions, and as such, County may enforce these covenants and restrictions by action at law or in equity, including, without limitation, a decree of specific performance or mandatory or prohibitory injunction, against any person or persons, entity or entities, violating or attempting to violate the terms of these covenants and restrictions. In any enforcement action in which County prevails, County shall be entitled to recover attorneys' fees and costs in the trial and appellate courts. Any forbearance on behalf of County to exercise its rights in the event of the failure of Declarant to comply with the provisions of this Declaration shall not be deemed or construed to be a waiver of the County's rights hereunder in the event of any subsequent failure of the Declarant to comply.
6. No waiver, modification, or termination of this Declaration shall be effective unless contained in a written document executed in the manner required by Section 7. Any waiver shall be applicable only to the specific instance to which it relates and shall not be deemed to be a continuing of future waiver. If any covenant, restriction, condition, or provision contained in this document is held to be invalid by any court of competent jurisdiction, such invalidity shall not affect the validity of any other covenant, restriction, condition, or provision contained herein, all of which shall remain in full force and effect. This document shall be construed in accordance with the laws of Florida, and venue for any dispute over its terms shall be Broward County, Florida.
7. If Declarant desires to use the Property or any portion thereof, for any use other than those permitted hereby, or desires to modify or terminate any of these covenants and restrictions, Declarant must apply to County for an amendment, assignment, or termination of these covenants and restrictions as to the particular affected portion of the Property. It shall be at the sole discretion of the Broward County Board of County Commissioners of Broward County, Florida ("Board") whether to modify, assign, or terminate these covenants and restrictions as to any portion of the Property, because Declarant has accepted these covenants and restrictions as a condition to the granting of the SHIP funds to complete the Project. Any such amendment, assignment, or termination, shall be approved by the Board and apply only to such portion of the Property that is specifically referenced in the amendment, assignment, or termination.
8. Transfer of Title. If Declarant transfers title of the Property prior to the end of the Affordability Period stated in Section 3, any SHIP funds provided by County to Declarant for the Project will become immediately due unless the County expressly consents to the assumption by the transferee of the SHIP Agreement, Mortgage, and Promissory Note, which consent shall not be unreasonably withheld, conditioned, or delayed, and any

transferee (or subsequent transferee) shall take title to the Property subject to this Declaration.

9. In the event Declarant fails to comply with the requirements of this Declaration, County shall have the right to enforce the terms of the Mortgage, Promissory Note, and this Declaration.
10. Declarant shall record this Declaration in the Public Records of Broward County, Florida at its sole expense.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

DECLARATION OF RESTRICTIVE COVENANTS SHIP MULTI-FAMILY RENTAL
CONSTRUCTION STRATEGY OPTION

IN WITNESS WHEREOF, DECLARANT, Pinnacle 441, LLC, by and through its
Vice President, has executed this Declaration of Restrictive Covenants.

DECLARANT

WITNESSES:

Pinnacle 441, LLC, a Florida limited liability company

Signature

PC 411, LLC, a Florida limited liability company, its Authorized Member

Print Name of Witness above

Signature

By: _____

Print Name of Witness above

Name: David O. Deutch

Title: Vice President

ACKNOWLEDGMENT

_____ day of _____, 2022

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me, by means of physical presence or online notarization, this _____ day of _____, 2022, by _____ as Vice President of PC 411, LLC, a Florida limited liability company, Authorized Member of Pinnacle 441 LLC, a Florida limited liability company, on behalf of the companies, who is personally known to me or who has produced as identification.

Notary Public:

Signature: _____

Print Name: _____

State of _____
My Commission Expires: _____
Commission Number: _____
(Notary Seal)

EXHIBIT A [to Declaration of Restrictive Covenants]
Project Description

Project Address: 890 N. State Road 7, Hollywood, Florida 33024

Pinnacle 441 is a catalytic mixed-use development delivering critically-needed affordable housing on the State Road 7 corridor. Located a mile south of the Hard Rock Casino, Pinnacle 441 will offer a variety of 1, 2, & 3 bedroom floor plans. The units governed by this Declaration shall be as follows: **2 SHIP Units, low income restricted (at or below 80% AMI)**. Pinnacle 441 will also contain 6,750 square feet of commercial development fronting the active and heavily-trafficked State Road 7/US441 corridor. Pinnacle 441 will offer easy convenience to transit, employment and services in an area primed for redevelopment by the City of Hollywood.

EXHIBIT B [to Declaration of Restrictive Covenants]

Legal Description

Parcel 1:

Lot 12, Less the South 100 feet, in Block 2, PINE RIDGE ESTATES, according to the Plat thereof, recoded in Plat Book 24, Page 10, of the Public Records of Broward County, Florida; and also the East 30 feet of Lot 11, Less the South 100 feet in Block 2, PINE RIDGE ESTATES, according to the Plat thereof, recoded in Plat Book 24, Page 10, of the Public Records of Broward County, Florida; Less that portion of Lot 12 conveyed to State of Florida Department of Transportation by Deeds recorded in Instrument Numbers 112853176 and 112853177.

Together with:

Parcel 2:

The South 100 feet of Lot 12, in Block 2, PINE RIDGE ESTATES, according to the Plat thereof, recorded in Plat Book 24, Page 10, of the Public Records of Broward County, Florida.

And together with:

Parcel 3:

Lot 11, Less the West 220 feet and Less the North 230 feet of the East 30 feet in Block 2, PINE RIDGE ESTATES, according to the Plat thereof, recorded in Plat Book 24, Page 10, of the Public Records of Broward County, Florida.

**EXHIBIT F
REQUEST FOR PAYMENT**

<p>TO (OWNER): FROM (CONTRACTOR): CONTRACT FOR: CONTRACTOR'S APPLICATION FOR PAYMENT</p>	<p>PROJECT NO.: _____ APPLICATION NO.: _____ PERIOD FROM: _____ PERIOD TO: _____ CONTRACT DATE: _____ Application is made for Payment, as shown below, in connection with the Contract. 1. ORIGINAL CONTRACT SUM \$ _____ 2. Net change by Change Orders \$ _____</p>
<p>CHANGE ORDER SUMMARY</p>	<p>3. CONTRACT SUM TO DATE (Line 1 + 2) \$ _____</p>
<p>Change Orders Approved in ADDITIONS DEDUCTIONS previous months by Owner TOTAL</p>	<p>4. TOTAL COMPLETED & STORED TO DATE (Column G) \$ _____</p>
<p>Approved this Month Number Date Approved</p>	<p>5. RETAINAGE a. 10% of Completed Work \$ _____ (Column D + E) b. _____% of Stored Material \$ _____ (Column F) Total Retainage (Line 5a + 5B or</p>
<p>TOTALS</p>	<p>Total in Column in I) \$ _____</p>
<p>Net change by Change Orders</p>	<p>6. TOTAL EARNED LESS RETAINAGE (Line 4 less Line 5 Total) \$ _____</p>
<p>The undersigned Contractor certifies to the Owner that the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due. CONTRACTOR: By: _____ Date: _____</p>	<p>7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate) \$ _____ 8. CURRENT PAYMENT DUE \$ _____ 9. BALANCE TO FINISH, PLUS RETAINAGE (Line 3 less Line 6) \$ _____ _____ State of Florida County of Broward Subscribed and sworn to before me this _____ day of _____ 20_____ Notary Public: My Commission Expires:</p>

**EXHIBIT G
QUARTERLY PROGRESS REPORT FORM**

Period Covered: _____ to _____
Date of Report: _____

A. Project Information.

Agency:
Person Preparing the Report:
Signature and Title:
Project Title:
Project Start-up Date:
Anticipated Project Completion Date
Actual Project Completion Date:

B.1 Project Cost.

	<u>Budget</u>	<u>Funds Expended</u>	<u>Percentage</u>
Total Project	\$ _____	\$ _____	_____ %
SHIP Funding	\$ _____	\$ _____	_____ %
Other Funding	\$ _____	\$ _____	_____ %

B.2 Declaration of Agency Budget Changes.

Program Income/Recapture:
Source of Program Income/Recapture:

B.3 Other Grant Awards.

Date(s): _____ Dollar Amount _____

B.4 Percentage of Project Completed to date. _____ %

C.1 Describe specific work tasks and qualified accomplishments completed this quarter:

<u>Task</u>	<u>Qualified Accomplishments This Quarter</u>
-------------	---

C.2 **Describe success or problems encountered with the Project:**

C.3 **Anticipated problems or concerns with the Project:** Please identify technical assistance needed and/or requested from the Housing Finance and Community Redevelopment Division staff.

C.4 **Anticipated advertisements and/or other contractual services:** If applicable, has the Housing Finance and Community Redevelopment Division staff been advised and appropriate steps taken to assure compliance?

D. **Program Objectives:**

<u>Work Tasks</u>	<u>Projected Yearly/ Total Performance</u>	<u>Quarterly Progress</u>	<u>Progress YTD</u>	<u>Supporting Documentation</u>
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EXHIBIT H INSURANCE REQUIREMENTS

Project: SBDF Funding Agreement with Florida 441
Agency: Beach, Florida and Community Redevelopment Division


TYPE OF INSURANCE	AGREED FORM	AMOUNT COVER	MINIMUM LIABILITY LIMITS			
				Each Occurrence	Aggregate	
GENERAL LIABILITY - Broad form <input checked="" type="checkbox"/> Commercial General Liability <input checked="" type="checkbox"/> Premises-Operations <input checked="" type="checkbox"/> NEU: Explosion/Collapse/Underground <input checked="" type="checkbox"/> Products/Completed Operations Hazard <input checked="" type="checkbox"/> Contractual Insurance <input checked="" type="checkbox"/> Broad Form Property Damage <input checked="" type="checkbox"/> Independent Contractors <input checked="" type="checkbox"/> Personal Injury Per Occurrence or Claims-Made: <input checked="" type="checkbox"/> Per Occurrence <input type="checkbox"/> Claims-Made Gen'l Aggregate Limit Applies per: <input type="checkbox"/> Project <input type="checkbox"/> Policy <input type="checkbox"/> Loss <input type="checkbox"/> Other _____	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		Bodily Injury Property Damage Combined Bodily Injury and Property Damage Personal Injury Products & Completed Operations	\$1,000,000 \$2,000,000	\$2,000,000
AUTO LIABILITY <input checked="" type="checkbox"/> Comprehensive Form <input checked="" type="checkbox"/> Owned <input checked="" type="checkbox"/> Hired <input checked="" type="checkbox"/> Non-owned <input checked="" type="checkbox"/> Any Auto, If Applicable <i>Note: May be waived if no driving will be done in performance of services/project.</i>			Bodily Injury (each person) Bodily Injury (each accident) Property Damage Combined Bodily Injury and Property Damage	\$500,000		
<input type="checkbox"/> EXCESS LIABILITY / UMBRELLA Per Occurrence or Claims-Made: <input type="checkbox"/> Per Occurrence <input type="checkbox"/> Claims-Made <i>Note: May be used to supplement minimum liability coverage requirements.</i>						
<input checked="" type="checkbox"/> WORKER'S COMPENSATION <i>Note: U.S. Employment of Harbor Workers' Act of 1920. Act is required for any activities on or about navigable water.</i>	N/A		Each Accident	STATUTORY LIMITS		
<input checked="" type="checkbox"/> EMPLOYER'S LIABILITY			Each Accident	\$500,000		
<input checked="" type="checkbox"/> POLLUTION/ENVIRONMENTAL LIABILITY			Each Claim			
<input checked="" type="checkbox"/> Builder's Risk or Property Insurance (During Construction) <i>Note: Coverage must be "All Risk". Completed Value. Howard County must be shown as a Loss Payee.</i>			*Maximum Deductible:	\$10,000	Completed Value	
			CONTRACTOR IS RESPONSIBLE FOR DEDUCTIBLE			
<i>Description of Deductible: "Three and County" shall be listed as Certificate Holder and endorsed as an additional insured for liability, except as to Professional Liability. County shall be provided 30 days written notice of cancellation, 10 days' notice of cancellation for non-payment. Contractor's insurance shall provide primary coverage and shall not require contribution from the County, self-insurance or otherwise. Any self-insured retention (SIR) higher than the amount permitted in this Agreement must be declared to and approved by County and may require proof of financial ability to meet losses. Contractor is responsible for all coverage deductibles unless otherwise specified in the agreement. For Claims-Made policies insurance must be maintained and evidence of insurance must be provided for at least three (3) years after completion of the contract of work.</i>						
CERTIFICATE HOLDER: Howard County 115 South Andrews Avenue Fort Lauderdale, Florida 33301			 <small>Digitally signed by CHARLES A. HOWARD Date: 2011.11.09 04:21:20 -0500</small> Risk Management Division			

EXHIBIT I-1

[See attached Word document]

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

SPACE ABOVE FOR RECORDER'S USE

Property Name: Pinnacle 441

SUBORDINATION AND INTERCREDITOR AGREEMENT

This **SUBORDINATION AND INTERCREDITOR AGREEMENT** (the "**Agreement**") is entered into as of [_____, 2022], by **BANK OF AMERICA, N.A.**, a national banking association (the "**Senior Lender**"), and **BROWARD COUNTY, FLORIDA**, a political subdivision of the State of Florida (the "**Subordinate Lender**") and is joined and consented to by **PINNACLE 441, LLC**, a Florida limited liability company (the "**Borrower**").

RECITALS

- A. Borrower is the owner of certain land located in Broward County, Florida, described in **Exhibit A** (the "**Land**"). The Land will be improved with a multifamily rental housing project (the "**Improvements**").
- B. Pursuant to that certain Construction Loan Agreement dated as of the date hereof, executed by Borrower and Senior Lender (as amended, restated, replaced, supplemented or otherwise modified from time to time, the "**Senior Loan Agreement**"), Senior Lender has agreed to make a construction loan to Borrower in the original principal amount of [Twenty Eight Million Eight Hundred Four Thousand Three Hundred Eighty and No/100 Dollars (\$28,804,380.00)] (the "**Senior Loan**"). Borrower's obligation to repay the Senior Loan is evidenced by that certain Promissory Note, dated as of the date hereof, executed by Borrower and made payable to the order of Senior Lender in the amount of the Senior Loan (as amended, restated, replaced, supplemented or otherwise modified from time to time, the "**Senior Loan Note**").
- C. The Senior Loan Note is secured by that certain Mortgage, Assignment of Rents, Security Agreement and Fixture Filing, dated as of the date hereof (as amended, restated, replaced, supplemented, or otherwise modified from time to time, the "**Senior Loan Mortgage**") that will encumber the Borrower's interest in the Land, the Improvements and related personal and other property described and defined in the Senior Loan Mortgage (the "**Mortgaged Property**"). The Senior Loan Note, the Senior Loan Mortgage and all other documents issued in connection therewith are herein referred to collectively as the "**Senior Loan Documents**".

- D. The Subordinate Lender has agreed to make a loan to Borrower in the original principal amount of One Hundred Thousand and No/100 Dollars (\$100,000) (the “**Subordinate Loan**”). Borrower’s obligation to repay the Subordinate Loan is evidenced by that certain Promissory Note, dated as of the date hereof, executed by Borrower and made payable to the order of the Subordinate Lender in the amount of the Subordinate Loan (as amended, restated, replaced, supplemented or otherwise modified from time to time, the “**Subordinate Loan Note**”). The Subordinate Loan is secured by that certain Mortgage, dated as of the date hereof, encumbering the Mortgaged Property (the “**Subordinate Loan Mortgage**”), and that certain Assignment of Leases, Rents and Contract Rights, dated as of the date hereof (the “**Assignment of Leases and Rents**”). The Subordinate Loan Note, the Subordinate Loan Mortgage, and all other documents at any time evidencing, securing, guaranteeing, or otherwise delivered in connection with the Subordinate Loan are herein referred to collectively as the “**Subordinate Loan Documents**”.
- E. The execution and delivery of this Agreement is a condition of Senior Lender’s (a) making the Senior Loan and (b) consenting to Borrower’s execution of the Subordinate Loan Documents and the recording of the Subordinate Loan Mortgage.
- F. The Senior Lender and the Subordinate Lender desire to set forth each entity’s rights regarding the Senior Loan Documents and the Subordinate Loan Documents.

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

1. **Definitions.** The following terms, when used in this Agreement (including, as appropriate, when used in the above recitals), will have the following meanings.
- (a) The terms “**Leases**” and “**Rents**”, as well as any term used in this Agreement and not otherwise defined in this Agreement, will have the meanings given to those terms in the Senior Loan Mortgage or in the Senior Loan Agreements.
 - (b) “**Bankruptcy Proceeding**” means any bankruptcy, reorganization, insolvency, composition, restructuring, dissolution, liquidation, receivership, assignment for the benefit of creditors, or custodianship action or proceeding under any federal or state law with respect to Borrower, any guarantor of any of the Senior Indebtedness (as defined herein), any of their respective properties, or any of their respective partners, members, officers, directors, or shareholders.
 - (c) “**Borrower**” means all persons or entities identified as “Borrower” in the first Recital of this Agreement, together with their successors and assigns, and any other person or entity who acquires title to the Mortgaged Property after the date of this Agreement; provided that the term “Borrower” will not include Senior Lender if Senior Lender acquires title to the Mortgaged Property.
 - (d) “**Business Day**” means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the laws of, or are in fact closed in, the state where Senior Lender’s office is located.
 - (e) “**Casualty**” means the occurrence of damage to or loss of all or any portion of the Mortgaged Property by fire or other casualty.

- (f) “**Condemnation**” shall mean a temporary or permanent taking by any Governmental Authority as the result, or in lieu or in anticipation, of the exercise of the right of condemnation or eminent domain, of all or any part of the Mortgaged Property, or any interest therein or right accruing thereto, including any right of access thereto or any change of grade affecting the Mortgaged Property or any part thereof.
- (g) “**Enforcement Action**” means any of the following actions taken by or at the direction of Subordinate Lender, in its sole capacity as the lender under the Subordinate Loan Documents: the acceleration of all or any part of the Subordinate Indebtedness, the advertising of or commencement of any foreclosure or trustee’s sale proceedings, the exercise of any power of sale, the acceptance of a deed or assignment in lieu of foreclosure or sale, the collecting of Rents, the obtaining of or seeking of the appointment of a receiver, the seeking of default interest, the taking of possession or control of any of the Mortgaged Property, the commencement of any suit or other legal, administrative, or arbitration proceeding based upon the Subordinate Loan Note or any other of the Subordinate Loan Documents (as defined herein), the exercising of any banker’s lien or rights of set-off or recoupment, or the exercise of any other remedial action against Borrower, any other party liable for any of the Subordinate Indebtedness or obligated under any of the Subordinate Loan Documents, or the Mortgaged Property.
- (h) “**Enforcement Action Notice**” means a written Notice from Subordinate Lender to Senior Lender, given the following one or more Subordinate Mortgage Default(s) and the expiration of any Notice or cure periods provided for such Subordinate Mortgage Default(s) in the Subordinate Loan Documents, setting forth in reasonable detail the Subordinate Mortgage Default(s) and the Enforcement Actions proposed to be taken by Subordinate Lender.
- (i) “**Governmental Authority**” means the government of the United States or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).
- (j) “**Improvements**” has the meaning set forth in the recitals of this Agreement.
- (k) “**Land**” has the meaning set forth in the recitals of this Agreement.
- (l) “**Loss Proceeds**” means all monies received or to be received under any insurance policy, from any condemning authority, or from any other source, as a result or any Condemnation or Casualty.
- (m) “**Notice**” is defined in Section 7(d).
- (n) “**Recording Office**” means the Official Records of Broward County.
- (o) “**Regulatory Agreement**” means the Land Use Restriction Agreement dated the date hereof made between Borrower and Subordinate Lender to be recorded in the Recording Office.

- (p) “**Restoration**” shall mean the repair and restoration of the Mortgaged Property after a Casualty or Condemnation as nearly as possible to the condition the Mortgaged Property was in immediately prior to such Casualty or Condemnation, with such alterations as may be reasonably approved by Senior Lender.
- (q) “**Senior Indebtedness**” means the indebtedness of Borrower as evidenced by the Senior Loan Documents.
- (r) “**Senior Lender**” has the meaning set forth in the recitals of this Agreement.
- (s) “**Senior Loan Agreements**” has the meaning set forth in the recitals of this Agreement.
- (t) “**Senior Loan Documents**” has the meaning set forth in the recitals of this Agreement.
- (u) “**Senior Loan Mortgage**” has the meaning set forth in the recitals of this Agreement.
- (v) “**Senior Loan Note**” has the meaning set forth in the recitals of this Agreement.
- (w) “**Senior Loan**” has the meaning set forth in the recitals of this Agreement.
- (x) “**Senior Mortgage Default**” means any act, failure to act, event, condition, or occurrence which constitutes, or which with the giving of Notice or the passage of time, or both, would constitute, an “**Event of Default**” as defined in the Senior Loan Documents.
- (y) “**Subordinate Indebtedness**” means all sums evidenced or secured or guaranteed by, or otherwise due and payable to Subordinate Lender pursuant to, the Subordinate Loan Documents.
- (z) “**Subordinate Loan**” has the meaning set forth in the recitals of this Agreement.
- (aa) “**Subordinate Loan Documents**” has the meaning set forth in the recitals of this Agreement.
- (bb) “**Subordinate Loan Mortgage**” has the meaning set forth in the recitals of this Agreement
- (cc) “**Subordinate Loan Note**” has the meaning set forth in the recitals of this Agreement
- (dd) “**Subordinate Mortgage Default**” means any act, failure to act, event, condition, or occurrence which allows (but for any contrary provision of this Agreement), or which with the giving of Notice or the passage of time, or both, would allow (but for any contrary provision of this Agreement), Subordinate Lender to take an Enforcement Action.
- (ee) “**Subordinate Lender**” means the person or entity named as such in the first paragraph of this Agreement and any other person or entity who becomes the legal holder of the Subordinate Loan Note after the date of this Agreement.

2. Subordination of Subordinate Indebtedness.

- (a) The Subordinate Indebtedness is and will at all times continue to be subject and subordinate in right of payment to the prior payment in full of the Senior Indebtedness.

- (b) Until the occurrence of a Senior Mortgage Default, Subordinate Lender will be entitled to retain for its own account all payments made on account of the principal of and interest on the Subordinate Indebtedness in accordance with the requirements of the Subordinate Loan Documents; provided no such payment is made more than 10 days in advance of its due date. However, immediately upon Subordinate Lender's receipt of Notice or actual knowledge of a Senior Mortgage Default, Subordinate Lender will not accept any payments on account of the Subordinate Indebtedness, and the provisions of Section 2(c) of this Agreement will apply. Subordinate Lender acknowledges that a Subordinate Mortgage Default constitutes a Senior Mortgage Default. Accordingly, upon the occurrence of a Subordinate Mortgage Default, Subordinate Lender will be deemed to have actual knowledge of a Senior Mortgage Default.
- (c) If (i) Subordinate Lender receives any payment, property, or asset of any kind or in any form on account of the Subordinate Indebtedness (including any proceeds from any Enforcement Action) after a Senior Mortgage Default of which Subordinate Lender has actual knowledge (or is deemed to have actual knowledge as provided in 2(b) above) or has been given Notice, or (ii) Subordinate Lender receives, voluntarily or involuntarily, by operation of law or otherwise, any payment, property, or asset in or in connection with any Bankruptcy Proceeding, such payment, property, or asset will be received and held in trust for Senior Lender. Subordinate Lender will promptly remit, in kind and properly endorsed as necessary, all such payments, properties, and assets to Senior Lender. Senior Lender will apply any payment, asset, or property so received from Subordinate Lender to the Senior Indebtedness in such order, amount (with respect to any asset or property other than immediately available funds), and manner as Senior Lender determines in its sole and absolute discretion.
- (d) Without limiting the complete subordination of the Subordinate Indebtedness to the payment in full of the Senior Indebtedness, in any Bankruptcy Proceeding, upon any payment or distribution (whether in cash, property, securities, or otherwise) to creditors (i) the Senior Indebtedness will first be paid in full in cash before Subordinate Lender will be entitled to receive any payment or other distribution on account of or in respect of the Subordinate Indebtedness, and (ii) until all of the Senior Indebtedness is paid in full in cash, any payment or distribution to which Subordinate Lender would be entitled but for this Agreement (whether in cash, property, or other assets) will be made to Senior Lender.
- (e) The subordination of the Subordinate Indebtedness will continue if any payment under the Senior Loan Documents (whether by or on behalf of Borrower, as proceeds of security or enforcement of any right of set-off or otherwise) is for any reason repaid or returned to Borrower or its insolvent estate, or avoided, set aside or required to be paid to Borrower, a trustee, receiver or other similar party under any bankruptcy, insolvency, receivership or similar law. In such event, any or all of the Senior Indebtedness originally intended to be satisfied will be deemed to be reinstated and outstanding to the extent of any repayment, return, or other action, as if such payment on account of the Senior Indebtedness had not been made.

3. Subordination of Subordinate Loan Documents.

- (a) Each of the Subordinate Loan Documents is, and will at all times remain, subject and subordinate in all respects to the liens, terms, covenants, conditions, operations, and effects of each of the Senior Loan Documents.

- (b) The subordination of the Subordinate Loan Documents and of the Subordinate Indebtedness will apply and continue notwithstanding (i) the actual date and time of execution, delivery, recording, filing or perfection of each of the Senior Loan Documents and of each of the Subordinate Loan Documents, and (ii) the availability of any collateral to Senior Lender, including the availability of any collateral other than the Mortgaged Property.
- (c) By reason of, and without in any way limiting, the full subordination of the Subordinate Indebtedness and the Subordinate Loan Documents provided for in this Agreement, all rights and claims of Subordinate Lender under the Subordinate Loan Documents in or to all or any portion of the Mortgaged Property are expressly subject and subordinate in all respects to the rights and claims of Senior Lender under the Senior Loan Documents in or to the Mortgaged Property.
- (d) If Subordinate Lender, by indemnification, subrogation or otherwise, acquires any lien, estate, right or other interest in any of the Mortgaged Property, then that lien, estate, right or other interest will be fully subject and subordinate to the receipt by Senior Lender of payment in full of the Senior Indebtedness, and to the Senior Loan Documents, to the same extent as the Subordinate Indebtedness and the Subordinate Loan Documents are subordinate pursuant to this Agreement.
- (e) Notwithstanding the foregoing, such subordination shall not derogate or otherwise limit Subordinate Lender's rights, following an event of default under the Subordinate Loan Documents to (a) compute interest on all amounts due and payable under the Subordinate Loan at the default rate described in the Subordinate Loan Documents, (b) compute cash flow payment, prepayment premiums and late charges, and (c) enforce against any person, other than Borrower and any guarantors or indemnitors under the Senior Loan Documents, any guaranty of the obligations of Borrower under the Subordinate Loan or (d) seek specific performance of to enforce the obligations, covenants and agreements of the Borrower contained in the Land.

4. Disbursement of Loans.

Each of the Senior Lender and Subordinate Lender agree that each of the Senior Loan and the Subordinate Loan shall be disbursed in accordance with the terms and provisions of the Senior Loan Documents and the Subordinate Loan Documents. Each of the Senior Lender and Subordinate Lender agree proceeds of the Senior Loan and the Subordinate Loan will be in accordance with the Development Budget and Draw Schedule approved by each of the Senior Lender, the Subordinate Lender, and the Borrower and attached hereto as **Exhibit B**. The parties acknowledge and agree that the proceeds of the Subordinate Loan will not be disbursed until cost certification in accordance with the terms of the Subordinate Loan Documents and that such loan proceeds will constitute a primary source for the repayment of the Senior Loan.

5. Additional Representations and Covenants.

- (a) Subordinate Lender represents and warrants that each of the following is true:
 - (i) Subordinate Lender is now the owner and holder of the Subordinate Loan Documents.
 - (ii) The Subordinate Loan Documents are now in full force and effect.

- (iii) The executed Subordinate Loan Documents are substantially in the same forms as those submitted to, and approved by, Senior Lender prior to the date of this Agreement, and have not been modified or amended.
 - (iv) No Subordinate Mortgage Default has occurred.
 - (v) There is no current unpaid maximum principal balance of the Subordinate Indebtedness.
 - (vi) No scheduled annual payments under the Subordinate Loan Note have been or will be prepaid.
 - (vii) None of the rights of Subordinate Lender under any of the Subordinate Loan Documents are subject to the rights of any third parties, by way of subrogation, indemnification or otherwise.
- (b) Without the prior written consent of Senior Lender in each instance, which consent shall not be unreasonably withheld, Subordinate Lender will not do any of the following:
- (i) Amend, modify, waive, extend, renew, or replace any provision of any of the Subordinate Loan Documents.
 - (ii) Pledge, assign, transfer, convey, or sell any interest in the Subordinate Indebtedness or any of the Subordinate Loan Documents.
 - (iii) Accept any payment on account of the Subordinate Indebtedness other than a regularly scheduled payment of interest or principal and interest made no earlier than 10 days prior to its due date.
 - (iv) Take any action which has the effect of increasing the Subordinate Indebtedness.
 - (v) Appear in, defend or bring any action to protect Subordinate Lender's interest in the Mortgaged Property except in instances of an emergency where it is impracticable to obtain the prior written consent of Senior Lender and in such instances Subordinate Lender shall provide notice to Senior Lender.
 - (vi) Take any action, as the lender under the Subordinate Loan Documents, concerning environmental matters affecting the Mortgaged Property.
 - (vii) Not accelerate any of the Borrower's obligations under the Subordinate Loan Documents, commence foreclosure proceedings with respect to the Mortgaged Property, collect Rents, appoint (or seek the appointment of) a receiver or institute any other collection or Enforcement Action.
- (c) Subordinate Lender will deliver to Senior Lender a copy of each Notice received or delivered by Subordinate Lender pursuant to the Subordinate Loan Documents or in connection with the Subordinate Indebtedness, promptly after Subordinate Lender's delivery or receipt of such Notice. Senior Lender will deliver to Subordinate Lender in the manner required in Section 6(b) a copy of each Notice of a Senior Mortgage Default delivered to Borrower by Senior Lender. Neither giving nor failing to give a Notice to Senior Lender or Subordinate Lender pursuant to this Section 5(c) will affect the validity

of any Notice given by Senior Lender or Subordinate Lender to Borrower, as between Borrower and such of Senior Lender or Subordinate Lender as provided the Notice to Borrower.

- (d) Without the prior written consent of Senior Lender in each instance, Subordinate Lender will not commence, or join with any other creditor in commencing, any Bankruptcy Proceeding. In the event of a Bankruptcy Proceeding, Subordinate Lender will not vote affirmatively in favor of any plan of reorganization or liquidation unless Senior Lender has also voted affirmatively in favor of such plan. In the event of any Bankruptcy Proceeding, Subordinate Lender will not contest the continued accrual of interest on the Senior Indebtedness, in accordance with and at the rates specified in the Senior Loan Documents, both for periods before and for periods after the commencement of such Bankruptcy Proceedings.
- (e) All original policies of insurance required pursuant to the Senior Loan Documents will be held by Senior Lender. Nothing in this Section 5(e) will preclude Subordinate Lender from requiring that it be named as a mortgagee and loss payee, as its interest may appear, under all policies of property damage insurance maintained by Borrower with respect to the Mortgaged Property, provided such action does not affect the priority of payment of Loss Proceeds, or that Subordinate Lender be named as an additional insured under all policies of liability insurance maintained by Borrower with respect to the Mortgaged Property. Subordinate Lender shall submit the following items to Senior Lender the later of (x) ten (10) Business Days after the date on which the proceeds of the Subordinate Loan are disbursed to Borrower, and (y) the effective date of the Senior Loan Documents:
 - (i) A complete set of the fully executed Subordinate Loan Documents to be true, correct and complete.
- (f) In the event of a Condemnation or a Casualty, all of the following provisions will apply:
 - (i) The rights of Subordinate Lender, solely in its capacity as the lender under the Subordinate Loan Documents, to participate in any proceeding or action relating to a Condemnation or a Casualty, or to participate or join in any settlement of, or to adjust, any claims resulting from a Condemnation or a Casualty, will be and remain subordinate in all respects to Senior Lender's rights under the Senior Loan Documents with respect thereto, and Subordinate Lender will be bound by any settlement or adjustment of a claim resulting from a Condemnation or a Casualty made by Senior Lender, provided however, this subsection or anything contained in this Agreement shall not limit the rights of Subordinate Lender to file pleadings, documents, claims or notices with the appropriate court with jurisdiction over the proposed condemnation action or casualty.
 - (ii) All Loss Proceeds will be applied either to payment of the costs and expenses of Restoration or to payment on account of the Senior Indebtedness, as and in the manner determined by Senior Lender in its sole discretion.
 - (iii) If Senior Lender applies or releases Loss Proceeds for the purposes of Restoration of the Mortgaged Property, then Subordinate Lender will release for such purpose all of its right, title and interest, if any, in and to such Loss Proceeds. If Senior Lender holds Loss Proceeds, or monitors the disbursement

thereof, Subordinate Lender will not do so. Nothing contained in this Agreement will be deemed to require Senior Lender to act for or on behalf of Subordinate Lender in connection with any Restoration or to hold or monitor any Loss Proceeds in trust for or otherwise on behalf of Subordinate Lender, and all or any Loss Proceeds may be commingled with any funds of Senior Lender.

- (iv) If Senior Lender elects to apply Loss Proceeds to payment on account of the Senior Indebtedness, and if the application of such Loss Proceeds results in the payment in full of the entire Senior Indebtedness, any remaining Loss Proceeds held by Senior Lender will be paid to Subordinate Lender unless another party has asserted a claim to the remaining Loss Proceeds.
- (g) Intentionally Deleted.
- (h) Except as provided in this Section 5(h), and regardless of any contrary provision in the Subordinate Loan Documents, Subordinate Lender will not collect payments for the purpose of escrowing for any cost or expense related to the Mortgaged Property or for any portion of the Subordinate Indebtedness. However, if Senior Lender is not collecting escrow payments for one or more Impositions, Subordinate Lender may collect escrow payments for such Impositions; provided that all payments so collected by Subordinate Lender will be held in trust by Subordinate Lender to be applied only to the payment of such Impositions.
- (i) Within 10 days after request by Senior Lender, Subordinate Lender will furnish Senior Lender with a statement, duly acknowledged and certified setting forth the then-current amount and terms of the Subordinate Indebtedness, confirming that there exists no default under the Subordinate Loan Documents (or describing any default that does exist), and certifying to such other information with respect to the Subordinate Indebtedness as Senior Lender may request.
- (j) Senior Lender may amend, waive, postpone, extend, renew, replace, reduce or otherwise modify any provision of any of the Senior Loan Documents without the necessity of obtaining the consent of or providing Notice to Subordinate Lender, and without affecting any of the provisions of this Agreement. Notwithstanding the foregoing, Senior Lender may not modify any provision of the Senior Loan Documents that increases the Senior Indebtedness, increases the interest rate, or extends the term, except for increases in the Senior Indebtedness that result from advances made by Senior Lender to protect the security or lien priority of Senior Lender under the Senior Loan Documents or to cure defaults under the Subordinate Loan Documents.

6. Default Under Loan Documents.

- (a) Senior Lender will have the right, but not the obligation, to cure any Subordinate Mortgage Default, until such time, if ever, as Senior Lender delivers to Subordinate Lender Senior Lender's Notice of written consent to the Enforcement Action described in the Enforcement Action Notice. Senior Lender will not be subrogated to the rights of Subordinate Lender under the Subordinate Loan Documents by reason of Senior Lender having cured any Subordinate Mortgage Default. However, Subordinate Lender acknowledges that all amounts advanced or expended by Senior Lender in accordance with the Senior Loan Documents or to cure a Subordinate Mortgage Default will be added to and become a part of the Senior Indebtedness and will be secured by the lien of

the Senior Loan Mortgage; no other future advances under the Senior Loan Documents shall be permitted.

- (b) Senior Lender will deliver to Subordinate Lender a copy of any Notice sent by Senior Lender to Borrower of a Senior Mortgage Default within 5 Business Days of sending such Notice to Borrower. Failure of Senior Lender to send Notice to Subordinate Lender will not prevent the exercise of Senior Lender's rights and remedies under the applicable Senior Loan Documents. Subordinate Lender will have the right, but not the obligation, to cure any monetary Senior Mortgage Default within 30 days following the date of such Notice; provided, however, that Senior Lender will be entitled during such 30-day period to continue to pursue its remedies under the Senior Loan Documents.

Subordinate Lender may, within 90 days after the date of the Notice, cure a non-monetary Senior Mortgage Default if during such 90-day period, Subordinate Lender keeps current all payments required by the Senior Loan Documents. If such a non-monetary Senior Mortgage Default creates an unacceptable level of risk relative to the Mortgaged Property, or Senior Lender's secured position relative to the Mortgaged Property, as determined by Senior Lender in its sole discretion, then during such 90-day period Senior Lender may exercise all available rights and remedies to protect and preserve the Mortgaged Property and the Rents, revenues and other proceeds from the Mortgaged Property. Subordinate Lender will not be subrogated to the rights of Senior Lender under the Senior Loan Documents by reason of Subordinate Lender having cured any Senior Mortgage Default. However, Senior Lender acknowledges that all amounts paid by Subordinate Lender to Senior Lender to cure a Senior Mortgage Default will be deemed to have been advanced by Subordinate Lender pursuant to, and will be secured by the lien of, the applicable Subordinate Mortgage. Notwithstanding anything in this Section 6(b) to the contrary, Subordinate Lender's right to cure any Senior Mortgage Default will terminate immediately upon the occurrence of any Bankruptcy Proceeding.

- (c) In the event of a Subordinate Mortgage Default, Subordinate Lender will not commence any Enforcement Action until (i) after Subordinate Lender has delivered to Senior Lender an Enforcement Action Notice with respect to such Enforcement Action, and (ii) Senior Lender has delivered to Subordinate Lender Senior Lender's written consent to such Enforcement Action by Subordinate Lender, provided that Subordinate Lender will be entitled to seek specific performance to enforce covenants and agreements of Borrower relating to income, rent, or affordability restrictions contained in the Subordinate Loan Documents, subject to Senior Lender's right to cure a Subordinate Mortgage Default set forth in Section 6(a). Senior Lender will advise Subordinate Lender whether Senior Lender consents to the Enforcement Action by Subordinate Lender within 90 days following Senior Lender's receipt of the Enforcement Action Notice (failure of Senior Lender to provide written consent to the Enforcement Action within such 90-day period constitutes Senior Lender's refusal of such consent). Subordinate Lender acknowledges that Senior Lender may grant or refuse consent to Subordinate Lender's Enforcement Action in Senior Lender's sole and absolute discretion. Any Enforcement Action on the part of Subordinate Lender will be subject to the provisions of this Agreement. Subordinate Lender acknowledges that the provisions of this Section 6(c) are fair and reasonable under the circumstances, that Subordinate Lender has received a substantial benefit from Senior Lender having granted its consent to the applicable Subordinate Mortgage, and that Senior Lender would not have granted such consent without the inclusion of these provisions in this Agreement.

- (d) Senior Lender may pursue all rights and remedies available to it under the Senior Loan Documents, at law, or in equity, regardless of any Enforcement Action Notice or Enforcement Action by Subordinate Lender. No action or failure to act on the part of Senior Lender in the event of a Subordinate Mortgage Default or commencement of an Enforcement Action will constitute a waiver on the part of Senior Lender of any provision of the Senior Loan Documents or this Agreement.
- (e) If the Enforcement Action taken by Subordinate Lender is the appointment of a receiver for any of the Mortgaged Property, all of the Rents, issues, profits and proceeds collected by the receiver will be paid and applied by the receiver solely to and for the benefit of Senior Lender until the Senior Indebtedness will have been paid in full. Further, the Subordinate Lender may exercise rights and remedies as an unsecured creditor against the Borrower in accordance with the Subordinate Loan Documents and applicable law, so long as such rights and remedies do not violate any express provisions of this Agreement. In the event that Subordinate Lender becomes a judgment lien creditor in respect to collateral as a result of enforcement of rights as an unsecured creditor, such judgement lien shall be subordinated to the liens securing Borrower's obligations to the Senior Lender on the same basis as other liens securing Borrower's obligations to the Subordinate Lender are so subordinated to such liens securing Borrower's obligations to the Senior Lender under this Agreement.
- (f) Subordinate Lender consents to and authorizes the release by Senior Lender of all or any portion of the Mortgaged Property from the lien, operation, and effect of the Senior Loan Documents. Subordinate Lender waives to the fullest extent permitted by law, all equitable or other rights it may have (i) in connection with the release of all or any portion of the Mortgaged Property, (ii) to require the separate sale of any portion of the Mortgaged Property, (iii) to require Senior Lender to exhaust its remedies against all or any portion of the Mortgaged Property or any combination of portions of the Mortgaged Property or any other collateral for the Senior Indebtedness, or (iv) to require Senior Lender to proceed against Borrower, any other party that may be liable for any of the Senior Indebtedness (including any general partner of Borrower if Borrower is a partnership), all or any portion of the Mortgaged Property or combination of portions of the Mortgaged Property or any other collateral, before proceeding against all or such portions or combination of portions of the Mortgaged Property as Senior Lender determines. Subordinate Lender consents to and authorizes, at the option of Senior Lender, the sale, either separately or together, of all or any portion of the Mortgaged Property. Subordinate Lender acknowledges that without Notice to Subordinate Lender and without affecting any of the provisions of this Agreement, Senior Lender may (i) extend the time for or waive any payment or performance under the Senior Loan Documents; (ii) modify or amend in any respect any provision of the Senior Loan Documents; and (iii) modify, exchange, surrender, release, and otherwise deal with any additional collateral for the Senior Indebtedness. Notwithstanding the foregoing and as set forth in Section 5(j), Senior Lender may not modify any provision of the Senior Loan Documents that increases the Senior Indebtedness, except for increases in the Senior Indebtedness that result from advances made by Senior Lender to protect the security or lien priority of Senior Lender under the Senior Loan Documents or to cure defaults under the Subordinate Loan Documents.
- (g) If any party other than Borrower (including Senior Lender) acquires title to any of the Mortgaged Property pursuant to a foreclosure of, or trustee's sale or other exercise of any power of sale under, the Senior Loan Mortgage conducted in accordance with applicable

law, the lien, operation, and effect of the Subordinate Mortgages and other Subordinate Loan Documents automatically will terminate with respect to such Mortgaged Property.

- (h) Notwithstanding any provision herein or in any of the Subordinate Loan Documents to the contrary, Subordinate Lender agrees that if (i) an Event of Default (as defined in the Subordinate Loan Documents) or an event or circumstance, which upon notice or lapse of time or both would constitute an Event of Default, has occurred and is continuing such that Subordinate Lender may withhold its funding of its share of the Draw Request (as such term is defined in the Senior Loan Documents), but (ii) Senior Lender has agreed to fund its share of the Draw Request, then Subordinate Lender will agree to fund all eligible costs contained in such Draw Request, provided that such funding is not in violation of any applicable laws.

7. Miscellaneous Provisions.

- (a) If there is any conflict or inconsistency between the terms of the Subordinate Loan Documents and the terms of this Agreement, then the terms of this Agreement will control.
- (b) This Agreement will be binding upon and will inure to the benefit of the respective legal successors and permitted assigns of the parties hereto, including, any subsequent holder of the Senior Indebtedness.
- (c) This Agreement does not constitute an approval by Senior Lender of the terms of the Subordinate Loan Documents.
- (d) Each Notice, request, demand, consent, approval or other communication (collectively, “**Notices**”, and singly, a “**Notice**”) which is required or permitted to be given pursuant to this Agreement will be in writing and will be deemed to have been duly and sufficiently given if (i) personally delivered with proof of delivery (any Notice so delivered will be deemed to have been received at the time so delivered), or (ii) sent by a national overnight courier service (such as FedEx) designating earliest available delivery (any Notice so delivered will be deemed to have been received on the next Business Day following receipt by the courier), or (iii) sent by United States registered or certified mail, return receipt requested, postage prepaid, at a post office regularly maintained by the United States Postal Service (any Notice so sent will be deemed to have been received on the date of delivery as confirmed by the return receipt), addressed to the respective parties as follows:
 - (i) Notices intended for Senior Lender will be addressed to:

Bank of America, N.A.
Mail Code: 401 East Las Olas Boulevard, 9th Floor
Fort Lauderdale, FL 33301
Attention: Judith Boswell

With a copy to:

Bank of America, N.A.
101 East Kennedy Blvd., 6th Floor
P.O. Box 31590

Tampa, Florida 33602
Mail Stop: FL1-400-06-13
Attention: CREB Loan Administration

And

Holland & Knight LLP
31 West 52nd Street
New York, New York 10019
Attention: Kathleen M. Furey, Esq.

- (ii) Notices intended for Subordinate Lender will be addressed to:

Broward County Housing Finance Division
110 N.E. 3rd Street – Third Floor
Fort Lauderdale, Florida 33301
Attn: Ralph Stone
Email address: rstone@broward.org

Any party, by Notice given pursuant to this Section 7(d), may change the person or persons and/or address or addresses, or designate an additional person or persons or an additional address or addresses, for its Notices, but Notice of a change of address will only be effective upon receipt. Neither party will refuse or reject delivery of any Notice given in accordance with this Section 7(d).

- (e) Nothing in this Agreement or in any of the Senior Loan Documents or Subordinate Loan Documents will be deemed to constitute Senior Lender as a joint venturer or partner of Subordinate Lender.
- (f) Upon Notice from Senior Lender, Subordinate Lender will execute and deliver such additional instruments and documents, and will take such actions, as are required by Senior Lender in order to further evidence or implement the provisions and intent of this Agreement.
- (g) This Agreement will be governed by the laws of the State of Florida.
- (h) If any one or more of the provisions contained in this Agreement, or any application of any such provisions, is invalid, illegal, or unenforceable in any respect, the validity, legality, enforceability, and application of the remaining provisions contained in this Agreement will not in any way be affected or impaired.
- (i) The term of this Agreement will commence on the date of this Agreement and will continue until the earliest to occur of the following events: (i) the payment of all of the Senior Indebtedness; provided that this Agreement will be reinstated in the event any payment on account of the Senior Indebtedness is avoided, set aside, rescinded or repaid by Senior as described in Section 2(e) of this Agreement, (ii) the payment of all of the Subordinate Indebtedness and expiration of the term of the Subordinate Loan Documents other than by reason of payments which Subordinate Lender is obligated to remit to Senior Lender pursuant to this Agreement, (iii) the acquisition by Senior Lender or by a third party purchaser of title to the Mortgaged Property pursuant to a foreclosure of, deed in lieu of foreclosure, or trustee's sale or other exercise of a power of sale or similar

disposition under the Senior Loan Mortgage; or (iv) with the prior written consent of Senior Lender, without limiting the provisions of Section 5(d), the acquisition by Subordinate Lender of title to the Mortgaged Property subject to the Senior Loan Mortgage pursuant to a foreclosure, or a deed in lieu of foreclosure, of (or the exercise of a power of sale under) the applicable Subordinate Mortgage.

- (j) No failure or delay on the part of any party to this Agreement in exercising any right, power, or remedy under this Agreement will operate as a waiver of such right, power, or remedy, nor will any single or partial exercise of any such right, power or remedy preclude any other or further exercise of such right, power, or remedy or the exercise of any other right, power or remedy under this Agreement.
- (k) Each party to this Agreement acknowledges that if any party fails to comply with its obligations under this Agreement, the other parties will have all rights available at law and in equity, including the right to obtain specific performance of the obligations of such defaulting party and injunctive relief.
- (l) Nothing in this Agreement is intended, nor will it be construed, to in any way limit the exercise by Subordinate Lender, when acting in its capacity as sovereign, of its governmental powers (including police, regulatory and taxing powers) or its powers to take by eminent domain, when acting in its capacity as an enforcement authority with respect to Borrower or the Mortgaged Property to the same extent as if it were not a party to this Agreement or the transactions contemplated by this Agreement.
- (m) Notwithstanding anything to the contrary contained in this Agreement or the Subordinate Loan Documents, Subordinate Lender agrees that in the event the Senior Lender waives a Senior Mortgage Default and continues to make advances under the Senior Loan Documents, Subordinate Lender will continue to make advances of the Subordinate Loans (as applicable) notwithstanding such Senior Mortgage Default.
- (n) The recitals hereof are true and correct and are incorporated herein by this reference.
- (o) This Agreement may be amended, changed, modified, altered or terminated only by a written instrument or written instruments signed by the parties to this Agreement.
- (p) This Agreement may be executed in two or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument.
- (q) The parties acknowledge and agree that Borrower is a third party beneficiary of this Agreement, with full rights as such. No other party will be entitled to any benefits hereunder, whether as a third-party beneficiary or otherwise.

[SIGNATURE PAGES TO FOLLOW]

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the day and year first above written.

BANK:

WITNESS OR ATTEST:

BANK OF AMERICA, N.A., a national banking association

Name: _____

Name: _____

By: _____ [SEAL]
[]
[]

STATE OF _____
COUNTY OF _____

The foregoing Subordination Agreement was acknowledged before me by means of physical presence or online notarization, this ____ day of _____, 20__ by _____, as _____ on behalf of Bank of America, N.A., a national banking association. He/She is personally known to me or has produced _____ as identification.

Given under my hand and seal of office this ____ day of _____, 2022.

(Personalized Seal)

Notary Public's Signature

SUBORDINATE LENDER:

WITNESSES:

SUBORDINATE MORTGAGEE:

BROWARD COUNTY, FLORIDA, a
political subdivision of the State of Florida

Print Name: _____

By: _____
Monica Cepero
County Administrator

Print Name: _____

STATE OF FLORIDA)
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this ____ day of _____, 2022, by Monica Cepero, as County Administrator of Broward County, Florida, a public body corporate and politic existing under the laws of the State of Florida, on behalf of the County. She is either personally known by me or has produced _____ as identification.

Notary Public

Printed Name
My commission expires: _____

Approved as to form by the Office of the
Broward County Attorney

By: _____
Christina A. Blythe
Assistant County Attorney

CONSENT OF BORROWER

Borrower acknowledges receipt of a copy of this Subordination and Intercreditor Agreement, dated as of the date first written above, by and between Bank of America, N.A., a national banking association and Broward County, a public corporation and a public body corporate and politic duly created and existing under the laws of the State of Florida, and consents to the agreement of the parties and the obligations and rights of Borrower as a third-party beneficiary as set forth in this Agreement.

WITNESSES:

BORROWER:

PINNACLE 441, LLC, a Florida limited liability company

Print Name: _____

By: PC 441, LLC, a Florida limited liability company,
as its manager

Print Name: _____

By: _____
David O. Deutch, as its
Vice President

STATE OF FLORIDA

COUNTY OF _____

Execution of the foregoing instrument was acknowledged before me this ____ day of _____, 2022, by David O. Deutch, as Vice President of PC 441, LLC, a Florida limited liability company, as Manager of Pinnacle 441, LLC, a Florida limited liability company, on behalf of the companies. He is either personally known to me or has produced a _____ driver's license as identification.

(AFFIX NOTARIAL SEAL)
Commission No. _____

Notary Public
(Name) _____
My Commission Expires: _____

EXHIBIT A

LEGAL DESCRIPTION

Parcel 1:

Lot 12, Less the South 100 feet, in Block 2, PINE RIDGE ESTATES, according to the Plat thereof, recoded in Plat Book 24, Page 10, of the Public Records of Broward County, Florida; and also the East 30 feet of Lot 11, Less the South 100 feet in Block 2, PINE RIDGE ESTATES, according to the Plat thereof, recoded in Plat Book 24, Page 10, of the Public Records of Broward County, Florida; Less that portion of Lot 12 conveyed to State of Florida Department of Transportation by Deeds recorded in Instrument Numbers 112853176 and 112853177.

Parcel 2:

The South 100 feet of Lot 12, in Block 2, PINE RIDGE ESTATES, according to the Plat thereof, recorded in Plat Book 24, Page 10, of the Public Records of Broward County, Florida.

Parcel 3:

Lot 11, Less the West 220 feet and Less the North 230 feet of the East 30 feet in Block 2, PINE RIDGE ESTATES, according to the Plat thereof, recorded in Plat Book 24, Page 10, of the Public Records of Broward County, Florida.

EXHIBIT B

PINNACLE 441

Hollywood, FL

Itemized Costs	Total Cost	COUNTY Grant	Source A Loan	Source B Tax Credit	Source C Def. Fees	Source D Other
A. Acquisition Cost						
1. Land	3,600,000		3,600,000			
2. Existing Structures	116,450		116,450			
3. Other						
B. Site Work						
1. Site Work (not included in construction contract costs)						
2. Other						
C. Construction/Rehabilitation (Construction contract costs)						
1. Site Work	750,000			750,000		
2. New Building	27,774,123		5,483,550	22,290,573		0
3. Rehabilitation						
D. Architectural and Engineering Fees						
1. Architect Fee-Design	466,000			466,000		
2. Architect Fee-Supervision	50,000			50,000		
3. Consultant or Processing Agent	0			0		
4. Engineering Fees	426,000			426,000		
5. Other (inspection fees, soft cost contingency, green cert fees)	288,160			288,160		
E. Other Owner Costs						
1. Appraisal	12,000			12,000		
2. Building Permits	561,706			561,706		
3. Tap Fees	343,133			343,133		
4. Soil Borings/Environmental Survey	69,500			69,500		
5. Real Estate Attorney (incl. in title)						
6. Construction Loan Legal	280,000			280,000		
7. Title and Recording	140,000			140,000		
8. Impact Fees	297,223	100,000		197,223		
9. Accounting Fees	75,000			75,000		
10. LIHTC Fees	570,934			570,934		
F. Interim Costs						
1. Construction Insurance	240,812			240,812		
2. Construction Interest	2,023,362			2,023,362		
3. Const. Loan Origination Fee	170,750			170,750		
G. Permanent Financing Fees/Expen.						
1. Credit Report						
2. Perm Loan Origination Fee	170,750			170,750		
3. Title and Recording	60,000			60,000		
4. Counsel's Fee	120,000			120,000		
H. Developer's Fees	5,663,984		0	1,732,942	3,931,042	
I. Project Reserves						
1. Rent-Up Reserves						
2. Operating Reserve & Repl. Reserve Capitaliz	354,776			354,776		
J. Tenant Relocation	0			0		
K. Project Administration/Management						
1. Marketing /Management	50,000			50,000		
2. Operating Expenses	50,000			50,000		
3. Taxes	222,000			222,000		
4. Insurance -- permanent	72,000			72,000		
L. TOTAL	45,018,663	100,000	9,200,000	31,787,621	3,931,042	0

EXHIBIT I-2

[See attached Word document]

This Instrument Prepared By

SUBORDINATION AGREEMENT

THIS AGREEMENT made as of the ____ day of _____, 20__, by (i) NEIGHBORHOOD LENDING PARTNERS OF FLORIDA, INC., a Florida not for profit corporation. (the "Senior Mortgagee"), whose address is _____; (ii) BROWARD COUNTY, FLORIDA, a political subdivision of the State of Florida (the "Subordinate Mortgagee"), whose address is 115 S Andrews Avenue, Fort Lauderdale, Florida 33301; and (iii) PINNACLE 441, LLC, a Florida limited liability company ("Borrower"), whose address is _____.

RECITALS

A. Borrower executed and delivered to Subordinate Mortgagee, a Mortgage Note (the "Subordinate Note") dated _____ in the principal amount of \$100,000.00, evidencing a loan (the "Subordinate Loan") secured by a Mortgage from Borrower in favor of Subordinate Mortgagee dated _____, and recorded at Official Records Book ____, Page ____, of the Public Records of Broward County, Florida (the "Subordinate Mortgage"). The Subordinate Mortgage encumbers the real property described in Exhibit "A" attached hereto and made a part hereof, the improvements thereon, and certain personal property relating thereto (collectively, the "Property"). Hereinafter the Subordinate Note and the Subordinate Mortgage are collectively referred to as the "Subordinate Loan Documents".

B. Borrower executed and delivered to the Senior Mortgagee a Multifamily Note (the "Senior Note") in the original principal amount of \$[9,200,000.00], evidencing a loan (the "Senior Loan") secured by a Multifamily Mortgage, Assignment of Rents and Security Agreement from Borrower in favor of Senior Mortgagee dated _____, 2022 and to be recorded in the Public Records of Broward County, Florida (the "Senior Mortgage"). Hereinafter the Senior Note and the Senior Mortgage are collectively referred to as the "Senior Loan Documents".

C. Senior Mortgagee is unwilling to make the Senior Loan to Borrower unless Subordinate Mortgagee enters into this agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration, from one to the other paid, the receipt and sufficiency whereof is hereby acknowledged, and to induce Senior Mortgagee to make the Senior Loan, the parties do hereby agree:

1. Recitals. The Recitals are true and correct and are made a part hereof.
2. Subordination.

(a) The Subordinate Mortgage is now and forever hereafter made subordinate and inferior to the Senior Mortgage and to all debt evidenced or secured thereby including principal, interest, costs and expenses, and to any and all extensions, modifications, amendments, enlargements or renewals thereof or future advances made thereunder. Further, the terms of the Subordinate Mortgage is and all rights and remedies of the Subordinate Mortgagee available to the Subordinate Mortgagee pursuant to the Subordinate Mortgage, including but not limited to the right to claim or receive any insurance or condemnation awards or proceeds, are hereby expressly subordinate to the terms of the Senior Mortgage is and the rights and remedies of Senior Mortgagee under the Senior Mortgage. Notwithstanding the foregoing or any other provision in this Agreement, until such time as Subordinate Mortgagee shall have received written notice from Senior Mortgagee of a default under the Senior Loan Documents, Subordinate Mortgagee may receive and collect any regularly scheduled payments of principal or interest or other amounts then due under the Subordinate Loan Documents and apply same against the payment then due and owing under the Subordinate Loan Documents.

(b) The indebtedness of Borrower, and any other obligor pursuant to the Subordinate Note, and any and all other indebtedness and other obligations of Borrower to Subordinate Mortgagee, and the Subordinate Mortgage, and all other liens, encumbrances and security interests given to secure the payment of the Subordinate Note and any other obligations of payment or performance of Borrower to Subordinate Mortgagee, whether now existing or hereafter created or acquired, shall be and hereby are subordinated in lien, priority and payment of principal and interest and all other charges and fees, including, without limitation, taxes and insurance premiums paid by Senior Mortgagee and interest accruing after any default or petition in bankruptcy, to the indebtedness of Borrower pursuant to the Senior Note, and all liens, encumbrances and security interests given to secure the payment thereof, whether now existing or hereafter created or acquired, including, without limitation, the Senior Mortgage and to any and all other loans, advances, extensions of credit, or other accommodations to or for the account of Borrower as Senior Mortgagee may elect to make from time to time, and any and all other indebtedness of Borrower to Senior Mortgagee, whether now existing or hereafter created or acquired, and any and all liens, encumbrances, and security interests given to secure the repayment or payment thereof, whether now existing or hereafter created or acquired, and to such renewals and extensions thereof as Senior Mortgagee may elect to make from time to time. Notwithstanding the foregoing, Senior Mortgagee may not modify any provisions of the Senior Loan Documents that increases the interest rate, extends the term (other than extensions expressly provided for in accordance with the Senior Loan Documents) or increases the Senior Loan, except for increases in the interest rate, extensions of the term or increases in the Senior Loan that results from advances made by Senior Mortgagee to protect the security or lien priority of Senior Mortgagee under the Senior Loan Documents or to cure defaults under the Subordinate Loan Documents.

3. Conditions Precedent to Remedial Action. If a default occurs under the Subordinate Loan Documents (a "Subordinate Loan Default") and is continuing, the Subordinate Mortgagee

agrees that, without the Senior Mortgagee's prior written consent, it will not commence foreclosure proceedings with respect to the Property under the Subordinate Mortgage or exercise any other rights or remedies it may have under the Subordinate Mortgage, including, but not limited to accelerating the Subordinate Loan (and enforcing any "due on sale" provision included in the Subordinate Mortgage), collecting rents, appointing (or seeking the appointment of) a receiver or exercising any other rights or remedies thereunder unless and until it has given the Senior Mortgagee at least 30 days' prior written notice. The Senior Mortgagee shall have the right, but not the obligation, to cure any Subordinate Loan Default within the same time period for curing a default which is given to the Borrower under the Subordinate Loan Documents, except that the Senior Mortgagee's time period for cure shall begin on the date on which it receives notice of the Subordinate Loan Default. All amounts advanced or expended by the Senior Mortgagee to cure a Subordinate Loan Default shall be deemed to have been advanced by the Senior Mortgagee pursuant to, and shall be secured by the lien of, the Senior Mortgage. Notwithstanding the foregoing, such limitations on the remedies of Subordinate Mortgagee shall not derogate or otherwise limit Subordinate Mortgagee's rights, following an event of default under the Subordinate Loan Documents to (a) compute interest on all amounts due and payable under the Subordinate Loan at the default rate described in the Subordinate Loan Documents, (b) compute prepayment premiums and late charges, and (c) enforce against any person, other than Borrower and any guarantors or indemnitors under the Senior Loan Documents, any guaranty of the obligations of Borrower under the Subordinate Loan.

4. Insurance, Condemnation. In the event of partial or total destruction of the Property which results in the payment of insurance proceeds, or in the event of a condemnation or similar proceeding which results in the payment of an award, the proceeds or award shall be applied in accordance with the relevant provisions of the Senior Mortgage.

5. Notices. All notices hereunder shall be in writing and shall be deemed to have been sufficiently given or served for all purposes when presented personally or three (3) days after mailing when sent by registered or certified mail, return receipt requested, postage prepaid, to the addresses set forth above, or at such other address of which a party shall have notified the party giving such notice in writing.

6. No Waiver. The giving of consent by Senior Mortgagee to the giving of the Subordinate Mortgage is not and shall not be deemed a waiver of the Senior Mortgagee's rights to prohibit any other junior mortgage of the Property. No delay on the part of Senior Mortgagee or Subordinate Mortgagee in the exercise of any right or remedy hereunder or under the Senior Mortgage or Subordinate Mortgage, respectively, shall operate as a waiver of any right hereunder.

7. Counterparts. The parties hereto agree that this Subordination Agreement may be executed in two or more counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

8. Paragraph Headings. The headings of the various paragraphs of this Subordination Agreement have been inserted only for the purposes of convenience, and are not part of this Subordination Agreement and shall not be deemed in any manner to modify, explain or restrict any of the provisions of this Subordination Agreement.

9. Choice of Law. This Agreement shall be construed, interpreted, enforced and governed by and in accordance with the laws of the State of Florida, excluding the principles thereof governing conflicts of law. If any provision shall be held prohibited or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating any other provision of this Agreement.

10. Binding Effect. This Agreement shall be binding upon the Borrower and the Subordinate Mortgagee and their respective heirs, successors and assigns and shall inure to the benefit of the Senior Mortgagee, its successors and assigns.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

EXECUTED the day and year above mentioned.

SENIOR MORTGAGEE:

**NEIGHBORHOOD LENDING PARTNERS OF
FLORIDA, INC.**, a Florida not-for-profit
corporation

Print Name: _____

By: _____
_____, as its

Print Name: _____

STATE OF FLORIDA
COUNTY OF HILLSBOROUGH

The foregoing Subordination Agreement was acknowledged before me by means of physical presence or online notarization, this ____ day of _____, 2022 by _____, as _____ of NEIGHBORHOOD LENDING PARTNERS OF FLORIDA, INC., a Florida not-for-profit corporation, on behalf of the corporation. He/She is personally known to me or has produced _____ as identification.

Notary Public

Printed Name
My commission expires: _____

WITNESSES:

SUBORDINATE MORTGAGEE:

BROWARD COUNTY, FLORIDA, a
political subdivision of the State of Florida

By: Monica Cepero
County Administrator

Print Name: _____

Print Name: _____

STATE OF FLORIDA)
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this ____ day of _____, 2022, by Monica Cepero, as County Administrator of Broward County, Florida, a public body corporate and politic existing under the laws of the State of Florida, on behalf of the County. He/She is either personally known by me or has produced _____ as identification.

Notary Public

Printed Name

My commission expires: _____

Approved as to form by the Office of the
Broward County Attorney

By: _____
Christina A. Blythe
Assistant County Attorney

WITNESSES:

BORROWER:

PINNACLE 441, LLC, a Florida limited liability company

Print Name: _____

By: PC 441, LLC, a Florida limited liability company,
as its manager

Print Name: _____

By: _____
David O. Deutch, as its
Vice President

STATE OF FLORIDA

COUNTY OF _____

Execution of the foregoing instrument was acknowledged before me this ____ day of _____, 2022, by David O. Deutch, as Vice President of PC 441, LLC, a Florida limited liability company, as Manager of Pinnacle 441, LLC, a Florida limited liability company, on behalf of the companies. He is either personally known to me or has produced a _____ driver's license as identification.

(AFFIX NOTARIAL SEAL)

Commission No. _____

Notary Public

(Name) _____

My Commission Expires: _____

EXHIBIT A
LEGAL DESCRIPTION

Parcel 1:

Lot 12, Less the South 100 feet, in Block 2, PINE RIDGE ESTATES, according to the Plat thereof, recorded in Plat Book 24, Page 10, of the Public Records of Broward County, Florida; and also the East 30 feet of Lot 11, Less the South 100 feet in Block 2, PINE RIDGE ESTATES, according to the Plat thereof, recorded in Plat Book 24, Page 10, of the Public Records of Broward County, Florida; Less that portion of Lot 12 conveyed to State of Florida Department of Transportation by Deeds recorded in Instrument Numbers 112853176 and 112853177.

Together with:

Parcel 2:

The South 100 feet of Lot 12, in Block 2, PINE RIDGE ESTATES, according to the Plat thereof, recorded in Plat Book 24, Page 10, of the Public Records of Broward County, Florida.

And together with:

Parcel 3:

Lot 11, Less the West 220 feet and Less the North 230 feet of the East 30 feet in Block 2, PINE RIDGE ESTATES, according to the Plat thereof, recorded in Plat Book 24, Page 10, of the Public Records of Broward County, Florida.