

This Agreement Prepared by and
after recording to be returned to:

MAINTENANCE AGREEMENT

THIS AGREEMENT is made and entered into this ___ day of _____, 202__, by and between the **CITY OF HOLLYWOOD**, a municipal corporation located in Broward County, Florida and organized and existing under the laws of Florida, hereinafter referred to as “**City**,” having an address of 2600 Hollywood Boulevard, Hollywood, Florida 33022, and **PINNACLE 441 LLC**, its successors and assigns, hereinafter referred to as “**Owner**,” having an address of 9100 South Dadeland Boulevard, Suite 700, Miami, Florida 33156.

WITNESSETH:

WHEREAS, Owner owns or controls certain property located in the City of Hollywood, Broward County, Florida as shown and described on Exhibit “A” attached hereto and made a part hereof (the “**Property**”); and

WHEREAS, for the purpose of conserving the quality, character, value and ambiance of the Property and improvements thereon, the Owner recognizes that it is in the best interest of Owner and all future Property owners or occupants to maintain the public improvements adjacent to the Property along State Road 7/US 441 and Johnson Street, according to the terms and conditions as set forth herein; and

WHEREAS, the landscape, irrigation and specialty concrete paths improvements adjacent to the Property along State Road 7/US 441 and specific items described in that certain “District Four (4) Amendment Number Fifteen (15) to State of Florida Department of Transportation Landscape Inclusive Memorandum of Agreement” (the “**Improvements**”) referencing Permit No. 2022-L-491-00020, hereinafter referred to as the “**MMOA Fifteenth Amendment**”, a copy of which is attached hereto as Exhibit “B”; and

WHEREAS, the City as a party to the MMOA Fifteenth Amendment is obligated to maintain the Improvements, which obligation is being undertaken by the Owner pursuant to this Agreement; and

WHEREAS, the maintenance obligations, as described in the MMOA Fifteenth Amendment, as set forth herein shall run with the land and be assumed by each and every person that may hereinafter acquire an interest in the Property; and

WHEREAS, Owner enters into this Agreement with the City pursuant to the requirements imposed on it and accepted by future Property owners or occupants, as a prerequisite to construction of the Improvements referenced herein; and

WHEREAS, the parties hereto mutually recognize the need for entering into this Agreement designating and setting forth the responsibilities and obligations hereunder;

NOW THEREFORE, for and in consideration of the covenants contained in this Agreement, it is mutually agreed between the parties as follows:

1. The recitals above are true and correct and are incorporated herein by this reference.

2. The Owner, its successors and assigns, agrees to maintain in perpetuity, unless otherwise terminated or modified pursuant to Paragraphs 5 and/or 10 of this Agreement, in accordance with the requirements of the MMOA Fifteenth Amendment the Improvements within the specified areas as set forth below and more fully described on Exhibit "C" attached hereto and incorporated herein by reference:

(a) Those landscape improvements along the Property's frontage on State Road 7 within the area illustrated in the MMOA Fifteenth Amendment; and

(b) Those landscape improvements beginning at State Road 7/US 441 Mile Post 3.026 to Mile Post 3.096 on the West side of State Road 7/US 441, which is more specifically described under State of Florida Department of Transportation Permit #2022-L-491-00020.

3. The Owner agrees to maintain such Improvements with such maintenance to include, among other things, periodic trimming, cutting, litter pickup, fertilizing and necessary replanting of the landscaping and keeping the other improvements in good and safe order and condition as would be usual and customary for said type of Improvements, all as described in the MMOA Fifteenth Amendment. In the event that the improvements are damaged or destroyed by hurricane or other casualty or vandalism, the Owner shall promptly repair or replace the damaged or destroyed Improvements.

4. If at any time after the execution of the Agreement it shall come to the attention of the City that the Improvements or a part thereof are not properly maintained pursuant to the terms of the MMOA Fifteenth Amendment, the City may at its option issue a written notice that a deficiency or deficiencies exist(s), by sending a certified letter to the Owner to place the Owner on notice thereof. Thereafter, the Owner shall have a period of thirty (30) calendar days following receipt of the foregoing notice within which to correct the cited deficiencies; provided however that, in the event that the correction of the deficiencies by their nature cannot be completed within thirty (30) calendar days, the Owner shall commence such corrective actions within thirty (30) calendar days and shall diligently continue the same to completion. If said deficiencies are not corrected within this time period, the City may at its option, proceed as follows:

(a) Maintain the improvements or a part thereof with City or contractor's personnel and invoice the Owner for reasonable expenses incurred. The Owner hereby grants permission to the City to enter the Property to perform such maintenance. The City may issue an invoice to the Owner for the reasonable costs incurred in performing such maintenance, and if such invoice is not paid within 30 days of invoice, the City may place a lien against the Property for the amount thereof, such lien to be effective as of the recording of any such claim of lien in the Public Records of Broward County, Florida;

(b) Terminate this Agreement in accordance with Paragraph 10 of this Agreement, remove, by City or contractor's personnel, any or all of the Improvements installed under this Agreement or any preceding agreements between Owner and City regarding the Improvements, if any, and invoice the Owner the reasonable cost of such removal and appropriate restorations, and if not paid within 30 days of invoice, the City may place a lien against the Property for the amount thereof, such lien to be effective as of the recording of the claim of lien in the Public Records of Broward County, Florida, or

(c) Invoke any rights and remedies allowed at law, in equity or otherwise.

5. It is understood between the parties hereto that Improvements within the public rights-of-way covered by this Agreement may be removed, relocated or adjusted at any time in the future and as determined to be necessary by the City. The Owner shall be given thirty (30) calendar days' notice to remove said Improvements after which time the City may remove same. However, other than actions deemed necessary by the City for the immediate protection of public safety, City agrees to provide notice to the Owner of its concerns regarding the continuation of any of the Improvements, and the City and Owner shall work cooperatively to attempt to address the City's concerns while retaining the Improvements.

6. The provisions of this Agreement shall be binding upon and inure to the benefits of successors in title to the Property.

7. The parties agree that this Agreement and Exhibits, upon execution of same, shall be recorded by Owner among the Public Records of Broward County, Florida. When so recorded, owners and occupants of the Property shall be on notice of each and every provision of this Agreement, and this Agreement shall be of the same force and effect as if said owners and occupants had joined with the parties to this Agreement in the execution hereof; and the acquisition or occupancy of any part of the Property shall be deemed conclusive evidence of the fact that the owners have consented to and accepted the Agreement herein contained and have become bound hereby, whereupon Owner shall be relieved of all further obligations under this Agreement, and City shall look solely to the then owner of the Property for performance of the obligations under this Agreement.

8. City and Owner agree to deliver to each other, from time to time as reasonably requested in writing, within fifteen (15) business days after receipt of such request, an estoppel certificate stating that this Agreement is unmodified and in full force and effect (or, if there have been modifications, that the Agreement is in full force and effect as modified, and stating the modifications), the status of Owner's performance hereunder and such other information as City or Owner may reasonably require with respect to the status of this Agreement and of the Improvements.

9. Owner, its successors and assigns, and future property owners of the Property shall indemnify and hold harmless City and its officers and employees (the "Indemnitees") from all suits, actions, claims and liability arising solely out of the Owner's negligent performance of the work under this Agreement, or Owner's failure to maintain the Improvements referenced herein in conformance with the standards described in Paragraph 4 above, provided that any such claim, damage, loss or expense is attributed to bodily injury, sickness, disease, personal injury or death,

or the injury to or destruction of tangible property, including the loss of use resulting therefrom (collectively, the "Claims"). Notwithstanding the foregoing, Owner shall have no obligation to indemnify or hold harmless the Indemnitees with respect to any Claims to the extent resulting or arising from the gross negligence or willful misconduct of any Indemnitee or the Florida Department of Transportation. Nothing in this Agreement shall be construed to limit the rights, privileges or immunities accorded to the City under the doctrine of sovereign immunity or as set forth in Florida Statutes Section 768.28.

10. This Agreement may be terminated by the City if the Owner fails to perform its duties under Paragraph 3, following the expiration of any applicable notice and/or cure period specified in Paragraph 4 hereof. This Agreement may also be modified or terminated by mutual consent of the Owner, its successor and assigns, and the City, which consent shall be evidenced in a written document recorded in the Public Records of Broward County, Florida.

IN WITNESS WHEREOF, the parties have hereunto set their hands on the day and year first above written.

[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

City

CITY OF HOLLYWOOD, FLORIDA

ATTEST:

PATRICIA A. CERNY, MMC
CITY CLERK

BY: _____
JOSH LEVY, MAYOR

APPROVED AS TO FORM:

DOUGLAS R. GONZALES
CITY ATTORNEY

Owner

PINNACLE 441, LLC, a Florida limited liability company

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

By: _____

Print Name: _____

Title: _____

WITNESSES:

Signature

Print Name

Signature

Print Name

STATE OF _____

COUNTY OF _____

THE FOREGOING was acknowledged before me by means of [] physical presence or [] online notarization, this _____ day of _____, 2023, by _____, as _____ of PC 441, LLC, a Florida limited liability company, the Authorized Member of PINNACLE 441, LLC, a Florida limited liability company, on behalf of the companies. He/She [] is personally known to me or [] who has produced _____ as identification.

NOTARY PUBLIC

Print Name: _____

My Commission Expires:

EXHIBIT "A"

DESCRIPTION OF THE "PROPERTY"

PINERIDGE ESTATES 24-10 B LOT 12 LESS S 100, AND E 30 OF LOT 11 LESS S 100 BLK 2, LESS POR DESC IN INST #112853176, TOG WITH S 100 OF LOT 12 BLK 2; TOG WITH LOT 11 LESS W 220 AND LESS N 230 OF E 30, BLK 2 AKA: PARCELS 1, 2 & 3 PINNACLE 441, SAID LAND LYING IN THE CITY OF HOLLYWOOD, BROWARD COUNTY, FLORIDA, LESS AND EXCEPT THOSE LANDS CONVEYED TO (I) THE CITY OF HOLLYWOOD PURSUANT TO WARRANTY DEED RECORDED IN INSTRUMENT NO. 118888665, AND (II) THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION PURSUANT TO WARRANTY DEED RECORDED IN INSTRUMENT NO. 119057574.

EXHIBIT “B”

MMOA FIFTEENTH AMENDMENT

EXHIBIT “C”

**LOCATION OF IMPROVEMENTS TO BE MAINTAINED BY
OWNER**

**THE PUBLIC IMPROVEMENTS IDENTIFIED AND CONTAINED IN THE AREAS
SPECIFIED IN SECTION 2 OF THIS AGREEMENT AND MORE FULLY DESCRIBED
IN THE FOLLOWING PROJECT DRAWINGS FOR “PINNACLE 441” LISTED BELOW
AND ATTACHED HERETO:**

FOR STATE ROAD 7 / US 441:

***FLORIDA DEPARTMENT OF TRANSPORTATION
PERMIT #2022-L-491-00020***

***PLANS PREPARED BY:
MICHAEL J. PHILLIPS, PLA
KEITH & ASSOCIATES***

DATED: SEPTEMBER 7, 2023

***SHEETS: LI-101
LI-501
LP-001
LP-002
LP-101
LP-501***