

## **FIRST AMENDMENT TO PURCHASE AND SALE AGREEMENT**

THIS FIRST AMENDMENT TO PURCHASE AND SALE AGREEMENT (this "Amendment") is made as of the \_\_\_ day of November, 2017 (the "Effective Date") by and between the **CITY OF HOLLYWOOD, FLORIDA** ("Seller") and **PINNACLE AT PEACEFIELD, LTD.**, a Florida limited partnership, its successors and/or assigns ("Purchaser").

### **RECITALS**

WHEREAS, Seller and Purchaser entered into that certain Purchase and Sale Agreement having an effective date of December 12, 2016 (the "Purchase Agreement"), for the sale of certain real Property as defined in Section 1 of the Purchase Agreement.

WHEREAS, Seller and Purchaser desire to amend the Purchase Agreement as more particularly set forth herein.

NOW THEREFORE, in consideration of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the parties, Seller and Purchaser hereby agree as follows:

1. **RECITALS**: The above recitals are true and correct and incorporated into this Amendment by this reference.
2. **DEFINITIONS**: Any capitalized terms not defined in this Amendment shall have the meaning given to such term in the Purchase Agreement.
3. **DEPOSITS**. Notwithstanding anything contained in Paragraph 2 of the Purchase Agreement, within two (2) business days following the Effective Date of this Amendment, Purchaser shall deposit as an additional deposit, the sum of Forty Thousand and No/100 Dollars (\$40,000.00) (the "Additional Deposit") with the Escrow Agent, and all references in the Purchase Agreement to the term "Escrow Deposit" shall here forth include the Additional Deposit.
4. **CLOSING CONDITIONS**. Paragraph 9(c) and the remainder of Paragraph 9 of the Purchase Agreement are hereby deleted in its entirety and the following is substituted in its place:

*"(i) Within four (4) months of the Effective Date of this Amendment, Purchaser shall have submitted an application of Purchaser's site plan to the Seller and applicable governmental authorities for approval; (ii) within nine (9) months of the Effective Date of this Amendment, Purchaser shall have obtained final site plan approval for the development of the Property and the CRA Property (as hereinafter defined) from the Seller and any other applicable governmental authority for the development of no fewer than one hundred twenty (120) residential units with related amenities on the Property and the CRA Property (the "Project"), with all time to appeal such approval having expired and no appeal then pending and no appeal instituted or filed; and (iii) within nine (9) months of Purchaser obtaining final site plan approval, Purchaser shall have received the building permit for the Project.*

*In addition to any rights or remedies that Purchaser may be entitled to under this Agreement, if any of the Closing Conditions are not satisfied by the date specified therefor, Purchaser shall have the right to terminate this Agreement upon delivering written notice to Seller, in which event the Escrow Deposit shall be returned to Purchaser and all other further obligations of the parties hereunder shall terminate, except those that expressly survive termination hereof. If Purchaser fails to deliver written notice of termination to Seller, as described herein, Purchaser shall be deemed to have waived the Closing Conditions.”*

5. CLOSING: The first sentence of Paragraph 10 of the Purchase Agreement is hereby deleted in its entirety and the following is substituted in its place:

*“Unless sooner terminated by either Seller or Purchaser pursuant to the provisions of this Agreement and subject to the terms and conditions of this Agreement, Closing shall take place simultaneously with closing on the construction loan for the development of the Project, but in no event later than June 30, 2019 (the “Closing Date”).”*

6. COMMUNITY GARDEN: Seller hereby represents and warrants to Purchaser that the portion of the Property being used as a “Community Garden” is pursuant to a license revocable upon notice from Seller to the person(s) utilizing same. Seller hereby covenants and agrees that within forty-five (45) days following receipt of written notice from Purchaser that Purchaser intends to close on a date certain but in no event later than the Closing Date, Seller shall on or before the Closing Date, terminate such license and all use rights as they relate to the Community Garden. Any and all materials, equipment or supplies placed upon the Property for the Community Garden that are not removed from the Property by the Closing Date (the “Community Garden Abandoned Property”) shall thereafter be deemed to be in exclusive possession and ownership of Purchaser, to be disposed of by Purchaser in its sole and absolute discretion. Seller shall indemnify and hold Purchaser harmless from and against any and all claims made by any person with respect to Purchaser’s disposition of the Community Garden Abandoned Property

7. THIRD PARTIES’ USE OF PROPERTY. Seller hereby covenants and agrees that within ten (10) days following receipt of written notice from Purchaser that Purchaser intends to close on a date certain, but in no event later than the Closing Date, Seller shall terminate any and all rights granted to third parties using portions of the Property, including but not limited to, third parties’ use of the Property as a construction staging area or otherwise for the storage of construction materials, equipment or supplies. Any and all materials, equipment or supplies placed upon the Property by third parties that are not removed from the Property by the Closing Date (the “Third Party Abandoned Property”) shall be deemed to be abandoned and be the exclusive property of Purchaser, to be disposed of by Purchaser in its sole and absolute discretion. Seller shall indemnify and hold Purchaser harmless from and against any and all claims made by any person with respect to Purchaser’s disposition of the Third Party Abandoned Property.

8. FULL FORCE AND EFFECT: Except as specifically modified by this Amendment, all other provisions of the Purchase Agreement remain in full force and effect. To the extent of any conflict between the provisions of the Purchase Agreement and this Amendment, the provisions of this Amendment shall control.

9. AUTHORITY: Seller and Purchaser represent and warrant to the other that such party has the full right, power, and lawful authority to enter into, execute, and perform under this Amendment and that such actions do not violate any other agreement, covenant, or restriction placed upon such party. Seller and Purchaser further represent and warrant to the other that the person signing this Amendment on its behalf has been duly authorized to sign this Amendment.
10. GOVERNING LAW: This Amendment shall be governed by the laws of the State of Florida, without application of its conflict of law principles.
11. BINDING EFFECT: This Amendment shall be binding upon, and shall inure to the benefit of, Seller, Purchaser, and their respective successors or assigns.
12. HEADINGS: The headings contained in this Amendment are for convenience of reference only and shall not be construed as limiting or defining in any way the provisions of this Amendment.
13. COUNTERPARTS: This Amendment may be executed in counterparts, each of which shall be an original, and all of which shall constitute one and the same instrument. Any signature delivered by facsimile or other forms of electronic transmission, such as a PDF, shall be considered an original signature by the sending party.

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IN WITNESS WHEREOF, Seller and Buyer have executed this Amendment as of the Effective Date.

**SELLER:**

**CITY OF HOLLYWOOD, FLORIDA**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**PURCHASER:**

**PINNACLE AT PEACEFIELD, LTD.**, a  
Florida limited partnership

By: PHG-Peacefield, LLC, a Florida limited  
liability company, its general partner

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

Name: David O. Deutch

Title: Vice President