

Upon Recording, RETURN TO:

**U. S. Department of Housing and Urban Development
Attn: Property Disposition Division, 6AHMLAT
801 Cherry Street, Unit #45, Ste. 2500
FORT WORTH, TX 76102**

**Pinnacle Village
Pompano Beach, FL
ID 800004170**

AMENDMENT TO AND RESTATEMENT OF DEED RIDERS

THIS AMENDMENT TO AND RESTATEMENT OF DEED RIDERS (this "*Agreement*") is made as of the __ day of _____, 2020, by and between the SECRETARY OF HOUSING AND URBAN DEVELOPMENT ("*HUD*") and Pinnacle Village, Ltd., a Florida limited partnership (the "*Owner*"), and acknowledged by the City of Pompano Beach, Florida (the "*City*").

Recitals

- A. HUD was the owner of the multifamily project formerly known as Holiday Lakes Apartments located in Pompano Beach, Florida (the "*Original Project*"), on land more particularly described on Exhibit A attached hereto and made a part hereof (the "*Property*").
- B. On September 19, 2002, HUD transferred the Property to the City by Special Warranty Deed (the "*HUD Deed*"), recorded on October 4, 2002, in Official Records Book 33895, Page 349 (CFN #102310386), of the Public Records of Broward County, Florida (the "*Recording Office*").

- C. The HUD Deed includes ten (10) riders (each a "**Deed Rider**" and collectively, the "**Deed Riders**") representing various covenants related to the development and management of the Original Project by the City or any subsequent project developed on the Property.
- D. On September 30, 2002, HUD and the City entered into an Up-Front Grant Agreement, pursuant to which HUD agreed to grant up to \$5,000,000 ("**UFG Funds**") to allow the City to carry out the demolition and redevelopment of the Property.
- E. The City subsequently conveyed the Property to Owner pursuant to a Warranty Deed executed June 24, 2004, and recorded on June 25, 2005, in Official Records Book 37722, Page 1786 (CFN #104113310) of the Recording Office.
- F. In connection with the transfer to the Owner, the City loaned the UFG Funds to the Owner in the original principal amount of \$4,715,983.00 ("**City Loan**"), evidenced by a Mortgage made June 23, 2004, and recorded in Official Records Book 37722, Page 1922 (Instr. # 104113320) of the Recording Office ("**City Mortgage**").
- G. By letter to the City dated January 14, 2004 ("**HUD Approval**"), HUD approved the use of UFG Funds to make the City Loan on the condition that any repayment, which would include, but not be limited to, any periodic payments, balloon payments and any interest, of the City Loan, will be paid to HUD.
- H. The Owner carried out the demolition of Original Project and completed the construction of the 148-unit development now known as Pinnacle Village Apartments on the Property in 2005 (the "**2005 Redevelopment**").
- I. Owner has requested and HUD has agreed to amend and restate the Deed Riders in conjunction with a refinance transaction closing on or around the date hereof, to (i) remove covenants satisfied upon completion of the 2005 Redevelopment, (ii) reflect the satisfaction of HUD's equity participation by payment of \$2,429,904.73 (the "**Equity Participation Payment**") to be made out of refinancing proceeds, and (iii) clarify Deed Riders, as appropriate.

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual benefits to be derived and other good and valuable consideration, the receipt of which is acknowledged, the parties hereby agree that, unless otherwise amended and/or restated herein, all of the Deed Riders in the HUD Deed are hereby terminated, and are otherwise amended and restated (as so amended and restated herein, the "*Restated Covenants*"), as follows:

1. **Enforcement (as to Deed Rider 1):** The Owner hereby assumes the Restated Covenants and acknowledges and agrees that the Restated Covenants encumber the Property and shall run with the land to the fullest extent permitted by law and equity, and shall be binding upon the Owner and its successors and assigns, for the benefit and in favor of and enforceable by HUD.

HUD shall be entitled to (a) institute legal action to enforce performance and observance of these Restated Covenants, (b) enjoin any acts which are violative of these Restated Covenants, and (c) exercise any other legal or equitable right or remedy with respect to these Restated Covenants.

Except for the sixth Restated Covenant (as to Deed Rider 6), as provided below, the Restated Covenants (such remaining Restated Covenants except the sixth Restated Covenant, referred to herein as the "*Expiring Covenants*") shall bind the Owner, its successors, assigns, and grantees for value, for a period equal to the rental/cooperative use restriction, it being understood and acknowledged that the Expiring Covenants shall automatically terminate and be of no further force or effect on September 19, 2027, without the need for recording any formal termination. Notwithstanding the automatic termination of the Expiring Covenants, HUD hereby agrees to provide the Owner with written confirmation in recordable form of the termination of the Expiring Covenants within thirty (30) days of request from the Owner. However, to ensure that HUD has all remedies available should the City require a repayment of the City Loan after the Expiring Covenants terminate, this covenant will survive for so long as the sixth Restated Covenant survives.

2. **Nondiscrimination Against Section 8 Certificate Holders and Voucher Holders (as to Deed Rider 2):** In order to comply with Section 204 of the Housing and Community Development Amendments of 1978, 12 USC §1701z-12, as amended, the Owner, for itself, its successors and assigns, agrees not to unreasonably refuse to lease a dwelling unit offered for rent, refuse to offer or sell cooperative stock, or otherwise discriminate in the terms of tenancy or cooperative purchase and sale because any tenant or proposed cooperative stock

purchaser is the holder of a Certificate of Family Participation or a Voucher under Section 8 of the United States Housing Act of 1937 (42 USC § 1437f), or any successor legislation (hereinafter referred to as "**Section 8**"). This provision is limited in its application for tenants or applicants with Section 8 Certificates or their equivalent (other than Vouchers), to those units which rent for an amount not greater than the Section 8 fair market rent for a comparable unit in the area as determined by HUD.

If the Owner, or any subsequent owner, breaches this covenant, HUD and/or one or more third-party beneficiaries, shall be entitled to institute legal action to enforce performance and observance of such covenant and to enjoin any acts which are violative of such covenant. For the purposes of this covenant, a third-party beneficiary shall be any person who holds a Certificate of Family Participation or a Voucher under Section 8 or any equivalent document under successor legislation.

3. **Affordability of Units (as to Deed Rider 3):**

Use Restriction. The Owner, or any subsequent owner, covenants that 126 units (representing eighty-five percent (85%) of the total units in the Property) will be maintained as affordable housing ("**Affordable Units**") until September 19, 2027 (the "**Restricted Period**"). During the Restricted Period, the Owner may not market dwelling units for any purpose other than rental or cooperative housing without HUD's prior written approval.

Income Eligibility Limitation. Of the total number of Affordable Units, 19 units (representing 15% of the Affordable Units) may be targeted to families with annual incomes between 80 and 115 percent of area median income, with adjustments for smaller and larger families, as determined by the Secretary. The remainder of the Affordable Units must be affordable to low- and very low-income families.

Maintenance of Rents at Affordable Levels. Rent for the Affordable Units for low- and very low-income families is defined as:

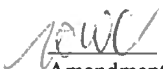
- a. The rent that does not exceed 30 percent of 80 percent of the area median income (not the income of the family), as determined by HUD, with adjustments for smaller and larger families.
- b. The unit rent is within the Section 8 voucher payment standard applicable to the community in which the 2005 Redevelopment is located, or the unit, or the tenant occupying such unit, is receiving assistance under Section 8 of the United States Housing Act of 1937.

Additional Grantee Covenants. The Owner, or any subsequent owner, covenants that it will not unreasonably refuse to lease Affordable Units to, or otherwise discriminate against, very low-income families. The Owner, or any subsequent owner, shall certify to HUD annually that the requirements in the above paragraphs have been fulfilled.

4. **Lead-Based Paint Hazards (as to Deed Rider 4):** Owner agrees to indemnify, defend, and hold HUD harmless from any liability arising from Owner's failure to satisfactorily perform its obligations with respect to the elimination of lead based-paint, health hazards, the prohibition against the use of lead-based paint, and Owner's responsibility for complying with applicable State and local lead-based paint laws, as well as 42 USC 4821-4886 and the regulations thereunder, 24 CFR Part 35.
5. **Post-Closing Demolition and Rebuilding Escrow Requirements (as to Deed Rider 5):** HUD acknowledges that the post-closing demolition and rebuilding escrow requirements in Deed Rider 5 have been satisfied and this covenant is hereby terminated.
6. **Upfront Grant Agreement (as to Deed Rider 6):** HUD acknowledges that the City and the Owner have satisfied the requirements of Deed Rider 6 for the use of the UFG funds. HUD further acknowledges that the City Loan may be forgiven by the City without the consent or approval of HUD. If there is no repayment of the City Loan, HUD will not require additional funds to be paid. If, however, the City requires any repayment on the City Loan, which would include, but not be exclusive to, any periodic payments, balloon payments, and any interest, such payment must be made to HUD consistent with the HUD Approval.

This Restated Covenant will survive so long as any principal or interest debt remains outstanding on the City Loan and so long as the City Mortgage, as may be subsequently extended or otherwise modified, remains recorded on the Property. This Restated Covenant will automatically expire upon the satisfaction or forgiveness of the City Loan and release of the City Mortgage. Notwithstanding the automatic termination of this Restated Covenant, HUD hereby agrees to provide the Owner with written confirmation in recordable form of the termination of this Restated Covenant within thirty (30) days following request by the Owner.

7. **Equity Participation (as to Deed Rider 7):** This covenant is hereby terminated, the Owner having paid HUD the sum of Two Million Four Hundred Twenty-nine Thousand Nine Hundred Four Dollars and Seventy-Three Hundredths (\$2,429,904.73) for such termination.



8. **Redevelopment Plan (as to Deed Rider 8)**: This covenant is hereby terminated; the redevelopment of the Property having been completed in 2005.
9. **Asbestos Hazards (as to Deed Rider 9)**: Owner agrees to indemnify, defend, and hold HUD harmless from any liability arising from Owner's failure to satisfactorily perform its obligations with respect to the elimination of asbestos health hazards, the prohibition against the use of asbestos, and Owner's responsibility for complying with applicable State and local asbestos laws and regulations.
10. **Existing Hazardous Substances—Demolition Activities (as to Deed Rider 10)**: This covenant has been satisfied as it relates to the demolition activities completed as part of the 2005 Redevelopment and is hereby terminated.
11. **Estoppel**: To the best of HUD's knowledge, there is no default under the existing Deed Riders as of the date of this Agreement.

[Signature Pages to Follow]



Amendment to and Restatement of Deed Riders
Pinnacle Village Apts., Pompano Beach, FL

This Page Intentionally Left Blank

Signature and notary page for Secretary of Housing and Urban Development

WITNESS the due execution of this Third Modification of Deed Riders as of the date first above written.

ATTEST/WITNESS:

SECRETARY OF HOUSING AND
URBAN DEVELOPMENT

William Chocho

By: *Jovanna M. Morales*
Jovanna M. Morales, Director
Property Disposition Division

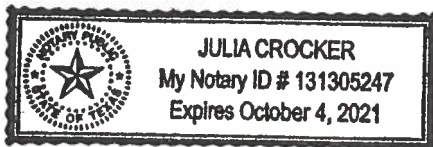
STATE OF TEXAS

COUNTY OF TARRANT

SS:

On this, the ____ day of _____, 2020, before me, the undersigned officer, personally appeared Jovanna M. Morales, who acknowledged herself to be the Director of the Property Disposition Division of the U.S. Department of Housing and Urban Development, and that she as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the Secretary of Housing and Urban Development by herself as such authorized officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



Notary Public

Julia Crocker

OWNER

Pinnacle Village, Ltd.,
a Florida limited partnership

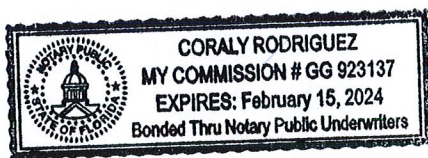
By: PHG-Pompano, LLC,
a Florida limited liability company,
its general partner

By: *David O. Deutch*
David O. Deutch,
Vice President

STATE OF FLORIDA)

COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 11 day of August, 2020, by David O. Deutch, the Vice President of PHG-Pompano, LLC, a Florida limited liability company, the general partner of Pinnacle Village, Ltd., a Florida limited partnership, on behalf of the limited partnership, who ☐ is personally known to me or ☐ has produced _____ as identification.



CR
NOTARY PUBLIC, State of Florida

Coral Rodriguez
Print Name

My Commission expires: 2/15/2024

Serial No.: 66 923137

(NOTARY SEAL ABOVE)

Notary Public - State of Florida

ACKNOWLEDGMENT OF TERMS

The City of Pompano Beach hereby acknowledges and agrees to the terms of this Agreement.

“CITY”:

CITY OF POMPAÑO BEACH

DocuSigned by:
Rex Hardin
By: 502CB780EB3F480...
REX HARDIN, MAYOR

DocuSigned by:
Gregory P. Harrison
By: 7052A67F15A44C8...
GREGORY P. HARRISON, CITY MANAGER

Attest:

DocuSigned by:
ASA
775D4290316A490...
ASCELETA HAMMOND, CITY CLERK

Approved As To Form:

DocuSigned by:
Mark E. Berman
B4DD5E1CDA804A1...
MARK E. BERMAN, CITY ATTORNEY

(SEAL)



EXHIBIT "A"
Legal Description

Parcel A of PINNACLE VILLAGE, according to the Plat thereof as recorded in Plat Book 173, Page 162, of the Public Records of Broward County, Florida.