

PURCHASE AND SALE AGREEMENT FOR RESERVED MITIGATION CREDITS

THIS PURCHASE AND SALE AGREEMENT FOR RESERVED MITIGATION CREDITS (hereinafter "Agreement") is made this _____ day of _____, _____, by and between **D.R. HORTON, INC.** (hereinafter "Seller"), whose mailing address is 10192 Dowden Rd Orlando, FL 32832 and **PINNACLE AT SINCLAIR, LLC** (hereinafter "Buyer") whose mailing address 9400 South Dadeland Boulevard, Suite 100 Miami, Florida 33156 (hereinafter collectively the "Parties").

WITNESSETH:

WHEREAS, Seller owns and operates the Twin Oaks Mitigation Bank located in Osceola County, Florida (the "Mitigation Bank") with freshwater herbaceous mitigation credits available for transfer and sale under South Florida Water Management District (hereinafter "SFWMD") Permit No. 49-00007-M.

WHEREAS, Buyer needs to purchase State Herbaceous Credits to offset wetland impacts associated with the proposed development of a project known as **Sinclair Apartments** (hereinafter "Project"), SFWMD Application No. 210407-5837;

WHEREAS, as part of the environmental permitting process for the Project involving SFWMD it is anticipated that SFWMD will condition the issuance of Buyer's permits on the purchase of Credits as compensatory mitigation;

WHEREAS, Seller agrees to sell and Buyer agrees to purchase Credits available from the Mitigation Bank on the terms and conditions below to be used to offset wetland impacts associated with the Project;

WHEREAS, Buyer has determined that the number of Credits to be purchased is 0.12 Herbaceous UMAM State Credits (the "Subject Credits"); and

NOW, THEREFORE, in consideration of the premises and of the mutual covenants hereinafter contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto, each intending to be legally bound, do hereby warrant and agree as follows:

- 1. Terms of Purchase.** The purchase price (hereinafter "Purchase Price") of the Subject Credits is Fifteen Thousand and 00/100 U.S. Dollars (\$15,000.00) payable to Seller by U.S. Institutional Check or wire transfer of federal funds pursuant to wire instructions to be provided by Seller. Seller agrees to reserve and sell to the Buyer the aforementioned Subject Credits. Upon execution of this Agreement, Buyer shall deliver the deposit of One Thousand Five Hundred and 00/100 U.S. Dollars (\$1,500.00) All payments shall be paid to the account of **D.R. HORTON, INC.** and submitted via U.S. Institutional Check or wire transfer of federal funds using the wire instructions provided by Seller.
- 2. Reservation Period.** This reservation shall commence upon the signing of this Agreement and payment of the Deposit to the Seller and shall expire October 27, 2021 (the "Expiration Date"). The Purchase Price less the deposit shall be due on or before the Expiration Date. If Buyer shall fail to deliver the Purchase Price in accordance with this Agreement, Seller may terminate this

Agreement by written notice to Buyer, upon which notice Seller shall be entitled to retain the Deposit and the Parties shall have no further rights or obligations hereunder, except as otherwise provided.

- 3. Cumulative Impact Assessment.** A Cumulative Impact Assessment will be provided for this project at Twin Oaks Mitigation Bank's expense.
- 4. Adjustment of Credit Reservation.** Seller agrees to reduce the number of credits reserved if the regulatory agency requirement is decreased at no penalty to the Buyer. In the case of a credit reservation adjustment within the reservation period identified above, Buyer and Seller will execute an addendum to this Agreement.
- 5. Covenants of Seller.** Seller covenants and agrees that it shall comply with all conditions and continuing requirements set forth in Seller's permits from the SFWMD for the Mitigation Bank. Responsibility for compliance with the Seller's permits as to mitigation on the Mitigation Bank shall solely be the responsibility of Seller. The provisions of this shall survive the closing hereunder.
- 6. Deposit.** Unless otherwise described herein or otherwise agreed, the Deposit shall be credited against the Purchase Price paid by Buyer for the Subject Credits. Said Deposit shall be non-refundable to Buyer except in the case of breach by Seller as set forth in Paragraph 8 below.
- 7. Conditions of Transfer of Credit.** Prior to the transfer of Subject Credits, Buyer shall provide a true and correct copy of the SFWMD permit with exhibits to Seller. Upon receipt of the permit and payment of the Purchase Price, Seller shall provide to Buyer within ten (10) days thereafter documentation as required by the SFWMD to effectuate the transfer of the Subject Credits as per the conditions of the Buyer's permit (i.e., copy of signed minor permit modification request) for the Project. Buyer is hereby notified that the transfer of Credits generally takes approximately thirty (30) to sixty (60) days to complete.
- 8. Debit of Credits and Transfer.** Upon notification of the debit of the Subject Credits by the SFWMD the same shall be transferred to Buyer together with documents evidencing such transfer of the Subject Credits. The Parties hereby agree that evidence of the Subject Credits being transferred shall be the receipt by Seller from SFWMD of the Minor Permit Modification to its Environmental Resources Permit (hereinafter the "ERP"). Once the transfer has been completed, the transfer shall be deemed to be completed and payment fully earned.
- 9. Breach of Seller.** If the closing of the purchase and sale of the Subject Credits as contemplated by this Agreement is not consummated because of a default by Seller hereunder, then Buyer shall provide Seller with written notice of such default and Seller shall have twenty (20) days within which to cure any such default; if Seller does not cure its default, then following such notice and cure period, Buyer may, as Buyer's sole and exclusive remedy (except as hereinafter expressly provided), terminate this Agreement by written notice to Seller, upon which notice Seller shall return the Deposit to Buyer and the parties shall have no further rights or obligations hereunder, except with respect to those provisions of this Agreement which by their express terms survive termination of this Agreement. Buyer hereby **EXPRESSLY WAIVES AND RELEASES ANY AND ALL OTHER RIGHTS, REMEDIES AND CLAIMS UNDER THIS AGREEMENT, AT LAW, IN EQUITY AND OTHERWISE IN CONNECTION WITH OR ARISING FROM ANY SUCH SELLER DEFAULT.**

10. Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the Parties hereto.

11. Applicable Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Florida.

12. Notices. Any notice or demand permitted or required by this Agreement shall be made in writing and shall be delivered by hand delivery, which shall include delivery by reputable national overnight courier service, such as Federal Express, or by electronic transmission (including electronic mail or facsimile, as may be set forth below) with confirmation of transmission followed by hand delivery of a copy of such notice or demand. Any such notice or demand shall be effective and deemed received on the date delivered to the addressee, as indicated on the receipt confirmation if delivered by hand, or if delivered by electronic transmission, on the date of such transmission, as indicated on the receipt confirmation. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed receipt of the notice, demand or request sent. For the purposes of this Section, notices shall be directed as follows:

Notices to Seller: D.R. HORTON, INC.
Attn: John Valantasis
10192 Dowden Rd
Orlando, FL 32832
Email: JGValantasis@drhorton.com

With a copy to: The Mitigation Banking Group, Inc.
Attn: Victoria K. Colangelo
P.O. Box 195813
Winter Springs, Florida 32708
Email: Victoria@mitigationbankinginc.com

Notices to Buyer: Pinnacle at Sinclair, LLC
Attn: David O. Deutch
9400 South Dadeland Blvd
Suite 100
Miami, Florida 33156

13. Entire Agreement. This Agreement contains the entire understanding between the Parties and the Parties agree that no representation was made by or on behalf of the other which is not contained in this Agreement, and that in entering into this Agreement neither relied upon any representation not especially herein contained. This Agreement shall not be binding upon the Seller and Buyer until executed by an officer of the Seller and Buyer, if applicable its corporate seal affixed, and an executed copy of the Agreement has been delivered to the Buyer and Seller.

14. Amendments and Waivers. This Agreement may not be amended, modified, altered, or changed in any respect whatsoever, except by a further agreement in writing duly executed by each and all of the parties hereto. No failure by Buyer or Seller to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement or to exercise any right or remedy upon a breach thereof shall constitute a waiver of any such breach or of such any other covenant,

agreement, term or condition. Any party hereto, by notice, may but shall be under no obligation to, waive any of its rights or any conditions to its obligations hereunder, or any duty, obligation or covenants of any other party hereto. No waiver shall affect or alter this Agreement, but each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

- 15. No Joint Venture or Partnership or Agency Relationship.** Seller does not have any ownership interest in Buyer's business relationships or operations and Buyer does not have any interest in Seller's business relationships or operations. The relationship between Seller and Buyer is not in any manner whatsoever a joint venture or partnership and neither party shall be the agent of the other for any purpose, unless specifically granted in writing after execution hereof. Neither party shall hold itself out as an agent, partner or joint venturer with the other and each party shall defend and indemnify the other against any claim of liability arising out of an asserted agency, partnership or joint venture by the other contrary to the express provisions of this paragraph.
- 16. Captions; Genders.** Captions used in this Agreement are for convenience of reference only and shall not affect the construction of any provision of this Agreement. Whenever used, the singular shall include the plural, the plural shall include the singular, and gender shall include all genders.
- 17. Partial Invalidity.** In case any term of this Agreement shall be held to be invalid, illegal or unenforceable, in whole or in part, neither the validity of the remaining part of such term or the validity of any other term of this Agreement shall in any way be affected thereby.
- 18. Calculation of Time.** Time periods of five (5) days or less shall be computed without including Saturdays, Sundays, or national legal holidays, and any time period existing on a Saturday, Sunday or national legal holiday shall be extended until 5:00 p.m. on the next business day.
- 19. Effective Date.** This Agreement is effective on the date on which the last of the parties signs this Agreement.
- 20. Typewritten or Handwritten Provisions.** Handwritten provisions and/or typewritten provisions inserted in this Agreement, which are initialed by both parties, shall control over the printed provisions in conflict therewith.
- 21. Counterparts.** This Agreement may be executed in any number of counterparts, any one and all of which shall constitute the agreement of the parties and shall be deemed one original instrument. The signature pages may be detached from one counterpart and reattached to another counterpart in order to form a fully-executed instrument. Signatures to this Agreement transmitted by facsimile or electronic mail will be valid and effective to bind the Party so signing. Each Party agrees to promptly deliver any execution original to this Agreement with its actual signature to the other Parties, but a failure to do so will not affect the enforceability of this Agreement.
- 22. Time is of the Essence.** Time is of the essence under the terms of this Agreement.
- 23. Agreement Not Recordable.** This Agreement shall not be recorded in the public records of any county and any attempt to do so shall be null and void and of no force and effect whatsoever and any attempt to do so shall place said party in default hereof.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement, to become effective as of the date and year first above written and in accordance with the terms of this Agreement.

Signed, sealed and delivered in the presence **SELLER:**
of:

D.R. HORTON, INC.

AS TO SELLER:

By: _____

WITNESS:

Name: Donna Pope

Title Vice President

Executed on _____, _____

BUYER:

AS TO BUYER:

PINNACLE AT SINCLAIR, LLC

WITNESS:

By: _____

Name: _____

Title: _____

Executed on _____, _____