

## PINECREST DEVELOPMENT AGREEMENT

This Development Agreement (“*Agreement*”) is entered into as of the \_\_\_\_ day of May, 2015, among Orange Village, a chartered municipal corporation (the “*Village*”), 4600 Lander Road, Orange Village, Ohio 44022, Pine Orange LLC, an Ohio limited liability company (the “*Commercial Developer*”), c/o Fairmount Properties LLC, 1138 W. 9<sup>th</sup> Street, Suite 200, Cleveland, Ohio 44113 and Walnut Hills LLC, a Pennsylvania limited liability company (the “*Residential Developer*”, and together with the Commercial Developer, sometimes referred to herein collectively as the “*Developers*” and individually as a “*Developer*”), c/o Centimark Corporation, 12 Grandview Circle, Third Floor, Canonsburg, Pennsylvania 15377-85333

### R E C I T A L S

WHEREAS, the Developers desire to develop real property in the Village described in the attached **Exhibit A** (the “*Property*”) for a commercial and residential mixed-use development commonly referred to as Pinecrest (the “*Project*”); and

WHEREAS, the Village owns real property (the “*Village Property*”), as same is identified, described and depicted in **Exhibits B-1, B-2, B-3, and B-4**, which the Commercial Developer desires to use for stormwater detention or retention purposes, ingress and egress to and from the Commercial Portion of the Project, landscaping, curbing, traffic control devices, signage and other improvements acceptable to the Village; and

WHEREAS, the Project will require the vacation of Pinecrest Drive and a portion of Walnut Hills Road, each of which is currently a publicly-dedicated street; and

WHEREAS, in conjunction with the Project, Lewanski Development, LLC (“**Lewanski**”) submitted a preliminary development plan for the Project to the Village, which plan was approved by the Village on July 3, 2013 (as so approved being the “*PDP*”);

WHEREAS, in conjunction with the Project, on May 1, 2013, Lewanski submitted to the Village an application (the “*Application*”) to rezone portions of the Property consisting of certain parcels of real property that front on Pinecrest Drive, Walnut Hills Road, Orange Place, and Harvard Road; and

WHEREAS, the Village amended the Application to include the entirety of the Property; and

WHEREAS, on July 31, 2013, the Village enacted Ordinance No. 2013-11, entitled “An Ordinance Enacting the Pinecrest Planned Development District (PPDD) Regulations and Rezoning Certain Parcels of Land From Class U-1 to PPDD, Amending the Village Zoning Map and Map Designations, Submitting the Proposed District and Zoning Change to the Voters of Orange Village and Declaring an Emergency,” which, subject to approval by both (i) a majority of the electors of the Village and (ii) a majority of the electors of the precinct in which the

Property is located voting thereon (collectively, “*Voter Approval*”), enacted Chapter 1175 of the Orange Village Ordinances, entitled Pinecrest Planned Development District (the “*PPDD Regulations*”), and provided for the amendment of the Village’s Zoning Map; and

WHEREAS, Voter Approval has been obtained; and

WHEREAS, the Commercial Developer has succeeded to the interest of Lewanski in respect of the Commercial Portion of the Project and the Residential Developer has succeeded to the interest of Lewanski in respect of the Residential Portion of the Project (as hereinafter defined); and

WHEREAS, in connection with its proposed development of the commercial and mixed-use portion of the Project that will be located within the PD-1, PD-2, PD-3 and PD-4 Subdistricts (the “*Commercial Portion of the Project*”), the Commercial Developer submitted an application to amend the PDP pursuant to Section 1175.03(c) of the PPDD Regulations, which application was approved by the Village Planning and Zoning Commission on February 10, 2015 (the PDP as amended, being herein referred to as the “*Revised PDP*”); and

WHEREAS, the Commercial Developer will be developing the Commercial Portion of the Project and the Residential Developer, in conjunction with the Commercial Developer or otherwise, will be developing the residential portion of the Project that will be located within the PD-5 Subdistrict (the “*Residential Portion of the Project*”); and

WHEREAS, the Residential Portion of the Project was also approved as part of the PDP and is unaffected by the Revised PDP; and

WHEREAS, any changes that the Residential Developer requires to the Residential Portion of the Project will require the approval of the Village to amend the Revised PDP pursuant to the PPDD Regulations and other applicable Village ordinances; and

WHEREAS, the Developers have represented and agree, and the Village’s support for the Project is predicated on the understanding that, the Project will comply with the terms and provisions of this Agreement, the Revised PDP and the PPDD Regulations, and further that:

A. The Project will be of the highest quality when compared to other similar sized and larger mixed use retail, office and residential developments, as provided in the PPDD Regulations and as further provided herein, including, without limitation, such factors as:

1. Existence of a distinctive character through features and attributes resulting in an aesthetic, functional, sustainable, economically beneficial and socially significant project, which, wherever economically feasible, takes advantage of low-impact storm water management policies such as

pervious surfaces, bio-retention ponds, use of vegetation and other similar best practices;

2. The design of the Commercial Portion of the Project as reflected in the Revised PDP, which generally describes the building architectural design and materials; site development defining landscaping and “street furniture;” signs; public spaces, and supplemental project amenities such as open space, plaza, pedestrian ways and the arrangement of parking fields into zones and areas to reduce the visual impact of cars;
3. Development standards demonstrating a high quality design through the use of building elements providing an articulate architectural vocabulary using materials, details and forms to provide a scale and relationship for a varied and refined pedestrian experience;
4. A tenant quality level and mix that the Commercial Developer will use good faith efforts to achieve by seeking to lease to retailers found in “upscale” or “high end” lifestyle centers by actively marketing its lease to such retailers and with tenant improvements and finishes including fully finished interiors with carpeted, wood, special treated or ceramic flooring; interior wall finish treatments and surfaces; varied ceilings with multiple levels, merchandise displays and fixtures found in upscale establishments; segregated fitting rooms; ambient and accent lighting consistent with refined retail design, and by excluding retailers found in typical, open-air, strip shopping centers, such as: value retailers, bargain stores, discounters, mass merchandisers, consignment retailers (except such retailers primarily selling art and/or jewelry), or Outlet Stores as defined in the PPDD Regulations. In determining compliance with this Section, the Village will be sensitive to and reflect the business model and market characteristics to which the tenant is directed;
5. The quality of the tenant mix which will be derived from seeking a unique aggregation of retailers, shops, businesses, restaurants and establishments currently not in the Northeast Ohio market to satisfy the unmet demand represented by Lewanski in the report prepared by Goodman and Company, dated February 20, 2013.

B. Commercial Developer, through its leasing efforts to date has determined that sufficient market potential exists in the region to attract retailers to the Commercial Portion of the Project that are not currently in Northeast Ohio; and

WHEREAS, the Village desires to protect the values of neighboring properties; and

WHEREAS, the parties desire to enter into this Agreement to set forth certain of the respective rights, agreements, and obligations of the parties as more specifically provided herein.

NOW, THEREFORE, in consideration of the mutual benefits derived by the parties and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**I. INCORPORATION OF RECITALS**

The recitals and “Whereas” clauses set forth above are fully incorporated in this Agreement and specifically made a part hereof, as if fully restated here and same are deemed to be fully effective and a reflection of the agreements and understandings of the parties.

**II. ADDITIONAL RESTRICTIONS ON PROJECT**

A. In addition to the use regulations contained in Section 1175.05 of the PPDD Regulations, the Commercial Developer agrees that until the fifth (5<sup>th</sup>) anniversary of the date upon which at least seventy-five (75%) percent of the aggregate leasable retail floor area of all of the buildings located in Sub-Districts PD-1, PD-2, PD-3 and PD-4, excluding, however, the hotel (collectively the “*Retail Area*”), are leased and occupied (the “*Significant Initial Occupancy Date*”), no less than sixty-five (65%) percent of the total Retail Area will be leased and occupied by business establishments that do not have an existing business location within a driving distance of 20-miles from the Property (“*Qualifying Tenants*”). In order to assure and confirm compliance with the restrictions set forth herein, during the period (the “*Compliance Period*”) from the date of this Agreement through the fifth (5<sup>th</sup>) anniversary of the Significant Initial Occupancy Date the Commercial Developer shall:

1. Certify to the Village annually within sixty (60) days after the end of each calendar year during the Compliance Period, the total percentage of Retail Area leased and occupied by Qualifying Tenants as of the end of such calendar year, which certification shall be detailed on a tenant-by-tenant basis and shall be in form and detail acceptable to the Village;
2. Notify the Village of any changes in tenants in the Retail Area no less than sixty (60) days prior to the date on which any new tenant takes occupancy or sixty (60) days after any Qualifying Tenant vacates the Commercial Portion of the Project; and

3. In connection with the application for a building permit for any space within the Retail Area (whether such application is made by or on behalf of the Commercial Developer or a tenant) and as a condition to the issuance of such building permit, certify to the Village, in a form and with detail acceptable to the Village, the percentage of Retail Area occupied by Qualifying Tenants as of the date of such application.
- B. The owner of that portion of the Property designated as the PD-6 Sub-District (the “**PD-6 Property**”), shall at all times own a majority of the aggregate acreage of real property comprising the PD-1, PD-2, PD-3, and PD-4 Sub-Districts, collectively. The Commercial Developer shall be the owner of the PD-6 Property prior to commencement of any construction activities in conjunction with the Project and shall (i) sign a Declaration of Restrictions substantially in the form attached as **Exhibit C** (the “**Declaration**”) (provided that, absent an amendment in accordance with the terms of the Declaration, the form of the Declaration shall not be altered to diminish the obligations of the Declarant thereunder or to reduce the rights of those who under its terms have the right to enforce it, including, without limitation, the “**Owners**” as that term is defined in the Declaration) and (ii) file such Declaration with the Cuyahoga County Recorder before any construction activities on the Property in conjunction with the Project occurs, which Declaration shall have priority over any and all mortgages or other monetary encumbrances on the portion of the Property that comprises the Project. The PD-6 Property shall at all times have only one owner.
- C. The Commercial Developer shall cause sound barriers to be installed for all HVAC, outdoor refrigeration systems, trash compactors and other similar or related improvements located in Sub-Districts PD-1 through PD-4 and the Project shall be designed and constructed so that upon occupancy of any portion of the Project, the ambient (i.e., background) noise level on Waterford Court measured using the “A-weighted” decibel scale shall not increase in a manner perceptible by the average human ear as determined by a sound professional comparing sound studies that document the pre- and post-construction sound levels using a variety of sound level descriptors. The pre-construction sound levels have been documented in a Sound Level Monitoring Report prepared by Chagrin Valley Engineering, Ltd., dated December 23, 2014, a copy of which has been provided by the Commercial Developer to the Village (the “**Pre-Construction Sound Report**”).

- D. The Commercial Developer shall cause each restaurant and other commercial occupant that generates persistent odors in the Commercial Portion of the Project to install and operate odor abatement system equipment and shall require each commercial tenant in any other Sub-District to install such equipment as is necessary so that such tenant's use of its premises will not cause persistent odors that are detectible to the residents of Waterford Court (collectively, the "**Waterford Residents**" and individually, a "**Waterford Resident**").
- E. As a condition to the issuance of any permits for construction of any site improvements, grading, paving, lighting, below ground utilities or landscape improvements in Sub-Districts PD-1 through PD-5 (the "**Project Site Improvements**"), the Developers shall cause the Project civil engineer to certify to a reasonable degree of engineering certainty to the Village that, after completion of construction and as designed and approved by all applicable governmental entities: (1) the proposed buildings and roof-top mechanical units in the Project (the "**Project Building Improvements**") and Project Site Improvements (collectively, the "**Project Improvements**"), other than landscaping in Sub-Districts PD-1 through PD-5, will not be able to be seen by persons standing on the first or second floor of a dwelling on Waterford Court; (2) the Project Improvements after being constructed, will not cause the ambient (i.e., background) noise level on Waterford Court as measured using the "A-weighted" decibel scale, to increase in a manner perceptible by the average human ear as determined by a sound professional comparing sound studies that document the pre- construction (as set forth in the Pre-Construction Sound Report) and the post-construction sound levels using a variety of sound level descriptors as set forth in the Pre-Construction Sound Report; and (3) the Project Improvements will not cause persistent odors that are detectible to the Waterford Residents.
- F. Promptly following its delivery to the Village, the Developers shall deliver to the Waterford Residents a copy of the certification required under Section 1175.11(n) of the PPDD Regulations.

### **III. IMPROVEMENTS, SECURITY, AND MAINTENANCE**

#### **A. REQUIRED IMPROVEMENTS AND EASEMENTS**

1. **Public Improvements.** The parties agree that certain improvements to public streets and to other public lands that are or may be related to the Project's development will be made prior to or concurrently with construction of the Project, as follows:
  - a. **Traffic Improvements.** The Commercial Developer, at its cost,

shall install or construct all traffic signals, control devices, signs, road improvements, traffic regulating flow facilities, and lane markings for public streets listed, and according to, the schedule in **Exhibit D** (the “*Traffic Improvements*”). Furthermore, the Commercial Developer acknowledges and agrees that all such traffic signals, control devices and signage shall be consistent with the Village’s existing sign schematic and style and shall otherwise be acceptable to the Village. The Commercial Developer shall submit all engineering plans for Traffic Improvements to the Village for the Village’s approval. The Commercial Developer understands that traffic signals and control devices will be required to be compatible with, and may be required to connect into, the Chagrin Boulevard signalization management and control system (the “*CBSMC*”) and that such signals and devices will be required to meet the specifications of the CBSMC. The Commercial Developer shall perform all work required under this Section in a good and workmanlike manner, using a contractor licensed to perform work in the Village and otherwise acceptable to the Village that shall at all times provide qualified labor and quality materials. The Commercial Developer shall coordinate and schedule all such work with the Village. The Village may inspect such work to assure conformance to the Village’s standards. After approval and acceptance by the Village of Traffic Improvements to standards approved by the Village, the appropriate governmental entity shall be responsible for maintaining the Traffic Improvements. In addition, eighteen (18) months after the Significant Initial Occupancy Date, the Commercial Developer shall, at no cost to the Village, engage TMS Engineers, Inc. or another experienced traffic engineer selected by the Commercial Developer and acceptable to the Village, to conduct a traffic impact study of the same scope and covering the same intersections as studied under the Pinecrest Traffic Study dated November 24, 2014, prepared by TMS Engineers, Inc. (as well as the newly created intersection of the northerly access drive to the Commercial Portion of the Project and Orange Place) to determine whether additional public traffic or other improvements are necessary as a result of any underestimation of traffic needs and impact during the Project planning stages and shall, at the Commercial Developer’s expense, implement such traffic improvements, subject to the Village’s reasonable discretion and

approval. The foregoing described Traffic Improvements specifically do not include and the Village shall have no obligation or liability to maintain, any private roadways or other improvements constructed within the Project and deemed or designated as non-public roadways and areas, as may be approved by the Village in the Final Development Plan (as defined in Section 1175.03(d) of the PDP Regulations) for the Commercial Portion of the Project.

- b. **Safety Force Mini-Station.** In the Commercial Portion of the Project, the Commercial Developer shall construct, at its cost and for the Village's permanent use at no cost to the Village (other than utilities used therein and insurance for any improvements made by the Village or property owned by the Village located therein), a facility to be used exclusively by the Village for police and fire services necessary to service the Project and the immediate surrounding area, such facility to have a floor area of no less than 2,800 SF and no greater than 3,000 SF, including vehicle bays and offices (the "*Mini-Station*"), which Mini-Station shall be in the location and of a design included in the Final Development Plan approved for the Commercial Portion of the Project in accordance with Section 1175.03(d) of the PPDD Regulations. In all events the Commercial Developer's construction of such Mini-Station shall be completed no later than the date upon which at least ten (10%) percent of the Retail Area is occupied. The Mini-Station as constructed by the Commercial Developer will be constructed to provide a heated and air-conditioned space, with lighting (including both general lighting and emergency and exit lighting), power outlets, communications outlets wired to a central board (or as otherwise required by the Village), bathroom fixtures, and entry doors pursuant to applicable building code requirements. In addition, the Mini-Station shall include, and the Developer, at no cost to the Village, shall install, overhead doors, fire protection systems and exhaust, as well as painted interiors, vinyl tile flooring and finished ceilings. Enclosed and secure interior space for emergency vehicles, an officer workroom and adequate storage space shall also comprise a portion of the Mini-Station. Except as expressly set forth herein, Developers shall not be required to provide or install any fixtures or equipment required for the operation of the Mini-Station.

2. **Easement Granted by the Village.** Subject to the provisions of subparagraphs a. through f. below, the Village shall grant the Developers easements to provide for the construction, maintenance and use of the Village Property at the approximate locations identified, described and depicted in **Exhibits B-1, B-2, B-3, and B-4**, for stormwater management facilities together with necessary traffic signals, control devices, signage, and landscaping thereon (collectively, the “*Village Property Improvements*”), pursuant to Village standards, and otherwise as follows:

a. The Village and the Commercial Developer shall, within ninety (90) days following approval by the Village of the Final Development Plan for the Commercial Portion of the Project, enter into (i) an easement agreement substantially in the form attached as **Exhibit E-1** with respect to the Village Property Improvements on the Village Property depicted in **Exhibit B-1** (the “*Stormwater Easement*”) and (ii) an easement agreement substantially in the form attached as **Exhibit E-2** with respect to the remaining Village Property Improvements on the Village Property depicted in **Exhibits B-2, B-3 and B-4** (the “*Traffic and Landscaping Easement*”) and together with the Stormwater Easement herein individually an “*Easement*” and collectively the “*Easements*”) requiring the Commercial Developer, at no cost to the Village, to install and construct upon the Village Property the Village Property Improvements. If required to provide access to the Project in accordance with the Final Development Plan for the Commercial Portion of the Development, the Traffic and Landscaping Easement shall provide for the construction, maintenance and use of the Village Property at the approximate location identified, described and depicted in **Exhibit B-4**, for a portion of the northern access to the Project, and the Village Property Improvements shall include such northern access to the Project; otherwise, the Traffic and Landscaping Easement shall not grant the Developers any rights, or impose on the Commercial Developer any obligations, with respect to such portion of the Village Property, and the Village Property Improvements shall not include such portion of the northern access to the Project. The Commercial Developer recognizes the desire of the Village that the northern access to the Project align with the existing driveway to the hotels and Bahama Breeze on the western side of Orange Place. Prior to the granting of the easement for the access point depicted in **Exhibit B-4**, the Commercial Developer shall demonstrate to

the Village that it has used commercially reasonable efforts to obtain an easement from University Hospitals of Cleveland that will provide for a northern driveway to the Project that will align with the existing driveway to the hotels and Bahama Breeze on the western side of Orange Place.

- b. Commercial Developer may, at its cost, obtain a policy of title insurance (the “***Title Policy***”) insuring that the Village is the true and lawful owner of the Village Property, and is well seized of the same in fee simple, and has good right and full power to convey the easements set forth in the Easements and that no third parties have any interest in the Village Property that would prevent or interfere with the Commercial Developer’s construction or maintenance of the Village Property Improvements, or the use of the Village Property for the Village Property Improvements;
- c. The Commercial Developer shall submit all engineering plans for the Village Property Improvements to the Village for its approval. The Commercial Developer shall perform all work on the Village Property in a good and workmanlike manner, using a contractor licensed to perform work in the Village and otherwise acceptable to the Village that at all times shall provide qualified labor and quality materials. The Commercial Developer shall coordinate and schedule all such work with the Village. The Village shall inspect such work to assure conformance to the Village’s standards. After approval and acceptance by the Village of the Village Property Improvements to standards approved by the Village, the Commercial Developer shall be responsible, at its sole cost, for maintaining all Village Property Improvements. For purposes of clarity, the Village and the Commercial Developer acknowledge and agree that the Traffic Improvements reflected on **Exhibit D**, upon Village approval and acceptance thereof by the Village of Traffic Improvements to standards approved by the Village, shall be maintained by the Village or other appropriate governmental entity.
- d. The Commercial Developer shall pay all costs and expenses incurred and to be incurred by the Village in conjunction with the Easements (including, without limitation, all reasonable costs and expenses incurred by the Village to acquire or extinguish interests that would otherwise prevent the Commercial Developer from obtaining the Title Policy).

- e. Pursuant to an easement agreement or agreements mutually acceptable to the Village and the Developers, the Developers shall grant access easements to the Village to assure perpetual safe and convenient access to the Project for emergency and safety vehicles and other Village vehicles via the access drives within the Project.
  - f. In the event that the Village and the Commercial Developer mutually determine that public or private improvements other than and/or in addition to the Village Property Improvements described herein, are necessary or appropriate in conjunction with the Project for the safety and/or convenience of the Village, the Village shall to the extent it is able to do so under applicable law, at the Commercial Developer's cost, acquire such property as may be required for such improvements, the Commercial Developer shall construct and maintain such improvements at its cost, and the Easements shall be amended to address such additional property and additional improvements.
3. **Utility Tie-Ins.** Since the Commercial Portion of the Project and the Residential Portion of the Project will not proceed simultaneously, the Developers recognize that they will have to work together cooperatively as they develop their respective plans for the development of their respective properties to assure that the Residential Portion of the Project will have access to such drainage and water quality facilities and underground utility facilities as will be necessary to support the development of the Residential Portion of the Project. It may be necessary in connection with the development of the Residential Portion of the Project that the Commercial Developer grant to the Residential Developer easements or other rights of access to drainage and water quality facilities and underground utility facilities that are constructed in connection with the Commercial Portion of the Project or otherwise provide access across a portion of the Commercial Portion of the Project to enable the Residential Portion of the Project to have access to drainage and water quality facilities and underground utility facilities located off-site. The Developers acknowledge that they will be required to work these rights out between themselves as they develop their respective properties. The Residential Developer recognizes that to the extent that the drainage and water quality facilities and underground utilities constructed on the Commercial Portion of the Project are not of sufficient size and capacity to permit the proper use of such facilities for the Residential Portion of the Project, the Residential Developer will not have the right to use such

facilities in connection with the development of the Residential Portion of the Project and that it will be required to provide for such facilities either on the Residential Portion of the Project or through easements or other rights acceptable to the Village upon its review of development plans relating to the Residential Portion of the Project.

4. **Seeding.** Promptly following the demolition and removal of homes that are in the Residential Portion of the Project as set forth in IV.A., below, the Residential Developer will cause the areas of the Residential Portion of the Project where such homes were located to be seeded as necessary and maintained in such condition so as to minimize erosion, dirt and dust until construction activities commence on the Residential Portion of the Project and shall otherwise comply with the Village's applicable erosion control standards.

- B. **SECURITY.** At least one security person, hired and paid for by the Commercial Developer, shall be at the Commercial Portion of the Project during the hours from 10:00 A.M to 10:00 P.M, Monday through Saturday and 10:00 A.M. to 6:00 P.M. on Sunday. Such security person shall be certified by the Ohio Police Officer Training Academy, shall hold such valid and active licenses, in good standing, as the Commercial Developer and the Village deem appropriate for a person in such position. The Commercial Developer and the Village shall cooperate to make certain that such security person is qualified to undertake and exercise the powers of such position.

#### **IV. CONSTRUCTION SEQUENCING.**

Before any construction on the Property in conjunction with the Project occurs, the Commercial Developer shall record the Declaration. The Developers represent and warrant that the Declaration will have priority over any and all mortgages or other encumbrances. The sequencing of construction of the Project (including, without limitation, open space/conservation, commercial and residential portions of the Project) shall be in accordance with the Revised PDP, as may be amended in conjunction with approval of the Final Development Plan or otherwise and the Project shall include construction of a parking garage (the "***Garage***") in a location substantially in accordance with the Revised PDP, which Garage shall include (a) a roof with no rooftop parking, which roof shall close any gap between the Garage and the adjacent portions of the Walls (as hereinafter defined), and (b) facades with architectural features on portions of its north, south and west sides. In addition, and notwithstanding anything contained herein to the contrary, at such time that construction commences on the Property in conjunction with any portion of the Project, such construction shall proceed as follows:

- A. All homes, together with all septic tanks, wells and other utilities, that are currently on portions of Pinecrest Drive and Walnut Hills Road that comprise the Project other than those located on the parcels assigned Cuyahoga County Permanent Parcel Nos. 901-01-039 and 901-01-054 shall be demolished and removed in accordance with applicable law, ordinance and regulation prior to a building permit being issued for any portion of the Project; provided, however, that in such instances where the seller of a property on Pinecrest Drive or Walnut Hills Road retains possession thereof after closing, the demolition and removal of such a home, together with all septic tanks, wells and other utilities, shall not be required prior to a building permit being issued for any portion of the Project. In such instances, the demolition and removal of such home, together with all septic tanks, wells and other utilities, may be delayed until after the Developers (or either of them) have obtained possession thereof, but in the case of the parcels assigned Cuyahoga County Permanent Parcel Nos. 901-01-015, 901-01-016, 901-01-017, 901-01-026 and 901-01-027 no later than 190-days after closing on the purchase thereof and in the case of all such other homes no later than 100-days after closing on the purchase thereof. In the event that the Developers (or either of them) acquires those homes located on Permanent Parcel Nos. 901-01-039 or 901-01-054, the Developer acquiring such homes promptly after the acquisition thereof shall cause such homes, together with all septic tanks, wells and other utilities, to be demolished.

Demolition and removal of homes, together with all septic tanks, wells and other utilities, that are currently on portions of Pinecrest Drive and Walnut Hills Road that comprise the Project will be performed so as not to unreasonably delay site work at, or construction of, the Commercial Portion of the Project. In the event that the provisions of this Paragraph A are not timely complied with the Village may, in addition to any other rights and remedies available at law or in equity, require the Commercial Developer to immediately cease all work on the Project until the provisions of this Paragraph A have been complied with. Prior to any construction activities in conjunction with the Project, the Commercial Developer shall install a six-foot tall temporary fence, fabric wind-screening along the eastern property line of said PD-6 Sub-District where same abuts the property of a Waterford Resident (an “*Abutting Waterford Resident*”), which temporary fence shall remain in place during and through completion of construction of the Mound, Walls and Landscaping (as hereinafter defined). Promptly following the demolition and removal of the homes that currently are located on the Property and clearing and grubbing the portion of the Property located in Sub-Districts PD-1 through PD-4, the Commercial Developer shall create a temporary topsoil mound in a portion of the area where the Mound (as hereinafter defined) will be located to prevent debris and construction from coming onto or being seen by the

Owners, which temporary mound will have swales on its east and west sides so as to prevent any water runoff from entering onto the Owners' property. No construction of above-ground improvements that are part of the Project, other than the construction of the temporary topsoil mound referenced above, the Mound, Walls and Landscaping (as hereinafter defined), the Garage, and the basements and first floors of Buildings 5, 6 and 7 shown in the Revised PDP, shall occur until completion of the Mound and Walls, and any such above-ground improvements relating to Buildings 5, 6 and 7 will in no event, at any time, be visible to the Owners from their properties. The Landscaping will be installed on the Mound promptly during the next planting season following construction of the Mound and Walls. While the homes referenced in this section are being demolished and at all times thereafter prior to completion of the Mound, Walls and Landscaping, the Developers shall take all reasonable action so as to cause the least amount of interference to the Owners.

- B. After the demolition of all homes, together with all septic tanks, wells and other utilities, that are currently on portions of Pinecrest Drive and Walnut Hills Road that comprise the Project that are required under Subsection (A) above to be demolished prior to a building permit being issued for any portion of the Project, the mound and walls to be located within and outside the boundaries of the PD-6 Property, shall be constructed and landscaped substantially in accordance with the Declaration, including (without limitation) the landscape plan by Cawrse & Associates, Inc. attached thereto (the "***Mound, Walls and Landscaping***"), provided, however, that, the Preliminary Grading Plan attached to the Declaration as Exhibit "E," the landscape plan by Cawrse & Associates, Inc. attached to the Declaration as Exhibit "F," and/or the wall design shown in the site line drawing attached to the Declaration as Exhibit "G" may be revised by the Declarant under the Declaration pursuant to, subject to and in accordance with the review and Revision Dispute (as defined in the Declaration) procedures set forth in Sections 1(b)(i), 1(b)(ii) and 1(b)(iii) of the Declaration, as to each of the Mound, Walls and Landscaping, respectively, including the right, to be exercised within fifteen (15) business days after being provided a copy of such revised plans, that Cawrse & Associates, Inc., on behalf of the Waterford Residents, may notify the Declarant and the Village Engineer in writing that it has determined that, after completion of the construction of the Mound as shown in the revised Preliminary Grading Plan, the proposed buildings and roof-top mechanical units in Sub-Districts PD-1 through PD-5 and/or the site and other improvements (other than landscaping), grading, paving, lighting and fixtures, and below ground utilities in Sub-Districts PD-1 through PD-5, will be able to be seen by persons standing on the first or second floor of a dwelling on Waterford Court and/or such revision adversely affects the residents of Waterford Court (the "***Revision Dispute***"). In

the event of such a Revision Dispute, the Declarant and Waterford Court residents, acting through Cawrse & Associates, Inc., shall promptly work, in good faith, to resolve such dispute. If following such good faith efforts to do so, the parties are unable to resolve the Revision Dispute, then they shall submit the Revision Dispute to the Village Engineer to resolve the Revision Dispute, and the Village Engineer's determination of such Revision Dispute shall be final. Additionally, the landscape plan by Cawrse & Associates, Inc. attached to the Declaration as Exhibit "F" may be otherwise modified as set forth in the Declaration.

- C. Other construction activities upon or about the Property may proceed and be performed simultaneously with the construction and other work relating to the Mound, Walls and Landscaping at such times as are permitted pursuant to Village ordinance, but subject to the following: (a) construction and related work upon the Mound, Walls and Landscaping shall only be performed between the hours of 7:30 a.m. and 7:30 p.m., Monday through Friday and between the hours of 8 a.m. and 3:30 p.m. on Saturdays; provided, however, that, should construction of the Mound, Walls or Landscaping fall behind the Commercial Developer's established construction schedule therefor, the Commercial Developer shall be permitted to perform and conduct construction and related work in connection with the Mound, Walls or Landscaping after the hours set forth above and on Sundays upon the approval of Cawrse & Associates, Inc., and (b) no construction of above-ground improvements that are part of the Project, other than the construction of the temporary topsoil mound referenced above, the Mound, Walls and Landscaping, the Garage, and the basements and first floors of Buildings 5, 6 and 7 shown in the Revised PDP, shall occur until completion of the Mound and Walls, and any such above-ground improvements relating to Buildings 5, 6 and 7 will in no event, at any time, be visible to the Owners from their properties.

All work performed pursuant to this subsection shall be performed utilizing generally accepted commercial construction practices and procedures; provided, however, that if there exists more than one generally accepted commercial construction practice and procedure to perform any such work that the affected Developer reasonably determines to be of comparable cost, such work shall be performed using the practice and procedure that will cause less interference or disruption to the Waterford Residents. Prior to the construction of any Project Improvements on the Property (including, without limitation grading of any portion of the Property), the Commercial Developer shall arrange for, secure, obtain and provide a payment and performance bond, standby letter of credit that is irrevocable without the Village's agreement, or other financial guarantee acceptable to, and in favor of, the Village, in an amount determined by the Village

to be sufficient to construct and pay for the Mound, Walls and Landscaping, in full, in accordance with the Declaration, including (without limitation) the landscape plan by Cawrse & Associates, Inc. If as a result of construction of the Mound, Walls or Landscaping, debris, dust or dirt travels onto the grounds of an Abutting Waterford Resident's property or windows of such Abutting Waterford Resident's home, the Commercial Developer shall, at its expense, upon the reasonable request of such Abutting Waterford Resident, remove such debris, dust or dirt and undertake reasonable and appropriate repairs to the extent such debris, dust or dirt cause tangible damage to such Abutting Waterford Resident's property.

- D. In connection with the construction activities on the Commercial Portion of the Project, the Commercial Developer shall construct, install and maintain such temporary and as necessary, permanent traffic improvements in and around the Property, as determined by the Village, as may be necessary in anticipation of detours, rerouting, and long term traffic disruptions as may arise in conjunction with Project construction, including (without limitation) temporary roadways, signals, and signage, such traffic improvements shall be subject to the Village's discretion and approval. Permanent road and traffic improvements set forth in **Exhibit D** may be implemented as necessary and as they arise, based on the overall Project construction schedule. In addition to temporary traffic improvements during construction, the Commercial Developer at its cost shall provide police or other personnel as may be necessary in the judgment of the Village to properly direct and control traffic during times of disruption related to construction of the Project.

All construction of underground improvements and building shells shall be performed utilizing generally accepted commercial construction practices and procedures; provided, however, that if there exists more than one generally accepted commercial construction practice and procedure to perform any such work that the Commercial Developer determines to be of comparable cost, such work shall be performed using the practice and procedure that will cause less interference or disruption to the Waterford Residents.

**V. VACATION OF PINECREST DRIVE AND WALNUT HILLS ROAD.**

- A. At the time of commencement of the Commercial Portion of the Project, the Village shall take the steps necessary to vacate Pinecrest Drive and that portion of Walnut Hills Road that is located within the PD-4 Sub-District. At the time of commencement of the Residential Portion of the Project, the Village, at the request of the Residential Developer, shall take such steps as are necessary to vacate the remaining portion of Walnut Hills Road which is located within the PD-5 Sub-District; provided, however, that in connection with any such vacation,

the Residential Developer and, to the extent necessary, the Commercial Developer, shall grant to each owner of property within the PD-5 Sub-District (other than the Residential Developer) a perpetual easement and right of ingress and egress over the private roadways constructed within, or providing ingress and egress to, the Residential Portion of the Project to and from Orange Place and Chagrin Boulevard (the “*PD-5 Roadway*”). In connection with the vacation of Pinecrest Drive and Walnut Hills Road, the Developers shall be liable for any and all necessary and applicable utility and easement relocations arising from the vacation of such public thoroughfares.

- B. As part of the Commercial Portion of the Project, the Commercial Developer shall cause to be constructed and shall maintain an access roadway that will provide access from any unvacated portion of Walnut Hills Road to and from Orange Place as shown on the Revised PDP. This access roadway shall to constructed to Village standards suitable for vehicular traffic, including, but not limited to, Village service and emergency vehicles, automobile and truck traffic.

## **VI. ASSESSMENT**

Within thirty (30) days after the request of the Village, the Developers shall present a petition to the Village requesting construction of an all-purpose trail serving the Village and connecting to the Property at the northeast corner of Harvard Road and Orange Place (the “*Trail*”), provided that the principal cost of the Trail (exclusive of interest and other costs, fees and expenses), assessed to the Property shall not exceed \$5 Million, which principal cost (together with interest and other costs, fees and expenses) shall be assessed and collected in twenty (20) equal annual installments.

## **VII. CONSIDERATION PAID BY THE COMMERCIAL DEVELOPER**

In addition to all other sums due hereunder or under the Village’s Ordinances, the Commercial Developer shall pay the Village the sum of \$500,000.00 as consideration for the Easements and the use of the Village Property thereunder and as additional consideration for all of the costs incurred and to be incurred by the Village in conjunction with the planning and construction of the Project. Such consideration shall be paid by the Commercial Developer to the Village upon execution of the Easements, provided, however, in the event that the Easements have not been executed within ninety (90) days following the approval by the Village of the Final Development Plan for the Commercial Portion of the Project, the Commercial Developer shall pay to the Village \$250,000.00 of such consideration not later than the ninetieth (90<sup>th</sup>) day following the approval of the Final Development Plan for the Commercial Portion of the Project and the remaining \$250,000.00 upon execution of the Easements.

## VIII. ENFORCEMENT

- A. The Village Building Commissioner shall be responsible for determining and verifying compliance with the terms of this Agreement and the PPDD Regulations. In the event that the Village Building Commissioner believes that the Developers, or either of them, has violated any of the terms of this Agreement or the PPDD Regulations, the Village shall promptly give the Commercial Developer or the Residential Developer, as the case may be, notice of the violation. The Village shall not exercise any remedies for such default unless the Village shall have given the affected Developer notice thereof and such Developer shall not have cured such default within thirty (30) days after the initial notice thereof from the Village (but no default shall be deemed to exist hereunder if such default cannot reasonably be cured in thirty (30) days and the affected Developer commences to remedy such default within said thirty (30) day period and proceeds thereafter with due diligence until completion, and completes such remedy within sixty (60) days of the initial notice thereof from the Village, or such additional period of time as the Village may approve); provided, however, if the default has created an emergency situation requiring immediate corrective action to protect property or persons from damage or injury, the Village shall be permitted to take corrective action at the expense of the Commercial Developer or the Residential Developer, as the case may be, prior to such notice provided the Village has used its best efforts to give the affected Developer written notice thereof and such Developer has not promptly responded. Notwithstanding anything to the contrary in this Agreement, neither the Commercial Developer nor the Residential Developer shall be subjected to any liability hereunder where either the violation or failure to cure the same result from Force Majeure (as defined herein).
- B. Notwithstanding the foregoing, to the extent the Waterford Residents are intended third party beneficiaries of Sections II.B., C., D., E., and F., and Sections IV.A., B., and the last paragraph of Section IV of this Agreement (the “**Third-Party Benefitting Provisions**”), the Village shall have no obligation to act (but shall nevertheless retain the right to act), to enforce the Third-Party Benefitting Provisions, unless and until such other party or parties, having the right to enforce, obtains a court order so requiring Village action pursuant to, and subject to the conditions of, Section IX.L of this Agreement. Moreover, the right and obligation of the Village to enforce any and all obligations hereunder, shall be undertaken based upon such acts as are in the best interest of the Village, in its entirety. The foregoing, however, shall not limit the rights of any person under Section IX.L.

**IX. MISCELLANEOUS**

A. **NOTICES.** Any notice of communication required or permitted to be given under this Agreement by either party to the other shall be deemed sufficiently given if personally delivered, or mailed by certified United States mail, postage prepaid, and addresses as follows:

1. To the Village: Mayor  
Orange Village  
4600 Lander Rd.  
Orange Village, Ohio 44022;

With copies to: Paul J. Singerman, Esq.  
Singerman, Mills, Desberg &  
Kauntz Co., L.P.A.  
3333 Richmond Road, Suite 370  
Beachwood, Ohio 44122;

-and-

Clerk of Council  
Orange Village  
4600 Lander Rd.  
Orange Village, Ohio 44022;

2. To Commercial Developer: Pine Orange LLC  
c/o Fairmount Properties, LLC  
1138 West 9<sup>th</sup> Street, Suite 200  
Cleveland, Ohio 44113  
Attention: General Counsel;

With copies to: Jordan Berns, Esq.  
Berns, Ockner & Greenberger, LLC  
3733 Park East Dr., Suite 200  
Beachwood, Ohio 44122;

3. To the Residential Developer: Walnut Hills LLC  
c/o John P. Liekar, Esq.  
CentiMark Corporation  
12 Grandview Circle, Third Floor  
Canonsburg, PA 15317-8533

Any party may change its address for notice purposes by providing written notice of such change to the other parties.

B. AMENDMENT.

- (a) Recognizing the likelihood of changing conditions (such as demand and supply factors; changes in tenants that are in (or likely to be in) the northeastern Ohio regional market area; and other needs and concerns of the Village and the Developers), the parties agree to review and consider amendments to this Agreement, as necessary.
- (b) The Village and the Developers acknowledge and agree that in the event either party requests further amendment and/or modification of this Agreement, the affected parties shall thereafter engage in good-faith discussion and negotiation, undertaking all efforts to resolve and address such issues as the parties may then raise in connection with this Agreement and such further amendment and modification thereof. In the event that any amendment to this Agreement affects only the Commercial Portion of the Project, such amendment may be made without the approval or consent of the Residential Developer. In the event that any amendment to this Agreement affects only the Residential Portion of the Project, such amendment may be made without the approval or consent of the Commercial Developer. Notice shall be provided to each Developer of any amendment to this Agreement, even if the approval or consent of such Developer may not be necessary for such amendment.
- (c) The parties further acknowledge and agree that this Agreement, as initially executed, is intended to outline the goals and objectives of the Project, as among the Developers and the Village, and governs the obligations of the parties. Nevertheless, the parties recognize and agree that several additional issues which may be integral to the parties' relationship, the construction of the Project and the overall development of the Property, may need to be further addressed, and shall be subsequently incorporated herein by amendment, including without limitation, demolition requirements, reporting requirements, and additional insurance and indemnification obligations.
- (d) Upon agreeing to amend any terms or conditions contained in this Agreement, including an agreement as to the substance and form of such amendment which each of the Village and the affected Developer is prepared to accept (an "***Amendment***"), to the extent any or all of the Third-Party Benefitting Provisions are to be modified or amended by such Amendment, the Village and the affected Developer shall deliver to each of the then current fee owners of each of the then improved properties on Waterford Court (each a "***Waterford Property***"), written notice of such Amendment, including a copy thereof (the "***Amendment Notice***"), and the date upon which Council shall hold a public hearing on the proposed amendment.

Delivery of such Amendment Notice and notice of the public hearing shall be deemed to be sufficiently given as to each and any Waterford Property if such Amendment Notice is personally delivered, or mailed by certified United States mail, postage prepaid to the street address of each such Waterford Property, unless the Mayor of the Village is notified, prior to the date of such Amendment Notice, in writing, of another address to which such Amendment Notice shall be delivered, provided that no Waterford Property shall be entitled to more than one Amendment Notice as to any Amendment.

Within thirty (30) days after the date of such Amendment Notice, each then current fee owner of a Waterford Property (a “*Waterford Owner*”), shall personally deliver, or mail by certified United States mail, postage prepaid, written notice (each an “*Owner’s Notice*”) which, (i) clearly identifies such Waterford Owner; (ii) is signed by such Waterford Owner; and (iii) states such Waterford Owner’s approval or disapproval of the pending amendment. Each Waterford Property shall be entitled to one such Owner’s Notice with respect to each Amendment Notice. If more than one Owner’s Notice is received from a Waterford Property, the first such Owner’s Notice received from a particular Waterford Property shall control. Any Waterford Property from which an Owner’s Notice is not received within thirty (30) days after the date of such Amendment Notice, shall be deemed to have approved the Amendment.

An Amendment shall be deemed to be approved and Village and Developer may thereupon proceed to execute and effectuate such Amendment, unless six (6) or more Owner’s Notices disapproving such Amendment are received within (30) days after the date of such Amendment Notice

The Village’s approval of any amendment to this Agreement identified in subsection (d) of this section shall not be effective unless and until Council approves such amendment by legislative action held after the public hearing required by this provision.

- C. **INCOME TAX.** The Developer shall withhold all Village income taxes due or payable under the provisions of the Village’s income tax ordinance for wages, salaries and commissions paid to its employees (if any) pursuant to the Village’s income tax ordinances. The Developer shall require its contractors or subcontractors to withhold any such Village income taxes due for services arising from or in relation to the Project or this Agreement. The Developer shall be liable for any unpaid Village income taxes of the employees, contractors, or subcontractors relating to the Project. Upon request, the Developer shall submit, in a format acceptable to the Treasurer of the Village, a reconciliation of all wages paid to its employees, contractors, and subcontractors that performed work in the

Village with respect to the Project. In addition, in order to facilitate the income tax sharing between the Village and the Orange City School District as a result of the tax-increment financing related to the Commercial Portion of the Project, the Commercial Developer shall, within thirty (30) days after the end of each calendar year, provide the Village with a listing of each of the tenants at the Commercial Portion of the Project, which listing will include the correct legal name of each tenant to facilitate the ability of the Village to track income taxes paid by employees at the Commercial Portion of the Project.

D. **SUCCESSORS-IN-INTEREST**. All rights and obligations contained herein shall be binding upon and inure to the benefit of each of the parties, as well as their respective successors, and assigns, provided however that:

(a) As to the Commercial Portion of the Project, until the Significant Initial Occupancy Date, the Village shall have the right to approve, consent to and confirm any Transfer (as defined below), of the rights and obligations of the Commercial Developer hereunder to any third party; provided, however, that a Related Party Transfer (as defined below) shall not be deemed to be a Transfer hereunder.

(b) As to the Residential Portion of the Project, until such time as (i) the northerly portion of Walnut Hills Road has been vacated as set forth in Section V, above, and (ii) the PD-5 Roadway has been fully completed, the Village shall have the right to approve, consent to and confirm any Transfer of the rights and obligations of the Residential Developer hereunder to any third party; provided, however, that a Related Party Transfer shall not be deemed to be a Transfer hereunder.

(c) As used herein, the following terms shall have the following meanings:

(i) “**Transfer**” shall mean the sale, transfer or conveyance of all or any part of the Commercial Portion of the Project or the Residential Portion of the Project, as the case may be, and/or of a substantial interest in the ownership or control of the Commercial Developer or the Residential Developer, as the case may be; provided, however, that (1) in respect of the Commercial Portion of the Project, the sale, transfer or conveyance by the Commercial Developer of an outlot within the Commercial Portion of the Project (as such outlot is depicted in the Revised PDP, as amended, or any approved final development plan for the Commercial Portion of the Project) for development purposes shall not be deemed to be a Transfer hereunder and (2) in respect of the Residential Portion of the Project, the sale, transfer or conveyance of a lot or lots upon which shall be constructed a residential dwelling shall not be deemed to be a Transfer hereunder;

- (ii) “**Related Party Transfer**” shall mean (1) in respect of a Transfer by the Commercial Developer, a transfer or other conveyance of the Commercial Portion of the Project to an entity which is controlled by Developer or Fairmount Properties LLC or of which Fairmount Properties LLC and Pine IX LLC owns or controls the majority of ownership interests therein and (2) in respect of a Transfer by the Residential Developer, a transfer or other conveyance of the Residential Portion of the Project to any entity which is controlled (alone or jointly) by the Residential Developer, the Commercial Developer, or Fairmount Properties LLC, or of which (alone or jointly) the Commercial Developer, Fairmount Properties LLC, the Residential Developer or Edward Dunlap owns or controls the majority of ownership interests therein.
- (d) No Related Party Transfer shall be subject to the Village’s approval, consent or confirmation hereunder. The Commercial Developer or Residential Developer, as the case may be, shall notify each transferee of the obligations hereunder, and that the same are binding on such transferees, provided however, the Village reserves the right to require each and any such transferee to independently adopt, ratify and confirm all such rights and obligations hereunder, in writing. Upon any Transfer approved by the Village pursuant to the terms of this Section IX.D., other than a Related Party Transfer, the transferor shall have no further liability hereunder, for acts or omissions to act arising on and after the date such Transfer is effective, but the transferor shall not be released from liability for acts or omissions to act arising prior to the date of such Transfer.
- (e) Developer and the Village acknowledge and agree that the Village’s approval, consent and/or confirmation of any Transfer prior to the Significant Initial Occupancy Date, to the extent such approval, consent and/or confirmation may be required hereunder, shall not be withheld, denied, conditioned or delayed if at the time of such contemplated Transfer, the intended transferee (the “**Transferee**”), including the entity retaining ownership and/or control over the Property and/or the affiliated individual or entity (including a parent entity) which owns or controls a majority of the ownership interest in such Transferee, (i) demonstrates to the Village’s satisfaction the availability of and unconditional access by Transferee to, the financial resources necessary to complete construction of the Project, (ii) demonstrates comprehensive knowledge and familiarity with large-scale, commercial retail projects in the northeast Ohio region area; and (iii) demonstrates significant experience and a successful track-record, of developing, construction, managing and/or operating “upscale” or “high end” retail developments. Developer and the Village acknowledge and agree that the foregoing are minimum qualifications which any Transferee shall be required to

fulfill, provided however, the Village may, in its sole discretion, waive any or all of the foregoing requirements, as circumstance warrant.

- E. **EXHIBITS**. The Exhibits to this Agreement constitute an integral part of and are hereby incorporated by reference into this Agreement.
  
- F. **COUNTERPARTS**. This Agreement may be signed in one or more counterparts or duplicate signature pages with the same force and effect as if all required signatures were contained in a single original instrument anyone one or more such counterparts or duplicate signature pages may be removed from any one or more original copies of this Agreement and annexed to other counterparts or duplicate signature pages to form a completely executed original instrument.
  
- G. **SEVERABILITY**. The invalidity or unenforceability of any one or more phrases, sentences, clauses, or sections in this Agreement shall not affect the validity or enforceability of the remaining portions of this Agreement, or any part thereof, and this Agreement shall be deemed amended to the extent required to make the provisions hereof lawful, valid and enforceable, giving maximum effect to the intent of the parties as evidenced in this Agreement. The parties agree to enter into a written instrument to evidence any such amendment.
  
- H. **GOVERNING LAW**. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio.
  
- I. **CAPTIONS**. The captions of the Articles and Sections of this Agreement are inserted for convenience only and shall not be deemed to constitute a part of this Agreement or in any manner limit or define the terms of this Agreement.
  
- J. **FORCE MAJEURE**. Except as expressly provided herein or with respect to any monetary obligation, if any party is delayed or hindered in, or prevented from, the performance of any covenant or obligation hereunder, as a result of any cause or circumstance beyond the reasonable control of such party, including, but not limited to, strikes, lockouts, shortages of labor, fuel or materials, acts of God, enemy act, riot, insurrection or other civil commotion, fire or other casualty or any future valid orders of any other governmental agency, court, or tribunal with jurisdiction over the Project, the Developers or the Village, then the time for performance of such covenant or obligation shall be extended by a reasonable time to accommodate such delay or hindrance. The party seeking the benefit of the provisions of this section shall, within thirty (30) days after the beginning of any such delay, notify the other parties thereof in writing, and the cause thereof, and provide information concerning the projected term of the delay.

K. **ENTIRE AGREEMENT.** This Agreement is intended to supersede all prior agreements and understandings concerning the subject matter of this Agreement, with the understanding of the parties that this Agreement and the applicable law provide for further reviews and the good faith efforts of the parties to reach subsequent agreements on issues related to the Project. While this Agreement is intended to and shall impose obligations on the Residential Developer to the extent that the obligations hereunder relate to the Residential Portion of the Project, the parties acknowledge that the Residential Developer has not submitted any plans for the design and construction of the Residential Portion of the Project and that in connection with the request for approval thereof, the Village may require that the Residential Developer amend this Development Agreement as it relates to the Residential Portion of the Project or enter into a separate development agreement related solely to the Residential Portion of the Project.

L. **THIRD-PARTY BENEFICIARIES.**

1. Subject to the conditions set forth Section VIII.B., above and in Subsection IX.L.2., below, the Waterford Residents are the sole intended third party beneficiaries of the Third-Party Benefiting Provisions and shall have the rights individually or collectively to enforce the provisions thereof. The Waterford Residents are not intended to be third party beneficiaries of any other provisions of this Agreement, and no persons or entities other than the Waterford Residents are intended to be third party beneficiaries of any provision of this Agreement.
2. No Waterford Resident shall be permitted to take action in court to enforce the Third-Party Benefiting Provisions unless the following has occurred:
  - i. Such Waterford Resident has provided the Village and the Developers notice in writing of purported violation of one or more the Third-Party Benefiting Provisions and within thirty (30) days after date of such notice, the Developers have failed to cure such purported violation (or, if such purported violation cannot reasonably be cured within such thirty (30) day period, the Developers have failed to commence to remedy such purported violation within the thirty (30) day period and proceed thereafter with due diligence until completion and completed the same within sixty (60) days of the date of such notice or such additional period of time as weather permits (such period, the “*Default Period*”).

- ii. Such Waterford Resident (the “*Notifying Waterford Resident*”) has, after expiration of the Default Period, attempted in good faith to resolve any dispute, claim or controversy arising out of or relating to the purported violation of one or more the Third-Party Benefiting Provisions identified in the notice required hereunder by mediation before a mediator (and at a date, time and location in Cuyahoga County, Ohio) mutually agreed upon by the Notifying Waterford Resident and the Developers or, if such Notifying Waterford Resident and the Developers cannot so agree, before a mediator (and at a date, time and place in Cuyahoga County, Ohio) determined by the Village’s Mayor; provided, however, that in no event shall such mediation take place more than thirty (30) days after the Default Period and, if such mediation does not occur within such thirty (30) day period, the parties shall be relieved of any requirement to mediate. The Notifying Waterford Resident shall notify the Village and all other Waterford Residents of such mediation and invite them to participate in such mediation. The Notifying Waterford Resident and the Developers shall share equally the costs and expenses of the mediator (which shall not include, and each party shall bear, the expenses incurred by each party for its own legal representation in connection with any mediation). Such mediation shall constitute settlement negotiations, and, to the extent allowed by applicable law, all offers, promises, conduct and statements, whether oral or written, made in the course of such mediation by any of the parties or their agents shall be confidential and inadmissible in any other legal proceeding, provided, however, that evidence which is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation.

Any Waterford Resident who, after complying with the provisions of Subsection L.2(a) and (b) above, initiates an action in court to enforce this Declaration or declare its terms shall, to the extent required by law, name as necessary parties thereto the Developers (or if a transfer of a Developer’s entire interest has occurred, then, instead of such Developer, the transferee of such Developer’s interest), all other Waterford Residents, and the Village. A Waterford Resident who initiates action in court to enforce the terms of the Third-Party Benefiting Provisions may seek injunctive relief or specific performance, but no Waterford Resident shall be entitled to seek or recover damages or attorneys fees from the

Developers or their respective successors or assigns or from the Village for any breach of the Third-Party Benefiting Provisions.

The Village and the Developers acknowledge and agree that the foregoing Third-Party Benefiting Provisions are intended to clearly delineate certain specific enforcement rights of the Waterford Residents with respect to provisions within this Agreement which directly benefit said Waterford Residents. The delineation of such Third-Party Benefiting Provisions, neither diminishes nor derogates the rights of any other person to bring action against the Village, the Developers or the Property, as may be available pursuant to applicable law.

- M. **INSURANCE.** During construction and until completion of the improvements on that portion of the Property being developed by it, each Developer shall insure against all claims for personal injury or death or property damage occurring in or about the Property, with single limits of liability for bodily injury or death or damage to property of not less than Five Million Dollars (\$5,000,000). The Village shall be named as an additional insured on the public liability insurance policies required by this Section. All insurance shall be effected by valid enforceable policies issued by insurers authorized to do business in the State of Ohio and approved by the Village in its discretion. Certificates of such insurance shall be delivered to the Village at least one week prior to commencement of construction; certificates of replacement policies shall be delivered to the Village at least fifteen (15) days prior to expiration of the previous policy. All such policies shall contain agreements of the insurer that the policies shall not be cancelled except upon thirty (30) days prior written notice to the affected Developer and the Village. The affected Developer shall promptly forward to the Village a copy of any such notice of cancellation.
- N. **FURTHER ASSURANCES.** The Developers shall take or cause to be taken any and all other or further actions necessary or required or requested of the Developers in order to effectuate any of the terms and provisions herein.
- O. **GOOD FAITH.** Whenever in this Agreement any party is required or permitted to grant approval or consent, take any action or request any other party to take any action, make decisions or otherwise exercise judgment as to a particular matter, arrangement or term, the party granting such approval or consent, taking or requesting such action, making decisions or otherwise exercising judgment shall act reasonably and in good faith and, in the case of approvals or consents, shall act with all deliberate speed in making its determination of whether or not to approve or consent to any particular matter and shall not impose conditions on the

granting of such approval or consent that the approving or consenting party does not believe are necessary in connection with such approval or consent.

***Remainder of Page Intentionally Left Blank  
Signature Page Follows***

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly on the date set forth above.

**PINE ORANGE LLC**

By: RFS Pinecrest LLC, Manager

By: Fairmount Properties, LLC, Manager

By: \_\_\_\_\_  
Adam Fishman, Member

**WALNUT HILLS LLC**

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

Its: \_\_\_\_\_

**ORANGE VILLAGE**

By: \_\_\_\_\_  
Kathy U. Mulcahy, Mayor

*Remainder of Page Intentionally Left Blank  
Notary Page Follows*

STATE OF OHIO )  
 )  
COUNTY OF CUYAHOGA )

BEFORE ME, a Notary Public in and for said County and State, on this \_\_\_\_ day of May, 2015, did personally appear PINE ORANGE LLC, an Ohio limited liability company, by RFS PINECREST LLC, its Manager, by FAIRMOUNT PROPERTIES, LLC, its Manager, by ADAM FISHMAN, its Member, who stated that he did sign the foregoing instrument in his capacity as such member and on behalf of each limited liability company, and the same was his and each such limited liability company's free act and deed.

\_\_\_\_\_  
Notary Public

STATE OF OHIO )  
 )  
COUNTY OF CUYAHOGA )

BEFORE ME, a Notary Public in and for said County and State, on this \_\_\_\_ day of May, 2015, did personally appear WALNUT HILLS LLC, an Ohio limited liability company, by \_\_\_\_\_, its \_\_\_\_\_, who stated that he did sign the foregoing instrument in his capacity as such \_\_\_\_\_, and the same was his and the company's free act and deed.

\_\_\_\_\_  
Notary Public

STATE OF OHIO )  
 )  
COUNTY OF CUYAHOGA )

BEFORE ME, a Notary Public in and for said County and State, on this \_\_\_\_ day of May, 2015, did personally appear ORANGE VILLAGE, an Ohio chartered municipal corporation by KATHY U. MULCAHY, its duly elected Mayor, who stated that she did sign the foregoing instrument in her capacity as Mayor, and the same was her and the Village's free act and deed.

\_\_\_\_\_  
Notary Public

***Remainder of Page Intentionally Left Blank  
Exhibits Follow***

## **LIST OF EXHIBITS**

**Exhibit A** – Legal Description of the Property

**Exhibit B-1** – Legal Description and Depiction of Block “B-1” of Village Property

**Exhibit B-2** – Legal Description and Depiction of Block “C-1” of Village Property

**Exhibit B-3** – Legal Description and Depiction of Block “A-1” of Village Property

**Exhibit B-4** – Legal Description and Depiction of “Easement Parcel” of Village Property

**Exhibit C** – Declaration of Restrictions

**Exhibit D** – Traffic Improvements

**Exhibit E-1** – Form of Stormwater Easement Agreement

**Exhibit E-2** – Form of Traffic and Landscaping Easement

**EXHIBIT A**

LEGAL DESCRIPTION OF THE PROPERTY

[Attached]

**EXHIBIT B-1**

LEGAL DESCRIPTION OF BLOCK "B-1" OF VILLAGE PROPERTY

[Attached]

**EXHIBIT B-2**

LEGAL DESCRIPTION OF BLOCK "C-1" OF VILLAGE PROPERTY

[Attached]

**EXHIBIT B-3**

LEGAL DESCRIPTION OF BLOCK "A-1" OF VILLAGE PROPERTY

[Attached]

**EXHIBIT B-4**

LEGAL DESCRIPTION OF "EASEMENT AREA" OF VILLAGE PROPERTY

[Attached]

**EXHIBIT C**

DECLARATION OF RESTRICTIONS

[Attached]

**EXHIBIT D**

TRAFFIC IMPROVEMENTS

[Attached]

**EXHIBIT E-1**

FORM OF STORMWATER EASEMENT AGREEMENT

[Attached]

**EXHIBIT E-2**

FORM OF TRAFFIC AND LANDSCAPING EASEMENT

[Attached]