

TAX INCREMENT SERVICE PAYMENT AGREEMENT

THIS TAX INCREMENT SERVICE PAYMENT AGREEMENT (the “Agreement”) is entered into as of this ____ day of _____, 2015 by and between **ORANGE VILLAGE**, an Ohio municipal corporation (hereinafter referred to as the “Village”), and **PINE ORANGE LLC**, an Ohio limited liability company (hereinafter referred to as the “Developer”), under the following circumstances:

A. The Developer intends to develop or redevelop certain parcels of real property located within the boundaries of the Village, described in Exhibit A attached hereto and made a part hereof (the “Site”) as a mixed-use development (the “Development”). The Development will benefit the Village and its residents by creating jobs, enlarging the property tax base, enhancing income tax revenues and stimulating collateral development in the Village.

B. Pursuant to Ohio Revised Code Sections 5709.40, .42, and .43 (together with related provisions of the Ohio Revised Code, the “TIF Act”) and the TIF Ordinance (as hereinafter defined), the Village has, among other actions: (i) established a tax increment financing program with respect to the real property that will be developed and redeveloped on the Site (the “TIF”); (ii) declared 100% of the increase in assessed value of the real property comprising the Site (which increase in assessed value is also hereinafter referred to as the “Improvement” as defined in the TIF Act) following the effective date of the TIF Ordinance to be a public purpose and exempt from real property taxation for the duration of the TIF Exemption; (iii) provided for service payments in lieu of taxes (the “Service Payments”) as obligations running with the land for the duration of the TIF Exemption payable with respect to the real property comprising the Site; (iv) authorized the payment of certain costs of the Public Infrastructure Improvements (as such term is defined in the TIF Act and further specified in the TIF Ordinance) from the Service Payments; and (v) authorized this Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and promises herein contained, the sufficiency of which are acknowledged by the parties hereto, the Village and the Developer hereby agree as follows:

1. Definitions; Interpretation.

(a) Definitions. In addition to the words and terms defined elsewhere in this Agreement, unless the context or use clearly indicates another meaning or intent:

“Associated Rollback Payments” means “rollback payments” associated with the Service Payments (i.e., those rollback payments that are paid to the Village with respect to the Improvements as a result of the TIF Exemption, and that would have been payable to taxing districts with respect to the Improvements had the TIF Exemption not been granted) due under Revised Code Section 321.24 (relating to Revised Code Section 319.302), which Associated Rollback Payments are, if and as received by the Village, to be transferred, deposited and otherwise dealt with as Service Payments.

“Authorized Village Representative” means the person at the time designated to act on behalf of the Village by written certificate containing the specimen signature of that person and signed on behalf of the Village by its Mayor. That certificate may designate an alternate or alternates and may be supplemented or changed from time to time by the Mayor.

“Authorized Developer Representative” means the person at the time designated to act on behalf of the Developer by written certificate furnished to the Village containing the specimen signature of that person and signed on behalf of the Developer by its authorized representative. That certificate may designate an alternate or alternates and may be supplemented or changed from time to time by that officer. In the event that all persons so designated become unavailable or unable to act and the Developer fails to designate a replacement within ten days after the date that the Village provides written notice to the Developer that a replacement is unavailable or unable to act, the Village may appoint an interim Authorized Developer Representative (which may be one or the other of the Authorized Village Representatives) until such time as the Developer designates a replacement.

“Authorized Official” means the Mayor of the Village, or any one person designated in writing by the Mayor to act in that capacity.

“Closing Date” means the date that the financing of the Public Infrastructure Improvements is closed.

“Compensation Agreement” means the School Compensation Agreement between the Village and the School District dated _____, 2015.

“County” means the County of Cuyahoga, Ohio.

“County Fiscal Officer” means the Fiscal Officer of the County.

“County Treasurer” means the Treasurer of the County.

“Developer” means Pine Orange LLC, an Ohio limited liability company, together with any permitted successors or assigns under this Agreement.

“Exemption Period” means the duration of the TIF Exemption commencing for each Parcel with the first tax year that begins after the effective date of the Ordinance and in which an Improvement attributable to a new structure on that Parcel would first appear on the tax list and duplicate of real and public utility property were it not for the exemption granted by this Ordinance, but not later than January 1, 2018, and ending on the earlier of (A) thirty (30) years after such commencement or (B) the date on which the Village can no longer require service payments in lieu of taxes, all in accordance with the requirements of the TIF Act and the TIF Ordinance.

“Improvements” means any increase in the assessed value of the real property located within the Site that would first appear on the tax list and duplicate of real and public utility property after the effective date of the TIF Ordinance, as provided in the TIF Act.

“Owners” means, initially, the Developer and any other owners of any Parcels.

“Parcels” means the parcel or parcels that comprise of the Site, as such Parcels may hereafter be split or consolidated.

“Person” or words importing persons mean firms, associations, partnerships (including without limitation, general and limited partnerships), joint ventures, societies, estates, trusts, corporations, limited liability companies, public or governmental bodies, other legal entities and natural persons.

“Public Infrastructure Improvements” means the public infrastructure improvements described in the TIF Ordinance and further described in Exhibit B attached hereto and any other public infrastructure improvements hereafter designated pursuant to the TIF Ordinance as public infrastructure improvements made, to be made, or in the process of being made that directly benefit, or that once made will directly benefit, the Parcels.

“School District” means the Orange City School District (Cuyahoga County, Ohio).

“Service Payment Agreement” or “Agreement” means this Tax Increment Service Payment Agreement dated on or prior to the Closing Date, between the Village and the Developer, as amended or supplemented from time to time.

“Service Payments” means the service payments in lieu of taxes to be paid pursuant to the TIF Act, the TIF Ordinance and this Agreement, including any Associated Rollback Payments, together with any interest or penalties associated with any of the foregoing.

“Site” means those parcels of land described in Exhibit A and being the site of the Development

“State” means the State of Ohio.

“Tax Incentive Review Council” means the Tax Incentive Review Council established by the Village pursuant to Ohio Revised Code Section 5709.85.

“Tax Increase Amount” means, for each year that the Compensation Agreement is in effect, the portion, if any, of the Service Payments derived from (i) additional property tax levies approved by the voters of the School District after the date of the Compensation Agreement and any renewals or replacements of such levies and (ii) a replacement levy or a renewal levy with an increase, replacing or renewing, as applicable, a levy in existence on the date of the Compensation Agreement to the extent such replacement or renewal levy exceeds the effective tax rate of the levy as it exists immediately prior to being replaced or renewed; provided, however, that an additional property tax levy approved by the voters of the School District within one year of the expiration or discontinuance of a then-existing levy shall not be treated as an additional levy unless the expiring or discontinued levy is a levy described in clause (i) above.

“TIF Act” means Sections 5709.40, 5709.42, 5709.43, 5709.82, 5709.83 and related provisions of the Ohio Revised Code, all as enacted and amended from time to time.

“TIF Bonds” means one or more series of bonds issued to fund costs of the Public Infrastructure Improvements.

“TIF Exemption” means the exemption of the Improvements from real property taxation pursuant to the TIF Act, the TIF Ordinance, and this Agreement, all in accordance with and subject to the terms thereof and hereof.

“TIF Fund” means the “Pinecrest Municipal Public Improvement Tax Increment Equivalent Fund” established in the TIF Ordinance.

“TIF Ordinance” means Ordinance No. 2015-__ adopted by the Village Council on May 6, 2015 approving, inter alia, the TIF Exemption, this Agreement, and the Compensation Agreement.

“Village” means Orange Village, Ohio.

“Village Council” means the Village Council of the Village.

(b) Interpretation. Any reference herein to the Village or the Village Council, or to any officer thereof, includes entities or officials succeeding to their respective functions, duties or responsibilities pursuant to or by operation of law or lawfully performing their functions.

Any reference to a section or provision of the Constitution of the State, or to a section, provision or chapter of the Ohio Revised Code, or to any statute of the United States of America, includes that section, provision or chapter as amended, modified, revised, supplemented or superseded from time to time; provided, that no amendment, modification, revision, supplement or superseding section, provision or chapter shall be applicable solely by reason of this paragraph, if it constitutes in any way an impairment of the rights or obligations of the Village, the Developer, or any other party under this Agreement, or any other instrument or document entered into in connection with any of the foregoing.

Unless the context indicates otherwise, words importing the singular number include the plural number, and vice versa. The terms “hereof,” “hereby,” “herein,” “hereto,” “hereunder,” “hereinafter” and similar terms refer to this Agreement; and the term “hereafter” means after, and the term “heretofore” means before, the date of this Agreement. Words of any gender include the correlative words of the other genders, unless the sense indicates otherwise.

2. Developer Covenants and Representations.

(a) The Developer represents, covenants and agrees that:

(1) it is a limited liability company duly organized and validly existing under the laws of the State of Ohio and is fully qualified to transact its business in the State of Ohio;

(2) it is not in violation of or in conflict with any provisions of the laws of the United States of America or the State applicable to the Developer that would impair its ability to carry out its obligations contained in this Agreement;

(3) this Agreement has, by proper action, been duly authorized, executed and delivered by the Developer and all steps necessary to be taken by the Developer, have been taken to constitute this Agreement, and the covenants and agreements of the Developer contemplated herein and therein, valid and binding obligations of the Developer, enforceable in accordance with their terms;

(4) (A) it has full limited liability company power and authority to execute, deliver and perform this Agreement and perform the transactions contemplated hereby, (B) to the knowledge of the Developer, that execution, delivery and performance does not and will not violate any provision of law applicable to the Developer or the Developer's organizational or operating agreements, and (C) neither the entering into this Agreement nor the performance thereof will constitute a violation or breach by the Developer of any contract, agreement, understanding or instrument to which the Developer is a party or, to the best of its knowledge, by which the Developer is subject or bound, or any judgment, order, writ, injunction or decree issued against or imposed upon the Developer, or, to the best of its knowledge, will result in the violation of any applicable law, order, rule or regulation of any governmental or quasigovernmental authority;

(5) there is no pending litigation, investigation or claim which affects or which might affect the Developer's performance of this Agreement and to the best of the Developer's knowledge, there is no threatened litigation, investigation or claim that affects or that might affect the Developer's performance of this Agreement; and

(6) the representations, covenants and agreements of the Developer made in this Agreement shall be deemed to apply as of the date of the execution of this Agreement and shall be construed as continuing (during the period of the TIF Exemption) representations and agreements and such representations made by the Developer are made with the knowledge and expectation that notwithstanding any investigation conducted by or on behalf of the Village (except as expressly stated in this Agreement), the Village is placing complete reliance thereon and that such representations are to be treated as material to the Village entering into this Agreement and the Developer further represents that no representation set forth in this Agreement contains any untrue statement of material fact.

(d) The Developer represents that, to the best of its knowledge, it is not prohibited from contracting with the Village by any provision of the Ohio Revised Code relating to conflicts of interest, illegal interest in government contracts, or any other ethical prohibition, and for breach or violation of this warranty, the Village shall have the right to annul this Agreement with no further obligation or penalty.

(e) In accordance with Ohio Revised Code Section 5709.832, the Developer hereby agrees that, in connection with the development of the Site, it shall not deny any individual employment based on considerations of race, religion, sex, disability, color, national origin or ancestry.

3. Village Covenants and Representations. The Village covenants and represents to the Developer as follows:

(a) Neither the entering into of this Agreement nor the performance thereof will constitute a violation or breach by the Village of any contract, agreement, understanding or instrument to which the Village is a party or by which the Village is subject or bound, of any judgment, order, writ, injunction or decree issued against or imposed upon the Village, or will result in the violation of any applicable law, order, rule or regulation of any governmental or quasigovernmental authority.

(b) There is no pending litigation, investigation or claim which affects or which might affect the Village's performance of this Agreement and to the best of the Village's knowledge, there is no threatened litigation, investigation or claim that affects or that might affect the Village's performance of this Agreement.

(c) This Agreement has, by proper action, been duly authorized, executed and delivered by the Village and all steps necessary to be taken by the Village have been taken to constitute this Agreement, and the covenants and agreements of the Village contemplated herein and therein, valid and binding obligations of the Village, enforceable in accordance with their terms

(d) Except for actions contemplated by this Agreement, as of the date of the execution of this Agreement, the Village has no information or knowledge of any change contemplated in the applicable laws, ordinances or restrictions or any judicial or administrative action that would prevent, limit or impede the Developer's undertaking of the Development.

(e) The representations and agreements of the Village made in this Agreement shall be deemed to apply as of the date of the execution of this Agreement and shall be construed as continuing (during the Exemption Period) representations and agreements and such representations made by the Village are made with the knowledge and expectation that notwithstanding any investigation conducted by or on behalf of the Developer (except as expressly stated in this Agreement), the Developer is placing complete reliance thereon and that such representations are to be treated as material to the Developer in entering into this Agreement and the Village further represents that no representation set forth in this Agreement contains any untrue statement of material fact or omits to state a material fact necessary in order

to make the statement contained herein not materially misleading or not misleading in light of circumstances under which they are made.

4. Tax Increment Financing. The School District has approved the TIF and has authorized and executed the Compensation Agreement. The Compensation Agreement provides, among other things, that the Village shall pay semi-annually to the School District, solely out of Service Payments, within 30 days following receipt, an amount equal to 25% of the real property taxes that the School District would have received, but for the TIF Exemption, but not including any real property taxes that would have been derived from the Tax Increase Amount. In addition, the Village has agreed in the Compensation Agreement to pay semi-annually to the School District, solely out of Service Payments, within 30 days following receipt, an amount equal to 100% of the real property taxes that the School District would have received, but for the TIF Exemption, that are derived from any Tax Increase Amount.

The Village has approved the TIF Ordinance with respect to the Site, and the Developer and any other Owners hereby agree to make Service Payments in accordance with the TIF Act, the TIF Ordinance, and this Agreement. Each Service Payment to be made under this Agreement will be made on a semi-annual basis in an amount equal to one-half ($\frac{1}{2}$) of the annual property tax amount that would have been payable had the TIF Exemption not been granted. During the Exemption Period, the Service Payments must be made semi-annually to the County Fiscal Officer (or to his/her designated agent for collection of Service Payments) by the date on which the real property taxes for the Improvements would otherwise be due and payable. The obligation to make Service Payments is absolute and unconditional.

For each tax year that the Improvements are exempt from real property taxation, the then-Owner of each Parcel must make the Service Payments with respect to that Parcel. The obligation of the Owner to pay in any event the Service Payments may not be terminated for any cause, including without limitation, any acts or circumstances that constitute failure of consideration, destruction of or damage to the Improvements, commercial frustration of purpose, any change in the tax or other laws or regulations or administrative actions or rulings by or under authority of the United States of America or of the State of Ohio, or any failure of the Village to perform and observe any agreement or obligation connected with this Agreement. However, the Owner will have no obligation to make Service Payments for any tax year in which the Improvements are not exempt from real property taxation. In addition, to the extent that Service Payments are made by an Owner as provided herein, such Owner shall not be required to reimburse any local taxing authority for any real property taxes that would otherwise be payable to that taxing authority had the Improvements not been exempted from real property taxation. The covenants to make Service Payments must have priority over any other interest in the Parcels comprising the Site, except for those title exceptions that are approved in writing by legal counsel for the Village.

Developer grants to the Village a continuing first lien on the Parcels comprising the Site as security for payment of each Service Payment. It is agreed that the covenants provided for in this Section must run with the land and in any event and without regard to technical classification, be binding to the fullest extent permitted by law and equity, for the benefit of and enforceable by, the Village, its successors and assigns, against Developer and its successors and

assigns, to the Parcels, including, but not limited to, any grantee in a conveyance of the Parcels through judicial process.

Either this Agreement must be recorded or a recorded declaration of covenants filed with respect to the Parcels prior to the conveyance of any of the Parcels.

It is further intended and agreed that the covenants to make Service Payments must remain in effect for the full Exemption Period, as permitted in accordance with the TIF Act and the TIF Ordinance.

In accordance with Section 5709.911(C)(1) of the Ohio Revised Code, the Parcels, regardless of future use or ownership remain liable for any Service Payments or service charges required by the exemption until the terms of the exemption have been satisfied, unless the Village consents to a subsequent exemption and relinquishes its right to collect the service payments or service charges as provided in Section 5709.911(B)(1) of the Ohio Revised Code.

Any late Service Payments must include an amount for interest calculated on the amount of the late payment at the same rate and in the same amount and payable at the same time as delinquent real property taxes.

Developer shall prepare, execute, and file within the time periods set forth in the Ohio Revised Code such applications, documents, and other information with appropriate officials of the State, the Village, or other public body as may be required to effect the TIF Exemption. The Developer shall also cause exemption applications to be prepared and filed with respect to the Site in accordance with Ohio Revised Code Section 5715.27. The Village shall cooperate in such preparation and filing by Developer, including, without limitation, executing such applications and documents as may be appropriate in assisting the Developer in obtaining such exemptions. The parties acknowledge that the TIF Exemption shall not occur until the State of Ohio Department of Taxation has issued a final determination with respect to the Site in accordance with Ohio Revised Code Section 5715.27. The parties acknowledge that the provisions of Ohio Revised Code Section 5709.91, which specify that the Service Payments shall be treated in the same manner as taxes for all purposes of the lien described in Ohio Revised Code Section 323.11, including but not limited to, the priority of the lien and the collection of Service Payments, shall apply to the TIF. The Village and Developer shall perform such acts as are reasonably necessary or appropriate to affect, claim, preserve, and maintain the exemptions from taxation granted under this Agreement including, without limitation, joining in the execution of all documentation and providing any necessary certificates required in connection with such exemptions. Developer will also join in and assist with any appeal of the findings of the Ohio Tax Commissioner with regard to the tax increment financing. Developer will comply with annual reporting requirements for review by the Tax Incentive Review Council.

After the TIF Exemption has been approved, Developer shall cause notice of the TIF Exemption and its obligations under this Agreement to be recorded and prepared in accordance with the provisions of Ohio Revised Code Section 5709.911(C)(1), at the County Recorder of Cuyahoga County, Ohio.

The parties acknowledge that the Service Payments will be used to pay costs of the Public Infrastructure Improvements and, specifically, to pay debt service charges on the TIF Bonds. The Village has not agreed to issue any TIF Bonds. The Developer further acknowledges that the School District's consent to the TIF Exemption and its obligations under the Compensation Agreement are subject, among other things, to the conditions that (a) the first series of TIF Bonds must be issued by December 31, 2015 and (b) the TIF Exemption for the Parcels shall not commence later than 2018, and that, unless approved in writing by the Village and the School District, failure to satisfy those conditions set forth in Section 2 of the Compensation Agreement shall result in the termination of the Compensation Agreement and the TIF Exemption.

5. Developer Contribution to School District. On the date of issuance of the first series of TIF Bonds, the Developer will pay or cause to be paid, in immediately available funds, indirectly or directly payable from the proceeds of the TIF Bonds, a \$300,000 donation payment, which the School District has agreed in the Compensation Agreement to use for the reconstruction or improvement of the School District's high school auditorium. The parties acknowledge that the School District is a third party beneficiary of this Section 5 and shall have the right to enforce the provisions thereof.

6. Non-Discriminatory Hiring Practices. The Developer and any subsequent Owners agree that they shall not deny any individual employment based on considerations of race, religion, sex, disability, color, national origin, ancestry, sexual orientation, gender identity and expression, or veteran status. Such covenant must run with the land and in any event and without regard to technical classification, be binding to the fullest extent permitted by law and equity, for the benefit of and enforceable by, the Village, its successors and assigns, against Developer and its successors and assigns, to the Parcels, including, but not limited to, any grantee in a conveyance of the Parcels through judicial process. The Developer and any subsequent Owners furthermore agree that they shall use commercially reasonable efforts to require that any lessees located within the Site comply with the provisions of this Section 6.

7. Notices. Any notice or consent required or permitted to be given by or on behalf of either party to the other shall be given by mailing such notice or consent by United States certified or registered mail, postage prepaid and return receipt requested, or via a reputable express overnight mail service which provides proof of delivery addressed to the parties as set forth below or at such other address as may be specified from time to time in writing delivered to the other party. Notices shall be effective upon receipt or refusal, as the case may be.

To the Village:

Mayor

Orange Village

4600 Lander Rd.

Orange Village, Ohio 44022;

With copies to: Price Finley, Esq.
Bricker & Eckler LLP
100 S. Third St.
Columbus, Ohio 43215;

-and-

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

To the Developer: Pine Orange LLC
c/o Fairmount Properties, LLC
1138 West 9th 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;

8. Remedies.

(a) In General. Except as otherwise provided in this Agreement, in the event of any default in or breach of this Agreement by either party hereto, or any successor to such party, such party (or successor) shall, within forty-five (45) days of receipt of written notice from the other, proceed to cure or remedy such default or breach. In case such action is not taken or not diligently pursued, or the default or breach shall not be cured or remedied within a reasonable time, the aggrieved party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, including, but not limited to, proceedings to compel specific performance by the party in default or breach of its obligations. All rights and remedies shall be cumulative and shall not be construed to exclude any other remedies allowed at law or in equity.

(b) Unforeseeable Delay. Neither party shall be considered in breach of its obligations under this Agreement due to unforeseeable causes beyond its reasonable control and without its fault or negligence, including, but not restricted to, acts of God, acts of the public enemy, acts of the Federal Government, orders of courts, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather or delays of subcontractors due to such causes. The party seeking the benefit of the provisions of this subsection shall, within fifteen (15) calendar days after actual notice of any such unforeseeable delay, have first notified the other party thereof in writing, and of the cause or causes thereof. With respect to the Developer, delays or failures to perform due to lack of funds shall not be deemed unforeseeable delays beyond the reasonable control of the Developer.

9. Miscellaneous.

(a) Conflict of Interest: Representatives of the Village Not Individually Liable. No official or employee of the Village shall have any personal interest, direct or indirect, in this Agreement, nor shall any such official or employee participate in any decision relating to this Agreement which affects his or her personal interests or the interest of any corporation, partnership, or association in which he or she is, directly or indirectly, interested. No official or employee of the Village shall be personally liable to the Developer, or any successor in interest, in the event of any default or breach by the Village or for any amount or amounts which may become due to the Developer or any successor to the Developer or on any obligations under the terms and conditions of this Agreement.

(b) Process of Agreement. The execution of this Agreement by the Mayor on behalf of the Village has been approved by the Village Council through the adoption of the TIF Ordinance, and as of the date of this Agreement the TIF Ordinance remains in full force and effect. Developer, by appropriate written authorization, will duly designate an officer of Developer to execute this Agreement upon receipt of an executed original from the Village pursuant to the conditions set forth herein.

(c) Cooperation Clause. If the terms of this Agreement, or any amendment or amendments to any provision of Village laws that are required to be enacted or amended as a consequence of this Agreement, are challenged by either referendum or administrative appeal to the courts or such other legal or equitable remedies sought by those who may oppose this Agreement, the parties agree to cooperate with each other to uphold the validity and enforceability of this Agreement, because the parties recognize that it is within the discretion of the Village under the laws and Constitution of the State of Ohio to provide for agreements between landowners and municipalities to further what is in the best interest of the public health, safety and welfare of a municipality and the other rights of private property there under. This cooperation clause only pertains to Village Council decisions relating to this Agreement, and this cooperation clause cannot be used to attempt to force Village Council to override other legislative or administrative decisions relating to the Development.

(d) Relationship of Parties. Nothing contained in this Agreement shall be deemed or construed, either by the parties hereto or by any third party, to create the relationship of principal and agent or to create any partnership, joint venture or other association between Developer and the Village.

(e) Village's Right of Access to Records. Developer agrees to maintain records pertaining to this Agreement in compliance with Section 149.43 of the Ohio Revised Code (the "Public Records Law"). Notwithstanding anything to the contrary contained herein or within any other document supplied to the Village by Developer, Developer understands and acknowledges that the Village is a governmental entity subject to the laws of the State of Ohio and that this Agreement, and any reports, data or other information supplied to the Village by Developer relating to the Agreement or the Development, may be subject to disclosure as a public record in accordance with the laws of the State of Ohio, including the Public Records

Law. In the event of a public record request made to the Village pursuant to and in accordance with the Public Records Law, Developer agrees to cooperate with the Village so the Village can comply with any such public record request. Developer and the Village have previously entered into a Confidentiality Agreement, dated September 23, 2014 (the "Confidentiality Agreement"), regarding the disclosure of certain trade secret information of Developer and the parties hereby acknowledge the continuing effectiveness of such Confidentiality Agreement with respect to the information provided by Developer to the Village.

(f) Mutual Consent. This Agreement may be canceled or modified by the mutual written consent of (A) Developer, on the one hand, and (B) the Village acting through the Mayor, on the other hand. Wherever the Mayor is entitled to act under this Agreement (e.g. delivery of notices, exercise of options, written waivers or consent), such action shall be deemed authorized by the Village Council provided such action is taken in accordance with this Agreement.

(g) Waivers. All waivers of the provision of this Agreement must be in writing and signed by the Authorized Village Representative and the Authorized Developer Representative, and all amendments hereto must be in writing and signed by the appropriate Representatives of the Village and Developer. No consent or waiver, express or implied, by either party to or of any breach of any covenant, condition, or duty of the other party shall be construed as a consent or waiver to or of any other breach of the same or any other covenant, condition or duty to be observed by the other party.

(h) Municipal Power. Nothing in this Agreement shall be construed to be in derogation of the powers granted to the municipal corporations by Article XVIII of the Ohio Constitution, including the right to protect the health, safety and welfare of its citizens.

(i) Indemnification. Developer shall indemnify, defend and hold harmless the Village and the Village's agents, employees and public officials (collectively, the "Indemnified Party") from and against any and all suits, claims, damages, losses and expenses (including reasonable attorneys' fees) regarding bodily injury, personal injury or property damage arising or allegedly arising out of, or resulting from the construction of the Development. The provisions of this subparagraph shall survive the termination of this Agreement. In case any claim or demand is at any time made, or action or proceeding is brought, against the Village in respect of which indemnity may be sought hereunder, the Indemnified Party shall promptly give notice of that action or proceeding to Developer, upon receipt of that notice shall have the obligation and the right to assume the defense of the action or proceeding with counsel reasonably satisfactory to the Village; provided, that failure of a party to give that notice shall not relieve Developer from any of its obligations under this Section unless that failure prejudices the defense of the action or proceeding by Developer. At its own expense, an Indemnified Party may employ separate counsel and participate in the defense. The Village agrees to fully cooperate with Developer and lend Developer such assistance as Developer shall reasonably request in defense of any claim, demand, action or proceeding at no cost to the Indemnified Party. Developer shall not be liable for any settlement made without its consent.

(j) Severability. In the event that any portions, sections or subsections of this Agreement are rendered invalid by the decision of any court or by the enactment of any law,

ordinance or regulation, such provision of this Agreement will be deemed to have never been included therein and the balance of the Agreement shall continue in full force and effect.

(k) Authority. Each party to this Agreement hereby represents and warrants that it is executing this Agreement with the full and proper authority and that the parties whose names appear hereon are duly authorized and empowered to make and execute this Agreement and that this Agreement is supported by consideration.

The Village is a political subdivision of the State of Ohio and is entitled to all of the immunities and defenses provided by law. Furthermore, no covenant, obligation or agreement of the Village contained in this Agreement shall be deemed to be a covenant, obligation or agreement of any present or future council member, officer, agent or employee of the Village in other than their official capacity and neither the council members of the Village approving this Agreement nor any officer or employee of the Village executing this Agreement shall be liable personally by reason of the covenants, obligations or agreements of the Village contained in this Agreement.

(l) Assignment. This Agreement shall be binding on the parties hereto and their respective successors and assigns.

(m) Merger and Amendment. This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the Development and the Site, to be completed in connection therewith, and contains all of the covenants, agreements, and other terms and conditions between the parties hereto with respect to the same. No waivers, alterations or modifications of this Agreement or any agreements in connection therewith shall be valid unless in writing and duly executed by all parties hereto.

(n) Counterparts. This Agreement may be executed in counterpart, and in several counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same Agreement.

(o) Governing Law; Venue. This Agreement shall be governed exclusively by and construed in accordance with the laws of the State of Ohio, without regard to its conflict of law provisions that would cause the application of the laws of another jurisdiction. Each party hereto (i) irrevocably consents to the exclusive jurisdiction of any state court located within Cuyahoga County, Ohio, in connection with any matter based upon or arising out of this Agreement, (ii) agrees that process may be served upon them in any manner authorized by the laws of the State of Ohio, and (iii) waives and covenants not to assert or plead any objection which they might otherwise have under such jurisdiction or such process.

(p) Further Actions. The Village and Developer agree to execute such additional documents, and take such further actions, as may reasonably be required to carry out the provisions and intent of this Agreement.

(q) Language. The language in all parts of this Agreement shall in all cases be construed as a whole according to its fair meaning and not strictly for nor against either the

Village or Developer. Section headings in this Agreement are for convenience only and are not to be construed as a part of this Agreement or in any way defining, limiting, or amplifying the provisions hereof.

(r) Litigation Notice; Management. Developer shall give the Village prompt notice of any action, suit or proceeding by or against Developer, at law or in equity, or before any governmental instrumentality or agency, of which that Developer has notice, which, if adversely determined, would materially impair the right or ability of Developer to implement, operate, maintain and develop the Development on the Site or would materially and adversely affect any of its business, operations, properties, assets or condition (financial or otherwise) together with a written statement setting forth the details thereof and any actions with respect thereto taken or proposed to be taken by Developer in response thereto.

(s) Term. Village and Developer agree that except as expressly set forth in this Agreement, following the payment of all Service Payments due pursuant to the TIF Ordinance and this Agreement, this Agreement, and all obligations of the parties hereunder, shall terminate and be of no further force or effect.

[Signatures follow on the next page]

The Developer has caused this Agreement to be duly executed by _____, its Authorized Developer Representative, and the Village has caused this Agreement to be duly executed by Kathy U. Mulcahy, its Mayor, as authorized by Ordinance No. 2015-__, all as of the date first above written.

ORANGE VILLAGE, OHIO

PINE ORANGE LLC,
an Ohio limited liability company

By: RFS Pinecrest LLC, Manager

Kathy U. Mulcahy
Mayor

By: Fairmount Properties LLC, Manager

By: _____
Adam Fishman, Member

STATE OF OHIO)
) SS:
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by _____, Authorized Developer Representative of Pine Orange LLC, an Ohio limited liability company.

Notary Public

STATE OF OHIO)
) SS:
COUNTY OF CUYAHOGA)

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by Kathy U. Mulcahy, Mayor of Orange Village, an Ohio municipal corporation, on behalf of the municipal corporation.

Notary Public

This instrument prepared by: Price D. Finley, Esq., Bricker & Eckler LLP, 100 South Third Street, Columbus, Ohio 43215

FISCAL OFFICER'S CERTIFICATE

The undersigned, Treasurer of Orange Village, Ohio (the "Village") under the foregoing Agreement, certifies hereby that the monies required to meet the obligations of the Village during the year 2015 under the foregoing Agreement have been appropriated lawfully for that purpose, and are in the Treasury of the Village or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Ohio Revised Code Sections 5705.41 and 5705.44.

Dated: _____, 2015

Treasurer
Orange Village, Ohio

EXHIBIT A

DESCRIPTION OF SITE

[insert legal descriptions and map]

EXHIBIT B

PUBLIC INFRASTRUCTURE IMPROVEMENTS

The Public Infrastructure Improvements includes, but is not limited to, construction of the following improvements on or near the Parcels that will directly benefit the Parcels and all related costs of permanent improvements (including those costs listed in Section 133.15(B) of the Ohio Revised Code):

- Land Acquisition, including acquisition in aid of industry, commerce, distribution, or research
- Environmental - Wetlands/Stream Mitigation
- Stormwater remediation, including improvements located on private property, which is determined to be necessary for public health, safety, and welfare
- Off Site Improvements - Signalization
- Electrical Ductbank, including the provision of gas or electric service facilities owned by nongovernmental entities, which is determined to be necessary for economic development purposes
- Earthwork - Public Amenity/Mound
- Utilities - Water/Sewer/Storm/Gas
- Site Concrete - Sidewalks, Curbs, etc.
- Retaining Walls
- Communication Infrastructure
- Site Lighting - Common Areas/Parking Areas
- Asphalt Paving - Parking Areas
- Landscaping, Amenities, Streetscape - Town Center
- Demolition, including demolition on private property, which is determined to be necessary for public health, safety, and welfare
- Public Parking Garage
- Orange Village Emergency Substation
- Public Restrooms