

1<sup>st</sup> reading 2-6-19  
2<sup>nd</sup> reading 2-13-19  
3<sup>rd</sup> reading 3-6-19  
Voted On  
Ayes: 6 Nays: 0  
PASSED  DEFEATED

**ORDINANCE NO. 2019-6**

**AN ORDINANCE  
AUTHORIZING THE MAYOR TO EXECUTE THE FIRST  
AMENDMENT TO THE TRAFFIC CONTROL AND LANDSCAPING  
EASEMENT BETWEEN ORANGE VILLAGE AND PINECREST  
PROJECT PARTNERS LLC.**

WHEREAS, Orange Village and Pinecrest Project Partners LLC, (the “Parties”) entered into a certain Traffic Control and Landscaping Easement on July 5, 2016, recorded in the Cuyahoga County Records as Instrument No. 201607140303 (the “Original Easement”) (capitalized terms used herein shall be defined as in the Original Easement unless otherwise defined herein); and

WHEREAS, Orange Village granted Pinecrest Project Partners LLC a perpetual easement for the purpose of constructing, reconstructing, altering and maintaining the Improvements under, over, along, upon, and across the Property; and

WHEREAS, Pinecrest Project Partners LLC constructed a monument sign for Pinecrest (the “Monument Sign”) on land owned by Orange Village that was outside the Property as described in the Original Easement; and

WHEREAS, the Parties desire to amend the Original Easement to add the land upon which the Monument Sign was constructed.

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF ORANGE VILLAGE, COUNTY OF CUYAHOGA, STATE OF OHIO:**

SECTION 1. That the Mayor is authorized and directed to enter into the First Amendment to Traffic Control and Landscaping Easement by and between Orange Village and Pinecrest Project Partners LLC (the “First Amendment”), a draft of which is appended hereto as “Exhibit A.” The First Amendment may be modified by the Mayor and Law Director in any manner that is not adverse to the interests of Orange Village.

SECTION 2. That the Mayor is hereby authorized and directed to execute all other documents and provide all other information necessary or helpful in order to perform the Village’s obligations under the First Amendment.

SECTION 3. That actions of this Council concerning and relating to the passage of this Resolution were adopted in an open meeting of this Council and that all deliberations of this Council and of any of its committees that resulted in such formal action were held in compliance with all legal requirements including Chapter 105 of the Code of Ordinances of Orange Village.

SECTION 4. That this Resolution shall be in full force and effect from and after its adoption and approval by the Mayor.

PASSED: March 6, 2019

Submitted to the Mayor for his approval on this 6<sup>th</sup> day of March, 2019

ATTEST:

Innamaria Glorioso  
Clerk-Treasurer

[Signature]  
Council President

Approved by the Mayor

March 12, 2019

Kathy U. Mulcahy  
Mayor

**FIRST AMENDMENT TO  
TRAFFIC CONTROL AND LANDSCAPING EASEMENT**

This **FIRST AMENDMENT TO TRAFFIC CONTROL AND LANDSCAPING EASEMENT** ("First Amendment") is made by and between **ORANGE VILLAGE**, a chartered municipal corporation, 4600 Lander Road, Orange Village, Ohio 44022 ("Grantor"), and **PINECREST PROJECT PARTNERS LLC**, a Delaware limited liability company, 1138 West 9th Street, Cleveland, Ohio 44113 ("Grantee"), under the following circumstances:

WHEREAS, Grantor and Grantee entered into a Traffic Control and Landscaping Easement as of July 5, 2016 and recorded as Instrument No. 201607140303 in the Cuyahoga County Records (the "Original Easement") (capitalized terms used herein shall be defined as in the Original Easement unless otherwise defined herein); and

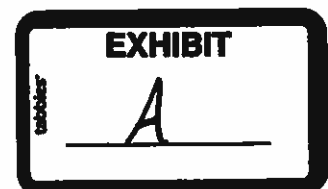
WHEREAS, Pursuant to the Original Easement, Grantor granted Grantee a perpetual easement for the purpose of constructing, reconstructing, altering and maintaining the Improvements under, over, along, upon, and across the Property; and

WHEREAS, Grantee constructed a monument sign for Pinecrest (the "Monument Sign") on land owned by Grantor that was outside the Property as described in the Original Easement; and

WHEREAS, Grantee has requested that Grantor amend the Original Easement on the terms set forth herein to add to the Property the land upon which the Monument Sign was constructed; and Grantor is willing to do so upon and so upon and subject to the terms and conditons set forth in this First Amendment.

NOW, THEREFORE, in consideration of the premises and mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Amendment of Property. Exhibit B to the Original Easement is hereby deleted in its entirety and in its place and stead is inserted Exhibit B attached hereto such that the term



"Property" in the Original Easment is hereby amended to include the real property described in Exhibit B attached hereto and depicted as Easement "C-1" therein.

2. Entry onto Property. Grantor (or any applicable utility company) shall have the right to enter the Property, at any time and from time-to-time, to maintain, repair, replace existing utilities or install new utilities within the Property. In connection with any such maintenance, repair, replacement or installation of existing or new utilities, Grantor (or the applicable utility company) shall have the right, at Grantee's sole cost and expense, to remove or relocate, or cause Grantee to remove or relocate, any Improvements (including, without limitation, the Monument Sign) on or under the Property. In addition, Grantee shall be responsible at its sole cost or expense to restore any damage to the Property caused by any work by Grantor (or any applicable utility company) on the Property. In the event that Grantor (or any applicable utility company) proposes to do any work that will result in the removal or relocation of any Improvements, Grantor (or the applicable utility company) shall provide Grantee with at least thirty (30) days' advance written notice thereof, except in the case of an emergency, in which instance Grantor shall provide Grantee such advance written and oral notice as is reasonable practicable under the circumstances.

3. Entry onto Adjacent Land. Grantor (or any applicable utility company) shall have the right to enter upon any land owned by Grantee and adjacent to the Property for the purpose of maintaining, repairing or replacing any utilities, existing or new, on the Property, and Grantor (or the applicable utility company) shall restore any Improvements on such adjacent land disturbed thereby at its sole cost and expense; provided, however, that Grantor (or the applicable utility company) shall provide Grantee with at least thirty (30) days' advance written notice of any proposed entrance onto land owned by Grantee and adjacent to the Property hereunder, except in the case where an emergency, in which instance Grantor shall provide Grantee such advance written and oral notice as is reasonable practicable under the circumstances.

4. Ratification. Except as expressly modified hereby, all provisions of the Original Easement are hereby ratified and confirmed and shall continue in full force and effect. In the event of any conflict or inconsistency between the terms of the Original Easement and the terms of this First Amendment, the terms of this First Amendment shall control to resolve such conflict or inconsistency.

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Signature Page Follows*

IN WITNESS WHEREOF, this First Amendment to Traffic Control and Landscaping Easement is executed this 6<sup>th</sup> day of March, 2018 2019.

**GRANTOR:**

**ORANGE VILLAGE**

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

And approved as to form:

Stephen L. Byron  
Stephen L. Byron, Law Director

**GRANTEE:**

**PINECREST PROJECT PARTNERS LLC,**  
a Delaware limited liability company

By: IX FP-BP Investors, LLC, Manager

BY: IX FP LLC, Manager

By: RFS Pinecrest LLC, Manager

By: Fairmount Properties  
LLC, Manager

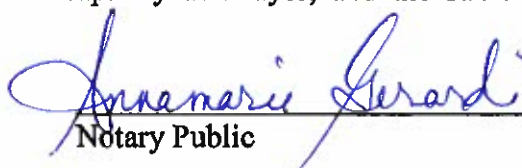
By: \_\_\_\_\_  
Adam Fishman,  
Member

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*Notary Acknowledgments Follow*

APPROVED JAN 05 2019

STATE OF OHIO )  
 )  
COUNTY OF CUYAHOGA )

BEFORE ME, a Notary Public in and for said County and State, on this 6<sup>th</sup> day of March ~~2018~~ 2019, 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

ANNAMARIE GIRARDI  
NOTARY PUBLIC, STATE OF OHIO  
My Commission Expires 2/28/2023

STATE OF OHIO )  
 )  
COUNTY OF CUYAHOGA )

BEFORE ME, a Notary Public in and for said County and State, on this \_\_\_\_\_ day of \_\_\_\_\_, 2018, did personally appear PINECREST PROJECT PARTNERS LLC, a Delaware limited liability company by IX FP-BP Investors, LLC, its Manager, by IX FP LLC, its Manager, by RFS Pinecrest LLC, its Manager, by Fairmount Properties LLC, its Manager, by Adam Fishman, Member, who stated that he did sign the foregoing instrument in his capacity as such Member, and the same was his and each company's free act and deed.

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

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Exhibit Follows*

EXHIBIT B

Legal Description  
 Easement Area "C-1"  
 File No. 13637-LD010  
 February 10, 2015  
 Revised October 2, 2018  
 Page 1 of 2

Situated in the Village of Orange, County of Cuyahoga, State of Ohio and known as being part of Block "B" and Block "C" in the Consolidation And Dedication Plat of a portion of Orange Place as shown by the recorded plat in Volume 315 of Maps, Pages 44-45 of Cuyahoga County Records and part of Vacated Pinecrest Drive as shown by the recorded plat in Volume 322, Page 5 of Cuyahoga County Records, all of and more land being part of Original Orange Township, Lot No. 1, Tract No. 4 and is further bounded and described as follows:

Beginning at a 1 1/4" iron pin monument at the intersection of the center line of Harvard Road (variable width) with the center line of Orange Place (variable width). Thence North 89°-39'-09" East, along said center line of Harvard Road, a distance of 106.44 feet to the intersection with the Southerly prolongation of the center line of Pine Crest Drive (60 feet wide) vacated. Thence North 00°-20'-51" West, along said Southerly prolongation, a distance of 47.53 feet to the principal place of beginning of the land herein described;

- Course 1 Thence South 89°-38'-09" West, a distance of 12.52 feet;
- Course 2 Thence North 00°-20'-51" West, a distance of 16.47 feet to a point on the Northerly right of way line of said Harvard Road;
- Course 3 Thence South 89°-39'-09" West, along a line 10 feet off and parallel to the Northerly right of way line of Harvard Road, a distance of 19.31 feet to a point on the Easterly right-of-way for Orange Place (Width Varies);
- Course 2 Thence Northwesterly, along the arc of a curve deflecting to the right and being the said Easterly right-of-way for Orange Place, a distance of 21.88 feet to a point of tangency. Said arc having a radius of 30.00 feet, a central angle of 41°-47'-48" and a chord which bears North 21°-15'-34" West, a distance of 21.40 feet;
- Course 3 Thence North 00°-21'-40" West, continuing along said Easterly right of way line of said Orange Place, a distance of 47.62 feet;
- Course 4 Thence North 14°-11'-45" East, a distance 39.79 feet;
- Course 5 Thence North 00°-21'-40" West, a distance 203.31 feet;
- Course 6 Thence South 89°-38'20" West, a distance of 10.00 feet;

Legal Description  
Easement Area "C-1"  
File No. 13637-LD010  
February 10, 2015  
Revised October 2, 2018  
Page 2 of 2

- Course 7      Thence North 00°-21'-40" West, a distance of 56.47 feet to a point on the Southerly line of Sublot 30 in said Walnut Hills Homestead and Northerly line of Block "B" in the said Consolidation And Dedication Plat of a portion of Orange Place;
- Course 8      Thence North 89°-38'-07" East, along the Southerly line of said Sublot 30 in Walnut Hills Homestead and Northerly line of said Block "B", a distance of 34.56 feet to a point on the center line of said Pinecrest Drive, Vacated;
- Course 9      Thence South 00°-21'-40" East, along said center line of Pinecrest Drive, Vacated, a distance of 365.91 feet;
- Course 10     Thence North 89°-43'-18" East, a distance of 4.90 feet;
- Course 11     Thence South 00°-20'-51" East, a distance of 16.46 feet to the principal place of beginning and containing 0.2428 Acre (10,578 Square Feet) of land.

Be the same more or less, but subject to all legal highways and easements of record.



HOLLAND DEVELOPMENT (Proj) 13637 Pinecrest Village Survey 13637 - Schmg. 10/2/2018 11:16:47 AM DWG TO PDF.plt

