

RIGHT-OF-ENTRY AGREEMENT

THIS RIGHT-OF-ENTRY AGREEMENT (this “Agreement”) is made effective as of this ___ day of _____, 20___ (the “Effective Date”), by and between the **VILLAGE OF PINECREST, FLORIDA**, a Florida municipal corporation (the “Village”) and _____ (the “Owner”), who is the owner of real property located within the Village at _____ and depicted on the attached legal description attached hereto as “Exhibit A” (the “Property”).

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Owner and the Village agree as follows:

1. Grant of Right-of-Entry. Owner hereby grants to the Village, including its officials, employees, agents, contractors, and volunteers, a right-of-entry over the Property for the purpose of locating, trapping and removing peafowl from the Property (the “Services”), subject to the terms and conditions set forth in this Agreement. Owner acknowledges that the provision of the Services is subject to the Village Manager’s approval. The Owner acknowledges that the Services includes :

- a. Scouting for peafowl on the Property;
- b. Installing peafowl traps;
- c. Monitoring traps as needed;
- d. Removing trapped peafowl;
- e. Removing traps; and
- f. Such other activities as may be necessary to effectuate the Services.

It is fully understood that this Agreement does not create any obligation by the Village to provide the Services.

2. Duration and Termination of Access. This Agreement shall be from the Effective Date through the _____ day of _____, 20___. The Village and the Owner may extend the term of this Agreement by mutual agreement in writing. Either party may terminate this Agreement for convenience upon five (5) calendar days’ notice or immediately for cause.

3. Services to be Performed During Business Hours. The Village, including its officials, employees, agents, contractors, or volunteers, may enter the Property during the Village’s normal business hours to provide the Services. Notwithstanding the foregoing, the Village may also make arrangements to enter the Property at such other times mutually agreed upon by the Owner and Village in writing.

4. Activities Comply with Applicable Laws. The Village and Contractor agree that any and all work performed on the Property and in association with this Agreement shall be done in a good, safe, workmanlike manner, and in accordance with applicable federal, state and local statutes, rules, and regulations.

5. Property Restoration. The Village or its contractor shall be responsible for restoring areas

of the Property affected by the provision of the Services to its original condition prior to the provision of the Services (excepting normal wear and tear).

6. Equipment Ownership. The traps and all related equipment utilized and/or installed pursuant to this Agreement for the provision of the Services shall remain the property of the Village or its contractor(s). The Owner is responsible for replacing any traps and related equipment that may be damaged or lost due to any actions by the Owner.

7. Owner's Non-Interference. The Owner shall not interfere with the Village, its officials, employees, agents, contractors, or volunteers, during the performance of the Services. Owner shall not move, damage, modify, alter, or take any actions concerning any equipment that is installed or utilized in the provision of the Services on the Property by the Village, its officials, employees, agents, contractors, or volunteers. Should Owner desire to move, damage, modify, alter, or take such other action concerning the equipment, the Owner shall notify the Village.

8. Owner's Use of Property. The Owner retains the right to use the Property, and the Village, its officials, employees, agents, contractors, or volunteers will work with the Owner regarding minimizing activities that may interfere with the Owner's management and use of the Property.

9. Release and Hold Harmless.

- a. Owner, for himself/herself and on behalf of his/her beneficiaries, heirs, assigns, personal representatives, and next of kin hereby releases and holds harmless and covenants to defend and indemnify the Village, its officials, employees, agents, contractors, or volunteers, with respect to any and all demands, claims, losses, suits, liabilities, causes of actions, judgements or damages, including injury, illness, disability, death, loss or damage to Owner or Owner's property, arising out of or in any way connected to the performance or non-performance of any provision of this Agreement, whether resulting from Owner's negligent act or omission or the act or omission of any other person or any act or omission of the Village, including, but not limited to the negligent acts or omissions of the Village.
- b. Nothing herein is intended to serve as a waiver of sovereign immunity by the Village nor shall anything included herein be construed as consent to be sued by third parties in any matter arising out of this Agreement or any other contract. The Village is subject to section 768.28, Florida Statutes, as may be amended from time to time.
- c. The provisions of this section shall survive termination of this Agreement.

10. Entire Agreement. This writing contains the entire Agreement of the parties and supersedes any prior oral or written representations. No representations were made or relied upon by either party, other than those that are expressly set forth herein.

11. Governing Law and Venue. This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Venue for any proceedings arising out of this Agreement shall be proper exclusively in Miami-Dade County, Florida.

12. Public Records, Notice Pursuant to Section 119.0701(2)(a), Florida Statutes.

IF THE OWNER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE OWNER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS: Priscilla Torres, Village Clerk, 12645 Pinecrest Parkway, Pinecrest, FL 33156, (305) 234-2121, ptorres@pinecrest-fl.gov.

13. Attorneys' Fees; Waiver of Jury Trial.

- a. In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover its attorneys' fees and costs, including the fees and expenses of any paralegals, law clerks and legal assistants, and including fees and expenses charged for representation at both the trial and appellate levels.
- b. IN THE EVENT OF ANY LITIGATION ARISING OUT OF THIS AGREEMENT, EACH PARTY HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVES ITS RIGHT TO TRIAL BY JURY.

14. Contractual Relationship. This Agreement is for right-of-entry to the Property, as further described herein, and shall in no way be construed to create a partnership, association or any other kind of joint undertaking, enterprise or venture between the parties.

15. Notices/Authorized Representatives. Any notices required by this Agreement shall be in writing and shall be deemed to have been properly given if transmitted by hand-delivery, by registered or certified mail with postage prepaid return receipt requested, or by a private postal service, addressed to the parties (or their successors) at the addresses listed on the signature page of this Agreement or such other address as the party may have designated by proper notice.

16. Severability. Any provision of this Agreement that is prohibited or unenforceable shall be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof.

17. No Third-Party Beneficiaries. Neither Party intends to directly or substantially benefit a third party by this Agreement. Therefore, the Parties agree that there are no third-party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of them based upon this Agreement.

**[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK.
SIGNATURE PAGE FOLLOWS.]**

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year as first stated above.

VILLAGE OF PINECREST

OWNER

By: _____
Yocelyn Galiano, ICMA-CM
Village Manager

By: _____
Name: _____
Title: _____

Village Resolution No.: _____

Witness:

Attest:

By: _____

By: _____
Priscilla Torres
Village Clerk

Witness:

Approved as to form and legal sufficiency:

By: _____

By: _____
Weiss Serota Helfman Cole & Bierman, P.L.
Village Attorney

Addresses for Notice:

Village of Pinecrest
Attn: Village Clerk Priscilla Torres
12645 Pinecrest Parkway
Pinecrest, FL 33156
305-234-2121 (telephone)
_____ (email)

Addresses for Notice:

_____ (telephone)
_____ (email)

With a copy to:

Weiss Serota Helfman Cole & Bierman, P.L.
Attn: Mitchell Bierman, Esq.
Village Attorney
2800 Ponce de Leon Boulevard, Suite 1200
Coral Gables, FL 33134
305-854-0800 (telephone)
mbierman@wsh-law.com (email)

With a copy to:

_____ (telephone)
_____ (email)