

**AN AGREEMENT TO PROVIDE FOR THE RECAPTURE OF THE  
COST OF CERTAIN PINNACLE DRIVE PUBLIC ROADWAY IMPROVEMENTS**

This Agreement (hereinafter referred to as the “Agreement”) made this 7th day of November, 2018, by and between Airport Road Holdings, LLC, (hereinafter referred to as “Owner”) and the VILLAGE OF ROMEOVILLE, an Illinois Municipal Corporation located in Will County, Illinois (hereinafter referred to as the “Village”).

**WHEREAS**, the Owner is the owner of record or was the developer of certain real estate described in Exhibit A attached hereto and incorporated herein (hereinafter referred to as the “Property”); and

**WHEREAS**, in connection with its development of the Property, Owner was required, pursuant to the applicable ordinances of the Village, to construct and install certain public roadway improvements to Pinnacle Drive (the “Improvements”), described more particularly in those certain plans therefor prepared by Spaceco and dated as of \_\_\_\_\_ (the “Plans”), copies of which are on file with the Village and which by reference are incorporated herein; and

**WHEREAS**, pursuant to the ordinances of the Village, the Improvements will be or have been dedicated to the Village and the Village will accept or has accepted such dedication; and

**WHEREAS**, in the opinion of the corporate authorities of the Village, certain portions of the

Improvements will be primarily used for or inure to the benefit of the property described in Exhibit B, a copy of which is attached hereto and incorporated herein (hereinafter referred to as the “Benefited Property”), and will constitute permanent and valuable improvements to the Village’s public roadway system; and

**WHEREAS**, the Village is authorized by the Illinois Municipal Code, specifically 65 ILCS 5/9-5-1 et seq., to enter into an agreement to permit Owner to obtain reimbursement for a portion of the cost of the Improvements to the extent that the Improvements benefit the Benefited Property; and

**WHEREAS**, the taxable value of real property within the corporate limits of the Village will increase as a result of the construction of the Improvements and the construction of the Improvements will further the planned growth of the Village and promote and protect the health, safety and welfare of the residents of the Village.

**NOW, THEREFORE**, in consideration of the covenants and conditions herein contained, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged by the parties, the Owner and the Village hereby agree as follows:

**Section 1: Incorporation of Recitals:** The recitals hereinabove set forth shall be incorporated herein as if fully set forth in this Section 1.

**Section 2: Installation of Improvements:** Owner represents that it has constructed and installed the Improvements in substantial conformance with the Plans and the ordinances of the Village, but nothing herein shall be deemed to waive any rights or remedies of the Village with respect to the construction and installation of the Improvements under the ordinances of the Village, including but not limited to the Village’s rights to require the correction and completion of all “punchlist” items of defective or incomplete work with respect to the Improvements.

**Section 3: Conveyance of the Improvements:** Provided that the Improvements have first been inspected and approved by the Village and determined to have been constructed in compliance with the Plans and the applicable ordinances of the Village, Owner shall on demand from the Village transfer by appropriate instruments and conveyances to the Village all of its right, title and interest in and to the Improvements.

**Section 4: Benefited Properties:** The corporate authorities of the Village have determined that the Benefited Property will benefit from the construction and installation of the Improvements as set forth herein, and that the owners and developers of the Benefited Property shall be responsible for reimbursing the Owner for a portion of the actual cost of constructing and installing the Improvements, all in accordance with Sections 5 and 6 hereof, and which actual cost is set forth in Exhibit C hereto.

**Section 5: Owner's Recapture of Cost of Improvements:**

The Village and the Owner acknowledge (i) that Owner's construction, and installation of the Improvements will benefit the Benefited Property by facilitating and improving the provision of vehicular access to and from the Benefited Property, by facilitating the provision of sanitary sewer service to the property and by facilitating the provision of water service to the Benefitted Property and (ii) that the aforesaid benefit created by the Improvements may be fairly allocated between the Benefited Property and the Property by dividing the cost of the Improvements equally between the Property and the Benefited Property. Accordingly, Owner shall be permitted to recapture 50 percent (50%) of the cost of the Improvements from the owners and developers of the Benefited Property, all in the manner and to the extent set forth in Sections 6 and 7 and Exhibit C of this Agreement, subject however, to the provisions of Section 12 of the Annexation Agreement governing the development

of the Property, a copy of which is recorded as Document No R2016004179 with the Will County Recorder's Office (the "Annexation Agreement"), which condition the right to receive such recapture payments from the owners and developers of the Benefited Property upon the actual development, use or occupancy of the Benefited Property in a manner that uses or accesses the benefits resulting from the construction of the Improvements.

**Section 6: Payment of Recapture Fees:** Not later than contemporaneously with the approval by the Village of any final plat, final development plan or building submitted with respect to all or any portion of the Benefited Property, and subject to Section 12 of the Annexation Agreement, the owners or developers of the Benefited Property shall pay directly and in full to Owner that principal sum of money equal to fifty percent (50%) of the cost of the Improvements, together with adjustments to said principal sum calculated in the manner set forth in Section 7 hereof. Upon payment of the aforementioned principal sum of money and the adjustments due thereon, Owner shall issue a receipt evidencing such payment to the owners or developers of the Benefited Property. To facilitate the payment to Owner of all sums to which it is entitled pursuant to this Agreement, the Village shall require all owners and developers of the Benefited Property or relevant portion thereof to present the aforementioned receipt prior to and as a condition of the Village's approval of any final plat, final development plan or building permit, as the case may be.

**Section 7: Adjustments to Recapture Fees Payable to Owner:** The principal amount of the above-described recapture fees which become payable to Owner from owners or developers of the Benefited Property or any relevant portion thereof shall be adjusted by application of the Construction Cost Index for Chicago, Illinois ("CCI"), as published by the Engineering News-Record. The adjustment shall be calculated by dividing the CCI in effect as of the date of the

annexation of the Benefited Property (or as of the date of the Village's issuance of any building permit, certificate of occupancy or other permit, review, approval or performance of any other action sought from the Village in connection with the Benefited Property, as the case may be) by the CCI in effect as of the date on which the Owner formally conveys the Improvements to the Village as contemplated by Section 3 hereof, and then multiplying the quotient therefrom by the original principal cost of the Improvements of . The product of such multiplication, representing the original principal cost of the Improvements as adjusted by the then-current CCI, shall then be divided by two, with the result of such division representing the actual total amount of the recapture fees and adjustments thereto due hereunder from the owners or developers of the Benefited Property to Owner.

**Section 8: Indemnification:** Owner shall indemnify, defend, and hold harmless the Village officers, trustees, officials, employees, agents, assignees and successors (collectively, the foregoing may hereinafter be referred to as the "Indemnified Parties") from any and all costs, damages, claims, suits, demands, judgments, and expenses, including but not limited to attorney fees, engineering fees, or expert witness fees, incurred or threatened with respect to any action, cause of action, lawsuit or other proceeding arising at law, in equity or before any administrative or other governmental body or tribunal having jurisdiction, arising out of or related to any term, provision or condition of this Agreement, or the performance, effect or interpretation thereof (collectively, the foregoing may hereinafter be referred to as the "Claims"). Without otherwise limiting the generality of the foregoing, Owner's obligations under this Section 8 shall specifically extend to and encompass the responsibility to indemnify, defend and hold harmless the Indemnified Parties with respect to Claims arising out of or related in any way to the accuracy, completeness or correctness of the calculation of

the cost of the Improvements, or arising out of or related in any way to the accuracy, completeness, truthfulness or correctness of the information and documentation provided to Village by Owner in connection with the review of the costs to be included hereunder in the cost of the Improvements and the making of the calculation of the cost of the Improvements. In the event that any Claim is asserted against the Village during the term of this Agreement, the Village shall, pending Owner's resolution thereof in accordance with this Section 8 and on terms satisfactory to Village, be entitled to withhold or suspend the issuance of any permit or approval, the performance of any service, the processing of any application, the conduct of any review or process or the performance of any other action whatsoever and without limitation sought by Owner or its successors, assignees or affiliated parties including but not necessarily limited to building permit reviews and approvals, certificates of occupancy, and real estate transfer tax stamps, whether or not relating to the Property, the Benefited Property, other property, or any other matter.

**Section 9: Village Obligations:** Notwithstanding any other Section or provision of this Agreement, the Village and its officers, employees and agents, shall not be obligated to collect, receive or make efforts to collect or receive any recapture fees or adjustments thereto payable to Owner hereunder or to bring any suit to effect such collection. Moreover, the Village and its officers, employees and agents shall not be liable or responsible in any way for any inability or failure whatsoever of the Owner to collect any recapture fees or interest, regardless of the cause or causes of such inability or failure, and shall not be liable or responsible to Owner or any person or entity claiming through Owner to pay any such recapture fees or interest under any theory whatsoever. Without otherwise limiting the generality of the foregoing, the Village shall expressly

have no liability for any inability or failure whatsoever of the Owner to collect any recapture fees or interest arising from or in any way relating to the application of Section 12 of the Annexation Agreement. However, the Owner may sue any owner or developer of the Benefited Property or any relevant portion thereof for the collection thereof, and in the event the Owner initiates litigation to collect said expenses, the Village agrees to cooperate with such efforts by allowing full and free access to its books and records, except for privileged documents, referring to the development of the Benefited Property or any relevant portion thereof at issue. Nothing herein shall be construed to constitute any warranty or representation by or on behalf of the Village as to the likelihood of actually collecting the recapture fees contemplated hereunder, or the legality or permissibility of imposing such recapture fees against all or any portion of the Benefited Property or the owners or developers thereof, and the Village hereby disclaims the existence of any and all such warranties, whether express or implied.

**Section 10: Term:** Upon its execution by the Owner and the Village, this Agreement shall be in full force and effect until (i) that date which is twenty years from the date first above named, or (ii) the date on which Owner receives all payments of recapture fees and adjustments thereto payable to it hereunder, whichever occurs first.

**Section 11: Miscellaneous:**

A. **Governing Law:** The laws, cases and statutes of the State of Illinois shall govern the validity, performance and enforcement of this Agreement.

B. **Notices:** All notices or other writings which any party hereto is required or permitted to give in connection with this Agreement shall be in writing and shall be served by personal delivery, which service shall be effective as of the date of such delivery, or mailed by registered or

certified mail, return receipt requested, with proper postage prepaid, which service shall be effective two (2) business days after the date of such mailing, and addressed as follows or to such other person or address as either party may designate from time to time by written notice given to the other party pursuant hereto:

If to Village:	Village Clerk Village of Romeoville 1050 W. Romeo Road Romeoville, Illinois 60446
with a copy to:	Raymond E. Meader, Esq. Tracy, Johnson & Wilson 2801 Black Road, 2d Floor Joliet, IL 60432
If to Owner:	Airport Road Holdings LLC John Pagliari One O'Hare Center 6250 N. River Road, Suite 4050 Rosemont, IL 60018
with a copy to:	Russell G. Whitaker, III Rosanova & Whitaker 30 W. Jefferson Avenue, Suite 200 Naperville, IL 60540

C. **Severability:** If any provisions of this Agreement are held to be invalid, such provisions shall be deemed to be excised therefrom, and the invalidity thereof shall not affect any of the other provisions contained herein, which provisions shall be enforceable to the fullest extent possible.

D. **Amendments:** The parties agree that this Agreement and all Exhibits attached hereto may be amended only by the mutual consent of the parties by the adoption of an ordinance or resolution of the Village approving said amendment or resolution, as provided by law. and the



execution of said amendment by the parties hereto, or their successors in interest.

E. **Headings:** The headings of the paragraphs of this Agreement are for convenience and reference only and do not form a part hereof and do not modify, interpret or construe the understandings of the parties hereto.

F. **Counterparts:** This Agreement may be signed upon any number of counterparts with the same effect as if the signatures to each were upon the same Agreement.

G. **Originals:** This Agreement may be reproduced by means of carbons, Xerox process or otherwise. Each such reproduction, if manually executed by the parties, shall for all purposes be deemed, and the same is hereby declared, to be a duplicate original of this Agreement.

H. **Singular and Plural:** Terms used in this Agreement shall be read in the singular or the plural as may be appropriate to the context in which they are used.

I. **Signatories:** The signatories to this Agreement on behalf of the Village are signing in their corporate and representative capacities, and shall not be personally or individually liable for its performance of any of the terms or conditions herein contained.

J. **Waiver:** No waiver by either party of any breach of any term or condition hereof shall be deemed a waiver of the same or any subsequent breach of the same or any other term or condition hereof. No term or condition of this Agreement shall be deemed waived by either party unless waived in writing.

K. **Applicability of Village Ordinances:** Except as otherwise specifically provided herein. the Ordinances of the Village, as amended from time to time. shall be fully applicable to performance under this Agreement.

L. **Entire Agreement:** Except as hereinafter expressly provided. this Agreement

supersedes all prior agreements, negotiations and representations and is a full integration of the entire Agreement of the parties.

M. **Remedies:**

(i) The parties may, at law or in equity, by suit, action, mandamus or other proceeding, enforce or compel the performance of this Agreement with the prevailing party being entitled to all costs and expenses. No action taken by either party hereto pursuant to the provisions of this section or pursuant to the provisions of any other section of this Agreement shall be deemed to constitute an election of remedies and all remedies set forth in this Agreement shall be cumulative and non-exclusive of any other remedy either set forth herein or available to either party at law or in equity.

(ii) In the event of any breach of or default under this Agreement, the parties shall give prompt written notice of such alleged breach or default and the party receiving such notice shall have thirty (30) days after receipt of such notice to cure such alleged breach or default, prior to the seeking of any remedy provided for herein, provided, however, that said thirty (30) day period shall be reasonably extended if the defaulting party has initiated the cure of said breach of default and is diligently proceeding therewith.

N. **Expenses for Preparation of Agreement** Owner acknowledges that the Village has incurred substantial expenses in connection with the preparation of this Agreement, including but not limited to the professional fees for engineering and legal services. Accordingly, contemporaneously with the execution of this Agreement by the Owner and the Village, the Village shall notify the Owner of the amounts of the various expenses incurred by the Village in connection with the preparation of this Agreement, and shall provide Owner with itemized invoices therefor together

with such notice. Thereafter, Owner shall remit to the Village the amounts of the expenses contained within the aforementioned notice and the supporting invoices, all within thirty (30) days of the date first above named. Nothing in this Paragraph 11.N shall permit the Owner to recapture all or any portion of the expenses to be reimbursed to the Village hereunder as part of the cost of the Improvements.

IN WITNESS WHEREOF, the parties hereto have duly caused this Agreement to be executed all as of the date and year first above named.

VILLAGE OF ROMEOVILLE

Airport Road Holdings, LLC

BY: \_\_\_\_\_  
John D. Noak  
Village President

BY: \_\_\_\_\_  
Its Authorized Officer

ATTEST: \_\_\_\_\_  
Dr. Bernice Holloway  
Village Clerk

ATTEST: \_\_\_\_\_

EXHIBIT A—LEGAL DESCRIPTION OF PROPERTY

The Property consists of the following described tracts:

LOT 1 IN AIRPORT ROAD SUBDIVISION, BEING A SUBDIVISION OF PART OF THE NW1/4 OF SEC. 17, T36N-R10E OF THE 3RD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED WITH THE WILL COUNTY RECORDER'S OFFICE AS DOCUMENT NO. R2017067580.

PIN 11-04-17-101-001-0000

and

LOT 2 IN AIRPORT ROAD SUBDIVISION, BEING A SUBDIVISION OF PART OF THE NW1/4 OF SEC. 17, T36N-R10E OF THE 3RD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED WITH THE WILL COUNTY RECORDER'S OFFICE AS DOCUMENT NO. R2017067580.

PIN 11-04-17-101-002-0000

EXHIBIT B—LEGAL DESCRIPTION OF BENEFITED PROPERTY

The Benefited Property consists of the following described tracts:

W1/2 OF THE NE1/4 OF SEC. 17, T36N-R10E (EX THE S 50 FT) & (EX 165 FT BY 264 FT IN NE COR) & (EX THAT PRT OF THE W1/2 OF THE NE1/4 OF SEC. 17, T36N-R10E DESSC AS COMM AT THE NW COR OF THE NE1/4; THC E 420.52 FT ALG THE N LN OF SD 1/4 TO THE POB; THC CONT E 291.37 FT ALG SD N LN; THC S 335.30 FT PERP TO SD N LN; THC W 291.37 FT PARL TO THE N LN; THC N 335.30 FT PERP TO THE N LN TO THE POB (EX THE W 268.69 FT OF THE W1/2 OF THE NE1/4 OF SEC 17, T36N-R10E 9EX THE S 50 FT THROF)) ADA THE W1/2 OF THE NE1/4 OF SEC 17, T36N-R10E (EX THE S 50 FT THROF) & (EX THAT PRT OF SD W1/2 DESC AS COMM AT THE NE COR OF THE W1/2 OF THE NE1/4 OF SEC. 17, T36N-R10E AS A POB; THC W OF THE N LN OF SD SEC 17, 165 FT; THC S ON A LN PARL TO THE E LN OF SEC 17 AFORESD 264 FT; THC E ON A LN PARL TO THE N LN OF SEC 17 AFORESD A DIST OF 165 FT; THC N 264 FT TO THE POB) AND ALSO (EX THT PRT OF THE W 268.69 FT OF THE W1/2 OF THE SD NE1/4 LYG N OF THE S 50 FT OF SD W1/2) AND ALSO (EX THT PRT OF THE W1/2 OF THE SD NE1/4 DESC AS COMM AT THE NW COR OF SD NE1/4; THC E 420.52 FT ALG THE N LN OF SD 1/4 TO THE POB; THC CONT E 291.37 FT ALG SD N LN; THC S 335.30 FT, PERP TO SD N LN; THC W 291.37 FT, PARL WITH SD N LN; THC N 335.30 FT PERP TO SD N LN TO THE POB.

PIN 11-04-17-200-006-0000

and

THE W 268.69 FT OF THE W1/2 OF THE NE1/4 OF SEC. 17, T36N-R10E (EX THE S 50 FT THROF).

PIN 11-04-17-200-008-0000

EXHIBIT C—The actual cost to construct the Improvements is \$3,282,700.90, consisting of the construction costs itemized below in an excerpt from the sworn statement of Owner's contractor, plus the sum of \$525,000, representing the price to purchase the Schacht parcel, required as offsite right of way for the Owner to construct the Improvements, plus the sum of \$391,667.04, representing Owner's cost of locating the entire right of way for the Improvements (excepting the offsite Schacht parcel referenced above) on the Property, and with no part of the right of way therefor coming from the Benefited Property.

EXTRA 01 - PINNACLE DRIVE									
01-003	SPACECO	CIVIL ENGINEERING/STAKING	\$ 83,123.00	\$ 83,123.00	\$ -	\$ 53,437.50	\$ 9,885.50	\$ -	100%
01-461	TESTING SERVICE CORP	TESTING	\$ 25,000.00	\$ 25,000.00	\$ -	\$ 25,000.00	\$ -	\$ -	100%
02-310	RYAN INC CENTRAL	EARTHWORK	\$ 403,861.50	\$ 403,861.50	\$ -	\$ 364,338.50	\$ 9,525.00	\$ -	100%
02-530	L.A. SITES INC	SANITARY/STORM SEWER	\$ 634,417.08	\$ 634,417.08	\$ -	\$ 629,510.08	\$ 5,907.00	\$ -	100%
02-740	P.T. FERRO CONSTRUCTION	FLEXIBLE PAVING/CURBS/GUTTER	\$ 547,750.00	\$ 547,750.00	\$ -	\$ 547,750.00	\$ -	\$ -	100%
02-820	ACTION FENCE	FENCING	\$ 8,200.00	\$ 8,200.00	\$ -	\$ 8,200.00	\$ -	\$ -	100%
02-900	WINTERS LANDSCAPE	LANDSCAPING & IRRIGATION	\$ 72,835.15	\$ 72,835.15	\$ -	\$ 72,835.15	\$ -	\$ -	100%
10-420	INTERIOR CONCEPTS	FIRE EXTINGUISHERS	\$ 402.00	\$ 402.00	\$ -	\$ 402.00	\$ -	\$ -	100%
19-210	ABCO ELECTRIC	ELECTRICAL	\$ 315,530.00	\$ 315,530.00	\$ -	\$ 315,530.00	\$ -	\$ -	100%
	ALSTON CONSTRUCTION	GENERAL CONDITIONS	\$ 127,265.13	\$ 127,265.13	\$ -	\$ 84,792.76	\$ 42,472.37	\$ -	100%
	ALSTON CONSTRUCTION	BONDS	\$ 15,808.00	\$ 15,808.00	\$ -	\$ 15,808.00	\$ -	\$ -	100%
	ALSTON CONSTRUCTION	INSURANCE	\$ 21,047.00	\$ 21,047.00	\$ -	\$ 22,036.29	\$ (989.29)	\$ -	100%
	ALSTON CONSTRUCTION	FEE	\$ 89,083.00	\$ 89,083.00	\$ -	\$ 73,760.72	\$ 15,322.28	\$ -	100%
	ALSTON CONSTRUCTION	ALSTON COST SAVINGS SPLIT	\$ 41,712.00	\$ 41,712.00	\$ -	\$ -	\$ 41,712.00	\$ -	100%
		SUBTOTAL EXTRA 01 - PINNACLE	\$ 2,366,033.86	\$ 2,366,033.86	\$ -	\$ 2,242,402.00	\$ 123,631.86	\$ -	100%