

**ROSEVILLE**  
**REQUEST FOR COUNCIL ACTION**

Date: September 26, 2022  
Item No.: 10.d

Department Approval



City Manager Approval



Item Description: Accept Public Improvements Related to The Enclave at McCarrons Lake  
Public Improvement Contract

1 **BACKGROUND**

2 On March 22, 2021, the City Council approved the Public Improvement Contract (PIC) with  
3 Airborne McCarrons, LLC, for development work related to The Enclave at McCarrons Lake  
4 development, located on the corner of Galtier Avenue and South McCarrons Boulevard. The new  
5 public infrastructure included new water and sewer mains to serve the development. Additionally,  
6 the developer graded and dedicated a trail easement for the Marion Street pathway connection  
7 between Marion Street and South McCarrons Boulevard which the City paved in 2021.

8 All public improvements were completed to the City's satisfaction in 2020. In order to close out the  
9 PIC, a resolution (Attachment A) from the City Council is needed accepting the improvements.

10 **FINANCIAL IMPACTS**

11 All project costs related to the PIC were paid for by the developer. No further costs are associated  
12 with the PIC.

13 **STAFF RECOMMENDATION**

14 The work completed was in accordance with the PIC. Staff recommends the City Council approve a  
15 resolution accepting the public improvements related to The Enclave at McCarrons Lake Public  
16 Improvement Contract.

17 **REQUESTED COUNCIL ACTION**

18 Motion to adopt the resolution accepting the public improvements related to The Enclave at  
19 McCarrons Lake Public Improvement Contract.

Prepared by: Jesse Freihammer, Assistant Public Works Director/City Engineer  
Attachments: A: Resolution  
B: Public Improvement Contract

**EXTRACT OF MINUTES OF MEETING  
OF THE  
CITY COUNCIL OF THE CITY OF ROSEVILLE**

\* \* \* \* \*

1 Pursuant to due call and notice thereof, a regular meeting of the City Council of the City  
2 of Roseville, County of Ramsey, Minnesota, was duly held on the 26<sup>th</sup> day of September,  
3 2022, at 6:00 p.m.

4  
5 The following members were present: and the following members were  
6 absent: .

7  
8 Councilmember introduced the following resolution and moved its adoption:

**RESOLUTION No.**

**ACCEPTING PUBLIC IMPROVEMENTS RELATED TO THE ENCLAVE AT  
MCCARRONS LAKE PUBLIC IMPROVEMENT CONTRACT**

9  
10  
11  
12  
13  
14  
15 BE IT RESOLVED by the City Council of the City of Roseville, as follows:

16  
17 WHEREAS, pursuant to a written contract signed with the City on March 22, 2021,  
18 Airborne McCarrons, LLC, has satisfactorily completed the public improvements  
19 associated with The Enclave at McCarrons Lake Public Improvement Contract.

20  
21 NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF  
22 ROSEVILLE, MINNESOTA, that the work completed under said contract is hereby  
23 accepted and approved; and

24  
25 The motion for the adoption of the foregoing resolution was duly seconded by  
26 Councilmember and upon vote being taken thereon, the following voted in  
27 favor thereof: and the following voted against the same: .

28  
29 WHEAREUPON said resolution was declared duly passed and adopted.



**PUBLIC IMPROVEMENT CONTRACT**  
***THE ENCLAVE AT MCCARRONS LAKE***

- I. **Parties.** This Agreement, dated \_\_\_\_\_, 2021, is entered into between the City of Roseville, a Minnesota municipal corporation, whose address is 2660 Civic Center Drive, Roseville, Minnesota 55113 (the “**City**”), and Airborne McCarrons, LLC, a Minnesota limited liability company, whose address is 13605 1<sup>st</sup> Ave N. Suite 100, Plymouth, MN 55441 (the “**Developer**”).
- II. **Request for Plat approval.** The Developer has asked the City to approve a plat of land to be known as “*The Enclave at McCarrons Lake*” (also referred to in this Agreement as the “Plat”). The land is legally described as follows:

**See Legal Description attached as Exhibit A hereto (the “Property”).**

- III. **Terms and Conditions of Plat Approval.** For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:
- A. **Plat Approval:** Subject to the terms and conditions of this Public Improvement Contract, the recitals above, and all other applicable City Code provisions, the City hereby approves the recording of the Plat.
- B. **Land Use:** Construction and operation of 20 Villa Homes with two common area outlots (22 lots total) including a private road and storm water improvements.
- C. **Public Improvements.** The Developer shall, subject to the terms and conditions contained herein, perform the following work and construct the following improvements (“Public Improvements”) in compliance with City approved Public Improvement Construction Plans described in Section III E below and all rules, regulations, standards and ordinances of the City:
1. Restoration of existing streets: Curb cuts and street cuts shall be reconstructed to match existing street typical section.
    - a) All unused curb openings along the South McCarrons Boulevard curb line shall be removed and replaced with curb to match existing. Curbs proposed to be replaced shall have a minimum of 3 feet of bituminous saw cut out to allow for proper compaction.
    - b) Utility trenches shall be restored by the Developer per City standard plate.
  2. Watermain construction: The Developer shall construct all watermain determined by the City to be necessary to serve the Property, including hydrants and individual lot services.
    - a) All watermain improvements and hydrants shall be constructed in accordance with City details, specifications, and the Public Improvement Construction Plans.

- b) All water services shall be private as defined by City Code.
3. Sanitary sewer construction: The Developer shall construct all sanitary sewer pipes determined to be necessary by the City to serve the Property, including individual lot services.
- a) All sanitary sewers shall be constructed in accordance with City details, specifications, and the City approved Public Improvement Construction Plans.
  - b) The sanitary sewer main from the manhole labeled on the Public Improvement Construction Plans as “Ex MH E” to those labeled as “MH1”, “MH2”, and “MH3” shall be public.
4. Pathway construction: The Developer shall construct a public bituminous trail within the plat from the Marion cul-de-sac to South McCarrons Boulevard.
- a) The pathway shall be constructed in accordance with City details, specifications, and the City approved Public Improvement Construction Plans.
  - b) If the City obtains funding to complete the pathway construction, then the City may give the Developer notice of the City’s intent to take responsibility for the pathway construction, as stated herein. Upon delivery by the City of written notice to the Developer in accordance with provision III.X of this Agreement, the Developer shall be relieved of the obligation to complete the pathway construction. The Developer may request the City Engineer to reduce the amount of the Financial Security by the corresponding amount in accordance with III.J.1 of this Agreement.
5. Erosion control: Prior to the commencement of any grading and before any utility construction is commenced or building permits are issued, the erosion control plan must be implemented, inspected and approved by the City. The Developer shall meet all requirements of the City’s Erosion Control Ordinance including but not limited to the following:
- a) No construction activity shall be allowed and no building permits shall be issued unless the Property is in full compliance with the erosion control requirements.
  - b) Measures shall be installed in compliance with MPCA NPDES permit requirements.
  - c) The City will inspect the site periodically and determine whether it is necessary to take additional measures to address erosion. The Developer shall comply with all additional erosion control requirements.
  - d) To remove dirt and debris from streets that has resulted from construction work by the Developer, its agents or assigns, the Developer shall sweep all haul roads on a weekly basis or more frequently as directed by the City Engineer until the site is stabilized. The Developer must sweep roadways with a water-discharge broom apparatus. Kick-off brooms shall not be utilized for street sweeping.
  - e) If the development on the Property does not comply with the erosion control plan or supplementary instructions received from the City, the City may, following giving the Developer 48-hour prior verbal notice (or immediately in the case of an emergency), take

such action as it deems appropriate to control erosion, the cost of which action shall be paid by the Developer to the City upon demand.

**D. Private Improvements.** The Developer shall, subject to the terms and conditions contained herein, perform the following work and construct the following improvements (“Private Improvements”) in compliance with City approved Construction Plans described in Section III E below and all rules, regulations, standards and ordinances of the City:

1. **Site Grading and Turf Restoration.** The Developer shall grade the Property in accordance with the City approved Grading, Drainage and Erosion Control Plan. Site grading improvements shall include common excavation, subgrade correction, embankment and pond excavation. The Developer shall conduct turf restoration on the Property which shall include seeding, mulching and erosion control.
  - a) The Developer shall submit to the City a site grading and drainage plan for the entire Plat acceptable to the City showing the grades and drainage for each lot prior to installation of the improvements.
  - b) The Developer shall furnish the City Engineer satisfactory proof of payment for the site grading work and shall submit a certificate of survey (as-constructed survey) of the development to the City after site grading, with street and lot grades.
  - c) All improvements to the lots and the final grading shall comply with the approved grading plan.
2. **Sanitary sewer construction:** The Developer shall construct all sanitary sewer pipes determined to be necessary by the City to serve the Property, including individual lot services.
  - a) All sanitary sewers shall be constructed in accordance with City details, specifications, and the City approved Public Improvement Construction Plans.
  - b) All sanitary sewer services shall be private as defined by City Code.
3. **Street Improvements.** The Developer shall construct all streets shown on the Plat in accordance with the Public Improvement Construction Plans. Street improvements include subgrade preparation, gravel base, bituminous surfacing, and concrete curb and gutters.
  - a) All streets for this Plat shall be private.
4. **Storm sewer construction:** The Developer shall construct all storm sewer improvements determined to be necessary by the City to serve the Property, including the construction of outlet control structures and flared end sections.
  - a) Storm sewer facilities, including ponds and filtration basins, shall be constructed in accordance with City details, specifications, and the City approved Public Improvement Construction Plans.
  - b) Filtration basins shall be protected from silt during construction. If these areas do not function as designed, the Developer shall reconstruct them as directed by the City Engineer.
  - c) All storm sewer improvements shall be private.

E. **Development Plans.** The Property shall be developed in accordance with the following plans, specifications and other documents (“Plans”). With the exception of the Plat, the Plans may be prepared after the parties have entered into this Agreement, provided however, no work shall be commenced on the Property until all of the Plans have been submitted to and approved by the City. The Plans shall not be attached to this Agreement, but shall be retained in the City files while the work to be done under this Agreement is being performed. If the Plans vary from the written terms of this Agreement, the written terms shall control. The Plans (which are sometimes referred to herein as the “Public Improvement Construction Plans”) are as follows:

- a) The Enclave at McCarrons Lake Final Plat;
- b) The Enclave at McCarrons Lake Plan Set; and
- c) Storm Water Maintenance Agreement.

F. **Notice to Proceed.** The improvements shall be installed in accordance with the City approved Plans and the rules, regulations, standards and ordinances of the City. The plans and specifications shall be prepared by a competent registered professional engineer, furnished to the City for review, and shall be subject to the approval of the City Engineer. No work shall commence on the Property until the City Engineer notifies the Developer that the work can commence.

1. The Developer shall obtain all necessary permits from the Minnesota Pollution Control Agency (MPCA), Minnesota Department of Health (MDOH), applicable watershed, all City permits, including erosion control, grading and storm water permit and other agencies and governmental authorities before proceeding with construction. Copies of these permits must be provided to the City Engineer.
2. The Developer or its engineer shall schedule a preconstruction meeting at a mutually agreeable time at City Hall with all the parties concerned, including City staff, to review the program for the construction work.
3. The Developer represents to the City that the Plat complies with all City, County, Metropolitan, State and Federal laws and regulations including, but not limited to: subdivision ordinances, zoning ordinances and environmental regulations. If the City determines that the Plat does not comply, the City may, at its option, refuse to allow construction or development work on the Property until the Developer does comply. Upon the City’s demand, the Developer shall cease work until there is compliance.

G. **Time of Performance.** The Developer shall complete all required public and private improvements enumerated in Paragraphs C and D by October 1, 2021, except final lift of bituminous, which shall be completed no later than July 31, 2022. The Developer may, however, forward a request for an extension of time to the City. If an extension is granted, it shall be conditioned upon updating the security posted by the Developer to reflect cost increases and the extended completion date.

H. **Inspection.** The Developer shall provide the services of a Project Representative and assistants at the site to provide continuous observation of the work to be performed and the improvements to be constructed under this Agreement.

1. The Developer shall provide the City Engineer a minimum of one business day notice prior to the commencement of the underground pipe laying and service connection; and prior to subgrade, gravel base and bituminous surface construction.



2. Developer's failure to comply with the terms of this section shall permit the City Engineer to issue a stop work order which may result in a rejection of the work and which shall obligate the Developer to take all reasonable steps, as directed by the City Engineer to ensure that the improvements are constructed and inspected pursuant to the terms of this Agreement; and shall further result in the assessment of a penalty, in an amount equal to 1% per occurrence, of the amount of the security required for Developer improvements, which amount the Developer agrees to pay to the City upon demand.
- I. **Engineering Coordination.** A City Engineering Coordinator shall be assigned to this project to provide further protection for the City against defects and deficiencies in the work and improvements through the observations of the work in progress and field checks of materials and equipment. However, the furnishing of such engineering coordination will not make the City responsible for construction means, methods, techniques, sequences or procedures or for the safety precautions or programs, or for the contractor's failure to perform the contractor's work in accordance with the Plans. The Developer is obligated to pay the City for City inspection services an amount equal to 4% of the estimated cost of the Public Improvements, which amount is \$10,587.44. This amount shall be paid at or prior to the execution of this Agreement.
  - J. **Security.** To guarantee compliance with the terms of this Agreement, payment of the costs of all Public Improvements and construction of all Public Improvements, the Developer shall furnish either: a) a cash deposit, or b) an irrevocable letter of credit for \$330,857.50 in a form to be approved by the City (the "Financial Security"). The amount of the Financial Security is 125% of the estimated cost to construct the Public Improvements. The City shall have the right to draw upon and use the Financial Security in the event that the Developer fails to perform any of its obligations under this Agreement.
    1. **Reduction of Security.** Periodically upon the Developer's written request, the City Engineer may reduce the amount of the Financial Security for completed Public Improvements provided the following conditions are met:
      - a) The Developer's engineer certifies that the Public improvements have been constructed to City standards and in accordance with the Plans.
      - b) The Developer provides documentation that its contractors and all their subcontractors and suppliers have been paid in full for the work completed and materials supplied.
      - c) The City Engineer determines that such Public Improvements have been fully completed in accordance with the Plans, specifications and provisions of this Agreement.

The amount of reduction shall be equal to that portion of the Financial Security which covers such completed Public Improvements; provided however, in no case shall the remaining amount of the Financial Security be less than the greater of: (i) 25% of the original amount of the Financial Security, or (ii) 125% of the estimated cost to complete the Public Improvements which have not been completed as determined by the City Engineer.

2. **Release of Security.** This Agreement shall run with the land and may be recorded against the title to the Property. After the work described in this Agreement has been completed, the Developer may request that the City accept the Public Improvements. This is



accomplished through a City Council resolution provided the following conditions are met:

- a) **As-built Survey.** The Developer shall provide an as-built survey upon completion of the Public Improvements described in Paragraph C in reproducible and digital (AutoCAD) format. The locations and elevations of sewer and water services shall be accurately shown on the survey.
- b) **Certification.** The Developer's engineer submits a letter certifying that the Public Improvements have been constructed to City Standards in accordance with the Plans and requests that the City accept the Public Improvements.
- c) **Payment.** The Developer provides documentation that its contractors and their subcontractors and suppliers have been paid in full for the work completed and the materials supplied.
- d) **Determination of Completion.** The City Engineer and the City Council have determined that all Public Improvements have been completed in accordance with the Plans, specifications and terms of this Agreement.

The date of City acceptance of the Public Improvements shall be the date of the City Council resolution accepting the Public Improvements.

In the event that a Letter of Credit is given as the Financial Security, the term of any Letter of Credit provided by the Developer must be at least one year. Notwithstanding anything to the contrary contained herein, in the event that: i) some or all of the Public Improvements have not been completed and accepted by the City before the expiration date of the Letter of Credit, ii) the City has been notified that the Letter of Credit is not being extended for another term of at least one year, and iii) no replacement Letter of Credit satisfactory to the City has been delivered to the City, the City shall have the right to draw on the full amount of the Letter of Credit at any time prior to the expiration of the Letter of Credit. In the event of such draw on the Letter of Credit, the City shall have the right to use the amount drawn to complete any unfinished Public Improvements, perform any unperformed obligations of the Developer, pay the costs to draw on the Letter of Credit and/or pay any costs to enforce this Agreement. The Letter of Credit shall allow Partial Draws and shall provide that a draw can be made on the Letter of Credit at a location which is in or within 30 miles of the City of Roseville.

- K. **Ownership of Improvements and Risk of Loss.** Upon completion and City acceptance of the Public Improvements, all Public Improvements lying within public rights-of-way and easements shall become City property without further notice or action, except as follows: Streets and storm sewer. The Developer shall be responsible for the risk of loss of all Public Improvements constructed by the Developer until ownership thereof passes to the City. Any damage or destruction, in whole or in part, to any Public Improvement constructed by the Developer shall be repaired and/or replaced by the Developer until ownership of such Public Improvement passes to the City. The following special requirements shall apply with respect to the maintenance of Public Improvements which have been completed and accepted by the City: None.
- L. **Warranty.** The Developer shall install and construct the Public Improvements in accordance with the terms and conditions of this Agreement. The Developer warrants the Public Improvements and all work required to be performed by the Developer hereunder against poor material and faulty workmanship for a period of two (2) years after its completion and acceptance by the City. The

Developer shall repair or replace as directed by the City and at the Developer's sole cost and expense: (i) any and all faulty work, (ii) any and all poor quality and/or defective materials, and (iii) any and all trees, plantings, grass and/or sod which are dead, are not of good quality and/or are diseased, as determined in the sole but reasonable opinion of the City or its Engineer, provided the City or its Engineer gives notice of such defect to Developer with respect to such items on or before 60 days following the expiration of the two year warranty period. The Developer shall post maintenance bonds or other security acceptable to the City to secure the warranties described herein, which bonds or other security shall be in addition to the Financial Security described herein.

- M. **Utility Company Improvements.** The utility improvements include underground gas, electric, and telephone service as installed by the appropriate utility company at the direction of the Developer. The Developer shall arrange for the installation of underground gas, electric, telephone and cable television before the final lift is started.
- N. **Park Dedication Fee.** Park dedication shall be cash in lieu of land dedications, in amount of \$72,250.00.
- O. **License.** The Developer hereby grants the City, its agents, employees, officers and contractors a license to enter the Property to perform all work and inspections deemed appropriate by the City during the installation of the Public Improvements. This license shall expire after the Property has been completely developed and all of the Public Improvements have been accepted by the City.
- P. **Building Permits.** In order to provide emergency vehicle access, a passable Class 5 road base must be extended to within 150 feet of any address seeking a building permit. Breach of the terms of this Agreement by the Developer shall be grounds for denial of building permits, including lots sold to third parties.
- Q. **Land Occupancy.** No certificate of occupancy shall be issued until:
1. All water and sewer improvements are installed per City plans.
  2. The private roadway has a minimum of one lift of pavement installed.
- R. **Construction Management.** The Developer and its contractors and subcontractors shall minimize impacts from construction on the surrounding neighborhood as follows:
1. **Definition of Construction Area.** The limits of the Project Area shall be defined with heavy-duty erosion control fencing approved by the City Engineer. Any grading, construction or other work outside this area requires approval by the City Engineer and the affected property owner.
  2. **Parking and Storage of Materials.** No fill, excavating material or construction materials shall be stored in the public right-of-way.
  3. **Hours of Construction.** Hours of construction, including moving of equipment shall be limited to the hours between 7 a.m. and 9 p.m. on weekdays and 9 a.m. and 9 p.m. on weekends.
  4. **Site Maintenance.** The Developer shall ensure the contractor maintains a clean work site. Measures shall be taken to prevent debris, refuse or other materials from leaving the site. Construction debris and other refuse generated from the project shall be removed from the site in a timely fashion and/or upon the request by the City Engineer. After the Developer has received twenty-four (24) hour verbal notice, the City shall have the right

to complete or contract to complete the site maintenance work at the Developer's expense, which amount the Developer shall pay to the City upon demand.

5. **Cold Weather Construction.** The City requires that no public concrete or bituminous infrastructure be constructed on frozen ground. Upon evidence of frozen ground in the project aggregate base/subgrade, all concrete and bituminous work shall cease for the construction year. No bituminous base paving or concrete pouring will be allowed after November 1<sup>st</sup> of the calendar year. Work may be performed after November 1<sup>st</sup> only with the approval of the City Engineer, and if permitted such work shall comply with City specifications.
  6. **Bituminous and Concrete Material Acceptance.** The City shall not accept concrete curb and gutter that has structural or cosmetic defects. The City shall identify all defective curb for removal. The City shall not accept bituminous base course with less than 91.5% density or that has an open graded appearance as determined by the City Engineer. This is considered to be rejected and shall be required to be removed at the Developer's expense. At no time shall the bituminous wear course be installed after September 1<sup>st</sup> of any calendar year or prior to weight restrictions being lifted in the spring.
  7. **Televising.** All public storm sewer and sanitary sewer shall be televised, at the Developer's expense, prior to the installation of the aggregate base, concrete curb and gutter, and bituminous. No roadway construction shall be commenced until the City has reviewed and approved the televising tapes. All televising media shall be submitted on DVD.
- S. **Certificate of Insurance.** The Developer shall provide, prior to the commencement of any site work or other development of the Property, evidence that it has insurance in the form of a Certificate of Insurance issued by a company authorized to do business in the State of Minnesota, which includes workman's compensation and general liability. Limits for bodily injury and death shall not be less than \$1,000,000 for one person and \$1,500,000 per occurrence. Limits for property damages shall be not less than \$500,000 for each occurrence. The City shall be included as an additional insured on general liability and property damage policies. The Developer shall provide the City with a renewal certificate of insurance at least 30 days prior to the expiration date of any policy required hereunder.
- T. **All Costs Responsibility of Developer.** The Developer shall pay all costs incurred by it and the City in conjunction with this Agreement, the approval of the Plat, the development of the Property, and the construction of the improvements required by this Agreement, including but not limited to, all costs of persons doing work or furnishing skills, tools, machinery and materials; insurance premiums; Letter of Credit fees and bond premiums; legal, planning and engineering fees; the preparation and recording of this Agreement and all easements and other documents relating to the Plat and the Property; and all costs incurred pertaining to the inspection and monitoring of the work performed and improvements constructed on the Property. The City shall not be obligated to pay the Developer or any of its agents or contractors for any costs incurred in connection with the construction of the improvements or the development of the Property. The Developer agrees to defend, indemnify, and hold the City and its mayor, councilmembers, employees, agents and contractors harmless from any and all claims of whatever kind or nature which may arise as a result of the construction of the improvements, the development of the Property or the acts of the Developer, and its employees, agents or contractors in connection thereto.

1. The Developer shall defend, indemnify, and hold the City and its mayor, councilmembers and employees harmless from claims made by itself and third parties for damages sustained or costs incurred resulting from Plat approval, development of the Property, construction of the improvements or other work performed on the Property. The Developer shall defend, indemnify, and hold the City and its mayor, councilmembers and employees harmless for all costs, damages or expenses which the City may pay or incur in consequence of such claims, including attorney's fees.
2. The Developer shall pay, or cause to be paid when due, and in any event before any penalty is attached, all charges, costs and fees referred to in this Agreement. This is a personal obligation of the Developer and shall continue in full force and effect even if the Developer sells one or more lots, all of the Property, or any part of it.
3. The Developer shall pay in full all bills submitted to it by the City for obligations incurred under this Agreement within thirty (30) days after receipt. If the bills are not paid on time, the City may, in addition to all other rights and remedies the City may have, halt development and construction work on the Property including, but not limited to, the issuance of building permits for lots which the Developer may or may not have sold, until the bills are paid in full. Bills not paid within thirty (30) days shall accrue interest at the rate of ten percent (10%) per year, or the maximum amount allowed by law, whichever is less.
4. The Developer shall reimburse the City for all costs incurred in the enforcement of this Agreement, including all attorney and engineering fees.
5. In addition to the charges referred to herein, other charges may be imposed such as, but not limited to, sewer availability charges ("SAC"), City water connection charges, City sewer connection charges, City storm water connection charges and building permit fees. The Developer shall pay all such other charges and fees upon being billed by the City.

U. **Default.** In the event of default by the Developer as to any of the work to be performed by it hereunder, the City may, at its option, perform the work and the Developer shall promptly reimburse the City for any expense incurred by the City, provided the Developer is first given notice of the work in default not less than 48 hours in advance or immediately before the City commences performing such work in the event of an emergency. This Agreement is a license for the City to act, and it shall not be necessary for the City to seek a court order for permission to enter the Property. When the City does any such work, the City may, in addition to its other remedies, assess the cost in whole or in part, against the Developer and/or the Property.

V. **Remedies.** Upon the occurrence of a breach of this Agreement by the Developer, the City, in addition to any other remedy which may be available to it, shall have the right to do any or all of the following:

1. City may make advances or take other steps to cure the default, and where necessary, enter the Property for that purpose. The Developer shall pay all sums so advanced or expenses incurred by the City upon demand, with interest from the date of such advances or expenses at the rate of 10% per annum or the maximum allowed by law, whichever is less. No action taken by the City pursuant to this section shall be deemed to relieve the Developer from curing any such default or from any other default hereunder. The City

shall not be obligated, by virtue of the existence or the exercise of this right, to perform any such act or cure any such default.

2. Obtain an order from a court of competent jurisdiction requiring the Developer to specifically perform its obligations pursuant to the terms and provisions of this Agreement.
3. Obtain an order from a court of competent jurisdiction enjoining the continuation of an event of default.
4. Halt all development work and construction of improvements until such time as the event of default is cured.
5. Withhold the issuance of a building permit and/or prohibit the occupancy of any structure(s) for which permits have been issued.
6. Draw upon and utilize the Developer's Financial Security to cover the costs of the City in order to correct the default, the costs to complete any unfinished Public Improvements, the costs to draw on the Financial Security and/or the costs to enforce this Agreement.
7. Terminate this Agreement by written notice to Developer at which time all terms and conditions contained herein shall be of no further force or effect and all obligations of the parties imposed hereunder shall be null and void.
8. Exercise any other remedies which may be available to it at law or in equity.
9. In addition to the remedies and amounts payable set forth or permitted above, upon the occurrence of an event of default, the Developer shall pay to the City all fees and expenses, including attorneys fees, incurred by the City as a result of the event of default, whether or not a lawsuit or other action is formally taken.
10. The Developer shall defend, indemnify, and hold the City and its mayor, councilmembers, employees, agents and contractors harmless from any liability or damages, including reasonable attorneys fees, which may be incurred as a result of the exercise of the City's rights pursuant to this Agreement.

**W. Assignment.** The Developer may not assign this Agreement without the written permission of the Roseville City Council.

**X. Notices to the Developer.** Required notices to the Developer shall be in writing, and shall be either hand delivered to the Chief Executive Officer or another officer, employee or agent of the Developer, or mailed to the Developer by registered or certified mail at the following address:

Airborne McCarrons, LLC  
13605 1<sup>st</sup> Ave N. Suite 100  
Plymouth, Minnesota 55441

**Y. Notices to the City.** Required notices to the Developer shall be either hand delivered to the City Engineer, or mailed to the City by registered or certified mail in care of the City Engineer at the following address:



City of Roseville  
2660 Civic Center Drive  
Roseville, Minnesota 55113  
Attn: City Engineer

**Z. Miscellaneous.**

1. The Developer shall comply with any and all applicable City, County, Metropolitan, State and Federal laws and regulations including, but not limited to: subdivision ordinances, zoning ordinances and environmental regulations that may apply to the Plat, the development of the Property, and the construction of the Public Improvements described herein.
2. The terms and conditions of this Agreement shall inure to the benefit of and shall be binding upon the parties hereto, and their respective successors and assigns.
3. The obligations of all parties signing this Agreement as a Developer shall be joint and several.
4. If any portion, section, subsection, sentence, clause, paragraph or phrase of this Agreement is for any reason held invalid, such decision shall not affect the validity of the remaining portions of this Agreement.
5. The action or inaction of the City shall not constitute a waiver or amendment to the provisions of this Agreement. To be binding, amendments or waivers must be in writing, signed by the parties and approved by the Roseville City Council. The City's failure to promptly take legal action to enforce a default under this Agreement shall not be a waiver or release of such default.
6. This Agreement shall run with the land and shall be binding upon the Developer, and its successors and assigns. The Developer shall, at its expense, record this Agreement with the Ramsey County Recorder if the Property is abstract property and/or with the Ramsey County Registrar of Titles if the Property is Torrens property. The Developer shall, prior to the time this Agreement is executed and recorded, furnish the City with title evidence and make arrangements satisfactory to the City to confirm that at the time that this Agreement is executed and recorded the Developer is the sole fee simple owner of the Property and that there are no other parties having an interest in, or a lien or encumbrance against the Property. No work shall commence on the Property prior to the recording of this Agreement.
7. This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota. Any legal proceeding pertaining to this Agreement, or the rights or obligations of the parties hereunder, shall be venued in courts or tribunals located in Ramsey County, Minnesota.
8. In addition to all other terms and conditions of this Agreement the Developer shall comply with and perform the Conditions of Development attached hereto as Exhibit B.


//


(Signatures Follow)

IN WITNESS WHEREOF, the parties have hereunto set their hands as of the day and year first above written.

CITY

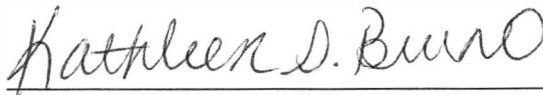
City of Roseville

By:   
Daniel J. Roe, Mayor

By:   
Patrick Trudgeon, City Manager

STATE OF MINNESOTA )  
COUNTY OF hamsey ) ss

The foregoing instrument was acknowledged before me this 23 day of March, 2021 by Daniel J. Roe and Patrick Trudgeon, the Mayor and City Manager respectively, of the City of Roseville, a Minnesota municipal corporation, on behalf of the corporation.

  
Notary Public







**EXHIBIT A**  
**Legal Description**

196 South McCarrons Boulevard, Roseville, MN 55113:

The South 1/2 of the Northwest 1/4 of the Southeast 1/4 of the Southeast 1/4 of Section 13, Township 29, Range 23, County of Ramsey, State of Minnesota, except the West 600 feet, thereof, and except the South 256.42 feet thereof;

AND Also, The East 39 feet of the North 90 feet of the South 256.42 feet of the East 1/2 of the Northwest 1/4 of the Southeast 1/4 of the Southeast 1/4 of said Section 13, Township 29, Range 23, County of Ramsey, State of Minnesota;

AND Also, That part of the East 1/2 of the Southeast 1/4 of the Southeast 1/4 of said Section 13, Township 29, Range 23, County of Ramsey, State of Minnesota lying Southwesterly of the center of McCarrons Boulevard South as now located and Northeasterly of the centerline of a lane running North 79 degrees 35 minutes West from a point on the East line of said Section 13, distant 575.6 feet North of the Southeast corner thereof, lying Northwesterly of a line running Northeasterly from said centerline of lane, at right angles thereto and from a point distant 657.74 feet Northwesterly from its point of beginning on said East line of Section 13, Ramsey County, Minnesota.

Abstract Property

\* \* \* \* \*

210 South McCarrons Boulevard, Roseville, MN 55113:

Parcel A:

That part of the North Half of the Northwest Quarter of the Southeast Quarter of the Southeast Quarter of Section 13, Township 29, Range 23, Except part conveyed to City of St. Paul in Book 1 23 of Deeds, page 66 and Except: Beginning at the Northwest corner of said North Half of the Northwest Quarter of the Southeast Quarter of the Southeast Quarter Section 13; thence North 89 degrees 18 minutes 08 seconds East, assumed bearing along the North line of said North Half, 265.47 feet to its intersection with the North line of South McCarrons Boulevard and the point of beginning; thence South 70 degrees 03 minutes 26 seconds East along the North line of South McCarrons Boulevard, 24.51 feet; thence North 25 degrees 18 minutes 31 seconds West 9.50 feet to the North line of said North Half; thence South 89 degrees 18 minutes 08 seconds West along the North line to the point of beginning, Ramsey County, Minnesota.

Parcel B:

The West 600 feet of the North 72.55 feet of the South Half of the Northwest Quarter of the Southeast Quarter of the Southeast Quarter of Section 13, Township 29, Range 23, Ramsey

County, Minnesota.

Abstract Property

To be Re-platted as a Common Interest Community (CIC) as Follows:

Units 1-20, The Enclave at McCarrons Lake, Ramsey County, Minnesota

Outlot A, The Enclave at McCarrons Lake, Ramsey County, Minnesota

Outlot B, The Enclave at McCarrons Lake, Ramsey County, Minnesota

**EXHIBIT B**  
**Conditions of Development**

1. All property owners shall either dedicate on the Plat or otherwise convey all roadway, utility, drainage, and other easements required by the City.
2. The access points to enter and exit the Property shall be at locations approved by the City and any other governmental entity having jurisdiction over adjacent roadways.
3. The Developer shall install subdivision monuments as reasonably required by the Roseville Public Works Department and Ramsey County Surveyor.
4. The Developer shall provide the City proof that the Developer/Owner is the fee simple owner of all of the Property included in the Plat and that there are no liens, encumbrances or other parties having an interest in the Property at the time the Plat and the Public Improvement Contract are recorded, or make other arrangements which are reasonably satisfactory to the City to assure that title to the Property following the recording of the Plat and the Public Improvement Contract shall be acceptable to the City.
5. The Developer shall pay all unpaid City subdivision review and other fees prior to the City releasing the Plat for recording.
6. No building permits shall be issued for any use of the Property which is not a permitted use.
7. The Developer or Builder shall form a Homeowner's Association(s) which will, among other things, be responsible for the maintenance and repair of various amenities on the Property. The Homeowner's Association documents shall be subject to the approval by the City Attorney and Staff. No work shall commence on the Property until such approval is given unless otherwise designated by the City Engineer in writing.

**TRAIL EASEMENT**

THIS INDENTURE is made as of this \_\_\_\_ day of \_\_\_\_\_, 202\_\_, between Airborne McCarrons, LLC, a Minnesota limited liability company (“Grantor”), and the City of Roseville, a Minnesota municipal corporation (“City”).

WITNESSETH:

That said Grantor, in consideration of One and no/100 Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby grant and convey unto the City, and its successors and assigns, a permanent trail easement in-gross, on, over, across and through a portion of the following described real property located in Ramsey County, Minnesota, to-wit:

See attached **Exhibit A**;

Said easement being that part of the above described parcel which is legally described as follows:

See attached **Exhibit B**

(the “Easement Area”).

The Easement Area is shown on the Certificate of Survey attached as Exhibit C.

The grant of the foregoing easement includes the right of the City, and its contractors, agents,

employees, and successors and assigns, to enter upon and use the Easement Area to construct, reconstruct, pave, inspect, operate and use sidewalks, trailways and/or other public pathways, together with signage, fences, retaining walls, landscaping, and other improvements and appurtenances, on, over, across and through the Easement Area; to grade, level, fill and drain the Easement Area; to excavate culverts, cuts, slopes and ditches within the Easement Area; to remove and import soils from and into the Easement Area; to remove trees, brush, undergrowth and other obstructions from the Easement Area; and to do all other acts and things which are reasonably necessary for or incidental to the enjoyment of the easement rights granted herein.

The foregoing easement shall be binding upon the Grantor and its successors and assigns, shall inure to the benefit of the City and its successors and assigns, and shall run with the land.

The Grantor, for itself and its successors and assigns, covenants with the City, and its successors and assigns, that Grantor is the owner of the Easement Area described herein and has good right to grant and convey the easement given herein to the City, subject to any recorded documents as of the date hereof.

TO HAVE AND TO HOLD THE SAME, together with all the hereditaments and appurtenances thereunto belonging, or in anywise appertaining, to the City, its successors and assigns, forever.





**EXHIBIT A**

**Legal Description of  
Grantor's Property**

Lots 15 and 16, Block 1; Lot 4, Block 2; and Outlot A of The Enclave at McCarrons Lake,  
Ramsey County, Minnesota.

(Abstract Property)

## EXHIBIT B

### Legal Description for Easement Area

Those parts of Lots 15 and 16, Block 1; Lot 4, Block 2; and Outlot A of THE ENCLAVE AT MCCARRONS LAKE, according to the recorded plat thereof, Ramsey County, Minnesota, described as follows:

Commencing at the southerly most corner of said Outlot A; thence North 10 degrees 11 minutes 4 seconds East, assumed bearing, along the easterly line of said Outlot A a distance of 197.65 feet to the point of beginning of area to be described; thence South 89 degrees 48 minutes 45 seconds West a distance of 47.52 feet; thence North 59 degrees 40 minutes 25 seconds West a distance of 39.37 feet to the intersection with the south line of said Lot 16; thence South 89 degrees 18 minutes 22 seconds West along the southerly lines of said Lot 16 and said Outlot A, a distance of 294.47 feet; thence North 23 degrees 20 minutes 35 seconds East a distance of 19.72 feet; thence North 89 degrees 18 minutes 26 seconds East a distance of 131.83 feet; thence North 64 degrees 18 minutes 26 seconds East a distance of 42.76 feet; thence South 78 degrees 5 minutes 49 seconds East a distance of 61.37 feet; thence South 32 degrees 17 minutes 56 seconds East a distance of 6.68 feet; thence North 89 degrees 17 minutes 50 seconds East a distance of 60.81 feet; thence South 61 degrees 53 minutes 45 seconds East a distance of 36.04 feet; thence North 89 degrees 48 minutes 45 seconds East a distance of 12.32 feet; thence North 44 degrees 57 minutes 16 seconds East a distance of 21.16 feet; thence North 0 degrees 5 minutes 46 seconds East a distance of 113.96 feet; thence North 47 degrees 22 minutes 39 seconds West a distance of 56.91 feet; thence North 2 degrees 37 minutes 21 seconds East a distance of 14.84 feet to the south right-of-way line of McCarrons Boulevard South, according to said THE ENCLAVE AT MCCARRONS LAKE; thence South 47 degrees 28 minutes 10 seconds East along said south right-of-way line a distance of 86.34 feet; thence southeasterly a distance of 20.18 feet along a tangential curve concave to the northeast having a radius of 570.00 feet and a central angle of 2 degrees 1 minute 43 seconds to said east line of Outlot A; thence South 10 degrees 11 minutes 4 seconds West along said east line a distance of 132.55 feet to said point of beginning.

This description will become valid upon the recording of THE ENCLAVE AT MCCARRONS LAKE, plat at Ramsey County.

**EXHIBIT C**

**Certificate of Survey**

The Certificate of Survey follows.