

THIS INSTRUMENT PREPARED BY:

John H. Boyd, Esq.
Costello Sury & Rooney, P.C.
One Lincoln Centre, Suite 1670
Oakbrook Terrace, Illinois 60181

AND RETURN TO:

City Administrator
City of Geneva
22 S. 1st Street
Geneva, Illinois 60134

ANNEXATION AGREEMENT

THIS ANNEXATION AGREEMENT (hereinafter sometimes referred to as this “Agreement”), is made and entered into as of the ____ day of _____ 2022, by and between the CITY OF GENEVA, an Illinois municipal corporation located in Kane County, Illinois (“City”), by and through the Mayor and City Council of the City (collectively the “Corporate Authorities”), D. FOUR, LLC, an Illinois limited liability company (“Owner”) and PHEASANT TAIL, LLC, an Illinois limited liability company or its affiliate or successor (in any case, the “Developer”). The City, the Owner, the Developer, and their respective successors, are sometimes herein referred to individually as a “Party” and collectively as the “Parties”.

RECITALS:

- A. Owner is the owner of record of certain real estate constituting a contiguous tract of land, the legal description of which is set forth as on Exhibit “A” attached hereto (the “Subject Realty”).
- B. The Subject Realty is depicted on the Plat of Annexation as Exhibit “B” which is attached hereto (the “Plat of Annexation”).
- C. The Subject Realty is located within unincorporated Kane County, Illinois (“County”) and is not located within the corporate boundaries of any municipal corporation.
- D. The Subject Realty is within the planning jurisdiction of the City and is contiguous to the corporate boundaries of the City.
- E. The Developer is the contract purchaser of the Subject Realty, and such affiliate, or its nominee (in either case, the “Related Purchaser”) intends to purchase the Subject Realty from the Owner and cause same to be developed by the Developer.

F. Owner and Developer desire to have the Subject Realty annexed to the City as soon as reasonably practicable following the execution of this Agreement, upon the terms and conditions hereinafter set forth.

G. Owner and Developer or its affiliate have heretofore filed a petition with the City requesting the City enter into this Agreement providing for (i) the annexation of the Subject Realty to the City upon the execution of this Agreement and (ii) the development of the Subject Realty in accordance with the terms and provisions of this Agreement.

H. Pursuant to due notice and advertisement under the provisions of Sections 11-15.1-1 through 11-15.1-5 of the Illinois Municipal Code, the City's Planning and Zoning Commission has held a public hearing and made its recommendation to the Corporate Authorities with respect to Owner's and Developer's requested zoning classification for the Subject Realty.

I. Pursuant to the provisions of Section 5/11-15.1-1 *et. seq.*, of the Illinois Municipal Code (65 ILCS 5/11-15.1 *et. seq.* as amended) a proposed Annexation Agreement was submitted to the Corporate Authorities and a public hearing was held thereon pursuant to notice as provided by law.

J. The Corporate Authorities after due and careful consideration have concluded that the annexation of the Subject Realty to the City and its zoning and development on the terms and conditions herein set forth would further enable the City to control the development of the area and would serve the best interests of the City.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements herein contained, IT IS HEREBY AGREED BY AND BETWEEN THE CITY, OWNER AND DEVELOPER as follows:

1. **APPLICABLE LAW.** This Agreement is made pursuant to and in accordance with the provisions of Section 5/11-15.1-1 *et. seq.*, of the Illinois Municipal Code (65 ILCS 5/11-15.1 *et. seq.*, as amended). The preceding recitals are hereby made a part of this Agreement.

2. **AGREEMENT: COMPLIANCE AND VALIDITY.** Owner and Developer have filed with the City Clerk of City a proper petition pursuant to and in accordance with the provisions of Section 5/7-1-8 of the Illinois Municipal Code (65 ILCS 5/7-1-8 as amended) conditioned on the execution of this Agreement and the compliance with the terms and provisions contained herein, to annex the Subject Realty into the City. It is understood and agreed that this Agreement in its entirety, together with the aforesaid petition for annexation, shall be null, void and of no force and effect unless the Subject Realty is validly annexed to the City and is validly zoned and classified as contemplated in this Agreement.

3. **ANNEXATION: POSSIBLE DISCONNECTION**

A. Owner has previously submitted to the City a petition for annexation of the Subject Realty, subject to the City's execution of this Annexation Agreement.

B. Concurrently with the execution of this Annexation Agreement (the “**Effective Date**”), the City agrees to enact valid and binding ordinances and resolutions (i) annexing the Subject Realty within the corporate boundaries of the City as provided in Section 3A below (the “**Annexation Ordinance**”), and (ii) enacting the PUD Ordinance as defined in Section 4B below. Said Annexation Ordinance together with the Plat of Annexation shall be recorded at the Kane County Recorder’s office.

C. Unless, within one hundred twenty (120) days following the date the City takes the last of the actions described in Section 3B above, the Developer or its nominee has acquired title to the Subject Realty and provides to the City proof of ownership (the “**Ownership Transfer Documentation**”), then upon written demand (the “**Disconnection Demand**”) made by Owner to the City (with copy to the Developer) made between the one hundred twentieth (120th) and the one hundred eightieth (180th) day after the Effective Date (the “**Disconnection Period**”), the City shall enact all ordinances required to disconnect the Subject Realty from the corporate limits of the City and to abrogate any plat of subdivision of the Subject Realty that has, as of said date, been approved and recorded (such action by the City being herein referred to as the “**Disconnection Actions**”), whereupon this Agreement shall be deemed terminated without further obligations of the parties hereunder. The right of the Owner to give a Disconnection Demand and to require the City to take the Disconnection Actions shall expire and be null and void upon the first to occur or arrive of (i) the delivery of the Ownership Transfer Documents to the City or (ii) the expiration of the Disconnection Period (whichever date may apply being herein referred to as the “**Disconnection Expiration Date**”).

D. Notwithstanding the foregoing provisions of subparagraph C of this Section 3 to the contrary, until the right of the Owner to make a Disconnection Demand has expired (as provided in the immediately preceding Section 3C), , the City shall have no obligation to the Developer or Owner, or their respective successors or assigns, to undertake any obligation assigned to the City as set forth in this Agreement which would result in any financial obligation or cost to the City unless the Owner or Developer first agrees to reimburse and / or indemnify the City in form and substance acceptable to the City Administrator (the “**Developer Financial Indemnifications**”) against such financial obligation or cost in the event that the City later implements the Disconnection Actions as required under Section 3C above. Said Developer Financial Indemnifications shall expire if the Subject Realty is not disconnected prior to the Disconnection Expiration Date.

4. ANNEXATION.

A. The City agrees to enact a valid and binding ordinance (“**Annexation Ordinance**”) annexing the Subject Realty within the corporate boundaries of the City within twenty-one (21) days following the delivery by the Developer or the Related Purchaser to the City of (i) proof that the Related Purchaser has become the owner of the Subject Realty, and (ii) a duly executed petition for annexation of the Subject Realty signed by such Related Purchaser subject to the applicable provisions of statutes and the terms and conditions hereinafter set forth (collectively, the “**Proof of Ownership**”). Said

Annexation Ordinance together with the Plat of Annexation shall be recorded at the Kane County Recorder's office.

B. In the event the Developer or Owner fails to file the materials described in Section 3A above with the City Clerk within ninety (90) days following the execution of this Agreement, the City or the Owner may elect to terminate this Agreement by providing written notice to all of the other parties to this Agreement. In the event of such written notice is given in accordance with the preceding sentence, then this Agreement shall be deemed terminated without further obligations of the parties hereunder.

5. **ZONING.**

A. Concurrently with the annexation of the Subject Realty to the City, the Subject Realty shall be zoned by the City and classified as I1- Light Industrial District with a special use for planned unit development pursuant to the provisions of 11-7B-3 of the City of Geneva Zoning Ordinance, as amended.

B. The form and content of the zoning ordinance to be adopted by the City with respect to the Subject Realty shall be as set forth on Exhibit "C" attached hereto (the "PUD Ordinance"), and shall expressly approve the Preliminary PUD Plans as hereafter defined. Thereafter, the Subject Realty shall be developed only in accordance with the provisions of this Agreement, the Subject Realty PUD Zoning Ordinance, and the applicable statutes and ordinances of the City (except as expressly modified herein).

6. **DEVELOPMENT PLANS AND RIGHTS.**

A. Attached hereto as Exhibit D is a list of the plans (collectively, the "Preliminary PUD Plans") for the development of the Subject Realty within the City, all of which are hereby approved by the City. The Preliminary PUD Plans include [to follow]. The buildable lots created by any final plat of planned unit development and subdivision shall sometimes be herein referred to as a "Lot" or the "Lots".

B. At the election of the Developer, the Developer may proceed with development of the Subject Realty as follows:

- (1) Under Preliminary PUD Plan Alternate A with a final plat of planned unit development and subdivision in substantial conformance with the attached Preliminary Plat of Planned Unit Development and Subdivision, except that [to follow if applicable]; or
- (2) [To follow]; or
- (3) [To follow].

C. The Developer may undertake development of the Lots in phases.; accordingly, each Phase shall independently be required to satisfy the vehicular and public safety access requirements of the PUD Ordinance and provide connection access to all

public utilities prior to the issuance of any certificate of occupancy. Provided the Developer commences construction on any one or more of the Lots created by the initial final plat of planned unit development and subdivision on or before the first anniversary of the recording of said initial final plat of planned unit development and subdivision, such construction shall satisfy the requirements of Section 11-9-11 of the City's Code of Ordinances as to the entire subdivision.

- D. The City hereby agrees that it will promptly review and approve the final plat of planned unit development and subdivision for the entire Subject Realty, and a final PUD plan for the Lots and buildings thereon to be created consistent with the Preliminary PUD Plans or by Alternate Plans (as the case may be) (collectively, the "Final PUD Plans") so long as they are in substantial conformance with the Preliminary PUD Plans, and shall permit the development of the Subject Realty in conformance therewith ("Substantially Conforming Development").
- E. Provided that any application submitted by the Developer to the City for a building permit on any of the Lots created by the final plat of planned unit development and subdivision reflects Substantially Conforming Development, as determined by the City's Community Development Director, the City shall promptly issue building permits as contemplated by Section 12 A without requiring any otherwise-required site plan review (including, without limitation review pursuant to Section 10-4B-1 of the City's Municipal Code), provided that such permit application substantially complies with all of the City's current, published requirements for the issuance of such building permits (except to the extent expressly waived or altered herein).

7. UTILITIES AND PUBLIC IMPROVEMENTS.

A. Sanitary Sewer Facilities. The City represents that the sanitary sewer system of the City, as of the date of the execution of this Agreement, (i) has been extended to the boundary of the Subject Realty in public rights-of-way or in other permanent easements held by the City, (ii) has sufficient line capacity to serve the Subject Realty when developed in accordance with the Final PUD Plans and (iii) may be accessed and utilized to serve development on the Subject Realty without imposing any so-called recapture or reimbursement fee or capital infrastructure fee upon the Developer other than as reflected on the Fee Schedule as defined in Paragraph 10 below. The sanitary sewer mains designed and constructed by Developer within the boundaries of the Subject Realty to serve the development thereon (the "On-Site Sanitary Sewer Mains") shall be (i) situated within on-site easements and (ii) conveyed to the City prior to occupancy, and the City shall take ownership of and, at its expense, be responsible for the ongoing care, maintenance, replacement and renewal of the On-Site Sanitary Sewer Mains in accordance with City regulations.

B. Storm Sewer Facilities. The City represents that the storm sewer system of the City, as of the date of the execution of this Agreement, (i) has been extended to the eastern boundary of the Subject Realty in the Geneva Drive public right-of-way or in other permanent easements held by the City, (ii) has sufficient line capacity to

serve the Subject Realty when developed in accordance with the Final PUD Plans, and (iii) may be accessed and utilized to serve development on the Subject Realty without imposing any so-called recapture or reimbursement fee or capital infrastructure fee upon the Developer other than as reflected on the Fee Schedule as defined in Paragraph 10 below. The storm sewer mains designed and constructed by Developer within the boundaries of the Subject Realty to serve the development thereon (the “On-Site Storm Sewer Mains”) shall be (i) situated within on-site easements and (ii) conveyed to the City prior to occupancy and the City shall take ownership of and, at its expense, be responsible for the ongoing care, maintenance, replacement and renewal of the public Storm Sewer Mains located in dedicated rights-of-way in accordance with City regulations.

C. Water Facilities. The City represents that the water distribution system of the City, as of the date of the execution of this Agreement, (i) has been extended to the [to follow] boundary of the Subject Realty in the [to follow] public right-of-way or in other permanent easements held by the City, (ii) has sufficient line capacity to serve the potable water and fire suppression needs of the Subject Realty when developed in accordance with the Final PUD Plans, and (iii) may be accessed and utilized to serve development on the Subject Realty without imposing any so-called recapture or reimbursement fee or capital infrastructure fee upon the Developer other than as reflected on the Fee Schedule as defined in Paragraph 10 below. The potable water mains designed and constructed by Developer within the boundaries of the Subject Realty to serve the development thereon (the “On-Site Water Mains”) shall be (i) situated within on-site easements and (ii) conveyed to the City prior to occupancy and the City shall take ownership of and, at its expense, be responsible for the ongoing care, maintenance, replacement and renewal of the On-Site Public Water Mains in accordance with City regulations.

D. Electric Distribution System.

1. Available Supply. The City represents that (i) it owns, operates and maintains the electrical facilities, supply and distribution systems (the “City Electrical System”), (ii) currently holds all permanent easements (if any) or permanent rights of access in public rights of way or private easements as are necessary to enable the Developer to extend the City Electrical System to the boundary of the Subject Realty from its substation at [to follow], and (iii) it has, and will reserve for service to the Substantially Conforming Development not less than [to follow] amps of power, in the aggregate, to serve all of the buildings within the subdivision and to be allocated among such buildings as the Developer may request, so long as construction on any one of the Lots is commenced as provided in Section 5, B, Exhibit “C” above. The amount of amps will be verified once the tenants’ or owners’ power needs are known, and to the extent that any proposed user requires more power, the City agrees to act in a commercially reasonable manner in supplying same.

2. Design of the Off-Site Electrical Facilities. Within sixty (60) days of the execution of this Annexation Agreement, the City in cooperation with the Developer and the Developer's engineer's shall at Developer's sole expense (i) design or cause the design of the off-site extension of the City Electrical System to serve the intended development thereon (the "Off-Site Electric System"), which includes but is not limited to poles, conduits, pull boxes, switch gear, primary wiring and electrical transformer, and (ii) as soon as reasonably practicable thereafter, issue, or cause to be issued, all necessary permits for the construction of same.

3. Construction of the Off-Site Electrical Facilities. Within one hundred twenty (120) days following the completion of the Off-Site Electric System Design (Section 6.D.2. above), the Developer shall fund and construct the Off-Site Electric System extension to serve the intended development, pursuant to the electrical engineering plans provided by the City. The City represents that it has in place one or more easements into which the City has the authority to (and will) authorize the Developer to install such Off-Site Electric System extension from the City's electric substation to the south and west of the Subject Realty all the way to the southerly boundary of the Subject Realty, without the payment by Developer of any fee or charge for the right to make such installation. After Developer's completion and the City's inspection and approval of such facilities for use, such facilities shall be owned and maintained by the City. The Developer shall not be entitled to recapture from any other benefitted property the costs incurred by the Developer in connection with the Off-Site Electric System.

4. Design and Construction of the On-Site Electrical Facilities. Within one hundred twenty (120) days following the submittal of final development plans for the Subject Realty, the City in cooperation with the Developer and the Developer's engineer's shall, at Developer's sole expense (i) design or cause the design of the on-site extension of the City Electrical System to the transformer location on the Subject Realty (the "On-Site Electric System"), and (ii) the Developer shall fund and construct the On-Site Electrical System extension to serve the intended development, pursuant to the electrical engineering plans provided by the City. Upon activation of such facilities for use, such facilities shall be owned and maintained by the City.

E. Storm Water Facilities. Upon development of the Subject Realty, Developer shall provide for storm water drainage and the detention thereof upon and from the Subject Realty in conformity with the City's Storm Water Management Ordinance.

F. Sidewalks and Street Related Improvements. As provided in Section 17A, the Developer shall dedicate to the City the right-of-way for the future extension of [to follow], and neither the construction and improvement thereof, nor the provision for associated utility extensions with respect to [to follow] shall be an obligation of

the Developer. The City shall not require the dedication of any other street within the boundaries of the Subject Realty other than the dedications shown on the Preliminary Plat of Planned Unit Development and Subdivision.

G. No Oversizing. Except as called for in the final engineering plans approved as part of the Final PUD Plans, no oversizing shall be required to be made (or paid for) by the Developer for any of the public water or sanitary sewer main improvements constructed within or adjacent to the Subject Realty and / or needed to serve the Subject Realty or other properties.

H. Exempt from Later-Adopted More Restrictive Codes and Ordinances. If during the term of this Agreement, any existing, amended, modified or new ordinances, codes or regulations of general applicability throughout the community to a developer, land owner or subdivider (i) affecting the installation of land improvements (streets, underground utilities, sidewalks, curbs and gutters) upon the Subject Realty are amended or modified in any manner to impose additional requirements on the installation of land improvements within the City, or (ii) so as to further restrict the permitted or special uses of the Subject Realty, the burden of such additional requirements or use changes shall not apply to the Subject Realty. This section shall not apply to any changes in fees imposed by the City. The City agrees that there shall be no unreasonable or discriminatory changes in the method of calculation of fees applicable to the Subject Realty.

I. Applicability of Later-Adopted Less Restrictive Codes and Ordinances If, during the term of this Agreement any existing, amended, modified or new ordinances, codes or regulations affecting the zoning, subdivision, development, construction of improvements, buildings or appurtenances or other regulatory ordinances regarding the public health, safety and welfare are amended or modified in any manner to (i) impose less restrictive requirements on the development of, or construction upon, I1 Zoning District properties within the City, or (ii) expand the permitted or special uses of property within any I1 Zoning District, then the benefit of such less restrictive requirements and / or expanded uses shall inure to the benefit of Owner and Developer, and anything to the contrary contained herein notwithstanding, Owner and Developer may elect to proceed with respect to the development of, or construction upon, the Subject Realty upon the less restrictive amendment or modification applicable generally to all properties within City

8. **FPA BOUNDARIES.** As of the date of this Agreement, all of the Subject Realty is within the Geneva Facilities Planned Area (FPA) for purposes of sanitary sewer service.

9. **SCHOOL AND PARK CONTRIBUTIONS.** Pursuant to the provisions of Section 6 of Subdivision Control Ordinance of the City Code (sometimes herein referred to as the “**Subdivision Regulations**”), the Parties agree that neither land contributions, or cash in lieu of land contributions, for schools or parks is applicable to the Subject Realty as no residential use is proposed or authorized for the Subject Realty hereunder.

10. **FEES AND CONTRIBUTIONS.** Except as otherwise set forth in EXHIBIT “F”, and the Fee Schedule referenced therein, or elsewhere in this Agreement, from and after the annexation of the Subject Realty to the City, Developer shall comply in all respects with the requirements of the City Code, for the payment of fees and / or the making of contributions in constructing, completing and dedicating public improvements required for the development of the Subject Realty, and the necessary fees and connection charges that may be applicable.

Notwithstanding the foregoing paragraph to the contrary, Developer agrees to pay to the City in a timely fashion, but not more than thirty (30) days following the date of each invoice promptly delivered by the City, all reimbursable fees and expenses which hereafter become owing to the City as a result of review and approvals required hereunder, which amounts shall be equal to one hundred percent of the costs incurred by the City.

11. **RECAPTURE OR REIMBURSEMENT AGREEMENTS.**

A. The City represents and agrees that there are no conflicting agreements relating to the Subject Property and the Owner’s and / or Developer’s rights under this Agreement and / or as it relates to the PUD Ordinance, Preliminary PUD Plans and /or Final PUD Plans. The City further represents to Developer that, to the City’s knowledge, there are no other City-approved recapture or reimbursements obligations that impose any payment obligations that are applicable to the annexation and development of the Subject Realty.

B. Excluding the Off-Site Electric System, if the City requires Developer to install any other public improvements which benefit any other property, the City agrees to execute a recapture agreement such that Developer shall be reimbursed the prorata cost (with interest) of installing such public improvements which benefits such other property. The City agrees that it shall not issue building permits for such other property benefitting from such improvements, until evidence of such payment to Developer has been submitted to the City by Developer in writing.

12. **CITY RESPONSIBILITY FOR UTILITIES.**

A. The City shall not be liable for delay in the performance of its obligation to extend the Off-Site and On-Site Electric System as provided in Section 6E above where delay is caused by strikes, riots, elements, embargoes, failure of carriers, inability to obtain material, or other acts of God, or any other cause beyond City’s reasonable control, including but not limited to the acquisition of easements, modifications of Facilities Planning Area boundaries, and Illinois Environmental Protection Agency permits.

B. In the event that any one or more provisions of this Agreement do not comply with any one or more provisions of the Illinois Compiled Statutes and the governing rules of the Illinois Pollution Control Board or the Federal or State Environmental Protection Agencies, then the City, Owner, Developer and all of their respective successors and assigns, agree to cooperate to comply with said provisions which

shall include, but not be limited to, the passage of resolutions and ordinances to accomplish such compliance.

13. BUILDING PERMITS.

(A) The City agrees to issue, within a reasonable time after initial submission, review, and approval of building construction plans, and the payment of required building permit fees and all other applicable fees, all necessary building and other permits for the construction of any and all improvements on the Subject Realty or issue a letter of denial within said period of time informing Developer and the applicant as to wherein the application does not conform to the stated section of the Code.

14. PRELIMINARY GRADING. Prior to the approval of any building permit or final plat of planned unit development and subdivision (if any) as the Developer may apply for, Developer may obtain from the City, and the City shall issue, a Notice to Proceed for site grading and earthwork to be performed in accordance with the applicable City storm water ordinance. Such site grading shall be in conformity with the Preliminary PUD Plans, the storm water management plan (“**Approved Stormwater Management Plan**”) and surety (in the form of cash, a bond, or a letter of credit, each as approved by the Director of Public Works) in an amount equal to 110% of the estimated erosion control, earthwork, stormwater utilities, and site restoration costs for the Subject Realty should the Development not proceed after site grading is commenced. Any changes or adjustments to the requirements for such grading resulting from the review and approval of the Final Engineering shall be promptly performed by Developer, at Developer's expense. In addition thereto, upon approval of Final Engineering by the City Engineer, but prior to issuance of a construction permit by the Illinois Environmental Protection Agency, Developer may commence construction of underground public improvements provided no connection of such underground public improvements shall be connected to active utility lines or mains until all appropriate construction and connection permits, if required, have been duly issued by the Illinois Environmental Protection Agency. Any and all such pre-permit work carried out by Developer shall be at Developer’s risk and Developer shall, at its expense, make such adjustments thereto as may be required for permit issuance.

15. OCCUPANCY PERMITS.

A. As to each building constructed on the Subject Realty, the City agrees to issue occupancy permits (certificates of occupancy) within a reasonable time (which, in any event, shall not exceed ten (10) business days after application) or to issue a letter of denial within said period of time informing Developer and the individual or entity to whom the building permit was issued specifically as to those corrections necessary as a condition to the issuance of a certificate of occupancy and quoting the section of the Code relied upon by the City in its request for correction.

B. Subject to the provisions of Section 15C below, the City agrees that occupancy permits (certificates of occupancy) (temporary, conditional or permanent, as the case may be) shall be issued as to each separate building upon (a) proper application

of the Developer or the party seeking occupancy, (b) compliance with all applicable building codes, zoning ordinance requirements and other applicable requirements of law, and (c) [to follow].

- C. If, and to the extent that, any building constructed on the Subject Realty is designed with separate interior tenant spaces, then the City agrees that it shall issue occupancy permits (certificates of occupancy) under the provisions of Section 14B above on a tenant space-by-tenant space basis provided that the incomplete portions of said building do not pose any material threat of public safety to the occupants if such tenant space(s), it being understood that the Developer will likely not complete the interior buildout of any particular tenant space until a tenant for that space is located and its build-out requirements are determined.

16. **REQUIREMENTS OF OTHER JURISDICTIONS.** It is agreed that the City is not liable or responsible for any restrictions on the City's obligations under this Agreement that may be required or imposed by any superior governmental bodies or agencies having jurisdiction over the Subject Realty, the City, Owner, and/or Developer, including, but not limited to, county, state and federal regulatory bodies. In any event, however, the City shall honor any "grandfather" provision contained in the legislation of such superior governmental authority which exempts the Subject Realty from such legislative regulation.

17. **APPLICABILITY OF CITY CODES.** All ordinances, regulations, and codes of the City, including, but not limited to, subdivision controls, zoning, storm water management and drainage, official plan, and related restrictions, as they presently exist, except as amended, departed from, varied, or modified by the terms of this Agreement, shall apply to the Subject Realty and its development.

18. **DEDICATION OF STREET RIGHT-OF-WAY.**

A. The final plat of planned unit development and subdivision for the Subject Realty ("Final Plat") shall provide for the dedication to the City, for public road and infrastructure purposes, [to follow], as shown on the Preliminary Plat of Planned Unit Development and Subdivision. Such dedication shall be accepted by the City upon the recording of the final plat of planned unit development and subdivision.

B. In connection with its construction of the Substantially Conforming Development on the Subject Realty, neither the Developer, the Owner, or their respective successors, shall be required to construct or contribute to the cost of any future improvements made to [to follow].

C. Developer shall make available to the City, at no cost, up to [to follow if applicable] of detention with respect to the storm water that may be discharged from [to follow if applicable].

19. **BINDING EFFECT, SUCCESSION IN INTEREST.** This Agreement shall constitute a covenant running with the land and be binding upon and inure to the benefit of the

Parties hereto, their successors in interest, assignees, lessees, and upon any successor municipal authorities of the City and successor municipalities. Except as otherwise expressly provided herein, upon the conveyance or assignment by Owner and/or Developer of its interest in the Subject Realty to any successor, assignee, or nominee, Owner and/or Developer, as the case may be, shall be released from any and all further liability or responsibility under this Agreement, and the City shall thereafter look only to the successor, assignee, or nominee of Owner and/or Developer as the case may be, concerning the performance of such duties and obligations of Owner and Developer hereby undertaken. Any such assignment or transfer of the rights and duties of Owner or Developer shall be effective only if in a written instrument expressly referring to this Agreement and recorded against the Subject Realty, provided, however, the recordation of a deed from Owner to Developer shall automatically transfer all of Owner's rights and duties hereunder to Developer. In no event, however, shall any of the obligations of Owner and/or Developer hereunder be deemed to have transferred to or be assumed by a bona fide purchaser for value of a lot improved with a dwelling unit for residential occupation.

20. BREACH: ENFORCEMENT.

A. In the event any monies due City by the Developer pursuant to any provisions hereof are not paid when due, and such payment failure continues for more than ten (10) business days following written notice by the City to the Developer, then the City Council may by resolution determine that no further approvals be issued for the Subject Realty until after such monies have been paid.

B. This Agreement shall be enforceable in any court of competent jurisdiction in Kane County, Illinois by either the City, the Developer and/or the Owner, or by any of them, or by any successor or successors in title or interest, or by the assigns of the parties. Enforcement may be sought by an appropriate action at law or in equity to secure the performance of the covenants, agreements, conditions and obligations contained herein. No action taken by any party hereto pursuant to the provisions of this Paragraph 20B or pursuant to the provisions of any other Paragraph 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 otherwise available to any party at law or in equity.

C. In the event of a material breach of this Agreement, the Parties agree that the party alleged to be in breach shall have 30 days after notice of said breach to correct the same prior to the non-breaching party's seeking of any remedy provided for herein (provided, however, that said 30 day period shall be extended if the defaulting party has initiated the cure of said default and is diligently proceeding to cure the same).

D. If any of the Parties shall fail to perform any of its obligations hereunder, and the party affected by such default shall have given notice of such default to the defaulting party, and such defaulting party shall have failed to cure such default within 30 days of such default notice (or any extension of said 30 day period if the defaulting party has initiated the cure of said default and is diligently proceeding to cure the same), then in addition to any and all other remedies that may be available, either in law or equity, the Party affected by such default shall have the right (but not the obligation) to take such action as in its reasonable discretion and judgment shall be

necessary to cure such default. In such event, the defaulting party hereby agrees to pay and reimburse the party affected by such default for all reasonable costs and expenses incurred by it in connection with action taken to cure such default.

E. The failure of the parties to insist upon the strict and prompt performance of the terms, covenants, agreements and conditions herein contained, or any of them, upon any other party imposed, shall not constitute or be construed as a waiver or relinquishment of any party's right thereafter to enforce any such term, covenant, agreement or condition, but the same shall continue in full force and effect.

21. **SEVERABILITY.** The provisions hereof shall be deemed to be severable; and if any section, paragraph, clause, provision or item herein shall be held invalid, the invalidity of such section, paragraph, clause, provision, or item shall not affect any other provision hereof, provided, however, City shall under no circumstances be required to incur any liability, loss or incur any expense for any reason in the event that any such section, paragraph, clause, provision or item is held invalid.

22. **NOTICE.** Any notice required or desired to be given under this Agreement, unless expressly provided to the contrary herein, may be sent by (a) certified mail, return receipt requested, in which case notice shall be deemed delivered on the date of deposit, postage prepaid in the U.S. mail or (b) a nationally recognized overnight courier, in which case notice shall be deemed delivered on the date of deposit with such courier or (c) by personal delivery. Notice on behalf of any party may be given by such party or its counsel to the other party and / or its counsel.

If to the City: Mayor, CITY OF GENEVA
22 South First Street
Geneva, Il 60134

with copies to: City Clerk
CITY OF GENEVA
22 South First Street
Geneva, Il 60134

And to: City Attorney
CITY OF GENEVA
22 South First Street
Geneva, IL 60134

If to Owner: D. Four, LLC
140 First Avenue
Batavia, IL 60510,

If to Developer: Pheasant Tail, LLC
190 S. LaSalle Street, Suite 3850
Chicago, IL 60603

with a copy to: Costello Sury & Rooney, P.C.
c/o John H. Boyd
One Lincoln Centre, Suite 1670
Oakbrook Terrace, Illinois 60181
jboyd@csrlawfirm.com

The names and addresses provided in this Paragraph may be changed from time to time by notice duly given in compliance with the provisions of this Paragraph.

23. **CONVEYANCES.** Nothing contained in this Agreement shall be construed to restrict or limit the right of the Owner to sell or convey all or any portion of the Subject Realty, whether improved or unimproved.

24. **TERM OF AGREEMENT.** This Agreement shall remain in force and effect for a period of twenty (20) years.

25. **CAPTIONS AND PARAGRAPH HEADINGS.** The captions and paragraph headings used herein are for convenience only and shall not be used in construing any term or provision of this Agreement.

26. **RECORDING.** This Agreement shall be recorded in the office of the Recorder of Deeds, Kane County, Illinois, by Owner at Owner's expense.

27. **PREAMBLES AND EXHIBITS.** The preambles set forth at the beginning of this Agreement, and the exhibits attached hereto, are incorporated herein by this reference and shall constitute substantive provisions of this Agreement.

28. **GOVERNING LAW.** This Agreement, and the terms and provisions contained herein, shall be construed and governed under the laws of the State of Illinois.

29. **COUNTERPARTS/FACSIMILE.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall be one and the same instrument. For purposes of executing this Agreement, any signed copy of this Agreement may be transmitted by facsimile machine and the signature of any party thereon shall for purposes of execution hereof be considered an original signature. Any facsimile document shall, at the request of either party, be re-executed by the other party in an original form, and neither party shall raise the use of a facsimile machine, or the fact that any signature or document was transmitted thereby, as a defense to the effectiveness of this Agreement.

30. **MISCELLANEOUS.**

A. This Agreement is and shall be deemed and construed to be the joint and collective work product of the City, the Owner, and the Developer and, as such, this Agreement shall not be construed against any party, as the otherwise purported drafter of same, by any court of

competent jurisdiction in order to resolve any inconsistency, ambiguity, vagueness or conflict in terms or provisions, if any, contained herein.

B. If the Subject Realty, or portions thereof, is currently used for the planting, harvesting, housing, storage and selling of soil grown crops then the Subject Realty or the portions thereof used for such purposes may continue to be used from time to time for the planting, harvesting, housing, storage and selling of soil crops grown on the Subject Realty as lawful nonconforming uses until such time as another use allowed under the City Zoning Ordinance enacted pursuant to this Agreement is established or until it is under development as provided herein.

C. This Agreement shall inure to the benefit of, and be binding upon, the parties hereto, the successors in title of the Owner, and each of them, their respective successors, grantees, lessees, and assigns, and upon successor Corporate Authorities of the City and successor municipalities.

D. Prior to the commencement of construction on the Subject Realty, the Developer shall submit to the City's Director of Community Development a plan showing the location of all proposed temporary construction trailers/offices, including parking areas, fencing, signage and landscape treatment. Said plan shall also indicate the general locations of where all construction and material storage trailers shall be located. The Developer shall be permitted a minimum of one (1) construction trailer and one (1) material storage trailer per building. The Developer shall have the right to use the construction and material storage trailers for the purpose of its construction until construction on a site is completed. The Developer shall keep such area free of debris and rubbish and keep the area free of weeds and in a mowed condition, and the City may inspect such area from time to time to determine that Developer is in compliance with its obligations hereunder. Such storage trailers shall be removed not later than the date of issuance of the last occupancy permit for the Subject Realty. Such storage trailers shall be set back a minimum of fifty (50) feet from the nearest perimeter lot line of the Subject Realty.

E. Section 11-9-11 of the City Code shall not be applicable to the Subject Realty, it being the intent of the parties hereto that there shall be no expiration date for the planned unit development approvals hereby granted.

31. **FORCE MAJEURE.** In the event the performance of any covenant to be performed hereunder by either the Owner, the Developer, or the City is delayed for causes which are beyond the reasonable control of the party responsible for such performance, which shall include, but not be limited to acts of God, war, acts of civil disobedience, strikes or similar causes, the time for such performance shall be extended by the reasonable amount of time of such delay.

32. **BOUNDARY AGREEMENT.**

The City represents that it has valid and enforceable boundary agreements in place with the City of St. Charles, Illinois (the "SOSC")(the "Boundary Agreement") that (i) as between the City and the COSC, gives the City the sole right to annex and control the development of the Subject Realty, and (ii) does not expire until the year 2034. The City agrees to take all legal action that may be

required to defend the validity and enforceability of such Boundary Agreement should the annexation of the Subject Realty by the City of Geneva be challenged by the City of St. Charles.

33. AMENDMENT: MAJOR AND MINOR AMENDMENT.

- A. This Agreement, and any exhibits or attachments hereto, may be amended from time to time in writing with the consent of the Parties hereto, pursuant to applicable provisions of the Geneva City Code and the Illinois Compiled Statutes. This Agreement may be amended from time to time by written agreement between the City and the then legal owner of fee title to that portion of the Subject Realty which is subject to and affected by such amendment; provided, that such amendment, if not executed by the then legal owner or owners of any other portion of the Subject Realty, shall in no manner alter, amend, or modify any of the rights, duties or obligations as set forth in this Agreement as they pertain to such other portions of the Subject Realty.
- B. Notwithstanding anything to the contrary stated herein or in the Geneva City Code (including, without limitation, Section 11-9-7 thereof), the City may, in its sole discretion, at the request of the Developer, approve a “Minor Amendment” to the PUD Ordinance and/or any of the other development plans approved by this Agreement without the necessity of public notice or hearing (unless required by law other than a City ordinance) and , instead, such approval may be given by the Director of Community Development, with the right of the Developer to appeal any decision of such Director to the City Council. As used herein, the term “Minor Amendment” shall mean and include the following:
- i. Adjustment to the location of private streets, parking lots or buildings by ten (10) feet or less, provided the adjusted location complies with the setback requires established herein;
 - ii. Decrease in building height or floor area;
 - iii. Increase or decrease by not more than 10% in open space, landscape areas or screening;
 - iv. Substitution of specified plant materials with comparable materials;
 - v. Any change in the number of off-street passenger vehicle parking spaces provided within the development to a number that is not more than 10% below what would otherwise be required by the City’s municipal code.
 - vi. Any change in the location or dimensions of walkways, driveways, streets, parking facilities, and loading facilities within the development by less than five feet.
 - vii. Substitution of aesthetically comparable exterior building materials;
 - viii. Reasonable architectural design changes.
 - ix. Technical changes (including changes to engineering plans and specifications which are determined by the Director of Public Works, City Engineer, Building Commissioner, Fire Chief or Director of Community Development, as the case may be, to be (i) in substantial compliance with the preliminary plan or plat as approved by the City Council, (ii) in compliance with the Code, as amended, except as specifically varied herein; and (iii) in compliance with good engineering practices.
 - x. Such other changes as, in the reasonable judgment of the Director of Community Development or, at his election, the City Council, make no material change to the

essential character and purpose of the development as approved by the original PUD Ordinance.

[signature pages follow]

IN WITNESS WHEREOF, the Parties have hereunto placed their hands and seals as of the date firth above written.

CITY:

CITY OF GENEVA, an Illinois municipal corporation

By: _____
Mayor

ATTEST:

By: _____
City Clerk

OWNER:

D. FOUR, LLC
an Illinois limited liability company

By: _____
Name: Austin Dempsey
Title: Manager

DEVELOPER:

Pheasant Tail, LLC
an Illinois limited liability company

By: _____
Name: Glen Bullock
Title: As Authorized Agent

STATE OF ILLINOIS)
) SS
COUNTY OF KANE)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that _____, Mayor, and _____, City Clerk, of the CITY OF GENEVA, an Illinois municipal corporation, who are personally known to me to be the same persons whose names are subscribed to the foregoing instruments as such Mayor and City Clerk, respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes therein set forth; and the said City Clerk then and there acknowledged that he, as custodian of the records of the corporation, did affix the corporate seal of said corporation to said instrument as his own free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this _____ day of _____, 2022.

Notary Public

STATE OF _____)
) SS
COUNTY OF _____)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that _____, _____ of D. Four, LLC, an Illinois limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instruments as such _____, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this _____ day of _____, 2022.

Notary Public

STATE OF _____)
) SS
COUNTY OF _____)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that _____, _____ of Pheasant Tail, LLC, an Illinois limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instruments as such _____, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this _____ day of _____, 2022.

Notary Public

SCHEDULE OF EXHIBITS

EXHIBIT "A"	Legal Description of Subject Realty
EXHIBIT "B":	Plat of Annexation
EXHIBIT "C":	PUD Ordinance
EXHIBIT "D":	Listing of Approved Preliminary PUD Plans
EXHIBIT "E":	Geneva Facilities Planning Area
EXHIBIT "F"	Fees and Contributions