



### AGENDA ITEM EXECUTIVE SUMMARY

Agenda Item:	Economic Incentive Agreement - Woodmont Tapville Geneva LLC		
Presenter & Title:	Cathleen Tymoszenko, Economic Development Director		
Date:	November 15, 2023		
<b>Please Check Appropriate Box:</b>			
<input type="checkbox"/>	Committee of the Whole Meeting	<input type="checkbox"/>	Special Committee of the Whole Meeting
<input checked="" type="checkbox"/>	City Council Meeting	<input type="checkbox"/>	Special City Council Meeting
<input type="checkbox"/>	Public Hearing	<input type="checkbox"/>	Other -
Associated Strategic Plan Goal/Objective: EV:II			
Estimated Cost: \$ 290,000	Budgeted?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Other Funding? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
If "Other Funding," please explain how the item will be funded: Sales Tax Rebate			
<b>Executive Summary:</b>			
<p>The former Little Owl/Flagstone has been vacant since August 2019. An owner/operator purchased the property in Sept. 2019 for a second location for a full service restaurant/bar. The pandemic, a series of interior construction hurdles, exterior preservation challenges and physical building constraints sidelined this vision. The City proposed a public-private partnership to include regional electric utility upgrades, securing private property easements, a sales tax rebate and set a date for review at COW. Despite efforts, the owner moved in a different direction and placed the property on the market in Dec. 2021. By Nov 2022, a new contract purchaser was working to establish a Tapville Social Restaurant. Tapville Social is a franchise that integrates self-pour technology in stand-alone restaurants, shopping kiosks and mobile taprooms. Geneva is one of three new restaurants planned to join seven nationwide.</p> <p>The contract purchaser was unable to secure financing so Woodmont was engaged to fund acquisition and renovations as they completed similar work for Tapville. Costs identified were in excess of those feasible for an owner-tenant relationship. Assistance options were vetted and staff worked with the expanded project team to alter phasing so structural and architectural work would be completed prior to façade renovations. Upfront money is needed to reverse disinvestment and deterioration, to secure an active end user and to complete historic preservation in advance of tenant occupancy. An execution copy of the Agreement proposes a \$138,800 grant and a maximum sales tax rebate of \$151,200. The owner will pursue federal tax credits to close the remainder of the gap. Grant funds will be from the City's American Rescue Plan Act (ARPA) funds set aside to support downtown investment. The City Attorney has made modifications to Authority and Finding sections of the draft Agreement to create the attached Execution Copy. There were no changes to the terms of the Agreement.</p>			
<b>Attachments:</b> <i>(please list)</i>			
<ul style="list-style-type: none"> <li>• Resolution &amp; Execution Copy Development Economic Incentive Agreement</li> </ul>			
<b>Voting Requirements:</b>			
<p><i>This motion requires a simple majority of affirmative votes for passage. (Mayor votes)</i></p> <p><i>The Mayor may vote on three occasions: (a) when the vote of the alderpersons has resulted in a tie; (b) when one half of the alderpersons elected have voted in favor of an ordinance, resolution, or motion even though there is no tie vote; or (c) when a vote greater than a majority of the corporate authorities is required by state statute or local ordinance to adopt an ordinance, resolution, or motion.</i></p>			
<b>Recommendation / Suggested Action:</b> <i>(how the item should be listed on agenda)</i>			
<p>Recommend Approval of Resolution Authorizing Execution of a Development Economic Incentive Agreement between City of Geneva and Woodmont Tapville Geneva LLC for 101-105 W. State Street, Geneva, IL.</p>			

**RESOLUTION NO. 2023 - 117**

**RESOLUTION AUTHORIZING EXECUTION OF  
A DEVELOPMENT ECONOMIC DEVELOPMENT AGREEMENT BY AND BETWEEN  
CITY OF GENEVA AND THE WOODMONT TAPVILLE GENEVA LLC**

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**BE IT RESOLVED BY THE CORPORATE AUTHORIES OF THE CITY OF  
GENEVA, KANE COUNTY, ILLINOIS, as follows:**

**SECTION 1:** That the City Administrator is hereby authorized to execute, on behalf of the City of Geneva, A Development Economic Incentive Agreement by and between City of Geneva and the Woodmont Tapville Geneva LLC, in the form attached hereto at Exhibit “A”, relating to the historic preservation and redevelopment of 101- 105 W. State Street, Geneva IL.

**SECTION 2:** This Resolution shall become effective from and after its passage as in accordance with law.

**PASSED** by the City Council of the City of Geneva, Kane County, Illinois, this \_\_\_\_ day of \_\_\_\_\_, 2023

**AYES: \_\_ NAYS: \_\_ ABSENT: \_\_ ABSTAINING: \_\_ HOLDING OFFICE: \_\_**

Approved by me this \_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

**DEVELOPMENT ECONOMIC INCENTIVE AGREEMENT**

**By and Between**

**CITY OF GENEVA AND WOODMONT TAPVILLE GENEVA LLC**

**FOR 101-105 W. STATE, GENEVA, IL.**

This Agreement is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by the CITY OF GENEVA, Kane County, Illinois, an Illinois Municipal Corporation (hereinafter referred to as the "CITY" or "corporate authorities"); and Woodmont Tapville Geneva LLC, a Texas limited liability company, 2100 W. 7<sup>th</sup> Street, Fort Worth, Texas 76107 (hereinafter referred to as "OWNER" ). The CITY and the OWNER are collectively referred to as the "Parties."

Pursuant to the provisions of statutes and Government Funds and Plans (as hereinafter defined) and the Illinois Constitution of 1970, and in consideration of the Findings set forth below, the mutual covenants herein contained and other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the Parties agree as follows:

**SECTION I. AUTHORITY**

The authority for the Parties to enter into this Agreement is:

- A. As a non-home rule unit of government the City's authority is expressly limited by Article VII, Section 7 of the Illinois Constitution of 1970, which provides in part that non-home rule units of government shall only have powers granted to them by law.
- B. Accordingly, under Illinois law (65 ILCS 5/8-11-20 and 65 ILCS 5/8-1-2.5) the corporate authorities may enter into an economic incentive agreement relating to the development or redevelopment of land within the corporate limits of the municipality and that the municipality may agree to share or rebate a portion of any retailers' occupation taxes received by the municipality that were generated by the development or redevelopment over a finite period of time and may appropriate and expend funds for economic development purposes, including, without limitation, the making of grants to any other governmental entity or commercial enterprise that are deemed necessary or desirable for the promotion of economic development within the municipality.
- C. The Coronavirus State and Local Fiscal Recovery Funds, a part of the federal American Rescue

Plan (known as the Government Funds and Plans), delivered funds to local government to support recovery and to ensure that governments have the resources needed to fight the pandemic, support families and businesses, maintain public service and build a strong, resilient and equitable economy by making investments that support long-term growth and opportunity. In keeping with this goal and the U.S. Department of the Treasury Coronavirus State & Local Fiscal Recovery Funds: Overview of the Final Rule issued in January 2022 and amended in 2023, the City Council of the City of Geneva has determined that a portion of the City of Geneva's American Rescue Plan will be used to support investment in historic downtown Geneva.

## **SECTION II. FINDINGS**

In accordance with the statutory provisions cited above as well as the City Council's intended use of Government Funds and Plans referenced above, the factors of consideration that have resulted in this Agreement are the following:

A. The OWNER is the contract purchaser of certain real property ("Property") located within the boundaries of the City, commonly known as 101-105 W. State Street, Geneva, Illinois 60134, and legally described in **Exhibit "A"**. The Property is improved with a two-story brick and block building consisting of approximately 9,014 square feet ("Building"). The Building is located in an established downtown commercial area at the intersection of two well-traveled State highways.

B. The property is identified as a Significant property within the local historic district and as a Contributing property in the Central Geneva Historic District, listed in the National Register of Historic Places.

C. The Property was once fully occupied by Little Owl restaurant and tavern since 1947. It was later expanded to add the Flagstaff, a craft drink establishment in 2007. The Little Owl and Flagstaff business closed in August of 2019. The Property has remained significantly unoccupied or underutilized for a period of at least two years.

D. The OWNER has entered into a contingent lease with a franchisee of Tapville Social Franchising, LLC, an Illinois limited liability company, 216 S. Washington Street, Naperville, IL 60540, its successors

and/or assigns (TENANT) attached hereto as **Exhibit “B”** (“Lease”). Pursuant to the Lease, TENANT and OWNER shall complete an extensive remodeling of the Building and use the Building as a Tapville Social dinner, brunch, flights Restaurant that will serve approximately 139 guests in an enclosed dining area. TENANT will agree to open for business within twenty-four (24) months of the Effective Date of this Agreement, subject to extension of time due to force majeure events such as strikes, material storages, casualties to the Building, condemnation or governmental permits delays.

E. The corporate authorities further finds that the Property, as it exists on the date of this Agreement, requires certain site and building improvements to meet the specifications and occupancy requirements of the TENANT hereafter sometimes referred to as the “Project” as further defined in the Project Budget as set forth in **Exhibit “C”**. Amongst the site and building improvements to be made are included but not limited to façade and site preparation; interior preparation; metals and carpentry finishes; mechanical/electrical improvements, and plumbing and HVAC upgrades.

F. The Parties acknowledge that the Project may require municipal of reviews and approvals by the City’s Plan and Zoning Commission, the Historic Preservation Commission and City Council.

G. The OWNER, who shall act as the developer (“Developer”) of the Project, is seeking economic assistance from the CITY in order to complete improvements and has demonstrated that without the economic assistance to be given by the CITY the Project as contemplated by the Project Budget would not be economically viable and the leasehold tenancy cannot be secured; and

H. The corporate authorities finds that the OWNER has demonstrated that if the Project expenditures are made, the vacant commercial space will become leasable and occupied; and

I. The corporate authorities also finds that OWNER is a recognized and established developer of commercial lease space and has provided specific evidence of equity financing for not less than 10% of the total project costs; and

J. The corporate authorities finds that completing the Project requires assistance from the CITY in order to complete the improvements and it is in the City of Geneva’s best interest to enter into this Agreement

in order to have the Property redeveloped and re-tenanted in accordance with the Project, that the re-tenanting of the Property will increase employment opportunities in the CITY, the Project will strengthen the commercial sector of the CITY and enhance the tax base of the CITY.

K. Pursuant to the 65 ILCS 5/8-11-20, the City Council of the City has made the following findings with respect to the Project:

- i. The Project is expected to create or retain job opportunities within the City.
- ii. The Project will serve to further the development of adjacent areas.
- iii. Without this Agreement, the Project would not be possible.
- iv. The Company meets high standards of creditworthiness and financial strength, as demonstrated by a letter from a financial institution having assets of \$10,000,000 or more which attests to the financial strength of the Company.
- v. The Project will strengthen the commercial sector of the City.
- vi. The Project will enhance the tax base of the City.
- vii. This Agreement is made in the best interest of the City.

**NOW, THEREFORE**, in consideration of the foregoing recitals and the mutual promises hereinafter contained, the adequacy and sufficiency of which the parties hereto stipulate the CITY and the OWNER agree as follows:

**SECTION 1. INCORPORATIONS OF RECITALS.** The recitals set forth hereinabove are incorporated herein by reference as substantive provisions of this Agreement.

**SECTION 2. INTENT.** Subject to the Conditions Precedent set forth in Section III. below, the CITY is prepared to commit to the incentives under the terms and conditions hereinafter set forth to induce and assist in the Project.

**SECTION 3. DEFINITIONS.** For the purpose of this Agreement, the use of the terms not otherwise defined herein will have the following meanings:

(i) "sales tax" and "sales tax revenue" shall be construed to refer to that net portion of taxes imposed by the State of Illinois (hereinafter referred to as "State") for distribution to the CITY pursuant to the Retailer's Occupation Tax Act (as said Act may be amended), or any other "sales tax" or similar tax that may be enacted by the State of Illinois or any governmental agency or body created under the laws of the State of Illinois and located within the State of Illinois, and which are collected by the State of Illinois and distributed to the CITY. Currently such net portion is one percent (1%) of the total amount of gross sales within the CITY that are subject to the aforementioned tax;

(ii) "Commencement Date" means the date the restaurant opens for business as stated at Section IV. B. below;

(iii) "Department" means the Illinois Department of Revenue;

(iv) "Maximum Payment" means the amount of \$ 290,000

(v) "Sales Tax Participation Period" means a period of 10 years beginning on the Commencement Date;

(vi) "Sales Tax Year(s)" means the 12 consecutive month period starting on the Commencement Date and ending 12 months later, and each consecutive succeeding 12-month period thereafter.

### **SECTION III. CONDITIONS PRECEDENT**

All undertakings on the part of the CITY pursuant to the Agreement are subject to the satisfaction of the following conditions:

A. The Owner shall provide evidence, reasonably satisfactory to the CITY that OWNER has obtained fee title to the Property and that OWNER and TENANT have entered into a non-contingent lease. Further,

the plans for building and signage improvements constituting the Project will have been approved by the CITY as required by law and as provided in CITY ordinances.

B. OWNER and TENANT will have completed the modifications and enhancements as set forth in the Project Budget set forth on **Exhibit “C”** for all portions of the leasable area of the Property, subject to the last sentence of Section IV. B. below; the CITY has issued an unconditional occupancy permit, and is reasonably projected to meet the Sales Projections and Employment Estimates set forth in **Exhibit “D”** hereto.

C. OWNER will have demonstrated to the reasonable satisfaction of the CITY that it has contributed up to **\$ 2,029,400** (or more than such amount) toward the Project Budget within twenty-four (24) months of the date of this Agreement, subject to extension for casualty, condemnation and/or force majeure events, or CITY caused delays. Prior to any reimbursement and following completion of the Project, OWNER shall provide CITY with any documentation necessary to establish its Reimbursable Improvement Costs as defined in **Exhibit “C”** and **Exhibit “E”** hereto. Such documentation shall include, but shall not be limited to, written proof of CITY inspections indicating code compliance (or no violations of codes) and/or compliance with approved plans, as applicable, and proof that the persons making such improvements have been paid in full.

D. In the event the foregoing conditions precedent are not satisfied within twenty-four (24) months of the date of this Agreement, subject to extension for casualty, condemnation and/or force majeure events, or CITY caused delays, either party may terminate this Agreement by sending thirty (30) days' prior written notice to the other party, whereupon this Agreement shall terminate and be of no further force and effect upon the expiration of such thirty (30) day period, unless the foregoing conditions precedent are satisfied prior to the expiration of such 30 day period.

E. OWNER affirms that during the term of this Agreement all sales tax generated by the Project shall be reported solely as sales tax revenue attributable to and reportable to the CITY and to no other municipality, all in compliance with 65 ILCS 5/8-11-21, as amended.

#### SECTION IV. DEVELOPMENT INCENTIVE REIMBURSEMENT

Upon the satisfaction of the Conditions Precedent set forth in Section III. Above and subject to the last sentence of Section IV. B. below, the incentives to be granted to OWNER shall be applied as follows:

A. **Historic Property Rehabilitation Grant:** The CITY shall contribute, as a grant, to the cost of the historic renovation of the property in an amount equal to 80% (eighty percent) but not to exceed **\$138,800** of the Façade and Site Preparation Costs of Phase 1 as set out in **“Exhibit C”**. The CITY will provide this grant award upon completion of the Façade and Site preparation improvements and interior improvements and issuance of a Certificate of Occupancy by the CITY for the commercial tenant. The OWNER shall submit to the CITY a verified statement, in such detail that is satisfactory to the City, showing proof of payment for the full cost of all work and labor, and/or of each separate component amount due to the contractor(s) involved in furnishing labor, materials, or equipment in said work, and/or component part. The CITY shall, upon receipt of said proof of payment, issue a check to the OWNER in payment of the portion of façade and site preparation improvements.

B. **Local Sales Tax Rebate:** Provided the Owner shall materially comply with and continue to be in material compliance with the provisions of this Agreement, subject to the expiration of any cure period as provided in Section VI. O. hereof, CITY shall deposit fifty percent (50%) of the CITY’S share of the Municipal sales taxes, as defined at Section II. K.(i) above, generated by taxable sales activities of the Property for each Sales Tax Year during the Sales Tax Participation Period into a special interest bearing fund, to the extent these sales taxes are received by the CITY from the Department (the “Sales Tax Distribution(s)”). The total amount of Sales Taxes collected in this fund shall be distributed to the OWNER upon completion of Phase II improvements in an amount not to exceed **\$151,200** per **“Exhibit C”**. Any and all funds committed by the CITY herein are to be solely derived from the sales tax generated by the Property. Should the Phase II Improvements be completed prior to accumulation of committed funds, the City will distribute payments to the owner tri annually until the full amount is met.

C. **Term.** The period of payment to OWNER shall commence on the date that the TENANT opens its restaurant for business to the public, and shall continue thereafter for ten (10) consecutive years from the said business opening or until such time that the OWNER receives eighty percent (80%) of the amount

OWNER expended for the improvements but not exceeding the amount set forth in the Project Budget detailed as Reimbursable Improvement Costs. Notwithstanding the foregoing statement to the contrary, this Agreement shall terminate ten (10) years after the Commencement Date pursuant Section II K. (ii) above, and shall end on the Sales Tax Participation Period expiration pursuant to Section II. K. (v) above, but in no event later than December 31, 2037.

## **SECTION V. REIMBURSEMENT PROCEDURES**

A. Sales Tax Reports: OWNER shall be responsible for duly executing appropriate agreements with TENANT in the Property requiring same, and require such TENANT contemporaneous with the filing of sales tax reports with the Illinois Department of Revenue or successor agency, to furnish to the CITY certified copies of any and all sales tax returns, sales tax reports, amendments, or any other paper filed with the State of Illinois, said Department of Revenue or other appropriate governmental entity, which documents are being provided to the CITY for purposes of identifying sales tax revenues collected pursuant to this Agreement. The OWNER will take all reasonable actions necessary to provide the Department with any and all documentation, to the extent reasonably available, that may be required by the Department and will provide the CITY with a power of attorney letter addressed to, and in a form satisfactory to, the Department authorizing the Department to release all general gross revenue and sales tax information to the CITY, which letter will authorize disclosing such information to the CITY during the Sales Tax Participation Period. Such letter will be in a form attached hereto as Exhibit G or such other or additional forms as are required from time to time by the Department to release such information to the CITY. If the Department refuses or otherwise fails to make the necessary sales tax information available to the CITY, then the OWNER will furnish to the CITY copies of the ST-1 and ST-2 monthly statements filed with the Department, certified by the OWNER, showing the amount of Sales Taxes paid during such month by the OWNER and, to the extent permitted by tenant leases, the same information for all tenants of the Property, together with evidence of the payment of such revenues, and the CITY agrees to rely on such certified monthly statements and evidence of payment in calculating the amount of Sales Tax Distributions available for disbursement to the OWNER hereunder. If the Department stops using either the ST-1 or ST-2 monthly statement forms for the reporting of gross sales receipts and the determination of gross sales tax obligations, then the OWNER will furnish to the CITY, and the CITY, in fulfilling its obligations under this Section 3, will rely on such equivalent or replacement forms as the Department may

then employ for determining and receiving such information, provided the CITY receives certified copies of such equivalent or replacement forms and evidence of payment of the sums referred to in such forms. In the alternative, OWNER shall be responsible for obtaining, and subsequently providing to the CITY, a list of the names and Illinois Department of Revenue Retail Occupancy Tax Identification Numbers for Tenant no later than ten (10) days after the last day of each quarter year. To the extent permitted by law, the CITY shall maintain the confidentiality of the information contained in such reports, but shall be permitted to disclose such information and documents to employees and consultants as the CITY, in its sole discretion, deems appropriate in order to monitor compliance with and audit, this Agreement. The CITY shall employ all legal means to protect the privacy of this information including the defense of any legal action brought against the CITY. In such event, OWNER shall be joined by the CITY to such litigation and OWNER shall provide its own counsel and shall bear all of its costs of defense. OWNER shall not be obligated to provide a defense for the CITY. The OWNER acknowledges that the CITY shall have no obligation to make Sales Tax Distributions to the OWNER that reflect the taxable sales activities on the Property unless and until the CITY receives from the OWNER/TENANT the documentation and evidence of payment referred to in this Section; provided, however, that the CITY shall request all such documentation from the OWNER in writing.

B. Payment Dates and Change in Sales Tax Structure: The CITY hereby agrees to pay “tri-annual installment payments” on March 31, July 31, and November 30 of each year (payment date) beginning with the second payment date after the TENANT in the Property opens for business to the public and continuing until such time as to include all sales tax revenues generated from actual sales occurring within the period indicated in Section IV., subject to the following calculations, deductions, terms and conditions:

(i) The "tri-annual installment payment" shall mean an amount equal to fifty percent (50%) of the local share of sales tax revenue attributable to sales generated by the Project provided that the sales tax information has been received by the CITY in a timely manner, all amounts paid to OWNER will be due and payable solely from the sales tax revenue received by the CITY from the Property.

(ii) However, if the CITY no longer receives sales tax revenues from the Property due to a change in Illinois statutes, then the CITY shall make payments to OWNER in the amount of the Local Sales Tax Rebate described in Section IV. hereof and from any alternate sources of revenue provided to the CITY

by the State specifically as a replacement or substitute for sales tax revenue presently received by the CITY. In the event that the CITY's share of said sales tax or substitute tax is reduced or increased by the State, then the OWNER's share thereof shall be reduced or increased utilizing the same percentage factor. Nothing in this Subsection 2) changes or affects Subsection IV. C. hereof.

C. The CITY will provide for payments required under this Section 3 in its annual budget ordinance for the fiscal year in which such payment may be due.

## **SECTION VI. ADDITIONAL COVENANTS**

A. Cessation of Business Operation: In the event of complete cessation of restaurant operation on the Property before the total of the above described sales tax rebate disbursements are made, and only in such event, the remaining sales tax rebate obligation equal to but not exceeding the herein described Reimbursable Improvement Costs may not be transferred to any successors or assigns of any interest of OWNER in the Property without the consent of the CITY.

B. Time: Time is of the essence unless otherwise stated in this Agreement and all time limits set forth are mandatory and cannot be waived except by a lawfully authorized and executed written waiver by the Party excusing such timely performance.

C. Binding Effect: This Agreement shall inure to the benefit of and shall be binding upon the CITY and OWNER and their respective successors and assigns. Notwithstanding anything herein to the contrary, the rights and benefits of this Agreement shall remain personal to OWNER, provided, however, OWNER may assign, without release of OWNER its duties, obligations and benefits to any entity which meets the standards for transfer, conveyance or sale set forth below, and CITY shall direct such reimbursement payments in accordance with any assignment notice to be provided by OWNER to CITY within thirty (30) days of such assignment. The standards for transfer, conveyance or sale shall be that the transferee developer meets high standards of creditworthiness and financial strength as demonstrated by one or more of the following:

- (i) Corporate debenture ratings of BBB or higher by Standard & Poor's Corporation or Baa or

higher by Moody's Investors Service, Inc.;

(ii) A letter from a financial institution with assets of \$10,000,000 or more attesting to the financial strength of the transferee developer; or

(iii) Specific evidence of equity financing for not less than 10% of the total project costs.

Once reimbursements to OWNER commence, OWNER may freely sell the Project or any portion thereof and retain the right to receive such reimbursements, as this Agreement shall not be construed to run with the land. Notwithstanding anything herein to the contrary, OWNER may assign this Agreement to a construction or mortgage lender as security for a loan with respect to the Project.

D. Law Governing: This Agreement shall be construed and enforced in accordance with the laws of the State of Illinois.

E. Severability: If any provision of this Agreement is held invalid by a court of competent jurisdiction or in the event such a court shall determine that the CITY does not have the power to perform any such provision, such provision shall be deemed to be excised here from and the invalidity thereof shall not affect any of the other provisions continued herein.

F. Notices: All notices and requests required pursuant to this Agreement shall be sent by certified mail as follows:

To the OWNER:

Woodmont Tapville Geneva LLC

2100 W. 7<sup>th</sup> Street

Fort Worth, TX 76107

Attn: Grant M. Gary, Principal

Phone: 817- 732-4000

To the CITY:

City Clerk, City of Geneva  
22 South First Street  
Geneva, Illinois 60134  
Phone: (630) 232-7494

With copies to:

City Administrator  
22 South First Street  
Geneva, Illinois 60134  
Phone: (630) 232-7494

City Attorney  
22 South First Street  
Geneva, Illinois 60134  
Phone: (630) 232-4511

G. Authority to Execute: The signatories of the parties hereto have been authorized by the corporate authorities of the CITY and the OWNER to execute this Agreement on their behalf.

H. Successors and Assigns. All the terms and provisions of this Agreement will be binding on and inure to the benefit of all of the successors and assigns of the parties hereto.

I. Third-Party Beneficiaries. The CITY and the OWNER agree that this Agreement is for the benefit of the parties hereto and not for the benefit of any third-party beneficiary. Except as otherwise provided herein, no third party will have any rights or claims against the CITY arising from this Agreement.

J. Time. Subject to Section VI. K. hereof, time is of the essence under this Agreement, and all-time limits set forth are mandatory and cannot be waived except by a lawfully authorized and executed written waiver by the party excusing such timely performance.

K. **Limitation of Liability.** Notwithstanding anything herein to the contrary by implication or otherwise, any obligations of the CITY created by or arising out of this Agreement will not be a general debt of the CITY on or a charge against its general credit or taxing powers but will be payable solely out of the Sales Tax revenues as set forth in Section IV. No recourse will be had for any payment pursuant to this Agreement against any officer, employee, attorney, or elected or appointed official, past, present, or future, of the CITY.

L. **Changes in Law.** The parties acknowledge that the agreement to distribute Sales Taxes as herein provided is predicated on existing law in the State of Illinois providing for the payment to Illinois municipalities of one percent (1%) of the taxable sales within each such modifying or eliminating the distribution of sales tax revenues to Illinois municipalities. The parties desire to make express provision for the effect of such change upon the operation of this Agreement. Accordingly, the parties agree as follows:

- (a) The City shall not, under any circumstances, be required to impose a municipal sales tax or other tax for the purpose of providing a source of funds for the Sales Tax Distributions herein contemplated.
  
- (b) Should the Illinois General Assembly hereafter eliminate the distribution of sales tax revenues to Illinois municipalities, or otherwise alter the distribution formula in a manner which prevents the City from being able to ascertain with specificity the amount of Sales Taxes being received by the City as a direct result of the taxable sales activities generated on the Property, the City shall have no obligation to make Sales Tax Distributions to the Company based upon the taxable sales activities generated on the Property, except to the extent provided otherwise in subparagraph (e) below. However, in the event the City can ascertain with specificity the amount of Sales Taxes being received by the City from the Company's records (certified copies of which the

Company shall provide to the City), the City shall make the Sales Tax Distributions.

- (c) Should the Illinois General Assembly hereafter and during the Sales Tax Participation Period increase the percentage of sales tax revenues distributed to Illinois municipalities, the Sales Tax Distributions provided for herein shall continue but shall apply solely to the amount of Sales Taxes equal to one percent (1%) of taxable sales activities, with such distribution continuing to be made in accordance with the distribution formula contained in Section 4.
- (d) Should the Illinois General Assembly hereafter and during the Sales Tax Participation Period reduce the percentage of sales tax revenues distributed to Illinois municipalities, Sales Tax Distributions provided for herein shall continue to be made in accordance with the distribution formula contained in Section 4.
- (e) Should the Illinois General Assembly hereafter and during the Sales Tax Participation Period eliminate, reduce or alter the formula for the distribution of sales tax revenues, as contemplated in subparagraphs (b) or (d) hereof, and should the City, in response to and during any such period of elimination, reduction or alteration occurring within the Sales Tax Participation Period, if authorized by law, impose or increase its municipal sales tax on retail sales activities occurring within the City's boundaries, and provided the amount of sales tax revenues generated by the Property can thereafter be determined with specificity, then the sales tax revenues generated thereby, up to an amount equal to one (1%) of the eligible retail sales activities of the Property, shall be distributed in accordance

with the distribution formula contained in Section 4 (subject to the various limitations contained herein).

M. No Waiver or Relinquishment of Right To Enforce Agreement. Failure of any party to this Agreement to insist on the strict and prompt performance of the terms, covenants, agreements, and conditions herein contained, or any of them, on any other party imposed will 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, which will continue in full force and effect.

N. Amendment. This Agreement sets forth all the promises, inducements, agreements, conditions, and understandings between the OWNER and the CITY relative to the subject matter thereof, and there are no promises, agreements, conditions, or understandings, either oral or written, express or implied, between them related thereto, other than as herein set forth. No subsequent alteration, amendment, change, or addition to this Agreement will be binding on the parties hereto unless authorized in accordance with law and reduced in writing and signed by them. However, whenever under the provisions of this Agreement any notice or consent of the CITY or the OWNER is required, or the CITY or the OWNER is required to agree or to take some action at the request of the other, such approval or such consent or such request will be given for the CITY, unless otherwise provided herein, by the President or his or her designee and for the OWNER by any officer or employee as the OWNER so authorizes.

O. Counterparts. This Agreement may be executed in two or more counterparts, each of which taken together will constitute one and the same instrument.

P. Default. In the event of any material default under or violation of this Agreement, the party not in default or violation will serve written notice on the party or parties in default or violation, which notice will be in writing and will specify the particular violation or default. All parties hereto reserve the right to cure any violation of this Agreement or default by any of them hereunder within 30 days after receipt of written notice of such default, provided that said 30-day period will be extended (a) if the alleged violation or default is not reasonably susceptible to being cured within this 30-day period, (b) if the party in default has promptly initiated a cure of the violation or default, and (c) if the party in default diligently and continuously pursues a cure of the violation or default until its completion.

IN WITNESS WHEREOF, this Agreement is entered into at Geneva, Illinois, as of the date and year shown above.

APPROVED BY the City of Geneva, Kane County, Illinois, by Resolution No. 2023-\_\_\_\_\_, on the \_\_\_\_ day of \_\_\_\_\_, 2023.

CITY OF GENEVA, an Illinois  
Municipal Corporation

\_\_\_\_\_  
Stephanie K. Dawkins  
City Administrator

ATTEST:

\_\_\_\_\_  
City Clerk

OWNER:

WOODMONT TAPVILLE GENEVA LLC, a Texas  
Limited liability company

By: Woodmont General GP LLC, a Texas limited  
Liability Company, its Manager

By: \_\_\_\_\_  
Stephen Coslik, Manager

By: \_\_\_\_\_  
Grant M. Gary, Co-Manager

**EXHIBIT A: LEGAL DESCRIPTION**

THE SOUTHERLY 90 FEET OF LOT 1 AND SOUTHERLY 90 FEET OF THE EASTERLY 2 FEET,  
4 INCENSE OF LOT 2 IN BLOCK 28 OF THE ORIGINAL TOWN OF GENEVA, IN THE CITY OF  
GENEVA, KANE COUNTY, ILLINOIS

PIN 12-03-430-017

Commonly known as: 101-105 W. State Street, Geneva, IL 60134

**EXHIBIT "B": LEASE**

**TO BE ADDED**

**EXHIBIT C: PROJECT BUDGET AND BUILDING ELEVATIONS AND PLANS**

Property Acquisition	\$1,375,000
Exterior Building Restoration south & east facades	396,000
Interior Improvements (not tenant specific)	
Mechanical/Electrical	66,000
Tenant Build Out	192,400
(Signage, Kitchen & Bar Equipment, Ansul System, Tapwall/TVs/ TV brackets) Professional Fees	
<b>TOTAL</b>	<b>\$2,029,400</b>

**EXHIBIT D: INCOME AND SALES TAX PROJECTIONS**

Annual Sales	\$3,190,000
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Annual Sales Tax to City (MT & NHR)	63,800
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Annual Sales Tax Allocation

Geneva (40% MT +100% NHR)	44,660
Woodmont (60% MT)	19,140

Potential Sales Tax Accumulation over Term (10 year)

Geneva	446,600
Woodmont	191,400

Employment Estimates

Geneva Jobs	48
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Annual Wages	\$823,200
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**EXHIBIT E: REIMBURSEABLE PROJECT COST****PHASE 1**

Wash masonry, repair or replace damaged brick, remove all patchwork and repair, grind and paint deteriorated and cracked mortar joints, remove and repair the wall of foreign objects, replace eight windowsills with bush hammered Lannon stone.	59,000
Remove existing brickmold from south elevation windows, install custom made brickmold.	9,000
Scrape, repair, and paint eight windows, two lintels, eight-pediment window heads decorative gable and building cornice system.	19,500
Stabilize east lintel with tiebacks, provide a structural saddle at the west lintel for interior support beam.	7,500
Remove and replace existing storefront, modify columns, bulkhead, entrance ramp, doorway and railing at new ramp.	53,500
Repair Masonry (southeast).	25,000
<b>TOTAL</b>	<b>173,500</b>

**PHASE 2**

Wash stonework, grind and chisel-out all mortar joints. Tuckpoint all mortar joints with a rope joint to match the original design wash again and seal masonry.	179,000
Replace brickmold with custom brickmold, repair and paint seven windows.	10,000
<b>TOTAL</b>	<b>189,000</b>

Owner shall be entitled to receive 80% of amounts contributed up to the Reimbursable Improvement Costs in accordance with the terms of the Agreement, even if it contributes less than the full amount of the Reimbursable Improvement Costs. Applicable line items may increase or decrease within the Project Budget

**EXHIBIT "F": SALES TAX FORM**

STATE OF ILLINOIS ) ss.  
COUNTY OF \_\_\_\_\_ )

**AUTHORIZATION**

The undersigned is an authorized officer of **WOODMONT TAPVILLE GENEVA LLC** (the "Taxpayer"), which is doing business at 101 West State Street (the "Property"), in Geneva, Illinois (the "City").

To induce the development of the Property, the City is utilizing certain sales tax revenues to provide certain benefits with respect to that development.

The undersigned Taxpayer hereby authorizes the Illinois Department of Revenue (the "Department") to release to the City the monthly amount of municipal Retailer's Occupation Tax generated by Taxpayer as shown in required filings with the Department.

This Authorization is valid for a period of 10 years, commencing on the date the restaurant opens for business per Section IV. B., and ending ten years later (but in no event later than December 31, 2037), at which time it will be null and void and of no further force or effect, without need of notice of any kind.

Taxpayer

Woodmont Tapville Geneva LLC, a Texas limited liability company

By: Woodmont Geneva GP LLC, a Texas limited liability company, its Manager

By: \_\_\_\_\_  
Stephen Coslik, Manager

By: \_\_\_\_\_  
Grant Gary, Co-Manager

Taxpayer Illinois Sales Tax Number

\_\_\_\_\_

STATE OF TEXAS )  
COUNTY OF TARRANT )

This instrument t was SUBSCRIBED and SWORN to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2023 by Stephen Coslik, Manager and by Grant Gary Co-Manager of Woodmont Geneva GP LLC, a Texas limited liability company, the Manager of Woodmont Tapville Geneva LLC, a Texas limited liability company, the taxpayer, for an on behalf of said limited liability company.

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