



## AGENDA ITEM EXECUTIVE SUMMARY

Agenda Item:	TIF 3 Redevelopment Agreement- Benchmark Developers (302 River PUD)		
Presenter & Title:	Cathleen Tymoszenko, Director of Economic Development David DeGroot, Director of Community Development		
Date:	October 21, 2024		
<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-I			
Estimated Cost: \$ 8,885,000		Budgeted? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Other Funding? <input type="checkbox"/> Yes <input type="checkbox"/> No
<i>If "Other Funding," please explain how the item will be funded:</i>			
<b>Executive Summary:</b>			
<p>Benchmark Developers is proposing to redevelop +/- 2-acre block bounded by Stevens Street, Ford Street, N. River Lane, and N. 1<sup>st</sup> Street into a five-story, 114-unit multifamily apartment building and twelve rental townhomes. The proposal includes the demolition of the majority of the existing structures and the subdivision of the block into two lots. Lot 1, the western half of the site, would feature two 6-unit townhome buildings, the preservation of the single-family home currently located at 305 N 1<sup>st</sup> Street, and 25 outdoor parking spaces. Lot 2 would include the apartment building with 122 first-floor garage parking spaces and 21 outdoor parking spaces along River Lane. The proposal would also provide enhancements to the public riverfront access and add 15 angled public parking stalls along the east side of River Lane. The project site is entirely within the Geneva Fox River Redevelopment Project Area (TIF 3). The total project budget is approximately \$44.7M and Benchmark has identified a need for TIF assistance.</p> <p>Significant site preparation costs- substantive environmental remediation, infrastructure and utility work, site clearing, building demolition, earthwork, mass excavation and construction of sidewalks and curbs in addition to necessary offsite work including utility improvements, burying power near the riverfront, river land paving and landscaping- are driving the need for assistance. To assist with the review of Benchmark's financials and increment to be generated, the City uses a third party development advisor to conduct the "but for" analysis which has determined that the project cannot reach acceptable industry returns without assistance. An inducement of \$8,885,000 is proposed to be reimbursed on a pay-as-you-go basis (note). The source of funding is 100% of the net increment from the project PINs after school district and library district payments. A draft Redevelopment Agreement outlines the partnership opportunity.</p>			
<b>Attachments:</b> <i>(please list)</i>			
<ul style="list-style-type: none"> <li>• Resolution Approving Redevelopment Agreement</li> </ul>			
<b>Voting Requirements:</b>			
<i>This motion requires a simple majority of affirmative votes for passage. (City Council Only)</i>			
<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>			
<b>Recommendation / Suggested Action:</b> <i>(how the item should be listed on agenda)</i>			
Consider Approval of Resolution Authorizing Redevelopment Agreement by and Between the City of Geneva and Benchmark Developers, Inc.			

**RESOLUTION NO. 2024-110**

**RESOLUTION AUTHORIZING EXECUTION OF  
A REDEVELOPMENT AGREEMENT BY AND BETWEEN  
BENCHMARK DEVELOPERS, INC. AND CITY OF GENEVA**

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

**SECTION 1:** That the Mayor is hereby authorized to execute, on behalf of the City of Geneva, A Redevelopment Agreement by and between Benchmark Developers, Inc. and City of Geneva substantially in the form attached hereto as Exhibit “A”, to provide tax increment financing assistance for the proposed residential development at the northeast corner of 1<sup>st</sup> Street and Ford.

**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 \_\_\_\_\_, 2024.

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

Approved by me this \_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
Mayor

ATTEST:

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

**REDEVELOPMENT AGREEMENT BY AND BETWEEN  
THE CITY OF GENEVA, KANE COUNTY, ILLINOIS AND  
BENCHMARK DEVELOPERS, INC.**

**THIS REDEVELOPMENT AGREEMENT** (“*Agreement*”) is entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2024 (“*Effective Date*”) by and between the City of Geneva, Kane County, Illinois, an Illinois municipal corporation (“*City*”), and Benchmark Developers, Inc., an Illinois corporation (the “*Developer*”).

In consideration of the mutual covenants and agreements set forth in this Agreement, the City and Developer hereby agree as follows:

**ARTICLE 1: RECITALS**

1.1 The City is a duly organized and validly existing non home-rule municipality pursuant to Article VII, Section 7 of the Constitution of the State of Illinois of 1970 and the laws of the State.

1.2 The City is engaged in the revitalization of its downtown district including the property commonly known as 302 North River Lane, which property is identified by parcel index numbers 12-03-280-002, -003, -004, -005, -006; and 12-03-281-001, -004, -005, -006 and -007 (the “*Subject Property*”).

1.3 The City has the authority pursuant to the laws of the State of Illinois, to promote the health, safety, and welfare of its inhabitants, to prevent the spread of blight, to encourage private development in order to enhance the local tax base, to increase job opportunities, and to enter into contractual agreements with third parties for the purpose of achieving these purposes.

1.4 Pursuant to the Tax Increment Allocation Redevelopment Act of the State of Illinois, 65 ILCS 5/11-74.4-1, *et seq.*, as from time to time amended (the “*TIF Act*”), the Mayor and City Council of the City (collectively, the Corporate Authorities”) are empowered to undertake the redevelopment of a designated area within its municipal limits in which existing conditions permit such area to be classified as a “blighted area” or a “conservation area” as such terms are defined in the TIF Act.

1.5 To stimulate and induce redevelopment pursuant to the TIF Act, the City, after giving all required notices, conducting a public hearing and making all findings required by law, on July 25, 2016, pursuant to Ordinance Nos. 2016-28, 2016-29 and 2016-3, approved a Redevelopment Plan and Redevelopment Project (the “*Redevelopment Plan*”) for an area designated as the Geneva Fox River Redevelopment Project Area (the “*Project Area*”), which Project Area includes the Subject Property, and adopted tax increment financing for the payment and financing of “Redevelopment Project Costs”, as defined by the TIF Act, incurred within the Project Area as authorized by the TIF Act.

1.6 The Developer proposes to acquire the Subject Property which includes approximately two (2) acres and thereafter demolish all buildings thereon and construct a five-story 114 unit multi-family apartment building and twelve (12) rental townhomes (collectively the “*Project*”) at an estimated cost of \$44, 700,000 (including the cost of acquisition).

1.7 The Developer has advised the City that it is not economically feasible for the Developer to acquire the Subject Property and undertake the Project due to the extraordinary costs required for the redevelopment of the Subject Property without financial assistance.

1.8 The City desires to have the Subject Property, redeveloped in order to eliminate the blight factors found upon the Subject Property; to increase the tax base for the City and taxing districts authorized to levy taxes upon the Subject Property; to provide employment opportunities for its residents; and to improve the general welfare of the community; and, therefore, is prepared to reimburse the Developer for certain costs associated with the Project, subject to the terms of this Agreement, the TIF Act and all other applicable provisions of law.

## ARTICLE 2: DEVELOPER'S OBLIGATIONS

2.1 The Developer covenants and agrees that the following obligations shall be preconditions to the City's obligations to reimburse the Developer for certain Redevelopment Project Costs in accordance with the terms and conditions in this Agreement:

- (a) On or before December 31, 2024, the Developer shall have acquired the Subject Property.
- (b) On or before March 1, 2025, the Developer shall have submitted to the City sufficient documentation evidencing the sources of funds, including any financing, that will be used to acquire the Subject Property and complete the Project requiring an approximate investment of \$44,700,000.
- (c) On or before May 1, 2025, the Developer shall have submitted to the City for its approval, all applications as required by the Geneva City Code ("*City Code*") to obtain such permits as necessary to undertake the Project in order to redevelop the Subject Property for its intended uses.
- (d) The Developer shall have secured by no later than June 30, 2025, all other approvals, consents, permits and licenses, from the City and all other governmental units and agencies having jurisdiction over the Subject Property, as required by all City building regulations or any other applicable ordinance of the City required to construct the Project, and shall have paid all building permit and connection fees and fees of any other unit or agency of government.
- (e) On or before July 30, 2025, the Developer shall have commenced construction of any of the Project on the Subject Property.
- (f) On or before December 31, 2026, the Developer shall have completed construction of the Project in accordance with this Agreement, any final plans approved by the City, the City Code and building regulations, and all other applicable laws and have obtained certificates of occupancy for all structures constructed on the Subject Property.
- (g) Upon completion of the Project, the Developer shall deliver to the City an itemization of all costs incurred in connection with the Project accompanied by all paid bills, invoices, receipts, and other documentation requested by the City to evidence a total investment of approximately \$44,700,000 by the Developer in acquiring the Subject Property and constructing the Project (the "*Total Project Costs*").

2.2 The Developer covenants and agrees to maintain the Subject Property in accordance with all applicable laws of the City and the State of Illinois throughout the term of this Agreement.

2.3 The Developer covenants and agrees to pay all fees, fines, utility bills and taxes when due to the City, State of Illinois, federal government and all taxing districts having the Subject Property within their jurisdiction, including but not limited to all real estate taxes.

2.4 Job Counts: The Developer agrees to annually disclose to the City the number of jobs, as of April 30<sup>th</sup>, that owners or tenants of the commercial buildings on the Subject Property have allocated to such buildings, to assist the City with its reporting requirements under Section 11-74.4-5(a) of the TIF Act.

### **ARTICLE 3: CITY OBLIGATIONS**

3.1 In consideration for the Developer acquiring the Subject Property and undertaking and completing the Project, so long as no notice of an event of default has been issued pursuant to Article 6 hereof and remains outstanding, and the Developer has satisfied all of its obligations under Section 2.1 hereof, the City shall reimburse the Developer for Redevelopment Project Costs incurred in connection with the acquisition of the Subject Property and construction of the Project in an amount not to exceed \$8,885,000 from the sources and in accordance with procedures set forth in Article 4.

### **ARTICLE 4. PROCEDURES TO REIMBURSE THE DEVELOPER**

4.1 The City shall have thirty (30) days after receipt of all documentation submitted by the Developer pursuant to Section 2.1(g) of this Agreement to determine which of the Total Project Costs incurred by the Developer in connection with the Project constitute eligible Redevelopment Project Costs. For purposes of this Agreement, Redevelopment Project Costs shall mean and include all costs and expenses as defined as “redevelopment project costs” in Section 11-74.4-3(q) of the TIF Act. The only reasons for determining a cost is not an Eligible Redevelopment Project Cost are that such expenditure (i) is not an eligible Redevelopment Project Cost under the TIF Act, (ii) that it was not incurred in connection with the acquisition of the Subject Property and/or construction of the Project, or (iii) that construction of the Project was not completed in accordance with the City Code, applicable building regulations and ordinances, other applicable laws, and the provisions of this Agreement. The Developer acknowledges that the determination of eligible Redevelopment Project Costs and qualification for reimbursement under this Agreement are subject to the TIF Act, all amendments to the TIF Act, before and after the date of this Agreement, and judicial interpretations of the TIF Act rendered during the term of this Agreement. The City has no obligation to the Developer to attempt to modify such judicial interpretations but will cooperate with the Developer in obtaining approval of Redevelopment Project Costs. The amount of Total Project Costs determined to be eligible Redevelopment Project Costs shall be referred to as “Eligible Redevelopment Project Costs”.

4.2 The City has established a special tax allocation fund solely for the Project Area (the “*STAF*”) into which the City shall deposit Incremental Taxes, as hereinafter defined, generated from the Project Area. On December 1 of each year [or, if later, that date which is ten (10) days following the date upon which the City receives Incremental Taxes (as defined below) from the final installment of real estate taxes (the “*STAF Allocation Date*”)], one-hundred percent (100%) of the Incremental Taxes with respect to the Subject Property during the period from the immediately preceding STAF Allocation Date to but not including, the current STAF Allocation Date shall be transferred and deposited into the Benchmark Subaccount of the STAF (which Subaccount shall be automatically created by the ordinance approving this Agreement). As used in this Agreement, “*Incremental Taxes*” shall mean the amount in the STAF equal to the amount of ad valorem taxes, if any, paid in respect of the Project Area and its improvements which is attributable to the increase in the equalized assessed value of all the parcels of property located therein over the initial equalized assessed value said parcels.

4.3 Upon receipt and approval of Eligible Redevelopment Project Costs, the City agrees to issue a “Developer Note”, in the form attached hereto as Exhibit A, in an amount not to exceed the lesser of: (i) \$8,885,000; or, (ii) the total Eligible Redevelopment Project Costs. The Developer Note shall have an annual interest rate of six percent (6%) payable by the City in accordance with the procedures, conditions and limitations as hereinafter set forth.

4.4 Funds deposited into the Benchmark Subaccount of the STAF shall annually, on or before December 31, be applied as follows:

- a) First, to the payment to the School District in an amount required pursuant to 11-74.4-3(q)( 7.5) of the TIF Act;
- b) Second, to the payment of any increased costs attributable to the Project as required pursuant to 11-74.4-3(q)( 7.7 )of the TIF Act; and
- c) Third, so long as no notice of a default has been issued to the Developer pursuant to 6.2 and remains outstanding, to the payment of interest and principal on the Developer Note until the first to occur: (i) reimbursement to the Developer of the lesser of the Eligible Redevelopment Project costs or \$8,885,000; or, (ii) December 31, 2030.

4.5 The City reserves the right to convert the Developer’s Note into a bond at any time during the term of this Agreement, the proceeds, less the costs of issuance, shall be used to pay outstanding principal and interest on the Developer’s Note.

THE CITY’S OBLIGATION TO REIMBURSE THE DEVELOPER UNDER THIS AGREEMENT IS A LIMITED OBLIGATION PAYABLE SOLELY FROM INCREMENTAL TAXES DEPOSITED IN THE BENCHMARK SUBACCOUNT OF THE STAF FROM TIME TO TIME AND SHALL NOT BE SECURED BY ANY OTHER FUND AS ASSET OF THE CITY OR THE FULL FAITH AND CREDIT OF THE CITY.

## **ARTICLE 5. REPRESENTATIONS, WARRANTIES, AND COVENANTS**

5.1 Developer's Representations Warranties and Covenants. To induce the City to enter into this Agreement, Developer represents, covenants, warrants, and agrees that:

- (a) Recitals. All representations and agreements made by Developer in Article 1 are true, complete, and accurate in all respects.
- (b) Organization and Authorization. Developer is an Illinois corporation duly formed and existing under the laws of the State of Illinois authorized to do business in Illinois, and Developer has the power to enter into, and by proper action has been duly authorized to execute, deliver, and perform, this Agreement. Developer will do, or cause to be done, all things necessary to preserve and keep in full force and effect its existence and standing as a limited liability company authorized to do business in the State of Illinois for so long as Developer is developing and constructing the Project.
- (c) Non-Conflict or Breach. The execution, delivery, and performance of this Agreement by Developer, the consummation of the transactions contemplated hereby, and the fulfillment of or compliance with the terms and conditions of this Agreement shall not conflict with or result in a violation or breach of any of the terms, conditions, or provisions of any offering or disclosure statement made, or to be made, on behalf of Developer, or any restriction, organizational document, agreement, or instrument to which Developer, or any of its partners or venturers, is now a party or by which Developer, or any of its partners or venturers, is bound, or constitute a default under any of the foregoing.
- (d) Pending Lawsuits. There are no actions at law or similar proceedings either pending or, to the best of Developer's knowledge, threatened against Developer that would materially or adversely affect:
  - (i) The ability of Developer to proceed with the construction and development of the Subject Property;
  - (ii) Developer's financial condition;
  - (iii) The level or condition of Developer's assets as of the date of this Agreement; or
  - (i) Developer's reputation.

5.2 City Representations, Warranties and Covenants. To induce Developer to enter into this Agreement and to undertake the performance of its obligations under this Agreement, the City represents, covenants, warrants and agrees as follows:

- (a) Recitals. All representations and agreements made by the City in Article 1 are true, complete, and accurate in all respects.

- (b) Authorizations. The City has the power to enter into and perform its obligations under this Agreement and by proper action has duly authorized the Mayor and City Clerk to execute and deliver this Agreement.
- (c) Non-Conflict or Breach. The execution, delivery, and performance of this Agreement by the City, the consummation of the transactions contemplated hereby and the fulfillment of or compliance with the terms and conditions of this Agreement shall not conflict with or result in a violation or breach of the terms of any order, agreement, or other instrument to which the City is a party or by which the City is now bound.
- (d) Pending Lawsuits. There are no actions at law or similar proceedings either pending or to the best of the City's knowledge being threatened against the City that would materially or adversely affect:
  - (i) The ability of Developer to proceed with the construction of the Development.
  - (ii) The ability of the City to perform its obligations under this Agreement.

#### **ARTICLE 6: ENFORCEMENT AND REMEDIES**

6.1 Enforcement: Remedies. The parties may enforce or compel the performance of this Agreement, in law or in equity, by suit, action, mandamus, or any other proceeding, including specific performance. Notwithstanding the foregoing, Developer agrees that it will not seek, and does not have the right to seek, to recover a judgment for monetary damages against the City or any elected or appointed officials, officers, employees, agents, representatives, engineers, consultants, or attorneys thereof, on account of the negotiation, execution, or breach of any of the terms and conditions of this Agreement.

6.2 Notice; Cure; Self-Help. In the event of a breach of this Agreement, the parties agree that the party alleged to be in breach shall have, unless specifically provided otherwise by any other provision of this Article 6, 30 days after notice of any breach delivered in accordance with Section 9 to correct the same prior to the non-breaching party's pursuit of any remedy provided for in Section 6.4 and 6.7; provided, however, that the 30-day period shall be extended, but only (i) if the alleged breach is not reasonably susceptible to being cured within the 30-day period, and (ii) if the defaulting party has promptly initiated the cure of the breach, and (iii) if the defaulting party diligently and continuously pursues the cure of the breach until its completion. If any party shall fail to perform any of its obligations under this Agreement, and if the party affected by the default shall have given written notice of the default to the defaulting party, and if the defaulting party shall have failed to cure the default as provided in this Section 6.2, then, except as specifically provided otherwise in the following sections of this Article 6, and in addition to any and all other remedies that may be available either in law or equity, the party affected by the default shall have the right (but not the obligation) to take any action as in its discretion and judgment shall be necessary to cure the default. In any event, the defaulting party hereby agrees to pay and reimburse the party affected by the default for all costs and expenses reasonably incurred by it in connection with action taken to cure the default, including attorney's fees and court costs.

6.3 Events of Default by Developer. Any of the following events or circumstances shall be an event of default by Developer with respect to this Agreement:

- (a) If any material representation made by Developer in this Agreement, or in any certificate; notice, demand to the City; or request made by the City in connection with any documents, shall prove to be untrue or incorrect in any material respect as of the date made.
- (b) Default by Developer in the performance or breach of any material covenant contained in this Agreement concerning the existence, structure, or financial condition of Developer.
- (c) Developer's default in the performance or breach of any material covenant, warranty, or obligation, including all obligations set forth in Article 2, contained in this Agreement.
- (d) The entry of a decree or order for relief by a court having jurisdiction in the premises in respect of Developer in an involuntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency, or other similar law, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator, or similar official of Developer for any substantial part of its property, or ordering the winding-up or liquidation of its affairs and the continuance of any such decree or order un-stayed and in effect for a period of 90 consecutive days. There shall be no cure period for this event of default.
- (e) The commencement by Developer of a voluntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency, or other similar law, or the consent by Developer to the appointment of or taking possession, by a receiver, liquidator, assignee, trustee, custodian, sequestrator, or similar official of Developer or of any substantial part of Developer's property, or the making by any such entity of any assignment for the benefit of creditors or the failure of Developer generally to pay such entity's debts as such debts become due or the taking of action by Developer in furtherance of any of the foregoing. There shall be no cure period for this event of default.
- (f) Developer's failure to pay the fees and expenses described in this Agreement.

6.4 Remedies for Default By Developer.

- (a) Subject to the provisions of this Agreement, in the case of an event of default by Developer, the City may terminate this Agreement at which point all future obligations hereunder shall be deemed null and void, or, pursuant to Section 6.1, may institute such proceedings as may be necessary or desirable in its opinion to cure or remedy such default or breach, including proceedings to compel specific performance of Developer of its obligations under this Agreement.

- (b) In case the City shall have proceeded to enforce its rights under this Agreement and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely to the City, then, and in every such case, Developer and the City shall be restored respectively to their several positions and rights hereunder, and all rights, remedies and powers of Developer and the City shall continue as though no such proceedings had been taken.

6.5 Indemnification by Developer: Agreement to Pay Attorneys' Fees and Expenses. Developer agrees to indemnify the City, and all of its elected and appointed officials, officers, employees, agents, representatives, engineers, consultants, and attorneys, against any and all claims that may be asserted at any time against any of such parties in connection with or as a result of (i) Developer's development, construction, maintenance, or use of the Subject Property; or (ii) Developer's default under the provisions of this Agreement. Such indemnification obligation, however, shall not extend to claims asserted against the City or any of the aforesaid parties in connection with or as a result of: (i) the performance of the City's representations, warranties and covenants under Article 5 of this Agreement; (ii) the City's default under the provisions of this Agreement; or (iii) the act, omission, negligence or misconduct of the City or any of the aforesaid parties. If Developer shall commit an event of default and the City should employ an attorney or attorneys or incur other expenses for the collection of the payments due under this Agreement or the enforcement of performance or observance of any obligation or agreement on the part of Developer herein contained, Developer, on the City's demand, shall pay to the City the reasonable fees of such attorneys and such other reasonable expenses so incurred by the City.

6.6 Events of Default by City. Any of the following events or circumstances shall be an event of default by the City with respect to this Agreement:

- (a) A default of any term, condition, or provision contained in any agreement or document relating to the Project (other than this Agreement), that would materially and adversely impair the ability of the City to perform its obligations under this Agreement, and the failure to cure such default within the earlier of 30 days after Developer's written notice of such default or in a time period reasonably required to cure such default or in accordance with the time period provided therein.
- (b) Failure to comply with any material term, provision, or condition of this Agreement within the time herein specified and failing to cure such noncompliance within 30 days after written notice from Developer of each failure or in a time period reasonably required to cure such default.
- (c) A representation or warranty of the City contained herein is not true and correct in any material respect for a period of 30 days after written notice to the City by Developer. If such default is incapable of being cured within 30 days, but the City begins reasonable efforts to cure within 30 days, then such default shall not be considered an event of default hereunder for so long as the City continues to diligently pursue its cure.

6.7 Remedies for Default by City. Subject to the provisions of this Agreement, in the case of an event of default by the City, Developer, pursuant to Section 6.1, may institute such proceedings as may be necessary or desirable in its opinion to cure or remedy such default or

breach, including proceedings to compel the City's specific performance of its obligations under this Agreement; provided, however, no recourse under any obligation contained herein or for any claim based thereon shall be had against the City, its officers, agents, attorneys, representatives in any amount in excess of the specific sum agreed to be paid by the City hereunder, and no liability, right or claim at law or in equity shall be attached to or incurred by the City, its officers, agents, attorneys, representatives or employees in any amount in excess of specific sums agreed by the City to be paid hereunder and any such claim is hereby expressly waived and released as a condition of and as consideration for the execution of this Agreement by the City.

## **ARTICLE 7: GENERAL PROVISIONS**

7.1 Maintain Improvements in Good and Clean Condition: Developer shall maintain the Subject Property in reasonably good and clean condition at all times during the development by Developer of the Subject Property, which shall include promptly removing all mud, dirt, and debris that is deposited on any street, sidewalk, or other public property in or adjacent to the Subject Property by Developer or any agent of or contractor hired by, or on behalf of Developer and repair any damage to any public property that may be caused by the activities of Developer or any agent of or contractor hired by, or on behalf of, Developer.

7.2 Liability and Indemnity of City.

- (a) No liability for City Review. Developer acknowledges and agrees that (i) the City is not, and shall not be, in any way liable for any damages or injuries that may be sustained as the result of the City's review and approval of any plans or improvements or as a result of the issuance of any approvals, permits, certificates, or acceptances for the development or use of any portion of the Subject Property or the improvements and (ii) the City's review and approval of any plans and the issuance of any approvals, permits, certificates, or acceptances does not, and shall not, in any way be deemed to insure Developer, or any of its successors, assigns, tenants, or licensees, or any third party, against violations or damage or injury of any kind at any time.
- (b) Hold Harmless and Indemnification. Developer shall hold harmless the City, and all of its elected and appointed officials, employees, agents, representatives, engineers, consultants, and attorneys from any and all claims that may asserted at any time against any of such parties in connection with (i) the City's review and approval of any plans or improvements or (ii) the City's issuance of any approval, permit or certificate. The foregoing provision, however, shall not apply to claims made against the City as a result of a City event of default under this Agreement, claims that are made against the City that relate to one or more of the City's representations, warranties, or covenants under Article 5 and claims that the City, either pursuant to the terms of this Agreement or otherwise explicitly has agreed to assume.
- (c) Defense Expenses. Developer shall pay all expenses, including legal fees and administrative expenses, incurred by the City in defending itself with regard to any and all of the claims identified in the first sentence of Subsection (b) above.

7.6 No Implied Waiver of City Rights. The City shall be under no obligation to exercise rights granted to it in this Agreement except as it shall determine to be in its best interest from time to time. Except to the extent embodied in a duly authorized and written waiver of the City, no failure to exercise at any time any right granted herein to the City shall be construed as a waiver of that or any other right.

7.7 Force Majeure. Time is of the essence of this Agreement, provided, however, a party shall not be deemed in material breach of this Agreement with respect to any of its obligations under this Agreement on such party's part to be performed if such party fails to timely perform the same and such failure is due in whole or in part to any strike, lock-out, labor trouble (whether legal or illegal), civil disorder, weather conditions, failure or interruptions of power, restrictive governmental laws and regulations, condemnations, riots, insurrections, acts of terrorism, war, fuel shortages, accidents, casualties, floods, earthquakes, fires, acts of Gods, epidemics, quarantine restrictions, freight embargoes, acts caused directly or indirectly by the other party (or the other party's agents, employees or invitees) or similar causes beyond the reasonable control of such party ("Force Majeure"). If one of the foregoing events shall occur or either party shall claim that such an event shall have occurred, the party to whom such claim is made shall investigate same and consult with the party making such claim regarding the same and the party to whom such claim is made shall grant any extension for the performance of the unsatisfied obligation equal to the period of the delay, which period shall commence to run from the time of the commencement of the Force Majeure; provided that the failure of performance was reasonably caused by such Force Majeure.

## **ARTICLE 8. TERM**

Term. This Agreement shall be in full force and effect upon its execution by the parties and terminate upon first to occur: (i) reimbursement to the Developer for the lesser of Eligible Redevelopment Project Costs incurred in connection with acquisition of the Subject Property and construction of the Project and \$8,885,000; or, (ii) December 31, 2030.

## **ARTICLE 9. NOTICES**

Notices. All notices and other communications in connection with this Agreement shall be in writing and shall be deemed delivered to the addressee thereof (a) when delivered in person on a business day at the address set forth below, or (b) on the third business day after being deposited in any main or branch United States post office, for delivery by properly addressed, postage prepaid, certified or registered mail, return receipt requested, at the address set forth below, or (c) by facsimile or email transmission, when transmitted to either the facsimile telephone number or email address set forth below, when actually received.

Notices and communications to Developer shall be addressed to, and delivered at, the following addresses:

with a copy to:

Benchmark Developers, Inc.  
c/o Anthony Pecoraro  
10 Cliff Rd.  
Highland Park, IL 60036

Notices and communications to the City shall be addressed to and delivered at these addresses:

with a copy to:

City of Geneva  
22 South First Street  
Geneva, Illinois 60134

Ottosen DiNolfo Hasenbalg & Castaldo, Ltd.  
Attn: Kathleen Field Orr  
1804 N. Naper Blvd., Ste. 350  
Naperville, IL 60563

By notice complying with the requirements of this Section, each party shall have the right to change the address or addressee, or both, for all future notices and communications to such party, but no notice of a change of address or addressee shall be effective until actually received.

#### **ARTICLE 10. IN GENERAL**

10.1 Amendments and Waiver. No modification, addition, deletion, revision, alteration, or other change to this Agreement shall be effective unless and until the change is reduced to writing and executed and delivered by the City and the Developer. No term or condition of this Agreement shall be deemed waived by any party unless the term or condition to be waived, the circumstances giving rise to the waiver and, where applicable, the conditions and limitations on the waiver are set forth specifically in a duly authorized and written waiver of such party. No waiver by any party of any term or condition of this Agreement shall be deemed or construed as a waiver of any other term or condition of this Agreement, nor shall waiver of any breach be deemed to constitute a waiver of any subsequent breach whether of the same or different provisions of this Agreement.

10.2 No Third Party Beneficiaries/Assignment. No claim as a third party beneficiary under this Agreement by any person, firm, or corporation shall be made, or be valid, against the City or Developer. The Developer may assign the payments under the Developer's Note provided that the assignee is an accredited investor, lender or successor of the Developer provided however the Developer remains fully responsible for all of the Developer's obligations under this Agreement.

10.3 Entire Agreement. This Agreement shall constitute the entire agreement of the Parties; all prior agreements between the Parties, whether written or oral, are merged into this Agreement and shall be of no force and effect.

10.4 Counterparts. This Agreement is to be executed in two or more counterparts, each of which shall be deemed an original but all of which shall constitute the same instrument.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the dates set forth below their respective signatures, to be effective as of the Effective Date.

**City of Geneva,**  
an Illinois municipal corporation

*Attest:*

By: \_\_\_\_\_  
Mayor

By: \_\_\_\_\_  
City Clerk

Benchmark Developers, Inc.,  
an Illinois Corporation

*Attest:*

By: \_\_\_\_\_  
President

By: \_\_\_\_\_  
Secretary