

EXHIBIT B

ANNEXATION AGREEMENT

THIS AGREEMENT made and entered into this 4th day of October, 2022, by and between the **CITY OF GENEVA**, an Illinois municipal corporation located in Kane County, Illinois (hereinafter referred to as "**CITY**"), and 1203 Fabyan Parkway, LLC (hereinafter referred to as "**OWNERS**").

WITNESSETH:

WHEREAS, the OWNERS are the OWNERS of record of certain separate parcels of real estate, the legal descriptions of which is set forth in Exhibit "A" attached hereto (hereinafter sometimes referred to as "Subject Realty"); and

WHEREAS, the OWNERS have agreed to develop Subject Realty and jointly and severally assume full responsibility and liability for the development of the Subject Realty in accordance with the terms and conditions of this Agreement, and will carry out the duties and obligations of the OWNERS as hereinafter provided; and

WHEREAS, the Subject Realty constitutes territory which is contiguous to and may be annexed to the CITY as provided in Article VII of the Illinois Municipal Code (Chapter 65, Illinois Compiled Statutes, Par. 5/7-1-1 (1998), as amended); and

WHEREAS, a Petition for Annexation for the Subject Realty has been filed by OWNERS with the CITY in accordance with law; and

WHEREAS, the annexation and development of the Subject Realty for the uses and purposes provided herein will promote sound planning, will aid in developing the CITY as a balanced community, and will assist the CITY in realizing the intent of the Comprehensive Plan of the CITY of Geneva; and

WHEREAS, the OWNERS desire to have the Annexing Parcel annexed to the CITY OF GENEVA upon the terms and conditions hereinafter set forth; and

WHEREAS, this Agreement is made pursuant to the provisions of paragraphs 11-15.1-1 through 11-15.1-5 of the Illinois Municipal Code [Chapter 65, Illinois Compiled Statutes, Pars. 5/11-15.1-1 through 5/11-15.1-5 (1998), as amended]; and

WHEREAS, proper legal notice has heretofore been provided pursuant to the provisions of 11-15.1-3 of the Illinois Municipal Code [Chapter 65, Illinois Compiled Statutes, Par. 5/1-15.1-3 (1998), as amended];

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

1. **ANNEXATION**: OWNERS have made application to the CITY for annexation of the Subject Realty. CITY agrees to annex the Subject Realty subject to the applicable provisions of statutes and the terms and conditions hereinafter set forth, and to further grant the approvals herein provided for the Subject Realty to facilitate the development of the Subject Realty in the manner set forth in this Agreement.

2. **ZONING**: Upon annexation of the Subject Realty to the CITY, the Subject Realty shall be classified as _____ District with a Special Use as a Planned Unit Development pursuant to the provisions of Appendix D of Geneva Municipal Code, as amended (hereinafter sometimes referred to as the "Zoning Ordinance"), subject to the additional conditions, variations, and restrictions hereinafter set forth, and shall be developed only in accordance with the provisions hereof, of applicable statutes and ordinances, and of Exhibit "B" attached hereto and made a part hereof entitled "An Ordinance Granting a Special Use as an B-1 Business Planned Unit Development for _____ Development-Unit _" (hereinafter sometimes referred to as the "PUD Ordinance"); the parties hereto agreeing and acknowledging that the terms and conditions set forth in the PUD Ordinance are expressly incorporated herein and made a part hereof as if fully set forth herein.

3. **PRELIMINARY PLAN FOR PLANNED DEVELOPMENT OF SUBJECT REALTY**: Attached hereto as Exhibit "C" which is also affixed to the PUD Ordinance as Exhibit III are the Preliminary Plat and Preliminary Engineering Plan (hereinafter sometimes referred to as the "Preliminary Plan"). The Preliminary Plan has been reviewed by the corporate authorities of the CITY, and is hereby approved as the Preliminary Plan for planned unit development for the Subject Realty. Said approval of the Preliminary Plan, and DEVELOPER's right and authority to develop the Subject Realty in substantial conformity with the Preliminary Plan and the terms and provisions of the PUD Ordinance shall continue in full force and effect throughout the term of this Agreement, subject to the provisions of Sections 1003.7 and 1003.11 of the Zoning Ordinance. For the purposes of this Agreement, the provisions of Section 1003.11(A) are hereby modified to provide that the City Council shall consider the planned unit development subject to revocation if

construction falls more than five (5) years behind the schedule filed with the final plan.

- a. **Final Plat Approval:** Subject to the provisions of Section 9 of the PUD Ordinance, OWNERS shall not be required to submit for review or obtain approval of any additional preliminary plan or plat in order to obtain approval by the CITY of a final plat or plats of subdivision of the Subject Realty which are in substantial conformity with the Preliminary Plan. Upon the submission of a final plat of subdivision, accompanied by final engineering plans, for any portion of the Subject Realty, and provided such final plat and final engineering plans comply with applicable Ordinances of the CITY (unless modified herein), this Agreement, and the PUD Ordinance, the CITY shall approve such final plat and final engineering plans within the time period provided pursuant to Section 5/11-12-8 of Chapter 65 of the Illinois Compiled Statutes, 1996 Edition. Such final approval shall be deemed to have satisfied the Final Plan Stage provisions of Section 1003 of the Zoning Ordinance, except for such Site Plan Review required under Section 1004 of the Zoning Ordinance. In any event, review of any plan or plat, whether preliminary, final, or a combined preliminary and final as provided for under the PUD Ordinance, by the Planning and Zoning Commission shall have for its purpose to provide the City Council with a recommendation only (not a decision) as to the review described in said Section 5/11-12-8, and a negative recommendation by the Planning and Zoning Commission shall not prevent the City Council from approving such plan or plat over the objection or negative recommendation of the Planning and Zoning Commission.
 - b. **Compliance:** The CITY shall in all respects comply with the provisions and requirements of Section 5/11-12-8 of Chapter 65 of the Illinois Compiled Statutes, 1998 Edition, with respect to the Subject Realty, and OWNERS shall be entitled to all rights and remedies provided it thereunder, and otherwise available at law or in equity, in the event of the CITY'S failure to comply therewith. OWNERS approve of and agree to abide by all of the provisions of the PUD Ordinance as set forth in Exhibit "B" attached hereto.
4. **F.P.A. BOUNDARIES:** As of the date of this Agreement, all of the Subject Realty is within the Geneva Facilities Planning Area (FPA) for purposes of sanitary sewer service, as shown in Exhibit "D" attached hereto.

5. **FEES AND CONTRIBUTIONS:** The OWNERS shall comply in all respects with the requirements of the Geneva Municipal Code, as modified, altered or varied by this Agreement and the PUD Ordinance, 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. In addition thereto, the following contributions have been agreed to by the parties hereto and the OWNERS shall pay same as a condition to the approval of a final plat or the issuance of a building permit, as the case may be:
- a. Owner shall pay to the CITY at the time of and as a condition to the issuance of each applicable building permit, during calendar year ASAP, on the Subject Realty an amount equal to 66 cents per square foot multiplied by the total gross square feet of building proposed to be constructed by Owner as and for a contribution for the construction of fire department facilities or acquisition of fire fighting equipment or apparatus to service the Subject Realty and other property within the fire protection service area of the CITY. For building permits issued in any calendar year subsequent to ASAP, the fee shall be based scale established by ordinance of the CITY.
 - b. All contributions provided for in this Paragraph shall be nonrefundable. In the event the Subject Realty is not developed in accordance with this Agreement and the PUD Ordinance, all contributions paid hereunder shall be credited towards any alternative development of the Subject Realty subsequently approved by the CITY.
6. **RESPONSIBILITY FOR CITY REVIEW EXPENSES:** OWNERS agree to pay all CITY expenses for the review, preparation of documents and plans, hearings and approvals of this Annexation Agreement and the attached PUD Ordinance, incurred by the CITY's legal counsel, consulting engineers, the City Administrator, Finance Officer, Director of Planning, Director of Public Works, and City Engineer, plus 10% for legislative costs incurred with respect to this Agreement and Ordinance. Said expenses shall be billed to the OWNERS and shall be paid in full as a condition to the CITY's execution of this Agreement.
7. **APPLICABILITY OF CITY CODE:** Other than set forth herein or in Exhibit "B", attached hereto and made a part hereof, OWNER shall comply in all respects with the

applicable provisions of Geneva Municipal Code, as amended from time to time, including Appendices B, C, and D and other CITY ordinances pertaining to development in effect at the time OWNER makes application to the CITY for a preliminary plat, final plat, building permit or permits in connection with the construction of buildings or structures on the Subject Realty, whether or not any of such ordinances are amended after the date hereof.

8. **CONSTRUCTION TRAILER:** Subject to the provisions of the PUD Ordinance, OWNERS shall be permitted to locate a construction office trailer on the Subject Realty during the construction of the public improvements. Said trailer shall be removed upon completion of all public improvements. All such storage trailers shall be set back a minimum of twenty-five (25) feet from the nearest perimeter lot line of the Subject Realty.

9. **OBLIGATION FOR EXISTING REIMBURSEMENT AGREEMENTS:** OWNERS hereby agree to abide by any and all existing reimbursement agreements recorded with the Kane County Recorder as of the date of this Agreement, identifying the Subject Realty as a "Benefitted Property".

10. **NO CITY RESPONSIBILITY FOR UTILITIES:** The CITY shall not be held responsible for its inability to install any utility, or for any loss or damage including consequential damage, or delay in installation, 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.

11. **OVERSIZING OF IMPROVEMENTS:** In the event the CITY requests the OWNERS to oversize certain water mains or sanitary sewers, such oversizing shall take place on the following basis: The City Engineer and the OWNERS's engineer shall have prepared and shall have agreed upon cost estimates indicating the cost for oversizing consideration. Such actual cost difference shall be assumed by the CITY. The CITY shall reimburse the OWNERS in an amount equal to the cost of oversizing within thirty (30) days of the issuance of a Certificate of Completion Resolution by the City Council covering the subject improvements.

12. **REQUIREMENTS OF OTHER JURISDICTIONS:** It is agreed that the CITY is

not liable or responsible for any restrictions on CITY'S obligations under this Agreement that may be required or imposed by any other governmental bodies or agencies having jurisdiction over the Subject Realty, CITY, OWNERS, including but not limited to county, state and federal regulatory bodies.

13. **APPLICABILITY OF CITY CODES:** Except as otherwise provided herein or in Exhibit B, attached hereto and made a part hereof, OWNER shall comply in all respects with the applicable provisions of Appendices B, C, and D of the Geneva Municipal Code and other CITY ordinances pertaining to the development, in effect at the time OWNER makes application to the CITY for a preliminary plan, final plat, building permit or permits in connection with the construction of buildings or structures on the Subject Realty, whether or not any of such ordinances are amended after the date hereof.
14. **BINDING EFFECT, SUCCESSION IN INTEREST, AND TERM:** This Agreement shall constitute a covenant running with the land and be binding upon and inure to the benefit of the parties hereto, successors in interest, assignees, lessees, and upon any successor municipal authorities of the CITY and successor municipalities for a period of twenty (20) years from the date hereof. Upon the conveyance by OWNERS of joint and separable interest in the Subject Realty to any successor, assign, or nominee, OWNER shall be released from any and all further liability or responsibility under this Agreement, and the CITY shall thereafter look only to the OWNERS successor, assign, or nominee, as the case may be, concerning the performance of such duties and obligations of OWNER hereby undertaken.
15. **JOINT AND SEVERAL OBLIGATIONS:** The obligations of those parties herein designated as OWNER shall be and are joint and several.
16. **NOTIFICATION REGARDING SALE:** Within thirty (30) days after the sale, transfer or assignment of all or any part of the Subject Realty or of the Assignment of the beneficial interest in a land trust holding title to the Subject Realty, OWNER shall notify CITY thereof.
17. **DISCONNECTION:** Once the Subject Realty has been annexed to CITY and a final plat and collateral approval granted for any part of the Subject Realty, OWNERS agree not to petition for disconnection of any part of the Subject Realty from CITY without CITY approval under any statutory provision and agrees that if the Subject Realty were disconnected from the CITY (a) the growth prospects and

plan and zoning ordinances of the CITY would be unreasonably disrupted; (b) if disconnected, substantial disruption will result to existing municipal service facilities, such as, but not limited to, sewer systems, street lighting, water mains, garbage collection and fire protection; and (c) if disconnected, the CITY would be unduly harmed through loss of tax revenue in the future. However, subject to the provisions of paragraph 4 hereof, CITY may disconnect the Subject Realty with the written consent of OWNERS.

18. **HOLD HARMLESS AND INDEMNIFICATION:** In the event a claim is made against the CITY, its officers, other officials, agents and employees or any of them or if the CITY is made a party-defendant in any proceeding arising out of or in connection with this Agreement or the annexation of the Subject Realty, the approval and issuance of a Special Use Permit for a Planned Development for the Subject Realty, or the development of the Subject Realty including, but not limited to, issues relating to storm water drainage upstream or downstream of Subject Realty, the OWNERS, to the extent permitted by law, shall defend and hold the CITY and such officers, other officials, agents and employees, past, present and future, harmless from all claims, liabilities, losses, taxes, judgments, costs, and fees, including expenses and reasonable attorney's fees, in connection therewith. Any such indemnified person may obtain separate counsel to participate in the defense thereof at his own expense; however, if the Canons of Legal Ethics require such indemnified person to be separately defended where there is no consent to a conflict of interest, then OWNERS shall bear such expense. The CITY and such officers, other officials, agents and employees shall reasonably cooperate in the defense of such proceedings. Said indemnification shall not include claims, liabilities, losses, judgments, costs, and fees arising from the negligent or wilfully wrongful acts or omissions of the CITY, its officers, other officials, agents and employees.
19. **ENFORCEMENT:** In the event any monies are due CITY pursuant to any provisions hereof the City Council may by resolution determine that no further approvals or building permits be issued for the Subject Realty until after such monies have been paid. Such resolution may be recorded in the Recorder of Deeds office. Such resolution shall not be effectuated until after the CITY has given OWNERS not less than ten (10) business days prior written notice of such indebtedness, and OWNERS fails to pay such amount in fact due to CITY within said ten day period.
20. **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.

21. **NOTICE**: Unless otherwise notified in writing, all notices, requests and demands shall be in writing and shall be delivered to or be mailed by certified mail, return receipt requested, as follows:

If to the CITY: Mayor, City of Geneva
22 South First Street
Geneva, Illinois 60134

With copies to: City Clerk
City of Geneva
22 South First Street
Geneva, Illinois 60134

City Attorney
City of Geneva
22 South First Street
Geneva, Illinois 60134

Community Development Director
City of Geneva
22 South First Street
Geneva, Illinois 60134

If to the OWNERS:

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.

22. **AMENDMENT**: 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 Municipal Code and the Illinois Compiled Statutes. Except for “technical changes” provided under Section 9 of the PUD

Ordinance, 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.

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. **NECESSARY ORDINANCES AND RESOLUTIONS:** The CITY shall pass all ordinances and resolutions necessary to permit the OWNERS to develop the Subject Realty in accordance with the provisions of this Agreement, provided said ordinances and/or resolutions are not contrary to law.

25. **TERM OF AGREEMENT:** This Agreement shall remain in force and effect for a period of twenty (20) years. The provisions of Section 1003.11 of Zoning Ordinance under Appendix D of the Geneva Municipal Code to the contrary notwithstanding, the special use for planned development created and adopted pursuant to the Planned Development Ordinance attached hereto as Exhibit "B" shall remain in force and effect throughout the term of this Agreement unless otherwise mutually agreed by OWNERS and the CITY.

26. **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.

27. **RECORDING:** This Agreement shall be recorded in the Office of the Recorder of Deeds, Kane County, Illinois, at OWNERS expense.

28. **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.

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

IN WITNESS WHEREOF, the parties have hereunto placed their hands and seals the date first above written.

CITY
CITY OF GENEVA, a Municipal
Corporation,

ATTEST:

By: _____ By:
Title: City Clerk

Title: Mayor

OWNER

1203 Fabyan Parkway LLC

Attest By: *Tomasz Rzedzian*
Title: President

By:
Title:

Trustee's Exculpation clause or rider
to be affixed here or on following page.

STATE OF ILLINOIS)
) SS
COUNTY OF KANE)

City

I, _____, a Notary Public, in and for the County and State aforesaid, do hereby certify, that Kevin Burns, personally known to me to be the Mayor of the City of Geneva, Kane County, Illinois, a municipal corporation, and _____, personally known to me to be the City Clerk of said corporation, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such Mayor and City Clerk, they signed and delivered the said instrument and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority given by the City Council of said corporation, as the free and voluntary act, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

GIVEN under by hand and official seal this _____ day of _____, 20__ .

Notary Public

My Commission Expires:

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

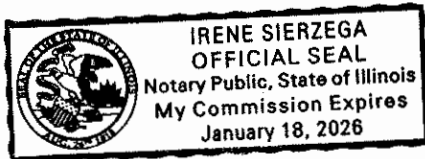
Owner

I, Irene Sierzega, a Notary Public, in and for the County and State aforesaid, do hereby certify, that Tomasz Rzedzian personally known to me to be the owner of the 1203 Fabyan Parkway LLC, an Illinois LLC, he signed and delivered the said instrument and as the free and voluntary act and deed of said LLC, for the uses and purposes therein set forth.

GIVEN under by hand and official seal this 4th day of October, 2022


Notary Public

My Commission Expires:



STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

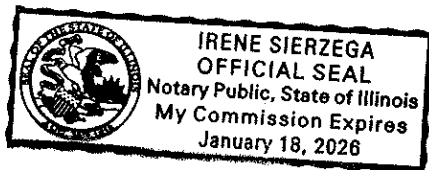
Owner

I, Irene Sierzega, a Notary Public, in and for the County and State aforesaid, do hereby certify, that Tomasz Rzedzian personally known to me to be the owner of the 1203 Fabyan Parkway LLC, an Illinois LLC, he signed and delivered the said instrument and as the free and voluntary act and deed of said LLC, for the uses and purposes therein set forth.

GIVEN under by hand and official seal this 4th day of October, 2022


Notary Public

My Commission Expires:



SCHEDULE OF EXHIBITS