

Ordinance #O.23.20

An Ordinance **AUTHORIZING THE EXECUTION OF AN ANNEXATION AGREEMENT WITH DSW INVESTMENTS, LLC.**

Adopted by the City Council of the City of Galena on this 10<sup>th</sup> Day of October 2023.

Published in pamphlet form by authority of the City Council of the City of Galena, Jo Daviess County, Illinois, this 10<sup>th</sup> Day of October 2023.

STATE OF ILLINOIS            )  
  )       City of Galena  
COUNTY OF JO DAVIESS )

CERTIFICATE

I, Mary Beth Hyde, certify that I am the duly elected municipal clerk of the City of Galena, JoDaviess County, Illinois.

I further certify that on the 10<sup>th</sup> Day of October 2023, the Corporate Authorities of said municipality passed and approved Ordinance No. O.23.20 entitled **AN ORDINANCE AUTHORIZING THE EXECUTION OF AN ANNEXATION AGREEMENT WITH DSW INVESTMENTS, LLC**, which provided by its terms that it should be published in pamphlet form.

The pamphlet form of Ordinance No. O.23.20 including the Ordinance and a cover sheet thereof, was prepared, and a copy of such Ordinance was posted in the municipal building, commencing the 10<sup>th</sup> Day of October 2023 and commencing for at least ten (10) days thereafter.

Dated at Galena, Illinois, this 11<sup>th</sup> Day of October 2023.

  
Mary Beth Hyde, City Clerk

(Seal)

**ORDINANCE NO. O.23.20**

**AN ORDINANCE AUTHORIZING THE EXECUTION OF AN  
ANNEXATION AGREEMENT WITH DSW INVESTMENTS, LLC**

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**WHEREAS**, it is in the best interests of the City of Galena, Jo Daviess County, Illinois, that a certain annexation agreement with DSW Investments, LLC, pertaining to the land described below, be entered into; and

**WHEREAS**, a copy of such agreement is attached hereto and incorporated herein; and

**WHEREAS**, the legal owners of record of the property that is the subject of the annexation agreement are ready, willing and able to enter into that agreement and to perform the obligations as required thereunder; and

**WHEREAS**, the statutory procedures provided in Division 15.1 of Article 11 of the Illinois Compiled Statutes, as amended, 65 ILCS 5/11-15.1, for the execution of the annexation agreement have been fully complied with;

**NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF GALENA, JO DAVIESS COUNTY, ILLINOIS, AS FOLLOWS:**

**SECTION 1:** That the property covered by the Annexation Agreement is described in EXHIBIT A, and

**SECTION 2:** That the Mayor be and is hereby authorized and directed to execute, and the City Clerk is directed to attest, a document known as "Annexation Agreement" (a copy of which is attached hereto and made a part hereof), and

**SECTION 3:** The invalidity of any section part, provision, term or phrase of this Ordinance shall not affect the validity of the remainder hereof, and

**SECTION 4:** All ordinances or parts of ordinances in conflict or inconsistent with this Ordinance shall be repealed to the extent of any such conflict or inconsistency, and

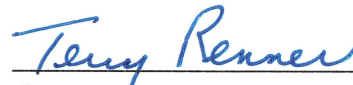
**SECTION 5:** This Ordinance shall be in full force and effect from and after its passage; approval and publication as provided by law.

PASSED AND APPROVED THIS 10<sup>th</sup> DAY OF OCTOBER, 2023.

**AYES:** Westemeier, Bernstein, Johnson, Kieffer, Tegtmeyer, Renner

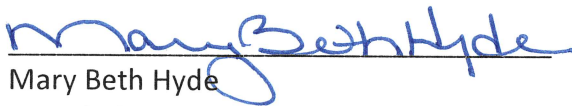
**NAYS:** None

**ABSENT:** Wienen



Terry Renner  
Mayor

ATTEST:



Mary Beth Hyde  
City Clerk

Prepared by:

Joseph Nack  
City Attorney  
101 Green Street  
Galena, Illinois 61036



DocId:8195414

Tx:4181298

**429485**

ANGELA KAISER, RECORDER  
JO DAVIESS COUNTY, IL  
12/08/2023 02:09 PM

RECORDING FEE                      62.00

**TYPE OF DOCUMENT: ANNEXATION AGREEMENT**

**Prepared by:**      City of Galena  
                            101 Green Street  
                            PO Box 310  
                            Galena, IL 61036

**Return to:**        Joseph Nack  
                            City Attorney  
                            City of Galena  
                            101 Green Street  
                            PO Box 310  
                            Galena, IL 61036

# **ANNEXATION AGREEMENT**

**THIS AGREEMENT** is made on or as of the 13 day of October, 2023, by and between the **CITY OF GALENA, an Illinois Municipal Corporation** (the "City") and **DSW Investments, LLC, or their grantees, heirs, successors or assigns**, (the "Owner/Developer").

## **RECITALS**

A. The Owner/Developer holds title to the "Property" hereinafter more particularly described in "Exhibit A."

B. Section 11-15.1-1 of the Illinois Municipal Code authorizes municipalities to enter into annexation agreements providing for the annexation of certain property upon the property becoming contiguous to the municipality.

C. Owner/Developer has signed a duly executed Petition for Annexation in accordance with the provisions of the Illinois Compiled Statutes, 65 ILCS 5/7-1-2 and is hereby requesting that the City enter into this Annexation Agreement pursuant to the requirements and provisions of Section 11-15.1-1 of the Illinois Municipal Code.

D. The Property is contiguous to the City of Galena and Owner/Developer has indicated the desire and intention to have the Property annexed to the City upon the terms and conditions herein set forth.

E. Section 11-15.1-2.1 of the Illinois Municipal Code provides that the property that is the subject of an annexation agreement adopted under Division 15.1 is subject to

the ordinances, control and jurisdiction of the annexing municipality in all respects, the same as property that lies within the annexing municipality's corporate limits.

F. Owner/Developer proposes to enter into an annexation agreement with the City for the Property, for a Highway 20 Design Permit to Construct a Tractor Supply Company store in the Highway 20 Corridor, a rezoning of the Property from Limited Agricultural to General Commercial, and a variance to allow a reduction in the Steep Slopes Protection Standards at the corner of Highway 20 and Bartell Boulevard pursuant to authority granted by the City of Galena Zoning Board of Appeals and the Galena City Council.

G. Given the proximity of the Property to the City of Galena corporate boundary and the possible provision of City utilities to the Property, the proposed development of the Property will have a far greater impact on the City than upon any other unit of local government having the authority to undertake regulation of those operations.

H. On September 13, 2023, after duly published notice, the Zoning Board of Appeals of the City conducted a public hearing on the request of the Owner/Developer for a Highway 20 Design Permit to Construct a Tractor Supply Company store in the Highway 20 Corridor, a rezoning of the Property from Limited Agricultural to General Commercial, and a variance to allow a reduction in the Steep Slopes Protection Standards at the corner of Highway 20 and Bartell Boulevard. The Zoning Board of Appeals, by a vote of five (5) in favor and none (0) against (5-0) recommended the approval of the zoning applications.

I. On October 10, 2023, after duly published notice, the City Council of the City reviewed and considered the record from the September 13, 2023, Zoning Board of

Appeals public hearing on the proposed rezoning. The City Council voted six (6) in favor and zero (0) against (6-0) to approve the first reading and waive the second reading of the rezoning ordinance, achieving the votes required for approval of the rezoning ordinance. At the same meeting, the City Council, after duly published notice, conducted a public hearing on this Agreement in accordance with applicable law. The City Council then voted to approve the first reading of the ordinance and to waive the second reading, achieving the votes required to execute this Annexation Agreement.

J. On October 11, 2023, after duly published notice, the Zoning Board of Appeals approved the finding of fact for the variance by a vote of five (5) in favor and zero (0) against (5-0).

K. Performance by both the Owner/Developer and the City of their respective obligations under this Agreement is critical to the health, safety and welfare of the general public, and to the enjoyment and use of property located in the vicinity of the Property.

L. Owner/Developer acknowledges and agrees that no development may begin on the Property until the associated permits are issued.

**NOW, THEREFORE,** in consideration of the foregoing recitals and in consideration of the mutual covenants and agreements hereinafter set forth, the City and the Owner/Developer agree as follows:

## **ARTICLE I**

### **INCORPORATION OF RECITALS AND EXHIBITS**

1.1 **Incorporation of Recitals.** The recitals herein above set forth are incorporated into and made a part of this Agreement.

1.2 **Incorporation of Exhibits.** The exhibits attached hereto are incorporated into and made a part of this Agreement.

## **ARTICLE II**

### **DEFINITIONS**

2.1 **Definitions.** As used in this Agreement, the following terms shall have the meaning set forth opposite each of them except where the use or context clearly indicates that a different meaning is intended:

2.1.1 **“Agreement”** or **“this Agreement”** shall mean this Annexation Agreement between the City and the Owner/Developer.

2.1.2 **“City”** means the City of Galena, a municipal corporation organized and existing under the laws of the State of Illinois and located in Jo Daviess County, Illinois.

2.1.3 **“County”** means the County of Jo Daviess in the State of Illinois.

2.1.4 **“Owner/Developer”** means DSW Investments, LLC, or their grantees, heirs, successors or assigns.

2.1.5 **“Property”** means the real property legally described on “Exhibit A.”

2.1.6 **“Zoning Code”** means the City of Galena Zoning Ordinance found at Chapter 154 of the City Code of the City.



## **ARTICLE III**

### **ANNEXATION AND ZONING OF THE PROPERTY**

3.1 **Plat of Annexation.** A plat of annexation, prepared at the sole cost and expense of the Owner/Developer, depicting the relationship of the boundaries of the Property prior to its annexation to the then-existing corporate limits of the City is attached and made part hereof as "Exhibit A".

3.2 **Annexation of the Property.** Within sixty (60) days after the adoption of this agreement, the City shall, subject to the terms and conditions of this Agreement, do all things necessary or appropriate to cause the Property to be annexed to the City and to comply with the provisions of this Agreement. In particular and without limitation, the City shall pass and approve an ordinance annexing the Property to the City and prepare and serve any notices as may be required for any township road district, fire protection district or library district, as appropriate. The City shall record with the Jo Daviess County Recorder as necessary the ordinance annexing the Property and record or file any other documents as may be necessary to effectuate the terms of this Agreement.

3.3 **Adoption of Ordinances Addressing Zoning Matters.** No later than sixty (60) days after the adoption of this Agreement, the City shall, subject to the terms and conditions of this Agreement, do all things necessary or appropriate, to adopt an ordinance to rezone the Property from Limited Agricultural to General Commercial.

3.4 **Use of the Property Prior to Annexation.** Until the City annexes the Property as provided in Section 3.2 of this Agreement, the City and Owner/Developer agree that the Owner/Developer may proceed with planning activities for developing the Property in accordance with and consistent with the terms of this Agreement and with all ordinances of the City regarding such development in place at the time of the execution of this Agreement.

## **ARTICLE IV**

### **ZONING**

4.1 **Zoning.** The City shall enact such ordinances, adopt such resolutions and take such other actions as are necessary to effectuate the following zoning:

4.1.1 Approve a Highway 20 Design Permit to Construct a Tractor Supply Company store in the Highway 20 Corridor.

4.1.2 Zone the Property General Commercial.

4.1.3 Approve a variance to allow a reduction in the Steep Slopes Protection Standards at the corner of Highway 20 and Bartell Boulevard.

4.2 **Highway Corridor Overlay Compliance.** Prior to the issuance of any City building permit, the Owner shall comply with the provisions of the Highway Corridor Overlay District as found in Zoning Code Section 154 Appendix C for those portions of the Property to which the Corridor District applies. According to Section 154.922, a Non-

Administrative Highway 20 Development permit shall be required for those portions of the Property to which the Corridor District applies.

4.3 **Screening.** Pursuant to Zoning Code Section 154.301 and Section 154.923, Owner/Developer shall be required to provide City with the proposed location and screening of all onsite facilities for refuse collection, loading areas, outdoor storage areas and HVAC or other utility equipment prior to the issuance of a building permit for the construction of any improvements on the Property.

4.4 **Site Plans.** Consistent with City of Galena Zoning Code, site plans shall be submitted to the Zoning Administrator and shall be reviewed and, if in compliance with City ordinances and this Agreement, approved by the City pursuant to the provisions found in Zoning Code Section 154.134 of the Galena Zoning Code.

4.5 **Materials to be Used.** Exterior materials on all buildings shall comply with Section 154, Appendix C, of the Zoning Code, as applicable and unless modified by zoning variance.

4.6 **Lighting, Signage and Parking.** Lighting, signage, parking, and other infrastructure in the development shall comply with the City of Galena Zoning Ordinance Sections 154.601-154.604 and 154.801-154.811.

4.7 **Utilities.** All public utilities constructed in the Property shall be located within right-of-ways or easements dedicated for utility services. All easements shall be a minimum twenty (20) feet in width from the utility and shall be adequate for the maintenance, repair, and replacement of the utilities as determined by the City engineer. All utilities constructed in the Property shall be located underground.

4.8 **Permits.** Prior to commencing construction of any buildings or development work, Owner/Developer shall at its sole cost and expense acquire any and all licenses or permits which may be required for said construction or work by applicable local ordinances of the City, as well as may be required by all county, state or federal statutes or regulations.

## **ARTICLE V**

### **CODES AND ORDINANCES; FEES**

5.1 Except where specifically limited or reserved by this Agreement, to the extent of any conflict, ambiguity or inconsistency between the terms, provisions or standards contained in this Agreement and the terms, provisions or standards, either presently existing or hereafter adopted, by the City of Galena Code of Ordinances, the City of Galena Zoning Code, the City of Galena Storm Water Detention Ordinance, or any other City code, ordinance or regulation, the terms, provisions and standards of this Agreement shall control and govern during the term of this Agreement.

5.2 No fee or charge of any description shall be imposed upon the Owner/Developer or upon the development and use of the Property, unless, as of the date of this Agreement, such fee or charge is in existence and being collected by the City on a uniform basis from all Owner/Developer, users and developers of property within the City. The Owner/Developer shall be subject to any changes in fees or charges, either increases or decreases, or new fees or charges, collected by the City during the term of this Agreement provided said changes are implemented on a uniform basis in the City and applicable to the Owner/Developer.

## **ARTICLE VI**

### **SANITARY SEWER SERVICE**

6.1 The City represents and warrants that it owns, operates and maintains a sanitary sewage collection, treatment and disposal system within its borders, and nearby the Property. All buildings on the property that are required by building code to have sanitary sewer facilities shall be connected to the public sewer system and shall not be permitted to utilize septic treatment or other alternative treatment or containment systems. In the event new public sewer mains and/or related public infrastructure are needed to serve the property, Owner/Developer shall provide, at the sole cost and expense of the Owner/Developer, a study by a professional engineer, approved by the City prior to the commencement of work to perform the study, which clearly demonstrates the capacity of the existing sanitary system to serve the expected needs of Owner/Developer without adversely affecting the operation of the existing sanitary system. Said study shall also identify all needs and design requirements for the installation of all connecting mains, etc. to the existing City sewer system and any required system of mains within the Property for a fully functioning system to serve the sanitation sewer needs of the Property as developed. Any necessary upgrades of the system identified by said engineering study, including any infrastructure to be located outside of the Property, and including but not limited to, pipes, valves, lift stations, pumps, treatment facilities, SCADA, lift stations, back-up power supplies, etc., shall be completed at the sole cost and expense of Owner/Developer prior to the City authorizing the Owner/Developer to connect to the system. In the event new public

sewer infrastructure is required, prior to the issuance of any construction or other permits related to any development of the Property, an Illinois Environmental Protection Agency construction and operating permit must be obtained at the sole cost and expense of the Owner/Developer. The City does not warrant, guarantee, or agree that the sanitary sewer system owned and operated by the City has sufficient capacity and functionality to serve the Property or any development thereof. The City shall not reserve any sewerage capacity for the Property until such time that the City issues construction permits for the construction of the sanitary sewer system for the Property or a connection permit in accordance with this paragraph.

6.2 Subject to the limitations set forth herein, the Owner/Developer shall have the right to connect to and use such sanitary sewer system and mains. Prior to the issuance of any building permits, Owner/Developer shall pay to the City all permit, tap-on and inspection fees based on the fee schedule in place at the time of permit application.

6.3 The Owner/Developer shall be responsible for obtaining any and all permissions, easements, or property necessary to install the sanitary sewer system needed to serve the Property. The City does not guarantee sufficient public right-of-way or public property to install sanitary sewer service outside of the Property. Any and all costs incurred by the City in assisting Owner/Developer in obtaining permits, easements, completion of the engineering study and any other assistance including, but not limited to City staff time, additional engineering and other professional costs as well as reasonable attorney fees, all as reasonably identified by the City, shall be reimbursed in full to the City by Owner/Developer prior to authorization to connect either to the

existing sewer system or any extension or expansion thereof accomplished by Owner/Developer or the City pursuant to the terms of this Agreement. Such action to complete such extension of the sanitary sewer system main or mains shall be taken no later than thirty (30) days before the date sanitary sewer service is required for occupancy of the improvements to be serviced by said sewer main extension and constructed on the Property. City shall without cost to the City and to the extent reasonably possible, assist Owner/Developer in procuring easements or acquiring property interests necessary to extend the sanitary sewer from its current terminus to the boundary of the Property in order to provide sanitary service to the Property. All such work will be done in accordance with plans provided in said engineering study and approved by the City Engineer.

6.4 Owner/Developer acknowledges and agrees that should a new sanitary lift station(s) be required to serve the Property, a generator sufficient to provide the back-up power necessary to assure ongoing operation of the lift station(s) and sewer system used to serve the Property shall be provided at the sole cost and expense of Owner/Developer. In addition, Owner/Developer acknowledges and agrees that a SCADA system interface compatible with the SCADA system operated by the City must be provided with the lift station(s) at the sole cost and expense of the Owner/Developer.

## **ARTICLE VII**

### **POTABLE WATER SERVICE**

7.1 The City represents and warrants that it owns, operates and maintains a potable water supply and distribution system within its borders. All buildings on the property that are required by the building code to have potable water service shall be connected to the public water system and shall not be permitted to private wells or other private water systems. In the event new public water mains and/or related public infrastructure are needed to serve the property, Owner/Developer shall provide, at the sole cost and expense of Owner/Developer, a study by a professional engineer, approved by the City prior to the commencement of work to perform the study, which clearly demonstrates the capacity and pressure of the existing potable water system to serve the expected needs of Owner/Developer without adversely affecting the operation of the public water system. Said study shall also identify all needs and design requirements for the installation including all pipes, valves, hydrants, booster pumps, pressure stations, wells and storage. Said study shall also identify all needs and design requirements for the installation of all connecting mains to the existing City potable water system and any required system of mains within the Property for a fully functioning system to serve the potable water needs of the Property as developed. Any necessary upgrades of the system identified by said engineering study, including any infrastructure to be located outside of the Property, and including but not limited to any pipes, valves, hydrants, pressure stations, towers, public wells, SCADA, etc., shall be completed at the sole cost and expense of the Owner/Developer prior to the City authorizing the Owner/Developer to connect to the system. In the event new public



sewer infrastructure is required, prior to the issuance of any construction or other permits related to the development of the Property, an Illinois Environmental Protection Agency construction and operating permit must be obtained at the sole cost and expense of the Owner/Developer. The City does not warrant, guarantee or agree that the potable water system owned and operated by the City has sufficient capacity or functionality to serve the Property or any development thereof. Furthermore, the City shall not reserve any potable water capacity for the Property until such time that the City issues construction permits for the construction of the water sewer system for the Property in accordance with this paragraph.

7.2 Subject to the limitations set forth herein, the Owner/Developer shall have the right to connect to and use such potable water supply system. Prior to the issuance of any building permits, Owner/Developer shall pay to the City all permit, tap-on and inspection fees based on the fee schedule in place at the time of permit application.

7.3 The Owner/Developer shall be responsible for obtaining any and all permissions, easements, or property necessary to install the potable water system needed to serve the Property. The City does not guarantee sufficient public right-of-way or public property to install water service outside of the Property. Any and all costs incurred by the City in assisting Owner/Developer in obtaining permits, easements, completion of the engineering study and any other assistance including, but not limited to City staff time, additional engineering and other professional costs as well as reasonable attorney fees, all as reasonably identified by the City, shall be reimbursed in full to the City by Owner/Developer prior to authorization to connect either to the existing potable water system or any extension or expansion thereof accomplished by

Owner/Developer or the City pursuant to the terms of this Agreement. Such action to complete such extension of the potable water main or mains shall be taken no later than thirty (30) days before the date water service is required for occupancy of the improvements to be serviced by said water main extension and constructed on the Property. City shall, without cost to the City and to the extent reasonably possible, assist Owner/Developer in procuring easements or acquiring property interests necessary to extend the potable water from its current terminus to the boundary of the Property in order to provide potable water service to the Property. All such work will be done in accordance with plans provided in said engineering study and approved by the City Engineer. Water within the Property shall be extended only with Illinois Environmental Protection Agency approval and pursuant to permits from the City.

## **ARTICLE XIII**

### **STORM DRAINAGE**

8.1 Owner/Developer shall be responsible for providing all necessary storm sewers, conveyances, pumps and equipment, detention systems and compensatory storage in compliance with the City of Galena Storm Water Detention Ordinance as amended, the existing City of Galena Flood Plain Ordinance and all other local, state, and federal applicable laws and regulations, as modified or amended pursuant to the terms of this Agreement. All storm sewers, conveyances, pumps and equipment, detention systems and compensatory storage shall be constructed, owned and maintained at the sole cost and expense of the Owner/Developer.

## **ARTICLE IX**

### **ROADWAYS**

9.1 The Owner/Developer shall construct all roadways, if any, required to be developed on the Property or constructed to access the property from an existing public roadway. Said construction shall be completed at the expense of the Owner/Developer and in accordance with the City's standards for roadway construction as they pertain to stone base and bituminous or concrete surfacing. All roadway design and construction shall be approved by the City Engineer.

## **ARTICLE X**

### **OTHER REQUIREMENTS REGARDING INFRASTRUCTURE**

10.1 All public infrastructure including, but not limited to the sanitary sewer system and potable water system shall be installed on the Property consistent with all City ordinances, specifications, rules, regulations and the terms of this Agreement and same shall be subject to inspection and testing by appropriate officials of the City prior to the required dedication to and acceptance of same by the City. No occupancy permits for any commercial buildings in the development shall be issued by the City until all testing, inspection, dedication and acceptance by the City of any sanitary sewer and potable water connections to existing City systems has been completed. All costs and expenses of such testing and inspections to facilitate City approval and acceptance thereof shall be paid by Owner/Developer, including, but not limited to, the cost of a professional engineer at any time during the development of the Property as required by

the City to inspect and test the sewer system and potable water system. Prior to the City accepting dedication of any public infrastructure, said professional engineer shall provide the City with a report confirming all public infrastructure is installed in accordance with City approved plans and specifications. Acceptance of public infrastructure shall be achieved by the adoption of an ordinance(s) with accompanying bill(s) of sale from the Owner/Developer.

10.2 Prior to taking any action with regard to installing any such public infrastructure systems, Owner/Developer shall provide at least forty-eight (48) hour advance notice to the City that such work is about to commence. Failure to provide such notice prior to the beginning of any such work shall be a breach of this Agreement and shall subject the Owner/Developer to stop work order(s) for a duration determined by City to be appropriate under the circumstance.

10.3 Owner/Developer acknowledges and agrees that no public infrastructure shall be approved or accepted by the City, nor will any building permits be issued without the delivery to the City by Owner/Developer of "As Built" plans and/or drawings of all such public infrastructure installations in both paper and electronic form compatible with the Jo Daviess County Geographic Information System (GIS) or any similar system used by Jo Daviess County and the City at the time of submission of same.

10.4 Prior to acceptance of any dedication of any public infrastructure by the City, Owner/Developer shall provide to the City copies of all recorded easements needed for such public infrastructure. Owner/Developer agree that all such easements shall not be created nor recorded without prior City Attorney acceptance and approval of the

language, terms and descriptions set forth therein. All such easements shall reference that maintenance and repairs of said public infrastructure shall be completed by Owner/Developer prior to acceptance of same by the City under the terms of this Agreement.

10.5 Owner/Developer shall warrant all infrastructure accepted by the City for a period of one year commencing on the date of acceptance of the infrastructure by ordinance. During the warranty period, Owner/Developer shall be responsible for all repairs necessary to maintain the public infrastructure free from defects or damage and in the same condition as at the date of acceptance.

## **ARTICLE XI**

### **BUILDING PERMITS**

11.1 It is agreed that the City will not issue building permits for the subject area unless and until City staff has completed all approvals as set forth above, including approval of the site plan consistent with zoning of the Property and the requirements as imposed upon Owner/Developer pursuant to this Agreement and any amendment thereto. Such plan or plans shall conform to the requirements of the Galena Zoning Code and the municipal codes applicable at the date of this Agreement. Such plan or plans, when submitted, shall be promptly considered by City staff and, if necessary, by the Galena Zoning Board of Appeals, the Zoning Administrator and/or the City Council, as the case may be. Owner/Developer shall pay all building permit fees required of properties located within the municipal limits at the time of application.

## **ARTICLE XII**

### **TERM**

12.1 This Agreement shall be binding upon the parties and their respective grantees, heirs, successors and assigns for twenty (20) years, commencing as of the date hereof, and for such further term as may hereinafter be authorized by statute and by City ordinance. Failure of Owner/Developer to complete development of the Property during said twenty (20) years shall require Owner/Developer to renegotiate a new Agreement with the City prior to proceeding with any development of the Property thereafter. Should the property be annexed to the City at the expiration of the Term of this Agreement, the continuing validity of the zoning of the Property or any ordinance enacted by the City pursuant to this Agreement shall not be affected.

## **ARTICLE XIII**

### **PERFORMANCE BOND**

13.1 A bond shall be required prior to the issuance of any permits for the construction of infrastructure intended to be dedicated to the City upon completion. To assure performance and completion of the terms and conditions of this Agreement and all construction and other commitments made by Owner/Developer under the terms of this agreement, Owner/Developer shall provide to the City a Performance Bond either in cash or through a bank or an insurance carrier acceptable to the City in an amount to be determined by City to cover one-hundred (100) percent of the cost of installing all public infrastructure. Said bond shall be in the name of the City, due within sixty (60) days of approval of Annexation Ordinance and shall authorize the City to use said funds if

Owner were to fail to perform under the terms of this Agreement. Failure to perform shall be identified as follows:

13.1.1. The infrastructure in any phase under construction is incomplete or deficient as required under this Agreement and the various applicable ordinances of the City; and

13.1.2 The work on any permitted phase of said infrastructure has ceased for more than twelve (12) months or the work on any permitted phase of infrastructure is incomplete twenty-four (24) months after the date the permit(s) was issued for said construction, and

13.1.3 The City has provided sixty (60) days written notice to Owner/Developer/Developers of the existence of such stoppage or deficiencies, or

13.1.4 At time of requested annexation under Article III hereof, Owner/Developer is unable or unwilling to complete the public infrastructure to satisfy City requirements or has failed to otherwise comply with the terms of this Agreement.

The City shall be authorized to collect, and use said bond proceeds, at the sole discretion of the City, acting in good faith, unless Owner/Developer obtains an Order of a court of competent jurisdiction stopping such use. The language of and the provider of

any such bond shall be agreed by the parties prior to the issuance of any construction permits by the City.

## **ARTICLE XIV**

### **GENERAL PROVISIONS**

15.1 **Breach and Opportunity to Cure**. Before any failure of any party to this Agreement to perform its obligations under this Agreement shall be deemed to be a breach of this Agreement, the party claiming such failure shall notify in writing the party alleged to have failed to perform of the alleged failure and shall demand performance. No breach of this Agreement may be found to have occurred if performance is completed to the reasonable satisfaction of the complaining party within thirty (30) days after receipt of such notice, or in the case of a failure which by its nature takes in excess of thirty (30) days to cure, such longer period of time as may be reasonably necessary to cure the same provided that the curing party is pursuing said cure with due diligence.

15.2 **Enforcement**. The terms and conditions of this Agreement shall be specifically enforceable by the parties hereto. In the event of litigation initiated by either party for the purpose of seeking enforcement of this Agreement, the Court shall award reasonable attorneys fees and costs to the prevailing party, whether such fees are incurred for purposes of negotiation, trial or appellate practice. A party will be deemed to have prevailed if it obtains a judgment or settlement which substantially provides the relief sought by such party as determined by the Court.

15.3 **Amendment**. This Agreement and any exhibits attached hereto may be amended only by the mutual consent of the parties including in the case of the City, by



the adoption of an ordinance or resolution of the City approving said amendment as provided by law, and by the execution of said amendment by the parties or their successors in interest. Any language of this section which is inconsistent with Illinois law at the time such language is being construed regarding amendment of annexation agreements is hereby agreed by the parties as void.

15.4 **No Other Agreements.** Except as otherwise expressly provided herein, this Agreement supersedes all prior agreements, negotiations and discussions relative to the subject matter hereof and fully integrates the agreement of the parties.

15.5 **Binding on Successors.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective grantees, heirs, successors and permitted assigns.

15.6 **Consent.** Except as otherwise provided herein, whenever consent or approval of either party is required, such consent or approval shall not be unreasonably withheld or unduly delayed.

15.7 **Paragraph Headings.** Paragraph headings and references are for the convenience of the parties and are not intended to limit, vary, define or expand the terms and provisions contained in this Agreement and shall not be used to interpret or construe the terms and provisions of this Agreement.

15.8 **Severability.** If any provision, covenant or portion of this Agreement or its application to any person, entity or property is held invalid, such invalidity shall not affect the application or validity of any other provisions, covenants or portions of this Agreement (and to that end, any provisions, covenants or portion of this Agreement are declared to be severable).

15.9 **Applicable Law.** This Agreement shall be construed in accordance with the laws and decisions of the State of Illinois.

15.10 **Notices.** All notices herein shall be in writing and shall be deemed to be effective as of the date of actual delivery if by personal delivery or as of the third day from and including the day of posting if mailed by certified or registered mail return receipt requested with postage prepaid:

To the City: City of Galena  
Attention: City Administrator  
101 Green Street  
Galena, IL 61036

with a copy to: City of Galena  
City Attorney  
101 Green Street  
Galena, IL 61036

To Owner/Developer: Donald Wienen  
DSW Investments, LLC  
171 E. Hoffman Rd.  
Elizabeth, IL 61028

or to such replacement parties as may from time to time be identified by written notice.

15.11 **Mutual Assistance.** Subject to provisions of this Agreement requiring payment for or reimbursement to the City for costs by Owner/Developer, the City and Owner/Developer shall do all things necessary or appropriate to carry out the terms and provisions of this Agreement and to aid and assist each other in carrying out the terms and objectives of this Agreement and the intentions of the Parties as reflected by said terms, including, without limitation, the giving of such notices, the holding of such public hearings, the enactment by the City of such resolutions and ordinances and the taking

of such other actions as may be necessary to enable the City's and Owner/Developer compliance with the terms and provisions of this Agreement and as may be necessary to give effect to the terms and objectives of this Agreement and the intentions of the parties as reflected by said terms. This process shall proceed in a manner where there shall be no costs to the City.

IN WITNESS WHEREOF, the City and Owner/Developer have caused this Annexation Agreement to be executed effective as of the day and year first above written.

CITY OF GALENA:

OWNER/DEVELOPER:

BY: Terry Renner  
Its Mayor

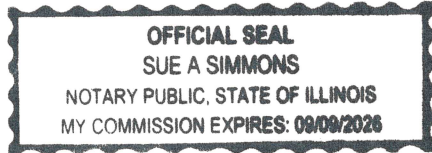
BY: Donald J. Wienen  
Donald Wienen

ATTEST: Marybeth  
Its City Clerk

ATTEST: [Signature]

STATE OF ILLINOIS     )  
  ) ss.  
JO DAVIESS COUNTY )

The foregoing instrument was acknowledged before me by Terry Renner, City Mayor, and Mary Beth Hyde, City Clerk, this 13 day of October, 2023.



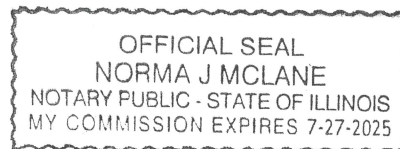
Sue A. Simmons  
Notary Public

STATE OF ILLINOIS     )  
  ) ss.  
JO DAVIESS COUNTY )

I, the undersigned, a Notary Public, in and for said County, in the State aforesaid, Do Hereby Certify that **Donald Wienen**, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 4<sup>th</sup> day of December, 2023.

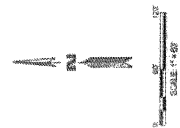
Norma J. McLane  
Notary Public



PREPARED BY AND RETURN TO:

Joseph Nack  
City Attorney  
City of Galena  
101 Green Street  
Galena, IL 61036  
815-777-1050

ANNEXATION PLAT  
THE BARTELL HOMESTEAD  
PART OF THE SOUTHWEST QUARTER SECTION 12 &  
PART OF THE SOUTHWEST QUARTER SECTION 11,  
TOWNSHIP 28 NORTH, RANGE 1 WEST OF THE 4TH P.M.,  
JO DAVIESS COUNTY, ILLINOIS

[illegible]

Curve table				
Curve #	Length	Radius	Delta	PI, CHNG
C1	125.24'	854.00'	77.348°	146°55'34"E
C2	92.22'	854.00'	64.248°	54°35'48"W

AGE: 28

TRACE 1: 2.23

TRACE 2: 0.03

TOTAL AGE: 2.26

[illegible][illegible]

ANNEXATION PLAT

[illegible]

EXHIBIT A

TRACT 1

LEGAL DESCRIPTION:

PART OF THE SOUTHWEST QUARTER OF SECTION 12 & PART OF THE SOUTHEAST QUARTER OF SECTION 11, TOWNSHIP 28 NORTH, RANGE 1 WEST OF THE 4<sup>TH</sup> P.M., ALSO KNOWN AS THE BARTELL HOMESTEAD, JO DAVIESS COUNTY, ILLINOIS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF LOT 1, GALENA SCENIC MEADOWS UNIT 2, ALSO BEING A POINT ON THE SOUTH RIGHT OF WAY LINE OF BARTELL BOULEVARD; THENCE, ALONG THE WEST LINE OF SAID OF SAID GALENA SCENIC MEADOWS UNIT 2 FOR THE NEXT FOUR COURSES, NORTH 81 DEGREES 16 MINUTES 06 SECONDS EAST, A DISTANCE OF 129.15 FEET; THENCE, SOUTH 09 DEGREES 31 MINUTES 17 SECONDS EAST, A DISTANCE OF 163.05 FEET; THENCE, SOUTH 82 DEGREES 06 MINUTES 15 SECONDS WEST, A DISTANCE OF 92.04 FEET; THENCE, SOUTH 07 DEGREES 47 MINUTES 39 SECONDS EAST, TO THE SOUTH CORNER OF LOT 2, GALENA SCENIC MEADOWS UNIT 2, ALSO BEING A POINT OF THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 12, A DISTANCE OF 298.52 FEET; THENCE, ALONG SAID SOUTH LINE, NORTH 88 DEGREES 24 MINUTES 49 SECONDS WEST, TO THE SOUTHWEST CORNER OF SAID SECTION 12, A DISTANCE OF 524.04 FEET; THENCE, ALONG THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 11, NORTH 87 DEGREES 20 MINUTES 50 SECONDS WEST, TO THE EAST RIGHT OF WAY LINE OF F.A. ROUTH 301 (U.S. ROUTE 20), A DISTANCE OF 36.11 FEET; THENCE, ALONG SAID EAST RIGHT OF WAY LINE FOR THE NEXT FIVE COURSES, NORTH 07 DEGREES 19 MINUTES 40 SECONDS WEST, A DISTANCE OF 18.49 FEET; THENCE, NORTH 11 DEGREES 21 MINUTES 01 SECONDS EAST, A DISTANCE OF 24.15 FEET; THENCE, NORTH 25 DEGREES 59 MINUTES 59 SECONDS EAST, A DISTANCE OF 23.05 FEET; THENCE, NORTH 40 DEGREES 24 MINUTES 07 SECONDS EAST, A DISTANCE OF 30.00 FEET; THENCE, NORTH 51 DEGREES 19 MINUTES 15 SECONDS EAST, TO THE SOUTH RIGHT OF WAY LINE OF BARTELL BOULEVARD, A DISTANCE OF 4.95 FEET; THENCE, ALONG SAID SOUTH RIGHT OF WAY LINE FOR THE NEXT TWO COURSES, NORTH 51 DEGREES 16 MINUTES 43 SECONDS EAST, TO AN ARC, A DISTANCE OF 438.48 FEET; THENCE, ALONG SAID ARC, A DISTANCE OF 105.24 FEET, SAID ARC HAVING A RADIUS OF 834.00 FEET, SAID ARC HAVING A CHORD BEARING OF NORTH 47 DEGREES 55 MINUTES 19 SECONDS EAST, AND A CORD DISTANCE OF 105.17 FEET, TO THE POINT OF BEGINNING, CONTAINING 3.70 ACRES, MORE OR LESS.

FOR THE ABOVE DESCRIPTION THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 12 HAS A BEARING OF NORTH 88 DEGREES 24 MINUTES 49 SECONDS WEST.

ANNEXATION LEGAL DESCRIPTION  
23-6004  
JLR

EXHIBIT A

TRACT 2

LEGAL DESCRIPTION:

PART OF THE SOUTHWEST QUARTER OF SECTION 12 & PART OF THE SOUTHEAST QUARTER OF SECTION 11, TOWNSHIP 28 NORTH, RANGE 1 WEST OF THE 4<sup>TH</sup> P.M., ALSO KNOW AS THE BARTELL HOMESTEAD, JO DAVIESS COUNTY, ILLINOIS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF LOT 1, GALENA SCENIC MEADOWS UNIT 2, ALSO BEING A POINT ON THE SOUTH RIGHT OF WAY LINE OF BARTELL BOULEVARD; THENCE, ALONG AN ARC ALONG THE SOUTH RIGHT OF WAY LINE OF BARTELL BOULEVARD, A DISTANCE OF 97.72 FEET, SAID ARC HAVING A RADIUS OF 834.00 FEET, SAID ARC HAVING A CHORD BEARING OF SOUTH 47 DEGREES 39 MINUTES 49 SECONDS WEST, AND A CHORD DISTANCE OF 97.66 FEET; THENCE, NORTH 21 DEGREES 29 MINUTES 49 SECONDS EAST, A DISTANCE OF 62.56 FEET; THENCE, SOUTH 81 DEGREES 16 MINUTES 06 SECONDS EAST, A DISTANCE OF 49.85 FEET, TO THE POINT OF BEGINNING, CONTAINING 0.03 ACRES, MORE OR LESS.

FOR THE ABOVE DESCRIPTION THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 12 HAS A BEARING OF NORTH 88 DEGREES 24 MINUTES 49 SECONDS WEST.