



**TO:** The Honorable Mayor and the City Council

**FROM:** Ty Livingston, Director of Planning & Community Development

**DATE:** February 11, 2020

**SUBJECT:** Land Exchange & Agreement with Cullinan Properties for Eastport Marina Building

**BACKGROUND:** As mentioned in a prior City Council communication, Cullinan Properties is in the process of selling its portion of the Eastport Marina Admin. Building. As a part of this process, staff met with the Cullinan team at the property to confirm that the current platting represented the property accurately. In reviewing the site, both entities – who comprise the current condo owner’s association – agreed the plat required revising in order to better reflect where assets are located. In addition, the condominium declaration is being amended to reflect the change in percentages in ownership and to update the governance provisions in accordance with these revised ownership percentages. The City’s percentage of ownership in the Eastport Marina Admin. Building condominium is decreasing from 34% to 26%.

These changes being made by the land exchange and the revision of unit ownership are largely “housekeeping” items, while the updates and revisions to the condominium declaration are being made to track the land exchange and the revision of unit ownership.

**RECOMMENDATION:** Approval, as presented.

**ORDINANCE NO. 4488**

**AN ORDINANCE APPROVING AN AGREEMENT FOR THE EXCHANGE  
OF REAL PROPERTY LOCATED AT EASTPORT MARINA AND  
AMENDMENT TO UNIT OWNERSHIP OF THE  
EASTPORT RESTAURANT/ADMINISTRATION BUILDING CONDOMINIUM**

**WHEREAS**, the main administrative and restaurant building at the Eastport Marina (the “Eastport Marina Building”) is partitioned into the Eastport Restaurant/Administration Building Condominium (“Condominium”), a condominium pursuant to a Declaration of Condominium recorded August 27, 1999 (“Declaration”); and

**WHEREAS**, the Condominium is comprised of two condominium units owned by the City of East Peoria and Cullinan Real Estate Holdings, LLC (“Cullinan”); and

**WHEREAS**, the City owns the real estate immediately surrounding the Eastport Marina Building, which, together with the two condominium units and real estate owned by the Eastport Restaurant/Administration Building Condominium Association (the “Association”), comprise the actual Eastport Marina Building site; and

**WHEREAS**, in order to better define the property ownership of the Eastport Marina Building site to more accurately correspond property ownership to the parties’ responsibilities thereto, the City and the Association desire to exchange the portion of the Association’s property identified in Exhibit A, attached hereto and incorporated by reference (the “Association Exchange Property”), and the portion of the City’s property also identified in Exhibit A attached hereto (the “City Exchange Property”) (the “Land Exchange”); and

**WHEREAS**, the parties further desire to redefine the boundaries of the condominium units such that portions of the City’s condominium unit (“City Exchange Unit”) are redefined to be part of Cullinan’s condominium unit and portions of Cullinan’s condominium unit (“Cullinan Exchange Unit”) are redefined to be part of the City’s condominium unit, all as set forth on the First Amended Plat, attached hereto as Exhibit B and incorporated by reference (“Re-Definition”); and

**WHEREAS**, in association with the Re-Definition, the parties further desire to re-allocate each unit owner’s percent interest in the common elements of the Condominium, as set forth on the Amendment to Declaration of Condominium Ownership set forth in Exhibit C attached hereto and incorporated herein (“Re-Allocation”), while also updating and clarifying the Condominium governance provisions in the Declaration by the Re-Allocation; and

**WHEREAS**, the parties have negotiated the terms of the Land Exchange, Re-Definition, and Re-Allocation as set forth in the Agreement for Exchange of Real Property set forth in Exhibit D attached hereto and incorporated herein (“Agreement”); and

**WHEREAS**, the City Council hereby finds that the City Exchange Property and the City Exchange Unit are no longer needed by the City for the public interest; and

**WHEREAS**, the City Council hereby further finds that the Association Exchange Property and the Cullinan Exchange Unit will prove useful to the City and its acquisition will serve the public interest; and

**WHEREAS**, the City Council hereby further finds that the value of the City Exchange Property and the Association Exchange Property are approximately equal taking into consideration the long-term best interests of the public; and

**WHEREAS**, the City Council hereby further finds that following the Re-Allocation, the value of the City Exchange Unit and the Cullinan Exchange Unit are approximately equal taking into consideration the long-term best interests of the public; and

**WHEREAS**, as prescribed in Section 11-76.2-2 of the Illinois Municipal Code (65 ILCS 5/11-76.2-2), the City published notice of a public hearing on the proposed exchange; and

**WHEREAS**, on Tuesday, February 18, 2020 at 6:00 p.m., as prescribed by the aforesaid public notice, the City Council conducted a public hearing on the proposed exchanges; and

**WHEREAS**, the City Council hereby further finds that it is in the best interests of the City to approve the Land Exchange pursuant to the terms of the Agreement and to approve the Re-Definition and the Re-Allocation in relation to the City’s ownership in the Condominium along with the related amendments to the Condominium governance as set forth in the Declaration and related documents;

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF EAST PEORIA, TAZEWELL COUNTY, ILLINOIS, THAT:**

**Section 1.** The above recitations are hereby found to be true and correct and are incorporated into this Ordinance by reference.

**Section 2.** The Agreement for the Land Exchange as set forth in Exhibit D, the Re-Definition as set forth in Exhibit B, and the Amendment to Declaration of Condominium as provided in the Re-Allocation and as set forth in Exhibit C are hereby approved.

**Section 3.** The Mayor and City Clerk are hereby authorized and instructed to execute the Agreement (Exhibit D) and the Re-Allocation (Exhibit C), together with such modifications to these documents as the Mayor in his discretion may approve, and the

Mayor and City Clerk are further authorized to execute all documents necessary to effectuate the Agreement, the Re-Definition, the re-Allocation, and the provisions of this Ordinance.

**Section 4.** This Ordinance is in addition to all other ordinances on the subject and shall be construed therewith excepting as to that part in direct conflict with any other ordinance, and in the event of such conflict, the provisions hereof shall govern.

**Section 5.** This Ordinance shall be in full force and effect from and after its passage and approval in the manner provided by law.

**PASSED BY THE COUNCIL OF THE CITY OF EAST PEORIA, TAZEWell COUNTY, ILLINOIS, IN REGULAR AND PUBLIC SESSION BY A THREE-FOURTHS VOTE IN COMPLIANCE WITH SECTION 11-76.2-4 OF THE MUNICIPAL CODE (65 ILCS 5/11-76.2-4) THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2020.**

**APPROVED:**

\_\_\_\_\_  
Mayor

**ATTEST:**

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

**EXAMINED AND APPROVED:**

\_\_\_\_\_  
Corporation Counsel

## EXHIBIT A

### The Condominium Exchange Property:

#### Parcel 1: 0.005 Acre± Tract

Part of Lot 3 in Eastport Marina Subdivision, being part of Lots 22 and 23 of the Assessment Plat recorded in Plat Book "H", Page 377 in the Tazewell County Recorder's office, in part of the Southeast Quarter of Section 22, Township 26 North, Range 4 West of the Third Principal Meridian, Tazewell County, Illinois, more particularly described as follows:

Beginning at the Northeast corner of said Lot 3, thence South 00 degrees 34 minutes 11 seconds East (bearings based on the Illinois State Plane, West Zone, NAD83, 2011 Adjustment), along the East line of said Lot 3, a distance of 24.36 feet; thence North 37 degrees 01 minutes 28 seconds West, a distance of 30.28 feet to the North line of said Lot 3; thence North 89 degrees 25 minutes 49 seconds East, along said North line, a distance of 17.99 feet to the Point of Beginning; said tract containing 0.005 acres, more or less, subject to any easements, reservations, restrictions and right of way of record.

#### Parcel 2: 0.003 Acre± Tract

Part of Lot 3 in Eastport Marina Subdivision, being part of Lots 22 and 23 of the Assessment Plat recorded in Plat Book "H", Page 377 in the Tazewell County Recorder's office, in part of the Southeast Quarter of Section 22, Township 26 North, Range 4 West of the Third Principal Meridian, Tazewell County, Illinois, more particularly described as follows:

Commencing at the Northwest corner of said Lot 3, thence North 89 degrees 25 minutes 49 seconds East (bearings based on the Illinois State Plane, West Zone, NAD83, 2011 Adjustment), along the North line of said Lot 3, a distance of 44.25 feet to the Point of Beginning of the tract to be described:

From the Point of Beginning, thence continuing North 89 degrees 25 minutes 49 seconds East, along said North line, a distance of 38.56 feet; thence South 40 degrees 29 minutes 49 seconds West, a distance of 8.98 feet; thence North 73 degrees 53 minutes 56 seconds West, a distance of 9.27 feet; thence South 16 degrees 40 minutes 10 seconds West, a distance of 2.89 feet; thence North 73 degrees 53 minutes 56 seconds West, a distance of 23.93 feet to the Point of Beginning; said tract containing 0.003 acres, more or less, subject to any easements, reservations, restrictions and right of way of record.

## **The City Exchange Property:**

### Parcel 1: 0.007 Acre± Tract

Part of Lot 2 in Eastport Marina Subdivision, being part of Lots 22 and 23 of the Assessment Plat recorded in Plat Book "H", Page 377 in the Tazewell County Recorder's office, in part of the Southeast Quarter of Section 22, Township 26 North, Range 4 West of the Third Principal Meridian, Tazewell County, Illinois, more particularly described as follows:

Beginning at the Northwest corner of Lot 3 in said Eastport Marina Subdivision, thence North 00 degrees 34 minutes 11 seconds West (bearings based on the Illinois State Plane, West Zone, NAD83, 2011 Adjustment), along the West line of said Lot 3 extended North, a distance of 13.25 feet; thence South 73 degrees 53 minutes 56 seconds East, a distance of 46.19 feet to the North line of said Lot 3; thence South 89 degrees 25 minutes 49 seconds West, along said North line, a distance of 44.25 feet to the Point of Beginning; said tract containing 0.007 acres, more or less, subject to any easements, reservations, restrictions and right of way of record.

### Parcel 2: 0.004 Acre± Tract

Part of Lot 2 in Eastport Marina Subdivision, being part of Lots 22 and 23 of the Assessment Plat recorded in Plat Book "H", Page 377 in the Tazewell County Recorder's office, in part of the Southeast Quarter of Section 22, Township 26 North, Range 4 West of the Third Principal Meridian, Tazewell County, Illinois, more particularly described as follows:

Commencing at the Northeast corner of Lot 3 in said Eastport Marina Subdivision, thence South 89 degrees 25 minutes 49 seconds West (bearings based on the Illinois State Plane, West Zone, NAD83, 2011 Adjustment), along the North line of said Lot 3, a distance of 17.99 feet to the Point of Beginning of the tract to be described:

From the Point of Beginning, thence continuing South 89 degrees 25 minutes 49 seconds West, along said North line, a distance of 24.20 feet; thence North 40 degrees 29 minutes 49 seconds East, a distance of 19.94 feet; thence South 37 degrees 01 minutes 28 seconds East, a distance of 18.69 feet to the Point of Beginning; said tract containing 0.004 acres, more or less, subject to any easements, reservations, restrictions and right of way of record.

### Parcel 3: 0.009 Acre± Tract

Part of Lot 2 in Eastport Marina Subdivision, being part of Lots 22 and 23 of the Assessment Plat recorded in Plat Book "H", Page 377 in the Tazewell County Recorder's office, in part of the Southeast Quarter of Section 22, Township 26 North, Range 4 West of the Third Principal Meridian, Tazewell County, Illinois, more particularly described as follows:

Beginning at the Southeast corner of Lot 3 in said Eastport Marina Subdivision, thence South 00 degrees 34 minutes 11 seconds East (bearings based on the Illinois State Plane, West Zone, NAD83, 2011 Adjustment), along the East line of said Lot 3, extended South, a distance of 2.66 feet; thence South 89 degrees 25 minutes 49 seconds West, a distance of 13.84 feet; thence South 00 degrees 34 minutes 11 seconds East, a distance of 2.84 feet; thence South 89 degrees 25 minutes 49 seconds West, a distance of 44.00 feet; thence South 00 degrees 34 minutes 11 seconds East, a distance of 0.50 feet; thence South 89 degrees 25 minutes 49 seconds West, a distance of 21.86 feet; thence North 00 degrees 34 minutes 11 seconds West, a distance of 6.00 feet to the South line of said Lot 3; thence North 89 degrees 25 minutes 49 seconds East, along said South line, a distance of 79.70 feet to the Point of Beginning; said tract containing 0.009 acres, more or less, subject to any easements, reservations, restrictions and right of way of record.

Parcel 4: 0.003 Acre± Tract

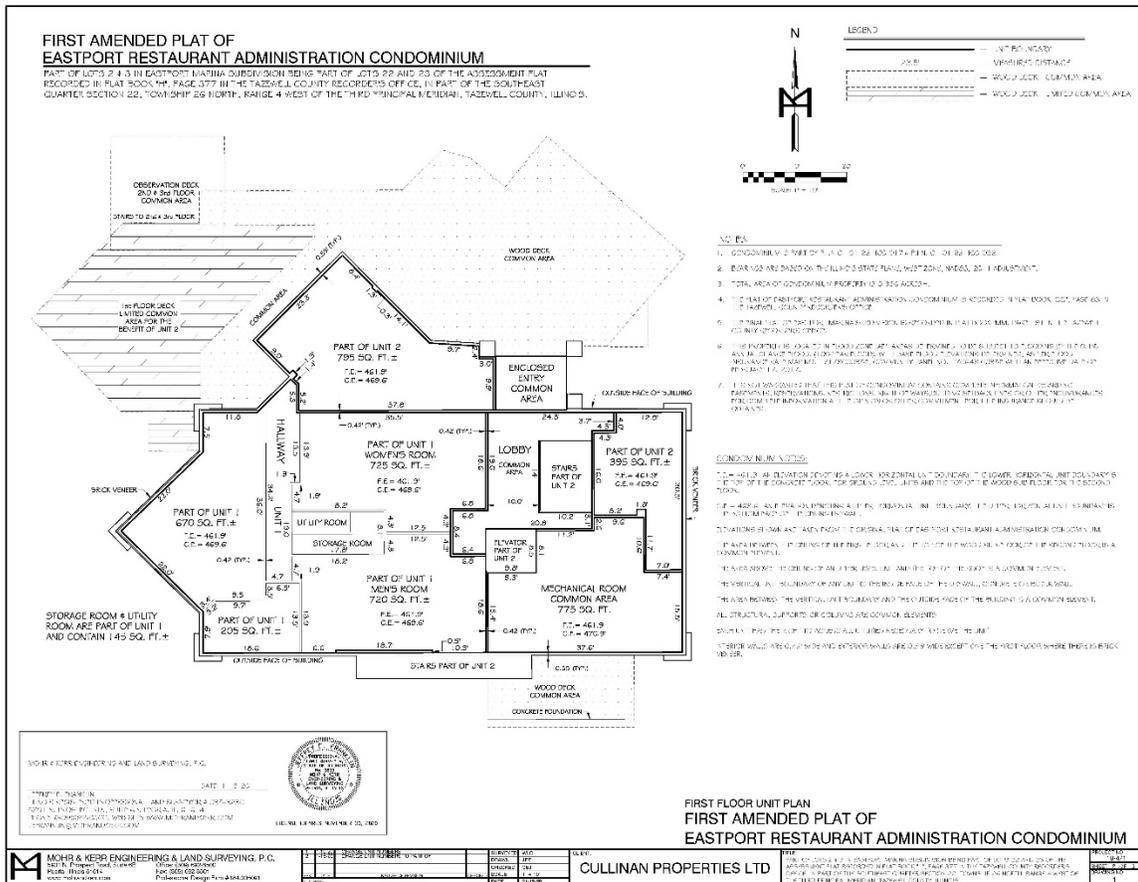
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Commencing at the Northwest corner of Lot 3 in said Eastport Marina Subdivision, thence South 00 degrees 34 minutes 11 seconds East (bearings based on the Illinois State Plane, West Zone, NAD83, 2011 Adjustment), along the West line of said Lot 3, a distance of 23.77 feet to the Point of Beginning of the tract to be described:

From the Point of Beginning, thence continuing South 00 degrees 34 minutes 11 seconds East, along said West line, a distance of 24.30 feet; thence North 45 degrees 24 minutes 38 seconds West, a distance of 17.23 feet; thence North 44 degrees 35 minutes 22 seconds East, a distance of 17.14 feet to the Point of Beginning; said tract containing 0.003 acres, more or less, subject to any easements, reservations, restrictions and right of way of record.

# EXHIBIT B

## FIRST AMENDED PLAT (CONDOMINIUM) – Page 1







**EXHIBIT C**

**AMENDMENT TO DECLARATION OF CONDOMINIUM**

**AMENDMENT TO  
DECLARATION  
*Tazewell County***

THIS DOCUMENT PREPARED BY AND  
AFTER RECORDING RETURN TO:

Scott A. Brunton  
MILLER, HALL & TRIGGS, LLC  
416 Main Street, Suite 1125  
Peoria, Illinois 61602

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**AMENDMENT TO DECLARATION OF CONDOMINIUM  
OF EASTPORT RESTAURANT/ADMINISTRATION BUILDING  
PURSUANT TO THE CONDOMINIUM PROPERTY ACT**

WHEREAS, the rights of the Unit Owners of Eastport Restaurant/Administration Building Association (“Association”), located in East Peoria, Illinois are governed by the Declaration of Condominium for Eastport Restaurant/Administration Building Pursuant to the Condominium Property Act, dated August 25, 1999, and recorded on August 27, 1999, in the Tazewell County Recorder’s Office as Document No. 99-2254 (the “Declaration”); and

WHEREAS, by unanimous vote of the Unit Owners and pursuant to a Property Exchange Agreement among the Board of Managers of the Association, Cullinan Real Estate Holdings, LLC as owner of Unit 2, and the City of East Peoria, as owner of Unit 1, the Board of Managers approved the exchange of certain properties described therein and as set forth on Attachment I, attached hereto and incorporated by reference; and

WHEREAS, by unanimous vote of the Unit Owners, the Board of Managers also approved the First Amended Plat of the Eastport Restaurant/Administration Building Condominium, redefining the boundaries of Unit 1 and Unit 2 and re-allocating percent ownership in the common elements pursuant to the Agreement and as set forth on the First Amended Plat attached hereto and incorporated by reference as Attachment II; and

NOW, THEREFORE, by the unanimous consent and vote of the undersigned Unit Owners, the Declaration is amended as follows:

1. The legal description for the Property set forth in Exhibit A to the Declaration is hereby amended as set forth on Attachment I:
2. The Plat of Condominium as set forth in Exhibit B to the Declaration is hereby amended by deleting the prior Exhibit B in its entirety and replacing it with the First Amended Plat, recorded in the Tazewell County Recorder’s Office on \_\_\_\_\_, 2020, as Document No. \_\_\_\_\_, and attached hereto as Attachment II.

3. The percentage ownership in the common elements of Eastport Restaurant/Administration Building Condominium as set forth in Exhibit C to the Declaration shall be reallocated as follows: Unit 1 - 26%, and Unit 2 – 74%. Exhibit C to the Declaration is hereby amended to reflect such percentages by deleting the prior percentages and replacing with the percentages as set forth herein.

4. Section 2.2(b) and Section 2.2(c) of the Declaration are hereby amended to require a 75% affirmative vote of the Unit Owners.

5. Section 2.3 of the Declaration is hereby amended to require approval of all Unit Owners.

6. A new section 3(g) is hereby added to Section 3 of the Declaration as follows:

(g) the Association shall be responsible for collection of assessments from Unit Owners and collection of each Unit Owner's proportionate share of the common expenses. The proportionate share shall be in the same ratio as its percentage of ownership in the Common Elements set forth in Exhibit C.

7. Section 8.5 of the Declaration is hereby amended to require a 75% affirmative vote of the Unit Owners for all amendments to the Declaration other than those amendments specifically listed in Section 8.5, which shall continue to require agreement of all Unit Owners.

IN WITNESS WHEREOF, the undersigned, \_\_\_\_\_, declares that he is President of the Board of Managers of Eastport Restaurant/Administration Building Association and is authorized to execute this Amendment to Declaration of Condominium of Eastport Restaurant/Administration Building pursuant to the power and authority vested in him by the Board of Managers and under the Declaration and Bylaws of Eastport Restaurant/Administration Building Association and with the unanimous consent of the Unit Owners.

DATED at East Peoria, Illinois, this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

BOARD OF MANAGERS OF EASTPORT  
RESTAURANT/ADMINISTRATION  
BUILDING ASSOCIATION

By: \_\_\_\_\_  
\_\_\_\_\_, Its President

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

I, a Notary Public for the State and County aforesaid, do hereby certify \_\_\_\_\_, personally known to me to be the President of Eastport Restaurant/Administration Building Condominium and the same person whose name is subscribed to the foregoing instrument as \_\_\_\_\_, appeared before me this day in person and acknowledged that he signed and delivered the same instrument, in such capacity, as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

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



CITY OF EAST PEORIA,  
an Illinois municipal corporation

By \_\_\_\_\_  
John P. Kahl, Mayor

**ATTEST:**

By \_\_\_\_\_  
Morgan R. Cadwalader, City Clerk

## ATTACHMENT I

### EXCHANGE PROPERTIES LEGAL DESCRIPTIONS

#### City Exchange Property (property added to the Association Property):

##### PARCEL 1: 0.007 Acre± Tract

Part of Lot 2 in Eastport Marina Subdivision, being part of Lots 22 and 23 of the Assessment Plat recorded in Plat Book "H", Page 377 in the Tazewell County Recorder's office, in part of the Southeast Quarter of Section 22, Township 26 North, Range 4 West of the Third Principal Meridian, Tazewell County, Illinois, more particularly described as follows:

Beginning at the Northwest corner of Lot 3 in said Eastport Marina Subdivision, thence North 00 degrees 34 minutes 11 seconds West (bearings based on the Illinois State Plane, West Zone, NAD83, 2011 Adjustment), along the West line of said Lot 3 extended North, a distance of 13.25 feet; thence South 73 degrees 53 minutes 56 seconds East, a distance of 46.19 feet to the North line of said Lot 3; thence South 89 degrees 25 minutes 49 seconds West, along said North line, a distance of 44.25 feet to the Point of Beginning; said tract containing 0.007 acres, more or less, subject to any easements, reservations, restrictions and right of way of record.

##### PARCEL 2: 0.004 Acre± Tract

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PARCEL 3: 0.009 Acre± Tract

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PARCEL 4: 0.003 Acre± Tract

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**Association Exchange Property (the property removed from the Association Property and transferred to the City):**

PARCEL 1: 0.005 Acre± Tract

Part of Lot 3 in Eastport Marina Subdivision, being part of Lots 22 and 23 of the Assessment Plat recorded in Plat Book "H", Page 377 in the Tazewell County Recorder's office, in part of the Southeast Quarter of Section 22, Township 26 North, Range 4 West of the Third Principal Meridian, Tazewell County, Illinois, more particularly described as follows:

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**EXHIBIT D**  
**AGREEMENT FOR EXCHANGE OF REAL PROPERTY**

## AGREEMENT FOR EXCHANGE OF REAL PROPERTY

**THIS AGREEMENT FOR SALE AND EXCHANGE OF REAL PROPERTY** (the "*Agreement*") is, on this \_\_\_\_ day of \_\_\_\_\_, 2020, made among **EASTPORT RESTAURANT/ADMINISTRATION BUILDING CONDOMINIUM ASSOCIATION** ("Association"), **CULLINAN REAL ESTATE HOLDINGS, LLC**, an Illinois limited liability company ("Cullinan"), and the **CITY OF EAST PEORIA**, an Illinois municipal corporation ("City").

### WITNESSETH:

**WHEREAS**, the main administrative and restaurant building at the Eastport Marina (the "Eastport Marina Building") is partitioned into the Eastport Restaurant/Administration Building Condominium ("Condominium"), a condominium pursuant to a Declaration of Condominium recorded August 27, 1999 ("Declaration"); and

**WHEREAS**, the Condominium is comprised of two condominium units owned, respectively, by the City and Cullinan; and

**WHEREAS**, the City is the owner of Unit 1 ("Unit 1") along with a 34% interest in the common elements of the Condominium; and

**WHEREAS**, Cullinan is the owner of Unit 2 ("Unit 2") along with a 66% interest in the common elements of the Condominium; and

**WHEREAS**, the City owns the real estate immediately surrounding the Eastport Marina Building, which, together with the two condominium units and real estate owned by the Association, comprise the actual Eastport Marina Building site; and

**WHEREAS**, in order to better define the property ownership of the Eastport Marina Building site to more accurately correspond property ownership to the parties' responsibilities thereto, the City and the Association desire to exchange the portion of the Association's property identified in Exhibit A, attached hereto and incorporated by reference (the "Association Exchange Property"), and the portion of the City's property also identified in Exhibit A attached hereto (the "City Exchange Property") (the "Land Exchange"); and

**WHEREAS**, the parties further desire to redefine the boundaries of the condominium units as set forth on the First Amended Plat, attached hereto as Exhibit B and incorporated by reference ("Re-Definition"), together with a corresponding re-allocation of each unit owner's percent interest in the common elements of the Condominium, as set forth on the Amendment to Declaration of Condominium Ownership set forth in Exhibit C attached hereto and incorporated herein ("Re-Allocation").

**NOW, THEREFORE**, in consideration of the mutual promises, covenants and conditions herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Transfer by the City.** The City hereby agrees to convey to the Association the City Exchange Property. The City shall convey merchantable title to the City Exchange Property

to the Association by Special Warranty Deed, free and clear of all liens and encumbrances, and not subject to any easements, covenants, restrictions, dedications or rights of way, or other matters affecting title to the City Exchange Property or use of the City Exchange Property, except for (i) title objections and exceptions approved or waived by the Association in accordance with the provisions of Section 5 hereof (ii) covenants, easements, restrictions and reservations of record, provided that none of the foregoing are violated or materially interfere with the Association's intended use of the City Exchange Property (iii) existing utility lines and easements provided that they do not prohibit the use of the City Exchange Property; and (iv) general real estate taxes not yet due and owing, (v) applicable governmental zoning and building code rules and regulations, provided that none of the foregoing are violated or would materially interfere with the Association's intended use of the City Exchange Property, and (vi) other matters approved in writing by the Association (the "*Permitted Exceptions*").

**2. Transfer by the Association.** The Association hereby agrees to convey to the City the Association Exchange Property. The Association shall convey merchantable title to the Association Exchange Property to the City by Special Warranty Deed, free and clear of all liens and encumbrances, and not subject to any easements, covenants, restrictions, dedications or rights of way, or other matters affecting title to the Association Exchange Property or use of the Association Exchange Property, except for (i) title objections and exceptions approved or waived by the City in accordance with the provisions of Section 5 hereof (ii) covenants, easements, restrictions and reservations of record, provided that none of the foregoing are violated or materially interfere with the City's intended use of the Association Exchange Property (iii) existing utility lines and easements provided that they do not prohibit the use of the Association Exchange Property; and (iv) general real estate taxes not yet due and owing, (v) applicable governmental zoning and building code rules and regulations, provided that none of the foregoing are violated or would materially interfere with the City's intended use of the Association Exchange Property, and (vi) other matters approved in writing by the City (the "*Permitted Exceptions*").

**3. Land Exchange.** The parties hereby acknowledge and agree that the value of the Association Exchange Property and the City Exchange Property is equal, and no additional consideration shall be paid by either party to the other party beyond the conveyances herein contemplated.

**4. Unit Re-Definition and Re-Allocation.** The boundaries of Unit 1 and Unit 2 shall be redefined as set forth on the First Amended Plat, attached hereto as Exhibit B, and each unit's respective ownership in the common elements of the Condominium shall be re-allocated as set forth on the Amendment to Declaration of Condominium Ownership set forth in Exhibit C. The parties agree to take all necessary action to cause for the Re-Definition and Re-Allocation.

**5. Title Commitment and Policy.** Within twenty (20) days after the execution of this Agreement, the Association shall, at its sole cost and expense, obtain title commitments ("*Title Commitments*") for an ALTA Owner's Title Insurance Policy ("*Title Policy*"), issued by a title insurance company reasonably acceptable to the City ("*Title Insurer*") covering the City Exchange Property and the Association Exchange Property and in an amount to be agreed upon by the parties. At closing, the Association shall cause the Title Insurer to issue the Title Policy for the Association Exchange Property to the City, and shall cause the Title Insurer to issue the Title Policy for the City Exchange Property to the Association.

Notwithstanding the above, Permitted Objections shall include the following: (i) general real estate taxes not yet due and owing; and (2) covenants, easements and restrictions of

record and applicable governmental zoning and building code rules and regulations, provided that none of the foregoing are violated or would materially interfere with the Parties' intended uses of the Properties.

**5.1 Objections to Title of Record.** Within five (5) days after each party's receipt of the aforesaid Title Commitments, each party shall give to the other party, written notification of any objections to or defects in title of record set forth in the Title Commitment. If either party fails to give said notice within said five (5) day period, such party shall be deemed to have accepted all matters then affecting title set forth in the Title Commitment. If either party does give said notice, such party shall be deemed to have accepted all matters set forth in the Title Commitment, not set forth in the notice. After receipt of said notice, the other party shall have the right, at its election, to endeavor to cure such objections to or defects in title set forth therein and shall notify the other party of such election within five (5) days. If the party receiving notice of title objections does elect to endeavor to cure such objections to or defects in title, it shall promptly commence and diligently pursue efforts to cure such objections.

**5.2 Failure to Cure Objections.** In the event either party fails to cure objections to or defects in title raised by the other party prior to closing, or if such party shall determine that its efforts to cure will not be successful, the objecting party may either (i) waive such title objections to or defects in title and proceed with closing hereunder or (ii) terminate this Agreement. In the event of termination, the parties shall have no further rights or liabilities under this Agreement.

**6. Closing.** The exchange of the Properties shall be consummated as follows:

**6.1 Closing Date.** The closing (the "*Closing*") shall be held on a date as mutually agreed upon by and between the parties, but in no event later than the date of closing on Cullinan's sale of its unit to the third-party purchaser (the "*Closing Date*"). The Closing shall be held at the offices of Miller, Hall & Triggs.

**6.2 The City's Deliveries.** At Closing, the City shall deliver the following:

6.2.1. **Deed.** An executed Warranty Deed to the City Exchange Property prepared by the City and in a form reasonably acceptable to the Association.

6.2.2. **ALTA Statement.** An executed ALTA Statement in the form required by the Title Insurer.

6.2.3. **Non-Foreign Affidavit.** An executed Non-Foreign Affidavit as required by Section 1445 of the Internal Revenue Code.

6.2.4. **Affidavit of Title.** An Affidavit of Title in customary form and substance with respect to matters set forth in Paragraph 9 hereof.

6.2.5. **Other Documents.** Such other documents, instruments, certifications and confirmations as may be reasonably required by the Association to fully effect and consummate the transactions contemplated hereby.

**6.3 The Association's Deliveries.** At Closing, the Association shall deliver to the following:

6.3.1. **Deed.** An executed Warranty Deed to the Association Exchange Property prepared by the Association and in a form reasonably acceptable to the City.

- 6.3.2. **Title Policy.** The Title Policy provided for in Section 5 hereof.
- 6.3.3. **ALTA Statement.** An executed ALTA Statement in the form required by the Title Insurer.
- 6.3.4. **Non-Foreign Affidavit.** An executed Non-Foreign Affidavit as required by Section 1445 of the Internal Revenue Code.
- 6.3.5. **Affidavit of Title.** An Affidavit of Title in customary form and substance with respect to matters set forth in Paragraph 10 hereof.
- 6.3.6. **Other Documents.** Such other documents, instruments, certifications and confirmations as may reasonably be required by the City to fully effect and consummate the transactions contemplated hereby.

**6.4 Joint Deliveries.** At Closing, the City and the Association shall jointly deliver to each other the following:

- 6.4.1. **Closing Statement.** An agreed upon closing statement.
- 6.4.2. **Transfer Tax Filings.** Executed documents complying with the provisions of all federal, state, county and local law applicable to the determination of transfer taxes.

**6.5. Property Taxes.** Until such time as the Association Exchange Property and the City Exchange Property are separately assessed from the Association Property and the City Property, respectively, the Association shall pay, prior to delinquency, all installments of real property taxes on the Association Exchange Property and the City shall pay, prior to delinquency, all installments of real property taxes on the City Exchange Property. Each party shall, on or before the due date for any such installment, provide the other with evidence of payment of said taxes. The provisions of this paragraph shall survive the date of Closing.

**6.6 Closing Costs.** The Association shall pay its attorneys' fees and the insurance premium for the title policies issued pursuant to the commitment for title insurance required by Section 5. hereof and any transfer taxes or sales taxes. The City shall pay the cost of the City's attorneys' fees and the cost of recording fees with respect to the deeds of conveyance.

7. **Brokerage Commissions.** Each party represents to the others that no real estate broker has been engaged with regard to this transaction. Each party (the "*Indemnifying Party*") agrees to indemnify and hold the others harmless against any brokerage commissions due to any real estate broker having been engaged by or claiming to have been engaged by the Indemnifying Party with regard to this transaction.

8. **Association Documents.** Upon Closing, the Association shall cause for the recording with the Tazewell County Recorder of Deeds of the Amendment to Declaration of Condominium Ownership for Eastport Restaurant/Administration Building Condominium and First Amended Plat, substantially in the same form as those set forth in Exhibits B & C.

9. **The City's Representations, Warranties and Covenants.** In addition to all other representations, covenants and warranties by the City herein, the City hereby represents, covenants and warrants, as of the date hereof and as of the Closing Date, as follows:

9.1. **Ownership.** The City is the sole owner of and has good and merchantable fee simple title to the City Exchange Property.

9.2. **Notice of Litigation or Violation.** The City has received no notice, nor has any knowledge, of any actions or claims filed or threatened by anyone against the City Exchange Property or the City in connection with any injury or damage sustained incidental to the use or occupancy of the City Exchange Property. The City shall promptly notify the Association of any such notice received between the date hereof and the Closing Date. The City knows of no violation of any federal, state, county or municipal law, ordinance, order, rule or regulation affecting the City Exchange Property, and the City has received no notice of any such violation issued by any governmental authority.

9.3. **Rights in Property.** There are no options, purchase contracts, or other agreements of any kind or nature, written or oral, whereunder or whereby any party could claim or assert any right, title or interest in the City Exchange Property.

9.4. **Mechanics Liens.** The City has fully paid all bills, claims and obligations for labor performed and materials furnished in and about the improvement of the City Exchange Property, and no such bills, claims or obligations are outstanding or unpaid.

9.5. **Leases.** No persons are in possession of the City Exchange Property under any oral or written lease.

9.6. **Encroachments.** To the best of the City's knowledge, no improvements upon the City Exchange Property encroach upon adjoining real estate, nor do any improvements upon adjoining real estate encroach upon the City Exchange Property.

9.7. **Special Assessments.** There are no special assessments against the City Exchange Property and there are no proceedings for special assessments against the City Exchange Property.

9.8. **Representations.** The representations, covenants and warranties made by the City under this Section 6 hereof shall be true and correct as of the Closing Date, and, upon request, the City will make an affidavit re-affirming the same at that time.

**10. The Association's Representations, Warranties and Covenants.** In addition to all other representations, covenants and warranties by the Association herein, the Association hereby represents, covenants and warrants, as of the date hereof and as of the Closing Date, as follows:

10.1. **Ownership.** The Association is the sole owner of and has good and merchantable fee simple title to the Association Exchange Property.

10.2. **Notice of Litigation or Violation.** The Association has received no notice, nor has any knowledge, of any actions or claims filed or threatened by anyone against the Association Exchange Property or the Association in connection with any injury or damage sustained incidental to the use or occupancy of the Association Exchange Property. The Association shall promptly notify the City of any such notice received between the date hereof and the Closing Date. The Association knows of no violation of any federal, state, county or municipal law, ordinance, order, rule or regulation affecting the Association Exchange Property, and the Association has received no notice of any such violation issued by any governmental authority.

10.3. **Rights in Property.** There are no options, purchase contracts, or other agreements of any kind or nature, written or oral, whereunder or whereby any party could claim or assert any right, title or interest in the Association Exchange Property.

10.4. **Mechanics Liens.** The Association has fully paid all bills, claims and obligations for labor performed and materials furnished in and about the improvement of the Association Exchange Property, and no such bills, claims or obligations are outstanding or unpaid.

10.5. **Leases.** No persons are in possession of the Association Exchange Property under any oral or written lease.

10.6. **Encroachments.** To the best of the Association knowledge, no improvements upon the Association Exchange Property encroach upon adjoining real estate, nor do any improvements upon adjoining real estate encroach upon the Association Exchange Property.

10.7. **Special Assessments.** There are no special assessments against the Association Exchange Property and there are no proceedings for special assessments against the Association Exchange Property.

10.8. **Representations.** The representations, covenants and warranties made by the Association under this Section 7 hereof shall be true and correct as of the Closing Date, and, upon request, the Association will make an affidavit re-affirming the same at that time.

11. **Miscellaneous.** It is further understood and agreed as follows:

11.1. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be an original, and such counterparts together shall constitute one and the same instrument.

11.2. **Survival.** The representations, warranties, covenants and agreements contained in this Agreement shall survive the Closing and the delivery of the deed without limitation.

11.3. **Severability.** If any provision of this Agreement shall be held to be void or unenforceable for any reason, the remaining terms and provisions hereof shall not be affected thereby.

11.4. **Time.** Time is of the essence of this Agreement.

11.5. **Binding Effect.** The provisions of this Agreement shall inure to the benefit of and bind the successors and assigns of the parties hereto.

11.6. **Amendment and Waiver.** This Agreement may be amended at any time in any respect only by an instrument in writing executed by the City, Cullinan, and the Association. Either party may waive any requirement to be performed by the other hereunder, provided that said waiver shall be in writing and executed by the party waiving the requirement.

11.7. **Integrated Agreement.** This Agreement constitutes the entire agreement between the Association, Cullinan and the City relating to the exchange of the Properties, and there are no agreements, understandings, restrictions, warranties or representations among the Parties other than those set forth herein.

11.8. **Choice of Law.** It is the intention of the Parties that the laws of Illinois shall govern the validity of this Agreement, the construction of its terms and interpretation of the rights and duties of the Association, Cullinan, and the City.

11.9. **Notices.** All notices, requests, consents and other communications required or permitted under this Agreement shall be in writing (including telex and telegraphic communication) and shall be (as elected by the person giving such notice) hand delivered by messenger or courier service, telecommunicated, or mailed (airmail if international) by registered or certified mail (postage prepaid), return receipt requested, addressed to:

The Association: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

City of East Peoria: City of East Peoria  
Attention: Mayor  
401 W. Washington Street  
East Peoria, IL 61611

Cullinan: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

or to such other address as any party may designate by notice complying with the terms of this paragraph. Each such notice shall be deemed delivered (a) on the date delivered if by personal delivery; (b) on the date of transmission with confirmed answer back if by telex, telefax or other telegraphic method; and (c) on the date upon which the return receipt is signed or delivery is refused or the notice is designated by the postal authorities as not deliverable, as the case may be, if mailed.

**12. Waiver of Tender.** Formal tender of executed deeds is hereby waived.

[SIGNATURES ON NEXT PAGE]

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed, as of the day and year first above written.

**CULLINAN REAL ESTATE HOLDINGS, LLC**

By: \_\_\_\_\_  
Its \_\_\_\_\_

**EASTPORT RESTAURANT/ADMINISTRATION  
BUILDING CONDOMINIUM ASSOCIATION**

By: \_\_\_\_\_  
Its \_\_\_\_\_

**CITY OF EAST PEORIA, an Illinois  
municipal corporation**

By \_\_\_\_\_  
John P. Kahl  
Mayor

**ATTEST:**

By \_\_\_\_\_  
Morgan R. Cadwalader  
City Clerk

## EXHIBIT A

### EXCHANGE PROPERTIES LEGAL DESCRIPTIONS

#### City Exchange Property:

##### PARCEL 1: 0.007 Acre± Tract

Part of Lot 2 in Eastport Marina Subdivision, being part of Lots 22 and 23 of the Assessment Plat recorded in Plat Book "H", Page 377 in the Tazewell County Recorder's office, in part of the Southeast Quarter of Section 22, Township 26 North, Range 4 West of the Third Principal Meridian, Tazewell County, Illinois, more particularly described as follows:

Beginning at the Northwest corner of Lot 3 in said Eastport Marina Subdivision, thence North 00 degrees 34 minutes 11 seconds West (bearings based on the Illinois State Plane, West Zone, NAD83, 2011 Adjustment), along the West line of said Lot 3 extended North, a distance of 13.25 feet; thence South 73 degrees 53 minutes 56 seconds East, a distance of 46.19 feet to the North line of said Lot 3; thence South 89 degrees 25 minutes 49 seconds West, along said North line, a distance of 44.25 feet to the Point of Beginning; said tract containing 0.007 acres, more or less, subject to any easements, reservations, restrictions and right of way of record.

##### PARCEL 2: 0.004 Acre± Tract

Part of Lot 2 in Eastport Marina Subdivision, being part of Lots 22 and 23 of the Assessment Plat recorded in Plat Book "H", Page 377 in the Tazewell County Recorder's office, in part of the Southeast Quarter of Section 22, Township 26 North, Range 4 West of the Third Principal Meridian, Tazewell County, Illinois, more particularly described as follows:

Commencing at the Northeast corner of Lot 3 in said Eastport Marina Subdivision, thence South 89 degrees 25 minutes 49 seconds West (bearings based on the Illinois State Plane, West Zone, NAD83, 2011 Adjustment), along the North line of said Lot 3, a distance of 17.99 feet to the Point of Beginning of the tract to be described:

From the Point of Beginning, thence continuing South 89 degrees 25 minutes 49 seconds West, along said North line, a distance of 24.20 feet; thence North 40 degrees 29 minutes 49 seconds East, a distance of 19.94 feet; thence South 37 degrees 01 minutes 28 seconds East, a distance of 18.69 feet to the Point of Beginning; said tract containing 0.004 acres, more or less, subject to any easements, reservations, restrictions and right of way of record.

##### PARCEL 3: 0.009 Acre± Tract

Part of Lot 2 in Eastport Marina Subdivision, being part of Lots 22 and 23 of the Assessment Plat recorded in Plat Book "H", Page 377 in the Tazewell County

Recorder's office, in part of the Southeast Quarter of Section 22, Township 26 North, Range 4 West of the Third Principal Meridian, Tazewell County, Illinois, more particularly described as follows:

Beginning at the Southeast corner of Lot 3 in said Eastport Marina Subdivision, thence South 00 degrees 34 minutes 11 seconds East (bearings based on the Illinois State Plane, West Zone, NAD83, 2011 Adjustment), along the East line of said Lot 3, extended South, a distance of 2.66 feet; thence South 89 degrees 25 minutes 49 seconds West, a distance of 13.84 feet; thence South 00 degrees 34 minutes 11 seconds East, a distance of 2.84 feet; thence South 89 degrees 25 minutes 49 seconds West, a distance of 44.00 feet; thence South 00 degrees 34 minutes 11 seconds East, a distance of 0.50 feet; thence South 89 degrees 25 minutes 49 seconds West, a distance of 21.86 feet; thence North 00 degrees 34 minutes 11 seconds West, a distance of 6.00 feet to the South line of said Lot 3; thence North 89 degrees 25 minutes 49 seconds East, along said South line, a distance of 79.70 feet to the Point of Beginning; said tract containing 0.009 acres, more or less, subject to any easements, reservations, restrictions and right of way of record.

PARCEL 4: 0.003 Acre± Tract

Part of Lot 2 in Eastport Marina Subdivision, being part of Lots 22 and 23 of the Assessment Plat recorded in Plat Book "H", Page 377 in the Tazewell County Recorder's office, in part of the Southeast Quarter of Section 22, Township 26 North, Range 4 West of the Third Principal Meridian, Tazewell County, Illinois, more particularly described as follows:

Commencing at the Northwest corner of Lot 3 in said Eastport Marina Subdivision, thence South 00 degrees 34 minutes 11 seconds East (bearings based on the Illinois State Plane, West Zone, NAD83, 2011 Adjustment), along the West line of said Lot 3, a distance of 23.77 feet to the Point of Beginning of the tract to be described:

From the Point of Beginning, thence continuing South 00 degrees 34 minutes 11 seconds East, along said West line, a distance of 24.30 feet; thence North 45 degrees 24 minutes 38 seconds West, a distance of 17.23 feet; thence North 44 degrees 35 minutes 22 seconds East, a distance of 17.14 feet to the Point of Beginning; said tract containing 0.003 acres, more or less, subject to any easements, reservations, restrictions and right of way of record.

**Association Exchange Property:**

PARCEL 1: 0.005 Acre± Tract

Part of Lot 3 in Eastport Marina Subdivision, being part of Lots 22 and 23 of the Assessment Plat recorded in Plat Book "H", Page 377 in the Tazewell County Recorder's office, in part of the Southeast Quarter of Section 22, Township 26

North, Range 4 West of the Third Principal Meridian, Tazewell County, Illinois, more particularly described as follows:

Beginning at the Northeast corner of said Lot 3, thence South 00 degrees 34 minutes 11 seconds East (bearings based on the Illinois State Plane, West Zone, NAD83, 2011 Adjustment), along the East line of said Lot 3, a distance of 24.36 feet; thence North 37 degrees 01 minutes 28 seconds West, a distance of 30.28 feet to the North line of said Lot 3; thence North 89 degrees 25 minutes 49 seconds East, along said North line, a distance of 17.99 feet to the Point of Beginning; said tract containing 0.005 acres, more or less, subject to any easements, reservations, restrictions and right of way of record.

PARCEL 2: 0.003 Acre± Tract

Part of Lot 3 in Eastport Marina Subdivision, being part of Lots 22 and 23 of the Assessment Plat recorded in Plat Book "H", Page 377 in the Tazewell County Recorder's office, in part of the Southeast Quarter of Section 22, Township 26 North, Range 4 West of the Third Principal Meridian, Tazewell County, Illinois, more particularly described as follows:

Commencing at the Northwest corner of said Lot 3, thence North 89 degrees 25 minutes 49 seconds East (bearings based on the Illinois State Plane, West Zone, NAD83, 2011 Adjustment), along the North line of said Lot 3, a distance of 44.25 feet to the Point of Beginning of the tract to be described:

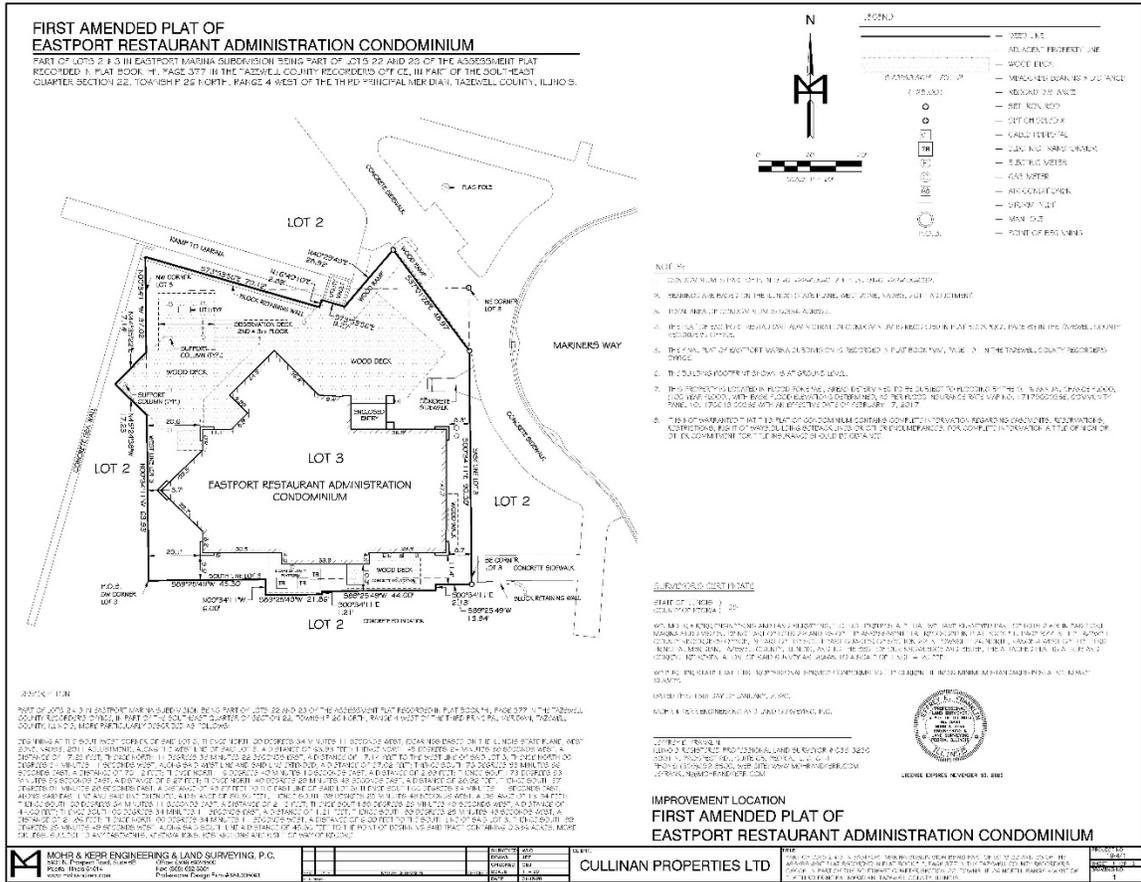
From the Point of Beginning, thence continuing North 89 degrees 25 minutes 49 seconds East, along said North line, a distance of 38.56 feet; thence South 40 degrees 29 minutes 49 seconds West, a distance of 8.98 feet; thence North 73 degrees 53 minutes 56 seconds West, a distance of 9.27 feet; thence South 16 degrees 40 minutes 10 seconds West, a distance of 2.89 feet; thence North 73 degrees 53 minutes 56 seconds West, a distance of 23.93 feet to the Point of Beginning; said tract containing 0.003 acres, more or less, subject to any easements, reservations, restrictions and right of way of record.





# EXHIBIT B

## FIRST AMENDED PLAT (CONDOMINIUM) – Page 3



**EXHIBIT C**

**FIRST AMENDED DECLARATION OF CONDOMINIUM**