

MEMORANDUM

July 14, 2022

TO: Mayor John P. Kahl and Members of the City Council

FROM: Scott A. Brunton, City Attorney

SUBJECT: TPC of EP LLC / Development Agreement (for Lot 4 of the Bass Pro Subdivision)

DISCUSSION:

TPC of EP LLC (“TPC”) has proposed the development of City-owned property in the Bass Pro Subdivision as a family entertainment facility (the “Family Entertainment Development Project”). The proposed Family Entertainment Development Project will be constructed by TPC on the northern 3.0-acre portion of Lot 4 of the Bass Pro Subdivision, which is located adjacent to the Bass Pro Shops between Bass Pro Drive and Interstate 74. City Officials have engaged in negotiations with TPC for the development of the Family Entertainment Development Project for this site, as City Officials have determined that this Family Entertainment Development Project will be an excellent fit and complement with the current development in the Bass Pro development project site and other nearby development and amenities in the City (including the Levee District). The Family Entertainment Development Project will consist of indoor-outdoor recreational space and an accompanying restaurant facility that will be constructed on land currently owned by the City.

The cost estimate for Family Entertainment Development Project is approximately \$5 million. In exchange for the construction of the Family Entertainment Development Project, the City will provide the City-owned land to TPC (the developer) contingent upon completion of the Project by TPC and the subsequent opening of the Family Entertainment Development Project for business. The Project completion is targeted for April 2024.

RECOMMENDATION:

Approval of this Resolution.

RESOLUTION NO. 2223-042

East Peoria, Illinois

_____, 2022

RESOLUTION BY COMMISSIONER _____

**RESOLUTION TO APPROVE DEVELOPMENT AGREEMENT FOR
FAMILY ENTERTAINMENT PROJECT IN THE BASS PRO SUBDIVISION**

WHEREAS, the City of the East Peoria (“City”) has established, amended, and expanded the Redevelopment Project Area for the Camp St. TIF District (the “TIF District”) under authority of the TIF Act as provided in the Illinois Municipal Code (65 ILCS 11-74.4-1, *et seq.*); and

WHEREAS, the City currently owns property within the TIF District which would serve as a suitable location for a family entertainment development project, with the City-owned property in the TIF District including the undeveloped Lot 4 of the Bass Pro Subdivision; and

WHEREAS, TPC of EP LLC (“Developer”) seeks to construct and operate a family entertainment center consisting of indoor and outdoor recreational space with an accompanying restaurant (the “Family Entertainment Development Project”) on the northern 3.0-acre portion of Lot 4 of the Bass Pro Subdivision (the “Property”); and

WHEREAS, the Developer and the City have negotiated the terms of a Development Agreement to bring about the Family Entertainment Development Project on the Property whereby the Property will be conveyed by the City to the Developer provided that the Developer constructs the Family Entertainment Development Project at a cost of \$5 million and then opens Family Entertainment facility for business on the Property; and

WHEREAS, the City hereby finds that the Family Entertainment Development Project will enhance and complement the current development of the Bass Pro Project site and adjacent development in the City, including the Levee District, and serve to further economic development in the City; and

WHEREAS, the City further finds that it is in the best interests of the City and its citizens to enter into the Development Agreement with the Developer for the Family Entertainment Development Project, as set forth in Exhibit A and attached hereto and incorporated by reference, as a means to promote the economic development in the City as provided herein;

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

Section 1. The above recitations are found to be true and correct.

Section 2. The Mayor and City Clerk are hereby authorized and directed to execute the Development Agreement (attached hereto as Exhibit A) with TPC of EP LLC for the Family Entertainment Development Project, under such terms and conditions as the Mayor in his discretion deems appropriate; provided that the City shall have no obligation under the terms of such Development Agreement until a fully-executed original has been provided to both the City and the Developer.

Section 3. The Mayor and City Clerk are hereby further authorized to execute any documentation, including the Real Property Purchase Agreement attached to the Development Agreement as an exhibit, necessary to complete the sale and transfer of the Property to the Developer as provided herein and in accordance with the terms of the Development Agreement.

APPROVED:

Mayor

ATTEST:

City Clerk

EXHIBIT A

Development Agreement with TPC of EP LLC

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the “Agreement”) is made and entered into this _____ day of July, 2022, by and between the **CITY OF EAST PEORIA, ILLINOIS**, an Illinois municipal corporation (the “City”) and **TPC of EP, LLC**, an Illinois limited liability company (“Developer”).

RECITALS

WHEREAS, the City has established, amended, and expanded its Camp Street Redevelopment Project Area (the “TIF District”) under authority of the TIF Act (65 ILCS 5/11 – 74.4.1); and

WHEREAS, the City currently owns undeveloped property within the TIF District that is located adjacent to the Bass Pro Shops development on the west side of Bass Pro Drive and situated immediately adjacent to the I-74 right-of-way, and such property is more particularly described and depicted in Exhibit A, attached hereto and incorporated by reference (the “Property”); and

WHEREAS, the Developer desires to design, construct, and operate a high-quality restaurant and indoor-outdoor family recreational center facility on the northern-most, approximate 3.0 acres of the Property (the “Project Site”); and

WHEREAS, the Developer’s proposed restaurant and family recreational center project will, as a consequence of its location, promote tourism and recreation within the City or otherwise attract non-resident visitors to the City; and

WHEREAS, the City and Developer (collectively the “Parties”) have determined that before the Parties enter in an agreement to transfer the Project Site to the Developer, further due diligence and site review will be needed due to some potential unique challenges for developing the Project Site, and therefore the Parties have decided to enter into this Agreement incorporating the terms under which the Project development will proceed;

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

ARTICLE I **OBLIGATIONS OF THE DEVELOPER**

1.1 **Project.** Developer shall cause to be built and thereafter maintain upon the Project Site a facility substantially conforming to the submission that the Developer has

provided to the City consisting of a restaurant and indoor-outdoor family recreational center consistent with the site plan set forth in Exhibit B, attached hereto and incorporated by reference, and inclusive of such related amenities (the "Project").

1.2 Construction of Project. Subject to conditions precedent to Developer's performance and the City's performance of its obligations hereunder, the Developer shall commence construction of the Project within ninety (90) days after conveyance of the Project Site to the Developer and thereafter proceed with due diligence to complete the Project.

1.3 Investment. Developer shall invest no less than Five Million Dollars (\$5,000,000) in the Project, exclusive of the value of the land and any development fee or charge back.

1.4 Design Review and Quality. To assure quality, Developer's Project and related building design and specifications shall be subject to the reasonable approval of the City's Design Review Committee, shall meet the design criteria adopted for the City's Levee District, and shall conform to all City Code provisions. Further, the Project shall comply with the provisions of the Declaration of Restrictive Covenants for the Bass Pro Subdivision recorded in the Tazewell County Recorder's Office on November 16, 2010, as Document No. 2010-22406.

1.5 Submission and Review of Project Plans and Specifications. Subject to the terms and conditions of this Agreement, the Developer shall submit the Project plans and specifications (the "Plans and Specifications") to the City as soon as reasonably practicable after the same are completed. The City, acting through its Mayor or such other representative of the City as the Mayor may designate, shall within fifteen (15) business days after submission approve or disapprove the Plans and Specifications and any subsequent material changes or corrections to the Plans and Specifications required to be submitted from time to time. The sole purpose of the review contemplated by this Section is to verify compliance with Sections 1.1 and 1.4 of this Agreement and this initial approval shall indicate only that the Project presented meets the criteria set forth in Sections 1.1 and 1.4. Any notice from the City stating that the Plans and Specifications (or changes or corrections to the Plans and Specifications) are disapproved shall state with specificity the modifications which are necessary to comply with this Agreement. If the Plans and Specifications are disapproved, they shall be resubmitted by the Developer until approved. The City shall be deemed to have approved any submission to which the City fails to respond within such fifteen (15) business day period. Review of the Plans and Specifications for compliance with applicable building codes shall be completed through a separate process which shall be conducted in the manner prescribed by the City Code, but expedited with the City's assistance. The City has reviewed the preliminary site plan and building elevation examples attached as Exhibit B and views such in a favorable light. The City and Developer mutually acknowledge the importance of developing this Project expeditiously. The City and Developer mutually acknowledge that this Project is a high priority, and each party will be engaged during the planning and construction phase of this Project, and will each utilize commercially reasonable and

diligent efforts to ensure that the planning and construction of the Project is commenced and completed timely.

1.6 Date of Completion. Subject to a Delays (as hereinafter defined) and the City's performance of its obligations hereunder, the Developer shall cause the Project to be completed by no later than April 30, 2024. "Delay" means "acts of God" (i.e. fire, earthquake, unforeseen flood), inclement weather to the extent the same is extraordinary and clearly beyond the weather conditions typically experienced in the area of the Project Site), inability to procure permits or materials, failure of power, governmental restrictions, acts, omissions or delays of the City, or reasons of a like nature not Developer's fault. If Developer is delayed or prevented from performing any of its obligation under this Section 1.6 because of Delays, then, except as otherwise specifically provided herein, the period of such Delays shall be deemed added to the time herein provided for the performance of such obligation.

1.7 Sale or Assignment of Interest. In the event Developer chooses to sell its interest in the Project or assign its rights under this Agreement, the City shall have no further obligation under this Agreement unless the City has first consented to the sale or assignment, the Developer or assignee has contractually committed to the City to perform all of the Developer's obligations under this Agreement, and the City has determined that the Developer or assignee has the experience and financial ability to perform all of Developer's obligations under this Agreement

1.8 Restrictive Covenant. Developer acknowledges that a primary inducement to the City for its execution and delivery of this Agreement is Developer's obligation to enter into the restrictive covenant set forth in this Section 1.8 of this Agreement.. During the term of this Agreement, Developer shall not develop, purchase, maintain, or operate any business nor participate in the planning, development, construction, or operation of any business or entity within a sixty (60) mile radius extending in all directions from the Property consisting of a facility or business operation similar to the Project as contemplated by this Agreement. The restrictive covenant provided herein shall extend to all other properties now or hereafter owned or controlled by Developer or its affiliates or related entities within this sixty-mile radius Further, within this sixty-mile radius, Developer shall not sell, lease, or otherwise transfer all or any portion of any real property to any person or entity, or for use as, a facility or business operation similar to the Project as contemplated by this Agreement. Developer, on its own behalf and on behalf of each other of Developer's current or future entities, acknowledges that the breach of the foregoing restrictive covenant may cause immediate and irreparable harm to the City for which damages are not an adequate remedy and that, to protect against such harm, City may seek and obtain from a court of competent jurisdiction the issuance of a restraining order or injunction to prohibit any actual or threatened breach. Such an action for a restraining order or injunction is in addition to and does not limit any and all other remedies available to the City for a breach of this restrictive covenant as provided by law or equity.

1.9 **Compliance with Applicable Codes.** Except as otherwise specifically provided herein, Developer shall develop the Project in accordance with all applicable provisions of the City Code or duly adopted variances thereof, and the City, upon request by the Developer, shall provide assistance in obtaining any such variances.

1.10 **Taxes and Governmental Charges.** Developer agrees to pay or cause to be paid promptly as and when the same shall become due and payable, all lawful real estate taxes, sales taxes or other lawful taxes, impositions and charges which may be imposed upon the Developer or any part of the Project Site, subject to the Developer's right to contest the same in accordance with applicable laws

1.11 **Prevailing Wages.** Developer shall assure prevailing wages are paid for all construction work related to the project.

1.12 **Reconveyance of Project Site.** If the Developer fails to commence vertical construction of the Project by July 31, 2023, which failure continues for more than thirty (30) days after notice thereof by the City to the Developer, the City, as its sole remedy, may elect to require the Developer to reconvey the Project site to the City at no cost to the City free and clear of all encumbrances other than those encumbrances in existence on the date that the City conveyed the Project Site to the Developer, after which the Agreement shall terminate and be of no further force or effect. If having commenced vertical construction of the Project by July, 31, 2023, the Developer thereafter fails to complete the Project by April 30, 2024, which failure to continues for more than thirty (30) days after notice thereof by the City to the Developer, the City shall have no further obligation under this Agreement, but in addition to all available remedies at law or in equity as set forth in 3.2, shall have the right of first refusal, that is the right but not the obligation, in its sole discretion to purchase the Project Site together with all improvements thereon before title can be transferred to any other Developer.

For the purposes of this Agreement, Developer shall be deemed to have commenced vertical construction of the Project after site preparation has been completed and in the normal course of construction and vertical above ground member has been constructed.

1.13 **Execution of Purchase and Sale Agreement.** The Developer shall execute the Purchase and Sale Agreement set forth in Exhibit D, attached hereto and incorporated by reference, simultaneously to the execution of this Agreement.

ARTICLE II
OBLIGATIONS OF THE CITY

2.1 **Exclusivity Commitment.** Prior to the date for Closing and following execution of this Agreement, the City shall not negotiate with or explore with any developer other than Developer a project for the Project Site.

2.2 **Conveyance.** The City shall at Closing convey to Developer clear title to the Project Site at no cost to Developer pursuant to the Purchase and Sale Agreement (set forth in Exhibit D). The City shall execute the Purchase and Sale Agreement simultaneously to the execution of this Agreement.

2.3 **Enterprise Zone Incentives.** The Developer shall be entitled to all Enterprise Zone Incentives available by virtue of the location of the Project Site within the boundaries of the Enterprise Zone. Any fees payable by the Developer in connection with the Enterprise Zone Incentives shall be paid on or before the date the Project is completed. Developer acknowledges that the real estate tax abatement ordinarily available within the Enterprise Zone is not available within the boundaries of any parcel located within a redevelopment project area created under authority of the TIF Act, including, without limitation, the Camp Street TIF District. Consequently, the Project is not eligible for a real estate tax abatement as a consequence of the location of the Project Site within the Camp Street TIF District.

2.4 **Soil Borings.** Within thirty (30) days after the execution of this Agreement, the City shall have soil borings completed on the Project Site and shall provide the test results from the soil borings to the Developer.

2.5 **Water Main Extension.** The City shall extend its water main to the Project Site in a timely manner to ensure that the Developer can proceed with construction of the Project and then the subsequent business operations of the Project Site. The City shall not be required to undertake this water main extension project until such time that the Closing has been completed, and title to the Project Site has been transferred to the Developer.

2.6 **Brush Clearing.** The City shall cause the excessive brush and scrub bushes and plants to be removed from the riverfront bank area lying between of the City's riverfront walkway and the Illinois River in the area that is located across Bass Pro Drive from the Project Site as depicted in the map on Exhibit C (the "Clearing Area"). This obligation shall not include or extend to the removal of any landscaping, bushes, or trees in the boulevard region of Bass Pro Dive at any point along Bass Pro Drive. Further, this obligation does not extend to large trees in the Clearing Area to the extent that such trees do not obstruct the river view at ground level and for an area of approximately six feet off the ground (other than the trunk of the tree).

2.7 **Closing.** Unless otherwise provided under the terms of the Purchase and Sale Agreement, the Closing shall occur no later than have ninety (90) days from the

execution of this Agreement. At the Closing, the City shall convey the Project Site to the Developer by a recordable warranty deed subject to easements, restrictions, and reservations of record approved by the Developer. At the Closing, the City shall deliver an owner's or City's affidavit, non-foreign affidavit, and such other affidavits and instruments as may be requested by the Developer or the Title Insurer, including, without limitation, evidence of the City's authority to execute and deliver this Agreement and such other Closing documents. All documents to be delivered by the parties at Closing shall be in form and substance reasonably satisfactory to the City and the Developer. The City shall pay all closing costs that are customarily the responsibility of the City for commercial property in Illinois.

2.8 Title Insurance. Consistent with the terms of the Purchase and Sale Agreement, the City shall procure at the City's expense a commitment to issue an owner's policy of title insurance issued by the Title Insurer showing a commitment to insure a fee simple absolute title to the Project Site to be vested in the Developer.

2.9 Environmental Conditions. As required under the Purchase and Sale Agreement, the City, to the extent such are within the City's possession or control, will provide the Developer with all title, environmental, civil, utility, survey, geotechnical and similar reports that would be of interest to a Developer concerning the Project Site. Developer may also obtain its own third-party reports concerning such matters. The Developer's obligations hereunder shall be contingent on Developer's acceptance or waiver of all matters shown on such reports.

2.10 Zoning of the Project Site. The Project Site is zoned with the B-3 Business Service District zoning classification, and as such, the proposed Project complies with the permitted uses in a B-3 zoning district.

ARTICLE III

GENERAL PROVISIONS

3.1 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 an 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 commercially reasonable diligence.

3.2 Remedies in the Event of Breach. In the event of a breach of this Agreement by either Party beyond any applicable notice and cure period or in the event either party is adjudicated as bankrupt or makes a general assignment for the benefit of

that Party's creditors or if a receiver is appointed on account of a party's insolvency, which is not terminated, dismissed or vacated within sixty (60) days after filing, then the non-breaching Party may without prejudice to any other right or remedy and after giving fifteen (15) days' written notice to the breaching Party, the non-defaulting Party may take whatever actions at law or in equity are necessary or appropriate to (a) protect the rights granted to such non-defaulting Party under this Agreement, (b) enforce the performance or observance by the defaulting Party of any term or condition of this Agreement (including, without limitation, the right to specifically enforce any such term or condition), (c) cure, for the account of the defaulting Party, any failure of the defaulting Party to perform or observe a material term or condition of this Agreement to be performed or observed by it, or (d) if prior to Closing, terminate this Agreement. In the event of such termination, the breaching Party shall not be entitled to receive any further benefits provided for under the terms of this Agreement. In the event of a breach by the Developer, the City shall be entitled to all available remedies at law or in equity, including specific performance. In the event of a breach by the City, the Developer shall be entitled to all available remedies at law or in equity, including specific performance. If the non-defaulting Party incurs any costs or expenses in connection with exercising its rights and remedies under, or enforcing, this Agreement, then the defaulting Party shall reimburse the non-defaulting Party for all such costs and expenses, together with interest at the rate of eight percent (8%) per annum. Notwithstanding anything to the contrary in this Section, the City's rights and remedies upon a breach of the Developer's obligation to commence construction shall be as expressly set forth in Section 1.12 of this Agreement.

3.3 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.

3.4 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.

3.5 Binding on Successors. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns. The Developer, without the prior written approval of the City may assign this Agreement, and/or any of the Developer's rights and obligations hereunder, to an entity controlling, controlled by, or under common control with, the Developer, and/or collaterally assign this Agreement to the Project lenders in connection with securing financing.

3.6 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.

3.7 **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.

3.8 **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).

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

3.10 **Notices.** All notices delivered pursuant to this Agreement shall be in writing and shall be deemed to be effective as of the date of actual delivery with personal delivery, the next business day if sent by overnight 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 East Peoria
401 W. Washington Street
East Peoria, IL 61611
Attention: Mayor

with a copy to: Miller, Hall & Triggs, LLC
416 Main Street, Suite 1125
Peoria, IL 61602
Attention: Scott A. Brunton

to the Developer: TPC of EP, LLC
119 W. Copperfield Drive
Dunlap, IL 61525
Attention: Jason Payne

with a copy to: Howard & Howard
211 Fulton Street, Suite 600
Peoria, IL 61602
Attention: Mary Corrigan

3.11 **Term of Agreement.** Section 1.8 of this Agreement shall remain in effect for a period of ten (10) years beginning when Developer completes the Project and opens to the public for business operations of the Project, unless terminated sooner by the Parties or pursuant to the terms of this Agreement or otherwise extended by the Parties pursuant to an amendment to this Agreement. The other terms of this Agreement shall

terminate when Developer completes the Project and opens to the public for business operations of the Project.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the date first listed herein above.

CITY OF EAST PEORIA

TPC of EP, LLC

By _____
John P. Kahl
Its Mayor

By _____
Jason Payne
Its Manager

EXHIBIT A

Property Description & Depiction

Part of Lot 4 of the Bass Pro Subdivision recorded June 27, 2012, as Document No. 12-12201, in Plat Book "JJJ" at Pages 76-77, in the Tazewell County Recorder of Deeds Office, in the City of East Peoria, County of Tazewell, State of Illinois.

Part of PIN: 01-01-29-202-004

Common Address: Bass Pro Drive, East Peoria, Illinois

EXHIBIT B
Project Site Plan

EXHIBIT C

Map of Clearing Area

EXHIBIT D

AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY

THIS AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY (“Agreement”) is entered into as of this _____ day of _____, 2022, by and between the **City of East Peoria**, an Illinois municipal corporation, (“Seller”) and **TPC of EP, LLC**, an Illinois limited liability company (“Purchaser”).

W I T N E S S E T H:

WHEREAS, Seller owns, Purchaser desires to purchase, and Seller desires to sell certain undeveloped real property known as the northern portion of the remainder of Lot 4 of the Bass Pro Subdivision off Bass Pro Drive in East Peoria, Illinois and more particularly described on **Exhibit A** and depicted in **Exhibit B**, both exhibits attached hereto and incorporated by reference (referred to as the “Property”), and in connection therewith Seller and Purchaser desire to enter into this Agreement to set forth the terms and conditions of such purchase and sale;

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. Sale Agreement. Seller hereby agrees to sell to Purchaser and Purchaser hereby agrees to purchase from Seller, subject to all of the terms and conditions of this Agreement, the Property together with all privileges, rights, easements, hereditaments and appurtenances thereunto and improvements thereon. Seller shall convey merchantable title to the Property to Purchaser by warranty deed, subject to all easements, covenants, restrictions, dedications or rights of way, or other matters affecting title to the Property or use of the Property, and other matters approved in writing by Purchaser.

2. Purchase Price. In consideration of the mutual promises and covenants made between the Seller and Purchaser (collectively referred to as the “Parties”) under that certain Development Agreement entered into between the Parties on the same day of the execution of this Agreement, Seller agrees to transfer title of the Property to Purchaser (the “Development Agreement”).

3. Title Commitment and Policy. Within fifteen (15) days after receiving the legal description or a plat of survey for the Property and at least fifteen (15) calendar days before closing, Seller shall deliver to Purchaser a title commitment showing Seller’s merchantable title in the Property, a Commitment for Title Insurance issued by a title insurance company regularly doing business in the county where the Property is located, committing the company to issue an ALTA policy insuring title to the Property in Buyer for the amount of established by the appraisal in Section 5.1 of this Agreement (or \$_____).

3.1. Objections to Title of Record. Within ten (10) days after Purchaser’s receipt of the aforesaid Title Commitment, Purchaser shall furnish to Seller written notification of any objections to or defects in title of record set forth in the Title Commitment. After receipt of said notice, Seller shall have the right, at its election, to endeavor to cure such objections to or defects in title set forth therein and shall notify Purchaser of such election within five (5) days. If Seller 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.

3.2. **Failure to Cure Objections.** In the event Seller fails to cure Purchaser's objections to or defects in title within thirty (30) days of receiving notice of such objections to or defects in title, or if Seller shall determine that its efforts to cure will not be successful, Purchaser may either (i) waive such title objections to or defects in title and proceed with closing hereunder or (ii) take action to terminate this Agreement in compliance with the provisions of the Development Agreement. In the event of termination of this Agreement, the parties shall have no further rights or obligations under this Agreement.

4. **Property and Improvements Sold "AS IS".** Except as otherwise provided in the Agreement or the Development Agreement, the Property is sold "AS IS", with no warranties or implied conditions.

5. **Conditions Precedent / Due Diligence.** Purchaser's obligations under this Agreement shall be subject to the following conditions precedent being satisfied to the satisfaction of the Purchaser (or waived by Purchaser in writing):

5.1. **Appraisal.** Purchaser shall obtain at Purchaser's expense an appraisal showing the fair market value of the Property. The appraisal shall be reasonably satisfactory to Purchaser's lender for purposes of obtaining financing.

5.2. **Subdivision Plat Approval.** Seller shall have obtained, at its expense, a legal description and plat of survey of the Property for the creation of the Property in accordance with the Illinois Plat Act and the East Peoria City Code. Purchaser agrees to cooperate in the filing and signing of any application for plat approval deemed reasonably necessary by Seller.

5.3. **Soil Inspection Report.** Seller shall have obtained, at Seller's expense, and provided to Purchaser an inspection and testing of the soil conditions of the Property, by a disinterested qualified company in such matters, adequately establishing that the Property is suitable for and capable of sustaining the proposed improvements which are intended to be constructed upon the Property as set forth in the Development Agreement.

5.4. **Utilities.** Seller shall provide Purchaser with engineering document regarding utilities for the Property demonstrating that adequate water, storm sewer, sanitary sewer, telephone, gas, and electrical services are available to the Property and are stubbed at the boundary of the Property through existing easements at the appropriate elevation. Seller shall obtain an ALTA survey prepared by an Illinois licensed surveyor and certified to Purchaser and Title Insurer outlining the overall property limits and area of the Property and identifying all utility lines servicing the Property and related easements (if any) of record. Seller shall provide the information required by this provision within forty-five (45) days after the execution of this Agreement or as otherwise agreed by the Parties.

5.5. **Environmental Considerations.** The City, to the extent such are within the City's possession or control, will provide the Purchaser with all environmental, survey, geotechnical, and similar reports that would be of interest to a Purchaser concerning the Property, including the IEPA closure permit (for the RS Wallace Power Plant Landfill Site). Purchaser may also obtain its own third-party reports concerning such matters. The Purchaser's obligations under this Agreement shall be contingent on Purchaser's acceptance or waiver of all matters shown on such reports. If any of the foregoing matters are not acceptable to the Purchaser, the Purchaser may terminate this Agreement within thirty (30) days from the effective date of this Agreement by delivering notice of termination to the Seller and time to cure as provided in the Development Agreement. If the Purchaser fails to deliver notice of termination to the Seller within thirty (30) days from the effective

date of this Agreement, all of the conditions in this Paragraph shall be deemed waived by the Purchaser. Notwithstanding the foregoing, the Purchaser acknowledges and agrees that soil conditions on the Project Site are such that the foundation of the Property improvements contemplated under the Development Agreement may require additional or extended footings or other similar reinforcement or stabilization, and that such requirements and the soil conditions creating such requirements shall not be considered valid reason to terminate this Agreement.

5.6. **Financing.** Purchaser shall have obtained a financing commitment for a loan from a reputable lending institution to be secured by a first mortgage on the Property in an amount and upon such terms as Purchaser otherwise chooses to accept.

In the event that any of the above conditions are not fulfilled to Purchaser's reasonable discretion and satisfaction within ninety (90) days from the date of this Agreement, then, unless Purchaser shall have waived the conditions in writing which have not been so fulfilled or satisfied, this Agreement shall terminate upon written Notice of Purchaser to Seller identifying the conditions remaining unsatisfied and time to cure as provided in the Development Agreement. Upon any effective termination pursuant to any provisions hereinabove, neither party shall have any further obligation or liability to the other. Purchaser shall have the right to enter upon the Property at reasonable times during the term of this Agreement for the purpose of making such studies, inspections, environmental assessments soil tests, etc. as Purchaser deems reasonably necessary for satisfaction of the conditions set forth in this Section 4; provided, however, that Purchaser shall indemnify and hold harmless Seller from and against all loss, costs, injury, damage or expense, including reasonable attorneys' fees, caused by such entry or tests and shall return the Property as nearly as possible to its original condition after any such studies, assessments, inspections and tests.

6. **Closing and Possession.** The purchase of the Property shall be consummated as follows:

6.1. **Closing Date.** The closing (the "Closing") shall be held on a date mutually agreed upon between the Parties, but no later than December 31, 2022. The Closing shall be held at the offices of Miller, Hall & Triggs, LLC. Possession shall occur at Closing.

6.2. **Seller's Deliveries.** At Closing, Seller shall deliver to Purchaser the following:

6.2.1. **Deed.** An executed warranty deed to the Property prepared by Seller at Seller's sole cost and expense.

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

6.2.3. **Affidavit of Title.** An Affidavit of Title substantially in the form attached as Exhibit C.

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

6.3. **Purchaser's Deliveries.** At Closing, Purchaser shall deliver to Seller the following:

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

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

6.4. **Joint Deliveries.** At Closing, Seller and Purchaser 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 showing the transfer as tax exempt.

6.5. **Property Taxes.** The Purchaser shall pay all installments of real property taxes on the Property for the calendar year of the Closing and all years thereafter.

6.6. **Closing Costs.** Seller shall pay the following costs: Seller's attorneys' fees and all closing costs, including the cost of the Title Insurance Policy. Purchaser shall pay the following costs: Purchaser's attorneys' fees, transfer taxes, and recording fees for recording the deed.

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

7.1. **Ownership.** Seller is the sole owner of and has good and merchantable fee simple title to the Property, subject to covenants, restrictions and easements of record.

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

7.3. **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 Property, excepting the Development Agreement between the Parties.

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

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

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

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

7.8. **Representations.** The representations, covenants and warranties made by Seller under Section 5 and this Section 5 shall be true and correct as of the Closing Date.

8. **Default.** If Seller wrongfully refuses to close the sale of the Property to Purchaser or is unable to close the sale of the Property under the terms of this Agreement or the Development Agreement, the same shall constitute a breach of this Agreement, and Purchaser shall be entitled to all remedies under Illinois law at law or equity at the time of the breach, including, without limitation, termination of this Agreement (in compliance with the provisions of the Development Agreement and opportunity to cure thereunder); specific performance, with the rights, but not the obligation, to perform Seller's covenants and agreements hereunder and to impose the cost and expense of such performance upon Seller as part of Sellers' additional closing costs; and the right to recover as an element of its damages, reasonable attorneys' fees, and court costs and all other damages that Purchaser will suffer as a result of Seller's breach or default hereunder.

If Purchaser wrongfully refuses to close the Purchase of the Property and pay the Purchase Price to Seller, then Seller shall be entitled to pursue any remedies available at law or in equity (including but not limited to seeking specific performance) and the right to recover as an element of its damages, reasonable attorneys' fees, and court costs and all other damages that Seller will suffer as a result of Purchaser's breach or default hereunder.

9. **Condemnation.** If, prior to the Closing, any portion or portions of the Property shall be taken by condemnation or any other proceeding in the nature of eminent domain from and after the date hereof, Purchaser, within fifteen (15) days after Purchaser receives notice of such taking, shall be entitled to declare this Agreement null and void to the extent the improvements contemplated under the Development Agreement are no longer commercially feasible due to the condemnation or eminent domain action. In the event of termination, the parties shall have no further rights or liabilities under this Agreement. If Purchaser has not notified Seller of its election to terminate within the aforesaid time period or otherwise in compliance with the provisions of the Development Agreement, this Agreement shall continue in full force and effect and there shall be no abatement of the Purchase Price. Seller shall be relieved, however, of the duty to convey title to the portion or portions of the Real Property so taken, but Seller shall, at Closing, assign to Purchaser all of Seller's rights and claims in and to any unpaid awards arising from such taking and credit to Purchaser on account of the Purchase Price all awards therefore awarded to Seller.

10. **Realtor's Commissions.** Seller represents to Purchaser that no real estate broker has been engaged by Seller with regard to this transaction. Purchaser represents to Seller that no real estate broker has been engaged by Purchaser with regard to this transaction. Each party (the "Indemnifying Party") agrees to indemnify and hold the other harmless against any other brokerage commissions due to any other real estate broker having been engaged by or claiming to have been engaged by the Non-Indemnifying Party with regard to this transaction.

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 Seller and Purchaser. 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 Purchaser and Seller relating to the purchase of the Property, and there are no agreements, understandings, restrictions, warranties or representations between Purchaser and Seller other than those set forth herein.

11.8. **Choice of Law.** It is the intention of Seller and Purchaser 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 Purchaser and Seller.

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:

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

With a copy to: Miller, Hall & Triggs, LLC
 Attn: Scott A. Brunton
 416 Main Street, Suite 1125
 Peoria, IL 61602

IF TO PURCHASER:

TPC of EP, LLC
Attention: Jason Payne
119 W. Copperfield Drive
Dunlap, IL 61525

With a copy to:

Howard & Howard
211 Fulton Street, Suite 600
Peoria, IL 61602
Attn: Mary Corrigan

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.

11.10. **Assignment.** Neither Party shall assign its interest in this Agreement without the prior consent of the other entity, which will not be unreasonably withheld.

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

PURCHASER:

SELLER:

TPC of EP, LLC,
an Illinois limited liability company

City of East Peoria, Illinois, an Illinois
municipal corporation

By: _____
Name: Jason Payne
Its Manager

By: _____
John Kahl, Mayor

Attest:

City Clerk

EXHIBIT A
DESCRIPTION OF PROPERTY

Part of Lot 4 of the Bass Pro Subdivision recorded June 27, 2012, as Document No. 12-12201, in Plat Book "JJJ" at Pages 76-77, in the Tazewell County Recorder of Deeds Office, in the City of East Peoria, County of Tazewell, State of Illinois.

Part of PIN: 01-01-29-202-004

Common Address: Bass Pro Drive, East Peoria, Illinois

EXHIBIT C

Affidavit of Seller

STATE OF ILLINOIS)
) SS.
COUNTY OF PEORIA)

AFFIDAVIT OF SELLER

The undersigned, being the duly authorized _____ of _____, Inc., an Illinois corporation (hereinafter referred to as "Seller"), does hereby depose and state on behalf of Seller as follows:

1. The Seller owns certain real estate (hereinafter referred to as the "Property"), which is legally described on Exhibit A, attached hereto.

2. The Seller (or each of them if there is more than one) is an Illinois corporation, in good standing.

3. This Affidavit is made by the Seller in connection with the sale of the Property to _____ (hereinafter referred to as "Purchaser"), and is given to induce the Purchaser to make or complete the purchase of the Property.

4. No labor, services, or materials have been furnished or delivered to the Property or used for improvements or repairs thereof at any time within the past four (4) months that have not been fully and completely paid for and the Seller has no debts, outstanding contracts or liabilities which could give rise to or result in a lien or claim of lien against the Property under the Illinois Mechanics' Lien Act.

5. All fixtures now located in or upon the Property are fully paid for and are not subject to any conditional sales contracts, chattel mortgages, or other security interests.

6. No persons are in possession of the Property except the Seller and there are no leases, oral or written, or other arrangements concerning the Property under which any person other than the Seller has any possessory rights in the Property.

7. To the knowledge of the Seller, there are no driveway agreements, overlaps, boundary lines in dispute or unrecorded easements in regard to the Property nor are there any improvements upon the Property which encroach upon adjoining properties nor are there any improvements from adjoining properties which encroach upon the Property.

8. To the knowledge of the Seller, the Property is not subject to any taxes or special assessments other than those shown as existing liens by the public records.

9. To the knowledge of the Seller, there are no presently existing violations of any restrictions or easements of record affecting the Property.

10. There is no outstanding contract, unrecorded deed, mortgage, or other conveyance affecting the Property executed by the Seller or to the knowledge of the Seller.

11. Neither the Seller nor Seller's agent has received any notice from any city, village, or other governmental authority of any violation of any applicable dwelling or building code, or any other law or regulation.

12. To the knowledge of the Seller, the current use of the Property is permitted under the existing zoning laws.

13. Seller further states that to the best of Seller's knowledge, the Property does not now contain, nor has it contained any Hazardous Substance, Hazardous Material, or Hazardous Waste as those terms are used without limitation in Illinois State or Federal Environmental Law, nor does the Property hold or contain any underground storage tank which requires registration with the State Fire Marshall.

14. The Seller does hereby certify the following: (a) Seller is not a non-resident alien for purposes of U.S. income taxation; (b) Seller's U.S. taxpayer identification number is _____; and (c) Seller's address is _____. Seller understands that this Certification may be disclosed to the Internal Revenue Service by the transferee and that any false statement Seller has made here could be punished by fine, imprisonment, or both. Under penalty of perjury, Seller declares that Seller has examined this Certification and to the best of Seller's knowledge and belief it is true, correct, and complete.

DATED this ____ day of _____, 20__.

By: _____
Its: _____

Subscribed and sworn to before me this
____ day of _____, 20__.

Notary Public