

# MEMORANDUM

February 7, 2023

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

FROM: Scott A. Brunton, City Attorney

SUBJECT: Resolution Approving New 3-Year Eastport Marina Management Agreement

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## DISCUSSION:

In 2022, the City approved a one-year Management Agreement for Eastport Marina with Omega 9 Marina LLC for conducting marina operations for the 2022 boating season. The operations staff for Omega 9 Marina LLC were able to stabilize and make improvements to the operations at Eastport Marina during the 2022 boating season. City Officials have now negotiated a new three-year Eastport Marina Management Agreement with Omega 9 Marina LLC that will be effective for the 2023 through 2025 boating seasons. This Resolution approves the new three-year Management Agreement with Omega 9 Marina LLC.

Additionally, City Officials have also determined that it is in the best interests of the City to maintain the Eastport Marina Operations Committee to provide oversight and coordinate operations at Eastport Marina. Accordingly, this Resolution also approves the appointments to the Operations Committee, who will be the same three persons on the Operations Committee for this past 2022 boating season - the City's Director of Finance (Jeff Becker), the Marina Operator (Brad Boehm), and Jason Payne.

## RECOMMENDATION:

Approval of this Resolution.

**RESOLUTION NO. 2223-144**

**East Peoria, Illinois**  
\_\_\_\_\_, **2023**

**RESOLUTION BY COMMISSIONER \_\_\_\_\_**

**RESOLUTION APPROVING THE EASTPORT MARINA MANAGEMENT  
AGREEMENT BETWEEN THE CITY OF EAST PEORIA  
AND OMEGA 9 MARINA, LLC**

**WHEREAS**, the City has constructed and operates a first-class quality marina known as Eastport Marina (the "Marina"); and

**WHEREAS**, City Officials have negotiated the terms of an agreement with Omega 9 Marina, LLC to manage the Marina for a three-year term beginning March 1, 2023, which is attached hereto as "Exhibit A" (the Marina Management Agreement); and

**WHEREAS**, the City hereby finds that it is in the best interests of the City to enter into the Marina Management Agreement with Omega 9 Marina, LLC to operate and manage the Marina under the terms specified in the attached Agreement; and

**WHEREAS**, the City further finds that it is in the best interests of the City to maintain the Eastport Operations Committee to oversee and coordinate the Eastport Marina operations; and

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

**Section 1.** The Eastport Marina Management Agreement with Omega 9, LLC in the form attached hereto labeled as "Exhibit A," is hereby approved.

**Section 2.** The Mayor and City Clerk are hereby authorized to execute the Marina Management Agreement on behalf of the City, together with such changes therein as the Mayor in his discretion may deem appropriate; provided, however, that such Agreement shall not be binding upon the City until an executed original thereof has been delivered to Omega 9 Marina, LLC.

**Section 3.** The persons appointed to the Eastport Operations Committee for the oversight and coordination of the Eastport Marina operations shall be the following: (1) the Eastport Marina Operations Manager from Omega 9 Marina, LLC; (2) Mr. Jason Payne; and (3) one City representative designated by the Mayor.

**APPROVED:**

**ATTEST:**

\_\_\_\_\_  
Mayor

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

**EXHIBIT A**

**Eastport Marina Management Agreement:  
Omega 9 Marina, LLC**

## **EASTPORT MARINA MANAGEMENT AGREEMENT**

**THIS MANAGEMENT AGREEMENT** (“Agreement”) is made this 1st day of March, 2023, by and between the **CITY OF EAST PEORIA**, an Illinois Municipal Corporation (hereinafter referred to as the “City”), and **Omega 9 Marina, LLC** (hereinafter referred to as the “Operator”).

**WHEREAS**, the City owns property located within the City on the Illinois River and known as Eastport Marina, consisting of a marina for recreational watercraft and other related improvements, including but not limited to service, storage, fueling and launching facilities for watercraft (hereinafter collectively referred to as “Eastport”); and

**WHEREAS**, the Operator is located in and does business in the City; and

**WHEREAS**, the Mr. Brad Boehm, the principal with the Operator, has experience as a boater and a business owner; and

**WHEREAS**, the City desires that Eastport shall be managed locally and that its operations shall be fully integrated into the City’s general operations; and

**WHEREAS**, as a means to ensure the smooth operation of Eastport, the City and the Operator hereby agree that an Eastport Operations Committee shall oversee Eastport operations in a manner that is consistent with this Agreement (the “Operations Committee”); and

**WHEREAS**, the City seeks to have the Operator participating on the Operations Committee, and the Operator is willing to accept such appointment to the Operations Committee upon the terms and conditions hereinafter set forth;

**WHEREAS**, Mr. Jason Payne shall also be appointed to the Operations Committee, and the Operations Committee shall further include at least one City representative designated by the Mayor;

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

1. **Appointment**: The City hereby appoints the Operator to the Operations Committee of Eastport, and the Operator hereby accepts such appointment and agrees to serve on the committee and operate Eastport in accordance with the terms and conditions of this Agreement.

2. **Term**:

(a) **Term**: The three-year term of this Agreement shall commence March 1, 2023, and continue thereafter until February 28, 2026. The term of this Agreement shall not extend or rollover after February 28, 2026.

(b) **Severe Damage**: In the event that Eastport is rendered substantially unusable so as not to be usable for normal business due to storm, flood, fire, ice, or other cause, nothing in this Agreement shall require the City to rebuild the damaged property.

### 3. **Operation of Eastport**:

(a) **Standard of Operation**: In order to maximize and maintain the economic value of Eastport and maximize profits and meet debt obligations of the City, the Operator covenants and agrees at all times to continuously operate, manage, and maintain the marina and related facilities in a first class and superior manner, achieve a high level of customer satisfaction and shall, in connection therewith, consistent with superior marina management, perform the services required of the Operator in the Agreement.

(b) **Hours of Operation**: During the boating season, the Eastport office shall be open seven (7) days per week, unless different hours are established in the approved Annual Plan (Exhibit A). At all other times, the office shall be open on a regular business schedule as approved by the City in the Annual Plan (Exhibit A). Service and storage hours will flex with the seasonal demands of the business. It is anticipated that service will generally operate on a 5.5 day schedule with on-call technicians being available from noon Saturday through Sunday.

(c) **Marketing**: Immediately upon commencement of this Agreement, and continuing during its term, the Operations Committee will market Eastport so as to maximize slip occupancy, dry stack storage, and transient traffic each boating season. The Operator understands and acknowledges that achieving and maintaining optimum occupancy levels is crucial to the success of Eastport. A website and Facebook page will be developed for Eastport Marina's marketing needs including but not limited, transient docks rentals, seasonal dock rentals, and general marketing of the facilities. Other avenues to market the facility are strongly encouraged by the City.

(d) **Slip Rental Rates**: Rental rates to be charged for slips shall be established in the approved annual budget for Eastport. The Operations Committee may, however, after consulting with and obtaining approval from the Mayor, offer special temporary incentives in an effort to maximize long term slip occupancy levels.

(e) **Boat Launch Operation**: At the City's request, the Operator shall operate and maintain the public boat launch and related improvements ("Boat Launch") as located on adjacent Fon du Lac Park District property as part of Eastport operation. Such responsibility shall include, but not be limited to, collection of a reasonable boat launch fee as established by the City; maintaining appropriate staffing to ensure safe and orderly operation; performance of all appropriate repairs and maintenance to the Boat Launch, surrounding property and channel (excluding mowing of the area generally bounded by the public boat launch, the public parking area on Park District property, and the roadways connecting the same).

(f) **Pool**: The Operator shall operate and manage the swimming pool ("Pool") as part of Eastport operation. Such responsibility shall include, but not be limited to, reasonable monitoring of persons utilizing the pool, maintaining appropriate staffing to ensure safe and orderly operations; performance of all appropriate repairs and maintenance to the pool and surrounding property.

(g) **Equipment Maintenance**: the Operator shall also provide reasonable maintenance of the Marina, including, but not limited to the forklifts and computer equipment.

(h) **Annual Plan and Budget**: During the initial term, on or before March 1 preceding the initial term, the Operations Committee will submit to the City a comprehensive annual plan, including without limitation, marketing, sales, and operations and related comprehensive budgets, for the succeeding contract year for approval by the City (the "Annual Plan"). The annual operating budget included as part of the Annual Plan shall include, without limitation, the anticipated income from all sources and expenses for non-capital repairs and maintenance, materials and supplies, disbursement and supporting information therefore, and a summary of anticipated capital expenditures and/or repairs for the next contract year. The City shall by March 15 of each such year, either approve the Annual Plan or give detailed reasons for its disapproval. In the case of disapproval, the Operations Committee will alter the Annual Plan to address City concerns. The parties will make good faith efforts to resolve any disputes in time for such Annual Plan to be properly implemented by the Operations Committee. Once the Annual Plan is agreed to by the City, the Annual Plan shall be attached to this Agreement as **Exhibit A** and shall be thereafter incorporated herein, and the Operations Manager will implement such Annual Plan (Exhibit A) without material deviation unless it secures the prior written consent of the City, which consent shall not be unreasonably withheld. In addition, the Operator shall not exceed any particular line item expense in the approved budget by more than ten percent (10%), or the entire budgeted expense by more than five percent (5%) without the prior written consent of the City. In the event of budget discussions going beyond

April 1, the Operator shall operate under the budget set forth in the previous Annual Plan until the new budget is finalized.

It is understood by all parties that successful adherence to the annual budget for all Eastport expenses is important to the financial success of Eastport. Therefore, the Operator agrees that should the total of all the Operations Manager controlled expenses in their entirety exceed the approved budget for such expenses by more than 5% without the prior written approval of the City (such approval to not be unreasonably withheld), the Operator may be found at fault and that the City may, pursuant to the right to cure provisions contained herein, dismiss the Operator and cancel this Agreement.

(i) **Public Nature of Eastport:** It is understood that Eastport is a publicly owned marina and that the public shall, consistent with necessary security for slip renters, have access to Eastport. Further, the City reserves the right to utilize the Eastport facility for various public events, such as festivals or similar celebrations, for not less than six days per year during the boating season and without limitation during the off season. The Operator will facilitate and help promote public events and generally welcome the public to Eastport. Public ownership of Eastport shall be acknowledged, and users shall be treated as **welcomed customers** of or visitors to the City.

(j) **Boat Repairs and Part Sales:** The Operator shall at all times strive to provide quality boat repair and service, as well as limited boat parts and accessories for the convenience of boaters at Eastport. To provide this quality boat repair service, the Operations Committee may lease space to a separate entity that will employ one or more highly skilled marine mechanics to service boats at Eastport. Income from the lease of space for this purpose shall be income to Eastport. However, all costs associated with boat repair, the sale of boat parts and accessories, and the overhead operational costs of the business shall be the responsibility of the separate entity.

(k) **Slip:** The Operator shall have the right to one boat slip and/or one drystack slot at no cost to the Operator. This provision shall only personally apply to the Operator and not any other staff of the Operator.

(l) **Construction Management:** With respect to all capital improvements at Eastport, the Operations Committee shall function as a construction manager, overseeing, by way of example, but not by way of limitation, the construction of any new or renovated docks, buildings, parking lots and such landscaping as may be authorized by the City. All capital improvements at Eastport shall be authorized in the annual budget or authorized in writing by the Mayor.

(m) **Limitation on Sale of Boat and Boat Accessories:** The Operator shall not permit Eastport to be used for the sale, service, or display of boats or boat accessories, except that Eastport may continue to service boats and provide services incidental thereto, including the sale of fuel and repair and replacement parts.

4. **Operator's Personnel:**

(a) The Operator shall hire and pay all persons necessary to be employed in order to properly market, maintain, operate and provide security for Eastport, including the marina office, service department, storage, parts, seasonal attendants, boat launch, accounting, fuel docks, sanitary pump-outs, etc., and to adequately keep records for Eastport in accordance with standard marina operating practice and generally accepted accounting principles. The supervision of all other employees will be the responsibility of the Operator, under the direction of the Operations Committee.

The Operator shall use due care and diligence in the hiring of such employees; and cause to be discharged all persons undesirable. All such employees shall be the employees of the Operator, as an independent contractor hereunder, and not the employees of the City. Because customer relations is crucial to the success of Eastport, however, employees determined by the City to be unsatisfactory shall be released.

(b) The Operator shall pay all employees hired pursuant to §4(a) and shall maintain adequate payroll records and shall make and remit to proper authorities all income tax deductions, unemployment insurance, worker's compensation payments, social security payments, pensions and other similar deductions or payments which may from time to time be applicable to such persons or other similar employees of the Operator. The Operator shall pay the costs of standard medical insurance, including hospitalization, medical, surgical and group life insurance plans hereinafter imposed by or included in agreements implemented with the consent of the City as indicated by approval of the annual budget, such approval to not be unreasonably withheld. Whenever possible, the Operator shall use administrative resources of the City so as to minimize administrative costs of Eastport.

(c) The Operator shall cause to be prepared and filed the necessary forms for unemployment insurance, social security and withholding taxes, and all other forms required by any federal, state or municipal authority or insurance company with respect to all persons employed pursuant to this §(4). All costs of personnel including but not limited to salaries, wages, and benefits shall be Expenses of Operation of Eastport.



(d) During the term of this Agreement, the Eastport Operations Committee shall ensure that the Operator will provide management services in connection with the management of Eastport. The Operator may not assign this Agreement to a corporate or other business entity, and any assignment shall be subject to the reasonable approval of the City.

All the employees shall undergo a thorough orientation and training program, with key emphasis on customer service skills, safety and accident prevention, and environmental compliance. All the Eastport employees shall be in uniform while on duty.

**5. Maintenance, Repair and Purchase of Materials:**

(a) The Operator shall maintain Eastport, Boat Launch (unless the City makes other arrangements for maintenance of the Boat Launch) and Pool and property surrounding either in a condition similar to that of other first class marina operations, and shall cause repairs and alterations of Eastport, Boat Launch and Pool and the improvements associated with them, including, without limitations, cleaning, plumbing, electrical, carpentry, decorating and such other similar repairs, alterations, acquire materials and engage services to ensure such maintenance and repairs (excluding mowing of the area generally bounded by the public boat launch, the public parking area on Park District property, and the roadways connecting the same), and acquire the same upon the most reasonable possible terms available to the Operations Manager consistent with the operation of a first class marina. The Operator shall cause Eastport, Boat Launch and Pool and property surrounding them to be kept free from debris and other accumulations and shall cause any rubbish to be removed promptly therefrom. The Operator shall at all times provide access to all Eastport areas to the City for purposes of inspecting for compliance with this section.

(b) The Operator shall routinely discuss with the Mayor, or City Council designee, the alternative of utilizing existing City equipment and employees to maintain and repair Eastport, Boat Launch, and Pool whenever it may be economical to utilize such existing City resources. If it is the decision of the City to utilize City resources, then the Operator shall do so as to minimize the Expenses of Operation.

(c) The Operator shall cause all acts to be performed in and about Eastport, Boat Launch, and Pool as shall be necessary or desirable to comply with any and all orders, codes, regulations or ordinances affecting Eastport, Boat Launch, or Pool imposed by any federal, state or local authority.

(d) All legitimate expenditures provided for in the Annual Plan (Exhibit A) incurred in accomplishing the responsibilities outlined in 5(a) shall be considered as Expenses of Operation of Eastport and shall be paid from the Eastport operating account as per the terms of normal trade or specific agreement.

Unless otherwise specifically set forth in the Annual Plan approved by the City (Exhibit A), repairs, alterations or purchases of materials and services therefore, involving an expenditure of more than Two Thousand Five Hundred Dollars (\$2,500) for any one item, shall be made only with the prior approval of the Mayor.

**6. Contracts:**

(a) Subject to limitations set forth in the Annual Plan (Exhibit A) and in §3(h) above, the Operator on behalf of the City shall enter into contracts and agreements for ordinary and usual maintenance of Eastport, electricity, gas, telephone, cleaning, landscaping, rubbish removal, security, or other services or such of them as the Operator shall deem advisable. The Operator on behalf of the City shall purchase all supplies which shall be necessary to properly operate Eastport.

(b) Notwithstanding anything in this Agreement to the contrary, all contracts relating to the collection of revenues including, but not limited to, slip rental contracts and contracts for any other revenue source shall be in the name of the City and the property of the City. All customer lists, including names, addresses and telephone numbers, and location of boats, shall be the property of the City.

(c) The City's officers or designated agents shall have the right to inspect and copy all contracts and agreements entered into by the Operator with respect to Eastport and all other information relating to Eastport at reasonable times.

**7. Collection and Remission of Revenues:**

(a) The Operator will, for and on behalf of the City, collect all revenues or income derived from slip rentals, transient rentals, dry stack, dry dock, fuel sales, winter storage, trailer storage, boat club, pool, the detail shop, boat launch fees and any and all other income producing activity at Eastport except for boat repairs, part and accessory sales and boat rentals. Such revenues and income shall constitute the "Revenues".

(b) All monies received by the Operator for and on behalf of the City shall be and remain the property of the City and shall be deposited promptly in the City's Eastport accounts at a financial institution specified by the City.

No such monies shall be mingled with the funds of the Operator or the City general accounts.

**8. Payment of Expenses:**

(a) Subject to the limitations in the Annual Plan (Exhibit A) and in §3(h) and §5(d) above, the Operator shall, and is hereby authorized on behalf of and at the sole cost of the City, prepare all necessary disbursements out of the Eastport Account for Expenses of Operation, which will be reviewed and approved by the City's Finance Director.

During the term of this Agreement, the City agrees to maintain a balance in the fund in an amount sufficient to permit the Operator to pay necessary expenditures pursuant to this Agreement and the Annual Plan (Exhibit A). In the event that at any time there be insufficient funds available in the Eastport Account to pay such expenses, the City agrees to immediately supply the Operator with funds to make such payments. The City agrees to reimburse the Operator promptly for any disbursement which the Operator may elect to advance for the Eastport Account of the City pursuant to the terms of this Agreement.

"Expenses of Operation" as used in this Agreement, shall include any costs of sales attributable to those revenues or income belonging to or collected on behalf of the City, direct or indirect cost of operation and expenses incurred in the operation of Eastport including, without limitations, personnel costs and benefits, insurance, advertising and marketing expenses, utility costs, taxes, fuel costs, cost of inventory and all other costs of operating all facets of Eastport. "Expenses of Operation" shall not include, however, debt service amortization or other charges relating to Eastport debt obligations. "Expenses of Operation" shall not include capital outlays, but shall include reasonable depreciation costs determined according to accepted accounting practices.

(b) The Operator shall ensure that all employees with access to receipts are bonded in an amount mutually agreed by the parties hereto or the Operator shall maintain sufficient dishonest employee insurance coverage.

**9. Reports to City:**

(a) The Operator shall prepare and submit to the City written reports for Eastport as follows:

(i) On or before the 20th day of each month, the Operator shall deliver or cause to be delivered to the City a profit and loss statement showing the results of operations for

the preceding month and for the year to date of the contract year, which statement shall reflect an accounting of actual to budgeted amounts.

(ii) Within 60 days after the end of each contract year, the Operator will deliver or cause to be delivered to the City a balance sheet and related statement of profit and loss showing the assets employed in operation of Eastport and the liabilities incurred in connection therewith, as of the contract year-end, and the results of the operation of Eastport during the preceding contract year.

(iii) On or before the 1st day of December, the Operator shall deliver to the City a comprehensive list reflecting the name and address of each person then renting a slip or boat storage at Eastport and each person who has at any time during the contract year rented a slip or boat storage at Eastport and location of each boat.

(iv) At any reasonable time, upon the request of the City copies of any and all materials or reports maintained by the Operator for Eastport shall be available to the City.

(b) The Operator shall cooperate with the City or the City's public accountant in connection with the preparation and filing of federal, state and other tax returns required by any governmental authority.

(c) The Operator shall cooperate with the City's public accountant in connection with the preparation of an annual audit of the books of account of the City, including an annual report each year of the operations of Eastport for the year then ended. Further, the Operator shall adopt such practices necessary to ensure sound accounting as may be reasonably recommended by the City's public accountant.

(d) The City or the City's officers or designated agents shall have the right at any reasonable time or interval to examine the Operator's books for Eastport or any portion thereof.

(e) The Operator shall prepare, keep and maintain at all times for a period of not less than five (5) years complete and accurate books of account and records during each calendar year and such other records as would normally be required to be kept and examined by an independent public accountant in accordance with generally accepted auditing practices in performing an audit. Upon five (5) days written notice to the Operator at any time during the term or within one (1) year of the expiration or sooner termination thereof, the City shall have the right to cause a complete audit

to be made by an independent public accountant designated by the City of all business affairs conducted at, upon and from Eastport and of all books and records pertaining thereof, and the Operator will make all such books and records available, or cause the same to be made available for such examination at Eastport or such other location agreed to by the City.

10. **Insurance:**

- (a) The Operator shall obtain umbrella insurance coverage in an amount of not less than One Million Dollars (\$1,000,000) with respect to its operation of Eastport for the benefit of both the City and the Operator and agrees to name the City as additional insured. The cost of said insurance shall be considered an operating expense of Eastport.
- (b) The Operator shall obtain workers compensation insurances at levels of not less than required by the State of Illinois for all Eastport employees. The cost of said insurance shall be considered an operating expense of Eastport.
- (c) Property, casualty, and liability insurance coverage in an amount of not less than One Million Dollars (\$1,000,000) with respect to its operation of Eastport for the benefit of both the City and the Operator and agrees to name the City as additional insured. This insurance shall cover liability on the entire Marina and boat launch and the property and casualty on the break walls, slips, docks and the boat launch. The City shall provide property and casualty insurance on the other buildings within the Marina. The cost of said insurance shall be considered an operating expense of Eastport.
- (d) The Operator shall obtain a pollution insurance coverage in an amount not less than One Million Dollars (\$1,000,000) with respect to its operation of Eastport for the benefit of both the City and the Operator and agrees to name the City as additional insured. This insurance shall cover liability on the entire Marina. The cost of said insurance shall be considered an operating expense of Eastport.

11. **Management Fees:**

- (a) **Fee:** During the first year of this three-year Agreement, the City shall pay to the Operator a management fee of Seventy-Eight Thousand Five Hundred Dollars (\$78,500). During the second year of this three-year Agreement, the City shall pay the Operator a management fee of Eighty Thousand Five Hundred Dollars (\$80,500). During the third year

of this three-year Agreement, the City shall pay the Operator Eighty-Two Thousand Five Hundred Dollars (\$82,500). The City shall pay the management fee in twelve equal monthly installments on the first day of each month commencing March 1st of each contract year.

12. **Restrictive Covenants:** The Operator agrees that it will not, directly or indirectly, or by an affiliate own, operate, manage or otherwise have an interest in any other marina operation, provide slip rentals, boat sales, boat storage or boat service within 50 miles of Eastport nor allow any of its principals, officers, or employees to do so. The restrictive covenants contained herein shall continue only during the term of this Agreement and any extensions thereof.

13. **Discretion of City:** Notwithstanding any provision hereunder, the City retains the right to modify its administrative and organizational structure in such a manner that the Operator, may upon notification, be required to report to and seek approval from an employee of the City other than the Mayor. Further, the City retains the right to cause such modifications and improvements of Eastport which it believes in its discretion are in the best interests of the City, providing such modifications and improvements do not materially detract from Revenues as defined in §7.

14. **Representations and Warranties; Indemnification:**

(a) The City and the Operator each represent and warrant to the other that it has the authority to enter into this Agreement and to fully perform its respective obligation hereunder.

(b) The Operator shall defend, indemnify and hold the City of East Peoria and its respective officers, directors, employees and agents harmless from and against any and all claims, actions, damages, expenses (including attorneys' fees), losses or liabilities arising out of any claim made as a result of the Operator's bad faith, recklessness, gross negligence, gross misconduct in its management and operation of Eastport, or arising out of any breach or claimed breach of any representation or any of the Operator's obligations pursuant to this Agreement.

(c) The City shall defend, indemnify and hold the Operator and its respective officers, directors, employees and agents harmless from and against any and all claims, actions, damages, expenses (including attorney's fees), losses or liabilities arising out of any claim made as a result of the City's bad faith, recklessness, gross negligence, gross misconduct in its management and operation of Eastport, or arising out of any breach or claimed breach of any representation or any of its obligations pursuant to this Agreement.

(d) The parties shall notify each other of the existence of claims relating to Eastport and shall cooperate with each other in defense of third-party claims.

**15. Termination of Agreement by City:**

(a) If one or more of the following events shall occur, the City may terminate this Agreement by notice to the Operator:

(i) If the Operator shall be in material default in the performance of any material term, covenant or condition which this Agreement requires it to perform, and shall fail to cure such material default within thirty (30) days of written notice from the City specifying such default; or

(ii) If the Operator shall make any assignment of its property for the benefit of creditors; or

(iii) If the Operator's interest under this Agreement shall be taken on execution of a judgment; or

(iv) If the Operator files a petition for adjudication as a bankrupt, for reorganization or for an arrangement under any bankruptcy or insolvency law, or if any involuntary petition under such law is filed against the Operator and not dismissed within ninety (90) days thereafter; or

(b) Upon the occurrence of one or more events under (a) above, the City may exercise any or all of the following remedies in addition to termination of the Agreement:

(i) The City may, immediately, or at any time thereafter, and without further notice or demand, enter on Eastport premises and expel the Operator and remove the Operator's effects (forcibly if necessary); and/or

(ii) The City may require that the Operator immediately deliver to the City all slip leases, boat storage rental agreements and similar agreements.

(c) The rights of termination granted to the City in this paragraph shall be in addition to any other right or remedy that may otherwise be available to the City including, but not limited to, recovery of amounts due and owing, to the City, any and all damages, and equitable relief resulting from any or all of the above event or events.

**16. Termination of Agreement by Operator:**

- (a) the Operator may terminate this Agreement by giving notice to the City, if the City shall be in material default in the performance of any material term, covenant or condition which this Agreement requires it to perform and shall fail to cure such material default within thirty (30) days of notice from the Operator specifying such default (unless such default cannot reasonably be cured within such thirty (30) day period and during such thirty (30) day period the City commences to cure such default and proceeds with diligence to complete such cure), provided that the City shall not be deemed to be in default pursuant to this Agreement if its failure to satisfy the requirements hereof is caused by the Operator's failure to perform its obligations hereunder.
- (b) The right of termination granted to the Operator in this paragraph shall be in addition to any other right or remedy that may otherwise be available to the Operator including, but not limited to, recovery of amounts due and owing to the Operator, any and all damages, and any equitable relief resulting from the City's default.

**17. Operator's Rights Upon Termination:**

(a) Upon termination of this Agreement, the Operator shall be entitled to the following unless this Agreement is unilaterally terminated by the Operator without cause or is terminated by the City under §16(a):

(i) Reimbursement of all expenses incurred with respect to Eastport, provided such expenses are authorized by this Agreement and are within the parameters of the approved Annual Plan (Exhibit A);

(ii) Payment of any other sums due the Operator hereunder.

(b) The obligations contained in this paragraph shall survive expiration or other termination of this Agreement. Upon termination of this Agreement, the Operator shall have the right to assign, and the City shall have the obligation to assume, all contracts entered into on behalf of the City, provided said contracts are within the parameters of the approved Annual Plan (Exhibit A).

**18. Notices:**



Any notices required or permitted hereunder shall be in writing and shall be valid and sufficient if delivered personally or dispatched in any post office of the United States by registered or certified mail, postage prepaid, addressed to the other party as follows:

If to the City: City of East Peoria  
401 W. Washington Street  
East Peoria, IL 61611

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

If to the Operator: Brad Boehm  
Omega 9 Marina, LLC  
701 Mariner Way  
East Peoria, IL 61611

and any party may change such address by notice given to the other party in the manner set forth above.

19. **Miscellaneous:**

(a) **Governing Law:** This Agreement shall be governed by and construed under the laws of the State of Illinois.

(b) **Counterparts:** This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

(c) **Headings:** Titles and headings of the paragraphs and subparagraphs of this Agreement are for the convenience of reference only and do not form a part of this Agreement and shall not in any way affect the interpretation hereof.

(d) **Amendment:** No explanation or information by either of the parties hereto shall alter or affect the meaning or interpretation of this Agreement and no modification or amendment to this Agreement shall be valid unless in writing and executed by both parties hereto.

(e) **Successors and Assigns:** Except for the restrictions on assignability contained in §4 hereof, the terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties hereto.

(f) **Waiver:** The waiver of any breach of any term or condition hereof shall not be deemed a waiver of any other or subsequent breach, whether of like or different nature.

(g) **Severability:** If any term or provision of this Agreement or the performance thereof shall to any extent be invalid or unenforceable, such invalidity or unenforceability shall not affect or render invalid or unenforceable any other provision of this Agreement, and this Agreement shall be valid and enforceable to the fullest extent permitted by law.

(h) **Relationship of the Parties:** The relationship of the City and the Operator shall be solely as owner and manager with the Operator acting as an independent contractor and in no event and for no purpose shall the City and the Operator be deemed partners or joint venturers.

(i) **Entire Agreement:** This Agreement supersedes and replaces in its entirety any prior agreement between the parties for management of Eastport.

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed as of the first date set forth above.

**CITY OF EAST PEORIA**

**Omega 9 Marina, LLC**

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Brad Boehm,  
Its Manager/Owner

**Attest:**

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

**EXHIBIT A**

**Comprehensive Annual Plan for Eastport Marina**