

MEMORANDUM

August 31, 2023

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

FROM: City Attorney Scott A. Brunton

SUBJECT: Acquisition of Additional Property in West Washington TIF District / Center Street Parcels

DISCUSSION:

As part of the past development in the City's West Washington Steet TIF redevelopment project area, the City had acquired property along Center Street between Richland Street in the Levee District and the Cedar Street Extension overpass. The City has been offered the opportunity to purchase some additional property along this Center Street corridor in West Washington Steet TIF District, which is immediately adjacent to property currently owned by the City. Due to its proximity to the City's current property along the Center Street corridor, the acquisition of this additional property will provide the City with greater opportunity to develop this area of the West Washington Steet TIF District in the coming years.

City Officials have negotiated the acquisition of this property from the current property owner, Cullinan Properties Ltd, under the terms of a Purchase Agreement at a total price of \$300,000. This Resolution approves this Purchase Agreement with the property owner and will allow the City to acquire these Center Street parcels for future development.

RECOMMENDATION: Approval.

ORDINANCE NO. 4742

**AN ORDINANCE APPROVING A REAL ESTATE PURCHASE AGREEMENT
WITH RESPECT TO CERTAIN PROPERTY LOCATED ALONG CENTER STREET,
NEAR ITS INTERSECTION WITH RICHLAND STREET**

WHEREAS, the City of East Peoria desires to purchase certain property along Center Street near its intersection with Richland Street in East Peoria, Illinois, as identified as Lots 9 – 13 on the attached Exhibit A (the “Property”); and

WHEREAS, the Property is located in the Redevelopment Area of the W. Washington Street TIF District;

WHEREAS, the City proposes to purchase the Property at the price of \$300,000.00 and upon such terms as are set forth in the Real Estate Purchase Agreement attached hereto as Exhibit B (the “Agreement”); and

WHEREAS, the City Council hereby finds that the purchase of the Property under the terms set forth in the Agreement is in the best interests of the City and the continued development in the W. Washington Street TIF District; and

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

Section 1. The findings and recitations set forth above are hereby adopted and found to be true and correct.

Section 2. The Agreement to purchase the Property is hereby approved. The Mayor is hereby authorized and directed to execute the Agreement on behalf of the City together with such changes therein as the Mayor in his discretion may deem appropriate; provided, however, that the Agreement shall not be binding upon the City until an original executed by the Mayor has been delivered to the owners of the Property.

Section 3. City staff is hereby directed to take any and all action as is necessary to conclude the purchase of the Property upon the terms and conditions set forth in the Agreement, and the Mayor and City Clerk are further authorized to execute any documents related to the purchase of the Property and the closing on the City’s acquisition of the Property.

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

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

PASSED BY THE COUNCIL OF THE CITY OF EAST PEORIA, TAZEWELL COUNTY, ILLINOIS, IN REGULAR AND PUBLIC SESSION THIS ____ DAY OF _____, 2023.

APPROVED:

Mayor

ATTEST:

City Clerk

EXAMINED AND APPROVED:

Corporate Counsel

EXHIBIT A

Lots 9-13 Center Street



Parcel Nos.: 01-01-32-202-007,
 01-01-32-202-008, 01-01-32-202-009,
 01-01-32-202-010, and 01-01-32-202-011

7/28/2023, 10:00:09 AM

East Peoria Parcels

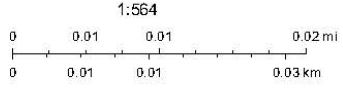
Symbols

- <all other values>
- Arrow 100
- Arrow 400

- FromTo 100
- FromTo 400
- Hook 100
- Hook 400
- Tip 100
- Tip 400

- Address Points
- City Limits
- Streets

- Aerial Imagery - 2019
- Red: Band_1
- Green: Band_2
- Blue: Band_3



EPGIS, Tazewell County, IL, EP GIS, City of East Peoria, County of Peoria, Esri, HERE, Garmin, INCREMENT P, USGS, EPA, USDA

EXHIBIT B
PURCHASE AGREEMENT

AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY

THIS AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY (this "**Agreement**") is entered into as of this ____ day of September, 2023 ("**Effective Date**") by **Cullinan Companies, LLC**, an Illinois limited liability company ("**Seller**") and the **CITY OF EAST PEORIA, ILLINOIS**, an Illinois municipal corporation ("**Purchaser**").

WITNESSETH:

WHEREAS, Purchaser desires to purchase and Seller desires to sell certain real property and appurtenances thereto belonging described in Section 1 below, 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, that certain real property located along Center Street in East Peoria, Illinois, which property is legally described on "**Exhibit A**" attached hereto and as generally depicted on Exhibit A, together with all privileges, rights, easements, hereditaments and appurtenances thereunto belonging and owned by Seller ("**Property**"). Seller shall convey title to the Property to Purchaser by special warranty deed in substantially the form attached hereto as Exhibit B, subject only to the following "**Permitted Exceptions**": (i) general real estate taxes and installments of special assessments not yet due and owing and all subsequent taxes and assessments; (ii) covenants, conditions, easements, restrictions, reservations, and encumbrances apparent or of record and applicable governmental laws, ordinances, codes and regulations, including without limitation zoning ordinances and building code rules and regulations; (iii) all roads and highways; and, (iv) such other matters as are otherwise acceptable to Purchaser.

2. Purchase Price. The purchase price of the Property ("**Purchase Price**") shall be Three Hundred Thousand Dollars (\$300,000.00), to be paid by Purchaser to Seller at Closing, plus or minus credits and prorations provided for herein, by bank wire transfer of collected federal funds. Upon execution of this Agreement, Purchaser shall deposit into escrow with Chicago Title Insurance Company, 2441 Warrenville Road, Lisle, Illinois, Attn: Adair Krieger (Email: adair.krieger@ctt.com) (the "Title Insurer" or "Escrow Agent"), its earnest money deposit ("Earnest Money"), being cash in the amount of FIFTEEN THOUSAND DOLLARS (\$15,000.00). The Earnest Money shall be held by the Escrow Agent and disbursed upon joint written order of Seller and Purchaser in accordance with Title Insurer's standard form of strict joint order escrow agreement. The Earnest Money may, at the Purchaser's discretion and expense, be deposited into an interest bearing account, with all interest accrued thereon being payable to the Purchaser. At Closing, the Earnest Money shall be applied to the Purchase Price. The Earnest Money is nonrefundable to Purchaser, except in the event that Seller defaults beyond any applicable cure period, or the Purchaser terminates this Agreement pursuant to Section 4.1, Section 4.2, Section 4.3, or Section 5.

3. Seller Deliverables. Within five (5) days of the Effective Date, Seller shall deliver to Purchaser copies of the most recent title policy and environmental reports concerning the Property within Seller's possession or control ("Seller's Deliverables"). Seller makes no representations or warranties as to the truth, accuracy, or completeness of any of the Seller's Deliverables, or any information, conclusions, or statements contained therein, and Seller's Deliverables are provided to Purchaser as a convenience only and any reliance on or use of the Seller's Deliverables shall be at Purchaser's sole risk and without recourse to Seller.

4. Title Commitment and Policy. Within thirty (30) days after the date of this Agreement, Seller shall, at Seller's sole cost and expense, provide Purchaser with a title commitment ("**Title Commitment**") for an ALTA Owner's Title Insurance Policy ("**Title Policy**"), issued by Title Insurer, covering the Property in the amount of the Purchase Price showing record title to the Property to be in Seller and provide Purchaser with copies of all documents identified therein as exceptions. At Closing, Seller shall cause the Title Insurer

to issue the Title Policy (which may take the form of a marked up title commitment or pro forma, with the actual policy to follow after closing) to Purchaser in accordance with the Title Commitment provided for in this Section 4, subject only to the General Exceptions and to the Permitted Exceptions.

4.1. **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 unpermitted exceptions or matters that would materially interfere with Purchaser's intended use of the Property or are not acceptable to Purchaser using good faith and reasonable judgment. If Purchaser fails to give said notice within said ten (10) day period, Purchaser shall be deemed to have accepted all matters then affecting title to the Property set forth in the Title Commitment. If Purchaser does give said notice, Purchaser shall be deemed to have accepted all matters set forth in the Title Commitment that are not set forth in the notice. 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 or to not cure any such objections or defects in title and shall notify Purchaser of such election within five (5) days. If Seller elects to not cure such objections to or defects in title, Purchaser may either (i) waive such title objections to or defects in title and proceed with closing hereunder and such waived title objections and defects shall be deemed Permitted Exceptions, or (ii) terminate this Agreement and obtain a refund of the Earnest Money. 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.

4.2. **Failure to Cure Objections.** In the event Seller fails to cure Purchaser's objections to or defects in title (for which Seller notifies Purchaser that Seller will attempt to cure) within the later of fifteen (15) days of receiving notice of such objections to or defects in title or the closing date, or if Seller shall determine that its efforts to cure will not be successful as to those objections or defects for which Seller notifies Purchase that Seller will attempt to cure, Purchaser may either (i) waive such title objections to or defects in title and proceed with closing hereunder and such waived title objections and defects shall be deemed Permitted Exceptions, or (ii) terminate this Agreement and obtain a refund of the Earnest Money. In the event of termination, the parties shall have no further rights or liabilities under this Agreement. Notwithstanding the foregoing, with respect to any objections or defects for which Seller notifies Purchaser that Seller elects not to cure, Purchaser shall have five days from receipt of such notice to terminate this Agreement, failing which such termination right shall be deemed waived and such objections and defects shall be deemed Permitted Exceptions.

4.3. **Declaration.** Certain leases of spaces or other agreements related to property adjacent to the Property (i) grant certain exclusive rights to the tenants or occupants thereunder, and/or (ii) prohibit and/or restrict certain uses that are, or will be, applicable to the Property (collectively, the "Restrictive Covenants"). Within ten days following the Effective Date, Seller will deliver to Purchaser a copy of a Declaration of Restrictive Covenants ("Declaration") that will be recorded against the Property at or before Closing. The Declaration will contain the Restrictive Covenants, and will be a Permitted Exception. Purchaser will have the right to terminate this Agreement by delivery of written notice of termination to Seller on or before the fifteenth day after Purchaser receives a copy of the Declaration if the Declaration is unacceptable to Purchaser, in Purchaser's sole and absolute discretion, in which event the Earnest Money will be refunded to the Purchaser.

5. Conditions Precedent. Purchaser's obligations under this Agreement shall be subject to the following condition precedent being satisfied to the satisfaction of the Purchaser (or waived by Purchaser in writing) on or before the last day of the Purchaser Condition Precedent Date:

5.1. **Environmental Audit.** Purchaser may obtain, at Purchaser's sole cost and expense, a written Phase I environmental assessment report (together with a Phase II environmental assessment report if such Phase I report suggests, but is inconclusive or incomplete as to the existence of possible environmental risk or violation), prepared by an engineering firm acceptable to Purchaser verifying that the Property is free of any environmental risks or violations, or that a

letter of no further remediation for the Property has been obtained and the conditions thereof have been met.

In the event that the above condition is not fulfilled to Purchaser's sole and reasonable discretion and satisfaction on or before 60 days following the Effective Date (the "Purchaser Condition Precedent Date") then, unless Purchaser shall have waived the conditions which have not been so fulfilled or satisfied in a written notice delivered to Seller on or before the Purchaser Condition Precedent Date, Purchaser shall be entitled to terminate this Agreement upon delivery of written notice of termination to Seller on or before the Purchaser Condition Precedent Date, in which event the Earnest Money shall be returned to Purchaser, and thereupon neither party shall have any further obligation or liability to the other. If Purchaser fails to deliver written notice of termination to Seller on or before the Purchaser Condition Precedent Date, all of the foregoing conditions shall be deemed waived by Purchaser.

Upon prior notice to Seller, Purchaser shall have the right to enter upon the Property at reasonable times prior to the Purchaser Condition Precedent Date for the sole purpose of performing the Phase I and/or Phase II environmental assessments referenced above as Purchaser deems reasonably necessary for satisfaction of the conditions set forth in this Section; provided, however, that Purchaser shall indemnify, defend (with counsel reasonably satisfactory to Seller) and hold harmless Seller from and against all claims, loss, costs, injuries, damages, liabilities, liens, or expenses, including reasonable attorneys' fees, arising out of or caused by such entry or assessments and shall return the Property to substantially the same condition as its original condition after any such entry and environmental assessments. Prior to entering the Property, Purchaser, and any party representing Purchaser, will provide an insurance certificate naming Seller and Seller's lender as additional insureds, evidencing commercial general liability and auto insurance (including property damage, bodily injury and death) with limits of at least \$2,000,000.00 per occurrence for bodily or personal injury or death. Seller shall not be in default if any of the conditions precedent specified above are not fulfilled on or before the Purchaser Condition Precedent Date. The provisions of this Section 5 shall survive the Closing or termination of this Agreement.

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

6.1. **Closing Date.** The closing of the purchase and sale of the Property shall be held on or before fifteen (15) days following the earlier of Purchaser's waiver of the condition precedent in Section 5 or the Purchaser Condition Precedent Date ("**Closing Date**"). The Closing shall be held at the offices of the Title Insurer or some other location mutually agreed by the parties, provided however, that either party may close the transaction in escrow by mail through the Title Insurer.

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

6.2.1. **Deed.** An executed Special Warranty Deed to the Property prepared by Seller and in a form attached hereto as Exhibit B.

6.2.2. **Title Policy.** The Title Policy for the Property as provided in Section 3.1 hereof (which may include a marked up or proforma commitment, with the actual policy to follow after closing).

6.2.3. **ALTA Statement.** An executed ALTA Statement in the form required by the Title Insurer subject to Seller's reasonable approval thereof.

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

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

6.3.1. **Purchase Price.** The Purchase Price for the Property as set forth in Section 2 hereof, plus or minor prorations provided for herein.

6.3.2. **ALTA Statement.** An ALTA Statement in the form required by the Title Insurer subject to Purchaser's reasonable approval thereof.

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

6.4.1. **Closing Statement.** An agreed upon closing statement conforming to the prorations and other relevant provisions of this Agreement.

6.4.2. **Transfer Tax Filings.** Executed documents complying with the provisions of all federal, state, county and local law applicable to the determination of transfer taxes.

6.5. **Closing Costs.** Seller shall pay the following costs: Seller's attorneys' fees, the insurance premium for the title policy issued pursuant to the commitment for title insurance required by Section 4 hereof, any state or county transfer taxes and the cost of state and county documentary stamps, and 50% of the closing and escrow fees. Purchaser shall pay the following costs: Purchaser's attorneys' fees and recording fees for the deed, the cost of any endorsements to the Title Policy, and any local transfer taxes and the cost of local documentary stamps, and 50% of the closing and escrow fees. Any charges under any declarations, easements or other documents of record shall be prorated as of the closing date.

6.6. **Property Taxes.**

6.6.1. **Payments by Seller.** All installments of real property taxes on the Property which are due and owing on or prior to the Closing Date shall be paid by Seller prior to or at Closing.

6.6.2. **Credits to Purchaser.** Purchaser shall receive a credit against the Purchase Price for all installments of real property taxes on the Property for the calendar year immediately preceding the Closing Date which are not yet due and owing as of the Closing Date. Real property taxes for the calendar year of the Closing shall be prorated from January 1 of such calendar year to the Closing Date based on the latest available assessment, and Purchaser shall receive an additional credit against the Purchase Price for the amount so calculated to be Seller's prorated share thereof.

7. Seller's Representations, Warranties and Covenants. Seller hereby represents, covenants and warrants, as of the date hereof, to Seller's knowledge, as follows:

7.1. **Ownership.** Seller is the sole owner of fee simple title to the Property.

7.2. **Rights in Property.** Except as may appear of record or in the Declaration, there are no options, purchase contracts, or other agreements of any kind or nature, written or oral, for which Seller is a party to whereunder or whereby any party could claim or assert any right, title or interest in the Property.

7.3. **Mechanics Liens.** Seller has fully paid all bills for labor performed and materials furnished under contracts entered into by Seller for such labor and materials in and to the improvement of the Property, and no such bills are outstanding or unpaid.

7.4. **Leases.** Except as may appear of record, Seller has not entered into any written or oral leases for any part of the Property.

7.5. **Intentionally Omitted.**

7.6. **Intentionally Omitted.**

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

For purpose of this Agreement and any document delivered at Closing, whenever the phrase "to Seller's knowledge", "to the best of Seller's knowledge", "known to Seller", or words of similar import are used, they shall be deemed to refer to the current, actual knowledge only, and not any implied, imputed or constructive knowledge, without investigation having been made or implied duty to investigate, of Josh Williams; provided in no event shall Josh Williams have any personal liability in connection with the foregoing.

7.8. **Survival.** The parties acknowledge and agree that the representations and warranties set

forth in this Section shall survive the Closing hereunder for a period of six (6) months. If Purchaser discovers any breach of any of the representations and warranties of Seller subsequent to the Closing, Seller shall have no liability to Purchaser unless written notice containing a description of the specific nature of such breach shall have been given by Purchaser to Seller prior to the expiration of the six (6) month survival period and is the subject of a lawsuit filed by Purchaser within six (6) months after the Closing; provided, however, in no event shall Seller's liability exceed Fifteen Thousand Dollars (\$15,000.00) in the aggregate with respect to any such claims.

8. Default. If Seller defaults under this Agreement and fails to close the sale of the Property to Purchaser and Seller does not cure such default within ten days of receipt of written notice of default from Purchaser, then Purchaser shall as its sole and exclusive remedy hereunder, either: (a) terminate this Agreement and receive the Earnest Money, or (b) proceed to enforce this Agreement by a suit for specific performance; provided such enforcement action is commenced within ninety days after expiration of such ten day cure period.

If Purchaser defaults under this Agreement and Purchaser does not cure such default within ten days of receipt of written notice of default from Seller, then PURCHASER AND SELLER AGREE THAT (i) IT WOULD BE IMPRACTICABLE AND EXTREMELY DIFFICULT TO FIX OR ESTABLISH ACTUAL DAMAGES OF SELLER IN THE EVENT OF A DEFAULT HEREUNDER BY PURCHASER; AND (ii) THAT THE AMOUNT OF PURCHASER'S EARNEST MONEY HEREUNDER IS IN THE PARTIES' BEST AND MOST REASONABLE ESTIMATE OF SELLER'S DAMAGES IN THE EVENT OF PURCHASER'S DEFAULT. ACCORDINGLY, UPON EXPIRATION OF TEN (10) DAYS FOLLOWING NOTICE BY SELLER OF PURCHASER'S DEFAULT IN ANY OF ITS OBLIGATIONS UNDER THIS AGREEMENT, AND PURCHASER DOES NOT CURE SUCH DEFAULT WITHIN SAID TEN (10) DAY PERIOD (PROVIDED, NO NOTICE SHALL BE REQUIRED AS A RESULT OF PURCHASER'S FAILURE TO CLOSE BY THE CLOSING DATE SET FORTH IN SECTION 6.1 HEREIN), THEN SELLER MAY, AT ITS SOLE AND EXCLUSIVE REMEDY HEREUNDER, TERMINATE THIS AGREEMENT IN WHICH EVENT SELLER SHALL RETAIN THE EARNEST MONEY AS LIQUIDATED DAMAGES.

9. Broker'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.

10. Miscellaneous. It is further understood and agreed as follows:

10.1. **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. The parties agree that this Agreement may be executed by electronic signature (including via DocuSign) and that a signature (including an electronically scanned signature) delivered by email or other electronic means shall have the same force and effect as delivery of an original signature.

10.2. **Survival.** The representations and warranties set forth in Section 7 of this Agreement shall survive the Closing and the delivery of the deed, subject to the limitations set forth in Section 7.

10.3. **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.

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

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

10.6. **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.

10.7. **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. Each party hereby warrants to the other that in entering into this Agreement, they have not relied upon any representations, warranties, statements, agreements, understandings, or restrictions made by the other party, except for those representations, warranties, agreements, understandings, or restrictions that are expressly set forth in this Agreement. Purchaser agrees that Purchaser has not been induced in the making, execution, or delivery of this Agreement by any representations, statements, warranties, agreements or understandings of Seller, or any person or entity purporting to represent Seller, except as contained in this Agreement.

10.8. **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.

10.9. **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) delivered by messenger or overnight courier service, or mailed (airmail if international) by registered or certified mail (postage prepaid), return receipt requested, addressed to:

IF TO SELLER:

Cullinan Properties, LTD
c/o SVP Investments
Attn: Josh Williams
420 N. Main Street
East Peoria, IL 61611

Copy to:

Timm & Garfinkel, LLC
Attn: Tom Reidenbach
770 Lake Cook Road, Suite 150
Deerfield, IL 60015

IF TO PURCHASER:

City of East Peoria
Attn: Mayor John Kahl
401 W. Washington Street
East Peoria, IL 61611

Copy to:

Miller Hall & Triggs
Attn: Kathleen Carter
416 Main St., Suite 1125
Peoria, IL 61602

or to such other address as any party may designate by notice complying with the terms of this Section. Each such notice shall be deemed delivered (a) on the date delivered if by personal delivery; (b) on the date of delivery or refusal of delivery if by nationally recognized overnight courier (such as FedEx or UPS); 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.

10.10. **Intentionally Omitted.**

10.11. **Assignment.** This Agreement may not be assigned by Purchaser or Seller without the prior written consent of the other party.

10.12. **Litigation; Jury Trial Waiver.** Any litigation arising from or relating to this Agreement shall take place solely in the state courts of the County in which the Property is located, and both parties stipulate and submit themselves to the jurisdiction of such courts as the exclusive forum and venue for such litigation. BOTH PARTIES INTENTIONALLY AND VOLUNTARILY WAIVE ANY AND ALL RIGHTS TO A TRIAL BY JURY IN ANY LITIGATION ARISING FROM OR RELATING TO THIS

AGREEMENT, AND STIPULATE THAT ANY SUCH LITIGATION SHALL PROCEED ON A NON-JURY BASIS ONLY.

10.13. **Limitation of Liability.** No past, present or future partner, manager, member, director, officer, shareholder, employee, advisor, affiliate or agent of or in Seller or any affiliate of Seller will have any personal liability, directly or indirectly, under or in connection with this Agreement or any other agreement or instrument made or entered into under or in connection with this Agreement, and Buyer, and its successors and permitted assigns, hereby waives any and all such personal liability. NOTWITHSTANDING ANY PROVISION TO THE CONTRARY, SELLER WILL NOT BE LIABLE TO BUYER FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, COLLATERAL, EXEMPLARY OR PUNITIVE DAMAGES, OR ANY DAMAGES FOR LOST PROFITS IN THE EVENT OF ANY DEFAULT UNDER OR RELATED TO THIS AGREEMENT OR ANY OTHER AGREEMENT OR INSTRUMENT EXECUTED OR DELIVERED IN CONNECTION HERewith OR THE TRANSACTIONS RELATED HERETO OR THERETO, REGARDLESS OF THE FORM OF THE ACTION OR THEORY OF RECOVERY EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

10.14. **Closing Date.** In the event that the Closing Date or any other deadline date described in this Agreement falls on a weekend or a holiday in the State in which the Property is located, the Closing Date or other deadline date shall be deemed to be the next business day.

10.15. **Interpretation.** The parties agree that this Agreement is the product of negotiations between the parties, that each party is equally responsible for the final drafting of this Agreement, and that this Agreement will not be construed or interpreted against either party as drafter thereof.

10.16. **Attorney Fees.** In any litigation between the parties related to or arising from this Agreement, the prevailing party will be entitled to recover from the other party all reasonable fees, costs and expenses, including without limitation attorney fees and expenses, that the prevailing party incurs arising from or related to such proceeding as fixed by the court in such proceeding, in addition to any other relief which such party may be entitled.

10. As Is. Except for the representations and warranties set forth in Section 7 of this Agreement, Purchaser acknowledges and agrees that it is purchasing the Property in its "AS-IS" condition and "WITH ALL FAULTS" basis, as of the Closing. PURCHASER IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, EXCEPT AS EXPRESSLY SET FORTH IN SECTION 7 OF THIS AGREEMENT, FROM SELLER, ANY SELLER RELATED PARTIES, OR THEIR AGENTS OR BROKERS, OR ANY OTHER PERSON ACTING OR PURPORTING TO ACT ON BEHALF OF SELLER, AS TO ANY MATTERS CONCERNING THE PROPERTY. PURCHASER MAKES THE FOLLOWING AGREEMENTS AND ACKNOWLEDGMENTS: (i) THAT PURCHASER IS RESPONSIBLE FOR MAKING AND HAS BEEN GRANTED THE OPPORTUNITY TO MAKE ALL INVESTIGATIONS (ABOVE GROUND AND BELOW GROUND) DEEMED NECESSARY TO DETERMINE WHETHER THE PROPERTY (A) CONTAINS ANY HAZARDOUS MATERIALS, (B) CONTAINS WETLANDS OR IS SUBJECT TO ADVERSE CONDITIONS, (C) CONTAINS ADEQUATE SOIL CONDITIONS, (D) IS IN SATISFACTORY CONDITION, AND (E) IS SUITABLE FOR PURCHASER'S INTENDED USE; (ii) THAT PURCHASER WAIVES AND RELEASES ANY RIGHT TO BRING ANY CLAIM AGAINST SELLER OF ANY NATURE WHATSOEVER WITH REGARD TO THE CONDITION OF THE PROPERTY, AND (iii) PURCHASER ASSUMES ALL RESPONSIBILITY FOR ANY DAMAGES CAUSED BY THE CONDITIONS OF THE PROPERTY UPON TRANSFER OF TITLE. IF THE CLOSING OCCURS, (I) PURCHASER AND ITS SUCCESSORS AND ASSIGNS HAVE, AND WILL BE DEEMED TO HAVE, AGREED TO ASSUME ALL RISKS AND LIABILITIES WITH RESPECT TO THE PRESENCE OF TOXIC OR HAZARDOUS SUBSTANCES, MATERIALS OR WASTES OR OTHER ACTUAL OR POTENTIAL ENVIRONMENTAL CONTAMINANTS ON, WITHIN, UNDER OR ABOUT THE PROPERTY, WHETHER KNOWN OR UNKNOWN, APPARENT, NON-APPARENT OR LATENT, AND WHETHER EXISTING PRIOR TO, AT OR SUBSEQUENT TO, TRANSFER OF THE PROPERTY TO PURCHASER, AND (II) PURCHASER AND ITS SUCCESSORS AND ASSIGNS WILL BE DEEMED TO HAVE WAIVED, RELINQUISHED AND RELEASED SELLER (AND SELLER'S OFFICERS, DIRECTORS, MANAGERS, MEMBERS, PARTNERS, SHAREHOLDERS,

EMPLOYEES, ADVISORS AND AGENTS) FROM AND AGAINST ANY AND ALL PAST, PRESENT AND FUTURE CLAIMS, DEMANDS, CAUSES OF ACTION, LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES AND COURT COSTS) OF ANY AND EVERY KIND OR CHARACTER, KNOWN OR UNKNOWN, RELATED TO OR ARISING FROM THE PROPERTY, INCLUDING, WITHOUT LIMITATION, RELATING TO THE PRESENCE OF TOXIC OR HAZARDOUS SUBSTANCES, MATERIALS OR WASTES OR OTHER ACTUAL OR POTENTIAL ENVIRONMENTAL CONTAMINANTS ON, WITHIN, UNDER OR ABOUT THE PROPERTY, WHETHER KNOWN OR UNKNOWN, APPARENT, NON-APPARENT OR LATENT, AND WHETHER EXISTING PRIOR TO, AT OR SUBSEQUENT TO, TRANSFER OF THE PROPERTY TO PURCHASER, AND/OR BY REASON OF OR ARISING OUT OF ANY LATENT OR PATENT DEFECTS OR PHYSICAL OR ENVIRONMENTAL CONDITIONS, VIOLATIONS OF LAWS, ORDINANCES, CODES OR REGULATIONS, OR OTHER GOVERNMENTAL REQUIREMENTS, OR ANY AND ALL OTHER ACTS, OMISSIONS, EVENTS, CIRCUMSTANCES OR MATTERS WITH RESPECT TO THE PROPERTY. THIS SECTION 10 SHALL SURVIVE CLOSING.

[SIGNATURES ON FOLLOWING PAGE]

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

SELLER:

Cullinan Companies, LLC, an Illinois limited liability company

By: _____

Name: _____

Its: _____

PURCHASER:

City of East Peoria, an Illinois Municipal Corporation.

By: _____
John Kahl, Mayor

Attest: _____
Morgan Cadwalader, City Clerk

EXHIBIT "C"

FORM OF SPECIAL WARRANTY DEED

This document prepared by:

Thomas R. Reidenbach
Timm & Garfinkel, LLC
770 Lake Cook Road, Suite 150
Deerfield, Illinois 60015

After recording return to:

SPECIAL WARRANTY DEED

This Indenture, made as of the ____ day of _____, 2023, between _____, a _____ limited liability company ("Grantor") and _____, a _____ **limited liability company** ("Grantee"), as grantee, having a mailing address at _____,

WITNESSETH, that Grantor, for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration in hand paid by Grantee, the receipt of which is hereby acknowledged pursuant to authority given by Grantor, by these presents does REMISE, RELEASE, ALIENATE AND CONVEY to Grantee, FOREVER, all interest in the following described real estate, situated in the County of ____ and State of Illinois, known and described as follows (hereinafter referred to as the "Subject Property") to wit:

[See legal description attached as Exhibit "A"]

Together with all and singular the hereditaments and appurtenances belonging there, or in any way appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, claim or demand whatsoever, of Grantor, either at law or in equity, of, in and to the Subject Property, with the hereditaments and appurtenances:

This Deed and conveyance are made and accepted subject to all (i) general real estate taxes and installments of special assessments not yet due and owing and all subsequent taxes and assessments; (ii) covenants, conditions, easements, reservations, restrictions and encumbrances apparent or of record and applicable governmental laws, ordinances, codes and regulations, including without limitation zoning ordinances and building code rules and regulations; (iii) all roads and highways; and (iv) such other matters as are otherwise acceptable to Purchaser (collectively, the "Permitted Exceptions").

Grantor warrants to Grantee that it shall warrant title against all persons or entities lawfully claiming by, through or under Grantor, but not otherwise, subject, however, to the Permitted Exceptions. Grantor hereby expressly limits the warranties and covenants of this deed to those expressly set forth herein, and disclaims and excludes all warranties and covenants that are not expressly set forth herein, including without

limitation, any that may arise by common law or statute.

TO HAVE AND TO HOLD the Subject Property, with the appurtenances, unto Grantee, its successors and assigns, forever, subject to the Permitted Exceptions.

GRANTOR:

By: _____
Printed Name: _____
Title: Manager

MAIL FUTURE TAX BILLS TO:

STATE OF ILLINOIS)

COUNTY OF _____) SS:
_____)

I, _____, a notary public in and for said County in the State aforesaid, DO HEREBY CERTIFY THAT _____, Manager of _____, a _____ limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing **SPECIAL WARRANTY DEED**, appeared before me this day in person and acknowledged that he signed and delivered the said document on behalf of the limited liability company and as his free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and seal, this ____ day of _____, _____.

NOTARY PUBLIC

**EXHIBIT "A" TO SPECIAL WARRANTY DEED
LEGAL DESCRIPTION OF PROPERTY**