



Doc#: 1135331099 Fee: \$246.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 12/19/2011 04:11 PM Pg: 1 of 106

This agreement was prepared by and after recording return to  
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Chicago, IL 60602

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**Viceroy Apartments Redevelopment Agreement**

This Viceroy Apartments Redevelopment Agreement (this "**Agreement**") is made as of this 19th day of December, 2011, by and between the City of Chicago, an Illinois municipal corporation (the "**City**"), through its Department of Housing and Economic Development ("**HED**"), Viceroy Hotel Limited Partnership, an Illinois limited partnership ("**Viceroy**"), and Heartland Housing, Inc., an Illinois not-for-profit corporation ("**Heartland**") and collectively with Viceroy, the "**Developer**").

**RECITALS**

**A. Constitutional Authority:** As a home rule unit of government under Section 6(a), Article VII of the 1970 Constitution of the State of Illinois (the "**State**"), the City has the power to regulate for the protection of the public health, safety, morals and welfare of its inhabitants, and pursuant thereto, has the power to encourage private development in order to enhance the local tax base, create employment opportunities and to enter into contractual agreements with private parties in order to achieve these goals.

**B. Statutory Authority:** The City is authorized under the provisions of the **Tax Increment Allocation Redevelopment Act**, 65 ILCS 5/11-74.4-1 et seq., as amended from time to time (the "**Act**"), to finance projects that eradicate blighted conditions and conservation area factors through the use of tax increment allocation financing for redevelopment projects.

**C. City Council Authority:** To induce redevelopment pursuant to the Act, the City Council of the City (the "**City Council**") adopted the following ordinances on February 16, 2000: (1) "Approval of Tax Increment Redevelopment Plan for Central West Redevelopment Project Area;" (2)

**DONE AT CUSTOMER'S REQUEST**

"Designation of Central West Redevelopment Area as Tax Increment Financing District;" and (3) "Adoption of Tax Increment Allocation Financing for Central West Redevelopment Project Area" (the "TIF Adoption Ordinance"), and adopted amendments thereto on March 12, 2008 (collectively "Amendment Number 1") and on September 8, 2011 ("Amendment Number 2" and, as so amended, all such ordinances collectively are referred to herein as the "TIF Ordinances"). The redevelopment project area referred to above as amended by Amendment Number 1 and Amendment Number 2 (collectively, the "**Redevelopment Area**") is legally described in **Exhibit A** hereto.

**D. The Project:** Heartland is acquiring via a bargain sale donation from the City (the "Acquisition") on the Closing Date (as defined hereinafter) certain property generally located at 28 North Ogden Avenue and 1517-1521 West Warren Boulevard within the Redevelopment Area as legally described on **Exhibit B** hereto (the "**Property**"). Heartland will convey such Property and existing improvements to Viceroy immediately following the City's conveyance of the Property to Heartland, and, within the time frames set forth in Section 3.01 hereof, the Developer shall commence and complete the following activities: rehabilitation of the six-story elevator building formerly known as the Viceroy Hotel (the "**Facility**") located on the Property into 89 affordable studio rental units (the "**Units**") to serve individuals with incomes at or below 60% of Area Median Income ("**AMI**") and related common areas and surface parking. The Facility shall have a partial green reflective roof membrane, geo-thermal heating and cooling, solar thermal hot water, Energy Star appliances, low VOC interior paints, environmentally sensitive flooring and high efficiency and insulated windows. Permeable pavers shall be used for the surface parking lot, loading area and outdoor café patio, and rain barrels shall be used to capture storm water runoff. A community garden shall also be constructed on the Property. The following standard features will be offered in the Facility at no additional fee or charge to the Unit tenants: individually controlled heating and cooling in each Unit; kitchens in each Unit, internet/ cable wiring; operable windows; and intercom system. The Facility will also include approximately 2,000 square feet of commercial space on the first floor (the "**Commercial Space**"). Historic work shall include masonry façade repair, in accordance with plans approved by HED's Historic Preservation Division ("Landmarks") and in accordance with the United States Secretary of the Interior's Standards for Historic Preservation in order for the Facility to maintain its status on the National Register of Historic Places. The Facility and related improvements described herein (including but not limited to those TIF-Funded Improvements as defined below and set forth on **Exhibit C**) are collectively referred to herein as the "**Project**." The completion of the Project would not reasonably be anticipated without the financing contemplated in this Agreement.

**E. Redevelopment Plan:** The Project is located in the Redevelopment Area and will be carried out in accordance with this Agreement and the City of Chicago Central West Tax Increment Financing Redevelopment Plan (the "**Redevelopment Plan**") attached hereto as **Exhibit D**.

**F. City Financing:** The City agrees to use, in the amounts set forth in **Section 4.03(a)** hereof, Available Incremental Taxes (as defined below), to pay for or reimburse the Developer for the costs of TIF-Funded Improvements pursuant to the terms and conditions of this Agreement. The City, as of the Closing Date, shall allocate and appropriate the amounts set forth in **Section 4.03(a)** for payment of the Redevelopment Project Costs of the Project.

**G. Prior TIF Financing:** Pursuant to an ordinance adopted by the City Council on July 21, 2004, the City entered into a redevelopment agreement dated as of December 27, 2004, with WHP Tower, LLC, an Illinois limited liability company, and WHP Tower Rental, LLC, an Illinois limited liability company, (collectively the "WHP Tower Developer"), for the issuance of a City Note in aggregate principal amount not to exceed \$2,611,649 secured by the pledge of certain Incremental

Taxes for the payment of redevelopment project costs in connection with the Horner/Westhaven Park Phase IIA2 Midrise Transformation Project (the "Westhaven Park Midrise Obligation").

Pursuant to an ordinance adopted by the City Council on June 29, 2005, the City entered into a redevelopment agreement dated as of December 1, 2005, with WHP Homes, LLC, an Illinois limited liability company ("WHP Homes"), for the issuance of a City Note in aggregate principal amount not to exceed \$2,501,821 secured by the pledge of certain Incremental Taxes for the payment of redevelopment project costs in connection with the Horner/Westhaven Park Phase IIA1 Lowrise Transformation Project (the "Horner Low-Rise Obligation").

Pursuant to an ordinance adopted by the City Council on November 30, 2005, the City entered into a redevelopment agreement dated as of March 21, 2006, with 950 W. Monroe Development, LLC, an Illinois limited liability company, ("950 W. Monroe Development"), for the issuance of a City Note in aggregate principal amount not to exceed \$2,890,000 secured by the pledge of certain Incremental Taxes for the payment of redevelopment project costs in connection with the 950 W. Monroe Development redevelopment project (the "950 W. Monroe Development LLC Obligation").

Pursuant to an ordinance adopted by the City Council on September 13, 2006, the City entered into an agreement dated October 24, 2006 with SomerCor 504, Inc., an Illinois not-for-profit corporation ("SomerCor"), whereby the City pledged certain Incremental Taxes for the payment of redevelopment project costs in connection with the Small Business Improvement Fund in an amount not to exceed \$500,000 (the "SomerCor Obligation").

Pursuant to a bond ordinance adopted by the City Council on December 13, 2006 the City issued \$30,765,000 in aggregate principal amount of General Obligation Bonds (Modern Schools Across Chicago Project), Series 2007C, dated as of January 1, 2007, for which ad valorem taxes levied for repayment will be abated with, along with certain incremental taxes from various other redevelopment project areas, including the Incremental Taxes (the "Modern Schools Bonds").

Pursuant to an ordinance adopted by the City Council on December 12, 2007, the City entered into a TIF Neighborhood Improvement Program agreement dated as of September 4, 2008, with Neighborhood Housing Services of Chicago, Inc., an Illinois not-for-profit corporation ("NHS"), whereby the City pledged certain Incremental Taxes for the payment of redevelopment project costs in connection with the Neighborhood Improvement Program in an amount not to exceed \$1,000,000 (the "NHS of Chicago Obligation").

Pursuant to an ordinance adopted by the City Council on July 9, 2008, the City entered into a redevelopment agreement dated as of February 9, 2009, with The Women's Treatment Center, an Illinois not-for-profit corporation ("Women's Treatment Center"), whereby the City pledged certain Incremental Taxes for the payment of redevelopment project costs in connection with the Women's Treatment Center redevelopment project in an amount not to exceed \$1,000,000 (the "Women's Treatment Center Obligation").

Pursuant to an ordinance adopted by the City Council on July 9, 2008, the City entered into a redevelopment agreement dated as of May 21, 2009, with Rush University Medical Center, an Illinois not-for-profit corporation ("Rush Medical Center"), for the issuance of City Notes to Rush Medical Center in the aggregate principal amount not to exceed \$75,000,000 secured by the pledge of certain Incremental Taxes for the payment of redevelopment project costs in connection with the Rush University project (the "Rush Medical Center Obligation").

The Westhaven Park Midrise Obligation, the Horner Low-Rise Obligation, the 950 W. Monroe Development LLC Obligation, the SomerCor Obligation, the Modern Schools Bonds, the NHS of Chicago Obligation, the Women's Treatment Center Obligation and the Rush Medical Center Obligation are collectively referred to herein as the Prior TIF Financings. The Developer acknowledges that the Prior TIF Financings are prior liens on the Central West TIF Fund and that the Developer has no claim on any monies except for monies which are Available Incremental Taxes.

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

## SECTION 1. RECITALS

The foregoing recitals are hereby incorporated into this agreement by reference.

## SECTION 2. DEFINITIONS

For purposes of this Agreement, in addition to the terms defined in the foregoing recitals, the following terms shall have the meanings set forth below:

**"Act"** shall have the meaning set forth in the Recitals hereof.

**"Affiliate"** shall mean any person or entity directly or indirectly controlling, controlled by or under common control with the Developer.

**"AMI"** shall have the meaning set forth in the Recitals hereof.

**"Annual Report"** shall mean the report described in **Section 8.21** hereof.

**"Available Incremental Taxes"** shall mean the Incremental Taxes then on deposit in the Central West TIF Fund after reduction of amounts to reflect the Prior TIF Obligations and the City Fee.

**"Central West TIF Fund"** shall mean the special tax allocation fund created by the City in connection with the Redevelopment Area into which the Incremental Taxes will be deposited.

**"Certificate"** shall mean the Certificate of Completion described in **Section 7.01** hereof.

**"Change Order"** shall mean any amendment or modification to the Scope Drawings, Plans and Specifications or the Project Budget as described in **Section 3.03**, **Section 3.04** and **Section 3.05**, respectively.

**"City Council"** shall have the meaning set forth in the Recitals hereof.

**"City Fee"** shall have the meaning set forth for such term in **Section 4.05(c)** hereof.

**"City Funds"** shall mean the funds described in **Section 4.03(b)** hereof.

**"Closing Date"** shall mean December 19<sup>th</sup>, 2011.

**"Commercial Space"** shall have the meaning set forth in the Recitals hereof.

**"Construction Contract"** shall mean that certain contract, substantially in the form attached hereto as **Exhibit E**, to be entered into among Heartland, Viceroy and the General Contractor providing for rehabilitation of the Project.

**"Corporation Counsel"** shall mean the City's Office of Corporation Counsel.

**"Deed"** shall have the meaning set forth in **Section 3.13(b)** hereof.

**"DOE"** shall mean the City's Department of Environment.

**"Donation Tax Credit Agreement"** shall mean that certain donation tax credit regulatory agreement entered into between the City and the Developer on the Closing Date.

**"Employer(s)"** shall have the meaning set forth in **Section 10** hereof.

**"Environmental Laws"** shall mean any and all Laws relating to public health and safety and the environment now or hereafter in force, as amended and hereafter amended, including but not limited to (i) the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601 et seq.); (ii) any so-called "**Superfund**" or "**Superlien**" law; (iii) the Hazardous Materials Transportation Act (49 U.S.C. Section 1801 et seq.); (iv) the Resource Conservation and Recovery Act (42 U.S.C. Section 6901 et seq.); (v) the Clean Air Act (42 U.S.C. Section 7401 et seq.); (vi) the Clean Water Act (33 U.S.C. Section 1251 et seq.); (vii) the Toxic Substances Control Act (15 U.S.C. Section 2601 et seq.); (viii) the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. Section 136 et seq.); (ix) the Illinois Environmental Protection Act (415 ILCS 5/1 et seq.); and (x) the Municipal Code of Chicago, including but not limited to the Municipal Code of Chicago, Sections 7-28-390, 7-28-440, 11-4-1410, 11-4-1420, 11-4-1450, 11-4-1500, 11-4-1530, 11-4-1550, or 11-4-1560.

**"Environmental Remediation"** has the meaning set forth in **Section 11.03**.

**"Equity"** shall mean funds of the Developer (other than funds derived from Lender Financing) irrevocably available for the Project, in the amount set forth in **Section 4.01** hereof, which amount may be increased pursuant to **Section 4.06** (Cost Overruns) or **Section 4.03(b)**.

**"Escrow"** shall mean the construction escrow established pursuant to the Escrow Agreement.

**"Escrow Agreement"** shall mean, with respect to each construction phase undertaken, any construction escrow agreement to be entered into by the Title Company (or an affiliate of, or an entity as an agent of, the Title Company), the Developer, the Lender(s) and the City (and acknowledged by the General Contractor), substantially in the form of **Exhibit L** attached hereto, which shall govern the funding of the Equity, the Lender Financing, if any, and the City Funds.

**"Event of Default"** shall have the meaning set forth in **Section 15** hereof.

**“Facility”** shall have the meaning set forth in the Recitals hereof.

**“Final NFR Letter”** shall mean a final comprehensive “no further remediation” letter from the IEPA approving the use of the Property for the rehabilitation, development and operation of the Project.

**“Financial Statements”** shall mean complete audited financial statements of the Developer prepared by a certified public accountant in accordance with generally accepted accounting principles and practices consistently applied throughout the appropriate periods.

**“General Contractor”** shall mean the general contractor(s) hired by the Developer pursuant to **Section 6.01**.

**“Hazardous Materials”** shall mean any toxic substance, hazardous substance, hazardous material, hazardous chemical or hazardous, toxic or dangerous waste defined or qualifying as such in (or for the purposes of) any Environmental Law, or any pollutant or contaminant, and shall include, but not be limited to, petroleum (including crude oil), any radioactive material or by-product material, polychlorinated biphenyls, lead-bearing substance and asbestos in any form or condition.

**“Horner Low-Rise Obligation”** shall have the meaning set forth in the Recitals hereof.

**“IEPA”** shall mean the Illinois Environmental Protection Agency.

**“Illinois Affordable Housing Tax Credit Act”** shall mean act enacted at 20 ILCS § 3805/7.28 and 35 ILCS §5/214.6.

**“Incremental Taxes”** shall mean such ad valorem taxes which, pursuant to the TIF Adoption Ordinance and Section 5/11-74.4-8(b) of the Act, are allocated to and when collected are paid to the Treasurer of the City of Chicago for deposit by the Treasurer into the Central West TIF Fund established to pay Redevelopment Project Costs and obligations incurred in the payment thereof.

**“Landmarks”** shall have the meaning set forth in the Recitals hereof.

**“Laws”** shall mean all applicable federal, state, local or other laws (including common law), statutes, codes, ordinances, rules, regulations or other requirements, now or hereafter in effect, as amended or supplemented from time to time, and any applicable judicial or administrative interpretation thereof, including any applicable judicial or administrative orders, consent decrees or judgments, including, without limitation, Sections 7-28 and 11-4 of the Municipal Code of Chicago relating to waste disposal.

**“Lender”** shall mean any provider of Lender Financing.

**“Lender Financing”** shall mean funds, if any, borrowed by either one of the Developer from any lender to fund costs of, and available to pay for, the Project.

**“Losses”** shall mean any and all debts, liens, claims, actions, causes of action, suits, demands, complaints, legal or administrative proceedings, losses, damages, assessments, obligations, liabilities, executions, judgments, amounts paid in settlement, arbitration or mediation awards, interest, fines, penalties, costs, expenses, and disbursements of any kind or nature

whatsoever (including, without limitation, Remediation Costs, reasonable attorneys' fees and expenses, consultants' fees and expenses and court costs).

**MBE(s)** shall mean a business identified in the Directory of Certified Minority Business Enterprises published by the City's Department of Procurement Services, or otherwise certified by the City's Department of Procurement Services as a minority-owned business enterprise, related to the Procurement Program or the Construction Program, as applicable.

**MBE/WBE Budget** shall mean the budget attached hereto as **Exhibit G-2**, as described in **Section 10.03**.

**Modern Schools Bonds** shall have the meaning set forth in the Recitals hereof.

**Municipal Code** shall mean the Municipal Code of the City of Chicago.

**NHS of Chicago Obligation** shall have the meaning set forth in the Recitals hereof.

**950 W. Monroe Development LLC Obligation** shall have the meaning set forth in the Recitals hereof.

**Non-Governmental Charges** shall mean all non-governmental charges, liens, claims, or encumbrances relating to the Developer, the Property or the Project.

**Permitted Liens** shall mean those liens and encumbrances against the Property and/or the Project set forth on **Exhibit F** hereto.

**Plans and Specifications** shall mean final construction documents containing a site plan and working drawings and specifications for the Project, as submitted to the City as the basis for obtaining building permits for the Project.

**Prior Expenditure(s)** shall have the meaning set forth in **Section 4.05(a)** hereof.

**Prior TIF Financing** shall have the meaning set forth in the Recitals hereof.

**Project** shall have the meaning set forth in the Recitals hereof.

**Project Budget** shall mean the budget attached hereto as **Exhibit G-1**, showing the total cost of the Project by line item, furnished by the Developer to HED, in accordance with **Section 3.03** hereof.

**Property** shall have the meaning set forth in the Recitals hereof.

**Purchase Price** shall have the meaning set forth in **Section 3.13(a)**.

**RACR** shall mean a Remedial Action Completion Report submitted to the IEPA in connection with a request for a Final NFR Letter.

**RAP** shall mean the Remedial Action Plan submitted by the Developer to the IEPA as amended or supplemented from time to time.

**"ROR"** means the Remediation Objectives Report submitted by the Developer to the IEPA as amended or supplemented from time to time.

**"Redevelopment Area"** shall have the meaning set forth in the Recitals hereof.

**"Redevelopment Plan"** shall have the meaning set forth in the Recitals hereof.

**"Redevelopment Project Costs"** shall mean redevelopment project costs as defined in Section 5/11-74.4-3(q) of the Act that are included in the budget set forth in the Redevelopment Plan or otherwise referenced in the Redevelopment Plan.

**"Released Claims"** shall have the meaning set forth for such term in **Section 11.04** hereof.

**"Remediation Costs"** shall mean governmental or regulatory body response costs, natural resource damages, property damages, and the costs of any investigation, cleanup, monitoring, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision or other third party in connection or associated with the Property or any improvements, facilities or operations located or formerly located thereon.

**"Reporting Period"** shall have the meaning as set forth in **Section 8.21** hereof.

**"Requisition Form"** shall mean the document, in the form attached hereto as **Exhibit H**, to be delivered by the Developer to HED pursuant to **Section 4.03** of this Agreement.

**"Rush Medical Center Obligation"** shall have the meaning set forth in the Recitals hereof.

**"Scope Drawings"** shall mean preliminary construction documents containing a site plan and preliminary drawings and specifications for the Project.

**"SomerCor"** shall have the meaning set forth in the Recitals hereof.

**"SRP"** means the IEPA's Site Remediation Program as set forth in Title XVII of the Illinois Environmental Protection Act, 415 ILCS 5/58 et seq., and the regulations promulgated thereunder.

**"State"** shall mean the State of Illinois.

**"Surplus"** shall have the meaning set forth in **Section 4.03(c)(iii)**.

**"Survey"** shall mean a Class A plat of survey in the most recently revised form of ALTA/ACSM land title survey of the Property dated within 45 days prior to the Closing Date, acceptable in form and content to the City and the Title Company, prepared by a surveyor registered in the State of Illinois, certified to the City and the Title Company, and indicating whether the Property is in a flood hazard area as identified by the United States Federal Emergency Management Agency (and updates thereof to reflect improvements to the Property in connection with the rehabilitation of the Facility and related improvements as required by the City or Lender).

**"Term of the Agreement"** shall mean the period of time commencing on the Closing Date and ending on December 31, 2024, the date on which the Redevelopment Area is no longer in effect.



**"TIF Adoption Ordinance"** shall have the meaning set forth in the Recitals hereof.

**"TIF-Funded Improvements"** shall mean those improvements of the Project which (i) qualify as Redevelopment Project Costs, (ii) are eligible costs under the Redevelopment Plan and (iii) the City has agreed to reimburse and/or pay for out of the City Funds, subject to the terms of this Agreement. **Exhibit C** lists the TIF-Funded Improvements for the Project.

**"TIF Ordinances"** shall have the meaning set forth in the Recitals hereof.

**"Title Company"** shall mean Greater Illinois Title Company, Inc., an Illinois corporation.

**"Title Policy"** shall mean a title insurance policy, including all endorsements as shall be required by Corporation Counsel, including but not limited to, an owner's comprehensive endorsement and satisfactory endorsements regarding zoning (3.1 with parking if applicable), contiguity (as applicable), location, access and survey, in the most recently revised ALTA or equivalent form, showing Viceroy as the insured, noting the recording of this Agreement as an encumbrance against the Property, and a subordination agreement in favor of the City with respect to previously recorded liens against the Property related to Lender Financing, if any, issued by the Title Company.

**"Units"** shall have the meaning set forth in the Recitals hereof.

**"WARN Act"** shall mean the Worker Adjustment and Retraining Notification Act (29 U.S.C. Section 2101 et seq.).

**"WBE(s)"** shall mean a business identified in the Directory of Certified Women Business Enterprises published by the City's Department of Procurement Services, or otherwise certified by the City's Department of Procurement Services as a women-owned business enterprise, related to the Procurement Program or the Construction Program, as applicable.

**"Westhaven Park Midrise Obligation"** shall have the meaning set forth in the Recitals hereof.

**"Women's Treatment Center Obligation"** shall have the meaning set forth in the Recitals hereof.

### SECTION 3. THE PROJECT

**3.01 The Project.** With respect to the Facility, the Developer shall, pursuant to the Plans and Specifications and subject to the provisions of **Section 18.17** hereof: (i) commence construction no later than December 31, 2011; and (ii) complete construction no later than June 30, 2013.

**3.02 Scope Drawings and Plans and Specifications.** The Developer has delivered the Scope Drawings and Plans and Specifications to HED and Landmarks (with respect to all exterior modifications to the Facility), and HED and Landmarks, respectively, have approved same. After such initial approval, subsequent proposed changes to the Scope Drawings or Plans and Specifications shall be submitted to HED (and also to Landmarks for all exterior modifications to the Facility) as a Change Order pursuant to **Section 3.04** hereof. The Scope Drawings and Plans and

Specifications shall at all times conform to the Redevelopment Plan as in effect on the date of this Agreement and all applicable Laws. The Developer shall submit all necessary documents to the City's Building Department, Department of Transportation and such other City departments or governmental authorities as may be necessary to acquire building permits and other required approvals for the Project.

**3.03 Project Budget.** The Developer has furnished to HED, and HED has approved, a Project Budget showing total costs for the Project in an amount not less than Twenty-Two Million Two Hundred Ninety-Six Thousand Seven Hundred Twenty Dollars and 00/100 (\$22,296,720). The Developer hereby certifies to the City that (a) the Lender Financing and Equity described in **Section 4.01** hereof, shall be sufficient to complete the Project; and (b) the Project Budget is true, correct and complete in all material respects. The Developer shall promptly deliver to HED certified copies of any Change Orders with respect to the Project Budget for approval pursuant to **Section 3.04** hereof.

**3.04 Change Orders.** All Change Orders (and documentation substantiating the need and identifying the source of funding therefor) that individually or in the aggregate (a) reduce the square footage of the Facility, (b) result in a delay in completing the Project in excess of 90 days, (c) changes the basic use of the Project, (d) increase or decrease any line item in the Project Budget by more than \$25,000, (e) change the use of the Project to a use other than multi-family affordable rental units, or (f) change the allocation between the Commercial Space and non-Commercial Space by more than 10% must be submitted by the Developer to HED for HED's prior written approval. The Developer shall not authorize or permit the performance of any work relating to any Change Order described in (a), (b), (c), (d), (e) or (f) above, or the furnishing of materials in connection therewith, prior to the receipt by the Developer of HED's (and, for any exterior modifications, Landmark's) written approval. The Construction Contract, and each contract between the General Contractor and any subcontractor, shall contain a provision to this effect. An approved Change Order shall not be deemed to imply any obligation on the part of the City to increase the amount of City Funds which the City has pledged pursuant to this Agreement or provide any other additional assistance to the Developer.

**3.05 HED Approval.** Any approval granted by HED of the Scope Drawings, Plans and Specifications and the Change Orders is for the purposes of this Agreement only and does not affect or constitute any approval required by any other City department or pursuant to any City ordinance, code, regulation or any other governmental approval, nor does any approval by HED pursuant to this Agreement constitute approval of the quality, structural soundness or safety of the Property or the Project.

**3.06 Other Approvals.** Any HED approval under this Agreement shall have no effect upon, nor shall it operate as a waiver of, the Developer's obligations to comply with the provisions of **Section 5.03** (Other Governmental Approvals) hereof. The Developer shall not commence rehabilitation of the Project until the Developer has obtained all necessary permits and approvals (including but not limited to HED's approval of the Scope Drawings and Plans and Specifications) and proof of the General Contractor's and each subcontractor's bonding as required hereunder.

**3.07 Progress Reports and Survey Updates.** The Developer shall provide HED with written monthly progress reports detailing the status of the Project, including a revised completion date, if necessary (with any change in completion date reflecting a delay in excess of 90 days being considered a Change Order, requiring HED's written approval pursuant to **Section 3.04**). The

Developer shall provide three (3) copies of an updated Survey to HED upon the request of HED or any Lender, reflecting improvements made to the Property.

**3.08 Inspecting Agent or Architect.** An independent agent or an architect with Landon Bone Baker Architects, Ltd. shall be the inspecting agent or architect, at the Developer's expense, for the Project. The inspecting agent or architect shall perform periodic inspections with respect to the Project, providing certifications with respect thereto to HED, prior to requests for disbursement for costs related to the Project. With the written consent of HED, the inspecting architect may be the inspecting architect engaged by or on behalf of any Lender, provided that said architect is an independent architect licensed by the State of Illinois, or an inspecting agent of HED.

**3.09 Barricades.** Prior to commencing any rehabilitation requiring barricades, the Developer shall install a construction barricade of a type and appearance satisfactory to the City and constructed in compliance with all applicable federal, state or City laws, ordinances and regulations. HED retains the right to approve the maintenance, appearance, color scheme, painting, nature, type, content and design of all barricades.

**3.10 Signs and Public Relations.** The Developer shall erect a sign of size and style approved by the City in a conspicuous location on the Property during the Project, indicating that financing has been provided by the City. The City reserves the right to include the name, photograph, artistic rendering of the Project and other pertinent information regarding the Developer, the Property and the Project in the City's promotional literature and communications.

**3.11 Utility Connections.** The Developer may connect all on-site water, sanitary, storm and sewer lines constructed on the Property to City utility lines existing on or near the perimeter of the Property, provided the Developer first complies with all City requirements governing such connections, including the payment of customary fees and costs related thereto.

**3.12 Permit Fees.** In connection with the Project and subject to waivers authorized by City Council, the Developer shall be obligated to pay only those building, permit, engineering, tap on and inspection fees that are assessed on a uniform basis throughout the City of Chicago and are of general applicability to other property within the City of Chicago.

**3.13 Conveyance of Property.** The following provisions shall govern the City's conveyance of the Property to the Developer:

(a) **Purchase Price.** The City hereby agrees to sell, and Heartland hereby agrees to purchase, upon and subject to the terms and conditions of this Agreement and the Donation Tax Credit Agreement, the Property, for the land write down amount of One and no/100 Dollar (\$1.00) (the "Purchase Price"), which is to be paid to the City on the Closing Date in cash or by certified or cashier's check or wire transfer of immediately available funds. Developer shall pay all escrow fees and other title insurance fees, premiums and closing costs. The Developer acknowledges and agrees that (i) the Purchase Price is based on an appraisal dated December 16, 2011 showing a value of \$2,458,000, which reflects the adjustment to the value of the property resulting from the reasonably expected amount of environmental remediation costs for purposes of compliance with the Illinois Affordable Housing Tax Credit Act and regulations, (ii) the Purchase Price reflects a "Discounted Sale" as defined in 47 Ill. Admin. Code Section 355.306 to the Illinois Affordable Housing Tax Credit Act, and (iii) the City has only agreed to sell the Property to Heartland for the Purchase Price because the Developer has agreed to execute this Agreement and the Donation Tax

Credit Agreement and comply with the respective terms and conditions, including Section 8.19 hereof.

(b) Form of Deed. The City shall convey the Property to Heartland by quitclaim deed (the "Deed"), subject to the terms of this Agreement and, without limiting the quitclaim nature of the deed, the following:

- (i) the Redevelopment Plan;
- (ii) the standard exceptions in an ALTA title insurance policy;
- (iii) all general real estate taxes and any special assessments or other taxes;
- (iv) all easements, encroachments, covenants and restrictions of record and not shown of record;
- (v) such other title defects as may exist; and
- (vi) any and all exceptions caused by the acts of the Developer or its agents.

(c) Title and Survey. The Developer acknowledges that it has obtained title insurance commitments for the Property, showing the City in title to the Property. The Developer shall be solely responsible for and shall pay all costs associated with updating such title commitments (including all search, continuation and later-date fees), and obtaining the Title Policy. The City shall have no obligation to cure title defects; provided, however, if there are exceptions for general real estate tax liens attributable to taxes due and payable prior to the Closing Date with respect to the Property, the City shall submit to the County a tax abatement letter and/or file a motion to vacate a tax sale in the Circuit Court of Cook County, seeking the exemption or waiver of such pre-closing tax liabilities, but shall have no further duties with respect to any such taxes. The Developer shall furnish the City with three (3) copies of the survey at Developer's sole cost and expense.

(d) The Land Closing. The conveyance of the Property shall take place on the Closing Date at the downtown offices of the Title Company or such other place as the parties may mutually agree upon in writing; provided, however, in no event shall the closing of the land sale occur unless the Developer has satisfied all conditions precedent set forth in this Agreement, unless HED, in its sole discretion, waives such conditions. On or before the Closing Date, the City shall deliver to the Title Company the Deed, all necessary state, county and municipal real estate transfer tax declarations, and an ALTA statement. The City will not provide a gap undertaking.

(e) Recording Costs. The Developer shall pay to record the Deed, this Agreement, and any other documents incident to the conveyance of the Property to Heartland.

#### **SECTION 4. FINANCING**

**4.01 Total Project Cost and Sources of Funds**. The cost of the Project is estimated to be \$22,296,720, to be applied in the manner set forth in the Project Budget. Such costs shall be funded from the following sources:

TIF	\$ 3,876,673*
Lender Financing	
US Bank Construction Loan	\$ 6,122,877
Enterprise Construction Loan	\$ 4,000,000
Equity (subject to <b>Sections 4.03(b) and 4.06</b> )	
Low Income Housing Tax Credit Equity	\$ 1,643,111
Historic Tax Credit Equity	\$ 2,679,902
Donation Tax Credit Equity	\$ 1,079,229
Deferred Developer Fee	\$ 224,369
DCEO Energy Efficiency Grant	\$ 182,127
Federal Energy Tax Credit Equity	\$ 30,432
Developer Equity	\$ 2,458,000
<b>ESTIMATED TOTAL</b>	<b>\$22,296,720</b>

\*City Funds reimbursed to Heartland for TIF Eligible Expenses will be loaned to Viceroy in accordance with the terms and conditions of the Viceroy amended and restated limited partnership agreement.

**4.02 Developer Funds.** Equity and/or Lender Financing may be used to pay any Project cost, including but not limited to Redevelopment Project Costs.

**4.03 City Funds.**

(a) Uses of City Funds. City Funds may only be used to pay directly or to reimburse Heartland for costs of TIF-Funded Improvements that constitute Redevelopment Project Costs and shall not be used to pay for TIF-Funded Improvements associated with the Commercial Space. **Exhibit C** sets forth, by line item, the TIF-Funded Improvements for the Project, and the maximum amount of costs that may be reimbursed from City Funds for each line item therein (subject to **Sections 4.03(b) and 4.07(d)**), contingent upon receipt by the City of documentation satisfactory in form and substance to HED evidencing such cost and its eligibility as a Redevelopment Project Cost.

(b) Payment of City Funds.

- i. Subject to the terms and conditions of this Agreement, including but not limited to this **Section 4.03** and **Section 5** hereof, the City hereby agrees to provide City funds in an amount not to exceed Three Million Eight Hundred Seventy-Six Thousand Six Hundred Seventy-Three Dollars and 00/100 (\$3,876,673) (the "City Funds") from Available Incremental Taxes to pay for and/or reimburse Heartland for the costs of the TIF-Funded Improvements in the amounts determined under **Section 4.03(c)**.
- ii. The City's financial commitment to provide Available Incremental Taxes for such purposes is subject to the Prior TIF Financings. The City retains the right to fund other projects within the Redevelopment Area using Available Incremental Taxes so long as such funding would not, based upon the City's projections and uses of Available Incremental Taxes at the time the City agrees to provide such funding, result in the amount of Available Incremental Taxes being insufficient to fund the City's obligations under this Agreement.

- iii. Subject to the terms and conditions of this Agreement, payments of the City Funds shall be made to Heartland in installments (each, an "Installment") in accordance with the terms of the Escrow Agreement and upon Heartland's submission of a draw request (the "Requisition Form") in accordance with **Section 4.03(c)**. Such Installments shall be in the amount set for in **Section 4.03(c)**; provided, however, that the total amount of City Funds expended for TIF-Funded Improvements shall be an amount not to exceed \$3,876,673.
- iv. City Funds derived from Incremental Taxes and available to pay such costs and allocated for such purposes shall be paid in accordance with the terms of this Agreement and the Escrow Agreement only so long as no Event of Default or condition for which the giving of notice or the passage of time, or both, would constitute an Event of Default exists under this Agreement or the Escrow Agreement.

The Developer acknowledges and agrees that the City's obligation to pay any City Funds is contingent upon the conditions set forth in parts (i), (ii), (iii) and (iv) above, as well the Developer's satisfaction of all other applicable terms and conditions of this Agreement, including, without limitation, compliance with the covenants in **Section 8.20**. In the event that such conditions are not fulfilled, the amount of Lender Financing and/or Equity to be contributed by the Developer pursuant to **Section 4.01** hereof shall be increased, as necessary, to complete the Project.

(c) **Payment Amount.** (i) The Installments, to be paid pursuant to a draw request in accordance with the Escrow Agreement and upon submission of a Requisition Form, shall be as follows:

<u>Installment</u>	<u>Payment Trigger</u>	<u>Payment Amount</u>
One	On or before January 20, 2012	Not to Exceed \$500,000
Two	Upon 50% completion	\$1,688,337
Three	Upon 75% completion	\$844,168
Four	Certificate of Completion Issued Pursuant to <b><u>Section 7.01</u></b> herein	\$ 844,168*

\* Installment Four shall be increased to include any amount less than \$500,000 not paid in Installment One.

(ii) Any delay in the construction completion date greater than six (6) months from the date set forth in **Section 3.01(ii)** shall result in the City no longer being obligated to reserve Available Increment in anticipation of paying Installments in accordance with **Section 4.03(c)(i)**.

(iii) To the extent that the actual Project costs are less than the budgeted Project costs as set forth in Project Budget (such amount being a "Surplus"), the City Funds can be reduced or reimbursed to the City (as the case may be) by the amount of the Surplus, if and as provided for in accordance with the terms of the Escrow Agreement.

**4.04 Construction Escrow.** The City, the Developer, the Title Company, the General Contractor and Lenders, if any, shall enter into an Escrow Agreement. All disbursements of City Funds shall be made through the funding of draw requests with respect thereto pursuant to the

Escrow Agreement and this Agreement. In case of any conflict between the terms of this Agreement and the Escrow Agreement with respect to the payment of City Funds hereunder, the terms of this Agreement shall control. The City shall receive copies of any draw requests and related documents submitted to the Title Company for disbursements under the Escrow Agreement and disbursements shall be approved in accordance with **Section 4.07** hereof, and in accordance with the Escrow Agreement.

#### **4.05 Treatment of Prior Expenditures and Subsequent Disbursements**

(a) **Prior Expenditures**. Only those expenditures previously paid or accrued by Heartland with respect to the Project prior to the Closing Date, evidenced by documentation satisfactory to HED and approved by HED as satisfying costs covered in the Project Budget, shall be considered previously contributed Equity or Lender Financing hereunder (the "**Prior Expenditures**"). HED shall have the right, in its sole discretion, to disallow any such expenditure as a Prior Expenditure. **Exhibit I** hereto sets forth the prior expenditures approved by HED as of the date hereof as Prior Expenditures. Prior Expenditures made for items other than TIF-Funded Improvements shall not be paid to Heartland but shall increase the amount of Equity and/or Lender Financing required to be contributed by the Developer pursuant to **Section 4.01** hereof.

(b) **Subsequent Disbursements**. Disbursements of City Funds for expenditures related to TIF-Funded Improvements may be allocated to and charged against the appropriate line only, with transfers of costs and expenses from one line item to another, without the prior written consent of HED, being prohibited, subject to the terms of **Section 3.04**. HED shall not unreasonably withhold its consent to such transfers so long as the Corporation Counsel has advised HED that an expenditure qualifies as an eligible cost under the Act.

(c) **City Fee**. Annually, the City may allocate an amount not to exceed ten percent (10%) of the Incremental Taxes for payment of costs incurred by the City for the administration and monitoring of the Redevelopment Area, including the Project (the "City Fee"). Such fee shall be in addition to and shall not be deducted from or considered a part of the City Funds, and the City shall have the right to receive such funds prior to any payment of City Funds hereunder.

**4.06 Cost Overruns**. If the aggregate cost of the TIF-Funded Improvements exceeds City Funds available pursuant to **Section 4.03** hereof, or if the cost of completing the Project exceeds the Project Budget, the Developer shall be solely responsible for such excess cost, and shall hold the City harmless from any and all costs and expenses of completing the TIF-Funded Improvements in excess of City Funds and of completing the Project.

**4.07 Preconditions of Disbursement**. As a condition to the disbursement of City Funds hereunder, Heartland shall submit, at the time of submission of the Requisition Form in accordance with **Section 4.03(c)**, supporting documentation regarding the applicable expenditures to HED, which shall be satisfactory to HED in its sole discretion. Delivery by Heartland to HED of any request for disbursement of City Funds hereunder shall, in addition to the items therein expressly set forth, constitute a certification by the Developer to the City, as of the date of such request for disbursement, that:

(a) the actual amount paid to the General Contractor and/or subcontractors who have performed work on the Project, and/or their payees is equal to or greater than the total amount of the disbursement request;

(b) all amounts shown as previous payments on the current Requisition Form have been paid to the parties entitled to such payment;

(c) the Developer has approved all work and materials for the current Requisition Form, and such work and materials conform to the Plans and Specifications;

(d) the representations and warranties contained in this Agreement are true and correct and the Developer is in compliance with all covenants contained herein;

(e) the Developer has received no notice and has no knowledge of any liens or claim of lien either filed or threatened against the Property except for the Permitted Liens and/or liens bonded by the Developer or insured by the Title Company; and

(f) no Event of Default or condition or event which, with the giving of notice or passage of time or both, would constitute an Event of Default exists or has occurred.

The City shall have the right, in its discretion, to require the Developer to submit further documentation as the City may require in order to verify that the matters certified to above are true and correct, and any disbursement by the City shall be subject to the City's review and approval of such documentation and its satisfaction that such certifications are true and correct; provided, however, that nothing in this sentence shall be deemed to prevent the City from relying on such certifications by the Developer. In addition, the Developer shall have satisfied all other preconditions of disbursement of City Funds for each disbursement, including but not limited to requirements set forth in, any tax credit regulatory agreements, the TIF Ordinances, this Agreement and/or the Escrow Agreement.

**4.08 Conditional Payment of City Funds.** The City Funds being provided hereunder are being provided to Heartland on a conditional basis, subject to the Developer's compliance with the provisions of this Agreement. The City Funds are subject to being reimbursed if number of Units at the Facility ceases to be utilized as affordable rental housing in accordance with Section 8.19 hereof during the Term of the Agreement. The payment of City Funds is subject to being terminated and/or reimbursed, as provided for in Section 15.

## SECTION 5. CONDITIONS PRECEDENT

The following conditions have been complied with to the City's satisfaction on or prior to the Closing Date:

**5.01 Project Budget.** The Developer has submitted to HED, and HED has approved, a Project Budget in accordance with the provisions of Section 3.03 hereof.

**5.02 Scope Drawings and Plans and Specifications.** The Developer has submitted to HED, and HED has approved, the Scope Drawings and Plans and Specifications accordance with the provisions of Section 3.02 hereof.

**5.03 Other Governmental Approvals.** The Developer has secured all other necessary approvals and permits required by any state, federal, or local statute, ordinance or regulation and has submitted evidence thereof to HED. Such approvals shall include, without limitation, all building permits necessary for the Project.



**5.04 Financing.** The Developer has furnished proof reasonably acceptable to the City that the Developer has Equity and Lender Financing in the amounts set forth in **Section 4.01** hereof to complete the Project and satisfy its obligations under this Agreement. If a portion of such funds consists of Lender Financing, the Developer has furnished proof as of the Closing Date that the proceeds thereof are available to be drawn upon by the Developer as needed and are sufficient (along with other sources set forth in **Section 4.01**) to complete the Project. The Escrow Agreement is attached hereto as **Exhibit L**. Any liens against the Property in existence at the Closing Date and recorded prior to this Agreement have been subordinated to certain encumbrances of the City set forth herein pursuant to a Subordination Agreement, in a form acceptable to the City, executed on or prior to the Closing Date, which is to be recorded, at the expense of the Developer, with the Office of the Recorder of Deeds of Cook County.

**5.05 Acquisition and Title.** On the Closing Date, the Developer has furnished the City with a pro forma copy of the Title Policy for the Property, certified by the Title Company, showing Viceroy as the named insured following Heartland's conveyance of title to Property to Viceroy. The Title Policy is dated as of the Closing Date and contains only those title exceptions listed as Permitted Liens on **Exhibit F** hereto and evidences the recording of this Agreement pursuant to the provisions of **Section 8.17** hereof. The Developer has provided to HED, on or prior to the Closing Date, documentation related to the purchase of the Property and certified copies of all easements, and encumbrances of record with respect to the Property not addressed, to HED's satisfaction, by the Title Policy and any endorsements thereto.

**5.06 Evidence of Clean Title.** The Developer, at its own expense, has provided the City with searches under the Developers names as follows:

Secretary of State	UCC search
Secretary of State	Federal tax lien search
Cook County Recorder	UCC search
Cook County Recorder	Fixtures search
Cook County Recorder	Federal tax lien search
Cook County Recorder	State tax lien search
Cook County Recorder	Memoranda of judgments search
U.S. District Court	Pending suits and judgments (including bankruptcy)
Clerk of Circuit Court, Cook County	Pending suits and judgments

showing no liens against the Developer, the Property, or any fixtures now or hereafter affixed thereto, except for the Permitted Liens and/or liens bonded by the Developer or insured by the Title Company.

**5.07 Surveys.** The Developer has furnished the City with three (3) copies of the Survey.

**5.08 Insurance.** The Developer, at its own expense, has insured the Property in accordance with **Section 12** hereof, and has delivered certificates required pursuant to **Section 12** hereof evidencing the required coverages to HED.

**5.09 Opinion of the Developer's Counsel.** On the Closing Date, the Developer has furnished the City with an opinion of counsel, substantially in the form attached hereto as **Exhibit J**, with such changes as required by or acceptable to Corporation Counsel.

**5.10 Evidence of Prior Expenditures.** The Developer has provided evidence satisfactory to HED in its sole discretion of the Prior Expenditures in accordance with the provisions of **Section 4.05** hereof.

**5.11 Financial Statements.** Heartland has provided Financial Statements to HED for its most recently completed fiscal year, and audited, if any, or unaudited interim financial statements for the period after the end of the most recently completed fiscal year. Viceroy has provided or shall provide a balance sheet reviewed by a certified public accountant to HED on or before the Closing Date. Following receipt of the Certificate, Viceroy shall provide to HED complete, audited financial statements prepared by a certified public accountant in accordance with generally accepted accounting principles.

**5.12 Documentation.** Developer will have provided documentation to HED, satisfactory in form and substance to HED concerning Developer's employment profile and copies of any ground leases or operating leases and other tenant leases executed by Developer for leaseholds in the Project.

**5.13 Environmental.** The Developer has provided DOE with copies of all environmental reports completed with respect to the Property. The Developer has provided the City with a letter from the environmental engineer(s) who completed such report(s), authorizing the City to rely on such reports. If required under **Section 11.03**, the Developer has taken all necessary and proper steps to enroll the Property in the SRP. The City agrees to reasonably cooperate with the Developer in Developer's efforts to satisfy this condition, at no cost to the City.

**5.14 Organizational Documents; Economic Disclosure Statement.** The Developer has provided, as applicable, a copy of its Articles of Incorporation or Certificate of Limited Partnership, containing the original certification of the Secretary of State of its state of organization; certificates of good standing from the Secretary of State of its state of organization and all other states in which the Developer is qualified to do business; a secretary's certificate in such form and substance as the Corporation Counsel may require; by-laws of the Developer; and such other organizational documentation as the City has requested. The Developer has provided to the City an Economic Disclosure Statement, in the City's then current form, dated as of the Closing Date.

**5.15 Litigation.** The Developer has provided to Corporation Counsel and HED, a description of all pending or threatened litigation or administrative proceedings involving the Developer, specifying, in each case, the amount of each claim, an estimate of probable liability, the amount of any reserves taken in connection therewith and whether (and to what extent) such potential liability is covered by insurance.

## **SECTION 6. AGREEMENTS WITH CONTRACTORS**

**6.01 Bid Requirement for General Contractor and Subcontractors.** The City has approved the Developer's selection of Linn Mathes, Inc., an Illinois corporation, as the General Contractor. The Developer shall submit copies of the Construction Contract to HED in accordance with **Section 6.02** below. Photocopies of all subcontracts entered or to be entered into in connection with the TIF-Funded Improvements shall be provided to HED within five (5) business days of the execution thereof. The Developer shall ensure that the General Contractor shall not (and shall cause the General Contractor to ensure that the subcontractors shall not) begin work on

the Project until the Plans and Specifications have been approved by HED and all requisite permits have been obtained.

**6.02 Construction Contract.** Prior to the execution thereof, the Developer shall deliver to HED a copy of the proposed Construction Contract with the General Contractor selected to handle the Project in accordance with **Section 6.01** above, for HED's prior written approval, which shall be granted or denied within ten (10) business days after delivery thereof. Within ten (10) business days after execution of such contract by the Developer, the General Contractor and any other parties thereto, the Developer shall deliver to HED and Corporation Counsel a certified copy of such contract together with any modifications, amendments or supplements thereto.

**6.03 Performance and Payment Bonds.** Prior to the commencement of any portion of the Project which includes work on the public way, the Developer shall require that the General Contractor be bonded for its payment by sureties having an A rating or better using a bond (American Institute of Architect's Form No. A311 or its equivalent) or a letter of credit. The City shall be named as obligee or co-obligee on any such bonds.

**6.04 Employment Opportunity.** The Developer shall contractually obligate and cause the General Contractor and each subcontractor to agree to the provisions of **Section 10** hereof.

**6.05 Other Provisions.** In addition to the requirements of this **Section 6**, the Construction Contract and each contract with any subcontractor shall contain provisions required pursuant to **Section 3.04** (Change Orders), **Section 8.07** (Employment Profile), **Section 8.08** (Prevailing Wage), **Section 10.01(e)** (Employment Opportunity), **Section 10.02** (City Resident Employment Requirement), **Section 10.03** (MBE/WBE Requirements, as applicable), **Section 12** (Insurance) and **Section 14.01** (Books and Records) hereof. Photocopies of all contracts or subcontracts entered or to be entered into in connection with the TIF-Funded Improvements shall be provided to HED within five (5) business days of the execution thereof.

## SECTION 7. COMPLETION OF REHABILITATION

### 7.01 Certificate of Completion.

(a) Upon (i) satisfaction of the conditions set forth in **Section 7.01(c)** hereof, and (ii) upon Developer's written request, HED shall issue to the Developer a Certificate in recordable form certifying that the Developer has fulfilled its obligation to complete the Project in accordance with the terms of this Agreement.

(b) HED shall respond to the Developer's written request for a Certificate within forty-five (45) days by issuing either a Certificate or a written statement detailing the ways in which the Project does not conform to this Agreement or has not been satisfactorily completed, and the measures which must be taken by the Developer in order to obtain the Certificate. The Developer may resubmit a written request for a Certificate upon completion of such measures.

(c) Developer acknowledges that the City will not issue a Certificate until the following conditions have been met:

(i) the Developer has given the City written notification that the Project, including all of the TIF-Funded Improvements, has been completed;

(ii) the Developer has provided HED with evidence acceptable to HED showing that Developer has completed the Project in compliance with the plans and specifications and all building permit requirements, including, without limitation, receipt of certificate(s) of occupancy for one hundred percent (100%) of the Units of the Project;

(iii) the City's monitoring unit has determined in writing that the Developer is in complete compliance with all requirements of **Section 8.08** (Prevailing Wage) and **Section 10** (Developer's Employment Obligations);

(iv) the Developer has provided documentation acceptable to HED showing that the Developer's Part Three application has been submitted and approved by the Illinois Historic Preservation Agency. If there is a lack of approval of Developer's Part Three submission, and such lack of approval (A) is the sole requirement not met for issuance of the Certificate by HED pursuant to this Agreement, and (B) has not resulted in any reduction of funds in order to complete the Project in accordance with the scope of work approved by HED and Landmarks in accordance with **Sections 3.02** and **3.04** hereof, then HED, may, but shall not be obligated to, in the HED Commissioner's sole discretion, issue the Certificate; and

(v) the Developer has provided documentation satisfactory to the City (including written verification from the Developer's architect) that it has (A) satisfied the environmental requirements of the Project, (B) submitted its enrollment application for participation in the Chicago Green Homes Program, and (C) completed rehabilitation of the Project in a manner sufficient to qualify for the Chicago Green Homes 2 Star designation in accordance with the Chicago Green Homes Program requirements and Program Guide version 2.0 published April 2009, as amended from time to time.

(d) Developer acknowledges that the City will not issue a Certificate if there exists an Event of Default under **Section 15.01** which has not been cured pursuant to **Section 15.03** or **Section 15.04**.

**7.02 Effect of Issuance of Certificate; Continuing Obligations.** The Certificate relates only to the rehabilitation of the Project, and upon its issuance, the City will certify that the terms of the Agreement specifically related to the Developer's obligation to complete such activities have been satisfied. After the issuance of a Certificate, however, all executory terms and conditions of this Agreement and all representations and covenants contained herein will continue to remain in full force and effect throughout the Term of the Agreement as to the parties described in the following paragraph, and the issuance of the Certificate shall not be construed as a waiver by the City of any of its rights and remedies pursuant to such executory terms.

Those covenants specifically described at **Sections 8.02, 8.18, 8.19, 8.20, 8.21** and **11.04** as covenants that run with the land are the only covenants in this Agreement intended to be binding upon any transferee of the Property (including an assignee as described in the following sentence) throughout the Term of the Agreement notwithstanding the issuance of a Certificate; provided, that upon the issuance of a Certificate, the covenants set forth in **Section 8.02** shall be deemed to have been fulfilled. The other executory terms of this Agreement that remain after the issuance of a Certificate shall be binding only upon the Developer or a permitted assignee of the Developer who, pursuant to **Section 18.15** of this Agreement, has contracted to take an assignment of the Developer's rights under this Agreement and assume the Developer's liabilities hereunder.

**7.03 Failure to Complete.** If the Developer fails to complete the Project in accordance with the terms of this Agreement, then the City has, but shall not be limited to, any of the following rights and remedies:

(a) the right to terminate this Agreement and cease all disbursement of City Funds not yet disbursed pursuant hereto;

(b) the right (but not the obligation) to complete those TIF-Funded Improvements that are public improvements and to pay for the costs of such TIF-Funded Improvements (including interest costs) out of City Funds or other City monies. In the event that the aggregate cost of completing such TIF-Funded Improvements exceeds the amount of City Funds available pursuant to **Section 4.01**, the Developer shall reimburse the City for all reasonable costs and expenses incurred by the City in completing such TIF-Funded Improvements in excess of the available City Funds; and

(c) the right to seek reimbursement of the City Funds from the Developer.

**7.04 Notice of Expiration of Term of Agreement.** Upon the expiration of the Term of the Agreement, HED shall provide the Developer, at the Developer's written request, with a written notice in recordable form stating that the Term of the Agreement has expired.

## **SECTION 8. COVENANTS/REPRESENTATIONS/WARRANTIES OF THE DEVELOPER.**

**8.01 General.** The Developer represents, warrants and covenants, as of the date of this Agreement and as of the date of each disbursement of City Funds hereunder, that:

(a) Viceroy is an Illinois limited partnership and Heartland is an Illinois not-for-profit corporation, each duly organized, validly existing, qualified to do business in Illinois, and each licensed to do business in any other state where, due to the nature of its activities or properties, such qualification or license is required;

(b) each of Viceroy and Heartland has the right, power and authority to enter into, execute, deliver and perform this Agreement, as applicable hereto;

(c) the execution, delivery and performance by the Developer of this Agreement has been duly authorized by all necessary action, and does not and will not violate (as applicable) its Articles of Organization, by-laws or partnership agreement as amended and supplemented, any applicable provision of law, or constitute a breach of, default under or require any consent under any agreement, instrument or document to which the Developer is now a party or by which the Developer is now or may become bound;

(d) unless otherwise permitted or not prohibited pursuant to or under the terms of this Agreement, Viceroy (following the sale and conveyance of the Property by Heartland to Viceroy) shall maintain good, indefeasible and merchantable fee simple title to the Property (and all improvements thereon) free and clear of all liens (except for the Permitted Liens and/or liens bonded by the Developer or insured by the Title Company, Lender Financing as disclosed in the Project Budget and Non-Governmental Charges that the Developer is contesting in good faith pursuant to **Section 8.14(b)** hereof);

(e) the Developer is now and for the Term of the Agreement shall remain solvent and able to pay its debts as they mature;

(f) there are no actions or proceedings by or before any court, governmental commission, board, bureau or any other administrative agency pending, threatened or affecting the Developer which would impair its ability to perform under this Agreement;

(g) the Developer has and shall maintain all government permits, certificates and consents (including, without limitation, appropriate environmental approvals) necessary to conduct its business and to construct, complete and, following the City's issuance of all applicable certificates of occupancy, operate the Project;

(h) the Developer is not in default with respect to any indenture, loan agreement, mortgage, deed, note or any other agreement or instrument related to the borrowing of money to which the Developer is a party or by which the Developer is bound;

(i) the Financial Statements are, and when hereafter required to be submitted will be, complete, correct in all material respects and accurately present the assets, liabilities, results of operations and financial condition of the Developer, and there has been no material adverse change in the assets, liabilities, results of operations or financial condition of the Developer since the date of the Developer's most recent Financial Statements;

(j) prior to the issuance of the Certificate pursuant to **Section 7.01**, the Developer shall not do any of the following without the prior written consent of HED, which consent shall be in HED's sole discretion: (1) be a party to any merger, liquidation or consolidation; (2) sell (including, without limitation, any sale and leaseback), transfer, convey, lease (except the lease of the Facility's Units to tenants in accordance with **Section 8.19** herein and the Commercial Space in the ordinary course of Viceroy's operation of the Project) or otherwise dispose of all or substantially all of its assets or any portion of the Property (including but not limited to any fixtures or equipment now or hereafter attached thereto); (3) enter into any transaction outside the ordinary course of the Developer's business; (4) assume, guarantee, endorse, or otherwise become liable in connection with the obligations of any other person or entity (excluding any guaranty or other liability undertaken by Heartland on its own behalf or on behalf of its affiliates relating to the development and operation of affordable housing in the City so long as such guaranty or liability does not materially adversely affect completion of the Project); or (5) enter into any transaction that would cause a material and detrimental change to the Developer's financial condition;

(k) the Developer has not incurred, and, prior to the issuance of the Certificate pursuant to **Section 7.01**, shall not, without the prior written consent of the Commissioner of HED, allow the existence of any liens against the Property (or improvements thereon) other than the Permitted Liens and/or liens bonded by the Developer or insured by the Title Company; or incur any indebtedness, secured or to be secured by the Property (or improvements thereon) or any fixtures now or hereafter attached thereto, except Lender Financing disclosed in the Project Budget;

(l) has not made or caused to be made, directly or indirectly, any payment, gratuity or offer of employment in connection with the Agreement or any contract paid from the City treasury or pursuant to City ordinance, for services to any City agency ("**City Contract**") as an inducement for the City to enter into the Agreement or any City Contract with the Developer in violation of Chapter 2-156-120 of the Municipal Code of the City;

(m) neither the Developer nor any affiliate of the Developer is listed on any of the following lists maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the Bureau of Industry and Security of the U.S. Department of Commerce or their successors, or on any other list of persons or entities with which the City may not do business under any applicable law, rule, regulation, order or judgment: the Specially Designated Nationals List, the Denied Persons List, the Unverified List, the Entity List and the Debarred List. For purposes of this subparagraph (m) only, the term "affiliate," when used to indicate a relationship with a specified person or entity, means a person or entity that, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with such specified person or entity, and a person or entity shall be deemed to be controlled by another person or entity, if controlled in any manner whatsoever that results in control in fact by that other person or entity (or that other person or entity and any persons or entities with whom that other person or entity is acting jointly or in concert), whether directly or indirectly and whether through share ownership, a trust, a contract or otherwise; and

(n) Developer agrees that Developer, any person or entity who directly or indirectly has an ownership or beneficial interest in Developer of more than 7.5 percent ("**Owners**"), spouses and domestic partners of such Owners, Developer's contractors (i.e., any person or entity in direct contractual privity with Developer regarding the subject matter of this Agreement) ("**Contractors**"), any person or entity who directly or indirectly has an ownership or beneficial interest in any Contractor of more than 7.5 percent ("**Sub-owners**") and spouses and domestic partners of such Sub-owners (Developer and all the other preceding classes of persons and entities are together, the "**Identified Parties**"), shall not make a contribution of any amount to the Mayor of the City of Chicago (the "**Mayor**") or to his political fundraising committee (i) after execution of this Agreement by Developer, (ii) while this Agreement or any Other Contract (as defined below) is executory, (iii) during the term of this Agreement or any Other Contract between Developer and the City, or (iv) during any period while an extension of this Agreement or any Other Contract is being sought or negotiated.

Developer represents and warrants that from the later of (i) February 10, 2005, or (ii) the date the City approached the Developer or the date the Developer approached the City, as applicable, regarding the formulation of this Agreement, no Identified Parties have made a contribution of any amount to the Mayor or to his political fundraising committee.

Developer agrees that it shall not: (a) coerce, compel or intimidate its employees to make a contribution of any amount to the Mayor or to the Mayor's political fundraising committee; (b) reimburse its employees for a contribution of any amount made to the Mayor or to the Mayor's political fundraising committee; or (c) bundle or solicit others to bundle contributions to the Mayor or to his political fundraising committee.

Developer agrees that the Identified Parties must not engage in any conduct whatsoever designed to intentionally violate this provision or Mayoral Executive Order No. 2011-4 or to entice, direct or solicit others to intentionally violate this provision or Mayoral Executive Order No. 2011-4.

Developer agrees that a violation of, non-compliance with, misrepresentation with respect to, or breach of any covenant or warranty under this provision or violation of Mayoral Executive Order No. 2011-4 constitutes a breach and default under this Agreement, and under any Other Contract for which no opportunity to cure will be granted unless the City, in its sole discretion, elects to grant such an opportunity to cure. Such breach and default entitles the City to all remedies (including without limitation termination for default) under this Agreement, under any Other Contract,

at law and in equity. This provision amends any Other Contract and supersedes any inconsistent provision contained therein.

If Developer intentionally violates this provision or Mayoral Executive Order No. 2011-4 prior to the closing of this Agreement, the City may elect to decline to close the transaction contemplated by this Agreement.

For purposes of this provision:

**"Bundle"** means to collect contributions from more than one source which are then delivered by one person to the Mayor or to his political fundraising committee.

**"Contribution"** means a "political contribution" as defined in Chapter 2-156 of the Municipal Code of Chicago, as amended.

Individuals are "Domestic Partners" if they satisfy the following criteria:

- (A) they are each other's sole domestic partner, responsible for each other's common welfare; and
- (B) neither party is married; and
- (C) the partners are not related by blood closer than would bar marriage in the State of Illinois; and
- (D) each partner is at least 18 years of age, and the partners are the same sex, and the partners reside at the same residence; and
- (E) two of the following four conditions exist for the partners:
  - 1. The partners have been residing together for at least 12 months.
  - 2. The partners have common or joint ownership of a residence.
  - 3. The partners have at least two of the following arrangements:
    - a. joint ownership of a motor vehicle;
    - b. a joint credit account;
    - c. a joint checking account;
    - d. a lease for a residence identifying both domestic partners as tenants.
  - 4. Each partner identifies the other partner as a primary beneficiary in a will.

**"Other Contract"** means any other agreement with the City of Chicago to which Developer is a party that is (i) formed under the authority of chapter 2-92 of the Municipal Code of Chicago; (ii) entered into for the purchase or lease of real or personal property; or (iii) for materials, supplies, equipment or services which are approved or authorized by the City Council of the City of Chicago.

**"Political fundraising committee"** means a "political fundraising committee" as defined in Chapter 2-156 of the Municipal Code of Chicago, as amended.

**8.02 Covenant to Redevelop**. Upon HED's approval of the Project Budget, the Scope Drawings and Plans and Specifications as provided in **Sections 3.02** and **3.03** hereof, and the Developer's receipt of all required building permits and governmental approvals, the Developer shall redevelop the Property in accordance with this Agreement and all Exhibits attached hereto, the TIF Ordinances, the Scope Drawings, Plans and Specifications, Project Budget and all amendments



thereto, and all Laws applicable to the Project, the Property and/or the Developer, including, without limitation, all Environmental Laws. The covenants set forth in this Section shall run with the land and be binding upon any transferee, but shall be deemed satisfied upon issuance by the City of the Certificate with respect thereto.

**8.03 Redevelopment Plan.** The Developer represents that the Project is and shall be in compliance with all of the terms of the Redevelopment Plan.

**8.04 Use of City Funds.** City Funds disbursed to Heartland shall be used by Heartland solely to pay for (or to reimburse Heartland for its payment for) the TIF-Funded Improvements as provided in this Agreement.

**8.05 Reserved.**

**8.06 Employment Opportunity; Progress Reports.** The Developer covenants and agrees to abide by, and contractually obligate and use reasonable efforts to cause the General Contractor, and, as applicable, to cause the General Contractor to contractually obligate each subcontractor to abide by the terms set forth in **Sections 8.08 and 10** hereof. The Developer shall deliver to the City written progress reports detailing compliance with the requirements of **Sections 8.08, 10.02 and 10.03** of this Agreement. Such reports shall be delivered to the City monthly. If any such reports indicate a shortfall in compliance, the Developer shall also deliver a plan to HED which shall outline, to HED's satisfaction, the manner in which the Developer shall correct any shortfall.

**8.07 Employment Profile.** The Developer shall submit, and contractually obligate and cause the General Contractor or any subcontractor to submit, to HED, from time to time, statements of its employment profile upon HED's request.

**8.08 Prevailing Wage.** Unless required to pay federal "Davis-Bacon" wages pursuant to the terms of the Lender Financing or project-based section 8 federal rental subsidy for the Project, the Developer covenants and agrees to pay, and to contractually obligate and cause the General Contractor and each subcontractor to pay, the prevailing wage rate as ascertained by the Illinois Department of Labor (the "**Department**"), to all Project employees. All such contracts shall list the specified rates to be paid to all laborers, workers and mechanics for each craft or type of worker or mechanic employed pursuant to such contract. If the Department revises such prevailing wage rates, the revised rates shall apply to all such contracts. Upon the City's request, the Developer shall provide the City with copies of all such contracts entered into by the Developer or the General Contractor to evidence compliance with this **Section 8.08**.

**8.09 Arms-Length Transactions.** Unless the City has given its prior written consent with respect thereto as set forth in this Agreement, no Affiliate of the Developer may receive any portion of City Funds, directly or indirectly, in payment for work done, services provided or materials supplied in connection with any TIF-Funded Improvement. The Developer shall provide information with respect to any entity to receive City Funds directly or indirectly (whether through payment to the Affiliate by the Developer and reimbursement to the Developer for such costs using City Funds, or otherwise), upon HED's request, prior to any such disbursement.

**8.10 Conflict of Interest.** Pursuant to Section 5/11-74.4-4(n) of the Act, the Developer represents, warrants and covenants that, to the best of its knowledge, no member, official, or employee of the City, or of any commission or committee exercising authority over the Project, the Redevelopment Area or the Redevelopment Plan, or any consultant hired by the City with respect

thereto, owns or controls, has owned or controlled or will own or control any interest, and no such person shall represent any person, as agent or otherwise, who owns or controls, has owned or controlled, or will own or control any interest, direct or indirect, in the Developer's business, the Property or any other property in the Redevelopment Area.

**8.11 Disclosure of Interest.** The Developer's counsel has no direct or indirect financial ownership interest in the Developer, the Property or any other aspect of the Project.

**8.12 Financial Statements.** Heartland shall obtain and provide to HED Financial Statements, and Viceroy shall provide a balance sheet, for the Developer's fiscal year ended December 31, 2010 and for each year thereafter the Developer shall obtain and provide HED Financial Statements within 90 days after the end of such fiscal year for the Term of the Agreement. In addition, the Developer shall submit unaudited financial statements as soon as reasonably practical following the close of each fiscal year and for such other periods as HED may request.

**8.13 Insurance.** The Developer, at its own expense, shall comply with all provisions of **Section 12** hereof.

**8.14 Non-Governmental Charges.** (a) **Payment of Non-Governmental Charges.** Except for the Permitted Liens and/or liens bonded by the Developer or insured by the Title Company, the Developer agrees to pay or cause to be paid when due any Non-Governmental Charge assessed or imposed upon the Project, the Property or any fixtures that are or may become attached thereto, which creates, may create, or appears to create a lien upon all or any portion of the Property or Project; provided however, that if such Non-Governmental Charge may be paid in installments, the Developer may pay the same together with any accrued interest thereon in installments as they become due and before any fine, penalty, interest, or cost may be added thereto for nonpayment. The Developer shall furnish to HED, within thirty (30) days of HED's written request, official receipts from the appropriate entity, or other proof satisfactory to HED, evidencing payment of the Non-Governmental Charge in question.

(b) **Right to Contest.** The Developer has the right, before any delinquency occurs:

(i) to contest or object in good faith to the amount or validity of any Non-Governmental Charge by appropriate legal proceedings properly and diligently instituted and prosecuted, in such manner as shall stay the collection of the contested Non-Governmental Charge, prevent the imposition of a lien or remove such lien, or prevent the sale or forfeiture of the Property (so long as no such contest or objection shall be deemed or construed to relieve, modify or extend the Developer's covenants to pay any such Non-Governmental Charge at the time and in the manner provided in this **Section 8.14**); or

(ii) at HED's sole option, to furnish a good and sufficient bond or other security satisfactory to HED in such form and amounts as HED shall require, or a good and sufficient undertaking as may be required or permitted by law to accomplish a stay of any such sale or forfeiture of the Property or any portion thereof or any fixtures that are or may be attached thereto, during the pendency of such contest, adequate to pay fully any such contested Non-Governmental Charge and all interest and penalties upon the adverse determination of such contest.

**8.15 Developer's Liabilities.** The Developer shall not enter into any transaction that would materially and adversely affect its ability to perform its obligations hereunder or to repay any material

liabilities or perform any material obligations of the Developer to any other person or entity. The Developer shall immediately notify HED of any and all events or actions which may materially affect the Developer's ability to carry on its business operations or perform its obligations under this Agreement or any other documents and agreements.

#### **8.16 Compliance with Laws.**

(a) Representation. To the best of the Developer's knowledge, after diligent inquiry, the Property and the Project are and shall be in compliance with all applicable Laws pertaining to or affecting the Project and the Property. Upon the City's request, the Developer shall provide evidence satisfactory to the City of such compliance.

(b) Covenant. Developer covenants that the Property and the Project will be operated and managed in compliance with all applicable Federal, State and local laws, statutes, ordinances, rules, regulations, executive orders and codes. Upon the City's request, Developer will provide evidence to the City of its compliance with this covenant.

**8.17 Recording and Filing.** The Developer shall cause this Agreement, certain exhibits (as specified by Corporation Counsel), all amendments and supplements hereto to be recorded and filed against the Property on the date hereof in the conveyance and real property records of the county in which the Project is located. This Agreement shall be recorded prior to any mortgage made in connection with Lender Financing or the mortgages securing any loans made by Heartland to Viceroy. The Developer shall pay all fees and charges incurred in connection with any such recording. Upon recording, the Developer shall immediately transmit to the City an executed original of this Agreement showing the date and recording number of record.

#### **8.18 Real Estate Provisions.**

##### (a) Governmental Charges.

(i) Payment of Governmental Charges. The Developer agrees to pay or cause to be paid when due all Governmental Charges (as defined below) which are assessed or imposed upon the Developer, the Property or the Project, or become due and payable, and which create, may create, a lien upon the Developer or all or any portion of the Property or the Project. "Governmental Charge" shall mean all federal, State, county, the City, or other governmental (or any instrumentality, division, agency, body, or department thereof) taxes, levies, assessments, charges, liens, claims or encumbrances (except for those assessed by foreign nations, states other than the State of Illinois, counties of the State other than Cook County, and municipalities other than the City), including any/all penalties, fees, and interest associated thereto, relating to the Developer, the Property or the Project including but not limited to real estate taxes.

(ii) Right to Contest. The Developer has the right before any delinquency occurs to contest or object in good faith to the amount or validity of any Governmental Charge by appropriate legal proceedings properly and diligently instituted and prosecuted in such manner as shall stay the collection of the contested Governmental Charge and prevent the imposition of a lien or the sale or forfeiture of the Property. No such contest or objection shall be deemed or construed in any way as relieving, modifying or extending the Developer's covenants to pay any such Governmental Charge at the time and in the manner provided in this Agreement unless the Developer has given prior written notice to HED of the

Developer's intent to contest or object to a Governmental Charge and, unless, at HED's sole option,

(i) the Developer shall demonstrate to HED's satisfaction that legal proceedings instituted by the Developer contesting or objecting to a Governmental Charge shall conclusively operate to prevent or remove a lien against, or the sale or forfeiture of, all or any part of the Property to satisfy such Governmental Charge prior to final determination of such proceedings; and/or

(ii) the Developer shall furnish a good and sufficient bond or other security satisfactory to HED in such form and amounts as HED shall require, or a good and sufficient undertaking as may be required or permitted by law to accomplish a stay of any such sale or forfeiture of the Property during the pendency of such contest, adequate to pay fully any such contested Governmental Charge and all interest and penalties upon the adverse determination of such contest.

(b) Developer's Failure To Pay Or Discharge Lien. If the Developer fails to pay any Governmental Charge or to obtain discharge of the same, the Developer shall advise HED thereof in writing, at which time HED may, but shall not be obligated to, and without waiving or releasing any obligation or liability of the Developer under this Agreement, in HED's sole discretion, make such payment, or any part thereof, or obtain such discharge and take any other action with respect thereto which HED deems advisable. All sums so paid by HED, if any, and any expenses, if any, including reasonable attorneys' fees, court costs, expenses and other charges relating thereto, shall be promptly disbursed to HED by the Developer. Notwithstanding anything contained herein to the contrary, this paragraph shall not be construed to obligate the City to pay any such Governmental Charge. Additionally, if the Developer fails to pay any Governmental Charge, the City, in its sole discretion, may require the Developer to submit to the City audited Financial Statements at the Developer's own expense.

(c) Real Estate Taxes.

(i) Acknowledgment of Real Estate Taxes. The Developer agrees that for the purpose of this Agreement, the minimum assessed value of the Property ("Minimum Assessed Value") is shown on Exhibit K attached hereto and incorporated herein by reference.

(ii) Real Estate Tax Exemption. With respect to the Property or the Project, neither the Developer nor any agent, representative, lessee, tenant, assignee, transferee or successor in interest to the Developer shall, during the Term of this Agreement, seek, or authorize any exemption (as such term is used and defined in the Illinois Constitution, Article IX, Section 6 (1970)) for any year that the Redevelopment Plan is in effect; provided, however, nothing contained in this provision shall preclude Developer from applying for and receiving any reduction in the amount of real estate taxes payable for the Project or the Property, subject to the provisions of clause (iii) below.

(iii) No Reduction in Real Estate Taxes. Neither the Developer nor any agent, representative, lessee, tenant, assignee, transferee or successor in interest to the Developer shall, during the Term of this Agreement, directly or indirectly, initiate, seek or apply for proceedings in order to lower the assessed value of all or any portion of the Property or the Project below the amount of the Minimum Assessed Value as shown in Exhibit K; provided,

however, the Developer is permitted to apply for a Class 9 or similar designation from Cook County even if such designation with respect to the Property would result in an assessed value below the Minimum Assessed Value shown on **Exhibit K**.

(iv) **No Objections**. Neither the Developer nor any agent, representative, lessee, tenant, assignee, transferee or successor in interest to the Developer, shall object to or in any way seek to interfere with, on procedural or any other grounds, the filing of any Underassessment Complaint or subsequent proceedings related thereto with the Cook County Assessor or with the Cook County Board of Appeals, by either the City or any taxpayer. The term "Underassessment Complaint" as used in this Agreement shall mean any complaint seeking to increase the assessed value of the Property up to (but not above) the Minimum Assessed Value as shown in **Exhibit K**; provided, however, the Developer is permitted to apply for a Class 9 or similar designation from Cook County.

(v) **Covenants Running with the Land**. The parties agree that the restrictions contained in this **Section 8.18(c)** are covenants running with the land and this Agreement shall be recorded by the Developer as a memorandum thereof, at the Developer's expense, with the Cook County Recorder of Deeds on the Closing Date. These restrictions shall be binding upon the Developer and its agents, representatives, lessees, successors, assigns and transferees from and after the date hereof; provided however, that the covenants shall be released when the Redevelopment Area is no longer in effect. The Developer agrees that any sale (including, without limitation, any sale and leaseback), lease, conveyance, or transfer of title to all or any portion of the Property or Redevelopment Area from and after the date hereof, including the transfer of title from Heartland to Viceroy, shall be made explicitly subject to such covenants and restrictions. Notwithstanding anything contained in this **Section 8.18(c)** to the contrary, the City, in its sole discretion and by its sole action, without the joinder or concurrence of the Developer, its successors or assigns, may waive and terminate the Developer's covenants and agreements set forth in this **Section 8.18(c)**.

**8.19 Affordable Housing Covenant**. The Developer agrees and covenants to the City that, prior to any foreclosure of the Property by a Lender and during the Term of this Agreement, the provisions of that certain Donation Tax Credit Agreement executed by and between the Developer and HED as of the date hereof shall govern the terms of the Developer's obligation to provide affordable housing. Following foreclosure, if any, and from the date of such foreclosure through the Term of the Agreement, the following provisions shall govern the terms of the obligation to provide affordable housing under this Agreement:

- (a) The Facility shall be operated and maintained solely as residential rental housing;
- (b) All of the Units in the Facility shall be available for occupancy to and be occupied solely by one or more persons qualifying as Low Income Families (as defined below) upon initial occupancy; and
- (c) All of the Units in the Facility have monthly rents, payable by the respective tenant, at or below 60% of the Chicago-area median income in accordance with the rules specified in Section 42(g)(2) of the Internal Revenue Code of 1986, as amended); provided, however, that for any unit occupied by a Family (as defined below) that no longer qualifies as a Low Income Family due to an increase in such Family's income since the date of its initial occupancy of such unit, the maximum monthly rent for such unit shall not exceed thirty percent (30%) of such Family's monthly income.

(d) As used in this **Section 8.19**, the following terms has the following meanings:

(i) "**Family**" shall mean one or more individuals, whether or not related by blood or marriage; and

(ii) "**Low Income Families**" shall mean Families whose annual income does not exceed sixty percent (60%) of the Chicago-area median income, adjusted for Family size, as such annual income and Chicago-area median income are determined from time to time by the United States Department of Housing and Urban Development, and thereafter such income limits shall apply to this definition.

(e) The covenants set forth in this **Section 8.19** shall run with the land and be binding upon any transferee.

(f) The City and the Developer may enter into a separate agreement to implement the provisions of this **Section 8.19**.

#### **8.20 Occupancy; Permitted Uses.**

For each Reporting Period, the Developer shall deliver as part of its Annual Report, documentation regarding occupancy of the Units, to the satisfaction of the City, which shall include a certified tenant rent roll along with such other information as the City shall request (the "Occupancy Report"), demonstrating, among other things, compliance with **Section 8.19** hereof. Developer shall cause the Facility to be used in accordance with **Section 8.19** hereof and the Redevelopment Plan. The covenants contained in this **Section 8.20** shall run with the land and be binding upon any transferee for the term of this Agreement.

**8.21 Annual Report.** Developer shall provide to HED an Annual Report consisting of (a) a letter from the Developer itemizing all ongoing requirements including references to all the relevant Sections of this Agreement, and (b) sufficient documentation and certifications to evidence that all ongoing requirements have been satisfied during the preceding reporting period. The Annual Report shall be submitted each year, for ten (10) years, on the yearly anniversary of the issuance of the Certificate of Completion (each such year being a "**Reporting Period**"). Failure by the Developer to submit the Annual Report shall constitute an Event of Default under **Section 15.01** hereof, without notice or opportunity to cure pursuant to **Section 15.03** hereof. The covenants contained in this **Section 8.21** shall run with the land and be binding upon any transferee for the term of this Agreement.

**8.22 Survival of Covenants.** All warranties, representations, covenants and agreements of the Developer contained in this **Section 8** and elsewhere in this Agreement shall be true, accurate and complete at the time of the Developer's execution of this Agreement, and shall survive the execution, delivery and acceptance hereof by the parties hereto and (except as provided in **Section 7** hereof upon the issuance of a Certificate) shall be in effect throughout the Term of the Agreement.

### **SECTION 9. COVENANTS/REPRESENTATIONS/WARRANTIES OF CITY**

**9.01 General Covenants.** The City represents that it has the authority as a home rule unit of local government to execute and deliver this Agreement and to perform its obligations hereunder.

**9.02 Survival of Covenants.** All warranties, representations, and covenants of the City contained in this **Section 9** or elsewhere in this Agreement shall be true, accurate, and complete at the time of the City's execution of this Agreement, and shall survive the execution, delivery and acceptance hereof by the parties hereto and be in effect throughout the Term of the Agreement.

## SECTION 10. DEVELOPER'S EMPLOYMENT OBLIGATIONS

**10.01 Employment Opportunity.** The Developer, on behalf of itself and its successors and assigns, hereby agrees, and shall contractually obligate its or their various contractors, subcontractors or any Affiliate of the Developer operating on the Property (collectively, with the Developer, the "**Employers**" and individually an "**Employer**") to agree, that for the Term of this Agreement with respect to Developer and during the period of any other party's provision of services in connection with the rehabilitation of the Project or occupation of the Property:

(a) No Employer shall discriminate against any employee or applicant for employment based upon race, religion, color, sex, national origin or ancestry, age, handicap or disability, sexual orientation, military discharge status, marital status, parental status or source of income as defined in the City of Chicago Human Rights Ordinance, Chapter 2-160, Section 2-160-010 et seq., Municipal Code, except as otherwise provided by said ordinance and as amended from time to time (the "**Human Rights Ordinance**"). Each Employer shall take affirmative action to ensure that applicants are hired and employed without discrimination based upon race, religion, color, sex, national origin or ancestry, age, handicap or disability, sexual orientation, military discharge status, marital status, parental status or source of income and are treated in a non-discriminatory manner with regard to all job-related matters, including without limitation: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Each Employer agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City setting forth the provisions of this nondiscrimination clause. In addition, the Employers, in all solicitations or advertisements for employees, shall state that all qualified applicants shall receive consideration for employment without discrimination based upon race, religion, color, sex, national origin or ancestry, age, handicap or disability, sexual orientation, military discharge status, marital status, parental status or source of income.

(b) To the greatest extent feasible, each Employer is required to present opportunities for training and employment of low- and moderate-income residents of the City and preferably of the Redevelopment Area; and to provide that contracts for work in connection with the rehabilitation of the Project be awarded to business concerns that are located in, or owned in substantial part by persons residing in, the City and preferably in the Redevelopment Area.

(c) Each Employer shall comply with all federal, state and local equal employment and affirmative action statutes, rules and regulations, including but not limited to the City's Human Rights Ordinance and the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq. (1993), and any subsequent amendments and regulations promulgated thereto.

(d) Each Employer, in order to demonstrate compliance with the terms of this Section, shall cooperate with and promptly and accurately respond to inquiries by the City, which has the responsibility to observe and report compliance with equal employment opportunity regulations of federal, state and municipal agencies.

(e) Each Employer shall include the foregoing provisions of subparagraphs (a) through (d) in every contract entered into in connection with the Project, and shall require inclusion of these provisions in every subcontract entered into by any subcontractors, and every agreement with any Affiliate operating on the Property, so that each such provision shall be binding upon each contractor, subcontractor or Affiliate, as the case may be.

(f) Failure to comply with the employment obligations described in this **Section 10.01** shall be a basis for the City to pursue remedies under the provisions of **Section 15.02** hereof.

**10.02 City Resident Construction Worker Employment Requirement.** The Developer agrees for itself and its successors and assigns, and pursuant to any City rider to the Construction Contract, shall contractually obligate its General Contractor and shall cause the General Contractor to contractually obligate its subcontractors, as applicable, to agree, that during the rehabilitation of the Project they shall comply with the minimum percentage of total worker hours performed by actual residents of the City as specified in Section 2-92-330 of the Municipal Code of Chicago (at least 50 percent of the total worker hours worked by persons on the site of the Project shall be performed by actual residents of the City); provided, however, that in addition to complying with this percentage, the Developer, its General Contractor and each subcontractor shall be required to make good faith efforts to utilize qualified residents of the City in both unskilled and skilled labor positions.

The Developer may request a reduction or waiver of this minimum percentage level of Chicagoans as provided for in Section 2-92-330 of the Municipal Code of Chicago in accordance with standards and procedures developed by the Chief Procurement Officer of the City.

**"Actual residents of the City"** shall mean persons domiciled within the City. The domicile is an individual's one and only true, fixed and permanent home and principal establishment.

The Developer, the General Contractor and each subcontractor shall provide for the maintenance of adequate employee residency records to show that actual Chicago residents are employed on the Project. Each Employer shall maintain copies of personal documents supportive of every Chicago employee's actual record of residence.

Weekly certified payroll reports (U.S. Department of Labor Form.WH-347 or equivalent) shall be submitted to the Commissioner of HED in triplicate, which shall identify clearly the actual residence of every employee on each submitted certified payroll. The first time that an employee's name appears on a payroll, the date that the Employer hired the employee should be written in after the employee's name.

The Developer, the General Contractor and each subcontractor shall provide full access to their employment records to the Chief Procurement Officer, the Commissioner of HED, the Superintendent of the Chicago Police Department, the Inspector General or any duly authorized representative of any of them. The Developer, the General Contractor and each subcontractor shall maintain all relevant personnel data and records for a period of at least three (3) years after final acceptance of the work constituting the Project.

At the direction of HED, affidavits and other supporting documentation will be required of the Developer, the General Contractor and each subcontractor to verify or clarify an employee's actual address when doubt or lack of clarity has arisen.

Good faith efforts on the part of the Developer, the General Contractor and each subcontractor to provide utilization of actual Chicago residents (but not sufficient for the granting of a



waiver request as provided for in the standards and procedures developed by the Chief Procurement Officer) shall not suffice to replace the actual, verified achievement of the requirements of this Section concerning the worker hours performed by actual Chicago residents.

When work at the Project is completed, in the event that the City has determined that the Developer has failed to ensure the fulfillment of the requirement of this Section concerning the worker hours performed by actual Chicago residents or failed to report in the manner as indicated above, the City will thereby be damaged in the failure to provide the benefit of demonstrable employment to Chicagoans to the degree stipulated in this Section. Therefore, in such a case of non-compliance, it is agreed that 1/20 of 1 percent (0.0005) of the aggregate hard construction costs set forth in the Project budget (the product of .0005 x such aggregate hard construction costs) (as the same shall be evidenced by approved contract value for the actual contracts) shall be surrendered by the Developer to the City in payment for each percentage of shortfall toward the stipulated residency requirement. Failure to report the residency of employees entirely and correctly shall result in the surrender of the entire liquidated damages as if no Chicago residents were employed in either of the categories. The willful falsification of statements and the certification of payroll data may subject the Developer, the General Contractor and/or the subcontractors to prosecution. **Any retainage to cover contract performance that may become due to the Developer pursuant to Section 2-92-250 of the Municipal Code of Chicago may be withheld by the City pending the Chief Procurement Officer's determination as to whether the Developer must surrender damages as provided in this paragraph.**

Nothing herein provided shall be construed to be a limitation upon the "Notice of Requirements for Affirmative Action to Ensure Equal Employment Opportunity, Executive Order 11246" and "Standard Federal Equal Employment Opportunity, Executive Order 11246," or other affirmative action required for equal opportunity under the provisions of this Agreement or related documents.

The Developer shall cause or require the provisions of this **Section 10.02** to be included in all construction contracts and subcontracts related to the Project.

**10.03. MBE/WBE Commitment.** The Developer agrees for itself and its successors and assigns, and, if necessary to meet the requirements set forth herein, shall contractually obligate the General Contractor to agree that during the Project:

(a) Consistent with the findings which support, as applicable, (i) the Minority-Owned and Women-Owned Business Enterprise Procurement Program, Section 2-92-420 et seq., Municipal Code of Chicago (the "**Procurement Program**"), and (ii) the Minority- and Women-Owned Business Enterprise Construction Program, Section 2-92-650 et seq., Municipal Code of Chicago (the "Construction Program," and collectively with the Procurement Program, the "**MBE/WBE Program**"), and in reliance upon the provisions of the MBE/WBE Program to the extent contained in, and as qualified by, the provisions of this **Section 10.03**, during the course of the Project, at least the following percentages of the MBE/WBE Budget (as set forth in **Exhibit G-2** hereto) shall be expended for contract participation by MBEs and by WBEs

- (1) At least twenty-four percent (24%) by MBEs.
- (2) At least four percent (4%) by WBEs.

(b) For purposes of this **Section 10.03** only, the Developer (and any party to whom a contract is let by the Developer in connection with the Project) shall be deemed a "**contractor**" and

this Agreement (and any contract let by the Developer in connection with the Project) shall be deemed a "**contract**" or a "**construction contract**" as such terms are defined in Sections 2-92-420 and 2-92-670, Municipal Code of Chicago, as applicable.

(c) Consistent with Sections 2-92-440 and 2-92-720, Municipal Code of Chicago, the Developer's MBE/WBE commitment may be achieved in part by the Developer's status as an MBE or WBE (but only to the extent of any actual work performed on the Project by the Developer) or by a joint venture with one or more MBEs or WBEs (but only to the extent of the lesser of (i) the MBE or WBE participation in such joint venture or (ii) the amount of any actual work performed on the Project by the MBE or WBE), by the Developer utilizing a MBE or a WBE as the General Contractor (but only to the extent of any actual work performed on the Project by the General Contractor), by subcontracting or causing the General Contractor to subcontract a portion of the Project to one or more MBEs or WBEs, or by the purchase of materials or services used in the Project from one or more MBEs or WBEs, or by any combination of the foregoing. Those entities which constitute both a MBE and a WBE shall not be credited more than once with regard to the Developer's MBE/WBE commitment as described in this **Section 10.03**. In accordance with Section 2-92-730, Municipal Code of Chicago, the Developer shall not substitute any MBE or WBE General Contractor or subcontractor with a non MBE/WBE General Contractor or subcontractor without the prior written approval of HED.

(d) The Developer shall deliver quarterly reports to the City's monitoring staff during the Project describing its efforts to achieve compliance with this MBE/WBE commitment. Such reports shall include, *inter alia*, the name and business address of each MBE and WBE solicited by the Developer or the General Contractor to work on the Project, and the responses received from such solicitation, the name and business address of each MBE or WBE actually involved in the Project, a description of the work performed or products or services supplied, the date and amount of such work, product or service, and such other information as may assist the City's monitoring staff in determining the Developer's compliance with this MBE/WBE commitment. The Developer shall maintain records of all relevant data with respect to the utilization of MBEs and WBEs in connection with the Project for at least five years after completion of the Project, and the City's monitoring staff shall have access to all such records maintained by the Developer, on five business days' notice, to allow the City to review the Developer's compliance with its commitment to MBE/WBE participation and the status of any MBE or WBE performing any portion of the Project.

(e) Upon the disqualification of any MBE or WBE General Contractor or subcontractor, if such status was misrepresented by the disqualified party, the Developer shall be obligated to discharge or cause to be discharged the disqualified General Contractor or subcontractor, and, if possible, identify and engage a qualified MBE or WBE as a replacement. For purposes of this subsection (e), the disqualification procedures are further described in Sections 2-92-540 and 2-92-730, Municipal Code of Chicago, as applicable.

(f) Any reduction or waiver of the Developer's MBE/WBE commitment as described in this **Section 10.03** shall be undertaken in accordance with Sections 2-92-450 and 2-92-730, Municipal Code of Chicago, as applicable.

(g) Prior to the commencement of the Project, the Developer shall be required to meet with the City's monitoring staff with regard to the Developer's compliance with its obligations under this **Section 10.03**. The General Contractor and all major subcontractors shall be required to attend this pre-construction meeting. During said meeting, the Developer shall demonstrate to the City's monitoring staff its plan to achieve its obligations under this **Section 10.03**, the sufficiency of which shall be approved by the City's monitoring staff. During the Project, the Developer shall submit the

documentation required by this **Section 10.03** to the City's monitoring staff, including the following: (i) subcontractor's activity report; (ii) contractor's certification concerning labor standards and prevailing wage requirements; (iii) contractor letter of understanding; (iv) monthly utilization report; (v) authorization for payroll agent; (vi) certified payroll; (vii) evidence that MBE/WBE contractor associations have been informed of the Project via written notice and hearings; and (viii) evidence of compliance with job creation/job retention requirements. Failure to submit such documentation on a timely basis, or a determination by the City's monitoring staff, upon analysis of the documentation, that the Developer is not complying with its obligations under this **Section 10.03**, shall, upon the delivery of written notice to the Developer, be deemed an Event of Default. Upon the occurrence of any such Event of Default, in addition to any other remedies provided in this Agreement, the City may: (1) issue a written demand to the Developer to halt the Project, (2) withhold any further payment of any City Funds to the Developer or the General Contractor, or (3) seek any other remedies against the Developer available at law or in equity.

## **SECTION 11. ENVIRONMENTAL MATTERS**

**11.01 "AS IS" SALE.** THE DEVELOPER ACKNOWLEDGES THAT IT HAS HAD ADEQUATE OPPORTUNITY TO INSPECT AND EVALUATE THE STRUCTURAL, PHYSICAL AND ENVIRONMENTAL CONDITION AND RISKS OF THE PROPERTY AND ACCEPTS THE RISK THAT ANY INSPECTION MAY NOT DISCLOSE ALL MATERIAL MATTERS AFFECTING THE PROPERTY. THE DEVELOPER AGREES TO ACCEPT THE PROPERTY IN ITS "AS IS," "WHERE IS" AND "WITH ALL FAULTS" CONDITION AT CLOSING WITHOUT ANY COVENANT, REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, OF ANY KIND, AS TO THE STRUCTURAL, PHYSICAL OR ENVIRONMENTAL CONDITION OF THE PROPERTY OR THE SUITABILITY OF THE PROPERTY FOR ANY PURPOSE WHATSOEVER. THE DEVELOPER ACKNOWLEDGES THAT IT IS RELYING SOLELY UPON ITS OWN INSPECTION AND OTHER DUE DILIGENCE ACTIVITIES AND NOT UPON ANY INFORMATION (INCLUDING, WITHOUT LIMITATION, ENVIRONMENTAL STUDIES OR REPORTS OF ANY KIND) PROVIDED BY OR ON BEHALF OF THE CITY OR ITS AGENTS OR EMPLOYEES WITH RESPECT THERETO. THE DEVELOPER AGREES THAT IT IS THE DEVELOPER'S SOLE RESPONSIBILITY AND OBLIGATION TO PERFORM ANY ENVIRONMENTAL REMEDIATION WORK AND TAKE SUCH OTHER ACTION AS IS NECESSARY TO PUT THE PROPERTY IN A CONDITION WHICH IS SUITABLE FOR ITS INTENDED USE.

**11.02** The Developer hereby represents and warrants to the City that the Developer has performed a Phase I environmental site assessment of the Property in accordance with the requirements of the ASTM E1527-05 standard ("Phase I") and other environmental studies sufficient to conclude that the Project may be rehabilitated, completed and operated in accordance with all Environmental Laws and this Agreement and all Exhibits attached hereto, the Scope Drawings, Plans and Specifications and all amendments thereto and the Redevelopment Plan. The Developer agrees to deliver to the City a copy of each report prepared by or for the Developer regarding the environmental condition of the Property.

**11.03 Environmental Remediation.** Notwithstanding the foregoing or any other provision to the contrary contained in this Agreement, DOE shall have the right to review and approve the Phase I and any other reports prepared for the Property. Upon DOE's request, the Developer shall perform additional studies and tests for the purpose of determining whether any environmental or health risks would be associated with the development of the Project, including, without limitation,

updating or expanding the Phase I and performing initial or additional Phase II testing. The Developer shall enroll the Property in the IEPA's SRP Program and take all necessary steps to obtain a Final NFR Letter. The Developer may proceed with all interior and exterior rehabilitation of the building (including, but not limited to, asbestos, lead-based paint and mold abatement, removal of any underground or above-ground storage tanks located within the building as well as improvements to wall, floors, fixtures, roofing and façade work) that is unrelated to and unaffected by the scope of work set forth in the forthcoming RAP prior to the IEPA's and DOE's approval of the RAP; provided, however, that Developer shall be responsible for correcting at its sole expense any work that it completed prior to the RAP that must be revised in accordance with the requirements of the RAP. The prohibition set forth in the preceding sentence does not preclude the Developer from removing the underground storage tank on the Property prior to the IEPA's and DOE's approval of the Developer's RAP. After the IEPA and DOE approve the Developer's RAP, the Developer covenants and agrees to complete all investigation, sampling, monitoring, testing, removal, response, disposal, storage, remediation, treatment and other activities necessary to obtain a Final NFR Letter for the Property in accordance with the requirements of the IEPA and all applicable Laws, including, without limitation, all applicable Environmental Laws ("Environmental Remediation"). If Environmental Remediation is required on the Property, the Developer acknowledges and agrees that the City will not issue a Certificate until the IEPA has issued, and the City has approved, a Final NFR Letter for the Property, which approval shall not be unreasonably withheld. The City shall have the right to approve the ROR, RAP and RACR for the Property and any changes or modifications thereto, which approval shall not be unreasonably withheld. The Developer shall bear sole responsibility for all aspects of the Environmental Remediation and any other investigative and cleanup costs associated with the Property and any improvements, facilities or operations located or formerly located thereon, including, without limitation, the removal and disposal of all Hazardous Materials, debris and other materials excavated during the performance of the Environmental Remediation. The Developer shall promptly transmit to the City copies of any written communications received from the IEPA or other regulatory agencies with respect to the Environmental Remediation.

**11.04 Release and Indemnification.** The Developer, on behalf of itself and anyone claiming by, through or under it, hereby releases, relinquishes and forever discharges the City, its officers, agents and employees, from and against any and all Losses which the Developer ever had, now have, or hereafter may have, whether grounded in tort or contract or otherwise, in any and all courts or other forums, of whatever kind or nature, whether known or unknown, arising out of or in any way connected with, directly or indirectly (a) any environmental contamination, pollution or hazards associated with the Property or any improvements, facilities or operations located or formerly located thereon, including, without limitation, any release, emission, discharge, generation, transportation, treatment, storage or disposal of Hazardous Materials, or threatened release, emission or discharge of Hazardous Materials; (b) the structural, physical or environmental condition of the Property, including, without limitation, the presence or suspected presence of Hazardous Materials in, on, under or about the Property or the migration of Hazardous Materials from or to other property; (c) any violation of, compliance with, enforcement of or liability under any Environmental Laws, including, without limitation, any Losses arising under CERCLA, and (d) any investigation, cleanup, monitoring, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision or other third party in connection or associated with the Property or any improvements, facilities or operations located or formerly located thereon (collectively, "Released Claims"). Furthermore, the Developer shall defend, indemnify, and hold the City harmless from and against any and all Losses which may be made or asserted by any third parties arising out of or in any way connected with, directly or indirectly, any of the Released Claims.

**11.05 Release Runs with the Land.** The covenant of release in Section 11.04 shall run with the Property, and shall be binding upon all successors and assigns of the Developer with respect to the Property, including, without limitation, each and every person, firm, corporation, limited liability company, trust or other entity owning, leasing, occupying, using or possessing any portion of the Property under or through the Developer following the date of the Deed. The Developer acknowledges and agrees that the foregoing covenant of release constitutes a material inducement to the City to enter into this Agreement, and that, but for such release, the City would not have agreed to convey the Property to the Developer. It is expressly agreed and understood by and between the Developer and the City that, should any future obligation of the Developer, or any of the Developer, arise or be alleged to arise in connection with any environmental, soil or other condition of the Property, neither the Developer, nor any of its current or former officers, directors, employees, agents, predecessors, successors or assigns, will assert that those obligations must be satisfied in whole or in part by the City because Section 11.04 contains a full, complete and final release of all such claims.

**11.06 Survival.** This Section 11 shall survive the Closing or any termination of this Agreement (regardless of the reason for such termination).

## SECTION 12. INSURANCE

The Developer must provide and maintain, at Developer's own expense, or cause to be provided and maintained during the term of this Agreement, the insurance coverage and requirements specified below, insuring all operations related to the Agreement.

(a) Prior to execution and delivery of this Agreement.

(i) Workers Compensation and Employers Liability

Workers Compensation Insurance, as prescribed by applicable law covering all employees who are to provide work under this Agreement and Employers Liability coverage with limits of not less than \$100,000 each accident, illness or disease.

(ii) Commercial General Liability (Primary and Umbrella)

Commercial General Liability Insurance or equivalent with limits of not less than \$1,000,000 per occurrence for bodily injury, personal injury, and property damage liability. Coverages must include the following: All premises and operations, products/completed operations independent contractors, separation of insureds, defense, and contractual liability (with no limitation endorsement). The City of Chicago is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly from the work.

(iii) All Risk Property

All Risk Property Insurance at replacement value of the property to protect against loss of, damage to, or destruction of the building/facility. The City is to be named as an additional insured and loss payee/mortgagee if applicable.

(b) Construction. Prior to the rehabilitation of any portion of the Project, Developer will cause its architects, contractors, subcontractors, project managers and other parties constructing the Project to procure and maintain the following kinds and amounts of insurance:

(i) Workers Compensation and Employers Liability

Workers Compensation Insurance, as prescribed by applicable law covering all employees who are to provide work under this Agreement and Employers Liability coverage with limits of not less than \$ 500,000 each accident, illness or disease.

(ii) Commercial General Liability (Primary and Umbrella)

Commercial General Liability Insurance or equivalent with limits of not less than \$2,000,000 per occurrence for bodily injury, personal injury, and property damage liability. Coverages must include the following: All premises and operations, products/completed operations (for a minimum of two (2) years following project completion), explosion, collapse, underground, separation of insureds, defense, and contractual liability (with no limitation endorsement). The City of Chicago is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly from the work.

(iii) Automobile Liability (Primary and Umbrella)

When any motor vehicles (owned, non-owned and hired) are used in connection with work to be performed, the Automobile Liability Insurance with limits of not less than \$2,000,000 per occurrence for bodily injury and property damage. The City of Chicago is to be named as an additional insured on a primary, non-contributory basis.

(iv) Railroad Protective Liability

When any work is to be done adjacent to or on railroad or transit property, Developer must provide or cause to be provided with respect to the operations that such Contractor performs, Railroad Protective Liability Insurance in the name of railroad or transit entity. The policy must have limits of not less than \$2,000,000 per occurrence and \$6,000,000 in the aggregate for losses arising out of injuries to or death of all persons, and for damage to or destruction of property, including the loss of use thereof.

(v) All Risk /Builders Risk

When Developer undertakes any construction, including improvements, betterments, and/or repairs, the Developer must provide or cause to be provided All Risk Builders Risk Insurance at replacement cost for materials, supplies, equipment, machinery and fixtures that are or will be part of the project. The City of Chicago is to be named as an additional insured and loss payee/mortgagee if applicable.

(vi) Professional Liability

When any architects, engineers, construction managers or other professional consultants perform work in connection with this Agreement, Professional Liability Insurance covering acts, errors, or omissions must be maintained with limits of not less than \$1,000,000. Coverage must include contractual liability. When policies are renewed or

replaced, the policy retroactive date must coincide with, or precede, start of work on the Project. A claims-made policy which is not renewed or replaced must have an extended reporting period of two (2) years.

(vii) Valuable Papers

When any plans, designs, drawings, specifications and documents are produced or used under this Agreement, Valuable Papers Insurance must be maintained in an amount to insure against any loss whatsoever, and must have limits sufficient to pay for the re-creation and reconstruction of such records.

(viii) Contractors Pollution Liability

When any remediation work is performed which may cause a pollution exposure, the Developer must cause remediation contractor to provide Contractor Pollution Liability covering bodily injury, property damage and other losses caused by pollution conditions that arise from the contract scope of work with limits of not less than \$1,000,000 per occurrence. Coverage must include completed operations, contractual liability, defense, excavation, environmental cleanup, remediation and disposal. When policies are renewed or replaced, the policy retroactive date must coincide with or precede, start of work on the Agreement. A claims-made policy which is not renewed or replaced must have an extended reporting period of two (2) years. The City of Chicago is to be named as an additional insured.

(c) Post Construction:

(i) All Risk Property Insurance at replacement value of the Property to protect against loss of, damage to, or destruction of the building/facility. The City is to be named as an additional insured and loss payee/mortgagee if applicable.

(d) Other Requirements:

The Developer must furnish the City of Chicago, Department of Housing and Economic Development, Development Support Services, City Hall, Room 1000, 121 North LaSalle Street 60602, original certificates of insurance, or such similar evidence, to be in force on the date of this Agreement, and Renewal Certificates of Insurance, or such similar evidence, if the coverages have an expiration or renewal date occurring during the term of this Agreement. The Developer must submit evidence of insurance on the City of Chicago Insurance Certificate Form (copy attached) or equivalent prior to closing. The receipt of any certificate does not constitute agreement by the City that the insurance requirements in the Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all Agreement requirements. The failure of the City to obtain certificates or other insurance evidence from Developer is not a waiver by the City of any requirements for the Developer to obtain and maintain the specified coverages. The Developer shall advise all insurers of the Agreement provisions regarding insurance. Non-conforming insurance does not relieve Developer of the obligation to provide insurance as specified herein. Nonfulfillment of the insurance conditions may constitute a violation of the Agreement, and the City retains the right to stop work and/or terminate agreement until proper evidence of insurance is provided.

The insurance must provide for 60 days prior written notice to be given to the City in the event coverage is substantially changed, cancelled, or non-renewed by the insurer;

provided, however, 10 days prior written notice shall be given to the City in the event that coverage is cancelled for non-payment of insurance premiums.

Any deductibles or self insured retentions on referenced insurance coverages must be borne by Developer and Contractor(s).

The Developer hereby waives and agrees to require their insurers to waive their rights of subrogation against the City of Chicago, its employees, elected officials, agents, or representatives.

The coverages and limits furnished by Developer in no way limit the Developer's liabilities and responsibilities specified within the Agreement or by law.

Any insurance or self insurance programs maintained by the City of Chicago do not contribute with insurance provided by the Developer under the Agreement.

The required insurance to be carried is not limited by any limitations expressed in the indemnification language in this Agreement or any limitation placed on the indemnity in this Agreement given as a matter of law.

If Developer is a joint venture or limited liability company, the insurance policies must name the joint venture or limited liability company as a named insured.

The Developer must require Contractor and subcontractors to provide the insurance required herein, or Developer may provide the coverages for Contractor and subcontractors. All Contractors and subcontractors are subject to the same insurance requirements of Developer unless otherwise specified in this Agreement.

If Developer, any Contractor or subcontractor desires additional coverages, the party desiring the additional coverages is responsible for the acquisition and cost.

The City of Chicago Risk Management Department maintains the right to modify, delete, alter or change these requirements.

## SECTION 13. INDEMNIFICATION

**13.01 General Indemnity.** Developer agrees to indemnify, pay, defend and hold the City, and its elected and appointed officials, employees, agents and affiliates (individually an "Indemnitee," and collectively the "Indemnitees") harmless from and against, any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (and including without limitation, the reasonable fees and disbursements of counsel for such Indemnitees in connection with any investigative, administrative or judicial proceeding commenced or threatened, whether or not such Indemnitees shall be designated a party thereto), that may be imposed on, suffered, incurred by or asserted against the Indemnitees in any manner relating or arising out of:

(i) the Developer's failure to comply with any of the terms, covenants and conditions contained within this Agreement; or



(ii) the Developer's or any contractor's failure to pay General Contractors, subcontractors or materialmen in connection with the TIF-Funded Improvements or any other Project improvement; or

(iii) the existence of any material misrepresentation or omission in this Agreement, any offering memorandum or information statement or the Redevelopment Plan or any other document related to this Agreement that is the result of information supplied or omitted by the Developer or any Affiliate or any of their respective agents, officers, directors, equity holders, employees, contractors or persons acting under the control or at the request of Developer or any Affiliate;

(iv) the Developer's failure to cure any misrepresentation in this Agreement or any other agreement relating hereto; or

(v) any act or omission by Developer or any Affiliate.

provided, however, that Developer shall have no obligation to an Indemnitee arising from the wanton or willful misconduct of that Indemnitee. To the extent that the preceding sentence may be unenforceable because it is violative of any law or public policy, Developer shall contribute the maximum portion that it is permitted to pay and satisfy under the applicable law, to the payment and satisfaction of all indemnified liabilities incurred by the Indemnitees or any of them. The provisions of the undertakings and indemnification set out in this **Section 13.01** shall survive the termination of this Agreement.

#### **SECTION 14. MAINTAINING RECORDS/RIGHT TO INSPECT**

**14.01 Books and Records.** The Developer shall keep and maintain separate, complete, accurate and detailed books and records necessary to reflect and fully disclose the total actual cost of the Project and the disposition of all funds from whatever source allocated thereto, and to monitor the Project. All such books, records and other documents, including but not limited to the Developer's loan statements, if any, General Contractors' and contractors' sworn statements, general contracts, subcontracts, purchase orders, waivers of lien, paid receipts and invoices, shall be available at the Developer's offices for inspection, copying, audit and examination by an authorized representative of the City, at the Developer's expense. The Developer shall incorporate this right to inspect, copy, audit and examine all books and records into all contracts entered into by the Developer with respect to the Project.

**14.02 Inspection Rights.** Upon three (3) business days' notice, any authorized representative of the City has access to all portions of the Project and the Property during normal business hours for the Term of the Agreement.

#### **SECTION 15. DEFAULT AND REMEDIES**

**15.01 Events of Default.** The occurrence of any one or more of the following events, subject to the provisions of **Section 15.03**, shall constitute an "Event of Default" by the Developer hereunder:

(a) the failure of the Developer to perform, keep or observe any of the covenants, conditions, promises, agreements or obligations of the Developer under this Agreement or any related agreement;

(b) the failure of the Developer to perform, keep or observe any of the covenants, conditions, promises, agreements or obligations of the Developer under any other agreement with any person or entity (after any applicable notice and cure period) if such failure may have a material adverse effect on the Developers' ability to perform, keep or observe any of its conditions, promises or obligations hereunder;

(c) the making or furnishing by the Developer to the City of any representation, warranty, certificate, schedule, report or other communication within or in connection with this Agreement or any related agreement which is untrue or misleading in any material respect;

(d) except as otherwise permitted hereunder, the creation (whether voluntary or involuntary) of, or any attempt to create, any lien or other encumbrance upon the Property, including any fixtures now or hereafter attached thereto, other than the Permitted Liens and/or liens bonded by the Developer or insured by the Title Company, or the making or any attempt to make any levy, seizure or attachment thereof;

(e) the commencement of any proceedings in bankruptcy by or against the Developer or for the liquidation or reorganization of the Developer, or alleging that the Developer is insolvent or unable to pay its debts as they mature, or for the readjustment or arrangement of the Developer's debts, whether under the United States Bankruptcy Code or under any other state or federal law, now or hereafter existing for the relief of debtors, or the commencement of any analogous statutory or non-statutory proceedings involving the Developer; provided, however, that if such commencement of proceedings is involuntary, such action shall not constitute an Event of Default unless such proceedings are not dismissed within sixty (60) days after the commencement of such proceedings;

(f) the appointment of a receiver or trustee for the Developer, for any substantial part of the Developer's assets or the institution of any proceedings for the dissolution, or the full or partial liquidation, or the merger or consolidation, of the Developer; provided, however, that if such appointment or commencement of proceedings is involuntary, such action shall not constitute an Event of Default unless such appointment is not revoked or such proceedings are not dismissed within sixty (60) days after the commencement thereof;

(g) the entry of any judgment or order against the Developer that impacts the Developers' ability to perform, keep or observe any of its conditions, promises or obligations hereunder which remains unsatisfied or undischarged and in effect for sixty (60) days after such entry without a stay of enforcement or execution;

(h) the occurrence of an event of default under any Lender Financing, which default is not cured within any applicable cure period;

(i) the dissolution of the Developer or the death of any natural person who owns a material interest in the Developer;

(j) the institution in any court of a criminal proceeding (other than a misdemeanor) against the Developer or any natural person who owns a material interest in the Developer, which is not

dismissed within thirty (30) days, or the indictment of the Developer or any natural person who owns a material interest in the Developer, for any crime (other than a misdemeanor); or

(k) the sale or transfer of a majority of the ownership interests of the Developer without the prior written consent of the City; provided however, transfers of partnership interests of the limited partner in accordance with Viceroy's First Amended and Restated Limited Partnership Agreement to any affiliate of Wincopin Circle LLLP, a Maryland limited liability limited partnership and its successors and assigns, shall require only notice to the City.

For purposes of **Sections 15.01(i)** and **15.01(j)** hereof, a natural person with a material interest in the Developer shall be one owning in excess of ten percent (10%) of Viceroy's partnership interests.

**15.02 Remedies.** Upon the occurrence of an Event of Default, the City may terminate this Agreement and all related agreements, and may suspend payment of and/or seek reimbursement of the City Funds. The City may, in any court of competent jurisdiction by any action or proceeding at law or in equity, pursue and secure any available remedy, including but not limited to injunctive relief or the specific performance of the agreements contained herein. To the extent permitted by law, the City may also lien the Property.

**15.03 Curative Period.** In the event the Developer shall fail to perform a monetary covenant which the Developer is required to perform under this Agreement, except as set forth elsewhere in this Agreement, an Event of Default shall not be deemed to have occurred unless the Developer has failed to perform such monetary covenant within ten (10) days of its receipt of a written notice from the City specifying that it has failed to perform such monetary covenant. In the event the Developer shall fail to perform a non-monetary covenant which the Developer is required to perform under this Agreement, except as set forth elsewhere in this Agreement, an Event of Default shall not be deemed to have occurred unless the Developer has failed to cure such default within sixty (60) days of its receipt of a written notice from the City specifying the nature of the default; provided, however, with respect to those non-monetary defaults which are not capable of being cured within such sixty (60) day period, the Developer shall not be deemed to have committed an Event of Default under this Agreement if it has commenced to cure the alleged default within such sixty (60) day period and thereafter diligently and continuously prosecutes the cure of such default until the same has been cured; provided, further, notwithstanding anything to the contrary contained herein, the City hereby agrees that any cure of any default made or tendered by one of Viceroy's limited partners shall be deemed to be a cure by the Developer and shall be accepted or rejected on the same basis as if made or tendered by Developer.

**15.04 Right to Cure by Lender.** In the event that an Event of Default occurs under this Agreement, and if, as a result thereof, the City intends to exercise any right or remedy available to it that could result in termination of this Agreement and all related agreements, or the suspension, cancellation, reduction or reimbursement of City Funds disbursed hereunder, the City shall prior to exercising such right or remedy, send notice of such intended exercise to the Lender and the Lender shall have the right (but not the obligation) to cure such Event of Default as follows:

(a) if the Event of Default is a monetary default, the Lender may cure such default within 30 days after the later of: (i) the expiration of the cure period, if any, granted to the Developer with respect to such monetary default; or (ii) receipt by the Lender of such notice from the City; and

(b) if any Event of Default is of a non-monetary nature, the Lender shall have the right to cure such default within 30 days after the later of: (i) the expiration of the cure period, if any, granted

to the Developer with respect to such non-monetary default; or (ii) receipt by the Lender of such notice from the City; and

(c) Notwithstanding the provisions of **Section 15.04(b)** hereof, if such non-monetary default is an Event of Default set forth in **Section 15.01(e), (f), (g), (h), (i) or (j)** hereof or Event of Default by the Developer of a nature so as not reasonably being capable of being cured within such 30 day period (each such default being a "Personal Developer Default"), the Lender shall provide written notice to the City within 30 days of receipt of notice of such Personal Developer Default stating that it shall cure such Personal Developer Default by the assignment of all of the Developer's rights and interests in this Agreement to the Lender or any other party agreed to in writing by both the Lender and the City. Upon receipt by the City of such notice from the Lender, the cure period shall be extended for such reasonable period of time as may be necessary to complete such assignment and assumption of Developer's rights hereunder; provided, however, that no payment of City Funds shall occur until such time as such Personal Developer Default is cured.

## SECTION 16. MORTGAGING OF THE PROJECT

All mortgages or deeds of trust in place as of the date hereof with respect to the Property or any portion thereof are listed on **Exhibit F** hereto (including but not limited to mortgages made prior to or on the date hereof in connection with Lender Financing) and are referred to herein as the "Existing Mortgages." Any mortgage or deed of trust that the Developer may hereafter elect to execute and record or permit to be recorded against the Property or any portion thereof is referred to herein as a "**New Mortgage**." Any New Mortgage that the Developer may hereafter elect to execute and record or permit to be recorded against the Property or any portion thereof with the prior written consent of the City is referred to herein as a "**Permitted Mortgage**." It is hereby agreed by and between the City and the Developer as follows:

(a) In the event that a mortgagee or any other party shall succeed to the Developer's interest in the Property or any portion thereof pursuant to the exercise of remedies under a New Mortgage (other than a Permitted Mortgage), whether by foreclosure or deed in lieu of foreclosure, and in conjunction therewith accepts an assignment of the Developer's interest hereunder in accordance with **Section 18.15** hereof, the City may, but shall not be obligated to, attorn to and recognize such party as the successor in interest to the Developer for all purposes under this Agreement and, unless so recognized by the City as the successor in interest, such party shall be entitled to no rights or benefits under this Agreement, but such party shall be bound by those provisions of this Agreement that are covenants expressly running with the land.

(b) In the event that any mortgagee shall succeed to the Developer's interest in the Property or any portion thereof pursuant to the exercise of remedies under an Existing Mortgage or a Permitted Mortgage, whether by foreclosure or deed in lieu of foreclosure, and in conjunction therewith accepts an assignment of the Developer's interest hereunder in accordance with **Section 18.15** hereof, the City hereby agrees to attorn to and recognize such party as the successor in interest to the Developer for all purposes under this Agreement so long as such party accepts all of the obligations and liabilities of "the Developer" hereunder; provided, however, that, notwithstanding any other provision of this Agreement to the contrary, it is understood and agreed that if such party accepts an assignment of the Developer's interest under this Agreement, such party has no liability under this Agreement for any Event of Default of the Developer which accrued prior to the time such party succeeded to the interest of the Developer under this Agreement, in which case the Developer shall be solely responsible. However, if such mortgagee under a Permitted Mortgage or an Existing

Mortgage does not expressly accept an assignment of the Developer's interest hereunder, such party shall be entitled to no rights and benefits under this Agreement, and such party shall be bound only by those provisions of this Agreement, if any, which are covenants expressly running with the land.

(c) Prior to the issuance of the Certificate pursuant to Section 7.01 hereof, no New Mortgage shall be executed with respect to the Property or any portion thereof without the prior written consent of the Commissioner of HED.

#### SECTION 17. NOTICE

Unless otherwise specified, any notice, demand or request required hereunder shall be given in writing at the addresses set forth below, by any of the following means: (a) personal service; (b) telecopy or facsimile; (c) overnight courier, or (d) registered or certified mail, return receipt requested.

If to the City: City of Chicago  
Department of Housing and Economic Development  
121 North LaSalle Street, Room 1000  
Chicago, IL 60602  
Attention: Commissioner

With Copies To: City of Chicago  
Department of Law  
Finance and Economic Development Division  
121 North LaSalle Street, Room 600  
Chicago, IL 60602

If to the Developer: Viceroy Hotel Limited Partnership  
and Heartland Housing, Inc.  
208 S. LaSalle Street, Suite 1818  
Chicago, Illinois 60604  
Attention: Executive Director

With Copies To: Applegate & Thorne-Thomsen, P.C.  
322 South Green Street, Suite 400  
Chicago, IL 60607  
Attention: William Skalitzky

and to: Enterprise Community Loan Fund, Inc.  
10227 Wincopin Circle  
Columbia, MD 21044  
Attn: Timothy E. Martin, Chief Credit Officer

Enterprise Community Partners, Inc.  
1 Whitehall Street, 11th Floor  
New York, NY 10004  
Attention: Gail Bayarin, Staff Attorney

Wincopin Circle LLLP  
c/o Enterprise Community Investment, Inc.  
10227 Wincopin Circle, Suite 810  
Columbia, Maryland 21044  
Attn: General Counsel

U.S. Bank National Association  
1 South Pinckney Street  
Madison, Wisconsin 53703  
Attn: Karyn Knaak

Dykema Gossett PLLC  
10 South Wacker Drive, Suite 2300  
Chicago, Illinois 60606  
Attn: Derek L. Cottier

First Baptist Congregational Church of Chicago  
1616 W. Washington Boulevard  
Chicago, IL 60612  
Attention: Rev. George Daniels

Such addresses may be changed by notice to the other parties given in the same manner provided above. Any notice, demand, or request sent pursuant to either clause (a) or (b) hereof shall be deemed received upon such personal service or upon dispatch. Any notice, demand or request sent pursuant to clause (c) shall be deemed received on the day immediately following deposit with the overnight courier and any notices, demands or requests sent pursuant to subsection (d) shall be deemed received two (2) business days following deposit in the mail.

## SECTION 18. MISCELLANEOUS

**18.01 Amendment.** This Agreement and the Exhibits attached hereto may not be amended or modified without the prior written consent of the parties hereto; provided, however, that the City, in its sole discretion, may amend, modify or supplement **Exhibit D** hereto without the consent of any party hereto. It is agreed that no material amendment or change to this Agreement shall be made or be effective unless ratified or authorized by an ordinance duly adopted by the City Council. The term "material" for the purpose of this **Section 18.01** shall be defined as any deviation from the terms of the Agreement which operates to cancel or otherwise reduce any developmental, construction or job-creating obligations of Developer (including those set forth in **Sections 10.02** and **10.03** hereof) by more than five percent (5%) or materially changes the Project site or character of the Project or any activities undertaken by Developer affecting the Project site, the Project, or both, or increases any time agreed for performance by the Developer by more than ninety (90) days.

**18.02 Entire Agreement.** This Agreement (including each Exhibit attached hereto, which is hereby incorporated herein by reference) constitutes the entire Agreement between the parties hereto and it supersedes all prior agreements, negotiations and discussions between the parties relative to the subject matter hereof.

**18.03 Limitation of Liability.** No member, elected or appointed official or employee or agent of the City shall be individually, collectively or personally liable to Developer or any successor

in interest to Developer in the event of any default or breach by the City or for any amount which may become due to Developer or any successor in interest, from the City or on any obligation under the terms of this Agreement.

**18.04 Further Assurances.** The Developer agrees to take such actions, including the execution and delivery of such documents, instruments, petitions and certifications as may become necessary or appropriate to carry out the terms, provisions and intent of this Agreement.

**18.05 Waiver.** Waiver by the City or the Developer with respect to any breach of this Agreement shall not be considered or treated as a waiver of the rights of the respective party with respect to any other default or with respect to any particular default, except to the extent specifically waived by the City or the Developer in writing. No delay or omission on the part of a party in exercising any right shall operate as a waiver of such right or any other right unless pursuant to the specific terms hereof. A waiver by a party of a provision of this Agreement shall not prejudice or constitute a waiver of such party's right otherwise to demand strict compliance with that provision or any other provision of this Agreement. No prior waiver by a party, nor any course of dealing between the parties hereto, shall constitute a waiver of any such parties' rights or of any obligations of any other party hereto as to any future transactions.

**18.06 Remedies Cumulative.** The remedies of a party hereunder are cumulative and the exercise of any one or more of the remedies provided for herein shall not be construed as a waiver of any other remedies of such party unless specifically so provided herein.

**18.07 Disclaimer.** Nothing contained in this Agreement nor any act of the City shall be deemed or construed by any of the parties, or by any third person, to create or imply any relationship of third-party beneficiary, principal or agent, limited or general partnership or joint venture, or to create or imply any association or relationship involving the City.

**18.08 Headings.** The paragraph and section headings contained herein are for convenience only and are not intended to limit, vary, define or expand the content thereof.

**18.09 Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute one and the same agreement.

**18.10 Severability.** If any provision in this Agreement, or any paragraph, sentence, clause, phrase, word or the application thereof, in any circumstance, is held invalid, this Agreement shall be construed as if such invalid part were never included herein and the remainder of this Agreement shall be and remain valid and enforceable to the fullest extent permitted by law.

**18.11 Conflict.** In the event of a conflict between any provisions of this Agreement and the provisions of the TIF Ordinances such ordinance(s) shall prevail and control.

**18.12 Governing Law.** This Agreement shall be governed by and construed in accordance with the internal laws of the State of Illinois, without regard to its conflicts of law principles.

**18.13 Form of Documents.** All documents required by this Agreement to be submitted, delivered or furnished to the City shall be in form and content satisfactory to the City.

**18.14 Approval.** Wherever this Agreement provides for the approval or consent of the City, HED or the Commissioner, or any matter is to be to the City's, HED's or the Commissioner's

satisfaction, unless specifically stated to the contrary, such approval, consent or satisfaction shall be made, given or determined by the City, HED or the Commissioner in writing and in the reasonable discretion thereof. The Commissioner or other person designated by the Mayor of the City shall act for the City or HED in making all approvals, consents and determinations of satisfaction, granting the Certificate or otherwise administering this Agreement for the City.

**18.15 Assignment.** Except as permitted in accordance with a Permitted Lien, the Developer may not sell, assign or otherwise transfer its interest in this Agreement in whole or in part without the written consent of the City. Any successor in interest to the Developer under this Agreement shall certify in writing to the City its agreement to abide by all remaining executory terms of this Agreement, including but not limited to **Sections 8.18** (Real Estate Provisions) and **8.22** (Survival of Covenants) hereof, for the Term of the Agreement. The Developer consents to the City's sale, transfer, assignment or other disposal of this Agreement at any time in whole or in part.

**18.16 Binding Effect.** This Agreement shall be binding upon the Developer, the City and their respective successors and permitted assigns (as provided herein) and shall inure to the benefit of the Developer, the City and their respective successors and permitted assigns (as provided herein). Except as otherwise provided herein, this Agreement shall not run to the benefit of, or be enforceable by, any person or entity other than a party to this Agreement and its successors and permitted assigns. This Agreement should not be deemed to confer upon third parties any remedy, claim, right of reimbursement or other right.

**18.17 Force Majeure.** Neither the City nor the Developer nor any successor in interest to either of them shall be considered in breach of or in default of its obligations under this Agreement in the event of any delay caused by damage or destruction by fire or other casualty, strike, shortage of material, unusually adverse weather conditions such as, by way of illustration and not limitation, severe rain storms or below freezing temperatures of abnormal degree or for an abnormal duration, tornadoes or cyclones, and other events or conditions beyond the reasonable control of the party affected which in fact interferes with the ability of such party to discharge its obligations hereunder. The individual or entity relying on this section with respect to any such delay shall, upon the occurrence of the event causing such delay, immediately give written notice to the other parties to this Agreement. The individual or entity relying on this section with respect to any such delay may rely on this section only to the extent of the actual number of days of delay effected by any such events described above.

**18.18 Exhibits.** All of the exhibits attached hereto are incorporated herein by reference.

**18.19 Business Economic Support Act.** Pursuant to the Business Economic Support Act (30 ILCS 760/1 *et seq.*), if the Developer is required to provide notice under the WARN Act, the Developer shall, in addition to the notice required under the WARN Act, provide at the same time a copy of the WARN Act notice to the Governor of the State, the Speaker and Minority Leader of the House of Representatives of the State, the President and Minority Leader of the Senate of State, and the Mayor of each municipality where the Developer has locations in the State. Failure by the Developer to provide such notice as described above may result in the termination of all or a part of the payment or reimbursement obligations of the City set forth herein.

**18.20 Venue and Consent to Jurisdiction.** If there is a lawsuit under this Agreement, each party may hereto agrees to submit to the jurisdiction of the courts of Cook County, the State of Illinois and the United States District Court for the Northern District of Illinois.



**18.21 Costs and Expenses.** In addition to and not in limitation of the other provisions of this Agreement, Developer agrees to pay upon demand the City's out-of-pocket expenses, including attorney's fees, incurred in connection with the enforcement of the provisions of this Agreement. This includes, subject to any limits under applicable law, attorney's fees and legal expenses, whether or not there is a lawsuit, including attorney's fees for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals and any anticipated post-judgment collection services. Developer also will pay any court costs, in addition to all other sums provided by law.

**18.22 Business Relationships.** The Developer acknowledges (A) receipt of a copy of Section 2-156-030 (b) of the Municipal Code of Chicago, (B) that Developer has read such provision and understands that pursuant to such Section 2-156-030 (b), it is illegal for any elected official of the City, or any person acting at the direction of such official, to contact, either orally or in writing, any other City official or employee with respect to any matter involving any person with whom the elected City official or employee has a "**Business Relationship**" (as defined in Section 2-156-080 of the Municipal Code of Chicago), or to participate in any discussion in any City Council committee hearing or in any City Council meeting or to vote on any matter involving any person with whom the elected City official or employee has a "Business Relationship" (as defined in Section 2-156-080 of the Municipal Code of Chicago), or to participate in any discussion in any City Council committee hearing or in any City Council meeting or to vote on any matter involving the person with whom an elected official has a Business Relationship, and (C) that a violation of Section 2-156-030 (b) by an elected official, or any person acting at the direction of such official, with respect to any transaction contemplated by this Agreement shall be grounds for termination of this Agreement and the transactions contemplated hereby. The Developer hereby represents and warrants that, to the best of its knowledge after due inquiry, no violation of Section 2-156-030 (b) has occurred with respect to this Agreement or the transactions contemplated hereby.

**18.23 Date of Performance.** If any date for performance under this Agreement falls on a Saturday, Sunday or other day which is a holiday under Federal law or under State law, the date for such performance will be the next succeeding business day.

**18.24 Construction of Words.** The use of the singular form of any word herein includes the plural, and vice versa. Masculine, feminine and neuter pronouns are fully interchangeable, where the context so requires. The words "herein", "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision. The term "include" (in all its forms) means "include, without limitation" unless the context clearly states otherwise. The word "shall" means "has a duty to".

**18.25 No Merger.** The terms of this Agreement shall not be merged with the Deed, and the delivery of the Deed shall not be deemed to affect or impair the terms of this Agreement.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

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

**VICEROY HOTEL LIMITED PARTNERSHIP,**  
an Illinois limited partnership

By: Viceroy GP, LLC, an Illinois limited liability company,  
its General Partner

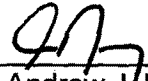
By: Heartland Housing, Inc., an Illinois not for profit corporation,  
Its Manager

By:   
Michael Goldberg, Executive Director

**HEARTLAND HOUSING, INC.**  
an Illinois not-for-profit corporation

By:   
Michael Goldberg, Executive Director

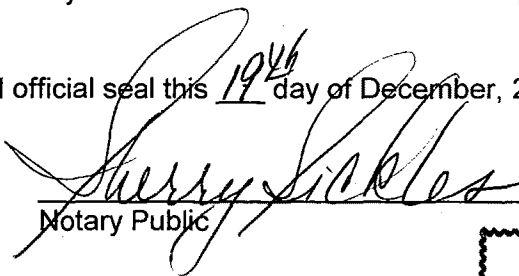
**CITY OF CHICAGO**

By:   
Andrew J. Mooney  
Commissioner  
Department of Housing and Economic Development

STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COOK )

The undersigned, a notary public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Michael Goldberg, personally known to me to be the Executive Director of Heartland Housing, Inc., an Illinois not-for-profit corporation, ("Heartland") and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed, and delivered said instrument, pursuant to the authority given to him by the board of directors of Heartland, as his free and voluntary act, as the free and voluntary act of Heartland for the uses and purposes therein set forth.

GIVEN under my hand and official seal this 19<sup>th</sup> day of December, 2011.

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

My Commission Expires \_\_\_\_\_

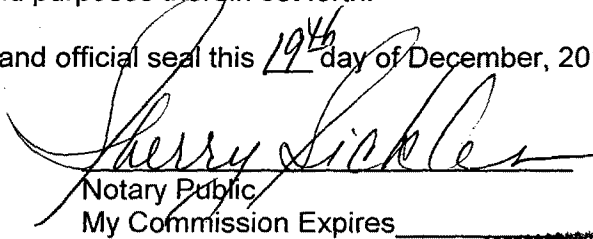


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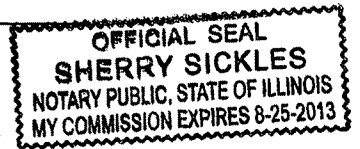
STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COOK )

The undersigned, a notary public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Michael Goldberg, personally known to me to be the Executive Director of Heartland Housing, Inc. ("Heartland"), which is the Manager of Viceroy GP, LLC, an Illinois limited liability company (the "Company"), which is the sole general partner of Viceroy Hotel Limited Partnership, an Illinois limited partnership, ("Viceroy") and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed, and delivered said instrument, pursuant to the authority given to him by the Board of Directors of Heartland, in its capacity as manager of the Company on behalf of Viceroy, as his free and voluntary act, as the free and voluntary act of Viceroy for the uses and purposes therein set forth.

GIVEN under my hand and official seal this 19<sup>th</sup> day of December, 2011.

  
Notary Public  
My Commission Expires \_\_\_\_\_

(SEAL)



STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COOK )

I, Patricia Sulewski, a notary public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Andrew J. Mooney, personally known to me to be the Commissioner of the Department of Housing and Economic Development of the City of Chicago (the "City"), and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed, and delivered said instrument pursuant to the authority given to him by the City, as his free and voluntary act and as the free and voluntary act of the City, for the uses and purposes therein set forth.

GIVEN under my hand and official seal this 19<sup>th</sup> day of December, 2011.



Patricia Sulewski  
Notary Public

My Commission Expires 5/7/14

**VICEROY APARTMENTS  
REDEVELOPMENT AGREEMENT**

**EXHIBIT A**

**REDEVELOPMENT AREA LEGAL DESCRIPTION**

See Attached.

*Appendix 1.*

(To Amendment No. 1 To Central West Redevelopment  
Area Project And Plan)

*Legal Description.*

(Chicago Guarantee Survey Company)

All that part of the east half of the southeast quarter of Section 12, Township 39 North, Range 13 East of the Third Principal Meridian and that part of Sections 7, 8, 17 and 18, all in Township 39 North, Range 14 East of the Third Principal Meridian bounded and described as follows:

beginning at the point of intersection of the south line of West Adams Street with the east line of South Morgan Street; thence south along said east line of South Morgan Street to the north line of West Jackson Boulevard; thence east along said north line of West Jackson Boulevard to the northerly extension of the east line of Lot 16 in Block 18 in Duncan's Addition to Chicago, a subdivision of the east half of the northeast quarter of Section 17, Township 39 North, Range 14 East of the Third Principal Meridian; thence south along said northerly extension and the east line of Lots 16, 15, 14, 13, 12, 11, 10 and 9, in said Block 18 in Duncan's Addition to Chicago, and along the southerly extension of said Lot 9 to the south line of West Van Buren Street; thence west along said south line of West Van Buren Street to the east line of South Sangamon Street; thence south along said east line of South Sangamon Street to the easterly extension of the north line of the south 9.5 feet of Lot 1 in Egan's Resubdivision of Lot 7 (except the south 1 foot thereof) and all of Lots 8 to 22, inclusive, and Lots 32 and 33 and the private alley south of Lot 32, all in Egan's Resubdivision of Block 24 in Duncan's Addition to Chicago, a subdivision of the east half of the northeast quarter of Section 17, Township 39 North, Range 14 East of the Third Principal Meridian; thence west along said easterly extension and the north line of the south 9.5 feet of Lot 1 in Egan's Resubdivision of Lot 7 and along the westerly extension thereof to the east line of Lot 27 in Egan's Resubdivision of Block 24; thence north along said east line of Lots 27 and 26 in Egan's Resubdivision of Block 24 to the north line of the south 5.60 feet of Lot 26 in said Egan's Resubdivision of Block 24; thence west along said north line of the south 5.60 feet of Lot 26 in Egan's Resubdivision of Block 24 and along the westerly extension thereof to the west line of South Morgan Street; thence north along said west line of South Morgan Street to the south line of West Van Buren Street; thence west along said south line of West Van Buren Street to the east line of South Aberdeen Street; thence south along said east line of South Aberdeen Street to the easterly extension of the north line of Lot 45 in C. J. Hull's Subdivision of Block 27 in Canal Trustee's Subdivision of the west half of the northeast quarter of Section 17, Township 39 North, Range 14 East of the Third Principal Meridian, said north line of Lot 45 being also the south line of the alley south of West Van Buren Street; thence west along said easterly extension and along the south line of the alley south of West Van Buren Street to the southerly extension of the east line of Lot 16 in said C. J. Hull's Subdivision; thence north along said southerly extension and the east line of said Lot 16 in C. J. Hull's Subdivision to the south line of West Van Buren Street;

thence west along said south line of West Van Buren Street to the west line of South Racine Avenue; thence north along said west line of South Racine Avenue to the south line of West Jackson Boulevard; thence west along said south line of West Jackson Boulevard to the centerline of the vacated alley lying east of and adjoining Lot 8 in S. L. Brown's Subdivision of the north half of Block 23 in the Canal Trustee's Subdivision of the west half and the west half of the northeast quarter of Section 17, Township 39 North, Range 14 East of the Third Principal Meridian; thence south along said centerline of the vacated alley lying east of and adjoining Lot 8 in S. L. Brown's Subdivision and along the southerly extension thereof to the south line of West Gladys Avenue; thence west along said south line of West Gladys Avenue, and along the westerly extension of said south line of West Gladys Avenue to the west line of South Throop Street; thence north along said west line of South Throop Street to the south line of West Jackson Boulevard; thence west along said south line of West Jackson Boulevard to the east line of South Loomis Street; thence south along said east line of South Loomis Street to the south line of West Van Buren Street; thence west along said south line of West Van Buren Street to the west line of South Laflin Street; thence north along said west line of South Laflin Street to the south line of West Adams Street; thence west along said south line of West Adams Street to the east line of South Ashland Avenue; thence south along said east line of South Ashland Avenue to the south line of West Jackson Boulevard; thence west along said south line of West Jackson Boulevard to the southerly extension of the west line of the east 10 feet of Lot 13 in Walker & Kreigh's Resubdivision of Blocks 16 and 19 in S. F. Smith's Subdivision of the northeast quarter of the northeast quarter of Section 18, Township 39 North, Range 14 East of the Third Principal Meridian; thence north along said southerly extension and the west line of the east 10 feet of Lot 13 in Walker & Kreigh's Resubdivision to the north line of said Lot 13, said north line of Lot 13 being also the south line of the alley north of West Jackson Boulevard; thence west along said south line of the alley north of West Jackson Boulevard to the east line of South Paulina Street; thence south along said east line of South Paulina Street to the south line of West Jackson Boulevard; thence west along said south line of West Jackson Boulevard to the east line of South Wood Street; thence south along said east line of South Wood Street to the southeasterly line of Ogden Avenue; thence southwesterly along said southeasterly line of Ogden Avenue to the north line of West Van Buren Street; thence east along said north line of West Van Buren Street to the east line of South Ashland Avenue; thence south along said east line of South Ashland Avenue to the south line of West Harrison Street; thence northwesterly along a straight line to the intersection of the south line of West Harrison Street with the west line of South Ashland Avenue; thence west along said south line of West Harrison Street to the centerline of the 16.5 foot wide vacated alley west of South Ashland Avenue; thence south along said centerline of the 16.5 foot wide vacated alley west of South Ashland Avenue to the north line of vacated West Flournoy Street; thence west along said north line of vacated West Flournoy Street to the northerly extension of a line 27 feet east of and parallel with the west line of Lot 1 in Block 4 in Sutton's Addition to Chicago in the northeast quarter of the southeast quarter of Section 18-39-14; thence south along the northerly extension of said parallel line to the centerline of vacated West Flournoy Street; thence west along said centerline of vacated West Flournoy Street to the northerly extension of the centerline of the 16.5 foot wide vacated alley west of South Paulina Street; thence south along said centerline of the 16.5 foot



wide vacated alley west of South Paulina Street to the south line of vacated West Flournoy Street; thence west along said south line of vacated West Flournoy Street to the east line of South Wood Street; thence south along said east line of South Wood Street to a point on a line parallel with and 133.5 feet south from the south line of vacated West Flournoy Street; thence west along said parallel line to a point on a line parallel with and 279.0 feet west from the east line of South Wood Street; thence north along said parallel line, a distance of 163.0 feet to a point on a line parallel with and 29.5 feet north from the south line of vacated West Flournoy Street; thence west along said parallel line, a distance of 192.0 feet to a point on a line parallel with and 471.0 feet west from the east line of South Wood Street; thence north along said parallel line, a distance of 32.0 feet to a point on a line parallel with and 61.5 feet north from the south line of vacated West Flournoy Street; thence west along said parallel line to the southeasterly line of Ogden Avenue; thence northeasterly along a straight line to the intersection of the northwesterly line of Ogden Avenue with the west line of Lot 54 in Hall and Brown's Subdivision of Lots 2 and 3 in the subdivision of Lots 13 to 16 in Codwise's Subdivision in Section 18-39-14; thence northeasterly along said northwesterly line of Ogden Avenue to the south line of West Harrison Street; thence west along said south line of West Harrison Street to the west line of South Damen Avenue; thence northeasterly along a straight line to the intersection of the west line of South Damen Avenue with the north line of West Harrison Street; thence north along said west line of South Damen Avenue to the south line of West Van Buren Street; thence west along said south line of West Van Buren Street to the east line of South Western Avenue; thence north along said east line of South Western Avenue and along the east line of North Western Avenue to the south line of West Washington Boulevard; thence west along said north line of West Washington Boulevard to the west line of North Western Avenue; thence north along said west line of North Western Avenue to the southerly line of West Lake Street; thence easterly along said southerly line of West Lake Street to the east line of North Leavitt Street; thence south along said east line of North Leavitt Street to the south line of Lot 60 in Thomas Stenson's Subdivision of Block 54 of the Canal Trustee's Subdivision of Section 7, Township 39 North, Range 14 East of the Third Principal Meridian, said south line of Lot 60 being also the north line of the alley south of West Maypole Avenue; thence east along said north line of the alley south of West Maypole Avenue to the east line of Lot 41 in said Thomas Stenson's Subdivision of Block 54 of the Canal Trustee's Subdivision, said east line of Lot 41 being also the west line of North Hoyne Avenue; thence north along said west line of North Hoyne Avenue to the westerly extension of the north line of Lot 2 in Streger's Resubdivision of Lots 10 to 12 in A. D. Taylor's Subdivision of the southwest quarter of Block 54 of the Canal Trustee's Subdivision of Section 7, Township 39 North, Range 14 East of the Third Principal Meridian, said north line of Lot 2 being also the south line of West Maypole Avenue; thence east along said south line of West Maypole Avenue to the west line of North Damen Avenue; thence north along said west line of North Damen Avenue to the southerly line of West Lake Street; thence easterly along said southerly line of West Lake Street to the west line of North Hermitage Avenue; thence south along said west line of North Hermitage Avenue to the westerly extension of the north line of Lot 6 in Block 1 (north of West Washington Boulevard) in Page & Wood's Subdivision of Outlots 50, 63 and 64 in Canal Trustee's Subdivision of Section 7, Township 39 North, Range 14 East of the Third Principal Meridian, said north line of

Lot 6 being also the southerly line of West Lake Street; thence easterly along said westerly extension and the southerly line of West Lake Street to the southwesterly line of West Randolph Street (formerly Bryan Place); thence southeasterly along said southwesterly line of West Randolph Street (formerly Bryan Place) to the northwesterly line of Ogden Avenue; thence southwesterly along said northwesterly line of Ogden Avenue to the northwesterly extension of the northeasterly line of Lot 1 in Webster's Subdivision of Lots 6 to 15, inclusive, of Block 2 in Union Park Addition to Chicago, a subdivision of Lots 5 and 6 in the Circuit Court Partition of the southwest quarter of Section 8, Township 39 North, Range 14 East of the Third Principal Meridian; thence southeasterly along said northwesterly extension of the northeasterly line of Lot 1 in Webster's Subdivision to the southeasterly line of said Ogden Avenue; thence southwesterly along said southeasterly line of Ogden Avenue to the west line of Lot 15 in Block 6 in Laflin & Loomis' Resubdivision of Blocks 5, 18, 21, 30, 31, 32, 33 and 41 and the subdivision of Blocks 6, 9, 19 and 20 in the Canal Trustee's Subdivision of the west half and the west half of the northeast quarter of Section 17, Township 39 North, Range 14 East of the Third Principal Meridian, said west line of Lot 15 being also the east line of the alley east of South Ashland Avenue; thence south along said west line of Lot 15 in Block 6 in Laflin & Loomis' Resubdivision of Blocks 5, 18, 21, 30, 31, 32, 33 and 41 and the subdivision of Blocks 6, 9, 19 and 20 in the Canal Trustee's Subdivision to the south line of said Lot 15, said south line of Lot 15 being also the north line of the alley south of West Madison Street; thence east along said north line of the alley south of West Madison Street to the east line of Lot 12 in said Block 6 in Laflin & Loomis' Resubdivision of Blocks 5, 18, 21, 30, 31, 32, 33 and 41 and the subdivision of Blocks 6, 9, 19 and 20 in the Canal Trustee's Subdivision; thence north along said east line of Lot 12 in Block 6 in Laflin & Loomis' Resubdivision of Blocks 5, 18, 21, 30, 31, 32, 33 and 41 and the subdivision of Blocks 6, 9, 19 and 20 in the Canal Trustee's Subdivision and along the northerly extension thereof to the north line of West Madison Street; thence east along said north line of West Madison Street to the northerly extension of the west line of Lot 24 in Block 5 in Laflin & Loomis' Resubdivision of Blocks 5, 18, 21, 30, 31, 32, 33 and 41 and the subdivision of Blocks 6, 9, 19 and 20 in the Canal Trustee's Subdivision, said west line of Lot 24 being also the east line of South Laflin Street; thence south along said east line of South Laflin Street to the north line of West Monroe Street; thence east along said north line of West Monroe Street to the west line of South Loomis Street; thence north along said west line of South Loomis Street to the westerly extension of the south line of Lot 5 in County Clerk's Division of Block 4 of the Canal Trustee's Subdivision of the west half and the west half to the northeast quarter of Section 17, Township 39 North, Range 14 East of the Third Principal Meridian, thence east along said westerly extension and the south line of Lot 5 in County Clerk's Division of Block 4 of the Canal Trustee's Subdivision to a line 90 feet east of and parallel with the east line of South Loomis Street; thence south along said line 90 feet east of and parallel with the east line of South Loomis Street to the north line of West Monroe Street; thence east along said north line of West Monroe Street to the west line of South Racine Avenue; thence north along said west line of South Racine Avenue to the westerly extension of the south line of Lot 25 in Hayes' Subdivision of Block 2 of the Canal Trustee's Subdivision of the west half and the west half to the northeast quarter of Section 17, Township 39 North, Range 14 East of the Third Principal Meridian, said south line of Lot 25 in Hayes' Subdivision, being also the

north line of West Rundell Place; thence east along said westerly extension and along the north line of West Rundell Place to the east line of Lot 8 in said Hayes' Subdivision of Block 2 of the Canal Trustee's Subdivision; thence north along said east line of Lot 8 in Hayes' Subdivision of Block 2 of the Canal Trustee's Subdivision to the south line of West Madison Street; thence east along said south line of West Madison Street to the west line of South Aberdeen Street; thence south along said west line of South Aberdeen Street to the south line of West Monroe Street; thence east along said south line of West Monroe Street to the west line of the east 50 feet of Lot 2 in the Assessor's Subdivision of Block 13 in Canal Trustee's Subdivision of the west half and the west half to the northeast quarter of Section 17, Township 39 North, Range 14 East of the Third Principal Meridian; thence south along said west line of the east 50 feet of Lot 2 in the Assessor's Subdivision of Block 13 in Canal Trustee's Subdivision to the north line of Lot 5 in said Assessor's Subdivision of Block 13 in Canal Trustee's Subdivision; thence east along said north line of Lot 5 and along the north line of Lot 6 in said Assessor's Subdivision of Block 13 in Canal Trustee's Subdivision to the east line of Lot 6 in the Assessor's Division of Lot 1 of Block 13 in Canal Trustee's Subdivision of the west half and the west half to the northeast quarter of Section 17, Township 39 North, Range 14 East of the Third Principal Meridian; thence north along said east line of Lot 6 in the Assessor's Division of Lot 1 of Block 13 in Canal Trustee's Subdivision to the south line of West Monroe Street; thence east along said south line of West Monroe Street to the east line of South Morgan Street; thence north along said east line of South Morgan Street to the south line of Lot 14 in Block 4 in Duncan's Addition to Chicago, a subdivision of the east half of the northeast quarter of Section 17, Township 39 North, Range 14 East of the Third Principal Meridian; thence east along said south line of Lot 14 and along the south line of Lot 3 in said Block 4 in Duncan's Addition to Chicago to the west line of South Sangamon Street; thence south along said west line of South Sangamon Street to the south line of West Monroe Street; thence east along said south line of West Monroe Street to the east line of South Peoria Street; thence south along said east line of South Peoria Street to the south line of West Adams Street; thence west along said south line of West Adams Street to the point of beginning at the east line of South Morgan Street. Excepting from the foregoing all that part of the south half of Section 7 and the north half of Section 18, all in Township 39 North, Range 14 East of the Third Principal Meridian bounded and described as follows:

beginning at the point of intersection of the east line of South Seeley Avenue with the south line of West Madison Street; thence east along said south line of West Madison Street to the southerly extension of the east line of the west 3.00 feet of Lot 74 of the plat of subdivision of Block 61 of the Canal Trustee's Subdivision of Section 17, Township 39 North, Range 14 East of the Third Principal Meridian; thence north along said southerly extension and the east line of the west 3.00 feet of Lot 74 of said plat of subdivision of Block 61 of the Canal Trustee's Subdivision of Section 17 to a line 47.5 feet north of and parallel with the north line of West Madison Street; thence west along said line 47.5 feet north of and parallel with the north line of West Madison Street to the east line of North Damen Avenue; thence north along said east line of North Damen Avenue to the south line of West Warren Avenue; thence east along said south line of West Warren Avenue to the southerly extension of the west line of Lot 28 of said

plat of subdivision of Block 61 of the Canal Trustee's Subdivision of Section 17; thence north along said southerly extension and the west line of Lot 28 of the plat of subdivision of Block 61 of the Canal Trustee's Subdivision of Section 17 to the north line thereof, said north line of Lot 28 being also the south line of the alley north of West Warren Avenue; thence east along said south line of the alley north of West Warren Avenue to the east line of South Wolcott Avenue; thence north along said east line of South Wolcott Avenue to the south line of West Washington Boulevard; thence east along said south line of West Washington Boulevard to the west line of North Wood Street; thence south along said west line of North Wood Street to the south line of West Warren Avenue; thence east along said south line of West Warren Avenue to the west line of the east 30.1 feet of Lot 5 in Block 4 (south of Washington Boulevard) in Page & Wood's Subdivision of Outlots 50, 63 and 64 in the Canal Trustee's Subdivision of Section 7, Township 39 North, Range 14 East of the Third Principal Meridian; thence south along said west line of the east 30.1 feet of Lot 5 in Block 4 (south of Washington Boulevard) in Page & Wood's Subdivision to the south line of said Lot 5; thence southwesterly along a straight line to the northwest corner of Lot 8 in said Block 4 (south of Washington Boulevard) in Page & Wood's Subdivision; thence south along the west line of said Lot 8 in said Block 4 (south of Washington Boulevard) in Page & Wood's Subdivision to the north line of West Madison Street; thence east along said north line of West Madison Street to the northerly extension of the west line of the parcel of land bearing Permanent Index Number 17-18-501-012, said west line being the west line of Lot 4 in Block 22 in Samuel F. Smith's Subdivision of the northeast quarter of the northeast quarter of Section 18, Township 39 North, Range 14 East of the Third Principal Meridian; thence south along said northerly extension and the west line of Lot 4 in Block 22 in Samuel F. Smith's Subdivision and along the southerly extension thereof to the centerline of the alley lying south of and adjoining the south line of said Lot 4; thence east along said alley centerline to the northerly extension of the east line of Lot "A" in Garrett's Consolidation of sundry lots in Blocks 4, 22 and 24 in Samuel F. Smith's Subdivision, also sundry lots in Circuit Court Subdivision, all in the northeast quarter of the northeast quarter of Section 18, Township 39 North, Range 14 East of the Third Principal Meridian; thence south along said northerly extension and the east line of Lot "A" in Garrett's Consolidation and along the southerly extension thereof to the centerline of Arcade Place; thence west along said centerline of Arcade Place to the northerly extension of the east line of the west 14.77 feet of Lot 4 in Block 28 in said Samuel F. Smith's Subdivision of the northeast quarter of the northeast quarter of Section 18, Township 39 North, Range 14 East of the Third Principal Meridian; thence south along said northerly extension and the east line of the west 14.77 feet of Lot 4 in Block 28 in said Samuel F. Smith's Subdivision and along the southerly extension thereof to the south line of West Monroe Street; thence east along said south line of West Monroe Street to the west line of South Paulina Street; thence south along said west line of South Paulina Street to the south line of Lot 1 in the Assessor's Division of Lots 8, 9 and 10 of Blocks 12 and 13 in Samuel F. Smith's Subdivision of the northeast quarter of the northeast quarter of Section 18, Township 39 North, Range 14 East of the Third Principal Meridian, said south line of Lot 1 in the Assessor's Division being also the north line of the alley south of West Monroe Street; thence west along said north line of the alley south of West Monroe Street to the

northerly extension of the east line of Lot 53 in Block 12 in H. H. Walker's Resubdivision of Blocks 12 and 13 in said Samuel F. Smith's Subdivision, said east line of Lot 53 being also the west line of the alley west of South Paulina Street; thence south along said northerly extension and the east line of Lot 53 in Block 12 in H. H. Walker's Resubdivision to the south line of said Lot 53, said south line of Lot 53 being also the north line of the alley north of West Adams Street; thence west along said north line of the alley north of West Adams Street to the northerly extension of the west line of the east 6.00 feet of Lot 40 in Block 13 in said H. H. Walker's Resubdivision; thence south along said northerly extension and the west line of the east 6.00 feet of Lot 40 in Block 13 in H. H. Walker's Resubdivision to the north line of West Adams Street; thence west along said north line of West Adams Street to the east line of Lot 18 in Block 5 in Ashland's Second Addition to Chicago, a subdivision of the west half of the northeast quarter of Section 18, Township 39 North, Range 14 East of the Third Principal Meridian; thence north along said east line of Lot 18 in Block 5 in Ashland's Second Addition to Chicago and along the northerly extension thereof to the south line of Lot 6 in Bowen's Subdivision of Lots 12 to 16 in Block 5 of Ashland's Second Addition to Chicago, a subdivision of the west half of the northeast quarter of Section 18, Township 39 North, Range 14 East of the Third Principal Meridian, said south line of Lot 6 being also the north line of the alley north of West Adams Street; thence west along said north line of the alley north of West Adams Street to the east line of South Damen Avenue; thence north along said east line of South Damen Avenue to the north line of West Monroe Street; thence west along said north line of West Monroe Street to the east line of South Seeley Avenue; thence north along said east line of South Seeley Avenue to the point of beginning for this exception parcel at the south line of West Madison Street, all in the city of Chicago, Cook County, Illinois.

*Appendix 2.*

(To Amendment No. 1 To Central West Redevelopment  
Area Project And Plan)

*Historically Significant Properties.*

The following properties within the Central West RPA have been identified as historically or architecturally significant by the Chicago Historic Resources Survey, and have been designated as "red" or "orange" buildings in that survey.

1020 -- 1064 West Adams Street

1052 -- 1052 West Adams Street

1458 -- 1458 West Adams Street

1628 -- 1628 West Adams Street

1630 -- 1630 West Adams Street

1743 -- 1743 West Adams Street

1839 -- 1839 West Adams Street

1841 -- 1841 West Adams Street

1935 -- 1939 West Adams Street

William McKinley High School, 2034 -- 2058 West Adams Street

2235 -- 2235 West Adams Street

2237 -- 2237 West Adams Street

2238 -- 2238 West Adams Street

2302 -- 2302 West Adams Street

2327 -- 2327 West Adams Street

Union Park Congregational Church, 46 -- 60 North Ashland Avenue

32 -- 40 South Ashland Avenue

The Salvation Army, 101 -- 101 South Ashland Avenue

YWCA, 105 -- 107 South Ashland Avenue

Church of the Epiphany, 201 -- 209 South Ashland Avenue

234 -- 234 South Ashland Avenue

236 -- 236 South Ashland Avenue

238 -- 238 South Ashland Avenue

213 -- 213 South Bell Avenue

215 -- 215 South Bell Avenue

217 -- 217 South Bell Avenue

Cook County Hospital, 1801 -- 1855 West Harrison Street

Pasteur Monument, 1820 -- 1820 West Harrison Street

1706 -- 1706 West Jackson Boulevard

Crane Technical High School, 2237 -- 2259 West Jackson Boulevard

Carter Harrison Statue, 1545 -- 1545 West Lake Street

Union Park Gymnasium, 1545 -- 1545 West Lake Street

Union Park Fieldhouse, 1545 -- 1545 West Lake Street

22 -- 22 South Leavitt Street

1720 -- 1720 West Madison Street

2014 -- 2020 West Madison Street

2346 -- 2346 West Madison Street

West Town State Bank, 2354 -- 2354 West Madison Street

1458 -- 1458 West Monroe Street

1524 -- 1524 West Monroe Street

1526 -- 1526 West Monroe Street

1528 -- 1528 West Monroe Street

1913 -- 1915 West Monroe Street

1943 -- 1943 West Monroe Street

2023 -- 2023 West Monroe Street

2050 -- 2050 West Monroe Street

2148 -- 2148 West Monroe Street

2150 -- 2150 West Monroe Street

2152 -- 2152 West Monroe Street

2230 -- 2230 West Monroe Street

2236 -- 2236 West Monroe Street

2251 -- 2251 West Monroe Street

2253 -- 2253 West Monroe Street

2255 -- 2255 West Monroe Street

2257 -- 2257 West Monroe Street

2259 -- 2259 West Monroe Street

2300 -- 2300 West Monroe Street

2301 -- 2301 West Monroe Street

2302 -- 2302 West Monroe Street

2304 -- 2304 West Monroe Street

2306 -- 2306 West Monroe Street

2307 -- 2307 West Monroe Street

2308 -- 2308 West Monroe Street

2309 -- 2309 West Monroe Street

2310 -- 2310 West Monroe Street

2312 -- 2312 West Monroe Street

2316 -- 2316 West Monroe Street

2320 -- 2320 West Monroe Street

15 -- 15 South Oakley Avenue

17 -- 17 South Oakley Avenue

19 -- 19 South Oakley Avenue

21 -- 21 South Oakley Avenue

23 -- 23 South Oakley Avenue



25 -- 25 South Oakley Avenue

111 -- 111 South Oakley Avenue

113 -- 113 South Oakley Avenue

107 -- 107 South Paulina Street

227 -- 227 South Racine Avenue

123 -- 135 South Sangamon Street

Union Park Hotel, 1519 -- 1525 West Warren Boulevard

1616 -- 1618 West Warren Boulevard

1650 -- 1650 West Warren Boulevard

1652 -- 1654 West Warren Boulevard

1952 -- 1956 West Warren Boulevard

2014 -- 2014 West Warren Boulevard

2017 -- 2017 West Warren Boulevard

2018 -- 2018 West Warren Boulevard

2020 -- 2020 West Warren Boulevard

2100 -- 2100 West Warren Boulevard

2137 -- 2137 West Warren Boulevard

2141 -- 2141 West Warren Boulevard

2209 -- 2209 West Warren Boulevard

2210 -- 2210 West Warren Boulevard

2211 -- 2211 West Warren Boulevard

2212 -- 2212 West Warren Boulevard

2214 -- 2214 West Warren Boulevard

2215 -- 2217 West Warren Boulevard

2216 -- 2216 West Warren Boulevard

2220 -- 2220 West Warren Boulevard

2222 -- 2222 West Warren Boulevard

2224 -- 2224 West Warren Boulevard

2226 -- 2226 West Warren Boulevard

2228 -- 2228 West Warren Boulevard

2234 -- 2234 West Warren Boulevard

2235 -- 2235 West Warren Boulevard

2240 -- 2240 West Warren Boulevard

2242 -- 2246 West Warren Boulevard

2252 -- 2252 West Warren Boulevard

2318 -- 2318 West Warren Boulevard

2319 -- 2319 West Warren Boulevard

2320 -- 2320 West Warren Boulevard

2322 -- 2322 West Warren Boulevard

2324 -- 2324 West Warren Boulevard

2326 -- 2326 West Warren Boulevard

2333 -- 2333 West Warren Boulevard

2335 -- 2335 West Warren Boulevard

1635 -- 1635 West Washington Boulevard

1703 -- 1703 West Washington Boulevard

1705 -- 1705 West Washington Boulevard

1927 -- 1927 West Washington Boulevard

Eighth Presbyterian Church, 2000 -- 2004 West Washington Boulevard

2001 -- 2001 West Washington Boulevard

2029 -- 2029 West Washington Boulevard

2048 -- 2048 West Washington Boulevard

2050 -- 2050 West Washington Boulevard

2110 -- 2110 West Washington Boulevard

2113 -- 2113 West Washington Boulevard

Third Church of Christ Scientist, 2149 -- 2159 West Washington Boulevard

2210 -- 2210 West Washington Boulevard

2214 -- 2214 West Washington Boulevard

2219 -- 2219 West Washington Boulevard

2229 -- 2229 West Washington Boulevard

2230 -- 2230 West Washington Boulevard

2232 -- 2232 West Washington Boulevard

2234 -- 2234 West Washington Boulevard

2235 -- 2235 West Washington Boulevard

2239 -- 2239 West Washington Boulevard

St. Malachy Catholic Church, 2242 -- 2246 West Washington Boulevard

2251 -- 2251 West Washington Boulevard

St. Malachy School, 2252 -- 2256 West Washington Boulevard

2253 -- 2253 West Washington Boulevard

2257 -- 2257 West Washington Boulevard

**VICEROY APARTMENTS  
REDEVELOPMENT AGREEMENT**

**EXHIBIT B**

**PROPERTY LEGAL DESCRIPTION**

Parcel 1:

LOTS 6 THROUGH 9 IN LAFLIN AND MATHER'S SUBDIVISION OF THE NORTH PART OF BLOCK "D" IN THE SOUTHWEST CORNER OF THE SOUTHWEST QUARTER OF SECTION 8, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, SOMETIMES CALLED BLOCK "D" IN WRIGHT'S ADDITION TO CHICAGO AND BEING IN THE SOUTH PART OF LOT 4 IN THE CIRCUIT COURT PARTITION OF THE SOUTHWEST QUARTER OF SECTION 8 AFORESAID, IN COOK COUNTY, ILLINOIS.

PINs: 17-08-332-005-0000 and 17-08-332-006-0000

Commonly known as 1517-1521 W. Warren Boulevard, Chicago, Illinois 60607.

Parcel 2:

LOTS 10 THROUGH 13 IN LAFLIN AND MATHER'S SUBDIVISION OF THE NORTH PART OF BLOCK "D" IN THE SOUTHWEST CORNER OF THE SOUTHWEST QUARTER OF SECTION 8, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, SOMETIMES CALLED 'BLOCK "D" IN WRIGHT'S ADDITION TO CHICAGO AND BEING IN THE SOUTH PART OF LOT 4 IN THE CIRCUIT COURT PARTITION OF THE SOUTHWEST QUARTER OF SECTION 8 AFORESAID, IN COOK COUNTY, ILLINOIS.

PIN: 17-08-332-007-0000

Commonly known as 28 North Ogden Avenue, Chicago, Illinois 60607.

VICEROY APARTMENTS  
REDEVELOPMENT AGREEMENT

EXHIBIT C

TIF-FUNDED IMPROVEMENTS

<u>Line Item</u>	<u>Cost</u>
Rehabilitation	\$13,049,426
Architecture and Engineering	<u>786,561</u>
TOTAL:	<u>\$13,835,987*</u>

- \* The maximum amount of City Funds provided to the Developer shall not exceed \$3,876,673.

**VICEROY APARTMENTS  
REDEVELOPMENT AGREEMENT**

**EXHIBIT D**

**REDEVELOPMENT PLAN**

Not Included for Recordation.

**VICEROY APARTMENTS  
REDEVELOPMENT AGREEMENT**

**EXHIBIT E**

**CONSTRUCTION CONTRACT**

Not Included for Recordation.

**VICEROY APARTMENTS  
REDEVELOPMENT AGREEMENT**

**EXHIBIT F**

**PERMITTED LIENS**

1. Liens or encumbrances against the Property:

Those matters set forth as Schedule B title exceptions in the Owner's title insurance policy issued by the Title Company as of the date hereof, a copy of which Owner has provided to the City, but only so long as applicable title endorsements issued in conjunction therewith on the date hereof, if any, continue to remain in full force and effect.

2. Liens or encumbrances against the Developer or the Project, other than liens against the Property and pledges and security agreements granted in connection with the financing sources set forth in Section 4.01, if any:

None.



**VICEROY APARTMENTS  
REDEVELOPMENT AGREEMENT**

**EXHIBIT G-1**

**PROJECT BUDGET**

Building Cost	\$ 1,792,00
Land Cost	666,000
Acquisition Related Costs	27,038
Construction Costs	13,049,426
Furniture, Fixtures and Equipment	70,971
Building Permits	5,717
Landscaping	45,000
Site Preparation	52,750
Other Construction	2,000
Contingency	1,322,989
Underground Storage Tanks	15,193
Soil Testing	14,005
Land Remediation	86,960
Asbestos Removal	143,713
Other Environmental	50,005
Architect	697,403
Engineering Fees	191,158
Blueprints and Reproduction	7,500
Property Needs Assessment Report	7,160
As-Is Plats and Surveys	6,930
Accountant – General	35,000
Legal	251,076
Consultants (Historic and TIF)	16,740
Appraisal and Market Study	30,260
Title and Recording Fees	35,000
Other Fees	332,757
Construction Interest	868,863
Liability Insurance	99,500
Real Estate Taxes	20,000
Leasing Personnel, Advertising, Model Units	70,000
Developer Fee	1,224,369
Reserves	1,059,238
TOTAL:	<u>\$22,296,720</u>

**VICEROY APARTMENTS  
REDEVELOPMENT AGREEMENT**

**EXHIBIT G-2**

**MBE/WBE BUDGET**

Construction Costs	\$13,049,426
Site Preparation	52,750
Engineering Fees	141,158
Architect	<u>645,403</u>
TOTAL:	<u>\$ 13,888,737</u>

24% MBE = \$3,333,297

4% WBE = \$555,549

**VICEROY APARTMENTS  
REDEVELOPMENT AGREEMENT**

**EXHIBIT H**

**FORM OF REQUISITION FORM**

Not Included for Recordation.

**VICEROY APARTMENTS  
REDEVELOPMENT AGREEMENT**

**EXHIBIT I**

**APPROVED PRIOR EXPENDITURES**

Architect Design Fees

\$634,608

**VICEROY APARTMENTS  
REDEVELOPMENT AGREEMENT**

**EXHIBIT J**

**OPINION OF DEVELOPER'S COUNSEL**

Not Included for Recordation.

**VICEROY APARTMENTS  
REDEVELOPMENT AGREEMENT**

**EXHIBIT K**

**MINIMUM ASSESSED VALUATIONS\***

17-08-332-005	EAV \$651,661
17-08-332-006	EAV \$ 7,630
17-08-332-007	EAV \$ 36,751

\*Represents the equalized assessed valuation for tax year 1998, which is the equalized assessed valuation of such Parcel on the date of establishment of the Redevelopment Area.

**VICEROY APARTMENTS  
REDEVELOPMENT AGREEMENT**

**EXHIBIT L**

**ESCROW AGREEMENT**

See Attached.

## ESCROW AND DISBURSEMENT AGREEMENT

This ESCROW AND DISBURSEMENT AGREEMENT (the "Escrow Agreement"), dated as of December 19, 2011 is made and executed by the City of Chicago, Illinois, an Illinois municipal corporation (the "City") through its Department of Housing and Economic Development ("DHED"), Heartland Housing, Inc., an Illinois not for profit corporation (the "Sponsor"), Viceroy Hotel Limited Partnership, an Illinois limited partnership (the "Borrower"), Greater Illinois Title Company, an Illinois corporation (as "Escrow Agent"), U.S. Bank National Association ("U.S. Bank") and Enterprise Community Loan Fund, Inc., a Maryland nonprofit corporation (the "Bridge Lender"). Sponsor, DHED, U.S. Bank and Bridge Lender are referred to herein collectively as the "Funders;" however, only DHED, U.S. Bank and Bridge Lender are the "Funding Lenders" as used herein.

### Preliminary Statement

In connection with paying or reimbursing a portion of the costs of acquisition, construction, rehabilitation, development, and equipping of the residential portion of a building located at the southwest corner of the intersection of West Warren Boulevard and North Ogden Avenue in the City, with such building including the address of 1517-21 W. Warren Boulevard and 28 N. Ogden Avenue (collectively, the "Property"), the City has concurrently herewith entered in the Viceroy Hotel Redevelopment Agreement with Sponsor and the Partnership (the "TIF Redevelopment Agreement"). Pursuant to the TIF Redevelopment Agreement, the City will provide \$3,876,673 of tax increment funds (the "City Funds") to Sponsor for the Project. Pursuant to the TIF Redevelopment Agreement, the City will deposit the City Funds into the Escrow Account in accordance with Exhibit E.I. attached hereto. The City shall not be required to deposit or disburse the City Funds to Sponsor prior to the date such funds are made available under the TIF Redevelopment Agreement. The Escrow Agent shall create a subaccount of the Escrow Account (the "City TIF Subaccount") for the deposit of the City Funds hereunder.

U.S. Bank has made a loan to the Borrower in the stated aggregate principal amount of \$6,122,877.00 (the "Senior Loan"), which is evidenced by a Promissory Note and secured by a Construction Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing ("Senior Mortgage") (the Promissory Note, Senior Mortgage and other documents that evidence and secure the Senior Loan, as amended, supplemented and restated from time to time, are the "Senior Loan Documents"). The Escrow Agent shall create a subaccount of the Escrow Account (the "U.S. Bank Subaccount") for the deposit of Senior Loan proceeds loaned by U.S. Bank to the Borrower.

Bridge Lender has made a loan to the Borrower in the stated aggregate principal amount of \$4,000,000 (the "Bridge Loan"), which is evidenced by a Promissory Note (the "Bridge Loan



Note”) and secured by a Multifamily Mortgage, Assignment of Rents and Security Agreement (the “Bridge Loan Mortgage”) (the Bridge Loan Note, Bridge Loan Mortgage and other documents that evidence and secure the Bridge Loan, as amended, supplemented and restated from time to time, are the “Bridge Loan Documents”). The Escrow Agent shall create a subaccount of the Escrow Account (the “Bridge Loan Subaccount”) for the deposit of Bridge Loan proceeds loaned by Bridge Lender to the Borrower.

The Bridge Loan will bridge the Borrower’s receipt of \$4,000,000 of capital contributions that Wincopin Circle LLLP, its successors and assigns, including Enterprise Housing Partners XX Limited Partnership (collectively, the “Investor”) will make pursuant to the First Amended and Restated Limited Partnership Agreement (the “Partnership Agreement”) by and among the Investor and Viceroy GP, LLC, an Illinois limited liability company. The Investor will contribute a total of \$14,476,292 in capital to the Borrower pursuant to the Partnership Agreement, subject to adjustment as provided therein (the “Capital Contributions”). Of the total Capital Contributions, only \$9,349,412 will be funded through this Escrow (the “Cash Equity”). The balance of the Capital Contributions, in the projected amount of \$5,126,880, will be funded after the Escrow Account has closed (the “Delayed Capital Contributions”); however, a portion of the Delayed Capital Contributions in the amount of \$4,000,000 will be needed by the Borrower to pay development costs. The Bridge Loan proceeds will be used by the Borrower to bridge the Borrower’s receipt of the \$4,000,000 of the Delayed Capital Contributions that are needed to pay such development costs. The remaining \$1,126,880 of the Delayed Capital Contributions (hereafter the “Deferred Equity”) will not be deposited with the Escrow Agent pursuant to this Escrow Agreement but shall be used in accordance with Part III of Exhibit B hereof. The Borrower will receive the Cash Equity in multiple installments: (a) \$1,064,234 at the closing (the “Cash Equity – First Installment”); (b) \$2,554,839 at various intervals during construction (“Cash Equity – Construction Installments”); (c) \$120,858 following construction completion and not earlier than March 19, 2013 (the “Cash Equity – Third Installment”); (d) \$300,000 following construction completion and certain other conditions and not earlier than March 19, 2013 (the “Cash Equity – Fourth Installment”); and (e) \$5,309,481 on or after October 1, 2013 (the “Cash Equity – Fifth Installment”). The actual amount of each Cash Equity Installment may vary if there is a credit adjuster in accordance with Sections 3.03 or 3.04 of the Partnership Agreement. The Escrow Agent shall create a subaccount of the Escrow Account (the “Owner Subaccount”) for the deposit of Cash Equity and General Partner Capital Contribution (as hereafter defined).

Concurrently herewith, the Partnership shall receive a capital contribution of \$122,900 from its general partner (the “General Partner Capital Contribution”). The proceeds of the General Partner Capital Contribution shall be deposited into and disbursed through the Escrow Account.

Sponsor has made a loan to the Borrower of the City Funds in the aggregate principal amount of \$3,876,673 (the “Sponsor TIF Loan”), which is evidenced by a Promissory Note (TIF) and secured by a subordinate Junior Mortgage, Assignment of Rents and Security Agreement (TIF) (herein as amended, supplemented and restated from time to time, the “Sponsor TIF Loan

Documents”). The Escrow Agent shall create a subaccount of the Escrow Account (the “Sponsor TIF Subaccount”) for the transfer of City Funds from the City TIF Subaccount to the Sponsor TIF Subaccount in accordance with the terms hereof.

Sponsor has made a second loan to the Borrower in the aggregate principal amount of \$1,261,386.00 (the “Sponsor Loan”), which is evidenced by a Sponsor Loan Promissory Note and secured by a subordinate Junior Mortgage, Assignment of Rents and Security Agreement (Sponsor Loan) (herein as amended, supplemented and restated from time to time, the “Sponsor Loan Documents”). The Sponsor Loan will be funded in multiple installments. The first installment shall be \$1,079,229 and shall be funded with proceeds received by the Sponsor from (i) the grant by the City of proceeds it received from the syndication of the Illinois Affordable Housing Tax Credits, and (ii) the \$10,000 donation received by the Sponsor in connection with such syndication (the “Sponsor Loan First Installment”). The remaining installments shall total \$182,157, and shall be funded with the proceeds received by the Sponsor through the DCEO energy efficiency grants as those funds are received during construction and, as applicable, following construction completion (the “Sponsor Loan Construction Installments”).

Sponsor has made a third loan to the Borrower in the aggregate principal amount of \$2,335,100 (the “Seller Financing Loan”), which is evidenced by a Seller Financing Promissory Note and secured by a subordinate Junior Mortgage, Assignment of Rents and Security Agreement (SF). The Borrower used the Seller Financing Loan to finance its acquisition of the Property prior to or concurrently with the execution of this Escrow Agreement. Accordingly, there are no Seller Financing Loan proceeds to be disbursed through this Escrow.

The Senior Loan Documents, Bridge Loan Documents and the TIF Redevelopment Agreement are referred to herein collectively as the “Agreements.” The total amounts of the Senior Loan, Bridge Loan, Sponsor TIF Loan, Sponsor Loan and Cash Equity are set forth on Part I of Exhibit B hereto.

The Title Company (as identified on Exhibit A hereto) has issued (or has issued its commitment to issue) an ALTA Mortgagee’s Title Insurance Policy with respect to the Senior Mortgage and the Bridge Loan Mortgage, each collectively referred to herein as the “Policy.”

The Funders and Borrower desire to utilize the staff and expertise of the Escrow Agent to collect, review and approve lien waivers, and disburse the Escrowed Proceeds (as hereinafter defined), subject to the terms and conditions of this Escrow Agreement.

**NOW, THEREFORE**, in consideration of the premises and the mutual agreements herein contained, the parties hereto agree as follows:

I. Creation of and Deposits to Escrow Account.

A. Escrow Account. There is hereby created with the Escrow Agent an escrow account (the “Escrow Account”), including the U.S. Bank Subaccount, Bridge Loan Subaccount, City

TIF Subaccount, Sponsor TIF Subaccount and Owner Subaccount, into which all funds shall be deposited hereunder in the amounts set forth in Part I of Exhibit C hereto. The Escrow Agent will provide, upon written request, any information regarding the disbursement of funds from the Escrow Account, including but not limited to specific disbursements of the proceeds of the Senior Loan, Bridge Loan, Sponsor TIF Loan/City Funds, Sponsor Loan and the Cash Equity.

B. Borrower's Deposits. The Investor, through the Borrower, will deposit into the Escrow Account the Cash Equity. In addition, the Sponsor, which is an affiliate of Viceroy GP, LLC, the general partner ("General Partner") of Borrower, will deposit into the Escrow Account the proceeds of the Sponsor Loan. The Cash Equity and Sponsor Loan proceeds detailed in Exhibit C hereto constitute the "Borrower's Deposits." The Borrower's Deposits and the proceeds of the Senior Loan, Bridge Loan and Sponsor TIF Loan/City Funds collectively constitute the "Escrowed Proceeds." Nothing in this Agreement shall affect the Borrower's obligations with respect to funding the Cash Equity and U.S. Bank's rights with respect thereto pursuant to the Investor Equity Assignment and Security Agreement dated as of even hereof by the Borrower and General Partner and in favor of U.S. Bank.

C. Funder Deposits. Over the term of this Escrow Agreement, the Funders will deposit into the Escrow Account the total amounts set forth for each such Funder, respectively, on Part I of Exhibit C hereto (being the proceeds of such Senior Loan, Bridge Loan or the City Funds/Sponsor TIF Loan, as applicable), all at intervals and installments to be determined pursuant to the respective Agreements, and will deposit into the Escrow Account as of the date hereof the amounts, if any, set forth for each Funder, respectively, on Part II of Exhibit C hereto. At the time of each request for a disbursement to be funded from the proceeds of Senior Loan, Bridge Loan or City Funds hereunder, such Funding Lender shall make a deposit with the Escrow Agent of all or a portion of the proceeds of the Senior Loan, Bridge Loan or City Funds, as applicable, in immediately available funds, in the amount approved by each Funding Lender pursuant to such request for disbursement as provided in Section IV hereof, provided, however, that (i) no event shall have occurred which is or, with the passage of time or the giving of notice or both, would become an event of default under any of the Agreements, (ii) each condition set forth in Section IV, as applicable, shall have been satisfied, (iii) conditions to disbursement in each Funding Lender's Agreement shall have been satisfied; and (iv) U.S. Bank shall not be obligated to deposit any proceeds of the Senior Loan unless, at the time of such request, the Senior Loan is "In Balance" (with Balancing Deposit, if applicable) (as such terms are defined in the Senior Loan Documents) and shall remain in balance following such disbursement. If the Funding Lender of the Senior Loan, Bridge Loan or City Funds shall, pursuant to a disbursement request, deposit with the Escrow Agent funds in an amount greater than the amount requested from such Funding Lender, the Escrow Agent shall promptly transfer the amount of such excess back to such Funding Lender.

## II. Allocation of Costs with Respect to Sources of Funds.

A. Disbursements of Cash Equity. Cash Equity shall be funded and disbursed as set forth in Exhibits B and C hereto and used to pay costs pursuant to the sources and uses payout

distribution schedule attached hereto as Exhibit D (the "Source by Use Chart"), as such payout schedule may be modified by the Owner's Statement (as defined in Section IV.A.1.a hereafter) included with each construction draw disbursement request.

B. Disbursement of Funding Lenders' Loans. Disbursement of the Senior Loan, Bridge Loan or City Funds (Sponsor TIF Loan), as the case may be, shall be as set forth in the Source by Use Chart attached as Exhibit D hereto.

1. Ineligible Costs: Intentionally Omitted.
2. Costs. Costs documented as expended for the Project shall be disbursed to Sponsor from the City Funds, provided that such costs expended for the Project are eligible for reimbursement under the TIF Redevelopment Agreement and permitted by law.

C. Principles of Funding. The Borrower's written request for disbursement hereunder shall specify the amounts of Escrowed Proceeds from each source to be disbursed on such draw, which shall be consistent with the following principles governing funding, and in accordance with the Draw Schedule of the Borrower delivered to and approved by each Funding Lender (as amended from time to time with all Funding Lenders' written approval).

The Escrow Agent shall disburse the following funds in the following order:

1. General Partner Capital Contribution;
2. Cash Equity First Installment;
3. Sponsor Loan First Installment;
4. City Funds First Installment (part of Sponsor TIF Loan);
5. Senior Loan; and
6. Bridge Loan;

provided, however, that from time to time, Escrow Agent shall also receive the City Funds Second Installment, City Funds Third Installment, City Funds Fourth Installment, Sponsor Loan Construction Installments, Cash Equity -- Construction Installments, Cash Equity -- Third Installment, Cash Equity -- Fourth Installment and Cash Equity Fifth Installment. Escrow Agent shall cease disbursing the Bridge Loan or Senior Loan, as applicable, when such additional funds are deposited into the Escrow Account. In accordance with the written directions of the Borrower and Funding Lenders delivered contemporaneously with such deposits, the Escrow Agent will disburse the newly deposited funds before resuming with any remaining disbursements of the Bridge Loan or Senior Loan.

Each Funding Lender, and not the Escrow Agent, is responsible for determining the amount of its disbursement requirement for each disbursement as described in this Section II(C) based upon the amount of each cost identified in the Source by Use Chart included in Exhibit D allocated to each Funder. Such amounts and each Funding Lender's agreement thereto shall be evidenced by the written request for disbursement signed by the Borrower and each Funding Lender and the Escrow Agent is entitled to rely thereon without further inquiry.

The Borrower expects to repay the Senior Loan with proceeds from the Cash Equity -- Fifth Installment, City Funds Fourth Installment (Sponsor TIF Loan) and a portion of the Bridge Loan, as applicable. The Borrower expects to repay the Bridge Loan with proceeds from the Delayed Capital Contributions following the closure of the Escrow Account.

III. Manner of Disbursement. Disbursements from the Escrow Account are to be made as follows, pursuant to each draw request approved pursuant to Section IV hereof:

A. By checks to the undersigned general contractor (the "General Contractor") for payment by the General Contractor to each subcontractor evidencing payment due for labor and/or materials furnished for the Project on a thirty (30) day lag basis;

B. To the General Contractor under its contract with Borrower for the rehabilitation of the Project, for general requirements, builder's overhead and builder's profit, when applicable, and for labor and/or materials furnished directly by the General Contractor for the Project, approved by the Funding Lenders pursuant to such disbursement request;

C. To the General Contractor for labor and/or materials furnished by subcontractors when such items have been paid directly by the General Contractor, and when substantiated by a payment affidavit and lien waiver from the subcontractor;

D. (1) To the undersigned environmental contractor (the "Environmental Contractor") under its contract with Borrower for certain environmental remediation of the Project, for general requirements, overhead and profit, when applicable, and for labor and/or materials furnished directly by the Environmental Contractor for the Project, approved by the Funding Lenders pursuant to such disbursement request;

(2) To the undersigned design-build contractor (the "Design Build Contractor") under its contract with Borrower for the design and installation of certain micropiles in the foundation for the Project, for general requirements, overhead and profit, when applicable, and for labor and/or materials furnished directly by the Design Builder for the Project, approved by the Funding Lenders pursuant to such disbursement request;

E. By checks to each subcontractor of the Environmental Contractor and Design Build Contractor (if any) evidencing payment due for labor and/or materials furnished to the Project;

F. To the Borrower and/or other parties as approved by the Borrower and the Funding Lenders for non-construction items.

For purposes of this Escrow Agreement, the term "subcontractor" shall include all mechanics and materialmen furnishing services (including remediation), labor, materials and supplies to the Project.

IV. Conditions Precedent to Disbursements. NOTWITHSTANDING ANYTHING IN THIS ESCROW AGREEMENT TO THE CONTRARY, THE ESCROW AGENT SHALL NOT

MAKE ANY DISBURSEMENTS HEREUNDER UNTIL THE FUNDING LENDERS, WHETHER OR NOT SUCH FUNDING LENDERS ARE CONTRIBUTING FUNDS TO SUCH DISBURSEMENT, HAVE APPROVED THE DISBURSEMENT REQUEST. IF ANY FUNDING LENDER HAS NOTIFIED THE ESCROW AGENT IN WRITING OR BY TELECOPY NOT TO DO SO, THE ESCROW AGENT SHALL NOT MAKE ANY DISBURSEMENTS HEREUNDER (a) EXCEPT AS PROVIDED IN SECTION V(F) HEREOF OR (b) UNLESS AND UNTIL ALL FUNDING LENDERS SHALL HAVE JOINTLY NOTIFIED THE ESCROW AGENT IN WRITING TO DO SO.

The additional terms and conditions under which disbursements are to be made under this Escrow Agreement are as follows:

A. All Disbursements. The requirements for all disbursements, including the first and final disbursement, are as follows:

1. Prior to each disbursement of funds hereunder, the following shall be furnished to the Escrow Agent for each disbursement which is requested for the Project:

a. A sworn owner's statement disclosing all contractors and material suppliers with whom the Borrower has contracted, their respective addresses, work or materials to be furnished, amounts of contracts, amounts paid to date, amounts of current payments and balances due (the "Owner's Statement");

b. A sworn General Contractor's statement setting forth in detail all contractors and material suppliers with whom the General Contractor has contracted for the Project, their respective addresses, work or materials to be furnished, amounts of contracts, amounts paid to date, amounts of current payments and balances due (the "Contractor's Statement"), together with the partial waiver of the General Contractor in the amount of the draw, and the waivers of liens, affidavits, supporting waivers and/or release of liens, if necessary, from subcontractors and material suppliers listed thereon shall be presented to the Escrow Agent within thirty (30) after disbursement;

c. Until the Environmental Contractor has been paid in full, a sworn Environmental Contractor's statement setting forth in detail all contractors and material suppliers with whom the Environmental Contractor has contracted for the Project, their respective addresses, work or materials to be furnished, amounts of contracts, amounts paid to date, amounts of current payments and balances due (the "Environmental Contractor's Statement"), together with the partial waiver of the Environmental Contractor in the amount of the draw, and the waivers of liens, affidavits, supporting waivers and/or release of liens, if necessary, from subcontractors and material suppliers listed thereon;

d. An approval of the current condition of title shown in each Policy from U.S. Bank and Bridge Lender. When, after the first disbursement, a further title search reveals a subsequently arising exception over which the Title Company is

unwilling to insure, the Escrow Agent will notify the Funders and Borrower, and shall discontinue disbursement until the exception has been disposed of to the satisfaction of the Funding Lenders. (A mechanic's lien claim over which the Title Company shall insure hereunder does not warrant a discontinuance of disbursement);

e. Other statements, waivers, affidavits, supporting waivers and releases of lien from such persons and in such form as may be required by the Escrow Agent for the purpose of releasing and waiving any and all rights to file mechanic's lien claims against the Project for those amounts and the work or materials which they represent (alternatively, the Borrower may enter into such indemnification arrangement with the Escrow Agent as required by the Escrow Agent to underwrite the requested coverage and issue the said required policy);

f. The Cash Equity installment due as of the date of the requested disbursement from the Borrower (if any), as well as sufficient funds in the aggregate, consisting of the applicable installment of the Cash Equity, Sponsor Loan proceeds, City Funds, General Partner Capital Contribution, Bridge Loan or Senior Loan proceeds as detailed in the Owner's Statement for the draw, to cover the amount of the disbursement for such draw;

g. A written approval by the Funding Lenders of the requested disbursement and a request that the disbursement be made. For disbursements other than the first disbursement, such approval shall reference any extras or change orders not previously covered by waivers or deposited funds, and the amount of such extra or change order. Except for the disbursement of City Funds to Sponsor, which shall be approved only by DHED pursuant to the terms of the TIF Redevelopment Agreement, approval of the Funding Lenders is required for every disbursement regardless of whether such Funding Lender is contributing funds to such disbursement. The approval of DHED for disbursements of City Funds shall consist solely of signed acknowledgement by DHED delivered to the Escrow Agent, Funders and Borrower that the requirements for such disbursement of the City Funds Second Installment, City Funds Third Installment and City Funds Fourth Installment, as applicable, have been satisfied in accordance with the TIF Redevelopment Agreement, as such installments are summarized on Exhibit E.II attached hereto. Sponsor shall loan the City Funds received pursuant to this Agreement to the Borrower pursuant to the Sponsor TIF Loan Documents. Upon receipt of approval by DHED for funding of each disbursement of the City Funds, the Escrow Agent will pay such disbursement of City Funds to Sponsor by transferring the City Funds from the City TIF Subaccount into the Sponsor TIF Subaccount. The Escrow Agent shall thereafter disburse such funds as have been deposited into the Sponsor TIF Subaccount in accordance with the approved draw to pay Borrower's costs. The disbursement of the proceeds from the Sponsor TIF Subaccount shall evidence the funding and disbursement of a like amount of Sponsor TIF Loan proceeds to the Borrower. All Funders shall be copied on the approvals required by this Section;

h. If any of the Funding Lenders so request, General Contractor shall provide current copies of all of General Contractor's subcontracts from time to time in effect with respect to the Project, Environmental Contractor shall provide current copies of all of Environmental Contractor's subcontracts from time to time in effect with respect to the Project, and Design-Build Contractor shall provide current copies of all of Design-Build Contractor's subcontracts from time to time in effect with respect to the Project (if any); and

i. An Architect's Certificate of Payment (Form G702) from Landon Bone Baker Architects, Ltd. relating to the General Contractor's work, and, if any Funding Lender makes a written request, all inspection reports made by Borrower's supervisory architect since the preceding disbursement.

2. Simultaneously with each disbursement, the Title Company shall issue and deliver a mechanics' lien and pending disbursement endorsement to U.S. Bank and Bridge Lender's respective Policies in form and substance satisfactory to U.S. Bank and Bridge Lender (the "Endorsement"). The amount shown in the pending disbursement portion of any such Endorsement shall be the amount of the total disbursement(s) made by U.S. Bank and Bridge Lender, respectively, to date, and the effective date thereof shall be the date U.S. Bank and Bridge Lender deposit their respective funds into the Escrow Account.

B. First Disbursement. Prior to the first disbursement of funds hereunder, and in addition to the requirements set forth above for all disbursements, the following shall be furnished:

1. Where applicable, the Title Company shall have furnished to the U.S. Bank and Bridge Lender Policies, in such form and with such endorsements as shall be satisfactory to U.S. Bank and Bridge Lender, covering the recording of the Senior Mortgage and Bridge Loan Mortgage, respectively, any, and showing each of U.S. Bank and Bridge Lender as the insured under their respective Policies.

C. Final Disbursement. Prior to the final disbursement of funds hereunder, and in addition to the requirements set forth above for all disbursements, the following shall be furnished:

1. A certificate addressed to the Escrow Agent, from the Funding Lender's construction consultant, if any, and DHED or its representative, certifying that all rehabilitation or construction work has been completed and materials are in place to the extent shown in the request for payment by the General Contractor.

2. Upon completion of the Project, the Borrower shall promptly submit notice thereof to the Escrow Agent and each Funder and shall cause the Title Company to issue a final Endorsement to the U.S. Bank and Bridge Lender Policies.

D. Disbursement Following Default Under a Funding Lender's Agreement. In the event of a default by Borrower under any of the Agreements (as determined after taking into



account all applicable notice and cure periods, if any), any Cash Equity, General Partner Capital Contribution and Sponsor Loan proceeds in the Escrow Account will be disbursed by Escrow Agent in accordance with the joint written direction of the Funding Lenders.

V. Escrow Agent. It is understood by the parties hereto and by the General Contractor, Design-Build Contractor and Environmental Contractor, each of whom has executed this Escrow Agreement to evidence their respective understanding and not as a party hereto, that the following provisions govern the duties of the Escrow Agent hereunder:

A. The Escrow Agent may, at its discretion, take whatever steps the Escrow Agent may deem necessary to verify the accuracy of any sworn statement required hereunder;

B. If at any time the Escrow Agent shall discover a misstatement of a material fact in any request or accompanying documentation, or other notice from the Borrower, it shall promptly give notice of such discovery to the Borrower and each Funder and shall thereafter not disburse funds from the Escrow Account until such misstatements shall have been corrected to the satisfaction of each Funding Lender and if applicable, the Borrower, except as directed pursuant to the joint direction of all Funding Lenders and if applicable, the Borrower;

C. Excluding the thirty-day lag permitted to the General Contractor for subcontractor lien waivers, the Escrow Agent will not accept any blanket lien waivers by the General Contractor or Environmental Contractor as to labor performed and/or materials furnished by others. The Escrow Agent will not accept any blanket waiver pre-signed by any subcontractor;

D. While the subcontractors and any suppliers of labor and materials listed on sworn statements are not parties to this Escrow Agreement and have no standing hereunder, the Escrow Agent is authorized to furnish to those persons information which the Escrow Agent may deem appropriate with regard to the times at which disbursements might be made to them, and what conditions remain unsatisfied when the Escrow Agent is not in a position to disburse;

E. Any requirement or undertaking herein notwithstanding, there is no obligation assumed by the Escrow Agent for insuring that sufficient funds will be available to pay all costs incurred in completing the Project, or that the Project will be completed. Except with respect to funds for which the Escrow Agent shall have received investment instructions in writing from the Funder of such funds and the Borrower, the Escrow Agent shall be under no duty to invest or reinvest any cash at any time held by it hereunder;

F. Upon receipt of written notice to the Escrow Agent from any Funder, which notice shall be provided to all other Funders and to the Borrower, the Escrow Agent shall transfer to such Funder all amounts previously disbursed by such Funder into the Escrow Account that remain in the Escrow Account; provided, however, that this provision shall not apply to the Sponsor relating to the Sponsor Loan proceeds or the Sponsor TIF Loan proceeds without the written consent of the City, Bridge Lender and U.S. Bank.

G. The Escrow Agent's charges for the services performed and title insurance protection furnished hereunder are the responsibility of the Borrower and are to be paid from funds

deposited herein, and the Escrow Agent reserves the right to suspend further processing of funds in the Escrow Account until this is done or other arrangements satisfactory to the Escrow Agent have been made; and

H. It is understood by the parties hereto that the requirements listed in this Section V are solely for the Escrow Agent's benefit to assist the Escrow Agent in fulfilling its obligations hereunder.

VI. Special Provisions. Special provisions applicable to this Escrow Agreement are set forth on Exhibit E hereto. If there shall be any inconsistency between the terms of the body of this Escrow Agreement and any term set forth as a special provision on Exhibit E hereto, the term set forth as a special provision on Exhibit E shall prevail.

VII. General.

A. Unless otherwise specified, any notice, demand or request required hereunder shall be given in writing at the addresses set forth on Exhibit F hereto, by any of the following means: (a) personal service; (b) electronic communications, whether by telex, telegram or telecopy; (c) overnight courier, receipt requested; or (d) registered or certified mail, return receipt requested. Such addresses may be changed by notice to the other parties given in the same manner provided above. Any notice, demand or request sent pursuant to either clause (a) or (b) above shall be deemed received upon such personal service or upon dispatch by electronic means with confirmation of receipt. Any notice, demand or request sent pursuant to clause (c) above shall be deemed received on the Business Day (as defined below) immediately following deposit with the overnight courier, and any notice, demand or request sent pursuant to clause (d) above shall be deemed received two Business Days following deposit in the mail. "Business Day" as used herein shall mean a day on which banks in the City of Chicago are not authorized or required to remain closed and which shall not be a public holiday under the laws of the State of Illinois or any ordinance or resolution of the City of Chicago.

B. No changes, amendments, modifications, cancellations or discharge of this Escrow Agreement, or any part hereof, shall be valid unless in writing executed by the parties hereto or their respective successors and assigns.

C. No official, officer or employee of the City shall be personally liable to the Borrower or any successor in interest in the event of any default or breach of this Escrow Agreement by the City or for any amount which may become due to the Borrower or any successor in interest, or on any obligation under the terms of this Escrow Agreement.

D. The Escrow Agent, Funders and Borrower agree that this Escrow Agreement is not intended to give any benefits, rights, privileges, actions or remedies to any person, partnership, firm or corporation other than the Escrow Agent, Funders and Borrower, as a third party beneficiary or otherwise, under any theory of law.

E. If any provision of this Escrow Agreement, or any paragraph, sentence, clause, phrase or word, or the application thereof, in any circumstance, is held invalid, the remainder of

this Escrow Agreement shall be construed as if such invalid part were never included herein and this Escrow Agreement shall be and remain valid and enforceable to the fullest extent permitted by law.

F. This Escrow Agreement shall be governed as to performance and interpretation in accordance with the internal laws of the State of Illinois, without regard to its conflict of laws principles.

G. This Escrow Agreement may be executed in several counterparts, each of which shall constitute an original and all of which shall constitute one and the same instrument.

H. Funders and the Borrower agree, absent any Event of Default under the Senior Loan Documents, Bridge Loan Documents and TIF Redevelopment Agreement, that any savings in the costs of completing the Project shall, at the direction of the City either (1) be retained by Borrower and used for betterments to the Project in accordance with Section IX.ii of the City's June 30, 2010 Conditional Reservation Letter relating to the Illinois Affordable Housing Tax Credits, or (2) reduce the City Funds in accordance with Section 4.03(c)(iii) of the TIF Redevelopment Agreement, and not to reduce the General Partner Capital Contribution, Cash Equity, Bridge Loan or Senior Loan. The Borrower shall fully disburse the Cash Equity – Construction Installments during construction, the Cash Equity – Third Installment and Cash Equity – Fourth Installment following construction completion, and the Cash Equity – Fifth Installment upon satisfaction of the conditions in the Partnership Agreement and concurrently with repayment of the Senior Loan. Any portion of the Cash Equity – Fifth Installment that is not used to repay the Senior Loan shall be applied to pay or reimburse costs of the Project or, in the event that such disbursement exceeds the remaining unpaid or unreimbursed Project costs (including the deferred development fee and Project costs that will be paid with the Delayed Capital Payments), shall be paid to the City to reduce the amount of the City Funds.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

[Signature Pages S-1 and S-2 follow]

IN WITNESS WHEREOF, the parties hereto have caused this Escrow Agreement to be duly executed and delivered as of the date first written above.

**CITY OF CHICAGO, ILLINOIS**

By: *[Signature]*  
Andrew J. Mooney, Commissioner  
Department of Housing and Economic Development

By: *Edward B. Ellis*  
Name: Ed Ellis, Deputy Commissioner  
Financial Control

**VICEROY HOTEL LIMITED PARTNERSHIP**

By: Viceroy GP, LLC, an Illinois limited liability company, its General Partner

By: Heartland Housing, Inc., its Manager

By: Michael Goldberg, Executive Director

**HEARTLAND HOUSING, INC., an Illinois not for profit corporation**

By: Michael Goldberg, Executive Director

**U.S. BANK NATIONAL ASSOCIATION**

By: \_\_\_\_\_  
Name:  
Title:

**ENTERPRISE COMMUNITY LOAN FUND, INC.**

By: \_\_\_\_\_  
Name:  
Title:

**GREATER ILLINOIS TITLE COMPANY**

By: *Rogelio Pineda*  
Name: Rogelio Pineda  
Title: Escrow Officer

IN WITNESS WHEREOF, the parties hereto have caused this Escrow Agreement to be duly executed and delivered as of the date first written above.

**CITY OF CHICAGO, ILLINOIS**

By: \_\_\_\_\_  
Andrew Mooney, Commissioner  
Department of Housing and Economic Development

By: \_\_\_\_\_  
Name: Ed Ellis, Deputy Commissioner  
Financial Control

**VICEROY HOTEL LIMITED PARTNERSHIP**

By: Viceroy GP, LLC, an Illinois limited liability company, its General Partner

**HEARTLAND HOUSING, INC., an Illinois not for profit corporation**

By: Michael Goldberg  
Michael Goldberg, Executive Director

By: Heartland Housing, Inc., its Manager

By: Michael Goldberg  
Michael Goldberg, Executive Director

**U.S. BANK NATIONAL ASSOCIATION**

By: Karyn Knaak  
Name: Karyn Knaak  
Title: Vice President

**ENTERPRISE COMMUNITY LOAN FUND, INC.**

By: \_\_\_\_\_  
Name:  
Title:

**GREATER ILLINOIS TITLE COMPANY**

By: \_\_\_\_\_  
Name:  
Title:

IN WITNESS WHEREOF, the parties hereto have caused this Escrow Agreement to be duly executed and delivered as of the date first written above.

**CITY OF CHICAGO, ILLINOIS**

By: \_\_\_\_\_  
Andrew Mooney, Commissioner  
Department of Housing and Economic Development

By: \_\_\_\_\_  
Name: Ed Ellis, Deputy Commissioner  
Financial Control

**VICEROY HOTEL LIMITED PARTNERSHIP**

By: Viceroy GP, LLC, an Illinois limited liability company, its General Partner

By: Heartland Housing, Inc., its Manager

By: \_\_\_\_\_  
Michael Goldberg, Executive Director

**HEARTLAND HOUSING, INC., an Illinois not for profit corporation**

By: \_\_\_\_\_  
Michael Goldberg, Executive Director

**U.S. BANK NATIONAL ASSOCIATION**

By: \_\_\_\_\_  
Name:  
Title:

**ENTERPRISE COMMUNITY LOAN FUND, INC.**

By: *Timothy E. Martin*  
Name: Timothy E. Martin  
Title: Chief Credit Officer

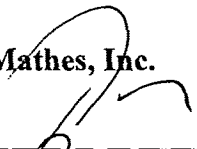
**GREATER ILLINOIS TITLE COMPANY**

By: \_\_\_\_\_  
Name:  
Title:

**Acknowledged**

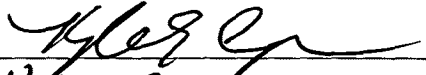
**General Contractor:**

**Linn-Mathes, Inc.**

By:   
Name: Robert J. Mathes  
Title: Senior VP

**Design-Build Contractor:**

**Hayward Baker, Inc.**

By:   
Name: Kyle E. Camper  
Title: Vice President

**Environmental Contractor:**

**Carnow Conibear Assoc., Ltd.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Acknowledged**

**General Contractor:**

**Linn-Mathes, Inc.**

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

Name:

Title:

**Design-Build Contractor:**

**Hayward Baker, Inc.**

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

Name:

Title:

**Environmental Contractor:**

**Carnow Conibear Assoc., Ltd.**

By: *Daniel T. Stone* \_\_\_\_\_

Name: Daniel T. Stone

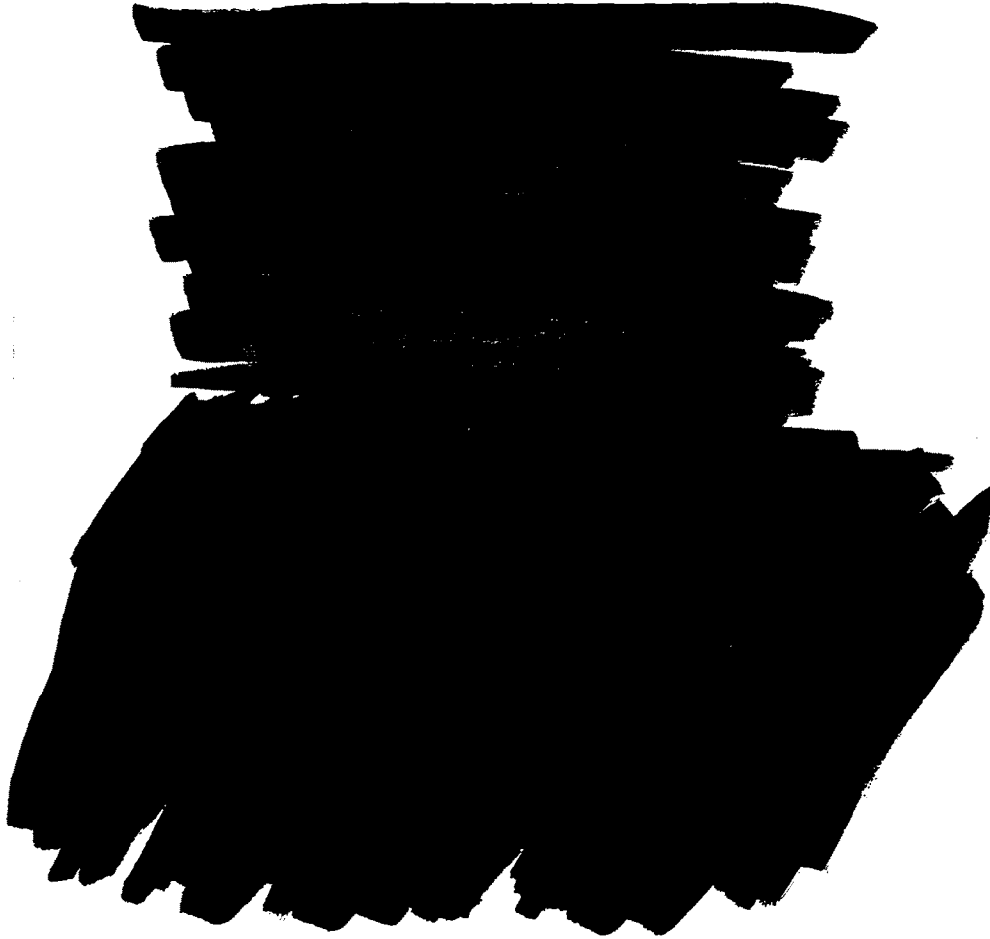
Title: Chief Financial Officer/ Treasurer



EXHIBIT D

SOURCES AND USES

See attached.



Construction Draw Schedule  
 Victory Apartments  
 City of Chicago Department of Housing and Community Development  
 Victory Apartments  
 Source by User Chart - Exhibit D  
 16 December 2011

Permanent Funds	Construction Period (first 24 months)	Closing Draw Dec-11	Closing Draw												Total													
			1	2	3	4	5	6	7	8	9	10	11	12		13	14	15	16	17	18	19	20	21	22	23		
			Jan-12	Feb-12	Mar-12	Apr-12	May-12	Jun-12	Jul-12	Aug-12	Sep-12	Oct-12	Nov-12	Dec-12	Jan-13	Feb-13	Mar-13	Apr-13	May-13	Jun-13	Jul-13	Aug-13	Sep-13	Oct-13	Nov-13			
LIHTC Equity	\$ 11,765,954	\$ 7,920,494	\$ 844,061	\$ 22,804	\$ 255,334	\$ 328,795	\$ 641,104							\$ 589,798											\$ 342,063	\$ 4,315,410	\$ 321,634	
Habitat Tax Credit Equity	\$ 2,679,003	\$ 1,404,830	\$ 197,015	\$ 7,446	\$ 33,864	\$ 120,443	\$ 155,134							\$ 135,985												\$ 77,011	\$ 72,255	
Energy Tax Credit Equity	\$ 30,433	\$ 30,466	\$ 1,433	\$ -	\$ 613	\$ 1,548	\$ 1,763							\$ 1,522												\$ 85	\$ 437	
Construction Loan 1 (US Bank)	\$ -	\$ 4,122,877																										
Construction Loan 2 (ECLF)	\$ -	\$ 3,549,985				\$ 30,741																						
LIHTC	\$ 1,876,336	\$ 1,079,339	\$ 1,079,339																									
TIF	\$ 3,874,673	\$ 3,874,673		\$ 500,000																								
DCEO	\$ 163,157	\$ 187,157		\$ 91,079																								
Senior Financing	\$ 2,335,100	\$ 2,335,100	\$ 1,335,100																									
City Capital Contributions	\$ 123,900	\$ 123,900	\$ 123,900																									
Deferred Developer Fee	\$ 124,364	\$ -																										
Total	\$ 24,246,720	\$ 17,033,913	\$ 4,407,464	\$ 240,426	\$ 393,051	\$ 701,348	\$ 923,251	\$ 1,176,189	\$ 1,313,645	\$ 1,448,920	\$ 1,619,323	\$ 1,498,621	\$ 1,493,621	\$ 1,807,634	\$ 905,411	\$ 806,141	\$ 732,798	\$ 246,859	\$ 1,210,233	\$ 46,209	\$ 31,377	\$ 31,508	\$ 31,639	\$ 31,639	\$ 2,433,076	\$ 14,690	\$ 410,352	
Closing Draw			1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23			
		Amount Drawn Before or During Construction																										
Acquisitions land	\$ 644,000	\$ 644,000	\$ 644,000																									
Acquisitions building	\$ 1,792,000	\$ 1,792,000	\$ 1,792,000																									
Transfer fees	\$ 21,016	\$ 21,016	\$ 21,016																									
Hard costs	\$ 12,740,123	\$ 12,740,123	\$ 11,740,123	\$ 1,000,000	\$ 700,000	\$ 600,000	\$ 500,000	\$ 400,000	\$ 300,000	\$ 200,000	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000
W.P. bond and insurance	\$ 191,359	\$ 191,359	\$ 191,359																									
Alloquies	\$ 104,000	\$ 104,000	\$ 104,000																									
Site Utilities	\$ 30,000	\$ 30,000	\$ 30,000																									
Test and Demo Work - BRC	\$ 13,838	\$ 13,838	\$ 13,838																									
Hard cost contingencies (10% hard costs)	\$ 7,224,951	\$ 1,224,951																										
Urban garden	\$ 45,000	\$ 45,000	\$ 45,000																									
Architecture - design	\$ 7,487	\$ 7,487	\$ 7,487																									
Architecture - design BPP/inter design	\$ 7,487	\$ 7,487	\$ 7,487																									
Architecture - design	\$ 413,212	\$ 413,212	\$ 413,212																									
Architecture - conceptual	\$ 155,780	\$ 155,780	\$ 155,780																									
Architecture - reimbursables	\$ 7,500	\$ 7,500	\$ 7,500																									
Kitchen Design	\$ 2,000	\$ 2,000	\$ 2,000																									
Arch - civil	\$ 50,000	\$ 50,000	\$ 50,000																									
Arch - Historic	\$ 56,670	\$ 56,670	\$ 56,670																									
Arch - Green	\$ 12,000	\$ 12,000	\$ 12,000																									
Historic Tree Consultant	\$ 10,000	\$ 10,000	\$ 10,000																									
Urban Farming/Food Consultant	\$ 3,000	\$ 3,000	\$ 3,000																									
Engineering	\$ 141,158	\$ 141,158	\$ 141,158																									
Building Commissioning	\$ 60,000	\$ 60,000	\$ 60,000																									
Legal - transactional	\$ 120,000	\$ 120,000	\$ 120,000																									
Legal - zoning	\$ 5,408	\$ 5,408	\$ 5,408																									
Legal - EBCC	\$ 15,523	\$ 15,523	\$ 15,523																									
Legal - budget/due diligence	\$ 47,000	\$ 47,000	\$ 47,000																									
Legal - vendor	\$ 40,000	\$ 40,000	\$ 40,000																									
Legal - real estate	\$ 4,145	\$ 4,145	\$ 4,145																									
Occupation Rising Fees	\$ 1,453	\$ 1,453	\$ 1,453																									
TIF Projections	\$ 6,740	\$ 6,740	\$ 6,740																									
Inspector - syndicator/tender	\$ 18,850	\$ 18,850	\$ 18,850																									
Personal Services	\$ 70,971	\$ 70,971	\$ 70,971																									
Dumpster Rental	\$ 3,500	\$ 3,500	\$ 3,500																									
Permits	\$ 5,217	\$ 5,217	\$ 5,217																									
Survey	\$ 6,520	\$ 6,520	\$ 6,520																									
Physical Need Assessment	\$ 7,146	\$ 7,146	\$ 7,146																									
Environmental Review/need definition report - US Bank	\$ 745	\$ 745	\$ 745																									
Environmental - Phase I	\$ 1,800	\$ 1,800	\$ 1,800																									
Environmental - Phase I update	\$ 1,510	\$ 1,510	\$ 1,510																									
Environmental - Phase II	\$ 14,000	\$ 14,000	\$ 14,000																									
IEPA SRP Design and Oversight	\$ 86,960	\$ 86,960	\$ 86,960																									
Asbestos Survey, Asbestos and Lead/Pb Survey	\$ 5,603	\$ 5,603	\$ 5,603																									
Lead based paint Inspection	\$ 1,370	\$ 1,370	\$ 1,370																									
Environmental Reference Letters	\$ 500	\$ 500	\$ 500																									
Elevator Lead Abatement	\$ 13,810	\$ 13,810	\$ 13,810																									
Interior Lead Abatement	\$ 20,000	\$ 20,000	\$ 20,000																									
Lead pipe clearance samples	\$ 3,100	\$ 3,100	\$ 3,100																									
Radon Testing	\$ 1,150	\$ 1,150	\$ 1,150																									
Asbestos Remediation	\$ 135,070	\$ 13																										

	Permanent Funds	Construction Period (First 24 months)	Closing Draw																									
			Dec-11	Jan-12	Feb-12	Mar-12	Apr-12	May-12	Jun-12	Jul-12	Aug-12	Sep-12	Oct-12	Nov-12	Dec-12	Jan-13	Feb-13	Mar-13	Apr-13	May-13	Jun-13	Jul-13	Aug-13	Sep-13	Oct-13	Nov-13		
Operating reserve	\$ 791,280	\$ 110,000																										\$ 110,000
Deposit to replacement reserve	\$ 15,000	\$ 35,000																										\$ 35,000
Application fees - enfl	\$ 13,500	\$ 17,500	\$ 8,320	\$ 6,370																								
Green Application Fee	\$ 1,400	\$ 1,500	\$ 1,500	\$ 1,500																								
Submittal Listing Review	\$ 1,500	\$ 1,500	\$ 1,500	\$ 1,500																								
BAAF Insurance Fee	\$ 1,000	\$ 1,000	\$ 1,000	\$ 1,000																								
10% Test Late Fee - HIDA	\$ 4,500	\$ 4,500	\$ 4,500	\$ 4,500																								
IAH/C Retention Fee	\$ -	\$ -	\$ -	\$ -																								
Takeoff preparation fee	\$ 135,241	\$ 135,241	\$ 135,241	\$ 135,241																								
Developer fee	\$ 1,324,369	\$ 950,000	\$ 300,000																								\$ 300,000	
Total Perm Allow	\$ 32,419,597	\$ 30,931,936	\$ 4,401,463	\$ 540,438	\$ 392,951	\$ 701,348	\$ 932,551	\$ 1,178,815	\$ 1,313,643	\$ 1,448,920	\$ 1,619,123	\$ 1,498,622	\$ 1,393,622	\$ 1,207,634	\$ 903,411	\$ 866,141	\$ 772,798	\$ 246,650	\$ 466,662	\$ 46,209	\$ 21,277	\$ 31,508	\$ 37,639	\$ 154,367	\$ 14,600	\$ 410,352	\$ 100,000	\$ 250,000
US Bank Takeout	\$ 6,122,877	\$ 6,122,877																										\$ 5,278,700
ECLF Takeout	\$ 600,000																											
Total Including Takeout	\$ 32,419,597	\$ 37,054,813	\$ 4,401,463	\$ 840,438	\$ 892,951	\$ 701,348	\$ 932,551	\$ 1,178,815	\$ 1,313,643	\$ 1,448,920	\$ 1,619,123	\$ 1,498,622	\$ 1,403,622	\$ 1,207,634	\$ 905,411	\$ 866,141	\$ 772,798	\$ 345,659	\$ 1,310,833	\$ 46,300	\$ 21,277	\$ 31,508	\$ 37,639	\$ 5,432,078	\$ 14,600	\$ 410,352	\$ 100,000	

## EXHIBIT A

### A. PARTIES:

1. Viceroy Hotel Limited Partnership, an Illinois limited partnership, referred to herein as the "Borrower," having an address at 208 S. LaSalle Street, Suite 1818, Chicago, Illinois 60604, Attention: Hume An.
2. Heartland Housing, Inc., an Illinois not for profit corporation, referred to herein as "Sponsor," having an address at 208 S. LaSalle Street, Suite 1818, Chicago, Illinois 60604, Attention: Hume An.
3. U.S. Bank National Association, a national banking association, referred to herein as "U.S. Bank," having an address at 1 South Pinckney Street, Madison, Wisconsin 53703, Attention: Karyn Knaak, Director.
4. City of Chicago, Illinois, an Illinois municipal corporation referred to herein as "City", having an address at its Department of Housing and Economic Development, 121 North LaSalle Street, Room 1006, Chicago, Illinois 60602, Attention: Commissioner.
5. Greater Illinois Title Company, an Illinois corporation, referred to herein as the "Escrow Agent" and "Title Company", having an address at 120 North LaSalle Street, Suite 900, Chicago, Illinois 60602; Attention: Melinda Janczur.
6. Enterprise Community Loan Fund, Inc., a Maryland nonprofit corporation, 10227 Wincopin Circle, Columbia, Maryland 21044

### B. Title Company: Greater Illinois Title Company

**EXHIBIT B**

**FUNDING OF THE PROJECT**

I. Total amounts of the respective Equity and Loans:

Borrower Deposits:		
1. Cash Equity		\$9,350,012.00
2. General Partner Capital Contribution		\$ 122,900.00
3. Sponsor Loan		\$1,261,386.00
Deferred Equity		\$1,126,280.00
Senior Loan		\$6,122,877.00
Bridge Loan		\$4,000,000.00
City Funds*		\$3,876,673.00
Total		\$25,860,128.00

\*\* The City Funds shall be disbursed to Sponsor pursuant to the TIF Redevelopment Agreement and loaned by Sponsor to the Borrower pursuant to the Sponsor TIF Loan Documents. See Section IV.A.1.g of this Agreement for more details.

II. Permitted Ratios: Not Applicable.

III. Disbursements outside this Escrow Account:

- a. Equity disbursed by the Borrower prior to the date hereof, outside this Escrow Account and approved by the Funding Lenders as Equity contributions:

None

- b. Amounts disbursed on December 19, 2011, but not disbursed into this Escrow Account:

None

- c. Amounts to be disbursed after December 19, 2011, outside this Escrow Account:

<u>Line Item</u>	<u>Source</u>	<u>Amount</u>
Operating Reserve	Deferred Equity*	\$ 791,280
Replacement Reserve	Deferred Equity*	\$ 35,600
Developer Fee	Deferred Equity*	\$ 300,000
Bridge Loan Repayment	Delayed Capital	\$4,000,000

\*part of the Capital Contributions to be made by Investor to Borrower pursuant to the Partnership Agreement

**EXHIBIT C**

**FUNDING OF THE ESCROW ACCOUNT**

I. Total amount to be disbursed into the Escrow Account over the term of the Escrow Agreement:

Borrower Deposits		
1. Cash Equity		\$9,349,412.00
2. General Partner Capital Contribution		\$ 122,900.00
3. Sponsor Loan		\$1,261,386.00
City Funds*		\$3,876,673.00
Senior Loan**		\$6,122,877.00
Bridge Loan**		\$4,000,000.00
Total		\$24,733,248.00

\* The City Funds shall be disbursed to Sponsor pursuant to the TIF Redevelopment Agreement and loaned by Sponsor to the Borrower pursuant to the Sponsor TIF Loan Documents. See Section IV.A.1.g for more details.

\*\* Amounts of the Senior Loan and Bridge Loan that have been designated as interest reserve accounts for monthly payment of interest on each loan will not be disbursed through the Escrow Account

II. Amounts disbursed into the Escrow Account on December 19, 2011, unless otherwise noted:

Borrower Deposits		
1. Cash Equity First Installment		\$ 1,064,234.00
2. General Partner Capital Contribution		\$ 122,900.00
3. Sponsor Loan First Installment		\$1,079,229.00
City Funds First Installment*		\$ 500,000.00
Senior Loan		\$0
Bridge Loan		\$0
Total		\$2,766,363.00

\*See Exhibit E; City Funds First Installment are reasonably expected to be deposited on or before January 20, 2012



	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48		
	Jan-14	Feb-14	Mar-14	Apr-14	May-14	Jun-14	Jul-14	Aug-14	Sep-14	Oct-14	Nov-14	Dec-14	Jan-15	Feb-15	Mar-15	Apr-15	May-15	Jun-15	Jul-15	Aug-15	Sep-15	Oct-15	Nov-15	Dec-15		
Operational reserve																									\$ 681,280	
Deposit to replacement reserve																										
Application fee - toll																										
Green Monitoring Fee																										
Subsidy Laying Review																										
HAIR Insurer Fee																										
10% Vest Late Fee - FHDA																										
IAHIC Reservation Fee																										
Task order reservation fee																										
Developer fee																										
Total Perm Users	\$ 14,875	\$ 64,873	\$ 14,993	\$ 15,061	\$ 15,134	\$ 15,187	\$ 15,230	\$ 15,274	\$ 15,318	\$ 15,442	\$ 15,506	\$ 15,571	\$ 15,636	\$ 15,701	\$ 15,766	\$ 15,832	\$ 15,898	\$ 15,964	\$ 16,031	\$ 16,097	\$ 16,164	\$ 16,232	\$ 16,299	\$ 16,367	\$ 16,434	\$ 16,501
US Bank Takeout																										\$ 4,908,000
ECL/FY Takeout																										
Total Including Takeout	\$ 14,875	\$ 64,873	\$ 14,993	\$ 15,061	\$ 15,134	\$ 15,187	\$ 15,230	\$ 15,274	\$ 15,318	\$ 15,442	\$ 15,506	\$ 15,571	\$ 15,636	\$ 15,701	\$ 15,766	\$ 15,832	\$ 15,898	\$ 15,964	\$ 16,031	\$ 16,097	\$ 16,164	\$ 16,232	\$ 16,299	\$ 16,367	\$ 16,434	\$ 4,908,000



**EXHIBIT E**

**SPECIAL PROVISIONS**

I. The City Funds will be deposited by the City into the TIF Subaccount of the Escrow Account according to the following schedule pursuant to the TIF Redevelopment Agreement:

<u>Installment</u>	<u>Date</u>	<u>Deposit Amount</u>
First	Closing Date*	\$500,000
Second	On or about June 1, 2012	\$1,688,337
Third	On or about October 1, 2012	\$844,168
Fourth	On or about March 1, 2013	\$844,168
Total		\$3,876,673

\*funding on or before January 20, 2012

II. The City Funds will be disbursed to Sponsor according to the following schedule pursuant to the TIF Redevelopment Agreement, and then concurrently loaned by Sponsor to the Partnership:

<u>Installment</u>	<u>Payment Trigger</u>	<u>Payment Amount</u>
First	Closing Date	\$500,000
Second	Upon 50% construction completion	\$1,688,337
Third	Upon 75% construction completion	\$844,168
Fourth	Upon issuance of Certificate of Completion Pursuant to <b><u>Section 7.01</u></b> of the TIF Redevelopment Agreement	\$844,168
Total		\$3,876,673

\*funding on or before January 20, 2012

End of Special Provisions

**EXHIBIT F**

**ADDRESSES OF PARTIES FOR NOTICE**

IF TO THE CITY: As set forth on Exhibit A hereto, with copies to:

Department of Finance  
City of Chicago  
33 North LaSalle Street, Suite 600  
Chicago, Illinois 60602  
Attention: Comptroller

Office of the Corporation Counsel  
City of Chicago  
121 North LaSalle Street, Room 600  
Chicago, Illinois 60602  
Attention: Finance and Economic  
Development Division

IF TO THE BORROWER: As set forth on Exhibit A hereto, with copies to:

Enterprise Community Investment, Inc.  
10227 Wincopin Circle, Suite 800  
Columbia, MD 21044  
Attention: General Counsel

Applegate & Thorne-Thomsen, P.C.  
626 W. Jackson, Suite 400  
Chicago, Illinois 60661  
Attention: Bill Skalitzky

IF TO U.S. BANK: As set forth on Exhibit A hereto, with copies to:

Dykema Gossett PLLC  
10 S. Wacker Drive, Suite 2300  
Chicago, Illinois 60606  
Attn: Derek L. Cottier

IF TO THE ESCROW AGENT: As set forth on Exhibit A hereto.

IF TO SPONSOR: As set forth on Exhibit A hereto.

IF TO BRIDGE LENDER: As set forth on Exhibit A hereto.