

## CONTRACT FOR THE PURCHASE AND SALE OF REAL ESTATE

THIS CONTRACT FOR THE PURCHASE AND SALE OF REAL ESTATE (the "Contract") is made as of the \_\_\_\_ day of \_\_\_\_\_, 2017 (the "Effective Date") between the Owner of Record, THE CITY OF AURORA, an Illinois Home Rule Municipal Corporation (the "Seller"), and HEARTLAND RECYCLING, L.L.C., an Illinois limited liability company (the "Buyer"). Seller and Buyer shall together be referred to as the "Parties" or individually as "Party."

WHEREAS, on the 23<sup>rd</sup> day of August, 2011, the Parties entered into a Development Agreement regarding the development of the land surface of the former quarry, and on May 27, 2014 the Parties entered into an Amended and Restated Development Agreement (both of which collectively shall be referred to herein as the "Development Agreement"), a copy of each is attached hereto as **Exhibit 1**, and the terms and conditions of said Agreements are fully incorporated herein by reference;

WHEREAS, the Buyer now wishes to add to the property which is the subject of the Development Agreement for the purposes stated therein, and the Seller is willing to sell additional surface rights on adjoining property to the Buyer for those purposes. Therefore, the Parties wish to enter into the following Agreement for the sale of the surface rights to the real estate identified in **Exhibit 2** attached hereto and fully incorporated herein by reference:

1. **PURCHASE AND SALE.** Subject to: (a) the terms and conditions hereof; (b) the Development Agreement which is attached hereto as **Exhibit 1**; (c) the terms and conditions of the Development Agreement which are fully incorporated herein by reference; and (d) to the terms and conditions of the special warranty deed, Seller agrees to sell to Buyer, and Buyer agrees to purchase all of Seller's rights, title and interest in the surface rights to the real property described in **Exhibit 2**. Seller retains all subsurface rights as described in the Development Agreement.

2. **PURCHASE PRICE/EARNEST MONEY.** Subject to the adjustments and prorations hereafter described, the total purchase price to be paid by Buyer to Seller for the Real Estate shall be **Sixteen Thousand Five Hundred Dollars (\$16,500.00)** (the "**Purchase Price**") payable at closing in good funds by wire transfer.

3. **TITLE INSURANCE.** Seller has delivered to Buyer and Buyer accepts a title commitment issued by Chicago Title Insurance Company in the amount of the Purchase Price showing title to the Real Estate vested in Seller and naming Buyer as the proposed insured. The title commitment shall be conclusive evidence of good title as therein shown as to all matters encumbered by this policy.

4. **SURVEY.** Seller, at its own expense, agrees to furnish to Buyer a plat of survey of the Real Estate made, and so certified by the surveyor as having been made, in compliance

with the Illinois Land Survey Standards.

5. **ENVIRONMENTAL**. The Real Estate shall be conveyed to Buyer on an "as-is, where-is" basis, without any representations or warranties of any kind, express or implied, either oral or written, made by Seller or any agent or representative of Seller with respect to the physical, environmental or structural condition of the Real Estate, including but not limited to layout, square footage, zoning, use and occupancy restrictions, susceptibility to flooding or with respect to the existence or absence of toxic, hazardous or petroleum materials, substances or wastes in, on, under or affecting the Real Estate. Except as is otherwise expressly set forth in this paragraph, neither Seller nor any agent of the Seller has made or hereby makes any warranty or representation whatsoever, and Seller and its agents hereby disclaim any implied warranties regarding fitness for a particular purpose, condition of improvements, quality or merchantability of the Real Estate or any portion thereof. Buyer further acknowledges to the Seller that Buyer understands that the Real Estate contained in the past and may currently contain toxic and hazardous wastes or hydrocarbon substances and that there is or may be impacted soil and groundwater on the Real Estate to levels which exceed current acceptable legal limits.

The Buyer agrees to take the Real Estate "as-is, where-is" and in so agreeing, the Buyer acknowledges and represents that Buyer has inspected and has made such investigation as Buyer deems appropriate into the conditions affecting the Real Estate, including, without limitation, the conditions described above. In so doing, the Buyer represents that Buyer has retained or will retain, at Buyer's sole cost and expense, such experts and consultants to assist in such inspection and investigation as Buyer has deemed or will deem appropriate. In agreeing to purchase the Real Estate "as-is, where-is" and without representation or warranty, express or implied, oral or written, except as expressly set forth in this Contract, the Buyer acknowledges and represents that Buyer has factored the "as-is, where-is" condition of the Real Estate into the price that Buyer has hereby agreed to pay for the Real Estate, and is satisfied with the same. Upon closing, Buyer agrees to assume all responsibility, damages, liability and obligation for and resulting from the physical, environmental and structural condition of the Real Estate, and specifically acknowledges the existing clay cap located thereon. Buyer shall have the sole and exclusive responsibility for complying with any and all federal, state and local laws, statutes, ordinances, rules, regulations and other requirements pertaining to any environmental conditions or contamination noted above from any source, including but not limited to, any requirements for the removal thereof.

The Seller shall have no responsibility to Buyer, or to Buyer's grantees, agents, employees, invitees, guests, contractors, successors or assigns or any other person or entity for the assessment, monitoring, remediation, or presence of environmental conditions or contamination on or at the Real Estate, and Buyer agrees that from and after the closing date, Buyer agrees to hold the Seller harmless from any and all liability and shall not bring any claim, or make any demand, on the Seller, in a court of law, or otherwise for damages, reimbursement, contributions, indemnification or otherwise relating thereto. It is the specific purpose of this Contract that the Seller shall have no responsibility for or obligation to the Buyer to remediate any environmental conditions or contamination that currently exists on the Real Estate, known or unknown, prior to or after the conveyance of title to the Real Estate to Buyer or under any other circumstances arising out of or relating to this Contract, the Parties agreeing that Buyer is

purchasing the Real Estate in an "as-is, where is" condition, and Seller shall not be liable to Buyer for any diminution in the value of the Real Estate, lost profits or rents or any other loss or business damages or business interruption, nor for any loss of any kind which Buyer suffered or would have suffered because of the presence of environmental conditions or contamination on, at or under the Real Estate.

Buyer shall assume the expense of defending all suits, administrative proceedings and disputes of any description with all persons, entities, political subdivisions or government agencies arising out of the matters to be indemnified under this Contract. In the event that the City or any of the City Affiliates is/are named as a defendant(s) in any claim, proceeding or lawsuit arising out of the matters to be indemnified under this Agreement, the City and/or any of the City Affiliates shall have the right to choose the attorney(s) who represent(s) them in said lawsuit, and the costs, expenses and fees associated with said attorney(s) in relation to said claim, proceeding or lawsuit shall be paid by Buyer pursuant to the indemnification provisions herein.

Buyer shall promptly deliver to the City any and all records, documents (including writings, drawings, graphs, charts, photographs, phono records, and other data compilations from which information can be obtained, translated, if necessary, through detection devices into reasonably usable form), or reports of any kind (including all written, printed, recorded or graphic matter however produced or reproduced and all copies, drafts and versions thereof not identical in each respect to the original) in Buyer's possession or control (which includes but is not limited to those records, documents and reports in the possession of Buyer's agents consultants and contractors) which relate or refer (which means, in addition to their customary and usual meaning, assess or assessing, concern or concerning, constitute or constituting, describe or describing, discuss or discussing, embody or embodying, evidence or evidencing, mention or mentioning and reflect or reflecting) to environmental matters and/or conditions associated directly or indirectly with the subject Real Estate (including the groundwater thereunder), including but not limited to written reports of a site assessment, environmental audits, soil test reports, water test reports, laboratory analysis and documents, reports or writings relating or referring to the subject Real Estate and/or any other Real Estate alleged to have been impacted by the migration, transportation, release or threatened release of hazardous materials on or from the subject Real Estate. Provided, however, that nothing in this paragraph shall require Buyer to deliver to the City those communications and documents that are encompassed by the attorney-client or work product privilege.

Although Buyer will take over the responsibility at the Real Estate, the Seller reserves to itself, and Buyer hereby grants and will cause any tenants to grant, to the Seller, its agents, attorneys, employees, consultants and contractors, an irrevocable license, right and authorization to enter upon and inspect the Real Estate for purposes of performing at Buyer's expense, any environmental work that the Seller is required to be performed by the Illinois Environmental Protection Agency, and/or any governmental authority having jurisdiction over the Real Estate specifically including the Seller, and to perform assessment, monitoring, repair and remediation measures and to perform such tests, and work, including, without limitation, repair of the clay cap, subsurface testing, soil and groundwater testing, and other work (including Remediation work) which may physically invade the Real Estate or improvements thereon, as the Seller, in its sole discretion, determines is necessary to protect its interests. Buyer consents to Seller's rights

hereunder and agrees to cooperate with Seller in the performance of the activities authorized herein so as to minimize the time and expense, including, without limitation, the grant of access to on-site utilities, if required for such activities. Notwithstanding the foregoing (or anything to the contrary contained in this Contract), the Seller shall not be liable to Buyer for any diminution in the value of the Real Estate, lost profits or rents, or any other loss of business damages or business interruption, nor for any loss of any kind which Buyer suffered or would have suffered because of the presence of the environmental conditions or contamination on, at or under the Real Estate.

The obligations, responsibilities and provisions of this paragraph shall survive the closing and the delivery of the Deed.

6. **BUYER'S REPRESENTATIONS AND WARRANTIES.** In addition to Buyer's covenants, representations and warranties as set forth in the Development Agreement, which is incorporated herein by reference, Buyer further covenants, represents and warrants to the Seller as to the following matters, each of which is so warranted to be true and correct as of the date of this Contract, and also to be true and correct as of the Closing Date:

- A. Authority of Signatories. Buyer hereby represents and warrants to Seller that Buyer has the requisite power and authority to enter into and fully carry out this Contract and the purchase of the Real Estate, including the execution of all instruments and documents delivered or to be delivered hereunder.

7. **RIGHT OF WAIVER.** Either Party to this Contract may elect to waive any right or remedy it may enjoy hereunder, provided that no such waiver shall be deemed to exist unless such waiver is in writing. No such waiver shall obligate the waiver of any other right or remedy hereunder, or shall be deemed to constitute a waiver of other rights and remedies provided pursuant to this Contract.

8. **CLOSING AND OBLIGATIONS AT CLOSING.** On the Closing Date, the obligations of Buyer and Seller, in addition to what is provided elsewhere in this Contract or the Development Agreement incorporated herein by reference, shall be as follows:

- A. Buyer shall deliver or cause to be delivered to Seller:
  - i) the Purchase Price, to be wired transferred as directed by Seller; and
  - ii) executed counterpart originals of a closing statement; and
  - iii) such other standard closing documents or other documentation as is required by applicable law or to effectuate the transaction contemplated hereby.
- B. Seller shall deliver or cause to be delivered to Buyer:
  - i) executed original Special Warranty Deed ("Deed"), conveying title to the Real Estate to Buyer, with a right of reverter and subject to other rights and obligations under the Development Agreement;
  - ii) executed counterpart originals of a closing statement;

- iii) such other standard closing documents or other documentation as is required to effectuate the transaction contemplated hereby; and
- iv) possession of the Real Estate shall be delivered to Buyer immediately at Closing.

C. The Parties shall jointly deposit fully executed State of Illinois Transfer Declarations, County Transfer Declarations, and the Seller shall obtain and deposit the City of Aurora Property Transfer Certificate, if any.

9. **NOTICES.** All notices, certificates, approvals, consents or other communications desired or required to be given hereunder shall be given in writing at the addresses set forth below, by any of the following means: (1) personal service, (2) electronic communications, whether by telex, telegram or telecopy, (3) overnight courier, or (4) registered or certified first class mail, postage prepaid, return receipt requested.

If to City:                   City of Aurora  
44 East Downer Place  
Aurora, Illinois 60507  
Attn: Bill Wiet

With a copy to:           Corporation Counsel  
City of Aurora  
44 East Downer Place  
Aurora, Illinois 60507

and:                         Klein, Thorpe and Jenkins, Ltd.  
20 North Wacker Drive, Suite 1660  
Chicago, Illinois 60606-2903  
Attention: Dennis G. Walsh

If to Developer:         Heartland Recycling, L.L.C.  
6201 W. Canal Bank Road  
Forest View, Illinois 60462  
Attn: Joseph A. Volini

With a copy to:         Shefsky & Froelich  
111 East Wacker Drive, Suite 2800  
Chicago, IL 60601  
Attn: Cid Froelich

The Parties, by notice hereunder, may designate any further or different addresses to which subsequent notices, certificates, approvals, consents or other communications shall be sent. Any notice, demand or request sent pursuant to either clause (1) or (2) hereof shall be deemed received upon such personal service or upon dispatch by electronic means. Any notice, demand or request sent pursuant to clause (3) shall be deemed received on the day immediately following

deposit with the overnight courier, and any notices, demands or requests sent pursuant to clause (4) shall be deemed received forty-eight (48) hours following deposit in the mail.

11. **BROKERAGE**. Each Party hereby represents and warrants to the other that no commission or other amount is payable to any other person or entity for brokerage or similar services performed hereunder, and each Party hereto agrees to indemnify, protect, defend and hold harmless the other Party for any commission or amount owed to or claimed by any person or entity claiming through such indemnifying Party other than the Broker.

12. **MISCELLANEOUS PROVISIONS**.

- A. **Other Acts**. Buyer and Seller each hereby agree to perform such other acts, and to execute, acknowledge, and/or deliver such other instruments, documents and materials, as may be reasonably necessary to effect consummation of the transaction contemplated herein.
- B. **Time is of the Essence**. Buyer and Seller mutually agree that time is of the essence throughout the term of this Contract and every provision hereof in which time is an element. No extension of time for performance of any obligations or acts shall be deemed an extension of time for performance of any other obligations or acts. If any date for performance of any of the terms, conditions or provisions hereof shall fall on a Saturday, Sunday or legal holiday, then the time of such performance shall be extended to the next business day thereafter.
- C. **Paragraph Headings**. The paragraph headings contained in this Contract are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several paragraphs hereof.
- D. **Interpretation**. Whenever used in this Contract, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.
- E. **Applicable Law and Parties Bound**. This Contract provides for the purchase and sale of Real Estate located in the State of Illinois, and is to be performed within the State of Illinois. Accordingly, this Contract and all questions of interpretation, construction and enforcement hereunder, shall be governed by the applicable statutory and common law of the State of Illinois. The Parties agree that for the purpose of any litigation relative to this Contract and its enforcement, venue shall be in Kane County, Illinois, and the Parties consent to the in personam jurisdiction of said Court for any such action or proceedings.
- F. **Related Documents**. The Parties acknowledge that the real estate transaction contemplated by this Contract is in furtherance of the terms and conditions of the Development Agreement, and is a companion real estate transaction as referenced in said Development Agreement.

- G. Completeness and Modifications. This Contract and the Exhibits attached hereto and made a part hereof, or required hereby, and the Development Agreement embody the entire Contract between the Parties hereto with respect to the Real Estate and supersede any and all prior agreements and understandings, whether written or oral, and whether formal or informal. No extensions, changes, modifications or amendments to or of the Contract, of any kind whatsoever, shall be made or claimed by Seller or Buyer, and no notices of any extension, change, modification or amendment made or claimed by Seller or Buyer shall have any force or effect whatsoever unless the same shall be endorsed in writing and fully signed by Seller and Buyer.
- H. No Merger. The terms, provisions, warranties and covenants made herein, shall survive the closing and delivery of the deeds and other instruments of conveyance, and this Contract shall not be merged therein, but shall remain binding upon and for the Parties hereto until fully observed, kept or performed.
- I. Recording. Buyer may record this Contract or any memorandum or short form hereof against the Real Estate, provided that if the transaction contemplated herein does not occur and the Contract is terminated as provided herein, Buyer shall not record a termination of the Contract.
- J. Counterparts. This Contract may be executed in counterparts, all of which counterparts taken together shall be deemed to be but one original.
- K. Severability. If any of the provisions of this Contract, or the application thereof to any person or circumstance, shall be invalid or unenforceable to any extent, the remainder of the provisions of this Contract shall not be affected thereby, and every other provision of this Contract shall be valid and enforceable to the fullest extent permitted by law.
- L. Uniform Vendor and Buyer Risk Act. The provisions of the Uniform Vendor and Buyer Risk Act of the State of Illinois shall be applicable to this Contract.
- M. Real Estate Settlement Procedures Act Disclosures. Buyer and Seller hereby agree to make all disclosures and do all things necessary to comply with applicable provisions of the Real Estate Settlement Procedures Act of 1974. In the event that either Party shall fail to make appropriate disclosures when asked, such failure shall be considered a breach on the part of said Party.
- N. Binding Effect. This Contract shall inure to the benefit of and shall be binding upon the heirs, legatees, transferees, personal representatives, Seller, agents, administrators, executors and successors in interest of any kind whatsoever, of the Parties hereto.
- O. Closing Date. In the event that the Closing Date or any other deadline date described in this Agreement falls on a weekend or a holiday, the Closing Date or other deadline date shall be deemed to be the next business day.

IN WITNESS WHEREOF, this Contract has been executed by the Parties hereto as of the date first above written.

**BUYER:**

**HEARTLAND RECYCLING, L.L.C.**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ATTEST:**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

DATE EXECUTED BY BUYER: \_\_\_\_\_

**SELLER:**

**CITY OF AURORA,  
an Illinois Home Rule Municipal Corporation**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ATTEST:**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

DATE EXECUTED BY SELLER: \_\_\_\_\_



**Exhibit 1**

**Development Agreement and Amended and Restated Development Agreements Between  
the City of Aurora and Heartland Recycling, L.L.C.  
In Regard to the Development of The Land Surface for the Former Quarry**

## **Exhibit 2**

### **Legal Description of the Real Estate**

The Real Estate is the surface rights (lying above elevation 550.00(NAVD1988)) to a parcel of land consisting of approximately .66+/-acres. The exact acreage and the legal description of the Real Estate shall be as set forth on a survey of the Real Estate to be procured by Seller.