

## **AGREEMENT FOR PURCHASE AND SALE**

This Agreement for Purchase and Sale and Joint Escrow Instructions (“Agreement”) is made and entered into this \_\_\_\_\_ day of February 2014 by and between the Redevelopment Agency of the City of Sparks (“Seller”), and LandCap Sparks, LLC (“Buyer”). The date on which both parties have executed this Agreement will be referred to herein as the “Contract Date.”

### **RECITALS**

Seller owns that certain real property consisting of approximately 10.2 acres of land known as APN 037-020-50 located on Marina Gateway, Sparks, Nevada 89434 (the “Property”). The property is described as follows:

Parcel A of Parcel Map 4081, filed in the Office of the County Recorder of Washoe County, State of Nevada on September 9, 2003, as File No. 2918146 Official Records and which is a real property and has been assigned Assessor's Parcel Number 037-020-50 in Washoe County, Nevada

Seller desires to sell its interest in the Property to Buyer; and Buyer desires to purchase the Property, under the terms and conditions contained herein.

NOW THEREFORE, in exchange for the mutual promises contained within the Agreement, and for other consideration, the parties agree as follows:

#### **1.0 CONSIDERATION**

##### **1.1 PROPERTY**

Seller agrees to sell and convey to Buyer, and Buyer agrees to purchase from Seller, on the terms and conditions contained in this Agreement, the Property. Included in the Property, shall be: the real property and any other rights associated with the Property, hereinafter referred to as “Acquired Rights”. No water rights are included with the Property. The following are the only permitted encumbrances on the Property.

**1.1.1** The Promissory Note and Deed of Trust, executed to secure financing for this transaction.

**1.1.2** Taxes and Assessment District payments not yet due.

**1.1.3** Those covenants, conditions, restrictions, public utility easements and other matters of record, if any, which do not adversely and materially affect Buyer’s ability to develop the Property.

## **1.2 PURCHASE PRICE**

The total purchase price for the Property ("Purchase Price") is Two Million Two Hundred-fifty Thousand Dollars (\$2,250,000) and shall be payable as follows:

### **1.2.1 BUYER'S INITIAL DEPOSITS**

Seller acknowledges receipt of Twenty-five thousand Dollars (\$25,000) which accompanied Buyers initial submission to the Seller on November 15, 2013. Buyer shall make an additional deposit within five business days after approval of this Agreement by the Seller, in the amount of Twenty-five thousand Dollars (\$25,000.00) (collectively the "Initial Deposits").

### **1.2.2 BUYERS' ADDITIONAL DEPOSIT**

Upon Buyer's approval or express written waiver of its contingencies, under Article 3.0 hereof; Buyer shall deposit an additional Fifty thousand Dollars (\$50,000) into Escrow ("Additional Deposit"), at which time both Buyer's Initial Deposit and Additional Deposit shall become non-refundable and released to Seller.

### **1.2.3 DEPOSIT AT CLOSING**

At closing, Buyer shall deposit Four Hundred Thousand Dollars (\$400,000.00) in cash, wire transfer, or cashier check into escrow. Buyer shall also deposit its share of closing costs, reimbursements, and prorations into escrow pursuant to Section 5.2.2.

### **1.2.4 SELLER FINANCING**

Seller agrees to finance the remaining purchase price and will Buyer will execute a Promissory Note ("Note"), and secure that Note with a Deed of Trust that will pledge the Property as Security for the Note. The Note shall be in the amount of One Million Seven Hundred and Fifty Thousand Dollars (\$1,750,000) bearing interest at four percent (4%) per annum with a term of three years. The terms of payment include monthly, interest-only payments, and semi-annual payments of One Hundred and Fifty Thousand Dollars (\$150,000.00) per payment. The Note will be executed in substantial conformance to the terms of the Promissory Note and Deed of Trust that are attached hereto as Exhibit A and B.

## **1.3 AGENCY APPROVAL**

The Agency's sale of the Property under the terms hereunder shall be subject to NRS Chapter 279, including NRS 279.630(3), and the approval of the Sparks City Council and the Redevelopment Agency of the City of Sparks. Said Approval shall be sought concurrently with the authority to execute this Agreement.

## **2.0 TITLE INSURANCE**

### **2.1 POLICY OF TITLE INSURANCE**

Seller must obtain an Owner's Policy of Title Insurance in the amount of the purchase price, showing title to the Property vested in Buyer, subject only to those exceptions to title approved by Buyer pursuant to Section 3.3.4 hereof (the "Policy of Title Insurance").

### **2.2 TITLE INSURANCE COST**

Seller shall pay the premium cost of Owner's Policy of Title Insurance issued pursuant to the Title Commitment, in the amount of the Purchase Price. Seller shall pay for the cost of any customary and commercially available endorsements to the Owner's Policy that Buyer may reasonably require which do not materially increase the premium. All other endorsements requested by Buyer shall be paid for by Buyer.

## **3.0 DUE DILIGENCE**

### **3.1 DUE DILIGENCE PERIOD**

The Due Diligence period begins on the date the Seller's Board authorizes the execution of this Agreement, and continues for thirty (30) days after that date, at which time, the Due Diligence period expires. Buyer's failure to notify Seller of its approval or disapproval of any of the items set forth in this Section 3.0, within the applicable approval period, shall constitute Buyer's approval of said items.

### **3.2 BUYERS' RIGHT TO DUE DILIGENCE**

During the Due Diligence Period, Buyer shall review any and all aspects of the physical and title conditions and development opportunities at its expense prior to determine the suitability of the Property for Buyer's intended development thereof. Buyer shall have the right to terminate this Agreement per its sole discretion on or before the end of the Due Diligence period in accordance with this Article 3.0 without liability to Buyer.

### **3.3 DUE DILIGENCE ACTIVITIES**

#### **3.3.1 PHYSICAL AND MARKETING CONDITIONS**

Feasibility studies to be completed prior to the end of the Due Diligence Period shall at Buyer's option include, without limitation: soils, geological, engineering, water rights, and marketing studies and surveys. Buyer, its representatives, agents and independent contractors are granted a license to enter the Property and/or the Business for purposes of conducting such feasibility studies. Buyer shall repair any damage to the Property, and shall defend, indemnify and hold Seller, its employees and agents harmless from and against all loss, damage or liability, including reasonable attorneys' fees, resulting from conducting such feasibility studies and the license granted hereinabove.

### **3.3.2 ENVIRONMENTAL REVIEWS**

Seller has obtained and provided to the Seller a "Phase I Environmental Site Assessment Report for the Property prepared by Converse Consultants and dated December 27, 2013. As recommended in the Phase I Environmental Site Assessment Report, Seller has commissioned and shall deliver the report from a Phase II investigation within twenty (20) days of the Contract Date. In the event that Seller is not able to timely deliver the Phase II report required in this Section, the Due Diligence Period shall be extended until the earlier of: ten (10) days after receipt of the Environmental documents, or sixty (60) days after the Contract Date.

### **3.3.3 LAND USE REGULATIONS**

Buyer shall review existing zoning ordinances, land use policies, and other land use restrictions ("Regulations") by the City of Sparks and other governmental jurisdictions affecting the Property. Seller shall assist Buyer in the interpretation of the Regulations as they apply to a residential or mixed use development on the Property in the form of a Site Plan Approval or a Special Use Permit required to allow for Buyer's intended uses on the Property. Buyer shall submit a site plan that is in conformance with the Regulations that apply to the Property at the time of its request for Seller's assistance.

### **3.3.4 CONDITIONS OF TITLE**

(a) Buyer shall obtain within seven days after the Contract Date a Commitment for Title Insurance, (hereinafter the "Commitment"), issued by the Title Company, covering the Property, together with legible copies of all documents of record described therein.

(b) Buyer shall, within ten (10) days after the receipt of the Commitment, give written notice to Seller specifying any and each title exception contained in the Commitment which would materially impair or prohibit Buyer's purchase, financing, develop or use of the Property (hereinafter a "Material Title Defect").

(c) Seller may within 10 days of notice of the Material Title Defect, in Seller's sole discretion, elect to cause such Material Title Defect to be removed or cured prior to the end of the Due Diligence Period. For Material Title Defects that may be cured with the payment of money, Seller may elect to cause such Material Title Defects to be cured by paying the obligation with the Purchase Price proceeds at the Closing. Seller may cure Material Title Defect or inform Buyer that such Material Title Defect will not be cured.

(d) If Seller elects not to remove or cure a Material Title Defect, then Buyer may elect to waive each objection to a Material Title Defect and accept the Material Title Defect as provided in Section 3.3.5 PERMITTED EXCEPTIONS hereof and without adjustment to the Purchase Price for such Material Title Defect or (b) terminate this Agreement. (in which latter case the Initial Deposit shall be refunded to Buyer immediately upon written request to Escrow, and the parties' obligation to close the purchase and sale transaction provided for in this Agreement shall terminate).

(e) Buyer's election to waive the Material Title Defect must be made on or before the expiration of the Due Diligence Period. In the event Buyer fails to make its election after Buyer's timely receipt of Seller's notice that a Material Title Defect will not be cured prior to or at the Closing, Buyer shall be deemed to have rejected the Material Title Defect and the transaction will terminate in accordance with this Article 3.0 without liability to Buyer.

(f) Notwithstanding the foregoing, any existing bank loans and any other similar monetary lien against the Property arising through the acts or omissions of Seller, other than current taxes and the obligations to be assumed by Buyer as part of the Purchase Price as specified in Section 1.1 above, and which may be discharged or removed by the disbursement of any portion of the Purchase Price by Seller at the Closing, shall be so cured, removed, and discharged by Seller at the Closing without the need for Buyer's objection or Seller's approval, as set forth above.

### **3.3.5 PERMITTED EXCEPTIONS**

As used in this Agreement, the term "Permitted Exceptions" shall mean:

(a) current real property taxes and regular assessments for the year in which the Closing occurs;

(b) City of Sparks Special Assessment Liens, except accrued interest and principal payments, and late fees if any;

(c) all covenants, conditions, restrictions, easements, rights-of-way, encroachments, non-monetary encumbrances, non-monetary title exceptions, and other non-monetary matters disclosed in the Commitment or which are a matter of public record at the time of execution of this Agreement, except for such Material Title Defects as to which Buyer timely objects in writing, as provided in Section 3.3.4 hereof, and does not thereafter waive such objection;

(d) all easements, rights-of-way, shortages in area, encroachments, encumbrances, title exceptions, and other matters affecting the Property such as would be disclosed or discoverable by Buyer making a complete and thorough inspection and survey (conforming to minimum ALTA/ACSM standards) of the Property at the time of Closing (except those disapproved by Buyer in accordance with Section 3.3.4);

## **3.4 CASH DEPOSITS AND DUE DILIGENCE PERIOD**

### **3.4.1 BUYERS' APPROVAL AT EXPIRATION OF DUE DILIGENCE PERIOD**

Upon Buyer's approval or express written waiver of its contingencies, under Article 3.0 hereof; Buyer shall deposit an additional Fifty thousand Dollars (\$50,000) into Escrow ("Additional Deposit"), at which time both Buyer's Initial Deposit and Additional Deposit shall become non-refundable and shall be released to Seller.

### **3.4.2 TERMINATION DURING DUE DILIGENCE PERIOD**

If this Agreement is terminated by Buyer as permitted under this Article, during the Due Diligence Period, the Buyer's Initial Deposits shall be refunded to Buyer, and neither party shall have any further right or remedy against the other under this Agreement. In such an event, Buyer and Seller each shall pay one-half of escrow cancellation fees and Seller shall pay the cost of the Preliminary Title Report.

### **3.4.3 TERMINATION AFTER DUE DILIGENCE PERIOD**

If this Agreement is terminated by Buyer after the Due Diligence Period, the Buyer's Initial Deposits and Additional Deposit shall be retained by Seller as Liquidated Damages, neither party shall have any further right or remedy against the other under this Agreement, and Buyer shall pay the cost of escrow cancellation or preliminary title report fees.

## **4.0 BUYERS' CONTINGENCY – APPROVAL OF DEVELOPMENT**

### **4.1 SUBMISSION OF SITE PLAN**

Within 90 days of the conclusion of the Due Diligence Period, Buyer shall submit applications for governmental approvals from the City of Sparks and other governmental jurisdictions (collectively the "City"), of a residential or mixed use development on the property (the "Project") in the form of a Site Plan Approval, Tentative Map, or Special Use Permit, as defined in the Sparks Municipal Code (the Submission); as required to allow for Buyer's intended uses on the Property. Buyer shall submit applications that are in conformance with the Regulations that apply to the Property at the time of submittal. Seller shall execute such documents as required by governmental jurisdiction to allow Buyer to seek said governmental approvals, at no cost to Seller. Any applicable application fees, such as for a Special Use Permit, shall be paid by Buyer.

### **4.2 SUBMISSION DATE AND APPROVAL DATE**

For purposes of this Agreement, the Submission Date shall mean the date that Buyer tenders the Submission to the City, with a copy to Seller; irrespective of the fact that the Submission Date is not a day designated for submission of applications by the City. The parties agree that the City's approval process will not proceed until the next scheduled date for the acceptance of the relevant applications. For purposes of this Agreement, "Approval Date" shall mean the date that the City's decision to approve the Project with Conditions accepted by Buyer becomes final, and no longer subject to the City's appeal process as described in the Sparks Municipal Code. Buyer shall have nine (9) months from the Submittal Date to receive approval of the Project by the City.

### **4.3 GOVERNMENTAL APPROVALS**

Buyer shall diligently pursue approval of the applications submitted under Section 4.1. It

is anticipated that the City staff will issue a report containing recommended conditions (“Conditions”) to be imposed on the Project, in the event the Project is approved by the City. Buyer shall have 10 days from the issuance of the staff report, or subsequent modification of the Conditions, at Buyer’s sole discretion, to accept the Conditions. Buyer has the right, but not the duty, to appeal the denial of the Project, or specific Conditions contained in an Approval. Such appeal shall be within the time constraints of the Municipal Code.

#### **4.4 BUYERS RIGHT TO TERMINATE**

In the event that Buyer does not receive Approval with Conditions accepted by Buyer within nine (9) months of Buyer’s Submission, Buyer shall have the right to terminate this Agreement.

### **5.0 ESCROW AND CLOSING**

#### **5.1 OPENING ESCROW**

Within five (5) business days of the Contract Date, an escrow shall be opened with First American Title Company, 5310 Kietzke Lane, Suite 100, Reno, NV 89511, (“Escrow Holder”) by the depositing by Buyer and Seller of a fully executed copy of this Agreement with Escrow Holder. Escrow Holder shall notify the parties of the date of such receipt, such date herein referred to as the date for “Opening Escrow”. Both Initial Deposits will be deposited into Escrow by the parties when the escrow is opened.

#### **5.2 ESCROW COSTS**

##### **5.2.1 PRORATION AND CREDITS**

Real property taxes and the interest portion of assessments shall be prorated between Buyer and Seller as of the Close of Escrow based on the latest available tax information. The pro ration shall be based on a 30-day month and a 360 day year. The principal amount of Special Assessment District liens at the Closing Date, (less accrual of Seller’s portion of the next scheduled principal reduction) shall be assumed by Buyer.

##### **5.2.2 SELLER’S COSTS**

- (a) One-half (1/2) of the escrow fee;
- (b) The premium for Owner’s Policy of Title Insurance;
- (c) The cost of preparing, acknowledging and recording the Grant Deed; and
- (d) The cost of any of Seller’s other obligations under this Agreement.

##### **5.2.3 BUYER’S COSTS**

- (a) One-half (1/2) of escrow fee;
- (b) The cost of documentary transfer taxes in connection with the

- recording of the Grant Deed;
- (c) The cost of any of Buyer's other obligations of this Agreement.

#### **5.2.4 BROKER'S COMMISSIONS**

Seller and Buyer each represent and warrant to each other that (except as disclosed to each of the parties in writing) no broker, agent or finder, licensed or otherwise, has been engaged by it, has been engaged by it, respectively, in connection with the transaction contemplated by this Agreement and that all negotiations relative to these instructions and this transaction have been carried out by such party directly with the other party without the intervention of any person in such a manner as to give rise to any valid claim against either of the parties for a broker's commission, finder's fee or other like payment. Each of the parties shall indemnify and defend the other party and hold it harmless from any and all losses, damage, liability or expense, including costs and reasonable attorney's fees, which the other party may incur or sustain by reason of or in connection with any misrepresentation or breach of warranty by the indemnifying party with respect to the foregoing.

#### **5.3 CLOSE OF ESCROW**

The "Close of Escrow" or "Closing Date" shall mean the date on which Buyers and Sellers obligations, as set forth below, for closing have been met. Escrow shall close no later than sixty (60) days after the occurrence of the Approval Date, as defined in section 4.2.

##### **5.3.1 BUYER'S OBLIGATIONS**

Before the closing date, Buyer shall:

- (a) Deliver Four Hundred Thousand Dollars (\$400,000.00) to Escrow Holder in cash or by wire transfer of funds or by a certified or bank cashier's check and made payable to Escrow Holder;
- (b) Deliver to Escrow the executed and notarized Note and Deed of Trust, and
- (c) Deposit with Escrow Holder all other sums and documents required by Escrow Holder to pay the costs of escrow and carry out the close this escrow.

##### **5.3.2 SELLER'S OBLIGATIONS**

On or before the Closing Date, Seller shall deliver to Escrow holder all of the following:

- (a) A fully executed and notarized grant, bargain and sale deed conveying the Property to Buyer (the "Grant Deed"), acceptable to Buyer, which complies with the Laws of the State of Nevada,
- (b) All other documents and sums required by Escrow Holder to the costs of and carry out the close of escrow.



### **5.3.3 OTHER CONDITIONS TO CLOSE ESCROW**

The Close of Escrow shall not take place unless and until receipt of the Policy of Title Insurance described in Article Two.

### **5.3.4 CLOSING PROCEDURE**

Upon receipt of all funds and instrument described in this section, and upon satisfaction or waiver of all contingencies and conditions set forth in this Agreement, the Escrow Holder shall:

- (a) Record the Grant Deed in the Official Records of Washoe County;
- (b) Record the Deed of Trust in the Official Records of Washoe County
- (c) Deliver to Buyer the document evidencing Seller's exemption from tax withholding under Internal Revenue Code Section 1445, as set forth in Section 5.11; and
- (d) Deliver the balance of the purchase price to Seller.

## **5.4 ESCROW INSTRUCTIONS**

This Agreement shall constitute the escrow instructions of Buyer and Seller.

### **5.4.1 ADDITIONAL ESCROW INSTRUCTIONS**

If Escrow Holder requires further instructions respecting its duties and obligations, including the reporting and withholding requirements of Section 1445 of the Internal Revenue Code of 1954, as amended through the Tax Reform Act of 1984, and regulations promulgated there under ("Section 1445"); the parties shall execute such instructions, provided that they do not change any of the substantive terms and between such additional escrow instructions and this Agreement, the provisions of this Agreement shall prevail, unless otherwise expressly stated in such additional escrow instructions.

### **5.4.2 ESCROW HOLDER'S GENERAL PROVISION**

Escrow Holder is hereby instructed to attach as Exhibit "B" to this Agreement a copy of Escrow Holder's standard printed escrow instructions, which are hereby incorporated into this Agreement in their entirety. In the event of any inconsistency between this Agreement and Exhibit "B", this Agreement shall govern the rights and obligations of Seller and Buyer.

## **6.0 REPRESENTATIONS AND WARRANTIES**

### **6.1 SELLER'S REPRESENTATION AND WARRANTIES**

Seller hereby represents and warrants to Buyer that the following statements are true and correct as of the date of this Agreement, and shall be true and correct as of the Close of Escrow, and the truth and accuracy of such statements shall constitute a condition to all of Buyer's

obligations under this Agreement:

**6.1.1** The sale of the Property has been authorized by appropriate action of Seller;

**6.1.2** The person(s) who have executed this Agreement and other instruments required under this agreement on behalf of Seller have been, or will be, duly authorized to execute the same on Seller's behalf and no other persons are required to execute this Agreement on behalf of Seller;

**6.1.3** The entering into and consummation of this Agreement by Seller will not constitute or result in Seller's default under any other contract by which Seller or the Property are bound;

**6.1.4** To the best of Seller's knowledge, there are no other agreements, leases or contracts affecting the Property that cannot be canceled upon 30 day notice.

**6.1.5** Seller shall furnish a grant deed and Policy of Title Insurance showing good and marketable title in fee to the Property free and clear of all liens and encumbrances in accordance with Article Three.

**6.1.6** No lawsuits, administrative proceedings or violations pending or threatened exist in relationship to the Property.

**6.1.7** The execution, delivery and performance of this Agreement does not and will not require any consent, approval, authorization or other order of, action by, filing with or notification to, any governmental authority or any third party. Seller knows of no reason why all the consents, approvals and authorizations necessary for the consummation of the transactions contemplated by this Agreement will not be received.

**6.1.8** Seller and the Property is, and at all times has been, in compliance with all laws and including any and all environmental laws, and holds and is in compliance with, and at all times has been and been in compliance with, all permits, certificates, licenses, approvals, registrations and authorizations required under all laws in connection with the Property.

**6.1.9** Seller shall execute such governmental authorizations as reasonably required under Article 3.3, and Seller shall approve of the assignment of the escrow to a ownership entity as described in Article 4.2.3.

## **6.2 BUYER'S REPRESENTATION AND WARRANTIES**

Buyer hereby represents and warrants to Seller that the following statements are true and correct as of the date of this Agreement, and shall be true and correct as of the Close of Escrow, and the truth and accuracy of such statements shall constitute a condition to all of Seller's obligations under this Agreement;

**6.2.1** The purchase of the Property will be authorized by appropriate action of Buyer.

**6.2.2** The person(s) who have executed this Agreement and other instruments required under this Agreement on behalf of Buyer have been, or will be, duly authorized to execute the same.

**6.2.3** Buyer shall form a special purpose entity in the form of a limited liability company or a limited liability partnership under the laws of Nevada to own the Property ("Company"). Buyer shall assign its position in the escrow to said Company. Buyer warrants that it will maintain a majority of the management interest in the Company.

## **7.0 REMEDIES**

### **7.1 REMEDIES**

Time is of the essence as to each and every provision of this Agreement. If Buyer defaults under this Agreement, Seller shall terminate this escrow and retain Buyer's Deposit as liquidated damages in accordance with Section 7.2. If Seller defaults under this Agreement, then Buyer shall have the right to bring an action in specific performance and/or to seek damages caused by Seller's default.

### **7.2 LIQUIDATED DAMAGES**

IF ESCROW FAILS TO CLOSE AS THE RESULT OF ANY DEFAULT OR BREACH BY BUYER OF THIS AGREEMENT, SELLER SHALL BE ENTITLED TO RECEIVE AND RETAIN, AS LIQUIDATED DAMAGES, THE INITIAL DEPOSIT AND ANY ADDITIONAL DEPOSITS DUE FROM BUYER AT THE TIME OF THE DEFAULT OR BREACH. THE PARTIES ACKNOWLEDGE THAT SAID SUM IS FAIR AND REASONABLE IN LIGHT OF ALL THE CIRCUMSTANCES EXISTING ON THE DATE OF THIS AGREEMENT, INCLUDING THE PARTIES' ESTIMATION OF THE POSSIBLE RANGE OF DAMAGES TO SELLER IN THE EVENT OF SUCH A DEFAULT OR BREACH BY BUYER, THE PARTIES HERETO HEREBY AGREEING THAT THE DAMAGES TO SELLER IN THE EVENT OF SUCH DEFAULT OR BREACH BY BUYER HEREUNDER WOULD BE IMPOSSIBLE TO ACCURATELY DETERMINE AND THAT PROOF OF THE AMOUNT OF SUCH DAMAGES WOULD BE COSTLY AND INCONVENIENT. SUCH LIQUIDATED DAMAGES SHALL BE SELLER'S SOLE AND EXCLUSIVE REMEDY FOR BUYER'S FAILURE TO PAY THE PURCHASE PRICE, AND BUYER SHALL HAVE NO OTHER OR FURTHER OBLIGATION OR LIABILITY UNDER THIS AGREEMENT TO SELLER ON ACCOUNT OF SUCH DEFAULT OR BREACH; PROVIDED, HOWEVER, THAT THIS PROVISION SHALL NOT LIMIT SELLER'S RIGHT TO RECEIVE REIMBURSEMENT FOR ATTORNEYS' FEES AND COSTS INCURRED IN SEEKING TO ENFORCE THIS LIQUIDATED DAMAGES PROVISION.

BUYER'S INITIALS: \_\_\_\_\_

SELLERS INITIALS: \_\_\_\_\_

## **8.0 CONDEMNATION AND DESTRUCTION TO THE PROPERTY**

### **8.1 CONDEMNATION**

If the Property, or any portion thereof or interest therein is taken by eminent domain, or any proceeding for such purpose is commenced prior to the Close of Escrow, then Buyer shall have the option to proceed with this transaction or terminate, then neither Buyer nor Seller shall have any further right or remedy against the other and the costs of termination shall be paid solely by Seller.

### **8.2 DAMAGE OR DESTRUCTION**

If, prior to Closing, the Property is damaged in an amount over Ten Thousand Dollars (\$10,000) (a "Material Casualty"), as reasonably estimated by Seller, Seller shall provide written notice thereof to Buyer and Buyer shall have five (5) business days to either (i) terminate the Agreement by providing written notice of such election to Seller, or (ii) elect to proceed with the transaction with respect to such Property, in which case Seller shall assign to Buyer at Closing its rights to all insurance proceeds in connection with such casualty or condemnation, if any. For any casualty which is not a Material Casualty, Seller shall assign to Buyer at the Closing all of its rights to all insurance proceeds in connection with such casualty, if any exist.

## **9.0 GENERAL PROVISIONS**

### **9.1 INCORPORATION OF EXHIBITS**

All of the exhibits attached and referred to in this Agreement are incorporated as though fully set forth in this Agreement.

### **9.2 ATTORNEYS' FEES**

In any action between Buyer and Seller and/or Escrow Holder for breach or to seek enforcement of any of the terms and provisions of this Agreement, or in connection with the Property, the prevailing party in those actions shall be awarded, in addition to costs, damages, injunctive or other relief its actual costs and expenses incurred in that action including, but not limited to, its reasonable attorneys' fees.

### **9.3 INDEMNIFICATION**

Seller hereby agrees to defend, indemnify and hold harmless the Agency and the City of Sparks, Nevada (the "City") from and against any loss, cost, expense, claim, demand, liabilities or damages, including reasonable attorney's fees, resulting from any misrepresentation or breach of warranty or breach of covenant made by Seller in this Agreement or in any document, certificate, schedule or exhibit given or delivered to the other party pursuant to or in connection with this Agreement, and such indemnification obligations shall survive the Closing. Seller hereby agrees to indemnify and hold harmless the Agency and the City for any Environmental Hazard or waste on the Property subsequently discovered. This indemnity shall survive the Closing.

## **9.4 NOTICE**

All notices, requests, demands and other communications given, or required to be given under this Agreement, shall be in writing, duly addressed to the parties as follows:

If to the Seller

REDEVELOPMENT AGENCY OF THE CITY  
OF SPARKS  
City Manager's Office  
431 Prater Way  
Sparks, NV 89431

If to Buyer

LANDCAP SPARKS, LLC  
27132 B Paseo Espada, Suite 1206  
San Juan Capistrano, CA 92675

With Copy to

David D. Dahl  
1199 Harbour Cove Court  
Sparks, NV 89434

### **9.4.1 FORM OF DELIVERY**

Any notices properly addressed, sent by registered or certified mail, return receipt requested, shall be deemed to have been duly given and received seventy-two (72) hours after they are deposited in the United States mail, postage prepaid. Notices shall be deemed delivered and received at the time delivered if properly addressed and delivered to the addresses set forth in this Section during normal business hours or personally delivered to the person to whose attention they are addressed. Notice sent by any other manner shall be effective only upon actual receipt by the addressee. Any party may change its address for purposes of this Section by giving notice to the other party and to Escrow Holder, as provided in this Section.

### **9.4.2 NON-BUSINESS DAYS**

Whenever notice must be given or documents delivered to Escrow Holder and Escrow Holder is closed on the last day for giving notice or delivering documents, then the parties shall have until the next following day that the Escrow Holder is open to give the notice or deliver the documents.

## **9.5 NO MERGER**

All warranties, representations, covenants, and other obligations contained in this Agreement shall survive recordation and delivery of the Grant Deed.

## **9.6 POSSESSION**

Possession of the Property shall be transferred to Buyer upon the Close of Escrow.

## **9.7 SUCCESSORS AND ASSIGNS**

This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of Buyer and Seller, provided that neither party may assign this Agreement without the prior written consent of the other party. Except as otherwise specifically provided elsewhere in this Agreement, no party may assign any right or delegate any obligation under this Agreement without the written consent of all the other parties obtained in advance of the assignment or delegation. Consent is subject to the sole and absolute discretion of the consenting party. Notwithstanding the foregoing, Buyer may assign all rights and delegate all duties under this Agreement to an Affiliate. For purposes hereof, "Affiliate" shall be defined as any entity which controls, is controlled by, or which is under common control with Buyer. Buyer agrees that upon any assignment, to any such entity and such entity's assumption of any obligations assigned, to provide notice thereof to Seller. Buyer shall be released from its liabilities to Seller in connection with such assigned obligations.

## **9.8 ENTIRE AGREEMENT**

This Agreement contains all of the agreements of the parties with respect to the matters contained in this Agreement. All prior or contemporaneous agreements or understandings, oral or written, are merged in this Agreement and shall not be effective for any purpose. No provision of this Agreement may be amended or modified except by an agreement, in writing, signed by the parties or their respective successors-in-interest and expressly stating that it is an amendment of this Agreement

## **9.9 HEADINGS**

The headings in this Agreement are for purposes of reference only and shall not limit or define the meaning of the provisions of this Agreement.

## **9.10 SEVERABILITY**

If any paragraph, section, sentence, clause or phrase contained in this Agreement becomes or is held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining paragraphs shall not be affected thereby, and the court may substitute provisions as nearly alike as possible.

## **9.11 GOVERNING LAW**

This Agreement shall be governed by, and construed in accordance with, the laws of the State of Nevada without regard to the conflicts of law provisions thereof. Any litigation regarding this Agreement or the Property shall be subject to the jurisdiction and venue in the courts located in Washoe County, Nevada.

**9.12 COUNTERPARTS**

This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which shall constitute one and the same instruments.

**9.13 WAIVER**

The failure or delay of either party to enforce any provision hereof shall not be deemed an approval of any further failure or delay to enforce.

**9.14 FURTHER ASSISTANCE**

Seller and Agency agree to perform such other acts, and to execute, acknowledge, and/or deliver subsequent to the Closing Date such other instruments, documents and other materials as Seller or Agency may reasonably request in order to effectuate the consummation of the transactions contemplated herein and to vest title to the Property in Agency.

IN WITNESS WHEREOF, this agreement has been executed by the parties on the date first stated above.

SELLER

Redevelopment Agency of the City of Sparks

By: \_\_\_\_\_ Date: \_\_\_\_\_, 2014  
Ron Smith, Chair

Attest:

By: \_\_\_\_\_ Date: \_\_\_\_\_, 2014  
Teresa M. Gardner, Agency Secretary

Approved as to form:

By: \_\_\_\_\_ Date: \_\_\_\_\_, 2014  
Doug Thornley, Assistant City Attorney

BUYER

LANDCAP SPARKS, LLC

By: \_\_\_\_\_ Date: \_\_\_\_\_, 2014

EXHIBIT A  
PROMISSORY NOTE



EXHIBIT B  
DEED OF TRUST