

AGREEMENT FOR  
PURCHASE AND SALE OF REAL PROPERTY  
AND JOINT ESCROW INSTRUCTIONS

THIS AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY AND JOINT ESCROW INSTRUCTIONS (this "Agreement") is made and entered as of August \_\_, 2018 (the "Execution Date") by and between Landsmith Appreciation Fund, LLC, ("Seller"), and Dooston Gardnerville, LLC or Assignee ("Buyer"). Buyer and Seller are sometimes referred to herein individually as a "Party" and collectively as the "Parties."

**RECITALS:**

A. Seller owns that certain real property in the County of Douglas (the "County"), State of Nevada, located in the County of Douglas, State of Nevada, described as follows: LOTS 1 THROUGH 17 INCLUSIVE, 34, 39 THROUGH 42 INCLUSIVE, 44 THROUGH 61 INCLUSIVE AND THE COMMON AREA, AS SHOWN ON THE FINAL MAP HERITAGE NEVADA SENIOR HOUSING (the "Heritage Map"), A PLANNED DEVELOPMENT #PD 05-003, RECORDED IN THE OFFICE OF THE DOUGLAS COUNTY RECORDER, STATE OF NEVADA, ON SEPTEMBER 11, 2006, IN BOOK 0906, PAGE 2968, AS DOCUMENT NO. 684198, OFFICIAL RECORDS, together with all appurtenant improvements, rights, interests, easements, tenements and estates as described on Exhibit A (the "Real Property").

B. The Real Property and any personal property, furnishings, fixtures, equipment, owned by Seller which is located thereon and used in connection with the ownership and operation of the Real Property, and all entitlements, governmental Approvals, mineral rights, oil and gas rights, water, water rights, air rights, development rights, utility fee credits, traffic fee credits and park fee credits, utility agreements, and privileges relating to the development of the property, to the extent that they may be conveyed, are referred to collectively in this Agreement as the "Property".

C. On or about June 17, 2015, Buyer and Seller entered into that certain agreement entitled Purchase and Sale of Real Property and Joint Escrow Instructions (the "Original Agreement"), pursuant to which Seller agreed to sell the Property to Buyer, and Buyer agreed to purchase the Property from Seller, on the terms and conditions contained in the Original Agreement.

D. Effective as of September 4, 2015, Buyer and Seller entered into that certain AMENDED AND RESTATED AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY AND JOINT ESCROW INSTRUCTIONS (the "Original Amended and Restated Agreement") for the purpose of amending and restating the Original Agreement.

E. On or about September 23, 2015, Buyer and Seller entered into that certain AMENDMENT TO AMENDED AND RESTATED AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY AND JOINT ESCROW INSTRUCTIONS (the "First Amendment") for the purpose of amending the Original Amended and Restated Agreement.

F. Effective as of September 24, 2015, Buyer and Seller entered into that certain SECOND AMENDMENT TO AMENDED AND RESTATED AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY AND JOINT ESCROW INSTRUCTIONS (the "Second Amendment") for the purpose

of amending the Original Amended and Restated Agreement as amended by the First Amendment. The Original Amended and Restated Agreement as amended by the First Amendment and the Second Amendment is referred to herein as the "2015 Agreement."

G. Effective as of August 7, 2017, Buyer and Seller entered into that certain AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY AND JOINT ESCROW INSTRUCTIONS, thereby terminating all prior agreements among the parties, (hereinafter "August 7, 2017 Agreement").

H. Pursuant to the 2015 Agreement, Lots 60 and 61 were referred to as the "Commercial Lots". Buyer has obtained approval of a tentative subdivision map that establishes on the Commercial Lots a total of twenty-two (22) single family detached lots, and such Lots are referred to herein at Lots 60-81, inclusive.

I. Seller and Buyer now desire to terminate the August 7, 2017 Agreement and to enter into this Agreement on and subject to the terms and conditions contained herein.

NOW, THEREFORE, in consideration of the foregoing recitals, the promises and covenants of the Parties in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which the Parties acknowledge, the Parties agree as follows:

1. Definitions. Certain capitalized terms used in this Agreement have the meanings defined below:

Approved or Approval means that with respect to any item or matter for which approval by any Authorities is required, the Authorities have conducted a final vote with respect thereto and have voted to approve such item or matter subject only to such conditions as may be approved by Buyer in writing, in its sole and arbitrary discretion and all time periods during which such approval may be appealed, submitted to the referendum process, or otherwise challenged shall have expired without the initiation of any such appeal, submission to referendum or other challenge (or if any such appeal, submission to referendum or other challenge has been initiated, then on the date on which any such appeal, referendum process or other challenge has been resolved on terms satisfactory to Buyer in its sole and absolute discretion).

Assignment of Declarant's Rights means an assignment to Buyer of all of Seller's rights, if any, as the "Declarant"- as to each Lot purchased by Buyer - under any declaration(s) of covenants, conditions and restrictions affecting the Real Property and any other property shown on the Heritage Map, in a form reasonably satisfactory to Buyer, duly executed by Seller, acknowledged and in recordable form and delivered to Buyer at each Closing as to each such Lot as is conveyed at such Closing.

Assignment of Plans shall mean the assignment of all of Seller's rights to the Buyer of all Seller's rights, if any, to all plans, permits, development agreements, structural engineering, civil engineering, architectural and landscape architectural drawings necessary to construct improvements on each Lot purchased by Buyer. The assignment of plans shall be in a form

reasonably satisfactory to Seller and Buyer and completed by the Seller at each Closing as to each Lot as is conveyed at such Closing.

Authorities mean governmental or quasi-governmental agencies or authorities having any jurisdiction over the Real Property.

Buyer is defined in the first paragraph of this Agreement.

Closing means the date upon which a Grant Deed is recorded in the Official Records of the County, fee simple title to a portion of the Real Property is conveyed to Buyer, and possession of such portion the Real Property is delivered to Buyer, in accordance with the terms of this Agreement.

Closing Date means a date on which a Closing is to occur.

Dates If any date in this Agreement requiring the performance of either Party falls upon a weekend or legal holiday that date shall automatically be extended the following Tuesday which is not a holiday.

Disapproved Exceptions is defined in Section 4.1(a).

Escrow means the escrow established pursuant to this Agreement through which the purchase and sale of the Property shall be consummated.

Escrow Holder means Ticor Title Company, 1483 US Highway 395 N, Ste. B Gardnerville, NV 89410 Office 775-783-1400 Direct 775-343-7759 Cell 775-315-3018 Fax 775-783-1449 Rishale.thompson@ticortitle.com.

Grant Deed means a grant deed in the form of Exhibit B, which shall be completed at each Closing with a legal description of each Lot that is conveyed at such Closing.

Improved Lot means any of the following Lots: Lots 1 – 17, inclusive, 34, 39 – 42, inclusive, and 44 - 59, inclusive as shown on the Heritage Map.

Lot means an Improved Lot or a Partially Improved Lot.

Opening of Escrow is the date on which Escrow is opened under Section 3.2.

Option Consideration means the sum of \$200,000.

Parties and Party are defined in the first paragraph of this Agreement.

Partially Improved Lot means any Lot of the proposed 22 Lots resulting from the subdivision of the Commercial Lots.

Property is defined in the Recitals to this Agreement.

Real Property is defined in the Recitals to this Agreement.

Residential Lot means each Lot included within the Property other than the Commercial Lots.

Title Company means Ticor Title Company.

2. Termination of August 7, 2017 Agreement. Upon complete execution of this Agreement by Buyer and Seller, the August 7, 2017 Agreement shall automatically be terminated, without any further action by either party, and shall thereafter be of no force or effect. All consideration previously paid by Buyer pursuant to the August 7, 2017 Agreement (including without limitation the "Deposit", as defined therein) shall be deemed fully earned by Seller and shall not be refundable to Buyer under any circumstances, and neither party shall have any rights or obligations under the August 7, 2017 Agreement.

3. Purchase and Sale; Escrow and Option Consideration.

3.1 Seller agrees to sell the Property to Buyer and Buyer agrees to purchase the Property from Seller, subject to and on the terms and conditions set forth herein.

3.2 Opening of Escrow. Upon mutual execution of this Agreement by the Parties, the Parties shall open an Escrow at the office of Escrow Holder by delivering an executed copy of this Agreement to Escrow Holder. This Agreement shall constitute joint escrow instructions to Escrow Holder. The Parties shall execute such additional instructions consistent with the provisions of this Agreement as may be reasonably required by Escrow Holder; provided, however, that as between the Parties, if any conflict between the provisions of this Agreement and the provisions of instructions required by Escrow Holder exists or arises, then the provisions of this Agreement shall control. Escrow Holder shall promptly notify Buyer and Seller in writing of the date of the Opening of Escrow. Escrow Holder is designated the "real estate reporting person" for purposes of Section 6045 of the Internal Revenue Code of 1986, as amended, and Treasury Regulation 1.6045-4, and any instructions or settlement statement prepared by Escrow Holder shall so provide. Escrow Holder shall be responsible for filing Form 1099-S with the Internal Revenue Service.

(a) Within one (1) business day following complete execution of this Agreement by Buyer and Seller, Buyer shall deliver Five Thousand Dollars (\$5,000) of the Option Consideration to Seller. Not later than September 30, 2018 Buyer shall deliver to Seller an additional One Hundred Thousand Dollars (\$100,000) of the Option Consideration. Not later than October 31, 2018 Buyer shall deliver to Seller the remaining Ninety-Five Thousand Dollars (\$95,000) of the Option Consideration. The Option Consideration (and each component thereof) shall be non-refundable to Buyer, except in the event of a material breach or default hereunder by Seller. The Option Consideration shall be applied to Purchase Price of the last Lots to be purchased by Buyer pursuant to Section 5; provided that if Buyer has not closed on all of the Lots on or before November 16, 2020, then Seller

shall have the right to retain any portion of the Option Consideration that has not previously been applied to the purchase price of any Lots.

(b) If a Closing fails to occur solely because of a material breach or default hereunder by Seller, then upon Buyer's demand, without limiting Buyer's rights or remedies as expressed in this Agreement for any breach, Seller shall return to Buyer any portion of the Option that has not previously applied to the purchase price of any Lots, and Buyer shall have the remedies set forth in Section 17.2.

#### 4. Buyer's Inspections and Feasibility Investigations.

##### 4.1 Title.

(a) Buyer has reviewed the condition of Seller's title to the Property and hereby agrees to accept title to each Lot subject to all exceptions to title affecting such Lot as of the date on which Buyer acquires such Lot; provided, however that Buyer does not accept (and Seller shall be obligated to remove) all exceptions affecting such Lot created by, or resulting from the acts or omissions of, Seller.

(b) At each Closing Seller shall deliver fee simple title to each Lot as is being conveyed at Closing subject to all exceptions to title affecting such Lot as of Closing, except for title exceptions affecting such Lot created by, or resulting from the acts or omissions of, Seller.

(c) Notwithstanding any contrary provision of this Agreement, Seller shall have no obligation to remove from title any exceptions to marketable title (other than those created by, or resulting from the acts or omissions of, Seller), and in no event shall Seller have any obligation to remove any exceptions to title created by, or resulting from the acts or omissions of, Buyer.

##### 4.2 Feasibility Study.

(a) Buyer acknowledges that, pursuant to the Original Agreement, Seller has delivered to Buyer copies of all studies, reports, agreements, documents, surveys, plans, maps, permits and entitlements in Seller's possession concerning the Property and its improvement and development, and Buyer hereby approves of the suitability of the Property for Buyer's use and development.

(b) Pursuant to the Original Agreement Seller has provided Buyer with complete copies of documents evidencing all leases, if any, encumbering the Property.

(c) Pursuant to the Original Agreement Seller has provided Buyer with estoppels from each tenant, if any, of the Property affirming its conditions of lease. Buyer shall have the continuous right to investigate and review, in Buyer's sole and absolute discretion, the condition and suitability of the leases until this Agreement is terminated or

otherwise expires. If necessary, Seller shall assist Buyer in contacting the parties to any leases on the Property.

(d) Except as otherwise expressly provided in this Agreement Buyer agrees to acquire the Property in an "AS IS" and "WHERE IS" condition.

4.3 Access. Subject to the remaining provisions of this Section 4.3, Seller grants to Buyer and Buyer's agents, employees and consultants a nonexclusive license to enter upon the Real Property for the purpose of allowing Buyer to conduct whatever tests, studies, surveys and work of improvement upon the Property as Buyer deems necessary. Buyer shall indemnify, save, protect, defend and hold harmless Seller and the Property from all loss or liability (including, without limitation, attorneys' fees) arising from such activities of Buyer, its agents, and employees upon the Property pursuant to this Agreement, the August 7, 2017 Agreement, the 2015 Agreement and/or the Original Agreement, and from all mechanics', materialman's and other liens resulting from any such conduct of Buyer, its agents, and employees. Notwithstanding the preceding sentence, Buyer shall have no indemnification obligation with respect to, and no liability for, any loss or damage resulting from or attributable to (i) the acts or omissions of Seller or Seller's agents, employees, invitees or licensees, (ii) any conditions or defects (including Hazardous Substances) within, on or adjacent to the Real Property not caused by Buyer, including those that are discovered by Buyer during its investigations and inspections (including, without limitation, any diminution in the value of the Property attributable to the discovery of such condition or defect and/or any exacerbation of any pre-existing condition or defect); provided that Buyer shall remain obligated to indemnify Seller and the Property as set forth herein for any exacerbation of a pre-existing condition or defect if Buyer fails to comply with the requirements set forth in subparagraphs (i)-(iv) below. Buyer shall cause the Property to be reasonably returned to its prior condition if Buyer or any of Buyer's agents, employees and consultants perform any invasive testing or other examination of the Property.

Buyer's right to enter onto the Property and conduct inspections and studies shall be subject to the following additional terms and conditions:

(i) Buyer shall provide Seller with at least one (1) business day prior written or oral notice of such entry.

(ii) The persons or entities performing the inspections, investigations or tests by or on behalf of Buyer shall be properly licensed and qualified and shall have obtained all appropriate permits for performing relevant tests on the Property and shall have delivered copies to Seller of such permits and all work plans and procedures for any such any inspections, investigations or tests on the Property prior to performing them. Buyer shall not perform any such inspections, investigations or tests without having first received Seller's written approval of the work plan therefor, which approval shall not be unreasonably withheld (provided that such approval shall not be construed as any certification or approval by Seller that the inspection, investigation or test contemplated by the work plan therefor is appropriate, effective, or in compliance with applicable laws). Prior to entry onto the Property, Buyer shall deliver to Seller (and cause each contractor and consultant who desires to enter onto the Property to deliver to Seller) a certificate of insurance evidencing that Buyer (or such applicable contractor or consultant) has obtained a policy or policies of commercial general liability insurance providing for a combined single limit of not less than One

Million Dollars (\$1,000,000) per occurrence covering liability to property or persons for Buyer's and its agents' and employees' (and contractors' or consultants') activities on or about the Property, and naming Seller as an additional insured.

(iii) Seller shall have right to have one (1) or more representatives of Seller accompany Buyer and Buyer's representatives, agents, consultants or contractors while they are on the Property.

(iv) The results of Buyer's tests, inspections and investigations shall be kept strictly confidential by Buyer and Seller, except that (a) either party may disclose such information as such party is required to do so by court order or under applicable law, and (b) Buyer may disclose such results to involved third parties who require information to assist Buyer in Buyer's due diligence investigations of the Property, provided that Buyer shall cause such third parties to be bound by the confidentiality obligation of Buyer hereunder. Upon request from Seller, Buyer shall promptly furnish to Seller, without representation or warranty, copies of all third-party reports, studies and assessments of the Property within the possession or control of Buyer and without additional cost to Buyer. Each Party's obligations under this clause (iv) shall survive the termination of the Agreement; provided that (A) following the Close of Escrow, Buyer shall be entitled to disclose such information to any such parties as Buyer shall deem appropriate and, to the extent Buyer does disclose such information without imposing on the recipient thereof the obligation to maintain the confidentiality of such information, then Seller shall no longer be obligated to maintain the confidentiality of such information, and (B) in the event the Agreement terminates prior to the Close of Escrow, Seller shall be entitled to disclose such information to any parties as Seller shall deem appropriate, including, without limitation, other prospective purchasers of the Property.

Buyer acknowledges that, pursuant to the Original Agreement, Buyer has completed its investigations and inspections of the Property pursuant to this Section 4.3.

5. Purchase Option; Subsequent Closings; Payment of Purchase Price.

5.1 Seller hereby grants to Buyer the option (the "Option") to designate the Lots that Buyer is purchasing at each Closing. The Option shall expire, without the necessity of any action on the part of either party hereto, (i) on October 16, 2020, or (ii) on September 30, 2018 but only if prior to such day Buyer has not delivered to Seller the One Hundred Thousand Dollar (\$100,000) installment of the Option Consideration that is due on that date in accordance with Section 3.2(a) (the first to occur of the dates referred to in clauses (i) and (ii) is referred to herein as the "Option Period Expiration Date"). The purchase price for each Lot shall be as set forth in the table below.

<u>Closing Date During the Month of:</u>	<u>Improved Lot Purchase Price:</u>	<u>Partially Improved Lot Purchase Price:</u>
August, 2018	\$68,900	\$37,100
September, 2018	\$69,225	\$37,275
October, 2018	\$69,550	\$37,450
November, 2018	\$69,875	\$37,625
December, 2018	\$70,200	\$37,800

Seller Initials \_\_\_\_\_

Buyer Initials \_\_\_\_\_



January, 2019	\$70,525	\$37,975
February, 2019	\$70,850	\$38,150
March, 2019	\$71,175	\$38,325
April, 2019	\$71,500	\$38,500
May, 2019	\$71,825	\$38,675
June, 2019	\$72,150	\$38,850
July, 2019	\$72,475	\$39,025
August, 2019	\$72,800	\$39,200
September, 2019	\$73,125	\$39,375
October, 2019	\$73,450	\$39,550
November, 2019	\$73,817	\$39,748
December, 2019	\$74,186	\$39,946
January, 2020	\$74,557	\$40,146
February, 2020	\$74,930	\$40,347
March, 2020	\$75,305	\$40,549
April, 2020	\$75,681	\$40,751
May, 2020	\$76,060	\$40,955
June, 2020	\$76,440	\$41,160
July, 2020	\$76,822	\$41,366
August, 2020	\$77,206	\$41,573
September, 2020	\$77,592	\$41,780
October, 2020	\$77,980	\$41,989
November, 2020	\$78,370	\$42,199

Buyer shall designate the Lot(s) that Buyer desires to close on by giving notice thereof (“Lot Designation Notice”) prior to the Option Period Expiration Date. Within not more than five (5) days following receipt of a Lot Designation Notice, Seller shall specify the Closing Date for the sale of the Lot(s) specified in the Lot Designation Notice, which Closing Date shall be not more than thirty (30) days following the date of Seller’s receipt of the Lot Designation Notice, and in no event shall be later than November 16, 2020. When so specifying the Closing Date, Seller also shall have the right to notify Buyer that Seller is excluding from a Closing any Lot designated by Buyer for purchase if such Lot is not pre-approved by Seller pursuant to the attached Phasing Plan and not reasonably contiguous to any Lot previously purchased by Buyer, including any other Lots designated by Buyer for purchase at the same Closing (any Lot that is so rejected by Seller is referred to herein as a “Rejected Lot”). If Seller fails to timely respond to a Lot Designation Notice, then the Closing Date for the Lot(s) specified therein shall take place thirty (30) days following the date of Seller’s receipt of the Lot Designation Notice.

5.2 So long as Seller has theretofore deposited with Escrow Holder a Grant Deed for the Lots to be conveyed at such Closing, then one (1) day before such Closing, Buyer shall deposit with Escrow Holder a series of Notes for each of the Lots to be conveyed at such Closing in a principal amount equal to the Purchase Price of each said Lot, and bearing interest at six percent (6%) per annum, simple interest for Notes entered into before October 16, 2019 and compounded monthly for Notes entered into thereafter . Each such Note shall be due and payable on the first anniversary of the



date of such Closing, or on such earlier date as provided therein. Each such Note shall be secured by a Deed of Trust encumbering each respective Lot. Seller agrees to subordinate the Deed of Trust encumbering a Lot to the lien of a lender providing construction financing for a single family home on such Lot; provided that Seller shall not be obligated to subordinate to any lien in excess of Two Hundred Sixty Thousand Dollars (\$260,000), and in no event shall Seller be obligated to subordinate more than ten (10) Deeds of Trust of at one time. In addition to the Notes and the Deeds of Trust, Buyer shall deposit with Escrow Holder Buyer's share of closing costs and pro-rations for the Lots to be conveyed at such Closing as provided in Section 6 below.

5.3 Seller and Buyer reasonably timely will deposit with Escrow Holder the documents required to consummate each Closing when and as described in Sections 6.3 and 7 below.

6. Closing Costs and Pro-rations.

6.1 Closing Costs. In accordance with customary practice in the County, Seller shall pay all standard CLTA title insurance premiums and recording fees associated with the transactions contemplated hereby. Buyer and Seller shall share equally the County's documentary transfer tax, and the Escrow Holder's fee for conducting the Escrow. Any other closing costs related to each Closing shall be paid by the parties in the manner consistent with customary practice for the County. Escrow Holder shall notify Buyer and Seller in writing of their respective shares of such costs at least three (3) business days prior to each Closing Date.

6.2 Pro-rations. Rents, rental deposits, contracts and real property taxes will be prorated as of each Closing Date. At least five (5) business days prior to a Closing Date, Escrow Holder shall deliver to Seller and Buyer a tentative proration schedule setting forth a preliminary determination of pro-rations based on the Lots being conveyed at such Closing. If any information needed for the proration of any item is not available or if any pro-ration made at any Closing does not actually reflect the expenses borne or income allocable to a party, the parties shall cooperate in good faith to re-prorate such item after Closing and payment shall be made promptly to the party entitled to the same outside of Escrow. After each Closing, Seller shall remain solely responsible for and shall promptly pay before delinquency any real estate taxes and assessments for the Real Property relating to periods prior to such Closing.

6.3 Deposits by Seller. No later than one (1) business day prior to each Closing Date, Seller shall deposit with Escrow Holder:

(a) The Grant Deed for the Lots being sold at such Closing, duly executed by Seller, acknowledged and in recordable form, conveying fee title to such Lots subject to all title exceptions then affecting such Lots, except for title exceptions created by, or resulting from the acts or omissions of, Seller.

(b) If requested by Buyer, an Assignment of Declarant's Rights to the extent applicable to the Lots being conveyed at such Closing.

(c) An Assignment and Bill of Sale in the form attached hereto as Exhibit C, duly executed by Seller ("Bill of Sale") to the extent applicable to the Lots being conveyed at such Closing.

(d) Seller's Federal Non-foreign Affidavit in standard form, and a Nevada state tax withholding certificate in accordance with the requirements of Nevada Revenue and Taxation Code, each duly executed by Seller (collectively, "Non-foreign Affidavits").

(e) Such other bills of sale, assignments and other instruments of transfer or conveyance as Buyer or Escrow Holder may reasonably request or as otherwise may be necessary to evidence and effect the sale, assignment, transfer, conveyance and delivery to Buyer of the Lots being conveyed at such Closing.

(f) The Seller's Assignment of Plans to the Buyer to the extent applicable to the Lots being conveyed at such Closing.

(g) Immediately available funds to cover Seller's share of closing costs and pro-rations for such Closing.

7. Deposits by Buyer. Prior to each Closing, Buyer shall deposit with Escrow Holder the following:

(a) A Note and Deeds of Trust in accordance with Section 5.2, for the Lots being conveyed at such Closing, as well as immediately available funds to cover Buyer's share of closing costs and pro-rations for such Closing.

(b) Such other instruments or documents as Escrow Holder may reasonably request or as may be necessary to complete the sale, assignment, transfer, conveyance and delivery to Buyer of the Lots being conveyed at such Closing.

8. Conditions to Closing.

8.1 Conditions to Buyer's Obligations. Each Closing and Buyer's obligation to purchase the Lots being conveyed at such Closing are subject to the satisfaction of the following conditions or Buyer's written waiver of such conditions on or before the date indicated. Buyer may waive in writing any or all of such conditions in its sole and absolute discretion.

(a) Buyer shall have exercised the Option as to such Lots.

(b) As of the Closing Date for such Closing, Seller shall have performed all obligations to be performed by Seller pursuant to this Agreement on or prior to such Closing Date.

8.2 Conditions to Seller's Obligations. Each Closing and Seller's obligation to consummate the transactions contemplated by this Agreement are subject to the satisfaction of the following conditions as of the Closing Date for such Closing:

(a) Buyer shall have performed all obligations to be performed by Buyer pursuant to this Agreement prior to such Closing.

(b) Buyer's representations and warranties set forth herein shall be true and correct as of such Closing.

9 Closing.

9.1 Escrow Holder's Actions. On each Closing Date, when Escrow Holder holds the items required to be deposited by Seller and Buyer as described above, Escrow Holder is instructed and authorized to: (i) record the Grant Deed for the Lots being conveyed at such Closing in the Official Records of the County; (ii) record the applicable Assignment of Declarant's Rights (if any, and if separate from the Grant Deed, and if requested by Buyer in writing) in the Official Records of the County; (iii) record the Deeds of Trust for the Lots being conveyed at such Closing in the Official Records of the County; (iv) pay any transfer taxes; (v) instruct the County Recorder to return the Grant Deed to Buyer; (vi) instruct the County Recorder to return the Deeds of Trust to Seller; (vii) deliver to Seller the original Notes deposited by Buyer; (viii) disburse to Seller any remaining balance from the funds provided by it; (ix) disburse to Buyer any remaining balance from the funds provided by it; and (x) deliver to Buyer the applicable Bill of Sale, the applicable Assignment of Declarant's Rights (if any), the Non-foreign Affidavits and the any title insurance policy that Title Company agreed to issue to Buyer at such Closing; provided that the issuance of such title insurance policy shall not be a condition to Closing.

9.2 Escrow Cancellation Charges. If a Closing does not occur because of the default of Seller, the Seller shall bear Escrow Cancellation Charges. If a Closing does not occur for any reason other than the default of the Seller, then Buyer shall pay Escrow Cancellation Charges. As used herein, "Escrow Cancellation Charges" means all fees, charges and expenses incurred by Escrow Holder or third parties engaged by Escrow Holder, as well as all expenses related to the services of the Title Company.

9.3 Conveyance and Possession. Upon each Closing, Seller shall convey to Buyer fee simple title to the Lots being conveyed at such Closing, subject to all title exceptions then affecting such Lots (except for title exceptions created by, or resulting from the acts or omissions of, Seller), and Seller shall deliver to Buyer exclusive possession of such Lots subject to existing leases.

10. Representations and Warranties of Seller. Seller makes the following representations and warranties to Buyer:

10.1 Seller owns the Real Property in fee simple absolute and has good and marketable fee simple title to the Real Property.

10.2 Prior to the Option Period Expiration Date, excepting for Section 18.1 herein, Seller shall not alienate, encumber, transfer, option, lease, assign, transfer or otherwise convey its interest or any portion of its interest in the Property or any portion thereof except (i) to Buyer pursuant to this Agreement, (ii) as permitted by Buyer (which permission shall not be unreasonable

withheld); (iii) as otherwise disclosed to Buyer by Seller in writing within 30 days after the Execution Date; or (iv) as permitted by this Agreement.

10.3 Notwithstanding any contrary warranty or representation of the Seller, and notwithstanding the information contained in paragraph "A" located in the recitals of this Agreement, Seller makes absolutely no representations or warranties as to the actual square footage or acreage of the Real Property. Buyer may measure or survey the Real Property on or before Feasibility Date, at Buyer's expense, to determine the actual square footage or acreage of the Real Property.

10.4 Seller has full capacity, right, power and authority to enter into this Agreement and to perform its obligations hereunder.

10.5 This Agreement constitutes the legal, valid and binding obligation of Seller, and is enforceable against Seller in accordance with its terms except to the extent that such enforcement may be limited by applicable bankruptcy, insolvency, moratorium and other principles relating to or limiting the rights of contracting parties generally. Neither this Agreement nor the consummation of any of the transactions contemplated by this Agreement violates or shall violate any provision of any agreement or document to which Seller is a party or by which Seller is bound. No consent is required from any third party before the Property may be conveyed to Buyer.

10.6 Seller has not received any written notice from any Authority indicating that (i) the Property is in violation of, or has been or is being investigated for, any violation of any federal, state or local law, ordinance or regulation relating to industrial hygiene, worker health and safety, or the environmental conditions in, at, on, under or about the Real Property (such laws, ordinances and regulations are collectively referred to as the "Environmental Laws") including without limitation soil and groundwater conditions; (ii) the Real Property has been subject to a deposit of any Hazardous Substance; (iii) Seller or any third party has used, generated, manufactured, stored or disposed in, at, on, under or about the Real Property or transported to or from the Real Property any Hazardous Substance; (iv) there has been a discharge, migration or release of any Hazardous Substance from, into, on, under or about the Real Property; and (v) there is now, or there has been on or in the Real Property, any underground storage tanks or surface impoundments, any asbestos-containing materials or any polychlorinated biphenyls used in hydraulic oils, electrical transformers or other equipment. As used in this Agreement, the words "personal knowledge of the Seller", "Seller's personal knowledge", "Seller's knowledge", "Seller's awareness", "Seller's becoming aware" and other similar expressions used in this Agreement means the personal and actual knowledge or awareness of James L. Breitenstein as of the date that Seller executes this Agreement, without having conducted any investigation and without having the duty to do so.

10.7 [INTENTIONALLY OMITTED]

10.8 Seller is not in default under, and Seller has received no notice of the occurrence of any event that, with the giving of notice or the passage of time, or both, would constitute a default under, any contract, covenant, condition, restriction, lease, easement, encumbrance or instrument encumbering or otherwise pertaining to the Property.

10.9 There are no lawsuits, claims, proceedings or investigations pending or, to the Seller's knowledge, threatened against or affecting Seller or the Property; to the Seller's knowledge, there is no basis for any claim that would affect the Property or Seller's ability to perform its obligations hereunder, and there are no lawsuits, proceedings or investigations pending in which Seller is the plaintiff or claimant and which relate to the Property. There is no action, suit or proceeding pending or, to the Seller's knowledge, threatened which questions the legality or propriety of the transactions contemplated by this Agreement. The representations and warranties in this Section 10.9 shall have no application to any disputes or litigation involving or among the constituent members of Buyer.

10.10 Seller has made no oral or written commitments, representations to, understandings with, or agreements with, any person, firm or entity, any adjoining property owner or any Authority which would in any way be binding on Buyer or would interfere with Buyer's ability to develop and improve the Property. Seller shall not make or enter into any such commitments, representations, understandings or agreements without Buyer's written consent (which consent may be granted or withheld in Buyer's sole discretion), except such oral or written commitments, representations, understandings, or agreements that Seller has disclosed to Buyer in writing within 30 days after execution of this Agreement.

10.11 [INTENTIONALLY OMITTED]

10.12 [INTENTIONALLY OMITTED]

10.13 Seller has not received any notice from any of Seller's insurance carriers of any defects or inadequacies in the Property, or any portion thereof, which would adversely affect the insurability of the Property or the cost of any such insurance, except as disclosed to the Buyer by Seller in writing within 30 days after execution of this Agreement. To the Seller's knowledge, there are no pending insurance claims with respect to any portion of the Property, except as disclosed to the Buyer by Seller in writing within 30 days after execution of this Agreement.

10.14 [INTENTIONALLY OMITTED]

10.15 Seller is not bankrupt or insolvent under any applicable federal or state standard. Seller has not filed for protection or relief under any applicable bankruptcy or creditor protection statute. No creditors have threatened Seller in writing with an involuntary petition or proceeding under any applicable bankruptcy or creditor protection statute. Seller is not entering into the transactions described in this Agreement with intent to defraud any creditor or to prefer the rights of one creditor over any other. Seller and Buyer have negotiated this Agreement at arms-length and the consideration to be paid represents fair market value for the assets to be transferred.

Subject to the third sentence of this paragraph, all representations, warranties and covenants of Seller in this Agreement are made as of the date of this Agreement and as of each Closing and shall continue and survive until the last Closing pursuant to this Agreement or the Option Period Expiration Date, whichever first occurs. Subject to the third sentence of this paragraph and except as provided in the preceding sentence, it shall be a material default hereunder if Seller is unable to make such representations, warranties and covenants truthfully

as of any Closing Date. Notwithstanding the foregoing, if a representation and warranty in this Section 10 based upon Seller's knowledge that was true when made becomes untrue due to circumstances outside of Seller's control prior to any Closing, such changed representation and warranty shall not constitute a breach by Seller so long as Seller discloses said circumstances to Buyer in writing within fifteen (15) days after Seller first receives written notice thereof. In the case of such a change of a representation and warranty due to circumstances outside of Seller's control, if the change would have a material adverse effect on Buyer's use, development and/or marketing of the Lots being conveyed at such Closing, Buyer may either (i) terminate this Agreement (in which event Seller shall immediately return to Buyer any portion of the Option Consideration that has not previously been applied to the purchase price of any Lots, and neither Party shall have any further obligation to the other hereunder, except as provided in Section 18.18 of this Agreement) or (ii) proceed to Closing despite such change.

11. Representations and Warranties of Buyer. Buyer makes the following representations, warranties and covenants to Seller:

11.1 Buyer is a limited liability company duly organized, validly existing and in good standing under the laws of the State of California and is duly qualified to do business in the State of California. Buyer has the right, power and authority to enter into this Agreement and to perform its obligations hereunder, and the person executing this Agreement on behalf of Buyer has the right, power and authority to do so.

11.2 This Agreement constitutes the legal, valid and binding obligation of Buyer enforceable against Buyer in accordance with its terms, except to the extent that such enforcement may be limited by applicable bankruptcy, insolvency, moratorium and other principles relating to or limiting the rights of contracting parties generally. This Agreement does not violate any provision of any material agreement or document to which Buyer is a party or to which Buyer is bound.

11.3 All representations and warranties of Buyer in this Agreement are made as of the date of this Agreement and as of each Closing and shall survive until the last Closing pursuant to this Agreement or the Option Period Expiration Date, whichever first occurs. It shall be a material default if Buyer is unable to make such representations and warranties truthfully as of each Closing Date.

11.4 BUYER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT BUYER IS A SOPHISTICATED REAL ESTATE INVESTOR AND IS PURCHASING THE PROPERTY ON AN "AS IS WITH ALL FAULTS" BASIS. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES OF SELLER EXPRESSLY SET FORTH IN THIS AGREEMENT, BUYER IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM SELLER OR ITS AGENTS AS TO ANY MATTERS CONCERNING THE PROPERTY, INCLUDING WITHOUT LIMITATION: (i) THE PHYSICAL CONDITION OF THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, THE PRESENCE OR ABSENCE OF ANY WETLANDS, NATURAL RESOURCES OR ENVIRONMENTAL CONDITIONS ON THE PROPERTY; (ii) THE QUALITY, NATURE, ADEQUACY, AND PHYSICAL CONDITION OF SOILS, GEOLOGY AND ANY GROUNDWATER; (iii) THE EXISTENCE, QUALITY, NATURE, ADEQUACY AND PHYSICAL CONDITION OF UTILITIES SERVING THE PROPERTY; (iv) THE DEVELOPMENT POTENTIAL OF THE PROPERTY, AND THE PROPERTY'S USE, HABITABILITY,



MERCHANTABILITY, OR FITNESS, SUITABILITY, VALUE OR ADEQUACY OF THE PROPERTY FOR ANY PARTICULAR PURPOSE; (v) THE STATUS OF ANY ENTITLEMENTS OR APPROVALS REQUIRED FOR DEVELOPMENT OF THE PROPERTY, THE ZONING OR OTHER LEGAL STATUS OF THE PROPERTY OR ANY OTHER PUBLIC OR PRIVATE RESTRICTIONS ON USE OF THE PROPERTY; (vi) THE COMPLIANCE OF THE PROPERTY WITH ANY APPLICABLE CODES, LAWS, REGULATIONS, STATUTES, ORDINANCES, PERMITS, COVENANTS, CONDITIONS AND RESTRICTIONS OF ANY GOVERNMENTAL OR QUASI-GOVERNMENTAL ENTITY OR OF ANY OTHER PERSON OR ENTITY; (vii) THE PRESENCE OR ABSENCE OF HAZARDOUS MATERIALS ON, UNDER OR ABOUT THE PROPERTY OR THE ADJOINING OR NEIGHBORING PROPERTY; (viii) THE QUALITY OF ANY LABOR AND MATERIALS USED IN ANY IMPROVEMENTS ON THE PROPERTY, (ix) THE CONDITION OF TITLE TO THE PROPERTY; (x) ANY MATTERS PERTAINING TO ASSESSMENT DISTRICTS OR COMMUNITY FACILITIES FINANCING DISTRICTS AFFECTING THE PROPERTY; AND (xi) THE ECONOMICS OF THE POTENTIAL DEVELOPMENT OF THE PROPERTY. BUYER ACKNOWLEDGES THAT IT SHALL USE ITS INDEPENDENT JUDGMENT AND MAKE ITS OWN DETERMINATION AS TO THE SCOPE AND BREADTH OF THE DUE DILIGENCE INVESTIGATION WHICH IT SHALL MAKE RELATIVE TO THE PROPERTY. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, BUYER SHALL RELY UPON ITS OWN INVESTIGATION OF THE PHYSICAL, ENVIRONMENTAL, ECONOMIC AND LEGAL CONDITION OF THE PROPERTY, THE IMPROVEMENTS THEREON (INCLUDING, WITHOUT LIMITATION, WHETHER THE PROPERTY IS LOCATED IN AN AREA WHICH IS DESIGNATED AS A SPECIAL FLOOD HAZARD AREA, DAM FAILURE INUNDATION AREA, EARTHQUAKE FAULT ZONE, SEISMIC HAZARD ZONE, HIGH FIRE SEVERITY AREA OR WILDLAND FIRE AREA, BY ANY FEDERAL, STATE OR LOCAL AGENCY). BUYER UNDERTAKES AND ASSUMES THE RISKS ASSOCIATED WITH ALL MATTERS PERTAINING TO THE PROPERTY'S LOCATION IN ANY AREA DESIGNATED AS A SPECIAL FLOOD HAZARD AREA, DAM FAILURE INUNDATION AREA, EARTHQUAKE FAULT ZONE, SEISMIC HAZARD ZONE, HIGH FIRE SEVERITY AREA OR WILDLAND FIRE AREA, BY ANY FEDERAL, STATE OR LOCAL AGENCY. THE PROVISIONS OF THIS SECTION 11.4 SHALL INDEFINITELY SURVIVE THE CLOSE OF ESCROW HEREUNDER OR TERMINATION OF THIS AGREEMENT AND SHALL NOT BE MERGED INTO THE GRANT DEED.

11.5 Except for any damages, claims, losses, liabilities, actions, causes of action, penalties, fines, liens, judgments, demands, costs and expenses whatsoever, including, without limitation, attorneys' fees and costs (collectively, "Claims") that Buyer may have against Seller (i) as a result of a breach by Seller of any express representations, warranties, covenants, or agreements set forth in this Agreement, or (ii) resulting from any knowing misconduct of Seller, Buyer on behalf of itself and, to the maximum extent permitted by law on behalf of its successors in interest in the Property, agrees to, and hereby does, waive, release and discharge Seller from any and all Claims, in law or in equity, known or unknown, which Buyer or its successors in interest in the Property, now has, or hereafter may have or acquire or possess arising out or in any way connected with the use, maintenance, ownership, development, sale, operation and occupancy of each Lot acquired by Buyer, the condition, status, quality, nature, contamination or environmental state of the Property. Without limiting the generality of the preceding sentence, and except for the express representations, warranties and covenants of Seller set forth in this Agreement, Buyer hereby waives any Claims Buyer may have for contribution from Seller under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. or any other federal or state statute or regulation for the cost of clean-up of any hazardous and/or toxic materials and substances on, in or under each



Lot acquired by Buyer. It is the intention of this paragraph that, except for Claims that Buyer may have against Seller as a result of (i) a breach by Seller of any of the express representations, warranties and covenants of Seller set forth in this Agreement, and/or (ii) any knowing misconduct of Seller, any and all responsibilities and obligations of Seller and any and all rights or Claims of Buyer, and, to the maximum extent permitted by all rights and Claims of Buyer's successors in interest in each Lot acquired by Buyer, arising by virtue of the physical or environmental condition of each such Lot, and the development of each such Lot are by this release provision declared null and void and of no present and future effect as to such persons or entities. Excluding Seller's fraud, Buyer expressly waives any right of rescission and all Claims by reason of any statement, representation, warranty, promise or covenant, if any, not contained in this Agreement. As to the express releases contained herein, Buyer hereby waives the provision of California Civil Code Section 1542 which provides as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

12. Notification by Seller of Certain Matters. Until the Option Period Expiration Date (or until the Agreement is earlier terminated), within fifteen (15) days after first receiving written notice of: (i) any material adverse change in the condition of any Lot not yet acquired by Buyer, (ii) the occurrence of any event or the discovery of any fact that would render any representation or warranty of Seller to Buyer in this Agreement materially untrue or misleading, or (iii) any communication from any third person alleging that the consent of such third person is or may be required in connection with the transactions contemplated by this Agreement, Seller shall advise Buyer thereof in writing.

13. Seller's Covenant Not to Further Encumber the Property. Until the Option Period Expiration Date, Seller shall not, without the consent of the Buyer, directly or indirectly, alienate, encumber, transfer, option, lease, assign, sell, transfer or convey its interest or any portion of such interest in the Property or any portion thereof, or enter into any agreement to do so, so long as this Agreement is in force, except for sales of Lots to Buyer pursuant to this Agreement and as permitted in this Section 13 and Section 18.1 herein. Seller shall timely discharge, prior to the each Closing, any and all obligations relating to work performed on or conducted at or materials delivered to the Lots to be conveyed to Buyer at such Closing from time to time by Seller, or at Seller's direction or on its behalf, in order to prevent the filing of any claim or mechanic's lien with respect to such work or materials; such requirement for discharge shall not apply to such obligations arising from work performed on, conducted at, or in connection with Buyer's inspections of the Property, or any of Buyer's development activities consistent with Buyer's intended development of the Property.

14. Processing of Approvals; Cooperation.

14.1 Buyer & Seller Processing of Approvals. Buyer at its sole and absolute discretion shall process, and Seller hereby grants Buyer the right and authority to process and seek, all County and Nevada Real Estate Division entitlements necessary to fulfill Buyer's business purpose including but not limited to planning applications, engineering of improvement plans, joint trench, architectural plans, structural engineering and landscape plans, grading permit and or Final Map(s)

and shall pay all consulting costs and County plan check fees associated with such entitlements; provided that in no event shall any Approval become binding on any Lot before the Closing of Buyer's purchase of such Lot unless Buyer has obtained Seller's prior written consent thereto. Without limiting the generality of the foregoing, Buyer shall bear all costs in connection with obtaining approval of and recording the Final Map for Lots 60-81 Buyer will pay for any fees associated with furtherment of the Buyer's business purpose at its sole cost and expense. In no event shall Buyer be responsible to Seller for any failure to obtain governmental Approvals.

14.2 Cooperation. Each Party shall cooperate with the other Party, and shall cause its consultants, engineers, contractors, affiliates and lenders and any other persons with an interest in the Property to cooperate with the other Party, in connection with its feasibility investigations under this Agreement; provided that Buyer shall pay (or reimburse Seller) for all costs of cooperating charged by Seller's consultants, engineers, contractors, affiliates and lenders. Such cooperation may apply in connection with the processing of and seeking governmental Approvals, including without limitation, cooperating in the defense of any legal challenge to any governmental Approvals, and the execution of any maps, applications, permits, filings or other documents. Seller shall not assert any of its interest in or rights to the Property in any way so as to hinder or delay Buyer's development and sale of the Property.

15. Damage or Destruction. If any damage or destruction to any Lot occurs prior to the Closing for such Lot, Seller shall give Buyer written notice thereof promptly following Seller becoming aware thereof. If Buyer eventually purchases such Lot, then the purchase price for such Lot shall not be reduced and at (and conditioned upon) the Closing for Buyer's purchase of such Lot Seller shall assign to Buyer all of Seller's rights to any proceeds paid or payable to Seller by reason of such damage or destruction.

16. Condemnation. If prior to the Closing for any Lot such Lot is subject to a written actual or written threatened taking by a public authority, by the power of eminent domain or otherwise, and if Buyer eventually purchase such Lot, then the purchase price for such Lot shall not be reduced and at (and conditioned upon) the Closing for Buyer's purchase of such Lot Seller shall assign to Buyer all of Seller's rights to any condemnation awards paid payable to Seller by reason of such condemnation or other taking.

17. Cure Period; Remedies.

17.1 Any other provision of this Agreement notwithstanding, no default by either party hereto shall result in a termination or limitation of any rights of such party hereunder unless and until the other party shall have notified the defaulting party in writing of said default, and the defaulting party shall have failed to cure said default within thirty (30) days after the receipt of said written notice, except that there shall be no cure period with respect to the failure to pay the purchase price for any Lot at the Closing therefor, and if Buyer does not timely pay either such amount, Buyer's purchase right under this Agreement shall immediately terminate.

17.2 If Seller defaults on its obligation to convey any Lot that Buyer has designated for purchase in a Lot Designation Notice for any reason (except due to a failure by Buyer to perform under the Agreement), then, as Buyer's sole remedies, Buyer may elect either to: (i) terminate the Agreement by giving Seller timely written notice of such election prior to or upon the date on which

the Closing for such Lot would have occurred but for Seller's default, and Buyer shall be entitled to the return of any portion of the Option Consideration that has not previously been applied to the purchase price of any Lots as well as recovery pursuant to Section 18.18 of this Agreement but no other damages; or (ii) enforce specific performance of this Agreement (together with any recovery to Buyer Section 18.18 of this Agreement). In order maintain a claim for specific performance, Buyer must file said claim within sixty (60) days following the date on which the Closing would have occurred but for Seller's default, and if Buyer prevails on such claim, Buyer must waive all other rights, claims, and causes of action for damages arising from Seller's breach (except that Buyer shall retain the right to recovery pursuant to Section 18.18 of this Agreement for attorneys fees and other costs of suit incurred in connection with pursuing specific performance). If Buyer proceeds with the Close of Escrow and acquires any Lot with actual knowledge of Seller's breach prior to the Close of Escrow for such Lot, Buyer shall be deemed to have waived all rights and remedies with respect to Seller's breach. If Buyer does not first become aware of a claim for breach until after the Closing for a Lot, Buyer shall have no right to bring an action for damages or any other claim with respect to such breach unless the total value of Buyer's claim (in the aggregate with the value of all other claims for breach by Seller of which Buyer does not become aware until after such Closing) exceeds Fifty Thousand Dollars (\$50,000) (which amount shall constitute a jurisdictional threshold for the benefit of Seller), and if it is ultimately determined that the aggregate value of Buyer's claims does not exceed Fifty Thousand Dollars (\$50,000), Seller shall have no liability to Buyer, and Buyer shall be deemed to be the prevailing party for purposes of Section 18.18 of this Agreement and shall be entitled to recovery pursuant thereto.

17.3 [INTENTIONALLY OMITTED]

LIQUIDATED DAMAGES

17.4 BUYER AND SELLER AGREE THAT THE OPTION CONSIDERATION CONSTITUTES GOOD AND VALUABLE CONSIDERATION GIVEN BY BUYER IN CONSIDERATION FOR SELLER'S GRANTING THE OPTION AND IS EARNED IMMEDIATELY UPON COMPLETE EXECUTION OF THIS AGREEMENT AND IS NOT A DEPOSIT. NEVERTHELESS, IF THE OPTION CONSIDERATION IS CHARACTERIZED OR OTHERWISE DEEMED TO BE A DEPOSIT, THE PARTIES HEREBY AGREE THAT THE REMAINING PROVISIONS OF THIS SECTION 17.4 SHALL APPLY. BUYER AND SELLER AGREE THAT IN THE EVENT OF A BUYER'S DEFAULT, BREACH OR FAILURE TO PERFORM (NOT DUE TO SELLER'S WRONGFUL ACTS OR OMISSIONS OR SELLER'S BREACH) IN ACCORDANCE WITH THE PROVISIONS OF THIS AGREEMENT, THE DAMAGES TO SELLER WOULD BE EXTREMELY DIFFICULT AND IMPRACTICABLE TO ASCERTAIN, AND THAT THE FULL AMOUNT OF THE OPTION CONSIDERATION (I.E., \$200,000) HAVING THEN BEEN PAID TO SELLER IS A REASONABLE ESTIMATE OF THE DAMAGES TO SELLER. SUCH DAMAGES INCLUDE, WITHOUT LIMITATION, THE COSTS OF NEGOTIATING AND DRAFTING THIS AGREEMENT, THE COSTS OF COOPERATING IN SATISFYING CONDITIONS TO CLOSING, THE COSTS OF SEEKING ANOTHER BUYER UPON BUYER'S DEFAULT, THE OPPORTUNITY COSTS IN KEEPING THE PROPERTY OUT OF THE MARKETPLACE, AND OTHER COSTS INCURRED IN CONNECTION WITH THE PERFORMANCE OF THIS AGREEMENT. ACCORDINGLY, BUYER AGREES THAT UNDER SUCH CIRCUMSTANCES, AS SELLER'S SOLE REMEDY IN THE EVENT OF ANY SUCH MATERIAL BREACH OR DEFAULT BY BUYER HEREUNDER, SELLER SHALL HAVE THE RIGHT TO RETAIN AS LIQUIDATED DAMAGES ANY PORTION OF THE OPTION CONSIDERATION THAT HAS NOT PREVIOUSLY BEEN APPLIED TO THE PURCHASE PRICE OF ANY LOTS. THE FOREGOING PROVISIONS OF THIS SECTION 17.4 OF THIS AGREEMENT IS DESCRIBED AS "PROVISION FOR LIQUIDATED DAMAGES". NOTWITHSTANDING THE LIMITATIONS PROVIDED BY

PROVISION FOR LIQUIDATED DAMAGES BY THIS SECTION 17.4, SELLER ALSO SHALL BE ENTITLED TO PURSUE AND RECOVER FOR ALL CLAIMS ARISING UNDER BUYER'S INDEMNITY IN THE SECOND SENTENCE OF SECTION 4.3 OF THIS AGREEMENT, FOR ALL CLAIMS FOR ATTORNEYS FEES PURSUANT TO SECTION 18.18 OF THIS AGREEMENT, AND FOR ALL CLAIMS ARISING UNDER BUYER'S INDEMNITY IN SECTION 18.24 OF THIS AGREEMENT.

Initials of Buyer: \_\_\_\_\_ Initials of Seller: \_\_\_\_\_

18. Miscellaneous.

18.1 Assignment. Seller shall not be entitled to assign this Agreement and its rights and obligations hereunder without obtaining Buyer's prior written consent, which consent will not be unreasonably withheld. Buyer shall not be entitled to assign this Agreement and its rights and obligations hereunder without obtaining Seller's prior written consent, which consent will not be unreasonably withheld.

18.2 No Memorandum of Agreement. Seller shall have no obligation to execute, and Buyer shall have no right to record any memorandum of agreement.

18.3 No Modifications. No addition to or modification of any term or provision of this Agreement shall be effective unless set forth in writing and signed by both Seller and Buyer.

18.4 Construction of Agreement. Each Party and the attorneys for each Party have participated in the drafting and preparation of this Agreement. Therefore, the provisions of this Agreement shall not be construed in favor of or against either Party but, shall be construed as if both Parties equally prepared this Agreement.

18.5 Headings. Paragraph headings herein are used for the purpose of convenience only and shall not be deemed to limit the subject of the sections or paragraphs of this Agreement or to be considered in their construction. Unless otherwise specifically referring to another instrument or document, references to "Sections" and "Subsections" refer to the Sections and Subsections of this Agreement.

18.7 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

18.8 Time of the Essence. Time is of the essence in the performance of each and every provision of this Agreement. Unless business days are expressly provided for, all references to "days" herein shall refer to consecutive calendar days. If a Closing Date or any other date or time period provided for in this Agreement is or ends on a Saturday, Sunday or federal, state or legal holiday, then such date shall automatically be extended to the next day which is not a Saturday, Sunday, Monday or federal, state or legal holiday.

18.9 Successors and Assigns. Subject to the provisions of Section 18.1, all of the provisions of this Agreement shall inure to the benefit of and shall be binding upon the successors and assigns of the Parties.

18.10 Further Assurances. Each of the Parties shall execute and deliver any and all additional papers, documents, and other assurances, and shall do any and all acts and things reasonably necessary in connection with the performance of their obligations hereunder and to carry out the intent of this Agreement. Without limiting the generality of the foregoing, Seller shall cooperate with Buyer by executing such documents and providing to Buyer or the appropriate regulatory agency such items as Buyer or the appropriate regulatory agency may reasonably request, and Seller shall cooperate under any covenants, conditions and restrictions affecting the Property so as to facilitate Buyer's development of the Property, provided such cooperation entails no material additional cost or expense to Seller.

18.11 No Waiver. The waiver by one Party of the performance of any covenant, condition or promise, or of the time for performing any act, under this Agreement shall not invalidate this Agreement nor shall it be considered a waiver by such Party of any other covenant, condition or promise or of the time for performing any other act required under this Agreement. The exercise of any remedy provided in this Agreement shall not be a waiver of any remedy provided by law, and the provisions of this Agreement for any remedy shall not exclude any other remedies unless they are expressly excluded by the terms of this Agreement.

18.12 Severability. If any provision of this Agreement is or shall be determined to be illegal, ineffective or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, ineffective or against public policy, the remaining provisions of this Agreement shall not be affected thereby and shall remain in force and effect to the full extent permitted by applicable law.

18.13 Gender and Number. In this Agreement, the masculine, feminine and neuter genders and the singular and the plural include one another, unless the context requires otherwise.

18.14 Confidentiality. Buyer and Seller agree to keep the terms of this transaction strictly confidential except to the extent disclosure to parties' respective principals, attorneys, persons, firms, or corporations involved in Buyer's processing of the entitlements, and financial sources as are reasonably required.

18.15 Entire Agreement. This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof and shall supersede all prior and contemporaneous agreements, representations, negotiations and understandings of the parties, oral or written, including without limitation the Original Agreement. The foregoing sentence shall in no way affect the validity of any instrument executed by the Parties in the form of the exhibits attached to this Agreement.

18.16 Incorporation of Exhibits. All exhibits to this Agreement are incorporated herein by this reference.

18.17 Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original, but all of which together shall constitute one and the same instrument. Counterparts may be delivered by facsimile or pdf attachment to email provided

that original executed counterparts are sent to the recipient on the next business day following the facsimile or email transmission.

18.18 Attorneys' Fees. If any action or proceeding is instituted to enforce or interpret any provision of this Agreement, the prevailing Party therein shall be entitled to recover its attorneys' fees and costs from the other Party.

18.19 Notices. Any notice to be given hereunder to either Party or to the Escrow Holder shall be in writing and shall be given by personal delivery (including express or courier service), by overnight courier, or by registered or certified mail, with return receipt requested, postage prepaid and addressed as follows:

To Seller: Landsmith Appreciation Fund, LLC  
1001 Marshall Street, Ste 500  
Redwood City, CA 94063  
Attention: James L Breitenstein  
Telephone (m): 415-652-2525  
Email: james@landsmith.com

To Buyer: Dooston Gardnerville, LLC  
18120 Golden Oaks Drive  
Jamestown, CA 95327  
Attention: Darrell J Leamon  
Telephone (m): 415-802-9088  
Email: djl@terrapacific.net

To Escrow: Ticor Title Company  
1483 US Highway 395 N, Ste. B  
Gardnerville, NV 89410  
Telephone: 775-783-1400 (o)  
775-343-7759 (d)  
775-315-3018 (c)  
775-783-1449 (f)  
Email: [Rishele.thompson@ticortitle.com](mailto:Rishele.thompson@ticortitle.com).

Any Party may, by written notice to the others and to Escrow Holder, designate a different address that shall be substituted for the one specified above. Any such notice shall be deemed to have been delivered upon its actual receipt or upon refusal of the second attempt at delivery, as evidenced by the regular records of the person or entity attempting delivery.

18.20 Relationship of Parties. The Parties agree that their relationship is that of seller and buyer, respectively, and that nothing contained herein shall make either Party the



fiduciary of the other for any purpose whatsoever, nor shall this Agreement be deemed to create any form of business organization between the Parties, including without limitation a joint venture or partnership. Neither Party is granted any right or authority to assume or create any obligation or responsibility on behalf of the other Party, nor shall either Party be in any way liable for any debt of the other.

18.21 Commissions. Each Party shall indemnify, defend, protect and hold harmless the other from any loss or liability (including, without limitation, attorneys' fees) arising from such party's dealings, negotiations, or consultations with any real estate brokers or agents relating to the transactions contemplated by this Agreement.

18.22 Survival. The agreements, representations, covenants and warranties of the Parties contained herein shall survive until the last Closing pursuant to this Agreement or the Option Period Expiration Date, whichever first occurs.

18.23 Tolling. Any other provision of this Agreement notwithstanding, each Closing Date shall be tolled and extended on a day for day basis for each day that elapses after Seller has received from Buyer written notice of default of its obligations under this Agreement (which notice shall specify the default and the required cure thereof) until the date on which Seller cures such default. Buyer shall not be required to pay any fee in connection with any tolling pursuant to this Section 18.23.

18.24 Buyer's Liability to Seller upon Termination. Any contrary provision of this Agreement notwithstanding, upon termination or cancellation where this Agreement provides (expressly or to the effect that) neither Party shall have any further obligation to the other hereunder, the Buyer shall, at Buyer's expense and at Seller's election, within thirty (30) days after the Option Period Expiration Date (or earlier termination or cancellation of this Agreement) (i) remove or eliminate from any Lot not then purchased by Buyer any encumbrances and liens created in pursuit of Buyer's development or exploitation of the Property as contemplated by this Agreement; (ii) restore the legal title and the physical utility of any Lot not then purchased by Buyer to that in effect as of the date of this Agreement; and (iii) indemnify Seller (including attorney fees) in case Buyer fails to accomplish items (i) and (ii) in this sentence to the reasonable satisfaction of the Seller. Buyer's obligations under this Section 18.24 are called "indemnity" as that word is used in the last sentence of Section 17.3 and Section 17.4.

18.25 Responsibility for HOA Assessments. Buyer shall be responsible for all HOA assessments imposed on each Lot purchased by Buyer pursuant to this Agreement and each other lot shown on the Heritage Map purchased by Buyer pursuant to any other agreement between Buyer and Seller to the extent the Builder of such lot is responsible therefor under the HOA budget, and Seller shall be responsible for all HOA assessments imposed on the lots shown on the Heritage Map during Seller's period of ownership thereof to the extent the Declarant is responsible therefor under the HOA budget. Notwithstanding the preceding sentence, (i) Buyer also shall be responsible for all assessments designated for the HOA reserve account (and/or for the cost of all capital improvements made in lieu of assessments for the HOA reserve account) that otherwise would have been payable by Seller pursuant to the preceding sentence, (ii) to the extent that Seller pays any assessment on a Lot pursuant to the preceding sentence that is allocable to a period of time following Seller's ownership thereof, such assessment shall be



prorated at the Closing for such Lot in the manner specified in Section 6.2; and (iii) to the extent that Buyer pays (pursuant to this Agreement or any other agreement between Buyer and Seller) any assessment for which Seller is responsible under the preceding sentence, Seller shall reimburse Buyer therefor within thirty (30) days following Buyer's delivery to Seller of evidence acceptable to Seller in its reasonable discretion substantiating the assessments for which Buyer is entitled to reimbursement hereunder.

18.26 Seller Responsibility to Reimbursements. Seller agrees to timely reimburse Buyer for Seller's share of past and future expenses paid by Buyer for the benefit of Seller in connection with i) payment of real property taxes and ii) transaction costs for the exchange of Lots 34 & 38. Such reimbursement will be made upon Buyer's presentation to Seller of its payment records and documentation supporting Seller's responsibility. Buyer agrees to accept such reimbursement(s) as credits in escrow of future Lot purchases, if so requested by Seller.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

BUYER:

Dooston Gardnerville, LLC

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

Its: \_\_\_\_\_

Date: \_\_\_\_\_

SELLER:

Landsmith Appreciation Fund, LLC

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

Its: \_\_\_\_\_

Date: \_\_\_\_\_

- Exhibit A - Real Property
- Exhibit B - Grant Deed
- Exhibit C - Assignment & Bill of Sale
- Exhibit D - Phasing Plan

Seller Initials \_\_\_\_\_

Buyer Initials \_\_\_\_\_

**ACCEPTANCE BY ESCROW HOLDER:**

Ticor Title Company hereby acknowledges that it has received a fully executed counterpart of the foregoing Agreement, Purchase and Sale of Real Property and Joint Escrow Instructions ("Agreement") and agrees to act as the Escrow Holder under the Agreement and to be bound by and perform the terms thereof as such terms apply to the Escrow Holder.

ESCROW:

Ticor Title Company

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

Its: \_\_\_\_\_

Date: \_\_\_\_\_

Example Only

EXHIBIT A

Real Property

The land situated in the County of Douglas, State of Nevada, described as follows:

LOTS 1 THROUGH 17 INCLUSIVE, 34, 39 THROUGH 42 INCLUSIVE, 44 THROUGH 61 INCLUSIVE AND THE COMMON AREA, AS SHOWN ON THE FINAL MAP HERITAGE NEVADA SENIOR HOUSING, A PLANNED DEVELOPMENT #PD 05-003, RECORDED IN THE OFFICE OF THE DOUGLAS COUNTY RECORDER, STATE OF NEVADA, ON SEPTEMBER 11, 2006, IN BOOK 0906, PAGE 2968, AS DOCUMENT NO. [684198](#), OFFICIAL RECORDS.

Example Only

**EXHIBIT B**

A.P.N.:  
File No:  
R.P.T.T.:        \$

When Recorded Mail To: Mail Tax Statements To:  
Dooston Gardnerville, LLC  
18120 Golden Oaks Drive  
Jamestown, CA 95327  
Attention: Darrell J Leamon

**GRANT, BARGAIN AND SALE DEED**

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

LandSmith Appreciation Fund, LLC

do(es) hereby GRANT, BARGAIN and SELL to

Dooston Gardnerville, LLC

the real property situate in the County of Douglas, State of Nevada, described as follows:

LOT(S) \_\_\_\_\_ AS SHOWN ON THE FINAL MAP HERITAGE NEVADA SENIOR HOUSING, A  
PLANNED DEVELOPMENT #PD 05-003, RECORDED IN THE OFFICE OF THE DOUGLAS COUNTY RECORDER,  
STATE OF NEVADA, ON SEPTEMBER 11, 2006, IN BOOK 0906, PAGE 2968, AS DOCUMENT NO. 684198,  
OFFICIAL RECORDS.

Subject to:  
All general and special taxes for the current fiscal year.

Covenants, Conditions, Restrictions, Reservations, Rights, Rights of Way and Easements now of record.

TOGETHER with all tenements, hereditaments and appurtenances, including easements and water rights,  
if any, thereto belonging or appertaining, and any reversions, remainders, rents, issues or profits thereof.

LandSmith Appreciation Fund, LLC

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

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

Date: \_\_\_\_\_

**EXHIBIT C**

**ASSIGNMENT AND BILL OF SALE**

For valuable consideration received, the undersigned ("Seller") does HEREBY BARGAIN, SELL AND CONVEY to Dooston Gardnerville, LLC ("Buyer"), all that personal property as described in that certain agreement of Agreement for Purchase and Sale of Real Property and Joint Escrow Instructions dated \_\_\_\_\_ (the "Agreement") between Seller and Buyer pertaining to certain real property located in Douglas County, Nevada.

Seller does hereby warrant, represent to and covenant to and with said Buyer that at the time of execution hereof, Seller is in lawfully possession in his/her own right of a good title to the above described personal property and that he has good right and lawful authority to sell and deliver the same, and that the same is free of all encumbrances of whatsoever kind or nature, except as disclosed by Seller pursuant to the Agreement.

EXCEPT AS SET FORTH IN THE PRECEDING PARAGRAPH, THE PERSONAL PROPERTY IS BEING TRANSFERRED BY SELLER ON AN "AS IS" BASIS, WITHOUT ANY REPRESENTATIONS OR WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, OF ANY KIND WHATSOEVER. WITHOUT LIMITING THE GENERALITY OF THE PRECEDING SENTENCE, BUYER ACKNOWLEDGES THAT SELLER EXPRESSLY DISCLAIMS AND NEGATES, AS TO ALL PERSONAL PROPERTY TRANSFERRED HEREBY: (i) ANY IMPLIED OR EXPRESS WARRANTY OF MERCHANTABILITY; (ii) ANY IMPLIED OR EXPRESS WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (iii) ANY IMPLIED OR EXPRESS WARRANTY OF CONFORMITY TO MODELS OR MATERIALS; AND (iv) ANY IMPLIED OR EXPRESS WARRANTY WITH RESPECT TO THE AVAILABILITY OR UTILITY OF ANY PERMITS, APPROVALS AND/OR CREDITS INCLUDED IN SUCH PERSONAL PROPERTY.

LandSmith Appreciation Fund, LLC

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

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

Date: \_\_\_\_\_