

RESOLUTION NO. 4561
(Direct Land Sale of 1.58 Acres +/-, to Henderson Pinnacle NewCo, LLC)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HENDERSON, NEVADA EXPRESSING ITS INTENT TO SELL APPROXIMATELY 1.58 ACRES, MORE OR LESS, OF REAL PROPERTY, IDENTIFIED AS ASSESSOR'S PARCEL NUMBER 178-26-101-001 LOCATED IN THE NORTHWEST QUARTER (NW 1/4) OF SECTION 26, TOWNSHIP 22 SOUTH, RANGE 62 EAST, M.D.M., TO HENDERSON PINNACLE NEWCO, LLC, A NEVADA LIMITED LIABILITY COMPANY FOR \$90,000.00, PURSUANT TO THE PROVISIONS OF NRS 268.061(1)(e)(1)(II).

- WHEREAS, the City of Henderson ("City") is the owner of approximately 1.58 acres, more or less, of vacant real property currently zoned DH (Development Holding), located in the Northwest Quarter (NW 1/4) of Section 26, Township 22 South, Range 62 East, M.D.M., further identified as Clark County Assessor's Parcel Number ("APN") 178-26-101-001 (the "City Property"); and
- WHEREAS, Henderson Pinnacle NewCo, LLC ("Buyer") owns property adjacent to the City Property, identified as APN 178-26-112-001 (the "Buyer's Property"); and
- WHEREAS, Buyer desires to purchase the City Property, to combine with the Buyer's Property; and
- WHEREAS, the City has obtained two independent appraisals of the City Property, which indicate a market value of Ninety Thousand and 00/100 Dollars (\$90,000.00); and
- WHEREAS, Buyer will pay all costs associated with mapping and conveyance of the City Property to Buyer, including the cost of appraisals, title reports, and noticing the sale, along with all closing costs; and
- WHEREAS, the sale of the City Property to Buyer will have no adverse effect on the City's use and operation of municipal utilities on the City Property, nor on any other public utility's current use and operation of public facilities on the City Property; and
- WHEREAS, the sale of the City Property is in the best interest of the City; and
- WHEREAS, pursuant to the provisions of Nevada Revised Statutes ("NRS") 268.061(1)(e)(1)(II), the City may sell real property owned by the City to a person who owns real property located adjacent to the real property being sold, without first offering the real property to the public, provided that the City Council of the City of Henderson ("City Council") has determined by resolution that the sale would be in the best interest of the City and the real property is a parcel that, as a result of its size, is too small to establish an economically viable use by anyone other than the person who owns real property adjacent to the real property offered for sale; and

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Henderson,

Nevada that:

SECTION 1. In accordance with NRS 268.061(1)(e)(1)(II), the City Council hereby finds that the sale of the real property identified in the Notice of Sale attached hereto as Exhibit A, consisting of 2 pages, and the Purchase and Sale Agreement and Joint Escrow Instructions, between Buyer and the City ("PSA") attached hereto as Exhibit B, consisting of 22 pages, in the manner set forth in this Resolution, Notice of Sale, and PSA, is in the best interest of the City.

SECTION 2. The sale of the City Property shall be subject to receipt and acceptance by City Council of the PSA executed by Buyer, in accordance with the terms and conditions set forth herein, including the requirement that the City Property be remapped with the Buyer's Property into one (1) legal parcel within one hundred eighty (180) days following the Closing Date, and such additional terms and conditions as may be approved by the City Council.

SECTION 3. The public meeting at which City Council will consider and possibly accept and approve the PSA for the City Property is March 19, 2024, at 4:00 p.m. or as soon after such time as practical, in the City Council Chambers, 240 Water Street, Henderson, Nevada 89015.

SECTION 4. The City Clerk is hereby authorized and directed to post this Resolution in those designated public places within the City set forth in the Notice of Sale and to publish the Notice of Sale not less than 30 days prior to March 19, 2024.

SECTION 5. A copy of this Resolution and Notice of Sale can be obtained in the Office of the City Clerk, 240 Water Street, Henderson, Nevada.

SECTION 6. This Resolution is effective upon adoption unless stated otherwise in the notice.

//

//

//

//

//

//

//

//

PASSED, ADOPTED, AND APPROVED THIS 6th DAY OF FEBRUARY, 2024, BY THE FOLLOWING ROLL-CALL VOTE OF COUNCIL.

Those voting aye:

Michelle Romero, Mayor

Councilmembers:

Carrie Cox

Jim Seebock

Dan H. Stewart

Dan K. Shaw

Those voting nay: None

Those abstaining: None

Those absent: None

Michelle Romero, Mayor

ATTEST:

Jose Luis Valdez, CMC, City Clerk

Exhibit A
NOTICE OF DIRECT LAND SALE

NOTICE IS HEREBY GIVEN that the City of Henderson, Nevada, a municipal corporation and political subdivision of the State of Nevada ("City"), intends to make a direct sale of that certain real property consisting of approximately 1.58 acres, more or less, identified as Clark County Assessor's Parcel Number 178-26-101-001, located in the Northwest Quarter (NW1/4) of Section 26, Township 22 South, Range 62 East M.D.M. as identified on Schedule 1 hereto, without first offering the property to the public and at fair market value, pursuant to the provisions of NRS 268.061(1)(e)(1)(II), subject to the following:

DATE, TIME, AND PLACE OF PROPOSED SALE; TERMS AND CONDITIONS

The Property is to be sold to Henderson Pinnacle NewCo, LLC, a Nevada limited liability company ("Buyer"), for valuable consideration, subject to all existing easements and encumbrances of record.

The public meeting at which City Council will consider and possibly accept and approve a binding purchase and sale agreement between the City and Buyer is March 19, 2024 at 4:00 P.M., or as soon after such time as practical, in the City Council Chambers, 240 Water Street, Henderson, Nevada 89015.

Resolution No. 4561 and this Notice of Direct Land Sale shall be posted at the Henderson Multigenerational Center, 250 S. Green Valley Parkway; City Hall, 240 Water Street, 1st Floor Lobbies; Whitney Ranch Recreational Center, 1575 Galleria Drive; and Fire Station No. 86, 1996 E. Galleria Drive. Any interested parties may obtain copies of the resolution and notice in the Office of the City Clerk, 240 Water Street, Henderson, Nevada.

THIS NOTICE IS GIVEN pursuant to and subject to Section 2.320 of the Charter of the City of Henderson, Nevada.

For more information, contact the City Clerk's Office at 240 Water Street, P.O. Box 95050, Henderson, Nevada 89009-5050.

Dated this 6th day of February, 2024.

JOSE LUIS VALDEZ, CMC, CITY CLERK

Schedule 1 to Notice of Direct Land Sale
Depiction of the City Property



EXHIBIT "B"
**PURCHASE AND SALE AGREEMENT
AND JOINT ESCROW INSTRUCTIONS**

THIS PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (this "Agreement") is made and entered into as of the date of City Council approval listed on the signature page hereto (the "Effective Date") by and between CITY OF HENDERSON, a municipal corporation and political subdivision of the State of Nevada, as seller ("Seller" or the "City"), and HENDERSON PINNACLE NEWCO, LLC, a Nevada limited liability company, as buyer ("Buyer"). Seller and Buyer may hereinafter be referred to individually as a "Party" and collectively as "Parties."

RECITALS

A. Seller owns approximately 1.58 acres, more or less, of real property located in the Northwest Quarter (NW 1/4) of Section 26, Township 22 South, Range 62 East, M.D.M., further identified as Clark County Assessor's Parcel Number ("APN") 178-26-101-001, and more particularly described on Exhibit A and depicted on Exhibit B, both of which are attached hereto and made a part hereof (together with all easements, hereditaments, and appurtenances related thereto (the "Property").

B. Buyer owns approximately 11.35 acres of real property identified as APN 178-26-112-001, located immediately adjacent to the Property ("Buyer's Property").

C. The Property is located in hillside terrain, with limited access.

D. Buyer desires to purchase the Property for the purpose of combining the Property with Buyer's Property into one legal parcel.

E. Pursuant to the provisions of Nevada Revised Statutes ("NRS") 268.061(1)(e)(1)(II), Seller may sell real property owned by Seller to a person who owns real property located adjacent to the real property being sold, without first offering the real property to the public, provided that the City Council of the City of Henderson ("City Council") has determined by resolution that the sale is in the best interest of the City and the real property is a parcel that, as a result of its size, is too small to establish an economically viable use by anyone other than the person who owns real property adjacent to the real property offered for sale.

F. In accordance with the provisions of NRS 268.061, the City Council adopted Resolution No. _____ on _____, 20- - __, expressing its intent to sell the Property to Buyer without first offering the real property to the public, pursuant to the provisions of NRS 268.061(1)(e)(1)(II) (the "Resolution of Intent to Sell"), and approved this Agreement on the

Effective Date, accepting Buyer's offer to purchase the Property pursuant to the terms and conditions set forth herein.

G. Buyer wishes to purchase, and Seller wishes to sell, the Property subject to the terms and conditions set forth in this Agreement.

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Buyer and Seller agree that the foregoing recitals are true and correct and incorporated herein by this reference and as follows:

1. **DEFINITIONS.** For the purposes of this Agreement the following terms are defined as follows:

“Business Day” means any calendar day other than a Friday, Saturday, or Sunday, or a holiday observed by the State of Nevada or United States federal government.

“Closing” or any derivative thereof or “Close of Escrow” means the consummation of the purchase and sale transaction contemplated under this Agreement for the Property, as evidenced by the recording of the Deed in the Official Records.

“Escrow Holder” means Fidelity National Title Company, 8363 W. Sunset Road, Suite 100, Las Vegas, NV 89113.

“Official Records” means the records of the Office of the County Recorder of Clark County, Nevada.

“Title Company” means Fidelity National Title Company, 8363 W. Sunset Road, Suite 100, Las Vegas, NV 89113.

2. PURCHASE AND SALE OF PROPERTY.

2.1. Purchase and Sale. Upon and subject to the terms and conditions set forth in this Agreement, Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, the Property.

2.2. Purchase Price. The price to be paid by Buyer to Seller for the purchase of the Property is Ninety Thousand and 00/100 Dollars (\$90,000.00) (the “Purchase Price”). Buyer shall deliver the entire amount of the Purchase Price into escrow on or prior to the Closing.

2.3. Closing. The transactions contemplated hereby shall close through Escrow (defined below) on a date mutually agreed by the parties (the “Closing Date”), provided that, if the parties do not designate an earlier Closing Date, the closing shall take place no later than April 18, 2024 (as amended by any extensions, the “Outside Closing Date”), and further provided that, the Parties may mutually agree to extend the Outside Closing Date for up to two (2) consecutive thirty (30) day periods by delivering written notice of such extension to Seller and Escrow Holder on or before the then-applicable Outside Closing Date.

2.4. Mapping. Within one hundred eighty (180) days following the Closing Date, Buyer shall have the Property re-mapped to combine the Property with the Buyer’s Property. Buyer is responsible for the cost of all fees and expenses incurred in the satisfaction of this condition. This provision shall survive expiration of this Agreement.

3. **ESCROW.**

3.1. Opening of Escrow. Promptly following the mutual execution of this Agreement, Buyer and Seller shall open an escrow (the “Escrow”) with Escrow Holder by delivering to Escrow Holder an executed original or copy of this Agreement. Upon receipt of the foregoing by Escrow Holder (the “Opening of Escrow”), Escrow Holder shall sign and date the Joinder by Escrow Holder below and deliver a copy of the fully executed Agreement to Seller and Buyer confirming the Opening of Escrow. The purchase and sale of the Property will be completed through the Escrow.

3.2. Cancellation of Escrow. In the event that this Agreement is terminated pursuant to Sections 14.1 or 14.2 because of the default of one of the Parties, the defaulting Party shall pay all costs of cancellation of Escrow and the Parties shall be released from any and all obligations (except for those that expressly survive termination) under this Agreement. If the Closing does not take place on or before the Outside Closing Date for any reason other than a default by one of the Parties pursuant to Sections 14.1 or 14.2, Buyer shall pay all costs related to the termination of Escrow.

3.3. Closing Statement. Not later than five (5) Business Days prior to the Closing Date, Escrow Holder shall deliver to each of the Parties for its review and approval a preliminary Closing statement setting forth the Closing costs allocable to each Party. Based on each of the Parties’ reasonable comments thereto, if any, Escrow Holder shall revise the same and each of the Parties shall, subject to reasonable approval and to the extent required by Escrow Holder, deliver a final closing statement to Escrow Holder (each, a “Closing Statement”).

4. **CONDITION OF TITLE**

4.1. Condition of Title.

(a) Buyer may obtain a commitment of title insurance insuring title to the Property (the "Title Commitment"). Seller shall provide any documents or instruments reasonably requested by Escrow Holder for the issuance of the Title Commitment to Buyer, provided that Buyer must cause Title Company to deliver the Title Commitment, together with legible copies of all of the exception documents and instruments referenced therein, to Buyer and Seller not less than ten (10) days from the Opening of Escrow.

4.2. Access to Property. Buyer's access to the Property prior to the Closing shall be subject to Buyer entering into a separate written Right of Entry and Liability Release Agreement, in form and substance acceptable to the City in its sole and absolute discretion, between Buyer and Seller for the limited purpose of Buyer and its agents inspecting the Property, as more fully set forth therein.

4.3. Survey. Buyer may, at its sole cost and expense, engage a surveyor or engineer licensed in the State of Nevada to prepare an ALTA/NSPS survey of the Property (the "Survey"), utilizing the Title Commitment. Any Survey shall specify the area of the Property, shall identify all locatable exceptions to title, shall locate all improvements on the Property, and identify any encroachments on the Property. Upon completion of such Survey, Buyer shall deliver an electronic copy of the Survey to Seller at no cost to Seller.

5. **DELIVERIES TO ESCROW HOLDER.**

5.1. By Seller. On the Closing Date, Seller will deliver or cause to be delivered to Escrow Holder the following (collectively, "Seller's Closing Deliveries"):

(a) One (1) original Grant, Bargain, Sale Deed, substantially in the form set forth on Exhibit C attached hereto ("Deed"), duly executed by Seller, notarized, and in recordable form;

(b) One (1) original counterpart of the State of Nevada Declaration of Value with respect to the Property ("Declaration of Value"), duly executed by Seller and in recordable form;

(c) One (1) original of the Closing Statement executed by Seller; and

(d) Such other documents or instruments reasonably requested by Escrow Holder to consummate the transactions contemplated under this Agreement.

5.2. By Buyer. Not later than 10:00 a.m. Pacific Standard Time on the Closing Date, Buyer will deliver or cause to be delivered to Escrow Holder the following (collectively, “Buyer’s Closing Deliveries”):

(a) By wire transfer, immediately available federal funds in an amount equal to the Purchase Price, plus Buyer’s costs and expenses to be paid through Escrow pursuant to Section 9.2 and Section 9.3 and in accordance with the Closing Statement;

(b) One (1) original counterpart of the Declaration of Value, duly executed by Buyer and in recordable form;

(c) One (1) original of the Closing Statement executed by Buyer; and

(d) Such other documents or instruments reasonably requested by Escrow Holder to consummate the transactions contemplated under this Agreement or for the issuance of Buyer’s Title Policy to Buyer.

6. CONDITION OF THE PROPERTY. THE SALE OF THE PROPERTY HEREUNDER IS AND WILL BE MADE ON AN “AS IS, WHERE IS” BASIS AND WITHOUT REPRESENTATIONS AND WARRANTIES OF ANY KIND OR NATURE, EXPRESS, IMPLIED OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, ANY REPRESENTATION OR WARRANTY CONCERNING TITLE TO THE PROPERTY, THE PHYSICAL CONDITION OF THE PROPERTY (INCLUDING, BUT NOT LIMITED TO, THE PRESENCE OR ABSENCE OF HAZARDOUS SUBSTANCES ON OR RESPECTING THE PROPERTY), THE COMPLIANCE OF THE PROPERTY WITH APPLICABLE LAWS AND REGULATIONS (INCLUDING, BUT NOT LIMITED TO, ZONING AND BUILDING CODES OR THE STATUS OF DEVELOPMENT OR USE RIGHTS RESPECTING THE PROPERTY), THE FINANCIAL CONDITION OF THE PROPERTY OR ANY OTHER REPRESENTATION OR WARRANTY RESPECTING ANY INCOME, EXPENSES, CHARGES, LIENS OR ENCUMBRANCES, RIGHTS OR CLAIMS ON, AFFECTING OR PERTAINING TO THE PROPERTY OR ANY PART THEREOF. BUYER ACKNOWLEDGES THAT BUYER HAS EXAMINED, REVIEWED AND INSPECTED ALL MATTERS, WHICH, IN BUYER’S JUDGMENT, BEAR UPON THE PROPERTY AND ITS VALUE AND SUITABILITY FOR BUYER’S PURPOSES. BUYER WILL ACQUIRE THE PROPERTY SOLELY ON THE BASIS OF BUYER’S PHYSICAL AND FINANCIAL EXAMINATIONS, REVIEWS AND INSPECTIONS AND THE TITLE INSURANCE PROTECTION AFFORDED BY THE BUYER’S TITLE POLICY. WITHOUT LIMITING THE GENERALITY OF THIS SECTION, NO WARRANTY OR REPRESENTATION IS MADE BY SELLER AS TO FITNESS FOR ANY PARTICULAR PURPOSE, MERCHANTABILITY, ABSENCE OF DEFECTS, ABSENCE OF HAZARDOUS OR TOXIC SUBSTANCES, ABSENCE OF FAULTS, FLOODING, OR COMPLIANCE WITH LAWS

AND REGULATIONS INCLUDING, WITHOUT LIMITATION, THOSE RELATING TO HEALTH, SAFETY, AND THE ENVIRONMENT. BUYER ACKNOWLEDGES THAT BUYER HAS ENTERED INTO THIS AGREEMENT WITH THE INTENTION OF MAKING AND RELYING UPON ITS OWN INVESTIGATION OF THE PHYSICAL, ENVIRONMENTAL, ECONOMIC USE, COMPLIANCE, AND LEGAL CONDITION OF THE PROPERTY AND THAT BUYER IS NOT NOW RELYING, AND WILL NOT LATER RELY, UPON ANY REPRESENTATIONS AND WARRANTIES MADE BY SELLER OR ANYONE ACTING OR CLAIMING TO ACT, BY, THROUGH OR UNDER OR ON SELLER'S BEHALF CONCERNING THE PROPERTY. Buyer represents and warrants to Seller that it has fully reviewed the disclaimers and waivers set forth in this Agreement with its counsel and understands the significance and effect thereof. Buyer acknowledges and agrees that the disclaimers and other agreements set forth herein are an integral part of this Agreement and that Seller would not have agreed to sell the Property to Buyer for the Purchase Price without this disclaimer and other agreements set forth herein.

7. CONDITIONS PRECEDENT TO BUYER'S OBLIGATIONS. Buyer's obligations to purchase the Property and Close Escrow are conditioned upon the satisfaction of the following conditions precedent:

7.1. Representations, Warranties and Covenants of Seller. Seller will have duly performed each and every covenant to be performed by Seller hereunder, and Seller's representations and warranties set forth in this Agreement will be true and correct as of the Closing Date.

7.2. Seller's Deliveries. Seller will have delivered each of Seller's Closing Deliveries.

The conditions set forth in this Section 7 are solely for the benefit of Buyer and may be waived only by Buyer. If any condition precedent to Buyer's obligations is not satisfied on or before the Closing Date, and Buyer has not waived the unsatisfied condition, Buyer may terminate this Agreement. If Buyer fails to terminate this Agreement as provided in this Section 7 and proceeds to Close Escrow, Buyer shall be deemed to have approved all matters pertaining to or affecting the Property and waived any such condition.

8. CONDITIONS PRECEDENT TO SELLER'S OBLIGATIONS. Seller's obligations to sell the Property and Close Escrow are conditioned upon the satisfaction of the following conditions precedent:

8.1. Representations, Warranties, and Covenants of Buyer. Buyer will have duly performed each and every covenant to be performed by Buyer hereunder and Buyer's

representations and warranties set forth in this Agreement will be true and correct as of the Closing Date.

8.2. Buyer's Deliveries. Buyer will have delivered each of Buyer's Closing Deliveries.

The conditions set forth in this Section 8 are solely for the benefit of Seller and may be waived only by Seller in writing. If any condition precedent to Seller's obligations is not satisfied on or before the Closing Date, and Seller has not waived the unsatisfied conditions, Seller may terminate this Agreement.

9. **COSTS AND EXPENSES.**

9.1. Seller's Costs and Expenses. Except as otherwise set forth herein, Seller will pay its own legal fees and professional fees incurred from any third-party consultants retained by Seller associated with this Agreement and any other costs or expenses to be paid by Seller pursuant to any provision of this Agreement.

9.2. Buyer's Costs and Expenses. Buyer will pay the following costs and expenses associated with this Agreement:

- (a) all document recording charges;
- (b) all documentary and real property transfer taxes;
- (c) all Escrow fees and costs, subject to Section 3.2;
- (d) all endorsements to and premiums for the Buyer's Title Policy, including any charges or incremental increase in the premium for the Buyer's Title Policy incurred as a result of any title policy endorsements requested by Buyer;
- (e) all of Buyer's own due diligence expenses, including expenses for any inspections undertaken, and for a Phase I or Phase II Environmental Site Assessment, if ordered by Buyer;
- (f) all legal fees and professional fees of other consultants incurred by Buyer, and any costs or expenses to be paid by Buyer pursuant to any provision of this Agreement; and
- (g) any other cost or expense expressly required to be paid by Buyer pursuant to Section 9.3 or any other provision of this Agreement.

9.3. Reimbursement for City Expenses. At Closing, Buyer will reimburse the City for the following costs and expenses associated with this Agreement (the “City’s Reimbursable Costs”):

(a) the actual amount charged by the Title Company for preliminary title reports, if any, in an amount up to One Hundred Fifty and 00/100 Dollars (\$150); and

(b) the City’s actual cost of publishing the Notice of Sale, in an amount to be provided to Escrow Holder by the City prior to the Close of Escrow, up to Five Hundred and 00/100 Dollars (\$500.00); and

(c) the City’s actual costs of obtaining appraisals consistent with NRS 268.061 et seq, in an amount to be provided to Escrow Holder by the City prior to the Close of Escrow.

10. **DISBURSEMENTS AND OTHER ACTIONS BY ESCROW HOLDER.** At the Close of Escrow, upon Buyer’s and Seller’s completion of the deliveries pursuant to Sections 5.1 and 5.2, Escrow Holder will promptly undertake all of the following:

10.1. Documents. Assemble original documents from the delivered counterparts, and confirm that all dates and other blanks are properly completed and that all exhibits are attached and the documents to be recorded pursuant to Section 10.3 are in the proper form for recording in the Official Records;

10.2. Funds. Deliver, in cash or immediately available funds, all sums due to the Parties entitled thereto in accordance with this Agreement and the closing statement(s) approved in advance by Seller and Buyer;

10.3. Recording. Cause the Deed and Declaration of Value to be recorded in the Official Records.

10.4. Buyer’s Title Policy. If purchased by the Buyer, Escrow Holder shall deliver to Buyer a title insurance policy, in accordance with the Title Commitment, showing title to the Property vested in Buyer (“Buyer’s Title Policy”).

10.5. Distribution of Documents. Distribute the original recorded Deed and Declaration of Value to Buyer and copies of the recorded documents, together with a copy of the final executed Closing Statement, to the Party that did not receive the original.

11. **REPRESENTATIONS AND WARRANTIES.** The following constitute representations and warranties of the Buyer:

11.1. Authority. Buyer has the legal power, right and authority to enter into this Agreement and the instruments referenced herein, and to consummate this transaction.

11.2. Authorization. All requisite action (corporate, trust, partnership or otherwise) has been taken by Buyer in connection with this Agreement, the instruments referenced herein, and the consummation of this transaction. No further consent of any partner, shareholder, creditor, investor, judicial or administrative body, governmental authority or other party is required for Buyer to consummate the transactions described herein.

11.3. Binding Agreement. This Agreement and all other documents required to close this transaction are, and at the Closing will be, valid, legally binding obligations of and enforceable against Buyer in accordance with their terms, subject only to applicable bankruptcy, insolvency, reorganization, moratorium laws or similar laws or equitable principles affecting or limiting the rights of contracting parties generally.

Each of the representations and warranties made in this Section 11 and under any other provision of this Agreement shall be true and correct in all material respects on the Effective Date, and shall be deemed to be made again as of the Close of Escrow, and shall then be true and correct in all material respects. All representations and warranties under this Section 11 shall survive the Closing for a period of six (6) months.

12. **NOTICES**. All notices or other communications required or permitted hereunder must be in writing and be personally delivered (including by means of professional messenger service) or sent by registered or certified mail, postage prepaid, return receipt requested to the addresses set forth below or such other address as the applicable Party may designate pursuant to the provisions of this Section 12:

Seller:	<i>if sent by U.S. Postal Service:</i> City of Henderson MSC 131 P.O. Box 95050 Henderson, Nevada 89009-5050 Attn: Property Management	<i>if personally delivered:</i> City of Henderson 240 Water Street Henderson, Nevada 89015 Attn: Property Management
with a copy to:	<i>if sent by U.S. Postal Service:</i> City of Henderson MSC 144 P.O. Box 95050 Henderson, Nevada 89009-5050	<i>if personally delivered:</i> City of Henderson 240 Water Street Henderson, Nevada 89015 Attn: City Attorney

Attn: City Attorney

Buyer: Henderson Pinnacle NewCo, LLC
Attention: Jonathan Lawrence
37 W 26th Street 1204
New York, New York, 10010

Escrow Holder: to the Address set forth in Section 1 in the definition of Escrow Holder

All notices will be deemed received upon the earlier of (i) if personally delivered, the date of confirmation of delivery or refusal to the address of the person to receive such notice, or (ii) if mailed, on the date of confirmed receipt or refusal.

13. **BROKERS.** Buyer represents to Seller that Buyer did not use the services of any real estate broker or person that may claim a commission or finder's fee with respect to this transaction Buyer agrees to indemnify, defend and hold harmless Seller from any liability arising out of actions of Buyer that may be made against Seller by any person, firm or corporation for the payment of a commission or finder's fee in connection with this Agreement, and this obligation shall survive the expiration or earlier termination of this Agreement.

14. **DEFAULT; REMEDIES; INDEMNIFICATION.**

14.1. Default by Seller. Subject to the notice and cure period set forth in Section 14.3, the occurrence of any of the following on or prior to Closing shall be a default by Seller hereunder: (i) the failure of Seller to timely deliver to the Escrow Holder any of Seller's Closing Deliveries; (ii) the failure of Seller to timely perform any material act to be performed by it, to refrain from performing any material prohibited act, or to fulfill any material condition to be fulfilled by it under this Agreement, or under any agreement referred to herein or attached hereto as an exhibit; or (iii) any of Seller's representations, warranties or covenants contained herein shall be untrue in any material respect as of the Effective Date or the Closing Date. In the event that the Close of Escrow and the consummation of the transaction contemplated by this Agreement do not occur by reason of such an uncured default by Seller, Buyer shall be entitled, as Buyer's exclusive remedy, to terminate this Agreement upon Buyer's written instructions to Escrow Holder; provided, however, Seller shall be given an opportunity to dispute the default in writing. In the event this Agreement is terminated pursuant to this Section 14.1 following a default by Seller, the Parties shall have no other obligations to one another except those that expressly survive.

14.2. Default by Buyer. Subject to the notice and cure period set forth in Section 14.3, the occurrence of any of the following on or prior to Closing shall be a default by Buyer hereunder: (i) the failure of Buyer to timely deliver to the Escrow Holder any of Buyer's Closing Deliveries; (ii) the failure of Buyer to timely perform any material act to be performed by it, to refrain from performing any material prohibited act, or to fulfill any material condition to be fulfilled by it under this Agreement, or under any agreement referred to herein or attached hereto as an exhibit; or (iii) any of Buyer's representations, warranties or covenants contained herein shall be untrue in any material respect as of the Effective Date or the Closing Date. In the event that the Close of Escrow and the consummation of the transaction contemplated by this Agreement do not occur by reason of such an uncured default by Buyer, Seller shall be entitled to terminate this Agreement upon Seller's written instructions to Escrow Holder. In the event of a Buyer default hereunder, Buyer shall be responsible for paying any Escrow fees, any accrued Buyer's costs pursuant to Section 9.2 and the City's Reimbursable Costs (collectively, the "Costs").

14.3. Cure Period. Neither Party shall avail itself of any remedy granted to it hereunder based upon an alleged default of the other Party hereunder unless and until written notice of the alleged default, in reasonable detail, has been delivered to the defaulting Party by the non-defaulting Party and the alleged default has not been cured on or before 5:00 p.m. (local time) on the fifth (5th) Business Day next following delivery of said notice of default, except as otherwise specifically set forth herein. Notwithstanding the foregoing, there shall be no cure period for a Party's failure to close on the Closing Date, to make its required deposits of the Closing deliverables or for its representations and warranties to be true and correct and accurate as of the Closing Date.

14.4. Damages. Notwithstanding the foregoing or any other provision of this Agreement to the contrary, Seller shall not bear any liability to Buyer under this Agreement for loss of business, loss of income or lost profits or any other indirect, punitive, special, or consequential damages, even if advised of the possibility of such damages. Except as otherwise expressly limited herein, no right or remedy herein conferred upon or reserved to Seller is intended to be exclusive of any other remedy or right, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given hereunder or not or hereafter existing by agreement, applicable law or in equity.

14.5. Non-Liability of Officials and Employees of the City. No member, official or employee of Seller shall be personally liable to Buyer, or any successor in interest, in the event of any default or breach by Seller or for any amount which may become due to Buyer or its successors, or on any obligations under the terms of this Agreement.

14.6. Indemnities Not Affected. Notwithstanding the limitation of remedies set forth in this Section 14, nothing herein shall limit or modify a Party's indemnity obligations under this

Agreement, which shall survive the termination of this Agreement; nor shall Section 13 limit or modify any duty or obligation, or breach thereof under this Agreement which expressly survives termination of this Agreement.

15. **CASUALTY OR CONDEMNATION.** If, after the Effective Date and prior to the Closing Date, any portion of the Property is damaged by a natural disaster or other casualty or is taken by exercise of the power of eminent domain or any proceedings are threatened or instituted to effect such a taking, Seller shall promptly give Buyer notice of such occurrence, and if in the commercially reasonable judgment of Buyer such casualty or condemnation is material, Buyer shall, within ten (10) days after receipt of such notice, elect either (i) to terminate this Agreement and all obligations of the Parties hereunder shall cease and this Agreement shall have no further force and effect, except as to those obligations which provide that they survive termination of this Agreement, or (ii) perform the Closing as scheduled (except that if the Closing Date is sooner than ten (10) days following Buyer's receipt of such notice, Closing shall be delayed until Buyer makes such election), without any abatement of or adjustment to the Purchase Price, or any right of Buyer to any condemnation award or insurance proceeds which may be received by Seller.

16. **MISCELLANEOUS.**

16.1. Possession of the Property. Seller will deliver possession of the Property to Buyer upon the Close of Escrow.

16.2. Time of the Essence. Time is of the essence with respect to the performance of this Agreement.

16.3. Counterparts; Signatures. This Agreement may be executed electronically and in counterparts, each of which shall be deemed to be an original instrument but all of which together shall constitute one agreement.

16.4. Severability. If any term or provision of this Agreement shall be deemed to be invalid or unenforceable to any extent, the remainder of this Agreement will not be affected thereby, and each remaining term and provision of this Agreement will be valid and be enforced to the fullest extent permitted by law.

16.5. Waivers. No waiver of any breach or any covenant or provision contained herein will be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision contained herein. No extension of time for performance of any obligation or act will be deemed an extension of the time for performance of any other obligation or act except those of the waiving Party, which will be extended by a period of time equal to the period of the delay. No waiver shall be binding unless executed in writing by the Party making the waiver.

Any failure or delay in giving a notice of a default shall not constitute a waiver of any default. Any failure or delay by any Party in asserting any of its rights or remedies in respect of any default shall not operate as a waiver of any default or of any such rights or remedies, or deprive such Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any of its rights or remedies.

16.6. Assignment; Successors and Assigns. This Agreement is binding upon and inures to the benefit of the permitted successors and assigns of the Parties hereto. Neither all nor any portion of Buyer's interest under this Agreement may be sold, assigned, encumbered, conveyed, or otherwise transferred, whether directly or indirectly, voluntarily, or involuntarily, or by operation of law or otherwise, including by a transfer of interests in Buyer either directly or indirectly (collectively, a "Transfer"). Any attempted Transfer shall be null and void. No Transfer or attempted Transfer shall operate to release Buyer or alter Buyer's primary liability to perform its obligations under this Agreement.

16.7. Entire Agreement; Modification. This Agreement constitutes the entire contract between the Parties hereto and supersedes all prior agreements and communications between Buyer and Seller. Any amendment, alteration, change or modification of or to this Agreement, in order to become effective, shall be made in writing and in each instance signed on behalf of each Party and, if applicable, approved by the City Council and in accordance with any applicable City signature policy.

16.8. Construction. This Agreement has been mutually negotiated by Buyer and Seller. Seller and Buyer and their respective advisors believe that this Agreement is the product of all of their efforts, that it expresses their agreement and that it should not be interpreted in favor or against either Buyer or Seller.

16.9. Governing Law, Jurisdiction and Venue. The Parties expressly agree that this Agreement shall be governed by and construed and interpreted in accordance with the substantive and procedural laws of the State of Nevada, without giving effect to its choice or conflicts of law provisions. All actions shall be initiated in the courts of Clark County, Nevada, or the federal district court with jurisdiction over Clark County, Nevada. The Parties irrevocably agree to submit to the exclusive jurisdiction of the courts located in Clark County, Nevada over any dispute or matter arising under or in connection with this Agreement.

16.10. Jury Trial Waiver. EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IT HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR

RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (i) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THIS WAIVER, (ii) IT UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF SUCH WAIVER, (iii) IT MAKES SUCH WAIVER VOLUNTARILY, AND (iv) IT HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVER AND CERTIFICATION IN THIS SECTION 16.10.

16.11. Approvals. The sale of City-owned property does not constitute an endorsement or approval of any development plans or a commitment or guarantee for water or sanitary sewer service. Provision of these services is administered pursuant to Titles 13 and 19 of the Henderson Municipal Code. Buyer understands the Property will be subject to requirements for development per the Henderson Municipal Code, as amended from time-to-time.

16.12. Zoning and Entitlements. The City of Henderson Comprehensive Plan and zoning ordinances and regulations adopted pursuant to the Comprehensive plan (each, as amended from time-to-time) are subject to change and do not create any property interest in the Buyer. Any proposed use of the Property must be compatible with the City of Henderson Comprehensive Plan and applicable zoning and all other requirements of applicable law.

16.13. City Council Approval. This Agreement shall not be binding upon Seller until it is approved by the City Council and executed and delivered on behalf of Seller.

16.14. No Recording. Neither this Agreement nor any memorandum hereof shall be recorded in the Official Records.

16.15. Third-Party Beneficiaries. This Agreement is for the sole and exclusive benefit of the Parties and their respective, permitted successors and assigns, and no third party is contemplated to or shall have any rights hereunder.

16.16. Interpretation. Whenever the words “include,” “includes” or “including” are used in this Agreement they shall be deemed to be followed by the words “without limitation.” The words “hereof”, “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. References to a person are also to his, her or its successors and permitted assigns. The masculine, feminine, or neuter gender, and the singular and plural number, shall each be considered to include the others whenever the context so requires. The headings and captions herein are inserted for convenient reference only and the same shall not limit nor construe the paragraphs or sections to which they apply nor otherwise affect the interpretation hereof. Unless

otherwise expressly provided herein, any agreement, instrument or statute defined or referred to herein or in any agreement or instrument defined or referred to herein means such agreement, instrument or statute as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of statutes) by succession of comparable successor statutes, and references to all attachments thereto and instruments incorporated therein. The time in which any act is to be done under this Agreement is computed by excluding the first day, and including the last day, unless the last day is a holiday or Friday, Saturday, or Sunday, and then that day is also excluded.

16.17. Further Assurances. Each Party will, whenever as reasonably requested to do so by the other Party, execute, acknowledge, and deliver, or cause to be executed, acknowledged, and delivered, any and all such further documents and do any and all other acts as may be necessary to carry out the intent and purpose of this Agreement.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

DATE OF CITY COUNCIL APPROVAL: _____, 20__.

SELLER:

CITY OF HENDERSON,

a municipal corporation and political
subdivision of the State of Nevada

APPROVED AS TO FORM:

By: _____

Richard A. Derrick
City Manager/CEO

Nicholas G. Vaskov
City Attorney

CAO

ATTEST:

APPROVED AS TO FUNDING:

Jose Luis Valdez, CMC
City Clerk

Maria Gamboa
Director of Finance

APPROVED AS TO CONTENT:

Lance M. Olson, P.E.
Director of Public Works

[Signatures continue onto the following page]

BUYER:

HENDERSON PINNACLE NEWCO, LLC

a Nevada limited liability company

By: Luxus Azure Pinnacle JV, LLC,

a Delaware limited liability company

Its: Manager

By: LMC US Corp,

a _____ corporation

Its: Manager

By: _____

Name: _____

Title: _____

By: _____

Name: Jonathan Lawrence

Its: Manager

By: _____

Name: James Reilly

Its: Manager

By: Luxus Henderson Pinnacle InvestCo, LLC,

a _____ limited liability company

Its: Manager

By: _____

Name: _____

Its: Manager

JOINDER BY ESCROW HOLDER

The undersigned joins this Agreement for the purposes of agreeing to act as Escrow Holder under this Agreement and confirms that the Opening of Escrow occurred on _____, 20__.

Fidelity National Title Company

By: _____

Name: _____

Its: _____

**EXHIBIT “A” to
PURCHASE AND SALE AGREEMENT
AND JOINT ESCROW INSTRUCTIONS**

DESCRIPTION OF THE PROPERTY

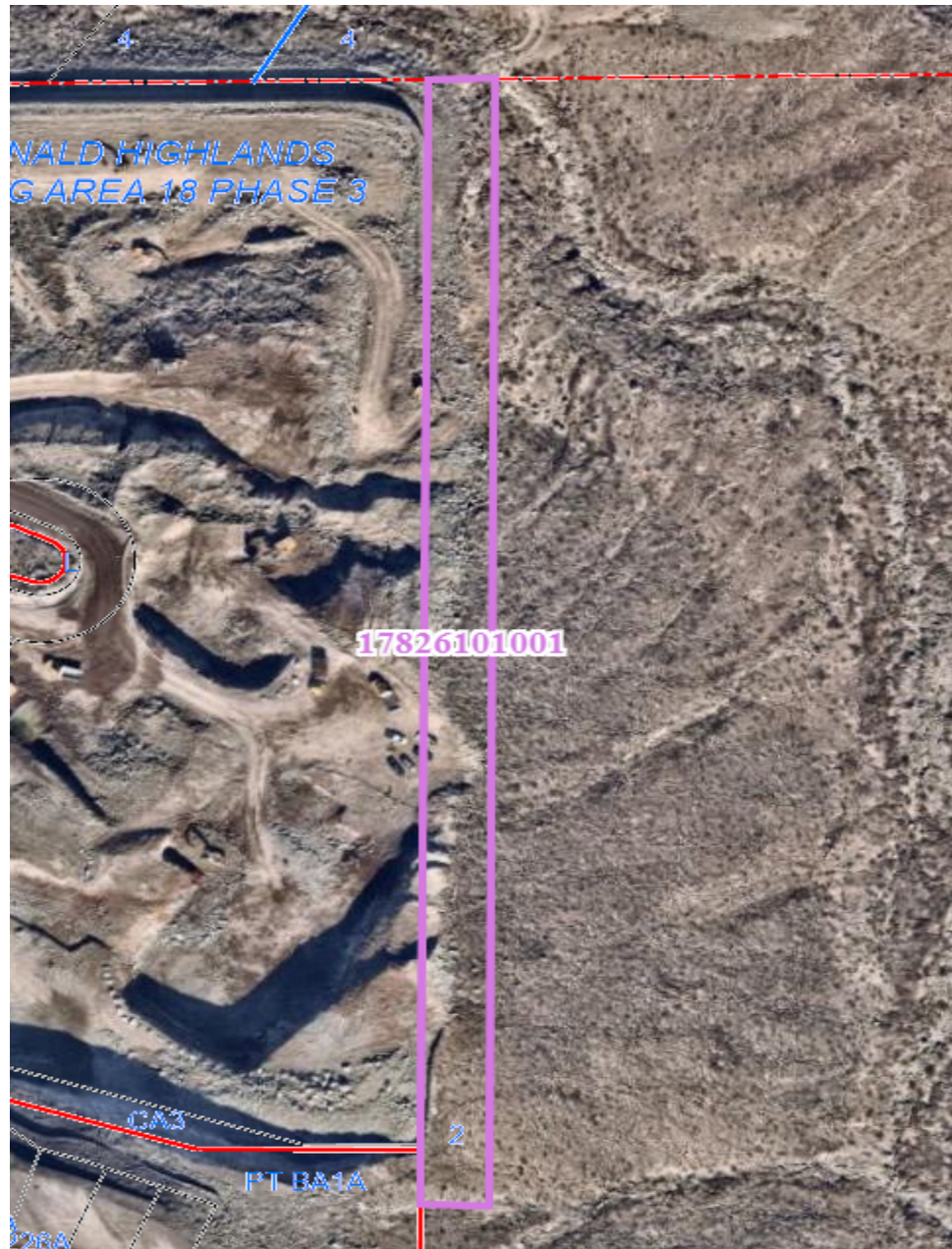
A Portion of the Northwest Quarter (NW 1/4) of the Northwest Quarter (NW 1/4) of Section 26, Township 22 South, Range 62 East, M.D.M. City of Henderson, Clark County, described as follows:

Parcel 2 of the Parcel Map, as shown by map thereof in File 129, Page 93, of Parcel Maps, Official Records, Clark County Nevada.

Also being Assessor’s Parcel Number: 178-26-101-001.

**EXHIBIT "B" to
PURCHASE AND SALE AGREEMENT
AND JOINT ESCROW INSTRUCTIONS**

DEPICTION OF THE PROPERTY



**EXHIBIT “C” to
PURCHASE AND SALE AGREEMENT
AND JOINT ESCROW INSTRUCTIONS**

FORM OF DEED

APN: 178-26-101-001

**WHEN RECORDED MAIL TO AND
MAIL PROPERTY TAX
STATEMENTS TO:**

**HENDERSON PINNACLE NEWCO,
LLC
37 W 26th Street
New York, New York 10010
Attention: Jonathan Lawrence**

GRANT, BARGAIN, SALE DEED

THIS INDENTURE WITNESSETH that CITY OF HENDERSON, a municipal corporation and political subdivision of the State of Nevada (“Grantor”), for valuable consideration, the receipt of which are hereby acknowledged, does hereby Grant, Bargain, Sell, and Convey to HENDERSON PINNACLE NEWCO, LLC, a Nevada limited liability company (“Grantee”), all that real property situated in the City of Henderson, County of Clark, State of Nevada, bounded and described as follows:

**See EXHIBIT “A” attached hereto and by this reference
incorporated herein (the “Property”);**

Subject to (a) taxes for the current fiscal year, not due or delinquent, and any and all taxes and assessments levied or assessed after the recording date hereof, which includes the lien of supplemental taxes, if any; and (b) encumbrances, restrictions, conditions, reservations, rights of way and easements affecting the use and occupancy of this Property as the same may now appear of record or be apparent from an inspection of the Property.

[Signatures and notarial acknowledgements appear on the following pages.]

Witness my hand this _____ day of _____, 20__.

CITY OF HENDERSON,

A municipal corporation and political subdivision of the State of Nevada

By: _____

MICHELLE ROMERO
MAYOR

ATTEST:

Jose Luis Valdez, CMC
City Clerk

APPROVED AS TO FORM:

Nicholas G. Vaskov
City Attorney

CAO Review

STATE OF NEVADA)
COUNTY OF CLARK)

This instrument was acknowledged before me on _____ by MICHELLE ROMERO
as **MAYOR** of **CITY OF HENDERSON**.

Notary Public in and for said County and State.

My commission expires: _____

EXHIBIT "A"

A Portion of the Northwest Quarter (NW 1/4) of the Northwest Quarter (NW 1/4) of Section 26, Township 22 South, Range 62 East, M.D.M. City of Henderson, Clark County, described as follows:

Parcel 2 of the Parcel Map, as shown by map thereof in File 129, Page 93, of Parcel Maps, Official Records, Clark County Nevada.

Also being Assessor's Parcel Number: 178-26-101-001.