

City of Carson City  
Agenda Report

Item # 5-1

**Date Submitted:** September 9, 2008

**Agenda Date Requested:** September 18, 2008  
**Time Requested:** Consent

**To:** Mayor and Supervisors

**From:** Parks and Recreation Department - Open Space Division

**Subject Title:** Action to approve a second amendment to the Wilson property Purchase and Sale Agreement to provide for a change in title companies.

**Staff Summary:** The Board of Supervisors approved the purchase of the Wilson Trust property, located at the top of Ash Canyon Trail on July 3, 2008. This action is to amend the agreement to provide for a change in title companies from Northern Nevada Title to Stewart Title at the request of the seller.

**Type of Action Requested:** (check one)

Resolution       Ordinance  
 Formal Action/Motion       Other (Specify)

**Does This Action Require A Business Impact Statement:**  Yes  No

**Recommended Board Action:** I move to approve a second amendment to the Wilson property Purchase and Sale Agreement to provide for a change in title companies.

**Explanation for Recommended Board Action:** Seventy-five percent of the cost of this transaction is to be funded by the U.S. Forest Service Legacy Program. After the Board of Supervisors approval of the transaction, the State of Nevada, U.S. Forest Service, and the seller agreed to amend the contract for the first time to permit for the transaction to close in January of 2009. This second amendment is to change the escrow companies.

**Applicable Statute, Code, Policy, Rule or Regulation:**

C.C.M.C., Chapter 21.07, Quality of Life (sale and use tax)

C.C.M.C., Chapter 13.06, Open Space

N.R.S. 244.275, Purchase for use of county appraisal

**Fiscal Impact:** This second amendment does not have a negative economic impact. The present taxes on the properties total \$681.46. Once the property is purchased this revenue will cease. The Open Space acquisition account, with a current balance of \$2.3 million, will pay for the purchase. The total estimated cost of \$599,210 includes the purchase price, appraisal, preliminary title report, estimated escrow and title insurance, the environmental Phase I, and surveyor. Approximately \$449,407.50 will be reimbursed to Carson City from the Forest Legacy Program.

**Explanation of Impact:**

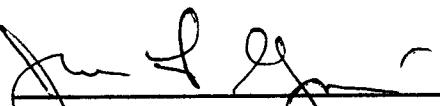
- There will be a loss of tax revenue since the property will be owned by Carson City.
- Upon reimbursement request, 75% of the total acquisition cost, approximately \$449,707.50, will be received from the Forest Legacy Program.

**Funding Source:** Question 18 Open Space Land acquisition account (254-5047-452-74-01) has a current balance of \$2.3 million.

**Alternatives:** Not to approve the transaction and inform the State of Nevada that we will not be accepting the Forest Legacy Program funding.

**Supporting Material:**

- Purchase and Sale Agreement
- Amendment #1
- Amendment #2

**Prepared By:**  Date: 9/10/08

Juan F. Guzman, Open Space Manager

**Reviewed By:**  Date: 9/9/08

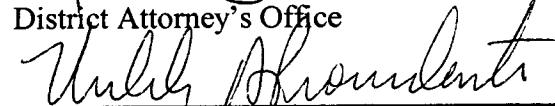
Roger Moellendorf, Parks & Recreation Director

 Date: 9/9/08

Larry Werner, City Manager

 Date: 9/9/08

Melinda B. Johnson  
District Attorney's Office

 Date: 9/9/08

Vicki Rhoads  
Finance Department

**Board Action Taken:**

Motion: \_\_\_\_\_ 1: \_\_\_\_\_ Aye/Nay

2: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
(Vote Recorded By)

## PURCHASE AND SALE AGREEMENT

THIS AGREEMENT ("Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2008, by and between Marilyn Rusk, Trustee of the Emerson J. Wilson Family Trust ("SELLER"), and Carson City, a consolidated municipality of the State of Nevada by and through its Board of Supervisors, of 201 North Carson Street, Suite 2, Carson City, Nevada 89701 ("BUYER"). SELLER and BUYER are sometimes hereinafter referred to individually as a "Party" and collectively as the "Parties."

### R E C I T A L S

A. SELLER is the fee simple owner of all that land and real property lying and situated in Carson City, Nevada, more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference (herein sometimes referred to as "Property") and SELLER desires to sell and BUYER desires to acquire the Property. It is understood that this purchase agreement includes one (1) specific parcel of real property comprising approximately 111.28 acres and specifically designated as APNs 7-031-04 and 7-091-26 and more specifically set forth in the Preliminary Title Report attached hereto as "Exhibit A" and incorporated herein by this reference. Any water rights appurtenant to this property are included in this transaction.

B. BUYER desires to acquire the Property to preserve open space and for other purposes as set forth in Carson City Municipal Code Chapter 13.06.

C. The property is uniquely located in the Carson Range adjacent to a primitive gravel road that accesses the Lake Tahoe State Park at the western terminus of Ash Canyon Trail, with riparian areas, viewscapes, timber forest, and other qualities which make it very desirable to preserve as open space.

D. The Property possesses estimated development potential of 5.5 residential units which, if permitted, would frustrate BUYER's desire to preserve the open space qualities of the Property.

E. SELLER is not retaining any ownership of the surface water rights from the Hobart Creek which may be appurtenant to the Property.

F. The Parties desire and intend by this Agreement to memorialize their agreements by this writing.

NOW THEREFORE, in consideration of the mutual covenants, terms and conditions herein contained, the Parties hereby agree as follows:

1. REPRESENTATIONS AND WARRANTIES: NO PERSON IS AUTHORIZED TO MAKE, AND BY EXECUTION HEREOF BUYER ACKNOWLEDGES THAT NO PERSON HAS MADE, ANY REPRESENTATION, WARRANTY, GUARANTY OR PROMISE EXCEPT AS SET FORTH HEREIN; AND NO AGREEMENT, STATEMENT, REPRESENTATION OR PROMISE MADE BY ANY SUCH PERSON WHICH IS NOT CONTAINED HEREIN SHALL BE VALID OR BINDING ON SELLER. THE ONLY REPRESENTATIONS OR WARRANTIES OUTSTANDING WITH RESPECT TO THE SUBJECT MATTER OF THIS TRANSACTION, EITHER EXPRESS OR IMPLIED BY LAW, ARE SET FORTH HEREIN, AND BUYER EXPRESSLY WAIVES THE RIGHT TO ANY WARRANTY IMPLIED BY LAW. THE PARTIES ACKNOWLEDGE THAT BUYER AND SELLER HAVE MADE THE SUBJECT PROPERTY AVAILABLE FOR THE OTHER'S INDEPENDENT INSPECTION.

2. PURCHASE AND SALE OF PROPERTY: SELLER agrees to convey the Property, together with all rights (including any water rights), title, and interest in accordance with the terms of this Agreement the following which shall comprise the sale contemplated in this Agreement:

- a. All of the real property lying and situate in Carson City, Nevada, consisting of 111.28 acres, more or less, and described in "Exhibit A."
- b. Any and all licenses, encroachment permits, ways, easements of whatever type or kind, together with all mineral rights, oil rights, gas rights, geothermal rights, sands and gravels which are appurtenant to or associated in anyway with the Property which are owned by SELLER.

The foregoing listed elements of the Property in this Paragraph 2 are hereinafter collectively referred to as the "Property".

3. PURCHASE PRICE: The purchase price for the above described Property shall be Five Hundred and Eight-Five Thousand and 00/100 (\$585,000) which shall be paid by BUYER to SELLER in accordance with the terms of this Agreement.

4. ESCROW, CONVEYANCE, AND TITLE INSURANCE: Escrow shall be with NORTHERN NEVADA TITLE COMPANY ("Escrow Holder"), which is located at 307 W. Winnie Lane, Suite 5, Carson City, Nevada, 89701.

a. Escrow shall open as of the date upon which Escrow Holder has received a fully signed original, or counterpart originals, of this Agreement, accompanied by the sums and documents required herein. The date all such items have been delivered to Escrow Holder shall be referred to herein as the "Opening of Escrow" and reported by letter to the Parties by Escrow Holder, and the date escrow actually closes and the deed is recorded shall be referred to as "Close of Escrow." Escrow Holder is hereby authorized and instructed to act in accordance with the provisions of this Agreement, which Agreement, together with Escrow Holder's standard escrow instructions, shall constitute Escrow Holder's escrow instructions. As between the Parties, if there is a conflict between Escrow Holder's standard instructions and this Agreement, this Agreement will control.

b. Ad valorem property taxes for the current fiscal year shall be prorated as of the Close of Escrow.

c. All assessments, and/or special taxes, including the full principal amount of all bonded indebtedness encumbering the Property, if any, shall be prorated to the close of escrow. To the extent such amounts can be identified or reasonably estimated by Escrow Holder they shall be accordingly paid (or reserved for payment) at Close of Escrow.

d. SELLER, at SELLER'S expense, shall furnish BUYER with a C.L.T.A. owner's policy of title insurance in the full amount of the purchase price issued by NORTHERN NEVADA TITLE COMPANY of Carson City, subject only to those exceptions disclosed herein or otherwise not objected to by BUYER or the preliminary title report.

e. BUYER and SELLER shall each pay one-half (½) of the escrow fee and any and all other fees, including recording fees, document preparation fees, real property transfer taxes and similar costs not specifically allocated in this Agreement.

f. In accordance with Nevada Revised Statutes (NRS) 361.060 and NRS 361A.265, SELLER shall have no liability for deferred taxes, interest, or penalties, arising out of any conversion of the Property from agricultural uses to open space or any higher use.

g. Title to the Property shall be conveyed by Grant, Bargain and Sale Deed AND MUST CONTAIN THE FOLLOWING LANGUAGE: "This land was purchased with Quality of Life

Sales and Use Tax Funds and is subject to the provisions of the Carson City Municipal Code Section 13.06."

5. PAYMENT OF PURCHASE PRICE: The Purchase Price for the Property described in Paragraph 3 above and detailed on the Exhibits hereto shall upon satisfaction of the conditions set forth in Paragraph 6 be paid by BUYER to Escrow Holder for SELLER as follows: The sum of Five Hundred Eight-Five Thousand and 00/100 (\$585,000) shall be paid into Escrow on or before the date set for the Close of Escrow, which is to close not later than January 7, 2009, federal funds, or other readily available funds.

6. BUYER'S CONDITIONS ON CLOSE OF ESCROW: Close of Escrow shall be subject to the following conditions: SELLER and BUYER shall diligently attempt to achieve the satisfaction of these conditions without undue delay. If any of these conditions cannot be met, then, unless waived by BUYER, Escrow Holder, upon receipt of notification from BUYER or from SELLER that it cannot or will not be able to satisfy a condition, shall immediately cancel the escrow and return the respective documents to SELLER and BUYER, and each party shall be responsible for one-half (½) of the escrow costs incurred, and thereafter neither Party shall have any further obligation, rights, or liability under this Agreement.

a. Except as otherwise approved by BUYER, title to the Property shall be conveyed to BUYER free of liens and encumbrances. SELLER shall, at its expense, furnish BUYER with a preliminary title report and, upon request, copies of all recorded exceptions to title referred to therein within forty-five (45) days after Opening of Escrow. Within twenty (20) days of receipt of: (i) the preliminary title report and all documents referred to in it; or (ii) any supplemental or amendatory report and the documents referred to as exceptions thereto, BUYER shall give SELLER notice specifying those matters which are unacceptable conditions of title. Said preliminary title report as supplemented and/or amended is hereinafter referred to as the "Title Report." All exceptions in the Title Report not specifically disapproved by BUYER within twenty (20) days after receipt of the initial submittal and/or, as applicable, supplementary or amendatory materials by BUYER, shall be deemed to have been approved. SELLER shall remove such objectionable items within fifteen (15) days thereafter, but in any event prior to the Close of Escrow and if SELLER fails to remove such objectionable items within said period, and/or if the Title Policy will not be issued in the exact form

approved by BUYER, SELLER shall notify BUYER in writing of such fact, and BUYER shall have the election to be exercised in writing within five (5) days after delivery to BUYER of such notice of SELLER of either:

1) terminating this Agreement, in which event Escrow Holder shall return the documents deposited herein to the Party depositing same; or

2) accepting the Property subject to the objectionable items.

b. To the extent that the same exists, SELLER shall furnish BUYER with any and all land surveys, engineering information, environmental assessments, planning or zoning information of the Property in SELLER's possession, within forty-five (45) days after Opening of Escrow. Should BUYER fail to close escrow for whatever reason, BUYER shall promptly return all such land surveys, engineering information, environmental assessments, planning or zoning information or other evaluations of the Property to SELLER and treat as confidential all information contained therein.

c. BUYER shall perform and approve, at its sole cost and expense, a Phase I Site Assessment.

d. This Agreement shall be approved by the Carson City Board of Supervisors.

In the event that any of the conditions to close are not met within the time frames set forth herein the SELLER or the BUYER may cancel and terminate this Agreement. In such event, this Agreement shall become null and void and the parties shall be returned to their original pre-Agreement condition. The parties will be released from any further obligation to each other and neither will be liable to the other for costs of partial performance or failure to perform. BUYER will be entitled to the return of all monies paid by it to the Escrow less one-half of the reasonable charges incurred by the Escrow Agent.

7. SELLER'S REPRESENTATIONS, COVENANTS, WARRANTIES AND OBLIGATIONS:

a. SELLER represents to BUYER that to the best knowledge of SELLER, the title to be conveyed to BUYER will not be encumbered by any easements, persons in possession, government patents or other rights, other than those items disclosed on the Title Report or which would be disclosed by a physical inspection of the Property. To the best knowledge of SELLER, there is no hazardous, toxic or radioactive material on the Property. SELLER agrees BUYER and/or its agents

may make all disclosures and file all reports which, may be required by law with respect to discovery of any hazardous, toxic or radioactive materials on the Property as a result of such investigations and hereby releases and holds BUYER harmless with respect to liability arising out of such disclosure.

b. SELLER warrants there are no threatened or pending condemnation proceedings against or affecting any part of the Property.

c. SELLER shall not commit knowingly or suffer to be committed any waste in or upon the Property. Waste shall include, but not be limited to, any injury to the Property which renders it in a condition materially different from its condition at the date of this Agreement.

d. To the best knowledge of SELLER, SELLER has complied, and the Property is in compliance, with all laws relating to the storage, use and disposal of hazardous, toxic or radioactive materials (collectively, "Toxic Materials").

e. To the best knowledge of SELLER, the execution and consummation of this Agreement pursuant to its terms will not result in a material breach of, contravene any provisions of, violate, or constitute a default under any articles of incorporation, charter, bylaw, mortgage, contract agreement to which SELLER is subject.

f. From the date of this Agreement to the Close of escrow, the SELLER will continue to provide BUYER full access to all of the Property and information relating to the historical use and operation of the Property.

8. POSSESSION: Possession of the Property shall be given to the BUYER at Close of Escrow, but during the term of this Agreement BUYER and its agents may enter upon the Property for the purpose of performing environmental or engineering, surveying or soil testing. BUYER agrees to pay, defend, indemnify and hold SELLER harmless from all liability, claims, costs and expense, except such as might accrue from the mere discovery of hazardous or toxic material, resulting from BUYER's activities on the Property during the escrow period. Should the BUYER fail to acquire the Property, then it is agreed that SELLER shall receive copies of all studies, test results and engineering generated by BUYER.

9. GOOD FAITH AND FAIR DEALING: During the term of this transaction the parties hereto agree and covenant, one unto the other, to act in good faith and to fairly and openly deal with

each other to accomplish the goals and objectives of the respective parties in closing the escrow envisioned herein.

10. BINDING EFFECT: This Agreement shall bind and inure to the benefit of the respective heirs, representatives, successors and assigns of BUYER and SELLER.

11. NOTICES: No notice, request, demand, instruction or other document to be given hereunder to any Party shall be effective for any purpose unless personally delivered to the person at the appropriate address set forth below (in which event such notice shall be deemed effective only upon such delivery) delivered by air courier next-day delivery (e.g., Federal Express), or delivered by U.S. mail, sent by registered or certified mail, return receipt requested as follows:

If to SELLER, to: Wilson Trust  
Marilyn Rusk  
4205 Old Highway 395 North  
Carson City, NV 89704

If to BUYER, to: Carson City, a Consolidated Municipality  
Juan F. Guzman, Open Space Manager  
3303 Butti Way, Building #9  
Carson City, Nevada 89701

Notices delivered by air courier shall be deemed to have been given the next business day after deposit with the courier and notices mailed shall be deemed to have been given on the second day following deposit of same in any United States Post Office mailbox in the state to which the notice is addressed or on the third day following deposit in any such post office box other than in the state to which the notice is addressed, postage prepaid, addressed as set forth above. The addresses and addressees, for the purpose of this Paragraph, may be changed by giving written notice of such change in the manner herein provided for giving notice. Unless and until such written notice of change is received, the last address and addressee stated by written notice, or provided herein if no such written notice of change has been received, shall be deemed to continue in effect for all purposes hereunder.

12. TIME: Time is of the essence for each provision of this Agreement of which time is a factor, and if this transaction is not completed prior to January 7, 2009, it shall terminate and SELLER shall be relieved of any further obligation to convey the Property to BUYER. BUYER has requested

that this transaction be completed prior to January 7, 2009. In no event will escrow close before January 1, 2009, unless SELLER agrees.

13. ATTORNEYS' FEES: In the event of any action or proceeding, including an arbitration brought by either Party against the other under this Agreement, the prevailing Party shall be entitled to recover all costs and expenses including the actual fees of its attorneys incurred for prosecution, defense, consultation or advice in such action or proceeding.

14. COMPUTATION OF PERIODS: All periods of time referred to in this Agreement shall include all Saturdays, Sundays and state or national holiday, unless the period of time specifies business days, provided that if the date to perform any act or give any notice with respect to this Agreement, shall fall on a Saturday, Sunday or state or national holiday, such act or notice may be timely performed or given on the next succeeding day which is not a Saturday, Sunday or state or national holiday.

15. INTERPRETATION: The Parties hereto acknowledge and agree that each has been given the opportunity to review this Agreement with legal counsel independently, and/or has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions hereof. The Parties have equal bargaining power, and intend the plain meaning of the provisions herein. In the event of an ambiguity in or dispute regarding the interpretation of same, the interpretation of this Agreement shall not be resolved by any rule of interpretation providing for interpretation against the Party who causes the uncertainty to exist or against the draftsman. This Agreement contains the entire agreement between the parties relating to the transactions contemplated hereby and all prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged and integrated into this Agreement.

16. SURVIVABILITY: All covenants of BUYER or SELLER which are intended hereunder to be performed in whole or in part after Close of Escrow and all representations, warranties and indemnities by either Party to the other, shall survive Close of Escrow and delivery of the Grant, Bargain and Sale Deed, and be binding upon and inure to the benefit of the respective Parties.

17. MUTUAL INDEMNITY: SELLER and BUYER hereby agree to indemnify, defend and hold the other Party harmless against any and all liability, claims, costs or expenses arising directly

or indirectly out of the covenants, representations and warranties given by the indemnifying Party to the other in this Agreement.

18. **AUTHORITY OF PARTIES:** Any corporation signing this Agreement, and each agent, officer, director, or employee signing on behalf of such corporation, but in his individual capacity, represents and warrants that said Agreement is duly authorized by and binding upon said corporation. Any individual signing this Agreement on behalf of a partnership or business entity other than a corporation represents that such other entity has power and authority to enter into this Agreement, and by such person's act is bound hereby.

19. **COUNTERPART:** This Agreement and any other agreement (or document) delivered pursuant hereto may be executed in one or more counterparts and by different Parties in separate counterparts. All of such counterparts shall constitute one and the same agreement and shall become effective when one or more counterparts of this Agreement have been signed by each Party and delivered to the other Parties.

IN WITNESS WHEREOF, SELLER and BUYER have fully executed this Agreement as of the date first above written.

“SELLER”  
MARILYN RUSK, TRUSTEE  
EMERSON J. WILSON FAMILY TRUST  
By its Trustee:

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MARILYN RUSK

DATE: \_\_\_\_\_, 2008.

“BUYER”  
CARSON CITY  
By:

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Marv Teixeira, Mayor

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Juan F. Guzman, Open Space Manager

DATE: \_\_\_\_\_, 2008

**THIS AMENDMENT** is made and entered into this \_\_\_\_ day of January, 2008, by and between the City and County of Carson City, a consolidated municipality and political subdivision of the State of Nevada, hereinafter referred to as the "CITY", and Marilyn Rusk, Trustee of the Emerson J. Wilson Family Trust, hereinafter referred to as the "SELLER", and is made to amend the existing Purchase and Sale Contract by and between CITY and SELLER for the purchase by CITY of APNs 7-091-26 and 7-031-04, as approved by the Carson City Board of Supervisors on July 3, 2008, hereinafter referred to as the "CONTRACT".

**WITNESSETH:**

**WHEREAS**, the CITY and SELLER desire to amend the CONTRACT to provide for an extension of date for the close of escrow required pursuant to the CONTRACT; and

**WHEREAS**, said amendment is at the request of both CITY and CONTRACTOR, and that benefit will be derived by the CITY and the SELLER from said amendment;

**NOW, THEREFORE**, in consideration of the mutual promises contained herein, CITY and CONTRACTOR, by and through their respective authorized representatives hereby agree to:

1. Amend Paragraph 5 of CONTRACT to provide in its entirety as follows:
  5. **PAYMENT OF PURCHASE PRICE**: The Purchase Price for the Property described in Paragraph 3 above and detailed on the Exhibits hereto shall upon satisfaction of the conditions set forth in Paragraph 6 be paid by BUYER to Escrow Holder for SELLER as follows: The sum of Five Hundred Eight-Five Thousand and 00/100 (\$585,000) shall be paid into Escrow on or before the date set for the Close of Escrow, which is to close not later than January 7, 2009, fed funds, or other readily available funds.
2. Amend Paragraph 6 of CONTRACT to provide in its entirety as follows:
  6. **BUYER'S CONDITIONS ON CLOSE OF ESCROW**: Close of Escrow shall be subject to the following conditions: SELLER and BUYER shall diligently attempt to achieve the satisfaction of these conditions without undue delay. If any of these conditions cannot be met, then, unless waived by BUYER, Escrow Holder, upon receipt of notification from BUYER or from SELLER that it cannot or will not be able to satisfy a condition, shall immediately cancel the escrow and return the respective documents to SELLER and BUYER, and each party shall be responsible for one-half (½) of the escrow costs incurred, and thereafter neither Party shall have any further obligation, rights, or liability under this Agreement.
    - a. Except as otherwise approved by BUYER, title to the Property shall be conveyed to BUYER free of liens and encumbrances. SELLER shall, at its expense, furnish BUYER with a preliminary title report and, upon request, copies of all recorded exceptions to title referred to therein within forty-five (45) days after Opening of Escrow. Within twenty (20) days of receipt of: (i) the preliminary title report and all documents referred to in it; or (ii) any supplemental or amendatory report and the

documents referred to as exceptions thereto, BUYER shall give SELLER notice specifying those matters which are unacceptable conditions of title. Said preliminary title report as supplemented and/or amended is hereinafter referred to as the "Title Report." All exceptions in the Title Report not specifically disapproved by BUYER within twenty (20) days after receipt of the initial submittal and/or, as applicable, supplementary or amendatory materials by BUYER, shall be deemed to have been approved. SELLER shall remove such objectionable items within fifteen (15) days thereafter, but in any event prior to the Close of Escrow and if SELLER fails to remove such objectionable items within said period, and/or if the Title Policy will not be issued in the exact form approved by BUYER, SELLER shall notify BUYER in writing of such fact, and BUYER shall have the election to be exercised in writing within five (5) days after delivery to BUYER of such notice of SELLER of either:

- 1) terminating this Agreement, in which event Escrow Holder shall return the documents deposited herein to the Party depositing same; or
- 2) accepting the Property subject to the objectionable items.

b. To the extent that the same exists, SELLER shall furnish BUYER with any and all land surveys, engineering information, environmental assessments, planning or zoning information of the Property in SELLER's possession, within forty-five (45) days after Opening of Escrow. Should BUYER fail to close escrow for whatever reason, BUYER shall promptly return all such land surveys, engineering information, environmental assessments, planning or zoning information or other evaluations of the Property to SELLER and treat as confidential all information contained therein.

c. BUYER shall perform and approve, at its sole cost and expense, a Phase I Site Assessment.

d. This Agreement shall be approved by the Carson City Board of Supervisors.

In the event that any of the conditions to close are not met within the time frames set forth herein the SELLER or the BUYER may cancel and terminate this Agreement. In such event, this Agreement shall become null and void and the parties shall be returned to their original pre-Agreement condition. The parties will be released from any further obligation to each other and neither will be liable to the other for costs of partial performance or failure to perform. BUYER will be entitled to the return of all monies paid by it to the Escrow less one-half of the reasonable charges incurred by the Escrow Agent.

3 Amend Paragraph 11 of **CONTRACT** to provide in its entirety as follows:

11. **NOTICES:** No notice, request, demand, instruction or other document to be given hereunder to any Party shall be effective for any purpose unless personally delivered to the person at the appropriate address set forth below (in which event such notice shall be deemed effective only upon such delivery) delivered by air courier next-day delivery (e.g., Federal Express), or delivered by U.S. mail, sent by registered or certified mail, return receipt requested as follows:

If to SELLER, to: Wilson Trust

Marilyn Rusk  
4205 Old Highway 395 North  
Carson City, NV 89704

If to BUYER, to: Carson City, a Consolidated Municipality  
Juan F. Guzman, Open Space Manager  
3303 Butti Way, Building #9  
Carson City, Nevada 89701

Notices delivered by air courier shall be deemed to have been given the next business day after deposit with the courier and notices mailed shall be deemed to have been given on the second day following deposit of same in any United States Post Office mailbox in the state to which the notice is addressed or on the third day following deposit in any such post office box other than in the state to which the notice is addressed, postage prepaid, addressed as set forth above. The addresses and addressees, for the purpose of this Paragraph, may be changed by giving written notice of such change in the manner herein provided for giving notice. Unless and until such written notice of change is received, the last address and addressee stated by written notice, or provided herein if no such written notice of change has been received, shall be deemed to continue in effect for all purposes hereunder

4. Amend Paragraph 12 of **CONTRACT** to provide in its entirety as follows:

12. **TIME:** Time is of the essence for each provision of this Agreement of which time is a factor, and if this transaction is not completed prior to January 7, 2009, it shall terminate and SELLER shall be relieved of any further obligation to convey the Property to BUYER. BUYER has requested that this transaction be completed prior to January 7, 2009. In no event will escrow close before January 1, 2009, unless SELLER agrees.

**IT IS ALSO AGREED**, that all unaffected conditions, requirements and restrictions of the Original Contract document remain in full force and effect for the duration of the Contract term.

“SELLER”  
MARILYN RUSK, TRUSTEE  
EMERSON J. WILSON FAMILY TRUST  
By its Trustee:

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MARILYN RUSK

“BUYER”  
CARSON CITY  
By:

---

Marv Teixeira, Mayor

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Juan F. Guzman, Open Space Manger

DATE: \_\_\_\_\_, 2008.

DATE: \_\_\_\_\_, 2008

**THIS SECOND CONTRACT AMENDMENT** is made and entered into this \_\_\_\_ day of September, 2008, by and between the City and County of Carson City, a consolidated municipality and political subdivision of the State of Nevada, hereinafter referred to as the "CITY", and Marilyn Rusk, Trustee of the Emerson J. Wilson Family Trust, hereinafter referred to as the "SELLER", and is made to amend the existing Purchase and Sale Contract by and between CITY and SELLER for the purchase by CITY of APNs 7-091-26 and 7-031-04, as approved by the Carson City Board of Supervisors on July 3, 2008, hereinafter referred to as the "CONTRACT".

**WITNESSETH:**

**WHEREAS**, the CITY and SELLER desire to amend the CONTRACT to provide for a change in the escrow title company required pursuant to the CONTRACT; and

**WHEREAS**, said amendment is at the request of both CITY and CONTRACTOR, and that benefit will be derived by the CITY and the SELLER from said amendment;

**NOW, THEREFORE**, in consideration of the mutual promises contained herein, CITY and CONTRACTOR, by and through their respective authorized representatives hereby agree to:

1. Amend Paragraph 4 of CONTRACT to provide in its entirety as follows:

4. **ESCROW, CONVEYANCE, AND TITLE INSURANCE:** Escrow shall be with STEWART TITLE COMPANY ("Escrow Holder"), which is located at 1886 College Parkway, Suite #101, Carson City, Nevada, 89706.

a. Escrow shall open as of the date upon which Escrow Holder has received a fully signed original, or counterpart originals, of this Agreement, accompanied by the sums and documents required herein. The date all such items have been delivered to Escrow Holder shall be referred to herein as the "Opening of Escrow" and reported by letter to the Parties by Escrow Holder, and the date escrow actually closes and the deed is recorded shall be referred to as "Close of Escrow." Escrow Holder is hereby authorized and instructed to act in accordance with the provisions of this Agreement, which Agreement, together with Escrow Holder's standard escrow instructions, shall constitute Escrow Holder's escrow instructions. As between the Parties, if there is a conflict between Escrow Holder's standard instructions and this Agreement, this Agreement will control.

b. Ad valorem property taxes for the current fiscal year shall be prorated as of the Close of Escrow.

c. All assessments, and/or special taxes, including the full principal amount of all bonded indebtedness encumbering the Property, if any, shall be prorated to the close of escrow. To the extent such amounts can be identified or reasonably estimated by Escrow Holder they shall be accordingly paid (or reserved for payment) at Close of Escrow.

d. SELLER, at SELLER'S expense, shall furnish BUYER with a C.L.T.A. owner's policy of title insurance in the full amount of the purchase price issued by STEWART TITLE COMPANY of Carson City, subject only to those exceptions disclosed herein or otherwise not objected to by BUYER or the preliminary title report.

e. BUYER and SELLER shall each pay one-half (1/2) of the escrow fee and any and all other fees, including recording fees, document preparation fees, real property transfer taxes and similar costs not specifically allocated in this Agreement.

f. In accordance with Nevada Revised Statutes (NRS) 361.060 and NRS 361A.265, SELLER shall have no liability for deferred taxes, interest, or penalties, arising out of any conversion of the Property from agricultural uses to open space or any higher use.

g. Title to the Property shall be conveyed by Grant, Bargain and Sale Deed AND MUST CONTAIN THE FOLLOWING LANGUAGE: "This land was purchased with Quality of Life Sales and Use Tax Funds and is subject to the provisions of the Carson City Municipal Code Section 13.06."

**IT IS ALSO AGREED**, that all unaffected conditions, requirements and restrictions of the Original Contract document remain in full force and effect for the duration of the Contract term.

"SELLER"  
MARILYN RUSK, TRUSTEE  
EMERSON J. WILSON FAMILY TRUST  
By its Trustee:

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MARILYN RUSK

"BUYER"  
CARSON CITY  
By:

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Marv Teixeira, Mayor

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Juan F. Guzman, Open Space Manager

DATE: \_\_\_\_\_, 2008.

DATE: \_\_\_\_\_, 2008