

**COUNTY OF OTERO, NEW MEXICO
COUNTY COMMISSION SPECIAL MEETING AGENDA
COUNTY ADMINISTRATION BUILDING - Rm#123
THURSDAY, JUNE 3, 2010 – 3:00 p.m.**

**Commission Chairman: Doug Moore, Commission District 1
Commission Vice-Chairperson: Clarissa McGinn, Commission District 2
Commission Member: Ronny Rardin, Commission District 3**

INVOCATION

PLEDGE OF ALLEGIANCE

“I pledge allegiance to the flag of the United States of America, and to the republic for which it stands, one nation under God, indivisible, with liberty and justice for all.”

SALUTE TO THE FLAG OF NEW MEXICO

“I salute the flag of the state of New Mexico, the zia symbol of perfect friendship among united cultures.”

NEW BUSINESS:

- 1) Canvass of votes for the 2010 Primary Election.
- 2) Consider approval of Resolution 06-03-10/98-52, regarding the purchase of 1104 White Sands Blvd., Alamogordo, New Mexico and associated P&S documents.
Submitted by: Ray Backstrom

EXECUTIVE SESSION:

- A. Collective Bargaining
- B. Pending/Threatened Litigation
- C. Personnel Issues
- D. Land
- E. Roads
- F. Detention Center
- G. Contracts

ADJOURNMENT


AGENDA REPORT

Otero County Commission

Meeting Date: June 03, 2010

Report Date: June 03, 2010

Submitted by: Ray Backstrom

Approved for Agenda: 


Subject: Consider approval of Resolution 06-03-10/98-52, regarding the purchase of 1104 White Sands Blvd., Alamogordo, New Mexico and associated P&S documents.

Research/Background: The County has been exploring the possibility of acquiring property to provide office space for those county offices that remain in the Otero County Courthouse. This move is in part driven by the office expansion requirements of the offices of the 12th Judicial District. State law requires the county to provide such space. Having located property that meets the needs of the county offices to be relocated, this resolution and associated P&S will formally authorize its purchase.

Staff/Department Recommendation:

Staff recommends approval of this Resolution and associated P&S documents.

This report and all attached documents have been reviewed by:


Name

Administration
Department

Recommend approval
 Yes No

Name

Department

Recommend approval
 Yes No

Name

Department

Recommend approval
 Yes No

This item was approved/disapproved by the Board of County Commissioners on ____/____/____.

Email: oteroadm@co.otero.nm.us
COMMISSION / ADMINISTRATION
(575) 437-7427
FAX (575) 443-2904
886-986-8376



1101 NEW YORK AVE.
ALAMOGORDO, NM 88310-8935

State of New Mexico
County of Otero

**RESOLUTION NO. 06-03-10/98-52
REGARDING THE PURCHASE OF
1104 WHITE SANDS BLVD., ALAMOGORDO, NEW MEXICO**

WHEREAS, the Board of County Commissioners of Otero County negotiated with White Sands Construction, Inc. for the purchase of 1104 White Sands Blvd., Alamogordo, New Mexico arriving at an agreement in principle for the purchase on November 13, 2009; and

WHEREAS, on June 3, 2010 the Board of County Commissioners of Otero County ratified the above referenced purchase and sale agreement for the property in the amount of \$1,445,742.56.

NOW, THEREFORE, BE IT RESOLVED, that the Board of County Commissioners ratify and confirm the purchase 1104 White Sands Blvd., Alamogordo, New Mexico.

PASSED, APPROVED AND ADOPTED on the 3rd day of June 2010.

**BOARD OF COUNTY COMMISSIONERS
OTERO COUNTY, STATE OF NEW MEXICO**

ATTEST:

Robyn Holmes, County Clerk
(Seal)

Doug Moore, Chairman

Clarissa McGinn, Vice-Chairperson

Ronny Rardin, Member

**ADDENDUM TO
AGREEMENT OF PURCHASE AND SALE
AND JOINT ESCROW INSTRUCTIONS**

THIS ADDENDUM TO AGREEMENT OF PURCHASE AND SALE AND JOINT ESCROW ("Agreement") is made this 3RD day of June, 2010, by and between White Sands Construction, Inc. ("Seller") and the County of Otero, State of New Mexico ("Buyer").

Buyer and Seller agree as follows

1. For and in recognition of the sum of \$1.00 and other good and valuable consideration, the receipt of which is hereby acknowledged Paragraph 1 (c) is hereby amended to reflect the corrected purchase price of \$1,445,742.56.
2. Except as specifically amended in this Addendum the Agreement of Purchase and Sale and Joint Escrow Instructions executed by the parties on or about November 13, 2009 remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Addendum as of the date and year set forth above.

SELLER

BUYER

WHITE SANDS CONSTRUCTION, INC.

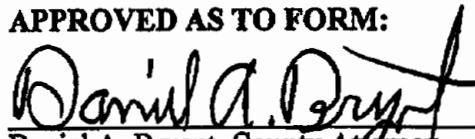
COUNTY OF OTERO, NEW MEXICO

By: _____
Dennis Crimmins

By: _____
Doug Moore, Chairman
Board of County Commissioners
Otero County, New Mexico

EXECUTED this 3rd day of June, 2010, by the County, signing by and through its Chairman of the County's Board of County commissioners, duly authorized to execute same by Resolution _____, approved by the County on June 3, 2010 and by the Buyer, acting through its duly authorized officer.

APPROVED AS TO FORM:



Daniel A. Bryant, County Attorney

STATE OF NEW MEXICO

)

COUNTY OF OTERO

BEFORE ME, the undersigned authority, on this day personally appeared Doug Moore, the Chairman of the Board of County Commissioners of Otero County, New Mexico, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and considerations therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 3rd day of June, 2010.

Gloria R. Sainz Notary Public in and for the
State of New Mexico

Gloria R. Sainz
Printed Name of Notary
My Commission expires: _____

**AGREEMENT OF PURCHASE AND SALE
AND JOINT ESCROW INSTRUCTIONS**

THIS AGREEMENT OF PURCHASE AND SALE AND JOINT ESCROW ("Agreement") is made this 13th day of ~~October~~, 2009, by and between ("Seller") and the County of Otero, State of New Mexico ("Buyer"). ~~November~~

Buyer and Seller agree as follows:

1. Definitions: For the purposes of this Agreement the following terms will be defined as follows:

(a) "Property": That certain partially improved real property in the City of Alamogordo, County of Otero, New Mexico, more particularly described on exhibit "A" attached hereto, together with those existing and to-be-completed improvements consisting of commercial/governmental offices as specified in those plans and specifications which are attached hereto as exhibit "B"

(b) "Effective Date": The Effective Date shall be the date upon which Seller notifies Buyer in writing that all improvements are substantially complete.

(c) "Purchase Price": \$1,351,388.94

(d) "Initial Deposit": \$450,462.93

(e) "Second Deposit": None.

(f) "Escrow Holder": Pioneer Abstract and Title Company
909 Delaware
Alamogordo, NM 88310

(g) "Title Company": Pioneer Abstract and Title Company
909 Delaware
Alamogordo, NM 88310

(h) "Closing Date": The close of escrow ("Closing Date") shall occur within nine (9) days following the expiration of the Due Diligence Period.

(i) "Due Diligence Period": Buyer shall have twenty-one (21) days from the Effective Date, to complete its due diligence as described in Section 9. The parties may extend the Due Diligence period by mutual written agreement as provided herein.

(j) "Financing Contingency": None.

(k) "Commission": None. Further, Seller shall not pay any commission or finders fees of any kind in connection with the transaction contemplated by this Agreement.

(l) "Notices": shall be sent as follows to:

Seller: White Sands Construction Inc.
1700 East Tenth Street
Alamogordo, NM 88310

Telephone: (575) 437-7816
Telecopier: (575) 437-2850
E-mail: dennis@whitesandsconstruction.com

With a copy to:
(which shall not
Constitute Notice)

John D. Wheeler
Post Office Box 1810
Alamogordo, NM 88310

Telephone: (575) 437-5750
Telecopier: (575) 437-3557
E-mail: jd@jdw-law.com

Buyer: The County of Otero, New Mexico

Ray Backstrom, Interim County Manager
1101 New York Ave.
Alamogordo, New Mexico 88310
Telephone: (575) 437-7427
Telecopier: (575) 443-2928
Email: rbackstrom@co.otero.nm.us

With a copy to:
(which shall not
Constitute Notice)

Daniel A. Bryant, Esq.
Otero County Attorney
159 Mescalero Trail, Suite 8
Ruidoso, New Mexico 88345
Telephone: (575) 258-2202
Telecopier: (575) 802-2202 - facsimile
E-mail: dan@bryantlaw.org

(m) Exhibit: Exhibit "A" - Legal Description

2. **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 buy from Seller the Property more particularly described in Exhibit "A" attached hereto, together with all easements, hereditaments and appurtenances thereto. Together with the completion of improvements in the form of reconstruction, remodeling and the construction of commercial/governmental offices that have been designed to meet the needs of Buyer, as

specified in a set of construction plans and specifications which is attached hereto as exhibit "B"

3. Purchase Price: The Purchase Price for the Property will be paid as follows:

3.1 Initial Deposit. Upon the opening of Escrow (as defined in Section 4), Buyer will deliver to Escrow Holder in cash, wire transfer or by certified or cashier's check collectible in same day funds, the Deposit. Escrow Holder will invest the Deposit in an interest bearing account and interest will be for the account of Buyer except as otherwise provided in this Agreement and will be applied against the Purchase Price at Closing. Except as expressly provided otherwise, the Deposit will become non-refundable unless Buyer terminates this Agreement by written notice to Seller and Escrow Holder as provided herein on or before the end of the Due Diligence Period including as it may have been mutually extended by the Parties. No interest will accrue on the Deposit after its delivery to Seller.

3.2 Second Deposit. Not applicable.

3.3 Cash Balance. On or before the Closing Date, Buyer will deposit into the Escrow the balance of the Purchase Price cash, by wire transfer or by certified or cashier's check collectible in same day funds.

4. Escrow: Within five (5) days after the execution of this Agreement, Buyer and Seller will open an escrow (the "Escrow") with the Escrow Holder by delivering to Escrow Holder a fully executed copy of this Agreement (the "Opening of Escrow"). The purchase and sale of the Property will be completed through the Escrow. Buyer and Seller agree to execute any additional instructions reasonably required by the Escrow Holder. If there is a conflict between any printed escrow instructions and this Agreement, the terms of this Agreement will govern.

5. Cancellation Fees and Expenses: In the event that the Closing does not occur at the time and in the manner provided in this Agreement because of the default of one of the parties, the non-defaulting party has the right to cancel the Escrow by written notice to the defaulting party and to the Escrow Holder. All costs of cancellation of the Escrow will be paid by the defaulting party. In addition, in the event of a default by Seller, Buyer will be entitled to a return of the Deposit together with any interest thereon. If the Closing does not take place for any reason other than a default by one of the parties, Escrow Holder will return the Deposit to Buyer together with all interest thereon, but less Buyer's share of the cancellation costs.

6. Deliveries to Escrow Holder:

6.1 By Seller. On or prior to the Closing Date, Seller will deliver or caused to be delivered to Escrow Holder the following items:

(a) A General Warranty Deed ("Warranty Deed"), in a form duly executed and acknowledged by Seller and in recordable and insurable form, conveying the Property to Buyer; and

(b) Copies of the final inspection(s) if any, and any warranties associated with the improvements being completed pursuant to this agreement, any and all information, sheets, data sheets or other documents typically generated as part and parcel of the completion of the commercial/governmental offices contemplated by this agreement if any, which are in the possession of, or which Seller may locate with reasonable diligence.

6.2 By Buyer. On or prior to the Closing Date, Buyer will deliver or cause to be delivered to Escrow Holder the following items:

(a) The balance of the Purchase Price in accordance with Sections 3 and 1(h);

(b) The amount due Seller, if any, after the costs, expenses and prorations are computed in accordance with Sections 12 and 13;

(c) Such Resolution or minutes of a meeting by the Board of County Commissioners of Otero County wherein they are authorizing the sale and purchase of the property described in Exhibit "A"; and

6.3 By Buyer and Seller. Buyer and Seller will each deposit such other instruments as are reasonably required by Escrow Holder or otherwise required to close Escrow. In addition Seller and Buyer will designate the Title Company as the "Reporting Person" for the transaction pursuant to Section 6045(e) of the Internal Revenue Code.

7. **Condition of Title:** At the Close of Escrow, fee simple title to the Property will be conveyed to Buyer by Seller by Warranty Deed, subject only to the following matters ("Permitted Exceptions"): (a) matters of title respecting the Property approved by Buyer in accordance with this Agreement; and (b) matters affecting the condition of title to the Property created by or with the written consent of Buyer.

8. **Conditions to the Close of Escrow:**

8.1 Conditions Precedent to Buyer's Obligations. The following conditions must be satisfied not later than the Closing Date or such other period of time as may be specified below:

(a) Title. Seller will furnish to Buyer, as soon as available, a preliminary report for the Property prepared by the Title Company together with copies of the documents described in such report. Buyer will have ten (10) days after receipt of the preliminary report within which to examine the preliminary title report and the documents and notify Seller in writing of any defects in title. If Buyer fails to notify Seller of any such defects, title will be deemed accepted. If Buyer timely notifies Seller of specific defects within such 10-day period, Seller will have ten (10) days after receipt of Buyer's notification of any defect in which to advise Buyer that:

(i) Seller will remove any objectionable exceptions to title on or before the Closing Date;

or

(ii) Seller will not cause the exceptions to be removed.

If Seller advises Buyer that it will not cause the exceptions to be removed, Buyer will have ten (10) days to elect, as its sole remedy, to:

(iii) proceed with the purchase and acquire the Property subject to such exceptions;

or

(iv) cancel the Escrow and this Agreement by written notice to Seller and the Escrow Holder, in which case the cancellation costs will be equally borne by Seller and by Buyer.

If Buyer does not give Seller notice of its election within ten (10) days, Buyer will be deemed to have elected to proceed with this transaction.

If Seller commits to remove any objection to title and fails to do so by the Closing Date, Seller will be in default under this Agreement and Buyer may, at Buyer's election, terminate this Agreement and pursue its remedies as set forth in Section 24.

(b) Inspections and Studies. By the end of the Due Diligence Period, Buyer must approve the results of any and all inspections, investigations, tests and studies (collectively, "Reports") as Buyer may have elected to make or obtain within the Due Diligence Period and must notify Seller in writing of such approval. If Buyer fails to so advise Seller, Buyer will be deemed to have accepted the condition of the Property. In that event that any inspection, test or study reveals a condition that is unacceptable to Buyer, Buyer will allow Seller a reasonable period of time to cure any such unacceptable condition. Buyer will pay for all such inspections, tests and studies. In the event that Seller is unable or unwilling to cure any unacceptable condition that is discovered during the Due Diligence Period, then, in that event, Buyer, may exercise its right to terminate this Agreement as provided herein, Buyer will provide Seller copies of any Reports in response to a written request by Seller and after payment by Seller to Buyer of Buyer's actual cost to produce the requested Report.

(c) Intentionally Omitted.

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

(e) No Material Changes. At the Closing Date, there will be no material adverse changes in the physical condition of the Property which have occurred after the Due Diligence Period.

(f) Seller's Deliveries. Seller will have delivered the items described in Section 6.1 herein.

(g) Title Insurance. As of the Close of Escrow, the Title Company will issue or have committed to issue the Title Policy to Buyer with only the Permitted Exceptions.

The conditions set forth in this Section are solely for the benefit of Buyer and may be waived only by Buyer. At all times Buyer has the right to waive any condition. Such waiver or waivers must be in writing to Seller. If any conditions are not satisfied on or before the end of the Due Diligence Period or the Closing Date, as applicable, and Buyer has not waived the unsatisfied conditions, Seller will not be deemed to be in default (unless Seller has breached Subsections (d) or (f) above) and Buyer's sole remedy will be to terminate this Agreement and obtain the refund of the Initial Deposit together with any interest thereon (and the Second Deposit, if made).

9. Due Diligence Period:

9.1 Matters To Be Reviewed. Buyer will have the time set forth in Section 1 to complete its due diligence and approve the following matters:

(a) The physical condition of the Property, including without limitation, soil conditions, the status of the Property with respect to hazardous and toxic materials and compliance of the Property with all applicable laws, including any laws relating to hazardous and toxic materials. Seller will allow Buyer and/or its agents access to the Property to perform any all investigations and inspections desired by Buyer (provided that any entry will be subject to the provisions of Section 23);

(b) All applicable government ordinances, rules and regulations;

(c) All licenses, permits and other governmental approvals and/or authorizations relating to the Property;

(d) Any and all documents pertaining to the Property including, but not limited to, any leases, agreements, contracts, documents, building construction documents, engineering drawings, environmental reports, building evaluation studies, easements and covenants, parking agreements, instruments, reports, surveys, books, records, and any warranties or guarantees relating to the Property which are in Seller's possession or are reasonably available to Seller; and

(e) Buyer's review and approval of the economic viability of the project in Buyer's sole and absolute discretion.

9.2 Intentionally Omitted.

~~9.3 Intentionally Omitted.~~

9.4 Intentionally Omitted.

9.5 Notice of Objections.

(a) If Buyer fails to notify Seller in writing of any objections to items (a) through (d) in Sections 9.1 or 9.3 above within the time period set forth in Section 1, as it may be extended by Sections 1(h) and 3.1, Buyer will be deemed to have approved such items.

(b) If Buyer notifies Seller in writing of any objections to the condition of the Property within the Due Diligence Period, the parties will have ten (10) business days to agree upon a resolution of the objection(s). If the parties cannot agree within the ten (10) business day period, then either party may invoke the dispute resolution mechanisms set forth in Section 26 below.

(c) If Buyer does not terminate this Agreement, Buyer will be deemed to have waived its objections, and this Agreement will continue in full force and effect.

9.6 Material New Matters. If Buyer discovers any new matter between the expiration of the Due Diligence Period and the Closing Date which was:

(a) purposely concealed by Seller or any other person or entity during the Due Diligence Period; or

(b) was not reasonably discoverable during the Due Diligence Period;

and that matter is one which:

(a) would appear as an exception in the Title Policy; or

(b) is materially inconsistent with a disclosure by Seller or with any representations or warranties contained in Sections 17 or 20; and

(c) such new matter is of such a nature that, in Buyer's reasonable judgment, it would materially and adversely affect the acquisition, development, sale or use of the Property;

then Buyer is entitled to treat such new matter as a failure of condition to the Close of Escrow.

If Buyer elects to treat such new matter as a failure of condition to the Close of Escrow, Buyer must give notice to Seller of Buyer's election to terminate this Agreement within three (3) business days of Buyer's obtaining knowledge of such new matter.

However, if Buyer gives Seller notice of its election to terminate this Agreement, Seller may ~~elect, by written notice to Buyer and to Escrow Holder within ten (10) business days following~~ Seller's receipt of Buyer's notice, to correct the new matter prior to the Close of Escrow. If Seller elects to correct the new matter, Seller will be entitled to extend the Close of Escrow for a reasonable period of time in order to correct the new matter and, in such event, this Agreement will not terminate. If Seller fails to correct the new matter by the Closing Date, as extended, Buyer, as Buyer's sole remedy, may terminate this Agreement in accordance with the provisions of Section 8.

10. Condition of Property: The Buyer is purchasing the property together with the

improvements set forth herein together with the usual warranties, and representations as to the condition of Fee Simple title and that the improvements comply with the plans and specifications set forth in Exhibit "B".

11. Conditions Precedent to Seller's Obligations: The Close of Escrow and Seller's obligations with respect to this transaction are subject to Buyer's delivery to Escrow Holder on or before the Closing Date, of the Purchase Price and the items described in Section 6.2.

12. Title Insurance: At the Close of Escrow, and at the expense of Seller, Seller will cause the Title Company to issue to Buyer an Owner's Title Insurance Policy in favor of Buyer, or their nominees, in an amount equal to the Purchase Price showing fee title to the Property vested in Buyer subject only to the title conditions approved by Buyer ("Title Policy") and the standard printed exceptions and conditions in the policy of title insurance. If Buyer elects to obtain any additional endorsements or an ALTA Policy, the additional premium and costs of survey for the ALTA Policy and the cost of any endorsements will also be at Buyer's sole cost and expense.

13. Costs and Expenses:

13.1 Seller will pay:

- (a) the cost of the CLTA policy
- (b) its prorated share of any bond or assessment which is a lien upon the Property;
- (c) 50% of all escrow fees and costs; and
- (d) Seller's share of prorations.

13.2 Buyer will pay:

- (a) any document recording charges;
- (b) the entire additional cost of the Owner's Title Insurance policy including the cost of any required survey;
- (c) 50% of all escrow fees and costs;
- (d) Buyer's share of prorations.

Buyer and Seller will each pay all legal and professional fees and fees of other consultants incurred by Buyer and Seller, respectively. All other costs and expenses will be allocated between Buyer and Seller in accordance with the customary practice in the County in which the Property is located.

14. Prorations:

14.1 Taxes/Assessments/Rents. All non-delinquent real estate taxes on the Property will be prorated as of the Close of Escrow based on the actual current tax bill. If the Close of Escrow takes place before the real estate taxes are fixed for the tax year in which the Close of Escrow occurs, the apportionment of real estate taxes will be made on the basis of the real estate taxes for the immediately preceding tax year applied to the latest assessed valuation. The prorations so determined shall be final and not subject to recomputation after Closing. All delinquent taxes and all delinquent assessments, if any, on the Property will be paid at the Close of Escrow from funds accruing to Seller. All supplemental taxes billed after the Close of Escrow for periods prior to the Close of Escrow will be paid promptly by Seller.

14.2 Method of Proration. All prorations will be made as of the date of Close of Escrow based on a 365 day year or a 30 day month, as applicable.

15. **Disbursements and Other Actions by Escrow Holder:** At the Close of Escrow, Escrow Holder will promptly undertake all of the following:

15.1 Funds. Disburse all funds deposited with Escrow Holder by Buyer in payment of the Purchase Price; deduct or credit all items chargeable to the account of Seller and/or Buyer pursuant to Section 13; disburse the balance of the Purchase Price to Seller and the remaining balance of the funds, if any, to Buyer promptly upon Close of Escrow.

15.2 Recording. Cause the Warranty Deed to be recorded with the County Recorder and obtain conformed copies thereof for distribution to Buyer and Seller.

15.3 Title Policy. Direct the Title Company to issue the Title Policy to Buyer.

15.4 Disbursement of Documents to Buyer. Disburse to Buyer the FIRPTA Certificate and any other documents (or copies thereof) deposited into Escrow by Seller pursuant hereto.

16. **Joint Representations and Warranties:** In addition to any express agreements of the parties contained herein, the following constitute representations and warranties of the parties each to the other:

16.1 Representations Regarding Authority.

(a) Each party has the legal power, right and authority to enter into this Agreement and the instruments referenced herein, and to consummate this transaction.

~~(b) All requisite action (corporate, trust, partnership or otherwise) has been taken by each party in connection with the entering into of 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.~~

(c) The individuals executing this Agreement and the instruments referenced herein on behalf of each party and the partners, officers or trustees of each party, if any, have the legal power, right, and actual authority to bind each party to the terms and conditions of those documents.

(d) This Agreement and all other documents required to close this transaction are and will be valid, legally binding obligations of and enforceable against each party 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.

17. Seller's Warranties and Representations: Seller makes the following representations, covenants and warranties and acknowledges that Buyer will rely on such representations, covenants, and warranties in acquiring the Property, each of which will survive the Closing for a period of two (2) years:

17.1 Seller has not entered into any lease or other agreement for possession with any person or entity (except Buyer) pursuant to which such person or entity has any current or future right or interest to occupy, possess or use all or any portion of the Property.

17.2 Seller is not a "foreign person" within the meaning of Section 1445(f)(3) of the Internal Revenue Code.

17.3 Without the prior written consent of Buyer, Seller will not convey any interest in the Property, and Seller will not subject the Property to any additional liens, encumbrances, covenants, conditions, easements, rights of way or similar matters after the date of this Agreement, except as may be otherwise provided for in this Agreement, which will not be eliminated prior to the Close of Escrow.

17.4 Seller will not make any material alterations to the Property without Buyer's consent.

17.5 So long as this Agreement remains in full force and effect, Seller will:

(a) Maintain the Property in substantially the same condition as of the Effective Date, normal wear and tear and damage by fire or other casualty excepted.

(b) Seller will not enter into any leases for any portion of the Property without Buyer's written consent.

18. Condemnation and Destruction:

18.1 Eminent Domain or Taking: If proceedings under a power of eminent domain relating to the Property or any part thereof are commenced prior to Close of Escrow, Seller must promptly inform Buyer in writing.

(a) If such proceedings involve the taking of title or a material interest in the Property by a governmental entity other than Buyer, Buyer may elect to terminate this Agreement by notice in writing sent within ten (10) days of Seller's written notice to Buyer, in which case the Deposit, less the escrow fees will be returned to Buyer and neither party will have any further obligation to or rights against the other except any rights or obligations of either party which are expressly stated to survive termination of this Agreement.

(b) If the proceedings do not involve the taking of title to all or a material interest in the Property, or if Buyer does not elect to terminate the Agreement, this transaction will be consummated as described herein and any award or settlement payable with respect to such proceeding will be paid or assigned to Buyer upon Close of Escrow.

(c) If this sale is not consummated for any reason, any condemnation award or settlement will belong to Seller.

18.2 Damage or Destruction. Except as provided in this Section, prior to the Close of Escrow the entire risk of loss of damage by fire, earthquake, flood, landslide or other casualty is borne and assumed by Seller. If, prior to the Close of Escrow, any part of the Property is damaged or destroyed by fire, earthquake, flood, landslide or other casualty, Seller will promptly inform Buyer of such fact in writing and advise Buyer as to the extent of the damage and whether it is, in Seller's reasonable opinion, "material" or not "material."

(a) If such damage or destruction is "material", Buyer has the option to terminate this Agreement upon written notice to the Seller given not later than ten (10) days after receipt of Seller's written notice to Buyer advising of such damage or destruction.

(b) For purposes hereof, "material" is deemed to be any damage or destruction to the Improvements where the cost of repair or replacement is estimated to be more than 25% of the Purchase Price of the Property and will take more than 60 days to repair.

(c) If this Agreement is so terminated, the provisions of Section 5 will govern.

(d) If Buyer does not exercise this option to terminate this Agreement, or if the casualty is not material, Seller will reduce the purchase price by the value allocated to the damaged portion of the Property and this transaction will close pursuant to the terms of this Agreement.

(e) If the damage is not material, Seller's notice to Buyer of the damage or destruction will also set forth Seller's reduced purchase price and Seller's allocation of value to the damaged portion of the Property. If Buyer does not accept Seller's reduced purchase price, Buyer's sole remedy will be to terminate this Agreement, and the provisions of Section 5 will govern.

19. Indemnification:

19.1 Indemnification by Seller. Seller agrees to indemnify, defend and hold Buyer harmless for, from and against any and all claims, demands, cause or causes of action and suit or suits of any nature whatsoever arising from any misrepresentation or breach of warranty or covenant by Seller in this Agreement. This indemnity does not apply, however, to any item, matter, occurrence or condition which was known to or reasonably discoverable by Buyer prior to the Closing Date.

20. Hazardous Substances:

20.1 For the purposes of this Agreement, the following terms have the following meanings:

(a) "Environmental Law" means any law, statute, ordinance or regulation pertaining to health, industrial hygiene or the environment including, without limitation CERCLA (Comprehensive Environmental Response, Compensation and Liability Act of 1980) and RCRA (Resources Conservation and Recovery Act of 1976).

(b) "Hazardous Substance" means asbestos or any substance, material or waste which is or becomes designated, classified or regulated as being "toxic" or "hazardous" or a "pollutant" or which is or becomes similarly designated, classified or regulated, under any federal, state or local law, regulation or ordinance.

20.2 Seller's Representations and Warranties:

As of the date of this Agreement, to the best of Seller's knowledge as defined in Section 20.1:

(a) no Hazardous Substances are now or have been used or stored on or within any portion of the Property except those substances which are or have been used or stored on the Property in the normal course of use and operation of the Property and in compliance with all applicable Environmental Laws;

(b) there are and have been no federal, state, or local enforcement, clean-up, removal, remedial or other governmental or regulatory actions instituted or completed affecting the Property; and

(c) no claims have been made by any third party against Seller relating to any Hazardous Substances on or within the Property.

20.3 Notices Regarding Hazardous Substances. During the term of this Agreement, Seller will promptly notify Buyer if it obtains knowledge that there may be any Hazardous Substance in or around the Property, or in the soil, groundwater or soil vapor on or under the Property, or that Seller or the Property may be subject to any threatened or pending investigation by any governmental agency under any law, regulation or ordinance pertaining to any Hazardous Substance. Any new disclosure by Seller made after the end of the Due Diligence Period will be governed by the provisions of Section 9.

21. 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), sent by nationally recognized overnight courier or sent by registered or certified mail, postage prepaid, return receipt requested to the addresses set forth in Section 1. All notices will be deemed received on the date of delivery, if personally delivered, the next day if sent by overnight courier or three (3) days after mailing, if mailed.

22. Broker - Consulting Fee: Seller represents and warrants to Buyer, and Buyer represents and warrants to Seller, that no broker or finder has been engaged by them in connection with any of the transactions contemplated by this Agreement, or to its knowledge is in any way connected with any of such transactions. In the event of any such claims for additional brokers' or finders' fees or commissions in connection with the negotiation, execution or consummation of this Agreement, the

party who dealt with such broker or finder will indemnify, save harmless and defend the other party from and against such claims.

23. Entry: Buyer and Buyer's representatives, agents and designees will have the right, at reasonable times and upon reasonable notice to Seller, (which notice must describe the scope of the planned testing and investigations) to enter upon the Property, in connection with its proposed purchase of the Property. However, Buyer agrees that:

- (a) all tests will be at Buyer's sole cost and expense;
- (b) Seller will have the right of approval (which will not be unreasonably withheld or delayed) of any proposed physical testing or drilling;
- (c) Buyer will advise Seller in advance of the dates of all tests and will schedule all tests during normal business hours;
- (d) Seller will have the right to have a representative of Seller accompany Buyer and Buyer's representatives, agents or designees while they are on the Property;
- (e) Buyer will indemnify, defend and hold Seller harmless for, from and against any and all claims, damages, costs, liabilities and losses (including mechanics' liens) arising out of any entry by Buyer or its agents, designees or representatives; and
- (f) Buyer will restore the Property at Buyer's sole cost and expense if this transaction does not close.

In addition, prior to any entry involving physical testing, drilling or other physical disturbance, Seller may require Buyer to provide Seller with proof of comprehensive general liability insurance naming Seller as an additional insured in an amount and with coverages reasonably satisfactory to Seller. This indemnity provision will survive the Closing or any earlier termination of this Agreement.

24. Legal and Equitable Enforcement of this Agreement:

24.1 Default by Seller. If the Close of Escrow and the consummation of the transaction contemplated by this Agreement do not occur by reason of willful and material default by Seller, Buyer, as its sole remedy will be entitled to either:

~~(a) the return of the Initial Deposit and the Second Deposit, if made, and payment of its reasonable out-of-pocket expenses incurred in connection with the transaction; or~~

(b) pursue an action for the specific performance of this Agreement.

Buyer specifically waives its right to pursue an action for damages.

24.2 Default by Buyer. IN THE EVENT THE CLOSING AND THE CONSUMMATION OF THE TRANSACTION HEREIN CONTEMPLATED DOES NOT OCCUR AS HEREIN PROVIDED BY REASON OF ANY DEFAULT OF BUYER, BUYER AND SELLER AGREE THAT IT WOULD BE IMPRACTICAL AND EXTREMELY DIFFICULT TO ESTIMATE THE DAMAGES WHICH SELLER MAY SUFFER. THEREFORE BUYER AND SELLER DO HEREBY AGREE THAT A REASONABLE ESTIMATE OF THE TOTAL NET DETRIMENT THAT SELLER WOULD SUFFER IN THE EVENT THAT BUYER DEFAULTS AND FAILS TO COMPLETE THE PURCHASE OF THE PROPERTY IS AND WILL BE, AS SELLER'S SOLE AND EXCLUSIVE REMEDY (WHETHER AT LAW OR IN EQUITY), AN AMOUNT EQUAL TO TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000.00) PLUS A COPY, AT NO COST TO SELLER, OF ANY AND ALL REPORTS CONCERNING THE PROPERTY CREATED FOR BUYER DURING THE DUE DILIGENCE PERIOD. BUYER SHALL ALSO TRANSFER, BY SPECIAL WARRANTY DEED, ALL OF ITS RIGHT, TITLE AND INTEREST IN AND TO LOT 5, BLOCK 51, CITY OF ALAMOGORDO, COUTNY OF OTERO, STATE OF NEW MEXICO. SAID AMOUNT, TOGETHER WITH THE TRANSFER OF THE REAL PROPERTY, WILL BE THE FULL, AGREED AND LIQUIDATED DAMAGES FOR THE BREACH OF THIS AGREEMENT BY BUYER, ALL OTHER CLAIMS TO DAMAGES OR OTHER REMEDIES BEING HEREIN EXPRESSLY WAIVED BY SELLER. NEITHER PARTY HAS ANY FURTHER RIGHTS OR OBLIGATIONS HEREUNDER, EACH TO THE OTHER EXCEPT FOR THE RIGHT OF SELLER TO COLLECT SUCH LIQUIDATED DAMAGES FROM BUYER AND ESCROW HOLDER.

Buyer's Initials: 

Seller's Initials: 

25. Assignment: Buyer will not assign this Agreement without obtaining Seller's prior consent which shall not be unreasonably withheld. Any other attempted assignment without Seller's prior consent will, at Seller's option, be voidable and constitute a material breach of this Agreement. No assignment will be effective against Seller until Buyer delivers to Seller a fully executed copy of the assignment instrument, which instrument must be satisfactory to Seller in both form and substance and pursuant to which the assignee assumes and agrees to perform for the benefit of Seller the obligations of Buyer under this Agreement, and pursuant to which the assignee makes the warranties and representations required of Buyer under this Agreement and such other representations and warranties as Seller may reasonably require. The foregoing notwithstanding, Seller agrees that Buyer may assign its interest in this Agreement.

26. Disputes: In the event of any dispute(s) between the parties, Buyer and Seller agree to the following:

26.1 The parties will attempt in good faith to resolve through negotiation any dispute, claim or controversy arising out of or relating to this Agreement. Either party may initiate negotiations by providing written notice in letterform to the other party, setting forth the subject of the dispute and the relief requested. The recipient of such notice will respond in writing within five (5) days with a statement of its position on and recommended solution to the dispute. If the dispute is not resolved by this exchange of correspondence, then representatives of each party with full settlement authority will meet at a mutually agreeable time and place within ten (10) days of the date of the initial notice

in order to exchange relevant information and perspectives, and to attempt to resolve the dispute. If the dispute is not resolved by these negotiations, the matter will be submitted to mediation.

26.2 All disputes not resolved through negotiation will be submitted for mediation. Either party may commence mediation by providing to the other party a written request for mediation, setting forth the subject of the dispute and the relief requested. The parties will cooperate in selecting a mediator from a panel of neutrals, and in scheduling the mediation proceedings. The parties covenant that they will participate in the mediation in good faith, and that they will share equally in its costs. All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the parties, their agents, employees, experts and attorneys, and by the mediator, are confidential, privileged and inadmissible for any purpose, including impeachment, in any arbitration or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation. Either party may initiate arbitration with respect to the matters submitted to mediation by filing a written demand for arbitration at any time following the initial mediation session or ten (10) business days after the date of filing the written request for mediation, whichever occurs first. Unless otherwise agreed by the parties, the mediator shall be disqualified from serving as arbitrator in the case.

26.3 All disputes not resolved by mediation, including the determination of the scope or applicability of this Agreement to arbitrate, shall be determined by the District Court of the Twelfth Judicial District in Otero County, New Mexico.

27. Miscellaneous:

27.1 Counterparts. This Agreement may be executed in counterparts.

27.2 Partial Invalidity. If any term or provision of this Agreement is 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.

27.3 Possession of the Property. Seller will deliver possession of the Property to Buyer upon the Close of Escrow free of leases and tenants or any other non-permitted encumbrances.

27.4 Waivers. No waiver of any breach of 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.~~

27.5 Successors and Assigns. This Agreement is binding upon and inures to the benefit of the permitted successors and assigns of the parties hereto.

27.6 Professional Fees. In the event of the bringing of any action, or suit by a party hereto against another party hereunder by reason of any breach of any of the covenants, agreements or

provisions on the part of the other party arising out of this Agreement, then in that event the prevailing party will be entitled to have the recovery of and from the other party all costs and expenses of the action, arbitration or suit, reasonable attorneys' fees, witness fees and any other professional fees resulting therefrom.

27.7 Entire Agreement. This Agreement (including all Exhibits attached hereto) constitutes the entire contract between the parties hereto and may not be modified except by an instrument in writing signed by the party to be charged.

27.8 Time of Essence. Seller and Buyer hereby acknowledge and agree that time is strictly of the essence with respect to each and every term, condition, obligation and provision hereof.

27.9 Construction. This Agreement has been prepared by Buyer and its professional advisors and reviewed by Seller and its professional advisers. 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. The parties further agree that this Agreement will be construed to effectuate the normal and reasonable expectations of a sophisticated Seller and Buyer.

27.10 Governing Law. The parties hereto expressly agree that this Agreement will be governed by, interpreted under, and construed and enforced in accordance with the laws of the State of New Mexico.

27.11 Not applicable.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year hereinabove written.

SELLER

BUYER

WHITE SANDS CONSTRUCTION, INC.

COUNTY OF OTERO, NEW MEXICO

By: 

By: 

Ronny Rardin, Chairman
Board of County Commissioners of
Otero County, New Mexico

EXECUTED this th 13 day of ~~October~~ ^{November}, 2009, by the County, signing by and through its Chairman of the County's Board of County Commissioners, duly authorized to execute same by Resolution _____, approved by the Otero County, New Mexico on October ____, 2009, and by the Buyer, acting through its duly authorized officer.

APPROVED AS TO FORM:

Daniel A. Bryant

By: Daniel A. Bryant

Its: General Counsel

COUNTY OF OTERO

Ronny Rardin

By: Ronny Rardin

Its: Chairman, Board of County Commissioners

THE STATE OF NEW MEXICO

COUNTY OF OTERO

BEFORE ME, the undersigned authority, on this day personally appeared Ronny Rardin, the County Chairman, Board of County Commissioners of the County of Otero, New Mexico, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for purposes and considerations therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 13th day of ^{November} ~~October~~, 2009.

Glora R. Sainz

Notary Public in and for the
State of New Mexico

Glora R. Sainz

Printed Name of Notary

My commission expires: 12-24-12

EXHIBIT "A"

LEGAL DESCRIPTION

Lots Six (6) and Seven (7), Block Fifty-One (51), Alamogordo, Otero County,
New Mexico.

Commonly known as 1104 White Sands Boulevard, Alamogordo, Otero County, New Mexico.

EXHIBIT "B"