

AGREEMENT OF PURCHASE AND SALE

THIS **AGREEMENT OF PURCHASE AND SALE** ("Agreement") is made as of this ____ day of _____, 200__, by and between _____ ("Seller(s)") and the **NEW MEXICO INTERSTATE STREAM COMMISSION** ("Purchaser").

WITNESSETH:

In consideration of and in reliance upon the covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE ONE

INTRODUCTORY MATTERS

1.01 In General. The Seller is the owner of the Property (as defined herein) and the Purchaser is desirous of acquiring the same in accordance with the terms and conditions of this Agreement.

1.02 Agreement to Purchase and Sell. Purchaser agrees to purchase from Seller, and Seller agrees to sell and convey to Purchaser, the Property, subject to and in accordance with the terms and conditions set forth herein.

1.03 Definitions. As used herein, and subject to the foregoing provisions of this Article One, the following words shall have the meanings ascribed:

"Closing" means the consummation of the transaction contemplated herein, which shall occur at the offices of the Title Company or its successor if any, or if no successor, then such other title company as Purchaser may designate.

"Closing date" means the date set forth in Section 6.01.

"Improvements" means the buildings and all other improvements, structures, fixtures, equipment, in, on, over or under the Premises, including but not limited to the electrical and utility systems (except to the extent owned by a utility company), to the extent owned, in whole or in part, by Seller, located at, on, or affixed to the Premises, to the full extent such items constitute or are or can be construed as realty under the laws of the State of New Mexico.

"Partial Final Decree" means the proposed partial final decree filed with the court in *State of New Mexico ex. rel. State Engineer v. L. T. Lewis, et. al., Nos. 20294 and 22600* on March 25, 2003 by the Pecos Valley Artesian Conservancy District, the Carlsbad Irrigation District, the United States, and the State of New Mexico as an attachment to their joint motion for entry of a partial final decree.

"Permitted Exceptions" means exceptions for general real estate taxes not yet due and payable and the specific exceptions set forth in Exhibit A attached hereto.

"Personalty" means all equipment, machinery, supplies and other personal property owned by Seller and any interest in any such property leased by Seller presently located in and used in connection with the ownership or management of the Improvements or the Premises, as such items

are specifically set forth in Exhibit B attached hereto.

“Premises” means the surface estate only of the lands described in Exhibit C attached hereto, including the Improvements and Personalty thereon or appurtenant thereto, together with Seller’s rights, easements or other interests, if any, in roadways, ditches, water wells or other property appurtenant to the Premises.

“Property” means collectively, the Premises, the Improvements, the Personalty, the Leases, the Intangible Property, and the Water Rights.

“Settlement Agreement” means the agreement between the Pecos Valley Artesian Conservancy District, the Carlsbad Irrigation District, the United States, and the State of New Mexico filed as an attachment to the Partial Final Decree.

“Survey” means a boundary Survey from a licensed New Mexico surveyor certified as of a date acceptable to the Title Company. The Survey shall meet the Minimum Standards for Boundary Surveying in New Mexico as adopted by the New Mexico Board of Registration for Professional Engineers and Surveyors.

“Title Commitment” means a current binder or commitment issued by the Title Insurer to Purchaser providing for the issuance at the Closing to Purchaser of the Title Policy, which binder or commitment must disclose Seller as the owner of fee simple interest in the Premises and shall disclose and shall have attached to it (or there shall be delivered by Seller to Purchaser) copies of all documents which constitute or create all exceptions to title to the Premises and all encumbrances on and other matters of record affecting the Premises which the Title Insurer will not waive under its normal underwriting guidelines.

“Title Defect” or “Title Defects” means a lien, claim, charge, security interest, defect, encumbrance, or other exception to title of the Property which would prevent Purchaser, subject to Permitted Exception, from obtaining marketable title to the Premises.

“Title Company” means, for purposes of receipt of Purchaser’s money under Article Two of this Agreement, Currier Abstract Company in Artesia, New Mexico, or its successor if any, or if no successor, then such other title company as Purchaser may designate, and for all other purposes under this Agreement, Guaranty Title Company of Carlsbad, New Mexico, or Lawyers Title of Roswell, Inc., in Roswell, New Mexico, or their successors, if any, or if no successor, then such other title company as Purchaser may designate.

“Title Insurer” means Lawyers Title Insurance Corporation.

“Title Policy” means a current ALTA Owner’s Policy of title insurance with full extended coverage, dated the date and time of Closing and with liability in the amount of the Purchase Price assigned to the Premises, exclusive of the value of any water rights being conveyed in connection with this agreement, insuring Purchaser as the owner of good, marketable and indefeasible fee title to the Premises and Improvements, subject only to the Permitted Exceptions and any endorsements as may be requested by Purchaser. Seller will provide Purchaser with a schedule allocating the Purchase Price between the Premises and the Water Rights.

“Water Rights” means all appurtenant water rights or rights to delivery of water (including carry over and subject to carriage loss) associated with the Premises as set forth in Exhibit D attached hereto.

“Water Rights Documents” means all recorded or unrecorded deeds purporting to transfer title to the Water Rights, all declarations filed with the Office of the State Engineer evidencing the Water Rights, all permits or licenses issued by the Office of the State Engineer, all offers of judgment, and all consent decrees, orders or other adjudicatory documents relating to the Water Rights.

ARTICLE TWO

PURCHASE PRICE

2.01 Deposit. For the purpose of securing the performance of Purchaser hereunder, Purchaser shall deposit with the Title Company, within forty-five (45) days of execution of this Agreement, 5% of the purchase price as earnest money ("Deposit"). The Deposit shall be invested in an interest-bearing account in a federally-insured depository institution with all interest earned from the date of Deposit until the date of Closing to be credited to Purchaser at Closing. The Title Company shall pay the Deposit: (1) to Seller at and upon the Closing to be applied against the Purchase Price; (2) to the party otherwise entitled to receive the Deposit in accordance with this Agreement. The parties shall execute such certificates and other written confirmation as the Title Company may reasonably require with regard to the disposition of the Deposit in accordance with this Agreement.

2.02 Payment of Purchase Price. The purchase price for the Property ("Purchase Price") shall be \$ _____, less any deductions, holdbacks or offsets and subject to 2.04 as set forth below. The Purchase Price shall be deposited on or before the Closing Date by Purchaser with the Title Company in immediately available funds.

2.03 Reserve. If the parties agree to schedule the Closing Date prior to harvest or last cutting on the premises (collectively "harvest"), but delay Purchaser's possession of the Premises until after harvest or last cutting, a portion of the purchase price equal to Fifty Dollars (\$50.00) per water right acre being purchased will be held in reserve (the "Reserve") with the Escrow Agent until the Purchaser and Seller jointly inspect the property in accordance with Section 8.02 and Seller's obligations hereunder have been satisfied. In the event Seller fails to perform the mowing or other remediation requested in the Purchaser's notice, Purchaser may, at its discretion, contract the mowing or other remediation and request return of the Reserve from the Escrow Agent.

ARTICLE THREE

CONTINGENCIES

3.01 Purchaser's Inspection Period. Purchaser shall have not less than five days before closing to review all matters relating to the Premises. If the Premises do not meet the Purchaser's criteria for any reason, Purchaser may terminate this Agreement at any time within the Purchaser's Inspection Period upon written notice of termination sent by Purchaser to Seller. Purchaser may also terminate this Agreement pursuant to the provisions in 5.01.

3.02 Seller's Disclosures and Deliveries. Seller shall cooperate with Purchaser to satisfy the contingencies hereunder. To assist Purchaser in its determination under this Article Three, Seller upon written request shall (to the extent not previously delivered to Purchaser) deliver the following items to Purchaser within ten (10) days of Seller's acceptance of this Agreement or otherwise make them available during normal business hours for Purchaser's review and copying: (i) copy of the most recent existing title insurance policy, if any, insuring Seller's interest in the

Property; (ii) copy of any existing survey of the Property; (iii) copy of the most recent real estate tax bill, together with a copy of any real estate tax protest documents, if any; (iv) copy of all deeds, Water Rights Documents (subsequent to but including court adjudication of said water rights), transfers and real estate or agricultural or soil conservation leases relating to the ownership or development of the Property; (v) copies of all warranties and guaranties relating to any improvements located on the Property; (vi) governmental documents, including building permits, licenses, agricultural programs relating to the Premises, soil and geographical and environmental studies, and grazing leases to the extent in Seller's possession and control; (vii) and any and all other documents in Seller's possession or reasonably available to Seller requested by Purchaser and material to Purchaser's inspection and purchase of the Property.

3.03 Governmental Contingencies. Before any sale can be closed, (1) this Agreement shall be duly and formally approved by the New Mexico Interstate Stream Commission, itself, (2) this Agreement shall satisfy the requirements of NMSA 1978, §72-14-10 and the contingencies established by the New Mexico Legislature in NMSA 1978, §72-1-2.4(D), and the 2002 general appropriations act, Laws 2002, ch. 109, §2, and (3) there must be sufficient funds appropriated by the New Mexico Legislature and authorized for expenditure by the New Mexico Department of Finance and Administration for the Purchaser to consummate the sale.

3.04 Land Division Contingencies.

A. Purchaser agrees to reimburse **50%** of the costs of the necessary surveying to effectuate such division with reimbursement to be paid at closing.

B. If Seller elects to retain one or more tracts from the Premises, Seller shall bear any costs of the division of the Premises, other than its agreed upon portion of the costs of the Survey, and shall obtain all necessary governmental approvals of such division prior to Closing. Seller shall, as a condition on Purchaser's obligation to close in addition to Section 5.01, infra, provide Purchaser with satisfactory documents evidencing final approval by the requisite regulatory agency.

C. Seller and the licensed land surveyor, as selected by Seller, shall verify: (1) that the lands being conveyed to Purchaser have water rights appurtenant to them; (2) that the amount and location of the water rights correlate with the records of the New Mexico Office of the State Engineer, including the hydrographic survey, permits and modifications; (3) that the water right acreage conforms to the Survey; and (4) that the Survey provides a description which may be utilized in the Warranty Deed required under Article 6.02 A(i).

D. Seller shall perform the Survey within forty-five (45) days of execution of the Agreement by the Purchaser. Upon receipt of the Survey, Purchaser shall have 45 days in which to exercise its due diligence with respect to the Survey.

3.05 Contingency Termination.

A. This Agreement shall terminate without further action by Seller or Purchaser immediately upon Purchaser's notice to Seller as a result of Seller's failure to satisfy a contingency under this Article Three, whereupon the Deposit shall be immediately refunded to Purchaser, and thereafter the parties shall have no further obligations hereunder except as otherwise expressly provided herein. If Seller otherwise satisfies all of his requirements under this Agreement to be fulfilled prior to Closing and Purchaser fails to complete this transaction within the time period set out in 3.01 for reasons other than a governmental contingency, Seller shall be entitled to receive the Deposit. If this Agreement terminates pursuant to this Article Three due to Seller's failure to satisfy the contingencies in this Article Three, Purchaser shall pay \$100.00 to Seller for Seller's execution and

entry into this Agreement. Seller acknowledges that Purchaser will expend time, money and other resources in connection with the inspection and examination of the Property and that, notwithstanding that this Agreement may terminate pursuant to this Paragraph, such time, money and other resources expended, together with the payment described above, constitutes good, valuable, sufficient and adequate consideration for Seller's execution of and entry into this Agreement. Notwithstanding the expenditure of time, money and other resources by Purchaser, if this Agreement is terminated due to Purchaser's inability to satisfy a governmental contingency, Purchaser will reimburse Seller for reasonable expenses actually incurred in preparation to sell the Premises upon the following terms and conditions:

i) Within 60 days of notice of termination by Purchaser, Seller shall provide to Purchaser a statement showing all actual and paid expenses with third party service providers incurred by Seller, along with supporting documentation for same. Within 30 days after receipt thereof, Purchaser shall deliver to Seller any written objections to cost reimbursements claimed. The Parties shall use all reasonable efforts to reach an agreement on the final amount within 90 days after date of tender of notice of termination of this Agreement. Seller shall not be entitled to reimbursement for time expended by Seller, either individually or corporately, nor reimbursement for the time value of money as to the Purchase Price, loans of Seller, etc.

ii) Upon final agreement as to the amount to be reimbursed, Purchaser will remit said amount to Seller within 45 days of written verification of agreement of the amount of reimbursement to Seller.

ARTICLE FOUR

ESCROW AND TITLE COSTS, SEARCHES AND TITLE COMMITMENT

4.01 Escrow and Title Costs. Title insurance and escrow charges shall be paid as follows:

A. The Title Company's fees for acting as closing agent shall be divided equally between Seller and Purchaser;

B. Seller shall pay the cost of the Title Commitment and Title Policy and the cost of recording any documents required to satisfy or release Title Defects. The standard premium for deletion of General Exceptions 1, 2, 3 and 5 under Schedule B shall be paid by Purchaser, but Seller shall pay any premium or cost required to delete General Exception 4 (lien, claim or right to a lien for services, labor or material furnished, imposed by law and not shown by the public record);

C. Seller shall (i) pay the cost of recording any other documents and (ii) any attorney's fees incurred for legal services to cure any exceptions to title other than the Permitted Exceptions; and

D. Notwithstanding the foregoing, if the Closing does not occur due to failure by any party hereto to satisfy its obligations under this Agreement, all costs specified above and any costs of recording of documents required to terminate this Agreement shall be borne by the party at fault.

4.02 Title Policy. At Seller's expense, the Title Policy shall be tendered to Purchaser within a reasonable time subsequent to Closing.

4.03 UCC Searches. It is a condition to Purchaser's obligation to close that at Closing the Title Company shall have delivered to Purchaser, at Purchaser's expense, copies of Uniform

Commercial Code searches in the name of Seller and the Property and in the records of Chaves County and in the UCC records of the Secretary of State of New Mexico, issued by a search company acceptable to Purchaser, and covering a date not earlier than ten (10) days prior to the Closing Date ("Searches"), and showing no security interest, lien, charge or other encumbrance on or with respect to the Property other than: (i) ones to be paid by Seller and released at or prior to Closing; or (ii) the Permitted Exceptions.

4.04 Title Defects Disclosed in Title Commitment, Survey and UCC Searches. Seller is required to remove all Title Defects at or prior to the Closing in each case in a manner satisfactory to Purchaser. If Seller after using all reasonable efforts is unable to cure all Title Defects by the Closing, Purchaser shall have the right by delivery of written notice of election to Seller on or before the Closing Date: (i) to terminate this Agreement, in which event, all of the Deposit shall be returned to Purchaser; or (ii) to proceed pursuant to this Agreement with the right to deduct from the Purchase Price an amount equal to the aggregate of liens or encumbrances of a definite or ascertainable amount that constitute Title Defects, subject to Purchaser's and Seller's agreement as to the amount (failing which Purchaser may waive objection to such Title Defect or terminate this Agreement pursuant to clause (i) above, and to waive objection as to any other Title Defects). In the event that Purchaser elects to proceed despite the existence of Title Defects, the Closing shall be delayed to such date as may be reasonably required for Seller to cause removal of the Title Defects with appropriate title insurance protection or otherwise, at Seller's costs, in each case in a manner acceptable to Purchaser.

ARTICLE FIVE

CONDITIONS TO PURCHASER'S OBLIGATION TO CLOSE

5.01 Conditions to Purchaser's Obligation to Close. Purchaser's obligations to purchase the Property is subject to satisfaction of the following conditions (which are in addition to all other conditions set forth herein), and absent satisfaction of same at the Closing Date or on the date otherwise set forth below, as the case may be, Purchaser may unilaterally and forthwith terminate this Agreement and upon written notice of termination to Seller, the Deposit shall be returned to Purchaser:

A. On the Closing Date, no suit, action or other proceeding by any person or entity shall be pending or threatened that seeks, nor shall there exist any judgment, lien, injunction or order, the effect of which is, to restrain or otherwise impair the purchase and sale of the Property or Purchaser's ability to use and enjoy the Property for the purposes set forth in the Settlement Agreement and the Partial Final Decree;

B. Seller's representations and warranties set forth herein shall be true and correct in all material respects as of the Closing Date;

C. Seller shall have performed each and all of its covenants and agreements required under this agreement including, but not limited to, any mowing or other remediation as required under Section 8.02;

D. All contingencies set forth in Article Three, as well as any other statutory contingencies set forth in NMSA 1978, §§72-1-2.4(D), 72-14-10, and the 2002 general appropriations act, Laws 2002, ch. 109, §2, or in any subsequent changes to said statutes or other statutes which affect Purchaser's ability to complete its obligation under this Agreement shall be satisfied within the applicable periods therein provided; and

E. Purchaser, at its sole discretion, may waive contingencies conditions set forth in this Agreement to its obligation to close on or before the Closing Date, except for the contingencies in Section 3.03 that requires the New Mexico Interstate Stream Commission to duly and formally approve the Agreement. Waiver of any other contingency shall be effective only if contained in writing, signed by Purchaser, and delivered to Seller.

ARTICLE SIX

CLOSING

6.01 Closing Date. Subject to all contingencies referenced in this Agreement, the Closing shall take place at the offices of the Title Company or any title company associated with the Title Company at a date to be determined within fifteen (15) days of final purchase approval by the New Mexico Interstate Stream Commission.

6.02 Closing Procedure. The Closing shall be upon the following terms and conditions:

A. Prior to the Closing Date, Seller shall deliver or cause to be delivered by the Title Company for Seller to the Title Company or any title company associated with the Title Company the following, all documents of which shall be reasonably acceptable, in form and substance, to Purchaser and its counsel:

(1) A General Warranty Deed encompassing the Water Rights and Change of Water Rights Ownership on form approved by the Office of the State Engineer of the State of New Mexico executed and acknowledged by Seller, conveying to Purchaser fee simple title to the Premises and Water Rights, subject only to the Permitted Exceptions;

(2) A Bill of Sale executed and acknowledged by Seller, with general warranties of title, transferring to Purchaser all of the Personalty;

(3) A FIRPTA Affidavit executed by Seller;

(4) Certificate of updating representations and warranties;

(5) Any additional documents that Purchaser or the Title Company may reasonably require for the proper consummation of the transaction contemplated by this Agreement.

B. Purchaser shall deliver to Title Company the remainder of the Purchase Price in immediately available funds.

C. Seller and Purchaser shall execute closing statements consistent with this Agreement in form and substance satisfactory to the parties hereto and such other documents and instruments as required pursuant to the provisions hereof.

D. At such time as Title Insurer has issued the Title Policy or has agreed without condition to issue the Title Policy upon recordation of the conveyance instruments delivered to Title Company, Purchaser shall deliver to the Title Company the balance of the Purchase Price, plus or minus agreed prorations.

E. Upon satisfaction or completion of the foregoing conditions and deliveries and performance by each party, the parties shall direct the Title Company to record and deliver the documents described above to the appropriate parties and make the disbursements according to

the appropriate parties according to the closing statements executed by Seller and Purchaser.

ARTICLE SEVEN

PRORATIONS BETWEEN PURCHASER AND SELLER

7.01 Items to be Prorated. The following items shall be apportioned or prorated between Seller and Purchaser as of close of the day preceding the Closing Date (it being understood and agreed that the parties shall endeavor to compute all closing adjustments at least three (3) days prior to Closing Date, and Seller, by such time, shall supply satisfactory supporting evidence for all such adjustments):

A. General real estate taxes ("Taxes") for the then-current calendar year and any installment of Taxes for any prior calendar year not yet due and payable. If the Closing occurs prior to the receipt by Seller of the tax bill for the calendar year in which the Closing occurs or for any prior calendar year, the Title Company shall prorate Taxes for such calendar year or years based upon the most recent ascertainable assessments and tax rates, applicable to the Property.

B. Utilities, including water, sewer, electric and gas, shall be prorated based upon estimates. Purchaser shall receive a credit at Closing for Seller's estimated share of utilities for the month in which Closing occurs and shall pay the utilities charges for such month.

C. The amount of deposits, if any, with utility companies that are assigned by Seller to Purchaser at the Closing shall be credited to Seller and charged to Purchaser.

ARTICLE EIGHT

ADDITIONAL AGREEMENTS

8.01 Seller's Operations. Seller covenants and agrees that prior to Closing, Seller will:

A. maintain any and all insurance coverage amounts presently in effect with respect to the Property, including policies of public liability, property damage and fire insurance, and name Purchaser as an additional insured with respect to any such coverage;

B. comply with all instruments of record, zoning approvals and permits and to timely pay all taxes, assessments and utility charges;

C. manage the Property in the ordinary course of business in accordance with Seller's past practice, but subject to the terms of this Agreement and in accordance with all applicable federal, state and local laws, ordinances and requirements, and maintain the Property in good order, condition and repair, reasonable wear and tear excepted;

D. not permit any other party to occupy or use the Property, or any portion thereof, for any reason whatsoever;

E. except with Purchaser's prior written consent or as otherwise expressly permitted herein, not enter into any agreement or approval that will be an obligation affecting the Property subsequent to the Closing, including but not limited to any easement, license or covenant appurtenant to the Property;

F. not take, or omit to take, any action that would have the effect of violating any of the

representations, warranties, covenants and agreements of Seller contained in this Agreement; or

G. not list the Property with any broker or otherwise solicit or make or accept any offers to sell the Property, not to engage in any discussions or negotiations with any third party with respect to the sale or other disposition of the Property, and not to enter into with any third party any contracts or agreements (whether binding or not) to sell or otherwise dispose of the Property.

H. in compliance with sound farming practices and Purchaser's instructions, if any, use reasonable diligence to keep the weeds and grass cut or controlled on the Premises, including farmstead, roadside and fence rows. Seller shall comply with all governmental regulations as to treatment of fields upon completion of harvest. Treatment of weed infestation and its costs shall be the responsibility of Seller.

8.02 Continuing Right to Inspect; Notice of Harvest.

A. Purchaser and its duly authorized agents shall have the continuing right to inspect the Property during normal business hours at all times during the pendency of this Agreement and the books and records of Seller with respect to the Property.

B. If Purchaser's possession of the Premises is delayed until after harvest, Seller shall notify Purchaser within three days after harvest is completed,

C. Upon Purchaser's giving a minimum of 3 days notice to Seller, Purchaser and Seller shall jointly inspect the property not more than 2 weeks prior to the closing date or the Purchaser taking possession, whichever is last to occur. Purchaser shall provide Seller with written notice of any mowing or other remediation necessary to be performed prior to closing in conformance with Section 5.01.

8.03 Possession. Seller shall deliver possession of the Property to Purchaser upon the completion of the Closing except as provided in Section 8.03(A), provided, however, that Seller shall continue to fulfill all provisions of Section 8.01 during Seller's possession pursuant to Section 8.03(A).

A. If crops have been planted but not yet harvested at the Closing, Seller may retain possession of the Property until all crops are harvested but no later than thirty (30) days after harvest is complete.

B. Seller does hereby release, discharge, indemnify and hold harmless New Mexico Interstate Stream Commission, its officers, employees, attorneys and agents for all claims, losses, damages, liabilities, demands, rights of causes of action, present or future, whether known, anticipated or unanticipated, resulting from or arising out of, or incident to, Seller's activities related to or a part of harvesting crops from the Premises, or as a result of, or incident to, engaging in or related to the harvesting from the Premises. Seller assumes all liability, responsibility and all risk of and for damage or injury that may occur to any person, lawfully or unlawfully on the Premises, during the harvesting. Seller does hereby expressly waive any claims, actions, or causes of action against the State of New Mexico, including the New Mexico Interstate Stream Commission, its respective officers, directors, managers, employees or agents for any loss or damage that may occur or arise out of the harvesting from the Premises and for any cause that is insured against under the terms of any insurance liability contract or for which New Mexico Interstate Stream Commission may be reimbursed as a result of insurance coverage for any loss suffered.

8.04 Seller's Right to Effect Exchange. Seller shall have forty-five (45) days after the date

of Closing within which to identify property of like kind to be exchanged for the Property; provided, however, that such exchange will be completed on or before one hundred eighty (180) days from the closing of this Agreement. Purchaser agrees to cooperate with Seller to effectuate such exchange, but if the exchange cannot be completed within the time specified in I.R.C. Section 1031, Seller agrees to sell the Property to the Purchaser on the terms set forth herein. Seller further agrees to indemnify and hold the Purchaser harmless against all claims, demands, suits, costs, and expenses, including attorneys' fees, asserted against or incurred by the Purchaser which arise out of the exchange or failure to exchange the Property.

8.05 Removal of Equipment. Seller reserves all pumping equipment in the wells and all sprinkler apparatus on the Premises. Seller agrees to permanently cap all wells on the premises to be transferred to the Purchaser, unless otherwise directed by Purchaser. Purchase agrees that Seller shall have the later of thirty (30) days after harvest is completed or 30 days after the date of Closing to remove well pumping equipment, sprinkler equipment, etc. Seller does hereby release, discharge, indemnify and hold harmless New Mexico Interstate Stream Commission, its officers, employees, attorneys and agents for all claims, losses, damages, liabilities, demands, rights of causes of action, present or future, whether known, anticipated or unanticipated, resulting from or arising out of, or incident to, Seller's activities related to in whole or in part to removing pumping equipment from the wells or removing sprinkler apparatus from the Premises after Closing. Seller does hereby waive any claims, actions, or causes of action against New Mexico Interstate Stream Commission, its respective officers, directors, managers, employees or agents for any loss or damage that may occur or arise out of the removal of pumping equipment from the wells or removal of sprinkler apparatus from the Premises and for any cause or loss that is insured against under the terms of any insurance liability contract or for which New Mexico Interstate Stream Commission may be reimbursed as a result of insurance coverage for any loss suffered by Seller, regardless of the cause or origin, including the negligence (whether sole, joint or concurrent) of New Mexico Interstate Stream Commission or its respective officers, directors, employees or agents.

8.06 Retention of Allotments and Payments. Seller shall retain any crop allotments or payments presently due Seller by the U. S. Department of Agriculture and Seller may further retain the option to move such allotments for future use. Similarly, Seller shall retain any and all crop loss or disaster payments presently due Seller or to which Seller may become entitled prior to Closing.

ARTICLE NINE

WARRANTIES, REPRESENTATIONS AND COVENANTS OF SELLER

Seller covenants, represents and warrants to Purchaser that:

9.01 Fee Title. Seller has good and marketable title to the Property free and clear of all liens, covenants, conditions, restrictions, rights-of-way, easements and encumbrances of any kind or character whatsoever, except those currently existing of record on the date of this Agreement.

9.02 Title to Personalty. Seller: (i) will transfer and convey the Personalty to Purchaser, except for changes, substitutions and deletions therefrom, in accordance with the provisions hereof, with full warranties of title free of liens, charges or other claims; and (ii) will not remove from the Premises or Improvements any of the Personalty, except as may be required for necessary repair or replacement, and replacement shall be of equal quality and quantity as existed as of the time of its removal.

9.03 Licenses and Permits. Exhibit F attached hereto and, by this reference, incorporated herein accurately sets forth all currently effective or currently required governmental and regulatory

licenses, franchises, permits, if any, respecting the Premises that were issued to or are the property of Seller, including any soil conservation agreements or obligations. Seller shall assign to Purchaser all licenses and permits for the operation of the Property and building permits and licenses to the extent that such licenses and permits are assignable and transferable. Seller agrees to cooperate with Purchaser in having such assignments and transfers effected on, or as soon as practicable after, the date of Closing, if so requested by Purchaser.

9.04 Hazard Insurance. Seller has not received any written notice of any violation of any insurance policy applicable to the Property from the insurers thereunder that has not been corrected. Such policies are in full force and effect, and Seller has not received any notices of cancellations relating thereto. Seller has not cancelled or terminated any such insurance, and will not do so at any time whatsoever.

9.05 Seller's Obligations. Other than the obligations of Seller expressly assumed by Purchaser, Seller, subject to the terms and conditions of this Agreement, covenants that it shall, on or after Closing, pay and discharge any and all liabilities of each and every kind arising out of or by virtue of the conduct of its business on the Property to and including the Closing, except to the extent of a credit given to Purchaser at Closing therefore.

9.06 Notice of Violations. Seller has no knowledge that and has received no written notice that either the Property or the use thereof violates any laws, rules and regulations of any federal, state, city or county government or any agency, body or subdivision thereof, having jurisdiction over the Property, or breaches or defaults on any contracts or agreements with any such governmental entity with jurisdiction over the Property, that have not been resolved to the satisfaction of the issuer of the notice.

9.07 Conflicts. To the best of Seller's knowledge, neither the acceptance hereof nor completion of the transactions contemplated hereby will conflict or result in the breach of any of the terms, conditions or provisions of any law or regulation or any order, writ, injunction or decree of any court or governmental agency or any agreement or instrument to which Seller and/or the Property is a party or by which Seller and/or the Property may be bound and the sale or assignment herein contemplated does not require the consent of any party which has not been obtained.

9.08 Pending Actions. There is no action or proceeding pending against Seller or any part of the Property, which, if determined adversely to Seller, actions would have a material adverse affect on the Property or this transaction, and to the best of Seller's knowledge, there are no actions or proceedings threatened against Seller or any part of the Property, which, if determined adversely to Seller, would have a material adverse affect on the Property or this transaction.

9.09 Accuracy of Statements. All the information set forth in the exhibits hereto or any certificate or other statements or information otherwise furnished by Seller to Purchaser in connection with this Agreement is true, correct and complete in all material respects and not misleading. Seller shall have the right and the obligation to advise Purchaser of any changes in such information that occur between the date of execution of this Agreement and the Closing, and the fact of such changes shall not impose any liability upon Seller, but any such change materially adversely affecting the Premises shall constitute grounds for Purchaser to terminate this Agreement.

9.10 Real Estate Taxes and Assessments. All Taxes and assessments, including assessments relating to the Water Rights, the current and all prior years have been paid. There are no assessments, charges or other sums owing to or assessable or chargeable by, any property owner or similar association affecting the Property.

9.11 Restrictions Applicable to Property. Seller has not received notice of and has no knowledge of any law, rule, ordinance, regulation, agreement, covenant, land plan or public or private restriction applicable to the Property or of any pending or contemplated change in any of the foregoing, of any pending or threatened judicial or administrative action, or any action pending or threatened by adjacent landowners or other persons, or any change in the condition of the Property, or any part thereof, which would in any way limit or impede Purchaser's intended use of the Property.

9.12 Environmental Review. Purchaser shall have the right to obtain at its own expense a Phase I Environmental Review ("Review") of the Property. If the Review indicates the existence of possible violation of federal or state environmental law or regulation, Purchaser will then have the right to elect to select one of the following options: (i) waive the violation and close upon the purchase of the Property as otherwise provided under this agreement; (ii) exclude from the purchase that portion of the premises affected by the violation; (iii) obtain a reasonable estimate of the cost of remediation of the violation and deduct said amount from the Purchase Price as agreed to by the parties; (iv) terminate this agreement without further obligation to Seller; or (v) obtain a Phase II Environmental Review for further delineation of the possible violation and then select one of options (i) – (iv). Purchaser's election to purchase under (i) shall be deemed an election to waive any cause of action or right of recoupment or indemnification for any subsequent fine, assessment, cost of remediation, related to the violation of law or regulation revealed by the Review.

9.13 Water Rights Review. In entering into this Agreement Purchaser has relied upon Seller's representations that Seller owns the water right(s) listed on Exhibit D attached hereto, and that Seller has used at least sixty (60) percent of the Water Right per annum over the last twenty (20) years. Purchaser shall have the right to obtain at its own expense a boundary Survey, title abstract and legal review of water right ownership and usage records for the water right(s) being purchased. If the Water Right and the usage of the Water Right differ from what the Seller represented to the Purchaser, either in terms of legal ownership, the type of Water Right represented, or the Seller's claimed usage of the Water Right as measured by the New Mexico State Engineer, or a discrepancy with the Survey and legal review, Purchaser may pursue one of the following options: (i) waive the discrepancy and close upon the purchase of the Property as otherwise provided under this agreement; (ii) renegotiate the Purchase Price agreed upon by the parties to reflect the discrepancy shown by the water rights review; (iii) terminate this agreement without further obligation to Seller. Purchaser's election to purchase under (i) shall be deemed an election to waive any cause of action related to the discrepancy.

9.14 FIRPTA. Section 1445 of the Internal Revenue Code (the "Code") does not apply to this transaction in that Seller is not a nonresident alien, foreign corporation, foreign partnership, foreign trust or foreign estate (as those terms are defined in the Code and Income Tax Regulations).

9.15 Adverse Information. Seller does not have any actual knowledge of any significant adverse fact or condition relating to the Property, which has not been specifically disclosed in writing by Seller to Purchaser. Seller has no reasonable cause to make any inquiry regarding such adverse facts or conditions.

9.16 Survival of Representation, Warranties and Covenants. All representations, warranties and covenants made by Seller in this Agreement (including, without limitation, any representations, warranties, or covenants in any other Article of this Agreement and representations and warranties with respect to the matters set forth in exhibits attached or required to be furnished pursuant hereto); are true and correct as of Closing and shall survive Closing and shall not be deemed to have merged into any other document or agreement.

9.17 Water Rights Transfers and Administration. The parties acknowledge that the Purchaser may, at its discretion, transfer the point of diversion and/or place or purpose of use of the water rights described in Exhibit "D" to the extent allowed under applicable law. Seller agrees to execute any documents necessary or useful, and otherwise co-operate with Purchaser, to affect any such transfer. Seller agrees not to protest any transfer of water rights, delivery of water to the Pecos River or other administrative action by the Purchaser with the New Mexico State Engineer's Office to implement the Partial Final Decree and the Settlement Agreement.

ARTICLE TEN

DEFAULT

10.01 Seller's Default. If Seller shall default in the performance of any of its obligations hereunder, and if such default is not cured within ten (10) days after written notice to Seller specifying such default, Purchaser shall have all rights and remedies to which Purchaser may be entitled by law and under this Agreement, including the right to specific performance, and the exercise of one or more of such rights or remedies shall not impair Purchaser's right to exercise any other rights or remedy, including the right to refund of the Deposit.

10.02 Purchaser's Default. If all of the conditions to Seller's obligation to sell the Property have been satisfied or waived in writing by Purchaser and if Purchaser should fail to consummate this transaction for any reason other than Seller's default, Seller's sole remedy in such event shall be to terminate this Agreement and to retain the Deposit as liquidated damages, Seller waiving all other rights or remedies in the event of such default by Purchaser.

ARTICLE ELEVEN

MISCELLANEOUS

11.01 Parties Bound. Without the prior written consent of Purchaser, Seller may not assign this Agreement and any such prohibited assignment shall be void. Subject to the foregoing, this Agreement and all provisions hereof, including, without limitations, all representations and warranties made hereunder, shall extend to, be obligatory upon and inure to the benefit of the parties hereto, their respective heirs, devisees, successors and assigns.

11.02 Interpretation. The article and paragraph headings of this Agreement are for convenience only and in no way limit or enlarge the scope of meaning of the language hereof.

11.03 Severability. If any terms of this Agreement, or their application to any person or circumstance, shall be held illegal, invalid, or unenforceable, the remainder of this Agreement, or the application of such terms to persons or circumstances other than those to which it is held illegal, invalid, or unenforceable, shall not be affected; provided, however, that the remainder of this Agreement is still capable of performance in substantial accordance with the original intent of the Parties.

11.04 Applicable Law. This Agreement and said other instruments shall, in all respects, be governed, construed, applied and enforced in accordance with the laws of New Mexico.

11.05 Entirety and Amendments. This Agreement embodies the entire agreement between the parties and supersedes and terminates without further rights or obligations thereunder all prior agreements and understandings, relating to the Property; this Agreement may be amended or

supplemented only by an instrument in writing executed by the party against whom enforcement is sought.

11.06 Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of such counterparts shall constitute one Agreement.

11.07 Time. Time is of the essence in the performance of each and every term, condition and covenant contained in this Agreement.

11.08 Notices. All notices required or permitted hereunder shall be in writing and shall be served on the parties at the following address:

If to Seller:

With a copy to:

If to Purchaser: Interstate Stream Commission
Post Office Box 25102
Santa Fe, NM 87501
Attention: Elisa N. Sims

copy to: Tanya Trujillo
Interstate Stream Commission
Post Office Box 25102
Santa Fe, NM 87501

Any such notices shall be either (a) sent by certified mail, return receipt requested, in which case notices shall be deemed delivered five (5) business days after deposit, postage prepaid in the U.S. Mail; (b) sent by overnight delivery using a nationally recognized overnight courier, in which case it shall be deemed delivered two business days after deposit with such courier; (c) sent by telefax, in which case notice shall be deemed delivered upon confirmation of successful transmission and receipt of such notice; or (d) sent by personal delivery to a responsible person with written confirmation of such delivery. The above addresses may be changed by written notice to the other party; provided, however, that no notice of a change of address shall be effective until actual receipt of such notice.

11.09 Construction. The parties acknowledge that the parties and their counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto.

11.10 Calculation of Time Periods. Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designed period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday or legal holiday observed by the State of New Mexico. The last day of any period of time described herein shall be deemed to end at 5:00 p.m. Santa Fe, New Mexico time.

11.11 Damage or Destruction. The risk of loss of or damage to the Property by reason of any insured or uninsured casualty during the period up to and including the Closing Date shall be

borne by Seller.

Executed effective the date first above written.

SELLER(S): _____ DATE: _____

_____ DATE: _____

NEW MEXICO INTERSTATE STREAM COMMISSION

By: _____ DATE: _____
Estevan R. Lopez, ISC Director

Approved as to form:

By: _____ DATE: _____
Agency Attorney

Approved as to budget sufficiency:

By: _____ DATE: _____
Administrative Services Division

EXHIBIT A

PERMITTED EXCEPTIONS

**TO AGREEMENT OF PURCHASE AND SALE BETWEEN
_____ AND NMISC**

1. Easements, claims of easements, rights-of-way of public record or reflected in the nonpreprinted exceptions of the title commitment.
2. Encroachments, overlaps, conflicts in boundary lines, shortages in area, or other matters which would be disclosed by an accurate survey and inspection of the premises.
3. Reservations or exceptions in patents or in acts authorizing the issuance thereof; water rights, claims or title to water.
4. Taxes or assessments which are not shown as existing liens by the public record.
5. Taxes for the year in which the purchase is completed.

EXHIBIT B

LIST OF PERSONALTY

**TO AGREEMENT OF PURCHASE AND SALE BETWEEN
_____ AND NMISC**

EXHIBIT C
TO AGREEMENT OF PURCHASE AND SALE BETWEEN
_____ AND NMISC

LEGAL DESCRIPTION OF LANDS

EXHIBIT D

DESCRIPTION OF WATER RIGHTS

**TO AGREEMENT OF PURCHASE AND SALE BETWEEN
_____ AND NMISC**

SUBDIVISION	SECTION	TOWNSHIP	RANGE	ACREAGE	DIVERSION	PRIORITY
					see below	see below
					see below	see below
					see below	see below
Total						

WELL FILE NO.	SUBDIVISION	SECTION	TOWNSHIP	RANGE

Diversion: _____ acre-feet per acre per annum for a total of _____ acre-feet per annum, plus carriage allowance.

Priority: _____ for _____ acres (_____ ac-ft/an)

Points of Diversion: Artesian Groundwater from the Well No. _____ located in the

Owner of Record: _____

EXHIBIT F

LICENSES, FRANCHISES, AND PERMITS

**TO AGREEMENT OF PURCHASE AND SALE BETWEEN
_____ AND NMISC**