

**PURCHASE AND SALE AGREEMENT
AND
ESCROW INSTRUCTIONS**

This Purchase and Sale Agreement and Escrow Instructions (“Agreement”) is entered into and is effective as of _____, 2023, by and between the City of Douglas, an Arizona municipal corporation (“Seller” or “City”), and JW Resources, LLC, an Arizona limited liability company or its nominee (“Buyer”), on the following terms and conditions contained herein.

RECITALS

WHEREAS, the City is in the owner of real property located at 3200 E. 10th Street, Douglas, Cochise County, Arizona commonly referred to as the Douglas Municipal Airport (“Airport”); and

WHEREAS, in compliance with the City Charter and A.R.S. §9-402, an invitation for bids for the purchase of a portion of the Airport was published and Buyer was the successful bidder; and

WHEREAS, the Seller and Buyer enter into this Agreement to set forth the rights and obligations of Buyer and Seller with respect to the purchase and sale and future development of the Airport Property.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals and the mutual promises and covenants set forth herein, and for other consideration, the receipt and adequacy of which is hereby acknowledged, the City and Buyer agree as follows:

1. Sale and Purchase. On the terms and conditions contained in this Agreement, Seller agrees to sell to Buyer and Buyer agrees to purchase from Seller, the real property located at 3200 E. 10th Street, Douglas, Cochise County, less the City Retained Property (defined in Section 5.03), and legally described and depicted on Exhibit A, together with all of Seller’s rights, title and interest in and to (a) the improvements, structures and fixtures located thereon (b) all appurtenances, hereditaments, easements, rights-of-way, reversions, remainders, development rights, well rights, water rights and air rights; (c) all oil, gas, and mineral rights not previously reserved; and (d) any other rights or privileges appurtenant to such real property (collectively, the “Property”).

2. Escrow and Title Company. The Seller and Buyer shall open an escrow (“Escrow”) with Pioneer Title Agency, 1065 F Ave Suite #6, Douglas, Arizona 85607, Attn: Candy Romo (“Title Company” or “Escrow Agent”) to facilitate the consummation of the sale of the Property. This Agreement shall also serve as escrow instructions to Title Company. The Seller and Buyer shall provide additional instructions reasonably requested by Title Company in connection with opening the Escrow or otherwise facilitating the consummation of the sale of the Property, not inconsistent with the terms of this Agreement. In the event of any conflict or inconsistency

between any additional Escrow Instructions requested by Title Company and this Agreement, the provisions of this Agreement shall prevail.

3. Purchase Price; Broker Fee.

3.01 Purchase Price. The purchase price ("Purchase Price") to be paid by Buyer for the Property shall be Two Million Ninety-Six Thousand and 00/100 Dollars (\$2,096,000.00). The Purchase Price shall be paid as follows:

(a) Within three (3) business days after the execution of this Agreement by Seller, Buyer and Title Company, Buyer shall deposit an earnest money deposit of Fifty Thousand and No/100 Dollars (\$50,000.00) by wire transfer of immediately available funds or Buyer's check with immediately available funds payable to Escrow Agent (the "Earnest Money"). The Earnest Money shall become non-refundable to Buyer at the expiration of the Feasibility Period (as defined in Section 6.02(b)), except as otherwise provided in this Agreement.

(b) The balance of the Purchase Price, subject to prorations and adjustments as described herein, shall be deposited by Buyer with Escrow Agent, in cash or immediately available funds ("Cash Payment"), on or before the Close of Escrow.

If the transaction contemplated hereby is consummated in accordance with the terms and provisions hereof, the Earnest Money shall be credited toward the Purchase Price at Closing. If the transaction is not so consummated, the Earnest Money shall be held and delivered by the Title Company as hereinafter provided.

3.02 Broker Fees. Buyer shall be responsible for and pay any real estate broker fees in this transaction that have been legally determined to be due an owning by Buyer

4. Escrow Opening and Closing.

4.01 Opening of Escrow. The Title Company shall sign and date this Agreement on the space provided at the end of this Agreement, indicating that Escrow has been opened as of such date ("Opening of Escrow"), which date shall be the date at which Title Company is in possession of a fully executed Agreement and the Earnest Money. The Title Company shall provide a copy of the fully executed Agreement to the Seller and Buyer within five (5) days of the Opening of Escrow.

4.02 Closing. Subject to the Conditions Precedent set forth in Section 8 and Section 9, the closing of this transaction and escrow (the "Closing" or "Close of Escrow") shall occur within thirty (30) days after the expiration of the Feasibility Period (as defined in Section 6.02(b)), unless an extension is otherwise agreed to in writing by both Parties. Buyer has the right, in Buyer's sole discretion, to Close Escrow on or before the expiration of the Feasibility Period.

5. Title

5.01 Status of Title. Within ten (10) business days after Opening of Escrow, or as soon thereafter as possible, Title Company shall provide Buyer and Seller with a current commitment for title insurance (the "Title Commitment") for the Property, disclosing all matters of record and other matters of which Title Company has knowledge which relate to the title to the Property, and a legible copy of each of the instruments and documents referred to in the Title Commitment. The Title Commitment shall include Title Company's requirements for Closing and issuing its title policy. Seller shall satisfy those requirements of Seller requiring a release of consensual monetary encumbrances on or before the Closing. Buyer shall have ten (10) business days after receipt of the Title Commitment and copies of all instruments and documents referred to in the Title Commitment, or five (5) business days after the receipt of any amendment thereto and copies of all instruments and documents referred to therein, to object in writing to Seller to any matter shown thereon. If Buyer fails to object within said period, the condition of title to the Property shall be deemed approved. If Buyer timely objects to any matter disclosed by the Title Commitment or any amendment thereto, the Seller may, but is not obligated, to use reasonable efforts to cure such objection(s) (although in no event shall the Seller be required to expend funds) within fifteen (15) business days thereafter. If, within such fifteen (15) business day period, the Seller is unsuccessful or responds that it is unwilling to cure Buyer's objection(s), Buyer shall have five (5) business days following notice from the Seller of its inability or unwillingness to cure in which Buyer shall elect by delivering written notice to the Seller and Title Company either to (a) waive its objection(s); or (b) terminate this Agreement. If Buyer elects to terminate this Agreement, Title Company shall deliver the Earnest Money to Buyer, less Fair Consideration (defined in Section 6.02(b)) without further notice to or from the Seller and neither party shall thereafter have any further rights or obligations hereunder except for those rights and obligations that survive the termination of this Agreement or the Close of Escrow as provided in this Agreement. Failure by Buyer to make a timely election shall constitute an election to terminate this Agreement. Failure by the Seller to give any notice shall constitute the Seller's election not to cure. Notwithstanding anything else stated herein, in all events, regardless of whether Buyer has given notice of objection as stated above, the Seller shall be obligated to satisfy and otherwise remove all monetary and financial liens and encumbrances in existence at the time of execution of this Agreement or incurred by the Seller on or before Closing hereunder (other than current taxes not yet due). Any title exceptions which have not been objected to or waived by Buyer shall be called "Permitted Title Exceptions."

5.02 Title Policy. At Closing, Title Company shall furnish to Buyer a standard coverage owner's policy of title insurance in the amount of the Purchase Price for the Property insuring Buyer's title to the Property, subject only to the usual printed exceptions contained in such title insurance policies and those matters approved by Buyer pursuant to Section 5.01. The Seller shall pay the premium for a standard coverage owner's policy. If Buyer wants an ALTA extended coverage owner's policy of title insurance, Buyer shall pay the difference in premium cost between an ALTA extended coverage and a standard owner's policy and the cost of any endorsements requested by Buyer.

5.03 Survey; City Retained Property. Upon the Arizona Department of Transportation's approval of the amended Airport Layout Plan ("ALP"), Seller, at its sole cost, will obtain a current survey of the Property ("Survey"), which Seller will provide to Buyer. The Survey shall delineate new property boundaries which shall be retained and owned by the City

("City Retained Property"). The City Retained Property is identified on Exhibit B, which is incorporated herein by reference.

6. Preliminary Due Diligence; Examination of Property.

6.01 Preliminary Due Diligence. Within five (5) business days after the Opening of Escrow, or as soon thereafter as possible, Seller shall provide to Buyer the following information (the "Property Information"), to the extent the Property Information is in the Seller's possession or control: a survey including existing public reports, cross-access easements, drainage easements, ditch easements and/or utility easements/agreements, title report, flood zone status/Elevation Certificate, proof of legal access, septic system reports and permits, well documentation and water rights, Phase 1 report or any other environmental studies or approvals related to current or past operations on the Property of which the Seller has knowledge, soil and archeological studies, tax information, Seller's Property Disclosure Statement, and other information Seller may have in its possession concerning the Property ("Preliminary Items of Due Diligence").

The Seller makes no representation or warranty whatsoever regarding the Property Information, except that the Seller has no actual knowledge of any incorrect information contained therein (and such representation is made without investigation or review by the Seller of the Property Information). The Seller nor any of its respective officials, officers, directors, employees, attorneys, engineers, agents or representatives shall be deemed to make or have made any representation or warranty as to the adequacy, validity, accuracy, fitness for a particular purpose or completeness of the Property Information, and neither Seller nor any of its officials, officers, directors, employees, attorneys, engineers, agents or representatives shall have any liability resulting from the use of or reliance on the Property Information. If this transaction does not close for any reason, Buyer shall not use any Property Information provided to Buyer and shall return the same and any copies thereof to the Seller.

6.02 Examination of Property.

(a) Upon making prior arrangements with the Seller, Buyer, its agents or employees may enter upon the Property for the purposes of inspecting the Property, conducting environmental, soil, engineering, structural and other tests as Buyer may deem necessary. Buyer shall restore the affected portion of the Property to its condition prior to the performance of such studies or inspections. Buyer agrees to indemnify, defend and hold the Seller harmless for, from and against any liability and/or damages caused by Buyer in exercising the foregoing license (unless arising from Seller's gross negligence or willful misconduct), including, but not limited to any and all costs, expenses and attorneys' fees, through all mediation, arbitration, trial and appellate proceedings, and agrees that this obligation to indemnify shall survive any termination of this Agreement and the Close of Escrow. All expenses incurred in connection with the exercise of such license by Buyer shall be the responsibility of Buyer. Prior to entry upon the Property, Buyer shall deliver to Seller a currently effective certificate of commercial general liability insurance with a minimum combined single limit of \$1,000,000 and a minimum aggregate limit of \$2,000,000. Seller shall be named an additional insured under such insurance policy and such policy shall not be cancellable without thirty days' notice to Seller and shall be underwritten by an insurer reasonably acceptable to Seller.

(b) Notwithstanding any provisions to the contrary, Buyer may terminate this Agreement for any reason, by either delivering written notice of such termination to Seller and Title Company on or before last day of the Feasibility Period. The period between the Opening of Escrow and the date ninety (90) days thereafter shall be the “Feasibility Period.” If Buyer elects to terminate this Agreement pursuant to this Section 6.02(b) the Title Company shall deliver the Earnest Money, less the sum of \$5,000, to be paid to Seller as fair consideration for this Agreement (“Fair Consideration”) to Buyer without further notice to or from Seller and neither party shall have any further rights or obligations except those rights and obligations that survive the termination of this Agreement or the Close of Escrow as provided in this Agreement.

7. Representations and Warranties.

7.01 Seller’s Representations and Warranties. The Seller makes the following representations and warranties, all of which shall be true and correct at the Closing and which shall not survive Closing:

(a) To the Seller’s actual knowledge, and except as reflected in the Title Documents, there are no claims, actions, suits, or other proceedings pending or threatened or any governmental department or agency or any other corporation, partnership, entity or person whomsoever, nor any voluntary actions or proceedings contemplated by the Seller, which in any manner or to any extent may detrimentally affect Buyer’s right, title or interest in and to the Property, or the Seller’s ability to perform the Seller’s obligations under this Agreement.

(b) The Seller has the full power and authority to enter into and perform this Agreement according to the terms hereof and the individuals executing this Agreement and all documents delivered pursuant to this Agreement on behalf of the Seller are authorized to do so.

(c) To the Seller’s actual knowledge, Seller has good and indefeasible title in fee simple to the Property. The Property has not been assigned or conveyed to any party. Except as reflected in the Title Documents, there are no agreements (other than this Agreement), commitments or understandings by or between the Seller and any third party pursuant to which the Seller or its successors in interest are required to convey, dedicate, sell or transfer any part of the Property or to grant any easement, water right, right-of-way, road or license in respect to any part of the Property.

(d) To the Seller’s actual knowledge, the Seller has not received any notices and the Seller is not otherwise aware that the Property was not or is not in compliance with all federal, state of Arizona and local laws, ordinances and regulations relating to environmental protection, occupational health and safety, public health and safety or public nuisance or menace (collectively “Environmental Laws”). To the Seller’s actual knowledge there has been no production, storage, transport, release, spillage or disposal upon the Property of any hazardous substances, hazardous waste, hazardous materials, toxic substances, contaminants, or any other substances declared to be hazardous or toxic under any Environmental Laws, except for spillage of aircraft fuel that may occur in the normal course of airplanes fueling and locating on the Property.

(e) To the Seller's actual knowledge, there is no pending or threatened condemnation or similar proceedings affecting the Property or any part thereof and the Seller has no knowledge that any such proceeding is presently contemplated.

(f) This Agreement and all documents required hereby to be executed by the Seller are and shall be valid, legally binding obligations of, and enforceable against the Seller, in accordance with their terms.

(g) Except as otherwise expressly set forth in this Agreement and the Deed, neither the Seller nor its officials, officers, employees, agents, representatives, attorneys or contractors (collectively "Seller's Parties") have made any representations, guaranties, promises, assurances or warranties, express or implied, to Buyer including, without limitation, any pertaining to the suitability of the Property for any purpose, the profitability of owning or operating the Property, the physical or environmental condition thereof, the suitability, habitability or merchantability or fitness of the Property for Buyer's intended use or for any use whatsoever, the rentals, income or expenses thereof, the net or gross acreage contained therein, the zoning thereof, the condition of title thereto, the existence or satisfaction of any local, state or federal approvals or permits for the development or use thereof, the availability or existence of water, sewer or other utilities, the existence or nonexistence of any hazardous substances or materials in, on or under the Property, or as to any past, present or future matter whatsoever. The Seller acknowledges and agrees that this disclaimer has been specifically negotiated and that the Property will be sold in the condition described in Section 6.01. Buyer acknowledges that it will have the opportunity to inspect the Property during the Feasibility Period, and during such period, observe its physical characteristics and existing conditions and the opportunity to conduct such investigation and study on and the Property and adjacent areas as Buyer deems necessary. Buyer hereby forever releases and discharges Seller from all responsibility and liability, including without limitation, liabilities and responsibilities for matters relating to the physical, environmental or legal compliance status of the Property, whether arising before or after the Effective Date, under the Comprehensive Environmental Response, Compensation and Liability Act Of 1980 (42 U.S.C. Sections 9601 et seq.), as amended ("**CERCLA**"), regarding the condition, valuation, salability, rentability or utility of the Property, or its suitability for any purpose whatsoever (including, but not limited to, with respect to the presence in the soil, air, structures and surface and subsurface waters, of Hazardous Materials or other materials or substances that have been or may in the future be determined to be toxic, hazardous, undesirable or subject to regulation and that may need to be specially treated, handled and/or removed from the Property under current or future federal, state and local laws, regulations or guidelines, and any structural and geologic conditions, subsurface soil and water conditions and solid and hazardous waste and Hazardous Materials on, under, adjacent to or otherwise affecting the Property). Buyer further hereby waives (and by Closing this transaction will be deemed to have waived) any and all objections and complaints (including, but not limited to, federal, state and local statutory and common law based actions, and any private right of action under any federal, state or local laws, regulations or guidelines to which the Property is or may be subject, including, but not limited to, CERCLA) concerning the physical characteristics and any existing conditions of the Property, including, without limitation, the landlord's obligations under the Leases relating to the physical, environmental or legal compliance status of the Property, whether arising before or after the Effective Date. Buyer further hereby assumes the risk of changes

in applicable laws and regulations relating to past, present and future environmental conditions on the Property and the risk that adverse physical characteristics and conditions, including, without limitation, the presence of Hazardous Materials or other contaminants, may not have been revealed by its investigation. For purposes hereof, "**Hazardous Materials**" means "Hazardous Material," "Hazardous Substance," "Pollutant or Contaminant," and "Petroleum" and "Natural Gas Liquids," as those terms are defined or used in Section 101 of CERCLA, and any other substances regulated because of their effect or potential effect on public health and the environment, including, without limitation, PCBs, lead paint, asbestos, urea formaldehyde, radioactive materials, putrescible materials, and infectious materials.

As used in this Agreement, "To the Seller's actual knowledge" shall mean the actual, present knowledge of the current City Manager of the City at the time of signing this Agreement, Ana Urquijo, without making any independent investigations or inquiries and without the duties to do so, and specifically negating the doctrines of constructive or imputed notice or knowledge.

7.02 Buyer's Representations and Warranties. Buyer represents and warrants to the Seller:

(a) Buyer is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Arizona. Buyer has all requisite power and authority to carry on its business as now conducted, to enter into this Agreement and to carry out and perform its obligations under this Agreement.

(b) The execution and delivery by Buyer of this Agreement and all of the documents and instruments required hereby and the consummation of the transactions contemplated hereby and thereby have been duly authorized by all requisite members or officers on the part of Buyer. This Agreement and each of the other documents and instruments required hereby have been duly executed and delivered by Buyer and constitute the valid and binding obligations of Buyer, enforceable against Buyer in accordance with their respective terms.

(c) The execution, delivery, and compliance with and performance by Buyer of this Agreement and each of the other documents and instruments required hereby do not and will not (i) violate the Articles of Organization or Operating Agreement of Buyer; or (ii) violate any law, statute, rule, regulation, order, judgment or decree to which Buyer is subject; or (iii) conflict with or result in a breach of or constitute a default under any contract, agreement or other instrument to which Buyer is a party or by which Buyer or any of Buyer's assets or properties are bound or to which Buyer or any of Buyer's assets or properties are subject.

(d) The execution, delivery and performance by Buyer of this Agreement and each of the other documents and instruments required hereby and the consummation of the transactions contemplated hereby and thereby do not and will not require any authorization, consent, approval, permit, filing, registration or exemption or other action by or notice to any court or administrative or governmental body.

(e) There are no actions, suits, litigation, proceedings or investigations pending or threatened against Buyer that could materially adversely affect Buyer's ability to perform Buyer's obligations under this Agreement or the consummation of the transactions

contemplated by this Agreement.

(f) Buyer acknowledges and agrees that with the aid of independent expert advice it will have had an opportunity to satisfy, prior to the expiration of the Feasibility Period, itself regarding the condition of the Property. Buyer acknowledges and agrees that upon Closing, Seller shall sell and convey the Property to Buyer and Buyer shall accept the Property “**AS IS, WHERE IS, WITH ALL FAULTS,**” except to the extent expressly provided otherwise in this Agreement or any document executed by Seller and delivered to Buyer at Closing. Except as expressly set forth in this Agreement or any document executed by Seller and delivered to Buyer at Closing, Buyer has not relied and will not rely on, and Seller has not made and is not liable for or bound by, any express or implied warranties, guarantees, statements, representations or information pertaining to the Property or relating thereto (including specifically, without limitation, the Property information packages distributed with respect to the Property) made or furnished by Seller, or any property manager, real estate broker, agent or third party representing or purporting to represent Seller, to whomever made or given, directly or indirectly, orally or in writing. Buyer represents that it is a knowledgeable, experienced and sophisticated Buyer of real estate and that, except as expressly set forth in this Agreement, it is relying solely on its own expertise and that of Buyer’s consultants in purchasing the Property and shall make an independent verification of the accuracy of any documents and information provided by Seller. Buyer will conduct such inspections and investigations of the Property as Buyer deems necessary, including, but not limited to, the physical and environmental conditions thereof, and shall rely upon same. By failing to terminate this Agreement prior to the expiration of the Feasibility Period, Buyer acknowledges that Seller has afforded Buyer a full opportunity to conduct such investigations of the Property as Buyer deemed necessary to satisfy itself as to the condition of the Property and the existence or non-existence or curative action to be taken with respect to any Hazardous Materials on or discharged from the Property, and will rely solely upon same and not upon any information provided by or on behalf of Seller or its agents or employees with respect thereto, other than such representations, warranties and covenants of Seller as are expressly set forth in this Agreement. Upon Closing, Buyer shall assume the risk that adverse matters, including, but not limited to, adverse physical or construction defects or adverse environmental, health or safety conditions, may not have been revealed by Buyer’s inspections and investigations. Buyer hereby represents and warrants to Seller that Buyer is represented by legal counsel in connection with the transaction contemplated by this Agreement, or Buyer has waived its right to have legal counsel represent Buyer in this transaction. Buyer waives any and all rights or remedies it may have or be entitled to, deriving from disparity in size or from any significant disparate bargaining position in relation to Seller.

8. Conditions Precedent to the Seller’s Obligations. The obligations of the Seller under this Agreement are subject to the satisfaction, on or prior to the Closing, of the following conditions, all or any of which may be waived in writing by the Seller:

(a) The Property shall have been rezoned for the development of the Airport consistent with Buyer’s proposal attached hereto as Exhibit C, to include (i) light industrial; (ii) hangar homes-residential; (iii) jet hangar; and (iv) commercial and retail, which will include a restaurant (“Airport Development”).

(b) Seller shall have obtained written authorization, if required, to enter into this Agreement from all agencies who have provided grant funding to the Airport and the State of Arizona and Federal Aviation Administration must have approved, in writing, the Amended ALP submitted by Seller.

(c) Seller shall have approved of the Survey.

(d) All representations and warranties made by Buyer in this Agreement and in any written statements delivered to the Seller by Buyer under this Agreement shall be true and correct as of the Closing.

(e) Buyer shall have performed and complied with all obligations of Buyer required by this Agreement to be performed or complied with by Buyer on or prior to the Closing.

(f) All documents required to be delivered by Buyer on or prior to the Closing shall have been properly executed by Buyer and delivered to Escrow Agent or the Seller in form and substance reasonably satisfactory to Seller.

9. Conditions Precedent to Buyer's Obligations. The obligations of Buyer under this Agreement are subject to the satisfaction, on or prior to the Closing, of the following conditions, all or any of which may be waived in writing by Buyer:

(a) All representations and warranties made by the Seller in this Agreement and in any written statement delivered to Buyer by the Seller under this Agreement shall be true and correct as of the Closing.

(b) The Seller shall have performed and complied with all its respective obligations required by this Agreement to be performed or complied with by it on or prior to the Closing.

(c) All documents required to be delivered by the Seller on or prior to the Closing shall have been properly executed by the Seller and delivered to Escrow Agent or Buyer in form and substance reasonably satisfactory to Buyer.

(d) Title Company shall have irrevocably committed to issue the Title Policy.

10. Remedies.

10.01 Seller's Remedies. In the event Buyer fails to perform its obligations pursuant to this Agreement for any reason except due to the Seller's default or failure to perform its obligations hereunder, the Seller shall be entitled as its sole remedy to terminate this Agreement and Title Company shall deliver to the Seller the Earnest Money as liquidated damages and not as penalty, in full satisfaction of claims against Buyer hereunder. The Seller and Buyer agree that the Seller's damages resulting from Buyer's default are difficult, if not impossible, to determine and

the amount of the Earnest Money is a fair estimate of those damages which has been agreed to in an effort to cause the amount of said damages to be certain. Nothing in this Section shall limit the Seller's right to recover attorneys' fees under Section 10.03 below.

10.02 Buyer's Remedies. If the Seller (1) fails to perform any of its obligations under this Agreement prior to the Closing for any reason other than the default of Buyer or the termination of this Agreement (and such failure continues for a period of ten (10) days following written notice to the Seller), or (2) breaches a representation and warranty, then the Seller shall be in default under this Agreement and, as Buyer's sole and exclusive remedy, Buyer may elect to: (i) waive the default and proceed to close this transaction and the Escrow; or (ii) pursue specific performance of this Agreement; or (iii) terminate this Agreement and receive the Earnest Money from the Title Company; provided, however, if specific performance is unavailable because of the affirmative or intentional acts or omissions of the Seller, Buyer may bring suit for damages as a result of the Seller's default hereunder. As a condition precedent to Buyer's right to pursue specific performance under section (ii) above, Buyer shall (a) not be in default under this Agreement; and (b) file suit therefore in the Superior Court of Arizona in Cochise County, Arizona on or before 5:00 pm MST on or before the date that is sixty (60) business days immediately following the scheduled Closing Date. Nothing in this Section shall limit Buyer's right to recover attorneys' fees under Section 10.03 below.

10.03 Attorneys' Fees. In the event either party hereto is required to employ an attorney because of the other party's default, then the defaulting party shall pay the non-defaulting party's reasonable attorneys' fees incurred in the enforcement of this Agreement.

10.04 Waiver. Seller and Buyer waive the right to pursue consequential or punitive damages against the other.

11. Closing.

11.01 Closing Matters.

(a) At Closing, the Seller shall execute, deliver, and acknowledge the following documents:

(i) A special warranty deed ("Deed") conveying the Property, subject only to ad valorem taxes for the year of closing and applicable Permitted Title Exceptions.

(ii) Notice of Reversion Option.

(iii) An affidavit, signed and acknowledged by the Seller under penalties of perjury, certifying that the Seller is not a nonresident alien, foreign corporation, foreign partnership, foreign trust, foreign estate, or other foreign person within the meaning of Section 1445 and Section 7701 of the Internal Revenue Code of 1986 and the associated Treasury Regulations.

(iv) An affidavit of property value as required by law.

(v) Such other documents as are reasonably necessary to close and consummate the purchase and sale transaction contemplated by this Agreement and as may be required by the lender for the Buyer.

(b) At Closing, Buyer shall:

(i) Deliver the Cash Payment to Title Company and any additional funds owed pursuant to Section 13(c) and Section 13(i)(i).

(ii) Execute and deliver an affidavit of property value as required by law.

(iii) Execute the Notice of Reversion Option.

(iv) Execute and deliver such other documents as are reasonably necessary to close and consummate the purchase and sale transaction contemplated by this Agreement and as may be required by the lender for Buyer or the Title Company.

(c) Title Company shall transfer the Earnest Money and Cash Payment to the Seller by wire transfer.

(d) Possession of the Property shall be delivered to Buyer at Closing.

11.02 Taxes. All real property taxes, bonds, special taxes, improvement taxes and assessments pertaining to the Property shall be prorated between the Parties based on the latest information available to Escrow Agent. If the actual amount of said taxes, bonds, and assessments are not known as of the Closing Date, said taxes, bonds and assessments shall be prorated based on the most recently assessed and known amounts, and there shall be no adjustments for either party in the event that the actual amounts of said taxes, bonds and assessments differ from said previous amounts.

11.03 Closing Costs. Escrow fees charged by Title Company shall be paid one-half (1/2) by the Seller and one-half (1/2) by Buyer. Seller shall pay the premium chargeable for a Standard's Owners Policy of Title Insurance. Buyer shall pay (i) the fee to upgrade the Title Policy to an ALTA Extended Coverage policy; (ii) the cost of any title endorsements Buyer may request, and (iii) fees and expenses related to Buyer's financing. The Seller shall pay the fee for recording the Deed. Except as otherwise provided in Section 10.03, each party shall be responsible for the payment of its own attorneys' fees incurred in connection with the transaction, which is the subject of this Agreement.

11.04 Commissions. Seller has not retained or engaged a real estate broker, commission agent or any other person who is or may be entitled to payment of a commission or finder's fee or other compensation in connection with the transaction contemplated by this Agreement. Buyer shall indemnify, hold harmless and defend the other, its successors and assigns for, from and against any and all claims, demands, actions, costs and expenses, including

reasonable attorney and accounting fees and court costs arising out of any claim by any real estate broker or other person claiming through Buyer that such person is entitled to any commission or fee in connection with this transaction. The provisions of this Section 11.04 shall survive the Closing.

12. Condemnation and Risk of Loss.

12.01 Condemnation. If, prior to Closing, any governmental authority, other than Seller, or other entity having condemnation authority shall institute an eminent domain proceeding or take any steps preliminary thereto (including the giving of any direct or indirect notice of intent to institute such proceedings) with regard to the Property, and the same is not dismissed on or before ten (10) days prior to Closing, Buyer shall be entitled either to terminate this Agreement upon written notice to Seller or to waive such right of termination and receive all such condemnation proceeds. In the event Buyer elects to terminate this Agreement under this Section 12.01, the Title Company shall forthwith return to Buyer the Earnest Money, less the Fair Consideration, and neither party to this Agreement shall thereafter have any further rights or obligations hereunder except for those rights and obligations that survive termination of this Agreement or the Close of Escrow as provided in this Agreement.

12.02 Risk of Loss. The risk of loss or damage to the Property and all liability to third persons until the Close of Escrow shall be borne by the Seller. Buyer shall assume all risks of loss or damage to the Property and all liability to third persons upon the Close of Escrow except as otherwise provided in Section 13(a).

13. Post-Closing Obligations and Reversion Option. The City and Buyer agree to the following post-closing obligations:

(a) The City shall retain control of all operations of the Airport and shall appoint an Airport Manager in charge of Airport operations. The City shall defend, indemnify, and hold harmless Buyer, its Members Managers, employees, and agents from and against all claims, damages, injuries, costs, penalties, actions, suits, and liabilities of all kinds, including without limitation, reasonable attorneys' fees, for personal injury, illness, or death of any person, and damage to or destruction of property arising out of or related to the negligent acts or omissions, willful misconduct or negligent conduct by the City or the City's employees, contractors or agents in connection with the City's operation of the Airport.

(b) The City shall design and complete rehabilitation of the existing Runway 03-21. Rehabilitation shall include mill and overlay in accordance with proper industry standards and following all local and any additional grant funding received. Buyer shall contribute to the Airport rehabilitation as provided in Section 13(i).

(c) The City has obtained Arizona Department of Transportation (ADOT) Aeronautics Division grants for improvement of the Airport ("Airport Grants"). The Airport Grants include, but are not limited to, \$108,000 for Airport security Fence Improvements Phase I in 2016 and \$180,000 for Airport Security Fence Improvements Phase II in 2018. The City will transfer the Airport Grants to Buyer, to the extent assignable, and Buyer shall be responsible for

the payment of any amounts that ADOT requests to be paid back as a result of Buyer's acquisition of the Property and such amounts shall be paid at Closing.

(d) Within eighteen (18) months after the Close of Escrow, Buyer will begin development and construction of all portions of the Airport Development (defined in Section 8(a)). Buyer shall comply with all local, state and federal laws in connection with the design and construction of the Airport Development. ~~This will include the beginning of construction and development of a jet hangar and a restaurant as agreed upon between the Parties.~~

(e) The City and Buyer shall cooperate with each other in granting reasonable and permanent access easements upon, over and across their respective properties, identified as the City Retained Property and the Property.

(f) The Parties agree to cooperate with each other in granting reasonable and permanent easements for utilities, telecommunications, fiber-optics and other devices upon and over their respective properties. Neither party shall charge the other party for the access and rights granted in such easements. The easements, however, will not interfere with areas where any permanent structural improvements are located or planned to be located on the City Retained Property or the Property, but shall be permitted in areas such as parking lots, landscape areas, drive aisles and other areas not designed for permanent structures.

(g) Buyer shall be responsible for compliance with all local, state and federal regulations in effect at the Airport, as well as compliance with all Federal Aviation Administration laws, regulations, inspections, audits, etc.

(h) Buyer shall be responsible for any costs and fees including, but not limited to, impact fees, plan review fees and permit fees and shall be subject to the City's or other appropriate governmental entity's normal plan submittal, review and approval processes, fees and day-to-day inspection services.

~~(i) Buyer shall make payments to the City for rehabilitation of the Douglas Airport as follows:~~

~~_____ (i) At Closing, Buyer and its successors shall pay to the City the amount of the runway rehabilitation costs that exceed One Million Five Hundred Thousand and No/100 Dollars (\$1,500,000.00) (the City shall pay the first \$1,500,000.00 of runway rehabilitation costs). The Parties agree that Buyer's share of the runway rehabilitation cost shall not exceed Five Hundred Thousand Dollars (\$500,000.00). Runway rehabilitation costs include, but are not limited to, all engineering, surveying, construction and construction administration as depicted in the scope of work shown on Exhibit D.~~

~~_____ (ii) In addition to the payment to the City required by Section 13(i)(i), Buyer and its successors shall pay to the City seventhree and one-half percent (73.5%) of the net proceeds received by Buyer and its successors from the sale of sections of the Property to third parties until the City has been paid a total of Five-Two Hundred Fifty Thousand Dollars (\$50250,000.00) ("Post-Closing Net Proceeds Payments"). The calculation of net proceeds will~~

allow for the deduction of apportioned land costs, apportioned development costs, construction costs specific to the subject parcel, and other reasonable related expenses incurred by Buyer and its successors for the subject parcel of real estate. There shall be no deduction for management or administrative expenses. Once the total amount set above in this subsection has been paid by Buyer and its successors to the City, Buyer and its successors shall have no further payment obligation to the City pursuant to this subsection.

_____(jiii) Post-Closing Net Proceeds Payments from Buyer to the City will be due within thirty (30) calendar days of each closing sale transaction undertaken by Buyer and its successors.

_____(kiv) The payments required by this Subsection shall continue to be applicable to each sub parcel until a final certificate of occupancy has been granted by the City for any subdivided part of the project Property. As such, each time a subdivided parcel is sold, but the subdivided parcel is not finally completed as contemplated and planned, the payment requirement shall continue to be applicable to succeeding sales involving the subdivided parcel.

_____(lv) Buyer and its successors shall provide the City with a detailed accounting for each such transaction at the time of the tendering of the required payment by Buyer to the City. If the City requests additional accounting information, Buyer shall reasonably comply with such requests.

m. Failure of Buyer to satisfy each of the terms and conditions set forth in this Section 13, unless the Parties mutually agree in writing to an extension of time, shall result in the City having the option of taking back the title to ~~the~~ any undeveloped Property (“Reversion Option”). A Notice of Reversion Option, in the form attached as Exhibit DE, shall be recorded against the Property at Close of Escrow. In the event the City exercises its Reversion Option, the Buyer agrees to immediately sign any and all documents necessary to provide the City with clear and unencumbered title to the subject undeveloped Property. “Undeveloped Property” shall be defined as any of the subject real estate transferred pursuant to this Agreement for which Buyer has not submitted development and construction plans to the City and which construction thereof has not begun to be reasonably undertaken by Buyer or its successors in interest in accordance therewith with Section 13(d). If the Property is transferred back to the City for any reason, the City shall pay Buyer the purchase price paid for the Property less the City’s costs incurred in connection with the sale and rezoning of the Property. Prior to exercising the Reversion Option, the City will give Buyer sixty (60) days written notice to comply with the terms it is in breach of.

n. The provisions of this Section 13 shall survive the Close of Escrow.

14. Miscellaneous.

14.01 Notices. Any and all notices, demands or requests required or permitted hereunder shall be in writing and shall be effective upon personal delivery or facsimile transmission (facsimile transmission must include verification of transmission) or one (1) business day after being deposited with any commercial air courier or express service providing next day delivery, addressed as follows:

To the Seller: City of Douglas
Attn: Ana Urquijo, City Manager
425 E. 10th Street
Douglas, AZ 85607
Email: ana.urquijo@douglasaz.gov

With copy to: Denis M. Fitzgibbons, City Attorney
Fitzgibbons Law Offices, P.L.C.
1115 E. Cottonwood Lane, Suite 150
P.O. Box 11208
Casa Grande, Arizona 85130-0148
Email: denis@fitzgibbonslaw.com

To Buyer: James Whitman
JW Resources, LLC
2824 North Power Road, Ste. 113-140
Mesa, AZ85215
480-993-7009
jwhitman@jwresourcesllc.com

With a copy to: Arly Richau
Attorney at Law
12401 North 68th Place
Scottsdale, AZ 85254
602-418-7876
arlyrichau@aol.com

Escrow Agent: Pioneer Title Agency,
Attn: Candy Romo
1065 F Ave Suite #6
Douglas, Arizona 85607
Phone.: (520) 364-4123
Email: candy.romo@pioneertitleagency.com

Buyer, the Seller or Escrow Agent may change its address for notice by giving notice in the manner provided above. The inability to deliver because of a changed address of which no notice was given, or rejection or other refusal to accept any notice, shall be deemed to be the receipt of the notice as of the date of such inability to deliver or rejection or refusal to accept. Any telephone numbers or e-mail addresses provided in this Agreement are for aiding informal communications only, and notices shall not be effective if provided orally or if sent only by e-mail.

14.02 Time of the Essence; Date of Performance. Time is of the essence of this Agreement, and Buyer and the Seller hereby agree to perform each and every obligation hereunder in a prompt and timely manner; provided, however, that if the date for the performance of any action or the giving of any notice which is required hereunder, occurs on a Saturday, Sunday or

legal holiday, the date for performance or giving of notice shall be the next succeeding business day.

14.03 Severability. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be valid under applicable law, but if any provision of this Agreement shall be invalid or prohibited hereunder, such provision shall be ineffective to the extent of such prohibition or invalidation which shall not invalidate the remainder of such provision or the remaining provisions of this Agreement.

14.04 Waiver. The waiver by either party hereto of any right granted to it hereunder shall not be deemed to be a waiver of any other right granted herein, nor shall same be deemed to be a waiver of a subsequent right obtained by reason of the continuation of any matter previously waived.

14.05 Entire Agreement. This Agreement, contains the entire agreement of the Parties hereto with respect to the matters covered hereby, supersedes all prior agreements, arrangements and understandings between the Parties and no other agreement, statement or promise made by either party hereto that is not contained herein shall be binding or valid. All exhibits to this Agreement are by this reference incorporated herein.

14.06 Amendments. This Agreement may be amended only by written document signed by each of the Parties hereto.

14.07 Further Performance. Each party shall, whenever and as often as it shall be requested by the other party, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such further instruments and documents, including supplemental escrow instructions, as may be reasonably necessary in order to complete the sale, conveyance and transfer herein provided and to do any and all things as may be requested in order to carry out the intent and purpose of this Agreement.

14.08 Counterparts. This Agreement may be executed simultaneously or in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement. A party's signature on this Agreement or any amendment hereto may be provided by facsimile or electronically scanned and shall be effective upon transmission to the other party hereto.

14.09 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, devisees, personal and legal representatives, successors and assigns.

14.10 Governing Law; Venue. This Agreement shall be construed and interpreted under, and governed and enforced according to the laws of the State of Arizona, without giving effect to the principles of conflicts of law. The Parties agree that should any court action be commenced relating to this Agreement, that the Cochise County Superior Court shall be the appropriate and exclusive venue therefore. The Parties expressly waive any and all provisions of law providing for a change of venue to any other state or federal court.

14.11 Dispute Resolution. In the event a dispute arises under this Agreement, Buyer and Seller agree that there shall be a thirty (30) day moratorium on litigation during which time the Buyer and the Seller agree to attempt to settle the dispute by non-binding mediation before commencement of litigation. The mediation shall be held under the Commercial Mediation Rules of the American Arbitration Association (“AAA”) but shall not be under the administration of the AAA unless agreed to by the Buyer and the Seller in writing, in which case all administrative fees shall be divided evenly between the Buyer and the Seller. The matter in dispute shall be submitted to a mediator mutually selected by Buyer and the Seller. If the Parties cannot agree upon the selection of a mediator within ten (10) business days, then within five (5) business days thereafter, the Buyer and the Seller shall request that the Presiding Judge of the Superior Court in and for the County of Cochise, State of Arizona, appoint the mediator. The mediator selected shall have at least ten (10) years of experience in mediating or arbitrating disputes relating to commercial property. The cost of any such mediation shall be divided equally between the Buyer and the Seller. The results of the mediation shall be nonbinding with either Buyer or the Seller free to initiate litigation upon the conclusion of the latter of the mediation or of the thirty (30) day moratorium on litigation. The mediation shall be completed in one day (or less) and shall be confidential, private, and otherwise governed by the provisions of A.R.S. § 12-2238, to the extent allowed by the Arizona Open Meetings Law, § 38-431 et. seq.

14.12 Headings and Construction. The headings set forth in this Agreement are inserted only for convenience and are not in any way to be construed as part of this Agreement or a limitation on the scope of the particular paragraph to which it refers. Where the context requires herein, the singular shall be construed as the plural, and neutral pronouns shall be construed as masculine and feminine pronouns, and vice versa. This Agreement shall be constructed according to its fair meaning and neither for nor against either party hereto.

14.13 Tax Reporting. Title Company, as the party responsible for Closing the transaction contemplated hereby within the meaning of Section 6045(e) of the Code, shall file all necessary information, reports, returns and statements (collectively, the "Tax Reports") regarding this transaction as required by the Code, including, without limitation, the Tax Reports required pursuant to Section 6045 of the Code. Title Company further agrees to indemnify and hold Buyer and Seller, and their respective attorneys and brokers, harmless from and against all claims, costs, liabilities, penalties, or expenses resulting from Title Company’s failure to file the Tax Reports which Title Company is required to file pursuant to this paragraph.

14.14 Conflict of Interest. This Agreement is subject to the conflict of interest provisions set forth in A.R.S. Section 38-511.

14.15 Assignment. Buyer shall not have the right to assign its rights under this Agreement without the consent of Seller, which may be granted or withheld in Seller’s sole and absolute discretion.

15. Right to Subdivide and Sell. Buyer shall have the right to sell all or any part of the Property governed by this Agreement, subject to the payments and other requirements contained in Section 13, which payments will continue to be applicable to each sale until final occupancy of

such parcel.

IN WITNESS WHEREOF, Buyer and the Seller have executed this Agreement effective as of the date first written above.

SELLER:

CITY OF DOUGLAS, a municipal corporation

By: _____
Its Ana Urquijo, City Manager

Attest:

Approved as to form:

By: _____
Alma Andrade,
City Clerk

By: _____
Denis M. Fitzgibbons
City Attorney

BUYER:

JW Resources, LLC an Arizona limited liability company

By: _____
James Whitman, Manager

ACKNOWLEDGEMENT AND AGREEMENT BY TITLE COMPANY

The Title Company hereby acknowledges receipt of a fully executed copy of this Agreement on this ___ day of _____, and agrees to accept, hold, deliver and disburse the Earnest Money, together with all interest accrued thereon and received by the Title Company, strictly in accordance with the terms and provisions of this Agreement and without the necessity of further consent or instruction by Seller or Buyer. The Title Company is hereby designated as, and agrees to undertake the obligations of, the Reporting Person pursuant to Section 6045 of the Internal Revenue Code and the regulations promulgated thereunder.

By: _____
Pioneer Title Agency,
Attn: Candy Romo
1065 F Ave Suite #6
Douglas, Arizona 85607

EXHIBIT A

Legal Description of the Property

To be provided by Title Company

EXHIBIT B

City Retained Property

To be Provided Once Survey is Completed

EXHIBIT C
Buyer's Proposal

EXHIBIT D

~~Runway Rehabilitation Project—Scope of Work~~

EXHIBIT DE

Notice of Reversion Option