

Commonwealth of Puerto Rico  
Department of Natural and Environmental Resources  
San Juan, Puerto Rico

Agency: 133

CONTRACT #: 050-07-00/19

Registry #: 3/6/07

PURCHASE AND SALE AGREEMENT

APPEARING:

ON THE FIRST PART: The Department of Natural and Environmental Resources of the Commonwealth of Puerto Rico (DNER), created and authorized to enter into this PURCHASE and SALE CONTRACT (hereinafter, "CONTRACT") by Law No. 23 of June 20, 1972, as amended, employer identification number 660-00-1007, which in turn is represented by the Secretary of Natural Resources, Javier Vélez-Arocho, of legal age, single, biologist by profession and resident of Guaynabo, Puerto Rico (hereinafter, the "DEPARTMENT").

ON THE SECOND PART: PFZ Properties, Inc., a corporation created under the Laws of Puerto Rico, employer identification number 660-23-2420, which in turn is represented by its President, Jack Katz, of legal age, married, and resident of Carolina, Puerto Rico (hereinafter, the "SELLER").



THE PARTIES STATE AS FOLLOWS:

WHEREAS: Only 7.3% of Puerto Rico's territory is protected from the pressures created by urban sprawl, when the best management practices point towards a 15% minimum in regards lands set aside for conservation ends.

WHEREAS: Article VI, § 19 of the Constitution of the Commonwealth of Puerto Rico states that it shall be the public policy of the Commonwealth to conserve, develop and use its natural resources in the most effective manner possible for the general welfare of the community.

WHEREAS: In conformity with Article 4 of Law No. 416 of September 22, 2004, as amended, also known as the Puerto Rico Environmental Public Policy Act, it is the ongoing responsibility of the Commonwealth of Puerto Rico to use all practical means, consistent with other basic considerations of public policy, to improve and coordinate plans, functions, programs and resources so that Puerto Rico can fulfill the responsibilities of each generation as custodian of the environment for the benefit of subsequent generations; assure safe, healthy, productive, esthetic and culturally pleasing landscapes for all Puerto Ricans; achieve the broadest enjoyment

of beneficial uses of the environment without degradation, risk to health or safety or other undesirable consequences; preserve the important historical, cultural and natural aspects of our heritage and maintain, wherever possible, an environment that offers diversity and variety for individual choice; achieve a balance between the population and the use of resources that permit a high standard of living and broad participation in the amenities of life; and improve the quality of renewable resources and oversee the sensible use of those resources that undergo depletion.

WHEREAS: According to Article 3 of Law No. 23 of June 20, 1972, as amended, also known as the Organic Act of the Puerto Rico Department of Natural and Environmental Resources, the DEPARTMENT is responsible for the implementation of the operational aspect of the public policy expressed in Article VI, § 19 of the Constitution of the Commonwealth. As such, the DEPARTMENT must carry out programs for the rational use and conservation of Puerto Rico's natural resources. As per said Organic Act, the Secretary of the DEPARTMENT is authorized to enter into contracts and agreements that further the legitimate objectives of the agency.

WHEREAS: Under the authority of Law No. 268 of September 5, 2003, as amended, the DEPARTMENT has established criteria based on ecological, social, legal and economic factors, among others, to adjudicate a fixed score depending on the particularities of lands and properties, which in turn serves as an objective evaluation method for diverse areas with multiple geographic and ecological characteristics.

WHEREAS: With the data compiled by the DEPARTMENT the agency has in turn created a statistical matrix which, initially, identified 48 properties of high ecological importance which should be acquired by the Commonwealth, for conservation purposes.

WHEREAS: It is the understanding of the DEPARTMENT that safeguarding a healthful environment for all Puerto Ricans, including future generations, constitutes a moral, legal and constitutional imperative.

WHEREAS: The DEPARTMENT, as per its Organic Act, as well as under other statutes of the Commonwealth of Puerto Rico has the duty of identifying and protecting lands of high ecological importance, that are, as such part of natural patrimony and heritage. The acquisition accorded today shall protect, to the maximum degree possible, lands of great ecological value which could be subjected to unsound development pressures that would be incompatible with their conservation.

**WHEREAS:** The DEPARTMENT intends to purchase, for conservation purposes, the following parcels of land of high ecological value, (hereinafter, the "PROPERTIES"):

The 62-cuerdas (60.2-acre) land tract which is the object of the proposed Costa Serena development

Natural composition of the tract:

A land tract in the coastal plain of the town of Loiza, with a flat terrain, forested in most of its extension by coconut palms and other trees and shrubs of the supralittoral uplands; totally composed of a segment of natural sand deposits, of marine origin, overlying an underground platform of consolidated to non-consolidated sandstone (colianite). The tract is located to the south of the sand dune system bordering the northern limit of road PR-187; to the north of the mangrove basin in the Torrecilla ward of the town of Loiza; to the east of the Natural Reserve of the Piñones Commonwealth Forest; and to the west of other segments of the greater sand deposit with coconut groves and coastal woodlands, and of the greater mangrove basin.

The 1185-cuerdas (1151-acre) land tract immediately to the south of the land tract where the Costa Serena development is proposed

A floodable land tract, covered in most of its extension by part of the basin mangrove system (mangrove swamp) of the Torrecilla Baja ward in the town of Loiza, and to a lesser extent by marshes or predominantly herbaceous wetlands resistant to brackish substrates.

The 58-cuerda (53.4-acre) (approximately) land tract in Punta Vacía Taloga

A land tract composed in all its extension by an upwelling of mostly consolidated colianites, located at the Punta Vacía Taloga in the Torrecilla Baja ward of the town of Loiza. The land surface has dense beach sedge in its northern extreme, subject to the saline spray of the adjoining high-energy marine coast; its plant layer reaches the height of the evergreen woodland covering most of its southern portion, which is occupied by trees, shrubs, vines, and herbaceous plants, all of which resist the strong salt-carrying coastal winds. It is limited to the north by those segments of the colianite upwelling subject to frequent wave splash.

**WHEREAS:** As an instrumentality of the Commonwealth of Puerto Rico, the DEPARTMENT manages the Fund for Land Acquisition and Conservation, established under Law No. 268 of September 5, 2003, as amended. Said fund, has monies available for the acquisition of the PROPERTIES which will be paid according to the professional appraisal to be carried out.

**WHEREAS:** The SELLER shall sell the PROPERTIES to the DEPARTMENT, who shall purchase them, and both parties shall carry out this transaction as per the following:

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*f*  
*46*  
*ms*  
*3/8*  
*2*

TERMS AND CONDITIONS

FIRST: SELLER shall withdraw from all Agencies of the Executive Branch of the Commonwealth the proposed development of Costa Serena Resort (#: 97-21-1075 JPL; O-PA DIA01-8J-00025-04032005; C-1197-1253, et al.) effective as of transfer to the DEPARTMENT of the full title (fee simple absolute) of the PROPERTIES, as set forth in paragraph THIRD of this CONTRACT. While this CONTRACT is in full force and effect, the SELLER shall desist from obtaining, and the Government of the Commonwealth of Puerto Rico shall not issue, any permits, inter-agency comments, endorsements and similar official documents for said development. The DEPARTMENT's Official Comments to the Final BIS for said development released on August 29, 2006, shall be repealed, effective as of transfer to the DEPARTMENT of the full title (fee simple absolute) of the PROPERTIES

SECOND: The Parties have chosen McCloskey, Mullet & Bonin Appraisers, P.S.C. as the professional real-estate appraiser to determine the price of the PROPERTIES and hereby accept his proposal, including methodology to be used, dated March 5, 2007. The cost of the appraisal shall be paid 50% by the SELLER and 50% by the DEPARTMENT. The purchase price of the PROPERTIES shall be the fair price determined by McCloskey, Mullet & Bonin Appraisers P.S.C.

THIRD: Within 120 days after the undersigning of the present CONTRACT, the SELLER shall transfer to the DEPARTMENT, via a property deed to be executed before a notary-public, the full title (fee simple absolute) of the PROPERTIES, as these lands are described in the Commonwealth's Property Registry. Simultaneously with the SELLER's transfer to the DEPARTMENT, of the full title (fee simple absolute) of the PROPERTIES, the DEPARTMENT shall pay the purchase price of the PROPERTIES in US Dollars by a certified check issued by the Secretary of the Puerto Rico Treasury Department. The transfers shall occur on a date mutually agreed upon by the Parties. All costs and expenses related to the execution and recording of the deed of transfer of the PROPERTIES shall be borne by the DEPARTMENT.

FOURTH: The DEPARTMENT, at its own cost and expense, shall promptly carry out certain tasks for the swift acquisition of the PROPERTIES. These pre-acquisition and acquisition tasks include actions such as title searches at the Property Registry of the Commonwealth and land surveys, if such are required. The DEPARTMENT can perform these pre-acquisition and acquisition tasks through its regular personnel or through personnel retained by contract. All actions set forth in this paragraph shall be borne by the DEPARTMENT.

FIFTH: Once the full title (fee simple absolute) of the PROPERTIES is transferred, the DEPARTMENT shall promptly carry out all necessary legal, administrative and/or legislative tasks so that the PROPERTIES can be incorporated into the DEPARTMENT's State Forests, the Piñones State Forest and/or shall perform any other action to safeguard and guarantee the

permanent preservation of the **PROPERTIES** as Public Domain of the People of Puerto Rico. All actions set forth in this paragraph shall be borne by the **DEPARTMENT**.

**SIXTH:** That in case of non-compliance by the **SELLER** of the main obligations set forth in this **CONTRACT**, particularly as expressed in the Second and Third Terms and Conditions, the **DEPARTMENT** shall bill and the **SELLER** shall pay, in full, the fees and costs related to pre-acquisition and acquisition tasks, including real-estate appraisals, within a period that shall not exceed 30 days after the **DEPARTMENT** sends the bill to the **SELLER** via certified mail. The remedies set forth in this paragraph constitute the sole and exclusive remedies of the **DEPARTMENT** under this **CONTRACT** and hereby waives all other remedies or rights at law or equity or under contract should **SELLER** fail or refuse to comply with this contract.

**SEVENTH:** That no employee or official working in or for the **DEPARTMENT** has any direct or indirect monetary interest in this **CONTRACT**.

**EIGHT:** The **SELLER** recognizes and acknowledges his duty to refrain from holding interest adverse to those of the **DEPARTMENT**. These adverse interests include the representation of clients who have or might have interests contrary to those of the **DEPARTMENT**. This duty includes the obligation to continually disclose to the **DEPARTMENT** all circumstances of his relationship to clients and third persons who might hold an adverse interest that could affect the **DEPARTMENT** at the moment of signature of this **CONTRACT** or during the period in which it is in force. The **SELLER** holds adverse interests when in benefit and furtherance of a client's needs it is also his duty to oppose the same ends, in furtherance of his obligations with a previous, actual or future client. Adverse or conflicting interests are held, also, if such conduct is described or typified as such in the ethical rules or norms of conduct of his profession, or in the Laws and Regulations of the Commonwealth of Puerto Rico. The **SELLER** shall refrain from acting in a way which portrays even the mere appearance of the existence of and adverse or conflicting interest.

**NINE:** The **SELLER** recognizes and acknowledges his duty to comply with the Drug Free Work Place Act of 1988.

**TENTH:** The **SELLER** certifies and guarantees that at the moment of signing **CONTRACT** he has complied with all tax duties and obligations during the 5 years before the **CONTRACT**; that no past taxes are due or owed to the Puerto Rico Treasury Department, or is under a deferred payment plan that is being complied with; that at the moment of signing **CONTRACT** he has paid all unemployment insurance, disability and social security dues for his employees (if applicable). That at the moment of signing this **CONTRACT** the **SELLER** has paid all property taxes. The **SELLER** recognizes and acknowledges that the aforementioned is an essential condition of this **CONTRACT** and if the previous certification is wholly or partly incorrect, the **SELLER** is forewarned that such defective certification constitutes enough cause to invalidate the present **CONTRACT**, if the **DEPARTMENT** so wishes.

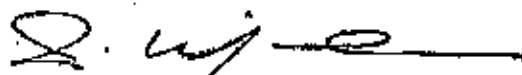
**ELEVENTH:** The SELLER expresses that he understands the legal obligation set forth in Law 438 of December 29, 2000, as amended by Law 84 of July 29, 2001, which states that no chief or head of a government agency, department, public corporation, municipality or any instrumentality or subdivision of the Commonwealth shall award a government auction or award a contract for transfer or sales of goods or services to any natural or legal person that has been convicted, or has declared himself or been found guilty, in the Commonwealth or in any State or Territory, including any area of federal jurisdiction, of the United States of America, of fraud, misuse or misappropriation of public funds, and other economic crimes. Conviction for such crimes shall automatically nullify and void all contracts with all government agencies, departments, public corporations, municipalities or any instrumentalities or subdivisions of the Commonwealth and all misappropriated or misused public funds shall be returned and refunded to the Commonwealth.

**TWELFTH:** This CONTRACT is subject to the laws of the Commonwealth of Puerto Rico and shall be interpreted according to said laws. Any case or controversy arising under the CONTRACT that cannot be resolved amicably by mutual accord of the signing parties shall be submitted for resolution to the General Court of Justice of The Commonwealth of Puerto Rico.

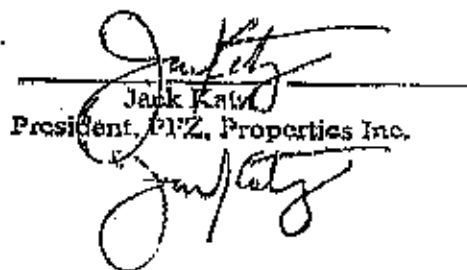
**THIRTEENTH:** This CONTRACT can be amended by mutual accord of the signing parties only if such amendments are in furtherance of the public interest and are in compliance with applicable laws and regulations. All amendments shall be proposed in writing and must be signed by both parties.

**FOURTEENTH:** All Clauses and Terms and Conditions of this CONTRACT are independent from each other and severable, and the invalidity of one or several Clauses, Terms and/or Conditions shall not void or affect the validity or legality of the remaining Clauses, Terms and/or Conditions.

IN WITNESS WHEREOF, the parties hereto have entered into this CONTRACT, in San Juan Puerto Rico this 6 of March 2007.



Javier Velaz Arocho  
Secretary DNER



Jack Katz  
President, PZ Properties Inc.



Estado Libre Asociado de Puerto Rico  
Commonwealth of Puerto Rico  
**OFICINA DEL CONTRALOR**  
Office of the Comptroller  
San Juan, Puerto Rico

PROCESO ADMINISTRATIVO DE LICITACION POR INVITACION PARA ADQUISICION DE BIENES  
22502027001 (enq) 11004

**CERTIFICACION**  
CERTIFICATION

**SOBRE OTORGAMIENTO DE CONTRATO, ESCRITURA O DOCUMENTO RELACIONADO**  
REGARDING THE EXECUTION OF CONTRACTS, DEEDS AND OTHER RELATED DOCUMENT

(1) **Código de Entidad** 2230  
Entity Code

(2) **Número de Contrato** 2007-001148  
Contract Number

(3) **Fecha de Otorgamiento (dd/mm/aa)** 06/03/07  
Date of execution (dd/mm/yy)

(4) **Cuántía Total** \$0.00  
Total amount

(5) **Cuentas:** 281-0500000-081-2004  
Accounts

(6) **Código del Tipo de Contrato** 26-ACUERDOS NO FINANCIEROS  
Contract Type Code

(7) **Exento** 10-NO conllevan un desembolso de fondos  
Exempt

(8) **Orden (Aprobación o dispensa de algún organismo del Gobierno)** VER CARTA DEL DRNA AL CONTRALOR 6/MARZO/07  
Authorization or waiver from another government entity

(9) **Vigencia desde (dd/mm/aa)** 06/03/07 **hasta (dd/mm/aa)** 06/03/08  
Effective date from (dd/mm/yy) to (dd/mm/yy)

(10) **Seguro Social Personal o Patronal** 660-23-2420  
Social Security Number

(11) **Contratista(s)** FRZ PROPERTIES, INC.  
Contractor

(12) **Representante(s) de la(s) Entidad(es) Gubernamental(es)** JAVIER VELEZ AROCHO  
Government Representative(s)

Se somete la presente certificación en un cumplimiento con la Carta Circular promulgada por el Contralor de Puerto Rico y en cumplimiento con el Reglamento Núm. 32 Sobre Registro de Contratos, Escrituras y Documentos Relacionados y Envío de Copias a la Oficina del Contralor. Esta debe ser remitida a la Oficina del Contralor.

This certification is submitted in compliance with the instructions issued by the Comptroller of Puerto Rico and in accordance with Regulation No. 32, regarding the Registration of Contracts, Deeds and Other Related Documents and the Mailing of such Copies to the Comptroller's Office by the Government entity.

Los suscribientes certificamos haber otorgado hoy el contrato descrito en este documento.  
The undersigned, certify having that the contract described in this document was executed on this date.

(13) **En (ciudad)** SAN JUAN, **Puerto Rico, hoy (dd/mm/aa)** 06/03/07  
in Puerto Rico, today (dd/mm/yy)

(14) **Firma(s) Contratista(s):**  
Signature of the Contractor(s)  
  
Firma (Signature) SS: 660-23-2420  
**FRZ PROPERTIES, INC. JACK KATZ**  
Letra de molde (print)

(15) **Firma(s) Funcionario(s) Gubernamental(es):**  
Signature of the Government Official(s)  
  
Firma (Signature)  
**JAVIER VELEZ AROCHO**  
Letra de molde (print)