

PURCHASE AGREEMENT

LITTLE PINE ISLAND MITIGATION BANK CREDITS

THIS AGREEMENT is made, effective the 20th day of January, 2022, by and between LPI Wetland Mitigation Bank, Ltd., a Florida limited partnership ("Banker") and Charlotte County Airport Authority ("Purchaser").

WHEREAS, Banker is a lawfully organized and in good standing under the laws of the State of Florida and doing business as a Mitigation Bank; and

WHEREAS, on June 15, 1995, the Governor and Cabinet of the State of Florida meeting as the Board of Trustees of the Internal Improvement Trust Fund unanimously approved that certain Use Agreement between Banker and the State of Florida for the Little Pine Island Mitigation Bank (the "Bank"); and

WHEREAS, Chapter 373, F.S., Section 62-342 F.A.C., 33 C.F.R. Chapter II and 40 C.F.R. Chapter I encourage the development and use of wetland mitigation banking in order to minimize the uncertainty associated with traditional mitigation practices, provide greater assurance of mitigation success, and in order to yield long-term sustainable regional ecological benefits; and

WHEREAS, Banker has obtained the necessary permits for Banker's operation of the Bank from the State of Florida, Department of Environmental Protection [Permit Number 198719-082 (formerly 362434779)] and the Army Corps of Engineers [Permit Number 199400037(IP-GS)] and the Federal Interagency Mitigation Banking Instrument; and

WHEREAS, Purchaser is developing the property as more particularly described on Exhibit "A" attached hereto (the "Impacted Site"); and

WHEREAS, in connection with Purchaser's development of the Impacted Site, Purchaser is required by the applicable authorities, as described on Exhibit "B", to mitigate the impact that Purchaser's development will have on wetlands located on the Impacted Site, through the purchase of mitigation credits; and

WHEREAS, Purchaser desires to achieve the above-described mitigation through the purchase of mitigation credits from Banker.

NOW THEREFORE, in consideration of the above premises, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties do hereby agree as follows:

1. **AGREEMENT TO PURCHASE.** Banker hereby agrees to sell, and Purchaser hereby agrees to purchase 2.80 freshwater herbaceous wetland mitigation credits (the "Credits"), subject to the terms and conditions of this Agreement.

2. **PURCHASE PRICE.** Purchaser shall pay to Banker the sum of FOUR HUNDRED SIXTY TWO THOUSAND 00/100 DOLLARS (\$462,000.00) (the "Purchase Price") for the Credits.

3. **DEPOSIT.** In order to reserve the availability of the Credits at the Purchase Price, Purchaser shall deliver to Banker a deposit of ONE HUNDRED THIRTY EIGHT THOUSAND SIX HUNDRED AND 00/100 DOLLARS (\$138,600.00) (the "Deposit") contemporaneously with the execution of this Agreement. Purchaser hereby agrees that the Deposit need not be segregated or escrowed and may be used by Banker, in Banker's sole discretion, to offset any and all costs associated with the operation of the Bank.

4. **BALANCE OF PURCHASE PRICE.** The balance of the Purchase Price, THREE HUNDRED TWENTY THREE THOUSAND FOUR HUNDRED AND 00/100 DOLLARS (\$323,400.00), shall be due and payable no later than fifteen (15) business days following issuance of the approvals by the applicable authorities, as described in Exhibit "B" for the Impacted Site or no later than November 29, 2022, whichever comes first (the "Payment Date"). If Purchaser fails to pay the balance of the Purchase Price by the Payment Date, then (i) Purchaser shall be in default hereunder, (ii) Banker shall have no obligation to transfer the Credits to Purchaser and (iii) the Deposit shall be deemed non-refundable and shall be forfeited to Banker. Thereafter, neither party shall have any further liability or obligation to the other hereunder.

5. **DELIVERY OF CREDITS; AVAILABILITY AND WITHDRAWAL.** Provided Purchaser has paid the Purchase Price on or before the Payment Date, Banker will deliver the Credits to Purchaser within fifteen (15) business days following the Payment Date (the "Delivery Date"); provided, however, Banker shall not be obligated to deliver the Credits to Purchaser until all applicable authorities including, but not limited to, the Florida Department of Environmental Protection and the Army Corps of Engineers, have deemed the Credits available and capable of being withdrawn by way of minor modifications of the Bank Permits (the "Credit Approvals"). Notwithstanding the forgoing, if Banker has not received the Credit Approvals on or before 5:00 p.m. on the thirtieth (30) day following the Delivery Date, then Purchaser may thereafter terminate this Agreement by providing written notice to Banker. In such event, Purchaser shall be entitled to a return of all sums paid to Banker pursuant to this Agreement.

6. **APPROVAL FOR USE OF CREDITS AT IMPACTED SITE.** Purchaser represents, warrants and covenants that the agencies listed on Exhibit "B" attached hereto are all of the agencies whose approval is necessary for use of the Credits at the Impacted Site. Purchaser shall be solely responsible for obtaining, and shall use its best efforts to obtain, all necessary agency approvals and permits for the use of the Credits at the Impacted Site. Purchaser shall provide copies of Purchaser's final permit(s) to the Banker within three (3) business days of their issuance but, in any event, not later than the Payment Date. Should Purchaser fail to obtain the final permit(s) and provide them to Banker prior to the Payment Date for any reason, then (i) Banker shall not be obligated to deliver the Credits to Purchaser (ii) this Agreement shall automatically terminate, (iii) the Deposit shall be forfeited to Banker and (iv) the parties shall have no further liability or obligation to the other hereunder.

7. **NOTICES.** Whenever this Agreement requires or permits any notice or request by one party to the other, the notice shall be in writing and deemed to have been given (a) upon delivery, if delivered personally, (b) upon receipt, if made via nationally recognized overnight courier, or (c) upon deposit in the U.S. Mails if given by certified mail, return receipt requested.

The parties' addresses for Notices are:

Banker: c/o Sheila O'Connor, Authorized Agent
LPI Wetland Mitigation Bank, Ltd.
1616 Cape Coral Pkwy W, Suite 102 PMB #261
Cape Coral, FL 33914

Purchaser: c/o James W. Parish, P.E., CEO
Charlotte County Airport Authority
Punta Gorda Airport
28000 A-1 Airport Road
Punta Gorda, FL 33982

8. **ATTORNEY'S FEES.** In any action, including breach, enforcement or interpretation, arising out of this Agreement, the prevailing party in such action shall be entitled to recover its reasonable attorney's fees, costs and expenses, including those incurred on appeal.

9. **APPLICABLE LAW.** This Agreement and the parties' rights and obligations hereunder shall be construed in accordance with the laws of the State of Florida. Venue to be Charlotte County, Florida.

10. **ASSIGNMENT.** Purchaser's rights under this Agreement may be assigned. Banker may assign its rights or obligations hereunder if Banker has transferred its mitigation banking permit and said transfer has been approved by the appropriate State and Federal agencies having jurisdiction.

11. **INTEGRATION; MODIFICATION.** This Agreement constitutes the entire Agreement of the parties concerning the subject matter hereof and supersedes any prior oral or written agreement or understanding of the parties. This Agreement may be modified, amended or supplemented only in a writing executed by the parties.

IN WITNESS WHEREOF, the Parties have hereunto set their hands effective the day and year first above written.

Banker:

**LPI WETLAND MITIGATION BANK, LTD.,
a Florida limited partnership**

By: 
Sheila O'Connor, Authorized Agent

CHARLOTTE COUNTY AIRPORT AUTHORITY

By: 
E0D2EEAA75074BC
James W. Parish, P.E., CEO

Exhibit "A"

**Charlotte County Strap Number(s) for the subject parcel:
412315400001**

Exhibit "B"

Purchaser and Banker to initial next to all applicable permits required for the Impacted Site:

Banker

Purchaser

Florida Department of Environmental Protection

South Florida Water Management District





Southwest Florida Water Management District





US Army Corps of Engineers