

MITIGATION CREDIT PURCHASE AGREEMENT

THIS MITIGATION CREDIT PURCHASE AGREEMENT (hereinafter "Agreement") is made this ____ day of _____, 2009, by and between **HAMMOCK LAKE MITIGATION BANK, LLC** ("Seller"), whose mailing address is 3715 Northside Parkway, Suite 2-500, Atlanta, GA 30327 and **CITY OF LEESBURG-LEESBURG INTERNATIONAL AIRPORT** ("Buyer") whose mailing address is 501 West Meadow Street Leesburg, Florida 34749 (collectively, the "Parties").

WITNESSETH:

WHEREAS, Seller owns Hammock Lake Mitigation Bank in Polk County, Florida (the "Mitigation Property") with state freshwater mitigation credits available or soon to be available for transfer and sale under Southwest Florida Water Management District (hereinafter "SWFWMD") Permit No. 43033458.000;

WHEREAS, Buyer has commenced environmental permitting for its proposed development known as **Runway 3 Safety Area and Taxiway A Line of Sight Tree Trimming** (the "Project") under SJRWMD Application No. 40-069-19073-21 ("Buyer's State Permit"), and it is anticipated that the approval of Buyer's State Permit will be conditioned on the purchase of freshwater mitigation credits as compensatory mitigation; and

WHEREAS, Seller agrees to sell and Buyer agrees to purchase 1.23 state freshwater herbaceous state mitigation credits (the "Credits") available from the Mitigation Property on the terms and conditions below;

NOW, THEREFORE, in consideration of the Credits and of the mutual covenants hereinafter contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, each intending to be legally bound, do hereby warrant and agree as follows:

1. **Terms of Purchase.** Subject to the terms of this Agreement, and for the consideration herein stated, Seller agrees to sell and Buyer agrees to purchase the Credits. The purchase price (hereinafter, the "Purchase Price") of the Credits is One Hundred Forty-Seven Thousand Six Hundred and 00/100 Dollars (\$147,600.00), which shall be paid by Buyer for the Credits as described herein, less a credit for the Deposit (as defined herein), payable to Seller via check, cashier's check or wired federal funds.
2. **Deposit.** Simultaneously with the execution and delivery of this Agreement, Buyer shall make a payment of Fourteen Thousand Seven Hundred Sixty and 00/100 Dollars (\$14,760.00) (hereinafter, the "Deposit") to Seller to be held in a non-interest bearing

account. Seller may commingle the Deposit with other funds of Seller and shall not be required to maintain the Deposit in a separate account. The Deposit shall be non-refundable, except in the case of written agency denial or in the event of a breach by Seller (as described in subparagraph 5(b) hereof), but shall be applied as credit against the Purchase Price as set forth in Paragraph 1 hereof.

3. **Reservation and Transfer of Credits.**

a. Upon payment of the Deposit, Seller shall set aside and reserve the Credits for purchase by Buyer until February 7, 2010 (the "Expiration Date"), and Seller shall send written notice of such reservation to SJRWMD. On or before the Expiration Date, Buyer shall deliver written notice to Seller of Buyer's intent to complete the transfer of the Credits, which notice must be accompanied by: (i) a copy of Buyer's State Permit as approved by SJRWMD and, (ii) payment to Seller in the amount of the Purchase Price, less the Deposit (the "Exercise Notice"). Within ten (10) days of Seller's receipt of the Exercise Notice, Seller shall submit to SWFWMD a copy of Buyer's State Permit and a written request to transfer the Credits to the Buyer, along with such other documentation as may be necessary to effect the transfer of the Credits.

b. Seller shall provide Buyer with evidence that the Credits have been transferred, the Parties hereby agreeing that evidence of the Credits having been transferred shall be a copy of a letter to Seller from SWFWMD confirming the Credit transfer.

c. In the event Buyer has not received approval of Buyer's State Permit prior to the Expiration Date, Buyer shall have the option to extend the Expiration Date by one (1) 45-day period (the "Extension Right"). Buyer may exercise the Extension Right by giving Seller written notice of the same on or before the Expiration Date, which notice must be accompanied by a payment of Fourteen Thousand Seven Hundred Sixty and 00/100 Dollars U.S. (\$14,760.00) (the "Extension Deposit"), which Extension Deposit shall be nonrefundable (except in the event of Seller's default), but applicable to the Purchase Price. The Extension Deposit shall be held with the Deposit and considered part of the Deposit for all purposes under this Agreement.

4. **Default and Remedies.**

a. If the purchase of the Credits contemplated hereby is not consummated because of a default by Buyer under this Agreement, then, as Seller's sole remedy, Seller shall have the right to retain the Deposit, including the Extension Deposit, if any, as full liquidated damages and not as a penalty.

b. If the purchase of the Credits contemplated hereby is not consummated

because of a default by Seller, then (a) Seller shall promptly return the Deposit, including the Extension Deposit, if any, to Buyer, and (b) Buyer may, at Buyer's option, pursue an action for specific performance.

5. **Assignment.** Buyer shall not assign, pledge or hypothecate this Agreement except to an entity controlling, controlled by or under common control with Buyer, if such entity is (or will be) the owner of the Project.
6. **Applicable Law.** This Agreement shall be construed and enforced in accordance with the laws of the state of Florida.
7. **Notices.** All notices required by this Agreement shall be in writing and shall be sent by certified or registered mail or hand delivered to the addresses set out below. Notices shall be deemed delivered and given when mailed, if mailed, or when delivered by hand, upon receipt.

Notices to Seller shall be sent to: Mitigation Marketing, LLC
c/o Hammock Lake Mitigation Bank
Attn: Megan McNeil
P.O. Box 540285 USPS
Orlando, Florida 32854
1005 Edgewater Drive Physical
Orlando, Florida 32804
407-481-0677 phone
407-648-3866 fax

With a copy to: Hammock Lake Mitigation Bank, LLC
c/o Timbervest, LLC
3715 Northside Parkway
Building 200, Suite 500
Atlanta, Georgia 30327
Attn: Cliff Orr

Notices to Buyer shall be sent to: City of Leesburg
Leesburg International Airport
Attn: Charlie Weller
501 West Meadow Street
Leesburg, Florida 34749

With a copy to: EBA Environmental
Attn: Mr. George Molinaro

323 10th Avenue West, Suite 300
Palmetto, Florida 34221

Hanson Professional Services, Inc.
Attn: Mr. Kent Bontrager
9015 Town Center Parkway Suite 105
Lakewood Ranch, Florida 34202

Any notice or demand so given, delivered or made by United States mail shall be deemed so given, delivered or made on the third business day after the same is deposited in the United States Mail, registered or certified letter, addressed as above provided, with postage thereon fully prepaid. All Parties agree that any notice may be faxed to any of the above Parties, provided, however, that a facsimile confirmation is received and that a copy of such notice given via facsimile is simultaneously sent to the noticed party via overnight delivery. Buyer and Seller may from time to time notify the other of changes with respect to whom and where notice should be sent by sending notification of such changes pursuant to this paragraph.

8. **Entire Agreement.** This Agreement contains the entire understanding between the Parties and the Parties agree that no representation was made by or on behalf of the other which is not contained in this Agreement, and that in entering into this Agreement neither relied upon any representation not especially herein contained. This Agreement shall not be binding upon the Seller and Buyer until executed by an officer of the Seller and Buyer, if applicable its corporate seal affixed, and an executed copy of the Agreement has been delivered to the Buyer and Seller.
9. **Amendments and Waivers.** This Agreement may not be amended, modified, altered, or changed in any respect whatsoever, except by a further agreement in writing duly executed by each and all of the parties hereto. No failure by Buyer or Seller to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement or to exercise any right or remedy upon a breach thereof shall constitute a waiver of any such breach or of such any other covenant, agreement, term or condition. Any party hereto, by notice, may but shall be under no obligation to, waive any of its rights or any conditions to its obligations hereunder, or any duty, obligation or covenants of any other party hereto. No waiver shall affect or alter this Agreement, but each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.
10. **No Joint Venture or Partnership or Agency Relationship.** Seller does not have any ownership interest in Buyer's business relationships or operations and Buyer does not have any interest in Seller's business relationships or operations. The relationship between Seller and Buyer is not in any manner whatsoever a joint venture or partnership and neither party shall be the agent of the other for any purpose, unless specifically granted in writing after

execution hereof. Neither party shall hold itself out as an agent, partner or joint venturer with the other and each party shall defend and indemnify the other against any claim of liability arising out of an asserted agency, partnership or joint venture by the other contrary to the express provisions of this paragraph.

11. **Captions; Genders.** Captions used in this Agreement are for convenience of reference only and shall not affect the construction of any provision of this Agreement. Whenever used, the singular shall include the plural, the plural shall include the singular, and gender shall include all genders.
12. **Partial Invalidity.** In case any term of this Agreement shall be held to be invalid, illegal or unenforceable, in whole or in part, neither the validity of the remaining part of such term or the validity of any other term of this Agreement shall in any way be affected thereby.
13. **Calculation of Time.** Business days shall be computed without including Saturdays, Sundays, or national legal holidays, and any time period ending on a Saturday, Sunday or national legal holiday shall be extended until 5:00 p.m. Eastern Time on the next business day.
14. **Effective Date.** The Effective Date of this Agreement is the date on which the last of the Parties signs this Agreement. If more than 30 days have transpired between the first and last signature, this agreement is null and void.
15. **Counterparts.** This Agreement may be executed in any number of counterparts, any one and all of which shall constitute the agreement of the parties and shall be deemed one original instrument. This Agreement may be executed by each party upon a separate copy at attached to another copy in order to form one or more counterparts.
16. **Time is of the Essence.** Time is of the essence under the terms of this Agreement.
17. **Agreement Not Recordable.** This Agreement shall not be recorded in the public records of any county and any attempt to do so shall be null and void and of no force and effect whatsoever and any attempt to do so shall place said party in default hereof.

[Signatures commence on following page]

SIGNATURE PAGES FOR MITIGATION CREDIT PURCHASE AGREEMENT

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement, to become effective as of the date and year first above written and in accordance with the terms of this Agreement.

Signed, sealed and delivered in the presence of:

SELLER:

HAMMOCK LAKE MITIGATION BANK, LLC

By: *Gordon Jones*
Name: *Gordon Jones*
Title: *Manager*

Executed on *November 19*, 2009

BUYER:

**CITY OF LEESBURG-
LEESBURG INTERNATIONAL AIRPORT**

By: _____
Name: _____
Title: _____

Attest: _____
City Clerk

Executed on _____, 2009