

**MITIGATION CREDIT PURCHASE AND DEPOSIT AGREEMENT**

**THIS MITIGATION CREDIT PURCHASE AND DEPOSIT AGREEMENT** (hereinafter "Agreement") is made this 29 day of June 2009, by and between **Ecosystems Land Mitigation Bank Corporation d/b/a Lake Louisa Land Trust**, (hereinafter "Seller"), whose mailing address is P.O. Box 540285 Orlando, Florida 32854 and the **City of Leesburg-Leesburg International Airport**, (hereinafter "Buyer") whose mailing address is 501 West Meadow Street Leesburg, Florida 34749 hereinafter collectively the "Parties").

**WITNESSETH:**

**WHEREAS**, the Seller maintains an ecological restoration project located in Lake County, Florida (hereinafter referred to as the "Mitigation Property");

**WHEREAS**, Seller owns a mitigation bank with freshwater mitigation credits (hereinafter "Credits") available for transfer and sale under St. Johns River Water Management District (hereinafter "SJRWMD") Permit No. 4-069-0313 and U.S. Army Corps of Engineers (hereinafter "USACOE") Permit No. 199502208.

**WHEREAS**, as part of the environmental permitting process involving the USACOE, it is anticipated that Buyer's permit from the aforereferenced respective governmental agencies will be conditioned upon purchase of Credits as compensatory mitigation;

**WHEREAS**, Seller agrees to sell and Buyer agrees to purchase Credits available from the Mitigation Property on the terms and conditions below to be used to offset wetland impacts associated with the proposed development of project known as **Extend Runway 31 & Partial Parallel Taxiway Project** (hereinafter "Project") USACOE Permit No. SAJ-2009-01160.

**WHEREAS**, the number of Credits to be purchased by Buyer has been determined by Buyer after consultation with its advisors to be ten and eighty-six hundredths (10.86) freshwater federal; and

**WHEREAS**, Seller requires as part of this Agreement for Buyer to remit this Agreement and funds to Seller via Mitigation Marketing in order to allow Seller to submit a minor permit modification (hereinafter "Minor Permit Modification") for a debit of ten and eighty-six hundredths (10.86) Credits from the seller's USACOE ledger so that the aforesaid respective Credits can be transferred to the Buyer.

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

1. **Terms of Purchase.** The purchase price (hereinafter "Purchase Price") of the Credits is Two Hundred Seventeen Thousand Two Hundred and 00/100 Dollars (\$217,200.00) payable in check, wired federal funds or cashier's check. Seller agrees to reserve and sell to the Buyer the aforementioned Credits under this Agreement as required by the USACOE. All payments shall be paid to the account of **Lake Louisa Land Trust** and submitted via Mitigation Marketing P.O. Box 540285 Orlando, Florida 32854.
2. **Reservation Period.** This reservation shall commence upon the signing of this Agreement and expire on August 15, 2009.
3. **Covenants of Seller.** Seller covenants and agrees that it shall comply with all conditions and continuing requirements set forth in Seller's permits from the USACOE for the Mitigation Property. Responsibility for compliance with the Seller's permits as to mitigation on the Mitigation Property shall solely be the responsibility of Seller. The provisions of this paragraph 3 shall survive the closing hereunder.
4. **Deposit.** Unless otherwise described herein or otherwise agreed, the Deposit shall be credited against the Purchase Price paid by Buyer for the Credits. The Deposit shall be deposited into a deposit account. Said Deposit shall be non-refundable to Buyer except in the case of written agency denial of credit use or breach by Seller as set forth in Paragraph 8 below.
5. **Conditions of Transfer of Credit.** Upon payment of the total Purchase Price and receipt of buyers permits, Seller shall provide to Buyer within ten (10) days thereafter documentation as required by the USACOE to effectuate the transfer of Credits as per the conditions of the Buyer's permit (i.e. copy of signed minor permit modification request) for the Project.
6. **Debit of Credits and Transfer.** Upon notification of the debit of the Credits by the USACOE, the same shall be transferred to Buyer together with document(s) evidencing such transfer of Credits. The Parties hereby agree that evidence of the Credits being transferred to Buyer shall be the receipt by Seller from the USACOE of credit transfer. Once transfer to Buyer has been completed, it is acknowledged that seller's payment is fully earned.
7. **Release of Deposit.** Upon receipt by Seller of above evidence acknowledging the transfer of mitigation credits and obligations to buyer, it is acknowledged the release of funds paid to Seller for this Agreement is authorized.
8. **Breach of Seller.** If, for any reason, the Credits have not been conveyed to Buyer due to



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 or their attorneys. 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.

12. **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.
13. **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.
14. **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.
15. **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.

16. **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.
17. **Calculation of Time.** Time periods of five (5) days or less shall be computed without including Saturdays, Sundays, or national legal holidays, and any time period existing on a Saturday, Sunday or national legal holiday shall be extended until 5:00 p.m. on the next business day.
18. **Effective Date.** This Agreement is effective on 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.
19. **Typewritten or Handwritten Provisions.** Handwritten provisions and/or typewritten provisions inserted in this Agreement, which are initialed by both parties, shall control over the printed provisions in conflict therewith.
20. **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.
21. **Time is of the Essence.** Time is of the essence under the terms of this Agreement.
22. **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.

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**SIGNATURE PAGES FOR MITIGATION CREDIT PURCHASE AND ESCROW 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:**  
**ECOSYSTEMS LAND MITIGATION BANK CORPORATION d/b/a Lake Louisa Land Trust**

Maria Tebit  
Witness Signature

By: Howard G. Seitz  
Howard G. Seitz, Esquire  
As Its: President

Maria Tebit  
Witness Name

Executed on June 22, 2009

**BUYER:**  
**CITY OF LEESBURG-LEESBURG INTERNATIONAL AIRPORT**

By: \_\_\_\_\_  
Lewis Puckett Jay Evans

Title: ~~City Mayor~~ City Manager

Attest: \_\_\_\_\_

Executed on \_\_\_\_\_, 2009

**ACKNOWLEDGMENT OF BALANCE DEPOSIT**

Receipt is hereby acknowledged of the final balance of \_\_\_\_\_ dollars  
(\$ \_\_\_\_\_) from Buyer and, if by check, such receipt is subject to clearance.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

**Mitigation Marketing, LLC**

By: \_\_\_\_\_

**Project Name: Extend Runway 31 & Partial Parallel Taxiway A**