

Barry Jones Wetland Mitigation Bank



MITIGATION CREDIT PURCHASE AGREEMENT AND ACKNOWLEDGMENT

THIS MITIGATION CREDIT PURCHASE AGREEMENT AND ACKNOWLEDGMENT ("Agreement") is entered into this ____ day of _____, 2023 by and between RBV MITIGATION CREDITS, LLC, a California limited liability company ("Seller") and CITY OF TEMECULA ("Buyer").

RECITALS

A. Pursuant to that certain Memorandum of Agreement Regarding the Establishment, Operation and Use of the **Barry Jones Wetland Mitigation Bank** dated December 1997 (the "MOA"), by and among Pacific Bay Homes (Seller's predecessor in interest); the California Department of Fish and Wildlife ("CDFW"); the United States Fish and Wildlife Service ("USFWS"); and the U.S. Army Corps of Engineers ("USACOE") (CDFW, USFWS and USACOE are referred to collectively hereinafter as the "Agencies"). The Agencies have acknowledged the creation of the Barry Jones Wetland Mitigation Bank (the "Mitigation Bank") and the right of Seller to sell "Mitigation Credits" as provided therein. Each Mitigation Credit is equivalent to 1 acre of mitigation.

B. Buyer desires to mitigate the loss of certain wetland habitat values on real property located in Riverside County California commonly known as **Santa Gertrudis Creek Trail Phase II - Margarita Road Undercrossing** (the "Buyer's Property").

C. Buyer has agreed to purchase from Seller, and Seller has agreed to sell to Buyer 0.19 Mitigation Credit (the "Conveyed Credits") from the Mitigation Bank on the terms and conditions set forth herein. The 0.19 credit represents 0.19 acre of valid U.S. Army Corps of Engineers and California Department of Fish and Wildlife mitigation for wetland resources, all credits being fully consistent with the BEI.

NOW, THEREFORE, in consideration of the agreements and acknowledgments set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller and Buyer hereby agree and acknowledge as follows:

1. **Purchase Price.** The purchase price for the **0.19** Mitigation Credits shall be Thirty-one Thousand Three Hundred Fifty dollars (**\$31,350.00**). The Purchase Price shall be paid in good

funds on the Closing Date, as hereinafter defined in Paragraph 3 below.

2. Acknowledgment of Sale. On the Closing Date, Seller shall deliver a fully executed original of the Acknowledgment of Sale of Mitigation Credits ("Acknowledgment"), a form of which is attached hereto as Exhibit A and such other documents and instruments as may be required by any of the Agencies to evidence and recognize the transfer of the Conveyed Credits to Buyer. Moreover, Seller agrees that to the extent such have not been provided to Buyer at the closing, then if requested by Buyer subsequent to the closing, Seller will provide such documents and instruments as may be required by any of the Agencies to evidence and recognize the transfer of the Conveyed Credits within ten (10) days following Buyer's request. The provisions of this Paragraph 2 shall survive the closing and termination of this Agreement.

3. Closing. The closing will occur on or before **February 14, 2023**, or such other date to which the Buyer and Seller may mutually agree in writing (the "Closing Date"). The closing shall mean the date that the Purchase Price is delivered to Seller and the fully executed Acknowledgment of Sale of Mitigation Credits is delivered to Buyer. Notwithstanding the foregoing, Buyer may accelerate the Closing Date.

4. AS-IS Sale. Buyer acknowledges and agrees that: (a) it is the Buyer's sole responsibility to obtain a determination from each federal, state, or local governmental agency with jurisdiction over the Buyer's Property, including, without limitation, the Agencies and the Regional Water Quality Control Board that the Conveyed Credits are acceptable to each such governmental agency and/or suitable for Buyer's purposes, including, without limitation, mitigation for impacts to wetland/riparian values; (b) the purchase and sale of the Conveyed Credits shall be made on an "AS IS, WHERE IS, WITH ALL FAULTS" basis as provided for in the BEI; and (c) any completed sale of any Conveyed Credits shall be final. Buyer further acknowledges and agrees that except as otherwise expressly set forth in this Agreement, neither Seller nor any of its officers, affiliates, representatives, consultants, or agents have made any representations or warranties, or have assumed any responsibility, with respect to (i) the mitigation value or mitigation requirements of the Buyer's Property; (ii) the mitigation value of the property conveyed to the Agencies in establishing the Mitigation Bank; (iii) the acceptability of the Conveyed Credits to any federal, state, or local governmental agency with jurisdiction over the Buyer's Property; (iv) the suitability or adequacy of the Conveyed Credits for Buyer's purposes in purchasing such Credits; or (v) any other fact or circumstances which might affect the Mitigation Bank, the Buyer's Property, the Conveyed Credits, or Buyer's purposes in purchasing such Credits. The Seller further specifically advises Buyer to consult with the Regional Water Quality Control Board as to the acceptability of the Conveyed Credits. The Regional Water Quality Control Board is not a signatory to the BEI.

5. Termination. Time is of the essence in this Agreement. In the event the closing does not occur by the Closing Date, Seller, at its election, and in its sole and absolute discretion, by written notice to Buyer, may terminate this Agreement and neither party shall have any further

obligations hereunder to each other or otherwise except as provided in Paragraph 6 below.

6. Brokers. Seller shall pay a commission to McCollum Associates pursuant to the terms of a separate written agreement if and only if the sale closes. Seller and Buyer each represent to the other that it has not had any other contract, agreement or dealings regarding the Conveyed Credits with, nor any communication in connection with the subject matter of this transaction through, any consultant, broker, agent, finder or other person who can claim a right to a consultant fee, commission or finder's fee in connection with the sale contemplated herein. In the event that other consultant, broker or finder makes a claim for a consultant fee or commission or finder's fee based upon any such contract, agreement, dealings or communication, the party through whom such claim is made shall be solely responsible for and shall indemnify, defend, and hold harmless the other party from and against said commission or fee and all costs and expenses (including without limitation reasonable attorneys' fees) incurred by the other party in defending against such claim. The provisions of this Paragraph 6 shall survive the termination of this Agreement.

7. Integration. Buyer and Seller agree that all negotiations, discussions, understandings and agreements heretofore made between them or their respective agents or representatives are merged in this Agreement and the Exhibits attached hereto, and this written Agreement alone fully and completely expresses their agreement with respect to the subject matter hereof and supersedes all prior agreements and understandings between the parties relating to the subject matter of this Agreement. Buyer and Seller further agree that Buyer has no responsibilities or obligations whatsoever regarding the Conveyed Credits or the MOA except as are expressly stated in this Agreement.

8. Notices. All deposits and any notice required or permitted to be made or given under this Agreement shall be made and delivered to the parties at the addresses set forth below each party's respective signature. All notices shall be in writing and shall be deemed to have been given when delivered by courier, when transmitted by facsimile (upon confirmation of successfully completed transmission), or upon the expiration of two (2) business days after the date of deposit of such notice in the United States mail, registered or certified mail, postage prepaid.

9. Attorneys' Fees. This Agreement shall be governed and construed in accordance with the laws of the State of California and interpreted as if prepared by both parties hereto. In the event a dispute arises concerning the meaning or interpretation of any provision of this Agreement, or in the event of any litigation arising out of or related to this Agreement, the party not prevailing in such dispute or litigation shall pay any and all costs and expenses incurred by the other party in establishing or defending its rights hereunder, including, without limitation, court costs, expert witness fees, and reasonable attorneys' fees.

10. Limited Representations and Warranties. Seller is a limited liability company duly formed, presently existing and in good standing under the laws of the State of California, is

qualified to transact business in the State of California, and has the power and authority to own, and does own, the Mitigation Credits, and the power and authority to consummate the sale of Conveyed Credits as contemplated by this Agreement, and the person executing this Agreement has the full authority to bind Seller. This Agreement and all instruments, including assignment and/or conveyance documents to be executed by Seller in connection herewith are or when delivered to Buyer will be duly authorized, executed and delivered by Seller and will be valid, binding and enforceable obligations of Seller. Neither this Agreement nor any instrument, including assignment and/or conveyance documents to be executed by Seller in connection herewith does now or will hereafter constitute a breach or default or invalidate, make inoperative or interfere with any contract, agreement, right or interest affecting or relating in any manner to the Conveyed Credits. The Conveyed Credits shall be assigned/conveyed to Buyer at the closing free and clear of all liens or other encumbrances of any type, monetary or non-monetary.

11. Counterparts. This Agreement may be executed and delivered in any number of identical counterparts, each of which so executed and delivered shall be deemed to be an original and all of which shall constitute one and the same instrument.

WHEREUPON, this Agreement has been executed as of the date first-above written.

SELLER:

RBV MITIGATION CREDITS, LLC, a California limited liability company

By: _____

Name: Karin T. Krogius

Its: Member

178 Shorecliff Road

Corona Del Mar, CA 92625

Attention: Karin Krogius

Telephone: (949) 300-4864 Email: kkrogius@pboaks.com

BUYER:

CITY OF TEMECULA

By: _____

Name: Zak Schwank

Its: Mayor

Attest by: _____

Name: Randi Johl

Its: City Clerk

Approved

as to Form: _____

Name: Peter M Thorson

Its: City Attorney

Mail to:

Attention: William Becerra

41000 Main Street

Temecula, CA 92590

Telephone: (951) 693-3963 Email: will.becerra@temeculaca.gov

USACOE: SPL-2021-00539-ERS

RWQCB: R9-2022-0090 WDID 9 000003780

CDFW: EPIMS-RIV-28811-R6

EXHIBIT A

Barry Jones Wetland Mitigation Bank

ACKNOWLEDGMENT OF SALE OF MITIGATION CREDITS

The undersigned Seller hereby acknowledges that it has sold and conveyed to _____ ("Buyer"), _____ wetland mitigation Credits from the Barry Jones Wetland Mitigation Bank for impacts associated with the _____ project. All terms of this conveyance shall be governed by the provisions of the Mitigation Credit Purchase Agreement between Buyer and the undersigned dated _____, 2022.

Seller: RBV MITIGATION CREDITS, LLC,
a California Limited Liability Company
178 Shorecliff Road
Corona Del Mar, CA 92625
Telephone: (949) 300-4864
Fax: (949) 644-7410
Email: kkrogius@pboaks.com

By: _____

Name: Ms. Karla Krogius

Its: Member

Date: _____

USACOE Permit
RWQCB Permit
CDFW Agreement