

## CONTRACT OF SALE

This Contract made on the \_\_\_\_\_ day of \_\_\_\_\_, in the year 2021 is by and between the Central Pine Barrens Joint Planning and Policy Commission, with a principal office at 624 Old Riverhead Road, Westhampton Beach, New York 11978 hereinafter called the "Seller" and \_\_\_\_\_, with offices at \_\_\_\_\_, Federal Identification Number \_\_\_\_\_ hereinafter called "Purchaser."

### 1. Agreement to Sell and Purchase

Seller owns Pine Barrens Credit Certificate # - in the amount of # \_\_\_ Pine Barrens Credits (the "PBC Certificate"). Seller agrees to sell the PBC Certificate and Purchaser agrees to buy the PBC Certificate. A copy of the PBC Certificate is attached hereto as Schedule A.

### 2. Purchase Price and When Paid

- a. The purchase price for the PBC Certificate is \$####.
- b. The purchase price is payable as follows
  - i. A Non-Refundable Bid Deposit of \$#### (1%).
  - ii. A Downpayment by check, subject to collection, on the signing of this Contract of \$#### (10%). The Downpayment shall be deposited in the general account of the Seller. The funds shall not be held in escrow by Seller's attorneys.
  - iii. A Balance due at Closing of \$#-----.

### 3. Acceptable funds

All money payable under this Contract unless otherwise specified, shall be either:

- a. Cash, but not over Five Hundred (\$500.00) Dollars,
- b. Good certified check of Purchaser, or official check of any bank, savings bank, trust company, or savings and loan association having a banking office in the State of New York, payable to the order of Seller,
- c. Money other than the purchase price, payable to Seller at Closing, may be by check of Purchaser up to the amount One Hundred (\$100.00) dollars, or

d. As otherwise agreed to in writing by Seller or Seller's attorney.

4. Closing Defined

Closing means the settlement of the obligations of Seller and Purchaser to each other under this Contract, including the payment of the purchase price to Seller, and the delivery to Purchaser the PBC Certificate free and clear of all encumbrances.

Seller will deliver to Purchaser at the time of Closing a resolution of its Commission authorizing the sale and delivery of the PBC Certificate .

5. Closing Date and Place

The Closing will take place at the office of Seller at 2:00 p.m. o'clock on or about the earlier of -----, in the year 2021 (30 days after the signing of the Contract).

6. Closing Adjournment

Purchaser may request to adjourn the closing for Five (5) months for cause upon payment of a payment of 10% of the total purchase price and upon the Commission's prior written approval. A request for an extension must explain why the extension is required and documentation from the Town of Brookhaven supporting the extension request. The Commission may reject an extension request for any reason.

7. Broker

Seller and Purchaser represents and warrants to each that neither party has dealt with any broker in connection with this sale. Seller and Purchaser shall indemnify and defend each other against any costs, claims and expenses, including reasonable attorneys' fees, arising out of the breach on their respective parts of any representation or agreement contained in this paragraph. The provisions of this paragraph shall survive Closing or earlier termination of this Contract.

8. Seller's Inability to Convey and Limitation of Liability or Cancellation of the Contract

If Seller is unable to transfer the PBC Certificate to Purchaser in accordance with this Contract or the Contract is cancelled pursuant to its terms, other than as a result of Purchaser's default, Seller's sole liability shall be to refund to Purchaser the Bid Deposit and Downpayment.

Upon such refund and payment, this Contract shall be considered canceled, and neither Seller nor Purchaser shall have any further rights, obligations or liabilities against or to the other hereunder.

9. Default

- a. If Purchaser defaults hereunder, Seller's shall receive and retain the Bid Deposit and Downpayment as liquidated damages and will cancel any Pine Barrens Credits conveyed under this Contract to Purchaser, as the parties agree that it might be impossible to determine the precise measure of the Seller's damages and the parties agree that the Downpayment and Bid Deposit and cancellation of any Pine Barrens Credits issued to Purchaser represents a fair measure of Seller's damages and is not a penalty. Any other sums paid by Purchaser to Seller under this Contract will be returned to Purchaser.
  - b. If the Seller defaults hereunder, Seller shall return to Purchaser the Bid Deposit and Down Payment. Upon such refund and payment, this Contract shall be considered canceled, and neither Seller nor Purchaser shall have any further rights, obligations or liabilities against or to the other hereunder. Purchaser expressly waives any claims it may have or hereafter have against the Seller in the event of the Seller's default including but not limited to claims to specific performance, actual, special or consequential damages.
  - c. The Commission may but shall not be obligated to grant Purchaser an opportunity to be heard before declaring Purchaser's default.
  - d. The provisions of this paragraph shall survive Closing or earlier termination of this Contract.
10. Purchasers Obligations and Seller's Right to Cancel the PBC Certificate
- a. Purchaser must Redeem with the Town of Brookhaven the Pine Barrens Credits conveyed under this Contract of Sale within Six (6) months from the date of the Closing. Purchaser's failure to Redeem the Pine Barrens Credits in the applicable time shall constitute a default by Purchaser.
  - b. Purchaser must Redeem the Pine Barrens Credits conveyed under this Contract of Sale under the terms of the Pine Barrens Credit Redemption Plan attached hereto and a part hereof as Schedule B. Purchaser's failure to Redeem the Pine Barrens Credits according to the terms of the Plan shall constitute a default by Purchaser.
  - c. Redeem means Purchaser's irrevocable transfer of the Pine Barrens Credits conveyed under this Contract of Sale to the Town of Brookhaven in exchange for an increase in the residential density of the project identified in the Pine Barrens Credits Redemption Plan.
  - d. Any assignment by Purchaser of its rights or obligations under this Contract, without the prior written consent of Seller, which Seller may grant or withhold in

its sole discretion, shall be null and void and shall constitute a default by Purchaser.

- d. Any transfer or assignment by Purchaser of the Pine Barrens Credits conveyed under this Contract of Sale after the Closing without the prior Commission's written approval which Seller may grant or withhold in its sole discretion shall constitute a default by Purchaser.
- e. The provisions of this paragraph shall survive Closing or earlier termination of this Contract.

#### 11. Notice

Any notice or other communication shall be in writing and sent by the parties' respective attorneys who are hereby authorized to do so on their behalf, by mail, postage prepaid, or delivered in person or by overnight courier to the respective parties' attorneys, to whom the notice is to be given, or to such other address as such party's attorney shall hereafter designate by notice given, or to such other address as such party's attorney shall hereafter designate by notice given to the other party's attorney pursuant to this paragraph. Each notice mailed shall be deemed given on the day of mailing the same except that each notice delivered in person or by overnight courier shall be deemed given when delivered.

#### 12. Miscellaneous Provisions.

- a. **Entire Agreement:** All prior understandings and agreements between Seller and Purchaser are merged in this Contract. It completely expresses their full agreement. It has been entered into after full investigation, neither party relying upon any statements made by anyone else that are not set forth in this Contract.
- b. **Changes Must be in Writing:** This Contract may not be changed or canceled except in writing. The Contract shall also apply to and bind the distributees, heirs, executors, administrators, successors and assigns of the respective parties. Each of the parties hereby authorize their attorneys to agree in writing to any changes in dates and time periods provided for in this Contract.
- c. **Rules of Construction:** Regardless of any contrary rule of construction, no provision of this Contract shall be construed in favor of one of the parties because it was drafted by the other party's attorney. No alleged ambiguity in this Contract shall be construed against the party whose attorney drafted it.
- d. **Governing Law and Venue:** This Contract shall be governed by the substantive and procedural laws of the State of New York. Venue for any action concerning the Contract shall be in Suffolk County, New York.

- e. Survival or Provisions: No provision of this Contract shall survive the Closing unless otherwise set forth herein.
- f. Recording: This Contract, nor any document relating to the subject matter contained herein may be recorded.
- g. Captions: The captions in this Contract are inserted for convenience of reference only and in way define, describe or limit the scope or intent of this Contract or any provisions hereof.
- h. This Contract shall be binding upon and shall be inure to the benefit of the parties hereof and their respective heirs or successors or permitted assigns.
- i. This Contract shall not be binding or effective until properly executed and a fully executed original is delivered to Purchaser.
- j. As used in this Contract, the masculine shall include the feminine and neuter, the singular shall include the plural and the plural shall include the singular, as the context requires.

IN WITNESS WHEREOF, this Contract has been duly executed by the parties hereto.

Central Pine Barrens Joint  
Planning and Policy Commission.

By: \_\_\_\_\_  
Judith Jakobsen, Executive Director

PURCHASER

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

Schedule A

Copy of PBC Certificate

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Schedule B

Pine Barrens Credit Redemption Plan

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