

SECOND AMENDMENT  
TO THE  
BANK ENABLING INSTRUMENT FOR THE NORTH COUNTY HABITAT BANK

THIS SECOND AMENDMENT, made the 12<sup>th</sup> day of May, 2008, is entered into by and among Westmark Development Corporation (“Bank Sponsor” and “Property Owner”), the Los Angeles District of the U.S. Army Corps of Engineers (“USACE”), Region IX of the U.S. Environmental Protection Agency (“USEPA”), the Carlsbad Office of the U.S. Fish and Wildlife Service (“USFWS”), and the South Coast Region (i.e., Region 5) of the California Department of Fish and Game (“CDFG”); collectively referred to herein as the “Parties.”

I. WHEREAS, the Parties entered into the “Bank Enabling Instrument for the North County Habitat Bank” (“Agreement”), which was made the 23rd day of May, 2007; and

II. WHEREAS, the Parties entered into the “First Amendment to the Bank Enabling Instrument for the North County Habitat Bank” (the “First Amendment”) dated the 25<sup>th</sup> of February, 2008; and

III. WHEREAS, the Parties desire to amend the Agreement and First Amendment as set forth herein.

NOW, THEREFORE, the Parties hereto agree as follows:

SECOND AMENDMENT

1. Section IV.A., Bank Sponsor’s Performance. The second sentence, after the phrase “management, monitoring, and reporting” delete “until one year after the Endowment Fund is fully funded and all success criteria are met,” and replace with “until all success criteria are met.”

2. Section VI.A., Summary of Anticipated Credits. The first sentence, after the phrase “shall then maintain the Bank Property in such condition until” delete “5-year success criteria have been met in accordance with the Bank Closure Plan or until all Credits are sold, whichever is later,” and replace with “until the 5-year success criteria have been met.”

3. Section VIII.A., Interim Maintenance Provisions. Strike the original paragraph in its entirety and insert in lieu thereof the following new paragraph A.

“The Bank Sponsor agrees to perform all necessary work to maintain the Bank Property consistent with the maintenance requirements articulated in the Restoration Plan until achievement of the 5-year success criteria.”

4. Section VIII.B., Interim Monitoring Provisions. Strike the first sentence and insert in lieu thereof the following new sentence: “The Bank Sponsor shall perform all work necessary to monitor the Bank Property in accordance with the monitoring procedures set forth in the Restoration Plan, activities which shall remain in effect until achievement of the 5-year success criteria.”

5. Integration. This Second Amendment represents the entire understanding of the Parties regarding the changes to the Agreement and First Amendment, and all other terms and conditions of the Agreement remain in full force and effect.

6. Executed Counterparts. The signature pages of this Second Amendment to the Agreement may be executed in multiple counterparts, and each such executed counterpart shall be deemed an original, all of which together shall constitute a single executed agreement.

IN WITNESS WHEREOF, the Parties have entered into this Second Amendment effective as of the date first written above.

  
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Westmark Development Corporation  
Bank Sponsor and Property Owner

5/12/08  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Chief, Regulatory Division  
U.S. Army Corps of Engineers  
Los Angeles District

\_\_\_\_\_  
Date

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Field Supervisor  
Carlsbad Fish and Wildlife Office

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Regional Manager  
South Coast Region  
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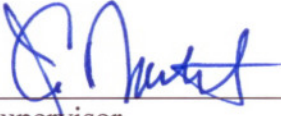
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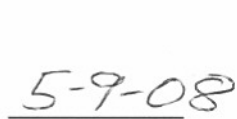
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