

ORDINANCE NO. 810-04

AN ORDINANCE DECLARING CERTAIN REAL PROPERTY NO LONGER NEEDED FOR MUNICIPAL PURPOSES AND AUTHORIZING THE LEASE OF THE SAME TO HABITAT FOR HUMANITY OF BALDWIN COUNTY, INC.

BE IT ORDAINED BY THE CITY COUNCIL OF FOLEY, ALABAMA, AS FOLLOWS:

Section 1. It is hereby found, established and declared that the real property owned by the City of Foley, Alabama, which is described below, is no longer needed for public or municipal purposes, to wit:

Lot 2 of the Hope Subdivision recorded on Map Slide 2167B, by Instrument Dated June 1, 2004 and Filed June 29, 2004 in the Baldwin County Probate Records.

Section 2. It is hereby found, established and declared that Habitat for Humanity of Baldwin County, Inc. ("Habitat for Humanity"), a not-for-profit charitable entity, which desires to lease said real property for use as a Habitat for Humanity administrative office and as a Habitat ReStore will serve a public purpose and will serve the best interests of the public and the City of Foley through its activities within and around the City of Foley. The City of Foley, by entering into a lease with Habitat for Humanity, will be contracting with Habitat for Humanity to locate an administrative office and Habitat ReStore in the City of Foley for the term of the lease, which will serve a public purpose and promote the health, welfare and benefit of the public.

Section 3. It is hereby found, established and declared to be in the best interest of the public and the City of Foley, Alabama to lease to Habitat for Humanity said real property for a thirty (30) year term with no renewals and no options to purchase in consideration for Habitat for Humanity using said property to build and locate an administrative office and Habitat ReStore and under such other terms and conditions deemed appropriate by the Mayor.

Section 4. That, pursuant to the authority granted by Section 11-47-21, Code of Alabama, the Mayor and the City Clerk are hereby authorized and directed to execute and attest a Lease Agreement to said property to Habitat for Humanity, which lease is to be prepared and reviewed by legal counsel, upon such terms and conditions as expressed herein and as the Mayor deems appropriate, and to take any and all other actions they deem necessary or prudent to effectuate the lease of said property to Habitat for Humanity.

Section 5. This ordinance shall become effective immediately upon its adoption and publication as required by law.

PASSED, ADOPTED and APPROVED this the 1st day of November, 2004.

[Signature of R. Timothy Russell]
R. Timothy Russell, Mayor

[Signature of Perry G. Bourne]
Perry G. Bourne, CMC
City Clerk/Administrator

State of Alabama, Baldwin County
I certify this instrument has filed
and taxes collected on
2004 Recorder
Instrument Number 05529
Pages 1
Recording Fee \$10.00
Deed DP
Index 5.00
Archive 5.00
African T. Johns, Judge of Probate

855329

"I certify that the foregoing Ordinance was published in the Foley Onlooker, a newspaper of general circulation in the City of Foley, in its issue of November 13, 2004.



A. Perry Wilbourne, CMC  
City Administrator/Clerk

COUNTY OF BALDWIN )  
STATE OF ALABAMA )

GROUND LEASE

This Lease, made as of the last day written below, by and between the CITY OF FOLEY, ALABAMA, a municipal corporation of the State of Alabama ("Lessor"), and HABITAT FOR HUMANITY OF BALDWIN COUNTY, INC., an Alabama corporation ("Tenant").

WITNESSETH:

1. **PREMISES:** In consideration of the rents, covenants and agreements hereinafter set forth, and in consideration of Tenant operating a Habitat for Humanity administrative offices and Habitat ReStore in Foley, Alabama which will serve the public interest and promote a public purpose, Lessor does hereby demise and lease to Tenant, and Tenant does hereby take and hire from Lessor, that certain real property situated in the City of Foley, Baldwin County, Alabama, and any and all improvements which now are or which shall be situated on said real property (the "Real Property") together with all rights, easements and appurtenances thereunto belonging or appertaining (collectively referred to herein as the "Leased Premises"), said Leased Premises being those more fully described as follows:

Lot 2 of the Hope Subdivision recorded on Map Slide 2167B, by Instrument Dated June 1, 2004 and Filed June 29, 2004 in the Baldwin County Probate Records.

This Lease is premised on the condition that Tenant shall use the Leased Premises for the purpose of locating, building, maintaining, and operating a not-for-profit Habitat for Humanity administrative office and Habitat ReStore on said Leased Premises in compliance with the terms of this Agreement. Tenant shall use the Leased Premises for no other purpose without the prior written consent of the Lessor which may be withheld in the sole discretion of the Lessor due to the fact that part of the consideration of this Lease to Lessor is the public purpose that will be served by said Habitat for Humanity facility. This provision is a material consideration of this Lease.

2. **TERM:** The term of this Agreement shall commence on the date Tenant signs this Agreement, or if Tenant signs first, the date Lessor signs this Agreement (the "Commencement Date"). Unless sooner terminated as provided herein or as provided by law, the term of this Agreement shall be the period of time from the Commencement Date to the THIRTIETH (30<sup>th</sup>) year anniversary of the Commencement Date.

3. **ASSIGNMENT AND SUBLETTING.** Tenant may not assign or transfer this Lease without the prior written consent of Lessor, which consent may be withheld in the discretion of Lessor; provided, however, Tenant may assign this Lease without Lessor's

State of Alabama, Baldwin County  
I certify this instrument was filed  
and taxes collected on:

2004 November -29 9: 30M

Instrument Number 054512 Pages 14

Recording 42.00 Mortgage

Deed Min Tax

Index pp 5.00

Archive 5.00

Adrian T. Johns, Judge of Probate

8574512

prior written consent to any party controlling, controlled by or under common control with Tenant so long as the assignee continues to use the Leased Premises as a Habitat for Humanity facility.

Tenant may sublet some or all of the Leased Premises, provided that the Sub-Lessee meets the requirements of Section 501(c)(3) of the Internal Revenue Code; the rent charged to the Sub-Lessee is not more than the rent charged herein plus the pro-rata portion of the amortized costs of the improvements and maintenance on the sub-leased premises; and subject to the prior written determination by the Lessor, in its sole discretion, that the renting of the Leased Premises, or some portion of the Leased Premises, to such Sub-Lessee serves a public purpose. Otherwise, Tenant may not sublet the Leased Premises.

4. RENTAL: In addition to providing a public service and public purpose by operating and maintaining a Habitat for Humanity facility on the Leased Premises, Tenant shall pay an annual rent of TEN DOLLARS (\$ 10.00) to Lessor at the address provided below. The first year's rent shall be due on the Commencement Date of this Lease, and thereafter Tenant shall pay annual rent in advance on each anniversary of the Commencement Date of this Lease.

5. TAXES AND ASSESSMENTS: Tenant shall pay all real estate taxes, including penalties and interest, special assessments, and all other taxes, assessments, impositions, and all other claims or charges (herein collectively called the "taxes") which may constitute or may be reduced to a lien upon the Real Property, including but not limited to, water, weed cutting, sewer, and all other charges before the same shall become delinquent. All such payments for the first and last year of the term shall be prorated between Lessor and Tenant so that Tenant shall be responsible for that portion of the taxes which is attributable to the term of this Lease. Tenant's tax obligation shall commence on the Commencement Date hereof.

If Tenant fails to pay any taxes which it is required to pay within the time period provided above, Lessor may, at its option, pay said taxes, together with any and all penalties and said amount shall become immediately due and payable as additional rent.

6. INSURANCE: Tenant hereby covenants and agrees at all times during the term of this Lease to maintain and keep in force comprehensive general liability insurance on an "occurrence" based policy against all claims for personal injury, death, or property damage occurring on or about the Leased Premises with minimum limits of liability of THREE HUNDRED THOUSAND DOLLARS (\$300,000) per person, THREE HUNDRED THOUSAND DOLLARS (\$300,000) per occurrence, and SIX HUNDRED THOUSAND DOLLARS (\$600,000) aggregate. Such policy shall name Lessor as an additional insured and shall require that Lessor be given thirty (30) days advance, written notice before cancellation or material alteration. Tenant shall furnish Lessor with a

Certificate of Insurance prior to the Commencement Date hereof. Tenant's insurance shall be primary to any insurance held by Lessor, and Tenant may not change or reduce its coverage without the prior, written consent of Lessor.

7. UTILITIES AND UTILITY EASEMENTS: Lessor does not warrant that water, sanitary services, storm sewers, electricity, gas, or other utilities (herein collectively referred to as "utilities") are available for connection or are adequate for Tenant's needs. Tenant shall have the right to grant easements over, upon and under the Leased Premises for utilities and similar purposes to service the development thereof and the improvements thereon; and Lessor agrees, from time to time upon request by Tenant, without any compensation being paid therefore, to join in the granting of such easements and to take any other action necessary to effectuate the same. Tenant shall pay all tap, connection, impact, environmental and like charges necessary to bring all utilities to the Leased Premises and which are necessary for Tenant to connect to and use all utility services.

8. CONSTRUCTION OF IMPROVEMENTS:

A. Plans and Elevations: Tenant shall submit to Lessor detailed plans and elevation drawings for the buildings and other improvements, including signage, which Tenant desires to construct on the Leased Premises prior to applying for a building permit, and Lessor shall have the right to reject any improvements which it reasonably determines will be detrimental to the public interest.

B. Zoning, Licenses and Permits: Lessor has made no representations or warranties about the current or future zoning restrictions or zoning district in which the Leased Premises is situated, or as to any variances for said premises.

Lessor acknowledges that this Lease is contingent upon Tenant obtaining all necessary permits, licenses, variances, easements and approvals pertaining to the building, occupancy, signs, parking, curb cuts, driveways (including ingress and egress to public thoroughfares), zoning, environmental controls, and any other governmental permits which, in the sole judgment of Tenant, are necessary to permit it to construct and operate a Habitat for Humanity facility with adjacent parking upon the Leased Premises. In the event any of the contingencies contained in this Lease have not been satisfied within one hundred eighty (180) days following the Commencement Date of this Lease (said one hundred eighty (180) day period is hereinafter referred to as the "Contingency Period"), then this Lease shall be void at the option of Tenant, and both parties shall be relieved from any obligations and/or liabilities hereunder, and possession of the property shall revert automatically to the Lessor.

9. CASUALTY LOSS: If the building or other improvements located on the Leased Premises should be damaged by fire or other casualty so that, in the reasonable judgment of Tenant, the business conducted on the Leased Premises could not be conducted in a normal manner until the buildings and/or improvements are repaired or reconstructed,

then Tenant may, at its option, either (i) repair or reconstruct the buildings and/or improvements, or (ii) within ninety (90) days after the date of the fire or other casualty return possession of the Leased Premises to Lessor with all buildings removed from the surface of the Leased Premises and the Leased Premises restored to as good or better of a condition it was in on the Commencement Date of this agreement, and then this Lease shall terminate. In the event Tenant elects to repair or reconstruct the buildings and/or improvements, this Lease shall continue in full force and effect.

If the buildings or other improvements located on the Leased Premises should be damaged by fire or other casualty but the damage is sufficiently limited that, in the reasonable judgment of Tenant, the business conducted on the Leased Premises can continue to be conducted in a normal manner while the buildings and improvements are being repaired, then Tenant shall repair the buildings and/or improvements and this Lease shall continue in force and effect.

10. SECURITY INTERESTS AND MORTGAGES:

A. Security Interest in Fixtures Permitted: Tenant shall have the right at any time to grant a security interest in any trade fixtures and equipment of every type and description owned by Tenant and installed or kept on the Leased Premises. Lessor hereby consents to any such security interest and disclaims any interest of any kind in any trade fixtures and equipment installed or kept on the Leased Premises. Lessor agrees that it will, within ten (10) days after any written request by Tenant, confirm the foregoing consent and disclaimer in writing.

B. Leasehold Mortgage Permitted: Tenant is hereby given the right, without Lessor's prior written consent, to mortgage its interest in this Agreement, and to assign this Agreement and any sublease as collateral security for such leasehold mortgage, upon the condition that all rights acquired under any such leasehold mortgage shall be subject to each and all of the covenants, conditions, and restrictions set forth in this Agreement. If Lessee shall mortgage this leasehold, and if the holder of any such leasehold mortgage shall send to Lessor a certified copy thereof, together with written notice in the manner required in Paragraph 34 herein specifying the name and address of the mortgagee, Lessor agrees that so long as any such leasehold mortgage shall remain unsatisfied of record, or until written notice of satisfaction is given by the holder to Lessor, the following provisions shall apply:

(a) There shall be no cancellation, surrender, or modification of this Agreement by joint action of Lessor and Tenant, without the prior consent in writing of the leasehold mortgagee;

(b) Lessor shall, upon serving Tenant with any notice of default, simultaneously serve a copy of such notice upon the holder of such leasehold mortgage. The leasehold mortgagee shall thereupon have the same period, after service of such notice upon it, to remedy or cause to be remedied the defaults complained of, and Lessor shall accept such performance by or at the instigation of such leasehold mortgagee as if

the same had been done by Tenant;

(c) Anything herein contained to the contrary notwithstanding, if any default shall occur which, pursuant to any provision of this Agreement entitles Lessor to terminate this Agreement, or regain possession of the Premises, and if before the expiration of thirty (30) days from the date of such leasehold mortgagee's receipt of service of notice of termination or of Lessor's regaining possession of the Premises, such leasehold mortgagee shall have notified Lessor of its desire to nullify such notice and shall have brought current all rent and other payments herein provided for, and then in default, and shall have complied or shall commence the work of complying with all of the other requirements of this Agreement, if they are then in default, and shall prosecute the same to completion with reasonable diligence, then in such event, Lessor shall not be entitled to terminate this Lease or regain or retain possession of the Premises, and any notice of termination theretofore given shall be void and of no effect and Lessor shall relinquish any possession thereof;

(d) Nothing herein contained shall require any leasehold mortgagee to cure any default of Lessee;

(e) Tenant shall upon request, execute, acknowledge, and deliver to each leasehold mortgagee an agreement prepared at the sole cost and expense of Tenant, in form satisfactory to such leasehold mortgagee, between Lessor, Tenant and leasehold mortgagee, confirming the agreements in all of the provisions of this Paragraph 10. The term "mortgage", whenever used herein, shall include whatever security instruments are used in the locale of the Premises, such as, without limitation, deeds of trust, security deeds and conditional deeds, as well as chattel mortgages and security agreements; and said term shall also include any instruments required in connection with a sale-leaseback transaction.

11. LIENS NOT PERMITTED: Tenant shall not, at any time, suffer or permit the attachment to the Leased Premises of any lien for work done or materials furnished in connection with the improvement, maintenance, repair and/or alteration of the premises by Tenant. If any such lien attaches to the premises and is not discharged or released within sixty (60) days from the date of receipt by Tenant of written notice of same from Lessor. Lessor may, at its option, pay to the lien claimant the amount of such lien and notify Tenant of such payment, in which event such amount shall be immediately due and payable by Tenant and shall bear interest at the rate of twelve percent (12%) per annum.

12. USE AND OCCUPANCY: Tenant shall use and occupy the Leased Premises in a careful, safe and proper manner, and will not occupy or use said premises or permit the same to be occupied or used for any purpose or business which is unlawful and will comply with all lawful requirements of all valid laws, ordinances, rules and regulations of all governmental authorities pertaining to the use and occupancy of the Leased Premises.

13. SURRENDER OF PREMISES: Tenant will deliver up and surrender possession of the Leased Premises to Lessor upon the expiration of this Lease or upon its termination in any way in the same condition and state of repair as the Leased Premises were in upon the Commencement Date of this Lease unless, during the term of this Lease, repaired, constructed or improved, in which event, in the condition existing after such repair, construction or improvement, normal wear and tear excepted (subject to any contrary terms found in Section 9). Provided, however, that Tenant shall have the right to remove all trade fixtures and equipment therefrom. Tenant shall surrender all keys for the Leased Premises to Lessor.

14. DEFAULT BY TENANT: If Tenant shall fail to pay any installment of rent promptly on the day the same shall become due and payable hereunder, and such failure shall continue for a period of thirty (30) days after receipt by Tenant of written notice thereof from Lessor, or if Tenant shall fail to keep and perform promptly any other affirmative covenant of this Lease, in accordance with the terms of this Lease and such failure shall continue for a period of thirty (30) days after receipt by Tenant of written notice thereof from Lessor, the Lessor may, at its sole option, declare this Lease to be terminated, and enter into the Leased Premises or any part thereof, with or without process of law, and expel Tenant or any person occupying the same in or upon said premises, and repossess and enjoy the Leased Premises as in Lessor's former estate. However, if the default cannot, with due diligence, be cured prior to the expiration of thirty (30) days from the date of receipt of the notice provided for above, and if Tenant commences within thirty (30) days after the date to eliminate the cause of such default and proceeds diligently and with reasonable dispatch to take all steps and do all work required to cure such default, then Lessor shall not have the right to declare this Lease terminated by reason of such default.

15. ABANDONMENT OF LEASED PREMISES: If Tenant should fail to occupy the Leased Premises for a period of one hundred eighty (180) consecutive days, then Lessor shall have the option, at its sole discretion, to declare the rights of Tenant under this Lease to be abandoned and to declare this Lease terminated. If Lessor chooses not to declare the Lease terminated, then the Lease will remain in effect and Tenant will be subject to all of the rights and liabilities hereunder.

16. NO WARRANTY OF CONDITION: Lessor does not warrant, and Tenant hereby acknowledges and agrees that Lessor has made no representation or warranty, that the Leased Premises is fit for any particular purpose or that it is suitable for the use to which the Tenant intends to put it. Tenant has had an opportunity to inspect and observe the Leased Premises, and Tenant enters into this Lease and takes the Leased Premises "as is, where is."

17. INDEMNITY: Tenant will indemnify Lessor and save it harmless from and against any and all fines, suits, claims, actions, damages, liability and expense of any kind or nature (i) by reason of any breach, violation or non-performance of any condition or covenant of Tenant herein, including any liability of Lessor arising out of the provisions of Section 18 below, and (ii) in connection with loss of life, personal injury and/or damage to property arising from or occurring on the Leased Premises, or the use thereof by Tenant or any of its servants, agents, volunteers, employees, or invitees. This obligation is in addition to any insurance coverage which may apply, and this obligation will survive the termination or expiration of this Agreement.

18. PURCHASE OF IMPROVEMENTS TO LEASED PREMISES:

A. In the event that Lessor declares Tenant to be in default under this Lease, Lessor will have the obligation to pay Tenant, or its assigns, for any pre-approved improvements to the Leased Premises at either their depreciated value, as determined by the Marshall Valuation Service, or the Tenant's outstanding mortgage balance on the premises, whichever is less.

B. In the event that Tenant is declared to be in default on any of its obligations to Regions Bank under the mortgage held by Regions Bank on the Leased Premises, and Regions Bank is forced to foreclose on the mortgage as a result of said default, then Lessor shall have the obligation to pay Tenant, or its assigns, for any pre-approved improvements to the Leased Premises at either their depreciated value, as determined by the Marshall Valuation Service, or the Tenant's outstanding mortgage balance on the premises, whichever is less.

C. The obligations of this section will survive the termination of this Agreement.

19. ENVIRONMENTAL MATTERS:

A. Definitions: For the purposes hereof, the following definitions shall apply:

(1) "Law or Regulation" means and includes the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA" or the Federal Superfund Act) as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA") 42 U.S.C., Sections 9601-9675; the Federal Resource Conservation and Recovery Act of 1976 ("RCRA"); the Clean Water Act, 33 U.S.C., Section 1321, et seq.; the Clean Air Act, 42 U.S.C., Section 7401, et seq., all as the same may be from time to time amended and any other federal, state, county, municipal, local or other statute, law, ordinance or regulation which may relate to or deal with human health or the environment, including, without limitation, all regulations promulgated by a regulatory body pursuant to any such statute, law or ordinance.

(2) "Hazardous Substance or Materials" means asbestos, urea formaldehyde, polychlorinated biphenyls ("PCBs"), nuclear fuel or materials, chemical waste, radioactive materials, explosives, known carcinogens, petroleum products or other

dangerous, toxic, or hazardous pollutant, contaminant, chemical, material or substance defined as hazardous or as a pollutant or contaminant in, or the release or disposal of which is regulated by, any Law or Regulation.

B. Representations and Warranties

(1) To the best of Lessor's knowledge, Lessor represents and warrants that there is not located on, in, about, or under the Leased Premises any Hazardous Substance. Tenant agrees, warrants and covenants that it will not use, bring on to, store, or otherwise introduce any Hazardous Substances to the Leased Premises.

(2) All representations and warranties herein contained shall be deemed to be continuing and shall survive the expiration or early termination of the Lease.

(3) If any representation or warranty herein contained shall be, or be found to be, false, inaccurate or misleading, then the other party shall be entitled to terminate this Lease and to recover as damages, in addition to all other damages legally recoverable, all costs and expenses incurred in correcting or remedying such error including all costs of clean up and all costs of defending any regulatory or governmental action resulting from such error including, without limitation, attorneys and experts fees and disbursements. This provision shall survive the termination or expiration of this Agreement.

20. DEFAULT BY LESSOR: If Lessor shall breach any warranty or fail to perform any covenant required to be performed by Lessor under the terms of this Lease, and if such breach or failure shall continue for a period of thirty (30) days after receipt by Lessor of written notice thereof from Tenant, then Tenant may declare this Lease to be terminated.

21. TITLE TO AND CONDITION OF BUILDINGS, IMPROVEMENTS, ETC. Trade fixtures and equipment shall be defined in this Lease to include kitchen plumbing fixtures (except sanitary plumbing fixtures), stainless steel equipment, kitchen equipment, display cases, refrigeration equipment, tables, chairs, benches, booths, pictures, mirrors, decorative wall items, all such other similar fixtures or equipment as Tenant may, from time to time, place in or upon the Leased Premises. Any or all of Tenant's trade fixtures and equipment may, at Tenant's option, be removed from the Leased Premises from time to time and may, at Tenant's option, be removed upon the expiration or termination of this Lease.

Title to the building and all other fixtures or improvements on the Leased Premises and any repairs, alterations, additions or improvements to said building or improvements, shall be vested in and remain in the name of Tenant at all times during the term of this Lease. Upon the expiration of this Lease or its termination in any way, title to the building and any improvements or fixtures shall automatically pass to and become vested in the Lessor, and Tenant shall, upon request of Lessor, execute such quit claim deed, bill of sale, or assignment as may be necessary to evidence the transfer of such title to Lessor.

During the term of this agreement, the Tenant will, at its own cost and without any

expense to Lessor, keep and maintain the premises, including all buildings and improvements constructed thereon, in good condition and repair and in a neat and clean appearance and conditions.

22. ADJOINING PROPERTY. Lessor does not warrant any rights to light, view or air over adjoining property and any diminution or shutting off of light, view or air by any structure which may exist or be erected adjacent to said building shall in no wise effect this Lease, or impose any liability on Lessor.

23. SUCCESSORS IN INTEREST. Every provision hereof applicable to Lessor and every provision hereof applicable to Tenant shall also bind, apply to and run in favor of "their respective successors in interest, heirs, executors, administrators, or personal representatives" as fully as if said quoted words were inserted after the word "Lessor" and "Tenant" wherever they appear herein, except that this provision shall not permit the assignment of the Lease, or subleasing of the Leased Premises except as expressly provided herein.

24. APPORTIONMENT OF CONDEMNATION AWARD: The parties hereto shall have whatever rights exist by law with regard to the condemnation of all or a part of the Leased Premises, provided, however, that due to the below market value monetary rent called for in this Agreement, the parties hereby stipulate and agree as follows with regard to the apportionment or division of any proceeds of a condemnation award or a sale in lieu of condemnation, and in the event and to the extent the a party would be entitled to receive more money or different treatment under the law than is provided below, that party hereby waives their rights under the law in exchange for the following rights to share in the condemnation proceeds: (1) the Tenant shall be entitled to recover the actual cost (less depreciation based on a 20-year straight line basis) of any improvements placed on the Real Property by Tenant and which are being taken by the condemning agency; and (2) the Lessor shall be entitled to recover all other and remaining money not owed to the Tenant pursuant to the preceding sentence.

25. ATTORNEY'S FEE AND WAIVER OF EXEMPTIONS. In the event of employment of an attorney for the collection of any amount due hereunder, or for the institution of any suit for possession of said property, or for advice or service incident to the breach of any other condition of this Lease by Tenant, or on account of bankruptcy proceedings by or against Tenant, or legal process being issued against the furniture and effects of Tenant, located upon the Leased Premises, or the leasehold interest of Tenant, Tenant agrees to pay and shall be taxed with a reasonable attorney's fee, which fee shall be a part of the debt evidenced and secured by this Lease. In order to further secure the prompt payment of said rents, as and when the same mature, and the faithful performance by Tenant of all and singular the terms, conditions and covenants on the part of Tenant

herein contained, and all damages and costs that Lessor may sustain by reason of the violation of said terms, conditions and covenants, or any of them, Tenant does hereby waive any and all right to claim personal property as exempt from levy and sale under the Constitution and Laws of the State of Alabama or any other State.

If Tenant prevails in any lawsuit against Lessor for breach of this Lease, Tenant shall be entitled to recover from Lessor reasonable attorneys fees.

26. EASEMENTS. No representation on the part of Lessor is herein contained concerning the existence or not of any rights-of-way, party wall agreements, zoning ordinances, easements, prescriptions, or covenants running with the land effecting the property or improvements here demised, and to the extent only as such may be determined by a physical inspection of the property and/or as such may be of record in the Probate Court of Baldwin County, Alabama, Tenant takes possession hereunder charged with notice thereof, and is bound to recognize all such rights-of-way, party wall agreements, easements, prescription and covenants running with the land, and zoning ordinances and to indemnify and hold Lessor harmless for any violations or breaches thereof by said Tenant.

27. LESSOR'S RIGHTS CUMULATIVE AND NON-WAIVER. The failure of Lessor to insist, in any one or more instances, upon a strict performance of any of the covenants of this Lease, or to exercise any option herein contained, shall not be construed as a waiver, or a relinquishment for the future, of such covenants or option, but the same shall continue and remain in full force and effect. The receipt of Lessor of rent, with knowledge of the breach of any covenant hereof, shall not be deemed a waiver of such breach, and no waiver by Lessor of any provision hereof shall be deemed to have been made unless expressed in writing, and signed by Lessor. Lessor's rights herein are cumulative and in addition to those provided by law.

28. SEVERABILITY. If any term, covenant or condition of this Lease or the application thereof to any person or circumstances shall to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant and condition of this Lease shall be valid and be enforced to the fullest extent permitted by law.

29. HOLDING OVER. Should Tenant continue to occupy the Leased Premises after the expiration of said term, then, except as otherwise provided for in this paragraph, Tenant shall continue as a tenant under the terms of this Lease (except as to duration) from month to month, and each holding over period thereafter shall in like manner create and cause a similar extension of this Lease from month to month; PROVIDED, HOWEVER, that if the said Tenant continues to remain in the Leased Premises after the

expiration of the said term or after a forfeiture incurred, Lessor, at any time, whether rent has been accepted by Lessor or not, reserves the unqualified right, or option to notify Tenant in writing of its election to terminate the Lease or any extension thereof, said termination to be effective at the end of the calendar month in which said notice is given, unless less than ten (10) days remain in said month, in which event, the effective date of termination shall be the last day of the calendar month following the date on which notice is given.

30. **EARLY TERMINATION.** In addition to termination provided under Section 8(B) herein, Tenant may terminate this Lease at any time by 30 days advance notice to Lessor without further liability if Lessor fails to have proper ownership of, or appropriately clear title to the Leased Premises or authority to enter in this Lease or if Lessor is in default and fails to cure within the time frame provided herein. The Lessor may terminate this Lease if Tenant is in default and fails to cure within the time frame(s) provided herein. Upon termination, all prepaid rent shall be retained by Lessor.

31. **FORCE MAJEURE:** Lessor and/or Tenant shall be excused for the period of any delay and shall not be deemed in default with respect to the performance of any of the terms, covenants, and conditions of this Lease when prevented from so doing by cause or causes beyond the Lessor's and/or Tenant's control, which shall include, without limitation, all labor disputes, governmental regulations or controls, fire or other casualty, inability to obtain any material, services, acts of God, or any other cause, whether similar or dissimilar to the foregoing, not within the control of the Lessor and/or Tenant.

32. **RECORDABLE LEASE:** Lessor agrees that upon request from Tenant, Lessor will promptly execute and deliver to Tenant a memorandum or short form lease (hereinafter "Memorandum of Lease"), prepared by Tenant, to be recorded in the public office in which records relating to the Leased Premises are kept and take such other and further action as may be necessary to give all persons now or hereafter interested in title to the Leased Premises notice of the existence of this Lease, including such terms and provisions as Tenant deems appropriate

33. **CONSTRUCTION OF LEASE:** Words of any gender used in this Lease shall be held to include any other gender, and words in the singular number shall be held to include the plural, when the sense requires.

34. **SERVICE OF NOTICE:** Notices hereunder shall be in writing signed by the party serving the same and shall be sent by Registered or Certified U. S. Mail, Return Receipt Requested, postage prepaid, or by private express mail service, and (a) if intended for Lessor, shall be addressed to:

Mayor - City of Foley

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City Hall  
407 East Laurel Avenue  
Foley, Alabama 36536

and (b) if intended for Tenant, shall be addressed to:

Habitat for Humanity Director  
21473 Highway 98 East  
Foley, AL 36536

or to such other addresses as either party may have furnished to the other from time to time as a place for the service of Notice. Any Notice so mailed shall be deemed to have been "given" as of the time said Notice is received or refused.

35. HEADINGS: It is understood and agreed that the headings are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope or intent of this Lease, nor in any way affect this Lease.

36. ENTIRE AGREEMENT: This Lease contains the entire agreement between the parties and any agreement hereafter made shall be ineffective to change, modify or discharge it in whole or in part unless such agreement is in writing and signed by both parties.

37. COUNTERPARTS: This Lease may be executed simultaneously in several counterparts, each of which will be deemed an original, but all of which together will constitute one in the same instrument.

IN WITNESS WHEREOF, the parties have caused this Lease to be executed on the date appearing together with their signatures below.

**[SIGNATURE PAGE FOLLOWS]**

LESSOR: THE CITY OF FOLEY, ALABAMA

R. Timothy Russell Date: \_\_\_\_\_  
By: R. Timothy Russell  
As Its: Mayor

ATTEST:  
Perry Wilbourne Date: 11-8-04  
By: Perry Wilbourne  
As Its: City Clerk

TENANT: HABITAT FOR HUMANITY OF BALDWIN COUNTY, INC.

Sherry S. Weaver Date: 11-8-04  
By: Sherry S. Weaver  
As Its: President

ATTEST:  
William G. Martin Date: 11-8-04  
By: William G. Martin  
As Its: Secretary

**ACKNOWLEDGMENTS**

STATE OF ALABAMA  
COUNTY OF BALDWIN

The undersigned, a Notary Public in and for the above state and county, hereby certify that R. Timothy Russell and Perry Wilbourne, the Mayor and City Clerk, respectively, of the City of Foley, Alabama, an Alabama municipal corporation, and who were known to me as the persons and officers described herein and who executed the foregoing instrument on behalf of said municipal corporation, and who acknowledged that they held the position or title set forth in the instrument and certificate, that they signed the instrument on behalf of the municipal corporation by proper authority, and that the instrument was the act of the municipal corporation for the purposes therein stated.

Given under my hand and official seal, this the 8<sup>th</sup> day of November, 2004.



Victoria Southern  
Notary Public  
My Commission Expires: 5-31-05

STATE OF ALABAMA  
COUNTY OF Baldwin

I, the undersigned Notary Public, in and for said county and said state, hereby certify that Sherry S. Weaver and William B. Martin whose names as President and Secretary, respectively, of Habitat for Humanity, Inc., an Alabama corporation, are signed to the foregoing instrument and who are known to me, acknowledged before me on this day, that being informed of the contents of said instrument, they, as such officers and with full authority, executed the same voluntarily for and as the act of said corporation on the day the same bears date.

Given under my hand and official seal, this the 8<sup>th</sup> day of November, 2003.

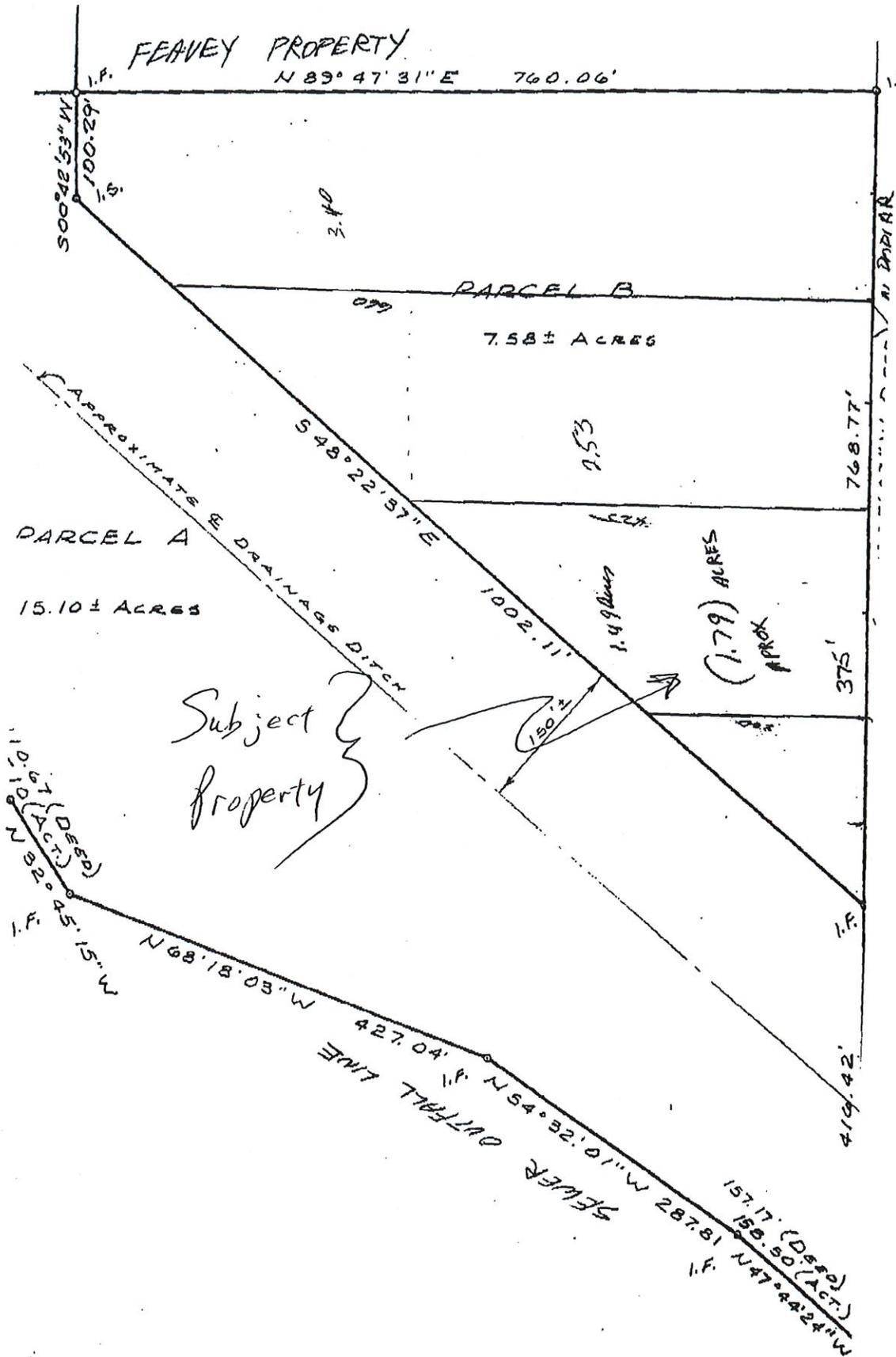
[SEAL]

Bosie Beach  
Notary Public  
My Commission Expires: 10/29/2008

This Document Prepared by:

J. CASEY PIPES  
HELMSING, LEACH, HERLONG,  
NEWMAN & ROUSE, P.C.  
P.O. Box 2767  
Mobile, AL 36652  
(251) 432-5521

3/17/04 Wo. session agenda -  
RTR







**Baldwin County  
Revenue Commissioner**

**Property Appraisal Link  
BALDWIN COUNTY, AL**

Current Date 11/ 9/2017

**Tax Year 2017**

**Valuation Date October 1, 2016**

**OWNER INFORMATION**

**PARCEL** 54-08-28-2-000-001.006 **PPIN** 262964 **TAX DIST** 07  
**NAME** FOLEY, CITY OF  
**ADDRESS** P O BOX 1750  
 FOLEY AL 36536  
**DEED TYPE** RP **BOOK** 0077 **PAGE** 0000227  
**PREVIOUS OWNER** FOLEY, CITY OF  
**LAST DEED DATE** 9/25/1980

**DESCRIPTION**

177.2' X 308.9' IRR LOT 2 HOPE SUB SLIDE 2167-B IN THE CITY  
 OF FOLEY SEC 28-T7S-R4E (WD)

**PROPERTY INFORMATION**

**PROPERTY ADDRESS** SECTION ST E  
**NEIGHBORHOOD** FOLEY FOLEY AREA  
**PROPERTY CLASS** SUB CLASS  
**SUBDIVISION** HOPES **SUB DESC** HOPE SUB  
**LOT 2 BLOCK**  
**SECTION/TOWNSHIP/RANGE** 00-00 -00  
**LOT DIMENSION** **ZONING**

**PROPERTY VALUES**

**LAND:** 37400 **CLASS 1:** **TOTAL ACRES:** 1.36  
**BUILDING:** **CLASS 2:** 37400 **TIMBER ACRES:**  
 ===== **CLASS 3:**  
**TOTAL PARCEL VALUE:** 37400  
**ESTIMATED TAX:** \$0.00

**DETAIL INFORMATION**

<u>CODE</u>	<u>TYPE</u>	<u>REF</u>	<u>METHOD</u>	<u>DESCRIPTION</u>	<u>LAND USE</u>	<u>TC</u>	<u>Hs</u>	<u>Pn</u>	<u>MARKET USE</u>		
									<u>VALUE</u>	<u>VALUE</u>	
M	<a href="#">LAND</a>	1	ST	AC9	1.36 acres	9170-VAC	GOVNT	2	N	N	37400

[View Tax Record](#)

Back



**Baldwin County  
Revenue Commissioner**

**Property Link  
BALDWIN COUNTY, AL**

Current Date 11/ 9/2017 Tax Year 2017  
Valuation Date October 1, 2016  
Records Last Updated 11/ 8/2017

**PROPERTY DETAIL**

**OWNER** FOLEY, CITY OF ACRES : 1.36  
P O BOX 1750  
  
FOLEY, AL 36536 APPRAISED VALUE: 37400  
ASSESSED : 7480  
**PARCEL** 54-08-28-2-000-001.006  
**ADDRESS** SECTION ST E

**TAX INFORMATION**

<b>YEAR 2017</b>	<b>TAX DUE</b>	<b>PAID</b>	<b>BALANCE</b>
	0.00	0.00	0.00

LAST PAYMENT DATE \*\*NA\*\*

**MISCELLANEOUS INFORMATION**

**EXEMPT CODES** DESCRIPTION 177.2' X 308.9' IRR LOT 2 HOPE  
SUB SLIDE 2167-B IN THE CITY  
**TAX DISTRICT** 07 OF FOLEY SEC 28-T7S-R4E (WD)  
**PPIN** 262964 Entry 00  
**ESCAPE YEAR**  
**ACCOUNT NUMBER**051670

**TAX HISTORY**

<u>Year</u>	<u>Owner</u>	<u>Total Tax</u>	<u>Paid(Y/N)</u>	<u>Appraised</u>	<u>Assessed</u>
2016	FOLEY, CITY OF	0.00	Y	30600	6120
2015	FOLEY, CITY OF	0.00	Y	30600	6120
2014	FOLEY, CITY OF	0.00	Y	30600	6120
2013	FOLEY, CITY OF	0.00	Y	30600	6120
2012	FOLEY, CITY OF	0.00	Y	30600	6120
2011	FOLEY, CITY OF	0.00	Y	28600	5720
2010	FOLEY, CITY OF	0.00	Y	16300	3260
2009	FOLEY, CITY OF	0.00	Y	16300	3260
2008	FOLEY, CITY OF	0.00	Y	16300	3260
2007	FOLEY, CITY OF	0.00	Y	26600	5320

**TAX SALES**

[PURCHASE COUNTY TAX SALE FILES](#)

Year Sold To Redeemed Date/By

\*\*NO TAX SALES FOUND\*\*