

EASEMENT AGREEMENT

This Easement Agreement (this "Agreement") made and entered into as of the ____ day of February, 2015 (the "Effective Date"), by and between **City of Foley, Alabama**, an Alabama municipal corporation ("Grantor") and **Coastal Alabama Farmers' and Fishermen's Market, Inc.**, an Alabama non-profit corporation ("Grantee"). **Wolf Bay Lodge, Inc.**, an Alabama corporation ("Wolf Bay"), also executes this Agreement to evidence its acknowledgement and consent to the terms hereof.

RECITALS:

WHEREAS, Grantee is the owner of certain real property located in Baldwin County, Alabama and more particularly described on Exhibit A attached hereto and made a part hereof (the "Benefitted Property"); and

WHEREAS, Grantor is the owner of certain real property, together with improvements situated thereon, located in Baldwin County, Alabama which is adjacent to and contiguous with the Benefitted Property, and more particularly described on Exhibit B attached hereto and made a part hereof (the "Grantor Property"); and

WHEREAS, Grantee desires to obtain from Grantor, and Grantor is willing to convey to Grantee, subject to certain terms hereof, certain easements and rights with respect that portion of the Grantor Property described on Exhibit C attached hereto and made a part hereof (the "Easement Property") for the use and benefit of Grantee and the Benefitted Property; and

WHEREAS, Wolf Bay is the sub-tenant and current occupant of the Grantor Property, and it has agreed to purchase the Grantor Property from the Grantor, subject to this Agreement.

AGREEMENT:

NOW THEREFORE, for and in consideration of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration set forth herein, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Grant of Non-Exclusive Easement.

(a) Grantor hereby grants and conveys to Grantee and its successors-in-title to the Benefitted Property the following:

(i) a perpetual, non-exclusive easement and right of way in, over, across, upon, along and through the Easement Property for ingress and egress of vehicular and pedestrian traffic to, from, and between the Benefitted Property and the adjoining public and private roads, streets and alleys, including Miflin Road (County Road #20) and for non-exclusive parking of motor vehicles; and

(ii) a perpetual, non-exclusive easement in, over, across, under, upon, along and through the Easement Property for the installation, maintenance, repair and replacement of utilities lines and equipment that benefit all or a portion of the Benefitted Property, including without limitation water, sanitary sewer, electricity, gas, telephone and cable television; provided that the owner(s) of the Benefitted Property shall, at their expense, repair and replace all damage to the Easement Property caused in connection with the installation, maintenance, repair or replacement of the utilities and shall restore the Easement Property to substantially the same condition as existed prior to such damage; and

(iii) a perpetual, non-exclusive easement in, over, across, under, upon, along and through the Easement Property for construction, installation, maintenance, operation, repair and replacement of signs, improvements and landscaping to provide a decorative entrance to the Benefitted Property, subject to the prior written approval of Grantor or its successor-in-title to the Grantor Property, in its reasonable discretion.

(b) The easements herein granted shall be for the benefit of the Benefitted Property for the non-exclusive use and enjoyment of the owner(s) of all or a portion of the Benefitted Property and their respective lessees, sublessees, licensees, contractors, subcontractors, agents, employees, guests, and other invitees.

(c) Grantor shall not construct or maintain any gates, fences, walls, curbs, obstructions or other improvements which impair or prevent the full and intended reasonable use of the Easement Property; provided, however, that the foregoing provision shall not prohibit barricades erected as reasonably necessary in connection with temporary construction or repair and maintenance of the Easement Property as herein contemplated (all such work to be conducted in the most expeditious manner reasonably possible to minimize interference and reasonable access to the Benefitted Property shall be maintained during the course of such work).

2. Maintenance of the Easement Property by Grantor. Grantor, at Grantor's sole expense (except as provided in Section 3 below), keep and maintain the Easement Property in good condition and state of repair, which shall include without limitation the obligation:

(a) to maintain all portions of the Easement Property in a level and evenly covered condition (if paved or otherwise covered);

(b) to resurface, repave and restripe all portions of the Easement Property from time to time as needed to maintain the Easement Property in a safe, slightly, good and functional condition and in compliance with all applicable governmental laws, rules, regulations, orders, and ordinances exercising jurisdiction thereover;

(c) to keep in repair any and all sidewalks, curbs, gutters, drainage facilities, directional signs and markers within the Easement Property;

(d) to remove all debris and trash from and within the Easement Property to the extent necessary to keep the Easement Property in a clean and orderly condition; and

(e) to maintain, repair and replace any signs and lighting placed within the Easement Property by Grantor in good and operating condition, and to pay all costs of operating any such signs and lighting including without limitation, charges for electrical service.

3. **Cost Sharing by Grantee.** The Grantee shall reimburse Grantor _____ percent (____%) of the costs incurred and paid by Grantor for paving, resurfacing, repaving or restriping all or part of the Easement Property, provided that the total of all reimbursements required by the Grantee shall not exceed \$_____ over any ____ () year period. In order to be entitled to any reimbursement, Grantor shall first provide the Grantee with written notice (a "Notice") of its intent to pave, resurface, repave or restripe all or part of the Easement Property and obtain written consent from Grantee (or the then owner(s) of the Benefitted Property) (such consent not to be unreasonably withheld, conditioned or delayed beyond twenty (20) days). Any Notice must contain an estimate of the costs to perform the work given by a reputable third-party. Any denial of consent to such improvements shall set forth in reasonable detail the basis for the denial. Any failure by any party to deliver written consent or denial with respect such improvements within twenty (20) days from the receipt of the Notice shall be deemed an approval by such party. After completion of all work associated with such improvements and receipt of lien waivers from all contractors and subcontractors performing work on the project, Grantor shall bill the Grantee for its share of the cost of such improvements, with such billing to include a substantiation of all expenses incurred for such improvements, a calculation of Grantee's share thereof, and a copy of all lien waivers evidencing payment in full by Grantor of all invoices, charges and expenses associated with such project. The Grantee shall remit payment to Grantor within thirty (30) days of receipt of such bill and supporting documentation. If, at the time such improvements are completed, there is more than one owner of the Benefitted Property, each such owner shall be responsible only for its pro rata share of the aforesaid reimbursement obligation determined by dividing the square footage of each owner's tract by the total combined square footage of the Benefitted Property.

4. **Ad Valorem Taxes.** Grantor agrees to pay, prior to delinquency, all real and personal property taxes and assessments levied against the Grantor Property directly to the appropriate taxing authorities. If Grantor fails to pay any such tax or assessment as herein required, then Grantee may pay such tax or assessment and any penalties or interest due thereon, and upon submission of a written statement demanding reimbursement together with a receipt for such payment, such owner shall be entitled to reimbursement from Grantor for the amount so expended.

5. **Covenant Running With the Land.** The rights and easements granted hereunder shall run with and be appurtenant to the Benefitted Property, and the benefits and burdens under this Easement shall be binding upon and inure to the benefit of the owners of the Benefitted Property and the Grantor Property and their respective successors, successors-in-title, and assigns. The rights and limitations on the use of the Easement Property shall be binding upon and inure to the benefit of any lessee, sublessee, licensee, agent, employee, guest, invitee or any other person from time to time entitled to the use and occupancy, or access to, any portion of the Benefitted Property and the Grantor Property. No covenant, condition or restriction hereunder is intended to be, or shall be construed as, a condition subsequent or as creating the possibility of reverter.

6. **Amendment.** The easements, covenants and provisions of this Easement may be amended only by a written instrument executed by Grantor and Grantee. Such amendment shall be effective upon filing said instrument in the Probate Office of Baldwin County, Alabama. Notwithstanding the provisions of this paragraph, Grantee may at any time and from time to time withdraw from all or part of the benefits and burdens of this Agreement, provided that Grantee's cost sharing obligation set forth in Section 3 of this Agreement shall continue so long as Grantee's rights under Section 1(a) continue to exist. Any withdrawal by Grantee of all or part of the benefits and burdens of this Agreement shall be evidenced by an amendment to this Agreement executed by Grantee, as applicable, and recorded in the Probate Office of Baldwin County, Alabama.

7. **Default; Remedies.** In the event that any party shall fail to perform or breach any covenants or restrictions imposed upon such person under this Easement (the "Defaulting Party"), then, in any such event, any party to this Easement not in default (the "Affected Party"), in addition to all other remedies it may have at law or in equity, after thirty (30) days' prior written notice to the Defaulting Party (or in the event of an emergency, after such notice that is reasonable in the circumstances), shall have the right to perform such obligation on behalf of the Defaulting Party. In such event, the Defaulting Party shall promptly reimburse the Affected Party for the costs incurred and paid in curing said default together with interest at a rate equal to _____ percent (____%) above the prime rate of Regions Bank to float, from date of payment until paid in full. In addition, any Affected Party shall have the right to pursue any available remedies at law or in equity, and any costs of any said proceeding, including attorneys' fees in a reasonable amount, shall be paid by the Defaulting Party.

8. **Acknowledgment and Consent by Wolf Bay.** Wolf Bay, by execution below, hereby acknowledges and consents to the foregoing Easement, and further acknowledges that upon its purchase of the Grantor Property, Wolf Bay shall assume the obligations of Grantor hereunder as the Grantor's successor-in-title to the Grantor Property.

9. **Miscellaneous.**

(a) Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Easement Property to the general public or for any public use or purpose whatsoever, it being the intention and understanding of the parties hereto that this Agreement shall be strictly limited to, and for the purposes herein expressed. The owner(s) of the Grantor Property shall retain the sole and exclusive ownership and control of the Easement Property subject to and consistent with the easements, restrictions and covenants set forth herein. Nothing contained in this Agreement, express or implied, shall confer upon any other person or entity any rights or remedies under or by reason of this Agreement.

(b) This Agreement shall be construed, interpreted and enforced in accordance with the laws of the State of Alabama.

(c) If any provision of this Agreement or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is

invalid or unenforceable, shall not be affected thereby; and each provision of this Agreement shall be valid and shall be enforced to the fullest extent permitted by law.

(d) All notices, statements, demands, approvals or other communications to be given under or pursuant to this Agreement shall be in writing and shall be delivered in person, by nationally recognized overnight courier service or by certified or registered mail, postage prepaid. If delivered by hand or by overnight courier, notice shall be deemed to have been given upon delivery. If mailed, notice will be deemed to have been given three (3) days after the date of mailing. The address of each party for purposes of this Section 9 is the address for tax notices for the Grantor Property and Benefitted Property, respectively, as of the date notice is given.

(e) This Agreement constitutes the entire agreement of the parties hereto with respect to the subject matter hereof.

(f) No term or condition of this Agreement shall be deemed to have been waived, nor shall there be an estoppel against the enforcement of any provision of this Agreement, except by written instrument of the party charged with such waiver or estoppel. No such written waiver shall be deemed a continuing waiver unless specifically stated therein and each such waiver shall operate only as to the specific term or condition waived and shall not constitute a waiver of such term or condition for the future or as to any act other than that specifically waived.

(g) This Agreement may be executed in any number of counterparts with the same effect as if all signing parties had signed the same document. All counterparts shall be construed together and constitute the same instrument.

[SIGNATURES COMMENCE ON THE NEXT PAGE]

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals effective as of the date first above written.

CITY OF FOLEY, ALABAMA

By: John Koniar
Its: Mayor
Date: _____

ATTEST:

City Clerk/Administrator

STATE OF ALABAMA
COUNTY OF BALDWIN

I, a Notary Public in and for said County in said State, hereby certify that John Koniar and _____, whose names at Mayor and City Clerk/Administrator, respectively, of the CITY OF FOLEY, a municipal 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 the said instrument, they, as such officers and with full authority, executed the same voluntarily for and as the act of said municipality, on the day the same bears date.

Given under my hand and Seal on this ____ day of _____, 2015.

NOTARY PUBLIC
My Commission Expires: _____
(NOTARY SEAL)

**COASTAL ALABAMA FARMERS' AND
FISHERMEN'S MARKET, INC., an Alabama
non-profit corporation**

By: _____
Its: _____

STATE OF ALABAMA
COUNTY OF BALDWIN

I, the undersigned authority, a Notary Public in and for said county in said State, hereby certify that _____, whose name as _____ of **COASTAL ALABAMA FARMERS' AND FISHERMEN'S MARKET, INC.**, an Alabama non-profit corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such manager and with full authority, executed the same voluntarily for and as the act of said company.

Given under my hand and official seal on this ____ day of _____, 2015.

NOTARY PUBLIC
My Commission Expires: _____
(NOTARY SEAL)

WOLF BAY LODGE, INC., an Alabama corporation

By: _____
Its: _____

STATE OF ALABAMA
COUNTY OF BALDWIN

I, the undersigned authority, a Notary Public in and for said county in said State, hereby certify that _____, whose name as President of Wolf Bay Lodge, Inc., an Alabama corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, she, as such President and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal on this ____ day of _____, 2015.

NOTARY PUBLIC
My Commission Expires: _____
(NOTARY SEAL)

THIS INSTRUMENT PREPARED BY:
John T. Dukes, Esq.
Helmsing, Leach, Herlong, Newman & Rouse, P.C.
150 Government Street, Suite 2000
Mobile, Alabama 36602
(251) 432-5521

EXHIBIT A

[BENEFITTED PROPERTY]

EXHIBIT B
[GRANTOR PROPERTY]

EXHIBIT C
[EASEMENT PROPERTY]

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