

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this “Agreement”) is made and entered into on this the ___ day of _____, 2024, by and between the **CITY OF FOLEY, ALABAMA**, an Alabama municipal corporation (“Seller” or “City”), and **BALDWIN COLD LOGISTICS, LLC** an Alabama limited liability company (“Purchaser”).

WHEREAS, Seller is the owner of certain real property described in **Exhibit A** attached hereto (collectively, the “Property”); and

WHEREAS, Seller and Purchaser desire that the Property be developed in accordance with the Development Plan (as hereinafter defined); and

WHEREAS, contemporaneously herewith, Seller will convey the Property to Purchaser by Warranty Deed (the “Deed”), which Deed incorporates the terms, conditions and covenants of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, agree as follows:

1. Scope of Work; Development Plan.

- (a) Purchaser has agreed to undertake the following improvements to the Property (hereinafter the “Development Plan”):
 - i. Build a cold storage facility that will include a 30,000 square foot freezer and a 5,000 square foot refrigerator; and
 - ii. Build a flex office space facility that will include 100 to 120 1,600 to 1,800 square foot units as well as two-story units comprised of warehouse and office space.
- (b) The Development Plan, as described in more detail in **Exhibit B** attached hereto and incorporated herein, has been provided by the Purchaser to Seller as part of the purchase negotiations.
- (c) In the event Purchaser wishes to make any modifications to the Development Plan, following receipt of the necessary building and development permits, Purchaser shall present all modifications to Seller for approval, which will not be unreasonably withheld.

2. Warranty.

The Development Plan and any other improvements of the Property (collectively, the “Improvements”) shall be performed in a good and workmanlike manner in accordance with all

applicable City of Foley ordinances and regulations and the guidelines and standards of the City Council of the City of Foley, and pursuant to the terms, conditions and deadlines provided for in this Agreement.

3. Deadlines.

- (a) Purchaser shall obtain all required permits from the City of Foley and/or agencies tasked with permitting the Improvements and commence construction within 24 months of the date of closing (the "Construction Commencement Deadline").
- (b) Time is of the essence in this Agreement and the above deadlines shall be strictly adhered to by Purchaser.

4. Additional Requirements. In addition to all other requirements in this Agreement, Purchaser shall construct and perform the Improvements in accordance with City of Foley ordinances and regulations and the guidelines and standards of the City Council of the City of Foley.

5. Enforcement.

- (a) As a material condition and inducement to Seller entering into this Agreement and conveying the Property to Purchaser, Purchaser has agreed to undertake the Development Plan, and any Improvements, in accordance with the terms and conditions of this Agreement.
- (b) Should construction not commence by the Construction Commencement Deadline, Seller shall give Purchaser written notice thereof of its intent to exercise its right to re-enter and repurchase the Property.
- (c) In the event the failure to commence construction is not cured within thirty (30) calendar days after written notice thereof from Seller, then, in any such event, title to the Property shall automatically revert to and re-vest in Seller, its successors and assigns, without the necessity of re-entry or repossession or any other action on the part of Seller. Purchaser, by its acceptance hereof, does hereby acknowledge and agree that, upon such reversion, the compensation due to Purchaser shall be the purchase price paid to Seller for the Property, said price to be paid at the closing; and, Purchaser does hereby waive any and all claims against Seller for reimbursement or for other compensation or for loss or expense suffered by Purchaser by reason of said reversion and re-vesting of title to the Property in Seller.
- (d) No failure on the part of Seller to enforce any term herein nor the waiver of any right hereunder by Seller shall discharge or invalidate such term or other condition, or any deadline contained herein, or affect the right of Seller to enforce the same in the event of a subsequent breach or default.

5. Indemnity. The Purchaser hereby agrees to indemnify, defend and hold the Seller harmless from all actions, claims, damages, liens, liability, costs and expenses, including reasonable attorney's

fees (collectively “Claims”), arising out of the entry by the Purchaser’s employees, agents, and contractors on the Property for purposes of fulfilling its obligations under this Agreement except where caused by the negligence or willful misconduct of the Seller, or its agents, employees, or contractors. The foregoing indemnification obligations shall survive the termination of this Agreement.

6. Miscellaneous.

- (a) This Agreement and the other agreements referred to herein constitute the entire agreement and understanding of the parties with respect to the subject matter hereof, and supersede all prior and contemporaneous agreements and understandings, oral or written, relative to said subject matter.
- (b) This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns, but neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by Purchaser without the prior written consent of Seller.
- (c) This Agreement may not be changed, amended, terminated, augmented, rescinded or otherwise altered, in whole or in part, except by a writing executed by each party hereto. No right, remedy or election given by any term of this Agreement shall be deemed exclusive, but each shall be cumulative with all other rights, remedies and elections available at law or in equity.
- (d) Any notice required or permitted hereunder shall be in writing, and shall be deemed given and received only when (a) personally delivered, (b) five (5) days following deposit in the United States Mail, postage prepaid, Certified Mail, Return Receipt Requested, (c) upon delivery by an overnight courier, addressed to Seller or Purchaser, or (d) upon delivery by electronic mail, as the case may be, at the addresses set forth below. Either party may change its address or other information above by written notice given as aforesaid.

To Seller: The City of Foley, Alabama
Attn: City Clerk
407 E. Laurel Avenue
Foley, Alabama 36535
Email: ktaylor@cityoffoley.org

With a copy to: Helmsing, Leach, Herlong, Newman & Rouse, P.C.
Attn: Keri R. Coumanis, Esq.
Rachel C. Palmer
150 Government Street, Suite 2000
Mobile, Alabama 36602
Email: krc@helmsinglaw.com
rqp@helmsinglaw.com

To Purchaser: Baldwin Cold Logistics, LLC

Attn: Khaled Ghor

Email: _____

- (e) This Agreement shall in all respects be governed by and construed in accordance with the laws of the State of Alabama, without regard to its conflict of laws principles.
- (f) The headings in this Agreement are inserted for convenience and identification only and are in no way intended to describe, interpret, define or limit the scope, extent or intent of this Agreement or any provision hereof.
- (g) This Agreement may be executed in multiple counterparts by original or facsimile signatures, and each such counterpart shall be considered an original, but all of which together shall constitute one and the same agreement.
- (h) Whenever the context requires, words used in the singular shall be construed to mean or to include the plural and vice versa, and pronouns of any gender shall be deemed to include and to designate the masculine, feminine or neuter gender.
- (i) Whenever a period of time is herein prescribed for the taking of any action by Purchaser, Purchaser shall not be liable or responsible for, and there shall be excluded from the computation of such period of time, any delays due to acts of God, adverse weather conditions in excess of those reasonably anticipatable during a given period that impacts construction (using the same standard for weather delay that would be applicable under the current standard AIA form of A-201 General Conditions, but including related drying time and time for re-preparation of ground, fill or other existing materials), shortages of labor or materials, governmental laws, regulations or restrictions, or any other cause whatsoever beyond the control of Purchaser.

[SIGNATURES PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

SELLER:

CITY OF FOLEY, ALABAMA,
an Alabama municipal corporation

By _____
As its: _____
Date: _____

ATTEST:

By: _____
Its: City Clerk

STATE OF ALABAMA
COUNTY OF BALDWIN

I, the undersigned Notary Public, in and for said County in said State, hereby certify that _____ and _____ whose names as _____ and _____ respectively, of the City of Foley, Alabama, 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 this instrument, they, as such officers and with full authority, executed the same voluntarily for and as the act of said municipal corporation on the day the same bears date.

Given under my hand and seal this the _____ day of _____, 2024.

NOTARY PUBLIC
My Commission Expires:
_____ (SEAL)

PURCHASER:

BALDWIN COLD LOGISTICS, LLC,
an Alabama limited liability company

By _____
Printed Name: _____
As its: _____

STATE OF ALABAMA
COUNTY OF BALDWIN

I, the undersigned Notary public in and for said county in said state, hereby certify that _____, whose name as _____ of BALDWIN COLD LOGISTICS, LLC, an Alabama limited liability company, 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 the above and foregoing instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said limited liability company on the day the same bears date.

Given under my hand and seal this the ____ day of _____, 2024.

NOTARY PUBLIC
My Commission Expires:
_____ (SEAL)

EXHIBIT A

PARCEL A:

Lot 6, of the Replat of Lots 5 and 6 of the Resubdivision of Lots 3, 4A, 4B, and 4C, Foley Beach Express Industrial Park (Slide 2254-D) and of Lots 2A and 2B of the Resubdivision of Lot 2, Foley Beach Express Industrial Park, Unit 7 (Slide 2491-D), said replat being recorded on Slide 2820-A, in the Office of the Judge of Probate of Baldwin County, Alabama.

PARCEL B:

Lot 2B, of the Replat of Lots 5 and 6 of the Resubdivision of Lots 3, 4A, 4B, and 4C, Foley Beach Express Industrial Park (Slide 2254-D) and of Lots 2A and 2B of the Resubdivision of Lot 2, Foley Beach Express Industrial Park, Unit 7 (Slide 2491-D), said replat being recorded on Slide 2820-A, in the Office of the Judge of Probate of Baldwin County, Alabama.

EXHIBIT B

DEVELOPMENT PLAN PROVIDED BY PURCHASER