

**DONATION AGREEMENT**  
(Springdale Stores, Inc. -Fire Station Land)

THIS DONATION AGREEMENT (this "Agreement") is entered into as of the Effective Date (hereinafter defined) by and between Springdale Stores, Inc., an Alabama corporation ("Springdale"), and the City of Foley, Alabama, a municipal corporation organized under the laws of the State of Alabama (the "City"). As used herein, the term "Parties" shall mean, collectively, Springdale and the City.

**RECITALS**

WHEREAS, Springdale and its related companies own a significant amount of undeveloped land located in and around the City, particularly in the Northeastern portion of the City; and

WHEREAS, the City has a need in the near term to acquire approximately two and a half acres of land in the Northeastern portion of the City for the development of a new facility for the Foley Fire Department; and

WHEREAS, Springdale is willing and able to donate and convey a portion of its real property to the City for its use as a site to develop a municipal Fire Department station; and

WHEREAS, Springdale requires the City's assistance with certain aspects of a developer's plans to purchase and develop a significant project on land owned by Springdale and its related company, Delaney Investments, Inc. ("the Kolter Project"); and

WHEREAS, the City is willing to assist Springdale and Delaney Investments with the Kolter Project, and Springdale is willing to donate land to the City for use as a fire station to allow for better fire and safety protection in the future; and

WHEREAS, the Parties desire to confirm their agreement and understanding in writing;

**AGREEMENT**

NOW, THEREFORE, in consideration of Ten Dollars paid to Springdale by the City, the mutual covenants and agreements herein set forth, the City's assistance with certain aspects of the Kolter Project, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, do hereby covenant and agree as follows.

1. Donation of Donated Land. Springdale hereby irrevocably agrees to gift, convey and donate certain real property in the Northeastern portion of the City to the City at a later date, which land is to be identified at a later date, that will be sufficient in size (up to two and a half acres), shape, elevation, road access, and utility access, and development potential for the City's use as a site to cause a Municipal Fire Department station as the primary function. The City agrees to acquire and accept the donated land from Springdale, all on and subject to the terms and conditions of this Agreement. The specific property will be mutually agreeable to both the Parties. It is the parties' mutual understanding that the City will need the donation to be made in calendar year 2026.

2. Subdivision and Review Contingency. Springdale and the City acknowledge, covenant and agree that they will cooperate to subdivide the donated land from any larger parcel of record it is a part of prior to the closing. Prior to construction of the Municipal Fire Department station, the City agrees to submit plans and specifications to Springdale for review and consent as to architectural design and materials in order to ensure that such facility, as built, will be in keeping with the surrounding area and further development of areas adjacent to the donated property.

3. Closing. The closing of the donation and conveyance of the Donated Land contemplated hereby (the "Closing") shall be held at 10:00 a.m. prevailing local time on a date mutually agreed to in writing by the City and Springdale (the "Closing Date").

4. Closing Deliveries. At the Closing:

(a) Springdale shall execute and deliver to the City the following: (i) a statutory warranty deed ("Deed"); (ii) a "FIRPTA Affidavit" for Springdale in form and substance reasonably acceptable to the City; and (iii) such other documents reasonably requested by the title insurance company.

(b) The City shall execute and deliver to Springdale a duly executed counterpart of the Deed. The parties acknowledge that the Deed will have a use restriction that the City must construct a municipal fire department station on the site as the primary use and may only use the site for public safety-related uses. The deed will not have a reversionary provision or any other option or right of repurchase in favor of Springdale or the grantor, but the use restriction can be enforced by Springdale (or the grantor) for so long as it continues to own property in the area.

The foregoing documents to be executed by Springdale and the City, as applicable, are herein collectively referred to as the "Closing Documents".

5. Possession. At Closing, Springdale shall deliver to the City actual possession of the Donated Land, vacant and free of all leases and rights of possession, use or occupancy.

6. Recording of the Deed. The City shall pay for all costs and expenses of recording the deed (including, without limitation, any deed taxes levied thereon).

7. Real Estate Taxes. At Closing, all real estate taxes, general assessments and municipal water and sewer rents assessed against the Donated Land for the tax year in which Closing occurs shall be apportioned between Springdale and the City as of the Closing Date. Such apportionment shall be based on the respective tax years for which such taxes are assessed, and on the most recent assessment of the Donated Land and the then applicable tax rates.

8. No Brokers. Neither Springdale nor the City has engaged, nor shall Springdale or the City owe any fees or commissions with respect to the engagement of, any agents, brokers or other third parties that may be owed or claim to be owed a commission or brokerage fee in connection with the consummation of the transactions contemplated herein, and Springdale and the City do each indemnify and hold harmless the other with respect to any such claims made on behalf of any such third parties by and through either Springdale or the City.

9. Notices. Any notices required or permitted to be given hereunder shall be given in writing and shall be delivered (a) in person, (b) by certified mail, postage prepaid, return receipt requested, (c) by a commercial overnight courier that guarantees next day delivery and provides to the sender a delivery receipt or (d) by electronic mail (followed by hard copy delivered in accordance with preceding subsections (a)-(c)). Any notice shall be effective only upon receipt (or refusal by the intended recipient to accept delivery). Such notices shall be addressed as follows:

Springdale: Springdale Stores, Inc.  
Attn.: Robert S. Frost, C.E.O.  
225 Springhill Memorial Place  
Mobile, Alabama 36608  
E-Mail: Bobbyf@delaneyinc.net

The City: The City of Foley, Alabama  
Attn: Assistant City Clerk  
407 E. Laurel Avenue  
Foley, AL 36535  
E-Mail: [cwatkins@cityoffoley.org](mailto:cwatkins@cityoffoley.org)

With copy to: Helmsing, Leach, Herlong, Newman & Rouse, P.C.  
Attn: Casey Pipes, Esq.  
150 Government Street, Suite 2000  
Mobile, AL 36602  
Email: [jcp@helmsinglaw.com](mailto:jcp@helmsinglaw.com)

or to such other address as either party may from time to time specify in writing to the other party.

10. Entire Agreement. This Agreement sets forth all of the agreements, representations, warranties and conditions of the Parties with respect to the subject matter hereof, and supersedes all prior or contemporaneous letters of intent, agreements, representations, warranties and conditions. This Agreement, together with the Exhibits hereto contain all representations, warranties and covenants made by the City and Springdale and constitutes the entire understanding between the Parties with respect to the subject matter hereof. Any correspondence, memoranda or agreements between the Parties are not binding on or enforceable against any party and are superseded and replaced in total by this Agreement together with the Exhibits attached hereto.

11. Amendments. This Agreement may be amended or modified only by a written instrument signed by the City and Springdale.

12. Time. Time is of the essence. Wherever herein there is a day or time period established for performance and such day or the expiration of such time period is not a Business Day, then such time for performance shall be automatically extended to the next following Business Day. As used herein, "Business Day" shall mean any day other than a Saturday, a Sunday, or a federal holiday recognized by the Federal Reserve Bank of Atlanta.

13. Attorneys' Fees. If either party hereto fails to perform any of its obligations under this Agreement or if any dispute arises between the Parties concerning the meaning or interpretation of any provision of this Agreement, then the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party on account of such default and/or in enforcing or establishing its rights hereunder, including, without limitation, court costs (including costs of any trial or appeal therefrom) and reasonable attorneys' fees and disbursements.

14. Assignment. Neither party may assign this Agreement (or any interest herein) under any circumstance whatsoever. Notwithstanding the foregoing, this Agreement shall be binding upon the successors in title to the Springdale real property, and to the successors of Springdale.

15. Governing Law. This Agreement and all issues arising hereunder shall be governed by the laws of the State of Alabama, without regard to its conflicts of law principles.

16. Waiver of Trial b v Jury. EACH PARTY HEREBY WAIVES, IRREVOCABLY AND UNCONDITIONALLY, TRIAL BY JURY IN ANY ACTION BROUGHT ON, UNDER OR BY VIRTUE OF OR RELATING IN ANY WAY TO THIS AGREEMENT OR ANY OF THE DOCUMENTS EXECUTED IN CONNECTION HERewith, THE DONATED LAND, OR ANY CLAIMS, DEFENSES, RIGHTS OF SET-OFF OR OTHER ACTIONS PERTAINING HERETO OR TO ANY OF THE FOREGOING.

17. Severability. If any provision of this Agreement, or the application thereof to any person, place or circumstance, shall be held by a court of competent jurisdiction to be invalid, unenforceable or void, the remainder of this Agreement and such provisions as applied to other persons, places and circumstances shall remain in full force and effect.

18. Counterparts and Execution. This Agreement may be executed in any number of identical counterparts which, taken together, shall constitute collectively one agreement. The Parties acknowledge and agree that execution of this Agreement may be accomplished by electronic signature utilizing DocuSign or any other mutually acceptable similar online, electronic, or digital signature technology. The Parties agree that this Agreement may be transmitted by facsimile machine or by electronic scanning and email, and the Parties intend that faxed, scanned, and electronic signatures shall constitute original signatures. A facsimile or scanned copy or any counterpart or conformed copy of this Agreement, including use of Adobe PDF technology to merge pages and create a conformed copy of this Agreement, with the signature (original, faxed, or scanned signature or permitted electronic signature) of all of the Parties shall be binding on the Parties. Except as provided in this subparagraph with respect to electronic signatures (e.g., DocuSign) and faxing, scanning, and emailing, (a) Springdale and the City do not assent or agree to and will not be bound by any electronic record, and without limiting the foregoing, (b) Springdale and the City agree that the Electronic Signatures in Global and National Commerce Act, any version of the Uniform Electronic Transactions Act, including without limitation Alabama Code § 8-1A-1, *et seq.* (1975), and any other laws applicable to contracting electronically do not and shall not apply to the execution of this Agreement or any amendment hereto.

*[Remainder of Page Intentionally Left Blank]*

IN WITNESS WHEREOF, the Parties have executed this Agreement the date and year first above written.

**THE CITY:**

**THE CITY OF FOLEY, ALABAMA**, a municipal corporation organized under the laws of the State of Alabama

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

Ralph Hellmich

As Its Mayor

Dated:

ATTEST:

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

Christi Watkins

As Its Assistant City Clerk

**SPRINGDALE:**

**SPRINGDALE STORES, INC.**, an Alabama corporation

By,

Name: \_Michael Delaney

As Its: Vice President

Dated: 1-11-2011