

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE ISSUANCE OF
\$1,500,000 OF GENERAL OBLIGATION WARRANTS, SERIES 2016

BE IT ORDAINED by the City Council of the City of Foley, Alabama, as follows:

ARTICLE I

DEFINITIONS, USE OF WORDS AND
PHRASES, AND FINDINGS BY THE CITY

Section 1.1 Definitions. The following words and phrases and others evidently intended as the equivalent thereof shall, in the absence of clear implication herein otherwise, be given the following respective interpretations:

“**Bank**” means Merchants & Marine Bank, in its role as Warrant Registrar and Paying Agent.

“**Business Day**” means any day other than a Saturday, Sunday or day on which banking institutions are required or authorized to close in the city in which the designated corporate trust agency office of the Bank is located, or on which the Federal Reserve Bank is closed.

“**City**” means the municipal corporation in the State of Alabama known as the City of Foley, Alabama, as it now exists, and any political subdivision resulting from any merger or consolidation thereof with any other political subdivision.

“**City Clerk**” means the city clerk of the City.

“**Code**” means the Internal Revenue Code of 1986 as amended.

“**Council**” means the governing body of the City as from time to time constituted.

“**Economic Development Amendment**” means Amendment 772 to the Constitution of Alabama of 1901, as amended, codified as Section 94.01 of the Official Recompilation of the Constitution of Alabama of 1901.

“**Government Obligations**” means direct obligations of the United States of America and obligations unconditionally guaranteed by the United States of America.

“**Interest Payment Date**” means any date on which an interest payment is due and payable under the Warrants.

“Paying Agent” means the City Treasurer in her capacity as registrar, transfer agent and paying agent with respect to the Warrants, or any successor thereto in such capacity as appointed by the City.

“Redemption Date” means the date for redemption of the Warrants determined pursuant to the terms of this Ordinance and provided in the notice provided for in Section 5.2.

“Redemption Price” means the price for redemption of the Warrants determined pursuant to the terms of this Ordinance and provided in the notice provided for in Section 5.2.

“Securities Depository” has the meaning given that term in Section 3.5 hereof.

“Treasurer” shall mean the treasurer or any assistant treasurer of the City.

“Warrant Authorizing Law” means Section 4, Chapter 81 and Section 2, Chapter 47 of Title 11, Code of Alabama, 1975

“Warrant Fund” means the special account created pursuant to Section 8.3 hereof.

“Warrant Holder” or **“Holder”** means the registered holder, from time to time, of any of the Warrants.

“Warrants,” unless otherwise indicated, means the \$1,500,000 in aggregate principal amount of the City's General Obligation Warrants, Series 2016, as more particularly described in Article II hereof and issued hereunder.

Section 1.2 Use of Words and Phrases. The following provisions shall be applied wherever appropriate herein:

Whenever used herein, any pronoun or pronouns shall be deemed to include both singular and plural and to cover all genders.

"Hereby", "herein", "hereinafter", "hereof", "hereunder" and other equivalent words refer to this Ordinance as a whole and not solely to any particular portion thereof in which any such word is used.

The definitions set forth in Section 1.1 hereof shall be deemed applicable whether the words defined are herein used in the singular or plural.

Section 1.3 Findings of Council. Having made due and proper investigation of the matters hereinafter referred to, the Council hereby finds and determines:

- (a) By a resolution previously adopted and pursuant to the Economic Development Amendment, the City has entered into that certain Project Agreement by and among the City and ROHR, Inc. (Project Turbine) (the “*Project Agreement*”) whereby the City would provide \$1,500,000.00 in incentives to ROHR, Inc. to be used for the expansion of its existing aerospace manufacturing facility (the “**Facility**”).
- (b) The City does not have, and does not expect to have, sufficient funds in the near future to pay all of the costs of the undertakings by the City in the Project Agreement.
- (c) Pursuant to the Economic Development Amendment, the Warrant Authorizing Law, and the prior resolution of the City dated May 19, 2016 and adopted pursuant to the Economic Development Amendment, the City is authorized to issue its warrants, in order to provide funding for the incentives provided by the City in the Project Agreement.
- (d) It is necessary, advisable and in the interest of the public that the City issue its General Obligation Warrants, Series 2016
- (e) to fund the incentives provided for in the Project Agreement and to pay costs of issuance and sale of such Warrants.

ARTICLE II

AUTHORIZATION, DESCRIPTION, EXECUTION, PAYMENT AND FORM OF THE WARRANTS

Section 2.1 Authorization of the Warrants. Pursuant to the applicable provisions of the constitution and laws of the State of Alabama, and for the purpose of funding the incentives set forth in the Project Agreement, there is hereby authorized to be issued by the City \$1,500,000,000 in aggregate principal amount of its General Obligation Warrants, Series 2016.

Section 2.2 Description of the Warrants. The Warrants shall be issued only in fully registered form, without coupons, shall be dated as the date of their delivery, shall be issued in one or more draws, and shall be numbered from R-1 upwards in the order of their issuance and delivery. The Warrants shall bear interest from the date of their delivery at the rate of two percent (2%) (calculated on the basis of a 360-day year of twelve 30-day months), payable on the first day of each month after issuance and until payment of the principal amount thereof, and, subject to the redemption provisions hereinafter set forth, shall mature on November 1, 2020. Payments of principal and interest shall be as further provided in the form of the Warrants in Section 2.5 of this Ordinance.

Section 2.3 Execution of the Warrants. The Warrants shall be executed in the name of the City by the manual or facsimile signatures of the Mayor of the City and its City Clerk inscribed or printed or otherwise reproduced thereon (it being herein provided that a condition to the validity of each Warrant is the manual execution on behalf of the Bank of the Registration Certificate endorsed on each Warrant). The Warrants shall be registered by the Treasurer of the City, in the records maintained by the Treasurer, as a claim against the City and the Warrant Fund, which registration shall be made simultaneously as to all the Warrants. The certificate of registration on each of the Warrants shall be executed by the manual or facsimile signature of the Treasurer of the City. The official seal of the City shall be impressed or printed or otherwise reproduced thereon and shall be attested by the aforementioned signature of the City Clerk. The said officers are hereby directed to cause the Warrants to be executed, sealed and registered in the manner provided by this section. Anything herein to the contrary notwithstanding, any assistant city clerk shall be empowered to execute any Warrant in the absence or unavailability of the City Clerk and any assistant treasurer of the City shall be empowered to execute any Warrant in the absence or unavailability of the Treasurer.

Section 2.4 Places and Medium of Payment of the Warrants. Principal of and interest on the Warrants shall be payable in lawful money of the United States of America. The principal of the Warrants shall be payable at the designated corporate trust agency office of the Bank, upon presentation and surrender of the Warrants as the same become due and payable. Interest on the Warrants shall be payable by check or draft mailed by the Bank to the lawful holders of the Warrants at the address shown on the registry books of the Bank pertaining to the Warrants as of the Record Date and shall be deemed timely made if so mailed on the Interest Payment Date (or if such Interest Payment Date is not a Business Day, on the Business Day next following such Interest Payment Date).

Section 2.5 Forms of the Warrants and Related Certificates. The Warrants, the certificate of registration thereof, the registration thereof as a claim against the Warrant Fund, and the form of assignment thereof shall be in substantially the following form with appropriate changes therein to conform to the applicable provisions hereof:

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(Form of Series 2016 Warrant)

GENERAL OBLIGATION WARRANT
SERIES 2016

Merchants & Marine Bank Loan No.: [_____]

U.S. \$1,500,000.00

Date: _____, 2016

CITY OF FOLEY,
an Alabama municipal corporation
P.O. Box 1750
Foley, AL 36536
(Hereinafter referred to as "Borrower")

MERCHANTS & MARINE BANK,
a Mississippi state chartered bank
1820 Gulf Shores Parkway
Gulf Shores, AL. 36542
(Hereinafter together with its successors
and/or assigns referred to as "Lender")

Borrower, for value received, hereby acknowledges itself indebted to, and does hereby order and direct the Treasurer of the Borrower (or any successor to the functions thereof) to pay, solely from the Warrant Fund hereinafter referenced, to Lender or order, the principal sum of ONE MILLION FIVE HUNDRED THOUSAND and 00/100 U.S. DOLLARS (\$1,500,000.00) or so much thereof as may have been disbursed to Borrower with interest, on the unpaid principal balance at the rate and on the terms provided in this General Obligation Warrant, including all renewals, extensions, substitutions or modifications, (The principal, together with all accrued interest thereon and any advances, fees, additions, or other charges added thereto are collectively referred to as the "Indebtedness".)

1. Loan Agreement. This General Obligation Warrant ("Warrant") is executed pursuant to that certain Loan Agreement between Lender and Borrower of even date herewith, as modified from time to time (the "Loan Agreement"). The term "Loan Documents" as used in this Warrant refers to the Loan documents executed in connection with or related to the Loan evidenced by this Warrant and described in the Loan Agreement. The term "Lender" includes any persons or entities who may hold or acquire a full or partial interest in this Loan including, but not limited to, any participants or transferors.

2. Purpose. Borrower shall use the proceeds of the Loan evidenced by this Warrant for payment of costs related to that certain Project Agreement by and between Borrower and ROHR, INC. (Project Turbine) and as described in the Loan Agreement. This Loan is for commercial purposes. This is a closed-end multiple advance Loan with a maximum available credit limit of \$1,500,000.00.

3. Advances. Borrower may request advances of funds ("Advances") from Lender. The aggregate Advances outstanding at any time shall not exceed the maximum available credit limit of \$1,500,000.00. If the aggregate Advances outstanding at any time exceed such limit, then the Borrower shall immediately pay such excess. The Lender may, without prior notice to the Borrower, charge any of the Borrower's accounts under the

control of the Lender in order to effect such payment. Advances made under this Warrant shall be due and payable at maturity.

4. Interest and Fee Computation. The rate of interest on the disbursed funds shall be Two Percent (2.0%). Interest on all principal amounts and fees outstanding from time to time hereunder shall be calculated on the basis of a 360-day year applied to the actual number of days upon which principal is outstanding, by multiplying the percent of the principal amount and the applicable rate set forth herein by the actual number of days elapsed, and dividing by 360.

5. Repayment Terms. This Warrant shall be payable as follows:

(a) Consecutive installments of interest shall be payable monthly on the disbursed outstanding principal balance. The first interest installment shall be due and payable October 1, 2016, and continuing on the 1st day of each succeeding calendar month occurring thereafter until, and including, November 1, 2017; and

(b) Thirty-Six (36) consecutive monthly installments in the amount of Forty Two Thousand Nine Hundred and Eighty One and 15/100 U.S Dollars (\$42,981.15) each shall become due and payable on the Indebtedness pursuant to the amortization schedule attached hereto as Exhibit "A". The principal and interest installments shall be calculated on the entire outstanding Indebtedness using a thirty-six (36) month amortization, and if the entire \$1,500,000 is not disbursed and outstanding on November 1, 2017, the monthly installment amount in this Section 5(b) will be modified to reflect the outstanding amount through an amendment or modification of this Warrant. The first principal and interest installment shall be due and payable, or accrued, on December 1, 2017, and continuing on the same day of each consecutive month thereafter, and

(c) One (1) final payment ending with the entire balance of the Indebtedness, all due and payable in full on or before November 1, 2020, which date shall be the "Maturity Date".

6. Application of Payments and Late Fees. All payments received by Lender shall be applied first, to accrued interest; second, to any expenses, late fees or other charges and additions thereto; and third to the balance of principal. In the event the Lender has not received the full amount of any payment within ten (10) calendar days after the date it is due, the Borrower shall pay to the Lender a late charge equal to five percent (5%) of any overdue payment.

7. Credit Rating. Intentionally deleted.

8. Prepayment. Borrower shall have the right to prepay the Indebtedness evidenced by this Warrant in full or in part, at any time during the term of this Warrant, without premium or penalty.

9. Events of Default. The occurrence of any one or more of the following events, circumstances, or conditions shall constitute a default hereunder ("Event of Default"):

(a) Failure of the Borrower to pay to the Lender promptly when the same shall become due (whether at scheduled maturity, upon mandatory payment, upon acceleration or otherwise) any portion of the Indebtedness evidenced by this Warrant, including, but not limited to, any installment of principal, interest or fees due under this Warrant: or

(b) The Borrower shall fail to perform or observe any term, covenant or agreement (other than for the payment of money) contained in this Warrant on its part to be performed or observed if such failure shall remain unremedied for thirty (30) days after written notice thereof shall have been given to the Borrower by the Lender, or

(c) The filing of any petition under the Bankruptcy Code or any similar federal or state statute by the Borrower and such filing is not discharged within sixty (60) days after filing, or

(d) The appointment of a receiver for, the making of a general assignment for the benefit of creditors by, or the insolvency of the Borrower and any of same is not discharged within sixty (60) days after the occurrence thereof; or

(e) The reasonable determination by the Lender that any material warranty, representation, certificate, or statement of the Borrower (whether contained in this Warrant or not) pertaining to or in connection with the Indebtedness is not true or is misleading in any material respect; or

(f) The occurrence of any material adverse change in the financial condition, property or operations of the Borrower, or

(g) The breach of any term or covenant of the Loan Agreement or Loan Documents.

10. Remedies Upon Default. If an Event of Default occurs under this Warrant or any Loan Documents, Lender may at any time thereafter, take the following actions (provided that Borrower shall have five (5) days following written notice from Lender to cure or attempt to cure any failure to timely make any payment and shall have thirty (30) days following written notice from Lender to cure or attempt to cure any failure to timely or properly perform any other covenant before the Lender shall take any of the following actions):

(a) Refuse to advance additional funds to Borrower. If Lender refuses to advance additional funds to Borrower, pursuant to this paragraph, all rights, duties and obligations hereunder, other than Lender's obligation to advance funds to Borrower, shall continue in full force and effect until the full and final payment and performance of the indebtedness.

(b) Reduce any claim to judgment by any available legal procedure.

(c) Accelerate the Indebtedness evidenced by this Warrant and/or any warrant(s) or other obligation(s) which may be taken in renewal, extension, substitution, or modification of all or any part of the indebtedness evidenced thereby and all other obligations of the Borrower to the Lender, howsoever created and existing, shall immediately become due and payable without demand upon or notice to the Borrower, and the Lender shall be entitled to exercise the other remedies as provided by law or in equity.

(d) The rights of the Lender under this paragraph are in addition to any other rights and remedies which the Lender may have upon the occurrence and continuation of an Event of Default as set forth in the Loan Agreement and Loan Documents and by Alabama law.

11. Waiver. The Borrower hereby waives presentment for payment, demand, notice of dishonor and protest and agrees that none of the terms or provisions hereof may be waived, altered, modified or amended except as the Lender and Borrower may consent thereto in writing.

12. Attorneys' Fees and Collection Costs. The Borrower hereby agrees to pay all out-of-pocket costs and expenses, including attorneys' fees, reasonably incurred by the Lender to enforce the collection of the Indebtedness evidenced by this Warrant or in enforcing any of the rights, powers, remedies, and privileges of the Lender hereunder. As used in this Warrant, the term, "attorneys' fees", shall mean reasonable charges and any out-of-pocket expenses for legal services rendered to or on behalf of the Lender in connection with the collection of the Indebtedness evidenced by this Warrant at any time whether prior to the commencement of judicial proceedings and/or thereafter at the trial and/or appellate level and/or in pre- and post-judgment or bankruptcy proceedings.

13. Place of Payment. The Indebtedness of this Warrant shall be payable in lawful currency of the United States of America to the Lender at 1820 Gulf Shores Parkway, Gulf Shores, AL 36542 or at such other place or to such other person as may be designated in writing by the Lender, in immediately available (same day) funds without deduction for or on account of any present or future taxes levied or imposed on this Warrant, the proceeds hereof, or on the Borrower or Lender hereof by any government, or any instrumentality, authority or political subdivision thereof. The Borrower agrees, upon the request of the Lender, to pay all such taxes (other than taxes on or measured by net income of the Lender hereof) in addition to the Indebtedness evidenced by this Warrant.

14. Default Rate. To the extent permitted by law, any amount of principal and/or interest evidenced by this Warrant which is not paid within ten (10) calendar days after the day when such payment is scheduled to be made, regardless of whether or not the Lender has accelerated payment of any or all sums outstanding under this warrant, shall bear interest from the day when due until said amount is paid in full, payable on demand, at the rate of five percent (5%) per annum ("Default Rate") not to exceed, however, the maximum lending rate permitted by Federal or Alabama law whichever is higher or unlimited. In the event any such payment of interest in excess of such maximum lending rate is received by the Lender, then such excess shall constitute and be designated as a payment on principal hereunder or, if such amount is in excess of the principal then due, such excess shall be refunded to the Borrower.

15. Usury. It is the intent of Lender to comply with applicable usury law. Neither Borrower nor any guarantors, endorsers or other parties now or hereafter becoming liable for payment of this Warrant shall ever be obligated or required to pay interest on this Warrant at a rate in excess of the maximum interest rate allowed by law, and the provisions of this paragraph shall control over all other provisions of this Warrant and the Loan Agreement. Lender expressly disavows any intention to charge or collect excessive unearned interest or finance charges in the event the maturity of this Warrant is accelerated. If the maturity of this Warrant shall be accelerated for any reason or if the principal of this Warrant is paid prior to the end of the term of this Warrant, and as a result thereof the interest received for the actual period of existence of the Loan evidenced by this Warrant exceeds the applicable maximum lawful rate, the holder of this Warrant shall credit the amount of such excess against the principal balance of this Warrant then outstanding; provided, however, that if the principal hereof has been paid in full, such excess shall be refunded to Borrower.

16. Choice of Law. This Warrant shall be deemed to have been made under and shall be governed by the laws of the State of Alabama in all respects (except as to interest rates and other terms of lending which are, by virtue of a federal preemption or, at the election of the Lender, may be governed by the laws of the United States of America), including matters of construction, validity and performance.

17. Jurisdiction. The Borrower hereby irrevocably submits to the jurisdiction of any state court having a situs in Baldwin County, State of Alabama, in any action or proceeding involving or in connection

with this Warrant. The Borrower irrevocably agrees that all claims in respect of such actions or proceedings may be heard and determined in such Alabama court. The Borrower irrevocably waives the defense of inconvenient forum to the maintenance of such action or proceeding. The Borrower agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in any other jurisdiction(s) by suit on the judgment or in any other manner provided by law. Anything herein to the contrary notwithstanding, the Lender may bring any legal action or proceeding involving this Warrant in any other appropriate jurisdiction.

18. Miscellaneous Provisions:

(a) Assignment or Transfer. This Warrant and the other Loan Documents shall inure to the benefit-of and be binding upon the parties and their respective heirs, legal representatives, successors and assigns. Subject to the terms of an investment letter to be executed by the Lender and the authorizing ordinance adopted by the City on August 15, 2016, this Warrant may be transferred by the Lender only upon written direction of the Lender or its legal representative, addressed to the Borrower, and presentation of this Warrant to the Borrower accompanied by written instrument of transfer, duly executed by the Lender or its attorney duly authorized in writing. Upon presentation of this Warrant to the Borrower for transfer, subject to the terms of the investment letter and the authorizing ordinance adopted by the City on August 15, 2016, the Borrower shall execute and deliver, in exchange for this Warrant, a new warrant or warrants of like tenor hereof, registered in the name of the transferee in an aggregate principal amount equal to the unpaid or unredeemed portion of the principal of this Warrant. No charge shall be made for the privilege of transfer, but the Lender, or any successor, requesting any such transfer shall pay any tax or other governmental charge required to be paid with respect thereto. In addition, nothing in this Warrant or any of the other Loan Documents shall prohibit Lender from pledging or assigning this Warrant or any of the other Loan Documents or any interest therein to any Federal Reserve Bank. Borrower shall not assign its rights and interest hereunder without the prior written consent of Lender, and any attempt by Borrower to assign without Lender's prior written consent is null and void. Any assignment shall not release Borrower from the obligation to repay the Indebtedness.

(b) Warrant a General Obligation; Warrant Fund:

(i) The Indebtedness evidenced by this Warrant is a general obligation of the Borrower, and the full faith, credit and taxing power of the Borrower are hereby irrevocably pledged to the punctual payment of the Indebtedness.

(ii) The Borrower does hereby establish a special fund designated the "Series 2016 Warrant Fund" (the "Warrant Fund") for the payment of the Indebtedness on this Warrant and does hereby covenant and agree to pay or cause to be paid into the Warrant Fund sums sufficient to provide for the due and punctual payment of the Indebtedness on this Warrant when and as the same becomes due and payable.

(c) Severability. If any provision of this Warrant or of the other Loan Documents shall be prohibited or invalid under applicable law, such provision shall be ineffective but only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Warrant or other such document.

(d) Notices. Any notices to Borrower shall be sufficiently given, if in writing and mailed or delivered to the Borrower's address shown above or such other address as provided hereunder. In the event that Borrower changes Borrower's address at any time prior to the date the Indebtedness is paid in full, Borrower

agrees to promptly give written notice of said change of address by registered or certified mail, return receipt requested, all charges prepaid.

(e) Plural: Captions. All references in the Loan Documents to borrower, guarantors, persons, document or other nouns of reference mean both the singular and plural form, as the case may be, and the term "person" shall mean any individual, person or entity. The captions contained in the Loan Documents are inserted for convenience only and shall not affect the meaning or interpretation of the Loan Documents.

(f) Reserved.

(g) Posting of Payments. All payments received during normal banking hours after 2:00 p.m. local time at the office of Lender first shown above shall be deemed received at the opening of the next banking day.

(h) Fees and Taxes. Borrower shall promptly pay all documentary, intangible recordation and/or similar taxes on this transaction whether assessed at closing or arising from time to time.

(i) JURY TRIAL WAIVER. THE PARTIES KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE, TO THE EXTENT PERMITTED BY LAW, THE RIGHT THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THE LOAN DOCUMENTS, AS DEFINED IN THE LOAN AGREEMENT, EXECUTED AND DELIVERED BY THE BORROWER TO THE LENDER IN CONJUNCTION WITH THIS WARRANT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF EITHER PARTY OR ANY STOCKHOLDER, MEMBER, DIRECTOR, OFFICER, EMPLOYEE, AGENT, ATTORNEY OR INDEPENDENT CONTRACTOR OF EITHER. THE PARTIES HAVE RECEIVED THE BENEFIT OF LEGAL COUNSEL IN CONNECTION WITH THIS JURY TRIAL WAIVER AND AGREE THAT LENDER MAY FILE A COPY OF THIS WARRANT WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY, AND BARGAINED-FOR AGREEMENT OF BORROWER IRREVOCABLY TO WAIVE, TO THE EXTENT PERMITTED BY LAW, BORROWER'S RIGHT TO TRIAL BY JURY, AND THAT ANY DISPUTE OR CONTROVERSY WHATSOEVER BETWEEN BORROWER AND LENDER SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY. THIS PROVISION IS A MATERIAL INDUCEMENT TO THE LOAN TO BORROWER.

(j) General; Estoppel:

(i) By acquisition and acceptance of this Warrant the Lender shall have agreed that (a) no covenant or agreement contained in this Warrant or in the Loan Documents shall be deemed to be a covenant or agreement of any elected official, officer, agent, employee, or member of the governing body of the Borrower in the individual capacity thereof, and (b) none of such parties or persons nor any officer executing this Warrant shall be liable personally on this Warrant or be subject to any personal liability or accountability by reason of the issuance of this Warrant.

(ii) It is hereby recited, certified and declared that the Indebtedness evidenced and ordered paid by this Warrant is lawfully due without condition, abatement or offset of any description, that this Warrant has been registered in the manner provided by law, that all acts, conditions and things required by the Constitution and laws of the State of Alabama to happen, exist and be performed precedent to and in the execution, registration and issuance of this Warrant, and the adoption of the Loan Documents, have happened, do exist and have been performed as so required, and that the principal amount of this Warrant and all other

indebtedness of the Borrower are within every debt and other limit prescribed by the Constitution and laws of the State of Alabama.

(k) Final Agreement. This Warrant and the other Loan Documents represent the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

BORROWER:

ATTEST:

CITY OF FOLEY,
An Alabama municipal corporation

By: Approved as to form. Not to be signed.
John Koniar, its Mayor

By: Approved as to form. Not to be signed.
Victoria Southern, City Clerk

Registration Certificate

It is hereby certified that this Warrant and the interest thereon have been registered by the undersigned as a claim against the City of Foley, Alabama and the Warrant Fund herein referenced.

Approved as to form. Not to be signed.
Treasurer of the City of Foley, Alabama

Exhibit "A"

Date: 08/04/2016

MERCHANTS & MARINE BANK

Page 1

Funding Date:	11/01/2017	Compounding:	Actuarial	Principal:	1,500,000.00
First Payment Date:	12/01/2017	Period:	Actual/360	Initial Interest Rate:	0.000%
		Pmt Schedule:	Monthly	Interest Rate:	2.000%
				Pmt Amount:	42,981.15

Payment Number	Payment Date	Days	Payment Amount	Interest Amount	Principal Reduction	Outstanding Balance
1	12/01/2017	30	\$42,981.15	2,500.00	40,481.15	1,459,518.85
2017	Totals:		42,981.15	2,500.00	40,481.15	
2	01/01/2018	31	\$42,981.15	2,513.62	40,467.53	1,419,051.32
3	02/01/2018	31	\$42,981.15	2,443.92	40,537.23	1,378,514.09
4	03/01/2018	28	\$42,981.15	2,144.36	40,836.79	1,337,677.30
5	04/01/2018	31	\$42,981.15	2,303.78	40,677.37	1,296,999.93
6	05/01/2018	30	\$42,981.15	2,161.67	40,819.48	1,256,180.45
7	06/01/2018	31	\$42,981.15	2,163.42	40,817.73	1,215,362.72
8	07/01/2018	30	\$42,981.15	2,025.60	40,955.55	1,174,407.17
9	08/01/2018	31	\$42,981.15	2,022.59	40,958.56	1,133,448.61

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10	09/01/2018	31	\$42,981.15	1,952.05	41,029.10	1,092,419.51
11	10/01/2018	30	\$42,981.15	1,820.70	41,160.45	1,051,259.06
12	11/01/2018	31	\$42,981.15	1,810.50	41,170.65	1,010,088.41
13	12/01/2018	30	\$42,981.15	1,683.48	41,297.67	968,790.74
2018	Totals:		515,773.80	25,045.69	490,728.11	
14	01/01/2019	31	\$42,981.15	1,668.47	41,312.68	927,478.06
15	02/01/2019	31	\$42,981.15	1,597.32	41,383.83	886,094.23
16	03/01/2019	28	\$42,981.15	1,378.37	41,602.78	844,491.45
17	04/01/2019	31	\$42,981.15	1,454.40	41,526.75	802,964.70
18	05/01/2019	30	\$42,981.15	1,338.27	41,642.88	761,321.82
19	06/01/2019	31	\$42,981.15	1,311.17	41,669.98	719,651.84
20	07/01/2019	30	\$42,981.15	1,199.42	41,781.73	677,870.11
21	08/01/2019	31	\$42,981.15	1,167.44	41,813.71	636,056.40
22	09/01/2019	31	\$42,981.15	1,095.43	41,885.72	594,170.68
23	10/01/2019	30	\$42,981.15	990.28	41,990.87	552,179.81
24	11/01/2019	31	\$42,981.15	950.98	42,030.17	510,149.64
25	12/01/2019	30	\$42,981.15	850.25	42,130.90	468,018.74
2019	Totals:		515,773.80	15,001.80	500,772.00	
26	01/01/2020	31	\$42,981.15	806.03	42,175.12	425,843.62
27	02/01/2020	31	\$42,981.15	733.40	42,247.75	383,595.87
28	03/01/2020	29	\$42,981.15	618.02	42,363.13	341,232.74
29	04/01/2020	31	\$42,981.15	587.68	42,393.47	298,839.27
30	05/01/2020	30	\$42,981.15	498.07	42,483.08	256,356.19
31	06/01/2020	31	\$42,981.15	441.50	42,539.65	213,816.54
32	07/01/2020	30	\$42,981.15	356.36	42,624.79	171,191.75
33	08/01/2020	31	\$42,981.15	294.83	42,686.32	128,505.43
34	09/01/2020	31	\$42,981.15	221.31	42,759.84	85,745.59
35	10/01/2020	30	\$42,981.15	142.91	42,838.24	42,907.35
36	11/01/2020	31	\$42,981.15	73.90	42,907.25	.10
2020	Totals:		472,792.65	4,774.01	468,018.64	
Grand Totals:			1,547,321.40	47,321.50	1,499,999.90	

ARTICLE III
FURTHER PROVISIONS WITH RESPECT TO
WARRANTS

Section 3.1 Home Office Payment Agreement. Upon the written request of the Holder of any Warrant or Warrants in an aggregate principal amount of not less than \$100,000, the Paying Agent will make payment of interest due on such Warrant or Warrants upon any Interest Payment Date by wire transfer to an account of such Holder maintained at a bank in the continental United States or by any other method providing for payment in same-day funds that is acceptable to the Bank, provided that payment of the principal of and redemption premium (if any) on such Warrant or Warrants shall be made only upon surrender of such Warrant or Warrants to the Bank, as Paying Agent.

Section 3.2 Interest After Payment Due Date. The Warrants, any premiums thereon and, to the extent legally enforceable, overdue installments of interest thereon, shall bear interest after the maturity dates thereof or such earlier date as they may be called for redemption, until paid or until money sufficient for the payment thereof shall have been deposited for that purpose with the Bank, at the respective rates borne thereby.

To the extent permitted by law, any amount of principal and/or interest evidenced by the Warrants which is not paid on the day when such payment is scheduled to be made, regardless of whether or not the Holder has accelerated payments of any or all sums outstanding under the Warrants, shall incur interest from the day when due until said amount is paid in full, payable on demand, at the rate of five percent (5%) per annum not to exceed, however, the maximum lending rate permitted by Federal or Alabama law whichever is higher or unlimited. The City will also pay late charges as provided in the form of the Warrants in Section 2.5 of this Ordinance.

Section 3.3 Temporary Certificates. Pending the preparation of definitive Warrants the City may execute, and upon request of the City, the Bank shall register and deliver, temporary certificates which are printed, lithographed, typewritten, mimeographed or otherwise produced, in any authorized denomination, substantially of the tenor of the definitive Warrants in lieu of which they are issued, but numbered from R-1 upwards, without other identification numbers, and with such other appropriate insertions, omissions, substitutions and other variations as the officers executing such temporary certificates may determine, as evidenced by their execution of such temporary certificates.

Any such temporary certificates shall be executed by the manual signatures of the appropriate officers of the City as required in Article II of this Ordinance and be executed and attested by the City Clerk. All such temporary certificates shall have impressed thereon the seal of the City.

If temporary Warrants are issued, the City will cause definitive Warrants to be prepared without unreasonable delay. After the preparation of definitive Warrants, the temporary Warrants shall be exchangeable for definitive Warrants upon surrender of the temporary Warrants at the

principal office of the Bank, without charge to the Holder. Upon surrender for cancellation of any one or more temporary Warrants the City shall execute and deliver in exchange therefor a like principal amount of definitive Warrants of like tenor, and in authorized denominations. Until so exchanged, temporary Warrants shall in all respects be entitled to the security and benefits of this Ordinance.

Section 3.4 Payments Due on a Day Other Than a Business Day. If any payment on the Warrants is due on a day which is not a Business Day, such payment shall be made on the first succeeding date which is a Business Day with the same effect as if made on the day such payment was due.

Section 3.5 Registration and Transfer of Warrants. The Warrants shall be registered as to principal, interest (if any) and premium (if any) and shall be transferable only on the registry books of the Paying Agent pertaining to the Warrants, subject to the terms of an investment letter executed by the initial Holder of the Warrants. The Paying Agent shall be the registrar and transfer agent of the City and shall keep at its office proper registry and transfer books in which it will note the registration and transfer of such Warrants as are presented for those purposes, all in the manner and to the extent hereinafter specified. The Warrants shall be transferable only on the transfer books of the Paying Agent. No transfer of any Warrants shall be valid hereunder unless such Warrants are presented at the office of the Paying Agent with written power to transfer signed by the registered owner thereof in person or by duly authorized attorney, properly stamped if required, in form and with guaranty of signature satisfactory to the Paying Agent whereupon the City shall execute, and the Paying Agent shall authenticate and deliver to the transferee a new Warrant, registered in the name of such transferee and of like tenor as that presented for transfer. The person in whose name any Warrant is registered on the books of the Paying Agent shall be the sole person to whom or on whose order payments on account of the principal thereof thereon may be made. The Warrants may not be assigned, hypothecated, pledged, or transferred except upon the prior written consent of the City as set forth in a resolution of the governing body of the City with respect thereto. Each registered owner of any of the Warrants, by receiving or accepting such Warrants, shall consent and agree and shall be estopped to deny that, insofar as the City and the Paying Agent are concerned, the Warrants may be transferred only in accordance with the provisions of this Authorizing Ordinance and the terms of the investment letter the form of which is attached as **Exhibit A** hereto.

The Paying Agent shall not be required to register or transfer any Warrant duly called for redemption (in whole or in part), during the period following the close of business of the Paying Agent's business on the forty-fifth (45th) day next preceding the date fixed for such redemption.

The Warrants may be transferred only to (i) an investment company registered under the Investment Company Act of 1940; (ii) a bank, as defined in Section 3(a)(2) of the Securities Act of 1933 (the "1933 Act"), whether acting in its individual or fiduciary capacity; (iii) an insurance company, as defined in Section 2(13) of the 1933 Act; or (iv) a sophisticated investor possessing sufficient knowledge and experience in financial and business matters, including the purchase and ownership of municipal and other tax-exempt obligations, to be able to evaluate the risks and merits

of the investment represented by the purchase of the Warrants. Each transferee shall be required to execute and deliver to the City an investment letter in the form attached as **Exhibit A** hereto.

ARTICLE IV

GENERAL OBLIGATION; PROVISION FOR PAYMENT OF OBLIGATIONS

Section 4.1 General Obligation. The indebtedness evidenced by the Warrants is and shall be a general obligation of the City and the full faith and credit of the City are hereby irrevocably pledged to the payment of the principal thereof and interest thereon.

Section 4.2 Continued Levy of Taxes; Maintenance of Warrant Fund. The City agrees that, so long as the principal of or interest on any of the Warrants remains unpaid, the City will annually levy and collect taxes, insofar as such taxes may be permitted by the present or any future provisions of the Constitution of Alabama, in such amounts as may be necessary to provide for the payment of the principal of and interest on the Warrants. The City further agrees that so long as the principal of or interest on any of the Warrants remains unpaid it will deposit in the Warrant Fund with respect to such Warrants, not later than the 25th day of the month next preceding an Interest Payment Date, an amount which, when added to the amounts then on deposit in such Warrant Fund, will equal the principal, interest and redemption premium (if any) to come due with respect to the Warrants on such Interest Payment Date.

Section 4.3 Provision for Payment. If the principal of and interest and redemption premium (if any) on the Warrants is paid in accordance with the terms thereof and this Ordinance, then all covenants, agreements and other obligations of the City to the Holders of such Warrants shall thereupon cease, terminate and become void and be discharged and satisfied. In the event the Warrants are so paid the Paying Agent shall pay to the City any surplus remaining in the Warrant Fund.

ARTICLE V

REDEMPTION PROVISIONS

Section 5.1 Optional Redemption. The Warrants are subject to redemption prior to their maturity, at the option of the City, in whole or in part, at any time (if less than all of the outstanding principal of any Warrant is to be redeemed, the registered Holder thereof shall surrender the Warrant that is to be prepaid in part to the Paying Agent in exchange, without expense to the Holder, for a new Warrant of like terms except in a principal amount equal to the unredeemed portion thereof) to be redeemed, at and for a redemption price equal to 100% of the principal amount of each Warrant or portion thereof redeemed, plus accrued interest to the date fixed for redemption.

Section 5.2 General Provisions Respecting Redemption of Warrants. Any optional redemption of the Warrants pursuant to the Authorizing Ordinance shall be effected in the following manner:

(a) The City Council shall adopt a resolution in which it shall call for redemption, when they are by their terms subject to redemption, the Warrants (and, in case less than the entire outstanding principal amount of the Warrants is to be redeemed, the principal amount thereof to be redeemed).

(b) The City (or the Paying Agent on its behalf) shall also cause to be forwarded by United States registered or certified mail to the registered owner of each Warrant the principal of which is to be redeemed in whole or in part, at the address of such registered owner as such address appears on the registry books of the Paying Agent pertaining to the Warrants, a notice stating the following: the Warrants bearing stated numbers (and, in case less than the entire outstanding principal amount of any Warrant is to be redeemed, the principal amount thereof to be redeemed) have been called for redemption and will become due and payable at the specified redemption price on a specified redemption date and that all interest thereon (if any) will cease after the date fixed for redemption thereof. Such notice shall be so mailed not more than sixty (60) nor less than thirty (30) days prior to the date fixed for redemption, but Holders of the Warrants may waive the requirements of this subparagraph with respect to the Warrants held by them without affecting the validity of the call for redemption of any other Warrant.

(c) Not later than the date fixed for redemption, the City (i) shall deposit or cause to be deposited with, or otherwise make available to, the Paying Agent the total redemption price of the Warrants so called for redemption, and (ii) shall furnish to the Paying Agent a certified copy of the resolution referred to in the foregoing subparagraph (a) of this section.

When the provisions of the foregoing subparagraphs (a), (b) and (c) of this Section 5.2 have been complied with, the Warrants so called for redemption (or, in the case of the Warrants called for redemption in part, the portions thereof called for redemption) shall become due and payable (at the place or places at which the same shall be payable), at the redemption price and on the redemption date specified in such notice, anything herein or in the Warrants to the contrary notwithstanding, and the Holders of such Warrants shall then and there surrender them for redemption at the principal office of the Paying Agent; provided, however, that with respect to any Warrants called for partial redemption, the Holder thereof shall surrender the Warrant that is to be prepaid in part to the Paying Agent in exchange, without expense to the Holder, for a new Warrant of like terms except in a principal amount equal to the unredeemed portion thereof; and out of the moneys so deposited with it, the Paying Agent shall make provision for payment of the Warrants (or portions thereof) so called for redemption, at the redemption price and on the redemption date so specified. All interest (if any) maturing after such redemption date on the Warrants (or portions thereof) so called for redemption on the said date shall cease to accrue or be payable.

Section 5.3 Result of Redemption of Warrants. Upon compliance with the requirements set forth in this Article V, and if the City is not on the Redemption Date in default in the payment of the principal of or interest on the Warrants, the Warrants (or principal portions thereof) called for redemption shall become due and payable at the Redemption Price and on the Redemption Date specified in the notice provided for in Section 5.2, and the Holders thereof shall then and there surrender them for redemption; provided, however, that in the event that less than all of the outstanding principal of any Warrant is to be redeemed, the registered Holder thereof shall surrender the Warrant that is to be prepaid in part to the Paying Agent in exchange, without expense to the Holder, for a new Warrant of like tenor except in a principal amount equal to the unredeemed portion thereof. All future interest on the Warrants (or principal portions thereof) so called for redemption shall cease to accrue after the Redemption Date.

ARTICLE VI

REGISTRATION AND TRANSFER OF THE WARRANTS

Section 6.1 Registration and Transfer of the Warrants. The Warrants shall be registered as to both principal and interest. Each Warrant shall have endorsed thereon a registration certificate substantially in the form provided in Section 2.5 hereof, and a condition to the validity of each Warrant shall be the manual execution of such certificate on behalf of the City Treasurer of the City. Such certificate, executed by the manual or facsimile signature of said City Treasurer, shall be conclusive as to the due registration of the claim against the City represented by the Warrants. The Paying Agent is hereby appointed as the Registrar and Transfer Agent for the Warrants, and shall be authorized to keep at its designated corporate trust agency office proper registry books in which it shall register the Warrants, as to both principal and interest, noting the registry on the Warrants so presented. Such registration shall conclusively designate the Warrant Holder as the sole person to whom or on whose order the payment of the principal of and interest on the Warrants so registered may be made. After such registration no transfer of a Warrant so registered shall be valid unless it is presented at the said office with written power to transfer, properly stamped if required, in form and with guaranty of signature satisfactory to the Registrar, and such new registration noted thereon by the Registrar. The Registrar shall not be required to transfer or exchange such Warrant during the period of fifteen (15) days next preceding any interest payment date. If any Warrant shall be duly called for redemption pursuant to the provisions hereof, the Registrar shall not be required to transfer such Warrant during the period of sixty (60) days next preceding the date fixed for its redemption.

Section 6.2 Exchange of Warrants. Upon request of the Holder of any Warrant, the City shall execute, and the Paying Agent shall register and deliver, upon surrender to the Paying Agent of the Warrant or Warrants, in exchange therefor, a Warrant or Warrants of the same tenor in different authorized principal amounts, together aggregating the same principal amount as the then unpaid principal of the Warrant or Warrants so surrendered, all as may be requested by the persons surrendering such Warrant or Warrants.

Section 6.3 Costs of Registration, Transfer and Exchange. The registration, transfer and exchange of Warrants (other than pursuant to Section 6.5 hereof) shall be without expense to the Holder or transferee. In every case involving a transfer, registration or exchange, such Holder shall pay all taxes and other governmental charges, if any, required to be paid in connection with such transfer, registration or exchange.

Section 6.4 Effect of Registration. The City, the Registrar, and the Paying Agent may deem and treat the person in whose name a Warrant is registered on the books of the Registrar as the absolute owner thereof for all purposes; they shall not be affected by notice to the contrary; and all payments by any of them to the person in whose name a Warrant is registered shall, to the extent of such payment, fully discharge all liability thereof.

Section 6.5 Replacement of Mutilated, Lost, Stolen or Destroyed Warrants. In the event that any Warrant is mutilated, lost, stolen or destroyed, the City may execute and deliver a new Warrant of like tenor as that mutilated, lost, stolen or destroyed; provided, that (a) in the case of any such mutilated Warrant, such Warrant is first surrendered to the City and the Paying Agent, and (b) in the case of any such lost, stolen or destroyed Warrant, there is first furnished to the City and the Paying Agent evidence of such loss, theft or destruction satisfactory to each of them, together with indemnity satisfactory to each of them. The City may charge the Holder with the expense of issuing any such new Warrant.

Section 6.6 Provisions with Respect to Paying Agent. (a) Appointment of Paying Agent and Acceptance of Duties. The Paying Agent is herein designated and appointed and shall act as registrar, transfer agent and payment agent with respect to the Warrants. Any successor Paying Agent, other than the City acting through its officers or employees, by its acceptance of such duties hereunder, shall accept and agree to perform the duties required by this Ordinance, subject, however, to the following conditions:

- (i) The Paying Agent shall undertake to perform such duties and only such duties as are specifically set forth in this Ordinance, and no implied covenants or obligations shall be read into this Ordinance against the Paying Agent.
- (ii) In the absence of bad faith or negligence on its part, the Paying Agent may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Paying Agent and conforming to the requirements of this Ordinance; provided, however, that in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Paying Agent, the Paying Agent shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Ordinance.
- (iii) The Paying Agent shall not be answerable for other than its gross negligence or willful default and the Paying Agent may act through its agents and attorneys with respect to any of its duties hereunder.

- (iv) No provision of this Ordinance shall be construed to relieve the Paying Agent from liability for its own gross negligence or willful misconduct, except that no provision of this Ordinance shall require the Paying Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.
 - (v) The Paying Agent may consult counsel on any matters connected herewith and shall not be answerable for any action taken or failure to take any action in good faith on the advice of counsel, provided that its action or inaction is not contrary to any express provision hereof.
 - (vi) The Paying Agent need not recognize a Holder of a Warrant as such without the satisfactory establishment of his title to such Warrant.
 - (vii) Any action taken by the Paying Agent at the request of and with the consent of the Holder of a Warrant will bind all subsequent Holders of the same Warrant and any Warrant issued hereunder in lieu thereof.
 - (viii) The Paying Agent may be a Holder or a pledgee of any of the Warrants as if not the Paying Agent hereunder.
 - (ix) The Paying Agent shall not be liable for the proper application of any moneys other than those that may be paid to or deposited with it.
 - (x) The Paying Agent shall not be liable to pay or allow interest on any moneys to be held by it under this Ordinance or otherwise to invest any such moneys, except as specifically required by this Ordinance or as may be required by law or other written agreement between the City and the Paying Agent.
 - (xi) The Paying Agent may make any investments permitted or required hereby through its own investment department, and any eligible investments issued or held by it hereunder shall be deemed investments and not deposits.
 - (xii) The Paying Agent shall, upon reasonable written request, inform the City of the amount at the time on deposit in any of the special funds or accounts created hereunder.
 - (xiii) The recitals of fact herein and in the Warrants are statements by the City and not by the Paying Agent, and the Paying Agent is in no way responsible for the validity or security of the Warrants or the validity of the security afforded hereby.
- (b) Resignation by Paying Agent. The Paying Agent and any successor Paying Agent may resign and be discharged from the duties under this Ordinance by causing written notice

specifying the effective date, postage prepaid, to the City and to every Holder of a Warrant. Unless the effective date of the Paying Agent's resignation shall coincide with the appointment of a successor Paying Agent by the Holders of the Warrants as herein provided, such date shall be at least sixty (60) days after the date on which notice to the City and the Holders of the Warrants shall have been mailed.

(c) Removal of Paying Agent. The Paying Agent may be removed at any time by the City.

(d) Appointment of Successor Paying Agent; Interim Paying Agent. In case the Paying Agent shall resign, be removed, be dissolved, be in course of dissolution or liquidation, or otherwise become incapable of acting hereunder, or in case it shall be taken under the control of any public officer or officers or of a receiver appointed by a court, a successor may be appointed by the City. Every successor Paying Agent appointed pursuant to this Section shall be a trust company or bank which is qualified to perform all duties of the Paying Agent under this Ordinance and which has, at the time of its acceptance of such appointment, capital, surplus and undivided profits of not less than \$25,000,000, if there be such an institution willing, qualified and able to accept appointment as Paying Agent upon reasonable or customary terms.

(e) Concerning any Successor Paying Agent. Every successor Paying Agent shall execute, acknowledge and deliver to its predecessor and also to the City an instrument in writing accepting its appointment as Paying Agent hereunder, and thereupon such successor Paying Agent, without any further act, deed or conveyance, shall become fully vested with all the rights, powers and duties of its predecessor. Such predecessor shall nevertheless, on the written request of the City or such successor Paying Agent, execute and deliver an instrument transferring to such successor Paying Agent all rights, powers and interests of such predecessor hereunder; and every predecessor Paying Agent shall deliver all securities and moneys held by it as Paying Agent hereunder to its successor.

(f) Merger or Consolidation of Paying Agent. Any corporation into which the Paying Agent may be merged or with which it may be consolidated, or any corporation resulting from any merger or consolidation to which the Paying Agent shall be a party, or any corporation succeeding to all or substantially all of the corporate trust business of the Paying Agent, shall be the successor of the Paying Agent hereunder, without the execution or filing of any paper or any further act on the part of any of the parties hereto. In case the registration certificates with respect to any Warrants shall have been executed by the Paying Agent then in office, any successor by merger or consolidation to such Paying Agent may adopt the registration of such Warrants and deliver such Warrants with the same effect as if such successor Paying Agent had itself registered such Warrants.

(g) Compensation of Paying Agent. Subject to the provisions of any separate agreement with the Paying Agent, the City shall pay to the Paying Agent from time to time reasonable compensation for all services rendered by it under this Ordinance, including its services as registrar and paying agent for the Warrants, and also all its reasonable expenses, charges, counsel fees, costs and expenses and other disbursements and those of its attorneys, agents and employees, incurred in

and about the performance of its duties hereunder.

(h) **Extraordinary Expenses.** If the Paying Agent is required by a governmental agency or court proceeding initiated by a third party to undertake efforts beyond that which is set forth herein but related thereto (other than due to the Paying Agent's negligence or willful misconduct), the Paying Agent shall notify the City of the same in writing and the City shall promptly pay the Paying Agent for such extraordinary fees, costs and expenses (including reasonable attorney's fees, costs and expenses) reasonably and necessarily incurred in connection therewith.

ARTICLE VII

EXECUTION AND DELIVERY OF THE WARRANTS; APPROVAL OF SALE

Section 7.1 Authority to Execute and Deliver the Warrants. The Mayor of the City, the City Clerk and the Treasurer are hereby authorized and directed to cause the Warrants to be executed, sealed, attested and registered as a claim against the City and the Warrant Fund as provided herein and delivered to the purchaser thereof upon payment to the City of the sale price therefor.

ARTICLE VIII

CREATION OF PROJECT AGREEMENT ACCOUNT AND WARRANT FUND; COVENANTS WITH RESPECT TO WARRANT PROCEEDS, DESIGNATION OF WARRANTS

Section 8.1 Project Agreement Account. There is hereby created a special fund of the City designated the "Series 2016 Warrant Project Agreement Account" (herein called the "Project Agreement Account") which shall be maintained until the costs and expenses incurred by the City in connection with the Project Agreement Account are paid to the extent funds are available in the Project Agreement Account for the payment of same. The Paying Agent shall be the custodian for the Project Agreement Account.

Section 8.2 Warrant Fund. There is hereby created a special account, the full name of which shall be the "City of Foley Warrant Fund, 2016." The Warrant Fund shall be maintained as a separate fund until payment in full of the principal of and interest on the Warrants. The Paying Agent is hereby designated as the custodian of the Warrant Fund.

On or before the 25th day of the month next preceding any Interest Payment Date, the City shall deposit into the Warrant Fund an amount which, when added to the amounts already on deposit therein, will be sufficient to provide for the payment of all principal of and interest and redemption

premium on the Warrants coming due on such Interest Payment Date. Monies deposited in the Warrant Fund shall be used by the Bank for the payment of principal, interest and redemption premium (if any) on, the Warrants, and for no other purpose until the payment in full of the Warrants. All amounts deposited in the Warrant Fund shall be applied to the payment of principal of the Warrants within thirteen (13) months from the date of such deposit.

Section 8.3 Investment of Moneys in Accounts. Pending the expenditure of moneys in the Warrant Fund, the City shall have the privilege at any time and from time to time of investing and reinvesting, or causing to be invested and reinvested, all or part of the moneys at any time on deposit in such account, in Government Obligations or in money market funds of the Paying Agent consisting of Government Obligations. Pending the expenditure of moneys in the Project Agreement Account, the City shall have the privilege at any time and from time to time of investing and reinvesting, or causing to be invested and reinvested, all or part of the moneys at any time on deposit in such account in Government Obligations, money market funds of the Paying Agent consisting of Government Obligations, or certificates of deposit issued by banks or trust companies having at the time of the deposit combined capital, surplus and undivided profits of not less than \$5,000,000.

The Paying Agent is hereby directed to invest and reinvest such amounts promptly upon receipt of, and in accordance with, the written instructions of the City. The Paying Agent may conclusively rely upon the City's written instructions as to both the suitability and legality of the directed investments. In the absence of written investment instructions from the City, the Paying Agent shall not be responsible or liable for keeping the moneys held by it hereunder fully invested. The Paying Agent shall not be liable for any losses from such directed investments.

Section 8.4 Security for Funds. Any money on deposit in any fund or account or held by the Bank pursuant to this Ordinance shall, unless invested as provided herein or secured by the Federal Deposit Insurance Corporation (or any successor agency of the United States of America) or under the State of Alabama Security for Alabama Funds Enhancement Program, be secured for the benefit of the City and the Holders by holding on deposit as collateral security direct obligations of the United States of America or obligations unconditionally guaranteed by the United States of America, or other marketable securities eligible as security for the deposit of public funds under the regulations of the Comptroller of the Currency, having a market value (exclusive of accrued interest) not less than the amount of money being secured.

ARTICLE IX

APPROVAL OF LOAN AGREEMENT; MISCELLANEOUS PROVISIONS

Section 9.1 Approval of Loan Agreement. The Mayor and City Clerk are hereby authorized and directed to execute and deliver on behalf of the City a Loan Agreement in substantially the form attached hereto as **Exhibit B**, with any revisions thereto as may be approved by the Mayor, with such execution and delivery to be conclusive proof of the Mayor's approval.

Section 9.2 Further Acts. From and after the execution and delivery of the documents hereinabove authorized, the proper officers, directors, agents and employees of the City are hereby authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of said documents as executed and are further authorized to take any and all further actions and execute and deliver any and all other documents as may be necessary in the issuance of the Warrants and in the delivery of the Official Statement or as contemplated by this Ordinance.

The Mayor and City Clerk are authorized and directed to prepare and furnish to the purchaser of the Warrants, when the Warrants are issued, certified copies of all the proceedings and records of the Council relating to the Warrants, and such other affidavits and certificates as may be required to show the facts relating to the legality and marketability of the Warrants as such facts appear from the books and records in such officers' custody and control or as otherwise known to them.

Section 9.3 Contractual Provisions. The provisions of this Ordinance shall constitute a contract between the City and the Holders at any time of the Warrants. Upon payment in full of the principal of and interest on the Warrants the obligations of the City hereunder shall cease with respect thereto.

Section 9.4 Warrants Payable at Par. Each bank at which the Warrants may at any time be payable, by acceptance of its duties as Paying Agent therefor, shall be construed to have agreed thereby with the Holders of the Warrants that all remittances made by it on the Warrants shall be made in bankable funds at par and without deduction for exchange, fees or expenses.

Section 9.5 Severability. The various provisions of this Ordinance are hereby declared to be severable. In the event any provisions hereof shall be held invalid by a court of competent jurisdiction, such invalidity shall not affect any other portion of this Ordinance.

Section 9.6 Repeal of Conflicting Provisions. All resolutions, orders or parts thereof in conflict with this Ordinance are to the extent of such conflict hereby repealed.

After discussion, Councilmember _____ moved that the foregoing ordinance and order be adopted and spread upon the minutes of this meeting, which motion was seconded by Councilmember _____, and, on roll call the following vote was registered:

YEAS

NAYS

The Chairman thereupon announced that the said ordinance had been carried by vote of the Council.

* * * * *

There being no further business to come before the meeting, the meeting was, upon motion duly made, seconded and unanimously carried, adjourned.

J. Wayne Trawick, Council President

John Koniar, Mayor

[SEAL]

ATTEST:

Vickey Southern, City Clerk

CLERK'S CERTIFICATE

I, Vickey Southern, City Clerk of the City of Foley, Alabama, DO HEREBY CERTIFY that the foregoing pages of typewritten material constitute excerpts from the minutes of a regular meeting of the City Council of Foley, Alabama, held on August 15, 2016, pertaining to the City's General Obligation Warrants, Series 2016, which meeting was called and assembled and was open to the public and at which a quorum was present and acting throughout, and that the original of said minutes appears of record in the minute books of the City Council of Foley, Alabama, which are in my custody and control.

Given under my hand and the seal of the City of Foley, Alabama, this ____ day of _____, 2016.

[SEAL]

City Clerk of the City of Foley, Alabama

Exhibit A

Form of Investment Letter

_____, 2016

City of Foley, Alabama
407 E. Laurel Avenue
Foley, AL 36535

Re: Not exceeding \$1,500,000 City of Foley, Alabama, General Obligation Warrants,
Series 2016

Ladies and Gentlemen:

The undersigned is the purchaser of the above-captioned issue of warrants (the "Warrants"), issued by the City of Foley, Alabama (the "City") pursuant to that certain Authorizing Ordinance adopted by City Council of the City on August 15, 2016 (the "Authorizing Ordinance"). In connection with such purchase, the undersigned hereby represents, warrants, covenants, and agrees as follows:

1. The undersigned is: (i) an investment company registered under the Investment Company Act of 1940; (ii) a bank, as defined in Section 3(a)(2) of the Securities Act of 1933 (the "1933 Act"), whether acting in its individual or fiduciary capacity; (iii) an insurance company, as defined in Section 2(13) of the 1933 Act; or (iv) a sophisticated investor possessing sufficient knowledge and experience in financial and business matters, including the purchase and ownership of municipal and other tax-exempt obligations, to be able to evaluate the risks and merits of the investment represented by the purchase of the Warrants.

2. The undersigned is purchasing the Warrants for investment for its own account and is not purchasing the Warrants for resale, distribution, or other disposition, and the undersigned has no present intention to resell, distribute, or otherwise dispose of all or any part of the Warrants. Nevertheless, if the undersigned resells or otherwise disposes of all or any part of the Warrants (or any legal or beneficial interest therein), it will resell or otherwise dispose of the Warrants only to (i) an investment company registered under the Investment Company Act of 1940; (ii) a bank, as defined in Section 3(a)(2) of the Securities Act of 1933 (the "1933 Act"), whether acting in its individual or fiduciary capacity; (iii) an insurance company, as defined in Section 2(13) of the 1933 Act; or (iv) a sophisticated investor possessing sufficient knowledge and experience in financial and business matters, including the purchase and ownership of municipal and other tax-exempt obligations, to be able to evaluate the risks and merits of the investment represented by the purchase of the Warrants. The undersigned further agrees that it will not sell, transfer, assign, or otherwise dispose of the Warrants (or any legal or beneficial interest therein except in compliance with the 1933 Act, the Securities Exchange Act of 1934, any rules and regulations promulgated under either of such Acts, and the applicable securities laws of any state or other jurisdiction. The undersigned acknowledges that the Warrants: (a) are not being registered under the 1933 Act and are not being registered or otherwise qualified for sale under the securities or "Blue Sky" laws of any state; (b) are being sold to the undersigned in reliance upon certain exemptions from registration and in reliance

upon the representations and warranties of the undersigned set forth herein; (c) will not be listed on any stock or other securities exchange; (d) will not be rated by Standard & Poor's Corporation, Moody's Investors Service, Inc., or any other similar rating service; and (e) may not be readily marketable.

3. The undersigned has made its own inquiry and analysis with respect to the City and other material factors affecting the value and investment quality of the Warrants, has investigated the City and its operations, and has either been supplied with or has had access to all information to which a reasonable investor would attach significance in making investment decisions, so that as a reasonable investor, the undersigned has been able to make its decision to purchase the Warrants. The undersigned acknowledges that the Warrants do not constitute an obligation, general or special, debt, liability, or moral obligation of the State of Alabama or any political subdivision thereof, other than the City, within the meaning of any constitutional or statutory provision whatsoever and that neither the faith and credit nor the taxing power of the State of Alabama or any political subdivision thereof, other than the City, is pledged to the payment of the principal of, premium, if any, or interest on the Warrants. The undersigned acknowledges that no covenant, stipulation, obligation, or agreement contained in the Authorizing Ordinance or the Warrants shall be deemed to be a covenant, stipulation, obligation, or agreement of any present or future trustee, officer, agent, or employee of the City in his or her individual capacity. The undersigned acknowledges that neither the State of Alabama nor any political subdivision thereof, other than the City, shall in any manner be liable for the performance of any agreement or covenant of any kind which may be undertaken by the City and that no breach thereof by the City shall create any obligation upon the State of Alabama or any political subdivision thereof, other than the City.

In reaching the conclusion that it desires to acquire the Warrants, the undersigned has carefully evaluated all risks associated with this investment and acknowledges that it is able to bear the economic risk of this investment. The undersigned, by reasons of its knowledge and experience in financial and business matters, is capable of evaluating the merits and risks of the investment in the Warrants.

4. The undersigned acknowledges that no official statement, prospectus or offering circular containing information with respect to the City or the Warrants (including the security therefor) has been or will be prepared and that it has made its own inquiry and analysis with respect to the City and the Warrants (including the security therefor), and the other material factors affecting the security and payment of the Warrants and that the undersigned has in no way relied upon the City or Bond Counsel in connection with such inquiry or analysis.

5. The undersigned acknowledges that it has either been supplied with or has had access to all information, including financial statements and other financial information, to which a reasonable investor would attach significance in making investment decisions, and that it has had the opportunity to ask questions and receive answers from knowledgeable individuals concerning the City and the Warrants, including the security therefor, so that as a reasonable investor it has been able to make its decision to purchase the above-stated principal amount of the Warrants.

6. The form, terms and provisions of the Authorizing Ordinance, the issuance, sale and delivery of the Warrants, the maturities, interest rate, redemption terms and sale price of the Warrants, and the sale of the Warrants, all as provided in the Authorizing Ordinance and the Warrants, are hereby in all respects approved.

7. The undersigned acknowledges receipt of and has reviewed the opinions of Bond Counsel (if any) delivered in connection with the original issuance of the Warrants.

8. This Investment Letter shall be binding upon the undersigned.

[Not to be Signed at This Time]

Very truly yours,

MERCHANTS & MARINE BANK

By: Approved as to form. Not to be signed.

Name: _____

Title: _____

Exhibit B

LOAN AGREEMENT

(Merchants & Marine Bank Loan No. [_____])

THIS LOAN AGREEMENT ("Agreement") is made and entered into this _____ day of _____ 2016, by and between CITY OF FOLEY, an Alabama municipal corporation (hereinafter called "Borrower"), and MERCHANTS & MARINE BANK, a Mississippi state chartered bank (hereinafter together with its successors and/or assigns called "Lender")

PRELIMINARY STATEMENT

The Borrower has applied to the Lender for a "Loan" (defined below) up to an aggregate principal amount of ONE MILLION FIVE HUNDRED THOUSAND and 00/100 U.S. DOLLARS (\$1,500,000.00). The proceeds of the Loan are to be used by the Borrower to pay for costs related to that certain Project Agreement by and between Borrower and ROHR, INC. (Project Turbine). The Lender is willing to make "Advances" (defined below) to the Borrower, upon the terms and subject to the conditions hereinafter set forth. Borrower has the authority to enter into this Agreement and execute the General Obligation Warrant and other Loan Documents pursuant to Ala. Code § 11-47-2 (1975) and Amendment 772 to the Constitution of Alabama of 1901, as amended, codified as Section 94.01 of the Official Recompilation of the Constitution of Alabama of 1901 (the "Economic Development Amendment").

ARTICLE I

The Loan

1.0 Loan. Subject to the terms and conditions hereof and in reliance on the representations and warranties contained herein, the Lender hereby establishes a closed-end multiple advance loan in favor of the Borrower in the principal amount of ONE MILLION FIVE HUNDRED THOUSAND and 00/100 U.S. DOLLARS (\$ 1,500,000.00) (the "Loan").

1.1 Warrant. The Loan shall be evidenced by a General Obligation Warrant of even date herewith executed by the Borrower (the "Warrant"). The Warrant shall evidence a closed-end multiple advance loan with a maximum available credit limit of ONE MILLION FIVE HUNDRED THOUSAND and 00/100 U.S. DOLLARS (\$1,500,000.00). During the term of the Warrant, interest shall be paid on the Warrant at a fixed interest rate, as defined in the Warrant, subject to adjustments as set forth in the Warrant (the principal, together with all accrued interest thereon and any advances, fees, additions, or other charges added thereto are collectively referred to as the "Indebtedness").

1.2 Advances. Borrower may request advances of funds ("Advances") from Lender. The aggregate Advances outstanding at any time shall not exceed the Loan amount. If the aggregate Advances outstanding at any time exceed such limit, then the Borrower shall immediately pay such excess. The Lender may, without prior notice to the Borrower, charge any of the Borrower's accounts under the control of the Lender in order to effect such payment. Advances made under this Agreement shall be due and payable at maturity.

1.3 Requests for Advances. Each Advance shall be made on the Banking Day on which the Lender receives notice from the Borrower, if such notice is received prior to 12:00 P.M. CST time on such Banking Day, and otherwise on the next Banking Day ("Banking Day" shall mean any day which the Lender is open to conduct commercial banking business at its office located in Gulf Shores, Alabama.) The Lender may

rely upon any telephone request which it believes is made by an officer or representative of Borrower. To the extent permitted by law, Borrower agrees to indemnify and hold the Lender harmless for any action, including the making of Advances hereunder, or loss or expense, taken or incurred by the Lender in good faith reliance upon such telephone request.

1.4 Method of Advances. In order to facilitate the Advances, the Borrower shall maintain an account with the Lender (the "Operating Account") and unless otherwise agreed upon between the Lender and the Borrower, every Advance shall be made by transferring funds to the Operating Account. All requests for Advances are subject to approval by an officer of lender before disbursement.

1.5 Repayment of Principal and Interest. The Warrant shall be payable as follows:

(a) Consecutive installments of interest shall be payable monthly on the disbursed outstanding principal balance. The first interest installment shall be due and payable October 1, 2016, and continuing on the 1st day of each succeeding calendar month occurring thereafter until, and including, November 1, 2017; and

(b) Thirty-Six (36) consecutive monthly installments in the amount of Forty Two Thousand Nine Hundred and Eighty One and 15/100 U.S Dollars (\$42,981.15) each shall become due and payable on the Indebtedness. The principal and interest installments shall be calculated on the entire outstanding Indebtedness using a thirty-six (36) month amortization, and if the entire \$1,500,000 is not disbursed and outstanding on November 1, 2017, the monthly installment amount in this Section 5(b) will be modified to reflect the outstanding amount through an amendment or modification of this Warrant. The first principal and interest installment shall be due and payable, or accrued, on December 1, 2017, and continuing on the same day of each consecutive month thereafter, and

(c) One (1) final payment ending with the entire balance of the Indebtedness, all due and payable in full on or before November 1, 2020, which date shall be the "Maturity Date".

1.6 Loan Documents Defined. The term "Loan Documents" as used herein shall mean all of the following (hereinafter defined):

(a) Loan Agreement,

(b) General Obligation Warrant, and

(c) All other related Loan documents that the Lender may reasonably require.

ARTICLE 2

Representations and Warranties of Borrower

The Borrower makes the following representations and warranties to Lender:

2.0 Organization, Corporate Powers, etc. a) the Borrower is duly organized, validly existing and in good standing under the laws of the State of Alabama: and (b) the Borrower has the power and authority to execute and perform this Agreement, to borrow hereunder and to execute and deliver the Loan Documents pursuant to Ala. Code § 11-47-2 and the Economic Development Amendment.

2.1 Authorization of Borrowing, etc. The execution, delivery and performance of this Agreement, the borrowing hereunder and the execution and delivery of the Warrant and the Loan Documents have been

duly authorized by the City Council in Ordinance [_____]. No consent of any other party, authority, or citizens of the City of Foley is required in connection with the execution, delivery and performance of the Loan Documents.

2.2 Validity. The Loan Documents, when executed and delivered, will constitute legal, valid and binding obligations of the Borrower, enforceable in accordance with their respective terms.

2.3 Financial Condition. The Borrower has heretofore furnished to the Lender financial statements (the "Financial Statements"). The Financial Statements were prepared in accordance with GAAP, consistently applied throughout the periods involved, are correct and complete, and accurately present the financial condition of the Borrower and the result of its operations for the periods then ended and each balance sheet therein contained shows all known liabilities, direct or indirect, fixed or contingent, of the Borrower, as of the respective date thereof.

2.4 Pending Litigation. There are no actions, suits or proceedings pending before any court, board, commission or other administrative agency (or to the knowledge of Borrower threatened) affecting the validity or enforceability of the Loan Documents.

2.5 Adverse Change. There has been no material adverse change in the business, properties or condition (financial or otherwise) of the Borrower since the application for this Loan.

2.6 Brokerage Fees. Lender shall not be liable in any respect for broker's fees or charges in connection with the Loan, and in addition, Borrower shall indemnify and save Lender harmless from any and all liability and claims with respect thereto.

2.7 Truth of Statements Contained. All statements and recitations by the Borrower contained herein or in the Loan Document are true and correct.

2.8 Documents and Signatures Genuine. All documents and signatures signed by Borrower or other persons in connection with this Agreement and the Loan Documents are genuine and in all respects what they purport to be.

2.9 Representations and Warranties for Each Advance. At the time of each Advance, the representations and warranties set forth in this **Article 2** shall be true and correct on and as of such time with the same effect as though such representations and warranties had been made on and as of such time, except to the extent that such representations and warranties expressly relate to an earlier date.

ARTICLE 3 **Affirmative Covenants**

Borrower hereby covenants and agrees with Lender that, until full and final payment of the Loan herein has occurred, it will:

3.0 Additional Advice. The Borrower will promptly advise the Lender of any change which constitutes or, after notice or lapse of time or both, would constitute an Event of Default as defined in Article 4 of this Agreement.

3.1 Payment of the Lender's Expense. The Borrower will bear and be responsible for paying all reasonable expenses incurred by the Lender in connection with the preparation, execution or enforcement of

this Agreement (whether or not the Loan is consummated) and the making and collection of the Loan, including, without limitation, the reasonable fees and disbursements of special counsel and appraisers employed by the Lender in any pre-trial, trial, appellate or bankruptcy proceeding, whether or not a lawsuit is commenced.

3.2 Loan Commitment Fee. Intentionally deleted.

3.3 Change of Circumstances. Promptly notify Lender of any change in fact or circumstances represented or warranted by Borrower in the Loan Documents furnished to Lender in connection with this Agreement.

3.4 Financial Statements. On an annual basis for the term of the Loan, the Borrower shall furnish Lender with audited Financial Statements when available.

ARTICLE 4 **Events of Default**

Each of the following events shall constitute an Event of Default.

4.0 Nonpayment of Principal or Interest. Failure of the Borrower to pay to the Lender promptly when the same shall become due (whether at scheduled maturity, upon mandatory payment, upon acceleration or otherwise) any portion of the Indebtedness evidenced by the Warrant, including, but not limited to, any installment of principal, interest or fees due under the Warrant; or

4.1 Breach of Covenant. The Borrower shall fail to perform or observe any term, covenant or agreement (other than for the payment of money) contained in this Agreement on its part to be performed or observed if such failure shall remain unremedied for thirty (30) days after written notice thereof shall have been given to the Borrower by the Lender; or

4.2 Bankruptcy of Borrower. The filing of any petition under the Bankruptcy Code or any similar federal or state statute by the Borrower and such filing is not discharged within sixty (60) days after filing; or

4.3 Appointment of Receiver. The appointment of a receiver for, the making of a general assignment for the benefit of creditors by, or the insolvency of the Borrower, and any of same is not discharged within sixty (60) days after the occurrence thereof; or

4.4 Breach of Warranty. The reasonable determination by the Lender that any material warranty, representation, certificate, or statement of the Borrower (whether contained in this Agreement or not) pertaining to or in connection with the Indebtedness is not true or is misleading in any material respect; or

4.5 Financial Condition. The occurrence of any material adverse change in the financial condition, property or operations of the Borrower; or

4.6 Breach of Loan Documents. The breach of any term or covenant of the Warrant or Loan Documents.

ARTICLE 5
Remedies of Lender

Upon the occurrence of any one or more of the Events of Default set out in **Article 4** hereof, Lender shall at its option be entitled, in addition to and not in lieu of the remedies provided for in the Loan Documents, to proceed to exercise any of the following remedies:

5.0 **Default Constitutes Default Under Loan Documents.** Borrower agrees that the occurrence of such Event of Default under any Loan Document shall constitute a default under each of the Loan Documents, thereby entitling Lender (i) to exercise without demand, notice, protest or presentment which are hereby waived, any of the various remedies therein provided, including the acceleration of the Indebtedness evidenced by the Warrant, and (ii) cumulatively to exercise all other rights, options and privileges provided by law or in equity.

5.1 **Actions.** Lender may, at its option:

(a) Refuse to advance additional funds to Borrower. If Lender refuses to advance additional funds to Borrower, pursuant to this subsection, all rights, duties and obligations hereunder, other than Lender's obligation to advance funds to Borrower, shall continue in full force and effect until the full and final payment and performance of the Indebtedness.

(b) Reduce any claim to judgment by any available legal procedure.

(c) Accelerate the Indebtedness evidenced by the Warrant and/or any warrant(s) or other obligation(s) which may be taken in renewal, extension, substitution, or modification of all or any part of the Indebtedness evidenced thereby and all other obligations of the Borrower to the Lender, howsoever created and existing, shall immediately become due and payable without demand upon or notice to the Borrower, and the Lender shall be entitled to exercise the other remedies as provided by law or in equity. The rights of the Lender under this Article are in addition to any other rights and remedies which the Lender may have upon the occurrence and continuation of an Event of Default as set forth in the Warrant and Loan Documents and by Alabama law.

5.2 **Partial Payment Not Waiver of Default.** The acceptance by Lender at any time and from time to time of partial payment on the Loan shall not be deemed to be a waiver of any default then existing. No waiver by Lender of any default shall be deemed to be a waiver of any other then existing or subsequent default, nor shall any such waiver by Lender be deemed to be a continuing waiver. No delay or omission by Lender in exercising any right or power under the Loan Documents shall impair any such right or power or be construed as a waiver thereof or any acquiescence therein, nor shall any single or partial exercise of any such right or power preclude other or further exercise thereof, or the exercise of any other right or power of Lender under the Loan Documents.

5.3 **Remedies of Lender Cumulative.** All rights and all remedies available to Lender under the Loan Documents shall be cumulative and in addition to all other rights and remedies granted to Lender at law or in equity, and may be exercised from time to time, and as often as may be deemed expedient by Lender, whether or not the Indebtedness be due and payable and whether or not Lender shall have instituted any suit for collection, or other action in connection with this Agreement or the Loan Documents.

5.4 **Expenditures.** Any sums spent by Lender pursuant to the exercise of any remedy provided in **Article 5** shall be part of the Loan.

ARTICLE 6

General Conditions

The following conditions shall be applicable throughout the term of this Agreement:

6.0 **Indemnification.** It is agreed that Lender has not made Borrower its agent and their relationship is merely one between a lender and a borrower. To the extent permitted by law, in the event the Lender shall be named as a party to any lawsuit brought at any time against the Borrower, with respect to or arising from the Loan or this Agreement, then, regardless of the merits of such lawsuit, the Borrower shall, at Lender's option, defend the Lender, and the Borrower shall, to the extent permitted by law, indemnify and hold harmless the Lender and its directors, officers, agents and employees from and against any suits, demands, claims, damages and expenses, including legal fees and costs incurred in any trial, appellate or bankruptcy proceeding growing out of or related to any such lawsuit, unless such suits, claims or damages are caused by the gross negligence or willful misconduct of the Lender.

6.1 **Prepayment.** Prepayment in full or in part is permitted without penalty to the Borrower at any time, without premium or penalty.

6.2 **Late Charge.** Upon the failure of Borrower to make when due any payment, within the applicable grace period provided in the Warrant, including but not limited to interest payments required under any of the loan Documents, Lender may assess Borrower a "late charge" equal to five percent (5%) of any overdue payment.

6.3 **Assignment.** Borrower may not assign this Agreement or its rights or obligations thereunder without the prior written consent of the Lender.

6.4 **Successors and Assigns Included in Parties.** Whenever in this Agreement one of the parties hereto is named or referred to, the heirs, legal representatives, successors and assigns of such parties shall be included and all covenants and agreements contained in this Agreement by or on behalf of the Borrower or by or on behalf of the Lender shall bind and inure to the benefit of their respective heirs, legal representative, successors and assigns, whether so expressed or not, however, Borrower shall not assign any of its rights, duties or obligations without the express written consent of Lender.

6.5 **Headings.** The headings of the sections, paragraphs and subdivisions of this Agreement are for the convenience of reference only, are not to be considered a part hereof and shall not limit or otherwise affect any of the terms hereof.

6.6 **Invalid Provisions to Affect No Others.** If fulfillment of any provision hereof or any transaction related hereto at the time performance of such provision shall be due and shall involve transcending the limit of validity prescribed by law, then ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity; and if any clause or provision herein contained operates or would prospectively operate to invalidate this Agreement in whole or in part, then such clause or provision only shall be held to be severable, as though not herein contained, and the remainder of this Agreement shall remain operative and in full and force and effect.

6.7 **Approvals and Consents.** Any approval by Lender specified herein shall be subject to the sole discretion of Lender unless specified otherwise. Any consent provided for herein must be in writing, unless specified otherwise.

6.8 Number and Gender. Whenever the singular or plural number, masculine or feminine or neuter gender is used herein, it shall equally include the other.

6.9 Amendments. Neither this Agreement nor any provision hereof may be changed, waived, discharged or terminated orally, but only by instrument in writing signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

6.10 Notices. All notices hereunder shall be in writing and shall be deemed to have been sufficiently given or served for all purposes three (3) days after when deposited in the U.S. Mail addressed as provided hereinafter.

If to Borrower:

City of Foley
P.O Box 1750
Foley, AL 36535
Attn. John Koniar, Mayor

If to Lender:

Merchants & Marine Bank
1820 Gulf Shores Parkway
Gulf Shores, AL 36542
Attn: Bradley Bell

or at such other address as any of the parties hereto may hereafter designate by written notice as provided for hereinabove.

6.11 Survival of Representations, Warranties and Agreements. All representations, warranties, agreements and provisions herein contained on the part of the Borrower shall survive the making of the Loan and the execution of Borrower's Warrant and shall be effective as long as any interest on or principal of the Loan remains unpaid.

6.12 Exemption from Truth in Lending and Fair Debt Collection Practices Acts. The Borrower understands and agrees that the extension of credit by the Lender to the Borrower represented by the Loan is exempt from the provisions of the Federal Consumers Credit Protection Act ("Truth in Lending Act") and Regulation "Z" of the Board of Governors of the Federal Reserve System of the United States of America and the Fair Debt Collection Practices Act because the Borrower is a person fully excluded therefrom and/or because the Loan is only for business or commercial purposes of the Borrower, and the Borrower acknowledges that the proceeds of the Loan are not being used for personal, family, household or agricultural purposes.

6.13 Jurisdiction. Borrower hereby irrevocably submits to the jurisdiction of any state court having a situs in Baldwin County, State of Alabama, in any action or proceeding involving or in connection with this Agreement. Borrower irrevocably agrees that all claims in respect of such actions or proceedings may be heard and determined in such Alabama state court. Borrower irrevocably waives the defense of inconvenient forum to the maintenance of such action or proceeding. Borrower agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in any other jurisdiction(s) by suit on the judgment or in any other manner provided by law.

6.14 Litigation. If litigation arises out of this Loan and Lender is the prevailing party, Lender shall be entitled to recover from Borrower its costs and expenses, including without limitation reasonable attorney's

fees.

6.15 Conflict. In the event of any conflict or ambiguity between the terms of this Agreement and any other Loan Documents, the terms of this Agreement shall prevail and shall be controlling.

6.16 Governing Law. This Agreement shall be governed, interpreted, construed and regulated exclusively by the laws of the State of Alabama without application of any conflict of laws principles.

6.17 Entire Agreement. Except for the Loan Documents, this instrument embodies the entire agreement between the parties and except for the Loan Documents, supersedes all prior agreements and understandings, if any, relating to the subject matter hereof, and may be amended or supplemented only by an instrument in writing executed jointly by Borrower and Lender.

6.18 Time. Time shall be of the essence with respect to all dates and periods of time set forth herein.

6.19 Counterparts. This Agreement may be executed in counterparts, and each such counterpart shall constitute an original and all such counterparts shall constitute one and the same instrument.

6.20 JURY TRIAL WAIVER. THE PARTIES KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE, TO THE EXTENT PERMITTED BY LAW, THE RIGHT THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THE LOAN DOCUMENTS, AS DEFINED IN THIS LOAN AGREEMENT, EXECUTED AND DELIVERED BY THE BORROWER TO THE LENDER IN CONJUNCTION WITH THE WARRANT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF EITHER PARTY OR ANY STOCKHOLDER, MEMBER, DIRECTOR, OFFICER, EMPLOYEE, AGENT, ATTORNEY OR INDEPENDENT CONTRACTOR OF EITHER. THE PARTIES HAVE RECEIVED THE BENEFIT OF LEGAL COUNSEL IN CONNECTION WITH THIS JURY TRIAL WAIVER AND AGREE THAT LENDER MAY FILE A COPY OF THIS LOAN AGREEMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY, AND BARGAINED-FOR AGREEMENT OF BORROWER IRREVOCABLY TO WAIVE, TO THE EXTENT PERMITTED BY LAW, BORROWER'S RIGHT TO TRIAL BY JURY, AND THAT ANY DISPUTE OR CONTROVERSY WHATSOEVER BETWEEN BORROWER, AND LENDER SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY. THIS PROVISION IS A MATERIAL INDUCEMENT TO THE LOAN TO BORROWER.

[Remainder of this Page Intentionally Left Blank]

The parties hereto have executed or caused this loan Agreement to be executed this _____ day of _____, 2016.

BORROWER:

City of Foley,
An Alabama municipal corporation,

By: Approved as to form. Not to be signed.
John Koniar, its Mayor

[Seal: City of Foley]

ATTEST:

By: Approved as to form. Not to be signed.
Vickey Southern, City Clerk

LENDER:

Merchants & Marine Bank,
A Mississippi state chartered bank,

By: Approved as to form. Not to be signed.