

**CONSENT AND AMENDMENT OF LEASE AGREEMENT AND TRUST INDENTURE**

**THIS CONSENT AND AMENDMENT OF LEASE AGREEMENT AND TRUST INDENTURE** (this "Agreement") is entered into as of the \_\_\_\_ day of January, 2014 (the "Effective Date"), by **THE CITY OF FOLEY PUBLIC FACILITIES COOPERATIVE DISTRICT**, an Alabama public corporation (the "District"), the **CITY OF FOLEY, ALABAMA**, an Alabama municipal corporation (the "City"), and **REGIONS BANK**, an Alabama banking corporation, as successor trustee (the "Trustee"), to The Bank of New York Mellon Trust Company, National Association under the Indenture (hereinafter defined).

**RECITALS**

A. Pursuant to that certain Statutory Warranty Deed dated September 30, 2009, executed by the City in favor of the District and recorded as **Instrument No. 1201724** in the Office of the Probate Judge of Baldwin County, Alabama, the City conveyed certain of its properties more particularly described therein (the "Project") to the District.

B. Immediately following such conveyance, the District leased the Project to the City pursuant to that certain Lease Agreement dated September 1, 2009, executed by and between the District and the City and recorded as **Instrument No. 1201725** in the Office of the Probate Judge of Baldwin County, Alabama (the "Lease Agreement").

C. Pursuant to that certain Trust Indenture dated September 1, 2009, executed by and between the District and the Trustee and recorded as **Instrument No. 1201726** in the Office of the Probate Judge of Baldwin County, Alabama (the "Indenture"), the District issued its Revenue Bonds, Series 2009 and granted as security therefor the District's interest in and to the Lease Agreement. Capitalized term used but not defined herein shall have there meaning assigned in the Indenture.

D. The City and the District included certain real property, described generally as "Land Purchase – E98 & Chicago" and more particularly described in Exhibit A attached hereto and incorporated herein (the "Subject Property"), in the conveyances under the Deed and in the description of the Project under the Lease Agreement and the Indenture.

E. The District and the City have determined it is in the best interests of the taxpayers and citizens of the City, and is in the direct financial interests of the District and the City, for the Subject Property to be released from the Lease Agreement for purposes of sale thereof by the City. To provide therefor, the District has executed and delivered unto the City a Statutory Warranty Deed to convey the Subject Property to the City (the "Deed").

F. The Trustee, the District and the City desire to evidence their mutual consent to and approval of the Deed and the deletion and release of the Subject Property from the Lease Agreement and the Indenture.

## AGREEMENT

**NOW, THEREFORE**, in consideration of the premises and the mutual agreements set forth in this Agreement, effective as of the Effective Date, the District, the City and the Trustee hereby agree as follows:

1. The re-conveyance of the Subject Property by the District to the City pursuant to the Deed is hereby approved.
2. The Subject Property is hereby released from the demise, lease, operation and effect of the Lease Agreement.
3. The Subject Property is hereby released from the lien, operation and effect of the Indenture.
4. From and after the Effective Date, the definition of "Project" as set forth in the Lease Agreement and the Indenture, shall mean and include the "Project" as presently defined, less and except the Subject Property.
5. The Lease Agreement is hereby amended by adding at the end of Article 8 thereof the following Section 8.06:

“SECTION 8.06 Special Covenant of City

(a) The City agrees that the City will not, directly or indirectly, during the Non-Substitution Period (as defined in Section 8.06(b)) purchase, lease, rent, or otherwise acquire an interest in, any building, facility or improvement for use by the City for the same purposes for which the City uses the City Hall and the City Library described on Exhibit A hereto.

(b) The term "Non-Substitution Period" as used in Section 8.06(a) shall mean a period which begins on the first day of the Fiscal Year which next succeeds the Fiscal Year in which this Lease Agreement is terminated pursuant to Section 5.01(a) hereof and which ends on the first to occur of the following:

- (1) The second anniversary of the date on which the Non-Substitution Period began; or
- (2) The date on which all of the Bonds are Fully Paid; or
- (3) September 30, 2030.”

6. Except as amended hereby, the Lease Agreement and Indenture shall remain in full force and effect.

*[signature page to follow]*

IN WITNESS WHEREOF, each of the undersigned has executed this Agreement as of the Effective Date.

**THE CITY OF FOLEY PUBLIC  
FACILITIES COOPERATIVE DISTRICT,**  
an Alabama public corporation

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_

[SEAL]

Attest: \_\_\_\_\_  
Secretary

STATE OF ALABAMA)

BALDWIN COUNTY )

I, the undersigned, a notary public in and for said county in said state, hereby certify that \_\_\_\_\_, whose name as \_\_\_\_\_ of **THE CITY OF FOLEY PUBLIC FACILITIES COOPERATIVE DISTRICT**, an Alabama public corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer, executed the same voluntarily on the day the same bears date on behalf of said public corporation.

Given under my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Notary Public

[NOTARIAL SEAL]

My commission expires: \_\_\_\_\_

**CITY OF FOLEY, ALABAMA**, an Alabama municipal corporation

By: \_\_\_\_\_  
Name: John Koniar  
Its: Mayor

[SEAL]

Attest: \_\_\_\_\_  
Clerk

STATE OF ALABAMA)

BALDWIN COUNTY )

I, the undersigned, a notary public in and for said county in said state, hereby certify that John Koniar, whose name as Mayor of the **CITY OF FOLEY, ALABAMA**, an Alabama municipal corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer, executed the same voluntarily on the day the same bears date on behalf of said municipal corporation.

Given under my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Notary Public

[NOTARIAL SEAL]

My commission expires: \_\_\_\_\_

**REGIONS BANK**, an Alabama banking corporation, as Trustee

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF ALABAMA)

\_\_\_\_\_ COUNTY)

I, the undersigned, a notary public in and for said county in said state, hereby certify that \_\_\_\_\_, whose name as \_\_\_\_\_ of **REGIONS BANK**, an Alabama banking corporation, as Trustee, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he/she, as such officer, executed the same voluntarily on the day the same bears date on behalf of said banking corporation, as Trustee.

Given under my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Notary Public

[NOTARIAL SEAL]

My commission expires: \_\_\_\_\_

**Exhibit A**

**Subject Property**

## JOINDER AND CONSENT

The undersigned, **ASSURED GUARANTY CORP.** (the "Insurer"), as insurer under that certain Financial Guaranty Insurance Policy (Policy No. D-2009-1350) of the \$23,335,000 original aggregate amount Revenue Bonds, Series 2009 issued by The City of Foley Public Facilities Cooperative District, an Alabama public corporation (the "District"), under that certain Trust Indenture dated September 1, 2009 between the District and Regions Bank, as successor trustee (the "Trustee") to The Bank of New York Mellon Trust Company, National Association, and recorded as Instrument No. 1201726 in the Office of the Probate Judge of Baldwin County, Alabama (the "Indenture"), does hereby grant its consent to the terms and provisions of, and the actions to be undertaken pursuant to, the foregoing Consent and Amendment of Lease Agreement and Trust Indenture dated as of January \_\_, 2014 by and among the District, the City of Foley, Alabama (the "City") and the Trustee.

This Joinder and Consent is executed and delivered by the Insurer pursuant to the terms of the Indenture, including, without limitation, Sections 16.07 and 16.09 thereof.

Neither this Joinder and Consent, nor any past, present or future consents, waivers, actions, amendments or other agreements, individually or in combination, may be construed to imply or impose upon the Insurer any intention, agreement, obligation or undertaking to grant future consents, waivers or amendments, or to limit the ability of the Insurer to exercise any and all of its rights under the Indenture; further, the Insurer has provided this consent for its own benefit and in its own interest, and the District and the City are solely responsible for obtaining such other waivers, consents or approvals or taking such other actions, if any, as may be required.

*[Signature and acknowledgment appear on the following page.]*

**IN WITNESS WHEREOF**, the undersigned has executed this Joinder and Consent as of the 12<sup>th</sup> day of January, 2014.

**ASSURED GUARANTY CORP.**

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF \_\_\_\_\_ )

\_\_\_\_\_ COUNTY )

I, the undersigned, a notary public in and for said county in said state, hereby certify that \_\_\_\_\_, whose name as \_\_\_\_\_ of **ASSURED GUARANTY CORP.**, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he/she, as such officer, executed the same voluntarily on the day the same bears date on behalf of said corporation.

Given under my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Notary Public

[NOTARIAL SEAL]

My commission expires: \_\_\_\_\_