

**CITY OF FOLEY
RESOLUTION _____**

**A RESOLUTION TO APPROVE TRANSFER OF REAL PROPERTY,
TO APPROVE A CORRECTIVE DEED AND TO CONFIRM AND RATIFY
A PURCHASE AGREEMENT AND PROMISSORY NOTE**

WHEREAS, the City of Foley (the "City") is the owner of certain real property located in the City of Foley, Baldwin County, and more particularly described herein below; and

WHEREAS, the City desires to transfer said property to The City of Foley Public Facilities Cooperative District (the "District") pursuant to the terms of a Deed, Purchase Agreement and Promissory Note; and

WHEREAS, the City desires to confirm and ratify a Purchase Agreement and Promissory Note.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FOLEY as follows:

THAT the City hereby approves the transfer of certain property pursuant to a Deed, Purchase Agreement and Promissory Note in substantially the form attached hereto as Exhibit "A", with such changes as may be approved by the Mayor, with his execution of the Deed, Purchase Agreement and Promissory Note indicating his approval and acceptance thereof; and

THAT the City hereby confirms and ratifies the Purchase Agreement and Promissory Note attached hereto as Exhibit "B" for the 13.782 acres commonly referred to as the Farmers' and Fishermen's Market property, and confirm and ratify the donation to the District of the remaining 17.388 acres conveyed by Warranty Deed dated October 16, 2013 and recorded October 18, 2013 as Instrument #1425464 in the records of the Judge of Probate of Baldwin County, Alabama.

ADOPTED AND APPROVED THIS ____ DAY OF _____, 2014.

**CITY OF FOLEY, ALABAMA, an Alabama Municipal
Corporation**

J. WAYNE TRAWICK, COUNCIL PRESIDENT

ATTEST:

**Victoria Southern, CMC
City Clerk**

Date

John E. Koniar, Mayor

Date

EXHIBIT "A"

Deed, Purchase Agreement and Promissory Note

STATE OF ALABAMA)
COUNTY OF BALDWIN)

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS that the **CITY OF FOLEY, ALABAMA, An Alabama Municipal Corporation**, the Grantor, for and in consideration of the sum of **TEN & 00/100 (\$10.00) DOLLARS** and other good and valuable consideration hereby acknowledged to have been paid to the Grantor by **THE CITY OF FOLEY PUBLIC FACILITIES COOPERATIVE DISTRICT**, the Grantee, does hereby **GRANT, BARGAIN, SELL AND CONVEY** unto the said Grantee, its successors and/or assigns, subject to the provisions hereinafter contained, all that real property in the County of Baldwin, State of Alabama, described as follows:

Commencing at a point where the centerline of the L & N Railroad intersects the North line of Section 28, Township 7 South, Range 4 East, Baldwin County, Alabama; run thence South 89 degrees 29 minutes 04 seconds East along the North line of Section 28, Township 7 South, Range 4 East, as surveyed by McNeil Robinson (Ala. Reg. No. 1065) for the City of Foley Industrial Park, plat dated July 20, 1979, for 940.50 feet to the West right of way of Vulcan Street; run thence South 01 degrees 33 minutes 48 seconds West along the West right of way of Vulcan Street for 10.17 feet to a point where the South right of way of Section Avenue, if extended, would intersect the West right of way of Vulcan Street; run thence due East along the South right of way of Section Avenue for 370.32 feet to the point of beginning; continue thence due East along said right of way for 760.0 feet to the West right of way of Poplar Street; run thence South 01 degrees 05 minutes 03 seconds West along said right of way of Poplar Street for 610.0 feet; run thence due West for 760.0 feet to a point; run thence North 01 degrees 05 minutes 03 seconds East for 610.0 feet to the point of Beginning. Said land being in the City of Foley, Baldwin County, Alabama, and containing 10.6409 acres, more or less.

**THIS CONVEYANCE WAS PREPARED WITHOUT THE BENEFIT
OF A TITLE EXAMINATION.**

SUBJECT TO THE FOLLOWING:

1. Subject to reservation of all interest in and to all oil, gas and mineral rights as contained in deed recorded in Real Book 77, Page 223.
2. Subject to oil, gas and mineral lease recorded in Deed Book 416, Page 92.
3. Right of way recorded in Deed Book 383, Page 586 for Section Avenue. No portion of the subject property lies in the subject right of way.
4. Any matters which a current and accurate survey would disclose.
5. Any recorded restrictions, covenants and easements of record not specifically set forth herein.
6. All matters of Public record as recorded in the Office of the Judge of Probate, Baldwin County, Alabama.
7. Previous Reservation of all Mineral Rights.

The recording references refer to the records in the Office of the Judge of Probate of Baldwin County, Alabama, unless otherwise indicated.

Together with any and all singular the rights, privileges, tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining; **TO HAVE AND TO HOLD** the same unto the said Grantee, and to its successors and/or assigns, forever.

This conveyance is made subject to restrictive covenants and easements applicable to said property of record in the said Probate Court records.

And, except as to the above, and the taxes hereafter falling due, the said Grantor, for itself and for its successors and assigns, hereby covenants with the Grantee that it is seized of an indefeasible estate in fee simple in and to said property, that said property is free and clear of all encumbrances and that it does hereby **WARRANT AND WILL**

FOREVER DEFEND the title to said property, and the possession thereof, unto the said Grantee, its successors and assigns, against the lawful claims of all persons, whomsoever.

IN WITNESS WHEREOF, the said Grantor by John Koniar as its Mayor, who is authorized to execute this conveyance, has hereunto set his hand and seal this the ____ day of _____, 2014.

CITY OF FOLEY, ALABAMA

BY: _____ (SEAL)
JOHN KONIAR

AS ITS: MAYOR

**STATE OF ALABAMA)
COUNTY OF BALDWIN)**

I, the undersigned Notary Public, in and for said State and County, hereby certify that **John Konair**, as Mayor of the **CITY OF FOLEY, ALABAMA**, the Grantor herein, whose name is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of said conveyance, executed with full authority and voluntarily on the day same bears date for and as an act of said City.

Given under my hand and seal this the ____ day of _____, 2014.

NOTARY PUBLIC
Commission Expires: _____

GRANTEE'S ADDRESS:
THE CITY OF FOLEY PUBLIC
FACILITIES COOPERATIVE DISTRICT
P.O. Box 1750
Foley, Alabama 36536

THIS INSTRUMENT PREPARED BY:
MISSTY C. GRAY
ADAMS AND REESE LLP
Post Office Box 1348
Mobile, Alabama 36633
(251) 433-3234 telephone
(251) 438-7733 facsimile

PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT (the "Agreement") is made to be effective as of the Effective Date (as hereinafter defined) by and among the following parties:

SELLER: CITY OF FOLEY, ALABAMA, an Alabama municipal corporation ("Seller"); and,

PURCHASER: THE CITY OF FOLEY PUBLIC FACILITIES COOPERATIVE DISTRICT, an Alabama public corporation ("Purchaser").

WHEREAS, Seller has acquired or will acquire title to certain parcels of real estate situated in Baldwin County, Alabama, and more particularly described in Exhibit A attached hereto and made a part hereof ("Property"); and

WHEREAS, Seller desires to sell and Purchaser desires to purchase the Property.

NOW THEREFORE, for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration to Seller in hand paid by Purchaser, the receipt and sufficiency of which are hereby acknowledged, Seller agrees to sell and Purchaser agrees to purchase the Property, upon the terms and conditions set forth below:

1. Purchase Price. Seller shall sell to Purchaser and Purchaser shall purchase from Seller the Property for a total of Three Million Two Hundred Fifty Thousand and No/100ths Dollars (\$3,250,000.00) ("Purchase Price"). The Purchase Price shall be payable in the form of a Promissory Note of even date herewith.
2. Title and Survey. Purchaser shall purchase, at its sole expense, any title insurance and/or surveys it desires to obtain with respect to the Property.
3. Purchaser's Investigation Rights. Seller hereby grants to Purchaser and to Purchaser's agents, employees and representatives, a continuing right of reasonable access, after reasonable notice to Seller and at reasonable times, for the purpose of conducting such surveys, engineering, geotechnical and environmental inspections and other investigations, evaluations, studies, tests and measurements (collectively the "Investigations") as Purchaser, or any prospective investor or lender, deems necessary or advisable. If any Investigation adversely disturbs the physical characteristics of the Property in any material respect, and Purchaser fails to purchase the Property under this Agreement, Purchaser shall restore the Property to substantially the same condition as existed prior to such Investigation. Purchaser's obligations hereunder shall survive termination of this Agreement.
4. Purchaser's Investigation Indemnity. Purchaser shall keep the Property free and clear of any liens, and will indemnify, defend and hold Seller harmless from all claims and

liabilities asserted against Seller, as a result of Purchaser's exercise of its rights of access and investigation; provided, however, that such indemnity shall not cover or extend to: (i) any claims of diminution in the value of the Property as a consequence of the results revealed by Purchaser's Investigations; or (ii) the exposure or release of Hazardous Substances that were located in, on, under or about the Property prior to Purchaser's entering the Property to conduct the Investigations. The obligations of the Purchaser under this paragraph shall survive any termination of this Agreement.

5. Time and Place of Closing. Closing of the transaction contemplated hereby ("Closing") shall be held no later than one hundred eighty (180) days after the Effective Date, unless extended by the written consent of the Purchaser and Seller, at a place and time agreed upon by the Purchaser and Seller. At Closing, Seller and Purchaser shall perform the obligations set forth in this Agreement, the performance of which obligations shall be concurrent conditions.
6. Obligations at Closing. At Closing, Purchaser shall pay: (i) deed taxes and other charges for recording Seller's deed, (ii) all legal, accounting and other professional and third party fees incurred by Purchaser in connection with this Agreement and the Closing, and (iii) any title insurance premiums and related charges. At Closing, Seller shall pay all legal, accounting and other professional and third party fees incurred by Seller in connection with this Agreement and the Closing. Property taxes, if any, will be prorated at Closing.
7. Conveyance. Seller shall convey to Purchaser good and marketable fee simple title to the Property by statutory warranty deed, free of all encumbrances except for the following: (i) the encumbrances set forth on Exhibit B attached hereto and incorporated herein by reference, (ii) taxes for the year in which the Property is conveyed and all years thereafter, and (iii) the zoning classification of the Property on the date hereof (Items (i), (ii), and (iii) collectively referred to as "Permitted Encumbrances").
8. Representations and Warranties of Seller. Seller hereby represents and warrants to Purchaser that Seller is an Alabama municipal corporation, formed and in good standing under the laws of the State of Alabama and has the full municipal corporation power and authority to convey the Property as provided in this Agreement and to carry out Seller's obligations hereunder, and all requisite action necessary to authorize Seller to enter into this Agreement and to carry out its obligations hereunder have been, or by the Closing will have been taken.
9. Representations and Warranties of Purchaser. Purchaser hereby represents and warrants to Seller that Purchaser is an Alabama public corporation, formed and in good standing under the laws of the State of Alabama and has the full power and authority to purchase the Property as provided in this Agreement and to carry out Purchaser's obligations hereunder, and all requisite action necessary to authorize Purchaser to enter into this Agreement and to carry out its obligations hereunder have been, or by the Closing will have been taken.

10. Disclaimers by Seller. Purchaser acknowledges and agrees that, except as expressly set forth in this Agreement and in any conveyance deed of the Property from Seller to Purchaser, Seller has not made, does not make, and specifically disclaims, any representations or warranties, whether express or implied, concerning or with respect to the nature, quality or condition of the Property, the income to be derived therefrom, the suitability of the same for Purchaser's purposes, the compliance therewith with any applicable laws, the habitability, merchantability or fitness for a particular purpose of the Property, or any other matter with respect to the Property. Purchaser further acknowledges and agrees that except for the representations and warranties of Seller set forth in this Agreement, the sale of the Property as provided for herein is made on a "as is -where is" basis. Seller hereby agrees to assign to Purchaser at Closing any representations and warranties Seller receives from third parties regarding the Property.
11. Conditions to Purchaser's Obligation to Close. The following are the conditions to Purchaser's obligations under this Agreement to close: (i) as of the Closing, Seller shall have performed all the obligations under this Agreement in all material respects.
12. Conditions to Seller's Obligation to Close. The following are the conditions to Seller's obligations under this Agreement to close: (i) as of the Closing, Purchaser shall have performed all the obligations under this Agreement in all material respects.
13. Default by Purchaser. In the event that the Purchaser should fail to consummate this Agreement for any reason, Seller's sole remedy shall be the right to terminate this Agreement.
14. Default by Seller. In the event that Seller should fail to consummate this Agreement for any reason, Purchaser's sole remedy shall be the right to terminate the Agreement.
15. Real Estate Commissions. Neither Seller nor Purchaser has contracted with any real estate broker, finder or similar person in connection with the transaction contemplated hereby. To the actual knowledge of Seller and Purchaser, no Acquisition Fees (as hereafter defined) have been paid or are due and owing to any person or entity. As used herein "Acquisition Fees" shall mean all fees paid to any person or entity in connection with the selection and purchase of the Property, including real estate commissions, selection fees, non-recurring management and start-up fees, development fees or any other fee of similar nature. To the extent allowed by law, Seller and Purchaser, each, hereby agrees to indemnify and hold harmless the other from and against any and all claims for Acquisition Fees or similar charges with respect to this transaction, arising by, through or under the indemnifying party and each further agrees to indemnify and hold harmless the other from any loss or damage resulting from an inaccuracy in the representations contained in this Section 15. This indemnification agreement of the parties shall survive the Closing.
16. Modifications. This Agreement cannot be changed orally, and no executory agreement shall be effective to waive, change, modify or discharge it in whole or in part unless such

executory agreement is in writing and is signed by the parties against whom enforcement of any waiver, change, modification or discharge is sought.

17. Notice. All notices, consents, requests, declarations, designations, approvals, reports, and other communications required or provided for by this Agreement shall be given in writing to the other party at the addresses set forth below, or at such other address as either party shall designate for itself by notice to the other party hereunder:

Seller: The City of Foley
Attn: John Koniar, Mayor
407 East Laurel Street
Foley, Alabama 36535

Purchaser: The City of Foley Public Facilities
Cooperative District
Attn: Charles J. Ebert, III, Chairman
407 East Laurel Street
Foley, Alabama 36535

18. Calculation of Time Periods. Unless otherwise specified, in computing any period of time described in this Agreement, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday or legal holiday.
19. Time of Essence. Seller and Purchaser agree that time is of the essence of this Agreement.
20. Successors and Assigns. The terms and provisions of this Agreement are to apply to and bind the permitted successors and assigns of the parties hereto.
21. Entire Agreement. This Agreement, including the Exhibits, contains the entire agreement between the parties pertaining to the subject matter hereof and fully supersedes all prior agreements and understandings between the parties pertaining to such subject matter.
22. Further Assurances. Each party agrees that it will without further consideration execute and deliver such other documents and take such other action, whether prior or subsequent to Closing, as may be reasonably requested by the other party to consummate more effectively the purposes or subject matter of this Agreement. Without limiting the generality of the foregoing, Purchaser shall, if requested by Seller, execute acknowledgments of receipt with respect to any materials delivered by Seller to Purchaser with respect to the Property.

23. Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. The counterparts of this Agreement may be executed and delivered by e-mail or facsimile signature by any of the parties to any other party and the receiving party may rely on the receipt of such document so executed and delivered by facsimile as if the original had been received. It shall be necessary to account for only one such counterpart in proving this Agreement.
24. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall nonetheless remain in full force and effect.
25. Applicable Law. THIS AGREEMENT SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE SUBSTANTIVE FEDERAL LAWS OF THE UNITED STATES AND THE LAWS OF THE STATE OF ALABAMA.
26. Waiver. No waiver by any party of any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach by the other party of the same or any other provision. Either party's consent to or approval of any act shall not be deemed to render unnecessary the obtaining of such party's express written consent to or approval of any subsequent act by the other party.
27. No Third Party Beneficiary. The provisions of this Agreement and of the documents to be executed and delivered at Closing are and will be for the benefit of Seller and Purchaser only and are not for the benefit of any third party, and accordingly, no third party shall have the right to enforce the provisions of this Agreement or of the documents to be executed and delivered at Closing.
28. Exhibits and Schedules. The following schedules or exhibits attached hereto shall be deemed to be an integral part of this Agreement:
- Exhibit A - Property Description
Exhibit B - Permitted Encumbrances
29. Captions. The section headings appearing in this Agreement are for convenience of reference only and are not intended, to any extent and for any purpose, to limit or define the text of any section or any subsection hereof.
30. Construction. The parties acknowledge that the parties and their counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto.

31. Authority. Each individual executing this Agreement on behalf of a party hereto represents and warrants that he/she is duly authorized to execute and deliver this Agreement on behalf of said party and that this Agreement is binding upon said party in accordance with its terms.
32. Effective Date. The date of execution by Seller shall be deemed the effective date of this Agreement (the "Effective Date").
33. Survival of Representations and Warranties. All of the representations and warranties and covenants contained in this Agreement shall survive the Closing.

[Signature Page to Follow]

[Signature Page for Purchase Agreement]

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement effective as of February ____, 2014.

SELLER:

THE CITY OF FOLEY, an Alabama Municipal Corporation

By: _____
Name: John Koniar
As its: Mayor

PURCHASER:

THE CITY OF FOLEY PUBLIC FACILITIES COOPERATIVE DISTRICT, an Alabama Public Corporation

By: _____
Name: Charles J. Ebert, III
As its: Chairman

EXHIBIT A

PROPERTY DESCRIPTION

The following described real property situated in the County of Baldwin, State of Alabama:

Commencing at a point where the centerline of the L & N Railroad intersects the North line of Section 28, Township 7 South, Range 4 East, Baldwin County, Alabama; run thence South 89 degrees 29 minutes 04 seconds East along the North line of Section 28, Township 7 South, Range 4 East, as surveyed by McNeil Robinson (Ala. Reg. No. 1065) for the City of Foley Industrial Park, plat dated July 20, 1979, for 940.50 feet to the West right of way of Vulcan Street; run thence South 01 degrees 33 minutes 48 seconds West along the West right of way of Vulcan Street for 10.17 feet to a point where the South right of way of Section Avenue, if extended, would intersect the West right of way of Vulcan Street; run thence due East along the South right of way of Section Avenue for 370.32 feet to the point of beginning; continue thence due East along said right of way for 760.0 feet to the West right of way of Poplar Street; run thence South 01 degrees 05 minutes 03 seconds West along said right of way of Poplar Street for 610.0 feet; run thence due West for 760.0 feet to a point; run thence North 01 degrees 05 minutes 03 seconds East for 610.0 feet to the point of Beginning. Said land being in the City of Foley, Baldwin County, Alabama, and containing 10.6409 acres, more or less.

EXHIBIT B

PERMITTED ENCUMBRANCES

1. Subject to reservation of all interest in and to all oil, gas and mineral rights as contained in deed recorded in Real Book 77, Page 223.
2. Subject to oil, gas and mineral lease recorded in Deed Book 416, Page 92.
3. Right of way recorded in Deed Book 383, Page 586 for Section Avenue. No portion of the subject property lies in the subject right of way.
4. Any matters which a current and accurate survey would disclose.
5. Any recorded restrictions, covenants and easements of record not specifically set forth herein.
6. All matters of Public record as recorded in the Office of the Judge of Probate, Baldwin County, Alabama.
7. Previous Reservation of all Mineral Rights.

The recording references refer to the records in the Office of the Judge of Probate of Baldwin County, Alabama, unless otherwise indicated.

PROMISSORY NOTE

\$3,250,000

Amortized as of February ___, 2014

FOR VALUE RECEIVED, the undersigned, The City of Foley Public Facilities Cooperative District, an Alabama public corporation (the "Maker"), promises to pay to the order of the City of Foley, an Alabama municipal corporation (together with any holder of this Promissory Note, the "Holder"), in lawful money of the United States of America, the principal sum of Three Million Two Hundred Fifty Thousand and 00/100 Dollars (\$3,250,000), together with interest in arrears on the unpaid principal balance at an annual rate equal to 1.3443% in the manner provided below. Interest shall be calculated on the basis of a year of 365 days, as applicable, and charged for the actual number of days elapsed. The Maker does hereby acknowledge and agree that the Holder shall be entitled to all of the rights of a holder in due course of negotiable instruments.

Section 1. Payment.

(a) Principal and Interest. This Promissory Note shall be payable in quarterly payments as follows:

Years 1 – 7: From the date hereof through the date that is Seven (7) years from the date hereof, Maker shall make quarterly payments of interest only (the "Initial Payment").

Year 7 – 30: From the date that is Seven (7) years from the date hereof through the date that is Thirty (30) years from the date hereof, Maker shall make quarterly payments of principal and interest (calculated based on a Thirty (30) year amortization period) (the "Adjusted Payment", together with the Initial Payment, the "Loan Payments").

Final Payment: On the date that is Thirty (30) years from the date hereof, Maker shall make a final payment of all of the outstanding principal balance and interest due under this Promissory Note, taking into account any Adjusted Payments which may also be due on such date.

The Loan Payment shall be due and payable on March 10, June 10, September 10, and December 10 of each respective year throughout the term of this Promissory Note beginning June 10, 2014 (or on such other dates as to mirror the payment dates of the certain anticipated loan payable by Chase NMTC CAFFM Investment Funds, L.L.C. in favor of Maker). Unless required by applicable law, payments will be first applied to any

unpaid collection costs and late charges, then to accrued unpaid interest, and any remaining amount to principal.

(b) Manner of Payment. Payment of principal and interest on this Promissory Note shall be made by personal check at such place in the United States of America as the Holder shall designate to the Maker in writing. If any payment of principal or interest on this Promissory Note is due on a day which is not a Business Day (as hereinafter defined), such payment shall be due on the next succeeding Business Day, and such extension of time shall be taken into account in calculating the amount of interest payable under this Promissory Note. "Business Day" means any day other than a Saturday, Sunday or legal holiday in the State of Alabama.

(c) Prepayment. The Maker may, without premium or penalty, at any date that a payment of principal and interest is due, prepay all or any portion of the outstanding principal balance due under this Promissory Note.

Section 2. Defaults.

(a) Events of Default. The occurrence of any one or more of the following events shall constitute an event of default hereunder (an "Event of Default"):

(i) If the Maker shall fail to pay when due the Loan Payments on this Promissory Note when due and such failure continues for fifteen (15) days.

(ii) If, pursuant to or within the meaning of the United States Bankruptcy Code or any other federal or state law relating to insolvency or relief of debtors (a "Bankruptcy Law"), the Maker shall (v) commence a voluntary case or proceeding; (w) consent to the entry of an order for relief against him or it in an involuntary case; (x) consent to the appointment of a trustee, receiver, assignee, liquidator or similar official; (y) make an assignment for the benefit of him or its creditors; or (z) admit in writing his inability to pay his debts as they become due.

(iii) If a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that (x) is for relief against the Maker in an involuntary case; or (y) appoints a trustee, receiver, assignee, liquidator or similar official for the Maker or substantially all of the properties of the Maker.

(iv) A final judgment shall be rendered by a court of law or equity against the Maker for the payment of money which shall remain unsatisfied for a period of 90 days without a stay of execution.

(b) Notice by Maker. The Maker shall notify the Holder in writing within five days after the occurrence of any Event of Default of which the Maker acquires knowledge.

(c) Remedies. Upon the occurrence of an Event of Default hereunder (unless all Events of Default have been cured (if allowed hereunder) or waived by the Holder), the Holder may, at his option, (i) by written notice to the Maker, declare the entire unpaid principal balance of this Promissory Note, together with all accrued interest thereon, immediately due and payable regardless of any prior forbearance, and (ii) exercise any and all rights and remedies available to him under applicable law, including the right to collect from the Maker all sums due under this Promissory Note. If any scheduled payment under this Promissory Note is not made within 30 days after the same becomes due, the Maker does hereby agree to pay a late charge equal to 5% of the amount of the payment which is in default, but not less than \$50.00 or more than the maximum amount allowed by applicable law. The Maker shall also pay all reasonable costs and expenses incurred by or on behalf of the Holder in connection with the Holder's exercise of any or all of its rights and remedies under this Promissory Note, including reasonable attorneys' fees and expenses through appeal.

Section 3. Miscellaneous.

(a) Waiver.

(1) The rights and remedies of the Holder under this Promissory Note shall be cumulative and not alternative. No waiver by the Holder of any right or remedy under this Promissory Note shall be effective unless in writing signed by the Holder. Neither the failure nor any delay in exercising any right, power or privilege under this Promissory Note shall operate as a waiver of such right, power or privilege and no single or partial exercise of any such right, power or privilege by the Holder shall preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege. To the maximum extent permitted by applicable law, (i) no claim or right of the Holder arising out of this Promissory Note can be discharged by the Holder, in whole or in part, by a waiver or renunciation of the claim or right unless in a writing, signed by the Holder; (ii) no waiver that may be given by the Holder shall be applicable except in the specific instance for which it is given; and (iii) no notice to or demand on the Maker shall be deemed to be a waiver of any obligation of the Maker or of the right of the Holder to take further action without notice or demand as provided in this Promissory Note.

(2) With respect to the amount due pursuant to this Promissory Note, the Maker waives (i) all rights of exemption of property from levy or sale under execution or other process for the collection of debts under the Constitution or laws of the United States of America or any state thereof; (ii) demand, presentment, protest, notice of dishonor, notice of nonpayment, suits against any party, diligence in collection and all other requirements necessary to enforce

this Promissory Note; and (iii) all statutory provisions and requirements for the benefit of the Maker now or hereinafter enforced (to the extent that the same may be waived).

(b) Amendment. This Promissory Note may not be changed orally, but only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

(c) Severability. If any provision in this Promissory Note is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Promissory Note shall remain in full force and effect. Any provision of this Promissory Note held invalid or unenforceable only in part or degree shall remain in full force and effect to the extent not held invalid or unenforceable.

(d) Governing Law. This Promissory Note and the rights of the parties hereunder shall be construed, interpreted and governed in accordance the laws of the State of Alabama, notwithstanding the principal place of business of the Maker, the place where this Promissory Note may be executed by the Maker, or the provisions of any jurisdiction's conflict-of-laws principles.

(e) Parties in Interest. This Promissory Note may not be assigned or transferred by the Maker without the prior written consent of the Holder and any such unpermitted assignment or transfer shall be null and void. This Promissory Note shall be binding on Maker's successors and assigns. This Promissory Note may be assigned or transferred by the Holder without the consent of the Maker.

(f) Captions; Construction. The captions or headings in this Promissory Note are provided for convenience only and shall not affect its construction or interpretation. All references to "Section" or "Sections" refer to the corresponding Section or Sections of this Promissory Note unless otherwise specified. All words used in this Promissory Note shall be construed to be of such gender or number as the circumstances require. Unless otherwise expressly provided, the word "including" does not limit the preceding words or terms. The words "hereof" and "hereunder" and similar references refer to this Promissory Note in its entirety and not to any specific section or subsection hereof. The schedule attached hereto is incorporated herein by reference.

(g) Maximum Legal Rate. The Maker and the Holder do hereby agree that no payment of interest or other consideration made or agreed to be made by the Maker to the Holder pursuant to this Promissory Note shall, at any time, be in excess of the maximum rate of interest permissible by law. In the event such payments of interest or other consideration provided for in this Promissory Note shall result in an effective rate of interest which, for any period of time, is

in excess of the limit of the usury or any other law applicable to the indebtedness evidenced hereby, all sums in excess of those lawfully collectible as interest for the period in question shall, without further agreement or notice between or by any party hereto be applied to principal immediately upon receipt of such monies by the Holder hereof with the same force and effect as though the Maker had specifically designated such and the Holder had agreed to accept such extra payments as a principal payment, without premium. This provision shall control every other obligation of the Maker and the Holder.

[Signature Page to Follow]

[Signature Page to Promissory Note]

IN WITNESS WHEREOF, the Maker has executed and delivered this Promissory Note under seal to be effective as of the date first written above.

MAKER:

THE CITY OF FOLEY PUBLIC FACILITIES
COOPERATIVE DISTRICT

Name: Charles J. Ebert, III
As its: Chairman

EXHIBIT "B"

Purchase Agreement and Promissory Note

PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT (the "Agreement") is made to be effective as of the Effective Date (as hereinafter defined) by and among the following parties:

SELLER: CITY OF FOLEY, ALABAMA, an Alabama municipal corporation ("Seller"); and,

PURCHASER: THE CITY OF FOLEY PUBLIC FACILITIES COOPERATIVE DISTRICT, an Alabama public corporation ("Purchaser").

WHEREAS, Seller has acquired or will acquire title to certain parcels of real estate situated in Baldwin County, Alabama, and more particularly described in Exhibit A attached hereto and made a part hereof ("Property"); and

WHEREAS, Seller desires to sell and Purchaser desires to purchase the Property.

NOW THEREFORE, for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration to Seller in hand paid by Purchaser, the receipt and sufficiency of which are hereby acknowledged, Seller agrees to sell and Purchaser agrees to purchase the Property, upon the terms and conditions set forth below:

1. Purchase Price. Seller shall sell to Purchaser and Purchaser shall purchase from Seller the Property for a total of Two Million Three Hundred Twenty Thousand Five Hundred Seventy-Nine and 00/100 Dollars (\$2,320,579) ("Purchase Price"). The Purchase Price shall be payable in the form of a Promissory Note of even date herewith.
2. Title and Survey. Purchaser shall purchase, at its sole expense, any title insurance and/or surveys it desires to obtain with respect to the Property.
3. Purchaser's Investigation Rights. Seller hereby grants to Purchaser and to Purchaser's agents, employees and representatives, a continuing right of reasonable access, after reasonable notice to Seller and at reasonable times, for the purpose of conducting such surveys, engineering, geotechnical and environmental inspections and other investigations, evaluations, studies, tests and measurements (collectively the "Investigations") as Purchaser, or any prospective investor or lender, deems necessary or advisable. If any Investigation adversely disturbs the physical characteristics of the Property in any material respect, and Purchaser fails to purchase the Property under this Agreement, Purchaser shall restore the Property to substantially the same condition as existed prior to such Investigation. Purchaser's obligations hereunder shall survive termination of this Agreement.
4. Purchaser's Investigation Indemnity. Purchaser shall keep the Property free and clear of any liens, and will indemnify, defend and hold Seller harmless from all claims and

liabilities asserted against Seller, as a result of Purchaser's exercise of its rights of access and investigation; provided, however, that such indemnity shall not cover or extend to: (i) any claims of diminution in the value of the Property as a consequence of the results revealed by Purchaser's Investigations; or (ii) the exposure or release of Hazardous Substances that were located in, on, under or about the Property prior to Purchaser's entering the Property to conduct the Investigations. The obligations of the Purchaser under this paragraph shall survive any termination of this Agreement.

5. Time and Place of Closing. Closing of the transaction contemplated hereby ("Closing") shall be held no later than one hundred eighty (180) days after the Effective Date, unless extended by the written consent of the Purchaser and Seller, at a place and time agreed upon by the Purchaser and Seller. At Closing, Seller and Purchaser shall perform the obligations set forth in this Agreement, the performance of which obligations shall be concurrent conditions.
6. Obligations at Closing. At Closing, Purchaser shall pay: (i) deed taxes and other charges for recording Seller's deed, (ii) all legal, accounting and other professional and third party fees incurred by Purchaser in connection with this Agreement and the Closing, and (iii) any title insurance premiums and related charges. At Closing, Seller shall pay all legal, accounting and other professional and third party fees incurred by Seller in connection with this Agreement and the Closing. Property taxes, if any, will be prorated at Closing.
7. Conveyance. Seller shall convey to Purchaser good and marketable fee simple title to the Property by statutory warranty deed, free of all encumbrances except for the following: (i) the encumbrances set forth on Exhibit B attached hereto and incorporated herein by reference, (ii) taxes for the year in which the Property is conveyed and all years thereafter, and (iii) the zoning classification of the Property on the date hereof (Items (i), (ii), and (iii) collectively referred to as "Permitted Encumbrances").
8. Representations and Warranties of Seller. Seller hereby represents and warrants to Purchaser that Seller is an Alabama municipal corporation, formed and in good standing under the laws of the State of Alabama and has the full municipal corporation power and authority to convey the Property as provided in this Agreement and to carry out Seller's obligations hereunder, and all requisite action necessary to authorize Seller to enter into this Agreement and to carry out its obligations hereunder have been, or by the Closing will have been taken.
9. Representations and Warranties of Purchaser. Purchaser hereby represents and warrants to Seller that Purchaser is an Alabama public corporation, formed and in good standing under the laws of the State of Alabama and has the full power and authority to purchase the Property as provided in this Agreement and to carry out Purchaser's obligations hereunder, and all requisite action necessary to authorize Purchaser to enter into this Agreement and to carry out its obligations hereunder have been, or by the Closing will have been taken.

10. Disclaimers by Seller. Purchaser acknowledges and agrees that, except as expressly set forth in this Agreement and in any conveyance deed of the Property from Seller to Purchaser, Seller has not made, does not make, and specifically disclaims, any representations or warranties, whether express or implied, concerning or with respect to the nature, quality or condition of the Property, the income to be derived therefrom, the suitability of the same for Purchaser's purposes, the compliance therewith with any applicable laws, the habitability, merchantability or fitness for a particular purpose of the Property, or any other matter with respect to the Property. Purchaser further acknowledges and agrees that except for the representations and warranties of Seller set forth in this Agreement, the sale of the Property as provided for herein is made on a "as is -where is" basis. Seller hereby agrees to assign to Purchaser at Closing any representations and warranties Seller receives from third parties regarding the Property.
11. Conditions to Purchaser's Obligation to Close. The following are the conditions to Purchaser's obligations under this Agreement to close: (i) as of the Closing, Seller shall have performed all the obligations under this Agreement in all material respects.
12. Conditions to Seller's Obligation to Close. The following are the conditions to Seller's obligations under this Agreement to close: (i) as of the Closing, Purchaser shall have performed all the obligations under this Agreement in all material respects.
13. Default by Purchaser. In the event that the Purchaser should fail to consummate this Agreement for any reason, Seller's sole remedy shall be the right to terminate this Agreement.
14. Default by Seller. In the event that Seller should fail to consummate this Agreement for any reason, Purchaser's sole remedy shall be the right to terminate the Agreement.
15. Real Estate Commissions. Neither Seller nor Purchaser has contracted with any real estate broker, finder or similar person in connection with the transaction contemplated hereby. To the actual knowledge of Seller and Purchaser, no Acquisition Fees (as hereafter defined) have been paid or are due and owing to any person or entity. As used herein "Acquisition Fees" shall mean all fees paid to any person or entity in connection with the selection and purchase of the Property, including real estate commissions, selection fees, non-recurring management and start-up fees, development fees or any other fee of similar nature. To the extent allowed by law, Seller and Purchaser, each, hereby agrees to indemnify and hold harmless the other from and against any and all claims for Acquisition Fees or similar charges with respect to this transaction, arising by, through or under the indemnifying party and each further agrees to indemnify and hold harmless the other from any loss or damage resulting from an inaccuracy in the representations contained in this Section 15. This indemnification agreement of the parties shall survive the Closing.
16. Modifications. This Agreement cannot be changed orally, and no executory agreement shall be effective to waive, change, modify or discharge it in whole or in part unless such

executory agreement is in writing and is signed by the parties against whom enforcement of any waiver, change, modification or discharge is sought.

17. Notice. All notices, consents, requests, declarations, designations, approvals, reports, and other communications required or provided for by this Agreement shall be given in writing to the other party at the addresses set forth below, or at such other address as either party shall designate for itself by notice to the other party hereunder:

Seller: The City of Foley
Attn: John Koniar, Mayor
407 East Laurel Street
Foley, Alabama 36535

Purchaser: The City of Foley Public Facilities
Cooperative District
Attn: Charles J. Ebert, III, Chairman
407 East Laurel Street
Foley, Alabama 36535

18. Calculation of Time Periods. Unless otherwise specified, in computing any period of time described in this Agreement, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday or legal holiday.
19. Time of Essence. Seller and Purchaser agree that time is of the essence of this Agreement.
20. Successors and Assigns. The terms and provisions of this Agreement are to apply to and bind the permitted successors and assigns of the parties hereto.
21. Entire Agreement. This Agreement, including the Exhibits, contains the entire agreement between the parties pertaining to the subject matter hereof and fully supersedes all prior agreements and understandings between the parties pertaining to such subject matter.
22. Further Assurances. Each party agrees that it will without further consideration execute and deliver such other documents and take such other action, whether prior or subsequent to Closing, as may be reasonably requested by the other party to consummate more effectively the purposes or subject matter of this Agreement. Without limiting the generality of the foregoing, Purchaser shall, if requested by Seller, execute acknowledgments of receipt with respect to any materials delivered by Seller to Purchaser with respect to the Property.

23. Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. The counterparts of this Agreement may be executed and delivered by e-mail or facsimile signature by any of the parties to any other party and the receiving party may rely on the receipt of such document so executed and delivered by facsimile as if the original had been received. It shall be necessary to account for only one such counterpart in proving this Agreement.
24. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall nonetheless remain in full force and effect.
25. Applicable Law. THIS AGREEMENT SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE SUBSTANTIVE FEDERAL LAWS OF THE UNITED STATES AND THE LAWS OF THE STATE OF ALABAMA.
26. Waiver. No waiver by any party of any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach by the other party of the same or any other provision. Either party's consent to or approval of any act shall not be deemed to render unnecessary the obtaining of such party's express written consent to or approval of any subsequent act by the other party.
27. No Third Party Beneficiary. The provisions of this Agreement and of the documents to be executed and delivered at Closing are and will be for the benefit of Seller and Purchaser only and are not for the benefit of any third party, and accordingly, no third party shall have the right to enforce the provisions of this Agreement or of the documents to be executed and delivered at Closing.
28. Exhibits and Schedules. The following schedules or exhibits attached hereto shall be deemed to be an integral part of this Agreement:
- Exhibit A - Property Description
Exhibit B - Permitted Encumbrances
29. Captions. The section headings appearing in this Agreement are for convenience of reference only and are not intended, to any extent and for any purpose, to limit or define the text of any section or any subsection hereof.
30. Construction. The parties acknowledge that the parties and their counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto.

31. Authority. Each individual executing this Agreement on behalf of a party hereto represents and warrants that he/she is duly authorized to execute and deliver this Agreement on behalf of said party and that this Agreement is binding upon said party in accordance with its terms.
32. Effective Date. The date of execution by Seller shall be deemed the effective date of this Agreement (the "Effective Date").
33. Survival of Representations and Warranties. All of the representations and warranties and covenants contained in this Agreement shall survive the Closing.

[Signature Page to Follow]

[Signature Page for Purchase Agreement]

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement effective as of October 16, 2013.

SELLER:

THE CITY OF FOLEY, an Alabama Municipal Corporation

By: _____

Name: John Koniar

As its: Mayor

PURCHASER:

THE CITY OF FOLEY PUBLIC FACILITIES COOPERATIVE DISTRICT, an Alabama Public Corporation

By: _____

Name: Charles J. Ebert, III

As its: Chairman

EXHIBIT A

PROPERTY DESCRIPTION

The following described real property situated in the County of Baldwin, State of Alabama:

A parcel of land situated in the Southeast quarter of the Southeast quarter of Section 4, Township 8 South, Range 4 East, Baldwin County, Alabama, being a part of Parcels 1 and 2 according to the survey and plat of Wilson Pecan Property Minor Subdivision as recorded in Slide 0002434-A in the Probate Office of Baldwin County, Alabama and being more particularly described as follows:

Commence at the Southeast corner of Parcel 2 according to the survey and plat of Wilson Pecan Property Minor Subdivision as recorded in Slide 0002434-A in the Probate Office of Baldwin County, Alabama, said point lying on the North right of way of Miflin Road (County Road #20); thence run North 89°55'03" West along the South line of said Parcel 2 and along said right of way for 294.94 feet to the Point of Beginning of the herein described parcel; thence continue North 89°55'03" West along said right of way for 126.75 feet; thence run North 00°33'41" East for 325.00 feet; thence run North 89°55'03" West for 270.00 feet; thence run South 00°33'41" West for 325.00 feet to the Northerly right of way of Miflin Road; thence run North 89°55'03" West along said right of way for 100.00 feet to the Southwest corner of Parcel 1 of said Wilson Pecan Property Minor Subdivision; thence run North 00°33'41" East for 1207.47 feet; thence run North 89°43'12" West for 694.33 feet to the northeast corner of Parcel #3 according to the Re-subdivision of Lot 5, Martin Subdivision as recorded in Slide 2334-A in the Probate Office of Baldwin County, Alabama; thence run North 00°16'48" West for 60.00 feet; thence run South 89°43'12" East for 794.34 feet; thence run along the arc of a curve to the right having a central angle of 68°51'37", a radius of 60.00 feet, a chord of 67.85 feet and a chord bearing of South 17°28'26" West for a distance of 72.11 feet; thence run South 00°33'41" West for 792.37 feet; thence run south 89°55'03" East for 170.00 feet; thence run North 00°04'32" East along for 345.05 feet; thence run South 89°55'28" East for 300.00 feet; thence run North 00°04'32" East for 221.19 feet; thence run North 89°55'28" West for 195.00 feet; thence run North 00°04'32" East for 290.00 feet to the North line of said Parcel 1; thence run South 89°43'12" East for 419.63 feet to the Northeast corner of said Parcel 1; thence run South 00°32'01" East along the east line of said Parcel 1 for 916.32 feet; thence run North 89°55'59" West for 291.57 feet; thence run South 00°00'53" East for 348.46 feet to the point of beginning. Contains 13.782 acres, more or less.

EXHIBIT B

PERMITTED ENCUMBRANCES

1. Any matters which a current and accurate survey would disclose.
2. Any recorded restrictions, covenants and easements of record not specifically set forth herein.
3. All matters of Public record as recorded in the Office of the Judge of Probate, Baldwin County, Alabama.
4. Previous Reservation of Mineral Rights.

The recording references refer to the records in the Office of the Judge of Probate of Baldwin County, Alabama, unless otherwise indicated.

PROMISSORY NOTE

\$2,320,579

Amortized as of October 16, 2013

FOR VALUE RECEIVED, the undersigned, The City of Foley Public Facilities Cooperative District, an Alabama public corporation (the "Maker"), promises to pay to the order of the City of Foley, an Alabama municipal corporation (together with any holder of this Promissory Note, the "Holder"), in lawful money of the United States of America, the principal sum of Two Million Three Hundred Twenty Thousand Five Hundred Seventy-Nine and 00/100 Dollars (\$2,320,579.00), together with interest in arrears on the unpaid principal balance at an annual rate equal to 1.3443% in the manner provided below. Interest shall be calculated on the basis of a year of 365 days, as applicable, and charged for the actual number of days elapsed. The Maker does hereby acknowledge and agree that the Holder shall be entitled to all of the rights of a holder in due course of negotiable instruments.

Section 1. Payment.

(a) Principal and Interest. This Promissory Note shall be payable in quarterly payments as follows:

Years 1 – 7: From the date hereof through the date that is Seven (7) years from the date hereof, Maker shall make quarterly payments of interest only (the "Initial Payment").

Year 7 – 30: From the date that is Seven (7) years from the date hereof through the date that is Thirty (30) years from the date hereof, Maker shall make quarterly payments of principal and interest (calculated based on a Thirty (30) year amortization period) (the "Adjusted Payment", together with the Initial Payment, the "Loan Payments").

Final Payment: On the date that is Thirty (30) years from the date hereof, Maker shall make a final payment of all of the outstanding principal balance and interest due under this Promissory Note, taking into account any Adjusted Payments which may also be due on such date.

The Loan Payment shall be due and payable on March 10, June 10, September 10, and December 10 of each respective year throughout the term of this Promissory Note beginning June 10, 2014 (or on such other dates as to mirror the payment dates of the certain anticipated loan payable by Chase NMTC CAFFM Investment Funds, L.L.C. in favor of Maker). Unless required by applicable law, payments will be first applied to any

unpaid collection costs and late charges, then to accrued unpaid interest, and any remaining amount to principal.

(b) Manner of Payment. Payment of principal and interest on this Promissory Note shall be made by personal check at such place in the United States of America as the Holder shall designate to the Maker in writing. If any payment of principal or interest on this Promissory Note is due on a day which is not a Business Day (as hereinafter defined), such payment shall be due on the next succeeding Business Day, and such extension of time shall be taken into account in calculating the amount of interest payable under this Promissory Note. "Business Day" means any day other than a Saturday, Sunday or legal holiday in the State of Alabama.

(c) Prepayment. The Maker may, without premium or penalty, at any date that a payment of principal and interest is due, prepay all or any portion of the outstanding principal balance due under this Promissory Note.

Section 2. Defaults.

(a) Events of Default. The occurrence of any one or more of the following events shall constitute an event of default hereunder (an "Event of Default"):

(i) If the Maker shall fail to pay when due the Loan Payments on this Promissory Note when due and such failure continues for fifteen (15) days.

(ii) If, pursuant to or within the meaning of the United States Bankruptcy Code or any other federal or state law relating to insolvency or relief of debtors (a "Bankruptcy Law"), the Maker shall (v) commence a voluntary case or proceeding; (w) consent to the entry of an order for relief against him or it in an involuntary case; (x) consent to the appointment of a trustee, receiver, assignee, liquidator or similar official; (y) make an assignment for the benefit of him or its creditors; or (z) admit in writing his inability to pay his debts as they become due.

(iii) If a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that (x) is for relief against the Maker in an involuntary case; or (y) appoints a trustee, receiver, assignee, liquidator or similar official for the Maker or substantially all of the properties of the Maker.

(iv) A final judgment shall be rendered by a court of law or equity against the Maker for the payment of money which shall remain unsatisfied for a period of 90 days without a stay of execution.

(b) Notice by Maker. The Maker shall notify the Holder in writing within five days after the occurrence of any Event of Default of which the Maker acquires knowledge.

(c) Remedies. Upon the occurrence of an Event of Default hereunder (unless all Events of Default have been cured (if allowed hereunder) or waived by the Holder), the Holder may, at his option, (i) by written notice to the Maker, declare the entire unpaid principal balance of this Promissory Note, together with all accrued interest thereon, immediately due and payable regardless of any prior forbearance, and (ii) exercise any and all rights and remedies available to him under applicable law, including the right to collect from the Maker all sums due under this Promissory Note. If any scheduled payment under this Promissory Note is not made within 30 days after the same becomes due, the Maker does hereby agree to pay a late charge equal to 5% of the amount of the payment which is in default, but not less than \$50.00 or more than the maximum amount allowed by applicable law. The Maker shall also pay all reasonable costs and expenses incurred by or on behalf of the Holder in connection with the Holder's exercise of any or all of its rights and remedies under this Promissory Note, including reasonable attorneys' fees and expenses through appeal.

Section 3. Miscellaneous.

(a) Waiver.

(1) The rights and remedies of the Holder under this Promissory Note shall be cumulative and not alternative. No waiver by the Holder of any right or remedy under this Promissory Note shall be effective unless in writing signed by the Holder. Neither the failure nor any delay in exercising any right, power or privilege under this Promissory Note shall operate as a waiver of such right, power or privilege and no single or partial exercise of any such right, power or privilege by the Holder shall preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege. To the maximum extent permitted by applicable law, (i) no claim or right of the Holder arising out of this Promissory Note can be discharged by the Holder, in whole or in part, by a waiver or renunciation of the claim or right unless in a writing, signed by the Holder; (ii) no waiver that may be given by the Holder shall be applicable except in the specific instance for which it is given; and (iii) no notice to or demand on the Maker shall be deemed to be a waiver of any obligation of the Maker or of the right of the Holder to take further action without notice or demand as provided in this Promissory Note.

(2) With respect to the amount due pursuant to this Promissory Note, the Maker waives (i) all rights of exemption of property from levy or sale under execution or other process for the collection of debts under the Constitution or laws of the United States of America or any state thereof; (ii) demand, presentment, protest, notice of dishonor, notice of nonpayment, suits against any party, diligence in collection and all other requirements necessary to enforce

this Promissory Note; and (iii) all statutory provisions and requirements for the benefit of the Maker now or hereinafter enforced (to the extent that the same may be waived).

(b) Amendment. This Promissory Note may not be changed orally, but only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

(c) Severability. If any provision in this Promissory Note is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Promissory Note shall remain in full force and effect. Any provision of this Promissory Note held invalid or unenforceable only in part or degree shall remain in full force and effect to the extent not held invalid or unenforceable.

(d) Governing Law. This Promissory Note and the rights of the parties hereunder shall be construed, interpreted and governed in accordance the laws of the State of Alabama, notwithstanding the principal place of business of the Maker, the place where this Promissory Note may be executed by the Maker, or the provisions of any jurisdiction's conflict-of-laws principles.

(e) Parties in Interest. This Promissory Note may not be assigned or transferred by the Maker without the prior written consent of the Holder and any such unpermitted assignment or transfer shall be null and void. This Promissory Note shall be binding on Maker's successors and assigns. This Promissory Note may be assigned or transferred by the Holder without the consent of the Maker.

(f) Captions; Construction. The captions or headings in this Promissory Note are provided for convenience only and shall not affect its construction or interpretation. All references to "Section" or "Sections" refer to the corresponding Section or Sections of this Promissory Note unless otherwise specified. All words used in this Promissory Note shall be construed to be of such gender or number as the circumstances require. Unless otherwise expressly provided, the word "including" does not limit the preceding words or terms. The words "hereof" and "hereunder" and similar references refer to this Promissory Note in its entirety and not to any specific section or subsection hereof. The schedule attached hereto is incorporated herein by reference.

(g) Maximum Legal Rate. The Maker and the Holder do hereby agree that no payment of interest or other consideration made or agreed to be made by the Maker to the Holder pursuant to this Promissory Note shall, at any time, be in excess of the maximum rate of interest permissible by law. In the event such payments of interest or other consideration provided for in this Promissory Note shall result in an effective rate of interest which, for any period of time, is

in excess of the limit of the usury or any other law applicable to the indebtedness evidenced hereby, all sums in excess of those lawfully collectible as interest for the period in question shall, without further agreement or notice between or by any party hereto be applied to principal immediately upon receipt of such monies by the Holder hereof with the same force and effect as though the Maker had specifically designated such and the Holder had agreed to accept such extra payments as a principal payment, without premium. This provision shall control every other obligation of the Maker and the Holder.

[Signature Page to Follow]

[Signature Page to Promissory Note]

IN WITNESS WHEREOF, the Maker has executed and delivered this Promissory Note under seal to be effective as of the date first written above.

MAKER:

THE CITY OF FOLEY PUBLIC FACILITIES
COOPERATIVE DISTRICT

Name: Charles J. Ebert, III
As its: Chairman