

RIGHT OF ENTRY AGREEMENT

THIS RIGHT OF ENTRY AGREEMENT (this "**Agreement**") is made and entered into effective as of the 18th day of May, 2015 (the "Effective Date"), by and between **COROC/Riviera L.L.C.**, a Delaware limited liability company ("Owner") whose address is 3200 Northline Avenue, Suite 360, Greensboro, NC 27408 and the City of Foley, an Alabama municipal corporation whose street address is 407 East Laurel Avenue, Foley, Alabama 36535 (the "City").

RECITALS:

A. Owner is the owner of Lot 4 of Riviera Center Subdivision (as recorded on Slide 1369B of the Baldwin County, Alabama Probate Court Records). The portion of Lot 4 located to the north of the existing access road and excluding the parking area as hatched on **Exhibit A** attached hereto and made a part hereof is referred to herein as the "Study Area."

B. The City is attempting to evaluate the feasibility of constructing storm water drainage pond/facilities on the Study Area and has requested that it and its consultants, engineers, surveyors and contractors be allowed to go onto the Study Area to make visual inspections, conduct engineering analysis and prepare plans and surveys which will assist the City in its analysis (such activities herein referred to as the "Work").

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, Owner and the City hereby agree as follows:

1. During the term of this Agreement, the City (and its agents, consultants, contractors and engineers) may use the Study Area for conducting the Work and for no other purpose.

2. This Agreement shall terminate on the earlier of (a) when the Work is completed; or (b) on breach of any covenant of this Agreement without prompt cure by the City; or (c) **August 31, 2015**.

3. The City agrees to defend and indemnify and hold harmless Owner, its officers, directors, joint venture partners, lenders, employees, agents, contractors and invitees from any and all claims, fines, costs, expenses (including reasonable attorneys' fees), loss, liability and damage of every kind and nature, including without limitation for personal injury, death, bodily injury, property damage, mechanic's lien, arising out of, or in any way connected with, the City exercising its rights under this Agreement, the Work, or the negligence or intentional misconduct of the City or its contractors, engineers, or their respective employees, agents, contractors, invitees or guests. This indemnity shall survive the expiration or earlier termination of this Agreement.

4. The City, at its own cost and expense, shall maintain, or City's contractor/engineer performing the Work, at its sole cost and expense, shall maintain the following policies of insurance applicable to the adjacent Shopping Center owned or leased by Owner, procured from insurance companies reasonably satisfactory to Owner and rated "B++VI" or better by the current edition of Bests Insurance Reports published by the A.M. Best Company:

- (a) Workers' Compensation Insurance providing statutory benefits and limits which shall fully comply with all state and federal requirements applying to this insurance in the state where

the property is located with a waiver of subrogation in favor of Owner, and employer's liability insurance with limits of not less than **\$100,000** per accident or disease and **\$500,000** aggregate by disease.

- (b) Motor Vehicle Liability Insurance with coverage for all owned, non-owned and hired vehicles with combined single limits of not less than **\$1,000,000** per occurrence for bodily injury and property damage.
- (c) Commercial General Liability Insurance including, but not limited to, coverage for products/completed operations, premises/operations, contractual and personal/advertising injury liabilities with combined single limits of not less than **\$5,000,000** per occurrence for bodily injury and property damage naming Owner as an additional insured.
- (d) Environmental Impairment or Pollution Liability Insurance, including cleanup costs, with limits of not less than **\$100,000** per claim and **\$100,000** in the aggregate, naming Owner as an additional insured.
- (e) Any engineer performing Work with respect to the Study Area shall maintain errors and omissions or professional liability insurance with limits of at least **\$1,000,000** per claim.

Neither the City, nor its contractors or engineers performing the Work shall enter the Study Area prior to delivering to Owner an insurance certificate evidencing that the foregoing insurance has been obtained.

5. The City agrees that the Work will be coordinated with Owner's local manager, Debra Brown, at least two (2) business days prior to any entry on the Study Area and will be performed in such a way as to minimize interference with the conduct of Owner's business on the adjacent Shopping Center. The City will not perform or permit its agents, contractors or engineers to perform any invasive studies without the express prior written consent of Owner, which consent may be conditioned or denied in Owner's sole discretion. Any entry upon the Study Area by or on behalf of the City shall be conducted in a safe manner and shall be subject to such rules, regulations, standards and conditions as Owner may reasonably impose.

6. The City agrees that the Work performed in the Study Area shall be done in accordance with any and all applicable laws, ordinances, statutes, governmental regulations and recorded restrictions on the Study Area, including, but not limited to, vegetation preservation laws.

7. Upon Owner's request, the City shall deliver to Owner the results of the City's Work.

8. At the conclusion of the Work, the City agrees to promptly repair any damage and restore the Study Area or the Owner's adjacent Shopping Center to the same condition that it was found prior to the commencement of the Work, all at the sole cost and expense of the City.

9. This Agreement shall be governed by and construed in accordance with the laws of the State in which the Study Area is located. This Agreement may be modified only by an instrument in writing signed by the parties.

10. By executing this Agreement, the parties acknowledge that they have had adequate time to reflect upon, consider and consult with legal counsel concerning the terms of this Agreement, and execute the same voluntarily and free from improper influence or duress.

11. Except as otherwise set forth in paragraph 5 herein, all notices, demands, requests or other instruments which may be or are required herein to be given to Owner or to the City shall be in writing and shall be sent to the address set forth in the introductory paragraph of this Agreement, or at such other address as the parties may specify in writing. Any such notices or other communications may be personally delivered, sent via a nationally recognized overnight courier service, or sent by certified mail, return receipt requested, postage prepaid, deposited in the United States Post Office (“USPO”) or a depository for the receipt of mail regularly maintained by the USPO, and such notice shall be considered made when so delivered or delivery is refused.

12. This Agreement shall be binding upon the parties and shall inure to the benefit of Owner, its successors, assigns, and mortgagees, and shall not be assigned by the City. In no event shall this Agreement grant the City any interest in the Study Area, Owner’s adjacent Shopping Center or land therein except as set forth herein and the City shall not be entitled to register any evidence of this Agreement on title to said lands. This Agreement may be executed in any number of counterparts, all of which when taken together shall constitute one agreement binding on the parties hereto. Furthermore, a copy of this Agreement transmitted by facsimile transmission or email that bears the signature of a party hereto shall be treated as an original hereof.

The undersigned parties have entered into this Agreement effective as of the Effective Date.

OWNER:

COROC/Riviera L.L.C.

a Delaware limited liability company

By: _____

Name: _____

Title: _____

THE CITY:

City of Foley

an Alabama municipal corporation

By: _____

Name: _____

Title: _____

Exhibit

A – Site Plan

EXHIBIT A

[SEE ATTACHED]

South Juniper Street

**Study
Area**

