

STATE OF ALABAMA
COUNTY OF BALDWIN

PURCHASE AGREEMENT

This Purchase Agreement ("Agreement") is entered into effective as of the ____ day of _____, 2019 (the "Effective Date") by and between **City of Foley, Alabama**, an Alabama municipal corporation ("Seller" or the "City"), 407 E. Laurel Avenue, Foley, Alabama 36535 and **Two River Holding LLC**, an Alabama limited liability company or its permitted assigns ("Purchaser"), 3597 Shandwick Place, Hoover, Alabama 35424.

Recitals

Whereas, Seller is the owner of Lot 1, Sportstown Village Subdivision, Phase 1, a map of which is recorded in Slide 0002604-B, Probate Records, Baldwin County, Alabama, attached hereto as Exhibit "A" (the "Property"); and

Whereas, Seller wishes to sell the Property to Purchaser, and Purchaser wishes to acquire the Property from Seller, subject to and in accordance with the terms and conditions hereof.

Now, therefore, in consideration of the sum of Ten Dollars (\$10.00), the premises, the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Purchaser hereby agree as follows:

1. Purchase and Sale. Subject to the terms and conditions of this Agreement, Seller hereby agrees to sell and convey the Property to Purchaser, and Purchaser hereby agrees to purchase the Property from Seller.
2. Purchase Price. The purchase price for the Property shall be Six Hundred Thousand and 00/100 Dollars (\$600,000.00) (the "Purchase Price"). The Purchase Price shall be paid to Seller at Closing in immediately available funds satisfactory to Seller.
3. Earnest Money. Within three (3) business days after the Effective Date, Purchaser shall deliver to Gulf Shores Title Company, Inc., 100 Cove Avenue, Gulf Shores, Alabama 36547 (the "Title Company"), the amount of TEN and No/100 Dollars (\$10.00) to be deposited by the Title Company in a non-interest bearing account (together with any additional earnest money deposited pursuant to this Agreement, the "Earnest Money"). All Earnest Money shall be non-refundable except as set forth herein. If Purchaser terminates this Agreement in accordance with any right to terminate granted by this Agreement, the Earnest Money shall be immediately refunded to Purchaser, and no party hereto shall have any further obligations under this Agreement except as expressly provided herein. If the sale of the Property is consummated pursuant to the terms of this Agreement, the Earnest Money shall be applied to the payment of the Purchase Price. In the event Purchaser breaches its obligations hereunder, then Seller shall retain the Earnest Money as liquidated damages, and neither Seller nor Purchaser shall have any further obligation or liability to the other hereunder except as expressly provided herein. In the event of a dispute regarding the Earnest Money, the Title Company shall deposit all the monies then held pursuant to this Agreement with the Baldwin County Circuit Court, and upon notifying all parties concerning such action, all liability on the part of the Title Company as escrow agent shall fully cease and terminate, except to the extent of accounting for

any monies theretofore delivered out of escrow.

4. Feasibility Period. Purchaser shall have a period of one hundred and twenty (120) calendar days following the Effective Date (the "Feasibility Period") to determine the feasibility of Purchaser's contemplated hotel development of the Property for a minimum of TWO HUNDRED (200) hotel rooms (the "Hotel"), and to obtain a binding commitment for financing of the acquisition of the Property and construction of the Hotel and related improvements. If Purchaser is not satisfied with such evaluation, or in the event Purchaser is unable to obtain the aforesaid binding commitment for financing, Purchaser may cancel this Agreement by giving written notification of such cancellation to Seller prior to the expiration of the Feasibility Period, in which event the Earnest Money shall be immediately refunded to Purchaser, and no party hereto shall have any further obligations under this Agreement except as expressly provided herein. In the event Purchaser does not give such notification to Seller in writing prior to the expiration of the Feasibility Period, the said evaluation of the Property shall be deemed satisfactory to Purchaser and the Earnest Money shall be non-refundable. **THE PURCHASER SHALL INDEMNIFY AND HOLD SELLER AND THE PROPERTY HARMLESS FROM AND AGAINST ALL CLAIMS, DEMANDS, COSTS AND DAMAGES RESULTING FROM PURCHASER'S INSPECTION AND/OR TESTING OF THE PROPERTY OR OTHERWISE ARISING FROM OR ATTRIBUTABLE TO ACTIVITIES ON THE PROPERTY PURSUANT TO THIS SECTION 4. PURCHASER SHALL REPAIR AND RESTORE THE PROPERTY TO ITS CONDITION EXISTING IMMEDIATELY PRIOR TO PURCHASER'S ENTRY UPON THE PROPERTY.** The foregoing indemnification obligation shall survive the termination of this Agreement.

5. Title Insurance. Within ninety (90) days following the Effective Date, the Seller will cause the Title Company to deliver a commitment from First American Title Insurance Company to issue an owner's policy of title insurance ("Owner's Title Policy") to Purchaser with respect to the Property (the "Title Commitment") in the amount of the Purchase Price. All exceptions which are set forth in the Title Commitment shall be deemed to be permitted exceptions to the status of Seller's title (the "Permitted Title Exceptions").

6. Closing. The closing of the purchase of the Property ("Closing") shall take place at Foley City Hall, 407 E. Laurel Avenue, Foley, Alabama 36535 on the fifteenth (15th) day following the expiration of the Feasibility Period, or on the following business day if such fifteenth (15th) day is a Saturday, Sunday or holiday on which national banks in Foley, Alabama are closed (the "Closing Date").

7. Right to Extend Closing Date.

(a) Purchaser shall have the right to extend the Closing Date for sixty (60) days (the "First Closing Date Extension"), subject to (a) Purchaser providing Seller written notice of such election to extend prior to expiration of the Feasibility Period, and (b) Purchaser delivering an additional TEN THOUSAND DOLLARS (\$10,000.00) earnest money to the Title Company prior to expiration of the Feasibility Period (which shall be included with the initial Earnest Money and non-refundable, but applicable to the Purchase Price).

(b) Purchaser shall have the right to extend the Closing Date for an additional sixty (60) days (the "Second Closing Date Extension"), subject to (a) Purchaser providing Seller written notice of such election to extend at least fifteen (15) days prior to expiration of the First Closing Date Extension, and (b) Purchaser delivering an additional TEN THOUSAND DOLLARS (\$10,000.00) earnest money to the Title Company prior to expiration of the First Closing Date Extension (which shall be included with the initial and additional Earnest Money and non-refundable, but applicable to the Purchase Price).

8. Hotel Construction Loan Contingency. The Seller's obligation to sell the Property is

contingent upon the Purchaser obtaining a construction loan on the Closing Date simultaneously upon acquisition of the Property for construction of the Hotel and related improvements. In the event such construction loan is not obtained on the Closing Date simultaneously upon Purchaser's acquisition of the Property, then Seller may terminate this Agreement, in which event the Earnest Money shall be disbursed to Seller as liquidated damages, and neither Seller nor Purchaser shall have any further obligation or liability to the other hereunder.

9. City Council Approval Contingency. This Agreement and the Seller's obligation to sell the Property as provided herein is contingent upon the issuance of all necessary and proper authorizations and approvals by the City Council of the City of Foley ("City Council"). In the event any such authorizations or approvals are denied or otherwise not obtained by the Closing Date, then either party may terminate this Agreement, in which event the Earnest Money shall be returned to Purchaser.

10. Hotel Development and Construction of Roadways. Purchaser shall utilize its best efforts to commence construction of the Hotel on the Property within three (3) months after the Closing Date, provided all necessary permits have been issued by the City. Prior to substantial completion of the Hotel, the City agrees to undertake the construction of Farmers Market Road and pedestrian paths with lighting from the Property to the Foley Sports Center, with such improvements to be designed, prioritized and performed in such order as the City deems appropriate in its sole discretion.

11. Cooperative District Sales Fee. Purchaser agrees that developments on the Property may be subject to a 2% sales fee ("District Sales Fee") on all taxable sales (including room nights, food, merchandise and all other taxable sales) to the extent authorized and permitted by law. The amounts received by the City as a result of District Sales Fees collected on hotel room and/or retail sales on the Property by Purchaser shall be split 50/50 with Purchaser and paid by the City annually within sixty (60) days after the end of the City's fiscal year. The City's obligation to Purchaser to split amounts received by the City as a result of District Sales Fees shall terminate at such time as Purchaser has received thirty-five percent (35%) of Purchaser's initial development cost for the Hotel (the "Hotel Development Cost") and any additional restaurant, sports-related businesses or retail developments on the Property for which the District Sales Fee is collected, or at such time as the District Sales Fee is terminated, whichever occurs first. Prior to commencement of business operations of the Hotel and any additional retail developments on the Property for which the District Sales Fee will be collected, Purchaser shall provide Seller with a written statement of its initial development costs, together with such supporting documentation as the City may reasonably request. The foregoing District Sales Fee will be in addition to, and not in lieu of, any other lodging or other applicable taxes, which will not be shared with Purchaser.

12. Property Restrictions; Reserved Rights; Other Provisions.

- (a) Use Restriction. The conveyance at Closing will be subject to a restrictive covenant with respect to the permitted use of the Property as set forth in the form of Statutory Warranty Deed with Reservations attached hereto as Exhibit "B" (the "Deed").
- (b) Option to Repurchase. Seller will retain and be granted an option to purchase the Property as set forth in the form of Deed attached hereto.
- (c) Right of First Refusal. Seller will retain and be granted a right of first refusal to purchase the Property as set forth in the form of Deed attached hereto.
- (d) The conveyance at Closing will be subject to a 20-foot easement retained by Seller as depicted on Exhibit "A" hereto for utilities and/or sidewalks and trolley drop off and

loading station.

13. Closing Deliverables. The purchase and sale of the Property pursuant to this Agreement shall be made by the execution and delivery at the Closing of the following instruments and documents by, from and between Seller and Purchaser, as applicable:

- (a) The Deed;
- (b) Settlement Statement prepared in accordance with this Agreement;
- (c) The Owner's Policy pursuant to the Title Commitment;
- (d) Such resolutions, authorizations or other documents or instruments as the Title Company shall require in the Title Commitment or as otherwise may be required of Seller or Purchaser, under the terms of this Agreement, to complete the sale and purchase of the Property.

14. Closing Costs and Expenses.

- (a) Purchaser shall pay (i) all recording and transfer fees, documentary stamps, taxes or other charges or assessments in connection with the recording of the Deed and other closing documents, as applicable, (ii) the fees charged for issuance of the Title Commitment and the premium charged for the Owner's Policy, (iii) all costs associated with Purchaser's financing; (iv) the closing fee charged by the Title Company in connection with the Closing, subject to Seller's agreement to pay one-half of such amount up to a maximum of \$350.00, and (v) Purchaser's attorney fees.
- (b) Seller shall pay (i) Seller's attorney fees, and (ii) one-half of any closing fee charged by the Title Company in connection with the Closing, up to a maximum of \$350.00.
- (c) Real estate taxes and assessments, if any, with respect to the Property shall be prorated based upon the best estimate available to the closing agent.

15. As-Is Sale. Except as expressly provided herein, the purchase and sale of the Property contemplated under this Agreement is and shall be on "as is, where is" basis.

16. Broker Commission. Seller and Purchaser hereby represent and warrant, each to the other, that there are no brokers, salesmen or other persons or entities entitled to any commission, finder's fee or compensation of any nature or character whatsoever which is or might be due for bringing about this transaction, and each party hereto hereby agrees to indemnify and hold the other harmless from any claim or liability (including costs and attorney's fees) to agents or brokers with whom such party may have dealt.

17. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon each of the parties hereto, and their respective successors and permitted assigns. Purchaser may not assign this Agreement without the prior written consent of Seller.

18. Notices. Any notices or other communications which may be required or desired to be given under the terms of this Agreement shall be in writing and shall be deemed to have been duly given if personally delivered, if sent by overnight courier service (e.g., Federal Express) or if mailed by United States certified mail, return receipt requested, postage prepaid, addressed to the respective party at the addresses set forth in the first paragraph of this Agreement.

19. Modification and Waiver. This Agreement may not be changed, amended or modified in any respect whatsoever, nor may any covenant, agreement, condition, requirement, provision, warranty or obligation contained herein be waived, except in writing signed by both parties or, in the event that such change, amendment, modification or waiver is for the benefit of one of the parties and to the detriment of the other, then the same must be in writing signed by the party or parties to whose detriment the change, amendment, modification or waiver inures.

20. Entire Agreement; Construction. This Agreement (and all exhibits and addenda hereto) constitutes the entire understanding and agreement between the parties hereto with respect to the subject matter hereof and supersedes any and all prior or contemporaneous agreements, whether written or oral. No covenants, agreements, terms, provisions, undertakings, statements, representations or warranties, whether written or oral, made or executed by any party hereto or any employee, representative or agent thereof, shall be binding upon any party hereto unless specifically set forth in this Agreement or in subsequent amendments executed by the parties hereto. The paragraph headings herein contained are inserted for convenience of reference only and shall not be deemed to be a part of this Agreement. The fact that one of the parties to this Agreement may be deemed to have drafted or structured any provision of this Agreement shall not be considered in construing or interpreting any particular provision of this Agreement, either in favor of or against such party.

[SIGNATURES COMMENCE ON THE NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date shown below the signature of each.

SELLER:

CITY OF FOLEY, ALABAMA

By: John Koniar

As its: Mayor

Date: _____

PURCHASER:

TWO RIVER HOLDING LLC,
an Alabama limited liability company

By: Bruce Benton

As its: Managing Member

Date: _____

EXHIBIT "A"

PROPERTY DESCRIPTION

Lot 1, Sportstown Village Subdivision, Phase 1, a map of which is recorded in Slide 0002604-B, Probate Records, Baldwin County, Alabama

EXHIBIT “B”

FORM OF STATUTORY WARRANTY DEED WITH RESERVATIONS STATE

OF ALABAMA:

COUNTY OF BALDWIN:

STATUTORY WARRANTY DEED WITH RESERVATIONS

KNOW ALL MEN BY THESE PRESENTS, that the CITY OF FOLEY, ALABAMA, an Alabama municipal corporation (“Grantor”), for and in consideration of TEN AND NO/100 DOLLARS (\$10.00), and other good and valuable consideration paid to Grantor by TWO RIVER HOLDING LLC, an Alabama limited liability company (“Grantee”), the receipt and sufficiency of which are hereby acknowledged, does, subject to the provisions hereinafter contained, hereby GRANT, BARGAIN, SELL and CONVEY unto the said Grantee and to Grantee’s successors and assigns, all that real property (the “Property”) in the County of Baldwin, State of Alabama, described as follows:

Lot 1, Sportstown Village Subdivision, Phase 1, a map of which is recorded in Slide 0002604-B, Probate Records, Baldwin County, Alabama.

Less and except all oil, gas and other mineral interests and all rights and privileges in connection therewith not previously reserved or conveyed by prior grantors.

Subject, however, to the following:

1. Use restrictions which shall run with the Property and are set forth as follows: The Property shall be used and occupied for the following permitted uses only (subject to applicable zoning or other laws, regulations and ordinances):

- (a) national brand hotel or motel having a minimum of 200 hotel rooms;
- (b) conference center;
- (c) movie theater showing nationally available movies comparable to Carmike;
- (d) family friendly indoor/outdoor entertainment or tourist-related activity center;
- (e) family friendly recreation facility;
- (f) museum;
- (g) community center;
- (h) microbrewery or distillery that is licensed as a “brewpub” as that term is defined by state licensing law;
- (i) art gallery or arts and crafts store featuring art and crafts created by local, national and international artists;
- (j) retail business primarily selling family friendly men’s and women’s apparel and accessories

such as handbags, jewelry and shoes;

- (k) bank;
- (l) professional or business office;
- (m) national chain sports bar that is open to minors in all areas (comparable to Buffalo Wild Wings, Baumhowers or Mugshots); or
- (n) family-style restaurant appropriate for all members of a family subject the following restrictions: The Property shall not be operated by any restaurant that primarily serves seafood or barbeque, and sales by the restaurant of alcoholic beverages shall be less than 20% of annual combined gross sales.

Any other use of the Property is and will be strictly prohibited unless approved in advance in writing by Grantor, in Grantor's sole discretion. In addition to the foregoing, (a) no tobacco related products may be sold on the Property, (b) the Property shall not be used as an adult video or bookstore or adult theater, lingerie store, pawn shop, night club, gambling establishment, a store dispensing or growing marijuana, gas station, automobile repair or lube facility, liquor store, tattoo or piercing parlor, and (c) without the prior written consent of the Grantor, in Grantor's sole discretion, the Property shall not be operated by any business that would duplicate or materially compete with a business then-operating and located on the property described on Exhibit "A" hereto now owned by Grantor, the City of Foley Public Facilities Cooperative District and/or Coastal Alabama Farmers' and Fishermen's Market, Inc.

The Property is or may in the future be located within close proximity to residential dwellings or other business establishments. Businesses on the Property shall be operated in harmony with such residential dwellings and business establishments so that no undue noises, disruptions or odors are emitted from or about the Property. Any use and occupancy of the Property shall comply with and not violate applicable zoning and/or governmental rules, regulations or use laws and with all applicable laws, guidelines, rules, regulations and requirements whether of Federal, State or Local origin, arising from or pertaining to the use or occupancy of the Property.

2. Reservation by Grantor of an option to purchase the Property on the following terms: In the event Grantee fails to (a) commence construction of hotel containing a minimum of 200 hotel rooms ("Hotel") on or before five (5) months following the date of this conveyance, for any reason other than the City's denial of necessary permits for construction of the Hotel notwithstanding proper application by Grantee, then Grantor shall have the option, upon thirty (30) days written notice to Grantee and failure to cure within said thirty (30) day period by Grantee, to purchase the Property, upon payment or tender of payment to Grantee, its successors and assigns, of an amount equal to the purchase price paid by Grantee to Grantor for the Property.

3. Reservation by Grantor of a right of first refusal to purchase the Property on the terms and conditions specified in any bona fide offer which the Grantee, its successors and assigns, intends to accept. In the event Grantee receives a bona fide offer from a prospective purchaser ("Prospective Purchaser") to purchase the Property (or any portion thereof) which Grantee intends to accept (a "Purchase Offer"), Grantor shall have a right of first refusal to purchase the property on the terms and conditions specified in such Purchase Offer. Upon receipt and approval or acceptance of the terms of the Purchase Offer, the Grantee shall provide written notice of such Purchase Offer ("Offer Notice") to Grantor, including the terms and conditions thereof.

The Grantor shall have thirty (30) days after its receipt of the Offer Notice, including all terms

and conditions thereof, to exercise its right of first refusal, in which event the sale of the Property shall take place on the terms and conditions set forth in the Offer Notice. If Grantor does not exercise its right of first refusal, (a) the Grantee, its successors and assigns, has the right to sell the Property to the prospective purchaser on the terms and conditions set forth in the Offer Notice, and (b) the Grantor's right of first refusal pursuant to this paragraph shall run with the land and apply to any subsequent sales of the Property by the Grantee's successors and assigns including subsequent owners of the Property. The Grantor's right of first refusal set forth herein shall automatically terminate and be of no further force and effect ninety-nine (99) years from the date of recording of this Deed.

4. All existing easements, reservations, zoning restrictions and rights of way of any kind, type or nature; all matters now of record in the Office of the Judge of Probate of Baldwin County, Alabama; all matters which are visible or would be discovered upon an inspection and/or survey of the Property; and any lien for current taxes or assessments which Grantee assumes and agrees to pay when due.

5. Those matters listed on Exhibit "B" attached hereto and incorporated herein by reference.

Together with, all and singular, the rights, benefits, privileges, improvements, tenements, hereditaments and appurtenances unto the same belonging or in any wise appertaining.

TO HAVE AND TO HOLD the Property unto the Grantee and Grantee's successors and assigns, forever.

IN WITNESS WHEREOF, the Grantor has hereunto set its hands and seals on this the ____ day of _____, 2019.

GRANTOR:

CITY OF FOLEY, ALABAMA, an Alabama
municipal corporation

By: _____
Its: _____

ATTEST:

By: _____
Its: _____

STATE OF ALABAMA :

COUNTY OF BALDWIN :

I, the undersigned Notary Public, in and for said County in said State, hereby certify that _____ and _____ whose names as _____ and _____ respectively, of the City of Foley, Alabama, are signed to the foregoing instrument and who are known to me, acknowledged before me on this day that, being informed of the contents of this instrument, they, as such officers and with full authority, executed the same voluntarily for and as the act of said municipal corporation on the day the same bears date.

Given under my hand and seal this the _____ day of _____, 2019.

NOTARY PUBLIC
My Commission Expires: _____
(SEAL)

GRANTOR'S ADDRESS:
407 E. Laurel Avenue
Foley, Alabama 36535

GRANTEE'S ADDRESS:

This Instrument Prepared

Exhibits to be attached to Statutory Warranty Deed:

Exhibit "A" - Property description of PDD Rezoning District (excepting Parcel 2, Wilson Pecan Property, a Minor Subdivision, occupied by Wolf Bay Lodge)

Exhibit "B" – Permitted Title Exceptions (Insert from Title Commitment)

4842-2940-9439, v. 3