

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE A DECLARATION OF  
RESTRICTIVE COVENANTS IN FAVOR OF NATIONAL FISH AND WILDLIFE  
FOUNDATION

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WHEREAS, on March 13, 2020, the City of Foley purchased property from Bill H. Bengtson, Jr., said deed attached hereto as Exhibit "A" (hereinafter the "Property") and

WHEREAS, the Property was purchased, in large part, from funds provided by the National Fish and Wildlife Foundation (hereinafter "NFWF"); and

WHEREAS, NFWF has requested that additional restrictive covenants be placed upon the Property as enumerated in the Declaration attached hereto as Exhibit "B;" and

WHEREAS, the additional restrictive covenants requested by NFWF only burden the property in ways that are surplus or superfluous to the City's intended use; and

WHEREAS, it is in the best interest of the public and the City, and it will promote the public health, safety and welfare of the community to impose the additional restrictions as stated in the Declaration on the Property;

NOW THEREFORE, be it ordained by the City Council of the City of Foley as follows:

1. That the City Council hereby finds and declares that the Declaration attached hereto as Exhibit "B" is reasonable and necessary to fulfill the purposes of the conveyance of the Property and that it is in the best interests of the City to execute the same.
2. That the Mayor and City Clerk of the City of Foley are hereby authorized and directed to execute, acknowledge, attest and deliver a the Declaration attached hereto as Exhibit "B" and to cause same to be recorded in the Probate Records of Baldwin County.
3. That the officers of the City, or any one or more of them, are hereby authorized and directed to do and perform or cause to be done or performed in the name and on behalf of the City such other acts, and execute, deliver, file and record such other instruments, documents, certificates, and notifications, all as shall be required by law or necessary or desirable to carry out the provisions and purposes of this Ordinance.
4. That any prior actions taken or agreements made or documents executed by any officers of the City in connection with the Declaration are hereby ratified, confirmed and approved.
5. That this Ordinance shall take effect immediately after its publication as required by law, and all resolutions, ordinances, orders, or parts thereof in conflict or inconsistent with any provision herein are, to the extent of such conflict or inconsistency, hereby repealed.

PASSED, ADOPTED and APPROVED this the \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Presiding Officer

ATTEST:

\_\_\_\_\_  
CITY CLERK

67-147

STATE OF ALABAMA  
COUNTY OF BALDWIN

BALDWIN COUNTY, ALABAMA  
HARRY D'OLIVE, JR. PROBATE JUDGE  
Filed/cert. 3/17/2020 11:41 AM  
TOTAL \$ 31.00  
7 Pages

1817876

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS: That Bill H. Bengston, Jr., a/k/a Bill H. Bengtson, Jr., a ~~MANMARRIED~~ man ("Grantor"), for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00), and other good and valuable consideration, to Grantor paid by the City of Foley, a Municipal Corporation ("Grantee"), the receipt whereof is hereby acknowledged, does GRANT, BARGAIN, SELL and CONVEY to Grantee, and to the successors in interest and assigns of Grantee, subject to the restrictions, easements, exceptions, and limitations hereinafter described, the several parcels of real property located in Baldwin County, Alabama (collectively the "Property"), and more particularly described on Exhibit A which is attached hereto and made a part hereof by reference.

Together with all and singular the rights, members, privileges, tenements, hereditaments, easements, appurtenances, buildings and improvements thereon and thereunto belonging or in anywise appertaining thereto, in fee simple, FOREVER.

The warranties by Grantor to Grantee are made subject to the following exceptions ("Permitted Exceptions"): to all easements, rights of way, setbacks, drainage-ways and roadways; to all restrictions, restrictive covenants and limitations on use of any part of the Property; to all matters that would be shown by an accurate and complete survey of the Property and an accurate and complete assessment, audit and inspection of the surface and subsurface of the Property; to the flood classifications of the Property; to restrictions, drainage and utility line easements, and notes as to common areas, minimum building setback lines, delineated wetlands shown on the recorded plats of portions of the Property; to all reservations and rights to oil, gas and minerals by predecessors in title; to any portion of the Property lying within the right of way of any public road or utility; to any portion of the Property which may constitute wetlands or tidelands and any restriction on use or development arising out of a determination that the Property, or some portion thereof, may be subject to provisions of the Alabama Coastal Preservation Statutes, the rules and regulations of the Alabama Department of Environmental Management and the Alabama Coastal Area Management Program, and any other governmental authority; and to all ad valorem taxes, as well as all escape, roll-back and recapture taxes, fees and assessments, if any, which Grantee assumes and agrees to pay when due, if Grantee is required to pay and is not exempt from doing so.

SUBJECT TO THE FOLLOWING RESTRICTIVE COVENANTS:

Grantee's use and ownership of the Property, and its successors' and assigns' use and ownership, shall be subject to the following restrictive covenants ("Restrictive Covenants") which shall be perpetual, shall run with the Property, are for the benefit of the National Fish and Wildlife Foundation ("NFWF") as a third party beneficiary as set forth more fully herein, and are binding upon Grantee and its successors and assigns:

A. Purpose. Grantee acknowledges that NFWF provided substantial funds used for Grantee's acquisition of the Property through a grant. In pertinent part, the Grant Agreement between Grantee and NFWF require that the Property be used only in certain ways, and that certain uses be prohibited. It is the purpose of these Restrictive Covenants to comply with the NFWF grant.

B. Restrictions. By acceptance and recordation of this Deed, Grantee covenants and agrees with Grantors and NFWF that:

- (i) NFWF is funding the acquisition of the Property for the purpose of protecting the conservation value of the Property;
- (ii) Grantee shall maintain the Property in perpetuity as a protected area in its natural state consistent with the purpose of preserving and protecting natural habitat, including but not limited to, tidal marshes, maritime forests, wetlands, and freshwater swamps, plants and animals found

- therein, and resource and/or water resources in the Gulf of Mexico region;
- (iii) Grantee shall not conduct or allow activity on or use of the Property that would impair or interfere with the conservation values, character, use, or utility of the Property; and, without limiting the foregoing, Grantee acknowledges and agrees the following activities are expressly prohibited: any commercial, industrial, or residential use of or activity on the Property; activities that may adversely impact threatened, endangered, or otherwise imperiled species; and placement or construction of any buildings or structures other than those reasonably required to carry out the purposes and work of Grantee in relation to the Property;
  - (iv) Activities on and uses for the Property may include: wetlands management; nature reserves; habitat preservation, rehabilitation, and restoration; limited public access in the form of unimproved, unpaved parking areas and access trails for maintenance; buffer zones; and other uses consistent with the conservation value of the Property; and
  - (v) NFWF is the beneficiary of the covenants contained herein.

C. Remedies and Self Help. Employees or agents of NFWF shall have the right but not the obligation upon advance notice to Grantee to enter the Property at all reasonable times for the purpose of inspecting the Property to determine if Grantee is complying with the Restrictive Covenants. If Grantee fails to comply with the Restrictive Covenants, after having been given written notice of such alleged failure and a reasonable opportunity to cure the same, NFWF shall have the right to enforce, by injunction and/or specific performance, the Restrictive Covenants, as well as the right to exercise any other rights or remedies provided by law or in equity, and these rights shall not be waived by one or more incidents of failure to enforce such rights; provided, however, that (i) Grantee shall not be considered to be in violation of the Restrictive Covenants if and to the extent that such noncompliance is caused by: natural disaster outside of human control (such as hurricanes) or exceptions to conveyance of the Property existing on the date of conveyance of the Property from Grantor to Grantee; and (ii) this Deed does not obligate NFWF to enforce the Restrictive Covenants or any other terms of the Deed.

D. Transfers. Subject to the requirements set forth herein, if title to the Property or an interest in some or all of the Property, including a leasehold interest, is transferred to a third party, it must be conveyed subject to a conservation easement that (i) shall be recorded with the deed and shall incorporate all terms and conditions set forth in the Restrictive Covenants, including the easement holder's responsibility to enforce the easement and (ii) names NFWF or its designee as the grantee or third party beneficiary.

E. Proceeds. If the Property is subsequently (a) conveyed or (b) condemned, in whole or in part; Grantee or its successors and assigns, shall use the proceeds of any such conveyance, or condemnation, or any residual value derived therefrom, exclusively to pay for property acquisition or other environmental benefit projects designed to remedy harm or eliminate or reduce the risk of future harm to coastal natural resources in the State of Alabama.

F. Notice. In the event of any subsequent transfer, sale, conveyance or condemnation of the Property, or any part thereof, by Grantee, or its successors and assigns, the then owner of the Property shall give written notice of any such transfer, sale, conveyance, or condemnation to NFWF Senior Vice President, Gulf Environmental Benefit Fund at 1133 15th Street, N.W., Suite 1100, Washington, D.C. 20005, on or before thirty (30) days from the date of any such transfer, sale, conveyance, or condemnation.

The Grantor further represents and warrants that the Property does not constitute the homestead of the Grantor.

TO HAVE AND TO HOLD the same unto the Grantee, and to the successors in interest and assigns of Grantee, FOREVER.

Grantor does, for himself and for his heirs, successors and assigns, covenant with Grantee, its successors and assigns, that Grantor is lawfully seized in fee simple of the Property; that it is free from all encumbrances, except as otherwise stated above; that Grantor has a good right to sell and convey the Property as aforesaid; that Grantor will, and his heirs, successors and assigns shall, warrant and defend the same to the said Grantee, its successors and assigns forever, against the lawful claims of all persons.

IN WITNESS WHEREOF, Grantor has hereunto set his hand and seal this 13<sup>th</sup> day of March, 2020.

GRANTOR:

Bill H. Bengtson, Jr.  
Bill H. Bengtson, Jr.,  
a/k/a Bill H. Bengtson, Jr.

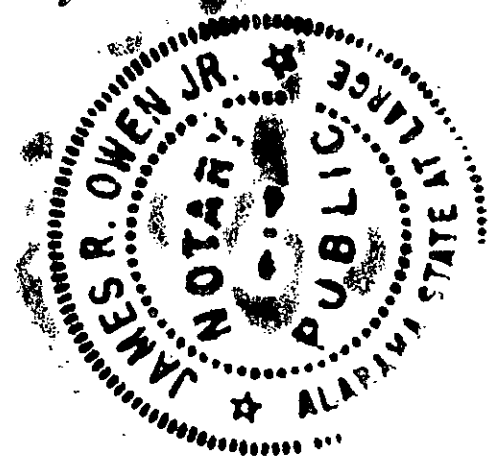
STATE OF ALABAMA  
COUNTY OF BALDWIN

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Bill H. Bengtson, Jr., a/k/a Bill H. Bengtson, Jr., whose name is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he executed the same voluntarily on the day the same bears date.

GIVEN under my hand this 13<sup>th</sup> day of March, 2020.

(Notary Seal)

[Signature]  
NOTARY PUBLIC  
My Commission Expires: 3/18/2020

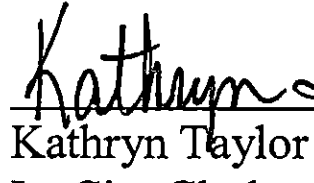


GRANTEE:

CITY OF FOLEY, an Alabama municipal corporation

  
By John Koniar  
Its Mayor

ATTEST:

  
Kathryn Taylor  
Its City Clerk

STATE OF ALABAMA:  
BALDWIN COUNTY:

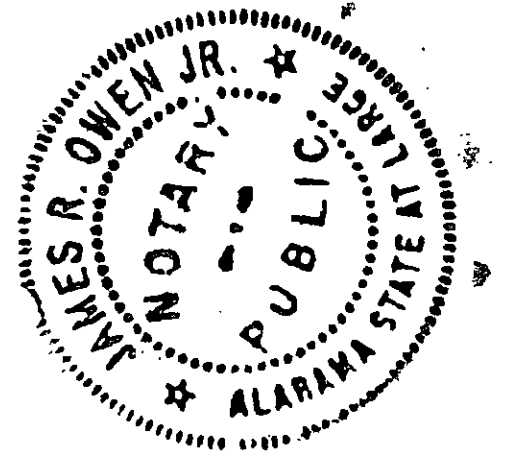
I, a Notary Public in and for said County in said State, hereby certify that John Koniar and Kathryn Taylor, whose names are signed to the foregoing as Mayor and City Clerk, respectively, of the City of Foley, an Alabama municipal corporation, and who are known to me, acknowledged before me on this day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

GIVEN under my hand this 13<sup>th</sup> day of March, 2020.

(Notary Seal)

  
NOTARY PUBLIC

My Commission Expires: 3/18/2020



This instrument prepared by:

CASEY PIPES  
Helmsing, Leach, Herlong, Newman & Rouse, P.C.  
Post Office Box 2767  
Mobile, AL 36652  
(251) 432-5521  
[jcp@helmsinglaw.com](mailto:jcp@helmsinglaw.com)

## EXHIBIT A

COMMENCE AT THE "LOCALLY ACCEPTED" NORTHWEST CORNER OF THE NORTHEAST QUARTER OF SECTION 6, TOWNSHIP 8 SOUTH, RANGE 4 EAST, ST. STEPHENS MERIDIAN, FOR A POINT OF BEGINNING AND RUN THENCE SOUTH 00 DEGREES 01'02" WEST, A DISTANCE OF 1324.15 FEET; THENCE RUN SOUTH 00 DEGREES 02'05" WEST, A DISTANCE OF 1323.57 FEET; THENCE RUN SOUTH 00 DEGREES 03'46" EAST, 1323.55 FEET; THENCE RUN NORTH 89 DEGREES 58'54" EAST, 379.32 FEET TO A POINT ON A DELINEATED WETLANDS LINE;

THENCE RUN NORTHEASTWARDLY, ALONG SAID DELINEATED WETLANDS LINE, THE FOLLOWING COURSES:

NORTH 46 DEGREES 23'09" EAST, 31.08 FEET;  
THENCE RUN NORTH 34 DEGREES 43'32" EAST, 40.21 FEET;  
THENCE RUN NORTH 05 DEGREES 16'59" EAST, 49.63 FEET;  
THENCE RUN NORTH 47 DEGREES 44'46" EAST, 86.55 FEET;  
THENCE RUN NORTH 33 DEGREES 22'15" EAST, 47.89 FEET;  
THENCE RUN NORTH 13 DEGREES 18'32" EAST, 34.47 FEET;  
THENCE RUN NORTH 29 DEGREES 22'45" EAST, 48.10 FEET;  
THENCE RUN NORTH 44 DEGREES 54'16" EAST, 38.90 FEET;  
THENCE RUN NORTH 37 DEGREES 42'32" EAST, 36.55 FEET;  
THENCE RUN NORTH 21 DEGREES 20'09" EAST, 26.86 FEET;  
THENCE RUN NORTH 22 DEGREES 52'10" EAST, 37.63 FEET;  
THENCE RUN NORTH 27 DEGREES 33'39" EAST, 48.01 FEET;  
THENCE RUN NORTH 23 DEGREES 10'36" EAST, 50.91 FEET;  
THENCE RUN NORTH 13 DEGREES 59'52" EAST, 52.47 FEET;  
THENCE RUN NORTH 01 DEGREE 09'26" EAST, 59.35 FEET;  
THENCE RUN NORTH 08 DEGREES 16'41" WEST, 52.10 FEET;  
THENCE RUN NORTH 41 DEGREES 27'38" WEST, 50.94 FEET;  
THENCE RUN NORTH 15 DEGREES 42'03" EAST, 42.64 FEET;  
THENCE RUN NORTH 11 DEGREES 34'46" EAST, 41.54 FEET;  
THENCE RUN NORTH 12 DEGREES 40'25" EAST, 27.82 FEET;  
THENCE RUN NORTH 27 DEGREES 33'18" WEST, 31.49 FEET;  
THENCE RUN NORTH 59 DEGREES 32'20" WEST, 85.68 FEET;  
THENCE RUN NORTH 28 DEGREES 26'49" EAST, 13.96 FEET;  
THENCE RUN SOUTH 67 DEGREES 41'45" EAST, 53.66 FEET;  
THENCE RUN SOUTH 82 DEGREES 37'03" EAST, 44.17 FEET;  
THENCE RUN NORTH 84 DEGREES 21'30" EAST, 33.34 FEET;  
THENCE RUN NORTH 81 DEGREES 18'27" EAST, 43.17 FEET;  
THENCE RUN NORTH 07 DEGREES 04'46" WEST, 28.06 FEET;  
THENCE RUN NORTH 07 DEGREES 11'17" WEST, 43.75 FEET;  
THENCE RUN NORTH 40 DEGREES 49'43" EAST, 38.16 FEET;  
THENCE RUN NORTH 37 DEGREES 34'17" EAST, 38.97 FEET;  
THENCE RUN NORTH 73 DEGREES 18'31" EAST, 34.87 FEET;  
THENCE RUN NORTH 49 DEGREES 24'21" EAST, 44.92 FEET;  
THENCE RUN NORTH 34 DEGREES 37'58" EAST, 44.96 FEET;  
THENCE RUN NORTH 26 DEGREES 26'06" EAST, 54.75 FEET;  
THENCE RUN NORTH 26 DEGREES 06'09" EAST, 44.87 FEET;  
THENCE RUN NORTH 13 DEGREES 40'31" EAST, 66.96 FEET;  
THENCE RUN NORTH 23 DEGREES 33'17" EAST, 41.54 FEET;  
THENCE RUN NORTH 12 DEGREES 00'29" EAST, 52.55 FEET;  
THENCE RUN NORTH 30 DEGREES 23'37" EAST, 46.95 FEET;  
THENCE RUN NORTH 23 DEGREES 18'19" EAST, 47.18 FEET;  
THENCE RUN NORTH 25 DEGREES 31'13" EAST, 48.88 FEET;  
THENCE RUN NORTH 26 DEGREES 49'49" EAST, 57.86 FEET;  
THENCE RUN NORTH 35 DEGREES 36'33" EAST, 62.64 FEET;  
THENCE RUN NORTH 09 DEGREES 37'04" EAST, 73.56 FEET;  
THENCE RUN NORTH 10 DEGREES 28'20" EAST, 45.83 FEET;  
THENCE RUN NORTH 53 DEGREES 26'01" EAST, 51.15 FEET;  
THENCE RUN NORTH 01 DEGREES 59' 46" EAST, 31.91 FEET;  
THENCE RUN NORTH 72 DEGREES 56'38" EAST, 24.53 FEET;  
THENCE RUN NORTH 29 DEGREES 35'16" EAST, 52.73 FEET;  
THENCE RUN NORTH 38 DEGREES 54'26" EAST, 47.97 FEET;  
THENCE RUN NORTH 41 DEGREES 25'52" EAST, 34.40 FEET;  
THENCE RUN NORTH 04 DEGREE 22'22" WEST, 54.26 FEET;  
THENCE RUN NORTH 08 DEGREES 53'37" WEST, 53.35 FEET;  
THENCE RUN NORTH 09 DEGREES 54'07" EAST, 28.96 FEET;

THENCE RUN NORTH 05 DEGREES 22'59" WEST, 31.92 FEET;  
THENCE RUN NORTH 08 DEGREES 32'36" EAST, 42.82 FEET;  
THENCE RUN NORTH 03 DEGREES 27'35" WEST, 48.44 FEET;  
THENCE RUN NORTH 02 DEGREES 33'12" WEST, 37.66 FEET;  
THENCE RUN NORTH 00 DEGREES 35'03" WEST, 32.83 FEET;  
THENCE RUN NORTH 04 DEGREES 16'39" EAST, 64.02 FEET;  
THENCE RUN NORTH 15 DEGREES 32'48" WEST, 60.43 FEET;  
THENCE RUN NORTH 05 DEGREES 40' 22" WEST, 114.73 FEET;  
THENCE RUN NORTH 09 DEGREES 26'15" WEST, 101.01 FEET;  
THENCE RUN NORTH 03 DEGREES 02'30" EAST, 87.60 FEET;  
THENCE RUN NORTH 09 DEGREES 40'21" WEST, 50.11 FEET;  
THENCE RUN NORTH 66 DEGREES 39'40" WEST, 72.62 FEET;  
THENCE RUN NORTH 05 DEGREES 10'36" EAST, 72.20 FEET;  
THENCE RUN NORTH 02 DEGREES 17'31" EAST, 59.41 FEET;  
THENCE RUN NORTH 17 DEGREES 06'56" WEST, 64.87 FEET;  
THENCE RUN NORTH 16 DEGREES 33'19" WEST, 129.10 FEET;  
THENCE RUN NORTH 03 DEGREES 53'31" EAST, 105.33 FEET;  
THENCE RUN NORTH 27 DEGREES 27'56" WEST, 113.93 FEET;  
THENCE RUN NORTH 08 DEGREES 19'24" WEST, 77.31 FEET;  
THENCE RUN NORTH 23 DEGREES 08'36" EAST, 40.81 FEET;  
THENCE RUN NORTH 13 DEGREES 19'29" EAST, 78.33 FEET;  
THENCE RUN NORTH 17 DEGREES 59'30" EAST, 43.08 FEET;  
THENCE RUN NORTH 21 DEGREES 20'29" EAST, 47.17 FEET;  
THENCE RUN NORTH 26 DEGREES 44'53" EAST, 38.37 FEET;  
THENCE RUN NORTH 38 DEGREES 56'30" EAST, 41.02 FEET;  
THENCE RUN NORTH 57 DEGREES 12'35" EAST, 37.01 FEET;  
THENCE RUN NORTH 41 DEGREES 40'12" EAST, 38.36 FEET;  
THENCE RUN NORTH 31 DEGREES 42'23" EAST, 39.46 FEET  
THENCE RUN NORTH 50 DEGREES 09'45" EAST, 37.48 FEET;  
THENCE RUN NORTH 38 DEGREES 18'54" EAST, 52.46 FEET;  
THENCE RUN NORTH 41 DEGREES 11'31" EAST, 40.27 FEET;  
THENCE RUN NORTH 39 DEGREES 43'44" EAST, 40.38 FEET;  
THENCE RUN NORTH 40 DEGREES 35'05" EAST, 37.58 FEET;  
THENCE RUN NORTH 33 DEGREES 07'07" EAST, 39.33 FEET;  
THENCE RUN NORTH 22 DEGREES 21'28" EAST, 39.92 FEET;  
THENCE RUN NORTH 42 DEGREES 30'55" EAST, 35.61 FEET;  
THENCE RUN NORTH 46 DEGREES 58'59" EAST, 18.94 FEET;  
THENCE RUN NORTH 44 DEGREES 40'31" EAST, 23.62 FEET;  
THENCE RUN NORTH 33 DEGREES 16'27" EAST, 26.86 FEET;  
THENCE RUN NORTH 35 DEGREES 01'31" EAST, 38.53 FEET;  
THENCE RUN NORTH 35 DEGREES 01'31" EAST, 22.05 FEET TO A POINT ON THE NORTH LINE  
OF SAID SECTION 6, TOWNSHIP 8 SOUTH, RANGE 4 EAST;

THENCE DEPARTING SAID DELINEATED WETLANDS LINE, RUN NORTH 89 DEGREES 49'33"  
WEST, 1507.13 FEET TO THE POINT OF BEGINNING.

LYING AND BEING IN THE EAST HALF OF SECTION 6, TOWNSHIP 8 SOUTH, RANGE 4 EAST,  
ST. STEPHENS MERIDIAN, BALDWIN COUNTY, ALABAMA



# Real Estate Sales Validation Form

60471

This Document must be filed in accordance with Code of Alabama 1975, Section 40-22-1

Grantor's Name Bill H. Bengston  
 Mailing Address 21450 Bengston Rd  
Robertsdale, AL  
36567

Grantee's Name City of Foley  
 Mailing Address P.O. Box 1750  
Foley, AL 36535

Property Address 93.16 Acres  
Foley, AL 36535

Date of Sale 3/13/2020  
 Total Purchase Price \$ 1,178,000.00

or  
 Actual Value \$ \_\_\_\_\_

or  
 Assessor's Market Value \$ \_\_\_\_\_

The purchase price or actual value claimed on this form can be verified in the following documentary evidence: (check one) (Recordation of documentary evidence is not required)

- ☐ Bill of Sale  
☐ Sales Contract  
☒ Closing Statement

- ☐ Appraisal  
☐ Other \_\_\_\_\_

If the conveyance document presented for recordation contains all of the required information referenced above, the filing of this form is not required.

## Instructions

Grantor's name and mailing address - provide the name of the person or persons conveying interest to property and their current mailing address.

Grantee's name and mailing address - provide the name of the person or persons to whom interest to property is being conveyed.

Property address - the physical address of the property being conveyed, if available.

Date of Sale - the date on which interest to the property was conveyed.

Total purchase price - the total amount paid for the purchase of the property, both real and personal, being conveyed by the instrument offered for record.

Actual value - if the property is not being sold, the true value of the property, both real and personal, being conveyed by the instrument offered for record. This may be evidenced by an appraisal conducted by a licensed appraiser or the assessor's current market value.

If no proof is provided and the value must be determined, the current estimate of fair market value, excluding current use valuation, of the property as determined by the local official charged with the responsibility of valuing property for property tax purposes will be used and the taxpayer will be penalized pursuant to Code of Alabama 1975 § 40-22-1 (h).

I attest, to the best of my knowledge and belief that the information contained in this document is true and accurate. I further understand that any false statements claimed on this form may result in the imposition of the penalty indicated in Code of Alabama 1975 § 40-22-1 (h).

Date 3/13/2020

Print James R. Owens, Jr.

☒ Unattested

Sign \_\_\_\_\_

(verified by)

(Grantor/Grantee/Owner/Agent) circle one

Print Form

Form RT-1

COUNTY OF BALDWIN

STATE OF ALABAMA

### DECLARATION OF RESTRICTIVE COVENANTS

This Declaration of Restrictive Covenants ("Declaration") is made and entered into as of the \_\_\_\_ day of August 2020, by the City of Foley, a municipal corporation (the "Declarant").

#### WITNESSETH:

WHEREAS, the Declarant is the owner of that certain real property located in Baldwin County, Alabama which is described on Exhibit "A" attached hereto and incorporated herein by this reference (the "Property") by reason of a Warranty Deed from Bill H. Bengston, Jr. which is recorded in the Probate Office of Baldwin County, Alabama, at Instrument Number 1817876 (the "Deed");

WHEREAS, a portion of the funds Declarant used for Declarant's acquisition of the Property were made available in order to implement certain terms set forth in plea agreements entered as judgment in the cases captioned as United States v. BP Exploration and Production, Inc., Case No. 2:12-cr-00292-SSV (E.D. La.), and/or United States v. Transocean Deepwater Inc., Case No. 2:13-cr-00001-JTM (E.D. La.) (together, the "Plea Agreements");

WHEREAS, compliance with the Plea Agreements' requirements and funds for the acquisition of the Property were administered through and monitored by the National Fish and Wildlife Foundation ("NFWF") through NFWF's Gulf Environmental Benefit Fund ("GEBF");

WHEREAS, as a condition to receiving GEBF funding, GEBF required Restrictive Covenants be placed on the Property; and

WHEREAS, the Deed contained errors in the Restrictive Covenants contained therein and Declarant wished to correct said errors by replacing the Restrictive Covenants contained in the Deed in their entirety;

NOW, THEREFORE, the Declarant hereby submits and subjects the Property to the following revised RESTRICTIVE COVENANTS:

Declarant's use and ownership of the Property, and its successors' and assigns' use and ownership, shall be subject to the following restrictive covenants ("Restrictive Covenants") which shall be perpetual, shall run with the Property, are for the benefit of the National Fish and Wildlife Foundation ("NFWF") as set forth more fully herein, and are binding upon Declarant and its successors and assigns:

- A. Purpose. Declarant acknowledges that a portion of the funds Declarant used for Declarant's acquisition of the Property were

made available in order to implement certain terms set forth in plea agreements entered as judgment in the cases captioned as United States v. BP Exploration and Production, Inc., Case No. 2:12-cr-00292-SSV (E.D. La.), and/or United States v. Transocean Deepwater Inc., Case No. 2:13-cr-00001-JTM (E.D. La.) (together, the “Plea Agreements”). In pertinent part, the Plea Agreements require that the funds used for Declarant’s acquisition of the Property be used only to “remedy harm and eliminate or reduce the risk of future harm to Gulf Coast natural resources, [and] to conduct or fund projects to remedy harm to resources where there has been injury to, or destruction of, loss of, or loss of use of those resources resulting from the Macondo oil spill.” Compliance with the Plea Agreements’ requirements and funds for the acquisition of the Property are administered through and monitored by NFWF, with an address of 1133 15th Street, N.W., Suite 1000, Washington, D.C. 20005 through NFWF’s Gulf Environmental Benefit Fund (“GEBF”).

- B. Restrictions. By acceptance and recordation of this Declaration, Declarant covenants and agrees with NFWF that:
- (i) NFWF is funding a portion of the cost of the Property’s acquisition for the purposes of enabling the Declarant’s design and development of a water quality improvement system and restoration of riverine wetlands in order to improve water quality to Bon Secour River and Bon Secour Bay (altogether, the “Purposes”);
  - (ii) Declarant shall use and allow the use of the Property only for the Purposes;
  - (iii) Declarant shall not conduct or allow activity on or use of the Property that would impair or interfere with the Purposes; and, without limiting the foregoing, Declarant acknowledges and agrees the following activities are expressly prohibited: any commercial, industrial, or residential use of or activity on the Property; activities that may adversely impact water quality or threatened, endangered, or otherwise imperiled species on the Property; and placement or construction of any buildings or structures other than those reasonably required to carry out the Purposes in relation to the Property;
  - (iv) Activities on and uses for the Property may include: wetlands management; nature reserves; habitat preservation, rehabilitation, and restoration; limited public access in the form of unimproved, unpaved parking areas and access trails for maintenance; buffer zones; and other uses consistent with the Purposes; and
  - (v) NFWF is the beneficiary of the covenants contained herein, which shall be perpetual and run with the Property.

C. Proceeds. If the Property is subsequently (a) conveyed or (b) condemned, in whole or in part; Declarant or its successors and assigns, shall use the proceeds of any such conveyance, or condemnation, or any residual value derived therefrom, exclusively to pay for property acquisition or other environmental benefit projects designed to remedy harm or eliminate or reduce the risk of future harm to coastal natural resources in the State of Alabama.

D. Notice. In the event of any subsequent transfer, sale, conveyance or condemnation of the Property, or any part thereof, by Declarant, or its successors and assigns, the then owner of the Property shall give written notice of any such transfer, sale, conveyance, or condemnation to NFWF Senior Vice President, GEBF at 1133 15th Street, N.W., Suite 1000, Washington, D.C. 20005, on or before thirty (30) days from the date of any such transfer, sale, conveyance, or condemnation.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be duly executed as of the day and year first above written.

**Declarant:**

CITY OF FOLEY, an Alabama municipal corporation

\_\_\_\_\_  
By John Koniar  
Its Mayor

ATTEST:

\_\_\_\_\_  
Kathryn Taylor  
Its City Clerk

STATE OF ALABAMA  
BALDWIN COUNTY

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

GIVEN under my hand this\_\_\_\_ day of August 2020.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:\_\_\_\_\_

This instrument prepared by:

CASEY PIPES

Helmsing, Leach, Herlong, Newman & Rouse, P.C.

Post Office Box 2767

Mobile, AL 36652

[\(251\) 432-5521](tel:2514325521)

[jcp@helmsinglaw.com](mailto:jcp@helmsinglaw.com)

EXHIBIT A

COMMENCE AT THE "LOCALLY ACCEPTED" NORTHWEST CORNER OF THE NORTHEAST QUARTER OF SECTION 6, TOWNSHIP 8 SOUTH, RANGE 4 EAST, ST. STEPHENS MERIDIAN, FOR A POINT OF BEGINNING AND RUN THENCE SOUTH 00 DEGREES 01'02" WEST, A DISTANCE OF 1324.15 FEET; THENCE RUN SOUTH 00 DEGREES 02'05" WEST, A DISTANCE OF 1323.57 FEET; THENCE RUN SOUTH 00 DEGREES 03'46" EAST, 1323.55 FEET; THENCE RUN NORTH 89 DEGREES 58'54" EAST, 379.32 FEET TO A POINT ON A DELINEATED WETLANDS LINE;

THENCE RUN NORTHEASTWARDLY, ALONG SAID DELINEATED WETLANDS LINE, THE FOLLOWING COURSES:

NORTH 46 DEGREES 23'09" EAST, 31.08 FEET;  
THENCE RUN NORTH 34 DEGREES 43'32" EAST, 40.21 FEET;  
THENCE RUN NORTH 05 DEGREES 16'59" EAST, 49.63 FEET;  
THENCE RUN NORTH 47 DEGREES 44'46" EAST, 86.55 FEET;  
THENCE RUN NORTH 33 DEGREES 22'15" EAST, 47.89 FEET;  
THENCE RUN NORTH 13 DEGREES 18'32" EAST, 34.47 FEET;  
THENCE RUN NORTH 29 DEGREES 22'45" EAST, 48.10 FEET;  
THENCE RUN NORTH 44 DEGREES 54'16" EAST, 38.90 FEET;  
THENCE RUN NORTH 37 DEGREES 42'32" EAST, 36.55 FEET;  
THENCE RUN NORTH 21 DEGREES 20'09" EAST, 26.86 FEET;  
THENCE RUN NORTH 22 DEGREES 52'10" EAST, 37.63 FEET;  
THENCE RUN NORTH 27 DEGREES 33'39" EAST, 48.01 FEET;  
THENCE RUN NORTH 23 DEGREES 10'36" EAST, 50.91 FEET;  
THENCE RUN NORTH 13 DEGREES 59'52" EAST, 52.47 FEET;  
THENCE RUN NORTH 01 DEGREE 09'26" EAST, 59.35 FEET;  
THENCE RUN NORTH 08 DEGREES 16'41" WEST, 52.10 FEET;  
THENCE RUN NORTH 41 DEGREES 27'38" WEST, 50.94 FEET;  
THENCE RUN NORTH 15 DEGREES 42'03" EAST, 42.64 FEET;  
THENCE RUN NORTH 11 DEGREES 34'46" EAST, 41.54 FEET;  
THENCE RUN NORTH 12 DEGREES 40'25" EAST, 27.82 FEET;  
THENCE RUN NORTH 27 DEGREES 33'18" WEST, 31.49 FEET;  
THENCE RUN NORTH 59 DEGREES 32'20" WEST, 85.68 FEET;  
THENCE RUN NORTH 28 DEGREES 26'49" EAST, 13.96 FEET;  
THENCE RUN SOUTH 67 DEGREES 41'45" EAST, 53.66 FEET;  
THENCE RUN SOUTH 82 DEGREES 37'03" EAST, 44.17 FEET;  
THENCE RUN NORTH 84 DEGREES 21'30" EAST, 33.34 FEET;  
THENCE RUN NORTH 81 DEGREES 18'27" EAST, 43.17 FEET;  
THENCE RUN NORTH 07 DEGREES 04'46" WEST, 28.06 FEET;  
THENCE RUN NORTH 07 DEGREES 11'17" WEST, 43.75 FEET;  
THENCE RUN NORTH 40 DEGREES 49'43" EAST, 38.16 FEET;  
THENCE RUN NORTH 37 DEGREES 34'17" EAST, 38.97 FEET;  
THENCE RUN NORTH 73 DEGREES 18'31" EAST, 34.87 FEET;

THENCE RUN NORTH 49 DEGREES 24'21" EAST, 44.92 FEET;  
THENCE RUN NORTH 34 DEGREES 37'58" EAST, 44.96 FEET;  
THENCE RUN NORTH 26 DEGREES 26'06" EAST, 54.75 FEET;  
THENCE RUN NORTH 26 DEGREES 06'09" EAST, 44.87 FEET;  
THENCE RUN NORTH 13 DEGREES 40'31" EAST, 66.96 FEET;  
THENCE RUN NORTH 23 DEGREES 33'17" EAST, 41.54 FEET;  
THENCE RUN NORTH 12 DEGREES 00'29" EAST, 52.55 FEET;  
THENCE RUN NORTH 30 DEGREES 23'37" EAST, 46.95 FEET;  
THENCE RUN NORTH 23 DEGREES 18'19" EAST, 47.18 FEET;  
THENCE RUN NORTH 25 DEGREES 31'13" EAST, 48.88 FEET;  
THENCE RUN NORTH 26 DEGREES 49'49" EAST, 57.86 FEET;  
THENCE RUN NORTH 35 DEGREES 36'33" EAST, 62.64 FEET;  
THENCE RUN NORTH 09 DEGREES 37'04" EAST, 73.56 FEET;  
THENCE RUN NORTH 10 DEGREES 28'20" EAST, 45.83 FEET;  
THENCE RUN NORTH 53 DEGREES 26'01" EAST, 51.15 FEET;  
THENCE RUN NORTH 01 DEGREES 59' 46" EAST, 31.91 FEET;  
THENCE RUN NORTH 72 DEGREES 56'38" EAST, 24.53 FEET;  
THENCE RUN NORTH 29 DEGREES 35'16" EAST, 52.73 FEET;  
THENCE RUN NORTH 38 DEGREES 54'26" EAST, 47.97 FEET;  
THENCE RUN NORTH 41 DEGREES 25'52" EAST, 34.40 FEET;  
THENCE RUN NORTH 04 DEGREE 22'22" WEST, 54.26 FEET;  
THENCE RUN NORTH 08 DEGREES 53'37" WEST, 53.35 FEET;  
THENCE RUN NORTH 09 DEGREES 54'07" EAST, 28.96 FEET;  
THENCE RUN NORTH 05 DEGREES 22'59" WEST, 31.92 FEET;  
THENCE RUN NORTH 08 DEGREES 32'36" EAST, 42.82 FEET;  
THENCE RUN NORTH 03 DEGREES 27'35" WEST, 48.44 FEET;  
THENCE RUN NORTH 02 DEGREES 33'12" WEST, 37.66 FEET;  
THENCE RUN NORTH 00 DEGREES 35'03" WEST, 32.83 FEET;  
THENCE RUN NORTH 04 DEGREES 16'39" EAST, 64.02 FEET;  
THENCE RUN NORTH 15 DEGREES 32'48" WEST, 60.43 FEET;  
THENCE RUN NORTH 05 DEGREES 40' 22" WEST, 114.73 FEET;  
THENCE RUN NORTH 09 DEGREES 26'15" WEST, 101.01 FEET;  
THENCE RUN NORTH 03 DEGREES 02'30" EAST, 87.60 FEET;  
THENCE RUN NORTH 09 DEGREES 40'21" WEST, 50.11 FEET;  
THENCE RUN NORTH 66 DEGREES 39'40" WEST, 72.62 FEET;  
THENCE RUN NORTH 05 DEGREES 10'36" EAST, 72.20 FEET;  
THENCE RUN NORTH 02 DEGREES 17'31" EAST, 59.41 FEET;  
THENCE RUN NORTH 17 DEGREES 06'56" WEST, 64.87 FEET;  
THENCE RUN NORTH 16 DEGREES 33'19" WEST, 129.10 FEET;  
THENCE RUN NORTH 03 DEGREES 53'31" EAST, 105.33 FEET;  
THENCE RUN NORTH 27 DEGREES 27'56" WEST, 113.93 FEET;  
THENCE RUN NORTH 08 DEGREES 19'24" WEST, 77.31 FEET;  
THENCE RUN NORTH 23 DEGREES 08'36" EAST, 40.81 FEET;  
THENCE RUN NORTH 13 DEGREES 19'29" EAST, 78.33 FEET;  
THENCE RUN NORTH 17 DEGREES 59'30" EAST, 43.08 FEET;  
THENCE RUN NORTH 21 DEGREES 20'29" EAST, 47.17 FEET;

THENCE RUN NORTH 26 DEGREES 44'53" EAST, 38.37 FEET;  
THENCE RUN NORTH 38 DEGREES 56'30" EAST, 41.02 FEET;  
THENCE RUN NORTH 57 DEGREES 12'35" EAST, 37.01 FEET;  
THENCE RUN NORTH 41 DEGREES 40'12" EAST, 38.36 FEET;  
THENCE RUN NORTH 31 DEGREES 42'23" EAST, 39.46 FEET  
THENCE RUN NORTH 50 DEGREES 09'45" EAST, 37.48 FEET;  
THENCE RUN NORTH 38 DEGREES 18'54" EAST, 52.46 FEET;  
THENCE RUN NORTH 41 DEGREES 11'31" EAST, 40.27 FEET;  
THENCE RUN NORTH 39 DEGREES 43'44" EAST, 40.38 FEET;  
THENCE RUN NORTH 40 DEGREES 35'05" EAST, 37.58 FEET;  
THENCE RUN NORTH 33 DEGREES 07'07" EAST, 39.33 FEET;  
THENCE RUN NORTH 22 DEGREES 21'28" EAST, 39.92 FEET;  
THENCE RUN NORTH 42 DEGREES 30'55" EAST, 35.61 FEET;  
THENCE RUN NORTH 46 DEGREES 58'59" EAST, 18.94 FEET;  
THENCE RUN NORTH 44 DEGREES 40'31" EAST, 23.62 FEET;  
THENCE RUN NORTH 33 DEGREES 16'27" EAST, 26.86 FEET;  
THENCE RUN NORTH 35 DEGREES 01'31" EAST, 38.53 FEET;  
THENCE RUN NORTH 35 DEGREES 01'31" EAST, 22.05 FEET TO A POINT ON THE  
NORTH LINE OF SAID SECTION 6, TOWNSHIP 8 SOUTH, RANGE 4 EAST;

THENCE DEPARTING SAID DELINEATED WETLANDS LINE, RUN NORTH 89  
DEGREES 49'33" WEST, 1507.13 FEET TO THE POINT OF BEGINNING.

LYING AND BEING IN THE EAST HALF OF SECTION 6, TOWNSHIP 8 SOUTH, RANGE  
4 EAST, ST. STEPHENS MERIDIAN, BALDWIN COUNTY, ALABAMA