

STATE OF ALABAMA
COUNTY OF BALDWIN

PURCHASE AGREEMENT

This Purchase Agreement (this "Agreement") is entered into by and between **City of Foley, Alabama**, an Alabama municipal corporation ("Seller"), 407 E. Laurel Avenue, Foley, Alabama 36535, **Wolf Bay Lodge, Inc.**, an Alabama corporation ("Purchaser"), with its address of 20801 Miflin Road, Foley, Alabama 36535, and the **City of Foley Public Facilities Cooperative District**, an Alabama public corporation (the "Cooperative District"), 407 E. Laurel Avenue, Foley, Alabama 36535, effective as of the date of Closing.

Whereas, Seller is the owner of that certain improved real property located at 20801 Miflin Road, Foley, Alabama 36535, as more particularly described on Exhibit "A" attached hereto and made a part hereof (the said real property and the improvements thereon are hereinafter collectively referred to as the "Property"); and

Whereas, the Cooperative District is the lessee under that certain Ground Lease executed June 15, 2010 between the Seller and the Cooperative District, as amended by that certain First Amendment to Ground Lease dated May 15, 2013 and Second Amendment to Ground Lease dated June 9, 2014 (as amended, the "Ground Lease"); and

Whereas, Purchaser is the sub-lessee and current occupant of the Property pursuant to that certain Agreement for Sublease dated June 15, 2010 between the Cooperative District and the Purchaser, as amended by that certain First Lease Amendment dated February 1, 2011, Second Lease Amendment dated August 31, 2011, and Third Amendment to Agreement for Sublease dated June 18, 2013 (as amended, the "Sublease"); and

Whereas, Seller wishes to sell, and Purchaser wishes to acquire from Seller, the Property, and the parties desire to terminate the Ground Lease and the Sublease, subject to the terms and conditions hereof.

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

1. **Purchase and Sale.** Subject to the terms and conditions of this Agreement, Seller hereby agrees to sell and convey to Purchaser, and Purchaser hereby agrees to purchase from Seller, the Property.

2. **Purchase Price.** The purchase price for the Property shall be One Million Three Hundred Thousand and No/100 Dollars (\$1,300,000.00) (the "Purchase Price"). The Purchase Price shall be paid to Seller pursuant to the following terms:

- (a) cash at Closing in the amount of Two Hundred Sixty Thousand and No/100 Dollars (\$260,000.00), by wire transfer of immediately available funds satisfactory to Seller; and
- (b) at the Closing, Purchaser shall execute a promissory note (the "Note") to Seller in the principal amount of One Million Forty Thousand and No/100 Dollars (\$1,040,000.00), in form and content satisfactory to Seller, with payment of the principal amount amortized over 15 years (180 months) at an initial interest rate of 4.5% per annum for the first

ninety (90) months.

Effective on the first day of the 91st month of the Note (August ____, 2022), the monthly payment of principal and interest due under the Note shall be adjusted as follows: The remaining principal balance as of August __, 2022 shall be amortized over 7.5 years (90 months) at the New Interest Rate (as hereinafter defined). The New Interest Rate will be 4.5%, increased or decreased, as the case may be, by the difference in the 10 Year Treasury Note Rate on February __, 2015 and the 10 Year Treasury Note Rate on August __, 2022, subject to the following limitations: The maximum amount of the New Interest Rate shall be 6.5% per annum and the minimum amount of the New Interest Rate shall be 3.5% per annum.

- (c) The Note shall be secured by (i) vendor's lien (the "Vendor's Lien") as to the Property, in form and content satisfactory to Seller, and (ii) a personal guaranty agreement (the "Guaranty Agreement"), in form and content satisfactory to Seller, executed by Charlene W. Habor (the "Guarantor") guaranteeing the obligations of Purchaser under the Note and Vendor's Lien.
- (d) No additional mortgage or lien shall be permitted against the Property.

3. Closing. The closing of the transaction contemplated by this Agreement (the "Closing") will occur simultaneously with the execution of this Agreement at Foley City Hall, 407 E. Laurel Avenue, Foley, Alabama 36535.

4. Property Restrictions; Reserved Rights.

(a) **Use Restriction.** The conveyance at Closing will be subject to a restrictive covenant requiring that the Property shall be used and occupied by Purchaser only for a first class sit down family style restaurant serving a variety of foods commensurate with Purchaser's current "Wolf Bay" restaurant operations and to sell apparel in a gift store relating to the restaurant's business and trade name, and for no other purpose. Sales by Purchaser of alcoholic beverages shall only be made (i) when incidental to the sale of the aforesaid foods (subject to Purchaser maintaining all applicable liquor licenses), and (ii) during the hours of full restaurant operation in the bar area as shown on Exhibit "B" attached hereto. Any other use of the Property is and will be strictly prohibited. No bar (other than as permitted in the immediately preceding sentence), sports bar or similar business shall be operated on the Property, notwithstanding the sale of food. Purchaser acknowledges that the Property is or may in the future be located within close proximity to residential dwellings or other business establishments, as well as the adjacent Farmer's and Fishermen's Market. Purchaser shall operate its business in harmony with such residential dwellings, establishments and the Farmer's and Fishermen's Market and shall ensure that no undue noises, disruptions or odors are emitted from or about the Property so as to disturb the residents of the residential dwellings or other business establishments or Farmer's and Fishermen's Market. Any such use by the Purchaser shall be in compliance with and not in violation of any local zoning and/or applicable governmental rules, regulations or use laws. Purchaser shall promptly comply with all applicable laws, guidelines, rules, regulations and requirements whether of Federal, State or Local origin, applicable to the Property, including those for the correction, prevention and abatement of nuisance, unsafe conditions, or other grievances arising from or pertaining to the use or occupancy of the Property, and Purchaser specifically agrees that Purchaser shall not use the Property in any way or manner that would violate any governmental and environmental rule, regulation, or law or that would cause any liability of any kind or nature to Seller under any such rule, regulation or law, and Purchaser does hereby agree to indemnify and hold harmless Seller from any and all damages of every kind or nature arising out

of the violation of the terms and provisions hereof, including attorneys' fees and costs at trial and on appeal.

(b) **Option to Repurchase.** Purchaser agrees that Seller will retain and be granted an option to purchase the Property on the following terms: In the event Purchaser or its successors and assigns fail to utilize or cease utilizing the Property as a restaurant commensurate with Purchaser's current "Wolf Bay" restaurant operation or otherwise vacates the Property for at least six (6) months out of any twelve (12) month period following the date of recording of the Deed, then Seller shall have the option to purchase the Property, free and clear of any liens or encumbrances, upon payment or tender of payment to Purchaser, or its successors and assigns as applicable, of an amount equal to the fair market value of the land and improvements as determined by a licensed Alabama M.A.I. appraiser employing the Marshall Valuation Service, less any amounts remaining owed under the Note. The Seller's option to purchase (a) may be exercised within sixty (60) days following each anniversary of the recording of the deed in the event the Purchaser or Purchaser's successors and assigns fail to utilize or cease utilizing the Property as set forth above, and (b) shall automatically terminate and be of no further force and effect ninety-nine (99) years from the date of recording of the Deed.

(c) **Right of First Refusal.** Seller will also retain and be granted a right of first refusal to purchase the Property on the terms and conditions specified in any bona fide offer which the Purchaser or its successors and assigns intends to accept. The Seller shall have thirty (30) days after its receipt of the offer, 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 the Seller does not exercise its right of first refusal, (a) the Purchaser or the Purchaser's successors and assigns as applicable may sell the Property to the prospective purchaser on the terms and conditions set forth in the offer, and (b) the Seller'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 Purchaser's successors and assigns including subsequent owners of the Property. The Seller'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.

(d) **Parking Area Easement.** Purchaser acknowledges that City has developed the Property and the adjacent Farmers' and Fishermen's Market property (the "Farmers' Market Property") as part of an economic development plan for the benefit of the City of Foley community and the public at large. Purchaser further acknowledges that the Farmers' Market Property is currently owned by Coastal Alabama Farmers' and Fishermen's Market, Inc., an Alabama non-profit corporation ("CAFFM"). Prior to Closing, Seller will record an Easement Agreement in the form attached hereto as Exhibit "C" granting to CAFFM the rights set forth therein, and the Easement Agreement shall be included in the Permitted Exceptions to title.

5. **Title Approval.** Seller has previously delivered to Purchaser a commitment ("Title Commitment") from _____ (the "Title Company") for an owner's title insurance policy ("Owner's Policy"), along with copies of any items listed as title exceptions therein. Any title 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 Exceptions").

6. **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, Purchaser and the Cooperative District, as applicable:

- (a) A Statutory Warranty Deed with Vendor's Lien Retained (the "Deed") in customary form prepared in accordance with the Title Commitment, subject to the Permitted Exceptions

and the property restrictions and reserved rights described in paragraph 4;

- (b) The Easement Agreement executed by the Seller, CAFFM and Purchaser;
- (c) Termination of Ground Lease executed by Seller and the Cooperative District;
- (d) Termination of Agreement for Sublease executed by the Cooperative District and the Purchaser;
- (e) Promissory Note executed by Purchaser;
- (f) Guaranty Agreement executed by Charlene W. Haber;
- (g) UCC Financing Statement(s);
- (h) Settlement Statement prepared in accordance with this Agreement;
- (i) The Owner's Policy;
- (j) 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.

7. Closing Costs and Expenses; Pay off of Change Order Cost.

(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 charge for the Owner's Policy, (iii) one-half of any closing fee charged by the Title Company, and (iv) Purchaser's attorney fees.

(b) Seller shall pay (i) one-half of any closing fee charged by the Title Company, and (ii) Seller's attorney fees.

(c) Rent due under the Agreement for Sublease shall be pro-rated as between the Cooperative District and the Purchaser as of the Closing Date.

(d) The amount of \$9,728.44, plus interest at the rate of 3% per annum from September 2, 2014 to the Closing Date, shall be paid at Closing by Purchaser to the Cooperative District, representing the remaining principal amount plus accrued interest due under the Second Lease Amendment dated August 31, 2011 between the Cooperative District and Purchaser.

(e) 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.

(f) [Discuss handling of credit for local sales tax/cooperative district sale fee under section 3(f) of the Agreement for Sublease]

(g) [other?]

8. **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.

9. **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 made for any such commission, finder's fee or compensation.

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

11. **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. Any notice so given, delivered or made by mail shall be deemed to have been duly given, delivered or made when received at the above-stated address. Either party may change the address to which notices are to be sent to such party by written notice to the other party specifying such change of address.

12. **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.

13. **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.

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

SELLER:

CITY OF FOLEY, ALABAMA

By: _____
As its: _____
Date: _____

PURCHASER:

WOLF BAY LODGE, INC.

By: _____
As its: _____
Date: _____

**CITY OF FOLEY PUBLIC FACILITIES
COOPERATIVE DISTRICT**

By: _____
As its: _____
Date: _____

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