

STATE OF ALABAMA  
COUNTY OF BALDWIN

### **PURCHASE AGREEMENT**

This Purchase Agreement ("Agreement") is entered into by and between DFC, L.L.C., an Alabama limited liability company ("Seller") and the CITY OF FOLEY, ALABAMA, an Alabama municipal corporation ("Purchaser"). The effective date of this Agreement shall be the date of execution by both Seller and Purchaser (the "Effective Date").

#### **Recitals**

**WHEREAS**, Seller is the owner of certain real property located in Baldwin County, Alabama and more specifically described as follows, to-wit:

Lots 16, 17, 18 and 19, Block 11 of Magnolia Springs Land Company Subdivision of Foley, Alabama, according to the plat thereof recorded in Map Book 1, Page 25 in the Office of the Judge of Probate of Baldwin County, Alabama

(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 TWO HUNDRED FIFTY THOUSAND and No/100 Dollars (\$250,000.00) (the "Purchase Price"). The Purchase Price shall be paid to Seller at Closing in immediately available funds satisfactory to Seller.

3. Earnest Money. Within five (5) business days after the Effective Date, if not previously provided, Purchaser shall deliver to the Title Company (defined below) earnest money in the amount of FIVE THOUSAND and No/100 (\$5,000.00) (the "Earnest Money"). 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. If the sale of the Property is not consummated for any reason other than a breach by the Purchaser, then the Earnest Money shall be refunded to Purchaser. If the sale of the Property is not consummated due to a breach of this Agreement by Purchaser, then the Earnest Money shall be paid to the Seller as liquidated damages, and neither Seller nor Purchaser shall have any further obligation or liability to the other hereunder.

4. Title Insurance. Within thirty (30) days following the Effective Date, the Purchaser will cause Gulf Shores Title Co. (the "Title 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 permitted exceptions to the status of Seller's title unless Purchaser objects in writing within thirty (30) days of its receipt of the Title Commitment and the documents referenced as title exceptions. Any title exceptions not objected to shall be deemed permitted and acceptable to Purchaser (the "Permitted Title Exceptions"). The premiums for the Owner's Title Policy and for the Title Commitment fees shall be paid by the Purchaser.

5. Survey. Seller will provide Purchaser, within thirty (30) days of the Effective Date, with any existing surveys of the Property in Seller's possession. Purchaser reserves the right to perform its own survey at Purchaser's expense at any time prior to Closing.

6. Closing. Unless otherwise agreed, the closing of the purchase of the Property ("Closing") shall take place through the offices of the Title Company located at 120 Cove Avenue, Gulf Shores, Alabama 36542. The Closing shall occur on the forty-fifth (45<sup>th</sup>) day following the Purchaser's receipt of the Title Commitment and title exception documents.

7. City Council Approval Contingency. This Agreement and the Purchaser's obligation to purchase 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. This approval will be granted within thirty (30) days from the Effective Date.

8. 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 in Alabama standard form conveying the Property to Purchaser, subject only to the lien for current ad valorem taxes and the Permitted Exceptions;
- (b) Settlement Statement prepared in accordance with this Agreement;
- (c) The Owner's Title Policy;
- (d) A Non-Foreign Status Affidavit and Certificate in customary form to be provided by the Title Company; and
- (e) Such authorizations, affidavits, organizational documents, proof of existence and good standing and other instruments as the Title Company shall require, including, without limitation, affidavits required by the Title Company to delete the standard exceptions to the Title Commitment concerning such matters as mechanic's liens, parties in possession and the gap, and such other and additional documents or instruments as may be required of Seller or Purchaser, under the terms of this Agreement, to complete the sale and purchase of the Property.

9. Additional Closing Costs and Expenses. Purchaser shall pay for the costs to prepare the Deed, the closing and escrow fee charged by the Title Company, all costs to record the Deed together with any transfer fees, documentary stamps, taxes or other charges or assessments in connection with the recording of the Deed and other closing documents, as applicable, and all other charges. Purchaser shall pay for the premium for the Title Policy and Title Commitment. Real estate taxes and assessments, if any, with respect to the Property shall be prorated based upon the best estimate available to the Title Company. Any proration based on an estimate will be prorated between the parties upon receipt of the actual tax bill upon the request of either party.

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

11. Commission. Seller and Purchaser hereby represent and warrant to each other that neither is represented by a real estate company, and no commission will be due or payable to any agent, broker, salesman, or other persons or entities.

12. 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.

13. 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 below. Any notice so given, delivered or made by mail shall be deemed to have been duly given, delivered or made when received at such 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.

To Purchaser:           The City of Foley, Alabama  
Attn: City Clerk  
407 E. Laurel Avenue  
Foley, Alabama 36535  
Email: [ktaylor@cityoffoley.org](mailto:ktaylor@cityoffoley.org)

With a copy to:       Helmsing, Leach, Herlong, Newman & Rouse, P.C.  
Attn: Casey Pipes  
150 Government Street, Suite 2000  
Mobile, Alabama 36602  
Email: [jcp@helmsinglaw.com](mailto:jcp@helmsinglaw.com)

To Seller:               DCF, L.L.C.  
Attn. Charles L. Dyas, Jr., Manger  
636 Tuthill Lane

Mobile, AL 36608  
c\_dyas@bellsouth.net

With a copy to: Eric J. Dyas  
37881 State Highway 225  
Bay Minette, Alabama 36507  
ericdyas01@gmail.com

14. Miscellaneous. 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, representations or warranties with respect to the subject matter hereof, whether written or oral. 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. 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. This Agreement may be executed in multiple copies, each of which will for all purposes constitute one Agreement, binding on all parties. Delivery of an executed copy of this Agreement by electronic transmission (e.g. facsimile or email) shall be binding upon the parties as delivery of the original.

[SIGNATURE PAGE TO FOLLOW]

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

**PURCHASER:**

**CITY OF FOLEY, ALABAMA,**  
an Alabama municipal corporation

\_\_\_\_\_  
By: \_\_\_\_\_  
As its: Mayor  
Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: City Clerk

**SELLER:**

DCF, L.L.C.

\_\_\_\_\_  
Charles L. Dyas, Jr., Manager  
Date: \_\_\_\_\_