

**CERTIFICATE OF PROCEEDINGS
OF
THE CITY OF FOLEY , ALABAMA**

_____, 2024

**Proceedings for Authorization
of
Economic Development Agreement
(J1 International Housing)**

I, the undersigned, do hereby certify that (1) I am the duly elected, qualified and acting City Clerk of the City of Foley, Alabama (the "City"); (2) as such I have access to all original records of the City and I am duly authorized to make certified copies of its records on its behalf; (3) the attached pages constitute a complete, verbatim and compared copy of excerpts from all those parts of the minutes of a meeting of the City Council of the City duly held on January 2, 2024, pertaining to the matters referenced therein, the original of which is on file and of record in the minute book of the City Council in my custody; (4) the resolutions set forth in such excerpts are complete, verbatim and compared copies of such resolutions as introduced and adopted by the City Council on such date and are in full force and effect without amendment or repeal in whole or in part.

IN WITNESS WHEREOF, I have hereunto set my hand as City Clerk of the City and have affixed the official seal of the City on _____, 2024.

City Clerk of the City of Foley, Alabama

SEAL

**EXCERPTS FROM THE MINUTES OF A REGULAR MEETING
OF THE CITY COUNCIL OF THE CITY OF FOLEY, ALABAMA**

**Economic Development Agreement
for
IRH Foley LLC**

The City Council of the City of Foley, Alabama met in regular public session at City Hall in the City of Foley, Alabama, at 4:00 p.m. on January 2, 2024.

The meeting was called to order by the Council President, and the roll was called with the following results:

Present: J. Wayne Trawick, Council President
 Vera J. Quaites
 Richard Dayton
 C. Rick Blackwell
 Charles J. Ebert

Absent:

The Mayor, Hon. Ralph Hellmich, was also present.

The Council President stated that a quorum was present and that the meeting was open for the transaction of business.

* * *

Thereupon, the following resolution was introduced in writing by the Council President and considered by the City Council:

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING AN
ECONOMIC DEVELOPMENT AGREEMENT
BY THE CITY OF FOLEY, ALABAMA
AND
IRH FOLEY LLC

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FOLEY, ALABAMA:

ARTICLE 1

Definitions

For purposes hereof:

Agreement means the Economic Development Agreement by the City and the Project User Fee Payer attached to this Resolution as Exhibit B.

Amendment No. 772 means Section 94.01 of the Constitution of Alabama of 2022 (formerly known as Amendment o. 772 to the Constitution of Alabama of 1901, as amended).

Project User Fee Payer means IRH Foley LLC.

Bond Counsel means Maynard Nexsen PC.

City means the City of Foley, Alabama.

Council means the City Council of the City.

Development shall have the meaning assigned in the Agreement.

Public Notice means the notice attached to this Resolution as Exhibit A.

ARTICLE 2

Representations

The Council, upon evidence duly presented to and considered by it, has found and determined, and does hereby find, determine and declare as follows:

- (a) The delivery and performance of the Agreement by the City will provide for the economic growth and development of the City in furtherance of the public interest thereof.
- (b) The expenditure of public funds for the purposes specified in the Agreement will serve a valid and sufficient public purpose, notwithstanding any incidental benefit accruing to any private entity or entities.
- (c) The City caused the Public Notice to be published on December 20, 2023 in *The Onlooker*, which newspaper is of circulation in the City.
- (d) The aggregate indebtedness of the City (including without limitation the Total City Commitment under the Agreement) which will be outstanding under, and chargeable against the limitation upon indebtedness prescribed by, Amendment No. 772 on the Effective Date of the Agreement will not exceed fifty percent (50%) of the assessed valuation of the taxable property of the City as assessed for state taxation for the tax year ending September 30, 2023.
- (e) The representations of the City on Section 3.01 of the Agreement are true and correct.

ARTICLE 3

Authorization

(a) The Council approves and authorizes the terms and provisions of, the representations and warranties of the City set forth in, and the obligations and transactions to be undertaken by the City pursuant to, the Agreement, with such changes thereto (by addition or deletion) which (i) do not (individually or in the aggregate) create any additional obligation, or extend or increase any stated obligation, of the City under the Agreement and (ii) the officers of the City conclusively approve by execution and delivery of the Agreement as provided by this Resolution.

(b) The Council authorizes and directs the Mayor, Finance Director, and City Clerk of the City to do and effect all of the following :

- (i) execute under seal, register, and attest the Agreement,
- (ii) execute, deliver, file and record such certificates, documents and notices with respect to such matters of fact as Bond Counsel determines to be necessary in connection with the Agreement,
- (iii) deliver the Agreement when advised by Bond Counsel and
- (iv) effect the performance of the Agreement.

ARTICLE 4

Ratification

The Council ratifies and confirms all prior action taken, and all certificates, documents, petitions, proceedings and public notices delivered, by or on behalf of the City in furtherance of the transactions herein authorized.

ARTICLE 5

Effect of Resolution

The Council authorizes this Resolution to take effect immediately and repeals any provision of any resolution, order, ordinance, or proceeding of the City to the extent of any conflict or inconsistency thereof with the provisions of this Resolution.

EXHIBIT A

Legal Notice

**LEGAL NOTICE
OF
PROPOSED ECONOMIC DEVELOPMENT ACTION
AND RELATED PUBLIC EXPENDITURES
OF
CITY OF FOLEY, ALABAMA**

The City of Foley, Alabama (the "City") gives notice that the City Council of the City will meet in regular public session at 4:00 p.m. on Tuesday, January 2, 2024 at City Hall in the City to consider, among other matters, the authorization, pursuant to the authority of Section 94.01 of the Constitution of Alabama of 2022, by the City of the payment, pursuant to separate written economic development agreements, from special public funds of the City of certain economic incentive payments for the period 2024 through 2045 to each of the following domestic, for profit, business entities (collectively the "Beneficiaries") in consideration, and in support, of the establishment, in the general area of the facilities of OWA Parks and Resorts in the City, by the Beneficiaries of business facilities and operations which the City considers in the public interest to be located in such area: (i) Magnolia Meat and Grocery LLC (food service), (ii) IRH Foley LLC (international residence hall), and (iii) Select Site Ventures LLC, d/b/a Cobblestone Hotel and Suites (hotel and lodging). The City expects to pay such economic incentive payments from the net proceeds of certain fees levied by the cultural and entertainment facilities cooperative district of the City on the users and customers of the business facilities of the Beneficiaries in respect of the costs incurred by the City for the construction, improvement, maintenance and operation of the public infrastructure that enables operation and use of the business facilities of the Beneficiaries. The total economic incentive payments will not exceed, in any period, the total amount received by the City from such fees in such period, therefore the City does not presently expect to pay any amount of such economic incentive payments from the proceeds of taxes levied by the City. The City seeks to achieve, by undertaking its obligation to provide such economic incentive payments, to promote the local economic and industrial development of the City by the increase of employment, tourism and visitation, the supply of persons available for skilled and unskilled labor, economic activity for local businesses, and the tax and revenue base of the City. The business entities to whom or for whose benefit the City proposes to lend its credit and grant public funds or thing of value will be the Beneficiaries and any affiliate of any thereof. All interested persons may examine and review the proposed economic development agreements, the proceedings for the levy of the user fees, and all related proceedings pertaining thereto, and make copies thereof at personal expense, and may obtain further public information with respect to the matters herein, at the offices of the City Administrator at City Hall in the City, during normal business hours, before and after the meeting of the City Council referenced herein.

Exhibit B

Economic Development Agreement

J1 INTERNATIONAL HOUSING

This Agreement, and any interest herein or obligation hereunder, is not negotiable and may be assigned or transferred (in whole or in part) only as provided herein.

ECONOMIC DEVELOPMENT AGREEMENT

Effective Date: _____, 2024

CITY OF FOLEY, ALABAMA

and

IRH FOLEY LLC

The within Project User Fees have been validated and confirmed by judgment of the Circuit Court of Baldwin County, Alabama entered on June 21, 2017 in 05-CV-2017-900473.00 and 05-CV-2017-900475.00.

This Agreement was prepared by Heyward C. Hosch and Ann Watford Todd of Maynard Nexsen PC.

ARTICLE 2

Definitions

For purposes of this Agreement:

Development means the international housing facilities to be established by the Project User Fee Payer on the Development Site.

Development Site means the real property described on Appendix B.

Districts mean collectively (i) The Public Athletic and Sports Facilities Cooperative District of the City of Foley, Alabama, and its successors and assigns; and (ii) The Public Cultural and Entertainment Facilities Cooperative District of the City of Foley, Alabama, and its successors and assigns.

Effective Date means _____, 2024.

Governmental Authority means any agency, authority, board, bureau, commission, court, department, or instrumentality of the (i) United States of America, (ii) the State, or (iii) any county, municipality, political subdivision or public corporation established or organized under the Constitution and laws of the State.

Person means any natural person, corporation (for profit or nonprofit), general or limited partnership, limited liability company or partnership, joint venture, association, trust, unincorporated organization or juridical person, or Governmental Authority.

Project shall have the meaning assigned in the Project User Fee Resolutions.

Project Facility shall have the meaning assigned in the Project User Fee Resolutions.

Project User Fee Area means the real property described on Appendix A.

Project User Fee Resolutions means collectively the respective resolutions of the Districts adopted on December 19, 2016, providing for the levy, collection and application of the Project User Fees within the Project User Fee Area.

Project User Fees means the Project User Fee for Property levied by the Districts pursuant to the Project User Fee Resolutions.

State means the State of Alabama.

Transaction Participants means collectively the City and the Project User Fee Payer.

ARTICLE 3

Representations

Section 3.01 The City

The City delivers this Agreement on the Effective Date pursuant to the authorization hereof by proceedings duly had and taken by the governing body thereof under the applicable laws of the State, and having found and determined precedent thereto:

- (i) The Project User Fee Payer constitutes an "Applicable Business" within the meaning of the Project User Fee Resolutions.
- (ii) The Development is located entirely within the Project User Fee Area.
- (iii) The Project User Fees have been validated and confirmed by the Circuit Court of Baldwin County, Alabama by judgements entered on June 21, 2017 in 05-CV-2017-900473.00 and 05-CV-2017-900475.00.
- (iv) The Project User Fee Payer is subject to the Project User Fees pursuant to the Project User Fee Resolutions.
- (v) There is no approval of, or filing with, any Governmental Authority is required for the validity, or performance by the City, of this Agreement.
- (vi) There is no litigation is pending, or threatened in writing, in which a result adverse to the City would have a material and adverse effect upon the validity, or performance by the City, of this Agreement.
- (vii) The delivery and performance of this Agreement by the City will not cause or result in a default or violation under any contractual agreement, or order or ruling of any Governmental Authority, binding upon, or in effect with respect to, the City which would have a material and adverse effect upon the validity or performance by the City, of this Agreement.

Section 3.02 The Project User Fee Payer

The Project User Fee Payer delivers this Agreement on the Effective Date pursuant to due authorization thereof in compliance with the applicable laws of the State and having found and determined precedent thereto:

- (i) The Project User Fee Payer constitutes an "Applicable Business" within the meaning of the Project User Fee Resolutions.
- (ii) The Development is located entirely within the Project User Fee Area.
- (iii) The Development constitutes a "Project Facility" and is directly benefited by the Project.
- (iv) The Project User Fee Payer is subject to the Project User Fees pursuant to the Project User Fee Resolutions.
- (v) The Project User Fee Payer has made all filings and notices, and obtained all approvals or consents of, any Governmental Authority required for the business operations of the Project User Fee Payer in the State and the validity, and performance by the Project User Fee Payer, of this Agreement.
- (vi) There is no litigation is pending, or threatened in writing, in which a result adverse to the Project User Fee Payer would have a material and adverse effect upon the validity, or performance by the Project User Fee Payer of, this Agreement or the establishment of the Development.
- (vii) The delivery and performance of this Agreement by the Project User Fee Payer will not cause or result in a default or violation under any contractual agreement or order or ruling of any Governmental Authority binding upon, or in effect with respect to, the Project User Fee Payer which would have a material and adverse effect upon the validity, or performance by the Project User Fee Payer of, this Agreement, or the establishment by the Project User Fee Payer of the Development.

ARTICLE 4

Agreements of Project User Fee Payer

The Project User Fee Payer covenants and agrees:

(i) to pay the Project User Fees to the City, in lawful currency of the United States of America immediately available, in due time, form amount, and manner as provided in the Project User Fee Resolutions; and

(ii) the City shall have and may exercise all rights and remedies available at law or in equity under the laws of the State for the conservation, enforcement and protection of the rights and interests thereof under this Agreement.

ARTICLE 5

Provisions of General Application

The Transaction Participants covenant and agree as follows:

- (a) **Governing Law:** This Agreement is governed by, and will be construed in accordance with, the laws of the State of Alabama without regard to principles of conflict of laws.
- (b) **Binding Effect:** This Agreement is enforceable by, and binding upon, the respective successors and assigns of each Transaction Participant.
- (c) **Counterparts:** This Agreement may be executed in several counterparts each of which shall constitute the same agreement.
- (d) **Enforceability:** If any provision herein shall be unenforceable, the remaining provisions hereof will not be affected thereby and will remain in full force and effect.
- (e) **Notices; Delivery:** Any notice given hereunder must be delivered as provided on Appendix C.
- (f) **No Jury Trial:** Each Transaction Participant (i) irrevocably waives, to the extent permitted by law, any right to trial by jury in any action or proceeding under, or related to, this Agreement and (ii) agrees that no Person has represented (by expression or implication) that a Transaction Participant would not seek to enforce such waiver in the event of litigation.
- (g) **No Joint Venture:** This Agreement does not operate, and cannot be construed, to create a joint venture or partnership by or among the Transaction Participants.
- (h) **No Other Beneficiaries:** This Agreement is solely for the benefit of the Transaction Participants, and the successors and assigns thereof, and no other Person has or may enforce any benefit, interest or rights under or by virtue of this Agreement.
- (i) **Final and Full Contract:** This Agreement constitutes the final and full contractual agreement of the Transaction Participants and replaces and supersedes all prior or other agreements (written or oral) relating to the subject matter hereof.

EXECUTION BY CITY

IN WITNESS WHEREOF, the City has caused this Agreement to be executed under seal and attested in the name of the City by officers thereof duly authorized thereunto on the Effective Date.

CITY OF FOLEY, ALABAMA

By _____
Mayor

S E A L

ATTEST: _____
City Clerk

EXECUTION BY PROJECT USER FEE PAYER

IN WITNESS WHEREOF, the Project User Fee Payer has caused this Agreement to be executed under seal by an officer or legal representative thereof duly authorized thereunto on the Effective Date.

IRH FOLEY LLC

By: _____, manager

By: _____

Its _____

APPENDIX A

Project Fee Area

APPENDIX B

Development Site

APPENDIX C

Notices

A. Addresses

1. The City
City of Foley, Alabama
407 E. Laurel Avenue
Foley, Alabama 36535
Attn: City Administrator
2. The Project User Fee Payer
IRH Foley LLC

B. Manner of Delivery

1. United States Postal Service

Delivery may be made by United States certified or registered mail, return receipt requested, postage pre-paid.

2. Private Delivery Service

Delivery may be made by a private delivery service which is accepted by the Internal Revenue Service as set forth on [IRS.gov/PDS](https://www.irs.gov/PDS).

3. Electronic Means

Communication by electronic mail, facsimile transmission, secure electronic transmission containing applicable authorization codes, passwords or authentication keys, or another method or system.

Duly passed and adopted on this January 2, 2024.

President of the City Council of the City of
Foley, Alabama

SEAL

Attest: _____
City Clerk

Transmitted to and approved by the Mayor on this January 2, 2024

Mayor of the City of Foley, Alabama

After said resolution had been discussed and considered in full by the Council, it was moved by Councilmember _____ that said resolution be now placed upon its final passage and adopted. The motion was seconded by Councilmember _____. The question being put as to the adoption of said motion and the final passage and adoption of said resolution, the roll was called with the following results:

Ayes:

J. Wayne Trawick, Council President
Vera J. Quaites
Richard Dayton
C. Rick Blackwell
Charles J. Ebert

Nays:

The Council President thereupon declared said motion carried and the resolution passed and adopted as introduced and read.

* * *

There being no further business to come before the meeting, it was moved and seconded that the meeting be adjourned. Motion carried.

Approval of Minutes:

Each of the undersigned does hereby approve, and waive notice of, the date, time, place and purpose of the meeting of the Foley City Council recorded in the above and foregoing minutes thereof and does hereby approve the form and content of the above and foregoing minutes and resolution therein.

Council President

Member of Council

Member of Council

Member of Council

Member of Council

SEAL

Attest: _____
City Clerk