

**CERTIFICATE OF PROCEEDINGS
OF
THE CITY OF FOLEY PUBLIC FACILITIES COOPERATIVE DISTRICT**

_____, 2024

**Proceedings for Authorization
of
Tanger Project Fees
and
Project User Fee Agreement
(COROC/Riviera, L.L.C.)**

I, the undersigned, certify that (1) I am the duly elected, qualified and acting Secretary of The City of Foley Public Facilities Cooperative District (the "District"); (2) as such I have access to all original records of the District 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 Board of Directors of the District duly held on December 2, 2024, pertaining to the matters referenced therein, the original of which is on file and of record in the minute book of the District 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 Board of Directors of the District on such date and is in full force and effect without amendment or repeal in whole or in part, and (5) the Notice attached to such minutes was posted on the date and at the places set forth in the attached minutes.

IN WITNESS WHEREOF, I have hereunto set my hand as the Secretary of The City of Foley Public Facilities Cooperative District and have affixed the official seal of the District on the above date.

Secretary of The City of Foley Public Facilities Cooperative
District

SEAL

THE CITY OF FOLEY PUBLIC FACILITIES COOPERATIVE DISTRICT

**Project User Fee Resolution
(Tanger Project Fees)**

The Board of Directors of The City of Foley Public Facilities Cooperative District met in public session at City Hall in the City of Foley, Alabama, at 2:30 p.m. on December 2, 2024.

Mr. Ebert, acting as Chair, called the meeting to order and called the roll with the following results:

Present: Charles J. Ebert, III
David J. Rauch
Vera Quaites
Ralph C. Hellmich
C. Rick Blackwell
A. Clyde Abrams, Jr.
Roderick W. Burkle

Absent:

The Chair stated that due notice of the date, time, place and purpose of this meeting had been (a) given to all members of the Board of Directors and (b) posted on November ____, 2024 at the place of meeting, the Library, and the Inspections Office in the City.

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

* * *

Thereupon, the following resolution was introduced in writing, duly seconded and unanimously adopted by the vote of all members of the Board of Directors present:

A RESOLUTION TO RATIFY AND CONFIRM THE ELECTION OF OFFICERS

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CITY OF FOLEY PUBLIC FACILITIES COOPERATIVE DISTRICT:

The Board appoints the following named persons to the following offices for terms ending on such date as their successors are chosen and qualify in their stead:

<u>Name</u>	<u>Office</u>
Charles J. Ebert, III	Chair of the Board of Directors
David J. Rauch	Vice-Chair
Roderick W. Burkle	Secretary-Treasurer
Ralph C. Hellmich	Assistant Secretary-Treasurer

Thereupon the following resolution was introduced in writing, duly seconded and unanimously adopted by the vote of all members of the Board of Directors present:

**A RESOLUTION TO IMPOSE THE TANGER PROJECT FEES IN THE TANGER PROJECT FEE AREA
IN THE CITY OF FOLEY, ALABAMA**

**BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CITY OF FOLEY PUBLIC FACILITIES
COOPERATIVE DISTRICT:**

Section 1. Definitions

For purposes hereof:

Applicable Business means and includes each Person who shall have obtained a business license from the City for the establishment and operation of a trade or business within the Tanger Project Fee Area prior to, on, or after, the Effective Date.

Authorizing Act means Chapter 99B of Title 11 of the Code of Alabama 1975.

City means the City of Foley, Alabama.

District means The City of Foley Public Facilities Cooperative District.

Economic Development Agreement means the Economic Development Agreement to be dated the date of delivery by the City and COROC/Riviera, L.L.C.

Effective Date means the date on which a judgment entered by the Circuit Court of Baldwin County, Alabama, validating and confirming this Resolution and the Tanger Project Fees shall have become forever conclusive pursuant to the Validation Act.

Governmental Authority means any agency, authority, board, bureau, commission, court, department, or instrumentality of the (i) United States of America, (ii) the State of Alabama, or (iii) any county,

municipality, political subdivision or public corporation established or organized under the Constitution and laws of the State of Alabama.

Gross Sales means the actual sales price of, or the value proceeding or accruing from, or other charge or consideration paid or payable for, all tangible personal property or lodging and accommodations sold, leased, licensed, delivered, or rented, and all places of amusement or entertainment conducted or operated, and all services performed, by any Person, whether for wholesale, retail, cash, credit, trade-ins or otherwise, without reserve or deduction for inability or failure to collect. Each installment or credit sale are treated as a sale for the full price in the month during which such sale is made, regardless of whether or when a Person receives payment therefor. No franchise or capital stock tax and no income or similar tax based on income or profits are deducted from Gross Sales. Gross Sales shall not include (a) any exchange of merchandise between stores simultaneously owned by a Person where such exchange is made solely for the convenient operation of said Person's business and not for the purpose of consummating a sale made in the Tanger Project Fee Area, (b) returns to shippers or manufacturers, (c) cash or credit refunds to customers on transactions (not to exceed the actual selling price of the item returned) otherwise included in Gross Sales, (d) sales of trade fixtures, machinery and equipment after use thereof in the conduct of a Person's business, (e) amounts collected and paid by a Person to any government for any sales or excise tax, (f) the amount of any discount on sales to employees, and (g) the amount of rent paid for the lease of real property or buildings located thereon.

Lease Agreement means that certain Lease Agreement dated September 1, 2009, as amended by First Amendment to Lease Agreement dated February 1, 2022, by the District and the City with respect to the Project and other public facilities subject thereto.

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.

Prior Tanger Resolution means that certain Resolution adopted by the District on September 5, 2017 entitled "A Resolution Imposing Project User Fees and Authorizing a Note Payable Therefrom" with respect to the Tanger Project Fee Area.

Project means the public infrastructure, including without limitation streets, roads, drainage facilities, traffic lighting, landscaping and traffic safety facilities, and utilities which are constructed, maintained and repaired by the City and which benefit the Tanger Project Fee Area.

Project User Fee for Property means a fee for the use of the Project imposed by the District in the amount of \$_____ on each Applicable Business which (i) is located within the Tanger Project Fee Area and (ii) is not subject to the Project User Fee for Transactions.

Project User Fee for Transactions means a fee for the use of the Project imposed by the District in the amount of one percent (1.00%) of Gross Sales produced within the Tanger Project Fee Area by an Applicable Business which is not subject to the Project User Fee for Property.

Project User means any Person who uses, or benefits from, the Project or any facility directly or indirectly served by the Project.

Tanger Project Fee Area means the real property located within the City as described on Exhibit A.

Tanger Project Fees means collectively the:

- (a) Project User Fee for Property; and
- (b) Project User Fee for Transactions.

Tanger Project Fee Agreement means that certain Project User Fee Agreement (Tanger Project Fee Area), to be dated the date of delivery by the District and the City, as attached hereto on Exhibit B.

Termination Date means the first to occur of:

- (a) December 31, 2050; or
- (b) the first date on which the Economic Development Agreement shall have been terminated in accordance with the terms thereof.

Validation Act means Article 17 of Chapter 6 of Title 6 of the Code of Alabama 1975.

Section 2. Representations; Continuation of Agreements; Consideration.

The Board of Directors of the District, upon evidence duly presented to and considered by it, has found and determined, and finds, determines and declares as follows:

- (a) The District will levy the Tanger Project Fees pursuant to this Resolution, in consideration of the financial expenditures and obligations of the City pursuant to the Lease Agreement with respect to the Project for the benefit of the District, for the period set forth in Section 4.
- (b) The Project constitutes a “project” for all purposes of the Authorizing Act.

Section 3. Imposition of Tanger Project Fees; Repeal of Prior Fees

- (a) The District, subject to Section 3(e) and for the use and benefit of the Project, imposes the Tanger Project Fees on each Applicable Business pursuant to the Authorizing Act (including without limitation Section 11-99B-11)
- (b) Each Applicable Business may collect the Tanger Project Fees levied thereupon from a Project User.
- (c) The Tanger Project Fees imposed by this Resolution are in addition to all other fees and licenses and taxes imposed or levied by law or by any taxing authority; provided, the fees levied pursuant to the Prior Tanger Resolution are repealed from and after the Effective Date.
- (d) All Tanger Project Fees paid pursuant to this Resolution are conclusively presumed to be fees paid by the Project Users for the use of and benefit from the Project.
- (e) In order that the District, as a public corporation, produce revenue as provided under the Authorizing Act by means consistent with those considerations of public policy by which the State of Alabama and any Governmental Authority in Baldwin County, Alabama, produce revenue for governmental and public purposes, the District exempts from the payment of the Tanger Project Fees any transaction or property to the extent such transaction or property is exempt from taxation under the laws of the State of Alabama or other any political subdivision thereof, such that those persons or transactions exempt from the payment of any state or local tax with respect to Gross Sales or Property are likewise exempt from the payment of the Tanger Project Fees with respect to the Project.

Section 4. Period of Levy and Collection of Tanger Project Fees.

The District will levy the Tanger Project Fees for the period beginning on (and including) the Effective Date and continuing thereafter until (and not including) the Termination Date.

Section 5. Payment of Tanger Project Fees

- (a) The Project User Fee for Transactions will be due and payable in monthly installments on or before the twentieth day of the month next succeeding the month in which such fees accrue.

(b) The Project User Fee for Property will be due and payable on or before December 31 in each year.

(c) Each Applicable Business will remit the Tanger Project Fees to, or at the direction of, the District on forms prescribed by the District or its designee.

Section 6. Special Obligations of Each Applicable Business; Records.

(a) The District will require:

(1) each Applicable Business to cause the amount of the Tanger Project Fees due from any Project User to be separately and distinctly denominated as a fee (and not a tax or included as part of a tax) on any receipt or other written notation or record provided to such Project User; and

(2) each Applicable Business to keep and maintain an accurate and complete set of records, books and other information sufficient to allow the District and the City to determine the correct amount of the Tanger Project Fees such Applicable Business must pay under this Resolution, which records, books and other information shall be open and available for inspection by the District and the City upon request at a reasonable time and location.

(b) The District and the City reserve the right to examine and audit, in the manner provided by law with respect to ad valorem and privilege, license and excise taxes, the records, books and other information maintained by each Applicable Business pursuant hereto for the purposes of determining the correct amount of the Tanger Project Fees such Applicable Business must remit to, or at the direction of, the District.

Section 7. Confidentiality.

The District will not disclose or divulge, except to the City, any information secured in arriving at the amount of any Project User Fee any Applicable Business must pay without the prior written consent of such Person.

Section 8. Penalties and Remedies.

(a) If any Applicable Business fails to pay to the District, or the City as assignee of the District, the amount of Tanger Project Fees due under this Resolution on any date established under Section 5(a) therefor, the District shall add a late fee of ten percent (10%) of the unpaid amount of the Tanger Project Fees to the amount due hereunder from such Applicable Business.

(b) The District, or the City as assignee of the District, may exercise all rights and remedies available at law or in equity for the administration and enforcement of the provisions of this Resolution, including specifically and without limitation all provisions, rights and remedies of the sales and use tax statutes of the State of Alabama for the enforcement and collection of sales and use taxes by the State of Alabama.

Section 9. The Tanger Project Fee Agreement .

The District, having reviewed the Tanger Project Fee Agreement: (a) approves, authorizes and confirms the representations of fact, agreements and obligations of the District in, and the terms and provisions of, the Tanger Project Fee Agreement and (b) authorizes and directs the officers of the District to (i) execute, under seal, and deliver the Tanger Project Fee Agreement in form and of content as presented to the District with such changes (by addition or deletion) as shall not create an additional, or extend or increase any present, obligation of the District under the Tanger Project Fee Agreement and as such officers shall approve by execution and delivery thereof, and (ii) take such action, and execute and deliver such certificates and documents, at such times and in such form and manner, as shall be required by applicable law, legal counsel to the District, or otherwise necessary, to establish the validity, or effect the purposes, of the Tanger Project Fee Agreement.

Section 10. Approval of Prior Actions.

The District approves, authorizes, ratifies and confirms all prior actions taken, and all agreements, documents or notices executed and delivered, by any officer of the District or other representative thereof, in furtherance of the purposes of this Resolution.

Section 11. Severability.

The provisions of this Resolution are severable. In the event that any one or more of such provisions shall, for any reason, be invalid, such invalidity shall not affect the other provisions of this Resolution, and this Resolution will operate and be construed as if such illegal or invalid provision had not been contained herein or therein.

Section 12. Repeal of Conflicting Provisions.

The District repeals all resolutions, or parts of any thereof, of the District in conflict, or inconsistent, with any provision of this Resolution to the extent of such conflict or inconsistency.

Section 13. Validation.

The District desires to determine the authority of the District to levy and collect the Tanger Project Fees and deliver and perform the Tanger Project Fee Agreement and the validity and legality of the Tanger Project Fees and the Tanger Project Fee Agreement and all proceedings had or taken in connection therewith and therefore authorizes and directs Maynard Nexsen PC, as special counsel to the District, to institute such validation proceedings in the name and on behalf of the District pursuant to the Validation Act and file all certificates, documents, instruments, and proceedings, and take all actions, as shall be necessary and desirable to effect judicial validation of the Tanger Project Fees and Tanger Project Fee Agreement.

Section 14. Immediate Effect.

The provisions of this Resolution shall take effect immediately.

Exhibit A

Tanger Project Fee Area

Exhibit B

Tanger Project Fee Agreement

**This Agreement, and any interest herein or obligation hereunder, is not negotiable and
may not be assigned or transferred.**

**PROJECT USER FEE AGREEMENT
(Tanger Project Fee Area)**

Effective Date: _____, 2025

between

THE CITY OF FOLEY PUBLIC FACILITIES COOPERATIVE DISTRICT

and

CITY OF FOLEY, ALABAMA

**This Agreement has been validated and confirmed by judgment of the Circuit Court of Baldwin County,
Alabama, entered on _____, 2025.**

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

**PROJECT USER FEE AGREEMENT
(Tanger Project Fee Area)**

This Agreement is made and delivered on the above Effective Date by the following persons each of whom is identified herein as:

City: **City of Foley, Alabama**

District: **The City of Foley Public Facilities Cooperative District**

Article 1

Consideration and Purpose

The District and the City have agreed, pursuant to Chapter 99B of Title 11 of the Code of Alabama 1975 (the "Authorizing Act"), that (i) the City will expend public funds on behalf of the District, with such funds to constitute a constructive loan from the City to the District, to pay for capital improvements of public infrastructure and streetscape (the "Project") in the central and primary business and commercial areas of the City, (ii) the City will convey the Project to the District without valuable consideration in furtherance of the public purposes of the District, (iii) the Project constitutes a "project" under, and for purposes of, the Authorizing Act and is within the geographic and corporate jurisdiction of the District, and (iv) the City has further agreed to provide financial contributions to the District to provide for the maintenance and operation of the Project.

The District has thereupon agreed and determined to levy and collect certain Tanger Project Fees for the use of, and within the area served by, the Project pursuant to Resolution thereof adopted on December 2, 2024 and to provide the net proceeds of the Tanger Project Fees to the City, pursuant to this Project Fee User Agreement for the payment (in whole or in part) of the public funds advanced by the City for the benefit of the District.

The District and the City have executed and delivered this Agreement pursuant to the Authorizing Act to provide for the delivery of the net proceeds of the Tanger Project Fees by the District to the City in payment of the public funds advanced by the City for the Project and in consideration of the acquisition and

conveyance of the Project to the District and the continuing financial contributions of the City for the benefit of the District with respect to the maintenance and operation of the Project,

ARTICLE 2

Definitions

For all purposes of this Agreement capitalized terms used herein without definition have the respective meanings assigned thereto in the Project User Fee Resolution of the District adopted on December 2, 2024 and entitled "A Resolution Imposing Tanger Project Fees in the Tanger Project Fee Area in the City of Foley, Alabama."

ARTICLE 3

Term and Termination of Agreement

The City and the District agree and covenant that this Agreement, and all agreements, obligations and undertakings herein, will become effective on the Effective Date and will continue in full force and effect thereafter until the date on which the District discontinues the levy and collection of the Tanger Project Fees pursuant to the Project User Fee Resolution, whereupon all agreements and obligations of the District and the City shall be discharged and terminated without recourse:

ARTICLE 4

The Tanger Project Fees

Section 4.01 Payment and Pledge of Tanger Project Fees

(a) For Value Received, the District promises to pay to the City the net proceeds of the Tanger Project Fees received by the District during the period beginning on the date of levy of the Tanger Project Fees and ending on the Termination Date on the following terms:

- (1) the maximum amount of the Tanger Project Fees to be paid to the City pursuant to this Agreement shall not exceed the lesser of the aggregate amounts payable by the City pursuant to the Economic Development Agreements or \$100,000,000; and
- (2) the Tanger Project Fees shall not bear interest; and
- (3) the levy of the Tanger Project Fees shall continue until the Termination Date; and
- (4) the Tanger Project Fees shall become due and payable to the City on the first day of each month during the term of the levy of the Tanger Project Fees and shall be paid to the City at City Hall in the City

(b) The District grants, bargains, sells, conveys, assigns and transfer to the City, without warranty or recourse, all right, title and interest of the District in and to the Tanger Project Fees.

(c) The District agrees to cause all of the proceeds of the Tanger Project Fees to be delivered and transferred to the City when and as received by the District, for use thereby in respect of payment to the City for the costs of the Project paid thereby.

(d) The District agrees the District will not, without the prior written consent of the City, sell, transfer or convey the Tanger Project Fees or any portion thereof or create or incur, or permit or suffer to be created or incurred, any mortgage, lien, or encumbrance upon the Tanger Project Fees or the Project User Fee Fund or any part thereof.

(e) The District makes no warranty or representation, and gives no assurance, that the Tanger Project Fees shall be collected in any amount or that the amounts thereof collected shall be sufficient for any purpose or use of the City with respect thereto.

Section 4.02 Collection of Tanger Project Fees

(a) Pursuant to the Project User Fee Resolution, the District appoints and engages the City to collect the Tanger Project Fees for and on behalf of the District and agrees the City may charge a collection fee in the amount of one percent (1.00%) of the gross amount of Tanger Project Fees collected for each calendar month, which collection fee will be payable solely from the Tanger Project Fees.

(b) The City agrees to collect, hold, invest and apply the Tanger Project Fees for the as provided in the Project User Fee Resolution.

Section 4.03 Use of Tanger Project Fees s

The City may use the Tanger Project Fees: (a) to pay the City for costs of the Project theretofore or thereafter paid or incurred; (b) to pay for the City's obligations under the Lease Agreement as long as the same is in effect; or (c) for any other lawful purpose.

Section 4.04 Contractual Agreement of District under Authorizing Act

The District covenants and agrees the conveyance by the District of the Tanger Project Fees to the City, as provided herein and in the Tanger Project Fees Resolution, constitutes a contractual agreement of the District for purposes of Section 11-99B-11(4) of the Code of Alabama 1975.

ARTICLE 5

Provisions of General Application

The City and the District (individually a “party” and collectively the “parties”) agree:

- (a) **Governing Law:** This Agreement shall be governed by and construed in accordance with the laws of the State of Alabama without regard to principles of conflict of laws.
- (b) **Binding Effect:** This Agreement shall inure to the benefit and be binding upon the respective successors and assigns of the parties.
- (c) **Counterparts:** This Agreement may be executed in several counterparts each of which shall constitute one and the same agreement.
- (d) **Amendment:** This Agreement may be amended only in writing duly authorized, executed and delivered by each party to this Agreement.
- (e) **Enforceability:** If any provision herein shall be unenforceable, the parties agree the remaining provisions hereof shall not be affected thereby and shall remain in full force and effect.
- (f) **Notices:** Any notice given hereunder by any party shall be delivered simultaneously to all parties hereto at the respective addresses thereof as provided in writing.
- (g) **No Jury Trial:** Each party (1) 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 (2) agrees that no person has represented (by expression or implication) that a party hereto would not seek to enforce such waiver in the event of litigation.
- (h) **No Joint Venture:** Each party agrees that (1) this Agreement shall not operate or be construed to create a joint venture or partnership among the parties and (2) it shall be solely responsible for the administration of its respective agreements and relationships with the other parties.
- (i) **No Other Beneficiaries:** Each party agrees that the Agreement is solely for the benefit of the parties and the successors and assigns thereof and no other person shall have any benefit, interest or rights under or by virtue of this Agreement.
- (j) **Final and Full Contract:** This Agreement shall constitute the final and full contractual agreement of the parties and shall supersede all prior or other agreements (written or oral) by the parties relating to the subject matter hereof.

IN WITNESS WHEREOF, the District and the City have each caused this Agreement to be executed, sealed and attested in its name by officers thereof duly authorized thereunto and to be dated the date and year first above written.

**THE CITY OF FOLEY PUBLIC FACILITIES
COOPERATIVE DISTRICT**

By _____
Its Chair

SEAL

Attest: _____
Its Secretary

CITY OF FOLEY, ALABAMA

By _____
Its Mayor

SEAL

Attest: _____
Its: City Clerk

VALIDATION CERTIFICATE

Validated and confirmed by judgment of the Circuit Court of Baldwin County, State of Alabama
entered on the _____ day of _____, 2025.

/s/ _____

Clerk of Circuit Court of Baldwin County,
State of Alabama

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 approves, and waives notice of, the date, time, place and purpose of the meeting of The City of Foley Public Facilities Cooperative District recorded in the above and foregoing minutes thereof and approve the form and content of the above and foregoing minutes and resolution therein.

Chair

Member

Member

Member

Member

Member

Member

SEAL

Attest: _____
Secretary

**NOTICE OF MEETING
OF
THE CITY OF FOLEY PUBLIC FACILITIES COOPERATIVE DISTRICT**

The City of Foley Public Facilities Cooperative District (the "District"), give notice the governing body of the District shall hold a public meeting at the offices of the District at City Hall, 407 East Laurel Avenue, in the City of Foley, at 2:30 p.m. on December 2, 2024, for the purposes of: electing officers for the District; authorizing certain user fees to finance a portion of the costs of the acquisition of a public project; and transacting such other business or taking such further action as may be conducted or taken at a regular meeting of the Board of Directors.

The meeting are open to the public and all interested persons may attend.

Further information may be obtained at the above-referenced office of the District during normal business hours.