

**MINUTES OF A MEETING OF THE CITY COUNCIL  
OF THE CITY OF FOLEY**

The City Council of The City of Foley met in public session at the office of the City at City Hall, in the City of Foley, Alabama, at 5:30 p.m. on May 16, 2014.

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

Present: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Absent: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The Council President stated that a quorum was present.

The Council President stated that due notice of the date, time, place and purpose of this meeting had been (a) posted at the place of meeting, and (b) given to all existing members of the City Council.

The Council President stated that the meeting was open for the transaction of business.

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**A RESOLUTION APPROVING FINANCING DOCUMENTS BY THE CITY OF  
FOLEY, ALABAMA AND THE CITY OF FOLEY PUBLIC FACILITIES  
COOPERATIVE DISTRICT**

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BE IT RESOLVED BY THE CITY COUNCIL OF CITY OF FOLEY, ALABAMA, (the “City”) as follows:

Section 1. The City has heretofore, upon evidence duly presented to and considered by it, found and determined, and does hereby find, determine and declare that:

(a) Pursuant to Chapter 99B of Title 11 of the Code of Alabama 1975 (the “Enabling Law”), the City, has authorized the incorporation of The City of Foley’s Public Facilities Cooperative District (the “District”), and the certificate of incorporation of the District is recorded as Instrument No. 1185056 and amended at Instrument No. 1219765 in the Office of the Judge of Probate of Baldwin County, Alabama.

(b) The City proposes, in conjunction with the conveyance of certain properties to the District and from the District to the Coastal Alabama Farmers’ and Fishermen’s Market, Inc. (the “CAFFM”), an Alabama nonprofit corporation of which the District is the sole member, to execute and deliver a Funding Agreement or Pledge Agreement by the City (the “Funding Agreement”) with respect to the unconditional obligation of the City, in the event of nonpayment by the District or the CAFFM, to pay (i) the principal of, premium, if any, and interest on the \$8,000,000 maximum principal amount of loans from Pacesetter CDE X LLC to the CAFFM (the “Loan”) and (ii) the obligations pursuant to a QALIB Indemnification Agreement, Environmental Indemnity, and a Guaranty of Payment and Completion to be entered by the District under Chapter 99B of Title 11 of the Code of Alabama 1975 (the “Enabling Law”) in conjunction with Loan (the “Guarantees”), to finance a portion of the costs of the Project hereinafter referenced, as more particularly described hereinbelow.

(c) The Funding Agreement will be executed and delivered by the City to the District. The beneficiary of the Loan is the CAFFM.

(d) Pursuant to Amendment No. 772 to the Constitution of Alabama of 1901, as amended (“Amendment No. 772”), the City has caused the Notice attached hereto as Exhibit A (the “Notice”) to be published on February 14, 2014 in *The Foley Onlooker* with respect to certain actions proposed to be taken, and certain agreements proposed to be made and delivered, by the City, to provide for the financing of a portion of the costs of the Project and the economic development of the City thereby, and the meeting designated in the Notice has been continued until the May 16, 2014 meeting of the City Council.

(e) There has been prepared for and delivered to the City, and made available for public inspection, the following agreements, contracts, documents and instruments with respect to the transactions described in the Notice and the undertakings by the City in connection therewith (collectively the “Financing Documents”):

- i. Notes;
- ii. Funding Agreement;
- iii. First Amended and Restated Investment Fund Operating Agreement;
- iv. Investment Fund Put/Call Agreement;
- v. QALICB Indemnification Agreement;
- vi. Fund Loan Agreement;
- vii. Fund Pledge Agreement;
- viii. Fund Promissory Note;
- ix. Fund Loan UCC-1;
- x. Fund Loan UCC-1 Exhibit A;
- xi. Account Pledge and Control Agreement (CFPFCD Reserve Account);
- xii. QLICI Guaranty of Payment and Completion;
- xiii. Debarment Certificates;
- xiv. Credit Agreement;
- xv. QLICI Loan A Note;
- xvi. QLICI Loan B Note;
- xvii. Account Pledge and Control Agreement (Disbursement Account);
- xviii. Account Pledge and Control Agreement (Lender Reserve Account);
- xix. Assignment Agreement;
- xx. Assignment of Contracts;
- xxi. Construction Monitoring and Disbursement Agreement (CMDA);
- xxii. Joint and Several Hazardous Substance Guaranty and Indemnification Agreement; and
- xxiii. Agreement for Lease, as amended, and as will be assigned to CAFFM.

(f) The expenditure of public funds for the purposes specified in the Notice and the Financing Documents will serve a valid and sufficient public purpose, notwithstanding any incidental benefit accruing to any private entity or entities.

(g) It is necessary, desirable, and in the best interests of the taxpayers and citizens of the City for the City to deliver and perform the agreements and undertakings of the City set forth in the Financing Documents.

Section 2. The City does hereby approve, ratify and confirm (i) the form and content of, and the statements set forth in, the Notice and (ii) the publication of the Notice as set forth in Section 1 of this resolution.

Section 3. The City does hereby approve, adopt, authorize, direct, ratify and confirm the representations, warranties, agreements and covenants of the City set forth in, and the transactions to be undertaken by the City pursuant to, the Funding Agreement.

Section 4. The Financing Documents are approved in substantially the form and of substantially the content attached hereto as Exhibit "B" and as presented to and considered by the City Council, with such changes or additions thereto or deletions therefrom as the officer of the City executing those of the Financing Documents to which the City is a party signatory thereto (herein collectively the "City Documents") shall approve, which approval shall be conclusively evidenced by execution of the City Documents by such officer as hereinafter provided.

Section 5. The Financing Documents presented to, considered and adopted by the City Council shall be filed in the permanent records of the City.

Section 6.

(a) The Mayor of the City is hereby authorized and directed to execute, acknowledge and deliver the City Documents for and on behalf of and in the name of the City. The City Clerk and Assistant City Clerk of the City are each hereby authorized and directed to attest the same.

(b) For purposes of the Financing Documents, the Finance Director is authorized and directed to act as an Authorized City Representative under and as defined therein.

Section 7. 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, notifications and related documents, all as shall be required by law or necessary or desirable to carry out the provisions and purposes of this Resolution and the Financing Agreement Documents.

Section 8. Any prior actions taken or agreements made or documents executed by any officers of the City in connection with the Financing Documents and the transactions therein authorized and approved are hereby ratified and confirmed.

Section 9.

(a) All ordinances, resolutions, orders, or parts thereof in conflict or inconsistent with any provision herein hereby are, to the extent of such conflict or inconsistency, repealed.

(b) This resolution shall take effect immediately.

**Exhibit A**  
**LEGAL NOTICE**

**OF**

**PUBLIC MEETING OF FOLEY CITY COUNCIL**

Regarding Economic Development Action Under Alabama

Constitutional Amendment No. 772

for

the Coastal Alabama Farmers' and Fishermen's Market

Notice is hereby given that the City Council (the "City Council") of the City of Foley, Alabama (the "City") will meet in public session at 5:30 p.m. on Monday, March 3, 2014, in City Hall in the City for the purpose of consideration of the transaction of any business that may properly come before the City Council; such business to include, but not be limited to, the authorization by the City Council of a resolution (the "Resolution") authorizing the conveyance of certain properties to the District (as defined below) with such properties to then be conveyed by The City of Foley's Public Facilities Cooperative District, Alabama (the "District") to the Coastal Alabama Farmers' and Fishermen's Market, Inc., an Alabama nonprofit corporation of which the District is the sole member (the "CAFFM") and the execution and delivery of a Funding Agreement or Pledge Agreement by the City (the "Funding Agreement") with respect to the unconditional obligation of the City, in the event of nonpayment by the District or the CAFFM, to pay (i) the principal of, premium, if any, and interest on the \$8,000,000 maximum principal amount of loans from Pacesetter Sub-CDE X L.L.C. to the CAFFM (the "Loan") and (ii) the obligations pursuant to an environmental indemnity, a payment and completion guaranty and a new markets tax credit recapture indemnity to be entered by the District under Chapter 99B of Title 11 of the Code of Alabama 1975 (the "Enabling Law") in conjunction with Loan (the "Guarantees"), to finance a portion of the costs of the Project hereinafter referenced, as more particularly described hereinbelow.

The Funding Agreement will be executed and delivered by the City to the District. The beneficiary of the Loan is the CAFFM.

The District is a public corporation created by the City of Foley, Alabama under the Enabling Law, and the certificate of incorporation thereof is recorded in the office of the Judge of Probate of Baldwin County, Alabama.

The Loan proceeds shall be issued to finance a portion of the costs of acquisition, construction and installation of “projects” (within the meaning of the Enabling Law; herein collectively the “Project”) to be located in the City of Foley and to include some or all of the following, as to be determined by the City and the District:

- (i) a farmers’ and fishermen’s market and related buildings for community activities of every kind and nature;
- (ii) buildings, facilities and improvements in conjunction with the facilities described in (i) and for the accommodation of visitors and users to the facilities described in (i), including without limitation retail buildings, restaurants and wholesale distribution facilities; and
- (iii) roads, streets, public ways, sidewalks, lighting, facilities for the provision of water, sewer, gas and electric power service, facilities for waste disposal, facilities for public safety and security, drainage and flood control facilities and improvements, and other infrastructure improvements related to the facilities described in (i) and (ii).

In conjunction with the NMTC Program (as defined below) the District, as leveraged lender, will loan a maximum of \$6,000,000 and Chase Community Equity, LLC, or its designee, as a qualified investor under the NMTC Program, will loan additional funds to the Chase NMTC CAFFM Investment Fund L.L.C. Then the Chase NMTC CAFFM Investment Fund L.L.C. will loan certain funds to the Pacesetter Sub-CDE X L.L.C which will then loan a maximum of \$8,000,000 to the CAFFM. The City’s involvement arises solely from moneys that may be required to be provided by the City pursuant to the Funding Agreement to the District to pay the Loan or the obligations pursuant to the Guarantees.

The Funding Agreement will be issued and delivered by the City simultaneously with the funding of the Loan and pursuant to Amendment No. 772 to the Constitution of Alabama of 1901, as amended, as a full faith and credit general obligation of the City. The amounts payable by the City under the Funding Agreement are payable from all general revenues of the City lawfully available for such purpose. The Funding Agreement will be effective on the date of delivery of the Loan and shall continue in effect until the date on which the Loan is paid in full and retired.

The Loan will require interest only payments for seven years and then be amortized over a 30 year period.

The Loan shall never constitute or give rise to an indebtedness or pecuniary liability payable from, or a charge against, the revenues, assets, credit, or taxing powers of the State of

Alabama, or any political subdivision thereof (except as specifically undertaken by the City under the Funding Agreement) within the meaning of any constitutional provision or statutory limitation whatsoever.

The City seeks to achieve, by undertaking its obligations pursuant to the Funding Agreement, to promote the local economic, commercial and industrial development of the City and to increase employment in the City and to promote and develop for the public good and welfare trade, commerce, industry, and employment opportunities in the City. The public and private corporations to whom and for whose benefit the City proposes to lend its credit and grant public funds or thing of value is the District and the CAFFM. The following business entities are involved in the financing of the Project and may incidentally benefit as a result: JP Morgan Chase Bank N.A., Chase Community Equity L.L.C., Chase NMTC CAFFM Investment Fund L.L.C., Pacesetter CDE L.L.C., Pacesetter Sub-CDE X L.L.C.

As noted, the proceeds of the Loan will finance only a portion of the costs of the Project. The balance of the costs of the Project will be paid by funds to be made available therefor under the New Market Tax Credit Program established under Section 45D of the Internal Revenue Code of 1986, as amended, with respect to federal income tax, and under applicable Alabama law with respect to state income tax (the "NMTC Program"). The NMTC Program requires that the Project be partially financed, and owned for the first seven years of the Project, by a private corporation or partnership designated as a "qualified active low-income community business" under said Section 45D (the "Qualified Business"). Under the NMTC Program, the Qualified Business will receive funds from private investors and will in turn apply such funds to the payment of the costs of the Project in accordance with the requirements of the NMTC Program. The combination of proceeds of the Loan and the funds to be made available by the Qualified Business under the NMTC Program will be determined in such amounts as shall be sufficient to pay in full the costs of the Project. The private investors who provide such funds to the Qualified Business for the Project will receive credits against federal and state income taxes, as applicable, to the direct financial benefit of such investors. The use of the funds made available by the Qualified Business under the NMTC Program to pay a portion of the costs of the Project directly reduces the costs of the Project which the City and the District would otherwise have to pay, by an amount equal to the amount of the funds so made available under the NMTC Program, and is therefore of direct financial benefit to the City and the taxpayers and citizens thereof.

As a result of the above financing program and the requirements of the NMTC Program, the private business entity to whom and for whose benefit the City proposes to lend its credit and grant public funds or thing of value is the Qualified Business as well as the District for the benefit of the Qualified Business. Except as described herein, no funds or revenues of the City shall be provided to the Qualified Business, or any other person or entity, for any use or purpose.

All interested persons may examine and review the Loan, the Funding Agreement, the Guarantees and all relevant documents pursuant to which the Loan is to be issued, and make copies thereof at personal expense, at the offices of the City Manager of the City in City Hall, Foley, Alabama, during normal business hours, before and after the meeting of the City Council referenced herein.

Further information concerning the information in this Notice may be obtained from the City Manager of the City at the offices thereof in City Hall during normal business hours.

**Exhibit “B”**

## PROMISSORY NOTE

\$3,250,000

Effective as of February \_\_\_\_, 2014

FOR VALUE RECEIVED, the undersigned, The City of Foley Public Facilities Cooperative District, an Alabama public corporation (the “Maker”), promises to pay to the order of the City of Foley, an Alabama municipal corporation (together with any holder of this Promissory Note, the “Holder”), in lawful money of the United States of America, the principal sum of Three Million Two Hundred Fifty Thousand and 00/100 Dollars (\$3,250,000), together with interest in arrears on the unpaid principal balance at an annual rate equal to 1.3443% in the manner provided below. Interest shall be calculated on the basis of a year of 365 days, as applicable, and charged for the actual number of days elapsed. The Maker does hereby acknowledge and agree that the Holder shall be entitled to all of the rights of a holder in due course of negotiable instruments.

### **Section 1. Payment.**

(a) Principal and Interest. This Promissory Note shall be payable in quarterly payments as follows:

**Years 1 – 7:** From the date hereof through the date that is Seven (7) years from the date hereof, Maker shall make quarterly payments of interest only (the “Initial Payment”).

**Year 7 – 30:** From the date that is Seven (7) years from the date hereof through the date that is Thirty (30) years from the date hereof, Maker shall make quarterly payments of principal and interest (calculated based on a Thirty (30) year amortization period) (the “Adjusted Payment”, together with the Initial Payment, the “Loan Payments”).

**Final Payment:** On the date that is Thirty (30) years from the date hereof, Maker shall make a final payment of all of the outstanding principal balance and interest due under this Promissory Note, taking into account any Adjusted Payments which may also be due on such date.

The Loan Payment shall be due and payable on March 10, June 10, September 10, and December 10 of each respective year throughout the term of this Promissory Note beginning June 10, 2014 (or on such other dates as to mirror the payment dates of the certain anticipated loan payable by Chase NMTC CAFFM Investment Funds, L.L.C. in favor of Maker). Unless required by applicable law, payments will be first applied to any

unpaid collection costs and late charges, then to accrued unpaid interest, and any remaining amount to principal.

(b) Manner of Payment. Payment of principal and interest on this Promissory Note shall be made by personal check at such place in the United States of America as the Holder shall designate to the Maker in writing. If any payment of principal or interest on this Promissory Note is due on a day which is not a Business Day (as hereinafter defined), such payment shall be due on the next succeeding Business Day, and such extension of time shall be taken into account in calculating the amount of interest payable under this Promissory Note. "Business Day" means any day other than a Saturday, Sunday or legal holiday in the State of Alabama.

(c) Prepayment. The Maker may, without premium or penalty, at any date that a payment of principal and interest is due, prepay all or any portion of the outstanding principal balance due under this Promissory Note.

## **Section 2. Defaults.**

(a) Events of Default. The occurrence of any one or more of the following events shall constitute an event of default hereunder (an "Event of Default"):

(i) If the Maker shall fail to pay when due the Loan Payments on this Promissory Note when due and such failure continues for fifteen (15) days.

(ii) If, pursuant to or within the meaning of the United States Bankruptcy Code or any other federal or state law relating to insolvency or relief of debtors (a "Bankruptcy Law"), the Maker shall (v) commence a voluntary case or proceeding; (w) consent to the entry of an order for relief against him or it in an involuntary case; (x) consent to the appointment of a trustee, receiver, assignee, liquidator or similar official; (y) make an assignment for the benefit of him or its creditors; or (z) admit in writing his inability to pay his debts as they become due.

(iii) If a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that (x) is for relief against the Maker in an involuntary case; or (y) appoints a trustee, receiver, assignee, liquidator or similar official for the Maker or substantially all of the properties of the Maker.

(iv) A final judgment shall be rendered by a court of law or equity against the Maker for the payment of money which shall remain unsatisfied for a period of 90 days without a stay of execution.

(b) Notice by Maker. The Maker shall notify the Holder in writing within five days after the occurrence of any Event of Default of which the Maker acquires knowledge.

(c) Remedies. Upon the occurrence of an Event of Default hereunder (unless all Events of Default have been cured (if allowed hereunder) or waived by the Holder), the Holder may, at his option, (i) by written notice to the Maker, declare the entire unpaid principal balance of this Promissory Note, together with all accrued interest thereon, immediately due and payable regardless of any prior forbearance, and (ii) exercise any and all rights and remedies available to him under applicable law, including the right to collect from the Maker all sums due under this Promissory Note. If any scheduled payment under this Promissory Note is not made within 30 days after the same becomes due, the Maker does hereby agree to pay a late charge equal to 5% of the amount of the payment which is in default, but not less than \$50.00 or more than the maximum amount allowed by applicable law. The Maker shall also pay all reasonable costs and expenses incurred by or on behalf of the Holder in connection with the Holder's exercise of any or all of its rights and remedies under this Promissory Note, including reasonable attorneys' fees and expenses through appeal.

**Section 3. Miscellaneous.**

(a) Waiver.

(1) The rights and remedies of the Holder under this Promissory Note shall be cumulative and not alternative. No waiver by the Holder of any right or remedy under this Promissory Note shall be effective unless in writing signed by the Holder. Neither the failure nor any delay in exercising any right, power or privilege under this Promissory Note shall operate as a waiver of such right, power or privilege and no single or partial exercise of any such right, power or privilege by the Holder shall preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege. To the maximum extent permitted by applicable law, (i) no claim or right of the Holder arising out of this Promissory Note can be discharged by the Holder, in whole or in part, by a waiver or renunciation of the claim or right unless in a writing, signed by the Holder; (ii) no waiver that may be given by the Holder shall be applicable except in the specific instance for which it is given; and (iii) no notice to or demand on the Maker shall be deemed to be a waiver of any obligation of the Maker or of the right of the Holder to take further action without notice or demand as provided in this Promissory Note.

(2) With respect to the amount due pursuant to this Promissory Note, the Maker waives (i) all rights of exemption of property from levy or sale under execution or other process for the collection of debts under the Constitution or laws of the United States of America or any state thereof; (ii) demand, presentment, protest, notice of dishonor, notice of nonpayment, suits against any party, diligence in collection and all other requirements necessary to enforce

this Promissory Note; and (iii) all statutory provisions and requirements for the benefit of the Maker now or hereinafter enforced (to the extent that the same may be waived).

(b) Amendment. This Promissory Note may not be changed orally, but only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

(c) Severability. If any provision in this Promissory Note is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Promissory Note shall remain in full force and effect. Any provision of this Promissory Note held invalid or unenforceable only in part or degree shall remain in full force and effect to the extent not held invalid or unenforceable.

(d) Governing Law. This Promissory Note and the rights of the parties hereunder shall be construed, interpreted and governed in accordance the laws of the State of Alabama, notwithstanding the principal place of business of the Maker, the place where this Promissory Note may be executed by the Maker, or the provisions of any jurisdiction's conflict-of-laws principles.

(e) Parties in Interest. This Promissory Note may not be assigned or transferred by the Maker without the prior written consent of the Holder and any such unpermitted assignment or transfer shall be null and void. This Promissory Note shall be binding on Maker's successors and assigns. This Promissory Note may be assigned or transferred by the Holder without the consent of the Maker.

(f) Captions; Construction. The captions or headings in this Promissory Note are provided for convenience only and shall not affect its construction or interpretation. All references to "Section" or "Sections" refer to the corresponding Section or Sections of this Promissory Note unless otherwise specified. All words used in this Promissory Note shall be construed to be of such gender or number as the circumstances require. Unless otherwise expressly provided, the word "including" does not limit the preceding words or terms. The words "hereof" and "hereunder" and similar references refer to this Promissory Note in its entirety and not to any specific section or subsection hereof. The schedule attached hereto is incorporated herein by reference.

(g) Maximum Legal Rate. The Maker and the Holder do hereby agree that no payment of interest or other consideration made or agreed to be made by the Maker to the Holder pursuant to this Promissory Note shall, at any time, be in excess of the maximum rate of interest permissible by law. In the event such payments of interest or other consideration provided for in this Promissory Note shall result in an effective rate of interest which, for any period of time, is

in excess of the limit of the usury or any other law applicable to the indebtedness evidenced hereby, all sums in excess of those lawfully collectible as interest for the period in question shall, without further agreement or notice between or by any party hereto be applied to principal immediately upon receipt of such monies by the Holder hereof with the same force and effect as though the Maker had specifically designated such and the Holder had agreed to accept such extra payments as a principal payment, without premium. This provision shall control every other obligation of the Maker and the Holder.

[Signature Page to Follow]

[Signature Page to Promissory Note]

IN WITNESS WHEREOF, the Maker has executed and delivered this Promissory Note under seal to be effective as of the date first written above.

MAKER:

THE CITY OF FOLEY PUBLIC FACILITIES  
COOPERATIVE DISTRICT

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Name: Charles J. Ebert, III  
As its: Chairman

## PROMISSORY NOTE

\$2,320,579

Effective as of October 16, 2013

FOR VALUE RECEIVED, the undersigned, The City of Foley Public Facilities Cooperative District, an Alabama public corporation (the “Maker”), promises to pay to the order of the City of Foley, an Alabama municipal corporation (together with any holder of this Promissory Note, the “Holder”), in lawful money of the United States of America, the principal sum of Two Million Three Hundred Twenty Thousand Five Hundred Seventy-Nine and 00/100 Dollars (\$2,320,579.00), together with interest in arrears on the unpaid principal balance at an annual rate equal to 1.3443% in the manner provided below. Interest shall be calculated on the basis of a year of 365 days, as applicable, and charged for the actual number of days elapsed. The Maker does hereby acknowledge and agree that the Holder shall be entitled to all of the rights of a holder in due course of negotiable instruments.

### **Section 1. Payment.**

(a) Principal and Interest. This Promissory Note shall be payable in quarterly payments as follows:

**Years 1 – 7:** From the date hereof through the date that is Seven (7) years from the date hereof, Maker shall make quarterly payments of interest only (the “Initial Payment”).

**Year 7 – 30:** From the date that is Seven (7) years from the date hereof through the date that is Thirty (30) years from the date hereof, Maker shall make quarterly payments of principal and interest (calculated based on a Thirty (30) year amortization period) (the “Adjusted Payment”, together with the Initial Payment, the “Loan Payments”).

**Final Payment:** On the date that is Thirty (30) years from the date hereof, Maker shall make a final payment of all of the outstanding principal balance and interest due under this Promissory Note, taking into account any Adjusted Payments which may also be due on such date.

The Loan Payment shall be due and payable on March 10, June 10, September 10, and December 10 of each respective year throughout the term of this Promissory Note beginning June 10, 2014 (or on such other dates as to mirror the payment dates of the certain anticipated loan payable by Chase NMTC CAFFM Investment Funds, L.L.C. in favor of Maker). Unless required by applicable law, payments will be first applied to any

unpaid collection costs and late charges, then to accrued unpaid interest, and any remaining amount to principal.

(b) Manner of Payment. Payment of principal and interest on this Promissory Note shall be made by personal check at such place in the United States of America as the Holder shall designate to the Maker in writing. If any payment of principal or interest on this Promissory Note is due on a day which is not a Business Day (as hereinafter defined), such payment shall be due on the next succeeding Business Day, and such extension of time shall be taken into account in calculating the amount of interest payable under this Promissory Note. "Business Day" means any day other than a Saturday, Sunday or legal holiday in the State of Alabama.

(c) Prepayment. The Maker may, without premium or penalty, at any date that a payment of principal and interest is due, prepay all or any portion of the outstanding principal balance due under this Promissory Note.

## **Section 2. Defaults.**

(a) Events of Default. The occurrence of any one or more of the following events shall constitute an event of default hereunder (an "Event of Default"):

(i) If the Maker shall fail to pay when due the Loan Payments on this Promissory Note when due and such failure continues for fifteen (15) days.

(ii) If, pursuant to or within the meaning of the United States Bankruptcy Code or any other federal or state law relating to insolvency or relief of debtors (a "Bankruptcy Law"), the Maker shall (v) commence a voluntary case or proceeding; (w) consent to the entry of an order for relief against him or it in an involuntary case; (x) consent to the appointment of a trustee, receiver, assignee, liquidator or similar official; (y) make an assignment for the benefit of him or its creditors; or (z) admit in writing his inability to pay his debts as they become due.

(iii) If a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that (x) is for relief against the Maker in an involuntary case; or (y) appoints a trustee, receiver, assignee, liquidator or similar official for the Maker or substantially all of the properties of the Maker.

(iv) A final judgment shall be rendered by a court of law or equity against the Maker for the payment of money which shall remain unsatisfied for a period of 90 days without a stay of execution.

(b) Notice by Maker. The Maker shall notify the Holder in writing within five days after the occurrence of any Event of Default of which the Maker acquires knowledge.

(c) Remedies. Upon the occurrence of an Event of Default hereunder (unless all Events of Default have been cured (if allowed hereunder) or waived by the Holder), the Holder may, at his option, (i) by written notice to the Maker, declare the entire unpaid principal balance of this Promissory Note, together with all accrued interest thereon, immediately due and payable regardless of any prior forbearance, and (ii) exercise any and all rights and remedies available to him under applicable law, including the right to collect from the Maker all sums due under this Promissory Note. If any scheduled payment under this Promissory Note is not made within 30 days after the same becomes due, the Maker does hereby agree to pay a late charge equal to 5% of the amount of the payment which is in default, but not less than \$50.00 or more than the maximum amount allowed by applicable law. The Maker shall also pay all reasonable costs and expenses incurred by or on behalf of the Holder in connection with the Holder's exercise of any or all of its rights and remedies under this Promissory Note, including reasonable attorneys' fees and expenses through appeal.

**Section 3. Miscellaneous.**

(a) Waiver.

(1) The rights and remedies of the Holder under this Promissory Note shall be cumulative and not alternative. No waiver by the Holder of any right or remedy under this Promissory Note shall be effective unless in writing signed by the Holder. Neither the failure nor any delay in exercising any right, power or privilege under this Promissory Note shall operate as a waiver of such right, power or privilege and no single or partial exercise of any such right, power or privilege by the Holder shall preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege. To the maximum extent permitted by applicable law, (i) no claim or right of the Holder arising out of this Promissory Note can be discharged by the Holder, in whole or in part, by a waiver or renunciation of the claim or right unless in a writing, signed by the Holder; (ii) no waiver that may be given by the Holder shall be applicable except in the specific instance for which it is given; and (iii) no notice to or demand on the Maker shall be deemed to be a waiver of any obligation of the Maker or of the right of the Holder to take further action without notice or demand as provided in this Promissory Note.

(2) With respect to the amount due pursuant to this Promissory Note, the Maker waives (i) all rights of exemption of property from levy or sale under execution or other process for the collection of debts under the Constitution or laws of the United States of America or any state thereof; (ii) demand, presentment, protest, notice of dishonor, notice of nonpayment, suits against any party, diligence in collection and all other requirements necessary to enforce

this Promissory Note; and (iii) all statutory provisions and requirements for the benefit of the Maker now or hereinafter enforced (to the extent that the same may be waived).

(b) Amendment. This Promissory Note may not be changed orally, but only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

(c) Severability. If any provision in this Promissory Note is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Promissory Note shall remain in full force and effect. Any provision of this Promissory Note held invalid or unenforceable only in part or degree shall remain in full force and effect to the extent not held invalid or unenforceable.

(d) Governing Law. This Promissory Note and the rights of the parties hereunder shall be construed, interpreted and governed in accordance the laws of the State of Alabama, notwithstanding the principal place of business of the Maker, the place where this Promissory Note may be executed by the Maker, or the provisions of any jurisdiction's conflict-of-laws principles.

(e) Parties in Interest. This Promissory Note may not be assigned or transferred by the Maker without the prior written consent of the Holder and any such unpermitted assignment or transfer shall be null and void. This Promissory Note shall be binding on Maker's successors and assigns. This Promissory Note may be assigned or transferred by the Holder without the consent of the Maker.

(f) Captions; Construction. The captions or headings in this Promissory Note are provided for convenience only and shall not affect its construction or interpretation. All references to "Section" or "Sections" refer to the corresponding Section or Sections of this Promissory Note unless otherwise specified. All words used in this Promissory Note shall be construed to be of such gender or number as the circumstances require. Unless otherwise expressly provided, the word "including" does not limit the preceding words or terms. The words "hereof" and "hereunder" and similar references refer to this Promissory Note in its entirety and not to any specific section or subsection hereof. The schedule attached hereto is incorporated herein by reference.

(g) Maximum Legal Rate. The Maker and the Holder do hereby agree that no payment of interest or other consideration made or agreed to be made by the Maker to the Holder pursuant to this Promissory Note shall, at any time, be in excess of the maximum rate of interest permissible by law. In the event such payments of interest or other consideration provided for in this Promissory Note shall result in an effective rate of interest which, for any period of time, is

in excess of the limit of the usury or any other law applicable to the indebtedness evidenced hereby, all sums in excess of those lawfully collectible as interest for the period in question shall, without further agreement or notice between or by any party hereto be applied to principal immediately upon receipt of such monies by the Holder hereof with the same force and effect as though the Maker had specifically designated such and the Holder had agreed to accept such extra payments as a principal payment, without premium. This provision shall control every other obligation of the Maker and the Holder.

[Signature Page to Follow]

[Signature Page to Promissory Note]

IN WITNESS WHEREOF, the Maker has executed and delivered this Promissory Note under seal to be effective as of the date first written above.

MAKER:

THE CITY OF FOLEY PUBLIC FACILITIES  
COOPERATIVE DISTRICT

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Name: Charles J. Ebert, III  
As its: Chairman



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**FUNDING AGREEMENT**

---

\_\_\_\_\_

Dated \_\_\_\_\_, 2014

\_\_\_\_\_

between

**CITY OF FOLEY, ALABAMA**

**AND**

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

---

**This Funding Agreement was prepared by C. Britton Bonner of Adams and Reese LP,  
115 S. McKenzie Street, Foley, Alabama 36535.**

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## FUNDING AGREEMENT

This **FUNDING AGREEMENT** is made and entered as of \_\_\_\_\_, 2014 (the "Agreement") by and between the **CITY OF FOLEY, ALABAMA**, a political subdivision of the State of Alabama (the "City"), and **THE CITY OF FOLEY PUBLIC FACILITIES COOPERATIVE DISTRICT**, an Alabama public corporation (the "District").

### Recitals

Pursuant to Amendment No. 772 to the Constitution of Alabama of 1901, as amended, ("Amendment No. 772") for the purposes expressed therein and herein and for the benefit of the District and the Coastal Alabama Farmers' and Fishermen's Market, Inc., an Alabama nonprofit corporation of which the District is the sole member (the "CAFFM"), the City and the District have delivered this Agreement simultaneously with execution and delivery of loans in the maximum principal amount of \$8,000,000 from Pacesetter CDE X, LLC (the "Pacesetter CDE") to the CAFFM (the "Loans") and the execution and delivery of (i) that certain Joint and Several Hazardous Substance Guaranty and Indemnification Agreement of even date herewith by the District and the CAFFM with and for the benefit of the Pacesetter CDE, (ii) that certain Guaranty of Payment and Completion of even date herewith by the District for the benefit of the Pacesetter CDE, and (iii) that certain QALICB Indemnification Agreement of even date herewith by the District and the CAFFM with and for the benefit of JPMorgan Chase Bank, N.A. (collectively, as the same may be amended, assigned, restated, modified, or supplemented from time to time, the "NMTC Guarantees") in conjunction with the Loans and the allocation of certain new market tax credits under Section 45D of the Internal Revenue Code of 1986, as amended (the "NMTC Program").

### Agreement

NOW, THEREFORE, for and in consideration of the premises, and the mutual covenants and agreements herein contained, the City and the District hereby covenant, agree and bind themselves as follows:

## ARTICLE 1

### REPRESENTATIONS AND WARRANTIES

#### SECTION 1.01 Representations and Warranties of the Issuer.

The District makes the following representations and warranties:

(a) The District is duly incorporated under the provisions of Chapter 99B of Title 11 of the Code of Alabama 1975 and has corporate power and authority to enter into this Agreement. The District is not in default under any of the provisions contained in its certificate of incorporation, its by-laws or in the laws of the State of Alabama. By proper corporate action the District has duly authorized the execution, delivery and performance of this Agreement.

(b) The District has executed and delivered the Guarantees in conjunction with the Loans and the Loans will be due and payable as to principal and interest in the years and in the amounts as set forth in Exhibit A hereto.

(c) The Loans were funded and delivered upon the condition, and in reliance, that simultaneously therewith the District would execute and deliver this Agreement.

### **SECTION 1.02 Representations and Warranties of the City.**

The City hereby represents and warrants as follows:

(a) This Agreement is made and delivered by the City pursuant to Amendment No. 772.

(b) The City has the power and authority to enter into this Agreement and to carry out its obligations hereunder and by proper action the City has duly authorized the execution, delivery and performance of this Agreement.

(c) The Loans were funded and delivered upon the condition, and in reliance, that simultaneously therewith the City would execute and deliver this Agreement.

(d) The issuance of the Loans and the application of the proceeds thereof for the purposes set forth in the closing documents for the Loans and in this Agreement will promote the local economic, commercial and industrial development of the City, increase employment in the City and promote and develop for the public good and welfare trade, commerce, industry, and employment opportunities in the City, as well as result in direct financial benefits to the City all in furtherance of the purposes of Amendment No. 772.

## **ARTICLE 2**

### **DURATION OF AGREEMENT**

The obligations of the City hereunder shall arise on the date of delivery of this Agreement and shall continue in effect until the NMTC Guarantees have expired or been terminated pursuant to their terms.

## **ARTICLE 3**

### **PAYMENT OF NMTC GUARANTEES**

#### **SECTION 3.01 Payments of NMTC Guarantees by the City.**

(a) For the payment of the NMTC Guarantees, the City hereby authorizes, orders and directs the Finance Director of the City of Foley to pay to the District in immediately available funds, upon presentation to the City by the Trustee of a payment request and certificate substantially in the form of Exhibit B hereto and solely from the Funding Agreement Fund hereinafter created, payments (collectively the "Funding Agreement Payments") at such time or

times as shall be necessary to provide for the due and punctual payment of the District's obligations under the NMTC Guarantees.

(b) The District shall apply all amounts received from the City under Section 3.01(a) of this Agreement in accordance with Section 4.01(a) hereof.

(c) The City agrees that the principal of and interest on the Loans shall become due and payable in each year as set forth on Exhibit A hereto.

(d) The City and the District agree:

(1) the obligations of and recourse against the City for payment of any amounts pursuant to this Agreement shall be limited to and shall not exceed the amounts determined from time to time as provided in Section 3.01(a);

(2) all payments hereunder by the City shall be valid and effectual to satisfy and discharge the liability of the City to the extent of the amounts paid and the City shall not be responsible or liable for payment to any third party with respect to such amounts so paid by the City.

### **SECTION 3.02 Funding Agreement Fund.**

(a) There is hereby established a special fund designated the "Funding Agreement Fund" which shall be held by the Finance Director of the City until this Agreement shall be terminated in accordance with its terms. Money in the Funding Agreement Fund shall be used solely for the payment of the obligations of the City under Section 3.01(a)(1) hereof.

(b) The City shall pay or cause to be paid, and the City hereby authorizes, orders and directs the Finance Director of the City to pay, into the Funding Agreement Fund from the taxes, revenues, or funds of the City amounts sufficient to provide for the due and punctual payment of the obligations of the City set forth under Section 3.01(a)(1) hereof.

### **SECTION 3.03 Nature of Obligations of the City.**

(a) The full faith and credit of the City are hereby irrevocably pledged to the obligations of the City to make the payments required under Section 3.01(a) of this Agreement and the obligations shall be absolute and unconditional under any and all circumstances and in no way conditioned or contingent upon any attempt to collect any of such amounts from the District, the CAFFM or any other person or entity or to realize upon any property pledged as collateral for the Loans or upon any other direct or indirect security for the Loans or resort to any other remedies.

(b) The City agrees the City may pay all amounts due under this Agreement from any funds or revenues of the City which are legally available for such purpose. The District shall apply all amounts received from the City under this Section 3.03(b) in accordance with Section 4.01(a) hereof.

## ARTICLE 4

### OBLIGATIONS OF THE DISTRICT

#### SECTION 4.01 Obligations of the District.

The District hereby agrees to comply with the provisions of the NMTC Guarantees and to cause all amounts received from the City in accordance with Section 3.01(a) or Section 3.03(b) to be applied to the payment of NMTC Guarantees as provided in the NMTC Guarantees.

#### SECTION 4.02 Remedies of the City.

The City hereby agrees that any failure of the District to comply with the provisions of Section 4.01 of this Agreement shall not constitute not relieve or discharge the City from any obligation hereunder. The City may, notwithstanding the foregoing, proceed to enforce the agreements of the District set forth in Section 4.01 of this Agreement by suit in equity, action at law, or other appropriate proceedings.

## ARTICLE 5

### EVENTS OF DEFAULT AND REMEDIES

#### SECTION 5.01 Events of Default.

Any one or more of the following shall constitute an event of default by the City hereunder (an "Event of Default") under this Agreement (whatever the reason for such event and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(a) the City shall fail to make any payment required by Section 3.01(a) hereof when and as the same shall become due and payable; or

(b) the appointment of a receiver, liquidator or trustee of the City or any of its properties or assets; or a general assignment by the City for the benefit of the creditors thereof; or the commencement of proceedings by or against the City under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, now or hereafter in effect.

#### SECTION 5.02 Remedies of the District.

(a) If an Event of Default exists, the District may proceed to protect its rights by suit in equity, action at law or other appropriate proceedings, including for the specific performance of any covenant or agreement of the City herein contained.

(b) The District may proceed directly against the City as provided herein without resorting to any other remedies which it may have and without proceeding against any other person or entity or any other security.

**SECTION 5.03 Remedies Subject to Applicable Law.**

All rights, remedies and powers provided by this Article may be exercised only to the extent the exercise thereof does not violate any applicable provision of law in the premises, and all the provisions of this Article are intended to be subject to all applicable mandatory provisions of law which may be controlling in the premises and to be limited to the extent necessary so that the same will not render this Agreement invalid or unenforceable.

**ARTICLE 6**

**THIRD-PARTY BENEFICIARY CONTRACT**

This Agreement is a third-party beneficiary contract and JPMorgan Chase Bank, N.A. and Pacesetter CDE (collectively with their successors and assigns, the “Beneficiaries”) as their interests appear in the NMTC Guarantees are third-party beneficiaries of the covenants and agreements on the part of the City and the District contained herein as fully and completely as if they were parties signatory hereto.

**ARTICLE 7**

**PROVISIONS OF GENERAL APPLICATION**

**SECTION 7.01 Enforceability.**

The provisions of this Agreement shall be severable. In the event any provision hereof shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any of the remaining provisions hereof.

**SECTION 7.02 Prior Agreements Cancelled.**

This Agreement shall completely and fully supersede all other prior agreements, both written and oral, among the parties hereto relating to the matters contained herein. None of the parties hereto shall hereafter have any rights under any of such prior agreements but shall look to this Agreement for definition and determination of all of their respective rights, liabilities and responsibilities relating to the matters contained herein.

**SECTION 7.03 Counterparts.**

This Agreement may be executed in counterparts, each of which shall constitute but one and the same agreement.

**SECTION 7.04 Binding Effect; Governing Law.**

(a) This Agreement shall inure to the benefit of, and shall be binding upon, the parties hereto and their respective permitted successors and assigns, except as otherwise provided herein. Faxed, scanned or photocopied signatures shall be deemed equivalent to original signatures.

(b) This Agreement shall be governed exclusively by the laws of the State of Alabama without regard to conflict of law principles.

**SECTION 7.05 Notices.**

(a) All notices, demands, consents, certificates or other communications hereunder shall be in writing, shall be sufficiently given and shall be deemed given when delivered personally to the party or to an officer of the party to whom the same is directed, or mailed by registered or certified mail, postage prepaid, or sent by overnight courier, addressed as follows:

- |   |   |
|---|---|
| (1) if to the Issuer:   | (2) if to the City:   |
| The City of Foley Public Facilities<br>Cooperative District<br>407 East Laurel Avenue<br>P.O. Box 1750<br>Foley, Alabama 36535<br>Attn: _____ | City of Foley, Alabama<br>City Hall<br>407 East Laurel Avenue<br>P.O. Box 1750<br>Foley, Alabama 36535<br>Attn: _____ |

(b) Any such notice or other document shall be deemed to be received as of the date delivered, if delivered personally, or as of three (3) days after the date deposited in the mail, if mailed, or the next business day, if sent by overnight courier.

**SECTION 7.06 No Assignment and Transfer of this Agreement.**

This Agreement is not negotiable and may not be transferred or assigned except to a successor trustee.

**SECTION 7.07 Amendments.**

(a) This Agreement may be amended or supplemented only by an instrument (i) in writing duly authorized, executed and delivered by each party hereto and (ii) with the prior written consent of the Beneficiaries.

(b) Any attempted amendment hereof or supplement hereto without full compliance with this Section shall be null and void and of no effect.

[signature page follows]

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

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

SEAL

By \_\_\_\_\_  
Chairman

ATTEST:

\_\_\_\_\_  
Secretary

ATTEST:

**CITY OF FOLEY, ALABAMA**

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

By: \_\_\_\_\_  
Mayor

**Registration Certificate**

I hereby certify that the above and foregoing Funding Agreement and the obligations of the District thereunder have been duly registered by me as a claim against the City of Foley, Alabama, in the State of Alabama, and the Funding Agreement Fund created therein.

\_\_\_\_\_  
Finance Director of the City of  
Foley, Alabama

**EXHIBIT A**

Debt Service on Loans

**EXHIBIT B**

**PAYMENT REQUEST AND CERTIFICATE**

**TO:** City of Foley, Alabama

**RE:** Funding Agreement dated as of \_\_\_\_\_, 2014 (the "Agreement") by and between the City of Foley, Alabama and the City of Foley Public Facilities Cooperative District

The District under the Funding Agreement hereby:

(1) requests payment by the City of Foley, Alabama of the amount of \$\_\_\_\_\_ in immediately available funds on or before \_\_\_\_\_, \_\_\_\_ pursuant to Section 3.01(a) of the above-referenced Agreement, and

(2) in connection therewith represents and certifies that the amount requested hereby:

(a) shall be applied to the following obligations under the NMTC Guarantees, in the amount of \$\_\_\_\_\_:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(b) when added to all amounts previously requested by the District and paid by the City pursuant to the above-referenced Agreement will not exceed the maximum amount to be paid by the City pursuant to said Agreement.

IN WITNESS WHEREOF, the District has caused this instrument to be executed and delivered by an officer thereof duly authorized thereunto on this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

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

By \_\_\_\_\_  
Its \_\_\_\_\_



**FIRST AMENDED AND RESTATED  
OPERATING AGREEMENT**

**of**

**CHASE NMTC CAFFM INVESTMENT FUND, LLC,**  
a Delaware limited liability company

**Dated as of [May \_\_], 2014**

*The membership interests in Chase NMTC CAFFM Investment Fund, LLC have not been registered under the Securities Act of 1933, as amended, and are subject to significant restrictions on transferability as set forth herein.*

**FIRST AMENDED AND RESTATED OPERATING AGREEMENT OF  
CHASE NMTC CAFFM INVESTMENT FUND, LLC**

THIS FIRST AMENDED AND RESTATED OPERATING AGREEMENT (this "Agreement") is made and entered into as of [May \_\_], 2014 (the "Effective Date"), by Chase Community Equity, LLC, a Delaware limited liability company, as the sole member ("CCE").

**RECITALS**

A. On December 5, 2013 (the "Formation Date"), a Certificate of Formation was filed in the Office of the Secretary of State of the State of Delaware (the "Formation State") forming a limited liability company under the Limited Liability Company Act (the "Act") in effect in the Formation State known as Chase NMTC CAFFM Investment Fund, LLC (the "Fund")

B. On December 18, 2013 (the "Prefund Date"), CCE, as the sole member, entered into that certain Operating Agreement of Fund (the "Initial Fund OA").

C. On the Prefund Date, in accordance with the Initial Fund OA, CCE agreed to contribute capital in the amount of \$8,000,000 to Fund, to be paid upon admission of CCE as the sole member of Fund (the "Initial Equity Investment"), which capital it received from an equity investment by its sole member, JPMorgan Chase Bank, N.A., a national banking association (the "Bank").

D. On the Prefund Date, Fund used the entire proceeds of the Initial Equity Investment to make two "qualified equity investment[s]" (as such term is used in Section 45D of the Internal Revenue Code of 1986, as amended (the "Code") and referred into herein, collectively, as the "CDE Capital Contribution") in Pacesetter CDE X, LLC, a Texas limited liability company ("CDE").

E. Fund made the CDE Capital Contribution in exchange for a 99.99% equity interest in CDE in accordance with that certain Amended and Restated Operating Agreement of CDE, dated as of the Prefund Date (the "Initial CDE OA"), by and between Fund, as investor member, and Pacesetter CDE, Inc., a Texas corporation ("Allocatee"), as managing member.

F. Prior to the Prefund Date, Allocatee received a 2012 allocation award of New Markets Tax Credits (defined below) authority under Section 45D of the Code in the amount of \$30,000,000.00 (the "Allocation").

G. Allocatee and the CDFI Fund (defined below) entered into that certain New Markets Tax Credit Program Allocation Agreement (Control Number: 12NMA003524) dated effective as of July 11, 2013, as amended by that certain Amendment of NMTC Program Allocation Agreement, dated effective as of October 1, 2013, pursuant to which CDE and certain other Subsidiary Allocatees (defined below) were added as parties to the agreement (collectively, the "Allocation Agreement"). The Allocation Agreement governs the Allocation.

H. On or prior to the Prefund Date, Allocatee made a sub-allocation to CDE of a portion of the Allocation, in the aggregate amount of \$8,000,000.00.

I. On the Effective Date, Fund, as investor member, and Allocatee, as managing member, will enter into that certain Second Amended and Restated Operating Agreement of CDE (as the same may be amended, assigned, modified, extended, or restated from time to time, the “CDE OA”), which amends and restates in its entirety the Initial CDE OA and contains the provisions governing CDE.

J. On the Effective Date, The City of Foley Public Facilities Cooperative District, an Alabama public corporation (“Fund Lender”), entered into an agreement with Fund, pursuant to which Fund Lender will make a loan to Fund in the original principal amount of \$[5,950,400] (the “Fund Loan”).

K. On the Effective Date, Fund will utilize the proceeds of the Fund Loan to (i) make a distribution to CCE in the amount of \$[5,410,400] and thereby reduce CCE’s net capital contribution to Fund to \$[2,589,600], and (ii) pay the Sub-Allocation Fee (defined below) to Allocatee.

L. On the Effective Date, CDE will use the entire proceeds of the CDE Capital Contribution to make four loans to Coastal Alabama Farmers’ and Fishermen’s Market, Inc., an Alabama nonprofit corporation (“Project Borrower”), in an aggregate principal amount of \$[8,000,000] (collectively, the “Project Loans”) to finance the construction of a farmers’ and retail market and a wholesale produce distribution facility located, respectively, at 20733 Mifflin Road and 410 East Section Avenue, Foley, Alabama.

M. The Project Loans are being made in order to utilize substantially all of the proceeds of the CDE Capital Contribution to make loans and other investments that constitute “qualified low-income community investments” (as defined in Section 45D of the Code and the Treasury Regulations and Guidance).

N. CCE desires to enter into this Agreement to (i) continue the Fund, (ii) amend and restate in its entirety the Initial Fund OA, and (iii) set forth all of the provisions governing the Fund.

NOW, THEREFORE, in consideration of the foregoing and of other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, CCE hereby agrees to continue Fund pursuant to the Act as set forth in this Agreement, which amends and restates the entirety of the Initial Fund OA and reads in its entirety as follows:

## **ARTICLE I DEFINITIONS**

**Section 1.1 Definitions.** For purposes of this Agreement, unless the language or context clearly indicates that a different meaning is intended, capitalized terms used herein have the meanings assigned to them as follows:

- (a) “Act” has the meaning set forth in the Recitals.

(b) “Agreement” means this First Amended and Restated Operating Agreement, as the same may be amended, assigned, modified, extended, or restated from time to time.

(c) “Allocatee” has the meaning set forth in the Recitals.

(d) “Allocation” has the meaning set forth in the Recitals.

(e) “Approved Investment” means (i) the Project Loans, and (ii) any other QLICI approved as provided for in the CDE OA.

(f) “Approved Investment Documents” means any documents or instruments evidencing or securing any Approved Investment.

(g) “Bank” has the meaning set forth in the Recitals.

(h) “Capital Contribution” with respect to the Member means the aggregate amount of money contributed or agreed to be contributed by the Member to the capital of Fund pursuant to this Agreement and shall include the Initial Equity Investment. Any reference to the Capital Contribution of the Member shall include the Capital Contribution made by a predecessor holder of the Membership Interest of the Member.

(i) “CCE” has the meaning set forth in the Preamble.

(j) “CDE” has the meaning set forth in the Recitals.

(k) “CDE Capital Contribution” has the meaning set forth in the Recitals.

(l) “CDE Member Interest” means the equity ownership interest of Fund in CDE at any particular time, including the right of Fund to any and all benefits to which Fund may be entitled as provided in the CDE OA.

(m) “CDE OA” has the meaning set forth in the Recitals.

(n) “CDFI Fund” means the Community Development Financial Institutions Fund of the United States Department of Treasury, or any successor agency charged with oversight responsibility for the federal New Markets Tax Credit program.

(o) “Certificate” means the Certificate of Formation of Fund or any other instrument or document which is required under the laws of the Formation State to be executed and filed for recording in the appropriate public offices within the Formation State to perfect or maintain Fund as a limited liability company under the laws of the Formation State, as such certificate may be amended from time to time..

(p) “Code” has the meaning set forth in the Recitals.

(q) “Compliance Period” means the seven-year credit period applicable to each QEI made by Fund in CDE, commencing on the first Credit Allowance Date with respect to each

such QEI and ending on the last day prior to the seventh anniversary of such first Credit Allowance Date.

(r) “Credit Allowance Date” means any “credit allowance date” (as defined in Section 45D(a)(3) of the Code) with respect to each QEI made in CDE.

(s) “Effective Date” has the meaning set forth in the Preamble.

(t) “Extraordinary Expenses” shall mean extraordinary or unanticipated operating or administrative costs or expenses incurred by Fund, including amounts funded to pay (i) costs incurred in connection with any defaulted Approved Investment and/or advances to permit CDE to make protective advances in connection with such loans, (ii) costs incurred in connection with the reinvestment of amounts pursuant to the NMTC Program Requirements, (iii) costs incurred in any litigation or other judicial or administrative proceeding in which Fund may be involved or in which Fund may have an interest, (iv) income, franchise or withholding taxes imposed upon Fund in connection with the ownership of Fund’s assets or operation of Fund’s business, and (v) costs involved in any challenge or audit of any tax returns of Fund arising out of an actual or alleged failure of a recipient of an Approved Investment (A) to qualify as a QALICB, (B) to cause an Approved Investment to be a QLICB, or (C) to comply with NMTC Program Requirements; *provided*, that Extraordinary Expenses shall not include (x) those expenses contemplated in the definition of “Operating Expenses,” or (y) payments of interest, principal, and other sums payable to Fund Lender pursuant to the Fund Loan Documents.

(u) “Fiscal Year” means Fund’s fiscal year, which shall be the calendar year.

(v) “Formation Date” has the meaning set forth in the Recitals.

(w) “Formation State” has the meaning set forth in the Recitals.

(x) “Fund” has the meaning set forth in the Recitals.

(y) “Fund Lender” has the meaning set forth in the Recitals.

(z) “Fund Loan” has the meaning set forth in the Recitals.

(aa) “Fund Loan Documents” means all documents or instruments evidencing, securing, or governing the Fund Loan or any agreement to forbear in the enforcement of remedies by the Fund Lender, as the same may be amended, modified, or restated from time to time.

(bb) “Income” means collectively, (i) all cash, revenues and funds received by Fund, including all distributions by CDE, other than (A) the Capital Contributions, (B) proceeds of the Fund Loan, and (C) Member Loans to Fund, plus (ii) amounts contained in any Fund reserves that are no longer required for the purposes for which they were reserved, as determined by the Member; *provided, however*, that any amounts that is determined to constitute an Unintentional Distribution shall not constitute Income and shall be subject to return as provided in the CDE OA.

- (cc) “Initial CDE OA” has the meaning set forth in the Recitals.
- (dd) “Initial Equity Investment” has the meaning set forth in the Recitals.
- (ee) “Initial Fund OA” has the meaning set forth in the Recitals.
- (ff) “Member” means CCE, or any successor or assignee of such Member admitted to Fund in accordance with the provisions hereof.
- (gg) “Member Loans” has the meaning set forth in Section 3.7.

(hh) “Membership Interest” means the ownership interest of a Member in Fund at any particular time, including the right of such Member to any and all benefits to which such Member may be entitled as provided in this Agreement and in the Act, including any voting, approval and consent rights, together with the obligations of such Member to comply with all the provisions of this Agreement and of said Act. As of the Effective Date, the Member is the sole member of Fund and holds 100% of the Membership Interests therein.

(ii) “Net Cash Flow” means, for any period, Income for such period, less the sum of the following to the extent required to be paid or set aside by Fund for such period (which shall be paid in the following order of priority): (i) interest, principal, and other sums due and payable on any Member Loans the proceeds of which were used to pay Extraordinary Expenses of Fund; (ii) Extraordinary Expenses of Fund; (iii) interest, principal, and other sums due and payable to the Fund Lender pursuant to the Fund Loan Documents; (iv) interest, principal, and other sums due and payable on any Member Loans the proceeds of which were not used to pay Extraordinary Expenses of Fund; and (v) funding of such reserves as may be required by this Agreement.

(jj) “New Markets Tax Credits” or “NMTCs” means the new markets tax credits allowed pursuant to Section 45D of the Code for qualified equity investments in connection with a certified community development entity.

(kk) “NMTC Program Requirements” means, collectively, the provisions of Section 45D of the Code, the Treasury Regulations and Guidance, and the Allocation Agreement.

(ll) “Operating Expenses” means all actual, out-of-pocket costs and expenses incurred to operate, manage, administer, terminate, and wind down Fund and/or to service and collect each QEI and Capital Contribution hereunder, including, (i) expenses related to compliance by Fund with the NMTC Program Requirements or causing CDE to comply with NMTC Program Requirements, (ii) fees for bookkeeping, accounting, and other similar services relating to the affairs of Fund (including without limitation, the annual audit of Fund, and the preparation of annual and interim financial statements and annual tax returns), (iii) expenses for insurance premiums, telephone, facsimile, internet and similar charges, (iv) Wire Transfer and Bank Maintenance Fees, (v) the annual fees for tax return preparation and the annual audit of Fund (if any), (vi) fees and expenses related to Fund maintaining its due organization, valid existence, and good standing under the laws of the State of Delaware, (vii) fees and expenses related to Fund registering to do business as a foreign limited liability company in any state (based on the

advice of the Member's accountants or counsel) and maintaining its due organization, valid existence, and good standing under the laws of any such state, and (viii) all other costs or expenses arising from the operation, oversight, and management of the investment and business activities of Fund; *provided*, that Operating Expenses shall not include (x) Extraordinary Expenses, or (y) payments of interest, principal, and other sums payable to the Fund Lender pursuant to the Fund Loan Documents.

(mm) "Person" means and includes a natural person, domestic or foreign limited liability company, corporation, partnership, limited partnership, joint venture, association, business trust, estate, trust, enterprise, and any other legal or commercial entity.

(nn) "Prefund Date" has the meaning set forth in the Recitals.

(oo) "Project Borrower" has the meaning set forth in the Recitals.

(pp) "Project Loans" has the meaning set forth in the Recitals.

(qq) "Project Loan Documents" means, collectively, any loan agreement(s), promissory note(s), mortgage(s) or deed(s) of trust, pledge agreements(s), and/or other documents evidencing, securing, or governing the Project Loans, as the same may be amended, modified, or restated from time to time in accordance with the CDE OA.

(rr) "Put/Call Agreement" means that certain Investment Fund Put/Call Agreement, dated as of the Effective Date, by and between CCE and Fund Lender, as the same may be amended, assigned, modified, extended, or restated from time to time.

(ss) "QALICB" means a "qualified active low-income community business" as defined in Section 45D(d)(2) of the Code.

(tt) "QEI" means any equity investment made by Fund in a certified community development entity that constitutes a "qualified equity investment" in such certified community development entity, as defined in Section 45D of the Code and the Treasury Regulations and Guidance.

(uu) "QLICI" means any "qualified low-income community investment," as such term is defined in Section 45D of the Code and the Treasury Regulations and Guidance.

(vv) "Recapture Event" has the meaning set forth in the CDE OA.

(ww) "Regulations" means any temporary, proposed or final regulations promulgated by the U.S. Department of the Treasury pursuant to the Code, as amended from time to time.

(xx) "Sub-Allocation Fee" means that certain fee in the amount of \$540,000 paid by the Fund to Allocatee for undertaking and agreeing to perform certain services in connection with the Allocation, pursuant to that certain Sub-Allocation Fee Agreement, dated as of the Effective Date, by and between the Fund and Allocatee.

(yy) “Tax Credit Investment Period” means the period beginning on the date on which Fund first makes a QEI in CDE and ending on the last day of the last Compliance Period applicable to a QEI made by Fund in CDE.

(zz) “Treasury Regulations and Guidance” means and includes any Regulations and any guidance, rule, or procedure published by the CDFI Fund, as amended from time to time, including without limitation the Community Development Entity Certification Application for CDE and the New Markets Tax Credit Allocation Application pursuant to which the Allocation was awarded.

(aaa) “Unintentional Distribution” has the meaning set forth in the CDE OA.

(bbb) “Wire Transfer and Bank Maintenance Fees” means all ordinary and necessary money-transfer service fees, charges, and the like, incurred by Fund in its ordinary operations as contemplated under this Agreement as well as monthly account maintenance and other bank charges relating to Fund’s bank account(s).

## **ARTICLE II ORGANIZATION**

**Section 2.1 Formation and Continuation.** The Fund was organized under the Act upon the filing of the Certificate. Except as otherwise expressly provided for herein and in the Certificate, the rights and liabilities of the Member shall be as provided for in the Act. The undersigned hereby continues Fund under the Act.

**Section 2.2 Name.** The name of Fund is Chase NMTC CAFFM Investment Fund, LLC.

**Section 2.3 Term.** The term of Fund commenced as of the Formation Date and shall be perpetual, unless Fund is dissolved by law or in accordance with the provisions of this Agreement.

**Section 2.4 Place of Business.** The address of Fund’s principal office shall be c/o Chase Community Equity, LLC, 10 S. Dearborn Street, 19th Floor, Mail Code: IL1-0953, Chicago, Illinois 60603-5506, Attention: NMTC Asset Manager. The Member may change the business address of Fund at any time and from time to time. The Fund may maintain such additional offices at such other places as the Member may hereafter determine.

**Section 2.5 Registered Office and Registered Agent.** The name of Fund’s registered agent for service of process in Delaware is the Corporation Trust Company, and its registered office shall be at the office of its registered agent at Corporation Trust Center, 1209 Orange Street, in the City of Wilmington, County of New Castle, Delaware 19801. The Member may change the registered office and registered agent by filing the address of the new registered agent’s office and/or the name of the new registered agent with the Delaware Secretary of State pursuant to the Act.

**Section 2.6 Purpose; Powers of Fund.**

(a) The purpose of Fund is to make one or more QEIs in CDE which will make the Project Loans or other Approved Investments and engage in other activities necessary or appropriate to the foregoing in order to: (a) provide current tax benefits to the Member in the form of (i) New Markets Tax Credits and (ii) losses which the Member may, with certain limitations, use to reduce income from any source; (b) preserve and protect Fund's capital; (c) provide, on a current basis and to the extent available, limited cash distributions from Fund's operations; (d) provide cash distributions resulting from (i) the maturity and repayment of the Project Loans or any other Approved Investment to CDE in accordance with its terms or the foreclosure of any property securing an Approved Investment (including any deed in lieu of foreclosure), or (ii) the sale by Fund of all or part of its CDE Member Interest in CDE or any other transaction affecting Fund or CDE which is not in the ordinary course of its business; and (e) otherwise engaging in any lawful act or activity for which limited liability companies may be formed under the Act and engaging in any and all activities necessary or incidental to the foregoing.

(b) The Fund shall possess and may exercise all the powers and privileges granted by the Act, any other applicable law or by this Agreement, together with any powers incidental thereto, so far as such powers and privileges are necessary or convenient to the conduct, promotion or attainment of the business, purposes or activities of Fund subject to the terms of this Agreement, including, without limitation, the following:

(i) to conduct its business, carry on its operations, and have and exercise the powers granted to a limited liability company by the Act in any state, territory, district, or possession of the United States that may be necessary, convenient, or incidental to the accomplishment of the purpose of Fund;

(ii) to borrow money and issue evidences of indebtedness, and to secure the same by a mortgage, pledge, or other lien on any or all of the assets of Fund. Without limiting the foregoing Fund is authorized to borrow the Fund Loan, to enter into the Fund Loan Documents, and to pledge the CDE Member Interest as collateral for the Fund Loan;

(iii) to invest capital in CDE, acquire, hold, own, maintain, sell, transfer, convey, assign, exchange or otherwise dispose of its CDE Member Interest, and enter into the CDE OA;

(iv) to acquire, by purchase, lease, contribution of property, or otherwise, and to own, hold, operate, maintain, finance, improve, lease, sell, convey, mortgage, transfer, demolish, or dispose of any real or personal property that may be necessary, convenient or incidental to the accomplishment of the purpose of Fund;

(v) to enter into, perform, and carry out contracts of any kind, including contracts with the Member or any affiliate necessary to, in connection with, or convenient or incidental to the accomplishment of the purpose of Fund;

(vi) to purchase, take, receive, subscribe for or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in or obligations of domestic or foreign corporations, associations, general or limited partnerships (including the power to be admitted as a partner thereof and to exercise the rights and perform the duties created thereby), trusts, limited liability

companies (including the power to be admitted as a member or appointed as a manager thereof and to exercise the rights and perform the duties created thereby), and other entities or individuals, or direct or indirect obligations of the United States or any foreign country or of any government, state, territory, governmental district, or municipality or of any instrumentality of any of them;

(vii) to lend money for any proper purpose, to invest and reinvest funds, and to take and hold real and personal property for the payment of funds so loaned or invested;

(viii) to guaranty the obligations of another, including the Member or any affiliate of the Member, to the extent permitted by applicable law;

(ix) to sue and be sued, complain and defend, bring actions at law or at equity, and participate in administrative or other proceedings, in its name;

(x) to appoint employees and agents of Fund, and define their duties and fix their compensation;

(xi) to indemnify any Person and to obtain any and all types of insurance;

(xii) to cease its activities and cancel its insurance;

(xiii) to negotiate, enter into, renegotiate, extend, renew, terminate, modify, amend, waive, execute, acknowledge, or take any other action with respect to any lease, contract or agreement (including any security agreement) in respect of any assets of Fund;

(xiv) to pay, collect, compromise, litigate, arbitrate, or otherwise adjust or settle any and all other claims or demands of or against Fund or to hold such proceeds against the payment of contingent liabilities; and to make, execute, acknowledge, and file any and all documents or instruments necessary, convenient, or incidental to the accomplishment of the purpose of Fund; and

(xv) to merge with, or consolidate into, another Delaware limited liability company or other business entity (as defined in Section 18-209(a) of the Act) upon the approval of the Member in its sole discretion and otherwise in accordance with the Act.

### **ARTICLE III CAPITAL AND MEMBERS**

**Section 3.1 Members, Membership Interests.** The name, address, and Membership Interest of the Member are set forth in Exhibit A. The Member shall determine whether and on what terms to admit Members.

#### **Section 3.2 Capital Contributions.**

(a) On the Prefund Date, the Member made the Initial Equity Investment. On the Effective Date, the Member's net Capital Contribution will be reduced to \$[2,589,600] in accordance with Sections 3.5 and 3.8.

(b) The Member may, but shall not be obligated to, contribute capital to Fund in addition to the Initial Equity Investment at such times, and upon such conditions, as the Member may determine, which contribution shall be reflected in the records of Fund.

**Section 3.3 No Right of Fund to Require Additional Capital Contributions; Expenses.** Except as set forth in Section 3.2, no Member shall be required to make a Capital Contribution, unless approved by such Member. The Member shall cause Fund to pay the Extraordinary Expenses of Fund and payments of interest, principal, and other sums due and payable to the Fund Lender pursuant to the Fund Loan Documents in the order of priority as set forth in the definition of Net Cash Flow. If there is insufficient Income to discharge the Extraordinary Expenses then the Member may cause Fund to direct CDE to submit an expense reimbursement request to the Project Borrower pursuant to the Project Loan Documents. The Member shall pay all Operating Expenses of Fund.

**Section 3.4 No Interest on Contributions.** Except as specifically provided in Sections 3.5 and 3.8, no Member has the right to receive any interest on such Member's Capital Contribution or to demand or receive the return of such Member's Capital Contribution.

**Section 3.5 Use of Fund Loan Proceeds.** On the Effective Date, Fund will utilize the proceeds of the Fund Loan to (a) make a distribution to the Member in the amount of \$[5,410,400] and thereby reduce the Member's net Capital Contribution to Fund to \$[2,589,600], and (b) pay the Sub-Allocation Fee to Allocatee.

**Section 3.6 CDE OA.** On the Effective Date, in accordance with the CDE OA, it is expected that CDE will make the Project Loans pursuant to and in accordance with the Project Loan Documents, and to pay certain fees and expenses referenced in the CDE OA. Thereafter, if necessary, CDE will make other Approved Investments to or in QALICBs pursuant to the terms of the CDE OA in order to ensure that substantially all of Fund's QEI in CDE is invested in one or more QLICIs at all times during the Tax Credit Investment Period.

**Section 3.7 Member Loans.** Nothing in this Agreement shall prevent the Member from making unsecured loans to Fund by agreement with Fund ("Member Loans"). Member Loans shall be unsecured, and shall be made on such other terms and conditions as are agreed upon by the Member and Fund, and such loans (together with interest thereon) shall be repaid solely from Net Cash Flow as provided in Section 4.2, provided, however, that such loans may only be made to the extent that such loan will not have, in the opinion of counsel retained by the Member, an adverse effect on the ability of the Member to recognize the New Markets Tax Credit associated with the QEI provided for in the CDE OA.

**Section 3.8 Distribution to Member.** Notwithstanding any provision of this Agreement or any other agreement to the contrary, on the Effective Date, and in accordance with Section 3.05, Fund will make a distribution to the Member in the amount of \$[5,410,400] and thereby reduce the Member's net Capital Contribution to Fund to \$[2,589,600].

## ARTICLE IV ALLOCATIONS AND DISTRIBUTIONS

**Section 4.1 Allocation of Profits and Losses.** All profits and losses and New Markets Tax Credits available for allocation shall be allocated entirely to the Member.

**Section 4.2 Interim Distributions.** Net Cash Flow available for distribution shall be applied and distributed annually to the Member. Subject to the reservation of sufficient Income to pay items (i), (ii), and (iii) in the definition of Net Cash Flow, interim distributions of Net Cash Flow may be made by Fund to the Member from time to time as the Member shall determine. In the event Member elects to exercise its option under the Put/Call Agreement at the end of the Tax Credit Investment Period, the Member may cause Fund to distribute any Net Cash Flow in the last year of the Tax Credit Investment Period to the Member for application toward payment of the closing costs of the exercise of its option in the event that the purchaser under the Put/Call Agreement has not paid such costs.

**Section 4.3 Distributions Upon Dissolution of Fund.** Upon dissolution of Fund pursuant to Section 10.1, the Member shall take full account of Fund's assets and liabilities, shall liquidate the assets as promptly as is consistent with obtaining fair value therefore, and shall apply and distribute the proceeds in the following order of priority:

- (a) *first*, to the payment and discharge of any Member Loans the proceeds of which were used to pay any Extraordinary Expenses;
- (b) *second*, to the payment of any outstanding Extraordinary Expenses;
- (c) *third*, to the payment and discharge of the Fund Loan;
- (d) *fourth*, to the payment and discharge of all of Fund's other outstanding debts, liabilities, and obligations, including, without limitation, the payment and discharge of any Member Loans the proceeds of which were not used to pay any Extraordinary Expenses;
- (e) *fifth*, to the establishment of such reserves as may be reasonably necessary to provide for contingent liabilities of Fund; and
- (f) *sixth*, to the Member.

## **ARTICLE V ACCOUNTING**

The books of account of Fund shall be kept in such a manner as the Member determine.

## **ARTICLE VI CHARACTERIZATION FOR TAX PURPOSES**

As of the Effective Date, the Member is the sole member of Fund and Fund is intended to be disregarded as an entity separate from the Member for federal income tax purposes.

## **ARTICLE VII MANAGEMENT**

**Section 7.1 Management of Fund.** The Member shall be the “managing member” of Fund. There shall not be a “manager” (within the meaning of the Act) of Fund. Except as otherwise expressly set forth in this Agreement or non-waiveable provision applicable law, the Member shall have full, exclusive, and complete discretion to manage and control the business and affairs of Fund, to make all decisions affecting the business and affairs of Fund, and to take all such actions as it deems necessary or appropriate to accomplish the purposes of Fund as set forth herein. Only the Member shall have the power to bind Fund, except and to the extent that such power is expressly delegated to any other Person by the Member, and such delegation shall not cause the Member to cease to be the managing member of Fund. No Person dealing with the Member shall be required to determine its authority to make any undertaking on behalf of Fund, or to determine any facts or circumstances bearing upon the existence of such authority.

**Section 7.2 Powers of the Member**

(a) The Member shall have the right, power and authority, in the management of the business and affairs of Fund, to do or cause to be done any and all acts, at the expense of Fund, deemed by the Member to be necessary or appropriate to effectuate the business, purposes and objectives of Fund.

(b) Without limiting the generality of the foregoing, the Member shall have the following powers and authorities:

(i) to establish a record date with respect to all actions to be taken hereunder that require a record date be established, including with respect to allocations and distributions;

(ii) to bring and defend on behalf of Fund actions and proceedings at law or in equity before any court or governmental, administrative or other regulatory agency, body or commission or otherwise;

(iii) to execute all documents or instruments, perform all duties and powers and do all things for and on behalf of Fund in all matters necessary, desirable, convenient or incidental to the purpose of Fund, including the Fund Loan Documents, the CDE OA, and all other documents, agreements and instruments related to the making of investments of Fund funds;

(iv) to cause Fund to perform its obligations under, and to exercise its rights and remedies under, the Fund Loan Documents, the CDE OA, and all other documents, agreements and instruments to which Fund is a party; and

(v) the expression of any power or authority of the Member in this Agreement shall not in any way limit or exclude any other power or authority of the Member which is not specifically or expressly set forth in this Agreement.

**Section 7.3 No Management by Non-Members.** Except as otherwise expressly provided herein or as authorized by the Member in accordance with this Agreement, no other Person shall take part in the day-to-day management, or the operation or control of the business and affairs of Fund. Except and only to the extent expressly delegated by the Member, no other Person shall be an agent of Fund or have any right, power or authority to transact any business in the name of Fund or to act for or on behalf of or to bind Fund.

**Section 7.4 Authorization for Execution of Certain Documents.** The Member, acting singly and in such Person's sole discretion on behalf of Fund, is hereby designated as an authorized Person, within the meaning of the Act, to execute, deliver, and file the certificate of formation of Fund (and any amendments and/or restatements thereof) and any other certificates (and any amendments and/or restatements thereof) necessary for Fund to qualify to do business in the Formation State or in any other jurisdiction in which Fund may wish to conduct business.

## **ARTICLE VIII RIGHTS AND DUTIES OF THE MEMBER**

**Section 8.1 Limitation of Liability.** The Member's liability for the debts, obligations, and liabilities of Fund is limited to the fullest extent as set forth in this Agreement, the Act, and other applicable law. The liability of any Member shall be limited to the Member's Capital Contribution as and when it is payable under the provisions of this Agreement. No Member shall have any other liability to contribute money to, or in respect of the liabilities or obligations of, Fund nor shall any Member be personally liable for any obligations of Fund. No Member shall be obligated to make Member Loans or any other loans to Fund.

**Section 8.2 No Restrictions of Business Pursuits of Members.** The Member or its affiliates may engage in, possess an interest in, act as attorney for, deal and contract with, be employed by or otherwise be connected with any other business ventures of any nature or description, independently or with others, whether similar or dissimilar to the business of Fund, and Fund shall have no rights by virtue of this Agreement in and to such independent ventures or the income or profits derived therefrom, and the pursuit of any such venture, even if directly or indirectly competitive with the business of Fund, shall not be deemed wrongful or improper. The Member or its affiliates shall not be obligated to present any particular investment opportunity to Fund even if such opportunity is of a character that, if presented to Fund, could be taken by Fund, and the Member or its affiliates shall have the right to take for its own account (individually or as a partner, shareholder, fiduciary, or otherwise) or to recommend to others any such particular investment opportunity.

**Section 8.3 Transactions between a Member and Fund.** Except as otherwise provided by applicable law, the Member may, but shall not be obligated to, act as a surety or guarantor for Fund, or contract or otherwise transact other business with Fund, and has the same rights and obligations when transacting business with Fund as a Person who is not a Member.

**Section 8.4 Transfer.** Except as otherwise provided by applicable law or the Fund Loan Documents, the Member may transfer or assign its Membership Interest to any Person. Any such transferee or assignee shall become Member of the Fund upon the execution of an amendment to this Agreement evidencing such admission under terms and condition acceptable to the transferee or assignee.

## **ARTICLE IX MEETINGS AND VOTING PROCEDURES**

**Section 9.1 Meetings.** Meetings shall be held at such times and places as the Member shall determine.

**Section 9.2 Action Without a Meeting.** Any action required or permitted to be taken at a meeting may be taken without a meeting by written action signed by the Member, except as otherwise provided in the Act or the Certificate.

## **ARTICLE X DISSOLUTION**

**Section 10.1 Dissolution Events.** The Fund shall dissolve, and its affairs wound up, upon the first to occur of the following:

- (a) the written consent of the Member; or
- (b) any other event causing a dissolution of Fund under the laws of the State of Delaware, including the entry of a decree of judicial dissolution under Section 18-802 of the Act.

Unless otherwise required by the Act, no other event shall cause the dissolution of Fund. No event specified in Section 18-304 of the Act shall cause any Person to cease to be a Member, and the business of Fund shall continue with Fund property. If a Member becomes bankrupt or is dissolved, the trustee or receiver of the estate shall have the rights of such Member for the purpose of settling or managing its estate or property and such power as the bankrupt or dissolved Member possessed to assign all or any part of its Membership Interest and to join with the assignee in satisfying conditions precedent to the admission of the assignee as a substitute Member.

**Section 10.2 Procedures Upon Dissolution.** Upon dissolution, the affairs of Fund shall be wound up in accordance with Section 4.3 and the provisions of the Act.

## **ARTICLE XI BOOKS AND RECORDS**

**Section 11.1 Contents and Location of Records.** The Fund will maintain at its principal place of business, or at some other location chosen by the Member, adequate books and records setting forth a true and accurate account of all business transactions arising out of and in connection with the conduct of Fund.

**Section 11.2 Access to Records.** The Member may inspect and review Fund's books and records and upon reasonable request may, at Fund's expense, have Fund make copies of any portion or all of such books and records. The Member shall cause the books and records and such other information as is required pursuant to the Fund Loan Documents to be made available to such Persons as required pursuant to the Fund Loan Documents.

**Section 11.3 Fiscal Year.** The fiscal year of Fund shall be the calendar year commencing January 1 and ending December 31.

## **ARTICLE XII INDEMNIFICATION**

**Section 12.1 Mandatory Indemnification; Standard.** To the fullest extent permitted by the Act and other applicable law, Fund will indemnify each Person made or threatened to be made a party to a proceeding by reason of such Person's capacity as a Member of Fund or as an officer, director, shareholder, agent, or employee of a Member acting in good faith in connection with the affairs of Fund against judgments, penalties, fines, including, without limitation, excise taxes assessed against any such Person with respect to an employee benefit plan, settlements, and reasonable expenses, including attorney fees and disbursements, incurred by such Person in connection with the proceeding.

**Section 12.2 Insurance.** The Fund may purchase and maintain insurance on behalf of a Person in that Person's official capacity against any liability asserted against and incurred by the Person in or arising from that capacity, whether or not Fund would have been required to indemnify the Person against such liability under the provisions of this Article.

### **ARTICLE XIII AMENDMENTS**

Any amendment to this Agreement must be approved in writing by the Member.

### **ARTICLE XIV MISCELLANEOUS**

**Section 14.1 Governing Law.** Notwithstanding where this Agreement may be executed by the Member, the Member agrees that this Agreement, and any question, dispute, or other matter related to or arising from this Agreement, will be governed by the laws of the Formation State without regard for the choice of law provisions thereof.

**Section 14.2 Binding Effect.** Each and all of the covenants, terms, provisions and agreements herein contained shall be binding upon and inure to the benefit of the Member and its heirs, legal representatives, successors and assigns.

**Section 14.3 Severability.** If any provision of this Agreement is held to be illegal, invalid, or unenforceable:

(a) that provision will be fully severable and this Agreement will be construed and enforced as if the illegal, invalid, or unenforceable provision had never been part of this Agreement;

(b) the remaining provisions of this Agreement will remain in full force and will not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement; and

(c) in the place of the illegal, invalid, or unenforceable provision, there will be added automatically to this Agreement a legal, valid, and enforceable provision that is as similar to the illegal, invalid, or unenforceable provision as possible.

**Section 14.4 Signature.** A faxed, scanned or photocopied signature to this Agreement shall be deemed equivalent to an original signature.

**Section 14.5 Notices.** Any notice required or permitted to be given hereunder shall be in writing and shall be effective when actually received if delivered by hand or overnight courier, or when confirmed by receipt if transmitted by telecopy, e-mail or other form of rapid transmission if notices given by such means of communication are capable of being confirmed upon delivery by electronic means, or 5 calendar days after being sent by first class mail, in each case prepaid and addressed to the parties as follows:

- (a) To Fund, by notice sent to the Member at the address specified on Exhibit A; and
- (b) To the Member, by notice sent to such Member at the address specified on Exhibit A.

Any party may change its address for purposes hereof by notice to the other parties delivered in accordance with this Section 14.5.

**Section 14.6 Headings.** Section and other headings contained in this Agreement are for reference purposes only and are not intended to describe, interpret, defuse or limit the scope, extent, or intent of this Agreement or any provision thereof.

**Section 14.7 Integration.** This Agreement (including without limitation the Recitals and Exhibits hereto, all of which are incorporated herein by this reference) constitutes the entire agreement among the parties pertaining to the subject matter hereof and supersedes all prior agreements and understandings pertaining thereto. Any Exhibits, Annexes, Recitals and Schedules identified in this Agreement are incorporated herein by reference and made a part hereof.

**Section 14.8 Third Party Beneficiaries.** This Agreement has been executed for the sole benefit of the Member, and no third party is authorized to rely upon any party's rights hereunder or to rely upon an assumption that a party has or will exercise its rights under this Agreement.

**Section 14.9 Pledge of CDE Member Interest.** Notwithstanding anything contained in this Agreement to the contrary, Fund is expressly permitted to pledge its CDE Member Interest as required to secure the Fund Loan and all other obligations of Fund under the Fund Loan Documents.

**Section 14.10 Construction.** Whenever the singular number is used in this Agreement and when required by the context, the same shall include the plural and vice versa, and the masculine gender shall include the feminine and neuter genders and vice versa. The words "hereof", "herein", and "hereunder", and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The words "including" or "include" shall mean including or include by way of example and not limitation (regardless of whether the words "without limitation" or words of similar import are used in conjunction therewith), unless otherwise expressly stated. References in this Agreement to Articles, Exhibits, and Sections are intended to refer to Articles, Exhibits, and Sections of this Agreement, unless otherwise specifically stated. Nothing in this Agreement shall be deemed to create any right or benefit for any creditor of Fund or any other Person that is not a party hereto,

and this Agreement shall not be construed in any respect to be for the benefit of any creditor of Fund or any other Person that is not a party hereto.

[REMAINDER OF PAGE BLANK; SIGNATURE PAGE TO FOLLOW.]

IN WITNESS WHEREOF, the Member has executed this First Amended and Restated Operating Agreement of Chase NMTC CAFFM Investment Fund, LLC as of the Effective Date.

**MEMBER:**

CHASE COMMUNITY EQUITY, LLC, a  
Delaware limited liability company

By: \_\_\_\_\_

Name: Wanda Clark

Title: Vice President

**EXHIBIT A**

**NAME, ADDRESS, AND MEMBERSHIP INTEREST OF THE MEMBER OF  
CHASE NMTC CAFFM INVESTMENT FUND, LLC**

**AS OF THE EFFECTIVE DATE**

<b>Member:</b>	<u>Capital Contribution</u>	<u>Percentage Interest</u>
Chase Community Equity, LLC c/o JPMorgan Chase Bank, N.A. 10 S. Dearborn, 19th Floor Mail Code: IL1-0953 Chicago, IL 60603-5506 Attention: NMTC Asset Manager Facsimile: 312-325-5050 Email: nmtc.reporting@chase.com	\$[2,589,600]*	100%

\*After Fund makes a distribution to the Member on the Effective Date in the amount of \$[5,410,400] pursuant to Sections 3.5 and 3.8 of this Agreement.

With a copy to:

Chase Community Equity, LLC  
c/o JPMorgan Chase Bank, N.A.  
New Markets Tax Credit Group  
2200 Ross Avenue, 9th Floor  
Mail Code: TX1-2951  
Dallas, TX 75201  
Attention: Wanda Clark  
Facsimile: 214-965-3297  
Email: wanda.clark@jpmchase.com

And a copy to:

Jones Day  
100 High Street, 21<sup>st</sup> Floor  
Boston, MA 02110  
Attention: Jeffrey D. Gaulin, Esq.  
Facsimile: 617-449-6999  
Email: jgaulin@jonesday.com

[REMAINDER OF PAGE BLANK]



**INVESTMENT FUND PUT/CALL AGREEMENT**

THIS INVESTMENT FUND PUT/CALL AGREEMENT (this “Agreement”) is entered into as of [May \_\_], 2014 (the “Effective Date”) by and between CHASE COMMUNITY EQUITY, LLC, a Delaware limited liability company (“Fund Member”), and THE CITY OF FOLEY PUBLIC FACILITIES COOPERATIVE DISTRICT, an Alabama public corporation (“Purchaser”).

Recitals

A. Fund Member is the owner of a 100% membership interest (the “Interest”) in Chase NMTC CAFFM Investment Fund, LLC, a Delaware limited liability company (“Fund”), pursuant to the terms of that certain First Amended and Restated Operating Agreement of Fund dated as of the Effective Date (as the same may be amended, restated, modified, or supplemented from time to time, the “Fund OA”), made by Fund Member as the sole member of Fund.

B. Fund Member may wish to dispose of its Interest following the end of the Tax Credit Investment Period, and Purchaser may wish to acquire the Interest following the end of the Tax Credit Investment Period, on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing, of the mutual promises of the parties hereto and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the parties agree as follows:

Agreement

1. Definitions. All capitalized terms listed in the introductory paragraph and Recitals to this Agreement have the meanings assigned to them therein, and all capitalized terms not otherwise expressly defined herein shall have the meanings assigned to them in the Fund OA. In addition, the following terms shall have the following meanings in this Agreement:

(a) “Affiliate” means (a) with respect to a corporation, (i) any officer or director thereof and any person which is, directly or indirectly, the beneficial owner of more than 10% of any class of shares or other equity security or (ii) any Entity or Entities (individually or in the aggregate) which, directly or indirectly, controls or are controlled by or is under common control with such corporation and (b) with respect to a partnership, venture or limited liability company, any (i) partner or member, (ii) partner of a partner or member, (iii) partnership with a common partner or member, or (iv) coventurer thereof, and if any partner, member or coventurer is a corporation, any Entity which is an Affiliate of such corporation. For purposes of this Agreement, the term “control” (including the terms “controlled by” and “under common control with”) shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of the person or such entity, whether through the ownership of voting securities, by contract or otherwise.

(b) “Business Day” means a day during which commercial banks in Chicago, Illinois and New York, New York are open for business of the nature required for the implementation or administration of this Agreement.

- (c) “Call” has the meaning set forth in Section 4(a).
- (d) “Call Election Notice” has the meaning set forth in Section 4(c).
- (e) “Call Price” has the meaning set forth in Section 4(c).
- (f) “CDE” means a “qualified community development entity” as such term is defined in Section 45D of the Code and the Treasury Regulations and Guidance.
- (g) “Compliance Period” means, with respect to a QEI, the seven-year credit period applicable to such QEI commencing on the first Credit Allowance Date with respect to such QEI and ending on the later to occur of (i) the last day prior to the seventh anniversary of said first Credit Allowance Date or (ii) the last day prior to the seven-year anniversary of the Effective Date.
- (h) “Credit Allowance Date” means any “credit allowance date” (as such term is defined in Section 45D(a)(3) of the Code) with respect to a QEI made in a CDE.
- (i) “Credit Agreement” means that certain Credit Agreement, dated as of the Effective Date, by and between Project Borrower and Pacesetter CDE X, LLC, a Texas limited liability company, as the same may be amended, restated, modified, or supplemented from time to time.
- (j) “Designee” means an Entity, the identity of which and all direct and indirect owners of which shall have been identified in writing to Fund Member no fewer than 10 Business Days prior to the date on which the Put Price or Call Price, as applicable, shall be paid and the Interest shall be transferred; *provided*, that in no event may a Designee or any direct or indirect owner of a Designee be (i) a foreign (*i.e.*, non-United States) Person, (ii) a Prohibited Person or (iii) Project Borrower.
- (k) “Entity” means any general partnership, limited partnership, limited liability limited partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative, or association.
- (l) “FMV” has the meaning set forth in Section 4(c).
- (m) “Fund Member Reps” means, collectively, (i) Fund Member is the sole owner of the Interest, (ii) the Interest is not subject to any charge, lien, pledge or encumbrance of any kind, (iii) Fund Member has not made, caused or entered into any prior assignment or transfer of the Interest or any portion thereof, other than pursuant to the Pledge Agreement, and (iv) Fund Member has power and authority to execute, deliver and perform its obligations pursuant to the terms of the assignment of the Interest.
- (n) “Governmental Authority” means any, federal, state, local, municipal, or other governmental or quasi governmental authority or self regulatory organization of any nature (including any agency, authority, branch, department, board, commission, court, tribunal or other entity, instrumentality or body politic exercising governmental or quasi governmental powers) or

exercising, or entitled or purporting to exercise, any administrative, executive, judicial, legislative, enforcement, regulatory or taxing authority or power.

(o) “Indemnitor” has the meaning set forth in the QALICB NMTC Indemnity.

(p) “JPMC” means JPMorgan Chase Bank, N.A., a national banking association, and its successors and/or assigns.

(q) “Objection Notice” has the meaning set forth in Section 4(d).

(r) “Person” means any individual or Entity, and the heirs, executors, administrators, legal representatives, successors, and assigns of such Person where the context so requires; and, unless the context otherwise requires, the singular shall include the plural, and the masculine gender shall include the feminine and the neuter and vice versa.

(s) “Prohibited Person” means any Person who (i) is subject to any legal requirement or list of any Governmental Authority (including, without limitation, the U.S. Office of Foreign Asset Control list) that prohibits or limits Fund Member, JPMC or their respective successors or assigns from making any advance or extension of credit to such Person or from otherwise conducting business with such Person, or (ii) fails to provide a reasonable period of time prior to the scheduled transfer of the Interest documentary and other evidence of such Person’s identity as may be requested by Fund Member, JPMC or their respective successors or assigns at any time to enable Fund Member, JPMC or their respective successors or assigns to verify such Person’s identity or to comply with any applicable legal requirement, including, without limitation, Section 326 of the USA Patriot Act of 2001, 31 U.S.C. Section 5318.

(t) “Project Borrower” means Coastal Alabama Farmers’ and Fishermen’s Market, Inc., an Alabama non-profit corporation.

(u) “Put” has the meaning set forth in Section 3(a).

(v) “Put Availability Notice” has the meaning set forth in Section 3(b).

(w) “Put Election Notice” has the meaning set forth in Section 3(c).

(x) “Put Option Period” has the meaning set forth in Section 3(c).

(y) “Put Price” has the meaning set forth in Section 3(d).

(z) “Put Rejection Notice” has the meaning set forth in Section 3(c).

(aa) “QALICB NMTC Indemnity” means that certain QALICB Indemnification Agreement, dated as of the Effective Date, by and among Purchaser, Project Borrower, and JPMC, as the same may be amended, restated, modified, or supplemented from time to time.

(bb) “QEI” means a “qualified equity investment” as such term is defined in Section 45D of the Code and the Treasury Regulations and Guidance.

(cc) “Recapture Expiration Date” means the first day following the end of the Tax Credit Investment Period.

(dd) “Tax Credit Investment Period” means the period beginning on the date on which Fund first makes a QEI in a CDE, and ending on the last day of the last Compliance Period applicable to the last QEI made by Fund in a CDE.

(ee) “Transfer” means the assignment of the Interest from Fund Member to Purchaser (or its Designee) in accordance with Section 3 or Section 4, as applicable.

2. Interest. Any reference in this Agreement to the Interest shall mean Fund Member’s entire Membership Interest and all of its other rights and obligations under the Fund OA.

3. Put of Fund Member’s Interest.

(a) Purchaser hereby grants to Fund Member the right and option, but not the obligation, to sell all (but not less than all) of the Interest to Purchaser (the “Put”) during the Put Option Period (defined below).

(b) On or after the Recapture Expiration Date, Purchaser shall deliver notice to Fund Member, advising Fund Member of the availability of the Put (the “Put Availability Notice”).

(c) Fund Member shall have the right to exercise the Put by delivering notice of such exercise (the “Put Election Notice”) in writing to Purchaser at any time during the period beginning on the Recapture Expiration Date and ending 90 calendar days following receipt of the Put Availability Notice from Purchaser (the “Put Option Period”). Delivery of the Put Election Notice constitutes the exercise of the Put option and shall bind Purchaser to purchase the Interest for the Put Price. Upon delivery of the Put Election Notice, Fund Member shall be obligated to sell, and Purchaser shall be obligated to purchase, the Interest. If Fund Member chooses not to exercise the Put, Fund Member may deliver notice of Fund Member’s decision to Purchaser (the “Put Rejection Notice”).

(d) The purchase price for the Interest (the “Put Price”) pursuant to the Put shall be an amount equal to the sum of:

- (i) One Thousand Dollars and No/100 (U.S. \$1,000.00); plus
- (ii) any transfer taxes and other closing costs attributable to the exercise of the Put and the sale of the Interest; plus
- (iii) any and all amounts due and owing from any Indemnitor to JPMC under the QALICB NMTC Indemnity; plus
- (iv) any other amounts due and owing, directly or indirectly, from Purchaser, Project Borrower, or any of their respective Affiliates to Fund.

(e) The date of the Put closing shall be the date the Put Price is paid by Purchaser. The Put Price shall be paid by Purchaser by federal wire transfer 10 Business Days following the receipt of the Put Election Notice, or such other date as Fund Member and Purchaser shall agree in writing.

(f) Purchaser shall bear the closing costs attributable to the exercise of the Put (including all of Fund Member's reasonable attorneys' fees and expenses); *provided*, Fund Member shall provide reasonable evidence of such costs to Purchaser prior to payment of the Put Price.

#### 4. Call of Fund Member's Interest.

(a) During the 90 calendar day period (the "Call Option Period") commencing on the date that is the earlier to occur of the following, Purchaser shall have the right and option (the "Call") to purchase all, but not less than all, of the Interest: (i) the expiration of the Put Option Period (but only if Fund Member did not deliver a Put Election Notice prior to the expiration thereof) or (ii) Purchaser's receipt of the Put Rejection Notice.

(b) Notwithstanding any provision of this Agreement to the contrary, the Call may not be exercised unless each of the following conditions precedent are satisfied: (i) no amounts are due and owing, directly or indirectly, from Purchaser, Project Borrower or any of their respective Affiliates to Fund; (ii) no amounts are due and owing from any Indemnitor to JPMC under the QALICB NMTC Indemnity; (iii) each of Purchaser and Project Borrower is duly formed, legally existing and in good standing under the laws of the state of its formation; (iv) no Default or Event of Default (each as defined in the Credit Agreement) has occurred and is continuing under any of the Project Loan Documents; and (v) no Person has disposed of any or all of its ownership interest in Project Borrower or permitted the issuance of additional ownership interests in Project Borrower without the prior written consent of Fund Member, such consent to be given or withheld in Fund Member's sole and absolute discretion.

(c) Purchaser shall have the right to exercise the Call by delivering notice of such exercise (the "Call Election Notice") in writing to Fund Member at any time during the Call Option Period. Upon delivery of a Call Election Notice, Purchaser shall be obligated to purchase, and Fund Member shall be obligated to sell, the Interest for an amount (the "Call Price") equal to the fair market value (the "FMV") of the Interest. The Call Election Notice shall contain the Purchaser's preliminary determination of the Call Price.

(d) Fund Member may, within 10 Business Days of receipt of the Call Election Notice, send written notice to Purchaser objecting to Purchaser's preliminary determination of the Call Price (an "Objection Notice"). If Purchaser does not receive from Fund Member an Objection Notice within such time period, the amount set forth in the Call Election Notice shall be the Call Price. If Fund Member timely objects to the amount set forth in the Call Election Notice for the Call Price, and if such disagreement is not otherwise resolved by agreement between the parties, then the Call Price shall be determined as follows:

(i) As soon as practicable and in any event within 10 calendar days following the delivery by Fund Member of the Objection Notice to Purchaser, Purchaser

shall select an independent appraiser with not less than 5 years experience in valuing commercial properties in the State of Alabama and in valuing interests in limited liability companies and New Markets Tax Credit transactions, which appraiser Fund Member may disapprove of in its reasonable discretion (which approval or disapproval shall not be unreasonably delayed or withheld) by notice to Purchaser, which notice shall specify the grounds for such disapproval. If Fund Member shall disapprove of an appraiser selected in accordance with the preceding provision, Purchaser shall select another appraiser in accordance with this Section 4(d)(i); and

(ii) The appraiser shall be instructed to determine the FMV of the Interest as of the date of the Call Election Notice and shall make such determination within 30 calendar days of its selection as appraiser in accordance with Section 4(d)(i). The FMV shall be determined by taking into account all facts and circumstances concerning the Interest as the appraiser shall deem relevant in making its determination, including in any event legal provisions affecting the Interest and the assets and liabilities of Fund. The appraiser shall use an appropriate method and time value of money discount rate, including an aggregate valuation and marketability discount rate for the Interest for illiquidity, taking into account any restrictions on transferability and any minority nonvoting characteristics thereof. The method of determining the Call Price set forth in this Section 4(d) shall be modified as deemed reasonably necessary by Fund Member to comply with then-existing tax law respecting valuation of the FMV of the Interest.

(e) The date of the Call closing shall be 10 calendar days following determination of the Call Price in accordance with Section 4(d). The Call Price shall be paid by Purchaser by federal wire transfer.

(f) Purchaser shall bear the closing costs attributable to the exercise of the Call (including the appraiser and all of Fund Member's reasonable attorneys' fees and expenses); *provided*, Fund Member shall provide reasonable evidence of such costs to Purchaser prior to payment of the Call Price.

5. Documents. As conditions precedent to payment of the Put Price or Call Price (as the case may be):

(a) Fund Member shall execute an amendment to the Fund OA pursuant to which Fund Member shall assign the Interest to Purchaser without recourse, representation or warranty other than the Fund Member Reps; and

(b) a certificate of amendment to the Certificate shall be filed with the Secretary of State of the State of Delaware reasonably acceptable to Fund Member changing the name of Fund to a name that does not include the word "Chase" and does not reference JPMC, Fund Member, or any Affiliate thereof.

6. Certain Rights and Obligations.

(a) Upon the Purchaser's receipt of the Put Election Notice or delivery of the Call Election Notice, as the case may be, Purchaser shall indemnify and defend and hold

harmless Fund Member and its Affiliates against all liabilities and obligations thereafter arising under or otherwise relating to the Fund OA, but in no event shall Fund Member be indemnified for any liabilities or obligations if and to the extent arising solely out of Fund Member's gross negligence, willful misconduct, malfeasance, or fraud. Purchaser shall take all commercially reasonable actions and shall pay all reasonable costs necessary to enable Fund Member to receive and retain the Put Price or Call Price, as the case may be, as against any creditor of Purchaser. Notwithstanding any provision of this Agreement to the contrary, to the extent permitted under the applicable provisions of the Code and the Regulations thereunder, Fund Member shall be allocated any and all Net Cash Flow, net Profits, net Losses, and New Markets Tax Credits in respect of the Interest for the period prior to the Transfer.

(b) After the Transfer, Fund Member shall have no further obligations or rights under the Fund OA.

7. Impact of Other Agreements and Documents. The obligations of the parties hereunder shall remain in full force and effect without regard to, and shall not be affected or impaired by, (a) any amendment or modification of or addition or supplement to the Fund OA made in accordance with this Agreement and the Fund Loan Documents, (b) any extension, indulgence or other action or inaction in respect of the Fund OA or the CDE OA, or any exercise or non-exercise of any right, remedy, power or privilege in respect of such agreements, or (c) any Bankruptcy, insolvency, reorganization or similar proceeding involving or affecting Purchaser.

8. Designee. Purchaser may designate a Designee to purchase the Interest under Section 3 or Section 4, as applicable; *provided*, (a) Purchaser and Designee shall agree, in a writing deemed acceptable to Fund Member in its sole and absolute discretion, to be jointly and severally liable for all obligations and liabilities of Purchaser under this Agreement and (b) Designee is duly formed, legally existing and in good standing under the laws of the state of its formation.

9. Notices. Any notice, request, demand, consent, approval, direction, agreement, or other communication (any "notice") required or permitted hereunder shall be in writing and shall be validly given if (a) sent by a nationally-recognized courier that obtains receipts, (b) delivered personally by a courier that obtains receipts, (c) mailed by United States certified mail (with return receipt requested and postage prepaid), (d) sent by facsimile (with a copy of such facsimile and proof of transmission thereof sent via one of the methods of delivery set forth in clauses (a), (b) or (c) hereof), or (e) sent by email (with a copy of such email and proof of transmission thereof sent via one of the methods of delivery set forth in clauses (a), (b) or (c) hereof), addressed to the applicable Person at the address set forth on Schedule A to this Agreement. Each Notice shall be effective upon being so sent, delivered, or mailed, but the time period for response or action shall run from the date of receipt as shown on the delivery receipt. Refusal to accept delivery or the inability to deliver because of a changed address for which no Notice was given shall be deemed receipt. Any party may periodically change its address for Notice (including different or additional addresses for copies) by giving the other party at least 10 calendar days' prior notice in accordance with the foregoing provisions.

10. Heirs, Successors and Assigns.

(a) Each and all of the covenants, terms, provisions and agreements herein contained shall be binding upon and inure to the benefit of the parties hereto and, to the extent permitted by this Agreement, their respective heirs, legal representatives, successors and assigns.

(b) Notwithstanding any provision of this Agreement to the contrary, Fund Member may assign or transfer all or any portion of the Interest to any Person, *provided*, that such Person delivers written evidence to Purchaser that such Person agrees to be bound by the terms of this Agreement.

11. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument. Faxed, scanned or photocopied signatures shall be deemed equivalent to original signatures.

12. Severability. If any provisions contained in this Agreement or any document executed in connection herewith shall be held or otherwise determined to be invalid, illegal or unenforceable in any respect, under any applicable law, the validity, legality and enforceability of the remaining provisions contained herein shall not, in any way, be affected or impaired, and such illegal, invalid or unenforceable provisions shall be replaced by other provisions in accordance with the purpose and meaning of this Agreement.

13. Entire Agreement. This Agreement (including the Recitals and Schedule A, which are incorporated herein by reference and made a part hereof) sets forth all (and is intended by all parties to be an integration of all) of the promises, agreement and understandings among the parties hereto with respect to the transactions contemplated herein, and there are no promises, agreements, or understandings, oral or written, express or implied, among them other than as set forth or incorporated herein. This Agreement may not be changed orally but only by an agreement in writing signed by Fund Member and Purchaser.

14. Captions. The headings in this Agreement are inserted for convenience only and are in no way intended to describe, interpret, define, or limit the scope, extent or intent of this Agreement or any provision hereof.

15. Waivers. The failure of any party to seek redress for default of or to insist upon the strict performance of any covenant or condition of this Agreement shall not prevent a subsequent act, which would have originally constituted a default, from having the effect of an original default.

16. Rights and Remedies Cumulative. The rights and remedies provided by this Agreement are cumulative and any one right or remedy by any party shall not preclude or waive the right to use any other remedy. Said rights and remedies are given in addition to any other legal rights the parties may have.

17. Construction. Whenever the singular number is used in this Agreement and when required by the context, the same shall include the plural and vice versa, and the masculine gender shall include the feminine and neuter genders and vice versa. The words “hereof”, “herein”, and “hereunder”, and words of similar import when used in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement. The words “including” or “include” mean including or include by way of example and not limitation

(regardless of whether the words “without limitation” or words of similar import are used in conjunction therewith), unless otherwise expressly stated. References in this Agreement to Sections are intended to refer to Sections of this Agreement, unless otherwise specifically stated. Nothing in this Agreement shall be deemed to create any right or benefit for any creditor of Fund Member, Purchaser, Fund, or any other Person that is not a party hereto (except a Designee of Purchaser as provided for in Section 8), and this Agreement shall not be construed in any respect to be for the benefit of any creditor of Fund Member, Purchaser, Fund, or any other Person that is not a party hereto (except a Designee of Purchaser as provided for in Section 8). Each of Fund Member and Purchaser has been represented by counsel and has participated in the drafting of this Agreement, accordingly, any rule of construction to the effect that the document is to be construed against a party that prepared or drafted a document shall be inapplicable.

18. Time of the Essence. Time is of the essence of every provision of this Agreement that specifies a time for performance.

19. Name of Fund. Purchaser covenants that, subsequent to the filing of a certificate of amendment to the Certificate with the Secretary of State of the State of Delaware changing the name of Fund pursuant to Section 5(b), Purchaser shall not permit Fund to change its name to include the word “Chase” or to reference JPMC, Fund Member, or any Affiliate thereof (to the extent such consent rights are provided Purchaser under the Fund OA).

20. CHOICE OF LAW; WAIVER OF JURY TRIAL AND CERTAIN OTHER RIGHTS; SUBMISSION TO JURISDICTION; SERVICE OF PROCESS.

(a) THE VALIDITY OF THIS AGREEMENT, THE CONSTRUCTION, INTERPRETATION, AND ENFORCEMENT HEREOF, AND THE RIGHTS OF THE PARTIES HERETO WITH RESPECT TO ALL MATTERS ARISING HEREUNDER OR RELATED HERETO SHALL BE DETERMINED UNDER, GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS (WITHOUT GIVING EFFECT TO CONFLICT OR CHOICE OF LAW PRINCIPLES).

(b) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). IT IS AGREED AND UNDERSTOOD THAT THIS WAIVER CONSTITUTES A WAIVER OF TRIAL BY JURY OF ALL CLAIMS AGAINST ALL PARTIES TO SUCH ACTIONS OR PROCEEDINGS, INCLUDING CLAIMS AGAINST PARTIES WHO ARE NOT PARTIES TO THIS AGREEMENT. EACH PARTY (i) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, AND (ii) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 20.

(c) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY AGREES THAT ANY PROCESS OR NOTICE OF MOTION OR OTHER APPLICATION TO ANY SUCH COURT IN CONNECTION WITH ANY ACTION OR PROCEEDING MAY BE SERVED UPON SUCH PARTY BY REGISTERED OR CERTIFIED MAIL TO OR BY PERSONAL SERVICE AT THE LAST KNOWN ADDRESS OF FUND MEMBER OR PURCHASER, AS APPLICABLE, WHETHER SUCH ADDRESS BE WITHIN OR OUTSIDE THE JURISDICTION OF ANY SUCH COURT.

(d) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, PURCHASER SHALL NOT ASSERT, AND HEREBY WAIVES, ANY CLAIM AGAINST FUND MEMBER, ON ANY THEORY OF LIABILITY, FOR SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES (AS OPPOSED TO DIRECT OR ACTUAL DAMAGES) ARISING OUT OF, IN CONNECTION WITH, OR AS A RESULT OF, THIS AGREEMENT OR ANY AGREEMENT OR INSTRUMENT CONTEMPLATED HEREBY AND/OR THE TRANSACTIONS CONTEMPLATED HEREBY.

21. [Intentionally Omitted.]

22. Enforcement Costs. In the event of any action at law or in equity to enforce the provisions of this Agreement or to secure relief or damages for the breach of this Agreement, the prevailing party shall be entitled to payment or reimbursement, as applicable, of its costs, expenses and fees (including without limitation reasonable attorneys', accountants', experts', and consultants' costs, expenses and fees, court costs and investigative expenses prior to trial, at trial and on appeal) incurred in such proceedings from the non-prevailing party.

23. No Arbitration. Fund Member and Purchaser agree that no action or proceeding arising in connection with this Agreement is subject to arbitration.

[REMAINDER OF PAGE BLANK; SIGNATURE PAGES TO FOLLOW.]

IN WITNESS WHEREOF, the parties have caused this Investment Fund Put/Call Agreement to be duly executed as of the Effective Date.

**FUND MEMBER:**

CHASE COMMUNITY EQUITY, LLC, a  
Delaware limited liability company

By: \_\_\_\_\_

Name: Wanda Clark

Title: Vice President

[COUNTERPART SIGNATURE PAGE TO  
INVESTMENT FUND PUT/CALL AGREEMENT]

**PURCHASER:**

THE CITY OF FOLEY PUBLIC FACILITIES  
COOPERATIVE DISTRICT, an Alabama public  
corporation

By: \_\_\_\_\_  
Name:  
Title:

## **SCHEDULE A**

### **Notice Addresses of Parties**

- (1) If to Fund Member: Chase Community Equity, LLC  
c/o JPMorgan Chase Bank, N.A.  
10 S. Dearborn Street, 19th Floor  
Mail Code: IL1-0953  
Chicago, IL 60603-5506  
Attention: NMTC Asset Manager  
Facsimile: 312-325-5050  
Email: nmtc.reporting@chase.com
- With a copy to: Chase Community Equity, LLC  
c/o JPMorgan Chase Bank, N.A.  
New Markets Tax Credit Group  
2200 Ross Avenue, 9th Floor  
Mail Code: TX1-2951  
Dallas, TX 75201  
Attention: Wanda Clark  
Facsimile: 214-965-3297  
Email: wanda.clark@jpmchase.com
- And a copy to: Jones Day  
100 High Street, 21<sup>st</sup> Floor  
Boston, MA 02110  
Attention: Jeffrey D. Gaulin, Esq.  
Facsimile: 617-449-6999  
Email: jgaulin@jonesday.com
- (2) If to Purchaser: The City of Foley Public Facilities Cooperative District  
c/o City of Foley  
407 East Laurel Avenue  
Foley, AL 36535  
Attention: Jeff Rouzie, Director of Economic Development  
Facsimile: 251-952-4012  
Email: [\_\_\_\_\_]
- And a copy to: Adams and Reese LLP  
RSA Battle House Tower  
11 North Water Street, Suite 23200  
Mobile, AL 36602  
Attention: John F. Lyle, III, Esq.  
Facsimile: 251-438-7733  
Email: john.lyle@arlaw.com

[REMAINDER OF PAGE BLANK]



**QALICB INDEMNIFICATION AGREEMENT**

THIS QALICB INDEMNIFICATION AGREEMENT (this “Agreement”) is entered into as of [May \_\_], 2014 (the “Effective Date”) by and among COASTAL ALABAMA FARMERS’ AND FISHERMEN’S MARKET, INC., an Alabama non-profit corporation (“Project Borrower”), THE CITY OF FOLEY PUBLIC FACILITIES COOPERATIVE DISTRICT, an Alabama public corporation (“CFPFCD”) (each of CFPFCD and Project Borrower an “Indemnitor” and collectively, “Indemnitors”), and JPMORGAN CHASE BANK, N.A., a national banking association (“JPMC”).

Recitals

A. JPMC is the sole member of Chase Community Equity, LLC, a Delaware limited liability company (“CCE”).

B. On December 18, 2014 (the “Prefund Date”), CCE, as the sole member of Fund, entered into that certain Operating Agreement (the “Initial Fund OA”) of Chase NMTC CAFFM Investment Fund, LLC, a Delaware limited liability company (“Fund”), as the sole member of Fund.

C. On the Prefund Date, in accordance with the Initial Fund OA, CCE, with the proceeds of an equity investment from JPMC (the “Equity Investment”), agreed to make a \$8,000,000 equity contribution to Fund, to be paid upon admission of CCE as the sole member of Fund (the “Capital Contribution”).

D. On the Prefund Date, Fund used the proceeds of the Capital Contribution (i) to make a “qualified equity investment” (as defined in Section 45D of the Internal Revenue Code of 1986, as amended (the “Code”) in the amount of \$2,000,000 in Pacesetter CDE X, LLC, a Texas limited liability company (“CDE”) and (ii) to make a second “qualified equity investment” (as defined in Section 45D of the Code) in the amount of \$6,000,000 in CDE (the two “qualified equity investments” are referred to collectively herein as the “QEIs”).

E. Fund made the QEIs upon its admission as a member of CDE in accordance with that certain Amended and Restated Operating Agreement of CDE (the “Initial CDE OA”) by and between Fund, as investor member, and Pacesetter CDE, Inc., a Texas corporation (“Allocatee”), as managing member.

F. On the Effective Date, CCE, as the sole member of Fund, entered into that certain First Amended and Restated Operating Agreement of Fund (as the same may be amended, modified, extended, or restated from time to time, the “Fund OA”), which amended and restated in its entirety the Initial Fund OA and contains the provisions governing Fund.

G. On the Effective Date, Fund, as investor member, and Allocatee, as managing member, entered into that certain Second Amended and Restated Operating Agreement of CDE (as the same may be amended, modified, extended, or restated from time to time, the “CDE OA”), which amended and restated in its entirety the Initial CDE OA and contains the provisions governing CDE.

H. On the Effective Date, Fund has obtained a loan from CFPFCD in the original principal amount of \$[5,950,400] (the “Fund Loan”).

I. On the Effective Date, Fund will use a portion of the proceeds of the Fund Loan to make a distribution to CCE in the amount of \$[5,410,400] and thereby reduce CCE’s net capital contribution to Fund to \$[2,589,600].

J. On the Effective Date, and in accordance with the CDE OA, CDE will use the entire proceeds of the QEIs to make two loans to Project Borrower in the aggregate original principal amount of \$8,000,000 (collectively, the “Project Loans”).

K. Each of the Project Loans is intended to constitute a “qualified low-income community investment” as such term is used in Section 45D of the Code (a “QLICI”).

L. The proceeds of the Project Loans will be used to finance the development of Project Borrower’s Farmers & Retail Market and Wholesale Distribution Facility (collectively, the “Project”), located at 20733 Mifflin Road, Foley, Alabama 36535 and 410 East Section Avenue, Foley, Alabama 36535, as more fully described in (i) that certain Credit Agreement, dated as of the Effective Date (as the same may be amended, assigned, restated, modified, or supplemented from time to time, the “Credit Agreement”), by and between Project Borrower, as borrower, and CDE, as lender, and (ii) the other Loan Documents (as defined in the Credit Agreement).

M. JPMC made the Equity Investment, caused CCE to make the Capital Contribution, and caused CCE to cause Fund to make the QEIs in CDE based on the assumption that JPMC will obtain New Markets Tax Credits under Section 45D of the Code (“Tax Credits”) in an aggregate amount equal to not less than \$3,120,000.00 (*i.e.*, 39% of the Designated QEI Amount (defined below)), as more specifically set forth in the NMTC Assumption (defined below), beginning on the date the QEIs were made to CDE (the “Credit Allowance Date”).

N. JPMC’s assumption as set forth in the immediately preceding Recital is based in part on the representations, warranties and covenants of Project Borrower in the Credit Agreement, pursuant to which the Project Loans were made.

O. As a condition to JPMC making the Equity Investment, JPMC causing CCE to make the Capital Contribution, and JPMC causing CCE to cause Fund to make the QEIs in CDE, and therefore as a condition to CDE making the Project Loans, JPMC is requiring that Indemnitors execute and deliver this Agreement to provide assurances with respect to the matters described herein, including, without limitation, the qualification of each of the Project Loans as a QLICI and the qualification of Project Borrower as a “qualified active low-income community business,” as such term is used in Section 45D of the Code (a “QALICB”).

P. Project Borrower and CFPFCD share a common charitable purpose and each entity will benefit directly and indirectly from CDE making the Project Loans to Project Borrower.

NOW, THEREFORE, for and in consideration of the mutual promises of the parties hereto, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Indemnitors hereby covenant and agree as follows:

1. Defined Terms. All capitalized terms listed in the introductory paragraph and Recitals to this Agreement have the meanings assigned to them therein, and all capitalized terms not otherwise expressly defined herein shall have the meanings assigned to them in the Credit Agreement. In addition, the following terms shall have the following meanings in this Agreement:

(a) “Affiliate” means (i) with respect to a corporation, (A) any officer or director thereof and any Person which is, directly or indirectly, the beneficial owner of more than 10% of any class of shares or other equity security or (B) any Person or Persons (individually or in the aggregate) which, directly or indirectly, controls or are controlled by or is under common control with such corporation and (ii) with respect to a partnership, venture or limited liability company, any (A) general partner or managing member, (B) general partner or managing member of a general partner or managing member, (C) partnership with a common general partner or managing member, or (D) coventurer thereof, and if any general partner, managing member or coventurer is a corporation, any Person which is an Affiliate of such corporation. For purposes of this definition, “controls” (which includes the correlative meanings of “controlled by” and “under common control with”) means effective power, directly or indirectly, to direct or cause the direction of the management and policies of such Person. Further, for purposes of this definition, Fund shall not be deemed to be an Affiliate of JPMC or CCE during any time (if ever) Allocatee or any Affiliate thereof is the manager of Fund.

(b) “After-Tax Basis” means, with respect to any NMTC Recapture Amount, the amount of such NMTC Recapture Amount supplemented by a further payment or payments (the “Supplemented NMTC Recapture Amount”) so that, after deducting from such Supplemented NMTC Recapture Amount the amount of all Taxes (net of any current credits, deductions or other tax benefits arising from the payment by JPMC of any amount, including Taxes, for which the payment to be received is made) imposed on JPMC by any Governmental Authority or other taxing authority with respect to such NMTC Recapture Amount, the balance of such payments shall be equal to the NMTC Recapture Amount; *provided, however*, for the purposes of this definition, and for purposes of any payment to be made to Fund, CCE, or JPMC on an After-Tax Basis, it shall be assumed that taxes are payable by JPMC at the Applicable Tax Rate.

(c) “Applicable Tax Rate” means the combined effective federal, state, and local corporate income tax rate (assuming in each case the maximum applicable corporate rate) in the jurisdiction(s) in which JPMC is required to recognize the payments to be made by Indemnitors pursuant to this Agreement.

(d) “Designated QEI Amount” means \$8,000,000.

(e) “Entity” means any general partnership, limited partnership, limited liability limited partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative, association, or public agency.

(f) “Event of Default” has the meaning assigned to such term in the Credit Agreement.

(g) “Financial Projections” means the financial projections, dated as of the Effective Date and certified by Novogradac & Company LLP, issued connection with the investments and loan transactions described in the Recitals.

(h) “Governmental Authority” means any, federal, state, local, municipal, or other governmental or quasi governmental authority or self regulatory organization of any nature (including any agency, authority, branch, department, board, commission, court, tribunal or other entity, instrumentality or body politic exercising governmental or quasi governmental powers) or exercising, or entitled or purporting to exercise, any administrative, executive, judicial, legislative, enforcement, regulatory or taxing authority or power.

(i) “Investment Fund Put/Call Agreement” means that certain Investment Fund Put/Call Agreement, dated as of the Effective Date, by and between CFPFCD and CCE, as the same may be amended, modified, extended, or restated from time to time.

(j) “IRS” means the Internal Revenue Service or any successor agency thereof.

(k) “NMTC Assumption” has the meaning set forth in Section 2.

(l) “NMTC Payment Date” means the earliest to occur of the following:

(i) the date of issuance of a Schedule K-1 to Fund, CCE, and/or JPMC for the applicable taxable year or years evidencing, indicating, or reflecting the occurrence of a Specified NMTC Recapture Event;

(ii) the fiscal year end of the year following the applicable taxable year or years for which a tax return evidencing, indicating, or reflecting the occurrence of a Specified NMTC Recapture Event is filed;

(iii) the date on which Fund, CCE, and/or JPMC provides notice to Indemnitors of its receipt of notice of (A) a determination by the IRS that a Specified NMTC Recapture Event has occurred, or (B) the intention of the IRS to assess a deficiency based on a Specified NMTC Recapture Event; or

(iv) the date on which Fund, CCE, and/or JPMC provides notice to Indemnitors of its determination, made by Fund, CCE, and/or JPMC based upon written advice from its tax counsel and/or its accountants, that a Specified NMTC Recapture Event has occurred.

(m) “NMTC Recapture Amount” means the sum of (i) the “credit recapture amount,” as defined in Section 45D(g)(2) of the Code, with respect to Tax Credits that have been claimed with respect to the Designated QEI Amount at the time of the Specified NMTC Recapture Event, plus (ii) an amount equal to the present value, calculated using a *per annum* discount rate equal to the Target Rate of Return, of the Tax Credits attributable to the Designated

QEI Amount that would have been allowed to JPMC for any Tax Credits not yet claimed at the time of the Specified NMTC Recapture Event, plus (iii) any other interest or penalties assessed by the IRS or any other Governmental Authority in connection therewith, plus (iv) such additional amount (if any) as shall be required to cause JPMC to have received, on an After-Tax Basis, the same “Internal Rate of Return” (as defined and calculated in the manner provided in the Financial Projections) from the payments made pursuant to this Agreement as JPMC would have received on account of its ownership of CCE if the Tax Credits had not been so recaptured or disallowed (*i.e.*, equal to the Target Rate of Return), taking into account the effect of the recapture, loss, or disallowance of Tax Credits and the receipt of the cash payments provided for herein, but otherwise based on the same assumptions in regard to profits, losses, and other tax and financial benefits as set forth in the Financial Projections, and utilizing the same methodology as used in the Financial Projections, including, without limitation, with respect to JPMC’s marginal federal and state income tax rates and with respect to the timing of Tax Credit recognition.

(n) “Person” means any individual or Entity, and the heirs, executors, administrators, legal representatives, successors, and assigns of such Person where the context so requires; and, unless the context otherwise requires, the singular shall include the plural, and the masculine gender shall include the feminine and the neuter and vice versa.

(o) “Prime Rate” means the reference rate for corporate loans announced from time to time by large, money center banks and reported as the “Prime Rate” in *The Wall Street Journal*, New York Edition, as such rate may change from time to time, or in the event such rate ceases to be determined and reported in such publication, any comparable rate determined in good faith by JPMC.

(p) “Specified NMTC Recapture Event” means any recapture or disallowance of any Tax Credits attributable to any QEI made by Fund in CDE:

(i) arising, directly or indirectly, in whole or in part, from Project Borrower failing to qualify as a QALICB;

(ii) arising, directly or indirectly, in whole or in part, from the Project Loans failing to qualify as QLICs (including, without limitation, the failure of Project Borrower or any tenant of the Project to constitute a “qualified business” within the meaning of Section 1.45D-1(d)(5) of the Treasury Regulations);

(iii) arising, directly or indirectly, in whole or in part, from fraud, material misrepresentation, gross negligence, or willful misconduct of any Indemnitor or any Affiliate thereof; or

(iv) arising, directly or indirectly, in whole or in part, from an Event of Default or any other action or inaction of any Indemnitor or any Affiliate thereof.

Notwithstanding anything to the contrary herein, a Specified NMTC Recapture Event shall not include a recapture or disallowance of any Tax Credits attributable to any QEI made by Fund in CDE caused solely on account of changes in the Code or the Treasury Regulations which cause Fund to receive less than the amount of Tax Credits it would have otherwise been eligible to

receive (except to the extent that the adverse effects thereof could reasonably have been mitigated by any Indemnitor or any Affiliate thereof).

(q) “Target Rate of Return” means a projected, after-tax internal rate of return to JPMC on account of its investment in CCE and CCE’s investment in Fund (and Fund’s QEI in CDE) equal to [\_\_\_\_\_] % per annum, taking into account the dates and amounts of such investments, all cash distributions, Tax Credits and other tax and financial benefits, and any offsetting tax detriments, as set forth in the Financial Projections, and utilizing the methodology contained in such Financial Projections.

(r) “Tax” or “Taxes” means any and all liabilities, losses, expenses and costs that are, or are in the nature of, taxes, fees or other governmental charges, including interest, penalties, fines, and additions to tax imposed by any Governmental Authority.

(s) “Treasury Regulations” means any temporary or final regulations promulgated under the Code.

2. Tax Assumptions. Indemnitors acknowledge that, by virtue of the fact that Fund’s equity investment in CDE is intended to constitute a “qualified equity investment” (as defined in Section 45D of the Code), and assuming no recapture or disallowance of the Tax Credits occurs, JPMC (through its ownership of CCE and Fund) expects to claim or be entitled to claim Tax Credits in an amount equal to (a) 5% of the Designated QEI Amount on the Credit Allowance Date and on each of the next two anniversary dates of the Credit Allowance Date, and (b) 6% of the Designated QEI Amount on each of the next four anniversary dates of the Credit Allowance Date (the “NMTC Assumption”), in an aggregate amount over such period equal to not less than \$3,120,000 (*i.e.*, 39% of the Designated QEI Amount).

### 3. Indemnification for Specified NMTC Recapture Events.

(a) Indemnitors, jointly and severally, shall be obligated to pay the NMTC Recapture Amount to JPMC within 10 calendar days of receipt of notice from JPMC of a NMTC Payment Date. JPMC shall provide Indemnitors along with such notice a written calculation of the NMTC Recapture Amount together with a description of the Specified NMTC Recapture Event.

(b) In addition to their obligation to pay the NMTC Recapture Amount, Indemnitors shall also be obligated, jointly and severally, to pay all costs, expenses, and fees (including without limitation reasonable attorneys’, accountants’, experts’, and consultants’ fees and expenses, court costs and investigative expenses) incurred by any of JPMC, CCE, Fund or any Affiliate of any of the foregoing in connection with any tax audit, litigation or other proceedings challenging JPMC’s, CCE’s or Fund’s entitlement to the Tax Credits as a result of any actual or alleged Specified NMTC Recapture Event.

(c) In the event that any amounts owed under this Section 3 are paid when due, Indemnitors shall have no liability to JPMC after the date of such payment for any interest or penalties assessed by the IRS or any other Governmental Authority with respect to such amounts on account of any delay by JPMC, CCE, Fund or any Affiliate of any of the foregoing in advancing Indemnitors’ payment to the IRS or other applicable Governmental Authority.

(d) Any amounts owed under this Section 3 that are not paid when due shall bear interest at a rate equal to 2% over the Prime Rate in effect at the end of the preceding calendar month, until paid in full.

4. Exculpation from Liability. Notwithstanding Section 3, Indemnitors shall have no liability to JPMC with respect to a Specified NMTC Recapture Event in the event that such Specified NMTC Recapture Event occurred solely from fraud, material misrepresentation, gross negligence, or willful misconduct of any of JPMC, CCE, Fund, Allocatee, CDE or any Affiliate of any of the foregoing.

5. General.

(a) Indemnitors shall have the ability to request reasonable additional documentation regarding any Specified NMTC Recapture Event, NMTC Recapture Amount or any other claim for indemnity under this Agreement; *provided, however*, (i) none of JPMC, CCE, Fund or any Affiliate of any of the foregoing shall be obligated to make available any confidential information relating to their respective federal or state income tax returns or any issues relating thereto nor any computer program employed to calculate any such amount and (ii) any dispute as to the reasonableness of the documentation requested and/or provided shall not limit or extinguish any Indemnitor's liability under this Agreement.

(b) All payments made hereunder shall be made in U.S. dollars in immediately available funds (unless the paying party is otherwise instructed by the recipient of such payment) to the account of the recipient.

(c) This Agreement shall be binding upon and shall inure to the benefit of, and shall be enforceable by, the parties hereto and their respective successors and permissible assigns whether or not an express assignment to any such holder of rights under this Agreement has been made. The term "JPMC" shall include any subsequent holder of the interests of JPMC as the member of CCE, the term "CCE" shall include any subsequent holder of the interest of CCE as the sole member of Fund, and the term "Fund" shall include any subsequent holder of the interest of Fund as the investor member of CDE. Each of JPMC, CCE, and Fund may assign such interests, in whole or in part, without notice and without affecting any liability or obligation of Indemnitors under this Agreement. Each of JPMC, CCE, and Fund may make available to any assignee all credit and financial data with respect to any Indemnitor as may be lawfully in the possession of JPMC, CCE or Fund. Notwithstanding anything to the contrary herein, this Agreement shall not inure to the benefit of any purchaser of CCE's interest as the sole member of Fund pursuant to the Investment Fund Put/Call Agreement.

(d) To the fullest extent permitted by applicable law, Indemnitors waive (i) notice of the acceptance of this Agreement, the CDE OA, the Fund OA or any part thereof and (ii) presentment, protest, notice, demand or action on delinquency in respect of this Agreement, the CDE OA, the Fund OA or any part thereof, including any right to require JPMC, CCE, Fund or any Affiliate of any of the foregoing to sue any other Person obligated with respect to this Agreement, the CDE OA, the Fund OA or any part thereof, or otherwise to enforce payment thereof against any collateral securing Indemnitors' obligations or to collect

against any other Person who may be liable on account of any Specified NMTC Recapture Event.

(e) No amendment or modification of this Agreement, and no approvals, consents or waivers hereunder, shall be valid or binding unless in writing and executed by the party to be bound.

(f) This Agreement constitutes the entire agreement among the parties pertaining to the subject matter hereof, and supersedes in their entirety any and all written or oral agreements previously existing between the parties with respect to such subject matter.

(g) Should any one or more provisions of this Agreement be determined to be illegal or unenforceable, all other provisions nevertheless shall be effective.

(h) Indemnitors hereby agree that this Agreement, the indemnified amounts as described in Section 3, and all other obligations indemnified hereby, shall remain in full force and effect at all times hereinafter until paid and/or performed in full notwithstanding any action or undertakings by or against any Indemnitor and/or any member of any Indemnitor or in any proceeding in the United States Bankruptcy Court, including, without limitation, any proceeding relating to valuation of collateral, election or imposition of secured or unsecured claim status upon claims by JPMC pursuant to any Chapter of the Bankruptcy Code or the Rules of Bankruptcy Procedure as same may be applicable from time to time.

(i) Each Indemnitor covenants, represents, and warrants to and for the benefit of JPMC as follows:

(i) the execution, delivery and performance by it of this Agreement does not contravene or conflict with any law, order, rule, regulation, writ, injunction or decree now in effect of any Governmental Authority over it, or any contractual restriction binding on or affecting it;

(ii) it has all necessary power and authority to enter into and perform this Agreement, and there are no facts or circumstances of which it is aware that could in any way impair or prevent it from performing its obligations under this Agreement;

(iii) any and all financial information with respect to it given by it or any other Indemnitor to CCE or JPMC fairly and accurately present its financial condition and results of its operations as of the respective dates thereof and for the respective dates indicated therein, and, since the respective dates thereof, there has been no material adverse change in its financial condition or the results of its operations; and

(iv) with the assistance of counsel of its choice, it has read and reviewed this Agreement and such other documents as it and its counsel deemed necessary or desirable to read.

(j) Project Borrower further covenants and agrees (i) to provide JPMC, within 90 calendar days of the end of each of its fiscal years, copies of audited financial statements regarding its previous fiscal year, including a balance sheet, a statement of operations, and a statement of cash flows and (ii) to promptly notify JPMC of any change in its financial condition that adversely and materially affects its ability to perform its obligations under this Agreement.

(k) CFPFCD further covenants and agrees (i) to provide JPMC, within 90 calendar days of the end of each of its fiscal years, copies of audited financial statements regarding its previous fiscal year, including a balance sheet, a statement of operations, and a statement of cash flows and (ii) to promptly notify JPMC of any change in its financial condition that adversely and materially affects its ability to perform its obligations under this Agreement.

(l) Any notice, request, demand, consent, approval, direction, agreement, or other communication (any “notice”) required or permitted hereunder shall be in writing and shall be validly given if (i) sent by a nationally-recognized courier that obtains receipts, (ii) delivered personally by a courier that obtains receipts, (iii) mailed by United States certified mail (with return receipt requested and postage prepaid), (iv) sent by facsimile (with a copy of such facsimile and proof of transmission thereof sent via one of the methods of delivery set forth in clauses (i), (i) or (iii) hereof), or (v) sent by email (with a copy of such email and proof of transmission thereof sent via one of the methods of delivery set forth in clauses (i), (ii) or (iii) hereof), addressed to the applicable party at the address set forth on Schedule A to this Agreement. Each notice shall be effective upon being so sent, delivered, or mailed, but the time period for response or action shall run from the date of receipt as shown on the delivery receipt, or the date the facsimile or email was sent, as applicable. Refusal to accept delivery or, to the fullest extent permitted by applicable law, the inability to deliver because of a changed address for which no notice was given shall be deemed receipt. Any party may periodically change its address for notice (including different or additional addresses for copies) by giving the other party at least 10 calendar days’ prior notice in accordance with the foregoing provisions.

(m) The liability of Indemnitors under this Agreement shall be joint and several and shall be an absolute, direct, immediate and unconditional indemnity of payment and not of collectability. The obligations of Indemnitors hereunder are independent of the obligations of any Affiliate or any other party which may be initially or otherwise responsible for performance or payment of the obligations hereunder guaranteed, and, in the event of any default hereunder, a separate action or actions may be brought and prosecuted against Indemnitors, whether or not any Affiliate is joined therein or a separate action or actions are brought against any Affiliate.

(n) References in this Agreement to Sections are intended to refer to Sections of this Agreement, unless otherwise specifically stated.

(o) The Recitals and Schedule identified in this Agreement are incorporated herein by reference and made a part hereof.

(p) This Agreement may be executed in several counterparts and all so executed shall constitute one agreement binding on all parties, notwithstanding that all parties

have not signed the original or the same counterpart. Faxed, scanned or photocopied signatures shall be deemed equivalent to original signatures.

6. CHOICE OF LAW; WAIVER OF JURY TRIAL AND CERTAIN OTHER RIGHTS; SUBMISSION TO JURISDICTION; SERVICE OF PROCESS.

(a) THE VALIDITY OF THIS AGREEMENT, THE CONSTRUCTION, INTERPRETATION, AND ENFORCEMENT HEREOF, AND THE RIGHTS OF THE PARTIES HERETO WITH RESPECT TO ALL MATTERS ARISING HEREUNDER OR RELATED HERETO SHALL BE DETERMINED UNDER, GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS WITHOUT GIVING EFFECT TO CONFLICT OR CHOICE OF LAW PRINCIPLES, AND TO THE EXTENT RELEVANT IN APPLYING THE PROVISIONS OF SECTION 45D OF THE CODE, THE CODE AND THE TREASURY REGULATIONS THEREUNDER.

(b) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). IT IS AGREED AND UNDERSTOOD THAT THIS WAIVER CONSTITUTES A WAIVER OF TRIAL BY JURY OF ALL CLAIMS AGAINST ALL PARTIES TO SUCH ACTIONS OR PROCEEDINGS, INCLUDING CLAIMS AGAINST PARTIES WHO ARE NOT PARTIES TO THIS AGREEMENT. EACH PARTY (i) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, AND (ii) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 6.

(c) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY AGREES THAT ANY PROCESS OR NOTICE OF MOTION OR OTHER APPLICATION TO ANY SUCH COURT IN CONNECTION WITH ANY ACTION OR PROCEEDING MAY BE SERVED UPON SUCH PARTY BY REGISTERED OR CERTIFIED MAIL TO OR BY PERSONAL SERVICE AT THE LAST KNOWN ADDRESS OF SUCH PARTY, WHETHER SUCH ADDRESS BE WITHIN OR OUTSIDE THE JURISDICTION OF ANY SUCH COURT.

(d) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, INDEMNITORS SHALL NOT ASSERT, AND HEREBY WAIVE, ANY CLAIM AGAINST JPMC AND JPMC'S AFFILIATES, ON ANY THEORY OF LIABILITY, FOR SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES (AS OPPOSED TO DIRECT OR ACTUAL DAMAGES) ARISING OUT OF, IN CONNECTION WITH, OR AS A RESULT OF, THIS AGREEMENT OR ANY AGREEMENT OR INSTRUMENT CONTEMPLATED HEREBY AND/OR THE TRANSACTIONS CONTEMPLATED HEREBY.

7. Enforcement Costs. In the event of any action at law or in equity to enforce the provisions of this Agreement or to secure relief or damages for the breach of this Agreement, the prevailing party shall be entitled to payment or reimbursement, as applicable, of its costs, expenses and fees (including without limitation reasonable attorneys', accountants', experts', and consultants' costs, expenses and fees, court costs and investigative expenses prior to trial, at trial and on appeal) incurred in such proceedings from the non-prevailing party.

[REMAINDER OF PAGE BLANK; SIGNATURE PAGES TO FOLLOW.]

IN WITNESS WHEREOF, each party has caused this QALICB Indemnification Agreement to be executed by its duly authorized officer as of the Effective Date.

**PROJECT BORROWER:**

COASTAL ALABAMA FARMERS' AND  
FISHERMEN'S MARKET, INC., an Alabama  
non-profit corporation

By: \_\_\_\_\_  
Name:  
Title:

[COUNTERPART SIGNATURE PAGE TO QALICB INDEMNIFICATION AGREEMENT]

**CFPFCD:**

THE CITY OF FOLEY PUBLIC FACILITIES  
COOPERATIVE DISTRICT, an Alabama public  
corporation

By: \_\_\_\_\_  
Name:  
Title:

[COUNTERPART SIGNATURE PAGE TO QALICB INDEMNIFICATION AGREEMENT]

**JPMC:**

JPMORGAN CHASE BANK, N.A., a national  
banking association

By: \_\_\_\_\_

Name: Wanda Clark

Title: Authorized Officer

**SCHEDULE A**

**Notice Addresses of Parties**

(1) If to either Indemnitor: c/o City of Foley  
407 East Laurel Avenue  
Foley, AL 36535  
Attention: Jeff Rouzie, Director of Economic Development  
Facsimile: 251-952-4012  
Email: [\_\_\_\_\_]

And a copy to: Adams and Reese LLP  
RSA Battle House Tower  
11 North Water Street, Suite 23200  
Mobile, AL 36602  
Attention: John F. Lyle, III, Esq.  
Facsimile: 251-438-7733  
Email: john.lyle@arlaw.com

(2) If to JPMC: JPMorgan Chase Bank, N.A.  
10 S. Dearborn Street, 19th Floor  
Mail Code: IL1-0953  
Chicago, IL 60603-5506  
Attention: NMTC Asset Manager  
Facsimile: 312-325-5050  
Email: nmtc.reporting@chase.com

With a copy to: Chase Community Equity, LLC  
c/o JPMorgan Chase Bank, N.A.  
New Markets Tax Credit Group  
2200 Ross Avenue, 9th Floor  
Mail Code: TX1-2951  
Dallas, TX 75201  
Attention: Wanda Clark  
Facsimile: 214-965-3297  
Email: wanda.clark@jpmchase.com

And a copy to: Jones Day  
100 High Street, 21<sup>st</sup> Floor  
Boston, MA 02110  
Attention: Jeffrey D. Gaulin, Esq.  
Facsimile: 617-449-6999  
Email: jgaulin@jonesday.com

[REMAINDER OF PAGE BLANK]



**FUND LOAN AGREEMENT**

THIS FUND LOAN AGREEMENT (this "Agreement"), dated as of [May \_\_], 2014 (the "Effective Date"), is entered into by and between THE CITY OF FOLEY PUBLIC FACILITIES COOPERATIVE DISTRICT, an Alabama public corporation ("Lender"), and CHASE NMTC CAFFM INVESTMENT FUND, LLC, a Delaware limited liability company ("Borrower").

**RECITALS**

A. Borrower has requested that Lender provide a loan (the "Loan") in the original principal amount of \$[5,950,400].

B. Concurrently with the execution of this Agreement, Borrower is executing and delivering to Lender that certain Fund Promissory Note for the original principal amount of the Loan (as the same may be amended, assigned, restated, modified, or supplemented from time to time, the "Note"). The Note evidences the Loan.

C. Concurrently with the execution of this Agreement, Lender and Borrower are entering into that certain Fund Pledge Agreement (as the same may be amended, assigned, restated, modified, or supplemented from time to time, the "Pledge Agreement"). The Pledge Agreement secures the payment and performance of Borrower's obligations under this Agreement.

D. On December 18, 2013 (the "Prefund Date"), Chase Community Equity, LLC, a Delaware limited liability company (together with its successors and assigns, "CCE"), provided an equity investment in the amount of \$8,000,000 in Borrower pursuant to the terms and conditions set forth in the Borrower OA (defined below).

E. On the Prefund Date, Borrower used the proceeds of CCE's equity investment to make an equity investment in the amount of \$8,000,000.00 (the "CDE Capital Contribution") in Pacesetter CDE X, LLC, a Texas limited liability company ("CDE").

F. CDE is a "qualified community development entity" formed for the purpose of serving or providing investment capital for low-income communities or low-income persons (as such terms are defined for the purposes of Section 45D of the Internal Revenue Code of 1986 (as amended from time to time, the "Code")).

G. On the Effective Date, CDE will use all of the proceeds of the CDE Capital Contribution to make loans to Coastal Alabama Farmers' and Fishermen's Market, Inc., an Alabama nonprofit corporation ("Project Borrower"), in the aggregate original principal amount of \$[8,000,000] (collectively, the "Project Loans").

H. The Project Loans will be evidenced by certain QLICI loan notes dated as of the Effective Date (collectively, the "Project Notes").

I. Project Borrower will use the proceeds of the Project Loans in accordance with the terms of the Project Loan Agreement (defined below).

J. Lender has agreed to make the Loan to Borrower upon and subject to all of the terms, conditions, covenants and agreements of this Agreement.

**NOW, THEREFORE**, in consideration of the mutual promises and agreements hereinafter contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

**Section 1. LOAN TERMS.**

**Section 1.1 Definitions.** All capitalized terms listed in the introductory paragraph and Recitals to this Agreement have the meanings assigned to them therein, and all capitalized terms not otherwise expressly defined herein have the meanings assigned to them in the Borrower OA. In addition, the following terms have the following meanings in this Agreement:

(a) “Anti-Terrorism Laws” means all laws relating to terrorism or money laundering, including, without limitation, the Executive Order and the Bank Secrecy Act, as amended by the USA Patriot Act.

(b) “Borrower OA” means that certain First Amended and Restated Operating Agreement of Borrower, dated as of the Effective Date, by CCE as the sole member and manager, as the same may be amended, assigned, restated, modified, or supplemented in accordance therewith and with this Agreement.

(c) “Borrower Organizational Documents” means any and all articles and/or certificates of formation, the Borrower OA, written consents, resolutions, and any other documents, including any amendments thereto, that govern the actions of Borrower and any of its members, managers, or principals, as the same may be amended, modified, extended, or restated from time to time.

(d) “Business Day” has the meaning set forth in the Note.

(e) “CDE Interest” has the meaning set forth in the Pledge Agreement.

(f) “CDE OA” means that certain Second Amended and Restated Operating Agreement of CDE, dated as of the Effective Date, by and between Borrower, as investor member, and Allocatee, as managing member, as the same may be amended, assigned, restated, modified, or supplemented in accordance therewith and with this Agreement.

(g) “Default Rate” has the meaning set forth in the Note.

(h) “Dollars” and “\$” means the lawful currency of the United States.

(i) “Event of Default” means any of those events set forth in Section 5.1.

(j) “Executive Order” means Executive Order No. 13224 on Terrorist Financing, effective September 23, 2001, including the Annex thereto, as amended from time to time.

(k) “Financial Projections” means the financial projections dated on or about the Effective Date, compiled and certified by Novogradac & Company LLP in connection with the transactions contemplated by the Borrower OA and the CDE OA, including, without limitation, the Project Loans.

(l) “Forbearance Termination Date” has the meaning set forth in Section 5.3(a).

(m) “GAAP” means generally accepted accounting principles in the United States of America applied on a basis consistent with the accounting practices applied in the financial statements of Borrower, except for any change in accounting practices to the extent that, due to a promulgation of the Financial Accounting Standards Board changing or implementing any new accounting standard, Borrower either (i) is required to implement such change, or (ii) for future periods will be required to and for the current period may in accordance with generally accepted accounting principles implement such change, for its financial statements to be in conformity with generally accepted accounting principles (any such change is hereinafter referred to as a “Required GAAP Change”); *provided*, that Borrower will fully disclose in such financial statements any such Required GAAP Change and the effects of the Required GAAP Change on Borrower’s income, retained earnings or other accounts, as applicable.

(n) “Governmental Authority” means any, federal, state, local, municipal, or other governmental or quasi governmental authority or self regulatory organization of any nature (including any agency, authority, branch, department, board, commission, court, tribunal or other entity, instrumentality or body politic exercising governmental or quasi governmental powers) or exercising, or entitled or purporting to exercise, any administrative, executive, judicial, legislative, enforcement, regulatory or taxing authority or power.

(o) “Interest Rate” means the applicable rate of interest set forth in the Note.

(p) “Laws” means, collectively, all federal, state and local laws, statutes, codes, ordinances, orders, rules and regulations, including judicial opinions or precedential authority, in the applicable jurisdiction.

(q) “Lien Enforcement Action” means (i) any action to foreclose on, take possession of, sell or otherwise realize (judicially or non-judicially) upon the CDE Interest, or any rights or privileges attendant thereto (including, without limitation, by set-off), (ii) any action to assert ownership rights with respect to the CDE Interest, or any rights or privileges attendant to the CDE Interest or arising under the CDE OA, including without limitation, voting, consent or management rights, (iii) any action (judicially or non-judicially) to dissolve or liquidate Borrower, and/or (iv) the commencement of any legal proceedings to facilitate any of the actions described in clauses (i), (ii) or (iii) herein.

(r) “Loan Documents” means, collectively, the Note, Pledge Agreement, this Agreement, and all other documents that evidence, secure, and govern the Loan, as the same may be amended, assigned, restated, modified, or supplemented from time to time.

(s) “Maturity Date” has the meaning set forth in the Note.

(t) “NMTC Program Requirements” means, collectively, the provisions of Section 45D of the Code, the Treasury Regulations and Guidance, and the Allocation Agreement (as defined in the CDE OA).

(u) “OFAC” means the Office of Foreign Asset Control of the U.S. Treasury Department and shall be deemed to include any successor agency thereof.

(v) “Permitted Liens” has the meaning set forth in the Pledge Agreement.

(w) “Pledged Collateral” has the meaning set forth in the Pledge Agreement.

(x) “Prohibited Person” means any of the following:

(i) a Person that is listed in the Annex to, or is otherwise subject to the provisions of, the Executive Order;

(ii) a Person owned or controlled by, or acting for or on behalf of, any Person that is listed in the Annex to, or is otherwise subject to the provisions of, the Executive Order;

(iii) a Person whom Lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law;

(iv) a Person who or that commits, threatens, or conspires to commit or supports “terrorism,” as defined in the Executive Order; or

(v) a Person that is named as a “specially designated national and blocked person” on the most current list published by OFAC at its official web site or any replacement website or other replacement official publication of such list.

(y) “Project Loan Agreement” means that certain Credit Agreement, dated as of the Effective Date, by and between Project Borrower and CDE, as the same may be amended, assigned, restated, modified, or supplemented.

(z) “Project Loan Documents” means, collectively, the Project Notes, the Project Loan Agreement, mortgages or deeds of trust, security agreements, pledge agreements, guaranties, and other instruments, documents, and agreements between Project Borrower and CDE that evidence, govern, and secure the Project Loans, as the same may be amended, assigned, restated, modified, or supplemented.

(aa) “Put/Call Agreement” means that certain Investment Fund Put/Call Agreement, dated as of the Effective Date, by and between CCE, and Lender, as the same may be amended, modified, or restated from time to time.

(bb) “Put” has the meaning set forth in the Put/Call Agreement.

(cc) “Put Option Period” has the meaning set forth in the Put/Call Agreement.

(dd) “Put Price” has the meaning set forth in the Put/Call Agreement.

(ee) “QALICB NMTC Indemnity” means that certain QALICB Indemnification Agreement, dated as of the Effective Date, by and among Project Borrower and Lender (as the “Indemnitors” thereunder) and JPMC, as the same may be amended, assigned, restated, modified, or supplemented.

(ff) “USA Patriot Act” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. No. 107-56, 115 Stat. 272 (2001), as amended from time to time.

**Section 1.2 Accounting Terms.** All accounting terms not specifically defined herein will be construed in accordance with GAAP.

**Section 1.3 Computation of Time.** In this Agreement, in the computation of a period of time from a specified date to a later specified date, the word “from” means “from and including” and the word “to” means “to but excluding.”

**Section 1.4 Loan Amount.** On the basis of the representations, warranties, and covenants of Borrower contained herein and subject to the terms and conditions set forth herein and in the other Loan Documents, on the Effective Date, Lender agrees to lend to Borrower, and Borrower agrees to borrow from Lender, the Loan, which will be disbursed in full on the Effective Date.

**Section 1.5 Loan Disbursement.** Following the satisfaction of all applicable conditions precedent set forth in Section 3, Lender will fully disburse the Loan as set forth in Section 1.4 to Borrower. The Loan is evidenced by the Note and the other Loan Documents and secured by the Pledged Collateral.

**Section 1.6 Interest Rate.** Section 4 of the Note is incorporated herein by reference and made a part hereof.

**Section 1.7 Payment Terms.**

(a) On [June 10], 2014, Borrower will pay interest only on the full proceeds of the Note, partially in arrears and partially in advance, for the period starting on the Effective Date and ending on [June 30], 2014.

(b) Commencing on [September 10], 2014 and continuing on the [10]th day of each [December, March, June and September] thereafter up to and including [March 10], 2021, Borrower will pay interest only on the full proceeds of the Note quarterly, partially in arrears and partially in advance for the quarter ending on the last day of the month of the payment date.

(c) Commencing on [June 10], 2021 and continuing on the [10]th day of each [September, December, March and June] thereafter up to the Maturity Date, Borrower will pay quarterly, partially in arrears and partially in advance for the quarter ending on the last day of the month of the payment date, equal installments of principal and interest. Except as otherwise set forth in this Agreement, the amount of the total installments of principal and interest payable

pursuant to this Section 1.7(c) will be equal to the amount necessary to fully amortize the unpaid principal balance of the Loan as of the Maturity Date at the Interest Rate. Payment of the principal balance of Loan, all accrued and unpaid interest thereon, and any other amounts payable by Borrower to Lender under the Loan Documents will be paid in full on the Maturity Date.

(d) All sums payable by Borrower hereunder or pursuant to the Note or the other Loan Documents will be paid in full without setoff or counterclaim by reason of any claim Borrower may have against Lender; *provided*, any amount owed by Lender to JPMC pursuant to the QALICB NMTC Indemnity will be (i) set off against amounts payable hereunder or pursuant to the Note or the other Loan Documents, (ii) retained by Borrower (for distribution to CCE as a member of Borrower and then to JPMC as a member of CCE), and (iii) treated as paid to Lender in satisfaction of an equivalent amount due and payable under the Loan Documents.

**Section 1.8 Maturity.** The entire outstanding principal balance under the Note plus all accrued and unpaid interest thereon will be due and payable on the Maturity Date of the Note.

**Section 1.9 Non-Recourse Loan.** In the event of any breach by Borrower hereunder or under any other Loan Document, the liability of Borrower will be limited to the Pledged Collateral, and Borrower will have no personal liability for any obligation hereunder. Notwithstanding anything to the contrary in this Agreement or any other Loan Document, no member or manager of Borrower or its shareholders, affiliates, members, managers, partners, officers, directors, employees, or any successors, transferees or assigns thereof, will have any personal liability for any obligation hereunder.

**Section 2. REPRESENTATION AND WARRANTIES OF BORROWER.** To induce Lender to enter into this Agreement, and to make the Loan to Borrower, Borrower represents and warrants to Lender, as of the Effective Date, as follows:

**Section 2.1 Organizational Status; Authorizations.** Borrower is duly formed, validly existing and in good standing as a limited liability company under the laws of the State of Delaware, with full power and authority to consummate the transactions contemplated hereby. Borrower has full power and authority to execute, deliver and perform all of the Loan Documents, and such execution, delivery and performance have been duly authorized by all requisite action on the part of Borrower. Borrower is duly authorized to (a) acquire and own the CDE Interest, (b) enter into the transactions contemplated by the Loan Documents, Borrower OA, and CDE OA, and (c) pledge and assign and grant liens and security interests as contemplated by the Loan Documents. This Agreement and the other Loan Documents and the provisions contained herein and therein are and will be the valid and legally enforceable obligations of Borrower in accordance with their terms.

**Section 2.2 No Actions.** There are no actions, suits or proceedings pending or, to the knowledge of Borrower, threatened against or affecting Borrower, before or by a Governmental Authority, and, to Borrower's knowledge, it is not in default with respect to any order, writ, injunction, decree or demand of any court or any Governmental Authority, which could have a material adverse impact on Borrower or involving the validity or enforceability of the Loan Documents.

**Section 2.3 No Breach.** The consummation of the transactions hereby contemplated and performance of this Agreement will not result in any breach of, or constitute a default under, any deed to secure debt, mortgage, deed of trust, indenture, security agreement, lease, bank loan or credit agreement, contract, articles of organization, operating agreement, joint venture agreement, partnership agreement or other instruments to which Borrower is a party or by which Borrower may be bound.

**Section 2.4 Anti-Terrorism Laws.** Borrower represents and warrants to Lender that:

- (a) Borrower is not in violation of any Anti-Terrorism Law;
- (b) No action, proceeding, investigation, charge, claim, report, or notice has been filed, commenced, or threatened against Borrower alleging any violation of any Anti-Terrorism Law; and
- (c) Borrower has no knowledge or notice of any fact, event, circumstance, situation, or condition which could reasonably be expected to result in:
  - (i) any action, proceeding, investigation, charge, claim, report, or notice being filed, commenced, or threatened against it alleging any violation of, or failure to comply with, any Anti-Terrorism Law; or
  - (ii) the imposition of any civil or criminal penalty against Borrower for any failure to so comply.

**Section 2.5 Prohibited Person.** Borrower is not a Prohibited Person, and has provided Lender with sufficient information (including names, addresses and, where applicable, jurisdiction of formation or organization) to reasonably permit Lender to verify the foregoing representation. Borrower does not:

- (a) conduct any business or engage in making or receiving any contribution of funds, goods, or services to or for the benefit of any Prohibited Person;
- (b) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked under the Executive Order; or
- (c) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law.

**Section 2.6 Ownership of Property; No Liens.** Borrower owns the Pledged Collateral, free and clear of all liens, claims, charges and encumbrances of every type or nature, except for the liens and security interests created by the Loan Documents and Permitted Liens.

**Section 3. CONDITIONS PRECEDENT TO LENDER'S OBLIGATION TO MAKE THE LOAN.** Lender will not be obligated to make the Loan hereunder unless the following conditions precedent have been satisfied (and the funding of the Loan by Lender will constitute Lender's acknowledgement of the satisfaction of all such conditions precedent):

**Section 3.1 Loan Documents.** Lender has received each of the Loan Documents executed by Borrower.

**Section 3.2 Governing Instruments.** Lender has received from Borrower a copy of each of the Borrower Organizational Documents, including the certificate of formation of Borrower, the Borrower OA, and such other documents, instruments, agreements and certificates as Lender reasonably requested with respect to Borrower.

**Section 3.3 Financial Projections.** Lender has received and approved the Financial Projections based upon income and expense numbers acceptable to Lender.

**Section 3.4 No Default or Event of Default.** There is (a) no default or Event of Default under this Agreement or any of the other Loan Documents and (b) no event which with notice or the passage of time, or both, would constitute a default or Event of Default under this Agreement or any of the other Loan Documents has occurred or is in existence.

**Section 3.5 Project Loan Documents.** CDE and Project Borrower have executed and delivered all of the Project Loan Documents, and all conditions to the funding of the Project Loans thereunder have been satisfied (or waived in writing by CDE).

**Section 4. COVENANTS OF BORROWER.** Borrower (in addition to and not in derogation of its covenants contained in any of the other Loan Documents) covenants and agrees, from the Effective Date and for so long as the Loan or any portion thereof is outstanding:

**Section 4.1 Prohibition of Transfers.** Borrower will not convey or further encumber the CDE Interest or any portion thereof in any way. Borrower will keep the CDE Interest free and clear of all security interests and encumbrances other than the Pledge Agreement and Permitted Liens and will not sell, assign, convey, contribute, pledge, hypothecate, encumber, or otherwise transfer in any manner, whether voluntarily or involuntarily, all or any portion of the CDE Interest, nor take any action (or fail to take any action) that may result in any charge, lien, or impairment of the CDE Interest, whether pursuant to the CDE OA, by agreement with any Person, or by operation of law.

**Section 4.2 Conduct of Business.** Borrower will maintain in full force and effect (a) its organizational existence, and (b) all licenses, bonds, franchises, leases, patents, contracts and other rights necessary to the conduct of its business. Borrower will exercise good faith in all activities relating to the conduct of the business of Borrower, and Borrower will take no action with respect to the business and property of Borrower which is not reasonably related to the achievement of the purpose of Borrower as set forth in the Borrower OA.

**Section 4.3 Amendment of CDE OA.** Borrower will not cause or permit any material modification, amendment, waiver or termination of the CDE OA to occur without the prior written consent of Lender, if such modification, amendment, waiver or termination would (a) impair Borrower's authority to grant a security interest in the Pledged Collateral to secure the Loan, (b) unilaterally cause the redemption of the CDE Interest after the Forbearance Termination Date, (c) preclude or otherwise limit CDE from distributing proceeds of the Project Loans to Borrower, (d) modify in any way Borrower's right of redemption, (e) impair Lender's security interest in the Pledged Collateral securing the Loan, (f) modify in any way any provision

of the CDE OA governing the timing of any payments or distributions to be made to Borrower, or (g) otherwise impair Borrower's ability to satisfy its payment obligations hereunder; *provided, however*, that in no event will Lender's consent be required if Borrower believes in good faith that any such modification, amendment, waiver or termination is necessary to maintain compliance with NMTC Program Requirements or to avoid a Recapture Event.

**Section 4.4 Amendment of Borrower Organizational Documents.** Borrower will not cause or permit any material modification, amendment, waiver or termination of any Borrower Organizational Documents to occur without the prior written consent of Lender, if such modification, amendment, waiver or termination would (a) preclude Borrower from using payoff proceeds of the Project Loans to pay amounts due and owing under the Loan, except if an Event of Default (as defined in the Project Loan Agreement) has occurred and is continuing, (b) impair Borrower's security interest in the Pledged Collateral securing the Loan, (c) impair Lender's rights and remedies under the Loan Documents, or (d) otherwise impair Borrower's ability to satisfy its payment obligations hereunder; *provided, however*, that in no event will Lender's consent be required if Borrower believes in good faith that any such modification, amendment, waiver or termination is necessary to maintain compliance with NMTC Program Requirements or to avoid a Recapture Event.

**Section 4.5 Other Indebtedness.** Borrower will not incur any indebtedness other than the Loan to be made pursuant to this Agreement as evidenced by the Note, loans made by any member of Borrower pursuant to the terms of the Borrower OA, and trade payables and administrative costs incurred by Borrower in the ordinary course of business.

**Section 4.6 Inspection.** Lender, or any Person designated by Lender, will have the right, from time to time hereafter upon 5 Business Days prior written notice to Borrower, to call at Borrower's place or places of business (or any other place where the Pledged Collateral or any information relating thereto is kept or located) during reasonable business hours and without hindrance or delay by Borrower, so that Lender may, at Lender's own expense, (a) inspect, audit, check and make copies of and extracts from Borrower's books, records, journals, orders, receipts, correspondence and other data relating to Borrower's business or to any transactions between the parties hereto and whether such items or data are maintained in accordance with Borrower's standard operating procedures or pursuant to this Agreement; (b) verify such matters concerning the Pledged Collateral as Lender may consider reasonable under the circumstances; and (c) discuss the affairs, finances and business of Borrower with any officers, employees or directors of Borrower. Within 10 Business Days of request therefor, Borrower will deliver to Lender, at Lender's own expense, any instruments necessary to obtain records from any Person maintaining the same.

**Section 4.7 Anti-Terrorism Laws.**

(a) Borrower covenants and agrees with Lender that Borrower will not: (i) conduct any business or engage in making or receiving any contribution of funds, goods, or services to or for the benefit of any Prohibited Person; (ii) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order or any other Anti-Terrorism Law; or (iii) engage in, or conspire to engage in, any transaction that

evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law.

(b) Before any changes in the direct or indirect ownership of Borrower to a Person other than an Affiliate of CCE or JPMC, Borrower will give a written notice to Lender: (i) advising Lender in reasonable detail as to the proposed ownership change and (ii) reaffirming that the representations and warranties herein contained will remain true and correct notwithstanding such change in ownership.

(c) Borrower agrees to deliver to Lender promptly (but in any event within 10 Business Days of Lender's written request) any certification or other evidence requested from time to time by Lender in its reasonable discretion, confirming Borrower's compliance with the foregoing covenants.

**Section 4.8 Single Purpose Entity Provisions.**

(a) Borrower's sole business purposes are those listed in Section 2.6(a) of the Borrower OA, including but not limited to: (i) acquiring and holding the CDE Interest, (ii) exercising its rights and powers and perform its duties and obligations under the CDE OA, (iii) entering into and performing its duties and obligations under the Loan Documents and the CDE OA, and (iv) undertaking activities incidental to the foregoing.

(b) Borrower (i) will conduct business only in its own name, (ii) will not engage in any business or have any assets unrelated to the foregoing purpose, (iii) will not have any indebtedness other than as permitted by this Agreement, (iv) will have its own separate accounts (with no commingling of assets), (v) will hold itself out as being an entity separate and apart from any other Person, (vi) will observe limited liability company formalities independent of any other Person, and (vii) will not change its name, or form of entity, unless Borrower has obtained the prior written consent of Lender to such change, and has taken all actions necessary or requested by Lender to file or amend any financing statement or continuation statement to assure perfection and continuation of perfection of security interests under the Loan Documents.

**Section 4.9 Use of Loan Proceeds.** The proceeds of the Loan will be used solely for the purposes set forth in Section 3.5 of the Borrower OA, which is incorporated herein by reference and made a part hereof.

**Section 4.10 Records.** Borrower will keep and maintain satisfactory and complete records of the Pledged Collateral, including but not limited to the record of all distributions received.

**Section 4.11 No Default or Event of Default.** No default or Event of Default under this Agreement or any of the other Loan Documents, and no event which with notice or the passage of time, or both, would constitute a default or Event of Default under this Agreement or any of the other Loan Documents has occurred or is in existence at the time of execution of this Agreement.

**Section 5. EVENTS OF DEFAULT AND REMEDIES.**

**Section 5.1 Events of Default.** Each of the following will constitute an Event of Default hereunder:

(a) If Borrower fails to make payment when due of any principal, interest or other payment obligation under the Note, this Agreement or any of the other Loan Documents and such failure remains more than 5 Business Days after notice of non-payment is given by Lender to Borrower; *provided, however*, notwithstanding the foregoing or anything else to the contrary in the Note, this Agreement or the other Loan Documents, it shall be an immediate Event of Default, without any prior notice, if either (i) a scheduled interest payment on the Note is not made within 5 calendar days after the date due or (ii) the payment due on the Maturity Date under the Note is not made within 5 calendar days after the date due;

(b) If Borrower fails to comply in any material respect with any non-monetary covenant made by it hereunder or under the Pledge Agreement, or any of the other Loan Documents (other than a failure which would be an Event of Default under another subparagraph of this Section 5.1) to Lender's satisfaction within 30 calendar days after receipt of written notice of such default from Lender; *provided, however*, that if such default is of a type that is susceptible to cure but cannot reasonably be cured within such 30 calendar day period, such failure will not be an Event of Default if Borrower commences to cure such default within such 30 calendar day period and thereafter diligently prosecutes such cure to completion;

(c) If any representation or warranty of Borrower in this Agreement or in any of the other Loan Documents is established to have been incorrect in any material respect when made; *provided*, that if Borrower did not have actual knowledge that the representation or warranty was incorrect when made and if the circumstances resulting in the inaccuracy of such representation or warranty are reasonably susceptible to being corrected so as to make such representation or warranty correct within the cure period applicable to covenant defaults under Section 5.1(b), Borrower will be entitled to cure the violation of such representation or warranty within the cure period applicable under Section 5.1(b);

(d) If any material default or event of default exists under any of the Loan Documents other than this Agreement, and such default or event of default continues beyond any applicable grace, cure or notice periods thereunder;

(e) If Borrower assigns this Agreement or any interest herein, in any way other than as herein permitted, or if the CDE Interest is conveyed, assigned, pledged or encumbered in any way other than as herein permitted, without the prior written consent of Lender, or Borrower engages in or causes or permits any transfer prohibited under Section 4.1; *provided, however*, that it will in no event be an Event of Default if CCE assigns or transfers all or any portion of its Interest (as defined in the Put/Call Agreement) in Borrower in accordance with the Put/Call Agreement; or

(f) If Borrower makes a general assignment for the benefit of creditors; or if any proceeding is instituted by Borrower seeking to adjudicate it as bankrupt or insolvent, or seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief, or

composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors, or seeking the entry of an order for relief or the appointment of a receiver, trustee, or similar official for it or for any substantial part of its property; or if any proceeding is instituted against Borrower seeking to adjudicate it bankrupt or insolvent, or seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief, or composition of its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors, or seeking the entry of an order for relief or the appointment of a receiver, trustee, or similar official for it or for any substantial part of its property and any such proceeding is not dismissed within 90 calendar days after the commencement of such proceeding; or if Borrower takes any action to authorize any of the actions set forth in this Section 5.1(f).

## **Section 5.2 Remedies.**

(a) Subject in all instances to Section 5.3, upon the occurrence of any Event of Default, Lender, in addition to all remedies conferred upon Lender by law and by the terms of the Loan Documents or any other documents serving as security for Borrower's indebtedness, may accelerate maturity of the Note, and demand payment of the principal sums due thereunder with interest, advances and costs, and in default of said payment or any part thereof, may exercise the power of sale, if given and available, and pursue any or all of its other rights and remedies under the Pledge Agreement and the other Loan Documents.

(b) Subject in all instances to Section 5.3, upon the occurrence of any Event of Default, Lender may seek to enforce the terms of the Note and this Agreement by declaratory judgment, specific performance, or by way of injunction or equitable remedies.

(c) The remedies and rights of Lender hereunder are cumulative and not exclusive of any other remedies of Lender under any other provision of this Agreement or under any other instrument or at law or in equity. Lender is privileged and has the absolute right, subject in all instances to Section 5.3, to resort to any one or more or all of said remedies, none to the exclusion of the others, concurrently or successively, in such order as Lender may select. Any additional funds advanced in connection with Lender's exercises of its remedies will be secured by the lien of the Pledge Agreement and will be considered a part of the Loan as though initially included therein.

## **Section 5.3 Forbearance.**

(a) Notwithstanding any provision of this Agreement, the Borrower OA, the CDE OA or any other Loan Documents to the contrary, and regardless of the existence or occurrence of any circumstance or event that would otherwise constitute a default or Event of Default by Borrower, Lender shall not be entitled to (i) take any Lien Enforcement Action, (ii) exercise any other rights or remedies it may have under the Loan Documents, including, without limitation, the Pledge Agreement, including, but not limited to, accelerating the Loan, collecting rents or distributions, appointing (or seeking the appointment of) a receiver or exercising any other rights or remedies thereunder, or (iii) commence, or join with any other creditor in commencing, any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings with respect to Borrower, from the date hereof until the termination of the Put Option Period (the "Forbearance Termination Date"), *provided, however*, if the Put is exercised in accordance with the Put/Call

Agreement, the Forbearance Termination Date shall be the date the Put Price is paid in full to CCE in accordance with the Put/Call Agreement. The provisions of this Section 5.3(a) shall be construed as, and shall operate as, a bar to any action, proceeding, or remedy (judicial or otherwise) that would violate the provisions of this Section 5.3(a). In the event that Lender shall threaten, initiate, or pursue any Lien Enforcement Action or other action, proceeding, or remedy in violation of the provisions of this Section 5.3(a), Lender agrees that damages would constitute an inadequate remedy to Borrower on account of such violation and that Borrower shall be entitled to seek and obtain injunctive relief prohibiting the same.

(b) On and after the Forbearance Termination Date, to the extent permitted under the Loan Documents, Lender shall be free, in its sole and absolute discretion, after an Event of Default (or the continuance of an Event of Default on and after the Forbearance Termination Date) to accelerate the payment in full of all of Borrower's obligations to Lender under the Loan Documents and to institute proceedings to enforce its rights and remedies under the Loan Documents and/or as provided by applicable law. All of Borrower's obligations and liabilities to Lender hereunder (including, without limitation, Borrower's payment obligations) and any documents, instruments or agreements pursuant to which Borrower may, from time to time, grant to Lender as collateral security for Borrower's obligations to Lender, shall survive the Forbearance Termination Date.

**Section 6. MISCELLANEOUS.** The following conditions shall be applicable throughout the term of this Agreement:

**Section 6.1 No Waiver.** No course of dealing on the part of Lender or its officers, employees, consultants or agents, nor any failure or delay by Lender with respect to exercising any of its rights, powers or privileges under the Loan Documents will operate as a waiver thereof.

**Section 6.2 Notices.** Any notice, request, demand, consent, approval, direction, agreement, or other communication (any "notice") required or permitted hereunder shall be in writing and shall be validly given if (a) sent by a nationally-recognized courier that obtains receipts, (b) delivered personally by a courier that obtains receipts, (c) mailed by United States certified mail (with return receipt requested and postage prepaid), (d) sent by facsimile (with a copy of such facsimile and proof of transmission thereof sent via one of the methods of delivery set forth in clauses (a), (b) or (c) hereof), or (e) sent by email (with a copy of such email and proof of transmission thereof sent via one of the methods of delivery set forth in clauses (a), (b) or (c) hereof), addressed to the applicable party at the address set forth on Schedule A. Each notice shall be effective upon being so sent, delivered, or mailed, but the time period for response or action shall run from the date of receipt as shown on the delivery receipt, or the date the facsimile or email was sent, as applicable. Refusal to accept delivery or the inability to deliver because of a changed address for which no notice was given shall be deemed receipt. Any party may periodically change its address for notice (including different or additional addresses for copies) by giving the other party at least 10 calendar days' prior notice in accordance with the foregoing provisions.

**Section 6.3 Entire Agreement; No Oral Amendments.** This Agreement (including without limitation the Recitals and Schedule A, which are incorporated herein by reference and

made a part hereof), together with the other Loan Documents, constitutes the entire agreement between Lender and Borrower (and any affiliates of Borrower) and supersedes all agreements previously made between the parties relating to its subject matter. There are no other understandings or agreements between them relating to such subject matter. Neither this Agreement nor any provision hereof (or of any of the other Loan Documents) may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of such change, waiver, discharge or termination is sought.

**Section 6.4 Additional Remedies.** The remedies herein provided shall be in addition to and not in substitution for the rights and remedies which would otherwise be vested in Lender in any Loan Document or at law or in equity, all of which rights and remedies are specifically reserved by Lender, subject in all instances to Section 5.3. The remedies herein provided or otherwise available to Lender shall be cumulative and may be exercised concurrently, subject in all instances to Section 5.3. The failure to exercise any of the remedies herein provided shall not constitute a waiver thereof, nor shall use of any of the remedies hereby provided prevent the subsequent or concurrent resort to any other remedy or remedies. It is intended that, subject in all instances to Section 5.3, all remedies herein provided for or otherwise available to Lender shall continue and be available to Lender until all sums due it by reason of this Agreement or any of the other Loan Documents have been paid to it in full.

**Section 6.5 No Partnership.** The relationship between Lender, on the one hand, and Borrower, on the other, will be solely that of lender and borrower, and such relationship will not, under any circumstances whatsoever, be construed to be a joint venture, joint adventure, or partnership.

**Section 6.6 Usury Savings.** Section 12 of the Note is incorporated herein by reference and made a part hereof.

**Section 6.7 Additional Documents.** Borrower agrees upon demand to do any act or execute any additional documents as may be reasonably required by Lender to secure the Note with the Pledged Collateral or to confirm the liens of the Pledge Agreement. All of said documents shall be in form and substance prepared by or acceptable to Lender.

**Section 6.8 Binding Effect; Continuing Agreement.** The terms, conditions, covenants, agreement, powers, privileges, notices and authorizations herein contained shall extend to, be binding upon and available to the heirs, executors, administrators, successors and, to the extent permitted hereunder, the assigns of each of the respective parties hereto. Notwithstanding the foregoing, Borrower shall not, without the prior written consent of Lender, assign or transfer this Agreement, whether voluntarily or by operation of law. An assignment or transfer in violation of this provision shall be invalid, of no force or effect and an Event of Default hereunder.

**Section 6.9 Headings.** The titles and headings of the Sections of this Agreement have been inserted for convenience of reference only and are not intended to summarize or otherwise describe, or limit, modify or expound upon the subject matter of such Sections.

**Section 6.10 CHOICE OF LAW; WAIVER OF JURY TRIAL AND CERTAIN OTHER RIGHTS; SUBMISSION TO JURISDICTION; SERVICE OF PROCESS.**

(a) THE VALIDITY OF THE LOAN, THIS AGREEMENT, OR ANY OF THE OTHER LOAN DOCUMENTS, THE CONSTRUCTION, INTERPRETATION, AND ENFORCEMENT HEREOF AND THEREOF, AND THE RIGHTS OF THE PARTIES HERETO AND THERETO WITH RESPECT TO ALL MATTERS ARISING HEREUNDER OR THEREUNDER OR RELATED HERETO OR THERETO SHALL BE DETERMINED UNDER, GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ALABAMA WITHOUT GIVING EFFECT TO CONFLICT OR CHOICE OF LAW PRINCIPLES.

(b) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EACH OF BORROWER AND LENDER (i) AGREES THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS AGREEMENT SHALL BE TRIED AND LITIGATED ONLY IN THE STATE AND FEDERAL COURTS LOCATED IN THE STATE OF ALABAMA AND (ii) WAIVES ANY RIGHT IT MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON CONVENIENS OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS SECTION 6.10.

(c) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EACH OF BORROWER AND LENDER WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). IT IS AGREED AND UNDERSTOOD THAT THIS WAIVER CONSTITUTES A WAIVER OF TRIAL BY JURY OF ALL CLAIMS AGAINST ALL PARTIES TO SUCH ACTIONS OR PROCEEDINGS, INCLUDING CLAIMS AGAINST PARTIES WHO ARE NOT PARTIES TO THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS. EACH PARTY (i) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, AND (ii) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 6.10.

(d) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EACH OF BORROWER AND LENDER AGREES THAT ANY PROCESS OR NOTICE OF MOTION OR OTHER APPLICATION TO ANY SUCH COURT IN CONNECTION WITH ANY ACTION OR PROCEEDING MAY BE SERVED UPON SUCH PARTY BY REGISTERED OR CERTIFIED MAIL TO OR BY PERSONAL SERVICE AT THE LAST KNOWN ADDRESS OF BORROWER OR LENDER, AS APPLICABLE, WHETHER SUCH ADDRESS BE WITHIN OR OUTSIDE THE JURISDICTION OF ANY SUCH COURT.

(e) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, LENDER SHALL NOT ASSERT, AND HEREBY WAIVES, ANY CLAIM AGAINST BORROWER, ON ANY THEORY OF LIABILITY, FOR SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES (AS OPPOSED TO DIRECT OR ACTUAL DAMAGES) ARISING OUT OF, IN CONNECTION WITH, OR AS A RESULT OF, THIS AGREEMENT, THE OTHER LOAN DOCUMENTS, OR ANY OTHER AGREEMENT OR INSTRUMENT CONTEMPLATED HEREBY AND/OR THE TRANSACTIONS CONTEMPLATED HEREBY.

**Section 6.11 [Intentionally Omitted].**

**Section 6.12 Enforcement Costs.** In the event of any action at law or in equity to enforce the provisions of this Agreement or the other Loan Documents or to secure relief or damages for the breach of this Agreement or the other Loan Documents, the prevailing party shall be entitled to payment or reimbursement, as applicable, of its costs, expenses and fees (including without limitation reasonable attorneys', accountants', experts', and consultants' costs, expenses and fees, court costs and investigative expenses prior to trial, at trial and on appeal) incurred in such proceedings from the non-prevailing party.

**Section 6.13 Duration of Agreement.** Borrower's agreements, obligations, covenants, representations and warranties hereunder shall remain in effect after the Loan is fully disbursed so long as any amounts under the Note are outstanding.

**Section 6.14 Interpretation of Agreement.** Whenever the singular number is used in this Agreement and when required by the context, the same shall include the plural and vice versa, and the masculine gender shall include the feminine and neuter genders and vice versa. The words "hereof", "herein", and "hereunder", and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The words "including" or "include" shall mean including or include by way of example and not limitation (regardless of whether the words "without limitation" or words of similar import are used in conjunction therewith), unless otherwise expressly stated. References in this Agreement to Sections are intended to refer to Sections of this Agreement, unless otherwise specifically stated. Each party to this Agreement has been represented by counsel and has participated in the drafting of this Agreement and the other Loan Documents; accordingly, any rule of construction to the effect that the document is to be construed against a party that prepared or drafted a document shall be inapplicable.

**Section 6.15 Severability.** If any provision of this Agreement or the application thereof to any Person or circumstance shall be invalid, illegal or unenforceable to any extent, that provision shall, if possible, be construed as though more narrowly drawn, if a narrower construction would avoid such invalidity, illegality, or unenforceability or, if that is not possible, such provision shall, to the extent of such invalidity, illegality, or unenforceability, be severed, and the remainder of this Agreement and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law. Notwithstanding the foregoing, the provisions of Section 5.3 shall be deemed integral to this Agreement and shall not be severable from the remainder of this Agreement.

**Section 6.16 Time of the Essence.** Time shall be of the essence with respect to all of Borrower's obligations under this Agreement and the other Loan Documents.

**Section 6.17 Counterparts.** This Agreement may be executed in multiple counterparts, any one of which shall be deemed an original, and all of which taken together shall be treated as one document. Faxed, scanned or photocopied signatures shall be deemed equivalent to original signatures.

[REMAINDER OF PAGE BLANK; SIGNATURE PAGES TO FOLLOW.]

IN WITNESS WHEREOF, Borrower and Lender have caused this Fund Loan Agreement to be duly executed as of the Effective Date.

**BORROWER:**

CHASE NMTC CAFFM INVESTMENT FUND,  
LLC, a Delaware limited liability company

By: Chase Community Equity, LLC, a Delaware  
limited liability company, its sole member

By: \_\_\_\_\_

Name: Wanda Clark

Title: Vice President

[COUNTERPART SIGNATURE PAGE TO FUND LOAN AGREEMENT]

**LENDER:**

THE CITY OF FOLEY PUBLIC FACILITIES  
COOPERATIVE DISTRICT, an Alabama public  
corporation

By: \_\_\_\_\_

Name:

Title:

**SCHEDULE A**

**Notice Addresses of Parties**

- (1) If to Borrower: Chase NMTC CAFFM Investment Fund, LLC  
c/o JPMorgan Chase Bank, N.A.  
10 S. Dearborn Street, 19th Floor  
Mail Code: IL1-0953  
Chicago, IL 60603-5506  
Attention: NMTC Asset Manager  
Facsimile: 312-325-5050  
Email: nmtc.reporting@chase.com
- With a copy to: Chase NMTC CAFFM Investment Fund, LLC  
c/o JPMorgan Chase Bank, N.A.  
New Markets Tax Credit Group  
2200 Ross Avenue, 9th Floor  
Mail Code: TX1-2951  
Dallas, TX 75201  
Attention: Wanda Clark  
Facsimile: 214-965-3297  
Email: wanda.clark@jpmchase.com
- And a copy to: Jones Day  
100 High Street, 21st Floor  
Boston, MA 02110  
Attention: Jeffrey D. Gaulin, Esq.  
Facsimile: 617-449-6999  
Email: jgaulin@jonesday.com
- (2) If to Lender: The City of Foley Public Facilities Cooperative District  
c/o City of Foley  
407 East Laurel Avenue  
Foley, AL 36535  
Attention: Jeff Rouzie, Director of Economic Development  
Facsimile: 251-952-4012  
Email: [\_\_\_\_\_]
- With a copy to: Adams and Reese LLP  
RSA Battle House Tower  
11 North Water Street, Suite 23200  
Mobile, AL 36602  
Attention: John F. Lyle, III, Esq.  
Facsimile: 251-438-7733  
Email: john.lyle@arlaw.com

[REMAINDER OF PAGE BLANK]



**FUND PLEDGE AGREEMENT**

THIS FUND PLEDGE AGREEMENT (this "Agreement"), dated as of [May \_\_], 2014, is entered into by and between THE CITY OF FOLEY PUBLIC FACILITIES COOPERATIVE DISTRICT, an Alabama public corporation ("Lender"), and CHASE NMTC CAFFM INVESTMENT FUND, LLC, a Delaware limited liability company ("Borrower").

**RECITALS**

A. Borrower has requested that Lender provide a loan (the "Loan") in the original principal amount of \$[5,950,400].

B. Concurrently with the execution of this Agreement, Lender and Borrower are entering into that certain Fund Loan Agreement (as the same may be amended, assigned, restated, modified, or supplemented from time to time, the "Loan Agreement"), pursuant to which Lender agreed to make the Loan.

C. Concurrently with the execution of this Agreement, Borrower is executing and delivering to Lender that certain Fund Promissory Note for the original principal amount of the Loan (as the same may be amended, assigned, restated, modified, or supplemented from time to time, the "Note"). The Note evidences the Loan.

D. The proceeds of the Loan will be used solely for the purposes set forth in Section 3.5 of the Borrower OA, which is incorporated herein by reference and made a part hereof.

E. Borrower is the record and beneficial owner of the CDE Interest (defined below).

F. As security for the payment and performance of Borrower's Obligations (defined below), Lender is requiring that Borrower execute and deliver this Agreement and grant the security interest contemplated hereby.

NOW, THEREFORE, in consideration of the promises and the covenants hereinafter contained, and to induce Lender to make the Loan under the Loan Agreement, it is agreed as follows:

1. Definitions. All capitalized terms listed in the introductory paragraph and Recitals to this Agreement have the meanings assigned to them therein, and all capitalized terms not otherwise expressly defined herein have the meanings assigned to them in the Loan Agreement. In addition, the following terms have the following meanings in this Agreement:

(a) "CDE Interest" means Borrower's entire interest in CDE, including Borrower's share of any dividends and distributions of the assets of CDE pursuant to the CDE OA and the LLC Act, and the right to vote on, consent to, or otherwise participate in any decision or action of or by CDE granted to Borrower pursuant to the CDE OA and the LLC Act.

(b) “LLC Act” means Title 3 (Limited Liability Companies) of the Texas Business Organizations Code, as may be amended or restated from time to time.

(c) “Obligations” means all of the indebtedness and all other obligations of Borrower under the Note and the other Loan Documents.

(d) “Permitted Liens” has the meaning set forth in Section 4(b).

(e) “Pledged Collateral” has the meaning set forth in Section 2.

(f) “Securities Act” has the meaning set forth in Section 8(e).

2. Pledge. Subject to the provisions of Sections 6 and 7, Borrower hereby pledges to Lender and grants to Lender, a first priority security interest in all of the following (collectively, the “Pledged Collateral”):

(a) the CDE Interest and the certificates and other instruments or agreements representing or evidencing the CDE Interest, and all dividends, distributions, cash, instruments, tax benefits, allocations of taxable income and loss, and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of the CDE Interest;

(b) all rights and privileges of Borrower with respect to the securities and other property referred to in Section 2(a); and

(c) all distributions, profits, products, and proceeds, whether cash or noncash, of or from any of the foregoing.

3. Collateral

(a) *Security for the Obligations*. This Agreement secures, and the Pledged Collateral is security for, the prompt payment and performance of the Obligations. The security interest granted by this Agreement is a continuing one and is irrevocable so long as any of the Obligations are outstanding or Borrower shall have any obligations under the Note and shall terminate only in accordance with Section 11.

(b) *Delivery of Pledged Collateral*. All certificates or other instruments representing or evidencing the Pledged Collateral, if any, shall be delivered to Lender at such time as Lender shall reasonably request, shall be accompanied by duly executed instruments of transfer or assignment in blank, including a duly executed assignment in blank, substantially in the form attached hereto as Exhibit A, all in form and substance reasonably satisfactory to Lender. Subject to Section 5.3 of the Loan Agreement, Lender shall have the right, at any time after the occurrence and during the continuance of an Event of Default, in its discretion and without notice to Borrower, to transfer to or to register in the name of Lender, any or all of the Pledged Collateral.

4. Representations and Warranties. Borrower represents and warrants to Lender that as of the Effective Date:

(a) Borrower is duly organized or formed, validly existing and in good standing under the laws of the State of Delaware, has the legal power and authority to own its assets and to carry on its business as now being and hereafter proposed to be conducted. Borrower is duly qualified and authorized to do business in each jurisdiction in which it is legally required to do so.

(b) Borrower is the sole holder of record and the sole beneficial owner of the Pledged Collateral, free and clear of any lien, charge or encumbrance thereon or affecting the title thereto, except for any liens created by this Agreement or the Borrower OA or securing unpaid capital contributions to CDE (collectively, the “Permitted Liens”).

(c) The CDE Interest constitutes 99.99% of all of the issued and outstanding equity interests of CDE. The CDE Interest has been duly authorized and validly issued.

(d) To the best of Borrower’s knowledge, (i) the CDE Interest has not been issued or transferred in violation of the securities registration, securities disclosure or similar laws of any jurisdiction to which such issuance or transfer may be subject and (ii) its execution, delivery and performance of this Agreement and the pledge of the Pledged Collateral hereunder do not, directly or indirectly, violate in any material respect or result in a violation of any such laws.

(e) Borrower has the right and requisite authority to pledge the Pledged Collateral to Lender, as provided herein.

(f) None of the Pledged Collateral is, as of the Effective Date, margin stock, and Borrower shall, promptly after learning thereof, notify CDE and Lender of any Pledged Collateral which is or becomes margin stock and execute and deliver in favor of Lender any and all instruments, documents and agreements (including, but not limited to Forms U-1) necessary to cause the pledge of such margin stock to comply with all applicable laws, rules and regulations.

(g) Except as have already been obtained as of the Effective Date, no consent, approval, authorization or other order of any Person and no consent, authorization, approval, or other action by, and no notice to or filing with, any governmental departments, commissions, boards, bureaus, agencies or other instrumentalities, domestic or foreign, is required to be made or obtained by Borrower either (i) for the pledge of the Pledged Collateral pursuant to this Agreement or for the execution, delivery or performance of this Agreement by Borrower or (ii) for the exercise by Lender of the voting or other rights provided for in this Agreement or the remedies in respect of the Pledged Collateral pursuant to this Agreement.

(h) The pledge of the Pledged Collateral to Lender pursuant to this Agreement will create a valid lien on and a first priority security interest in the Pledged Collateral, and the proceeds thereof, securing the payment of the Obligations, subject only to Permitted Liens.

(i) The Pledged Collateral is not certificated.

(j) This Agreement has been duly authorized, executed, and delivered by Borrower and constitutes the legal, valid and binding obligation of Borrower enforceable in accordance with its terms.

(k) The only assets of Borrower are the Pledged Collateral and other assets incidental thereto.

(l) Borrower has no indebtedness other than the Loan.

(m) Borrower represents and warrants to Lender that JPMC, the sole member of CCE (which is the sole member of Borrower), is an “accredited investor” as such term is defined in Rule 501(a) of the Regulation D promulgated under the Securities Act.

(n) The representations and warranties set forth in this Section 4 shall survive the execution and delivery of this Agreement.

5. Covenants. Borrower covenants and agrees that until the satisfaction in full of the Obligations:

(a) Borrower will not sell, assign, transfer, pledge, or otherwise encumber any of its rights in or to any of the Pledged Collateral or any dividends or other distributions or payments with respect thereto or grant a lien, charge, encumbrance or security interest on any thereof, except Permitted Liens.

(b) Borrower will, at its expense, promptly execute, acknowledge and deliver all such instruments and take all such action as Lender from time to time may reasonably request in order to ensure to Lender the benefits of the liens and security interests in and to the Pledged Collateral intended to be created by this Agreement, including the delivery of all certificates and other documentation, evidencing any of the Pledged Collateral and the filing of any necessary Uniform Commercial Code financing statements, which may be filed by Lender without the signature of Borrower.

(c) Borrower will defend the title to the Pledged Collateral and the liens of Lender, for the benefit of Lender against the claim of any Person and will maintain and preserve such liens until the payment in full of the Obligations.

(d) Borrower will not allow the Pledged Collateral to become certificated without the prior written consent of Lender.

(e) Borrower shall have no indebtedness other than the Loan, Member Loans (as defined in the Borrower OA), and trade payables incurred by Borrower.

(f) Subject to Section 5.3 of the Loan Agreement, at any time an uncured Event of Default remains outstanding, Borrower hereby consents to Lender’s or its designee’s right to become and be admitted as a member or partner, as applicable, of CDE and to receive distributions and allocations from CDE upon the exercise of Lender’s rights hereunder without further action, approval or consent.

6. Borrower’s Rights. Until the later to occur of: (a) notice of the occurrence and continuance of an Event of Default is given by Lender to Borrower in accordance with Section 18(b) and (b) Lender is entitled to exercise remedies under the Loan Documents in accordance with Section 5.3 of the Loan Agreement:

(i) Borrower shall have the right, from time to time, to vote on, consent to, or otherwise participate in any decision or action of or by CDE granted to Borrower pursuant to the CDE OA or the LLC Act for all purposes not inconsistent with the provisions of this Agreement and the other Loan Documents, *provided, however*, that no vote shall be cast, and no consent shall be given or action taken, which would have the effect of impairing in any material respect the validity of Lender's security interest in the Pledged Collateral; and

(ii) Lender shall have no right to exercise any right to vote on, consent to, or otherwise participate in any decision or action of or by CDE granted to Borrower pursuant to the CDE OA and the LLC Act.

7. Defaults and Remedies. Subject to Section 5.3 of the Loan Agreement, upon the occurrence and continuance of an Event of Default, then or at any time after such declaration and following written notice to Borrower, Lender is hereby authorized and empowered to do any and all of the following in a commercially reasonable manner:

(a) transfer and register in its name or in the name of its nominee the whole or any part of the Pledged Collateral;

(b) exchange certificates or instruments representing or evidencing the CDE Interest for certificates or instruments of smaller or larger denominations;

(c) exercise the voting rights with respect to the CDE Interest;

(d) collect and receive all cash dividends and other distributions made with respect to the CDE Interest; and

(e) sell in one or more sales after 10 calendar days' written notice is sent by Lender of the time and place of any public sale or of the time after which a private sale is to take place (which notice Borrower agrees is commercially reasonable), but without any previous notice or advertisement, the whole or any part of the Pledged Collateral and to otherwise act with respect to the Pledged Collateral as though Lender were the outright owner thereof; *provided, however*, Lender shall not have any duty to exercise any such right of sale or to preserve the same and shall not be liable for any failure to do so or for any delay in doing so.

8. Sale of Pledged Collateral.

(a) Any sale of the whole or any part of the Pledged Collateral in accordance with Section 7(e) shall be made at a public or private sale at Lender's place of business, or at any public building to be named in the notice of sale, either for cash or upon credit or for future delivery at such price as Lender may deem fair and reasonable, and Lender may be the purchaser of the whole or any part of the Pledged Collateral so sold and hold the same thereafter in its own right free from any claim of Borrower or any right of redemption. Each sale shall be made to the highest bidder, but Lender reserves the right to reject any and all bids at such sale which, in its discretion, it shall deem inadequate. Demands of performance, notices of sale, advertisements and the presence of property at sale are hereby waived and any sale hereunder may be conducted by an auctioneer or any officer or agent of Lender.

(b) If, at the original time or times appointed for the sale of the whole or any part of the Pledged Collateral, the highest bid, if there be but one sale, shall be inadequate to discharge in full all the Obligations, or if the Pledged Collateral be offered for sale in lots, if at any of such sales, the highest bid for the lot offered for sale would indicate to Lender, in its discretion, the unlikelihood of the proceeds of the sales of the whole of the Pledged Collateral being sufficient to discharge all the Obligations, Lender may, on one or more occasions and in its discretion, postpone any of said sales by public announcement at the time of sale, and no other notice of such postponement or postponements of sale need be given, any other notice being hereby waived; *provided, however*, that any sale or sales made after such postponement shall be after 10 calendar days' notice to Borrower.

(c) In the event of any sale of the whole or any part of the Pledged Collateral, Lender shall, after deducting all reasonable costs or expenses of every kind (including reasonable attorneys' fees and disbursements) for care, safekeeping, collection, sale, delivery or otherwise, apply the residue of the proceeds of the sales to the payment or reduction, either in whole or in part, of the Obligations.

(d) In the event that it becomes necessary to comply with any Federal or State law or regulation or to make or file any registration thereunder in order for Lender to exercise any of its rights hereunder, Borrower expressly agrees to do or cause to be done all acts and prepare and execute all documents necessary to effect such compliance or registration, and to bear all reasonable costs in connection therewith. Borrower agrees to indemnify and to hold Lender harmless from and against any claim or liability caused by (i) any omission or alleged omission to state a material fact required to be stated, or necessary to make the statements, in light of the circumstances in which they are made, not misleading (as required in any registration or prospectus) or (ii) a failure to register or comply with any such law or regulation, unless such failure is caused by Lender.

(e) If, at any time when Lender shall determine to exercise its right to sell the whole or any part of the Pledged Collateral, and such Pledged Collateral or the part thereof to be sold shall not, for any reason whatsoever, be effectively registered under the Securities Act of 1933 (as amended from time to time, the "Securities Act"), then Lender may, in its discretion (subject only to the requirements of applicable law), sell such Pledged Collateral or part thereof by private sale in such manner and under such circumstances as is commercially reasonable and shall not be required to effect such registration or to cause the same to be effected; *provided, however*, that Lender agrees and shall cause any purchaser of Pledged Collateral to agree that Borrower shall (x) not be liable to any purchaser of Pledged Collateral for any action taken or omitted to be taken by Lender in connection with the sale of Pledged Collateral, and (y) not be responsible in any manner to any purchaser of Pledged Collateral for any statement, representation or warranty made by Lender in connection with the sale of Pledged Collateral. Without limiting the generality of the foregoing, in any such event Lender in its discretion may:

(i) in accordance with applicable securities laws, proceed to make such private sale notwithstanding that a registration statement for the purpose of registering such Pledged Collateral or part thereof could be or shall have been filed under said Securities Act (or similar statute);

(ii) approach and negotiate with a single possible purchaser to effect such sale; and

(iii) restrict such sale to a purchaser who will represent and agree that such purchaser is purchasing for its own account, for investment and not with a view to the distribution or sale of such Pledged Collateral or part thereof.

(f) In addition to a private sale as provided in Section 7(e) and this Section 8, if any of the Pledged Collateral shall not be freely distributable to the public without registration under the Securities Act (or similar statute) at the time of any proposed sale pursuant to Section 7(e) and this Section 8, then Lender shall not be required to effect such registration or cause the same to be effected but, in its discretion (subject only to applicable requirements of law), may require that any sale hereunder (including a sale at auction) be conducted subject to restrictions:

(i) as to the financial sophistication and ability of any Person permitted to bid or purchase at any such sale;

(ii) as to the content of legends to be placed upon any certificates representing the Pledged Collateral sold in such sale, including restrictions on future transfer thereof;

(iii) as to the representations required to be made by each Person bidding or purchasing at such sale relating to that Person's access to financial information about any issuer of the Pledged Collateral and such Person's intentions as to the holding of the Pledged Collateral so sold for investment, for its own account, and not with a view to the distribution thereof; and

(iv) as to such other matters as Lender may, in its discretion, deem necessary or appropriate in order that such sale (notwithstanding any failure so to register) may be effected in compliance with the Uniform Commercial Code and other laws affecting the enforcement of creditors' rights and the Securities Act and all applicable state securities laws.

(g) Borrower recognizes that Lender may be unable to effect a public sale of the whole or any part of the Pledged Collateral and may be compelled to resort to one or more private sales thereof. Borrower also acknowledges that any such private sale may result in prices and other terms less favorable to the seller than if such sale were a public sale. Borrower agrees that such sale shall not be deemed to have been made in a commercially unreasonable manner because it was conducted as a private sale. Lender shall be under no obligation to delay a sale of any of the Pledged Collateral for the period of time necessary to permit the registrant to register such securities for public sale under the Securities Act, or under applicable state securities laws, even if Borrower would agree to do so.

(h) Borrower agrees, to the maximum extent permitted by applicable law, that following the occurrence and during the continuance of an Event of Default, it will not at any time plead, claim or take the benefit of any appraisal, valuation, stay, extension, moratorium or redemption law now or hereafter in force in order to prevent or delay the enforcement of this Agreement, or the absolute sale of the whole or any part of the Pledged Collateral or the possession thereof by any purchaser at any sale hereunder, and Borrower waives the benefit of

all such laws to the extent it lawfully may do so. No failure or delay or forbearance under Section 5.3 of the Loan Agreement or otherwise on the part of Lender to exercise any such right, power or remedy and no notice or demand which may be given to or made upon Lender with respect to any such remedies shall operate as a waiver thereof, or limit or impair Lender's right to take any action or to exercise any power or remedy hereunder, without notice or demand, or prejudice its rights as against Borrower in any respect.

(i) Borrower further agrees that a breach of any of the covenants contained in this Section 8 will cause irreparable injury to Lender, that Lender has no adequate remedy at law in respect of such breach and, as a consequence, agrees that each and every covenant contained in this Section 8 shall be specifically enforceable against Borrower, and Borrower hereby waives and agrees not to assert any defenses against an action for specific performance of such covenants except for a defense that Lender's rights are subject to Section 5.3 of the Loan Agreement or that the Obligations are not then due and payable in accordance with the agreements and instruments governing and evidencing such obligations.

(j) The rights and remedies of Lender under this Agreement shall be cumulative and not exclusive of any rights or remedies which it would otherwise have. In exercising such rights and remedies, Lender may be selective, and no failure or delay or forbearance under Section 5.3 of the Loan Agreement or otherwise by Lender in exercising any right shall operate as a waiver of it, nor shall any single or partial exercise of any power or right preclude its other or further exercise or the exercise of any other power or right.

(k) Following the Forbearance Termination Date, upon the occurrence of an Event of Default and during the continuation of such Event of Default, Borrower hereby irrevocably constitutes and appoints Lender and any officer or agent thereof with full power of substitution as Borrower's true and lawful attorney-in-fact and as such, Lender is hereby authorized and permitted to take, in its own name or in the name of Borrower for itself and as a member of CDE (to the extent of the interests in the Pledged Collateral), any action specified in this Agreement to be taken by Lender.

9. Section 5.3 of the Loan Agreement. Notwithstanding any provision in this Agreement to the contrary, the rights and remedies of Lender are subject in all respects to the provisions of Section 5.3 of the Loan Agreement (incorporated herein by reference and made a part hereof), and nothing in this Agreement shall be deemed to authorize or empower Lender to take any action or exercise any right or remedy that is inconsistent with such provisions.

10. Waiver. No delay or forbearance under Section 5.3 of the Loan Agreement or otherwise on Lender's part in exercising any power of sale, lien, option or other right hereunder, and no notice or demand which may be given to or made upon Borrower by Lender with respect to any power of sale, lien, option or other right hereunder, shall constitute a waiver thereof, or limit or impair Lender's right to take any action or to exercise any power of sale, lien, option, or any other right hereunder, without notice or demand, or prejudice Lender's rights as against Borrower in any respect.

11. Termination. Subject to Section 14, this Agreement shall terminate and be of no further force or effect at such time as the Obligations shall have been irrevocably paid and performed in

full. Upon such payment and performance in full of the Obligations, Lender shall deliver to Borrower the Pledged Collateral at the time subject to this Agreement and then in Lender's possession or control and all instruments of assignment executed in connection therewith, free and clear of the liens hereof and, except as otherwise provided herein, all of Borrower's obligations hereunder shall at such time terminate.

12. Lien Absolute. All rights of Lender hereunder, and the Obligations of Borrower hereunder, shall be absolute and unconditional without regard to:

(a) any lack of validity or enforceability of the Loan Agreement, the Note, any other Loan Document or any other agreement or instrument governing or evidencing any Obligations or any of Borrower's Obligations;

(b) any change in the time, manner or place of payment of, or in any other term of, all or any part of Borrower's Obligations, or any other amendment or waiver of or any consent to any departure from the Loan Agreement, the Note, any other Loan Document or any other agreement or instrument governing or evidencing Borrower's Obligations;

(c) any exchange, release or non-perfection of any other collateral, or any release or amendment or waiver of or consent to departure from any guaranty, for all or any of Borrower's Obligations; or

(d) any other circumstance which might otherwise constitute a defense available to, or a discharge of, Borrower.

13. Release. Except as specifically provided for in any other Loan Document, Borrower hereby waives notice of acceptance of this Agreement, and also presentment, demand, protest and notice of dishonor of all or any of Borrower's Obligations, and promptness in commencing suit against any party hereto or liable hereon, and in giving any notice to or of making any claim or demand hereunder upon Borrower. Borrower consents and agrees that Lender may at any time, or from time to time, in its discretion exchange, release and/or surrender all or any of the Pledged Collateral and/or any other collateral for the Loan, or any part thereof, by whomsoever deposited, which is now or may hereafter be held by Lender in connection with all or any of the Obligations; all in such manner and upon such terms as Lender may deem proper, and without notice to or further assent from Borrower, it being hereby agreed that Borrower shall be and remain bound upon this Agreement, without regard to the value or condition of any of the Pledged Collateral or other collateral for the Loan, and notwithstanding any such change, exchange, settlement, compromise, surrender, release, renewal or extension, and notwithstanding also that the Obligations may, at any time, exceed the aggregate principal amount thereof set forth in the Loan Agreement, or any other agreement governing any Obligations. No act or omission of any kind on Lender's part shall in any event affect or impair this Agreement.

14. Reinstatement. This Agreement shall remain in full force and effect and continue to be effective or be reinstated, as the case may be, if at any time payment and performance of the Obligations, or any part thereof, is, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee of the Obligations, whether as a

“voidable preference”, “fraudulent conveyance”, or otherwise, all as though such payment or performance had not been made.

15. Non-Recourse. The provisions of this Agreement are expressly made subject to the limitations on recourse set forth in Section 1.10 of the Loan Agreement, which are incorporated herein by reference.

16. Lender Liability. Neither Lender, nor any of its respective officers, directors, employees, agents or counsel shall be liable for any action lawfully taken or omitted to be taken by it or them hereunder or in connection herewith, except for its or their own fraud, gross negligence, or willful misconduct.

17. Lender Assignment or Transfer. Lender may not assign or otherwise transfer all or a portion of its rights and/or obligations under the Loan Agreement (including, without limitation, all or any portion of the Loan) to any Person without the prior written consent of Borrower (such consent in Borrower’s sole and absolute discretion).

18. Miscellaneous. The following conditions shall be applicable throughout the term of this Agreement:

(a) *No Waiver*. Section 6.1 of the Loan Agreement is incorporated herein by reference.

(b) *Notices*. Section 6.2 of the Loan Agreement is incorporated herein by reference.

(c) *Entire Agreement; No Oral Amendments*. This Agreement and the exhibit attached hereto, together with the other Loan Documents, constitutes the entire agreement by and between Lender and Borrower (and any Affiliates of Borrower) and supersedes all agreements previously made between the parties relating to its subject matter. There are no other understandings or agreements between them relating to such subject matter. Neither this Agreement nor any provision hereof may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of such change, waiver, discharge or termination is sought.

(d) *No Partnership*. Section 6.5 of the Loan Agreement is incorporated herein by reference.

(e) *Binding Effect; Continuing Agreement*. Section 6.8 of the Loan Agreement is incorporated herein by reference

(f) *Headings*. Section 6.9 of the Loan Agreement is incorporated herein by reference.

(g) *CHOICE OF LAW; WAIVER OF JURY TRIAL AND CERTAIN OTHER RIGHTS; SUBMISSION TO JURISDICTION; SERVICE OF PROCESS*. Section 6.10 of the Loan Agreement is incorporated herein by reference.

(h) *[Intentionally Omitted]*.

(i) *Enforcement Costs.* Section 6.12 of the Loan Agreement is incorporated herein by reference.

(j) *Duration of Agreement.* Section 6.13 of the Loan Agreement is incorporated herein by reference.

(k) *Interpretation of Agreement.* Section 6.14 of the Loan Agreement is incorporated herein by reference.

(l) *Severability.* If any provision of this Agreement or the application thereof to any Person or circumstance shall be invalid, illegal or unenforceable to any extent, that provision shall, if possible, be construed as though more narrowly drawn, if a narrower construction would avoid such invalidity, illegality, or unenforceability or, if that is not possible, such provision shall, to the extent of such invalidity, illegality, or unenforceability, be severed, and the remainder of this Agreement and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law. Notwithstanding the foregoing, to the extent (i) Section 5.3 of the Loan Agreement is incorporated herein by reference or (ii) any provision hereof is made subject to Section 5.3 of the Loan Agreement, such provisions shall be deemed integral to this Agreement and shall not be severable from the remainder of this Agreement.

(m) *Time of the Essence.* Subject to Section 5.3 of the Loan Agreement, time shall be of the essence with respect to all or any of Borrower's Obligations.

(n) *Counterparts.* Section 6.17 of the Loan Agreement is incorporated herein by reference.

[REMAINDER OF PAGE BLANK; SIGNATURE PAGES TO FOLLOW.]

IN WITNESS WHEREOF, Borrower and Lender have caused this Fund Pledge Agreement to be duly executed as of the Effective Date.

**BORROWER:**

CHASE NMTC CAFFM INVESTMENT FUND,  
LLC, a Delaware limited liability company

By: Chase Community Equity, LLC, a Delaware  
limited liability company, its sole member

By: \_\_\_\_\_

Name: Wanda Clark

Title: Vice President

[COUNTERPART SIGNATURE PAGE TO FUND PLEDGE AGREEMENT]

**LENDER:**

THE CITY OF FOLEY PUBLIC FACILITIES  
COOPERATIVE DISTRICT, an Alabama public  
corporation

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT A**

**FORM OF ASSIGNMENT**

CHASE NMTC CAFFM INVESTMENT FUND, LLC, a Delaware limited liability company (“Assignor”), hereby assigns to THE CITY OF FOLEY PUBLIC FACILITIES COOPERATIVE DISTRICT, an Alabama public corporation (“Assignee”), all of its rights, title and interest in and to the investor member limited liability company interest in PACESETTER CDE X, LLC, a Texas limited liability company, and directs that all future distributions and allocations of income or loss on account of such interest be paid or allocated to Assignee.

Assignee hereby accepts said interest subject to all terms, covenants and conditions of (i) that certain Fund Loan Agreement, dated as of [May \_\_], 2014, by and between Assignor and Assignee (as the same may be amended, assigned, restated, modified, or supplemented from time to time, the “Loan Agreement”), including but not limited to Section 5.3 thereof, incorporated herein by reference and made a part hereof, and (ii) the CDE OA (as defined in the Loan Agreement).

Dated: \_\_\_\_\_, 20\_\_

**ASSIGNOR:**

CHASE NMTC CAFFM INVESTMENT FUND,  
LLC, a Delaware limited liability company

By: Chase Community Equity, LLC, a Delaware  
limited liability company, its sole member

By: \_\_\_\_\_

Name:

Title:

**ASSIGNEE:**

THE CITY OF FOLEY PUBLIC FACILITIES  
COOPERATIVE DISTRICT, an Alabama public  
corporation

By: \_\_\_\_\_

Name:

Title:



**FUND PROMISSORY NOTE**

<b>Borrower:</b>	<b>Lender:</b>
CHASE NMTC CAFFM INVESTMENT FUND, LLC 10 S. Dearborn Street, 19th Floor Mail Code: IL1-0953 Chicago, IL 60603-5506 Attention: NMTC Asset Manager	THE CITY OF FOLEY PUBLIC FACILITIES COOPERATIVE DISTRICT c/o City of Foley 407 East Laurel Avenue Foley, AL 36535 Attention: Jeff Rouzie, Director of Economic Development

Principal Amount:  
U.S. \$[5,950,400.00]

Note Date:  
[May \_\_], 2014

1. **PROMISE TO PAY.** CHASE NMTC CAFFM INVESTMENT FUND, LLC, a Delaware limited liability company (“Borrower”), promises to pay to the order of THE CITY OF FOLEY PUBLIC FACILITIES COOPERATIVE DISTRICT, an Alabama public corporation (“Lender”), in lawful money of the United States of America, the sum of [FIVE MILLION NINE HUNDRED FIFTY THOUSAND FOUR HUNDRED] AND NO/100 DOLLARS (U.S. \$[5,950,400.00]), together with interest at the rate described below assessed on the unpaid principal balance of this Fund Promissory Note (this “Note”) as outstanding from time to time, commencing on the date of this Note and continuing until this Note is paid in full.

2. **LOAN AGREEMENT.** This Note is executed in connection with that certain Fund Loan Agreement dated as of even date with this Note by and between Borrower and Lender (as the same may be amended, assigned, restated, modified, or supplemented from time to time, the “Loan Agreement”). The terms, provisions and conditions of the Loan Agreement are incorporated herein by reference and made a part hereof.

3. **DEFINITIONS.** For the purposes of this Note, unless otherwise defined herein, capitalized terms used herein shall have the meaning ascribed to such terms in the Loan Agreement. The following definitions (some of which are restated from those definitions contained in the Loan Agreement) shall apply to the words and phrases used herein:

(a) “Business Day” means any day other than a Saturday, Sunday or a legal holiday on which banks are authorized or required to be closed for the conduct of commercial banking business in the States of Alabama and/or New York.

(b) “Default Rate” means a rate of interest per annum equal to 3% in excess of the Interest Rate.

(c) “Event of Default” means any of those events set forth in Section 5.1 of the Loan Agreement.

(d) “Fund Pledge Agreement” means that certain Fund Pledge Agreement dated as of the date hereof by Borrower in favor of Lender, as the same may be amended, assigned, restated, modified, or supplemented from time to time.

(e) “Interest Rate” means [\_\_. \_\_%] per annum.

(f) “Loan Documents” means this Note, the Loan Agreement, the Fund Pledge Agreement, and all other documents, instruments and agreements which evidence, secure or are otherwise executed in connection with the Loan, as the same may be amended, assigned, restated, modified, or supplemented from time to time.

(g) “Maturity Date” means [\_\_\_\_\_, 20\_\_].

4. INTEREST RATE. The outstanding principal amount of the Note from time to time will bear interest at the Interest Rate. From and after the date of any Event of Default and continuing so long as such Event of Default is continuing, interest on all principal amounts outstanding under the Loan will accrue at the Default Rate. All interest payable hereunder will be computed on the basis of a 360-day year consisting of twelve 30-day months. With respect to any partial month, interest payments will be computed for the actual number of days elapsed on the basis of a 360-day year.

5. PAYMENT.

(a) *Payment Dates*. The outstanding principal amount and accrued interest of this Note shall be due and payable on the dates set forth in the Loan Agreement, including without limitation Section 1.7 thereof, which is incorporated herein by reference and made a part hereof.

(b) *Payment Time & Address*. Borrower shall make each payment required to be made by it hereunder (whether of principal, interest or fees, or otherwise) prior to 11:00 a.m., Central time, on the date when due, in immediately available funds. Borrower will pay Lender at Lender’s address shown above or at such other place as Lender may designate in writing.

(c) *Business Day*. If any payment on this Note becomes due and payable on a day other than a Business Day, such payment shall be extended to the next succeeding Business Day and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. Borrower will pay the balance of all outstanding principal and accrued and unpaid interest on the Maturity Date. All payments hereunder shall be made in U.S. dollars.

(d) *Event of Default*. Section 5.1 of the Loan Agreement is incorporated herein by reference and made a part hereof. During the occurrence and continuance of an Event of Default, but subject in all instances to Section 5.3 of the Loan Agreement, Lender, at its option, may enforce its rights against any collateral securing this Note without enforcing its rights against Borrower or any other property or indebtedness due or to become due to Borrower.

6. FORBEARANCE. Notwithstanding any provision in this Note to the contrary, the rights and remedies of Lender are subject in all respects to the provisions of Section 5.3 of the Loan Agreement (incorporated herein by reference and made a part hereof), and nothing in this Note

shall be deemed to authorize or empower Lender to take any action or exercise any right or remedy that is inconsistent with such provisions.

7. PREPAYMENT. Borrower may prepay this Note in whole or in part at any time without penalty.

8. SUCCESSORS AND ASSIGNS LIABLE. Borrower's obligations and agreements under this Note will be binding upon Borrower's successors and assigns. The rights and remedies granted to Lender under this Note will inure to the benefit of Lender's successors and assigns, as well as to any subsequent holder or holders of this Note.

9. CAPTION HEADINGS. Caption headings of the sections of this Note are for convenience purposes only and are not to be used to interpret or to define their provisions. In this Note, whenever the context so requires, the singular includes the plural and the plural also includes the singular.

10. SEVERABILITY. If any provision of this Note is held to be invalid, illegal or unenforceable by any court, that provision will be deleted from this Note and the balance of this Note will be interpreted as if the deleted provision never existed.

11. WAIVER. Subject to Section 5.3 of the Loan Agreement, time shall be of the essence with respect to all of Borrower's obligations under this Note. Borrower and all others who may become liable for all or any part of the indebtedness evidenced by this Note and their respective heirs, successors and assigns agree to be jointly and severally bound by this Note, and jointly and severally (a) waive and renounce to the extent permitted by law any and all homestead exemption rights and the benefits of all valuation appraisal, stay, redemption and moratorium privileges as against this debt or any renewal or extension hereof; and (b) waive presentment, demand, protest, notice of nonpayment, notice of dishonor, any and all lack of diligence or delays in the collection or enforcement hereof, and any such privileges and defenses as may now be in effect or which may hereafter become law. Borrower agrees that, without releasing or impairing Borrower's liability hereunder, Lender may at any time release, surrender, substitute or exchange any collateral securing this Note and may at any time release any party primarily or secondarily liable for the indebtedness evidenced by this Note.

12. USURY SAVINGS. Notwithstanding anything to the contrary contained in this Note or the other Loan Documents, in no event shall the total of all charges payable under this Note and the other Loan Documents that are or could be held to be in the nature of interest exceed the maximum rate permitted under applicable law. Should Lender receive any payment which is or would be in excess of that permitted to be charged under any such applicable law, such payment shall have been, and shall be deemed to have been, made in error and shall automatically be applied to reduce the principal balance outstanding on this Note. If at any time the Interest Rate shall exceed such maximum rate, and thereafter the Interest Rate is below such maximum rate, then the Interest Rate shall be increased to the maximum rate for such period of time as is required so that the total amount of interest received by Lender is equal to that which would have been received by Lender but for the first two sentences of this Section 12.

13. CHOICE OF LAW; WAIVER OF JURY TRIAL AND CERTAIN OTHER RIGHTS; SUBMISSION TO JURISDICTION; SERVICE OF PROCESS. Section 6.10 of the Loan Agreement is incorporated herein by reference and made a part hereof.

14. ENFORCEMENT COSTS. Section 6.12 of the Loan Agreement is incorporated herein by reference and made a part hereof.

[REMAINDER OF PAGE BLANK; SIGNATURE PAGE TO FOLLOW.]

IN WITNESS WHEREOF, Borrower has caused this Fund Promissory Note to be duly executed as of the date first written above.

**BORROWER:**

CHASE NMTC CAFFM INVESTMENT FUND,  
LLC, a Delaware limited liability company

By: Chase Community Equity, LLC, a Delaware  
limited liability company, its sole member

By: \_\_\_\_\_

Name: Wanda Clark

Title: Vice President



**UCC FINANCING STATEMENT**

FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT FILER (optional)
B. E-MAIL CONTACT AT FILER (optional)
C. SEND ACKNOWLEDGMENT TO: (Name and Address)
<div style="display: flex; justify-content: space-between; align-items: center;"> <div style="border-left: 1px solid black; border-top: 1px solid black; width: 40%; height: 40%;"></div> <div style="border-right: 1px solid black; border-top: 1px solid black; width: 40%; height: 40%;"></div> </div> <div style="display: flex; justify-content: space-between; align-items: center; margin-top: 20px;"> <div style="border-left: 1px solid black; border-bottom: 1px solid black; width: 40%; height: 40%;"></div> <div style="border-right: 1px solid black; border-bottom: 1px solid black; width: 40%; height: 40%;"></div> </div>

**THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY**

1. DEBTOR'S NAME: Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here  and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

1a. ORGANIZATION'S NAME				
OR				
1b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
1c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

2. DEBTOR'S NAME: Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here  and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

2a. ORGANIZATION'S NAME				
OR				
2b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
2c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b)

3a. ORGANIZATION'S NAME				
OR				
3b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
3c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

4. COLLATERAL: This financing statement covers the following collateral:

5. Check only if applicable and check only one box: Collateral is  held in a Trust (see UCC1Ad, item 17 and Instructions)  being administered by a Decedent's Personal Representative

6a. Check <u>only</u> if applicable and check <u>only</u> one box: <input type="checkbox"/> Public-Finance Transaction <input type="checkbox"/> Manufactured-Home Transaction <input type="checkbox"/> A Debtor is a Transmitting Utility	6b. Check <u>only</u> if applicable and check <u>only</u> one box: <input type="checkbox"/> Agricultural Lien <input type="checkbox"/> Non-UCC Filing
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7. ALTERNATIVE DESIGNATION (if applicable):  Lessee/Lessor     Consignee/Consignor     Seller/Buyer     Bailee/Bailor     Licensee/Licenser

8. OPTIONAL FILER REFERENCE DATA:



**EXHIBIT A TO UCC FINANCING STATEMENT**

DEBTOR: Chase NMTC CAFFM Investment Fund, LLC  
c/o JPMorgan Chase Bank, N.A.  
10 S. Dearborn, 19th Floor  
Mail Code: IL1-0953  
Chicago, IL 60603-5506  
Attention: NMTC Asset Manager

SECURED PARTY: The City of Foley Public Facilities Cooperative District  
c/o City of Foley  
407 East Laurel Avenue  
Foley, AL 36535  
Attention: Jeff Rouzie, Director of Economic Development

The following assets of Debtor Chase NMTC CAFFM Investment Fund, LLC are pledged to Secured Party:

(1) the CDE Interest and the certificates and other instruments or agreements representing or evidencing the CDE Interest, and all dividends, distributions, cash, instruments, tax benefits, allocations of taxable income and loss, and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of the CDE Interest;

(2) all rights and privileges of Debtor with respect to the securities and other property referred to in (1) above; and

(3) all distributions, profits, products, and proceeds, whether cash or noncash, of or from any of the foregoing.

The following terms have the following meanings in this **Exhibit A**:

(a) "**CDE**" means Pacesetter CDE X, LLC, a Texas limited liability company.

(b) "**CDE Interest**" means Debtor's entire interest in CDE, including Debtor's share of any dividends and distributions of the assets of CDE pursuant to the CDE OA and the LLC Act, and the right to vote on, consent to, or otherwise participate in any decision or action of or by CDE granted to Debtor pursuant to the CDE OA and the LLC Act.

(c) "**CDE OA**" means that certain Second Amended and Restated Operating Agreement of CDE, dated as of [May \_\_], 2014, by and between Pacesetter CDE, Inc., a Texas corporation, as managing member, and Debtor, as investor member, as the same may be amended, modified, extended, or restated from time to time.

(d) "**LLC Act**" means the Title 3 (Limited Liability Companies) of the Texas Business Organizations Code, as may be amended or restated from time to time.

[REMAINDER OF PAGE BLANK]



**ACCOUNT PLEDGE AND CONTROL AGREEMENT  
(CFPFCD RESERVE ACCOUNT)**

THIS ACCOUNT PLEDGE AND CONTROL AGREEMENT (CFPFCD RESERVE ACCOUNT) (this “Agreement”) is entered into as of [May \_\_], 2014 (the “Effective Date”), by and among (i) JPMORGAN CHASE BANK, N.A., a national banking association, in its capacity as holder of the Reserve Account defined below (in such capacity, “Bank”), having an address at 270 Park Avenue, 45th Floor, Mail Code: NY1-K425, New York, New York 10017, (ii) JPMORGAN CHASE BANK, N.A., a national banking association, in its capacity as a secured party (in such capacity, “JPMC”), (iii) PACESETTER CDE X, LLC, a Texas limited liability company, as a secured party (“CDE”), having an address at 2600 East Southlake Boulevard, Suite 120-105, Southlake, Texas 76092, and (iv) THE CITY OF FOLEY PUBLIC FACILITIES COOPERATIVE DISTRICT, an Alabama public corporation (“CFPFCD”), having an address at 407 East Laurel Avenue, Foley, Alabama 36535.

RECITALS

A. Coastal Alabama Farmers’ and Fishermen’s Market, Inc., an Alabama non-profit corporation (“Borrower”), owns the Land (as defined in the Credit Agreement (defined below)) and the existing improvements thereon, on which Borrower is constructing the Project (as defined in the Credit Agreement).

B. On the Effective Date, CDE is making the Loans (as defined in the Credit Agreement) to Borrower to provide financing for the Project, pursuant to (i) that certain Credit Agreement, dated as of the Effective Date (as the same may be amended, assigned, restated, modified, or supplemented from time to time, the “Credit Agreement”), by and between Borrower, as borrower, and CDE, as lender, and (ii) the other Loan Documents (as defined in the Credit Agreement).

C. On the Effective Date, CAFFM is entering into the Environmental Indemnity and Guaranty of P&C (each defined below) for the benefit of CDE.

D. On the Effective Date, CAFFM is entering into the QALICB NMTC Indemnity (defined below) for the benefit of JPMC.

E. On the Effective Date, and pursuant to the Closing Transfers Memorandum (as defined in the Credit Agreement), CAFFM will deposit \$150,000 (the “Reserve Deposit”) into the Reserve Account (defined below) established by CFPFCD with Bank and (i) pledged to CDE to secure CAFFM’s Obligations (defined below) to CDE and (ii) pledged to JPMC to secure CAFFM’s Obligations to JPMC.

F. Funds shall be withdrawn from the Reserve Account as set forth in herein.

G. CDE is unwilling to make the Loans unless the Reserve Deposit is made on the Effective Date for the benefit of CDE.

H. JPMC is unwilling to make the Equity Investment (as defined in the QALICB NMTC Indemnity), to cause Chase Community Equity, LLC, a Delaware limited liability company (“CCE”), to make the Capital Contribution (as defined in the QALICB NMTC Indemnity), and to cause CCE to cause Chase NMTC CAFFM Investment Fund, LLC, a Delaware limited liability company (“Fund”), to make the QEIs (as defined in the QALICB NMTC Indemnity) in CDE unless the Reserve Deposit is made on the Effective Date for the benefit of JPMC.

I. The parties hereto are entering into this Agreement for the purposes of (i) CFPFCD granting to CDE and JPMC (collectively, the “Secured Parties”) a security interest in the Reserve Account, (ii) perfecting the Secured Parties’ security interests in the Reserve Account, (iii) setting for the relative priorities of the Secured Parties in the Reserve Account, (iv) engaging Bank to provide the services described herein, and (v) providing Bank the directions of the Secured Parties and CFPFCD with respect to the Reserve Account and all unreleased funds deposited therein (collectively, the “Unreleased Funds”).

### AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Defined Terms. All capitalized terms not otherwise expressly defined herein shall have the meanings assigned to them in the Credit Agreement. In addition, the following terms shall have the following meanings in this Agreement:

(a) “Agreement” has the meaning set forth in the introductory paragraph, as the same may be amended, assigned, restated, modified, or supplemented.

(b) “Bad Act” means, with respect to any Person, such Person’s willful misconduct, gross negligence or fraud.

(c) “Bank” has the meaning set forth in the introductory paragraph to this Agreement.

(d) “CCE” has the meaning set forth in the Recitals.

(e) “CDE” has the meaning set forth in the introductory paragraph to this Agreement.

(f) “CFPFCD” has the meaning set forth in the introductory paragraph to this Agreement.

(g) “Covered Person” means each of CDE, JPMC, Bank, CDE’s members, the respective Affiliates of each of the foregoing, and the respective directors, managers, members, partners, officers, employees, lenders, representatives, consultants, and attorneys of each of the foregoing.

(h) “Credit Agreement” has the meaning set forth in the Recitals.

(i) “Effective Date” has the meaning set forth in the introductory paragraph to this Agreement.

(j) “Eligible Bank” means Bank or such other bank or financial institution, as may be selected by the Secured Parties or CDE, as applicable, that is an “insured depository institution” under the Federal Deposit Insurance Act, as amended, and has a combined capital and surplus of not less than \$1,000,000,000 at all times.

(k) “Environmental Indemnity” means that certain Environmental Indemnity Agreement, dated as of Effective Date, given by Borrower and CFPFCD in favor of CDE, as the same may be amended, assigned, restated, modified, or supplemented from time to time.

(l) “Fund” has the meaning set forth in the Recitals.

(m) “Guaranty of P&C” means that certain Guaranty of Payment and Completion, dated as of the Effective Date, given by CFPFCD in favor of CDE, as the same may be amended, assigned, restated, modified, or supplemented from time to time.

(n) “JPMC” has the meaning set forth in the introductory paragraph to this Agreement.

(o) “Liabilities” has the meaning set forth in Section 11(a).

(p) “Obligations” means (i) all indebtedness and obligations of CFPFCD to CDE under the Loan Documents (including, without limitation, the Environmental Indemnity and Guaranty of P&C) or (ii) all obligations of CFPFCD to JPMC under the QALICB NMTC Indemnity, as the context requires.

(q) “QALICB NMTC Indemnity” means that certain QALICB Indemnification Agreement, dated as of the Effective Date, by and among Borrower and CFPFCD (as the “Indemnitors” thereunder) and JPMC, as the same may be amended, assigned, restated, modified, or supplemented from time to time.

(r) “Reserve Account” means that certain account established by CFPFCD with Bank into which the Reserve Deposit shall be made and which, in accordance with this Agreement, is more particularly described in Section 2(a).

(s) “Reserve Deposit” has the meaning set forth in the Recitals.

(t) “Secured Parties” has the meaning set forth in the Recitals.

(u) “UCC” means the Uniform Commercial Code as adopted by the State of Alabama or any other State, as applicable, as the same may be amended, restated, replaced, supplemented, or otherwise modified from time to time.

(v) “Unreleased Funds” has the meaning set forth in the Recitals.

2. Reserve Account.

(a) The Reserve Account maintained for CFPFCD bears account number [\_\_\_\_\_] and is entitled “[\_\_\_\_\_].” The Reserve Account consists of an interest bearing account, and CFPFCD agrees that it will include in its income all interest and earnings on the funds deposited therein. The Reserve Account has been assigned the federal tax identification number of CFPFCD.

(b) Bank represents and warrants to the Secured Parties that: (i) Bank maintains the Reserve Account for CFPFCD and (ii) Bank does not know of any claim to or interest in the Reserve Account, except for claims and interests of the parties referred to in this Agreement.

(c) Bank shall hold the Reserve Account and the Unreleased Funds for the benefit of CFPFCD and the Secured Parties as their interests are set forth in this Agreement, and Bank shall designate such amounts on its books as being held for the benefit of the Secured Parties and CFPFCD in accordance with the terms hereof.

(d) The Reserve Account and the Unreleased Funds shall be maintained separate and apart from the other funds of Bank and CFPFCD, and shall be held, invested, and disbursed by Bank in accordance with the terms hereof.

3. Unreleased Funds. Bank will make the Reserve Deposit on the Effective Date and will comply with all instructions it receives directing disposition of the Unreleased Funds originated from the Secured Parties, without further consent by CFPFCD.

4. Control of and Disbursements from the Reserve Account.

(a) The Reserve Account shall be subject to the control and direction of the Secured Parties. The Secured Parties shall have the sole and absolute right to make or authorize withdrawals from the Reserve Account, and any such withdrawals from the Reserve Account shall be made in accordance with the terms of this Agreement. Notwithstanding anything to the contrary in this Agreement, neither CFPFCD nor any other Person claiming by, on behalf of or through CFPFCD shall have any right or authority, whether express or implied, to make use of, or withdraw any funds from the Reserve Account, or to give any instructions with respect to the Reserve Account.

(b) CFPFCD authorizes and directs Bank, and Bank agrees, that Bank shall not honor CFPFCD’s instructions with respect to a release from the Reserve Account without the Secured Parties’ prior written consent (such consent in the Secured Parties’ sole and absolute discretion). By their signatures to this Agreement, CFPFCD hereby authorizes and directs Bank, and Bank agrees, to comply with the instructions of the Secured Parties directing disposition of the funds without further consent of CFPFCD.

5. Security Interest.

(a) CFPFCD hereby grants to the Secured Parties a first priority perfected security interest in the Reserve Account, the Unreleased Funds, and all cash and non-cash proceeds of all

or any of the foregoing, in whatever form, and all proceeds of such proceeds, as additional security for the Obligations.

(b) Upon the occurrence and continuance of an Event of Default (as defined in the Credit Agreement), the Secured Parties may, in addition to any and all other rights and remedies available to CDE under the Loan Documents, direct Bank to pay to CDE all Unreleased Funds in the Reserve Account, and CDE may apply any or all such funds to the repayment of CFPFCD's Obligations to CDE in any order in CDE's sole and absolute discretion. Subject to Section 5(d), within 10 Business Days of receipt of such direction from the Secured Parties, Bank shall disburse funds in the Reserve Account by wire transfer, account transfer or check, or otherwise for final disposition.

(c) Upon the occurrence and continuance of a Specified NMTC Recapture Event (as defined in the QALICB NMTC Indemnity) or other event triggering liability under the QALICB NMTC Indemnity, JPMC (individually and without the need for CDE's prior or contemporaneous acknowledgement or consent) may, in addition to any and all other rights and remedies available to JPMC under the QALICB NMTC Indemnity, direct Bank to pay to JPMC all Unreleased Funds in the Reserve Account, and JPMC may apply any or all such funds to the repayment of CFPFCD's Obligations to JPMC in any order in JPMC's sole and absolute discretion. JPMC shall provide CDE with a copy of any such direction provided to Bank. Within 10 Business Days of receipt of such direction from JPMC, Bank shall disburse funds in the Reserve Account by wire transfer, account transfer or check, or otherwise for final disposition.

(d) Notwithstanding anything to the contrary herein, in the event directions are provided to Bank under Section 5(b) and Section 5(c) prior to Bank's disbursement of funds in the Reserve Account, the Secured Parties and CFPFCD acknowledge and agree that Bank shall follow the direction of JPMC provided under Section 5(c).

(e) This Section 5 shall constitute a "security agreement" and the Reserve Account shall constitute a "deposit account" within the meaning of the UCC, and each of the Secured Parties shall have all of the remedies of a secured party under the UCC. CFPFCD authorizes the Secured Parties to file any financing or continuation statements and amendments thereto relating to the Reserve Account without the signature of CFPFCD.

(f) CFPFCD represents and warrants that it has the legal right to pledge the Reserve Account to the Secured Parties, that the funds in the Reserve Account are not held for the benefit of a third party, and that there are no perfected liens or encumbrances with respect to the Reserve Account. CFPFCD covenants to the Secured Parties that it shall not enter into any acknowledgment or agreement that gives any other Person except the Secured Parties control over, or any other security interest, lien or title in, the Reserve Account.

(g) CFPFCD will not, without obtaining the prior written consent of the Secured Parties (such consent in the Secured Parties' sole and absolute discretion), further pledge, assign or grant any security interest in the Reserve Account or the Unreleased Funds or permit any lien or encumbrance to attach thereto, or any levy to be made thereon, or any UCC-1 Financing

Statements, except those naming the Secured Parties, as the secured parties, to be filed with respect thereto.

(h) Bank acknowledges, that, in accordance with this Agreement:

(i) the Reserve Account and all Unreleased Funds have been irrevocably pledged, transferred and assigned to the Secured Parties as security for the Obligations; and

(ii) the Secured Parties have a security interest in the Reserve Account and all Unreleased Funds and a lien thereon, and CFPFCD has not made (and will not make) another pledge of the Reserve Account or the Unreleased Funds.

(i) In connection with the security interest granted in this Section 5, Bank is irrevocably authorized and directed, without any additional consent or authorization of CFPFCD, to disburse all Unreleased Funds as directed by the Secured Parties in accordance with Section 5(b) and Section 5(c), as applicable. Bank shall give written notice to CFPFCD of any such disbursement within a reasonable period after it is completed. Bank agrees to take commercially reasonable measures to notify the Secured Parties immediately in the event that any other Person makes a claim to or with respect to the Reserve Account or any Unreleased Funds.

6. Investment of Unreleased Funds. Unreleased Funds shall be invested by Bank in a money market account at Bank.

7. Resignation by or Termination of Bank.

(a) CFPFCD may not unilaterally terminate this Agreement or close the Reserve Account. Except as set forth in Section 10, Bank shall not cause or permit the Reserve Account to be closed unless it has received prior written notice from the Secured Parties.

(b) Bank may resign from its duties, obligations, and rights under this Agreement at any time after 30 calendar days' prior written notice to the Secured Parties and CFPFCD, but in no event will Bank be released of its obligations hereunder unless and until an Eligible Bank is designated by the Secured Parties (such designation in the Secured Parties' sole and absolute discretion) as a successor to Bank and has assumed the duties, obligations, and rights of Bank hereunder in accordance with Section 7(e).

(c) CDE may not terminate Bank's duties, obligations or rights under this Agreement in the absence of a Bad Act by Bank. Any claim by CDE that Bank committed a Bad Act shall be provided to Bank in writing (with copies provided to JPMC and CFPFCD). Bank may contest any such claim in any court of competent jurisdiction (subject to Section 23). If Bank contests such claim, Bank duties, obligations, and rights under this Agreement shall continue unabated unless and until a final determination is rendered by a court of competent jurisdiction that Bank committed a Bad Act. In the event (i) such a final determination is issued or (ii) Bank does not contest CDE's claim that Bank committed a Bad Act, CDE shall designate a successor to Bank (such designation in CDE's sole and absolute discretion), which shall be an Eligible Bank.

(d) The resignation or termination of Bank in accordance with this Agreement shall, without further action by any Person, release Bank from its duties, obligations, and rights under this Agreement arising from and after the date of such resignation or termination.

(e) The designated successor to Bank shall be required to expressly assume all duties, obligations, and rights of Bank under this Agreement. Bank agrees to reasonably cooperate with its designated successor in the orderly transitioning of its duties, obligations, and rights under this Agreement to such designated successor. All funds then on deposit in the Reserve Account, after payment of all accrued and unpaid fees of Bank (if any) with respect to Reserve Account, shall be disbursed to the designated successor to hold and administer the Reserve Account.

8. Bank Fees and Set-off.

(a) To compensate Bank for performing the services required hereunder, CFPFCD hereby agrees to pay Bank's standard fees for such services, in accordance with a schedule of fees to be established from time to time by Bank. In addition, CFPFCD hereby agrees to pay to Bank for the actual amount of any exchange, collection, processing, transfer, wire, postage or other out-of-pocket expenses incurred by Bank with respect to the Reserve Account, as reasonably determined by Bank from time to time.

(b) Upon the request of CFPFCD, Bank shall include its fees in an account analysis statement, in accordance with the particular arrangements between Bank and CFPFCD.

(c) Bank waives any right to offset any claim against CFPFCD which it might have against the Reserve Account; *provided, however*, that Bank retains the right to charge the Reserve Account for any charges, fees and expenses provided for herein for which CFPFCD is responsible and for all items deposited in and credited to the Reserve Account and subsequently returned unpaid or with respect to which Bank fails to receive final settlement. If there are insufficient funds in the Reserve Account to cover the fees or returned items attributable to such account, CFPFCD agrees to reimburse Bank for the amount of such shortfall within 3 Business Days following demand therefor. Bank hereby subordinates all security interests, liens, claims, and, except as specifically set forth in this Section 8, rights of setoff it may have now or in the future, against the Reserve Account to the security interests, liens and claims of the Secured Parties.

9. Reserve Account Statements. Upon request, Bank shall send a monthly report to the Secured Parties and CFPFCD, which monthly report shall specify all credits and debits to the Reserve Account for the previous calendar month and the balance in the Reserve Account as of the end of such month. Bank shall provide or deliver to the Secured Parties and CFPFCD copies of all statements and other information concerning the Reserve Account as they shall reasonably request.

10. Term of Agreement. Following the earlier to occur of the following, this Agreement shall irrevocably terminate and Bank shall close the Reserve Account: (a) written notice from the Secured Parties that CFPFCD has fully paid and satisfied all Obligations or (b) following the seven-year anniversary of the Effective Date, written notice from the Secured Parties that the Reserve Account may be closed. Upon the termination of this Agreement and the closing of the

Reserve Account, all funds then on deposit in the Reserve Account, after payment of all accrued and unpaid fees of Bank (if any), shall be released by Bank to CFPFCD. Bank shall be under no obligation to provide notice to the Secured Parties, CFPFCD or any other Person of the termination of this Agreement or the closing of the Reserve Account.

11. Indemnification.

(a) CFPFCD hereby agrees to indemnify and hold harmless each Covered Person from any and all losses, liabilities, suits, actions, obligations, fines, damages, judgments, penalties, claims, causes of action, charges, costs and expenses (including, without limitation, reasonable attorneys', accountants', experts', consultants' fees, disbursements and court costs prior to trial, at trial and on appeal) (collectively, "Liabilities") which are imposed on, incurred or paid by, or asserted against a Covered Person (i) by reason or on account of this Agreement or (ii) in connection with any instruction or request of CFPFCD made under this Agreement.

(b) A Covered Person's right of indemnification under Section 11(a) will not be directly or indirectly limited, prejudiced, impaired or eliminated in any way by any finding or allegation that the conduct of Bank, CDE and/or JPMC is active, passive or subject to any other classification or that Bank, CDE and/or JPMC is directly or indirectly responsible under any theory of any kind for any act or omission by CFPFCD or any other Person other than a Covered Person.

(c) Notwithstanding Section 11(a) and (b), CFPFCD will not be obligated to indemnify, defend, or hold harmless a Covered Person from or against any Liabilities caused as a direct result of such Covered Person's Bad Acts.

(d) Notwithstanding Section 10 or any other provision to the contrary contained in this Agreement or any of the other Loan Documents, the obligations of CFPFCD under this Section 11 (i) will survive the termination of this Agreement and (ii) will not be directly or indirectly limited, prejudiced, impaired or eliminated in any way with respect to Bank if Bank has resigned or has been terminated by CDE in accordance with this Agreement.

12. Certain Matters Affecting Bank.

(a) Bank may rely and shall be protected in acting or refraining from acting upon any written notice (including but not limited to electronically confirmed facsimiles of such written notice) believed by it to be genuine and to have been signed or presented by the proper party or parties. Bank and its Affiliates shall not be liable for any loss or injury resulting from its actions or its performance or lack of performance of its duties hereunder or for its decisions in the absence of a Bad Act. In no event shall Bank or any of its Affiliates be liable for (i) acting in accordance with instructions from the Secured Parties or (with respect to Section 5(c) only) JPMC or (ii) losses due to forces beyond the control of Bank, including, without limitation, strikes, work stoppages, acts of war or terrorism, insurrection, revolution, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services.

(b) The duties and obligations of Bank hereunder shall be determined solely by the express provisions of this Agreement. Bank is not acting as a fiduciary for any Person. Bank

shall not be liable except for the performance of Bank's duties and obligations as are specifically set forth in this Agreement. No implied covenants or obligations shall be read into this Agreement against Bank.

13. Conflicts. Matters not covered by this Agreement shall be determined in accordance with the customary procedures of Bank and any deposit account agreements, and in the event of a conflict between the terms of this Agreement and the customary procedures of Bank and/or any deposit account agreements, the terms of this Agreement shall govern.

14. Notices. Any notice, request, demand, consent, approval, direction, agreement, or other communication (any "notice") required or permitted hereunder must be in writing and will be validly given only if (a) sent by a nationally-recognized courier that obtains receipts, (b) delivered personally by a courier that obtains receipts, (c) mailed by United States certified mail (with return receipt requested and postage prepaid), (d) sent by facsimile (with a copy of such facsimile and proof of transmission thereof sent via one of the methods of delivery set forth in clauses (a), (b) or (c) hereof), or (e) sent by email (with a copy of such email and proof of transmission thereof sent via one of the methods of delivery set forth in clauses (a), (b) or (c) hereof unless specified herein that such notice may be provided exclusively by email), addressed to the applicable Person at the address set forth on Schedule A to this Agreement. Each notice shall be effective upon being so sent, delivered, or mailed, but the time period for response or action shall run from the date of receipt as shown on the delivery receipt. Refusal to accept delivery or the inability to deliver because of a changed address for which no notice was given shall be deemed received. Any party may periodically change its address for notice (including different or additional addresses for copies) by giving the other party at least 10 calendar days' prior notice in accordance with the foregoing provisions.

15. Headings and Section References. The headings used herein are for convenience only and do not limit or alter the terms of this Agreement or in any way affect the meaning or interpretation of this Agreement. References in this Agreement to Sections are intended to refer to Sections of this Agreement, unless otherwise specifically stated.

16. Successors and Assigns.

(a) This Agreement shall bind and inure to the benefit of and be enforceable by the Secured Parties, CFPFCD, Bank and their respective, permissible successors and assigns.

(b) CDE shall have the right to assign or transfer its duties, obligations, and rights under this Agreement in connection with any assignment of all or any part of the Loans in accordance with the Loan Documents. Any assignee or transferee of CDE pursuant to the immediately preceding sentence shall be entitled to all the benefits afforded to CDE under this Agreement; *provided*, that such assignee or transferee shall have delivered to Bank, JPMC and CFPFCD written evidence that such assignee or transferee agrees to be bound by the terms of this Agreement.

(c) Bank shall have the right to assign or transfer its duties, obligations, and rights under this Agreement in accordance with Section 7 or with the prior written consent of the Secured Parties.

17. Incorporation of Recitals and Schedule. The Recitals and Schedule identified in this Agreement are incorporated herein by reference and made a part hereof.

18. Entire Agreement; Amendment and Modification. This Agreement (together with other Loan Documents, to the extent referenced herein) embodies the entire agreement and understanding by and among the parties hereto relating to the subject matter hereof, and supersedes all prior agreements and understandings relating to the subject matter hereof. No changes, amendments, or alterations to this Agreement will be effective unless pursuant to written instrument executed by the Secured Parties, CFPFCD and Bank (or each such party's respective successors or assigns, if applicable).

19. No Waiver of Strict Compliance. No waiver or failure of a party to insist upon strict compliance with any obligation, covenant, agreement, representation, warranty, or condition shall operate as a waiver of, or estoppel with respect to, any subsequent or other failure to comply with such obligation, covenant, agreement, representation, warranty, or condition, or with any other obligation, covenant, agreement, representation, warranty, or condition contained herein. Failure to exercise any right, power, or remedy shall not constitute a waiver of any obligations under this Agreement or constitute a modification of this Agreement. The making of this Agreement shall not waive or impair any other security a party may have or hereafter acquire for the payment of obligations under this Agreement, and the taking of any additional security it may have in the order it may deem proper.

20. No Guaranty. Notwithstanding any provision to the contrary contained in this Agreement, neither the Secured Parties nor Bank shall be deemed to have, directly or indirectly, guaranteed any debts, obligations or liabilities of CFPFCD or CFPFCD's Affiliates.

21. No Partnership Created. Neither the execution of this Agreement, nor any action taken by CDE or Bank pursuant hereto is intended to be, nor shall it be construed to be, the formation of a partnership or joint venture between CDE and Bank.

22. Severability. The invalidity or unenforceability of any terms or provisions of this Agreement shall not affect the validity or enforceability of any other provisions of this Agreement, which shall remain in full force and effect, and, if any such unenforceable provision hereof is enforceable in any part or to any lesser extent, such provision shall be enforceable in all such parts and to the greatest extent permissible under applicable law.

23. CHOICE OF LAW; WAIVER OF JURY TRIAL AND CERTAIN OTHER RIGHTS; SUBMISSION TO JURISDICTION; SERVICE OF PROCESS.

(a) THE VALIDITY OF THIS AGREEMENT, THE CONSTRUCTION, INTERPRETATION, AND ENFORCEMENT HEREOF, AND THE RIGHTS OF EACH PARTY WITH RESPECT TO ALL MATTERS ARISING HEREUNDER OR RELATED HERETO SHALL BE DETERMINED UNDER, GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ALABAMA, WITHOUT GIVING EFFECT TO CONFLICT OR CHOICE OF LAW PRINCIPLES.

(b) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL

PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). IT IS AGREED AND UNDERSTOOD THAT THIS WAIVER CONSTITUTES A WAIVER OF TRIAL BY JURY OF ALL CLAIMS AGAINST ALL PARTIES TO SUCH ACTIONS OR PROCEEDINGS, INCLUDING CLAIMS AGAINST PARTIES WHO ARE NOT PARTIES TO THIS AGREEMENT. EACH PARTY (i) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, AND (ii) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 23.

(c) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY AGREES THAT ANY PROCESS OR NOTICE OF MOTION OR OTHER APPLICATION TO ANY SUCH COURT IN CONNECTION WITH ANY ACTION OR PROCEEDING MAY BE SERVED UPON SUCH PARTY BY REGISTERED OR CERTIFIED MAIL TO OR BY PERSONAL SERVICE AT THE LAST KNOWN ADDRESS OF SUCH PARTY WHETHER SUCH ADDRESS BE WITHIN OR OUTSIDE THE JURISDICTION OF ANY SUCH COURT.

(d) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, NO PARTY SHALL ASSERT, AND EACH PARTY HEREBY WAIVES, ANY CLAIM AGAINST ANY OTHER PARTY OR SUCH OTHER PARTY'S AFFILIATES, ON ANY THEORY OF LIABILITY, FOR SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES (AS OPPOSED TO DIRECT OR ACTUAL DAMAGES) ARISING OUT OF, IN CONNECTION WITH, OR AS A RESULT OF, THIS AGREEMENT OR ANY AGREEMENT OR INSTRUMENT CONTEMPLATED HEREBY AND/OR THE TRANSACTIONS CONTEMPLATED HEREBY.

24. [Intentionally Omitted].

25. Enforcement Costs. In the event of any action at law or in equity to enforce the provisions of this Agreement or to secure relief or damages for the breach of this Agreement, the prevailing party shall be entitled to payment or reimbursement, as applicable, of its costs, expenses and fees (including without limitation reasonable attorneys', accountants', experts', and consultants' costs, expenses and fees, court costs and investigative expenses prior to trial, at trial and on appeal) incurred in such proceedings from the non-prevailing party.

26. Receipt and Review of Loan Documents. Each party to this Agreement acknowledges and agrees that it has been provided with a copy of the Credit Agreement and each of the other Loan Documents it has requested and has reviewed such documents with counsel of its own choosing.

27. Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered

shall be deemed an original, but all of which counterparts together shall constitute but one and the same instrument. Faxed, scanned or photocopied signatures shall be deemed equivalent to original signatures.

[REMAINDER OF PAGE BLANK; SIGNATURE PAGES TO FOLLOW.]

IN WITNESS WHEREOF, the parties hereto have executed this Account Pledge and Control Agreement (CFPFCD Reserve Account) as of the Effective Date.

**CFPFCD:**

THE CITY OF FOLEY PUBLIC FACILITIES  
COOPERATIVE DISTRICT, an Alabama public  
corporation

By: \_\_\_\_\_  
Name:  
Title:

[COUNTERPART SIGNATURE PAGE TO  
ACCOUNT PLEDGE AND CONTROL AGREEMENT (CFPFCD RESERVE ACCOUNT)]

**CDE:**

PACESETTER CDE X, LLC, a Texas limited  
liability company

By: Pacesetter CDE, Inc., a Texas corporation, its  
managing member

By: \_\_\_\_\_

Name: Giovanni Capriglione

Title: Secretary

[COUNTERPART SIGNATURE PAGE TO  
ACCOUNT PLEDGE AND CONTROL AGREEMENT (CFPFCD RESERVE ACCOUNT)]

**BANK & JPMC:**

JPMORGAN CHASE BANK, N.A., a national  
banking association

By: \_\_\_\_\_

Name: Wanda Clark

Title: Authorized Officer

**SCHEDULE A**

**Notice Addresses of Parties**

(1) If to CFPFCD: The City of Foley Public Facilities Cooperative District  
c/o City of Foley  
407 East Laurel Avenue  
Foley, AL 36535  
Attention: Jeff Rouzie, Director of Economic Development  
Facsimile: 251-952-4012  
Email: [\_\_\_\_\_]

And a copy to: Adams and Reese LLP  
RSA Battle House Tower  
11 North Water Street, Suite 23200  
Mobile, AL 36602  
Attention: John F. Lyle, III, Esq.  
Facsimile: 251-438-7733  
Email: john.lyle@arlaw.com

And copies to: The addresses set forth under (3) below.

(2) If to CDE: Pacesetter CDE X, LLC  
c/o Pacesetter CDE, Inc.  
2600 E. Southlake Blvd., Suite 120-105  
Southlake, TX 76092  
Attention: Giovanni Capriglione  
Email: giovanni@pacesettercde.com

With a copy to: Law Office of Mark D. Foster  
4835 LBJ Freeway, Suite 424  
Dallas, TX 75244  
Attention: Mark D. Foster, Esq.  
Facsimile: 214-363-9551  
Email: mark@mdfoster.com

And copies to: The addresses set forth under (3) below.

(3) If to JPMC or Bank: JPMorgan Chase Bank, N.A.  
10 S. Dearborn Street, 19th Floor  
Mail Code: IL1-0953  
Chicago, IL 60603-5506  
Attention: NMTC Asset Manager  
Facsimile: 312-325-5050  
Email: nmtc.reporting@chase.com

[CONTINUED NEXT PAGE]

**SCHEDULE A (CONT'D)**

**Notice Addresses of Parties**

With a copy to: Chase Community Equity, LLC  
c/o JPMorgan Chase Bank, N.A.  
New Markets Tax Credit Group  
2200 Ross Avenue, 9th Floor  
Mail Code: TX1-2951  
Dallas, TX 75201  
Attention: Wanda Clark  
Facsimile: 214-965-3297  
Email: wanda.clark@jpmchase.com

And a copy to: Jones Day  
100 High Street, 21<sup>st</sup> Floor  
Boston, MA 02110  
Attention: Jeffrey D. Gaulin, Esq.  
Facsimile: 617-449-6999  
Email: jgaulin@jonesday.com

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**GUARANTY OF PAYMENT AND COMPLETION**

THIS GUARANTY OF PAYMENT AND COMPLETION (this "Guaranty") is made as of [May \_\_], 2014 (the "Effective Date") by THE CITY OF FOLEY PUBLIC FACILITIES COOPERATIVE DISTRICT, an Alabama public corporation ("CFPFCD"), for the benefit of PACESETTER CDE X, LLC, a Texas limited liability company ("Lender").

**RECITALS**

A. Contemporaneously with this Guaranty, Lender and Coastal Alabama Farmers' and Fishermen's Market, Inc., an Alabama nonprofit corporation ("Borrower"), have entered into that certain Credit Agreement (as the same may be amended, assigned, restated, modified, or supplemented from time to time, the "Credit Agreement"), pursuant to which Lender has agreed to make loans to Borrower in the aggregate original principal amount of \$[8,000,000] (as more particularly described in the Credit Agreement, collectively, the "Loans").

B. Borrower shall use the proceeds of the Loans to construct a farmers' and retail market and a wholesale produce distribution facility (collectively, the "Improvements") located, respectively, at 20733 Mifflin Road and 410 East Section Avenue, Foley, Alabama (collectively, the "Land"), all in accordance with (i) the Credit Agreement and (ii) the other Loan Documents (as defined in the Credit Agreement).

C. As a condition to making the Loans, Lender has required that CFPFCD (i) guarantee completion of the construction and equipping of the Improvements and payment and performance of certain of Borrower's obligations under the Credit Agreement and the other Loan Documents and (ii) make a cash contribution to Borrower in the amount of \$[380,000.00] (the "Equity Contribution") on the Effective Date, all as provided in this Guaranty.

D. CFPFCD will derive substantial economic benefit, directly and/or indirectly, from Borrower's receipt of the Loans and the Equity Contribution.

E. The execution and delivery of this Guaranty by CFPFCD is a condition precedent to the making of the Loans.

**AGREEMENT**

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, in order to induce Lender to make the Loans to Borrower, and intending to be legally bound hereby, CFPFCD hereby covenants and agrees as follows:

1. Definitions. All capitalized terms utilized in this Guaranty but not otherwise defined shall have the meanings ascribed to them in the Credit Agreement.
2. Guaranteed Obligations. CFPFCD absolutely, unconditionally, and irrevocably guarantees to Lender each and all of the following (collectively, the "Guaranteed Obligations"):

(a) the full, complete and punctual observance, performance and satisfaction of all of the obligations, duties, covenants and agreements of Borrower under the Credit Agreement and the other Loan Documents (including but not limited to the CMDA) with respect to the diligent and timely commencement, construction and Completion of the Improvements free of any claim for mechanics', materialmen's or any other liens, and in accordance with (i) all applicable requirements of any Governmental Authority having jurisdiction over the construction and equipping of the Improvements, (ii) any documents of record setting forth covenants, conditions, easements or restriction in the official records of the State in which the project is located, (iii) the Plans & Specifications, (iv) the Project Budget, and (v) the time periods and other requirements set forth in the Loan Documents, including, without limitation, and subject to, the following:

(A) to perform, complete and pay for (or cause to be performed, completed and paid for) all construction work required to achieve Completion of the Improvements (the "Construction Work") in accordance with the Credit Agreement and the other Loan Documents and to timely pay all costs of said Construction Work and all other costs associated with the construction and equipping of the Improvements;

(B) to perform the obligations, duties, covenants and agreements of Borrower under the CMDA (incorporated herein by reference and made a part hereof), including but not limited to Section 3.5 thereof;

(C) if any mechanics' or materialmen's lien, judgments or stop notices should be filed, or should attach, with respect to the Property by reason of the Construction Work, to promptly cause the removal or, subject to Lender's reasonable consent, bonding over of such liens, judgments or stop notices in accordance with the terms of the Credit Agreement or any other Loan Documents;

(D) subject to Section 6.2 of the Credit Agreement (incorporated herein by reference and made a part hereof), if any chattel mortgages, conditional vendor's liens or any liens, encumbrances or security interests whatsoever should be filed, or should attach, with respect to the personal property, fixtures, attachments and equipment (1) delivered upon the Property and owned by Borrower, (2) attached to the Property, or (3) used in connection with the Construction Work, to promptly cause the removal or, subject to Lender's reasonable consent, bonding over of such lien(s) and post security against the consequences of their possible foreclosure; and

(E) to pay all other fees, costs and expenses payable under the Credit Agreement or any other Loan Document or otherwise payable by Borrower to any Person in connection with the Construction Work or the Completion of the Improvements if such costs are not paid by Borrower;

(b) the prompt, full and complete performance and payment of the Loans and the interest thereon as and when the same shall become due and payable under the Notes, whether at stated maturity, by acceleration or otherwise, and any and all other sums of money payable by Borrower to Lender under the provisions of the Credit Agreement or any other Loan Document, including without limitation, the payment or reimbursement, as applicable, of fees and expenses of Lender and Lender's members or partners, as applicable;

(c) the payment in full of all actual losses, costs, expenses, claims or damages arising out of Borrower's or CFPFCD's fraud, gross negligence, willful misrepresentation, willful misconduct, physical waste, misappropriation and misapplication of funds, voluntary bankruptcy filings or other actions intended to cause or result in an event described in Section 8.1(a) of the Credit Agreement (incorporated herein by reference and made a part hereof);

(d) the prompt, full and complete performance and payment of Borrower's obligation to indemnify, protect, hold harmless and defend the Covered Persons in accordance with Section 5.12 of the Credit Agreement (incorporated herein by reference and made a part hereof); and

(e) the payment in full of any and all reasonable expenses, including, without limitation, (i) all reasonable attorneys', accountants', experts', consultants' fees and expenses and (ii) all disbursements and court costs prior to trial, incurred by Lender (whether at trial or on appeal) in the collection of all or any portion of CFPFCD's obligations under this Guaranty or the exercise or enforcement of any one or more of the rights, powers, privileges, remedies and interests of Lender under this Guaranty or the other Loan Documents, whether or not such expenses constitute part of Borrower's obligations; and

(f) the payment in full of all real estate taxes, other taxes and assessments, municipal charges, utility charges, insurance premiums for all policies of insurance required to be furnished by Borrower pursuant to the Credit Agreement, as well as interest, fees and charges (including, without limitation, late fees incurred) payable under the Credit Agreement or any other Loan Document or otherwise payable by Borrower to any Person in connection with the Property if such costs are not paid by Borrower.

All obligations described in Section 2(a) are referred to herein as the "Completion Obligations." All obligations described in Section 2(b) are referred to herein as the "Debt Payment Obligations." All obligations described in Section 2(c)-(f) are referred to herein as the "Other Payment Obligations."

3. Termination. Subject to Section 7, and provided that the Completion Obligations have been satisfied, this Guaranty shall terminate effective immediately upon payment in full of the Debt Payment Obligations and the Other Payment Obligations owed by Borrower or CFPFCD under the Loan Documents.

4. Unconditional Guaranty.

(a) The liability of CFPFCD under this Agreement shall be an absolute, continuing, direct, immediate present and unconditional guaranty of payment and performance and not of collection and is in no way conditioned or contingent upon any attempt to enforce Lender's rights against Borrower or to collect from Borrower or upon any other condition or contingency; accordingly, Lender shall have the right to proceed against CFPFCD immediately upon any Event of Default, without taking any prior action or proceeding to enforce the Credit Agreement or any other Loan Documents or for the liquidation or foreclosure of any security Lender may at any time hold pursuant to the Loan Documents.

(b) To the fullest extent permitted by applicable law, CFPFCD hereby (i) waives any right or claim of right to cause a marshalling of Borrower's assets or to cause Lender to proceed against any of the security for the Loans or for the obligations guaranteed by this Guaranty before proceeding against CFPFCD, (ii) agrees that any payments required to be made by CFPFCD under this Guaranty shall become due on demand in accordance with the terms hereof and without presentment to Borrower, demand for payment or protest, or notice of non-payment or protest, and (iii) except as provided in this Guaranty, to the fullest extent permitted by applicable law expressly waives and relinquishes all rights and remedies accorded by applicable law to guarantors.

(c) It is expressly understood that the waivers and agreements of CFPFCD set forth in this Guaranty (including but not limited to the waivers and agreements set forth in Section 4(a) and (b)) constitute additional and cumulative benefits given to Lender for its security and constitutes a material inducement to Lender to make the Loans.

(d) Lender may at any time and from time to time take any and/or all actions and enforce all rights and remedies available to it under this Guaranty or under applicable law to collect from CFPFCD any amounts then due and payable under this Guaranty by CFPFCD and/or to cause CFPFCD to fulfill its obligations under this Guaranty.

5. Liability Unimpaired.

(a) CFPFCD's liability under this Guaranty shall in no way be limited or impaired by, and CFPFCD hereby consents to and agrees to be bound by, any amendment or modification of the provisions of any of the Loan Documents agreed to in writing by the parties thereto, whether with or without notice to any CFPFCD and with or without consideration.

(b) In addition, CFPFCD's liability under this Guaranty shall in no way be limited or impaired by (i) any extensions of time for performance required by any of said documents, (ii) any sale or assignment of the Notes by Lender, (iii) any exculpatory provision in any of such instruments limiting Lender's recourse against Borrower, (iv) the release of Borrower or any other Person from performance or observance of any of the agreements, covenants, terms or conditions contained in any of such instruments by operation of law or otherwise, (v) the release or substitution in whole or in part of any security for the Loans, (vi) the invalidity, irregularity or unenforceability, in whole or in part, of any of the Loan Documents, this Guaranty, or any other instrument or agreement executed or delivered to Lender in connection with the Loans, except to the extent that there is a final adjudication by a court of competent jurisdiction of a valid defense to Borrower's obligations under the Loan Documents to payment of the Loans, (vii) the inaccuracy of any of the representations and warranties made by Borrower in the Credit Agreement or any other Loan Documents, or (viii) except to the extent prohibited by applicable law, any other action or circumstance whatsoever that constitutes, or might be construed to constitute, a legal or equitable discharge or defense (except full payment and satisfaction) of Borrower for its obligations under any of the Loan Documents or of CFPFCD under this Guaranty; and, in any such case, whether with or without notice to CFPFCD and with or without consideration.

(c) Any indebtedness of Borrower to CFPFCD now or hereafter existing is hereby subordinated to the payment and performance of the Guaranteed Obligations. CFPFCD acknowledges and agrees that CFPFCD will not seek, accept, or retain for its own account any payment from Borrower on account of such subordinated debt if an Event of Default or condition or event which, with the giving of notice or passage of time, or both, would constitute an Event of Default, has occurred and is continuing under any of the Loan Documents. Following the occurrence and during the continuation of any Event of Default or condition or event which, with the giving of notice or passage of time, or both, would constitute an Event of Default under any of the Loan Documents, any payments to CFPFCD on account of such subordinated debt shall be collected and received by CFPFCD in trust for Lender and shall be paid over to Lender for application on account of the Indebtedness owing under the Loan Documents without impairing or releasing the Guaranteed Obligations of CFPFCD hereunder.

6. Events of Default.

(a) Upon the occurrence and continuance of an Event of Default by Borrower under the Loan Documents, CFPFCD agrees, on demand by Lender (which demand may be made concurrently with notice to Borrower that such an Event of Default has occurred and is continuing), to perform all of the Guaranteed Obligations. Subject to the terms and conditions of the Credit Agreement, the CMDA, and the other Loan Documents, Lender shall make the undisbursed balance of its Loans available for disbursement to CFPFCD for the purpose of (i) fulfilling the Completion Obligations and (ii) subject to the sole and absolute discretion of Lender, fulfilling the other Guaranteed Obligations. CFPFCD acknowledges and agrees that its failure to satisfy the conditions precedent for a Funds Release (as defined in the CMDA) shall not in any way whatsoever eliminate, limit or otherwise modify its Debt Payment Obligations or Other Payment Obligations.

(b) Lender shall have the right, at its option, but without any obligation to do so, either before, during or after commencing foreclosure or sale proceedings, as the case may be, and before, during or after pursuing any other right or remedy against Borrower or CFPFCD, to perform any and all of the obligations of Borrower and/or CFPFCD by or through any agent, contractor or subcontractor of its selection, all as Lender in its sole discretion deems proper, and CFPFCD shall indemnify and hold Lender free and harmless from and against any and all loss, damage, reasonable out-of-pocket cost and expense, injury, or liability Lender may suffer or incur in connection with the exercise of its rights under this Guaranty or the performance of the Guaranteed Obligations except to the extent such loss, damage, cost, expense, injury or liability results from the fraud, gross negligence, or willful misconduct of Lender. Furthermore, Lender shall not have any obligation to protect or insure any Collateral, nor shall Lender have any obligation to perfect its security interest in the Collateral.

(c) Notwithstanding anything else contained in this Guaranty, the Credit Agreement, or in any other Loan Document, and for the avoidance of doubt, any claims against Borrower or CFPFCD related to tax benefits derived by Bank in connection with the Property shall be governed exclusively by the QALICB NMTC Indemnity.

(d) All of the remedies set forth in this Guaranty and/or provided for in the Credit Agreement and the other Loan Documents or at law or equity shall be available to Lender, and

the choice by Lender of one such alternative over another shall not be subject to question or challenge by CFPFCD or any other Person, nor shall any such choice be asserted as a defense, setoff, or failure to mitigate damages in any action, proceeding, or counteraction by Lender to recover or seek any other remedy under this Guaranty, nor shall such choice preclude Lender from subsequently electing to exercise a different remedy. The parties have agreed to the alternative remedies hereinabove specified in part because they recognize that the choice of remedies in the event of a failure hereunder will necessarily be and should properly be a matter of good faith business judgment, which the passage of time and events may or may not prove to have been the best choice to maximize recovery by Lender at the lowest cost to Borrower and/or CFPFCD. It is the intention of the parties that such good faith choice by Lender be given conclusive effect regardless of such subsequent developments.

7. Reinstatement. This Guaranty shall continue to be effective, or be reinstated automatically, as the case may be, if at any time payment, in whole or in part, of any of the Guaranteed Obligations is rescinded or otherwise must be restored or returned by Lender (whether as a preference, fraudulent conveyance or otherwise) upon or in connection with the insolvency, bankruptcy, dissolution, liquidation or reorganization of Borrower, CFPFCD or any other Person, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, Borrower, CFPFCD or any other Person or for a substantial part of Borrower's, CFPFCD's or any of such other Person's property, as the case may be, or otherwise, all as though such payment had not been made. CFPFCD further agrees that in the event any such payment is rescinded or must be restored or returned, all costs and reasonable expenses (including without limitation all reasonable attorneys', accountants', experts', consultants' fees and expenses) incurred by or on behalf of Lender in defending or enforcing such continuance or reinstatement, as the case may be, shall constitute costs of enforcement, the payment of which is guaranteed by CFPFCD pursuant to Section 2.

8. Equity Contribution to Borrower. CFPFCD acknowledges and agrees that (a) it will make the Equity Contribution to Borrower on the Effective Date by depositing same in the Disbursement Account and (b) the Equity Contribution constitutes a material inducement to Lender to make the Loans.

9. Representations and Warranties. In order to induce Lender to accept this Guaranty and the other Loan Documents, CFPFCD represents and warrants to Lender (which representations and warranties will survive the extensions of credit under the Credit Agreement) that all of the representations and warranties made by Borrower with respect to CFPFCD under Article 4 of, and the Addendum to, the Credit Agreement (all of which are incorporated herein by reference and made a part hereof) are true and correct as of the Effective Date.

10. Affirmative Covenants. Unless the prior written consent to the contrary is obtained from Lender (which consent may be granted or withheld in Lender's sole and absolute discretion), CFPFCD will at all times comply with the covenants contained in Article 5 of the Credit Agreement that are applicable to CFPFCD (all of which are incorporated herein by reference and made a part hereof), from the Effective Date and for so long as any part of the Indebtedness is outstanding.

11. Negative Covenants. Unless the prior written consent to the contrary is obtained from Lender (which consent may be granted or withheld in Lender's sole and absolute discretion), CFPFCD will at all times comply with the covenants contained in Article 6 of the Credit Agreement that are applicable to CFPFCD (all of which are incorporated herein by reference and made a part hereof), from the Effective Date and for so long as any part of the Indebtedness is outstanding.

12. Notices. Section 10.1 and Schedule A of the Credit Agreement are incorporated herein by reference and made a part hereof.

13. Amendments. This Guaranty may not be changed, waived, discharged or terminated orally or in any manner other than by an instrument in writing signed by CFPFCD and Lender.

14. Invalidity. In the event that any one or more of the provisions contained in this Guaranty is, for any reason, held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect any other provision of this Guaranty.

15. Survival of Agreements. All representations and warranties of CFPFCD herein, and all covenants and agreements in this Guaranty not fully performed as of the Effective Date, will survive the Effective Date.

16. Waivers. No course of dealing on the part of Lender or its officers, employees, consultants or agents, nor any failure or delay by Lender with respect to exercising any of its rights, powers or privileges under this Guaranty will operate as a waiver thereof.

17. Cumulative Rights. The rights and remedies of Lender under this Guaranty will be cumulative, and the exercise or partial exercise of any such right or remedy will not preclude the exercise of any other right or remedy available to Lender under this Guaranty, any of the other Loan Documents or by law or in equity.

18. Time of the Essence. Time is of the essence with respect to the payment and performance of all of CFPFCD's obligations and liabilities under this Guaranty.

19. Successors and Assigns.

(a) This Guaranty binds and benefits CFPFCD, Lender, and their respective, permitted successors and assigns.

(b) References to any Person herein shall include such Person's respective permitted successors and assigns.

(c) This Guaranty is for the benefit of Lender and for such other Person or Persons as may from time to time become or be the holders of any of the Indebtedness in accordance with the terms hereof, and to the extent set forth in the Credit Agreement, this Guaranty will be transferable and negotiable, with the same force and effect and to the same extent as the Indebtedness may be transferable, it being understood that, upon the transfer or assignment by Lender of any of the Indebtedness, the legal holder of such Indebtedness will have all of the rights granted to Lender under this Guaranty.

20. Relationship Between the Parties. The relationship between Lender, on the one hand, and CFPFCD, on the other, will be solely that of lender and guarantor, and such relationship will not, under any circumstances whatsoever, be construed to be a joint venture, joint adventure, or partnership.
21. Titles of Sections. All titles or headings to articles, sections, subsections or other divisions of this Guaranty or the exhibits hereto are only for the convenience of the parties and will not be construed to have any effect or meaning with respect to the other content of such articles, sections, subsections or other divisions, such other content being controlling as to the agreements hereunder.
22. Section References. References in this Guaranty to Sections are intended to refer to Sections of this Guaranty, unless otherwise specifically stated.
23. Singular and Plural. Words used herein in the singular, where the context so permits, will be deemed to include the plural and vice versa. The definitions of words in the singular herein will apply to such words when used in the plural where the context so permits and vice versa.
24. CHOICE OF LAW; WAIVER OF JURY TRIAL AND CERTAIN OTHER RIGHTS; SUBMISSION TO JURISDICTION; SERVICE OF PROCESS FOR ALL LOAN DOCUMENTS. Section 10.19 of the Credit Agreement is incorporated herein by reference and made a part hereof; *provided*, that each reference to “Borrower” therein shall be deemed a reference to CFPFCD, references to the “Agreement” therein shall be deemed a reference to this Guaranty, and references to Section 10.19 shall be deemed a reference to this Section 24.
25. [Intentionally Omitted].
26. Enforcement Costs. Section 10.22 of the Credit Agreement is incorporated herein by reference and made a part hereof; *provided*, that references to the “Agreement” therein shall be deemed a reference to this Guaranty.
27. [Intentionally Omitted].
28. Receipt and Review of Loan Documents. CFPFCD acknowledges and agrees that it has been provided with a copy of the Credit Agreement and each of the other Loan Documents it has requested and has reviewed such documents with counsel of its own choosing.
29. Entire Agreement. This Guaranty constitutes the entire agreement among the parties pertaining to the subject matter hereof, and supersedes in their entirety any and all written or oral agreements previously existing between the parties with respect to such subject matter.
30. Signature. A faxed, scanned or photocopied signature to this Guaranty shall be deemed equivalent to an original signature.

[REMAINDER OF PAGE BLANK; SIGNATURE PAGE TO FOLLOW.]

IN WITNESS WHEREOF, CFPFCD has caused this Guaranty of Payment and Completion to be duly executed and delivered by its duly authorized official as of the Effective Date.

**CFPFCD:**

THE CITY OF FOLEY PUBLIC FACILITIES  
COOPERATIVE DISTRICT, an Alabama public  
corporation

By: \_\_\_\_\_  
Name:  
Title:



**CERTIFICATION REGARDING DEBARMENT, SUSPENSION,  
INELIGIBILITY AND VOLUNTARY EXCLUSION**

**LOWER TIER COVERED TRANSACTIONS**

**Date: [May \_\_], 2014**

**Instructions for Certification**

A. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

B. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

C. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

D. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transactions, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. The prospective lower tier participant may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

E. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 C.F.R. part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

F. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

G. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 C.F.R. part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each

participant may, but is not required to, check the List of Parties excluded from Federal Procurement and Nonprocurement Programs.

H. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

I. Except for transactions authorized under Paragraph E of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 C.F.R. part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION,  
INELIGIBILITY AND VOLUNTARY EXCLUSION**

**LOWER TIER COVERED TRANSACTIONS**

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

[REMAINDER OF PAGE BLANK; SIGNATURE PAGE TO FOLLOW.]

IN WITNESS WHEREOF, the undersigned has caused this Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion to be duly executed as of the date first written above.

**JPMORGAN CHASE BANK, N.A.**, a national  
banking association

By: \_\_\_\_\_  
Name: Wanda Clark  
Title: Authorized Officer

IN WITNESS WHEREOF, the undersigned has caused this Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion to be duly executed as of the date first written above.

**CHASE COMMUNITY EQUITY, LLC**, a  
Delaware limited liability company

By: \_\_\_\_\_  
Name: Wanda Clark  
Title: Vice President

IN WITNESS WHEREOF, the undersigned has caused this Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion to be duly executed as of the date first written above.

**CHASE NMTC CAFFM INVESTMENT FUND,  
LLC**, a Delaware limited liability company

By: Chase Community Equity, LLC, a Delaware  
limited liability company, its sole member

By: \_\_\_\_\_

Name: Wanda Clark

Title: Vice President

IN WITNESS WHEREOF, the undersigned has caused this Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion to be duly executed as of the date first written above.

**PACESETTER CDE, INC.**, a Texas corporation

By: \_\_\_\_\_

Name: Giovanni Capriglione

Title: Chief Compliance Officer

IN WITNESS WHEREOF, the undersigned has caused this Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion to be duly executed as of the date first written above.

**PACESETTER CDE X, LLC**, a Texas limited liability company

By: Pacesetter CDE, Inc., a Texas corporation, its managing member

By: \_\_\_\_\_  
Name: Giovanni Capriglione  
Title: Chief Compliance Officer

IN WITNESS WHEREOF, the undersigned has caused this Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion to be duly executed as of the date first written above.

**COASTAL ALABAMA FARMERS' AND FISHERMEN'S MARKET, INC.**, an Alabama nonprofit corporation

By: \_\_\_\_\_  
Name:  
Title:

IN WITNESS WHEREOF, the undersigned has caused this Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion to be duly executed as of the date first written above.

**THE CITY OF FOLEY PUBLIC FACILITIES  
COOPERATIVE DISTRICT**, an Alabama public  
corporation

By: \_\_\_\_\_  
Name:  
Title:



**CREDIT AGREEMENT**

**by and between**

**PACESETTER CDE X, LLC,  
a Texas limited liability company,  
as Lender**

**and**

**COASTAL ALABAMA FARMERS' AND FISHERMEN'S MARKET, INC.,  
an Alabama non-profit corporation,  
as Borrower**

**Dated as of [June \_\_], 2014**

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## CREDIT AGREEMENT

THIS CREDIT AGREEMENT (together with all addenda, exhibits and schedules attached hereto, as originally executed and as hereafter amended or restated from time-to-time in writing, this “Agreement”), dated as of [June \_\_], 2014 (the “Effective Date”), is made by and between COASTAL ALABAMA FARMERS’ AND FISHERMEN’S MARKET, INC., an Alabama non-profit corporation (“Borrower”), and PACESETTER CDE X, LLC, a Texas limited liability company (“Lender”). Borrower and Lender agree as follows:

### ARTICLE 1 GENERAL TERMS

Section 1.1 Terms Defined Above. The terms defined in the preamble hereto have the meanings set forth therein.

Section 1.2 Certain Definitions. As used in this Agreement, the following terms will have the meanings indicated, unless the context otherwise requires:

(a) “Accountants” means Novogradac & Company LLP, or such other firm of independent certified public accountants as may be engaged by Borrower with the prior written consent of Lender, which consent may be granted or withheld in Lender’s reasonable discretion.

(b) “Addendum” means the New Markets Tax Credit Program Addendum to Credit Agreement attached as Exhibit A.

(c) “Affiliate” means, when used with reference to a specified Person: (i) any Person that, directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with the specified Person, including by means of a non-member manager; (ii) any Person that is an officer of, manager of, member of, partner in, or trustee of, or serves in a similar capacity with respect to the specified Person or of which the specified Person is an officer, manager, member, partner, or trustee, or with respect to which the specified Person serves in a similar capacity; (iii) any Person that, directly or indirectly, is the beneficial owner of, or controls, 10% or more of any class of equity securities of, or otherwise has a substantial beneficial interest (10% or more) in, the specified Person, or of which the specified Person is directly or indirectly the owner of 10% or more of any class of equity securities, or in which the specified Person has a substantial beneficial interest (10% or more); and (iv) any relative or spouse of the specified Person. As used in this definition, the term “control” (including the terms “controlled by” and “under common control with”) means the direct or indirect possession of power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

(d) “Allocatee” means Pacesetter CDE, Inc., a Texas corporation.

(e) “Architect” means [\_\_\_\_\_], a \_\_\_\_\_], the architect selected by Borrower to design the Improvements and supervise construction of the Improvements.

(f) “Asset Management Fee” has the meaning set forth in Section 5.6(a)(ii).

(g) “Assignment Agreement” means that certain Assignment Agreement, dated as of the Effective Date, by and between the City and Borrower. [*Note – additional Assignment Agreement may be needed if Construction Contracts have been executed by CFPFCD.*]

(h) “Assignment of Contracts” means that certain Assignment of Contracts, dated as of the Effective Date, by Borrower in favor of Lender, assigning the Plans & Specifications and the Construction Contracts to Lender, as the same may be amended, assigned, restated, modified, or supplemented from time to time.

(i) “Audit and Tax Reimbursements” has the meaning set forth in Section 5.6(a)(ii).

(j) “Bank” means JPMorgan Chase Bank, N.A., a national banking association.

(k) “Business Day” means any day other than a Saturday, Sunday or any day on which commercial banks in Baldwin County, Alabama, or New York, New York, are authorized or required to be closed.

(l) “CCE” means Chase Community Equity, LLC, a Delaware limited liability company, the sole member and manager of Fund, and its successors and assigns.

(m) “CFPFCD” means The City of Foley Public Facilities Cooperative District, an Alabama public corporation.

(n) “CFPFCD Reserve Account” means that certain account established by CFPFCD with Bank into which certain funds will be deposited on the Effective Date to secure CFPFCD’s obligations (i) to Lender under the Guaranty of P&C and the Environmental Indemnity and (ii) to Bank under the QALICB NMTC Indemnity.

(o) “CFPFCD Reserve Account P&C Agreement” means that certain Account Pledge and Control Agreement (CFPFCD Reserve Account), dated as of the Effective Date, by and among CFPFCD, Bank, and Lender, as the same may be amended, assigned, restated, modified, or supplemented from time to time.

(p) “City” means the City of Foley, Alabama, a political subdivision of the State of Alabama.

(q) “Client Information” has the meaning set forth in Section 10.24(a).

(r) “Closing Transfers Memorandum” means that certain Closing Transfers Memorandum, dated as of the Effective Date, to which Lender, Bank, CCE, and Borrower (together with certain other parties) are parties.

(s) “CMDA” means that certain Construction Monitoring and Disbursement Agreement, dated as of the Effective Date, by and among Bank, Disbursement Agent, Borrower, and Lender, as the same may be amended, assigned, restated, modified, or supplemented from time to time.

(t) “Code” means the Internal Revenue Code of 1986, as amended.

(u) “Collateral” means the Land, the Improvements, and all other collateral described in the Collateral Documents.

(v) “Collateral Documents” has the meaning set forth in Section 3.1 and collectively includes, without limitation, all guaranties and all security agreements, financing agreements, mortgages, deeds of trust, pledges, assignments creating and perfecting security interests, liens or encumbrances in the assets of Borrower in favor of Lender to secure the Indebtedness, as the same may be amended, assigned, restated, modified, or supplemented from time to time.

(w) “Community Benefits Agreement” means that certain Community Benefits Agreement, dated as of the Effective Date, by and among Allocatee, Lender and Borrower, a copy of which is attached hereto as Exhibit F, as the same may be amended, assigned, restated, modified, or supplemented from time to time.

(x) “Completion of the Improvements” has the meaning set forth in Section 5.14(a).

(y) “Compliance Period” means the period beginning on the Effective Date and ending on the seventh anniversary of the Effective Date.

(z) “Construction Completion Schedule” has the meaning set forth in Section 5.14(a).

(aa) “Construction Contracts” means, collectively, the following agreements relating to the Improvements contemplated by the Plans & Specifications: (i) all agreements between Borrower and Architect, including without limitation the [\_\_\_\_\_] (as defined on Exhibit A to the Assignment of Contracts); (ii) all agreements between Borrower and General Contractor, including without limitation the [\_\_\_\_\_] (as defined on Exhibit A to the Assignment of Contracts); [(iii) all agreements between Borrower and Program Manager, including without limitation the Program Management Agreement (as defined on Exhibit A to the Assignment of Contracts)][**NOTE – TBD**]; and (iv) all other contracts with any other contractors, suppliers and construction service providers.

(bb) “Construction Documents” means, collectively, the Plans & Specifications, Construction Contracts, all guaranties, warranties and undertakings under any of the foregoing, and all permits and licenses used in connection with the Improvements.

(cc) “Contamination” has the meaning set forth in the Environmental Indemnity.

(dd) “Controlled Affiliate” has the meaning set forth in Section 4.11(c).

(ee) “Covered Person” or “Covered Persons” has the meaning set forth in Section 5.12(b).

(ff) “Debt” means any and all amounts and/or liabilities owing from time to time by Borrower or CFPFCD, as applicable, to any Person, including Lender, direct or indirect, liquidated or contingent, now existing or hereafter arising, including without limitation: (i) indebtedness for borrowed money; (ii) unfunded portions of commitments for money to be borrowed; (iii) the amounts of all standby and commercial letters of credit and bankers acceptances, matured or unmatured, issued on behalf of Borrower; and (iv) guaranties of the obligations of any other Person, whether direct or indirect, whether by agreement to purchase the indebtedness of any other Person or by agreement for the furnishing of funds to any other Person through the purchase or lease of goods, supplies or services (or by way of stock purchase, capital contribution, advance or loan) for the purpose of paying or discharging the indebtedness of any other Person, or otherwise.

(gg) “Deed of Trust” means that certain Deed of Trust, Assignment of Rents and Leases and Fixture Filing, dated as of the Effective Date, made by Borrower to the trustee named therein, for the benefit of Lender, as the same may be amended, assigned, restated, modified, or supplemented from time to time, together with the appropriate UCC-1 Financing Statements.

(hh) “Default” means the occurrence of any of the events specified in Section 8.1, whether or not any requirement for notice or lapse of time has been satisfied.

(ii) “Development Expense Schedule” means the detailed line item cost breakdown of land costs, construction costs (hard costs) and all other related indirect development costs, including without limitation, interest expense, design and engineering costs, construction management, inspection and development fees, loan fees, expense payments and reimbursements, and costs for permits and approvals (soft costs) submitted to and approved by Disbursement Agent and Lender.

(jj) “Disbursement Account” means that certain account established by Borrower with Bank into which deposits shall be made from time to time in accordance with the CMDA and the other Loan Documents, which account is more particularly described in the Disbursement Account P&C Agreement.

(kk) “Disbursement Account P&C Agreement” means that certain Account Pledge and Control Agreement (Disbursement Account), dated as of the Effective Date, by and among Borrower, Bank, and Lender, as the same may be amended, assigned, restated, modified, or supplemented from time to time.

(ll) “Disbursement Agent” means JPMorgan Chase Bank, N.A., a national banking association, in its capacity as “Disbursement Agent” under the CMDA, or any successor thereto appointed by Lender in accordance with the CMDA.

(mm) “Embargoed Person” has the meaning set forth in Section 4.11(c).

(nn) “Environmental Indemnity” means that certain Joint and Several Hazardous Substance Guaranty and Indemnification Agreement, dated as of Effective Date, given by Borrower and CFPFCD in favor of Lender, as the same may be amended, assigned, restated, modified, or supplemented from time to time.

(oo) “ERISA” means the Employee Retirement Income Security Act of 1974, as amended, and the regulations promulgated thereunder from time to time.

(pp) “Event of Default” has the meaning set forth in Section 8.1, *provided*, that any requirement for notice or lapse of time or any other condition precedent has been satisfied.

(qq) “Executive Order” has the meaning set forth in Section 4.11(c).

(rr) “Force Majeure” means strikes, lockouts, inability to procure materials (but not including changes in cost thereof), inability despite due diligence to obtain required permits, power failure, acts of God, actions or failures to act on the part of Governmental Authorities preventing performance, civil commotion, fire, unavoidable casualty, unusually severe weather conditions which decrease the efficiency of construction by 50% or more, or other causes not caused by and beyond the control of the party performing an obligation hereunder; *provided*, that unless such party gives notice of the Force Majeure event to the other party to this Agreement describing the particulars of the Force Majeure event, including, but not limited to, the nature of the occurrence and its expected duration within 20 calendar days of the initial date of such event, then such event shall not constitute Force Majeure event hereunder.

(ss) “Foreign Assets Control Regulations” has the meaning set forth in Section 4.11(c).

(tt) “Fund” means Chase NMTC CAFFM Investment Fund, LLC, a Delaware limited liability company.

(uu) “Fund OA” means that certain Operating Agreement of Fund, dated as of the Effective Date, by CCE as the sole member and manager, as the same may be amended, restated, modified, or supplemented.

(vv) “Funding Agreement” means that certain Funding Agreement, dated as of the Effective Date, by and between the City and CFPFCD, as the same may be amended, restated, modified, or supplemented.

(ww) “General Contractor” means Sun Coast Builders, Inc., an Alabama corporation, the contractor selected by Borrower to construct the Improvements.

(xx) “Governmental Authority” means any, federal, state, local, municipal, or other governmental or quasi governmental authority or self regulatory organization of any nature (including any agency, authority, branch, department, board, commission, court, tribunal or other entity, instrumentality or body politic exercising governmental or quasi governmental powers) or exercising, or entitled or purporting to exercise, any administrative, executive, judicial, legislative, enforcement, regulatory or taxing authority or power.

(yy) “Guaranty of P&C” means that certain Guaranty of Payment and Completion, dated as of the Effective Date, given by CFPFCD in favor of Lender, as the same may be amended, assigned, restated, modified, or supplemented from time to time.

(zz) “Hazardous Substance” has the meaning set forth in the Environmental Indemnity.

(aaa) “Improvements” means the new construction of a farmer’s market and a wholesale distribution facility located on the Land pursuant to the Plans & Specifications, which, upon completion, will be used for the Intended Use, and all related improvements, equipment, and fixtures.

(bbb) “Indebtedness” means, collectively, all of Borrower’s obligations under the Notes, including without limitation, all unpaid principal of and accrued and unpaid interest and premiums, if any, on each Note; all accrued and unpaid fees and all indebtedness, expenses, reimbursements and indemnities, including any recapture payments, of Borrower to Lender or any indemnified party under the Loan Documents; and any and all other present and future loans, extensions of credit, liabilities and/or obligations of every nature and kind whatsoever that Borrower may now or in the future owe to or incur in favor of Lender, pursuant to the Loan Documents.

(ccc) “Intended Use” means the intended use of the Improvements and Property, specifically, a farmer’s market and a wholesale distribution facility.

(ddd) “Land” means, collectively, those certain tracts of land located at 20733 Miflin Road, Foley, Alabama 36535 and 410 East Section Avenue, Foley, Alabama 36535, (more particularly described in the Collateral Documents), on which the Improvements will be constructed.

(eee) “Lease” or “Leases” means all leases, subleases, licenses, rental agreements and other agreements of any kind, whether oral or written, pursuant to which a party holds rights of occupancy of any of the Property, whether each is existing as of the Effective Date or at any time hereafter entered into, together with all guarantees of and security for any tenant’s, subtenant’s, lessee’s or sublessee’s performance thereunder, and all amendments, extensions, renewals and modifications thereto.

(fff) “Lender Reserve Account” means that certain account established by Borrower with Bank into which certain proceeds of Loan A2 and Loan B2 will be deposited on the Effective Date to

secure amounts due by Borrower to Lender under Section 5.6(a).

(ggg) “Lender Reserve Account P&C Agreement” means that certain Account Pledge and Control Agreement (Lender Reserve Account), dated as of the Effective Date, by and among Borrower, Bank and Lender, as the same may be amended, assigned, restated, modified, or supplemented from time to time.

(hhh) “Lien” means, as applied to the property of any Person, any interest in such property securing an obligation owed by, or a claim made against, the Person, whether such interest is based on jurisprudence, statute or contract, and including, but not limited to, (i) the lien or security interest arising from a mortgage, mortgage deed, deed of trust, encumbrance, assignment, pledge, security agreement, conditional sale or trust receipt or a lease, consignment or bailment for security purposes; (ii) any arrangement, express or implied, under which any property of such Person is transferred, sequestered or otherwise identified for the purpose of causing the same to act as security for the payment of any Debt or the performance of any other obligation in priority to the payment of the general unsecured creditors and/or subsequent creditors of such Person; or (iii) the filing of, or any agreement to give, any financing statement under the Uniform Commercial Code of any Governmental Authority or its equivalent in any jurisdiction. The term “Lien” will include reservations, exceptions, encroachments, easements, servitudes, usufructs, rights-of-way, covenants, conditions, restrictions, leases and other title exceptions and encumbrances affecting property. For the purposes of this Agreement, Borrower will be deemed to be the owner of any property which it has accrued or holds subject to a conditional sale agreement, financing lease or other arrangement pursuant to which title to the property has been retained by or vested in some other Person for security purposes.

(iii) “Loan” means either Loan A or Loan B, as the context requires.

(jjj) “Loans” means, collectively, Loan A and Loan B.

(kkk) “Loan A” means that certain loan being made by Lender to Borrower in accordance with the terms of the Loan Documents on the Effective Date in the original principal amount of \$[5,950,400]. Loan A is evidenced by, among other things, the Loan A Note.

(lll) “Loan B” means that certain loan being made by Lender to Borrower in accordance with the terms of the Loan Documents on the Effective Date in the original principal amount of \$[2,049,600]. Loan B is evidenced by, among other things, the Loan B Note.

(mmm) “Loan A Note” means that certain QLICI Loan A Note, executed on the Effective Date by Borrower and payable to the order of Lender, and any and all amendments, extensions, modifications, supplements, restatements, refinancings, substitutions or renewals thereto or thereof.

(nnn) “Loan B Note” means that certain QLICI Loan B Note, executed on the Effective Date by Borrower and payable to the order of Lender, and any and all amendments, extensions, modifications, supplements, restatements, refinancings, substitutions or renewals thereto or thereof.

(ooo) “Loan Documents” means this Agreement, the Notes, CMDA, Collateral Documents, Environmental Indemnity, QALICB NMTC Indemnity, Closing Transfers Memorandum, [Assignment Agreement,] and all other instruments and documents, now existing or hereafter existing, executed by Borrower, CFPFCD, and/or any other Person in connection with either Loan, as the same may be amended, assigned, restated, modified, or supplemented from time to time.

(ppp) “Material Adverse Effect” means, with respect to any Person, a material adverse effect upon such Person’s business, assets, liabilities, condition (financial or otherwise), results of operations or business prospects. With respect to Borrower and CFPFCD, a “Material Adverse Effect” shall include, but not be limited to, a material adverse effect upon Borrower’s or CFPFCD’s ability to perform its obligations under the Loan Documents or upon the enforceability of such obligations against Borrower or CFPFCD.

(qqq) “New Markets Tax Credits” or “NMTC” means the credits against federal income taxes under Section 45D of the Code.

(rrr) “New Markets Tax Credit Program” means the program of the Internal Revenue Service and the Community Development Financial Institutions Fund, a wholly-owned governmental corporation within the United States Department of Treasury, related to the tax credits able to be claimed pursuant to Section 45D of the Code.

(sss) “Note” means either the Loan A Note or Loan B Note.

(ttt) “Notes” means, collectively, the Loan A Note and Loan B Note.

(uuu) “OFAC” means the Office of Foreign Assets Control of the United States Department of the Treasury or any successor agency thereof.

(vvv) “Operating Accounts” means all bank accounts maintained by or for Borrower other than the Disbursement Account and the Lender Reserve Account.

(www) “Operating Budget” means the annual budget for the operation and management of the Property (including, but not limited to, capital expenditure projections for at least three years beyond the next fiscal year), as applicable, and prepared by a Person deemed acceptable to Lender in its sole and absolute discretion.

(xxx) “Patriot Act” has the meaning set forth in Section 4.11(a).

(yyy) “Permitted Encumbrances” has the meaning set forth in Section 6.2.

(zzz) “Person” means any individual, sole proprietorship, general or limited partnership, limited liability partnership, joint venture, trust, unincorporated organization, association, corporation, limited liability company, institution, entity, party or government (whether territorial, national, federal, state, county, city, municipal or otherwise, including, without limitation, any instrumentality, division, agency, body or department thereof), or any other form of entity.

(aaaa) “Plan” means any plan subject to Title IV of ERISA and maintained by Borrower, or any such plan to which Borrower is required to contribute on behalf of its employees.

(bbbb) “Plans & Specifications” means the final plans and specifications for the Improvements, including architectural drawings, engineering drawings, landscape drawings and all other plans and specifications, all as amended from time to time, subject to the terms of this Agreement.

(cccc) “Program Manager” means HOAR Program Management, LLC, a Delaware limited liability company, the program manager selected by Borrower to supervise construction of the Improvements.

(dddd) “Prohibited Person” means any Person (i) listed in the Annex to the Executive Order or identified pursuant to Section 1 of the Executive Order; (ii) that is owned or controlled by, or acting for or on behalf of, any Person listed in the Annex to the Executive Order or identified pursuant to the provisions of Section 1 of the Executive Order; (iii) with whom Lender is prohibited from dealing or otherwise engaging in any transaction by any terrorism or anti-laundering law, including the Executive Order; (iv) who commits, threatens, conspires to commit, or support “terrorism” as defined in the Executive Order; (v) who is named as a “Specially designated national or blocked person” on the most current list published by the OFAC at its official website, at <http://www.treas.gov/offices/enforcement/ofac/sdn/t11sdn.pdf> or any replacement website or other replacement official publication of such list; or (vi) who is owned or controlled by a Person listed above in clause (iii) or (v).

(eeee) “Projections” means the financial projections, dated as of the Effective Date and certified by Novogradac & Company LLP, issued in connection with the transactions contemplated in the Loan Documents.

(ffff) “Project” means the construction of the Improvements.

(gggg) “Project Budget” means the budget for Project, including, without limitation, all items on the Development Expense Schedule. The applicable page(s) of the Projections evidencing the Project Budget are attached hereto as Exhibit B.

(hhhh) “Property” means the Land and the Improvements.

(iiii) “Punch List Items” means details of construction, decoration and mechanical and electrical adjustment which in the aggregate are minor in character and do not materially interfere with the operation of the affected portions of the Improvements for the Intended Use.

(jjjj) “QALICB NMTC Indemnity” means that certain QALICB Indemnification Agreement, dated as of the Effective Date, by and among Borrower and CFPFCD (as the “Indemnitors” thereunder) and Bank, as the same may be amended, assigned, restated, modified, or supplemented from time to time.

(kkkk) “Solvent” means, when used with respect to any Person on a particular day, that on such date (i) the fair value of the property of such Person is greater than the total amount of liabilities, including without limitation, contingent liabilities, of such Person, (ii) the present fair salable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (iii) such Person is able to realize upon its assets and pay its debts and other liabilities, contingent obligations and other commitments as they mature in the ordinary course of business, (iv) such Person does not intend to, and does not believe that it will, incur debts and liabilities beyond such Person’s ability to pay as such debts and liabilities mature, and (v) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person’s property would constitute unreasonably small capital after giving due consideration to the prevailing practice in the industry in which such Person is engaged. In computing the amount of contingent liabilities at any time, it is intended that such liabilities will be computed at the amount which, in light of all of the facts and circumstances existing at such time, represents the amount that can be reasonably expected to become an actual or matured liability.

(llll) “Substantially Complete” mean the full completion of the Improvements except for Punch List Items and minor items that do not materially interfere with the full operation of all of the Intended Use of the Property.

(mmmm) “Term Sheet” means that certain Chase New Markets Tax Credit Group NMTC Equity Investment Term Sheet, dated March 10, 2014, by and among CCE, Allocatee, Borrower and CFPFCD, as amended by each of the parties’ agreement to the terms set forth in that certain email from counsel from CCE dated April 26, 2014 with the subject line “CAFFM – amendment to Term Sheet; next steps.”

(nnnn) “Trading With the Enemy Act” has the meaning set forth in Section 4.11(c).

(oooo) “UCC” means the Uniform Commercial Code as adopted by the State in which the Project is located or the State in which any collateral of Borrower or CFPFCD (including without limitation the Collateral) is located, as applicable, as the same may be amended, restated, replaced, supplemented, or otherwise modified from time to time.

(pppp) “United Line of Credit” means that certain line of credit being extended by United Bank to CFPFCD in the aggregate principal amount of \$400,000 on August 12, 2013.

(qqqq) “United Line of Credit Documents” means all loan or credit agreements, promissory notes (including but not limited to the United Line of Credit Promissory Note), indemnity agreements, guaranty agreements, and all other instruments and documents, now existing or hereafter existing, executed by Borrower, CFPFCD, the City, and/or any other Person in connection with the United Line of Credit, as the same may be amended, assigned, restated, modified, or supplemented from time to time in accordance with Section 5.22.

(rrrr) “United Line of Credit Promissory Note” means that certain Promissory Note, dated as of October 4, 2013 and with a maturity date of October 4, 2014, by CFPFCD in favor of United Bank in the original principal amount of \$400,000.

Section 1.3 Accounting Terms. Unless otherwise specified herein, all accounting terms used herein will be interpreted, all accounting determinations hereunder will be made, and all financial statements required to be delivered hereunder will be prepared in accordance with generally accepted accounting principles as in effect from time to time, on a basis consistent (except for changes approved by independent public accountants for Borrower) with the most recent audited financial statements of Borrower.

## **ARTICLE 2 THE CREDIT**

### Section 2.1 Loans.

(a) *Agreement*. Subject to and upon the terms and conditions contained in this Agreement and the Notes and relying on the representations and warranties contained in the Loan Documents, Lender agrees to make the Loans to Borrower on the Effective Date.

(b) *Terms of Notes*. The terms of each Note are incorporated herein by reference, including, but not limited to, Section 4 (Interest Rate), Section 5 (Payment), Section 6 (Prepayment), and Section 15 (Usury Savings) thereof.

(c) *Single Advance*. On the Effective Date, the entire proceeds of the Loans shall be advanced and deposited into the Disbursement Account.

Section 2.2 Disbursements. On the Effective Date, certain proceeds of the Loans shall be disbursed out of the Disbursement Account by Disbursement Agent as reflected in the Closing Transfers Memorandum. Funds thereafter remaining in the Disbursement Account shall be disbursed by Disbursement Agent to Borrower (or directly to payees) in accordance with this Agreement and the CMDA.

Section 2.3 Business Days. If the date for any advance, payment, or disbursement hereunder falls on a day which is not a Business Day, then for all purposes of this Agreement the same shall be deemed to have fallen on the next following Business Day, and such extension of time shall in such case be included in the computation of payments of interest.

Section 2.4 Use of Proceeds. Borrower shall use the proceeds of the Loans solely to (a) pay or reimburse itself or others for predevelopment and other costs (including, without limitation, fees and expenses) paid prior to the Effective Date in connection with the Improvements (as reflected in the Closing Transfers Memorandum) or the transactions contemplated by the Loan Documents, (b) pay for hard and soft costs incurred in connection with the Improvements on and after the Effective Date in accordance with this Agreement and the CMDA, and (c) establish and fund the Lender Reserve Account.

Section 2.5 Method of Payment. All payments on the Loans shall be made, without setoff, deduction, or counterclaim, in immediately available funds to Lender.

### **ARTICLE 3 SECURITY FOR THE INDEBTEDNESS**

Section 3.1 Security. The Indebtedness shall be secured by the Collateral, which includes all property of Borrower of whatever nature. In furtherance thereof, Borrower shall assign to Lender or grant to Lender security interests in the Collateral, as the case may be, by (without limitation) the following documents and instruments:

(a) that certain Architect's Agreement and Consent to Assignment [and Collateral Assignment] of Contract and Plans, dated as of the Effective Date, by Architect in favor of Lender, as the same may be amended, assigned, restated, modified, or supplemented from time to time;

(b) Assignment of Contracts;

(c) CFPFCD Reserve Account P&C Agreement;

(d) Deed of Trust;

(e) Disbursement Account P&C Agreement;

(f) that certain General Contractor's Agreement and Consent to Assignment [and Collateral Assignment] of Contract, dated as of the Effective Date, by General Contractor in favor of Lender, as the same may be amended, assigned, restated, modified, or supplemented from time to time;

(g) Guaranty of P&C;

(h) Lender Reserve Account P&C Agreement;

(i) [that certain Program Manager’s Agreement and Consent to Assignment and Collateral Assignment of Contract, dated as of the Effective Date, by Program Manager in favor of Lender, as the same may be amended, assigned, restated, modified, or supplemented from time to time;]

(j) UCC-1 Financing Statements filed with the appropriate Governmental Authorities, and recorded among the appropriate land records, as the same may be amended, assigned, restated, modified, or supplemented from time to time; and

(k) any other instruments required by Lender from time to time to better or more completely establish or perfect Lender’s security interests in the Collateral, as the same may be amended, assigned, restated, modified, or supplemented from time to time.

Collectively, the agreements referenced in this Section 3.1 are referred to herein as the “Collateral Documents.”

#### **ARTICLE 4 REPRESENTATIONS AND WARRANTIES**

In order to induce Lender to enter into the Loan Documents, Borrower represents and warrants to Lender (which representations and warranties will survive the extensions of credit under this Agreement) that, as of the Effective Date:

Section 4.1 Existence, Power and Authorization.

(a) Borrower (i) is a nonprofit corporation, duly formed, legally existing and in good standing under the laws of the State of its formation; (ii) is duly authorized and empowered to execute, deliver and perform the Loan Documents to which it is a party; (iii) has duly and effectively taken all actions requisite for the due execution of the Loan Documents to which it is a party; (iv) does not need to obtain the consent or approval of any other Person, including without limitation, any Governmental Authority and/or any existing creditors of Borrower, that has not already been obtained to be able to execute, deliver and perform its obligations under the Loan Documents to which it is a party; (v) has reviewed the Loan Documents with its counsel and has had the opportunity to discuss the provisions thereof with Lender and Disbursement Agent prior to execution; (vi) acknowledges and agrees that the Loan Documents to which it is a party constitute valid and binding obligations of Borrower, enforceable in accordance with their terms (except that enforcement may be subject to any applicable bankruptcy, insolvency or applicable laws generally affecting the enforcement of creditors’ rights); and (vii) Borrower is in compliance with all of the affirmative and negative covenants contained in the Loan Documents to which it is a party.

(b) CFPFCD (i) is a public corporation, duly formed, legally existing and in good standing under the laws of the State of its formation; (ii) is duly authorized and empowered to execute, deliver and perform the Loan Documents to which it is a party; (iii) has duly and effectively taken all actions requisite for the due execution of the Loan Documents to which it is a party; (iv) does not need to obtain the consent or approval of any other Person, including without limitation, any Governmental Authority and/or any existing creditors of CFPFCD, that has not already been obtained to be able to execute, deliver and perform its obligations to under the Loan Documents to which it is a party; (v) has reviewed the Loan Documents with its counsel and has had the opportunity to discuss the provisions thereof with Lender and Disbursement Agent prior to execution; (vi) acknowledges and agrees that the Loan Documents to which it is a party constitute valid and binding obligations of CFPFCD, enforceable in accordance with their terms (except that enforcement may be subject to any applicable bankruptcy, insolvency or applicable

laws generally affecting the enforcement of creditors' rights); and (vii) CFPFCD is in compliance with all of the affirmative and negative covenants contained in the Loan Documents to which it is a party.

Section 4.2 No Legal Bar or Resultant Lien.

(a) Borrower's execution, delivery and performance of the Loan Documents does not and will not violate (i) any provisions of Borrower's organizational documents, (ii) any other contract, indenture or agreement to which Borrower is a party or by which any of its property may be bound, or (iii) any material provision of law, regulation, order, injunction, judgment, decree or writ to which Borrower or any of its property is subject. Further, the Loan Documents will not result in or require the creation or imposition of any Lien upon any property now owned or hereafter acquired by Borrower other than as contemplated by the Loan Documents.

(b) CFPFCD's execution, delivery and performance of the Loan Documents does not and will not violate (i) any provisions of CFPFCD's organizational documents, (ii) any other contract, indenture or agreement to which CFPFCD is a party or by which any of its property may be bound, or (iii) any material provision of law, regulation, order, injunction, judgment, decree or writ to which CFPFCD or any of its property is subject. Further, the Loan Documents will not result in or require the creation or imposition of any Lien upon any property now owned or hereafter acquired by CFPFCD other than as contemplated by the Loan Documents.

Section 4.3 Financial Condition; Solvency; Other Information.

(a) Borrower represents and warrants the following to Lender and Disbursement Agent:

(i) All financial statements of Borrower (if any) delivered to Lender or Disbursement Agent: (A) are true, correct and complete in all material respects and (B) fairly and accurately present the financial condition of the parties for whom such financial statements were submitted as of the date of such financial statements, and there are no contingent liabilities not disclosed thereby that had or could reasonably be expected to have a Material Adverse Effect on or to Borrower.

(ii) Since the close of the period covered by the latest financial statements delivered to Lender or Disbursement Agent with respect to Borrower (if applicable), no event has occurred that has caused or could reasonably be expected to cause a Material Adverse Effect on or to Borrower.

(iii) As of the Effective Date, no condition exists or, to the knowledge of Borrower, is threatened, that could reasonably be expected (A) to cause a Material Adverse Effect on or to Borrower or (B) to cause a Default or an Event of Default under this Agreement or any other Loan Document to which Borrower is a party.

(iv) Borrower (A) is Solvent and (B) after consummation of the transactions contemplated by the Loan Documents (including the making of the Loans), and after giving effect to all obligations incurred by Borrower in connection herewith, will be Solvent.

(v) All information, reports, papers and data given to Lender or Disbursement Agent by Borrower pursuant to the Loan Documents and in connection with Borrower's application for the Loans are accurate and correct in all material respects.

(vi) All financial projections given to Lender or Disbursement Agent by Borrower were prepared in good faith based on facts and circumstances existing at the time of preparation and were accurate in all material respects. No information, exhibit or report furnished by Borrower to Lender or Disbursement Agent in connection with the negotiation of the Loan Documents contains any material misstatement of fact or fails to state a material fact or any fact necessary to make the statements contained therein not materially misleading.

(vii) Borrower owes no outstanding Debt other than (A) the Indebtedness to Lenders under the Loan Documents and (B) such other permissible Debt as set forth in Section 6.1.

(viii) Borrower has determined that its reasonable working capital needs, based on its projected cash flow, are an amount equal to up to 12 months of operating expenses, and such amount shall be retained by Borrower on the Effective Date. This working capital is intended to be used for operations and improvements to the Project within 12 months of the Effective Date.

(ix) The fair market value of the Project, after the Completion of the Improvements, is not expected to be less than the aggregate amount of all indebtedness secured by the Project.

(x) Borrower reasonably expects that it will have sufficient sources of funds to complete the construction of the Project. The original aggregate principal amount of the Loans and all other sources of funds do not exceed the Development Expense Schedule incurred or to be incurred by Borrower to construct the Project.

(b) CFPFCD represents and warrants the following to Lender and Disbursement Agent:

(i) All financial statements of CFPFCD delivered to Lender or Disbursement Agent: (A) are true, correct and complete in all material respects and (B) fairly and accurately present the financial condition of the parties for whom such financial statements were submitted as of the date of such financial statements, and there are no contingent liabilities not disclosed thereby that had or could reasonably be expected to have a Material Adverse Effect on or to CFPFCD.

(ii) Since the close of the period covered by the latest financial statements delivered to Lender or Disbursement Agent with respect to CFPFCD, no event has occurred that has caused or could reasonably be expected to cause a Material Adverse Effect on or to CFPFCD.

(iii) As of the Effective Date, no condition exists or, to the knowledge of CFPFCD, is threatened, that could reasonably be expected (A) to cause a Material Adverse Effect on or to CFPFCD or (B) to cause a Default or an Event of Default under this Agreement or any other Loan Document to which CFPFCD is a party.

(iv) CFPFCD (A) is Solvent and (B) after consummation of the transactions contemplated by the Loan Documents, and after giving effect to all obligations incurred by CFPFCD in connection herewith, will be Solvent.

(v) All information, reports, papers and data given to Lender or Disbursement Agent by CFPFCD pursuant to the Loan Documents and in connection with CFPFCD's application for the Loans are accurate and correct in all material respects.

(vi) All financial projections given to Lender or Disbursement Agent by CFPFCD were prepared in good faith based on facts and circumstances existing at the time of preparation and were accurate in all material respects. No information, exhibit or report furnished by

CFPFCD to Lender or Disbursement Agent in connection with the negotiation of the Loan Documents contains any material misstatement of fact or fails to state a material fact or any fact necessary to make the statements contained therein not materially misleading.

(vii) CFPFCD owes no outstanding Debt other than the indebtedness reflected in the financial statements provided to Lender in accordance with this Agreement. In addition, CFPFCD has executed the Guaranty of P&C, pursuant to which CFPFCD has, among other things, guaranteed the payment and performance of the Guaranteed Obligations (as defined therein) and agreed to make the Equity Contribution (as defined therein).

#### Section 4.4 Taxes and Governmental Charges.

(a) Borrower has filed all federal, state and any other tax returns and reports required to be filed and have paid all taxes, assessments, fees and other governmental charges levied upon it or upon its property or income which are due and payable, including interest and penalties, or has provided adequate reserves for the payment thereof.

(b) CFPFCD has filed all federal, state and any other tax returns and reports required to be filed and have paid all taxes, assessments, fees and other governmental charges levied upon it or upon its property or income which are due and payable, including interest and penalties, or has provided adequate reserves for the payment thereof.

#### Section 4.5 Defaults.

(a) Borrower is not in default under any indenture, mortgage, deed of trust, agreement or other instrument to which it is a party or by which it is bound, including without limitation, the Construction Documents, which default had or could reasonably be expected to have a Material Adverse Effect on or to it.

(b) CFPFCD is not in default under any indenture, mortgage, deed of trust, agreement or other instrument to which it is a party or by which it is bound, including without limitation, the Construction Documents, which default had or could reasonably be expected to have a Material Adverse Effect on or to it.

#### Section 4.6 Compliance with the Law.

(a) Borrower (i) is not in violation of any law, judgment, decree, order, ordinance, or governmental rule or regulation to which it or its property is subject or (ii) except as otherwise set forth in this Agreement, has obtained each license, permit, franchise and/or other governmental authorization necessary to the ownership of any of its property or the conduct of its business; in each case, which violation or failure had or could reasonably be expected to have a Material Adverse Effect on or to it.

(b) CFPFCD (i) is not in violation of any law, judgment, decree, order, ordinance, or governmental rule or regulation to which it or its property is subject or (ii) except as otherwise set forth in this Agreement, has obtained each license, permit, franchise and/or other governmental authorization necessary to the ownership of any of its property or the conduct of its business; in each case, which violation or failure had or could reasonably be expected to have a Material Adverse Effect on or to it.

#### Section 4.7 ERISA.

(a) Borrower is in compliance in all material respects with the applicable provisions of ERISA, and no “reportable event”, as such term is defined in Section 4043 of ERISA, has occurred with respect to any Plan of Borrower.

(b) CFPFCD is in compliance in all material respects with the applicable provisions of ERISA, and no “reportable event”, as such term is defined in Section 4043 of ERISA, has occurred with respect to any Plan of CFPFCD.

Section 4.8 Title to Collateral.

(a) Borrower (i) has good and merchantable title to the Collateral, free of all liens and encumbrances except Permitted Encumbrances and (ii) except as otherwise set forth in this Agreement, has not conveyed or agreed to convey or encumber any Collateral in any way except in favor of Lender pursuant to the Loan Documents.

(b) The Property has, or will have prior to the Completion of the Improvements, all necessary rights-of-way, easements and servitudes for ingress and egress to a public street.

Section 4.9 Environmental Matters.

(a) Borrower represents and warrants the following to Lender and Disbursement Agent: (i) to the best of its knowledge, information and belief, no part of the Land constitutes “wetlands”, as such term is defined by applicable federal law and no permit is needed for the Project from the U.S. Army Corps of Engineers or any other Governmental Authority not disclosed in writing to Lender and Disbursement Agent; (ii) except as may be set forth in the Environmental Indemnity, it has no knowledge of any deposit, storage, disposal, burial, discharge, spillage, uncontrolled loss, seepage or filtration of Hazardous Substances at, upon, under or within the Land; and (iii) it has not caused or permitted to occur, and shall not permit to exist, any condition which may cause Contamination at, upon, under or within the Land or on any contiguous real estate.

(b) CFPFCD represents and warrants the following to Lender and Disbursement Agent: (i) to the best of its knowledge, information and belief, no part of the Land constitutes “wetlands”, as such term is defined by applicable federal law and no permit is needed for the Project from the U.S. Army Corps of Engineers or any other Governmental Authority not disclosed in writing to Lender and Disbursement Agent; (ii) except as may be set forth in the Environmental Indemnity, it has no knowledge of any deposit, storage, disposal, burial, discharge, spillage, uncontrolled loss, seepage or filtration of Hazardous Substances at, upon, under or within the Land; and (iii) it has not caused or permitted to occur, and shall not permit to exist, any condition which may cause Contamination at, upon, under or within the Land or on any contiguous real estate.

Section 4.10 Governmental Requirements. The Property is in compliance with all current governmental requirements affecting the Property, including, without limitation, zoning and land use regulations, building codes and all restrictions and requirements imposed by applicable Governmental Authorities with respect to the Improvements and the Intended Use of the Property.

Section 4.11 Patriot Act Representations and Covenants.

(a) *Notification.* Lender hereby notifies Borrower that pursuant to the requirements of Section 326 of the USA Patriot Act of 2001 31 U.S.C. Section 5318 (the “Patriot Act”), it is required to obtain, verify and record information that identifies the Borrower, which information includes the name

and address of the Borrower and other information that will allow Lender to identify Borrower in accordance with the Patriot Act.

(b) *Government Regulation.* Borrower shall not (i) be or become subject at any time to any law, regulation, or list of any Governmental Authority (including, without limitation, the U.S. Office of Foreign Asset Control list) that prohibits or limits Lender from making any advance or extension of credit to Borrower or from otherwise conducting business with Borrower, or (ii) fail to provide documentary and other evidence of Borrower's identity as may be requested by Lender at any time to enable Lender to verify Borrower's identity or to comply with any applicable law or regulation, including, without limitation, Section 326 of the Patriot Act.

(c) *Representations.*

(i) Neither Borrower nor, to the knowledge of Borrower, any of its respective Affiliates over which Borrower exercises management control (each, a "Controlled Affiliate") is a Prohibited Person, and Borrower and, to the knowledge of Borrower, such Controlled Affiliates are in compliance with all applicable orders, rules and regulations of OFAC.

(ii) Neither Borrower nor, to the knowledge of Borrower, any of its respective Affiliates: (A) is targeted by United States or multilateral economic or trade sanctions currently in force; (B) is owned or controlled by, or acts on behalf of, any Person that is targeted by United States or multilateral economic or trade sanctions currently in force; (C) is a Prohibited Person; or (D) is named, identified or described on any list of Persons with whom United States Persons may not conduct business, including any such blocked persons list, designated nationals list, denied persons list, entity list, debarred party list, unverified list, sanctions list or other such lists published or maintained by the United States, including OFAC, the United States Department of Commerce or the United States Department of State.

(iii) None of Borrower's assets constitute property of, or are beneficially owned, directly or indirectly, by any Person targeted by economic or trade sanctions under Federal law, including, but not limited to, the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701 et seq., The Trading with the Enemy Act, 50 U.S.C. App. 1 et seq. (the "Trading With the Enemy Act"), any of the foreign assets control regulations of the Treasury (31 C.F.R., Subtitle B, Chapter V, as amended) (the "Foreign Assets Control Regulations") or any enabling legislation or regulations promulgated thereunder or executive order relating thereto (which includes, without limitation, (A) Executive Order No. 13224, effective as of September 24, 2001, and relating to Blocking Property and Prohibiting Transaction With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)) (the "Executive Order") and (B) the Patriot Act, if the result of such ownership would be that either Loan made by Lender would be in violation of law ("Embargoed Person"); (C) no Embargoed Person has any interest of any nature whatsoever in Borrower if the result of such interest would be that such Loan would be in violation of law; (D) Borrower has not engaged in business with Embargoed Persons if the result of such business would be that either Loan made by Lender would be in violation of law; and (E) neither Borrower nor any Controlled Affiliate (i) is or will become a "blocked person" as described in the Executive Order, the Trading With the Enemy Act or the Foreign Assets Control Regulations or (F) engages or will engage in any dealings or transactions, or be otherwise associated, with any such "blocked person". For purposes of determining whether or not a representation is true or a covenant is being complied with under this Section 4.11(c)(iii), Borrower shall not be required to make any investigation into (1) the ownership of publicly traded stock or other publicly traded securities or (2) the beneficial ownership of any collective investment fund.

Section 4.12 New Markets Tax Credit Program Representations and Warranties. Borrower's representations and warranties contained in the Addendum are incorporated into this Agreement in full.

Section 4.13 Litigation.

(a) No litigation or proceedings are pending, or to the best of Borrower's knowledge are threatened, against Borrower which had or could reasonably be expected to have a Material Adverse Effect on or to it. Without limiting the foregoing, there are no pending or, to the best of Borrower's knowledge, threatened proceedings or actions to revoke, invalidate, rescind or modify any building or other permits heretofore issued with respect to the Property.

(b) No litigation or proceedings are pending, or to the best of CFPFCD's knowledge are threatened, against CFPFCD which had or could reasonably be expected to have a Material Adverse Effect on or to it. Without limiting the foregoing, there are no pending or, to the best of CFPFCD's knowledge, threatened proceedings or actions to revoke, invalidate, rescind or modify any building or other permits heretofore issued with respect to the Property.

Section 4.14 Plans & Specifications. To the best of Borrower's knowledge, the Plans & Specifications comply in all material respects (and the Improvements, when completed in accordance with the Plans & Specifications, will comply in all material respects) with all applicable federal, state and local laws, statutes, codes, ordinances, orders, rules, and regulations and interpretations thereof, including those relating to erosion control, land use and development, subdivision of property, environmental matters, zoning, fire safety, and structural, architectural or other features of buildings or other improvements to property or the uses thereof (including those regulating or requiring access or special facilities for disabled persons).

Section 4.15 Improvements. To the best of Borrower's knowledge, neither the Improvements nor the Intended Use of the Property will violate (a) any applicable federal, state or local law, statute, code, ordinance, order, rule, or any regulation or interpretation thereof, or (b) any zoning, land use or historical site plans, approvals or other requirements, building permits, restrictions of record, or any agreement affecting the Improvements or any part thereof, including without limitation, the Construction Documents and any Lease. Without limiting the foregoing, all authorizations, approvals, consents, licenses, permits, exemptions of, registrations and filings with, and reports to a Governmental Authority required to complete the Project in accordance with the Plans & Specifications have been obtained prior to the commencement of any work for which such Governmental Approval is required. All permits and licenses required for the operation of the Property that cannot be obtained until the Improvements are completed can be obtained if the Improvements are completed in accordance with the Plans & Specifications.

Section 4.16 Change Orders. Borrower has provided copies of all change orders (if any) permitting changes to the Plans & Specifications approved by Borrower or any other Person on or before the Effective Date.

Section 4.17 Reaffirmations. Each request for a disbursement of the proceeds of the Loans under the CMDA shall constitute an express representation, warranty and affirmation to Lender and Disbursement Agent, as of the date of each such request, that each of the representations and warranties of this Article 4 are true and correct in all materials aspects as of the date of each such request and on the date of the actual disbursement of proceeds of the Loans, except as may be otherwise disclosed to Lender and Disbursement Agent in writing.

## **ARTICLE 5 AFFIRMATIVE COVENANTS**

Unless the prior written consent to the contrary is obtained from Lender (which consent may be granted or withheld in Lender's sole and absolute discretion), Borrower will at all times comply with the covenants contained in this Article 5, from the Effective Date and for so long as any part of the Indebtedness is outstanding.

Section 5.1 Performance of Obligations. Borrower will repay each Loan in accordance with the Loan Documents. Each of Borrower and CFPFCD will do and perform every act required of it under the applicable Loan Documents at the time or times and in the manner specified in the Loan Documents.

Section 5.2 Financial Statements and Reports; Tax Returns; NMTC Reports. Borrower will deliver, or cause to be delivered, to Lender (unless otherwise noted):

(a) *Borrower's Quarterly Financial Statements*. As soon as available and in any event within 60 calendar days after the end of each fiscal calendar quarter of Borrower, Borrower's internally prepared statements of financial position and related statements of activities and cash flows for that quarter and year-to-date, certified correct by the chief financial officer of Borrower.

(b) *Borrower Annual Financial Statements*. (i) As soon as available and in any event within 90 calendar days after the end of each fiscal year of Borrower, Borrower's audited statement of financial position and related statements of activities and cash flows as of the end of and for such year, together with an unqualified opinion of an independent public accountant acceptable to Lender; and (ii) as soon as available and in any event within 60 calendar days after the end of each fiscal year of Borrower, Borrower's internally prepared annual statements of financial position and related statements of activities and cash flows as of the end of and for such year, certified correct by the chief financial officer of Borrower. At least 15 calendar days prior to the deadline set forth in subsection (i), Borrower will deliver its draft audited statements to Lender.

(c) *Borrower Tax Returns*. As soon as available and in any event within 90 calendar days after the end of each fiscal year, copies of federal income tax returns, with all supporting schedules, of Borrower (if applicable) for the prior fiscal year, *provided*, if Borrower files for an extension of time to file a tax return, it will deliver to the Lender (i) within 15 calendar days of filing, a copy of such extension, and (ii) as soon as available and in any event within 15 calendar days of the earlier of filing its tax return for the prior fiscal year or the extended due date, a copy of its filed tax return. In addition, as soon as available and in any event within 90 calendar days after the end of each fiscal year, copies of the Form 990 of Borrower.

(d) *CFPFCD's Quarterly Financial Statements*. As soon as available and in any event within 60 calendar days after the end of each fiscal calendar quarter of CFPFCD, CFPFCD's internally prepared statements of financial position and related statements of activities and cash flows for that quarter and year-to-date, certified correct by the chief financial officer of CFPFCD.

(e) *CFPFCD Annual Financial Statements*. (i) As soon as available and in any event within 90 calendar days after the end of each fiscal year of CFPFCD, CFPFCD's audited statements of financial position and related statements of activities and cash flows as of the end of and for such year, together with an unqualified opinion of an independent public accountant acceptable to Lender; and (ii) as soon as available and in any event within 60 calendar days after the end of each fiscal year of CFPFCD, CFPFCD's internally prepared annual statements of financial position and related statements of activities and cash flows as of the end of and for such year, certified correct by the chief financial officer of CFPFCD. At least 15 calendar days prior to the deadline set forth in subsection (i), CFPFCD will deliver its draft audited statements to Lender.

(f) *CFPFCD Tax Returns.* As soon as available and in any event within 90 calendar days after the end of each fiscal year, copies of federal income tax returns, with all supporting schedules, of CFPFCD for the prior fiscal year, *provided*, if CFPFCD files for an extension of time to file a tax return, it will deliver to the Lender (i) within 30 calendar days of filing, a copy of such extension, and (ii) as soon as available and in any event within 30 calendar days of the earlier of filing its tax return for the prior fiscal year or the extended due date, a copy of its filed tax return. In addition, as soon as available and in any event within 90 calendar days after the end of each fiscal year, copies of the Form 990 of CFPFCD.

(g) *Compliance Certificates; Leases.* (i) Within 20 calendar days after the end of each *fiscal quarter* of Borrower, (A) a NMTC program compliance certificate substantially in the form as Attachment 1 to the Addendum, (B) a QALICB questionnaire substantially in the form as Exhibit C and (C) copies of all Leases and all amendments and modifications to Leases executed during the preceding fiscal quarter (including all Leases and amendments and modifications to Leases deemed consented to by Lender in accordance with Section 6.3(c) and (d)), and (ii) within 20 calendar days after the end of each *fiscal year* of Borrower, an annual New Market Tax Credit Program Construction Contractor and Subcontractor Survey with respect to each contractor logging billable hours attributable to work on the Project substantially in the form attached as Exhibit D.

(h) *Litigation and Disputes.* Not later than 60 calendar days after the end of each fiscal year of Borrower, a status report of any and all litigation or disputes threatened or instituted against or affecting Borrower, CFPFCD, the Project or Property, including, but not limited to, such litigation or disputes that fall within the scope of Section 5.10.

(i) *NMTC Reports.* Promptly upon the reasonable request of Lender and in any event within 15 Business Days of such request, all information, reports and certifications required from Borrower and/or CFPFCD from time to time by Lender as Lender deems reasonably necessary to demonstrate compliance with any law, regulation or other guidance applicable to the New Markets Tax Credit Program, as such reporting requirements may change from time to time, including without limitation, (i) Section 45D of the Code and the treasury regulations and guidance issued pursuant to Section 45D of the Code and (ii) all information as specified in the Addendum and Attachment 1 thereto.

(j) *Local Taxes.* As soon as available and in any event within 90 calendar days after the end of each calendar year, a schedule of all local taxes paid by Borrower during such calendar year (including, without limitation, sales/use tax, lodging tax, beverage tax, tourism tax and property tax), along with proof of payment.

(k) *Operating Budget.* Not later than 30 days prior to the start of each fiscal year of Borrower, Borrower will submit the Operating Budget for such fiscal year.

(l) *Borrower's Insurance Policies.* As soon as available and in any event within 60 calendar days after the end of each fiscal year of Borrower, a listing of insurance policies providing coverage for the Property, detailing the type, level of coverage, deductibles, insurance carrier, and term, along with the current Accord certificates showing the same.

(m) *Form 1023.* As soon as available and in any event within 15 calendar days after submission to or receipt from the Internal Revenue Service, as applicable, all correspondence or materials relating to Borrower's Form 1023, Application for Recognition of Exemption Under Section 501(c)(3).

(n) *Community Benefits Agreement.* In accordance with Section [ ] of the Community Benefits Agreement, on or before [ ] of each year starting in 2015, Borrower will provide an

annual Community Benefits Report to Lender in the form attached as Exhibit [A] to the Community Benefits Agreement. *[Note – Pacesetter to circulate draft.]*

(o) *Additional Information.* Promptly upon the reasonable request of Lender and in any event within 15 Business Days of such request, such other information regarding the business and affairs and financial condition of Borrower and/or CFPFCD as Lender may reasonably request. Upon the occurrence and continuance of an Event of Default, Borrower acknowledges and agrees that Lender may contact any third party, including, without limitation, any lien holders on any collateral, any insurance company insuring any collateral, and any financial institution with which Borrower maintains a loan or depository relationship, to obtain information relating to the ownership, use, operation, maintenance or construction of the collateral. Borrower hereby authorizes each such third party to release such information to Lender and agrees to execute any documents reasonably requested by Lender to enable Lender to obtain such information.

(p) *GAAP.* All balance sheets, other financial reports, and budgets referred to in this Section 5.2 shall be in such detail as Lender may reasonably request and will conform to generally accepted accounting principles applied on a consistent basis.

Section 5.3 Taxes and Other Liens. Borrower will pay and discharge (or bond over) promptly when due all taxes, assessments and governmental charges or levies imposed upon it or upon its income or upon the Property as well as all claims of any kind (including claims for labor, materials, supplies and rent) which, if unpaid, would have or could reasonably be expected to have a Material Adverse Effect on or to Borrower or CFPFCD, and might become a Lien upon any or all of the Property; *provided*, that Borrower will not be required to pay any such tax, assessment, charge, levy or claim if the amount, applicability or validity thereof is contested in good faith by appropriate proceedings diligently conducted and Borrower sets up adequate reserves for the same in accordance with generally accepted accounting principles and meets all bonding or deposit requirements therefor. If requested by Lender, Borrower will furnish Lender with proof of payment acceptable to Lender of all taxes, assessments, charges, levies or claims not later than the date on which penalties or Liens might attach thereto. In the event that Borrower contests any such taxes, assessments, charges, levies or claims in accordance with this Section 5.3, if requested by Lender, Borrower will furnish Lender with a reasonably detailed, written description of the contested matter and all actions taken by Borrower in connection with such contest.

Section 5.4 Maintenance of Existence and Property.

(a) Borrower will maintain its corporate existence and rights.

(b) CFPFCD will maintain its corporate existence and rights.

(c) Borrower will maintain the Property in good order and condition at all times and make all repairs, replacements, additions, betterments and improvements to the Property to the extent necessary to keep the Property in full operation and in neat, clean and secure condition.

Section 5.5 Further Assurances. Borrower will promptly (and in no event later than 30 calendar days after notice from Lender is received) cure any defects in the creation, execution and delivery of the Loan Documents. Borrower, at its expense, will promptly execute and deliver to Lender upon request all such other and further documents, agreements and instruments in compliance with or accomplishment of the covenants and agreements of Borrower in the Loan Documents, or to correct any omissions in the Loan Documents, or more fully state the security obligations set out herein or in any of the Loan Documents.

Section 5.6 Payment/Reimbursement of Lender's and Fund's Fee and Expenses.

(a) *Lender's Fees and Expenses.*

(i) On the Effective Date, Borrower shall use a portion of the proceeds of the Loan to establish and fund the Lender Reserve Account in the amount of \$[168,000] and such account shall be pledged to Lender pursuant to the Lender Reserve Account P&C Agreement. Funds from the Lender Reserve Account shall be used to pay (A) portions of Asset Management Fee as set forth below and (B) portions of the Audit and Tax Reimbursements as set forth below, and such funds shall be released in accordance with the Lender Reserve Account P&C Agreement.

(ii) Borrower shall pay to Lender an asset management fee in the amount of \$10,000 per year (prorated for any partial year) (the "Asset Management Fee"). The Asset Management Fee shall be paid quarterly (in equal payments of \$2,500) on the [first] day of each March, June, September, and December of each year, commencing on the Effective Date and ending on the Maturity Date (as that term is defined in any of the Notes). [All payments of the Asset Management Fee made during the Compliance Period shall be made from the Lender Reserve Account with the exception of the [\_\_\_\_\_, 2021] payment of which only \$[\_\_\_] shall be paid from the Lender Reserve Account and the remaining amount owed shall be paid from other funds of Borrower]. Commencing in the year 2014, Borrower shall pay Lender the amount of \$24,000 each year to reimburse Lender for accounting, audit and tax expenses incurred ("Audit and Tax Reimbursements") promptly upon receipt of an invoice for such expenses. The Audit and Tax Reimbursements shall be paid from the Lender Reserve Account for the years 2014 through 2019. In the event that the annual accounting, audit and tax expenses of Lender exceed the estimated amounts set forth in this Section 5.6(a)(i), Borrower shall pay the excess of such expenses to Lender upon receipt of an invoice therefrom in accordance with Section 5.6(c). Lender shall authorize Bank to release such amounts as are needed to pay such fees and expenses as set forth above pursuant to the Lender Reserve Account P&C Agreement.

(b) *Fund Operating Expenses.* As of the Effective Date, Fund does not anticipate incurring any Extraordinary Expenses (as defined in the Fund OA). However, if such expenses are incurred, and if the distributions from Lender are insufficient to pay such expenses, Lender may invoice Borrower for such expenses, and Borrower shall pay such invoice to Lender within 10 Business Days of receipt thereof.

(c) *Payment of Invoices.* Any amounts due directly from Borrower as set forth in this Section 5.6 shall be payable within 20 calendar days of the receipt of an invoice therefor. The failure by Borrower to pay any such invoice within such 20 calendar day period (i) shall be governed by Section 8.1(j) and (ii) interest on such outstanding amounts shall accrue at a rate of interest per annum equal to 3% (computed for the actual number of days elapsed on the basis of a 360-day year).

Section 5.7 Insurance; Casualty or Condemnation.

(a) Borrower shall procure and maintain for the benefit of Lender, or cause to be so procured and maintained, original paid up insurance policies from companies licensed as regulated insurers in the State in which the Project is located and reasonably acceptable to Lender, in amounts, in form and substance, and with expiration dates acceptable to Lender, providing the types of insurance on the Property as set forth in Exhibit E.

(b) All of the policies listed in Exhibit E shall contain an agreement by the insurer not to cancel or amend the policies without giving Lender at least 30 calendar days' prior written notice of such insurer's intention to do so, except in case of non-payment, in which case, at least 10 calendar days' prior written notice shall be required.

(c) Borrower shall deliver original or certified copies of policies to Lender as of the Effective Date, and Borrower shall deliver original or certified renewal policies (or insurance certificates from Borrower's insurance servicer) to Lender with satisfactory evidence of payment not less than 15 calendar days in advance of the expiration date of the existing policy or policies. Borrower shall provide Lender with endorsements or other evidence reasonably acceptable to Lender, evidencing the required coverages, additional insured/mortgagee/loss payee status, waiver of subrogation and other requirements of this Section 5.7. In the event Borrower should, for any reason whatsoever, fail to keep the Property or any part thereof so insured, or to keep said policies so payable, or fail to deliver to Lender the original or certified policies of insurance and the renewals thereof upon demand, then Lender may, but shall not be obligated to, have such insurance effected in such amounts and by such companies as Lender may deem proper and may pay the premiums therefor. Borrower shall reimburse Lender upon demand for the amount of premium paid.

(d) Borrower agrees to notify Lender immediately in writing of any material fire or other casualty to or accident involving the Property, whether or not such fire, casualty or accident is covered by insurance, and of any institution of condemnation proceedings or notice of any pending or threatened condemnation proceedings. Borrower further agrees to notify promptly Borrower's insurance company and to submit an appropriate claim and proof of claim to the insurance company if the Property is damaged or destroyed by any fire or other casualty.

(e) Lender is hereby authorized and empowered, at its option, to collect and receive the proceeds from any policy or policies of insurance or from any condemnation proceedings or compromise in lieu thereof, and each insurance company and Governmental Authority is hereby authorized and directed to make payment of all such losses directly to Lender instead of to Borrower and Lender jointly. Net proceeds thereof shall be applied in accordance with Section 5.7(f), (g), and/or (h).

(f) If there is a fire or casualty loss which damages all or a portion of the Improvements, or any condemnation affecting the Property, then the proceeds of the insurance or condemnation shall be deposited into a cash collateral account with Bank, for the benefit of Lender and such proceeds will be applied to the payment of the cost of restoration of the Improvements upon such terms and conditions as Lender may deem necessary or appropriate in its reasonable discretion; *provided*, that (i) restoration is reasonably feasible in Lender's reasonable discretion and such insurance proceeds must be adequate to cover the cost of restoration of the Improvements, or if the proceeds are insufficient, then Borrower shall give Lender such adequate protection and assurance as Lender may, in its reasonable discretion require, that additional funds will be provided by Borrower in order to complete the restoration of the Improvements, (ii) Borrower shall have provided Lender with such adequate protection and assurance as Lender may, in its reasonable discretion require, that Borrower has sufficient funds on hand to pay interest and principal on the Loans during the restoration period, (iii) no Event of Default has occurred and is continuing, and (iv) the priority of the Collateral Documents in the Property is not impaired. In connection with any restoration of the Improvements, Borrower shall provide Lender with a detailed cost breakdown showing by line item all costs projected for such restoration and a revised and updated cost breakdown shall be furnished by Borrower to Lender on a monthly basis.

(g) If not all of the conditions set forth in Section 5.7(f)(i)-(iv) are satisfied, then any insurance or condemnation proceeds resulting from a partial or total loss of the Improvements may, at Lender's option, be applied to the payment of the Indebtedness or to full or partial restoration of the Improvements. If such insurance or condemnation proceeds are not sufficient to pay the Indebtedness in full, Lender shall have the right to accelerate the maturity of the Indebtedness and proceed against Borrower and/or the remainder of the Collateral; and if the proceeds exceed the amount necessary to pay the Indebtedness in full, then such excess shall be paid to Borrower.

(h) If there is a fire or casualty loss or condemnation which causes the proceeds of any rental loss or business interruption insurance to be payable, such proceeds shall be paid to Lender and (i) so long as no Event of Default has occurred and is continuing, applied to the payment of the installments of principal and interest on the Loans as they become due, ad valorem real estate taxes and special assessments and operating expenses of the Property, as they respectively become due, or (ii) if an Event of Default has occurred and is continuing, applied to the payment of the Indebtedness as Lender may elect in its sole and absolute discretion.

(i) Coverages for commercial property, builders risk, boiler and machinery, windstorm, earthquake, business interruption / loss of rents, or other property coverages, and any umbrella coverages with respect to any of the foregoing, shall include a non contributory standard mortgagee clause or its equivalent in a form satisfactory to Lender, or the statutory mortgagee clause, if any, required in the State in which the Project is located, or a mortgagee's loss payable endorsement, in favor of Lender, as reasonably acceptable to Lender.

#### Section 5.8 Accounts and Records.

(a) Borrower will keep books of record and accounts in which true and correct entries will be made as to all material matters of all dealings or transactions in relation to its business and activities, in accordance with generally accepted accounting principles, consistently applied except for changes in accounting principles or practices with which the independent certified public accountants for Borrower concur.

(b) CFPFCD will keep books of record and accounts in which true and correct entries will be made as to all material matters of all dealings or transactions in relation to its business and activities, in accordance with generally accepted accounting principles, consistently applied except for changes in accounting principles or practices with which the independent certified public accountants for CFPFCD concur.

#### Section 5.9 Right of Inspection.

(a) Borrower will permit any officer, employee or agent of Lender to visit and inspect any of the property of Borrower (including the Property), examine the books of record and accounts of Borrower, take copies and extracts therefrom, and discuss the affairs, finances and accounts of Borrower with Borrower's officers, accountants and/or auditors, all at such reasonable times and on reasonable prior notice and as often as Lender may reasonably request.

(b) CFPFCD will permit any officer, employee or agent of Lender to visit and inspect any of the property of CFPFCD, examine the books of record and accounts of CFPFCD, take copies and extracts therefrom, and discuss the affairs, finances and accounts of CFPFCD with CFPFCD's officers, accountants and/or auditors, all at such reasonable times and on reasonable prior notice and as often as Lender may reasonably request.

(c) All inspections under this Section 5.9 shall be subject to confidentiality provisions of Section 10.23, with all books of record and accounts of Borrower and CFPFCD specifically deemed "confidential" thereunder.

#### Section 5.10 Notice of Certain Events.

(a) Borrower will promptly notify Lender if Borrower learns of the occurrence of any event which constitutes a Default hereunder, together with a reasonably detailed, written statement by a responsible officer of Borrower or CFPFCD, as applicable, of the steps being taken to cure the Default.

(b) Borrower will promptly notify Lender of any change in operations of Borrower or CFPFCD that would have or could reasonably be expected to have a Material Adverse Effect on or to Borrower or CFPFCD, or any material change in the cost or scope of the Improvements.

(c) Borrower will promptly notify Lender of any litigation or dispute threatened or instituted against or affecting Borrower, CFPFCD, the Project or Property that, in the event of any adverse ruling or decision, would have or could reasonably be expected to have (i) a Material Adverse Effect on or to Borrower or CFPFCD or (ii) any material change in the operations of the Project or Property. In the event of such litigation, Borrower or CFPFCD, as applicable, will cause such proceedings to be contested in good faith and, in the event of any adverse ruling or decision, Borrower or CFPFCD, as applicable, will prosecute all allowable appeals.

(d) Lender may (but shall not be obligated to), without prior notice to Borrower, commence, appear in, or defend any action or proceeding purporting to affect the Loans, or the respective rights and obligations of Lender and Borrower pursuant to this Agreement or any of the other Loan Documents. Lender may (but shall not be obligated to) pay all necessary fees and expenses (including, without limitation, reasonable attorneys', accountants', experts', consultants' fees, disbursements and court costs prior to trial, at trial and on appeal) incurred in connection with such proceedings or actions, which Borrower shall repay to Lender upon demand.

#### Section 5.11 ERISA Compliance.

(a) Borrower shall comply with all of the applicable funding and other requirements of ERISA as such requirements relate to the Plans of Borrower.

(b) CFPFCD shall comply with all of the applicable funding and other requirements of ERISA as such requirements relate to the Plans of CFPFCD.

#### Section 5.12 Indemnification.

(a) Borrower shall pay or cause to be paid, on demand, all of Lender's reasonable costs, expenses, and fees, including but not limited to, the reasonable legal fees and expenses of counsel to Lender, together with all recording fees and taxes, title insurance premiums, appraiser fees, environmental audit fees and insurance consulting fees, any broker's fees, survey costs and other costs and expenses related to the preparation, negotiation, execution, delivery, filing, and recording of the Loan Documents (or any amendment or modification thereof) and the closing and funding of the Loans. In addition, Borrower shall pay, on demand by Lender, all reasonable expenses, charges, costs and fees (including reasonable attorneys' and accountants' fees and expenses) in connection with the servicing, administration, enforcement interpretation, and collection of the Loans and the Loan Documents, and in the preservation and protection of Lender's rights hereunder and thereunder. Without limitation Borrower shall pay all costs and expenses, including reasonable attorneys' and accountants' fees, incurred by Lender in any case or proceeding against Borrower under the United States Bankruptcy Code (or any law succeeding or replacing any of the same).

(b) Borrower agrees to indemnify, protect, hold harmless and defend Lender, Bank, Disbursement Agent, CCE, Lender's members or partners (as applicable), the respective Affiliates of each of the foregoing, and the respective directors, managers, members, partners, officers, employees, lenders,

representatives, consultants, and attorneys of each of the foregoing (each, a “Covered Person” and collectively, the “Covered Persons”), from and against any and all losses, liabilities, suits, actions, obligations, fines, damages, judgments, penalties, claims, causes of action, charges, costs and expenses (including, without limitation, reasonable attorneys’, accountants’, experts’, consultants’ fees, disbursements and court costs prior to trial, at trial and on appeal) which are imposed on, incurred or paid by, or asserted against a Covered Person by reason or on account of, or in connection with, (i) any Default or Event of Default under any of the Loan Documents; (ii) any breach of any representation or covenant of Borrower or CFPFCD in any of the Loan Documents; (iii) any gross negligence, fraud or willful misconduct of Borrower, CFPFCD, or any Affiliate thereof or any of their respective directors, managers, members, partners, officers, employees, representatives, consultants, or attorneys; (iv) the development, redevelopment, operation or financing of the Property; (v) any accident, injury, death or damage to any Person or property occurring in, on or about the Property or any street, drive, sidewalk, curb or passageway adjacent thereto; (vi) any Specified NMTC Recapture Event as defined in the QALICB NMTC Indemnity; (vii) any claim asserted by any Person (including, but not limited to, any consultant) with respect to the payment of any fees, costs or expenses alleged to be owed thereto by Borrower or any Affiliate thereof relating to the closing of the Loans or the Fund making a “qualified equity investment” (as such term is used in Section 45D of the Code) in Lender; and (viii) any claim arising from the ownership, occupancy or use of the Property or any other Collateral (including without limitation any other real property owned, managed or leased by Borrower or CFPFCD) and any business conducted by Borrower or CFPFCD, including without limitation claims by or on behalf of contractors, sub contractors, neighbors, tenants, and community groups. Notwithstanding the foregoing, Borrower shall not have any liability for losses, liabilities, suits, actions, obligations, fines, damages, judgments, penalties, claims, causes of action, charges, costs and expenses of a Covered Person caused by the gross negligence, fraud, breach or willful misconduct of or by such Covered Person.

(c) Any amount payable to a Covered Person under this Section 5.12 shall be due and payable upon demand therefor and receipt by Borrower of a statement setting forth in reasonable detail the amount claimed and the basis therefor. Borrower’s obligations under this Section 5.12 shall not be affected by the absence or unavailability of insurance covering the same or by the failure or refusal of any insurance carrier to perform any obligation on its part under any such policy of insurance. If any claim, action or proceeding is made or brought which is subject to the indemnity set forth in this Section 5.12, Borrower shall resist or defend against the same, in its own name or, if necessary, in the name of the applicable Covered Person, by attorneys for Borrower’s insurance carrier (if the same is covered by insurance) approved by the applicable Covered Person or otherwise by attorneys retained by Borrower and approved by the applicable Covered Person.

(d) Any and all amounts due to Lender under this Section 5.12 not paid in accordance with Section 5.12(c) shall immediately and without prior notice be added to the principal amount of the Notes and secured by the Loan Documents.

(e) All obligations set forth in this Section 5.12 shall survive the making and repayment of the Indebtedness, foreclosure of the Deed of Trust or acceptance by Lender or its successors or assigns of a deed in lieu of foreclosure.

#### Section 5.13 Compliance with Laws and Covenants.

(a) Borrower will observe and comply in all material respects with all laws, statutes, codes, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, certificates, franchises, permits, licenses, authorizations, directions and requirements (including without limitation any of the foregoing relating to environmental standards or controls) of all Governmental Authorities applicable to Borrower or the Property.

(b) CFPFCD will observe and comply in all material respects with all laws, statutes, codes, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, certificates, franchises, permits, licenses, authorizations, directions and requirements (including without limitation any of the foregoing relating to environmental standards or controls) of all Governmental Authorities applicable to CFPFCD.

Section 5.14 Construction Covenants. In addition to the covenants, representations, and warranties of Borrower otherwise set forth in the Loan Documents, Borrower hereby agrees that, so long as any part of the Indebtedness is outstanding, unless compliance shall have been waived in writing by Lender (or Disbursement Agent on behalf of Lender subject to the CMDA) in such party's reasonable discretion, Borrower shall at all times comply with the following covenants:

(a) Commencement and Completion of the Improvements.

(i) Borrower will (A) cause the Project to be prosecuted with diligence and continuity after the Effective Date in accordance with the Plans & Specifications, (B) promptly correct or cause to be corrected any defect in the Improvements, any material departure in the Project from the Plans & Specifications, requirements of any Governmental Authorities, or any encroachment by any part of the Improvements or any other structure located on the Property on any building line, easement, property line, or restricted area, (C) undertake and guarantee to Lender that the Improvements will be completed in a good and workmanlike manner in accordance with the Plans & Specifications, (D) promptly notify Lender of any Lien that Borrower has knowledge of filed by General Contractor, Program Manager, Architect, any subcontractor, supplier or laborer, and (E) promptly notify Lender that Borrower has knowledge that General Contractor has failed to pay any subcontractor any amounts due following the funding of any advance for the payment of same.

(ii) Notwithstanding anything to the contrary in this Agreement, the Improvements shall not be deemed to be Substantially Complete (the "Completion of the Improvements") until (A) they shall contain all equipment, furnishings and fixtures required for the Intended Use of the Property and the Improvements and/or which may be required by Governmental Authorities and/or by any law, regulation or rule of any Governmental Authority, (B) permanent certificates of occupancy and all other necessary certificates, licenses, consents and other approvals of Governmental Authorities have been issued or made with respect to the Improvements (subject to Section 8.1(e), temporary certificates of occupancy (if applicable) may be provided instead of permanent certificates of occupancy), and (C) title to the Property is clear and no liens or encumbrances exist against the Property other than Permitted Encumbrances and liens and encumbrances previously approved in writing by Lender.

(iii) Borrower shall cause the Project to proceed according to the schedule of work contained in the Construction Documents ("Construction Completion Schedule"), and in any event, shall cause Completion of the Improvements to occur on or before [\_\_\_\_ \_], 2014.

(iv) Borrower may not change the Construction Completion Schedule.

(v) Borrower shall cause satisfaction of all conditions precedent to final Funds Release as set forth in Section 3.11 of the CMDA and completion of all Punch List Items to occur not later than 60 calendar days following the date of Completion of the Improvements. Section 3.6 of the CMDA (Construction Consultant; Other Consultants) is incorporated herein by this reference.

(b) Project Budget and Development Expense Schedule. Borrower has submitted to Lender the Project Budget and Development Expense Schedule. The total amount of the Development Expense Schedule shall not exceed the amount set forth in the Projections. Proceeds of the Loans shall not be used in violation of the sublimits as are set forth in the Project Budget, subject to the CMDA. Changes in the Project Budget may be made only in accordance with the following:

(i) Section 3.8 of the CMDA is incorporated herein by this reference.

(ii) No reallocations to or from the Disbursement Account may be made without Lender's prior written consent in each instance, which consent may be granted or withheld in Lender's sole and absolute discretion. There shall be no reallocations from the Lender Reserve Account or the CFPFCD Reserve Account.

(c) Change Orders. On or after the Effective Date, Borrower will not (i) cause or permit any changes in the Plans & Specifications except pursuant to a change order approved in writing by Lender and Architect (or such other architect or engineer approved by Lender who prepared the original Plans & Specifications), or (ii) make any change in any contract or subcontract without the prior written consent of Lender, which consent may be granted or withheld in Lender's reasonable discretion; *provided*, that change orders submitted on or after the Effective Date that affect the cost of the Improvements less than \$50,000 in each case must be furnished to Lender but shall not require the prior written approval of Lender; *provided further, however*, that if any change order of less than \$50,000 submitted on or after the Effective Date when added to all other change orders of less than \$50,000 submitted on or after the Effective Date equals \$250,000 or more in change orders submitted on or after the Effective Date such latter change order and all future change orders shall require the prior written consent of Lender, which consent may be granted or withheld in Lender's reasonable discretion.

(d) Subcontractor Verifications; Materials Testing. Within 10 calendar days after request by Lender, Borrower shall furnish to Lender (i) a certificate, in form prescribed by Lender, signed by all subcontractors and material suppliers as to the existence, amount and retainage of any subcontracts and materials supplies agreements, and/or (ii) copies of all reports documenting field and laboratory tests on materials and construction quality to verify compliance of the work with the specified quality standards set forth in the Plans & Specifications.

(e) Off-Site Storage. Section 3.10(b) of the CMDA is incorporated herein by this reference.

Section 5.15 Accounts. Borrower shall maintain all Operating Accounts with Bank. Subject to the rights of Lender under the Disbursement Account P&C Agreement, Borrower shall maintain the Disbursement Account with Bank. Subject to the rights of Lender under the Lender Reserve Account P&C Agreement, Borrower shall maintain the Lender Reserve Account with Bank. Subject to the rights of Lender and Bank under the CFPFCD Reserve Account P&C Agreement, CFPFCD shall maintain the Lender Reserve Account with Bank.

Section 5.16 Appraisal. Lender shall have the right to have the Property appraised at Borrower's expense once during the term of the Loans (and at any time an Event of Default has occurred and is continuing) and at each request for an extension of either Loan. In addition, Lender shall have the right to have the Property appraised at Lender's expense at any time during the term of the Loans.

Section 5.17 New Markets Tax Credit Program Covenants. Borrower will comply with all of the covenants set forth in the Addendum, all of which are incorporated herein by this reference.

Section 5.18 Certain Taxes of Lender.

(a) If any income, franchise or withholding taxes are imposed on Lender or its members or partners, as applicable, in connection with the Loans, the Project, or any Event of Default by Borrower or CFPFCD under the Loan Documents, Lender shall provide reasonable notice to Borrower, including documentation evidencing the amount of taxes due. Borrower shall pay or reimburse Lender for any such taxes in accordance with Section 5.6 (with Lender distributing such payment or reimbursement to its appropriate member, if applicable).

(b) Notwithstanding Section 5.18(a), Borrower shall have no obligation to pay or reimburse any such income, franchise or withholding taxes imposed on Lender if (a) Lender is taxed as a corporation under Subchapter C of the Code, (b) such taxes when paid by Lender are allowed as a credit against amounts otherwise due by the members or partners, as applicable, of Lender, (c) such taxes are payable as a result of any asset management fees or other fees payable by Borrower to Lender in connection with its Loans, or (d) such taxes are payable as a result of Lender conducting any business other than making its Loans. Borrower's obligation to pay or reimburse such income, franchise or withholding taxes imposed on any member of Lender shall be subject to the same exclusions as described in this Section 5.18 with respect to Lender.

Section 5.19 Tax Treatment of Leases. Borrower shall treat each Lease as a lease (as opposed to a sale) of the applicable portion of the Property from Borrower to the lessee named therein for federal income tax purposes.

Section 5.20 [Intentionally Omitted].

Section 5.21 Organizational Matters. Borrower shall do all things necessary to observe organizational formalities and preserve its separate legal existence, and Borrower shall not amend, modify or otherwise change its organizational documents without the prior written consent of Lender (which consent may be granted or withheld in Lender's sole and absolute discretion).

Section 5.22 Compliance with United Line of Credit Documents. CFPFCD and the City shall comply at all times with the terms and conditions of the United Line of Credit Documents. The United Line of Credit Documents may not be amended, assigned, restated, modified or supplemented without the prior written consent of Lender (such consent in Lender's reasonable discretion); *provided, however*, the maturity date under the United Line of Credit Promissory Note (but not the aggregate amount thereof) may be extended without the prior written consent of Lender.

## **ARTICLE 6 NEGATIVE COVENANTS**

Unless Lender's prior written consent to the contrary is obtained (which consent may be granted or withheld in Lender's sole and absolute discretion), Borrower will at all times comply with the covenants contained in this Article 6, from the Effective Date and for so long as any part of the Indebtedness is outstanding.

Section 6.1 Debts, Guaranties and Other Obligations. Borrower will not incur, create, assume or in any manner become or be liable in respect of any Debt direct or contingent, except for:

- (a) the Indebtedness to Lender under the Loan Documents;
  - (b) unsecured trade payables from time to time incurred in the ordinary course of business;
- and

(c) taxes, assessments or other government charges which are not yet due or are being contested in good faith by appropriate action promptly initiated and diligently conducted, as long as Borrower has provided adequate reserves therefor as required by generally accepted accounting principles and has complied with all deposit and bonding requirements.

Section 6.2 Liens. Borrower will not create, incur, assume or permit to exist any Lien on any of its property (including the Property and any other real or personal property owned by Borrower, whether or not associated with the Project) now owned or hereafter acquired, except for (“Permitted Encumbrances”):

- (a) Liens in favor of Lender securing the Indebtedness;
- (b) Liens disclosed in the title insurance policy issued in favor of Lenders in connection with the origination of the Loans;
- (c) Liens for (i) taxes, assessments, or other governmental charges not yet due or which are being contested in accordance with Section 5.3 and (ii) claims of any kind (including claims for labor, materials, supplies and rent) which are being contested in accordance with Section 5.3;
- (d) Purchase money Liens created in the ordinary course of Borrower’s business with respect to assets not purchased with proceeds of the Loans; provided that such security interests encumber only the assets being so acquired; and
- (e) inchoate Liens arising under ERISA to secure the contingent liability of Borrower permitted by this Agreement.

Section 6.3 Merger and Sale of Property; Leasing.

(a) Borrower will not acquire, merge with or consolidate with any Person (whether or not such acquisition, merger, or consolidation requires any capital expenditures on the part of Borrower and whether or not Borrower is the surviving Person), or sell, assign, transfer or encumber its ownership interests, if any, or enter into any agreement by which effective control over board appointments, proxies, voting or other board actions are granted, assigned or delegated to any other Person without the prior written consent of Lender (which consent may be granted or withheld in Lender’s sole and absolute discretion).

(b) Borrower will not sell, assign, exchange, convey, Lease (or, once approved in accordance with the terms hereof, amend, modify or terminate a Lease or accept the surrender thereof by the tenant thereunder) or otherwise dispose or otherwise dispose of (whether in one transaction or in a series of transactions) any interest in the Property to any Person without the prior written consent of Lender (which consent may be granted or withheld in Lender’s reasonable discretion), except for Leases permitted in Section 6.3(c) and (d).

(c) So long as no Event of Default has occurred and is continuing, Lender shall be deemed to consent to any Lease entered into by Borrower that satisfies each of the following requirements:

- (i) the Lease does not materially interfere with the operation of the Improvements for the Intended Use;
- (ii) the Lease does not beach any covenant, warranty or representation made by Borrower or CFPFCD in the Addendum;

- (iii) the Lease does not include greater than 5% of the square footage of the then-existing Improvements;
- (iv) the Lease is for a term of no more than [65] calendar days; and
- (v) the Lease explicitly prohibits the tenant thereunder from using or permitting the use or occupancy of the leased premises for the conduct of any of the following prohibited activities or businesses: operation of any private or commercial golf course; country club; massage parlor; hot tub facility; suntan facility; race track or other facility used for gambling; any store the principal business of which is the sale of alcoholic beverages for consumption off premises; or residential rental property.

(d) So long as no Event of Default has occurred and is continuing, Lender shall be deemed to consent to (i) a amendment or modification of a Lease provided that the Lease as modified or amended satisfies each of the requirements under Section 6.3(c) and (ii) a termination of a Lease or the surrender thereof by the tenant thereunder if such Lease was deemed consented to be Lender in accordance with Section 6.3(c).

(e) Without the prior written consent of Lender (which consent may be granted or withheld in Lender's reasonable discretion), Borrower shall not accept any rental payment under any Lease more than one month in advance of its due date; *provided*, if a Lease is for a term or no more than [65] calendar days, Borrower may accept prepayment in full of the rent due thereunder.

(f) Notwithstanding anything to the contrary in this Agreement or the other Loan Documents, Borrower acknowledges and agrees that it shall not contract for, delegate or assign, in whole or in part, (i) any material management and/or operational responsibilities of the Improvements and/or (ii) any of its responsibilities under the Loan Documents relating to the construction of the Improvements to any Persons not an Affiliate of Borrower without the prior written consent of Lender (which consent may be granted or withheld in Lender's reasonable discretion).

#### Section 6.4 ERISA Compliance.

(a) Borrower will not at any time permit any Plan maintained by it to engage in any "prohibited transaction" as such term is defined in Section 4975 of the Code to the extent an exemption to the prohibited transaction does not exist under ERISA or the Code; incur any "accumulated funding deficiency" as such term is defined in Section 302 of ERISA; or terminate any such Plan in a manner which could result in the imposition of a Lien on the property of Borrower pursuant to Section 4068 of ERISA.

(b) CFPFCD will not at any time permit any Plan maintained by it to engage in any "prohibited transaction" as such term is defined in Section 4975 of the Code to the extent an exemption to the prohibited transaction does not exist under ERISA or the Code; incur any "accumulated funding deficiency" as such term is defined in Section 302 of ERISA; or terminate any such Plan in a manner which could result in the imposition of a Lien on the property of CFPFCD pursuant to Section 4068 of ERISA.

Section 6.5 Property Management Agreement. Borrower shall not enter into a property management agreement for the Property without receiving the prior written consent of Lender, which consent may be granted or withheld in Lender's reasonable discretion. In the event Borrower executes a property management agreement for the Property, it is understood and agreed that (a) no such property

management agreement may be amended, modified or terminated except with the prior written consent of Lender (which consent may be granted or withheld in Lender's reasonable discretion) or as expressly authorized by any of the Loan Documents, (b) Borrower shall not pay any property management fees to or pay or reimburse any costs or expenses of the property manager of the Property prior to making timely debt service payments to Lender in accordance with the terms of the Loans, and (c) if an Event of Default has occurred and is continuing, Borrower acknowledges and agrees that no property management fees will be paid and no costs or expenses of the property manager shall be paid or reimbursed, as applicable.

## **ARTICLE 7 CONDITIONS OF LENDING**

Section 7.1 Conditions of Advances. The obligation of Lender to close and make advances on the Loans is subject to the accuracy of each and every representation and warranty of Borrower and CFPFCD contained in the Loan Documents, and to the receipt and approval by CCE, Lender and/or Disbursement Agent, as applicable, of all materials identified in the Term Sheet, the closing checklist distributed by counsel for Disbursement Agent, and the satisfaction of all other applicable provisions under Article 2 and all other reasonable requirements and conditions reasonably imposed by Lender and/or Disbursement Agent.

## **ARTICLE 8 EVENTS OF DEFAULT AND REMEDIES**

Section 8.1 Events of Default. Any of the following events will be considered an "Event of Default" as that term is used herein.

- (a) *Bankruptcy or Receivership Proceedings; Assignments for Benefit of Creditors*.
  - (i) Borrower or CFPFCD files a case under the Federal Bankruptcy Code or seeks relief under any provision of any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, or consents to the filing of any case or petition against Borrower or CFPFCD under any such law.
  - (ii) A receiver, conservator, liquidator or trustee of Borrower or CFPFCD, or of any of their respective property (including, but not limited to, the Property) is appointed by order or decree of any court or agency or supervisory authority having jurisdiction; or an order for relief is entered against Borrower or CFPFCD under the Federal Bankruptcy Code; or Borrower or CFPFCD is adjudicated bankrupt or insolvent; or the Property or any material portion of any other property of Borrower or CFPFCD is sequestered by court order and such order remains in effect for more than 30 calendar days after such party obtains knowledge thereof; or a petition is filed against Borrower or CFPFCD under any state, reorganization, arrangement, insolvency, readjustment of debt, dissolution, liquidation or receivership law of any jurisdiction, whether now or hereafter in effect, and such petition is not dismissed within 60 calendar days of the filing date.
  - (iii) Borrower or CFPFCD makes an assignment for the benefit of its creditors, or admits in writing its inability to pay its debts generally as they become due, or consents to the appointment of a receiver, trustee or liquidator of Borrower or CFPFCD, the Collateral or of all or any part of Borrower's or CFPFCD's property (including, but not limited to, the Property).

(b) *Certain Breaches of this Agreement.* Borrower (i) violates Section 6.4, (ii) fails to maintain insurance pursuant to Section 5.7, or (iii) fails to commence construction or cause Completion of the Improvements to occur within the time frames set forth in Section 5.14(a) (subject to Force Majeure).

(c) *Certificates of Occupancy.* The Completion of the Improvements was achieved pursuant to the receipt of temporary certificates of occupancy and Borrower fails to receive permanent certificates of occupancy prior to the expiration of such temporary certificates of occupancy.

(d) *CMDA.* Section 3.5 of the CMDA (Deficiency) is incorporated herein by reference.

(e) *Construction Requirements; Permits; Progress of Construction.*

(i) Borrower fails to comply with any requirements of any Governmental Authority having jurisdiction with regard to the Project.

(ii) Any permit, approval or license for the Project shall be revoked or suspended, or any stop work order is issued against the Project or any part thereof, and such revocation, suspension or stop work order is not the result of Force Majeure and remains in effect for 45 calendar days.

(iii) All permits and such other licenses that are required to authorize the construction and operation of the Improvements in accordance with the Plans & Specifications are not obtained within [45] calendar days of the Effective Date.

(iv) Following the commencement of the Project within the time frame set forth in Section 5.14(a), such construction is abandoned or is discontinued for a period of more than 15 consecutive calendar days, subject to Force Majeure.

(f) *Covenants.*

(i) Borrower defaults in the observance or performance of any covenant or agreement contained in Section 5.17 or as set forth in the Addendum.

(ii) Borrower or CFPFCD defaults in the observance or performance of any covenant or agreement in the Loan Documents (other than a covenant or agreement specifically addressed under this Section 8.1) to be kept or performed by Borrower or CFPFCD, and such default continues unremedied for a period of 30 calendar days after notice thereof being given by Lender to Borrower or CFPFCD, as applicable; *provided*, that for any default which cannot in the reasonable determination of Lender be cured within 30 calendar days, it shall not be an Event of Default provided that Borrower or CFPFCD, as applicable, commences a cure within 30 calendar days of notice and continues to diligently prosecute a cure to the satisfaction of Lender; *provided, however*, that in no event shall Borrower or CFPFCD, as applicable, have more than 90 calendar days from the date of notice from Lender to cure a default hereunder.

(g) *Damage to Improvements.* The Improvements are substantially damaged or destroyed by fire or other casualty and Lender determines in its reasonable discretion that the Improvements cannot be restored and completed in accordance with the terms and provisions of the Loan Documents.

(h) *Material Agreements.*

(i) Borrower fails to cure within any applicable notice and/or grace period a default by it under any of the Construction Contracts and such default has or could reasonably be expected to have a Material Adverse Effect on or to Borrower.

(ii) Borrower fails to cure within any applicable notice and/or grace period a default under any Lease and such default has or could reasonably be expected to have a Material Adverse Effect on or to Borrower.

(iii) CFPFCD or the City, as applicable, fails to cure within any applicable notice and/or grace period a default under any of the United Line of Credit Documents and such default has or could reasonably be expected to have a Material Adverse Effect on or to CFPFCD.

(iv) The occurrence of any "Event of Default" as defined in the Funding Agreement.

(i) *Other Debt*

(i) Borrower fails to cure within any applicable notice and/or grace period a default under any Debt (other than the Loans) owed to any Person other than Lender and such default has or could reasonably be expected to have a Material Adverse Effect on or to Borrower.

(ii) CFPFCD fails to cure within any applicable notice and/or grace period a default under any Debt which has or could reasonably be expected to have a Material Adverse Effect on CFPFCD.

(iii) Borrower or CFPFCD defaults in the payment of any amounts due to Lender or in the observance or performance of any of the covenants or agreements contained in any loan agreements, note, leases, collateral or other documents relating to any Debt of Borrower or CFPFCD to Lender (other than the Loans), and any grace period applicable to such default has elapsed.

(j) *Payments.* Borrower fails to make payment when due of any principal, interest or other payment obligation under either Note, this Agreement (including, but not limited to, Section 5.6) or any of the other Loan Documents and such failure remains more than 5 Business Days after notice of non-payment is given by Lender to Borrower. Notwithstanding the foregoing or anything else to the contrary in this Agreement or the other Loan Documents, it shall be an immediate Event of Default, without any prior notice, if either (i) a scheduled interest payment on either Note is not made within 5 calendar days after the date due, or (ii) the payment due on the Maturity Date under (and as defined in) either Note is not made on such date is not made on the date due.

(k) *Representations and Warranties.*

(i) A warranty or representation made by Borrower or CFPFCD in the Addendum or furnished to Lender in connection with any compliance requirements under the New Markets Tax Credit Program is false in any material respect, or if of a continuing nature, becomes false in any material respect; *provided*, Borrower, with the consent of Lender (such consent in Lender's sole and absolute discretion), may have 30 calendar days to cure such default; *provided further*, at Lender's election (such election in Lender's sole and absolute discretion), if such default is not reasonably capable of being cured within such 30 calendar day period, an Event of Default shall be deemed to occur on the 15th Business Day following notice to Borrower unless Borrower or CFPFCD posts a bond from a bonding company satisfactory to Lender (in an amount deemed sufficient by Lender in its sole and absolute discretion to indemnify and save harmless Lender) to

secure Borrower's or CFPFCD's (as applicable) diligent performance of such action as shall be necessary to cure such default.

(ii) Any representation or warranty of Borrower or CFPFCD contained in the Loan Documents (other than in the Addendum) proves to have been incorrect in any material respect as of the date thereof; or any representation, statement (including financial statements), certificate or data furnished or made to Lender or Disbursement Agent by Borrower or CFPFCD under the Loan Documents (other than in the Addendum) proves to have been untrue in any material respect as of the date stated or certified, and such default continues uncured for a period of 30 calendar days after notice of such default (specifying the default) is given by Lender to Borrower; *provided*, that for any such default which cannot in the reasonable determination of Lender be cured within 30 calendar days, it shall not be an Event of Default provided that Borrower or CFPFCD commences a cure within 30 calendar days of notice and continues to diligently prosecute a cure to the satisfaction of Lender; *provided, however*, that in no event shall Borrower or CFPFCD have more than 75 calendar days from the date of notice from Lender to cure a default hereunder.

(l) *Risk to Collateral.* Any (i) threatened or actual material impairment to the priority of Lender's interests in the Collateral or (ii) material adverse effect on the value of the Collateral or the amount which Lender likely would receive (after giving consideration to delays in payment and costs of enforcement).

(m) *Undischarged Judgments.* Judgment for the payment of money in excess of \$50,000.00 (which is not covered by insurance) is rendered by any Governmental Authority against Borrower, and Borrower does not discharge the same or provide for its discharge in accordance with its terms, or procure a stay of execution thereof within 30 calendar days from the date of entry thereof, and within said 30-day period or such longer period during which execution of such judgment will have been stayed, appeal therefrom and cause the execution thereof to be stayed during such appeal while providing such reserves therefor as may be required under generally accepted accounting principles, and such default continues uncured for a period of 30 days after notice of such default (specifying the default) is given by Lender to Borrower.

(n) *Unauthorized Amendment or Termination of Material Agreements.*

(i) Any of the Construction Contracts is amended, assigned, restated, modified, supplemented or terminated without the prior written consent of Lender (such consent in Lender's sole and absolute discretion) and such amendment, assignment, restatement, modification, supplementation or termination has or could reasonably be expected to have a Material Adverse Effect on or to Borrower or CFPFCD.

(ii) Except as permitted under Section 6.3, a Lease is amended, assigned, restated, modified, supplemented or terminated without the prior written consent of Lender (such consent in Lender's sole and absolute discretion) and such amendment, assignment, restatement, modification, supplementation or termination has or could reasonably be expected to have a Material Adverse Effect on or to Borrower.

(iii) Except as provided in Section 5.22, any of the United Line of Credit Documents is amended, assigned, restated, modified or supplemented without the prior written consent of Lender (such consent in Lender's reasonable discretion).

(iv) The Funding Agreement is amended, assigned, restated, modified or supplemented without the prior written consent of Lender (such consent in Lender's sole and absolute discretion).

Section 8.2 Remedies. Upon the occurrence and during the continuance of any Event of Default, Lender may, in its sole and absolute discretion, pursue any one or more of the following remedies concurrently or successively, it being the intent hereof that none of such remedies shall be to the exclusion of any other:

- (a) withhold any further advances of the Loans to Borrower (if applicable);
- (b) direct Disbursement Agent to cease authorizing releases of the proceeds of the Loans to Borrower from the Disbursement Account;
- (c) take possession of the Property and complete (or discontinue the completion of) the construction and equipping of the Improvements and do anything in its sole but reasonable judgment to fulfill the obligations of Borrower hereunder, including, but not limited to, the right to avail itself of or procure performance under the Construction Contracts or to terminate the Construction Contracts (in accordance with the applicable Collateral Documents). Without restricting the generality of the foregoing and for purposes aforesaid, Borrower hereby appoints and constitutes Lender its lawful attorney-in-fact with full power of substitution in the Property, exercisable at any time an Event of Default has occurred and is continuing, to complete construction and equipping of the Improvements in the name of Borrower; to make changes in the Plans & Specifications as necessary or desirable to complete construction and equipping of the Improvements in substantially the manner contemplated by the Construction Documents; to retain or employ new general contractors, subcontractors, architects and inspectors as shall be required for such purposes; to pay, settle, or compromise all existing bills and claims, which may be lien or security interests, or to avoid such bills and claims becoming liens against the Property or security interests against fixtures or equipment, or as may be necessary or desirable for the Completion of the Improvements or for the clearance of title; to provide for and cause the completion of any tenant work, tenant furnishings or tenant improvements for all or any portion of the Improvements on the Land; and to do any and every act which Borrower might do in its own behalf; to prosecute and defend all actions or proceedings in connection with the Property or fixtures or equipment; it being understood and agreed that this power of attorney shall be a power coupled with an interest and cannot be revoked, but shall terminate once the Indebtedness is paid in full;
- (d) perform any or all of Borrower's covenants and agreements under any of the other Loan Documents or any Lease, and Borrower shall pay the cost thereof to Lender on demand;
- (e) declare the entire principal amount of all Indebtedness then outstanding including interest accrued thereon, to be immediately due and payable without presentment, demand, protest, notice of protest or dishonor or other notice of default of any kind, all of which are hereby expressly waived by Borrower;
- (f) set off any sum due to or incurred by Lender against all deposits and credits of Borrower with, and any and all claims of Borrower against, Lender. Such right shall exist whether or not Lender shall have made any demand hereunder or under any other Loan Documents, whether or not said sums, or any part thereof, or deposits and credits held for the account of Borrower is or are matured or unmatured, and regardless of the existence or adequacy of any collateral, guaranty or any other security, right or remedy available to Lender. Lender agrees that, as promptly as is reasonably possible after the exercise of any such setoff right, it shall notify Borrower of its exercise of such setoff right; *provided, however*, that the failure of Lender to provide such notice shall not affect the validity of the exercise of such setoff

rights. Nothing in this Agreement shall be deemed a waiver or prohibition of or restriction on Lender to all rights of banker's lien, setoff and counterclaim available pursuant to law;

(g) exercise any or all remedies and rights under the Loan Documents, including without limitation Lender's rights under the Collateral Documents (*e.g.*, foreclose on the Deed of Trust), and/or exercise any other rights or remedies which it may have at law or in equity; and

(h) Borrower hereby consents to the remedies of specific performance and of injunction and other equitable remedies for a breach or prospective breach of Section 6 of each Note (incorporated herein by this reference) and the Addendum.

Section 8.3 Default Rate of Interest. Any amount payable by Borrower under any of the other Loan Documents which is not paid when due shall bear interest at the Default Rate specified in each Note from the date due until paid.

**ARTICLE 9**  
**[INTENTIONALLY OMITTED]**

**ARTICLE 10**  
**MISCELLANEOUS**

Section 10.1 Notices. Any notice, request, demand, consent, approval, direction, agreement, or other communication (any "notice") required or permitted under the Loan Documents shall be in writing and shall be validly given if (a) sent by a nationally-recognized courier that obtains receipts, (b) delivered personally by a courier that obtains receipts, (c) mailed by United States certified mail (with return receipt requested and postage prepaid), (d) sent by facsimile (with a copy of such facsimile and proof of transmission thereof sent via one of the methods of delivery set forth in clauses (a), (b) or (c) hereof), or (e) sent by email (with a copy of such email sent using next day delivery via the method of delivery set forth in clause (a) hereof), addressed to the applicable Person at the address set forth on Schedule A to this Agreement. Each notice shall be effective upon being so sent, delivered, mailed, or transmitted, but the time period for response or action shall run from the date of receipt as shown on the delivery receipt. Refusal to accept delivery or the inability to deliver because of a changed address for which no notice was given shall be deemed receipt. Further, any notice actually received shall be deemed receipt. Any Person may periodically change its address for notice (including different or additional addresses for copies) by giving the other party at least 10 calendar days' prior notice in accordance with the foregoing provisions.

Section 10.2 Entire Agreement.

(a) The Addendum, Exhibits, Recitals, and Schedule identified in this Agreement are incorporated herein by reference and made a part hereof.

(b) The Loan Documents now, or hereafter to be, executed set forth the entire agreement of Lender and Borrower and supersede all prior written or oral understandings with respect thereto; *provided*, that all written representations, warranties and certifications made by Borrower to Lender with respect to the Indebtedness under any of the Loan Documents will survive the termination of this Agreement.

Section 10.3 Renewal, Extension or Rearrangement. All provisions of this Agreement relating to each Note will apply with equal force and effect to each and all promissory notes hereafter executed which in whole or in part represent a renewal, extension for any period, increase, decrease or rearrangement of any part of either Note, as applicable, except to the extent modified therein.

Section 10.4 Amendments. This Agreement may not be changed, waived, discharged or terminated orally or in any manner other than by an instrument in writing signed by Borrower and Lender.

Section 10.5 Invalidity. In the event that any one or more of the provisions contained in this Agreement is, for any reason, held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect any other provision of this Agreement.

Section 10.6 Survival of Agreements. All representations and warranties of Borrower herein, and all covenants and agreements in this Agreement and the Notes not fully performed as of the Effective Date, will survive the Effective Date.

Section 10.7 Waivers. No course of dealing on the part of Lender or its officers, employees, consultants or agents, nor any failure or delay by Lender with respect to exercising any of its rights, powers or privileges under this Agreement or the Notes will operate as a waiver thereof.

Section 10.8 Cumulative Rights. The rights and remedies of Lender under this Agreement and the Notes will be cumulative, and the exercise or partial exercise of any such right or remedy will not preclude the exercise of any other right or remedy available to Lender under this Agreement, the Notes, any of the other Loan Documents or by law or equity.

Section 10.9 Time of the Essence. Time will be deemed of the essence with respect to the performance of all of the terms, provisions and conditions on the part of Borrower and Lender to be performed under this Agreement and the Notes.

Section 10.10 Successors and Assigns; Participants.

(a) This Agreement binds and benefits Borrower, Lender, and their respective, permitted successors and assigns.

(b) References to any Person herein shall include such Person's respective permitted successors and assigns.

(c) This Agreement is for the benefit of Lender and for such other Person or Persons as may from time to time become or be the holders of any of the Indebtedness in accordance with the terms hereof, and to the extent set forth in Section 10.10(d), this Agreement will be transferable and negotiable, with the same force and effect and to the same extent as the Indebtedness may be transferable, it being understood that, upon the transfer or assignment by Lender of any of the Indebtedness, the legal holder of such Indebtedness will have all of the rights granted to Lender under this Agreement.

(d) Borrower hereby recognizes and agrees that: (i) Lender may transfer all or any portion of the Indebtedness to its Investor Member as defined in and in accordance with Lender's organizational documents and (ii) Lender may, from time to time and one or more times, transfer all or any portion of the Indebtedness to one or more third parties upon the occurrence and during the continuance of any Event of Default (such transfers under this subsection (ii) may include, but are not limited to, sales of participation interests in such Indebtedness in favor of one or more third parties, *provided, however*, that such transfers shall not occur if they result in or follow the recapture or disallowance of any New Markets Tax Credits); *provided further*, that Lender may not transfer any portion of the Indebtedness except as expressly set forth in Section 10.10(d)(i)-(ii).

(e) Subject to the limitations on assignments set forth in Section 10.10(d), Borrower specifically (i) consents to all such transfers and assignments and waives any subsequent right to consent

to any such transfers and assignments as may be provided under applicable state or federal law; (ii) agrees that the purchaser of a participation interest in the Indebtedness will be considered as the absolute owner of a percentage interest of such Indebtedness and that such a purchaser will have all of the rights granted to the purchaser under any participation agreement governing the sale of such a participation interest; (iii) waives any right of offset that Borrower may have against Lender and/or any purchaser of such a participation interest in the Indebtedness and unconditionally agrees that Lender or such a purchaser may enforce Borrower's Indebtedness under the Loan Documents, without regard to the failure or insolvency of Lender or any such purchaser; (iv) agrees that any purchaser of a participation interest in the Indebtedness may exercise any and all rights of counter-claim, set-off, banker's lien and other liens with respect to any and all monies owing to Borrower; and (v) agrees that, upon any transfer of all or any portion of the Indebtedness, Lender may transfer and deliver any and all Collateral to the transferee of such Indebtedness and the Collateral will secure any and all of the Indebtedness in favor of such a transferee, and after any such transfer has taken place, Lender will be fully discharged from any and all future liability and responsibility to Borrower with respect to the Collateral, and the transferee thereafter will be vested with all the powers, rights and duties with respect to the Collateral.

Section 10.11 Relationship Between the Parties. The relationship between Lender, on the one hand, and Borrower, on the other, will be solely that of lender and borrower, and such relationship will not, under any circumstances whatsoever, be construed to be a joint venture, joint adventure, or partnership.

Section 10.12 Third Party Beneficiaries. All obligations of Lender to make advances on the Loans are imposed solely and exclusively for the benefit of Borrower and its permitted assigns. No other Person shall have standing to require satisfaction of such condition or be entitled to assume that Lender shall refuse to make the advance in the absence of strict compliance with any or all conditions thereof, and no other Person shall, under any circumstances, be deemed to be a beneficiary of such conditions, any or all of which may be freely waived, in whole or in part, by Lender at any time in its sole and absolute discretion.

Section 10.13 Titles of Articles, Sections and Subsections. All titles or headings to articles, sections, subsections or other divisions of this Agreement or the exhibits hereto are only for the convenience of the parties and will not be construed to have any effect or meaning with respect to the other content of such articles, sections, subsections or other divisions, such other content being controlling as to the agreement between the parties hereto.

Section 10.14 Singular and Plural. Words used herein in the singular, where the context so permits, will be deemed to include the plural and vice versa. The definitions of words in the singular herein will apply to such words when used in the plural where the context so permits and vice versa.

Section 10.15 Article and Section References. References in this Agreement to Articles and Sections are intended to refer to Articles and Sections of this Agreement, unless otherwise specifically stated.

Section 10.16 Counterparts. This Agreement may be executed in two or more counterparts, and it will not be necessary that the signatures of all parties hereto be contained on any one counterpart hereof; each counterpart will be deemed an original, but all of which together will constitute one and the same instrument. A faxed, scanned or photocopied signature to this Agreement shall be deemed equivalent to an original signature.

Section 10.17 Review by Counsel. Borrower acknowledges and agrees that (a) Borrower's counsel has reviewed the Loan Documents and (b) any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of the Loan Documents.

Section 10.18 Third Parties. Neither Borrower nor Lender intends the benefits of any of the Loan Documents to inure to, or otherwise exist for, the benefit of any third party who has a contractual relationship with Borrower, who is a creditor of Borrower with respect to the Property, or any part thereof, any tenant or other occupant of the Property, or who otherwise succeeds to Borrower's interest or rights, and none of the Loan Documents shall be construed to make or render Lender or Lender's Affiliates, members or partners, as applicable, managers, officers, directors, agents or employees liable to any materialman, supplier, contractor, subcontractor, successor in title to the Property, or any part thereof, or any tenant or other occupant of the Property, or for debts or claims accruing to any such Persons against Borrower. Notwithstanding anything contained in any of the Loan Documents or any conduct or course of conduct by Borrower and/or Lender, whether before or after signing this Agreement, none of the Loan Documents shall be construed as creating any right, claim or cause of action against Lender or Lender's Affiliates, members or partners, as applicable, managers, officers, directors, agents or employees, in favor of any materialman, supplier, contractor, subcontractor, successor in title to the Property, or any part thereof, or any tenant or other occupant of the Property or to any other Person.

Section 10.19 CHOICE OF LAW; WAIVER OF JURY TRIAL AND CERTAIN OTHER RIGHTS; SUBMISSION TO JURISDICTION; SERVICE OF PROCESS FOR ALL LOAN DOCUMENTS.

(a) THE VALIDITY OF THIS AGREEMENT AND, UNLESS OTHERWISE PROVIDED THEREIN, THE OTHER LOAN DOCUMENTS, THE CONSTRUCTION, INTERPRETATION, AND ENFORCEMENT HEREOF AND THEREOF, AND THE RIGHTS OF BORROWER AND LENDER WITH RESPECT TO ALL MATTERS ARISING HEREUNDER OR THEREUNDER OR RELATED HERETO OR THERETO SHALL BE DETERMINED UNDER, GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ALABAMA, WITHOUT GIVING EFFECT TO CONFLICT OR CHOICE OF LAW PRINCIPLES.

(b) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, BORROWER AND LENDER (i) AGREE THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS AGREEMENT AND, UNLESS OTHERWISE PROVIDED THEREIN, THE OTHER LOAN DOCUMENTS SHALL BE TRIED AND LITIGATED ONLY IN THE STATE AND FEDERAL COURTS LOCATED IN THE STATE OF ALABAMA (*PROVIDED, HOWEVER, THAT ANY SUIT SEEKING ENFORCEMENT AGAINST ANY COLLATERAL OR OTHER PROPERTY MAY BE BROUGHT, AT LENDER'S OPTION, IN THE COURTS OF ANY JURISDICTION WHERE SUCH COLLATERAL OR OTHER PROPERTY MAY BE FOUND*) AND (ii) WAIVE ANY RIGHT IT MAY HAVE TO ASSERT THE DOCTRINE OF *FORUM NON CONVENIENS* OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS SECTION 10.19.

(c) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, BORROWER AND LENDER WAIVE ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER LOAN DOCUMENTS (UNLESS OTHERWISE PROVIDED THEREIN) OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). IT IS AGREED AND UNDERSTOOD THAT THIS WAIVER CONSTITUTES A WAIVER OF TRIAL BY JURY OF ALL CLAIMS AGAINST ALL PARTIES TO SUCH ACTIONS OR PROCEEDINGS, INCLUDING CLAIMS AGAINST PARTIES WHO ARE NOT PARTIES TO THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS. BORROWER AND LENDER (i) CERTIFY THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY TO THIS AGREEMENT HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, AND (ii) ACKNOWLEDGE THAT IT AND THE

OTHER PARTIES TO THIS AGREEMENT HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND TO EXECUTE OR ACCEPT THE OTHER LOAN DOCUMENTS, AS APPLICABLE, BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 10.19.

(d) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, BORROWER AND LENDER AGREE THAT ANY PROCESS OR NOTICE OF MOTION OR OTHER APPLICATION TO ANY SUCH COURT IN CONNECTION WITH ANY ACTION OR PROCEEDING MAY BE SERVED UPON SUCH PARTY BY REGISTERED OR CERTIFIED MAIL TO OR BY PERSONAL SERVICE AT THE LAST KNOWN ADDRESS OF SUCH PARTY WHETHER SUCH ADDRESS BE WITHIN OR OUTSIDE THE JURISDICTION OF ANY SUCH COURT.

(e) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, BORROWER SHALL NOT ASSERT, AND HEREBY WAIVES, ANY CLAIM AGAINST LENDER AND LENDER'S AFFILIATES, MEMBERS OR PARTNERS, AS APPLICABLE, MANAGERS, OFFICERS, DIRECTORS, AGENTS AND EMPLOYEES, ON ANY THEORY OF LIABILITY, FOR SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES (AS OPPOSED TO DIRECT OR ACTUAL DAMAGES) ARISING OUT OF, IN CONNECTION WITH, OR AS A RESULT OF, THIS AGREEMENT, THE OTHER LOAN DOCUMENTS, OR ANY AGREEMENT OR INSTRUMENT CONTEMPLATED HEREBY AND/OR THE TRANSACTIONS CONTEMPLATED HEREBY.

(f) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, BORROWER HEREBY WAIVES THE BENEFITS OF ALL VALUATION, APPRAISEMENT, HOMESTEAD, EXEMPTION, STAY, REDEMPTION AND MORATORIUM LAWS, NOW IN FORCE OR WHICH MAY HEREAFTER BECOME LAWS.

Section 10.20 [Intentionally Omitted].

Section 10.21 Right of Setoff. Borrower hereby grants to Lender a continuing lien, security interest and right of setoff as security for payment and performance of all of its obligations under the Loan Documents (including, but not limited to, the Notes), upon and against all deposits, credits, collateral and property, now or hereafter in the possession, custody, safekeeping or control of Lender or any entity under the control of Lender and its successors and/or assigns or in transit to any of them. At any time, without demand or notice (any such notice being expressly waived by Borrower), but only upon the occurrence and continuance of an Event of Default, Lender may setoff the same or any part thereof and apply the same to any liability or obligation of Borrower even though unmatured and regardless of the adequacy of any other collateral security for any or all of the Loans. ANY AND ALL RIGHTS TO REQUIRE LENDER TO EXERCISE ITS RIGHTS OR REMEDIES WITH RESPECT TO ANY OTHER COLLATERAL WHICH SECURES THE LOANS PRIOR TO EXERCISING ITS RIGHT OF SETOFF WITH RESPECT TO SUCH DEPOSITS, CREDITS OR OTHER PROPERTY OF BORROWER ARE HEREBY KNOWINGLY, VOLUNTARILY, AND IRREVOCABLY WAIVED.

Section 10.22 Enforcement Costs. Notwithstanding anything to the contrary in this Agreement or the other Loan Documents, in the event of any action at law or in equity to enforce the provisions of this Agreement or any of the other Loan Documents or to secure relief or damages for the breach of this Agreement or any of the other Loan Documents, the prevailing party shall be entitled to payment or reimbursement, as applicable, of its costs, expenses and fees (including without limitation reasonable attorneys', accountants', experts', and consultants' costs, expenses and fees, court costs and investigative expenses prior to trial, at trial and on appeal) incurred in such proceedings from the non-prevailing party.

Section 10.23 Confidentiality. Lender agrees to maintain the confidentiality of the Information, except that Information may be disclosed (a) to it and its Affiliates' directors, officers, employees and agents, including accountants, legal counsel and other advisors (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential); (b) to the extent requested by any regulatory authority; (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process; (d) to any other party to this Agreement; (e) in connection with the exercise of any remedies hereunder or any suit, action or proceeding relating to the obligations or the enforcement of rights under the Loan Documents; (f) in accordance with Section 10.24; (g) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section 10.23 or (ii) becomes available to Lender on a nonconfidential basis from a source other than Borrower, or (h) with the consent of Borrower. For the purposes of this Section 10.23, "Information" means all information received from Borrower relating to Borrower or its business, other than any such information that is available to Lender on a nonconfidential basis prior to disclosure by Borrower; *provided* that, in the case of information received from Borrower after Effective Date, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section 10.23 shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Section 10.24 Publicity.

(a) *Publication*. Borrower consents to and acknowledges that, upon consummation of the Loans, Lender, Allocatee, Disbursement Agent, and/or their applicable Affiliates may, at their option and expense, use the name and logo of the Borrower and any information regarding the financing contemplated by this Agreement (including, without limitation, the names of any Affiliate of Borrower participating in such transactions, and the structure, terms and project specifics of such transactions) in its marketing and communications materials (including without limitation, issue press releases or place or publish "tombstone" advertisements in such newspapers, newsletters, magazines, trade journals or other periodicals or place signs on the Land) as they may choose relating to or otherwise referencing the financing transaction contemplated herein and in presentations or speeches made to its employees, officers, clients and other interested third parties. Such information shall be referred to herein as "Client Information." Borrower understands that the Client Information may be used nationally and/or internationally and may be used in web pages, print ads, press releases, direct mail and various types of brochures, presentation materials or marketing sheets, and that various media formats other than those listed may be used (including without limitation video or audio presentations through any such media form). In these materials, Lender, Allocatee, Disbursement Agent, and/or their applicable Affiliates also may discuss the types of services and solutions they have provided to Borrower or its Affiliates. Borrower, for itself and for its Affiliates, hereby releases each of the foregoing parties from any liability for any claim related to such party's use of the Client Information as contemplated hereby. The rights granted in the foregoing release shall be binding upon the undersigned parties and their successors and assigns. Each of the parties hereto expressly agrees that the foregoing provisions relating to the use of Client Information shall survive the termination of this Agreement.

(b) *Photographs and Other Media*. Borrower hereby authorizes Lender, Allocatee, Disbursement Agent, and/or their applicable Affiliates to reproduce and display any media (including, without limitation, photographs and illustrations) of the Property submitted to Lender, Allocatee, Disbursement Agent, and/or their applicable Affiliates by Borrower. Borrower represents and warrants to each of the foregoing parties that Borrower has obtained any and all licenses and/or permissions necessary for Borrower's and such party's use of such media.

(c) *Construction Financing Publicity.* Borrower shall do the following:

(i) upon request, include on signs placed on the Property during construction work language to the effect that the (A) “project is funded, in part, from an investment by an affiliate of JPMorgan Chase Bank, N.A.” and (B) “project is funded, in part, from an investment by an affiliate of Pacesetter CDE, Inc.”

(ii) acknowledge the contribution of Lender, Allocatee, Disbursement Agent, and their respective Affiliates in project-related web and print media, and in verbal remarks in public;

(iii) invite representatives of Lender, Allocatee, Disbursement Agent, and their respective Affiliates to participate in public relations opportunities (*e.g.*, speaking opportunity at ribbon cutting, ground breaking);

(iv) permit Lender, Allocatee, Disbursement Agent, and their respective Affiliates access to and permission to use any photographic and/or schematic images of the Property obtained by such Persons’ respective marketing departments (*e.g.*, website, brochures, advertisements); and

(v) permit Lender, Allocatee, Disbursement Agent, and their respective Affiliates to publicize the financing provided pursuant to this Agreement.

(d) *Borrower Approval.* Borrower will have the right to approve the form and substance of any materials (*e.g.*, press releases, signs) issued or released by any Person under Section 10.24(a)-(c), such approval not to be unreasonably withheld.

[REMAINDER OF PAGE BLANK; SIGNATURE PAGES TO FOLLOW.]

IN WITNESS WHEREOF, Borrower and Lender have caused this Credit Agreement to be duly executed as of the Effective Date.

**BORROWER:**

COASTAL ALABAMA FARMERS' AND  
FISHERMEN'S MARKET, INC., an Alabama non-  
profit corporation

By: \_\_\_\_\_  
Name:  
Title:

[COUNTERPART SIGNATURE PAGE TO CREDIT AGREEMENT]

**LENDER:**

PACESETTER CDE X, LLC, a Texas limited liability company

By: Pacesetter CDE, Inc., a Texas corporation, its managing member

By: \_\_\_\_\_

Name: Giovanni Capriglione

Title: Chief Compliance Officer

**SCHEDULE A**

**Notice Addresses of Parties**

(1) If to Borrower: Coastal Alabama Farmers' and Fishermen's Market, Inc.  
c/o City of Foley  
407 East Laurel Avenue  
Foley, AL 36535  
Attention: Jeff Rouzie, Director of Economic Development  
Facsimile: 251-952-4012  
Email: [\_\_\_\_\_]

With a copy to: Adams and Reese LLP  
RSA Battle House Tower  
11 North Water Street, Suite 23200  
Mobile, AL 36602  
Attention: John F. Lyle, III, Esq.  
Facsimile: 251-438-7733  
Email: john.lyle@arlaw.com

And copies to: The addresses set forth under (4) below.

(2) If to CFPFCD: The City of Foley Public Facilities Cooperative District  
c/o City of Foley  
407 East Laurel Avenue  
Foley, AL 36535  
Attention: Jeff Rouzie, Director of Economic Development  
Facsimile: 251-952-4012  
Email: [\_\_\_\_\_]

With a copy to: Adams and Reese LLP  
RSA Battle House Tower  
11 North Water Street, Suite 23200  
Mobile, AL 36602  
Attention: John F. Lyle, III, Esq.  
Facsimile: 251-438-7733  
Email: john.lyle@arlaw.com

And copies to: The addresses set forth under (4) below.

(3) If to Lender: Pacesetter CDE X, LLC  
c/o Pacesetter CDE, Inc.  
2600 E. Southlake Boulevard  
Suite 120-105  
Southlake, TX 76092  
Attention: Giovanni Capriglione  
Email: giovanni@pacesettercde.com

[CONTINUED NEXT PAGE]

**SCHEDULE A (CONT'D)**

**Notice Addresses of Parties**

With a copy to: Law Office of Mark D. Foster  
4835 LBJ Freeway, Suite 424  
Dallas, TX 75244  
Attention: Mark D. Foster, Esq.  
Facsimile: 214-363-9551  
Email: mark@mdfoster.com

And copies to: The addresses set forth under (4) below.

(4) Copy Parties: Chase Community Equity, LLC  
c/o JPMorgan Chase Bank, N.A.  
10 S. Dearborn Street, 19th Floor  
Mail Code: IL1-0953  
Chicago, IL 60603-5506  
Attention: NMTC Asset Manager  
Facsimile: 312-325-5050  
Email: nmtc.reporting@chase.com

With a copy to: Chase Community Equity, LLC  
c/o JPMorgan Chase Bank, N.A.  
2200 Ross Avenue, 9th Floor  
Mail Code: TX1-2951  
Dallas, TX 75201  
Attention: Wanda Clark  
Facsimile: 214-965-3297  
Email: wanda.clark@jpmchase.com

And a copy to: Jones Day  
100 High Street, 21<sup>st</sup> Floor  
Boston, MA 02110  
Attention: Jeffrey D. Gaulin, Esq.  
Facsimile: 617-449-6999  
Email: jgaulin@jonesday.com

[REMAINDER OF PAGE BLANK]

## EXHIBIT A

### NEW MARKETS TAX CREDIT PROGRAM ADDENDUM TO CREDIT AGREEMENT

Borrower acknowledges that Lender is making the Loans to Borrower on the basis that each of the Loans will qualify as a “qualified low-income community investment” for purposes of generating certain tax credits (the “New Markets Tax Credit” or “NMTCs”) under Section 45D of the Internal Revenue Code of 1986, as amended (the “Code”). Borrower certifies that the information set forth below is correct in all respects to Lender to induce Lender to make the Loans. Borrower hereby represents, warrants, covenants, and agrees that the proceeds of the Loans will be used solely for the purposes set forth in the Credit Agreement to which this Addendum is attached as Exhibit A (as the same may be amended, assigned, restated, modified, or supplemented from time to time, the “Credit Agreement”) and, upon Lender’s written request, Borrower will provide Lender with all documentation determined by Lender to be reasonably necessary to demonstrate Borrower’s compliance with such representations, warranties, and covenants.

In connection with the issuance of opinion letters to be delivered by Jones Day, the Law Office of Mark D. Foster, and Adams and Reese LLP, Borrower hereby acknowledges and agrees that the foregoing law firms may rely on the representations, warranties and covenants contained in the Credit Agreement and this Addendum.

Capitalized terms used herein and not otherwise defined herein have the meanings set forth in the Credit Agreement. The terms and conditions, and representations, warranties, covenants, and agreements set forth in this Addendum are, by this reference, incorporated into the Credit Agreement and made a part thereof.

1. **ADDITIONAL REPRESENTATIONS AND WARRANTIES.** Borrower hereby represents and warrants to Lender as follows:

(a) Borrower is a non-profit corporation duly organized, validly existing and in good standing under the laws of the State of its formation and is, and will be, treated as a corporation for federal income tax purposes. Borrower shall cause the proceeds of the Loans to be expended solely for and with respect to the Project or the Business (defined below).

(b) Borrower owns the Land and the improvements thereon. Borrower leases the Property to tenants and operates a farmers’ market and a wholesale distribution facility (the “Business”). All of Borrower’s Business currently is and throughout the term of the Loans will be located at the Property.

(c) Borrower currently operates and throughout the term of the Loans shall operate the Business such that Borrower shall qualify as a “qualified active low-income community business” (as defined in Section 45D(d)(2)(A) of the Code (a “QALICB”) and the related Federal Income Tax Regulations, including proposed, interim and temporary regulations (the “Regulations”).

(d) Based solely on data (the “Census Data”) from the Community Development Financial Institutions Fund, an agency of the United States Department of the Treasury (the “CDFI Fund”), the Property is located in highly distressed census tract numbers 01003011501 and 01003011502 (collectively, the “Census Tract”) and the Census Tract is in a low-income community (as defined in Section 45D(e) of the Code and the Regulations) (a “Low-Income Community”).

(e) Borrower knows of no facts or circumstances that contradicts or undermines the validity of, or of any reason or circumstances that could reasonably contradict or undermine the validity of: (i) any of the matters described in the Census Data or (ii) Borrower's representations set forth herein.

(f) With respect to the current taxable year, 50% or more of the total gross income of Borrower is and shall (for each tax year throughout the term of the Loans) continue to be derived from the active conduct of a qualified business (as defined in Section 45D(d)(3) of the Code and the related Regulations) within the Census Tract.

(g) With respect to the current taxable year, 50% or more of the use of the tangible property of Borrower (whether owned or leased) is and shall (for each tax year throughout the term of the Loans) continue to be within the Census Tract (provided, however, that for any taxable year in which Borrower has no employees, at least 85% of the use of Borrower's tangible property (whether owned or leased) will be within the Census Tract). This percentage shall be determined in accordance with the rules set forth in Section 1.45D-1(d)(4)(i)(B) of the Regulations, which provides that the percentage shall be determined based on a fraction, the numerator of which is the average value of the tangible property owned or leased by Borrower and used by Borrower during the taxable year in the Census Tract and the denominator of which is the average value of the tangible property owned or leased by Borrower during the taxable year. For purposes of this percentage, the Regulations provide that property owned by Borrower is valued at its cost basis under Section 1012 of the Code and property leased by the entity is valued at a reasonable amount established by Borrower.

(h) With respect to the current taxable year, at least 50% of the services performed for Borrower by its employees (or employees of any Affiliate of Borrower that is primarily engaged in providing services to Borrower), if any, are and shall (for each tax year throughout the term of the Loans) continue to be performed on the Property. The percentage of services performed is determined based on the total amount paid by Borrower for employee services performed on the Property during the taxable year compared to the total amount paid by Borrower for employee services during the taxable year.

(i) Borrower is not and throughout the term of the Loans shall not be a bank, credit union or other financial institution.

(j) With respect to the current taxable year, less than 5% of the average of the aggregate unadjusted bases of the property of Borrower is and shall be, for each tax year throughout the term of the Loans, attributable to (i) works of art, (ii) rugs or antiques, (iii) metals or gems, (iv) stamps or coins, (v) alcoholic beverages, (vi) or any other tangible personal property specified by the Secretary of the United States Department of Treasury as a "collectible" (collectively, "Collectibles").

(k) With respect to the current taxable year, less than 5% of the average of the aggregate unadjusted bases of the property of Borrower is and shall be, for each tax year throughout the term of the Loans, attributable to debt, stock, partnership interests, options, futures contracts, forward contracts, warrants, notional principal contracts (including any interest rate swap, cap or similar agreement), annuities, and other similar property ("Nonqualified Financial Property"); *provided, however*, that, in accordance with the safe harbor set forth in Section 1.45D-1(d)(4)(i)(E) of the Regulations, Nonqualified Financial Property does not include: (i) reasonable amounts of working capital held in cash (including, without limitation, the proceeds of the Loans that will be expended for construction and rehabilitation of the Property within 12 months of the Effective Date), cash equivalents, or debt instruments with a term of 18 months or less, and (ii) debt instruments described in Section 1221(a)(4) of the Code.

(l) Borrower is not currently engaged, and has no expectation that at any point during the term of the Loans it will become engaged, in any trade or business, either as a principal or an ancillary

business, that is an excluded business under Section 1.45D-1(d)(5)(iii) of the Regulations, including, without limitation, any one or more of the following: (i) developing or holding intangibles for sale or license; (ii) the operation of (A) a private or commercial golf course, (B) a country club, (C) a massage parlor, (D) a hot tub facility, (E) a suntan facility, (F) a racetrack or other facility used for gambling, or (G) any store the principal activity of which is the sale of alcoholic beverages for consumption off premises; or (iii) farming (within the meaning of Section 2032A(e)(5)(A) or (B) of the Code and the related Regulations) (collectively with the businesses described in clauses (i) or (ii) of this paragraph, an “Excluded Business”).

(m) Borrower is, as of the Effective Date, and shall at all times during the term of the Loans, continue to be a QALICB.

(n) Each of the Loans is a “qualified low-income community investment” (as such term is defined in Section 45D(d)(1) of the Code and the related Regulations) (a “QLICI”).

(o) No tenant, subtenant or occupant of any portion of the Property is engaged in, nor shall Borrower permit any tenant, subtenant or occupant of any portion of the Property to engage in, any Excluded Business throughout the term of the Loans.

(p) No portion of the Property constitutes, and throughout the term of the Loans, no portion of the Property shall constitute “residential rental property” as such term is defined in Section 168(e)(2)(A) of the Code (“Residential Rental Property”).

(q) Borrower does not own or operate, nor will it at any time during the term of the Loans own or operate, any asset or property other than the Property and incidental personal property necessary for the ownership or operation of the Property.

(r) (i) All information concerning Borrower and the Property known to Borrower, CFPFCD or any of their respective Affiliates, or which should have been known to any of them in the exercise of reasonable care, has been disclosed by Borrower to Lender; (ii) all information concerning all property (other than the Property) of Borrower known to Borrower, or which should have been known to Borrower in the exercise of reasonable care, has been disclosed by Borrower to Lender; and (iii) there are no facts or information known to Borrower, CFPFCD or any of their respective Affiliates, or which should have been known to any of them in the exercise of reasonable care, which would make any of the facts or information submitted by Borrower to Lender with respect to Borrower or the Property inaccurate, incomplete or misleading in any material respect.

(s) All documents and information provided by Borrower and CFPFCD to Lender and/or the Accountants are complete and accurate in all material respects and accurately describe the entire business of Borrower.

(t) Borrower has had no correspondence or any communication with, to or from the CDFI Fund, concerning non-compliance with, or deficiencies in, reporting practices.

(u) The officers of Borrower have determined that no officer, director, principal, employee or owner of Borrower are on the list of Specially Designated Nationals and Blocked Persons promulgated by the United States Department of the Treasury and located on the internet at <http://www.treas.gov/offices/enforcement/ofac/sdn/t11sdn.pdf>.

(v) The assumptions underlying the Projections prepared by the Accountants are reasonable in all material respects and to the best knowledge of Borrower, are accurate and complete in all material respects based on all of the facts and circumstances known to Borrower as of the Effective Date.

(w) Borrower has fully and accurately stated in writing to Lender the nature of Borrower's business and of the goods or services it provides, Borrower's primary sources of revenue, and Borrower's primary expenditures, all of which is comprised in the Business. Borrower has no present plans or intentions to (i) change the nature of, or manner in which it conducts, the Business in any way that would cause to be untrue any of the representations, warranties or covenants set out in this Agreement, (ii) move or expand its operations to any location outside the Census Tract, or (iii) develop, construct or improve any property outside the Census Tract.

(x) The amount of reserves, receivables, assets and other items of working capital shown on the Projections is reasonable in all material respects based upon the reasonably anticipated costs of constructing and operating the Property by Borrower.

(y) Borrower reasonably expects that the term of each Lease does not exceed 80% of the anticipated useful life of the applicable portion of the Improvements.

(z) [Borrower has no employees and does not expect to have any employees during the term of the Loans.] [*Note – Borrower is this correct?*]

(aa) No portion of the Property constitutes a "qualified low-income building" under Section 42 of the Code.

(bb) Borrower has no information or knowledge tending to indicate that Borrower might not satisfy all of the requirements of a QALICB.

(cc) Borrower reasonably expects the cost basis of the Improvements to equal or exceed 50% of the cost basis of the unimproved real property.

(dd) The Census Tract is in a Low-Income Community for which (i) the poverty rate is greater than 30% and (ii) if located within a non-metropolitan area, median family income does not exceed 60% of statewide median family income or if located within a metropolitan area, median family income does not exceed 60% of the greater of statewide median family income or the metropolitan area median family income, which meets the requirements set forth in Section 3.2(h) of the New Markets Tax Credit Program Allocation Agreement entered into by Lender (the "Allocation Agreement") for being considered "highly distressed".

(ee) [Borrower has read and understood the Agreed Upon Procedures Report, dated as of the Effective Date, prepared by Novogradac & Company LLP (the "AUP Report").] [*Note – May be N/A.*]

(ff) Borrower has not made and throughout the term of the Loans shall not make any election to be taxed as a corporation for federal income tax purposes.

(gg) Borrower has no information or knowledge tending to indicate that any of the matters described in [the AUP Report or ]Borrower's representations set forth therein are inaccurate, incomplete or misleading in any material respect.

2. **ADDITIONAL COVENANTS.** Borrower hereby covenants and agrees with Lender that, so long as any of the Loans remains outstanding:

(a) Borrower shall provide, at no cost to Lender, such reporting information as Lender may reasonably require to comply with the New Markets Tax Credit Program. Borrower shall provide Lender with such information as it or its Affiliates has in its possession and provide Lender with access to the Property and to tenants of the Property and subject to the terms of any lease and any sublease(s), assist Lender in obtaining information needed to maintain compliance with the New Markets Tax Credit Program requirements and in addition will provide any information required to be provided to the CDFI Fund. Such assistance shall include providing reasonable estimates to Lender where necessary or otherwise assisting Lender in obtaining such information. Such information shall be provided within a reasonable period after a specific request is made, and shall include, without limitation, the following:

- (i) the number of minority, woman or low income person-owned or controlled businesses at the Property;
- (ii) the number of minority, woman or low income persons employed by businesses at the Property;
- (iii) the number of persons employed by businesses at the Property;
- (iv) information regarding locally-owned companies involved in the improvement, and operation of the Property and the operation of the Business;
- (v) an estimate of the number of full-time equivalent jobs as of the date hereof, the projected full-time equivalent jobs to be created or retained, the jobs actually created or retained as a result of the financing, including an estimate of the number of permanent jobs held by low-income persons or residents of low-income communities as defined in Section 45D of the Code to the extent the latter information is available, and a breakdown of such jobs based on wages;
- (vi) the annual gross revenues of Borrower as of its fiscal year ending prior to the date hereof, the annual gross revenues of Borrower for each subsequent tax year;
- (vii) an estimate of the amount of taxes payable by Borrower after completion of construction, the amount of taxes paid by Borrower for the preceding tax year;
- (viii) the total construction costs (provided only through the Completion of the Improvements);
- (ix) the total construction costs funded by equity (provided only through the Completion of the Improvements); and
- (x) the total construction costs funded by public sources, if any (provided only through the Completion of the Improvements).

(b) Borrower shall not move or expand existing operations to any location other than the Property or develop, construct or improve any real property at any location other than the Property without the prior written consent of Lender (which consent may be granted or withheld in Lender's sole and absolute discretion).

(c) Borrower shall not use or convert the Property (or any portion thereof) into Residential Rental Property.

(d) If and to the extent Borrower is ever required to depreciate the Property for Federal income tax purposes, Borrower shall depreciate the Improvements over 39 years as nonresidential real property, except to the extent accelerated depreciation is allowed under the Code.

(e) Borrower will not be a bank, credit union or other financial institution.

(f) Fifty percent (50%) or more of the total gross income of Borrower shall (for each tax year throughout the term of the Loans) be derived from the active conduct of a qualified business (as defined in Section 45D(d)(3) of the Code and the related Regulations) within the Census Tract.

(g) [Borrower will not have any employees during the term of the Loans][**OR**][Fifty percent (50%) of the services performed for Borrower by its employees (or employees of any Affiliate of Borrower that is primarily engaged in providing services to Borrower), as determined in the manner set forth in Section 1(h) of this Addendum, shall (for each tax year throughout the term of the Loans) continue to be performed within a Low-Income Community]. **[Note – Borrower please confirm which rep is appropriate.]**

(h) Fifty (50%) or more of the use of the tangible property of Borrower (whether owned or leased), as determined in the manner set forth in Section 1(g) of this Addendum, shall (for each tax year throughout the term of the Loans) be within the Census Tract (*provided, however*, that for any taxable year in which Borrower has no employees, at least 85% of the use of Borrower's tangible property (whether owned or leased) will be within the Census Tract).

(i) Borrower shall not purchase, acquire or allow the build-up of Nonqualified Financial Property to the extent such purchase, acquisition or build-up would cause the aggregate bases of Borrower's Nonqualified Financial Property to be 5% or more of the aggregate unadjusted bases of all property of Borrower nor shall Borrower dispose of any asset if the disposition would cause the aggregate bases of Borrower's Nonqualified Financial Property to be 5% or more of the aggregate unadjusted bases of all property of Borrower. Borrower shall provide to Lender (upon request) a true, correct, and complete listing of any Nonqualified Financial Property owned by Borrower, including therein the unadjusted basis of such property, and shall maintain records thereof throughout the term of the Loans.

(j) Section 6.3 of the Credit Agreement is incorporated herein by reference. No tenant, subtenant or occupant of the Property shall be engaged in any Excluded Business nor shall Borrower permit any tenant, subtenant or occupant to engage in (i) the rental of Residential Rental Property or (ii) any Excluded Business. Borrower shall provide to Lender (upon request) copies of all rent rolls, leases, and subleases, modifications, amendments, renewals and extensions of any leases, together with information as to the tenant, the tenant's business, and the lease term, promptly after such documents become available.

(k) Borrower shall not acquire any Collectible to the extent that, after such acquisition, the aggregate bases of Collectibles owned by Borrower would equal or exceed 5% of the aggregate unadjusted bases of all property of Borrower nor shall Borrower dispose of any asset if the disposition would cause the aggregate bases of Collectibles owned by Borrower to equal or exceed 5% of the aggregate unadjusted bases of all property of Borrower. Borrower shall provide to Lender (upon request) a true, correct, and complete listing of any Collectibles owned by Borrower, including therein the unadjusted basis of such property, and shall maintain records thereof throughout the term of the Loans.

(l) Borrower shall not conduct any Excluded Business, nor shall Borrower permit any tenant, lessee, sublessee or other user or occupant of the Property to (i) engage in the rental of Residential Rental Property or (ii) conduct any Excluded Business.

(m) Borrower shall be a QALICB and shall take all actions necessary to maintain such status required by Section 45D of the Code and the related Regulations.

(n) Borrower shall take all actions within its control necessary to maintain the status of each of the Loans as a QLICI, including, without limitation, not making any unscheduled prepayment of the Loans not specifically permitted in the Credit Agreement.

(o) Borrower shall comply with any request by Lender in connection with the duties and obligations of Borrower under Section 45D of the Code to prevent a recapture of NMTCs, provided that any such request will not adversely affect the economic terms and conditions of the Loans for Borrower or any of Borrower's obligations hereunder in any material manner.

(p) Borrower shall not take any action which would cause Borrower to (i) cease to be a QALICB pursuant to Section 45D of the Code and the related Regulations or (ii) prepay all or any portion of the Loans other than as permitted under the Loan Documents.

(q) Borrower shall not take any action which would cause Lender to be in default under any agreement by and between Lender and the CDFI Fund, if Lender first informs Borrower that such action would cause such default, unless the failure by Borrower to take such action would cause Borrower to be in default under any Loan Documents and would also adversely affect the economic terms and conditions of the Loans for Borrower or any of Borrower's obligations hereunder in any material manner.

(r) Borrower shall provide Lender with all information reasonably requested by Lender (i) to complete any reporting to Lender's members or partners, as applicable, in connection with the NMTC resulting from the Loans, (ii) in connection with Lender's NMTC reports and audits, including those made by the CDFI Fund's Community Investment Impact System, and (iii) in connection with any application to be made by Lender to the CDFI Fund for additional allocations of NMTC authority.

(s) Borrower shall comply with the requirements imposed by the New Markets Tax Credit Program on the Property pursuant to Section 45D of the Code and the related Regulations.

(t) Borrower shall only use proceeds of the Loans as set forth in the Credit Agreement and shall not use proceeds of the Loans in connection with any other property or business of Borrower (no permission for the ownership or operation of any such other property or business being implied).

(u) Borrower shall prepare all required federal, state or local income tax returns or reports in a manner consistent with its ownership of the entire Property, including any portion of the Property leased by Borrower to any other Person.

(v) Borrower is currently and throughout the term of the Loans shall be engaged in activities that further its nonprofit purpose.

(w) Borrower is currently and throughout the term of the Loans shall be engaged in activities that further its nonprofit purpose, and, assuming that Borrower's Form 1023, Application for Recognition of Exemption, is approved by the IRS, Borrower shall maintain its exempt non-profit status under Section 501(c)(3) of the Code.

(x) Borrower shall (i) treat the Loans as indebtedness for all purposes and (ii) shall treat each Lease as a lease for all purposes, and shall not take any positions contrary to such treatment.

(y) No portion of the Property will constitute a “qualified low-income building” under Section 42 of the Code.

(z) Borrower shall provide to Lender such information and sign such documents as are reasonably necessary for Lender and its members to make timely, accurate and complete submissions of (i) federal and state income tax returns, (ii) reports to governmental agencies, and (iii) any other reports required to be delivered to Lender, Fund or their respective members or partners, as applicable.

(aa) Borrower shall not permit a change in control or ownership of interests in Borrower or the Business which would result in (i) Lender, (ii) any member of Lender, (iii) CCE or (iv) Bank having NMTC Control (as such term is defined in Section 1.45D-1(d)(6)(ii)(B) of the Regulations) of Borrower.

(bb) Borrower shall not discontinue conducting the Business, shall not relocate, expand or materially change the nature of its business, and shall not materially change the manner in which its business activities are conducted, other than changes in the nature of its business or the manner in which it conducts its business that do not cause such business to cease to be a qualified business (as defined in Section 45D(d)(3) of the Code and the related Regulations) of Borrower or to cease to continue as a QALICB (as determined by Lender in its good faith judgment and based upon the advice of counsel) and which are otherwise permitted hereunder.

(cc) Borrower shall utilize all proceeds of the Loans within 12 months of the Effective Date.

(dd) Borrower will certify in writing to Lender that it remains in compliance with the provisions hereof, including in such certification the current percentages or ratios under the above sections that are applicable to Borrower at such time, by providing a certificate substantially in the form attached hereto as Attachment 1 as set forth in Section 5.2[(g)] of the Credit Agreement.

(ee) Borrower shall engage solely in the ownership, development, operation and management of the Property.

(ff) Borrower shall not make any election to be taxed as a corporation for federal income tax purposes.

(gg) Borrower is and shall continue to be a corporation for federal income tax purposes during the term of the Loans and shall file all returns consistent therewith.

(hh) Borrower shall promptly notify Lender of any risk of noncompliance to this Addendum.

(ii) In no event shall any leases, amendments or subleases be entered into that would constitute a transfer of the ownership of the Property for federal income tax purposes.

(jj) Except as set forth in Section 6.3 of the Credit Agreement, Borrower shall not lease any portion of the Property at any time during the term of the Loans.

(kk) Borrower shall maintain its funds and other assets separate from those of any other Person and shall not participate in a cash management system with any other Person unless any funds of Borrower which are maintained or deposited in such cash management system can at all times be identified as funds owned by Borrower. Borrower shall maintain all of its books, records, financial statements and bank accounts separate from those of its Affiliates and any other Person. Borrower’s assets shall not be listed as assets on the financial statement of any other Person, and Borrower shall have its own separate financial statements

(ll) Borrower does not currently guarantee and shall not guarantee or become obligated for the debts of any other Person or pledge its assets for the benefit of any Person and does not and shall not hold itself out as being responsible for the debts or obligations of any other Person. Borrower shall not acquire obligations or securities of its Affiliates.

(mm) Borrower shall collaborate with Lender with respect to the response to be made to any 90 calendar day notice of noncompliance and ability to cure the provisions hereof provided by the CDFI Fund to Lender pursuant to the Allocation Agreement.

(nn) Borrower shall not by its action or inaction cause a recapture of NMTCs.

[REMAINDER OF PAGE BLANK]

## ATTACHMENT 1

### COMPLIANCE CERTIFICATE

In order to ensure that each of the loans made by PACESETTER CDE X, LLC, a Texas limited liability company ("Lender"), to COASTAL ALABAMA FARMERS' AND FISHERMEN'S MARKET, INC., an Alabama non-profit corporation ("Borrower"), on [June \_\_], 2014 (the "Effective Date") qualify as a "qualified low-income community investment" (a "QLICI"), Borrower hereby certifies that it is a "qualified active low-income community business" (a "QALICB"), as such terms are defined by Section 45D of the Internal Revenue Code of 1986, as amended (the "Code"), and Section 1.45D-1(d)(4) of the Regulations.

1. Capitalized terms not otherwise defined in this Compliance Certificate (this "Certificate") have the meanings set forth in the New Markets Tax Credit Addendum to Credit Agreement attached as Exhibit A to that certain Credit Agreement, dated as of the Effective Date, by and between Lender and Borrower (as such Credit Agreement may be amended, assigned, restated, modified, or supplemented).

2. Borrower acknowledges and agrees that Borrower is and will remain a QALICB. Accordingly, Borrower hereby certifies that, as of the date hereof:

(a) The ratio of (i) the average value of the tangible property owned or leased by Borrower and used by Borrower during the current fiscal year of Borrower to date within any "low-income community" as such term is defined in Section 45D of the Code and the related Regulations, to (ii) the total average value of the tangible property owned or leased by Borrower and used by Borrower in the current fiscal year to date, is no less than 50% (*provided, however*, that for any taxable year in which Borrower has no employees, the foregoing reference to "50%" shall be replaced with "85%"). For purposes of the preceding sentence, tangible property owned by Borrower has been valued at its cost basis as determined under Section 1012 of the Code and tangible property leased by Borrower has been valued at a reasonable amount established by Borrower and reasonably acceptable to Lender.

(b) Less than 5% of the average aggregate unadjusted bases of Borrower's property is attributable to collectibles (as defined in Section 408(m)(2) of the Code). Borrower has provided Lender a true, correct and complete listing of any collectibles owned by Borrower, which listing includes the unadjusted bases of such property.

(c) Less than 5% of the average aggregate unadjusted bases of Borrower's property is attributable to nonqualified financial property (as defined in Section 1397C(e) of the Code). Borrower has provided Lender with a true, correct and complete listing of any non-qualified financial property owned by Borrower, which includes the unadjusted bases of such property.

(d) Neither Borrower's nor any tenant of Borrower's business activities nor any tenant's business activities at the Property include operation of any Excluded Business.

(e) Neither Borrower nor any tenant of Borrower is (i) renting Residential Real property or (ii) a business operating any Excluded Business as of the date of this Certificate.

(f) Borrower owns the Land and the improvements thereon. Borrower leases portions of the Property to tenants.

(g) No portion of the Property constitutes Residential Rental Property.

(h) At least 50% of the total gross income of Borrower is, will be, and shall (for each tax year throughout the term of the Loans) continue to be derived from the active conduct of a qualified business (as defined in Section 45D(d)(3) of the Code and the related Regulations) within the Census Tract.

(i) If applicable, at least 50% of the services performed for Borrower by its employees (or employees of any Affiliate of Borrower that is primarily engaged in providing services to Borrower) is, will be and shall continue to be performed on the Property. The percentage of services performed is determined based on the total amount paid by Borrower for employee services performed on the Property during the taxable year compared to the total amount paid by Borrower for employee services during the taxable year.

(j) Borrower is currently and throughout the term of the Loans shall be engaged in activities that further its nonprofit purpose, and, assuming that Borrower's Form 1023, Application for Recognition of Exemption, is approved by the IRS, Borrower shall maintain its exempt non-profit status under Section 501(c)(3) of the Code.

(k) Based solely on data from the CDFI Fund, the Property is located in highly distressed census tract numbers 01003011501 and 01003011502 (collectively, the "Census Tract") and the Census Tract is in a low-income community (as defined in Section 45D(e) of the Code and the Regulations).

(l) The nature of the Business, and Borrower's primary sources of revenue, is the development and use of the Property, and Borrower's primary expenditures are projected to be as set forth in the Projections. Borrower has no present plans or intentions to change the nature of or manner in which it conducts the Business which would cause it not to be in accordance with the provisions of this Section 2(l).

[REMAINDER OF PAGE BLANK; SIGNATURE PAGE TO FOLLOW.]

IN WITNESS WHEREOF, the Borrower has caused this Compliance Certificate to be duly executed on \_\_\_\_\_, 20\_\_.

**BORROWER:**

COASTAL ALABAMA FARMERS' AND  
FISHERMEN'S MARKET, INC., an Alabama non-  
profit corporation

By: \_\_\_\_\_  
Name:  
Title:  
(Authorized Signatory)

**EXHIBIT B**  
**PROJECT BUDGET**

[attached behind]

**EXHIBIT C**

**QALICB QUESTIONNAIRE**

*Entity Name:* COASTAL ALABAMA FARMERS' AND FISHERMEN'S MARKET, INC., an Alabama non-profit corporation ("Borrower")

*Effective date of report:* \_\_\_\_\_

*Date report prepared:* \_\_\_\_\_

*Name of person preparing report:* \_\_\_\_\_

*Phone number:* \_\_\_\_\_

*Defined terms:* Capitalized terms used herein and not otherwise defined herein have the meanings set forth in the Credit Agreement to which this Exhibit C is attached (as such Credit Agreement may be amended, assigned, restated, modified, or supplemented).

<i>No.</i>	<i>Question</i>	<i>Explanation / Response</i>
1.	Has there been any default, with or without notice, or conditions which if unchanged may lead to a default or an Event of Default under the Loan Documents or any Lease? Describe:	
2.	Are all required taxes currently paid? If not, how much is unpaid to whom and why?	
3.	Is all required insurance bound and paid for through the date of this report? If not, explain:	
4.	Is there any material fact which may substantially alter projected payments of interest and/or principal as set forth in the Projections? Explain:	
5.	If applicable, has any member or partner pledged or collateralized any of its interest in Borrower? Explain:	
6.	Has any Affiliate of Borrower received any distributions, compensation, or reimbursed expenses during the quarter? If so, please provide detail:	
7.	Has Borrower borrowed any money this period (secured or unsecured) from any Person for any reason, including operating deficit loans? If so, please provide a detailed breakdown of all such loans:	

8.	Was there any natural disaster or other incident creating property damage this period that might have an adverse impact on construction or operations? If so, please provide detail:	
9.	If applicable, during the period, did any member or partner of Borrower or CFPFCD die, dissolve, or go bankrupt? Provide details and an explanation of the impact on Borrower.	
10.	Were there any conditions or circumstances this period which reduced or might be expected to reduce below projected levels the amount of New Market Tax Credits available to Lender's members or partners, as applicable? Explain:	
11.	Were there violations of any health, safety, building code, or other statutes or regulations by Borrower? Please explain and provide detail:	
12.	Are there any material lawsuits or other legal proceedings, threatened or actual, against Borrower or CFPFCD which had or could reasonably be expected to have a Material Adverse Effect on Borrower or CFPFCD? Provide copies of all court filings or description of any such action or threatened action.	
13.	Are there any operating or reserve accounts which were required to be funded that have not been funded to required levels?	
14.	If applicable, are there any shareholder distributions that were required to be made by Borrower or CFPFCD that have not been made?	
15.	If applicable, is Borrower or CFPFCD owed any advances by its members or partners, as applicable, or its Affiliates?	
16.	Has the Internal Revenue Service made any claims against Borrower or CFPFCD or are you aware of any upcoming audits of Borrower or CFPFCD?	

[REMAINDER OF PAGE BLANK; SIGNATURE PAGE TO FOLLOW.]

IN WITNESS WHEREOF, the Borrower has caused this QALICB Questionnaire to be duly executed on \_\_\_\_\_, 20\_\_\_\_.

**BORROWER:**

COASTAL ALABAMA FARMERS' AND  
FISHERMEN'S MARKET, INC., an Alabama non-  
profit corporation

By: \_\_\_\_\_  
Name:  
Title:  
(Authorized Signatory)

**EXHIBIT D**

**ANNUAL NEW MARKET TAX CREDIT PROGRAM  
CONSTRUCTION CONTRACTOR AND SUBCONTRACTOR SURVEY**

The New Markets Tax Credit (“NMTC”) Program, established by Congress in December 2000, is aimed at stimulating economic opportunity and job creation and improved goods and services in low income communities. The development of the building which your organization is sponsoring has been financed, in part, with NMTC investments. The private investment produced by the NMTC Program is expected to result in the creation of jobs and material improvement in the lives of residents of low-income communities. This survey is designed to help assess the outcomes of the NMTC investment has achieved.

Date of Project Completion: \_\_\_\_\_

Contract or Subcontract Amount: \_\_\_\_\_

**A. General Project Information**

1. Name of Firm: \_\_\_\_\_

2. Address of Firm: \_\_\_\_\_  
\_\_\_\_\_

3. Person completing form: Name \_\_\_\_\_  
Title \_\_\_\_\_  
Phone \_\_\_\_\_  
Email \_\_\_\_\_

4. Address of Project: \_\_\_\_\_  
\_\_\_\_\_

5. Is your firm owned or controlled by a  
Minority  Yes  No  
Woman  Yes  No  
Low-income individual\*  Yes  No

6. This question is to be completed by the contractor only: Please attach a list of names, address and subcontract amounts for each subcontractor. Also indicate whether the firm is minority or woman owned, or owned by a low income person.\*

*\* Low income is defined as any individual having an income adjusted for family size, of not more than 80% of the Statewide Area Median Income*

**B. Jobs Creation Information (Construction)**

1. How many construction jobs are **projected** to be created during the project? \_\_\_\_\_  
How did you derive this estimate?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



8. What type of benefits do the construction workers receive? Check all that apply.

- Health Insurance
- Dental Insurance
- Long term Disability
- Short term Disability
- Retirement
- Paid vacation
- Paid sick time
- Job Training (either on or off the job training), describe:

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- Career advancement opportunities, describe:

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- Education assistance, describe:

---

- Child care or child care support or subsidy
- Flexible schedules

[REMAINDER OF PAGE BLANK]

**EXHIBIT E**

**INSURANCE REQUIREMENTS**

*Capitalized terms used herein and not otherwise defined herein have the meanings set forth in the Credit Agreement to which this <u>Exhibit E</u> is attached (as such Credit Agreement may be amended, assigned, restated, modified, or supplemented).		
<b>Type</b>	<b>Amount</b>	<b>Certificate/Policy/Endorsement Requirements</b>
Borrower's Commercial General Liability	\$1,000,000 per occurrence, combined single limit, \$2,000,000 aggregate.	<b>Name Fund and Lender as Additional Insured</b> as their interests may appear using approved endorsements with defense provided in addition to policy limits for indemnitees and products, personal injury, completed operation coverage for 24 mo. and cross liability if more than one Named Insured.
Borrower's Commercial Excess/Umbrella Liability	\$2,000,000 (minimum for loans up to \$1MM) \$5,000,000 (minimum for loans \$1MM and higher).	<b>Name Fund and Lender as Additional Insured as their interests may appear.</b>
Borrower's Worker's Comp. and Employer's Liability (if applicable)  <i>[Note: such coverage will only be required if Borrower [or tenant] has employees.]</i>	Statutory limits and \$1,000,000 minimum per accident.	"All States" Endorsement if applicable.
Borrower's or Contractor's Special/All Risk Builder's Risk during Construction  <i>[Note: Delayed opening coverage and/or terrorism coverage may be waived on a case by case basis with credit approval.]</i>	100% Insurable Value (if have appraisal, replacement cost basis (excluding land); if no appraisal-- for new construction, calculated as construction contract value less land, foundation costs and architect's fees; for rehab, calculated as estimate of core and shell plus construction budget for rehab).	<b>Name Lender as Mortgagee and Loss Payee</b> and Owner as Insured. <i>[Owner as Additional Named Insured if supplied by 3rd party Contractor].</i> Completed value, Non- Reporting form with no coinsurance requirement, <i>[delayed opening (delay in start-up and grant the insured permission to occupy prior to completion)].</i> <i>[Policy shall not contain exclusion for terrorist losses. If such exclusion exists a separate Terrorism policy covering Certified Acts of Terrorism in an amount equal to the full replacement cost or the loan amount, whichever is less.]</i> All deductibles/self insured retentions shall be clearly evidenced.
Borrower's Special Cause of Loss/All Risk Hazard  <i>[Note: Terrorism coverage is not required for NMTC investments.]</i>	100% Insurable Value (if have appraisal, replacement cost basis (excluding land); if no appraisal-- for new construction, calculated as construction contract value less land, foundation costs and architect's fees; for rehab, calculated as estimate of core and shell plus construction budget for rehab)	<b>Name Lender as Mortgagee and Loss Payee</b> and Owner as Insured. <i>[Owner as Additional Named Insured if supplied by 3rd party.]</i> Completed value, Non- Reporting form with no coinsurance requirement and grant the insured permission to occupy prior to completion. Include a non-contributing mortgagee clause and an Ordinance or Change in Law endorsement equal to 25% of the property insurance limit <i>[50% if the bldg is over 10 yrs old; 10% if new construction or adding to existing project but not gut rehab].</i> If the real property is a condominium or a co-op, additional insurance from the Condominium Association or the Co-op Board is required showing adequate insurance of the structure. All deductibles/self insured retentions shall be clearly evidenced.

Borrower's Windstorm, if project is located in a Windstorm Zone	100% Insurable Value (if have appraisal, replacement cost basis (excluding land); if no appraisal-- for new construction, calculated as construction contract value less land, foundation costs and architect's fees; for rehab, calculated as estimate of core and shell plus construction budget for rehab)	<b>Name Lender as Mortgagee <u>and</u> Loss Payee.</b>
Contractor's Commercial Excess/Umbrella Liability	\$1,000,000 (minimum for loans up to \$1MM) \$5,000,000 (minimum for loans \$1MM and higher)	<b>Name Fund, Lender, and Borrower as Additional Insured as their interests may appear.</b> <i>[Owner as Additional Named Insured if supplied by 3rd party Contractor].</i>
Boiler & Machinery Insurance	100% Replacement Cost	<b>Name Lender as Mortgagee <u>and</u> Loss Payee.</b> (Required if a central HVAC system exists or if the bldg is relying on equipment & machinery to operate elevators, escalators and the like.)
Borrower's Earthquake Insurance (Applicable to properties in Seismic Zones 3 & 4 and FM Zones 40 & 70. An evaluation of the potential for earthquake damage is required.)	To be determined	<b>Name Lender as Mortgagee <u>and</u> Loss Payee.</b>
Borrower's Business Interruption /Loss of Rents (if applicable) <i>[Note: such coverage will only be required if the Borrower leases the project and collects rent.]</i>	To be determined	<b>Name Lender as Mortgagee <u>and</u> Loss Payee.</b> (Extension to the Special Cause of Loss policy providing protection if a loss occurs and the tenants abate rent).
Contractor's Commercial General Liability	\$1,000,000 per occurrence, combined single limit, \$2,000,000 aggregate	<b>Name Fund and Lender as Additional Insured as their interests may appear.</b>
Flood Insurance	To be determined	<b>Name Lender as Mortgagee and Loss Payee.</b>

**Additional Requirements:**

1. For the Fund: Certificate holder as non-contributing Additional Insured clause shall read as "Chase NMTC CAFFM Investment Fund, LLC, a Delaware limited liability company, and its successors and/or assigns." For Lender, such clause shall read "Pacester CDE X, LLC, a Texas limited liability company, and its successors and/or assigns."
2. Certificate must reference the property description or address, full name of insurance company and term of policy.
3. Blanket policies: Certificate must identify the secured property by address and show the sum insured or state replacement value.
4. Certificate must provide for 30 days notice of adverse change, cancellation or non-renewal ("endeavor to" verbiage is not acceptable).
5. Evidence of liability insurance must be presented on an **Acord 25 form** certificate or on a form approved by Fund and Lender. Builder's risk and special cause of loss, hazard and property must be on an **Acord 27(Personal Property)/28 (Commercial Property) form** certificate or on a form approved by the Investment Fund(s) and CDEs.

- |   |
|---|
| 6. Company Insuring must be rated not less than "A-" VIII or better by A.M. Best Co., in Best's Rating Guide.   |
| 7. Waiver of Subrogation against named Additional Insured.  |
| 8. Loan documentation may have the right to force place special cause of loss, hazard and property insurance and flood insurance (if applicable) if there is a lapse in coverage. |

[REMAINDER OF PAGE BLANK.]

**EXHIBIT F**

**COMMUNITY BENEFITS AGREEMENT**

[attached behind]



**QLICI LOAN A NOTE**

<b>Borrower:</b>	<b>Lender:</b>
COASTAL ALABAMA FARMERS' AND FISHERMEN'S MARKET, INC. c/o City of Foley 407 East Laurel Avenue Foley, AL 36535 Attention: Jeff Rouzie, Director of Economic Development	PACESETTER CDE X, LLC c/o Pacesetter CDE, Inc. 2600 E. Southlake Boulevard Suite 120-105 Southlake, TX 76092 Attention: Giovanni Capriglione

Principal Amount:  
U.S. \$[5,950,400.00]

Note Date:  
[June \_\_], 2014

1. **PROMISE TO PAY.** COASTAL ALABAMA FARMERS' AND FISHERMEN'S MARKET, INC., an Alabama non-profit corporation ("Borrower"), promises to pay to the order of PACESETTER CDE X, LLC, a Texas limited liability company ("Lender"), in lawful money of the United States of America, the sum of [FIVE MILLION NINE HUNDRED FIFTY THOUSAND FOUR HUNDRED] AND NO/100 DOLLARS (U.S. \$[5,950,400.00]), together with interest at the rate described below assessed on the unpaid principal balance of this QLICI Loan A Note (this "Note") as outstanding from time to time, commencing on the date of this Note and continuing until this Note is paid in full.

2. **CREDIT AGREEMENT.** This Note is executed in connection with that certain Credit Agreement dated as of even date with this Note by and between Borrower and Lender (as the same may be amended, assigned, restated, modified, or supplemented from time to time, the "Credit Agreement"). All capitalized terms used but not defined in this Note have the meanings set forth in the Credit Agreement.

3. **ADVANCES.** The full proceeds of this Note will be advanced to Borrower on the date hereof (the "Note Date") and, except as set forth in Section 5(d), applied as set forth in the Credit Agreement.

4. **INTEREST RATE.** Advances under this Note shall bear interest from the date of this Note until paid at the rate of [1.0]% per annum (the "Interest Rate"). Interest due under this Note shall be computed on the basis of a 360-day year consisting of twelve 30-day months. With respect to any partial month, interest payments shall be computed for the actual number of days elapsed on the basis of a 360-day year.

5. **PAYMENT.**

(a) *Payment Dates.*

(i) Commencing on [September 1, 2014], and continuing on the [first (1st)] day of each [December, March, June, and September] thereafter through [June 1, 2021], accrued and unpaid interest shall be due and payable quarterly, in arrears, on the [first (1st)] day of each [December, March, June, and September]; provided that interest shall accrue on the outstanding principal balance of this Note through and including the last day of the applicable month; provided further, that Borrower's first interest payment due will include interest incurred from the date of this Note through [September 30, 2014].

(ii) Commencing on [September 1, 2021], and continuing on the the [first (1st)] day of each [December, March, June, and September] thereafter through and including the Maturity Date (defined below), payments of principal and interest shall be due and payable such that the loan fully amortizes upon the Maturity Date at the Interest Rate.

(iii) Payment of the principal balance of this Note, all accrued and unpaid interest thereon, and any other amounts payable by Borrower to Lender under this Note and the other Loan Documents will be paid in full on the Maturity Date.

(b) *Payment Time & Address.* Borrower shall make each payment required to be made by it hereunder (whether of principal, interest or fees, or otherwise) prior to 11:00 a.m., Central time, on the date when due, in immediately available funds, without set-off or counterclaim. Borrower will pay Lender at Lender's address shown above or at such other place as Lender may designate in writing.

(c) *Business Day.* If any payment on this Note becomes due and payable on a day other than a Business Day, such payment shall be extended to the next succeeding Business Day and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension.

(d) *Event of Default.* Failure to make payments on this Note on the date such amount becomes due and payable shall constitute an Event of Default hereunder. Following an Event of Default, unless otherwise agreed in writing by Lender in its sole discretion or required by applicable law, payments will be applied first to pay all sums owing under this Note and the Loan Documents other than interest and principal, if any, then to interest owing under this Note, and any remaining amount to unpaid principal.

(e) *Payments.* All payments required hereunder shall be made in U.S. dollars.

6. **PREPAYMENT.** Borrower may not prepay this Note in whole or in part at any time prior to the 7th anniversary of the Note Date. Borrower acknowledges that the Loan evidenced by this Note is part of an integrated financing structure that includes one or more investments made under the New Markets Tax Credit program pursuant to Section 45D of the Code and the regulations thereunder (the "NMTC Program"), which requires that funds remain invested during the applicable compliance period thereunder. As a result, prepayments under this Note could have impacts on the financing structure that could materially affect the economic relationships and benefits to Lender and others intended by that structure and could also create additional compliance risks under the NMTC Program. Accordingly, Borrower acknowledges that the

prepayment prohibition period set forth herein has been specifically bargained for by Lender and Borrower, and is reasonable in duration and effect. Borrower further acknowledges that Lender would not make the Loan evidenced by this Note without such prepayment restriction. Therefore, Borrower consents to the remedies of specific performance and of injunction and other equitable remedies for a breach or prospective breach of this Section 6.

7. MATURITY DATE. This Note shall mature on the earlier of (a) [December 31, 2043], or (b) the date on which the unpaid principal balance of this Note becomes due and payable by acceleration or otherwise pursuant to the Loan Documents or the exercise by Lender of any right or remedy under any Loan Document (as applicable, the “Maturity Date”).

8. [Reserved].

9. DEFAULT RATE. From and after the date of any Event of Default, interest on funds outstanding hereunder shall accrue at a rate of interest per annum equal to 3% in excess of the Interest Rate.

10. [Reserved].

11. SUCCESSORS AND ASSIGNS LIABLE. Borrower’s obligations and agreements under this Note will be binding upon Borrower’s successors and assigns. The rights and remedies granted to Lender under this Note will inure to the benefit of Lender’s successors and assigns, as well as to any subsequent holder or holders of this Note.

12. CAPTION HEADINGS. Caption headings of the sections of this Note are for convenience purposes only and are not to be used to interpret or to define their provisions. In this Note, whenever the context so requires, the singular includes the plural and the plural also includes the singular.

13. SEVERABILITY. If any provision of this Note is held to be invalid, illegal or unenforceable by any court, that provision will be deleted from this Note and the balance of this Note will be interpreted as if the deleted provision never existed.

14. WAIVER. Borrower, all endorsers and guarantors of this Note, and all others who may become liable for all or any part of the obligations evidenced by this Note and their respective heirs, successors and assigns agree to be jointly and severally bound by this Note, and jointly and severally (a) waive and renounce to the extent permitted by law any and all homestead exemption rights and the benefits of all valuation appraisement, stay, redemption and moratorium privileges as against this debt or any renewal or extension hereof; and (b) waive presentment, demand, protest, notice of nonpayment, notice of dishonor, any and all lack of diligence or delays in the collection or enforcement hereof, and any such privileges and defenses as may now be in effect or which may hereafter become law. Borrower and all endorsers and guarantors of this Note further jointly and severally agree that Lender may, without notice, in such manner, on such terms and for such time(s) as Lender may see fit, extend, or renew this Note, and/or release any maker, endorser, or guarantor of this Note, and/or substitute or add guarantors, and/or substitute or release any or all of collateral for this Note and provide any other

indulgence or forbearance to Borrower, all without in any way affecting, releasing, or foregoing the joint and several liability of Borrower and all endorsers and guarantors of this Note.

15. USURY SAVINGS. Notwithstanding anything to the contrary contained in this Note or the other Loan Documents, in no event shall the total of all charges payable under this Note and the other Loan Documents that are or could be held to be in the nature of interest exceed the maximum rate permitted under applicable law. Should Lender receive any payment which is or would be in excess of that permitted to be charged under any such applicable law such payment shall have been, and shall be deemed to have been, made in error and shall, (a) if made prior to the 7th anniversary of the Note Date, be returned to Borrower, or (b) if made on or after the 7th anniversary of the Note Date, automatically be applied to reduce the principal balance outstanding on this Note. If at any time the Interest Rate shall exceed such maximum rate, and thereafter the Interest Rate is below such maximum rate, then the Interest Rate shall be increased to the maximum rate for such period of time as is required so that the total amount of interest received by Lender is that which would have been received by Lender but for the first two sentences of this Section 15.

16. CHOICE OF LAW; WAIVER OF JURY TRIAL AND CERTAIN OTHER RIGHTS; SUBMISSION TO JURISDICTION; SERVICE OF PROCESS FOR ALL LOAN DOCUMENTS. Section 10.19 of the Credit Agreement is incorporated herein by reference and made a part hereof, except references to "Agreement" therein shall be deemed a reference to this Note, and references to Section 10.19 shall be deemed a reference to this Section 16.

17. ENFORCEMENT COSTS. Section 10.22 of the Credit Agreement is incorporated herein by reference and made a part hereof.

18. DEED OF TRUST. This Note is secured by, among other things, the Deed of Trust on the Property.

19. TIME IS OF THE ESSENCE. Time is of the essence with respect to the payment and performance of all of Borrower's obligations and liabilities under this Note.

[REMAINDER OF PAGE BLANK; SIGNATURE PAGE TO FOLLOW.]

IN WITNESS WHEREOF, Borrower has caused this QLICI Loan A Note to be duly executed as of the Note Date stated above.

**BORROWER:**

COASTAL ALABAMA FARMERS' AND  
FISHERMEN'S MARKET, INC., an Alabama  
non-profit corporation

By: \_\_\_\_\_  
Name:  
Title:



**QLICI LOAN B NOTE**

<b>Borrower:</b>	<b>Lender:</b>
COASTAL ALABAMA FARMERS' AND FISHERMEN'S MARKET, INC. c/o City of Foley 407 East Laurel Avenue Foley, AL 36535 Attention: Jeff Rouzie, Director of Economic Development	PACESETTER CDE X, LLC c/o Pacesetter CDE, Inc. 2600 E. Southlake Boulevard Suite 120-105 Southlake, TX 76092 Attention: Giovanni Capriglione

Principal Amount:  
U.S. \$[2,049,600.00]

Note Date:  
[June \_\_], 2014

1. **PROMISE TO PAY.** COASTAL ALABAMA FARMERS' AND FISHERMEN'S MARKET, INC., an Alabama non-profit corporation ("Borrower"), promises to pay to the order of PACESETTER CDE X, LLC, a Texas limited liability company ("Lender"), in lawful money of the United States of America, the sum of [TWO MILLION FORTY-NINE THOUSAND SIX HUNDRED] AND NO/100 DOLLARS (U.S. \$[2,049,600.00]), together with interest at the rate described below assessed on the unpaid principal balance of this QLICI Loan B Note (this "Note") as outstanding from time to time, commencing on the date of this Note and continuing until this Note is paid in full.

2. **CREDIT AGREEMENT.** This Note is executed in connection with that certain Credit Agreement dated as of even date with this Note by and between Borrower and Lender (as the same may be amended, assigned, restated, modified, or supplemented from time to time, the "Credit Agreement"). All capitalized terms used but not defined in this Note have the meanings set forth in the Credit Agreement.

3. **ADVANCES.** The full proceeds of this Note will be advanced to Borrower on the date hereof (the "Note Date") and, except as set forth in Section 5(d), applied as set forth in the Credit Agreement.

4. **INTEREST RATE.** Advances under this Note shall bear interest from the date of this Note until paid at the rate of [1.0]% per annum (the "Interest Rate"). Interest due under this Note shall be computed on the basis of a 360-day year consisting of twelve 30-day months. With respect to any partial month, interest payments shall be computed for the actual number of days elapsed on the basis of a 360-day year.

5. **PAYMENT.**

(a) *Payment Dates.*

(i) Commencing on [September 1, 2014], and continuing on the [first (1st)] day of each [December, March, June, and September] thereafter through [June 1, 2021], accrued and unpaid interest shall be due and payable quarterly, in arrears, on the [first (1st)] day of each [December, March, June, and September]; provided that interest shall accrue on the outstanding principal balance of this Note through and including the last day of the applicable month; provided further, that Borrower's first interest payment due will include interest incurred from the date of this Note through [September 30, 2014].

(ii) Commencing on [September 1, 2021], and continuing on the the [first (1st)] day of each [December, March, June, and September] thereafter through and including the Maturity Date (defined below), payments of principal and interest shall be due and payable such that the loan fully amortizes upon the Maturity Date at the Interest Rate.

(iii) Payment of the principal balance of this Note, all accrued and unpaid interest thereon, and any other amounts payable by Borrower to Lender under this Note and the other Loan Documents will be paid in full on the Maturity Date.

(b) *Payment Time & Address.* Borrower shall make each payment required to be made by it hereunder (whether of principal, interest or fees, or otherwise) prior to 11:00 a.m., Central time, on the date when due, in immediately available funds, without set-off or counterclaim. Borrower will pay Lender at Lender's address shown above or at such other place as Lender may designate in writing.

(c) *Business Day.* If any payment on this Note becomes due and payable on a day other than a Business Day, such payment shall be extended to the next succeeding Business Day and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension.

(d) *Event of Default.* Failure to make payments on this Note on the date such amount becomes due and payable shall constitute an Event of Default hereunder. Following an Event of Default, unless otherwise agreed in writing by Lender in its sole discretion or required by applicable law, payments will be applied first to pay all sums owing under this Note and the Loan Documents other than interest and principal, if any, then to interest owing under this Note, and any remaining amount to unpaid principal.

(e) *Payments.* All payments required hereunder shall be made in U.S. dollars.

6. **PREPAYMENT.** Borrower may not prepay this Note in whole or in part at any time prior to the 7th anniversary of the Note Date. Borrower acknowledges that the Loan evidenced by this Note is part of an integrated financing structure that includes one or more investments made under the New Markets Tax Credit program pursuant to Section 45D of the Code and the regulations thereunder (the "NMTC Program"), which requires that funds remain invested during the applicable compliance period thereunder. As a result, prepayments under this Note could have impacts on the financing structure that could materially affect the economic relationships and benefits to Lender and others intended by that structure and could also create additional compliance risks under the NMTC Program. Accordingly, Borrower acknowledges that the

prepayment prohibition period set forth herein has been specifically bargained for by Lender and Borrower, and is reasonable in duration and effect. Borrower further acknowledges that Lender would not make the Loan evidenced by this Note without such prepayment restriction. Therefore, Borrower consents to the remedies of specific performance and of injunction and other equitable remedies for a breach or prospective breach of this Section 6.

7. MATURITY DATE. This Note shall mature on the earlier of (a) [December 31, 2043], or (b) the date on which the unpaid principal balance of this Note becomes due and payable by acceleration or otherwise pursuant to the Loan Documents or the exercise by Lender of any right or remedy under any Loan Document (as applicable, the “Maturity Date”).

8. [Reserved].

9. DEFAULT RATE. From and after the date of any Event of Default, interest on funds outstanding hereunder shall accrue at a rate of interest per annum equal to 3% in excess of the Interest Rate.

10. [Reserved].

11. SUCCESSORS AND ASSIGNS LIABLE. Borrower’s obligations and agreements under this Note will be binding upon Borrower’s successors and assigns. The rights and remedies granted to Lender under this Note will inure to the benefit of Lender’s successors and assigns, as well as to any subsequent holder or holders of this Note.

12. CAPTION HEADINGS. Caption headings of the sections of this Note are for convenience purposes only and are not to be used to interpret or to define their provisions. In this Note, whenever the context so requires, the singular includes the plural and the plural also includes the singular.

13. SEVERABILITY. If any provision of this Note is held to be invalid, illegal or unenforceable by any court, that provision will be deleted from this Note and the balance of this Note will be interpreted as if the deleted provision never existed.

14. WAIVER. Borrower, all endorsers and guarantors of this Note, and all others who may become liable for all or any part of the obligations evidenced by this Note and their respective heirs, successors and assigns agree to be jointly and severally bound by this Note, and jointly and severally (a) waive and renounce to the extent permitted by law any and all homestead exemption rights and the benefits of all valuation appraisement, stay, redemption and moratorium privileges as against this debt or any renewal or extension hereof; and (b) waive presentment, demand, protest, notice of nonpayment, notice of dishonor, any and all lack of diligence or delays in the collection or enforcement hereof, and any such privileges and defenses as may now be in effect or which may hereafter become law. Borrower and all endorsers and guarantors of this Note further jointly and severally agree that Lender may, without notice, in such manner, on such terms and for such time(s) as Lender may see fit, extend, or renew this Note, and/or release any maker, endorser, or guarantor of this Note, and/or substitute or add guarantors, and/or substitute or release any or all of collateral for this Note and provide any other

indulgence or forbearance to Borrower, all without in any way affecting, releasing, or foregoing the joint and several liability of Borrower and all endorsers and guarantors of this Note.

15. USURY SAVINGS. Notwithstanding anything to the contrary contained in this Note or the other Loan Documents, in no event shall the total of all charges payable under this Note and the other Loan Documents that are or could be held to be in the nature of interest exceed the maximum rate permitted under applicable law. Should Lender receive any payment which is or would be in excess of that permitted to be charged under any such applicable law such payment shall have been, and shall be deemed to have been, made in error and shall, (a) if made prior to the 7th anniversary of the Note Date, be returned to Borrower, or (b) if made on or after the 7th anniversary of the Note Date, automatically be applied to reduce the principal balance outstanding on this Note. If at any time the Interest Rate shall exceed such maximum rate, and thereafter the Interest Rate is below such maximum rate, then the Interest Rate shall be increased to the maximum rate for such period of time as is required so that the total amount of interest received by Lender is that which would have been received by Lender but for the first two sentences of this Section 15.

16. CHOICE OF LAW; WAIVER OF JURY TRIAL AND CERTAIN OTHER RIGHTS; SUBMISSION TO JURISDICTION; SERVICE OF PROCESS FOR ALL LOAN DOCUMENTS. Section 10.19 of the Credit Agreement is incorporated herein by reference and made a part hereof, except references to “Agreement” therein shall be deemed a reference to this Note, and references to Section 10.19 shall be deemed a reference to this Section 16.

17. ENFORCEMENT COSTS. Section 10.22 of the Credit Agreement is incorporated herein by reference and made a part hereof.

18. DEED OF TRUST. This Note is secured by, among other things, the Deed of Trust on the Property.

19. TIME IS OF THE ESSENCE. Time is of the essence with respect to the payment and performance of all of Borrower’s obligations and liabilities under this Note.

[REMAINDER OF PAGE BLANK; SIGNATURE PAGE TO FOLLOW.]

IN WITNESS WHEREOF, Borrower has caused this QLICI Loan B Note to be duly executed as of the Note Date stated above.

**BORROWER:**

COASTAL ALABAMA FARMERS' AND  
FISHERMEN'S MARKET, INC., an Alabama  
non-profit corporation

By: \_\_\_\_\_  
Name:  
Title:



**ACCOUNT PLEDGE AND CONTROL AGREEMENT (DISBURSEMENT ACCOUNT)**

This ACCOUNT PLEDGE AND CONTROL AGREEMENT (DISBURSEMENT ACCOUNT) (this “Agreement”) is entered into as of [June \_\_], 2014 (the “Effective Date”), by and among (i) JPMORGAN CHASE BANK, N.A., a national banking association, having an address at 270 Park Avenue, 45th Floor, Mail Code: NY1-K425, New York, New York 10017, in its capacity as Bank (in such capacity, “Bank”) and Disbursement Agent (in such capacity, “Disbursement Agent”), (ii) COASTAL ALABAMA FARMERS’ AND FISHERMEN’S MARKET, INC., an Alabama non-profit corporation (“Borrower”), having an address at c/o City of Foley, 407 East Laurel Avenue, Foley, Alabama 36535, and (iii) PACESETTER CDE X, LLC, a Texas limited liability company (“Lender”), having an address at 2600 E. Southlake Boulevard, Suite 120-105, Southlake, Texas 76092.

**RECITALS**

A. Borrower owns the Land and the existing improvements thereon, on which Borrower is constructing the Project.

B. On the Effective Date, Lender is making loans to Borrower in the original aggregate principal amount of \$[8,000,000.00] (collectively, the “Loans”) to provide financing for the Project, pursuant to the Credit Agreement.

C. On the Effective Date, and pursuant to the Closing Transfers Memorandum and the Credit Agreement: (i) Lender will advance all proceeds of the Loans into the Disbursement Account (as defined below) established by Borrower with Bank and pledged to Lender to secure the Loans and (ii) Lender, Borrower, and Disbursement Agent have agreed that Bank will disburse certain proceeds of the Loans from the Disbursement Account in order to enable Borrower to make the Initial Payment.

D. Following the Initial Payment, there shall remain \$[1,594,525] of proceeds of the Loans and the entire proceeds of the Equity Contribution in the Disbursement Account for application as set forth in the Credit Agreement and the CMDA (defined below).

E. Borrower may from time to time be required to make certain deposits into the Disbursement Account pursuant to the Loan Documents.

F. Disbursement Agent has been engaged by Lender pursuant to the CMDA to act as the disbursement agent of the Loans and to process requests for and authorize releases of certain proceeds of, and deposits related to, the Loans from the Disbursement Account.

G. The parties hereto are entering into this Agreement for the purposes of (i) Borrower granting to Lender a security interest in the Disbursement Account, (ii) perfecting Lender’s security interest in the Disbursement Account, (iii) engaging Bank to provide the services described herein, and (iv) providing Bank the directions of Lender, Disbursement Agent, and Borrower with respect to the Disbursement Account and Unreleased Funds deposited therein.

## AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Defined Terms. All capitalized terms not otherwise expressly defined herein shall have the meanings assigned to them in the CMDA. In addition, the following terms shall have the following meanings in this Agreement:

(a) “Agreement” has the meaning set forth in the introductory paragraph, as the same may be amended, assigned, restated, modified, or supplemented from time to time.

(b) “Bank” has the meaning set forth in the introductory paragraph to this Agreement.

(c) “Borrower” has the meaning set forth in the introductory paragraph to this Agreement.

(d) “CMDA” means that certain Construction Monitoring and Disbursement Agreement, dated as of the Effective Date, by and among Bank, Disbursement Agent, Lender, and Borrower, as the same may be amended, assigned, restated, modified, or supplemented from time to time.

(e) “Disbursement Account” means that certain account established by Borrower with Bank into which deposits shall be made from time to time in accordance with the Loan Documents, which account is more particularly described in Section 2(a).

(f) “Disbursement Agent” has the meaning set forth in the introductory paragraph to this Agreement.

(g) “Effective Date” has the meaning set forth in the introductory paragraph to this Agreement.

(h) “Eligible Bank” means Bank or such other bank or financial institution, as may be selected by Lender (and is reasonably acceptable to Borrower), that is an “insured depository institution” under the Federal Deposit Insurance Act, as amended, and has a combined capital and surplus of not less than \$1,000,000,000.00 at all times.

(i) “Lender” has the meaning set forth in the introductory paragraph to this Agreement.

(j) “Obligations” means all indebtedness and obligations of Borrower under the Loan Documents.

(k) “UCC” means the Uniform Commercial Code as adopted by the State of Alabama, as the same may be amended, restated, replaced, supplemented, or otherwise modified from time to time.

2. Disbursement Account.

(a) The Disbursement Account maintained for Borrower bears account number [\_\_\_\_\_] and is entitled “[Coastal Alabama Farmers’ and Fishermen’s Market, Inc. Disbursement Account]”. The Disbursement Account consists of an interest bearing account, and Borrower agrees that it will include in its income all interest and earnings on the funds deposited therein. The Disbursement Account has been assigned the federal tax identification number of Borrower.

(b) Bank represents and warrants to Lender that: (i) Bank maintains the Disbursement Account for Borrower and (ii) Bank does not know of any claim to or interest in the Disbursement Account, except for claims and interests of the parties referred to in this Agreement.

(c) Bank shall hold the Disbursement Account and the Unreleased Funds for the benefit of Borrower and Lender, as their interests are set forth in this Agreement, and Bank shall designate such amounts on its books as being held for the benefit of Borrower and Lender in accordance with the terms hereof.

(d) The Disbursement Account and the Unreleased Funds shall be maintained separate and apart from the other funds of Bank and Borrower, and shall be (i) held and invested by Bank in accordance with the terms hereof and (ii) disbursed in accordance with the terms hereof and of the CMDA.

3. Initial Payment and Unreleased Funds. Bank will make the Initial Payment on the Effective Date and will comply with all instructions it receives directing disposition of the Unreleased Funds originated by Lender or Disbursement Agent without further consent by Borrower. At the election of Lender or Disbursement Agent, some or all Unreleased Funds may instead be held in one or more other successor or replacement disbursement account(s) with Bank, upon prior written notice to Borrower (except that such written notice will not be required if an Event of Default under any of the Loan Documents has occurred and is continuing), *provided*, that such Unreleased Funds are held on substantially the same terms as set forth in this Agreement.

4. Processing Receipts.

(a) Borrower (or an Affiliate thereof) may be required to deposit funds into the Disbursement Account after the Effective Date from time to time, pursuant to the Loan Documents. All deposits by Borrower (or an Affiliate thereof) shall be made in the form of electronic transfers delivered to Bank, by wire transfer or other form of electronic transfer to Bank, for the Disbursement Account, in accordance with the wire transfer instructions as set forth in the Closing Transfers Memorandum or in such other form or manner as may hereafter be approved in writing by (i) Lender or Disbursement Agent (acting on behalf of Lender) and (ii) Bank.

(b) Bank shall receive and process all receipts deposited by or on behalf of Lender or Borrower. Checks, money orders or other instruments for the payment of money which may be handled as cash items by Federal Reserve Banks, if delivered to Bank for deposit in the

Disbursement Account and if found by Bank in its reasonable discretion to be in proper order, shall be endorsed by Bank for deposit in the Disbursement Account.

5. Control of and Disbursements from the Disbursement Account.

(a) The Disbursement Account shall be subject to the control and direction of Lender; *provided, however*, that (i) Lender hereby delegates to Disbursement Agent its right to exercise control and direction over the Disbursement Account pursuant to and in accordance with the CMDA (which delegation shall cease, and all rights and obligations of the Disbursement Agent hereunder shall revert to Lender, from and after such time as the Disbursement Agent shall cease to be engaged pursuant to the CMDA), (ii) Lender and Disbursement Agent acting on behalf of Lender (for so long as Disbursement Agent is engaged by Lender pursuant to the CMDA) shall have the sole right to make or authorize withdrawals from the Disbursement Account, and any such withdrawals or disbursements from the Disbursement Account shall be made in accordance with the CMDA, and (iii) neither Borrower nor any other Person claiming by, on behalf of or through Borrower shall have any right or authority, whether express or implied, to make use of, or withdraw any funds from the Disbursement Account, or to give any instructions with respect to the Disbursement Account.

(b) Borrower authorizes and directs Bank, and Bank agrees, that Bank shall not honor Borrower's instructions with respect to a release from the Disbursement Account without Lender's or Disbursement Agent's (acting on behalf of Lender) prior written consent. By their signatures to this Agreement, Borrower hereby authorizes and directs Bank, and Bank agrees, to comply with the instructions of Lender or Disbursement Agent (acting on behalf of Lender) directing disposition of the funds without further consent of Borrower.

6. Security Interest.

(a) Borrower hereby grants to Lender a first priority perfected security interest in the Disbursement Account, the Unreleased Funds, and all cash and non-cash proceeds of all or any of the foregoing, in whatever form, and all proceeds of such proceeds, as additional security for the Obligations. Upon the occurrence and continuance of an Event of Default, Lender or Disbursement Agent (acting on behalf of Lender) may, in addition to any and all other rights and remedies available to Lender, direct Bank to pay to Lender all Unreleased Funds in the Disbursement Account, and Lender may apply any or all such funds to the repayment of the Obligations in any order in Lender's sole and absolute discretion. This Section 6 shall constitute a "security agreement" and the Disbursement Account shall constitute a "deposit account" within the meaning of the UCC, and Lender shall have all of the remedies of a secured party under the UCC. Borrower authorizes Lender and Disbursement Agent (acting on behalf of Lender) to file any financing or continuation statements and amendments thereto relating to the Disbursement Account without the signature of Borrower.

(b) Borrower represents and warrants that it has the legal right to pledge the Disbursement Account to Lender, that the funds in the Disbursement Account are not held for the benefit of a third party, and that there are no perfected liens or encumbrances with respect to the Disbursement Account. Borrower covenants to Lender that it shall not enter into any

acknowledgment or agreement that gives any other Person except Lender control over, or any other security interest, lien or title in, the Disbursement Account.

(c) Borrower will not, without obtaining the prior consent of Lender, further pledge, assign or grant any security interest in the Disbursement Account or the Unreleased Funds or permit any lien or encumbrance to attach thereto, or any levy to be made thereon, or any UCC-1 Financing Statements, except those naming Lender, as the secured party, to be filed with respect thereto.

(d) Bank acknowledges that, in accordance with this Agreement:

(i) the Disbursement Account and all Unreleased Funds have been irrevocably pledged, transferred and assigned to Lender as additional security for the Obligations; and

(ii) Lender has a first priority security interest in the Disbursement Account and all Unreleased Funds and a first priority lien thereon, and Borrower has not made (and will not make) another pledge of the Disbursement Account or the Unreleased Funds.

(e) In connection with the security interest granted in this Section 6, Bank is irrevocably authorized and directed, without any additional consent or authorization of Borrower, to disburse all Unreleased Funds as directed by Lender or Disbursement Agent (acting on behalf of Lender). Bank shall provide written notice to Borrower of any such disbursement within a reasonable period after it is completed. Bank agrees to take commercially reasonable measures to notify Lender and Disbursement Agent immediately in the event that any other Person makes a claim to or with respect to the Disbursement Account or any Unreleased Funds.

#### 7. Investment/Reinvestment of Unreleased Funds.

(a) Unreleased Funds shall be invested and reinvested by Bank upon the request of Borrower, subject in all instances to the prior consent of Lender or Disbursement Agent (acting on behalf of Lender) (such consent in their sole and absolute discretion), in a money market account at Bank or in bank repurchase agreements, or any other interest bearing banking arrangements with Bank. Notwithstanding anything to the contrary in this Agreement, in all events Lender's security interest in the Disbursement Account and the Unreleased Funds shall be maintained and perfected with respect to any investment or reinvestment of Unreleased Funds.

(b) No investment or reinvestment of Unreleased Funds shall be made in a security maturing later than the dates on which such funds will be needed for application to Project costs, as specified in writing to Bank by Borrower (such writing to include the estimated amount and date of each anticipated Funds Release). Bank shall be entitled to rely upon such writing in connection with all investments and reinvestments of Unreleased Funds, and Bank shall have no duty or obligation to verify the accuracy thereof. In the event that certain Unreleased Funds are to be included in a Funds Release earlier than estimated by Borrower, Borrower shall pay any and all early withdrawal penalties, early liquidation losses, or other losses arising from any withdrawal or liquidation prior to the stated maturity thereof, and shall indemnify, defend and

hold harmless Bank, Lender, and Disbursement Agent from all Liabilities arising in connection therewith.

(c) None of Bank, Lender or Disbursement Agent (acting on behalf of Lender) shall have any duty or obligation to make investment or reinvestment recommendations with respect to Unreleased Funds, and none shall have any liability to any Person for any losses or any investment or reinvestment directed by Borrower in accordance with this Section 7.

(d) No approval of Borrower's investment or reinvestment request by Lender or Disbursement Agent (acting on behalf of Lender) in accordance with Section 7(a) shall result in any obligation or acceptance by Lender or Disbursement Agent of any such penalties or any investment or reinvestment losses, whether or not discovered by Bank, Lender or Disbursement Agent.

8. Resignation by or Termination of Bank.

(a) Borrower may not unilaterally terminate this Agreement, the CMDA or close the Disbursement Account. Bank shall not cause or permit the Disbursement Account to be closed unless it has received prior written notice from Lender or Disbursement Agent (acting on behalf of Lender).

(b) Bank may resign from its duties, obligations, and rights under this Agreement at any time after 30 calendar days' prior written notice to Lender and Borrower, but in no event will Bank be released of its obligations hereunder unless and until an Eligible Bank is designated by Lender as a successor to Bank and assumed the duties, obligations, and rights of Bank hereunder in accordance with Section 8(e).

(c) Lender may not terminate Bank's duties, obligations or rights under this Agreement in the absence of a Bad Act by Bank. Any claim by Lender that Bank committed a Bad Act shall be provided to Bank in writing (with a copy provided to Disbursement Agent and Borrower). Bank may contest any such claim in any court of competent jurisdiction (subject to Section 24). Absent a final determination by such a court that Bank committed a Bad Act, Bank duties, obligations, and rights under this Agreement will continue unabated.

(d) The resignation or termination of Bank in accordance with this Agreement shall, without further action by any Person, release Bank (but not Disbursement Agent) from its duties, obligations, and rights under this Agreement and the CMDA arising from and after the date of such resignation or termination.

(e) Lender, acting in its sole and absolute discretion, shall designate a successor to Bank after receipt of written notice of resignation by Bank or after terminating Bank (subject to Bank's contest rights under Section 8(c)), as applicable. As a condition precedent to such designation, the successor to Bank will assume all duties, obligations, and rights of Bank under this Agreement and the CMDA. Bank agrees to reasonably cooperate with a designated successor bank in the orderly transitioning of its duties, obligations, and rights under this Agreement and the CMDA to such designated successor. All funds then on deposit in the Disbursement Account, after payment of all accrued and unpaid fees of Bank (if any), shall be disbursed to an Eligible Bank to hold and administer the Disbursement Account.

9. Bank Fees and Set-off.

(a) To compensate Bank for performing the services required hereunder, Borrower hereby agrees to pay Bank's standard fees for such services, in accordance with a schedule of fees to be established from time to time by Bank. In addition, Borrower hereby agrees to pay to Bank for the actual amount of any exchange, collection, processing, transfer, wire, postage or other out-of-pocket expenses incurred by Bank with respect to the Disbursement Account, as reasonably determined by Bank from time to time.

(b) Upon the request of Borrower, Bank shall include its fees in an account analysis statement, in accordance with the particular arrangements between Bank and Borrower.

(c) Bank waives any right to offset any claim against Borrower which it might have against the Disbursement Account; *provided, however*, that Bank retains the right to charge the Disbursement Account for any charges, fees and expenses provided for herein for which Borrower is responsible and for all items deposited in and credited to the Disbursement Account and subsequently returned unpaid or with respect to which Bank fails to receive final settlement. If there are insufficient funds in the Disbursement Account to cover the fees or returned items attributable to such account, Borrower agrees to reimburse Bank for the amount of such shortfall within 3 Business Days following demand therefor. Bank hereby subordinates all security interests, liens, claims, and, except as specifically set forth in this Section 9, rights of setoff it may have now or in the future, against the Disbursement Account to the security interests, liens and claims of Lender.

10. Disbursement Account Statements. Upon request, Bank shall send a monthly report to Lender, Disbursement Agent, and Borrower, which monthly report shall specify all credits and debits to the Disbursement Account for the previous calendar month and the balance in the Disbursement Account as of the end of such month. Bank shall provide or deliver to each of Lender, Disbursement Agent, and Borrower copies of all statements and other information concerning the Disbursement Account as they shall reasonably request.

11. Term of Agreement. Upon the release of funds from the Disbursement Account to Borrower in accordance with Section 6.1(b) of the CMDA, this Agreement shall terminate.

12. Indemnification.

(a) Borrower hereby agrees to indemnify and hold harmless each Indemnitee Party from any and all Liabilities that relate directly or indirectly, in whole or in part, to: (i) any instruction or request of Borrower in connection with this Agreement or (ii) any release (or determination not to release) of Unreleased Funds.

(b) An Indemnitee Party's right of indemnification under Section 12(a) will not be directly or indirectly limited, prejudiced, impaired or eliminated in any way by any finding or allegation that the conduct of Bank, Disbursement Agent, and/or Lender is active, passive or subject to any other classification or that Bank, Disbursement Agent, and/or Lender is directly or indirectly responsible under any theory of any kind for any act or omission by Borrower or any other Person other than an Indemnitee Party.

(c) Notwithstanding Section 12(a) and (b), Borrower will not be obligated to indemnify, defend or hold harmless an Indemnitee Party from or against any Liabilities caused as a direct result of such Indemnitee Party's Bad Acts.

(d) Notwithstanding Section 11 or any other provision to the contrary contained in this Agreement or any other Loan Document, the indemnity obligations of Borrower under this Section 12 and all other provisions of this Agreement (i) will survive the termination of this Agreement and (ii) will not be directly or indirectly limited, prejudiced, impaired or eliminated in any way with respect to Bank or Disbursement Agent if Bank or Disbursement Agent, as applicable, has resigned or has been terminated by Lender in accordance with this Agreement or the CMDA, as applicable.

13. Certain Matters Affecting Bank.

(a) Bank may rely and shall be protected in acting or refraining from acting upon any written notice (including but not limited to electronically confirmed facsimiles of such written notice) believed by it to be genuine and to have been signed or presented by the proper party or parties. Bank and its Affiliates shall not be liable for any loss or injury resulting from its actions or its performance or lack of performance of its duties hereunder or for its decisions in the absence of a Bad Act. In no event shall Bank or any of its Affiliates be liable for (i) acting in accordance with instructions from Lender or Disbursement Agent (acting on behalf of Lender) or (ii) losses due to forces beyond the control of Bank, including, without limitation, strikes, work stoppages, acts of war or terrorism, insurrection, revolution, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services.

(b) The duties and obligations of Bank hereunder shall be determined solely by the express provisions of this Agreement. Bank is not acting as a fiduciary for any Person. Bank shall not be liable except for the performance of Bank's duties and obligations as are specifically set forth in this Agreement. No implied covenants or obligations shall be read into this Agreement against Bank.

(c) At the direction of Lender or Disbursement Agent (acting on behalf of Lender), Bank shall disburse funds in the Disbursement Account by wire transfer, account transfer or check, or otherwise for final disposition, as directed in writing by Lender or Disbursement Agent (acting on behalf of Lender).

14. Conflicts. Matters not covered by this Agreement shall be determined in accordance with the customary procedures of Bank and any deposit account agreements, and in the event of a conflict between the terms of this Agreement and the customary procedures of Bank and/or any deposit account agreements, the terms of this Agreement shall govern.

15. Notices. Section 7.1 and Schedule A of the CMDA are incorporated herein by reference and made a part hereof.

16. Headings and Section References. Section 7.2 of the CMDA is incorporated herein by reference and made a part hereof.

17. Successors and Assigns. Section 7.3 of the CMDA is incorporated herein by reference and made a part hereof. Bank shall have the right to assign or transfer its duties, obligations, and rights under this Agreement in accordance with Section 8 or with the prior written consent of Lender.
18. Incorporation of Recitals. The Recitals to this Agreement are incorporated herein by reference and made a part hereof.
19. Entire Agreement; Amendment and Modification. Section 7.5 of the CMDA is incorporated herein by reference and made a part hereof.
20. No Waiver of Strict Compliance. Section 7.6 of the CMDA is incorporated herein by reference and made a part hereof.
21. No Guaranty. Section 7.7 of the CMDA is incorporated herein by reference and made a part hereof.
22. No Partnership Created. Section 7.8 of the CMDA is incorporated herein by reference and made a part hereof.
23. Severability. Section 7.9 of the CMDA is incorporated herein by reference and made a part hereof.
24. CHOICE OF LAW; WAIVER OF JURY TRIAL AND CERTAIN OTHER RIGHTS; SUBMISSION TO JURISDICTION; SERVICE OF PROCESS. Section 7.10 of the CMDA is incorporated herein by reference and made a part hereof.
25. Enforcement Costs. Section 7.12 of the CMDA is incorporated herein by reference and made a part hereof.
26. Receipt and Review of Loan Documents. Section 7.14 of the CMDA is incorporated herein by reference and made a part hereof.
27. Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all of which counterparts together shall constitute but one and the same instrument. Faxed, scanned or photocopied signatures shall be deemed equivalent to original signatures.

[REMAINDER OF PAGE BLANK; SIGNATURE PAGES TO FOLLOW.]

IN WITNESS WHEREOF, the parties hereto have executed this Account Pledge and Control Agreement (Disbursement Account) as of the Effective Date.

**BORROWER:**

COASTAL ALABAMA FARMERS' AND  
FISHERMEN'S MARKET, INC., an Alabama  
non-profit corporation

By: \_\_\_\_\_  
Name:  
Title:

[COUNTERPART SIGNATURE PAGE TO  
ACCOUNT PLEDGE AND CONTROL AGREEMENT (DISBURSEMENT ACCOUNT)]

**LENDER:**

PACESETTER CDE X, LLC, a Texas limited liability company

By: Pacesetter CDE, Inc., a Texas corporation, its managing member

By: \_\_\_\_\_  
Name: Giovanni Capriglione  
Title: Chief Compliance Officer

[COUNTERPART SIGNATURE PAGE TO  
ACCOUNT PLEDGE AND CONTROL AGREEMENT (DISBURSEMENT ACCOUNT)]

**BANK & DISBURSEMENT AGENT:** JPMORGAN CHASE BANK, N.A., a national  
banking association

By: \_\_\_\_\_  
Name: Wanda Clark  
Title: Authorized Officer



**ACCOUNT PLEDGE AND CONTROL AGREEMENT  
(LENDER RESERVE ACCOUNT)**

THIS ACCOUNT PLEDGE AND CONTROL AGREEMENT (LENDER RESERVE ACCOUNT) (this “Agreement”) is entered into as of [June \_\_\_], 2014 (the “Effective Date”), by and among (i) JPMORGAN CHASE BANK, N.A., a national banking association (“Bank”), having an address at 270 Park Avenue, 45th Floor, Mail Code: NY1-K425, New York, New York 10017, (ii) PACESETTER CDE X, LLC, a Texas limited liability company (“Lender”), having an address at 2600 E. Southlake Boulevard, Suite 120-105, Southlake, Texas 76092, and (iii) COASTAL ALABAMA FARMERS’ AND FISHERMEN’S MARKET, INC., an Alabama non-profit corporation (“Borrower”), having an address at c/o City of Foley, 407 East Laurel Avenue, Foley, Alabama 36535.

RECITALS

A. Borrower owns the Land and the existing improvements thereon, on which Borrower is constructing the Project.

B. On the Effective Date, Lender is making the Loans to Borrower to provide financing for the Project, pursuant to the Credit Agreement.

C. On the Effective Date, and pursuant to the Closing Transfers Memorandum and the Credit Agreement: (i) Lender will advance all proceeds of the Loans into the Disbursement Account established by Borrower with Bank and pledged to Lender to secure the Loans and (ii) Lender and Borrower have agreed that Bank will deposit \$[168,000] of the proceeds of the Loans (the “Reserve Deposit”) into the Reserve Account.

D. Funds shall be withdrawn from the Reserve Account as set forth in Section 5.6(a) of the Credit Agreement (the “RA Provisions”).

E. Lender is unwilling to make the Loans unless the Reserve Deposit is made on the Effective Date for the benefit of Lender.

F. The parties hereto are entering into this Agreement for the purposes of (i) Borrower granting to Lender a security interest in the Reserve Account, (ii) perfecting Lender’s security interest in the Reserve Account, (iii) engaging Bank to provide the services described herein, and (iv) providing Bank the directions of Lender and Borrower with respect to the Reserve Account and all unreleased funds deposited therein (collectively, the “Unreleased Funds”).

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Defined Terms. All capitalized terms not otherwise expressly defined herein shall have the meanings assigned to them in the Credit Agreement. In addition, the following terms shall have the following meanings in this Agreement:

(a) “Agreement” has the meaning set forth in the introductory paragraph, as the same may be amended, assigned, restated, modified, or supplemented.

(b) “Allocatee” means Pacesetter CDE, Inc., a Texas corporation, and its successors and assigns.

(c) “Bad Act” means, with respect to any Person, such Person’s willful misconduct, gross negligence or fraud.

(d) “Bank” has the meaning set forth in the introductory paragraph to this Agreement.

(e) “Borrower” has the meaning set forth in the introductory paragraph to this Agreement.

(f) “Credit Agreement” means that certain Credit Agreement, dated as of the Effective Date, by and between Lender and Borrower, as the same may be amended, assigned, restated, modified, or supplemented.

(g) “Effective Date” has the meaning set forth in the introductory paragraph to this Agreement.

(h) “Eligible Bank” means Bank or such other bank or financial institution, as may be selected by Lender (and is reasonably acceptable to Borrower), that is an “insured depository institution” under the Federal Deposit Insurance Act, as amended, and has a combined capital and surplus of not less than \$1,000,000,000.00 at all times.

(i) “Lender” has the meaning set forth in the introductory paragraph to this Agreement.

(j) “Lender OA” means that certain Second Amended and Restated Operating Agreement of Lender, dated as of the Effective Date, by and between Fund, as investor member, and Allocatee, as managing member, as the same may be amended, assigned, restated, modified, or supplemented.

(k) “Liabilities” has the meaning set forth in Section 11(a).

(l) “Obligations” means all indebtedness and obligations of Borrower to Lender under the Loan Documents.

(m) “RA Provisions” has the meaning set forth in the Recitals.

(n) “Reserve Account” means that certain account established by Borrower with Bank into which the Reserve Deposit shall be made and which, in accordance with this Agreement, is more particularly described in Section 2(a).

(o) “Reserve Deposit” has the meaning set forth in the Recitals.

(p) “UCC” means the Uniform Commercial Code as adopted by the State of Alabama or any other State, as applicable, as the same may be amended, restated, replaced, supplemented, or otherwise modified from time to time.

(q) “Unreleased Funds” has the meaning set forth in the Recitals.

2. Reserve Account.

(a) The Reserve Account maintained for Borrower bears account number [\_\_\_\_\_] and is entitled “[Coastal Alabama Farmers’ and Fishermen’s Market, Inc. Pacesetter Reserve Account].” The Reserve Account consists of an interest bearing account, and Borrower agrees that it will include in its income all interest and earnings on the funds deposited therein. The Reserve Account has been assigned the federal tax identification number of Borrower.

(b) Bank represents and warrants to Lender that: (i) Bank maintains the Reserve Account for Borrower and (ii) Bank does not know of any claim to or interest in the Reserve Account, except for claims and interests of the parties referred to in this Agreement.

(c) Bank shall hold the Reserve Account and the Unreleased Funds for the benefit of Borrower and Lender, as their interests are set forth in this Agreement, and Bank shall designate such amounts on its books as being held for the benefit of Borrower and Lender in accordance with the terms hereof.

(d) The Reserve Account and the Unreleased Funds shall be maintained separate and apart from the other funds of Bank and Borrower, and shall be held, invested, and disbursed by Bank in accordance with the terms hereof.

3. Unreleased Funds. Bank will make the Reserve Deposit on the Effective Date and will comply with all instructions it receives directing disposition of the Unreleased Funds originated by Lender without further consent by Borrower. At the election of Lender, some or all Unreleased Funds may instead be held in one or more other successor or replacement fee reserve account(s) with Bank, upon prior written notice to Borrower (except that such written notice will not be required upon the occurrence and continuance of an Event of Default), *provided*, that such Unreleased Funds are held on substantially the same terms as set forth in this Agreement.

4. Control of and Disbursements from the Reserve Account.

(a) The Reserve Account shall be subject to the control and direction of Lender. Lender shall have the sole and absolute right to make or authorize withdrawals from the Reserve Account, and any such withdrawals from the Reserve Account shall be made in accordance with the RA Provisions. Notwithstanding anything to the contrary in this Agreement, neither Borrower nor any other Person claiming by, on behalf of or through Borrower shall have any right or authority, whether express or implied, to make use of, or withdraw any funds from the Reserve Account, or to give any instructions with respect to the Reserve Account.

(b) Borrower authorizes and directs Bank, and Bank agrees, that Bank shall not honor Borrower's instructions with respect to a release from the Reserve Account without Lender's prior written consent (such consent in Lender's sole and absolute discretion). By their signatures to this Agreement, Borrower hereby authorizes and directs Bank, and Bank agrees, to comply with the instructions of Lender directing disposition of the funds without further consent of Borrower.

5. Security Interest.

(a) Borrower hereby grants to Lender a first priority perfected security interest in the Reserve Account, the Unreleased Funds, and all cash and non-cash proceeds of all or any of the foregoing, in whatever form, and all proceeds of such proceeds, as additional security for the Obligations. Upon the occurrence and continuance of an Event of Default, Lender may, in addition to any and all other rights and remedies available to Lender, direct Bank to pay to Lender all Unreleased Funds in the Reserve Account, and Lender may apply any or all such funds to the repayment of the Obligations in any order in Lender's sole and absolute discretion. This Section 5 shall constitute a "security agreement" and the Reserve Account shall constitute a "deposit account" within the meaning of the UCC, and Lender shall have all of the remedies of a secured party under the UCC. Borrower authorizes Lender to file any financing or continuation statements and amendments thereto relating to the Reserve Account without the signature of Borrower.

(b) Borrower represents and warrants that it has the legal right to pledge the Reserve Account to Lender, that the funds in the Reserve Account are not held for the benefit of a third party, and that there are no perfected liens or encumbrances with respect to the Reserve Account. Borrower covenants to Lender that it shall not enter into any acknowledgment or agreement that gives any other Person except Lender control over, or any other security interest, lien or title in, the Reserve Account.

(c) Borrower will not, without obtaining the prior written consent of Lender (such consent in Lender's sole and absolute discretion), further pledge, assign or grant any security interest in the Reserve Account or the Unreleased Funds or permit any lien or encumbrance to attach thereto, or any levy to be made thereon, or any UCC-1 Financing Statements, except those naming Lender, as the secured party, to be filed with respect thereto.

(d) Bank acknowledges, that, in accordance with this Agreement:

(i) the Reserve Account and all Unreleased Funds have been irrevocably pledged, transferred and assigned to Lender as additional security for the Obligations; and

(ii) Lender has a security interest in the Reserve Account and all Unreleased Funds and a lien thereon, and Borrower has not made (and will not make) another pledge of the Reserve Account or the Unreleased Funds.

(e) In connection with the security interest granted in this Section 5, Bank is irrevocably authorized and directed, without any additional consent or authorization of Borrower, to disburse all Unreleased Funds as directed by Lender. Bank shall give written

notice to Borrower of any such disbursement within a reasonable period after it is completed. Bank agrees to take commercially reasonable measures to notify Lender immediately in the event that any other Person makes a claim to or with respect to the Reserve Account or any Unreleased Funds.

6. Investment of Unreleased Funds. Unreleased Funds shall be invested by Bank in a money market account at Bank.

7. Resignation by or Termination of Bank.

(a) Borrower may not unilaterally terminate this Agreement or close the Reserve Account. Except as set forth in Section 10, Bank shall not cause or permit the Reserve Account to be closed unless it has received prior written notice from Lender.

(b) Bank may resign from its duties, obligations, and rights under this Agreement at any time after 30 calendar days' prior written notice to Lender and Borrower, but in no event will Bank be released of its obligations hereunder unless and until an Eligible Bank is designated by Lender as a successor to Bank and has assumed the duties, obligations, and rights of Bank hereunder in accordance with Section 7(e).

(c) Lender may not terminate Bank's duties, obligations or rights under this Agreement in the absence of a Bad Act by Bank. Any claim by Lender that Bank committed a Bad Act shall be provided to Bank in writing (with a copy provided to Borrower). Bank may contest any such claim in any court of competent jurisdiction (subject to Section[s] 23 [and 24]). Absent a final determination by such a court that Bank committed a Bad Act, Bank duties, obligations, and rights under this Agreement will continue unabated.

(d) The resignation or termination of Bank in accordance with this Agreement shall, without further action by any Person, release Bank from its duties, obligations, and rights under this Agreement arising from and after the date of such resignation or termination.

(e) Lender, acting in its sole and absolute discretion, shall designate a successor to Bank, which shall be an Eligible Bank, after receipt of written notice of resignation by Bank or after terminating Bank (subject to Bank's contest rights under Section 7(c)), as applicable. The designated successor to Bank shall be required to expressly assume all duties, obligations, and rights of Bank under this Agreement. Bank agrees to reasonably cooperate with its designated successor in the orderly transitioning of its duties, obligations, and rights under this Agreement to such designated successor. All funds then on deposit in the Reserve Account, after payment of all accrued and unpaid fees of Bank (if any) with respect to Reserve Account, shall be disbursed to the designated successor to hold and administer the Reserve Account.

8. Bank Fees and Set-off.

(a) To compensate Bank for performing the services required hereunder, Borrower hereby agrees to pay Bank's standard fees for such services, in accordance with a schedule of fees to be established from time to time by Bank. In addition, Borrower hereby agrees to pay to Bank for the actual amount of any exchange, collection, processing, transfer, wire, postage or

other out-of-pocket expenses incurred by Bank with respect to the Reserve Account, as reasonably determined by Bank from time to time.

(b) Upon the request of Borrower, Bank shall include its fees in an account analysis statement, in accordance with the particular arrangements between Bank and Borrower.

(c) Bank waives any right to offset any claim against Borrower which it might have against the Reserve Account; *provided, however*, that Bank retains the right to charge the Reserve Account for any charges, fees and expenses provided for herein for which Borrower is responsible and for all items deposited in and credited to the Reserve Account and subsequently returned unpaid or with respect to which Bank fails to receive final settlement. If there are insufficient funds in the Reserve Account to cover the fees or returned items attributable to such account, Borrower agrees to reimburse Bank for the amount of such shortfall within 3 Business Days following demand therefor. Bank hereby subordinates all security interests, liens, claims, and, except as specifically set forth in this Section 8, rights of setoff it may have now or in the future, against the Reserve Account to the security interests, liens and claims of Lender.

9. Reserve Account Statements. Upon request, Bank shall send a monthly report to Lender and Borrower, which monthly report shall specify all credits and debits to the Reserve Account for the previous calendar month and the balance in the Reserve Account as of the end of such month. Bank shall provide or deliver to Lender and Borrower copies of all statements and other information concerning the Reserve Account as they shall reasonably request.

10. Term of Agreement. Following the earlier to occur of the following, this Agreement shall irrevocably terminate and Bank shall close the Reserve Account: (a) written notice from Lender that Borrower has fully paid and satisfied all Obligations (including without limitation the RA Provisions) or (b) following the end of the Compliance Period (as defined in the Lender OA), written notice from Lender that the Reserve Account may be closed. Upon the termination of this Agreement and the closing of the Reserve Account, all funds then on deposit in the Reserve Account, after payment of all accrued and unpaid fees of Bank (if any), shall be released by Bank to Lender. Bank shall be under no obligation to provide notice to Lender, Borrower or any other Person of the termination of this Agreement or the closing of the Reserve Account.

11. Indemnification.

(a) Section 5.12 of the Credit Agreement is incorporated herein by reference and made a part hereof. Borrower acknowledges and agrees that its obligations hereunder include any and all losses, liabilities, suits, actions, obligations, fines, damages, judgments, penalties, claims, causes of action, charges, costs and expenses (including, without limitation, reasonable attorneys', accountants', experts', consultants' fees, disbursements and court costs prior to trial, at trial and on appeal) (collectively, "Liabilities") which are imposed on, incurred or paid by, or asserted against a Covered Person by reason or on account of, or in connection with any instruction or request of Borrower in connection with this Agreement.

(b) A Covered Person's right of indemnification under Section 11(a) will not be directly or indirectly limited, prejudiced, impaired or eliminated in any way by any finding or

allegation that the conduct of Bank and/or Lender is active, passive or subject to any other classification or that Bank and/or Lender is directly or indirectly responsible under any theory of any kind for any act or omission by Borrower or any other Person other than a Covered Person.

(c) Notwithstanding Section 11(a) and (b), Borrower will not be obligated to indemnify, defend, or hold harmless a Covered Person from or against any Liabilities caused as a direct result of such Covered Person's Bad Acts.

(d) Notwithstanding Section 10 or any other provision to the contrary contained in this Agreement or any of the other Loan Documents, the obligations of Borrower under this Section 11 (i) will survive the termination of this Agreement and (ii) will not be directly or indirectly limited, prejudiced, impaired or eliminated in any way with respect to Bank if Bank has resigned or has been terminated by Lender in accordance with this Agreement.

12. Certain Matters Affecting Bank.

(a) Bank may rely and shall be protected in acting or refraining from acting upon any written notice (including but not limited to electronically confirmed facsimiles of such written notice) believed by it to be genuine and to have been signed or presented by the proper party or parties. Bank and its Affiliates shall not be liable for any loss or injury resulting from its actions or its performance or lack of performance of its duties hereunder or for its decisions in the absence of a Bad Act. In no event shall Bank or any of its Affiliates be liable for (i) acting in accordance with instructions from Lender or (ii) losses due to forces beyond the control of Bank, including, without limitation, strikes, work stoppages, acts of war or terrorism, insurrection, revolution, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services.

(b) The duties and obligations of Bank hereunder shall be determined solely by the express provisions of this Agreement. Bank is not acting as a fiduciary for any Person. Bank shall not be liable except for the performance of Bank's duties and obligations as are specifically set forth in this Agreement. No implied covenants or obligations shall be read into this Agreement against Bank.

(c) At the direction of Lender, Bank shall disburse funds in the Reserve Account by wire transfer, account transfer or check, or otherwise for final disposition, as directed in writing by Lender.

13. Conflicts. Matters not covered by this Agreement shall be determined in accordance with the customary procedures of Bank and any deposit account agreements, and in the event of a conflict between the terms of this Agreement and the customary procedures of Bank and/or any deposit account agreements, the terms of this Agreement shall govern.

14. Notices. Any notice, request, demand, consent, approval, direction, agreement, or other communication (any "notice") required or permitted hereunder must be in writing and will be validly given only if (a) sent by a nationally-recognized courier that obtains receipts, (b) delivered personally by a courier that obtains receipts, (c) mailed by United States certified mail (with return receipt requested and postage prepaid), (d) sent by facsimile (with a copy of such facsimile and proof of transmission thereof sent via one of the methods of delivery set forth in

clauses (a), (b) or (c) hereof), or (e) sent by email (with a copy of such email and proof of transmission thereof sent via one of the methods of delivery set forth in clauses (a), (b) or (c) hereof unless specified herein that such notice may be provided exclusively by email), addressed to the applicable Person at the address set forth on Schedule A to this Agreement. Each notice shall be effective upon being so sent, delivered, or mailed, but the time period for response or action shall run from the date of receipt as shown on the delivery receipt. Refusal to accept delivery or the inability to deliver because of a changed address for which no notice was given shall be deemed received. Any party may periodically change its address for notice (including different or additional addresses for copies) by giving the other party at least 10 calendar days' prior notice in accordance with the foregoing provisions.

15. Headings and Section References. The headings used herein are for convenience only and do not limit or alter the terms of this Agreement or in any way affect the meaning or interpretation of this Agreement. References in this Agreement to Sections are intended to refer to Sections of this Agreement, unless otherwise specifically stated.

16. Successors and Assigns.

(a) This Agreement shall bind and inure to the benefit of and be enforceable by Lender, Bank, and Borrower and their respective, permissible successors and assigns.

(b) Lender shall have the right to assign or transfer its duties, obligations, and rights under this Agreement in connection with any assignment of all or any part of the Loans in accordance with the Loan Documents. Any assignee or transferee of Lender pursuant to the immediately preceding sentence shall be entitled to all the benefits afforded to Lender under this Agreement; *provided*, that such assignee or transferee shall have delivered to Bank and Borrower written evidence that such assignee or transferee agrees to be bound by the terms of this Agreement.

(c) Bank shall have the right to assign or transfer its duties, obligations, and rights under this Agreement in accordance with Section 7 or with the prior written consent of Lender.

17. Incorporation of Recitals and Schedule. The Recitals and Schedule identified in this Agreement are incorporated herein by reference and made a part hereof.

18. Entire Agreement; Amendment and Modification. This Agreement (together with other Loan Documents, to the extent referenced herein) embodies the entire agreement and understanding by and among the parties hereto relating to the subject matter hereof, and supersedes all prior agreements and understandings relating to the subject matter hereof. No changes, amendments, or alterations to this Agreement will be effective unless pursuant to written instrument executed by Borrower, Lender, and Bank (or each such party's respective successors or assigns, if applicable).

19. No Waiver of Strict Compliance. No waiver or failure of a party to insist upon strict compliance with any obligation, covenant, agreement, representation, warranty, or condition shall operate as a waiver of, or estoppel with respect to, any subsequent or other failure to comply with such obligation, covenant, agreement, representation, warranty, or condition, or with any other obligation, covenant, agreement, representation, warranty, or condition contained

herein. Failure to exercise any right, power, or remedy shall not constitute a waiver of any obligations under this Agreement or constitute a modification of this Agreement. The making of this Agreement shall not waive or impair any other security a party may have or hereafter acquire for the payment of obligations under this Agreement, and the taking of any additional security it may have in the order it may deem proper.

20. No Guaranty. Notwithstanding any provision to the contrary contained in this Agreement, neither Lender nor Bank shall be deemed to have, directly or indirectly, guaranteed any debts, obligations or liabilities of Borrower or Borrower's Affiliates.

21. No Partnership Created. Neither the execution of this Agreement, nor any action taken by Lender or Bank pursuant hereto is intended to be, nor shall it be construed to be, the formation of a partnership or joint venture between Lender and Bank.

22. Severability. The invalidity or unenforceability of any terms or provisions of this Agreement shall not affect the validity or enforceability of any other provisions of this Agreement, which shall remain in full force and effect, and, if any such unenforceable provision hereof is enforceable in any part or to any lesser extent, such provision shall be enforceable in all such parts and to the greatest extent permissible under applicable law.

23. CHOICE OF LAW; WAIVER OF JURY TRIAL AND CERTAIN OTHER RIGHTS; SUBMISSION TO JURISDICTION; SERVICE OF PROCESS.

(a) THE VALIDITY OF THIS AGREEMENT, THE CONSTRUCTION, INTERPRETATION, AND ENFORCEMENT HEREOF, AND THE RIGHTS OF EACH PARTY WITH RESPECT TO ALL MATTERS ARISING HEREUNDER OR RELATED HERETO SHALL BE DETERMINED UNDER, GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ALABAMA, WITHOUT GIVING EFFECT TO CONFLICT OR CHOICE OF LAW PRINCIPLES.

(b) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY (i) AGREES THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS AGREEMENT SHALL BE TRIED AND LITIGATED ONLY IN THE STATE AND FEDERAL COURTS LOCATED IN THE STATE OF ALABAMA AND (ii) WAIVES ANY RIGHT IT MAY HAVE TO ASSERT THE DOCTRINE OF *FORUM NON CONVENIENS* OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS SECTION 23.

(c) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). IT IS AGREED AND UNDERSTOOD THAT THIS WAIVER CONSTITUTES A WAIVER OF TRIAL BY JURY OF ALL CLAIMS AGAINST ALL PARTIES TO SUCH ACTIONS OR PROCEEDINGS, INCLUDING CLAIMS AGAINST PARTIES WHO ARE NOT PARTIES TO THIS AGREEMENT. EACH PARTY (i) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR

ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, AND (ii) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 23.

(d) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY AGREES THAT ANY PROCESS OR NOTICE OF MOTION OR OTHER APPLICATION TO ANY SUCH COURT IN CONNECTION WITH ANY ACTION OR PROCEEDING MAY BE SERVED UPON SUCH PARTY BY REGISTERED OR CERTIFIED MAIL TO OR BY PERSONAL SERVICE AT THE LAST KNOWN ADDRESS OF SUCH PARTY WHETHER SUCH ADDRESS BE WITHIN OR OUTSIDE THE JURISDICTION OF ANY SUCH COURT.

(e) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, NO PARTY SHALL ASSERT, AND EACH PARTY HEREBY WAIVES, ANY CLAIM AGAINST ANY OTHER PARTY OR SUCH OTHER PARTY'S AFFILIATES, ON ANY THEORY OF LIABILITY, FOR SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES (AS OPPOSED TO DIRECT OR ACTUAL DAMAGES) ARISING OUT OF, IN CONNECTION WITH, OR AS A RESULT OF, THIS AGREEMENT OR ANY AGREEMENT OR INSTRUMENT CONTEMPLATED HEREBY AND/OR THE TRANSACTIONS CONTEMPLATED HEREBY.

24. Enforcement Costs. In the event of any action at law or in equity to enforce the provisions of this Agreement or to secure relief or damages for the breach of this Agreement, the prevailing party shall be entitled to payment or reimbursement, as applicable, of its costs, expenses and fees (including without limitation reasonable attorneys', accountants', experts', and consultants' costs, expenses and fees, court costs and investigative expenses prior to trial, at trial and on appeal) incurred in such proceedings from the non-prevailing party.

25. Receipt and Review of Loan Documents. Each party to this Agreement acknowledges and agrees that it has been provided with a copy of the Credit Agreement and each of the other Loan Documents it has requested and has reviewed such documents with counsel of its own choosing.

26. Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all of which counterparts together shall constitute but one and the same instrument. Faxed, scanned or photocopied signatures shall be deemed equivalent to original signatures.

[REMAINDER OF PAGE BLANK; SIGNATURE PAGES TO FOLLOW.]

IN WITNESS WHEREOF, the parties hereto have executed this Account Pledge and Control Agreement (Lender Reserve Account) as of the Effective Date.

**BORROWER:**

COASTAL ALABAMA FARMERS' AND  
FISHERMEN'S MARKET, INC., an Alabama  
non-profit corporation

By: \_\_\_\_\_  
Name:  
Title:

[COUNTERPART SIGNATURE PAGE TO  
ACCOUNT PLEDGE AND CONTROL AGREEMENT  
(LENDER RESERVE ACCOUNT)]

**LENDER:**

PACESETTER CDE X, LLC, a Texas limited  
liability company

By: Pacesetter CDE, Inc., a Texas corporation, its  
managing member

By: \_\_\_\_\_  
Name: Giovanni Capriglione  
Title: Chief Compliance Officer

[COUNTERPART SIGNATURE PAGE TO  
ACCOUNT PLEDGE AND CONTROL AGREEMENT  
(LENDER RESERVE ACCOUNT)]

**BANK:**

JPMORGAN CHASE BANK, N.A., a national  
banking association

By: \_\_\_\_\_  
Name: Wanda Clark  
Title: Authorized Officer

**SCHEDULE A**

**Notice Addresses of Parties**

(1) If to Borrower: Coastal Alabama Farmers' and Fishermen's Market, Inc.  
c/o City of Foley  
407 East Laurel Avenue  
Foley, AL 36535  
Attention: Jeff Rouzie, Director of Economic Development  
Facsimile: 251-952-4012  
Email: [\_\_\_\_\_]

With a copy to: Adams and Reese LLP  
RSA Battle House Tower  
11 North Water Street, Suite 23200  
Mobile, AL 36602  
Attention: John F. Lyle, III, Esq.  
Facsimile: 251-438-7733  
Email: john.lyle@arlaw.com

And copies to: The addresses set forth under (3) below.

(2) If to Lender: Pacesetter CDE X, LLC  
c/o Pacesetter CDE, Inc.  
2600 E. Southlake Boulevard, Suite 120-105  
Southlake, TX 76092  
Attention: Giovanni Capriglione  
Email: giovanni@pacesettercde.com

With a copy to: Law Office of Mark D. Foster  
4835 LBJ Freeway, Suite 424  
Dallas, TX 75244  
Attention: Mark D. Foster, Esq.  
Facsimile: 214-363-9551  
Email: mark@mdfoster.com

And copies to: The addresses set forth under (3) below.

(3) If to Bank: JPMorgan Chase Bank, N.A.  
10 S. Dearborn Street, 19th Floor  
Mail Code: IL1-0953  
Chicago, IL 60603-5506  
Attention: NMTC Asset Manager  
Facsimile: 312-325-5050  
Email: nmtc.reporting@chase.com

[CONTINUED NEXT PAGE]

**SCHEDULE A (CONT'D)**

**Notice Addresses of Parties**

And a copy to: JPMorgan Chase Bank, N.A.  
New Markets Tax Credit Group  
2200 Ross Avenue, 9th Floor  
Mail Code: TX1-2951  
Dallas, TX 75201  
Attention: Wanda Clark  
Facsimile: 214-965-3297  
Email: wanda.clark@chase.com

And a copy to: Jones Day  
100 High Street, 21<sup>st</sup> Floor  
Boston, MA 02110  
Attention: Jeffrey D. Gaulin, Esq.  
Facsimile: 617-499-6999  
Email: jgaulin@jonesday.com

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**ASSIGNMENT AGREEMENT**

THIS ASSIGNMENT AGREEMENT (this "Assignment") is made as of [June \_\_], 2014 (the "Effective Date") by the CITY OF FOLEY, ALABAMA, a political subdivision of the State of Alabama (the "City"), in favor of COASTAL ALABAMA FARMERS' AND FISHERMEN'S MARKET, INC., an Alabama non-profit corporation ("Borrower").

**RECITALS**

A. Contemporaneously with this Assignment, Pacesetter CDE X, LLC, a Texas limited liability company ("Lender"), and Borrower have entered into that certain Credit Agreement (as the same may be amended, assigned, restated, modified, or supplemented from time to time, the "Credit Agreement"), pursuant to which Lender has agreed to make loans to Borrower in the aggregate original principal amount of \$[8,000,000] (as more particularly described in the Credit Agreement, collectively, the "Loans").

B. The City will derive substantial economic benefit, directly and/or indirectly, from Borrower's receipt of the Loans.

C. As a condition to making the Loans, Lender has required that (i) the City irrevocably and unconditionally assign, pledge, transfer and set over to Borrower all of its rights in and to the Contracts (as defined in the Borrower's Assignment (defined below)) on the Effective Date, as provided in this Assignment and (ii) Borrower irrevocably and unconditionally assign, pledge, transfer and set over all of its rights, title, and interests in the Contracts to Lender, as provided in that certain Assignment of Contracts dated as of the Effective Date made by Borrower in favor of Lender (as the same may be amended, assigned, restated, modified, or supplemented from time to time, the "Borrower's Assignment").

**AGREEMENT**

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, in order to induce Lender to make the Loans to Borrower, and intending to be legally bound hereby, the City hereby covenants and agrees as follows:

1. Recitals; Definitions. The foregoing recitals are hereby incorporated into this Assignment. All capitalized terms utilized in this Assignment but not otherwise defined shall have the meanings ascribed to them in the Borrower's Assignment.

2. Assignment. The City hereby irrevocably and unconditionally assigns, pledges, transfers and sets over to Borrower all of its right, title and interest in and to the Contracts. Notwithstanding the foregoing, the City may remain a party to the Contracts for the sole purpose of guaranteeing the payment obligations of Borrower thereunder.

3. Acceptance. Borrower hereby accepts the assignment of the Contracts and agrees to be bound to the performance of all obligations of the City under the terms of the Contracts from and after the Effective Date.

4. Representations and Warranties. The City hereby represents and warrants to Borrower as follows:

(a) To the best of the City's knowledge, as of the Effective Date: (i) there have been no prior assignments of the Contracts, (ii) Borrower has been provided with true, complete and correct copies of the Contracts, (iii) the Contracts are in full force and effect, (iv) the City has fully performed all of its obligations under the Contracts which, by the terms of the Contracts, are required to be performed as of the Effective Date, (v) there exists no default on the part of the City or any other party under any of the Contracts, and (vi) the right, title and interest of the City in, to and under the Contracts are not subject to any defense, offset, counterclaim or claim.

(b) No consent of any person is required in connection with the execution, delivery and performance by the City of this Assignment.

(c) The individual executing this Assignment on behalf of the City has the power and authority and the legal right to execute and deliver this Assignment and to bind the City to perform its obligations under this Assignment.

5. Lender Reliance. Lender and its members or partners, as applicable, may rely upon the representations and warranties of the City set forth in Section 4.

6. Successors and Assigns. This Assignment shall be binding upon the City and the City's heirs, executors, administrators, legal representatives, successors and assigns, and shall inure to the benefit of Borrower and its successors and assigns.

7. Entire Agreement; Amendment and Modification; Conflict. This Assignment (together with the Borrower's Assignment, to the extent referenced herein) embodies the entire agreement and understanding by and among the parties hereto relating to the subject matter hereof, and supersedes all prior agreements and understandings relating to the subject matter hereof. No changes, amendments, or alterations to this Assignment will be effective unless pursuant to (a) written instrument executed by the City and Borrower and (b) the prior written consent of Lender (such consent in Lender's sole and absolute discretion).

8. CHOICE OF LAW. THE VALIDITY OF THIS ASSIGNMENT, THE CONSTRUCTION, INTERPRETATION, AND ENFORCEMENT HEREOF, AND THE RIGHTS OF THE CITY AND BORROWER WITH RESPECT TO ALL MATTERS ARISING HEREUNDER OR RELATED HERETO SHALL BE DETERMINED UNDER, GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ALABAMA, WITHOUT GIVING EFFECT TO CONFLICT OR CHOICE OF LAW PRINCIPLES.

9. Signature. This Assignment may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all of which counterparts together shall constitute but one and the same instrument. Faxed, scanned or photocopied signatures shall be deemed equivalent to original signatures.

[REMAINDER OF PAGE BLANK; SIGNATURE PAGES TO FOLLOW.]

IN WITNESS WHEREOF, the City and Borrower have caused this Assignment Agreement to be duly executed and delivered by their duly authorized officers as of the Effective Date.

**CITY:**

CITY OF FOLEY, ALABAMA, a political  
subdivision of the State of Alabama

By: \_\_\_\_\_  
Name:  
Title:

[COUNTERPART SIGNATURE PAGE TO ASSIGNMENT AGREEMENT]

**BORROWER:**

COASTAL ALABAMA FARMERS' AND  
FISHERMEN'S MARKET, INC., an Alabama non-  
profit corporation

By: \_\_\_\_\_

Name:

Title:



## ASSIGNMENT OF CONTRACTS

THIS ASSIGNMENT OF CONTRACTS (this "Assignment"), dated as of [June \_\_], 2014 (the "Effective Date"), is made by COASTAL ALABAMA FARMERS' AND FISHERMEN'S MARKET, INC., an Alabama non-profit corporation ("Borrower"), in favor of PACESETTER CDE X, LLC, a Texas limited liability company ("Lender").

### RECITALS

A. Contemporaneously with this Assignment, Borrower and Lender have entered into that certain Credit Agreement dated as of the Effective Date (as the same may be amended, assigned, restated, modified, or supplemented from time to time, the "Credit Agreement"), pursuant to which Lender has agreed to make loans to Borrower in the aggregate original principal amount of \$[8,000,000] (collectively, and as more particularly described in the Credit Agreement, the "Loans").

B. Lender is unwilling to (i) enter into the Credit Agreement and the other Loan Documents or (ii) make the Loans to Borrower unless Borrower, among other things, secures the obligations to Lender under the Loan Documents by delivering this Assignment.

### AGREEMENT

In consideration of the mutual covenants contained herein and benefits derived herefrom, and for good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, Borrower agrees to the following terms and conditions:

1. Definitions. All capitalized terms listed in the introductory paragraph and Recitals to this Assignment have the meanings assigned to them therein, and all capitalized terms not otherwise expressly defined herein shall have the meanings assigned to them in the Credit Agreement. In addition, the following terms shall have the following meanings in this Assignment:

- (a) "Architect" means [\_\_\_\_\_, a \_\_\_\_\_].
- (b) "Architect Contract" has the meaning set forth on Exhibit A.
- (c) "Construction" has the meaning set forth in Section 2(c).
- (d) "Construction Contract" has the meaning set forth on Exhibit A.
- (e) "Contracts" has the meaning set forth in the last paragraph of Section 2.
- (f) "General Contractor" means Sun Coast Builders, Inc., an Alabama corporation.
- (g) "Obligations" has the meaning set forth in Section 2.
- (h) "Plans" has the meaning set forth in Section 2(c).

- (i) “Program Manager” means HOAR Program Management, LLC, a Delaware limited liability company.

2. Assignment and Pledge. As security for the payment in full of the indebtedness and performance in full of all obligations (collectively, whether now existing or hereafter arising, the “Obligations”) of Borrower to Lender under the Loan Documents (including but not limited to the Notes), Borrower hereby irrevocably and unconditionally assigns, pledges, transfers and sets over to Lender all of its right, title and interest in and to:

(a) all purchase, construction, construction management, design, AIA agreements, development, easement, property rights, service, supply, management, use, leasing, operation, maintenance, landscaping, gardening, parking, engineering, consulting and architectural contracts and agreements, licenses and all other similar contracts and agreements, all amendments, modifications and supplements thereto, relating to the Property and the Project, whomever the parties are to such contracts and agreements and whether such contracts and agreements are currently in existence or are subsequently entered into, and all claims of Borrower for breach by any other parties to any of the foregoing contracts and agreements, or any covenant, agreement, representation or warranty contained therein, all right, title and interest of Borrower in, to, under or pursuant to any and all reserve or escrow accounts, now or hereafter established pursuant to any of the foregoing contracts and agreements, including without limitation the right to receive any proceeds of such accounts, and all proceeds of any and all of the foregoing;

(b) all permits, licenses, approvals, variances, waivers, development rights, connection and service rights, easements, agreements and all other rights, benefits and approvals created by law or issued by any governmental or quasi-governmental agency or utility, including without limitation, site plan approvals, zoning approvals, historic or environmental approvals, transferable development rights, density allocations and credits, rights under any joint or planned unit development approvals, and vault agreements, and all amendments, supplements and additions thereto;

(c) all plans, specifications, surveys, drawings, plats, studies, reports, data and other technical information, drawings and descriptions of whatever nature now or hereafter existing which relate to the development, construction, reconstruction, restoration, decoration, repair or replacement of the Project, including without limitation the plans and specifications for the renovation and/or construction of the Project (the “Construction”) including without limitation those prepared by [the Architect], and all amendments, modifications and supplements to any of the writings described in this Section 2(c) (collectively, the “Plans”); and

(d) the agreements described on Exhibit A and attached hereto as Exhibits B, C and D.

All of the items described in Section 2(a)-(d), inclusive, together with and all amendments, modifications and supplements thereto and any collateral for any third party’s performance under any of the contracts and agreements herein described are sometimes herein referred to collectively as the “Contracts.” This Assignment is an absolute assignment for

security purposes which shall become void and of no further force or effect upon payment and performance of all Obligations.

3. Representations and Warranties. Borrower represents and warrants to Lender as follows:

- (a) Borrower is the true owner and holder of the Contracts;
- (b) Borrower has not assigned or granted a security interest in any of the Contracts to any Person other than Lender;
- (c) Borrower's interest in each of the Contracts is not subject to any claims, setoffs, encumbrances or deductions;
- (d) true, correct and complete copies of the Contracts have been delivered to Lender as of the Effective Date and constitute valid and binding obligations of the parties thereto, are enforceable in accordance with their terms, subject to applicable law, and have not been amended, restated, modified, or supplemented except as disclosed to Lender;
- (e) Borrower is not in default under the terms of any of the Contracts and no event has occurred that with the passage of time would result in a default under any of the Contracts;
- (f) all covenants, conditions and agreements have been performed as required by the Contracts by all parties thereto, except those which are not due to be performed until after the Effective Date; and
- (g) Borrower is not aware that any other party to the Contracts is in default under the terms of any of the Contracts.

4. No Assumption by Lender; Borrower's Covenants.

- (a) Neither this Assignment nor any action or actions on the part of Lender shall constitute an assumption by Lender of any obligations to be performed by Borrower under the Contracts, and Borrower shall continue to be liable for all obligations thereunder.
- (b) Borrower agrees to punctually perform any and all obligations it may have under the Contracts, to take such steps as may be necessary or appropriate to secure performance by all other parties of their obligations under the Contracts and to not amend in a material manner, or terminate with or without cause, any of the Contracts, without the express prior written consent of Lender, which consent shall not be unreasonably withheld, delayed or conditioned.
- (c) Lender may, at its option, but shall not be obligated to, perform or discharge any obligations of Borrower under any of the Contracts, at Borrower's expense, in the event that Borrower fails to do so. Lender will use commercially reasonable efforts to notify Borrower of its intent to perform or discharge Borrower's obligations under this Section 4.
- (d) Borrower agrees to hold harmless and indemnify each Covered Person against and from any and all loss, cost, liability or expense (including without limitation attorneys', accountants' and consultants' fees and expenses, court costs and investigation expenses)

resulting from any failure of Borrower to perform its obligations under the Contracts, unless any such loss, cost, liability or expense arises directly or indirectly from such Covered Person's willful misconduct, gross negligence or fraud. Any amount covered by this indemnity shall be payable on demand, and shall bear interest from the date of demand until the same is paid by Borrower to the applicable Covered Person at a rate equal to the Default Rate.

5. Use of Plans. Subject to the express terms of the Architect Contract, Lender may use the Plans for any purpose relating to the Construction, including, without limitation, inspections of construction and the completion of the Construction. For the purpose of completing, maintaining, restoring and otherwise dealing with the Construction, Lender may, subject to the express terms of the Architect Contract, reassign its right, title and interest in the Plans to any Person succeeding to Lender's or Borrower's interest in any or all of the Loans or the Property, in Lender's sole and absolute discretion, upon reasonable notice to Borrower and Architect (or other Person who prepared the Plans), and any such reassignment shall be valid and binding upon Borrower.

6. No Approval of Plans. Lender's acceptance of this Assignment shall not constitute approval of the Plans by Lender nor constitute Lender's representation, agreement or warranty that the Plans comply with applicable law. No Covered Person shall have any liability or obligation whatsoever in connection with the Plans and no responsibility for the adequacy thereof or for the completion of the Construction. Lender is hereby granted the right, but shall not have a duty, to inspect the Construction. No such inspection nor any failure by Lender to make objections after any such inspection shall constitute a representation by Lender that the Construction is in accordance with the Plans or constitute a waiver of the Lender's right thereafter to insist that the Construction be constructed in strict accordance with the Plans.

7. Benefits Conditionally Retained by Borrower. Lender hereby grants Borrower a revocable license to continue to receive the benefits of, and exercise the rights under, the Contracts; *provided, however*, such rights may be revoked in the sole and absolute discretion of Lender upon the occurrence and continuance of an Event of Default.

8. Action By Lender Following Default.

(a) Upon the occurrence and continuance of an Event of Default, Lender shall have the right, but not the obligation, without notice to Borrower and without the necessity of taking possession of the Project or any part thereof, to take in its name or in the name of Borrower or otherwise such action as Lender may at any time or from time to time determine, in its sole and absolute discretion, to be reasonably necessary to (i) cure any default under the Contracts or (ii) obtain the benefits of or to enforce, protect or exercise the rights of Borrower or Lender under the Contracts. In addition to the foregoing, Lender may exercise any other rights or remedies it has under the Loan Documents. No Covered Person shall incur any liability for any action taken by Lender or on Lender's behalf in good faith, pursuant to this Assignment, if such action proves to be in whole or in part inadequate or invalid.

(b) Borrower agrees to hold harmless and indemnify each Covered Person against and from any and all loss, cost, liability or expense (including without limitation attorneys', accountants' and consultants' fees and expenses, court costs and investigation expenses) in

connection with or otherwise related in any way whatsoever to Borrower's actions and omissions hereunder, except to the extent any such loss, cost, liability or expense arises directly or indirectly from such Covered Person's willful misconduct, gross negligence or fraud.

9. Power of Attorney. Borrower hereby irrevocably constitutes and appoints Lender its true and lawful agent and attorney-in-fact, with full power of substitution, to demand, receive and enforce all rights of Borrower under the Contracts, to modify, supplement and terminate the Contracts, to give appropriate releases, receipts for or on behalf of Borrower in connection with the Contracts, in the name, place and stead of Borrower or in Lender's name, with the same force and effect as Borrower could do if this Assignment had not been made, which appointment shall be effective upon the occurrence and continuance of an Event of Default. Borrower authorizes any third party to exclusively rely on the certificate of an officer of Lender for the occurrence and continuance of an Event of Default and hereby waives and releases any claim Borrower may have against such third party for such reliance. Borrower hereby agrees to deliver to Lender, upon Lender's written demand, originals of all of the Contracts and such other instruments and documents as Lender may reasonably request in order to permit Lender's succession to the right, title and interest of Borrower in and to the Contracts as provided herein. It is hereby recognized that the power of attorney granted in this Section 9 is coupled with an interest and is irrevocable until payment and performance in full of all Obligations.

10. Amounts Advanced by Lender. In the event Lender exercises any of the rights or remedies granted Lender in this Assignment or in any other Loan Documents with respect to the Contracts, the amount advanced by Lender in connection with the exercise of such rights shall be (a) added to the indebtedness under the Loan Documents (including but not limited to the indebtedness under the Notes), (b) secured by the collateral (as described in this Assignment and the other Loan Documents), and (c) bear interest at the interest rate set forth in the Notes until paid or reimbursed in full to Lender.

11. Consents of Parties to the Contracts. Borrower hereby agrees that on the Effective Date, Borrower shall cause to be executed and delivered to Lender:

(a) agreements and consents to this Assignment, in form and substance reasonably satisfactory to Lender, from Architect and General Contractor as more specifically identified under Section 3.1 of the Credit Agreement;

(b) at the request of Lender, such other agreements and consents to this Assignment, in form and substance reasonably satisfactory to Lender, from any other Persons (other than Borrower).

Borrower acknowledges and agrees that Lender has required the inclusion of this Section 11 as a material condition precedent to making the Loans.

12. Modifications to Contracts. Borrower shall not modify, amend, terminate and/or waive any Contracts or any terms and/or provisions of any Contracts without the prior written consent of Lender (such consent in Lender's sole and absolute discretion).

13. No Guaranty. Notwithstanding any provision to the contrary contained in this Assignment, Lender shall not be deemed to have, directly or indirectly, guaranteed any debts, obligations or liabilities of Borrower or Borrower's Affiliates.

14. Notices. Section 10.1 and Schedule A of the Credit Agreement are incorporated herein by reference and made a part hereof.

15. Amendments. This Assignment may not be changed, waived, discharged or terminated orally or in any manner other than by an instrument in writing signed by Borrower and Lender.

16. Invalidity. In the event that any one or more of the provisions contained in this Assignment is, for any reason, held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect any other provision of this Assignment.

17. Survival of Agreements. All representations and warranties of Borrower herein, and all covenants and agreements in this Assignment not fully performed as of the Effective Date, will survive the Effective Date.

18. Waivers. No course of dealing on the part of Lender or its officers, employees, consultants or agents, nor any failure or delay by Lender with respect to exercising any of its rights, powers or privileges under this Assignment will operate as a waiver thereof.

19. Cumulative Rights. The rights and remedies of Lender under this Assignment will be cumulative, and the exercise or partial exercise of any such right or remedy will not preclude the exercise of any other right or remedy available to Lender under this Assignment, any of the other Loan Documents or by law or in equity.

20. Time of the Essence. Time will be deemed of the essence with respect to the performance of all of the terms, provisions and conditions on the part of Borrower to be performed under this Assignment.

21. Successors and Assigns.

(a) This Assignment binds and benefits Borrower, Lender, and their respective, permitted successors and assigns.

(b) References to any Person herein shall include such Person's respective permitted successors and assigns.

(c) This Assignment is for the benefit of Lender and for such other Person or Persons as may from time to time become or be the holders of any of the Indebtedness in accordance with the terms hereof, and to the extent set forth in the Credit Agreement, this Assignment will be transferable and negotiable, with the same force and effect and to the same extent as the Indebtedness may be transferable, it being understood that, upon the transfer or assignment by Lender of any of the Indebtedness, the legal holder of such Indebtedness will have all of the rights granted to Lender under this Assignment.

22. Relationship Between the Parties. The relationship between Lender, on the one hand, and Borrower, on the other, will be solely that of lender and borrower, and such relationship will not, under any circumstances whatsoever, be construed to be a joint venture, joint adventure, or partnership.

23. Titles of Sections. All titles or headings to articles, sections, subsections or other divisions of this Assignment or the exhibits hereto are only for the convenience of the parties and will not be construed to have any effect or meaning with respect to the other content of such articles, sections, subsections or other divisions, such other content being controlling as to the agreements hereunder.

24. Section References. References in this Assignment to Sections are intended to refer to Sections of this Assignment, unless otherwise specifically stated.

25. Singular and Plural. Words used herein in the singular, where the context so permits, will be deemed to include the plural and vice versa. The definitions of words in the singular herein will apply to such words when used in the plural where the context so permits and vice versa.

26. CHOICE OF LAW; WAIVER OF JURY TRIAL AND CERTAIN OTHER RIGHTS; SUBMISSION TO JURISDICTION; SERVICE OF PROCESS FOR ALL LOAN DOCUMENTS. Section 10.19 of the Credit Agreement is incorporated herein by reference and made a part hereof; *provided*, that references to the “Agreement” therein shall be deemed a reference to this Assignment.

27. Enforcement Costs. Section 10.22 of the Credit Agreement is incorporated herein by reference and made a part hereof; *provided*, that references to the “Agreement” therein shall be deemed a reference to this Assignment.

28. Signature. A faxed, scanned or photocopied signature to this Assignment shall be deemed equivalent to an original signature.

[REMAINDER OF PAGE BLANK; SIGNATURE PAGE TO FOLLOW.]

IN WITNESS WHEREOF, the Borrower has executed this Assignment of Contracts as of the Effective Date.

**BORROWER:**

COASTAL ALABAMA FARMERS' AND  
FISHERMEN'S MARKET, INC., an Alabama  
non-profit corporation

By: \_\_\_\_\_  
Name:  
Title:

## EXHIBIT A

### LIST OF CONTRACTS

(1) Standard Form of Agreement Between Owner and Architect, dated as of \_\_\_\_\_, 201\_, by and between [\_\_\_\_\_] and Architect [and assigned by [\_\_\_\_\_] to Borrower pursuant to the Assignment Agreement] (collectively, and as the same may be amended, modified or supplemented from time to time, the “Architect Contract”). A copy of the Architect Contract is attached hereto as Exhibit B.

(2) Standard Form of Agreement Between Owner and General Contractor, dated as of \_\_\_\_\_, 201\_, by and between [\_\_\_\_\_] and General Contractor [and assigned by [\_\_\_\_\_] to Borrower pursuant to the Assignment Agreement] (collectively, and as the same may be amended, modified or supplemented from time to time, the “Construction Contract”). A copy of the Construction Contract is attached hereto as Exhibit C.

(3) City of Foley Program Manager Master Services Agreement, approved by the City as of June 17, 2013, by and between the City and General Contractor and assigned by the City to Borrower pursuant to the Assignment Agreement (collectively, and as the same may be amended, modified or supplemented from time to time, the “Program Management Contract”). A copy of the Program Management Contract is attached hereto as Exhibit D.

[REMAINDER OF PAGE BLANK]

**EXHIBIT B**

**ARCHITECT CONTRACT**

[attached behind]

**EXHIBIT C**

**CONSTRUCTION CONTRACT**

[attached behind]

**EXHIBIT D**

**PROGRAM MANAGEMENT CONTRACT**

[attached behind]



**CONSTRUCTION MONITORING AND DISBURSEMENT AGREEMENT**

**by and among**

**JPMORGAN CHASE BANK, N.A.,  
a national banking association,  
in its capacity as Disbursement Agent and Bank,**

**PACESETTER CDE X, LLC,  
a Texas limited liability company,  
as Lender**

**and**

**COASTAL ALABAMA FARMERS' AND FISHERMEN'S MARKET, INC.,  
an Alabama non-profit corporation,  
as Borrower**

**Dated as of [June \_\_], 2014**

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## **CONSTRUCTION MONITORING AND DISBURSEMENT AGREEMENT**

THIS CONSTRUCTION MONITORING AND DISBURSEMENT AGREEMENT (this “Agreement”) is made as of [June \_\_], 2014 (the “Effective Date”), by and among JPMORGAN CHASE BANK, N.A., a national banking association, in its capacity as Disbursement Agent hereunder (in such capacity, “Disbursement Agent”), JPMORGAN CHASE BANK, N.A., a national banking association, its capacity as holder of the Disbursement Account defined below (in such capacity, “Bank”), COASTAL ALABAMA FARMERS’ AND FISHERMEN’S MARKET, INC., an Alabama non-profit corporation (“Borrower”), and PACESETTER CDE X, LLC, a Texas limited liability company (“Lender”).

### **RECITALS**

A. Borrower owns those certain tracts of land located at 20733 Miflin Road, Foley, Alabama 36535 and 410 East Section Avenue, Foley, Alabama 36535 (collectively, the “Land”) and the existing improvements thereon, on which Borrower is constructing the Project (as defined below).

B. On the Effective Date, Lender is making loans to Borrower in the aggregate original principal amount of \$[8,000,000] (collectively, the “Loan”) to provide financing for the Project, pursuant to the Credit Agreement (as defined below).

C. On the Effective Date, and pursuant to the Closing Transfers Memorandum (as defined below) and the Credit Agreement: (i) Lender will advance all proceeds of the Loan into the Disbursement Account (as defined below) established by Borrower with Bank and pledged to Lender to secure the Loan, (ii) CFPFCD will make the Equity Contribution (each as defined below) to Borrower by depositing same in the Disbursement Account, and (iii) Lender, Borrower, and Disbursement Agent have agreed that Bank will disburse certain Loan proceeds from the Disbursement Account in order to enable Borrower to pay certain fees, costs, and expenses of Borrower, reimburse certain Affiliates (as defined below) for costs previously incurred in connection with the Project, and establish and fund a certain reserve (collectively, the “Initial Payment”).

D. Following the Initial Payment, the proceeds of the Loan and the Equity Contribution remaining in the Disbursement Account will be applied as set forth in the Credit Agreement and this Agreement.

E. From time to time, as further described below, Borrower may be required to deposit amounts required to cure any Deficiency (as defined below) into the Disbursement Account for application to the costs of the Project.

F. Lender and Borrower have requested that Disbursement Agent, for so long as Disbursement Agent is engaged by Lender as “Disbursement Agent” hereunder, (i) process each Release of Funds Request (as defined below), (ii) authorize Bank to disburse Unreleased Funds (as defined below) from the Disbursement Account on behalf of and for the benefit of Lender, and (iii) monitor the Project in accordance with the terms of this Agreement (collectively, the “Services”).

G. The parties are entering into this Agreement for the purposes of (i) Lender engaging Disbursement Agent to perform the Services, (ii) establishing procedures for each Release of Funds Request, and (iii) such other purposes as described herein.

## AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

### ARTICLE 1 GENERAL TERMS

Section 1.1 Definitions. All capitalized terms not otherwise expressly defined herein shall have the meanings assigned to them in the Credit Agreement. In addition, the following terms shall have the following meanings in this Agreement:

- (a) “Accepted Practices” has the meaning set forth in Section 4.2(a).
- (b) “Affiliate” means, when used with reference to a specified Person: (i) any Person that, directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with the specified Person, including by means of a non-member manager; (ii) any Person that is an officer of, manager of, member of, partner in, or trustee of, or serves in a similar capacity with respect to the specified Person or of which the specified Person is an officer, manager, member, partner, or trustee, or with respect to which the specified Person serves in a similar capacity; (iii) any Person that, directly or indirectly, is the beneficial owner of, or controls, 10% or more of any class of equity securities of, or otherwise has a substantial beneficial interest (10% or more) in, the specified Person, or of which the specified Person is directly or indirectly the owner of 10% or more of any class of equity securities, or in which the specified Person has a substantial beneficial interest (10% or more); (iv) any relative or spouse of the specified Person. As used in this definition, the term “control” (including the terms “controlled by” and “under common control with”) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.
- (c) “Agreement” has the meaning set forth in the introductory paragraph, as the same may be amended, assigned, restated, modified, or supplemented from time to time.
- (d) “Allocatee” means Pacesetter CDE, Inc., a Texas corporation.
- (e) “Architect” means [\_\_\_\_\_], a [\_\_\_\_\_], the architect selected by Borrower to design the Improvements and supervise the Project and approved by Lender.
- (f) “Authorized Representative” has the meaning set forth in Section 3.1.
- (g) “Bad Act” means, with respect to any Person, such Person’s willful misconduct, gross negligence or fraud.
- (h) “Bank” has the meaning set forth in the introductory paragraph to this Agreement.
- (i) “Borrower” has the meaning set forth in the introductory paragraph to this Agreement.
- (j) “Borrower Parties” means, collectively, Borrower, CFPFCD and any other Persons liable for payment or performance of the indebtedness and obligations under the Loan Documents.

(k) “Business Day” means any day other than a Saturday, Sunday or any day on which commercial banks in Baldwin County, Alabama, or New York, New York, are authorized or required to be closed.

(l) “CFPFCD” means The City of Foley Public Facilities Cooperative District, an Alabama public corporation.

(m) “Closing Transfers Memorandum” means that certain Closing Transfers Memorandum, dated as of the Effective Date, to which Lender, Allocatee, Disbursement Agent, and Borrower (together with certain other parties) are parties, which sets forth certain funds transfers to be made in connection with the closing of the Loan.

(n) “Completion Date” means [\_\_\_\_ \_], 2014.

(o) “Completion of the Improvements” means (i) the Improvements shall contain all equipment, furnishings and fixtures required for the intended use of the Property (*i.e.*, a farmers’ market and wholesale distribution facility) and/or which may be required by Governmental Authorities and/or by any law, regulation or rule of any Governmental Authority, (ii) permanent certificates of occupancy and all other necessary certificates, licenses, consents and other approvals of Governmental Authorities have been issued or made with respect to the Improvements (subject to the Credit Agreement, temporary certificates of occupancy (if applicable) may be provided instead of permanent certificates of occupancy), and (iii) title to the Property is clear and no liens or encumbrances exist against the Property not previously approved in writing by Lender.

(p) “Construction Consultant” has the meaning set forth in Section 3.6(a).

(q) “Credit Agreement” means that certain Credit Agreement, dated as of the Effective Date, by and between Lender and Borrower, as the same may be amended, assigned, restated, modified, or supplemented from time to time.

(r) “Deed of Trust” means that certain [Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing], dated as of the Effective Date, [made by Borrower in favor of Lender], as the same may be amended, assigned, restated, modified, or supplemented from time to time, together with the appropriate UCC-1 Financing Statements.

(s) “Deficiency” has the meaning set forth in Section 3.5(a).

(t) “Deficiency Deposit” has the meaning set forth in Section 3.5(b).

(u) “Development Expense Schedule” means the detailed line item cost breakdown of land costs, construction costs (hard costs) and all other related indirect development costs, including without limitation, interest expense, design and engineering costs, construction management, inspection and development fees, loan fees, expense payments and reimbursements, and costs for permits and approvals (soft costs) submitted to and approved by Lender.

(v) “Disbursement Account” means that certain account established by Borrower with Bank into which deposits shall be made from time to time in accordance with this Agreement and the other Loan Documents, which account is more particularly described in the P&C Agreement.

(w) “Disbursement Agent” has the meaning set forth in the introductory paragraph to this Agreement.

(x) “Disbursement Agent Party” means, as applicable, Disbursement Agent or any of its Affiliates, partners, members, managers, directors, officers, agents, employees, or successors or assigns.

(y) “Effective Date” has the meaning set forth in the introductory paragraph to this Agreement.

(z) “Equity Contribution” means the cash contribution in the amount of \$[209,478].00 that CFPFCD will make to Borrower on the Effective Date in accordance with the Guaranty of Payment and Completion.

(aa) “Event of Default” means, in regard to the Loan Documents, any breach, violation, or default thereunder that remains uncured following the expiration of such grace or cure period (if any) as shall be provided for such breach, violation, or default under such Loan Documents.

(bb) “Funds Release” has the meaning set forth in Section 3.1.

(cc) “General Contractor” means Sun Coast Builders, Inc., an Alabama corporation, the contractor selected by Borrower to construct the Improvements and approved by Lender.

(dd) “Governmental Authority” means any, federal, state, local, municipal, or other governmental or quasi governmental authority or self regulatory organization of any nature (including any agency, authority, branch, department, board, commission, court, tribunal or other entity, instrumentality or body politic exercising governmental or quasi governmental powers) or exercising, or entitled or purporting to exercise, any administrative, executive, judicial, legislative, enforcement, regulatory or taxing authority or power.

(ee) “Governmental Requirements” means all applicable existing and future laws, regulations, ordinances, building codes, restrictions and requirements of, and all agreements with and commitments to, all governmental, judicial or legal authorities having jurisdiction over any part of the Project, including those pertaining to the construction, sale, leasing or financing of the Project, and with all recorded covenants and restrictions affecting the Property and Project.

(ff) “Guaranty of Payment and Completion” means that certain Guaranty of Payment and Completion, dated as of the Effective Date, given by CFPFCD in favor of Lender, as the same may be amended, assigned, restated, modified, or supplemented from time to time.

(gg) “Improvements” means the construction of a farmers’ market and wholesale distribution facility located on the Land pursuant to the Plans & Specifications, which, upon completion, is anticipated to contain approximately [\_\_\_\_\_] aggregate square feet of newly built and rehabilitated space for the operation of a farmers’ market and wholesale distribution facility, and all related improvements and fixtures.

(hh) “Indemnitee Party” means, as applicable, Lender, Allocatee, Bank, Disbursement Agent or any of their Affiliates, partners, members, managers, directors, officers, agents, accountants, counsel, employees, or successors or assigns.

(ii) “Initial Deposit” has the meaning set forth in Section 2.1(a).

(jj) “Initial Payment” has the meaning set forth in the Recitals.

(kk) “Land” has the meaning set forth in the Recitals.

- (ll) “Lender” has the meaning set forth in the introductory paragraph to this Agreement.
- (mm) “Lender Approval Period” has the meaning set forth in Section 3.2(b).
- (nn) “Liabilities” means, collectively, any and all claims, suits, actions, damages, liabilities, losses, costs, expenses (including without limitation reasonable attorneys’, accountants’, experts’, and consultants’ fees and expenses, court costs and investigative expenses) or for any interruption of services, or incidental, consequential, special or punitive damages.
- (oo) “Loan” has the meaning set forth in the Recitals.
- (pp) “Loan Documents” means, collectively, all documents that evidence, govern, or secure the Loan and obligations of Borrower and other Persons relating to the Loan, including but not limited to this Agreement, the Credit Agreement, the Notes, the Deed of Trust, the P&C Agreement, and the Closing Transfers Memorandum.
- (qq) “Material Adverse Effect” means, with respect to any Person, a material adverse effect upon such Person’s business, assets, liabilities, condition (financial or otherwise), results of operations or business prospects. With respect to Borrower and CFPFCD, a “Material Adverse Effect” shall include, but not be limited to, a material adverse effect upon Borrower’s or CFPFCD’s ability to perform its respective obligations under the Loan Documents or upon the enforceability of such obligations against Borrower or CFPFCD, as applicable.
- (rr) “New Markets Tax Credit Program” means the program of the Internal Revenue Service and the Community Development Financial Institutions Fund, a wholly-owned governmental corporation within the United States Department of Treasury, related to the tax credits able to be claimed pursuant to Section 45D of the Internal Revenue Code of 1986, as amended.
- (ss) “Notes” means, collectively, the QLICI loan notes made by the Borrower with respect to the Loan and payable to the order of Lender, delivered pursuant to the Credit Agreement, together with any amendments, extensions, modifications, supplements, restatements, refinancings, substitutions or renewals thereto or thereof.
- (tt) “Obligations” means all indebtedness and obligations of Borrower under the Credit Agreement and the other Loan Documents.
- (uu) “P&C Agreement” means that certain Account Pledge and Control Agreement (Disbursement Account), dated as of the Effective Date, by and among Bank, Lender, and Borrower, as the same may be amended, assigned, restated, modified, or supplemented from time to time.
- (vv) “Plans & Specifications” means the final plans and specifications for the Improvements, including architectural drawings, engineering drawings, landscape drawings and all other plans and specifications, all as amended from time to time, subject to the terms of the Credit Agreement.
- (ww) “Person” means any individual, sole proprietorship, general or limited partnership, limited liability partnership, joint venture, trust, unincorporated organization, association, corporation, limited liability company, institution, entity, party or government (whether territorial, national, federal, state, county, city, municipal or otherwise, including, without limitation, any instrumentality, division, agency, body or department thereof), or any other form of entity.
- (xx) “Progress Report” has the meaning set forth in Section 3.6(b).

(yy) “Project” means the construction of the Improvements.

(zz) “Project Budget” means the budget for Project, including, without limitation, all items on the Development Expense Schedule. The applicable pages of the Projections evidencing the Project Budget are attached hereto as Exhibit B.

(aaa) “Property” means the Land and the Improvements.

(bbb) “Projections” means the financial projections, dated as of the Effective Date and certified by Novogradac & Company LLP, issued in connection with the transactions contemplated in this Agreement and the other Loan Documents.

(ccc) “Release of Funds Request” has the meaning set forth in Section 3.1.

(ddd) “Retainage” has the meaning set forth in Section 3.10(a).

(eee) “Services” has the meaning set forth in the Recitals.

(fff) “Title Company” means [\_\_\_\_\_, a \_\_\_\_\_].

(ggg) “Title Policy” means a lender’s title policy issued by the Title Company in favor of Lender in form and substance satisfactory to Lender as required under the Credit Agreement, for the Property, showing the Deed of Trust as a first mortgage lien against Borrower’s interest in the Property and showing no exceptions to title not previously approved by Lender together with evidence that all premiums for such policy have been paid.

(hhh) “Termination Notice” has the meaning set forth in Section 6.1(a).

(iii) “Unreleased Funds” means the funds remaining in the Disbursement Account at any particular time, including, without limitation, any and all monies deposited in the Disbursement Account after the Effective Date, and all interest or other earnings earned thereon.

(jjj) “UCC” means the Uniform Commercial Code as adopted by the State of Alabama, as the same may be amended, restated, replaced, supplemented, or otherwise modified from time to time.

## **ARTICLE 2 INITIAL DEPOSIT AND INITIAL PAYMENT**

### **Section 2.1 Initial Deposit and Initial Payment.**

(a) On the Effective Date, Loan proceeds advanced by Lender to Borrower pursuant to the Closing Transfers Memorandum and the Credit Agreement will be deposited into the Disbursement Account (such deposit is referred to herein as the “Initial Deposit”). The Initial Deposit shall be deemed advanced under the Credit Agreement and the Notes for all purposes and will accrue interest at the interest rate under the applicable Notes from and after the Effective Date.

(b) Also on the Effective Date, the Equity Contribution will be deposited into the Disbursement Account for the benefit of Borrower.

(c) Disbursement Agent (on behalf of Lender) hereby directs Bank to release proceeds of the Initial Deposit in an amount sufficient to enable Borrower to make the Initial Payment.

(d) Unreleased Funds will be held and disbursed for application to Project costs in accordance with this Agreement.

(e) All Loan proceeds shall be disbursed in accordance with the terms hereof prior to the disbursement of any Equity Contribution proceeds.

### **ARTICLE 3 FUND RELEASES; DEFICIENCY**

Section 3.1. Release of Funds Request. To request that Disbursement Agent authorize a release of Unreleased Funds (each a “Funds Release”), Borrower will make an application for release of Unreleased Funds by sending Disbursement Agent (with a copy thereof concurrently to Lender, which copy may be provided exclusively by email) a release of funds request (a “Release of Funds Request”) in the form attached hereto as Exhibit A. Borrower will not submit more than one Release of Funds Request per month. Each Release of Funds Request will (a) include a detailed breakdown of the Project costs to which the release of Unreleased Funds will be applied, including but not limited to the requisition of General Contractor and (b) be signed by an authorized officer of Borrower, or such other Person as is designated in writing by Borrower (an “Authorized Representative”). Borrower will be entitled to request the reimbursement of Project costs it paid with funds other than Loan proceeds and, if applicable, will identify same on a Release of Funds Request.

Section 3.2. Processing of Release of Funds Request.

(a) Disbursement Agent will have 10 Business Days from the receipt of a complete Release of Funds Request (*i.e.*, one that contains all required information and materials pursuant to Section 3.9 and/or Section 3.11, as applicable) within which to review and approve or disapprove of such Release of Funds Request.

(b) Lender will have 5 Business Days from the receipt of a complete Release of Funds Request (which may be provided exclusively by email) within which to review and approve or disapprove (which approval or disapproval may be provided exclusively by email) of such Release of Funds Request (the “Lender Approval Period”). If Lender does not send notice to Disbursement Agent of an objection to the Release of Funds Request during the Lender Approval Period, Lender will be deemed to have approved same and Disbursement Agent will be authorized (if Disbursement Agent itself approves such Release of Funds Request) to direct Bank to make the applicable Funds Release from the Disbursement Account. If Lender sends notice to Disbursement Agent within the Lender Approval Period objecting to the Funds Release, such notice must provide, in sufficient detail, the reason for such objection, and Lender will provide Borrower with a copy of such notice.

(c) If (i) Lender objects to a Release of Funds Request during the Lender Approval Period in accordance with Section 3.2(b), and Disbursement Agent recommends approval of such Release of Funds Request, or (ii) if Disbursement Agent identifies deficiencies in a Release of Funds Request and recommends against approval, and notwithstanding Disbursement Agent’s advice, Lender recommends approving such Release of Funds Request, then Disbursement Agent and Lender shall promptly meet and confer in person or by telephone to discuss the Release of Funds Request at issue and to reconcile their positions. If, at the expiration of the 10 Business Day period during which Disbursement Agent shall approve or disapprove a Release of Funds Request, Lender and Disbursement Agent remain unable to agree regarding the approval or disapproval of a Release of Funds Request, then Lender, in the exercise of its business judgment, agrees that it shall follow and shall be deemed to have consented to the recommendation of Disbursement Agent regarding the approval or disapproval of a Release of Funds Request.

Section 3.3. Conditions Precedent to Approval of Release of Funds Request.

(a) No Funds Release will be permitted or authorized unless the conditions precedent for the release of Unreleased Funds set forth in this Agreement have been satisfied, or have been waived by Lender in writing pursuant to Section 3.9 or Section 3.11, as applicable, or unless Lender shall have consented or shall be deemed to have consented to such Funds Release pursuant to Section 3.2. Disbursement Agent has the right to take such actions as Lender is entitled to take under the Loan Documents to verify that such conditions precedent have been satisfied, and to obtain such lien releases and other assurances for the benefit of Lender as Lender would be entitled to receive in accordance with the terms of the Loan Documents.

(b) If Disbursement Agent determines in its sole discretion that the conditions precedent for the release of Unreleased Funds have not been fulfilled, Disbursement Agent will notify Lender and Borrower of the same (which notice may be provided exclusively by email). If, on the other hand, Disbursement Agent determines, in its sole discretion, that such conditions precedent have been fulfilled, and provided that the Release of Funds Request has been approved (or deemed approved) by Lender pursuant to Section 3.2, Disbursement Agent will authorize a Funds Release as provided in this Agreement.

(c) Notwithstanding anything to the contrary set forth herein, Disbursement Agent is authorized during its engagement hereunder to release amounts necessary to make regularly scheduled payments of interest from the Disbursement Account (or other specified Borrower account(s)) as necessary to make regularly scheduled payments of interest on the Loan in accordance with the Loan Documents. In connection with the foregoing, Borrower shall, upon request of Disbursement Agent, provide Disbursement Agent with (i) an executed Transfer of Third Party Funds letter, substantially in the form attached hereto as Exhibit C, or (ii) an executed Chase NMTC Transfer of Funds Authorization letter, substantially in the form attached hereto as Exhibit D.

Section 3.4. Application of Proceeds of Funds Release. Upon authorization of a Funds Release, the released funds will be applied to Project costs identified in the applicable Release of Funds Request.

Section 3.5. Deficiency.

(a) If at any time, upon the sole determination of Lender or Disbursement Agent, the actual cost for the Completion of the Improvements in accordance with the Project Budget exceeds the aggregate amount of the Unreleased Funds and any other budgeted sources of funds for the Project (the amount by which such cost exceeds the Unreleased Funds and other budgeted sources of funds for the Project, hereinafter referred to as the “Deficiency”), Lender or Disbursement Agent, as applicable, will send a notice (which notice may be provided exclusively via email) to Borrower and the other parties hereto.

(b) Within 7 calendar days after receipt of a notice of a Deficiency, Borrower shall deposit into the Disbursement Account funds in the amount of the Deficiency (a “Deficiency Deposit”). The failure of Borrower to make the required Deficiency Deposit as set forth in the immediately prior sentence (i) will constitute a default under this Agreement and an Event of Default under the Credit Agreement and (ii) in addition to all other remedies provided for under this Agreement and the other Loan Documents, will entitle Disbursement Agent and Lender, each in its sole and absolute discretion, to disapprove any additional Fund Releases unless and until the required Deficiency Deposit is made.

(c) All Deficiency Deposits by Borrower shall be made in the form of electronic transfers delivered to Bank, by wire transfer or other form of electronic transfer to Bank, for deposit to the

Disbursement Account, in accordance with the wire transfer instructions as set forth in the Closing Transfers Memorandum or in such other form or manner as may hereafter be approved in writing by (i) Lender or Disbursement Agent (acting on behalf of Lender) and (ii) Bank.

Section 3.6. Construction Consultant; Other Consultants.

(a) Disbursement Agent will retain an inspecting architect ("Construction Consultant"), and any other consultants deemed necessary or desirable by Lender or Disbursement Agent, at Borrower's expense, to make periodic inspections of the Project and to review all change orders requiring Lender's approval relating to the Project.

(b) Before any Funds Release is made in response to a Release of Funds Request, Lender or Disbursement Agent will request that Construction Consultant and/or, at the election of Disbursement Agent, Disbursement Agent's own personnel, (i) inspect all work and materials for which payment is requested and all other work upon the Project, (ii) review the current Release of Funds Request, (iii) approve such work and Release of Funds Request, and (iv) submit to Lender and Disbursement Agent a progress inspection report (a "Progress Report"). Each Progress Report shall approve or disapprove, as applicable, the work upon the Project and the Release of Funds Request. The author of each Progress Report (*i.e.*, Construction Consultant or Disbursement Agent's own personnel) shall provide a copy of such report to Disbursement Agent and Lender promptly upon completion thereof.

(c) In addition to Construction Consultant, Lender may retain such other consultants as [such] Lender deems necessary or convenient to perform such services as may, from time to time, be required by [such] Lender in connection with this Agreement, the Project, the Loan, or the Credit Agreement or any other Loan Document.

(d) Lender, Disbursement Agent, and their respective agents and representatives (including but not limited to Construction Consultant) may enter and visit the Property at any reasonable time following reasonable prior notice to Borrower for the purposes of (i) performing an appraisal, (ii) observing the Project, and (iii) examining all materials, Plans & Specifications, working drawings, and other documentation relating to the Project. Borrower and Borrower's agents and representatives shall assist Lender, Disbursement Agent, and their respective agents and representatives as is reasonably necessary to enable them to perform the foregoing tasks.

(e) It is expressly understood and agreed that neither Disbursement Agent nor Lender is under any duty to supervise or to inspect the Project, and that any such inspection by or on behalf of Disbursement Agent or Lender is for the sole purpose of protecting the interests of Lender with respect to the Property and Project. Failure to inspect the work or any part thereof shall not constitute a waiver of any of Lender's rights hereunder. Inspection not followed by notice of Default/Event of Default shall not constitute a waiver of any Default/Event of Default then existing; nor shall it constitute an acknowledgment that there has been or will be compliance with the Plans & Specifications or applicable legal requirements or that the Project is free from defective materials or workmanship. It is further understood and agreed that any consents or approvals of Disbursement Agent or Lender hereunder are for the sole purpose of protecting the interests of Lender under the Loan Documents and Borrower shall have no right to rely on such approvals for Borrower's purposes.

(f) Borrower acknowledges that (i) Construction Consultant has been retained by Lender to act as a consultant and only as a consultant to Lender in connection with the Project, (ii) Construction Consultant shall in no event or under any circumstance have any power or authority to make any decision or to give any approval or consent or to do any other act or thing which is binding upon Lender and any such purported decision, approval, consent, act or thing by Construction Consultant on behalf of Lender

shall be void and of no force or effect, (iii) notwithstanding the recommendations of Construction Consultant, Lender reserves the right to make any and all decisions required to be made by Lender under this Agreement and to give or refrain from giving any and all consents or approvals required to be given by Lender under this Agreement and to accept or not accept any matter or thing required to be accepted by Lender under this Agreement, without in any instance being bound or limited in any manner or under any circumstance whatsoever by any opinion expressed or not expressed, or advice given or not given, or information, certificate or report provided or not provided, by Construction Consultant to Lender or any other Person with respect thereto, (iv) Lender reserves the right in its sole and absolute discretion to disregard or disagree, in whole or in part, with any opinion expressed, advice given or information, certificate or report furnished or provided by Construction Consultant to Lender or any other Person, and (v) Lender reserves the right in its sole and absolute discretion to replace Construction Consultant with another inspecting professional at any time and without prior notice to or approval by Borrower. Borrower shall have no right to receive copies of any written reports by Construction Consultant (including without limitation any Progress Report), but in the event Lender makes such information or portions thereof available to Borrower, Borrower shall rely thereon at its own risk.

(g) Disbursement Agent and Lender may retain such other consultants as Disbursement Agent or Lender deems necessary or convenient to perform such services as may, from time to time, be required by Disbursement Agent or Lender, as applicable, in connection with this Agreement, the Project, the Loan, or the Credit Agreement or any other Loan Document.

Section 3.7. Non-Conforming Work. If Construction Consultant determines that any work or materials do not substantially conform to the Plans & Specifications or sound building practices, or otherwise materially depart from any of the requirements of this Agreement or the Plans & Specifications, then Disbursement Agent (a) shall provide notice to Lender and Borrower of the applicable nonconformity or departure (which notice may be provided exclusively by email), (b) shall require Borrower to promptly cause the work to be corrected to Construction Consultant's satisfaction, and (c) Disbursement Agent shall cease further Funds Releases with respect to the non-conforming work until such work is corrected. If such non-conforming work is not corrected within 30 calendar days after Borrower's receipt of notice of the existence of such non-conforming work, then Disbursement Agent shall cease all further Funds Releases until such work is corrected. No action taken by Disbursement Agent or Lender in accordance with this Section 3.7 shall affect Borrower's obligation to complete the Project on or before the Completion Date.

Section 3.8. Cost Savings. If there is a savings in a particular line item set forth in the breakdown of Project costs, and if such savings are substantiated by evidence satisfactory to Lender and Disbursement Agent, Borrower, after obtaining the prior consent of Lender and Disbursement Agent, which consent may be withheld in the sole and absolute discretion of Lender and Disbursement Agent, may reallocate such savings to other line items in the Project Budget with respect to which additional costs have been incurred or to the contingency reserve line item.

Section 3.9. Conditions Precedent to Fund Releases. Each of the following conditions precedent must be satisfied by Borrower, approved by Disbursement Agent, and approved (or deemed approved) by Lender prior to approval of any Release of Funds Request:

(a) Borrower shall have delivered a complete copy of the Release of Funds Request to Disbursement Agent and Lender in accordance with Section 3.2;

(b) all insurance coverage required to be maintained by Borrower under the Credit Agreement or by applicable law is in full force and effect;

- (c) all representations and warranties contained in this Agreement and in the other Loan Documents are true and correct in all material respects;
- (d) this Agreement and all other Loan Documents are in full force and effect;
- (e) no Event of Default under the Loan Documents has occurred and is continuing (unless such Event of Default shall have been waived in writing by Lender);
- (f) no event has occurred (including, without limitation, any litigation or administrative proceedings) and no condition exists or, to the knowledge of Borrower or CFPFCD, is threatened, which (i) had or could reasonably be expected to have a Material Adverse Effect on or to Borrower or CFPFCD or (ii) could reasonably be expected to constitute a default under this Agreement or any other Loan Document;
- (g) the progress of the Project is such that the Completion of the Improvements is reasonably anticipated to be completed on or before the Completion Date;
- (h) if applicable, Borrower has made all required Deficiency Deposits;
- (i) all consents, licenses, permits, and other authorizations or approvals then required by any Governmental Authority with respect to the Project have been obtained and/or issued, or will be timely obtained in accordance with the Credit Agreement;
- (j) if applicable, each of Disbursement Agent and Lender have received an updated endorsement to the Title Policy satisfactory thereto, which shall contain no additional liens or encumbrances affecting the Property (except those that shall have been insured or bonded over to the satisfaction of Lender and Disbursement Agent) other than the Deed of Trust and those exceptions previously approved in writing by Lender;
- (k) Disbursement Agent has received copies of notarized partial unconditional lien waiver forms executed by General Contractor and each subcontractor, supplier and materialmen (with a copy of such lien waivers provided to Lender), including, without limitation, from all parties sending statutory notices to contractors, notices to owners, or notices of nonpayment, specifying in each such partial lien waiver the amount paid in consideration of such partial release, and covering all work and materials included in the Request for Funds Release;
- (l) Disbursement Agent and Lender have received an AIA G702 Application and Certificate for Payment completed by General Contractor and certified by Architect;
- (m) Disbursement Agent and Lender (i) have received (if not previously delivered) a list of all subcontractors employed in connection with the Project, containing the name, address, and telephone number of each such subcontractor, a general statement of the nature of the work to be done, the labor and materials to be supplied, the names of new materialmen, if known, and the approximate dollar value of such labor or work with respect to each and (ii) have the right to make direct contact with each subcontractor and materialmen to verify the facts disclosed by said list or for any other purpose;
- (n) Disbursement Agent and Lender have received copies of invoices or other reasonably acceptable documentation to substantiate Borrower's request for payments of hard and soft costs incurred for the Project;

(o) Architect has certified the results of regular, periodic inspections of the Project to Disbursement Agent and Lender, which must be satisfactory to Disbursement Agent and Lender in their sole and absolute discretion;

(p) the Progress Report from Construction Consultant for the applicable Release of Funds Request recommending the funding of the Release of Funds Request;

(q) Disbursement Agent and Lender have received such other evidence as they may require that the Project is proceeding in accordance with the Plans & Specifications and the Project Budget, neither of which shall have been amended, restated or modified, except as expressly approved by Lender in accordance with the Credit Agreement;

(r) with respect to any payment for stored materials, the Release of Funds Request shall contain all of the items described in Section 3.10 with respect to such stored materials;

(s) Disbursement Agent and Lender have received an updated Construction Completion Schedule (which shall include a statement from Borrower regarding any anticipated variances with respect to the date of the Completion of the Improvements); and

(t) Borrower shall have furnished to Lender and Disbursement Agent such other instruments, documents, certificates, endorsements, invoices and opinions as Lender and Disbursement Agent may request to confirm satisfaction of the foregoing conditions.

In the event that any of the conditions precedent set forth in this Section 3.9 are not satisfied, Disbursement Agent will notify Lender and Borrower in writing (which notice may be provided exclusively by email). Unless and until such conditions precedent are satisfied by Borrower or waived by Lender in writing (which waiver may be provided exclusively by email), Disbursement Agent will not release any funds to Borrower from the Disbursement Account.

#### Section 3.10. Retainage; Stored Materials; Further Covenants.

(a) Funds Releases from the Disbursement Account for the General Contractor will be made on the basis of [90]% of the cost of the work and materials in place on the Property, and the General Contractor's overhead and profit, and of the cost of stored materials if allowed under Section 3.10(b), less the amount(s) previously released therefor. The percentage of Funds Releases held back during the course of the Project shall be hereinafter referred to as "Retainage." The Retainage will be released in accordance with Section 3.11.

(b) No Funds Releases shall be authorized for payment for stored materials, unless Lender and Disbursement Agent have provided their prior consent thereto. Upon approval of disbursements by Lender and Disbursement Agent for stored materials, all such stored materials must be incorporated into the Project within 45 calendar days of Borrower's Release of Funds Request regarding the storage of such materials, and the following conditions will apply:

(i) copies of all invoices related to such stored materials and a stored material inventory sheet have been submitted with the Release of Funds Request;

(ii) photographs (clearly marked) of such stored materials shall be submitted with the applicable Release of Funds Request;

(iii) with respect to materials stored on the Property, such materials have been adequately secured, as determined by Architect and Construction Consultant; and

(iv) with respect to materials stored off the Property, (A) proof of insurance of such off-site material has been provided, (B) proof of title to such off-site material has been provided, and (C) if requested by Disbursement Agent or Lender (each acting in its sole and absolute discretion), additional steps have been taken to properly perfect a security interest in such off-site material.

Section 3.11. Conditions Precedent to Final Funds Release. Each of the following conditions precedent must be satisfied by Borrower, approved by Disbursement Agent, and approved (or deemed approved) by Lender prior to approval of the final Release of Funds Request for the remaining Unreleased Funds:

(a) all conditions precedent set forth in Section 3.9, to the extent not modified or replaced in this Section 3.11, have been satisfied;

(b) written certification has been provided by Borrower, Architect, and General Contractor to Disbursement Agent and Lender that the Project has been completed substantially in accordance with (i) the Plans & Specifications approved by Lender and (ii) all applicable Governmental Requirements;

(c) written certification has been provided by Construction Consultant to Disbursement Agent and Lender that (i) Construction Consultant has made regular inspections of the Project during the course of construction, (ii) the Project has been completed substantially in accordance with (A) the Plans & Specifications approved by Lender and (B) all applicable Governmental Requirements;

(d) if applicable, Disbursement Agent and Lender have received all final Certificates of Occupancy (or, subject to Section 5.14(a)(ii) of the Credit Agreement, temporary Certificates of Occupancy (if applicable)) issued by the applicable Governmental Authority, or other satisfactory evidence that all legal requirements of such jurisdiction to occupy and use the Project have been satisfied;

(e) Disbursement Agent and Lender have received final unconditional lien releases and waivers provided by Architect, General Contractor, and all subcontractors for the work performed under the Architect Contract and Construction Contract;

(f) Disbursement Agent and Lender have received an AIA G702 Application and Certificate for Payment completed by General Contractor and certified by Architect;

(g) if applicable, Disbursement Agent and Lender have received an Architect's Certificate of Completion (on a form to be provided by Disbursement Agent), together with the AIA G704 Certificate of Substantial Completion;

(h) Disbursement Agent and Lender have received a set of detailed "as-built" plans and specifications for the Project, including plans and specifications for architectural, structural, mechanical, plumbing, electrical and site development work (including storm drainage, utility lines and landscaping), approved as such by Borrower, Architect and General Contractor;

(i) Borrower has provided Disbursement Agent and Lender with insurance certificates evidencing compliance with all insurance requirements under the Credit Agreement or by applicable law;

(j) if applicable, an endorsement to the Title Policy has been issued to Lender in a form approved by Lender, (i) affirmatively insuring against any and all mechanic's and materialmen's liens

against the Property, (ii) removing the “pending disbursement” provision of the Title Policy, (iii) providing current survey coverage based on the as-built survey referred to in Section 3.11(k), (iv) removing any other qualifications or conditions to coverage based on completion of construction, and (v) showing no encroachments exist over any building, zoning, right-of-way or property boundary lines, and no exceptions to title other than those contained in the Title Policy or otherwise approved by Lender;

(k) Disbursement Agent and Lender have received a final “as-built” survey of the Project on the Property, describing the dimensions and location of all improvements constructed in place which conforms to the then current minimum detail requirements for ALTA/ACSM Land Title Surveys;

(l) if applicable, but only to the extent not previously received, Disbursement Agent and Lender shall have received a certified rent roll pertaining to leases in effect at such time (all of which shall have been entered into in accordance with the requirements of the Loan Documents), all tenants shall have provided an estoppel certificate to Lender confirming that such tenant has unconditionally accepted its premises, has commenced paying rent (or has unconditionally agreed that it is obligated to commence paying rent) and such other matters regarding the leases and the premises thereunder as Lender reasonably may require;

(m) if applicable, Borrower has provided Disbursement Agent and Lender with evidence that all real estate taxes which are due and payable for the current tax year have been paid in full; and

(n) Borrower shall have furnished to Lender and Disbursement Agent such other instruments, documents, certificates, endorsements, invoices and opinions as Lender and Disbursement Agent may request to confirm satisfaction of the foregoing conditions.

In the event that any of the conditions precedent set forth in this Section 3.11 are not satisfied, Disbursement Agent will notify Lender and Borrower in writing (which notice may be provided exclusively by email). Unless and until such conditions precedent are satisfied by Borrower or waived by Lender in writing (which waiver may be provided exclusively by email), Disbursement Agent will not release any funds to Borrower from the Disbursement Account.

After a release of funds pursuant to final Release of Funds Request (all in accordance with this Section 3.11), funds remaining in the Disbursement Account (including without limitation any interest earned), if any, not otherwise needed for any remaining Project soft costs will be the property of Borrower and shall be released to Borrower; *provided, however*, that such funds shall be held as a working capital reserve fund by Borrower to pay operating shortfalls of the Property and/or to fund capital improvements on the Property approved by Lender, subject to compliance by Borrower with New Market Tax Credit Program requirements. Notwithstanding the foregoing, such funds shall not be released to Borrower during the continuance of any Event of Default under the Loan Documents.

#### **ARTICLE 4 DISBURSEMENT AGENT**

Section 4.1. Appointment and Authorization of Disbursement Agent. Lender hereby appoints, designates, and authorizes Disbursement Agent to perform the Services on behalf of and for the benefit of Lender in accordance with the Accepted Practices.

Section 4.2. Accepted Practices.

(a) Disbursement Agent shall perform the Services on behalf of and for the benefit of Lender[s] in accordance with the terms of this Agreement, and in furtherance of and to the extent

consistent with such terms, in accordance with the same care, skill, prudence and diligence with which it performs similar services with respect to similar mortgage loans for its own account, giving due consideration to customary and usual standards of practice of prudent institutional commercial mortgage loan servicers (such administering and disbursing standards hereinafter referred to as the “Accepted Practices”).

(b) Subject to the Accepted Practices, Disbursement Agent shall have full power and authority to do or cause to be done any and all things in connection with performing the Services which it may deem reasonably necessary or desirable.

(c) Notwithstanding any provision to the contrary contained in this Agreement or any other Loan Document, Disbursement Agent shall not have any duties or responsibilities except those expressly set forth in this Agreement, nor will Disbursement Agent have or be deemed to have any fiduciary relationship with Lender, Borrower, or any other Person, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist with respect to Disbursement Agent. Without limiting the generality of the foregoing sentence, any use of the term “agent” in this Agreement or in the other Loan Documents with reference to Disbursement Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead, such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship by and among independent contracting parties.

#### Section 4.3. Non-liability of Disbursement Agent.

(a) Borrower acknowledges and agrees that (i) the relationship between Borrower and Disbursement Agent, solely in its capacity as “Disbursement Agent” hereunder, is and shall remain solely that of a borrower and an independent loan disbursement agent, respectively, and Disbursement Agent neither undertakes nor assumes any responsibility to select, review, inspect, supervise, pass judgment upon or inform Borrower of any matter in connection with the Project, including matters relating to the adequacy or legal sufficiency of any of the documents, agreements or arrangements pertaining to the Loan or the duties, obligations, and rights of any Person in connection therewith; and Borrower shall rely entirely on its own judgment with respect to such matters and acknowledges that any review, inspection, supervision, exercise of judgment or information supplied to Borrower by Disbursement Agent in connection with such matters is solely for the protection of Disbursement Agent and that neither Borrower nor any third party is entitled to rely on it and (ii) Disbursement Agent will process each Release of Funds Request and disburse Unreleased Funds in accordance with the Accepted Practices only for so long as Disbursement Agent is engaged by Lender pursuant to this Agreement.

(b) Lender acknowledges and agrees that Allocatee, as managing member of Lender, and not Disbursement Agent, is responsible for maintaining Allocatee’s and Lender’s compliance with all New Markets Tax Credit Program requirements.

(c) No Disbursement Agent Party will be held directly or indirectly liable or responsible for any Liabilities of Borrower, Lender or any other Person:

(i) arising from (A) any defect in any building, grading, landscaping or other onsite or offsite improvement, (B) any act or omission of Borrower or any of its agents, employees, independent contractors, licensees or invitees, (C) any accident on the Property or any fire, flood or other casualty or hazard thereon, (D) the failure of Borrower or any of its licensees, employees, invitees, agents, independent contractors or other representatives to maintain the Property in a safe condition, or (E) any nuisance made or suffered on the Property;

(ii) the validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any Loan Document (except as to Disbursement Agent's signatures thereon), or of any endorsements thereon, even if such documents should in fact prove to be in any or all respects invalid, insufficient, inaccurate, fraudulent, or forged; *provided*, that Disbursement Agent believes in good faith that such documents are valid, sufficient, and genuine;

(iii) any action taken or omitted to be taken by it under or in connection with this Agreement or any other Loan Document or the transactions contemplated hereby (except for the Bad Acts of such Disbursement Agent Party); or

(iv) any acknowledgement, recital, statement, representation or warranty made by Borrower or Lender contained in this Agreement or in any other Loan Document, or in any certificate, report, statement or other document referred to or provided for in, or received by Disbursement Agent under or in connection with, this Agreement or any other Loan Document;

*provided, however*, that the foregoing will not apply to Liabilities of any Disbursement Agent Party caused as a direct result of such Disbursement Agent Party's Bad Acts.

(d) Subject to the Accepted Practices, no Disbursement Agent Party will have any obligation to Borrower, Lender or any other Person to assure that the Property exists or is owned by Borrower or is cared for, protected or insured or that the liens or security interests granted under this Agreement or any other Loan Document have been properly or sufficiently or lawfully created, perfected, protected or enforced or are entitled to any particular priority.

Section 4.4. Reliance by Disbursement Agent. Disbursement Agent will be entitled to rely, and will be fully protected in relying, upon any writing, communication, signature, resolution, representation, notice, consent, certificate, affidavit, letter, telegram, facsimile, telex or telephone message, electronic mail message, statement or other document or conversation believed by it in its reasonable discretion to be genuine and correct and to have been signed, sent or made by the proper responsible officer, and upon advice and statements of legal counsel (including counsel to Lender and Borrower), independent accountants and other experts selected by Disbursement Agent.

Section 4.5. Disbursement Agent in Its Individual Capacity. Disbursement Agent and its Affiliates may make loans to, issue letters of credit for the account of, accept deposits from, acquire equity interests in and generally engage in any kind of banking, trust, financial advisory, underwriting or other business with Lender, Borrower, and any of their respective Affiliates as though Disbursement Agent were not "Disbursement Agent" hereunder and without notice to or consent of Lender.

Section 4.6. Resignation by or Termination of Disbursement Agent.

(a) Disbursement Agent may resign from its duties, obligations, and rights under this Agreement at any time after 30 calendar days' prior notice to Lender and Borrower, but in no event will Disbursement Agent be released of its obligations hereunder until the earlier to occur of the following: (i) a successor to Disbursement Agent is engaged by Lender in accordance with Section 4.6(d) or (ii) in Disbursement Agent's sole and exclusive discretion, not less than 45 calendar days after providing Lender and Borrower with the foregoing notice (regardless of whether a successor to Disbursement Agent has been engaged by Lender).

(b) Lender may terminate Disbursement Agent's duties, obligations, and rights under this Agreement at any time after 45 calendar days' prior notice to Disbursement Agent. Lender will provide a copy of such notice to Borrower.

(c) The resignation or termination of Disbursement Agent in accordance with this Agreement shall, without further action by any Person, release Disbursement Agent from its duties, obligations, and rights under the P&C Agreement. The parties acknowledge that the resignation or termination of Disbursement Agent in accordance with this Agreement shall not alter or modify the duties, obligations, and rights of Bank under this Agreement or the P&C Agreement.

(d) Lender, acting in its sole and absolute discretion, will designate a successor to Disbursement Agent (which may be Lender or an Affiliate thereof) after receipt of notice of resignation by Disbursement Agent or after terminating Disbursement Agent, as applicable. As a condition precedent to such designation, the successor to Disbursement Agent will assume all duties, obligations, and rights of Disbursement Agent under this Agreement and the P&C Agreement. Disbursement Agent agrees to reasonably cooperate with a successor agent in the orderly transitioning of its duties, obligations, and rights under this Agreement and the P&C Agreement to such designated successor.

(e) Any request for reimbursement of fees or out-of-pocket costs or expenses incurred by a retiring or terminated Disbursement Agent shall be deemed waived if it is not made within 60 calendar days after the date that such retirement or termination becomes effective.

## **ARTICLE 5 LENDER**

Section 5.1. Lender Representations to Disbursement Agent. Lender hereby represents to Disbursement Agent that:

(a) Disbursement Agent has not made any representation or warranty to Lender other than as expressly set forth herein, and that no act by Disbursement Agent hereafter taken, including but not limited to any consent to and acceptance of any assignment or review of the affairs of Lender or any Affiliate thereof, will be deemed to constitute any representation or warranty by Disbursement Agent to Lender as to any matter, including whether Disbursement Agent has disclosed material information in its possession;

(b) Lender has, independently and without reliance upon Disbursement Agent and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, prospects, operations, property, financial and other condition and creditworthiness of the Borrower Parties, and all applicable bank or other regulatory laws relating to the transactions contemplated hereby, and made its own decision to enter into this Agreement and to extend credit under the Loan Documents;

(c) Lender will, independently and without reliance upon Disbursement Agent and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement or any other Loan Document, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of the Borrower Parties; and

(d) except for notices, reports and other documents expressly required to be furnished to Lender by Disbursement Agent in accordance with this Agreement, Disbursement Agent will not have any duty or responsibility to provide Lender with any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of Borrower or any of its Affiliates which may come into the possession of Disbursement Agent (including but not limited to any

information obtained pursuant to activities of Disbursement Agent and its Affiliates within the scope of Section 4.5).

Section 5.2. Non-Liability of Lender. Lender shall have no liability to Borrower or any of Borrower's Affiliates, partners, members, managers, directors, officers, agents, employees, or successors or assigns with respect to any decision, approval or consent made or provided by Lender in connection with a Release of Funds Request (except to the extent arising from Lender's Bad Acts), and no decision, approval or consent by Lender with respect to a Release of Funds Request shall be deemed to be an approval or acceptance by Lender of any plans, specifications, work or materials done or furnished, or equipment or property purchased, with respect to the Project, or a representation by Lender as to the fitness of such plans, specifications, work, materials, equipment, or property.

## **ARTICLE 6 TERM OF AGREEMENT; INDEMNIFICATION**

### Section 6.1 Term of Agreement.

(a) This Agreement shall terminate upon (i) the occurrence of the later of: (A) Completion of the Improvements or (B) the release of the remaining Unreleased Funds to Borrower (after the conditions precedent for release of such funds set forth in Section 3.11 are satisfied by Borrower or waived or deemed to be waived by Lender) and (ii) the issuance by Lender or Disbursement Agent of a notice to Borrower and Bank (which notice may be provided exclusively by email) informing them of the termination of this Agreement (the "Termination Notice").

(b) Upon receipt of the Termination Notice, all funds then on deposit in the Disbursement Account, after payment of all accrued and unpaid fees of Bank and Disbursement Agent (if any), shall be released by Bank to Borrower in accordance with Section 3.11. Upon the release of such funds, Bank's duties with respect to the Disbursement Account shall irrevocably terminate.

(c) Borrower may submit a request to Lender and Disbursement Agent requesting that the Termination Notice be issued if Borrower reasonably believes that such notice is warranted; *provided*, the failure by Lender and/or Disbursement Agent to respond to Borrower's request shall not operate to terminate this Agreement or to otherwise modify the duties, obligations, and rights of the parties hereunder.

### Section 6.2 Indemnification.

(a) Borrower hereby agrees to indemnify and hold harmless each Indemnitee Party from any and all Liabilities that relate directly or indirectly, in whole or in part, to: (i) a claim, demand or cause of action that a Person has or asserts against Borrower in connection with the development, operation or financing of the Project, (ii) any act or omission by Borrower, any contractor, subcontractor or material supplier, engineer, architect or other Person with respect to the Property, (iii) the ownership, occupancy or use of the Property, (iv) any instruction or request of Borrower in connection with this Agreement, (v) any release (or determination not to release) Unreleased Funds, or (vi) any other reasonable costs incurred in connection with this Agreement.

(b) An Indemnitee Party's right of indemnification under Section 6.2(a) will not be directly or indirectly limited, prejudiced, impaired or eliminated in any way by any finding or allegation that the conduct of Bank, Disbursement Agent, and/or Lender is active, passive or subject to any other classification or that Bank, Disbursement Agent, and/or Lender is directly or indirectly responsible under

any theory of any kind for any act or omission by Borrower or any other Person other than an Indemnitee Party.

(c) Notwithstanding Section 6.2(a) and (b), Borrower will not be obligated to indemnify, defend or hold harmless an Indemnitee Party from or against any Liabilities (i) caused as a direct result of such Indemnitee Party's Bad Acts or (ii) that arise after such Indemnitee Party takes possession of the Property through foreclosure, deed-in-lieu of foreclosure or otherwise (unless resulting from acts or omissions of Borrower or its Affiliates prior to such Indemnitee Party taking possession).

(d) Notwithstanding Section 6.1 or any other provision to the contrary contained in this Agreement or any other Loan Document, the indemnity obligations of Borrower under this Section 6.2 and all other provisions of this Agreement (i) will survive the termination of this Agreement and (ii) will not be directly or indirectly limited, prejudiced, impaired or eliminated in any way with respect to Bank or Disbursement Agent if Bank or Disbursement Agent, as applicable, has resigned or has been terminated by Lender in accordance with this Agreement or the P&C Agreement, as applicable.

## **ARTICLE 7 MISCELLANEOUS**

Section 7.1 Notices. Any notice, request, demand, consent, approval, direction, agreement, or other communication (any "notice") required or permitted hereunder must be in writing and will be validly given if (a) sent by a nationally-recognized courier that obtains receipts, (b) delivered personally by a courier that obtains receipts, (c) mailed by United States certified mail (with return receipt requested and postage prepaid), (d) sent by facsimile (with a copy of such facsimile and proof of transmission thereof sent via one of the methods of delivery set forth in clauses (a), (b) or (c) hereof), or (e) sent by email (with a copy of such email and proof of transmission thereof sent via one of the methods of delivery set forth in clauses (a), (b) or (c) hereof unless specified herein that such notice may be provided exclusively by email), addressed to the applicable Person at the address set forth on Schedule A to this Agreement. Each notice shall be effective upon being so sent, delivered, or mailed, but the time period for response or action shall run from the date of receipt as shown on the delivery receipt, or the date the facsimile or email was sent, as applicable. Refusal to accept delivery or the inability to deliver because of a changed address for which no notice was given shall be deemed received. Any party may periodically change its address for notice (including different or additional addresses for copies) by giving the other party at least 10 calendar days' prior notice in accordance with the foregoing provisions.

Section 7.2 Headings and Section References. The headings used herein are for convenience only and do not limit or alter the terms of this Agreement or in any way affect the meaning or interpretation of this Agreement. References in this Agreement to Sections are intended to refer to Sections of this Agreement, unless otherwise specifically stated.

Section 7.3 Successors and Assigns.

(a) This Agreement shall bind and inure to the benefit of and be enforceable by Lender, Disbursement Agent, Bank, and Borrower and their respective, permissible successors and assigns.

(b) Lender shall have the right to assign or transfer its duties, obligations, and rights under this Agreement in connection with any assignment of all or any part of the Loan in accordance with the Loan Documents. Any assignee or transferee of Lender pursuant to the immediately preceding sentence shall be entitled to all the benefits afforded to Lender under this Agreement; *provided*, that such assignee or transferee shall have delivered to the other parties hereto written evidence that such assignee or transferee agrees to be bound by the terms of this Agreement.

Section 7.4 Incorporation of Exhibits, Recitals and Schedule. The Exhibits, Recitals, and Schedule identified in this Agreement are incorporated herein by reference and made a part hereof.

Section 7.5 Entire Agreement; Amendment and Modification. This Agreement (together with other Loan Documents, to the extent referenced herein) embodies the entire agreement and understanding by and among the parties hereto relating to the subject matter hereof, and supersedes all prior agreements and understandings relating to the subject matter hereof. No changes, amendments, or alterations to this Agreement will be effective unless pursuant to written instrument executed by Borrower, Lender, Bank, and Disbursement Agent (or each such party's respective successors or assigns, if applicable).

Section 7.6 No Waiver of Strict Compliance. No waiver or failure of a party to insist upon strict compliance with any obligation, covenant, agreement, representation, warranty, or condition shall operate as a waiver of, or estoppel with respect to, any subsequent or other failure to comply with such obligation, covenant, agreement, representation, warranty, or condition, or with any other obligation, covenant, agreement, representation, warranty, or condition contained herein. Failure to exercise any right, power, or remedy shall not constitute a waiver of any obligations under this Agreement or constitute a modification of this Agreement. The making of this Agreement shall not waive or impair any other security a party may have or hereafter acquire for the payment of obligations under this Agreement, and the taking of any additional security it may have in the order it may deem proper.

Section 7.7 No Guaranty. Notwithstanding any provision to the contrary contained in this Agreement or any other Loan Document, none of Bank, Disbursement Agent or Lender shall be deemed to have, directly or indirectly, guaranteed any debts, obligations or liabilities of Borrower or Borrower's Affiliates.

Section 7.8 No Partnership Created. Neither the execution of this Agreement, nor any action taken by Bank, Disbursement Agent or Lender pursuant hereto is intended to be, nor shall it be construed to be, the formation of a partnership or joint venture (a) between Lender and Bank, (b) between Lender and Disbursement Agent, or (c) by and among Bank, Disbursement Agent or Lender.

Section 7.9 Severability. The invalidity or unenforceability of any terms or provisions of this Agreement shall not affect the validity or enforceability of any other provisions of this Agreement, which shall remain in full force and effect, and, if any such unenforceable provision hereof is enforceable in any part or to any lesser extent, such provision shall be enforceable in all such parts and to the greatest extent permissible under applicable law.

Section 7.10 CHOICE OF LAW; WAIVER OF JURY TRIAL AND CERTAIN OTHER RIGHTS; SUBMISSION TO JURISDICTION; SERVICE OF PROCESS.

(a) THE VALIDITY OF THIS AGREEMENT, THE CONSTRUCTION, INTERPRETATION, AND ENFORCEMENT HEREOF, AND THE RIGHTS OF EACH PARTY WITH RESPECT TO ALL MATTERS ARISING HEREUNDER OR RELATED HERETO SHALL BE DETERMINED UNDER, GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ALABAMA, WITHOUT GIVING EFFECT TO CONFLICT OR CHOICE OF LAW PRINCIPLES.

(b) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY (i) AGREES THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS AGREEMENT SHALL BE TRIED AND LITIGATED ONLY IN THE STATE AND FEDERAL COURTS LOCATED IN THE STATE OF ALABAMA (*PROVIDED, HOWEVER, THAT ANY SUIT SEEKING ENFORCEMENT AGAINST ANY COLLATERAL OR OTHER PROPERTY MAY BE BROUGHT, AT LENDER'S OPTION, IN THE COURTS OF ANY JURISDICTION WHERE SUCH*

COLLATERAL OR OTHER PROPERTY MAY BE FOUND) AND (ii) WAIVES ANY RIGHT IT MAY HAVE TO ASSERT THE DOCTRINE OF *FORUM NON CONVENIENS* OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS SECTION 7.10.

(c) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). IT IS AGREED AND UNDERSTOOD THAT THIS WAIVER CONSTITUTES A WAIVER OF TRIAL BY JURY OF ALL CLAIMS AGAINST ALL PARTIES TO SUCH ACTIONS OR PROCEEDINGS, INCLUDING CLAIMS AGAINST PARTIES WHO ARE NOT PARTIES TO THIS AGREEMENT. EACH PARTY (i) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, AND (ii) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 7.10.

(d) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY AGREES THAT ANY PROCESS OR NOTICE OF MOTION OR OTHER APPLICATION TO ANY SUCH COURT IN CONNECTION WITH ANY ACTION OR PROCEEDING MAY BE SERVED UPON SUCH PARTY BY REGISTERED OR CERTIFIED MAIL TO OR BY PERSONAL SERVICE AT THE LAST KNOWN ADDRESS OF SUCH PARTY WHETHER SUCH ADDRESS BE WITHIN OR OUTSIDE THE JURISDICTION OF ANY SUCH COURT.

(e) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, BORROWER SHALL ASSERT, AND BORROWER HEREBY WAIVES, ANY CLAIM AGAINST ANY OTHER PARTY AND SUCH PARTY'S AFFILIATES, MEMBERS, PARTNERS OR SHAREHOLDERS, AS APPLICABLE, MANAGERS, OFFICERS, DIRECTORS, AGENTS AND EMPLOYEES, ON ANY THEORY OF LIABILITY, FOR SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES (AS OPPOSED TO DIRECT OR ACTUAL DAMAGES) ARISING OUT OF, IN CONNECTION WITH, OR AS A RESULT OF, THIS AGREEMENT OR ANY AGREEMENT OR INSTRUMENT CONTEMPLATED HEREBY AND/OR THE TRANSACTIONS CONTEMPLATED HEREBY.

(f) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, LENDER SHALL NOT ASSERT, AND LENDER HEREBY WAIVES, ANY CLAIM AGAINST DISBURSEMENT AGENT, BANK, AND/OR THEIR RESPECTIVE AFFILIATES, MEMBERS, PARTNERS OR SHAREHOLDERS, AS APPLICABLE, MANAGERS, OFFICERS, DIRECTORS, AGENTS AND EMPLOYEES, ON ANY THEORY OF LIABILITY, FOR SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES (AS OPPOSED TO DIRECT OR ACTUAL DAMAGES) ARISING OUT OF, IN CONNECTION WITH, OR AS A RESULT OF, THIS AGREEMENT OR ANY AGREEMENT OR INSTRUMENT CONTEMPLATED HEREBY AND/OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 7.11 [Intentionally Omitted].

Section 7.12 Enforcement Costs. In the event of any action at law or in equity to enforce the provisions of this Agreement or to secure relief or damages for the breach of this Agreement, the

prevailing party shall be entitled to payment or reimbursement, as applicable, of its costs, expenses and fees (including without limitation reasonable attorneys', accountants', experts', and consultants' costs, expenses and fees, court costs and investigative expenses prior to trial, at trial and on appeal) incurred in such proceedings from the non-prevailing party.

Section 7.13 [Intentionally Omitted].

Section 7.14 Receipt and Review of Loan Documents. Each party to this Agreement acknowledges and agrees that it has been provided with a copy of the Credit Agreement and each of the other Loan Documents it has requested and has reviewed such documents with counsel of its own choosing.

Section 7.15 Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all of which counterparts together shall constitute but one and the same instrument. Faxed, scanned or photocopied signatures shall be deemed equivalent to original signatures.

[REMAINDER OF PAGE BLANK; SIGNATURE PAGES TO FOLLOW.]

IN WITNESS WHEREOF, each party has executed this Construction Monitoring and Disbursement Agreement on the Effective Date.

**BORROWER:**

COASTAL ALABAMA FARMERS' AND  
FISHERMEN'S MARKET, INC., an Alabama non-  
profit corporation

By: \_\_\_\_\_  
Name:  
Title:

[COUNTERPART SIGNATURE PAGE TO  
CONSTRUCTION MONITORING AND DISBURSEMENT AGREEMENT]

**LENDER:**

PACESETTER CDE X, LLC, a Texas limited liability  
company

By: Pacesetter CDE, Inc., a Texas corporation, its  
managing member

By: \_\_\_\_\_  
Name: Giovanni Capriglione  
Title: Chief Compliance Officer

[COUNTERPART SIGNATURE PAGE TO  
CONSTRUCTION MONITORING AND DISBURSEMENT AGREEMENT]

**BANK & DISBURSEMENT AGENT:**

JPMORGAN CHASE BANK, N.A., a national banking  
association

By: \_\_\_\_\_

Name: Wanda Clark

Title: Authorized Officer

**SCHEDULE A**

**Notice Addresses of Parties**

(1) If to Borrower: Coastal Alabama Farmers' and Fishermen's Market, Inc.  
c/o City of Foley  
407 East Laurel Avenue  
Foley, AL 36535  
Attention: Jeff Rouzie, Director of Economic Development  
Facsimile: 251-952-4012  
Email: [\_\_\_\_\_]

With a copy to: Adams and Reese LLP  
RSA Battle House Tower  
11 North Water Street, Suite 23200  
Mobile, AL 36602  
Attention: John F. Lyle, III, Esq.  
Facsimile: 251-438-7733  
Email: john.lyle@arlaw.com

And copies to: The addresses set forth under (3) below.

(2) If to Lender: Pacesetter CDE X, LLC  
c/o Pacesetter CDE, Inc.  
2600 E. Southlake Boulevard  
Suite 120-105  
Southlake, TX 76092  
Attention: Giovanni Capriglione  
Email: giovanni@pacesettercde.com

With a copy to: Law Office of Mark D. Foster  
4835 LBJ Freeway, Suite 424  
Dallas, TX 75244  
Attention: Mark D. Foster, Esq.  
Facsimile: 214-363-9551  
Email: mark@mdfoster.com

And copies to: The addresses set forth under (3) below.

(3) If to Disbursement Agent or Bank: JPMorgan Chase Bank, N.A.  
10 S. Dearborn Street, 19th Floor  
Mail Code: IL1-0953  
Chicago, IL 60603-5506  
Attention: NMTC Asset Manager  
Facsimile: 312-325-5050  
Email: nmtc.reporting@chase.com

[CONTINUED NEXT PAGE]

**SCHEDULE A (CONT'D)**

**Notice Addresses of Parties**

With a copy to: JPMorgan Chase Bank, N.A.  
700 N. Pearl Street, 13<sup>th</sup> Floor  
Dallas, TX 75201  
Attention: Mayela Malczewski  
Facsimile: 866-778-4060  
Email: mayela.c.malczewski@jpmorgan.com

And a copy to: JPMorgan Chase Bank, N.A.  
New Markets Tax Credit Group  
2200 Ross Avenue, 9th Floor  
Mail Code: TX1-2951  
Dallas, TX 75201  
Attention: Wanda Clark  
Facsimile: 214-965-3297  
Email: wanda.clark@chase.com

And a copy to: Jones Day  
100 High Street, 21st Floor  
Boston, MA 02110  
Attention: Jeffrey D. Gaulin, Esq.  
Facsimile: 617-449-6999  
Email: jgaulin@jonesday.com

[REMAINDER OF PAGE BLANK]

**EXHIBIT A**

**Form of Draw Request**

**RELEASE OF FUNDS REQUEST**

JPMorgan Chase Bank, N.A.  
Chase Community Development Real Estate

**Draw #:** \_\_\_\_  
**Project Name: Coastal Alabama Farmers' and  
Fishermen's Market**

*Regular Mail:*  
Mail Code: TX1-2625  
PO Box 655415  
Dallas, TX 75265-5415

*Overnight Mail:*  
Mail Code: TX1-2625  
700 N. Pearl Street, 13th Floor  
Dallas, TX 75201

Attention: Steven N. Albritton  
Facsimile: 214-965-3395  
Email: steven.n.albritton@chase.com

Pacesetter CDE X, LLC  
c/o Pacesetter CDE, Inc.  
2600 E. Southlake Boulevard  
Suite 120-105  
Southlake, TX 76092  
Attention: Giovanni Capriglione  
Email: giovanni@pacesettercde.com

**RE:** Release of Funds Request in connection with loans in the aggregate original principal amount of \$[8,000,000] made under that certain Credit Agreement (as the same may be amended, assigned, restated, modified, or supplemented from time to time, the "*Credit Agreement*") dated as of [June \_\_], 2014 (the "*Effective Date*") by and between COASTAL ALABAMA FARMERS' AND FISHERMEN'S MARKET, INC., an Alabama non-profit corporation ("*Borrower*"), and PACESETTER CDE X, LLC, a Texas limited liability company ("*Lender*").

1. Borrower hereby requests a release of funds that have been advanced under the Credit Agreement to account no(s) \_\_\_\_\_ in the amount of \$\_\_\_\_\_ in accordance with the Construction Monitoring and Disbursement Agreement (as the same may be amended, assigned, restated, modified, or supplemented from time to time, the "*CMDA*") dated as of the Effective Date by and among Borrower, Lender, JPMorgan Chase Bank, N.A., a national banking association, as agent ("*Disbursement Agent*"), and JPMorgan Chase Bank, N.A., a national banking association, as depository bank ("*Bank*"). Borrower (a) acknowledges and agrees that this amount is subject to inspection, verification and available funds and (b) understands that no funds shall be disbursed on any property for which a payoff amount has been quoted by Lender.

2. Borrower acknowledges and agrees that no funds shall be disbursed unless and until the Title Company provides a date down endorsement on the Title Policy. Borrower has \_\_\_ / has not \_\_\_ included a date down endorsement with this Release of Funds Request.
3. Borrower agrees to provide, if requested by Disbursement Agent, Bank or Lender, a listing of all vendors showing the name and the amount currently due each party to whom Borrower is obligated for labor, material and/or services supplied. This information would be provided in support of the disbursements requested in this Release of Funds Request.
4. Borrower represents and warrants to Disbursement Agent, Bank, and Lender that:
  - (a) It has complied with all of its duties and obligations under the terms of the Credit Agreement and the CMDA (including without limitation all conditions precedent set forth in Section 3.9 and/or Section 3.11 of the CMDA, as applicable);
  - (b) No Event of Default has occurred and is continuing;
  - (c) All change orders or changes to the Project Budget have been submitted to and approved by Lender or Disbursement Agent, as applicable;
  - (d) All previous Loan advances have been used solely for the purposes set forth in the Credit Agreement and the CMDA;
  - (e) All outstanding claims for labor, materials and/or services furnished prior to this draw period have been paid;
  - (f) All construction prior to the date hereof has been in accordance with the Plans & Specifications;
  - (g) All of the requested advance will be used solely to pay obligations set forth on the attachment hereto;
  - (h) There are no liens outstanding against the Project except for (i) liens and security interests in favor of Lender under the Loan Documents (if any) and (ii) the exceptions set forth on the Title Policy previously approved by Lender (if any); and
  - (i) The amount of Loan proceeds remaining in the Disbursement Account and other budgeted sources of funds (if any) for the Project is sufficient to pay the cost of completing the Project in accordance with the Plans & Specifications originally submitted to Disbursement Agent or as modified and approved by Disbursement Agent (on behalf of Lender) through change orders approved in accordance with the Credit Agreement.
5. Borrower understands this Release of Funds Request is made for the purpose of inducing Lender to make an advance to Borrower and that, in making such advance, Disbursement Agent, Bank, and Lender will rely upon the accuracy of the matters stated herein.
6. Release of the requested funds may be subject to the receipt by Disbursement Agent of a certificate from the Title Company stating that no claims have been filed of record which adversely affect the title of Borrower to the Project subsequent to the Effective Date.
7. Undefined terms used herein shall have the same meaning as in the CMDA.

8. Borrower certifies that the statements made herein and in any documents submitted herewith are true and has duly caused this Release of Funds Request to be signed on its behalf by the undersigned, thereto duly authorized.
9. Borrower requests that this draw be funded and that the disbursement funds be deposited in accordance with the Disbursement Authorization Form on file with Disbursement Agent.

[REMAINDER OF PAGE BLANK; SIGNATURE PAGE TO FOLLOW.]

IN WITNESS WHEREOF, Borrower has executed this Release of Funds Request on the date below written.

**DATE:** \_\_\_\_\_, 201\_\_

**BORROWER:**

COASTAL ALABAMA FARMERS' AND  
FISHERMEN'S MARKET, INC., an Alabama non-  
profit corporation

By: \_\_\_\_\_

Name:

Title:

(Authorized Signatory)

**EXHIBIT B**  
**PROJECT BUDGET**

[attached behind]

**EXHIBIT C**

**TRANSFER OF THIRD PARTY FUNDS**  
*(Name and Address)*

Date: \_\_\_\_\_

JPMorgan Chase Bank, N.A.  
Attn: \_\_\_\_\_  
700 N. Pearl Street  
13<sup>th</sup> Floor, Mail Code TX1-2625  
Dallas, TX 75201

Please process the following transfer request for: \_\_\_\_\_  
*(Deal or Project Name)*

Dear \_\_\_\_\_,  
*(Sr. Service Specialist)*

<b>DEBIT INFORMATION</b>	<b>CREDIT INFORMATION</b>
Account Name: Name of Bank: ABA: Acct: Effective Date: Amount:	Account Name: Name of Bank: ABA: Acct: Purpose: REF:

Please feel free to call me directly at \_\_\_\_\_ to verify these instructions.  
*(Phone Number)*

Sincerely,

\_\_\_\_\_  
*(Deal or Project Name)*

\_\_\_\_\_  
*(Authorized Signatory)*

**EXHIBIT D**

**CHASE NMTC TRANSFER OF FUNDS AUTHORIZATION**

Date: \_\_\_\_\_

JPMorgan Chase Bank, N.A.

Attn: \_\_\_\_\_ (Sr. Service Specialist)

700 N. Pearl Street

13<sup>th</sup> Floor, Mail Code TX1-2625

Dallas, TX 75201

Re: \_\_\_\_\_  
(Name)

Dear \_\_\_\_\_: (Sr. Service Specialist)

This memorandum is to request a withdrawal from the \_\_\_\_\_ (name of account) account # \_\_\_\_\_ to \_\_\_\_\_ (name of account) account # \_\_\_\_\_ for the invoiced interest or fees on \_\_\_\_\_ (Name) due (monthly/quarterly) starting with \_\_\_\_\_ (starting date) going forward until further notice.

Sincerely,

\_\_\_\_\_  
(Deal or Project Name)

\_\_\_\_\_  
(Authorized Signer)



**JOINT AND SEVERAL HAZARDOUS SUBSTANCE  
GUARANTY AND INDEMNIFICATION AGREEMENT**

THIS JOINT AND SEVERAL HAZARDOUS SUBSTANCE GUARANTY AND INDEMNIFICATION AGREEMENT (this “Indemnity”) is made as of [June \_\_], 2014 (the “Effective Date”) by and among COASTAL ALABAMA FARMERS’ AND FISHERMEN’S MARKET, INC., an Alabama non-profit corporation (“Borrower”), THE CITY OF FOLEY PUBLIC FACILITIES COOPERATIVE DISTRICT, an Alabama public corporation (“Guarantor”) (each of Borrower and Guarantor an “Indemnitor” and collectively, “Indemnitors”), and PACESETTER CDE X, LLC, a Texas limited liability company (“Lender”).

Recitals

A. Lender has agreed to make loans to Borrower in the original aggregate original principal amount of \$[8,000,000] (collectively, the “Loans”), which Loans will be (a) advanced pursuant to the provisions of the Credit Agreement (as defined below), (b) evidenced by and payable in accordance with the provisions of the Notes (as defined in the Credit Agreement), and (c) secured by the Deed of Trust (as defined in the Credit Agreement);

B. Guarantor will derive substantial economic benefit, directly and/or indirectly, from Borrower’s receipt of the Loans; and

C. Lender is willing to make the Loans only if Indemnitors execute and deliver this Indemnity.

Agreement

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, and in order to induce Lender to make the Loans, each Indemnitor hereby acknowledges, agrees and confirms that all of the above recitals are true, correct and complete and hereby covenants and agrees with Lender as follows:

1. Recitals; Definitions. All capitalized terms utilized in this Indemnity but not otherwise defined shall have the meanings ascribed to them in the Credit Agreement. For the purposes of this Indemnity the following terms shall have the following meanings:

(a) “Contamination” means the emission, discharge or release of any Hazardous Substance to, on, onto or into the Environment and the effects of such emission, discharge or release, including the presence or existence of any such Hazardous Substance.

(b) “Credit Agreement” means that certain Credit Agreement, dated as of the Effective Date, by and between Lender and Borrower, as the same may be amended, assigned, restated, modified, or supplemented from time to time.

(c) “Debt” shall mean all principal, interest, additional interest (including specifically all interest accruing from and after the commencement of any case, proceeding or action under any existing or future laws relating to bankruptcy, insolvency or similar matters with respect to Borrower) and other sums of any nature whatsoever which may or shall become due and payable pursuant to the provisions of the Notes, the Credit Agreement, the Deed of Trust, or any other Loan Documents (all of the above unaffected by modification thereof in any bankruptcy or insolvency proceeding), and even though Lender may not have an allowed claim for the same against Borrower as a result of any bankruptcy or insolvency proceeding.

(d) “Environment” means navigable waters, waters of the contiguous zone, ocean waters, surface waters, groundwater, drinking water supply, land surface, soil, subsurface strata, indoor surfaces or outdoor or indoor air.

(e) “Environmental Laws” means, collectively, any and all laws, ordinances, rules, regulations, directives, orders, authorizations, decrees, notices, permits, binding plans, demand letters or other mandates, proscriptions or prescriptions of any nature, of a Governmental Authority relating in any way to any Hazardous Substance, Contamination, protection of the Environment, protection of natural resources, or human health and safety, including, without limitation, those relating to emissions, discharges, releases or threatened emissions, discharges or releases to, on, onto or into the Environment of, or exposures or threatened exposures to, any Hazardous Substance.

(f) “Environmental Liability” shall mean liabilities arising under any Environmental Law for response, remedial or investigation costs, and any other expenses (including reasonable attorney and consultant fees, laboratory costs and litigation costs) required under, arising from, or necessary to attain or maintain compliance with, Environmental Laws or relating to or arising from Contamination or Hazardous Substances.

(g) “Environmental Matters” means any matter arising out of or relating to (i) Contamination; (ii) Environmental Laws or compliance with Environmental Laws; (iii) protection of the Environment; or (iv) workplace, occupational and human health and safety.

(h) “Environmental Permits” means all approvals, consents, permits, licenses, registrations and authorizations required by applicable Environmental Laws in order to operate the Borrower’s business, the Real Property and other owned or leased real property.

(i) “Hazardous Substance” shall mean any element, substance, compound or mixture whether solid, liquid or gaseous, that: (i) is or shall in the future be subject to regulation of any kind by any Governmental Authority with regard to protection of the Environment, natural resources or human health and safety; or (ii) the presence, existence or threatened presence or existence of which shall at any time give rise, under any theory of law or equity, to Environmental Liability.

(j) “Indemnified Party” and “Indemnified Parties” means, individually or collectively, as applicable, each of (i) Lender, (ii) Lender’s directors, officers, managers, members or partners (as applicable), shareholders, agents, Affiliates, and employees, (iii) any

assignee or successor in interest of all or part of Lender's interest in the Loans and/or the Loan Documents, (iv) any owner of a participation interest in any or all of the Loans and/or the Loan Documents, (v) any purchaser who acquires any or all of the Real Property from Lender, (vi) any grantee of a deed or assignment in lieu of foreclosure of all or part of the Real Property whereby said grantee becomes vested in the Real Property, (vii) any court appointed receiver, and (viii) Bank and CCE.

(k) "Indemnity Documents" has the meaning set forth in Section 5(a).

(l) "Liabilities" has the meaning set forth in Section 6.

(m) "Off-Site Contamination" means Contamination or threatened Contamination at any real property previously owned, leased or operated by Borrower or any off-site location or locations to which the Borrower transported, arranged for the transportation of, disposed of, or otherwise caused or allowed to be present Hazardous Substances generated by Borrower. Off-Site Contamination shall not mean or include the effects or results of migration outside or beyond the boundary lines of the Real Property or other owned or leased real property.

(n) "On-Site Contamination" means Contamination exceeding applicable cleanup standards or remediation thresholds and the physical effects of such Contamination, in, on, under or about or emanating or migrating from the Real Property or other owned or leased real property or the threat of migration of Contamination exceeding applicable cleanup standards or remediation thresholds onto, at, into, under or from the Real Property or other owned or leased real property. On-Site Contamination shall mean and include the effects or results of migration outside or beyond the boundary lines of the Real Property or other owned or leased real property.

(o) "Other Guaranties" means any other guaranty of payment, guaranty of performance, completion guaranty, indemnification agreement or other guaranty or instrument creating any obligation or undertaking of any nature whatsoever (other than this Indemnity) now or hereafter executed and delivered by any Indemnitor to Lender, CCE, Bank or any of their respective Affiliates in connection with the Loans.

(p) "Other Obligations" has the meaning set forth in Section 8(a).

(q) "[Real Property]" has the meaning set forth in the Deed of Trust.

2. Environmental Representations and Warranties. Indemnitors hereby represent and warrant to Lender:

(a) Borrower is and in the past has been in compliance with Environmental Laws and Environmental Permits applicable to the Real Property and other owned or leased real property and the Borrower's business.

(b) No Contamination exists on, about, under or beneath the Real Property or other owned or leased real property which could give rise to Environmental Liability.

(c) Borrower has not received any notification of Contamination with respect to the Real Property or other owned or leased real property.

(d) There are no above or underground storage tanks, asbestos containing materials, or equipment containing polychlorinated biphenyls on, about or beneath the Real Property or other owned or leased real property.

(e) Borrower has not received notice and does not have knowledge of:

(i) any claim, demand, investigation, enforcement action, Environmental Liability, statutory lien or other action instituted or threatened against the Borrower, Borrower's business, the Real Property or other owned or leased real property by a Governmental Authority pursuant to any Environmental Law;

(ii) any claim, demand notice, suit or action, made or threatened by any person against the Borrower, Borrower's business, the Real Property or other owned or leased real property relating to (A) any form of damage, loss or injury resulting from, or claimed to result from, Contamination on, about, beneath or arising from the Real Property or other owned or leased real property or (B) any alleged violation of the Environmental Laws by the Borrower or Borrower's business; or

(iii) any communication to or from any Governmental Authority arising out of or in connection with actual or alleged Contamination under, on, about or beneath the Real Property or other owned or leased real property or arising in connection with the operation of the Borrower's business, including without limitation, any notice of violation, citation, complaint, order, directive, request for information or response thereto, notice letter, demand letter or compliance schedule.

(f) No Hazardous Substances generated by the Borrower have ever been directly or indirectly sent, transferred, transported to, treated, stored, or disposed of at any site identified by a Governmental Authority as requiring or recommended for environmental investigation or cleanup.

(g) Neither the Real Property nor other owned or leased real property has been identified by any Governmental Authority as requiring or recommended for environmental investigation or cleanup.

(h) Borrower (i) currently holds all Environmental Permits required by Environmental Law for the Borrower's operation of the business, Borrower's activities and operations at the Real Property and other owned or leased real property, and for any past or ongoing alterations or improvements at the Real Property or other owned or leased real property; and (ii) any applications for renewal of such Environmental Permits have been submitted on a timely basis.

(i) The Borrower has not assumed, undertaken or otherwise become subject to any liability of any other person relating to or arising from any Environmental Law.

(j) Neither the Borrower's business nor the Real Property or other owned or leased real property will require a material capital expenditure or annual operating expense to achieve or maintain compliance with applicable Environmental Law.

3. Indemnification for Environmental Matters. Indemnitors will defend, indemnify, and hold harmless each Indemnified Party from and against any and all claims, demands, penalties, causes of action, fines, liabilities, settlements, damages, costs, or expenses of whatever kind or nature, known or unknown, foreseen or unforeseen, contingent or otherwise (including, without limitation, counsel and consultant fees and expenses, investigation and laboratory fees and expenses, court costs, and litigation expenses) arising out of, or in any way related to:

(a) Environmental Liabilities relating to:

(i) On-Site Contamination;

(ii) Off-Site Contamination;

(iii) Exposure to one or more Hazardous Substance; or

(iv) Non-compliance or alleged non-compliance with Environmental Law.

(b) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to any such Hazardous Substance; and

(c) any lawsuit brought or threatened, settlement reached, or order or directive of or by any Governmental Authority relating to such Hazardous Substance.

4. Indemnification for Environmental Liability. Indemnitors absolutely and unconditionally agree to indemnify and to hold each Indemnified Party harmless from and against any and all Environmental Liability of any nature whatsoever, contingent or otherwise, foreseen or unforeseen, incurred by any Indemnified Party (including, without limitation, counsel fees) as a result of any delay or suspension in the construction of the Improvements resulting from any order or action taken by any Governmental Authority having jurisdiction over Environmental Matters or Hazardous Substances.

5. Indemnification for Enforcement. Each Indemnitor hereby indemnifies and shall hold harmless and defend each Indemnified Party at Indemnitors' sole cost and expense against any loss or liability, cost or expense (including, but not limited to, reasonable attorneys' fees and disbursements of any Indemnified Party's counsel, whether in-house staff, retained firms or otherwise), and all claims, actions, procedures and suits arising out of or in connection with:

(a) any ongoing matters arising out of this Indemnity and any document or instrument now or hereafter executed and/or delivered in connection herewith (collectively, the "Indemnity Documents");

(b) any amendment to, or restructuring of the obligations of any Indemnitor hereunder; and

(c) any and all lawful action that may be taken by Lender in connection with the enforcement of the provisions of this Indemnity or any of the other Indemnity Documents and the obligations of any Indemnitor thereunder, whether or not suit is filed in connection with the same, or in connection with Borrower, any Indemnitor and/or any partner, joint venturer or shareholder thereof becoming a party to a voluntary or involuntary federal or state bankruptcy, insolvency or similar proceeding.

All sums expended by any Indemnified Party shall be payable on demand and, until reimbursed by Indemnitors pursuant hereto, shall bear interest at the default interest rate set forth in the Notes.

6. Right of Set-Off. In addition to any right available to Lender under applicable law or any other agreement, each Indemnitor hereby gives to Lender a continuing lien on, security interest in and right of set-off against all moneys, securities and other property of such Indemnitor and the proceeds thereof, now on deposit or now or hereafter delivered, remaining with or in transit in any manner to Lender, its correspondents, participants or its agents from or for Indemnitors, whether for safekeeping, custody, pledge, transmission, collection or otherwise or coming into possession of Lender in any way, and also, any balance of any deposit account and credits of any Indemnitor with, and any and all claims of such Indemnitor against, Lender or Bank at any time existing, as collateral security for all of the obligations of Indemnitors under this Indemnity, including fees, contracted with or acquired by Lender, whether joint, several, absolute, contingent, secured, matured or unmatured (for the purposes of this Section 6 and Sections 8, 10, and 19, collectively, the “Liabilities”), hereby authorizing Lender at any time or times, without prior notice, to apply such balances, credits or claims, or any part thereof, to such Liabilities in such amounts as it may select, whether contingent, unmatured or otherwise and whether any collateral security therefore is deemed adequate or not. The collateral security described herein shall be in addition to any collateral security described in any separate agreement executed by any Indemnitor. Lender, in addition to any right available to it under applicable law or any other agreement, shall have the right, at its option, to immediately set off against any Liabilities all monies owed by Lender in any capacity to any Indemnitor, whether or not due, and Lender shall, at its option, be deemed to have exercised such right to set off and to have made a charge against any such money immediately upon the occurrence of any events of default set forth below, even though such charge is made or entered on the books of Lender subsequent to those events.

7. Transfer of Real Property. The obligations and liabilities of Indemnitors under this Indemnity shall survive and continue in full force and effect and shall not be terminated, discharged or released, in whole or in part, irrespective of whether the Debt has been paid in full and irrespective of any foreclosure of the Deed of Trust, sale of the Real Property pursuant to the provisions of the Deed of Trust or acceptance by Lender, its successors or assigns of a deed or assignment in lieu of foreclosure or sale and irrespective of any other fact or circumstance of any nature whatsoever.

8. Other Remedies. Each Indemnitor hereby expressly agrees that this Indemnity is independent of, and in addition to, all collateral granted, pledged or assigned under the Loan Documents, and each Indemnitor hereby consents that from time to time, before or after any default by the Borrower, with or without further notice to or assent from any Indemnitor:

(a) any security at any time held by or available to Lender for any obligation of the Borrower, or any security at any time held by or available to Lender for any obligation of any other Person primarily, secondarily or otherwise liable for all or any portion of the Debt, any other Liabilities and/or any other obligations of the Borrower or any other Person, other than Lender, under any of the Loan Documents (collectively, "Other Obligations"), including any guarantor of the Debt, the Liabilities and/or of any of such Other Obligations, may be accelerated, settled, exchanged, surrendered or released and Lender may fail to set off and may release, in whole or in part, any balance of any deposit account or credit on its books in favor of the Borrower, or any such other Person;

(b) any obligation of the Borrower, or of any such other Person, may be changed, altered, renewed, extended, continued, accelerated, surrendered, compromised, settled, waived or released in whole or in part, or any default with respect thereto waived; and

(c) Lender may extend further credit in any manner whatsoever to the Borrower, and generally deal with the Borrower or any of the above-mentioned security, deposit account, credit on its books or other Person as Lender may see fit;

and Indemnitors shall remain bound under this Indemnity, without any loss of rights by any Indemnified Party and without affecting the liability of any Indemnitor, notwithstanding any such exchange, surrender, release, change, alteration, renewal, extension, continuance, compromise, waiver, inaction, extension of further credit or other dealing. In addition, all moneys available to Lender for application in payment or reduction of the Debt, the Liabilities and/or any Other Obligations may be applied by Lender in such manner and in such amounts and at such time or times and in such order, priority and proportions as Lender may see fit.

9. Waivers by Indemnitors. Each Indemnitor hereby waives:

(a) notice of acceptance of this Indemnity;

(b) protest and notice of dishonor or default to any Indemnitor or to any other Person with respect to any obligations hereby guaranteed;

(c) all other notices to which any Indemnitor might otherwise be entitled; and

(d) any demand under this Indemnity.

10. Remedies. If any of the following shall occur:

(a) an Event of Default occurs under any of the Loan Documents; or

(b) any Indemnitor violates any provision of this Indemnity or any other guaranty or other agreement executed by them with respect to any of the Loans or this Indemnity;

then, and in such event, Lender may declare the Liabilities to be, and the same shall become, immediately due and payable and/or may exercise any or all of its remedies as set forth herein or at law or in equity.

11. No Other Action Necessary. This is a guaranty of payment and not of collection and each Indemnitor further waives any right to require that any action be brought against Borrower or any other Person or to require that resort be had to any security or to any balance of any deposit account or credit on the books of Lender in favor of Borrower or any other Person. Any payment on account of or reacknowledgment of the Debt by Borrower, or any other Person liable therefor or action taken, payment or reacknowledgment made with respect to any Environmental Matters or to Lender in connection therewith, shall be deemed to be taken or made on behalf of all Indemnitors and shall serve to start anew the statutory period of limitations applicable to the obligations of Indemnitors with respect to any Environmental Matter or to Lender in connection herewith.

12. Successors and Assigns; Beneficiaries. This Indemnity confers rights and remedies upon Lender and the other Indemnified Parties. No Person, other than Lender and the other Indemnified Parties, has any rights or remedies under the Agreement. Each reference herein to an Indemnitor shall be deemed to include the heirs, executors, administrators and legal representatives, as applicable, of such Indemnitor, *provided, however*, that no Indemnitor shall in any event nor under any circumstance have the right, without obtaining the prior written consent of Lender, to assign or transfer its obligations and liabilities under this Indemnity, in whole or in part, to any other Person.

13. Construction; Singular and Plural; Obligations Joint and Several. Words used herein in the singular, where the context so permits, will be deemed to include the plural and vice versa. Lender may proceed against none, one or more of the Indemnitors at one time or from time to time as it sees fit in its sole and absolute discretion. If any party hereto shall be a partnership, the agreements and obligations on the part of Indemnitors herein contained shall remain in force and application notwithstanding any changes in the Persons composing the partnership and the term "Indemnitor" shall include any altered or successive partnerships but the predecessor partnerships and their partners shall not thereby be released from any obligations or liability hereunder. If any party hereto shall be a limited liability company, the agreements and obligations on the part of Indemnitors herein contained shall remain in force and application notwithstanding any changes in the Persons composing the limited liability company and the term "Indemnitor" shall include any altered or successive limited liability companies but the predecessor limited liability companies and their members shall not thereby be released from any obligations or liability hereunder. If any party hereto shall be a corporation, the agreements and obligations on the part of Indemnitors herein contained shall remain in force and application notwithstanding the merger, consolidation, reorganization or absorption thereof, and the term "Indemnitor" shall include such new entity, but the old entity shall not thereby be released from any obligations or liabilities hereunder. Borrower is executing this Indemnity as a further assurance that its obligations set forth herein will remain in full force and effect, notwithstanding

the assignment or discharge of record of the Deed of Trust or any other fact or circumstances whatsoever.

14. No Waivers. No delay on the part of Lender in exercising any right or remedy under this Indemnity or failure to exercise the same shall operate as a waiver in whole or in part of any such right or remedy. No notice to or demand on any Indemnitor shall be deemed to be a waiver of the obligation of any of the undersigned or of the right of Lender to take further action without notice or demand as provided in this Indemnity. No course of dealing between any Indemnitor and Lender shall change, modify or discharge, in whole or in part, this Indemnity or any obligations of any Indemnitor.

15. Amendments; Cumulative Rights. This Indemnity may not be changed, waived, discharged or terminated orally or in any manner other than by an instrument in writing signed by Indemnitors and Lender. No waiver of any term, covenant or provision of this Indemnity shall be effective unless given in writing by Lender and if so given by Lender shall only be effective in the specific instance in which given. The execution and delivery hereafter to Lender by any Indemnitor of a new instrument of guaranty or any reaffirmation of guaranty, of whatever nature, shall not terminate, supersede or cancel this instrument, unless expressly so provided therein, and all rights and remedies of Lender hereunder or under any instrument of guaranty hereafter executed and delivered to Lender by any Indemnitor shall be cumulative and may be exercised singly or concurrently

16. Obligations Absolute. Each Indemnitor acknowledges that this Indemnity and each Indemnitor's obligations under this Indemnity are and shall at all times continue to be absolute, irrevocable and unconditional in all respects, and shall at all times be valid and enforceable irrespective of any other agreements or circumstances of any nature whatsoever which might otherwise constitute a defense to this Indemnity and the obligations of any Indemnitor under this Indemnity or the obligations of any other Person (including, without limitation, Borrower) relating to this Indemnity or the obligations of any Indemnitor hereunder or otherwise with respect to the Debt, including, but not limited to, a foreclosure of the Deed of Trust or the realization upon any other collateral given, pledged or assigned as security for all or any portion of the Debt, or the filing of a petition under Title 11 of the United States Code with regard to Borrower or Guarantor, or the commencement of an action or proceeding for the benefit of the creditors of Borrower or Guarantor, or the obtaining by Lender of title to, respectively, the Real Property or to any collateral given, pledged or assigned as security for the Debt by reason of the foreclosure or enforcement of the Deed of Trust or any other pledge or security agreement, the acceptance of a deed or assignment in lieu of foreclosure or sale, or otherwise.

17. Entire Agreement. This Indemnity (including the recitals, which are incorporated herein by reference and made a part hereof) constitutes the entire agreement among the parties pertaining to the subject matter hereof, and supersedes in their entirety any and all written or oral agreements previously existing between the parties with respect to such subject matter.

18. Indemnitors' Representations and Warranties. Each Indemnitor represents and warrants that:

(a) it has the full power and authority to execute and deliver this Indemnity and to perform its obligations under this Indemnity; the execution, delivery and performance of this Indemnity by such Indemnitor has been duly and validly authorized; and all requisite action has been taken by such Indemnitor to make this Indemnity valid and binding upon such party, enforceable in accordance with its terms;

(b) neither the execution and delivery of this Indemnity nor the consummation of the transactions contemplated hereby nor compliance with the terms and provisions hereof will violate any applicable provision of law or any applicable regulation or other manifestation of governmental action; and

(c) all necessary approvals, consents, licenses, registrations and validations of any Governmental Authority, including, without limitation, approvals required to permit the undersigned to execute and carry out the provisions of this Indemnity, for the validity of the obligations of the undersigned hereunder and for the making of any payment or remittance of any funds required to be made by the undersigned under this Indemnity, have been obtained and are in full force and effect.

19. Waiver of Guarantor's Rights Against Borrower; Effect of Bankruptcy. Notwithstanding any payments made by any Indemnitor pursuant to the provisions of this Indemnity, Guarantor irrevocably waives all rights to enforce or collect upon any rights which it now has or may acquire against Borrower either by way of subrogation, indemnity, reimbursement or contribution for any amount paid under Indemnity or by way of any other obligations whatsoever of Borrower to Guarantor, nor shall Guarantor file, assert or receive payment on any claim, whether now existing or hereafter arising, against Borrower in the event of the commencement of a case by or against Borrower under Title 11 of the United States Code. In the event either a petition is filed under said Title 11 of the United States Code with regard to Borrower or an action or proceeding is commenced for the benefit of the creditors of Borrower, this Indemnity shall at all times thereafter remain effective in regard to any payments or other transfers of assets to Lender received from or on behalf of Borrower prior to notice of termination of this Indemnity and which are or may be held voidable on the grounds of preference or fraud, whether or not the Debt has been paid in full. Any payment on account of or reacknowledgment of the Debt by Borrower, or any other Person liable therefor, or action taken, or payment or reacknowledgment made, of any of the obligations of Borrower to take and complete the actions specified in this Indemnity shall serve to start anew the statutory period of limitations applicable to each Indemnitor hereunder. The provisions of this Section 19 shall survive the term of this Indemnity and the payment in full of the Debt and all other Liabilities.

20. Notices. Section 10.1 and Schedule A of the Credit Agreement are incorporated herein by reference and made a part hereof.

21. CHOICE OF LAW; WAIVER OF JURY TRIAL AND CERTAIN OTHER RIGHTS; SUBMISSION TO JURISDICTION; SERVICE OF PROCESS FOR ALL LOAN DOCUMENTS. Section 10.19 of the Credit Agreement is incorporated herein by reference and made a part hereof; *provided*, that each reference to "Borrower" therein shall be deemed a reference to each Indemnitor, each reference to the "Agreement" therein shall be deemed a

reference to this Indemnity, and each reference to Section 10.19 shall be deemed a reference to this Section 21.

22. [Intentionally Omitted].

23. Enforcement Costs. Section 10.22 of the Credit Agreement is incorporated herein by reference and made a part hereof; *provided*, that references to the “Agreement” therein shall be deemed a reference to this Indemnity.

24. Waiver of Defense. Each Indemnitor absolutely, unconditionally and irrevocably waives any and all right to assert or interpose any defense, setoff, counterclaim or crossclaim of any nature whatsoever with respect to this Indemnity or the obligations of such Indemnitor under this Indemnity, or the obligations of any other Person relating to this Indemnity, or the obligations of such Indemnitor hereunder or otherwise with respect to the Loans in any action or proceeding brought by Lender to collect the Debt, or any portion thereof, or to enforce the obligations of Indemnitors under this Indemnity (provided, however, that the foregoing shall not be deemed a waiver of the right of any Indemnitor to assert any compulsory counterclaim maintained in a court of competent jurisdiction, if such counterclaim is compelled under local law or rule of procedure, nor shall the foregoing be deemed a waiver of the right of any Indemnitor to assert any claim which would constitute a defense, setoff, counterclaim or crossclaim of any nature whatsoever against Lender in any separate action or proceeding). Each Indemnitor hereby undertakes and agrees that this Indemnity shall remain in full force and effect for all of the obligations and liabilities of any Indemnitor hereunder, notwithstanding the maturity of the Loans, whether by acceleration, scheduled maturity or otherwise.

25. No Effect by Other Documents. No exculpatory provisions which may be contained in any Loan Document shall in any event or under any circumstances be deemed or construed to modify, qualify, or affect in any manner whatsoever the obligations and liabilities of any Indemnitor under this Indemnity.

26. Liabilities Cumulative. The obligations and liabilities of each Indemnitor under this Indemnity are in addition to the obligations and liabilities of each Indemnitor under the Other Guaranties. The discharge of any or all of any Indemnitor’s obligations and liabilities under any one or more of the Other Guaranties by any Indemnitor or by reason of operation of law or otherwise shall in no event or under any circumstance constitute or be deemed to constitute a discharge, in whole or in part, of any Indemnitor’s obligations and liabilities under this Indemnity. Conversely, the discharge of any or all of any Indemnitor’s obligations and liabilities under this Indemnity by any Indemnitor or by reason of operation of law or otherwise shall in no event or under any circumstance constitute or be deemed to constitute a discharge, in whole or in part, of any Indemnitor’s obligations and liabilities under any of the Other Guaranties.

27. Invalidity. In the event that any one or more of the provisions contained in this Indemnity is, for any reason, held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect any other provision of this Indemnity.

28. Survival of Agreements. All representations and warranties of Indemnitors herein, and all covenants and agreements in this Indemnity not fully performed as of the Effective Date, will survive the Effective Date.

29. Time of the Essence. Time will be deemed of the essence with respect to the payment and performance of all of the terms, provisions and conditions on the part of Indemnitors to be paid or performed under this Indemnity.

30. Relationship between the Parties. The relationship between Lender, on the one hand, and each Indemnitor, on the other, will be solely that of lender and indemnitor, and such relationship will not, under any circumstances whatsoever, be construed to be a joint venture, joint adventure, or partnership.

31. Titles of Sections. All titles or headings to articles, sections, subsections or other divisions of this Indemnity are only for the convenience of the parties and will not be construed to have any effect or meaning with respect to the other content of such articles, sections, subsections or other divisions, such other content being controlling as to the agreements hereunder.

32. Section References. References in this Indemnity to Sections are intended to refer to Sections of this Indemnity, unless otherwise specifically stated.

33. [Intentionally Omitted].

34. Receipt and Review of Loan Documents. Each Indemnitor acknowledges and agrees that it has been provided with a copy of the Credit Agreement, Deed of Trust and each of the other Loan Documents it has requested and has reviewed such documents with counsel of its own choosing.

35. Counterparts. This Indemnity may be executed in any number of counterparts, each of which shall be an original and all of which shall constitute together but one and the same agreement. Faxed, scanned or photocopied signatures shall be deemed equivalent to original signatures.

[REMAINDER OF PAGE BLANK; SIGNATURE PAGES TO FOLLOW.]

IN WITNESS WHEREOF, the parties have executed this Joint and Several Hazardous Substance Guaranty and Indemnification Agreement as of the Effective Date.

**BORROWER:**

COASTAL ALABAMA FARMERS' AND FISHERMEN'S MARKET, INC., an Alabama non-profit corporation

By: \_\_\_\_\_  
Name:  
Title:

[COUNTERPART SIGNATURE PAGE TO  
JOINT AND SEVERAL HAZARDOUS SUBSTANCE GUARANTY AND  
INDEMNIFICATION AGREEMENT]

**GUARANTOR:**

THE CITY OF FOLEY PUBLIC FACILITIES  
COOPERATIVE DISTRICT, an Alabama public  
corporation

By: \_\_\_\_\_  
Name:  
Title:

[COUNTERPART SIGNATURE PAGE TO  
JOINT AND SEVERAL HAZARDOUS SUBSTANCE GUARANTY AND  
INDEMNIFICATION AGREEMENT]

**LENDER:**

PACESETTER CDE X, LLC, a Texas limited  
liability company

By: Pacesetter CDE, Inc., a Texas corporation, its  
managing member

By: \_\_\_\_\_  
Name: Giovanni Capriglione  
Title: Chief Compliance Officer



## **AGREEMENT FOR LEASE**

**THIS AGREEMENT FOR LEASE** ("Lease") is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Effective Date"), by and between "Landlord" (as such term is defined in Section 1.1 hereof) and "Tenant" (as such term is defined in Section 1.2 hereof). Landlord does hereby lease to Tenant and Tenant hereby leases from Landlord the "Premises" (as such term is defined in Section 1.4 hereof) located at the Coastal Alabama Farmers' and Fishermen's Market Wholesale Distribution Facility (herein referred to as "CAFFM Wholesale Distribution Facility") (as such term is defined in Section 1.3 hereof). This Lease is subject to the terms, covenants and conditions herein set forth and Landlord and Tenant each covenant, as a material part of the consideration for this Lease, to keep and perform each and all of said terms, covenants and conditions. The relationship between Landlord and Tenant hereunder is that of usufruct only, and no estate for years shall be deemed to have been granted hereby.

### **1.0 SUMMARY OF BASIC LEASE PROVISIONS**

#### **1.1. LANDLORD**

City of Foley's Public Facilities Cooperative District

##### **1.1.1. ADDRESS OF LANDLORD**

407 East Laurel Avenue  
Foley, Alabama 36535  
Attn: Accounting Department

#### **1.2. TENANT**

Gulf Coast Produce of Alabama LLC

##### **1.2.1. ADDRESS OF TENANT**

194 Bohn Street  
Biloxi, Mississippi 39530

##### **1.2.2. TENANT'S TRADE NAME**

Gulf Coast Produce of Alabama LLC

#### **1.3. THE CAFFM Wholesale Distribution Building**

The "CAFFM Wholesale Distribution Building" is that certain building shown on "Exhibit A" attached hereto.

#### **1.4. PREMISES**

The "Premises" shall be defined as that certain space reflected as the area crosshatched on "Exhibit A" attached hereto within the CAFFM Wholesale Distribution Building, located at 410 East Section Avenue, Foley, Alabama, having a Gross Leasable Area (as such term is defined in Section 1.4.1 hereof) of approximately 20,000 square feet and located within the western part of the building. The exterior walls, roof and the area beneath the Premises are demised hereunder and Landlord reserves the right to place, replace, maintain and repair within the Premises utility lines, pipes, and the like, to serve premises other than the Premises. This Lease does not grant any legal rights to "light and air" outside the Premises nor any particular view visible from the Premises, nor any easements, licenses or other interests unless expressly contained in this Lease.

##### **1.4.1. GROSS LEASABLE AREA**

The "Gross Leasable Area" shall mean the number of square feet of enclosed floor area intended for the exclusive use by a tenant and its customers, whether or not actually occupied. Gross Leasable Area shall not include: (i) restroom area that Landlord will allow Tenant to use; (ii) loading docks and truck ramps; (iii) parking structures (iv) rooftop mechanical structures; (viii), entrance areas, general pedestrian walkways and other floor space not intended to be leased to tenants. The Gross Leasable Area of the Premises is measured from the exterior

face of exterior walls and to the centerline of demising partitions. Such area is rounded off to the nearest one-half square foot.

#### **1.4.2. ANCHOR TENANT**

[Intentionally omitted]

#### **1.5. LEASE TERM**

The "Lease Term" shall be ten (10) Lease Years and shall commence on the Commencement Date (as such term is defined in Section 1.6.2 hereof). The term "Lease Year" shall mean a period of twelve (12) consecutive full calendar months commencing on the Commencement Date. If the Commencement Date is not the first day of a calendar month, then the first Lease Year shall consist of the first twelve (12) consecutive full calendar months of this Lease plus the remaining calendar days in the month in which the Commencement Date occurs. Each succeeding Lease Year shall commence upon the first day of the calendar month coinciding with or following the anniversary date of the Commencement Date of the Lease Term. If the Lease Term expires on a date not at the end of a full Lease Year, the period of time following the final full Lease Year shall be defined to be a "Partial Lease Year".

##### **1.5.1. OPTION TO RENEW**

Landlord grants to Tenant an option to extend the Lease Term for two (2) additional five (5) year periods ("Option Period") subject to the following:

- (a) Tenant is not then in default under any of the terms and conditions contained within the Lease beyond any applicable notice and cure period either at the time Tenant exercises its right to said Option Period or on the date of commencement of each Option Period;
- (b) Tenant provides written notice to Landlord of Tenant's intent to extend the Lease Term not less than one hundred eighty (180) days prior to the originally scheduled expiration date of the Lease Term or, if applicable, the respective Option Period;
- (c) Tenant is in full compliance with Section 4.0 hereof and, in particular, with the provisions pertaining to the maintaining of full, complete and accurate permanent records and accounts in accordance with general accounting practices reasonably acceptable to Landlord;
- (d) Tenant has remained in full compliance with Section 6.0 hereof during the Lease Term and, in particular, with Landlord's guidelines and regulations on printed displays or show window lettering established for the Premises, and Tenant has not failed to remove any printed display or show window lettering not approved by Landlord within ten (10) days following Tenant's receipt of Landlord's notice to correct; and
- (e) All other terms and conditions of the Lease shall remain unchanged with the exception that: (i) other than as set forth herein, Tenant shall have no further Option Periods to renew the Lease Term; and (ii) Base Rent shall be as set forth in Section 1.9.1 herein below.

#### **1.6. DELIVERY DATE/COMMENCEMENT DATE**

##### **1.6.1. DELIVERY DATE**

The "Delivery Date" shall be the date Landlord delivers the Premises to Tenant with Landlord's Work (as such term is defined in Exhibit B attached hereto) substantially completed.

##### **1.6.2. COMMENCEMENT DATE**

The "Commencement Date" shall be the date one hundred and eighty (180) days from the delivery date at which time rent will be due.

**1.7. DROP DEAD DATE**

In the event the Lease Term has not commenced on or before December 31st, 2014 (the "Drop Dead Date"), then this Lease shall be automatically be null and void and neither Landlord nor Tenant shall have any liability or obligation to the other.

**1.8. USE.**

The Premises shall only be used for the operation of a 1<sup>st</sup> class Produce/Wholesale Distribution Facility, that may also include a USDA meat cutting facility, that will complement the wholesale/produce distribution of products from the Coastal Alabama Farmers and Fishermen’s Market, Inc. to regional restaurants, schools, hospitals and other entities that would utilize this service.

**1.9. RENT.**

**1.9.1. BASE RENT (Including Amortization of Tenant Allowance)**

“Base Rent” shall be:

INITIAL TERM	PER SQUARE FOOT	MONTHLY BASE RENT	ANNUAL BASE RENT
Lease Years 1-2	\$5.00/sf	\$8,333.00	\$100,000.00
Lease Years 3-5	\$6.54/sf	\$10,900.00	\$130,800.00
Lease Years 6-10	\$7.04/sf	\$11,733.00	\$140,800.00
<b>FIRST OPTION PERIOD</b> Lease Years 11-15	\$7.54/sf	\$12,567.00	\$150,800.00
<b>SECOND OPTION PERIOD</b> Lease Years 16-20	\$7.92/sf	\$ 13,200.00	\$158,400.00

**1.9.2. Additional Rent:**

Additional Rent (as defined in Section 4.3) shall be capped at \$12,000.00 per Year for Landlord’s portion of Insurance, Common Area Maintenance and CAFFM Wholesale Distribution Building Operating Costs (ad defined in Section 5.5 hereof) for Years 1-10 initial term of the Lease.

**1.9.3. Other Rent:**

Tenant shall be responsible for payment of all Utility costs including Electric, Gas, Water, and Sewer, Telephone, Cable, Garbage, and Trash Pickup charges that is used by Tenant and Tenants space. (Further detailed in 8.0)

**1.10. SECURITY DEPOSIT**

None

**1.11. BROKER:**

NAI Mobile / Allan Cameron  
56 St. Emanuel Street  
Mobile, AL 36602  
(Broker Agreement is a separate contract with Landlord)

**2.0 TERM/COMMENCEMENT DATE**

**2.1. LEASE TERM**

The "Lease Term" and the "Commencement Date" are defined in Sections 1.5 and 1.6.2 hereof. When the Commencement Date and Termination Date of the Lease Term have been determined, Landlord and Tenant shall execute and deliver a written statement ("Commencement Date Agreement") specifying therein the Commencement Date and Termination Date of the Lease Term. In the event Landlord submits to Tenant the Commencement Date Agreement for Tenant's execution and Tenant does not execute and return the same to Landlord within

thirty (30) days of Tenant's receipt of the same, then the date Landlord establishes as the Commencement Date shall be conclusively deemed the Commencement Date.

## **2.2. ACCEPTANCE OF THE PREMISES**

Tenant acknowledges that: (i) it will take possession of the Premises within ten (10) days following the Delivery Date. All construction to the Premises by Tenant after taking possession of the same ("Tenant's Work") shall be performed in accordance with Exhibit B. Except as may otherwise be specifically set forth herein, Landlord shall not be required to make any alterations, improvements or repairs to the Premises or the CAFFM at any time.

## **2.3. FAILURE TO OPEN**

If Tenant fails to take possession of the Premises within ten (10) days after the Delivery Date and open the same for business to the public, fully stocked and staffed within one hundred and eighty days (180) days after the Commencement Date, then Landlord shall have, in addition to any and all remedies herein provided, the option to immediately cancel and terminate this Lease.

## **2.4. EFFECTIVE DATE**

Landlord and Tenant acknowledge that certain obligations under various Sections of this Lease may commence prior to the Commencement Date (e.g., construction, indemnities, liability insurance) and both agree that this Lease is a binding and enforceable agreement as of the Effective Date.

## **2.5. 1<sup>st</sup> RIGHT OF REFUSAL TO LEASE ADDITIONAL SPACE IN THE CAFFM WHOLESALE DISTRIBUTION BUILDING**

Landlord agrees to contact Tenant before leasing additional space in the CAFFM Wholesale Distribution Building in writing and grants Tenant 1<sup>st</sup> Right of Refusal to lease additional space at the same rate and term as the new tenant. Tenant will have 30 days to respond in writing from the date Landlord notifies Tenant of their intentions to lease additional space to a potential business. If Tenant does not respond in writing within the 30 day period to lease the additional space, Tenant forfeits their right of 1<sup>st</sup> Refusal to lease the additional space and Landlord is free to lease the space to any qualified potential business that Landlord feels will be a good addition to the CAFFM Wholesale Distribution Building. However, no right of first refusal shall exist for the first one hundred and eighty (180) days after execution of this agreement.

## **2.6. EARLY TERMINATION OF LEASE AND PENALTIES**

If Tenant chooses to terminate the Lease before the initial 10 year lease term expires, Tenant shall pay Landlord one additional year of rent or if in the final year of the lease the Tenant shall pay a sum equal to the months remaining on the lease. In addition, if this Lease is terminated for any reason whatsoever the Tenant shall reimburse Landlord for any portion of Tenant Allowance still owed according to the terms set forth herein. For the purposes of this lease the Tenant Allowance owed by Tenant is reduced by 10% each year. So by example only, if Tenant terminated Lease after the 5<sup>th</sup> year, Tenant would owe Landlord 50% of the original amount of the Tenant Allowance.

## **3.0 USE**

Tenant agrees it shall use and occupy the Premises only for the use set forth in Section 1.8 hereof and for no other purpose or use. Tenant further agrees to use the "Trade Name" set forth in Section 1.2.2 hereof for the Premises and no other trade name without the prior written consent of Landlord, which consent shall not be unreasonably withheld. During the Lease Term, Tenant shall be in continuous use and occupancy of the Premises and shall not vacate or abandon the same, and except as may otherwise be required or prohibited by law, Tenant shall, during the Lease Term, keep the Premises open for business, at a minimum, for the Required Operating Hours (as such term is defined in Section 3.1 hereof). Tenant shall be subject to and agrees to adhere to and be bound by the Rules and Regulations for the Market contained in section 22.1 hereof.

### **3.1. REQUIRED OPERATING HOURS**

Tenant shall, during the Lease Term, keep the Premises open for business, a minimum of thirty (30) hours per week.

## **4.0 RENT**

Tenant covenants and agrees to pay to Landlord, at the address for Landlord set forth in Section 1.1.1 hereof or at such other place as designated in writing by Landlord, in lawful United States currency, without notice, demand, deduction or set-off except as expressly provided herein, the following rentals (collectively, the "Rent"), together with any sales, use or other taxes assessed from time to time on the Rent or on the use and occupancy of the Premises, if any:

### **4.1. BASE RENT**

"Base Rent" is defined in Section 1.9.1 hereof. The first installment of Base Rent shall be due, in advance, on the Commencement Date. Each subsequent installment shall be due, in advance, on the first day of each month next ensuing after the Commencement Date. Base Rent shall be paid in monthly installments as described in Section 1.9.1 hereof.

If the Commencement Date is other than the first day of a calendar month, Base Rent and Additional Rent for the period from the Commencement Date to the first day of the first full month shall be prorated on a per diem basis and shall be paid on the Commencement Date.

### **4.2. PERCENTAGE RENT**

NONE

### **4.3. ADDITIONAL RENT**

It is the intent of the parties that the Rent payable to Landlord includes shared expenses associated with the operation of the CAFFM Wholesale Distribution Building and the Tenant's Space and that the Rent payable to the Landlord is Net of all sales or use taxes imposed on the Rent, if any, or otherwise and, accordingly, in addition to all other amounts that may be due pursuant to this Lease, Tenant shall pay the following sums as Additional Rent:

#### **4.3.1. TAXES**

Tenant shall pay Tenant's Pro Rata Share (as Pro Rata Share is defined in Section 4.5 hereof) of: (i) the amount of all real and personal property taxes and assessments levied, imposed or assessed during each Lease Year (or payments made to public authorities in lieu of the foregoing) upon the CAFFM Wholesale Distribution Building, and (ii) sanitary sewer taxes, extraordinary or special assessments and all costs and fees, including reasonable attorneys' and/or tax consultants' fees incurred by Landlord in contesting or negotiating the same with public authorities with regard to either (i) or (ii) above (collectively, "Taxes"), plus the full amount of any real property tax assessment that is directly attributable to any improvements made by Tenant to the Premises, plus the full amount of any sales or use taxes imposed on the Rent and/or Tenant's operation of its business in the Premises, if any. Notwithstanding the foregoing, in no event shall Tenant's Pro Rata Share of Taxes include any interest or late fees assessed against Landlord for delinquent payment. Landlord's good faith estimate of Tenant's Pro Rata Share of Taxes for Lease Year 1 is N/A per square foot of the Premises.

#### **4.3.2. INSURANCE:**

Tenant shall pay Tenant's Pro Rata Share of the total cost to Landlord of all fire and extended coverage, environmental liability coverage, liability coverage, business income and extra expense coverage and other insurance coverage carried by Landlord with respect to the CAFFM Wholesale Distribution Building (collectively, "Insurance"). Tenant's Pro Rata Share of the cost of Insurance for Lease Years 1-10 shall not exceed \$6,000.00 per year.

#### **4.3.3. COMMON AREA MAINTENANCE AND COST OF OPERATION OF BUILDING CAP**

Tenant shall pay Tenant's Pro Rata Share of the total cost to Landlord for the maintenance of the Common Area (as such term is defined Section 5.1 hereof) and CAFFM Wholesale Distribution Building Operating Costs (as defined in Section 5.5 hereof) Tenant's Pro Rata Share of the costs described in this Section 4.4.3 for Years 1-10 shall not exceed \$6,000.00 annually.

#### **4.3.4. OTHER ADDITIONAL RENT**

Tenant shall pay all other sums of money or charges required to be paid by Tenant, including, but not limited to, utility charges billed to Landlord for Tenant's usage in accordance with the provisions of Section 8.0 hereof, reasonable attorneys' fees incurred by Landlord to enforce the provisions of this Lease and interest charges on past due payments, all of which shall be characterized as Additional Rent. Payments of any such amounts shall be due thirty (30) days following Tenant's receipt of Landlord's statement therefore.

#### **4.4. PAYMENT OF ADDITIONAL RENT**

No later than thirty (30) days after the Commencement Date, and thereafter at least once each calendar year, Landlord shall deliver to Tenant a written statement setting forth the monthly installments of Additional Rents that Landlord estimates will be needed to pay in full for that calendar year. If at any time during the calendar year Landlord determines that the initial estimate should be revised so that it will more closely approximate the expected actual Additional Rent, Landlord may revise the initial estimate by delivering to Tenant a subsequent statement. Tenant shall pay Landlord, together with Base Rent, on the first day of each month during this Lease, the monthly installments of estimated Additional Rent as set forth in the last statement received by Tenant. Within ninety (90) days following each calendar year for the CAFFM Wholesale Distribution building, Landlord shall endeavor to deliver to Tenant a statement of the actual Additional Rent payable by Tenant for the previous calendar period. Landlord's failure to include an item as Additional Rent or to submit statements as called for herein shall not be deemed to be a waiver of Tenant's requirement to pay the sums herein provided. If the total amount of estimated payments paid by Tenant for any calendar period is less than the actual amount payable by Tenant, then Tenant shall pay the balance of Additional Rent in a lump sum within thirty (30) days after Tenant's receipt of Landlord's statement of the actual amount. If the total of the estimated payments is greater than the actual Additional Rent for the same period, then Tenant shall receive a credit against the next due payment(s) of estimated Additional Rent.

#### **4.4.1. PRORATION**

If the first Lease Year commences on any day other than January 1<sup>st</sup>, or if the Lease Term ends on any day other than December 31<sup>st</sup>, any payment due to Landlord by reason of any Additional Rent or estimated installment thereof shall be justly and fairly prorated. This covenant shall survive the expiration or termination of this Lease, if Landlord estimates that Additional Rent will be payable by Tenant at the end of the calendar year and subsequent to Lease expiration.

#### **4.5. TENANT'S PRO RATA SHARE**

The Tenant shall pay as additional rent the Tenant's Pro Rata Share of taxes, insurance, common area maintenance, CAFFM Wholesale Distribution Building Operating Costs or any other items as defined herein. The Tenant's Pro Rata Share is agreed to be Twenty-One percent (21%) and shall be subject to increase or decrease due to any increase or decrease in the Gross Leasable Area or the total square of the Premises (the "Pro Rata Share"). The Tenant's Pro Rata Share shall be a percentage, as set forth above, which is obtained by dividing the total square feet of the Gross Leasable Area from time to time by the total square feet of the Premises from time to time. At the Commencement Date of this Lease, the Gross Leasable

Area is 20,000 square feet and the total square feet of the Premises is 94,000 square feet.

#### **4.6. INTEREST ON PAST DUE AMOUNTS**

Any amount due from Tenant to Landlord hereunder which is not paid within ten (10) days of the date the same is due shall bear interest at the rate (the "Default Rate") equal to the lesser of: (i) the maximum interest rate allowed by applicable law; or (ii) one and one-half percent (1.5%) per month from the due date until paid unless otherwise specifically provided herein, but the payment of such interest shall not excuse or cure any default by Tenant under this Lease.

### **5.0 COMMON AREA**

#### **5.1. DEFINITION OF COMMON AREA**

The term "Common Area" shall mean the common areas, employee parking areas, service roads, sidewalks and/or walkways, bridges, stairs not contained in leased areas, fire, service and exit corridors and parking areas located at the CAFFM Wholesale Distribution Building together with such other facilities as may be designated from time to time by Landlord.

#### **5.2. USE OF COMMON AREA**

The use and occupancy by Tenant of the Premises shall include the use in common with others entitled thereto of the Common Area of the CAFFM Wholesale Distribution Building. Landlord reserves the right to designate an area within the Common Area as tenant parking.

#### **5.3. SIDEWALKS/WALKWAYS**

Tenant shall not: (i) encumber or obstruct the sidewalks and/or walkways adjoining the Premises or allow the same to be obstructed or encumbered in any manner; or (ii) place or cause to be placed any merchandise, signs, vending machines or anything else on any sidewalk, walkway or exterior of the Premises without the prior written consent of Landlord, which consent shall be in Landlord's absolute discretion.

#### **5.4. MODIFICATIONS**

The CAFFM Wholesale Distribution Building is the property of Landlord and is at all times subject to the unrestricted control of Landlord. Exhibit A sets forth the general layout of the CAFFM Wholesale Distribution Building and shall not be deemed to be a warranty, representation or agreement on the part of Landlord that the CAFFM Wholesale Distribution Building will be or is exactly as indicated on said diagram nor that any tenant named thereon is now or will forever be a tenant in the CAFFM Wholesale Distribution Building. Landlord may increase, reduce or change the number, dimensions or location of the walks, buildings and parking areas in any manner whatsoever that Landlord shall deem proper and reserves the right to make alterations or additions to the building in which the Premises are contained and to add buildings adjoining the same or elsewhere in the CAFFM Wholesale Distribution Building. If the amount or type of such areas is diminished, increased or otherwise altered, Landlord shall not be subject to any liability nor shall Tenant be entitled to any compensation or diminution or abatement of Rent nor shall the diminution, enlargement or alteration of such areas be deemed constructive or actual eviction; provided, however, Landlord agrees not to make any such alterations or additions if the result of the same would materially and adversely affect the access to of the Premises.

#### **5.5. COST OF MAINTENANCE AND BUILDING OPERATING COST**

Tenant shall reimburse Landlord for the cost of maintenance, operation and administration of the Common Area of the CAFFM as set forth in Section 4.3.3 hereof. The term "CAFFM Wholesale Distribution Building Operating Costs" shall mean the total costs and expenses incurred in connection with the normal administration, operation, preventive and corrective maintenance and repair of the CAFFM Wholesale Distribution Building, whether paid to employees of Landlord or to

third parties engaged by Landlord, including without limitation and by example only: the cost and expense of maintaining, repairing, lighting, signing, cleaning, sweeping, painting, striping and removal of snow, ice, trash and debris from the Common Area; the cost and expense for all utilities used or consumed in connection with the Common Area; the cost and expense of maintaining, watering, planting, replanting and replacing flowers, trees, grass, shrubbery and planters; the cost and expense of rental or depreciation of machinery, equipment, fixtures and personal property used in the operation and maintenance of the Common Area, including, but not limited to, elevators and escalators; the cost and expense of the repair or replacement of the paving, curbs, walkways, drainage, pipes, conduits, lighting (including poles, bulbs and ballasts) and similar items used in connection with the Common Area; the cost and expense of sanitary sewer and water provided to the CAFFM Wholesale Distribution Building, unless the same is billed directly to the tenant; cost and expense of building repairs, building painting and roof cleaning; the cost and expense of supplies used in cleaning or maintaining the Common Area; the cost and expense of maintaining directory and pylon signage, if any, for the CAFFM Wholesale Distribution Building; the cost and expense of security services, if any, as Landlord may provide.

Notwithstanding anything contained herein to the contrary, in no event shall Tenant's share of CAFFM Wholesale Distribution Building Cost of Maintenance or Operating Costs: (a) for Lease Year's 1-10 of the Term hereof (and any partial month, if any, preceding such Lease Year, on a per diem basis) exceed \$6,000.00 annually ("Years 1-10 CAM Cap"); provided, **however** the cost and expense of security, snow and ice removal in the Common Area shall be excluded from the Year's 1-10 CAM Cap.

## **6.0 SIGNS**

The standards with which Tenant must comply regarding signs for the Premises are attached hereto as Exhibit D.

## **7.0 IMPROVEMENTS, ALTERATIONS AND REPAIRS**

### **7.1. IMPROVEMENTS AND ALTERATIONS OF PREMISES BY TENANT**

Tenant may at any time during the Lease Term make improvements or alterations to the Premises as Tenant may from time to time deem necessary or desirable; provided: (i) Tenant shall not have the right to make any improvements or alterations that affect the structure, structural strength or outward appearance of the Premises or the CAFFM Wholesale Distribution Building; and (ii) prior to beginning any such work, Tenant shall submit to Landlord complete and detailed plans and specifications in writing for approval by Landlord, which approval shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, Tenant shall have the right to make non-structural, non-storefront improvements and alterations to the Premises without Landlord's consent; provided the same does not exceed Twenty Five Thousand and No/100 Dollars (\$25,000.00) per calendar year ("Non-Approved Alterations"); provided, however, Landlord may, at its option, require Tenant, at Tenant's sole cost and expense, to remove any such Non-Approved Alterations installed within the Premises at the expiration or sooner termination of the Lease Term and to repair any damage to the Premises caused by such removal, and in the event Tenant fails to do so, Landlord may make such repairs or remove such improvements or alterations which are not promptly made by Tenant and charge Tenant for the reasonable cost thereof. Tenant hereby agrees to pay such amounts within thirty (30) days after receipt of written demand thereof by Landlord. Any improvements or alterations made to the Premises shall be in compliance with all insurance requirements and regulations and ordinances of governmental authorities and shall, upon the expiration or sooner termination of the Lease Term, become the property of Landlord, unless Landlord has demanded Tenant remove the same as provided hereinabove.

The interest of Landlord in the Premises and the CAFFM Wholesale Distribution Building is not subject to liens for improvements or alterations made by Tenant or as a result of Tenant's Work. Tenant will not create or permit to be created or remain as a result of any action or work done or contracted for by Tenant, any lien, encumbrance or charge levied on account of any imposition of any mechanic's, laborer's or materialman's lien which might be or become a lien, encumbrance or charge upon the Premises, the CAFFM Wholesale Distribution Building or any part thereof, or the income therefrom, whether or not the same shall have any priority or preference over or ranking on a parity with the estate, rights and interest of Landlord in the Premises or the CAFFM Wholesale Distribution Building or any part thereof, or the income therefrom, and Tenant will not suffer any other matter or thing whereby the estate, rights and interest of Landlord in the Premises or the CAFFM Wholesale Distribution Building or any part thereof, might be impaired as the result of Tenant's Work.

If any mechanic's, laborer's or materialman's lien shall at any time be filed against the Premises or the CAFFM Wholesale Distribution Building or any part thereof, as a result of any action or work done on behalf of or contracted for by Tenant, Tenant, within ten (10) days after notice of the filing thereof, shall cause it to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. If Tenant shall fail to cause such lien to be so discharged within the period aforesaid, then, in addition to any other right or remedy available to Landlord, Landlord may, but shall not be obligated to, discharge such lien by paying the amount claimed to be due. Any amount so paid by Landlord and all costs, expenses and fees, including, without limitation, reasonable attorneys' fees, incurred by Landlord in connection with any mechanic's, laborer's or materialman's lien, whether or not the same has been discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise, together with interest thereon at the Default Rate from the respective dates of Landlord's making of the payments and incurring of the costs and expenses, shall constitute Additional Rent payable by Tenant to Landlord within ten (10) days after receipt of written demand thereof by Landlord.

Nothing contained in this Lease shall be deemed or construed in any way as constituting the consent or request of Landlord, express or implied by inference or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any alteration, addition, improvement or repair to the Premises or the CAFFM Wholesale Distribution Building or any part thereof, or as giving Tenant any right, power or authority to contract for or permit the rendering of any services or the furnishing of any materials that would give rise to the filing of any lien against the Premises or the CAFFM Wholesale Distribution Building or any part thereof, nor to subject Landlord's estate in the Premises or the CAFFM Wholesale Distribution Building or any part thereof, to liability in any way under any mechanic's and/or materialman's lien laws of the state in which the CAFFM Wholesale Distribution Building is located, it being expressly understood that Landlord's estate shall not be subject to any such liability.

## **7.2. IMPROVEMENTS AND ALTERATIONS BY LANDLORD**

Landlord hereby reserves the right at any time and from time to time during the Lease Term to make any additions, alterations, changes or improvements (including, but not limited to, building additional stories) to the building in which the Premises are contained and to build additional structures adjoining thereto. Landlord also reserves the right to construct other buildings and improvements on the CAFFM Wholesale Distribution Building Lot from time to time and at any time during the Lease Term provided, however, Landlord agrees not to make any such alterations or additions that would adversely affect Tenant's operations or access to of the Premises.

### **7.3. REPAIRS BY LANDLORD**

Landlord agrees to keep and maintain in good order and repair the roof, structural components, exterior walls and the Fire Suppression system of the premises (excluding all sprinkler heads within Tenant's space, signs, doors, windows and glass, including plate glass). If any such maintenance and repairs are caused in part or in whole by the act, neglect, fault or omission of any duty by Tenant, its agents, contractors or employees, or any damage is caused by breaking and entering, then Tenant shall pay to Landlord the reasonable, actual cost of such maintenance and repairs, except as may otherwise be herein expressly retained. Landlord hereby gives Tenant exclusive control of the Premises and shall be under no obligation to inspect the Premises. Tenant shall promptly report in writing to Landlord any known defective condition which Landlord is required to repair pursuant to this Section. Tenant's failure to report to Landlord any such known condition or defect shall make Tenant responsible to Landlord for any liabilities, costs, expenses and reasonable attorneys' fees incurred by Landlord as a result of such defect. Landlord shall not be liable for any failure to make such repairs or to perform any maintenance unless such failure shall persist for an unreasonable time after written notice of the need of such repairs or maintenance is given to Landlord by Tenant. Except as herein provided regarding casualty loss, there shall be no abatement of Rent and no liability of Landlord by reason of any injury to or interference with Tenant's business arising from the making of any repairs, alterations or improvements in or to any portion of the CAFFM Wholesale Distribution Building or the Premises or in or to fixtures, appurtenances and equipment therein.

Notwithstanding anything contained herein to the contrary, in the event Landlord fails to make any repairs required to be made by Landlord within thirty (30) days, or commence to make such repairs within said thirty (30) day period if said repairs cannot be made within said thirty (30) day period, after Landlord's receipt of written notice of the need for such repairs from Tenant, Tenant shall have the right to make such repairs and deduct the reasonable cost thereof from Tenant's next payment of Base Rent or Additional Rent coming due.

### **7.4. REPAIRS BY TENANT**

Tenant shall, at its own cost and expense, keep and maintain the Premises and appurtenances thereto and every part thereof in good order and repair except those portions of the Premises to be repaired by Landlord pursuant to Section 7.3 hereof. Without limiting the foregoing, Tenant agrees to keep in good order and repair and to replace as needed all fixtures pertaining to heating, air conditioning (including compressors fans and ducts), ventilation, water, sewer and electrical systems and Tenant shall be liable for any damage to such systems resulting from Tenant's misuse within Tenant's Leased Premises and restrooms which are outside of Tenant's Leased Premises but are made available to Tenant and Tenant's employees and guest. Tenant agrees to return the Premises to Landlord at the expiration or sooner termination of this Lease in as good condition and repair as when first received, reasonable wear and tear and damage by fire or other insurable casualty excepted. All damage or injury to the CAFFM Wholesale Distribution Building, the Premises, the building or the Common Area caused by the act or negligence of Tenant, its agents, contractors, employees, invitees, or licensees shall be promptly repaired by Tenant at its sole cost and expense and to the reasonable satisfaction of Landlord. Landlord may make such repairs which are not promptly made by Tenant and charge Tenant for the reasonable cost thereof and Tenant hereby agrees to pay such amounts as Additional Rent hereunder within thirty (30) days after receipt of written demand thereof by Landlord.

### **8.0 UTILITIES**

Tenant shall pay from the date the Premises are delivered to Tenant, the cost of sewer and/or water hook up or tie-in, demand or reservation fees of any kind the cost of gas, electricity, fuel, light, heat, power, telephone, internet, cable, trash and garbage removal and all other utilities furnished to the Premises or used by Tenant in connection therewith, whether such utility costs are determined by separate billing and metering or are billed by Landlord to Tenant for Tenant's share of the utility costs. Tenant shall not

install any equipment nor shall Tenant use the Premises in a manner that will exceed or overload the capacity of any utility facilities. If Tenant's use of the Premises shall require additional utility facilities, the same shall be installed only after obtaining Landlord's written approval, which shall not be unreasonably withheld, and shall be installed at Tenant's expense in accordance with plans and specifications approved in writing by Landlord. If Tenant's use or occupancy of the Premises results in an increase to Landlord of any utilities expense or connection or user fees or charges for increased usage or capacity or assessments of any kind whatsoever, Tenant shall pay the entire amount thereof within thirty (30) days after receipt of written demand thereof by Landlord. In no event shall Landlord be liable for any interruption or failure in the supply of utilities to the Premises.

## **9.0 PERSONAL PROPERTY TAXES**

Tenant shall pay, prior to delinquency, all personal property taxes assessed against or levied upon the Premises and upon its fixtures, signs, furnishings, equipment, leasehold improvements and all other personal property of any kind owned by or used in connection with the Premises by Tenant. In the event any of Tenant's leasehold improvements, equipment, furniture, fixtures or other personal property shall be assessed and taxed with the real property, Tenant shall pay to Landlord the full amount of such taxes applicable to Tenant's property within ten (10) days of Tenant's receipt of a statement from Landlord setting forth the amount of such taxes applicable to Tenant's property. Landlord maintains the right, but not the obligation, to pay said taxes for the benefit of Tenant and consider the same as Additional Rent due under this Lease.

## **10.0 INSURANCE**

### **10.1. TENANT'S INSURANCE**

Tenant shall at all times during the Lease Term maintain in full force and effect the following insurance in the standard form generally in use in the state in which the CAFFM is located, with insurance companies authorized to do business in said state, rated no less than A, VIII in the current edition of Best's Rating Guide:

- (a) Commercial general liability insurance with a combined single limit of at least Two Million and No/100 Dollars (\$2,000,000,00), protecting Tenant and Landlord (as an additional insured) against claims based upon, involving or arising out of the ownership, use, occupancy or maintenance of the Premises. Such coverage shall include coverage for liability assumed under this Lease as an "insured contract" for the performance of Tenant's indemnity obligations under this Lease. In the event the business being conducted from the Premises includes the sale or other disposition of alcoholic beverages for on or off premises consumption, Tenant shall, in addition to the commercial general liability insurance, obtain liquor liability insurance in amounts equal to that required above for the commercial general liability insurance;
- (b) Property insurance covering all personal property, trade fixtures, signs, plate glass, floor covering, decorative items, furniture, equipment, inventory and merchandise or other property of Tenant of any type or kind in the Premises to the extent of one hundred percent (100%) of the full replacement value of the same against fire and other perils commonly included in "Causes of Loss-Special Form" coverage; an
- (c) Workmen's Compensation Insurance and employee insurance as required by law.

Except with respect to workmen's compensation insurance, all such insurance policies shall be endorsed to add Landlord and the holder of a first lien ("Mortgagee") on the CAFFM Wholesale Distribution Building as additional insureds for the full amount of the insurance herein required, and to provide that such insurance shall be primary, and that any insurance maintained by Landlord shall be excess only and not contributory. Tenant shall furnish to Landlord, before the Commencement Date, and at least thirty (30) days before expiration or termination or reduction of coverage of any such policy, copies of policies or certificates of insurance evidencing coverages required by this Lease. All policies

required hereunder shall contain an endorsement providing that the insurer will not cancel, fail to renew or amend the policy or policies without first giving thirty (30) days prior written notice thereof to Landlord.

#### **10.2. LANDLORD'S INSURANCE**

Landlord shall at all times during the Lease Term maintain in full force and effect insurance in the standard form generally in use in the state in which the CAFFM is located, with insurance companies authorized to do business in said state, rated no less than B+ in the current edition of Best's Rating Guide:

- (a) Commercial general liability insurance with a combined single limit of at least Two Million and No/100 Dollars (\$2,000,000.00), against claims based upon, involving or arising out of the ownership, use, occupancy or maintenance of the Common Area of the CAFFM Wholesale Distribution Building; and
- (b) Property insurance coverage for all casualties included in the classification "Causes of Loss-Special Form" coverage, and including sprinkler leakage, in an amount not less than one hundred percent (100%) of the full replacement value, and against such other hazards and in such amounts as Landlord or its lenders may reasonably require from time to time. It is understood that Landlord's insurance obligation hereunder does not extend to personal property, trade fixtures, signs, plate glass, floor covering, decorative items, furniture, equipment, inventory and merchandise in the Premises. The term "full replacement value" shall mean the actual replacement cost, not deducting depreciation, excluding foundation and excavation costs.

#### **10.3. INCREASE IN LANDLORD'S INSURANCE**

Tenant agrees that it will not keep, use, sell or offer for sale in or upon the Premises any article which may be prohibited by the standard form of fire insurance policy. Tenant agrees to pay, as Additional Rent, any increase in premiums for fire and extended coverage insurance that may be charged during the Lease Term on the amount of such insurance which may be carried by Landlord on the Premises or the CAFFM Wholesale Distribution Building, resulting from the type of merchandise sold or the type of business conducted by Tenant in the Premises, whether or not Landlord has consented to the same. In determining whether increased premiums are the result of Tenant's use of the Premises, a schedule, issued by the organization making the insurance rate on the Premises, showing the various components of such rate, shall be conclusive evidence of the several items and charges which make up the fire insurance rates on the Premises. In the event Tenant's occupancy causes any increase in premium for the fire, boiler and/or casualty rates on the Premises or CAFFM Wholesale Distribution Building or any part thereof above the rate for the least hazardous type of occupancy legally permitted in the Premises, Tenant shall pay the additional premium on the fire, boiler and/or casualty insurance policies by reasons thereof. Bills for such additional premiums shall be rendered by Landlord to Tenant at such times as Landlord may elect, and shall be due within thirty (30) days after receipt of written demand thereof by Landlord.

#### **10.4. MASTER POLICY**

The insurance required by this Section may be included in policies of "blanket insurance", provided that, in all other respects, each such policy shall comply with the requirements of this Section and provided that no other loss which may or may not be also insured thereby, shall in any way affect or limit the coverages and amount of insurance required hereby.

#### **10.5. SUBROGATION**

Notwithstanding any other provisions of this Lease, Landlord and Tenant each releases the other and, on behalf of its insurers, waives its entire right to recovery against the other for loss or damage to the waiving party and its property to the extent that the loss or damage is covered by insurance or would have been

covered by insurance proceeds payable under any policy required to be maintained under this Lease. Landlord and Tenant each agrees to furnish to each insurance company which has or will issue such policies notice of the mutual waivers contained herein and to have the insurance policies properly endorsed, if necessary, to prevent the invalidation of said coverage by said waivers. This waiver shall not be effective to relieve any party failing to maintain the aforescribed insurance.

## **11.0 INDEMNIFICATION**

### **11.1. LIMITED LIABILITY**

Landlord or its agents shall not be liable for any loss or damage to persons or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water or rain which may leak from any part of the building or from the pipes, appliances or plumbing works therein or from the roof, street or subsurface or from any other place resulting from dampness or any other cause whatsoever unless caused by or due to the negligence or willful misconduct of Landlord, its agents, contractors or employees. Landlord or its agents shall not be liable for interference with the light, air or for any latent defect in the Premises, except for those latent defects associated with the work to be performed by Landlord on the Premises as set forth on Exhibit B. Landlord shall not be liable for any such damage caused by other tenants of the CAFFM Wholesale Distribution Building or persons in or about the Premises or, occupants of adjacent property or the public or caused by operations in construction of any private, public or quasi-public work. All property of Tenant kept or stored on the Premises shall be so kept or stored at the risk of Tenant only and Tenant shall hold Landlord harmless from any claims arising out of damage to the same, including subrogation claims by Tenant's insurance carrier unless such damage shall be caused by the willful act or neglect of Landlord.

### **11.2. INDEMNIFICATION OF LANDLORD**

Tenant hereby indemnifies and agrees to hold Landlord harmless against and from any and all claims arising from Tenant's use of the Premises or from the conduct of its business or from any activity, work or other things done, permitted or suffered by Tenant in or about the Premises and agrees to further indemnify and hold harmless Landlord against and from any and all claims arising from any breach or default in the performance of any obligation on Tenant's part to be performed under the terms of this Lease or arising from any act or negligence of Tenant or any officer, agent, employee, guest or invitee of Tenant and from all costs, reasonable attorneys' fees, whether at trial or on appeal, and liabilities incurred in or about the defense of any such claim or any action or proceeding brought thereon. If any action or proceeding is brought against Landlord by reason of such claim, Tenant, upon notice from Landlord, shall defend the same at Tenant's expense by counsel reasonably satisfactory to Landlord. Tenant, as a material part of the consideration to Landlord, hereby assumes all risk of damage to property or injury to persons in, upon or about the Premises from any cause other than Landlord's negligence or willful misconduct and Tenant hereby waives all claims in respect thereof against Landlord. Tenant shall give prompt notice to Landlord in case of casualty or accidents in the Premises.

## **12.0 DAMAGE OR DESTRUCTION**

If the Premises or the building of which the same are a part are damaged by fire or other insured casualty and the insurance proceeds have been made available therefore by the holder(s) of any mortgages covering the Premises, the damage shall be repaired by and at the expense of Landlord to the extent of such available insurance proceeds, provided such repairs can, in Landlord's sole, reasonable opinion, be made within sixty (60) days after the occurrence of the casualty without the payment of overtime or other premiums. Until such repairs are completed, Base Rent shall be abated in proportion to that part of the Premises which is unusable by Tenant in the conduct of its business, as mutually determined by Landlord and Tenant, except that there shall be no abatement of Rent if any portion of the Premises are unusable for a period equal to one (1) day or less. If: (i)

the Premises are damaged as the result of any cause other than a fire or other casualty included in the insurance coverage Landlord is required to maintain pursuant to Section 10.2 hereof; (ii) the insurance coverage Landlord is required to maintain pursuant to Section 10.2 hereof was maintained, but the insurance proceeds have not been made available; or (iii) in Landlord's sole, reasonable opinion, the damage cannot be repaired within sixty (60) days; then, in any of such events, Landlord shall have the option to: (1) repair or restore such damage, in which case this Lease shall continue in full force and effect but Base Rent will be proportionately reduced as hereinabove provided; or (2) give notice to Tenant at any time within sixty (60) days after such damage, terminating this Lease as of the date specified in such notice, which date shall be no more than thirty (30) days after the giving of such notice. In the event of giving such notice, this Lease shall expire and all interest of Tenant in the Premises shall terminate on the date so specified in such notice and Base Rent, reduced by a proportionate reduction as hereinabove provided, shall be paid to the date of said termination.

Notwithstanding anything to the contrary contained in this Section, Landlord shall not have any obligation to repair, reconstruct or restore the Premises when the damage resulting from any casualty covered under this Section occurs during the last twelve (12) months of the Lease Term or any extension thereof.

Except as provided in this Section, there shall be no abatement of Rent and no liability of Landlord by reason of injury to or interference with Tenant's business or property arising from the making of any repairs, alterations or improvements in or to any portion of the building or the Premises or to fixtures, appurtenances and equipment therein. Tenant understands and agrees that Landlord shall have no obligation to carry insurance of any kind on Tenant's personal property, furniture, furnishings, inventory, fixtures, equipment or property of any type or kind of the Tenant under the provisions of this Lease and that Landlord shall not be obligated to make any repairs thereto or to replace the same.

### **13.0 CONDEMNATION**

If the whole of the Premises or so much thereof as to render the balance unusable by Tenant shall be taken under power of eminent domain or otherwise transferred in lieu thereof, this Lease shall automatically terminate as of the date of such condemnation authority or taking, whichever is later. No award for any total or partial taking shall be apportioned and Tenant hereby assigns to Landlord any award which may be made in such taking in condemnation, together with any or all rights of Tenant now or hereafter arising in or to the same or any part thereof; provided, however, Tenant shall be entitled to file and claim, prove and receive from any condemnation proceeding an award to reflect the relative loss suffered as a result of the taking of its trade fixtures, furniture and/or leasehold improvements, as well as any special damages, such as Tenant's moving expenses; provided: (i) Tenant waives any claim for the leasehold value of the Premises; and (ii) any award to Tenant does not alter or diminish the award of Landlord or Landlord's lender.

### **14.0 ASSIGNMENT AND SUBLETTING**

Tenant shall not, either voluntarily or by operation of law, sell, assign, hypothecate or transfer this Lease or sublet the Premises or any part thereof without the prior written consent of Landlord which consent shall not be unreasonably withheld. Tenant hereby agrees that Landlord's withholding of its consent shall be reasonable unless all of the following requirements have been satisfied:

- (a) Landlord shall be provided with at least thirty (30) days written notice prior to any proposed assignment or subletting;
- (b) The proposed assignment or subletting shall be for the entire Premises and not a portion thereof;
- (c) Tenant shall remain primarily liable under this Lease and shall guarantee the Lease if Landlord so requests;
- (d) Any proposed assignee or sublessee shall assume, in a written instrument acceptable to Landlord, all of the obligations of Tenant hereunder;

- (e) The proposed assignee's or sublessee's use of the Premises shall be, without limitation, in strict compliance with Section 1.8 hereof;
- (f) The net worth of the proposed assignee or sublessee shall be such that Landlord can be reasonably satisfied that the proposed assignee or sublessee shall be able to meet the monetary obligations contained herein;
- (g) The proposed assignee or sublessee shall have at least three (3) years of retail experience in the management and/or operation of a business; and
- (h) The nature and operation of the Premises by the proposed assignee or sublessee shall not conflict with or detract from the reputation, the operation and maintenance of the CAFFM Wholesale Distribution Building and Landlord's investment therein.

Any sale, assignment, mortgage, transfer or subletting of this Lease or the Premises or any parts hereof or thereof contrary to the provisions of this Section shall be void, unless approved in writing by Landlord, and shall, at the option of Landlord, constitute a default under this Lease. The consent by Landlord to an assignment or subletting shall not in any way be construed to relieve Tenant from obtaining the express consent of Landlord to any further assignment or subletting of the Premises, nor shall the acceptance of Rent by Landlord from any assignee or sublessee be deemed a waiver of the obligation to obtain Landlord's consent to an assignment or subletting.

In the event Tenant is a corporation or trust, Tenant must obtain Landlord's approval for any proposed change in the control of Tenant or any entity controlling Tenant, which approval shall be in Landlord's reasonable discretion, and any such change in control occurring without Landlord's prior approval shall, at the option of Landlord, constitute a default under this Lease.

The parties to this Agreement acknowledge and agree that the Landlord shall have the right to assign this lease at any time, without any notice to or consent of the Tenant. Without limiting the immediately preceding sentence, the Parties agree and understand that it is specifically anticipated that this Agreement will be assigned by the Landlord to the City of Foley's Public Facilities Cooperative District and from the same to the Coastal Alabama Farmers and Fishermen's Market, Inc.

## **15.0 ESTOPPEL CERTIFICATE, ATTORNMENT AND SUBORDINATION**

### **15.1. ESTOPPEL CERTIFICATE**

Within ten (10) days after request thereof by Landlord, or in the event that upon any sale, assignment or hypothecation of the Premises and/or the land thereunder by Landlord an Estoppel Certificate shall be required from Tenant, Tenant agrees to deliver in recordable form, a certificate to any proposed mortgagee or purchaser, or to Landlord, certifying that this Lease is unmodified and in full force and effect (or, if there have been modifications, that the same is in full force and effect as modified, and stating the modifications), that there are no defenses or offsets thereto or stating those claimed by Tenant and the dates to which Base Rent and other charges have been paid, and such other matters as may be required by such mortgagee or purchaser of the CAFFM Wholesale Distribution Building. The form of such Estoppel Certificate shall be in form and content as may be required by such purchaser or mortgagee of the CAFFM Wholesale Building.

### **15.2. ATTORNMENT**

Tenant shall, in the event any proceedings are brought for the foreclosure of the CAFFM Wholesale Distribution Building or the Premises or in the event of exercise of the power of sale under any mortgage made by Landlord covering the CAFFM Wholesale Distribution Building or the Premises, attorn to the purchaser upon any such foreclosure or sale and recognize such purchaser as Landlord under this Lease.

### **15.3. SUBORDINATION**

(a) Except as set forth in Section 15.3(b) hereof, Tenant agrees that this Lease shall at all times be subject and subordinate to the lien of any mortgage (including any amendment or modification thereof), which at any time may be placed on the Premises by Landlord. If requested in writing by the holder or prospective holder thereof, Tenant agrees, upon demand, without cost to execute and deliver an instrument in a form and substance acceptable to Landlord and its lender, or such other form as may be reasonably required by the mortgagee or a proposed mortgagee, to effectuate such subordination, which instrument shall include, among and with any other provisions required by the mortgagee, an agreement on the part of Tenant to attorn to any and all successors, resulting from any foreclosure of any such mortgage or conveyance in lieu of the foreclosure and shall also provide that Tenant shall be entitled to continue possession of the Premises under this Lease so long as Tenant complies with all terms, conditions and provisions of this Lease;

(b) Notwithstanding anything contained in this Lease to the contrary, Tenant covenants and agrees that, if the present or future holder of any mortgage (including any amendment and/or modification thereof, whether made prior or subsequent to the subordination provided by this Section 15.3) affecting the Premises subordinates said mortgage to this Lease, whether the same be part of a general subordination by such mortgagee or specifically refers to this Lease, then this Lease shall for all intents and purposes be considered to be paramount and superior to said mortgage and shall survive and continue to remain in full force and effect, even though said mortgage be foreclosed; and, in the event of any such foreclosure, Tenant agrees to thereafter attorn to the mortgagee, its successors and assigns, and to any purchaser at foreclosure, its successors and assigns.

(c) Tenant agrees that, without the prior written consent of the mortgagee, it will not: (i) prepay any Rent or other charges due under this Lease more than fifteen (15) days in advance of the due date required by this Lease; (ii) terminate this Lease or exercise a right of set-off, if any there be; or (iii) amend this Lease.

### **16.0 DEFAULT**

#### **16.1. EVENTS OF DEFAULT BY TENANT**

This Lease is made upon the condition that Tenant shall punctually and faithfully perform all covenants and agreements as herein set forth. The happening of any one or more of the following listed events of default shall constitute a breach of this Lease by Tenant:

(a) The failure of Tenant to pay any part, portion or component of any Rent payable by Tenant on the date the same shall become due and such Rent shall remain unpaid for more than ten (10) days after written notice thereof by Landlord to Tenant;

(b) The taking of the leasehold on execution or other process of law in any action against Tenant;

(c) The failure of Tenant to take possession of, construct and thereafter open the Premises for business, fully fixtured, stocked and staffed within thirty (30) days of the Commencement Date, or the abandonment of the Premises, or cessation of Tenant's business within the Premises;

(d) The filing by Tenant of any petition or answer seeking any reorganization, liquidation, arrangement, readjustment or similar relief for itself under any present or future federal, state or other statute and the failure of Tenant to secure a dismissal thereof within ninety (90) days; provided, however, that in the event Landlord shall not be permitted to terminate this Lease because of

the provisions of Title 11 of the United States Code (the "Bankruptcy Code"), then Tenant, as debtor-in-possession, or any trustee, receiver or liquidator appointed for Tenant's benefit, must provide adequate assurance of performance of the terms of this Lease, which shall include, without limitation, adequate assurance: (i) of the source of Rent reserved hereunder; (ii) that the assumption of this Lease will not breach any provision hereunder; (iii) that any assumption or assignment of this Lease will not breach any provision such as the radius, location, use or exclusivity provisions in this or any other lease, finance agreement or master agreement relating to the Shopping Center under any circumstances, as the use provision of this Lease is the equivalent of a covenant running with the land and as such, may not be changed by the state of bankruptcy of Tenant; and (iv) that the assumption or assignment of this Lease will not unreasonably disrupt any tenant mix or balance in the Shopping Center, and if the trustee does not cure such defaults and provide such adequate assurances under the Bankruptcy Code within the applicable time periods provided by the Bankruptcy Code, then this Lease shall be deemed rejected and Landlord shall have the right to immediate possession of the Premises and shall be entitled to all remedies provided by the Bankruptcy Code for damages for breach and/or termination of this Lease;

(e) The removal by Tenant of any leasehold improvements from the Premises without replacement thereof;

(f) The failure of Tenant to secure and maintain the insurance coverages and provide evidence thereof to Landlord as required by the provisions of this Lease in accordance with the time periods set forth herein;

(g) The failure of Tenant, within seventy-two (72) hours after receipt of written notice from Landlord, to comply with the parking requirements established by Landlord or the failure of the Tenant to comply with any term as set forth in the Rules and Regulations attached hereto as Exhibit C or as otherwise provided by Landlord from time-to-time; or

(h) The failure of Tenant, within thirty (30) days after receipt of written notice from Landlord, to comply with any of the other provisions of this Lease (that is, other than those discussed in Subsections (a) through (g) hereinabove), or any other agreement between Landlord and Tenant, including all Exhibits incorporated herein by reference, all of which terms, provisions and covenants shall be deemed material; provided, however, that if any such default shall be a default that cannot be cured by the payment of money and cannot with diligence be cured within such thirty (30) day period, and if the cure of such default shall be promptly commenced and prosecuted with diligence, the period within which such default may be cured shall be extended for an additional period of time, not to exceed an additional thirty (30) days, as may be reasonably necessary to cure such default as long as Tenant prosecutes such cure with diligence and continuity and provided Landlord receives periodic reports with respect thereto.

## **16.2. LANDLORD'S REMEDIES FOR TENANT DEFAULT**

(a) Upon the occurrence of any event or events of default by Tenant, whether enumerated in this Section or not, Landlord shall have the option, at Landlord's election, to pursue any one or more of the following in addition to, and not in limitation of, any other remedy or right permitted Landlord by law or by this Lease: (i) Landlord may cancel and terminate this Lease and dispossess Tenant; (ii) Landlord may elect to enter and repossess the Premises and relet the Premises for Tenant's account, holding Tenant liable for any damages, for all reasonable expenses incurred in any such reletting and for any

difference between the amount of Rent received from such reletting and the amount due and payable under the terms of this Lease; and/or (iv) Landlord may enter upon the Premises and do whatever Tenant is obligated to do under the terms of this Lease (and Tenant shall reimburse Landlord within ten (10) days after written demand thereof for any reasonable expenses which Landlord may incur in effecting compliance with Tenant's obligations under this Lease); provided, however, Landlord shall not operate Tenant's business.

(b) Should Landlord, as a result of any Tenant default, elect to terminate this Lease, shall be entitled to collect from Tenant as damages: (i) the worth at the time of award of the unpaid Rent and other charges which may be due and unpaid by Tenant at the time of termination; (ii) the worth at the time of award of the amount by which the unpaid Rent and other charges which would have come due after termination until the time of award exceeds the amount of rental loss that Tenant proves could have been reasonably avoided; (iii) those damages set forth in 2.6 of this Agreement, specifically any portion of the Tenant Allowance that has not yet been fully repaid by Tenant's fulfillment of a Lease Year term; and (iv) all other reasonable amounts necessary to compensate Landlord for all detriment proximately caused by Tenant's failure to perform or which are likely to result therefrom including, but not limited to reasonable attorneys' fees, costs of repossession, costs of removing persons or property from the Premises, costs of repairs to the Premises, costs of reasonable alterations to the Premises to make the space tenantable to prospective replacement tenants, costs of re-leasing the space, brokerage fees, etc. All computations of the worth at the time of award of amounts recoverable by Landlord as stipulated herein shall be computed by allowing interest at the Default Rate. The worth at the time of award shall be computed by discounting the amount otherwise recoverable by Landlord at the discount rate of the Federal Reserve Bank of Atlanta at the time of the award.

(c) If Landlord shall elect, as previously provided, to reenter the Premises, it is agreed that Landlord shall conduct itself in a reasonable manner and Landlord shall not be liable for damages by reason of such entry.

### **16.3. RIGHTS CUMULATIVE**

All rights, options and remedies of Landlord contained in this Lease shall be construed and held to be cumulative and the exercise of one or more rights, remedies or options shall not be taken to exclude or waive the right to the exercise of any other. All such rights, remedies and options may be exercised and enforced concurrently and whenever and as often as deemed desirable. Landlord shall have the right to pursue any one or all of such remedies which may be provided herein or by law or in equity. For the purpose of any suit by Landlord brought or based on this Lease, this Lease shall be construed to be a divisible contract, to the end that successive actions may be maintained as successive periodic sums shall mature under this Lease. It is further agreed that failure to include in any suit or action any sum or sums then matured shall not be a bar to the maintenance of any suit or action for the recovery of said sum or sums so omitted.

### **16.4. LANDLORD'S DEFAULT**

If Landlord fails to comply with any term, provision or covenant of this Lease, and such failure continues for thirty (30) days following Landlord's receipt of notice from Tenant (or if Landlord cannot comply within thirty (30) days, within such additional time frame needed to cure, provided Landlord is diligently pursuing the cure of the same), Landlord shall be deemed in default of this Lease. Tenant may elect to cure Landlord's default, in which event; Tenant may deduct any reasonable costs associated with curing Landlord's default against future installments of Base Rent and Additional Rent, together with interest at the Default Rate, from the date of such expenditure until Tenant is reimbursed in full.

## **17.0 ACCESS BY LANDLORD**

Landlord and its agents shall have the right to enter the Premises whenever reasonably necessary, in the case of an emergency, and/or at all reasonable times during Tenant's normal business hours for the purpose of examining or inspecting the same, showing the same to prospective purchasers or lessees of the CAFFM Wholesale Distribution Building and making such alterations, repairs, improvements or additions to the Premises or the CAFFM Wholesale Distribution Building of which they are a part as Landlord may deem necessary or desirable.

## **18.0 EXCULPATION OF LANDLORD/SALE BY LANDLORD**

### **18.1. NO LIABILITY OF LANDLORD**

If Landlord shall fail to perform any covenant, term or condition of this Lease upon Landlord's part to be performed and, as a consequence of such default, Tenant shall recover a money judgment against Landlord, such judgment shall be satisfied only out of the proceeds of sale received upon execution of such judgment and levy thereon against the right, title and interest of Landlord in the CAFFM Wholesale Distribution Building as the same may then be encumbered and neither Landlord, nor any of the employees, Council members, Directors, agents or assignees comprising Landlord shall be liable for any deficiency. It is understood that in no event shall Tenant have the right to levy execution against any property of Landlord other than its interest in the CAFFM Wholesale Distribution Building parcel as hereinbefore expressly provided.

### **18.2. SALE BY LANDLORD**

In the event of the sale or other transfer of Landlord's right, title and interest in the Premises or the portion of the Distribution Center parcel which includes the Premises, other than a transfer for security purposes only, Landlord shall be released from all subsequent liability and obligations hereunder; provided, however, that any funds in the hands of Landlord at the time of such transfer, in which Tenant has an interest, shall be turned over to the transferee and any amounts then due and payable to Tenant by Landlord under any provisions of this Lease shall be paid to Tenant, it being intended hereby that the covenants and obligations contained in this Lease on the part of Landlord shall, subject as aforesaid, be binding on Landlord, its successors and assigns, only during their respective successive periods of ownership.

## **19.0 SURRENDER OF THE PREMISES/HOLDING OVER**

### **19.1. SURRENDER OF THE PREMISES**

At the expiration or termination of this Lease, Tenant shall remove all signage (including its exterior, storefront signage) and any Non-Approved Alterations installed in the Premises during the Lease Term pursuant to the terms of Section 7.1 hereof from the Premises and surrender the Premises to Landlord clean and in good condition and repair, reasonable wear and tear excepted, and in the event Tenant fails to do so, Landlord may make such repairs and/or remove such signage and charge Tenant for the reasonable cost thereof. Tenant hereby agrees to pay such amounts within thirty (30) days after Tenant's receipt of written demand thereof by Landlord. Any liability of Tenant hereunder shall survive termination of this Lease, whether by expiration of the Lease Term, eviction or otherwise.

### **19.2. HOLDING OVER**

Should Tenant continue in occupancy of the Premises after the termination or expiration of this Lease, Tenant shall become a tenant from month to month only upon each and all of the terms herein provided as may be applicable to such month to month tenancy, except that the monthly Rent shall be twice the Rent in effect during the last month of the Lease Term or Option Period, as applicable, and any such holding over shall not constitute a renewal or extension of this Lease. In the event Landlord gives Tenant a sixty (60) day notice to vacate the Premises

prior to the expiration of the Lease Term and Tenant continues to hold over after the expiration of said sixty (60) day notice, Tenant shall be liable to Landlord for all damages caused to Landlord by Tenant's failure to vacate, including, but not limited to, loss of rental income.

## **20.0 NOTICES**

Any and all notices, elections or demands permitted or required to be made under this Lease shall be in writing, and shall be delivered personally, or sent by overnight courier service by a company regularly engaged in the business of delivering business packages, or sent by registered or certified mail, return receipt requested, to the other party at the respective address set forth in Sections 1.1.1 and 1.2.1 hereof, or at such other address as may be specified in writing from time to time by either party to the other. The date of personal delivery or, if sent by mail or overnight courier, then the date of delivery or first refusal thereof as evidenced by the carrier's or courier's receipt, shall be the effective date of such notice, election or demand. Notwithstanding the foregoing, after Tenant takes possession of the Premises, any notice by Landlord to Tenant shall be deemed valid if sent to the address set forth in Section 1.2.1 hereof or to the Premises. A copy of all notices required or permitted to be given to Landlord or Tenant shall be concurrently transmitted to such party or parties at such address as such party may from time to time hereafter designate by notice to the other party.

## **21.0 INABILITY TO PERFORM**

This Lease and the obligations of each party hereunder shall not be affected or impaired because the other party is unable to fulfill any of its obligations hereunder or is delayed in doing so unless such inability or delay is caused by reason of strike or other labor troubles, civil commotion, invasion, rebellion, hostilities, military or usurped power, sabotage, governmental regulations or controls, inability to obtain any material, service or financing, energy shortages, acts of God or by any other causes beyond the reasonable control of such party; provided, however, the foregoing provision shall not excuse Tenant's failure to pay Rent.

## **22.0 GENERAL COVENANTS OF TENANT**

### **22.1. RULES AND REGULATIONS**

Landlord reserves the right to make reasonable rules and regulations ("Rules and Regulations") with respect to the CAFFM Wholesale Distribution Building, including, but not limited to, the parking area, grounds and the building of which the Premises are a part. Tenant hereby agrees to comply with such Rules and Regulations and any amendments to the same. A copy of the current Rules and Regulations is attached hereto as Exhibit C.

### **22.2. COMPLIANCE WITH LAW**

Tenant agrees to comply with all laws, ordinances, orders, regulations and requirements of all county, municipal, state, federal and other governmental authorities affecting the construction, use and occupancy of the Premises and the cleanliness, safety or operation thereof. Tenant agrees to be the responsible entity for instituting a plan of compliance to ensure that the Premises are in compliance with the Americans with Disabilities Act of 1990 (the "ADA") and Tenant shall make, at its sole cost, any and all alterations which may be required to bring the Premises into compliance with the ADA. Tenant agrees, at its sole expense, to comply with all recommendations, regulations and requirements of any public or private agency having authority over insurance rates with respect to the construction, use or occupancy of the Premises by Tenant, including, without limitation, installation and maintenance of any fire extinguishing apparatus required by local regulations or the requirements of insurance underwriters.

## **23.0 ATTORNEYS' FEES**

In the event either Landlord or Tenant brings an action at law or equity against the other in order to enforce any provision of this Lease or as the result of an alleged default under this Lease, the prevailing party in such action shall be entitled to recover from the other party reasonable attorneys' fees and court costs including such fees, costs and expenses as such prevailing party may incur on any appeal from such action or proceeding.

## **24.0 MUTUAL WAIVER OF JURY TRIAL**

Landlord and Tenant each hereby waive any right to a trial by jury on any claim, counterclaim, setoff, demand, action or cause of action brought by either of the parties hereto against the other on any matters whatsoever arising out of or in any way pertaining or relating to: (i) this Lease; (ii) the relationship of Landlord and Tenant; (iii) the use and occupancy of the Premises; or (iv) in any way connected with or pertaining or relating to or incidental to any dealings of the parties hereto with respect to this Lease, or any other matter or controversy whatsoever between the parties; in all of the foregoing cases whether now existing or hereafter arising. Landlord and Tenant agree that either or both of them may file a copy of this provision with any court as written evidence of the knowing, voluntary and bargained agreement between the parties irrevocably to waive trial by jury, and that any dispute or controversy whatsoever between them shall instead be tried in a court of competent jurisdiction by a judge sitting without a jury. Tenant hereby certifies that no representative or agent of Landlord, including Landlord's counsel, has represented, expressly or otherwise, that Landlord would not seek to enforce the provisions of this waiver in the event of such dispute or controversy. Tenant acknowledges that Landlord has, in part, been induced to enter into this Lease and let the Premises to Tenant in reliance on the provisions of this waiver.

## **25.0 WAIVER**

No waiver by Landlord or Tenant of any provision of this Lease shall be deemed to be a waiver of any other provision hereof or of any subsequent breach by the other party of the same or any other provision. Landlord's consent or approval of any act by Tenant requiring Landlord's consent or approval shall not be deemed to render unnecessary the obtaining of Landlord's consent or approval of any act by Tenant requiring Landlord's consent or approval of any subsequent act of Tenant, whether or not similar to the act consented to or approved. No act or thing done by Landlord or by Landlord's agents during the Lease Term shall be deemed an acceptance of or surrender of the Premises, and no agreement to accept such surrender shall be valid unless in writing and signed by Landlord. No employee of Landlord or of Landlord's agents shall have any power to accept the keys to the Premises prior to the expiration or termination of this Lease and the delivery of the keys to any such employee shall not operate as a termination of this Lease or surrender of the Premises.

## **26.0 BROKERS**

Other than as specifically set forth in Section 1.11 hereof, Landlord and Tenant each represent and warrant to the other that there was no broker or real estate agent involved in the negotiation and execution of this Lease and that no claims exist for any broker, agent, Realtor, attorney or lender's fee in connection with making or executing this Lease. Landlord and Tenant each agree to indemnify and hold the other harmless against any liability that may arise from any such claim, including reasonable attorneys' fees, brought as a result of the action of the indemnifying party.

## **27.0 AUTHORITY**

Landlord and Tenant each hereby represent that the person signing on behalf of such party has the full right and authority to enter into this Lease and by doing so does not violate any existing agreement or indenture to which it is a party or by which it is bound or affected, and if Tenant is a corporation, any provisions of its Articles of Incorporation, By-Laws or other governing or enabling documents or regulations, and that the execution and delivery of this Lease has been duly authorized by Tenant's Board of Directors; and upon request of Landlord, Tenant will deliver to Landlord a true, correct and certified copy of the enabling resolutions adopted by Tenant's Board of Directors.

## **28.0 HAZARDOUS SUBSTANCES**

### **28.1. DEFINITION OF HAZARDOUS SUBSTANCES**

The term "Hazardous Substances", as used in this Lease, shall include, without limitation, flammables, explosives, radioactive materials, asbestos, polychlorinated biphenyls (PCBs), chemicals known to cause cancer or reproductive

toxicity, pollutants, contaminants, hazardous wastes, toxic substances or related materials, petroleum and petroleum products and substances declared to be hazardous or toxic under any law or regulation now or hereafter enacted or promulgated by any governmental authority.

## **28.2. RESTRICTIONS ON TENANT**

Tenant shall not cause or permit to occur: (i) any violation of any federal, state or local law, ordinance or regulation now or hereafter enacted, related to environmental conditions ("Laws") on, under or about the Premises or arising from Tenant's use or occupancy of the Premises, including, but not limited to, soil and ground water conditions; or (ii) the use, generation, release, manufacture, refining, production, processing, storage or disposal of any Hazardous Substances without Landlord's prior written consent, which consent may be withdrawn, conditioned or modified by Landlord in its sole and absolute discretion in order to insure compliance with all applicable Laws, as such Laws may be enacted or amended from time to time.

## **28.3. ENVIRONMENTAL CLEAN UP**

Tenant shall, at Tenant's own expense: (i) comply with all Laws regulating the use, generation, storage, transportation or disposal of Hazardous Substances; (ii) make all submissions to, provide all information required by and comply with all requirements of all governmental authorities (the "Authorities") under the Laws; (iii) prepare and submit the required plans and all related bonds and other financial assurances should the Authorities or any third party demand that a cleanup plan be prepared and a cleanup be undertaken because of any deposit, spill, discharge or other release of Hazardous Substances that occurs during the Lease Term, at or from the Premises or which arises at any time from Tenant's use or occupancy of the Premises and Tenant shall carry out all such clean up plans; and (iv) promptly provide all information regarding the use, generation, storage, transportation or disposal of Hazardous Substances that is requested by Landlord.

If Tenant fails to fulfill any duty imposed under this Section 28.3 within thirty (30) days following its request, Landlord may proceed with such efforts and, in such case, Tenant shall cooperate with Landlord in order to prepare all documents Landlord deems necessary or appropriate to determine the applicability of the Laws to the Premises and Tenant's use thereof and for compliance therewith and Tenant shall execute all documents promptly upon Landlord's request and any expenses incurred by Landlord shall be payable by Tenant as Additional Rent. No such action by Landlord and no attempt made by Landlord to mitigate damages under any Law shall constitute a waiver of any of Tenant's obligations under this Section 28.3. Tenant's obligations and liabilities under this Section 28.3 shall survive the expiration or other termination of this Lease.

## **28.4. TENANT'S INDEMNITY**

Tenant shall indemnify, defend and hold harmless Landlord, its respective officers, directors, beneficiaries, shareholders, partners, agents and employees, from all fines, suits, procedures, claims and actions of every kind and all costs associated therewith, including reasonable attorneys' and consultants' fees, arising out of or in any way connected with any deposit, spill, discharge or other release of Hazardous Substances that occurs during the Lease Term at or from the Premises or which arises at any time from Tenant's use or occupancy of the Premises or from Tenant's failure to provide all information, make all submissions or take all steps required by all Authorities under the Laws and all other environmental laws. Tenant's obligations and liabilities under this Section 28.4 shall survive the expiration or other termination of this Lease.

## **29.0 MISCELLANEOUS**

### **29.1. TIME OF ESSENCE**

Time is of the essence in the Lease.

## **29.2. SUCCESSORS AND ASSIGNS**

All rights and liabilities herein given to, or imposed upon, the respective parties hereto shall extend to and bind the several respective heirs, executors, administrators, successors and assigns of the said parties; and if there shall be more than one Tenant, they shall all be bound jointly and severally by the terms, covenants and agreements herein. Subject to the provisions of Section 14.0 hereof, no rights shall inure to the benefit of any assignee of Tenant unless the same has been approved by Landlord in writing. Nevertheless, Landlord at any time and from time to time, may make an assignment of its interest in this Lease and, in the event of such assignment and the assumption by the assignee of the covenants and agreements to be performed by Landlord herein, Landlord and its successors and assigns (other than the assignee of this Lease) shall be released from any and all liability hereunder.

## **29.3. PARTIAL INVALIDITY**

Any provision of this Lease which shall be held to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision hereof and such other provisions shall remain in full force and effect.

## **29.4. HEADINGS: LANDLORD AND TENANT**

The Section captions contained in this Lease are for convenience only and do not in any way limit or amplify any term or provision hereof. The terms "Landlord" and "Tenant" as used herein shall include the plural as well as the singular, the neuter shall include the masculine and feminine genders and, if there be more than one Tenant, the obligations herein imposed upon Tenant shall be joint and several.

## **29.5. AMENDMENTS MUST BE IN WRITING**

No provision of this Lease may be amended except by an agreement in writing signed by the parties or their respective successors in interest.

## **29.6. GOVERNING LAW**

This Lease is made and accepted by the parties in the state in which the CAFFM Wholesale Distribution Building is located with reference to the laws of such state and shall be construed, interpreted and governed by and in accordance with the laws of such state. Tenant agrees that Landlord may institute any legal proceedings with respect to this Lease or the Premises in the district, circuit or superior court of the county in which the CAFFM Wholesale Distribution Building is located, and submits itself to the jurisdiction of such court. If Tenant is a corporation chartered other than in the state in which the CAFFM Wholesale Distribution Building is located, Tenant acknowledges and agrees that it is "doing business" in such state and appoints the Secretary of State of such state as its agent for service of process for all matters pertaining to this Lease or the Premises unless Tenant has qualified to do business in such state and has registered another person with such Secretary of State as its agent for service of process within such state.

## **29.7. NO RECORDING**

This Lease shall not be recorded in the public records without Landlord's prior written consent; provided, however, a Memorandum of Lease, acceptable to Landlord, may be executed and delivered by the parties hereto for the purpose of recording in the public records at the expense of the requesting party.

## **30.0 SECURITY DEPOSIT**

The parties acknowledge and agree there is no security deposit required.

## **31.0 REPRESENTATIONS**

The parties acknowledge that Tenant may have general and specific requirements and needs relating to the operation of its business from the Premises, and Landlord and Tenant are entering into this Lease in reliance solely upon Tenant's expertise and ability to evaluate the suitability of the Premises and the CAFFM Wholesale Distribution Building for the conduct of Tenant's business. Tenant hereby represents that it has entered into this Lease without reliance upon any obligation of Landlord to make and Tenant agrees that Landlord shall not be obligated to make, any disclosures concerning the value,

condition or suitability of the Premises. Tenant hereby represents to Landlord and Landlord hereby represents to Tenant that this Lease, with its Exhibits, sets forth the entire agreement between the parties. Each party further represents to the other that it has not been induced, persuaded or motivated by any promise or representation that is not contained in this Lease. Any prior conversations, understandings or oral agreements not herein reduced to writing, prior writings or any other item not contained herein are hereby merged herein and extinguished. Tenant represents to Landlord that it is entering into this Lease based solely on the writing contained herein and that Tenant has not relied and is not relying on any representation, whether written or oral, not contained in writing in this Lease. Tenant acknowledges that Landlord and its agents have made no representations or promises with respect to the Premises or the CAFFM Wholesale Distribution Building except as herein expressly set forth. Tenant further represents that Tenant will not assert in any way any claim that Landlord, its agents or employees, in any way represented, misrepresented, promised, agreed or had any understanding regarding the lease of the Premises not contained herein. Tenant represents that it has completely read and fully understands all the provisions of this Lease or that Tenant was represented by competent counsel who read and/or explained all provisions to Tenant. The parties agree that the normal rules of ambiguity against the drafting party shall apply to this Agreement.

### **32.0 OFAC CERTIFICATION**

Tenant hereby represents, warrants and certifies that: (i) the transactions contemplated hereby are not "blocked" pursuant to any statute, regulation, including, but not limited to, any regulations of the Office of Foreign Assets Control ("OFAC") of the Department of the Treasury and/or executive order, including, but not limited to, Executive Order 13224 dated September 24, 2001 (the "Order"); (ii) Tenant and any of its affiliates, and any of their respective partners, member, shareholders or other equity owners (collectively, "Tenant Affiliates") is not a "person" subject to the prohibitions set forth in the Order, as the term "person" is described and identified in the Order; and (iii) this Lease is not entered into for the purpose of evading or avoiding, or attempting to violate any of the prohibitions in the Order. Tenant, for itself and on behalf of its successors, heirs and assigns, hereby covenants and agrees to indemnify, defend and hold Landlord harmless from and against any and all loss, cost, expense, claim or damage (including, without limitation, reasonable attorneys' fees) suffered, claimed or incurred by Landlord in the event the certification herein is false, and to promptly notify Landlord if Tenant or any Tenant Affiliate receives notice that Tenant or Tenant Affiliate is or has been designated a "Specially Designated National" or "Blocked Person" on any list maintained by the OFAC, or any successor office or agency. If during the Lease Term, Tenant or Tenant Affiliate is or becomes a "Specially Designated National" or "Blocked Person" then such designation shall constitute an event of default, which shall entitle Landlord to exercise any and all rights and/or remedies available under this Lease or pursuant to applicable law.

### **33.0 TENANT ALLOWANCE**

Landlord to provide up to **FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00)** for Tenant improvements and equipment that will be necessary to run a 1<sup>st</sup> class Wholesale Distribution Center that will compliment the wholesale/distribution of products from the Coast Alabama Farmers and Fishermen's Market, Inc. to regional restaurants, schools, hospitals and other entities that would utilize this service. See Exhibit "B" for details and payment procedures.

### **34.0 ADDITIONAL LEASE FOR THE CAFFM WHOLESALE DISTRIBUTION BUILDING**

Intentionally omitted

### **35.0 EXHIBITS**

Exhibits A, B, C and D are attached hereto and made a part hereof.

### **36.0 GUARANTY.**

In consideration of the Lease of the Premises by Landlord to Tenant and the Tenant Allowance provided to Tenant for improvements to the Premises for the benefit of Tenant, [\_\_\_\_\_], the undersigned guarantors, which are the parent companies and sole owners of the Tenant and derive a direct benefit herefrom,

do hereby guarantee unto Landlord the performance, when due, of all obligations of Tenant under this Lease during the Lease Term and any renewal term or extension by holdover or otherwise.

**37.0 COMMENCEMENT OF CONSTRUCTION AND TENANT ALLOWANCE.**

Tenant will not commence any work, improvements, alterations or repairs, and no obligation of the Landlord for the Tenant Allowance (as defined herein) will arise, until the Landlord or its designee, closes and completes a New Market Tax Credits transaction in the approximate amount of \$8,000,000 in relation to the project referred to as the Coastal Alabama Farmers' and Fishermen's Market, unless written consent of the Chairman of the Landlord is otherwise given to commence work.

**IN WITNESS WHEREOF**, the parties hereto have signed and sealed this Lease as of the day and year first above written.

**LANDLORD**

By: \_\_\_\_\_

ITS: \_\_\_\_\_

DATE EXECUTED: \_\_\_\_\_

**ATTEST:**

By: \_\_\_\_\_

**TENANT**

By: \_\_\_\_\_

ITS: \_\_\_\_\_

DATE EXECUTED: \_\_\_\_\_

FEDERAL TAX ID# \_\_\_\_\_

**ATTEST:**

By: \_\_\_\_\_

The undersigned guarantors, for good and valuable consideration received, hereby acknowledge and agree to the terms of Section 36.0 hereof.

[Company Name]

By: \_\_\_\_\_

ITS: \_\_\_\_\_

Date Executed: \_\_\_\_\_

Federal Tax Id#: \_\_\_\_\_

[Company Name]

By: \_\_\_\_\_

ITS: \_\_\_\_\_

Date Executed: \_\_\_\_\_

Federal Tax Id#: \_\_\_\_\_

Signed, sealed and delivered in  
The presence of:

\_\_\_\_\_  
Witness

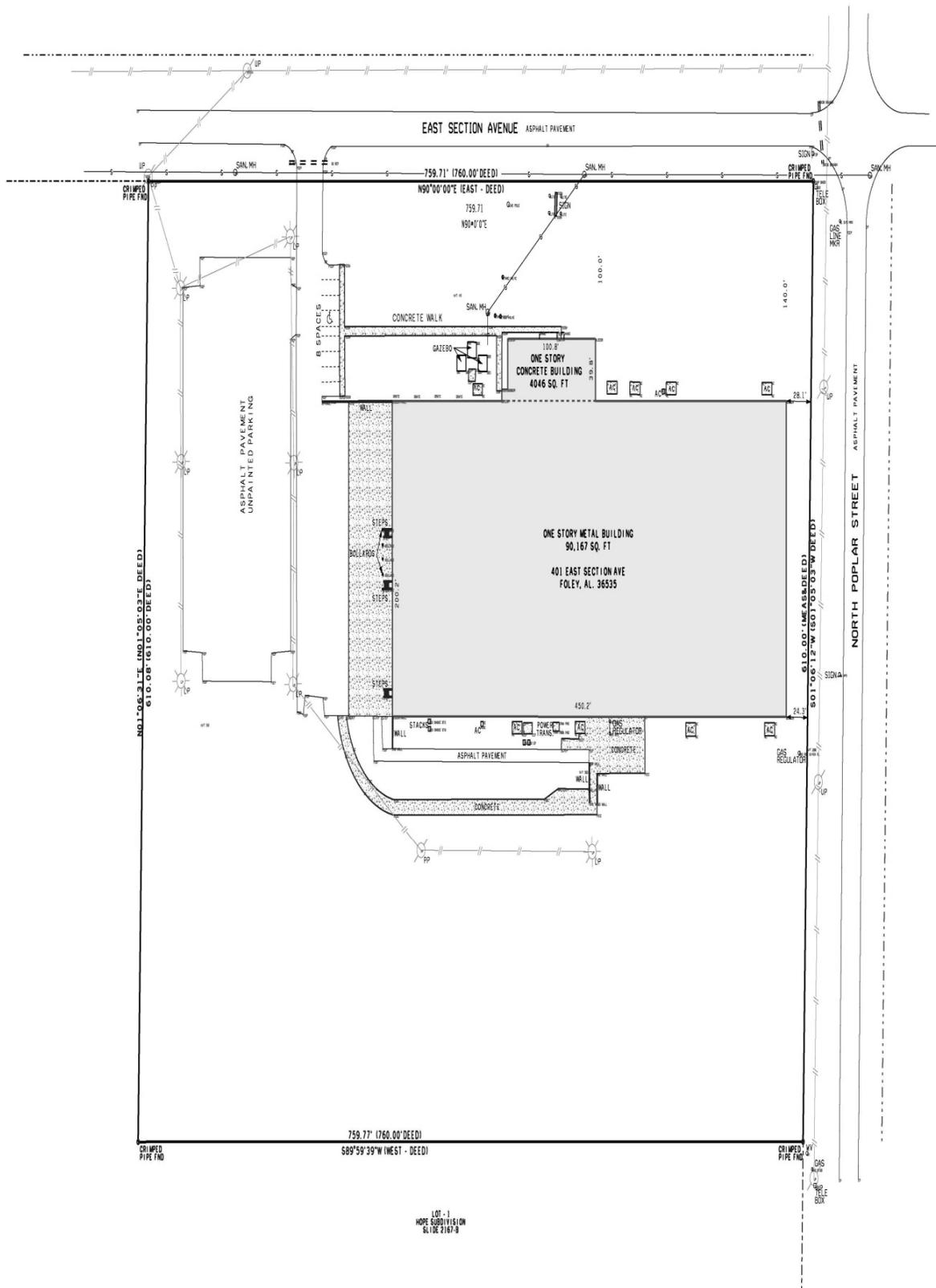
Name: \_\_\_\_\_

\_\_\_\_\_  
Witness

Name: \_\_\_\_\_

EXHIBIT A

DIAGRAM AND LOCATION OF THE PREMISES



## **EXHIBIT B**

### **LANDLORD AND TENANT'S WORK RELATING TO THE BASE BUILDING COMPONENTS AND THE PREMISES**

#### **GENERAL**

Exhibit B is intended to describe the obligations of both Landlord and Tenant with respect to the design and construction of the Tenants Premises. Landlord and Tenant will coordinate their respective work with the other insofar as the schedule and prudent construction practices will allow.

#### **A. Premises – Landlord's Work**

1. Repair any roof leaks that are within Tenant's Leased Space.
2. Repair and bring Fire Suppression system up to code and deliver in working condition to Tenant's Space.
3. Service existing HVAC system that cools Tenant's office space and deliver to Tenant in good working order.

#### **B. Tenant-Allowance**

Landlord and Tenant hereby agree that Landlord will provide up to FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) (\$25.00 per square foot of the Premises) as a Tenant Allowance (the "Tenant Allowance"). Said amount shall be amortized for a period of ten (10) years at five percent (5%) interest which is part of the lease payment (the "Tenant Allowance"). The Tenant Allowance will be paid as follows:

- (i) One-third (1/3) of the Tenant Allowance will be paid within thirty (30) days after submission of invoices, lien release waivers (in a form reasonably acceptable to Landlord) from Tenant's contractors and sub-contractors for work completed and satisfactory proof of completion of one-third (1/3) of work performed that are acceptable to Landlord;
- (ii) An additional one-third (1/3) of the Tenant Allowance will be paid after submission of invoices, lien release waivers (in a form reasonably acceptable to Landlord) from Tenant's contractors and sub-contractors for work completed and satisfactory proof of the completion of two-thirds (2/3) of work performed that are acceptable to Landlord;
- (iii) Final payment of Tenant Allowance will be paid upon completion of the following:
  - a.) Completion of all work by Tenant and submission to the Landlord of a copy of final billing from Tenant's contractors containing reasonable and satisfactory detail the work performed and the cost of such work;
  - b.) All lien release waivers (in a form reasonably acceptable to Landlord) from Tenant's contractors and sub-contractors for work completed;
  - c.) Proof of completion of any and all punch list items; and
  - d.) Copy of the certificate of occupancy, and any and all permits as may be required by law for the demised premises.

Within thirty (30) days from the date the aforementioned items are received by the Landlord, the Landlord shall disperse the final Tenant Allowance. Landlord and Tenant further agree that Tenant shall supply Landlord with a store layout for the Premises prepared by Tenant's Engineer or Architect.

All work performed as part of or in connection with said Tenant Allowance shall be in compliance with all governing statutes, ordinances, regulations, building codes and insurance rating boards. The Tenant and/or its contractors or subcontractors shall submit, prior to the commencement of any work written plans for such work to be performed, and proof of Payment and Performance Bonds in an amount equal to the work to be performed

in a form and substance reasonably satisfactory to Landlord. All such plans and bonds shall be approved, in writing, by the Landlord prior to the commencement of any work. The Tenant's failure to comply with this provision and/or failure to obtain Landlord's written consent to such plans and/or bonds shall be considered a breach of the terms of this Agreement and subject to the Tenant to default as defined herein.

Tenant will also file for and obtain all necessary permits and Certificates of Occupancy for the work performed by it.

**With regard to Landlord's Work:**

1. Landlord will file for and obtain all necessary permits and Certificates of Occupancy for the work performed by it.
2. Landlord shall perform all of its work so as to comply with all governing statutes, ordinances, regulations, building codes and insurance rating boards.

**C. Premises – Tenant's Work**

All work and/or modifications in excess of the FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) Tenant Allowance agreed to by Landlord and Tenant as part of Tenant's Plans shall be paid by Tenant, at its sole cost and expense. All work is subject to the provisions of 7.1 of this Agreement and any other terms contained herein. Any work performed by Tenant or its contractors or subcontractors must be approved, in writing, by the Landlord, after review of any plans of the Tenant and any such work shall not commence until such written consent is granted by Landlord.

1. General Requirements for Tenant's work, if any:
  - (a) Construction will be in accordance with the requirements, laws, regulations, ordinances and standards of all jurisdictional authorities.
  - (b) Non-combustible construction: All Tenant construction shall be non-combustible as defined by applicable codes except that fire resistant wood will be permitted where approved by the jurisdictional authorities.
  - (c) Above ceiling: All material installed above the ceiling of the Premises for the attachment of equipment as approved by Landlord shall be non-combustible as defined by applicable codes. All materials shall be secured to the structural framing system with approved fasteners. Any wiring shall use plenum rated cable or be enclosed in non-combustible conduit.
  - (d) Fixture Support: All Tenant improvements other than ceilings and lighting fixtures shall be floor mounted unless contrary written approval is obtained from Landlord.
  - (e) Mezzanines, Cat Walks: All construction is subject to prior approval by local Building Authority and by Structural Engineer verifying that loads do not exceed building frame capacity.
  - (f) Tenant electrical: All electrical requirements for fixtures and/or special equipment shall be approved by Landlord and its engineers prior to installation.
  - (g) Temporary services: Landlord will provide temporary light, power and water, during the construction period, Tenant may use the temporary services for its construction, for which it agrees to compensate Landlord at the rate of fifteen cents (.15) per square foot of the Premises per month during said period of use.
  - (h) Employees: Tenant at all times will enforce strict discipline and good order between its employees and contractors hired or retained by Tenant and their subcontractors and their respective employees to perform Tenant's Work. Tenant's contractors and their subcontractors will not employ persons who will cause labor disputes or stoppages in Tenant's Work or among other contractor's personnel performing work at the CAFFM Wholesale Distribution Building.

Tenant agrees that if, during the period of construction of the Premises, any of its employees strike or if picket lines or boycotts or other visible activities objectionable to Landlord are established or conducted or carried out against Tenant or its employees or any of them, on or about the Premises of the CAFFM Wholesale Distribution Building, Tenant shall immediately close the Premises to the public and remove all employees

therefrom until dispute giving rise to such strike, picket line, boycott or objectionable activity has been settled to Landlord's satisfaction.

(i) Insurance: Tenant agrees, prior to commencement of construction, to furnish Landlord with a Certificate of Insurance, evidencing that Tenant has obtained Builder's Risk Insurance in an amount equal to the cost of Tenant's Work insuring same against fire, standard extended coverage risks and other such risks as Landlord may elect to have insured by Tenant, including performance and payment bonds as may be required herein.

Tenant will, during the period of construction of its work, secure and maintain at its expense, a policy of Insurance covering all Tenant's personal property, trade fixtures, signs, plate glass, floor covering, decorative items, furniture, equipment, inventory and merchandise or property of any type or kind to the extent of full replacement value against all casualties included under a standard form of Fire, Extended Coverage and Malicious Mischief insurance policy in use where the Premises is located. Landlord will be furnished with a certificate thereof.

Tenant or Tenant's contractor and/or subcontractor will, during the period of construction of its work, secure and maintain a Comprehensive General Liability Policy in an amount reasonably acceptable to Landlord and furnish Landlord with a certificate thereof.

Tenant will cause its contractor and subcontractors to secure and maintain in effect statutory Workmen's Compensation and other insurance as required by the state where the Shopping Center is located and will furnish Landlord with a certificate thereof.

Once construction is completed, Tenant shall carry insurance as provided in Section 10.1 of the Lease.

(j) Miscellaneous: Whether or not otherwise specifically required herein, all Tenant's Work shall comply with the requirements, rules and regulations of all authorities having governmental jurisdiction over the Premises. In all instances where Tenant is to install any item, it shall also furnish such item.

(k) Work changes: Any changes in Tenant's Work during the course of its construction which may be required by the jurisdictional authorities or Landlord's underwriters shall be performed by Tenant at Tenant's expense.

(l) Roof and/or floor penetrations: Any penetrations to the roof and/or the slab or underslab/roof deck of the premises located above Tenant (if the Premises is not on the top floor of building in which the Premises is located) by Tenant as part of Tenant's Work must be approved by Landlord prior to the same occurring and made by Landlord's original roofing contractor or by a licensed contractor approved by the manufacturer of the roof or of the tension tendon cables or support structures located in the floor (collectively, "Authorized Contractor"). All work must be done in such a manner as not to void Landlord's warranty for the roof or compromise the structural integrity of the Premises or the building to which it is a part. Tenant shall be liable for any and all damages, liabilities and claims, including those of Landlord for the voiding of its roof warranty, which results from any roof and/or floor penetrations which are not performed by an Authorized Contractor.

(m) Food Service Exhaust Hoods: None

(n) Roof mounted equipment: None

#### **D. Construction Procedure and Special Provisions Applicable to Tenant's Work**

1. Tenant and Tenant's employees and contractors are limited to performing their work, including any office or storage for construction purposes, within the Premises only. No work, access or storage is allowed on finished public sidewalks or area ways.

2. Tenant and Tenant's Contractors shall each be responsible for daily removal from the CAFFM Wholesale Distribution Building area of all trash, rubbish and surplus material resulting from Tenant's construction activities. If Tenant, its agents, employees or contractors fail to remove these items daily, Landlord or Landlord's contractor may remove them at their discretion and charge Tenant the reasonable cost of the removal.

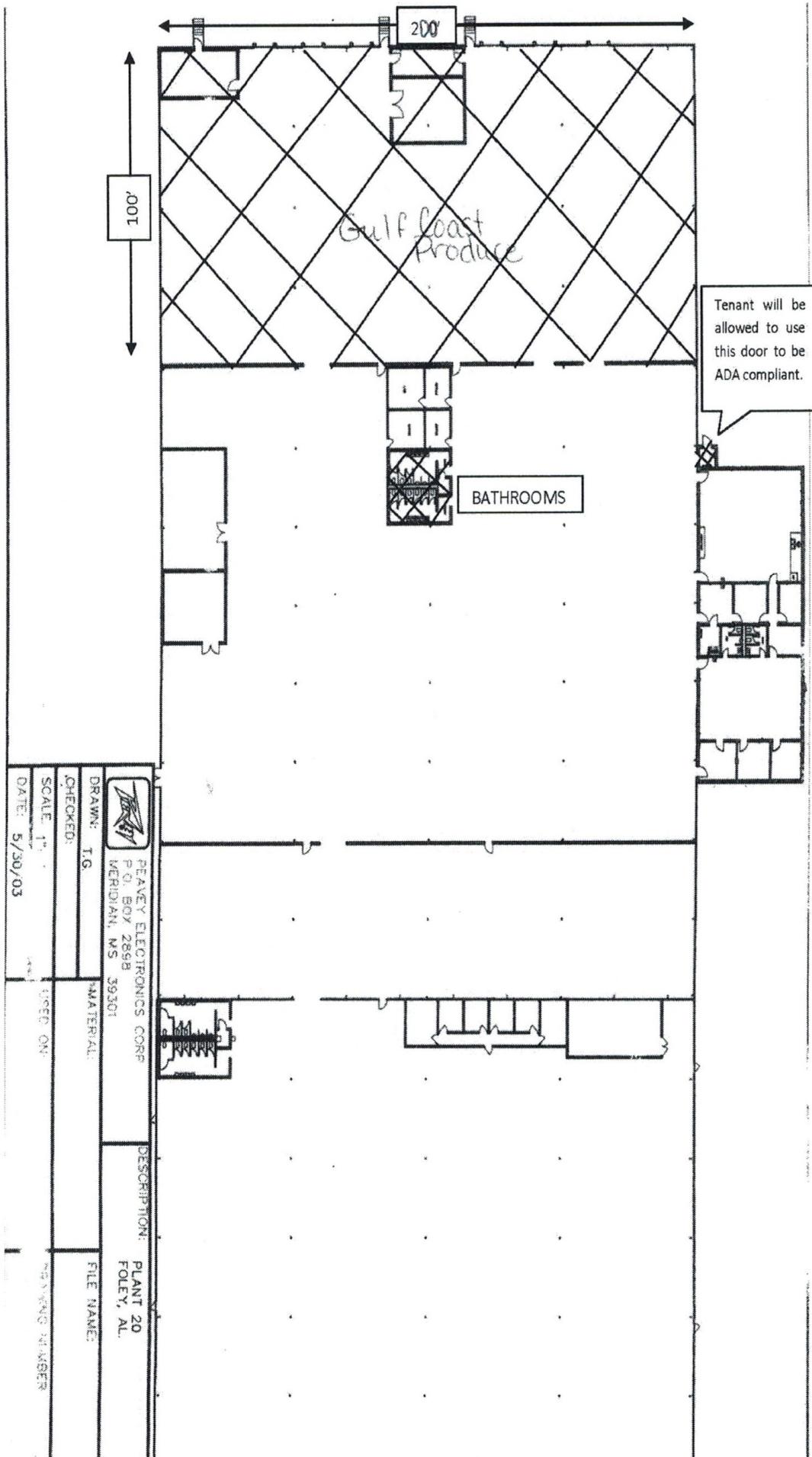
3. Tenant's Work shall be done in such a manner as to be coordinated with all work being performed or to be performed by Landlord to such an extent that Tenant's Work shall not interfere with nor delay the completion of any such work in the CAFFM Wholesale Distribution Building.

In the event Landlord's Work and Tenant's Work shall progress simultaneously, Landlord shall not be liable for any injury to person or damage to property of Tenant or of Tenant's employees, licensees or invitees, from any cause whatsoever occurring upon or about the Premises, and Tenant shall and will indemnify and save Landlord harmless from any and all liability and claims arising out of or connected with such injury or damage.

4. Tenant agrees that it, its general contractors and their subcontractors shall use only labor which is compatible with the labor force of Landlord's general contractor.

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(ATTACH FLOORPLAN)



## **EXHIBIT C**

### **RULES AND REGULATIONS**

**Tenant agrees:**

1. To continuously during the Lease Term keep the entire Premises occupied and open for business during the hours hereinabove specified.
2. To keep all garbage and refuse in the kind of container specified by Landlord and to place the same outside of the Premises, prepared for collection in the manner and at the times and places specified by Landlord and in accordance with municipal regulations.
4. To keep the outside areas immediately adjoining the Premises clean and not to burn, place or permit and rubbish, obstruction or merchandise in such areas.
5. To keep the Premises clean, orderly, sanitary and free from objectionable odors and from insects, vermin and other pests.
6. Not to solicit business or distribute any handbills or other advertising materials in the Common Area of the CAFFM Wholesale Distribution Building.
7. Not to advertise or conduct on or about the Premises any distress sale, fire sale, bankruptcy sale, liquidation, relocation sale, closing sale, going-out-of-business sale, auction, sheriff's sale, receiver's sale or any other sale that, in Landlord's opinion, adversely affects the reputation of the CAFFM Wholesale Distribution Building or suggests that the business operations are to be discontinued in the Premises.
8. Tenant and Tenant's employees should park their automobiles only in those parking areas designated by Landlord, from time to time, for that purpose. Upon request by Landlord, Tenant shall provide Landlord with a list of Tenant's employees and a description, including license plate number, of Tenant and Tenant's employee's automobiles, which may from time to time be parked at the CAFFM.

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## **EXHIBIT D**

### **TENANT SIGN STANDARDS**

#### **Sign Criteria**

**A.** The signs of the CAFFM Wholesale Distribution Building shall be of high quality and subject to all applicable local governmental rules and regulations; Tenant shall be allowed to install one (1) exterior sign for each separate entrance for the Premises and one (1) Pylon sign or Monument sign on the West part of the building in front of their leased Premises. The CAFFM reserves the right to also have their logo on Tenant's Monument or Pylon sign any cost associated with the CAFFM signage or logo will be paid for by the CAFFM.

#### **Sign Compliance, Submission, Review and Approval Procedures**

**A.** All signs at the CAFFM Wholesale Building shall comply with these criteria and with any and all local ordinances.

**B.** Proposed Tenant sign designs shall be included in any conceptual, preliminary or design submissions made by Tenant to Landlord for approval.

**C.** Complete sign design and/or shop drawings incorporating any Landlord required modifications to the conceptual or preliminary designs shall be submitted by Tenant to Landlord for approval in writing prior to any sign fabrication or installation. Such drawings shall fully define all sign locations, sizes, shapes, forms, materials, colors, finishes, details, methods of attachment or support, methods of illumination, power supply, and all related work and shall depict signs in relation to the Tenant's building architecture, storefront design and/or other proposed improvements.

**D.** Upon Landlord approval of complete sign design and/or shop drawings, the same shall be submitted to the local officials for approval. No fabrication or installation of signs shall proceed until both Landlord and local governing body approvals are granted.

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**AMENDMENT  
TO  
AGREEMENT FOR LEASE**

\_\_\_\_\_, 2014

This Amendment is executed to amend and revise a certain portion of that certain Agreement for Lease (the "Lease") dated on or about \_\_\_\_\_, 2014, by and between the City of Foley's Public Facilities Cooperative District ("Landlord") and Gulf Coast Produce of Alabama LLC ("Tenant").

In exchange for good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, Landlord and Tenant hereby agree as follows:

1. Section 33.0 of the Lease is hereby deleted in its entirety and replaced with the following:

**33.0 TENANT ALLOWANCE**

Landlord to provide up to **FIVE HUNDRED THOUSAND DOLLARS** (\$500,000.00) in total value for Tenant improvements and equipment that will be necessary to run a 1st class Wholesale Distribution Center that will complement the wholesale/distribution of products from the Coastal Alabama Farmers and Fishermen's Market, Inc. to regional restaurants, schools, hospitals and other entities that would utilize this service. See Exhibit "B" for details and payment procedures.

2. The first sentence of the first paragraph of Section B of Exhibit B of the Lease is hereby deleted in its entirety and replaced with the following:

Landlord and Tenant hereby agree that Landlord will provide up to **FIVE HUNDRED THOUSAND DOLLARS** (\$500,000.00) (\$25.00 per square foot of the Premises) in the form of (i) immediately available funds, or (ii) building materials, construction materials and supplies, or other tangible personal property to be permanently affixed to and incorporated into the Premises, as a Tenant Allowance (the "Tenant Allowance") in Landlord's sole discretion to be used exclusively for the purposes of Tenant improvements to the Premises during the Lease Term.

3. The first sentence of the first paragraph of Section C of Exhibit B of the Lease is hereby deleted in its entirety and replaced with the following:

All work and/or modifications in excess of the Tenant Allowance agreed to by Landlord and Tenant as part of Tenant's Plans shall be paid by Tenant, at its sole cost and expense.

4. Except as specifically amended herein, all terms and provisions of the Lease shall remain in full force and effect and are hereby expressly ratified and confirmed by the parties hereto.

[Signature Page to Follow]

**IN WITNESS WHEREOF**, the parties hereto have signed and sealed this Amendment as of the day and year first above written.

**LANDLORD**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**ATTEST:**

By: \_\_\_\_\_

**TENANT**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**ATTEST:**

By: \_\_\_\_\_



\* \* \*

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

Minutes approved:

\_\_\_\_\_  
Council President

SEAL

Attest: \_\_\_\_\_  
Secretary

CERTIFICATE OF SECRETARY

The undersigned duly elected, qualified and acting Secretary of The City of Foley hereby certifies that: (1) the above and foregoing 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 May 16, 2014, pertaining to the matters therein referred to, the original of which is on file and of record in the minute book of the City Council in my custody; (2) 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 have not been repealed, amended, or changed; and (3) notice was posted at the place of meeting in the City of Foley.

IN WITNESS WHEREOF, I have hereunto set my hand as Secretary of the City and have affixed the official seal of the City on May \_\_\_\_\_, 2014.

\_\_\_\_\_  
Secretary of The City of Foley

SEAL