

## PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT (the "Agreement") is made to be effective as of the Effective Date (as hereinafter defined) by and among the following parties:

SELLER: THE CITY OF FOLEY PUBLIC FACILITIES COOPERATIVE DISTRICT, an Alabama public corporation ("Seller"); and,

PURCHASER: COASTAL ALABAMA FARMERS' AND FISHERMEN'S MARKET, an Alabama public corporation ("Purchaser").

WHEREAS, Seller has acquired or will acquire title to certain parcels of real estate situated in Baldwin County, Alabama, and more particularly described in Exhibit A attached hereto and made a part hereof ("Property"); and

WHEREAS, Seller desires to sell and Purchaser desires to purchase the Property.

NOW THEREFORE, for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration to Seller in hand paid by Purchaser, the receipt and sufficiency of which are hereby acknowledged, Seller agrees to sell and Purchaser agrees to purchase the Property, upon the terms and conditions set forth below:

1. Purchase Price. Seller shall sell to Purchaser and Purchaser shall purchase from Seller the Property for a total of Two Million Three Hundred Twenty Thousand Five Hundred Seventy-Nine and 00/100 Dollars (\$2,320,579) ("Purchase Price"). The Purchase Price shall be payable in the form of a Promissory Note of even date herewith.
2. Title and Survey. Purchaser shall purchase, at its sole expense, any title insurance and/or surveys it desires to obtain with respect to the Property.
3. Purchaser's Investigation Rights. Seller hereby grants to Purchaser and to Purchaser's agents, employees and representatives, a continuing right of reasonable access, after reasonable notice to Seller and at reasonable times, for the purpose of conducting such surveys, engineering, geotechnical and environmental inspections and other investigations, evaluations, studies, tests and measurements (collectively the "Investigations") as Purchaser, or any prospective investor or lender, deems necessary or advisable. If any Investigation adversely disturbs the physical characteristics of the Property in any material respect, and Purchaser fails to purchase the Property under this Agreement, Purchaser shall restore the Property to substantially the same condition as existed prior to such Investigation. Purchaser's obligations hereunder shall survive termination of this Agreement.
4. Purchaser's Investigation Indemnity. Purchaser shall keep the Property free and clear of any liens, and will indemnify, defend and hold Seller harmless from all claims and

liabilities asserted against Seller, as a result of Purchaser's exercise of its rights of access and investigation; provided, however, that such indemnity shall not cover or extend to: (i) any claims of diminution in the value of the Property as a consequence of the results revealed by Purchaser's Investigations; or (ii) the exposure or release of Hazardous Substances that were located in, on, under or about the Property prior to Purchaser's entering the Property to conduct the Investigations. The obligations of the Purchaser under this paragraph shall survive any termination of this Agreement.

5. Time and Place of Closing. Closing of the transaction contemplated hereby ("Closing") shall be held no later than one hundred eighty (180) days after the Effective Date, unless extended by the written consent of the Purchaser and Seller, at a place and time agreed upon by the Purchaser and Seller. At Closing, Seller and Purchaser shall perform the obligations set forth in this Agreement, the performance of which obligations shall be concurrent conditions.
6. Obligations at Closing. At Closing, Purchaser shall pay: (i) deed taxes and other charges for recording Seller's deed, (ii) all legal, accounting and other professional and third party fees incurred by Purchaser in connection with this Agreement and the Closing, and (iii) any title insurance premiums and related charges. At Closing, Seller shall pay all legal, accounting and other professional and third party fees incurred by Seller in connection with this Agreement and the Closing. Property taxes, if any, will be prorated at Closing.
7. Conveyance. Seller shall convey to Purchaser good and marketable fee simple title to the Property by statutory warranty deed, free of all encumbrances except for the following: (i) the encumbrances set forth on Exhibit B attached hereto and incorporated herein by reference, (ii) taxes for the year in which the Property is conveyed and all years thereafter, and (iii) the zoning classification of the Property on the date hereof (Items (i), (ii), and (iii) collectively referred to as "Permitted Encumbrances").
8. Representations and Warranties of Seller. Seller hereby represents and warrants to Purchaser that Seller is an Alabama municipal corporation, formed and in good standing under the laws of the State of Alabama and has the full municipal corporation power and authority to convey the Property as provided in this Agreement and to carry out Seller's obligations hereunder, and all requisite action necessary to authorize Seller to enter into this Agreement and to carry out its obligations hereunder have been, or by the Closing will have been taken.
9. Representations and Warranties of Purchaser. Purchaser hereby represents and warrants to Seller that Purchaser is an Alabama public corporation, formed and in good standing under the laws of the State of Alabama and has the full power and authority to purchase the Property as provided in this Agreement and to carry out Purchaser's obligations hereunder, and all requisite action necessary to authorize Purchaser to enter into this Agreement and to carry out its obligations hereunder have been, or by the Closing will have been taken.

10. Disclaimers by Seller. Purchaser acknowledges and agrees that, except as expressly set forth in this Agreement and in any conveyance deed of the Property from Seller to Purchaser, Seller has not made, does not make, and specifically disclaims, any representations or warranties, whether express or implied, concerning or with respect to the nature, quality or condition of the Property, the income to be derived therefrom, the suitability of the same for Purchaser's purposes, the compliance therewith with any applicable laws, the habitability, merchantability or fitness for a particular purpose of the Property, or any other matter with respect to the Property. Purchaser further acknowledges and agrees that except for the representations and warranties of Seller set forth in this Agreement, the sale of the Property as provided for herein is made on a "as is -where is" basis. Seller hereby agrees to assign to Purchaser at Closing any representations and warranties Seller receives from third parties regarding the Property.
11. Conditions to Purchaser's Obligation to Close. The following are the conditions to Purchaser's obligations under this Agreement to close: (i) as of the Closing, Seller shall have performed all the obligations under this Agreement in all material respects.
12. Conditions to Seller's Obligation to Close. The following are the conditions to Seller's obligations under this Agreement to close: (i) as of the Closing, Purchaser shall have performed all the obligations under this Agreement in all material respects.
13. Default by Purchaser. In the event that the Purchaser should fail to consummate this Agreement for any reason, Seller's sole remedy shall be the right to terminate this Agreement.
14. Default by Seller. In the event that Seller should fail to consummate this Agreement for any reason, Purchaser's sole remedy shall be the right to terminate the Agreement.
15. Real Estate Commissions. Neither Seller nor Purchaser has contracted with any real estate broker, finder or similar person in connection with the transaction contemplated hereby. To the actual knowledge of Seller and Purchaser, no Acquisition Fees (as hereafter defined) have been paid or are due and owing to any person or entity. As used herein "Acquisition Fees" shall mean all fees paid to any person or entity in connection with the selection and purchase of the Property, including real estate commissions, selection fees, non-recurring management and start-up fees, development fees or any other fee of similar nature. To the extent allowed by law, Seller and Purchaser, each, hereby agrees to indemnify and hold harmless the other from and against any and all claims for Acquisition Fees or similar charges with respect to this transaction, arising by, through or under the indemnifying party and each further agrees to indemnify and hold harmless the other from any loss or damage resulting from an inaccuracy in the representations contained in this Section 15. This indemnification agreement of the parties shall survive the Closing.
16. Modifications. This Agreement cannot be changed orally, and no executory agreement shall be effective to waive, change, modify or discharge it in whole or in part unless such

executory agreement is in writing and is signed by the parties against whom enforcement of any waiver, change, modification or discharge is sought.

17. Notice. All notices, consents, requests, declarations, designations, approvals, reports, and other communications required or provided for by this Agreement shall be given in writing to the other party at the addresses set forth below, or at such other address as either party shall designate for itself by notice to the other party hereunder:

Seller: The City of Foley Public Facilities  
Cooperative District  
Attn: Charles J. Ebert, III, Chairman  
407 East Laurel Street  
Foley, Alabama 36535

Purchaser: Coastal Alabama Farmers' and Fishermen's  
Market  
Attn: President  
407 East Laurel Street  
Foley, Alabama 36535

18. Calculation of Time Periods. Unless otherwise specified, in computing any period of time described in this Agreement, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday or legal holiday.
19. Time of Essence. Seller and Purchaser agree that time is of the essence of this Agreement.
20. Successors and Assigns. The terms and provisions of this Agreement are to apply to and bind the permitted successors and assigns of the parties hereto.
21. Entire Agreement. This Agreement, including the Exhibits, contains the entire agreement between the parties pertaining to the subject matter hereof and fully supersedes all prior agreements and understandings between the parties pertaining to such subject matter.
22. Further Assurances. Each party agrees that it will without further consideration execute and deliver such other documents and take such other action, whether prior or subsequent to Closing, as may be reasonably requested by the other party to consummate more effectively the purposes or subject matter of this Agreement. Without limiting the generality of the foregoing, Purchaser shall, if requested by Seller, execute acknowledgments of receipt with respect to any materials delivered by Seller to Purchaser with respect to the Property.



23. Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. The counterparts of this Agreement may be executed and delivered by e-mail or facsimile signature by any of the parties to any other party and the receiving party may rely on the receipt of such document so executed and delivered by facsimile as if the original had been received. It shall be necessary to account for only one such counterpart in proving this Agreement.
24. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall nonetheless remain in full force and effect.
25. Applicable Law. THIS AGREEMENT SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE SUBSTANTIVE FEDERAL LAWS OF THE UNITED STATES AND THE LAWS OF THE STATE OF ALABAMA.
26. Waiver. No waiver by any party of any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach by the other party of the same or any other provision. Either party's consent to or approval of any act shall not be deemed to render unnecessary the obtaining of such party's express written consent to or approval of any subsequent act by the other party.
27. No Third Party Beneficiary. The provisions of this Agreement and of the documents to be executed and delivered at Closing are and will be for the benefit of Seller and Purchaser only and are not for the benefit of any third party, and accordingly, no third party shall have the right to enforce the provisions of this Agreement or of the documents to be executed and delivered at Closing.
28. Exhibits and Schedules. The following schedules or exhibits attached hereto shall be deemed to be an integral part of this Agreement:
- Exhibit A - Property Description  
Exhibit B - Permitted Encumbrances
29. Captions. The section headings appearing in this Agreement are for convenience of reference only and are not intended, to any extent and for any purpose, to limit or define the text of any section or any subsection hereof.
30. Construction. The parties acknowledge that the parties and their counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto.

31. Authority. Each individual executing this Agreement on behalf of a party hereto represents and warrants that he/she is duly authorized to execute and deliver this Agreement on behalf of said party and that this Agreement is binding upon said party in accordance with its terms.
32. Effective Date. The date of execution by Seller shall be deemed the effective date of this Agreement (the "Effective Date").
33. Survival of Representations and Warranties. All of the representations and warranties and covenants contained in this Agreement shall survive the Closing.


[Signature Page to Follow]

[Signature Page for Purchase Agreement]

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement effective as of November 4, 2013.

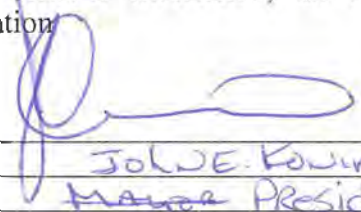
**SELLER:**

THE CITY OF FOLEY PUBLIC FACILITIES  
COOPERATIVE DISTRICT, an Alabama Public  
Corporation

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

**PURCHASER:**

COASTAL ALABAMA FARMERS' AND  
FISHERMEN'S MARKET, an Alabama Public  
Corporation

By:   
Name: Jolene Kowar  
As its: Mayor President

## **EXHIBIT A**

### **PROPERTY DESCRIPTION**

The following described real property situated in the County of Baldwin, State of Alabama:

A parcel of land situated in the Southeast quarter of the Southeast quarter of Section 4, Township 8 South, Range 4 East, Baldwin County, Alabama, being a part of Parcels 1 and 2 according to the survey and plat of Wilson Pecan Property Minor Subdivision as recorded in Slide 0002434-A in the Probate Office of Baldwin County, Alabama and being more particularly described as follows:

Commence at the Southeast corner of Parcel 2 according to the survey and plat of Wilson Pecan Property Minor Subdivision as recorded in Slide 0002434-A in the Probate Office of Baldwin County, Alabama, said point lying on the North right of way of Miflin Road (County Road #20); thence run North 89°55'03" West along the South line of said Parcel 2 and along said right of way for 294.94 feet to the Point of Beginning of the herein described parcel; thence continue North 89°55'03" West along said right of way for 126.75 feet; thence run North 00°33'41" East for 325.00 feet; thence run North 89°55'03" West for 270.00 feet; thence run South 00°33'41" West for 325.00 feet to the Northerly right of way of Miflin Road; thence run North 89°55'03" West along said right of way for 100.00 feet to the Southwest corner of Parcel 1 of said Wilson Pecan Property Minor Subdivision; thence run North 00°33'41" East for 1207.47 feet; thence run North 89°43'12" West for 694.33 feet to the northeast corner of Parcel #3 according to the Re-subdivision of Lot 5, Martin Subdivision as recorded in Slide 2334-A in the Probate Office of Baldwin County, Alabama; thence run North 00°16'48" West for 60.00 feet; thence run South 89°43'12" East for 794.34 feet; thence run along the arc of a curve to the right having a central angle of 68°51'37", a radius of 60.00 feet, a chord of 67.85 feet and a chord bearing of South 17°28'26" West for a distance of 72.11 feet; thence run South 00°33'41" West for 792.37 feet; thence run south 89°55'03" East for 170.00 feet; thence run North 00°04'32" East along for 345.05 feet; thence run South 89°55'28" East for 300.00 feet; thence run North 00°04'32" East for 221.19 feet; thence run North 89°55'28" West for 195.00 feet; thence run North 00°04'32" East for 290.00 feet to the North line of said Parcel 1; thence run South 89°43'12" East for 419.63 feet to the Northeast corner of said Parcel 1; thence run South 00°32'01" East along the east line of said Parcel 1 for 916.32 feet; thence run North 89°55'59" West for 291.57 feet; thence run South 00°00'53" East for 348.46 feet to the point of beginning. Contains 13.782 acres, more or less.

## **EXHIBIT B**

### **PERMITTED ENCUMBRANCES**

1. Any matters which a current and accurate survey would disclose.
2. Any recorded restrictions, covenants and easements of record not specifically set forth herein.
3. All matters of Public record as recorded in the Office of the Judge of Probate, Baldwin County, Alabama.
4. Previous Reservation of Mineral Rights.

The recording references refer to the records in the Office of the Judge of Probate of Baldwin County, Alabama, unless otherwise indicated.

## PROMISSORY NOTE

\$2,320,579

Effective as of November 4, 2013

FOR VALUE RECEIVED, the undersigned, Coastal Alabama Farmers' and Fishermen's Market, an Alabama public corporation (the "Maker"), promises to pay to the order of The City of Foley Public Facilities Cooperative District, an Alabama public 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 0.32% 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. The principal and interest due under this Promissory Note shall be due and payable in full on or before the date that is one (1) year from the date hereof (the "Loan Payment").

(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 Payment 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:

COASTAL ALABAMA FARMERS' AND  
FISHERMEN'S MARKET



Name: John E. Kovian  
As to: Mayor President

STATE OF ALABAMA )  
COUNTY OF BALDWIN )

BALDWIN COUNTY, ALABAMA  
TIM RUSSELL, PROBATE JUDGE  
Filed/cert. 11/14/2013 1:36 PM  
TOTAL \$ 15.00  
3 Pages

1429462

WARRANTY DEED



KNOW ALL MEN BY THESE PRESENTS that the **CITY OF FOLEY'S PUBLIC FACILITIES COOPERATIVE DISTRICT**, An Alabama Cooperative District, the Grantor, for and in consideration of the sum of TEN & 00/100 (\$10.00) DOLLARS and other good and valuable consideration hereby acknowledged to have been paid to the Grantor by **COASTAL ALABAMA FARMERS' AND FISHERMEN'S MARKET, INC.**, the Grantee, does hereby **GRANT, BARGAIN, SELL AND CONVEY** unto the said Grantee, its successors and/or assigns, subject to the provisions hereinafter contained, all that real property in the County of Baldwin, State of Alabama, described as follows:

Start at the Southeast Corner of Section 4, Township 8 South, Range 4 East. Commence westerly, N 89°-58'-18" W, a distance of 667.02 feet, to a point; thence go N 00°-35'-51" W, a distance of 60.00 feet, to a point. Continue N 89°-55'-03" W, a distance of 294.97 feet to the Point of Beginning of the property herein described. Said Point of Beginning is also located on the northern right of way line of Miflin Road (County Road 20). Continue N 89°-55'-03" W, a distance of 496.66 feet to a point; thence N 00°-33'-23" E, a distance of approximately 1,267.33 feet, more or less to a point on the northern boundary of the property herein described; said point serving as the northwestern most corner of the property herein described. Thence, continue S 89°-44'-11" E, for approximately 763 feet, more or less to a point on the western boundary of the property herein described. Said point also being the northeastern most corner of said property. From said point, continue S 00°-32'-50"E, for a distance of 916.00 feet to a point; continue N 89°-55'-39" W, for a distance of 291.51 feet to a point; thence S 00°-01'-18" W, for a distance of 348.58 feet to the Point of Beginning of the parcel herein described. Said parcel contains 20.19 acres, more or less.

**THIS CONVEYANCE WAS PREPARED WITHOUT THE BENEFIT  
OF A TITLE EXAMINATION.**

**SUBJECT TO THE FOLLOWING:**

1. Any matters which a current and accurate survey would disclose.
2. Any recorded restrictions, covenants and easements of record not specifically set forth herein.
3. All matters of Public record as recorded in the Office of the Judge of Probate, Baldwin County, Alabama.
4. Previous Reservation of all Mineral Rights.

The recording references refer to the records in the Office of the Judge of Probate of Baldwin County, Alabama, unless otherwise indicated.

Together with any and all singular the rights, privileges, tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining; **TO HAVE AND TO HOLD** the same unto the said Grantee, and to its successors and/or assigns, forever.

This conveyance is made subject to restrictive covenants and easements applicable to said property of record in the said Probate Court records.

And, except as to the above, and the taxes hereafter falling due, the said Grantor, for itself and for its successors and assigns, hereby covenants with the Grantee that it is seized of an indefeasible estate in fee simple in and to said property, that said property is free and clear of all encumbrances and that it does hereby **WARRANT AND WILL FOREVER DEFEND** the title to said property, and the possession thereof, unto the said Grantee, its successors and assigns, against the lawful claims of all persons, whomsoever.

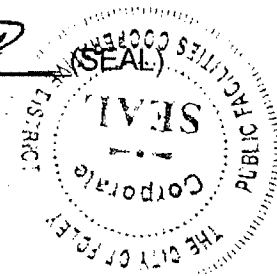
**IN WITNESS WHEREOF**, the said Grantor by Charles J. Ebert, III as its Chairman, who is authorized to execute this conveyance, has hereunto set his hand and seal this the 4<sup>th</sup> day of November, 2013.

**CITY OF FOLEY'S PUBLIC FACILITIES  
COOPERATIVE DISTRICT**

BY: 

**CHARLES J. EBERT, III**

AS ITS: CHAIRMAN



**STATE OF ALABAMA )  
COUNTY OF BALDWIN )**

I, the undersigned Notary Public, in and for said State and County, hereby certify that **Charles J. Ebert, III**, as Chairman of the **CITY OF FOLEY'S PUBLIC FACILITIES COOPERATIVE DISTRICT**, the Grantor herein, whose name is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of said conveyance, executed with full authority and voluntarily on the day same bears date for and as an act of said Cooperative District.

Given under my hand and seal this the 4th day of November, 2013.



NOTARY PUBLIC

Commission Expires:

VICTORIA SOUTHERN  
Notary Public - State of Alabama  
My Commission Expires  
June 24, 2017

**GRANTEE'S ADDRESS:  
COASTAL ALABAMA FARMERS' AND  
FISHERMEN'S MARKET, INC.**

**THIS INSTRUMENT PREPARED BY:**

**MISSTY C. GRAY  
ADAMS AND REESE LLP  
Post Office Box 1348  
Mobile, Alabama 36633  
(251) 433-3234 telephone  
(251) 438-7733 facsimile**





**CORRECTION WARRANTY DEED**

STATE OF ALABAMA  
COUNTY OF BALDWIN

Witnesseth this correction deed ("*Correction Deed*") by and between THE CITY OF FOLEY PUBLIC FACILITIES COOPERATIVE DISTRICT and COASTAL ALABAMA FARMERS' AND FISHERMAN'S MARKET, INC.:

**RECITALS**

1. **THE CITY OF FOLEY PUBLIC FACILITIES COOPERATIVE DISTRICT** ("CO-OP") is an Alabama public corporation, duly authorized to do business in the State of Alabama having a mailing address at P.O. Box 1750, Foley, AL 36535.

2. **COASTAL ALABAMA FARMERS' AND FISHERMAN'S MARKET, INC.** ("CAFFM") is an Alabama nonprofit corporation, duly authorized to do business in the State of Alabama having a mailing address at 407 East Laurel Avenue, Foley, AL 36535.

3. By Warranty Deed ("Original Deed") dated November 4, 2013, and recorded November 14, 2013 as Instrument #1429462 in the records of the Judge of Probate of Baldwin County, Alabama, CO-OP conveyed to CAFFM certain lands situated in Baldwin County, Alabama.

4. There is a scrivener's error contained in the legal description of the Original Deed.

5. CO-OP and CAFFM now desire to execute and deliver this Correction Warranty Deed in order to correct and clarify the legal description.

6. All recording references in this Correction Warranty Deed are to the records appearing in the Office of the Judge of Probate of Baldwin County, Alabama.

**CORRECTION AMENDMENT**

Now therefore, know all by these presents that for and in consideration of the premises, CO-OP and CAFFM hereby adopt and incorporate the recitals set forth above and do further agree as follows:

1. CO-OP and CAFFM hereby amend, reform and correct the legal description in

the Original Deed to read as follows:

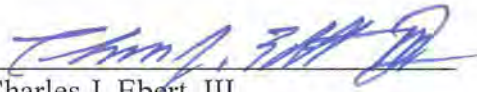
A parcel of land situated in the Southeast quarter of the Southeast quarter of Section 4, Township 8 South, Range 4 East, Baldwin County, Alabama, being a part of Parcels 1 and 2 according to the survey and plat of Wilson Pecan Property Minor Subdivision as recorded in Slide 0002434-A in the Probate Office of Baldwin County, Alabama and being more particularly described as follows:

Commence at the Southeast corner of Parcel 2 according to the survey and plat of Wilson Pecan Property Minor Subdivision as recorded in Slide 0002434-A in the Probate Office of Baldwin County, Alabama, said point lying on the North right of way of Miflin Road (County Road #20); thence run North 89°55'03" West along the South line of said Parcel 2 and along said right of way for 294.94 feet to the Point of Beginning of the herein described parcel; thence continue North 89°55'03" West along said right of way for 126.75 feet; thence run North 00°33'41" East for 325.00 feet; thence run North 89°55'03" West for 270.00 feet; thence run South 00°33'41" West for 325.00 feet to the Northerly right of way of Miflin Road; thence run North 89°55'03" West along said right of way for 100.00 feet to the Southwest corner of Parcel 1 of said Wilson Pecan Property Minor Subdivision; thence run North 00°33'41" East for 1207.47 feet; thence run North 89°43'12" West for 694.33 feet to the northeast corner of Parcel #3 according to the Re-subdivision of Lot 5, Martin Subdivision as recorded in Slide 2334-A in the Probate Office of Baldwin County, Alabama; thence run North 00°16'48" West for 60.00 feet; thence run South 89°43'12" East for 794.34 feet; thence run along the arc of a curve to the right having a central angle of 68°51'37", a radius of 60.00 feet, a chord of 67.85 feet and a chord bearing of South 17°28'26" West for a distance of 72.11 feet; thence run South 00°33'41" West for 792.37 feet; thence run south 89°55'03" East for 170.00 feet; thence run North 00°04'32" East along for 345.05 feet; thence run South 89°55'28" East for 300.00 feet; thence run North 00°04'32" East for 221.19 feet; thence run North 89°55'28" West for 195.00 feet; thence run North 00°04'32" East for 290.00 feet to the North line of said Parcel 1; thence run South 89°43'12" East for 419.63 feet to the Northeast corner of said Parcel 1; thence run South 00°32'01" East along the east line of said Parcel 1 for 916.32 feet; thence run North 89°55'59" West for 291.57 feet; thence run South 00°00'53" East for 348.46 feet to the point of beginning. Contains 13.782 acres, more or less.

2. As amended, reformed and corrected, the Original Deed remains in full force and effect.

[SIGNATURE PAGES FOLLOW]

THE CITY OF FOLEY PUBLIC  
FACILITIES COOPERATIVE DISTRICT


By:   
Name: Charles J. Ebert, III  
As Its: Chairman

STATE OF ALABAMA

COUNTY OF BALDWIN

I, the undersigned Notary Public, in and for said County in said State, hereby certify that **Charles J. Ebert, III** whose name as **Chairman** of **The City of Foley Public Facilities Cooperative District**, whose name is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of this instrument, executed with full authority and voluntarily on the day same bears date for and as the act of said Cooperative District.

Given under by hand and seal this the 25<sup>th</sup> day of February, 2014.

  
Notary Public



[AFFIX NOTARIAL SEAL]

Commission Expires:



[ADDITIONAL SIGNATURE PAGE FOLLOWS]



COASTAL ALABAMA FARMERS'  
AND FISHERMEN'S MARKET, INC.

By: [Signature]  
Name: John E. Kodiar  
As Its: Manager President

STATE OF ALABAMA

COUNTY OF BALDWIN

I, the undersigned Notary Public, in and for said County in said State, hereby certify that John E. Kodiar whose name as President of the **Coastal Alabama Farmers' and Fishermen's Market, Inc.**, whose name is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of this instrument, executed with full authority and voluntarily on the day same bears date for and as the act of said Corporation.

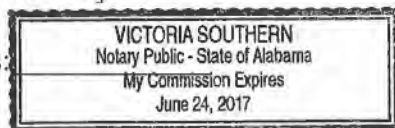
Given under by hand and seal this the 25th day of February, 2014.

[Signature]  
Notary Public



[AFFIX NOTARIAL SEAL]

Commission Expires:



INSTRUMENT PREPARED BY:

Rusty Russell  
Adams and Reese LLP  
11 N. Water St. Ste 23200  
Mobile, Alabama 36602  
(251) 433-3234

**CORRECTION WARRANTY DEED**

STATE OF ALABAMA  
COUNTY OF BALDWIN

BALDWIN COUNTY, ALABAMA  
TIM RUSSELL PROBATE JUDGE  
Filed/cert. 6/9/2014 10:08 AM  
TOTAL \$ 18.00  
4 Pages

1460775



Witnesseth this correction warranty deed ("Correction Deed") by and between **THE CITY OF FOLEY PUBLIC FACILITIES COOPERATIVE DISTRICT** and **COASTAL ALABAMA FARMERS' AND FISHERMAN'S MARKET, INC.:**

**R E C I T A L S**

1. **THE CITY OF FOLEY PUBLIC FACILITIES COOPERATIVE DISTRICT** ("CO-OP") is an Alabama public corporation, duly authorized to do business in the State of Alabama having a mailing address at P.O. Box 1750, Foley, AL 36535.

2. **COASTAL ALABAMA FARMERS' AND FISHERMAN'S MARKET, INC.** ("CAFFM") is an Alabama nonprofit corporation, duly authorized to do business in the State of Alabama having a mailing address at 407 East Laurel Avenue, Foley, AL 36535.

3. By Warranty Deed ("Original Deed") dated November 4, 2013, and recorded November 14, 2013 as Instrument #1429462 in the records of the Judge of Probate of Baldwin County, Alabama, CO-OP conveyed to CAFFM certain lands situated in Baldwin County, Alabama.

4. By Correction Warranty Deed ("First Correction Deed") dated February 25, 2014, and recorded March 7, 2014 as Instrument #1444947 in the records of the Judge of Probate of Baldwin County, Alabama, CO-OP and CAFFM corrected certain errors contained in the Original Deed.

5. There is a scrivener's error contained in the legal description of the Original Deed and the First Correction Deed.

6. CO-OP and CAFFM now desire to execute and deliver this Correction Deed in order to correct and clarify the legal description.

7. All recording references in this Correction Deed are to the records appearing in the Office of the Judge of Probate of Baldwin County, Alabama.

## CORRECTION AMENDMENT

Now therefore, know all by these presents that for and in consideration of the premises, CO-OP and CAFFM hereby adopt and incorporate the recitals set forth above and do further agree as follows:

1. CO-OP and CAFFM hereby amend, reform and correct the legal description in the Original Deed and the First Correction Deed to read as follows:


A parcel of land situated in the Southeast quarter of the Southeast quarter and in A parcel of land situated in the Southeast quarter of the Southeast quarter and in the Southwest quarter of the Southeast quarter of Section 4, Township 8 South, Range 4 East, Baldwin County, Alabama, being a part of Parcels 1 and 2 according to the survey and plat of Wilson Pecan Property Minor Subdivision as recorded in Slide 0002434-A in the Probate Office of Baldwin County, Alabama and being more particularly described as follows:

Commence at the Southeast corner of Parcel 2 according to the survey and plat of Wilson Pecan Property Minor Subdivision as recorded in Slide 0002434-A in the Probate Office of Baldwin County, Alabama, said point lying on the North right of way of Miflin Road (County Road #20); thence run North 89°55'03" West along the South line of said Parcel 2 and along said right of way for 294.94 feet to the Point of Beginning of the herein described parcel; thence continue North 89°55'03" West along said right of way for 126.75 feet; thence run North 00°33'41" East for 325.00 feet; thence run North 89°55'03" West for 270.00 feet; thence run South 00°33'41" West for 325.00 feet to the Northerly right of way of Miflin Road; thence run North 89°55'03" West along said right of way for 100.00 feet to the Southwest corner of Parcel 1 of said Wilson Pecan Property Minor Subdivision; thence run North 00°33'41" East for 1207.47 feet; thence run North 89°43'12" West for 694.33 feet to the northeast corner of Parcel #3 according to the Re-subdivision of Lot 5, Martin Subdivision as recorded in Slide 2234-A in the Probate Office of Baldwin County, Alabama; thence run North 00°16'48" West for 60.00 feet; thence run South 89°43'12" East for 794.34 feet; thence run along the arc of a curve to the right having a central angle of 68°51'37", a radius of 60.00 feet, a chord of 67.85 feet and a chord bearing of South 17°28'26" West for a distance of 72.11 feet; thence run South 00°33'41" West for 792.37 feet; thence run south 89°55'03" East for 170.00 feet; thence run North 00°04'32" East along for 345.05 feet; thence run South 89°55'28" East for 300.00 feet; thence run North 00°04'32" East for 221.19 feet; thence run North 89°55'28" West for 195.00 feet; thence run North 00°04'32" East for 290.00 feet to the North line of said Parcel 1; thence run South 89°43'12" East for 419.63 feet to the Northeast corner of said Parcel 1; thence run South 00°32'01" East along the east line of said Parcel 1 for 916.32 feet; thence run North 89°55'59" West for 291.57 feet; thence

run South 00°00'53" East for 348.46 feet to the point of beginning. Contains 13.782 acres, more or less.

2. As amended, reformed and corrected, the Original Deed and the First Correction Deed remain in full force and effect.

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

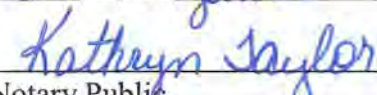
By:   
Name: Charles J. Ebert, III  
As Its: Chairman

STATE OF ALABAMA

COUNTY OF BALDWIN

I, the undersigned Notary Public, in and for said County in said State, hereby certify that **Charles J. Ebert, III** whose name as **Chairman of The City of Foley Public Facilities Cooperative District**, whose name is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of this instrument, executed with full authority and voluntarily on the day same bears date for and as the act of said Cooperative District.

Given under by hand and seal this the 5<sup>th</sup> day of June, 2014.

  
Notary Public



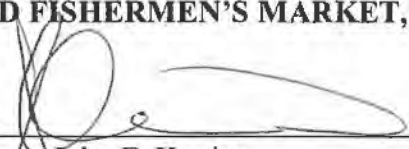
[AFFIX NOTARIAL SEAL]

Commission Expires: \_\_\_\_\_



[ADDITIONAL SIGNATURE PAGE FOLLOWS]

**COASTAL ALABAMA FARMERS'  
AND FISHERMEN'S MARKET, INC.**

By:   
Name: John E. Koniar  
As Its: President

STATE OF ALABAMA

COUNTY OF BALDWIN

I, the undersigned Notary Public, in and for said County in said State, hereby certify that **John E. Koniar** whose name as **President** of the **Coastal Alabama Farmers' and Fishermen's Market, Inc.**, whose name is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of this instrument, executed with full authority and voluntarily on the day same bears date for and as the act of said Corporation.

Given under by hand and seal this the 5<sup>th</sup> day of June, 2014.

  
Notary Public

[AFFIX NOTARIAL SEAL]

Commission Expires: 6-24-2017

**INSTRUMENT PREPARED BY:**

Rusty Russell  
Adams and Reese LLP  
11 N. Water St. Ste 23200  
Mobile, Alabama 36602  
(251) 433-3234

17425

BALDWIN COUNTY, ALABAMA  
TIM RUSSELL PROBATE JUDGE  
Filed/cert. 7/11/2014 1:10 PM  
TOTAL \$ 21.00  
5 Pages

1466495



## CORRECTION WARRANTY DEED

STATE OF ALABAMA  
COUNTY OF BALDWIN

Witnesseth this correction warranty deed ("Correction Deed") by and between **THE CITY OF FOLEY PUBLIC FACILITIES COOPERATIVE DISTRICT** and **COASTAL ALABAMA FARMERS' AND FISHERMEN'S MARKET, INC.**:

### RECITALS

1. **THE CITY OF FOLEY PUBLIC FACILITIES COOPERATIVE DISTRICT** ("CO-OP") is an Alabama public corporation, duly authorized to do business in the State of Alabama having a mailing address at P.O. Box 1750, Foley, AL 36535.

2. **COASTAL ALABAMA FARMERS' AND FISHERMEN'S MARKET, INC.** ("CAFFM") is an Alabama nonprofit corporation, duly authorized to do business in the State of Alabama having a mailing address at 407 East Laurel Avenue, Foley, AL 36535.

3. By Warranty Deed ("Original Deed") dated November 4, 2013, and recorded November 14, 2013 as Instrument #1429462 in the records of the Judge of Probate of Baldwin County, Alabama, CO-OP conveyed to CAFFM certain lands situated in Baldwin County, Alabama.

4. By Correction Warranty Deed ("First Correction Deed") dated February 25, 2014, and recorded March 7, 2014 as Instrument #1444947 in the records of the Judge of Probate of Baldwin County, Alabama, CO-OP and CAFFM corrected certain errors contained in the Original Deed.

5. By Correction Warranty Deed ("Second Correction Deed") dated June 5, 2014, and recorded June 9, 2014 as Instrument #1460775 in the records of the Judge of Probate of Baldwin County, Alabama, CO-OP and CAFFM corrected certain errors contained in the Original Deed and First Correction Deed.

6. There is a scrivener's error contained in the name "Coastal Alabama Farmers' and Fisherman's Market, Inc." in the First Correction Deed and the Second Correction Deed.

7. There is a scrivener's error contained in the legal description of the Original Deed, First Correction Deed and the Second Correction Deed.

8. CO-OP and CAFFM now desire to execute and deliver this Correction Deed in order to correct and clarify the name of CAFFM and legal description.

9. All recording references in this Correction Deed are to the records appearing in the Office of the Judge of Probate of Baldwin County, Alabama.

### **CORRECTION AMENDMENT**

Now therefore, know all by these presents that for and in consideration of the premises, CO-OP and CAFFM hereby adopt and incorporate the recitals set forth above and do further agree as follows:

1. CO-OP and CAFFM hereby amend, reform and correct the name "Coastal Alabama Farmers' and Fisherman's Market, Inc." in the First Correction Deed and Second Correction Deed to read as follows:

Coastal Alabama Farmers' and Fishermen's Market, Inc.

2. CO-OP and CAFFM hereby amend, reform and correct the legal description in the Original Deed, the First Correction Deed and the Second Correction Deed to read as follows:

A parcel of land situated in the Southeast quarter of the Southeast quarter and in the Southwest quarter of the Southeast quarter of Section 4, Township 8 South, Range 4 East, Baldwin County, Alabama, being a part of Parcels 1 and 2 according to the survey and plat of Wilson Pecan Property Minor Subdivision as recorded in Slide 0002434-A in the Probate Office of Baldwin County, Alabama and being more particularly described as follows:

Commence at the Southeast corner of Parcel 2 according to the survey and plat of Wilson Pecan Property Minor Subdivision as recorded in Slide 0002434-A in the Probate Office of Baldwin County, Alabama, said point lying on the North right of way of Miflin Road (County Road #20); thence run North 89°55'03" West along the South line of said Parcel 2 and along said right of way for 294.94 feet to the Point of Beginning of the herein described parcel; thence continue North 89°55'03" West along said right of way for 126.75 feet; thence run North 00°33'41" East for 325.00 feet; thence run North 89°55'03" West for 270.00 feet; thence run South 00°33'41" West for 325.00 feet to the Northerly right of way of Miflin Road; thence run North 89°55'03" West along said right of way for 100.00 feet to the Southwest corner of Parcel 1 of said Wilson Pecan Property Minor Subdivision; thence run North 00°33'41" East for 1207.47 feet; thence run North 89°43'12" West for 694.33 feet to the northeast corner of Parcel #3 according to the Re-subdivision of Lot 5, Martin Subdivision as recorded in Slide 2234-A in the Probate Office of Baldwin County, Alabama; thence run North 00°16'48"

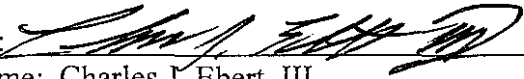
West for 60.00 feet; thence run South  $89^{\circ}43'12''$  East for 794.34 feet; thence run along the arc of a curve to the right having a central angle of  $68^{\circ}51'37''$ , a radius of 60.00 feet, a chord of 67.85 feet and a chord bearing of South  $17^{\circ}28'26''$  West for a distance of 72.11 feet; thence run South  $00^{\circ}33'41''$  West for 792.37 feet; thence run south  $89^{\circ}55'03''$  East for 170.00 feet; thence run North  $00^{\circ}04'32''$  East along for 345.05 feet; thence run South  $89^{\circ}55'28''$  East for 300.00 feet; thence run North  $00^{\circ}04'32''$  East for 221.19 feet; thence run North  $89^{\circ}55'28''$  West for 195.00 feet; thence run North  $00^{\circ}04'32''$  East for 290.00 feet to the North line of said Parcel 1; thence run South  $89^{\circ}43'12''$  East for 419.63 feet to the Northeast corner of said Parcel 1; thence run South  $00^{\circ}32'01''$  East along the east line of said Parcel 1 for 916.32 feet; thence run North  $89^{\circ}55'59''$  West for 291.57 feet; thence run South  $00^{\circ}00'53''$  West for 348.46 feet to the point of beginning. Contains 13.782 acres, more or less.

2. As amended, reformed and corrected, the Original Deed, the First Correction Deed and the Second Correction Deed remain in full force and effect.

[SIGNATURE PAGES FOLLOW]



THE CITY OF FOLEY PUBLIC  
FACILITIES COOPERATIVE DISTRICT

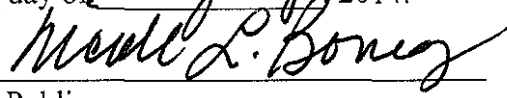
By:   
Name: Charles J. Ebert, III  
As Its: Chairman

STATE OF ALABAMA

COUNTY OF BALDWIN

I, the undersigned Notary Public, in and for said County in said State, hereby certify that **Charles J. Ebert, III** whose name as **Chairman** of **The City of Foley Public Facilities Cooperative District**, whose name is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of this instrument, executed with full authority and voluntarily on the day same bears date for and as the act of said Cooperative District.

Given under by hand and seal this the 2nd day of July 2014.


  
Notary Public

[AFFIX NOTARIAL SEAL]

Commission Expires: 1/18/2017

[ADDITIONAL SIGNATURE PAGE FOLLOWS]

**COASTAL ALABAMA FARMERS'  
AND FISHERMEN'S MARKET, INC.**

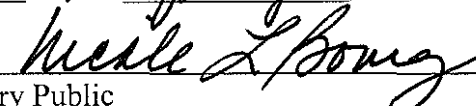
By:   
Name: John E. Koniar  
As Its: President

STATE OF ALABAMA

COUNTY OF BALDWIN

I, the undersigned Notary Public, in and for said County in said State, hereby certify that **John E. Koniar** whose name as **President** of the **Coastal Alabama Farmers' and Fishermen's Market, Inc.**, whose name is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of this instrument, executed with full authority and voluntarily on the day same bears date for and as the act of said Corporation.

Given under by hand and seal this the 2nd day of July, 2014.

  
Notary Public

[AFFIX NOTARIAL SEAL]

Commission Expires: 1/18/2017

INSTRUMENT PREPARED BY:  
Rusty Russell  
Adams and Reese LLP  
11 N. Water St. Ste 23200  
Mobile, Alabama 36602  
(251) 433-3234

## PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT (the "Agreement") is made to be effective as of the Effective Date (as hereinafter defined) by and among the following parties:

SELLER: CITY OF FOLEY, ALABAMA, an Alabama municipal corporation ("Seller"); and,

PURCHASER: THE CITY OF FOLEY PUBLIC FACILITIES COOPERATIVE DISTRICT, an Alabama public corporation ("Purchaser").

WHEREAS, Seller has acquired or will acquire title to certain parcels of real estate situated in Baldwin County, Alabama, and more particularly described in Exhibit A attached hereto and made a part hereof ("Property"); and

WHEREAS, Seller desires to sell and Purchaser desires to purchase the Property.

NOW THEREFORE, for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration to Seller in hand paid by Purchaser, the receipt and sufficiency of which are hereby acknowledged, Seller agrees to sell and Purchaser agrees to purchase the Property, upon the terms and conditions set forth below:

1. Purchase Price. Seller shall sell to Purchaser and Purchaser shall purchase from Seller the Property for a total of Three Million Two Hundred Fifty Thousand and No/100ths Dollars (\$3,250,000.00) ("Purchase Price"). The Purchase Price shall be payable in the form of a Promissory Note of even date herewith.
2. Title and Survey. Purchaser shall purchase, at its sole expense, any title insurance and/or surveys it desires to obtain with respect to the Property.
3. Purchaser's Investigation Rights. Seller hereby grants to Purchaser and to Purchaser's agents, employees and representatives, a continuing right of reasonable access, after reasonable notice to Seller and at reasonable times, for the purpose of conducting such surveys, engineering, geotechnical and environmental inspections and other investigations, evaluations, studies, tests and measurements (collectively the "Investigations") as Purchaser, or any prospective investor or lender, deems necessary or advisable. If any Investigation adversely disturbs the physical characteristics of the Property in any material respect, and Purchaser fails to purchase the Property under this Agreement, Purchaser shall restore the Property to substantially the same condition as existed prior to such Investigation. Purchaser's obligations hereunder shall survive termination of this Agreement.
4. Purchaser's Investigation Indemnity. Purchaser shall keep the Property free and clear of any liens, and will indemnify, defend and hold Seller harmless from all claims and

liabilities asserted against Seller, as a result of Purchaser's exercise of its rights of access and investigation; provided, however, that such indemnity shall not cover or extend to: (i) any claims of diminution in the value of the Property as a consequence of the results revealed by Purchaser's Investigations; or (ii) the exposure or release of Hazardous Substances that were located in, on, under or about the Property prior to Purchaser's entering the Property to conduct the Investigations. The obligations of the Purchaser under this paragraph shall survive any termination of this Agreement.

5. Time and Place of Closing. Closing of the transaction contemplated hereby ("Closing") shall be held no later than one hundred eighty (180) days after the Effective Date, unless extended by the written consent of the Purchaser and Seller, at a place and time agreed upon by the Purchaser and Seller. At Closing, Seller and Purchaser shall perform the obligations set forth in this Agreement, the performance of which obligations shall be concurrent conditions.
6. Obligations at Closing. At Closing, Purchaser shall pay: (i) deed taxes and other charges for recording Seller's deed, (ii) all legal, accounting and other professional and third party fees incurred by Purchaser in connection with this Agreement and the Closing, and (iii) any title insurance premiums and related charges. At Closing, Seller shall pay all legal, accounting and other professional and third party fees incurred by Seller in connection with this Agreement and the Closing. Property taxes, if any, will be prorated at Closing.
7. Conveyance. Seller shall convey to Purchaser good and marketable fee simple title to the Property by statutory warranty deed, free of all encumbrances except for the following: (i) the encumbrances set forth on Exhibit B attached hereto and incorporated herein by reference, (ii) taxes for the year in which the Property is conveyed and all years thereafter, and (iii) the zoning classification of the Property on the date hereof (Items (i), (ii), and (iii) collectively referred to as "Permitted Encumbrances").
8. Representations and Warranties of Seller. Seller hereby represents and warrants to Purchaser that Seller is an Alabama municipal corporation, formed and in good standing under the laws of the State of Alabama and has the full municipal corporation power and authority to convey the Property as provided in this Agreement and to carry out Seller's obligations hereunder, and all requisite action necessary to authorize Seller to enter into this Agreement and to carry out its obligations hereunder have been, or by the Closing will have been taken.
9. Representations and Warranties of Purchaser. Purchaser hereby represents and warrants to Seller that Purchaser is an Alabama public corporation, formed and in good standing under the laws of the State of Alabama and has the full power and authority to purchase the Property as provided in this Agreement and to carry out Purchaser's obligations hereunder, and all requisite action necessary to authorize Purchaser to enter into this Agreement and to carry out its obligations hereunder have been, or by the Closing will have been taken.

10. Disclaimers by Seller. Purchaser acknowledges and agrees that, except as expressly set forth in this Agreement and in any conveyance deed of the Property from Seller to Purchaser, Seller has not made, does not make, and specifically disclaims, any representations or warranties, whether express or implied, concerning or with respect to the nature, quality or condition of the Property, the income to be derived therefrom, the suitability of the same for Purchaser's purposes, the compliance therewith with any applicable laws, the habitability, merchantability or fitness for a particular purpose of the Property, or any other matter with respect to the Property. Purchaser further acknowledges and agrees that except for the representations and warranties of Seller set forth in this Agreement, the sale of the Property as provided for herein is made on a "as is -where is" basis. Seller hereby agrees to assign to Purchaser at Closing any representations and warranties Seller receives from third parties regarding the Property.
11. Conditions to Purchaser's Obligation to Close. The following are the conditions to Purchaser's obligations under this Agreement to close: (i) as of the Closing, Seller shall have performed all the obligations under this Agreement in all material respects.
12. Conditions to Seller's Obligation to Close. The following are the conditions to Seller's obligations under this Agreement to close: (i) as of the Closing, Purchaser shall have performed all the obligations under this Agreement in all material respects.
13. Default by Purchaser. In the event that the Purchaser should fail to consummate this Agreement for any reason, Seller's sole remedy shall be the right to terminate this Agreement.
14. Default by Seller. In the event that Seller should fail to consummate this Agreement for any reason, Purchaser's sole remedy shall be the right to terminate the Agreement.
15. Real Estate Commissions. Neither Seller nor Purchaser has contracted with any real estate broker, finder or similar person in connection with the transaction contemplated hereby. To the actual knowledge of Seller and Purchaser, no Acquisition Fees (as hereafter defined) have been paid or are due and owing to any person or entity. As used herein "Acquisition Fees" shall mean all fees paid to any person or entity in connection with the selection and purchase of the Property, including real estate commissions, selection fees, non-recurring management and start-up fees, development fees or any other fee of similar nature. To the extent allowed by law, Seller and Purchaser, each, hereby agrees to indemnify and hold harmless the other from and against any and all claims for Acquisition Fees or similar charges with respect to this transaction, arising by, through or under the indemnifying party and each further agrees to indemnify and hold harmless the other from any loss or damage resulting from an inaccuracy in the representations contained in this Section 15. This indemnification agreement of the parties shall survive the Closing.
16. Modifications. This Agreement cannot be changed orally, and no executory agreement shall be effective to waive, change, modify or discharge it in whole or in part unless such



23. Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. The counterparts of this Agreement may be executed and delivered by e-mail or facsimile signature by any of the parties to any other party and the receiving party may rely on the receipt of such document so executed and delivered by facsimile as if the original had been received. It shall be necessary to account for only one such counterpart in proving this Agreement.
24. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall nonetheless remain in full force and effect.
25. Applicable Law. THIS AGREEMENT SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE SUBSTANTIVE FEDERAL LAWS OF THE UNITED STATES AND THE LAWS OF THE STATE OF ALABAMA.
26. Waiver. No waiver by any party of any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach by the other party of the same or any other provision. Either party's consent to or approval of any act shall not be deemed to render unnecessary the obtaining of such party's express written consent to or approval of any subsequent act by the other party.
27. No Third Party Beneficiary. The provisions of this Agreement and of the documents to be executed and delivered at Closing are and will be for the benefit of Seller and Purchaser only and are not for the benefit of any third party, and accordingly, no third party shall have the right to enforce the provisions of this Agreement or of the documents to be executed and delivered at Closing.
28. Exhibits and Schedules. The following schedules or exhibits attached hereto shall be deemed to be an integral part of this Agreement:
- Exhibit A - Property Description  
Exhibit B - Permitted Encumbrances
29. Captions. The section headings appearing in this Agreement are for convenience of reference only and are not intended, to any extent and for any purpose, to limit or define the text of any section or any subsection hereof.
30. Construction. The parties acknowledge that the parties and their counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto.

31. Authority. Each individual executing this Agreement on behalf of a party hereto represents and warrants that he/she is duly authorized to execute and deliver this Agreement on behalf of said party and that this Agreement is binding upon said party in accordance with its terms.
32. Effective Date. The date of execution by Seller shall be deemed the effective date of this Agreement (the "Effective Date").
33. Survival of Representations and Warranties. All of the representations and warranties and covenants contained in this Agreement shall survive the Closing.

[Signature Page to Follow]

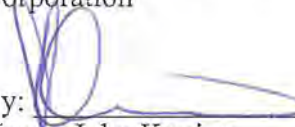


[Signature Page for Purchase Agreement]

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement effective as of February \_\_\_\_, 2014.


**SELLER:**

THE CITY OF FOLEY, an Alabama Municipal Corporation

By:   
Name: John Koniar  
As its: Mayor

**PURCHASER:**

THE CITY OF FOLEY PUBLIC FACILITIES COOPERATIVE DISTRICT, an Alabama Public Corporation

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

## **EXHIBIT A**

### **PROPERTY DESCRIPTION**

The following described real property situated in the County of Baldwin, State of Alabama:

Commencing at a point where the centerline of the L & N Railroad intersects the North line of Section 28, Township 7 South, Range 4 East, Baldwin County, Alabama; run thence South 89 degrees 29 minutes 04 seconds East along the North line of Section 28, Township 7 South, Range 4 East, as surveyed by McNeil Robinson (Ala. Reg. No. 1065) for the City of Foley Industrial Park, plat dated July 20, 1979, for 940.50 feet to the West right of way of Vulcan Street; run thence South 01 degrees 33 minutes 48 seconds West along the West right of way of Vulcan Street for 10.17 feet to a point where the South right of way of Section Avenue, if extended, would intersect the West right of way of Vulcan Street; run thence due East along the South right of way of Section Avenue for 370.32 feet to the point of beginning; continue thence due East along said right of way for 760.0 feet to the West right of way of Poplar Street; run thence South 01 degrees 05 minutes 03 seconds West along said right of way of Poplar Street for 610.0 feet; run thence due West for 760.0 feet to a point; run thence North 01 degrees 05 minutes 03 seconds East for 610.0 feet to the point of Beginning. Said land being in the City of Foley, Baldwin County, Alabama, and containing 10.6409 acres, more or less.

## **EXHIBIT B**

### **PERMITTED ENCUMBRANCES**

1. Subject to reservation of all interest in and to all oil, gas and mineral rights as contained in deed recorded in Real Book 77, Page 223.
2. Subject to oil, gas and mineral lease recorded in Deed Book 416, Page 92.
3. Right of way recorded in Deed Book 383, Page 586 for Section Avenue. No portion of the subject property lies in the subject right of way.
4. Any matters which a current and accurate survey would disclose.
5. Any recorded restrictions, covenants and easements of record not specifically set forth herein.
6. All matters of Public record as recorded in the Office of the Judge of Probate, Baldwin County, Alabama.
7. Previous Reservation of all Mineral Rights.

The recording references refer to the records in the Office of the Judge of Probate of Baldwin County, Alabama, unless otherwise indicated.

## 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

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

STATE OF ALABAMA )  
COUNTY OF BALDWIN )

BALDWIN COUNTY, ALABAMA  
TIM RUSSELL PROBATE JUDGE  
Filed/cert. 3/ 7/2014 11:28 AM  
TOTAL \$ 15.00  
3 Pages

1444946

WARRANTY DEED



KNOW ALL MEN BY THESE PRESENTS that the **CITY OF FOLEY, ALABAMA,**  
**An Alabama Municipal Corporation,** the Grantor, for and in consideration of the sum of  
TEN & 00/100 (\$10.00) DOLLARS and other good and valuable consideration hereby  
acknowledged to have been paid to the Grantor by **THE CITY OF FOLEY PUBLIC**  
**FACILITIES COOPERATIVE DISTRICT,** the Grantee, does hereby **GRANT, BARGAIN,**  
**SELL AND CONVEY** unto the said Grantee, its successors and/or assigns, subject to the  
provisions hereinafter contained, all that real property in the County of Baldwin, State of  
Alabama, described as follows:

Commencing at a point where the centerline of the L & N  
Railroad intersects the North line of Section 28, Township 7  
South, Range 4 East, Baldwin County, Alabama; run thence  
South 89 degrees 29 minutes 04 seconds East along the North  
line of Section 28, Township 7 South, Range 4 East, as  
surveyed by McNeil Robinson (Ala. Reg. No. 1065) for the City  
of Foley Industrial Park, plat dated July 20, 1979, for 940.50  
feet to the West right of way of Vulcan Street; run thence  
South 01 degrees 33 minutes 48 seconds West along the  
West right of way of Vulcan Street for 10.17 feet to a point  
where the South right of way of Section Avenue, if extended,  
would intersect the West right of way of Vulcan Street; run  
thence due East along the South right of way of Section  
Avenue for 370.32 feet to the point of beginning; continue  
thence due East along said right of way for 760.0 feet to the  
West right of way of Poplar Street; run thence South 01  
degrees 05 minutes 03 seconds West along said right of way  
of Poplar Street for 610.0 feet; run thence due West for 760.0  
feet to a point; run thence North 01 degrees 05 minutes 03  
seconds East for 610.0 feet to the point of Beginning. Said  
land being in the City of Foley, Baldwin County, Alabama, and  
containing 10.6409 acres, more or less.

**THIS CONVEYANCE WAS PREPARED WITHOUT THE BENEFIT  
OF A TITLE EXAMINATION.**

**SUBJECT TO THE FOLLOWING:**

1. Subject to reservation of all interest in and to all oil, gas and mineral rights as contained in deed recorded in Real Book 77, Page 223.
2. Subject to oil, gas and mineral lease recorded in Deed Book 416, Page 92.
3. Right of way recorded in Deed Book 383, Page 586 for Section Avenue. No portion of the subject property lies in the subject right of way.
4. Any matters which a current and accurate survey would disclose.
5. Any recorded restrictions, covenants and easements of record not specifically set forth herein.
6. All matters of Public record as recorded in the Office of the Judge of Probate, Baldwin County, Alabama.
7. Previous Reservation of all Mineral Rights.

The recording references refer to the records in the Office of the Judge of Probate of Baldwin County, Alabama, unless otherwise indicated.

Together with any and all singular the rights, privileges, tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining; **TO HAVE AND TO HOLD** the same unto the said Grantee, and to its successors and/or assigns, forever.

This conveyance is made subject to restrictive covenants and easements applicable to said property of record in the said Probate Court records.

And, except as to the above, and the taxes hereafter falling due, the said Grantor, for itself and for its successors and assigns, hereby covenants with the Grantee that it is seized of an indefeasible estate in fee simple in and to said property, that said property is free and clear of all encumbrances and that it does hereby **WARRANT AND WILL**

FOREVER DEFEND the title to said property, and the possession thereof, unto the said Grantee, its successors and assigns, against the lawful claims of all persons, whomsoever.

IN WITNESS WHEREOF, the said Grantor by John Koniar as its Mayor, who is authorized to execute this conveyance, has hereunto set his hand and seal this the 17th day of February, 2014.

CITY OF FOLEY, ALABAMA

BY: [Signature]  
JOHN KONIAR

AS ITS: MAYOR



STATE OF ALABAMA )  
COUNTY OF BALDWIN )

I, the undersigned Notary Public, in and for said State and County, hereby certify that **John Konair**, as Mayor of the **CITY OF FOLEY, ALABAMA**, the Grantor herein, whose name is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of said conveyance, executed with full authority and voluntarily on the day same bears date for and as an act of said City.

Given under my hand and seal this the 17th day of February, 2014.

[Signature]

NOTARY PUBLIC

Commission Expires:



**GRANTEE'S ADDRESS:**  
THE CITY OF FOLEY PUBLIC  
FACILITIES COOPERATIVE DISTRICT  
P.O. Box 1750  
Foley, Alabama 36536

THIS INSTRUMENT PREPARED BY:  
MISSTY C. GRAY  
ADAMS AND REESE LLP  
Post Office Box 1348  
Mobile, Alabama 36633  
(251) 433-3234 telephone  
(251) 438-7733 facsimile



## PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT (the "Agreement") is made to be effective as of the Effective Date (as hereinafter defined) by and among the following parties:

SELLER: THE CITY OF FOLEY PUBLIC FACILITIES COOPERATIVE DISTRICT, an Alabama public corporation ("Seller"); and,

PURCHASER: COASTAL ALABAMA FARMERS' AND FISHERMAN'S MARKET, an Alabama public corporation ("Purchaser").

WHEREAS, Seller has acquired or will acquire title to certain parcels of real estate situated in Baldwin County, Alabama, and more particularly described in Exhibit A attached hereto and made a part hereof ("Property"); and

WHEREAS, Seller desires to sell and Purchaser desires to purchase the Property.

NOW THEREFORE, for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration to Seller in hand paid by Purchaser, the receipt and sufficiency of which are hereby acknowledged, Seller agrees to sell and Purchaser agrees to purchase the Property, upon the terms and conditions set forth below:

1. Purchase Price. Seller shall sell to Purchaser and Purchaser shall purchase from Seller the Property for a total of Three Million Two Hundred Fifty Thousand and No/100ths Dollars (\$3,250,000.00) ("Purchase Price"). The Purchase Price shall be payable in U.S. Dollars on the Effective Date.
2. Title and Survey. Purchaser shall purchase, at its sole expense, any title insurance and/or surveys it desires to obtain with respect to the Property.
3. Purchaser's Investigation Rights. Seller hereby grants to Purchaser and to Purchaser's agents, employees and representatives, a continuing right of reasonable access, after reasonable notice to Seller and at reasonable times, for the purpose of conducting such surveys, engineering, geotechnical and environmental inspections and other investigations, evaluations, studies, tests and measurements (collectively the "Investigations") as Purchaser, or any prospective investor or lender, deems necessary or advisable. If any Investigation adversely disturbs the physical characteristics of the Property in any material respect, and Purchaser fails to purchase the Property under this Agreement, Purchaser shall restore the Property to substantially the same condition as existed prior to such Investigation. Purchaser's obligations hereunder shall survive termination of this Agreement.
4. Purchaser's Investigation Indemnity. Purchaser shall keep the Property free and clear of any liens, and will indemnify, defend and hold Seller harmless from all claims and liabilities asserted against Seller, as a result of Purchaser's exercise of its rights of access

and investigation; provided, however, that such indemnity shall not cover or extend to: (i) any claims of diminution in the value of the Property as a consequence of the results revealed by Purchaser's Investigations; or (ii) the exposure or release of Hazardous Substances that were located in, on, under or about the Property prior to Purchaser's entering the Property to conduct the Investigations. The obligations of the Purchaser under this paragraph shall survive any termination of this Agreement.

5. Time and Place of Closing. Closing of the transaction contemplated hereby ("Closing") shall be held no later than one hundred eighty (180) days after the Effective Date, unless extended by the written consent of the Purchaser and Seller, at a place and time agreed upon by the Purchaser and Seller. At Closing, Seller and Purchaser shall perform the obligations set forth in this Agreement, the performance of which obligations shall be concurrent conditions.
6. Obligations at Closing. At Closing, Purchaser shall pay: (i) deed taxes and other charges for recording Seller's deed, (ii) all legal, accounting and other professional and third party fees incurred by Purchaser in connection with this Agreement and the Closing, and (iii) any title insurance premiums and related charges. At Closing, Seller shall pay all legal, accounting and other professional and third party fees incurred by Seller in connection with this Agreement and the Closing. Property taxes, if any, will be prorated at Closing.
7. Conveyance. Seller shall convey to Purchaser good and marketable fee simple title to the Property by statutory warranty deed, free of all encumbrances except for the following: (i) the encumbrances set forth on Exhibit B attached hereto and incorporated herein by reference, (ii) taxes for the year in which the Property is conveyed and all years thereafter, and (iii) the zoning classification of the Property on the date hereof (Items (i), (ii), and (iii) collectively referred to as "Permitted Encumbrances").
8. Representations and Warranties of Seller. Seller hereby represents and warrants to Purchaser that Seller is an Alabama municipal corporation, formed and in good standing under the laws of the State of Alabama and has the full municipal corporation power and authority to convey the Property as provided in this Agreement and to carry out Seller's obligations hereunder, and all requisite action necessary to authorize Seller to enter into this Agreement and to carry out its obligations hereunder have been, or by the Closing will have been taken.
9. Representations and Warranties of Purchaser. Purchaser hereby represents and warrants to Seller that Purchaser is an Alabama public corporation, formed and in good standing under the laws of the State of Alabama and has the full power and authority to purchase the Property as provided in this Agreement and to carry out Purchaser's obligations hereunder, and all requisite action necessary to authorize Purchaser to enter into this Agreement and to carry out its obligations hereunder have been, or by the Closing will have been taken.
10. Disclaimers by Seller. Purchaser acknowledges and agrees that, except as expressly set forth in this Agreement and in any conveyance deed of the Property from Seller to

Purchaser, Seller has not made, does not make, and specifically disclaims, any representations or warranties, whether express or implied, concerning or with respect to the nature, quality or condition of the Property, the income to be derived therefrom, the suitability of the same for Purchaser's purposes, the compliance therewith with any applicable laws, the habitability, merchantability or fitness for a particular purpose of the Property, or any other matter with respect to the Property. Purchaser further acknowledges and agrees that except for the representations and warranties of Seller set forth in this Agreement, the sale of the Property as provided for herein is made on a "as is -where is" basis. Seller hereby agrees to assign to Purchaser at Closing any representations and warranties Seller receives from third parties regarding the Property.

11. Conditions to Purchaser's Obligation to Close. The following are the conditions to Purchaser's obligations under this Agreement to close: (i) as of the Closing, Seller shall have performed all the obligations under this Agreement in all material respects.
12. Conditions to Seller's Obligation to Close. The following are the conditions to Seller's obligations under this Agreement to close: (i) as of the Closing, Purchaser shall have performed all the obligations under this Agreement in all material respects.
13. Default by Purchaser. In the event that the Purchaser should fail to consummate this Agreement for any reason, Seller's sole remedy shall be the right to terminate this Agreement.
14. Default by Seller. In the event that Seller should fail to consummate this Agreement for any reason, Purchaser's sole remedy shall be the right to terminate the Agreement.
15. Real Estate Commissions. Neither Seller nor Purchaser has contracted with any real estate broker, finder or similar person in connection with the transaction contemplated hereby. To the actual knowledge of Seller and Purchaser, no Acquisition Fees (as hereafter defined) have been paid or are due and owing to any person or entity. As used herein "Acquisition Fees" shall mean all fees paid to any person or entity in connection with the selection and purchase of the Property, including real estate commissions, selection fees, non-recurring management and start-up fees, development fees or any other fee of similar nature. To the extent allowed by law, Seller and Purchaser, each, hereby agrees to indemnify and hold harmless the other from and against any and all claims for Acquisition Fees or similar charges with respect to this transaction, arising by, through or under the indemnifying party and each further agrees to indemnify and hold harmless the other from any loss or damage resulting from an inaccuracy in the representations contained in this Section 15. This indemnification agreement of the parties shall survive the Closing.
16. Modifications. This Agreement cannot be changed orally, and no executory agreement shall be effective to waive, change, modify or discharge it in whole or in part unless such executory agreement is in writing and is signed by the parties against whom enforcement of any waiver, change, modification or discharge is sought.

17. Notice. All notices, consents, requests, declarations, designations, approvals, reports, and other communications required or provided for by this Agreement shall be given in writing to the other party at the addresses set forth below, or at such other address as either party shall designate for itself by notice to the other party hereunder:

Seller:

The City of Foley Public Facilities  
Cooperative District  
Attn: Charles J. Ebert, III, Chairman  
407 East Laurel Street  
Foley, Alabama 36535

Purchaser:

Coastal Alabama Farmers' and Fishermen's  
Market  
Attn: John Koniar, President  
407 East Laurel Street  
Foley, Alabama 36535

18. Calculation of Time Periods. Unless otherwise specified, in computing any period of time described in this Agreement, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday or legal holiday.
19. Time of Essence. Seller and Purchaser agree that time is of the essence of this Agreement.
20. Successors and Assigns. The terms and provisions of this Agreement are to apply to and bind the permitted successors and assigns of the parties hereto.
21. Entire Agreement. This Agreement, including the Exhibits, contains the entire agreement between the parties pertaining to the subject matter hereof and fully supersedes all prior agreements and understandings between the parties pertaining to such subject matter.
22. Further Assurances. Each party agrees that it will without further consideration execute and deliver such other documents and take such other action, whether prior or subsequent to Closing, as may be reasonably requested by the other party to consummate more effectively the purposes or subject matter of this Agreement. Without limiting the generality of the foregoing, Purchaser shall, if requested by Seller, execute acknowledgments of receipt with respect to any materials delivered by Seller to Purchaser with respect to the Property.



23. Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. The counterparts of this Agreement may be executed and delivered by e-mail or facsimile signature by any of the parties to any other party and the receiving party may rely on the receipt of such document so executed and delivered by facsimile as if the original had been received. It shall be necessary to account for only one such counterpart in proving this Agreement.
24. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall nonetheless remain in full force and effect.
25. Applicable Law. THIS AGREEMENT SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE SUBSTANTIVE FEDERAL LAWS OF THE UNITED STATES AND THE LAWS OF THE STATE OF ALABAMA.
26. Waiver. No waiver by any party of any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach by the other party of the same or any other provision. Either party's consent to or approval of any act shall not be deemed to render unnecessary the obtaining of such party's express written consent to or approval of any subsequent act by the other party.
27. No Third Party Beneficiary. The provisions of this Agreement and of the documents to be executed and delivered at Closing are and will be for the benefit of Seller and Purchaser only and are not for the benefit of any third party, and accordingly, no third party shall have the right to enforce the provisions of this Agreement or of the documents to be executed and delivered at Closing.
28. Exhibits and Schedules. The following schedules or exhibits attached hereto shall be deemed to be an integral part of this Agreement:
- Exhibit A - Property Description  
Exhibit B - Permitted Encumbrances
29. Captions. The section headings appearing in this Agreement are for convenience of reference only and are not intended, to any extent and for any purpose, to limit or define the text of any section or any subsection hereof.
30. Construction. The parties acknowledge that the parties and their counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto.

31. Authority. Each individual executing this Agreement on behalf of a party hereto represents and warrants that he/she is duly authorized to execute and deliver this Agreement on behalf of said party and that this Agreement is binding upon said party in accordance with its terms.
32. Effective Date. The date of execution by Seller shall be deemed the effective date of this Agreement (the "Effective Date").
33. Survival of Representations and Warranties. All of the representations and warranties and covenants contained in this Agreement shall survive the Closing.

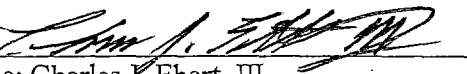
[Signature Page to Follow]

[Signature Page for Purchase Agreement]

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement  
effective as of July 11, 2014.

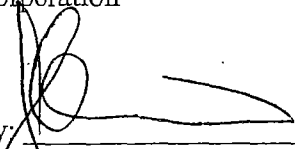
**SELLER:**

THE CITY OF FOLEY PUBLIC FACILITIES  
COOPERATIVE DISTRICT, an Alabama Public  
Corporation

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

**PURCHASER:**

COASTAL ALABAMA FARMERS' AND  
FISHERMEN'S MARKET, an Alabama Public  
Corporation

By:   
Name: John Koniar  
As its: President

## **EXHIBIT A**

### **PROPERTY DESCRIPTION**

The following described real property situated in the County of Baldwin, State of Alabama:

Commencing at a point where the centerline of the L & N Railroad intersects the North line of Section 28, Township 7 South, Range 4 East, Baldwin County, Alabama; run thence South 89 degrees 29 minutes 04 seconds East along the North line of Section 28, Township 7 South, Range 4 East, as surveyed by McNeil Robinson (Ala. Reg. No. 1065) for the City of Foley Industrial Park, plat dated July 20, 1979, for 940.50 feet to the West right of way of Vulcan Street; run thence South 01 degrees 33 minutes 48 seconds West along the West right of way of Vulcan Street for 10.17 feet to a point where the South right of way of Section Avenue, if extended, would intersect the West right of way of Vulcan Street; run thence due East along the South right of way of Section Avenue for 370.32 feet to the point of beginning; continue thence due East along said right of way for 760.0 feet to the West right of way of Poplar Street; run thence South 01 degrees 05 minutes 03 seconds West along said right of way of Poplar Street for 610.0 feet; run thence due West for 760.0 feet to a point; run thence North 01 degrees 05 minutes 03 seconds East for 610.0 feet to the point of Beginning. Said land being in the City of Foley, Baldwin County, Alabama, and containing 10.6409 acres, more or less.

## **EXHIBIT B**

### **PERMITTED ENCUMBRANCES**

1. Subject to reservation of all interest in and to all oil, gas and mineral rights as contained in deed recorded in Real Book 77, Page 223.
2. Subject to oil, gas and mineral lease recorded in Deed Book 416, Page 92.
3. Right of way recorded in Deed Book 383, Page 586 for Section Avenue. No portion of the subject property lies in the subject right of way.
4. Any matters which a current and accurate survey would disclose.
5. Any recorded restrictions, covenants and easements of record not specifically set forth herein.
6. All matters of Public record as recorded in the Office of the Judge of Probate, Baldwin County, Alabama.
7. Previous Reservation of all Mineral Rights.

The recording references refer to the records in the Office of the Judge of Probate of Baldwin County, Alabama, unless otherwise indicated.

17425

STATE OF ALABAMA )  
COUNTY OF BALDWIN )

BALDWIN COUNTY, ALABAMA  
TIM RUSSELL PROBATE JUDGE  
Filed/cert. 7/11/2014 1:11 PM  
TOTAL \$ 15.00  
3 Pages

1466496

WARRANTY DEED



Mortgage Recorded Simultaneously

KNOW ALL MEN BY THESE PRESENTS that the **THE CITY OF FOLEY PUBLIC FACILITIES COOPERATIVE DISTRICT**, the Grantor, for and in consideration of the sum of **TEN & 00/100 (\$10.00) DOLLARS** and other good and valuable consideration hereby acknowledged to have been paid to the Grantor by **COASTAL ALABAMA FARMERS' AND FISHERMEN'S MARKET, INC.** the Grantee, does hereby **GRANT, BARGAIN, SELL AND CONVEY** unto the said Grantee, its successors and/or assigns, subject to the provisions hereinafter contained, all that real property in the County of Baldwin, State of Alabama, described as follows:

Commencing at a point where the centerline of the L & N Railroad intersects the North line of Section 28, Township 7 South, Range 4 East, Baldwin County, Alabama; run thence South 89 degrees 29 minutes 04 seconds East along the North line of Section 28, Township 7 South, Range 4 East, as surveyed by McNeil Robinson (Ala. Reg. No. 1065) for the City of Foley Industrial Park, plat dated July 20, 1979, for 940.50 feet to the West right of way of Vulcan Street; run thence South 01 degrees 33 minutes 48 seconds West along the West right of way of Vulcan Street for 10.17 feet to a point where the South right of way of Section Avenue, if extended, would intersect the West right of way of Vulcan Street; run thence due East along the South right of way of Section Avenue for 370.32 feet to the point of beginning; continue thence due East along said right of way for 760.0 feet to the West right of way of Poplar Street; run thence South 01 degrees 05 minutes 03 seconds West along said right of way of Poplar Street for 610.0 feet; run thence due West for 760.0 feet to a point; run thence North 01 degrees 05 minutes 03 seconds East for 610.0 feet to the point of Beginning. Said land being in the City of Foley, Baldwin County, Alabama, and containing 10.6409 acres, more or less.

**THIS CONVEYANCE WAS PREPARED WITHOUT THE BENEFIT OF A TITLE EXAMINATION.**

**SUBJECT TO THE FOLLOWING:**

1. Subject to reservation of all interest in and to all oil, gas and mineral rights as contained in deed recorded in Real Book 77, Page 223.
2. Subject to oil, gas and mineral lease recorded in Deed Book 416, Page 92.
3. Right of way recorded in Deed Book 383, Page 586 for Section Avenue. No portion of the subject property lies in the subject right of way.
4. Any matters which a current and accurate survey would disclose.
5. Any recorded restrictions, covenants and easements of record not specifically set forth herein.
6. All matters of Public record as recorded in the Office of the Judge of Probate, Baldwin County, Alabama.
7. Previous Reservation of all Mineral Rights.

The recording references refer to the records in the Office of the Judge of Probate of Baldwin County, Alabama, unless otherwise indicated.

Together with any and all singular the rights, privileges, tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining; **TO HAVE AND TO HOLD** the same unto the said Grantee, and to its successors and/or assigns, forever.

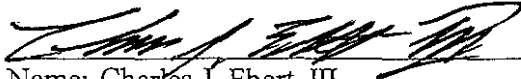
This conveyance is made subject to restrictive covenants and easements applicable to said property of record in the said Probate Court records.

And, except as to the above, and the taxes hereafter falling due, the said Grantor, for itself and for its successors and assigns, hereby covenants with the Grantee that it is seized of an indefeasible estate in fee simple in and to said property, that said property is free and clear of all encumbrances and that it does hereby **WARRANT AND WILL FOREVER DEFEND** the title to said property, and the possession thereof, unto the said Grantee, its successors and assigns, against the lawful claims of all persons, whomsoever.

This deed is effective as of the 11<sup>th</sup> day of July, 2014

IN WITNESS WHEREOF, the said Grantor by Charles J. Ebert, II as its Chairman, who is authorized to execute this conveyance, has hereunto set his hand and seal this the 2nd day of July, 2014.

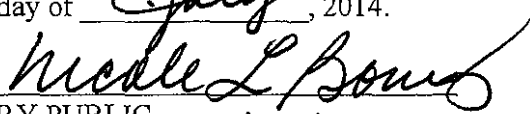
**THE CITY OF FOLEY PUBLIC FACILITIES  
COOPERATIVE DISTRICT**

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

**STATE OF ALABAMA )  
COUNTY OF BALDWIN )**

I, the undersigned Notary Public, in and for said State and County, hereby certify that **Charles J. Ebert, III**, as Chairman of **The City Of Foley Public Facilities Cooperative District**, the Grantor herein, whose name is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of said conveyance, executed with full authority and voluntarily on the day same bears date for and as an act of said Cooperative District.

Given under my hand and seal this the 2nd day of July, 2014.

  
NOTARY PUBLIC  
Commission Expires: 1/18/2017

**GRANTEE'S ADDRESS:**

**COASTAL ALABAMA FARMERS'  
AND FISHERMEN'S MARKET  
P.O. Box 1750  
Foley, Alabama 36536**

**THIS INSTRUMENT PREPARED BY:**

**Rusty Russell  
ADAMS AND REESE LLP  
Post Office Box 1348  
Mobile, Alabama 36633  
(251) 433-3234 telephone  
(251) 438-7733 facsimile**



**REIMBURSEMENT AGREEMENT**

THIS REIMBURSEMENT AGREEMENT (this “Agreement”) is made as of the 11th day of July, 2014 (the “Effective Date”), by and between COASTAL ALABAMA FARMERS’ AND FISHERMEN’S MARKET, INC., an Alabama nonprofit corporation (“Borrower”), THE CITY OF FOLEY PUBLIC FACILITIES COOPERATIVE DISTRICT, an Alabama public corporation (“CFPFCD”).

Recitals

A. Prior to the Effective Date, Borrower acquired certain real property located in Foley, Alabama, commonly known as the “Farmers Market Property,” from CPFCD pursuant to the terms of a Purchase Agreement, Deed, Assignment and Assumption of Lease, and Promissory Note.

B. The purchase price paid for the Farmers Market Property did not exceed the estimated value of such property set forth in an appraisal dated October 27, 2013.

C. CPFCD has made or incurred expenditures between October 28, 2013 and the Effective Date, inclusive, in an amount not less than \$283,109 in connection with, and directly related to, the development of the Farmers Market Property (the “Farmers Market Expenditures”).

D. Invoices, receipts, checks, and/or other documentation substantiating in full the Farmers Market Expenditures are attached hereto as Exhibit A and made apart hereof.

E. On the Effective Date, Borrower acquired certain real property located in Foley, Alabama, commonly known as the “Peavey Property,” from CPFCD pursuant to the terms of a Purchase Agreement, Deed, and Assignment and Assumption of Lease.

F. The purchase price paid for the Peavey Property did not exceed the estimated value of such property set forth in an appraisal dated November 10, 2013.

G. CPFCD has made or incurred expenditures between November 11, 2013 and the Effective Date, inclusive, in an amount not less than \$500,000 in connection with, and directly related to, the development of the Peavey Property (the “Peavey Expenditures”).

H. Invoices, receipts, checks, and/or other documentation substantiating in full the Peavey Expenditures are attached hereto as Exhibit B and made apart hereof.

I. At the time the Farmers Market Expenditures and the Peavey Expenditures (collectively, “Incurred Expenditures”) were incurred, CPFCD intended and expected to be reimbursed from the proceeds of certain loans (the “Loans”) being made by Pacesetter CDE X, LLC, a Texas limited liability company, to Borrower on the Effective Date.

J. Borrower has benefitted from the Incurred Expenditures, and intends to reimburse CPFCD \$460,225 of such expenditures out of the proceeds of the Loans, with the remaining

amount of such Incurred Expenditures (*i.e.*, \$322,884) to be deemed and treated as an in-kind contribution from CFPFCD to Borrower.

### Agreement

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the parties hereby acknowledge, agree and confirm that all of the above recitals are true, correct and complete and hereby covenant and agree as follows:

1. Reimbursement. In order to reimburse CFPFCD for Incurred Expenditures, Borrower hereby agrees to pay on the Effective Date to CFPFCD the amount of \$460,225.

2. In-Kind Contribution. Borrower acknowledges and agrees that the Incurred Expenditures for which it is not reimbursing CFPFCD pursuant to Section 1, such expenditures totaling \$322,884, shall be deemed and treated as an in-kind contribution from CFPFCD to Borrower

3. Representations and Warranties of CFPFCD. CFPFCD hereby represents and warrants to Borrower that:

(a) the Farmers Market Expenditures were validly and properly incurred and/or accrued by CFPFCD between October 28, 2013 and the Effective Date, inclusive, in connection with and directly related to the development of the Farmers Market Property, and that CFPFCD has provided detailed accounting information with respect to the Farmers Market Expenditures; and

(b) the Peavey Expenditures were validly and properly incurred and/or accrued by CFPFCD between November 11, 2013 and the Effective Date, inclusive, in connection with and directly related to the development of the Peavey Property, and that CFPFCD has provided detailed accounting information with respect to the Peavey Expenditures

4. 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.

5. 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 under this Agreement.

6. Relationship between the Parties. The provisions of this Agreement are not intended to create, nor shall they in any way be interpreted to create, a joint venture, a partnership, or any other similar relationship between the parties.

7. Titles of Sections. All titles or headings to articles, sections, subsections or other divisions of this Agreement 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.

8. Section References. References in this Agreement to sections are intended to refer to sections of this Agreement, unless otherwise specifically stated.

9. Governing Law. THE VALIDITY OF THIS AGREEMENT, THE CONSTRUCTION, INTERPRETATION, AND ENFORCEMENT HEREOF, AND THE RIGHTS OF THE PARTIES 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.

10. Entire Agreement. This Agreement (including the recitals and exhibits, 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.

11. Counterparts. This Agreement 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 Reimbursement Agreement as of the Effective Date.

**BORROWER:**

COASTAL ALABAMA FARMERS' AND  
FISHERMEN'S MARKET, INC., an Alabama  
nonprofit corporation

By: 

Name: John E. Koniar

Title: President

[COUNTERPART SIGNATURE PAGE TO REIMBURSEMENT AGREEMENT]

**CFPFCD:**

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

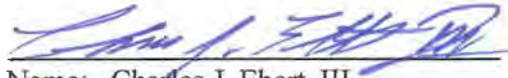
By:   
Name: Charles J. Ebert, III  
Title: Chairman

EXHIBIT A

Farmers Market Expenditures

[attached behind]

Post Date	Invoice #	Vendor	Reference	Description	Amount
10/16/2013	57032	R & S PAVING & GRADING, INC	CHK: 001057	BUILDING AREA ONLY	31,040.00
10/16/2013	57037	R & S PAVING & GRADING, INC	CHK: 001057	TIME & MATERIAL	21,818.80
10/16/2013	57034	R & S PAVING & GRADING, INC	CHK: 001057	HWY 20 ROADWAY	104,718.20
10/30/2013	377076	REYNOLDS ACE HARDWARE	CHK: 001078	6-KEY BLANKS/FARMER'S MKT	11.94
10/30/2013	377128	REYNOLDS ACE HARDWARE	CHK: 001078	SHEETMETAL SCREWS/FARMER'S MKT	22.60
10/30/2013	72-0002314-IN	MISCELLANEOUS	CHK: 001072	KELLEY BROS. HARDWARE:4-SIGNS	72.00
10/30/2013	376981	REYNOLDS ACE HARDWARE	CHK: 001078	SPRAYPAINT,PLAST NUMBERS	77.09
10/30/2013	2595770-2131-6	WASTE MANAGEMENT OF ALABAMA	CHK: 001084	30YD C & D ROLLOFF	257.50
10/30/2013	10/29/13	JOHNNY T CHRISTOPHER	CHK: 001070	PAINTING INTERIOR OF COPULAS	600.00
10/30/2013	MCS#10	MCS CONTRACTING, INC	CHK: 001075	8.5% PROJECT MANAGEMENT FEE	2,542.17
10/30/2013	APPRAISAL#1	WELDON RUSHING PAYNE	CHK: 001064	APPRAISAL REPORT/FARMER'S MKT	3,950.00
10/30/2013	APPRAISAL#2	WELDON RUSHING PAYNE	CHK: 001065	APPRAISAL REPORT/FARMER'S MKT	3,950.00
10/30/2013	9933/BAL DUE	QUALITY SIGN COMPANY, INC.	CHK: 001076	CAFFM ROAD SIGN/FARMER'S MKT	3,973.67
10/30/2013	57052	R & S PAVING & GRADING, INC	CHK: 001077	TIME & MATERIAL	4,617.92
10/30/2013	APPRAISAL#3	WELDON RUSHING PAYNE	CHK: 001066	APPRAISAL REPORT/FARMER'S MKT	4,800.00
10/30/2013	APPRAISAL#4	WELDON RUSHING PAYNE	CHK: 001067	APPRAISAL REPORT/FARMER'S MKT	4,800.00
10/30/2013	10202900	LANDSCAPE WORKSHOP, INC.	CHK: 001074	INSTL PLANTS,IRRIG/FARMERS MKT	24,248.80
11/13/2013	2596822-2131-4	WASTE MANAGEMENT OF ALABAMA	CHK: 001098	C & D ROLL-OFF	257.08
11/13/2013	7092579-00	SOUTHERN PIPE & SUPPLY CO., IN	CHK: 001094	MATERIAL	565.00
11/13/2013	7092452-00	SOUTHERN PIPE & SUPPLY CO., IN	CHK: 001094	MATERIAL	584.43
11/13/2013	7092516-00	SOUTHERN PIPE & SUPPLY CO., IN	CHK: 001094	MATERIAL	960.71
11/13/2013	7092536-00	SOUTHERN PIPE & SUPPLY CO., IN	CHK: 001094	MATERIAL	2,129.09
11/13/2013	7092529-00	SOUTHERN PIPE & SUPPLY CO., IN	CHK: 001094	MATERIAL	2,602.44
11/13/2013	MCS#11	MCS CONTRACTING, INC	CHK: 001091	8.5% PROJECT MANAGEMENT FEE	2,722.49
11/13/2013	1037002	WARREN AVERETT, LLC	CHK: 001097	PROF SERV/CAFFM/10/31/13	2,790.00
11/13/2013	13-42	GRAY MATTER CONSULTING, LLC	CHK: 001086	3RD/4TH QTR GRANT ADMIN FEE	7,937.52
11/13/2013	1983	WATKINS ACY STRUNK DESIGN, INC	CHK: 001100	PROF SERV/REIMBURSABLE EXP	8,500.00
11/13/2013	57079	R & S PAVING & GRADING, INC	CHK: 001093	TIME & MATERIAL	16,430.50
11/26/2013	A-134337	BALDWIN PORTABLE TOILETS, INC	CHK: 001107	REGULAR UNIT PORTABLE TOILET	9.68
11/26/2013	MCS#12	MCS CONTRACTING, INC	CHK: 001109	8.5% PROJECT MANAGEMENT FEE	537.77
12/04/2013	190370-00	MATHES OF ALABAMA	CHK: 001115	STEEL COVER/CAFFM	12.66
12/04/2013	MCS#13	MCS CONTRACTING, INC	CHK: 001116	8.5% PROJECT MANAGEMENT FEE	37.20
12/04/2013	7156567-00	SOUTHERN PIPE & SUPPLY CO., IN	CHK: 001118	ELECT WATER HEATER/CAFFM	425.00
12/17/2013	17188438 RI	MAYER ELECTRIC FINANCIAL CORP	CHK: 001126	ELECTRICAL MATERIALS	(197.51)
12/17/2013	17190361 RI	MAYER ELECTRIC FINANCIAL CORP	CHK: 001126	ELECTRICAL MATERIALS	(85.64)
12/17/2013	17154536 RI	MAYER ELECTRIC FINANCIAL CORP	CHK: 001126	ELECTRICAL MATERIALS	(6.36)
12/17/2013	17033651 RI	MAYER ELECTRIC FINANCIAL CORP	CHK: 001126	ELECTRICAL MATERIALS	7.64
12/17/2013	MCS#14	MCS CONTRACTING, INC	CHK: 001128	8.5% PROJECT MANAGEMENT FEE	87.16
12/17/2013	17132624 RI	MAYER ELECTRIC FINANCIAL CORP	CHK: 001126	ELECTRICAL MATERIALS	206.89
12/17/2013	17055781 RI	MAYER ELECTRIC FINANCIAL CORP	CHK: 001126	ELECTRICAL MATERIALS	251.28
12/17/2013	17090683 RI	MAYER ELECTRIC FINANCIAL CORP	CHK: 001126	ELECTRICAL MATERIALS	397.44
12/17/2013	1707458 RI	MAYER ELECTRIC FINANCIAL CORP	CHK: 001126	ELECTRICAL MATERIALS	451.68

**TOTAL:**

**259,114.84**

Post Date	Invoice	Vendor Name	Reference	Description	Amount
05/08/2014	RES#93	ADEM	CHK: 001189	PERMIT APP/FARMERS MKT PHII	1,155.00
04/09/2014	182865A	HATCH MOTT MACDONALD ALABAMA,	CHK: 001177	SURVEYING TASK 1 ALTA	5,200.00
11/20/2013	11307	MCCOLLOUGH ARCHITECTURE, INC	CHK: 001104	PROF SERVICES/FARMER'S MKT	3,125.00
12/17/2013	11313	MCCOLLOUGH ARCHITECTURE, INC	CHK: 001127	PROF SERV/CAFFM PHII	3,437.50
9/30/2013	57096	R & S PAVING & GRADING, INC	CHK:	STORED MATERIAL/CAFFM-PH II	4,856.56
12/17/2013	130705	RABER SURVEYING	CHK: 001129	WILSON PECAN PROP/CAFFM PHII	1,500.00
05/14/2014	2005774	TTL, INC	CHK: 001196	CBMPP ASSISTANCE/CAFFM PH 11	950.00
03/18/2014	111145/FINAL/PY#1	VOLKERT, INC	CHK: 001171	ESA 31 ACRES BECK ROAD	2,000.00
06/10/2014	2167	WATKINS ACY STRUNK DESIGN INC	CHK: 001217	DESIGN DRAWING/FARMER MKT PHII	520.00
04/09/2014	14-113	WETLAND RESOURCES	CHK: 001180	WETLAND DETERMINATION/CAFFM	1,250.00

**TOTAL:**

**23,994.06**



EXHIBIT B

Peavey Expenditures

[attached behind]

Date Paid	Invoice #	Vendor	Check#	Description	Amount
5/22/2014	231317	Fastener Systems, Inc.	1199	Materials for GCP buildout/Peavey Bldg	11,422.99
5/22/2014	330	Green Span Profiles/Capital Business Credit	1200	Materials for GCP cold storage/Peavey Bldg	2,495.11
5/22/2014	350	Green Span Profiles/Capital Business Credit	1201	Materials for GCP cold storage/Peavey Bldg	105,576.23
6/12/2014	1	Marshall & Associates, LLC	1214	Contractor Pay Application No. 1	67,640.67
6/12/2014	116396	Climate Control of Pensacola, Inc.	1213	Walk-in collar and freezer equipment	155,440.00
6/12/2014	10001	Baldwin Concrete	1212	7 Bag Grout	95.00
6/12/2014	10002	Baldwin Concrete	1212	4000 PSI Cooler	5,508.00
6/12/2014	2	*Marshall & Associates, LLC (partial-GCP pays remainder)	1214	Contractor Pay Application No. 2	151,822.00
<b>TOTAL:</b>					<b>500,000.00</b>

## **AGREEMENT FOR LEASE**

**THIS AGREEMENT FOR LEASE** ("Lease") is made this \_\_\_\_\_ day of \_\_\_\_\_, 2013 (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 in the Coastal Alabama Farmers Fishermens Market (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**

Coastal Alabama Farmers and Fishermens Market

##### **1.1.1. ADDRESS OF LANDLORD**

407 East Laurel Avenue  
Foley, Alabama 36535  
Attn: Accounting Department

#### **1.2. TENANT**

Alescia Forland

##### **1.2.1. ADDRESS OF TENANT**

<b>Mailing:</b>	P.O. Box 871	<b>Physical:</b>	5201 S. Hickory St.
	Loxley, AL 36551		Loxley, AL 36551

##### **1.2.2. TENANT'S TRADE NAME**

Loxley Farm Market doing business as 4Land Family Market

#### **1.3. THE CAFFM**

The "CAFFM" shall be that certain Market known as Coastal Alabama Farmers and Fishermens Market. The CAFFM is 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 identified as **Building B Space B**, having a Gross Leasable Area (as such term is defined in Section 1.4.1 hereof) of approximately 6,000 square feet and located within the CAFFM. The exterior walls, roof and the area beneath the Premises are not 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) outside selling areas which are not heated or air conditioned; (ii) loading docks and truck ramps; (iii) management offices; (iv) security/police offices; (v) public restrooms/comfort stations; (vi) parking structures below or above grade; (vii) rooftop mechanical structures; (viii) elevator shafts; (ix) stairwells; (x) riser rooms; and (xi) lobbies, entrance areas, general pedestrian walkways and other floor space not intended to be leased to tenants for use as retail space. The Gross

Leasable Area of the Premises is measured from the exterior face of exterior walls and storefront framing, to the inside of masonry walls abutting Anchor Tenants (as such term is defined in Section 1.4.2 hereof), to the centerline of demising partitions and to the non-leasable side of demising partitions of sprinkler rooms. 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 period ("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 which is the earlier to occur of: (i) Ninety days (90) days following the Delivery Date; or (ii) the date Tenant opens the Premises for business to the public.

**1.7. DROP DEAD DATE**

In the event the Lease Term has not commenced on or before December 31st, 2015 (the "Drop Dead Date"), then this Lease shall be automatically null and void and neither Landlord nor Tenant shall have any liability or obligation to the other.

**1.8. USE.**

A full service Retail Farmers Market selling Fruits, Berries, Vegetables, Cheeses, Honey, Meats, Pork, Poultry, and Seafood including Value Added products including Breads, Jams, Pies, Cakes, Ice Cream as well as products found outside our region such as Banana's, Pineapples, and any other products normally found in a upscale Farmers Market including Wines and Beer.

**1.9. RENT.**

**1.9.1. BASE RENT**

"Base Rent" shall be:

INITIAL TERM	PER SQUARE FOOT	MONTHLY BASE RENT	ANNUAL BASE RENT
Lease Years 1-3	\$6.50/sf	\$3,250.00	\$39,000.00
Lease Years 4-7	\$7.00/sf	\$3,500.00	\$42,000.00
Lease Years 8-10	\$7.50/sf	\$3,750.00	\$45,000.00
FIRST OPTION PERIOD Lease Years 11-15	\$8.00/sf	\$4,000.00	\$48,000.00
SECOND OPTION PERIOD Lease Years 16-20	\$8.50/sf	\$4,250.00	\$51,00.00

**1.9.2. PERCENTAGE RENT**

None

**1.9.3. SUBSTITUTE RENT**

None

**1.10. SECURITY DEPOSIT**

None

**1.11. BROKER/BROKER'S FEE**

None

**2.0 TERM/COMMENCEMENT DATE/RELOCATION.**

**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) the Premises are yet to be constructed; (ii) the Premises shall be constructed in accordance with Exhibit B; and (iii) 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 fixtured, stocked and staffed within Ninety (90) 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. RELOCATION**

[Intentionally omitted]

## **3.0 USE**

Tenant agrees it shall use and occupy the Premises 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; provided, however, Landlord and Tenant hereby agree that it shall be reasonable for Landlord to withhold its consent if said new trade name conflicts with the trade name of any other tenant of the CAFFM at the time of the proposed change. 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) and, at all such times, Tenant shall keep the Premises fully manned and in full operation and shall in good faith maintain a complete and sufficient stock of new, first class merchandise of current style and type, attractive displays and with sufficient and competent personnel and with such materials and supplies as are necessary for the proper operation of the Premises. See Section 22.1 hereof regarding Rules and Regulations for the Market.

Notwithstanding anything contained herein to the contrary, Tenant shall have the right to close the Premises to business with the public on the following days:

### **3.1. REQUIRED OPERATING HOURS**

Tenant shall, at a minimum, be open and operating for business to the public from the Premises **six days per week, 10:00 a.m. – 5:00 p.m.** and closed on Sunday **OR** Monday ("Required Operating Hours"). If Tenant is not open for business to the public at anytime during the Required Operating Hours, then Tenant shall pay to Landlord as Additional Rent a fee of One Hundred and No/100 Dollars (\$100.00) per day for each and every day Tenant fails to be open for business to the public from the Premises for the Required Operating Hours "Required Operating Hours Fee". Said Required Operating Hours Fee shall be due and payable by Tenant within ten (10) days of Tenant's receipt of Landlord's invoice regarding the same. Landlord agrees to allow Tenant up to 12 days per year to be closed at Tenants discretion for Stocking, Holidays or other reason that Tenant deems necessary.

## **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 designated 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**

There shall be no Percentage Rent due under this Lease.

##### **4.2.1. GROSS SALES DEFINED**

The term "Gross Sales" as used herein is hereby defined to mean receipts from the gross sales of Tenant and of all licensees, concessionaires and subtenants of Tenant, from all business conducted upon or from the Premises by Tenant and all others, and whether such sales are evidenced by check, credit, charge account, exchange or the like, and shall include, without limitation, amounts received from the sale of goods, wares, merchandise and for services performed on, at or off the Premises, together with the amount of all orders taken or received at the Premises, whether such orders are filled from the Premises or elsewhere, and whether such sales are made by means of merchandise or other vending devices in the Premises. Each charge or sale upon installment or credit shall be included in Gross Sales only to the extent of that portion of payment received by Tenant during such month. No deductions shall be allowed for uncollectible credit accounts.

##### **4.2.2. GROSS SALES REPORTING**

##### **4.2.3. AUDIT OF TENANT'S GROSS SALES**

#### **4.3. ADDITIONAL RENT**

It is the intent of the parties that the Rent payable to Landlord is absolutely net of all expenses associated with the operation of the CAFFM and 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 as Additional Rent:

##### **4.3.1. TAXES**

Tenant's Pro Rata Share (as such term 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, 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's Pro Rata Share of the total cost to Landlord of all fire and extended coverage, liability coverage, workmen's compensation coverage, environmental liability coverage, business income and extra expense coverage and other insurance coverage carried by Landlord with respect to the CAFFM (collectively, "Insurance"). Landlord's good faith estimate of Tenant's Pro Rata

Share of Insurance for Lease Years 1-7 is not to exceed \$.50 per square foot of the Premises annually.

#### **4.3.3. COMMON AREA MAINTENANCE**

For the maintenance of the Common Area (as such term is defined Section 5.1 hereof) of the CAFFM, an amount equal to Tenant's Pro Rata Share of the CAFFM Operating Costs (as such term is defined in Section 5.5 hereof). Landlord shall establish the fiscal period for determining the CAFFM Operating Costs. Landlord's good faith estimate of Tenant's Pro Rata Share of CAFFM Operating Costs for Lease Year's 1-7 is \$1.00 per square foot of the premises annually. See Section 5.5.1 hereof regarding a cap on Tenant's Pro Rata Share of CAFFM Operating Costs.

#### **4.3.4. OTHER ADDITIONAL RENT**

All other sums of money or charges required to be paid by Tenant, including, but not limited to, utility charges billed to Tenant 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 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, 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, or if the Lease Term ends on any day other than December 31, 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.

##### **4.4.2. TENANT'S RIGHT TO AUDIT**

#### **4.5. TENANT'S PRO RATA SHARE**

Tenant's Pro Rata Share shall be determined by first deducting the contribution, if any, made by any Anchor Tenant of the CAFFM from the costs of the Taxes, Insurance or CAFFM Operating Costs and then multiplying the difference



by a fraction, the numerator of which shall be the Gross Leasable Area of the Premises and the denominator of which shall be the approximate Gross Leasable Area of the CAFFM exclusive of the Gross Leasable Area leased by Anchor Tenants. Tenant's Pro Rata Share is subject to adjustment by Landlord based on the foregoing formula if the Gross Leasable Area of the CAFFM is diminished by casualty, condemnation or similar takings or other events reducing the Gross Leasable Area or if the Gross Leasable Area is increased by additions to the CAFFM.

#### **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, loading facilities, sidewalks and/or walkways, elevators and escalators, bridges, stairs not contained in leased areas, public restrooms and comfort stations, fire, service and exit corridors and customer parking areas within the CAFFM 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. Landlord reserves the right to designate an area within the Common Area as tenant and employee 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 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 and shall not be deemed to be a warranty, representation or agreement on the part of Landlord that the CAFFM 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. 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. 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 or visibility of the Premises.

#### **5.5. COST OF MAINTENANCE**

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 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, 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, unless the same is billed directly to the tenants; 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, including paper supplies for restrooms located in the Common Area; the cost and expense of maintaining directory and pylon signage, if any, for the CAFFM; the cost and expense of security services, if any, as Landlord may provide; management fees; property owner association fees, if any, assessed to the CAFFM; and the cost and expense of personnel to implement such services and an administrative fee equal to fifteen percent (15%) of the total cost of operating and maintaining the Common Area. Notwithstanding the foregoing, the cost and expense of any capital items, as such term is defined by generally accepted accounting principles (GAAP), included in CAFFM Operating Costs shall be amortized on a straight-line basis over the useful life of the item.

#### **5.5.1. CAP ON CAFFM OPERATING COSTS**

Notwithstanding anything contained herein to the contrary, in no event shall Tenant's Pro Rata Share of CAFFM Operating Costs: (a) for Lease Year's 1-7 of the Term hereof (and any partial month, if any, preceding such Lease Year, on a per diem basis) exceed \$1.00 per square foot ("Years 1-7 CAM Cap"); and (b) beginning with Lease Year 8 of the Term hereof cannot increase by more than ten percent (10%) over Tenant's Pro Rata Share for the immediately preceding Lease Year ("CAM Cap"); provided, however, the cost and expense of security, snow and ice removal or utilities used and consumed in the Common Area shall be excluded from the Year's 1-7 CAM Cap.

#### **6.0 SIGNS**

The standards with which Tenant must comply regarding signs for the Premises are attached hereto as Exhibit D with Tenant acknowledging and agreeing that, as part of Landlord's development of the CAFFM, Tenant shall be required to install, at Tenant's sole cost and expense, certain signage for the Premises (*i.e.*, an exterior, storefront sign, a blade sign and signage for the rear, delivery/service door(s), if any, for the Premises). See Exhibit C attached hereto for required hours of illumination for Tenant's exterior, storefront signage. Tenant shall not place, erect or install any signs on any portion of the Premises nor allow to be erected or installed any signs, printed displays or show window lettering visible from outside the Premises without the prior written approval of Landlord. Landlord shall have complete authority over size, art work, design, color, taste, text and content of all signs, which authority may be arbitrarily exercised to deny the use of any sign or proposed sign. All such signs shall be maintained in a good and safe condition and appearance by Tenant, at its own expense. Upon the expiration or sooner termination of this Lease, Tenant shall, at its own expense, remove all signage from the Premises. Tenant shall repair and restore any damage to the Premises, either inside or outside, resulting from the erection, maintenance or removal of said signs, and in the event Tenant fails to do so, Landlord may make such repairs or removal which is 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. The Tenant agrees that it shall be subject to any and/or amendments to the Landlord's rules and

regulations if such are in place at such time as the Tenant may change, replace, upgrade or otherwise make alterations to its sign or signage during the term of the lease. The obligations of Tenant set forth in this Section shall survive expiration or earlier termination of this Lease.

## **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; and (ii) prior to beginning such work, Tenant shall submit to Landlord complete and detailed plans and specifications 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 Ten Thousand and No/100 Dollars (\$10,000.00) 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 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 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 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 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 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 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 or any part thereof, nor to subject Landlord's estate in the Premises or the CAFFM 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 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 in the CAFFM from time to time and at any time during the Lease Term, including multi-level parking facilities and to make alterations thereto and to build additional stories on any such buildings; provided, however, Landlord agrees not to make any such alterations or additions if the result of same would materially and adversely affect the access to or visibility of the Premises.

## **7.3. REPAIRS BY LANDLORD**

Landlord agrees to keep and maintain in good order and repair only the roof, structural components, exterior walls (excluding all signs, doors, windows and glass, including plate glass) and sprinkler systems of the Premises. 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 herein, 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 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. Tenant, at its expense, shall obtain a service contract for repairs and maintenance of the heating and air conditioning system that conforms to the warranty requirements of said system. Tenant shall provide Landlord with a current copy of said service contract. 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, the Premises, the building or the Common Area caused by the act or negligence of Tenant, its agents, contractors, employees 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 assessed due to Tenant's specific use of the Premises, including, without limitation, any impact fees or development fees assessed in connection with the Premises, the cost of gas, electricity, fuel, light, heat, power, telephone, 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 as Additional Rent for Tenant's proportionate 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, 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 the amounts equal to that required above for the commercial general liability insurance;

(b) Property insurance covering all trade fixtures, signs, plate glass, floor covering, decorative items, furniture, equipment and merchandise 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; and

(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 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 A, 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; 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 trade fixtures, signs, plate glass, floor covering, decorative items, furniture, equipment 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, 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 rate 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 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 Shopping Center or persons in or about the Premises or the CAFFM, 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.

### **11.3. INDEMNIFICATION OF TENANT**

Landlord hereby indemnifies and agrees to hold Tenant harmless against and from any and all claims for any loss or damage to Tenant arising from the Common Area from the negligence, willful misconduct or omission by Landlord or its agents, contractors or employees (provided such loss or damage is not caused by Tenant, its agents, contractors or employees), including all costs and reasonable attorneys' fees, whether at trial or on appeal, 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 Tenant by reason of such claim, Landlord, upon notice from Tenant, shall defend the same at Landlord's expense.

### **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 furniture and furnishings or on any fixtures or equipment removable by 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 retail 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 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.

### **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. The form of such Estoppel Certificate shall be in form and content substantially the same as set forth in Exhibit E hereto, or such other form as may be required by such purchaser or mortgagee of the CAFFM.

### **15.2. ATTORNMENT**

Tenant shall, in the event any proceedings are brought for the foreclosure of the CAFFM or the Premises or in the event of exercise of the power of sale under any mortgage made by Landlord covering the CAFFM 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 substantially the form attached hereto as Exhibit F, 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 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, as set forth in the Rules and Regulations attached hereto as Exhibit C; 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) [Intentionally-omitted]; (iii) 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) [Intentionally omitted]; 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 Shopping Center and making such alterations, repairs, improvements or additions to the Premises or the Shopping Center 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 Shopping Center as the same may then be encumbered and neither Landlord, nor any of the partners 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 Shopping Center 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 Shopping 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 broom 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 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 Shopping Center, 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 and Landlord 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 this 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 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 heirs, executors, administrators, 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 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 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 Shopping Center 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**

[Intentionally omitted]

#### **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 for the conduct of Tenant's business. Tenant hereby represents that it has entered into this Lease without reliance upon any obligation of Landlord 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 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 OPENING CO-TENANCY**

[Intentionally omitted]

### **34.0 ADDITIONAL LEASE FOR THE SHOPPING CENTER**

Base Rent for this Lease and the new lease shall be as follows:

### **35.0 EXHIBITS**

Exhibits A, B, C and D are attached hereto and made a part hereof.

**(THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK)**

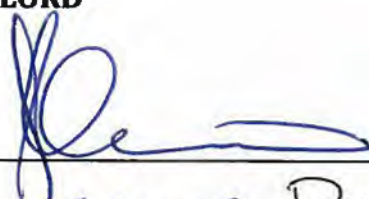
**IN WITNESS WHEREOF**, the parties hereto have signed and sealed this Lease as of the day and year first above written.

**LANDLORD**

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

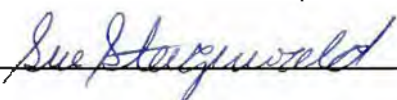
ITS: \_\_\_\_\_

DATE EXECUTED: \_\_\_\_\_

  
\_\_\_\_\_  
DP ~~Mayor~~ President  
8/13/2014

**ATTEST:**

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



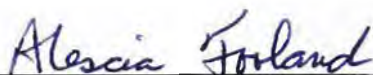
**TENANT**

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

ITS: \_\_\_\_\_

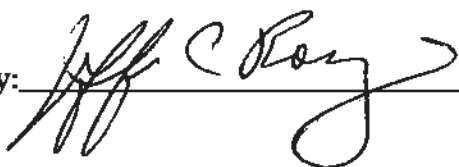
DATE EXECUTED: \_\_\_\_\_

FEDERAL TAX ID# \_\_\_\_\_

  
\_\_\_\_\_  
President of Loxley Farm Market, Inc  
631146044

**ATTEST:**

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



**EXHIBIT A**

**DIAGRAM AND LOCATION OF THE PREMISES**



## **EXHIBIT B**

### **LANDLORD'S 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 base building and of the Premises. Landlord and Tenant will coordinate their respective work with the other insofar as the schedule and prudent construction practices will allow.

#### **A. Base Building – Landlord's Work**

1. Structural frame and roof system designed in accordance with local conditions and applicable codes. Live and dead loads shall be based on typical retail requirements.
2. Exterior walls of materials and finishes selected by Landlord.
3. Concrete sidewalks and pavement at locations as indicated on Landlord's project design drawings for the CAFFM (the "Project Design Drawings").
4. Built-up, composition, single ply membrane, modified bitumen or metal standing seam roof.

#### **B. Premises – Landlord's Work**

Landlord and Tenant hereby agree that Landlord is going to provide a "turn-key" deal with regard to construction of the Premises. Landlord and Tenant further agree that Tenant shall supply Landlord with a store layout for the Premises prepared by Landlord's Architect, on or before November 15, 2013 which Landlord will use to have plans prepared for the Premises ("Build-Out Plans") and paid for by Landlord ("Architect"). The costs to draw the Build-Out Plans by the Architect shall be included in Landlord's Construction Cost Cap, as such term is defined hereinbelow. Landlord and Tenant further agree that Landlord's maximum expense for construction of the Build-Out Plans (including the costs to construct Landlord's standard vanilla box for the Premises) shall be FIVE HUNDRED FORTY SIX THOUSAND DOLLARS (\$91.00) per square foot of the Premises ("Landlord's Construction Cost Cap"). Upon receipt of the Build-Out Plans, Landlord shall have the same priced by Landlord's general contractor (or other contractor selected by Landlord). In the event the cost to construct the Build-Out Plans exceeds Landlord's Construction Cost Cap, Tenant shall have the right to either revise the Build-Out Plans to reduce the costs to below Landlord's Construction Cost Cap or agree to pay the construction costs above Landlord's Construction Cost Cap. Said amount shall be due and payable to Landlord within thirty (30) days after delivery of the Premises to Tenant with Landlord's Work substantially completed.

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.
3. Any materials, equipment, fixtures or machinery other than or in addition to those items specifically enumerated in this Exhibit B which Landlord is to install or construct in the Premises on Tenant's behalf shall be paid for by Tenant at the earlier of thirty (30) days following receipt of invoice from Landlord or commencement of construction. Payment by Tenant of such costs shall not operate, expressly or implicitly, to create in Tenant any interest in the Premises beyond the leasehold interest granted herein.

**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.
3. Any materials, equipment, fixtures or machinery other than or in addition to those items specifically enumerated in this Exhibit B which Landlord is to install or construct in the Premises on Tenant's behalf shall be paid for by Tenant at the earlier of thirty (30) days following receipt of invoice from Landlord or commencement of construction. Payment by Tenant of such costs shall not operate, expressly or implicitly, to create in Tenant any interest in the Premises beyond the leasehold interest granted herein.
4. All improvements, furniture, fixtures and/or equipment paid for and installed by Landlord, as part of Landlord's Work, shall be upon termination or expiration of the Lease be the property of Landlord.

**C. Premises - Tenant's Work**

All work and/or modifications in excess of the work agreed to by Landlord and Tenant as part of Tenant's Plans to be Landlord's Work shall be by Tenant, at its sole cost and expense.

1. General Requirements for Tenant's Work, if any:
  - (a) Construction will be in accordance with the requirements 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: Tenant may construct a mezzanine with Landlord's prior written approval provided the mezzanine framing is completely independent of the basic building structural frame. All construction is subject to prior approval by the Local Building Authority and Landlord's Architect.
  - (f) Tenant electrical: All electrical requirements for fixtures and/or special equipment shall be approved by Landlord and its engineers prior to installation. The cost of all Tenant electrical and connections to Landlord system will be borne by Tenant.
  - (g) Temporary services: Although it is anticipated the utilities will be turned over or transferred to Tenant at the time the Premises are delivered to Tenant for Tenant's Work, in the event Landlord provides 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 in the Shopping Center.

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 Shopping Center, 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

Tenant will, during the period of construction of its work, secure and maintain at its expense, a policy of Insurance covering Tenant's trade fixtures and equipment, furniture and furnishings 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 Shopping Center is located. Landlord will be furnished with a certificate thereof.

Tenant or Tenant's contractor and/or subcontractor will, during will, during the period of construction of its work, secure and maintain a Comprehensive General Liability Policy 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 contract 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 result from any roof and/or floor penetrations which are not performed by an Authorized Contractor.

(m) Food Service Exhaust Hoods: In the event, Tenant proposes to install an exhaust hood and fan over food service equipment, Tenant shall obtain the services of a registered structural engineer to verify the capacity of the structure to support the weight of the hood and fan. Tenant shall submit calculations and any required modifications to Landlord for Landlord's approval as part of Tenant's Initial Plans as set forth in Paragraph D.1 hereof. Tenant shall also, as part of Tenant's Work on the Premises, provide a grease containment system around any such exhaust fan to protect the roof membrane of the Premises from grease damage. Tenant shall submit detailed plans for the type system Tenant intends to install for the Premises as part of Tenant's Initial Plans as set forth in Paragraph D.1 hereof; provided; however, such system must be equal to that manufactured by Grease Guard, Inc. or other Landlord approved manufacturer. For food service tenants located below residential buildings, other restrictions and criteria will apply. Tenant is responsible for all costs to install the exhaust system in accessible shafts provided by Landlord, including ductwork, roof curb, flashings, electrical connections and roof mounted fan, in space provided and per criteria to be provided by Landlord. All installations are subject to inspection and approval by Landlord or its authorized representative.

(n) Roof mounted equipment: For tenants located below residential buildings, special criteria will be provided by Landlord controlling the installation of any equipment or systems Tenant proposes to install on the roof, including, but not limited to, permissible locations, routing, attachment and support of conduits and refrigerant lines, flashings and other requirements. Tenant shall indicate, or cause to indicate all such conditions on Tenant's Initial Plans in full accordance with the provided criteria.

**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 Shopping Center 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 and other tenants of Landlord in the Shopping Center to such an extent that Tenant's Work shall not interfere with nor delay the completion of any such work in the Shopping Center.

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.

5. Landlord's general contractor shall have the right to establish reasonable rules and regulations governing Tenant and Tenant's contractors in order that the construction of the Shopping Center proceed in a safe and orderly manner in accordance with all of the provisions of this Lease and governing building and safety codes.

6. Tenant and Tenant's general contractor are responsible to see to it that any and all penetrations of existing work are done in a manner that protects the integrity of the structure and the weather tightness of the exterior enclosure. Under no circumstances shall Tenant or Tenant's contractor cut, drill or install any shot fasteners into any structural member or slab without first obtaining, in writing, the permission of Landlord.

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**(ATTACH FLOORPLAN)**

**TO BE ATTACHED**

## **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 hereinafter specified.
2. To load and unload goods only at such times, in such areas and through such entrances as may be designated for such purposes by Landlord (the "Loading Area"). There shall not be any parking or standing by delivery vehicles outside of the Loading Area or in any location that interferes with the use of any of the travel lanes or the parking garages of the CAFFM. Trailers or trucks shall be permitted to remain parked overnight in an area behind Tenant's gates.
3. 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.
7. To warehouse, store and/or stock in the Premises only such goods, wares and merchandise as Tenant intends to offer for sale at retail at, in, from or upon the Premises. This shall not preclude occasional emergency transfers of merchandise to the other stores of Tenant if any, not located in the Shopping Center. Tenant shall use for office, clerical or other non-selling purposes only such space in the Premises as is from time to time reasonably required for Tenant's business in the Premises.
8. Not to use or operate any machinery that, in Landlord's opinion, is harmful to the building or disturbing to other lessees in the Shopping Center of which the Premises are a part nor shall Tenant use any loud speakers, televisions, phonographs, radios or other devices in a manner so as to be heard or seen outside of the Premises nor display merchandise on the exterior of the Premises either for sale or for promotion purposes.
9. 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 Shopping Center or suggests that the business operations are to be discontinued in the Premises.
10. Not to conduct any other commercial business or enterprise within three (3) miles of the Premises during the Lease Term.
11. Tenant agrees to keep its signs and exterior lights well lighted every day during the Required Operating Hours and for at least three (3) hours thereafter.
12. 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.

## **EXHIBIT D**

### **TENANT SIGN STANDARDS**

#### **Sign Criteria for In-Line Retail Shops**

A. The signs of In-Line Retail Tenant Shops at CAFFM shall be unique, of high quality and creatively integrated with both Tenant's storefront design and the surrounding building's architectural character.

B. All Tenant signs are limited to the following types:

1. Exterior building wall facade/storefront signs
2. Canopy signs
3. Awning signs
4. Window signs
5. Projected hanging blade or shingle signs
6. Projected vertical blade marquee-style signs
7. Window band safety markings
8. Floor/threshold signs

C. 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. An exterior sign location may be occupied by:

1. An exterior building wall facade/storefront sign, and/or
2. A canopy sign, and/or
3. An awning sign, and/or
4. Window signs,

provided that the total sign face area of all such signs shall be not more than 1 square foot of sign face area per 1 lineal foot of building facade or storefront width, or more than 75 square feet, nor more 10% of the total wall area of that building facade or storefront width.

D. Primary facade/storefront signs shall be sized in accordance with their facade or storefront width. The size of the sign or graphics must be in proportion with the available sign area, but the total horizontal dimension of the sign or combined signs shall not exceed 75% of the width of the building facade or storefront.

E. The following types of signs are permitted on Landlord building facades or tenant storefronts:

1. Signs of dimensional wood, stone, metal, tile, glass or other material with a permanent appearance. For such signs, indirect illumination must be provided.
2. Reverse channel letters (open to the rear) with contained or concealed halo illumination against a backing surface or wall. Letter-sides and faces must be opaque, and the sign backing surface or wall material must be matte or non-reflective.
3. Incised signing cast into or carved out of an opaque storefront material. For such signs, indirect illumination must be provided.

4. Customized signs consisting of dimensional, sculptural iconographic elements contextual to Tenant's and Landlord's design. For such signs, indirect illumination must be provided.

5. Internally illuminated individual channel letters with acrylic faces, where specifically permitted in writing in advance by Landlord.

6. Open channel letters with exposed neon illumination contained within where specifically permitted in writing in advance by Landlord.

F. The following types of signs are not permitted on Landlord building facades or tenant storefronts:

1. Surface mounted box or cabinet-type signs.
2. Internally illuminated or backlit translucent awnings.
3. Cloth, paper, cardboard signs or signs of other temporary or non-durable materials.
4. Stickers or decals around or on surfaces of the storefront.
5. Flashing, noisemaking, animated, moving, or rotating signs.
6. Non-illuminated signs of any kind.
7. Signs painted directly onto building surfaces.

G. Canopy and awning signs shall be proportional to the canopy or awning to which they are attached. Lettering and/or logos shall be opaque and either pin-mounted or mounted flush to the canopy, or, alternately, either suspended from or standing atop a canopy edge. Canopy signs shall be limited in material, fabrication and construction as defined in Paragraphs E and F above. Awning sign lettering and/or logos shall be opaque and silk-screened or sewn onto awning fabric.

H. Window signs shall be any signs installed against or within a window or storefront glazing, and intended to be seen from primary common areas. Window signs shall be limited in material, fabrication and construction as defined in Paragraphs E and F above. Periodically changing window displays and merchandising shall not be considered window signs.

I. In addition to the provisions of Paragraph C above, 1 secondary storefront blade, projecting or shingle sign is permitted for each tenant storefront facade directed toward primary common areas. Such blade or shingle sign shall be not more than 6 square feet in sign face area. Blade or shingle signs shall be proportional to, and compatible with, Tenant's storefront design. Blade or shingle signs shall have 2 opposite and parallel readable faces. Sign faces shall be indirectly illuminated. Blade or shingle sign frames, brackets or other supports and any sign lighting must be ornamental and contextual to both Tenant's storefront design and architectural character of Landlord's buildings.

J. In addition to the provisions of Paragraph C above, if approved in advance in writing by Landlord as a key component of Tenant's building or storefront design, and as essential to the overall visual character of the Shopping Center, 1 additional tertiary vertical marquee-style sign may be permitted for tenant storefront facades directed toward primary common areas at key intersections or nodes of the Shopping Center. Such vertical marquee-style signs shall be not more than 12 square feet in sign face area.

K. Secondary blade or shingle signs and tertiary vertical marquee-style signs shall be sized in proportion with their mounting area, and shall not obstruct or obscure other tenants' storefronts or signs or significant Landlord building detailing or features. The design of these signs must be unique, and shall promote Tenant's identity while remaining compatible with the facade of Landlord's buildings.

L. In addition to the provisions of Paragraph C above, Tenant is permitted a floor/threshold sign at any exterior entrance from primary common areas. Such floor/threshold signs shall be centered in front of the storefront entrance doorway, shall be installed flush with adjacent common area paving, and shall be not more than 12 square feet in area. Such floor/threshold signs shall be provided with a durable, slip-resistant, walkable surface. Tenant shall be responsible for providing a watertight installation, and the sign shall be designed to Landlord's complete approval in advance in writing in all pertinent physical attributes: size, shape, depth, material, fabrication, installation, color, finish, surface, maintenance, etc. Tenant shall bear all costs related to the installation of the sign, including costs related to modifications of Landlord's sidewalk or pavement or other work.

M. In addition to the provisions of Paragraph C above, Tenant shall be permitted decal-type lettering and/or logos applied to the interior face of storefront glass as safety markings. Such signing shall not be continuous across any glass surface and shall measure no more than 4" high at any point. Letters and/or logo may be gold-leaf, silver-leaf, or may simulate an etched or frosted glass appearance. Where compatible with Tenant's storefront design and approved in advance in writing by Landlord, other colors may be used for letters and/or logo of such glass markings.

N. Signs shall be limited to Tenant's Trade Name only. Established logos that are part of a business identity are permitted, but shall be included in considerations of sign-to-storefront proportions and area/size restrictions. No brand names, product names or phrases may appear in the storefront or any area directly visible to the public. Decals or other signing indicating product lines or credit card acceptability are not permitted in the storefront or on the building facades.

O. Any sign, notice or other graphic or video display, particularly self-illuminated signs and television monitors, located within the store and visible from common areas are permitted only if and as approved in advance in writing by Landlord. Tenant's sign submittals to Landlord for approval shall include indication of any proposed decals or signs indicating hours of operation or other such incidental information.

P. Final placement and connection of signs to Landlord's building facade must be approved by and coordinated with Landlord's tenant construction representative. All connections must be weather tight.

Q. Manufacturers' labels, underwriters' labels, clips, brackets, frames or any other form of extraneous advertising, structure, attachments, connectors, or lighting devices shall be fully concealed from public view. Sign manufacturers' identification and/or sign permit information may be applied as and if required by local authorities, but shall be as inconspicuous as possible.

R. All electric signs and installation methods must meet U. L. standards.

S. At no time shall hand-lettered, non-professional signs, or newspaper advertisements be displayed on any store front or any building exterior.

T. Signs shall be located only in conjunction with a public building entrance or tenant space entrance or tenant storefront or customer service entrance. With the exception of restaurant tenants or other tenants with specific signage provisions specified in their lease, no tenant signs shall be permitted on Landlord building facades facing parking lots and lacking a public entrance.

U. All internally and indirectly illuminated signs must be illuminated during the normal operating hours of the CAFFM and must be controlled by the use of an automatic time clock or control system.

V. Exit/service doors to tenant spaces throughout the CAFFM shall have standard identification only, consisting of the tenant name and the tenant space address number. Such signs shall be furnished and installed by Landlord at Tenant's expense. Tenant shall not apply any other signage or wording to exit/service doors

W. Tenants may be required by local ordinance to have an address indication at the storefront. If required, this signage shall be furnished and installed by Landlord, at Tenant's expense, to ensure consistency throughout the CAFFM

**Sign Compliance, Submission, Review and Approval Procedures**

A. All signs at the Shopping Center shall comply with these criteria, and with local sign ordinances.

B. Proposed Tenant sign designs shall be included in any conceptual, preliminary or design submission made by Tenant to Landlord for approval. Tenant sign designs shall be shown in relation to Tenant's building architecture, storefront design and/or other proposed improvements.

C. Complete sign design and/or shop drawings incorporating any Landlord-requested 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 Tenant's building architecture, storefront design and/or other proposed improvements.

D. Upon Landlord approval of complete sign design and/or shop drawings, 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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## **AGREEMENT FOR LEASE**

**THIS AGREEMENT FOR LEASE** ("Lease") is made this \_\_\_\_\_ day of \_\_\_\_\_, 2013 (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 in the Coastal Alabama Farmers Fishermens Market (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 SUBLEASE PROVISIONS**

#### **1.1. LANDLORD**

Coastal Alabama Farmers and Fishermens Market

##### **1.1.1. ADDRESS OF LANDLORD**

407 East Laurel Avenue  
Foley, Alabama 36535  
Attn: Accounting Department

#### **1.2. TENANT**

Mark H. White

##### **1.2.1. ADDRESS OF TENANT**

6423 Bayfront Park Drive  
Daphne, Alabama 36526

##### **1.2.2. TENANT'S TRADE NAME**

Moe's Original Bar-B-Que

#### **1.3. THE CAFFM**

The "CAFFM" shall be that certain Market known as Coastal Alabama Farmers and Fishermens Market. The CAFFM is 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 identified as **Building B, Space A** having a Gross Leasable Area (as such term is defined in Section 1.4.1 hereof) of approximately 3,500 square feet and located within the CAFFM. The exterior walls, roof and the area beneath the Premises are not 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) outside selling areas which are not heated or air conditioned; (ii) loading docks and truck ramps; (iii) management offices; (iv) security/police offices; (v) public restrooms/comfort stations; (vi) parking structures below or above grade; (vii) rooftop mechanical structures; (viii) elevator shafts; (ix) stairwells; (x) riser rooms; and (xi) lobbies, entrance areas, general pedestrian walkways and other floor space not intended to be leased to tenants for use as retail space. The Gross

Leasable Area of the Premises is measured from the exterior face of exterior walls and storefront framing, to the inside of masonry walls abutting Anchor Tenants (as such term is defined in Section 1.4.2 hereof), to the centerline of demising partitions and to the nonleasable side of demising partitions of sprinkler rooms. 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 one (1) additional five (5) year period ("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 which is the earlier to occur of: (i) ninety days (90) days following the Delivery Date; or (ii) the date Tenant opens the Premises for business to the public.



**1.7. DROP DEAD DATE**

In the event the Lease Term has not commenced on or before December 31st, 2015 (the "Drop Dead Date"), then this Lease shall be automatically null and void and neither Landlord nor Tenant shall have any liability or obligation to the other.

**1.8. USE.**

For the operation of Moe's Original Bar-B-Que, serving primarily meat, chicken, pork, vegetables, desserts, old drinks, tea, coffee, beer, wine and alcoholic beverages not to exceed 20% of gross sales.

**1.9. RENT.**

**1.9.1. BASE RENT**

"Base Rent" shall be:

INITIAL TERM	PER SQUARE FOOT	MONTHLY BASE RENT	ANNUAL BASE RENT
Lease Years 1-3	\$11.00/sf	\$3,208.00	\$38,500.00
Lease Years 4-7	\$12.00/sf	\$3,500.00	\$42,000.00
Lease Years 8-10	\$13.44/sf	\$3,920.00	\$47,040.00
FIRST OPTION PERIOD Lease Years 11-15	\$14.88/sf	\$4,340.00	\$52,080.00

**1.9.2. PERCENTAGE RENT**

None

**1.9.3. SUBSTITUTE RENT**

None

**1.10. SECURITY DEPOSIT**

None

**1.11. BROKER/BROKER'S FEE**

None

**2.0 TERM/COMMENCEMENT DATE/RELOCATION.**

**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) the Premises are yet to be constructed; (ii) the Premises shall be constructed in accordance with Exhibit B; and (iii) 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 fixtured, stocked and staffed within ninety (90) 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. RELOCATION**

[Intentionally omitted]

## **3.0 USE**

Tenant agrees it shall use and occupy the Premises 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; provided, however, Landlord and Tenant hereby agree that it shall be reasonable for Landlord to withhold its consent if said new trade name conflicts with the trade name of any other tenant of the CAFFM at the time of the proposed change. 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) and, at all such times, Tenant shall keep the Premises fully manned and in full operation and shall in good faith maintain a complete and sufficient stock of new, first class merchandise of current style and type, attractive displays and with sufficient and competent personnel and with such materials and supplies as are necessary for the proper operation of the Premises. See Section 22.1 hereof regarding Rules and Regulations for the Market.

Notwithstanding anything contained herein to the contrary, Tenant shall have the right to close the Premises to business with the public on the following days:

### **3.1. REQUIRED OPERATING HOURS**

Tenant shall, at a minimum, be open and operating for business to the public from the Premises **six days per week**, 11:00 a.m. – 7:00 p.m. and closed on Sunday **OR** Monday ("Required Operating Hours"). If Tenant is not open for business to the public at anytime during the Required Operating Hours, then Tenant shall pay to Landlord as Additional Rent a fee of One Hundred and No/100 Dollars (\$100.00) per day for each and every day Tenant fails to be open for business to the public from the Premises for the Required Operating Hours "Required Operating Hours Fee". Said Required Operating Hours Fee shall be due and payable by Tenant within ten (10) days of Tenant's receipt of Landlord's invoice regarding the same.

## **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 designated 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**

There shall be no Percentage Rent due under this Lease.

##### **4.2.1. GROSS SALES DEFINED**

The term "Gross Sales" as used herein is hereby defined to mean receipts from the gross sales of Tenant and of all licensees, concessionaires and subtenants of Tenant, from all business conducted upon or from the Premises by Tenant and all others, and whether such sales are evidenced by check, credit, charge account, exchange or the like, and shall include, without limitation, amounts received from the sale of goods, wares, merchandise and for services performed on, at or off the Premises, together with the amount of all orders taken or received at the Premises, whether such orders are filled from the Premises or elsewhere, and whether such sales are made by means of merchandise or other vending devices in the Premises. Each charge or sale upon installment or credit shall be included in Gross Sales only to the extent of that portion of payment received by Tenant during such month. No deductions shall be allowed for uncollectible credit accounts.

##### **4.2.2. GROSS SALES REPORTING**

##### **4.2.3. AUDIT OF TENANT'S GROSS SALES**

#### **4.3. ADDITIONAL RENT**

It is the intent of the parties that the Rent payable to Landlord is absolutely net of all expenses associated with the operation of the CAFFM and 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 as Additional Rent:

##### **4.3.1. TAXES**

Tenant's Pro Rata Share (as such term 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, 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's Pro Rata Share of the total cost to Landlord of all fire and extended coverage, liability coverage, workmen's compensation coverage, environmental liability coverage, business income and extra expense coverage and other insurance coverage carried by Landlord with respect to the CAFFM (collectively, "Insurance"). Landlord's good faith estimate of Tenant's Pro Rata Share of Insurance for Lease Years 1-7 is not to exceed \$.50 per square foot of the Premises annually.

#### **4.3.3. COMMON AREA MAINTENANCE**

For the maintenance of the Common Area (as such term is defined Section 5.1 hereof) of the CAFFM, an amount equal to Tenant's Pro Rata Share of the CAFFM Operating Costs (as such term is defined in Section 5.5 hereof). Landlord shall establish the fiscal period for determining the CAFFM Operating Costs. Landlord's good faith estimate of Tenant's Pro Rata Share of CAFFM Operating Costs for Lease Year's 1-7 is \$1.00 per square foot of the Premises annually. See Section 5.5.1 hereof regarding a cap on Tenant's Pro Rata Share of CAFFM Operating Costs.

#### **4.3.4. OTHER ADDITIONAL RENT**

All other sums of money or charges required to be paid by Tenant, including, but not limited to, utility charges billed to Tenant 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 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, 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, or if the Lease Term ends on any day other than December 31, 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**

Tenant's Pro Rata Share shall be determined by first deducting the contribution, if any, made by any Anchor Tenant of the CAFFM from the costs of the Taxes, Insurance or CAFFM Operating Costs and then multiplying the difference by a fraction, the numerator of which shall be the Gross Leasable Area of the Premises and the denominator of which shall be the approximate Gross Leasable Area of the CAFFM exclusive of the Gross Leasable Area leased by Anchor Tenants. Tenant's Pro Rata Share is subject to adjustment by Landlord based on the foregoing formula if the Gross Leasable Area of the CAFFM is diminished by

casualty, condemnation or similar takings or other events reducing the Gross Leasable Area or if the Gross Leasable Area is increased by additions to the CAFFM.

#### **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, loading facilities, sidewalks and/or walkways, elevators and escalators, bridges, stairs not contained in leased areas, public restrooms and comfort stations, fire, service and exit corridors and customer parking areas within the CAFFM 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. Landlord reserves the right to designate an area within the Common Area as tenant and employee 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 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 and shall not be deemed to be a warranty, representation or agreement on the part of Landlord that the CAFFM 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. 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. 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 or visibility of the Premises.

#### **5.5. COST OF MAINTENANCE**

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 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, 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, unless the same is billed directly to the tenants; 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, including paper supplies for restrooms located in the Common Area; the cost and expense of maintaining directory and pylon signage, if any, for the CAFFM; the cost and expense of security services, if any, as Landlord may provide; management fees; property owner association fees, if any, assessed to the CAFFM; and the cost and expense of personnel to implement such services and an administrative fee equal to fifteen percent (15%) of the total cost of operating and maintaining the Common Area. Notwithstanding the foregoing, the cost and expense of any capital items, as such term is defined by generally accepted accounting principles (GAAP), included in CAFFM Operating Costs shall be amortized on a straight-line basis over the useful life of the item.

#### **5.5.1. CAP ON CAFFM OPERATING COSTS**

Notwithstanding anything contained herein to the contrary, in no event shall Tenant's Pro Rata Share of CAFFM Operating Costs: (a) for Lease Year's 1-7 of the Term hereof (and any partial month, if any, preceding such Lease Year, on a per diem basis) exceed \$1.00 per square foot ("Years 1-7 CAM Cap"); and (b) beginning with Lease Year 8 of the Term hereof cannot increase by more than ten percent (10%) over Tenant's Pro Rata Share for the immediately preceding Lease Year ("CAM Cap"); provided, however, the cost and expense of security, snow and ice removal or utilities used and consumed in the Common Area shall be excluded from the Year's 1-7 CAM Cap.

#### **6.0 SIGNS**

The standards with which Tenant must comply regarding signs for the Premises are attached hereto as Exhibit D with Tenant acknowledging and agreeing that, as part of Landlord's development of the CAFFM, Tenant shall be required to install, at Tenant's sole cost and expense, certain signage for the Premises (*i.e.*, an exterior, storefront sign, a blade sign and signage for the rear, delivery/service door(s), if any, for the Premises). *See* Exhibit C attached hereto for required hours of illumination for Tenant's exterior, storefront signage. Tenant shall not place, erect or install any signs on any portion of the Premises nor allow to be erected or installed any signs, printed displays or show window lettering visible from outside the Premises without the prior written approval of Landlord. Landlord shall have complete authority over size, art work, design, color, taste, text and content of all signs, which authority may be arbitrarily exercised to deny the use of any sign or proposed sign. All such signs shall be maintained in a good and safe condition and appearance by Tenant, at its own expense. Upon the expiration or sooner termination of this Lease, Tenant shall, at its own expense, remove all signage from the Premises. Tenant shall repair and restore any damage to the Premises, either inside or outside, resulting from the erection, maintenance or removal of said signs, and in the event Tenant fails to do so, Landlord may make such repairs or removal which is 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. The Tenant agrees that it shall be subject to any and/or amendments to the Landlord's rules and regulations if such are in place at such time as the Tenant may change, replace, upgrade or otherwise make alterations to its sign or signage during the term of the lease. The obligations of Tenant set forth in this Section shall survive expiration or earlier termination of this Lease.

## **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; and (ii) prior to beginning such work, Tenant shall submit to Landlord complete and detailed plans and specifications 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 Ten Thousand and No/100 Dollars (\$10,000.00) 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 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 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 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 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 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 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 or any part thereof, nor to subject Landlord's estate in the Premises or the CAFFM 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 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 in the CAFFM from time to time and at any time during the Lease Term, including multi-level parking facilities and to make alterations thereto and to build additional stories on any such buildings; provided, however, Landlord agrees not to make any such alterations or additions if the result of same would materially and adversely affect the access to or visibility of the Premises.

## **7.3. REPAIRS BY LANDLORD**

Landlord agrees to keep and maintain in good order and repair only the roof, structural components, exterior walls (excluding all signs, doors, windows and glass, including plate glass) and sprinkler systems of the Premises. 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 herein, 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 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. Tenant, at its expense, shall obtain a service contract for repairs and maintenance of the heating and air conditioning system that conforms to the warranty requirements of said system. Tenant shall provide Landlord with a current copy of said service contract. 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, the Premises, the building or the Common Area caused by the act or negligence of Tenant, its agents, contractors, employees 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 assessed due to Tenant's specific use of the Premises, including, without limitation, any impact fees or development fees assessed in connection with the Premises, the cost of gas, electricity, fuel, light, heat, power, telephone, 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 as Additional Rent for Tenant's proportionate 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, 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 the amounts equal to that required above for the commercial general liability insurance;

(b) Property insurance covering all trade fixtures, signs, plate glass, floor covering, decorative items, furniture, equipment and merchandise 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; and

(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 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 A, 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; 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 trade fixtures, signs, plate glass, floor covering, decorative items, furniture, equipment 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, 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 rate 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 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 Shopping Center or persons in or about the Premises or the CAFFM, 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.

### **11.3. INDEMNIFICATION OF TENANT**

Landlord hereby indemnifies and agrees to hold Tenant harmless against and from any and all claims for any loss or damage to Tenant arising from the Common Area from the negligence, willful misconduct or omission by Landlord or its agents, contractors or employees (provided such loss or damage is not caused by Tenant, its agents, contractors or employees), including all costs and reasonable attorneys' fees, whether at trial or on appeal, 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 Tenant by reason of such claim, Landlord, upon notice from Tenant, shall defend the same at Landlord's expense.

### **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 furniture and furnishings or on any fixtures or equipment removable by 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 retail 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 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.

#### **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. The form of such Estoppel Certificate shall be in form and content substantially the same as set forth in Exhibit E hereto, or such other form as may be required by such purchaser or mortgagee of the CAFFM.

#### **15.2. ATTORNMENT**

Tenant shall, in the event any proceedings are brought for the foreclosure of the CAFFM or the Premises or in the event of exercise of the power of sale under any mortgage made by Landlord covering the CAFFM 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 substantially the form attached hereto as Exhibit F, 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 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, as set forth in the Rules and Regulations attached hereto as Exhibit C; 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) [Intentionally-omitted]; (iii) 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) [Intentionally omitted]; 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 Shopping Center and making such alterations, repairs, improvements or additions to the Premises or the Shopping Center 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 Shopping Center as the same may then be encumbered and neither Landlord, nor any of the partners 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 Shopping Center 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 Shopping 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 broom 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 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 Shopping Center, 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 and Landlord 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 this 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 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 heirs, executors, administrators, 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 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 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 Shopping Center 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**

[Intentionally omitted]

### **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 for the conduct of Tenant's business. Tenant hereby represents that it has entered into this Lease without reliance upon any obligation of Landlord 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 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 OPENING CO-TENANCY**

[Intentionally omitted]

### **34.0 ADDITIONAL LEASE FOR THE SHOPPING CENTER**

Base Rent for this Lease and the new lease shall be as follows:


### **35.0 EXHIBITS**

Exhibits A, B, C and D are attached hereto and made a part hereof.


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IN WITNESS WHEREOF, the parties hereto have signed and sealed this Lease as of the day and year first above written.

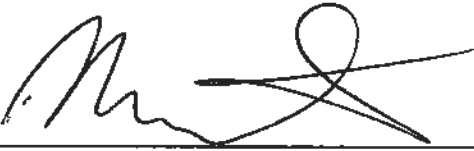
LANDLORD

By:   
ITS: ~~Mayor~~ President  
DATE EXECUTED: 8/13/14

ATTEST:

By: 

TENANT

By:   
ITS: President  
DATE EXECUTED: 8/9/14  
FEDERAL TAX ID#

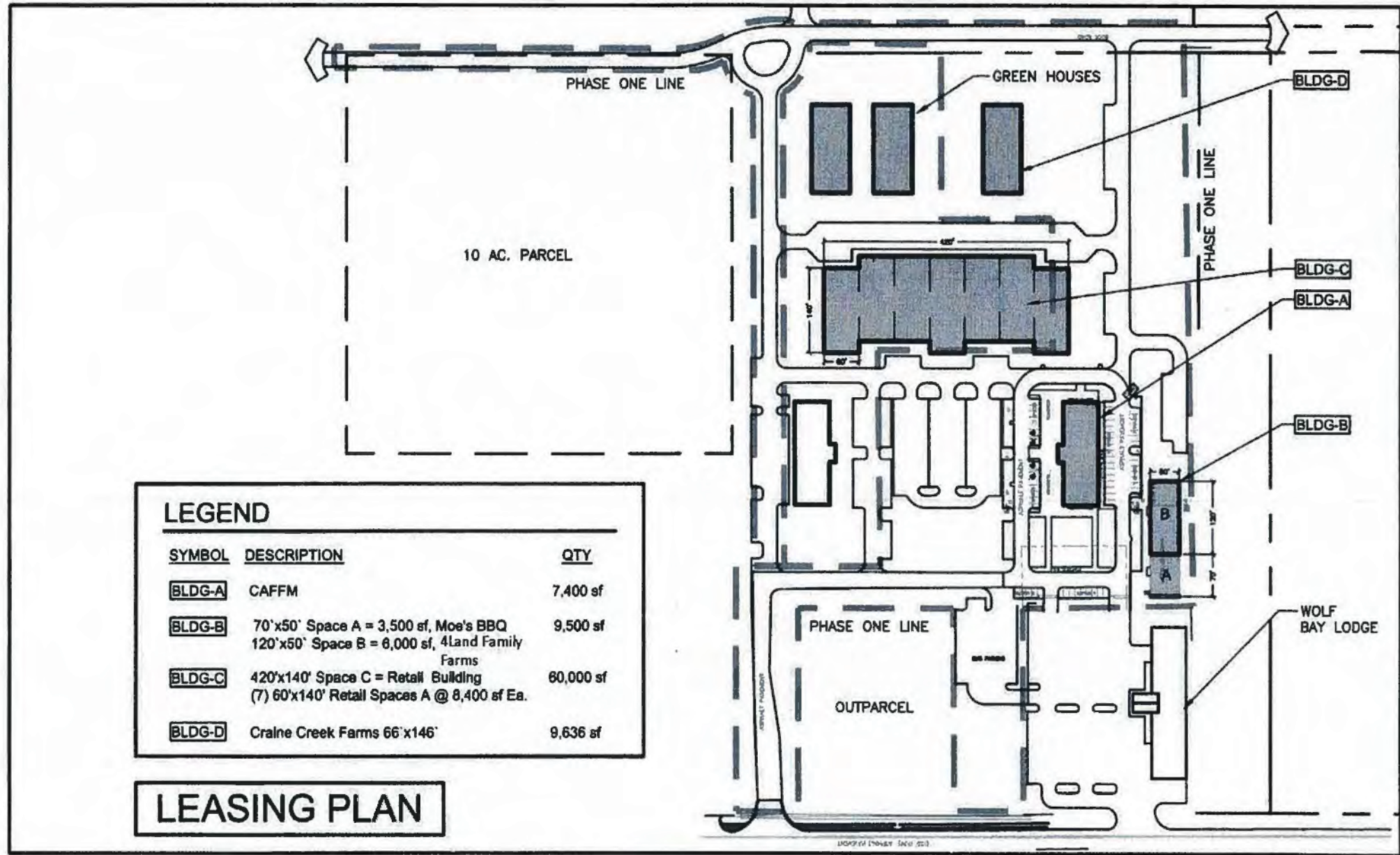
ATTEST:

By: 



# EXHIBIT A

## DIAGRAM AND LOCATION OF THE PREMISES





## **EXHIBIT B**

### **LANDLORD'S 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 base building and of the Premises. Landlord and Tenant will coordinate their respective work with the other insofar as the schedule and prudent construction practices will allow.

#### **A. Base Building – Landlord's Work**

1. Structural frame and roof system designed in accordance with local conditions and applicable codes. Live and dead loads shall be based on typical retail requirements.
2. Exterior walls of materials and finishes selected by Landlord.
3. Concrete sidewalks and pavement at locations as indicated on Landlord's project design drawings for the CAFFM (the "Project Design Drawings").
4. Built-up, composition, single ply membrane, modified bitumen or metal standing seam roof.

#### **B. Premises – Landlord's Work**

Landlord and Tenant hereby agree that Landlord is going to provide a "turn-key" deal with regard to construction of the Premises. Landlord and Tenant further agree that Tenant shall supply Landlord with a store layout for the Premises prepared by Landlord's Architect, on or before November 15, 2013 which Landlord will use to have plans prepared for the Premises ("Build-Out Plans") and paid for by Landlord ("Architect"). The costs to draw the Build-Out Plans by the Architect shall be included in Landlord's Construction Cost Cap, as such term is defined hereinbelow. Landlord and Tenant further agree that Landlord's maximum expense for construction of the Build-Out Plans (including the costs to construct Landlord's standard vanilla box and other soft costs including Project Manager and Program Management for the Premises) shall be FOUR HUNDRED NINETY THOUSAND THREE HUNDRED AND NINETY NINE DOLLARS (\$140.00 per square foot of the Premises) ("Landlord's Construction Cost Cap"). Upon receipt of the Build-Out Plans, Landlord shall have the same priced by Landlord's general contractor (or other contractor selected by Landlord). In the event the cost to construct the Build-Out Plans exceeds Landlord's Construction Cost Cap, Tenant shall have the right to either revise the Build-Out Plans to reduce the costs to below Landlord's Construction Cost Cap or agree to pay the construction costs above Landlord's Construction Cost Cap. Said amount shall be due and payable to Landlord within thirty (30) days after delivery of the Premises to Tenant with Landlord's Work substantially completed.

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.
3. Any materials, equipment, fixtures or machinery other than or in addition to those items specifically enumerated in this Exhibit B which Landlord is to install or construct in the Premises on Tenant's behalf shall be paid for by Tenant at the earlier of thirty (30) days following receipt of invoice from Landlord or commencement of construction. Payment by Tenant of such costs shall not operate, expressly or implicitly, to create in Tenant any interest in the Premises beyond the leasehold interest granted herein.

**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.
3. Any materials, equipment, fixtures or machinery other than or in addition to those items specifically enumerated in this Exhibit B which Landlord is to install or construct in the Premises on Tenant's behalf shall be paid for by Tenant at the earlier of thirty (30) days following receipt of invoice from Landlord or commencement of construction. Payment by Tenant of such costs shall not operate, expressly or implicitly, to create in Tenant any interest in the Premises beyond the leasehold interest granted herein.
4. All improvements, furniture, fixtures and/or equipment paid for and installed by Landlord, as part of Landlord's Work, shall be upon termination or expiration of the Lease be the property of Landlord.

**C. Premises – Tenant's Work**

All work and/or modifications in excess of the work agreed to by Landlord and Tenant as part of Tenant's Plans to be Landlord's Work shall be by Tenant, at its sole cost and expense.

1. General Requirements for Tenant's Work, if any:
  - (a) Construction will be in accordance with the requirements 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: Tenant may construct a mezzanine with Landlord's prior written approval provided the mezzanine framing is completely independent of the basic building structural frame. All construction is subject to prior approval by the Local Building Authority and Landlord's Architect.
  - (f) Tenant electrical: All electrical requirements for fixtures and/or special equipment shall be approved by Landlord and its engineers prior to installation. The cost of all Tenant electrical and connections to Landlord system will be borne by Tenant.
  - (g) Temporary services: Although it is anticipated the utilities will be turned over or transferred to Tenant at the time the Premises are delivered to Tenant for Tenant's Work, in the event Landlord provides 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 in the Shopping Center.

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 Shopping Center, 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

Tenant will, during the period of construction of its work, secure and maintain at its expense, a policy of Insurance covering Tenant's trade fixtures and equipment, furniture and furnishings 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 Shopping Center 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 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 contract 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 result from any roof and/or floor penetrations which are not performed by an Authorized Contractor.

(m) Food Service Exhaust Hoods: In the event, Tenant proposes to install an exhaust hood and fan over food service equipment, Tenant shall obtain the services of a registered structural engineer to verify the capacity of the structure to support the weight of the hood and fan. Tenant shall submit calculations and any required modifications to Landlord for Landlord's approval as part of Tenant's Initial Plans as set forth in Paragraph D.1 hereof. Tenant shall also, as part of Tenant's Work on the Premises, provide a grease containment system around any such exhaust fan to protect the roof membrane of the Premises from grease damage. Tenant shall submit detailed plans for the type system Tenant intends to install for the Premises as part of Tenant's Initial Plans as set forth in Paragraph D.1 hereof; provided; however, such system must be equal to that manufactured by Grease Guard, Inc. or other Landlord approved manufacturer. For food service tenants located below residential buildings, other restrictions and criteria will apply. Tenant is responsible for all costs to install the exhaust system in accessible shafts provided by Landlord, including ductwork, roof curb, flashings, electrical connections and roof mounted fan, in space provided and per criteria to be provided by Landlord. All installations are subject to inspection and approval by Landlord or its authorized representative.

(n) Roof mounted equipment: For tenants located below residential buildings, special criteria will be provided by Landlord controlling the installation of any equipment or systems Tenant proposes to install on the roof, including, but not limited to, permissible locations, routing, attachment and support of conduits and refrigerant lines, flashings and other requirements. Tenant shall indicate, or cause to indicate all such conditions on Tenant's Initial Plans in full accordance with the provided criteria.

**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 Shopping Center 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 and other tenants of Landlord in the Shopping Center to such an extent that Tenant's Work shall not interfere with nor delay the completion of any such work in the Shopping Center.

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.

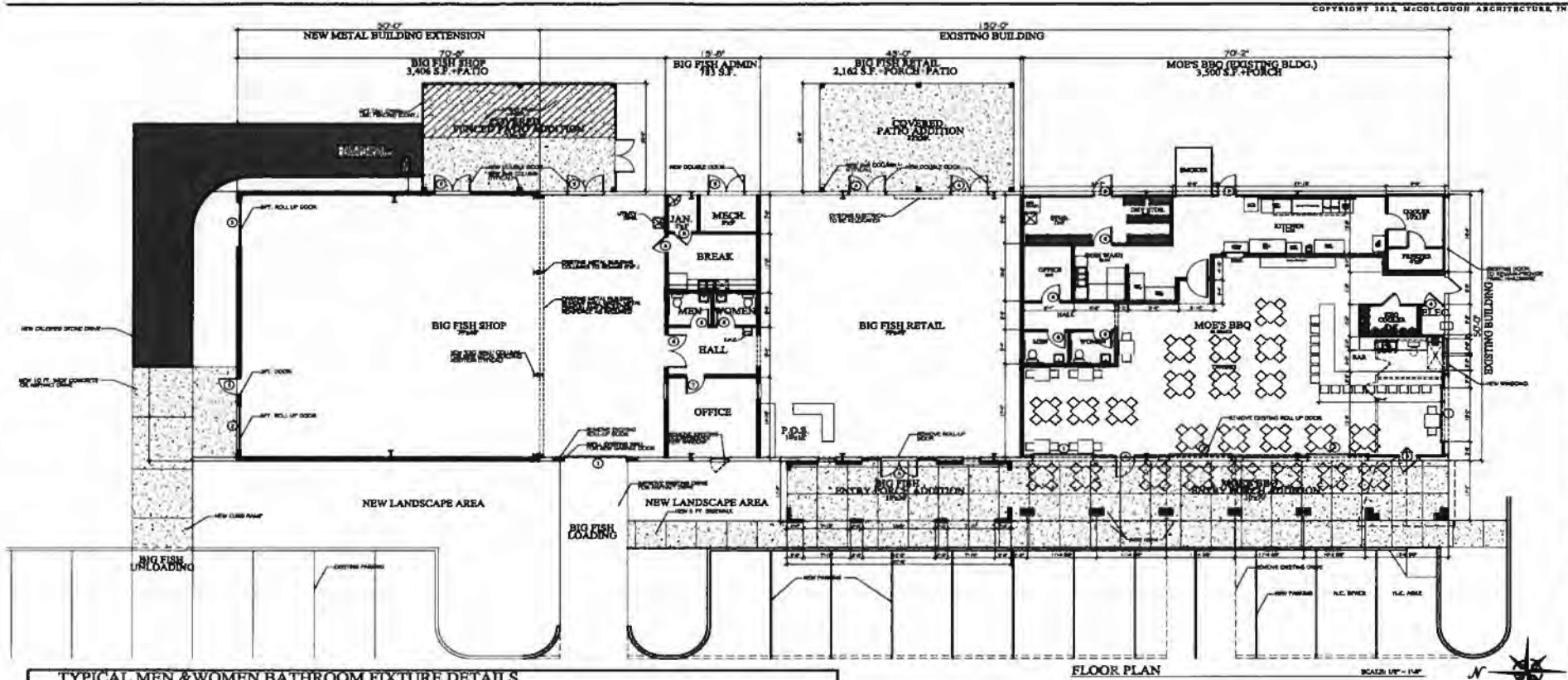
4. Tenant agrees that it, its general contractors and their subcontractors shall use only labor which is compatible with the labor force of Landlord's general contractor.

5. Landlord's general contractor shall have the right to establish reasonable rules and regulations governing Tenant and Tenant's contractors in order that the construction of the Shopping Center proceed in a safe and orderly manner in accordance with all of the provisions of this Lease and governing building and safety codes.

6. Tenant and Tenant's general contractor are responsible to see to it that any and all penetrations of existing work are done in a manner that protects the integrity of the structure and the weather tightness of the exterior enclosure. Under no circumstances shall Tenant or Tenant's contractor cut, drill or install any shot fasteners into any structural member or slab without first obtaining, in writing, the permission of Landlord.

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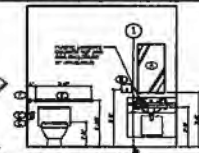
**(ATTACH FLOORPLAN)**



## TYPICAL MEN & WOMEN BATHROOM FIXTURE DETAILS



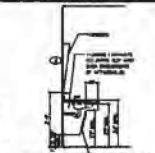
### ACCESSIBLE TOILET ROOM



Ⓐ ELEVATION



 ELEVATION



© VANTY SECTION

ACCESSORIES SCHEDULE	
ITEM NO.	DESCRIPTION
1	ACCESSIBLE MIRROR LAST BATH
2	BOW DISPENSER (20)
3	PAPER TOWEL DISPENSER EXCEPT 3715
4	TOILET PAPER DISPENSER OTHER
5	36" ROUND BATH SIDE
6	48" BATH BATH SIDE
7	SHOWER AND SHOWER DISPENSER, OTHER
8	16" VERTICAL BATH SIDE
NOTE:	INDICATE QUANTITY IN WALL-BATH ROOMS FOR ALL ACCESSORIES.

[illegible]

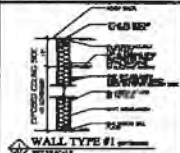
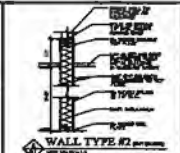
### ROOM FINISH SCHEDULE

[illegible]

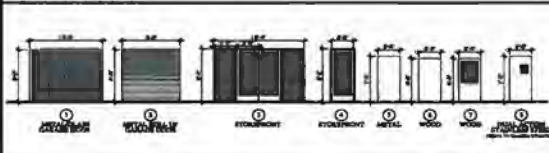
## ABBREVIATIONS

P.T.	PROBABLE TREATED	P.P.E.	THICKER FLOOR ELEVATION
O.C.	ON CRACKS	SPR. 50	APPROX. 2000
FR	FRAGMENTS FORCED THRU	M.R. 100	LOCATING REINFORCED
MR	MINIMUM	E.B.	CORROSION WITH PASS
CONC.	CONCRETE	A.C.T.	REINFORCED CEILING FLE
SA	SAG	V.A.C.T	WITH ACCURACY DURING THE

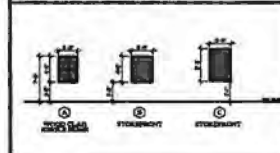
## WALL TYPES

WALL TYPE #1 perman
**WALL TYPE #2** part 2 of 2

## DOOR TYPES



## WINDOW TYPES



**McCOLLOUGH  
ARCHITECTURE, INC.**  
P.O. BOX 6316  
ORLY HILLS, ALABAMA  
35451-2616  
PHONE: 205-966-9223

**NOT FOR  
CONSTRUCTION**

**TENANT FIT-UP BUILDING (PHASE 2)**  
**FOR THE**  
**FOLEY FARMERS' MARKET**  
FOLEY  
ALABAMA

**JOB NO.:**  
**DRAWN:** CAB  
**CHECKED:** STM  
**DATE:** 2014.01.06  
**REVISION:**

SCALE:
SHEET NO:
A1
DESIGN DEVELOPMENT



## **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 hereinafter specified.
2. To load and unload goods only at such times, in such areas and through such entrances as may be designated for such purposes by Landlord (the "Loading Area"). There shall not be any parking or standing by delivery vehicles outside of the Loading Area or in any location that interferes with the use of any of the travel lanes or the parking garages of the CAFFM. Trailers or trucks shall not be permitted to remain parked overnight in any area of the CAFFM, whether loaded or unloaded.
3. 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.
7. To warehouse, store and/or stock in the Premises only such goods, wares and merchandise as Tenant intends to offer for sale at retail at, in, from or upon the Premises. This shall not preclude occasional emergency transfers of merchandise to the other stores of Tenant if any, not located in the Shopping Center. Tenant shall use for office, clerical or other non-selling purposes only such space in the Premises as is from time to time reasonably required for Tenant's business in the Premises.
8. Not to use or operate any machinery that, in Landlord's opinion, is harmful to the building or disturbing to other lessees in the Shopping Center of which the Premises are a part nor shall Tenant use any loud speakers, televisions, phonographs, radios or other devices in a manner so as to be heard or seen outside of the Premises nor display merchandise on the exterior of the Premises either for sale or for promotion purposes.
9. 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 Shopping Center or suggests that the business operations are to be discontinued in the Premises.
10. Not to conduct any other commercial business or enterprise within three (3) miles of the Premises during the Lease Term.
11. Tenant agrees to keep its signs and exterior lights well lighted every day during the Required Operating Hours and for at least three (3) hours thereafter.
12. 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.

## **EXHIBIT D**

### **TENANT SIGN STANDARDS**

#### **Sign Criteria for In-Line Retail Shops**

A. The signs of In-Line Retail Tenant Shops at CAFFM shall be unique, of high quality and creatively integrated with both Tenant's storefront design and the surrounding building's architectural character.

B. All Tenant signs are limited to the following types:

1. Exterior building wall facade/storefront signs
2. Canopy signs
3. Awning signs
4. Window signs
5. Projected hanging blade or shingle signs
6. Projected vertical blade marquee-style signs
7. Window band safety markings
8. Floor/threshold signs

C. 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. An exterior sign location may be occupied by:

1. An exterior building wall facade/storefront sign, and/or
2. A canopy sign, and/or
3. An awning sign, and/or
4. Window signs,

provided that the total sign face area of all such signs shall be not more than 1 square foot of sign face area per 1 lineal foot of building facade or storefront width, or more than 75 square feet, nor more 10% of the total wall area of that building facade or storefront width.

D. Primary facade/storefront signs shall be sized in accordance with their facade or storefront width. The size of the sign or graphics must be in proportion with the available sign area, but the total horizontal dimension of the sign or combined signs shall not exceed 75% of the width of the building facade or storefront.

E. The following types of signs are permitted on Landlord building facades or tenant storefronts:

1. Signs of dimensional wood, stone, metal, tile, glass or other material with a permanent appearance. For such signs, indirect illumination must be provided.
2. Reverse channel letters (open to the rear) with contained or concealed halo illumination against a backing surface or wall. Letter-sides and faces must be opaque, and the sign backing surface or wall material must be matte or non-reflective.
3. Incised signing cast into or carved out of an opaque storefront material. For such signs, indirect illumination must be provided.

4. Customized signs consisting of dimensional, sculptural iconographic elements contextual to Tenant's and Landlord's design. For such signs, indirect illumination must be provided.

5. Internally illuminated individual channel letters with acrylic faces, where specifically permitted in writing in advance by Landlord.

6. Open channel letters with exposed neon illumination contained within where specifically permitted in writing in advance by Landlord.

F. The following types of signs are not permitted on Landlord building facades or tenant storefronts:

1. Surface mounted box or cabinet-type signs.
2. Internally illuminated or backlit translucent awnings.
3. Cloth, paper, cardboard signs or signs of other temporary or non-durable materials.
4. Stickers or decals around or on surfaces of the storefront.
5. Flashing, noisemaking, animated, moving, or rotating signs.
6. Non-illuminated signs of any kind.
7. Signs painted directly onto building surfaces.

G. Canopy and awning signs shall be proportional to the canopy or awning to which they are attached. Lettering and/or logos shall be opaque and either pin-mounted or mounted flush to the canopy, or, alternately, either suspended from or standing atop a canopy edge. Canopy signs shall be limited in material, fabrication and construction as defined in Paragraphs E and F above. Awning sign lettering and/or logos shall be opaque and silk-screened or sewn onto awning fabric.

H. Window signs shall be any signs installed against or within a window or storefront glazing, and intended to be seen from primary common areas. Window signs shall be limited in material, fabrication and construction as defined in Paragraphs E and F above. Periodically changing window displays and merchandising shall not be considered window signs.

I. In addition to the provisions of Paragraph C above, 1 secondary storefront blade, projecting or shingle sign is permitted for each tenant storefront facade directed toward primary common areas. Such blade or shingle sign shall be not more than 6 square feet in sign face area. Blade or shingle signs shall be proportional to, and compatible with, Tenant's storefront design. Blade or shingle signs shall have 2 opposite and parallel readable faces. Sign faces shall be indirectly illuminated. Blade or shingle sign frames, brackets or other supports and any sign lighting must be ornamental and contextual to both Tenant's storefront design and architectural character of Landlord's buildings.

J. In addition to the provisions of Paragraph C above, if approved in advance in writing by Landlord as a key component of Tenant's building or storefront design, and as essential to the overall visual character of the Shopping Center, 1 additional tertiary vertical marquee-style sign may be permitted for tenant storefront facades directed toward primary common areas at key intersections or nodes of the Shopping Center. Such vertical marquee-style signs shall be not more than 12 square feet in sign face area.

K. Secondary blade or shingle signs and tertiary vertical marquee-style signs shall be sized in proportion with their mounting area, and shall not obstruct or obscure other tenants' storefronts or signs or significant Landlord building detailing or features. The design of these signs must be unique, and shall promote Tenant's identity while remaining compatible with the facade of Landlord's buildings.



L. In addition to the provisions of Paragraph C above, Tenant is permitted a floor/threshold sign at any exterior entrance from primary common areas. Such floor/threshold signs shall be centered in front of the storefront entrance doorway, shall be installed flush with adjacent common area paving, and shall be not more than 12 square feet in area. Such floor/threshold signs shall be provided with a durable, slip-resistant, walkable surface. Tenant shall be responsible for providing a watertight installation, and the sign shall be designed to Landlord's complete approval in advance in writing in all pertinent physical attributes: size, shape, depth, material, fabrication, installation, color, finish, surface, maintenance, etc. Tenant shall bear all costs related to the installation of the sign, including costs related to modifications of Landlord's sidewalk or pavement or other work.

M. In addition to the provisions of Paragraph C above, Tenant shall be permitted decal-type lettering and/or logos applied to the interior face of storefront glass as safety markings. Such signing shall not be continuous across any glass surface and shall measure no more than 4" high at any point. Letters and/or logo may be gold-leaf, silver-leaf, or may simulate an etched or frosted glass appearance. Where compatible with Tenant's storefront design and approved in advance in writing by Landlord, other colors may be used for letters and/or logo of such glass markings.

N. Signs shall be limited to Tenant's Trade Name only. Established logos that are part of a business identity are permitted, but shall be included in considerations of sign-to-storefront proportions and area/size restrictions. No brand names, product names or phrases may appear in the storefront or any area directly visible to the public. Decals or other signing indicating product lines or credit card acceptability are not permitted in the storefront or on the building facades.

O. Any sign, notice or other graphic or video display, particularly self-illuminated signs and television monitors, located within the store and visible from common areas are permitted only if and as approved in advance in writing by Landlord. Tenant's sign submittals to Landlord for approval shall include indication of any proposed decals or signs indicating hours of operation or other such incidental information.

P. Final placement and connection of signs to Landlord's building facade must be approved by and coordinated with Landlord's tenant construction representative. All connections must be weather tight.

Q. Manufacturers' labels, underwriters' labels, clips, brackets, frames or any other form of extraneous advertising, structure, attachments, connectors, or lighting devices shall be fully concealed from public view. Sign manufacturers' identification and/or sign permit information may be applied as and if required by local authorities, but shall be as inconspicuous as possible.

R. All electric signs and installation methods must meet U. L. standards.

S. At no time shall hand-lettered, non-professional signs, or newspaper advertisements be displayed on any store front or any building exterior.

T. Signs shall be located only in conjunction with a public building entrance or tenant space entrance or tenant storefront or customer service entrance. With the exception of restaurant tenants or other tenants with specific signage provisions specified in their lease, no tenant signs shall be permitted on Landlord building facades facing parking lots and lacking a public entrance.

U. All internally and indirectly illuminated signs must be illuminated during the normal operating hours of the CAFFM and must be controlled by the use of an automatic time clock or control system.

V. Exit/service doors to tenant spaces throughout the CAFFM shall have standard identification only, consisting of the tenant name and the tenant space address number. Such signs shall be furnished and installed by Landlord at Tenant's expense. Tenant shall not apply any other signage or wording to exit/service doors

W. Tenants may be required by local ordinance to have an address indication at the storefront. If required, this signage shall be furnished and installed by Landlord, at Tenant's expense, to ensure consistency throughout the CAFFM

**Sign Compliance, Submission, Review and Approval Procedures**

A. All signs at the Shopping Center shall comply with these criteria, and with local sign ordinances.

B. Proposed Tenant sign designs shall be included in any conceptual, preliminary or design submission made by Tenant to Landlord for approval. Tenant sign designs shall be shown in relation to Tenant's building architecture, storefront design and/or other proposed improvements.

C. Complete sign design and/or shop drawings incorporating any Landlord-requested 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 Tenant's building architecture, storefront design and/or other proposed improvements.

D. Upon Landlord approval of complete sign design and/or shop drawings, 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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## AGREEMENT FOR LEASE

THIS AGREEMENT FOR LEASE ("Lease") is made this 3rd day of March, 2014 (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
FIRST OPTION PERIOD Lease Years 11-15	\$7.54/sf	\$12,567.00	\$150,800.00
SECOND OPTION PERIOD 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; and
- (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 John E Koniar  
By: [Signature]  
ITS: Mayor  
DATE EXECUTED: 3/3/2014

ATTEST:  
By: [Signature]

TENANT  
By: Mike Alise/Vice President  
ITS: Gulf Coast Produce of Alabama LLC  
DATE EXECUTED: 3-3-14  
FEDERAL TAX ID# 46-4949990

ATTEST:  
By: [Signature]

The undersigned guarantors, for good and valuable consideration received, hereby acknowledge and agree to the terms of Section 36.0 hereof.

[Company Name]  
By: Mike Alise/Vice President  
ITS: Gulf Coast Produce of Alabama LLC  
Date Executed: 3-3-14  
Federal Tax Id#: 46-4949990

[Company Name]  
By: \_\_\_\_\_  
ITS: \_\_\_\_\_  
Date Executed: \_\_\_\_\_  
Federal Tax Id#: \_\_\_\_\_

Signed, sealed and delivered in

The presence of:

Brenda W. Shambo

Witness

Sandra Pate

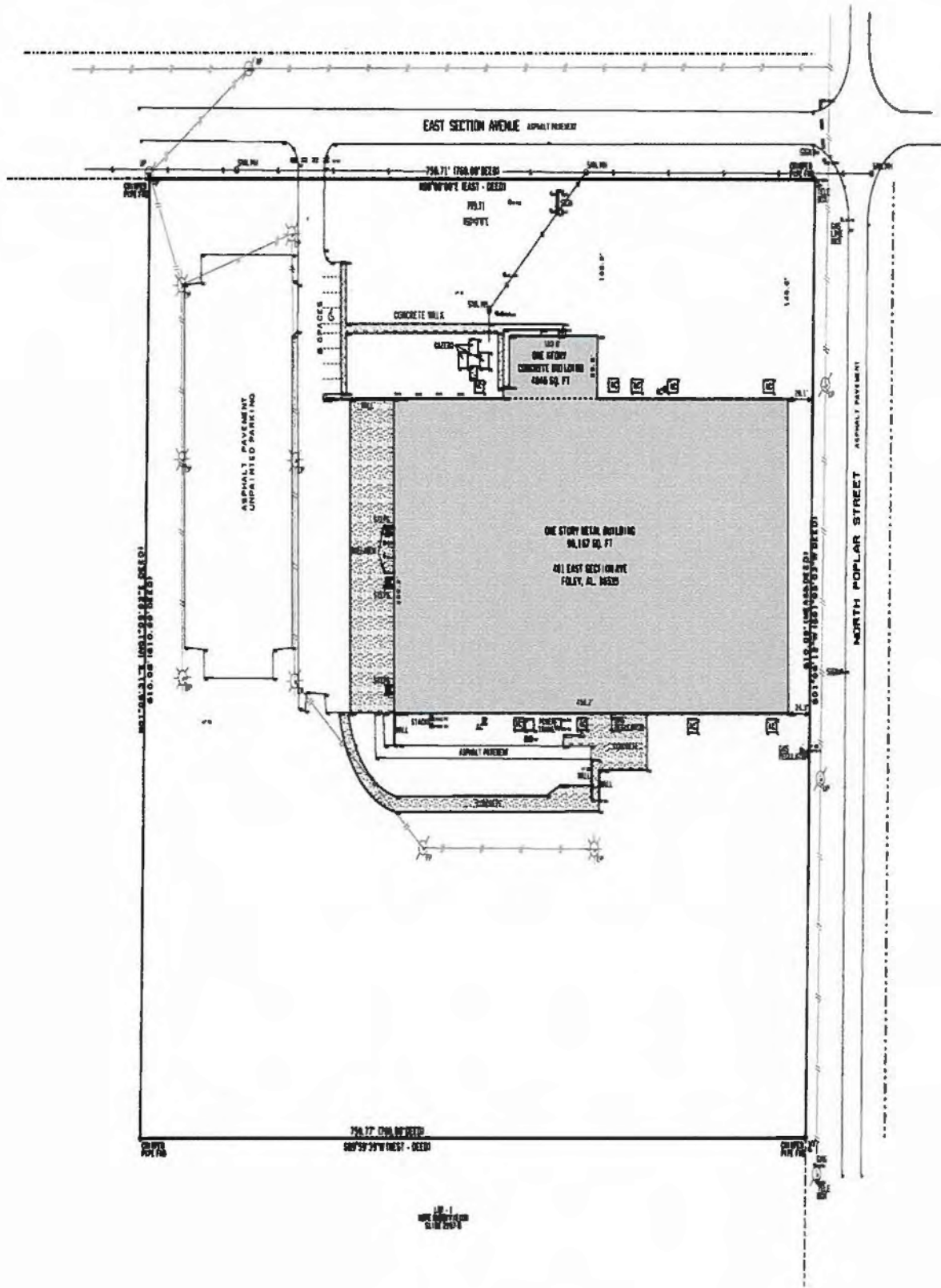
Witness

Name: Brenda W. Shambo

Name: Sandra Pate

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.



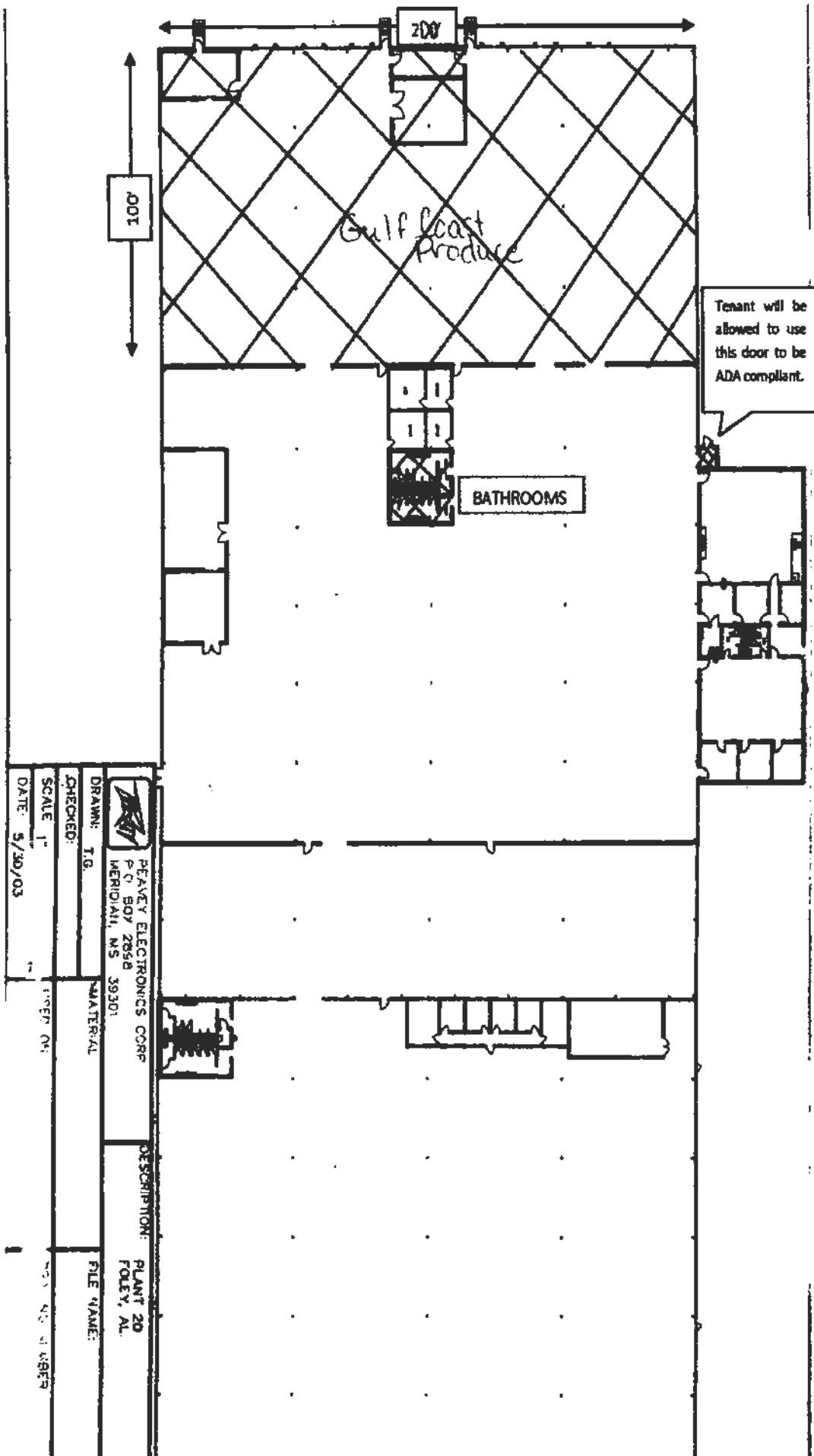
3. Tenant's Work shall be done in such a manner as to be coordinated with all work being performed or to be performed by Landlord to such an extent that Tenant's Work shall not interfere with nor delay the completion of any such work in the CAFFM Wholesale Distribution Building.

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**

May 6, 2014

This Amendment is executed to amend and revise a certain portion of that certain Agreement for Lease (the "Lease") dated on or about March 3, 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.

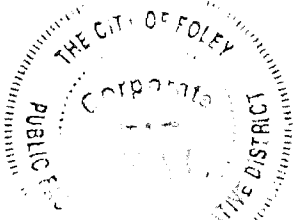
3. The first sentence of the first paragraph of Section C of Exhibit B of the Lease is hereby deleted in its entirety and replaced with the following:

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.



**ATTEST:**

By: [Signature]

David J. Rauch, Vice Chairman

**LANDLORD**

By: [Signature]

Name: Charles J. Ebert, III

Its: Chairman

**TENANT**

By: [Signature]

Name: Mike Alise

Its: Gulf Coast Produce of Alabama, LLC

**ATTEST:**

By: [Signature]

STATE OF ALABAMA

COUNTY OF BALDWIN

**ASSIGNMENT AND ASSUMPTION OF LEASE**

THIS ASSIGNMENT AND ASSUMPTION OF LEASE (this "Assignment") is entered into this 11<sup>th</sup> day of July, 2014, by and between the following parties:

ASSIGNOR: The City of Foley Public Facilities Cooperative District, an Alabama cooperative district, whose mailing address is P.O. Box 1750, Foley, AL 36535 (the "Assignor"); and

ASSIGNEE: Coastal Alabama Farmers' and Fishermen's Market, Inc., an Alabama nonprofit, whose mailing address is 407 East Laurel Avenue, Foley, AL 36535 (the "Assignee").

WHEREAS, Assignor entered into that certain Agreement For Lease by and between Assignor and Gulf Coast Produce of Alabama, dated March 3, 2014, for the use of approximately 20,000 square feet of enclosed floor space within the CAFFM Wholesale Distribution Building, located at 410 East Section Avenue, Foley, Alabama, as amended by that certain Amendment to Agreement for Lease, dated May 6, 2014 (collectively, the "Lease"); and

WHEREAS, Assignor desires to assign, convey and transfer to Assignee, all of Assignor's right, title, and interest to, in and under the Lease and Assignee wishes to accept and assume all such right, title, and interest.

NOW THEREFORE, for and in consideration of the mutual covenants contained herein, the receipt and sufficiency of which is hereby acknowledged, Assignor and Assignee agree as follows:

1. Assignment. Assignor does hereby assign, transfer, sell and convey by way of assignment unto Assignee all of Assignor's right, title, and interest to, in and under the Lease.

2. Assumption. Assignee does hereby assume and agree to perform all Liabilities under the Lease arising or accruing from and after the date hereof (other than for any Breach which occurred prior to the date hereof) and Assignor shall remain responsible for all Liabilities under the Lease arising or accruing prior to the date hereof or which arise after the date hereof but which relate to any Breach that occurred prior to the date hereof.

3. Further Assurances. Assignor agrees to perform, execute and or deliver any and all such further acts and assurances, as Assignee may reasonably require to enable Assignee to obtain the benefit of the provisions of the Lease.

4. Binding Effect. This Assignment shall be binding upon and inure to the benefit of and be enforceable by the successors and assigns of Assignor and Assignee.



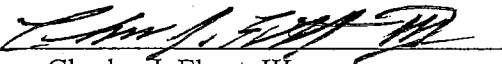
5. Governing Law. This Assignment shall be governed by and construed in accordance with the internal laws of the State of Alabama, without giving effect to any choice or conflict of law provision or rule (whether of the State of Alabama or any other jurisdiction) that would cause the application of the Laws of any jurisdiction other than those of the State of Alabama.

6. Counterparts. This Assignment may be executed in any number of counterparts and any party thereto may execute any such counterpart, each of which when executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument. This Assignment shall become binding when one or more counterparts taken together shall have been executed and delivered by the parties. It shall not be necessary in making proof of this Assignment or any counterpart hereof to produce or account for any of the other counterparts.

[Signature Pages to Follow]

IN WITNESS WHEREOF, the parties hereto have executed this Assignment to be effective as of the date first written above.

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

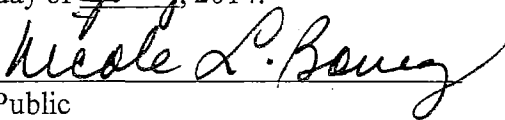
By:   
Name: Charles J. Ebert, III  
As Its: Chairman

STATE OF ALABAMA

COUNTY OF BALDWIN

I, the undersigned Notary Public, in and for said County in said State, hereby certify that **Charles J. Ebert, III** whose name as **Chairman of The City of Foley Public Facilities Cooperative District**, whose name is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of this instrument, executed with full authority and voluntarily on the day same bears date for and as the act of said Cooperative District.

Given under by hand and seal this the 2nd day of July, 2014.

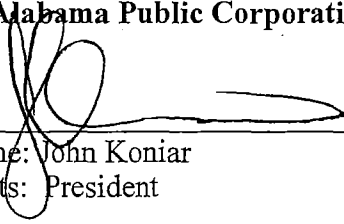
  
Notary Public

[AFFIX NOTARIAL SEAL]

Commission Expires: 1/18/2017

[Signature Page of Assignee to Follow]

**COASTAL ALABAMA FARMERS'  
AND FISHERMEN'S MARKET, INC.,  
an Alabama Public Corporation**

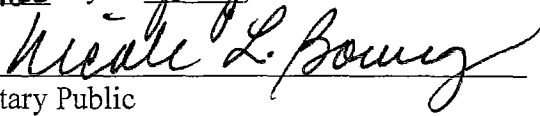
By:   
Name: John Koniar  
As its: President

STATE OF ALABAMA

COUNTY OF BALDWIN

I, the undersigned Notary Public, in and for said County in said State, hereby certify that **John Koniar** whose name as **President** of the **Coastal Alabama Farmers' and Fishermen's Market, Inc.**, whose name is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of this instrument, executed with full authority and voluntarily on the day same bears date for and as the act of said Corporation.

Given under by hand and seal this the 2nd day of July, 2014.

  
Notary Public

[AFFIX NOTARIAL SEAL]

Commission Expires: 1/18/2017

INSTRUMENT PREPARED BY:

Rusty Russell  
Adams and Reese LLP  
11 N. Water St. Ste 23200  
Mobile, Alabama 36602  
(251) 433-3234

**FIRST AMENDED AND RESTATED  
OPERATING AGREEMENT  
of  
CHASE NMTC CAFFM INVESTMENT FUND, LLC,  
a Delaware limited liability company**

**Dated as of July 11, 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 July 11, 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 QLICI, 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 QLICs 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: Kevin R. Goldsmith  
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>	<b><u>Capital Contribution</u></b>	<b><u>Percentage Interest</u></b>
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: Douglas R. Banghart, Esq.  
Facsimile: 617-449-6999  
Email: dbanghart@jonesday.com

[REMAINDER OF PAGE BLANK]

**PACESETTER CDE X, LLC**

**a Texas limited liability company**

**SECOND AMENDED AND RESTATED OPERATING AGREEMENT**

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**Dated as of July 11, 2014**

*Limited liability company interests in Pacesetter CDE X, LLC, have not been registered with the Securities and Exchange Commission under the Securities Act of 1933, as amended, or the state securities laws of any state. Without such registration, limited liability company interests in Pacesetter CDE X, LLC may not be sold, pledged, hypothecated, or otherwise transferred by a member at any time whatsoever except upon delivery to Pacesetter CDE X, LLC of an opinion of counsel satisfactory to the Pacesetter CDE X, LLC that registration is not required for such transfer and/or the submission to the Pacesetter CDE X, LLC of such other evidence as may be satisfactory to Pacesetter CDE X, LLC to the effect that any such transfer will not violate the Securities Act of 1933, as amended, and/or applicable state securities laws, and/or any rule or regulation promulgated thereunder. In addition, any sale or other transfer of limited liability company interests in Pacesetter CDE X, LLC is subject to certain restrictions that are set forth in this Second Amended and Restated Operating Agreement.*



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## SECOND AMENDED AND RESTATED OPERATING AGREEMENT

This Second Amended and Restated Operating Agreement (the “Agreement”) is made and entered into as of July 11, 2014 by and among Pacesetter CDE, Inc. a Texas corporation, as managing member (the “Managing Member” or “Allocatee,” as applicable) and Chase NMTC CAFFM Investment Fund, LLC, a Delaware limited liability company (the “Fund”). The Managing Member and the Fund are each referred to herein individually as a “Member” and collectively as the “Members”.

### RECITALS

WHEREAS, on April 30, 2013, the Certificate of Formation was executed to form a limited liability company known as Pacesetter CDE X, LLC (the “LLC”) under the Limited Liability Company Act as in effect in the State of Texas which certificate was filed for recording in the Office of the Texas Secretary of State on April 30, 2013;

WHEREAS, as of April 30, 2013, the Managing Member entered into that certain Operating Agreement of the LLC with Giovanni Capriglione, a Texas individual (the “Initial Member”) (the “Initial Agreement”);

WHEREAS, as of December 18, 2013 (the “Prefund Date”) the Managing Member and the Fund executed that certain Amended and Restated Operating Agreement (“First Amended Agreement”);

WHEREAS, as of the Prefund Date, Initial Member withdrew from the LLC;

WHEREAS, the Allocatee has received, pursuant to the Tenth Round (2012) of the New Markets Tax Credit Program, an allocation of New Markets Tax Credits under Section 45D of the Code, in the amount of \$30,000,000 of qualified equity investments (the “Allocation”) and has entered into the Allocation Agreement governing such Allocation;

WHEREAS, on or before the Prefund Date, and in accordance with the First Amended Agreement, the Allocatee made two separate sub-allocations in the amount of \$2,000,000 and \$6,000,000 (the “Sub-Allocation”) to the LLC;

WHEREAS, on the Prefund Date, and in accordance with the First Amended Agreement, the Fund made contributions of \$2,000,000 and \$6,000,000, respectively, as equity to the LLC, with each such equity contribution expected to constitute a “qualified equity investment” as the term is defined in Section 45D of the Code, eligible for New Markets Tax Credits;

WHEREAS, the LLC will make loans to Coastal Alabama Farmers’ and Fishermen’s Market, Inc., an Alabama nonprofit corporation (the “Borrower”), which is expected to constitute a “qualified active low-income community business” for purposes of the New Markets Tax Credit program, which loans are expected to constitute “qualified low-income community investments” under the New Markets Tax Credit program; and

WHEREAS, the parties hereto now desire to enter into this Agreement to (i) continue the LLC and continue the Managing Member as managing member; (ii) amend and restate the First Amended Agreement in its entirety; and (iii) set forth all of the provisions governing the LLC.

NOW, THEREFORE, in consideration of the foregoing, of mutual promises of the parties hereto, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree to continue Pacesetter CDE X, LLC pursuant to the terms of this Agreement.

## ARTICLE 1.

### DEFINITIONS

“Accountants” means a firm of independent certified public accountants as may be engaged by the Managing Member on behalf of the LLC with the Consent of the Fund.

“Act” means the Texas Limited Liability Company Act, as amended from time to time (or any successor law).

“Adjusted Capital Account Balance” means the balance in a Member’s Capital Account as of the end of any Fiscal Year of the LLC, after giving effect to the following adjustments: (i) credit to such Capital Account any amounts which the Member is obligated to restore pursuant to any provision of this Agreement or is deemed to be obligated to restore pursuant to the penultimate sentences of Sections 1.704-2(g)(1) and 1.704-2(i)(5) of the Treasury Regulations; and (ii) debit to such Capital Account the items described in Sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5) and 1.704-1(b)(2)(ii)(d)(6) of the Treasury Regulations, expressly including the amount of all New Markets Tax Credits allocated to the Members. The foregoing definition of Adjusted Capital Account Balance is intended to comply with the provisions of Section 1.704-1(b)(2)(ii)(d) of the Treasury Regulations and shall be interpreted consistently therewith.

“Affiliate” means, with respect to a specified Person, (i) any Person, including by means of a non-member manager, directly or indirectly controlling, controlled by or under common control with the Person specified, (ii) any Person owning or controlling 10% or more of the outstanding voting securities or beneficial interests of the Person specified, (iii) any officer, director, partner, trustee or member of the immediate family of the Person specified, (iv) if the Person specified is an officer, director, general partner, manager or managing member or trustee, any corporation, partnership or trust for which that Person acts in that capacity or (v) any Person who is an officer, director, general partner, trustee or holder of 10% or more of outstanding voting securities or beneficial interests of any Person described in clauses (i) through (iv). 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. Affiliate of the Managing Member does not include a Person who is a partner in a

partnership, limited liability company, or joint venture with the Managing Member if that Person is not otherwise an Affiliate of the Managing Member.

“Agreement” means this Second Amended and Restated Operating Agreement, as executed on the Closing Date and as amended from time to time. The Agreement shall constitute the “limited liability company agreement” of the LLC, as such term is used in the Act and is intended to govern the operation and management of the LLC and the relations of the Members to the exclusion of provisions of the Act or other applicable statutes, laws, and regulations, except to the extent such provisions supersede and control the agreement of the Members as a matter of law.

“Allocatee” means Pacesetter CDE, Inc., as the recipient of the Allocation.

“Allocatee Affiliate” means any Affiliate of the Allocatee, other than the LLC.

“Allocation” means the allocation by the CDFI Fund of New Markets Tax Credits under Section 45D of the Code, in the amount of \$30,000,000 of qualified equity investments, awarded to the Allocatee.

“Allocation Agreement” means that certain agreement executed as of July 11, 2013, as amended on effective September 10, 2013 between the Allocatee, the LLC, and the CDFI Fund (as well as other Subsidiary CDEs from time to time) governing the Allocatee’s and the LLC’s (and if applicable, other Subsidiary CDEs’) use and application of investment funds with respect to which an allocation of New Markets Tax Credits has been received.

“Allocation Application” means the New Markets Tax Credit Allocation Application of the Allocatee, pursuant to which the Allocation was awarded, as the same may have been supplemented or amended, together with the notice of the Allocation issued by the CDFI Fund.

“AFR” means the mid-term “applicable federal rate” as defined in Section 1274(d) of the Code.

“Approval Request” means a request by a Member to the other Member for approval of a loan or investment to be made by the LLC pursuant to Section 6.01 of this Agreement. An Approval Request shall contain sufficient information to allow the other Member to determine that the proposed loan or investment satisfies the requirements of this Agreement including but not limited to the requirement that the proposed loan or investment constitutes a QLICI and that the LLC has a “reasonable expectation” that the recipient of the loan or investment will remain a Qualified Business for the duration of the loan or investment as provided in Section 1.45D-1(d)(6)(i) of the Treasury Regulations.

“Approved Investment” means (i) CAFFM Loan, and any other QLICI approved by the Members, and (ii) any Loan Loss Reserve.

“Approved Investment Documents” means any documents or instruments evidencing or securing an Approved Investment.

“Approved QALICB” means the Borrower and any other Qualified Business that receives an Approved Investment.

“Asset Management Fee” has the meaning in Section 3.08(a) of this Agreement.

“Bankruptcy” or “Bankrupt” as to any Person means the filing of a petition for relief as to any such Person as debtor or bankrupt under the Bankruptcy Code or like provision of law; insolvency of such Person as finally determined by a court proceeding; filing by such Person of a petition or application to accomplish the same or for the appointment of a receiver or a trustee for such Person or a substantial part of its assets; or commencement of any proceedings relating to such Person under any other reorganization, arrangement, insolvency, adjustment of debt or liquidation law of any jurisdiction, whether now in existence or hereinafter in effect, either by such Person or by another, provided that if such proceeding is commenced by another, such Person indicates his approval of such proceeding, consents thereto or acquiesces therein, or such proceeding is contested by such Person and has not been finally dismissed within 60 days.

“Bankruptcy Code” means any Section or Chapter of the United States Bankruptcy Code.

“Borrower” has the meaning set forth in the recitals.

“Borrower Payments Account” has the meaning set forth in Section 6.03 of this Agreement.

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

“CAFFM Loan” means, collectively, the loans (intended to be QLICIs) evidenced by that certain QLICI Loan A-1 Note in the original principal amount of \$1,352,600, that certain QLICI Loan A-2 Note in the original principal amount of \$4,597,800, that certain QLICI Loan B-1 Note in the original principal amount of \$647,400 and that certain QLICI Loan B-2 Note in the original principal amount of \$1,402,200, respectively, executed by the Borrower and payable to the LLC and each dated as of the Closing Date.

“Capital Account” means the capital account of a Member as described in Section 7.03 of this Agreement.

“Capital Contribution Account” has the meaning set forth in Section 6.02 of this Agreement.

“Cash Receipts” means all cash receipts of the LLC recognizable by the LLC for income tax reporting purposes, including fees, interest, penalties and distributions, together with withdrawals from Reserves to the extent otherwise permitted hereunder; provided, however, that Cash Receipts shall exclude Principal Payments, the proceeds of any loans to the LLC, and any CDE Capital Contribution.

“CCE” means Chase Community Equity, LLC, the sole member of the Fund.

“CDE” means a “qualified community development entity” as such term is defined in Section 45D of the Code and the Treasury Regulations and Guidance.

“CDE Capital Contribution(s)” means the actual aggregate amount of capital contributed or agreed to be contributed to the LLC by the Fund, and/or the Managing Member as set forth on Exhibit A. The Capital Account of a substitute Member shall include CDE Capital Contributions made by the assignor of such interest (or a pro rata portion thereof in the case of assignment of less than the entire Membership Interests of the assignor).

“CDE Percentage Interests” means the respective percentages as set forth on Exhibit A.

“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 New Markets Tax Credit program.

“Certificate of Formation” means the Certificate of Formation of the LLC filed with the Secretary of State of Texas pursuant to the Act to form the LLC, as originally executed and amended, modified, supplemented, or restated from time to time, as the context requires.

“Certification Application” means the Community Development Entity Certification Application of the LLC, as the same may be supplemented or amended, together with the notice of the certification of the LLC as a CDE issued by the CDFI Fund.

“Closing Date” means the date upon which the Members execute this Agreement.

“Code” means the Internal Revenue Code of 1986, as amended, or any corresponding provision or provisions of subsequent superseding federal revenue laws.

“Compliance Period” means the seven-year credit period applicable to each QEI made by the Fund in the LLC, 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.

“Consent” means, with respect to a specified Person, the written consent of such Person.

“Contravening Member” has the meaning set forth in Section 4.06 of this Agreement.

“Counsel” means with respect to the LLC, Law Office of Mark D. Foster of Dallas, TX, or such other counsel as may be engaged by the Managing Member on behalf of the LLC with the prior Consent of the Fund, and, with respect to the Fund, Jones Day or such other counsel as may be engaged by the Fund.

“Covered Person” means the Fund, JPMC, CCE, Allocatee, Managing Member, each Governing Board Member, and the Tax Matters Partner (in its capacity as such), and the past,



present and future Affiliates, officers, directors, shareholders, members, partners, employees, representatives and agents of any of the foregoing.

“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 to the LLC.

“Credit Investment Period” means the period beginning on the date on which the Fund first makes a QEI to the LLC and ending on the last day of the seventh anniversary of the date hereof.

“Deficit Capital Account” means, with respect to any Member, an Adjusted Capital Account Balance that is less than zero.

“Designated Affiliate” means any Person performing services on behalf of the LLC, within the scope of the authority of the Managing Member, who: (a) directly or indirectly, controls, is controlled by, or is under common control with the Managing Member, (b) owns or controls 10% or more of the outstanding voting securities of the Managing Member, (c) is an officer, director, member or trustee of the Managing Member, or (d) if the Managing Member is an officer, director, member or trustee, any Entity for which the Managing Member acts in any such capacity.

“Direct-Tracing Calculation” means the “direct-tracing calculation,” as described in Section 1.45D-1(c)(5)(ii) of the Treasury Regulations.

“Distributable Cash” means all Cash Receipts and all Final Return of Capital received by the LLC plus amounts in Reserves that are no longer needed for the purposes for which they were set aside (to the extent such amounts are not included within the definition of Final Return of Capital), less amounts necessary to pay Servicing Expenses and making any deposits into Reserves to the extent set aside by the LLC, and any other unpaid expenses of the LLC.

“Dollars”, “USD” and “\$” means dollars in the legal tender of the United States of America.

“Economic Interest” means a Member’s share of one or more of Net Profits, Net Losses, Distributable Cash, and any other distributions of the assets of the LLC pursuant to this Agreement and the Act, but not taking into account any right to participate in the management or affairs of the LLC, or the right to vote on, consent to or otherwise participate in any decision of the Members.

“Election Notice” has the meaning set forth in Section 9.05 of this Agreement.

“Entity” means any general partnership, limited partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative, association, foreign trust or foreign business organization.

“Expenses” means all non-extraordinary actual, reasonable, and necessary out-of-pocket costs and expenses incurred in the ordinary course of business in order to operate, manage, administer, terminate, and wind down the LLC and/or to originate, underwrite, service, and collect the LLC’s investments, including (i) expenses related to compliance by the LLC with the NMTC Program Requirements, (ii) fees for bookkeeping, accounting, tax, legal and other similar services relating to the affairs of the LLC (including without limitation, the annual audit of the LLC, the preparation of annual and interim financial statements, tax returns and the preparation and submission of compliance reports to the CDFI Fund), (iii) costs and expenses associated with communications between the Managing Member and the Fund, and (iv) all other costs or expenses arising from the operation, oversight, and management of the investment and business activities of the LLC. Under the Approved Investment Documents, the LLC may seek reimbursement from the Borrower or any other Approved QALICB for some or all of the Expenses.

“Extraordinary Expenses” means the extraordinary operating or administrative costs or expenses incurred by the LLC including without limitation: (a) costs incurred in the enforcement of defaulted Approved Investments, including any protective advances in connection with such loans, or the sale, acquisition, operation and disposition of any collateral for any such loans or of any such other investments; (b) costs incurred in any litigation or other judicial or administrative proceeding in which the LLC may be involved; (c) costs and expenses incurred in connection with the reinvestment of amounts pursuant to NMTC Program Requirements; (d) costs involved in any challenge or audit of any tax returns of the LLC; and (e) any tax liabilities or obligations that may be imposed directly on the LLC.

“Final Return of Capital” means any of the following to the extent the same is not required to be reinvested in order to comply with the Substantially-All Requirement as determined by the Managing Member, subject to the approval of the Fund in its reasonable discretion of the methodology used to make such determination: (i) any Scheduled Principal Payment or Return of Capital; and (ii) amounts in any Reserve that are applied to any defaults or shortfalls in payment under one or more of the Approved Investments, to the extent the Members elect not to invest such amounts into other Approved Investments as otherwise provided for herein.

“Financing Facility” means the loans in the aggregate amount of \$5,950,400 loan from the Fund Lender, and any other loan obtained by the Fund from time to time providing financing to the Fund, the proceeds of which are used in whole or in part to enable the Fund, directly or indirectly, to provide the Fund’s CDE Capital Contributions.

“Financing Facility Documents” means all documents and instruments evidencing or securing the Financing Facility.

“Fiscal Year” means the fiscal year of the LLC, as determined under Section 8.08 of this Agreement.

“Fund” means Chase NMTC CAFFM Investment Fund, a Delaware limited liability company.

“Fund’s Investment Criteria” means the criteria applied by JPMC’s credit committee in the ordinary course of JPMC’s lending business to evaluate and underwrite potential loans and borrowers.

“Fund Lender” means The City of Foley Public Facilities Cooperative District, an Alabama public corporation, and any other lender of any portion of the Financing Facility, or its assignee, in its capacity as lender under the Financing Facility.

“GAAP” means generally accepted accounting principles in the United States of America in effect from time to time (as set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board, or in such other statements by such other entities as may be in general use by significant segments of the accounting profession, which are applicable to the circumstances as of the date of determination).

“Governing Board” means the “governing board” (as such term is used in the NMTC Program Requirements maintained in accordance with Section 3.02 of this Agreement).

“Governing Board Member” and “Governing Board Members” have the meaning provided in Section 3.02 of this Agreement.

“Governmental Authority” means any nation or government, any state or other political subdivision thereof, and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, and any corporation or other entity owned or controlled (through stock or capital ownership or otherwise) by any of the foregoing, whether domestic or foreign.

“Guidance” means any guidance, rule, or procedure published by the CDFI Fund and applicable to the Allocation and/or the Sub-Allocation, including without limitation the Certification Application and the Allocation Application.

“including” or “include” is used to provide examples of the matter described, and is not used by limitation, whether or not the words “without limitation” or words of similar import are used.

“Indemnity Agreement” means that certain CDE Indemnification Agreement dated as of the Closing Date by and among the LLC, the Managing Member and JPMC.

“Initial Agreement” has the meaning provided in the Recitals.

“Initial Member” has the meaning set forth in the Recitals.

“Insolvent” means with respect to any Person on a particular date, that on such date (i) such Person was unable to pay its debts as they come due, or (ii) the fair market value of the property of such Person is less than the total amount of liabilities, including contingent liabilities, of such Person. The amount of contingent liabilities (such as litigation) at any time shall be computed as the amount that, in light of all the facts and circumstances existing at the time, represents the amount that can reasonably be expected to become an actual or matured liability.

“Interest Holder” means a Member holding an Economic Interest.

“Investment Default” has the meaning provided in Section 6.01(d) of this Agreement.

“Investment Period” means, as applicable, (a) the twelve-month period following the receipt by the LLC of a QEI if and so long as the Substantially-All Requirement remains unsatisfied as to such QEI, (b) the twelve-month period following the receipt of any Principal Payment or Return of Capital (that is not a Final Return of Capital) with respect to any Approved Investment funded from a QEI, if and so long as the Substantially-All Requirement remains unsatisfied as to such QEI, or (c) the end of the calendar year following the calendar year in of Capital) with respect to any Approved Investment funded from a QEI, if and so long as the Substantially-All Requirement remains unsatisfied as to such QEI.

“IRS” means the Internal Revenue Service.

“JPMC” means JPMorgan Chase Bank, N.A., a national banking association.

“LLC” means Pacesetter CDE X, LLC, the limited liability company formed pursuant to the Act and continued pursuant to this Agreement, and which is a Subsidiary CDE of the Managing Member.

“Loan Loss Reserve” means a Reserve for loan losses or for additional investments in connection with any Approved Investment, funded in such amounts as the Managing Member and the Fund shall determine (but not in excess of 5% of total QEIs).

“Low-Income Community” means any “low-income community” as defined in Section 45D of the Code and the Treasury Regulations and Guidance (expressly including any targeted population designated under the Treasury Regulations.)

“Managing Member” means Pacesetter CDE, Inc., a Texas corporation, or any successor or assignee of such Managing Member admitted to the LLC in accordance with Article 9 of this Agreement, or any new Managing Member appointed as such pursuant to Section 9.04 of this Agreement.

“Managing Member’s Investment Criteria” means the investment criteria as set forth in the Allocation Agreement without regard to Section 3.3(i), as the same may be supplemented, modified, or amended from time to time upon the written approval of all of the Members.

“Material Adverse Effect” means actions, omissions or other events that individually (or collectively with other actions, omissions or events) could reasonably be expected to (i) prevent the LLC from fulfilling its purpose as set forth in Section 2.05 of this Agreement; (ii) result in a material economic loss; or (iii) cause a Recapture Event for which the Managing Member would be liable under the Indemnity Agreement.

“Member” means the Managing Member, the Fund, or any other Person who is admitted as a member of the LLC in accordance with the provisions of this Agreement.

“Member Loan” means any advance of funds by a Member to the LLC in the form of a loan pursuant to Section 8.07 of this Agreement.

“Membership Interest” means a Member’s entire interest in the LLC, including such Member’s Capital Account, such Member’s Economic Interest, and 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, together with the obligations of such Member to comply with all the provisions of this Agreement and of the Act.

“Net Cash Flow” means for each fiscal year the sum of (i) Operating Income and (ii) any other funds deemed available for distribution by the Managing Member with the approval of the LLC, if required, less the sum of all Expenses that are not taken into account in the definition of Operating Income and any amortization of principal on any debt of the LLC. Net Cash Flow shall be determined separately for each fiscal year, commencing on the day after the Closing Date and shall not be cumulative.

“Net Profits” and “Net Losses” shall be determined in accordance with Section 8.13 of this Agreement.

“New Markets Tax Credit” means the new markets tax credit allowed pursuant to Section 45D of the Code for QEIIs invested in a CDE.

“NMTC Program Requirements” means, collectively, the provisions of Section 45D of the Code, the Treasury Regulations and Guidance, and all requirements set forth in the Certification Application, the Allocation Application and the Allocation Agreement.

“Notice” means a writing containing the information required to be communicated to a Person and sent by registered or certified mail, or by overnight delivery service, postage prepaid, to such Person at the last known address of such Person, the date of the certification receipt therefore being deemed the date of such Notice; provided, however, that any written communication containing such information sent to such Person actually received by such Person shall constitute Notice; provided, however, that any written communication containing such information sent to such Member actually received by such Member shall constitute Notice for all purposes of this Agreement.

“Operating Income” means, for each Fiscal Year or other period, an amount equal to the “operating income” of the LLC for such Fiscal Year or other period, determined in accordance with Section 1.45D-1(e)(3)(iii) of the Treasury Regulations.

“Permitted Temporary Investments” means certificates of deposit and time or demand deposits in, JPMC.

“Person(s)” means any individual or Entity, and the heirs, executors, administrators, legal representatives, successors, and assigns of such “Person” where the context so permits.

“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 the Managing Member or the manager of the Fund, as applicable.

“Principal Payments” means any amounts received as repayment of principal on a loan that is a QLICI other than Scheduled Principal Payments.

“Prohibited Distributions” has the meaning set forth in Section 8.04(a) of this Agreement.

“Project Documents” means this Agreement, the Certification Application, the Allocation Application, the Allocation Agreement, any other document or instruments executed by the LLC in connection with the New Markets Tax Credits and any Approved Investment Documents.

“Proposed Qualified Investment” means any loan or investment proposed by any party to this Agreement that is certified by the party proposing it as meeting the NMTC Program Requirements including the applicable requirements of the Allocation Agreement.

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

“QLICI” means a qualified low-income community investment as defined in Section 45D(d)(1) of the Code.

“Qualified Business” means a business or a portions of business to which the LLC is lending or investing money, and which qualifies as a “qualified active low-income community business” under Section 45D of the Code, and as to which the entire amount of any loan or investment by the LLC constitutes a QLICI.

“Qualified Census Tract” means a census tract within the Service Area, which qualifies as a Low-Income Community.

“Qualified Loan” means the CAFFM Loan or any other loan that constitutes an Approved Investment.

“Recapture Event” means any event or condition that would cause or result in a reduction, loss, disallowance or recapture of all or any portion of the New Markets Tax Credits pursuant to Section 45D(g) of the Code or the Treasury Regulations and Guidance thereunder.

“Redemption” has the meaning set forth in Section 9.05 of this Agreement.

“Redemption Period” has the meaning set forth in Section 9.05 of this Agreement.

“Related Documents” means all of the documents executed in connection herewith or in connection with the Approved Investment Documents.

“Remaining Investment Period” means the last three months of the Investment Period, without regard to the six month cure period that may be available under Section 1.45D-1(e)(6) of the Treasury Regulations.

“Reserves” means funds set aside or amounts allocated to reserves which shall be maintained in amounts recommended from time to time by the Managing Member and approved by the Fund, for working capital and to pay taxes, insurance, or other costs or expenses incident to the ownership or operation of the LLC’s business, including as provided in Section 6.01 of this Agreement.

“Return of Capital” means Principal Payments or any other amounts received by the LLC in payment of, or for, capital, equity or principal with respect to an Approved Investment, but excluding Scheduled Principal Payments.

“Rules and Regulations” means provisions of the Certification Application relevant to (i) insuring the continuing qualification of the LLC as a “qualified community development entity” pursuant to and as defined for the purposes of Section 45D of the Code and the Treasury Regulations and Guidance with respect thereto and (ii) defining and clarifying investment procedures designed to provide for continued compliance with the NMTC Program Requirements; together with any revisions thereto implemented by the Managing Member provided the same shall be consistent with the NMTC Program Requirements; provided, that no Rule or Regulation shall have retrospective effect, result in the return of any CDE Capital Contribution or otherwise require the LLC or any Member to dispose of any investment previously made or revoke any action previously taken unless the failure to dispose of such investment or revoke such action would likely result in the disqualification of the LLC as a “qualified community development entity”.

“Scheduled Principal Payments” means any periodic amounts received during a calendar year as repayment of principal on a loan that is a QLICI to the extent such payments are provided for in the Approved Investment Documents.

“Securities Act” means the Securities Act of 1933, as amended.

“Securities Claims” has the meaning set forth in Section 10.03(b) of this Agreement.

“Service Area” means the national service area as specified in the Allocation Agreement and Certification Application.

“Servicer” means or any Person appointed by the LLC with the Consent of the Fund as the Servicer of any Approved Investments, or any successor Servicer, appointed under any Servicing Agreement.

“Servicing Agreement” means any servicing agreement entered into between the LLC and the Servicer, pursuant to which such party shall provide certain servicing functions with respect to the Approved Investments in compliance with the Servicing Standards.

“Servicing Standards” has the meaning set forth in Section 3.03(r) of this Agreement.

“Single Purpose Entity” means a limited liability company which, at all times since its formation and thereafter:

- (i) has not and shall not engage in any business or activity other than making Approved Investments and Permitted Temporary Investments, and activities incidental thereto;

- (ii) has not and shall not, acquire or own any assets other than Approved Investments and Permitted Temporary Investments, and such incidental personal property as may be necessary in connection with owning the same;

- (iii) has and shall preserve its existence as an entity duly organized, validly existing and in good standing (if applicable) under the laws of the jurisdiction of its formation or organization;

- (iv) has not and shall not merge or consolidate with any other Person;

- (v) except as otherwise expressly permitted or contemplated in this Agreement, has not taken, and shall not take, any action to dissolve, wind-up, terminate or liquidate in whole or in part; to sell, transfer or otherwise dispose of all or substantially all of its assets; to change its legal structure; transfer or permit the direct or indirect transfer of any membership or other equity interests, as applicable, unless otherwise permitted herein; issue additional membership or other equity interests, unless otherwise permitted herein, as applicable; or seek to accomplish any of the foregoing;

- (vi) shall not, without the unanimous Consent of all its Members: (A) file or consent to the filing of any petition, either voluntary or involuntary, to take advantage of any applicable insolvency, bankruptcy, liquidation or reorganization statute; (B) seek or consent to the appointment of a receiver, liquidator or any similar official; or (C) make an assignment for the benefit of creditors;



(vii) has not, and shall not amend or restate its organizational documents if such change would adversely impact the requirements set forth in this definition, unless as otherwise required by applicable law or regulation;

(viii) shall not own any subsidiary;

(ix) shall not commingle its assets with the assets of any other Person;

(x) except as otherwise expressly permitted or contemplated in this Agreement (including in Section 3.03(b) of this Agreement), has not, and shall not, incur any debt, secured or unsecured, direct or contingent (including, without limitation, guaranteeing any obligation), other than customary unsecured trade payables incurred in the ordinary course of owning Approved Investments and Permitted Temporary Investments, as applicable, provided the same do not exceed, in the aggregate, at any time a maximum amount of \$10,000 and are paid within sixty (60) days of the date incurred;

(xi) shall maintain its records, books of account, bank accounts, financial statements, accounting records and other entity documents separate and apart from those of any other Person;

(xii) shall only enter into any contract or agreement with any general partner, member, shareholder, principal or Allocatee Affiliate, or any general partner, member, principal or Affiliate thereof, upon terms and conditions that are substantially similar to those that would be available on an arms-length basis with third parties;

(xiii) shall not maintain its assets in such a manner that it will be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person;

(xiv) except as otherwise expressly permitted or contemplated in this Agreement, shall not assume or guaranty the debts of any other Person, hold itself out to be responsible for the debts of another Person, or otherwise pledge its assets for the benefit of any other Person or hold out its credit as being available to satisfy the obligations of any other Person;

(xv) shall not make any Investments or advances to any other Person other than Approved Investments and Permitted Temporary Investments;

(xvi) shall file its own tax returns as required under federal and state law;

(xvii) shall hold itself out to the public as a legal entity separate and distinct from any other Person;

(xviii) shall maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations;

(xix) shall allocate shared expenses (including, without limitation, shared office space) and shall use separate stationery, invoices and checks;

(xx) except as otherwise expressly permitted or contemplated in this Agreement, shall pay its own liabilities (including, without limitation, salaries of its own employees) from its own funds; and

(xxi) except as otherwise expressly permitted or contemplated in this Agreement, shall not acquire obligations or securities of its partners, members or shareholders.

“Special Capital Contributions” has the meaning set forth in Section 7.05(a) of this Agreement.

“Special Contributions Account” has the meaning set forth in Section 7.05(b) of this Agreement.

“Sub-Allocation” has the meaning provided in the Recitals.

“Subsidiary CDE” means a qualified community development entity formed by the Allocatee as a “subsidiary” as such term is used in the Treasury Regulations and Guidance, for the purpose of receiving a Sub-Allocation of New Markets Tax Credits from the Managing Member’s Allocation.

“Substantially-All Requirement” means the requirement provided for in Section 1.45D-1(c)(5) of the Treasury Regulations.

“Tax” or “Taxes” means any and all liabilities, losses, expenses, and costs that are, or are in the nature of, taxes on income (whether based on gross income or net income), together with all interest, penalties, fines, and additions to such taxes imposed by any Governmental Authority.

“Taxable Income” and “Taxable Losses,” means, for each Fiscal Year of the LLC (or other period for which Taxable Income and Tax Losses must be computed), the LLC’s Taxable Income or Taxable Losses determined in accordance with Section 703 of the Code.

“Tax Matters Partner” has the meaning set forth in Section 8.12 of this Agreement.

“Taxpayer Notice” has the meaning set forth in Section 3.04(d)(i) of this Agreement.

“Transferring Member” means any Member which sells, assigns, pledges, hypothecates, gifts, bequeaths or otherwise transfers, with or without consideration, all or any portion of its Membership Interests.

“Treasury Regulations” or “Treas. Reg.” means any temporary, proposed or final regulations promulgated by the U.S. Department of the Treasury from time to time under the Code.

“Undistributable Cash Reserve Account” has the meaning set forth in Section 6.04 of this Agreement.

“Unintentional Distribution” has the meaning set forth in Section 8.04(c) of this Agreement.

## ARTICLE 2.

### CONTINUATION OF THE LLC

**2.01 Continuation; Admission of Members.** The undersigned hereby continue the LLC as a limited liability company under the Act. As of the Prefund Date the Fund was admitted as a Member of the LLC on the terms and conditions set forth in the First Amended Agreement and (b) the First Amended Agreement is amended and restated in its entirety by this Agreement. The Managing Member shall take all other necessary action required by law to perfect and maintain the LLC as a limited liability company under the laws of the State of Texas, shall register the LLC under any applicable assumed or fictitious name statute or similar law in force and effect, and shall execute and file such documents as may be required to qualify the LLC as a foreign limited liability company in any other jurisdiction in which such qualification shall be required.

**2.02 Name.** The name of the limited liability company governed by this Agreement is Pacesetter CDE X, LLC, and it shall conduct business solely under such name.

**2.03 Principal Places of Business.** The LLC may locate the principal place of business at such place or places as the Managing Member may deem advisable. The initial principal place of business of the LLC shall be 2600 E. Southlake Blvd., Suite 120-105, Southlake, TX 76092.

**2.04 Registered Office and Statutory Agent.** The LLC’s initial registered office shall be at the office of its registered agent: Mark D. Foster, 4835 LBJ Suite 424, Dallas, Texas 75244. The Managing 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 Secretary of State pursuant to the Act.

**2.05 Purpose and Powers.** The primary purpose of the LLC is 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 Code) in the Service Area, consistent with the requirements for constituting a qualified community development entity under Section 45D of the Code and the related Treasury Regulations and Guidance, and in connection therewith the LLC may conduct any business which is lawful to be conducted by a limited liability company pursuant to the Act, provided it is in furtherance of and consistent with such purposes. In

furtherance of its purpose, the primary activity of the LLC is to make Approved Investments in Qualified Businesses. In pursuing such purpose, on or before the Prefund Date the LLC received the Sub-Allocation. The purposes of the LLC shall also include making Permitted Temporary Investments as herein provided. Subject to the limitations set forth in this Agreement, the LLC shall have all powers necessary to or reasonably connected with the LLC's business which may be legally exercised by a limited liability company under the Act or which are necessary, customary, convenient or incident to the realization of its purposes. The LLC may take such actions as it deems necessary or advisable to qualify and to continue the qualification of the LLC as a CDE and to comply with the NMTC Program Requirements as applicable to the Sub-Allocation. In pursuing such purpose, subject to the provisions of this Agreement, the LLC may, without any obligation to do so except as specifically provided under this Agreement:

(a) enter into the Allocation Agreement or supplement thereto with respect to the Sub-Allocation;

(b) make Approved Investments to Qualified Businesses in the Service Area;  
and

(c) take such actions as it deems necessary or advisable (x) to obtain equity funds, through one or more private placements to "Accredited Investors" (as such term is defined in Regulation D under the Securities Act of 1933, as amended), to the Fund or other Members to be admitted to the LLC in accordance with this Agreement, (y) to cause the LLC to issue limited liability company interests to its Members, and (z) to enter into, execute, and deliver such related agreements, certificates, and instruments, and any amendments, modifications, or supplements thereto, governing or pertaining to such investments, the issuance of such limited liability company interests, and the operation of the LLC.

**2.06 Term.** The term of existence of the LLC commenced on the effective date of filing of the Certificate of Formation with the Secretary of State, and shall continue indefinitely until the first to occur of (a) the dissolution of the LLC in accordance with the provisions of this Agreement, and (b) the effective date of dissolution provided by a decree of a duly authorized judicial or administrative authority.

**2.07 Conduct of Business by the LLC.** In furtherance of maintaining the separate liability and separate existence of the LLC:

(a) The LLC shall not incur, contract for, or otherwise have any debts, liabilities or obligations other than the debts, liabilities and obligations incurred in connection with and in furtherance of the purpose of the LLC as set forth in this Agreement.

(b) The LLC will conduct its own business under direction of the Managing Member as provided for herein and that business will be conducted solely in the name of the LLC and in such a way as to not mislead others as to the identity of the entity with which they are dealing. In that regard, all written communications by the LLC, including, without limitation, letters, invoices, purchase orders and contracts, have been and will be made solely in

the name of the LLC. The LLC will always describe itself as a separate legal entity and not as a division or department of any other Person, including any Allocatee Affiliate.

(c) The LLC shall (i) establish bank accounts solely in the name of the LLC, (ii) enter into contracts and procure goods and services only in the name of the LLC, and pay the expenses and liabilities of the LLC (to the extent otherwise permitted herein) from the funds of the LLC, (iii) hold title to its assets only in the name of the LLC and account for such assets separately from any other Person, (iv) either (A) use separate letterhead with the LLC name in all correspondence and use separate invoices and checks bearing the LLC name or (B) clearly designate that any correspondence, invoices and checks relate to the LLC, (v) maintain books and records that are separate and distinct from those of any other Person, (vi) conduct meetings of the Members separately from those of any other Person and keep separate minute books of all such meetings and other actions of the Members, and (vii) otherwise cause the LLC to conduct business solely under its own name. Nothing contained in the forgoing shall obligate any service provider to the LLC to provide such services in the name of the LLC.

(d) The LLC shall not incur or guaranty any indebtedness or obligations on behalf of any Member, any Affiliate of any Member, or any other Person.

(e) Neither the LLC nor the Managing Member shall enter into any agreement with the Managing Member or any Allocatee Affiliate for the sale of goods or services to the LLC not specifically provided for in this Agreement unless (i) the compensation paid for such goods or services is reasonable (i.e., at fair market value) and is paid only for goods or services actually furnished to the LLC, (ii) the goods or services to be furnished are reasonable for and necessary to the LLC, (iii) the fees, terms and conditions of such transaction are at least as favorable to the LLC as would be obtainable in an arm's-length transaction. No agent, attorney, accountant or other independent consultant or contractor who also is employed on a full-time basis by the Managing Member or any Allocatee Affiliate shall be compensated by the LLC for his or her services. Any contract covering such transactions shall be in writing and shall be terminable by the LLC without penalty with no more than sixty (60) days notice. Any payment made to the Managing Member or a Allocatee Affiliate for such goods or services shall be fully disclosed to the Members. The LLC shall not, by the making of lump-sum or advance payments to any Person, circumvent the provisions of this Section 2.07(e).

(f) The LLC will maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations.

(g) The LLC will not commingle its funds or other assets with the funds or other assets of any Member, or any Affiliate of any Member, or any other Person, and the LLC shall otherwise maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any Member, or any Affiliate of any Member, or any other Person.

(h) The LLC shall not hold itself out to be responsible for the debts or obligations of any other Person.

(i) The LLC shall at all times be and remain a Single Purpose Entity.

### **ARTICLE 3.**

#### **RIGHTS AND DUTIES OF MEMBERS**

**3.01 Management.** The business and affairs of the LLC shall be managed by the Managing Member, in accordance with the terms of this Agreement, the Rules and Regulations, if any, and the Act. In connection therewith, the Managing Member hereby certifies that the Rules and Regulations currently consist of only the relevant sections of the Certification Application. Where the Managing Member is granted express authority or subject to express obligations under the terms of this Agreement, the Managing Member shall have full and complete authority, power and discretion with respect to such matters, except for situations in which the Consent or approval of the Fund is expressly required by this Agreement, the Rules and Regulations, or by non-waivable provisions of the Act. The Managing Member shall manage and control said affairs of the LLC using no less than commercially reasonable efforts and shall devote such of its time as is necessary to the affairs of the LLC.

**3.02 Accountability.**

(a) The LLC shall maintain a Governing Board for the purposes of maintaining accountability to residents of Low-Income Communities. Subject to the Rules and Regulations, the number of members of the Governing Board (each a “Governing Board Member” and collectively the “Governing Board Members”) shall be determined from time to time by the Managing Member, provided, however, that at all times not less than 20% of the Governing Board Members serving on the Governing Board shall consist of individuals who are, or who otherwise represent the interests of, residents of Low-Income Communities in the Service Area, in accordance with Code Section 45D(c)(1)(B) and the Treasury Regulations and Guidance thereunder. The Governing Board shall meet (in person or through telecommunications) not less frequently than two (2) times per year. A representative of the Managing Member shall be present in person or through telecommunications at each such meeting, and the Fund shall be entitled to have a representative present in person or through telecommunications at any such meeting.

(b) The LLC shall provide semi-annual certification to the Members in the form attached hereto as Exhibit D, as well as certification within thirty (30) days of any change to the membership of the Governing Board, that the Governing Board is accountable as required by the NMTC Program Requirements which certification shall include a list of the Governing Board Members and the basis for their classification as representative of Low-Income Communities. It is intended that the Managing Member “control” the LLC, as defined in Treas. Reg. Section 1.45D-1(d)(5) and the Allocation Agreement. The Managing Member shall

manage and control said affairs of the LLC in good faith with due care and diligence, and using no less than commercially reasonable efforts.

(c) If the Managing Member determines, or the Fund otherwise becomes aware, that the composition of the Governing Board fails to meet the accountability requirements of the NMTC Program Requirements, then the Managing Member shall provide Notice to the Fund which states with specificity the reason for such failure and which appoints one (1) or more Governing Board members, the appointment of whom to the Governing Board would cause the Governing Board to comply with the NMTC Program Requirements. If the Managing Member is unable to satisfy the Fund, in the reasonable judgment of the Fund, that the LLC maintains accountability to the residents of Low-Income Communities in the manner provided for in the Certification Application or as otherwise required under Section 45D of the Code and the Treasury Regulations and Guidance thereunder, then the Fund may require the Managing Member to add or remove members of the Governing Board of the Fund's choosing.

(d) The Governing Board Members shall be the same members as are the members of the governing board of the Allocatee, unless the Managing Member provides Notice otherwise. As a result, the Governing Board may meet in conjunction with meetings regarding the Allocatee and/or other Subsidiary CDEs of the Allocatee.

**3.03 Certain Powers of Managing Member.** The Managing Member, pursuant to the authority granted to it under but subject to the limitations of this Agreement, shall have the power and duty to exercise a controlling influence over the management policies and investment decisions of the LLC in connection with the fulfillment of the purposes of the LLC as stated in Section 2.05 hereof and the compliance by the LLC with the NMTC Program Requirements. Without limiting the foregoing, the Managing Member shall have the following authority and power, subject to the limitations set forth in this Agreement and complying with the NMTC Program Requirements and the express limitations contained in this Agreement, the Managing Member shall have the power:

(a) to propose and approve, subject to the approval rights of the Fund pursuant to Sections 3.05(a)(iii) and 6.01(b) of this Agreement, all Approved Investments and the terms and conditions on which the same are made in the manner provided for in Section 6.01(a) of this Agreement, including the provisions of the applicable loan documents;

(b) to cause the LLC to borrow money for the business of the LLC on such terms as the Managing Member deems appropriate, and to prepay (in whole or in part), refinance, amend, extend, or otherwise modify any debt of the LLC;

(c) to purchase and maintain liability and other insurance for the protection of the property and business of the LLC;

(d) to cause the LLC to hold, own, buy, sell, lease and exchange real and personal properties of the LLC in the name of the LLC and to construct, operate, maintain and improve the same;

(e) to cause the LLC to make interim investments only in Permitted Temporary Investments or as otherwise provided herein;

(f) to execute on behalf of and in the name of the LLC all instruments and documents, including, without limitation: any and all documents with respect to any Approved Investment, checks, drafts, notes and other negotiable instruments; security agreements; documents providing for the acquisition or disposition of the property of the LLC; and any other appropriate instruments or documents;

(g) to propose any actions to be taken by the LLC for approval by the Members as the Managing Member may deem to be necessary or appropriate to the conduct of the business of the LLC;

(h) to enter into, make and perform on behalf of the LLC any and all agreements, contracts and other undertakings, including contracts with any Member, any Affiliate thereof, or any agent of the LLC on behalf of the LLC, to the extent consistent with the other provisions of this Agreement and in furtherance of the purposes of the LLC, provided, however, that agreements, contracts or undertakings between the LLC and any Member thereof (or an Affiliate of such Member) shall be on arms-length, “market” terms and conditions; provided further that the foregoing provision shall be deemed satisfied with respect to the fees payable pursuant to Section 3.08 of this Agreement;

(i) to establish, maintain and close accounts with banks and/or brokers, and draw checks or other orders for the payment of money or disposition of assets on behalf of the LLC;

(j) to approve the form and content of all reports, records, statements, certifications, documents, and filings made or required to be made by the LLC pursuant to the NMTC Program Requirements, including those referred to in Section 3.04(b) and (d)(i)-(d)(viii) hereof;

(k) to elect, appoint, engage, employ and terminate such officers of the LLC, if any, which the Managing Member deems necessary or appropriate, such officers to have such duties and powers as specified by the Managing Member in connection with the appointment of such officers (provided that no compensation shall be paid by the LLC to such officers except as may be provided in this Agreement or except with the prior approval of the Fund);

(l) to delegate any of its duties under this Agreement or any Related Document and to engage, employ, terminate and replace accountants, legal counsel, managing agents or other professionals to perform services for the LLC with the Consent of the Fund;

(m) subject to Section 3.05 hereof, to commence and defend litigation on behalf of the LLC, participate in administrative or other proceedings on behalf of the LLC, and enter into settlements with respect thereto on behalf of the LLC;



(n) to indemnify any Person on behalf of the LLC in accordance with this Agreement and the Act;

(o) to adopt, amend, modify, clarify and interpret the Rules and Regulations, if any;

(p) to enter into agreements with the CDFI Fund regarding the allocation or sub-allocation of New Markets Tax Credits in a manner consistent with the provisions of this Agreement; provided, that agreements which pertain to the Sub-Allocation (including any amendments or modifications to any such agreements) shall be subject to the prior, written approval of the Fund;

(q) to take any and all actions as it deems necessary in its good faith judgment to protect against the public disclosure (pursuant to any Freedom of Information Act requests, or otherwise) of information with respect to the Allocatee, the Allocation, the Sub-Allocation, and all related information that the Managing Member believes to be confidential, proprietary, or otherwise protected from disclosure, at the expense of the LLC to the extent (and only to the extent) the foregoing relates to the Sub-Allocation and/or the LLC;

(r) to perform on behalf of the LLC, origination (except as otherwise provided in Article VI), asset management, loan closing, funding and servicing with respect to any Approved Investments, including the determination of a borrower's compliance or non-compliance with the applicable loan documents, or to delegate any of the foregoing to a Servicer pursuant to a Servicing Agreement, provided, however, that in the event that the Servicing Agreement is terminated as provided for therein, the Managing Member shall cause the Approved Investments to be serviced with the same care, skill, prudence and diligence customarily exercised by prudent institutional commercial mortgage loan servicers (the "Servicing Standards"); and provided, further, that the Managing Member shall remain liable to the LLC and the Fund for the performance of its obligations hereunder, notwithstanding any such delegation to a Servicer of such rights, powers, and responsibilities. The Managing Member covenants to observe the Servicing Standards when considering any requests for Consent received from the Servicing Agent pursuant to the Servicing Agreement; and

(s) to exercise responsibility for business development, raising capital, underwriting, portfolio monitoring, reporting and compliance.

**3.04 Certain Duties of Managing Member.** In furtherance of its management responsibilities as aforesaid, it shall be the obligation of the Managing Member to perform the following duties by and on behalf of the LLC, as provided in this Agreement:

(a) To manage the LLC's continuing compliance with the NMTC Program Requirements, including obtaining a Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transaction for each QLICI, in a form materially similar to the one attached hereto as Exhibit B, to the extent contemplated in the Assurances and Certificates contained in the Allocation Application;

(b) To preserve, renew and keep in full force and effect the status of the Managing Member as a CDE, and in furtherance thereof it shall:

(i) ensure that it maintains accountability through the Governing Board to residents of Low-Income Communities throughout the Service Area through their representation on the Governing Board of the Managing Member, including as provided in Section 3.02 hereof; and

(ii) timely submit to the CDFI Fund any certifications (including annual certifications) or required notices in connection with the LLC's continued compliance with the requirements applicable to a CDE, and the Managing Member shall provide the Members with copies of such certification or notice;

(c) To comply with all terms and conditions of the Allocation Agreement applicable to the Managing Member, and so long as the Managing Member is the managing member of the LLC, cause all Subsidiary CDEs to comply with all terms of the Allocation Agreement applicable to such Subsidiary CDEs;

(d) To cause the LLC to perform and comply with all terms and conditions of the Allocation Agreement applicable to the LLC as a Subsidiary CDE thereunder (subject to performance by any Servicer of the Servicing Standards under a Servicing Agreement), and in connection therewith, it shall:

(i) (A) supply IRS Form 8874-A, Notice of Qualified Equity Investment for New Markets Tax Credit to taxpayers required pursuant to Section 1.45D-1(g)(2) of the Treasury Regulations and Section 3.5 of the Allocation Agreement (each a "Taxpayer Notice") as otherwise provided for herein, and (B) a screen print of the Allocation Tracking System report which shows the finalized QEI and the QEI Identifier number;

(ii) if, at any time during the Compliance Period, there is a Recapture Event, provide notice to the Fund, including all prior holders of the Fund's Membership Interest that a Recapture Event has occurred no later than fifteen (15) calendar days after the date the Managing Member becomes aware of the Recapture Event;

(iii) provide to the Fund information pertaining to any Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transaction with respect to the Managing Member, as contemplated in the Assurances and Certifications contained in the Managing Member's Allocation Application, and as to any of the other matters covered by Section 4.11 of the Allocation Agreement with respect to the Managing Member;

(iv) make the disclosures required under Section 4.9 of the Allocation Agreement (and in connection therewith, the other Members hereby acknowledge that receipt of a New Markets Tax Credit allocation from the CDFI Fund shall not be deemed

to be an assurance of any kind by the CDFI Fund regarding any CDE Capital Contribution to the LLC;

(v) make all submissions required under Sections 6.2 and 6.3 of the Allocation Agreement and provide each other Member with copies thereof;

(vi) obtain from the Fund and be responsible for retaining the records and information required under Section 6.4 of the Allocation Agreement with respect to the LLC, as a Subsidiary Allocatee thereunder;

(vii) be responsible for submitting the reports required under Section 6.5 of the Allocation Agreement and provide the Fund with copies thereof, provided that the Managing Member shall be obligated to file a notice of receipt of each QEI with the CDFI Fund's Allocation Tracking System as contemplated in Section 6.5(a) of the Allocation Agreement with respect to each QEI. The Managing Member, using the Allocation Tracking System, will notify the CDFI Fund that the Fund has made the QEI(s) (in accordance with Section 6.5(a) of the Allocation Agreement) within 10 calendar days of the CDFI Fund informing the Managing Member that the deadline for providing such notification has been reinstated;

(viii) be responsible for timely supplying the certification required by Section 6.5(d)(ii) of the Allocation Agreement in connection with each QEI. In addition, in connection with each QEI, it shall prepare a calculation, based on information to be provided by the Servicer, supply the Fund with a calculation demonstrating the satisfaction of the Substantially-All Requirement with respect to each QLICI that is funded (or, at the request of the Fund, proposed to be funded) and the corresponding QEI from which it was funded. The Managing Member shall also timely supply the Fund with drafts of calculations and other materials supporting compliance with the Substantially-All Requirements within thirty (30) days of the due date thereof, as well as copies of any CDFI Fund filings thereof. The Members contemplate that substantially-all of each QEI will be used to make QLICIs and therefore that a Direct Tracing Calculation will be used. Such calculations will comply with all applicable NMTC Program Requirements. The Members shall work together to resolve any methodology questions. In the event that the Members are unable to agree, the Fund shall have right to provide the Managing Member with alternative methodology determined by the Fund in its reasonable discretion);

(ix) advise the CDFI Fund of the existence of any of the material events described in Section 6.9 of the Allocation Agreement and promptly supply the Fund with copies of such notices given to the CDFI Fund;

(x) provide the Members promptly with notice of any facts which come to its attention that may require a report to the Office of Inspector General of the U.S. Department of the Treasury pursuant to Section 6.2 of the Allocation Agreement, and promptly make such report as required by Section 6.2 of the Allocation Agreement;

(xi) not allow to occur a Recapture Event attributable to actions or events for which the LLC or the Managing Member is or may be liable under Indemnity Agreement;

(xii) provide the Fund with any notice received by it pursuant to Section 8.6 of the Allocation Agreement and, with respect to notices applicable to the LLC, collaborate with the Fund with respect to the response to be made to any such notice; and

(xiii) The Managing Member, using ATS, will timely notify the CDFI Fund that the Fund has made the QEI (in accordance with Section 6.5(a) of the Allocation Agreement) once the CDFI Fund informs the Managing Member that the deadline for providing such notification has been reinstated;

(e) Execute and deliver the CDE Compliance Certificate (substantially in the form attached hereto as Exhibit D) to the Fund twice annually, once with regard to the period January 1-June 30 and once with regard to the period July 1-December 31 within ten (10) days of the end of such periods;

(f) Reserved;

(g) To seek any waiver or extension pursuant to Treas. Reg. 1.45D-1(e)(5) in the manner provided for in the laws and regulations governing the New Markets Tax Credit program;

(h) In the event that any amount of a QEI or portion thereof ceases to be used as required by Section 45D(b)(1)(B) of the Code, or in the event the Managing Member determines that any amounts received by the LLC are subject to the reinvestment requirements of Section 1.45D-1(d)(2) of the Treasury Regulations, the Managing Member (with the Consent of the Fund) shall comply with the provisions of Article 6 hereof so as to enable the LLC to reinvest such amounts as provided therein, and the Managing Member and the Fund shall work together using best efforts to cause such amounts to be so reinvested. In the event the Fund and the Managing Member cannot agree within ten (10) calendar days upon whether reinvestment is required, then reinvestment shall nevertheless be required as determined by either the Fund or the Managing Member, as the case may be, in the amounts that the Fund or the Managing Member, as the case may be, believes is required and the other Members shall cooperate in effecting such reinvestment.

(i) Not less than forty-five (45) days prior to the end of each Fiscal Year, the Managing Member shall provide to the Fund (A) an analysis of the LLC's projected Operating Income for such Fiscal Year, as determined pursuant to Section 1.45D-1(e)(3)(iii) of the Treasury Regulations, and the Company's projected distributions to the Members during such Fiscal Year, and (B) confirmation of the LLC's plans to ensure that any projected distributions will not be treated as a redemption for purposes of Section 1.45D-1(e)(2)(iii) of the Treasury Regulations.

(j) Cause the Approved Investments to be serviced in accordance with the Servicing Standards by an approved Servicer; provided, for so long as a Servicing Agreement is

not in effect, service any Approved Investments in accordance with the Servicing Standards, including, but not limited to, calculation of interest rates, mailing of invoices, and receipt and processing of payments.

### **3.05 Limitations on Authority.**

(a) Matters Subject to Approval of the Fund. Notwithstanding any provision of this Agreement to the contrary, the LLC shall not take, and the Managing Member shall not be empowered or authorized to take or cause the LLC to take, any of the following actions without the Consent of the Fund:

(i) approving, executing, or entering into the Related Documents (provided, the Fund hereby Consents to the LLC entering into the Related Documents relating to the CAFFM Loan, the signatures for which are to be released from escrow on the Closing Date);

(ii) making or acquiring, or entering into any agreement to make or acquire, any loan or investment that is not an Approved Investment or that does not otherwise meet the criteria for investment set forth in this Agreement other than in Permitted Temporary Investments permitted in Section 3.03(e);

(iii) approving, executing, or entering into any Approved Investment Documents (provided, the Fund hereby Consents to the LLC entering into the Approved Investment Documents for the CAFFM Loan, the signatures for which are to be released from escrow on the Closing Date);

(iv) amending or modifying in any material respect any Approved Investment previously made, including the Approved Investments or any Approved Investment Document, including but not limited to any amendment or modification that would cause such investment or loan not to constitute a QLICI;

(v) accepting any prepayment of any Approved Investment during the Credit Investment Period;

(vi) selling, disposing of, assigning, or liquidating any Approved Investment, including without limitation (A) any sale, transfer, or encumbrance of the LLC's interest in any Approved Investment, (B) accepting any deed in lieu of foreclosure, or (C) causing any foreclosure sale with respect to any property securing an Approved Investment unless (i) another Approved Investment has been identified into which the proceeds of such sale, disposition or liquidation will be invested as required under Treas. Reg. Section 1.45D-1(d)(2), and in accordance with this Agreement, or (ii) the Managing Member shall have determined, and the Fund shall have concurred in writing, that such amount constitutes a Final Return of Capital;

(vii) obligating the LLC to any extraordinary transaction, including the acquisition of any interest in another entity, or the contribution of capital to an entity as to

which the LLC has acquired an interest or to any transaction not in the normal course of the day-to-day management and operation of the LLC's business as set forth in this Agreement;

(viii) settling any dispute or entering into any consent agreement with the CDFI Fund, the IRS or other Governmental Authority;

(ix) causing the LLC to sell or pledge in any year all or any portion of its assets with an aggregate value in excess of \$25,000;

(x) in connection with any Approved Investment, (A) shorten the maturity date, (B) accelerate the maturity of the Approved Investment, commence exercising remedies for the collection of the Approved Investment, including foreclosure proceedings, or agree to the settlement of any such proceedings; (C) waive any restriction on prepayment of any Approved Investment; or (D) take possession of or acquire title to any collateral, whether through foreclosure, deed in lieu of foreclosure, or other exercise or remedies under the Approved Investment Documents;

(xi) borrowing money for the business of the LLC, and prepaying (in whole or in part), refinancing, amending, extending, or otherwise modifying any debt of the LLC, or entering into any agreement to borrow, refinance funds from any Person, other than Member Loans pursuant to Section 8.07 hereof;

(xii) causing a dissolution of the LLC, or taking any action which would result in any such dissolution (other than at the time and in accordance with this Agreement), or participating in a merger or consolidation with any other entity by the LLC;

(xiii) causing the filing by the LLC of any bankruptcy, insolvency, receivership, or similar proceeding against the LLC, or consenting to any such proceeding being filed against the LLC, or the executing or delivering any assignment for the benefit of the creditors of the LLC;

(xiv) causing the LLC to merge, consolidate or engage in any business activity other than as permitted by this Agreement;

(xv) except as otherwise expressly provided in Article 9 of this Agreement, admitting as a Member any Person other than the Members named in this Agreement;

(xvi) voting on any plan of reorganization, restructuring, or similar plan in any bankruptcy of the borrower under any Approved Investment made by the LLC;

(xvii) approving the purchase, sale, lease, or exchange of any real property and any material personal property of the LLC;

(xviii) approving any agreement by the LLC to indemnify any Person other than as specifically set forth in this Agreement;

(xix) amending or modifying in any material respect, or agreeing to waive any material provision of, any Related Documents to which the LLC may be a party, or approving any amendment or modification of, or the waiver of any material provision of, any Related Documents, to the extent of the LLC's approval rights with respect to any such documents;

(xx) taking any other action which, under any other provision of this Agreement, requires the approval or Consent of the Fund;

(xxi) approving the amendment or modification of the Rules and Regulations that may have a Material Adverse Effect on the LLC or the Fund;

(xxii) making any material change in any accounting method or practice of the LLC that may have a Material Adverse Effect on the LLC or the Fund with respect to the New Markets Tax Credits or the income, profits, losses, deductions, or other financial or tax benefits intended to arise from the Fund's investment in the LLC, or the making, amending or revoking of any tax election required of or permitted to be made by the LLC under the Code or the Regulations, including, without limitation, any election under Section 45D of the Code; or

(xxiii) approving the payment of any compensation to the Managing Member or any Affiliate of the Managing Member;

(xxiv) commencing or settling any litigation or other claim by or against the LLC; confessing a judgment against the LLC; participating in any litigation, administrative or other proceedings on behalf of and in the name of the LLC and entering into settlements with respect thereto on behalf of and in the name of the LLC, provided with respect to any of the foregoing that the amount at issue is in excess of \$75,000 in any single instance or \$150,000 in the aggregate;

(xxv) changing any accounting method or practice of the LLC, or the making, amending or revoking of any tax election required of or permitted to be made by the LLC under the Code or the Treasury Regulations, including, without limitation, any election under Section 45D of the Code, provided that prompt written notice of such modifications or amendments are provided to the Fund;

(xxvi) entering into any modification or amendment to the Allocation Agreement, or any other agreement with the Allocatee or the CDFI Fund regarding the Allocation or Sub-Allocation, other than (i) an amendment that reflects the addition of one or more Subsidiary CDEs (in addition to the LLC) formed by the Managing Member to receive one or more sub-allocations with respect to the Allocation, or (ii) amendments that are directed to the Allocation generally or exclusively to the sub-allocations other than the Sub-Allocation and that could not reasonably be expected to have a material,

adverse impact on the LLC or the Fund (it being agreed that the Managing Member, for itself and on behalf of the LLC, shall have authority to enter into amendments in the nature of those described in clauses (i) and (ii) of this subparagraph), provided that prompt written notice of such modifications or amendments are provided by the Managing Member to the Fund;

(xxvii) entering into any contract or agreement with the Managing Member or any Allocatee Affiliate except as otherwise expressly authorized in this Agreement, or entering into any contract or agreement with any other Person under which the obligations of the LLC exceed \$50,000;

(xxviii) the transfer or hypothecation of the Managing Member's interest in the LLC, except as otherwise provided in this Agreement;

(xxix) engaging or employing accountants, legal counsel, managing agents or other professionals to perform services for the LLC other than the Accountants and Counsel;

(xxx) amending or modifying any Servicing Agreement, or any other material agreement to which the LLC is a party;

(xxxi) engaging, electing, appointing or terminating officers of the LLC and defining the scope of their authority; and

(xxxii) taking any action to opt in to Article 8 of the Uniform Commercial Code as in effect in the State of Texas or to have the Membership Interests be a "security" as defined in Article 8 of the Uniform Commercial Code as in effect in the State of Texas.

(b) Other Limitations on Managing Member. The Managing Member shall not have any authority to:

(i) borrow from the LLC or commingle the LLC funds with the funds of any other Person;

(ii) take or authorize any act that would be in conflict with the purpose of the LLC as set forth in Section 2.05 hereof, or which would make it impossible to carry on the ordinary business of the LLC;

(iii) authorizing or consenting to any act in contravention of this Agreement, any organizational document of the LLC or any other Related Document;

(iv) act in contravention of this Agreement or the Act; or

(v) except as expressly provided for herein, delegate its powers, rights and obligations hereunder without the Consent of the other Members.



### **3.06 Investor Member Proposed Action.**

Notwithstanding anything herein to the contrary, the Fund shall be entitled at any time, and from time to time, to propose actions by the LLC, and the Managing Member agrees to give good faith consideration to any such proposed actions and shall take such actions if the Managing Member determines in good faith that the same are in the best interests of the LLC and the Fund and are consistent with the provisions of this Agreement, Section 45D of the Code and the Treasury Regulations thereunder, the Allocation Agreement, other applicable laws and regulations, the contractual and legal duties of the LLC to third parties, and the status of the LLC as a limited liability company and a partnership for tax purposes.

**3.07 Reserves.** The Managing Member may, with the Consent of the Fund, establish any reserves necessary for the operation of the LLC.

### **3.08 Compensation and Reimbursement.**

(a) The LLC shall pay the Managing Member a fee (the “Asset Management Fee”) in the amount of Thirty-Four Thousand and No\100 Dollars (\$34,000) per year to reimburse the Managing Member for the LLC’s tax, audit and accounting expenses, which expenses shall be invoiced to the Borrower (or other Approved QALICB, as applicable) and paid in accordance with the Approved Investment Documents; provided, in 2021 the Asset Management Fee shall be \$44,000 and in 2022 the Asset Management Fee shall be \$24,000. The Borrower has established a reserve account to pay a portion of such such expenses for years 2014 through 2021. In accordance with the Approved Investment Documents, in the event Borrower’s reserve account funds are not sufficient to pay such fee which are due, the Managing Member or LLC shall invoice the Borrower for any unpaid Asset Management Fees.

(b) The Managing Member shall be responsible for paying (or incurring, without reimbursement from the Fund) the Expenses and Extraordinary Expenses each year; provided, however, that if the Managing Member is removed pursuant to Section 9.04 of this Agreement, then the provisions of Section 9.04(b) shall apply such that after the date of such removal the Fund shall be responsible until such time as a successor Managing Member has been admitted after which the successor Managing Member shall be responsible.

(c) Other than fees in Section 3.08(a) above, the LLC will not reimburse the Managing Member for any payment by Managing Member of Expenses and Extraordinary Expenses provided that the Managing Member may receive reimbursement for Extraordinary Expenses related to non-routine, extraordinary management matters pre-approved by the Fund. The Managing Member shall not be entitled to any reimbursement from the Fund for Expenses incurred in connection with its services hereunder.

**3.09 No Third-Party Authority.** Unless authorized to do so by this Agreement or authorized in writing by the Managing Member, no attorney-in-fact, employee or other agent of the LLC shall have any power or authority to bind the LLC in any way, to pledge its credit or to render it liable for any purpose.

**3.10 Liability for Certain Acts.** The Managing Member shall perform its duties in good faith, in a manner it believes to be in the best interests of the LLC, and with such care as an ordinarily prudent person in a like position would use under similar circumstances. In performing its duties as Managing Member, the Managing Member shall be entitled to rely on information, opinions, reports or statements, including financial statements and/or other financial data, in each case prepared or presented by (i) one or more agents or employees of the LLC, or (ii) Counsel, the Accountants or other persons as to matters that the Managing Member reasonably believes to be within such Person's professional or expert competence. Except as otherwise provided in this Agreement, no Covered Person shall be liable to the LLC or any Member for any loss or damage sustained by the LLC or any Member, unless the loss or damage shall have been the result of fraud, gross negligence, or a wrongful taking by such Covered Person. Except as otherwise provided herein, any Covered Person may consult with Counsel to the LLC or any other counsel selected by it with the Consent of the Members and any opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered or omitted by such Covered Person hereunder in accordance with the opinion of such counsel. The Covered Person who performs its duties hereunder in accordance with this Section 3.10 shall have no liability by reason of being or having been a Covered Person.

**3.11 Limitations on Liabilities and Duties to the LLC.**

(a) Except as provided in Sections 10.03(d) herein (and the Indemnity Agreement), the Managing Member shall not be liable, responsible or accountable in damages or otherwise to the LLC or any of the other Members for any act or omission performed or omitted by it in good faith on behalf of the LLC and in a manner reasonably believed by it to be within the scope of the authority granted to it by this Agreement and in the best interest of the LLC, it being agreed that liability shall arise only on account of the gross negligence, willful misconduct, or fraud by the Managing Member or the breach by the Managing Member of any express provision of this Agreement (after notice and opportunity to cure as provided in Section 9.04 of this Agreement). Any loss or damage incurred by the Managing Member by reason of any act or omission performed or omitted by it in good faith on behalf of the LLC and in a manner reasonably believed to be within the scope of the authority granted to it by this Agreement and in the best interests of the LLC (but not, in any event, any loss or damage incurred by reason of its own gross negligence, willful misconduct, fraud or breach as aforesaid) shall be paid from the LLC assets to the extent available, after payment of Extraordinary Expenses (but the Fund shall not have any personal liability and shall have no obligation to make a CDE Capital Contribution under any circumstances on account of any such loss or damage incurred by the Managing Member or on account of the payment thereof).

(b) Notwithstanding any provision to the contrary at law or in equity, neither the Managing Member, any Member nor any Affiliate shall be required to perform his, her, or its functions as his, her, or its sole and exclusive function or be restricted in any manner in engaging in or maintaining any other business interests or activities in addition to those relating to the LLC, and neither the Managing Member, the LLC nor any Member shall have any right, by virtue of this Agreement, to share or participate in such other investments or activities of any Covered Person, the Fund or the LLC or to the income or proceeds derived therefrom.

**3.12 Indemnity of Covered Persons.** The LLC shall, to the maximum extent permitted under applicable law, indemnify and make advances for expenses to all Covered Persons with respect to any claim, loss, expense, liability, action or damage (including, without limitation any action by a third-party or Member against such Covered Person) due to or arising from any action, inaction or decision performed, taken, not taken or made by such Covered Person in connection with the activities and operations of the LLC; provided that such Covered Person was not guilty of willful misconduct, fraud, gross negligence, malfeasance, or a material breach of any representation, warranty, covenant, or agreement set forth in this Agreement or a wrongful taking. The termination of a proceeding by judgment, order, settlement, conviction or upon a plea of *nolo contendere*, or its equivalent, shall not, by itself, create a presumption regarding whether the conduct of the Covered Person constituted willful misconduct, fraud, gross negligence, malfeasance, or a material breach of any representation, warranty, covenant, or agreement set forth in this Agreement or a wrongful taking (unless there has been a final adjudication in the proceeding regarding such matter). Notwithstanding the foregoing, if any claim, loss, expense, liability, action or damage for which a Covered Person seeks indemnification relates to an action, inaction or decision performed, taken, not taken or made with respect to the LLC, then indemnification shall be paid only out of the assets of the LLC. The provisions of this Section shall be in addition to and not in limitation of any other rights of indemnification and reimbursement or limitations of liability to which a Covered Person may be entitled. The provisions of this Section 3.12 shall apply whether or not at the time of reimbursement the Covered Person entitled to reimbursement is then a Covered Person. Notwithstanding any repeal of this Section or other amendment hereof, its provision shall be binding upon the LLC as to any claim, loss, expense, liability, action or damage due to or arising out of matters which occur during or are referable to the period prior to any such repeal or amendment of this Section. It is expressly agreed that the provisions of this Section shall not apply so as to indemnify a Member against liability to any other Member for a breach or violation of this Agreement, and a Member having breached or violated this Agreement shall be responsible for the losses, expenses, liabilities, and damages incurred by other Members arising from such breach of violation.

## **ARTICLE 4.**

### **RIGHTS AND OBLIGATIONS OF MEMBERS**

**4.01 Limitation of Liability; Nature of Interest.** Each Member's liability shall be limited to the fullest extent permitted by law as set forth in this Agreement, the Act, and other applicable law. Each Member agrees that its Membership Interest shall for all purposes be personal property. A Member has no interest in the specific property of the LLC.

**4.02 LLC Debt Liability.** A Member will not be personally liable for any debts or losses of the LLC beyond his respective CDE Capital Contributions and any obligations of the Member under Sections 7.01 and 7.02 to make CDE Capital Contributions, except as provided in Section 4.05 or as otherwise required by law.

**4.03 Addresses; List of Members.** The respective names and business addresses of the Members are set forth on Exhibit A of this Agreement, and the CDE Percentage Interests of all current Members shall be as set forth on Exhibit A of this Agreement, as may be amended from time to time to reflect any changes. Upon the written request of any Member, the Managing Member shall provide a list showing the names, addresses and CDE Percentage Interests and Economic Interests of all current Members.

**4.04 Priority and Return of Capital.** Except as may be expressly provided in Article 8, no Interest Holder shall have priority over any other Interest Holder, either as to the return of CDE Capital Contributions or as to Net Profits, Net Losses or distributions; provided that this Section shall not apply to loans which a Member has made to the LLC.

**4.05 Liability of a Member to the LLC.** To the fullest extent permitted by law, a Member who receives a distribution or the return in whole or in part of its CDE Capital Contribution is liable to the LLC only to the extent provided by the Act.

**4.06 Limitation of Authority of Members.** Except as otherwise expressly provided in this Agreement, no Member other than the Managing Member, in its capacity as such, shall (i) have authority over the management, operation or control of the affairs of the LLC, (ii) have any right, power or authority to transact any business in the name of the LLC, or (iii) act for or on behalf of or bind the LLC. No Member, in its capacity as a member of the LLC, shall, except as expressly provided herein, be entitled to vote on or approve any matter relating to the LLC or its business or affairs. Without limitation of the indemnification obligations under Sections 3.12, 10.03(b) and 10.03(d), each Member that acts in contravention of this Section (a “Contravening Member”) shall, to the fullest extent permitted by law, indemnify, defend, and hold harmless each other Member and the LLC from and against any and all loss, cost, expense, liability or damage arising from or out of any claim based upon any action by such Contravening Member in contravention of the first sentence of this Section 4.06.

**4.07 LLC Books and Records.** The Managing Member shall maintain and preserve, during the term of the LLC, the accounts, books, and other relevant LLC documents described in Sections 8.09 and 8.10, and shall provide copies thereof to the Fund upon the written request of the Fund. Upon reasonable written request, the Fund shall have the right, at a time during ordinary business hours, as reasonably determined by the Managing Member, to inspect and copy, the LLC documents identified in the Act, and such other documents which the Managing Member, in its discretion, deems appropriate.

**4.08 Partition.** Each Member waives any and all rights that it may have to maintain an action for partition of property of the LLC.

## **ARTICLE 5.**

### **MEETINGS OF MEMBERS**

**5.01 Meetings.** Except as otherwise provided in this Agreement, meetings of the Members, for any purpose or purposes, may be called by any two (2) Members.

**5.02 Place of Meetings.** The place of meeting for the Members shall be the principal place of business of the LLC.

**5.03 Notice of Meetings.** Except as provided in Section 5.04, written notice stating the place, day and hour of the meeting of the Members and the purpose or purposes for which the meeting is called shall be delivered not less than three (3) calendar days nor more than forty (40) calendar days before the date of the meeting, either personally or by mail, by or at the direction of either Member calling the meeting, to each Member of the LLC entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered two (2) calendar days after being deposited in the United States mail, addressed to each Member of the LLC at its address as it appears on the books of the LLC, with postage thereon prepaid.

**5.04 Meeting of All Members.** If all of the Members shall meet at any time and place, either within or outside of the State of Texas, and consent to the holding of a meeting at such time and place, such meeting shall be valid without call or notice, and at such meeting lawful action may be taken.

**5.05 Record Date.** For the purpose of determining Members entitled to notice of or to vote at any meeting of such Members or any adjournment thereof, or Members entitled to receive payment of any distribution, or in order to make a determination of Members for any other purpose, the date on which notice of the meeting is mailed or the date on which the resolution declaring such distribution is adopted, as the case may be, shall be the record date for such determination of such Members. When a determination of Members entitled to vote at any meeting of Members has been made as provided in this Section, such determination shall apply to any adjournment thereof.

**5.06 Quorum.** The presence of at least one (1) authorized representative of each Member shall constitute a quorum for purposes of any meeting of the Members; provided, that in any instance in which the matters to be determined at such meeting consist solely of matters for which the approval of fewer than all Members is required under this Agreement, the presence of at least one (1) authorized representative of those Members whose approval is so required shall constitute a quorum. In the absence of a quorum at any such meeting, the representative(s) of the remaining Members so represented may adjourn the meeting from time to time for a period not to exceed sixty (60) calendar days without further notice. However, if the adjournment is for more than sixty (60) calendar days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each Member of record entitled to vote at the meeting. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally noticed. The Members present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal during such meeting of one or more representatives of a Member, whose absence would cause loss of a quorum.

**5.07 Manner of Acting.** If a quorum is present, the affirmative vote of those Members whose approval is required under this Agreement shall be the act of the Members. In addition, the Managing Member shall be entitled to request advisory approvals on any matters that the

Managing Member believes are within its or their authority under this Agreement and/or the Act, and the submission of a matter for such approval shall not be deemed to waive, limit, or relinquish the Managing Member's power or authority under this Agreement or to modify this Agreement in any manner. Unless otherwise expressly provided herein or required under applicable law, only persons admitted to the LLC as Members or substitute Members may vote or consent upon any matter and their vote or consent, as the case may be, shall be counted in the determination of whether the matter was approved by the Members.

**5.08 Proxies.** At all meetings of Members, a Member may vote in person or by proxy executed in writing by the Member or by a duly authorized attorney-in-fact. Such proxy shall be filed with the Managing Member before or at the time of the meeting. No proxy shall be valid after eleven months from the date of its execution, unless otherwise provided in the proxy.

**5.09 Action by Members Without a Meeting.** Subject to the provisions of the Act, action required or permitted to be taken at a meeting of Members may be taken without a meeting if the action is evidenced by one or more written consents describing the action taken, signed by those Members entitled to vote on such matter, for inclusion in the minutes of or for filing with the records of the LLC. Action taken under this Section is effective when the requisite number of Members have signed the consent, unless the consent specifies a different effective date.

**5.10 Waiver of Notice.** When any notice is required to be given to any Member, a waiver thereof in writing signed by the person entitled to such notice, whether before, at, or after the time stated therein, shall be equivalent to the giving of such notice.

**5.11 Telephonic Meetings.** A Member may participate in a meeting of Members by means of conference telephone or similar communications equipment enabling all Members participating in the meeting to hear one another. Participation in a meeting pursuant to this section shall constitute presence in person at such meeting.

**5.12 Confidentiality.** Each Member agrees to maintain the confidentiality of the LLC's records and affairs, and not to provide to any Person copies of any financial statements or other documents, books, records or reports provided or available to such Member in connection with its Membership Interest, and each Member agrees not to disclose to any other Person any information contained therein; provided, that a Member may make disclosure and may provide financial statements, tax returns and other records (i) to its accountants, legal counsel, financial advisors and other fiduciaries and representatives (and to those of the LLC), (ii) to the directors, officers, employees, constituent partners, or constituent members (as applicable) of each Member and its Affiliates, so long as, in any such case, such disclosure is reasonably necessary or required to enable the Member to carry out its duties and exercise its rights and powers under this Agreement and to comply with the Allocation Agreement and the Treasury Regulations and Guidance, and such Person is under an obligation or has been instructed to maintain the confidentiality thereof and not to disclose to any other Person any information contained therein (other than in a manner consistent with the provisions of this Section), (iii) if, to the extent required by judicial or administrative order, or to the extent reasonably determined to be required

by statute or law (provided, that to the extent possible, the LLC is given prior notice to enable it to seek a protective order or similar relief if it chooses to do so in its sole discretion); (iv) to representatives of any federal or state regulatory agency with jurisdiction over such Member; and (v) in order to enforce rights under this Agreement and related agreements to which it is a party. Notwithstanding anything herein to the contrary, the Managing Member agrees that the Fund and its members (and each employee, representative or other agent of the Fund and its members) may disclose to any and all persons the disclosures permitted above and, without limitation of any kind, the tax treatment and tax structure of the LLC and any transactions entered into by the LLC and all materials of any kind (including opinions or other tax analyses) that are provided to such Fund relating to such tax treatment and tax structure. However, any information relating to the tax treatment or tax structure shall remain subject to the confidentiality provisions hereof (and the foregoing sentence shall not apply) to the extent reasonably necessary to enable the parties hereto, their respective affiliates, and their respective affiliates' directors and employees to comply with applicable securities laws. For this purpose, "tax structure" means any facts relevant to the federal income tax treatment of the ownership of Membership Interests or the transactions entered into by the LLC, but does not include information relating to the identity of the LLC, its affiliates or the issuer of any interests in which the LLC invests. Nothing in this paragraph shall be deemed to require the Managing Member to disclose to the Fund any information that the Managing Member is permitted or required to keep confidential. This paragraph is meant to be interpreted so as to prevent the transactions contemplated by this Agreement from being treated as offered under "conditions of confidentiality" within the meaning of the Internal Revenue Code and the Treasury Regulations thereunder.

## **ARTICLE 6.**

### **APPROVED INVESTMENTS AND ACCOUNTS.**

#### **6.01 Approved Investments and Uses of CDE Capital Contributions.**

(a) In general, the LLC shall utilize the CDE Capital Contributions received by it to make loans or investments that are QLICs in a manner that complies with the Substantially-All Requirement, and as otherwise provided for herein. It is the intent of the Members to use all of the Fund's CDE Capital Contributions to make the Approved Investment.

(b) In the event that any Member projects that the Substantially-All Requirement will not be met with respect to any QEI for any reason, including as a result of (i) the failure to consummate all or any portion of the QLICs contemplated with respect to the Approved Investment, or (ii) the receipt by the LLC of any Scheduled Principal Payment or Return of Capital that is not a Final Return of Capital, one or more Proposed Qualified Investments shall be proposed to the LLC by any Member by means of an Approval Request for approval by each other Member (and it shall be a requirement that each Proposed Qualified Investment be approved by each Member prior to committing to closing or funding such Proposed Qualified Investment). The Members will work together using best efforts to cause such amounts to be invested or reinvested (as applicable) in a timely manner in accordance with the NMTC Program Requirements.

(c) In connection with its preparation or review of any Approval Request (as applicable), the Managing Member shall use good faith efforts to determine whether the Proposed Qualified Investment is a QLCI and meets NMTC Program Requirements (other than with respect to the Allocation Application and Section 3.3(i) of the Allocation Agreement) and the Managing Member's Investment Criteria. Any determination by the Managing Member that a Proposed Qualified Investment does not satisfy the foregoing shall be accompanied by an opinion or other written advice from a nationally recognized law firm, independent accounting firm or other independent community development professional with new markets tax credit experience selected by the Managing Member with the Consent of the Fund. In making the foregoing determinations, the Managing Member shall be entitled reasonably to rely on any facts provided by the Fund and/or the Servicer (if applicable), as well as on any opinions of Counsel. Each Member agrees to use good faith efforts to decide upon any such proposed action as soon as possible under the circumstances but, in all events, no later than thirty-five (35) days after an Approval Request shall have been delivered by any Member. Upon approval by the Managing Member and the Fund of an Approval Request, the Proposed Qualified Investment described therein shall constitute an Approved Investment.

(d) If upon the commencement of any Remaining Investment Period (i) the Fund shall have proposed to the Managing Member one or more Proposed Qualified Investments that satisfy the criteria discussed in, and as determined by, Section 6.01(c) above, in an aggregate amount sufficient to satisfy the Substantially-All Requirement with respect to the applicable QEI, and the Managing Member shall not have approved such Proposed Qualified Investments; and (ii) the Managing Member shall also have failed to propose one or more Proposed Qualified Investments that meet the Fund's Investment Criteria as determined by the Fund in its sole discretion in an aggregate amount sufficient to continuously satisfy the Substantially-All Requirement, then, upon the occurrence of all of the events described in clauses (i) and (ii) hereof (such events collectively referred to as an "Investment Default"), the Fund shall have the right to remove the Managing Member in accordance with Section 9.04(a)(vi) hereof. Upon the occurrence of the events described in both provisions (i) and (ii) of this paragraph, the right to remove the Managing Member shall continue thereafter unless one or more Proposed Qualified Investments, in an aggregate amount sufficient to satisfy the Substantially-All Requirement, are closed and funded prior to the end of the Remaining Investment Period, and upon such event the right to remove the Managing Member with respect to such occurrence shall terminate. If the Managing Member is removed pursuant hereto (but solely if the Managing Member did not contest such removal), such removal shall be the exclusive remedy of the Fund against the Managing Member for any loss, liability, damage, fees, costs and expenses incurred by reason of the LLC's failure to satisfy the Substantially-All Requirement.

## **6.02 Capital Contribution Account**

The LLC shall create a Capital Contribution Account which shall be used to receive CDE Capital Contributions from the Members (or from the applicable account in which CDE Capital Contributions from the Members made on the Prefund Date were deposited) and to fund the Approved Investments and fees described herein. One hundred percent (100%) of the CDE Capital Contributions from the Fund, to the extent each constitutes a QEI, shall be used to fund



Approved Investments, in accordance with Treas. Reg. Section 1.45D-1(c)(5) and Section 3.2(j) of the Allocation Agreement, or to fund Reserves to the extent the balances therein are deemed invested for purposes of the Substantially-All Requirement. The balance in the Capital Contribution Account shall be \$800 (consisting solely of the proceeds of the Managing Member's CDE Capital Contribution) once the CAFFM Loan is made. The Capital Contribution Account, and any additional Capital Contribution Account, shall be managed by the Managing Member, and only the Managing Member may draw funds from such accounts and only for purposes consistent with this Agreement. Each Capital Contribution Account shall be maintained at all times until the termination of this Agreement (unless this Agreement otherwise expressly contemplates closure of such fund prior to the date of termination of this Agreement), and shall not be evidenced by passbooks or similar writings.

### **6.03 Borrower Payments Account**

Prior to receipt by the LLC of any payments on an Approved Investment by the Approved QALICB, the Managing Member shall create an account on behalf of the LLC, which account shall be used to receive all payments by the Approved QALICB of the Approved Investment (including any Revenue attributable thereto, any Return of Capital or Scheduled Principal Payment) (such account a "Borrower Payments Account") and make annual distributions to the Members. The Borrower Payments Account shall be a segregated and irrevocable account which shall be maintained at all times until the termination of this Agreement (unless this Agreement otherwise expressly contemplates closure of such fund prior to the date of termination of this Agreement). The Managing Member shall maintain a system of accounting that allows it to distinguish among Scheduled Principal Payments, Return of Capital, and Revenue. With respect to Scheduled Principal Payments and Return of Capital (if any), such system shall allow the tracing of each amount received to the QLCI to which it relates. This account will be periodically monitored by the Managing Member, and it will determine, subject to the Consent of the Fund in its reasonable discretion, the extent to which Scheduled Principal Payments or Return of Capital constitutes a Final Return of Capital or in the alternative must be reinvested in order to comply with the Substantially-All Requirement. Only the Managing Member or the Servicer, pursuant to the Servicing Agreement, shall draw funds from the Borrower Payments Account. If the Managing Member determines that an amount that constitutes Distributable Cash cannot be distributed, then said amount will be transferred to the Undistributable Cash Reserve Account. The Borrower Payments Account shall not be evidenced by passbooks or similar writings.

In the case of a partial taking by eminent domain or damage, destruction or other casualty which is covered by insurance collateral, unless otherwise directed by the LLC in accordance with this Agreement, any proceeds received shall be deposited in the Borrower Payments Account and be subject to the treatment described in Section 6.01(b) and this Section 6.03.

**6.04 Undistributable Cash Reserve Account.** The LLC shall create an account, which shall be used to receive cash from the Borrower Payments Account described in Section 6.03 herein (the "Undistributable Cash Reserve Account"). This account will aggregate cash that is generally available for distribution to the Fund, but cannot be distributed because the Fund has

determined such a distribution would potentially be treated as a redemption of a Member's investment under the NMTC rules and cause a Recapture Event. This account will accumulate otherwise distributable cash until such time as it can be distributed to the Fund. The Undistributable Cash Reserve Account shall be maintained at all times until the termination of this Agreement (unless this Agreement otherwise expressly contemplates closure of such fund prior to the date of termination of this Agreement), and shall not be evidenced by passbooks or similar writings. This account will be periodically monitored by the Managing Member, and it will determine, subject to the Consent of the Fund, whether such amounts are required to be reinvested, may then be distributed, or shall remain in the Undistributable Cash Reserve Account.

**6.05 Depository.** All Reserves and accounts maintained by the LLC, including the accounts described in this Article, shall be maintained with JPMC, or such other depository as the Managing Member shall select with the Consent of the Fund. The LLC hereby assigns, delivers and grants to the Fund a security interest in the accounts described in this Article to secure the performance of the LLC of its obligations under this Agreement.

## **ARTICLE 7.**

### **CONTRIBUTIONS TO THE LLC AND CAPITAL ACCOUNTS**

#### **7.01 Members' CDE Capital Contributions.**

(a) The Fund made two CDE Capital Contributions in the aggregate amount of \$8,000,000 on the Prefund Date. Such CDE Capital Contribution was designated by the Managing Member as two QEIs in the amounts of \$2,000,000 and \$6,000,000, respectively. The Fund shall not be obligated to make any CDE Capital Contributions except as provided in this Section 7.01(a).

(b) The Managing Member made its CDE Capital Contribution in the amount of \$800 on the Prefund Date. The Managing Member shall not be obligated to make any CDE Capital Contributions except as provided in this Section 7.01(b).

(c) On or prior to the Prefund Date the Managing Member made the Sub-Allocation. The Managing Member shall be under no obligation to make additional sub-allocations, in excess of the Sub-Allocation, to the LLC.

(d) The Managing Member will cause the LLC to provide to the Fund the notification required by Section 1.45D-1(g)(2)(i), in the form prescribed from time to time by the IRS, within sixty (60) days following the receipt by the LLC of each CDE Capital Contribution that constitutes a QEI.

**7.02 Additional Contributions.** No Member shall be obligated to contribute any capital or other funds or property to the LLC except as expressly provided in Section 7.01 of this Agreement or as may hereafter be agreed to in writing by the Member (it being acknowledged that neither Member has any obligation to make or enter into any such agreement). None of the

terms, covenants, obligations or rights contained in this Article 7 is or shall be deemed to be for the benefit of any Person or Entity other than the Members and the LLC, and no such third person shall under any circumstances have any right to compel any actions or payments by the Members.

### **7.03 Capital Accounts.**

(a) A separate Capital Account will be maintained for each Member. Each Member's Capital Account will be increased by (i) the amount of money contributed by such Member to the LLC; (ii) the fair market value of property contributed by such Member to the LLC (net of liabilities secured by such contributed property that the LLC is considered to assume or take subject to under Section 752 and as set forth in the Treasury Regulations promulgated under Code Section 704); (iii) allocations to such Member of Net Profits and Net Losses from or on account of such Member's Interest in the LLC; and (iv) allocations to such Member of income described in Code Section 705(a)(1)(B) from or on account of such Member's Interest in the LLC. Each Member's Capital Account will be decreased by (1) the amount of money distributed to such Member by the LLC; (2) the fair market value of property distributed to such Member by the LLC (net of liabilities secured by such distributed property that such Member is considered to assume or take subject to under Code Section 752 and as set forth in the Treasury Regulations promulgated under Code Section 704); (3) allocations from the LLC to such Member of expenditures described in Code Section 705(a)(2)(B) of the Code; (4) to the extent not previously allocated pursuant to the allocations described in this Section, allocations from the LLC to such Member of expenditures described in Code Section 705(a)(2)(B); and (5) allocations from the LLC to the account of such Member of loss and deduction as set forth in such Treasury Regulations, taking into account adjustments to reflect book value.

(b) In the event of a permitted sale or exchange of a Membership Interest, the Capital Account of the transferor in the LLC shall become the Capital Account of the transferee to the extent it relates to the transferred Membership Interest in accordance with Section 1.704-1(b)(2)(iv) of the Treasury Regulations.

(c) The manner in which Capital Accounts are to be maintained pursuant to this Section 7.03 is intended to comply with the requirements of Code Section 704(b) and the Treasury Regulations promulgated thereunder. If the Managing Member and the Fund determine that the manner in which Capital Accounts of the LLC are to be maintained pursuant to the preceding provisions of this Section 7.03 should be modified in order to comply with Code Section 704(b) and the Treasury Regulations, then notwithstanding anything to the contrary contained in the preceding provisions of this Section 7.03, the method in which Capital Accounts of the LLC are maintained shall be so modified; provided, however, that any change in the manner of maintaining Capital Accounts shall not materially alter the economic agreement between or among the Members of the LLC as set forth in the Agreement.

(d) Subject to the Act, upon liquidation of the LLC (or any Member's Membership Interest), liquidating distributions will be made in accordance with the positive Capital Account balances of the Members, as determined after taking into account all Capital

Account adjustments for the LLC's taxable year during which the liquidation occurs. Liquidation proceeds will be paid within sixty (60) days of the end of the taxable year (or, if later, within one hundred twenty (120) days after the date of the liquidation). The LLC may offset damages for breach of this Agreement by the Managing Member or the Fund whose interest is liquidated (whether upon the withdrawal or removal of the Member or the liquidation of the LLC) against the amount otherwise distributable to such Member by the LLC.

(e) Except as otherwise required in the Act (and subject to Sections 7.01 and 7.02), no Member shall have any liability to restore all or any portion of a deficit balance in such Member's Capital Account in the LLC.

#### **7.04 Withdrawal or Reduction of Members' Contributions to Capital.**

(a) Except as provided herein, no Member may withdraw as a Member of the LLC or require return or payment of all or any portion of its CDE Capital Contribution or Capital Account and no withdrawal of capital shall be permitted during the Credit Investment Period unless in the opinion of Counsel to the LLC such withdrawal would not constitute a Recapture Event or otherwise not result in a recapture or disallowance of New Markets Tax Credits under Section 45D of the Code and the Treasury Regulations thereunder.

(b) A Member shall not receive out of the LLC's assets any part of its CDE Capital Contribution to the LLC until all liabilities of the LLC, except liabilities to Members of the LLC on account of their CDE Capital Contributions, have been paid or there remain assets of the LLC sufficient to pay them.

(c) A Member, irrespective of the nature of its CDE Capital Contribution to the LLC, has only the right to demand and receive cash in return for its CDE Capital Contribution to the LLC.

#### **7.05 Special Capital Contributions.**

(a) The Fund shall be entitled at any time and from time to time, in its sole discretion, to make one or more additional CDE Capital Contributions to the LLC (herein called "Special Capital Contributions"). Such election shall be effective upon the Fund giving written notice of such election to the Managing Member and at the time of such notice making a Special Capital Contribution in an amount of not less than \$500. At any time following such election, the Fund may elect to make further Special Capital Contributions from time to time to the LLC, in such amounts as the Fund determines. Upon making any Special Capital Contribution, the Adjusted Capital Account Balance of the Fund shall be increased by the amount of each such contribution. Notwithstanding the foregoing, the Fund shall be entitled to make Special Capital Contributions only if it determines, in its sole discretion, that one or more Special Capital Contribution(s) may be necessary to allow the Fund (and/or JPMC) to continue to claim New Markets Tax Credits pursuant to Section 45D of the Code and the Treasury Regulations.

(b) Unless otherwise specified in writing by the Fund, Special Capital Contributions shall be held by the LLC in a segregated account in the name of the LLC, which

account shall be maintained at JPMC or an affiliate thereof, as designated in writing from time to time by the Fund, and shall be interest-bearing or non-interest bearing as the Fund may direct from time to time (the “Special Contributions Account”). The funds in the Special Contributions Account, including all interest earned thereon, shall remain in such account and shall not be used, applied, or distributed for any purpose, other than upon the written consent and direction of the Fund; provided, that the Fund shall permit interest earnings on such account to be applied to any direct costs and expenses of (i) maintaining such account and/or (ii) maintaining the existence of the LLC or paying costs of preparing tax returns and financial reports to the extent the LLC does not have other sources of funds available for such purpose. The LLC shall not be entitled to pledge, encumber, or otherwise transfer any of its right, title or interest in the Special Contributions Account. The Managing Member shall have no authority or discretion over such account or any proceeds therein, and no disbursement or release of funds from such account shall be made without the Consent of the Fund.

(c) Notwithstanding any provision of this Agreement to the contrary, unless doing so would cause a Recapture Event, the Fund shall be entitled to special distributions from the LLC, having priority over all other distributions to any and all other Members of the LLC, in an amount equal to the aggregate amount of Special Capital Contributions made by the Fund to the LLC. Such special distributions shall be made upon written demand by the Fund to the Managing Member, and shall be made, first, from the amounts then on deposit in the Special Contributions Account, and if for any reason (other than the authorized disbursement or utilization of the funds in such account for any other purpose as provided above) the amounts then on deposit in the Special Contributions Account shall be insufficient to repay the entire amount of the Special Capital Contributions, then from any other funds available for distribution by the LLC. Any such special distribution shall also include the amount of interest earnings then being held in the Special Contributions Account, to the extent remaining after the Fund has received from the Special Contributions Account an amount equal to the aggregate amount of its Special Capital Contributions.

(d) In the event that JPMC, CCE or the Fund shall determine, or the Managing Member shall determine based on the advice and recommendation of its Counsel and Accountants, that any portion of the Special Capital Contributions must be invested in providing products or services to low-income communities or low-income persons, so as to maintain the status of the LLC as a CDE, then the parties shall promptly seek out one or more investments mutually acceptable to the Fund and the Managing Member. Both the Managing Member and the Fund shall have the right to propose and the right to approve such investments; provided, that (i) the Managing Member’s right of approval shall be limited to whether the investment serves low-income communities or low-income persons (so as to enable the LLC to maintain its qualification as a CDE) and shall not be unreasonably withheld or delayed, and (ii) in addition to having the same right of approval as described in clause (i) immediately above, Fund shall be entitled to approve all material economic terms and all material documentation governing such investment, it being expressly agreed that, Fund shall be entitled to disapprove any investment that, on the basis of their own underwriting analysis, poses an unacceptable economic risk of repayment or otherwise does not satisfy the Fund’s Investment Criteria. Upon approval of any such investment, the Managing Member shall undertake and discharge the responsibilities set

forth in Section 6.01 with respect to the closing of such investment. All repayments on account of any such investment shall be immediately deposited in the Special Contributions Account (as applicable) and shall not be applied or disbursed except in accordance with the foregoing provisions of this Section governing the use and application of funds in such accounts. Notwithstanding any provision to the contrary in this Agreement, in addition to having the right to demand distributions from the Special Contributions Account, Fund shall be entitled to demand a distribution in kind of any such investments at any time after the same have been made by the LLC, provided that doing so would not cause a Recapture Event.

## **ARTICLE 8. ALLOCATIONS, INCOME TAX, DISTRIBUTIONS, ELECTIONS AND REPORTS**

**8.01 Allocations of Profits and Losses from Operations.** Subject to Section 8.02 of this Agreement, Net Profits and Net Losses of the LLC for each Fiscal Year (or part thereof) shall be allocated to the Members at the end of each Fiscal Year (or part thereof) as set forth below:

(a) Allocation of Net Losses: Net Losses shall be allocated in the following order of priority:

(i) First, to the Members in proportion to their Adjusted Capital Account Balances, until their respective Capital Account balances have been reduced to zero; and

(ii) Second, to the Members in proportion to their respective CDE Percentage Interests.

(b) Allocation of Net Profits: Net Profits shall be allocated in the following order of priority:

(i) First, to the Members to the extent of the amount by which the cumulative Net Losses previously allocated to each Member under Section 8.01(a) above exceeds the cumulative Net Profits previously allocated to each Member under this Section 8.01(b);

(ii) Second, 100% to the Member(s) having received or entitled to receive distributions under Section 8.03, until the aggregate Net Profits that have been and are then being allocated pursuant to this Section 8.01(b)(ii) for such Fiscal Year and all prior Fiscal Years, on a cumulative basis, equals the total distributions to such Member(s) have received or are entitled to receive pursuant to Section 8.03; and

(iii) Third, to the Members in proportion to their respective CDE Percentage Interests.

(c) New Markets Tax Credits. The Members agree that the aggregate basis of the Members making QEIs in the LLC must be reduced by the amount of the New Markets Tax Credits in the periods such New Markets Tax Credits are available. The Members agree that the Fund is entitled to one hundred percent (100%) of the New Markets Tax Credits and correspondingly shall be allocated one hundred percent (100%) of such New Markets Tax Credits basis reduction.

**8.02 Special Allocations to Capital Accounts**. Notwithstanding Section 8.01 hereof:

(a) No allocations of loss, deduction and/or expenditures described in Code Section 705(a)(2)(B) shall be charged to the Capital Account of any Member if such allocation would cause such Member to have a Deficit Capital Account in the LLC. The amount of the loss, deduction and/or Code Section 705(a)(2)(B) expenditure which would have caused a Member to have a Deficit Capital Account shall instead be charged to the Capital Account of any Members in the LLC which would not have a Deficit Capital Account in the LLC as a result of the allocation, in proportion to their respective CDE Capital Contributions, or, if no such Members in the LLC exist, then to the Members in the LLC in accordance with their interests in the LLC profits pursuant to Section 8.01.

(b) In the event any Member unexpectedly receives any adjustments, allocations, or distributions described in Sections 1.704-1(b)(2)(ii)(d)(4), (5) or (6) of the Treasury Regulations, which create or increase a Deficit Capital Account of such Member in the LLC, then items of the LLC income and gain (consisting of a pro rata portion of each item of income, including gross income, and gain for such year and, if necessary, for subsequent years) shall be specially credited to the Capital Account of such Member in the LLC in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, the Deficit Capital Account so created as quickly as possible. It is the intent that this Section 8.02(b) be interpreted to comply with the alternate test for economic effect set forth in Section 1.704-1(b)(2)(ii)(d) of the Treasury Regulations.

(c) In the event any Member would have a Deficit Capital Account in the LLC at the end of any LLC taxable year which is in excess of the sum of any amount that such Member is obligated to restore to the LLC under Treasury Regulations Section 1.704-1(b)(2)(ii)(c) and such Member's share of minimum gain as defined in Section 1.704-2(g)(1) of the Treasury Regulations (which is also treated as an obligation to restore in accordance with Section 1.704-1(b)(2)(ii)(d) of the Treasury Regulations) of the LLC, the Capital Account of such Member in the LLC shall be specially credited with items of Membership income (including gross income) and gain in the amount of such excess as quickly as possible.

(d) Notwithstanding any other provision of this Section 8.02, if there is a net decrease in a minimum gain as defined in Treasury Regulations Section 1.704-2(d) during a taxable year of the LLC, then, the Capital Account of each Member in the LLC shall be allocated items of income (including gross income) and gain for such year (and if necessary for subsequent years) equal to that Member's share of the net decrease in minimum gain. This Section 8.02 is intended to comply with the minimum gain charge back requirement of Section 1.704-2 of the

Treasury Regulations and shall be interpreted consistently therewith. If in any taxable year that the LLC has a net decrease in a minimum gain, and the minimum gain charge back requirement would cause a distortion in the economic arrangement among the Members of the LLC and it is not expected that the LLC will have sufficient other income to correct that distortion, the Managing Member of the LLC may in its discretion (and shall, if requested to do so by a Member of the LLC) seek to have the IRS waive the minimum gain charge back requirement in accordance with Treasury Regulations Section 1.704-2(f)(4).

(e) Items of loss, deduction and expenditures described in Code Section 705(a)(2)(B) which are attributable to any nonrecourse debt of the LLC and are characterized as partner (Member) nonrecourse deductions under Section 1.704-2(i) of the Treasury Regulations shall be allocated to the Members' Capital Accounts in accordance with Section 1.704-2(i) of the Treasury Regulations.

(f) Beginning in the first taxable year in which there are allocations of "nonrecourse deductions" (as described in Section 1.704-2(b) of the Treasury Regulations), such deductions shall be allocated to the Members of the LLC in accordance with, and as a part of, the allocations of the profit or loss of the LLC for such period.

(g) In accordance with Code Section 704(c)(1)(A) and Section 1.704-1(b)(1)(vi) of the Treasury Regulations, if a Member contributes property to the LLC with a fair market value that differs from its adjusted basis at the time of contribution, income, gain, loss and deductions with respect to the property shall, solely for federal income tax purposes, be allocated among the Members of the LLC so as to take account of any variation between the adjusted basis of such property to the LLC and its fair market value at the time of contribution.

(h) Pursuant to Code Section 704(c)(1)(B), if any contributed property is distributed by the LLC other than to the contributing Member within five years of being contributed, then, except as provided in Code Section 704(c)(2), the contributing Member shall be treated as recognizing gain or loss from the sale of such property in an amount equal to the gain or loss that would have been allocated to such Member under Code Section 704(c)(1)(A) if the property had been sold at its fair market value at the time of the distribution.

(i) In connection with a CDE Capital Contribution of money or other property (other than a *de minimis* amount) by a new or existing Member as consideration for a Membership Interest, or in connection with the liquidation of the LLC or a distribution of money or other property (other than a *de minimis* amount) by the LLC to a retiring Member (as consideration for a Membership Interest), the Capital Accounts of the Members of the LLC shall be adjusted to reflect a revaluation of the LLC property (including intangible assets) in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv)(f). If, under Section 1.704-1(b)(2)(iv)(f) of the Treasury Regulations, property of the LLC that has been revalued is properly reflected in the Capital Accounts and on the books of the LLC at a book value that differs from the adjusted tax basis of such property, then depreciation, depletion, amortization and gain or loss with respect to such property shall be shared among the Members in the LLC in a manner that takes account of the variation between the adjusted tax basis of such property and its book



value, in the same manner as variations between the adjusted tax basis and fair market value of property contributed to the LLC are taken into account in determining the Members' shares of tax items under Code Section 704(c).

(j) All recapture of income tax deductions resulting from the sale or disposition of property of the LLC shall be allocated to the Members to whom the deduction that gave rise to such recapture was allocated hereunder to the extent that such Member is allocated any gain from the sale or other disposition of such property.

(k) Any credit or charge to the Capital Accounts of the Members pursuant to Sections 8.02(b), (c), and/or (d), hereof shall be taken into account in computing subsequent allocations of profits and losses pursuant to Section 8.01, so that the net amount of any items charged or credited to Capital Accounts pursuant to Sections 8.01 and 8.02 shall to the extent possible, be equal to the net amount that would have been allocated to the Capital Account of each Member in the LLC pursuant to the provisions of this Article 8 as if the special allocations required by Sections 8.02(b), (c), and/or (d), had not occurred.

**8.03 Distributions.** Solely at the request of the Fund, except as provided in Sections 8.04(d) and 8.07, all Distributable Cash permitted to be distributed under this Section 8.03 hereof, shall be distributed to the Members on a *pari passu* basis in accordance with their CDE Percentage Interests within 5 calendar days of the due date of each payment under the Approved Investment Documents. All amounts withheld pursuant to the Code or any provisions of state or local tax law with respect to any payment or distribution to the Members shall be treated as amounts distributed to the relevant Member or Members pursuant to this Section 8.03. In the event that (i) the Fund does not request for there to be a distribution pursuant to this Section 8.3, or (ii) the Fund determines pursuant to Section 8.04 that any distribution requested to be made in this Section 8.03 may not be made as or when provided for in this Section 8.03, such undistributed amounts shall be deposited in the Undistributable Cash Reserve Account pursuant to Section 6.04 hereof. Upon determination by the Managing Member, subject to the right of the Fund to provide the Managing Member with alternative methodology determined by the Fund in its reasonable discretion, that any such amounts may be distributed in conformance with the requirements of this Agreement, such amounts shall promptly be distributed to the Members entitled to such amounts pursuant to this Section 8.03.

**8.04 Limitations on Distributions.**

(a) No distributions or return of CDE Capital Contributions shall be made and paid from the LLC assets, if such distribution or return of CDE Capital Contributions violates the Act or if after the distribution or return of CDE Capital Contributions is made either:

- (i) the LLC would be Insolvent;
- (ii) the net assets of the LLC would be less than zero; or
- (iii) after the distribution or return of CDE Capital Contribution is made such distribution or return of CDE Capital Contributions or similar action or

inaction is reasonably likely to constitute a Recapture Event (collectively, a “Prohibited Distribution”).

It is expressly acknowledged and agreed that (A) any Prohibited Distribution shall be retained by the LLC or re-invested by the LLC until the end of the applicable Compliance Period (in accordance with Section 45D of the Code and the Treasury Regulations and Guidance); and (B) distributions to the Fund in any Fiscal Year may not exceed the Fund’s pro rata share of the LLC’s Operating Income for such Fiscal Year as provided under Section 1.45D-1(e)(3)(iii) of the Treasury Regulations, except to the extent applicable to any non-pro rata distributions otherwise permitted therein, and that any distributions made for a period less than a Fiscal Year must be made in accordance with the Managing Member’s estimate of the LLC’s Operating Income for the entire Fiscal Year to which such payment relates (in accordance with the NMTC Program Requirements).

(b) Any determination under Section 8.04(a) shall be made by the Managing Member. The Managing Member may base a determination that a distribution or return of a CDE Capital Contribution may be made under Section 8.04(a) in good faith reliance upon a balance sheet and profit and loss statement of the LLC represented to be correct by the person having charge of its books of account or certified by the Accountants to fairly reflect the financial condition of the LLC.

(c) In order to effect the Members’ intent that the LLC shall only make distributions to the extent such distributions do not cause a Recapture Event as provided in Section 8.04(a)(iii), if, after the close of any Fiscal Year during the Credit Investment Period, the Fund determines in its sole discretion that the total distributions in such Fiscal Year to the Fund exceeded the Fund’s pro rata share of Operating Income of the LLC (as determined pursuant to Section 1.45D-1(e)(3)(iii) of the Treasury Regulations), and the same would constitute a Recapture Event, then such distribution shall necessarily be deemed to have been unintentional (an “Unintentional Distribution”). The Fund shall return the Unintentional Distribution, plus interest accruing at the AFR and calculated from the date(s) of such Unintentional Distribution, to the CDE within twenty (20) calendar days following Notice thereof. The books and records of the CDE shall thereafter be corrected/adjusted to reflect, consistent with the Members’ explicit intent expressed herein, that the Unintentional Distribution did not occur or, at the request of the Fund, that the distribution constituted a loan by the LLC to the Fund. The Members further agree that, if the NMTC Program Requirements are updated with reference to the interaction between distributions, redemptions, and Recapture Events, the Members shall in good faith adopt a policy for distributions which maximizes the distributions made hereunder without causing a Recapture Event.

(d) Notwithstanding any provision to the contrary contained in this Agreement, the LLC shall not be required to make a distribution to a Member on account of its interest in the LLC if such distribution would violate the Act or any other applicable law.

**8.05 Accounts.** Complete books of account of the LLC, in which each transaction shall be fully and accurately entered, shall be kept at the principal office of the LLC and at such

other locations as the Managing Member shall determine from time to time and shall be open to inspection and copying on reasonable Notice by any Member or any such Member's authorized representatives during normal business hours. The costs of such inspection and copying shall be borne by the Member. The Managing Member shall maintain a system of accounting that allows it to distinguish among Return of Capital and Profits. With respect to Return of Capital (if any), such system shall allow the tracing of each amount received to the QLICI to which it relates. Such system shall also allow the tracing of each QLICI to the QEI(s) from which it was funded. Any Return of Capital received by the LLC shall be monitored by the Managing Member to determine whether such amounts must be reinvested as provided in Section 6.01 hereof. The Managing Member shall also monitor all Distributable Cash to determine whether such amounts are subject to the limitations set out in Section 8.04(a)(iii) hereof. The accounting system of the Managing Member shall also identify any Distributable Cash that cannot be distributed to the Fund as aforesaid.

**8.06 Accounting Principles.** The financial statements and financial books and records of the LLC shall be prepared in accordance with generally accepted accounting principles applied on a consistent basis using the accrual method of accounting and shall be appropriate and adequate for the LLC and/or carrying out the provisions of this Agreement.

**8.07 Loans to the LLC.** Nothing in this Agreement shall prevent the Fund or any other Member from making secured or unsecured loans to the LLC by agreement with the LLC. In the event the LLC shall at any time require funds in excess of those available to it from Revenue or Final Return of Capital, the Managing Member shall promptly notify the Fund of the same, including the amounts then required and the purpose(s) for which they are needed. In such case, the Fund may elect to make one or more secured or unsecured loan(s) to the LLC, in its sole and absolute discretion, to meet the reasonable needs of the LLC (herein called "Member Loans"). Member Loans provided for in this Section 8.07 shall bear interest at a rate from time to time not to exceed the Prime Rate, plus two (2) percentage points, *per annum*, and such loans (together with interest thereon) shall be repaid solely from Distributable Cash, prior to any distributions to the Members pursuant to Section 8.03 hereof.

**8.08 Accounting Period.** The Fiscal Year of the LLC for financial accounting purposes, and for federal, state and local income tax purposes, shall be the fiscal year of the Fund, which as of the date hereof is the calendar year.

**8.09 Records and Reports.** The Managing Member shall maintain records and accounts of the operations and expenditures of the LLC. At the expense of the LLC, the Managing Member shall maintain records and accounts of the operations and expenditures of the LLC. Upon reasonable written request and in accordance with the Act, each Member of the LLC shall have the right, at a time during ordinary business hours, as reasonably determined by the Managing Member of the LLC, to inspect and copy, at the requesting Member's expense, the LLC documents identified in the Act, and such other documents which the Managing Member, in its discretion, deems appropriate. At a minimum the LLC shall keep at its principal place of business the following records:

(a) A current list of the full name and last known address of each Member of the LLC setting forth the amount of cash each Member has contributed to the LLC, a description and statement of the agreed value of the other property or services each Member has contributed to the LLC or has agreed to so contribute in the future, and the date on which each became a Member in the LLC;

(b) A copy of the Certificate of Formation of the LLC and all amendments to the foregoing, together with executed copies of any powers of attorney pursuant to which any amendment has been executed;

(c) Copies of the LLC's federal, state, and local income tax returns and reports, if any, for the three (3) most recent years;

(d) Copies of the LLC's currently effective written Operating Agreement, and copies of any financial statements of the LLC for the three most recent years;

(e) Minutes of every meeting of the Members and of the Governing Board;

(f) Any written consents obtained from Members of the LLC for actions taken by Members of the LLC without a meeting;

(g) The books and records of the LLC for the current and past four (4) fiscal years; and

(h) Unless contained in the Certificate of Formation or this Agreement, a writing prepared by the Managing Member setting out the following:

(i) The times at which or events on the happening of which any additional contributions agreed to be made by each Member of the LLC are to be made.

(ii) Any right of a Member to receive distributions that include a return of all or any part of the Member's contributions to the LLC.

(iii) Any power of a Member to grant the right to become an assignee of any part of the Member's interest in the LLC, and the terms and conditions of the power.

**8.10 Financial Statements and Information.** The Managing Member shall maintain and preserve, during the term of the LLC, the accounts, books and relevant documents described in this Section 8.10 with respect to the LLC, as a whole, and shall deliver to the Fund:

(a) provided a Member makes written request to the Managing Member at least 60 days prior to the end of such quarter, within forty-five (45) days after the end of each calendar quarter:

(i) unaudited financial statements for the LLC which may be prepared and certified by the Managing Member, including a balance sheet, statement of income or loss and statement of cash sources and applications;

(ii) a report of the balance in the Reserves, and of any reduction or termination of any Reserves, and a calculation that the amount in Reserves are consistent with and do not exceed the limitation in Treasury Regulations Section 1.45D-1(d)(3);

(iii) a report of any notice of a material fact which may substantially affect distributions pursuant to this Agreement;

(iv) a description of all transactions between the LLC and the Managing Member or any Allocatee Affiliate, including a report of fees, commissions, compensation, and other remuneration and reimbursed expenses paid by the LLC to the Managing Member or any Allocatee Affiliate and the services and goods provided to the LLC; and

(v) a report of such other information as may be deemed by the LLC to be material to the existence or operation of the LLC or its business or of an Approved Investment;

(b) By March 30 of each LLC fiscal year, all necessary tax reporting information regarding the LLC required by the Fund for preparation of its respective federal, state, and local income or franchise tax or information returns, or those of its members, for the preceding fiscal year, including form K-1.

(c) Within ninety (90) days after the end of each LLC fiscal year:

(i) audited financial statements prepared by the Accountants, including: a balance sheet, a statement of operations, a statement of cash flows, a statement summarizing the calculation of tax credits and depreciation; and a statement of changes in Members' capital accounts;

(ii) a statement summarizing the distributions, fees, commissions, compensation, and other remuneration and reimbursed expenses paid for such year to any Member or Allocatee Affiliate, and the services performed or goods provided therefor;

(iii) a report on the balances of all Reserves as of the end of the fiscal year and a calculation that the amount in the Reserves is consistent with and does not exceed the limitation in Treasury Regulations 1.45D-1(d)(3);

(iv) a report of any Member Loans; and

(v) a reconciliation of the differences between the tax basis and GAAP basis statements.

(d) Promptly, but in all events within five (5) calendar days:

(i) upon learning of (A) any of the material events described in Section 6.9 of the Allocation Agreement, or (B) any default or event with the passage of time would constitute an event of default under any documents evidencing an Approved Investment, notice of such event of default;

(ii) from time to time as may be reasonably requested by the Fund, information on the state of the business, financial condition, and affairs of the LLC;

(iii) upon learning of a condition or circumstance which is expected to reduce below the projected levels the amount of New Markets Tax Credits available to the Fund, a detailed statement describing such matters; and

(iv) upon the preparation or filing of any reports or filings, copies of which are required to be provided to the Fund pursuant to the terms of Article 3 (and, in any event, with the time period provided in Article 3 (if any)), provided the Managing Member shall supply institutional-level reporting and financial statements to the Fund within twenty (20) days of the date such reporting must be filed by the Managing Member with CDFI, and transactional-level reporting within ten (10) days of such date.

(e) Within five (5) days after receipt by the LLC or the Managing Member:

(i) copies of all reports, notices, filings or correspondence with any governmental agency regarding the New Markets Tax Credits, default notices, notices given or received pursuant to any document evidencing an Approved Investment, notice of any CDFI Fund or Secretary proceeding involving the LLC; and

(ii) copies of all lawsuits or legal proceedings or alleged violations of law, and notices of all actions taken, or proposed to be taken, affecting the LLC or the Managing Member.

(f) Upon request of the Fund, within thirty (30) days after the end of each calendar quarter:

(i) unaudited financial statements for the LLC which may be prepared by the Managing Member, including a balance sheet, statement of income or loss and statement of cash sources and applications; and

(ii) unaudited financial statement for the QALICB, including a balance sheet, statement of income or loss statement of cash sources and applications.

**8.11 Returns and other Elections.** At the expense of the LLC, the Managing Member shall cause the preparation and timely filing of all tax returns required to be filed by the LLC pursuant to the Code and all other tax returns deemed necessary and required in each jurisdiction in which the LLC does business, using the services of the Accountants for the LLC.

The Fund shall also cooperate with and assist the LLC (including timely providing all necessary information) to enable the Managing Member to prepare to file all reports and filings required to be made by the LLC and/or the Managing Member under the NMTC Program Requirements. The Managing Member shall also send to each Member copies of all annual compliance reports filed by the LLC with the CDFI Fund as and when the same are submitted to the CDFI Fund. All elections permitted to be made by the LLC under federal or state laws shall be made as the Managing Member may determine in good faith to be in the best interests of the LLC and the Members; provided, that upon the request of the Fund, the Managing Member shall file an election, pursuant to Sections 734, 743, and 754 of the Code, to adjust the basis of the LLC's property for federal income tax purposes. With respect to each Fiscal Year during the LLC's operations, at such time as the Accountants shall have prepared the proposed tax return for such year, the Accountants shall provide copies of such proposed tax return to the Members for review and comment. Any changes in such proposed tax return recommended by a Member's accountants shall be made by the Accountants prior to the completion of such tax return for execution by the Managing Member.

#### **8.12 Tax Matters Partner**

(a) The Managing Member is designated the "Tax Matters Partner" (as defined in Code Section 6231), and is authorized and required to represent the LLC (at the LLC's expense) in connection with all examinations of the LLC's affairs by tax authorities, including, without limitation, administrative and judicial proceedings, and to expend the LLC funds for professional services and costs associated therewith. The Fund may attend such proceedings and reasonably consult with the Tax Matters Partner with respect thereto. The Members agree to cooperate with each other and to do or refrain from doing any and all things reasonably required to conduct such proceedings. The Tax Matters Partner shall give to the other Members written notice within seven calendar days of receipt of information that the IRS or any other taxing authority intends to examine the LLC tax return or the books and records of the LLC and the time and place of such examination. The Tax Matters Partner shall furnish to the other Members within seven calendar days of receipt copies of all notices or other written communications received by the Tax Matters Partner from the IRS or any other taxing authority (except such notices or communications as are sent directly to the Fund).

(b) The Tax Matters Partner shall have and perform all of the duties required under the Code, including furnishing the name, address, taxpayer identification number and interest in Net Profits and Net Losses of each Member to the IRS.

(c) The Tax Matters Partner shall, within seven calendar days thereafter, advise each Member in writing of the substance and form of any conversation or communication held with any representative of the IRS. The Tax Matters Partner shall not have the authority, unless such action has been approved in writing by the Members:

(i) to extend the statute of limitations for assessing or computing any tax liability against the LLC (or the amount or character of any LLC tax item) or select the forum for judicial review;

- (ii) to settle any audit with the IRS or other taxing authority;
- (iii) to file a request for an administrative adjustment with the IRS or other taxing authority at any time or file a petition for judicial review;
- (iv) to initiate or settle any judicial review or action concerning the amount or character of any Partnership item (within the meaning of Section 5231(a)(3) of the Code) with respect to any such request;
- (v) to intervene in any action brought by any other Member for judicial review of a final adjustment of any LLC tax item; or
- (vi) take any other action not expressly permitted by this Article 8 on behalf of the LLC or any Member in connection with any administrative or judicial tax proceeding reasonably likely to affect the rights or obligations of the Fund;

(d) The Managing Member shall keep the other Members advised of any dispute the LLC may have with any Federal, State or local taxing authority (a “Tax Dispute”), and shall afford the other Members the opportunity to participate directly in the negotiation of the Tax Dispute, to the extent permitted by law. Reasonable legal fees incurred in connection with any Tax Dispute shall be paid by the LLC, except that if the LLC lacks sufficient funds to undertake or prosecute any litigation relating to such Tax Dispute (including, without limitation, any appeal) and either the Managing Member or Fund does not consent to a settlement or resolution of such tax dispute, then the legal fees and other costs and expenses associated with such litigation shall be funded by the Member(s) refusing to consent to such settlement or resolution, through one or more Member Loans to the LLC. The Managing Member shall determine whether any corporate tax shelter filing for the LLC is required, and if either such Member believes such a filing is necessary, the Managing Member shall cause such filing to be made.

(e) In the event of any LLC-level proceeding instituted by the IRS pursuant to Sections 6221 through 6233 of the Code reasonably likely to affect the rights or obligations of the Fund, the Tax Matters Partner shall consult with the Fund regarding the nature and content of all actions to be taken and defenses to be raised by the LLC in response to such proceeding. The Tax Matters Partner also shall consult with the Fund regarding the nature and content of any proceeding pursuant to Sections 6221 through 6233 of the Code instituted by or on behalf of the LLC (including the decision to institute proceedings, whether administrative or judicial, and whether in response to a previous IRS proceeding against the LLC or otherwise).

(f) The Tax Matters Partner shall, upon request by the Fund, permit Fund to include its attorney in the power of attorney (Form 2848) for the LLC for any taxable years under a tax audit or in a tax administrative appeals process.

**8.13 Net Profits and Net Losses.** For any fiscal period of the LLC, “Net Profits” or “Net Losses” shall be an amount equal to the LLC’s taxable income or loss for such period from all sources, determined in accordance with Section 703(a) of the Code, adjusted in the following



manner: (a) the income of the LLC that is exempt from federal income tax shall be added to such taxable income or loss; (b) any expenditures of the LLC which are not deductible in computing its taxable income and not properly chargeable to its capital account under either Section 705(a)(2)(B) of the Code or the Treasury Regulations promulgated under Section 704(b) of the Code shall be subtracted from such taxable income or loss; (c) in the event any LLC property is revalued in accordance with Section 1.704-1(b)(2)(iv)(f) of the Treasury Regulations, then the amount of any adjustment to the value of such LLC property shall be taken into account as gain or loss from the disposition of such LLC property for purposes of computing Net Profits or Net Losses; (d) gain or loss resulting from any disposition of the LLC property which has been revalued pursuant to Section 1.704-1(b)(2)(iv)(f) of the Treasury Regulations and with respect to which gain or loss is recognized for Federal income tax purposes shall be computed by reference to the adjusted value of such LLC property, notwithstanding that the adjusted tax basis of such LLC property differs from the adjusted value; (e) any depreciation, amortization or other cost recovery deductions taken into account in computing such taxable income or loss shall be recomputed based upon the adjusted value of any LLC property which has been revalued in accordance with Section 1.704-1(b)(2)(iv)(f) of the Treasury Regulations; and (f) any items of income, gain, loss, deduction or credit which are specially allocated pursuant to Section 8.02(d) through (k) shall not be taken into account in computing Net Profits or Net Losses.

**8.14 Reporting Responsibilities to the Fund.** Subject to the Managing Member providing the statements, reports, returns, notices, and filings required to be provided to the Fund as set forth in this Agreement, the Fund shall be solely responsible for providing all statements, reports, returns, notices, and filings to its constituent members and partners, and neither the Managing Member nor the LLC shall have any direct or indirect obligation or liability to any such constituent members or partners as to any such matters. However, because under certain circumstances the LLC may be required under the Allocation Agreement and/or the Treasury Regulations and Guidance to provide statements, reports, returns, or notices to, or information on, persons who hold equity interests in the Fund, the Fund shall advise the Managing Member in writing of the name, address, and taxpayer identification number of each constituent member or partner of the Fund who may claim New Markets Tax Credits based on their investment in the LLC (whether holding their interests directly or through one or more intermediate entities) and any assignments, transfers, or other changes thereof from time to time, together with any other information pertaining to its constituent members or partners as may be required from time to time to enable the LLC and the Managing Member to comply with the Allocation Agreement and/or the Treasury Regulations and Guidance.

**8.15 Expenses of Tax Matters Partner.** The LLC shall, to the fullest extent permitted by law, indemnify and reimburse the Tax Matters Partner for all expenses, including legal and accounting fees, claims, liabilities, losses and damages incurred in connection with any administrative or judicial proceeding with respect to the tax liability of the Member. The payment of all such expenses shall be made before any distributions are made from Operating Income, or any discretionary reserves are set aside by the Managing Member. Neither the Managing Member, nor any Affiliate, nor any other Person shall have any obligation to provide funds for such purpose. The taking of any action and the incurring of any expense by the Tax Matters Partner in connection with any such proceeding, except to the extent required by law, is

a matter in the sole discretion of the Tax Matters Partner and the provisions on limitations of liability of the Managing Member and indemnification set forth in Sections 3.10 or 3.11 of this Agreement shall be fully applicable to the Tax Matters Partner in its capacity as such. Notwithstanding the foregoing, the LLC shall not indemnify or reimburse the Tax Matters Partner (a) to the extent that such indemnity or reimbursement relates to the Tax Matters Partner's gross negligence, malfeasance or fraud or (b) the Managing Member is acting as the Tax Matters Partner with respect to a matter for which it is or was liable to JPMC under the Indemnity Agreement.

## **ARTICLE 9.**

### **TRANSFERABILITY**

#### **9.01 General.**

(a) Except as otherwise specifically provided herein, no Member shall have the right, without the Consent of the other Members, as to all or any part of its Membership Interest in the LLC, to:

(i) sell, assign, pledge, hypothecate, transfer, exchange or otherwise transfer for consideration (collectively, "sell" or "sale"); provided, however, that the Fund shall be entitled to pledge (and ultimately convey in the event of a foreclosure) all or any part of its Membership Interest to secure indebtedness of the Fund incurred in order to provide funding of its CDE Capital Contribution obligations hereunder without consent;

(ii) gift, bequeath or otherwise transfer for no consideration (whether or not by operation of law, except in the case of bankruptcy);

(iii) withdraw as a member or dissociate itself from the LLC; or

(iv) sell to an "employee benefit plan" as defined in and within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended.

(b) Subject only to Section 9.02, the Fund may sell or otherwise transfer its Membership Interest without the Consent of the Managing Member to any Affiliate of the Fund. Nothing in this Section 9.01 shall limit the authority of the Fund or any member therein to sell or otherwise transfer any interest within the Fund, in such Person's sole discretion.

(c) Notwithstanding anything to the contrary contained in this Agreement or otherwise, the Members hereby Consent to (A) the pledge of, and the granting of a security interest in, all of the Membership Interest of the Fund and all other interests of the Fund in the LLC in favor of the Fund Lender to secure all obligations of the Fund to the Fund Lender under the Financing Facility Documents, and (B) the exercise by the Fund Lender of all of its rights and remedies relating to such pledge whether under such documents or under applicable law,

including any “sale” (as defined in Section 9.01(a)(i)) by the Fund Lender in connecting with the exercise of any such rights and remedies.

## **9.02 Limitations; Effectiveness.**

(a) As a condition to the LLC recognizing the effectiveness of the purchase or receipt of the Transferring Member’s interest in the LLC by a third party (including an Economic Interest), and further subject to Section 9.03 regarding substitution of a new Member, the non-Transferring Member may require the Transferring Member or the proposed purchaser, donee or successor-in-interest, as the case may be, to execute, acknowledge and deliver instruments of transfer, assignment and assumption and such other certificates, representations and documents, and to perform all such other acts which such Managing Member may deem necessary or desirable to:

- (i) verify the purchase, gift or transfer, as the case may be; and
- (ii) confirm that the Person desiring to acquire an interest in the LLC, or to be admitted as a Member (as the case may be), has accepted and agreed to be subject and bound by all of the terms, obligations and conditions of the Agreement (whether or not such Person is to be admitted as a new Member).

(b) No assignment of a Membership Interest may be made unless, in the written opinion of Counsel acceptable to the Members, which opinion shall be satisfactory in form and substance to the Managing Member and is delivered prior to the date of such assignment:

- (i) such assignment, when added to the total of all other assignments of Membership Interests within the preceding twelve (12) months, would not result in the LLC being considered to have terminated within the meaning of Section 708 of the Code;
- (ii) such assignment would not violate any federal securities laws or any state securities or “Blue Sky” laws (including without limitation any investor suitability standards) applicable to the LLC or the Membership Interest to be assigned, or cause the LLC to need to be registered under the Investment Company Act of 1940, as amended; and
- (iii) such assignment would not cause the LLC to lose its status as a partnership for federal income tax purposes or to become a publicly traded partnership within the meaning of Section 7704 of the Code.

(c) Any sale or gift of a Membership Interest or any portion thereof or admission of a Member in compliance with this Article 9 shall be deemed effective on such date that the donee or successor-in-interest complies with the conditions set forth in this Section 9.02. The Transferring Member hereby agrees, upon request of the remaining Members, to execute such certificates or other documents and to perform such other acts as may be reasonably requested by the remaining Members from time to time in connection with such sale, transfer,

assignment, or substitution. The Transferring Member hereby agrees to indemnify the LLC and the remaining Members against any and all loss, damage, or expense (including, without limitation, tax liabilities or loss of tax benefits) arising directly or indirectly as a result of any transfer or purported transfer in violation of this Article 9.

### **9.03 Transferee Not Member in Absence of Consent.**

(a) If the requisite approval is not obtained for the proposed sale or gift of the Transferring Member's Membership Interest to a purchaser or donee which is not a Member immediately prior to the sale or gift, then the proposed transferee or donee shall have no right to participate in the management of the LLC or to become a Member, notwithstanding such transferee's compliance with the provisions of Section 9.02 hereof. The transferee or donee shall be merely a holder of an Economic Interest. However, the provisions of this Section shall not be deemed to excuse any violation of this Agreement resulting from the transfer. No transfer of a Member's interest in the LLC (including any transfer of any Economic Interest therein or any other transfer which has not been approved by unanimous Consent of the Members) shall be effective unless and until written notice (including the name and address of the proposed transferee or donee and the date of such transfer) has been provided to the Managing Member.

(b) Upon and contemporaneously with any sale or gift of a portion of a Transferring Member's Membership Interest (including any Economic Interest) which does not at the same time transfer the balance of the rights associated with the Membership Interest transferred by the Transferring Member (including, without limitation, the rights of the Transferring Member to participate in the management of the LLC), all remaining rights and interest which were owned by the Transferring Member immediately prior to such sale or gift or which were associated with the transferred interest shall immediately lapse until either (1) the Managing Member agrees to reinstate such rights to the Member who did not previously obtain any required Consent of the Members or (2) the Managing Member agrees to reinstate such rights to a successor or transferee of such Member.

### **9.04 Removal of Managing Member.**

(a) The Fund shall have the right to remove the Managing Member solely upon the occurrence of any of the following events (each a "Removal Event") described in this Section 9.04:

(i) An act of fraud committed by the Managing Member, which act shall be considered to have a Material Adverse Effect on the LLC;

(ii) A grossly negligent act or an act of willful misconduct or wrongful taking committed by the Managing Member, with respect to the performance or nonperformance of any activity relating to the LLC, which act shall be considered to have a Material Adverse Effect on the LLC;

(iii) A breach by the Managing Member of this Agreement, which breach has a Material Adverse Effect on the LLC, and any violation of the Allocation

Agreement or the NMTC Program Requirements shall be considered to have a Material Adverse Effect on the LLC;

(iv) [reserved];

(v) the Managing Member shall have caused the LLC to violate any of the Project Documents, or any provisions of the NMTC Program Requirements or any state or federal regulations, any of which has a Material Adverse Effect with respect to the LLC, and any violation of the Allocation Agreement or the NMTC Program Requirements or any violation that would cause a Recapture Event shall be considered to have a Material Adverse Effect on the LLC;

(vi) the Managing Member shall become subject to removal under Section 6.01 hereof, which event shall be considered to have a Material Adverse Effect on the LLC;

(vii) An event of Bankruptcy shall have occurred with respect to the LLC or the Managing Member, which event shall be considered to have a Material Adverse Effect on the LLC; or

(viii) The Managing Member shall have conducted the affairs of the LLC in such a manner as would cause the LLC to be treated for federal income tax purposes as an association taxable as a corporation, if such conduct has a Material Adverse Effect on the LLC.

(b) Notice of Removal. The Fund shall give Notice to all Members of its determination that the Managing Member shall be removed. Upon the giving of such Notice, and notwithstanding any other provision of this Agreement, the Fund shall have the right to take any action on behalf of the Managing Member or the LLC to cure the occurrence which is the subject of such removal Notice. The Managing Member shall have thirty (30) days after receipt of such Notice to cure any default or other reason for such removal (if susceptible to cure as determined by the Fund in its reasonable discretion). It is expressly agreed that the cure rights provided for herein shall not apply to a removal event described in Section 9.04(a)(i), (ii), (vi) or (vii) above.

The Fund is hereby authorized to seek, on behalf of the LLC, any consents, authorizations, or approvals as it may deem necessary or convenient to exercising its rights pursuant to Section 9.04, including the consent of the CDFI Fund. Upon request by the Fund, the Managing Member and the Fund shall cooperate in the effort to obtain the consent (or ratification) of the CDFI Fund to the removal, the transfer of control of the LLC to the Fund, and, if requested by the CDFI Fund or the Fund, the execution of a revised or replacement Allocation Agreement. Nothing contained in this Section 9.04(b) is intended to limit the rights of the Fund to initiate the immediate removal of the Managing Member upon the occurrence, in the Fund's sole determination, of a Removal Event, or to otherwise authorize any proceeding or process (such as, by way of example and not of limitation, a preliminary injunction or temporary restraining order) to delay the immediate exercise by the Fund of its rights under Section 9.04.

Upon the removal of the Managing Member, the Fund may elect a successor Managing Member (including an Affiliate of the Fund) within ninety (90) days and admit such successor Managing Member to the LLC notwithstanding the provisions of Sections 9.01 through 9.03 hereof. The successor Managing Member shall have all rights and responsibilities of the Managing Member under this Agreement which arise following the date of admission of such successor Managing Member. Following the removal of the Managing Member and until the Fund has elected a successor Managing Member, the Fund shall have all rights and responsibilities of the Managing Member under this Agreement, including the right to allocations and distributions to be made to the Managing Member pursuant to Article 8 hereof.

(c) Effect of Removal Upon Managing Member's Interest. Upon the removal of the Managing Member, the Fund shall elect a new Managing Member within ninety (90) calendar days, and the removed Managing Member shall be thereupon deemed to hold only an Economic Interest in the LLC, which shall be economically equivalent to its Managing Member's interest in allocations and distributions in the LLC. A Managing Member who is removed from the LLC in accordance with the provisions of this Section 9.04 shall cease to have any further interest in the LLC, except as expressly set forth in this Section. A Managing Member who is removed shall, to the fullest extent permitted by law, (a) not be entitled to the reimbursement of expenses or other compensation provided for in this Agreement except to the extent already earned, incurred or expended, and (b) not be liable for obligations under this agreement which accrue after the date of such removal but shall remain liable for all obligations under this Agreement accrued up until the effective date of such removal. Amounts otherwise payable to the Managing Member as fees or reimbursements hereunder shall be applied to meet the Managing Member's obligations (including any liability under any indemnification) and such application shall serve to reduce any such liabilities of the Managing Member. Upon the payment (or application of payments against obligations and liabilities of the Managing Member as provided for herein) to the Managing Member of the amount represented by the positive Capital Account balance of the Managing Member (which need not be made until dissolution of the LLC), the Managing Member shall no longer have an Economic Interest (or any other interest of any kind) in the LLC.

(d) Power of Attorney. The Fund is hereby granted an irrevocable power of attorney, coupled with an interest, to execute any and all documents on behalf of the Members and the LLC as shall be legally necessary and sufficient to effect all of the foregoing provisions of this Section. The election by the Fund to remove the Managing Member under this Section shall not limit or restrict the availability and use of any other remedy which the Fund might have with respect to the Managing Member in connection with its undertakings and responsibilities under this Agreement.

## **9.05 Redemption.**

(a) The LLC hereby grants to the Fund the irrevocable and exclusive right and option, exercisable during the Redemption Period (as defined below), to require the LLC upon the terms and conditions set forth in this Section 9.05 to redeem all, but not less than all, of the Fund's Membership Interest (the "Redemption"), and upon exercise of such Redemption, the LLC shall

have the obligation to redeem all, but not less than all, of the Fund's Membership Interest for the consideration set forth below.

(b) The Redemption may be exercised by the Fund, at any time during the two hundred seventy (270) day period beginning at the end of the Compliance Period (the “Redemption Period”). If, at any time during the Redemption Period, the Fund elects to sell its Membership Interest to the LLC pursuant to the provisions of this Section 9.05, it shall give the LLC notice of such election (an “Election Notice”).

(c) Within thirty (30) days after delivery to the LLC of an Election Notice from the Fund, the Fund shall redeem and surrender its Membership Interest in the LLC in exchange for (i) amounts distributable to it under Section 9.05 (d) below and (ii) a distribution in kind, effected by an assignment without recourse, of the Approved Investment and Approved Investment Documents (if any such loan is still outstanding, and if not, any Replacement Investment), together with any other non-cash assets then held by the LLC; provided, that the Managing Member shall retain from the assets of the LLC cash in the amount Managing Member would have received had the LLC been liquidated.

(d) To the extent that, at the time of such redemption, the LLC is holding any Distributable Cash that has not yet been distributed in accordance with this Agreement, the Fund, at the time of the redemption of its Membership Interest in the LLC, shall be entitled to receive a portion of such Distributable Cash (after deduction of applicable fees and expenses as permitted pursuant to the terms of this Agreement and the distribution to the Managing Member as set forth in Section 9.05 (c) hereinabove) in proportion to its Membership Interest in the LLC. Such additional distribution shall be in addition to the distribution in kind set forth above.

(e) Upon such assignment, the Fund shall cease to be a Member and shall execute and deliver such documents, assignments, instruments and other items, and shall take such other action, as shall be necessary in connection with the Redemption.

(f) In the event that the Fund has not exercised the redemption rights set forth above within the Redemption Period, the Managing Member may, at any time thereafter, elect either (i) to cause the LLC to redeem the Membership Interest of the Fund on the same terms as set forth above, by giving written notice of such election to the Fund, or (ii) to dissolve the LLC pursuant to Section 11.01 of this Agreement.

#### **9.06 Effect of Bankruptcy, Death, Withdrawal, Dissolution, or Incompetence of a Managing Member.**

(a) In the event of the Bankruptcy of a Managing Member or the withdrawal, death or dissolution of a Managing Member or an adjudication that a Managing Member is incompetent (which term shall include, but not be limited to, insanity) the business of the LLC shall be continued by the other Managing Member(s), if applicable; provided, however, that if the withdrawn, Bankrupt, deceased, dissolved or incompetent Managing Member is then the sole Managing Member, then the LLC shall be dissolved, unless a majority in Interest of the other Members, within ninety (90) days after receiving Notice of such Bankruptcy, withdrawal, death,

dissolution or adjudication of incompetence, elect to designate a successor Managing Member(s) and continue the LLC upon the admission of such successor Managing Member(s) to the LLC.

(b) Upon the Bankruptcy, death, dissolution or adjudication of incompetence of a Managing Member, such Managing Member shall immediately cease to be a Managing Member and its Interest shall without further action be converted to an Economic Interest; provided, however, that the converted Percentage Interest of such Managing Member shall be ratably reduced to the extent necessary to insure that the remaining or substitute Managing Member(s) hold(s) a 0.005% Percentage Interest. Except as otherwise provided in Section 9.04, upon the Bankruptcy, withdrawal, death, dissolution or adjudication of incompetence of a Managing Member, such Managing Member shall immediately cease to be a Managing Member, it being understood that the Members are relying on the unique personal services and expertise of the Managing Member and will need to secure a successor Managing Member because the Managing Member will be unable to provide its unique services in the forgoing events. The Fund may designate a successor Managing Member in the same manner as provided for in the event of removal of the Managing Member under Section 9.04(c) and admit such successor Managing Member(s) to the LLC notwithstanding the provisions of Sections 9.01-9.03 hereof. The successor Managing Member shall have all rights and responsibilities of the Managing Member under this Agreement which arise following the date of admission of such successor Managing Member. Until the Fund has designated such a successor Managing Member, the Fund shall have all rights and responsibilities of the Managing Member under this Agreement, including the right to allocations and distributions to be made to the Managing Member pursuant to Article 8 hereof.

Except as set forth above, such conversion of the Membership Interest of the Managing Member to an Economic Interest shall not affect any obligations or liabilities of the Bankrupt, deceased, dissolved or incompetent Managing Member existing prior to the Bankruptcy, death, dissolution or incompetence of such person as a Managing Member (whether or not such rights, obligations or liabilities were known or had matured).

(c) The Managing Member, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, agrees that in the event the Managing Member should make application for or seek protection or relief under any of the sections or chapters of the Bankruptcy Code, or in the event that any involuntary petition is filed against the Managing Member, then, in such event, any other Member shall thereupon be entitled to immediate relief from any automatic stay imposed by Section 362 of the Bankruptcy Code, or otherwise, on or against the exercise of the rights and remedies available to such Member pursuant to this Agreement, or otherwise. The foregoing shall in no way preclude, restrict, or prevent the Managing Member from filing for protection under the Bankruptcy Code.

(d) The Members acknowledge and agree that this Agreement is a contract under which the Fund is excused from accepting performance from the Managing Member, its assignee or trustee, in the event that the Managing Member makes application for or seeks protection under any of the sections or chapters of the Bankruptcy Code, or in the event that an involuntary petition is filed against such Managing Member. The effect of this Paragraph shall



be that this Agreement is hereby deemed to be subject to the exceptions to assumption and assignment of contracts set forth in Sections 365(c)(1) and 365(e)(2)(A) of the Bankruptcy Code and that the Fund, by its refusal to consent to an assumption or assignment of this Agreement by the Managing Member after the filing of a petition in bankruptcy by or against such Managing Member, shall be able to prevent such assumption or assignment.

(e) To the fullest extent permitted by law, in the event that the Managing Member makes application for or seeks relief or protection under any of the sections or chapters of the Bankruptcy Code, or in the event that any involuntary petition is filed against said Managing Member, then, in such event, any Member may apply or move to the bankruptcy court in which such petition is filed for a change of venue to the bankruptcy court where the LLC has its principal place of business, and the Managing Member hereby agrees not to oppose or object to such application or motion in any way.

## **ARTICLE 10.**

### **REPRESENTATION AND WARRANTIES**

**10.01 Managing Member Representations and Warranties.** The Managing Member hereby represents and warrants to the other Members as of the Closing Date (unless otherwise stated below) as follows, which representations and warranties are given for the benefit of the Fund.

(a) As of the Prefund Date and at all times thereafter through the Closing Date, the LLC is and has been a limited liability company, duly formed and validly existing under the laws of the State of Texas and has full power and authority to acquire, own, operate and supervise the interest in the LLC in accordance with the terms of this Agreement and the organizational documents of the LLC. As of the Prefund Date and at all times thereafter through the Closing Date, the Managing Member is and has been a corporation, duly organized and validly existing under the laws of the State of Texas and has full power and authority to acquire and own its interest in the LLC and to operate and supervise the activities of the LLC in accordance with the terms of this Agreement;

(b) As of the Prefund Date and at all times thereafter through the Closing Date, the Allocatee and the LLC are each a CDE, and the LLC is a “subsidiary” of the Allocatee, for purposes of the NMTC Program Requirements as of the date of this Agreement and under the terms hereof.

(c) The execution and delivery of this Agreement has been duly authorized by all necessary and required corporate or other action and will not constitute a breach or violation of, or a default under, the organizational documents of the Managing Member or any agreement by which the Managing Member or any of its properties or interests are bound (except insofar as the Sub-Allocation is subject to the approval of the CDFI Fund under the Allocation Agreement);

(d) The Governing Board, as constituted as of the date hereof and at all times on or after the Prefund Date through and including the Closing Date, and the provisions of this

Agreement (if complied with) satisfy the accountability requirements under Section 45D of the Code and the Treasury Regulations and Guidance thereunder;

(e) No bankruptcy, attachment, execution proceeding, assignment for the benefit of creditors, insolvency, receivership, or other, similar proceedings are pending or threatened against the Managing Member or the LLC.

(f) Neither the Managing Member nor the LLC has entered into any contract for the sale of Membership Interests in the LLC or the New Markets Tax Credits with respect thereto or a designation of any CDE Capital Contribution to the LLC as a QEI, other than to the Fund as provided in this Agreement. The Managing Member has not obtained or requested and will not obtain or request a sub-allocation of New Markets Tax Credits pursuant to the Allocation in excess of an amount that would limit or preclude the sub-allocation of New Markets Tax Credits to the LLC as provided for in this Agreement.

(g) The Allocation Agreement is in full force and effect, no Material Event as provided for in Section 6.9 of the Allocation Agreement has occurred, and each representation and warranty contained in the Allocation Agreement was true as of the date given and at all times on and after the Prefund Date through and including the Closing Date;

(h) The LLC is a Subsidiary Allocatee of the Allocatee and the Sub-Allocation was approved by the Allocatee on or before the Prefund Date, and the Sub-Allocation was been authorized by the CDFI Fund on or before the Prefund Date and is in full force and effect;

(i) The LLC has no monetary or non-monetary obligations or liabilities of any kind, nor has the LLC, prior to the Closing Date, entered into any agreement or taken any action that could give rise to any monetary or non-monetary obligation or liability, other than its obligations to pay Counsel and Accountants; and

(j) The LLC intends to be treated as a partnership for federal income tax purposes, has filed all tax returns, if any, since its formation consistent with partnership characterization; has never filed an election under Section 7701 of the Code to be treated as a corporation for federal income tax purposes, and will not file an election under Section 7701 of the Code to be treated as a corporation for federal income tax purposes without the prior written Consent of the Fund; and

(k) [Reserved]; and

(l) The Managing Member is not Insolvent and the execution and delivery of this Agreement and the other agreements and documents contemplated hereby, and the performance of its obligations hereunder and thereunder, will not render the Managing Member Insolvent nor will it result in a fraudulent conveyance or a fraudulent transfer of the assets of the Managing Member; and until the later of the filing of articles of dissolution for the LLC under Section 11.03 hereof or the full and complete payment and fulfillment of all obligations hereunder or thereunder of the Managing Member, the Managing Member will not take or suffer

any actions that would render it Insolvent or result in a fraudulent conveyance or fraudulent transfer of its assets; and the Managing Member shall annually execute and deliver a written certificate to the Fund that the Managing Member is not Insolvent and has not committed a fraudulent conveyance or fraudulent transfer.

(m) Neither the Managing Member nor any of its principals (as defined by 31 C.F.R. 19.105): (i) are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency; (ii) within a three-year period prior to the date the Managing Member signed the Allocation Agreement, have been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction, violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; (iii) are presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in (ii) above; or (iv) within a three-year period prior to the date the Managing Member signed the Allocation Agreement, have had one or more public transactions (Federal, State or local) terminated for cause or default.

(n) On or before the Prefund Date, the Managing Member delivered to the Fund (or the Fund has waived receipt of) true, correct, and complete copies of the following documents: (i) the Allocation Agreement and any amendments thereto; (ii) the Notice of Allocation received by the Managing Member with respect to the Allocation, (iii) the notice of the certification of each of the Managing Member and the LLC as a qualified community development entity from the CDFI Fund, (iv) the organizational documents of each of the Managing Member and LLC, (v) evidence of the Sub-Allocation and (vi) all material notices and correspondence between the Managing Member and the CDFI Fund with respect to the Allocation and/or the Sub-Allocation. The foregoing documents are hereby agreed to be subject to the confidentiality restrictions set forth in Section 5.12 of this Agreement.

(o) The Managing Member (i) has caused the LLC to file (in accordance with Section 3.04(d)(i) hereof) a notice of receipt of each QEI made prior to the Closing Date with the CDFI Fund's Allocation Tracking System as contemplated in Section 6.5(a) of the Allocation Agreement with respect to QEIs as to which it has issued a corresponding Taxpayer Notice as provided for herein under Section 7.01(d) and (ii) will cause the LLC to file (in accordance with Section 3.04(d)(i) hereof) a notice of receipt of each QEI made on or after the Closing Date with the CDFI Fund's Allocation Tracking System as contemplated in Section 6.5(a) of the Allocation Agreement with respect to QEIs as to which it will issue a corresponding Taxpayer Notice as provided for herein under Section 7.01(d);

(p) The LLC was entitled as of the Prefund Date to designate, as two QEIs in the amounts of \$2,000,000 and \$6,000,000, respectively, of the CDE Capital Contributions of the Fund;

(q) This Agreement (including all exhibits hereto) constitutes the valid, enforceable, and binding obligations of the Managing Member;

(r) No event, occurrence or proceeding is pending that would materially adversely affect the ability of the Managing Member or its Affiliates to perform its obligations hereunder or under any other agreement with respect to a QLICI;

(s) The Managing Member has disclosed in writing to the Fund any (i) default or failure of compliance with respect to any financial, contractual or governmental obligation of the LLC or the Managing Member, (ii) IRS or CDFI Fund proceedings regarding the Allocation, the LLC or the Managing Member, (iii) litigation, criminal action or administrative proceeding against the LLC or the Managing Member; (iv) communication regarding the Allocation, the Sub-Allocation, proposed Approved Investments, the LLC or the Managing Member from the CDFI Fund or any other governmental authority or Person which is not in the ordinary course of business, and (v) liabilities or monetary or non-monetary obligations of the LLC or the Managing Member or any contractual agreements that could give rise to the foregoing;

(t) The Managing Member has not received notice from the IRS that it has considered the Managing Member to be involved in any abusive tax shelter and is not aware of any facts, which, if known to the IRS, would cause such notice to be issued.

(u) The Managing Member has a reasonable expectation that the Borrower will be a “qualified active low-income community business” under Section 45D of the Code through the term of the CAFFM Loan.

(v) To the knowledge of the Managing Member, after due inquiry, no default by any Member or event with the passage of time would constitute a default by any Member existed under the First Amended Agreement immediately prior to the execution of this Agreement.

#### **10.02 The Fund Representations and Warranties.**

(a) The Fund (for itself and JPMC) hereby represents and warrants to the Managing Member and the LLC that:

(i) The Fund is (and has been at all times on and after the Prefund Date) an “accredited investor” as such term is defined in Rule 501(a) of Regulation D promulgated under the Securities Act of 1933, as amended (the “Securities Act”) by reason of being a business entity, not formed for the specific purpose of acquiring its Membership Interest, with total assets in excess of \$5,000,000.

(ii) Its Membership Interest was not offered to it by means of any general solicitation or advertising.

(iii) No formal written descriptive offering materials regarding the LLC or the offering of the Membership Interest have been given to or requested by it for

purposes of such offering. It has such knowledge and experience in financial and business matters so as to be capable of evaluating and understanding, and has evaluated and understood, the merits and risks of an investment in the LLC, and it has been given the opportunity to (A) obtain information and examine all documents relating to the LLC and its respective business, (B) ask questions of and receive answers from the LLC concerning the LLC, its respective business, and the terms and conditions of its investment in the LLC, and (C) obtain any additional information, to the extent the LLC possesses such information or could acquire it without unreasonable effort or expense, necessary or appropriate to verify the accuracy of any information previously furnished. All such questions have been answered to its satisfaction, and all information and documents, books and records pertaining to the investment that it has requested have been made available to it.

(iv) It has participated in the negotiation of, has reviewed and understands, and has approved the First Amended Agreement and this Agreement.

(v) In entering into the transactions contemplated by the First Amended Agreement and this Agreement, it has relied is relying solely on the results of its own independent investigation and the advice of its own advisors and counsel with respect to purchase of its Membership Interest. Other than the representations, warranties and covenants of the Managing Member contained in the First Amended Agreement and this Agreement, it has neither received nor relied on any legal, investment, or tax advice from the LLC or the Managing Member, or their respective officers, members, agents, or other representatives relating to an investment in the LLC or to the likelihood of successful operations or anticipated financial results of the LLC. It has had an opportunity to read, understand and negotiate the provisions of the First Amended Agreement and this Agreement and other documents related to the LLC and its respective business, and to consider and consult with its advisors and counsel regarding the operation and consequences of such provisions.

(vi) It recognized that its investment in the LLC involves substantial risks too numerous and diverse to be adequately described, summarized, or listed in the limited documentation for the sale of its Membership Interest. It is experienced in making investments of this kind and is aware of and understands the nature and potential for such risks in an investment of this kind. It determined that the purchase of its Membership Interest was consistent with its investment objectives and that it is able to bear the substantial economic risks of its investment in the LLC. Among other factors it has taken into consideration, it can afford to hold its Membership Interest for an indefinite period and can afford a complete loss of its investment in the LLC.

(vii) It understands that no Governmental Authority has passed on or made any recommendation or endorsement of an investment in its Membership Interest. It acknowledges that it has been informed that the receipt by the Allocatee of a New Markets Tax Credit allocation from the CDFI Fund and the suballocation to the LLC by

the Managing Member of a portion of such allocation shall not be deemed to be an assurance of any kind by the CDFI Fund regarding an investment in the LLC.

(viii) It understands that (A) its Membership Interest has not been registered under the Securities Act or applicable state securities laws, and is being offered and sold under an exemption from registration provided by such laws and the rules and regulations thereunder; (B) the LLC is under no obligation to register such Membership Interest or to comply with any applicable exemption under any applicable securities laws with respect to such Membership Interest; (C) it must bear the economic risks of its investment in the LLC for an indefinite period of time because it is not anticipated that there will be any market for such Membership Interest and because such Membership Interest cannot be resold unless subsequently registered under applicable securities laws or unless an exemption from such registration is available; and (D) the exemption provided by Rule 144 under the Securities Act may not be available because of the conditions and limitations of that Rule, in the absence of the availability of that Rule any disposition by it of any or all of its Membership Interest may require compliance with some other exemption under the Securities Act, and the LLC is under no obligation and does not plan to take any action in furtherance of making that Rule or any other exemption so available. It has been informed that legends referring to the restrictions indicated herein will be placed on documents evidencing or representing its Membership Interest.

(ix) The Fund (i) has been at all times on after and after the Prefund Date and will continue to be a limited liability company, duly organized and validly existing under the laws of the state of its organization, and (ii) has at all times on after and after the Prefund Date (and shall continue to have) full power and authority to acquire its Membership Interest hereunder and to perform its obligations hereunder and timely meet its CDE Capital Contribution obligations.

(x) The execution and delivery of this Agreement (including all exhibits hereto) and the performance of all acts heretofore or hereafter made or taken (or to be made or taken in the future) pertaining to transactions contemplated by this Agreement by the Fund have been or will be duly authorized by all necessary or required corporate or other action, and the consummation of any such transactions will not constitute a breach or violation of, or a default under, the organizational documents of the Fund or any agreement by which the Fund or any of its properties or interests are bound, nor constitute a violation of any governmental regulations, court decree or any other instrument affecting the Fund.

(xi) This Agreement (including all exhibits hereto) constitutes the valid and binding obligations of the Fund.

(xii) At all times on after and after the Prefund Date, the the Fund has been owned 100% by CCE, which is 100% owned by JPMC, a widely-held C corporation.

(xiii) All information in this Section 10.02(a) is correct and complete as of the date hereof.

(b) [Reserved].

(c) The foregoing representations and warranties shall survive the sale to the fund of its Membership Interest, as well as any investigation made by any Person relying on the foregoing.

(d) The Fund hereby represents, warrants, and agrees that it is acquire its Membership Interest on the Prefund Date for its own account for investment only and not for the purpose of, or with a view to, the resale or distribution of all or any part thereof, nor with a view to selling or otherwise distributing said interest or any part thereof at any particular time or under any predetermined circumstances. No one other than the Fund has any interest in or any right to acquire such Fund's Membership Interest.

### **10.03 Indemnity by Fund, Managing Member and Controlling Entity.**

(a) [Reserved].

(b) The Fund shall, to the fullest extent permitted by law, indemnify and hold the LLC, the Managing Member, and each other Covered Person in relation to the Managing Member, harmless from and against any and all claims, actions, causes of actions, judgments, orders, and other proceedings (and all related losses, expenses, liabilities, or damages, including legal fees and expenses) asserted by any constituent member or partner (or any prospective member or partner) in the Fund or other Person claiming by or through the Fund (whether asserted directly by any such Person or by the Fund on their behalf) or by any governmental agency or any securities exchange or association (collectively, "Securities Claims"), based on any failure or alleged failure of the Fund, the Managing Member, or the LLC to comply with any Securities Laws (including any disclosure requirements thereunder), except to the extent that any such Securities Claims are determined by a final judgment of a court of competent jurisdiction to have been caused by any action or inaction of the Managing Member.

(c) The LLC may advance funds to the Managing Member or a Designated Affiliate pursuant to Section 10.03 for reasonable legal expenses and other costs incurred as a result of any legal action provided that, to the extent not related to the removal of the Managing Member pursuant to Section 9.04 hereof, (a) the legal action relates to acts or omissions with respect to the performance of duties or services on behalf of the LLC, (b) the legal action is initiated by a third party who is not the Fund, or the legal action is initiated by the Fund and a court of competent jurisdiction approves such advancement, and (c) the Managing Member or the Designated Affiliate undertakes to promptly repay the advanced funds to the LLC in cases in which such Person is not entitled to indemnification under this Section 10.03.

(d) Except with respect to the matters covered in the Indemnity Agreement(such matters to be governed by the Indemnity Agreement), the Managing Member shall, to the fullest extent permitted by law, defend, indemnify and hold harmless the Fund, CCE

and JPMC from any liability, loss, damage, fees, costs and expenses incurred by reason of any demands, claims, suits, actions or proceedings arising out of the LLC or the Managing Member's gross negligence, fraud, or malfeasance or material breach of this Agreement; provided, that the Fund has not willfully breached a material provision of this Agreement or directed the Managing Member's commission of such grossly negligent, fraudulent, or wrongful act. Notwithstanding anything to the contrary contained herein, under no circumstances shall the Managing Member have any liability under this Agreement for any loss, damage, fees, costs, or expenses caused by any action or inaction of JPMC, CCE or Fund in material breach of this Agreement. The foregoing indemnification shall be a recourse obligation of the Managing Member and shall survive the dissolution of the LLC and/or the death, retirement, incompetence, insolvency, Bankruptcy, removal or withdrawal of the Managing Member.

**10.04 Disclaimer of Certain Representations and Warranties.** The Fund has done, and is accepting responsibility for doing, such investigations, analyses, and other due diligence as it has deemed necessary or advisable (including consultation with its own legal counsel and accounting and financial advisors) to satisfy itself regarding its investment in the LLC. Without limiting the foregoing, and except as expressly set forth in Section 10.01 hereof, the Fund hereby acknowledges and agrees that no representation, warranty, or assurance by the Managing Member is, has been, or will be made or deemed made by the Managing Member with respect to any of the following (and the Managing Member shall have no liability therefor):

(a) All matters pertaining to the underwriting, evaluation, and collectability of any Approved Investment (including the financial capacity of the Approved QALICB thereunder to pay any such loans or the value of any collateral intended to secure the same); the legal existence, authority, and creditworthiness of any Approved QALICB or other Person under or in relation to any such loans; and the validity, enforceability, and perfection of any loan documents with respect to any Approved Investment and the rights, remedies, liens, security interests, or claims thereunder;

(b) The ability of the LLC to reinvest any principal repayments under any Approved Investment to the extent necessary to satisfy the Substantially-All Requirement; and

(c) The ability of the Fund (and any investors therein) to actually benefit from the New Markets Tax Credits intended to be allocated to the Fund under this Agreement.

## **ARTICLE 11.**

### **DISSOLUTION AND TERMINATION**

**11.01 Dissolution.** The LLC shall continue until it is dissolved, which shall occur solely upon the first to occur of the following events:

(a) the agreement of the Members;



(b) at the election of the Managing Member at any time from and after the date that is six (6) months after the expiration of the Credit Investment Period with the Consent of the Fund, provided such Consent may only be withheld for a period of 90 days;

(c) at the election of the Fund upon the expiration of the Credit Investment Period;

(d) the entry of a decree of judicial dissolution of the LLC under the Act; and

(e) the termination of the legal existence of the last remaining Member of the LLC or the occurrence of any other event which terminated the continued membership of the last remaining Member of the LLC in the LLC unless the LLC is continued without dissolution in a manner permitted by the Act.

### **11.02 Winding Up, Liquidation and Distribution of Assets.**

(a) Upon dissolution, the LLC shall be liquidated in an orderly manner in accordance with this Section 11.02 and the Act. The liquidation shall be conducted by the Managing Member or, if the Managing Member is unable to do so, then by a Person approved by the Fund, to carry out the liquidation of the LLC. The Managing Member, or such other Person acting in such capacity, is called the “Liquidating Trustee”.

(b) If the LLC is dissolved and its affairs are to be wound up, subject to the requirements of the Act, the Liquidating Trustee shall:

(i) Satisfy all liabilities of the LLC (whether by payment or the making of reasonable provision for payment thereon), including liabilities to Members who are creditors, to the extent otherwise permitted by law, other than liabilities to Members for Distributions, and establish such Reserves as may be reasonably necessary to provide for contingent liabilities of the LLC (for purposes of determining the Capital Accounts of the Members, the amounts of such Reserves shall be deemed to be an expense of the LLC);

(ii) Distribute the remaining funds of the LLC, or, at the option of the Liquidating Trustee, sell or otherwise liquidate all of the LLC’s assets as promptly as practicable, or at the option of the Fund, the Liquidating Trustee shall distribute any Approved Investment to the Fund, and all other assets in accordance with the positive capital account balances of the Members, as determined after all capital account adjustments for the LLC taxable year during with such liquidation occurs (other than those made pursuant to Treasury Regulations Sections 1.704-1(b)(2)(ii)(b)(2) and (3)), by the end of such taxable year, and thereafter in the manner set forth in Section 8.03 of this Agreement;

(iii) Allocate any Net Profits or Net Losses resulting from such sales to the Members’ Capital Accounts in accordance with Article 8 hereof; and

(iv) Distribute the remaining assets to those Members with positive Capital Accounts in accordance with the balances of such Capital Accounts and then in accordance with Section 8.01.

(c) Notwithstanding anything to the contrary in this Agreement, upon a liquidation within the meaning of Section 1.704-1(b)(2)(ii)(g) of the Treasury Regulations, if any Member has a Deficit Capital Account (after giving effect to all contributions, distributions, allocations and other Capital Account adjustments for all taxable years, including the year during which such liquidation occurs), such Member shall have no obligation to make any CDE Capital Contribution, and the negative balance of such Member's Capital Account shall not be considered a debt owed by such Member to the LLC or to any other Person for any purpose whatsoever.

(d) The Liquidating Trustee shall comply with all requirements of applicable law pertaining to the winding up of the affairs of the LLC and the final distribution of its assets. If the Liquidating Trustee is not a Member of the LLC, nor an Affiliate of any of them, then the Liquidating Trustee may receive, from the assets of the LLC, a reasonable fee for services rendered to the LLC, in an amount approved by the Members.

(e) When all debts, liabilities and obligations of the LLC have been paid and discharged or adequate provisions have been made therefor in accordance with the Act and all of the remaining property and assets of the LLC have been distributed, a certificate of cancellation as required by the Act shall be executed by the Managing Member and filed with the Texas Secretary of State.

**11.03 Effect of Filing of Articles of Dissolution.** Upon the filing of a certificate of cancellation with the Texas Secretary of State, the existence of the LLC shall cease.

**11.04 Return of Contribution Non-recourse to Other Members.** Except as provided by law or as expressly provided in this Agreement, upon dissolution, each Member shall look solely to the assets of the LLC for the return of its CDE Capital Contributions. If the LLC's property remaining after the payment or discharge of the debts and liabilities of the LLC is insufficient to return the cash contribution of one or more Members, such Member or Members shall have no recourse against any other Member, except as otherwise provided by law.

## **ARTICLE 12.**

### **ATTORNEY-IN-FACT**

**12.01 Attorney-in-Fact and Agent.** Each Member, by execution of this Agreement, irrevocably constitutes and appoints the Managing Member (or the Liquidating Trustee, as described herein) to act as such Member's true and lawful attorney-in-fact and agent, with full power and authority in such Member's name, place, and stead to execute, acknowledge, and deliver, and to file or record in any appropriate public office: (a) any certificate or other instrument that may be necessary, desirable, or appropriate to qualify the LLC as a limited liability company or to transact business as such in any jurisdiction in which the LLC conducts

business; (b) any certificate or amendment to the LLC's Certificate of Formation or to any certificate or other instrument that may be necessary, desirable, or appropriate to reflect an amendment approved in accordance with the provisions of this Agreement; and (c) any certificates or instruments that may be necessary, desirable, or appropriate to reflect the dissolution and winding up of the LLC. This power of attorney will be deemed to be coupled with an interest and will survive the incapacity, Bankruptcy, dissolution or termination of each Member and the Transfer of the Member's Membership Interest or any portion thereof. Notwithstanding the existence of this power of attorney, each Member agrees to join in the execution, acknowledgment, and delivery of the instruments referred to above if requested to do so by the Managing Member. This power of attorney is a limited power of attorney and does not authorize any Managing Member to act on behalf of a Member except as described in this Section 12.01.

## **ARTICLE 13.**

### **MISCELLANEOUS PROVISIONS**

**13.01 Notices.** Unless otherwise specified herein, all notices, demands, requests or other communications which may be or are required to be given to, served upon or sent by a Member, the Governing Board Members or the LLC pursuant to this Agreement shall be in writing and shall be deemed given or sent two (2) days after deposit, as registered or certified mail, postage and fees prepaid, in the United States mails; when delivered to Federal Express, United Parcel Service, DHL WorldWide Express, or Airborne Express, for overnight delivery, charges prepaid or charged to the sender's account; when personally delivered to the recipient; when transmitted to the recipient by electronic means, and such transmission is electronically confirmed as having been successfully transmitted, delivered or addressed as follows:

(a) To the LLC or the Managing Member, by notice sent to the Managing Member at its address specified in Exhibit A of this Agreement;

And a copy to:

Law Office of Mark D. Foster  
Attn: Mark D. Foster, Esq.  
4835 LBJ Freeway, Suite 424  
Dallas, TX 75244  
Facsimile: (214) 363-9551  
Telephone: (214) 363-9599

(b) To any Governing Board Member, by notice sent to the most recent address for such Person contained in the records of the LLC; and

(c) To the Fund, by notice sent to such Fund at the address specified in Exhibit A of this Agreement.

And a copy to:

Jones Day  
100 High Street, 21<sup>st</sup> Floor  
Boston, MA 02110  
Attn: Douglas Banghart, Esq.  
PH: 617-449-6937  
FAX: 617-449-6999

Any Member may change its address for notice purposes by giving written notice of such change (in accordance with the foregoing provisions) to all other Members and to the LLC, and upon receipt of any such notice, the Managing Member shall cause the records of the LLC affairs maintained by the Managing Member to be updated to reflect such change of address.

**13.02 Application of Texas Law.** This Agreement and its interpretation shall be governed exclusively by its terms and by the laws of the State of Texas, and specifically the Act, without regard to principles of conflict of laws.

**13.03 Execution of Additional Documents.** Each Member shall promptly execute and deliver any and all additional documents, instruments, notices, and other assurances, and shall do any and all other acts and things, consistent with the terms of this Agreement and reasonably necessary in connection with the performance of their respective obligations under this Agreement and to carry out the intent of the parties.

**13.04 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, and neuter gender shall also include a trust, firm, company, or corporation all as the context and meaning of this Agreement may require. 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” means 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 and Sections are intended to refer to Articles and Sections of this Agreement, unless otherwise specifically stated. Nothing in this Agreement shall be deemed to create any right in or benefit for any creditor of the LLC 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 the LLC that is not a party hereto. Each Member has been represented by counsel and has participated in the drafting of this Agreement; accordingly, the parties hereto intend that 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.

**13.05 Headings.** 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.

**13.06 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.

**13.07 Rights and Remedies Cumulative.** The rights and remedies provided by this Agreement are cumulative and the use of 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.

**13.08 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.

**13.09 Heirs, Successors and Assigns.** 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.

**13.10 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.

**13.11 Entire Agreement.** This Agreement supersedes all agreements previously made between the parties relating to its subject matter. There are no other understandings or agreements between them. It contains the entire agreement of the parties. It may not be changed orally but only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification, extension or discharge is sought.

**13.12 Incorporation of Exhibits, Appendices, and Schedules.** The Exhibits, Appendices, and Schedules, if any, identified in this Agreement are incorporated herein by reference and made a part hereof.

**13.13 Capacity and Authority to Execute Agreement.** Each Member represents and warrants to the other Members that the Member has the capacity and authority to enter into this Agreement.

**13.14 Conflict of Interest.** The parties to this Agreement acknowledge that this document was prepared with the cooperation of the Members and their respective legal representative and therefore each party hereto agrees that by signing this Agreement that, to the fullest extent permitted by law, each respective party knowingly consents and waives any potential conflict of interest created by any dual representation of the parties as a result of the cooperative legal effort in the drafting and preparation of this Agreement.

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

**13.16 Limitation on Benefits of this Agreement.** This Agreement is made solely for the benefit of the Members to this Agreement and their respective permitted successors and assigns, and except as may otherwise be expressly provided herein, no other person or entity shall have or acquire any right by virtue of this Agreement.

**13.17 Personal Jurisdiction and Venue.** Each Member hereby submits to personal jurisdiction in the State of Texas and waives any and all personal rights to object to such jurisdiction for the purposes of litigation to enforce this Agreement. However, the provisions of this Section shall not be deemed to preclude any party from filing any such action, suit or proceeding in any appropriate forum. Each Member hereby agrees that, to the fullest extent permitted by law, any process or notice of motion or other application to any such court in connection with any such action or proceeding may be served upon the other Member by registered or certified mail to or by personal service at the last known address of such Member, whether such address be within or without the jurisdiction of any such court.

**13.18 WAIVER OF TRIAL BY JURY.** EACH MEMBER HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHT UNDER THIS AGREEMENT OR RELATING THERETO OR ARISING FROM THE INVESTMENT RELATIONSHIP WHICH IS THE SUBJECT OF THIS AGREEMENT AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

**13.19 Amendments.** Amendments to this Agreement may only be adopted upon the affirmative Consent of the Members.

*[Signatures contained on following page]*

COUNTERPART SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto have executed this Second Amended and Restated Operating Agreement on the date first above written.

**Members:**

**MANAGING MEMBER:**

PACESETTER CDE, INC., a Texas corporation

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

Name: Giovanni Capriglione

Title: Secretary

COUNTERPART SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto have executed this Second Amended and Restated Operating Agreement on the date first above written.

**FUND:**

**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:



Kevin R. Goldsmith, Vice President



## EXHIBIT A

### **Members, CDE Capital Contributions and CDE Percentage Interests**

	<u>CDE Capital Contribution</u>	<u>CDE Percentage Interest</u>
Managing Member:		
Pacesetter CDE, Inc. 2600 E. Southlake Blvd. Suite 120-105 Southlake, TX 756092 Attn: Giovanni Capriglione PH: 214-263-5982	\$800  EIN 80-0921565	0.01%

With copy to:

Law Office of Mark D. Foster  
4835 LBJ Freeway, Suite 424  
Dallas, Texas 75244  
PH: 214-363-9599  
FX: 214-363-9551

Fund:

Chase NMTC CAFFM Investment Fund, LLC	\$2,000,000	99.99%
	<u>\$6,000,000</u>	
c/o JPMorgan Chase Bank, N.A. 10 S. Dearborn Street, 19 <sup>th</sup> Floor Mail Code: IL 1-0953 Chicago, IL 60603-5506 Attn: NMTC Asset Manager Email: nmtc.reporting@chase.com Fax: (312) 233-2363	\$8,000,000  EIN 37-1745555	

With copies to:

JPMorgan Chase Bank., N.A.  
New Markets Tax Credit Group  
2200 Ross Avenue, 9<sup>th</sup> Floor  
Mail Code: TX1-2951  
Dallas, TX 75201

Attention: Wanda Clark  
Facsimile: 214-965-3297  
Email: wanda.clark@jpmchase.com

Jones Day  
100 High Street, 21<sup>st</sup> Floor  
Boston, MA 02110  
Attn: Douglas Banghart, Esq.  
PH: 617-449-6937  
FAX: 617-449-6999

## **EXHIBIT B**

### **Form Of CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION – LOWER TIER COVERED TRANSACTIONS**

#### **Instructions for Certification**

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. 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.

3. 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 had become erroneous by reason of changed circumstances.

4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, 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. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. 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.

6. 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.

7. 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.

8. 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.

9. Except for transactions authorized under paragraph 5 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 are 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.

Date: \_\_\_\_\_

Qweti

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

Name:

Title:

**EXHIBIT C**

**[Reserved]**

## **EXHIBIT D**

### **CDE COMPLIANCE CERTIFICATE**

**TO:** JPMorgan Chase Bank, N.A.,  
Chase Community Equity, LLC, and  
Chase NMTC CAFFM Investment Fund, LLC

**FROM:** Pacesetter CDE, Inc.

**DATE:** \_\_\_\_\_

**RE:** Pacesetter CDE X, LLC CDE Compliance Certificate for the [First  
Half]/[Second Half] of the Year [\_\_\_\_\_]

Pursuant to Section 3.02(b) of the Second Amended and Restated Operating Agreement (“Agreement”) of Pacesetter CDE X, LLC, a Texas limited liability company (the “CDE”), and in accordance with Section 45D(c)(1)(B) of the Code and the Treasury Regulations and Guidance thereunder, Pacesetter CDE, Inc., a Texas corporation (the “Managing Member”), as Managing Member of the CDE certifies the matters set forth herein to Chase NMTC CAFFM Investment Fund, LLC, a Delaware limited liability company (the “Fund”), Chase Community Equity, LLC, a Delaware limited liability company (the “Fund Investor”), and to JPMorgan Chase Bank, N.A., a national banking association (“JPMC”). Capitalized terms used but not defined herein have the meanings ascribed thereto in the Agreement. The purpose of this certificate is to certify that the CDE has maintained its status as a CDE during the past six months and to identify any material concerns that may affect the CDE status in the future. The Managing Member acknowledges and understands that the Fund, Fund Investor and JPMC will be relying upon this Certificate.

1. **CDE Organization.** The CDE is and has been during the past six months a domestic partnership for federal tax purposes and is and has been during the past six months duly organized, validly existing, and in good standing under the laws of Texas.

2. **CDE Mission.** The CDE continues to maintain its primary mission of serving, or providing investment capital for, Low-Income Communities (“LICs”) or Low-Income Persons as required by and as such terms are used in Section 45D of the Code and Regulations. The CDE has not modified, amended, or waived any provision of its organizational documents regarding such mission. A minimum of 60 percent of the activities of the CDE are and will be directed towards serving LICs or Low-Income Persons.

3. **CDE Accountability.** The CDE maintains “accountability” to the LICs that it serves or intends to serve, as defined in and within the meaning of Section 45D of the Code and the Treasury Regulations promulgated thereunder. In particular, a minimum of 20 percent of the CDE’s Governing Board Members is representative of the LICs (a “LIC Representative”) in its Service Area (the “Designated LIC”).

4. **Governing Board Members.** The Governing Board of the CDE consists of the following members (please list and attach additional sheets if necessary):

Governing Board Member Name and Residence	LIC Representative (check one)?	Basis for asserting Governing Board Member is a LIC Representative and Date Governing Board Member supplied his/her answer? (check one) (if "otherwise" is checked, attach sheet explaining basis)
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Resides in the Designated LIC? <input type="checkbox"/> Otherwise represents interests of LIC residents in the Designated LIC? Date: _____
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Resides in the Designated LIC? <input type="checkbox"/> Otherwise represents interests of LIC residents in the Designated LIC? Date: _____
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Resides in the Designated LIC? <input type="checkbox"/> Otherwise represents interests of LIC residents in the Designated LIC? Date: _____
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Resides in the Designated LIC? <input type="checkbox"/> Otherwise represents interests of LIC residents in the Designated LIC? Date: _____
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Resides in the Designated LIC? <input type="checkbox"/> Otherwise represents interests of LIC residents in the Designated LIC? Date: _____
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Resides in the Designated LIC? <input type="checkbox"/> Otherwise represents interests of LIC residents in the Designated LIC? Date: _____
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Resides in the Designated LIC? <input type="checkbox"/> Otherwise represents interests of LIC residents in the Designated LIC? Date: _____
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Resides in the Designated LIC? <input type="checkbox"/> Otherwise represents interests of LIC residents in the Designated LIC? Date: _____
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Resides in the Designated LIC? <input type="checkbox"/> Otherwise represents interests of LIC residents in the Designated LIC? Date: _____

5. **Maintaining Board Status.** Within the past six months each Governing Board Member of the CDE who is considered a LIC Representative:

A. verified that he/she had not ceased or substantially changed the residence or activities that establishes his/her LIC Representative status.

B. identified any plans he/she may have to cease or substantially change involvement in the residence or activities that establishes his/her LIC Representative status.

C. identified any plans or activities that he/she has begun that could be considered a qualification that improves or enhances his/her LIC Representative status.

D. confirmed that he/she is not a principal or staff person: (i) of the Allocatee, (ii) of JPMC, or (iii) of the Fund.

E. confirmed that he/she is not a bank employee whose principal responsibilities are within the community development department of the bank.

F. confirmed that he/she is currently active in promoting community or economic development in the Designated LIC and is not a retiree from such previous service.

6. **Allocation Agreement.** The Allocation Agreement is in full force and effect and no Material Event as provided for in Section 6.9 of the Allocation Agreement has occurred, and each representation and warranty contained in the Allocation Agreement was true as of the date given and as of the date of this Certificate.

7. **No Defaults, etc.** The Managing Member has disclosed in writing to JPMC and the Fund any (i) default or failure of compliance with respect to any material financial, contractual or governmental obligation of the CDE or the Allocatee; (ii) IRS or CDFI Fund proceeding regarding the Allocation, the CDE, or the Allocatee; (iii) litigation, criminal action or administrative proceeding against the CDE or the Allocatee; (iv) communication regarding the Allocation, the Sub-Allocation, the CDE, or the Allocatee from the CDFI Fund or any other governmental authority or Person which is not in the ordinary course of business or that may indicate a material problem or issue with the QEIs made by the Fund; and (v) liabilities or monetary or non-monetary obligations of the CDE or the Managing Member or any contractual agreements that could give rise to the foregoing.

8. **Sub-Allocation.** The CDE continues to be a Subsidiary Allocatee of the Allocatee and the Sub-Allocation continues to have been authorized by the CDFI Fund and continues to be in full force and effect.

9. **Report and Audit Submission.** The CDE and the Allocatee each has completed and submitted in a timely manner all reports and certifications associated with Section 45D of the Code or otherwise required by the CDFI Fund and the IRS, including but not limited to the Institution Level Report, the Transaction Level Report, and an annual audit of the Allocatee (that includes all its subsidiaries).



12. **General.** No Recapture Event has occurred or, to the actual knowledge of the Managing Member, is likely to occur prior to the end of the Compliance Period associated with all QEIs contributed by the Fund.

The information set forth herein is are true, correct and complete on and as of the date first above written.

**CDE:**

Pacesetter CDE X, LLC, a Texas limited liability company

By: Pacesetter CDE, Inc., a Texas corporation, its managing member

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**MANAGING MEMBER:**

Pacesetter CDE, Inc., a Texas corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**CDE INDEMNIFICATION AGREEMENT**

THIS CDE INDEMNIFICATION AGREEMENT (this “Agreement”) is entered into as of July 11, 2014 (the “Effective Date”) by and among PACESETTER CDE, INC., a Texas corporation (“Allocatee”), and PACESETTER CDE X, LLC, a Texas limited liability company (“CDE”) (each of Allocatee and CDE 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, 2013 (the “Prefund Date”), CCE, as the sole member, entered into that certain Operating Agreement (the “Initial Fund OA”) of Chase NMTC CAFFM Investment Fund, LLC, a Delaware limited liability company (“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 \$8,000,000.00 equity contribution to Fund, to be paid upon admission of CCE as the sole member of Fund (the “Initial Capital Contribution”).

D. On the Effective Date, CCE, as the sole member, 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.

E. 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”).

F. On the Effective Date, Fund has obtained a loan from The City of Foley Public Facilities Cooperative District, an Alabama public corporation (“Fund Lender”), in the original principal amount of \$5,950,400.00 (the “Fund Loan”).

G. On the Effective Date, Fund will use the proceeds of the Fund Loan to, among other things, make a distribution to CCE in the amount of \$5,410,400.00 and thereby reduce CCE’s net capital contribution to Fund to \$2,589,600.00.

H. On the Prefund Date, Fund used the entire proceeds of the capital contribution 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 to herein collectively as the “QEIs”), in the aggregate amount of \$8,000,000.00 in CDE.

I. Prior to the Effective Date, Allocatee received an allocation award of New Markets Tax Credits (“Tax Credits”) authority under Section 45D of the Code in the amount of \$30,000,000.00 (the “Allocation”).

J. Allocatee and the Community Development Financial Institutions Fund of the United States Department of Treasury entered into that certain New Markets Tax Credit Program Allocation Agreement (Control Number: 12NMA003524), effective July 11, 2013, as amended by that certain 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 of Allocatee were added as parties to the agreement (as may be further amended from time to time, the “Allocation Agreement”). The Allocation Agreement governs the Allocation.

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

L. On the Effective Date, and in accordance with the CDE OA, CDE will use substantially all of the QEI proceeds 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 \$8,000,000.00 (each a “Project Loan” and collectively, the “Project Loans”).

M. 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”) and is being made for the benefit of Project Borrower.

N. Project Borrower is expected to constitute a “qualified active low-income community business,” as such term is used in Section 45D of the Code (referred to herein as a “QALICB”).

O. JPMC made its 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 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”).

P. JPMC’s assumption as set forth in the immediately preceding Recital is based in part on certain undertakings of Allocatee as the managing member of CDE pursuant to the CDE OA.

Q. As a condition to JPMC making its Equity Investment in CCE, 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.

R. Indemnitors will benefit from the transactions described in these Recitals by reason of (among other things) the fees and other benefits to be received from their participation in CDE and its business.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Indemnitors hereby 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 CDE OA. In addition, the following terms shall have the following meanings in this Agreement:

(a) “Accountants” means Novogradac & Company LLP.

(b) “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 member, (B) general partner of a general partner or member, (C) partnership with a common general partner or member, or (D) coventurer thereof, and if any general partner, 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.

(c) “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.

(d) “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.

(e) “Credit Investment Period” means the period beginning on the date Fund’s initial QEI in CDE occurred and ending on the seventh anniversary of the date of Fund’s last QEI in CDE.

(f) “Designated QEI Amount” means \$8,000,000.00.

(g) “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.

(h) “Financial Projections” means the tax benefit and financial projections, dated as of the Effective Date, relating to the investment and loan transactions described in the Recitals, as prepared by the Accountants.

(i) “Governmental Authority” means any state, federal, local, municipal or other governmental authority or instrumentality.

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

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

(l) “Liability Cap” means \$168,000.00, *i.e.*, the cumulative amount of fees that the Financial Projections reflect that Allocatee and its Affiliates are to be paid during the Credit Investment Period.

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

(n) “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.

(o) “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.

(p) “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.

(q) “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.

(r) “Removal Date” has the meaning set forth in Section 4(b).

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

(i) under Section 45D(g)(3)(A) of the Code as a result of CDE failing to qualify or ceasing to qualify as a “qualified community development entity” under that Section of the Code (a “Disqualification”);

(ii) under Section 45D(g)(3)(B) of the Code, but only to the extent that CDE has failed or ceased to use “substantially all” of the proceeds of the QEIs made into CDE to make QLICs during the Credit Investment Period and such failure has resulted from actions or omissions of any Indemnitor or any Affiliate

thereof in violation of Allocatee's (as managing member of CDE) initial investment obligations or its reinvestment-related obligations as set forth in Section 6.01 of the CDE OA (a "Sub-All Failure");

(iii) under Section 45D(g)(3)(C) of the Code as a result of a redemption caused by any distribution(s) made by any Indemnitor or any Affiliate thereof contrary to the terms of the CDE OA (a "Redemption"), *provided* that a Redemption does not occur as a result of any independent action of JPMC, CCE or Fund (it being understood that the solicited or unsolicited opinion of JPMC, CCE or any Affiliate thereof as to whether a distribution may be made from CDE assets by Allocatee (as managing member of CDE) under Section 8.04 of the CDE OA shall not be considered an independent action of JPMC, CCE or any Affiliate thereof); or

(iv) arising from fraud, material misrepresentation, gross negligence, or willful misconduct of any Indemnitor or any Affiliate thereof (each, a "Bad Act").

(t) "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 QEIs in CDE) equal to 5.87% 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.

(u) "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.

(v) "Treasury Regulations" means any temporary or final regulations promulgated under the Code.

(w) "Unwind Agreement" means that certain Unwind Agreement, dated as of the Prefund Date, by and among Indemnitors, JPMC, CCE and Fund.

2. Tax Assumptions. Indemnitors acknowledge that, by virtue of the fact that Fund's equity investment in CDE is intended to constitute two "qualified equity investment[s]" (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) expects to claim or be entitled to claim Tax Credits in an amount equal to the sum of (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 \$3,120,000.00 (*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, any Affiliate thereof, and/or Fund 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, or any Affiliate thereof 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:

(a) occurred solely from fraud, material misrepresentation, gross negligence, or willful misconduct of any of JPMC, CCE, or any Affiliate thereof; or

(b) occurred subsequent to the date of the removal of Allocatee as the managing member of CDE pursuant to the CDE OA (the "Removal Date"), except that Indemnitors shall be responsible and liable under this Agreement for a Specified NMTC Recapture Event that occurs after the Removal Date if (i) such Specified NMTC Recapture Event results from any actions or omissions of any Indemnitor or any Affiliate thereof that occurred prior to the Removal Date (regardless of whether such actions or omissions were known by any of JPMC, CCE, or any Affiliate thereof on or before the Removal Date) and (ii) JPMC, CCE, and Fund act in a commercially reasonable manner on and after the Removal Date.

5. Limitation on Liability.

(a) Notwithstanding Section 3(a), Indemnitors' liability to JPMC for a NMTC Recapture Amount on account of a Sub-All Failure or a Redemption shall not exceed the Liability Cap.

(b) Notwithstanding anything to the contrary in this Agreement, the Liability Cap shall not apply to any liability of Indemnitors arising on account of a Disqualification or a Bad Act (including, without limitation, any Sub-All Failure or Redemption that is a result, in whole or in part, of a Bad Act). By way of examples (and not limitation), it is expressly agreed



that each of the following shall in each instance be deemed to constitute a Bad Act by Indemnitors for purposes of this Agreement:

(i) a failure by Allocatee or CDE to provide notice to Fund, CCE, and JPMC of the occurrence or expected occurrence of a Redemption or a Sub-All Failure within 10 calendar days of any of Allocatee, CDE, Fund or any Affiliate thereof being notified of same by the Accountants or tax counsel for CDE or Fund or by the IRS or CDFI Fund; and

(ii) a failure by Allocatee or CDE to designate Fund's capital contribution to CDE as two QEIs.

6. 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, or any of their Affiliates 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 investor 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 in this Agreement, this Agreement shall not inure to the benefit of any purchaser of CCE's interest as the investor 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 of their Affiliates 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) Each Indemnitor further covenants and agrees to:

(i) within 60 calendar days of the end of each calendar year, copies of audited financial statements regarding the previous calendar year for such Indemnitor, including a balance sheet, a statement of operations, and a statement of cash flows; and

(ii) 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) 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), (ii) 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 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, 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.

(l) 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.

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

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

(o) 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.

7. 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 (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 CITY OF DALLAS IN THE STATE OF TEXAS 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.

(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 HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 7.

(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 FUND MEMBER OR PURCHASER, AS APPLICABLE, WHETHER SUCH ADDRESS BE WITHIN OR OUTSIDE THE JURISDICTION OF ANY SUCH COURT.

(e) 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.

8. 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 (including without limitation reasonable attorneys, accountants, experts, and consultants fees and expenses, court costs and investigative expenses prior to trial, at trial and on appeal) incurred in such proceedings from the non-prevailing party. Notwithstanding anything to the contrary in this Agreement, the limitation on liability set forth in Section 5(a) shall not apply to any liability arising under this Section 8.

9. Termination of Unwind Agreement. Notwithstanding anything to the contrary herein, JPMC (on behalf of itself and CCE and Fund) and Indemnitors acknowledge and agree that the Unwind Agreement is irrevocably terminated as of the Effective Date.

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

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

**ALLOCATEE:**

PACESETTER CDE, INC., a Texas corporation

By: 

Name: Giovanni Capriglione

Title: Secretary

[COUNTERPART SIGNATURE PAGE TO CDE INDEMNIFICATION AGREEMENT]

**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 CDE INDEMNIFICATION AGREEMENT]

**JPMC:**

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

By:   
Name: Kevin R. Goldsmith  
Title: Authorized Officer



## **SCHEDULE A**

### **Notice Addresses of Parties**

(1) If to any Indemnitor: Pacesetter CDE, Inc.  
2600 E. Southlake Blvd.  
Suite 120-105  
Southlake, TX 756092  
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

(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: 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: Douglas R. Banghart, Esq.  
Facsimile: 617-449-6999  
Email: dbanghart@jonesday.com

[REMAINDER OF PAGE BLANK]

**QALICB INDEMNIFICATION AGREEMENT**

THIS QALICB INDEMNIFICATION AGREEMENT (this “Agreement”) is entered into as of July 11, 2014 (the “Effective Date”) by and among COASTAL ALABAMA FARMERS’ AND FISHERMEN’S MARKET, INC., an Alabama nonprofit 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, 2013 (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 owner of a 99.99% membership interest, and Pacesetter CDE, Inc., a Texas corporation (“Allocatee”), as managing member and owner of a 0.01% membership interest.

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 owner of a 99.99% membership interest, and Allocatee, as managing member and owner of a 0.01% membership interest, 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 Miflin 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 5.87% 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; 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 ALABAMA 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  
nonprofit corporation

By: 

Name: John E. Koniar

Title: President

[COUNTERPART SIGNATURE PAGE TO QALICB INDEMNIFICATION AGREEMENT]

**CFPFCD:**

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

By:



Name: Charles J. Ebert, III

Title: Chairman

[COUNTERPART SIGNATURE PAGE TO QALICB INDEMNIFICATION AGREEMENT]

**JPMC:**

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

By: 

Name: Kevin R. Goldsmith

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: jrouzie@cityoffoley.org

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: Douglas R. Banghart, Esq.  
Facsimile: 617-449-6999  
Email: dbanghart@jonesday.com

[REMAINDER OF PAGE BLANK]



**INVESTMENT FUND PUT/CALL AGREEMENT**

THIS INVESTMENT FUND PUT/CALL AGREEMENT (this “Agreement”) is entered into as of July 11, 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 nonprofit 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 (as defined in the Fund OA) 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 other than the

repayment of the principal and interest not currently due on the Project Loans (as defined in the QALICB NMTC Indemnity).

(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 closing of the Put or Call, 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 Affiliate of Fund Member; *provided*, such Affiliate shall deliver written evidence to Purchaser that such Affiliate agrees to be bound by the terms of this Agreement. Fund Member's rights and obligations under this Agreement shall attach to the Interest and shall bind any subsequent transferee of such Interest. Fund Member shall not transfer or assign its rights and obligations under this Agreement (i) to any Person that is not also the owner of the Interest and (ii) without the prior written consent of Purchaser, to any Person that is not an Affiliate of Fund Member.

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; 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 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 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:



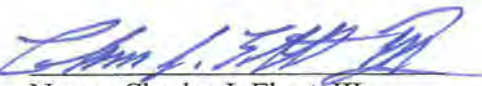
Name: Kevin R. Goldsmith

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: Charles J. Ebert, III  
Title: Chairman

## **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: Douglas R. Banghart, Esq.  
Facsimile: 617-449-6999  
Email: dbanghart@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: jrouzie@cityoffoley.org
- 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]

**SUB-ALLOCATION FEE AGREEMENT**

THIS SUB-ALLOCATION FEE AGREEMENT (this “Agreement”) is dated as of July 11, 2014 (the “Effective Date”), by and between PACESETTER CDE, INC., a Texas corporation (“Allocatee”), and CHASE NMTC CAFFM INVESTMENT FUND, LLC, a Delaware limited liability company (“Fund”).

**RECITALS**

WHEREAS, Allocatee is the managing member of Pacesetter CDE X, LLC, a Texas limited liability company (“CDE”);

WHEREAS, each of Allocatee and CDE is a “certified 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 (the “Code”)), consistent with the requirements constituting a qualified community development entity under Section 45D of the Code;

WHEREAS, Allocatee has received from the CDFI Fund a 2012 allocation of New Markets Tax Credits under Section 45D of the Code in the amount of \$30,000,000 of qualified equity investments (the “Allocation”);

WHEREAS, on or before December 18, 2013 (the “Prefund Date”), Allocatee made (i) a sub-allocation to CDE of its Allocation in the amount of \$6,000,000 (“Sub-Allocation #1”) and (ii) a sub-allocation to CDE of its Allocation in the amount of \$2,000,000 (“Sub-Allocation #2”);

WHEREAS, on the Prefund Date, Fund contributed the entire proceeds of Sub-Allocation #1 and Sub-Allocation #2 to CDE in exchange for a 99.99% membership interest in CDE;

WHEREAS, prior to the Effective Date, CDE designated each of Sub-Allocation #1 and Sub-Allocation #2 as a QEI;

WHEREAS, on the Effective Date, CDE will use the entire proceeds of Sub-Allocation #1 and Sub-Allocation #2 to fund loans to qualified active low-income community businesses as defined in Section 45D(d)(2) of the Code; and

WHEREAS, Fund has agreed, on the terms and conditions set forth herein, to pay a fee to Allocatee (the “Sub-Allocation Fee”) for undertaking and agreeing to perform the Sub-Allocation Services (as defined in Section 2 below) to benefit, directly and/or indirectly, Fund.

**AGREEMENT**

NOW, THEREFORE, for the consideration reflected in the above Recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Allocatee and Fund hereby agree as follows:

1. Definitions. Capitalized terms used in this Agreement and not specifically defined herein shall have the meanings assigned to them in that certain Second Amended and Restated Operating Agreement of CDE, dated as of the Effective Date (as the same may be amended, modified, extended, or restated from time to time, the “CDE OA”), by and between Allocatee and Fund.

2. Sub-Allocation Fee.

(a) Allocatee has performed or caused to be performed and will perform or cause to be performed services related to Sub-Allocation #1 for the benefit of Fund. Such services included, without limitation, overseeing and coordinating CDE’s receipt of Sub-Allocation #1 (collectively, the “Sub-Allocation Services”).

(b) In compensation for its performance of the Sub-Allocation Services, Allocatee shall be entitled to receive the Sub-Allocation Fee from Fund in the amount of \$540,000, payable on the Effective Date.

(c) Payment of the Sub-Allocation Fee by Fund shall confirm that the Sub-Allocation Services have been satisfactorily completed in all respects.

(d) Notwithstanding any provision to the contrary herein, the parties acknowledge and agree that (i) the Sub-Allocation Services do not include any services provided by Allocatee with respect to Sub-Allocation #2 and (ii) Allocatee is not being paid any fees by Fund (including but not limited to the Sub-Allocation Fee) for any services provided by Allocatee with respect to Sub-Allocation #2.

3. Independent Contractor. Allocatee’s engagement hereunder is solely as an independent contractor to provide those services and perform those obligations expressly set forth herein. This Agreement shall not be deemed to constitute or give rise to, or be construed as creating, any partnership or joint venture between the parties hereto, or between any party or parties hereto and any other person or entity, and neither party shall have or be deemed to have any fiduciary duty to the other party hereunder. Notwithstanding the foregoing or anything to the contrary set forth in this Agreement, the terms and provisions of this Agreement shall not modify or diminish, in any manner, Allocatee’s obligations under the CDE OA or the Indemnity Agreement.

4. Successors. Wherever any of the parties to this Agreement is referred to, such reference is deemed to include the successors and assigns of such party, and this Agreement shall be binding upon and inure to the benefit of the successors and assigns of each party hereto, provided, however, that no party may assign any of its rights or obligations under this Agreement without the prior written consent of the other party.

5. Counterparts. This Agreement may be executed in several counterparts and all so executed shall constitute one agreement binding on both parties, notwithstanding that both parties have not signed the original or the same counterpart.

6. Amendments and Waivers. No amendment or waiver of any provision of this Agreement shall be effective unless the same shall be in writing and signed by each of the parties, and no

delay on the part of any party in exercising any of its powers or rights, or any partial or single exercise thereof, shall constitute a waiver thereof.

7. Interpretation. The headings of the sections of this Agreement have been inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Agreement. Whenever used in this Agreement, the singular shall include the plural and the plural shall include the singular. 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. This Agreement is intended solely for the benefit of the parties named herein and their respective permitted successors and assigns, and no other person or entity shall have any right to enforce the provisions of this Agreement. The provisions of this Agreement are intended to govern only the relationship of the parties with respect to the specific services and obligations provided for herein and shall not affect any rights, powers, remedies, duties, obligations, or liabilities as between the parties in any other capacity or under any other agreement.

8. 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 (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 CITY OF DALLAS, STATE OF TEXAS 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 8.

(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 HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 8.

(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 FUND OR CDE, AS APPLICABLE, WHETHER SUCH ADDRESS BE WITHIN OR OUTSIDE THE JURISDICTION OF ANY SUCH COURT.

(e) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, NEITHER PARTY SHALL ASSERT, AND EACH HEREBY WAIVES, ANY CLAIM AGAINST THE OTHER, 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.

9. 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, the parties have executed this Sub-Allocation Fee Agreement as of the Effective Date.

**ALLOCATEE:**

PACESETTER CDE, INC., a Texas corporation

By:

A handwritten signature in blue ink, appearing to read "G. Capriglione", is written over a horizontal line.

Name: Giovanni Capriglione

Title: Secretary

[COUNTERPART SIGNATURE PAGE TO SUB-ALLOCATION FEE AGREEMENT]

**FUND:**

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: Kevin R. Goldsmith

Title: Vice President

**FUND LOAN AGREEMENT**

THIS FUND LOAN AGREEMENT (this “Agreement”), dated as of July 11, 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 September 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 September 30, 2014.

(b) Commencing on December 10, 2014 and continuing on the 10th day of each March, June, September and December thereafter up to and including June 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 September 10, 2021 and continuing on the 10th day of each December, March, June and September 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 the Put/Call Agreement or 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: Kevin R. Goldsmith  
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: Charles J. Ebert, III

Title: Chairman

## **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: Douglas R. Banghart, Esq.  
Facsimile: 617-449-6999  
Email: dbanghart@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: jrouzie@cityoffoley.org
- 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 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:  
July 11, 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 1.0% 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 December 31, 2043.

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 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 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: Kevin R. Goldsmith  
Title: Vice President

**FUND PLEDGE AGREEMENT**

THIS FUND PLEDGE AGREEMENT (this “Agreement”), dated as of July 11, 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 (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.

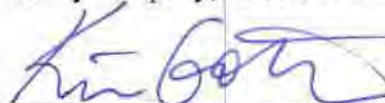
[REMAINDER OF PAGE BLANK; SIGNATURE PAGES TO FOLLOW.]

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: Kevin R. Goldsmith  
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: Charles J. Ebert, III  
Title: Chairman

**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 July 11, 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:  
(Authorized Signatory)

**ASSIGNEE:**

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

By: \_\_\_\_\_  
Name:  
Title:  
(Authorized Signatory)

*Bay State Corporate Services, Inc.  
Six Beacon Street, Ste. 510  
Boston, MA 02108  
617-742-8484 phone*

## FILING REPORT

July 14, 2014

Bill To:  
Jones Day  
Leo Greenberg  
100 High Street  
21st Floor  
Boston, MA 02110

Ship To:  
Jones Day  
Leo Greenberg  
100 High Street  
21st Floor  
Boston, MA 02110

Order No.: 112211

Subject: Chase NMTC CAFFM Investment Fund, LLC  
Jurisdiction: DE-SOS

Service: UCC FILING

File Number: 20142751964

File Date: 7/11/14

**UCC FINANCING STATEMENT**

FOLLOW INSTRUCTIONS

DELAWARE DEPARTMENT OF STATE  
U.C.C. FILING SECTION  
FILED 01:27 PM 07/11/2014  
INITIAL FILING # 2014 2751964

SRV: 140944642

A. NAME & PHONE OF CONTACT AT FILER (optional)
B. E-MAIL CONTACT AT FILER (optional)
C. SEND ACKNOWLEDGMENT TO: (Name and Address)  Patrick J. Cronin, Esq. Jones Day 100 High Street, 21st Floor Boston, MA 02110

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 <b>Chase NMTC CAFFM Investment Fund, LLC</b>				
OR	1b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
1c. MAILING ADDRESS <b>10 S. Dearborn, 19th Floor, Code: IL1-0953</b>		CITY <b>Chicago</b>	STATE <b>IL</b>	POSTAL CODE <b>60603-5506</b>
			COUNTRY <b>USA</b>	

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 <b>The City of Foley Public Facilities Cooperative District</b>				
OR	3b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
3c. MAILING ADDRESS <b>c/o City of Foley, 407 East Laurel Avenue</b>		CITY <b>Foley</b>	STATE <b>AL</b>	POSTAL CODE <b>36535</b>
			COUNTRY <b>USA</b>	

4. COLLATERAL: This financing statement covers the following collateral:

The assets of Debtor Chase NMTC CAFFM Investment Fund, LLC set forth on Exhibit A attached hereto and incorporated herein for all purposes.

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 only if applicable and check only one box:

☐ Public-Finance Transaction ☐ Manufactured-Home Transaction ☐ A Debtor is a Transmitting Utility

6b. Check only if applicable and check only one box:

☐ Agricultural Lien ☐ Non-UCC Filing

7. ALTERNATIVE DESIGNATION (if applicable): ☐ Lessee/Lessor ☐ Consignee/Consignor ☐ Seller/Buyer ☐ Bailee/Bailor ☐ Licensee/Licensor

8. OPTIONAL FILER REFERENCE DATA:

Filed With: Delaware Department of State. 080461-660015

**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 July 11, 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.

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**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 nonprofit corporation,  
as Borrower**

**Dated as of July 11, 2014**

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- Schedule A – Notice Addresses of Parties

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- Exhibit A – New Markets Tax Credit Program Addendum to Credit Agreement
- Exhibit B – Project Budget
- Exhibit C – QALICB Questionnaire
- Exhibit D – Annual New Market Tax Credit Program Construction Contractor and Subcontractor Survey
- Exhibit E – Insurance Requirements
- Exhibit F – Community Benefits Agreement

## **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 July 11, 2014 (the “Effective Date”), is made by and between COASTAL ALABAMA FARMERS’ AND FISHERMEN’S MARKET, INC., an Alabama nonprofit 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)     “Anti-Corruption Laws” means all laws, rules, and regulations of any jurisdiction applicable to Borrower and its Affiliates from time to time concerning or relating to bribery or corruption.

(f)     “Architect” means McCollough Architecture, Inc., an Alabama corporation, the architect selected by Borrower to design the Improvements and supervise construction of the Improvements.

(g)     “Asset Management Fee” has the meaning set forth in Section 5.6(a)(ii).

(h) “Assignment Agreement” means that certain Assignment Agreement, dated as of the Effective Date, by and between the City and Borrower.

(i) “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.

(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, an Alabama municipal corporation.

(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 December 18, 2020.

(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 Architect Contract (as defined on Exhibit A to the Assignment of Contracts); (ii) all agreements between Borrower and Construction Manager, including without limitation the Construction Contract (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); 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) “Construction Manager” means Sun Coast Builders, Inc., an Alabama corporation, the contractor selected by Borrower to construct the Improvements.

(dd) “Contamination” has the meaning set forth in the Environmental Indemnity.

(ee) “Controlled Affiliate” has the meaning set forth in Section 4.11(c).

(ff) “Covered Person” or “Covered Persons” has the meaning set forth in Section 5.12(b).

(gg) “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.

(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) “Distribution Facility Purchase Agreement” means that certain Purchase Agreement by and between CFPFCD and Borrower, dated as of the Effective Date, pertaining to Borrower’s purchase of the Distribution Facility from CFPFCD for a purchase price of \$3,250,000, such purchase price to be paid on the Effective Date from proceeds of the Loans.

(nn) “Embargoed Person” has the meaning set forth in Section 4.11(c).

(oo) “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.

(pp) “ERISA” means the Employee Retirement Income Security Act of 1974, as amended, and the regulations promulgated thereunder from time to time.

(qq) “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.

(rr) “Executive Order” has the meaning set forth in Section 4.11(c).

(ss) “Farmers’ Market Purchase Agreement” means that certain Purchase Agreement by and between CFPFCD and Borrower, dated as of November 4, 2013, pertaining to Borrower’s purchase of the Farmers’ Market from CFPFCD for a purchase price of \$2,320,579, such purchase price paid in the form of the Farmers’ Market Note.

(tt) “Farmers’ Market Note” means that certain Promissory Note, executed on November 4, 2013 by Borrower and payable to the order of CFPFCD, in the original principal amount of \$2,320,579, such amount to be paid on the Effective Date from proceeds of the Loans.

(uu) “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.

(vv) “Foreign Assets Control Regulations” has the meaning set forth in Section 4.11(c).

(ww) “Fund” means Chase NMTC CAFFM Investment Fund, LLC, a Delaware limited liability company.

(xx) “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.

(yy) “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.

(zz) “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.

(aaa) “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.

(bbb) “Hazardous Substance” has the meaning set forth in the Environmental Indemnity.

(ccc) “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.

(ddd) “Incurred Expenditures” has the meaning set forth in Section 4.19.

(eee) “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.

(fff) “Intended Use” means the intended use of the Improvements and Property, specifically, a farmer’s market and a wholesale distribution facility.

(ggg) “Land” means, collectively, those certain tracts of land located at 20733 Mifflin Road, Foley, Alabama 36535 (the “Farmers’ Market”) and 410 East Section Avenue, Foley, Alabama 36535 (the “Distribution Facility”) (each as more particularly described in the Collateral Documents), on which the Improvements will be constructed.

(hhh) “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.

(iii) “Lender Reserve Account” means that certain account established by Borrower with Bank into which certain proceeds of Loan A-2 and Loan B-2 will be deposited on the Effective Date to secure amounts due by Borrower to Lender under Section 5.6(a).

(jjj) “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.

(kkk) “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.

(lll) “Loan” means any of Loan A-1, Loan A-2, Loan B-1 or Loan B-2, as the context requires.

(mmm) “Loans” means, collectively, Loan A-1, Loan A-2, Loan B-1 and Loan B-2.

(nnn) “Loan A-1” 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 \$1,352,600. Loan A-1 is evidenced by, among other things, the Loan A-1 Note.

(ooo) “Loan A-2” 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 \$4,597,800. Loan A-2 is evidenced by, among other things, the Loan A-2 Note.

(ppp) “Loan B-1” 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 \$647,400. Loan B-1 is evidenced by, among other things, the Loan B-1 Note.

(qqq) “Loan B-2” 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 \$1,402,200. Loan B-2 is evidenced by, among other things, the Loan B-2 Note.

(rrr) “Loan A-1 Note” means that certain QLICI Loan A-1 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.

(sss) “Loan A-2 Note” means that certain QLICI Loan A-2 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.

(ttt) “Loan B-1 Note” means that certain QLICI Loan B-1 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.

(uuu) “Loan B-2 Note” means that certain QLICI Loan B-2 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.

(vvv) “Loan Documents” means this Agreement, the Notes, CMDA, Collateral Documents, Environmental Indemnity, QALICB NMTC Indemnity, Closing Transfers Memorandum, Assignment Agreement, Funding Agreement, 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 any Loan, as the same may be amended, assigned, restated, modified, or supplemented from time to time.

(www) “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.

(xxx) “Mortgage” means that certain Mortgage, 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.

(yyy) “New Markets Tax Credits” or “NMTC” means the credits against federal income taxes under Section 45D of the Code.

(zzz) “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.



(aaaa) “Note” means any of the Loan A-1 Note, Loan A-2 Note, Loan B-1 Note or Loan B-2 Note, as the context requires.

(bbbb) “Notes” means, collectively, the Loan A-1 Note, Loan A-2 Note, Loan B-1 Note and Loan B-2 Note.

(cccc) “OFAC” means the Office of Foreign Assets Control of the United States Department of the Treasury or any successor agency thereof.

(dddd) “Operating Accounts” means all bank accounts maintained by or for Borrower other than the Disbursement Account and the Lender Reserve Account.

(eeee) “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.

(ffff) “Patriot Act” has the meaning set forth in Section 4.11(a).

(gggg) “Permitted Encumbrances” has the meaning set forth in Section 6.2.

(hhhh) “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.

(iiii) “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.

(jjjj) “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.

(kkkk) “Program Manager” means HOAR Program Management, LLC, a Delaware limited liability company, the program manager selected by Borrower to supervise construction of the Improvements.

(llll) “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-laundersing 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).

(mmmm) “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.

(nnnn) “Project” means the construction of the Improvements.

(oooo) “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.

(pppp) “Property” means the Land and the Improvements.

(qqqq) “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.

(rrrr) “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.

(ssss) “Sanctions” means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by the U.S. government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State.

(tttt) “Sanctioned Country” means, at any time, a country or territory which is the subject or target of any Sanctions.

(uuuu) “Sanctioned Person” means, at any time, (i) any Person listed in any Sanctions-related list of designated Persons maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the U.S. Department of State, (ii) any Person operating, organized or resident in a Sanctioned Country or (iii) any Person controlled by any such Person.

(vvvv) “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.

(wwwv) “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.

(xxxx) “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.”

(yyyy) “Trading With the Enemy Act” has the meaning set forth in Section 4.11(c).

(zzzz) “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.

(aaaa) “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.

(bbbb) “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.

(cccc) “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 CFPFCD 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 the purchase price to acquire the Distribution Facility pursuant to the Distribution Facility Purchase Agreement, (c) pay the Farmers' Market Note in full pursuant to the Farmers' Market Purchase Agreement, (d) 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 (e) 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 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) that certain Construction Manager's Agreement and Consent to Assignment of Contract, dated as of the Effective Date, by Construction Manager in favor of Lender, as the same may be amended, assigned, restated, modified, or supplemented from time to time;
- (e) Disbursement Account P&C Agreement;
- (f) Guaranty of P&C;
- (g) Lender Reserve Account P&C Agreement;
- (h) Mortgage;

(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:

**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 Lender 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 Property, after the Completion of the Improvements, is not expected to be less than the aggregate amount of all indebtedness secured by the Property.

(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).

#### 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 has 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 has 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 and (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 and (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; Anti-Corruption Laws and Sanctions.

(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 any 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 any 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.

(d) *Anti-Corruption Laws and Sanctions.* Borrower has implemented and maintains in effect policies and procedures designed to ensure compliance by Borrower, its Affiliates and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions, and Borrower, its Affiliates and their respective officers and employees and to the knowledge of the Borrower its directors and agents, are in compliance with Anti-Corruption Laws and applicable Sanctions in all material respects. None of (i) Borrower, CFPFCD, any Affiliate or any of their respective directors, officers or employees, or (ii) to the knowledge of Borrower, any agent of Borrower or any Affiliate that will act in any capacity in connection with or benefit from the credit facility established hereby, is a Sanctioned Person. No Loan, use of proceeds or other transaction contemplated by this Agreement will violate Anti-Corruption Laws or applicable Sanctions.

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.

Section 4.18 Margin Stock. No portion of the Loans is being made for the purpose of purchasing or carrying "margin stock" within the meaning of Regulations G, T, U or X issued by the Board of Governors of the Federal Reserve System.

Section 4.19 Incurred Expenditures. CFPFCD has made or incurred expenditures (a) between October 28, 2013 and the Effective Date, inclusive, in an amount not less than \$283,109 in connection with, and directly related to, the development of the Farmers' Market and (b) between November 11, 2013 and the Effective Date, inclusive, in an amount not less than \$500,000 in connection with, and directly related to, the development of the Distribution Facility (collectively, the "Incurred Expenditures"). At the time the Incurred Expenditures were incurred, CFPFCD intended and expected to be reimbursed for part of the Incurred Expenditures from the proceeds of the Loans. Borrower has benefitted from the Incurred Expenditures, and intends to reimburse CFPFCD \$460,225 of such Incurred Expenditures out of the proceeds of the Loans, with the difference between the Incurred Expenditures and such reimbursed amount (*i.e.*, \$322,884) to be treated as an in-kind contribution from CFPFCD to Borrower. Borrower and/or CFPFCD has detailed accounting records, including, without limitation, invoices, receipts, checks, and other payments, to substantiate in full the Incurred Expenditures. Disbursement Agent, CCE and Fund are third party beneficiaries of this Section 4.19.

## **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 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 CFPFCD.

(g) *Compliance Certificates; Leases.* (i) Not later than January 15 of each year, a NMTC program compliance certificate substantially in the form as Attachment 1 to the Addendum, (ii) within 20 calendar days after the end of each *fiscal quarter* of Borrower, (A) a QALICB questionnaire substantially in the form as Exhibit C and (B) 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 (iii) 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 to the extent that each such contractor or subcontractor cooperates with Borrower in providing the information necessary to complete such survey; *provided*, that if after good faith efforts by Borrower, any



such contractor does not so cooperate, Borrower shall identify such contractor or subcontractor in writing to Lender.

(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 Acord 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 5 of the Community Benefits Agreement, on or before January 31 of each year starting in 2015, Borrower will provide an annual Community Benefits Report to Lender in the form attached as Exhibit B to the Community Benefits Agreement.

(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 Loan A-2 and Loan B-2 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 the Asset Management Fee 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 (the "Asset Management Fee") in the amount of \$34,000 each year through the Maturity Date (as that term is defined in any of the Notes); *provided, however*, such amount shall be \$44,000 in 2021 and \$24,000 in 2022. Commencing September 1, 2014, the Asset Management Fee shall be paid quarterly in

equal installments on the first day of each March, June, September, and December of each year; provided however that the quarterly payment amounts due in the years 2021 and 2022 shall be invoiced by Lender. Up to \$24,000 per year of the Asset Management Fee shall be paid by from the Lender Reserve Account to the extent funds are available; all remaining amounts due and owing for the Asset Management Fee shall be invoiced by or on behalf of Lender to Borrower. Lender shall authorize Bank to release such amounts as are needed to pay such fees as set forth above pursuant to the Lender Reserve Account P&C Agreement.

(iii) Borrower shall be responsible for all third party fees and expenses incurred outside of the ordinary course of business related to the Project, such as the exercise of remedies in the case of an event of default under the Loan Documents.

(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).

(d) In the event that after the Effective Date any Governmental Authority subjects Lender to any new or additional charge, fee, withholding or tax of any kind with respect to the Loans or changes the method of taxation of the Loans or changes the reserve or deposit requirements applicable to the Loans, Borrower shall pay to Lender such additional amounts as will compensate Lender for such cost of lost income resulting therefrom as reasonably determined by Lender (other than taxes based upon or measured by the income or profits of Lender).

#### 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.

#### 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 Mortgage 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.

(c) Borrower will maintain in effect and enforce policies and procedures designed to ensure compliance by Borrower, its Affiliates and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions.

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 Construction Manager, Program Manager, Architect, any subcontractor, supplier or laborer, and (E) promptly notify Lender that Borrower has knowledge that Construction Manager 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 May 1, 2015.

(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 CFPFCD 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 any 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 representations, warranties and 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 Lender 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 breach 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) an 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.

Section 6.6 Use of Proceeds. Borrower will not request any Loan advance or disbursement, and Borrower shall not use, and shall procure that its Affiliates and its or their respective directors, officers, employees and agents shall not use, the proceeds of any Loan (a) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws, (b) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, or (c) in any manner that would result in the violation of any Sanctions applicable to any party hereto.

## **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 defaults in the observance or performance of any covenant or agreement contained in Section 6.6.

(iii) 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 liens 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 Mortgage), 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 publicity 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  
nonprofit corporation

By: 

Name: John E. Koniar

Title: President

[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: Secretary

## **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: jrouzie@cityoffoley.org

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: jrouzie@cityoffoley.org

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: Douglas R. Banghart, Esq.  
Facsimile: 617-449-6999  
Email: dbanghart@jonesday.com

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## **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 nonprofit 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) All 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, concerning (i) Borrower and the Property and (ii) all property (other than the Property) of Borrower, has been disclosed by Borrower to Lender to the extent that such information had or could reasonably be expected to have had a material impact on Lender’s decision to make the Loans or enter into the Loan Documents.

(s) 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.

(t) 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.

(u) Borrower has had no correspondence or any communication with, to or from the CDFI Fund, concerning non-compliance with, or deficiencies in, reporting practices.

(v) 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>.

(w) 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.

(x) 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.

(y) 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.

(z) 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.

(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 which is (i) located in a county not contained within a Metropolitan Statistical Area (MSA) (*i.e.* a Non-Metropolitan County), as defined pursuant to 44 U.S.C. 3504(e) and 31 U.S.C. 104(d) and Executive order 10253 (3 C.F.R. Part 1949-1953 Comp., p.758), as amended, with respect to the 2010 Census and as made available by the CDFI Fund; and (ii) identified as a "Food Desert," which is either: (A) a census tract determined to be a Food Desert by the U.S. Department of Agriculture (USDA), as identified in USDA's Food Desert Locator Tool; or (B) a census tract that qualifies as Low-Income Community and has been identified as having low access to a supermarket or grocery store through a methodology that has been adopted for use by another governmental or philanthropic healthy food initiative, to the extent Borrower's use of the Loans will increase access to healthy food, 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").

(ff) 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.

(gg) Borrower (i) was formed under the Alabama Nonprofit Corporation Law, Title 10A, Chapter 3 of the Code of Alabama 1975 and not a special state charter (and can act only in the ways that nonprofit corporations may act under the Alabama Nonprofit Corporation Law), (ii) does not have any

powers normally reserved to the State of Alabama (*e.g.*, police powers, regulatory powers, the power to tax, the power – at least in the absence of legislative action – of eminent domain), (iii) does not have substantial and continuous reporting requirements directly to state legislative, executive or judicial authorities, and (iv) does not receive any state appropriations special to its nature.

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) Fifty percent (50%) or more 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.

(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 QLICB, 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 or 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, and, assuming that Borrower's Form 1023, Application for Recognition of Exemption, is approved by the IRS, Borrower shall maintain its exempt nonprofit status under Section 501(c)(3) of the Code.



(w) 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.

(x) No portion of the Property will constitute a “qualified low-income building” under Section 42 of the Code.

(y) 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.

(z) 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 NMTCC Control (as such term is defined in Section 1.45D-1(d)(6)(ii)(B) of the Regulations) of Borrower.

(aa) 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.

(bb) Borrower shall utilize all proceeds of the Loans within 12 months of the Effective Date.

(cc) 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.

(dd) Borrower shall engage solely in the ownership, development, operation and management of the Property.

(ee) 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.

(ff) Borrower shall promptly notify Lender of any risk of noncompliance to this Addendum.

(gg) 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.

(hh) 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.

(ii) 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

(jj) 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.

(kk) 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.

(ll) 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 nonprofit corporation ("Borrower"), on July 11, 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 collectables 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 nonprofit 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  
nonprofit corporation

By: \_\_\_\_\_  
Name:  
Title:  
(Authorized Signatory)

**EXHIBIT B**

**PROJECT BUDGET**

[attached behind]

**COASTAL ALABAMA FARMERS' AND FISHERMEN'S MARKET, INC.**  
**FORECASTED SOURCES AND USES OF CASH**  
**FOR THE PERIOD BEGINNING JUNE 26, 2014 AND ENDING MARCH 31, 2015**

	Predevelopment	QLICI Closing 7/11/2014	July 2014	August 2014	September 2014	October 2014	November 2014	December 2014	January 2015	February 2015	March 2015	Totals
<b>SOURCES:</b>												
QLICI Loan A1 from Pacesetter CDE X, LLC	\$ -	\$ 1,352,600	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,352,600
QLICI Loan B1 from Pacesetter CDE X, LLC	-	647,400	-	-	-	-	-	-	-	-	-	647,400
QLICI Loan A2 from Pacesetter CDE X, LLC	-	4,597,800	-	-	-	-	-	-	-	-	-	4,597,800
QLICI Loan B2 from Pacesetter CDE X, LLC	-	1,402,200	-	-	-	-	-	-	-	-	-	1,402,200
Public Facilities District Equity	-	322,884	-	-	-	-	-	-	-	-	-	322,884
Subtotal	-	8,322,884	-	-	-	-	-	-	-	-	-	8,322,884
Advances from Public Facilities District	3,103,688	-	-	-	-	-	-	-	-	-	-	3,103,688
Total Sources	\$ 3,103,688	\$ 8,322,884	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 11,426,572
<b>USES:</b>												
<b>Farmers &amp; Fishermens Market</b>												
Acquisition of land and Building	\$ 2,320,579	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 2,320,579
Reimbursable expenses*	283,109	-	-	-	-	-	-	-	-	-	-	283,109
Consulting Fee	-	40,000	-	-	-	-	-	-	-	-	-	40,000
NMTC closing costs	-	139,618	-	-	-	-	-	-	-	-	-	139,618
Construction cost (GMP)	-	-	96,369	217,580	290,107	217,580	142,054	24,710	-	-	-	988,400
Architectural and engineering	-	-	63,820	3,989	3,989	3,988	3,988	-	-	-	-	79,774
Program Manager	-	-	9,500	17,000	17,000	17,000	17,000	-	-	-	-	77,500
Geotech, CMT, Other	-	-	7,500	2,000	500	-	-	-	-	-	-	10,000
Contingency	-	-	-	16,549	16,549	16,549	16,550	-	-	-	-	66,197
Subtotal - Farmers & Fishermens Market	2,603,688	179,618	177,189	257,118	328,145	255,117	179,592	24,710	-	-	-	4,005,177
<b>Wholesale Distribution Facility &amp; Warehouse/Retail Market</b>												
Acquisition of land and existing building	-	3,250,000	-	-	-	-	-	-	-	-	-	3,250,000
Tenant improvements*	500,000	-	-	-	-	-	-	-	-	-	-	500,000
Consulting Fee	-	115,800	-	-	-	-	-	-	-	-	-	115,800
NMTC closing costs	-	209,427	-	-	-	-	-	-	-	-	-	209,427
Reserve - Pacesetter	-	168,000	-	-	-	-	-	-	-	-	-	168,000
PM Environmental Phase I	-	4,200	-	-	-	-	-	-	-	-	-	4,200
HPN Reliance Party Report	-	310	310	310	310	310	310	310	-	-	-	2,170
Subtotal - Wholesale Distribution Facility & Warehouse/Retail Mar	500,000	3,747,737	310	310	310	310	310	310	-	-	-	4,249,597
Subtotal - Development costs before interest and fees	3,103,688	3,927,355	177,499	257,428	328,455	255,427	179,902	25,020	-	-	-	8,254,774
<b>Interest During Construction</b>												
QLICI Loan A1 - Interest	-	-	-	-	3,180	-	-	3,534	-	-	3,534	10,248
QLICI Loan B1 - Interest	-	-	-	-	1,522	-	-	1,691	-	-	1,691	4,905
QLICI Loan A2 - Interest	-	-	-	-	10,811	-	-	12,012	-	-	12,012	34,834
QLICI Loan B2 - Interest	-	-	-	-	3,297	-	-	3,663	-	-	3,663	10,623
First Year Asset Management Fee	-	-	-	-	2,500	-	-	2,500	-	-	2,500	7,500
Subtotal - Development costs	3,103,688	3,927,355	177,499	257,428	349,765	255,427	179,902	48,420	-	-	23,400	8,322,884
Repay advances from Public Facilities District	-	3,103,688	-	-	-	-	-	-	-	-	-	3,103,688
Total Uses	\$ 3,103,688	\$ 7,031,043	\$ 177,499	\$ 257,428	\$ 349,765	\$ 255,427	\$ 179,902	\$ 48,420	\$ -	\$ -	\$ 23,400	\$ 11,426,572
Deposit to/(Withdrawal from) Disbursement Account	\$ -	\$ 1,291,841	\$ (177,499)	\$ (257,428)	\$ (349,765)	\$ (255,427)	\$ (179,902)	\$ (48,420)	\$ -	\$ -	\$ (23,400)	
Ending Cash Balance - Disbursement Account	\$ -	\$ 1,291,841	\$ 1,114,342	\$ 856,914	\$ 507,149	\$ 251,722	\$ 71,820	\$ 23,400	\$ 23,400	\$ 23,400	\$ -	

\*Note: These costs were originally paid by the Public Facilities District.

## **EXHIBIT C**

### **QALICB QUESTIONNAIRE**

*Entity Name:* COASTAL ALABAMA FARMERS' AND FISHERMEN'S MARKET, INC., an Alabama nonprofit 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).

<b><i>No.</i></b>	<b><i>Question</i></b>	<b><i>Explanation / Response</i></b>
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 CFPFCD or any other member of Borrower 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  
nonprofit 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?

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

2. How many construction jobs have been created from start of construction through present? \_\_\_\_\_  
How do you track this data?

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3. What percentage of construction jobs pay the Davis-Bacon prevailing wage rate? \_\_\_\_\_

4. Please provide the average and median compensation for each job type and trade. Attach a compensation schedule to the end of this form. (*Please convert hourly wages to annual equivalents by multiplying hourly wage by 2,080 hours/year.*)

5. Please provide the following information for each of your employees that work on this project. If name cannot be provided, provide the title of the employee. Note, this information solely is used to calculate the % of employees who live in Low Income Communities.

Employee Name/ or Other Identifier	% of the Time that the Employee works at the Project	Employee Address

\*If additional space is required, please attach a list to the end of this document.

6. Describe the workforce and social service agencies that were used to locate and recruit low income persons to fill construction jobs:

Agency	Agency Address	Agency Contact	# of persons placed into construction jobs by agency

7. Describe any additional efforts you use to fill construction jobs with local or low income persons.

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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:

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- ☐ Child care or child care support or subsidy
- ☐ Flexible schedules

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## 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 Exhibit E is attached (as such Credit Agreement may be amended, assigned, restated, modified, or supplemented).

Type	Amount	Certificate/Policy/Endorsement Requirements
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 "Pacesetter 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.

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| 6. Company Insuring must be rated not less than “A-” VIII or better by A.M. Best Co., in Best’s Rating Guide. Contractor’s insurer (Alabama HomeBuilders Self Insurers Fund) for Workers Comp and Employers liability is not rated by AM Best. |
| 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]