COMMUNITY BENEFITS AGREEMENT

THIS COMMUNITY BENEFITS AGREEMENT (this "**Agreement**") is made and entered into as of July 11, 2014, by and between and PACESETTER CDE X, LLC, a Texas limited liability company (the "**Lender**"), and COASTAL ALABAMA FARMERS' AND FISHERMEN'S MARKET, INC., an Alabama nonprofit corporation (the "**Borrower**" and the "**NMTC Beneficiary**").

Recitals

A. Pacesetter CDE, Inc., a Texas corporation ("**PS CDE**"), is the managing member of Lender. PS CDE received a $30,000,000 million allocation of New Markets Tax Credits ("**NMTCs**") authority from the Community Development Financial Institution Fund (the "**CDFI Fund**") in the 10th (2012) allocation round.

C. Under the terms and conditions applicable to the NMTC program and the Allocation Agreement PS CDE and the CDFI Fund, PS CDE sub-allocated $2,000,000 and $6,000,000 of NMTCs to Lender in connection with the loan in the amount of $8,000,000, (the "**PS Loan**") provided by Lender to Borrower under the Credit Agreement ("**Credit Agreement**") dated as of even date herewith among Lender, as lender, and Borrower, as borrower, to finance the development of the CAFFM Farmers & Retail Market and CAFFM Wholesale Distribution Facility located at 20733 Miflin Road, Foley, Alabama 36535 and 410 East Section Avenue, Foley, Alabama 36535 (the "**Project**") as further described in the Credit Agreement and related documents between Lender and NMTC Beneficiary to be signed and delivered in connection with the PS Loan (collectively the "Loan").

D. The parties understand and acknowledge that the Project is located in particularly economically distressed and underserved rural community (Census Tracts No. 01003011502 and 01003011501) (the "**Project Area**").

E. The availability of NMTCs has enabled the Lender to provide the Loan on terms and conditions that are flexible and non-conventional, including interest rates that are at least 50% lower than the prevailing market rates for the same product.

F. NMTC Beneficiary acknowledges that Lender's agreement to execute the Credit Agreement and make the Loan is expressly predicated upon (1) NMTC Beneficiary's agreement to sign, deliver and perform this Agreement, (2) the Project's location in the Project Area, which is a community lacking adequate access to capital, (3) the significant community development benefits that will be delivered within the Project Area and other Low-income Communities as a result of the Project, and (4) the significant benefits that will be delivered to Low-Income Persons within the Project Area and other Low-Income Communities.

G. Lender and NMTC Beneficiary desire to enter into this Agreement to ensure that the expected benefits expected from the Loan will be achieved.

Accordingly, the parties agree as follows:

Agreement

1. **Definitions**. The following capitalized terms will have the following meanings in this Agreement:

(a) "**FTE**" means Full-Time Equivalent constituting permanent employment of at least 35 hours per week.

(b) "**Living Wages**" means $18.92 per hour as calculated by MITs Living Wage Calculator for a family comprised of a two adults and two children, equaling $37,848 in annual wages based on 2,000 work hours per year.

(c) "**Low-Income Community**" means any population census tract satisfying the definition of Low-Income Community under the New Markets Tax Credit program as set forth in Internal Revenue Code Section 45D(e), including any population census tract if (1) the poverty rate for such tract is at least 20%, or (2) (a) in the case of a tract not located within a metropolitan area, the median family income of such tract does not exceed 80% of statewide median family income, or (b) in the case of a tract located within a metropolitan area, the median family income for such tract does not exceed 80% of the greater of statewide median family income or the metropolitan area median family income.

(d) "**Low-Income Person**" means any individual having an income, adjusted for family size, of not more than: (1) for metropolitan areas, 80% of the area median family income; and (2) for non-metropolitan areas, the greater of (a) 80% of the area median family income or (b) 80% of the statewide non-metropolitan area median family income.

(e) "**Permanent FTE Job**" means a job that is at least 24 months in duration and involves at least a 35-hour workweek.

2. **Community Impacts**. By completing the Project using the Loan, the NMTC Beneficiary will use commercially reasonable efforts to achieve the following impacts, which are based upon data collected and analysis performed by NMTC Beneficiary and Lender hereof:

(a) Created new Permanent FTE Jobs at NMTC Beneficiary with detail provided in Exhibit A and with the majority of such jobs providing Living Wages; and

(c) Created at least **75** construction related jobs at the location at peak times, which would be short term employment, during the construction of the Project

3. **Catalytic Impact**. The Project also catalyzed additional private investment through contributions and grants in excess of **$853,688, including $500,000 from BP due to the oil spill and $353,688 from the City of Foley, Alabama through land, building and cash contributions**.

4. **Stakeholder Input**. To ensure that community involvement and accountability are incorporated into Project development, the NMTC Beneficiary represents that the community impact goals described in Section 2 were based upon operations to date.

5. **Community Benefit Review**. Until maturity of the Loan, by January 31 of each year, NMTC Beneficiary will provide an annual Community Benefits Report (**"CBR**") to Lender in the form attached as Exhibit B, describing the status and results of the community benefits directly related to the completion of the Project and the Loan for the previous year. NMTC Beneficiary will deliver to Lender such other documents and materials that Lender may reasonably request for the purpose of reviewing and assessing NMTC Beneficiary's community benefits activities. In addition, at the request of Lender, upon submission of the CBR, NMTC Beneficiary will meet with Lender at a mutually agreeable location and time to discuss the status of the Project, the CBR and the community impacts of the Project. In connection with each interview, upon the reasonably request of Lender, NMTC Beneficiary will use commercially reasonable efforts to arrange for stakeholders benefiting from the Project to participate in each meeting.

6. **Disclosure**. NMTC Beneficiary agrees that the Lender (and its affiliates) may use this Agreement and the information furnished under this Agreement by the NMTC Beneficiary for community reporting purposes to the CDFI Fund and Lender.

7. **Miscellaneous**. This Agreement, including any exhibits hereto, contains the entire Agreement by and between the parties hereto concerning the matters set forth herein and supersedes any prior understanding or agreements between the parties hereto. This Agreement may not be amended or modified except in writing by the parties hereto. This Agreement is governed by the laws of the State of Texas, without giving effect to any conflict-of-law principle that would result in the laws of any other jurisdiction governing this Agreement.

[Remainder of page Intentionally Left Blank]

[Signature Page Follows]

IN WITNESS WHEREOF, the Lender and Borrower have caused this Community Benefits Agreement to be duly executed as of the day and year first above written.

LENDER:

PACESETTER CDE X, LLC, a Texas limited liability company

By: Pacesetter CDE, Inc., a Texas corporation, its managing member

By:_____
Giovanni Capriglione, Secretary

BORROWER:

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

By: _____
John E. Koniar, President

IN WITNESS WHEREOF, the Lender and Borrower have caused this Community Benefits Agreement to be duly executed as of the day and year first above written.

LENDER:

PACESETTER CDE X, LLC, a Texas limited liability company

By: Pacesetter CDE, Inc., a Texas corporation, its managing member

By: _____
Giovanni Capriglione, Secretary

BORROWER:

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

By: _____
John E. Koniar, President

Exhibit **A**

	Full Time Employees		Part Time Employees		
	Total	**Wages > $37,000**	**Total**	**Women-Owned**	**Minority-Owned**
Gulf Coast Produce	25	17	-	-	-
Moe's	16	4	-	-	-
4 Land Farms	9	4	-	-	-
CAFFM	2	2	-	-	-
Farmers / Fisherman Vendors	-	-	80	40	3
TOTAL:	**52**	**27**	**80**	**40**	**3**

EXHIBIT B

COMMUNITY BENEFITS REPORT

For the period ending _____, 20__, COASTAL ALABAMA FARMERS' AND FISHERMEN'S MARKET, INC., an Alabama non-profit, non-stock corporation (the "**Borrower**", together with lessees of the Project, collectively, the "**NMTC Beneficiary**"), pursuant to the Community Benefits Agreement dated [___], 2014, between NMTC Beneficiary and PACESETTER CDE IX, LLC, a Texas limited liability company (the "**Lender**"), Borrower affirms and certifies the following:

8. **Definitions**. Each capitalized term used in this Community Benefits Report (this "**CBR**") without definition will have the meaning ascribed in the Community Benefits Agreement.

9. **Community Impacts**. By completing the Project using the NMTC Loan, the NMTC Beneficiary achieved the following community impacts (place "N/A" in blank if not applicable to Project or unknown impact):

(a) Created **75** Predevelopment or Construction FTE Jobs;

(b) Created **52** Permanent FTE jobs and maintained **0** Permanent FTE jobs at an operating business as described in Exhibit B;

(c) Provided at least **0%** of Predevelopment or Construction FTE Jobs with wages at the Davis-Bacon prevailing wage rate;

(d) Provided at least **52%** of Permanent FTE jobs with Living Wages as described in the Exhibit B and the following benefits: Gulf Coast Produce provides health insurance through Blue Cross and pays for 50% of the cost for single employees and 100% of the cost for family plans;

(e) Targeted **95%** of Predevelopment or Construction FTE jobs to be filled by residents of Low-Income Communities and/or Low-Income Persons by _____;

(f) Targeted **85%** of Permanent FTE jobs to be filled by residents of Low-Income Communities and/or Low-Income Persons by _____;

(g) Provided commercial goods and/or services to residents of Low-income Communities or Low-income Persons by **providing small local farmers/fishermen improved market channels and access, including a retail outlet where farmers/fishermen sell directly to the consumer at retail prices (higher margin) and a wholesale market for a consistent and reliable year round outlet**. Served **45** clients through the provision of goods and services;

(h) Provided community goods and/or services to residents of Low-income Communities or Low-income Persons by **providing fresh, healthy foods to the community at an affordable price and establishing a business that will attract tourism and generate**

additional private investment and commerce. Served **2,400 weekly** clients through the provision of goods and services;

(i) Financed or assist minority-owned or controlled businesses by **providing space to vendors in the Farmer's and Fisherman's Market that currently are composed of 4% minorities**;

(j) Financed or assist women-owned or controlled businesses by **providing space to vendors in the Farmer's and Fisherman's Market that currently are composed of 50% women**;

(k) Created environmentally sustainable outcomes by _____

(l) Increased access to fresh and healthy food for Low-Income Persons or Low-Income Communities by **building a 30 stall Farmer's and Fisherman's Market and 6,000 square feet of leasable space to 4Land Family Market in a area designated by USDA as a food desert**;

(m) The Borrower reported an Annual Gross Revenue in the most recent fiscal year of **$111,000**;

(n) [Other]

10. **Catalytic Impact**. By completing the Project using the NMTC Loan, the NMTC Beneficiary achieved the following catalytic impacts (place "N/A" in blank if not applicable to Project or unknown impact):

(a) Attracted or closed $_____ of financing from other sources;

(b) Attracted or catalyzed additional private investment including _____; and

(c) Expanded or created new businesses in the surrounding area including _____.

The undersigned certifies the information set forth in this CBR is correct, complete and accurate in all material respects for the period described above.

BORROWER:

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

By: _____
Name: _____
Its: _____

EXECUTION VERSION

QLICI LOAN A-1 NOTE

Borrower:	**Lender**:
COASTAL ALABAMA FARMERS' AND FISHERMEN'S MARKET, INC. c/o City of Foley 407 East Laurel Avenue Foley, AL 36535 Attention: Jeff Rouzie, Director of Economic Development	PACESETTER CDE X, LLC c/o Pacesetter CDE, Inc. 2600 E. Southlake Boulevard Suite 120-105 Southlake, TX 76092 Attention: Giovanni Capriglione

Principal Amount:
U.S. $1,352,600.00

Note Date:
July 11, 2014

1. PROMISE TO PAY. COASTAL ALABAMA FARMERS' AND FISHERMEN'S MARKET, INC., an Alabama nonprofit corporation ("Borrower"), promises to pay to the order of PACESETTER CDE X, LLC, a Texas limited liability company ("Lender"), in lawful money of the United States of America, the sum of ONE MILLION THREE HUNDRED FIFTY-TWO THOUSAND SIX HUNDRED AND NO/100 DOLLARS (U.S. $1,352,600.00), together with interest at the rate described below assessed on the unpaid principal balance of this QLICI Loan A-1 Note (this "Note") as outstanding from time to time, commencing on the date of this Note and continuing until this Note is paid in full.

2. CREDIT AGREEMENT. This Note is executed in connection with that certain Credit Agreement dated as of even date with this Note by and between Borrower and Lender (as the same may be amended, assigned, restated, modified, or supplemented from time to time, the "Credit Agreement"). All capitalized terms used but not defined in this Note have the meanings set forth in the Credit Agreement.

3. ADVANCES. The full proceeds of this Note will be advanced to Borrower on the date hereof (the "Note Date") and, except as set forth in Section 5(d), applied as set forth in the Credit Agreement.

4. INTEREST RATE. Advances under this Note shall bear interest from the date of this Note until paid at the rate of 1.045% per annum (the "Interest Rate"). Interest due under this Note shall be computed on the basis of a 360-day year consisting of twelve 30-day months. With respect to any partial month, interest payments shall be computed for the actual number of days elapsed on the basis of a 360-day year.

5. PAYMENT.

(a) *Payment Dates*.

(i) Commencing on September 1, 2014, and continuing on the first (1st) day of each December, March, June, and September thereafter through June 1, 2021, accrued and unpaid interest shall be due and payable quarterly, partially in arrears and partially in advance, on the first (1st) day of each December, March, June, and September; *provided* that interest shall accrue on the outstanding principal balance of this Note through and including the last day of the applicable month; *provided further*, that Borrower's first interest payment due will include interest incurred from the date of this Note through September 30, 2014.

(ii) Commencing on September 1, 2021, and continuing on the first (1st) day of each December, March, June, and September thereafter through and including the Maturity Date (defined below), payments of principal and interest shall be due and payable such that the loan fully amortizes upon the Maturity Date at the Interest Rate.

(iii) Payment of the principal balance of this Note, all accrued and unpaid interest thereon, and any other amounts payable by Borrower to Lender under this Note and the other Loan Documents will be paid in full on the Maturity Date.

(b) *Payment Time & Address.* Borrower shall make each payment required to be made by it hereunder (whether of principal, interest or fees, or otherwise) prior to 11:00 a.m., Central time, on the date when due, in immediately available funds, without set-off or counterclaim. Borrower will pay Lender at Lender's address shown above or at such other place as Lender may designate in writing.

(c) *Business Day.* If any payment on this Note becomes due and payable on a day other than a Business Day, such payment shall be extended to the next succeeding Business Day and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension.

(d) *Event of Default.* Failure to make payments on this Note on the date such amount becomes due and payable shall constitute an Event of Default hereunder. Following an Event of Default, unless otherwise agreed in writing by Lender in its sole discretion or required by applicable law, payments will be applied first to pay all sums owing under this Note and the Loan Documents other than interest and principal, if any, then to interest owing under this Note, and any remaining amount to unpaid principal.

(e) *Payments*. All payments required hereunder shall be made in U.S. dollars.

6. PREPAYMENT. Borrower may not prepay this Note in whole or in part at any time prior to December 18, 2020. Borrower acknowledges that the Loan evidenced by this Note is part of an integrated financing structure that includes one or more investments made under the New Markets Tax Credit program pursuant to Section 45D of the Code and the regulations thereunder (the "NMTC Program"), which requires that funds remain invested during the applicable compliance period thereunder. As a result, prepayments under this Note could have impacts on the financing structure that could materially affect the economic relationships and benefits to Lender and others intended by that structure and could also create additional compliance risks under the NMTC Program. Accordingly, Borrower acknowledges that the prepayment

prohibition period set forth herein has been specifically bargained for by Lender and Borrower, and is reasonable in duration and effect. Borrower further acknowledges that Lender would not make the Loan evidenced by this Note without such prepayment restriction. Therefore, Borrower consents to the remedies of specific performance and of injunction and other equitable remedies for a breach or prospective breach of this Section 6.

7. MATURITY DATE. This Note shall mature on the earlier of (a) December 31, 2043, or (b) the date on which the unpaid principal balance of this Note becomes due and payable by acceleration or otherwise pursuant to the Loan Documents or the exercise by Lender of any right or remedy under any Loan Document (as applicable, the "Maturity Date").

8. LATE FEE. If any payment is not received by Lender within 10 calendar days after its due date (whether as stated, by acceleration or otherwise), Lender may assess and Borrower agrees to pay a late fee equal to the greater of (i) 3.0% of the amount of such payment or (ii) $25.00; provided, however, that such late charge shall not exceed $1,500.00. Such late charge shall compensate Lender for administrative expenses and other costs of delinquent payment, may be assessed without notice, shall be immediately due and payable, and shall be in addition to all other rights and remedies available to Lender. Borrower shall pay the late payment charge upon demand by Lender or, if billed, within the time specified.

9. DEFAULT RATE. From and after the date of any Event of Default, interest on funds outstanding hereunder shall accrue at a rate of interest per annum equal to 3% in excess of the Interest Rate.

10. [Reserved].

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

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

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

14. WAIVER. Borrower, all endorsers and guarantors of this Note, and all others who may become liable for all or any part of the obligations evidenced by this Note and their respective heirs, successors and assigns agree to be jointly and severally bound by this Note, and jointly and severally (a) waive and renounce to the extent permitted by law any and all homestead exemption rights and the benefits of all valuation appraisement, stay, redemption and moratorium privileges as against this debt or any renewal or extension hereof; and (b) waive presentment, demand, protest, notice of nonpayment, notice of dishonor, any and all lack of diligence or delays in the collection or enforcement hereof, and any such privileges and defenses

as may now be in effect or which may hereafter become law. Borrower and all endorsers and guarantors of this Note further jointly and severally agree that Lender may, without notice, in such manner, on such terms and for such time(s) as Lender may see fit, extend, or renew this Note, and/or release any maker, endorser, or guarantor of this Note, and/or substitute or add guarantors, and/or substitute or release any or all of the collateral for this Note and provide any other indulgence or forbearance to Borrower, all without in any way affecting, releasing, or foregoing the joint and several liability of Borrower and all endorsers and guarantors of this Note.

15. USURY SAVINGS. Notwithstanding anything to the contrary contained in this Note or the other Loan Documents, in no event shall the total of all charges payable under this Note and the other Loan Documents that are or could be held to be in the nature of interest exceed the maximum rate permitted under applicable law. Should Lender receive any payment which is or would be in excess of that permitted to be charged under any such applicable law such payment shall have been, and shall be deemed to have been, made in error and shall, (a) if made prior to the 7th anniversary of the Note Date, be returned to Borrower, or (b) if made on or after the 7th anniversary of the Note Date, automatically be applied to reduce the principal balance outstanding on this Note. If at any time the Interest Rate shall exceed such maximum rate, and thereafter the Interest Rate is below such maximum rate, then the Interest Rate shall be increased to the maximum rate for such period of time as is required so that the total amount of interest received by Lender is that which would have been received by Lender but for the first two sentences of this Section 15.

16. CHOICE OF LAW; WAIVER OF JURY TRIAL AND CERTAIN OTHER RIGHTS; SUBMISSION TO JURISDICTION; SERVICE OF PROCESS FOR ALL LOAN DOCUMENTS. Section 10.19 of the Credit Agreement is incorporated herein by reference and made a part hereof, except references to "Agreement" therein shall be deemed a reference to this Note, and references to Section 10.19 shall be deemed a reference to this Section 16.

17. ENFORCEMENT COSTS. Section 10.22 of the Credit Agreement is incorporated herein by reference and made a part hereof.

18. MORTGAGE. This Note is secured by, among other things, the Mortgage on the Property.

19. TIME IS OF THE ESSENCE. Time is of the essence with respect to the payment and performance of all of Borrower's obligations and liabilities under this Note.

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

IN WITNESS WHEREOF, Borrower has caused this QLICI Loan A-1 Note to be duly executed as of the Note Date stated above.

BORROWER:

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

By: _____

Name: John E. Koniar
Title: President

EXECUTION VERSION

QLICI LOAN B-1 NOTE

Borrower:	**Lender**:
COASTAL ALABAMA FARMERS' AND FISHERMEN'S MARKET, INC. c/o City of Foley 407 East Laurel Avenue Foley, AL 36535 Attention: Jeff Rouzie, Director of Economic Development	PACESETTER CDE X, LLC c/o Pacesetter CDE, Inc. 2600 E. Southlake Boulevard Suite 120-105 Southlake, TX 76092 Attention: Giovanni Capriglione

Principal Amount:
U.S. $647,400.00

Note Date:
July 11, 2014

1. PROMISE TO PAY. COASTAL ALABAMA FARMERS' AND FISHERMEN'S MARKET, INC., an Alabama nonprofit corporation ("Borrower"), promises to pay to the order of PACESETTER CDE X, LLC, a Texas limited liability company ("Lender"), in lawful money of the United States of America, the sum of SIX HUNDRED FORTY-SEVEN THOUSAND FOUR HUNDRED AND NO/100 DOLLARS (U.S. $647,400.00), together with interest at the rate described below assessed on the unpaid principal balance of this QLICI Loan B-1 Note (this "Note") as outstanding from time to time, commencing on the date of this Note and continuing until this Note is paid in full.

2. CREDIT AGREEMENT. This Note is executed in connection with that certain Credit Agreement dated as of even date with this Note by and between Borrower and Lender (as the same may be amended, assigned, restated, modified, or supplemented from time to time, the "Credit Agreement"). All capitalized terms used but not defined in this Note have the meanings set forth in the Credit Agreement.

3. ADVANCES. The full proceeds of this Note will be advanced to Borrower on the date hereof (the "Note Date") and, except as set forth in Section 5(d), applied as set forth in the Credit Agreement.

4. INTEREST RATE. Advances under this Note shall bear interest from the date of this Note until paid at the rate of 1.045% per annum (the "Interest Rate"). Interest due under this Note shall be computed on the basis of a 360-day year consisting of twelve 30-day months. With respect to any partial month, interest payments shall be computed for the actual number of days elapsed on the basis of a 360-day year.

5. PAYMENT.

(a) *Payment Dates*.

(i) Commencing on September 1, 2014, and continuing on the first (1st) day of each December, March, June, and September thereafter through June 1, 2021, accrued and unpaid interest shall be due and payable quarterly, partially in arrears and partially in advance, on the first (1st) day of each December, March, June, and September; provided that interest shall accrue on the outstanding principal balance of this Note through and including the last day of the applicable month; provided further, that Borrower's first interest payment due will include interest incurred from the date of this Note through September 30, 2014.

(ii) Commencing on September 1, 2021, and continuing on the first (1st) day of each December, March, June, and September thereafter through and including the Maturity Date (defined below), payments of principal and interest shall be due and payable such that the loan fully amortizes upon the Maturity Date at the Interest Rate.

(iii) Payment of the principal balance of this Note, all accrued and unpaid interest thereon, and any other amounts payable by Borrower to Lender under this Note and the other Loan Documents will be paid in full on the Maturity Date.

(b) *Payment Time & Address.* Borrower shall make each payment required to be made by it hereunder (whether of principal, interest or fees, or otherwise) prior to 11:00 a.m., Central time, on the date when due, in immediately available funds, without set-off or counterclaim. Borrower will pay Lender at Lender's address shown above or at such other place as Lender may designate in writing.

(c) *Business Day.* If any payment on this Note becomes due and payable on a day other than a Business Day, such payment shall be extended to the next succeeding Business Day and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension.

(d) *Event of Default.* Failure to make payments on this Note on the date such amount becomes due and payable shall constitute an Event of Default hereunder. Following an Event of Default, unless otherwise agreed in writing by Lender in its sole discretion or required by applicable law, payments will be applied first to pay all sums owing under this Note and the Loan Documents other than interest and principal, if any, then to interest owing under this Note, and any remaining amount to unpaid principal.

(e) *Payments*. All payments required hereunder shall be made in U.S. dollars.

6. PREPAYMENT. Borrower may not prepay this Note in whole or in part at any time prior to December 18, 2020. Borrower acknowledges that the Loan evidenced by this Note is part of an integrated financing structure that includes one or more investments made under the New Markets Tax Credit program pursuant to Section 45D of the Code and the regulations thereunder (the "NMTC Program"), which requires that funds remain invested during the applicable compliance period thereunder. As a result, prepayments under this Note could have impacts on the financing structure that could materially affect the economic relationships and benefits to Lender and others intended by that structure and could also create additional compliance risks under the NMTC Program. Accordingly, Borrower acknowledges that the prepayment

prohibition period set forth herein has been specifically bargained for by Lender and Borrower, and is reasonable in duration and effect. Borrower further acknowledges that Lender would not make the Loan evidenced by this Note without such prepayment restriction. Therefore, Borrower consents to the remedies of specific performance and of injunction and other equitable remedies for a breach or prospective breach of this Section 6.

7. MATURITY DATE. This Note shall mature on the earlier of (a) December 31, 2043, or (b) the date on which the unpaid principal balance of this Note becomes due and payable by acceleration or otherwise pursuant to the Loan Documents or the exercise by Lender of any right or remedy under any Loan Document (as applicable, the "Maturity Date").

8. LATE FEE. If any payment is not received by Lender within 10 calendar days after its due date (whether as stated, by acceleration or otherwise), Lender may assess and Borrower agrees to pay a late fee equal to the greater of (i) 3.0% of the amount of such payment or (ii) $25.00; provided, however, that such late charge shall not exceed $1,500.00. Such late charge shall compensate Lender for administrative expenses and other costs of delinquent payment, may be assessed without notice, shall be immediately due and payable, and shall be in addition to all other rights and remedies available to Lender. Borrower shall pay the late payment charge upon demand by Lender or, if billed, within the time specified.

9. DEFAULT RATE. From and after the date of any Event of Default, interest on funds outstanding hereunder shall accrue at a rate of interest per annum equal to 3% in excess of the Interest Rate.

10. [Reserved].

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

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

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

14. WAIVER. Borrower, all endorsers and guarantors of this Note, and all others who may become liable for all or any part of the obligations evidenced by this Note and their respective heirs, successors and assigns agree to be jointly and severally bound by this Note, and jointly and severally (a) waive and renounce to the extent permitted by law any and all homestead exemption rights and the benefits of all valuation appraisement, stay, redemption and moratorium privileges as against this debt or any renewal or extension hereof; and (b) waive presentment, demand, protest, notice of nonpayment, notice of dishonor, any and all lack of diligence or delays in the collection or enforcement hereof, and any such privileges and defenses

as may now be in effect or which may hereafter become law. Borrower and all endorsers and guarantors of this Note further jointly and severally agree that Lender may, without notice, in such manner, on such terms and for such time(s) as Lender may see fit, extend, or renew this Note, and/or release any maker, endorser, or guarantor of this Note, and/or substitute or add guarantors, and/or substitute or release any or all of the collateral for this Note and provide any other indulgence or forbearance to Borrower, all without in any way affecting, releasing, or foregoing the joint and several liability of Borrower and all endorsers and guarantors of this Note.

15. USURY SAVINGS. Notwithstanding anything to the contrary contained in this Note or the other Loan Documents, in no event shall the total of all charges payable under this Note and the other Loan Documents that are or could be held to be in the nature of interest exceed the maximum rate permitted under applicable law. Should Lender receive any payment which is or would be in excess of that permitted to be charged under any such applicable law such payment shall have been, and shall be deemed to have been, made in error and shall, (a) if made prior to the 7th anniversary of the Note Date, be returned to Borrower, or (b) if made on or after the 7th anniversary of the Note Date, automatically be applied to reduce the principal balance outstanding on this Note. If at any time the Interest Rate shall exceed such maximum rate, and thereafter the Interest Rate is below such maximum rate, then the Interest Rate shall be increased to the maximum rate for such period of time as is required so that the total amount of interest received by Lender is that which would have been received by Lender but for the first two sentences of this Section 15.

16. CHOICE OF LAW; WAIVER OF JURY TRIAL AND CERTAIN OTHER RIGHTS; SUBMISSION TO JURISDICTION; SERVICE OF PROCESS FOR ALL LOAN DOCUMENTS. Section 10.19 of the Credit Agreement is incorporated herein by reference and made a part hereof, except references to "Agreement" therein shall be deemed a reference to this Note, and references to Section 10.19 shall be deemed a reference to this Section 16.

17. ENFORCEMENT COSTS. Section 10.22 of the Credit Agreement is incorporated herein by reference and made a part hereof.

18. MORTGAGE. This Note is secured by, among other things, the Mortgage on the Property.

19. TIME IS OF THE ESSENCE. Time is of the essence with respect to the payment and performance of all of Borrower's obligations and liabilities under this Note.

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

IN WITNESS WHEREOF, Borrower has caused this QLICI Loan B-1 Note to be duly executed as of the Note Date stated above.

BORROWER:

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

By: _____

Name: John E. Koniar
Title: President

EXECUTION VERSION

QLICI LOAN A-2 NOTE

Borrower:	**Lender**:
COASTAL ALABAMA FARMERS' AND FISHERMEN'S MARKET, INC. c/o City of Foley 407 East Laurel Avenue Foley, AL 36535 Attention: Jeff Rouzie, Director of Economic Development	PACESETTER CDE X, LLC c/o Pacesetter CDE, Inc. 2600 E. Southlake Boulevard Suite 120-105 Southlake, TX 76092 Attention: Giovanni Capriglione

Principal Amount:
U.S. $4,597,800.00

Note Date:
July 11, 2014

1. PROMISE TO PAY. COASTAL ALABAMA FARMERS' AND FISHERMEN'S MARKET, INC., an Alabama nonprofit corporation ("Borrower"), promises to pay to the order of PACESETTER CDE X, LLC, a Texas limited liability company ("Lender"), in lawful money of the United States of America, the sum of FOUR MILLION FIVE HUNDRED NINETY-SEVEN THOUSAND EIGHT HUNDRED AND NO/100 DOLLARS (U.S. $4,597,800.00), together with interest at the rate described below assessed on the unpaid principal balance of this QLICI Loan A-2 Note (this "Note") as outstanding from time to time, commencing on the date of this Note and continuing until this Note is paid in full.

2. CREDIT AGREEMENT. This Note is executed in connection with that certain Credit Agreement dated as of even date with this Note by and between Borrower and Lender (as the same may be amended, assigned, restated, modified, or supplemented from time to time, the "Credit Agreement"). All capitalized terms used but not defined in this Note have the meanings set forth in the Credit Agreement.

3. ADVANCES. The full proceeds of this Note will be advanced to Borrower on the date hereof (the "Note Date") and, except as set forth in Section 5(d), applied as set forth in the Credit Agreement.

4. INTEREST RATE. Advances under this Note shall bear interest from the date of this Note until paid at the rate of 1.045% per annum (the "Interest Rate"). Interest due under this Note shall be computed on the basis of a 360-day year consisting of twelve 30-day months. With respect to any partial month, interest payments shall be computed for the actual number of days elapsed on the basis of a 360-day year.

5. PAYMENT.

(a) *Payment Dates*.

(i) Commencing on September 1, 2014, and continuing on the first (1st) day of each December, March, June, and September thereafter through June 1, 2021, accrued and unpaid interest shall be due and payable quarterly, partially in arrears and partially in advance, on the first (1st) day of each December, March, June, and September; provided that interest shall accrue on the outstanding principal balance of this Note through and including the last day of the applicable month; provided further, that Borrower's first interest payment due will include interest incurred from the date of this Note through September 30, 2014.

(ii) Commencing on September 1, 2021, and continuing on the first (1st) day of each December, March, June, and September thereafter through and including the Maturity Date (defined below), payments of principal and interest shall be due and payable such that the loan fully amortizes upon the Maturity Date at the Interest Rate.

(iii) Payment of the principal balance of this Note, all accrued and unpaid interest thereon, and any other amounts payable by Borrower to Lender under this Note and the other Loan Documents will be paid in full on the Maturity Date.

(b) *Payment Time & Address.* Borrower shall make each payment required to be made by it hereunder (whether of principal, interest or fees, or otherwise) prior to 11:00 a.m., Central time, on the date when due, in immediately available funds, without set-off or counterclaim. Borrower will pay Lender at Lender's address shown above or at such other place as Lender may designate in writing.

(c) *Business Day.* If any payment on this Note becomes due and payable on a day other than a Business Day, such payment shall be extended to the next succeeding Business Day and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension.

(d) *Event of Default.* Failure to make payments on this Note on the date such amount becomes due and payable shall constitute an Event of Default hereunder. Following an Event of Default, unless otherwise agreed in writing by Lender in its sole discretion or required by applicable law, payments will be applied first to pay all sums owing under this Note and the Loan Documents other than interest and principal, if any, then to interest owing under this Note, and any remaining amount to unpaid principal.

(e) *Payments*. All payments required hereunder shall be made in U.S. dollars.

6. PREPAYMENT. Borrower may not prepay this Note in whole or in part at any time prior to December 18, 2020. Borrower acknowledges that the Loan evidenced by this Note is part of an integrated financing structure that includes one or more investments made under the New Markets Tax Credit program pursuant to Section 45D of the Code and the regulations thereunder (the "NMTC Program"), which requires that funds remain invested during the applicable compliance period thereunder. As a result, prepayments under this Note could have impacts on the financing structure that could materially affect the economic relationships and benefits to Lender and others intended by that structure and could also create additional compliance risks under the NMTC Program. Accordingly, Borrower acknowledges that the prepayment

prohibition period set forth herein has been specifically bargained for by Lender and Borrower, and is reasonable in duration and effect. Borrower further acknowledges that Lender would not make the Loan evidenced by this Note without such prepayment restriction. Therefore, Borrower consents to the remedies of specific performance and of injunction and other equitable remedies for a breach or prospective breach of this Section 6.

7. MATURITY DATE. This Note shall mature on the earlier of (a) December 31, 2043, or (b) the date on which the unpaid principal balance of this Note becomes due and payable by acceleration or otherwise pursuant to the Loan Documents or the exercise by Lender of any right or remedy under any Loan Document (as applicable, the "Maturity Date").

8. LATE FEE. If any payment is not received by Lender within 10 calendar days after its due date (whether as stated, by acceleration or otherwise), Lender may assess and Borrower agrees to pay a late fee equal to the greater of (i) 3.0% of the amount of such payment or (ii) $25.00; provided, however, that such late charge shall not exceed $1,500.00. Such late charge shall compensate Lender for administrative expenses and other costs of delinquent payment, may be assessed without notice, shall be immediately due and payable, and shall be in addition to all other rights and remedies available to Lender. Borrower shall pay the late payment charge upon demand by Lender or, if billed, within the time specified.

9. DEFAULT RATE. From and after the date of any Event of Default, interest on funds outstanding hereunder shall accrue at a rate of interest per annum equal to 3% in excess of the Interest Rate.

10. [Reserved].

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

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

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

14. WAIVER. Borrower, all endorsers and guarantors of this Note, and all others who may become liable for all or any part of the obligations evidenced by this Note and their respective heirs, successors and assigns agree to be jointly and severally bound by this Note, and jointly and severally (a) waive and renounce to the extent permitted by law any and all homestead exemption rights and the benefits of all valuation appraisement, stay, redemption and moratorium privileges as against this debt or any renewal or extension hereof; and (b) waive presentment, demand, protest, notice of nonpayment, notice of dishonor, any and all lack of

diligence or delays in the collection or enforcement hereof, and any such privileges and defenses as may now be in effect or which may hereafter become law. Borrower and all endorsers and guarantors of this Note further jointly and severally agree that Lender may, without notice, in such manner, on such terms and for such time(s) as Lender may see fit, extend, or renew this Note, and/or release any maker, endorser, or guarantor of this Note, and/or substitute or add guarantors, and/or substitute or release any or all of the collateral for this Note and provide any other indulgence or forbearance to Borrower, all without in any way affecting, releasing, or foregoing the joint and several liability of Borrower and all endorsers and guarantors of this Note.

15. USURY SAVINGS. Notwithstanding anything to the contrary contained in this Note or the other Loan Documents, in no event shall the total of all charges payable under this Note and the other Loan Documents that are or could be held to be in the nature of interest exceed the maximum rate permitted under applicable law. Should Lender receive any payment which is or would be in excess of that permitted to be charged under any such applicable law such payment shall have been, and shall be deemed to have been, made in error and shall, (a) if made prior to the 7th anniversary of the Note Date, be returned to Borrower, or (b) if made on or after the 7th anniversary of the Note Date, automatically be applied to reduce the principal balance outstanding on this Note. If at any time the Interest Rate shall exceed such maximum rate, and thereafter the Interest Rate is below such maximum rate, then the Interest Rate shall be increased to the maximum rate for such period of time as is required so that the total amount of interest received by Lender is that which would have been received by Lender but for the first two sentences of this Section 15.

16. CHOICE OF LAW; WAIVER OF JURY TRIAL AND CERTAIN OTHER RIGHTS; SUBMISSION TO JURISDICTION; SERVICE OF PROCESS FOR ALL LOAN DOCUMENTS. Section 10.19 of the Credit Agreement is incorporated herein by reference and made a part hereof, except references to "Agreement" therein shall be deemed a reference to this Note, and references to Section 10.19 shall be deemed a reference to this Section 16.

17. ENFORCEMENT COSTS. Section 10.22 of the Credit Agreement is incorporated herein by reference and made a part hereof.

18. MORTGAGE. This Note is secured by, among other things, the Mortgage on the Property.

19. TIME IS OF THE ESSENCE. Time is of the essence with respect to the payment and performance of all of Borrower's obligations and liabilities under this Note.

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

IN WITNESS WHEREOF, Borrower has caused this QLICI Loan A-2 Note to be duly executed as of the Note Date stated above.

BORROWER:

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

By: _____
Name: John E. Koniar
Title: President

EXECUTION VERSION

QLICI LOAN B-2 NOTE

Borrower:	**Lender**:
COASTAL ALABAMA FARMERS' AND FISHERMEN'S MARKET, INC. c/o City of Foley 407 East Laurel Avenue Foley, AL 36535 Attention: Jeff Rouzie, Director of Economic Development	PACESETTER CDE X, LLC c/o Pacesetter CDE, Inc. 2600 E. Southlake Boulevard Suite 120-105 Southlake, TX 76092 Attention: Giovanni Capriglione

Principal Amount:
U.S. $1,402,200.00

Note Date:
July 11, 2014

1. PROMISE TO PAY. COASTAL ALABAMA FARMERS' AND FISHERMEN'S MARKET, INC., an Alabama nonprofit corporation ("Borrower"), promises to pay to the order of PACESETTER CDE X, LLC, a Texas limited liability company ("Lender"), in lawful money of the United States of America, the sum of ONE MILLION FOUR HUNDRED TWO THOUSAND TWO HUNDRED AND NO/100 DOLLARS (U.S. $1,402,200.00), together with interest at the rate described below assessed on the unpaid principal balance of this QLICI Loan B-2 Note (this "Note") as outstanding from time to time, commencing on the date of this Note and continuing until this Note is paid in full.

2. CREDIT AGREEMENT. This Note is executed in connection with that certain Credit Agreement dated as of even date with this Note by and between Borrower and Lender (as the same may be amended, assigned, restated, modified, or supplemented from time to time, the "Credit Agreement"). All capitalized terms used but not defined in this Note have the meanings set forth in the Credit Agreement.

3. ADVANCES. The full proceeds of this Note will be advanced to Borrower on the date hereof (the "Note Date") and, except as set forth in Section 5(d), applied as set forth in the Credit Agreement.

4. INTEREST RATE. Advances under this Note shall bear interest from the date of this Note until paid at the rate of 1.045% per annum (the "Interest Rate"). Interest due under this Note shall be computed on the basis of a 360-day year consisting of twelve 30-day months. With respect to any partial month, interest payments shall be computed for the actual number of days elapsed on the basis of a 360-day year.

5. PAYMENT.

(a) *Payment Dates*.

(i) Commencing on September 1, 2014, and continuing on the first (1st) day of each December, March, June, and September thereafter through June 1, 2021, accrued and unpaid interest shall be due and payable quarterly, partially in arrears and partially in advance, on the first (1st) day of each December, March, June, and September; provided that interest shall accrue on the outstanding principal balance of this Note through and including the last day of the applicable month; provided further, that Borrower's first interest payment due will include interest incurred from the date of this Note through September 30, 2014.

(ii) Commencing on September 1, 2021, and continuing on the first (1st) day of each December, March, June, and September thereafter through and including the Maturity Date (defined below), payments of principal and interest shall be due and payable such that the loan fully amortizes upon the Maturity Date at the Interest Rate.

(iii) Payment of the principal balance of this Note, all accrued and unpaid interest thereon, and any other amounts payable by Borrower to Lender under this Note and the other Loan Documents will be paid in full on the Maturity Date.

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(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.

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prohibition period set forth herein has been specifically bargained for by Lender and Borrower, and is reasonable in duration and effect. Borrower further acknowledges that Lender would not make the Loan evidenced by this Note without such prepayment restriction. Therefore, Borrower consents to the remedies of specific performance and of injunction and other equitable remedies for a breach or prospective breach of this Section 6.

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14. WAIVER. Borrower, all endorsers and guarantors of this Note, and all others who may become liable for all or any part of the obligations evidenced by this Note and their respective heirs, successors and assigns agree to be jointly and severally bound by this Note, and jointly and severally (a) waive and renounce to the extent permitted by law any and all homestead exemption rights and the benefits of all valuation appraisement, stay, redemption and moratorium privileges as against this debt or any renewal or extension hereof; and (b) waive presentment, demand, protest, notice of nonpayment, notice of dishonor, any and all lack of

diligence or delays in the collection or enforcement hereof, and any such privileges and defenses as may now be in effect or which may hereafter become law. Borrower and all endorsers and guarantors of this Note further jointly and severally agree that Lender may, without notice, in such manner, on such terms and for such time(s) as Lender may see fit, extend, or renew this Note, and/or release any maker, endorser, or guarantor of this Note, and/or substitute or add guarantors, and/or substitute or release any or all of collateral for this Note and provide any other indulgence or forbearance to Borrower, all without in any way affecting, releasing, or foregoing the joint and several liability of Borrower and all endorsers and guarantors of this Note.

15. USURY SAVINGS. Notwithstanding anything to the contrary contained in this Note or the other Loan Documents, in no event shall the total of all charges payable under this Note and the other Loan Documents that are or could be held to be in the nature of interest exceed the maximum rate permitted under applicable law. Should Lender receive any payment which is or would be in excess of that permitted to be charged under any such applicable law such payment shall have been, and shall be deemed to have been, made in error and shall, (a) if made prior to the 7th anniversary of the Note Date, be returned to Borrower, or (b) if made on or after the 7th anniversary of the Note Date, automatically be applied to reduce the principal balance outstanding on this Note. If at any time the Interest Rate shall exceed such maximum rate, and thereafter the Interest Rate is below such maximum rate, then the Interest Rate shall be increased to the maximum rate for such period of time as is required so that the total amount of interest received by Lender is that which would have been received by Lender but for the first two sentences of this Section 15.

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19. TIME IS OF THE ESSENCE. Time is of the essence with respect to the payment and performance of all of Borrower's obligations and liabilities under this Note.

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

IN WITNESS WHEREOF, Borrower has caused this QLICI Loan B-2 Note to be duly executed as of the Note Date stated above.

BORROWER:

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

By: _____

Name: John E. Koniar
Title: President

17425

This Instrument prepared by
and should be returned to:

Jones Day
Attn: Patrick J. Cronin
100 High Street, 21st Floor
Boston, MA 02110
(617) 449-6930

BALDWIN COUNTY, ALABAMA
TIM RUSSELL PROBATE JUDGE
Filed/cert. 7/11/2014 1:12 PM
TOTAL $ 75.00
23 Pages

1469497

STATE OF ALABAMA)

BALDWIN COUNTY)

MORTGAGE, ASSIGNMENT OF RENTS AND LEASES AND FIXTURE FILING

by

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

to

PACESETTER CDE X, LLC,
a Texas limited liability company,

as "Grantee"

Dated as of July 11, 2014

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EXHIBIT A: Description of Property

MORTGAGE, ASSIGNMENT OF RENTS AND LEASES AND FIXTURE FILING

THIS MORTGAGE, ASSIGNMENT OF RENTS AND LEASES AND FIXTURE FILING (this "Mortgage") is executed as of July 11, 2014 (the "Effective Date"), by COASTAL ALABAMA FARMERS' AND FISHERMEN'S MARKET, INC., an Alabama nonprofit corporation ("Grantor"), to PACESETTER CDE X, LLC, a Texas limited liability company ("Grantee").

ARTICLE I
GRANT

Section 1.01. Grant. For the purposes and upon the terms and conditions in this Mortgage, Grantor irrevocably grants, conveys, and assigns to Grantee, with power of sale and right of entry and possession, Grantor's interest in the real property located in Baldwin County, Alabama, which is described in Exhibit A attached hereto and incorporated herein by reference (the "Land") and made a part hereof, which Grantor is now seized and possessed and in actual possession, together with:

(a) all right, title, and interest of Grantor, including any after-acquired title or reversions, in and to the beds of the ways, streets, avenues, alleys, easements, rights-of-way, gaps and gores, if any, adjoining the said real property and any and all other, further, and additional right, title, or interest of any kind in or to said Land that at any time may be acquired by Grantor, all of which when acquired by Grantor shall be and become part of said real property;

(b) all improvements now or hereafter situated thereon including all of Grantor's gas and electrical fixtures, heaters, space heaters, engines and machinery, boilers, ranges, elevators and motors, bathtubs, sinks, water closets, basins, pipes, faucets and other air conditioning, plumbing and heating fixtures, drapes, mirrors, mantles, refrigerating plants, dishwashers and appurtenances, and all building material and equipment now or hereafter delivered to said real property and intended to be installed therein; such other goods, furnishings, equipment now or hereafter delivered to said real property and intended to be installed therein; such other furniture, fixtures, goods, equipment, chattels and personal property delivered to said real property from time to time; and all renewals or replacements thereof or articles in substitution thereof and all of the estate, right, title and interest of Grantor in and to all property of any nature whatsoever, now or hereafter situated on said real property or intended to be used in connection with the operation thereof, all of which, to the extent permitted by law, shall be deemed to be fixtures and an accession to the freehold and a part of the realty as between the parties hereto and all Persons claiming by, through or under them and shall be deemed to be a portion of the security for the Secured Obligations (defined below);

(c) all and singular the rights, interests and appurtenances whatsoever, in any way belonging, relating or appertaining to any of said real property or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Grantor including but not limited to all of Grantor's sewer capacity rights, all other capacity rights, and Grantor's rights under contracts, all building permits, driveway permits, and other permits, agreements, approvals, entitlements, utility commitments, licenses and all other documents, payments, fees, impact fees, prepaid tap fees, commitment fees, deposits and sums paid affecting said real property, condemnation proceeds and insurance proceeds paid with respect to said real property, and all rents, profits, issues and revenues of said real property from time to time accruing, under the Leases (defined below). In addition, Grantor hereby assigns, transfers and conveys to Grantee, its successors and assigns, all of Grantor's right, title and interest in, to and under all Leases, together with all Rents (defined below); subject, however, to the conditional permission given to Grantor hereunder to collect the rents under any such Leases;

(d) all right, power, privilege, option, title and interest of Grantor in and under all present or future accounts, deposit accounts, investment property, documents, instruments, chattel paper, and general intangibles (including "payment intangibles") relating to said real property, as the foregoing terms are defined in the UCC (defined below), all deposits, monies or escrows held by Grantee or Grantee's agents or Affiliates (as defined in the Credit Agreement) or any accounts established pursuant hereto or pursuant to any other Loan Documents (as defined in the Credit Agreement), and all contract rights, Leases, derivative investments, letters of credit, and rate cap agreements, including casualty insurance policies and liability insurance policies, trade names, trademarks, service marks, logos, copyrights, goodwill, franchises, books, records, plans, specifications, permits, licenses, approvals, actions, claims under the United States Bankruptcy Code or any other reorganization, arrangement, insolvency, adjustment of debt or liquidation law of any jurisdiction, whether now in existence or hereinafter in effect, and causes of action which now or hereafter relate to, are derived from or are used in connection with said real property or the use, operation, maintenance, occupancy or enjoyment thereof or the conduct of any business or activities thereon;

(e) all insurance proceeds payable to Grantor in connection with any damage or harm to relating to said real property, and any and all awards and other compensations arising from the exercise of the right of eminent domain, or any purchase in lieu thereof, over all or any part of said real property or the improvements thereon or any easement or appurtenances thereof, including any award for severance or consequential damages or for any change in the grade of streets;

(f) all of Grantor's right, title and interest, in and to all plans and specifications, and all construction, architectural, design, engineering, personal property, security and all other agreements regarding the development, construction, leasing, management or operation of said real property or the buildings, structures, or other improvements situated or to be situated thereon, and any other similar agreements that Grantor has entered into or in the future may enter into with respect to said real property or the buildings, structures, or other improvements situated or to be situated thereon, together with all additions thereto, substitutes therefor and modifications thereof;

(g) any refunds payable to Grantor with respect to the property resulting from any appeal or reassessment of real property taxes thereof, and together with any refunds or reimbursements payable with respect to bonds, escrow accounts or reimbursements payable in connection with the use, development and ownership of said real property; and

(h) all of Grantor's right, title and interest, if any, in and to all proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims (said real property and the other property described above are collectively referred to herein as the "Property"). The listing of specific rights or property shall not be interpreted as a limitation of general terms.

TO HAVE AND TO HOLD the Property, unto Grantee and Grantee's substitutes, successors and assigns, forever, to secure the payment of the Secured Obligations and to secure the performance of Grantor's obligations herein, and Grantor does hereby bind Grantor and Grantor's heirs, legal representatives, successors and assigns, to warrant and forever defend the Property unto Grantee and Grantee's substitutes, successors and assigns, forever, against the claim or claims of all Persons (defined below) whomsoever claiming or to claim the same, or any part thereof, subject to the Permitted Encumbrances (as defined in the Credit Agreement (defined below)).

Section 1.02. Address. The addresses of the Property are 20733 Miflin Road, Foley, Alabama 36535 and 410 East Section Avenue, Foley, Alabama 36535. Neither the failure to designate an address nor any inaccuracy in the address designated shall affect the validity or priority of the lien of this Mortgage on the Property as described on Exhibit A. In the event of any conflict between the provisions of Exhibit A and said address, Exhibit A shall control.

Section 1.03. Advance Under the Mortgage. The principal indebtedness evidenced by the Notes (as defined below) is being advanced in a lump sum.

ARTICLE II
OBLIGATIONS SECURED

Section 2.01. Obligations Secured. Grantor makes this grant and assignment for the purpose of securing the following obligations (each, a "Secured Obligation" and, collectively, the "Secured Obligations"):

(a) payment to Grantee of all sums at any time owing and performance of all other obligations arising under or in connection with the following:

(i) that certain QLICI Loan A-1 Note, executed on the Effective Date, in the original principal amount of ONE MILLION THREE HUNDRED FIFTY-TWO THOUSAND SIX HUNDRED AND NO/100 DOLLARS (U.S. $1,352,600), with interest as provided therein, executed by Grantor for the benefit of Grantee or its successors or assigns, and maturing on December 31, 2043;

(ii) that certain QLICI Loan A-2 Note, executed on the Effective Date, in the original principal amount of FOUR MILLION FIVE HUNDRED NINETY-SEVEN THOUSAND EIGHT HUNDRED AND NO/100 DOLLARS (U.S. $4,597,800), with interest as provided therein, executed by Grantor for the benefit of Grantee or its successors or assigns, and maturing on December 31, 2043;

(iii) that certain QLICI Loan B-1 Note, executed on the Effective Date, in the original principal amount of SIX HUNDRED FORTY-SEVEN THOUSAND FOUR HUNDRED AND NO/100 DOLLARS (U.S. $647,400), with interest as provided therein, executed by Grantor for the benefit of Grantee or its successors or assigns, and maturing on December 31, 2043;

(iv) that certain QLICI Loan B-2 Note, executed on the Effective Date, in the original principal amount of ONE MILLION FOUR HUNDRED TWO THOUSAND TWO HUNDRED AND NO/100 DOLLARS (U.S. $1,402,200), with interest as provided therein, executed by Grantor for the benefit of Grantee or its successors or assigns, and maturing on December 31, 2043; and

(v) the payment and performance of any other indebtedness or obligations incurred in connection with the credit accommodation evidenced by the notes referred to in (i) through (iv) above (such notes, as the same may be amended, extended, modified, supplemented, restated, refinanced, substituted or renewed, being referred to herein individually as a "Note" and collectively as the "Notes"), whether or not specifically referenced therein, and as set forth in that certain Credit Agreement, dated as of the Effective Date, by and between Grantor and Grantee (as the same may be amended, assigned, restated, modified, or supplemented from time to time, the "Credit Agreement");

(b) payment and performance of all obligations of Grantor under this Mortgage, together with all advances, payments or other expenditures made by Grantee, in accordance with the terms hereof following the occurrence and during the continuance of an Event of Default, as or for the payment or performance of any such obligations of Grantor;

(c) payment and performance of all obligations, if any, and the contracts under which they arise, which any rider attached to and recorded with this Mortgage recites are secured hereby;

(d) payment to Grantee of all liability, whether liquidated or unliquidated, defined, contingent, conditional or of any other nature whatsoever, and performance of all other obligations, arising under any swap, derivative, foreign exchange or hedge transaction or arrangement (or other similar transaction or arrangement howsoever described or defined) at any time entered into with Grantee in connection with any Secured Obligation;

(e) payment and performance of all funds advanced by Grantee to or for the benefit of Grantor pursuant hereto or pursuant to any other Loan Document (as defined in the Credit Agreement); and

(f) all modifications, extensions and renewals of any of the Secured Obligations (including, without limitation, (i) modifications, extensions or renewals at a different rate of interest; or (ii) deferrals or accelerations of the required principal payment dates or interest payment dates or both, in whole or in part), however evidenced, whether or not any such modification, extension or renewal is evidenced by a new or additional promissory note or notes.

Section 2.02. Obligations. The term "obligations" is used herein in its most comprehensive sense and includes any and all advances, debts, obligations and liabilities heretofore, now or hereafter made, incurred or created, whether voluntary or involuntary and however arising, whether due or not due, absolute or contingent, liquidated or unliquidated, determined or undetermined, joint or several, including, without limitation, all principal, interest, charges, including prepayment charges and late charges, and loan fees at any time accruing or assessed on any Secured Obligation. In the event any portion of the sums intended to be secured by this Mortgage cannot be lawfully secured hereby, payments in reduction of such sums shall be applied first to those portions not secured hereby.

Section 2.03. Incorporation. All terms of the Secured Obligations are herein by reference and made a part hereof. All Persons (as defined in the Credit Agreement) who may have or acquire an interest in the Property are hereby deemed to have notice of the terms of the Secured Obligations and to have notice, if provided therein, that: (a) any Note or any other Secured Obligation may permit borrowing, repayment and reborrowing; and (b) the rate of interest on one or more of the Secured Obligations may vary from time to time.

ARTICLE III
ASSIGNMENT OF RENTS

Section 3.01. Assignment. For the purposes and upon the terms and conditions set forth herein, Grantor irrevocably assigns to Grantee all of Grantor's right, title and interest in, to and under 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 (including without limitation the Leases (as defined in the Credit Agreement)), 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 (each, a "Lease" and collectively, the "Leases"), together with any and all other rents, issues and profits of the Property (collectively, "Rents"). This assignment shall not impose upon Grantee any duty to produce Rents from the Property, nor cause Grantee to be: (x) a "mortgagee in possession" for any purpose; (y) responsible for performing any of the obligations of the lessor or landlord under any Lease; or (z) responsible for any waste committed by any Person at any time in possession of the Property or any part thereof, or for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property, unless and until Grantee have taken possession (including through the appointment of a receiver) pursuant to the exercise of remedies under this Mortgage or the other Loan Documents. This is an absolute assignment, not an assignment for security only, and the right of Grantee to Rents is not contingent upon and may be exercised without taking possession of the Property. Grantor agrees to execute

and deliver to Grantee, within 5 calendar days of written request from Grantee, such additional documents as Grantee may reasonably request to further evidence the assignment to Grantee of any and all Leases and Rents. Grantee, at Grantee's option and without notice to Grantor, may notify any lessee or tenant of this assignment of the Leases and Rents.

Section 3.02. Protection of Security. To protect the security of this assignment, Grantor agrees:

(a) at Grantor's sole cost and expense: (i) to perform each obligation to be performed by the lessor or landlord under each Lease and to enforce or secure the performance of each obligation to be performed by the lessee or tenant under each Lease; (ii) not to modify any Lease in any material respect, nor accept surrender under or terminate the term of any Lease; (iii) not to anticipate the Rents under any Lease; and (iv) not to waive or release any lessee or tenant of or from any Lease obligations. Grantor assigns to Grantee all of Grantor's right and power to modify the terms of any Lease, to accept a surrender under or terminate the term of or anticipate the Rents under any Lease, and to waive or release any lessee or tenant of or from any Lease obligations, and any attempt on the part of Grantor to exercise any such rights or powers without the prior written consent of Grantee (such consent in Grantee's sole and absolute discretion) shall be an Event of Default (defined below) hereunder;

(b) at Grantor's sole cost and expense, in accordance with Section 5.12 of the Credit Agreement, to defend any action in any manner connected with any Lease or the obligations thereunder, and to pay all fees, costs and expenses of Grantee and their respective Affiliates (as defined in the Credit Agreement), including reasonable attorneys' fees, costs, and expenses, in any such action in which Grantee or its respective Affiliates may appear;

(c) that, should Grantor fail to do any act required to be done by Grantor under a Lease, then Grantee, but without obligation to do so and without notice to Grantor and without releasing Grantor from any obligation hereunder, may make or do the same in such manner and to such extent as Grantee deems necessary to protect the security hereof, and, in exercising such powers, Grantee may employ attorneys and other agents, and Grantor shall pay all reasonable fees, costs and expenses costs, including reasonable attorneys' fees, costs, and expenses, incurred by Grantee, or their respective agents or Affiliates, in the exercise of the powers granted herein. Grantor shall give prompt notice to Grantee of any default by any lessee or tenant under any Lease, and of any notice of default on the part of Grantor under any Lease received from a lessee or tenant thereunder, together with an accurate and complete copy thereof; and

(d) to pay to Grantee immediately upon demand all sums expended under the authority hereof, including reasonable attorneys' fees, costs and expenses, together with interest thereon from the date of demand at the highest applicable interest rate set forth in Section 9 of the Notes, and the same, at the option of Grantee, may be added to any Secured Obligation and shall be secured hereby.

Section 3.03. License. Grantee confers upon Grantor a license ("License") to collect and retain the Rents as, but not before, they come due and payable, until the occurrence of any Event of Default; *provided, however,* that prior to written notice given by Grantee to Grantor of the occurrence and continuance of an Event of Default, Grantor shall collect and receive all Rents and revenues of the Property as trustee for the benefit of Grantee. Upon the occurrence of any Event of Default, the License shall be automatically revoked, and Grantee may, at the option of Grantee and without notice to Grantor, either in person or by agent, with or without bringing any action, or by a receiver to be appointed by a court (to which appointment Grantor hereby expressly consents): (a) enter, take possession of, manage and operate the Property or any part thereof; (b) make, cancel, enforce or modify any Lease; (c) obtain and evict tenants, fix or modify Rents, and do any acts which Grantee deems proper to protect the security hereof; and (d) either with or without taking possession of the Property, in its own name, sue for or otherwise collect and receive all Rents, including those past due and unpaid, and apply the same in accordance with the provisions of this Mortgage.

The entering and taking possession of the Property, the collection of Rents and the application thereof as aforesaid, shall not cure or waive any Event of Default, nor waive, modify or affect any notice of default hereunder, nor invalidate any act done pursuant to any such notice. The License shall not grant to Grantee the right to possession, except as provided in this Mortgage.

ARTICLE IV
RIGHTS AND DUTIES OF THE PARTIES

Section 4.01. Title. Grantor warrants that, except as disclosed to Grantee in that certain first mortgage title insurance policy Grantor is providing Grantee in accordance with the Credit Agreement, Grantor (i) lawfully possesses and holds good and indefeasible fee simple title to the Land and the improvement on the Land and (ii) has not encumbered any other item of the Property, without limitation on the right to encumber, as herein provided, and that Grantor intends that this Mortgage create and constitute a valid first priority lien on the Property.

Section 4.02. Taxes and Assessments. Section 5.18 of the Credit Agreement is incorporated herein by reference and made a part hereof.

Section 4.03. Performance of Secured Obligations. Grantor shall promptly pay and perform each Secured Obligation when due.

Section 4.04. Liens, Encumbrances and Charges. Section 6.2 of the Credit Agreement is incorporated herein by reference and made a part hereof.

Section 4.05. Insurance; Casualty or Condemnation. Section 5.7 and Exhibit E of the Credit Agreement are incorporated herein by reference and made a part hereof.

Section 4.06. Taxes and Other Liens. Section 5.3 of the Credit Agreement is incorporated herein by reference and made a part hereof.

Section 4.07. Books and Records. Sections 5.8 and 5.9 of the Credit Agreement are incorporated herein by reference and made a part hereof.

Section 4.08. Maintenance and Preservation of Property. Subject to the provisions of any Secured Obligation, Grantor covenants:

(a) to keep the Property in good condition and repair;

(b) without the prior written consent of Grantee (such consent in Grantee's reasonable discretion), not to (i) remove or demolish the Property (permitted Transfers, as defined below, excepted), (ii) materially alter or add to the Property, or (iii) commit or permit waste of the Property, except as reasonably contemplated by Grantor to maintain, preserve, or increase the value of the Property or its utility to the business of Grantor on the Property or to comply with any requirements described in clause (e) below

(c) without the prior written consent of Grantee (such consent in Grantee's reasonable discretion), not to initiate or acquiesce in any change in any zoning or other land classification which affects the Property;

(d) to restore promptly and in good workmanlike manner any portion of the Property which may be damaged or destroyed, unless Grantee requires that all of the insurance proceeds be used to reduce the Secured Obligations as provided in Section 4.05;

(e) to comply with and not to suffer violation of any or all of the following which govern acts or conditions on, or otherwise affect the Property: (i) laws, ordinances, regulations, standards and judicial and administrative rules and orders; (ii) covenants, conditions, restrictions and equitable servitudes, whether public or private; and (iii) requirements of insurance companies and any bureau or agency which establishes standards of insurability, except where and to the extent that the failure to comply or suffering of a violation could not reasonably be expected to have a Material Adverse Effect (as defined in the Credit Agreement) on or to Grantor or the Property.

Section 4.09. Hazardous Substances; Environmental Provisions. Pursuant to the Environmental Indemnity (as defined in the Credit Agreement), Grantor and CFPFCD (as defined in the Credit Agreement) have fully indemnified Grantee for certain environmental matters concerning the Property, as more particularly described therein. All terms, conditions, obligations, and agreements set forth the Environmental Indemnity are incorporated herein by reference and made a part hereof and this Mortgage shall secure the obligations of Grantor and CFPFCD thereunder. Grantor agrees to abide by all terms, conditions, obligations, and agreements set forth in the Environmental Indemnity.

Section 4.10. Protection of Security. Grantor shall, at Grantor's sole cost and expense: (a) protect, preserve, warrant and defend the Property and Grantor's title and right to possession of the Property against all adverse claims, subject to Permitted Encumbrances; (b) if Grantor's interest in the Property is a leasehold interest or estate, pay and perform in a timely manner all obligations to be paid and/or performed by the lessee or tenant under the lease or other agreement creating such leasehold interest or estate; and (c) protect, preserve and defend the security of this Mortgage and the rights and powers of Grantee under this Mortgage against all adverse claims, subject to Permitted Encumbrances. Grantor shall give Grantee prompt notice in writing of the assertion of any adverse claim, the filing of any action or proceeding, or the occurrence of any damage, condemnation offer or similar action relating to or affecting the Property and, if Grantor's interest in the Property is a leasehold interest or estate, of any notice of default or demand for performance under the lease or other agreement pursuant to which such leasehold interest or estate was created or exists.

Section 4.11. Indemnification of Covered Persons and Reimbursement. Section 5.12 of the Credit Agreement is incorporated herein by reference and made a part hereof. As therein and herein provided, Grantor shall pay upon demand, after expenditure, all sums expended for expenses paid or incurred by Grantee pursuant to any of the terms of this Mortgage or in any action or proceeding relating directly or indirectly to the Secured Obligations in which Grantee may appear or be made a party, whether or not pursued to final judgment, and in any exercise of any of the rights or remedies granted to Grantee by this Mortgage or any of the other Loan Documents, whether or not any such right or remedy is exercised to completion. Such expenses shall include, without limitation, court costs, expenses for evidence of title, appraisals, inspections and surveys and reasonable attorneys' fees.

Section 4.12. Due on Sale or Encumbrance. Except as permitted by the provisions of any Secured Obligation or by applicable law, if the Property or any interest therein shall be sold, transferred (including, without limitation, where applicable, through sale or transfer of a majority or controlling interest of the corporate stock, or any general partnership, limited liability company or other similar interests, of Grantor), mortgaged, assigned, encumbered or leased, whether voluntarily, involuntarily or by operation of law (each of which actions and events is called a "Transfer"), without the prior written consent of Grantee (such consent in Grantee's sole and absolute discretion), then Grantee may declare all Secured Obligations immediately due and payable in full. Grantor shall notify Grantee in writing of each Transfer within 5 calendar days of the date thereof. Notwithstanding the foregoing, sales or transfers of items of the Property which have become obsolete or worn beyond practical use and which have been replaced by adequate substitutes having a value equal to or greater than the replaced items when new shall not constitute a "Transfer."

Section 4.13. Releases, Extensions, Modifications and Additional Security. Without notice to or the consent, approval or agreement of any Person having any interest at any time in the Property or in any manner obligated under any Secured Obligation (each, an "Interested Party"), Grantee may, from time to time, release any Interested Party from liability for the payment of any Secured Obligation, take any action or make any agreement extending the maturity or otherwise altering the terms or increasing the amount of any Secured Obligation, accept additional security, and enforce, waive, subordinate or release all or a portion of the Property or any other security for any Secured Obligation. None of the foregoing actions shall release or reduce the personal liability of any Interested Party, or release or impair the priority of the lien of this Mortgage upon the Property.

Section 4.14. Defeasance and Termination.

(a) All of the covenants and agreements of Grantor herein shall survive the execution and delivery of this Mortgage and shall continue in force until an express written release hereof is executed by Grantee.

(b) If Grantor shall perform faithfully each and all of the covenants and agreements herein contained and shall pay the Secured Obligations in full, and shall satisfy all obligations secured hereby, then, and then only, this Mortgage shall be released upon Grantor's written request and at Grantor's expense, by documentation in form and substance satisfactory to Grantee (and Grantee shall promptly upon such request execute, acknowledge, and deliver same to Grantor). No release of this Mortgage or the lien hereof shall be valid unless executed by Grantee.

(c) It is expressly contemplated that Grantor may from time to time become additionally indebted to Grantee, all of which indebtedness shall be secured by this Mortgage until the lien hereof is so released in writing by Grantee.

Section 4.15. Subrogation. Grantee shall be subrogated to the lien of all encumbrances, whether or not released of record, paid in whole or in part by Grantee pursuant to this Mortgage or by the proceeds of any Secured Obligation.

ARTICLE V
DEFAULT PROVISIONS

Section 5.01. Event of Default. The occurrence of any of the following shall constitute an "Event of Default" under this Mortgage, the Credit Agreement, and the other Loan Documents:

(a) the occurrence of any "Event of Default" (as defined in the Credit Agreement);

(b) Grantor fails to pay any amount payable to Grantee under this Mortgage when any such payment is due in accordance with the terms hereof, such failure continues after the giving of any required notice hereunder and the expiration of any applicable cure period hereunder;

(c) the existence of any inaccuracy or untruth in any material respect in any representation or warranty contained in this Mortgage that continues unremedied following notice given by Grantee to Grantor and the expiration of the applicable cure period specified in Section 8.1(k)(ii) of the Credit Agreement; and

(d) Grantor fails to perform or cause to be performed any other obligation or observe any other condition, covenant, term, agreement or provision required to be performed or observed by Grantor under the this Mortgage; *provided, however*, that if such failure by its nature and the terms of this Mortgage can be cured, then so long as the continued operation and safety of the Property, and the priority, validity and

enforceability of the liens created by this Mortgage or any of the other Loan Documents and the value of the Property are not impaired, threatened or jeopardized, then Grantor shall have a period ("Cure Period") of 30 calendar days after Grantor obtains actual knowledge of such failure or receives written notice of such failure to cure the same and an Event of Default shall not be deemed to exist during the Cure Period, provided further that if Grantor commences to cure such failure during the Cure Period and is diligently and in good faith attempting to effect such cure, the Cure Period shall be extended for 30 additional calendar days, but in no event shall the Cure Period be longer than 60 calendar days in the aggregate.

Section 5.02. Rights and Remedies. Upon the occurrence and continuance of an Event of Default, Grantee shall have all the following rights and remedies:

(a) with or without notice of demand, presentment or any other notice of any kind, including, without limitation, notice of intention to accelerate and notice of acceleration, all of which are expressly waived by Grantor, to declare all Secured Obligations immediately due and payable in full;

(b) with or without notice, without releasing Grantor from any Secured Obligation and without becoming a mortgagee in possession, to cure any Event of Default of Grantor and, in connection therewith: (i) to enter upon the Property and to do such acts and things as Grantee deems necessary or desirable to protect the security of this Mortgage, including, without limitation, to appear in and defend any action or proceeding purporting to affect the security of this Mortgage or the rights or powers of Grantee hereunder; (ii) to pay, purchase, contest or compromise any encumbrance, charge, lien or claim of lien which, in the judgment of Grantee, is senior in priority to this Mortgage, the judgment of Grantee being conclusive as between the parties hereto; (iii) to obtain, and to pay any premiums or charges with respect to, any insurance required to be carried hereunder; and (iv) to employ counsel, accountants, contractors and other appropriate Persons to assist them;

(c) to commence and maintain an action or actions in any court of competent jurisdiction to foreclose this Mortgage as a mortgage or to obtain specific enforcement of the covenants of Grantor under this Mortgage, and Grantor agrees that such covenants shall be specifically enforceable by injunction or any other appropriate equitable remedy. For the purposes of any suit brought under this subsection, Grantor waives the defenses of laches and any applicable statute of limitations;

(d) to apply to a court of competent jurisdiction for and obtain appointment of a receiver of the Property as a matter of strict right and without regard to: (i) the adequacy of the security for the repayment of the Secured Obligations; (ii) the existence of a declaration that the Secured Obligations are immediately due and payable; or (iii) the filing of a notice of default; and Grantor consents to such appointment;

(e) to take and possess all documents, books, records, papers and accounts of Grantor or the then owner of the Property; to make or modify Leases of, and other agreements with respect to, the Property upon such terms and conditions as Grantee deems proper; and to make repairs, alterations and improvements to the Property deemed necessary, in the reasonable judgment of Grantee, to protect or enhance the security hereof;

(f) to foreclose the liens and security interests of this Mortgage by public sale, by judicial foreclosure or in any other manner allowed at law or in equity, in which case Grantee or the agent of Grantee shall give notice of the foreclosure sale as provided herein or as required by applicable law, and to exercise any and all remedies and rights given hereunder or in any other instrument securing payment of or relating to the Secured Obligations and to exercise any and all remedies available at law or in equity;

(g) to resort to and realize upon the security hereunder and any other security now or later held by Grantee concurrently or successively and in one or several consolidated or independent judicial actions or

lawfully taken non-judicial proceedings, or both, and to apply the proceeds received in accordance with Section 5.03, all in such order and manner as Grantee shall determine in its sole and absolute discretion;

(h) upon sale of the Property at any judicial or non-judicial foreclosure, Grantee may credit bid (as determined by Grantee in its sole and absolute discretion) all or any portion of the Secured Obligations in lieu of cash payment. Any Person, including but not limited to Grantor or Grantee, may purchase at such sale; and

(i) exercise all other rights and remedies provided in Section 8.2 of the Credit Agreement or the other Loan Documents, all of which are incorporated herein by reference and made a part hereof.

Section 5.03. Application of Foreclosure Sale Proceeds. After deducting all reasonable fees, costs and expenses of this Mortgage, including costs of evidence of title and reasonable attorneys' fees, costs and expenses in connection with a sale, all proceeds of any foreclosure sale shall be applied first, to payment of all Secured Obligations (including, without limitation, all sums expended by Grantee under the terms hereof and not then repaid, with accrued interest at the highest applicable "Default Rate" under the Notes), in such order and amounts as Grantee shall determine in its sole and absolute discretion; and the remainder, if any, to the Person or Persons legally entitled thereto.

Section 5.04. Application of Other Sums. All Rents or other sums received by Grantee or any agent or receiver thereof, less all reasonable fees, costs, and expenses incurred by Grantee or such agent or receiver, including reasonable attorneys' fees, costs and expenses, shall be applied to payment of the Secured Obligations in such order as Grantee shall determine in its sole and absolute discretion; *provided, however,* that Grantee shall not have any liability for funds it does not actually receive.

Section 5.05. No Cure or Waiver. None of (a) the entry upon and taking possession of the Property by Grantee or any receiver, (b) any collection of Rents, insurance proceeds, condemnation proceeds or damages, other security or proceeds of other security, or other sums, (c) the application of any collected sum to any Secured Obligation, or (d) the exercise of any other right or remedy by Grantee or any receiver shall impair the status of the security of this Mortgage, or cure or waive any breach, Event of Default or notice thereof, or nullify the effect of any notice of an Event of default or sale (unless all Secured Obligations and any other sums then due hereunder and the other Loan Documents have been paid in full and Grantor has cured all other continuing Events of Default), or prejudice Grantee in the exercise of any right or remedy, or be construed as an affirmation by Grantee of any tenancy, lease or option of the Property or a subordination of the lien of this Mortgage.

Section 5.06. Power to File Notices and Cure Events of Default. Grantor hereby irrevocably appoints Grantee and its successors and assigns as Grantor's true attorney-in-fact to perform any of the following powers upon the occurrence and during the continuance of an Event of Default, which agency is coupled with an interest: (a) to execute and/or record any notices of completion, cessation of labor, or any other notices that Grantee deems appropriate to protect its interest; and (b) to perform any obligation of Grantor hereunder; *provided, however,* that Grantee, as such attorney-in-fact, shall only be accountable for such funds as are actually received by Grantee, and Grantee shall not be liable to Grantor or any other Person for any failure to act under this Section 5.06.

Section 5.07. Remedies Cumulative; No Waiver. All rights, powers and remedies of Grantee hereunder are cumulative and are in addition to all rights, powers and remedies provided by applicable law or in any other agreements between Grantor and Grantee (including but not limited to the Credit Agreement and the other Loan Documents). The rights, powers and remedies of Grantee hereunder shall not be interpreted to curb, limit extinguish or otherwise modify the rights, powers and remedies of Grantee under the Credit Agreement or any of the other Loan Documents, which may be more expansive. No delay, failure or

discontinuance of Grantee in exercising any right, power or remedy hereunder shall affect or operate as a waiver of such right, power or remedy hereunder or under the Credit Agreement or any of the other Loan Documents; nor shall any single or partial exercise of any such right, power or remedy preclude, waive or otherwise affect any other or further exercise thereof or the exercise of any other right, power or remedy hereunder or under the Credit Agreement or any of the other Loan Documents.

Section 5.08. Foreclosure. If Grantee exercises the right to foreclose the liens and security interests of this Mortgage by non-judicial foreclosure sale, Grantee shall do so in the following manner and upon the following terms and conditions:

(a) ***Public Sale.*** Upon the occurrence and continuance of an Event of Default, Grantee will sell all or any part of the Property at public auction to the highest bidder for cash (or for such cash equivalents as are allowed by applicable law and are acceptable to Grantee). Grantee may sell the Property either as a whole or in separate parcels and in such manner and order, all as Grantee may determine in its sole and absolute discretion. Neither Grantor nor any other Person shall have the right to direct the order in which the Property is sold. The sale will take place at the County Court House door considered the front or main door to the County Court House in the county or division of the county where the Property, or any substantial part of the Property, is located, between the hours of 11:00 a.m. and 4:00 p.m. on the first Tuesday of any month. If required by applicable law, the commencement of the sale must occur within three hours following the time designated in the notice of sale as the earliest time that the sale will occur. Any sale may be postponed or adjourned by announcement at the time and place appointed for the sale without further notice except as may be required by law. Grantee is not required to have either physical or constructive possession of the Property or to exhibit, present or display any of the Property being sold. Payment of the purchase price to Grantee satisfies the obligation of any purchaser at the sale. The purchaser is not responsible for the application of the purchase price. Following receipt of the purchase price, Grantee, or owner or the indebtedness and this Mortgage, or auctioneer at said sale will execute and deliver to the purchaser or purchasers at the sale good and sufficient conveyances, conveying the property so sold to the purchaser or purchasers in fee simple with general warranty of title. The recitals in said conveyances of any matters or facts shall be conclusive proof of the truthfulness thereof. The conveyances will be executed on behalf of, and will be binding upon, Grantor. If any sale made under this Mortgage is not completed or is defective in the opinion of Grantee, the sale will not exhaust the power of sale set forth in this Mortgage, and Grantee shall have the right to cause a subsequent sale or sales to be made.

The sale or sales of less than all of the Property shall not exhaust the power of sale herein granted. If the proceeds of such sale or sales of less than all of the Property shall be less than the aggregate amount of the Secured Obligations, and the expense of executing this Mortgage, this Mortgage shall remain in full force and effect as to the unsold portion of the Property. Grantee may bid, and being the highest bidder therefor, become the purchaser of any or all of the Property at any foreclosure sale hereunder and shall have the right to credit the amount of the bid upon the unpaid amount of the Secured Obligations in lieu of cash payment.

(b) ***Notice.*** The foreclosure sale shall be conducted after first giving notice of the time, place and terms of such sale by publication once a week for three successive weeks prior to said sale in some newspaper published in the county where the Property, or any substantial part of the Property, is located. Further, at least 21 calendar days preceding the date of the sale, Grantee must: (i) post written notice of the time, place and terms of the sale (including the earliest time that the sale will occur) at the courthouse door (or other area in the courthouse designated by applicable law for such public notices) in each county in which any portion of the Property is located; (ii) file a copy of the notice in the office of the county clerk in each county in which any portion of the Property is located; and (iii) serve Grantor and each debtor obligated to pay all or any portion of the Secured Obligations according to the records of Grantee with written notice of the proposed sale by certified mail. If no area of the courthouse has been designated by the commissioners'

court where sales are to take place, the notice of sale shall designate the area where the sale is to take place. Service of the notice is complete upon deposit of the notice, enclosed in a postpaid certified mail wrapper, properly addressed to Grantor and each such debtor at the most recent address shown by the records of Grantee, in a post office or official depository under the care and custody of the United States Postal Service. The affidavit of any individual having knowledge of the facts to the effect that such service was completed is prima facie evidence of the fact of service.

Section 5.09. Waiver of Redemption, Notice, and Marshaling of Assets. To the fullest extent permitted by applicable law, Grantor irrevocably and unconditionally waives and releases: (a) all benefit that may accrue to Grantor by virtue of any present or future law or judicial decision exempting the Property from attachment, levy, or sale on execution, or providing for any appraisement, valuation, stay of execution, exemption from civil process, right of redemption (equitable or legal), or extension of time for payment and (b) any right to a marshaling of assets or sale in inverse order of alienation or rights pertaining to the administration of the estates of descendants or any other right or matter which would defeat the right of Grantee to sell the Property for the collection of the Secured Obligations (without any prior or different resort for collection).

Section 5.10. Tenancy at Will. If Grantee forecloses the liens under this Mortgage at a time when Grantor or Grantor's heirs, devisees, representatives, successors, assigns or any other Persons claiming any interest in the Property by, through or under Grantor are occupying or using all or any part of the Property, each occupant immediately will become the tenant of the purchaser at the foreclosure sale. The tenancy will be a tenancy at will at a reasonable rental per day established by the purchaser and based upon the value of the portion of the Property occupied. Rent will be due daily to the purchaser. If the tenant fails to surrender possession of the Property upon written demand, tbe purchaser may institute and maintain an action for forcible entry and detainer.

ARTICLE VI
FIXTURE FILING

Section 6.01. Uniform Commercial Code Security Agreement. This Mortgage is intended to be a security agreement pursuant to the Uniform Commercial Code as adopted by the State of Alabama (as the same may be amended, restated, replaced, supplemented, or otherwise modified from time to time, the "UCC") for any of the items specified above as part of the Property which, under applicable law, may be subject to a security interest pursuant to the UCC, and Grantor hereby grants and conveys to Grantee a first and prior security interest in all of the Property that constitutes personal property (the "Collateral," for purposes of this Article VI), whether now owned or hereafter acquired. Grantor agrees that Grantee may file this Mortgage, or a reproduction hereof, in the real estate records or other appropriate index, as a financing statement for any of the items specified above as part of the Collateral. Any reproduction of this Mortgage or of any other security agreement or financing statement shall be sufficient as a financing statement. In addition, Grantee may submit for filing any financing statements, as well as extensions, renewals and amendments thereof, and reproductions of this Mortgage in such form as Grantee may deem appropriate to perfect a security interest with respect to the foregoing items. Grantor shall pay all costs of filing such financing statements and any extensions, renewals, amendments and releases thereof, and shall pay all costs and expenses of any record searches for financing statements Grantee may reasonably require.

Section 6.02. Grantor expressly warrants and covenants:

(a) Except for the security interest granted hereby, Grantor is the owner of the Collateral free from any lien, security interest or encumbrance other than the Permitted Encumbrances and the liens permitted by the terms of the Credit Agreement.

(b) The Collateral is used or bought primarily for use in the business of Grantor or an affiliate of Grantor and not for consumer purposes.

(c) Grantor's business address is as stated below. To the extent that any Collateral constitutes tangible personal property, that portion of such Collateral is located at or on or is used or owned for or in connection with the Property.

(d) Grantor shall promptly notify Grantee of any change in the location of the Collateral or any change in Grantor's principal place of business.

(e) Grantor shall pay when due, prior to delinquency, all taxes and assessments of every nature which may be levied or assessed against the Collateral, except to the extent being contested in good faith by appropriate proceedings.

(f) Except for liens in favor of Grantee, without Grantee's prior written consent (such consent in Grantee's sole and absolute discretion), Grantor shall not permit or allow any lien, security interest or encumbrance whatsoever upon the Collateral and shall not permit the Collateral to be attached or replevied, except for Permitted Encumbrances and as may otherwise be permitted by the Credit Agreement.

In the absence of the occurrence and continuance of an Event of Default, Grantor may have possession of the Collateral and use it in any lawful manner; upon the occurrence and continuance of an Event of Default, Grantee shall have the immediate right to the possession of the Collateral.

Upon the occurrence and continuance of an Event of Default, Grantee shall have the remedies of a secured party under the UCC, and Grantee may also invoke the remedies otherwise provided in this Mortgage or any of the other Loan Documents as to such items. In exercising any of said remedies, Grantee may proceed against the items of real property and any items of Collateral specified above separately or together and in any order whatsoever, without in any way affecting the availability of Grantee's remedies under the UCC or any of the other remedies provided in this Mortgage or any of the other Loan Documents. Within 10 calendar days following any request therefor by Grantee given after the occurrence or during the continuance of any Event of Default, Grantor shall prepare and deliver to Grantee a written inventory specifically listing all of the Collateral covered by the security interest herein granted, consistent in form, content, and specificity as Grantor maintains its books and records concerning such Collateral in the ordinary course of its business, which inventory shall be certified by Grantor as being true, correct, and complete in all material respects.

Portions of the Collateral are goods which are or are to become fixtures relating to the Property, and Grantor covenants and agrees that the filing of this Mortgage in the real estate records of the county where the Property is located shall also operate from the time of filing as a fixture filing in accordance with Section 9A-334 of the UCC.

Section 6.03. Fixture Filing. The following information is provided in order that this Mortgage shall comply with the requirements of the UCC for instruments to be filed as financing statements and with other requirements of applicable law:

(a)	Name of Grantor (Debtor) & Type of Organization:	COASTAL ALABAMA FARMERS' AND FISHERMEN'S MARKET, INC., an Alabama nonprofit corporation

	Address of Grantor:	c/o City of Foley 407 East Laurel Avenue Foley, AL 36535
(b)	Name of Grantee (Secured Party) & Type of Organization:	PACESETTER CDE X, LLC, a Texas limited liability company
	Address of Grantee:	c/o Pacesetter CDE, Inc. 2600 E. Southlake Boulevard Suite 120-105 Southlake, TX 76092
(c)	Record Owner of Real Estate Described on Exhibit A hereto:	GRANTOR
(d)	Grantor's Jurisdiction of Organization or Incorporation:	Alabama
(e)	Organizational No.:	291 - 432

ARTICLE VII
MISCELLANEOUS PROVISIONS

Section 7.01. No Merger. No merger shall occur as a result of Grantee acquiring any other estate in, or any other lien on, the Property.

Section 7.02. Execution of Documents. Grantor agrees, upon demand by Grantee, to execute any and all documents and instruments required to effectuate the provisions of this Mortgage.

Section 7.03. Right of Inspection. Section 5.9(a) of the Credit Agreement is incorporated herein by reference and made a part hereof.

Section 7.04. Notices. Except for any notice required under Section 5.08(b) or as otherwise required pursuant to any applicable law, any notice, request, demand, consent, approval, direction, agreement, or other communication (any "notice") required or permitted hereunder must be in writing and will be validly given only if (a) sent by a nationally-recognized courier that obtains receipts, (b) delivered personally by a courier that obtains receipts, (c) mailed by United States certified mail (with return receipt requested and postage prepaid), (d) sent by facsimile (with a copy of such facsimile and proof of transmission thereof sent via one of the methods of delivery set forth in clauses (a), (b) or (c) hereof), or (e) sent by email (with a copy of such email and proof of transmission thereof sent via one of the methods of delivery set forth in clauses (a), (b) or (c) hereof unless specified herein that such notice may be provided exclusively by email), addressed to the applicable Person at the address set forth on Schedule A to this Mortgage. Each notice shall be effective upon being so sent, delivered, or mailed, but the time period for response or action shall run from the date of receipt as shown on the delivery receipt. Refusal to accept delivery or the inability to deliver because of a changed address for which no notice was given shall be deemed received. Any 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 7.05. Successors; Assignment. This Mortgage shall be binding upon and inure to the benefit of the heirs, executors, administrators, legal representatives, successors and assigns of the parties hereto; *provided, however,* that this Section 7.05 does not waive the provisions of Section 4.12. Grantee reserves the right to

sell, assign, transfer, negotiate or grant participations in all or any part of, or any interest in, the rights and benefits of Grantee under the applicable Notes, any and all other Secured Obligations and this Mortgage, but only to the extent permitted under Section 10.10 of the Credit Agreement. The term "Grantee" shall include any subsequent holder of any or all of Grantee's Secured Obligations.

Section 7.06. Rules of Construction. (a) When appropriate based on the identity of the parties or other circumstances, the masculine gender includes the feminine or neuter or both, and the singular number includes the plural; (b) the term "Property" means all and any part of or interest in the Property; (c) all Article and Section headings herein are for convenience of reference only, are not a part of this Mortgage, and shall be disregarded in the interpretation of any portion of this Mortgage; and (d) all terms of Exhibit A, and each other Exhibit and Schedule attached hereto and recorded herewith, are incorporated herein by reference and made a part hereof.

Section 7.07. Severability of Provisions. If any provision of this Mortgage shall be held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity without invalidating the remainder of such provision or any remaining provisions of this Mortgage.

Section 7.08. Homestead. Grantor represents and agrees that if Grantor is an individual, no part of the Property constitutes or shall constitute any part of his or her personal, business or rural homestead.

Section 7.09. Relationship of Parties. No right or benefit conferred on Grantee under this Mortgage shall constitute or be deemed to constitute Grantee a partner or a joint venturer with Grantor. Grantor and Grantee specifically acknowledge that the relationship between Grantor and Grantee is solely that of grantor under and Grantee of this Mortgage and that all payments required to be made by Grantor to Grantee under this Mortgage and/or the Secured Obligations are required solely by reason of that relationship.

Section 7.10. Savings Clause. Section 15 (Usury Savings) of each Note is incorporated herein by reference and made a part hereof.

Section 7.11. CHOICE OF LAW; WAIVER OF JURY TRIAL AND CERTAIN OTHER RIGHTS; SUBMISSION TO JURISDICTION; SERVICE OF PROCESS.

(a) THE VALIDITY OF THIS MORTGAGE, THE CONSTRUCTION, INTERPRETATION, AND ENFORCEMENT HEREOF, AND THE RIGHTS OF GRANTOR AND GRANTEE 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, GRANTOR AND GRANTEE (BY ACCEPTING THIS MORTGAGE) HEREBY AGREE THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS MORTGAGE SHALL BE TRIED AND LITIGATED ONLY IN THE STATE AND FEDERAL COURTS LOCATED IN THE STATE OF ALABAMA. GRANTOR AND GRANTEE (BY ACCEPTING THIS MORTGAGE) HEREBY WAIVE, TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, ANY RIGHT EACH 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 7.11.

(c) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, GRANTOR AND GRANTEE (BY ACCEPTING THIS MORTGAGE) HEREBY WAIVE, TO THE FULLEST EXTENT

PERMITTED BY APPLICABLE LAW, ANY RIGHT EACH MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS MORTGAGE OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, 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 MORTGAGE. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, GRANTORAND GRANTEE (BY ACCEPTING THIS MORTGAGE) HEREBY (i) CERTIFY THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF GRANTOR OR GRANTEE HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, AND (ii) ACKNOWLEDGE THAT GRANTOR HAS BEEN INDUCED TO ENTER INTO, AND GRANTEE HAS BEEN INDUCED TO ACCEPT, THIS MORTGAGE BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 7.11.

(d) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, GRANTOR AND GRANTEE (BY ACCEPTING THIS MORTGAGE) HEREBY 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 EACH PERSON BY REGISTERED OR CERTIFIED MAIL TO OR BY PERSONAL SERVICE AT THE LAST KNOWN ADDRESS OF SUCH PERSON, WHETHER SUCH ADDRESS BE WITHIN OR OUTSIDE THE JURISDICTION OF ANY SUCH COURT.

(e) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, GRANTOR SHALL NOT ASSERT, AND HEREBY WAIVES, ANY CLAIM AGAINST GRANTEE OR ANY AFFILIATE OF GRANTEE, 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 MORTGAGE OR ANY AGREEMENT OR INSTRUMENT CONTEMPLATED HEREBY AND/OR THE TRANSACTIONS CONTEMPLATED HEREBY.

(f) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, GRANTOR 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 7.12. Enforcement Costs. In the event of any action at law or in equity to enforce the provisions of this Mortgage or to secure relief or damages for the breach of this Mortgage, 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 & NOTARY PAGE TO FOLLOW.]

IN WITNESS WHEREOF, Grantor has executed this Mortgage, Assignment of Rents and Leases and Fixture Filing as a sealed instrument as of the Effective Date.

GRANTOR:

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

By: _____
Name: John E. Koniar
Title: President

STATE OF ALABAMA)

COUNTY OF BALDWIN)

I, Nicole L. Bourg, a Notary Public in and for said County in said State, hereby certify that John E. Koniar, whose name as President of Coastal Alabama Farmers' and Fishermen's Market, Inc., an Alabama nonprofit corporation, 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 said instrument, he, as such member and with full authority, executed the same voluntarily for and as the act of said corporation.

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

Nicole L. Bourg
Notary Public

AFFIX SEAL

My commission expires: 1/18/2017

SCHEDULE A

Notice Addresses of Parties

(1)	If to Grantor:	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 Grantee:	Pacesetter CDE X, LLC c/o Pacesetter CDE, Inc. 2600 E. Southlake Boulevard Suite 120-105 Southlake, TX 76092 Attention: Giovanni Capriglione Email: giovanni@pacesettercde.com
	With a copy to:	Law Office of Mark D. Foster 4835 LBJ Freeway, Suite 424 Dallas, TX 75244 Attention: Mark D. Foster, Esq. Facsimile: 214-363-9551 Email: mark@mdfoster.com
	And copies to:	The addresses set forth under (4) below.
(3)	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

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SCHEDULE A (CONT'D)

Notice Addresses of Parties

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, 21st Floor Boston, MA 02110 Attention: Douglas R. Banghart, Esq. Facsimile: 617-449-6999 Email: dbanghart@jonesday.com

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EXHIBIT A

Exhibit A to Mortgage, Assignment of Rents and Leases and Fixture Filing executed as of July 11, 2014, by COASTAL ALABAMA FARMERS' AND FISHERMEN'S MARKET, INC., an Alabama nonprofit corporation, as Grantor, to PACESETTER CDE X, LLC, a Texas limited liability company, as Grantee.

DESCRIPTION OF PROPERTY

PARCEL 1:

A parcel of land situated in the Southeast quarter of the Southeast quarter and in the Southwes 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 Propert Minor Subdivision as recorded in Slide 0002434-A in the Probate Office of Baldwin County, Alabam and being more particularly described as follows:

Commence at the Southeast corner of Parcel 2 according to the survey and plat of Wilson Pecar 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 rur North 89°55'03" West along the South line of said Parcel 2 and along said right of way for 294.94 fee to the Point of Beginning of the herein described parcel; thence continue North 89°55'03" Wes along said right of way for 126.75 feet; thence run North 00°33'41" East for 325.00 feet; thence rur 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 foı 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 tc 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 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 foı 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" West for 348.46 feet to the point of beginning. Contains 13.782 acres, more or less.

PARCEL 2:

Commencing at a point where the centerline of 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 760.00 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 610.00 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.

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UCC-1 Financing Statement (Alabama)

(On File)

17425

BALDWIN COUNTY, ALABAMA
TIM RUSSELL PROBATE JUDGE
Filed/cert. 7/11/2014 1:15 PM
TOTAL $ 0.00
6 Pages

1466498

BALDWIN COUNTY, ALABAMA
TIM RUSSELL PROBATE JUDGE
Filed/cert. 7/11/2014 1:18 PM
TOTAL $ 31.00
5 Pages

0167661

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT FILER (optional)
Nicole Bourg

B. E-MAIL CONTACT AT FILER (optional)
nicole.bourg@arlaw.com

C. SEND ACKNOWLEDGMENT TO: (Name and Address)
Nicole Bourg
Adams and Reese LLP
P.O. Box 1348
Mobile, AL 36633

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

OR

1b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

1c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
407 East Laurel Avenue	Foley	AL	36535	USA

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
Pacesetter CDE X, LLC

OR

3b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

3c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
2600 E. Southlake Blvd., Suite 120-105	Southlake	TX	76092	USA

4. COLLATERAL: This financing statement covers the following collateral:

All of the Collateral as defined in that certain Mortgage, Assignment of Rents and Leases and Fixture Filing (the "Mortgage") dated July 11, 2014 by Coastal Alabama Farmers' and Fishermen's Market, Inc. and in favor of Pacesetter CDE X, LLC as more particularly described on Exhibit A attached hereto.

For Tax Collected See

Instrument # 1466497

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:
Baldwin County Probate Records

UCC FINANCING STATEMENT ADDENDUM

FOLLOW INSTRUCTIONS

9. NAME OF FIRST DEBTOR: Same as line 1a or 1b on Financing Statement, if line 1b was left blank because Individual Debtor name did not fit, check here ☐

9a. ORGANIZATION'S NAME

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

OR

9b. INDIVIDUAL'S SURNAME

FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S) | SUFFIX

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

10. DEBTOR'S NAME: Provide (10a or 10b) only one additional Debtor name or Debtor name that did not fit in line 1b or 2b of the Financing Statement (Form UCC1) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name) and enter the mailing address in line 10c

10a. ORGANIZATION'S NAME

OR

10b. INDIVIDUAL'S SURNAME

INDIVIDUAL'S FIRST PERSONAL NAME

INDIVIDUAL'S ADDITIONAL NAME(S)/INITIAL(S) | SUFFIX

10c. MAILING ADDRESS | CITY | STATE | POSTAL CODE | COUNTRY

11. ☐ ADDITIONAL SECURED PARTY'S NAME or ☐ ASSIGNOR SECURED PARTY'S NAME: Provide only one name (11a or 11b)

11a. ORGANIZATION'S NAME

OR

11b. INDIVIDUAL'S SURNAME | FIRST PERSONAL NAME | ADDITIONAL NAME(S)/INITIAL(S) | SUFFIX

11c. MAILING ADDRESS | CITY | STATE | POSTAL CODE | COUNTRY

12. ADDITIONAL SPACE FOR ITEM 4 (Collateral).

13. ☑ This FINANCING STATEMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS (if applicable)

14. This FINANCING STATEMENT: ☐ covers timber to be cut ☐ covers as-extracted collateral ☑ is filed as a fixture filing

15. Name and address of a RECORD OWNER of real estate described in item 16 (if Debtor does not have a record interest):

16. Description of real estate:

See Exhibit B attached hereto.

17. MISCELLANEOUS:

Exhibit A

All of the below listed property that constitutes personal property whether now owned or hereafter acquired:

(a) all right, title, and interest of Debtor, including any after-acquired title or reversions, in and to the beds of the ways, streets, avenues, alleys, easements, rights-of-way, gaps and gores, if any, adjoining the Land (as defined in the Mortgage) and any and all other, further, and additional right, title, or interest of any kind in or to said Land that at any time may be acquired by Debtor, all of which when acquired by Debtor shall be and become part of said real property;

(b) all improvements now or hereafter situated thereon including all of Debtor's gas and electrical fixtures, heaters, space heaters, engines and machinery, boilers, ranges, elevators and motors, bathtubs, sinks, water closets, basins, pipes, faucets and other air conditioning, plumbing and heating fixtures, drapes, mirrors, mantles, refrigerating plants, dishwashers and appurtenances, and all building material and equipment now or hereafter delivered to said real property and intended to be installed therein; such other goods, furnishings, equipment now or hereafter delivered to said real property and intended to be installed therein; such other furniture, fixtures, goods, equipment, chattels and personal property delivered to said real property from time to time; and all renewals or replacements thereof or articles in substitution thereof and all of the estate, right, title and interest of Debtor in and to all property of any nature whatsoever, now or hereafter situated on said real property or intended to be used in connection with the operation thereof, all of which, to the extent permitted by law, shall be deemed to be fixtures and an accession to the freehold and a part of the realty as between the parties hereto and all persons claiming by, through or under them and shall be deemed to be a portion of the security for the Secured Obligations (as defined in the Mortgage);

(c) all and singular the rights, interests and appurtenances whatsoever, in any way belonging, relating or appertaining to any of said real property or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Debtor including but not limited to all of Debtor's sewer capacity rights, all other capacity rights, and Debtor's rights under contracts, all building permits, driveway permits, and other permits, agreements, approvals, entitlements, utility commitments, licenses and all other documents, payments, fees, impact fees, prepaid tap fees, commitment fees, deposits and sums paid affecting said real property, condemnation proceeds and insurance proceeds paid with respect to said real property, and all rents, profits, issues and revenues of said real property from time to time accruing, under the Leases (as defined in the Mortgage). In addition, Debtor hereby assigns, transfers and conveys to Secured Party, its successors and assigns, all of Debtor's right, title and interest in, to and under all Leases, together with all Rents (as defined in the Mortgage); subject, however, to the conditional permission given to Debtor hereunder to collect the rents under any such Leases;

(d) all right, power, privilege, option, title and interest of Debtor in and under all present or future accounts, deposit accounts, investment property, documents, instruments, chattel paper, and general intangibles (including "payment intangibles") relating to said real property, as the foregoing terms are defined in the UCC (as defined in the Mortgage), all deposits, monies or escrows held by Secured Party or Secured Party's agents or affiliates (as defined in the Credit Agreement) or any accounts established pursuant hereto or pursuant to any other Loan Documents (as defined in the Mortgage), and all contract rights, Leases, derivative investments, letters of credit, and rate cap agreements, including casualty insurance policies and liability insurance policies, trade names, trademarks, service marks, logos, copyrights, goodwill, franchises, books, records, plans, specifications, permits, licenses, approvals, actions, claims under the United States Bankruptcy Code or any other reorganization, arrangement, insolvency, adjustment of debt or liquidation law of any jurisdiction, whether now in existence or

hereinafter in effect, and causes of action which now or hereafter relate to, are derived from or are used in connection with said real property or the use, operation, maintenance, occupancy or enjoyment thereof or the conduct of any business or activities thereon;

(e) all insurance proceeds payable to Debtor in connection with any damage or harm to relating to said real property, and any and all awards and other compensations arising from the exercise of the right of eminent domain, or any purchase in lieu thereof, over all or any part of said real property or the improvements thereon or any easement or appurtenances thereof, including any award for severance or consequential damages or for any change in the grade of streets;

(f) all of Debtor's right, title and interest, in and to all plans and specifications, and all construction, architectural, design, engineering, personal property, security and all other agreements regarding the development, construction, leasing, management or operation of said real property or the buildings, structures, or other improvements situated or to be situated thereon, and any other similar agreements that Debtor has entered into or in the future may enter into with respect to said real property or the buildings, structures, or other improvements situated or to be situated thereon, together with all additions thereto, substitutes therefor and modifications thereof;

(g) any refunds payable to Debtor with respect to the property resulting from any appeal or reassessment of real property taxes thereof, and together with any refunds or reimbursements payable with respect to bonds, escrow accounts or reimbursements payable in connection with the use, development and ownership of said real property; and

(h) all of Debtor's right, title and interest, if any, in and to all proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims. The listing of specific rights or property shall not be interpreted as a limitation of general terms.

Exhibit B

Parcel 1:

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" West for 348.46 feet to the point of beginning. Contains 13.782 acres, more or less.

Parcel 2:

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 decrees 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.

EXECUTION VERSION

GUARANTY OF PAYMENT AND COMPLETION

THIS GUARANTY OF PAYMENT AND COMPLETION (this "Guaranty") is made as of July 11, 2014 (the "Effective Date") by THE CITY OF FOLEY PUBLIC FACILITIES COOPERATIVE DISTRICT, an Alabama public corporation ("CFPFCD"), for the benefit of PACESETTER CDE X, LLC, a Texas limited liability company ("Lender").

RECITALS

A. Contemporaneously with this Guaranty, Lender and Coastal Alabama Farmers' and Fishermen's Market, Inc., an Alabama nonprofit corporation ("Borrower"), have entered into that certain Credit Agreement (as the same may be amended, assigned, restated, modified, or supplemented from time to time, the "Credit Agreement"), pursuant to which Lender has agreed to make loans to Borrower in the aggregate original principal amount of $8,000,000 (as more particularly described in the Credit Agreement, collectively, the "Loans").

B. Borrower shall use the proceeds of the Loans to construct a farmers' and retail market and a wholesale produce distribution facility (collectively, the "Improvements") located, respectively, at 20733 Miflin Road and 410 East Section Avenue, Foley, Alabama (collectively, the "Land"), all in accordance with (i) the Credit Agreement and (ii) the other Loan Documents (as defined in the Credit Agreement).

C. As a condition to making the Loans, Lender has required that CFPFCD guarantee completion of the construction and equipping of the Improvements and payment and performance of certain of Borrower's obligations under the Credit Agreement and the other Loan Documents, as provided in this Guaranty.

D. CFPFCD will derive substantial economic benefit, directly and/or indirectly, from Borrower's receipt of the Loans.

E. The execution and delivery of this Guaranty by CFPFCD is a condition precedent to the making of the Loans.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, in order to induce Lender to make the Loans to Borrower, and intending to be legally bound hereby, CFPFCD hereby covenants and agrees as follows:

1. Definitions. All capitalized terms utilized in this Guaranty but not otherwise defined shall have the meanings ascribed to them in the Credit Agreement.

2. Guaranteed Obligations. CFPFCD absolutely, unconditionally, and irrevocably guarantees to Lender each and all of the following (collectively, the "Guaranteed Obligations"):

(a) the full, complete and punctual observance, performance and satisfaction of all of the obligations, duties, covenants and agreements of Borrower under the Credit Agreement and

the other Loan Documents (including but not limited to the CMDA) with respect to the diligent and timely commencement, construction and Completion of the Improvements free of any claim for mechanics', materialmen's or any other liens, and in accordance with (i) all applicable requirements of any Governmental Authority having jurisdiction over the construction and equipping of the Improvements, (ii) any documents of record setting forth covenants, conditions, easements or restriction in the official records of the State in which the project is located, (iii) the Plans & Specifications, (iv) the Project Budget, and (v) the time periods and other requirements set forth in the Loan Documents, including, without limitation, and subject to, the following:

(A) to perform, complete and pay for (or cause to be performed, completed and paid for) all construction work required to achieve Completion of the Improvements (the "Construction Work") in accordance with the Credit Agreement and the other Loan Documents and to timely pay all costs of said Construction Work and all other costs associated with the construction and equipping of the Improvements;

(B) to perform the obligations, duties, covenants and agreements of Borrower under the CMDA (incorporated herein by reference and made a part hereof), including but not limited to Section 3.5 thereof;

(C) if any mechanics' or materialmen's lien, judgments or stop notices should be filed, or should attach, with respect to the Property by reason of the Construction Work, to promptly cause the removal or, subject to Lender's reasonable consent, bonding over of such liens, judgments or stop notices in accordance with the terms of the Credit Agreement or any other Loan Documents;

(D) subject to Section 6.2 of the Credit Agreement (incorporated herein by reference and made a part hereof), if any chattel mortgages, conditional vendor's liens or any liens, encumbrances or security interests whatsoever should be filed, or should attach, with respect to the personal property, fixtures, attachments and equipment (1) delivered upon the Property and owned by Borrower, (2) attached to the Property, or (3) used in connection with the Construction Work, to promptly cause the removal or, subject to Lender's reasonable consent, bonding over of such lien(s) and post security against the consequences of their possible foreclosure; and

(E) to pay all other fees, costs and expenses payable under the Credit Agreement or any other Loan Document or otherwise payable by Borrower to any Person in connection with the Construction Work or the Completion of the Improvements if such costs are not paid by Borrower;

(b) the prompt, full and complete performance and payment of the Loans and the interest thereon as and when the same shall become due and payable under the Notes, whether at stated maturity, by acceleration or otherwise, and any and all other sums of money payable by Borrower to Lender under the provisions of the Credit Agreement or any other Loan Document, including without limitation, the payment or reimbursement, as applicable, of fees and expenses of Lender and Lender's members or partners, as applicable;

(c) the payment in full of all actual losses, costs, expenses, claims or damages arising out of Borrower's or CFPFCD's fraud, gross negligence, willful misrepresentation, willful misconduct, physical waste, misappropriation and misapplication of funds, voluntary bankruptcy filings or other actions intended to cause or result in an event described in Section 8.1(a) of the Credit Agreement (incorporated herein by reference and made a part hereof);

(d) the prompt, full and complete performance and payment of Borrower's obligation to indemnify, protect, hold harmless and defend the Covered Persons in accordance with Section 5.12 of the Credit Agreement (incorporated herein by reference and made a part hereof); and

(e) the payment in full of any and all reasonable expenses, including, without limitation, (i) all reasonable attorneys', accountants', experts', consultants' fees and expenses and (ii) all disbursements and court costs prior to trial, incurred by Lender (whether at trial or on appeal) in the collection of all or any portion of CFPFCD's obligations under this Guaranty or the exercise or enforcement of any one or more of the rights, powers, privileges, remedies and interests of Lender under this Guaranty or the other Loan Documents, whether or not such expenses constitute part of Borrower's obligations; and

(f) the payment in full of all real estate taxes, other taxes and assessments, municipal charges, utility charges, insurance premiums for all policies of insurance required to be furnished by Borrower pursuant to the Credit Agreement, as well as interest, fees and charges (including, without limitation, late fees incurred) payable under the Credit Agreement or any other Loan Document or otherwise payable by Borrower to any Person in connection with the Property if such costs are not paid by Borrower.

All obligations described in Section 2(a) are referred to herein as the "Completion Obligations." All obligations described in Section 2(b) are referred to herein as the "Debt Payment Obligations." All obligations described in Section 2(c)-(f) are referred to herein as the "Other Payment Obligations."

3. Termination. Subject to Section 7, and provided that the Completion Obligations have been satisfied, this Guaranty shall terminate effective immediately upon payment in full of the Debt Payment Obligations and the Other Payment Obligations owed by Borrower or CFPFCD under the Loan Documents.

4. Unconditional Guaranty.

(a) The liability of CFPFCD under this Agreement shall be an absolute, continuing, direct, immediate present and unconditional guaranty of payment and performance and not of collection and is in no way conditioned or contingent upon any attempt to enforce Lender's rights against Borrower or to collect from Borrower or upon any other condition or contingency; accordingly, Lender shall have the right to proceed against CFPFCD immediately upon any Event of Default, without taking any prior action or proceeding to enforce the Credit Agreement or any other Loan Documents or for the liquidation or foreclosure of any security Lender may at any time hold pursuant to the Loan Documents.

(b) To the fullest extent permitted by applicable law, CFPFCD hereby (i) waives any right or claim of right to cause a marshalling of Borrower's assets or to cause Lender to proceed against any of the security for the Loans or for the obligations guaranteed by this Guaranty before proceeding against CFPFCD, (ii) agrees that any payments required to be made by CFPFCD under this Guaranty shall become due on demand in accordance with the terms hereof and without presentment to Borrower, demand for payment or protest, or notice of non-payment or protest, and (iii) except as provided in this Guaranty, to the fullest extent permitted by applicable law expressly waives and relinquishes all rights and remedies accorded by applicable law to guarantors.

(c) It is expressly understood that the waivers and agreements of CFPFCD set forth in this Guaranty (including but not limited to the waivers and agreements set forth in Section 4(a) and (b)) constitute additional and cumulative benefits given to Lender for its security and constitutes a material inducement to Lender to make the Loans.

(d) Lender may at any time and from time to time take any and/or all actions and enforce all rights and remedies available to it under this Guaranty or under applicable law to collect from CFPFCD any amounts then due and payable under this Guaranty by CFPFCD and/or to cause CFPFCD to fulfill its obligations under this Guaranty.

5. Liability Unimpaired.

(a) CFPFCD's liability under this Guaranty shall in no way be limited or impaired by, and CFPFCD hereby consents to and agrees to be bound by, any amendment or modification of the provisions of any of the Loan Documents agreed to in writing by the parties thereto, whether with or without notice to any CFPFCD and with or without consideration.

(b) In addition, CFPFCD's liability under this Guaranty shall in no way be limited or impaired by (i) any extensions of time for performance required by any of said documents, (ii) any sale or assignment of the Notes by Lender, (iii) any exculpatory provision in any of such instruments limiting Lender's recourse against Borrower, (iv) the release of Borrower or any other Person from performance or observance of any of the agreements, covenants, terms or conditions contained in any of such instruments by operation of law or otherwise, (v) the release or substitution in whole or in part of any security for the Loans, (vi) the invalidity, irregularity or unenforceability, in whole or in part, of any of the Loan Documents, this Guaranty, or any other instrument or agreement executed or delivered to Lender in connection with the Loans, except to the extent that there is a final adjudication by a court of competent jurisdiction of a valid defense to Borrower's obligations under the Loan Documents to payment of the Loans, (vii) the inaccuracy of any of the representations and warranties made by Borrower in the Credit Agreement or any other Loan Documents, or (viii) except to the extent prohibited by applicable law, any other action or circumstance whatsoever that constitutes, or might be construed to constitute, a legal or equitable discharge or defense (except full payment and satisfaction) of Borrower for its obligations under any of the Loan Documents or of CFPFCD under this Guaranty; and, in any such case, whether with or without notice to CFPFCD and with or without consideration.

(c) Any indebtedness of Borrower to CFPFCD now or hereafter existing is hereby subordinated to the payment and performance of the Guaranteed Obligations. CFPFCD acknowledges and agrees that CFPFCD will not seek, accept, or retain for its own account any payment from Borrower on account of such subordinated debt if an Event of Default or condition or event which, with the giving of notice or passage of time, or both, would constitute an Event of Default, has occurred and is continuing under any of the Loan Documents. Following the occurrence and during the continuation of any Event of Default or condition or event which, with the giving of notice or passage of time, or both, would constitute an Event of Default under any of the Loan Documents, any payments to CFPFCD on account of such subordinated debt shall be collected and received by CFPFCD in trust for Lender and shall be paid over to Lender for application on account of the Indebtedness owing under the Loan Documents without impairing or releasing the Guaranteed Obligations of CFPFCD hereunder.

6. Events of Default.

(a) Upon the occurrence and continuance of an Event of Default by Borrower under the Loan Documents, CFPFCD agrees, on demand by Lender (which demand may be made concurrently with notice to Borrower that such an Event of Default has occurred and is continuing), to perform all of the Guaranteed Obligations. Subject to the terms and conditions of the Credit Agreement, the CMDA, and the other Loan Documents, Lender shall make the undisbursed balance of its Loans available for disbursement to CFPFCD for the purpose of (i) fulfilling the Completion Obligations and (ii) subject to the sole but reasonable discretion of Lender, fulfilling the other Guaranteed Obligations. CFPFCD acknowledges and agrees that its failure to satisfy the conditions precedent for a Funds Release (as defined in the CMDA) shall not in any way whatsoever eliminate, limit or otherwise modify its Debt Payment Obligations or Other Payment Obligations.

(b) Lender shall have the right, at its option, but without any obligation to do so, either before, during or after commencing foreclosure or sale proceedings, as the case may be, and before, during or after pursuing any other right or remedy against Borrower or CFPFCD, to perform any and all of the obligations of Borrower and/or CFPFCD by or through any agent, contractor or subcontractor of its selection, all as Lender in its sole discretion deems proper, and CFPFCD shall indemnify and hold Lender free and harmless from and against any and all loss, damage, reasonable out-of-pocket cost and expense, injury, or liability Lender may suffer or incur in connection with the exercise of its rights under this Guaranty or the performance of the Guaranteed Obligations except to the extent such loss, damage, cost, expense, injury or liability results from the fraud, gross negligence, or willful misconduct of Lender. Furthermore, Lender shall not have any obligation to protect or insure any Collateral, nor shall Lender have any obligation to perfect its security interest in the Collateral.

(c) Notwithstanding anything else contained in this Guaranty, the Credit Agreement, or in any other Loan Document, and for the avoidance of doubt, any claims against Borrower or CFPFCD related to tax benefits derived by Bank in connection with the Property shall be governed exclusively by the QALICB NMTC Indemnity.

(d) All of the remedies set forth in this Guaranty and/or provided for in the Credit Agreement and the other Loan Documents or at law or equity shall be available to Lender, and

the choice by Lender of one such alternative over another shall not be subject to question or challenge by CFPFCD or any other Person, nor shall any such choice be asserted as a defense, setoff, or failure to mitigate damages in any action, proceeding, or counteraction by Lender to recover or seek any other remedy under this Guaranty, nor shall such choice preclude Lender from subsequently electing to exercise a different remedy. The parties have agreed to the alternative remedies hereinabove specified in part because they recognize that the choice of remedies in the event of a failure hereunder will necessarily be and should properly be a matter of good faith business judgment, which the passage of time and events may or may not prove to have been the best choice to maximize recovery by Lender at the lowest cost to Borrower and/or CFPFCD. It is the intention of the parties that such good faith choice by Lender be given conclusive effect regardless of such subsequent developments.

7. Reinstatement. This Guaranty shall continue to be effective, or be reinstated automatically, as the case may be, if at any time payment, in whole or in part, of any of the Guaranteed Obligations is rescinded or otherwise must be restored or returned by Lender (whether as a preference, fraudulent conveyance or otherwise) upon or in connection with the insolvency, bankruptcy, dissolution, liquidation or reorganization of Borrower, CFPFCD or any other Person, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, Borrower, CFPFCD or any other Person or for a substantial part of Borrower's, CFPFCD's or any of such other Person's property, as the case may be, or otherwise, all as though such payment had not been made. CFPFCD further agrees that in the event any such payment is rescinded or must be restored or returned, all costs and reasonable expenses (including without limitation all reasonable attorneys', accountants', experts', consultants' fees and expenses) incurred by or on behalf of Lender in defending or enforcing such continuance or reinstatement, as the case may be, shall constitute costs of enforcement, the payment of which is guaranteed by CFPFCD pursuant to Section 2.

8. [Intentionally Omitted].

9. Representations and Warranties. In order to induce Lender to accept this Guaranty and the other Loan Documents, CFPFCD represents and warrants to Lender (which representations and warranties will survive the extensions of credit under the Credit Agreement) that all of the representations and warranties made by Borrower with respect to CFPFCD under Article 4 of, and the Addendum to, the Credit Agreement (all of which are incorporated herein by reference and made a part hereof) are true and correct as of the Effective Date.

10. Affirmative Covenants. Unless the prior written consent to the contrary is obtained from Lender (which consent may be granted or withheld in Lender's sole and absolute discretion), CFPFCD will at all times comply with the covenants contained in Article 5 of the Credit Agreement that are applicable to CFPFCD (all of which are incorporated herein by reference and made a part hereof), from the Effective Date and for so long as any part of the Indebtedness is outstanding.

11. Negative Covenants. Unless the prior written consent to the contrary is obtained from Lender (which consent may be granted or withheld in Lender's sole and absolute discretion), CFPFCD will at all times comply with the covenants contained in Article 6 of the Credit Agreement that are applicable to CFPFCD (all of which are incorporated herein by reference and

made a part hereof), from the Effective Date and for so long as any part of the Indebtedness is outstanding.

12. Notices. Section 10.1 and Schedule A of the Credit Agreement are incorporated herein by reference and made a part hereof.

13. Amendments. This Guaranty may not be changed, waived, discharged or terminated orally or in any manner other than by an instrument in writing signed by CFPFCD and Lender.

14. Invalidity. In the event that any one or more of the provisions contained in this Guaranty is, for any reason, held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect any other provision of this Guaranty.

15. Survival of Agreements. All representations and warranties of CFPFCD herein, and all covenants and agreements in this Guaranty not fully performed as of the Effective Date, will survive the Effective Date.

16. Waivers. No course of dealing on the part of Lender or its officers, employees, consultants or agents, nor any failure or delay by Lender with respect to exercising any of its rights, powers or privileges under this Guaranty will operate as a waiver thereof.

17. Cumulative Rights. The rights and remedies of Lender under this Guaranty will be cumulative, and the exercise or partial exercise of any such right or remedy will not preclude the exercise of any other right or remedy available to Lender under this Guaranty, any of the other Loan Documents or by law or in equity.

18. Time of the Essence. Time is of the essence with respect to the payment and performance of all of CFPFCD's obligations and liabilities under this Guaranty.

19. Successors and Assigns.

(a) This Guaranty binds and benefits CFPFCD, Lender, and their respective, permitted successors and assigns.

(b) References to any Person herein shall include such Person's respective permitted successors and assigns.

(c) This Guaranty is for the benefit of Lender and for such other Person or Persons as may from time to time become or be the holders of any of the Indebtedness in accordance with the terms hereof, and to the extent set forth in the Credit Agreement, this Guaranty will be transferable and negotiable, with the same force and effect and to the same extent as the Indebtedness may be transferable, it being understood that, upon the transfer or assignment by Lender of any of the Indebtedness, the legal holder of such Indebtedness will have all of the rights granted to Lender under this Guaranty.

20. Relationship Between the Parties. The relationship between Lender, on the one hand, and CFPFCD, on the other, will be solely that of lender and guarantor, and such relationship will not,

under any circumstances whatsoever, be construed to be a joint venture, joint adventure, or partnership.

21. Titles of Sections. All titles or headings to articles, sections, subsections or other divisions of this Guaranty or the exhibits hereto are only for the convenience of the parties and will not be construed to have any effect or meaning with respect to the other content of such articles, sections, subsections or other divisions, such other content being controlling as to the agreements hereunder.

22. Section References. References in this Guaranty to Sections are intended to refer to Sections of this Guaranty, unless otherwise specifically stated.

23. Singular and Plural. Words used herein in the singular, where the context so permits, will be deemed to include the plural and vice versa. The definitions of words in the singular herein will apply to such words when used in the plural where the context so permits and vice versa.

24. CHOICE OF LAW; WAIVER OF JURY TRIAL AND CERTAIN OTHER RIGHTS; SUBMISSION TO JURISDICTION; SERVICE OF PROCESS FOR ALL LOAN DOCUMENTS. Section 10.19 of the Credit Agreement is incorporated herein by reference and made a part hereof; *provided*, that each reference to "Borrower" therein shall be deemed a reference to CFPFCD, references to the "Agreement" therein shall be deemed a reference to this Guaranty, and references to Section 10.19 shall be deemed a reference to this Section 24.

25. [Intentionally Omitted].

26. Enforcement Costs. Section 10.22 of the Credit Agreement is incorporated herein by reference and made a part hereof; *provided*, that references to the "Agreement" therein shall be deemed a reference to this Guaranty.

27. [Intentionally Omitted].

28. Receipt and Review of Loan Documents. CFPFCD acknowledges and agrees that it has been provided with a copy of the Credit Agreement and each of the other Loan Documents it has requested and has reviewed such documents with counsel of its own choosing.

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

30. Signature. A faxed, scanned or photocopied signature to this Guaranty shall be deemed equivalent to an original signature.

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

IN WITNESS WHEREOF, CFPFCD has caused this Guaranty of Payment and Completion to be duly executed and delivered by its duly authorized official as of the Effective Date.

CFPFCD:

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

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

EXECUTION VERSION

JOINT AND SEVERAL HAZARDOUS SUBSTANCE GUARANTY AND INDEMNIFICATION AGREEMENT

THIS JOINT AND SEVERAL HAZARDOUS SUBSTANCE GUARANTY AND INDEMNIFICATION AGREEMENT (this "Indemnity") is made as of July 11, 2014 (the "Effective Date") by and among 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 ("Guarantor") (each of Borrower and Guarantor an "Indemnitor" and collectively, "Indemnitors"), and PACESETTER CDE X, LLC, a Texas limited liability company ("Lender").

Recitals

A. Lender has agreed to make loans to Borrower in the original aggregate original principal amount of $8,000,000 (collectively, the "Loans"), which Loans will be (a) advanced pursuant to the provisions of the Credit Agreement (as defined below), (b) evidenced by and payable in accordance with the provisions of the Notes (as defined in the Credit Agreement), and (c) secured by the Mortgage (as defined in the Credit Agreement);

B. Guarantor will derive substantial economic benefit, directly and/or indirectly, from Borrower's receipt of the Loans; and

C. Lender is willing to make the Loans only if Indemnitors execute and deliver this Indemnity.

Agreement

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, and in order to induce Lender to make the Loans, each Indemnitor hereby acknowledges, agrees and confirms that all of the above recitals are true, correct and complete and hereby covenants and agrees with Lender as follows:

1. Recitals; Definitions. All capitalized terms utilized in this Indemnity but not otherwise defined shall have the meanings ascribed to them in the Credit Agreement. For the purposes of this Indemnity the following terms shall have the following meanings:

(a) "Contamination" means the emission, discharge or release of any Hazardous Substance to, on, onto or into the Environment and the effects of such emission, discharge or release, including the presence or existence of any such Hazardous Substance.

(b) "Credit Agreement" means that certain Credit Agreement, dated as of the Effective Date, by and between Lender and Borrower, as the same may be amended, assigned, restated, modified, or supplemented from time to time.

(c) "Debt" shall mean all principal, interest, additional interest (including specifically all interest accruing from and after the commencement of any case, proceeding or

action under any existing or future laws relating to bankruptcy, insolvency or similar matters with respect to Borrower) and other sums of any nature whatsoever which may or shall become due and payable pursuant to the provisions of the Notes, the Credit Agreement, the Mortgage, or any other Loan Documents (all of the above unaffected by modification thereof in any bankruptcy or insolvency proceeding), and even though Lender may not have an allowed claim for the same against Borrower as a result of any bankruptcy or insolvency proceeding.

(d) "Environment" means navigable waters, waters of the contiguous zone, ocean waters, surface waters, groundwater, drinking water supply, land surface, soil, subsurface strata, indoor surfaces or outdoor or indoor air.

(e) "Environmental Laws" means, collectively, any and all laws, ordinances, rules, regulations, directives, orders, authorizations, decrees, notices, permits, binding plans, demand letters or other mandates, proscriptions or prescriptions of any nature, of a Governmental Authority relating in any way to any Hazardous Substance, Contamination, protection of the Environment, protection of natural resources, or human health and safety, including, without limitation, those relating to emissions, discharges, releases or threatened emissions, discharges or releases to, on, onto or into the Environment of, or exposures or threatened exposures to, any Hazardous Substance.

(f) "Environmental Liability" shall mean liabilities arising under any Environmental Law for response, remedial or investigation costs, and any other expenses (including reasonable attorney and consultant fees, laboratory costs and litigation costs) required under, arising from, or necessary to attain or maintain compliance with, Environmental Laws or relating to or arising from Contamination or Hazardous Substances.

(g) "Environmental Matters" means any matter arising out of or relating to (i) Contamination; (ii) Environmental Laws or compliance with Environmental Laws; (iii) protection of the Environment; or (iv) workplace, occupational and human health and safety.

(h) "Environmental Permits" means all approvals, consents, permits, licenses, registrations and authorizations required by applicable Environmental Laws in order to operate the Borrower's business, the Real Property and other owned or leased real property.

(i) "Hazardous Substance" shall mean any element, substance, compound or mixture whether solid, liquid or gaseous, that: (i) is or shall in the future be subject to regulation of any kind by any Governmental Authority with regard to protection of the Environment, natural resources or human health and safety; or (ii) the presence, existence or threatened presence or existence of which shall at any time give rise, under any theory of law or equity, to Environmental Liability.

(j) "Indemnified Party" and "Indemnified Parties" means, individually or collectively, as applicable, each of (i) Lender, (ii) Lender's directors, officers, managers, members or partners (as applicable), shareholders, agents, Affiliates, and employees, (iii) any assignee or successor in interest of all or part of Lender's interest in the Loans and/or the Loan Documents, (iv) any owner of a participation interest in any or all of the Loans and/or the Loan Documents, (v) any purchaser who acquires any or all of the Real Property from Lender, (vi) any

grantee of a deed or assignment in lieu of foreclosure of all or part of the Real Property whereby said grantee becomes vested in the Real Property, (vii) any court appointed receiver, and (viii) Bank and CCE.

(k) "Indemnity Documents" has the meaning set forth in Section 5(a).

(l) "Liabilities" has the meaning set forth in Section 6.

(m) "Off-Site Contamination" means Contamination or threatened Contamination at any real property previously owned, leased or operated by Borrower or any off-site location or locations to which the Borrower transported, arranged for the transportation of, disposed of, or otherwise caused or allowed to be present Hazardous Substances generated by Borrower. Off-Site Contamination shall not mean or include the effects or results of migration outside or beyond the boundary lines of the Real Property or other owned or leased real property.

(n) "On-Site Contamination" means Contamination exceeding applicable cleanup standards or remediation thresholds and the physical effects of such Contamination, in, on, under or about or emanating or migrating from the Real Property or other owned or leased real property or the threat of migration of Contamination exceeding applicable cleanup standards or remediation thresholds onto, at, into, under or from the Real Property or other owned or leased real property. On-Site Contamination shall mean and include the effects or results of migration outside or beyond the boundary lines of the Real Property or other owned or leased real property.

(o) "Other Guaranties" means any other guaranty of payment, guaranty of performance, completion guaranty, indemnification agreement or other guaranty or instrument creating any obligation or undertaking of any nature whatsoever (other than this Indemnity) now or hereafter executed and delivered by any Indemnitor to Lender, CCE, Bank or any of their respective Affiliates in connection with the Loans.

(p) "Other Obligations" has the meaning set forth in Section 8(a).

(q) "Real Property" means, collectively, the "Land" as defined in the Mortgage, and the improvements now or hereafter situated thereon.

2. Environmental Representations and Warranties. Indemnitors hereby represent and warrant to Lender that, to their knowledge, after due inquiry:

(a) Borrower is and in the past has been in compliance with Environmental Laws and Environmental Permits applicable to the Real Property and the Borrower's business carried on within the Real Property.

(b) No Contamination exists on, about, under or beneath the Real Property which could give rise to Environmental Liability.

(c) Borrower has not received any notification of Contamination with respect to the Real Property or other owned or leased real property.

(d) There are no above or underground storage tanks, asbestos containing materials, or equipment containing polychlorinated biphenyls on, about or beneath the Real Property or other owned or leased real property.

(e) Borrower has not received notice and does not have knowledge of:

(i) any claim, demand, investigation, enforcement action, Environmental Liability, statutory lien or other action instituted or threatened against the Borrower, Borrower's business, the Real Property or other owned or leased real property by a Governmental Authority pursuant to any Environmental Law;

(ii) any claim, demand notice, suit or action, made or threatened by any person against the Borrower, Borrower's business, the Real Property or other owned or leased real property relating to (A) any form of damage, loss or injury resulting from, or claimed to result from, Contamination on, about, beneath or arising from the Real Property or other owned or leased real property or (B) any alleged violation of the Environmental Laws by the Borrower or Borrower's business; or

(iii) any communication to or from any Governmental Authority arising out of or in connection with actual or alleged Contamination under, on, about or beneath the Real Property or other owned or leased real property or arising in connection with the operation of the Borrower's business, including without limitation, any notice of violation, citation, complaint, order, directive, request for information or response thereto, notice letter, demand letter or compliance schedule.

(f) No Hazardous Substances generated by the Borrower have ever been directly or indirectly sent, transferred, transported to, treated, stored, or disposed of at any site identified by a Governmental Authority as requiring or recommended for environmental investigation or cleanup.

(g) The Real Property has not been identified by any Governmental Authority as requiring or recommended for environmental investigation or cleanup.

(h) Borrower (i) currently holds all Environmental Permits required by Environmental Law for the Borrower's operation of the business, Borrower's activities and operations at the Real Property, and for any past or ongoing alterations or improvements at the Real Property; and (ii) any applications for renewal of such Environmental Permits have been submitted on a timely basis.

(i) The Borrower has not assumed, undertaken or otherwise become subject to any liability of any other person relating to or arising from any Environmental Law.

(j) Neither the Borrower's business nor the Real Property will require a material capital expenditure or annual operating expense to achieve or maintain compliance with applicable Environmental Law.

3. Indemnification for Environmental Matters. Indemnitors will defend, indemnify, and hold harmless each Indemnified Party from and against any and all claims, demands, penalties, causes of action, fines, liabilities, settlements, damages, costs, or expenses of whatever kind or nature, known or unknown, foreseen or unforeseen, contingent or otherwise (including, without limitation, counsel and consultant fees and expenses, investigation and laboratory fees and expenses, court costs, and litigation expenses) arising out of, or in any way related to:

(a) Environmental Liabilities relating to:

(i) On-Site Contamination;

(ii) Off-Site Contamination;

(iii) Exposure to one or more Hazardous Substance; or

(iv) Non-compliance or alleged non-compliance with Environmental Law.

(b) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to any such Hazardous Substance; and

(c) any lawsuit brought or threatened, settlement reached, or order or directive of or by any Governmental Authority relating to such Hazardous Substance.

4. Indemnification for Environmental Liability. Indemnitors absolutely and unconditionally agree to indemnify and to hold each Indemnified Party harmless from and against any and all Environmental Liability of any nature whatsoever, contingent or otherwise, foreseen or unforeseen, incurred by any Indemnified Party (including, without limitation, counsel fees) as a result of any delay or suspension in the construction of the Improvements resulting from any order or action taken by any Governmental Authority having jurisdiction over Environmental Matters or Hazardous Substances.

5. Indemnification for Enforcement. Each Indemnitor hereby indemnifies and shall hold harmless and defend each Indemnified Party at Indemnitors' sole cost and expense against any loss or liability, cost or expense (including, but not limited to, reasonable attorneys' fees and disbursements of any Indemnified Party's counsel, whether in-house staff, retained firms or otherwise), and all claims, actions, procedures and suits arising out of or in connection with:

(a) any ongoing matters arising out of this Indemnity and any document or instrument now or hereafter executed and/or delivered in connection herewith (collectively, the "Indemnity Documents");

(b) any amendment to, or restructuring of the obligations of any Indemnitor hereunder; and

(c) any and all lawful action that may be taken by Lender in connection with the enforcement of the provisions of this Indemnity or any of the other Indemnity Documents and the obligations of any Indemnitor thereunder, whether or not suit is filed in connection with

the same, or in connection with Borrower, any Indemnitor and/or any partner, joint venturer or shareholder thereof becoming a party to a voluntary or involuntary federal or state bankruptcy, insolvency or similar proceeding.

All sums expended by any Indemnified Party shall be payable on demand and, until reimbursed by Indemnitors pursuant hereto, shall bear interest at the default interest rate set forth in the Notes.

6. Right of Set-Off. In addition to any right available to Lender under applicable law or any other agreement, each Indemnitor hereby gives to Lender a continuing lien on, security interest in and right of set-off against all moneys, securities and other property of such Indemnitor and the proceeds thereof, now on deposit or now or hereafter delivered, remaining with or in transit in any manner to Lender, its correspondents, participants or its agents from or for Indemnitors, whether for safekeeping, custody, pledge, transmission, collection or otherwise or coming into possession of Lender in any way, and also, any balance of any deposit account and credits of any Indemnitor with, and any and all claims of such Indemnitor against, Lender or Bank at any time existing, as collateral security for all of the obligations of Indemnitors under this Indemnity, including fees, contracted with or acquired by Lender, whether joint, several, absolute, contingent, secured, matured or unmatured (for the purposes of this Section 6 and Sections 8, 10, and 19, collectively, the "Liabilities"), hereby authorizing Lender at any time or times, without prior notice, to apply such balances, credits or claims, or any part thereof, to such Liabilities in such amounts as it may select, whether contingent, unmatured or otherwise and whether any collateral security therefore is deemed adequate or not. The collateral security described herein shall be in addition to any collateral security described in any separate agreement executed by any Indemnitor. Lender, in addition to any right available to it under applicable law or any other agreement, shall have the right, at its option, to immediately set off against any Liabilities all monies owed by Lender in any capacity to any Indemnitor, whether or not due, and Lender shall, at its option, be deemed to have exercised such right to set off and to have made a charge against any such money immediately upon the occurrence of any events of default set forth below, even though such charge is made or entered on the books of Lender subsequent to those events.

7. Transfer of Real Property. The obligations and liabilities of Indemnitors under this Indemnity shall survive and continue in full force and effect and shall not be terminated, discharged or released, in whole or in part, irrespective of whether the Debt has been paid in full and irrespective of any foreclosure of the Mortgage, sale of the Real Property pursuant to the provisions of the Mortgage or acceptance by Lender, its successors or assigns of a deed or assignment in lieu of foreclosure or sale and irrespective of any other fact or circumstance of any nature whatsoever.

8. Other Remedies. Each Indemnitor hereby expressly agrees that this Indemnity is independent of, and in addition to, all collateral granted, pledged or assigned under the Loan Documents, and each Indemnitor hereby consents that from time to time, before or after any default by the Borrower, with or without further notice to or assent from any Indemnitor:

(a) any security at any time held by or available to Lender for any obligation of the Borrower, or any security at any time held by or available to Lender for any obligation of any other Person primarily, secondarily or otherwise liable for all or any portion of the Debt, any

other Liabilities and/or any other obligations of the Borrower or any other Person, other than Lender, under any of the Loan Documents (collectively, "Other Obligations"), including any guarantor of the Debt, the Liabilities and/or of any of such Other Obligations, may be accelerated, settled, exchanged, surrendered or released and Lender may fail to set off and may release, in whole or in part, any balance of any deposit account or credit on its books in favor of the Borrower, or any such other Person;

(b) any obligation of the Borrower, or of any such other Person, may be changed, altered, renewed, extended, continued, accelerated, surrendered, compromised, settled, waived or released in whole or in part, or any default with respect thereto waived; and

(c) Lender may extend further credit in any manner whatsoever to the Borrower, and generally deal with the Borrower or any of the above-mentioned security, deposit account, credit on its books or other Person as Lender may see fit;

and Indemnitors shall remain bound under this Indemnity, without any loss of rights by any Indemnified Party and without affecting the liability of any Indemnitor, notwithstanding any such exchange, surrender, release, change, alteration, renewal, extension, continuance, compromise, waiver, inaction, extension of further credit or other dealing. In addition, all moneys available to Lender for application in payment or reduction of the Debt, the Liabilities and/or any Other Obligations may be applied by Lender in such manner and in such amounts and at such time or times and in such order, priority and proportions as Lender may see fit.

9. Waivers by Indemnitors. Each Indemnitor hereby waives:

(a) notice of acceptance of this Indemnity;

(b) protest and notice of dishonor or default to any Indemnitor or to any other Person with respect to any obligations hereby guaranteed;

(c) all other notices to which any Indemnitor might otherwise be entitled; and

(d) any demand under this Indemnity.

10. Remedies. If any of the following shall occur:

(a) an Event of Default occurs under any of the Loan Documents; or

(b) any Indemnitor violates any provision of this Indemnity or any other guaranty or other agreement executed by them with respect to any of the Loans or this Indemnity;

then, and in such event, Lender may declare the Liabilities to be, and the same shall become, immediately due and payable and/or may exercise any or all of its remedies as set forth herein or at law or in equity.

11. No Other Action Necessary. This is a guaranty of payment and not of collection and each Indemnitor further waives any right to require that any action be brought against Borrower or any other Person or to require that resort be had to any security or to any balance of

any deposit account or credit on the books of Lender in favor of Borrower or any other Person. Any payment on account of or reacknowledgment of the Debt by Borrower, or any other Person liable therefor or action taken, payment or reacknowledgment made with respect to any Environmental Matters or to Lender in connection therewith, shall be deemed to be taken or made on behalf of all Indemnitors and shall serve to start anew the statutory period of limitations applicable to the obligations of Indemnitors with respect to any Environmental Matter or to Lender in connection herewith.

12. Successors and Assigns; Beneficiaries. This Indemnity confers rights and remedies upon Lender and the other Indemnified Parties. No Person, other than Lender and the other Indemnified Parties, has any rights or remedies under the Agreement. Each reference herein to an Indemnitor shall be deemed to include the heirs, executors, administrators and legal representatives, as applicable, of such Indemnitor, *provided*, *however*, that no Indemnitor shall in any event nor under any circumstance have the right, without obtaining the prior written consent of Lender, to assign or transfer its obligations and liabilities under this Indemnity, in whole or in part, to any other Person.

13. Construction; Singular and Plural; Obligations Joint and Several. Words used herein in the singular, where the context so permits, will be deemed to include the plural and vice versa. Lender may proceed against none, one or more of the Indemnitors at one time or from time to time as it sees fit in its sole and absolute discretion. If any party hereto shall be a partnership, the agreements and obligations on the part of Indemnitors herein contained shall remain in force and application notwithstanding any changes in the Persons composing the partnership and the term "Indemnitor" shall include any altered or successive partnerships but the predecessor partnerships and their partners shall not thereby be released from any obligations or liability hereunder. If any party hereto shall be a limited liability company, the agreements and obligations on the part of Indemnitors herein contained shall remain in force and application notwithstanding any changes in the Persons composing the limited liability company and the term "Indemnitor" shall include any altered or successive limited liability companies but the predecessor limited liability companies and their members shall not thereby be released from any obligations or liability hereunder. If any party hereto shall be a corporation, the agreements and obligations on the part of Indemnitors herein contained shall remain in force and application notwithstanding the merger, consolidation, reorganization or absorption thereof, and the term "Indemnitor" shall include such new entity, but the old entity shall not thereby be released from any obligations or liabilities hereunder. Borrower is executing this Indemnity as a further assurance that its obligations set forth herein will remain in full force and effect, notwithstanding the assignment or discharge of record of the Mortgage or any other fact or circumstances whatsoever.

14. No Waivers. No delay on the part of Lender in exercising any right or remedy under this Indemnity or failure to exercise the same shall operate as a waiver in whole or in part of any such right or remedy. No notice to or demand on any Indemnitor shall be deemed to be a waiver of the obligation of any of the undersigned or of the right of Lender to take further action without notice or demand as provided in this Indemnity. No course of dealing between any Indemnitor and Lender shall change, modify or discharge, in whole or in part, this Indemnity or any obligations of any Indemnitor.

15. Amendments; Cumulative Rights. This Indemnity may not be changed, waived, discharged or terminated orally or in any manner other than by an instrument in writing signed by Indemnitors and Lender. No waiver of any term, covenant or provision of this Indemnity shall be effective unless given in writing by Lender and if so given by Lender shall only be effective in the specific instance in which given. The execution and delivery hereafter to Lender by any Indemnitor of a new instrument of guaranty or any reaffirmation of guaranty, of whatever nature, shall not terminate, supersede or cancel this instrument, unless expressly so provided therein, and all rights and remedies of Lender hereunder or under any instrument of guaranty hereafter executed and delivered to Lender by any Indemnitor shall be cumulative and may be exercised singly or concurrently

16. Obligations Absolute. Each Indemnitor acknowledges that this Indemnity and each Indemnitor's obligations under this Indemnity are and shall at all times continue to be absolute, irrevocable and unconditional in all respects, and shall at all times be valid and enforceable irrespective of any other agreements or circumstances of any nature whatsoever which might otherwise constitute a defense to this Indemnity and the obligations of any Indemnitor under this Indemnity or the obligations of any other Person (including, without limitation, Borrower) relating to this Indemnity or the obligations of any Indemnitor hereunder or otherwise with respect to the Debt, including, but not limited to, a foreclosure of the Mortgage or the realization upon any other collateral given, pledged or assigned as security for all or any portion of the Debt, or the filing of a petition under Title 11 of the United States Code with regard to Borrower or Guarantor, or the commencement of an action or proceeding for the benefit of the creditors of Borrower or Guarantor, or the obtaining by Lender of title to, respectively, the Real Property or to any collateral given, pledged or assigned as security for the Debt by reason of the foreclosure or enforcement of the Mortgage or any other pledge or security agreement, the acceptance of a deed or assignment in lieu of foreclosure or sale, or otherwise.

17. Entire Agreement. This Indemnity (including the recitals, which are incorporated herein by reference and made a part hereof) constitutes the entire agreement among the parties pertaining to the subject matter hereof, and supersedes in their entirety any and all written or oral agreements previously existing between the parties with respect to such subject matter.

18. Indemnitors' Representations and Warranties. Each Indemnitor represents and warrants that:

(a) it has the full power and authority to execute and deliver this Indemnity and to perform its obligations under this Indemnity; the execution, delivery and performance of this Indemnity by such Indemnitor has been duly and validly authorized; and all requisite action has been taken by such Indemnitor to make this Indemnity valid and binding upon such party, enforceable in accordance with its terms;

(b) neither the execution and delivery of this Indemnity nor the consummation of the transactions contemplated hereby nor compliance with the terms and provisions hereof will violate any applicable provision of law or any applicable regulation or other manifestation of governmental action; and

(c) all necessary approvals, consents, licenses, registrations and validations of any Governmental Authority, including, without limitation, approvals required to permit the undersigned to execute and carry out the provisions of this Indemnity, for the validity of the obligations of the undersigned hereunder and for the making of any payment or remittance of any funds required to be made by the undersigned under this Indemnity, have been obtained and are in full force and effect.

19. Waiver of Guarantor's Rights Against Borrower; Effect of Bankruptcy. Notwithstanding any payments made by any Indemnitor pursuant to the provisions of this Indemnity, Guarantor irrevocably waives all rights to enforce or collect upon any rights which it now has or may acquire against Borrower either by way of subrogation, indemnity, reimbursement or contribution for any amount paid under Indemnity or by way of any other obligations whatsoever of Borrower to Guarantor, nor shall Guarantor file, assert or receive payment on any claim, whether now existing or hereafter arising, against Borrower in the event of the commencement of a case by or against Borrower under Title 11 of the United States Code. In the event either a petition is filed under said Title 11 of the United States Code with regard to Borrower or an action or proceeding is commenced for the benefit of the creditors of Borrower, this Indemnity shall at all times thereafter remain effective in regard to any payments or other transfers of assets to Lender received from or on behalf of Borrower prior to notice of termination of this Indemnity and which are or may be held voidable on the grounds of preference or fraud, whether or not the Debt has been paid in full. Any payment on account of or reacknowledgment of the Debt by Borrower, or any other Person liable therefor, or action taken, or payment or reacknowledgment made, of any of the obligations of Borrower to take and complete the actions specified in this Indemnity shall serve to start anew the statutory period of limitations applicable to each Indemnitor hereunder. The provisions of this Section 19 shall survive the term of this Indemnity and the payment in full of the Debt and all other Liabilities.

20. Notices. Section 10.1 and Schedule A of the Credit Agreement are incorporated herein by reference and made a part hereof.

21. CHOICE OF LAW; WAIVER OF JURY TRIAL AND CERTAIN OTHER RIGHTS; SUBMISSION TO JURISDICTION; SERVICE OF PROCESS FOR ALL LOAN DOCUMENTS. Section 10.19 of the Credit Agreement is incorporated herein by reference and made a part hereof; *provided*, that each reference to "Borrower" therein shall be deemed a reference to each Indemnitor, each reference to the "Agreement" therein shall be deemed a reference to this Indemnity, and each reference to Section 10.19 shall be deemed a reference to this Section 21.

22. Enforcement Costs. Section 10.22 of the Credit Agreement is incorporated herein by reference and made a part hereof; *provided*, that references to the "Agreement" therein shall be deemed a reference to this Indemnity.

23. Waiver of Defense. Each Indemnitor absolutely, unconditionally and irrevocably waives any and all right to assert or interpose any defense, setoff, counterclaim or crossclaim of any nature whatsoever with respect to this Indemnity or the obligations of such Indemnitor under this Indemnity, or the obligations of any other Person relating to this Indemnity, or the obligations of such Indemnitor hereunder or otherwise with respect to the Loans in any action or

proceeding brought by Lender to collect the Debt, or any portion thereof, or to enforce the obligations of Indemnitors under this Indemnity (provided, however, that the foregoing shall not be deemed a waiver of the right of any Indemnitor to assert any compulsory counterclaim maintained in a court of competent jurisdiction, if such counterclaim is compelled under local law or rule of procedure, nor shall the foregoing be deemed a waiver of the right of any Indemnitor to assert any claim which would constitute a defense, setoff, counterclaim or crossclaim of any nature whatsoever against Lender in any separate action or proceeding). Each Indemnitor hereby undertakes and agrees that this Indemnity shall remain in full force and effect for all of the obligations and liabilities of any Indemnitor hereunder, notwithstanding the maturity of the Loans, whether by acceleration, scheduled maturity or otherwise.

24. No Effect by Other Documents. No exculpatory provisions which may be contained in any Loan Document shall in any event or under any circumstances be deemed or construed to modify, qualify, or affect in any manner whatsoever the obligations and liabilities of any Indemnitor under this Indemnity.

25. Liabilities Cumulative. The obligations and liabilities of each Indemnitor under this Indemnity are in addition to the obligations and liabilities of each Indemnitor under the Other Guaranties. The discharge of any or all of any Indemnitor's obligations and liabilities under any one or more of the Other Guaranties by any Indemnitor or by reason of operation of law or otherwise shall in no event or under any circumstance constitute or be deemed to constitute a discharge, in whole or in part, of any Indemnitor's obligations and liabilities under this Indemnity. Conversely, the discharge of any or all of any Indemnitor's obligations and liabilities under this Indemnity by any Indemnitor or by reason of operation of law or otherwise shall in no event or under any circumstance constitute or be deemed to constitute a discharge, in whole or in part, of any Indemnitor's obligations and liabilities under any of the Other Guaranties.

26. Invalidity. In the event that any one or more of the provisions contained in this Indemnity is, for any reason, held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect any other provision of this Indemnity.

27. Survival of Agreements. All representations and warranties of Indemnitors herein, and all covenants and agreements in this Indemnity not fully performed as of the Effective Date, will survive the Effective Date.

28. Time of the Essence. Time will be deemed of the essence with respect to the payment and performance of all of the terms, provisions and conditions on the part of Indemnitors to be paid or performed under this Indemnity.

29. Relationship between the Parties. The relationship between Lender, on the one hand, and each Indemnitor, on the other, will be solely that of lender and indemnitor, and such relationship will not, under any circumstances whatsoever, be construed to be a joint venture, joint adventure, or partnership.

30. Titles of Sections. All titles or headings to articles, sections, subsections or other divisions of this Indemnity are only for the convenience of the parties and will not be construed

to have any effect or meaning with respect to the other content of such articles, sections, subsections or other divisions, such other content being controlling as to the agreements hereunder.

31. Section References. References in this Indemnity to Sections are intended to refer to Sections of this Indemnity, unless otherwise specifically stated.

32. Receipt and Review of Loan Documents. Each Indemnitor acknowledges and agrees that it has been provided with a copy of the Credit Agreement, Mortgage and each of the other Loan Documents it has requested and has reviewed such documents with counsel of its own choosing.

33. Counterparts. This Indemnity may be executed in any number of counterparts, each of which shall be an original and all of which shall constitute together but one and the same agreement. Faxed, scanned or photocopied signatures shall be deemed equivalent to original signatures.

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

IN WITNESS WHEREOF, the parties have executed this Joint and Several Hazardous Substance Guaranty and Indemnification Agreement as of the Effective Date.

BORROWER:

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

By: _____

Name: John E. Koniar
Title: President

[COUNTERPART SIGNATURE PAGE TO
JOINT AND SEVERAL HAZARDOUS SUBSTANCE GUARANTY AND
INDEMNIFICATION AGREEMENT]

GUARANTOR:

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

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

[COUNTERPART SIGNATURE PAGE TO
JOINT AND SEVERAL HAZARDOUS SUBSTANCE GUARANTY AND
INDEMNIFICATION AGREEMENT]

LENDER:

PACESETTER CDE X, LLC, a Texas limited liability company

By: Pacesetter CDE, Inc., a Texas corporation, its managing member

By: _____
Name: Giovanni Capriglione
Title: Secretary

EXECUTION VERSION

CONSTRUCTION MONITORING AND DISBURSEMENT AGREEMENT

by and among

JPMORGAN CHASE BANK, N.A.,
a national banking association,
in its capacity as Disbursement Agent and Bank,

PACESETTER CDE X, LLC,
a Texas limited liability company,
as Lender

and

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

Dated as of July 11, 2014

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CONSTRUCTION MONITORING AND DISBURSEMENT AGREEMENT

THIS CONSTRUCTION MONITORING AND DISBURSEMENT AGREEMENT (this "Agreement") is made as of July 11, 2014 (the "Effective Date"), by and among JPMORGAN CHASE BANK, N.A., a national banking association, in its capacity as Disbursement Agent hereunder (in such capacity, "Disbursement Agent"), JPMORGAN CHASE BANK, N.A., a national banking association, its capacity as holder of the Disbursement Account defined below (in such capacity, "Bank"), COASTAL ALABAMA FARMERS' AND FISHERMEN'S MARKET, INC., an Alabama nonprofit corporation ("Borrower"), and PACESETTER CDE X, LLC, a Texas limited liability company ("Lender").

RECITALS

A. Borrower owns those certain tracts of land located at 20733 Miflin Road, Foley, Alabama 36535 and 410 East Section Avenue, Foley, Alabama 36535 (collectively, the "Land") and the existing improvements thereon, on which Borrower is constructing the Project (as defined below).

B. On the Effective Date, Lender is making loans to Borrower in the aggregate original principal amount of $8,000,000 (collectively, the "Loan") to provide financing for the Project, pursuant to the Credit Agreement (as defined below).

C. On the Effective Date, and pursuant to the Closing Transfers Memorandum (as defined below) and the Credit Agreement: (i) Lender will advance all proceeds of the Loan into the Disbursement Account (as defined below) established by Borrower with Bank and pledged to Lender to secure the Loan, and (ii) Lender, Borrower, and Disbursement Agent have agreed that Bank will disburse certain Loan proceeds from the Disbursement Account in order to enable Borrower to pay certain fees, costs, and expenses of Borrower, reimburse certain Affiliates (as defined below) for costs previously incurred in connection with the Project, and establish and fund a certain reserve (collectively, the "Initial Payment").

D. Following the Initial Payment, the proceeds of the Loan remaining in the Disbursement Account will be applied as set forth in the Credit Agreement and this Agreement.

E. From time to time, as further described below, Borrower may be required to deposit amounts required to cure any Deficiency (as defined below) into the Disbursement Account for application to the costs of the Project.

F. Lender and Borrower have requested that Disbursement Agent, for so long as Disbursement Agent is engaged by Lender as "Disbursement Agent" hereunder, (i) process each Release of Funds Request (as defined below), (ii) authorize Bank to disburse Unreleased Funds (as defined below) from the Disbursement Account on behalf of and for the benefit of Lender, and (iii) monitor the Project in accordance with the terms of this Agreement (collectively, the "Services").

G. The parties are entering into this Agreement for the purposes of (i) Lender engaging Disbursement Agent to perform the Services, (ii) establishing procedures for each Release of Funds Request, and (iii) such other purposes as described herein.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

ARTICLE 1
GENERAL TERMS

Section 1.1 Definitions. All capitalized terms not otherwise expressly defined herein shall have the meanings assigned to them in the Credit Agreement. In addition, the following terms shall have the following meanings in this Agreement:

(a) "Accepted Practices" has the meaning set forth in Section 4.2(a).

(b) "Affiliate" means, when used with reference to a specified Person: (i) any Person that, directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with the specified Person, including by means of a non-member manager; (ii) any Person that is an officer of, manager of, member of, partner in, or trustee of, or serves in a similar capacity with respect to the specified Person or of which the specified Person is an officer, manager, member, partner, or trustee, or with respect to which the specified Person serves in a similar capacity; (iii) any Person that, directly or indirectly, is the beneficial owner of, or controls, 10% or more of any class of equity securities of, or otherwise has a substantial beneficial interest (10% or more) in, the specified Person, or of which the specified Person is directly or indirectly the owner of 10% or more of any class of equity securities, or in which the specified Person has a substantial beneficial interest (10% or more); (iv) any relative or spouse of the specified Person. As used in this definition, the term "control" (including the terms "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

(c) "Agreement" has the meaning set forth in the introductory paragraph, as the same may be amended, assigned, restated, modified, or supplemented from time to time.

(d) "Allocatee" means Pacesetter CDE, Inc., a Texas corporation.

(e) "Architect" means McCollough Architecture, Inc., an Alabama corporation, the architect selected by Borrower to design the Improvements and supervise the Project and approved by Lender.

(f) "Authorized Representative" has the meaning set forth in Section 3.1.

(g) "Bad Act" means, with respect to any Person, such Person's willful misconduct, gross negligence or fraud.

(h) "Bank" has the meaning set forth in the introductory paragraph to this Agreement.

(i) "Borrower" has the meaning set forth in the introductory paragraph to this Agreement.

(j) "Borrower Parties" means, collectively, Borrower, CFPFCD and any other Persons liable for payment or performance of the indebtedness and obligations under the Loan Documents.

(k) "Business Day" means any day other than a Saturday, Sunday or any day on which commercial banks in Baldwin County, Alabama, or New York, New York, are authorized or required to be closed.

(l) "CFPFCD" means The City of Foley Public Facilities Cooperative District, an Alabama public corporation.

(m) "Closing Transfers Memorandum" means that certain Closing Transfers Memorandum, dated as of the Effective Date, to which Lender, Allocatee, Disbursement Agent, and Borrower (together with certain other parties) are parties, which sets forth certain funds transfers to be made in connection with the closing of the Loan.

(n) "Completion Date" means May 1, 2015.

(o) "Completion of the Improvements" means (i) the Improvements shall contain all equipment, furnishings and fixtures required for the intended use of the Property (*i.e.*, a farmers' market and wholesale distribution facility) and/or which may be required by Governmental Authorities and/or by any law, regulation or rule of any Governmental Authority, (ii) permanent certificates of occupancy and all other necessary certificates, licenses, consents and other approvals of Governmental Authorities have been issued or made with respect to the Improvements (subject to the Credit Agreement, temporary certificates of occupancy (if applicable) may be provided instead of permanent certificates of occupancy), and (iii) title to the Property is clear and no liens or encumbrances exist against the Property not previously approved in writing by Lender.

(p) "Construction Consultant" has the meaning set forth in Section 3.6(a).

(q) "Construction Manager" means Sun Coast Builders, Inc., an Alabama corporation, the contractor selected by Borrower to construct the Improvements and approved by Lender.

(r) "Credit Agreement" means that certain Credit Agreement, dated as of the Effective Date, by and between Lender and Borrower, as the same may be amended, assigned, restated, modified, or supplemented from time to time.

(s) "Deficiency" has the meaning set forth in Section 3.5(a).

(t) "Deficiency Deposit" has the meaning set forth in Section 3.5(b).

(u) "Development Expense Schedule" means the detailed line item cost breakdown of land costs, construction costs (hard costs) and all other related indirect development costs, including without limitation, interest expense, design and engineering costs, construction management, inspection and development fees, loan fees, expense payments and reimbursements, and costs for permits and approvals (soft costs) submitted to and approved by Lender.

(v) "Disbursement Account" means that certain account established by Borrower with Bank into which deposits shall be made from time to time in accordance with this Agreement and the other Loan Documents, which account is more particularly described in the P&C Agreement.

(w) "Disbursement Agent" has the meaning set forth in the introductory paragraph to this Agreement.

(x) "Disbursement Agent Party" means, as applicable, Disbursement Agent or any of its Affiliates, partners, members, managers, directors, officers, agents, employees, or successors or assigns.

(y) "Effective Date" has the meaning set forth in the introductory paragraph to this Agreement.

(z) "Event of Default" means, in regard to the Loan Documents, any breach, violation, or default thereunder that remains uncured following the expiration of such grace or cure period (if any) as shall be provided for such breach, violation, or default under such Loan Documents.

(aa) "Funds Release" has the meaning set forth in Section 3.1.

(bb) "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.

(cc) "Governmental Requirements" means all applicable existing and future laws, regulations, ordinances, building codes, restrictions and requirements of, and all agreements with and commitments to, all governmental, judicial or legal authorities having jurisdiction over any part of the Project, including those pertaining to the construction, sale, leasing or financing of the Project, and with all recorded covenants and restrictions affecting the Property and Project.

(dd) "Improvements" means the construction of a farmers' market and wholesale distribution facility located on the Land pursuant to the Plans & Specifications, which, upon completion, is anticipated to include a famers' market-style pavilion consisting of approximately 9,500 square feet and a warehouse facility consisting of approximately 2,040 square feet, and all related improvements and fixtures.

(ee) "Indemnitee Party" means, as applicable, Lender, Allocatee, Bank, Disbursement Agent or any of their Affiliates, partners, members, managers, directors, officers, agents, accountants, counsel, employees, or successors or assigns.

(ff) "Initial Deposit" has the meaning set forth in Section 2.1(a).

(gg) "Initial Payment" has the meaning set forth in the Recitals.

(hh) "Land" has the meaning set forth in the Recitals.

(ii) "Lender" has the meaning set forth in the introductory paragraph to this Agreement.

(jj) "Lender Approval Period" has the meaning set forth in Section 3.2(b).

(kk) "Liabilities" means, collectively, any and all claims, suits, actions, damages, liabilities, losses, costs, expenses (including without limitation reasonable attorneys', accountants', experts', and consultants' fees and expenses, court costs and investigative expenses) or for any interruption of services, or incidental, consequential, special or punitive damages.

(ll) "Loan" has the meaning set forth in the Recitals.

(mm) "Loan Documents" means, collectively, all documents that evidence, govern, or secure the Loan and obligations of Borrower and other Persons relating to the Loan, including but not limited to this Agreement, the Credit Agreement, the Notes, the Mortgage, the P&C Agreement, and the Closing Transfers Memorandum.

(nn) "Material Adverse Effect" means, with respect to any Person, a material adverse effect upon such Person's business, assets, liabilities, condition (financial or otherwise), results of operations or business prospects. With respect to Borrower and CFPFCD, a "Material Adverse Effect" shall include, but not be limited to, a material adverse effect upon Borrower's or CFPFCD's ability to perform its respective obligations under the Loan Documents or upon the enforceability of such obligations against Borrower or CFPFCD, as applicable.

(oo) "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.

(pp) "New Markets Tax Credit Program" means the program of the Internal Revenue Service and the Community Development Financial Institutions Fund, a wholly-owned governmental corporation within the United States Department of Treasury, related to the tax credits able to be claimed pursuant to Section 45D of the Internal Revenue Code of 1986, as amended.

(qq) "Notes" means, collectively, the QLICI loan notes made by the Borrower with respect to the Loan and payable to the order of Lender, delivered pursuant to the Credit Agreement, together with any amendments, extensions, modifications, supplements, restatements, refinancings, substitutions or renewals thereto or thereof.

(rr) "Obligations" means all indebtedness and obligations of Borrower under the Credit Agreement and the other Loan Documents.

(ss) "P&C Agreement" means that certain Account Pledge and Control Agreement (Disbursement Account), dated as of the Effective Date, by and among Bank, Lender, and Borrower, as the same may be amended, assigned, restated, modified, or supplemented from time to time.

(tt) "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.

(uu) "Plans & Specifications" means the final plans and specifications for the Improvements, including architectural drawings, engineering drawings, landscape drawings and all other plans and specifications, all as amended from time to time, subject to the terms of the Credit Agreement.

(vv) "Progress Report" has the meaning set forth in Section 3.6(c).

(ww) "Program Manager" means HOAR Program Management, LLC, a Delaware limited liability company, the program manager selected by Borrower to supervise construction of the Improvements.

(xx) "Project" means the construction of the Improvements.

(yy) "Project Budget" means the budget for Project, including, without limitation, all items on the Development Expense Schedule. The applicable pages of the Projections evidencing the Project Budget are attached hereto as Exhibit B.

(zz) "Property" means the Land and the Improvements.

(aaa) "Projections" means the financial projections, dated as of the Effective Date and certified by Novogradac & Company LLP, issued in connection with the transactions contemplated in this Agreement and the other Loan Documents.

(bbb) "Release of Funds Request" has the meaning set forth in Section 3.1.

(ccc) "Retainage" has the meaning set forth in Section 3.10(a).

(ddd) "Services" has the meaning set forth in the Recitals.

(eee) "Title Company" means Alabama Land Title Company, Inc., an Alabama corporation.

(fff) "Title Policy" means a lender's title policy issued by the Title Company in favor of Lender in form and substance satisfactory to Lender as required under the Credit Agreement, for the Property, showing the Mortgage as a first mortgage lien against Borrower's interest in the Property and showing no exceptions to title not previously approved by Lender together with evidence that all premiums for such policy have been paid.

(ggg) "Termination Notice" has the meaning set forth in Section 6.1(a).

(hhh) "Unreleased Funds" means the funds remaining in the Disbursement Account at any particular time, including, without limitation, any and all monies deposited in the Disbursement Account after the Effective Date, and all interest or other earnings earned thereon.

(iii) "UCC" means the Uniform Commercial Code as adopted by the State of Alabama, as the same may be amended, restated, replaced, supplemented, or otherwise modified from time to time.

ARTICLE 2
INITIAL DEPOSIT AND INITIAL PAYMENT

Section 2.1 Initial Deposit and Initial Payment.

(a) On the Effective Date, Loan proceeds advanced by Lender to Borrower pursuant to the Closing Transfers Memorandum and the Credit Agreement will be deposited into the Disbursement Account (such deposit is referred to herein as the "Initial Deposit"). The Initial Deposit shall be deemed advanced under the Credit Agreement and the Notes for all purposes and will accrue interest at the interest rate under the applicable Notes from and after the Effective Date.

(b) Disbursement Agent (on behalf of Lender) hereby directs Bank to release proceeds of the Initial Deposit in an amount sufficient to enable Borrower to make the Initial Payment.

(c) Unreleased Funds will be held and disbursed for application to Project costs in accordance with this Agreement.

ARTICLE 3
FUND RELEASES; DEFICIENCY

Section 3.1. Release of Funds Request. To request that Disbursement Agent authorize a release of Unreleased Funds (each a "Funds Release"), Borrower will make an application for release of Unreleased Funds by sending Disbursement Agent (with a copy thereof concurrently to Lender, which copy may be

provided exclusively by email) a release of funds request (a "Release of Funds Request") in the form attached hereto as Exhibit A. Borrower will not submit more than one Release of Funds Request per month. Each Release of Funds Request will (a) include a detailed breakdown of the Project costs to which the release of Unreleased Funds will be applied, including but not limited to the requisition of Construction Manager and (b) be signed by an authorized officer of Borrower, or such other Person as is designated in writing by Borrower (an "Authorized Representative"). Borrower will be entitled to request the reimbursement of Project costs it paid with funds other than Loan proceeds and, if applicable, will identify same on a Release of Funds Request.

Section 3.2. Processing of Release of Funds Request.

(a) Disbursement Agent will have 10 Business Days from the receipt of a complete Release of Funds Request (*i.e.*, one that contains all required information and materials pursuant to Section 3.9 and/or Section 3.11, as applicable) within which to review and approve or disapprove of such Release of Funds Request.

(b) Lender will have 5 Business Days from the receipt of a complete Release of Funds Request (which may be provided exclusively by email) within which to review and approve or disapprove (which approval or disapproval may be provided exclusively by email) of such Release of Funds Request (the "Lender Approval Period"). If Lender does not send notice to Disbursement Agent of an objection to the Release of Funds Request during the Lender Approval Period, Lender will be deemed to have approved same and Disbursement Agent will be authorized (if Disbursement Agent itself approves such Release of Funds Request) to direct Bank to make the applicable Funds Release from the Disbursement Account. If Lender sends notice to Disbursement Agent within the Lender Approval Period objecting to the Funds Release, such notice must provide, in sufficient detail, the reason for such objection, and Lender will provide Borrower with a copy of such notice.

(c) If (i) Lender objects to a Release of Funds Request during the Lender Approval Period in accordance with Section 3.2(b), and Disbursement Agent recommends approval of such Release of Funds Request, or (ii) if Disbursement Agent identifies deficiencies in a Release of Funds Request and recommends against approval, and notwithstanding Disbursement Agent's advice, Lender recommends approving such Release of Funds Request, then Disbursement Agent and Lender shall promptly meet and confer in person or by telephone to discuss the Release of Funds Request at issue and to reconcile their positions. If, at the expiration of the 10 Business Day period during which Disbursement Agent shall approve or disapprove a Release of Funds Request, Lender and Disbursement Agent remain unable to agree regarding the approval or disapproval of a Release of Funds Request, then Lender, in the exercise of its business judgment, agrees that it shall follow and shall be deemed to have consented to the recommendation of Disbursement Agent regarding the approval or disapproval of a Release of Funds Request.

Section 3.3. Conditions Precedent to Approval of Release of Funds Request.

(a) No Funds Release will be permitted or authorized unless the conditions precedent for the release of Unreleased Funds set forth in this Agreement have been satisfied, or have been waived by Lender in writing pursuant to Section 3.9 or Section 3.11, as applicable, or unless Lender shall have consented or shall be deemed to have consented to such Funds Release pursuant to Section 3.2. Disbursement Agent has the right to take such actions as Lender is entitled to take under the Loan Documents to verify that such conditions precedent have been satisfied, and to obtain such lien releases and other assurances for the benefit of Lender as Lender would be entitled to receive in accordance with the terms of the Loan Documents.

(b) If Disbursement Agent determines in its sole but reasonable discretion that the conditions precedent for the release of Unreleased Funds have not been fulfilled, Disbursement Agent will notify Lender and Borrower of the same (which notice may be provided exclusively by email). If, on the other hand, Disbursement Agent determines, in its sole but reasonable discretion, that such conditions precedent have been fulfilled, and provided that the Release of Funds Request has been approved (or deemed approved) by Lender pursuant to Section 3.2, Disbursement Agent will authorize a Funds Release as provided in this Agreement.

(c) Notwithstanding anything to the contrary set forth herein, Disbursement Agent is authorized during its engagement hereunder to release amounts necessary to make regularly scheduled payments of interest from the Disbursement Account (or other specified Borrower account(s)) as necessary to make regularly scheduled payments of interest on the Loan in accordance with the Loan Documents. In connection with the foregoing, Borrower shall, upon request of Disbursement Agent, provide Disbursement Agent with (i) an executed Transfer of Third Party Funds letter, substantially in the form attached hereto as Exhibit C, or (ii) an executed Chase NMTC Transfer of Funds Authorization letter, substantially in the form attached hereto as Exhibit D.

Section 3.4. Application of Proceeds of Funds Release. Upon authorization of a Funds Release, the released funds will be applied to Project costs identified in the applicable Release of Funds Request.

Section 3.5. Deficiency.

(a) If at any time, upon the sole but reasonable determination of Lender or Disbursement Agent, the actual cost for the Completion of the Improvements in accordance with the Project Budget exceeds the aggregate amount of the Unreleased Funds and any other budgeted sources of funds for the Project (the amount by which such cost exceeds the Unreleased Funds and other budgeted sources of funds for the Project, hereinafter referred to as the "Deficiency"), Lender or Disbursement Agent, as applicable, will send a notice (which notice may be provided exclusively via email) to Borrower and the other parties hereto.

(b) Within 7 calendar days after receipt of a notice of a Deficiency, Borrower shall deposit into the Disbursement Account funds in the amount of the Deficiency (a "Deficiency Deposit"). The failure of Borrower to make the required Deficiency Deposit as set forth in the immediately prior sentence (i) will constitute a default under this Agreement and an Event of Default under the Credit Agreement and (ii) in addition to all other remedies provided for under this Agreement and the other Loan Documents, will entitle Disbursement Agent and Lender, each in its sole but reasonable discretion, to disapprove any additional Fund Releases unless and until the required Deficiency Deposit is made.

(c) All Deficiency Deposits by Borrower shall be made in the form of electronic transfers delivered to Bank, by wire transfer or other form of electronic transfer to Bank, for deposit to the Disbursement Account, in accordance with the wire transfer instructions as set forth in the Closing Transfers Memorandum or in such other form or manner as may hereafter be approved in writing by (i) Lender or Disbursement Agent (acting on behalf of Lender) and (ii) Bank.

Section 3.6. Construction Consultant; Other Consultants; Program Manager.

(a) Disbursement Agent or Lender may retain an inspecting architect and/or any other consultants (each, a "Construction Consultant") deemed necessary or desirable by Lender or Disbursement Agent, at Borrower's expense, to make periodic inspections of the Project and to review all change orders requiring Lender's approval relating to the Project. Additionally, Lender, at Borrower's expense, may retain such other consultants as Lender deems necessary or convenient to perform such

services as may, from time to time, be required by Lender in connection with this Agreement, the Project, the Loan, or the Credit Agreement or any other Loan Document.

(b) Borrower has retained Program Manager to make periodic inspections of, and review all change orders submitted in connection with, the Project. As of the Effective Date, each of Disbursement Agent and Lender has decided to forego retaining a Construction Consultant; *provided*, Program Manager (i) provides Disbursement Agent and Lender with copies of all recommendations, reports and other writings relating to the Project (including without limitation all Progress Reports) simultaneously with providing copies thereof to Borrower or any Affiliate thereof and (ii) each Progress Report specifically provides that Disbursement Agent and Lender are entitled to rely on such report. All costs of Program Manager, including but not limited to any costs charged or imposed by Program Manager to comply with the foregoing, shall be at Borrower's expense. Notwithstanding anything to the contrary set forth herein, Borrower hereby acknowledges that each of Disbursement Agent and Lender reserves the right in its sole and absolute discretion to retain a Construction Consultant at any time and without prior notice to or approval by Borrower. If a Construction Consultant is retained, such Construction Consultant shall provide, on behalf of Disbursement Agent and Lender, the services previously provided by Program Manager (including without limitation providing Disbursement Agent and Lender with Progress Reports as set forth in Section 3.6(c)).

(c) Before any Funds Release is made in response to a Release of Funds Request, Lender or Disbursement Agent, (i) Program Manager or (ii) Construction Consultant (if retained) and/or, at the election of Disbursement Agent, Disbursement Agent's own personnel, will (A) inspect all work and materials for which payment is requested and all other work upon the Project, (B) review the current Release of Funds Request, (C) approve such work and Release of Funds Request, and (D) submit to Lender and Disbursement Agent a progress inspection report (a "Progress Report"). Each Progress Report shall approve or disapprove, as applicable, the work upon the Project and the Release of Funds Request. The author of each Progress Report (*i.e.*, Program Manager, Construction Consultant or Disbursement Agent's own personnel) shall provide a copy of such report to Disbursement Agent and Lender promptly upon completion thereof.

(d) Lender, Disbursement Agent, and their respective agents and representatives (including but not limited to Construction Consultant (if retained)) may enter and visit the Property at any reasonable time following reasonable prior notice to Borrower for the purposes of (i) performing an appraisal, (ii) observing the Project, and (iii) examining all materials, Plans & Specifications, working drawings, and other documentation relating to the Project. Borrower and Borrower's agents and representatives shall assist Lender, Disbursement Agent, and their respective agents and representatives as is reasonably necessary to enable them to perform the foregoing tasks.

(e) It is expressly understood and agreed that neither Disbursement Agent nor Lender is under any duty to supervise or to inspect the Project, and that any such inspection by or on behalf of Disbursement Agent or Lender is for the sole purpose of protecting the interests of Lender with respect to the Property and Project. Failure to inspect the work or any part thereof shall not constitute a waiver of any of Lender's rights hereunder. Inspection not followed by notice of Default or Event of Default shall not constitute a waiver of any Default or Event of Default then existing; nor shall it constitute an acknowledgment that there has been or will be compliance with the Plans & Specifications or applicable legal requirements or that the Project is free from defective materials or workmanship. It is further understood and agreed that any consents or approvals of Disbursement Agent or Lender hereunder are for the sole purpose of protecting the interests of Lender under the Loan Documents and Borrower shall have no right to rely on such approvals for Borrower's purposes.

(f) Borrower hereby acknowledges that (i) Program Manager shall in no event or under any circumstance have any power or authority to make any decision or to give any approval or consent or to do any other act or thing which is binding upon Disbursement Agent or Lender and any such purported decision, approval, consent, act or thing by Program Manager on behalf of Disbursement Agent or Lender shall be void and of no force or effect, (ii) notwithstanding the recommendations of Program Manager, each of Disbursement Agent and Lender reserves the right to make any and all decisions required to be made by Disbursement Agent and Lender, respectively, under this Agreement and to give or refrain from giving any and all consents or approvals required to be given by Disbursement Agent or Lender, as applicable, under this Agreement and to accept or not accept any matter or thing required to be accepted by Disbursement Agent or Lender, respectively, under this Agreement, without in any instance being bound or limited in any manner or under any circumstance whatsoever by any opinion expressed or not expressed, or advice given or not given, or information, certificate or report provided or not provided, by Program Manager to Disbursement Agent, Lender or any other Person with respect thereto, and (iii) each of Disbursement Agent and Lender reserves the right in its sole and absolute discretion to disregard or disagree, in whole or in part, with any opinion expressed, advice given or information, certificate or report furnished or provided by Program Manager to Disbursement Agent, Lender or any other Person.

(g) Borrower hereby acknowledges that (i) if retained, Construction Consultant will be retained by Disbursement Agent and Lender to act as a consultant and only as a consultant to Disbursement Agent and Lender in connection with the Project, (ii) Construction Consultant shall in no event or under any circumstance have any power or authority to make any decision or to give any approval or consent or to do any other act or thing which is binding upon Disbursement Agent or Lender and any such purported decision, approval, consent, act or thing by Construction Consultant on behalf of Disbursement Agent or Lender shall be void and of no force or effect, (iii) notwithstanding the recommendations of Construction Consultant, each of Disbursement Agent and Lender reserves the right to make any and all decisions required to be made by Disbursement Agent and Lender, respectively, under this Agreement and to give or refrain from giving any and all consents or approvals required to be given by Lender under this Agreement and to accept or not accept any matter or thing required to be accepted by Disbursement Agent or Lender, respectively, under this Agreement, without in any instance being bound or limited in any manner or under any circumstance whatsoever by any opinion expressed or not expressed, or advice given or not given, or information, certificate or report provided or not provided, by Construction Consultant to Disbursement Agent, Lender or any other Person with respect thereto, (iv) each of Disbursement Agent and Lender reserves the right in its sole and absolute discretion to disregard or disagree, in whole or in part, with any opinion expressed, advice given or information, certificate or report furnished or provided by Construction Consultant to Disbursement Agent, Lender or any other Person, and (v) each of Disbursement Agent and Lender reserves the right in its sole and absolute discretion to replace Construction Consultant with another inspecting professional at any time and without prior notice to or approval by Borrower. Borrower shall have no right to receive copies of any written reports by Construction Consultant (including without limitation any Progress Report), but in the event Disbursement Agent or Lender makes such information or portions thereof available to Borrower, Borrower shall rely thereon at its own risk.

(h) Disbursement Agent and Lender may retain such other consultants as Disbursement Agent or Lender deems necessary or convenient to perform such services as may, from time to time, be required by Disbursement Agent or Lender, as applicable, in connection with this Agreement, the Project, the Loan, or the Credit Agreement or any other Loan Document.

Section 3.7. Non-Conforming Work. If Program Manager or, if retained, Construction Consultant determines that any work or materials do not substantially conform to the Plans & Specifications or sound building practices, or otherwise materially depart from any of the requirements of this Agreement or the Plans & Specifications, then Disbursement Agent (a) shall provide notice to Lender and Borrower of the

applicable nonconformity or departure (which notice may be provided exclusively by email), (b) shall require Borrower to promptly cause the work to be corrected to Program Manager's or Construction Consultant's (as applicable) satisfaction, and (c) Disbursement Agent shall cease further Funds Releases with respect to the non-conforming work until such work is corrected. If such non-conforming work is not corrected within 30 calendar days after Borrower's receipt of notice of the existence of such non-conforming work, then Disbursement Agent shall cease all further Funds Releases until such work is corrected. No action taken by Disbursement Agent or Lender in accordance with this Section 3.7 shall affect Borrower's obligation to complete the Project on or before the Completion Date.

Section 3.8. Cost Savings. If there is a savings in a particular line item set forth in the breakdown of Project costs, and if such savings are substantiated by evidence satisfactory to Lender and Disbursement Agent, Borrower, after obtaining the prior consent of Lender and Disbursement Agent, which consent may be withheld in the sole but reasonable discretion of Lender and Disbursement Agent, may reallocate such savings to other line items in the Project Budget with respect to which additional costs have been incurred or to the contingency reserve line item.

Section 3.9. Conditions Precedent to Fund Releases. Each of the following conditions precedent must be satisfied by Borrower, approved by Disbursement Agent, and approved (or deemed approved) by Lender prior to approval of any Release of Funds Request:

(a) Borrower shall have delivered a complete copy of the Release of Funds Request to Disbursement Agent and Lender in accordance with Section 3.2;

(b) all insurance coverage required to be maintained by Borrower under the Credit Agreement or by applicable law is in full force and effect;

(c) all representations and warranties contained in this Agreement and in the other Loan Documents are true and correct in all material respects;

(d) this Agreement and all other Loan Documents are in full force and effect;

(e) no Event of Default under the Loan Documents has occurred and is continuing (unless such Event of Default shall have been waived in writing by Lender);

(f) no event has occurred (including, without limitation, any litigation or administrative proceedings) and no condition exists or, to the knowledge of Borrower or CFPFCD, is threatened, which (i) had or could reasonably be expected to have a Material Adverse Effect on or to Borrower or CFPFCD or (ii) could reasonably be expected to constitute a default under this Agreement or any other Loan Document;

(g) the progress of the Project is such that the Completion of the Improvements is reasonably anticipated to be completed on or before the Completion Date;

(h) if applicable, Borrower has made all required Deficiency Deposits;

(i) all consents, licenses, permits, and other authorizations or approvals then required by any Governmental Authority with respect to the Project have been obtained and/or issued, or will be timely obtained in accordance with the Credit Agreement;

(j) if applicable, each of Disbursement Agent and Lender have received an updated endorsement to the Title Policy satisfactory thereto, which shall contain no additional liens or

encumbrances affecting the Property (except those that shall have been insured or bonded over to the satisfaction of Lender and Disbursement Agent) other than the Mortgage and those exceptions previously approved in writing by Lender;

(k) Disbursement Agent has received copies of notarized partial unconditional lien waiver forms executed by Construction Manager and each subcontractor, supplier and materialmen (with a copy of such lien waivers provided to Lender), including, without limitation, from all parties sending statutory notices to contractors, notices to owners, or notices of nonpayment, specifying in each such partial lien waiver the amount paid in consideration of such partial release, and covering all work and materials included in the Request for Funds Release;

(l) Disbursement Agent and Lender have received an AIA G702 Application and Certificate for Payment completed by Construction Manager and certified by Architect;

(m) Disbursement Agent and Lender (i) have received (if not previously delivered) a list of all subcontractors employed in connection with the Project, containing the name, address, and telephone number of each such subcontractor, a general statement of the nature of the work to be done, the labor and materials to be supplied, the names of new materialmen, if known, and the approximate dollar value of such labor or work with respect to each and (ii) have the right to make direct contact with each subcontractor and materialmen to verify the facts disclosed by said list or for any other purpose;

(n) Disbursement Agent and Lender have received copies of invoices or other reasonably acceptable documentation to substantiate Borrower's request for payments of hard and soft costs incurred for the Project;

(o) Architect has certified the results of regular, periodic inspections of the Project to Disbursement Agent and Lender, which must be satisfactory to Disbursement Agent and Lender in their sole and absolute discretion;

(p) the Progress Report from Program Manager or, if retained, Construction Consultant for the applicable Release of Funds Request recommending the funding of the Release of Funds Request;

(q) Disbursement Agent and Lender have received such other evidence as they may require that the Project is proceeding in accordance with the Plans & Specifications and the Project Budget, neither of which shall have been amended, restated or modified, except as expressly approved by Lender in accordance with the Credit Agreement;

(r) with respect to any payment for stored materials, the Release of Funds Request shall contain all of the items described in Section 3.10 with respect to such stored materials;

(s) Disbursement Agent and Lender have received an updated Construction Completion Schedule (which shall include a statement from Borrower regarding any anticipated variances with respect to the date of the Completion of the Improvements); and

(t) Borrower shall have furnished to Lender and Disbursement Agent such other instruments, documents, certificates, endorsements, invoices and opinions as Lender and Disbursement Agent may request to confirm satisfaction of the foregoing conditions.

In the event that any of the conditions precedent set forth in this Section 3.9 are not satisfied, Disbursement Agent will notify Lender and Borrower in writing (which notice may be provided exclusively by email). Unless and until such conditions precedent are satisfied by Borrower or waived by

Lender in writing (which waiver may be provided exclusively by email), Disbursement Agent will not release any funds to Borrower from the Disbursement Account.

Section 3.10. Retainage; Stored Materials; Further Covenants.

(a) Funds Releases from the Disbursement Account for the Construction Manager will be made on the basis of 90% of the cost of the work and materials in place on the Property, and the Construction Manager's overhead and profit, and of the cost of stored materials if allowed under Section 3.10(b), less the amount(s) previously released therefor. The percentage of Funds Releases held back during the course of the Project shall be hereinafter referred to as "Retainage." The Retainage will be released in accordance with Section 3.11.

(b) No Funds Releases shall be authorized for payment for stored materials, unless Lender and Disbursement Agent have provided their prior consent thereto. Upon approval of disbursements by Lender and Disbursement Agent for stored materials, all such stored materials must be incorporated into the Project within 45 calendar days of Borrower's Release of Funds Request regarding the storage of such materials, and the following conditions will apply:

(i) copies of all invoices related to such stored materials and a stored material inventory sheet have been submitted with the Release of Funds Request;

(ii) photographs (clearly marked) of such stored materials shall be submitted with the applicable Release of Funds Request;

(iii) with respect to materials stored on the Property, such materials have been adequately secured, as determined by Architect and either Program Manager or, if retained, Construction Consultant; and

(iv) with respect to materials stored off the Property, (A) proof of insurance of such off-site material has been provided, (B) proof of title to such off-site material has been provided, and (C) if requested by Disbursement Agent or Lender (each acting in its sole and absolute discretion), additional steps have been taken to properly perfect a security interest in such off-site material.

Section 3.11. Conditions Precedent to Final Funds Release. Each of the following conditions precedent must be satisfied by Borrower, approved by Disbursement Agent, and approved (or deemed approved) by Lender prior to approval of the final Release of Funds Request for the remaining Unreleased Funds:

(a) all conditions precedent set forth in Section 3.9, to the extent not modified or replaced in this Section 3.11, have been satisfied;

(b) written certification has been provided by Borrower, Architect, and Construction Manager to Disbursement Agent and Lender that the Project has been completed substantially in accordance with (i) the Plans & Specifications approved by Lender and (ii) all applicable Governmental Requirements;

(c) written certification has been provided by Program Manager or, if retained, Construction Consultant to Disbursement Agent and Lender that (i) Program Manager or, if retained, Construction Consultant has made regular inspections of the Project during the course of construction, (ii) the Project has been completed substantially in accordance with (A) the Plans & Specifications approved by Lender and (B) all applicable Governmental Requirements;

(d) if applicable, Disbursement Agent and Lender have received all final Certificates of Occupancy (or, subject to Section 5.14(a)(ii) of the Credit Agreement, temporary Certificates of Occupancy (if applicable)) issued by the applicable Governmental Authority, or other satisfactory evidence that all legal requirements of such jurisdiction to occupy and use the Project have been satisfied;

(e) Disbursement Agent and Lender have received final unconditional lien releases and waivers provided by Architect, Construction Manager, and all subcontractors for the work performed under the Architect Contract and Construction Contract;

(f) Disbursement Agent and Lender have received an AIA G702 Application and Certificate for Payment completed by Construction Manager and certified by Architect;

(g) if applicable, Disbursement Agent and Lender have received an Architect's Certificate of Completion (on a form to be provided by Disbursement Agent), together with the AIA G704 Certificate of Substantial Completion;

(h) Disbursement Agent and Lender have received a set of detailed "as-built" plans and specifications for the Project, including plans and specifications for architectural, structural, mechanical, plumbing, electrical and site development work (including storm drainage, utility lines and landscaping), approved as such by Borrower, Architect and Construction Manager;

(i) Borrower has provided Disbursement Agent and Lender with insurance certificates evidencing compliance with all insurance requirements under the Credit Agreement or by applicable law;

(j) if applicable, an endorsement to the Title Policy has been issued to Lender in a form approved by Lender, (i) affirmatively insuring against any and all mechanic's and materialmen's liens against the Property, (ii) removing the "pending disbursement" provision of the Title Policy, (iii) providing current survey coverage based on the as-built survey referred to in Section 3.11(k), (iv) removing any other qualifications or conditions to coverage based on completion of construction, and (v) showing no encroachments exist over any building, zoning, right-of-way or property boundary lines, and no exceptions to title other than those contained in the Title Policy or otherwise approved by Lender;

(k) Disbursement Agent and Lender have received a final "as-built" survey of the Project on the Property, describing the dimensions and location of all improvements constructed in place which conforms to the then current minimum detail requirements for ALTA/ACSM Land Title Surveys;

(l) if applicable, but only to the extent not previously received, Disbursement Agent and Lender shall have received a certified rent roll pertaining to leases in effect at such time (all of which shall have been entered into in accordance with the requirements of the Loan Documents), all tenants shall have provided an estoppel certificate to Lender confirming that such tenant has unconditionally accepted its premises, has commenced paying rent (or has unconditionally agreed that it is obligated to commence paying rent) and such other matters regarding the leases and the premises thereunder as Lender reasonably may require;

(m) if applicable, Borrower has provided Disbursement Agent and Lender with evidence that all real estate taxes which are due and payable for the current tax year have been paid in full; and

(n) Borrower shall have furnished to Lender and Disbursement Agent such other instruments, documents, certificates, endorsements, invoices and opinions as Lender and Disbursement Agent may request to confirm satisfaction of the foregoing conditions.

In the event that any of the conditions precedent set forth in this Section 3.11 are not satisfied, Disbursement Agent will notify Lender and Borrower in writing (which notice may be provided exclusively by email). Unless and until such conditions precedent are satisfied by Borrower or waived by Lender in writing (which waiver may be provided exclusively by email), Disbursement Agent will not release any funds to Borrower from the Disbursement Account.

After a release of funds pursuant to final Release of Funds Request (all in accordance with this Section 3.11), funds remaining in the Disbursement Account (including without limitation any interest earned), if any, not otherwise needed for any remaining Project soft costs will be the property of Borrower and shall be released to Borrower; *provided, however*, that such funds shall be held as a working capital reserve fund by Borrower to pay operating shortfalls of the Property and/or to fund capital improvements on the Property approved by Lender, subject to compliance by Borrower with New Market Tax Credit Program requirements. Notwithstanding the foregoing, such funds shall not be released to Borrower during the continuance of any Event of Default under the Loan Documents.

ARTICLE 4
DISBURSEMENT AGENT

Section 4.1. Appointment and Authorization of Disbursement Agent. Lender hereby appoints, designates, and authorizes Disbursement Agent to perform the Services on behalf of and for the benefit of Lender in accordance with the Accepted Practices.

Section 4.2. Accepted Practices.

(a) Disbursement Agent shall perform the Services on behalf of and for the benefit of Lender in accordance with the terms of this Agreement, and in furtherance of and to the extent consistent with such terms, in accordance with the same care, skill, prudence and diligence with which it performs similar services with respect to similar mortgage loans for its own account, giving due consideration to customary and usual standards of practice of prudent institutional commercial mortgage loan servicers (such administering and disbursing standards hereinafter referred to as the "Accepted Practices").

(b) Subject to the Accepted Practices, Disbursement Agent shall have full power and authority to do or cause to be done any and all things in connection with performing the Services which it may deem reasonably necessary or desirable.

(c) Notwithstanding any provision to the contrary contained in this Agreement or any other Loan Document, Disbursement Agent shall not have any duties or responsibilities except those expressly set forth in this Agreement, nor will Disbursement Agent have or be deemed to have any fiduciary relationship with Lender, Borrower, or any other Person, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist with respect to Disbursement Agent. Without limiting the generality of the foregoing sentence, any use of the term "agent" in this Agreement or in the other Loan Documents with reference to Disbursement Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead, such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship by and among independent contracting parties.

Section 4.3. Non-liability of Disbursement Agent.

(a) Borrower acknowledges and agrees that (i) the relationship between Borrower and Disbursement Agent, solely in its capacity as "Disbursement Agent" hereunder, is and shall remain solely

that of a borrower and an independent loan disbursement agent, respectively, and Disbursement Agent neither undertakes nor assumes any responsibility to select, review, inspect, supervise, pass judgment upon or inform Borrower of any matter in connection with the Project, including matters relating to the adequacy or legal sufficiency of any of the documents, agreements or arrangements pertaining to the Loan or the duties, obligations, and rights of any Person in connection therewith; and Borrower shall rely entirely on its own judgment with respect to such matters and acknowledges that any review, inspection, supervision, exercise of judgment or information supplied to Borrower by Disbursement Agent in connection with such matters is solely for the protection of Disbursement Agent and that neither Borrower nor any third party is entitled to rely on it and (ii) Disbursement Agent will process each Release of Funds Request and disburse Unreleased Funds in accordance with the Accepted Practices only for so long as Disbursement Agent is engaged by Lender pursuant to this Agreement.

(b) Lender acknowledges and agrees that Allocatee, as managing member of Lender, and not Disbursement Agent, is responsible for maintaining Allocatee's and Lender's compliance with all New Markets Tax Credit Program requirements.

(c) No Disbursement Agent Party will be held directly or indirectly liable or responsible for any Liabilities of Borrower, Lender or any other Person:

(i) arising from (A) any defect in any building, grading, landscaping or other onsite or offsite improvement, (B) any act or omission of Borrower or any of its agents, employees, independent contractors, licensees or invitees, (C) any accident on the Property or any fire, flood or other casualty or hazard thereon, (D) the failure of Borrower or any of its licensees, employees, invitees, agents, independent contractors or other representatives to maintain the Property in a safe condition, or (E) any nuisance made or suffered on the Property;

(ii) the validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any Loan Document (except as to Disbursement Agent's signatures thereon), or of any endorsements thereon, even if such documents should in fact prove to be in any or all respects invalid, insufficient, inaccurate, fraudulent, or forged; *provided*, that Disbursement Agent believes in good faith that such documents are valid, sufficient, and genuine;

(iii) any action taken or omitted to be taken by it under or in connection with this Agreement or any other Loan Document or the transactions contemplated hereby (except for the Bad Acts of such Disbursement Agent Party); or

(iv) any acknowledgement, recital, statement, representation or warranty made by Borrower or Lender contained in this Agreement or in any other Loan Document, or in any certificate, report, statement or other document referred to or provided for in, or received by Disbursement Agent under or in connection with, this Agreement or any other Loan Document;

provided, *however*, that the foregoing will not apply to Liabilities of any Disbursement Agent Party caused as a direct result of such Disbursement Agent Party's Bad Acts.

(d) Subject to the Accepted Practices, no Disbursement Agent Party will have any obligation to Borrower, Lender or any other Person to assure that the Property exists or is owned by Borrower or is cared for, protected or insured or that the liens or security interests granted under this Agreement or any other Loan Document have been properly or sufficiently or lawfully created, perfected, protected or enforced or are entitled to any particular priority.

Section 4.4. Reliance by Disbursement Agent. Disbursement Agent will be entitled to rely, and will be fully protected in relying, upon any writing, communication, signature, resolution, representation, notice, consent, certificate, affidavit, letter, telegram, facsimile, telex or telephone message, electronic mail message, statement or other document or conversation believed by it in its reasonable discretion to be genuine and correct and to have been signed, sent or made by the proper responsible officer, and upon advice and statements of legal counsel (including counsel to Lender and Borrower), independent accountants and other experts selected by Disbursement Agent.

Section 4.5. Disbursement Agent in Its Individual Capacity. Disbursement Agent and its Affiliates may make loans to, issue letters of credit for the account of, accept deposits from, acquire equity interests in and generally engage in any kind of banking, trust, financial advisory, underwriting or other business with Lender, Borrower, and any of their respective Affiliates as though Disbursement Agent were not "Disbursement Agent" hereunder and without notice to or consent of Lender.

Section 4.6. Resignation by or Termination of Disbursement Agent.

(a) Disbursement Agent may resign from its duties, obligations, and rights under this Agreement at any time after 30 calendar days' prior notice to Lender and Borrower, but in no event will Disbursement Agent be released of its obligations hereunder until the earlier to occur of the following: (i) a successor to Disbursement Agent is engaged by Lender in accordance with Section 4.6(d) or (ii) in Disbursement Agent's sole and exclusive discretion, not less than 45 calendar days after providing Lender and Borrower with the foregoing notice (regardless of whether a successor to Disbursement Agent has been engaged by Lender).

(b) Lender may terminate Disbursement Agent's duties, obligations, and rights under this Agreement at any time after 45 calendar days' prior notice to Disbursement Agent. Lender will provide a copy of such notice to Borrower.

(c) The resignation or termination of Disbursement Agent in accordance with this Agreement shall, without further action by any Person, release Disbursement Agent from its duties, obligations, and rights under the P&C Agreement. The parties acknowledge that the resignation or termination of Disbursement Agent in accordance with this Agreement shall not alter or modify the duties, obligations, and rights of Bank under this Agreement or the P&C Agreement.

(d) Lender, acting in its sole and absolute discretion, will designate a successor to Disbursement Agent (which may be Lender or an Affiliate thereof) after receipt of notice of resignation by Disbursement Agent or after terminating Disbursement Agent, as applicable. As a condition precedent to such designation, the successor to Disbursement Agent will assume all duties, obligations, and rights of Disbursement Agent under this Agreement and the P&C Agreement. Disbursement Agent agrees to reasonably cooperate with a successor agent in the orderly transitioning of its duties, obligations, and rights under this Agreement and the P&C Agreement to such designated successor.

(e) Any request for reimbursement of fees or out-of-pocket costs or expenses incurred by a retiring or terminated Disbursement Agent shall be deemed waived if it is not made within 60 calendar days after the date that such retirement or termination becomes effective.

ARTICLE 5
LENDER

Section 5.1. Lender Representations to Disbursement Agent. Lender hereby represents to Disbursement Agent that:

(a) Disbursement Agent has not made any representation or warranty to Lender other than as expressly set forth herein, and that no act by Disbursement Agent hereafter taken, including but not limited to any consent to and acceptance of any assignment or review of the affairs of Lender or any Affiliate thereof, will be deemed to constitute any representation or warranty by Disbursement Agent to Lender as to any matter, including whether Disbursement Agent has disclosed material information in its possession;

(b) Lender has, independently and without reliance upon Disbursement Agent and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, prospects, operations, property, financial and other condition and creditworthiness of the Borrower Parties, and all applicable bank or other regulatory laws relating to the transactions contemplated hereby, and made its own decision to enter into this Agreement and to extend credit under the Loan Documents;

(c) Lender will, independently and without reliance upon Disbursement Agent and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement or any other Loan Document, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of the Borrower Parties; and

(d) except for notices, reports and other documents expressly required to be furnished to Lender by Disbursement Agent in accordance with this Agreement, Disbursement Agent will not have any duty or responsibility to provide Lender with any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of Borrower or any of its Affiliates which may come into the possession of Disbursement Agent (including but not limited to any information obtained pursuant to activities of Disbursement Agent and its Affiliates within the scope of Section 4.5).

Section 5.2. Non-Liability of Lender. Lender shall have no liability to Borrower or any of Borrower's Affiliates, partners, members, managers, directors, officers, agents, employees, or successors or assigns with respect to any decision, approval or consent made or provided by Lender in connection with a Release of Funds Request (except to the extent arising from Lender's Bad Acts), and no decision, approval or consent by Lender with respect to a Release of Funds Request shall be deemed to be an approval or acceptance by Lender of any plans, specifications, work or materials done or furnished, or equipment or property purchased, with respect to the Project, or a representation by Lender as to the fitness of such plans, specifications, work, materials, equipment, or property.

ARTICLE 6
TERM OF AGREEMENT; INDEMNIFICATION

Section 6.1 Term of Agreement.

(a) This Agreement shall terminate upon (i) the occurrence of the later of: (A) Completion of the Improvements or (B) the release of the remaining Unreleased Funds to Borrower (after the conditions precedent for release of such funds set forth in Section 3.11 are satisfied by Borrower or waived or deemed to be waived by Lender) and (ii) the issuance by Lender or Disbursement Agent of a notice to Borrower and Bank (which notice may be provided exclusively by email) informing them of the termination of this Agreement (the "Termination Notice").

(b) Upon receipt of the Termination Notice, all funds then on deposit in the Disbursement Account, after payment of all accrued and unpaid fees of Bank and Disbursement Agent (if any), shall be released by Bank to Borrower in accordance with Section 3.11. Upon the release of such funds, Bank's duties with respect to the Disbursement Account shall irrevocably terminate.

(c) Borrower may submit a request to Lender and Disbursement Agent requesting that the Termination Notice be issued if Borrower reasonably believes that such notice is warranted; *provided*, the failure by Lender and/or Disbursement Agent to respond to Borrower's request shall not operate to terminate this Agreement or to otherwise modify the duties, obligations, and rights of the parties hereunder.

Section 6.2 Indemnification.

(a) Borrower hereby agrees to indemnify and hold harmless each Indemnitee Party from any and all Liabilities that relate directly or indirectly, in whole or in part, to: (i) a claim, demand or cause of action that a Person has or asserts against Borrower in connection with the development, operation or financing of the Project, (ii) any act or omission by Borrower, any contractor, subcontractor or material supplier, engineer, architect or other Person with respect to the Property, (iii) the ownership, occupancy or use of the Property, (iv) any instruction or request of Borrower in connection with this Agreement, (v) any release (or determination not to release) Unreleased Funds, or (vi) any other reasonable costs incurred in connection with this Agreement.

(b) An Indemnitee Party's right of indemnification under Section 6.2(a) will not be directly or indirectly limited, prejudiced, impaired or eliminated in any way by any finding or allegation that the conduct of Bank, Disbursement Agent, and/or Lender is active, passive or subject to any other classification or that Bank, Disbursement Agent, and/or Lender is directly or indirectly responsible under any theory of any kind for any act or omission by Borrower or any other Person other than an Indemnitee Party.

(c) Notwithstanding Section 6.2(a) and (b), Borrower will not be obligated to indemnify, defend or hold harmless an Indemnitee Party from or against any Liabilities (i) caused as a direct result of such Indemnitee Party's Bad Acts or (ii) that arise after such Indemnitee Party takes possession of the Property through foreclosure, deed-in-lieu of foreclosure or otherwise (unless resulting from acts or omissions of Borrower or its Affiliates prior to such Indemnitee Party taking possession).

(d) Notwithstanding Section 6.1 or any other provision to the contrary contained in this Agreement or any other Loan Document, the indemnity obligations of Borrower under this Section 6.2 and all other provisions of this Agreement (i) will survive the termination of this Agreement and (ii) will not be directly or indirectly limited, prejudiced, impaired or eliminated in any way with respect to Bank or Disbursement Agent if Bank or Disbursement Agent, as applicable, has resigned or has been terminated by Lender in accordance with this Agreement or the P&C Agreement, as applicable.

ARTICLE 7
MISCELLANEOUS

Section 7.1 Notices. Any notice, request, demand, consent, approval, direction, agreement, or other communication (any "notice") required or permitted hereunder must be in writing and will be validly given if (a) sent by a nationally-recognized courier that obtains receipts, (b) delivered personally by a courier that obtains receipts, (c) mailed by United States certified mail (with return receipt requested and postage prepaid), (d) sent by facsimile (with a copy of such facsimile and proof of transmission thereof sent via one of the methods of delivery set forth in clauses (a), (b) or (c) hereof), or (e) sent by email (with

a copy of such email and proof of transmission thereof sent via one of the methods of delivery set forth in clauses (a), (b) or (c) hereof unless specified herein that such notice may be provided exclusively by email), addressed to the applicable Person at the address set forth on Schedule A to this Agreement. Each notice shall be effective upon being so sent, delivered, or mailed, but the time period for response or action shall run from the date of receipt as shown on the delivery receipt, or the date the facsimile or email was sent, as applicable. Refusal to accept delivery or the inability to deliver because of a changed address for which no notice was given shall be deemed received. Any party may periodically change its address for notice (including different or additional addresses for copies) by giving the other party at least 10 calendar days' prior notice in accordance with the foregoing provisions.

Section 7.2 Headings and Section References. The headings used herein are for convenience only and do not limit or alter the terms of this Agreement or in any way affect the meaning or interpretation of this Agreement. References in this Agreement to Sections are intended to refer to Sections of this Agreement, unless otherwise specifically stated.

Section 7.3 Successors and Assigns.

(a) This Agreement shall bind and inure to the benefit of and be enforceable by Lender, Disbursement Agent, Bank, and Borrower and their respective, permissible successors and assigns.

(b) Lender shall have the right to assign or transfer its duties, obligations, and rights under this Agreement in connection with any assignment of all or any part of the Loan in accordance with the Loan Documents. Any assignee or transferee of Lender pursuant to the immediately preceding sentence shall be entitled to all the benefits afforded to Lender under this Agreement; *provided*, that such assignee or transferee shall have delivered to the other parties hereto written evidence that such assignee or transferee agrees to be bound by the terms of this Agreement.

Section 7.4 Incorporation of Exhibits, Recitals and Schedule. The Exhibits, Recitals, and Schedule identified in this Agreement are incorporated herein by reference and made a part hereof.

Section 7.5 Entire Agreement; Amendment and Modification. This Agreement (together with other Loan Documents, to the extent referenced herein) embodies the entire agreement and understanding by and among the parties hereto relating to the subject matter hereof, and supersedes all prior agreements and understandings relating to the subject matter hereof. No changes, amendments, or alterations to this Agreement will be effective unless pursuant to written instrument executed by Borrower, Lender, Bank, and Disbursement Agent (or each such party's respective successors or assigns, if applicable).

Section 7.6 No Waiver of Strict Compliance. No waiver or failure of a party to insist upon strict compliance with any obligation, covenant, agreement, representation, warranty, or condition shall operate as a waiver of, or estoppel with respect to, any subsequent or other failure to comply with such obligation, covenant, agreement, representation, warranty, or condition, or with any other obligation, covenant, agreement, representation, warranty, or condition contained herein. Failure to exercise any right, power, or remedy shall not constitute a waiver of any obligations under this Agreement or constitute a modification of this Agreement. The making of this Agreement shall not waive or impair any other security a party may have or hereafter acquire for the payment of obligations under this Agreement, and the taking of any additional security it may have in the order it may deem proper.

Section 7.7 No Guaranty. Notwithstanding any provision to the contrary contained in this Agreement or any other Loan Document, none of Bank, Disbursement Agent or Lender shall be deemed to have, directly or indirectly, guaranteed any debts, obligations or liabilities of Borrower or Borrower's Affiliates.

Section 7.8 No Partnership Created. Neither the execution of this Agreement, nor any action taken by Bank, Disbursement Agent or Lender pursuant hereto is intended to be, nor shall it be construed to be, the formation of a partnership or joint venture (a) between Lender and Bank, (b) between Lender and Disbursement Agent, or (c) by and among Bank, Disbursement Agent or Lender.

Section 7.9 Severability. The invalidity or unenforceability of any terms or provisions of this Agreement shall not affect the validity or enforceability of any other provisions of this Agreement, which shall remain in full force and effect, and, if any such unenforceable provision hereof is enforceable in any part or to any lesser extent, such provision shall be enforceable in all such parts and to the greatest extent permissible under applicable law.

Section 7.10 CHOICE OF LAW; WAIVER OF JURY TRIAL AND CERTAIN OTHER RIGHTS; SUBMISSION TO JURISDICTION; SERVICE OF PROCESS.

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

(b) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY (i) AGREES THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS AGREEMENT SHALL BE TRIED AND LITIGATED ONLY IN THE STATE AND FEDERAL COURTS LOCATED IN THE STATE OF ALABAMA (*PROVIDED*, *HOWEVER*, THAT ANY SUIT SEEKING ENFORCEMENT AGAINST ANY COLLATERAL OR OTHER PROPERTY MAY BE BROUGHT, AT LENDER'S OPTION, IN THE COURTS OF ANY JURISDICTION WHERE SUCH COLLATERAL OR OTHER PROPERTY MAY BE FOUND) AND (ii) WAIVES ANY RIGHT IT MAY HAVE TO ASSERT THE DOCTRINE OF *FORUM NON CONVENIENS* OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS SECTION 7.10.

(c) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). IT IS AGREED AND UNDERSTOOD THAT THIS WAIVER CONSTITUTES A WAIVER OF TRIAL BY JURY OF ALL CLAIMS AGAINST ALL PARTIES TO SUCH ACTIONS OR PROCEEDINGS, INCLUDING CLAIMS AGAINST PARTIES WHO ARE NOT PARTIES TO THIS AGREEMENT. EACH PARTY (i) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, AND (ii) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 7.10.

(d) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY AGREES THAT ANY PROCESS OR NOTICE OF MOTION OR OTHER APPLICATION TO ANY SUCH COURT IN CONNECTION WITH ANY ACTION OR PROCEEDING MAY BE SERVED UPON SUCH PARTY BY REGISTERED OR CERTIFIED MAIL TO OR BY PERSONAL SERVICE

AT THE LAST KNOWN ADDRESS OF SUCH PARTY WHETHER SUCH ADDRESS BE WITHIN OR OUTSIDE THE JURISDICTION OF ANY SUCH COURT.

(e) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, BORROWER SHALL NOT ASSERT, AND BORROWER HEREBY WAIVES, ANY CLAIM AGAINST ANY OTHER PARTY AND SUCH PARTY'S AFFILIATES, MEMBERS, PARTNERS OR SHAREHOLDERS, AS APPLICABLE, MANAGERS, OFFICERS, DIRECTORS, AGENTS AND EMPLOYEES, ON ANY THEORY OF LIABILITY, FOR SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES (AS OPPOSED TO DIRECT OR ACTUAL DAMAGES) ARISING OUT OF, IN CONNECTION WITH, OR AS A RESULT OF, THIS AGREEMENT OR ANY AGREEMENT OR INSTRUMENT CONTEMPLATED HEREBY AND/OR THE TRANSACTIONS CONTEMPLATED HEREBY.

(f) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, NONE OF LENDER, DISBURSEMENT AGENT NOR BANK SHALL ASSERT, AND EACH HEREBY WAIVES, ANY CLAIM AGAINST EACH SUCH OTHER PARTY, AND/OR THEIR RESPECTIVE AFFILIATES, MEMBERS, PARTNERS OR SHAREHOLDERS, AS APPLICABLE, MANAGERS, OFFICERS, DIRECTORS, AGENTS AND EMPLOYEES, ON ANY THEORY OF LIABILITY, FOR SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES (AS OPPOSED TO DIRECT OR ACTUAL DAMAGES) ARISING OUT OF, IN CONNECTION WITH, OR AS A RESULT OF, THIS AGREEMENT OR ANY AGREEMENT OR INSTRUMENT CONTEMPLATED HEREBY AND/OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 7.11 [Intentionally Omitted].

Section 7.12 Enforcement Costs. In the event of any action at law or in equity to enforce the provisions of this Agreement or to secure relief or damages for the breach of this Agreement, the prevailing party shall be entitled to payment or reimbursement, as applicable, of its costs, expenses and fees (including without limitation reasonable attorneys', accountants', experts', and consultants' costs, expenses and fees, court costs and investigative expenses prior to trial, at trial and on appeal) incurred in such proceedings from the non-prevailing party.

Section 7.13 [Intentionally Omitted].

Section 7.14 Receipt and Review of Loan Documents. Each party to this Agreement acknowledges and agrees that it has been provided with a copy of the Credit Agreement and each of the other Loan Documents it has requested and has reviewed such documents with counsel of its own choosing.

Section 7.15 Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all of which counterparts together shall constitute but one and the same instrument. Faxed, scanned or photocopied signatures shall be deemed equivalent to original signatures.

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

IN WITNESS WHEREOF, each party has executed this Construction Monitoring and Disbursement Agreement on the Effective Date.

BORROWER:

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

By: _____

Name: John E. Koniar
Title: President

[COUNTERPART SIGNATURE PAGE TO
CONSTRUCTION MONITORING AND DISBURSEMENT AGREEMENT]

LENDER:

PACESETTER CDE X, LLC, a Texas limited liability company

By: Pacesetter CDE, Inc., a Texas corporation, its managing member

By: _____
Name: Giovanni Capriglione
Title: Secretary

[COUNTERPART SIGNATURE PAGE TO
CONSTRUCTION MONITORING AND DISBURSEMENT AGREEMENT]

BANK & DISBURSEMENT AGENT: 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 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 (3) below.
(2)	If to Lender:	Pacesetter CDE X, LLC c/o Pacesetter CDE, Inc. 2600 E. Southlake Boulevard Suite 120-105 Southlake, TX 76092 Attention: Giovanni Capriglione Email: giovanni@pacesettercde.com
	With a copy to:	Law Office of Mark D. Foster 4835 LBJ Freeway, Suite 424 Dallas, TX 75244 Attention: Mark D. Foster, Esq. Facsimile: 214-363-9551 Email: mark@mdfoster.com
	And copies to:	The addresses set forth under (3) below.
(3)	If to Disbursement Agent or Bank:	JPMorgan Chase Bank, N.A. 10 S. Dearborn Street, 19th Floor Mail Code: IL1-0953 Chicago, IL 60603-5506 Attention: NMTC Asset Manager Facsimile: 312-325-5050 Email: nmtc.reporting@chase.com

[CONTINUED NEXT PAGE]

SCHEDULE A (CONT'D)

Notice Addresses of Parties

With a copy to:	JPMorgan Chase Bank, N.A. 700 N. Pearl Street, 13th Floor Dallas, TX 75201 Attention: Mayela Malczewski Facsimile: 866-778-4060 Email: mayela.c.malczewski@jpmorgan.com
And a copy to:	JPMorgan Chase Bank, N.A. New Markets Tax Credit Group 2200 Ross Avenue, 9th Floor Mail Code: TX1-2951 Dallas, TX 75201 Attention: Wanda Clark Facsimile: 214-965-3297 Email: wanda.clark@chase.com
And a copy to:	Jones Day 100 High Street, 21st Floor Boston, MA 02110 Attention: Douglas R. Banghart, Esq. Facsimile: 617-449-6999 Email: dbanghart@jonesday.com

[REMAINDER OF PAGE BLANK]

EXHIBIT A

Form of Draw Request

RELEASE OF FUNDS REQUEST

JPMorgan Chase Bank, N.A.
Chase Community Development Real Estate

Draw #: ___
Project Name: Coastal Alabama Farmers' and Fishermen's Market

Regular Mail:
Mail Code: TX1-2625
PO Box 655415
Dallas, TX 75265-5415

Overnight Mail:
Mail Code: TX1-2625
700 N. Pearl Street, 13th Floor
Dallas, TX 75201

Attention: Steven N. Albritton
Facsimile: 214-965-3395
Email: steven.n.albritton@chase.com

Pacesetter CDE X, LLC
c/o Pacesetter CDE, Inc.
2600 E. Southlake Boulevard
Suite 120-105
Southlake, TX 76092
Attention: Giovanni Capriglione
Email: giovanni@pacesettercde.com

RE: Release of Funds Request in connection with loans in the aggregate original principal amount of $8,000,000 made under that certain Credit Agreement (as the same may be amended, assigned, restated, modified, or supplemented from time to time, the "*Credit Agreement*") dated as of July 11, 2014 (the "*Effective Date*") 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*").

1. Borrower hereby requests a release of funds that have been advanced under the Credit Agreement to account no(s) _____ in the amount of $_____ in accordance with the Construction Monitoring and Disbursement Agreement (as the same may be amended, assigned, restated, modified, or supplemented from time to time, the "*CMDA*") dated as of the Effective Date by and among Borrower, Lender, JPMorgan Chase Bank, N.A., a national banking association, as agent ("*Disbursement Agent*"), and JPMorgan Chase Bank, N.A., a national banking association, as depository bank ("*Bank*"). Borrower (a) acknowledges and agrees that this amount is subject to inspection, verification and available funds and (b) understands that no funds shall be disbursed on any property for which a payoff amount has been quoted by Lender.

2. Borrower acknowledges and agrees that no funds shall be disbursed unless and until the Title Company provides a date down endorsement on the Title Policy. Borrower has ___ / has not ___ included a date down endorsement with this Release of Funds Request.

3. Borrower agrees to provide, if requested by Disbursement Agent, Bank or Lender, a listing of all vendors showing the name and the amount currently due each party to whom Borrower is obligated for labor, material and/or services supplied. This information would be provided in support of the disbursements requested in this Release of Funds Request.

4. Borrower represents and warrants to Disbursement Agent, Bank, and Lender that:

   (a) It has complied with all of its duties and obligations under the terms of the Credit Agreement and the CMDA (including without limitation all conditions precedent set forth in Section 3.9 and/or Section 3.11 of the CMDA, as applicable);

   (b) No Event of Default has occurred and is continuing;

   (c) All change orders or changes to the Project Budget have been submitted to and approved by Lender or Disbursement Agent, as applicable;

   (d) All previous Loan advances have been used solely for the purposes set forth in the Credit Agreement and the CMDA;

   (e) All outstanding claims for labor, materials and/or services furnished prior to this draw period have been paid;

   (f) All construction prior to the date hereof has been in accordance with the Plans & Specifications;

   (g) All of the requested advance will be used solely to pay obligations set forth on the attachment hereto;

   (h) There are no liens outstanding against the Project except for (i) liens and security interests in favor of Lender under the Loan Documents (if any) and (ii) the exceptions set forth on the Title Policy previously approved by Lender (if any); and

   (i) The amount of Loan proceeds remaining in the Disbursement Account and other budgeted sources of funds (if any) for the Project is sufficient to pay the cost of completing the Project in accordance with the Plans & Specifications originally submitted to Disbursement Agent or as modified and approved by Disbursement Agent (on behalf of Lender) through change orders approved in accordance with the Credit Agreement.

5. Borrower understands this Release of Funds Request is made for the purpose of inducing Lender to make an advance to Borrower and that, in making such advance, Disbursement Agent, Bank, and Lender will rely upon the accuracy of the matters stated herein.

6. Release of the requested funds may be subject to the receipt by Disbursement Agent of a certificate from the Title Company stating that no claims have been filed of record which adversely affect the title of Borrower to the Project subsequent to the Effective Date.

7. Undefined terms used herein shall have the same meaning as in the CMDA.

8. Borrower certifies that the statements made herein and in any documents submitted herewith are true and has duly caused this Release of Funds Request to be signed on its behalf by the undersigned, thereto duly authorized.

9. Borrower requests that this draw be funded and that the disbursement funds be deposited in accordance with the Disbursement Authorization Form on file with Disbursement Agent.

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

IN WITNESS WHEREOF, Borrower has executed this Release of Funds Request on the date below written.

DATE: _____, 201__

BORROWER:

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

By: _____
Name:
Title:
(Authorized Signatory)

<u>EXHIBIT B</u>

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
SOURCES:												
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
USES:												
Farmers & Fishermens Market												
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
Wholesale Distribution Facility & Warehouse/Retail Market												
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
Interest During Construction												-
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.

DEV S&U - QALICB
CAFFM final forecast 07102014

See Independent Acountants' Compilation Report

EXHIBIT C

TRANSFER OF THIRD PARTY FUNDS
(Name and Address)

Date: _____

JPMorgan Chase Bank, N.A.
Attn: _____
700 N. Pearl Street
13th Floor, Mail Code TX1-2625
Dallas, TX 75201

Please process the following transfer request for: _____
(Deal or Project Name)

Dear _____,
(Sr. Service Specialist)

DEBIT INFORMATION	CREDIT INFORMATION
Account Name: Name of Bank: ABA: Acct: Effective Date: Amount:	Account Name: Name of Bank: ABA: Acct: Purpose: REF:

Please feel free to call me directly at _____ to verify these instructions.
(Phone Number)

Sincerely,

_____
(Deal or Project Name)

_____
(Authorized Signatory)

EXHIBIT D

CHASE NMTC TRANSFER OF FUNDS AUTHORIZATION

Date: _____

JPMorgan Chase Bank, N.A.
Attn: _____ *(Sr. Service Specialist)*
700 N. Pearl Street
13th Floor, Mail Code TX1-2625
Dallas, TX 75201

Re: _____
(Name)

Dear _____: *(Sr. Service Specialist)*

This memorandum is to request a withdrawal from the _____ *(name of account)* account # _____ to _____ *(name of account)* account # _____ for the invoiced interest or fees on _____ _____ *(Name)* due *(monthly/quarterly)* starting with _____ *(starting date)* going forward until further notice.

Sincerely,

_____
(Deal or Project Name)

_____
(Authorized Signer)

EXECUTION VERSION

ACCOUNT PLEDGE AND CONTROL AGREEMENT (DISBURSEMENT ACCOUNT)

This ACCOUNT PLEDGE AND CONTROL AGREEMENT (DISBURSEMENT ACCOUNT) (this "Agreement") is entered into as of July 11, 2014 (the "Effective Date"), by and among (i) JPMORGAN CHASE BANK, N.A., a national banking association, having an address at 270 Park Avenue, 45th Floor, Mail Code: NY1-K425, New York, New York 10017, in its capacity as Bank (in such capacity, "Bank") and Disbursement Agent (in such capacity, "Disbursement Agent"), (ii) COASTAL ALABAMA FARMERS' AND FISHERMEN'S MARKET, INC., an Alabama nonprofit corporation ("Borrower"), having an address at c/o City of Foley, 407 East Laurel Avenue, Foley, Alabama 36535, and (iii) PACESETTER CDE X, LLC, a Texas limited liability company ("Lender"), having an address at 2600 E. Southlake Boulevard, Suite 120-105, Southlake, Texas 76092.

RECITALS

A. Borrower owns the Land and the existing improvements thereon, on which Borrower is constructing the Project.

B. On the Effective Date, Lender is making loans to Borrower in the original aggregate principal amount of $8,000,000.00 (collectively, the "Loans") to provide financing for the Project, pursuant to the Credit Agreement.

C. On the Effective Date, and pursuant to the Closing Transfers Memorandum and the Credit Agreement: (i) Lender will advance all proceeds of the Loans into the Disbursement Account (as defined below) established by Borrower with Bank and pledged to Lender to secure the Loans and (ii) Lender, Borrower, and Disbursement Agent have agreed that Bank will disburse certain proceeds of the Loans from the Disbursement Account in order to enable Borrower to make the Initial Payment.

D. Following the Initial Payment, there shall remain $1,291,841.00 of proceeds of the Loans in the Disbursement Account for application as set forth in the Credit Agreement and the CMDA (defined below).

E. Borrower may from time to time be required to make certain deposits into the Disbursement Account pursuant to the Loan Documents.

F. Disbursement Agent has been engaged by Lender pursuant to the CMDA to act as the disbursement agent of the Loans and to process requests for and authorize releases of certain proceeds of, and deposits related to, the Loans from the Disbursement Account.

G. The parties hereto are entering into this Agreement for the purposes of (i) Borrower granting to Lender a security interest in the Disbursement Account, (ii) perfecting Lender's security interest in the Disbursement Account, (iii) engaging Bank to provide the services described herein, and (iv) providing Bank the directions of Lender, Disbursement Agent, and Borrower with respect to the Disbursement Account and Unreleased Funds deposited therein.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Defined Terms. All capitalized terms not otherwise expressly defined herein shall have the meanings assigned to them in the CMDA. In addition, the following terms shall have the following meanings in this Agreement:

(a) "Agreement" has the meaning set forth in the introductory paragraph, as the same may be amended, assigned, restated, modified, or supplemented from time to time.

(b) "Bank" has the meaning set forth in the introductory paragraph to this Agreement.

(c) "Borrower" has the meaning set forth in the introductory paragraph to this Agreement.

(d) "CMDA" means that certain Construction Monitoring and Disbursement Agreement, dated as of the Effective Date, by and among Bank, Disbursement Agent, Lender, and Borrower, as the same may be amended, assigned, restated, modified, or supplemented from time to time.

(e) "Disbursement Account" means that certain account established by Borrower with Bank into which deposits shall be made from time to time in accordance with the Loan Documents, which account is more particularly described in Section 2(a).

(f) "Disbursement Agent" has the meaning set forth in the introductory paragraph to this Agreement.

(g) "Effective Date" has the meaning set forth in the introductory paragraph to this Agreement.

(h) "Eligible Bank" means Bank or such other bank or financial institution, as may be selected by Lender (and is reasonably acceptable to Borrower), that is an "insured depository institution" under the Federal Deposit Insurance Act, as amended, and has a combined capital and surplus of not less than $1,000,000,000.00 at all times.

(i) "Lender" has the meaning set forth in the introductory paragraph to this Agreement.

(j) "Obligations" means all indebtedness and obligations of Borrower under the Loan Documents.

(k) "UCC" means the Uniform Commercial Code as adopted by the State of Alabama, as the same may be amended, restated, replaced, supplemented, or otherwise modified from time to time.

2. Disbursement Account.

(a) The Disbursement Account maintained for Borrower bears account number 3071911332 and is entitled "Coastal Alabama Farmers' and Fishermen's Market, Inc. Disbursement Account". The Disbursement Account consists of an interest bearing account, and Borrower agrees that it will include in its income all interest and earnings on the funds deposited therein. The Disbursement Account has been assigned the federal tax identification number of Borrower.

(b) Bank represents and warrants to Lender that: (i) Bank maintains the Disbursement Account for Borrower and (ii) Bank does not know of any claim to or interest in the Disbursement Account, except for claims and interests of the parties referred to in this Agreement.

(c) Bank shall hold the Disbursement Account and the Unreleased Funds for the benefit of Borrower and Lender, as their interests are set forth in this Agreement, and Bank shall designate such amounts on its books as being held for the benefit of Borrower and Lender in accordance with the terms hereof.

(d) The Disbursement Account and the Unreleased Funds shall be maintained separate and apart from the other funds of Bank and Borrower, and shall be (i) held and invested by Bank in accordance with the terms hereof and (ii) disbursed in accordance with the terms hereof and of the CMDA.

3. Initial Payment and Unreleased Funds. Bank will make the Initial Payment on the Effective Date and will comply with all instructions it receives directing disposition of the Unreleased Funds originated by Lender or Disbursement Agent without further consent by Borrower. At the election of Lender or Disbursement Agent, some or all Unreleased Funds may instead be held in one or more other successor or replacement disbursement account(s) with Bank, upon prior written notice to Borrower (except that such written notice will not be required if an Event of Default under any of the Loan Documents has occurred and is continuing), *provided*, that such Unreleased Funds are held on substantially the same terms as set forth in this Agreement.

4. Processing Receipts.

(a) Borrower (or an Affiliate thereof) may be required to deposit funds into the Disbursement Account after the Effective Date from time to time, pursuant to the Loan Documents. All deposits by Borrower (or an Affiliate thereof) shall be made in the form of electronic transfers delivered to Bank, by wire transfer or other form of electronic transfer to Bank, for the Disbursement Account, in accordance with the wire transfer instructions as set forth in the Closing Transfers Memorandum or in such other form or manner as may hereafter be approved in writing by (i) Lender or Disbursement Agent (acting on behalf of Lender) and (ii) Bank.

(b) Bank shall receive and process all receipts deposited by or on behalf of Lender or Borrower. Checks, money orders or other instruments for the payment of money which may be handled as cash items by Federal Reserve Banks, if delivered to Bank for deposit in the

Disbursement Account and if found by Bank in its reasonable discretion to be in proper order, shall be endorsed by Bank for deposit in the Disbursement Account.

5. Control of and Disbursements from the Disbursement Account.

(a) The Disbursement Account shall be subject to the control and direction of Lender; *provided, however*, that (i) Lender hereby delegates to Disbursement Agent its right to exercise control and direction over the Disbursement Account pursuant to and in accordance with the CMDA (which delegation shall cease, and all rights and obligations of the Disbursement Agent hereunder shall revert to Lender, from and after such time as the Disbursement Agent shall cease to be engaged pursuant to the CMDA), (ii) Lender and Disbursement Agent acting on behalf of Lender (for so long as Disbursement Agent is engaged by Lender pursuant to the CMDA) shall have the sole right to make or authorize withdrawals from the Disbursement Account, and any such withdrawals or disbursements from the Disbursement Account shall be made in accordance with the CMDA, and (iii) neither Borrower nor any other Person claiming by, on behalf of or through Borrower shall have any right or authority, whether express or implied, to make use of, or withdraw any funds from the Disbursement Account, or to give any instructions with respect to the Disbursement Account.

(b) Borrower authorizes and directs Bank, and Bank agrees, that Bank shall not honor Borrower's instructions with respect to a release from the Disbursement Account without Lender's or Disbursement Agent's (acting on behalf of Lender) prior written consent. By their signatures to this Agreement, Borrower hereby authorizes and directs Bank, and Bank agrees, to comply with the instructions of Lender or Disbursement Agent (acting on behalf of Lender) directing disposition of the funds without further consent of Borrower.

6. Security Interest.

(a) Borrower hereby grants to Lender a first priority perfected security interest in the Disbursement Account, the Unreleased Funds, and all cash and non-cash proceeds of all or any of the foregoing, in whatever form, and all proceeds of such proceeds, as additional security for the Obligations. Upon the occurrence and continuance of an Event of Default, Lender or Disbursement Agent (acting on behalf of Lender) may, in addition to any and all other rights and remedies available to Lender, direct Bank to pay to Lender all Unreleased Funds in the Disbursement Account, and Lender may apply any or all such funds to the repayment of the Obligations in any order in Lender's sole and absolute discretion. This Section 6 shall constitute a "security agreement" and the Disbursement Account shall constitute a "deposit account" within the meaning of the UCC, and Lender shall have all of the remedies of a secured party under the UCC. Borrower authorizes Lender and Disbursement Agent (acting on behalf of Lender) to file any financing or continuation statements and amendments thereto relating to the Disbursement Account without the signature of Borrower.

(b) Borrower represents and warrants that it has the legal right to pledge the Disbursement Account to Lender, that the funds in the Disbursement Account are not held for the benefit of a third party, and that there are no perfected liens or encumbrances with respect to the Disbursement Account. Borrower covenants to Lender that it shall not enter into any

acknowledgment or agreement that gives any other Person except Lender control over, or any other security interest, lien or title in, the Disbursement Account.

(c) Borrower will not, without obtaining the prior written consent of Lender, further pledge, assign or grant any security interest in the Disbursement Account or the Unreleased Funds or permit any lien or encumbrance to attach thereto, or any levy to be made thereon, or any UCC-1 Financing Statements, except those naming Lender, as the secured party, to be filed with respect thereto.

(d) Bank acknowledges that, in accordance with this Agreement:

(i) the Disbursement Account and all Unreleased Funds have been irrevocably pledged, transferred and assigned to Lender as additional security for the Obligations; and

(ii) Lender has a first priority security interest in the Disbursement Account and all Unreleased Funds and a first priority lien thereon, and Borrower has not made (and will not make) another pledge of the Disbursement Account or the Unreleased Funds.

(e) In connection with the security interest granted in this Section 6, Bank is irrevocably authorized and directed, without any additional consent or authorization of Borrower, to disburse all Unreleased Funds as directed by Lender or Disbursement Agent (acting on behalf of Lender). Bank shall provide written notice to Borrower of any such disbursement within a reasonable period after it is completed. Bank agrees to take commercially reasonable measures to notify Lender and Disbursement Agent immediately in the event that any other Person makes a claim to or with respect to the Disbursement Account or any Unreleased Funds.

7. Investment/Reinvestment of Unreleased Funds.

(a) Unreleased Funds shall be invested and reinvested by Bank upon the request of Borrower, subject in all instances to the prior consent of Lender or Disbursement Agent (acting on behalf of Lender) (such consent in their sole and absolute discretion), in a money market account at Bank or in bank repurchase agreements, or any other interest bearing banking arrangements with Bank. Notwithstanding anything to the contrary in this Agreement, in all events Lender's security interest in the Disbursement Account and the Unreleased Funds shall be maintained and perfected with respect to any investment or reinvestment of Unreleased Funds.

(b) No investment or reinvestment of Unreleased Funds shall be made in a security maturing later than the dates on which such funds will be needed for application to Project costs, as specified in writing to Bank by Borrower (such writing to include the estimated amount and date of each anticipated Funds Release). Bank shall be entitled to rely upon such writing in connection with all investments and reinvestments of Unreleased Funds, and Bank shall have no duty or obligation to verify the accuracy thereof. In the event that certain Unreleased Funds are to be included in a Funds Release earlier than estimated by Borrower, Borrower shall pay any and all early withdrawal penalties, early liquidation losses, or other losses arising from any withdrawal or liquidation prior to the stated maturity thereof, and shall indemnify, defend and

hold harmless Bank, Lender, and Disbursement Agent from all Liabilities arising in connection therewith.

(c) None of Bank, Lender or Disbursement Agent (acting on behalf of Lender) shall have any duty or obligation to make investment or reinvestment recommendations with respect to Unreleased Funds, and none shall have any liability to any Person for any losses or any investment or reinvestment directed by Borrower in accordance with this Section 7.

(d) No approval of Borrower's investment or reinvestment request by Lender or Disbursement Agent (acting on behalf of Lender) in accordance with Section 7(a) shall result in any obligation or acceptance by Lender or Disbursement Agent of any such penalties or any investment or reinvestment losses, whether or not discovered by Bank, Lender or Disbursement Agent.

8. Resignation by or Termination of Bank.

(a) Borrower may not unilaterally terminate this Agreement, the CMDA or close the Disbursement Account. Bank shall not cause or permit the Disbursement Account to be closed unless it has received prior written notice from Lender or Disbursement Agent (acting on behalf of Lender).

(b) Bank may resign from its duties, obligations, and rights under this Agreement at any time after 30 calendar days' prior written notice to Lender and Borrower, but in no event will Bank be released of its obligations hereunder unless and until an Eligible Bank is designated by Lender as a successor to Bank and assumed the duties, obligations, and rights of Bank hereunder in accordance with Section 8(e).

(c) Lender may not terminate Bank's duties, obligations or rights under this Agreement in the absence of a Bad Act by Bank. Any claim by Lender that Bank committed a Bad Act shall be provided to Bank in writing (with a copy provided to Disbursement Agent and Borrower). Bank may contest any such claim in any court of competent jurisdiction (subject to Section 24). Absent a final determination by such a court that Bank committed a Bad Act, Bank duties, obligations, and rights under this Agreement will continue unabated.

(d) The resignation or termination of Bank in accordance with this Agreement shall, without further action by any Person, release Bank (but not Disbursement Agent) from its duties, obligations, and rights under this Agreement and the CMDA arising from and after the date of such resignation or termination.

(e) Lender, acting in its sole and absolute discretion, shall designate a successor to Bank after receipt of written notice of resignation by Bank or after terminating Bank (subject to Bank's contest rights under Section 8(c)), as applicable. As a condition precedent to such designation, the successor to Bank will assume all duties, obligations, and rights of Bank under this Agreement and the CMDA. Bank agrees to reasonably cooperate with a designated successor bank in the orderly transitioning of its duties, obligations, and rights under this Agreement and the CMDA to such designated successor. All funds then on deposit in the Disbursement Account, after payment of all accrued and unpaid fees of Bank (if any), shall be disbursed to an Eligible Bank to hold and administer the Disbursement Account.

9. Bank Fees and Set-off.

(a) To compensate Bank for performing the services required hereunder, Borrower hereby agrees to pay Bank's standard fees for such services, in accordance with a schedule of fees to be established from time to time by Bank. In addition, Borrower hereby agrees to pay to Bank for the actual amount of any exchange, collection, processing, transfer, wire, postage or other out-of-pocket expenses incurred by Bank with respect to the Disbursement Account, as reasonably determined by Bank from time to time.

(b) Upon the request of Borrower, Bank shall include its fees in an account analysis statement, in accordance with the particular arrangements between Bank and Borrower.

(c) Bank waives any right to offset any claim against Borrower which it might have against the Disbursement Account; *provided, however*, that Bank retains the right to charge the Disbursement Account for any charges, fees and expenses provided for herein for which Borrower is responsible and for all items deposited in and credited to the Disbursement Account and subsequently returned unpaid or with respect to which Bank fails to receive final settlement. If there are insufficient funds in the Disbursement Account to cover the fees or returned items attributable to such account, Borrower agrees to reimburse Bank for the amount of such shortfall within 3 Business Days following demand therefor. Bank hereby subordinates all security interests, liens, claims, and, except as specifically set forth in this Section 9, rights of setoff it may have now or in the future, against the Disbursement Account to the security interests, liens and claims of Lender.

10. Disbursement Account Statements. Upon request, Bank shall send a monthly report to Lender, Disbursement Agent, and Borrower, which monthly report shall specify all credits and debits to the Disbursement Account for the previous calendar month and the balance in the Disbursement Account as of the end of such month. Bank shall provide or deliver to each of Lender, Disbursement Agent, and Borrower copies of all statements and other information concerning the Disbursement Account as they shall reasonably request.

11. Term of Agreement. Upon the release of funds from the Disbursement Account to Borrower in accordance with Section 6.1(b) of the CMDA, this Agreement shall terminate.

12. Indemnification.

(a) Borrower hereby agrees to indemnify and hold harmless each Indemnitee Party from any and all Liabilities that relate directly or indirectly, in whole or in part, to: (i) any instruction or request of Borrower in connection with this Agreement or (ii) any release (or determination not to release) of Unreleased Funds.

(b) An Indemnitee Party's right of indemnification under Section 12(a) will not be directly or indirectly limited, prejudiced, impaired or eliminated in any way by any finding or allegation that the conduct of Bank, Disbursement Agent, and/or Lender is active, passive or subject to any other classification or that Bank, Disbursement Agent, and/or Lender is directly or indirectly responsible under any theory of any kind for any act or omission by Borrower or any other Person other than an Indemnitee Party.

(c) Notwithstanding Section 12(a) and (b), Borrower will not be obligated to indemnify, defend or hold harmless an Indemnitee Party from or against any Liabilities caused as a direct result of such Indemnitee Party's Bad Acts.

(d) Notwithstanding Section 11 or any other provision to the contrary contained in this Agreement or any other Loan Document, the indemnity obligations of Borrower under this Section 12 and all other provisions of this Agreement (i) will survive the termination of this Agreement and (ii) will not be directly or indirectly limited, prejudiced, impaired or eliminated in any way with respect to Bank or Disbursement Agent if Bank or Disbursement Agent, as applicable, has resigned or has been terminated by Lender in accordance with this Agreement or the CMDA, as applicable.

13. Certain Matters Affecting Bank.

(a) Bank may rely and shall be protected in acting or refraining from acting upon any written notice (including but not limited to electronically confirmed facsimiles of such written notice) believed by it to be genuine and to have been signed or presented by the proper party or parties. Bank and its Affiliates shall not be liable for any loss or injury resulting from its actions or its performance or lack of performance of its duties hereunder or for its decisions in the absence of a Bad Act. In no event shall Bank or any of its Affiliates be liable for (i) acting in accordance with instructions from Lender or Disbursement Agent (acting on behalf of Lender) or (ii) losses due to forces beyond the control of Bank, including, without limitation, strikes, work stoppages, acts of war or terrorism, insurrection, revolution, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services.

(b) The duties and obligations of Bank hereunder shall be determined solely by the express provisions of this Agreement. Bank is not acting as a fiduciary for any Person. Bank shall not be liable except for the performance of Bank's duties and obligations as are specifically set forth in this Agreement. No implied covenants or obligations shall be read into this Agreement against Bank.

(c) At the direction of Lender or Disbursement Agent (acting on behalf of Lender), Bank shall disburse funds in the Disbursement Account by wire transfer, account transfer or check, or otherwise for final disposition, as directed in writing by Lender or Disbursement Agent (acting on behalf of Lender).

14. Conflicts. Matters not covered by this Agreement shall be determined in accordance with the customary procedures of Bank and any deposit account agreements, and in the event of a conflict between the terms of this Agreement and the customary procedures of Bank and/or any deposit account agreements, the terms of this Agreement shall govern.

15. Notices. Section 7.1 and Schedule A of the CMDA are incorporated herein by reference and made a part hereof.

16. Headings and Section References. Section 7.2 of the CMDA is incorporated herein by reference and made a part hereof.

17. Successors and Assigns. Section 7.3 of the CMDA is incorporated herein by reference and made a part hereof. Bank shall have the right to assign or transfer its duties, obligations, and rights under this Agreement in accordance with Section 8 or with the prior written consent of Lender.

18. Incorporation of Recitals. The Recitals to this Agreement are incorporated herein by reference and made a part hereof.

19. Entire Agreement; Amendment and Modification. Section 7.5 of the CMDA is incorporated herein by reference and made a part hereof.

20. No Waiver of Strict Compliance. Section 7.6 of the CMDA is incorporated herein by reference and made a part hereof.

21. No Guaranty. Section 7.7 of the CMDA is incorporated herein by reference and made a part hereof.

22. No Partnership Created. Section 7.8 of the CMDA is incorporated herein by reference and made a part hereof.

23. Severability. Section 7.9 of the CMDA is incorporated herein by reference and made a part hereof.

24. CHOICE OF LAW; WAIVER OF JURY TRIAL AND CERTAIN OTHER RIGHTS; SUBMISSION TO JURISDICTION; SERVICE OF PROCESS. Section 7.10 of the CMDA is incorporated herein by reference and made a part hereof.

25. Enforcement Costs. Section 7.12 of the CMDA is incorporated herein by reference and made a part hereof.

26. Receipt and Review of Loan Documents. Section 7.14 of the CMDA is incorporated herein by reference and made a part hereof.

27. Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all of which counterparts together shall constitute but one and the same instrument. Faxed, scanned or photocopied signatures shall be deemed equivalent to original signatures.

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

IN WITNESS WHEREOF, the parties hereto have executed this Account Pledge and Control Agreement (Disbursement Account) as of the Effective Date.

BORROWER:

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

By: _____

Name: John E. Koniar
Title: President

[COUNTERPART SIGNATURE PAGE TO
ACCOUNT PLEDGE AND CONTROL AGREEMENT (DISBURSEMENT ACCOUNT)]

LENDER:

PACESETTER CDE X, LLC, a Texas limited liability company

By: Pacesetter CDE, Inc., a Texas corporation, its managing member

By: _____
Name: Giovanni Capriglione
Title: Secretary

[COUNTERPART SIGNATURE PAGE TO
ACCOUNT PLEDGE AND CONTROL AGREEMENT (DISBURSEMENT ACCOUNT)]

BANK & DISBURSEMENT AGENT: JPMORGAN CHASE BANK, N.A., a national banking association

By: _____
Name: Kevin R. Goldsmith
Title: Authorized Officer

EXECUTION VERSION

ACCOUNT PLEDGE AND CONTROL AGREEMENT
(LENDER RESERVE ACCOUNT)

THIS ACCOUNT PLEDGE AND CONTROL AGREEMENT (LENDER RESERVE ACCOUNT) (this "Agreement") is entered into as of July 11, 2014 (the "Effective Date"), by and among (i) JPMORGAN CHASE BANK, N.A., a national banking association ("Bank"), having an address at 270 Park Avenue, 45th Floor, Mail Code: NY1-K425, New York, New York 10017, (ii) PACESETTER CDE X, LLC, a Texas limited liability company ("Lender"), having an address at 2600 E. Southlake Boulevard, Suite 120-105, Southlake, Texas 76092, and (iii) COASTAL ALABAMA FARMERS' AND FISHERMEN'S MARKET, INC., an Alabama nonprofit corporation ("Borrower"), having an address at c/o City of Foley, 407 East Laurel Avenue, Foley, Alabama 36535.

RECITALS

A. Borrower owns the Land and the existing improvements thereon, on which Borrower is constructing the Project.

B. On the Effective Date, Lender is making the Loans to Borrower to provide financing for the Project, pursuant to the Credit Agreement.

C. On the Effective Date, and pursuant to the Closing Transfers Memorandum and the Credit Agreement: (i) Lender will advance all proceeds of the Loans into the Disbursement Account established by Borrower with Bank and pledged to Lender to secure the Loans and (ii) Lender and Borrower have agreed that Bank will deposit $168,000.00 of the proceeds of Loan A-2 and Loan B-2 (the "Reserve Deposit") into the Reserve Account.

D. Funds shall be withdrawn from the Reserve Account as set forth in Section 5.6(a) of the Credit Agreement (the "RA Provisions").

E. Lender is unwilling to make the Loans unless the Reserve Deposit is made on the Effective Date for the benefit of Lender.

F. The parties hereto are entering into this Agreement for the purposes of (i) Borrower granting to Lender a security interest in the Reserve Account, (ii) perfecting Lender's security interest in the Reserve Account, (iii) engaging Bank to provide the services described herein, and (iv) providing Bank the directions of Lender and Borrower with respect to the Reserve Account and all unreleased funds deposited therein (collectively, the "Unreleased Funds").

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

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

(a) "Agreement" has the meaning set forth in the introductory paragraph, as the same may be amended, assigned, restated, modified, or supplemented.

(b) "Allocatee" means Pacesetter CDE, Inc., a Texas corporation, and its successors and assigns.

(c) "Bad Act" means, with respect to any Person, such Person's willful misconduct, gross negligence or fraud.

(d) "Bank" has the meaning set forth in the introductory paragraph to this Agreement.

(e) "Borrower" has the meaning set forth in the introductory paragraph to this Agreement.

(f) "Credit Agreement" means that certain Credit Agreement, dated as of the Effective Date, by and between Lender and Borrower, as the same may be amended, assigned, restated, modified, or supplemented.

(g) "Effective Date" has the meaning set forth in the introductory paragraph to this Agreement.

(h) "Eligible Bank" means Bank or such other bank or financial institution, as may be selected by Lender (and is reasonably acceptable to Borrower), that is an "insured depository institution" under the Federal Deposit Insurance Act, as amended, and has a combined capital and surplus of not less than $1,000,000,000.00 at all times.

(i) "Lender" has the meaning set forth in the introductory paragraph to this Agreement.

(j) "Lender OA" means that certain Second Amended and Restated Operating Agreement of Lender, dated as of the Effective Date, by and between Fund, as investor member, and Allocatee, as managing member, as the same may be amended, assigned, restated, modified, or supplemented.

(k) "Liabilities" has the meaning set forth in Section 11(a).

(l) "Obligations" means all indebtedness and obligations of Borrower to Lender under the Loan Documents.

(m) "RA Provisions" has the meaning set forth in the Recitals.

(n) "Reserve Account" means that certain account established by Borrower with Bank into which the Reserve Deposit shall be made and which, in accordance with this Agreement, is more particularly described in Section 2(a).

(o) "Reserve Deposit" has the meaning set forth in the Recitals.

(p) "UCC" means the Uniform Commercial Code as adopted by the State of Alabama or any other State, as applicable, as the same may be amended, restated, replaced, supplemented, or otherwise modified from time to time.

(q) "Unreleased Funds" has the meaning set forth in the Recitals.

2. Reserve Account.

(a) The Reserve Account maintained for Borrower bears account number 3071911357 and is entitled "Coastal Alabama Farmers' and Fishermen's Market, Inc. Pacesetter Reserve Account." The Reserve Account consists of an interest bearing account, and Borrower agrees that it will include in its income all interest and earnings on the funds deposited therein. The Reserve Account has been assigned the federal tax identification number of Borrower.

(b) Bank represents and warrants to Lender that: (i) Bank maintains the Reserve Account for Borrower and (ii) Bank does not know of any claim to or interest in the Reserve Account, except for claims and interests of the parties referred to in this Agreement.

(c) Bank shall hold the Reserve Account and the Unreleased Funds for the benefit of Borrower and Lender, as their interests are set forth in this Agreement, and Bank shall designate such amounts on its books as being held for the benefit of Borrower and Lender in accordance with the terms hereof.

(d) The Reserve Account and the Unreleased Funds shall be maintained separate and apart from the other funds of Bank and Borrower, and shall be held, invested, and disbursed by Bank in accordance with the terms hereof.

3. Unreleased Funds. Bank will make the Reserve Deposit on the Effective Date and will comply with all instructions it receives directing disposition of the Unreleased Funds originated by Lender without further consent by Borrower. At the election of Lender, some or all Unreleased Funds may instead be held in one or more other successor or replacement fee reserve account(s) with Bank, upon prior written notice to Borrower (except that such written notice will not be required upon the occurrence and continuance of an Event of Default), *provided*, that such Unreleased Funds are held on substantially the same terms as set forth in this Agreement.

4. Control of and Disbursements from the Reserve Account.

(a) The Reserve Account shall be subject to the control and direction of Lender. Lender shall have the sole and absolute right to make or authorize withdrawals from the Reserve Account, and any such withdrawals from the Reserve Account shall be made in accordance with the RA Provisions. Notwithstanding anything to the contrary in this Agreement, neither Borrower nor any other Person claiming by, on behalf of or through Borrower shall have any right or authority, whether express or implied, to make use of, or withdraw any funds from the Reserve Account, or to give any instructions with respect to the Reserve Account.

(b) Borrower authorizes and directs Bank, and Bank agrees, that Bank shall not honor Borrower's instructions with respect to a release from the Reserve Account without Lender's prior written consent (such consent in Lender's sole and absolute discretion). By their signatures to this Agreement, Borrower hereby authorizes and directs Bank, and Bank agrees, to comply with the instructions of Lender directing disposition of the funds without further consent of Borrower.

5. Security Interest.

(a) Borrower hereby grants to Lender a first priority perfected security interest in the Reserve Account, the Unreleased Funds, and all cash and non-cash proceeds of all or any of the foregoing, in whatever form, and all proceeds of such proceeds, as additional security for the Obligations. Upon the occurrence and continuance of an Event of Default, Lender may, in addition to any and all other rights and remedies available to Lender, direct Bank to pay to Lender all Unreleased Funds in the Reserve Account, and Lender may apply any or all such funds to the repayment of the Obligations in any order in Lender's sole and absolute discretion. This Section 5 shall constitute a "security agreement" and the Reserve Account shall constitute a "deposit account" within the meaning of the UCC, and Lender shall have all of the remedies of a secured party under the UCC. Borrower authorizes Lender to file any financing or continuation statements and amendments thereto relating to the Reserve Account without the signature of Borrower.

(b) Borrower represents and warrants that it has the legal right to pledge the Reserve Account to Lender, that the funds in the Reserve Account are not held for the benefit of a third party, and that there are no perfected liens or encumbrances with respect to the Reserve Account. Borrower covenants to Lender that it shall not enter into any acknowledgment or agreement that gives any other Person except Lender control over, or any other security interest, lien or title in, the Reserve Account.

(c) Borrower will not, without obtaining the prior written consent of Lender (such consent in Lender's sole and absolute discretion), further pledge, assign or grant any security interest in the Reserve Account or the Unreleased Funds or permit any lien or encumbrance to attach thereto, or any levy to be made thereon, or any UCC-1 Financing Statements, except those naming Lender, as the secured party, to be filed with respect thereto.

(d) Bank acknowledges, that, in accordance with this Agreement:

(i) the Reserve Account and all Unreleased Funds have been irrevocably pledged, transferred and assigned to Lender as additional security for the Obligations; and

(ii) Lender has a security interest in the Reserve Account and all Unreleased Funds and a lien thereon, and Borrower has not made (and will not make) another pledge of the Reserve Account or the Unreleased Funds.

(e) In connection with the security interest granted in this Section 5, Bank is irrevocably authorized and directed, without any additional consent or authorization of Borrower, to disburse all Unreleased Funds as directed by Lender. Bank shall give written

notice to Borrower of any such disbursement within a reasonable period after it is completed. Bank agrees to take commercially reasonable measures to notify Lender immediately in the event that any other Person makes a claim to or with respect to the Reserve Account or any Unreleased Funds.

6. Investment of Unreleased Funds. Unreleased Funds shall be invested by Bank in a money market account at Bank.

7. Resignation by or Termination of Bank.

(a) Borrower may not unilaterally terminate this Agreement or close the Reserve Account. Except as set forth in Section 10, Bank shall not cause or permit the Reserve Account to be closed unless it has received prior written notice from Lender.

(b) Bank may resign from its duties, obligations, and rights under this Agreement at any time after 30 calendar days' prior written notice to Lender and Borrower, but in no event will Bank be released of its obligations hereunder unless and until an Eligible Bank is designated by Lender as a successor to Bank and has assumed the duties, obligations, and rights of Bank hereunder in accordance with Section 7(e).

(c) Lender may not terminate Bank's duties, obligations or rights under this Agreement in the absence of a Bad Act by Bank. Any claim by Lender that Bank committed a Bad Act shall be provided to Bank in writing (with a copy provided to Borrower). Bank may contest any such claim in any court of competent jurisdiction (subject to Section 23). Absent a final determination by such a court that Bank committed a Bad Act, Bank duties, obligations, and rights under this Agreement will continue unabated.

(d) The resignation or termination of Bank in accordance with this Agreement shall, without further action by any Person, release Bank from its duties, obligations, and rights under this Agreement arising from and after the date of such resignation or termination.

(e) Lender, acting in its sole and absolute discretion, shall designate a successor to Bank, which shall be an Eligible Bank, after receipt of written notice of resignation by Bank or after terminating Bank (subject to Bank's contest rights under Section 7(c)), as applicable. The designated successor to Bank shall be required to expressly assume all duties, obligations, and rights of Bank under this Agreement. Bank agrees to reasonably cooperate with its designated successor in the orderly transitioning of its duties, obligations, and rights under this Agreement to such designated successor. All funds then on deposit in the Reserve Account, after payment of all accrued and unpaid fees of Bank (if any) with respect to Reserve Account, shall be disbursed to the designated successor to hold and administer the Reserve Account.

8. Bank Fees and Set-off.

(a) To compensate Bank for performing the services required hereunder, Borrower hereby agrees to pay Bank's standard fees for such services, in accordance with a schedule of fees to be established from time to time by Bank. In addition, Borrower hereby agrees to pay to Bank for the actual amount of any exchange, collection, processing, transfer, wire, postage or

other out-of-pocket expenses incurred by Bank with respect to the Reserve Account, as reasonably determined by Bank from time to time.

(b) Upon the request of Borrower, Bank shall include its fees in an account analysis statement, in accordance with the particular arrangements between Bank and Borrower.

(c) Bank waives any right to offset any claim against Borrower which it might have against the Reserve Account; *provided, however*, that Bank retains the right to charge the Reserve Account for any charges, fees and expenses provided for herein for which Borrower is responsible and for all items deposited in and credited to the Reserve Account and subsequently returned unpaid or with respect to which Bank fails to receive final settlement. If there are insufficient funds in the Reserve Account to cover the fees or returned items attributable to such account, Borrower agrees to reimburse Bank for the amount of such shortfall within 3 Business Days following demand therefor. Bank hereby subordinates all security interests, liens, claims, and, except as specifically set forth in this Section 8, rights of setoff it may have now or in the future, against the Reserve Account to the security interests, liens and claims of Lender.

9. Reserve Account Statements. Upon request, Bank shall send a monthly report to Lender and Borrower, which monthly report shall specify all credits and debits to the Reserve Account for the previous calendar month and the balance in the Reserve Account as of the end of such month. Bank shall provide or deliver to Lender and Borrower copies of all statements and other information concerning the Reserve Account as they shall reasonably request.

10. Term of Agreement. Following the earlier to occur of the following, this Agreement shall irrevocably terminate and Bank shall close the Reserve Account: (a) written notice from Lender that Borrower has fully paid and satisfied all Obligations (including without limitation the RA Provisions) or (b) following the end of the Compliance Period (as defined in the Lender OA), written notice from Lender that the Reserve Account may be closed. Upon the termination of this Agreement and the closing of the Reserve Account, all funds then on deposit in the Reserve Account, after payment of all accrued and unpaid fees of Bank (if any), shall be released by Bank to Lender. Bank shall be under no obligation to provide notice to Lender, Borrower or any other Person of the termination of this Agreement or the closing of the Reserve Account.

11. Indemnification.

(a) Section 5.12 of the Credit Agreement is incorporated herein by reference and made a part hereof. Borrower acknowledges and agrees that its obligations hereunder include any and all losses, liabilities, suits, actions, obligations, fines, damages, judgments, penalties, claims, causes of action, charges, costs and expenses (including, without limitation, reasonable attorneys', accountants', experts', consultants' fees, disbursements and court costs prior to trial, at trial and on appeal) (collectively, "Liabilities") which are imposed on, incurred or paid by, or asserted against a Covered Person by reason or on account of, or in connection with any instruction or request of Borrower in connection with this Agreement.

(b) A Covered Person's right of indemnification under Section 11(a) will not be directly or indirectly limited, prejudiced, impaired or eliminated in any way by any finding or

allegation that the conduct of Bank and/or Lender is active, passive or subject to any other classification or that Bank and/or Lender is directly or indirectly responsible under any theory of any kind for any act or omission by Borrower or any other Person other than a Covered Person.

(c) Notwithstanding Section 11(a) and (b), Borrower will not be obligated to indemnify, defend, or hold harmless a Covered Person from or against any Liabilities caused as a direct result of such Covered Person's Bad Acts.

(d) Notwithstanding Section 10 or any other provision to the contrary contained in this Agreement or any of the other Loan Documents, the obligations of Borrower under this Section 11 (i) will survive the termination of this Agreement and (ii) will not be directly or indirectly limited, prejudiced, impaired or eliminated in any way with respect to Bank if Bank has resigned or has been terminated by Lender in accordance with this Agreement.

12. Certain Matters Affecting Bank.

(a) Bank may rely and shall be protected in acting or refraining from acting upon any written notice (including but not limited to electronically confirmed facsimiles of such written notice) believed by it to be genuine and to have been signed or presented by the proper party or parties. Bank and its Affiliates shall not be liable for any loss or injury resulting from its actions or its performance or lack of performance of its duties hereunder or for its decisions in the absence of a Bad Act. In no event shall Bank or any of its Affiliates be liable for (i) acting in accordance with instructions from Lender or (ii) losses due to forces beyond the control of Bank, including, without limitation, strikes, work stoppages, acts of war or terrorism, insurrection, revolution, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services.

(b) The duties and obligations of Bank hereunder shall be determined solely by the express provisions of this Agreement. Bank is not acting as a fiduciary for any Person. Bank shall not be liable except for the performance of Bank's duties and obligations as are specifically set forth in this Agreement. No implied covenants or obligations shall be read into this Agreement against Bank.

(c) At the direction of Lender, Bank shall disburse funds in the Reserve Account by wire transfer, account transfer or check, or otherwise for final disposition, as directed in writing by Lender.

13. Conflicts. Matters not covered by this Agreement shall be determined in accordance with the customary procedures of Bank and any deposit account agreements, and in the event of a conflict between the terms of this Agreement and the customary procedures of Bank and/or any deposit account agreements, the terms of this Agreement shall govern.

14. Notices. Any notice, request, demand, consent, approval, direction, agreement, or other communication (any "notice") required or permitted hereunder must be in writing and will be validly given only if (a) sent by a nationally-recognized courier that obtains receipts, (b) delivered personally by a courier that obtains receipts, (c) mailed by United States certified mail (with return receipt requested and postage prepaid), (d) sent by facsimile (with a copy of such facsimile and proof of transmission thereof sent via one of the methods of delivery set forth in

clauses (a), (b) or (c) hereof), or (e) sent by email (with a copy of such email and proof of transmission thereof sent via one of the methods of delivery set forth in clauses (a), (b) or (c) hereof unless specified herein that such notice may be provided exclusively by email), addressed to the applicable Person at the address set forth on Schedule A to this Agreement. Each notice shall be effective upon being so sent, delivered, or mailed, but the time period for response or action shall run from the date of receipt as shown on the delivery receipt. Refusal to accept delivery or the inability to deliver because of a changed address for which no notice was given shall be deemed received. Any party may periodically change its address for notice (including different or additional addresses for copies) by giving the other party at least 10 calendar days' prior notice in accordance with the foregoing provisions.

15. Headings and Section References. The headings used herein are for convenience only and do not limit or alter the terms of this Agreement or in any way affect the meaning or interpretation of this Agreement. References in this Agreement to Sections are intended to refer to Sections of this Agreement, unless otherwise specifically stated.

16. Successors and Assigns.

(a) This Agreement shall bind and inure to the benefit of and be enforceable by Lender, Bank, and Borrower and their respective, permissible successors and assigns.

(b) Lender shall have the right to assign or transfer its duties, obligations, and rights under this Agreement in connection with any assignment of all or any part of the Loans in accordance with the Loan Documents. Any assignee or transferee of Lender pursuant to the immediately preceding sentence shall be entitled to all the benefits afforded to Lender under this Agreement; *provided*, that such assignee or transferee shall have delivered to Bank and Borrower written evidence that such assignee or transferee agrees to be bound by the terms of this Agreement.

(c) Bank shall have the right to assign or transfer its duties, obligations, and rights under this Agreement in accordance with Section 7 or with the prior written consent of Lender.

17. Incorporation of Recitals and Schedule. The Recitals and Schedule identified in this Agreement are incorporated herein by reference and made a part hereof.

18. Entire Agreement; Amendment and Modification. This Agreement (together with other Loan Documents, to the extent referenced herein) embodies the entire agreement and understanding by and among the parties hereto relating to the subject matter hereof, and supersedes all prior agreements and understandings relating to the subject matter hereof. No changes, amendments, or alterations to this Agreement will be effective unless pursuant to written instrument executed by Borrower, Lender, and Bank (or each such party's respective successors or assigns, if applicable).

19. No Waiver of Strict Compliance. No waiver or failure of a party to insist upon strict compliance with any obligation, covenant, agreement, representation, warranty, or condition shall operate as a waiver of, or estoppel with respect to, any subsequent or other failure to comply with such obligation, covenant, agreement, representation, warranty, or condition, or with any other obligation, covenant, agreement, representation, warranty, or condition contained

herein. Failure to exercise any right, power, or remedy shall not constitute a waiver of any obligations under this Agreement or constitute a modification of this Agreement. The making of this Agreement shall not waive or impair any other security a party may have or hereafter acquire for the payment of obligations under this Agreement, and the taking of any additional security it may have in the order it may deem proper.

20. No Guaranty. Notwithstanding any provision to the contrary contained in this Agreement, neither Lender nor Bank shall be deemed to have, directly or indirectly, guaranteed any debts, obligations or liabilities of Borrower or Borrower's Affiliates.

21. No Partnership Created. Neither the execution of this Agreement, nor any action taken by Lender or Bank pursuant hereto is intended to be, nor shall it be construed to be, the formation of a partnership or joint venture between Lender and Bank.

22. Severability. The invalidity or unenforceability of any terms or provisions of this Agreement shall not affect the validity or enforceability of any other provisions of this Agreement, which shall remain in full force and effect, and, if any such unenforceable provision hereof is enforceable in any part or to any lesser extent, such provision shall be enforceable in all such parts and to the greatest extent permissible under applicable law.

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

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

(b) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY (i) AGREES THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS AGREEMENT SHALL BE TRIED AND LITIGATED ONLY IN THE STATE AND FEDERAL COURTS LOCATED IN THE STATE OF ALABAMA AND (ii) WAIVES ANY RIGHT IT MAY HAVE TO ASSERT THE DOCTRINE OF *FORUM NON CONVENIENS* OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS SECTION 23.

(c) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). IT IS AGREED AND UNDERSTOOD THAT THIS WAIVER CONSTITUTES A WAIVER OF TRIAL BY JURY OF ALL CLAIMS AGAINST ALL PARTIES TO SUCH ACTIONS OR PROCEEDINGS, INCLUDING CLAIMS AGAINST PARTIES WHO ARE NOT PARTIES TO THIS AGREEMENT. EACH PARTY (i) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR

ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, AND (ii) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 23.

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

(e) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, NO PARTY SHALL ASSERT, AND EACH PARTY HEREBY WAIVES, ANY CLAIM AGAINST ANY OTHER PARTY OR SUCH OTHER PARTY'S AFFILIATES, ON ANY THEORY OF LIABILITY, FOR SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES (AS OPPOSED TO DIRECT OR ACTUAL DAMAGES) ARISING OUT OF, IN CONNECTION WITH, OR AS A RESULT OF, THIS AGREEMENT OR ANY AGREEMENT OR INSTRUMENT CONTEMPLATED HEREBY AND/OR THE TRANSACTIONS CONTEMPLATED HEREBY.

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

25. Receipt and Review of Loan Documents. Each party to this Agreement acknowledges and agrees that it has been provided with a copy of the Credit Agreement and each of the other Loan Documents it has requested and has reviewed such documents with counsel of its own choosing.

26. Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all of which counterparts together shall constitute but one and the same instrument. Faxed, scanned or photocopied signatures shall be deemed equivalent to original signatures.

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

IN WITNESS WHEREOF, the parties hereto have executed this Account Pledge and Control Agreement (Lender Reserve Account) as of the Effective Date.

BORROWER:

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

By: _____

Name: John E. Koniar
Title: President

[COUNTERPART SIGNATURE PAGE TO
ACCOUNT PLEDGE AND CONTROL AGREEMENT
(LENDER RESERVE ACCOUNT)]

LENDER:

PACESETTER CDE X, LLC, a Texas limited liability company

By: Pacesetter CDE, Inc., a Texas corporation, its managing member

By: _____
Name: Giovanni Capriglione
Title: Secretary

[COUNTERPART SIGNATURE PAGE TO
ACCOUNT PLEDGE AND CONTROL AGREEMENT
(LENDER RESERVE ACCOUNT)]

BANK:

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 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 (3) below.
(2)	If to Lender:	Pacesetter CDE X, LLC c/o Pacesetter CDE, Inc. 2600 E. Southlake Boulevard, Suite 120-105 Southlake, TX 76092 Attention: Giovanni Capriglione Email: giovanni@pacesettercde.com
	With a copy to:	Law Office of Mark D. Foster 4835 LBJ Freeway, Suite 424 Dallas, TX 75244 Attention: Mark D. Foster, Esq. Facsimile: 214-363-9551 Email: mark@mdfoster.com
	And copies to:	The addresses set forth under (3) below.
(3)	If to Bank:	JPMorgan Chase Bank, N.A. 10 S. Dearborn Street, 19th Floor Mail Code: IL1-0953 Chicago, IL 60603-5506 Attention: NMTC Asset Manager Facsimile: 312-325-5050 Email: nmtc.reporting@chase.com

[CONTINUED NEXT PAGE]

SCHEDULE A (CONT'D)

Notice Addresses of Parties

And a copy to:	JPMorgan Chase Bank, N.A. New Markets Tax Credit Group 2200 Ross Avenue, 9th Floor Mail Code: TX1-2951 Dallas, TX 75201 Attention: Wanda Clark Facsimile: 214-965-3297 Email: wanda.clark@chase.com
And a copy to:	Jones Day 100 High Street, 21st Floor Boston, MA 02110 Attention: Douglas R. Banghart, Esq. Facsimile: 617-499-6999 Email: dbanghart@jonesday.com

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EXECUTION VERSION

ACCOUNT PLEDGE AND CONTROL AGREEMENT
(CFPFCD RESERVE ACCOUNT)

THIS ACCOUNT PLEDGE AND CONTROL AGREEMENT (CFPFCD RESERVE ACCOUNT) (this "Agreement") is entered into as of July 11, 2014 (the "Effective Date"), by and among (i) JPMORGAN CHASE BANK, N.A., a national banking association, in its capacity as holder of the Reserve Account defined below (in such capacity, "Bank"), having an address at 270 Park Avenue, 45th Floor, Mail Code: NY1-K425, New York, New York 10017, (ii) JPMORGAN CHASE BANK, N.A., a national banking association, in its capacity as a secured party (in such capacity, "JPMC"), (iii) PACESETTER CDE X, LLC, a Texas limited liability company, as a secured party ("CDE"), having an address at 2600 East Southlake Boulevard, Suite 120-105, Southlake, Texas 76092, and (iv) THE CITY OF FOLEY PUBLIC FACILITIES COOPERATIVE DISTRICT, an Alabama public corporation ("CFPFCD"), having an address at 407 East Laurel Avenue, Foley, Alabama 36535.

RECITALS

A. Coastal Alabama Farmers' and Fishermen's Market, Inc., an Alabama nonprofit corporation ("Borrower"), owns the Land (as defined in the Credit Agreement (defined below)) and the existing improvements thereon, on which Borrower is constructing the Project (as defined in the Credit Agreement).

B. On the Effective Date, CDE is making the Loans (as defined in the Credit Agreement) to Borrower to provide financing for the Project, pursuant to (i) that certain Credit Agreement, dated as of the Effective Date (as the same may be amended, assigned, restated, modified, or supplemented from time to time, the "Credit Agreement"), by and between Borrower, as borrower, and CDE, as lender, and (ii) the other Loan Documents (as defined in the Credit Agreement).

C. On the Effective Date, CFPFCD is entering into the Environmental Indemnity and Guaranty of P&C (each defined below) for the benefit of CDE.

D. On the Effective Date, Borrower and CFPFCD are entering into the QALICB NMTC Indemnity (defined below) for the benefit of JPMC.

E. On the Effective Date, and pursuant to the Closing Transfers Memorandum (as defined in the Credit Agreement), CFPFCD will deposit $150,000.00 (the "Reserve Deposit") into the Reserve Account (defined below) established by CFPFCD with Bank and (i) pledged to CDE to secure CFPFCD's Obligations (defined below) to CDE and (ii) pledged to JPMC to secure CFPFCD's Obligations to JPMC.

F. Funds shall be withdrawn from the Reserve Account as set forth in herein.

G. CDE is unwilling to make the Loans unless the Reserve Deposit is made on the Effective Date for the benefit of CDE.

H. JPMC is unwilling to make the Equity Investment (as defined in the QALICB NMTC Indemnity), to cause Chase Community Equity, LLC, a Delaware limited liability company ("CCE"), to make the Capital Contribution (as defined in the QALICB NMTC Indemnity), and to cause CCE to cause Chase NMTC CAFFM Investment Fund, LLC, a Delaware limited liability company ("Fund"), to make the QEIs (as defined in the QALICB NMTC Indemnity) in CDE unless the Reserve Deposit is made on the Effective Date for the benefit of JPMC.

I. The parties hereto are entering into this Agreement for the purposes of (i) CFPFCD granting to CDE and JPMC (collectively, the "Secured Parties") a security interest in the Reserve Account, (ii) perfecting the Secured Parties' security interests in the Reserve Account, (iii) setting forth the relative priorities of the Secured Parties in the Reserve Account, (iv) engaging Bank to provide the services described herein, and (iv) providing Bank the directions of the Secured Parties and CFPFCD with respect to the Reserve Account and all unreleased funds deposited therein (collectively, the "Unreleased Funds").

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

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

(a) "Agreement" has the meaning set forth in the introductory paragraph, as the same may be amended, assigned, restated, modified, or supplemented.

(b) "Bad Act" means, with respect to any Person, such Person's willful misconduct, gross negligence or fraud.

(c) "Bank" has the meaning set forth in the introductory paragraph to this Agreement.

(d) "CCE" has the meaning set forth in the Recitals.

(e) "CDE" has the meaning set forth in the introductory paragraph to this Agreement.

(f) "CFPFCD" has the meaning set forth in the introductory paragraph to this Agreement.

(g) "Covered Person" means each of CDE, JPMC, Bank, CDE's members, the respective Affiliates of each of the foregoing, and the respective directors, managers, members, partners, officers, employees, lenders, representatives, consultants, and attorneys of each of the foregoing.

(h) "Credit Agreement" has the meaning set forth in the Recitals.

(i) "Effective Date" has the meaning set forth in the introductory paragraph to this Agreement.

(j) "Eligible Bank" means Bank or such other bank or financial institution, as may be selected by the Secured Parties or CDE, as applicable, that is an "insured depository institution" under the Federal Deposit Insurance Act, as amended, and has a combined capital and surplus of not less than $1,000,000,000 at all times.

(k) "Environmental Indemnity" means that certain Joint and Several Hazardous Substance Guaranty and Indemnification Agreement, dated as of Effective Date, given by Borrower and CFPFCD in favor of CDE, as the same may be amended, assigned, restated, modified, or supplemented from time to time.

(l) "Fund" has the meaning set forth in the Recitals.

(m) "Guaranty of P&C" means that certain Guaranty of Payment and Completion, dated as of the Effective Date, given by CFPFCD in favor of CDE, as the same may be amended, assigned, restated, modified, or supplemented from time to time.

(n) "JPMC" has the meaning set forth in the introductory paragraph to this Agreement.

(o) "Liabilities" has the meaning set forth in Section 11(a).

(p) "Obligations" means (i) all indebtedness and obligations of CFPFCD to CDE under the Loan Documents (including, without limitation, the Environmental Indemnity and Guaranty of P&C) or (ii) all obligations of CFPFCD to JPMC under the QALICB NMTC Indemnity, as the context requires.

(q) "QALICB NMTC Indemnity" means that certain QALICB Indemnification Agreement, dated as of the Effective Date, by and among Borrower and CFPFCD (as the "Indemnitors" thereunder) and JPMC, as the same may be amended, assigned, restated, modified, or supplemented from time to time.

(r) "Reserve Account" means that certain account established by CFPFCD with Bank into which the Reserve Deposit shall be made and which, in accordance with this Agreement, is more particularly described in Section 2(a).

(s) "Reserve Deposit" has the meaning set forth in the Recitals.

(t) "Secured Parties" has the meaning set forth in the Recitals.

(u) "UCC" means the Uniform Commercial Code as adopted by the State of Alabama or any other State, as applicable, as the same may be amended, restated, replaced, supplemented, or otherwise modified from time to time.

(v) "Unreleased Funds" has the meaning set forth in the Recitals.

2. Reserve Account.

(a) The Reserve Account maintained for CFPFCD bears account number 3096638308 and is entitled "CFPFCD Reserve Account." The Reserve Account consists of an interest bearing account, and CFPFCD agrees that it will include in its income all interest and earnings on the funds deposited therein. The Reserve Account has been assigned the federal tax identification number of CFPFCD.

(b) Bank represents and warrants to the Secured Parties that: (i) Bank maintains the Reserve Account for CFPFCD and (ii) Bank does not know of any claim to or interest in the Reserve Account, except for claims and interests of the parties referred to in this Agreement.

(c) Bank shall hold the Reserve Account and the Unreleased Funds for the benefit of CFPFCD and the Secured Parties as their interests are set forth in this Agreement, and Bank shall designate such amounts on its books as being held for the benefit of the Secured Parties and CFPFCD in accordance with the terms hereof.

(d) The Reserve Account and the Unreleased Funds shall be maintained separate and apart from the other funds of Bank and CFPFCD, and shall be held, invested, and disbursed by Bank in accordance with the terms hereof.

3. Unreleased Funds. Bank will make the Reserve Deposit on the Effective Date and will comply with all instructions it receives directing disposition of the Unreleased Funds originated from the Secured Parties, without further consent by CFPFCD.

4. Control of and Disbursements from the Reserve Account.

(a) The Reserve Account shall be subject to the control and direction of the Secured Parties. The Secured Parties shall have the sole and absolute right to make or authorize withdrawals from the Reserve Account, and any such withdrawals from the Reserve Account shall be made in accordance with the terms of this Agreement. Notwithstanding anything to the contrary in this Agreement, neither CFPFCD nor any other Person claiming by, on behalf of or through CFPFCD shall have any right or authority, whether express or implied, to make use of, or withdraw any funds from the Reserve Account, or to give any instructions with respect to the Reserve Account.

(b) CFPFCD authorizes and directs Bank, and Bank agrees, that Bank shall not honor CFPFCD's instructions with respect to a release from the Reserve Account without the Secured Parties' prior written consent (such consent in the Secured Parties' sole and absolute discretion). By their signatures to this Agreement, CFPFCD hereby authorizes and directs Bank, and Bank agrees, to comply with the instructions of the Secured Parties directing disposition of the funds without further consent of CFPFCD.

5. Security Interest.

(a) CFPFCD hereby grants to the Secured Parties a first priority perfected security interest in the Reserve Account, the Unreleased Funds, and all cash and non-cash proceeds of all

or any of the foregoing, in whatever form, and all proceeds of such proceeds, as additional security for the Obligations.

(b) Upon the occurrence and continuance of an Event of Default (as defined in the Credit Agreement), the Secured Parties may, in addition to any and all other rights and remedies available to CDE under the Loan Documents, direct Bank to pay to CDE all Unreleased Funds in the Reserve Account, and CDE may apply any or all such funds to the repayment of CFPFCD's Obligations to CDE in any order in CDE's sole and absolute discretion. Subject to Section 5(d), within 10 Business Days of receipt of such direction from the Secured Parties, Bank shall disburse funds in the Reserve Account by wire transfer, account transfer or check, or otherwise for final disposition.

(c) Upon the occurrence and continuance of a Specified NMTC Recapture Event (as defined in the QALICB NMTC Indemnity) or other event triggering liability under the QALICB NMTC Indemnity, JPMC (individually and without the need for CDE's prior or contemporaneous acknowledgement or consent) may, in addition to any and all other rights and remedies available to JPMC under the QALICB NMTC Indemnity, direct Bank to pay to JPMC all Unreleased Funds in the Reserve Account, and JPMC may apply any or all such funds to the repayment of CFPFCD's Obligations to JPMC in any order in JPMC's sole and absolute discretion. JPMC shall provide CDE with a copy of any such direction provided to Bank. Within 10 Business Days of receipt of such direction from JPMC, Bank shall disburse funds in the Reserve Account by wire transfer, account transfer or check, or otherwise for final disposition.

(d) Notwithstanding anything to the contrary herein, in the event directions are provided to Bank under Section 5(b) and Section 5(c) prior to Bank's disbursement of funds in the Reserve Account, the Secured Parties and CFPFCD acknowledge and agree that Bank shall follow the direction of JPMC provided under Section 5(c).

(e) This Section 5 shall constitute a "security agreement" and the Reserve Account shall constitute a "deposit account" within the meaning of the UCC, and each of the Secured Parties shall have all of the remedies of a secured party under the UCC. CFPFCD authorizes the Secured Parties to file any financing or continuation statements and amendments thereto relating to the Reserve Account without the signature of CFPFCD.

(f) CFPFCD represents and warrants that it has the legal right to pledge the Reserve Account to the Secured Parties, that the funds in the Reserve Account are not held for the benefit of a third party, and that there are no perfected liens or encumbrances with respect to the Reserve Account. CFPFCD covenants to the Secured Parties that it shall not enter into any acknowledgment or agreement that gives any other Person except the Secured Parties control over, or any other security interest, lien or title in, the Reserve Account.

(g) CFPFCD will not, without obtaining the prior written consent of the Secured Parties (such consent in the Secured Parties' sole and absolute discretion), further pledge, assign or grant any security interest in the Reserve Account or the Unreleased Funds or permit any lien or encumbrance to attach thereto, or any levy to be made thereon, or any UCC-1 Financing

Statements, except those naming the Secured Parties, as the secured parties, to be filed with respect thereto.

(h) Bank acknowledges, that, in accordance with this Agreement:

(i) the Reserve Account and all Unreleased Funds have been irrevocably pledged, transferred and assigned to the Secured Parties as security for the Obligations; and

(ii) the Secured Parties have a security interest in the Reserve Account and all Unreleased Funds and a lien thereon, and CFPFCD has not made (and will not make) another pledge of the Reserve Account or the Unreleased Funds.

(i) In connection with the security interest granted in this Section 5, Bank is irrevocably authorized and directed, without any additional consent or authorization of CFPFCD, to disburse all Unreleased Funds as directed by the Secured Parties in accordance with Section 5(b) and Section 5(c), as applicable. Bank shall give written notice to CFPFCD of any such disbursement within a reasonable period after it is completed. Bank agrees to take commercially reasonable measures to notify the Secured Parties immediately in the event that any other Person makes a claim to or with respect to the Reserve Account or any Unreleased Funds.

6. Investment of Unreleased Funds. Unreleased Funds shall be invested by Bank in a money market account at Bank.

7. Resignation by or Termination of Bank.

(a) CFPFCD may not unilaterally terminate this Agreement or close the Reserve Account. Except as set forth in Section 10, Bank shall not cause or permit the Reserve Account to be closed unless it has received prior written notice from the Secured Parties.

(b) Bank may resign from its duties, obligations, and rights under this Agreement at any time after 30 calendar days' prior written notice to the Secured Parties and CFPFCD, but in no event will Bank be released of its obligations hereunder unless and until an Eligible Bank is designated by the Secured Parties (such designation in the Secured Parties' sole and absolute discretion) as a successor to Bank and has assumed the duties, obligations, and rights of Bank hereunder in accordance with Section 7(e).

(c) CDE may not terminate Bank's duties, obligations or rights under this Agreement in the absence of a Bad Act by Bank. Any claim by CDE that Bank committed a Bad Act shall be provided to Bank in writing (with copies provided to JPMC and CFPFCD). Bank may contest any such claim in any court of competent jurisdiction (subject to Section 23). If Bank contests such claim, Bank duties, obligations, and rights under this Agreement shall continue unabated unless and until a final determination is rendered by a court of competent jurisdiction that Bank committed a Bad Act. In the event (i) such a final determination is issued or (ii) Bank does not contest CDE's claim that Bank committed a Bad Act, CDE shall designate a successor to Bank (such designation in CDE's sole and absolute discretion), which shall be an Eligible Bank.

(d) The resignation or termination of Bank in accordance with this Agreement shall, without further action by any Person, release Bank from its duties, obligations, and rights under this Agreement arising from and after the date of such resignation or termination.

(e) The designated successor to Bank shall be required to expressly assume all duties, obligations, and rights of Bank under this Agreement. Bank agrees to reasonably cooperate with its designated successor in the orderly transitioning of its duties, obligations, and rights under this Agreement to such designated successor. All funds then on deposit in the Reserve Account, after payment of all accrued and unpaid fees of Bank (if any) with respect to Reserve Account, shall be disbursed to the designated successor to hold and administer the Reserve Account.

8. Bank Fees and Set-off.

(a) To compensate Bank for performing the services required hereunder, CFPFCD hereby agrees to pay Bank's standard fees for such services, in accordance with a schedule of fees to be established from time to time by Bank. In addition, CFPFCD hereby agrees to pay to Bank for the actual amount of any exchange, collection, processing, transfer, wire, postage or other out-of-pocket expenses incurred by Bank with respect to the Reserve Account, as reasonably determined by Bank from time to time.

(b) Upon the request of CFPFCD, Bank shall include its fees in an account analysis statement, in accordance with the particular arrangements between Bank and CFPFCD.

(c) Bank waives any right to offset any claim against CFPFCD which it might have against the Reserve Account; *provided, however*, that Bank retains the right to charge the Reserve Account for any charges, fees and expenses provided for herein for which CFPFCD is responsible and for all items deposited in and credited to the Reserve Account and subsequently returned unpaid or with respect to which Bank fails to receive final settlement. If there are insufficient funds in the Reserve Account to cover the fees or returned items attributable to such account, CFPFCD agrees to reimburse Bank for the amount of such shortfall within 3 Business Days following demand therefor. Bank hereby subordinates all security interests, liens, claims, and, except as specifically set forth in this Section 8, rights of setoff it may have now or in the future, against the Reserve Account to the security interests, liens and claims of the Secured Parties.

9. Reserve Account Statements. Upon request, Bank shall send a monthly report to the Secured Parties and CFPFCD, which monthly report shall specify all credits and debits to the Reserve Account for the previous calendar month and the balance in the Reserve Account as of the end of such month. Bank shall provide or deliver to the Secured Parties and CFPFCD copies of all statements and other information concerning the Reserve Account as they shall reasonably request.

10. Term of Agreement. Following the earlier to occur of the following, this Agreement shall irrevocably terminate and Bank shall close the Reserve Account: (a) written notice from the Secured Parties that CFPFCD has fully paid and satisfied all Obligations or (b) following the seven-year anniversary of the Effective Date; *provided* that neither JPMC nor CDE has provided written notice to CFPFCD that any Obligations are due and owing. Upon the termination of this

Agreement and the closing of the Reserve Account, all funds then on deposit in the Reserve Account, after payment of all accrued and unpaid fees of Bank (if any), shall be released by Bank to CFPFCD. Bank shall be under no obligation to provide notice to the Secured Parties, CFPFCD or any other Person of the termination of this Agreement or the closing of the Reserve Account.

11. Indemnification.

(a) CFPFCD hereby agrees to indemnify and hold harmless each Covered Person from any and all losses, liabilities, suits, actions, obligations, fines, damages, judgments, penalties, claims, causes of action, charges, costs and expenses (including, without limitation, reasonable attorneys', accountants', experts', consultants' fees, disbursements and court costs prior to trial, at trial and on appeal) (collectively, "Liabilities") which are imposed on, incurred or paid by, or asserted against a Covered Person (i) by reason or on account of this Agreement or (ii) in connection with any instruction or request of CFPFCD made under this Agreement.

(b) A Covered Person's right of indemnification under Section 11(a) will not be directly or indirectly limited, prejudiced, impaired or eliminated in any way by any finding or allegation that the conduct of Bank, CDE and/or JPMC is active, passive or subject to any other classification or that Bank, CDE and/or JPMC is directly or indirectly responsible under any theory of any kind for any act or omission by CFPFCD or any other Person other than a Covered Person.

(c) Notwithstanding Section 11(a) and (b), CFPFCD will not be obligated to indemnify, defend, or hold harmless a Covered Person from or against any Liabilities caused as a direct result of such Covered Person's Bad Acts.

(d) Notwithstanding Section 10 or any other provision to the contrary contained in this Agreement or any of the other Loan Documents, the obligations of CFPFCD under this Section 11 (i) will survive the termination of this Agreement and (ii) will not be directly or indirectly limited, prejudiced, impaired or eliminated in any way with respect to Bank if Bank has resigned or has been terminated by CDE in accordance with this Agreement.

12. Certain Matters Affecting Bank.

(a) Bank may rely and shall be protected in acting or refraining from acting upon any written notice (including but not limited to electronically confirmed facsimiles of such written notice) believed by it to be genuine and to have been signed or presented by the proper party or parties. Bank and its Affiliates shall not be liable for any loss or injury resulting from its actions or its performance or lack of performance of its duties hereunder or for its decisions in the absence of a Bad Act. In no event shall Bank or any of its Affiliates be liable for (i) acting in accordance with instructions from the Secured Parties or (with respect to Section 5(c) only) JPMC or (ii) losses due to forces beyond the control of Bank, including, without limitation, strikes, work stoppages, acts of war or terrorism, insurrection, revolution, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services.

(b) The duties and obligations of Bank hereunder shall be determined solely by the express provisions of this Agreement. Bank is not acting as a fiduciary for any Person. Bank shall not be liable except for the performance of Bank's duties and obligations as are specifically set forth in this Agreement. No implied covenants or obligations shall be read into this Agreement against Bank.

13. Conflicts. Matters not covered by this Agreement shall be determined in accordance with the customary procedures of Bank and any deposit account agreements, and in the event of a conflict between the terms of this Agreement and the customary procedures of Bank and/or any deposit account agreements, the terms of this Agreement shall govern.

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

15. Headings and Section References. The headings used herein are for convenience only and do not limit or alter the terms of this Agreement or in any way affect the meaning or interpretation of this Agreement. References in this Agreement to Sections are intended to refer to Sections of this Agreement, unless otherwise specifically stated.

16. Successors and Assigns.

(a) This Agreement shall bind and inure to the benefit of and be enforceable by the Secured Parties, CFPFCD, Bank and their respective, permissible successors and assigns.

(b) CDE shall have the right to assign or transfer its duties, obligations, and rights under this Agreement in connection with any assignment of all or any part of the Loans in accordance with the Loan Documents. Any assignee or transferee of CDE pursuant to the immediately preceding sentence shall be entitled to all the benefits afforded to CDE under this Agreement; *provided*, that such assignee or transferee shall have delivered to Bank, JPMC and CFPFCD written evidence that such assignee or transferee agrees to be bound by the terms of this Agreement.

(c) Bank shall have the right to assign or transfer its duties, obligations, and rights under this Agreement in accordance with Section 7 or with the prior written consent of the Secured Parties.

17. Incorporation of Recitals and Schedule. The Recitals and Schedule identified in this Agreement are incorporated herein by reference and made a part hereof.

18. Entire Agreement; Amendment and Modification. This Agreement (together with other Loan Documents, to the extent referenced herein) embodies the entire agreement and understanding by and among the parties hereto relating to the subject matter hereof, and supersedes all prior agreements and understandings relating to the subject matter hereof. No changes, amendments, or alterations to this Agreement will be effective unless pursuant to written instrument executed by the Secured Parties, CFPFCD and Bank (or each such party's respective successors or assigns, if applicable).

19. No Waiver of Strict Compliance. No waiver or failure of a party to insist upon strict compliance with any obligation, covenant, agreement, representation, warranty, or condition shall operate as a waiver of, or estoppel with respect to, any subsequent or other failure to comply with such obligation, covenant, agreement, representation, warranty, or condition, or with any other obligation, covenant, agreement, representation, warranty, or condition contained herein. Failure to exercise any right, power, or remedy shall not constitute a waiver of any obligations under this Agreement or constitute a modification of this Agreement. The making of this Agreement shall not waive or impair any other security a party may have or hereafter acquire for the payment of obligations under this Agreement, and the taking of any additional security it may have in the order it may deem proper.

20. No Guaranty. Notwithstanding any provision to the contrary contained in this Agreement, neither the Secured Parties nor Bank shall be deemed to have, directly or indirectly, guaranteed any debts, obligations or liabilities of CFPFCD or CFPFCD's Affiliates.

21. No Partnership Created. Neither the execution of this Agreement, nor any action taken by CDE or Bank pursuant hereto is intended to be, nor shall it be construed to be, the formation of a partnership or joint venture between CDE and Bank.

22. Severability. The invalidity or unenforceability of any terms or provisions of this Agreement shall not affect the validity or enforceability of any other provisions of this Agreement, which shall remain in full force and effect, and, if any such unenforceable provision hereof is enforceable in any part or to any lesser extent, such provision shall be enforceable in all such parts and to the greatest extent permissible under applicable law.

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

(a) THE VALIDITY OF THIS AGREEMENT, THE CONSTRUCTION, INTERPRETATION, AND ENFORCEMENT HEREOF, AND THE RIGHTS OF EACH PARTY WITH RESPECT TO ALL MATTERS ARISING HEREUNDER OR RELATED HERETO SHALL BE DETERMINED UNDER, GOVERNED BY, AND CONSTRUED IN

ACCORDANCE WITH THE LAWS OF THE STATE OF ALABAMA, WITHOUT GIVING EFFECT TO CONFLICT OR CHOICE OF LAW PRINCIPLES.

(b) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). IT IS AGREED AND UNDERSTOOD THAT THIS WAIVER CONSTITUTES A WAIVER OF TRIAL BY JURY OF ALL CLAIMS AGAINST ALL PARTIES TO SUCH ACTIONS OR PROCEEDINGS, INCLUDING CLAIMS AGAINST PARTIES WHO ARE NOT PARTIES TO THIS AGREEMENT. EACH PARTY (i) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, AND (ii) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 23.

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

(d) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, NO PARTY SHALL ASSERT, AND EACH PARTY HEREBY WAIVES, ANY CLAIM AGAINST ANY OTHER PARTY OR SUCH OTHER PARTY'S AFFILIATES, ON ANY THEORY OF LIABILITY, FOR SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES (AS OPPOSED TO DIRECT OR ACTUAL DAMAGES) ARISING OUT OF, IN CONNECTION WITH, OR AS A RESULT OF, THIS AGREEMENT OR ANY AGREEMENT OR INSTRUMENT CONTEMPLATED HEREBY AND/OR THE TRANSACTIONS CONTEMPLATED HEREBY.

24. [Intentionally Omitted].

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

26. Receipt and Review of Loan Documents. Each party to this Agreement acknowledges and agrees that it has been provided with a copy of the Credit Agreement and each of the other

Loan Documents it has requested and has reviewed such documents with counsel of its own choosing.

27. Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all of which counterparts together shall constitute but one and the same instrument. Faxed, scanned or photocopied signatures shall be deemed equivalent to original signatures.

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

IN WITNESS WHEREOF, the parties hereto have executed this Account Pledge and Control Agreement (CFPFCD Reserve Account) as of the Effective Date.

CFPFCD:

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

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

[COUNTERPART SIGNATURE PAGE TO
ACCOUNT PLEDGE AND CONTROL AGREEMENT (CFPFCD RESERVE ACCOUNT)]

CDE:

PACESETTER CDE X, LLC, a Texas limited liability company

By: Pacesetter CDE, Inc., a Texas corporation, its managing member

By: _____
Name: Giovanni Capriglione
Title: Secretary

[COUNTERPART SIGNATURE PAGE TO
ACCOUNT PLEDGE AND CONTROL AGREEMENT (CFPFCD RESERVE ACCOUNT)]

BANK & JPMC:

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

By: _____
Name: Kevin R. Goldsmith
Title: Authorized Officer

SCHEDULE A

Notice Addresses of Parties

(1) If to CFPFCD:

The City of Foley Public Facilities Cooperative District
c/o City of Foley
407 East Laurel Avenue
Foley, AL 36535
Attention: Jeff Rouzie, Director of Economic Development
Facsimile: 251-952-4012
Email: 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

And copies to: The addresses set forth under (3) below.

(2) If to CDE:

Pacesetter CDE X, LLC
c/o Pacesetter CDE, Inc.
2600 E. Southlake Blvd., Suite 120-105
Southlake, TX 76092
Attention: Giovanni Capriglione
Email: giovanni@pacesettercde.com

With a copy to:

Law Office of Mark D. Foster
4835 LBJ Freeway, Suite 424
Dallas, TX 75244
Attention: Mark D. Foster, Esq.
Facsimile: 214-363-9551
Email: mark@mdfoster.com

And copies to: The addresses set forth under (3) below.

(3) If to JPMC or Bank:

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

[CONTINUED NEXT PAGE]

SCHEDULE A (CONT'D)

Notice Addresses of Parties

With a copy to:	Chase Community Equity, LLC c/o JPMorgan Chase Bank, N.A. New Markets Tax Credit Group 2200 Ross Avenue, 9th Floor Mail Code: TX1-2951 Dallas, TX 75201 Attention: Wanda Clark Facsimile: 214-965-3297 Email: wanda.clark@jpmchase.com
And a copy to:	Jones Day 100 High Street, 21st Floor Boston, MA 02110 Attention: Douglas R. Banghart, Esq. Facsimile: 617-449-6999 Email: dbanghart@jonesday.com

[REMAINDER OF PAGE BLANK]

EXECUTION VERSION

ASSIGNMENT AGREEMENT

THIS ASSIGNMENT AGREEMENT (this "Assignment") is made as of July 11, 2014 (the "Effective Date") by the CITY OF FOLEY, ALABAMA, an Alabama municipal corporation (the "City"), in favor of COASTAL ALABAMA FARMERS' AND FISHERMEN'S MARKET, INC., an Alabama nonprofit corporation ("Borrower").

RECITALS

A. Contemporaneously with this Assignment, Pacesetter CDE X, LLC, a Texas limited liability company ("Lender"), and Borrower have entered into that certain Credit Agreement (as the same may be amended, assigned, restated, modified, or supplemented from time to time, the "Credit Agreement"), pursuant to which Lender has agreed to make loans to Borrower in the aggregate original principal amount of $8,000,000 (as more particularly described in the Credit Agreement, collectively, the "Loans").

B. The City will derive substantial economic benefit, directly and/or indirectly, from Borrower's receipt of the Loans.

C. As a condition to making the Loans, Lender has required that (i) the City irrevocably and unconditionally assigns, pledges, transfers and sets over to Borrower all of its rights in and to the Contracts (as defined in the Borrower's Assignment (defined below)) on the Effective Date, as provided in this Assignment and (ii) Borrower irrevocably and unconditionally assigns, pledges, transfers and sets over all of its rights, title, and interests in the Contracts to Lender, as provided in that certain Assignment of Contracts dated as of the Effective Date made by Borrower in favor of Lender (as the same may be amended, assigned, restated, modified, or supplemented from time to time, the "Borrower's Assignment").

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, in order to induce Lender to make the Loans to Borrower, and intending to be legally bound hereby, the City hereby covenants and agrees as follows:

1. Recitals; Definitions. The foregoing recitals are hereby incorporated into this Assignment. All capitalized terms utilized in this Assignment but not otherwise defined shall have the meanings ascribed to them in the Borrower's Assignment.

2. Assignment. The City hereby irrevocably and unconditionally assigns, pledges, transfers and sets over to Borrower all of its right, title and interest in and to the Contracts. Notwithstanding the foregoing, the City may remain a party to the Contracts for the sole purpose of guaranteeing the payment obligations of Borrower thereunder.

3. Acceptance. Borrower hereby accepts the assignment of the Contracts and agrees to be bound to the performance of all obligations of the City under the terms of the Contracts from and after the Effective Date.

4. Representations and Warranties. The City hereby represents and warrants to Borrower as follows:

(a) To the best of the City's knowledge, as of the Effective Date: (i) there have been no prior assignments of the Contracts, (ii) Borrower has been provided with true, complete and correct copies of the Contracts, (iii) the Contracts are in full force and effect, (iv) the City has fully performed all of its obligations under the Contracts which, by the terms of the Contracts, are required to be performed as of the Effective Date, (v) there exists no default on the part of the City or any other party under any of the Contracts, and (vi) the right, title and interest of the City in, to and under the Contracts are not subject to any defense, offset, counterclaim or claim.

(b) No consent of any person is required in connection with the execution, delivery and performance by the City of this Assignment.

(c) The individual executing this Assignment on behalf of the City has the power and authority and the legal right to execute and deliver this Assignment and to bind the City to perform its obligations under this Assignment.

5. Lender Reliance. Lender and its members or partners, as applicable, may rely upon the representations and warranties of the City set forth in Section 4.

6. Successors and Assigns. This Assignment shall be binding upon the City and the City's heirs, executors, administrators, legal representatives, successors and assigns, and shall inure to the benefit of Borrower and its successors and assigns.

7. Entire Agreement; Amendment and Modification; Conflict. This Assignment (together with the Borrower's Assignment, to the extent referenced herein) embodies the entire agreement and understanding by and among the parties hereto relating to the subject matter hereof, and supersedes all prior agreements and understandings relating to the subject matter hereof. No changes, amendments, or alterations to this Assignment will be effective unless pursuant to (a) written instrument executed by the City and Borrower and (b) the prior written consent of Lender (such consent in Lender's sole and absolute discretion).

8. CHOICE OF LAW. THE VALIDITY OF THIS ASSIGNMENT, THE CONSTRUCTION, INTERPRETATION, AND ENFORCEMENT HEREOF, AND THE RIGHTS OF THE CITY AND BORROWER WITH RESPECT TO ALL MATTERS ARISING HEREUNDER OR RELATED HERETO SHALL BE DETERMINED UNDER, GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ALABAMA, WITHOUT GIVING EFFECT TO CONFLICT OR CHOICE OF LAW PRINCIPLES.

9. Signature. This Assignment may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all of which counterparts together shall constitute but one and the same instrument. Faxed, scanned or photocopied signatures shall be deemed equivalent to original signatures.

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

IN WITNESS WHEREOF, the City and Borrower have caused this Assignment Agreement to be duly executed and delivered by their duly authorized officers as of the Effective Date.

CITY:

CITY OF FOLEY, ALABAMA, an Alabama municipal corporation

By: _____

Name: John E. Koniar
Title: Mayor

[COUNTERPART SIGNATURE PAGE TO ASSIGNMENT AGREEMENT]

BORROWER:

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

By: _____

Name: John E. Koniar
Title: President

EXECUTION VERSION

ASSIGNMENT OF CONTRACTS

THIS ASSIGNMENT OF CONTRACTS (this "Assignment"), dated as of July 11, 2014 (the "Effective Date"), is made by COASTAL ALABAMA FARMERS' AND FISHERMEN'S MARKET, INC., an Alabama nonprofit corporation ("Borrower"), in favor of PACESETTER CDE X, LLC, a Texas limited liability company ("Lender").

RECITALS

A. Contemporaneously with this Assignment, Borrower and Lender have entered into that certain Credit Agreement dated as of the Effective Date (as the same may be amended, assigned, restated, modified, or supplemented from time to time, the "Credit Agreement"), pursuant to which Lender has agreed to make loans to Borrower in the aggregate original principal amount of $8,000,000 (collectively, and as more particularly described in the Credit Agreement, the "Loans").

B. Lender is unwilling to (i) enter into the Credit Agreement and the other Loan Documents or (ii) make the Loans to Borrower unless Borrower, among other things, secures the obligations to Lender under the Loan Documents by delivering this Assignment.

AGREEMENT

In consideration of the mutual covenants contained herein and benefits derived herefrom, and for good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, Borrower agrees to the following terms and conditions:

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

(a) "Architect" means McCollough Architecture, Inc., an Alabama corporation.

(b) "Architect Contract" has the meaning set forth on Exhibit A.

(c) "Construction" has the meaning set forth in Section 2(c).

(d) "Construction Contract" has the meaning set forth on Exhibit A.

(e) "Construction Manager" means Sun Coast Builders, Inc., an Alabama corporation.

(f) "Contracts" has the meaning set forth in the last paragraph of Section 2.

(g) "Obligations" has the meaning set forth in Section 2.

(h) "Plans" has the meaning set forth in Section 2(c).

(i) "Program Manager" means HOAR Program Management, LLC, a Delaware limited liability company.

2. Assignment and Pledge. As security for the payment in full of the indebtedness and performance in full of all obligations (collectively, whether now existing or hereafter arising, the "Obligations") of Borrower to Lender under the Loan Documents (including but not limited to the Notes), Borrower hereby irrevocably and unconditionally assigns, pledges, transfers and sets over to Lender all of its right, title and interest in and to:

(a) all purchase, construction, construction management, design, AIA agreements, development, easement, property rights, service, supply, management, use, leasing, operation, maintenance, landscaping, gardening, parking, engineering, consulting and architectural contracts and agreements, licenses and all other similar contracts and agreements, all amendments, modifications and supplements thereto, relating to the Property and the Project, whomever the parties are to such contracts and agreements and whether such contracts and agreements are currently in existence or are subsequently entered into, and all claims of Borrower for breach by any other parties to any of the foregoing contracts and agreements, or any covenant, agreement, representation or warranty contained therein, all right, title and interest of Borrower in, to, under or pursuant to any and all reserve or escrow accounts, now or hereafter established pursuant to any of the foregoing contracts and agreements, including without limitation the right to receive any proceeds of such accounts, and all proceeds of any and all of the foregoing;

(b) all permits, licenses, approvals, variances, waivers, development rights, connection and service rights, easements, agreements and all other rights, benefits and approvals created by law or issued by any governmental or quasi-governmental agency or utility, including without limitation, site plan approvals, zoning approvals, historic or environmental approvals, transferable development rights, density allocations and credits, rights under any joint or planned unit development approvals, and vault agreements, and all amendments, supplements and additions thereto;

(c) all plans, specifications, surveys, drawings, plats, studies, reports, data and other technical information, drawings and descriptions of whatever nature now or hereafter existing which relate to the development, construction, reconstruction, restoration, decoration, repair or replacement of the Project, including without limitation the plans and specifications for the renovation and/or construction of the Project (the "Construction") including without limitation those prepared by the Architect, and all amendments, modifications and supplements to any of the writings described in this Section 2(c) (collectively, the "Plans"); and

(d) the agreements described on Exhibit A and attached hereto as Exhibits B, C and D.

All of the items described in Section 2(a)-(d), inclusive, together with and all amendments, modifications and supplements thereto and any collateral for any third party's performance under any of the contracts and agreements herein described are sometimes herein referred to collectively as the "Contracts." This Assignment is an absolute assignment for

security purposes which shall become void and of no further force or effect upon payment and performance of all Obligations.

3. Representations and Warranties. Borrower represents and warrants to Lender as follows:

(a) Borrower is the true owner and holder of the Contracts;

(b) Borrower has not assigned or granted a security interest in any of the Contracts to any Person other than Lender;

(c) Borrower's interest in each of the Contracts is not subject to any claims, setoffs, encumbrances or deductions;

(d) true, correct and complete copies of the Contracts have been delivered to Lender as of the Effective Date and constitute valid and binding obligations of the parties thereto, are enforceable in accordance with their terms, subject to applicable law, and have not been amended, restated, modified, or supplemented except as disclosed to Lender;

(e) Borrower is not in default under the terms of any of the Contracts and no event has occurred that with the passage of time would result in a default under any of the Contracts;

(f) all covenants, conditions and agreements have been performed as required by the Contracts by all parties thereto, except those which are not due to be performed until after the Effective Date; and

(g) Borrower is not aware that any other party to the Contracts is in default under the terms of any of the Contracts.

4. No Assumption by Lender; Borrower's Covenants.

(a) Neither this Assignment nor any action or actions on the part of Lender shall constitute an assumption by Lender of any obligations to be performed by Borrower under the Contracts, and Borrower shall continue to be liable for all obligations thereunder.

(b) Borrower agrees to punctually perform any and all obligations it may have under the Contracts, to take such steps as may be necessary or appropriate to secure performance by all other parties of their obligations under the Contracts and to not amend in a material manner, or terminate with or without cause, any of the Contracts, without the express prior written consent of Lender, which consent shall not be unreasonably withheld, delayed or conditioned.

(c) Lender may, at its option, but shall not be obligated to, perform or discharge any obligations of Borrower under any of the Contracts, at Borrower's expense, in the event that Borrower fails to do so. Lender will use commercially reasonable efforts to notify Borrower of its intent to perform or discharge Borrower's obligations under this Section 4.

(d) Borrower agrees to hold harmless and indemnify each Covered Person against and from any and all loss, cost, liability or expense (including without limitation attorneys', accountants' and consultants' fees and expenses, court costs and investigation expenses)

resulting from any failure of Borrower to perform its obligations under the Contracts, unless any such loss, cost, liability or expense arises directly or indirectly from such Covered Person's willful misconduct, gross negligence or fraud. Any amount covered by this indemnity shall be payable on demand, and shall bear interest from the date of demand until the same is paid by Borrower to the applicable Covered Person at a rate equal to the Default Rate.

5. Use of Plans. Subject to the express terms of the Architect Contract, Lender may use the Plans for any purpose relating to the Construction, including, without limitation, inspections of construction and the completion of the Construction. For the purpose of completing, maintaining, restoring and otherwise dealing with the Construction, Lender may, subject to the express terms of the Architect Contract, reassign its right, title and interest in the Plans to any Person succeeding to Lender's or Borrower's interest in any or all of the Loans or the Property, in Lender's sole and absolute discretion, upon reasonable notice to Borrower and Architect (or other Person who prepared the Plans), and any such reassignment shall be valid and binding upon Borrower.

6. No Approval of Plans. Lender's acceptance of this Assignment shall not constitute approval of the Plans by Lender nor constitute Lender's representation, agreement or warranty that the Plans comply with applicable law. No Covered Person shall have any liability or obligation whatsoever in connection with the Plans and no responsibility for the adequacy thereof or for the completion of the Construction. Lender is hereby granted the right, but shall not have a duty, to inspect the Construction. No such inspection nor any failure by Lender to make objections after any such inspection shall constitute a representation by Lender that the Construction is in accordance with the Plans or constitute a waiver of the Lender's right thereafter to insist that the Construction be constructed in strict accordance with the Plans.

7. Benefits Conditionally Retained by Borrower. Lender hereby grants Borrower a revocable license to continue to receive the benefits of, and exercise the rights under, the Contracts; *provided*, *however*, such rights may be revoked in the sole and absolute discretion of Lender upon the occurrence and continuance of an Event of Default.

8. Action By Lender Following Default.

(a) Upon the occurrence and continuance of an Event of Default, Lender shall have the right, but not the obligation, without notice to Borrower and without the necessity of taking possession of the Project or any part thereof, to take in its name or in the name of Borrower or otherwise such action as Lender may at any time or from time to time determine, in its sole and absolute discretion, to be reasonably necessary to (i) cure any default under the Contracts or (ii) obtain the benefits of or to enforce, protect or exercise the rights of Borrower or Lender under the Contracts. In addition to the foregoing, Lender may exercise any other rights or remedies it has under the Loan Documents. No Covered Person shall incur any liability for any action taken by Lender or on Lender's behalf in good faith, pursuant to this Assignment, if such action proves to be in whole or in part inadequate or invalid.

(b) Borrower agrees to hold harmless and indemnify each Covered Person against and from any and all loss, cost, liability or expense (including without limitation attorneys', accountants' and consultants' fees and expenses, court costs and investigation expenses) in

connection with or otherwise related in any way whatsoever to Borrower's actions and omissions hereunder, except to the extent any such loss, cost, liability or expense arises directly or indirectly from such Covered Person's willful misconduct, gross negligence or fraud.

9. Power of Attorney. Borrower hereby irrevocably constitutes and appoints Lender its true and lawful agent and attorney-in-fact, with full power of substitution, to demand, receive and enforce all rights of Borrower under the Contracts, to modify, supplement and terminate the Contracts, to give appropriate releases, receipts for or on behalf of Borrower in connection with the Contracts, in the name, place and stead of Borrower or in Lender's name, with the same force and effect as Borrower could do if this Assignment had not been made, which appointment shall be effective upon the occurrence and continuance of an Event of Default. Borrower authorizes any third party to exclusively rely on the certificate of an officer of Lender for the occurrence and continuance of an Event of Default and hereby waives and releases any claim Borrower may have against such third party for such reliance. Borrower hereby agrees to deliver to Lender, upon Lender's written demand, originals of all of the Contracts and such other instruments and documents as Lender may reasonably request in order to permit Lender's succession to the right, title and interest of Borrower in and to the Contracts as provided herein. It is hereby recognized that the power of attorney granted in this Section 9 is coupled with an interest and is irrevocable until payment and performance in full of all Obligations.

10. Amounts Advanced by Lender. In the event Lender exercises any of the rights or remedies granted Lender in this Assignment or in any other Loan Documents with respect to the Contracts, the amount advanced by Lender in connection with the exercise of such rights shall be (a) added to the indebtedness under the Loan Documents (including but not limited to the indebtedness under the Notes), (b) secured by the collateral (as described in this Assignment and the other Loan Documents), and (c) bear interest at the interest rate set forth in the Notes until paid or reimbursed in full to Lender.

11. Consents of Parties to the Contracts. Borrower hereby agrees that on the Effective Date, Borrower shall cause to be executed and delivered to Lender:

(a) agreements and consents to this Assignment, in form and substance reasonably satisfactory to Lender, from Architect, Construction Manager and Program Manager as more specifically identified under Section 3.1 of the Credit Agreement;

(b) at the request of Lender, such other agreements and consents to this Assignment, in form and substance reasonably satisfactory to Lender, from any other Persons (other than Borrower).

Borrower acknowledges and agrees that Lender has required the inclusion of this Section 11 as a material condition precedent to making the Loans.

12. Modifications to Contracts. Borrower shall not modify, amend, terminate and/or waive any Contracts or any terms and/or provisions of any Contracts without the prior written consent of Lender (such consent in Lender's sole and absolute discretion).

13. No Guaranty. Notwithstanding any provision to the contrary contained in this Assignment, Lender shall not be deemed to have, directly or indirectly, guaranteed any debts, obligations or liabilities of Borrower or Borrower's Affiliates.

14. Notices. Section 10.1 and Schedule A of the Credit Agreement are incorporated herein by reference and made a part hereof.

15. Amendments. This Assignment may not be changed, waived, discharged or terminated orally or in any manner other than by an instrument in writing signed by Borrower and Lender.

16. Invalidity. In the event that any one or more of the provisions contained in this Assignment is, for any reason, held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect any other provision of this Assignment.

17. Survival of Agreements. All representations and warranties of Borrower herein, and all covenants and agreements in this Assignment not fully performed as of the Effective Date, will survive the Effective Date.

18. Waivers. No course of dealing on the part of Lender or its officers, employees, consultants or agents, nor any failure or delay by Lender with respect to exercising any of its rights, powers or privileges under this Assignment will operate as a waiver thereof.

19. Cumulative Rights. The rights and remedies of Lender under this Assignment will be cumulative, and the exercise or partial exercise of any such right or remedy will not preclude the exercise of any other right or remedy available to Lender under this Assignment, any of the other Loan Documents or by law or in equity.

20. Time of the Essence. Time will be deemed of the essence with respect to the performance of all of the terms, provisions and conditions on the part of Borrower to be performed under this Assignment.

21. Successors and Assigns.

(a) This Assignment binds and benefits Borrower, Lender, and their respective, permitted successors and assigns.

(b) References to any Person herein shall include such Person's respective permitted successors and assigns.

(c) This Assignment is for the benefit of Lender and for such other Person or Persons as may from time to time become or be the holders of any of the Indebtedness in accordance with the terms hereof, and to the extent set forth in the Credit Agreement, this Assignment will be transferable and negotiable, with the same force and effect and to the same extent as the Indebtedness may be transferable, it being understood that, upon the transfer or assignment by Lender of any of the Indebtedness, the legal holder of such Indebtedness will have all of the rights granted to Lender under this Assignment.

22. Relationship Between the Parties. The relationship between Lender, on the one hand, and Borrower, on the other, will be solely that of lender and borrower, and such relationship will not, under any circumstances whatsoever, be construed to be a joint venture, joint adventure, or partnership.

23. Titles of Sections. All titles or headings to articles, sections, subsections or other divisions of this Assignment or the exhibits hereto are only for the convenience of the parties and will not be construed to have any effect or meaning with respect to the other content of such articles, sections, subsections or other divisions, such other content being controlling as to the agreements hereunder.

24. Section References. References in this Assignment to Sections are intended to refer to Sections of this Assignment, unless otherwise specifically stated.

25. Singular and Plural. Words used herein in the singular, where the context so permits, will be deemed to include the plural and vice versa. The definitions of words in the singular herein will apply to such words when used in the plural where the context so permits and vice versa.

26. CHOICE OF LAW; WAIVER OF JURY TRIAL AND CERTAIN OTHER RIGHTS; SUBMISSION TO JURISDICTION; SERVICE OF PROCESS FOR ALL LOAN DOCUMENTS. Section 10.19 of the Credit Agreement is incorporated herein by reference and made a part hereof; *provided*, that references to the "Agreement" therein shall be deemed a reference to this Assignment.

27. Enforcement Costs. Section 10.22 of the Credit Agreement is incorporated herein by reference and made a part hereof; *provided*, that references to the "Agreement" therein shall be deemed a reference to this Assignment.

28. Signature. A faxed, scanned or photocopied signature to this Assignment shall be deemed equivalent to an original signature.

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

IN WITNESS WHEREOF, the Borrower has executed this Assignment of Contracts as of the Effective Date.

BORROWER:

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

By: _____

Name: John E. Koniar
Title: President

EXHIBIT A

LIST OF CONTRACTS

(1) Standard Form of Agreement Between Owner and Architect, dated as of June 25, 2014, by and between Borrower and Architect (as the same may be amended, modified or supplemented from time to time, the "Architect Contract"). A copy of the Architect Contract is attached hereto as Exhibit B.

(2) Standard Form of Agreement Between Owner and Construction Manager, dated as of July 7, 2014, by and between Borrower and Construction Manager (as the same may be amended, modified or supplemented from time to time, the "Construction Contract"). A copy of the Construction Contract is attached hereto as Exhibit C.

(3) City of Foley Program Manager Master Services Agreement, approved by the City as of June 17, 2013, by and between the City and Program Manager, as amended by that certain Amendment No. 1 to City of Foley, Alabama Master Services Agreement, dated April 7, 2014, by and between the City and Program Manager, and assigned by the City to Borrower pursuant to the Assignment Agreement (collectively, and as the same may be amended, modified or supplemented from time to time, the "Program Management Contract"). A copy of the Program Management Contract is attached hereto as Exhibit D.

[REMAINDER OF PAGE BLANK]

<u>EXHIBIT B</u>

ARCHITECT CONTRACT

[attached behind]

June 25, 2014

Coastal Alabama Farmers and Fisherman's Market, Inc.
407 East Laurel Avenue
Foley, AL 36535

Coastal Alabama Foley Farmers' Market; Phase II ("CAFFM")

Agreement for Architectural Services

The following is provided to outline the terms and conditions between McCollough Architecture, Inc. (Architect) and the Coastal Alabama Farmers and Fisherman's Market, Inc. (Owner) for architectural services for the above-referenced project.

Basic Scope of Services

This project involves a continuum of architectural services for the Coastal Alabama Farmers and Fisherman's Market master plan. Phase II work consists of the renovation and addition to the city's existing metal building structure to accommodate two tenants (Moe's Barbeque and Forland Farms) with a budget of approximately $966,000.00. The existing building to be renovated is approximately 7,500 square feet and a metal building addition of 2,000 square feet. The work also includes approximately 2,500 square feet of covered porches/entry elements and related site work.

The Architect will produce deliverables to achieve these objectives by following the process below (Deliverables and/or milestones are noted in **bold**):

1. **Programming Phase:**
   This phase of work will involve meeting with the tenant representatives from Moe's and Forland Farms to analyze current facilities to determine the current and projected future needs of the tenants.

2. **Conceptual Design Phase**:
   Upon completion of the Programming Phase the Architect will develop a Master Plan for the project (in graphic form) to meet the program requirements. This work shall include a conceptual site plan, floor plan(s), and concept elevation sketches.

4790 Main Street; Ste F209
Orange Beach, Alabama
36561

Phone: 251.968.7222
Website: McColloughArchitecture.Com
Email: stedm@mcarcht.com

P.O. Box 6310
Gulf Shores, Alabama
36547-6310

3. **Design Development; Construction Documents; Bidding & Negotiation; and Construction Administration/Observation**:** The Architect's services for these phases shall also include the following consulting engineers and their scope of work:
    A. Structural Engineering (includes porches/entry additions). Metal Building addition (including foundation design) by Metal building manufacturer.
    B. Mechanical; Plumbing; and Electrical Engineering.
    C. Civil Engineering:
        1. Task 1-Civil Site Plans (cover page; notes; demolition, site geometric, utility, stormwater management, site grading, and erosion/sedimentation control plans and related details).
        2. Task 2-Permitting & Construction Administration (providing work necessary for permitting plans through the City of Foley including assistance with bidding and contract negotiations; providing assistance with the City of Foley Land Disturbance Permit application and approval; and providing intermittent inspections of work progress and review/approval of the contractor's monthly pay requests).
        3. Task 3-Surveying Services (provide topographic survey of proposed construction area; provide updated topographic and engineering survey of area of the improvements; locate all drainage and utilities; and set temporary bench marks for construction).

***As outlined above, The Architect, as a representative of the Owner, agrees to provide Construction Site Observations as requested by the Owner during construction to become generally familiar with the progress and the quality of the work performed in order to keep the Owner informed of the work.*

The Architect shall endeavor to guard the Owner against defects and deficiencies with the work observed during the visit and determine, in general, if the work is being performed in a manner that when fully completed will be in accordance with the contract documents.

PRODUCTION AND FEES

A. Coordination and Staffing

The Architect shall coordinate the work outlined in this proposal with that of other team consultants. The Architect will attend project meetings as needed, and prepare written comments and supplemental drawings/documents as necessary.

B. Fee Schedule/Compensation and Schedule for Deliverables

Items 1:……

Programming Phase & Conceptual Design Phase
Items 2:……
Conceptual Design Phase

Item 3:…….
Design Development; Construction Documents; and Construction Administration

_____

TOTAL FEE FOR ITEMS 1,2&3: Lump Sum: $79,774.00

ADDITIONAL SERVICES

A. The Architect shall properly notify the Owner that additional services are required prior to proceeding with the additional work. Additional Services include, but is not limited to the following:

1. Revising or modifying documents when the revisions are inconsistent with approvals or instructions previously given by the Owner.
2. Revising work due to changes required as a result of the Owner not making decisions in a timely manner.
3. Work not identified in Basic Scope of Services.

B. Should the Owner request or require additional work outside the Basic Scope of Work, the following hourly rates shall apply:

Classification	Hourly Billing Rate
Principal	**$125.00**
Drafting	**$ 85.00**
Interior Designer	**$ 75.00**
Clerical	**$ 25.00**
Engineering	**Cost plus 15%**

OTHER PROVISIONS

1. Reimbursable expenses including direct project costs associated with copying, blueprinting, postage and delivery services, and renderings/artwork will be billed at cost plus 10%.

2. Five (5) percent interest will be charged per month on any unpaid balance after 30 days plus all costs of collection including reasonable attorney's fees.

3. This agreement is based on the understanding that the client will proceed with the project in an expeditious manner from acceptance of contract terms. If the project is delayed more than one hundred twenty (120) days from the start of work, it is understood and agreed that the standard hourly rates and the Total Fee may be subject to change requiring a new agreement.

4. Original artwork, renderings, and presentation boards will be considered additional service. Costs relating to this work shall be presented to the Owner for approval prior to work being performed.

5. It is understood that the Architect's services and scope of work does not include Geotechnical Engineering, Landscape Architecture; Kitchen Consultants (provided by the tenant) and/or Audio-Visual Consulting. These services can be provided as an Additional Service but are not included in the Architect's Basic Scope of Services.

6. The schedule (as outlined above) is based on several days review by the Owner and shall be equitably adjusted if longer review periods are necessary. Days are based on calendar days and do not include holidays.

7. It is understood that the Owner will provide a complete survey and drawings of the existing buildings at his expense that would depict all boundaries, easements, utilities, topographical information, benchmarks, existing buildings, and any other criteria needed for the Architect to perform his work.

8. It is understood that these services do not include interior decorating or other specialized display design work. These can be provided as an additional service if requested.

9. It is understood that the Architect does not provide any warranty of the General Contractor's work. Any warranty in regards to the Contractor's work should be expressed in the agreement between the Owner and Contractor.

10. It is understood that if the scope of the Project is changed materially, compensation shall be subject to renegotiation, OR, If the Project is changed or altered by the desires of the Owner after the construction drawings have begun, the Architect and his Consultants shall be reimbursed (based on the established fee schedule) to make the changes desired.

11. It is understood that the Drawings and Specifications as instruments of service are the property of the Architect whether the Project for which they were prepared is executed or not. They are not to be used by the Owner on other projects or extensions to the original Project except by agreement with appropriate compensation the Architect.

12. In the event the project, for whatever reason does not become a reality (in the building form), the Owner shall compensate the Architect's fee earned until the date of termination, within 14 days after the delivery of such documents to the Owner.

13. Either party may terminate this agreement upon 30 days written notice to the other. Upon termination, the Architect will provide the Owner with all task items billed and paid for and the Owner shall pay all fees and costs for tasks completed to time of termination.

If you have any questions or concerns regarding this proposal, please let me know. Otherwise, if you feel this proposal is acceptable, please return a signed and dated original to our office to serve as our agreement and maintain an executed original for your records.

Again, thank you very much for this opportunity and we look forward to working with you.

June 25, 2014

_____	_____
Sted McCollough, President Date	Coastal Alabama Farmers Date
McCollough Architecture, Inc.	and Fisherman's Market, Inc.
(Architect)	(Owner)

8. It is understood that these services do not include interior decorating or other specialized display design work. These can be provided as an additional service if requested.

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June 25, 2014

Sted McCollough, President Date
McCollough Architecture, Inc.
(Architect)

7/7/14

Coastal Alabama Farmers Date
and Fisherman's Market, Inc.
(Owner)

<u>EXHIBIT C</u>

CONSTRUCTION CONTRACT

[attached behind]

AIA® Document A133™ – 2009

Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201™–2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

AGREEMENT made as of the 7th day of July in the year 2014.
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status and address)
Coastal Alabama Farmers' and Fisherman's Market, Inc.
407 East Laurel Avenue
Foley, Alabama 36535

and the Construction Manager:
(Name, legal status and address)
Sun Coast Builders Inc – Steve Bailey
11122 County Road 65
Foley, Alabama 36535
License #16687

for the following Project:
(Name and address or location)
CAFFM Phase 2
Foley, Alabama 36535

The Architect:
(Name, legal status and address)
McCollough Architecture – Sted McCollough
4790 Main Street at the Wharf, Suite 209
Orange Beach, Alabama 36561

The Owner's Designated Representative:
(Name, address and other information)
Hoar Program Management
150 Government Street Suite 3005
Mobile, Alabama 36601

The Construction Manager's Designated Representative:
(Name, address and other information)
MCS Contracting Inc– Myles Bishop
PO Box 636
Summerdale, Alabama 36580
License #21110

The Architect's Designated Representative:
(Name, address and other information)
Sted McCollough
4790 Main Street at the Wharf, Suite 209
Orange Beach, Alabama 36561

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User Notes: (862350666)

The Owner and Construction Manager agree as follows.

TABLE OF ARTICLES

1 GENERAL PROVISIONS

2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

3 OWNER'S RESPONSIBILITIES

4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

6 COST OF THE WORK FOR CONSTRUCTION PHASE

7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

8 INSURANCE AND BONDS

9 DISPUTE RESOLUTION

10 TERMINATION OR SUSPENSION

11 MISCELLANEOUS PROVISIONS

12 SCOPE OF THE AGREEMENT

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 2.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 2.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

§ 1.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

§ 1.3 General Conditions

For the Preconstruction Phase, AIA Document A201™–2007, General Conditions of the Contract for Construction, shall apply only as specifically provided in this Agreement. For the Construction Phase, the general conditions of the contract shall be as set forth in A201–2007, which document is incorporated herein by reference. The term "Contractor" as used in A201–2007 shall mean the Construction Manager.

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ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 2.1 Preconstruction Phase

§ 2.1.1 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

§ 2.1.2 Consultation

The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall advise the Owner and the Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations consistent with the Project requirements to the Owner and Architect on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

§ 2.1.3 When Project requirements in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor: ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner.

§ 2.1.4 Phased Construction

The Construction Manager shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, or phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities and procurement and construction scheduling issues.

§ 2.1.5 Preliminary Cost Estimates

§ 2.1.5.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume or similar conceptual estimating techniques for the Architect's review and Owner's approval. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 2.1.5.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. Such estimates shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action.

§ 2.1.6 Subcontractors and Suppliers

The Construction Manager shall develop bidders' interest in the Project.

§ 2.1.7 The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered well in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction. If

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the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

§ 2.1.8 Extent of Responsibility
The Construction Manager shall exercise reasonable care in preparing schedules and estimates. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

§ 2.1.9 Notices and Compliance with Laws
The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi governmental authorities for inclusion in the Contract Documents.

§ 2.2 Guaranteed Maximum Price Proposal and Contract Time
§ 2.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager and in consultation with the Architect, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's review and acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, including contingencies described in Section 2.2.4, and the Construction Manager's Fee.

§ 2.2.2 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Construction Manager shall provide in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

§ 2.2.3 The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

.1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;

.2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 2.2.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications;

.3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, contingency, and the Construction Manager's Fee;

.4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and

.5 A date by which the Owner must accept the Guaranteed Maximum Price.

§ 2.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include its contingency for the Construction Manager's exclusive use to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order.

§ 2.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner and Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 2.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum

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Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 2.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the commencement of the Construction Phase, unless the Owner provides prior written authorization for such costs.

§ 2.2.8 The Owner shall authorize the Architect to provide the revisions to the Drawings and Specifications to incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications.

§ 2.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

§ 2.3 Construction Phase

§ 2.3.1 General

§ 2.3.1.1 For purposes of Section 8.1.2 of A201–2007, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

Date of commencement of the work for the construction phase will be July 14, 2014.

§ 2.3.1.2 The Construction Phase shall commence upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal or the Owner's issuance of a Notice to Proceed, whichever occurs earlier.

§ 2.3.2 Administration

§ 2.3.2.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect. The Owner shall then determine, with the advice of the Construction Manager and the Architect, which bids will be accepted. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 2.3.2.2 If the Guaranteed Maximum Price has been established and when a specific bidder (1) is recommended to the Owner by the Construction Manager, (2) is qualified to perform that portion of the Work, and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Contract Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount and time requirement of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 2.3.2.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost-plus a fee basis, the Construction Manager shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Section 6.11 below.

§ 2.3.2.4 If the Construction Manager recommends a specific bidder that may be considered a "related party" according to Section 6.10, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction, according to Section 6.10.2.

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§ 2.3.2.5 The Owner's Designated Representative in cooperation with the Construction Manager shall schedule and conduct weekly meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Owner's Representative shall use these weekly meetings as the basis to prepare a weekly report and promptly distribute report to the Owner with in 2 days of meeting.

§ 2.3.2.6 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and submittal schedule in accordance with Section 3.10 of A201 - 2007.

§ 2.3.2.7 The Owner's Designated Representative in cooperation with the Construction Manager shall record the progress of the Project. On a weekly basis, or otherwise as agreed to by the Owner, the Owner's Designated Representative shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner. The Construction Manager shall also keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

§ 2.3.2.8 The Owner's Designated Representative in cooperation with the Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Owner's Designated Representative shall identify variances between actual and estimated costs and report the variances to the Owner and Architect and shall provide this information in its weekly reports to the Owner and Architect, in accordance with Section 2.3.2.7 above.

§ 2.4 Professional Services

Section 3.12.10 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

§ 2.5 Hazardous Materials

Section 10.3 of A201 2007 shall apply to both the Preconstruction and Construction Phases.

ARTICLE 3 OWNER'S RESPONSIBILITIES

§ 3.1 Information and Services Required of the Owner

§ 3.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems sustainability and site requirements.

§ 3.1.2 Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Construction Manager may only request such evidence if (1) the Owner fails to make payments to the Construction Manager as the Contract Documents require, (2) a change in the Work materially changes the Contract Sum, or (3) the Construction Manager identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Construction Manager and Architect.

§ 3.1.3 The Owner's Designated Representative shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1.1, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 3.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or

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services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 3.1.4.1 The Owner shall furnish tests, inspections and reports required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 3.1.4.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 3.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 3.1.4.4 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

§ 3.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's Designated Representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201–2007, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 3.2.1 Legal Requirements. The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 3.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B103™–2007, Standard Form of Agreement Between Owner and Architect, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement.

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 4.1 Compensation

§ 4.1.1 For the Construction Manager's Preconstruction Phase services, the Owner shall compensate the Construction Manager as follows:

§ 4.1.2 For the Construction Manager's Preconstruction Phase services described in Sections 2.1 and 2.2:
(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

$0.00 for Preconstruction services

(Paragraphs deleted)

ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 5.1 For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager the Contract Sum in current funds. The Contract Sum is the Cost of the Work as defined in Section 6.1.1 plus the Construction Manager's Fee.

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§ 5.1.1 The Construction Manager's Fee:
(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)

$45,000 for Construction Manager's Fee

§ 5.1.2 The method of adjustment of the Construction Manager's Fee for changes in the Work:

Mutually agreeable amount determined by the Owner and the Construction Manager at the time of the change

§ 5.1.3 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

10% above the direct cost of the work

§ 5.1.4 Rental rates for Construction Manager-owned equipment shall not exceed N/A percent (N/A %) of the standard rate paid at the place of the Project.

§ 5.1.5 Unit prices, if any:
(Identify and state the unit price; state the quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit ($0.00)
N/A	N/A	N/A

§ 5.2 Guaranteed Maximum Price

§ 5.2.1 The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, as it is amended from time to time. To the extent the Cost of the Work exceeds the Guaranteed Maximum Price, the Construction Manager shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the Owner.
(Insert specific provisions if the Construction Manager is to participate in any savings.)

If in the event that the Construction Manager completes the project below the GMP, the value of the savings will be split 50/50 between the Construction Manager and the Owner.

§ 5.2.2 The Guaranteed Maximum Price is subject to additions and deductions by Change Order as provided in the Contract Documents and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

§ 5.3 Changes in the Work

§ 5.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201–2007, General Conditions of the Contract for Construction. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 5.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Section 7.2 of AIA Document A201–2007, General Conditions of the Contract for Construction.

§ 5.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201–2007 and the term "costs" as used in Section 7.3.7 of AIA Document A201–2007 shall have the meanings assigned to them in AIA Document A201–2007 and shall not be modified by Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

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§ 5.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201–2007 shall mean the Cost of the Work as defined in Sections 6.1 to 6.7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 5.1 of this Agreement.

§ 5.3.5 If no specific provision is made in Section 5.1.2 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 5.1.2 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 6.1 Costs to Be Reimbursed

§ 6.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7.

§ 6.1.2 Where any cost is subject to the Owner's prior approval, the Construction Manager shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.

§ 6.2 Labor Costs

§ 6.2.1 Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

§ 6.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site with the Owner's prior approval.
(If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager's principal or other offices shall be included in the Cost of the Work, identify in Section 11.5, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)

§ 6.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ 6.2.4 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 6.2.1 through 6.2.3.

§ 6.2.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, with the Owner's prior approval.

§ 6.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts.

§ 6.4 Costs of Materials and Equipment Incorporated in the Completed Construction

§ 6.4.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

§ 6.4.2 Costs of materials described in the preceding Section 6.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

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§ 6.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ 6.5.1 Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

§ 6.5.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Construction Manager-owned item may not exceed the purchase price of any comparable item. Rates of Construction Manager-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.

§ 6.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ 6.5.4 Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

§ 6.5.5 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

§ 6.5.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

§ 6.6 Miscellaneous Costs

§ 6.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

§ 6.6.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Construction Manager is liable.

§ 6.6.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager is required by the Contract Documents to pay.

§ 6.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201–2007 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 6.7.3.

§ 6.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document A201–2007 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

§ 6.6.6 Costs for electronic equipment and software, directly related to the Work with the Owner's prior approval.

§ 6.6.7 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.

§ 6.6.8 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution

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of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

§ 6.6.9 Subject to the Owner's prior approval, expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work.

§ 6.7 Other Costs and Emergencies

§ 6.7.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ 6.7.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of AIA Document A201–2007.

§ 6.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Construction Manager and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

§ 6.7.4 The costs described in Sections 6.1 through 6.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2007 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.8.

§ 6.8 Costs Not To Be Reimbursed

§ 6.8.1 The Cost of the Work shall not include the items listed below:

- **.1** Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 6.2, or as may be provided in Article 11;
- **.2** Expenses of the Construction Manager's principal office and offices other than the site office;
- **.3** Overhead and general expenses, except as may be expressly included in Sections 6.1 to 6.7;
- **.4** The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- **.5** Except as provided in Section 6.7.3 of this Agreement, costs due to the negligence or failure of the Construction Manager, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- **.6** Any cost not specifically and expressly described in Sections 6.1 to 6.7;
- **.7** Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- **.8** Costs for services incurred during the Preconstruction Phase.

§ 6.9 Discounts, Rebates and Refunds

§ 6.9.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

§ 6.9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 6.9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.10 Related Party Transactions

§ 6.10.1 For purposes of Section 6.10, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Construction Manager; any entity in which any stockholder in, or management employee of, the Construction Manager owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Construction Manager. The term "related party" includes any member of the immediate family of any person identified above.

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§ 6.10.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3. If the Owner fails to authorize the transaction, the Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3.

§ 6.11 Accounting Records

The Construction Manager shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 7.1 Progress Payments

§ 7.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Construction Manager as provided below and elsewhere in the Contract Documents.

§ 7.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

The period covered by each application for payment shall be for work done thru the 25th of the preceding month.

§ 7.1.3 Provided that an Application for Payment is received by the Architect not later than the **5th** day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the **30th** day of the **same** month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than **thirty (30)** days after the Architect receives the Application for Payment.

(Federal, state or local laws may require payment within a certain period of time.)

§ 7.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, less that portion of those payments attributable to the Construction Manager's Fee, plus payrolls for the period covered by the present Application for Payment.

§ 7.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 7.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the

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percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 7.1.7 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

.1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201-2007;

.2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;

.3 Add the Construction Manager's Fee, less retainage of **two and one half** percent (2 ½ %). The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;

.4 Subtract retainage of **two and one half** percent (2 ½ %) from that portion of the Work that the Construction Manager self-performs;

.5 Subtract the aggregate of previous payments made by the Owner;

.6 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and

.7 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201 2007.

§ 7.1.8 The Owner and Construction Manager shall agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

§ 7.1.9 Except with the Owner's prior approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 7.1.10 In taking action on the Construction Manager's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.4 or other supporting data; that the Architect has made exhaustive or continuous on-site inspections; or that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 7.2 Final Payment

§ 7.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

.1 the Construction Manager has fully performed the Contract except for the Construction Manager's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201-2007, and to satisfy other requirements, if any, which extend beyond final payment;

.2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and

.3 a final Certificate for Payment has been issued by the Architect.

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The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows.

§ 7.2.2 The Owner's auditors will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201 2007. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201–2007. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 7.2.3 If the Owner's auditors report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201–2007. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 7.2.4 If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1.1 and not excluded by Section 6.8 to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Construction Manager has participated in savings as provided in Section 5.2.1, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

ARTICLE 8 INSURANCE AND BONDS

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and the Construction Manager shall provide bonds as set forth in Article 11 of AIA Document A201–2007.
(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201–2007.)

Type of Insurance or Bond	Limit of Liability or Bond Amount ($0.00)
Labor and Materials Performance & Payment Bond	**100% Value of the Contract ($988,400.00)**

ARTICLE 9 DISPUTE RESOLUTION

§ 9.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of A201–2007. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 9.3 of this Agreement shall not apply.

§ 9.2 For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201–2007, the method of binding dispute resolution shall be as follows:
(Check the appropriate box. If the Owner and Construction Manager do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

[X] Arbitration pursuant to Section 15.4 of AIA Document A201–2007

[ ] Litigation in a court of competent jurisdiction

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[ ] Other: *(Specify)*

§ 9.3 Initial Decision Maker
The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201–2007 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.
(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

ARTICLE 10 TERMINATION OR SUSPENSION

§ 10.1 Termination Prior to Establishment of the Guaranteed Maximum Price
§ 10.1.1 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Section 14.1.1 of A201–2007.

§ 10.1.2 In the event of termination of this Agreement pursuant to Section 10.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 4.1.

§ 10.1.3 If the Owner terminates the Contract pursuant to Section 10.1.1 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 10.1.2:

.1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
.2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
.3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.3.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

§ 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price
Following execution of the Guaranteed Maximum Price Amendment and subject to the provisions of Section 10.2.1 and 10.2.2 below, the Contract may be terminated as provided in Article 14 of AIA Document A201–2007.

§ 10.2.1 If the Owner terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of A201–2007 shall not exceed the

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amount the Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

§ 10.2.2 If the Construction Manager terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager under Section 14.1.3 of A201–2007 shall not exceed the amount the Construction Manager would otherwise have received under Sections 10.1.2 and 10.1.3 above, except that the Construction Manager's Fee shall be calculated as if the Work had been fully completed by the Construction Manager, utilizing as necessary a reasonable estimate of the Cost of the Work for Work not actually completed.

§ 10.3 Suspension
The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2007. In such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201–2007, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 5.1 and 5.3.5 of this Agreement.

ARTICLE 11 MISCELLANEOUS PROVISIONS
§ 11.1 Terms in this Agreement shall have the same meaning as those in A201–2007.

§ 11.2 Ownership and Use of Documents
Section 1.5 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

§ 11.3 Governing Law
Section 13.1 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

§ 11.4 Assignment
The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement. Except as provided in Section 13.2.2 of A201–2007, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 11.5 Other provisions:

N/A

ARTICLE 12 SCOPE OF THE AGREEMENT
§ 12.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

§ 12.2 The following documents comprise the Agreement:

.1 AIA Document A133–2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

.2 AIA Document A201–2007, General Conditions of the Contract for Construction

(Paragraphs deleted)

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This Agreement is entered into as of the day and year first written above.

OWNER *(Signature)*	CONSTRUCTION MANAGER *(Signature)*
JOHN E. KONIAR	Steve Bailey Pres
(Printed name and title)	*(Printed name and title)*

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This Agreement is entered into as of the day and year first written above.

	Steve Bailey
OWNER *(Signature)*	**CONSTRUCTION MANAGER** *(Signature)*
	Steve Bailey Pres.
(Printed name and title)	*(Printed name and title)*

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AIA® Document A133™ – 2009 Exhibit A

Guaranteed Maximum Price Amendment

AGREEMENT made as of the 7th day of July in the year 2014.

for the following PROJECT:
(Name and location or address)
CAFFM Phase 2
Foley Alabama

THE OWNER:
(Name, legal status and address)
Coastal Alabama Farmers' and Fisherman's Market
407 East Laurel Avenue
Foley, Alabama 36535

THE OWNER'S DESIGNATED REPRESENTATIVE:
(Name, address and other information)
Hoar Program Management
150 Government Street Suite 3005
Mobile, Alabama 36601

THE ARCHITECT:
(Name, legal status and address)
McCollough Architecture – Sted McCollough
4790 Main Street at the Wharf, Suite 209
Orange Beach, Alabama 36561

THE CONSTRUCTION MANAGER (CONTRACTOR):
(Name, legal status and address)
Sun Coast Builders Inc – Steve Bailey
11122 County Road 65
Foley, Alabama
License #16687

THE CONSTRUCTION MANAGER's DESIGNATED REPRESENTATIVE
(Name, legal status and address)
MCS Contracting Inc– Myles Bishop
PO Box 636
Summerdale, Alabama 36580
License #21110

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201™–2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

ARTICLE A.1
§ A.1.1 Guaranteed Maximum Price
Pursuant to Section 2.2.6 of the Agreement, the Owner and Construction Manager hereby amend the Agreement to establish a Guaranteed Maximum Price. As agreed by the Owner and Construction Manager, the Guaranteed Maximum Price is an amount that the Contract Sum shall not exceed. The Contract Sum consists of the Construction Manager's Fee plus the Cost of the Work, as that term is defined in Article 6 of this Agreement.

§ A.1.1.1 The Contract Sum is guaranteed by the Construction Manager not to exceed **Nine Hundred Eighty Eight Thousand Four Hundred Dollars ($ 988,400.00),** subject to additions and deductions by Change Order as provided in the Contract Documents.

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§ A.1.1.2 Itemized Statement of the Guaranteed Maximum Price. Provided below is an itemized statement of the Guaranteed Maximum Price organized by trade categories, allowances, contingencies, alternates, the Construction Manager's Fee, and other items that comprise the Guaranteed Maximum Price.
(Provide below or reference an attachment.)

Itemized Statement of GMP			
Division	**Description**	**Sub Totals**	**Totals**
0	Mobilization		$ 25,000
2	Existing Conditions		$ 5,500
	Demolition	$ 5,500	
3	Structural Concrete		$ 634
	Soil Poisoning	$ 634	
4	Masonry & Architecture Conc.		$ 4,000
	Exterior CMU Backup	$ -	
	Masonry Veneer	$ 4,000	
5	Metals		$ 32,301
	Structural Steel System	$ 24,008	
	Miscellaneous Metals	$ 8,293	
6	Woods & Plastics		$ 57,940
	Rough Carpentry	$ 5,542	
	Structural Wood Framing	$ 30,174	
	Finish Carpentry	$ 22,224	
7	Thermal & Moisture Protection		$ 15,948
	Waterproofing/Damproofing/Caulking	$ 11,402	
	Steep Roofing Systems	$ 4,546	
8	Openings		$ 77,750
	Doors & Hardware	$ 20,977	
	Overhead Doors	$ 30,452	
	Glass & Glazing Systems	$ 26,321	
9	Finishes		$ 57,263
	Exterior Metal Studs & Sheathing	$ 20,109	
	Interior Drywall & GFRC	Wo	
	Hard Tile	$ 10,044	
	Acoustical Ceiling Systems	$ 4,706	
	Soft Tile/Carpet/Wood	$ 1,000	

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	Painting & Wall Coverings	$ 21,404	
10	Specialties		$ 2,155
	Restroom Accessories	$ 2,155	
11	Equipment		$ 122,000
	Food Service Equipment, Coolers & FF&E Allowance	$ 122,000	
13	Special Construction		$ 155,501
	Metal Building	$ 62,351	
	Existing Reroof	$ 31,162	
	Steel Entrance & Roof System	$ 18,591	
	Rear Patios	$ 43,397	
21	Fire Suppression		$ 33,500
	Wet Pipe Automatic	$ 33,500	
22	Plumbing Systems		$ 52,400
23	HVAC Systems		$ 73,187
	Package System	$ 60,687	
	Big Fans	$ 12,500	
26	Electrical		$ 135,000
27	Communications-Allowance		$ 10,000
31	Earthwork		$ 7,535
	Layout/Engineering	$ 600	
	Site Demolition	$ 300	
	Clear & Grub	$ 500	
	Site Grading & Excavation	$ 5,635	
	Erosion Control	$ 500	
32	Exterior Improvements		$ 37,136
	Base & Paving	$ 18,030	
	Sidewalks	$ 7,2056	
	Fencing	$ 900	
	Landscape & Irrigation-Allowance	$ 11,000	
33	Utilities		$ 13,650
	Domestic Water	$ 11,050	
	Sanitary Sewer	$ 1,200	
	Natural Gas	$ 1,400	
50	License, Bonds, and Insurance		$ 25,000

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	Payment & Performance Bond	$ 20,000	
	General Liability & Umbrella	$ 5,000	
Projected Cost for Construction			$ 943,400
Construction Manager Fee			$ 45,000
Project Total			$ 988,400

§ **A.1.1.3** The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:
(State the numbers or other identification of accepted alternates. If the Contract Documents permit the Owner to accept other alternates subsequent to the execution of this Amendment, attach a schedule of such other alternates showing the amount for each and the date when the amount expires.)

No alternates are included in GMP

§ **A.1.1.4** Allowances included in the Guaranteed Maximum Price, if any:
(Identify allowance and state exclusions, if any, from the allowance price.)

Item	Price ($0.00)
Food Service Equipment & FF&E	**$122,000 – Included in GMP**
Communications Allowance	**$10,000 – Included in GMP**
Landscaping & Irrigation	**$11,000 – Included in GMP**

§ **A.1.1.5** Assumptions, if any, on which the Guaranteed Maximum Price is based:

Date of commencement of the work for the construction phase is July 14, 2014

§ **A.1.1.6** The Guaranteed Maximum Price is based upon the following Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
AIA A133- 2009	**Standard Form of Agreement Between Owner & Construction Manager as Contractor**	**July 7, 2014**	**1-16**
AIA A201 – 2007	**General Conditions of the Contract for Construction**	**July 7. 2014**	**1-43**

§ **A.1.1.7** The Guaranteed Maximum Price is based upon the following Specifications:
(Either list the Specifications here, or refer to an exhibit attached to this Agreement.)
TBD

Section	Title	Date	Pages

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§ A.1.1.8 The Guaranteed Maximum Price is based upon the following Drawings:
(Either list the Drawings here, or refer to an exhibit attached to this Agreement.)

Number	Title	Date
T1.1	TITLE SHEET; NOTES; VICINITY MAP	2014.02.14
T1.2	SPECIFICATIONS	2014.02.14
C1	ARCHITECTURAL SITE PLAN	2014.02.14
F-1.0	FOUNDATION PLAN (FRONT)	2014.02.14
F-1.1	FOUNDATION PLAN (REAR)	2014.02.14
D-1.0	DETAILS & SECTIONS	2014.02.14
D-1.1	DETAILS & SECTIONS	2014.02.14
D-1.2	DETAILS & SECTIONS	2014.02.14
D-1.3	DETAILS & SECTIONS	2014.02.14
D-1.4	DETAILS & SECTIONS	2014.02.14
D-1.5	DETAILS & SECTIONS	2014.02.14
D-1.6	DETAILS & SECTIONS	2014.02.14
LS1	LIFE SAFETY PLAN	2014.02.14
A1.1	FLOOR PLAN, DETAILS, AND SCHEDULES	2014.02.14
A1.2	MOE'S KITCHEN EQUIPMENT PLAN	2014.02.14
A1.3	ROOF PLAN	2014.02.14
A2.1	BUILDING ELEVATIONS AND SECTION	2014.02.14
A3.1	WALL SECTIONS	2014.02.14
P1.1	PLUMBING SCHEDULE MOE'S/BIG FISH	2014.02.14
P2.1	OVERALL PLUMBING PLAN	2014.02.14
P3.1	SANITARY PLAN	2014.02.14
P4.1	PLUMBING DETAILS MOE'S	2014.02.14
P4.2	PLUMBING DETAILS MOE'S	2014.02.14
P5.1	PLUMBING DETAILS MOE'S/BIG FISH	2014.02.14
M1.1	HVAC SCHEDULE MOE'S/BIG FISH	2014.02.14
M2.1	OVERALL HVAC PLAN	2014.02.14
M3.1	HVAC DETAILS MOE'S	2014.02.14
E1.1	LEGEND, NOTES, SCHEDULE, AND RISER	2014.02.14
E2.1	POWER PLAN	2014.02.14
E2.2	POWER PLAN ENLARGED	2014.02.14
E3.1	LIGHTING PLAN	2014.02.14
E4.1	PANEL SCHEDULES	2014.02.14
F1.1	FIRE PROTECTION PLAN	2014.02.14
F1.2	FIRE PROTECTION NOTES AND LEGEND	2014.02.14

§ A.1.1.9 The Guaranteed Maximum Price is based upon the following other documents and information:
(List any other documents or information here, or refer to an exhibit attached to this Agreement.)

Contractors Construction Schedule Dated June 25, 2014 – See Attached

ARTICLE A.2

§ A.2.1 The anticipated date of Substantial Completion established by this Amendment:

November 27, 2014

This Agreement is entered into as of the day and year first written above.

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OWNER *(Signature)*

JOHN E. KONIAR
(Printed name and title)

Steve Bailey
CONSTRUCTION MANAGER *(Signature)*

Steve Bailey Pres.
(Printed name and title)

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User Notes: (1244752454)

OWNER *(Signature)*	Steve Bailey **CONSTRUCTION MANAGER** *(Signature)*
(Printed name and title)	Steve Bailey Pres. *(Printed name and title)*

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AIA® Document A201™ – 2007

General Conditions of the Contract for Construction

AGREEMENT made as of the 7th day of July in the year 2014.

for the following PROJECT:
(Name and location or address)
CAFFM Phase 2
Foley Alabama

THE OWNER:
(Name, legal status and address)
Coastal Farmers' and Fisherman's Market, Inc
407 East Laurel Avenue
Foley, Alabama 36535

THE OWNER'S DESIGNATED REPRESENTATIVE:
(Name, address and other information)

Hoar Program Management
150 Government Street Suite 3005
Mobile, Alabama 36601

THE ARCHITECT:
(Name, legal status and address)
McCollough Architecture – Sted McCollough
4790 Main Street at the Wharf, Suite 209
Orange Beach, Alabama 36561

THE CONSTRUCTION MANAGER (CONTRACTOR):
(Name, legal status and address)
Sun Coast Builders Inc – Steve Bailey
11122 County Road 65
Foley, Alabama
License #16687

THE CONSTRUCTION MANAGER's DESIGNATED REPRESENTATIVE
(Name, legal status and address)
MCS Contracting Inc– Myles Bishop
PO Box 636
Summerdale, Alabama 36580
License #21110

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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3 CONTRACTOR

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding requirements.

§ 1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect, the Owner and the Contractor, or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or the Owner and the Architect (4) between any persons or entities other than the Owner and the Contractor. The Architect and the Owner shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's and the Owner's duties.

§ 1.1.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 THE PROJECT

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by separate contractors.

§ 1.1.5 THE DRAWINGS

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

§ 1.1.6 THE SPECIFICATIONS

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 INSTRUMENTS OF SERVICE

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 INITIAL DECISION MAKER

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

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§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.3 CAPITALIZATION

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 INTERPRETATION

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants.

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

ARTICLE 2 OWNER

§ 2.1 GENERAL

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's designated representative.

(Paragraph deleted)

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

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§ 2.2.2 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.2.4 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.2.5 The Owner, via the Architect, shall furnish to the Contractor 10 copies of the drawings and specifications for execution of the Work.

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's and/ or Owner's designated representaive's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect after consulting with the Owner's designated represntative. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

ARTICLE 3 CONTRACTOR

§ 3.1 GENERAL

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect and/or Owner's designated representative in the Architect's and/or Owner's designated representative administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

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§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect and the Owner's designated representative any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect and the Owner's designated representative may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a Contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect and Owner's designated representative any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect and the Owner's designated representative may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect or the Owner's designated representative issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner, Architect, or Owner's designated representative for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner, Owner's designated representative and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect or the Owner's designated representative. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.4 LABOR AND MATERIALS

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

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§ 3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

3.4.4 The Contractor's or his Subcontractor's supervisors and workmen engaged on special work or skilled Work in any supervisory position or trade shall be qualified and have had sufficient education, training and experience as a recognized professional or master mechanic in such Work to perform it properly and satisfactorily as prescribed in the Contract Documents.

3.4.5 Any project manager, superintendent, engineer, foreman or workman employed by the Contractor or by a subcontractor who, in the sole opinion of the Architect and/or Owner's designated representative, does not perform his Work in a proper and skillful manner or becomes party to disrespectful, intemperate, disorderly, intoxicated, or dishonest behavior, or uses foul language, fights, commits criminal act(s) falsifies records and construction, covers-up faulty Work or materials, does not comprehend or follow instructions, does not get along with the Architect or Owner's representative, or is otherwise objectionable, shall, at the written request by the Architect and/or Owner's designated representative, be discharged 24 hours by the Contractor or Subcontractor employing such project manager, superintendent, engineer, foreman or workman, and shall not be employed again or any portion of the Work without the written consent of the Architect and the Owner's designated representative.

3.4.6 Should the Contractor fail to remove such person or persons specified in Article 3.4.5 hereinabove or fail to furnish suitable and sufficient machinery, equipment, materials or qualified labor force for the proper execution of the Work, the Architect and/or Owner's designated representative may withhold all payments which are or may become due the Contractor or may suspend the Work until such orders are complied with.

§ 3.5 WARRANTY

The Contractor warrants to the Owner, Owner's designated representative, and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect and/or Owner's designated representative, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.6 TAXES

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.7 PERMITS, FEES, NOTICES, AND COMPLIANCE WITH LAWS

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

3.7.1.1 The Owner shall secure building permit and the Contractor shall secure all other permits customarily obtained from the City of Foley at no cost.

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§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions. If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner, Architect and Owner's designated representative before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect and/or Owner's designated representative will promptly investigate such conditions and, if the Architect and/or Owner's designated representative determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect and/or Owner's designated representative determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect and/or Owner's designated representative shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's and/or Owner's designated representative's determination or recommendation, that party may proceed as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner, Owner's designated representative and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 ALLOWANCES

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- **.1** allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- **.2** Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- **.3** whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 SUPERINTENDENT

§ 3.9.1 The Contractor shall employ a competent superintendent or Project Manager and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent or project manager shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Owner's designated representative the name and qualifications of a proposed superintendent. The Owner's designated representative may reply within 14 days to the Contractor in writing stating (1) whether the

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Owner, Owner's designated representative or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect and/or Owner's designated representative requires additional time to review. Failure of the Architect and/or Owner's designated representative to reply within the 14 day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner, Owner's designated representative or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner, Architect's and Owner's designated representative's consent, which shall not unreasonably be withheld or delayed.

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 If required by the Owner, The Contractor, within seven (7) business days after being awarded the Contract, shall prepare and submit for the Owner's, Owner's designated representative's and Architect's information a Contractor's construction schedule for the Work.

§ 3.10.2 If required by the Architect, the Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's and Owner's designated representative's approval. The Architect's and Owner's designated representative's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect and Owner's designated representative reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals..

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner, Owner's designated representative and Architect.

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and Owner's designated representative and shall be delivered to the Owner's designated representative for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 If required by the Architect, the Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. Submittals which are not marked as reviewed for compliance with

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the Contract Documents and approved by the Contractor may be returned by the Architect without action. Wherever Shop Drawings are required in these Specifications, Shop Drawings shall be submitted for approval before materials are fabricated. Drawings shall show complete details. The General Contractor shall check and approve them either in writing or by stamp before forwarding to the Architect The Architect will mark copies "Approved" if correct; or. "Approved As Noted" if only minor corrections are necessary. If major corrections are necessary they will be noted on the Shop Drawings and they will be returned to the Contractor for correction and resubmission. Submit two (2) copies for Architect's,and Owner's use plus the number of copies the Contractor requires for his own use.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect .

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Owner. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§ 3.13 USE OF SITE

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

3.13.1 The Contractor shall coordinate the Contractor's operations with, and secure the approval of the Owner's designated representative prior to using any portion of the site.

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§ 3.14 CUTTING AND PATCHING

§ 3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and Owner's designated representative and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

§ 3.15 CLEANING UP

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 ACCESS TO WORK

The Contractor shall provide the Owner, Owner's designated representative and Architect access to the Work in preparation and progress wherever located.

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

§ 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, Architect, Owner's designated representative, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

3.19 The Contractor shall be responsible at the appropriate time during construction of the Project to have all permanent meters installed (electrical, water, gas, etc.) and all utilities connected prior to the time of Final Inspection as required by the Contract Documents and /or Scope of Work . The Owner shall pay all utilities costs.

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ARTICLE 4 ARCHITECT

§ 4.1 GENERAL

§ 4.1.1 The Owner shall retain an architect lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number. "Architect" may also designate the Licensed Designer of the Project and may be an Engineer of Landscape Architect.

4.1.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the contract documents singular in number. The term "Owner" means Owner or in some instances mean the Owner's designated representative.

§ 4.1.2 Duties, responsibilities and limitations of authority of the Architect or Owner's designated representative as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Architect. Consent shall not be unreasonably withheld.

§ 4.1.3 If the employment of the Architect is terminated, the Owner shall employ a successor architect as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Architect and Owner's designated representative will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative (1) during construction (2) until all conditions necessary for the final completion and payment have been fulfilled. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.

§ 4.2.2 The Architect and Owner's designated representative will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect and/or Owner's designated representative will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect and/or Owner's designated representative will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

§ 4.2.3 On the basis of the site visits, the Architect and Owner's designated representative will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted, and (2) defects and deficiencies observed in the Work. The Architect and/or Owner's designated representative will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect and/or Owner's designated representative will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Owner's designated representative, and shall contemporaneously provide the same information to the Architect. about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner's designated representative, and shall contemporaneously provide the same information to the Architect..

§ 4.2.5 Based on the Architect's and Owner's designated representative's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

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§ 4.2.6 The Architect or Owner's designated representative in consultation with the Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect or Owner's designated representative in consultation with the Architect considers it necessary or advisable, the Architect or Owner's designated representative will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect or Owner's designated representative nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect or Owner's designated representative to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 If required by the Architect the Contractor will transmit to the Architect all Shop Drawings, Product Data and Samples. The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect and the Owner or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect with assistance from the Owner's designated representative will prepare Change Orders and Construction Change Directives and the Architect may authorize minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect, with the assistance of the Owner's designated representative, will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

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ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

§ 5.2.1 The Contractor shall furnish in writing to the Owner through the Owner's designated representative the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Owner's designated representative may reply within 14 days to the Contractor in writing stating (1) whether the Owner, Owner's designated representative or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect or Owner requires additional time for review. Failure of the Owner or Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner,or Architect has no reasonable objection.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.3 SUBCONTRACTUAL RELATIONS

By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- **.1** assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- **.2** assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

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§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation may be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

§ 6.2 MUTUAL RESPONSIBILITY

§ 6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect and Owner apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Owner in consultation with the Architect, will allocate the cost among those responsible.

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ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

§ 7.2 CHANGE ORDERS

§ 7.2.1 A Change Order is a written instrument prepared by the Architect with assistance from the Owner's designated representative and signed by the Owner, Contractor and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect with assistance from the Owner's designated representative and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.7.

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices may be equitably adjusted.

§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect and Owner of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

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§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Owner shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum an allowance of 10% mark-up on Subcontractor's direct cost (actual cost of Labor & Materials) and mutually agreeable amount between the contractor and owner for contractors markup. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

- **.1** Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- **.2** Costs of materials, supplies and equipment, including cost of transportation, actually incorporated or consumed in the work;
- **.3** Rental costs of machinery and equipment, exclusive of hand tools, whether rented by the Contractor or others;
- **.4** Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- **.5** Additional costs of supervision and field office personnel directly attributable to the change.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Owner's designated representative. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect and Owner's designated representative will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect and Owner's designated representative determines, in the Architect's and Owner's designated representative's professional judgment, to be reasonably justified. The Architect's and Owner's designated representative's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect and Owner's designated representative concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 MINOR CHANGES IN THE WORK

The Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor.

ARTICLE 8 TIME

§ 8.1 DEFINITIONS

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

See Article 2.3.1.1 of AIA 133 - 2009

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

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§ 8.2 PROGRESS AND COMPLETION

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

.1 No Work shall commence and no materials ordered until the Owner issues the written Notice to Proceed.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner, Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner; or by other causes that the Architect, based on the recommendations of the Owner's designated representative determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

8.4 LIQUIDATED DAMAGES

8.4.1 Time is the essence of the Contract. Any delay in the completion of the Work as provided for in the Contract Documents will cause inconvenience to the public and loss and damage to the Owner in interest, and in additional administrative, architectural, inspection, and supervision charges.

Therefore, unless otherwise defined in the Contract Documents, a time charge equal to **$0 per calendar day** will be made against the Contractor for the entire period that any part of the Work remains uncompleted after the time specified for the Substantial Completion of the Work, the amount of which shall be deducted by the Owner, and shall be retained by the Owner out of monies otherwise due the Contractor in the final payment, not as a penalty, but as liquidated damages sustained.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 CONTRACT SUM

The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.2 SCHEDULE OF VALUES

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Architect through the Owner's designated representative, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect and Owner's designated representative may require. This schedule, unless objected to by the Architect or Owner's designated representative, shall be used as a basis for reviewing the Contractor's Applications for Payment.

.1 Unit Prices, if stated in the Contract Documents shall be identified within the Schedule of Values.

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 The Contractor shall submit to the Architect on the first of each month, for Work done through the 25th of the preceding month, two (2) original, itemized Applications for Payment for Work completed in accordance with the accepted schedule of values, if required under Section 9.2., for completed portions of the Work. Such application shall

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be supported by such data substantiating the Contractor's right to payment as the Owner, Owner or Architect may require, such copies of requisitions from subcontractors and material suppliers, and shall reflect retainage and documents as follows:

.1 Until the final payment is made, the Owner shall pay ninety-seven and one half percent (97.5%) of the amount due the Contractor on account of progress payments (note: the 2-1/2% retainage is calculated by withholding the first 5% of the first 50% of the work completed); and the 2-1/2% of total contract amount from 51% - 100% completed.

.2 The Contractor shall provide documentation substantiating that test, inspections and approvals for portions of Work included in an Application for Payment and required by the Contract Documents, or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction were made at the appropriate time.

§ 9.3.1.1 Such applications may include requests for payment on account of changes in the Work, which have been authorized and approved by properly executed Change Order(s).

§ 9.3.1.2 Such applicatiuns may Include requests for payment on account of changes in the Work, which have been authorized and approve by properly executed Change Order(s).

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The Architect with assistance from the Owner's designated representative will, within three (3) days after receipt of the Contractor's Application for Payment either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's and Owner's designated representative's reasons for withholding certification in whole or in part as provided in Section 9.5.1. Such notifications will be forwarded to the Contractor by the Owner.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect and Owner's designated representative to the Owner, based on the Architect's and Owner's designated representative's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Architect's and Owner's designated representative's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect or Owner's designated representative. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect or Owner's designated representative has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

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§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.5.1 The Architect or Owner's designated representative may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's or Owner's designated representative opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect with assistance from the Owner's designated representative unable to certify payment in the amount of the Application, the Architect or Owner's designated representative will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor, Architect and Owner's designated representative cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect and Owner's designated representative are able to make such representations to the Owner. The Architect or Owner's designated representative may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's or Owner's designated representative opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.3 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and Owner's designated representative and the Architect or Owner's designated representative will reflect such payment on the next Certificate for Payment.

§ 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect and Owner's designated representative.

§ 9.6.2 The Contractor shall pay each Subcontractor no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Owner will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect, Owner and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

§ 9.6.4.1 The Contractor shall include partial lien releases from each Subcontractor with each monthly Application for Payment.

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§ 9.6.5 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.7 FAILURE OF PAYMENT

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within Seven days after the receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect, then the Contractor may, upon seven additional days' written notice to the Owner, Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time may be extended appropriately and the Contract Sum may be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect with assistance from the Owner's designated representative will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect with assistance from the Owner's designated representative, to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work .

§ 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the

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Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor and Owner's designated representative shall jointly prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect after consultation with the Owner's designated representative.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Owner's designated representative, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of the Contractor's written notice through the Owner's designated representative that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), contractors Affidavit of Release of Liens, and (3) separate Releases or Waivers of Liens from Subcontractors and material and equipment suppliers. The final 2.5% retained will not be paid until all items mentioned are complete and verified by the Architect and the Owner.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 , Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of special warranties required by the Contract Documents.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

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ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 SAFETY OF PERSONS AND PROPERTY

§ 10.2.1 The Contractor shall comply with all Federal, State and Local law regarding safety including the requirements of the Occupational Safety and Health Act of 1970, Public Law #91-596, latest revision. Contractor shall take all other reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

.1 employees on the Work and other persons who may be affected thereby;

.2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and

.3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

.4 The Contractor shall be responsible for damage done to buried cables and other utilities by it's equipment and shall contact the appropriate offices prior to construction for information depth, etc., of utilities in the area.

§ 10.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner, Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 HAZARDOUS MATERIALS

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to

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persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner, Owner's designated representative and Architect in writing.

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up, except to the extent that any such delay is attributable to the Contractor's objection to the persons or entities whom Owner shall have furnished to perform the task of removal of safe containment of such material or substance.

§ 10.3.3 The Owner shall not be responsible for materials or substances brought to the site by the Contractor regardless of whether such materials or substances were required by the Contract Documents.

§ 10.3.4 The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.5 If, without negligence or wantonness on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner may reimburse the Contractor for all reasonable cost and expense thereby incurred.

(Paragraph deleted)

§ 10.4 EMERGENCIES

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency may be determined only as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- **.1** Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- **.2** Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- **.3** Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- **.4** Claims for damages insured by usual personal injury liability coverage;
- **.5** Claims for damages, because of injury to or destruction of tangible property, including loss of use resulting therefrom;

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.6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;

.7 Claims for bodily injury or property damage arising out of completed operations; and

.8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

The Contractor shall take out and maintain during the life of the Contract no less than the following amounts of insurance with the Owner and Owner's designated representative named as an additional insured. Contractor shall submit a Certificate of Insurance and a supplemental Attachment for Certificate of Insurance 25-2 (7/90), AIA Document G715. Insurance companies listed as the "Companies Affording Coverage" shall be authorized by the Secretary of the State of Alabama. Insurance produced out of the State of Alabama must be signed or counter signed by a Resident Agent of Alabama, with the Resident Agent's name, address and telephone number typed or printed on the face of the Certificate of Insurance.

.1 Workmen's Compensation and Employer's Liability Insurance: - Statutory-amount and coverage as required by law of place in which the Work is performed.

.2 The Contractor shall provide Broad Form (commonly termed Comprehensive) General Liability Insurance (including premises-product-completed operations) for limits of liability not less than:

A.	Bodily Injury	$1,000,000 each person $1,000,000 each occurrence
B.	Property Damage	$1,000,000 each occurrence; or
C.	Bodily Injury & Property Damage	$1,000,000 combined single limit

3. Such comprehensive policy shall include the following:

A. All liability of the Contractor, for the Contractor's Direct Operations.

B. Subcontractor's Operations.

C. Completed Operations Cover, thereby meaning any loss which shall occur after the contract has been completed, but which can be traced back to the Contract.

D. Contractual Liability, meaning thereby; any risk assumed by the Contractor under Hold Harmless Agreements or any other assumption of liability, but specifically Items 11.1.1.8.3G herein below

E. Broad Form Property damage Coverage, including Completed Operations.

F. Personal Injury Liability, with employee's exclusions removed.

G. The Contractor shall indemnify and save harmless the Owner and Owner's designated reprentative against all loss, cost, or damaged on account of injuries to persons or property occurring in the performance of the Contract, including all reasonable attorney's fees incurred by the Owner and/or Owner's designated representative, on account thereof.

4. The Contractor shall carry for himself and shall require that all Subcontractors and all Owners of Automobiles or trucks rented or hired on the contract carry until the Contract is completed. Comprehensive Automobile Liability Coverage for Bodily Injury and property Damage in amounts not less than the minimum amounts as indicated. The Contractor and Subcontractor shall also carry for themselves insurance for all non-owned and hired automobile at the limits of liability as indicated below:

A.	Bodily Injury	$1,000,000 each person $1,000,000 each occurrence
B.	Property damage	$1,000,000 each occurrence; or,
C.	Bodily Injury & Property damage	$1,000,000 combined single limit

5. Excess Liability: $2,000,000 limit

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6. Builder's Risk Coverage. The Owner shall carry a Builder's Risk Policy to cover the full amount of the Contract during construction. SEE SECTION 11.3 WHICH DETAILS THE COVERAGE REQUIRED BY THIS SECTION.

7. A Surety authorized to do business in the State of Alabama shall furnish the required insurance.

8. The ACCORD™ Certificate must be signed or countersigned by a Licensed Resident Agent of the State of Alabama and the agent's name, address and telephone number must appear on the face of the certificate.

9. The Surety must have a minimum rating of A/Class VI as reported in the latest issue of Best's Key Rating Guide Property-Casualty, published by Alfred M. best Company, Inc., if the bid price exceeds $50,000.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner through the Owner's designated representative with a copy to the Architect prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Owner's designated representative, the Architect and the Architect's Consultants as additional insured's for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

§ 11.2 OWNER'S LIABILITY INSURANCE

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

§ 11.3 PROPERTY INSURANCE

§ 11.3.1 The Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles (See 11.1.1 Supplement Builder's Risk Coverage). Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

§ 11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's, Owner's and Contractor's services and expenses required as a result of such insured loss.

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§ 11.3.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance that will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

§ 11.3.1.3 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.

§ 11.3.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

(Paragraphs deleted)

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 The Contractor shall furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder.

§ 11.4.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

11.4.3. The Labor and Materials Payment Bond and Performance Bonds shall each be for one hundred percent (100%) of the Contract price if the Contract Price is greater than $10,000.00

1. Cost of the bonds shall be included in the bid.

2. Bond shall be submitted with the executed agreement on provided form(s).

3. Power of Attorney is required for both bonds.

4. A Surety authorized to do business in the State of Alabama shall furnish both bands.

5. A Surety licensed to do business in the State of Alabama must execute the bonds.

6. Each bond must be signed or countersigned by a Resident Agent of the State of Alabama.

7. The Surety must have a minimum rating of A/Class VII as reported in the latest issue of Best's Key

Rating Guide Property-Casualty, published by Alfred M. Best Company, Inc., if the bid price exceeds $50,000.00.

8. The Surety company shall be required to execute AIA Document G-707, "Consent of Surety to Final Payment" prior to Final Payment being made to the Contractor.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 UNCOVERING OF WORK

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's or Owner's designated representative's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect or Owner's designated representative be uncovered for the Architect's or Owner's designated representative's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect or Owner's designated represnetaive has not specifically requested to examine prior to its being covered, the Architect or Owner's designated representative may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs nf uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If

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such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

The Contractor shall promptly correct Work rejected by the Architect or Owner's designated representative or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's or Owner's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect the Owner may correct it in accordance with Section 2.4.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

The Contract shall be governed by the law of the State of Alabama.

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§ 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

13.2.3 No assignment of the Contract shall be made without the written permission of Surety providing bonding.

§ 13.3 WRITTEN NOTICE

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

§ 13.4 RIGHTS AND REMEDIES

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 13.4.2 No action or failure to act by the Owner, Owner's designated representative, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

§ 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect and Owner's designated representativr timely notice of when and where tests and inspections are to be made so that the Architect and Owner's designated representative may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

§ 13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Architect or Owner'sdesignated representative will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect and Owner's designated representative of when and where tests and inspections are to be made so that the Architect and Owner's designated representative may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's and Owner's designated representative services and expenses shall be at the Contractor's expense.

§ 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Owner's designated representative for review and transmittal to the Architect.

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§ 13.5.5 If the Architect is to observe tests, inspections or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

13.5.7 Test, inspections or approvals made in addition to the Architects normal design and contract administration services caused by the Contractor shall be paid for by the Contractor. The normal service schedule is contained in Article 2.8.1 of AIA B102-2007 as amended by the Owner and is available to Contractor on request.

13.5.8 The Contractor must call the Inspections Department of the City of Foley for their inspections and approval at the times required by the City well as notify the Architect, Owner, Consulting Engineer, and/or Test Laboratory, for inspection and approval of sub-grade conditions, under slab and footing Conditions, vapor barrier placement, reinforcing steel placement, all structural connections, electrical, mechanical, etc. None of the above will be accepted that have been covered up before receiving approval of the Architect or his Consultant.

§ 13.6 INTEREST

(Paragraph deleted)

§ 13.7 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.

13.8 COMMENCEMENT OF STATUTORY LIMITATION PERIOD

13.8.1 As between the Owner and Contractor:

1. Before Substantial Completion. As to acts or failures to act occurring prior to the relevant date of Substantial Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than such date of Substantial Completion;
2. Between Substantial Completion and Final Payment. As to acts or failures to act occurring subsequent to the relevant date of Substantial Completion and prior to the final payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all event snot later than the date of issuance of the final Certificate for Payment; and
3. After Final Payment. As to acts or failures to act occurring after the relevant date of the final Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of any act or failure to act by the Contractor pursuant to any Warranty provided under Section 3.5, the date of any correction of the Work or failure to correct the Work by the Contractor under Section 3.5, the date of any correction of the Work or failure to correct the Work by the Contractor under Section 12.2, or the date of actual commission of any other act or failure to perform any duty or obligation by the Contractor or Owner, whichever occurs last.

13.9 SUBSTITUTION OF MATERIALS AND EQUIPMENT

13.9.1 Whenever a material, article or piece of equipment is identified on the Drawings or in the Specifications by reference to manufacturer's or vendor's names, trade names, catalog numbers, or the like, it is so identified for the purpose of establishing a standard, and any material, article, or piece of equipment of other manufacturers or vendors which will perform adequately the duties imposed by the general design will be considered equally acceptable provided the material, article, or piece of equipment so proposed is, in the opinion of the Architect, of equal substance, appearance and function. It shall not be purchased or installed by the Contractor without the Architect's written approval.

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ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner, Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner, Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the above reasons exist, the Owner, after consultation with the Owner, and upon certification by the Initial Decision Maker that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's and Owner's services and expenses made necessary thereby, and other damages incurred by the Owner

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and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker after consultation with the Owner, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time may be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of termination.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 CLAIMS

§ 15.1.1 DEFINITION

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 15.1.2 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant acting with due diligence, reasonable should have first recognized the condition giving rise to the Claim, whichever is later. Claims must be initiated by written notice to the Architect, Owner and the other party.

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Owner will prepare Change Orders and the Architect will issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

§ 15.1.4 CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work giving rise to such claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

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§ 15.1.5 CLAIMS FOR ADDITIONAL TIME

§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay to critical path activities of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.5.2 If adverse weather conditions (above average rain shall be considered adverse weather) are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled critical path activities of construction. The Contractor shall document all days within a calendar month that the Contractor could not work on critical path activities for that month due to adverse weather and these days must be substantiated by the Owner's designated representative.

§ 15.1.5.3 Above average rain days shall be assessed and calculated as follows:

.1 The total number of days in a month it rained more than or equal to 0.10 inches multiplied by a ratio derived by taking the result of the Actual Monthly Rainfall in inches per NOAA, less the 10 year Average Monthly Rainfall in inches for that Month per NOAA and dividing by Actual Monthly Rainfall in inches per NOAA: (((Actual Monthly Rainfall in inches per NOAA) - (10year Average Monthly Rainfall in inches per NOAA)/Actual Monthly Rainfall in inches per NOAA). NOAA documentation shall be as recorded at the Mobile Regional Airport.

.3 The result of that multiplication is the amount of calendar days the Contractor can submit as a request for above average rain days.

§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

.1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

.2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 INITIAL DECISION

§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Architect, as the initial decision maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial decision maker reasonably concludes that, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

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§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is oot serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties

(Paragraphs deleted)
§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.3 Mediation
§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.4 Arbitration
§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

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§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 15.4.4 Consolidation or Joinder

§ 15.4.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Contractor under this Agreement.

OWNER *(Signature)*	Steve Bailey CONSTRUCTION MANAGER *(Signature)*
JOHN E. KONIAR *(Printed name and title)*	Steve Bailey Pres *(Printed name and title)*

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§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 15.4.4 Consolidation or Joinder

§ 15.4.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Contractor under this Agreement.

OWNER *(Signature)*	Steve Bailey **CONSTRUCTION MANAGER** *(Signature)*
(Printed name and title)	Steve Bailey Pres *(Printed name and title)*

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<u>EXHIBIT D</u>

PROGRAM MANAGEMENT CONTRACT

[attached behind]

Date: **April 7, 2014**

AMENDMENT No. 1
to
City of Foley, Alabama
Master Services Agreement

for

Agreement approved and adopted **June 17th, 2013**

by and between

City of Foley, Owner
and
Hoar Program Management LLC, Consultant

The following changes in the said contract are made therein:

Modify the agreement per article 5.2.1 to incorporate 2 additional projects including the Coastal Alabama Farmers and Fishermans Market (CAFFM) Phase 2 and the Foley Sports Complex.

Modify article 3 of agreement to incorporate HPM's basic scope of services for CAFFM Phase 2 to include:

- Assist the CAFFM in selection of Architect or Record
- Act as Owner's Representative / Liaison to Architect of Record
- Negotiate Fee for Architect of Record
- Monitor Schematic, 30%, 60%, 90% Design Development
- Recommend Value Engineering to Architect where required
- Validate Budget at 30%, 60%, 90% Design Development
- Assist the CAFFM in selection of Construction Manager(CM) as Contractor
- Prepare Construction Manager's Contract and Contract Exhibits
- Review Construction Manager's Estimate
- Recommend Value Engineering to Construction Manager where required
- Validate Construction Manager's Estimate
- Monitor Construction Activities, Construction Schedule, and Cost Control of all Construction Manager's Work Packages.
- Provide weekly progress reports on Construction Manager's progress
- Provide executive summaries of project status to Mayor and Council Members on request.

Modify article 3 of agreement to incorporate HPM's basic scope of services for Foley Sports Complex to include:

- Act as Owner's Representative/Liaison between City of Foley Staff and all entities associated with Blue Collar.
- Monitor Design Development, and Estimate Review of Blue Collar's Architect and Contractor
- Recommend Value Engineering where required to Blue Collar's Architect and Contractor
- Validate Blue Collar's Contractor's Estimate
- Review all Work Package Bids received from Blue Collar's Contractor
- Monitor Construction Activities, Construction Schedule, and Cost Control of Blue Collar's Contractor.
- Provide weekly progress reports on Blue Collar's Contractor's Progress
- Provide executive summaries of project status to Mayor and Council Members on request.

Modify article 4 of agreement to extend the duration of the agreement from June 17th 2014 until June 17th, 2015.

Modify article 7.1 Basis of Contract Price to include:

- Lump sum amount of $77,500 for services for CAFFM Phase 2 – See attached breakdown
- Lump sum amount of $161,200 for services for Foley Sports Complex – See attached breakdown

_Basis of fee for Amendment in addition to scope of services:

For CAFFM Phase 2:
Anticipated construction NTP is May 1, 2014.
Anticipated construction completion is September 15, 2014
Anticipated fiscal year 2014 fees is $77,500

For Foley Sports Complex:
Anticipated construction NTP is May 1, 2014
Anticipated construction completion is April 31, 2015
Anticipated fiscal year 2014 fees is $67,000
Anticipated fiscal year 2015 fees is $94,200

If the anticipated basic scope of services changes significantly and/or construction period extends beyond our current anticipated completion date's HPM will follow the procedures outlined in article 5 of the current contract.

The Owner and the Consultant agree to the terms of this Amendment as contained herein.

CONTRACTING PARTIES

Consultant	**Owner**
Hoar Program Management, LLC	**City of Foley**
By: _____	**By** _____
Mike Lanier - President	**John Koniar - Mayor**

City of Foley, AL

407 E. Laurel Avenue
Foley, AL 36535

Signature Copy

Resolution: 13-0343-RES

File Number: 13-0740 **Enactment Number: 13-0343-RES**

Consider Resolution Hiring Hoar Program Management

WHEREAS, Hoar Program Management has submitted a Master Services Agreement for professional "Project Management and Owner's Representative Services". Hoar's services includes projects such as overseeing the Event Center and Outdoor Athletic Fields design/development and to monitor the ATRIP grant spending for work performed by Volkert.

NOW THEREFORE BE IT RESOLVED that the City Council of the City of Foley, Alabama, as follows:

SECTION 1: Approves hiring Hoar Program Management, at the established hourly rates, as outlined in their Master Services Agreement, which is made a permanent part of this resolution upon its adoption.

SECTION 2: Appropriates $50,000 under Account No. 12-665-7312 Q89. City staff shall report back to Council and the Finance Department on how the appropriated funds are being spent.

SECTION 3: This Resolution shall become effective immediately upon its adoption as required by law.

PASSED, APPROVED AND ADOPTED this 17th day of June, 2013.

Aye: 4 Council Member Quaites, Council Member Hellmich, Council Member Blackwell and Council Member Ebert III

Abstain: 1 President Trawick

CITY OF FOLEY CORPORATE SEAL FOLEY, ALABAMA

President's Signature _____ **Date** _____

Attest by City Clerk Loteria Southern **Date** 6-19-2013

Mayor's Signature _____ **Date** 6/19/2013

HOAR
PROGRAM
MANAGEMENT

City of Foley, Alabama Program Manager
Master Services Agreement

ARTICLE 1
SERVICES AND OTHER DEFINITION

1.1 "Services" and "Work" are synonymous for purposes of this Contract and mean **Project Management and Owner's Representative Services** for any Project of Owner made subject to this Contract by virtue of execution of an Amendment (as defined below)

1.2 "Amendment" means an amendment executed by Owner and PM in substantially the form of attached Exhibit A identifying a particular capital improvement project (s) of Owner. An Amendment by Owner and PM subjects the capital improvement project (s) identified in that Amendment to the terms and conditions of this Contract.

1.3 "Project" means any capital improvement project undertaken by Owner for which Owner and PM execute an Amendment. "Projects" refers collectively all Projects.

1.4 "Program" means the various Projects undertaken and underway from time to time by Owner in regard to its various properties, but does not include any capital improvement project of Owner for which an Amendment has not been executed by Owner and PM. Execution of this Contract does not obligate Owner to use PM in connection with any capital improvement project.

ARTICLE 2
RELATIONSHIP OF THE PARTIES

2.1 Owner and Program Manager: **For the purposes of this agreement the Owner shall refer to City of Foley and the PM shall refer to Hoar Program Management, a division of Hoar Construction, LLC.**

2.1.1 Relationship: Program Manager ("PM") shall be Owner's principal agent in providing Program Management and Owner's Representative Services described in this Contract. PM and Owner each accept the relationship of trust and confidence between them, which is established in this Contract.

2.1.2 Standard of Service: PM shall furnish its services properly, in accordance with the standards of its profession, and in accordance with applicable federal, state and local laws and regulations which are in effect on the date of this Contract.

2.2 Owner and Designer:

2.2.1 Owner-Designer Agreement: Owner shall enter into a separate agreement, the "Owner-Designer Agreement," with one or more designer professionals to provide for the design of any Project related to the Program and certain design-related services during the Construction Phase of a Project. The Project is defined in Article 1 of this Contract.

2.2.2 Changes: Owner shall not modify the Owner-Designer Agreement in any way that is prejudicial to PM. If Owner terminates Designer's services, a substitute acceptable to PM shall be appointed. PM to have opportunity to review for A & E contract prior to final acceptance by the Owner

2.3 Owner and Prime Contractors:

2.3.1 Construction Contract: Owner may enter into a separate contract with one or more Contractors for the construction of a Project within the Program.

2.4 Relationship of PM to Other Project Participants:

2.4.1 Working Relationship: In providing the Program Management and Owner's Representative Services described in this Contract, PM shall endeavor to maintain, on behalf of Owner, a working relationship with all vendors involved with the "Program".

2.4.2 Limitations: Nothing in this contract shall be construed to mean that PM assumes any of the responsibilities of any other consultant or contractor involved with the Program. All consultants are solely responsible for their individual scope of services and compliance with any local, state or federal requirements.

ARTICLE 3
BASIC SERVICES

3.1 Program Manager's Basic Services: As the Program is more clearly defined, specific project scope of services will be incorporated into this Master Services agreement via Amendment to Article 3. Any and all staffing increases or decreases will be addressed in Article 3. Billing for increases to

staff for specific projects will be in accordance with Exhibit A (Hourly Rate schedule) unless otherwise agreed upon in Article 3. The rates reflected in Exhibit A will be subject to annual increases to cover inflation and possible increased cost of employment. The increase to the Hourly Rate schedule will be at the mutual consent of both the Program Manager and the Owner.

ARTICLE 4
DURATION OF MASTER SERVICE AGREEMENT

4.1 The commencement date for The Master Service Agreement shall be the date of the execution of this Contract.

4.2 The duration of The Master Services Agreement under this Contract shall be 365 consecutive calendar days from the commencement date and to be automatically renewed annually unless Hoar Program Management is notified in writing within 60 days prior to the anniversary date of this contract. For specific durations for projects reference Amendments as indicated in Article 3.

4.3 The duration of The Master Service Agreement may be changed only as specified in Article 5.

ARTICLE 5
CHANGES TO MASTER SERVICE AGREEMENT TERMS AND CONDITIONS

5.1 <u>OWNER CHANGES:</u>

5.1.1 Once the Scope of Services have been defined in Article 3 of this agreement, Owner, without invalidating this Contract, may make changes in Program Manager's Basic Services. PM shall promptly notify Owner of changes that increase or decrease PM's compensation or the duration of Program Manager's Basic Services or both.

5.1.2 If the scope or the duration of this agreement is changed, PM's compensation shall be adjusted equitably. A written proposal indicating the change in compensation for a change in the scope or duration of shall be provided by PM to Owner within thirty (30) days of the occurrence of the event giving rise to such request. The amount of the change in compensation to be

paid shall be determined on the basis of PM's cost and a reasonable adjustment in PM's fixed, lump sum, or factor fee consistent with the provisions of Article 7.

5.2 AUTHORIZATION:

5.2.1 Changes in Program Manager's Basic Services and entitlement to additional compensation or a change in duration of this Contract shall be made by a written amendment to this Contract executed by Owner and PM. The amendment shall be executed by Owner and PM prior to PM's performing the services required by the amendment.

5.2.2 PM shall proceed to perform the services required by the amendment only after receiving written notice from Owner directing PM to proceed.

5.3 INVOICES FOR ADDITIONAL COMPENSATION:

5.3.1 PM shall submit invoices for additional compensation with its invoice for Basic Services and payment shall be made pursuant to the provisions of Article 7 of this Contract.

ARTICLE 6
OWNER'S RESPONSIBILITIES

6.1 Owner shall provide to PM complete information regarding Owner's knowledge of and requirements for the Program. Owner shall be responsible for the accuracy and completeness of all reports, data, and other information furnished. PM may use and rely on the information furnished by Owner in performing services under this Contract and on the reports, data, and other information furnished by Owner's consultants.

6.2 Owner shall be responsible for the presence at the site of any asbestos, PCB's, petroleum, radioactive materials and other hazardous materials, and the consequences of such presence.

6.3 Owner shall promptly review all reports, requests and information submitted by PM and as appropriate shall respond or render decisions pertaining promptly. Owner's responses and decisions are critical to the Program Schedule and, accordingly, Owner agrees to furnish required information and approvals and perform its responsibilities and activities in a timely manner to facilitate orderly progress of the Work in cooperation with PM consistent with this Contract and in accordance with the planning and scheduling requirements and budgetary restraints of the Program.

6.4 Owner shall furnish legal, accounting and insurance counseling services as may be necessary for the Program.

6.5 Owner shall furnish insurance for the Program as specified in Article 8.

6.6 If Owner observes or otherwise becomes aware of any fault or defect with any Project or any Work that does not comply with the requirements of the Contract Documents, Owner shall give prompt written notice thereof to PM.

6.7 Owner shall retain necessary consultants to carry out the scope of projects as the scope is defined. The Services, duties and responsibilities set out in the agreements with any of the Owner's consultants shall be compatible and consistent with this contract. Owner shall require that all consultants perform its services in cooperation with the PM in order not to hinder the overall success of the Program. Owner shall provide the PM with a copy of all agreements with the consultants and Owner represents to the PM that all the terms of those agreements have been acknowledged by and accepted to the consultant. PM agrees to perform all duties and responsibilities that Owner has agreed PM will perform in the agreements between Owner and any consultants. The terms and conditions of the Agreement between Owner and consultant shall not be changed without written consent of PM, which consent shall not be unreasonably withheld. A Designer whose services, duties and responsibilities shall be described in a written agreement between Owner and Designer. The services, duties and responsibilities set out in the Agreement between Owner and Designer shall be compatible and consistent with this Contract and the Contract Documents. Owner shall, in its agreement with Designer, require that Designer perform its services in cooperation with PM, consistent with this Contract and in accordance with the planning and scheduling requirements and budgetary restraints of the Project. Owner shall provide to PM a copy of the Agreement between Owner and Designer, and Owner represents to PM that all the terms of that Agreement have been acknowledged by and are acceptable to Designer. PM agrees to perform all duties and responsibilities that Owner has agreed PM will perform in the Agreement between Owner and Designer. The terms and conditions of the Agreement between Owner and Designer shall not be changed without written consent of PM, which consent shall not be unreasonably withheld.

6.8 Owner shall cause any and all agreements between Owner and any consultant or vendor to be compatible and consistent with this Contract. Each of the agreements shall include waiver of subrogation and shall expressly recognize PM as Owner's agent in providing the Program Manager's Basic and Additional Services specified in this Contract.

6.9 Owner shall in a timely manner secure, submit and pay for necessary approvals, easements, assessments, building permits and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

6.10 Owner shall furnish evidence satisfactory to PM that sufficient funds are available and committed for the entire cost of the Program. Unless such reasonable evidence is furnished, PM is not required to commence Program Manager's Services and may, if such evidence is not presented within a reasonable time, suspend the Services specified in this Contract upon fifteen (15) days' written notice to Owner. This should help eliminate making contractual obligations prior to funding being available. In such event, PM shall be compensated in the manner provided in Paragraph 9.2.

6.11 Owner shall send to PM and shall require all consultants or vendors to send to PM copies of all notices and communications received during the duration of the Program. During the Construction Phase of the Project, Owner shall require that Prime Contractors submit all notices and communications relating to the Project directly to PM.

6.12 Owner shall designate in writing an officer, employee or other authorized representatives to act in Owner's behalf with respect to the Program. This representative shall have the authority to approve changes in the scope of the Program and shall be available during working hours and as often as may be required to render decisions and to furnish information in a timely manner.

6.13 Owner shall make payments to Consultants and Vendors recommended by PM on the basis of Consultant and Vendor's applications for payment.

ARTICLE 7
CONTRACT PRICE AND PAYMENT

7.1 Basis for Contract Price: Unless provided otherwise, the basis for the contract price to be paid PM for Services shall be in accordance with conditions established in Article 3 of this agreement.

7.2 Basis for Payment for Consultants Engaged By PM: For architects, engineers, and other consultants engaged by PM to perform services related to the Project, PM shall be paid the amount of the invoice times a multiple of 1.10.

7.3 Direct Expenses: In addition to the amounts provided for in Paragraphs 7.1 and 7.2, PM shall be reimbursed for its actual approved expenditures made by PM, and by engineers, architects and its consultants engaged by-PM on behalf of the Owner. Also to include without limitation:

7.3.1 Long distance telephone calls, telegrams, facsimiles, and similar charges;

7.3.2 Handling, shipping, mailing and reproduction of materials and documents;

7.3.3 Transportation and living expenses when traveling in connection with the Project;

7.3.4 Computer equipment, computer software purchased, electronic data processing service and electronic data processing equipment, word processing equipment;

7.3.5 Insurance which PM is required to carry by the terms of this Contract which are not included as part of the contract rates.

7.3.6 Relocation of employees and their families;

7.3.7 Temporary living expenses of employees, who are not relocated, but assigned to the Project;

7.3.8 Gross receipts taxes, sales or use taxes, service taxes and other similar taxes required to be paid as a result of performance of services by PM of this Contract;

7.3.9 Field office expenses including the cost of office rentals, field telephones, utilities, field furniture, equipment and supplies; and

7.3.10 Legal costs reasonably and properly incurred by PM in connection with its performance under this Contract.

7.3.11 Fees paid for securing approval of authorities having jurisdiction over the Project;

7.4 Program Manager's Accounting Records: Records of PM's personnel expense, engineers', architects' and consultants fees and direct expenses pertaining to the Program shall be maintained on the basis of generally-accepted accounting practices and shall be available for inspection by Owner or Owner's representative at mutually convenient times for a period of two years after completion of the Construction Phase.

7.5 Payments: Payments shall be made monthly, not later than thirty (30) days after presentation of PM's invoice to Owner, as follows:

7.5.1 Payment of the Contract Price as indicated in Paragraph 7.1 shall be in amounts prorated equally over the duration of Program Manager's Services. The duration shall be as set out in Article 4;

7.5.2 Payment of expense and the fixed hourly rate for principals shall be in amounts equal to the actual hours spent during the billing period on the Program multiplied by the rates and multiples stated in Exhibit A;

7.5.3 Payment of engineer, architect and consultant services shall be in amounts equal to the invoice in receipt by PM for the billing period times the multiplier stated in Paragraph 7.2;

7.5.4 Reimbursement for direct expenses shall be in amounts equal to expenditures made during the billing period and during previous billing periods not yet invoiced times the multiplier stated in Paragraph 7.2;

7.5.5 Unless there has been proven negligence by the PM, no deductions shall be made from PM's compensation due to any claim by Owner, or its consultant or vendors or others not a party to this Contract or due to any liquidated damages, retainage or other sums withheld from payments to any consultant or vendor or others not a party to this Contract; and

7.5.6 Compensation for Additional Services: PM shall be compensated and payments shall be made for performing Additional Services in the same amount and manner as provided in Article 7 for Basic Services. There shall be an increase in the fixed fee set out in Paragraph 7.2 in an amount that is mutually agreeable between Owner and PM.

7.6 Fixed Price: ***not applicable***

ARTICLE 8
INSURANCE AND MUTUAL INDEMNITY

8.1 Program Manager Insurance:

8.1.1 PM shall purchase and maintain insurance to cover the following:

8.1.1.1 Claims under Workers' Compensation, disability benefits and other similar employee benefits acts that are applicable to the Work performed;

8.1.1.2 Claims for damages for bodily injury, occupational sickness or disease or death of PM's employees under any applicable employer's liability law;

8.1.1.3 Claims for damages for bodily injury or death of any person other than PM's employees to the extent that it arises out of PM's negligence;

8.1.1.4 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use there from to the extent that it arises out of PM's negligence; or

8.1.1.5 Claims for damages for bodily injury or death of any person or property damage arising out of Ownership, maintenance or use of any motor vehicle to the extent that it arises out of PM's negligence.

8.1.2 Program Manager's Comprehensive General and Automobile Liability Insurance.

8.1.3 Comprehensive General Liability Insurance may be obtained under a single policy for the full limits required or by a combination of underlying policies with the balance provided by an excess or umbrella liability policy.

8.1.4 The foregoing policies shall be written for not less than the limits agreed upon by PM and Owner and shall contain a provision that coverages afforded under the policies shall not be canceled or expire until at least thirty (30) days written notice has been given to Owner and shall include the Owner as an additional insured under the policies. Certificates of insurance showing such coverage to be in force shall be filed with Owner prior to commencement of PM's services.

8.2 Owner's Insurance:

8.2.1 Owner shall be responsible for purchasing and maintaining its own liability insurance and at Owner's option, may purchase and maintain such additional insurance to protect Owner against claims losses, or damages that may arise from any project performed under the Program.

8.2.2 PM, as agent of Owner, shall be named as an additional insured in any insurance policy obtained by Owner or its consultants/vendors/contractors for any project performed under the Program.

8.2.3 Owner shall be responsible for purchasing builder's risk insurance on an all risk basis, sufficient to cover the interests of PM.

8.3 Notices and Recovery:

8.3.1 Owner and PM each shall provide the other with copies of all policies thus obtaining for the Program. Each party shall provide the other thirty (30) days written notice of cancellation, non-renewal or endorsement reducing or restricting coverage.

8.4 Waiver of Subrogation:

8.4.1 Owner and PM waive all rights against each other and against Prime Contractor, Designer, consultants, agents and employees of the other for damages during construction covered by any property insurance as set forth in the Contract Documents. Owner and PM shall each require similar waivers from their Prime Contractors, consultants and agents.

8.5 Indemnity:

8.5.1 PM hereby agrees to indemnify and hold harmless Owner, and its employees, agents and representatives from and against any and all claims, demands, suits and damages for bodily injury and property damage that arise out of or result from the negligent acts or omissions of PM in performing the Program Manager's Services under this Contract provided, however, that PM does not assume any risk of damages and shall not be liable for any damages to any project within the Program or to property that is incorporated in, or shall be incorporated in, or is located on a project site. The total liability of PM arising by reason of this indemnity for losses that are not insured or exceed the amount of available insurance shall not exceed the amount of the total compensation actually paid to PM by Owner pursuant to this Contract.

8.5.2 The Owner shall cause each Designer, Engineer or any other Owner contracted Vendor, (hereinafter collectively referred to as Agents), to agree to defend, indemnify and exonerate the Program Manager (and its agents and employees) as to and from all liability, claims, action, causes of action, lawsuits and demands (including all judgments and settlements made at arms length and all attorneys fees and litigation expense connected therewith) for personal injury, death, (including personal injury or death of the Agents' own employees) and/or property damage arising out of any act or omissions, work or operation performed by, for, and on behalf of the Agents. The foregoing covenant and agreement shall include all such liabilities, claims, lawsuits and demands where it is charged, alleged or proven that the Agents (or its agents or employees) was in any way at fault in causing or contributing to such injury, death or property damage. The Agents' liability insurance policies shall each contain contractual insurance coverage so as to protect the Agents and in turn the Program Manager as to the covenant contained in this section. The Program Manager shall be named as an additional insured in the Agents' comprehensive

general liability, automobile and excess liability insurance policies.

8.5.3 Owner hereby agrees to defend, indemnify, and hold harmless PM and its employees, agents and representatives from and against any and all claims, demands, suits and damages for bodily injury and property damage that arise out of or result from negligent acts or omissions of Owner, its employees, agents, representatives, independent Prime Contractors, material suppliers, Prime Contractor and Designer.

ARTICLE 9
TERMINATION AND SUSPENSION

9.1 Termination by Owner for Convenience:

9.1.1 Project Canceled or Deferred: This Contract may be terminated by Owner for its convenience upon ninety (90) days' written notice to PM if such termination is the result of Owner canceling or indefinitely deferring the Program.

9.1.1.1 Payment Due PM: If the Program is canceled or indefinitely deferred and this Contract is terminated by Owner, PM shall be paid (i) the amounts due for services performed and expenses incurred up to the effective date of termination, and (ii) all expenses incurred as a result of such termination, whether incurred prior to, during or after such termination, plus an amount calculated as follows:

9.1.1.2 If the termination occurs during the Pre-design Phase, Design Phase or Bidding Phase, twenty (20) percent of the total amount paid, plus amount due at termination;

9.1.1.3 If the termination occurs during the Construction Phase or Post-Construction Phase, ten (10) percent of the total amount paid, plus amount due at termination;

9.1.2 Termination by Owner For Cause: Owner may terminate PM (i) for cause if PM has materially failed to perform its duties and obligations under this Contract and if Owner has given PM written notice of the intent to terminate for cause and the reasons for the intent to terminate for cause and has allowed PM fourteen (14) days to cure the alleged reasons and has thereafter provided written notice of termination, or (ii) for a suspension of sixty (60) days or more based on order of a court or other authority having jurisdiction or other event not the fault of either party, upon Owner giving fourteen (14) days' written notice.

9.1.2.1 PM shall be due the amounts set out in Section 9.1.1.1 except for the amounts called for in Section 9.1.2.

9.2 Termination by PM:

PM may terminate this Contract for (i) nonpayment by Owner, (ii) suspension of the Program for more than ninety (90) days, or (iii) material breach or failure of Owner to comply with this Contract.

9.2.1 In such event PM shall be paid consistent with Paragraph

9.3 Suspension:

9.3.1 Owner may in writing order PM to suspend all or any part of Program Manager's Services for the Program for the convenience of Owner or for stoppage beyond the control of Owner or PM. If the performance of all or any part of the Services for the Program is so suspended, an adjustment in PM's compensation shall be made for the increase, if any, in the cost of PM's performance of this Contract caused by such suspension and this Contract shall be modified in writing accordingly.

9.3.2 In the event Program Manager's Services for the Program are suspended, Owner shall reimburse PM for all of the costs of its staff on at the time of the suspension for the first thirty (30) days of such suspension. PM shall reduce the size of its project staff for the remainder of the suspension period as directed by Owner and, during such period, Owner shall reimburse PM for all of the costs of its reduced staff. Upon cessation of the suspension, PM shall restore the staff in accordance to meet the requirements of the Program at that time.

9.3.3 Persons assigned by PM to another project during such suspension periods and not available to return to the Program upon cessation of the suspension shall be replaced. Owner shall reimburse PM for costs incurred for relocation of previous staff persons returning to the Program or for new persons assigned to the Program.

ARTICLE 10
DISPUTE RESOLUTION

10.1 Owner and PM shall submit all unresolved claims, counterclaims, disputes, controversies, and other matters in question between them arising out of or relating to this Contract or the breach thereof ("disputes"), to mediation prior to either party's initiating against the other a demand for arbitration pursuant to Paragraph 10.2; provided, that if mediation is not conducted within sixty (60) days of a written request by either party to mediate, then either party can demand arbitration pursuant to Paragraph 10.2.1.

10.1.1. Owner and PM shall agree in writing as to the identity of the mediator and the rules and procedures of the mediation. If Owner and PM cannot agree, the dispute shall be submitted to mediation under the then current Construction Industry Mediation Rules of the American Arbitration Association.

10.2 All disputes that Owner and PM are unable to resolve by mediation as aforesaid shall be finally decided by binding arbitration.

10.2.1 The parties agree that this Contract involves interstate commerce and the agreement to arbitrate is governed by the Federal Arbitration Act (9 USC § 1 et seq.) and the arbitration will be conducted in Baldwin County in the state of Alabama. that the agreement to arbitrate, and Any award of the arbitrator(s) shall be specifically enforceable in BaldwinCounty in the state of Alabama any court having jurisdiction.

10.2.2 Owner and PM agree to submit all disputes to arbitration under the then current Construction Industry Rules of the American Arbitration Association.

10.2.3 Notice of demand for arbitration must be filed in writing with the other party to this Contract and with the American Arbitration Association. The demand must be made within a reasonable time after the dispute has arisen, but not prior to or during the pendency of the mediation as agreed in Paragraph 10.1. In no event may the demand for arbitration be made after the date when institution of legal proceedings based on such dispute in question would be barred by the applicable statute of limitations.

10.2.4 No arbitration arising out of, or relating to, this Contract may include, by consolidation, joinder or in any other manner, any person or entity who is not a party to this Contract unless both parties agree otherwise in writing.

10.2.5 The award rendered by the arbitrator(s) will be final, judgment may be entered upon it in any court having jurisdiction thereof, and the award will not be subject to modification or appeal.

10.2.6 In any judicial proceeding to enforce this Contract to arbitrate, the only issues to be determined shall be those set forth in 9 U.S.C. § 4 Federal Arbitration Act, and such issues shall be determined by the Court without a jury. All other issues, such as, but not limited to, arbitrability, prerequisites to arbitration, compliance with contractual time limits, applicability of indemnity clauses, clauses limiting damages and statutes of limitations shall be for the arbitrator(s), whose decision thereon shall be final and binding. The parties agree to file no interlocutory appeal of an order compelling arbitration.

10.2.7 Unless otherwise agreed in writing, PM shall continue to carry out its responsibilities under this Contract during any dispute, and Owner shall continue to make payments in accordance with this Contract.

ARTICLE 11
ADDITIONAL PROVISIONS

11.1 Confidentiality – Except for communication related to the performance of its services under this Contract, or for communications related to filings with, or otherwise required by, governmental bodies having jurisdiction over a particular project performed under this contract, or for information required to be disclosed by law or regulation or for publicity approval by Owner, PM agrees to keep all information concerning the Program confidential.

11.2 Limitation and Assignment – Neither the Owner nor PM shall assign or transfer its interest in this Contract without the written consent of the other, except that PM may, without approval of Owner, assign accounts receivable to a commercial bank or other financial institution for securing loans. In the event of an assignment by Owner, Owner agrees that it shall remain liable for payments due to PM under this Contract in the event the assignee fails to make such payments.

11.3 Governing Law – This Contract shall, unless otherwise provided, be governed by the law of the state Alabama.

11.4 Extent of Agreement – This Contract constitutes the entire agreement between the parties and incorporates all prior agreements and understandings in connection with the subject matter hereof. This Contract may be amended only by a written amendment signed by Owner and PM. Nothing contained in this Contract is intended to benefit any third party.

11.5 Severability – If any portion of this Contract is held as a matter of law to be unenforceable, the remainder of this Contract shall be enforceable without such portion.

11.6 Meaning of Terms – References made in the singular shall include the plural and the masculine shall include the feminine or the neuter.

11.7 Notices – All notices required by this Contract or other communications to either party by the other shall be deemed given when made in writing and delivered either by hand delivery, or by depositing in the United States Mail, postage prepaid, addressed as follows, or by facsimile sent to the following fax number, or by E-mail sent to the following E-mail address:

To Owner:
Mayor John Konair
407 East Laurel Avenue
P.O. Box 1750
Foley, Alabama 36536
Phone: 251 – 943 – 1545
Fax: 251 – 952 - 4014
To Program Manager:
Mike Lanier, Hoar Program Management
150 Government Street, Suite 3500
Mobile, AL 36602
Fax #: 251-431-9857
E-Mail: lanier@hoarpm.com

11.8 Exhibit A – Billing Rates -

11.8.1 Exhibit B – Certificate of Insurance – Dated 7/1/2011

Arbitration: The parties expressly acknowledge that this Contract contains an agreement to final and binding arbitration of all disputes that might relate to or arise out of this Contract.

IN WITNESS WHEREOF, the parties have duly executed this Contract as of the date set forth on page 1 hereof.

ATTEST:

Witness: Victoria Southern

OWNER

By:

Title: Mayor

Witness:

Program Manager

By:

Title: President

EXHIBIT B

ACORD

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 07/01/2011

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
MCGRIFF, SEIBELS & WILLIAMS, INC.
P.O. Box 10265
Birmingham, AL 35202

CONTACT NAME:
PHONE (A/C, No, Ext): 800-476-2211 FAX (A/C, No):
E-MAIL ADDRESS:

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : American Contractors Ins Co RRG	
INSURER B : ACIG Insurance Company	19984
INSURER C : Charter Oak Fire Insurance Company	
INSURER D : Illinois Union Insurance Company	27960
INSURER E : St. Paul Travelers	
INSURER F :	

INSURED
Hoar Construction, LLC
P.O. Box 660400
Birmingham, AL 35266-0400

COVERAGES CERTIFICATE NUMBER: STCBBCWW REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS		
A	GENERAL LIABILITY X COMMERCIAL GENERAL LIABILITY CLAIMS-MADE X OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: POLICY X PRO-JECT LOC			GL11000034 Primary GL11X000034 Excess FF	06/01/2011	06/01/2012	EACH OCCURRENCE	$	1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	$	100,000
							MED EXP (Any one person)	$	5,000
							PERSONAL & ADV INJURY	$	1,000,000
							GENERAL AGGREGATE	$	2,000,000
							PRODUCTS - COMP/OP AGG	$	2,000,000
								$	
C	AUTOMOBILE LIABILITY X ANY AUTO ALL OWNED AUTOS X HIRED AUTOS SCHEDULED AUTOS X NON-OWNED AUTOS X Hired Physical Damage			DT8105909G719C0F11	06/01/2011	06/01/2012	COMBINED SINGLE LIMIT (Ea accident)	$	1,000,000
							BODILY INJURY (Per person)	$	
							BODILY INJURY (Per accident)	$	
							PROPERTY DAMAGE (Per accident)	$	
								$	
D	UMBRELLA LIAB X OCCUR X EXCESS LIAB CLAIMS-MADE DED RETENTION $			G21979132006	06/01/2011	06/01/2012	EACH OCCURRENCE	$	5,000,000
							AGGREGATE	$	5,000,000
								$	
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y / N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	N/A		WC11000025 WC11000095 (TX,KY,WV)	06/01/2011	06/01/2012	X WC STATU-TORY LIMITS OTH-ER		
							E.L. EACH ACCIDENT	$	1,000,000
							E.L. DISEASE - EA EMPLOYEE	$	1,000,000
							E.L. DISEASE - POLICY LIMIT	$	1,000,000
E	COMBINED INLAND MARINE Owned Equip & Leased/Rented Equip on File w/Co., All Risk Coverage, Boom & Overload Exclusion Removed. Valuation is Actual Cash Value			QT6604022N998	06/01/2011	06/01/2012	Leased/Rented/Per Occ Per Item	$ $ $ $ $	750,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

CERTIFICATE HOLDER

For Evidence Purposes Only

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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EXECUTION VERSION

CONSTRUCTION MANAGER'S AGREEMENT AND CONSENT TO ASSIGNMENT OF CONTRACT

THIS CONSTRUCTION MANAGER'S AGREEMENT AND CONSENT TO ASSIGNMENT OF CONTRACT (this "Consent") is made as of July 11, 2014 (the "Effective Date"), by SUN COAST BUILDERS, INC., an Alabama corporation ("CM"), to and for the benefit of PACESETTER CDE X, LLC, a Texas limited liability company ("Lender").

RECITALS

A. Pursuant to the Credit Agreement, Lender is making loans to Coastal Alabama Farmers' and Fishermen's Market, Inc., an Alabama nonprofit corporation ("Borrower"), in the aggregate original principal amount of $8,000,000 (collectively, the "Loans"). The proceeds of the Loans are to be used to finance the construction of the Improvements.

B. CM is a party to the Contract and pursuant to the Contract will construct the Improvements and provide other services as provided in the Contract.

C. Pursuant to the Assignment, Borrower has assigned all its right, title, and interest (but not its obligations) in, to and under the Contract to Lender as additional security for the payment in full of the indebtedness and performance in full of all obligations of Borrower to Lender under the Loan Documents.

D. Lender has required that CM execute this Consent as a material condition of making the Loans.

NOW, THEREFORE**,** in consideration of the foregoing premises, and of other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, CM hereby agrees as follows:

1. Definitions. All capitalized terms listed in the introductory paragraph and Recitals to this Consent 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 Assignment. In addition, the following terms shall have the following meanings in this Consent.

(a) "Architect" means McCollough Architecture, Inc., an Alabama corporation, its successors and assigns, and all other architects, engineers and other design professionals engaged by Borrower to design the Improvements and supervise construction of the Improvements.

(b) "Assignment" means that certain Assignment of Contracts, dated as of the Effective Date, from Borrower to Lender, as the same may be amended, assigned, restated, modified, or supplemented from time to time.

(c) "Contract" means that certain Standard Form of Agreement Between Owner and Construction Manager, dated as of July 7, 2014, by and between Borrower and CM, as the same may be amended, restated, modified, or supplemented.

(d) "Credit Agreement" means that certain Credit Agreement, dated as of the Effective Date, by and between Borrower and Lender, as the same may be amended, assigned, restated, modified, or supplemented from time to time.

(e) "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.

(f) "Improvements" means, collectively, the new construction of a farmers' and retail market located at 20733 Miflin Road, Foley, Alabama 36535, and the new construction of a wholesale produce distribution facility located at 410 East Section Avenue, Foley, Alabama 36535.

(g) "Loan Documents" means the Credit Agreement and all promissory notes and other documents, whether now or hereafter existing, executed by Borrower and/or any other Person in connection with the Loans, as such documents may be amended, restated, modified, or supplemented.

(h) "Permits" means all consents, licenses, building permits required for the construction, renovation, completion, occupancy and operation of the Improvements in accordance with applicable law and all agreements, contracts and reports performed or prepared in contemplation of development of the Improvements.

(i) "Person" means any individual, general partnership, limited partnership, limited liability limited partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative, association, or public agency, 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.

(j) "Plans" means the plans and specifications for the development of the Improvements prepared by Architect and initialed for identification purposes on or prior to the Effective Date by Architect, Borrower, Lender, and (if applicable) CM, including all related working drawings and shop drawings, as the same may be amended, modified or supplemented from time to time by change orders executed in compliance with the provisions of the Credit Agreement.

(k) "Services" means the services to be provided by CM under the Contract.

2. Consent. CM hereby consents to the assignment of the Contract from Borrower to Lender in accordance with the Assignment.

3. Representations and Warranties. CM hereby represents and warrants to Lender as follows:

(a) CM (i) is duly licensed to conduct its business in the State in which the Improvements are being made and will at all times maintain its license in full force and effect throughout the term of the Contract and (ii) has the requisite knowledge, skills, and experience to perform its Services and other obligations under the Contract.

(b) To the best of CM's knowledge, as of the Effective Date: (i) there have been no prior assignments of the Contract or Services, (ii) the Contract is in full force and effect, (iii) CM has fully performed all its obligations under the Contract which are by the terms of the Contract required to be performed as of the Effective Date, (iv) there exists no default on the part of CM or Borrower under the Contract, and (v) the right, title and interest of CM in, to and under the Contract are not subject to any defense, offset, counterclaim or claim.

(c) No consent of any Person is required in connection with the execution, delivery and performance by CM of this Consent.

(d) The individual executing this Consent on behalf of CM has the power and authority and the legal right to execute and deliver this Consent and to bind CM to perform its obligations under this Consent.

(e) All necessary action has been taken by CM to authorize the execution and delivery of, and the performance of its obligations under, this Consent.

(f) The Improvements will be constructed substantially in accordance with the Plans and the project schedule set forth in the Contract. The Plans (i) have been reviewed and approved by CM, and (ii) are sufficient to enable CM to perform its obligations under the Contract. The project schedule set forth in the Contract is realistic and feasible.

(g) As of the Effective Date, telephone, drainage, gas, electric, sewer, and water facilities are available for immediate use at the perimeter of the Property in adequate quantity and without the need for offsite easements, and prior to commencement of construction of any Improvement, CM shall have obtained all Permits required from local utility companies or Governmental Authorities in order to ensure that the foregoing utilities will be available to the Improvements upon completion.

(h) Upon completion of the Improvements in accordance with the Plans: (i) the Improvements will comply with all applicable law, including, without limitation, applicable zoning, environmental protection, life safety, use, land use and building laws, ordinances and regulations as such laws, ordinances and regulations exist on the Effective Date, (ii) the Improvements will have proper pedestrian and vehicular access to and from the site and adjoining streets and/or roads without the need for further authorizations, approvals, or easements, (iii) Borrower will be entitled to the issuance of such certificates authorizing the occupancy of the Improvements as such Governmental Authorities having jurisdiction customarily issue upon completion of the Improvements and readiness thereof for use and occupancy of the Improvements for its intended purpose, and (iv) the CM will have fully complied with the terms of the Contract.

4. <u>Agreement.</u>

(a) Notwithstanding anything to the contrary set forth in the Contract, if an Event of Default has occurred and is continuing, Lender, at its option, may terminate the Contract upon 15 calendar days notice to CM or may elect to keep the Contract in full force and effect, in which event, CM shall continue to perform the Services on Lender's behalf (or on behalf of Lender's nominee(s)) in accordance with the terms of the Contract, provided that Lender shall agree to pay CM for such services done for Lender's account and benefit after Lender's request.

(b) If any proceeds of the Loans are disbursed directly to CM, it will receive such proceeds, and will hold the right to receive the same, in trust, for the purpose of paying the cost of the Improvements, including without limitation payment of subcontractors and it will apply the same to such payment in accordance with the applicable draw request and not for any other purpose without Lender's prior written consent.

5. Change in Contract and Plans; Change Orders.

(a) CM will not (i) cause or permit any amendment, modification or termination of the Contract without the prior approval of Lender, (ii) cause or permit any changes in the Plans without the prior approval of Lender and Architect, or (iii) enter into, approve or permit any change order without the prior approval of Lender, *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 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.

(b) Notwithstanding Section 5(a), in the event Lender provides CM with notice that an Event of Default has occurred and is continuing, then CM will not enter into, or permit to become effective, any change order without Lender's prior written consent.

6. No Liability of Lender. The parties hereto acknowledge that Borrower is solely and absolutely liable for the performance of any and all obligations and the payment of any and all amounts due to CM under the Contract, and that Lender shall have no liability with respect to the performance of any obligations or the payment of any amount due or owing to CM under the Contract except to the extent specifically provided for in this Consent. CM acknowledges and agrees that it has no rights under or pursuant to any of the Loan Documents other than under this Consent.

7. Inspection by Lender or Agents Thereof. CM agrees to cooperate with such Persons as Lender may designate to visit and inspect the Improvements, all work done, labor performed and materials furnished, to examine the books, records, Plans, Permits, shop drawings and documents relating to the Improvements and/or the construction or rehabilitation of the Improvements in CM's possession and take copies and extracts from such documents and materials and to discuss the affairs of Borrower relating to same. Such visits/site inspections: (a) shall be at reasonable times during regular business hours, (b) shall be subject to providing

reasonable notice to CM, and (c) are anticipated to occur on a monthly basis, subject to Lender's reasonable discretion. Lender shall have no obligation to make any such inspections nor any liability or obligation to CM, such inspection being for Lender's own purposes. No such inspection, or any failure by Lender to make objections after any such inspection shall result in any obligation or acceptance of Lender for any deficiency in construction, variance from the Plans or applicable law or otherwise which may be revealed by any such inspection, whether or not discovered by Lender.

8. Default by Borrower. If Borrower defaults in making any payment or in the performance of any other obligation under the Contract, CM shall promptly give Lender notice of such default and Lender shall have the right for a period of 30 calendar days from the receipt of such notice of default, at its option, to cure or remedy such default. However, Lender shall have no obligation to cure any such default.

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 Consent. 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. Further, any notice actually received 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. Specific Performance; Injunction. CM acknowledges that the nature of the transactions contemplated in this Consent is such that money damages may be an inadequate remedy in the event of a breach of this Consent; and, therefore, CM expressly agrees and consents that if a default or a breach of this Consent occurs, Lender, in addition to any other available remedy, at law or in equity, shall be entitled to the remedies of specific performance and injunction to carry out the intentions expressed in this Consent. It is the express intention that the right of Lender to resort to specific performance and/or injunction as provided in this Consent shall be cumulative.

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

(a) THE VALIDITY OF THIS CONSENT, THE CONSTRUCTION, INTERPRETATION, AND ENFORCEMENT HEREOF, AND THE RIGHTS OF EACH PARTY WITH RESPECT TO ALL MATTERS ARISING HEREUNDER OR RELATED HERETO SHALL BE DETERMINED UNDER, GOVERNED BY, AND CONSTRUED IN

ACCORDANCE WITH THE LAWS OF THE STATE OF STATE OF ALABAMA, WITHOUT GIVING EFFECT TO CONFLICT OR CHOICE OF LAW PRINCIPLES.

(b) CONTRACTOR AND LENDER (BY ACCEPTING THIS CONSENT) AGREE THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS CONSENT SHALL BE TRIED AND LITIGATED ONLY IN THE STATE AND FEDERAL COURTS LOCATED IN THE STATE OF ALABAMA.

(c) CONTRACTOR AND LENDER (BY ACCEPTING THIS CONSENT) HEREBY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT EACH MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS CONSENT 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 CONSENT. EACH OF CONTRACTOR AND LENDER (BY ACCEPTING THIS CONSENT) HEREBY (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 CONTRACTOR HAS BEEN INDUCED TO ENTER INTO, AND LENDER HAS BEEN INDUCED TO ACCEPT, THIS CONSENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 11.

(d) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, CONTRACTOR AND LENDER (BY ACCEPTING THIS CONSENT) 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 EACH PERSON BY REGISTERED OR CERTIFIED MAIL TO OR BY PERSONAL SERVICE AT THE LAST KNOWN ADDRESS OF SUCH PERSON, AS APPLICABLE, WHETHER SUCH ADDRESS BE WITHIN OR OUTSIDE THE JURISDICTION OF ANY SUCH COURT.

(e) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, CONTRACTOR SHALL NOT ASSERT, AND HEREBY WAIVES, ANY CLAIM AGAINST LENDER, 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 CONSENT OR ANY AGREEMENT OR INSTRUMENT CONTEMPLATED HEREBY AND/OR THE TRANSACTIONS CONTEMPLATED HEREBY.

12. Enforcement Costs. In the event of any action at law or in equity to enforce the provisions of this Consent or to secure relief or damages for the breach of this Consent, 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.

13. Miscellaneous. The section headings used in this Consent are for convenience of reference only and are not to affect the construction hereof or be taken into consideration in the interpretation of this Consent. No amendment or modification of this Consent, and no approvals, consents or waivers hereunder, shall be valid or binding unless in writing and executed by the party to be bound. This Consent (including but not limited to Schedule A, incorporated herein by reference) 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. In case any provision in this Consent shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. This Consent shall be binding upon the permitted successors and assigns of CM and shall inure to the benefit of the successors and assigns of Lender, and all Persons claiming by through or under Lender. A faxed, scanned or photocopied signature to this Consent shall be deemed equivalent to an original signature.

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

IN WITNESS WHEREOF, CM has caused this Construction Manager's Agreement and Consent to Assignment of Contract to be executed as of the Effective Date.

CONTRACTOR: SUN COAST BUILDERS, INC., an Alabama corporation

By: Sun Coast Bldrs. Inc
Name: Steve Bailey
Title: Pres.
(Authorized Signatory)

SCHEDULE A

Notice Addresses of Parties

(1)	If to CM:	Sun Coast Builders, Inc. 11122 County Road 65 Foley, AL 36535 Attention: Steve Bailey Facsimile: 251-943-4346 Email: sunbuilder@gulftel.com
	And copies to:	The addresses set forth under (3) below.
(2)	If to Lender:	Pacesetter CDE X, LLC c/o Pacesetter CDE, Inc. 2600 E. Southlake Boulevard Suite 120-105 Southlake, TX 76092 Attention: Giovanni Capriglione Email: giovanni@pacesettercde.com
	With a copy to:	Law Office of Mark D. Foster 4835 LBJ Freeway, Suite 424 Dallas, TX 75244 Attention: Mark D. Foster, Esq. Facsimile: 214-363-9551 Email: mark@mdfoster.com
	And copies to:	The addresses set forth under (3) below.
(3)	Copy Parties:	JPMorgan Chase Bank, N.A. 10 Dearborn Street, 19th Floor Mail Code: IL1-0953 Chicago, IL 60603-5506 Attention: NMTC Asset Manager Facsimile: 312-325-5050 Email: nmtc.reporting@chase.com

[CONTINUED NEXT PAGE]

SCHEDULE A (CONT'D)

Notice Addresses of Parties

and:	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:	Jones Day 100 High Street, 21st Floor Boston, MA 02110 Attention: Douglas R. Banghart, Esq. Facsimile: 617-449-6999 Email: dbanghart@jonesday.com

[REMAINDER OF PAGE BLANK]

EXECUTION VERSION

ARCHITECT'S AGREEMENT AND CONSENT TO ASSIGNMENT OF CONTRACT AND PLANS

THIS ARCHITECT'S AGREEMENT AND CONSENT TO ASSIGNMENT OF CONTRACT AND PLANS (this "Consent") is made as of July 11, 2014 (the "Effective Date"), by MCCOLLOUGH ARCHITECTURE, INC., an Alabama corporation ("Architect"), to and for the benefit of PACESETTER CDE X, LLC, a Texas limited liability company ("Lender").

RECITALS

A. Pursuant to the Credit Agreement, Lender is making loans to Coastal Alabama Farmers' and Fishermen's Market, Inc., an Alabama nonprofit corporation ("Borrower"), in the aggregate original principal amount of $8,000,000 (collectively, the "Loans"). The proceeds of the Loans are to be used to finance the construction of the Improvements.

B. Architect is a party to the Contract and pursuant to the Contract has prepared the Plans.

C. Pursuant to the Assignment, Borrower has assigned all its right, title, and interest (but not its obligations) in, to and under the Contract and the Plans to Lender as additional security for the payment in full of the indebtedness and performance in full of all obligations of Borrower to Lender under the Loan Documents.

D. Lender has required that Architect execute this Consent as a material condition of making the Loans.

NOW, THEREFORE, in consideration of the foregoing premises, and of other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Architect hereby agrees as follows:

1. Definitions. All capitalized terms listed in the introductory paragraph and Recitals to this Consent 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 Assignment. In addition, the following terms shall have the following meanings in this Consent.

(a) "Assignment" means that certain Assignment of Contracts dated as of the Effective Date from Borrower to Lender, as the same may be amended, restated, modified, or supplemented.

(b) "CM" means Sun Coast Builders, Inc., an Alabama corporation, its successors and assigns, and all other contractors or suppliers engaged by Borrower with respect to the Improvements.

(c) "Contract" means that certain Standard Form of Agreement Between Owner and Architect, dated as of June 25, 2014, by and between Borrower and Architect, as the same may be amended, restated, modified, or supplemented.

(d) "Credit Agreement" means that certain Credit Agreement, dated as of the Effective Date, by and between Borrower and Lender, as the same may be amended, restated, modified, or supplemented.

(e) "Improvements" means, collectively, the new construction of a farmers' and retail market located at 20733 Miflin Road, Foley, Alabama 36535, and the new construction of a wholesale produce distribution facility located at 410 East Section Avenue, Foley, Alabama 36535.

(f) "Loan Documents" means the Credit Agreement and all promissory notes and other documents, whether now or hereafter existing, executed by Borrower and/or any other Person in connection with the Loans, as such documents may be amended, restated, modified, or supplemented.

(g) "Permits" means all consents, licenses, building permits required for the construction, renovation, completion, occupancy and operation of the Improvements in accordance with applicable law and all agreements, contracts and reports performed or prepared in contemplation of development of the Improvements.

(h) "Person" means any individual, general partnership, limited partnership, limited liability limited partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative, association, or public agency, 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.

(i) "Plans" means the plans and specifications for the development of the Improvements prepared by Architect and initialed for identification purposes on or prior to the Effective Date by Architect, Borrower, Lender, and (if applicable) CM, including all related working drawings and shop drawings, as the same may be amended, modified or supplemented from time to time by change orders executed in compliance with the provisions of the Credit Agreement.

(j) "Services" means the services to be provided by Architect under the Contract.

2. Consent. Architect hereby consents to the assignment of the Contract and Plans from Borrower to Lender in accordance with the Assignment.

3. Representations and Warranties. Architect hereby represents and warrants to Lender as follows:

(a) Architect (i) is duly licensed to conduct its business in the State of Alabama and will at all times maintain its license in full force and effect throughout the term of the Contract and (ii) has the requisite knowledge, skills, and experience to perform its Services and other obligations under the Contract.

(b) To the best of Architect's knowledge, as of the Effective Date: (i) there have been no prior assignments of the Contract, Plans or Services, (ii) the Contract is in full force and effect, (iii) Architect has fully performed all its obligations under the Contract which are by the terms of the Contract required to be performed as of the Effective Date, (iv) there exists no default on the part of Architect or Borrower under the Contract, and (v) the right, title and interest of Architect in, to and under the Contract and Plans are not subject to any defense, offset, counterclaim or claim.

(c) No consent of any Person is required in connection with the execution, delivery and performance by Architect of this Consent.

(d) The individual executing this Consent on behalf of Architect has the power and authority and the legal right to execute and deliver this Consent and to bind Architect to perform its obligations under this Consent.

(e) All necessary action has been taken by Architect to authorize the execution and delivery of, and the performance of its obligations under, this Consent.

(f) Upon completion of the Improvements in accordance with the Plans, (i) to the best of Architect's knowledge, the Improvements will comply with all applicable building and life safety codes and (ii) Architect will have fully complied with the terms of the Contract.

(g) Architect has reviewed the project schedule and, to the best of its knowledge, the project schedule is realistic and feasible.

4. Agreement.

(a) Upon receipt of notice from Lender that a Default or Event of Default (each as defined in the Credit Agreement) has occurred and is continuing, Architect shall upon request deliver the Plans to Lender; *provided*, *however*, that (i) Architect shall be entitled to payment of any amounts due under the Contract that are related solely to the preparation of the Plans and (ii) Lender's use of the Plans shall be in accordance with the terms and conditions of the Contract.

(b) Notwithstanding anything to the contrary set forth in the Contract, if a Default or an Event of Default has occurred and is continuing, Lender, at its option, may terminate the Contract upon 15 calendar days notice to Architect or may elect to keep the Contract in full force and effect, in which event, Architect shall continue to perform the Services on Lender's behalf (or on behalf of Lender's nominee(s)) in accordance with the terms of the Contract, provided that Lender shall agree to pay Architect for such services done for Lender's account and benefit after Lender's request.

5. Change in Contract and Plans; Change Orders.

(a) Architect will not (i) cause or permit any amendment, modification or termination of the Contract without the prior approval of Lender, (ii) cause or permit any changes in the Plans without the prior approval of Lender, or (iii) enter into, approve or permit any change order without the prior approval of Lender, *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 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 consent of Lender.

(b) Notwithstanding Section 5(a), in the event Lender provides Architect with notice that there a Default or an Event of Default has occurred and is continuing, then Architect will not enter into, or permit to become effective, any change order without Lender's prior consent.

(c) Architect shall cause any change order or amendment to the Plans to comply with all building and life safety codes.

6. No Liability of Lender. The parties hereto acknowledge that Borrower is solely and absolutely liable for the performance of any and all obligations and the payment of any and all amounts due to Architect under the Contract, and that Lender shall have no liability with respect to the performance of any obligations or the payment of any amount due or owing to Architect under the Contract except to the extent specifically provided for in this Consent. Architect acknowledges and agrees that it has no rights under or pursuant to any of the Loan Documents other than under this Consent.

7. Inspection by Lender or its Agents. Architect agrees to cooperate with such Persons as Lender may designate to visit and inspect the Improvements, all work done, labor performed and materials furnished, to examine the books, records, Plans, Permits, shop drawings and documents relating to the Improvements and/or the construction or rehabilitation of the Improvements in Architect's possession and take copies and extracts from such documents and materials and to discuss the affairs of Borrower relating to same. Such visits/site inspections (a) shall be at reasonable times during regular business hours, (b) shall be subject to providing reasonable notice to Architect, and (c) are anticipated to occur on a monthly basis, subject to Lender's reasonable discretion. Lender shall have no obligation to make any such inspections nor any liability or obligation to Architect, such inspection being for Lender's own purposes. No such inspection, or any failure by Lender to make objections after any such inspection shall result in any obligation or acceptance of Lender for any deficiency in construction, variance from the Plans or applicable law or otherwise which may be revealed by any such inspection, whether or not discovered by Lender.

8. Default by Borrower. If Borrower defaults in making any payment or in the performance of any other obligation under the Contract, Architect shall promptly give Lender notice of such default and Lender shall have the right for a period of 30 calendar days from the receipt of such notice of default, at its option, to cure or remedy such default. However, Lender shall have no obligation to cure any such default.

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 Consent. 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. Further, any notice actually received 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. Specific Performance; Injunction. Architect acknowledges that the nature of the transactions contemplated in this Consent is such that money damages may be an inadequate remedy in the event of a breach of this Consent; and, therefore, Architect expressly agrees and consents that if a default or a breach of this Consent occurs, Lender, in addition to any other available remedy, at law or in equity, shall be entitled to the remedies of specific performance and injunction to carry out the intentions expressed in this Consent. It is the express intention that the right of Lender to resort to specific performance and/or injunction as provided in this Consent shall be cumulative.

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

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

(b) ARCHITECT AND LENDER (BY ACCEPTING THIS CONSENT) AGREE THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS CONSENT SHALL BE TRIED AND LITIGATED ONLY IN THE STATE AND FEDERAL COURTS LOCATED IN THE STATE OF ALABAMA.

(c) ARCHITECT AND LENDER (BY ACCEPTING THIS CONSENT) HEREBY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT EACH MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS CONSENT 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 CONSENT. EACH OF ARCHITECT AND LENDER (BY ACCEPTING THIS CONSENT) HEREBY (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 ARCHITECT HAS BEEN INDUCED TO ENTER INTO, AND LENDER HAS BEEN INDUCED TO ACCEPT, THIS CONSENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 11.

(d) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ARCHITECT AND LENDER (BY ACCEPTING THIS CONSENT) 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 EACH PERSON BY REGISTERED OR CERTIFIED MAIL TO OR BY PERSONAL SERVICE AT THE LAST KNOWN ADDRESS OF SUCH PERSON, AS APPLICABLE, WHETHER SUCH ADDRESS BE WITHIN OR OUTSIDE THE JURISDICTION OF ANY SUCH COURT.

(e) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ARCHITECT SHALL NOT ASSERT, AND HEREBY WAIVES, ANY CLAIM AGAINST LENDER, 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 CONSENT OR ANY AGREEMENT OR INSTRUMENT CONTEMPLATED HEREBY AND/OR THE TRANSACTIONS CONTEMPLATED HEREBY.

12. Enforcement Costs. In the event of any action at law or in equity to enforce the provisions of this Consent or to secure relief or damages for the breach of this Consent, 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.

13. Miscellaneous. The section headings used in this Consent are for convenience of reference only and are not to affect the construction hereof or be taken into consideration in the interpretation of this Consent. No amendment or modification of this Consent, and no approvals, consents or waivers hereunder, shall be valid or binding unless in writing and executed by the party to be bound. This Consent (including but not limited to Schedule A, incorporated herein by reference) 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. In case any provision in this Consent shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. This Consent shall be binding upon the permitted successors and assigns of Architect and shall inure to the benefit of the successors and assigns of Lender, and all Persons claiming by through or under Lender. A faxed, scanned or photocopied signature to this Consent shall be deemed equivalent to an original signature.

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

IN WITNESS WHEREOF, Architect has caused this Architect's Agreement and Consent to Assignment of Contract and Plans to be executed as of the Effective Date.

ARCHITECT:

MCCOLLOUGH ARCHITECTURE, INC., an Alabama corporation

By: _____

Name: STED MCCOLLOUGH

Title: PRESIDENT.

(Authorized Signatory)

SCHEDULE A

Notice Addresses of Parties

(1)	If to Architect:	McCollough Architecture, Inc. 4490 Main Street at the Wharf, Suite 209 Orange Beach, AL 36561 Attention: Stedmann B. McCollough, President
	And copies to:	The addresses set forth under (3) below.
(2)	If to Lender:	Pacesetter CDE X, LLC c/o Pacesetter CDE, Inc. 2600 E. Southlake Boulevard Suite 120-105 Southlake, TX 76092 Attention: Giovanni Capriglione Email: giovanni@pacesettercde.com
	With a copy to:	Law Office of Mark D. Foster 4835 LBJ Freeway, Suite 424 Dallas, TX 75244 Attention: Mark D. Foster, Esq. Facsimile: 214-363-9551 Email: mark@mdfoster.com
	And copies to:	The addresses set forth under (3) below.
(3)	Copy Parties:	JPMorgan Chase Bank, N.A. 10 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
	And:	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

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SCHEDULE A (CONT'D)

Notice Addresses of Parties

And: Jones Day
100 High Street, 21st Floor
Boston, MA 02110
Attention: Douglas R. Banghart, Esq.
Facsimile: 617-449-6999
Email: dbanghart@jonesday.com

[REMAINDER OF PAGE BLANK]

EXECUTION VERSION

PROGRAM MANAGER'S AGREEMENT AND CONSENT TO ASSIGNMENT AND COLLATERAL ASSIGNMENT OF CONTRACT

THIS PROGRAM MANAGER'S AGREEMENT AND CONSENT TO ASSIGNMENT AND COLLATERAL ASSIGNMENT OF CONTRACT (this "Consent") is made as of July 11, 2014 (the "Effective Date"), by HOAR PROGRAM MANAGEMENT, LLC, a Delaware limited liability company ("PM"), to and for the benefit of PACESETTER CDE X, LLC, a Texas limited liability company ("Lender").

RECITALS

A. The City of Foley Public Facilities Cooperative District, an Alabama public corporation ("CFPFCD"), plans to convey to Coastal Alabama Farmers' and Fishermen's Market, Inc., an Alabama nonprofit corporation ("Borrower"), certain property and the improvements thereon located at 20733 Miflin Road, Foley, Alabama 36535 and 410 East Section Avenue, Foley, Alabama 36535.

B. Pursuant to the Credit Agreement, Lender is making loans to Borrower, in the aggregate original principal amount of $8,000,000 (collectively, the "Loans"). The proceeds of the Loans are to be used to finance the construction of the Improvements.

C. PM is a party to the Contract and pursuant to the Contract will provide project management and other services as provided in the Contract relating to the design and construction of the Improvements.

D. The City of Foley, Alabama, a political subdivision of the State of Alabama, the "City") has assigned all its right, title and interest in and to the Contract to Borrower pursuant to that certain Assignment Agreement, dated as of the Effective Date, by and between City and Borrower (the "City's Assignment").

E. Pursuant to the Collateral Assignment, Borrower has assigned all its right, title, and interest (but not its obligations) in, to and under the Contract to Lender as additional security for the payment in full of the indebtedness and performance in full of all obligations of Borrower to Lender under the Loan Documents.

F. Lender has required that PM execute this Consent as a material condition of making the Loans.

NOW, THEREFORE, in consideration of the foregoing premises, and of other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, PM hereby agrees as follows:

1. Definitions. All capitalized terms listed in the introductory paragraph and Recitals to this Consent 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 Collateral Assignment. In addition, the following terms shall have the following meanings in this Consent.

(a) "Architect" means McCollough Architecture, Inc., an Alabama corporation, its successors and assigns, and all other architects, engineers and other design professionals (but not PM) engaged by Borrower to design the Improvements and supervise construction of the Improvements.

(b) "CM" means Sun Coast Builders, Inc., an Alabama corporation, the contractor selected by Borrower to construct the Improvements.

(c) "Collateral Assignment" means that certain Assignment of Contracts, dated as of the Effective Date, from Borrower to Lender, as the same may be amended, assigned, restated, modified, or supplemented from time to time.

(d) "Contract" means, collectively, that certain City of Foley Program Manager Master Services Agreement, approved by the City as of June 17, 2013, by and between the City and PM, as amended by that certain Amendment No. 1 to City of Foley, Alabama Master Services Agreement, dated April 7, 2014, by and between the City and PM, and assigned by the City to Borrower pursuant to the City's Assignment, as the same may be amended, assigned, restated, modified, or supplemented from time to time.

(e) "Credit Agreement" means that certain Credit Agreement, dated as of the Effective Date, by and between Borrower and Lender, as the same may be amended, assigned, restated, modified, or supplemented from time to time.

(f) "Improvements" means, collectively, the new construction of a farmers' and retail market located at 20733 Miflin Road, Foley, Alabama 36535, and the new construction of a wholesale produce distribution facility located at 410 East Section Avenue, Foley, Alabama 36535.

(g) "Loan Documents" means the Credit Agreement and all promissory notes and other documents, whether now or hereafter existing, executed by Borrower and/or any other Person in connection with the Loans, as such documents may be amended, restated, modified, or supplemented.

(h) "Permits" means all consents, licenses, building permits required for the construction, renovation, completion, occupancy and operation of the Improvements in accordance with applicable law and all agreements, contracts and reports performed or prepared in contemplation of development of the Improvements.

(i) "Person" means any individual, general partnership, limited partnership, limited liability limited partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative, association, or public agency, 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.

(j) "Plans" means the plans and specifications for the development of the Improvements prepared by Architect and initialed for identification purposes on or prior to the Effective Date by Architect, Borrower, Lender, and (if applicable) PM, including all related

working drawings and shop drawings, as the same may be amended, modified or supplemented from time to time by change orders executed in compliance with the provisions of the Credit Agreement.

(k) "Services" means the services to be provided by PM under the Contract.

2. Consent. PM hereby consents to (a) the assignment of the Contract from the City to Borrower in accordance with the City's Assignment and (b) the assignment of the Contract from Borrower to Lender in accordance with the Collateral Assignment.

3. Representations and Warranties. PM hereby represents and warrants to Lender as follows:

(a) PM (i) is duly licensed to conduct its business in the State in which the Improvements are being made and will at all times maintain its license in full force and effect throughout the term of the Contract and (ii) has the requisite knowledge, skills, and experience to perform its Services and other obligations under the Contract.

(b) To the best of PM's knowledge, as of the Effective Date: (i) there have been no prior assignments of the Contract or Services except as otherwise set forth in this Consent, (ii) the Contract is in full force and effect, (iii) PM has fully performed all its obligations under the Contract which are by the terms of the Contract required to be performed as of the Effective Date, (iv) there exists no default on the part of PM or Borrower under the Contract, and (v) the right, title and interest of PM in, to and under the Contract are not subject to any defense, offset, counterclaim or claim.

(c) No consent of any Person is required in connection with the execution, delivery and performance by PM of this Consent.

(d) The individual executing this Consent on behalf of PM has the power and authority and the legal right to execute and deliver this Consent and to bind PM to perform its obligations under this Consent.

(e) All necessary action has been taken by PM to authorize the execution and delivery of, and the performance of its obligations under, this Consent.

(f) Upon completion of the Improvements in accordance with the Plans, (i) to the best of PM's knowledge, the Improvements will comply with all applicable building and life safety codes and (ii) PM will have fully complied with the terms of the Contract.

(g) PM has reviewed the project schedule and, to the best of its knowledge, the project schedule is realistic and feasible.

4. Agreement. Notwithstanding anything to the contrary set forth in the Contract, if an Event of Default has occurred and is continuing, Lender, at its option, may terminate the Contract upon 15 calendar days notice to PM or may elect to keep the Contract in full force and effect, in which event, PM shall continue to perform the Services on Lender's behalf (or on behalf of Lender's nominee(s)) in accordance with the terms of the Contract, provided that

Lender shall agree to pay PM for such services done for Lender's account and benefit after Lender's request.

5. Change in Contract and Plans; Change Orders.

(a) PM will not (i) cause or permit any amendment, modification or termination of the Contract without the prior approval of Lender, (ii) cause or permit any changes in the Plans without the prior approval of Lender, CM and Architect, or (iii) enter into, approve or permit any change order without the prior approval of Lender, *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 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.

(b) Notwithstanding Section 5(a), in the event Lender provides PM with notice that an Event of Default has occurred and is continuing, then PM will not enter into, or permit to become effective, any change order without Lender's prior written consent.

6. No Liability of Lender. The parties hereto acknowledge that Borrower is solely and absolutely liable for the performance of any and all obligations and the payment of any and all amounts due to PM under the Contract, and that Lender shall have no liability with respect to the performance of any obligations or the payment of any amount due or owing to PM under the Contract except to the extent specifically provided for in this Consent. PM acknowledges and agrees that it has no rights under or pursuant to any of the Loan Documents other than under this Consent.

7. Inspection by Lender or Agents Thereof. PM agrees to cooperate with such Persons as Lender may designate to visit and inspect the Improvements, all work done, labor performed and materials furnished, to examine the books, records, Plans, Permits, shop drawings and documents relating to the Improvements and/or the construction or rehabilitation of the Improvements in PM's possession and take copies and extracts from such documents and materials and to discuss the affairs of Borrower relating to same. Such visits/site inspections: (a) shall be at reasonable times during regular business hours, (b) shall be subject to providing reasonable notice to PM, and (c) are anticipated to occur on a monthly basis, subject to Lender's reasonable discretion. Lender shall have no obligation to make any such inspections nor any liability or obligation to PM, such inspection being for Lender's own purposes. No such inspection, or any failure by Lender to make objections after any such inspection shall result in any obligation or acceptance of Lender for any deficiency in construction, variance from the Plans or applicable law or otherwise which may be revealed by any such inspection, whether or not discovered by Lender.

8. Default by Borrower. If Borrower defaults in making any payment or in the performance of any other obligation under the Contract, PM shall promptly give Lender notice of such default and Lender shall have the right for a period of 30 calendar days from the receipt of

such notice of default, at its option, to cure or remedy such default. However, Lender shall have no obligation to cure any such default.

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 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 Consent. 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. Further, any notice actually received 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. Specific Performance; Injunction. PM acknowledges that the nature of the transactions contemplated in this Consent is such that money damages may be an inadequate remedy in the event of a breach of this Consent; and, therefore, PM expressly agrees and consents that if a default or a breach of this Consent occurs, Lender, in addition to any other available remedy, at law or in equity, shall be entitled to the remedies of specific performance and injunction to carry out the intentions expressed in this Consent. It is the express intention that the right of Lender to resort to specific performance and/or injunction as provided in this Consent shall be cumulative.

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

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

(b) PM AND LENDER (BY ACCEPTING THIS CONSENT) AGREE THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS CONSENT SHALL BE TRIED AND LITIGATED ONLY IN THE STATE AND FEDERAL COURTS LOCATED IN THE STATE OF ALABAMA.

(c) PM AND LENDER (BY ACCEPTING THIS CONSENT) HEREBY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT EACH MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS CONSENT 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 CONSENT. EACH OF PM AND LENDER (BY ACCEPTING THIS CONSENT) HEREBY (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 PM HAS BEEN INDUCED TO ENTER INTO, AND LENDER HAS BEEN INDUCED TO ACCEPT, THIS CONSENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 11.

(d) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, PM AND LENDER (BY ACCEPTING THIS CONSENT) 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 EACH PERSON BY REGISTERED OR CERTIFIED MAIL TO OR BY PERSONAL SERVICE AT THE LAST KNOWN ADDRESS OF SUCH PERSON, AS APPLICABLE, WHETHER SUCH ADDRESS BE WITHIN OR OUTSIDE THE JURISDICTION OF ANY SUCH COURT.

(e) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, PM SHALL NOT ASSERT, AND HEREBY WAIVES, ANY CLAIM AGAINST LENDER, 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 CONSENT OR ANY AGREEMENT OR INSTRUMENT CONTEMPLATED HEREBY AND/OR THE TRANSACTIONS CONTEMPLATED HEREBY.

12. Enforcement Costs. In the event of any action at law or in equity to enforce the provisions of this Consent or to secure relief or damages for the breach of this Consent, 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.

13. Miscellaneous. The section headings used in this Consent are for convenience of reference only and are not to affect the construction hereof or be taken into consideration in the interpretation of this Consent. No amendment or modification of this Consent, and no approvals, consents or waivers hereunder, shall be valid or binding unless in writing and executed by the party to be bound. This Consent (including but not limited to Schedule A, incorporated herein by reference) 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. In case any provision in this Consent shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. This Consent shall be binding upon the permitted successors and assigns of PM and shall inure to the benefit of the successors

and assigns of Lender, and all Persons claiming by through or under Lender. A faxed, scanned or photocopied signature to this Consent shall be deemed equivalent to an original signature.

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

IN WITNESS WHEREOF, PM has caused this Program Manager's Agreement and Consent to Assignment of Contract to be executed as of the Effective Date.

PM:

HOAR PROGRAM MANAGEMENT, LLC, a Delaware limited liability company

By: _____

Name: Mike Lanier
Title: President
(Authorized Signatory)

SCHEDULE A

Notice Addresses of Parties

(1)	If to PM:	Hoar Program Management 150 Government Street, Suite 3500 Mobile, AL 36602 Attention: Mike Lanier Facsimile: 205-423-2323 Email: lanier@hpmleadership.com
	With a copy to:	Hoar Holdings, LLC Two Metroplex Drive Suite 400 Birmingham, AL 35209 Attention: Doug Eckert Facsimile: 205-423-2323 Email: deckert@hoar.com
	And copies to:	The addresses set forth under (3) below.
(2)	If to Lender:	Pacesetter CDE X, LLC c/o Pacesetter CDE, Inc. 2600 E. Southlake Boulevard Suite 120-105 Southlake, TX 76092 Attention: Giovanni Capriglione Email: giovanni@pacesettercde.com
	With a copy to:	Law Office of Mark D. Foster 4835 LBJ Freeway, Suite 424 Dallas, TX 75244 Attention: Mark D. Foster, Esq. Facsimile: 214-363-9551 Email: mark@mdfoster.com
	And copies to:	The addresses set forth under (3) below.

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SCHEDULE A (CONT'D)

Notice Addresses of Parties

(3) Copy Parties:

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

and:

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:

Jones Day
100 High Street, 21st Floor
Boston, MA 02110
Attention: Douglas R. Banghart, Esq.
Facsimile: 617-449-6999
Email: dbanghart@jonesday.com

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CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

LOWER TIER COVERED TRANSACTIONS

Date: July 11, 2014

Instructions for Certification

A. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

B. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

C. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

D. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transactions, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used herein, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. The prospective lower tier participant may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

E. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 C.F.R. part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

F. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

G. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 C.F.R. part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each

participant may, but is not required to, check the List of Parties excluded from Federal Procurement and Nonprocurement Programs.

H. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by these instructions. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

I. Except for transactions authorized under Paragraph E of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 C.F.R. part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

LOWER TIER COVERED TRANSACTIONS

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

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

IN WITNESS WHEREOF, the undersigned has caused this Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion to be duly executed as of the date first written above.

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

By: _____

Name: Kevin R. Goldsmith
Title: Authorized Officer

IN WITNESS WHEREOF, the undersigned has caused this Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion to be duly executed as of the date first written above.

CHASE COMMUNITY EQUITY, LLC, a
Delaware limited liability company

By: _____
Name: Kevin R. Goldsmith
Title: Vice President

IN WITNESS WHEREOF, the undersigned has caused this Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion to be duly executed as of the date first written above.

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

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

By: _____
Name: Kevin R. Goldsmith
Title: Vice President

IN WITNESS WHEREOF, the undersigned has caused this Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion to be duly executed as of the date first written above.

PACESETTER CDE, INC., a Texas corporation

By: _____
Name: Giovanni Capriglione
Title: Secretary

IN WITNESS WHEREOF, the undersigned has caused this Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion to be duly executed as of the date first written above.

PACESETTER CDE X, LLC, a Texas limited liability company

By: Pacesetter CDE, Inc., a Texas corporation, its managing member

By: _____
Name: Giovanni Capuglione
Title: Secretary

IN WITNESS WHEREOF, the undersigned has caused this Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion to be duly executed as of the date first written above.

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

By: _____

Name: John E. Koniar
Title: President

IN WITNESS WHEREOF, the undersigned has caused this Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion to be duly executed as of the date first written above.

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

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

The City of Foley Public Facilities Cooperative District
c/o City of Foley
407 East Laurel Avenue
Foley, Alabama 36535
Attention: Jeff Rouzie, Director of Economic Development

July 11, 2014

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

RE: **Letter of Direction Regarding Payments and Reimbursements (this "Letter")**

Ladies and Gentlemen:

On the date hereof, The City of Foley Public Facilities Cooperative District, an Alabama public corporation ("CFPFCD"), and the Coastal Alabama Farmers' and Fishermen's Market, Inc., an Alabama nonprofit corporation ("CAFFM"), are executing certain documents to consummate a New Market Tax Credit transaction with, among others, Pacesetter CDE X, LLC, a Texas limited liability company, and Chase NMTC CAFFM Investment Fund, LLC, a Delaware limited liability company (the "Investment Fund"). In connection therewith, the foregoing parties, among others, are executing that certain Closing Transfers Memorandum dated as of the date hereof (the "Flow of Funds").

For purposes of the convenience of the parties, CFPFCD wishes to reduce the number of wires at closing. Accordingly, this Letter shall serve as the direction of CFPFCD to CAFFM that CAFFM should wire $5,950,400 directly to the Investment Fund on the date hereof (and such wire should be set forth on the Flow of Funds), which wire shall be deemed for all purposes:

(a) *first*, payment or reimbursement, as applicable, by CAFFM to CFPFCD of:

(i) payment in full of that certain Promissory Note by CAFFM in favour of CFPFCD, dated as of November 4, 2013, pursuant to which CAFFM is indebted to CFPFCD pertaining to CAFFM's purchase from CFPFCD of certain property and improvements located at 20733 Miflin Road, Foley, Alabama 36535 in the amount of $2,320,579 for the estimated value of such property and improvements as of October 27, 2013;

(ii) payment in full of the purchase price under that certain Purchase Agreement by and between CFPFCD and CAFFM, dated as of the date hereof, pursuant to which CAFFM is purchasing from CFPFCD certain property and improvements located at 410 East Section Avenue, Foley, Alabama 36535 for the purchase price of $3,250,000, the estimated value of such property and improvements as of November 10, 2013;

(iii) the partial reimbursement of expenditures set forth in that certain Reimbursement Agreement by and between CFPFCD and CAFFM, dated as of the date hereof, pursuant to which CAFFM is reimbursing CFPFCD for certain expenditures made or incurred by CFPFCD for such properties in the amount of $379,821 (with the remaining $80,404 to be reimbursed by CAFFM to CFPFCD thereunder to be wired directly to CFPFCD); and

(b) *second*, the making of a certain loan by CFPFCD to the Investment Fund in the aggregate original principal amount of $5,950,400 pursuant to that certain Fund Loan Agreement, dated as of the date hereof, by and between CFPFCD and the Investment Fund.

[REMAINDER OF PAGE BLANK; SIGNATURE PAGES TO FOLLOW]

Should you have any questions regarding the above, please contact the undersigned.

CFPFCD:

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

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

Acknowledged and agreed to as of the date first set forth above:

CAFFM:

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

By: _____
Name: John E. Koniar
Title: President

CLOSING TRANSFERS MEMORANDUM

This Closing Transfers Memorandum (this "Memorandum"), dated as of July 11, 2014, is agreed to by: (1) JPMorgan Chase Bank, N.A., a national banking association ("JPMC"), (2) Chase Community Equity, LLC, a Delaware limited liability company ("CCEL") (3) Chase NMTC CAFFM Investment Fund, LLC ("Investment Fund"), (4) Pacesetter CDE, Inc., a Texas corporation ("Pacesetter Allocatee"), (5) Pacesetter CDE X, LLC, a Texas limited liability company ("Pacesetter CDE"), (6) The City of Foley Public Facilities Cooperative District, an Alabama public corporation ("Leverage Lender") and (7) Coastal Alabama Farmers' and Fishermen's Market, Inc., an Alabama nonprofit corporation ("QALICB"), and details the flow of funds in connection with the closing and NMTC funding originated from CCEL, as the NMTC investor, and Leverage Lender, all for the purpose of providing debt and equity financing for the Investment Fund, a "qualified equity investment" to CDE, and "qualified low income community investment" loans to QALICB to fund the development of the Coastal Alabama Farmers' and Fishermen's Market NMTC Project in Foley, Alabama.

The parties hereby: (i) intend that the transactions set forth in this Memorandum are to be effected on the date first set forth above and (ii) direct the appropriate parties to take such actions, or agree to take such actions, as are necessary or appropriate in order to effect such transfers.

This Memorandum may be executed in two or more counterparts, and by facsimile, each of which shall be an original, but shall constitute one and the same Memorandum.

THE VALIDITY OF THIS MEMORANDUM, THE CONSTRUCTION, INTERPRETATION, AND ENFORCEMENT HEREOF, AND THE RIGHTS OF EACH PARTY WITH RESPECT TO ALL MATTERS ARISING HEREUNDER OR RELATED HERETO SHALL BE DETERMINED UNDER, GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO CONFLICT OR CHOICE OF LAW PRINCIPLES.

[four signature pages follow]

CCEI:

Chase Community Equity, LLC,
a Delaware limited liability company

By: _____
Name: Kevin R. Goldsmith
Title: Vice President

JPMC:

JPMorgan Chase Bank, N.A.,
a national banking association

By: _____
Name: Kevin R. Goldsmith
Title: Authorized Officer

Investment 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

Pacesetter Allocatee:

Pacesetter CDE, Inc.,
a Texas corporation

By: _____
Name: Giovanni Capriglione
Title: Secretary

Pacesetter 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

QALICB:

Coastal Alabama Farmers' and Fishermen's Market, Inc.,
an Alabama nonprofit corporation

By: _____
Name: John E. Koniar
Title: President

Leverage Lender:

The City of Foley Public Facilities Cooperative District,
an Alabama public corporation

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

NMTC FUNDING

The following transactions will take place on or about July 11, 2014:

GUARANTOR RESERVE FUNDING

1 The City of Foley Public Facilities Cooperative District ("Leverage Lender")

The City of Foley Public Facilities Cooperative District ("Leverage Lender") will deposit the following funds from cash on hand:

a.	$150,000.00	to The City of Foley Public Facilities Cooperative District

a.

Account Name:	CFPFCD Reserve Account
Bank Name:	JPMorgan Chase Bank
Account No.:	3096638308
ABA Routing No.:	021000021
Reference:	Guarantor Reserve Deposit

CDE LEVEL FUNDING

2 Chase NMTC CAFFM Investment Fund, LLC ("Investment Fund")

Investment Fund previously deposited a $6,000,000.00 qualified equity investment and a $2,000,000 qualified equity investment in Pacesetter CDE X, LLC ("Pacestter CDE") as part of the prefunding completed on December 18, 2013 into the following account:

a.	$6,000,000.00	to Pacesetter CDE X, LLC
b.	$2,000,000.00	to Pacesetter CDE X, LLC

a.

Account Name:	Pacesetter CDE X, LLC Prefunding Account
Bank Name:	JPMorgan Chase Bank
Account No.:	532886376
ABA Routing No.:	021000021
Reference:	Pacesetter CDE X, LLC QEI #1

b.

Account Name:	Pacesetter CDE X, LLC Prefunding Account
Bank Name:	JPMorgan Chase Bank
Account No.:	532886376
ABA Routing No.:	021000021
Reference:	Pacesetter CDE X, LLC QEI #2

3 Pacesetter CDE, Inc. ("Pacesetter Allocatee")

Pacesetter CDE, Inc., as Pacesetter CDE managing member ("Pacesetter Allocatee"), previously deposited its $800.00 capital contribution as part of the prefunding completed December 18, 2013, into the following account:

a.	$800.00	to Pacesetter CDE X, LLC

a.

Account Name:	Pacesetter CDE X, LLC Prefunding Account
Bank Name:	JPMorgan Chase Bank
Account No.:	532886376
ABA Routing No.:	021000021
Reference:	Managing Member Contribution

JPMorgan Chase Bank, N.A. ("JPMC")

4 JPMC

Upon confirmation of Step 1, above, JPMC authorizes the transfer of the previously deposited QEIs described in Step 2 above and previously deposited Managing Member Contribution described in Step 3 above from account #532886376 into the following account:

a.	$6,000,000.00	to Pacesetter CDE X, LLC
b.	$2,000,000.00	to Pacesetter CDE X, LLC
c.	$800.00	to Pacesetter CDE X, LLC

a.

Account Name:	Pacesetter CDE X, LLC Operating Account
Bank Name:	JPMorgan Chase Bank
Account No.:	580780000
ABA Routing No.:	021000021
Reference:	Transfer of QEI #1 Proceeds into New Account

b.

Account Name:	Pacesetter CDE X, LLC Operating Account
Bank Name:	JPMorgan Chase Bank
Account No.:	580780000
ABA Routing No.:	021000021
Reference:	Transfer of QEI #2 Proceeds into New Account

c.

Account Name:	Pacesetter CDE X, LLC Operating Account
Bank Name:	JPMorgan Chase Bank
Account No.:	580780000
ABA Routing No.:	021000021
Reference:	Transfer of Managing Member Contribution Proceeds into New Account

QLICI LOAN FUNDING

5 Pacestter CDE X, LLC ("Pacesetter CDE")

Upon confirmation of Step 4a-c above, Pacesetter Allocatee, as managing member of Pacesetter CDE, authorizes the transfer of the following amounts from account 580780000:

a.	$1,352,600.00	to Coastal Alabama Farmers' and Fishermen's Market, Inc. (QLICI Loan A-1)
b.	$4,597,800.00	to Coastal Alabama Farmers' and Fishermen's Market, Inc. (QLICI Loan A-2)
c.	$647,400.00	to Coastal Alabama Farmers' and Fishermen's Market, Inc. (QLICI Loan B-1)
d.	$1,402,200.00	to Coastal Alabama Farmers' and Fishermen's Market, Inc. (QLICI Loan B-2)
	$800.00	BALANCE to remain in the Pacesetter CDE account (to be held as reserve)

a.

Account Name:	Coastal Alabama Farmers' and Fishermen's Market, Inc Disbursement Account
Bank Name:	JPMorgan Chase Bank
Account No.:	3071911332
ABA Routing No.:	021000021
Reference:	QLICI Loan A-1

b.

Account Name:	Coastal Alabama Farmers' and Fishermen's Market, Inc Disbursement Account
Bank Name:	JPMorgan Chase Bank
Account No.:	3071911332
ABA Routing No.:	021000021
Reference:	QLICI Loan A-2

c.

Account Name:	Coastal Alabama Farmers' and Fishermen's Market, Inc Disbursement Account
Bank Name:	JPMorgan Chase Bank
Account No.:	3071911332
ABA Routing No.:	021000021
Reference:	QLICI Loan B-1

d.

Account Name:	Coastal Alabama Farmers' and Fishermen's Market, Inc Disbursement Account
Bank Name:	JPMorgan Chase Bank
Account No.:	3071911332
ABA Routing No.:	021000021
Reference:	QLICI Loan B-2

QALICB LEVEL / INVESTMENT FUND LEVEL FUNDING

6 Coastal Alabama Farmers' and Fishermen's Market, Inc. ("QALICB")

Upon receipt of $8,000,000.00 in aggregate funds above in described in Step 5a-d above, Coastal Alabama Farmers' and Fishermen's Market, Inc. ("QALICB") authorizes the transfer of the following amounts from account 3071911332:

a.	$5,950,400.00	to Chase NMTC CAFFM Investment Fund, LLC in accordance with that certain Letter of Direction Regarding Payments and Reimbursements from Leverage Lender and acknowledged and agreed to by QALICB
b.	$168,000.00	to Coastal Alabama Farmers' and Fishermen's Market, Inc. (for Pacesetter CDE Fee Reserve Deposit)
c.	$4,200.00	to Texas Real Estate Loans (for reimbursement of costs for PM Phase I Environmental Site Assessment Reports)
d.	$80,404.00	to The City of Foley Public Facilities Cooperative District (for reimbursement of expenditures pursuant to Reimbursement Agreement and that certain Letter of Direction Regarding Payments and Reimbursements)
e.	$505,155.00	to Alabama Land Title Company, Inc. (for disbursement of professionals fees, recording, filing and title insurance premium expenses)
	$1,291,841.00	*BALANCE to remain in the account (for future construction completion)*

a.

Account Name:	Chase NMTC CAFFM Investment Fund, LLC Prefunding Account
Bank Name:	JPMorgan Chase Bank
Account No.:	528175164
ABA Routing No.:	021000021
Reference:	Transfer in accordance with the Letter of Direction

b.

Account Name:	Coastal Alabama Farmers' and Fishermen's Market, Inc Pacesetter Fee Reserve Account
Bank Name:	JPMorgan Chase Bank
Account No.:	3071911357
ABA Routing No.:	021000021
Reference:	Pacesetter CDE Fee Reserve

c.

Account Name:	TEXAS REAL ESTATE LOANS
Bank Name:	JPMorgan Chase Bank
Account No.:	9008104606
ABA Routing No.:	021000021
Reference:	Credit NMTC Cost Center #421222

d.

Account Name:	The City of Foley Public Facilities Cooperative District Operating Account / CAFFM
Bank Name:	Bryant Bank
Account No.:	1000300021
ABA Routing No.:	062206512
Reference:	Partial Reimbursement of Expenditures

e.

Account Name:	Alabama Land Title Company, Inc.
Bank Name:	IBERIABANK
Account No.:	20000823414
ABA Routing No.:	265270413
Reference:	

** Wire instructions for funds to be transferred by Alabama Land Title Company, Inc. as outlined in the Title Instruction Letter dated as of the date hereof. The items to be paid by the closing escrow account are estimated to be as follows:*

$105,000.00	to Jones Day for JPMC, Investor & Fund legal fees
$48,700.00	to The Law Office of Mark D. Foster for Allocatee & CDE legal fees
$125,000.00	to Adams and Reese LLP for Leverage Lender & QALICB legal fees
$49,000.00	to Novogradac & Company LLP for financial modeling fee and AUP
$155,800.00	to The HWH Group for NMTC consulting fee (reduced by $4200 for PM Phase I reports noted in Step 10b)
$310.00	to HOAR Program Management LLC for Reliance Party Report
$21,345.00	to Alabama Land Title Company, Inc. for disbursement of professionals fees, recording, filing and title insurance premium expenses
$505,155.00	**Legal and Title Company Fees**
$505,155.00	**Total Disbursed at Closing to Alabama Land Title Company, Inc.**

7 Chase Community Equity, LLC ("Investor")

Upon confirmation of the transfer described in Step 6a, the Investor, as the sole member of the Investment Fund, authorizes a transfer of the following amount as a return of excess equity due to the prefunding completed December 18, 2013 from account #528175164, leaving $2,589,600 remaining as the Investor's net equity contribution.

a. $5,410,400.00 to Chase Community Equity, LLC

a.

Account Name:	Chase Community Equity
Bank Name:	JPMorgan Chase Bank
Account No.:	844007971
ABA Routing No.:	021000021
Reference:	Investor Member Return of Excess Capital

8 Investment Fund

Upon confirmation of Step 7 above, the Investor, as the sole member of the Investment Fund, authorizes the transfer of the following amount from account #528175164:

a. $540,000.00 to Pacesetter CDE, Inc. (as a Sub-Allocation Fee)

a.

Account Name:	Pacesetter CDE, Inc.
Bank Name:	Wells Fargo Bank
Bank Location:	San Francisco, CA
Account No.:	2399114442
ABA Routing No.:	121000248
Reference:	Pacesetter CDE, Inc. Sub-Allocation Fee

9 Return of Investor Reservation Deposit

The Investor will transfer the following amount to Leverage Lender:

a. $70,000.00 to The City of Foley Public Facilities Cooperative District

a.

Account Name:	The City of Foley Public Facilities Cooperative District Operating Account / CAFFM
Bank Name:	Bryant Bank
Account No.:	1000300021
ABA Routing No.:	062206512
Reference:	Investor Return of Deposit

10 Return of Pacesetter Allocatee Reservation Deposit

Pacesetter Allocatee will transfer the following amount to Leverage Lender:

a. $40,000.00 to The City of Foley Public Facilities Cooperative District

a.

Account Name:	The City of Foley Public Facilities Cooperative District Operating Account / CAFFM
Bank Name:	Bryant Bank
Account No.:	1000300021
ABA Routing No.:	062206512
Reference:	Pacesetter Return of Deposit

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JPMorgan Chase Accounts

Entity		Account Name
Chase NMTC CAFFM Investment Fund, LLC	**528175164**	Chase NMTC CAFFM Investment Fund, LLC Prefunding Account
Pacesetter CDE X, LLC	**532886376**	Pacesetter CDE X, LLC Prefunding Account
Pacesetter CDE X, LLC	**580780000**	Pacesetter CDE X, LLC Operating Account
Coastal Alabama Farmers' and Fishermen's Market, Inc.	**3071911332**	Coastal Alabama Farmers' and Fishermen's Market, Inc Disbursement Account
Coastal Alabama Farmers' and Fishermen's Market, Inc.	**3071911357**	Coastal Alabama Farmers' and Fishermen's Market, Inc Pacesetter Fee Reserve Account
Coastal Alabama Farmers' and Fishermen's Market, Inc.	**568029321**	Coastal Alabama Farmers' and Fishermen's Market, Inc Operating Account
The City of Foley Public Facilities Cooperative District	**3096638308**	CFPFCD Reserve Account

Non Chase Accounts

Entity	Account Name
Pacesetter CDE, Inc.	Pacesetter CDE, Inc.
The City of Foley Public Facilities Cooperative District	The City of Foley Public Facilities Cooperative District Operating Account / CAFFM
Alabama Land Title Company, Inc.	Alabama Land Title Company, Inc.

Bank Routing Number	021000021	JPMorgan Chase Bank

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July 11, 2014

VIA E-MAIL

Alabama Land Title Company, Inc. (the "Title Company")
112 North Hoyle Avenue
Bay Minette, AL 36507
Attention: Stephanie Fannin

Re: New Markets Tax Credit Transaction for Coastal Alabama Farmers' and Fishermen's Market, Inc., an Alabama nonprofit corporation (the "Borrower")

Dear Stephanie:

Adams and Reese LLP represents the Borrower in connection with the above-referenced transaction relating to certain property located at 20733 Miflin Road, Foley, Alabama 36535 and 410 East Section Avenue, Foley, Alabama 36535 (collectively, the "Property") (as further described in the pro forma lender's title policy attached hereto as Exhibit A (the "Lender's Title Policy")). The following recording instructions are submitted on behalf of Pacesetter CDE X, LLC, a Texas limited liability company ("Lender"), and relate to Lender making loans in the aggregate original principal amount of $8,000,000 (collectively, the "Loan") to Borrower. The Loan is evidenced by four promissory notes, each dated as of the date hereof, executed by Borrower in favor of the Lender. In connection with the Loan, Borrower is executing a Mortgage, Assignment of Rents and Leases and Fixture Filing (the "Mortgage") for the benefit of the Lender, pertaining to the Property.

Upon the Title Company's receipt of $505,155 (the "Funds") and satisfaction of the conditions set forth herein, the Title Company shall (i) distribute the Funds as specified in the wiring instructions attached as hereto as Exhibit B (the "Wiring Instructions"), (ii) record, in the order listed below, the documents listed in Section A, and (iii) issue the Lender's Title Policy, which shall include gap coverage and insure, as of the date of recording of the Mortgage, the validity and priority of the Mortgage as a lien on the Property, with a total liability equal to the amount of the Loan.

A. Deposits into Escrow.

1. The Correction Warranty Deed;

2. The Warranty Deed;

3. The Mortgage;

4. UCC-1 Financing Statement naming the Borrower as debtor, to be filed with the Alabama Secretary of State; and

5. UCC-1 Financing Statement naming the Borrower as debtor, to be filed in the land records of Baldwin County, Alabama.

B. Conditions of Closing. You may close the above-referenced escrow (the "Closing") only upon fulfillment of the following conditions:

1. You hold the documents listed in Section A hereto and have checked and verified that such documents comply with local recording requirements.

2. You have had e-mail confirmation from Borrower's counsel (Rusty Russell, Esq., of Adams & Reese LLP), Lender's counsel (Mark Foster, Esq., of the Law Office of Mark D. Foster) and counsel for Chase Community Equity, LLC ("Investor") (Patrick J. Cronin, Esq., of Jones Day) that all other conditions of closing required to be fulfilled outside of this escrow have been fulfilled to the satisfaction of such party.

3. You have received the Funds.

C. Closing Procedures. In connection with the closing of the Loan and these recording instructions, you will strictly adhere to the procedures set forth below in the order in which they are set forth. Unless otherwise set forth herein, all requirements with respect to closing shall, to the extent fulfilled, be considered as having taken place simultaneously, and no delivery or payment shall be considered as having been made until all deliveries, payment and closing transactions have been accomplished. Prior to recording any documents, you will review each of the documents listed in Section A above to confirm that each such document is complete, that correct signature pages have been attached, and that all legal descriptions and other exhibits have been attached.

1. Distribute the Funds as specified in the Wiring Instructions.

2. Record in the order listed above documents in Section A in the appropriate land records or with the Alabama Secretary of State, as applicable.

D. Deliveries. Once all documents have been recorded in accordance with these recording instructions, you are to provide, within one (1) day of recordation, email confirmation that recording is complete, copies (in PDF format) of all documents listed in Section A, and, within thirty (30) days of Closing, the issued Lender's Title Policy to pcronin@jonesday.com, lgreenberg@jonesday.com, mark@mdfoster.com, debbie@mdfoster.com, john.lyle@arlaw.com, britton.bonner@arlaw.com, and rusty.russell@arlaw.com.

E. General Instructions. General instructions for the escrow are as follows:

1. These recording instructions shall continue in full force and effect until the end of business on July 11, 2014, unless Lender's counsel notifies you in writing to the contrary.

2. These recording instructions may be amended or supplemented only with the written consent of Investor's, Lender's and Borrower's respective counsel.

3. File-stamped originals of the documents listed in Section A above must be delivered to Borrower's counsel, Adams and Reese LLP, at the address set forth at the top of this letter within thirty (30) days after the close of escrow.

4. Upon receipt of these instructions, you are to execute the Acknowledgement of Receipt which appears on the following page and (i) email a PDF copy of same to counsel at the addresses listed in Section D and (ii) mail the original executed document to Borrower's counsel, Adams and Reese LLP, at the address set forth at the top of this letter.

Sincerely,
Adams and Reese LLP

By: _____
Name: Rusty Russell

ACKNOWLEDGMENT OF RECEIPT

The undersigned hereby acknowledges receipt of these recording instructions and agrees to proceed in strict accordance herewith.

Dated: July 11, 2014

Alabama Land Title Company, Inc., an Alabama corporation

By: Anne P. Henley
Name: Anne P. Henley
Title: Manager
(Authorized Signatory)

EXHIBIT A

Lender's Title Policy

[attached behind]

FATIC-438
Schedule A
ALTA Loan Policy (6-17-06)

First American Title Insurance Company

SCHEDULE A

First American Title Insurance Company
1 First American Way
Santa Ana, California 92707

Issuing Office File No: **14-17524 REVISED 7/9/14 @ 2:10** Policy No. **PROFORMA**

Loan No.:

Address Reference:

Date of Policy: **Date and time of recording** Amount of Insurance: **$8,000,000.00**

1. Name of Insured:
   Pacesetter CDE X, LLC, its successors and/or assigns as their interest may appear

2. The estate or interest in the Land that is encumbered by the Insured Mortgage is:
   Fee Simple

3. Title is vested in:
   Coastal Alabama Farmers' & Fishermen's Market, Inc., an Alabama nonprofit corporation

4. The insured Mortgage and its assignments, if any, are described as follows: **Mortgage, Assignment of Rents and Leases and Fixture Filing from Coastal Alabama Farmers' & Fishermen's Market, Inc., an Alabama nonprofit corporation, to Pacesetter CDE X, LLC, a Texas limited liability company, dated July ____, 2014, filed for record July ____, 2014 as Instrument Number _____.**

5. The Land referred to in this policy is described as follows:

   See attached Exhibit "A" for Legal Description.

6. This policy incorporates by reference those ALTA endorsements selected below:

X 3.2-06 (Zoning)
X 8.2-06 (Environmental)
X 9.7-06 (Restrictions, Encroachments, Minerals)
X 22.0-06 (Location)
X (Deletion of Arbitration)
X 17.0-06 (Access & Entry)
X 18.1-06 (Multiple Tax Parcel))
X 25.0-06 (Same as Survey)
X 32.0-06 (Mechanic's Lien)
X 14.1-06 (Future Advance)
X 6.0-06 (Variable Rate)
X 24.0-06 (Doing Business)
X 17.2-06 (Utility Facilities)
X 35.3-06 (Mineral)

☐ **Lic. #: 0655928**
☐ **Lic. #: 0655927**
☐ **Lic. #: 0655926**
☐ **Lic. #:0678987**

Agency License #: A188406

Alabama Land Title Company, Inc.
112 N. Hoyle Ave.
Bay Minette, Alabama 36507
251-937-5566

By:_____
Authorized Signatory

First American Title Insurance Company

Issuing Office File No.: 14-17524 Policy No. PROFORMA

EXHIBIT A

LEGAL DESCRIPTION:

PARCEL 1:
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 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" West for 348.46 feet to the point of beginning. Contains 13.782 acres, more or less.

PARCEL 2:
Commencing at a point where the centerline of 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 760.00 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 610.00 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.

First American Title Insurance Company

SCHEDULE B

EXCEPTIONS FROM COVERAGE

Issuing Office File No.: **14-17524** Policy No. **PROFORMA**

This policy does not insure against loss or damage (and the Company will not pay costs, attorney's fees, or expenses) that arise by reason of:

1. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.

2. Any facts, rights, interests, or claims that are not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.

3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.

4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.

5. Any mineral or mineral rights leased, granted or retained by current or prior owners.

6. Taxes and assessments for the year **2014** and subsequent years and not yet due and payable.

NOTE: Exceptions numbered 1, 2, 3, and 4 above are hereby deleted.

AS TO PARCEL 1:

7. Deleted

8. Deleted

9. Deleted

10. Deleted

11. Deleted

12. Deleted

13. No insurance is afforded as to the amount of acreage contained in the insured premises.

14. Second Amendment to Ground Lease by the City of Foley, Alabama, to The City of Foley Public Facilities Cooperative District dated June 9, 2014, recorded June 11, 2014 as Instrument Number 1461425 and Third Amendment to Agreement for Sublease dated May 29, 2014, recorded as Instrument Number 1459090.

AS TO PARCEL 2:

15. Deleted

16. Deleted

17. Deleted

18. Oil, gas and mineral lease from Foley & Company and Magnolia Land Company to States Oil Company, dated May 31, 1971, and recorded in Deed Book 416, page 92.

19. Reservation of oil, gas and minerals set out in that deed from Magnolia Land Company to J. Don Foster dated September 24, 1990, recorded in Real Property Book 77, page 223 and referenced in Real Property Book 77, page 229.

20. Deleted

21. Deleted

22. No insurance is afforded as to the amount of acreage contained in the insured premises.

AS TO PARCELS 1 AND 2

23. Subject to overhead utility lines as shown on survey dated November 21, 2013, updated July 8, 2014, designated Project No. 335504, and survey dated December 16, 2013, updated July 8, 2014, designated Project No. 331492, by Hatch mott McDonald, Robbin E. Phillips, AL. P.L.S. #14976.

FATIC-440
Schedule B, Part II
ALTA Loan Policy (6-17-06)

Loan Policy

Issued by

First American Title Insurance Company

SCHEDULE B – PART II

Issuing Office File No.: **14-17524** Policy No. **PROFORMA**

In addition to the matters set forth in Part I of this Schedule B, the title to the estate or interest in the land described or referred to in Schedule A is subject to the following matters, if any be shown, but the Company insures that these matters are subordinate to the lien or charge of the insured mortgage upon the estate or interest:

UCC Financing Statement by Coastal Alabama Farmers' & Fishermen's Market, Inc., debtor and Pacesetter CDE X, LLC, secured party, recorded July ___, 2014, as UCC Financing Statement Number _____, cross indexed as Instrument Number _____.

ENDORSEMENT

Attached to Policy No. _____

Issued by

FIRST AMERICAN TITLE INSURANCE COMPANY

1. For purposes of this endorsement:

   a. "Improvement" means a building, structure, road, walkway, driveway, curb, subsurface utility or water well existing at Date of Policy or to be built or constructed according to the Plans that is or will be located on the Land, but excluding crops, landscaping, lawns, shrubbery, or trees.

   b. "Plans" means those site and elevation plans made by NONE.

2. The Company insures against loss or damage sustained by the Insured in the event that, at Date of Policy

   a. according to applicable zoning ordinances and amendments, the Land is not classified Zone B1A, Extended Business District (Parcel 1) and M1, Light Industrial District (Parcel 2);

   b. the following use or uses are not allowed under that classification:

   c. There shall be no liability under paragraph 2.b. if the use or uses are not allowed as the result of any lack of compliance with any condition, restriction, or requirement contained in the zoning ordinances and amendments, including but not limited to the failure to secure necessary consents or authorizations as a prerequisite to the use or uses. This paragraph 2.c. does not modify or limit the coverage provided in Covered Risk 5.

3. The Company further insures against loss or damage sustained by the Insured by reason of a final decree of a court of competent jurisdiction either prohibiting the use of the Land, with any existing Improvement, as specified in paragraph 2.b. or requiring the removal or alteration of the Improvement, because of a violation of the zoning ordinances and amendments in effect at Date of Policy with respect to any of the following matters:

   a. Area, width, or depth of the Land as a building site for the Improvement

   b. Floor space area of the Improvement

   c. Setback of the Improvement from the property lines of the Land

   d. Height of the Improvement, or

   e. Number of parking spaces.

4. There shall be no liability under this endorsement based on:

   a. the invalidity of the zoning ordinances and amendments until after a final decree of a court of competent jurisdiction adjudicating the invalidity, the effect of which is to prohibit the use or uses;

   b. the refusal of any person to purchase, lease or lend money on the Title covered by this policy.

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AMERICAN LAND TITLE ASSOCIATION

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

FIRST AMERICAN TITLE INSURANCE COMPANY

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ENDORSEMENT

Attached to Policy No. _____

Issued by

FIRST AMERICAN TITLE INSURANCE COMPANY

The Company insures against loss or damage sustained by the Insured by reason of an environmental protection lien that, at Date of Policy, is recorded in the Public Records or filed in the records of the clerk of the United States district court for the district in which the Land is located, unless the environmental protection lien is set forth as an exception in Schedule B.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

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ENDORSEMENT

Attached to Policy No. _____

Issued by

FIRST AMERICAN TITLE INSURANCE COMPANY

1. The insurance provided by this endorsement is subject to the exclusions in Section 5 of this endorsement; and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.
2. For purposes of this endorsement only:
   a. "Covenant" means a covenant, condition, limitation or restriction in a document or instrument in effect at Date of Policy.
   b. "Future Improvement" means a building, structure, road, walkway, driveway, curb, lawn, shrubbery or trees to be constructed on or affixed to the Land in the locations according to the Plans and that by law will constitute real property.
   c. "Improvement" means an improvement, including any lawn, shrubbery, or trees, affixed to either the Land or adjoining land at Date of Policy that by law constitutes real property.
   d. "Plans" means the survey, site and elevation plans or other depictions or drawings prepared by Hatch Mott McDonald dated November 21, 2013, last updated July 8, 2014, designated as Project No. 335504 (Parcel 1); and dated December 16, 2013, last updated July 8, 2014, designated as Project No.331492 (Parcel 2).
3. The Company insures against loss or damage sustained by the Insured by reason of:
   a. A violation of a Covenant that:
      i. divests, subordinates, or extinguishes the lien of the Insured Mortgage,
      ii. results in the invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage, or
      iii. causes a loss of the Insured's Title acquired in satisfaction or partial satisfaction of the Indebtedness;
   b. A violation of an enforceable Covenant by an Improvement on the Land at Date of Policy or by a Future Improvement, unless an exception in Schedule B of the policy identifies the violation;
   c. Enforced removal of an Improvement located on the Land or of a Future Improvement as a result of a violation of a building setback line shown on a plat of subdivision recorded or filed in the Public Records at Date of Policy, unless an exception in Schedule B of the policy identifies the violation; or
   d. A notice of a violation, recorded in the Public Records at Date of Policy, of an enforceable Covenant relating to environmental protection describing any part of the Land and referring to that Covenant, but only to the extent of the violation of the Covenant referred to in that notice, unless an exception in Schedule B of the policy identifies the notice of the violation.

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4. The Company insures against loss or damage sustained by reason of:
   a. An encroachment of:
      i. an Improvement located on the Land at Date of Policy or a Future Improvement, onto adjoining land or onto that portion of the Land subject to an easement; or
      ii. an Improvement located on adjoining land onto the Land at Date of Policy,

   unless an exception in Schedule B of the policy identifies the encroachment otherwise insured against in Sections 4.a.i. or 4.a.ii.;

   b. Damage to an Improvement located on the Land at Date of Policy or a Future Improvement:
      i. that encroaches onto that portion of the Land subject to an easement excepted in Schedule B, which damage results from the exercise of the right to maintain the easement for the purpose for which it was granted or reserved; or
      ii. resulting from the future exercise of a right to use the surface of the Land for the extraction or development of minerals or any other subsurface substances excepted from the description of the Land or excepted in Schedule B.
5. This endorsement does not insure against loss or damage (and the Company will not pay costs, attorneys' fees, or expenses) resulting from:
   a. any Covenant contained in an instrument creating a lease;
   b. any Covenant relating to obligations of any type to perform maintenance, repair, or remediation on the Land;
   c. except as provided in Section 3.d, any Covenant relating to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances;
   d. contamination, explosion, fire, vibration, fracturing, earthquake or subsidence; or
   e. negligence by a person or an Entity exercising a right to extract or develop minerals or other subsurface substances.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

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ENDORSEMENT

Attached to Policy No. _____

Issued by

FIRST AMERICAN TITLE INSURANCE COMPANY

The Company insures against loss or damage sustained by the Insured by reason of the failure of an open building, known as 20733 Miflin Road, Foley, Alabama 36535 (Parcel 1), and 1 story metal building, known as 410 Section Avenue, Foley Alabama 36535 (Parcel 2), to be located on the Land at Date of Policy.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

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AMERICAN LAND TITLE ASSOCIATION

ENDORSEMENT

Attached to Policy FA-

Issued By

FIRST AMERICAN TITLE INSURANCE COMPANY

The Policy is hereby amended by deleting Paragraph No.13 from the Conditions.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

First American Title Insurance Company

By: _____

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F.A. Form 45 (4/90-amended 6/17/2006)
Delete Arbitration-Lenders

ENDORSEMENT

Attached to Policy No. _____

Issued by

FIRST AMERICAN TITLE INSURANCE COMPANY

The Company insures against loss or damage sustained by the Insured if, at Date of Policy (i) the Land does not abut and have both actual vehicular and pedestrian access to and from Miflin Road, also known as Baldwin County Highway 20 (Parcel 1), and East Section Avenue (Parcel 2) (the "Street"), (ii) the Street is not physically open and publicly maintained, or (iii) the Insured has no right to use existing curb cuts or entries along that portion of the Street abutting the Land.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

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ENDORSEMENT

Attached to Policy No. _____

Issued by

FIRST AMERICAN TITLE INSURANCE COMPANY

The Company insures against loss or damage sustained by the Insured by reason of:

1. those portions of the Land identified below not being assessed for real estate taxes under the listed tax identification numbers or those tax identification numbers including any additional land:

Parcel 1:	**Tax Identification Numbers:**	**05-61-02-04-0-000-012.000 and 05-61-02-04-0-000-012.001**
Parcel 2:	**Tax Identification Numbers:**	**05-54-08-28-2-000-001.004 and 05-54-08-28-2-000-001.005**

2. the easements, if any, described in Schedule A being cut off or disturbed by the nonpayment of real estate taxes, assessments or other charges imposed on the servient estate by a governmental authority.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

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Attached to Policy No. _____

Issued by

FIRST AMERICAN TITLE INSURANCE COMPANY

The Company insures against loss or damage sustained by the Insured by reason of the failure of the Land as described in Schedule A to be the same as that identified on the survey made by Hatch Mott McDonald dated November 21, 2013, updated July 8, 2014, designated as Project No. 335504 (Parcel 1); and dated December 16, 2013, updated July 8, 2014, designated as Project No. 331492 (Parcel 2)

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

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ENDORSEMENT

Attached to Policy No. _____

Issued by

FIRST AMERICAN TITLE INSURANCE COMPANY

1. Covered Risk 11(a) of this policy is deleted.

2. The insurance [for Construction Loan Advances] added by Section 3 of this endorsement is subject to the exclusions in Section 4 of this endorsement and the Exclusions from Coverage in the Policy, the provisions of the Conditions, and the exceptions contained in Schedule B. For the purposes of this endorsement and each subsequent Disbursement Endorsement:

   a. "Date of Coverage", is Date of Recording unless the Company sets a different Date of Coverage by an ALTA 33-06 Disbursement Endorsement issued at the discretion of the Company.

   b. "Construction Loan Advance," shall mean an advance that constitutes Indebtedness made on or before Date of Coverage for the purpose of financing in whole or in part the construction of improvements on the Land.

   c. "Mechanic's Lien," shall mean any statutory lien or claim of lien, affecting the Title, that arises from services provided, labor performed, or materials or equipment furnished.

3. The Company insures against loss or damage sustained by the Insured by reason of:

   a. The invalidity or unenforceability of the lien of the Insured Mortgage as security for each Construction Loan Advance made on or before the Date of Coverage;

   b. The lack of priority of the lien of the Insured Mortgage as security for each Construction Loan Advance made on or before the Date of Coverage, over any lien or encumbrance on the Title recorded in the Public Records and not shown in Schedule B; and

   c. The lack of priority of the lien of the Insured Mortgage, as security for each Construction Loan Advance made on or before the Date of Coverage over any Mechanic's Lien, if notice of the Mechanic's Lien is not filed or recorded in the Public Records, but only to the extent that the charges for the services, labor, materials or equipment for which the Mechanic's Lien is claimed were designated for payment in the documents supporting a Construction Loan Advance disbursed by or on behalf of the Insured on or before Date of Coverage.

4. This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) by reason of any Mechanic's Lien arising from services, labor, material or equipment:

   a. furnished after Date of Coverage; or

   b. not designated for payment in the documents supporting a Construction Loan Advance disbursed by or on behalf of the Insured on or before Date of Coverage.

   This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any

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of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

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ENDORSEMENT

Attached to Policy No. _____

Issued by

FIRST AMERICAN TITLE INSURANCE COMPANY

1. The insurance for Advances added by Sections 2 and 3 of this endorsement is subject to the exclusions in Section 4 of this endorsement and the Exclusions from Coverage in the Policy, except Exclusion 3(d), the provisions of the Conditions, and the exceptions contained in Schedule B.

   a. "Agreement," as used in this endorsement, shall mean the note or loan agreement, the repayment of Advances under which is secured by the Insured Mortgage.

   b. "Advance," as used in this endorsement, shall mean only an advance of principal made after the Date of Policy as provided in the Agreement, including expenses of foreclosure, amounts advanced pursuant to the Insured Mortgage to pay taxes and insurance, assure compliance with laws, or to protect the lien of the Insured Mortgage before the time of acquisition of the Title, and reasonable amounts expended to prevent deterioration of improvements, together with interest on those advances.

   c. "Changes in the rate of interest," as used in this endorsement, shall mean only those changes in the rate of interest calculated pursuant to a formula provided in the Insured Mortgage or the Agreement at Date of Policy.

2. The Company insures against loss or damage sustained by the Insured by reason of:

   a. The invalidity or unenforceability of the lien of the Insured Mortgage as security for each Advance.

   b. The lack of priority of the lien of the Insured Mortgage as security for each Advance over any lien or encumbrance on the Title.

   c. The invalidity or unenforceability or lack of priority of the lien of the Insured Mortgage as security for the Indebtedness, Advances and unpaid interest resulting from (i) re-Advances and repayments of Indebtedness, (ii) earlier periods of no indebtedness owing during the term of the Insured Mortgage, or (iii) the Insured Mortgage not complying with the requirements of state law of the state in which the Land is located to secure Advances.

3. The Company also insures against loss or damage sustained by the Insured by reason of:

   a. The invalidity or unenforceability of the lien of the Insured Mortgage resulting from any provisions of the Agreement that provide for (i) interest on interest, (ii) changes in the rate of interest, or (iii) the addition of unpaid interest to the Indebtedness.

   b. Lack of priority of the lien of the Insured Mortgage as security for the Indebtedness, including any unpaid interest that was added to principal in accordance with any provisions of the Agreement, interest on interest, or interest as changed in accordance with the provisions of the Insured Mortgage, which lack of priority is caused by (i) changes in the rate of interest, (ii) interest on interest, or (iii) increases in the Indebtedness resulting from the addition of unpaid interest.

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4. This endorsement does not insure against loss or damage (and the Company will not pay costs, attorneys' fees, or expenses) resulting from:

   a. The invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage as security for any Advance made after a Petition for Relief under the Bankruptcy Code (11 U.S.C.) has been filed by or on behalf of the mortgagor;

   b. The lien of real estate taxes or assessments on the Title imposed by governmental authority arising after Date of Policy;

   c. The lack of priority of the lien of the Insured Mortgage as security for any Advance to a federal tax lien, which Advance is made after the earlier of (i) actual knowledge of the Insured that a federal tax lien was filed against the mortgagor, or (ii) the expiration, after notice of a federal tax lien filed against the mortgagor, of any grace period for making disbursements with priority over the federal tax lien provided in the Internal Revenue Code (26 U.S.C.);

   d Any federal or state environmental protection lien;

   e. The lack of priority of any Advance made after the Insured has Knowledge of the existence of liens, encumbrances or other matters affecting the Land intervening between Date of Policy and the Advance, as to the intervening lien, encumbrance or other matter; or

   f. Usury, or any consumer credit protection or truth-in-lending law. [; or

   g. Any mechanic's or materialmen's lien.]

5. The Indebtedness includes Advances.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

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AMERICAN LAND TITLE ASSOCIATION

ENDORSEMENT

Attached to Policy No. _____

Issued by

FIRST AMERICAN TITLE INSURANCE COMPANY

The Company insures against loss or damage sustained by the Insured by reason of:

1. The invalidity or unenforceability of the lien of the Insured Mortgage resulting from its provisions that provide for changes in the rate of interest.

2. Loss of priority of the lien of the Insured Mortgage as security for the unpaid principal balance of the loan, together with interest as changed in accordance with the provisions of the Insured Mortgage, which loss of priority is caused by the changes in the rate of interest.

"Changes in the rate of interest", as used in this endorsement, shall mean only those changes in the rate of interest calculated pursuant to the formula provided in the loan documents secured by the Insured Mortgage at Date of Policy.

This endorsement does not insure against loss or damage based upon:

1. usury, or

2. any consumer credit protection or truth in lending law.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

FIRST AMERICAN TITLE INSURANCE COMPANY

By: _____

Authorized Signatory

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AMERICAN LAND TITLE ASSOCIATION

ENDORSEMENT

Attached to Policy No. _____

Issued by

FIRST AMERICAN TITLE INSURANCE COMPANY

The Company insures against loss or damage sustained by the Insured by reason of the invalidity or unenforceability of the lien of the Insured Mortgage on the ground that making the loan secured by the Insured Mortgage constituted a violation of the "doing - business" laws of the State where the Land is located because of the failure of the Insured to qualify to do business under those laws.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

FIRST AMERICAN TITLE INSURANCE COMPANY

By: _____

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AMERICAN LAND TITLE ASSOCIATION

ENDORSEMENT

Attached to Policy No. _____

Issued by

FIRST AMERICAN TITLE INSURANCE COMPANY

The Company insures against loss or damage sustained by the Insured by reason of the lack of a right of access to the following utilities or services: **[CHECK ALL THAT APPLY]**

X Water service	X Natural gas service	X Telephone service
X Electrical power service	X Sanitary sewer	X Storm water drainage
[ ] _____	[ ] _____	[ ] _____

either over, under or upon rights-of-way or easements for the benefit of the Land because of:

(1) a gap or gore between the boundaries of the Land and the rights-of-way or easements;

(2) a gap between the boundaries of the rights-of-way or easements ; or

(3) a termination by a grantor, or its successor, of the rights-of-way or easements.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

FIRST AMERICAN TITLE INSURANCE COMPANY

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AMERICAN LAND TITLE ASSOCIATION

ENDORSEMENT
Attached to Policy No. _____

Issued by

FIRST AMERICAN TITLE INSURANCE COMPANY

1. The insurance provided by this endorsement is subject to the exclusion in Section 4 of this endorsement; and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.
2. For purposes of this endorsement only:
   a. "Improvement" means a building, structure located on the surface of the Land, and any paved road, walkway, parking area, driveway, or curb, affixed to the Land at Date of Policy and that by law constitutes real property, but excluding any crops, landscaping, lawn, shrubbery, or trees.
   b. "Future Improvement" means a building, structure, and any paved road, walkway, parking area, driveway, or curb to be constructed on or affixed to the Land in the locations according to the Plans and that by law will constitute real property, but excluding any crops, landscaping, lawn, shrubbery, or trees.
   c. "Plans" means the survey, site and elevation plans or other depictions or drawings prepared by Hatch Mott McDonald dated November 21, 2013, last updated July 8, 2014 (Parcel 1), designated as Project No. 335504, and December 16, 2013, last updated July 8, 2014 (Parcel 2), designated as Project No. 331492 (Parcel 2).
3. The Company insures against loss or damage sustained by the Insured by reason of the enforced removal or alteration of an Improvement or a Future Improvement, resulting from the future exercise of any right existing at Date of Policy to use the surface of the Land for the extraction or development of minerals or any other subsurface substances excepted from the description of the Land or excepted in Schedule B.
4. This endorsement does not insure against loss or damage (and the Company will not pay costs, attorneys' fees, or expenses) resulting from:
   a. contamination, explosion, fire, vibration, fracturing, earthquake or subsidence; [or]
   b. negligence by a person or an Entity exercising a right to extract or develop minerals or other subsurface substances[; or
   c. the exercise of the rights described in NONE

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

FIRST AMERICAN TITLE INSURANCE COMPANY

By: _____
Authorized Signatory

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AMERICAN LAND TITLE ASSOCIATION

EXHIBIT B

Wiring Instructions

Firm	Dollar Amount	Wiring Instructions
Jones Day	$105,000	Citibank, N.A. ABA # 021000089 Swift Code: CITIUS33 Account # 37026407 For Credit to Jones Day Reference: 080461-660015
Law Office of Mark D. Foster	$48,700	Frost National Bank ABA # 114000093 Account # 980045845 For Credit to Law Office of Mark D. Foster
Adams and Reese LLP	$125,000	Receiving Bank: Regions Bank 301 St. Charles Avenue New Orleans, LA 70130 ABA #062005690 Further credit to Regions Bank – New Orleans, Louisiana Main Office Account Title: Adams and Reese LLP General Account Account Number: 41-0516-3927 A&R File No.: 5498-13
Novogradac & Company LLP	$49,000	U.S. Bank ABA # 121122676 Account # 153492594053 For Credit to Novogradac & Company LLP Reference: CAF001
The HWH Group	$155,800	Capital One, N.A. ABA # 111901014 Account Number 3620928142 For Credit to Harrison, Walker and Harper Group, LLC
Alabama Land Title Company, Inc.	$21,345	IBERIABANK 200 W. Congress Street Lafayette, LA 70501 FOR CREDIT TO: Alabama Land Title Company, Inc. 112 North Hoyle Avenue Bay Minette, AL 36507 ABA Routing Number: 265270413 Account Number: 20000823414
Hoar Program Management	$310	Regions Bank P.O. Box 10247 Birmingham, AL 35202 For Credit to Hoar Construction, LLC 2 Metroplex Drive, Suite 400 Birmingham, AL 35209 ABA Routing #062000019 Bank Account #0304923146
TOTAL:	**$505,155**	

LAW OFFICE OF
MARK D. FOSTER

July 11, 2014

JPMorgan Chase Bank, N.A.
Chase Community Equity LLC
Chase NMTC CAFFM Investment Fund, LLC

10 S. Dearborn Street, 19th Floor
Mail Code IL1-0953
Chicago, Illinois 60603-5506
Attention: NMTC Asset Manager

Jones Day
100 High Street, 21st Floor
Boston, MA 02110

Pacesetter CDE, Inc.
2600 E. Southlake Blvd.
Suite 120-105
Southlake, TX 756092
Attn: Giovanni Capriglione

Re: Certain Corporate and Tax Opinions Concerning the Investment in Pacesetter CDE X, LLC and Loan to Coastal Alabama Farmers' and Fishermen's Market, Inc.

Ladies and Gentlemen:

We have acted as special counsel to Pacesetter CDE X, LLC, a Texas limited liability company ("Suballocatee"), its managing member Pacesetter CDE, Inc., a Texas corporation ("Allocatee"), and Pacesetter\MVHC, Inc., a Texas corporation ("PCE") in connection with (i) the acquisition of a member interest in the Suballocatee by Chase NMTC CAFFM Investment Fund, LLC, a Delaware limited liability company ("Investor Member"), (ii) the Investor Member's capital contribution in the Suballocatee in the amount of $8,000,000 ("IM Capital Contribution"), and (iii) the loans in the amounts of $1,352,600, $4,597,800, $647,400 and $1,402,200 (the "Investment") by the Suballocatee to Coastal Alabama Farmers' and Fishermen's Market, Inc., an Alabama nonprofit corporation ("Borrower"). Pursuant to the terms of the 2012 (Round 10) Allocation Agreement ("Allocation Agreement") dated July 11,

4835 LBJ Freeway, Suite 424 • Dallas, Texas 75244 • fax 214.363.9551
www.mdfoster.com • Mark D. Foster (214)363-9599 mark@mdfoster.com

2013, and as amended effective October 1, 2013, between the Allocatee, subsidiary entities (including without limitation, the Suballocatee) and the Community Development Financial Institutions Fund, a wholly owned government corporation with the U.S Department of Treasury ("CDFI Fund"), the Allocatee received a $30,000,000 allocation ("Allocation") of New Markets Tax Credit ("Credits") investment authority under Section 45D of the Internal Revenue Code of 1986, as amended (the "Code"). Prior to the Investor Member making the IM Capital Contribution on December 18, 2013 (the "Prefund Date"), Allocatee made a suballocation of $8,000,000 of NMTC investment authority to the Suballocatee from its Allocation.

You have requested that we render to you certain corporate and tax opinions in connection with the transactions described above. Specifically, we have been asked to opine that (i) the Suballocatee will be treated as a partnership and the Investor Member will be treated as a partner in the Suballocatee, within the meaning of Section 761 of the Code as of the Prefund Date through the date hereof; (ii) the Suballocatee will not be treated as a "publicly traded partnership," within the meaning of Code Section 7704 as of the Prefund Date through the date hereof; (iii) the allocations of Net Profits and Net Losses set forth in the Second Amended and Restated Operating Agreement of the Suballocatee, dated as of the date hereof, by and between the Allocatee and the Investor Member (the "Operating Agreement"), will have or be deemed to have "substantial economic effect," within the meaning of Code Section 704(b) and the Treasury Regulations thereunder and will respected for federal income tax purposes; (iv) Allocatee is a "qualified community development entity" as such term is defined in Section 45D(c) of the Code (a "QCDE") and has received a valid allocation of Credits; (v) the Suballocatee is a QCDE and has received a valid suballocation of Credits from the Allocatee as approved by the CDFI Fund; (vi) the IM Capital Contribution in the Suballocatee will be treated as of the Prefund Date as a "qualified equity investment" as such term is defined in Section 45D(b)(i) of the Code; (vii) the Allocatee and Suballocatee are duly organized and validly existing; and (viii) the documents executed by the Suballocatee, Allocatee and PCE are valid legally binding and enforceable obligations of each respective entity. All capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Operating Agreement.

In rendering this opinion, we have relied upon the facts set forth in Section 2 hereof. Section 2 contains a discussion of all facts that we have determined to be relevant to the opinions rendered herein. We have used reasonable efforts to identify and ascertain all facts that were relevant. This opinion identifies and considers all facts we have determined to be relevant. We have also relied upon the opinion Adams & Reese LLP delivered in connection with this transaction. We have also examined the credentials of Adams & Reese LLP and based on this examination we believe that Adams & Reese LLP qualified to deliver the Adams & Reese LLP opinion. Therefore in conducting our analysis set forth below, we have accepted the Adams & Reese LLP opinion as being reasonably based and may be relied upon for purposes of this

opinion letter. This opinion letter also relies in part on the Novogradac & Company LLP financial projections, dated as of the date hereof, with respect to the IM Capital Contribution, the Investment and related transactions (the "Financial Projections"). We have examined the credentials of Novogradac & Company LLP and based on this examination we believe that Novogradac & Company LLP is qualified to deliver the Financial Projections. Therefore in conducting our analysis set forth below, we have accepted the Financial Projections as being reasonably based and may be relied upon for purposes of this opinion letter.

We have also relied upon the assumptions set forth in Section 3 hereof. We have not relied upon or based this opinion on any factual assumptions (including assumptions concerning future events) that we believe to be unreasonable, including any factual assumptions that we know or should know are incorrect or incomplete. Should there be any material inaccuracy in the facts or assumptions, our opinions herein may not be correct. In Section 4, we have evaluated all significant Federal tax issues and have applied the law to the facts.

In connection with rendering this opinion we have reviewed the following documents each dated as of the date hereof except where otherwise indicated (together, the "Documents"):

1. Allocatee's Certificate of Formation filed with the Texas Secretary of State on February 1, 2008;

2. The Allocatee's Bylaws;

3. The Suballocatee's Certificate of Formation filed with the Texas Secretary of State on April 30, 2013;

4. The Operating Agreement of the Suballocatee dated April 30, 2013 and the Amended and Restated Operating Agreement of the Suballocatee dated December 18, 2013, 2013 (the "Initial Operating Agreement") and the Operating Agreement;

5. Organizational documents of PCE;

6. The Allocation Agreement;

7. Credit Agreement between the Borrower and Suballocatee;

8. QLICI Loan A-1 Note in the original principal amount of $1,352,600 executed by the Borrower in favor of the Suballocatee;

9. QLICI Loan A-2 Note in the original principal amount of $4,597,800 executed by the Borrower in favor of Suballocatee;

10. QLICI Loan B-1 Note in the original principal amount of $647,400 executed by the Borrower in favor of Suballocatee;

11. QLICI Loan B-2 Note in the original principal amount of $1,402,200 executed by the Borrower in favor of Suballocatee;

12. Additional loan documents governed by the Credit Agreement, including without limitation, the (i) Mortgage, Assignment of Rents and Leases and Fixture Filing, (ii) Environmental Indemnity Agreement, (iii) Guaranty of Payment and Completion, (iv) Account Pledge and Control Agreement (Disbursement Account), (v) Account Pledge and Control Agreement (CFPFCD Reserve Account), (vi) Account Pledge and Control Agreement (Lender Reserve Account), (vii) Assignment of Contracts, (viii) General Contractor's Agreement and Consent to Assignments of Contract, (ix) Construction Manager's Agreement and Consent to Assignments of Contract, (x) Architect's Agreement and Consent to Assignments of Contract and Plans, and (xi) Construction Monitoring and Disbursement Agreement;

13. Organizational documents of Borrower;

14. CDE Indemnification Agreement executed by Allocatee and Suballocatee in favor of JPMorgan Chase, N.A., a national banking association ("JPMC");

15. Letter ("QEI Designation") from the Suballocatee to the Investor Member dated the Prefund Date, designating the IM Capital Contribution as a "qualified equity investment" in the amount of $6,000,000 as defined in Code Section 45D(b)(1) (a "QEI") and as a QEI in the amount of $2,000,000, respectively;

16. Debarment Certificates executed by Borrower, Allocatee, and Suballocatee, respectively;

17. Sub-Allocation Fee Agreement between the Allocatee and the Investor Member;

18. Closing Transfers Memorandum by and among JPMC, Allocatee, Suballocatee, Investor Member, Borrower and certain other parties;

19. Data from the CDFI Fund and the Federal Financial Institutions Examination Council's ("FFIEC") website for 20733 Miflin Road and 410 East Section Avenue, Foley, Alabama 36535, reflecting it is located within census tracts number 01003011502 and 01003011501 and the CDFI Fund website's 2010 census tract database;

20. The Financial Projections;

21. Certificates of Fact from the Secretary of State of Texas for Allocatee and Suballocatee (each, a "Good Standing Certificate");

22. Agreed Upon Procedures letter prepared by Novogradac & Company LLP;

23. Unanimous Consent of Directors of Allocatee;

24. CDFI Fund's Allocation Tracking System print-out evidencing the Suballocation of $6,000,000 and $2,000,000 from Allocatee to the Suballocatee and designation of the Qualified Equity Investments ("Print Screen Transfer");

25. Allocatee's Application to the CDFI Fund for certification as a QCDE;

26. Suballocatee's Application to the CDFI Fund for certification as a QCDE (the "Sub-CDE Application");

27. CDFI Fund letters dated June 18, 2008 and July 15, 2013 certifying that Allocatee and the Suballocatee are each a QCDE; and

28. Such other documents and agreements as we have determined to be necessary for purposes of our opinions.

In connection with our review of the Documents, we have assumed the genuineness of all signatures (other than the Allocatee, the Suballocatee and PCE), the authenticity of all items submitted to us as originals, the conformity with authentic originals of all items submitted to us as copies, and the conformity in all material respects to final versions of all items submitted to us in draft version. We also have assumed, without independent verification or investigation, that (a) we have been provided with true, correct, and complete copies of all such Documents, (b) none of such Documents has been amended or modified, (c) all such Documents are in full force and effect in accordance with the terms thereof, and (d) the Documents reviewed by us reflect the entire agreement of the parties thereto with respect to the subject matter thereof. As to

matters of fact material to this opinion, we have relied on, and assume the accuracy of, the representations and warranties made by the Allocatee in each of the Transaction Documents to which it is a party and nothing has come to our attention that causes us to doubt the accuracy thereof, and we have relied on certificates of public officials and certificates of officers of the parties hereto.

The non-tax portion of this opinion is governed by, and shall be interpreted in accordance with, the Legal Opinion Accord (the "Accord") of the ABA Section of Business Law (1991). As a consequence, this opinion is subject to a number of definitions, assumptions, qualifications, limitations and exclusions, more particularly described in the Accord; and this opinion should be read in conjunction therewith. We are members of the Bar, and are only licensed to practice, in the State of Texas. As such we express no opinion as to any questions of law other than with respect to laws of the State of Texas in effect on the date hereof and applicable federal law, and no opinion is expressed herein as to any other matters governed by the laws of any other jurisdiction. With regard to the enforceability of any documents which are governed by laws other than the State of Texas, we have assumed the laws of such state are the same as the State of Texas.

This opinion letter addresses only the specific issues listed above. This opinion letter does not address other federal income tax issues or the tax consequences under the laws of any state, city or other local jurisdiction or of any foreign country, nor does it address other federal tax issues, sales tax, transfer tax, real estate taxes, conveyance fees, estate and gift tax or any other tax consequences of the member of the Investor Member or the transactions contemplated by organizational documents of the Investor Member. Specifically, this opinion does not address the deduction of interest or other items by the Investor Member or the Suballocatee (which may result in the allocation of a tax loss through the Investor Member to its members).

Our opinion is based on the law as it exists as of the date of this letter. Changes in the Code, the regulations promulgated thereunder ("Treasury Regulations" or "Treas. Reg."), rulings, or decided cases, any of which may have retroactive effect, may be inconsistent with the views expressed herein. We assume no obligation to inform you of any such changes.

Section 1—Disclosures Required by Circular 230

The opinions rendered herein are issued in accordance with the American Bar Association Formal Opinion No. 346 (Revised), dated January 29, 1982 ("ABA Formal Opinion"), which provides standards for "tax shelter" opinions. A "tax shelter" is defined by the ABA Formal Opinion as an investment which has as a significant feature for federal income tax purposes of either (i) deductions in excess of income from the investment which are available in

any year to reduce income from other sources in that year or (ii) credits in excess of the tax attributable to the income from the investment being available in any year to offset taxes on income from other sources in that year (subject to certain exceptions).

The opinions rendered herein are also issued in accordance with Sections 10.35 and 10.37 of the United States Treasury Circular 230, Title 31 Code of Federal Regulations, Subtitle A, Part 10 that were recently revised effective as of June 12, 2014 ("Circular 230").

This opinion is issued in accordance with the standards set forth in Circular 230 applicable to written advice that provide generally that a practitioner rendering written tax advice must have the appropriate level of knowledge, skill, thoroughness, and preparation necessary for the matter for which he or she is engaged, and must – (i) base the written advise on reasonable factual and legal assumptions (including assumptions as to future events), (ii) reasonably consider all relevant facts and circumstances that the practitioner knows or reasonably should know, (iii) use reasonable efforts to identify and ascertain the facts relevant to written advise on each federal tax matter, (iv) not rely upon representations, statements, findings or agreements including projections, financial forecasts, or appraisals) of the taxpayer or any other person if reliance on them would be unreasonable, (v) relate applicable law and authorities to facts, and (vi) not, in evaluating a federal tax matter, take into account the possibility that a tax return will not be audited or that a matter will not be raised on audit. We believe that we have complied with Circular 230 in rendering the advice contained in this letter. We also confirm that we do not have a conflict of interest that is in violation of Circular 230.

THIS OPINION IS LIMITED IN SCOPE TO THE FEDERAL TAX ISSUES ADDRESSED HEREIN. ADDITIONAL ISSUES MAY EXIST THAT COULD AFFECT THE FEDERAL TAX TREATMENT OF THE TRANSACTIONS AND THIS OPINION DOES NOT CONSIDER OR PROVIDE A CONCLUSION WITH RESPECT TO ANY ADDITIONAL ISSUES.

THE UNDERSIGNED IMPOSES NO LIMITATIONS ON THE RECIPIENTS OF THIS OPINION WITH RESPECT TO SUCH RECIPIENTS' DISCLOSURE OF THE TAX TREATMENT OR TAX STRUCTURE OF THE TRANSACTIONS THAT ARE THE SUBJECT OF THIS OPINION, AND THEREFORE THIS OPINION IS NOT SUBJECT TO "CONDITIONS OF CONFIDENTIALITY" WITHIN THE MEANING OF CIRCULAR 230.

THERE IS NO COMPENSATION ARRANGEMENT, SUCH AS A REFERRAL FEE OR A FEE-SHARING ARRANGEMENT, BETWEEN THE UNDERSIGEND AND ANY PERSON WITH RESPECT TO PROMOTING, MARKETING OR RECOMMENDING THE TRANSACTIONS THAT ARE THE SUBJEC OF THIS OPINION OR ANY REFERRAL

AGREEMENT BETWEEN THE UNDERSIGNED AND A PERSON ENGAGED IN PROMOTING, MARKETING OR RECOMMENDING THE TRANSACTIONS THAT ARE THE SUBJECT OF THIS OPINION.

Section 2—Facts

Pursuant to the terms of the Allocation Agreement, the Allocatee has received the Allocation, and according to the Print Screen Transfer and the terms of the Initial Operating Agreement has transferred $6,000,000 and $2,000,000 of such Allocation to the Suballocatee. According to the terms of the Initial Operating Agreement, the Investor Member acquired an investor member's interest in the Suballocatee and made the IM Capital Contribution as of the Prefund Date, which was designated as QEIs in the amounts of $6,000,000 and $2,000,000, respectively. The QEIs are intended to qualify for Credits in the amounts of $2,340,000 and $780,000, respectfully, to be claimed by the Investor Member.

Under the terms of the Operating Agreement, Net Profits and Net Losses are allocated 99.99% to the Investor Member and .01% to the Allocatee and Credits are allocated 100% to the Investor Member. Cash Flow is similarly to be distributed 99.99% to the Investor Member and .01% to the Allocatee. Pursuant to Section 7.03 of the Operating Agreement, a Capital Account is established and maintained for each member according to the requirements of the Treasury Regulations under Code Section 704(b). Section 8.02 of the Operating Agreement contains a "qualified income offset" and other provisions required by the Treasury Regulations. Section 3.05 of the Operating Agreement provides the Investor Member with substantial voting and consent rights with respect to the Suballocatee. Under Section 9.04 of the Operating Agreement, the Investor Member may remove the Allocatee as managing member of the Suballocatee under certain circumstances.

As required by Section 6.01 of the Operating Agreement, the Suballocatee will invest 100% of the IM Capital Contribution to make the Investment. The loans comprising the Investment are each intended to constitute a "qualified low-income community investment" as such term is defined by Section 45D(d)(1) of the Code. The Borrower will use the proceeds of the Investment to finance the development of the CAFFM Farmers & Retail Market and CAFFM Wholesale Distribution Facility located at 20733 Miflin Road and 410 East Section Avenue in Foley, Alabama (the "Facility"). According to the FFIEC website and based on CDFI Fund's website providing 2010 census tract database eligibility, the Facility is located in census tracts 01003011502 and 01003011501, which is a qualified low-income census tract as defined in Section 45D(e) of the Code ("Qualified Census Tract"). According to the Credit Agreement, more than 85% of the Company's tangible property is used and is projected to be used in the

Qualified Census Tract in accordance with Treasury Regulation Section 1.45D-1(d)(4)(i)(B). The Borrower intends to conduct its operations as a "qualified active low-income community business" as such term is defined by Code Section 45D(d)(2)(C) and Treasury Regulations Section 1.45D-1(d)(4)(iii)(A).

Section 3—Assumptions

For purposes of this opinion letter, we have assumed the following:

(a) Except for the Allocatee, the Suballocatee and PCE, each of the parties to each of the Documents has full power, authority, and legal right to enter into and perform the terms of the Documents and to take any and all actions thereunder in connection with the actions contemplated thereby.

(b) No actions will be taken by the Investor Member, the Suballocatee, the Allocatee, PCE or other parties to actions described in the Documents which would have the effect of materially altering the facts set forth in the Documents, including, but not limited to, any action which would result in the termination of the Investor Member or the Allocatee as a partner in the Suballocatee for United States federal income tax purposes under Section 708(b)(1)(B) of the Code.

(c) Each of the applicable parties will comply with all of its obligations under the Operating Agreement.

(d) Member interests in the Suballocatee (i) will not be traded on a national securities exchange, a foreign securities exchange, a regional or local exchange, or an interdealer quotation system that regularly disseminates firm buy or sell quotations by identified brokers or dealers by electronic means or otherwise; (ii) no interests in the Suballocatee were or will be (A) required to be registered under the Securities Act of 1933 or (B) issued in a transaction exempt from registration under the Securities Act of 1933 by reason of Regulation S (17 CFR 230.901 through 230.904), (iii) the Suballocatee will not have in excess of two members at any time after taking into account the anti-avoidance rule of Treasury Regulation §1.7704-1(h)(3); and (iv) the Suballocatee will not elect to be treated as an association or corporation for federal income tax purposes.

(e) The Investor Member is a limited liability company owned 100% by Chase Community Equity, LLC, a Delaware limited liability company. Chase Community Equity, LLC is owned 100% by JPMC.

(f) Prior to the date hereof, the Suballocatee properly filed Form 8874-A with the Internal Revenue Service ("IRS") designating the the IM Capital Contribution as two QEIs, in the amounts of $6,000,000 and $2,000,000, respectively (and consistent with the QEI Designation).

Section 4—Evaluation of Significant Federal Tax Issues and Application of Law to Facts

Classification of the Investor Member as a Partner in the Suballocatee

The term "partner" is defined in the Code as a "member of a partnership." *See* I.R.C. §§761(b) and 7701(a)(2). As a practical matter, the definitions of "partner" and "partnership" are to a large extent interdependent. That is, if a particular arrangement is deemed to constitute a partnership for federal income tax purposes, it is axiomatic that at least two or more of the participants in such arrangement constitute partners.

In *Commissioner v. Culbertson*, 337 U.S. 733 (1949), the U.S. Supreme Court stated that a partnership will exist for federal income tax purposes only when "considering all the facts—the agreement, the conduct of the parties in execution of its provisions, their statements, the testimony of disinterested persons, the relationship of the parties, their respective abilities and capital contributions, the actual control of income and the purposes for which it is used, and any other facts throwing light on their true intent—the parties in good faith and acting with a business purpose intended to join together in the present conduct of the enterprise."

The courts have taken into account a number of factors in determining whether a partnership exists. While the intention of the parties to join together to make and share profits has been one of the most important factors, other indicia of a partnership established by the courts include the sharing of losses, joint ownership of capital, joint participation in management, and contribution of services. *See e.g., McManus v. Commissioner*, 65 T.C. 197 (1975), aff'd, 583 F.2d 443 (9th Cir. 1978); *McDougal v. Commissioner*, 62 T.C. 720 (1974); *Luna v. Commissioner*, 42 T.C. 1067 (1967); *Allison v. Commissioner*, T.C. Memo 1976-248, 35 T.C.M. 1069; *Kelly v. Commissioner*, T.C. Memo 1970-250, 29 T.C.M. 1090.

In *Historic Boardwalk Hall, LLC v Commissioner*, 694 F.3d 425 (3d Cir. 2012), the United States Court of Appeals for the Third Circuit ruled that to be a partner in a partnership, a taxpayer must have a bona fide equity participation, which it held meant having a meaningful stake in the success or failure of the enterprise. A partner could not merely be a lender which is repaid regardless of the success or failure of the venture. *Boardwalk* was based in part on earlier cases of *TIFD III-E, Inc. v. United States*, 459 F 3d 220 (2d Cir. 2006) (herein "*Castle*

Harbour") and *Virginia Historic Tax Credit Fund 2001 LP v. Commissioner*, 639 F 3d 129 (4th Cir. 2011). Both *Castle Harbor* and *Virginia Historic* held that the taxpayers did not have a bona fide equity participation in the partnership. The *Boardwalk* Court assumed that the partnership formalities existed, that there was a business purpose in addition to the tax credits, and that there was a possibility of risk to the taxpayer partner (assuming there was economic substance). However the Court said the issue to determine if a taxpayer is a partner in a partnership is whether the taxpayer has a meaningful stake in the enterprise. If the partnership is structured in such a way that the taxpayer has no significant upside and all of the downside risk is covered by insurance, guarantees, liability caps, deposits, and reserves, then the receipt of tax credits looks more like a return of principal from a lender rather than profits from a successful venture. In *Boardwalk*, the taxpayer's maximum upside was the possibility to receive three percent (3%) in addition to a return of the tax credits, the remaining upside from the transaction was eliminated through the structure of the financing. All of its downside risk was covered by insurance, guarantees, and cash. Accordingly, the Court held that the taxpayer did not have a bona fide equity participation because there was no "meaningful" stake in the success or failure of the enterprise.

In the present case, the Investor Member and the Allocatee came together to form a partnersbip in order to make and share profits and losses. As evidence of their intention to form a partnership, the Investor Member and the Allocatee followed the formal procedure for forming the Suballocatee and treating the Suballocatee as a partnership for all financial accounting and tax purposes, including federal income tax purposes. Each of the Investor Member and the Allocatee made, on or before the Prefund Date, capital contributions to the Suballocatee. The Investor Member and the Allocatee entered into the Initial Operating Agreement to define, among other things, their rights and duties regarding the sharing of profits and losses, the management of the Suballocatee and the maintenance of capital accounts. As of the date hereof, the Initial Operating Agreement is being amended and restated in its entirety by the Operating Agreement (which also defines, among other things, the Investor Member's and Allocatee's rights and duties regarding the sharing of profits and losses, the management of the Suballocatee and the maintenance of capital accounts).

Both the Investor Member and the Allocatee have significant risk in this partnership. There is the possibility of losing all or a portion of the Investment if the Borrower's business operations are not successful and it does not have sufficient assets to repay the Investment or it files bankruptcy. Unlike the *Boardwalk*, *Castle Harbour* and *Virginia Historic* cases, there are no partner guarantees, insurance contracts, or cash reserves sufficient to shield each member of the Suballocatee from downside risk of loss, other than indemnities covering damages from certain breaches of the Operating Agreement by the Allocatee (and in limited cases, the Investor Member). Additionally, the Projections reflect that the Suballocatee will be repaid its

Investment. Accordingly, we are of the opinion that the Investor Member and Allocatee should each have a bona fide equity participation in the Suballocatee.

Further, the principal authority for determining whether an entity is in fact a partnership for federal income tax purposes is Section 301.7701-3 of the Treasury Regulations. This section provides that a business entity with two or more members will be classified as a partnership unless (1) the entity elects to be classified as a corporation, or (2) the entity is otherwise classified as a corporation under provisions of the Code or Regulations. Whether an organization is a business entity for this purposes does not depend upon whether it is recognized as an entity under local law, but rather whether it is recognized as a separate entity under federal tax law; an organization will generally be recognized under federal tax law if its members carry on a trade, business, financial operation, or venture and divide the profits therefrom. Treas. Reg. § 301.7701-1(a). The Allocatee has represented to us that the Suballocatee will not elect to be classified as a corporation. While Section 301.7701-2 provides numerous circumstances under which an entity must be classified as a corporation, an entity such as the Suballocatee, which has been formed under local law as a limited liability company and which will conduct only those activities reasonably related to lending money for construction of the Facility, will not create such circumstances. In addition, given the provisions of the Operating Agreement and the activities of the Suballocatee, the Suballocatee will not be classified as a corporation under any other provision of the Code or Regulations. For example, the Suballocatee will not be a publicly traded partnership, and therefore will not be treated as a corporation under Code Section 7704, because the provisions of the Operating Agreement do not allow interests in the Suballocatee to be readily tradable.

Based on and subject to the foregoing, and assuming that hereinafter no election is made by the Suballocatee to be treated as a corporation, it is our opinion that, for federal income tax purposes, (i) the Suballocatee should be treated as a partnership as of the Prefund Date and up to and including the date hereof and (ii) the Investor Member should be treated as a partner in the Suballocatee as of the Prefund Date and up to and including the date hereof.

Publicly Traded Partnership

Code Section 7704 defines a "publicly traded partnership" as any partnership if the interests are traded on an established securities market or are readily tradable on a secondary market or the substantial equivalent thereof. Treas. Reg. §1.7704-1(c)(1) expands on the meaning of a secondary market or the substantial equivalent thereof as "taking into account all of the facts and circumstances, the partners are readily able to buy, sell, or exchange their partnership interests in a manner that is comparable, economically, to trading on an established securities market." The regulations contain several safe harbors compliance with which will

assure avoidance of publicly traded partnership status. Based on the expected number of members in the Suballocatee, and based on the assumption listed above, the Suballocatee will satisfy a safe harbor in the regulations to avoid treatment as a publicly traded partnership. Based on and subject to the foregoing, it is our opinion that as of the Prefund Date and up to and including the date hereof, the Suballocatee should not be treated as a publicly traded partnership under Section 7704 of the Code.

Validity of Allocations

Generally, each member's distributive share of income, gain, loss, deduction, or credit from the Suballocatee will be determined in accordance with the Operating Agreement. Specifically, Section 8.01 of the Operating Agreement provides for allocations of the Suballocatee's Net Profits, Net Losses and Credits. Section 704 of the Code provides that an allocation to a member or partner under an operating agreement of income, gain, loss, deduction, or credit (or items thereof) will not be respected unless such allocation has substantial economic effect. If an allocation does not have substantial economic effect, the partner's distributive share of income, gain, loss, deduction, or credit (or items thereof) is determined in accordance with the partner's interest in the partnership (determined by taking into account all facts and circumstances). Based on the analysis below, we are of the opinion that the allocations of the Suballocatee's Net Profits, Net Losses and Credits will be respected in all material respects.

Allocation of Net Profits and Net Losses. In order for an allocation to have substantial economic effect, it must have economic effect and the economic effect must be substantial. In general, the Treasury Regulations under Section 704 provide that an allocation does not have economic effect unless (i) a capital account is maintained for each partner in accordance with federal income tax accounting principles, (ii) allocations of income, gain, loss, and deduction are reflected by appropriate increases or decreases in the partners' respective capital accounts, (iii) liquidation proceeds throughout the term of the partnership will be allocated in accordance with the partners' positive capital account balances, and (iv) any partner with a deficit in his capital account following the distribution of liquidation proceeds is required to restore the deficit amount to the partnership, which amount is to be distributed to the partners in accordance with their positive capital account balances or paid to creditors. Treas. Reg. §1.704-1(b)(2)(ii)(b). Treas. Reg. §1.704-1(b)(2)(ii)(c) provides an "alternate" test for economic effect, to the extent that an allocation does not create or increase a deficit (taking into account any amount the partner is obligated to restore), that contains the first three requirements listed above and requires that a "qualified income offset" be included in the agreement. For this purpose, Treas. Reg. §1.704-2(g)(1) provides that, for purposes of the alternate test for economic effect, the partner's share of partnership "minimum gain" is added to the amount of the deficit balance in the partner's capital account that the partner is obligated to restore.

Treas. Reg. §1.704-1(b)(2)(ii)(i) provides that if one of the foregoing safe harbors is not satisfied in all technical respects, but the actual effect of the allocations in the operating agreement have the same effect as if they had been, the allocations in the operating agreement will be deemed to have economic effect.

The Operating Agreement complies with the first three requirements listed above, and contains a qualified income offset provision. In addition, the effect of the allocations will be the same as if all of the requirements of the alternate safe harbor had been complied with, and thus will satisfy the economic effect equivalence test in Treas. Reg. §1.704-1(b)(2)(ii)(i).

Because the Operating Agreement does not require the Investor Member to fund any deficit capital account balance, it does not comply with the fourth requirement of the economic effect test. However, assuming that the other requirements of the economic effect test are satisfied, the Treasury Regulations provide an alternative to the fourth requirement. Under this alternative, an allocation will have economic effect to the extent that it does not create a deficit or increase an existing deficit in any partner's capital account balance (determined after taking into account expected decreases in the partner's capital account balance by reason of depletion allowances, losses, deductions and certain distributions, and taking into account amounts the partner is obligated to restore) and the partnership agreement has provisions allocating income and gain to partners who unexpectedly have deficit capital account balances (a "qualified income offset"). Treas. Reg. §1.704-1(b)(2)(ii)(d). In our opinion, the allocations set forth in the Operating Agreement meet the requirements of the "alternative" test and therefore have economic effect.

The economic effect of an allocation will be substantial if there is a reasonable possibility that the allocation will substantially affect the dollar amounts to be received by the members from the partnership, independent of tax consequences. Treas. Reg. §1.704-1(b)(2)(iii)(a). An allocation will be considered to be insubstantial if, as a result of the allocation, the after-tax consequences to at least one partner may, in present value terms, be enhanced, and there is a strong likelihood that the after-tax economic consequences to no partner will be diminished in present value terms. *Id.* Allocations are also insubstantial if they merely shift tax consequences within a partnership taxable year or are likely to be offset by other allocations in subsequent taxable years. Treas. Reg. §1.704-1(b)(2)(iii)(b). In our view, the allocations of the Operating Agreement should comply with the substantiality test.

Based on the foregoing discussion, it is our opinion that the allocations of Net Profits, Net Losses and Credits to the Investor Member as set forth in the Operating Agreement, if incurred as reflected in the Financial Projections, should have or be deemed to have "substantial

economic effect" within the meaning of Code Section 704(b) and the Treasury Regulations promulgated thereunder and should be respected for federal income tax purposes.

Allocatee and Suballocatee as Qualified Community Development Entities

Code Section 45D(c)(1) states that a qualified community development entity (i) is a for-profit or non-profit domestic partnership or corporation, (ii) has as its primary mission serving, or providing investment capital for low-income communities or low-income persons, (iii) must maintain accountability to residents or low-income communities through representation on any governing board of the entity or on any advisory board to the entity, and (iv) must be certified by the Secretary of the Treasury as being a QCDE. Although a QCDE can be a non-profit, the entity to receive the investment from the investors must be a for-profit entity in order for the investor to claim the Credits. Allocatee is a for-profit corporation whose mission as stated in its Certificate of Formation is to serve and provide investment capital for low-income communities and low-income persons. The Allocatee was incorporated in 2008 and since such date has elected to be taxed as a corporation and not as an association or partnership for federal income tax purposes. The Allocatee's most recent tax return was a Form 1120 for corporations. Allocatee has a governing board consisting of eight members, six of which are residents of or otherwise represent low-income communities as required with respect to its State of Texas service area. The Allocatee has represented that it has at least semi-annual governing board meetings and that it annually certifies its low-income representatives. Pursuant to a letter dated June 18, 2008, Allocatee has been certified by the CDFI Fund as a QCDE, and the Allocatee has not received any notice from the CDFI Fund that its status as a qualified community development entity has been revoked or terminated. Therefore, Allocatee is a qualified community development entity under Section 45D(c) of the Code. Allocatee applied for and received from the CDFI Fund an allocation of New Markets Tax Credits in the amount of $30,000,000 in Round 10. The terms and conditions to such allocation are as set forth in the Allocation Agreement. Therefore, it is our opinion that Allocatee is a "qualified community development entity" as such term is defined in Section 45D(c) of the Code and has received a valid allocation of Credit authority from the United States Department of the Treasury in an amount in excess of $8,000,000.

The Suballocatee is a for-profit limited liability company (which will be taxable as a partnership as discussed above), whose purpose is to serve and provide investment capital for low-income communities, and specifically the Investment to the Borrower (which owns a project located in a low-income community). The Suballocatee maintains accountability to residents of low-income communities through the Allocatee's governing board. The Suballocatee has represented that it has at least semi-annual governing board meetings and that it annually certifies its low-income representatives. Pursuant to its Allocation Agreement, the Allocatee

may transfer a portion of its NMTC Allocation to a "subsidiary allocatee" that is certified as a QCDE by the CDFI Fund. A "subsidiary" is an entity that is controlled, directly or indirectly by a QCDE. "Control" is defined by the CDFI Fund as (a) ownership, control or power to vote more than 50% percent of the outstanding shares of any class of voting securities of any entity, directly or indirectly or acting through one or more other persons; (b) control in any manner over the election of a majority of the directors, trustees, or general partners (or individuals exercising similar functions) of any other entity; or (c) power to exercise, directly or indirectly, a controlling influence over the management policies or investment decisions of another entity, as determined by the CDFI Fund. For a transfer of its allocation to a subsidiary, the allocatee must demonstrate, at a minimum, that it exercises and will maintain a controlling influence over the investment decisions of the subsidiary allocatee. The CDFI Fund guidance provides that an allocatee exercises a "controlling influence over the investment decisions" of a subsidiary allocatee if the allocatee has the authority to propose potential QLICIs and the authority to approve all proposed transactions involving the use of NMTC proceeds. In order to demonstrate a controlling influence over the management policies of a Suballocatee, the allocatee must be, at a minimum: (a) identified in all organizational documents of managing entity as the managing member; (b) at all times in principal control over the day-to-day operations of the sub-allocatee and no parties may impose unreasonable limitations on the rights and privileges of the allocatee to carry out general management functions. The allocatee may enter into contracts with other entities to perform general management functions but the allocatee must retain the authority to remove the contracted parties with or without cause. Some indicia of management control include the powers to (i) make all decisions affecting the business, (ii) act for and bind the entity, (iii) make strategic, governance and contract decisions, (iv) establish all policies governing operations, (v) acquire and dispose of interest in real property, (vi) establish bank accounts, (vii) employ and terminate consultants, and (viii) exercise responsibility for business development, raising capital.

The Allocatee's Application for a NMTC Allocation identified PCE as the "Controlling Entity." In the Allocation Application's Glossary of Terms, a "Controlling Entity" is defined as "an entity that controls an Applicant, and has a controlling influence over the day-to-day management and operations (including investment decisions) of the QCDE and of any Subsidiary entities to which the Applicant may transfer its allocation of tax credit authority." If an NMTC Allocation is issued, such controlling entity must continue to exercise such control over the QCDE (and, through the QCDE, control of all "subsidiary allocatees") throughout the term of the Allocation Agreement. PCE is the sole shareholder of the Allocatee and pursuant to the Allocatee's Certificate of Formation and bylaws, through its control of the Board of Directors and officers of the Allocatee, controls the day-to-day operations of the Allocatee and the investment decisions of the Allocatee. The Allocatee is the managing member of the Suballocatee, and pursuant to Section 3.01 of the Operating Agreement controls the day-to-day

operations of the Suballocatee. The Operating Agreement of the Suballocatee provides that Allocatee's consent is required with respect to any Approved Investments of the Suballocatee. Allocatee's governing board is the same governing board of the Suballocatee. The Operating Agreement provides that the Allocatee cannot be removed as managing member of the Suballocatee without cause and limits the removal rights of the Investor Member to, *inter alia*, those actions which could result in a recapture of the Credits or constitute a breach by the Allocatee which could have a material adverse effect on the Suballocatee or its members. Accordingly, the Operating Agreement grants the Allocatee sufficient rights, and reasonably limits the rights and privileges of the Investor Member, to demonstrate that the Allocatee controls the Suballocatee. Pursuant to a letter dated July 15, 2013, the CDFI Fund reviewed the Suballocatee's Application and the Suballocatee has been certified by the CDFI Fund as a QCDE. Therefore, it is our opinion that, as of the Prefund Date and up to and including the date hereof, the Suballocatee was and is a "qualified community development entity" as such term is defined in Section 45D(c) of the Code and should qualify as a subsidiary allocatee of Allocatee. Further, based on the foregoing, it is our opinion that as of the Prefund Date and up to and including the date hereof, the Allocatee should be treated as controlling the Suballocatee within the meaning of the Allocation Agreement and the Suballocatee's CDE Application. Finally, based on the foregoing, it is our opinion that the CDFI Fund should conclude that the Allocatee is controlled by PCE as the "Controlling Entity."

Pursuant to its Allocation Agreement, Allocatee may transfer a portion of its NMTC Allocation to a "subsidiary allocatee" that is certified as a QCDE by the CDFI Fund. Pursuant to the terms and conditions of the Print Screen Transfer, the Allocatee made a valid transfer in the aggregate amount of $8,000,000 of its Allocation to the Suballocatee on or before the Prefund Date. Therefore, it is our opinion that the Suballocatee received a valid suballocation of Credit authority (in the amount of the Suballocation) from Allocatee as approved by the CDFI Fund on or before the Prefund Date.

Qualification of Interest as Qualified Equity Investment

To qualify as a QEI an equity investment in a QCDE must be acquired by the taxpayer at its original issuance solely in exchange for cash, "substantially all" of the proceeds of the investment must be used by the QCDE to make qualified low-income community investments and the investment must be designated by the QCDE as a QEI. Treas. Reg. §1.45D-1(c)(5) states that the "substantially all" requirement is treated as met (i) if at least eighty-five percent (85%) of the taxpayers investment is directly traceable to one or more QLICIs, or (ii) if at least 85% of the aggregate gross assets of the QCDE are invested in QLICIs. Here, the Allocatee has been awarded an allocation in the amount of $30,000,000 in accordance with the terms and conditions of the Allocation Agreement. The Allocatee transferred $8,000,000 of its Allocation to the

Suballocatee on or before the Prefund Date, as evidenced by the Print Screen Transfer. The IM Capital Contribution in the Suballocatee was made solely in the form of a cash investment and the issuance of a member interest in the Suballocatee to the Investor Member constituted the original issuance of an interest in the Suballocatee in exchange for the investment. Pursuant to the Initial Operating Agreement, the Suballocatee was required to designate the IM Capital Contribution as QEIs in the amounts of $6,000,000 and $2,000,000, respectively. The Suballocatee is investing 100% of the QEIs in the Investment to the Borrower on the date hereof, thus satisfying the direct tracing requirement of the "substantially all" requirement. Accordingly, assuming that the Suballocatee invests substantially all of the proceeds of the QEIs in qualified low-income community investments within a 12-month period commencing upon the receipt of the IM Capital Contribution, it is our opinion that the Investor Member will be treated for federal income tax purposes as having made two QEIs within the meaning of Section 45D(b)(1) of the Code as of the Prefund Date in the amounts of $6,000,000 and $2,000,000, respectively, which will entitle the Investor Member to claim Credits in the amounts of $2,340,000 and $780,000, respectively.

Opinions

Based solely upon the facts, assumptions and discussion set forth herein and our review of the Documents, and we are aware of no facts or circumstances that would lead us to conclude the contrary thereto, we are of the opinion that:

GENERAL CORPORATE OPINIONS

1. The Suballocatee is a limited liability company, duly organized and validly existing under the laws of the State of Texas, and based solely on its Good Standing Certificate, in good standing under the laws of the State of Texas. As of the Prefund Date through the date hereof, the Suballocatee had and has the power and lawful authority to engage in the business contemplated by the Documents to which it is a party.

2. Allocatee is a corporation duly organized and validly existing under the laws of the State of Texas, and based solely on its Good Standing Certificate, in good standing under the laws of the State of Texas. As of the Prefund Date through the date hereof, the Allocatee had and has the power and lawful authority to engage in the business contemplated by the Documents to which it is a party.

3. PCE is a corporation duly organized and validly existing under the laws of the State of Texas, and based solely on its Good Standing Certificate, in good standing under the laws of the State of Texas. As of the Prefund Date through the date hereof, PCE had and has the power and lawful authority to engage in the business contemplated by the Documents to which it is a party.

4. Under the Initial Operating Agreement, the Investor Member was validly admitted as sole investor member of the Suballocatee entitled to all the benefits of a member under the Initial Operating Agreement (and as of the date hereof, entitled to all the benefits of a member under the Operating Agreement), and the interest of Investor Member in the Suballocatee is the interest of a member with no personal liability for the obligations, loans and mortgages of the company. The membership interest of Investor Member in the Suballocatee is free and clear of any pledge, claim, encumbrance, charge or restriction (other than those created by Investor Member), except as may be expressly provided in the Operating Agreement.

5. The execution and delivery of the Documents to which Allocatee is a party thereto, and the consummation by Allocatee of the transactions contemplated thereby, and the performance by Allocatee of its obligations thereunder, have been duly and validly authorized by all necessary action by or on behalf of Allocatee.

6. The execution and delivery of the Documents to which the Suballocatee is a party thereto, and the consummation by the Suballocatee of the transactions contemplated thereby, and the performance by the Suballocatee of its obligations thereunder, have been duly and validly authorized by all necessary action by or on behalf of Suballocatee.

7. The execution and delivery of the Documents to which PCE is a party thereto, and the consummation by PCE of the transactions contemplated thereby, and the performance by PCE of its obligations thereunder, have been duly and validly authorized by all necessary action by or on behalf of PCE.

8. No authorization, consent, approval, or other action (which has not been obtained or taken) by, or filing with, any state or federal court or governmental authority is required in connection with (i) the execution and delivery by Allocatee of the Documents to which it is a party, (ii) the execution and delivery by the Suballocatee of the Documents to which it is a party, and (iii) the execution and delivery by PCE of the Documents to which it is a party.

9. Each of the Documents to which the Suballocatee is a party has been duly executed and delivered by Allocatee on behalf of the Suballocatee. Each of the Documents to

which the Allocatee is a party has been duly executed and delivered by the Allocatee. Each of the Documents to which PCE is a party has been duly executed and delivered by PCE.

10. The execution and delivery of, and the performance of the obligations under, the Documents will not violate the organizational documents of the Suballocatee, Allocatee, or PCE as to the documents executed by each of them respectively and will not violate any law, statute, rule or regulation applicable to Allocatee, Suballocatee, or PCE or, to our knowledge, any judgment, order, writ, injunction or decree of which we are aware, applicable to Allocatee, Suballocatee and PCE. To our knowledge, the execution and delivery of the performance of the obligations under the Documents will not cause a breach or default (or give rise to any right of termination, cancellation or acceleration) under any agreement binding upon Allocatee, Suballocatee or PCE.

11. To our knowledge, there is no litigation or other claim pending before any court or administrative or other governmental body or threatened against Allocatee, Suballocatee or PCE, which if adversely determined would have a material adverse effect against Allocatee, Suballocatee or PCE, or the ability of any such party to perform its obligations under the Documents, as applicable.

12. The obligations of Allocatee under the Documents to which it is a party constitute the valid and legally binding obligations of Allocatee, enforceable against Allocatee in accordance with their terms. The obligations of the Suballocatee under the Documents to which it is a party constitute the valid and legally binding obligations of the Suballocatee, enforceable against the Suballocatee in accordance with their terms. The obligations of PCE under the Documents to which it is a party constitute the valid and legally binding obligations of PCE, enforceable against PCE in accordance with their terms.

CDE, QLICI AND TAXATION OPINIONS

13. Based on and subject to the foregoing, the Allocatee should be treated as a corporation for federal income tax purposes as of the Prefund Date and up to and including the date hereof.

14. Based on and subject to the foregoing, and assuming that no election is made by the Suballocatee to be treated as a corporation, it is our opinion that, for federal income tax purposes, (i) the Suballocatee should be treated as a partnership as of the Prefund Date and up to and including the date hereof and (ii) each of the Allocatee and the Investor Member should be treated as a partner in the Suballocatee as of the Prefund Date and up to and including the Prefund Date.

15. Based on and subject to the foregoing, it is our opinion that the Suballocatee should not be treated as a publicly traded partnership under Section 7704 of the Code.

16. Based on the foregoing discussion, it is our opinion that the allocations of Net Profits, Net Losses and Credits as set forth in the Operating Agreement should have or be deemed to have "substantial economic effect" within the meaning of Code Section 704(b) and the Treasury Regulations promulgated thereunder and should be respected for federal income tax purposes.

17. Based on and subject to the foregoing, it is our opinion that (i) the Allocatee should have received a valid Allocation of Credits in an aggregate amount at least equal to $8,000,000, all of which was suballocated to the Suballocatee on or before the Prefund Date, (ii) each of the Allocatee and the Suballocatee constitutes a QCDE as such term is used in Section 45D of the Code as of the Prefund Date and up to and including the date hereof; (ii) the Suballocatee should be considered a "Subsidiary Allocatee" (as such term is used in the Allocation Agreement) of Allocatee as of the Prefund Date and up to and including the date hereof; (iii) the Allocatee should be treated as controlling the Suballocatee within the meaning of the Allocation Agreement and the Sub-CDE Application as of the Prefund Date and up to and including the date hereof; (iv) PCE should be treated as controlling the Allocatee and, through the Allocatee, the Suballocatee within the meaning of the Allocation Agreement and the Sub-CDE Application as of the Prefund Date and up to and including the date hereof, and (v) Allocatee should be deemed to have validly sub-allocated $8,000,000 of the Allocation to the Suballocatee on or before the Prefund Date.

18. Based on and subject to the foregoing and assuming that the Suballocatee properly designated the IM Capital Contribution as two QEIs in the amounts of $6,000,000 and $2,000,000, respectfully, within the time period required, it is our opinion that (i) the Suballocatee satisfies the Substantially All Test with respect to the QEIs as set forth in Treasury Regulation Section 1.45-1(c)(5)(i), and (ii) the Investor Member should be treated for federal income tax purposes as having made two QEIs within the meaning of Section 45D(b)(1) of the Code in the amounts of $6,000,000 and $2,000,000, respectfully, as of the Prefund Date, which will entitle the Investor Member to claim Credits in the amounts of $2,340,000 and $780,000, respectively.

A number of issues discussed herein, including matters on which we have expressed an opinion, have not been definitively resolved by statute, regulations, rulings or court decisions. Moreover, with respect to some of such matters, existing precedents provide very little guidance. While our opinions and views expressed herein are based upon our best interpretations of

existing sources of law, no assurance can be given that such interpretations would be followed if they became the subject of judicial or administrative proceedings. Furthermore, our opinions are based on existing law. No assurance can be given that legislative or administrative changes, or court decisions, which may or may not be retroactive with respect to transactions completed prior to the effective dates of such changes, will not significantly affect the tax consequences to the parties.

This opinion expresses our opinion on the issues discussed if such issues were competently and completely argued before a court. This is our opinion only, based on the assumptions and analysis contained in this opinion, and it is not a guarantee or prediction of the actual outcome of any challenge by the IRS with respect to the issues discussed. No ruling has or will be sought from the IRS on the issues discussed herein, and it is not known if the IRS would agree or disagree with the conclusions expressed.

Respectfully Submitted,

Mark D. Foster