

# CITY OF FOLEY, ALABAMA

## Omnibus Certificate as to Opinion of Adams and Reese LLP

This Certificate is made and delivered to Adams and Reese LLP ("A&R") in connection with the legal opinion to be issued by A&R for and on behalf of the City of Foley, Alabama, an Alabama political subdivision (the "City"), to United Bank ("United Bank") with respect to the consummation and closing ("Closing") of the transactions contemplated by that certain Funding Agreement dated January 22, 2016 (the "Funding Agreement") between the City and Coastal Alabama Farmers' and Fishermen's Market, Inc. ("CAFFM") and all other documents relating to the transactions contemplated thereby (collectively the "Transaction Documents"). All capitalized terms used herein that are not otherwise defined herein shall have the meanings assigned to them in the Transaction Documents.

John Koniar, the Mayor of the City, certifies that he has undertaken all necessary review to make this certification, and hereby certifies to A&R, to the best of his knowledge, after due inquiry and investigation that:

1. The City is a political subdivision duly authorized and established under the laws of the State of Alabama pursuant to Alabama Code Ann. Section 11-41-1, et seq. There are no proceedings pending or, to my knowledge, threatened or contemplated for the merger, consolidation, liquidation or dissolution of the City or the sale of all or substantially all of its assets, or which would otherwise threaten the City's political subdivision existence.

2. Each person who, as a mayor, member of the City Council, officer and/or representative of the City, signed (i) the Transaction Documents to which the City is a party or (ii) any other document, certificate or instrument delivered prior hereto or on the date hereof in connection with the execution and delivery of the Transaction Documents, was, at the respective times of such signing and delivery, and is now, duly elected or appointed, qualified and acting in such capacity, and the signatures of such persons appearing on such documents are their genuine signatures. Set forth below are the true specimens of their signatures:

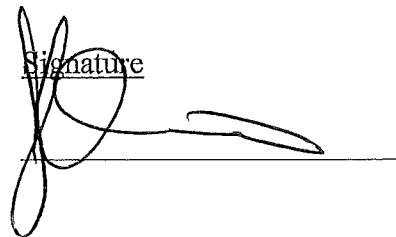
Name

Title

Signature

John Koniar

Mayor

A handwritten signature in black ink, appearing to be 'John Koniar', written over a horizontal line.

3. Attached hereto as Exhibit A and made a part hereof is a true and complete copy of all actions and minutes of all of the meetings of the City Council of the City authorizing the execution, delivery and performance of the Transaction Documents. The Transaction Documents were approved by the City Council at a properly held meeting on December 23, 2015.

Each action taken at each such meeting was taken upon due notice (or waiver thereof), with a quorum present and voting throughout (or, if through action by written consent, was in accordance with Alabama law), and in full compliance in all respects with the laws of the State of Alabama, and the resolutions reflected in such minutes/action by written consent have not been amended, modified or rescinded and are in full force and effect on the date hereof. All documents necessary to authorize the City to execute any of the Transaction Documents and to engage in any transaction or business as contemplated by the Transaction Documents have been duly authorized, executed and filed.

4. The City has done all things necessary to preserve in full force and effect its political subdivision powers and existence, and its rights, licenses and qualifications to carry on its business in the State of Alabama, and has not received notice from any governmental authority or other person of any failure in this regard. The City has not received any notice from any federal, state or local governmental authority concerning, imposing or threatening any revocation, modification, stay or suspension of any of its political subdivision powers or existence.

5. All representations made by, and all information pertaining to the City as set forth in the Transaction Documents and any and all certificates delivered in connection therewith, was at the time made and is true, complete and accurate in all respects as of the date hereof and may be relied upon by A&R.

6. The City has obtained all licenses, permits, consents, approvals, franchises, authorizations and orders of and from all governmental, supervisory, regulatory and other authorities which are required for the City to own and operate its properties, to lease the properties it operates under lease and to conduct its business in each jurisdiction in which it carries on such business at present, and the City is not in default of any such license, permit, consent, approval, franchise, authorization or order.

7. The execution and delivery of the Transaction Documents by the City do not, and the performance by the City of its agreements in the Transaction Documents, will not violate any statutes, laws, administrative decisions, ordinances, rules or regulations of the State of Alabama and the United States of America or conflict with or violate any order, writ, judgment, injunction, decree, determination or award presently in effect of any court, arbitrator or governmental department, commission, board, bureau, agency or other instrumentality in the State of Alabama to which the City is subject.

8. The City is not subject to any governmental programs (or operating in a regulated industry) which require(s) governmental consent prior to entering into the transactions contemplated by the Transaction Documents.

9. There is no order, writ, judgment, injunction, decree, determination, award, charge, investigation, action, suit or proceeding before any court, arbitrator or supervisory, regulatory, administrative or governmental agency, body or authority, pending, threatened, or presently in effect against the City, to which the City is a party, or by which its assets or properties are or may become bound or affected or which might affect the performance of the City under the Transaction Documents or the consummation of the transactions contemplated therein or might result in any adverse change in the condition (financial or otherwise), business, properties, results of operations or prospects of the City.

10. The City has not made an assignment for the benefit of creditors or become insolvent or committed an act of bankruptcy or made any proposal under any bankruptcy or insolvency legislation or any similar statute, and no bankruptcy or similar petition has been filed or presented by it, and no judgment or order has been entered by any court approving any such petition, and no custodian or receiver or any other official with similar powers has been appointed for it or any portion or its properties or assets as a result of any such action of filing. No bankruptcy or similar petition with respect to the bankruptcy, insolvency or other enforced liquidation of the City has been presented or filed against it or is deemed to be binding upon it. Immediately following the consummation of the transactions contemplated by the Transaction Documents, the City will not be insolvent, as defined in the United States Bankruptcy Code, 11 U.S.C. §101 et. seq. or the laws of its jurisdiction of organization, will be able to pay its debts as they mature, will have capital sufficient to carry on its business and all business in which it presently intends to engage, and will have assets which, at fair valuation and at present fair salable value, are greater than the amount of its liabilities, whether direct or contingent.

The undersigned is aware that A&R will rely on the matters set forth herein in rendering its opinions to United Bank.

Dated: January 22, 2016

By: 

Name: John Koniar

**Exhibit A**

Attached to and made a part of that certain **City of Foley, Alabama** Omnibus Certificate to Adams and Reese LLP dated January 22, 2016:

**Authorizing Resolutions for Transaction Documents**

[See Attached]



## City of Foley, AL

407 E. Laurel Avenue  
Foley, AL 36535

### Signature Copy

Resolution: 15-2393-RES

File Number: 15-0740

Enactment Number: 15-2393-RES

#### RESOLUTION APPROVING FUNDING AGREEMENT BY THE CITY OF FOLEY, ALABAMA

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

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

(a) The City proposes, to execute and deliver a Funding Agreement or Pledge Agreement by the City (the "Funding Agreement") with respect to the unconditional obligation of the City, in the event of nonpayment by the Coastal Alabama Farmers' and Fishermen's Market, Inc., an Alabama nonprofit corporation (the "CAFFM") to pay (i) the principal of, premium, if any, and interest on the \$1,400,000 maximum principal amount of loans from United Bank (the "Lender") to the CAFFM (the "Loan"), to finance the costs of the Project hereinafter referenced, as more particularly described hereinbelow.

(b) The Funding Agreement will be executed and delivered by the City to the CAFFM.

(c) Pursuant to Amendment No. 772 to the Constitution of Alabama of 1901, as amended ("Amendment No. 772"), the City has caused the Notice attached hereto as Exhibit "A" (the "Notice") to be published on December 9, 2015 in *The Foley Onlooker* with respect to certain actions proposed to be taken, and certain agreements proposed to be made and delivered, by the City, to provide for the financing the Project and the economic development of the City thereby.

(d) The Funding Agreement and United Bank's term sheet (collectively the "Financing Documents") has been prepared for and delivered to the City, and made available for public inspection.

(e) The expenditure of public funds for the purposes specified in the Notice and the Financing Documents will serve a valid and sufficient public purpose, notwithstanding any incidental benefit accruing to any private entity or entities. The City seeks to achieve, by undertaking its obligations pursuant to the Funding Agreement, to promote the local economic, commercial and industrial development of the City and to increase employment in the City and to promote and develop for the public good and welfare trade, commerce, industry, and employment opportunities in the City.

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

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

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

Section 4. The Financing Documents are approved in substantially the form and with

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

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

Section 6. The Mayor of the City is hereby authorized and directed to execute, acknowledge and deliver the City Documents for and on behalf of and in the name of the City. The City Clerk and Assistant City Clerk of the City are each hereby authorized and directed to attest the same.

Section 7. The officers of the City, or any one or more of them, are hereby authorized and directed to do and perform or cause to be done or performed in the name and on behalf of the City such other acts, and execute, deliver, file and record such other instruments, documents, certificates, notifications and related documents, all as shall be required by law or necessary or desirable to carry out the provisions and purposes of this Resolution and the Financing Documents.

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

Section 9.

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

(b) This resolution shall take effect immediately.

PASSED, APPROVED AND ADOPTED this 21st day of December, 2015.



President's Signature

Date

12-23-15

Attest by City Clerk

Date

12-23-2015

Mayor's Signature

Date

12/23/15

Exhibit "A"

LEGAL NOTICE  
OF  
PUBLIC MEETING OF FOLEY CITY COUNCIL

Regarding Economic Development Action Under Alabama

Constitutional Amendment No. 772

for

the Coastal Alabama Farmers' and Fishermen's Market

Notice is hereby given that the City Council (the "City Council") of the City of Foley, Alabama (the "City") will meet in public session at 5:30 p.m. on Monday, December 21, 2015, in City Hall in the City for the purpose of consideration of the transaction of any business that may properly come before the City Council; such business to include, but not be limited to, the authorization by the City Council of a resolution (the "Resolution") authorizing the execution and delivery of a Funding Agreement or Pledge Agreement by the City (the "Funding Agreement") with respect to the unconditional obligation of the City, in the event of nonpayment by the Coastal Alabama Farmers' and Fishermen's Market, Inc., an Alabama nonprofit corporation (the "CAFFM") to pay the principal of, premium, if any, and interest on the \$1,400,000 maximum principal amount of loans from a bank or lending institution to be determined by CAFFM ("Lender") to the CAFFM (the "Loan"), to finance the costs of the Project hereinafter referenced, as more particularly described hereinbelow.

The Funding Agreement will be executed and delivered by the City to the CAFFM. The beneficiary of the Loan is the CAFFM and Lessee (as defined herein).

The Loan proceeds shall be issued to finance the costs of acquisition, construction and installation of projects to be located in the City of Foley and to include some or all of the following, as to be determined by the City and the CAFFM (collectively, the "Project");

(i) improvements to be made to the building and facilities located at 410 East Section Avenue, Foley, Alabama 36535, owned by CAFFM and more commonly known as the Peavey Building (the "Peavey Building"); and

(ii) loading docks, additional doors, parking, utility relocation and additions, roof penetrations, HVAC and sprinkler head adjustments, and other infrastructure improvements related to the building and the facilities described in (i).

The purpose of the Project is to induce Bon Secour Valley, Inc. ("Lessee") to enter into a lease agreement with the CAFFM for the lease of a portion of the Peavey Building. The costs of the Project will be added to the base rent under the lease agreement and paid by Lessee to the CAFFM over the term of the lease. Lessee intends to use the leased property to operate a manufacturing plant for the purpose of dehydrating of certain fruits and vegetables and manufacturing pet treats. The business will add jobs to the area and create growing opportunities and income for local farmers.

Lender will loan a maximum of \$1,400,000 to the CAFFM. The City's involvement arises solely from moneys that may be required to be provided by the City pursuant to the Funding Agreement to the CAFFM to pay the Loan.

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

The Loan will be a 12 month construction line of credit which will be converted to a 15 year loan to be paid in 180 monthly installments.

The Loan shall never constitute or give rise to an indebtedness or pecuniary liability payable from, or a charge against, the revenues, assets, credit, or taxing powers of the State of Alabama, or any political subdivision thereof (except as specifically undertaken by the City under the Funding Agreement) within the meaning of any constitutional provision or statutory limitation whatsoever.

The City seeks to achieve, by undertaking its obligations pursuant to the Funding Agreement, to promote the local economic, commercial and industrial development of the City and to increase employment in the City and to promote and develop for the public good and welfare trade, commerce, industry, and employment opportunities in the City. The private entities to whom and for whose benefit the City proposes to lend its credit and grant public funds or thing of value is the CAFFM and the Lessee. The following business entities or their affiliates are involved in the financing of the Project and may incidentally benefit as a result: Lender, Woerner AgriBusiness LLC, and Bon Secour Valley, Inc.



The City Council expects to determine at its public meeting that the loan of funds and things of value in connection with the transaction described above will serve a valid and sufficient purpose, notwithstanding any incidental benefit accruing to any other entity including any private entity or entities.

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

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

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

The City Council of The City of Foley met in public session at the office of the City at City Hall, in the City of Foley, Alabama, at 5:30 p.m. on December 21, 2015.

The meeting was called to order by J. Wayne Trawick, President of the City Council, and the roll was called with the following results:

Present:

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Absent:

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The Council President stated that a quorum was present.

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

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

\* \* \*

Exhibit "B"

FINANCING DOCUMENTS

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**FUNDING AGREEMENT**

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**Dated January 22, 2016**

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**between**

**CITY OF FOLEY, ALABAMA**

**AND**

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

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**This Funding Agreement was prepared by C. Britton Bonner of Adams and Reese LP,  
11 North Water Street, Suite 23200, Mobile, AL 36602.**

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## **FUNDING AGREEMENT**

This **FUNDING AGREEMENT** is made and entered as of January 22, 2016, (the "Agreement") by and between the **CITY OF FOLEY, ALABAMA**, a political subdivision of the State of Alabama (the "City"), and **COASTAL ALABAMA FARMERS' AND FISHERMEN'S MARKET, INC.**, an Alabama nonprofit corporation (the "CAFFM").

### **Recitals**

Pursuant to Amendment No. 772 to the Constitution of Alabama of 1901, as amended, ("Amendment No. 772") for the purposes expressed therein and herein and for the benefit of the CAFFM, the City and the CAFFM have delivered this Agreement simultaneously with execution and delivery of the loan in the maximum principal amount of \$1,400,000 from United Bank to CAFFM (the "Loan"). The proceeds of the Loan will be used by the CAFFM for certain improvements to the CAFFM's building located at 410 East Section Avenue, Foley, Alabama (the "CAFFM Wholesale Distribution Building") pursuant to that certain Agreement to Lease dated December 29, 2015, between CAFFM and Bon Secour Valley, Inc. (the "Project").

### **Agreement**

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

## **ARTICLE 1**

### **REPRESENTATIONS AND WARRANTIES**

#### **SECTION 1.01 Representations and Warranties of the CAFFM.**

The CAFFM makes the following representations and warranties:

(a) The CAFFM is an Alabama nonprofit corporation and has corporate power and authority to enter into this Agreement. The CAFFM is not in default under any of the provisions contained in its certificate of incorporation, its by-laws or in the laws of the State of Alabama. By proper corporate action the CAFFM has duly authorized the execution, delivery and performance of this Agreement.

(b) The CAFFM will execute and deliver the Loan Documents in conjunction with the Loan and the Loan Documents will be in substantially the form set forth in Exhibit A hereto (the "Loan Documents").

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

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

The City hereby represents and warrants as follows:

- (a) This Agreement is made and delivered by the City pursuant to Amendment No. 772.
- (b) The City has the power and authority to enter into this Agreement and to carry out its obligations hereunder and by proper action the City has duly authorized the execution, delivery and performance of this Agreement.
- (c) The Loan will be funded and delivered upon the condition, and in reliance, that simultaneously therewith the City would execute and deliver this Agreement.
- (d) The Project is being undertaken and operated by the Event Center Entity upon the condition, and in reliance by the Event Center Entity, that simultaneously herewith the City would execute and deliver this Agreement.
- (e) The issuance of the Loan and the application of the proceeds thereof for the purposes set forth in the closing documents for the Loan and in this Agreement and the construction and operation of the Project within the city limits of the City will promote the local economic, commercial and industrial development of the City, increase employment in the City and promote and develop for the public good and welfare trade, commerce, industry, and employment opportunities in the City, as well as result in direct financial benefits to the City all in furtherance of the purposes of Amendment No. 772.

## **ARTICLE 2**

### **DURATION OF AGREEMENT**

The obligations of the City hereunder shall arise on the date of delivery of this Agreement and shall continue in effect until the Loan has expired or been terminated pursuant to its terms.

## **ARTICLE 3**

### **PAYMENT OF LOAN**

#### **SECTION 3.01 Payments of Loan Amounts by the City.**

(a) For the payment of the Loan, the City hereby authorizes, orders and directs the Finance Director of the City of Foley to pay to the CAFFM in immediately available funds, upon presentation to the City by the CAFFM of a payment request and certificate substantially in the form of Exhibit B hereto and solely from the Funding Agreement Fund hereinafter created, payments (collectively the "Funding Agreement Payments") at such time or times as shall be necessary to provide for the due and punctual payment of the CAFFM's obligations under the Loan.

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

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

(d) The City and the CAFFM agree:

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

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

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

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

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

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

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

(b) The City agrees the City may pay all amounts due under Section 3.01(a) of this Agreement from any funds or revenues of the City which are legally available for such purpose. The CAFFM shall apply all amounts received from the City under this Section 3.03(b) in accordance with Section 4.01 hereof.

## **ARTICLE 4**

### **OBLIGATIONS OF THE CAFFM**

#### **SECTION 4.01 Obligations of the CAFFM.**

The CAFFM hereby agrees to comply with the provisions of the Loan and to cause all amounts received from the City in accordance with Section 3.01(a) to be applied to the payment of the Loan.

#### **SECTION 4.02 Remedies of the City.**

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

## **ARTICLE 5**

### **EVENTS OF DEFAULT AND REMEDIES**

#### **SECTION 5.01 Events of Default.**

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

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

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

#### **SECTION 5.02 Remedies of the CAFFM.**

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

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



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

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

## **ARTICLE 6**

### **THIRD-PARTY BENEFICIARY CONTRACT**

This Agreement is a third-party beneficiary contract and United Bank, Foley, Alabama (collectively with its successors and assigns, the "Beneficiary") as its interests appear in the Loan Documents is a third-party beneficiary of the covenants and agreements on the part of the City and the CAFFM contained herein as fully and completely as if it was a party signatory hereto.

## **ARTICLE 7**

### **PROVISIONS OF GENERAL APPLICATION**

#### **SECTION 7.01 Enforceability.**

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

#### **SECTION 7.02 Prior Agreements Cancelled.**

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

#### **SECTION 7.03 Counterparts.**

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

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

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

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

#### **SECTION 7.05 Notices.**

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

- |     |   |     |   |
|-----|---|-----|---|
| (1) | if to the CAFFM:  | (2) | if to the City:   |
|     | Coastal Alabama Farmers' and<br>Fishermen's Market, Inc.<br>407 East Laurel Avenue<br>P.O. Box 1750<br>Foley, Alabama 36535<br>Attn: Chairman |     | City of Foley, Alabama<br>City Hall<br>407 East Laurel Avenue<br>P.O. Box 1750<br>Foley, Alabama 36535<br>Attn: Mayor |

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

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

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

#### **SECTION 7.07 Amendments.**

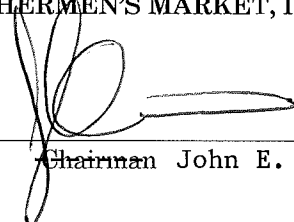
(a) This Agreement may be amended or supplemented only by an instrument (i) in writing duly authorized, executed and delivered by each party hereto and (ii) with the prior written consent of the Beneficiary.

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

[signature page follows]

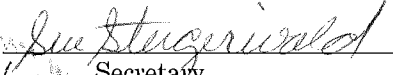
IN WITNESS WHEREOF, the CAFFM and the City have each caused this Agreement to be executed in its name, under seal, and the same attested, all by officers thereof duly authorized thereunto, and have caused this Agreement to be dated the date and year first above written.

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

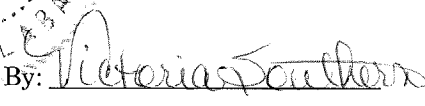
By   
Chairman John E. Koniar, President

SEAL

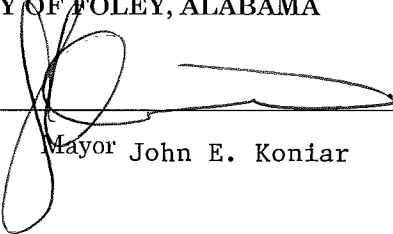
ATTEST:

  
Secretary

ATTEST:

  
City Clerk

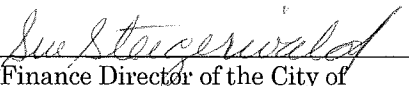
**CITY OF FOLEY, ALABAMA**

By:   
Mayor John E. Koniar

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**Registration Certificate**

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

  
Finance Director of the City of  
Foley, Alabama

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## EXHIBIT A

## CLOSED LINE OF CREDIT AGREEMENT

This CLOSED LINE OF CREDIT AGREEMENT is effective as of this 22nd day of January, 2016 (the "**Line of Credit Agreement**"), by and among COASTAL ALABAMA FARMERS' AND FISHERMAN'S MARKET, INC., an Alabama non-profit company organized in accordance with Section 501(c)(3) of the Internal Revenue Code (the "**Borrower**"); and UNITED BANK, an Alabama banking corporation (the "**Lender**"). A closed line of credit is hereby established in the amount of One Million and Four Hundred Thousand United States Dollars (\$1,400,000.00) for the benefit of the Borrower.

1. The Lender hereby establishes a closed line of credit in Borrower's favor in the amount of One Million and Four Hundred Thousand United States Dollars (\$1,400,000.00); provided however, that no provision of this Agreement shall be deemed to require the Lender to advance any sum of money at any time. When Borrower wants Lender to advance any sum of money hereunder, Borrower may request such an advance, and the Lender may advance the requested funds subject to the Lenders discretion.

2. The advances made pursuant to this Line of Credit Agreement will bear interest at the rate as determined pursuant to a certain unsecured subordinated promissory note (the "**Note**"), a copy of which is attached hereto and made a part hereof as Exhibit A.

3. The occurrence of one or more of the following events (herein called a "**Default**" or an "**Event of Default**") shall constitute a default by the Borrower hereunder, and under the Note, in addition to but not in limitation of any events which would cause a default under the terms and conditions of the Note:

(a) Default in the payment or performance of any liability or obligation of Borrower to Lender or of any covenant or liability contained or referred to herein, in the Note, or in any other note, instrument, document or agreement evidencing any obligation.

(b) The failure of Borrower to perform or to observe any of the provisions of any real estate mortgage, security agreement or other agreement or document now or hereafter evidencing or creating any security for the payment of the Note.

(c) Any representation or warranty of the Borrower in connection with this Line of Credit Agreement or any document executed in accordance herewith, or in pursuance hereof, shall be false on the date on which made.

(d) The failure by Borrower to pay, when due, any amount due under the Note or the failure by the Borrower to pay, when due, any obligation of Borrower to Lender.

(e) Borrower's insolvency, appointment of a receiver for all or a part of Borrower's property, the making of any assignment by Borrower for the benefit of creditors or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Borrower or upon the issuing of any writ of attachment by trustee process or otherwise or a restraining order or injunction affecting any of the Borrower's property; provided, however, if any such proceeding is commenced against the Borrower, the Borrower shall have thirty (30)

days in which to cause such proceeding to be dismissed.

(f) The insolvency of the City of Foley, Alabama.

(g) The admission in writing of a Borrower's insolvency or inability to pay debts generally as they become due, or upon any deterioration of the financial condition of the Borrower, any endorser or guarantor of this Line of Credit Agreement or the Note, which results in the Lender deeming itself, in good faith, insecure.

(h) Ninety (90) days after DEMAND is made pursuant to the Note, unless the Borrower has satisfied the Note in full.

(i) Any event not herein listed, but which would qualify as an Event of Default pursuant to the Note.

Any such event caused by, or occurring with regard to, any one or more persons constituting the "Borrower" shall be deemed to be so caused by (or occurring with regard to) the "Borrower."

If any Event of Default occurs, all obligations outstanding from the Borrower to the Lender, including obligations pursuant to this Line of Credit Agreement and/or the Note, shall immediately become due and payable without demand, presentment, protest or other notice of any kind, all of which are hereby expressly waived. In the event of such Event of Default, the Lender may proceed to enforce the payment of all obligations of Borrower to Lender and to exercise any and all of the rights and remedies afforded to Lender by law or under the terms of this Line of Credit Agreement or otherwise.

4. Borrower agrees to furnish to the Lender, upon demand, but not more than semi-annually, so long as indebtedness under the Line of Credit Agreement and the Note remains unpaid, a certified financial statement prepared by an independent accountant setting forth in reasonable detail the assets, liabilities, and net worth of the Borrower and certified to under oath by an officer of the Borrower. Such financial statements shall be sent to the Lender at its address listed above and shall be at the sole cost and expense of the Borrower.

5. This Line of Credit Agreement is supplementary to each and every other agreement between Borrower and Lender and shall not be so construed as to limit or otherwise derogate from any of the rights or remedies of Lender or any of the liabilities, obligations or undertakings of Borrower under any such agreement, nor shall any contemporaneous or subsequent agreement between Borrower and Lender be construed to limit or otherwise derogate from any of the rights or remedies of Lender or any of the liabilities, obligations or undertakings of Borrower hereunder unless such other agreement specifically refers to this Line of Credit Agreement and expressly so provides.

6. This Line of Credit Agreement and the covenants and agreements herein contained shall continue in full force and effect until all such obligations, liabilities and undertakings have been paid or otherwise satisfied in full. No delay or omission on the part of Lender in exercising any right hereunder shall operate as a waiver of such rights or any other

right and waiver on any one or more occasions shall not be construed as a bar to or waiver of any right or remedy of Lender on any future occasion. This Line of Credit Agreement is intended to take effect as a sealed instrument, shall be governed by and construed in accordance with the laws of the Alabama, shall be binding upon Borrower's legal representatives, successors and assigns, and shall inure to the benefit of Lender's successors and assigns.

7. The Borrower does hereby certify that any and all necessary resolutions that may be required to effectuate and validate the terms of this Line of Credit Agreement and the Note, have been duly made and adopted by the Borrower.

8. Lender may, without consent from or notice to Borrower, enter into a Participation Agreement with another lender to fund any advance, or any portion thereof, of this Line of Credit.

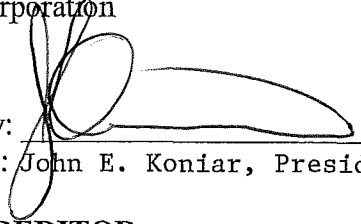
9. Borrower's access to the funds advanced pursuant to this Line of Credit Agreement shall terminate as of 5:00 p.m. central standard time on the 22nd day of January 2017. Afterwards, Borrower shall have no further access, and Lender shall have no obligation, to funds advanced pursuant to this Line of Credit Agreement.

*[Remainder of this page has been intentionally left blank. Signature page follows.]*

IN WITNESS WHEREOF, the parties have caused these presents to be executed as a contract under seal effective January 22nd, 2016.

**DEBTOR:**

COASTAL ALABAMA FARMERS' AND  
FISHERMAN'S MARKET, an Alabama non-profit  
corporation

By:   
Its: John E. Koniar, President

**CREDITOR:**

UNITED BANK, an Alabama banking corporation

By:   
Its: Senior Vice President



**UNSECURED SUBORDINATED LINE OF CREDIT PROMISSORY NOTE OF  
COASTAL ALABAMA FARMERS' AND FISHERMAN'S MARKET, INC.**

\$ 1,400,000.00

Foley, Alabama  
January 22, 2016

FOR VALUE RECEIVED, the undersigned **COASTAL ALABAMA FARMERS' AND FISHERMAN'S MARKET, INC.**, an Alabama non-profit corporation formed under Section 501(c)(3) of the Internal Revenue Service Code ("**Borrower**"), having an address at 407 East Laurel Avenue, Foley, Alabama 36535, promises to pay to the order of **UNITED BANK**, an Alabama banking corporation ("**Lender**"), having an office for payment at: 200 E. Nashville St., Atmore, Alabama 36502 (or such other place as the Lender may designate in writing), the principal sum of ONE MILLION FOUR HUNDRED THOUSAND AND 00/100 DOLLARS (\$1,400,000.00), or so much of that sum as may be advanced under this Promissory Note (hereinafter "Note" or "Promissory Note") by Lender pursuant to the Closed Line of Credit Agreement ("Line of Credit Agreement") agreed to by Borrower and Lender on the 22nd day of January 2016, with principal and interest thereon payable as specified in this Note. Capitalized terms used but not defined herein shall have the meanings assigned to such terms in the Mortgage and Security Agreement.

On July 11, 2014, prior to the issue of this Promissory Note, Borrower entered into a credit agreement with Pacesetter CDE X, LLC (the "July 11, 2014 credit agreement"). Borrower's payment of this Promissory Note is subordinated to the payment terms of the July 11, 2014 credit agreement. Exclusive of the July 11, 2014 credit agreement, this Promissory Note is not subordinated to the payment of any other debts or liabilities that have been incurred by Borrower.

1. **Rates of Interest.** The outstanding principal balance of this Promissory Note shall bear interest at a fixed rate of 2.94 PERCENT per annum from this Promissory Note's execution date through January 31, 2017. Beginning on February 1, 2017 and continuing for the following 180 months through January 31, 2032, the outstanding principal balance of this Promissory Note shall bear interest at a fixed rate of 3.60 PERCENT per annum. At all times, interest on the principal amount hereof and all other Obligations shall be computed on the basis of a 360-day year and shall be charged for the actual number of days elapsed during any month or other accrual period.

2. **Date and Time of Payment.** Commencing on March 1, 2016 and on the first day of each month thereafter through and until the Maturity Date (as defined below), Borrower shall pay

to Lender consecutive monthly installments of interest only in an amount equal to the Monthly Payment Amount. The "**Monthly Payment Amount**" shall equal interest only on the outstanding principal balance, calculated at an annual interest rate equal to the Interest Rate or the Default Rate, as applicable. The first Monthly Payment Amount shall include "stub" interest for the period commencing on the date hereof through and including February 29, 2016. Payments shall be delivered to United Bank at Post Office Box 8, Atmore, Alabama 36504 or at another address mutually agreed upon in writing by the parties.

All accrued and unpaid interest and the unpaid principal balance hereof are due and payable on the earlier to occur of (a) the Maturity Date or (b) the date of termination of this Promissory Note, whether by its terms, by prepayment, or by acceleration. If any payment of principal or interest on this Promissory Note shall become due and payable on a day other than a business day, such payment shall be made on the next succeeding business day. All amounts outstanding under this Promissory Note shall constitute Borrower's obligations and shall include, without limitation, all principal, interest (including all interest which accrues after the commencement of any case or proceeding by or against Borrower in bankruptcy whether or not allowed in such case or proceeding), expenses, reasonable attorneys' fees and any other sum chargeable to Borrower hereunder and owing to Lender under this Promissory Note (all such obligations and all other obligations of Borrower under this Promissory Note being hereinafter referred to as the "**Obligations**").

3. **Use of Proceeds.** On January 22, 2016, Lender shall make available a line of credit in the sum of U.S. \$1,400,000 to the Borrower for transfer to Borrower by wire transfer(s). BORROWER REPRESENTS AND WARRANTS THAT THE LOAN EVIDENCED BY THIS PROMISSORY NOTE IS FOR COMMERCIAL PURPOSES, AND NOT FOR PERSONAL, HOUSEHOLD OR CONSUMER PURPOSES.

4. **Default Rate.** Notwithstanding Section 1, after the occurrence of any Event of Default and for so long as such Event of Default continues, and in any event from and after the Maturity Date, all outstanding principal under this Promissory Note shall bear interest until paid in full at a rate of interest equal to the lesser of (i) eighteen percent (18%) per annum or (ii) the maximum rate permitted by Alabama law (the "**Default Rate**").

5. **Maturity.** To the extent not sooner due and payable in accordance with this Promissory Note, the Obligations shall be due and payable on January 31, 2032 (the "**Maturity Date**"). Upon

payment of the Obligations hereunder in full by or on behalf of Borrower, this Promissory Note shall be deemed paid in full.

6. **Prepayment.** This Promissory Note may be prepaid, in whole or in part at any time, without the payment of a premium, provided that (i) Borrower gives the holder of this Promissory Note written notice of Borrower's intention to prepay this Promissory Note or a portion thereof and (ii) such prepayment is accompanied by payment of all interest accrued hereunder and unpaid through the date of prepayment.

7. **Application of Payments.** All payments shall be made by Borrower in lawful money of the United States without setoff, counterclaim or any other deduction whatsoever and shall be applied to amounts then due and payable in the following order: (a) to Lender's costs and expenses reimbursable in connection herewith; (b) to interest accrued on the outstanding principal balance of this Promissory Note; (c) to the principal amount hereof; and (d) to all other Obligations, or in such other manner as Lender shall determine in its sole and exclusive discretion.

8. **Representations and Warranties.** Borrower makes the following representations and warranties to Lender, which representations and warranties are true, correct, and complete as of the date hereof.

(a) **Due Organization and Qualification.** Borrower is duly organized and validly existing and in good standing under the laws of Alabama and Section 501(c)(3) of the Internal Revenue Code. Borrower is qualified to do business in any other jurisdiction where it is required to be so qualified, and has all requisite power and authority to (i) own its assets and carry on its business, and (ii) execute, deliver and perform the Obligations.

(b) **Due Authorization; No Conflict.** The execution, delivery, and performance by Borrower of this Promissory Note have been duly authorized by all necessary action on the part of Borrower. This Promissory Note has been duly executed and delivered by Borrower. The execution, delivery, and performance by Borrower of this Promissory Note and the consummation of the transactions contemplated hereby, do not and will not (i) violate any provision of federal, state, provincial or local law or regulation applicable to Borrower, its organizational documents, or any order, judgment, or decree of any court or other governmental authority, (ii) conflict with, result in a breach or termination of, or constitute (with any required due notice or lapse of time or both) a default under any material contractual obligation of Borrower, (iii) result in or require the creation or imposition of any lien of any nature whatsoever upon any properties or assets of

Borrower or (iv) require any approval of any of Borrower's stockholders or any approval or consent of any other person or entity, other than consents or approvals that have been obtained and that are still in force and effect. The execution, delivery, and performance by Borrower of this Promissory Note do not and will not require any registration with, consent, or approval of, or notice to, or other action with or by, any governmental authority, other than consents or approvals that have been obtained and that are still in force and effect. This Promissory Note when executed and delivered by Borrower will be the legally valid and binding obligation of Borrower, enforceable against Borrower in accordance with its term, except as enforcement may be limited by (A) the Subordination Agreement, (B) equitable principles or (C) bankruptcy, insolvency, reorganization, moratorium, or similar laws relating to or limiting creditors' rights generally, but (subject to the limitations set forth in the immediately preceding clauses (A) and (B)) such unenforceability will not render this Promissory Note invalid as a whole or substantially interfere with realization of the principal benefits provided thereby.

(c) **No Litigation.** No litigation, investigation or proceeding of or before any arbitrator or government authority is (i) pending or, to the knowledge of Borrower (after due and diligent inquiry), threatened with respect to this Promissory Note or any of the transactions contemplated hereby or (ii) pending or, to the knowledge of Borrower (after due and diligent inquiry), threatened by or against Borrower, its properties or revenues which, if adversely determined, would have a material adverse effect on its business, operations, property or financial condition, when taken as a whole.

(d) **No Default.** Borrower is not in default under or with respect to any contractual obligation and no event of default has occurred or is continuing with respect to Borrower.

(e) **Taxes.** Borrower has filed or caused to be filed all tax returns required to be filed by it and has paid all taxes due and payable on said returns or on any assessments made against Borrower or any of its property. All other taxes, fees or other charges on Borrower or any of its property by any governmental authority have been paid and no tax liens have been filed.

9. **Covenants of Borrower.** As of the date hereof and so long as the Obligations hereunder, or any portion thereof, shall be outstanding:

(a) Borrower will preserve and keep in force and effect, its corporate existence and all licenses and permits necessary to the proper conduct of its business;

(b) Borrower will promptly pay and discharge, all taxes, assessments, charges or levies imposed upon Borrower, or upon or in respect of all or any part of the property or business of Borrower, all trade accounts payable in accordance with usual and customary business terms and all claims for work, labor or materials, which if unpaid might become a lien or charge upon any property of Borrower; provided, Borrower shall not be required to pay such tax, assessment, charge, levy, account payable or claim if (i) the validity, applicability or amount thereof is being contested in good faith by appropriate action or proceeding which will prevent the forfeiture or sale of any property of Borrower, and (ii) Borrower shall set aside on its books, adequate reserves with respect thereto; and

(c) Borrower will promptly comply with all laws, ordinances or governmental rules and regulation to which it is subject, the violations of which would materially or adversely affect its properties, business, prospects, profits or condition or would result in any material lien or charge upon any property of Borrower.

10. **Events of Default; Remedies; Acceleration.**

(a) The occurrence of any one or more of the following events (regardless of the reason therefor) shall constitute an **"Event of Default"** hereunder:

(i) Borrower fails to make any payment of the outstanding principal balance of this Promissory Note, any payment of interest due hereunder, or any payment of any of the other Obligations as and when due and payable, and such failure continues for a period of 5 days after written notice thereof from Lender;

(ii) Any representation or warranty of Borrower made in this Promissory Note or in the Subordination Agreement proves to have been false or incorrect in any material respect;

(iii) Borrower shall violate any material provision of this Promissory Note or the Subordination Agreement which violation continues for a period of 30 days after written notice thereof from Lender;

(iv) A case or proceeding is commenced against Borrower seeking a decree or order (A) under Title 11 of the United States Bankruptcy Code (11 U.S.C. §§101 *et seq.*, as amended, and any successor statute, the **"Bankruptcy Code"**), or any other applicable federal, state or foreign bankruptcy or other similar law, rule or regulation, (B) appointing a custodian, receiver, liquidator, assignee, trustee or sequestrator (or similar official) for Borrower or for any material part of

Borrower's assets (or for any subsidiary or any material part of a subsidiary's assets), or (C) ordering the winding-up or liquidation of the affairs of Borrower or any subsidiary, and such case or proceeding shall remain undismissed or unstayed for sixty (60) days or more or a decree or order granting the relief sought in such case or proceeding shall be entered by a court of competent jurisdiction; or

(v) Borrower, without the prior written consent of Lender (A) files a petition seeking relief under the Bankruptcy Code, or any other applicable federal, state or foreign bankruptcy or other similar law, rule or regulation, (B) consents to or fails to contest in a timely and appropriate manner the institution of proceedings thereunder or the filing of any such petition or the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee or sequestrator (or similar official) for Borrower or for any material part of Borrower's assets, (C) makes an assignment for the benefit of creditors, (D) takes any action in furtherance of the foregoing or (E) admits in writing its inability to pay its debts as such debts become due.

(vi) If either of the following conditions occur, as determined by the Lender in the exercise of its reasonable discretion: (A) Borrower is unable in the ordinary course of business to pay its debts as they are due; or (B) the sum of Borrower's debts exceeds the fair market value of all of Borrower's assets and property. Prior to a default being declared under this sub-paragraph, Lender shall provide Borrower written notice of Lender's determination. Borrower shall, thereafter, have thirty (30) days to provide evidence of its ability to pay its debts satisfactory to Lender. A default under this sub-paragraph shall only then occur if, subsequent to the conclusion of such 30-day period and after consideration of any evidence provided by Borrower, Lender continues to believe, in the exercise of its reasonable discretion, that Borrower is in imminent danger of being unable to timely pay any amounts due to Lender under this Promissory Note as such amounts become due; or

If Borrower shall default on any material obligations of Borrower or an event of default shall occur with respect to any material agreement of Borrower, whether such agreement shall be in effect or effective subsequent to this Promissory Note.

(b) Subject to the terms of the July 11, 2014 credit agreement, immediately upon the occurrence of any Event of Default, Lender may (i) in its sole and absolute discretion elect to accelerate and declare as immediately due any and all Obligations owed hereunder; (ii) proceed to protect and enforce Lender's rights by suit in equity, action at law and/or other appropriate proceeding, either for specific performance of any covenant or condition contained in this

Promissory Note or in any instrument or document delivered to Lender pursuant to this Promissory Note, or in aid of the exercise of any power granted in this Promissory Note or any such instrument or document, and (iii) proceed to enforce payment of the Obligations in such manner as Lender may elect and to realize upon any and all rights of Lender hereunder. All of Lender's rights hereunder shall be cumulative. Lender shall have all other rights and remedies not inconsistent herewith as provided under applicable law or in equity, and no exercise by Lender of one right or remedy shall be deemed an election, and no waiver by Lender of any Event of Default shall be deemed a continuing waiver. No delay by Lender shall constitute a waiver, election or acquiescence by it and no waiver in one circumstance shall be deemed to be a waiver in any other.

(c) In the event that the Obligations hereunder shall be paid in full by or on behalf of Borrower, after the acceleration of this Promissory Note but prior to the Maturity Date, then this Promissory Note shall be deemed paid in full.

11. **Certain Rights and Waivers.** To the maximum extent permitted by applicable law, Borrower hereby expressly waives: (a) all presentments, demands for performance, notices of nonperformance (except to the extent expressly required by this Promissory Note), protests, notices of protest and notices of dishonor; (b) any requirement of diligence or promptness on the part of Lender in the enforcement of its rights under this Promissory Note; and (c) any defense (other than indefeasible payment in full) which it may now or hereafter have with respect to its liability under this Note. No release of any person liable for payment of the Obligations, no extension of time for payment of this Promissory Note or any installment hereof, and no alteration, amendment or waiver of any provision of the other documents executed in connection herewith made by agreement between Lender and any other person or party shall release, modify, amend, waive, extend, change, discharge, terminate or affect the liability of Borrower, and any other person or party who may become liable under the documents executed in connection herewith, for the payment of all or any part of the Obligations.

12. **Assignments.** Borrower may not assign or transfer any of its rights or obligations hereunder without the express, written consent of Lender first had and obtained, which consent may be granted or withheld in Lender's reasonable discretion. Any such purported assignment or transfer by Borrower without the express, written consent of Lender shall be null and void *ab initio*.

13. **Costs and Expenses.** Borrower agrees to pay all reasonable costs and expenses of Lender, including without limitation all reasonable fees and disbursements of counsel; advisors,

consultants, examiners and appraisers for Lender, in connection with (a) the issuance of this Promissory Note and advancement of the principal amount hereunder (which fees and disbursements associated with the origination of this Promissory Note shall not exceed \$5,000), (b) any enforcement (whether through negotiations, legal process or otherwise) of this Promissory Note, (c) any workout or restructuring of this Promissory Note during the pendency of one or more Events of Default, and (d) any bankruptcy case or proceeding of Borrower or any appeal thereof.

14. **Governing Law.** The validity of this promissory note, the construction, interpretation, and enforcement hereof, and the rights of the borrower and lender 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 reference to conflicts of law principles except to the extent necessary to enforce this choice of law provision.

15. **Notices.** All communications hereunder shall be in writing and shall be deemed to be duly given and received (a) upon delivery if delivered personally, (b) upon confirmed transmittal if by facsimile, (c) on the next business day if sent by nationally recognized overnight courier, or (d) four (4) business days after mailing if mailed by prepaid certified or registered mail, return receipt requested, in each case to the appropriate notice address or facsimile number.

16. **Independent Arm's Length Transaction.** It is understood and agreed that this Promissory Note and the transactions contemplated hereby and thereby were negotiated in an arms-length transaction separate and distinct from any other transaction or contractual obligations and are independent of any transaction or transactions between Borrower, on the one hand, and Lender and any of its affiliates or related entities on the other hand. Borrower further agrees that the contractual obligations of Borrower hereunder are in no way dependent or conditioned upon any other agreements, contracts or transactions whatsoever unless expressly stated herein.

17. **Parties.** Nothing herein is intended to create or stipulate any benefit for any third party.

18. **Further Assurances.** Upon request of Lender, Borrower will promptly correct any defects, errors, or omissions in the execution or acknowledgment of this Promissory Note, and execute, acknowledge, and deliver such other assurances and instruments as shall, in the opinion of Lender, be necessary to fulfill the terms of this Promissory Note.

19. **Severability.** In the event that any one or more of the provisions contained in this Promissory Note shall for any reason be held invalid, illegal, or unenforceable in any respect, such



invalidity, illegality, or unenforceability shall not affect any other provision of this Promissory Note.

20. **No Waiver by Lender.** No course of dealing on the part of Lender, its officers or employees, nor any failure or delay by Lender with respect to exercising any of its rights or remedies hereunder, nor any extension of time to Borrower to cure any Event of Default hereunder, shall operate as a waiver thereof, nor shall the exercise or partial exercise of any such right or remedy preclude the exercise of any other right or remedy.

21. **Time of the Essence.** Time shall be of the essence with respect to all provisions of this Promissory Note.

22. **Amendment.** This Promissory Note cannot be changed, modified, amended, waived, extended, discharged or terminated orally or by estoppel or waiver, regardless of any claimed partial performance referable thereto, or by any alleged oral modification or by any act or failure to act on the part of Borrower or Lender.

23. **Construction.** If any paragraph, clause or provision of this Promissory Note is construed or interpreted by a court of competent jurisdiction to be void, invalid or unenforceable, such voidness, invalidity or unenforceability will not affect the remaining paragraphs, clauses and provisions of this Promissory Note, which shall nevertheless be binding upon the parties hereto with the same effect as though the void or unenforceable part had been severed and deleted.

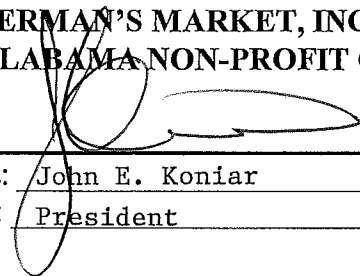
24. **JURY WAIVER.** THE BORROWER HEREBY WAIVES THE RIGHT TO ANY JURY TRIAL IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM BROUGHT BY LENDER OR BORROWER AGAINST THE OTHER.

25. **JURISDICTION.** BORROWER HEREBY IRREVOCABLY SUBMITS ITSELF TO THE JURISDICTION AND VENUE OF THE STATE AND FEDERAL COURTS OF ALABAMA, AND AGREES AND CONSENTS THAT SERVICE OF PROCESS MAY BE MADE UPON IT IN ANY LEGAL PROCEEDING RELATING TO THIS PROMISSORY NOTE IN ACCORDANCE WITH THE LAWS OF SUCH JURISDICTION.

[End of text; signature on next page]

IN WITNESS WHEREOF, the undersigned has executed this Unsecured Subordinated Line of Credit Promissory Note as of the date first written above.

**COASTAL ALABAMA FARMERS' AND  
FISHERMAN'S MARKET, INC.,  
AN ALABAMA NON-PROFIT CORPORATION**

By:   
NAME: John E. Koniar  
TITLE: President

STATE OF ALABAMA

COUNTY OF BALDWIN

I, Kathryn Taylor, a Notary Public for said County and State, do hereby certify that John E. Koniar, whose title is President for Coastal Alabama Farmers' and Fisherman's Market, Inc., an Alabama non-profit corporation, who has signed the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Witness my hand and official stamp or seal, this 22 day of January, 2016

Kathryn Taylor

My Commission Expires:



**EXHIBIT B**

**PAYMENT REQUEST AND CERTIFICATE**

**TO:** City of Foley, Alabama

**RE:** Funding Agreement dated as of \_\_\_\_\_, 2014 (the "Agreement") by and between the City of Foley, Alabama and the Coastal Alabama Farmers' and Fishermen's Market, Inc. (the "CAFFM")

The CAFFM under the Funding Agreement hereby:

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

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

(a) shall be applied to obligations under the Loan in the amount of \$\_\_\_\_\_;

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

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

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

By \_\_\_\_\_

Its \_\_\_\_\_

CERTIFICATE OF SECRETARY

The undersigned duly elected, qualified and acting Secretary of The City of Foley hereby certifies that: (1) the above and foregoing pages constitute a complete, verbatim and compared copy of excerpts from all those parts of the minutes of a meeting of the City Council of the City duly held on \_\_\_\_\_, 2015, pertaining to the matters therein referred to, the original of which is on file and of record in the minute book of the City Council in my custody; (2) the resolutions set forth in such excerpts are complete, verbatim and compared copies of such resolutions as introduced and adopted by the City Council on such date and have not been repealed, amended, or changed; and (3) notice was posted at the place of meeting in the City of Foley.

IN WITNESS WHEREOF, I have hereunto set my hand as Secretary of the City and have affixed the official seal of the City on \_\_\_\_\_, 2015.

\_\_\_\_\_  
Secretary of The City of Foley

SEAL



516 S. McKenzie St.  
P. O. Box 1885  
Foley, AL 36536

Tel 251.943-2020  
Fax 251.9643-2030

www.unitedbank.com  
Member FDIC

December 15, 2015

Coastal Alabama Farmers and Fishermen's Market  
407 East Laurel Avenue  
Foley, Alabama 36535

United Bank is pleased to respond to your request associated with proposed infrastructure improvements for the Coastal Alabama Farmers and Fishermen's Market. While this term sheet is not a commitment it will provide you with the terms and conditions under which a commitment may be forthcoming. The following would apply:

Borrower: Coastal Alabama Farmers and Fishermen's Market

Pledge Agreement /  
Funding Agreement: The City of Foley

Amount: Up to one million four hundred thousand (\$1,400,000.00) dollars

Purpose: To provide funds for the improvement of facilities located at 410 East Section Avenue, Foley, Alabama 36535

Repayment: Construction Period: Closed end construction line of credit with interest only due monthly  
Term Period: Principal and interest payments due monthly on a fifteen year amortization

Interest Rate: Construction Period: The interest rate would be 2.494% fixed for the term of the facility. Interest will accrue on an actual /360 day year basis  
Term Period: The interest rate would be 3.60% fixed for the term of the facility. Interest will accrue on an actual /360 day year basis

Facility: The credit facility will be unsecured. The credit facility will be subordinate to the Loan(s) as defined in certain Credit Agreement by and between Pacesetter CDEX, LLC and Coastal Alabama Farmers' and Fisherman's Market dated July 11, 2014.

Documentation: Meeting minutes authorizing the transaction and city attorney opinion letter verifying the validity of the debt to be provided to Bank at least twenty four (24) hours prior to closing for review, along with any other documentation deemed necessary by the Bank.

Fees: There will be no bank fees associated with this transaction. Fees will be limited to counsel charges including but not limited to opinion letter, document preparation fee, etc.

This term sheet is not a commitment but will stipulate terms under which a commitment may be forthcoming based on credit approval. We appreciate the opportunity to present this proposal. If not accepted, the terms discussed herein will become null and void at the Bank's discretion on December 18, 2015. This expressed interest does not constitute a formal commitment for financing. If there are any questions or if you would like to further discuss any of the above terms or conditions please contact me at 251-943-2026.

Best regards,

David F. Stewart, Jr.  
Senior Vice President/Commercial Loan Officer  
251-943-2020 voice  
251-943-2030 fax  
[david.stewart@unitedbank.com](mailto:david.stewart@unitedbank.com)

Accepted by:

Date 12/15/15