

CITY OF ANNISTON
May 18, 2021
5:30 P.M.

- **INVOCATION**
- **PLEDGE OF ALLEGIANCE**
- **CALL TO ORDER**
- **ROLL CALL**
- **READING/APPROVAL OF MINUTES OF PREVIOUS MEETING**
 - May 04, 2021 Regular meeting
- **ADDITIONS/DELETIONS TO THE AGENDA**
- **ADOPTION OF AGENDA**

I. BOARD CONFIRMATION

- (a)** Alexis Wise – Main Street Board

II. CONDUCT PUBLIC HEARING - Suspended during COVID-19

Speaking to a Public Hearing Item

In the interest of time and to ensure the fairness of all persons who appear before the City Council to speak for or against a public hearing item, speakers will be limited to three (3) minutes each to address City Council except as described herein. One speaker for the Petitioner may address the City Council for no more than 10 minutes, unless extended by the Mayor. In an effort help the City Council and the general public to better understand the issues, the Mayor may request that a City staff member address the City Council from the podium. Speakers from the general public may only speak when recognized by the Mayor during the public hearing. Speakers will be asked to come to the podium to address the City Council for three (3) minutes and they shall state their name and resident address for the record. Speakers addressing City Council on a public hearing item should coordinate comments in order to respect City Council's time constraints. Groups should select a spokesperson to present the major points that summarize their position and opinions. Speakers are urged to be brief and non-repetitive with their comments. Comments shall specifically address the public hearing item before the City Council, and the speaker shall maintain appropriate tone and decorum when addressing the City Council. City Council may ask questions of the applicant, speakers, or staff during these proceedings only for the purpose of clarifying information. The speaker shall not direct derogatory comments to any individual, organization, or business. At the conclusion of the three (3) minute time period, the speaker will be notified that his/her time has elapsed and the next speaker will be recognized to come forward to the podium and address the City Council. Once the public hearing is closed on an item, there will be no further opportunity for formal or informal public input at a City Council meeting.

- (a)** To receive public comments regarding a Project Development Agreement between the City and Jack's Family Restaurants, LP

III. UNFINISHED BUSINESS – None

IV. CONSENT AGENDA

- (a)** Resolution appointing member(s) to the Main Street Anniston Board
- (b)** Resolution authorizing the execution and delivery of an Equipment Lease/Purchase Agreement with Altec Capital Services, L.L.C.
- (c)** Motion to award the bid for a Mechanics Utility/Crane Truck to Ingram Equipment Company in the amount of \$152,561.85
- (d)** Motion to approve a Retail Beer (Off Premises Only) and Retail Table Wine (Off Premises Only) alcohol license application for Duaa Saeed LLC d/b/a Express Market 13 located at 1500 Quintard Avenue within the corporate city limit

V. MOTIONS

- (a)** Motion to appoint _____ to the Health Care Authority Place #5 with a term to expire May 31, 2026 (See attached HCA Resolution for nominations)

VI. RESOLUTIONS

- (a)** A resolution authorizing the issuance of the City's Series 2021-A Limited Obligation Certificate of Indebtedness with regard to the Project Development Agreement by and between the City of Anniston, Alabama and Jack's Family Restaurants, LP
- (b)** A resolution authorizing an Economic Development Agreement between the City of Anniston, Alabama and Jack's Family Restaurants, LP

VII. ADDITIONAL OR OTHER MATTERS THAT MAY COME BEFORE COUNCIL

VIII. RECEIVE INFORMAL PUBLIC COMMENTS – Suspended during COVID-19

IX. RECEIVE FORMAL PUBLIC COMMENT – Suspended during COVID-19

COUNCIL COMMENTS – Suspended during COVID-19

ADJOURNMENT

MINUTES

Anniston, Alabama

May 5, 2021

The City Council of the City of Anniston, Alabama, met in Regular Session in Room B at the Anniston City Meeting Center in the City of Anniston, Alabama, on Wednesday, May 5, 2021, at approximately 12:32 o'clock p.m.

Jack Draper, Mayor, prayed the Invocation.

Jack Draper, Mayor, led the Pledge of Allegiance to the Flag.

Mayor Draper called the meeting to order. On call of the roll, the following Council Members were found to be present: Council Members Jenkins, Roberts, Smith, Harris, and Draper; absent: none. A quorum was present and the meeting opened for the transaction of business.

David Arnett, Acting City Manager, was present.

Bruce Downey, City Attorney, was present.

Council Member Smith made a motion to waive the reading of and approve the minutes of the April 20, 2021 regular meeting. The motion was seconded by Council Member Roberts and on call of the roll the following vote was recorded: ayes: Council Member Roberts, Smith, Harris, and Draper; abstentions: Council Member Jenkins; nays: none. The motion carried and the April 20, 2021 regular meeting minutes were approved.

Mayor Draper made a motion to adopt the agenda with the deletions: of a public hearing to receive public comments over-ruling objections to the abatement of identified nuisances caused by unsafe buildings, structures, or construction(Group 2021-02 Unsafe Structures) and a resolution over-ruling objections to the abatement of identified nuisances caused by unsafe buildings, structures, or construction (Group 2021-02 Unsafe Structures); and the additions: of a motion to approve the purchase of one (1) 2022 Mack Pinnacle 64T Day cab for Public Works from Nextran Corporation in the amount of \$41,396.00 and a resolution declaring various vehicles and pieces of equipment as surplus and authorizing their sale to the consent agenda . The motion was seconded by Council Member Smith and on call of the roll the following vote was recorded: ayes: Council Member Jenkins, Roberts, Smith, Harris, and Draper; nays: none. The motion carried and the amended agenda was adopted.

Mayor Draper made a motion to approve the consent agenda:

- (a) Resolution authorizing reimbursements to city officials for expenses incurred while traveling away from the City (21-R-34)
- (b) Resolution declaring a reported condition to be a public nuisance Group 2021-03 Grass/Debris/Vehicles (21-R-35)
- (c) Motion to award the bid for the purchase of one (1) Leaf Vacuum Machine to Bonnell Industries Inc., in the amount of \$48,556.00
- (d) Motion to award the bid for the purchase of one (1) Backhoe Loader to Warrior Tractor and Equipment in the amount of \$85,600.00

(e) Motion to reject the bid for the purchase of two (2) Shutter Loaders from Environmental Products Group

(f) Motion to approve the purchase of one (1) 2022 Mack Pinnacle 64T Daycab for Public Works from Nextran Corporation in the amount of \$41,396.00

(g) Resolution declaring various and pieces of equipment as surplus and authorizing their sale (21-R-36)

The motion was seconded by Council Member Harris and on call of the roll the following vote was recorded: ayes: Council Member Jenkins, Roberts, Smith, Harris, and Draper; nays: none. The motion carried and the consent agenda was approved.

Mayor Draper introduced an ordinance Amending Section 15.49 of The Code of Ordinance of the City of Anniston Alabama designating an alley as one-way in the direction indicated (1st Reading) (21-O-5).

Council Member Jenkins made a motion to read the ordinance Amending Section 15.49 of The Code of Ordinance of the City of Anniston Alabama designating an alley as one-way in the direction indicated by title only. The motion was seconded by Council Member Smith.

Mayor Draper opened a public hearing to receive public comment on reading the ordinance Amending Section 15.49 of The Code of Ordinance of the City of Anniston Alabama designating an alley as one-way in the direction indicated by title only. No one spoke. Mayor Draper closed the public hearing.

And on call of the roll the following vote was recorded: ayes: Council Member Jenkins, Roberts, Smith, Harris, and Draper; nays: none. The motion carried and the ordinance was read by title only.

Mayor Draper read Ordinance 21-O-5 by title only.

Council Member Smith made a motion for unanimous consent for immediate consideration of Ordinance 21-O-5. The motion was seconded by Council Member Harris and on call of the roll the following vote was recorded: ayes: Council Member Jenkins, Roberts, Smith, Harris, and Draper; nays: none. The motion carried.

Council Member Jenkins made a motion for passage and adoption of Ordinance 21-O-5. The motion was seconded by Council Member Harris and on call of the roll the following vote was recorded: ayes: Council Member Jenkins, Roberts, Smith, Harris, and Draper; nays: none. The motion carried and Ordinance 21-O-5 was passed and adopted.

Mayor Draper introduced an ordinance amending section 15.57 of The Code of Ordinances of The City of Anniston, Alabama adding four-way stop intersection (1st Reading)(21-O-6).

Council Member Jenkins made a motion to read the ordinance amending section 15.57 of The Code of Ordinances of The City of Anniston, Alabama adding four-way stop intersection by title only. The motion was seconded by Council Member Smith.

Mayor Draper opened a public hearing to receive public comment on reading the ordinance amending section 15.57 of The Code of Ordinances of The City of Anniston, Alabama adding four-way stop intersection by title only. No one spoke. Mayor Draper closed the public hearing.

And on call of the roll the following vote was recorded: ayes: Council Member Jenkins, Roberts, Smith, Harris, and Draper; nays: none. The motion carried and the ordinance was read by title only.

Mayor Draper read Ordinance 21-O-6 by title only.

Council Member Harris made a motion for unanimous consent for immediate consideration of Ordinance 21-O-6. The motion was seconded by Council Member Roberts and on call of the roll the following vote was recorded: ayes: Council Member Jenkins, Roberts, Smith, Harris, and Draper; nays: none. The motion carried.

Council Member Harris made a motion for passage and adoption of Ordinance 21-O-6. The motion was seconded by Council Member Roberts and on call of the roll the following vote was recorded: ayes: Council Member Jenkins, Roberts, Smith, Harris, and Draper; nays: none. The motion carried and Ordinance 21-O-6 was passed and adopted.

Mayor Draper introduced an ordinance amending section 15.58 of the Code of Ordinances of The City of Anniston, Alabama removing a two-way stop intersection (1st Reading) (21-O-7).

Council Member Jenkins made a motion to read the ordinance amending section 15.58 of the Code of Ordinances of The City of Anniston, Alabama removing a two-way stop intersection by title only. The motion was seconded by Council Member Smith.

Mayor Draper opened a public hearing to receive public comment on reading the ordinance amending section 15.58 of the Code of Ordinances of The City of Anniston, Alabama removing a two-way stop intersection by title only. No one spoke. Mayor Draper closed the public hearing.

And on call of the roll the following vote was recorded: ayes: Council Member Jenkins, Roberts, Smith, Harris, and Draper; nays: none. The motion carried and the ordinance was read by title only.

Mayor Draper read Ordinance 21-O-7 by title only.

Council Member Smith made a motion for unanimous consent for immediate consideration of Ordinance 21-O-7. The motion was seconded by Council Member Jenkins and on call of the roll the following vote was recorded: ayes: Council Member Jenkins, Roberts, Smith, Harris, and Draper; nays: none. The motion carried.

Council Member Roberts made a motion for passage and adoption of Ordinance 21-O-7. The motion was seconded by Council Member Jenkins and on call of the roll the following vote was recorded: ayes: Council Member Jenkins, Roberts, Smith, Harris, and Draper; nays: none. The motion carried and Ordinance 21-O-7 was passed and adopted.

There being no further business to come before the council at that time Mayor Draper made a motion that the meeting be adjourned. The motion was seconded by Council Member Harris; and on call of the roll, the following vote was recorded: ayes: Council Members Jenkins, Roberts, Smith, Harris, and Draper; nays: none. The motion carried and the meeting was adjourned at approximately 12:43 o'clock p.m.

BOARD CONFIRMATIONS

City of Anniston
BOARDS & COMMISSIONS
Application Form

Applicants are strongly urged to attend several meetings of a board prior to applying

Name of board or commission: Main Street Anniston

Your name: Alexis Wise Home Phone #: [REDACTED]

Street address: [REDACTED] City: [REDACTED] Zip Code: [REDACTED]

Mailing address (if different): _____

Employer: Anniston City Schools / Anniston High School

Your position: Principal Office Phone #: [REDACTED]

My primary residence is within the Anniston city limits: Yes _____ No ✓

If no, I reside within Calhoun County: Yes _____

Have you previously serve on any city board? If so, which board: NO

Are you aware of any potential conflicts of interest that may arise during your service on this board (i.e., property interest, business interest, etc.)? If so, please explain below: Potential conflicts of interest do not preclude appointments.

NO

Please indicate the area(s) of expertise that you can bring to the above board(s), and then list education, experience, reasons for your interest, and other factors that support your interest in serving. **Please use additional sheets if necessary.**

My area of expertise would be with management and organization. Bachelor of Science, Master of Science and Educational Specialist degree in Secondary Education ELA, from Jacksonville State University and a Master's Certification in Instructional Leadership from The University of Alabama. Because I am the Principal of Anniston High School, I have a vested interest in seeing the community succeed and want to do what I can to assist in that success. I am a firm believer that we are all in it together!

Return to:

Myra Bushard
Office of the City Manager
P.O. Box 2168
Anniston, AL 36202

E-Mail: citymanager@anniston.al.gov
Telephone: 256-231-7705
Fax: 256-236-7632

Signature: Alexis Wise

Date: 4/20/2021

Email: [REDACTED]

Fax #: _____

PUBLIC HEARING

CITY OF ANNISTON, ALABAMA NOTICE OF PROPOSED ACTION AT PUBLIC MEETING

Notice is hereby given that on **May 18, 2021** at **5:30 P.M.**, Central Time, at the Anniston City Meeting Center, 1615 Noble St, Anniston, Alabama, the City Council of the City of Anniston, Alabama (the “City”) will hold a meeting, which will constitute a public meeting, to consider, discuss, vote upon, and take other action authorizing and approving a Project Development Agreement between the City and Jack’s Family Restaurants, LP (“Jack’s”), under which Jack’s will acquire property, construct and operate a Restaurant within the corporate limits of the City and the City will assist in the form of a sales tax rebate of sixty percent (60%) of the currently unobligated sales taxes generated by the Restaurant, for a period of no more than ten (10) years or until a total rebate has been delivered of \$900,000.00 (whichever occurs first) for the purpose of promoting the development of commercial property within the City Limits of Anniston which is projected to create a significant number of full and part time jobs. The City believes that the Restaurant development together with the provision of the assistance will have at least the following public benefits: promote and continue economic and industrial development within the City, increase the City’s tax revenue, provide additional employment opportunities for the City’s citizens and otherwise promote the health, welfare, and prosperity of the citizens of the City. Further, the City will seek to determine at the public meeting whether the expenditure of public funds as described in this notice serves a valid and sufficient public purpose, notwithstanding any incidental benefit accruing to any private entity or entities.

Notice of this public meeting is being published pursuant to the requirements of Section 94.01 of the Constitution of Alabama of 1901 (also known as Amendment 772 to the Alabama Constitution of 1901), as amended, and all other applicable laws, to the extent applicable.

THE CITY COUNCIL OF THE CITY OF ANNISTON, ALABAMA

CONSENT AGENDA

RESOLUTION NUMBER 21-R-___

A RESOLUTION APPOINTING MEMBER(S) TO MAIN STREET ANNISTON BOARD

WHEREAS, the Council has adopted Ordinance No. 14-O-13, an ordinance amending Division 1, Article XI, Chapter 2 of the Code of Ordinances for the City of Anniston, Alabama Regulating Boards, Commissions and Authorities, in order to, among other things, assign the positions on the City's boards, commissions and authorities to nominations by specific Council Ward Representatives or to the Office of the Mayor so that those who are appointed to serve more fairly and equitably represent the citizenry of the City and to simplify and clarify to Council's nomination and appointment process;

WHEREAS, the Council has adopted a schedule of nominations to govern appointments to the Main Street Anniston Board;

WHEREAS, the Council desires to make certain appointments to said Board in accordance with the previously adopted Schedule of Nominations;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Anniston, Alabama as follows:

Section 1. The City Council of the City of Anniston does hereby appoint those persons identified in the Schedule of Nominations for the Main Street Anniston Board attached hereto as Exhibit A to the board and for the terms set forth therein.

Section 2. That the City Clerk shall cause a copy of this Resolution to be mailed to the above named appointees and to said board.

PASSED and ADOPTED this **18th** day of **May, 2021**

CITY COUNCIL OF THE CITY OF
ANNISTON, ALABAMA

Jack Draper, Mayor

Jay Jenkins, Council Member

Demetric Roberts, Council Member

Ciara Smith, Council Member

Millie Harris, Council Member

ATTEST:

Skyler Bass, City Clerk

EXHIBIT "A"

MAIN STREET ANNISTON BOARD

Board Positions	Nominations	Board Member Name	Expiration Date	Explanation
3	Ward 3	Alexis Wise	05/31/2023	Appointment

RESOLUTION NO. 21-R-___

**A RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF AN EQUIPMENT
LEASE/PURCHASE AGREEMENT WITH ALTEC CAPITAL SERVICES, L.L.C.**

WHEREAS, The City of Anniston, Alabama (the "Lessee") has determined that a true and very real need exists for the Equipment (the "Equipment") described in the proposed Equipment Lease/Purchase Agreement (the "Agreement") by and between ALTEC CAPITAL SERVICES, L.L.C., as Lessor, and Lessee, as lessee, presented to this meeting; and

WHEREAS, Lessee has taken the necessary steps, including those relating to any applicable legal bidding requirements, to arrange for the acquisition of the Equipment; and

WHEREAS, Lessee proposes to enter into the Agreement with ALTEC CAPITAL SERVICES, L.L.C., substantially in the proposed form presented to this meeting;

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Anniston, Alabama as follows:

Section 1. It is hereby found and determined that the terms of the Agreement in the form presented to this meeting and incorporated in this resolution, are in the best interests of Lessee for the acquisition of the Equipment.

Section 2. The Agreement is hereby approved. The City Manager of Lessee and any other officer of Lessee who shall have power to execute contracts on behalf of Lessee be, and each of them hereby is, authorized to execute, acknowledge and deliver the Agreement with any changes, insertions and omissions therein as may be approved by the officers who execute the Agreement, such approval to be conclusively evidenced by such execution and delivery of the Agreement. The City Manager of Lessee and any other officer of Lessee who shall have power to do so be, and each of them hereby is, authorized to affix the official seal of Lessee to the Agreement and attest the same.

Section 3. The proper officers of Lessee be, and each of them hereby is, authorized and directed to execute and deliver any and all papers, instruments, opinions, certificates, affidavits and other documents and to do or cause to be done any and all other acts and things necessary or proper for carrying out this resolution and the Agreement.

Section 4. The undersigned further certifies that the above resolution has not been repealed or amended and remains in full force and effect and further certifies that the Equipment Lease/Purchase Agreement by and between ALTEC CAPITAL SERVICES, L.L.C., as Lessor, and Lessee, as Lessee, is the same as presented at said meeting of the governing body of Lessee, excepting only such changes, insertions and omissions as shall have been approved by the officers who executed the same.

PASSED AND ADOPTED this the **18th** day of **May, 2021**.

CITY COUNCIL OF THE CITY OF
ANNISTON, ALABAMA

BY: _____
Jack Draper, Mayor

BY: _____
Jay W. Jenkins, Council Member

BY: _____
Demetric Roberts, Council Member

BY: _____
Ciara Smith, Council Member

BY: _____
Millie Harris, Council Member

ATTEST:

Skyler Bass, City Clerk

EQUIPMENT LEASE/PURCHASE AGREEMENT

THIS EQUIPMENT LEASE/PURCHASE AGREEMENT ("Agreement") is made as of May 01, 2021 by and between ALTEC CAPITAL SERVICES, L.L.C. ("Lessor") and CITY OF ANNISTON, ALABAMA ("Lessee").

In consideration of the mutual covenants, terms and conditions hereinafter contained, Lessor hereby agrees to lease to Lessee, and Lessee hereby agrees to lease from Lessor, the property (hereinafter, together with all replacements and accessions thereto, referred to as the "Equipment") generally described in the Preliminary Description of Equipment attached hereto and to be more specifically described in the Certificate of Acceptance, in the form attached, to be executed and delivered pursuant hereto, subject to the terms and conditions set forth herein.

This Agreement is made upon the following terms and conditions:

(1) **TERM.**(a) **Commencement of Term.** This Agreement shall be effective, and the parties' obligations hereunder shall arise, as of the date hereof. The term of lease under this Agreement shall commence on the date on which the Equipment is accepted by Lessee, as indicated on the Certificate of Acceptance (the "Commencement Date"), and shall terminate on the last business day of Lessee's then current fiscal budget period (such period being hereinafter referred to as the "Original Term"). (b) **Renewal of Term.** Subject to the provisions of Section 10 hereof and sub-part (e) of this Section, the Original Term will be automatically and successively renewed at the end of the Original Term under the same terms and conditions for successive renewal periods ("Renewal Terms"), with the last of such Renewal Terms to end on the last day of the Full Lease Term, as specified on the Schedule of Payments executed by Lessee and attached hereto (the "Schedule"). (c) **Termination of Term.** The term of lease will terminate upon the earliest to occur of any of the following events: (1) The expiration of the Original Term or any Renewal Term and the nonrenewal thereof in accordance with the terms and conditions of this Agreement; (2) The purchase of the Equipment by Lessee under the provisions of Sections 8(c) or 10 of this Agreement; (3) A default by Lessee and Lessor's election to terminate this Agreement under Section 13; or(4)The payment by Lessee of all rental payments to be paid by Lessee hereunder with respect to the Equipment. (d) **Continuation of Lease Term by Lessee.** Lessee intends, subject to the provisions of sub-part (e) of this Section, to continue the term of the lease hereunder through the Original Term and all Renewal Terms for the Full Lease Term and to pay the rental payments hereunder. Lessee reasonably believes that legally available funds in an amount sufficient to make all rental payments for the Full Lease Term can be obtained and further intends to do all things lawfully within its power to obtain and maintain funds from which the rental payments may be made. (e) **Nonappropriation.** In the event sufficient funds are not appropriated for the payment of all rental payments required to be paid in the next succeeding Renewal Term, then Lessee may terminate this Agreement at the end of the Original Term or the then current Renewal Term, as the case may be, and Lessee shall not be obligated to make payment of the rental payments provided for in this Agreement beyond the then current term. Lessee agrees to give notice to Lessor of such termination at least sixty (60) days prior to the end of the then current term or, if nonappropriation has not occurred by that date, promptly upon the occurrence of nonappropriation. If this Agreement is terminated under this sub-part, Lessee agrees, at Lessee's sole cost and expense, peaceably to deliver the Equipment to Lessor at such location as is specified by Lessor, in the condition required by Section 5(b) hereof, on or before the effective date of termination.

(2) **RENTAL PAYMENTS.** (a) **Rental Payments to Constitute a Current Expense of Lessee.** Lessor and Lessee understand and intend that the obligation of Lessee to pay rental payments hereunder shall constitute a current expense of Lessee and shall not in any way be construed to be a debt of Lessee in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by Lessee, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or monies of Lessee. (b) **Payment of Rental Payments.** Lessee shall pay rental payments exclusively from legally available funds, in lawful money of the United States of America, to Lessor in the amounts and on the rental payment due dates set forth in the Schedule without notice. In the event that any rental payment is not received by Lessor on or before the due date therefor, Lessee agrees to pay a late charge determined on the basis of accrued interest on the delinquent amount at the rate of one percent (1%) per month (or, if such rate is in excess of the maximum rate permitted by law, the maximum rate permitted by law) from the date of delinquency to the date that the rental payment is received by Lessor. (c) **Interest and Principal Components.** As set forth in the Schedule, a portion of each rental payment is paid as, and represents payment of, interest, and the balance of each rental payment is paid as, and represents payment of, principal. (d) **Rental Payments to be Unconditional.** The obligation of Lessee to make rental payments hereunder, and to perform and observe the covenants and agreements contained in this Agreement, shall be absolute and unconditional in all events, except as expressly provided in this Agreement. Lessee shall not assert any right of setoff, counterclaim, or abatement against its obligations hereunder, including (without limitation) by reason of equipment failure, disputes with the vendor(s) or manufacturer(s) of the Equipment or Lessor, accident or any unforeseen circumstances.

(3) **REPRESENTATIONS AND COVENANTS OF LESSEE.** Lessee represents, covenants and warrants to Lessor as follows: (a) Lessee is a state or political subdivision thereof within the meaning of Section 103(c) of the Internal Revenue Code of 1986, as amended, (the "Code") and will do or cause to be done all things necessary to preserve and keep in full force and effect its existence as such. (b) Lessee is authorized under the Constitution and laws of the state of AL to enter into this Agreement and the transactions contemplated hereby and to perform all of its obligations hereunder. (c) Lessee's name as indicated in the opening paragraph and on the signature page of this Agreement is its true, correct, and complete legal name. (d) As evidenced by an attachment hereto, the execution and delivery of this Agreement by or on behalf of Lessee has been duly authorized by all necessary action of the governing body of Lessee, and Lessee has obtained such other approvals and consents as are necessary to consummate this Agreement. Lessee further represents, covenants and warrants that all requirements have been met, and procedures have occurred, necessary to ensure the enforceability of this Agreement against Lessee, and that Lessee has complied with such public bidding requirements as may be applicable to this Agreement and the acquisition of the Equipment by Lessee hereunder. (e) Lessee shall cause to be executed and attached hereto an incumbency certificate and an opinion of its counsel in form and substance satisfactory to Lessor. (f) Lessee has determined that a present need exists for the Equipment which need is not temporary or expected to diminish in the near future. The Equipment is essential to and will be used by Lessee only for the purpose of performing one or more governmental functions of Lessee consistent with the permissible scope of Lessee's authority and will not be used in a trade or business of any person or entity. Lessee shall cause to be executed and attached hereto an Essential Use of Equipment Letter in form and substance satisfactory to Lessor. (g) Within one hundred fifty (150) days of the end of each fiscal year of Lessee during the term hereof, Lessee shall provide Lessor with a copy of its audited financial statements for such fiscal year. Additionally, Lessee shall provide Lessor with budgets, proof of appropriation for the ensuing fiscal year and such other financial information relating to the ability of Lessee to continue this Agreement as may reasonably be requested by Lessor. (h) The Equipment is, and shall remain during the period this Agreement is in force, personal property and when subject to use by Lessee under this Agreement will not be or become fixtures. (i) Lessee acknowledges that Lessor is acting only as a financing source with respect to the Equipment, which has been selected by Lessee. (j) Lessee will promptly and duly execute and deliver to Lessor such further documents, instruments and assurances and take such further action as Lessor may from time to time reasonably request in order to carry out the intent and purpose of this Agreement and to establish and protect the rights and remedies created or intended to be created in favor of Lessor hereunder.

(4) **TITLE TO EQUIPMENT; SECURITY INTEREST.** (a) **Title to the Equipment.** During the term of this Agreement, title to the Equipment shall vest in Lessee, subject to the rights of Lessor under this Agreement. In the event of a default as set forth in Section 13 hereof or nonappropriation as set forth in Section 1(e) hereof, title shall immediately vest in Lessor. (b) **Security Interest.** To secure the prompt payment and performance as and when due of all of Lessee's obligations under this Agreement, Lessee hereby grants to Lessor a first priority security interest in the Equipment, all replacements, substitutions, accessions and proceeds (cash and non-cash), including the proceeds of all insurance policies, thereof. Lessee agrees that with respect to the Equipment Lessor shall have all of the rights and remedies of a secured party under the Uniform Commercial Code as in effect in the state of AL. Lessee may not dispose of any item of the Equipment without the prior written consent of Lessor, notwithstanding the fact that proceeds constitute a part of the Equipment.

(5) **USE AND MAINTENANCE.** (a) **Use.** Lessee shall use the Equipment solely for the purpose of performing one or more governmental functions of Lessee and in a careful, proper and lawful manner consistent with the requirements of all applicable insurance policies relating to the Equipment. Lessee will not change the location of any items of the Equipment as specified in the applicable Certificate of Acceptance without the prior written consent of Lessor, which consent shall not be unreasonably withheld. Lessee shall not attach or incorporate the Equipment to or in any other item of equipment in such a manner that the Equipment becomes or may be deemed to have become an accession to or a part of such other item of equipment. (b) **Maintenance.** Lessee, at its own expense, will keep and maintain, or cause to be kept and maintained, the Equipment in as good operating condition as when delivered to Lessee hereunder, ordinary wear and tear resulting from proper use thereof alone excepted, and will provide all maintenance and service and make all repairs reasonably necessary for such purpose. All replacement parts and accessions shall be free and clear of all liens, encumbrances or rights of others and have a value and utility at least equal to the parts or accessions replaced. Lessee shall not make any material alterations to the Equipment without the prior written consent of Lessor, which consent shall not be unreasonably withheld. All additions to the Equipment which are essential to its operation, or which cannot be detached without materially interfering with such operation or adversely affecting the Equipment's value and utility, shall immediately be deemed incorporated in the Equipment and subject to the terms of this Agreement as if originally leased hereunder, and subject to the security interest of Lessor. Upon reasonable advance notice, Lessor shall have the right to inspect the Equipment and all maintenance records with respect thereto, if any, at any reasonable time during normal business hours.

Additional Provisions for Vehicles. As to any Equipment leased hereunder that constitutes motor vehicles ("Vehicles"), you further covenant and agree as follows:

(a) You shall, at your own expense, obtain in our name all registration plates and other plates, permits inspections or licenses required to be obtained in connection with the Vehicles, or related to their operation and use except for the initial registration plates which we obtain at your expense. We shall issue to you, for such purpose, appropriate limited powers of attorney or such other authority as may be necessary. You shall not, without our prior written consent, permit any Vehicle to be located in a state other than the state in which such

Vehicle is then titled for any continuous period of time that would subject such Vehicle to the titling or registration laws of such other state. **YOU AGREE THAT NO VEHICLE SHALL BE USED TO TRANSPORT PERSONS FOR HIRE OR HAZARDOUS SUBSTANCES.**

(b) At any time that you are required to return the Vehicle to us, you shall, at your expense, deliver the Vehicle to the nearest Altec facility within the United States which we specify.

(c) Each Vehicle shall not have more than the average miles per year recorded on its odometer than the mileage specified for the selected Lease Term for each vehicle type and specific model as detailed on the Supplement (or, if no mileage is specified in the Supplement, each Vehicle shall not have more than twelve thousand (12,000) miles per year for each year of the applicable Lease Term) and you shall pay us, at the time of Vehicle surrender, an excess mileage charge equal to \$.35 per mile for each mile exceeding specified mileage

(d) Ensure all Equipment and equipment operations conform to all applicable local, state, and Federal laws, health and safety guidelines. Upon return, the Equipment will be complete and operational with all components as originally supplied and will have passed D.O.T. inspections, or other appropriate agency or association requirements for operation. If applicable, an inspection sticker or certificate will be furnished to Lessor verifying compliance with any regulatory requirements. Lessee shall satisfy all legal and regulatory conditions necessary for Lessor to sell or lease the Equipment to a third party. Lessee will keep all licenses and operating certificates required for operation of the Equipment current during the term of the Lease. Lessee will at all times use the Equipment in compliance with all applicable laws and regulations of any governmental, local and regulatory agency;

(e) Provide safe, secure storage for the Equipment for one-hundred and eighty (180) days after expiration or earlier termination of the Lease at not more than three (3) location (s) selected by Lessor;

(f) Take such action as may be required so that, upon return, each unit of Equipment must meet all of its manufacturer's specifications for performance under full-rated loads and all of the following conditions:

1). Tires: All tires shall be of the same type (original size) and manufacturer (i.e. matched) and have a minimum of fifty (50) percent remaining tread life. All front tires shall be original casing with no crossed lugs, rear tires may be either original casings or first time recapped tires and no tire shall exhibit or have flat or bald spots, dry rot, exposed cord or cuts in sidewall;

2). Any time or life-limited components including, but not limited to, power train assembly, transmissions, converters, generators, axles, wheels, pumps or other parts shall have at least fifty (50%) percent useful life remaining before the manufacturer's next recommended major overhaul, rebuild, calibration or replacement as recommended by the manufacturer and/or published in standard maintenance manuals;

3). Mechanical Power Train: Each unit of Equipment shall have passed a dynamometer test, road test and oil analysis, each conducted not more than sixty- (60) days prior to the return of the equipment, the test results shall have been provided to Lessor not more than two- (2) weeks after each test has been conducted and not less than two- (2) weeks prior to the return of the Equipment and the tests and test results shall have been reasonably acceptable to the Lessor. The engine must have at least 50% remaining mileage until the next manufacturer's scheduled "in-frame" overhaul, there shall be no cracked cylinder heads or engine blocks, the wheel horsepower must be within 80% - 85% of the rated flywheel horsepower without excess blow-by, exhaust system leakage or oil leakage and must meet current smoke emission standards. The transmission and rear axles shall be capable of pulling loads to their full rated capacity, there shall be no transmission, drive axle or wheel hub oil leaks and there shall be no "slipping" or "grabbing" clutch. Cooling and lubrication systems shall not be contaminated and there shall be no leaking between systems, no battery shall have any dead cell, cracked case or be inoperative;

4). Service Body/Digger Derrick: Lessee will ensure that the Equipment will be mechanically and structurally sound, no bowed sections, free of cracks, bends or warping that impacts the Fair Market Value and marketability of the Equipment and is capable of performing the functions for which the Equipment was originally designed. Ensure all safety equipment, covers and guards, parts and components must be in-place and operational. No safety features shall be bypassed or disconnected. All body parts shall be intact with no tears or dents in metal. Service bodies to be free of dents (or cracks on fiberglass components) or damages over \$50.00, normal wear and tear excepted. Sheet metal must be complete. All cooling, heating and lubrication systems shall not be contaminated and there shall be no leaks or leakage between systems. All gauges, indicators and controls will be in good conditions, plastic or glass coverings intact, clear and all will be in good working order. No battery shall have any dead cells, cracked case be inoperative or unable to be charged. All internal fluids, such as lube oil and hydraulic fluids, are to be filled to operating levels and all filler caps are to be secured. Digger/Derrick boom, hydraulic cylinders and all accessories and attachments shall be free of damage and capable of performing to their maximum operational designs. All drive axles and non-drive axles are to be fully functional with no slipping, grinding or grabbing, and the Equipment shall be operational in all gears, forward and reverse. If during such inspection, the authorized inspector finds any of the material or workmanship to be defective or the Equipment not meeting or exceeding the manufacturer's operating requirements, Lessee, at lessee's cost, shall repair or replace the material or defective workmanship utilizing manufacturer approved components and in accordance with the manufacturer's recommendations. After corrective measures are completed, lessee, at Lessee's cost will provide for a follow-up inspection of the Equipment by the authorized inspector as outlined in this paragraph;

5). General Condition: With respect to each unit, there must be no structural or mechanical damage; no glass shall be broken, chipped or cracked; no upholstery shall have any cuts, tears or burn marks. All rust or corrosion must be treated in a manner consistent with standard industry practices. All Equipment must have a good overall appearance and no material damage. The Equipment shall be cleaned (internal and external), free of rust and corrosion with no missing or damaged parts. Upon return, all commercial logos, advertising, graffiti, insignias and lettering shall be removed and repaired in a workmanlike manner so as to not damage the Equipment. Manufacturer's identity plates and markings shall not be removed. With respect to each unit, the total cost of necessary repairs for damage or other related costs necessary to place the Equipment in such condition as to be in complete compliance with this Lease may not exceed \$150.00;

6). Documents and Records: Written records of scheduled and other maintenance and repair work done shall be kept, dated, and signed by the appropriate authority. A service history or log will be maintained during the Lease term and a copy provided to Lessor upon request during the term of the Lease, or at Lease termination. All maintenance records,

maintenance record jackets, repair jackets, repair orders, license plates, registration certificates and all other similar documents, in their entirety, must be returned to Lessor;

7). Brakes: Brake drums, linings and other brake components shall not be cracked and shall not exceed manufacturers' recommended wear limits. Brake linings shall have fifty (50) percent remaining wear;

8). Maintenance: Lessee shall strictly follow the manufacturer's recommended maintenance and service schedule, as required to validate any warranty, at Lessee's sole cost and expense. Any maintenance or repair work shall comply with the guidelines and procedures as specified by the manufacturers of the equipment and in accordance with standards in the industry. Lessee will use only original manufacturer's approved replacement parts and components in the performance or any maintenance and repair of the Equipment. Lessee will at all times maintain the Equipment in good operational condition and appearance;

9). Use: Lessee guarantees that the Equipment will not be or have been operated beyond the rated capacity as certified by the manufacturer at any time during the Lease term. Lessee will not discriminate in the use of the Equipment from any other similar equipment in its fleet;

10). Alterations: Lessee will not modify the Equipment without the prior written approval of Lessor. In any event, Lessee will not make any modifications or alterations that would impair the Equipment's use, value, marketability or manufacturer's warranty and recommendations. Lessee will not make any alterations to the Equipment that would damage or restrict the use of the Equipment from its initial use and design and that cannot be removed without damage to the unit. Changes, modifications or additions to the Equipment mandated by Federal or state authorities will be completed by Lessee and become property of Lessor;

11). Not more than ninety- (90) days prior to return of Equipment, during regular working hours, Lessee must make the Equipment available to allow Lessor or Lessor's agent to conduct an in-depth physical inspection. Any part, component or function found not to be within the manufacturer's tolerances and operational specifications, including but not limited to engines, transmissions, clutches, drive trains, and rear axles, will be replaced or brought within those tolerances and specifications to the satisfaction of Lessor. Testing with necessary reconditioning to meet the return conditions are to be provided to Lessor two-(2) weeks prior to the return of the equipment. Lessee shall obtain written certification from the manufacturers or their authorized representative that the Equipment has been returned in accordance with the terms set forth herein;

(6) **FEES; TAXES; OTHER GOVERNMENTAL AND UTILITY CHARGES; LIENS.** (a) Fees. Lessee shall be liable to reimburse Lessor for, and agrees to hold Lessor harmless from, all titling, recordation, documentary stamp and other fees arising at any time prior to or during the Full Lease Term, or upon or relating to the Equipment or this Agreement. (b) Taxes, Other Governmental Charges and Utility Charges. The parties contemplate that the Equipment will be used for a governmental purpose of Lessee and that the Equipment will be exempt from all taxes presently assessed and levied with respect to personal property. In the event that the use, possession or acquisition of the Equipment is found to be subject to taxation in any form (except for net income taxes of Lessor), Lessee will pay, as the same come due, all taxes and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied during the Full Lease Term against or with respect to the Equipment, as well as all utility and other charges incurred in the operation and use of the Equipment. (c) Liens. Lessee shall keep the Equipment free and clear of all liens, levies and encumbrances, except those created under this Agreement.

(7) **INSURANCE.** (a) Casualty Insurance. At its own expense, Lessee shall keep the Equipment insured against loss or damage due to fire and the risks normally included in extended coverage, malicious mischief and vandalism, for not less than the Full Insurable Value of the Equipment. As used herein, "Full Insurable Value" means the full replacement value of the Equipment or the Prepayment Amount applicable to the immediately preceding rental payment due date as designated on the Schedule, whichever is greater. All insurance for loss or damage shall provide that losses, if any, shall be payable to Lessor and Lessee, as their interests may appear, and Lessee shall utilize its best efforts to have all checks relating to any losses delivered promptly to Lessor. If Lessee insures similar properties against casualty loss by self-insurance, with Lessor's prior consent Lessee may satisfy its obligations with respect to casualty insurance hereunder by means of a self-insurance fund reasonably acceptable to Lessor. The Net Proceeds of the insurance required hereby shall be applied as provided in Section 8 hereof. As used herein, "Net Proceeds" means the amount remaining from the gross proceeds of any insurance claim or condemnation award after deduction of all expenses (including attorneys' fees) incurred in the collection of such claim or award. (b) Liability Insurance. Lessee shall also carry public liability insurance, both personal injury and property damage, covering the Equipment in an amount as Lessor may from time to time reasonably require on notice to Lessee. Lessor shall be named as an additional insured with respect to all such liability insurance. With Lessor's prior consent, Lessee may satisfy its obligations with respect to liability insurance hereunder by maintaining a funded self-insurance plan. (c) Worker's Compensation. Lessee shall carry worker's compensation insurance covering all employees working on, in, near or about the Equipment, or demonstrate to the satisfaction of Lessor that adequate self-insurance is provided, and shall require any other person or entity working on, in, near or about the Equipment to carry such coverage throughout the Full Lease Term. (d) General Requirements. All insurance required under this Section 7 shall be in form and amount and with companies reasonably satisfactory to Lessor except as otherwise expressly provided herein. Lessee shall pay the premiums therefor and deliver to Lessor the policies of insurance or duplicates thereof, or other evidence satisfactory to Lessor of such insurance coverage, annually throughout the Full Lease Term. Each insurer shall agree, by endorsement upon the policy or policies issued by it or by independent instrument furnished to Lessor, that (a) it will give Lessor thirty (30) days' prior written notice of the effective date of any

material alteration or cancellation of such policy; and (b) insurance as to the interest of any named additional insured or loss payee other than Lessee shall not be invalidated by any actions, inactions, breach of warranty or conditions or negligence of Lessee with respect to such policy or policies.

(8) **RISK OF LOSS; DAMAGE, DESTRUCTION AND CONDEMNATION; USE OF NET PROCEEDS.** (a) **Risk of Loss.** Lessee assumes all risk of loss of or damage to the Equipment from any cause whatsoever, and no such loss of or damage to the Equipment, defect therein, or unfitness or obsolescence thereof, shall relieve Lessee of its obligation to make rental payments or perform any other obligations hereunder. (b) **Damage, Destruction and Condemnation.** If prior to the termination of the Full Lease Term (1) the Equipment or any portion thereof is destroyed (in whole or in part) or is damaged by fire or other casualty; or (2) title to, or the temporary use of, the Equipment or any part thereof or the estate of Lessee or Lessor in the Equipment or any part thereof shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority; Lessee and Lessor will cause the Net Proceeds of any insurance claim or condemnation award to be applied to Lessee's obligations pursuant to sub-part (c) of this Section. (c) **Use of Net Proceeds.** Provided the Equipment is not deemed to be a total loss, Lessee shall, at its expense (subject to application of the Net Proceeds), cause the prompt repair, replacement or restoration of the affected Equipment. In the event that the Equipment is totally destroyed or damaged and Lessee is unable to make arrangements satisfactory to Lessor for the prompt replacement thereof, Lessee shall pay to Lessor, on the rental payment due date next succeeding the date of such loss, the Prepayment Amount applicable to such rental payment due date plus the rental payment due on such date and any other amounts then payable by Lessee hereunder. Upon such payment, the term of the lease and the security interest of Lessor in the Equipment shall terminate, and Lessee will acquire full and unencumbered title to the Equipment as provided in Section 10 hereof. If Lessee is not then in default hereunder, any portion of the Net Proceeds in excess of the amount required to pay in full Lessee's obligations as set forth in this sub-part (c) shall be for the account of Lessee. Lessee agrees that if the Net Proceeds are insufficient to pay in full Lessee's obligations as set forth in this sub-part (c), Lessee shall make such payments to the extent of any deficiency.

(9) **DISCLAIMER OF WARRANTIES.** LESSOR, NOT BEING A SELLER (AS SUCH TERM IS DEFINED IN THE UNIFORM COMMERCIAL CODE), NOR A SELLER'S AGENT, HEREBY EXPRESSLY DISCLAIMS AND MAKES TO LESSEE NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO: THE FITNESS FOR USE, DESIGN OR CONDITION OF THE EQUIPMENT; THE QUALITY OR CAPACITY OF THE EQUIPMENT; THE WORKMANSHIP IN THE EQUIPMENT; THAT THE EQUIPMENT WILL SATISFY THE REQUIREMENTS OF ANY LAW, RULE, SPECIFICATION OR CONTRACT PERTAINING THERETO; AND ANY GUARANTY OR WARRANTY AGAINST PATENT INFRINGEMENT OR LATENT DEFECTS, it being agreed that all such risks, as between Lessor and Lessee, are to be borne by Lessee. Lessor is not responsible or liable for any direct, indirect, incidental or consequential damage to or losses resulting from the installation, operation or use of the Equipment or any products manufactured thereby. All assignable warranties made by the vendor(s) or manufacturer(s) to Lessor are hereby assigned to Lessee for and during the Full Lease Term and Lessee agrees to resolve all such claims directly with the vendor(s) or manufacturer(s). Provided that Lessee is not then in default hereunder, Lessor shall cooperate fully with Lessee with respect to the resolution of such claims, in good faith and by appropriate proceedings at Lessee's expense. Any such claim shall not affect in any manner the unconditional obligation of Lessee to make rental payments hereunder.

(10) **PURCHASE OF EQUIPMENT BY LESSEE/PREPAYMENT.** Provided that Lessee is not then in default under this Agreement, this Agreement will terminate, the security interest of Lessor in the Equipment will be terminated, and Lessee will acquire title to the Equipment free and clear of all liens and encumbrances created by, or arising through or under, Lessor: (a) at the end of the Full Lease Term, upon payment in full of all rental payments and other amounts payable by Lessee hereunder for the Full Lease Term; or (b) on any rental payment due date, upon payment by Lessee of the then applicable Prepayment Amount as set forth on the Schedule plus the rental payment due on such date and all other amounts then due by Lessee hereunder, provided Lessee shall have given Lessor not less than thirty (30) days' prior notice of its intent to make such payment.

(11) **QUIET POSSESSION.** Lessor represents and covenants to Lessee that Lessor has full authority to enter into this Agreement, and that, conditioned upon Lessee performing all of the covenants and conditions hereof, as to claims of Lessor or persons claiming under Lessor, Lessee shall peaceably and quietly hold, possess and use the Equipment during the term of this Agreement subject to the terms and provisions hereof.

(12) **ASSIGNMENT; SUBLEASING; INDEMNIFICATION.** (a) **Assignment by Lessor.** This Agreement, and the rights of Lessor hereunder and in and to the Equipment and the Schedule, may be assigned and reassigned in whole or in part to one or more assignees by Lessor or its assignees at any time without the necessity of obtaining the consent of Lessee; provided, however, no such assignment or reassignment shall be effective unless and until Lessee shall have been given written notice of assignment disclosing the name and address of the assignee or its agent authorized to receive payments and otherwise service this Agreement on its behalf. Upon receipt of notice of assignment, Lessee agrees to record the same in records maintained for such purpose, and further, to make all payments as designated in

the assignment, notwithstanding any claim, defense, setoff or counterclaim whatsoever (whether arising from a breach of this Agreement or otherwise) that Lessee may from time to time have against Lessor or Lessor's assignees. Lessee agrees to execute all documents, including acknowledgments of assignment, which may reasonably be requested by Lessor or its assignees to protect their interests in the Equipment and in this Agreement. (b) **No Sale, Assignment or Subleasing by Lessee.** This Agreement and the interest of Lessee in the Equipment may not be sold, assigned, sublet or encumbered by Lessee without the prior written consent of Lessor. (c) **Release and Indemnification Covenants.** To the extent permitted by the laws and Constitution of the state of AL, Lessee hereby assumes and agrees to indemnify, protect, save, and keep harmless Lessor, its agents and employees, from and against any and all losses, damages, injuries, claims, demands and expenses, including legal expenses, of whatsoever kind and nature, solely caused by Lessee, its agents and employees, including those arising out of or on account of (1) the ordering, acquisition, delivery, installation or rejection of the Equipment; (2) the possession, maintenance, use, condition, or operation of any item of the Equipment (by whomsoever used or operated); or (3) the loss, damage, destruction, removal, return, surrender, sale or other disposition of the Equipment, or any item thereof. It is understood and agreed, however, that Lessor shall give Lessee prompt notice of any claim or liability hereby indemnified against and that Lessee shall be entitled to control the defense thereof, so long as Lessee is not in default hereunder.

(13) **EVENTS OF DEFAULT AND REMEDIES.** (a) **Events of Default.** The following shall be "events of default" under this Agreement and the terms "event of default" and "default" shall mean, whenever they are used in this Agreement, any one or more of the following events: (1) failure by Lessee to pay any rental payment or other payment required to be paid hereunder within five (5) days of the due date therefor; or (2) failure by Lessee to observe and perform any other covenant, condition or agreement on its part to be observed or performed hereunder and such failure shall continue unremedied for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied, unless Lessor shall agree in writing to an extension of such time prior to its expiration; or (3) any certificate, statement, representation, warranty or audit contained herein or heretofore or hereafter furnished with respect hereto by or on behalf of Lessee proving to have been false in any material respect at the time as of which the facts therein set forth were stated or certified, or having omitted any substantial contingent or unliquidated liability or claim against Lessee; or (4) commencement by Lessee of a case or proceeding under the Federal bankruptcy laws or filing by Lessee of any petition or answer seeking relief under any existing or future bankruptcy, insolvency or other similar laws or an answer admitting or not contesting the material allegations of a petition filed against Lessee in any such proceeding; or (5) a petition against Lessee in a proceeding under any existing or future bankruptcy, insolvency or other similar laws shall be filed and not withdrawn or dismissed within sixty (60) days thereafter; or (6) an attachment, levy or execution is levied upon or against the Equipment or any item thereof. (b) **Remedies on Default.** Whenever any event of default shall have occurred and be continuing, Lessor shall have the right, at its sole option without any further demand or notice, to exercise any one or more of the following remedies: (1) with or without terminating this Agreement, retake possession of the Equipment or items thereof and sell, lease or sublease items of the Equipment for the account of Lessee, with the net amount of all proceeds received by Lessor to be applied to Lessee's obligations hereunder including, but not limited to, all payments due and to become due during the Full Lease Term, holding Lessee liable for the excess (if any) of (i) the rental payments payable by Lessee hereunder to the end of the Original Term or then current Renewal Term (whichever is applicable) and any other amounts then payable by Lessee hereunder (including but not limited to attorneys' fees, expenses and costs of repossession), over (ii) the net purchase price or rent and other amounts paid by a purchaser, lessee or sublessee of the Equipment pursuant to such sale, lease or sublease, provided that the excess (if any) of such amounts over the Prepayment Amount applicable to the last rental payment due date of the Original Term or Renewal Term (whichever is applicable) and the amounts referred to in clause (i) shall be paid to Lessee; (2) require Lessee at Lessee's risk and expense promptly to return the Equipment to Lessor in the manner and in the condition set forth in Section 5(b) hereof at such location as is specified by Lessor; (3) if Lessor is unable to repossess the Equipment for any reason, the Equipment shall be deemed a total loss and Lessee shall pay to Lessor the amount due pursuant to Section 8 hereof; and (4) exercise any other right, remedy or privilege which may be available to it under applicable laws of the state of AL or any other applicable law or proceed by appropriate court action to enforce the terms of this Agreement, to recover damages for the breach of this Agreement, or to rescind this Agreement as to the Equipment. In addition, Lessee will remain liable for all legal fees and other costs and expenses, including court costs, incurred by Lessor with respect to the enforcement of any of the remedies listed above or any other remedy available to Lessor. (c) **No Remedy Exclusive.** No remedy herein conferred upon or reserved to Lessor is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. Lessor's remedies hereunder may be exercised separately with respect to items of the Equipment. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

(14) **TAX COVENANTS.** (a) The parties assume that Lessor can exclude the interest component of the rental payments from federal gross income. Lessee covenants and agrees that it will (i) use a book entry system to register the owner of this Agreement so as to meet the applicable requirements of Section 149(a)(3) of the Code; (ii) timely file an IRS Form 8038-G (or, if the invoice price of the Equipment is less than \$100,000, a Form 8038-GC) with the Internal Revenue Service ("IRS") in accordance with Section 149(e) of the Code; (iii) not permit the Equipment to be directly or indirectly used for a private business use within the meaning of Section 141 of the Code including, without limitation, use by private persons or entities pursuant to contractual arrangements which do not satisfy the IRS' guidelines for

permitted management contracts, as the same may be amended from time to time; (iv) comply with all provisions and regulations applicable to excluding the interest component of the rental payments from federal gross income pursuant to Section 103 of the Code; and (v) cause to be completed, executed and delivered to Lessor a Tax Compliance Agreement and No Arbitrage Certificate substantially in the form provided by Lessor. (b) If Lessor either (i) receives notice, in any form, from the Internal Revenue Service; or (ii) reasonably determines, based on an opinion of independent tax counsel selected by Lessor and approved by Lessee, which approval Lessee shall not unreasonably withhold, that Lessor may not exclude the interest component of any rental payment from federal gross income because Lessee breached a covenant contained herein, then Lessee shall pay to Lessor, within thirty (30) days after Lessor notifies Lessee of such determination, the amount which, with respect to rental payments previously paid and taking into account all penalties, fines, interest and additions to tax (including all federal, state and local taxes imposed on the interest component of all rental payments due through the date of such event) that are imposed on Lessor as a result of the loss of the exclusion, will restore to Lessor the same after-tax yield on the transaction evidenced by this Agreement (assuming tax at the highest marginal corporate tax rate) that it would have realized had the exclusion not been lost. Additionally, Lessee agrees that upon the occurrence of such an event, it shall pay additional rent to Lessor on each succeeding rental payment due date in such amount as will maintain such after-tax yield to Lessor.

(15) LESSOR'S RIGHT TO PERFORM FOR LESSEE. If Lessee fails to perform or comply with any of its agreements contained herein, Lessor shall have the right, but shall not be obligated, to effect such performance or compliance, and the amount of any out of pocket expenses and other reasonable expenses of Lessor incurred in connection with the performance of or compliance with such agreement, together with interest thereon at the rate of twelve percent (12%) per annum (or, if such rate is in excess of the maximum rate permitted by law, the maximum rate permitted by law), shall be payable by Lessee upon demand.

Within ten (10) days of receipt, Lessee shall execute, endorse and deliver to Lessor any deed, conveyance, assignment or other instrument in writing as may be required to vest in Lessor any right, title or power which by the terms hereof are expressed to be conveyed or conferred upon Lessor, including, without limitation: (a) Uniform Commercial Code financing statements (including continuation statements), real property waivers; (b) documents and checks or drafts relating to or received in payment for any loss or damage under the policies of insurance required by the provisions of Section 7 hereof to the extent that the same relate to the Equipment; and (c) upon default or nonappropriation or times thereafter as Lessor in its sole and absolute discretion may determine, any bill of sale, document, instrument, invoice, freight bill, bill of lading or similar document relating to the Equipment in order to vest title in Lessor and transfer possession to Lessor. Further, to the extent permitted by law, Lessee appoints Lessor as its attorney-in-fact for the limited purpose of, and with the full authority to, execute and file Uniform Commercial Code financing statements (including continuation statements) in the name and on behalf of Lessor, and agrees that photocopies of originally executed Uniform Commercial Code financing statements (including continuation statements) may be filed in the appropriate recordation offices as originals. In addition, the Lessee hereby authorizes the Lessor to prepare and file Uniform Commercial Code financing statements (including continuation statements) naming Lessee as debtor and Lessor as secured party without the signature of the Lessee to the extent permitted by law.

(16) MISCELLANEOUS. (a) **Notices.** All notices (excluding billings and communications in the ordinary course of business) hereunder shall be in writing, and shall be sufficiently given and served upon the other party if delivered (i) personally, (ii) by United States registered or certified mail, return receipt requested, postage prepaid, (iii) by an overnight delivery by a service such as Federal Express or Express Mail from which written confirmation of overnight delivery is available; or (iv) by facsimile with a confirmation copy by regular United States mail, postage prepaid, addressed to the other party at its respective address stated below the signature of such party or at such other address as such party shall from time to time designate in writing to the other party, and shall be effective from the date of mailing. (b) **Binding Effect.** This Agreement shall inure to the benefit of and shall be binding upon Lessor and Lessee and their respective successors and assigns. (c) **Severability; Survival.** Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, Lessee hereby waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect. The representations, warranties and covenants of Lessee herein shall be deemed to be continuing and to survive the closing hereunder. Each execution by Lessee of a Certificate of Acceptance shall be deemed a reaffirmation and warranty that there have been no material adverse change in the financial condition of Lessee from the date of execution hereof. The obligations of Lessee under Sections 1(e), 6, 12(c) and 14, which accrue during the term of this Agreement, shall survive the termination of this Agreement. (d) **Execution in Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. (e) **Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the state of AL. (f) **TO THE EXTENT PERMITTED BY APPLICABLE LAW, LESSOR AND LESSEE EACH WAIVE ANY AND ALL RIGHTS TO A TRIAL BY JURY TO ANY ACTION, CLAIM OR SUIT ARISING OUT OF, RELATING TO, OR BROUGHT IN CONNECTION WITH THIS LEASE.** (g) **Captions.** The captions in this Agreement are for convenience of reference only and shall not define or limit any of the terms or provisions hereof. (h) **Entire Agreement.** This Agreement constitutes the entire agreement between Lessor and Lessee. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing signed by both parties, and then such waiver, consent, modification or change shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, representations or warranties, express or implied, not specified herein regarding this Agreement or the Equipment leased hereunder. Any terms and conditions of any purchase

order or other document (with the exception of supplements) submitted by Lessee in connection with this Agreement which are in addition to or inconsistent with the terms and conditions of this Agreement will not be binding on Lessor and will not apply to this Agreement. Lessee by the signature below of its authorized representative acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above set forth.

ALTEC CAPITAL SERVICES, L.L.C., Lessor

By: _____

City of Anniston, Alabama, Lessee

By: _____
Its: _____

240908

DESCRIPTION OF EQUIPMENT

Attached to and made a part of that certain
Equipment Lease/Purchase Agreement dated as of

May 01, 2021

by and between ALTEC CAPITAL SERVICES, L.L.C., as Lessor,
and City of Anniston, Alabama, as Lessee

The items of Equipment to become subject to the Agreement can be generally described as follows:

2020 Ford F550 Altec Bucket AT37 – G

VIN: 1FDUF5GT2LEC52784

SN: 1220DE23509

LOCATION OF EQUIPMENT:

4309 McClellan Blvd

Birmingham, AL 35206-2812

ANTICIPATED PURCHASE PRICE: \$104,353.00

SCHEDULE OF PAYMENTS

Attached to and made a part of that certain Equipment Lease/Purchase Agreement dated as of May 01, 2021 by and between ALTEC CAPITAL SERVICES, L.L.C., as Lessor, and City of Anniston, Alabama, as Lessee.

Commencement Date: Equipment Delivery Date, as confirmed by Signature of Delivery and Acceptance Certificate

Full Lease Term: 60 months beginning with Commencement Date.

Rental payments are payable (**check one**) X in advance _____ in arrears of the period to which they relate. Rental payment due dates will be based on the Commencement Date, and established in Lessor's notification to Lessee of the Commencement Date.

	Date	Payment	Interest	Principal	Balance
Loan	05/01/2021				100,350.01
2020 Totals		0.00	0.00	0.00	
1	05/01/2021	22,535.00	4,003.97	18,531.03	81,818.98
2021 Totals		22,535.00	4,003.97	18,531.03	
2	05/01/2022	22,535.00	3,264.58	19,270.42	62,548.56
2022 Totals		22,535.00	3,264.58	19,270.42	
3	05/01/2023	22,535.00	2,495.69	20,039.31	42,509.25
2023 Totals		22,535.00	2,495.69	20,039.31	
4	05/01/2024	22,535.00	1,696.12	20,838.88	21,670.37
2024 Totals		22,535.00	1,696.12	20,838.88	
5	05/01/2025	22,535.00	864.63	21,670.37	0.00
2025 Totals		22,535.00	864.63	21,670.37	
Grand Totals		112,675.00	12,324.99	100,350.01	

City of Anniston, Alabama
Lessee

By: _____

Date: _____

CERTIFICATE OF ACCEPTANCE

The undersigned, as Lessee under the Equipment Lease/Purchase Agreement dated as of May 01, 2021 (the "Agreement") with ALTEC CAPITAL SERVICES, L.L.C. ("Lessor"), hereby certifies:

1. The items of the Equipment, as such term is defined in the Agreement, fully and accurately described on the Equipment List attached hereto have been delivered and installed at the location(s) set forth therein.
2. A present need exists for the Equipment which need is not temporary or expected to diminish in the near future. The Equipment is essential to and will be used by the Lessee only for the purpose of performing one or more governmental functions of Lessee consistent with the permissible scope of Lessee's authority.
3. The estimated useful life of the Equipment based upon the manufacturer's representations and Lessee's projected needs is not less than the term of lease with respect to the Equipment.
4. Lessee has conducted such inspection and/or testing of the Equipment as it deems necessary and appropriate and hereby acknowledges that it accepts the Equipment for all purposes as of the date of this Certificate.
5. The Equipment is covered by insurance in the types and amounts required by the Agreement.
6. No event of default, as such term is defined in the Agreement, and no event which with the giving of notice or lapse of time, or both, would become an event of default, has occurred and is continuing on the date hereof.
7. Based on the foregoing, Lessor is hereby authorized and directed to fund the acquisition of the Equipment set forth on the Equipment List by paying, or causing to be paid, the manufacturer(s)/vendor(s) the amounts set forth on the attached invoices.
8. The following documents are attached hereto and made a part hereof:
 - (a) Equipment List
 - (b) Original Invoice(s)
 - (c) Copies of Certificate(s) of Origin designating Altec Capital Trust as lienholder if any part of the Equipment consists of motor vehicles, and evidence of filing
 - (d) Copy of Application for titling

If Lessee paid an invoice prior to the commencement date of the Agreement and is requesting reimbursement for such payment, also attach a copy of evidence of such payment together with a copy of Lessee's Declaration of Official Intent and other evidence that Lessee has satisfied the requirements for reimbursement set forth in Treas. Reg. §1.150-2.

City of Anniston, Alabama
Lessee

By: _____
Date: _____

INCUMBENCY CERTIFICATE

I do hereby certify that I am the duly elected or appointed and acting Secretary/Clerk of City of Anniston, Alabama, a body corporate and politic duly organized and existing under the laws of the state of AL, that I have custody of the records of such entity, and that, as of the date hereof, the individuals named below are the duly elected or appointed officers of such entity holding the offices set forth opposite their respective names. I further certify that (i) the signatures set opposite their respective names and titles are their true and authentic signatures, and (ii) such officers have the authority on behalf of such entity to enter into that certain Equipment Lease/Purchase Agreement dated as of May 01, 2021 (the "Agreement") between such entity and ALTEC CAPITAL SERVICES, L.L.C. and is duly authorized to execute Certificates of Acceptance, Requisition Requests, and other documents relating to the Agreement.

<u>NAME</u>	<u>TITLE</u>	<u>SIGNATURE</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

IN WITNESS WHEREOF, I have duly executed this Certificate and affixed the seal of City of Anniston, Alabama hereto this ____ day of _____, 2021.

[SEAL]

(Secretary/Clerk)

(OTHER THAN THE PERSON SIGNING THE DOCUMENTS)

05/03/2021

FACT SHEET

SUBJECT: Evaluation of bids for a Mechanics Utility/Crane Truck

VENDORS SUBMITTING BIDS

Ingram Equipment Company

\$152,561.85

RECOMMENDATION: The bid should be awarded to Ingram Equipment Company for the amount of \$152,561.85.

ADVERTISEMENT FOR BID

The City of Anniston will be receiving sealed bids for the purchase of a Mechanics Utility/Crane Truck until Monday, May 3, 2021, at 10:30 a.m., Central Time, in the Executive Conference Room, City Hall, 4309 McClellan Blvd., Anniston, Alabama, and then at said office publicly opened and read aloud.

All bid documents are available for review Monday through Friday 8:00 a.m. – 4:00 p.m. at the Public Work's Office, City Hall, 4309 McClellan Blvd., Anniston, and AL. Copies of bid documents may be obtained at this office.

The City of Anniston reserves the right to waive any informality or to reject any or all bids.

Direct all questions to Public Works at 256-231-7742.

Chantrece Martin, Public Works

April 17, 2021

Invitation for Bid
Number COA2021-B-006
Bids to be opened at
10:30 a.m., Central Time
May 3, 2021, in the
Anniston City Hall, Large Conference Room
4309 McClellan Blvd
Anniston, Alabama

INVITATION FOR BID

To Whom It May Concern:

Sealed bids will be received for Mechanics Utility/Crane Truck by the City of Anniston, Alabama, at the Large Conference Room in City Hall until the above time and date. Bids received after the above time and date will be considered non-responsive and will be returned unopened.

Sincerely,

Chantrece Martin
Administrative Assistant

BID SCHEDULE

The City of Anniston will accept proposals for the purchase of the following equipment. Any equipment to be provided must meet or exceed the specifications of the listed equipment. The City of Anniston will determine if any proposed equipment meets the required specifications. A copy of specifications of the listed equipment is attached.

<u>Item</u>	<u>Description</u>	<u>Qty</u>	<u>Unit</u>	<u>Unit Price</u>
1.	Mechanics Utility/Crane Truck New and unused, To meet the following Specifications:	1	each	\$ _____

SPECIFICATIONS

Truck Chassis must have a GVWR equal to or greater than 19,500 lbs.

- Must have high output alternator
- Truck chassis to be Crew Cab
- Transmission must have PTO provisions
- Chassis to have roof mount Lightbar.
 - Amber with rear Stop/Turn/Tail. 40 degree long range LED Fenix Fusion FN-4918 or Equivalent

11' (84" CA) Mechanic Utility/Crane Body

- 10 gauge (3.6mm) Body with 12 gauge (2.8mm) tread plate on tops and cargo bed
- Integral crane box to transfer load directly to outriggers
- Internal stainless steel hinges
- Double-paneled doors
- Gas door struts
- Rounded door corners throughout
- Flush door panels with bulb seal gasket and functional full-length drip rail Fully undercoated for rust prevention
- Large, flush-mounted, stop-tail-turn lights
- Four recessed tie downs in the cargo floor, two tie downs along both walls of the cargo bed. All tie downs to be mounted in the rear half of cargo area.
- Rounded door corners throughout
- Fully Adjustable Shelving in all compartments (except Left Front)
- LED compartment Lights
- Master lock System
- Left Side Front tool box (5) 3", (2) 5", (1) 7" or equivalent
- Must have Fully Hydraulic Out and Down Outriggers
- Contained 50' x ½" air hose reel (rear exit)
- 2000 watt power inverter

- Must have 1600 lb Lift Gate with minimum 38" platform
- Must have Vanair® CAP-START® 3000+AIR 12V System Installed
 - Vanair Compressor/Generator to be mounted in cargo area
 - Control panel and 30' (3/0) cable to be mounted curbside/passenger
 - Plumbed to chassis gas tank if applicable (remote tank If Not Applicable)
 - If Not Applicable - ASME/CRN certified remote tank to include check valve, pressure relief valve, and condensation drain
 - System Tied to chassis battery

Must have 7000 lb or greater PTO driven Hydraulic Crane

- PTO and Hydraulic pump must provide a minimum of 8 gpm flow @ 2750 psi
- Total boom reach of 20 foot
- Possess at least 80 foot of 3/8 cable with minimum break strength of 14,000 lbs
- System tied to chassis battery
- 370 degrees of rotation with integrated stop limit

Truck and Mechanic body to be White in color

Must be able to deliver completed unit within 120 days of date ordered,

Use of specific names and numbers is not intended to restrict the bidding of any seller and/or manufacturer, but is solely for the purpose of indicating the type, size and quality of materials, products, service, or equipment considered best adapted to the City's intended use.

BIDDING ON:

MFG: _____

MODEL: _____

BRAND: _____

DELIVERY: _____ **CALENDAR DAYS FROM DATE OF ORDER.**

- NOTE:** It is the intent of this Invitation for Bid to award a firm, fixed price contract with no provisions for price escalation.
- NOTE:** The City of Anniston reserves the right to accept or reject all bids or any portion thereof.
- NOTE:** Bids shall be submitted in sealed envelopes and marked with the Invitation for Bid number and bid opening time and date.
- NOTE:** Delivery shall be F.O.B. destination, Anniston, Alabama.
- NOTE:** Bid price must include all vehicle registration fees.



CITY OF ANNISTON

FINANCE DEPARTMENT FACT SHEET

TO: CITY COUNCIL AND CITY MANAGER
FROM: JULIE BORRELLI, FINANCE DIRECTOR
SUBJECT: DUA SAEED LLC
DATE: 5/5/2021
CC:

- 🌐 Formal action is required for Retail Beer (Off Premises Only) and Retail Table Wine (Off Premises Only)
- 🌐 Located inside the City Limits at 1500 Quintard Ave, Anniston, AL 36201.
- 🌐 The Police Department provided a background check which showed no criminal activity.

MOTIONS

March 31, 2021

TO: Anniston City Council / Appointing Authority

RE: Board Candidates for The Health Care Authority of The City of Anniston

In accordance with Section 14 of the Certificate of Reincorporation dated September 6, 2016 between The Regional Medical Center Board and The City of Anniston, Alabama, The Health Care Authority of the City of Anniston Board submits the following slate of 3 (three) candidates for consideration for a term beginning June 1, 2021. We request that the Council please review the slate of candidates and select one nominee to fill the vacancy of the term ending May 31, 2021. *Board Resolution attached*

Place #5

- Hinton (Bud) Owsley (*currently seated*)
- Debra Foster
- JeanAnn Oglesby

Each of the candidates is a current resident of the city of Anniston, has a solid record of community service and has expressed a willingness to serve on the Board. We look forward to hearing from you regarding the appointment. If you have any questions, please let me know. Thank you.

Sincerely,



Louis A. Bass
President/CEO

RESOLUTION

WHEREAS, According to the Certificate of Reincorporation of The Health Care Authority of the City of Anniston, the Board of Directors of The Health Care Authority of the City of Anniston (the "Board") shall comply with the procedures as set forth in Section 14 with respect to the appointment of directors by the City, and the governing bodies of Calhoun County, Alabama, the City of Oxford, Alabama and the City of Jacksonville, Alabama (with the City, each an "Appointing Authority").

WHEREAS, NOW, THEREFORE, BE IT RESOLVED BY THE BOARD The Board respectfully nominates the following individuals (first slate) to fill the upcoming vacancy (term ending May 31, 2021) currently held by Hinton (Bud) Owsley to the Board of Directors of The Health Care Authority of the City of Anniston:

Place # 5

- . Hinton (Bud) Owsley (currently seated)
- . Debra Foster
- . JeanAnn Oglesby

Passed and adopted on the 31th day of March 2021 by the Health Care Authority of the City of Anniston Board at a meeting held in Anniston, Calhoun County, Alabama.

Sandra Fox Sudduth, Chairwoman of Board of Directors
The Health Care Authority of the City of Anniston

RESOLUTIONS

RESOLUTION NO. 21-R-_____

**A RESOLUTION AUTHORIZING THE ISSUANCE OF THE CITY'S SERIES 2021-A
LIMITED OBLIGATION CERTIFICATE OF INDEBTEDNESS WITH REGARD TO
THE PROJECT DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF
ANNISTON, ALABAMA, AND JACK'S FAMILY RESTAURANTS, LP.**

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

1. The City does hereby approve, adopt, ratify, authorize and confirm the following documents:

(a) the Project Development Agreement (the "Development Agreement") by and among the City and Jack's Family Restaurants, LP, a Delaware Limited Partnership (the "Developer"); and

(b) the form and issuance of the City's Series 2021-A Limited Obligation Certificate of Indebtedness.

2. The documents described in Section 1 of this resolution (herein collectively the "Financing Documents") are approved in substantially the form and of substantially the content as the Financing Documents presented to and considered by the City Council, with such changes or additions thereto or deletions therefrom as the Mayor of the City executing those of the Financing Documents to which the City is a party signatory thereto shall approve, which approval shall be conclusively evidenced by his executing the Financing Documents as hereinafter provided.

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

4. The Certificate of Indebtedness evidences the obligations of the City set forth in the Development Agreement which serve to promote economic development of the City as more thoroughly described in the Development Agreement and further serve a valid and sufficient public purpose notwithstanding any incidental benefit to any private person or entity including Developer and have been found by the City Council to be in the best interests of the citizens of the City.

5. The City desires, before the issuance of the Series 2021-A Limited Obligation Certificate of Indebtedness, described in the Financing Documents, to validate the legality of all proceedings had or taken in connection therewith, the validity of the means provided for the payment of the Series 2021-A Limited Obligation Certificate of Indebtedness and the validity of all covenants and provisions contained in the resolution and order authorizing the issuance of the Series 2021-A Limited Obligation Certificate of Indebtedness, by filing a complaint against the taxpayers and citizens of the City of Anniston, Alabama in the Circuit Court of Calhoun County, Alabama. A complaint to validate such Series 2021-A Limited Obligation Certificate of Indebtedness, the Financing Documents, proceedings, means provided for the payment thereof, and all covenants and provisions contained in the resolution and order authorizing the issuance of said obligation shall be filed and validation proceedings shall be instituted in the name of the City and the members of the governing body of the City. Hill, Gossett, Kemp & Hufford, P.C. is hereby

designated and appointed as the attorney of the City to file such complaint, institute such proceedings, and to take all steps necessary to complete such validation proceedings in accordance with the provisions of applicable law. Any actions heretofore taken by such attorneys in connection with the filing of such complaint or such validation proceedings are hereby ratified and confirmed.

6. Subject to successful resolution of the Validation Proceedings, the Mayor is hereby authorized and directed to execute, acknowledge and deliver the Financing Documents for and on behalf of and in the name of the City. The City Clerk is hereby authorized and directed to attest the same. Any prior execution of the Financing Documents by any of the aforesaid officers is hereby ratified and confirmed.

7. The Mayor and the City Clerk, or either of them, are hereby authorized and directed to: execute, deliver, file and record such related financing documents and security agreements and notices thereof as may be necessary or desirable to carry out the provisions of this resolution.

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

9. The City does hereby approve, adopt, ratify, and confirm the seal impressed on these minutes as and for the official corporate seal of the City and said seal shall remain in the custody of the City Clerk, who is hereby authorized to affix the same to bonds, contracts, proceedings and other documents of the City.

PASSED and ADOPTED this _____ day of _____, 2021.

CITY COUNCIL OF THE CITY OF
ANNISTON, ALABAMA

Jack Draper, Mayor

Jay Jenkins, Council Member

Demetric Roberts, Council Member

Ciara Smith, Council Member

Millie Harris, Council Member

ATTEST:

Skyler Bass, City Clerk

THIS CERTIFICATE HAS NOT BEEN REGISTERED (i) UNDER THE SECURITIES ACT OF 1933, AS AMENDED, IN RELIANCE UPON THE EXEMPTION PROVIDED BY SECTION 4(2) OF SAID ACT, OR (ii) UNDER ANY STATE SECURITIES LAW, IN RELIANCE UPON APPLICABLE EXEMPTIONS, AND MAY NOT BE TRANSFERRED WITHOUT REGISTRATION EXCEPT PURSUANT TO AN EXEMPTION THEREFROM.

**UNITED STATES OF AMERICA
STATE OF ALABAMA**

**CITY OF ANNISTON, ALABAMA
LIMITED OBLIGATION CERTIFICATE OF INDEBTEDNESS,
SERIES 2021-A**

Reference is made to the provisions of that certain Project Development Agreement dated as of _____, 2021 (the "Development Agreement") by and among the City of Anniston (the "City"), and the Payee (as hereinafter defined), to and by which all of which provisions the Holder (as hereinafter defined), by acceptance of this Certificate, assents and agrees to be bound.

CITY OF ANNISTON, ALABAMA, a municipal corporation of the State of Alabama (the "City"), for value received, hereby acknowledges itself indebted to:

Jack's Family Restaurants, LP (the "Payee")

(a/k/a the "Holder") in the amounts described in the Development Agreement at a maximum amount of Nine Hundred Thousand and No/100 Dollars (\$900,000.00). The amounts payable by the City to the Payee under this Limited Obligation Certificate of Indebtedness (this "Certificate") shall be payable and subject to the terms and conditions described in the Development Agreement. All amounts due pursuant to this Certificate shall solely be payable out of the City Tax Revenue (as described in the Development Agreement) which is levied and actually collected by the City.

Authority for Issuance

This Certificate is issued pursuant to the authority of the Constitution and laws of the State of Alabama, including particularly and without limitation, Amendment 772 to the Constitution of Alabama of 1901 (the "Enabling Law"). This Certificate is a limited obligation of the City payable solely out of the "Pledged Revenues" (defined below).

Payment

Payment of this Certificate shall be made to the Holder in accordance with the terms and conditions of the Development Agreement; provided the final payment under this Certificate shall be made only upon presentation and surrender of this Certificate to the City for cancellation.

Each payment made on this Certificate shall be reflected by the notations made by the Payee on its internal records (which may be kept by computer or by other means determined by the Payee) and the Payee is hereby authorized so to record thereon all such payments.

All payments by the City shall be made in such coin or currency of the United States of America as at the time of payment is legal tender for the payment of public and private debts, and shall be valid and effectual to satisfy and discharge the liability of the City upon this Certificate to the extent of the amounts so paid.

The person in whose name this Certificate is registered shall be deemed and regarded as the absolute owner hereof for all purposes, and payment of the principal of this Certificate shall be made only to or upon the order of the Holder hereof or its legal representative, and neither the City nor any agent of the City shall be affected by any notice to the contrary.

Security

This Certificate is a limited obligation of the City payable solely from the portion of the taxes payable to the Payee as described in the Development Agreement (the "Pledged Revenues").

This Certificate shall never constitute a charge against the general credit or taxing powers of the City within the meaning of any constitutional provision or statutory limitation whatsoever.

Registration and Transfer

This Certificate is registered in the name of the Holder on the book of registration maintained for that purpose by the City, and the Registration of Ownership appearing hereon shall be signed by the Mayor or Clerk of the City. This Certificate may be transferred only upon surrender hereof to the City for the transfer, together with the written request of the Holder or its legal representative addressed to the City, after having obtained all requisite consents to such assignment as required by Development Agreement, and recordation of such transfer on said book of registration and endorsement hereon by the City. Upon presentation to the City for transfer, this Certificate must be accompanied by a written instrument or instruments of transfer satisfactory to the City, in form of the Assignment attached hereto, duly executed by the Holder or its attorney duly authorized in writing.

General

No covenant or agreement contained in this Certificate or in the Development Agreement shall be deemed to be a covenant or agreement of any officer, agent, employee, or member of the governing body of the City in their individual capacity, and none of such parties or persons nor any officer executing this Certificate shall be liable personally on this Certificate or be subject to any personal liability or accountability by reason of the issuance of this Certificate.

It is hereby recited, certified and declared that the indebtedness evidenced and ordered paid by this Certificate is lawfully due without condition, abatement or offset of any description, subject to the provisions of the Development Agreement, that this Certificate has been registered in the manner provided by law, that all acts, conditions and things required by the Constitution and laws of the State of Alabama to happen, exist and be performed precedent to and in the execution, registration and issuance of this Certificate, the adoption of the resolutions and/or ordinances of the City approving the Development Agreement and this Certificate, and the execution and delivery of the Development Agreement and this Certificate, have happened, do exist and have been performed in due time, form and manner as so required by law and that the indebtedness evidenced by this Certificate, together with all other indebtedness of the City, are within every debt and other limit prescribed by the Constitution and laws of the State of Alabama.

IN WITNESS WHEREOF, the City, acting by and through the City Council of the City, as the governing body thereof, has caused this Certificate to be executed in its name and on its behalf by the Mayor of the City, has caused its corporate seal to be affixed hereto and the same attested by the Clerk of the City, and has caused this Certificate to be dated _____, 2021.

CITY OF ANNISTON, ALABAMA

By: _____
Mayor

SEAL

Attest: _____
City Clerk

REGISTRATION OF OWNERSHIP

This Certificate is recorded and registered on the Certificate register of City of Anniston, Alabama in the name of the last owner named below. Amounts due under this Certificate shall be payable only to or upon the order of such registered owner.

<u>Date of</u> <u>Registration</u>	<u>In Whose Name</u> <u>Registered</u>	<u>Signature of Authorized</u> <u>Officer of City</u>
_____, 2021	Jack's Family Restaurants, LP	_____
_____	_____	_____
_____	_____	_____

RESOLUTION NO. 21-O-__

A RESOLUTION AUTHORIZING AN ECONOMIC DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ANNISTON, ALABAMA AND JACK'S FAMILY RESTAURANTS, LP

BE IT RESOLVED by the City Council of the City of Anniston, Alabama as follows:

Section 1. Findings. The City Council (the "Council") of the City of Anniston, Alabama (the "City"), which is the governing body of the City, has found and ascertained and does hereby declare as follows:

A. The Council has heretofore caused to be published in The Anniston Star, the newspaper having the largest circulation in the City, in its edition of May 8 – 9, 2021, a notice to the public announcing the holding by the Council of a public meeting beginning at 5:30 PM on May 18, 2021 for the purpose of receiving comments from interested citizens, pursuant to the provisions of the constitution and laws of the State of Alabama, including particularly Amendment No. 772 to the Constitution of Alabama of 1901, concerning the proposed authorization, execution and delivery, for and in the name and behalf of the City, of a Project Development Agreement (the "Development Agreement") (attached hereto as Exhibit "A") by and between the City and Jack's Family Restaurants, LP (collectively the "Developer"), in which the City proposes to take the actions as set forth therein and as partially described below.

B. The purpose of the project and the items set forth above is the promotion of the economic development of the City in accordance with the economic development goals and objectives of the City, the increase in tax revenues in and around the City, the increase in jobs in and around the City and the improvement of the quality of life for citizens in and around the City.

C. Any interested citizens appearing at the public hearing have been given an opportunity to make comments to the Council on the proposed project and the terms of the Development Agreement and the Council has considered such comments as may have been made with respect thereto.

D. The public benefits sought to be achieved by the adoption of the Development Agreement are the construction and operation of a restaurant facility which is expected to generate additional tax revenues for the City, and the creation of additional full time equivalent jobs in the City, many of which will be filled by residents of the City and which will improve and enhance the overall aesthetics of the City thereby promoting economic development within the City and enhancing the quality of life for citizens of the City.

E. For purposes of Amendment No. 772 to the Constitution of Alabama of 1901, the Developer is the business entity to whom or for whose benefit the City proposes to lend its credit or grant public funds or thing of value;

F. The expenditure of public funds for the purpose specified in this resolution will serve a valid and sufficient public purpose, notwithstanding any incidental benefit accruing to any private entity or entities.

Section 2. **Approval.** The Council hereby approves the authorization, execution and delivery, for and in the name and behalf of the City, of:

A. the Development Agreement by and between the City and the Developer, and the provisions set forth therein in substantially the form and of substantially the content as the said Development Agreement and presented to and considered by the City Council, with such changes or

additions thereto or deletions therefrom as the Mayor of the City executing such Development Agreement to which the City is a party signatory thereto shall approve, which approval shall be conclusively evidenced by his executing the Development Agreement as herein provided.

B. The approval of the above stated Development Agreement provided for herein is contingent upon and subject to the approval of all parties to the Development Agreement and the said Development Agreement is approved in substantially the same form and substance of those presented to and considered by the City Council.

Section 3. **Authorization of Related Documents and Actions.** The Mayor, the City Clerk, and all other officers of the City and of the Council are hereby authorized and directed to execute, deliver, seal and attest such other agreements, undertakings, documents and certificates and to take such other actions on behalf of the City and the Council as may be necessary or desirable to consummate the execution and delivery of the Development Agreement and the undertakings of the City and the Council as set forth in the Development Agreement and to carry out fully the transactions contemplated by this resolution subject to the conditions set forth herein.

Section 4. **Provisions of Resolution Severable.** The various provisions of this resolution are hereby declared to be severable. In the event any provision hereof shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not affect the validity or enforceability of any other portion of this resolution.

Section 5. **Effective Date.** This resolution shall take effect upon its passage and adoption by the Council.

PASSED and **ADOPTED** this the ____ day of _____, 2021.

CITY COUNCIL OF THE CITY OF
ANNISTON, ALABAMA

Jack Draper, Mayor

Jay Jenkins, Council Member

Demetric Roberts, Council Member

Ciara Smith, Council Member

Millie Harris, Council Member

ATTEST:

Skyler Bass, City Clerk

STATE OF ALABAMA)

COUNTY OF CALHOUN)

PROJECT DEVELOPMENT AGREEMENT

THIS **PROJECT DEVELOPMENT AGREEMENT** (the “Agreement”) is hereby made and entered into on this the _____ day of _____, 2021, by and among the **CITY OF ANNISTON, ALABAMA**, a municipal corporation organized and existing under the laws of the State of Alabama (the “City”), (the City sometimes referred to hereinafter as the "Public Body") and **JACK’S FAMILY RESTAURANTS, LP**, a Delaware Limited Partnership (the “Developer”). The City and the Developer are sometimes collectively referred to as the “Parties” and singularly as the “Party”.

RECITALS:

WHEREAS, the Public Body supports and encourages business development in order to increase tax revenues and improve the quality of life of its citizens; and

WHEREAS, Amendment No. 772 to the Constitution of Alabama (1901) (Section 94.01(a)(3) of the Recompiled Constitution of Alabama hereinafter (referred to as “Amendment No. 772”), authorizes the Public Body to lend their credit to or grant public funds and things of value in aid of or to any corporation or other business entity for the purpose of promoting the economic development of the City; and

WHEREAS, Developer proposes to, conditioned on the incentives described herein, purchase and develop upon (including construction, site work, etc.) real property located within the City (the “Project Site”) generally located at: Golden Springs Road and which is more particularly described on Exhibit “A” which is attached hereto and incorporated herein by reference, and to fund the construction of any building(s) on the Project Site (the “Retail Center”) pursuant to and in accordance with plans and drawings (the “Development Plan”) to be submitted to the City, which shall be incorporated herein as Exhibit “B” upon delivery to the City and to thereafter operate the Retail Center as a restaurant facility (the “Restaurant”) of Developer; and

WHEREAS, the above referenced development of the Project Site and the Retail Center and the operation of the Retail Center as described above is expected to provide increased tax revenues for the City and provide employment opportunities for citizens of the City; and

WHEREAS, the development of the Project Site and the Retail Center and the operation of the Retail Center is expected to generate annual taxable sales in approximately the amount of One Million Eight Hundred Thousand No/100 Dollars (\$1,800,00.00) and the creation of a significant number of full and part time jobs, many of which may be filled by residents of the Public Body; and

WHEREAS, the development of the Project Site and the Retail Center and the operation of the Retail Center are expected to promote the economic development and create a public benefit and enhance the welfare of the citizens of the Public Body by, among other things: promoting local economic and commercial development and the stimulating the local economy; increasing the tax revenues of the Public Body; improving the quality of life for citizens of the Public Body; providing employment opportunities for citizens of the Public Body; and

WHEREAS, the Public Body has determined that entry into the Agreement and the development of the Project Site and the Retail Center and the operation of the Retail Center will: promote the economic development of the Public Body; create jobs; increase the tax revenues in and around the Public Body; promote the location, relocation, expansion and retention of commercial enterprises in the City; preserve and improve the aesthetic quality of commercial development, inuring to the economic health of the City; and improve the quality of life for citizens in and around the Public Body; and further, have determined that the expenditure of the public funds for the purposes specified therein will serve a valid and sufficient public purpose, notwithstanding any incidental benefits accruing to any private entity or entities, and further, have determined that the entry into the agreements and transactions described herein is in the best interest of the health, safety and welfare of the citizens in and around the Public Body; and

WHEREAS, the Public Body finds that it is necessary, proper and in the public interest, in accordance with Amendment No. 772, that the Public Body provide certain incentives to Developer in connection with the development of the Project Site and the Retail Center and the operation of the Retail Center, and that providing such financial assistance is a public purpose consistent with and in furtherance of the objectives of Amendment No. 772; and

WHEREAS, the Parties hereto are desirous of having the terms and conditions of their agreement set forth in a valid, binding, and enforceable agreement between the Public Body and the Developer.

AGREEMENT

NOW, THEREFORE, upon and in consideration of the mutual promises and covenants contained herein and for other valuable consideration, the receipt, adequacy and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

ARTICLE I **DEFINITIONS**

1.1 “City Assistance” means an amount equal to sixty percent (60%) of the City Tax Revenue derived from the Net Taxable Sales generated by the Retail Center located on the Project Site until such time as the Term of this Agreement is reached.

1.2 “City Tax Revenue” means the monthly revenue obtained from the City’s five percent (5%) general sales tax levied by and paid to the City that is derived solely from the operation of the Retail Center; the City Tax Revenue does not include any taxes levied or that may be levied exclusively for educational purposes or otherwise currently obligated by the City.

1.3 “Commencement Date” means the date a Certificate of Occupancy is issued for the Retail Center.

1.4 “Development Plan” shall refer to the plans, specifications, drawings and other documents for the complete development of the existing Project Site and Retail Center in accordance with the plans and drawings submitted to the Public Body. All Parties acknowledge the Development Plan is not completed at this time but will be finalized after execution of this Agreement. Developer agrees to follow all local building codes related to the development of this project.

1.5 “Effective Date” shall have the meaning ascribed to such term in Section 5.1 hereof.

1.6 “Fiscal Quarter” means the applicable three-month period of the Public Body’s Fiscal Year. The Public Body’s Fiscal Quarters are October 1 through December 31, January 1 through March 31, April 1 through June 30, and July 1 through September 30.

1.7 “Net Taxable Sales” means the retail sales generated at the Retail Center that are taxable by the City and for which payment is actually made to the City from the Restaurant located on the Project Site.

1.9 “Payment Dates” means the tenth (10th) day of the first month following the first full fiscal quarter in which the Developer or its assignee is open for business at the Retail Center and continuing thereafter on the 10th day of month following each successive fiscal quarter thereafter until terminated as provided for in Section 4.3 hereof. To clarify, notwithstanding anything to the contrary herein, Payment Dates shall occur every three months (on the 10th day of said month) beginning the first month following the first full fiscal quarter in which the Developer or its assignee is open for business at the Retail Center until terminated as provided for in Section 4.3 hereof.

1.10 “Project” means the development of the Project Site and Retail Center in accordance with the Development Plan.

1.11 “Project Site” means the property within the City and located generally at North 3rd Street and more particularly described on Exhibit “A” which is attached hereto and incorporated herein by reference.

1.12 “Public Assistance” shall mean the City Assistance as set forth in Article IV of this Agreement.

1.13 “Retail Center” shall have the meaning ascribed to such term in the Recitals.

1.14 “Term” shall mean a period of ten (10) years from the Commencement Date.

ARTICLE II

OBLIGATIONS OF DEVELOPER

2.1 Development of Retail Center. Developer agrees at its sole cost and expense to purchase and/or construct upon and/or develop the Project Site and the Retail Center on the Project Site pursuant to and in accordance with the Development Plan.

2.2 Project Construction. The Developer agrees at its sole cost and expense to develop the Project Site and Retail Center in accordance with the Development Plan and all other plans, specifications and drawings necessary for the development of the Project Site and Retail Center.

2.3 Expenses of Development. Developer shall be responsible for all costs of the Project construction. Developer shall be responsible for payment of its own fees with respect to the development of the Project, including, but not limited to, legal, accounting, engineering, surveying, title work, architectural, construction and environmental services. Developer shall not hold itself out as an agent of the Public Body with respect to the development or construction of the Project Site and Retail Center.

2.4 Compliance with Laws. Developer agrees to require all persons and entities designing or developing the Project Site and Retail Center to do so in accordance with all applicable statutes, ordinances, laws, rules and regulations of any governmental authority having jurisdiction over the Project; should the Public Body become aware of any failure in this regard, it shall provide Developer with notice of the same and the Developer shall cure the same within no more than thirty (30) days from said notice.

2.5 Compliance with Agreement. Developer shall comply with the terms and conditions contained in this Agreement.

ARTICLE III

CONTINGENCIES

3.1 The obligations of the Public Body under this Agreement are contingent upon the following:

(a) Developer’s compliance with its obligations as set forth in this Agreement.

(b) Approval and Validation Proceedings. The Public Body shall file validation proceedings (the “Validation Proceedings”) in Calhoun County, Alabama, to validate the legality and validity of, amongst other things: (i) the City’s authority to issue the Public Assistance set forth in this Agreement, (ii) all proceedings had or taken in connection therewith, (iii) this

Agreement, and (iv) the revenues and means provided for the payment of the Public Assistance of the City (v) the Certificate of Indebtedness described below.

Should the Circuit Court fail to validate as per the above, Developer shall be released from all of its obligations herein.

Developer shall be responsible for all costs, fees, and expenses for the validation proceeding. The firm of Hill, Gossett, Kemp & Hufford, P.C. is hereby designated and appointed as the attorney of the City to file such complaint, institute such proceedings, and to take all steps necessary to complete such validation proceedings in accordance with the provisions of applicable law. Any actions heretofore taken by such attorneys in connection with the filing of such complaint or such validation proceedings are hereby ratified and confirmed.

(c) Certificate of Indebtedness. The City shall issue a Certificate of Indebtedness evidencing their agreement as described herein and defining its obligations as also stated herein.

ARTICLE IV **PUBLIC ASSISTANCE**

4.1 City Assistance.

(a) In consideration of and subject to the conditions contained in this Agreement, and as an inducement for Developer's agreement to develop and operate the Retail Center on the Project Site, the City hereby agrees to pay to Developer the City Assistance for the Term and upon the terms and conditions contained in this Agreement.¹

(b) The City Assistance shall be paid solely for costs incurred by the Developer for costs associated with the development (including but not limited to construction of applicable parking areas, buildings, site work, etc.) of the Retail Center and the Project Site as set out in the Development Plan and/or other applicable plans and for no other purposes, and, as a condition precedent to any payments of City Assistance, Developer shall provide documentation in such form as is reasonably satisfactory to the City evidencing Developer's payment of the costs associated with the development of the Retail Center and the Project Site; otherwise, Developer shall not be entitled to the payment of City Assistance as provided for herein.

(c) Subject to the conditions contained in the Agreement and provided that all contingencies contained herein have been met and that Developer is in compliance with the terms and conditions of the Agreement, the City shall pay the first payment of City Assistance to

¹ It is expressly acknowledged that Developer may transfer the Project Site to a third party (including but not limited to a sale / leaseback scenario) but will continue to operate and/or ensure operation of the Retail Center as the Restaurant. Notwithstanding anything herein, such a transfer of the real property is expressly contemplated and approved by the City. The City Assistance will continue to be due and payable to Developer unless otherwise expressly allowed by the City as described in Section 5.4 herein.

Developer on the first Payment Date and continue thereafter on the 10th day of the first month following every full fiscal quarter thereafter until terminated as provided for in Section 4.3 hereof.

(d) Timely submission of sales tax returns and payment of such taxes by the Restaurant shall be a condition precedent to the City's obligation to make payments of the City Assistance. The City shall verify the amount of the Tax Revenue for the preceding quarter before payment of the reimbursement of the City Assistance to Developer and, subject to applicable law, with each payment of City Assistance the City will provide a written summary of the amount of City Tax Revenue received by the City. Further, at Developer's request, said written summary shall be provided to Developer by City on a quarterly basis.

(e) The City Assistance shall be paid to Developer solely by the City and solely from the City Tax Revenue actually received by the City from the Net Taxable Sales generated by the Retail Center located on the Project Site. The City's obligation to make such payments is not a general obligation of the City, but is limited to the sales taxes actually received as City Tax Revenue resulting from the operation of the Retail Center located on the Project Site.

(f) After the Commencement Date, in the event that no quarterly Net Taxable Sales are generated by the Retail Center during any quarter during the term of this Agreement, neither Developer nor its designees, successors or assigns, if any, shall have any general or other recourse against the City for the payment or nonpayment of City Assistance exclusively for or related to said quarter. However, because City Assistance is paid pursuant to this Agreement every three (3) months, City Assistance may be due and payable on any given Payment Date based upon the City's Net Taxable Sales for all other months during the applicable three (3) month time period prior to said Payment Date even if no Net Taxable Sales were generated on any particular one (1) or two (2) months during said three (3) month time period. No interest, carrying charge or finance charge of any kind shall accrue or be added to the principal amount due Developer by the City hereunder. Under no circumstance will any given month's Net Taxable Sales, or lack thereof, cause a reduction to the City Assistance generated by the other months in an applicable three (3) month time period. To clarify, no month can cause negative City Assistance.

(g) No sums owed to Developer by virtue of the City Assistance shall accrue interest and any interest that accrues from the deposit of the City Assistance shall belong to and be retained by the City.

(h) Developer agrees that the City is responsible solely for payment of the City Assistance.

4.2 Audit. All pertinent books, accounts, or other records accumulated by Developer in connection with sales from the Retail Center shall be available to representatives of the City for inspection and audit and shall be retained for three (3) years from the termination of this Agreement. If any audit, claim or litigation is begun concerning this Agreement before the expiration of the three (3) year period, Developer shall retain the records until the resolution of all

litigation, claims, or audits involving such records. The City's right to audit pursuant to this Section 4.2 shall survive the termination of this Agreement.

4.3 Termination of City Assistance. Any provision contained herein to the contrary, the obligation of the City to pay the City Assistance shall terminate upon any of the following events: (a) at such time as the Developer has received the amount of the actual out-of-pocket costs incurred and expended by Developer solely for costs associated with development of the Project Site and the Retail Center, and for no other purpose, or a total of Nine Hundred Thousand Dollars (\$900,000.00), whichever is less, or (b) ten (10) years from the date Commencement Date; at which time the obligations of the City to pay the City Assistance shall cease, and all obligations of the City pursuant to the Agreement shall cease. Notwithstanding anything to the contrary herein, at the time of termination of this Agreement, any and all City Assistance owed to Developer shall remain due and payable. All accrued City Assistance shall be paid to Developer within six (6) months of accrual thereof.

ARTICLE V

MISCELLANEOUS

5.1 Effective Date. This Agreement shall become effective on the date upon which it is executed by the last Party to sign (the "Effective Date").

5.2 Public Purpose. The Public Body does hereby ascertain, determine, declare and find that the development of the Retail Center and the Project Site through the expenditure of public funds in the form of the City Assistance will serve a valid and sufficient public purpose, notwithstanding any incidental benefit accruing to Developer or any other person or private entity. The Public Body does further hereby ascertain, determine, declare and find that it is in the best interest of the Public Body and will serve a public purpose and further enhance the public benefit and welfare by, among other things: (i) the development of the Retail Center which is expected to generate annual Net Taxable Sales of approximately One Million Eight Hundred Thousand and No/100 Dollars (\$1,800,000.00) and the creation of numerous full and part time jobs in the City, many of which will be filled by residents of the City; (ii) the promotion of local economic and commercial development and the stimulation of the local economy; (iii) increasing the City's tax base, which will result in additional tax revenues for the City and additional tax revenues for public schools; (iv) promoting the location, relocation, expansion and retention of commercial enterprises in the City; and (v) preserving and improving the aesthetic quality of commercial development, which inure to the economic health of the City.

5.3 Liability of the Public Body. Nothing contained in this Agreement shall be construed to impose a charge against the general credit of the Public Body. The City shall have no liability or obligation in connection with the construction or operation of the Retail Center other than for the City Assistance as set forth herein.

5.4 Assignment. Developer may assign or transfer this Agreement or any interest herein or any part hereof to another entity provided, however, that each of the following conditions

is satisfied: (i) such assignee agrees in writing to assume and be responsible for any and all obligations and duties of Developer hereunder, and (ii) Developer is in compliance with all the terms and conditions hereof at the time of such proposed assignment. Notwithstanding the above, the Parties agree Developer may assign the City Assistance revenue stream to its Lender if so required by Lender.

5.5 Default and Termination.

(a) Upon the occurrence of an event of default by Developer which is not cured within thirty (30) days after written notice from the City, the City may, in its discretion, pursue any one or more of the following remedies:

- (i) seek and obtain injunctive relief or declaratory relief to the extent that the City may be entitled such relief; or
- (ii) terminate this Agreement.

(b) Upon the occurrence of an event of default by the City which is not cured within thirty (30) days after written notice from Developer, the Developer may, in its discretion, pursue any one or more of the following remedies:

- (i) seek and obtain injunctive relief, declaratory relief, or damages in the amount of the unpaid obligations of the City, if any; or
- (ii) terminate this Agreement.

5.7 Governing Law. This Agreement, all rights of the Parties hereunder, and all disputes which may arise hereunder shall be subject to and governed in accordance with the laws of the State of Alabama. By executing this Agreement, the Parties hereto do hereby consent to the jurisdiction and venue of the courts of Calhoun County, Alabama with respect to any matter arising hereunder.

5.8 Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

5.9 Notices. All communications and notices expressly provided herein shall be sent, by first class mail, postage prepaid, by facsimile, or by a nationally recognized overnight courier for delivery on the following business day, as follows:

To City:

City of Anniston, Alabama
4309 McClellan Boulevard

To Developer:

Jack's Family Restaurants, LP
124 West Oxmoor Rd.

Anniston, Alabama 36206

Birmingham, AL 35209

Attn: Mayor

Attn: Jim Avery

With Copy To:

Bruce J. Downey IV
THE DOWNEY LAW FIRM, LLC
P.O. Box 626
Anniston, AL 36201

With Copy To:

James E. Hill
HILL, GOSSETT, KEMP &
HUFFORD P.C.
P.O. Box 310
Moody, AL 35004

or to such other address as the Parties shall be from time to time designate by written notice.

5.10 Cost and Expense. Each Party agrees to pay its own costs incurred in connection with the negotiation and preparation of this Agreement.

5.11 Press Releases. The Developer hereby agrees to cooperate fully with the City and in connection with the preparation and release of all press releases and publications concerning the Project and Developer's business operations at the Retail Center.

5.12 Section Titles and Headings. The section titles and headings are for convenience only and do not define, modify or limit any of the terms and provisions hereof.

5.13 Representations and Warranties.

(a) Developer makes the following representations and warranties as the basis for its undertakings pursuant to this Agreement:

(i) Developer is a duly organized and existing Delaware Limited Partnership, is qualified to do business in the State of Alabama and is in good standing under the laws of the State of Alabama, and has the power to enter into and to perform and observe the agreements and covenants on its part contained in this Agreement.

(ii) The execution and delivery of this Agreement on the part of Developer's undersigned officer have been duly authorized by Developer.

(iii) All actions and proceedings required to be taken by or on behalf Developer to execute and deliver this Agreement, and to perform the covenants, obligations and agreements of Developer hereunder, have been duly taken.

(iv) The execution and performance of this Agreement by Developer do not constitute and will not result in the breach or violation of any contract, lease, mortgage, bond, indenture, franchise, permit or agreement of any nature to which Developer is a party.

(v) The representations, warranties and covenants made by Developer herein shall survive the performance of any obligations to which such representations, warranties and covenants relate.

(b) The City makes the following representations and warranties as the basis for its undertakings pursuant to the Agreement:

(i) The City is a duly organized and validly existing Alabama municipal corporation and is vested generally with the authority generally provided to municipalities pursuant to Amendment No. 772.

(ii) The City is specifically capable and qualified to enter into this Agreement; said Agreement violates no debt limit or other provision of law and the City may legally enter into and be bound by this Agreement.

(iii) The execution and delivery of this Agreement on the part of the City and the execution of this Agreement by its Mayor have been duly authorized by the City.

(iv) The representations, warranties and covenants made by the City herein shall survive the performance of any obligations to which such representations, warranties and covenants relate.

5.14 Relationship of Parties. The City and Developer agree that nothing contained in this Agreement, or any act of Developer or of the City, shall be deemed or construed by the Parties hereto, or by third persons, to create any relationship of third party beneficiary hereof, or of principal and agent, or of a limited or a general partnership or of a joint venture or of any association or relationship between Developer and the City other than as independent contractors in a contract entered into at arm's length. Notwithstanding any of the provisions of this Agreement, it is agreed that the City has no investment or equity interest in the business of Developer, and shall not be liable for any debts of Developer, nor shall the City be deemed or construed to be a partner, joint venturer or otherwise interested in the assets of Developer, nor shall Developer at any time or times use the name or credit of the City in purchasing or attempting to purchase any equipment, supplies or other thing whatsoever.

5.15 Compliance with Laws.

(a) Developer shall comply, and shall use its best efforts to cause its officers, agents, employees and contractors to comply, with all applicable federal, state and local statutes, regulations, rules, ordinances and other laws applicable to the operation of the Project.

(b) Developer shall not enter into, execute, or be a party to any covenant agreement, lease, deed, assignment, conveyance, or any other written instrument, which restricts the sale, lease, use or occupancy of the Retail Center, or any part thereof, or any improvements placed

thereon, upon the basis of national origin, race, religion, sex or color. Developer shall comply with all federal, state, and local laws, in effect from time to time, prohibiting discrimination or segregation, and will not discriminate, by reason of national origin, race, religion, sex or color in the sale, lease or use or occupancy of the Retail Center.

5.16 Binding Effect. This Agreement and all terms, provisions and obligations set forth herein shall be binding upon and shall inure to the benefit of Developer and its successors and assigns and shall be binding upon and shall inure to the benefit of the Public Body and its successors and assigns.

5.17 Entire Agreement: Amendment. This Agreement constitutes one entire and complete agreement, and neither of the Parties hereto shall have any rights arising from any separate component of this Agreement without complying in all respects with its duties and obligations under all parts and components hereof. This Agreement constitutes and includes all promises and representations, expressed or implied, made by the City and Developer. No stipulations, agreements or understandings of the Parties hereto shall be valid or enforceable unless contained in this Agreement. No oral conditions, warranties or modifications hereto shall be valid between the Parties. This Agreement may be amended only by a written instrument executed by both Parties.

[signatures contained on the following page]

IN WITNESS WHEREOF, each Party hereto has caused this Agreement to be duly executed as of the date first above written.

DEVELOPER:

JACK'S FAMILY RESTAURANTS, LP

By: _____

Title: _____

Date: _____

CITY:

CITY OF ANNISTON, ALABAMA

By: _____

Jack Draper

Title: Mayor

Date: _____

WITNESS:

ATTEST:

By: _____
City Clerk

EXHIBIT A

Address: No address has been assigned to the property as of the date of execution. The property is located within the City of Anniston and generally on Golden Springs Road.

Legal Description: The parties do not have a legal description for the property as of the date of execution.

It is the intent of the parties to supplant Exhibit A when the address and/or legal description, which will more accurately describe the property are available.