

**RESOLUTION 12-174**

BE IT RESOLVED by the City Council of Decatur, Morgan County, in the State of Alabama, that it appearing the Bid of PNC Bank, NA, having been the lowest and best bid for furnishing funding for the Lazy River at Point Mallard, in accordance with specifications provided, and from evidence submitted it appearing that such vendor is qualified and able to fulfill the requirements of the specifications, said bid is hereby adopted and authorizes Mayor to execute a general obligation instrument with said bidder in the amount of Three Million Seven Hundred Fifty Thousand Dollars (\$3,750,000.00).

Adopted this 18<sup>th</sup> day of June, 2012



[Date]

[Customer Name]

[Address]

Attention: \_\_\_\_\_

Re: **Forward Fixed Rate Lock Letter**

Dear \_\_\_\_\_:

\_\_\_\_\_ (the "**Company**") has requested that PNC Bank, National Association (the "**Bank**") provide the Company with a forward rate commitment (the "**Forward Rate**") for the [describe subject loan] (the "**Facility**") described in the [commitment letter/letter agreement] dated \_\_\_\_\_, \_\_\_\_\_ (the "**Commitment**"). The Forward Rate is offered at a fixed rate of \_\_\_\_\_ percent (\_\_\_\_%) per annum for a principal amount of \$\_\_\_\_\_ beginning no later than \_\_\_\_\_, \_\_\_\_\_ (the "**Rate Lock Expiration Date**"). Principal and interest under the Facility shall be repaid as provided in the Commitment.

The Bank is willing to commit to the Forward Rate upon the terms and conditions specified herein, subject to execution and delivery of the definitive documentation for the Facility in form and content satisfactory to the Bank and satisfaction of the other terms and conditions as are set forth in the Commitment. The documentation must be executed and delivered and funding of the Facility must occur by a date (the "**Closing Date**") which is no later than the Rate Lock Expiration Date.

By accepting this letter, the Company agrees that in the event that for any reason the Closing Date does not occur on or before the Rate Lock Expiration Date, the Bank shall not be obligated to provide the Forward Rate and the Company shall pay to the Bank the amount of any loss or expense which the Bank may sustain or incur as a result of the Company's failure to close the Facility by such date, including but not limited to any loss of margin, loss or expense incurred in liquidating or employing deposits from third parties and any loss or expense incurred in connection with funds acquired by the Bank to fund borrowings subject to the Forward Rate. Such payment shall be due two (2) business days after the Bank gives notice to the Company of the amount thereof, setting forth in reasonable detail the basis for the calculation thereof. A certificate by the Bank as to such amount shall be conclusive if made in good faith. The Company acknowledges and agrees that such amount represents reasonable compensation for loss of bargain and is not a penalty.

[Customer Name]

[Date]

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This letter is governed by the laws of \_\_\_\_\_. No modification or waiver of any of the terms of this letter will be valid unless agreed to in writing by the Bank. When accepted, this letter will constitute the entire agreement between the Bank and the Company concerning the Forward Rate, and shall supersede all prior and contemporaneous understandings and agreements (written or oral) relating thereto.

To accept this letter, please sign the enclosed copy where indicated below and return it to the Bank no later than the Bank's close of business on \_\_\_\_\_, \_\_\_\_\_. If this letter is not accepted by said date, this letter will automatically terminate without liability or further obligation of the Bank.

Very truly yours,

PNC BANK, NATIONAL ASSOCIATION

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

[Customer Name]

[Date]

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### ACCEPTANCE

The Company hereby agrees to the above provisions, intending to be legally bound hereby. The Company understands that the above provisions may obligate the Company to make a significant payment to the Bank in the event the Closing Date does not occur by the Rate Lock Expiration Date, and the amount of any such payment cannot be predicted in advance of such event. The Company is fully informed of and is capable of evaluating, and has evaluated, the potential financial risks and benefits and the appropriateness in light of its individual circumstances, of this letter. The Company is entering into this letter in reliance only upon its own judgment, and is not relying upon any representations, warranty, views or advice of the Bank.

[COMPANY]

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_