

Order 86-14/15

Passage: 8-0 (Brennan absent) on 11/17/2014

Effective 11/27/2014

MICHAEL F. BRENNAN (MAYOR)
KEVIN J. DONOGHUE (1)
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CITY OF PORTLAND
IN THE CITY COUNCIL

JOHN R. COYNE (5)
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JON HINCK (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER AMENDING AND EXPANDING THE BAYSIDE ECONOMIC
REDEVELOPMENT PROGRAM AND BAYSIDE REDEVELOPMENT
TAX INCREMENT FINANCING DISTRICT**

ORDERED, that the Bayside Economic Redevelopment Program and the Bayside Tax Increment Financing District approved by City Council Order 172-12/13 is hereby expanded and amended in substantially the form as attached; and

BE IT FURTHER ORDERED, that the Acting City Manager is hereby authorized to execute whatever documents are necessary to effect the intent and purpose of this Order.

City of Portland

Bayside Economic Redevelopment Program and Tax Increment Financing Program

Prepared by:

The City of Portland Economic Development Department

Enacted by the Portland City Council March 17, 2003

Revised by the Portland City Council July 6, 2005

Revised by the Portland City Council November 21, 2005

Revised by the Portland City Council June 5, 2006

Revised by the Portland City Council November 17, 2014

Section:

- I. Introduction/Updated 2014
- II. Amended Development Program
- III. Physical Description
- IV. Financial Plan
- V. Amended Financial Data
- VI. Tax Shifts
- VII. Municipal Approvals

Exhibits:

- A. Revised TIF Models and Tax Shifts
- B. Area Map Showing Site location
- C. Map of Existing and Expanded Bayside TIF District
- D. Credit Enhancement Agreements (Approved as of 11/17/2014)
- E. Notice of Public Hearing
- F. City Council Minutes
- G. City Council Order
- H. Original Assessed Values/Assessor's Certificate
 - 1. Assessor's Certificate of OAV for Existing Bayside TIF District as of 3/31/2007
 - 2. Assessor's Certificate of OAV for Expanded Area of Bayside TIF District as of 3/31/2013

I. Introduction/Updated 2014

East and West Bayside continue to be gateways to Portland's peninsula. A lot of changes to East and West Bayside have occurred since the Bayside (West) TIF Districted was adopted by the City Council on March 17, 2003. Relocation of one scrap yard and the addition of new medical office buildings, new housing for college students, planned market rate housing and commercial space associated with the Federated Midtown Project, two new grocery stores, pharmacies, and financial institutions have transformed West Bayside's industrial heritage to a more compact urban development pattern, which extends the Central Business District to I-295. East Bayside has been experiencing its own transformation with new coffee shops, artist studios, and new housing. Continued attention to the West Bayside TIF District is needed to fulfill the *Bayside Vision*.

History

In 1996, the process began when the City of Portland obtained funding from the Environmental Protection Agency (EPA) to undertake a Brownfield's Pilot Project in Bayside. The City designated a ten-lot, 14-acre parcel between Oxford Street and Marginal Way as the Bayside Brownfield's Project Area and has since created a \$500,000 loan fund for the express purpose of cleaning up the site to clear the way for future development. The study area was subsequently enlarged to incorporate the area from Congress Street to I-295, and from Franklin Arterial to Forest Avenue, which is approximately 129 acres.

Since 1996, the City of Portland has been working with a team of consultants on planning for opportunities for the reuse of the Bayside land. An extensive public participation process, which involved hundreds of participants, produced a plan entitled "A New Vision for Bayside". The Bayside plan identifies the following eleven development principles and five critical actions in order to transform this area into a vital, productive and diverse urban neighborhood:

Development Principles

- Urban Gateway
- Economic and Employment Opportunities
- A Walkable District
- A Critical Mass of Dwellings
- Transit Oriented Development
- Multi-level Parking Structures
- A Neighborhood Center
- Recreation and Open Space
- A Social Service Network
- Environmental Remediation
- Scrap yard Redevelopment

Critical Actions

- Acquire the Railroad Property
- Redevelop the Scrap yard Parcels
- Build More Housing
- Create Transit Oriented Development
- Secure the Future of Portland's Social Service Network

Public participation continues to be an ongoing aspect of the Plan's implementation. The Bayside Neighborhood Association and the Bayside Community Development Corporation include neighborhood property owners, residents, commercial owners and tenants.

Since adopting the Bayside Vision Plan in December 1999 as a part of the Comprehensive Plan, the City has moved forward on several of the identified critical actions. After several years of complex negotiations with Guilford Transportation and the Maine Department of Transportation, the City purchased the Railroad property. Using Housing and Urban Development ("HUD") and Economic Development Administration ("EDA") funding, this 6+ acre parcel made the City a major property owner in the area of Bayside slated primarily for commercial redevelopment.

EDA and City Capital Improvement Funds have been used to rebuild the sewer system along Somerset Street, adjacent to the railroad parcel, as well as to extend Chestnut Street from Somerset Street to Marginal Way. These improvements were key infrastructure investments for new development in Bayside. The City continues to be committed to investing in Bayside as funding becomes available, but clearly a variety of financing mechanisms have been and will continue to be needed.

With these first actions completed, attention has been focused on the need for structured parking associated with the Federated Midtown Project. At meeting after meeting, then Bayside Development Committee (BDC) members stated unequivocally that the Bayside Plan cannot be implemented to its fullest without structured parking; and that the entire redevelopment plan hinges upon the relocation of the scrap metal recycling facilities. Furthermore, it is clear that the private sector cannot afford to make new investments in Bayside that include the cost of creating structured parking, nor can the market alone bear the cost of relocating the scrap metal recycling facilities.

The first such private development project which included constructing garages occurred on property that was sold by the City to two private developers (Capital, LLC and Southern Maine Student Housing, LLC) who planned a then estimated \$38,400,000 in new taxable commercial investment. The project consisted of a 72,000 sq. ft. office building, perched upon a 430 space parking garage with ground floor retail, alongside a 405 bed student housing facility with a 130 space parking garage. The cost of constructing the structured parking added more costs to the project than market rents could support, so financing relief was sought through the use of Credit Enhancement Agreements (Exhibit D) so that the project moved forward with the density sought for Bayside. This entire investment occupies just over 3 acres by reducing the footprint and allowing for vertical expansion.

The purpose of this Amended TIF application is to create an increased revenue source that can meet these needs, as well as other development principles and critical actions items contained in the *Bayside Vision Report I and II*, and to expand the District to include all of the Bayside area included in the *Bayside Vision*.

This Amended TIF District will assist in accomplishing the goals of the *Bayside Vision*. The public benefits associated with an expanded Bayside TIF District include:

- Provide support for Portland's **continued economic development**;
- Help increase the **vibrancy and stability of the Bayside neighborhood**;
- Create **employment opportunities** for area residents;
- Produce **tax shift benefits** averaging an estimated savings to the City of \$680,307 annually;
- Improve the general economy of Portland and the State of Maine.

II. Amended Development Program

A. *The Amended Project*

With this amended and restated Development Program, the City of Portland seeks to expand the Bayside Redevelopment Tax Increment Financing District to align with the area of Bayside contained in the *Bayside Vision Plans I and II* for the purposes of:

- create additional parking structures
- entering into Credit Enhancement Agreements with developers to facilitate the construction of new taxable commercial investment in Bayside
- relocation of the one remaining scrap metal recycling facility and acquisition of scrap metal yard site
- infrastructure (roadway and sidewalk) located in District
- pledging TIF revenue as a repayment source to HUD or any other agency or entity that finances Bayside investment
- public infrastructure improvements for both pedestrians and transit, lighting, and open space/trails
- supporting the Economic Development Department with funds to market and prepare for redevelopment land in Bayside
- cover the City's Economic Development Department staff costs

The success of these efforts will enhance the City's ability to attract new investment to Bayside, leading to a densely developed commercial district, which will create new taxable value and provide expanded opportunities for employment. The City's Economic Development Department will market the City's land as potential building sites to prospective businesses and developers, in addition to promoting Bayside as a whole.

B. *The Amended Development District*

Properties that are to be designated as part of the Amended TIF District and are the subject of this application are shown on the revised attached map (Exhibit C), containing approximately 67 acres with an original assessed value of \$78,251,800 - real property value only - as of March 31, 2014. When this 67 acres is added to the existing Bayside TIF District of 62.18, the Amended District would total 129.18 acres

Note: The City is now adjusting the previously submitted approved acreage of 77 to 62.18 based on current City GIS mapping. This adjustment is reflective of the properties which make up the original assessed value for the district as of 3/31/2007 of \$44,066,380 – real and personal property value.

The Amended TIF District will apply to only new value generated within the District and will not affect the current property tax base.

C. The Amended Development Program

The City of Portland, by designating the Amended Bayside Redevelopment TIF District, will potentially capture all new investments made within the Amended District. The City is projecting to capture up to 100% of the new assessed value over the original assessed value, and retain from the district the new tax revenues generated from that captured assessed value. These revenues will be allocated to the Project Cost Account for the purposes described in II.A. above. Each year, the City Council may adjust the specific amount to be captured and retained for purposes of this Amended TIF, based upon the needs of the Amended District, and the commitments made through Credit Enhancement Agreements, collateral for loan or bond repayment, and the like.

D. Municipal Use of TIF Revenues

The City of Portland seeks authorization to utilize the revenues generated from the Amended Bayside TIF District to support economic development in Bayside through the development of multi-level parking structures, as a source of repayment to HUD or any other agency or entity that finances Bayside investment, as well as to assist in any relocation of the remaining scrap metal recycling facility not associated with a HUD loan, or for any other City borrowing so authorized for the benefit of the District, including infrastructure improvements for both pedestrians and transit, lighting, and open space/trails, as detailed in II.A above. In addition, the City will allocate a portion of the retained revenue to the Economic Development Department to support staffing and marketing efforts to attract additional development in Bayside, and to make commercial investments in land and infrastructure deemed appropriate for the economic redevelopment of the District. The City may also, from time to time, enter into Credit Enhancement Agreements to promote additional commercial taxable investment within the District.

See Table 1 Below for Municipal Use of TIF Revenues, Statutory Citation, and Cost Estimates – Citations all refer to Title 30-A, Chapter 206, Section 5225.

Municipal Use of TIF Revenues	Statutory Citation	Cost Estimate
Create Additional Parking Structures	(1)(A)	\$10,000,000
Credit Enhancement Agreements (Approved)	(1)(A)	\$6,000,000 over life of TIF District
Relocate one remaining scrap metal recycling facility and acquisition of scrap metal yard site	(1)(A)	T/B/D
Infrastructure (roadway and sidewalk) located in District	(1)(A)	T/B/D
Pledging TIF revenue as a repayment source to HUD or any other agency or entity that finances Bayside investment	(1)(A)	\$6,000,000 over life of TIF District
Public infrastructure improvements for both pedestrians and transit, lighting, and open space/trails	(1)(A)	T/B/D
Supporting the Economic Development Department with funds to market and prepare for redevelopment land in Bayside	(1)(A)	\$500,000
Cover the City's Economic Development Department staff costs	(1)(A) and (1)(C)(1)	\$250,000/annual

E. Operational Components

1. Public Facilities

The City will invest in projects to further goals of the *Bayside Vision*, as outlined in II.A above.

2. Uses of Private Property

The Amended Bayside Economic Redevelopment Program and TIF District includes both public and private property. The funds generated from this district will be used to support commercial investment on both public and private land.

3. Plans for relocation of persons displaced by development activities.

Though not contemplated at this point, any possible relocation costs of displaced persons resulted from one or more City projects funded through this Amended Development Program shall be covered by the City as required.

4. Environmental Controls

The Amended Development Program proposes improvements that will comply with all federal, state and local rules and regulations and applicable land use requirements.

5. Plan of Operation of Amended District

During the life of the Amended Tax Increment Financing District, the City of Portland, City Council, or their designee, will be responsible for the administration of the District.

III. Physical Description

A. Total acreage of the municipality: 12,386 taxable acres

B. Total acreage proposed for amended tax increment financing district:
62.18 acres – Approved TIF District
67.00 acres – Proposed TIF District Expansion
129.18 total acres

C. Percent of line B of line A (line B divided by line A cannot exceed 2%): 1.04%

D. Total acreage of all existing and proposed TIF Districts in the municipality as of 6/30/2014:

Existing (inc. TOD):	216.50 (Includes existing Bayside of 62.18 acres)
Less TOD Acres:	-30.00
Proposed:	67.00
Total:	253.50

E. Percent line D of line A (cannot exceed 5%): 2%

F. Not less than 25%, by area, of the real property within a development district shall meet at least one of the following criteria:

1. Blighted acres N/A. Line F1 divided by line B = _____.
2. Acreage in need of rehabilitation, redevelopment or conservation N/A. Line F2 divided by line B = _____.
3. Acreage suitable for commercial siting = 129.18. Line F3 divided by line B = 100%.

G. Enclosed municipal maps:

1. Area map showing site location of the Amended TIF District in relation to geographic location of municipality (Exhibit B).
2. Site map showing tax map locations of the Amended TIF District (Exhibit C).

IV. Financial Plan

A. *Costs and Sources of Revenues*

The original Bayside TIF District comprised an area of approximately 11 acres of real property with an original assessed value of \$1,608,190 as of March 31, 2002. On July 6, 2005, the City Council authorized an expansion of the TIF District as shown on Exhibit C to a total of 62.18 acres (see explanation in II.B above), with a revised original assessed value of \$44,066,380 as of March 31, 2007 – real and personal property value. Exhibit C is the map which also highlight the Amended District encompassing the original 62.18 acres, as well as the 67 acres for this expansion. The real property value in this expanded area of 67 acres has an Original Assessed Value as of March 31, 2014, of \$78,251,800.

The Amended Development Program provides for the new tax revenues generated by the increase in assessed value of the District to be captured and designated as TIF Revenues. The City will apply the retained revenues to the economic development activities described in the Amended Development Program. To date, these activities include:

- Assisting with the Financing for Parking Structures – est. \$10,000,000+
- Credit Enhancement Agreements with Capital, LLC and Southern Maine Student Housing, LLC for the construction of 550 structured parking spaces - \$6,000,000 (\$450,000 per year for 10 years, and \$300,000 per year for an additional 5 years).
- Relocate one remaining scrap metal recycling facility and acquisition of scrap metal yard site
- Infrastructure (roadway and sidewalk) located in District
- Pledging TIF revenue as a repayment source for HUD or any other agency or entity that finances Bayside investment (\$400,000 per year for 15 years).
- Public infrastructure improvements for both pedestrians and transit, lighting and open space/trails;
- Economic Development Department Staffing and Land Preparation and Marketing – est. \$500,000;
- Cover the City's Economic Development Department staff costs – est. \$250,000/annually.

The attached Revised Exhibit A details the projections of retained revenues based upon the anticipated assessed value increases within the District. Revised Exhibit A is a projection based upon best available information and is included for demonstration purposes only. No assurances are provided as to the results reflected therein.

B. Development Program Account

This Development Program requires establishment of a Development Program Account pledged to, and charged with, the payment of the project costs in the manner outlined in 30-A M.R.S.A. §5254 (3)(A)(2).

The Bayside TIF Development Program Account is established consisting of a project cost account (“Project Cost Account”) pledged to, and charged with, payment of project costs. The Project Cost Account shall consist of Company Cost Subaccounts (Company Cost Subaccount), pledged to and charged with payment to authorized companies under the terms of an approved Credit Enhancement Agreement for reimbursements for eligible project costs, and a City Cost Subaccount (the “City Cost Subaccount”) pledged to, and charged with, payment to the City for the cost of approved economic development expenses.

C. Financing Plan

The original TIF District comprised an area of approximately 11 acres of real and personal property. The value of the real and personal property within the district as of March 31, 2002 was established as the original assessed value. With the subsequent expansion, the value of the additional real and personal property within the district expansion as of March 31, 2007 was established as the original assessed value, with that value being \$44,066,380. With this additional expansion from 62.18 to add 67 acres to the District, for a total of 129.16 acres, the value of real property within the expanded District of 67 acres has a March 31, 2014 date established as the original assessed value, or \$78,251,800 as detailed in Section IV.A. above.

The developments within the described Amended Bayside TIF District will add significant new taxable value in the City of Portland. TIF revenues will be allocated as described on Revised Exhibit A to finance the costs described in the Amended Development Program. Actual payments to the Project Cost Account will be adjusted based upon the applicable annual percentage retained, or a specific amount to be retained within the Amended District, and the actual annual assessed value within the Amended District, to be determined by the City Council on a yearly basis.

V. Amended Financial Data

A. Total 2014 value of equalized property in the municipality: \$7,551,450,000

B. Original assessed value of all properties in all existing and proposed TIF districts:

Existing	\$296,740,160 (Includes existing Bayside TIF)
Less TOD:	-\$4,970,470
Proposed	<u>\$78,251,800</u>
Total	\$370,021,490

Line B divided by line A = 4.9% (cannot exceed 5%).

- C. Estimate of increased assessed value by year after implementation of the development program: See Revised Exhibit A
- D. Percentage of increased assessed value to be applied to the development program fund: See Revised Exhibit A
- E. Estimated annual tax increment: \$1,717,654 (Average)
- F. Total average annual value of development program fund: \$1,717,654 (Average)
- G. Annual principal and interest payment of bonded indebtedness: N/A at this time
- H. Financial assumptions and safeguards: The City of Portland is under no obligation to repay any bonds that would involve a pledge of the City's full faith and credit.

VI. Tax Shifts

A. *Average Annual Amount:*

General Purpose Aid to Education Tax Shift: \$593,812

Municipal Revenue Sharing Tax Shift: \$47,751

County Tax Shift: \$38,745

Total Average Annual Savings: \$680,307

VII. Municipal Approvals

A. *Public Hearing Notice*

The City of Portland did give proper Notice of Public Hearing in accordance with the requirements of 30-A M.R.S.A. §5253. The notice was published on November 3, 2014, in a newspaper of general circulation (see Exhibit E).

B. Public Hearing

A Public Hearing at which the proposed Amended Bayside Municipal Tax Increment Financing District was discussed was held on November 17, 2014, in the Portland City Council Chambers. A copy of the minutes of that meeting is included as Exhibit F.

C. Authorizing Votes

An attested copy of the resolution of the Portland City Council designating the Amended Municipal TIF district created for the implementation of the Bayside Redevelopment Program is included as Exhibit G.

D. Assessors Certification

An attested copy of the certification by the City of Portland Tax Assessor as to the revised Original Assessed Value of the expanded Bayside Municipal Tax Increment Financing District is included as Exhibit H.

Exhibit A

City of Portland - TIF Values for Bayside TIF Year 1 to 3, or Tax Years 2003 to 2005

Original Area: 11 Acres

OAV a/o 3/31/2002: 1,608,190

Table Reflects:

- 1) Actual Percentages Captured
- 2) Actual Mill Rate
- 3) Actual Yearly Property Values

Bayside TIF - Years 1 to 3 (FY04 to FY06) - City of Portland- TIF Table (OAV as 3/31/2002 \$1,608,190)									
Various Percent Sheltered from Original Bayside TIF - Years 1 to 3									
TIF Year	Tax Year- April 1	Increased Assessed Value Real & PP Prop.	% of Value Captured	Captured Valuation	Mill Rate	Total New Taxes Captured	Captured Revenue to Business Project Account	Captured Revenue to Municipal Project Account	City Non- Captured General Fund Revenues
1	2003	\$6,191,580	1.00%	\$61,916	26.83	\$1,661	\$0	\$1,661	\$164,434
2	2004	\$7,295,740	1.00%	\$72,957	26.53	\$1,936	\$0	\$1,936	\$191,620
3	2005	\$9,171,480	54.00%	\$4,952,599	20.13	\$99,696	\$0	\$99,696	\$84,926
3 Year TIF Total		\$22,658,800		\$5,087,472		\$103,292	\$0	\$103,292	\$440,981
Average Annual						\$34,431	\$0	\$34,431	\$146,994

Exhibit A

10/17/2014

City of Portland - TIF Tax Shifts for Bayside TIF Year 1 to 3, or Tax Years 2003 to 2005

Original Area: 11 Acres

OAV a/o 3/31/2002: 1,608,190

Table Reflects:

- 1) 1% Capture Yr 1; 1% Capture Yr 2; 54% Capture Yr 3
- 2) Mill Rates: Yr 1-26.83; Yr 2-26.53; Yr 20.13

Tax Shifts-Avoided Formula Impacts from Sheltering of Valuation: City of Portland-Bayside Original TIF for Years 1 to 3 (FY04 to FY06)							
TIF Year	Tax Year- April 1	Total Added Valuation	Sheltered Valuation	Avoided Formula Impacts from Sheltering of Valuation			Total Avoided Impacts
				Avoided Loss of State Aid to for Education	Avoided Loss of State Municipal Revenue Sharing	Avoided Increase in County Tax	
1	2003	\$6,191,580	\$61,916	\$502	\$40	\$33	\$575
2	2004	\$7,295,740	\$72,957	\$591	\$48	\$39	\$677
3	2005	\$9,171,480	\$4,952,599	\$40,116	\$3,226	\$2,621	\$45,963
3 Year TIF Total		\$22,658,800	\$5,087,472	\$41,209	\$3,314	\$2,693	\$47,215
Average Annual			\$1,695,824.13	\$13,736	\$1,105	\$898	\$15,738

Various Percent Sheltered From Original Bayside TIF - Years 1 to 3 (FY04 to FY06)

Exhibit A

City of Portland TIF Values for Bayside TIF

Original Area w 1st Expansion:

OAV a/o 3/31/2007:

Table Reflects:

62.18 Acres
\$44,066,380

- 1) Actual Percentages Captured Years 4 to 12
- 2) Projected 100% Captured Years 13 to 30
- 3) Actual Yearly Property Valuation Years 4 to 12
- 4) Projected Increase Property Valuation of 1% Years 13 to 30
- 5) Projected Increase of Mill Rate of 2% Years 13 to 30

Original Bayside TIF - Actual Years 4 to 12 (FY07 to FY15); Projections Years 13 to 30 (FY16 to FY33) - City of Portland- TIF Projection Table (OAV AO 3/31/2007 OF \$44,066,380)												
Actual Various Percent Sheltered from Original Bayside TIF Years 4 to 12; 100% Sheltered Years 13 to 30)												
TIF Year	Tax Year- April 1	Increased Assessed Value Real & PP Prop.	% of Value Captured	Captured Valuation	Projected Mill Rate	Total Projected New Taxes Captured	Captured Revenue to Business Project Account	Captured Revenue to Municipal Project Account	City Non- Captured General Fund Revenues			
4	2006	\$11,052,960	28.00%	\$3,094,829	16.31	\$50,477	\$0	\$50,477	\$129,797			
5	2007	\$23,657,250	1.00%	\$236,573	17.10	\$4,045	\$0	\$4,045	\$400,494			
6	2008	\$49,496,900	100.00%	\$49,496,900	17.74	\$878,075	\$0	\$878,075	\$0			
7	2009	\$69,217,260	78.00%	\$53,989,463	17.74	\$957,773	\$0	\$957,773	\$270,141			
8	2010	\$88,355,920	71.00%	\$48,532,703	17.92	\$869,706	\$478,338	\$391,368	\$355,232			
9	2011	\$62,808,110	73.00%	\$45,849,920	18.28	\$838,137	\$427,450	\$410,687	\$309,996			
10	2012	\$66,477,790	47.00%	\$31,244,561	18.82	\$588,023	\$441,017	\$147,006	\$663,089			
11	2013	\$65,716,350	98.00%	\$64,402,023	19.41	\$1,250,043	\$450,016	\$800,028	\$25,511			
12	2014	\$65,131,890	83.00%	\$54,059,469	20.00	\$1,081,189	\$443,288	\$637,902	\$221,448			
13	2015	\$66,223,873	100.00%	\$66,223,873	20.40	\$1,350,967	\$472,838	\$878,129	\$0			
14	2016	\$67,326,775	100.00%	\$67,326,775	20.81	\$1,400,936	\$476,318	\$924,617	\$0			
15	2017	\$68,440,707	100.00%	\$68,440,707	21.22	\$1,452,597	\$479,357	\$973,240	\$0			
16	2018	\$69,565,778	100.00%	\$69,565,778	21.65	\$1,506,005	\$361,441	\$1,144,564	\$0			
17	2019	\$70,702,099	100.00%	\$70,702,099	22.08	\$1,561,217	\$359,080	\$1,202,137	\$0			
18	2020	\$71,849,784	100.00%	\$71,849,784	22.52	\$1,618,291	\$356,024	\$1,262,267	\$0			
19	2021	\$73,008,946	100.00%	\$73,008,946	22.97	\$1,677,287	\$352,230	\$1,325,056	\$0			
20	2022	\$74,179,699	100.00%	\$74,179,699	23.43	\$1,738,267	\$365,036	\$1,373,231	\$0			
21	2023	\$75,362,160	100.00%	\$75,362,160	23.90	\$1,801,295	\$0	\$1,801,295	\$0			
22	2024	\$76,556,445	100.00%	\$76,556,445	24.38	\$1,866,438	\$0	\$1,866,438	\$0			
23	2025	\$77,762,673	100.00%	\$77,762,673	24.87	\$1,933,762	\$0	\$1,933,762	\$0			
24	2026	\$78,980,964	100.00%	\$78,980,964	25.36	\$2,003,339	\$0	\$2,003,339	\$0			
25	2027	\$80,211,437	100.00%	\$80,211,437	25.87	\$2,075,241	\$0	\$2,075,241	\$0			
26	2028	\$81,454,215	100.00%	\$81,454,215	26.39	\$2,149,542	\$0	\$2,149,542	\$0			
27	2029	\$82,709,421	100.00%	\$82,709,421	26.92	\$2,226,320	\$0	\$2,226,320	\$0			
28	2030	\$83,977,179	100.00%	\$83,977,179	27.46	\$2,305,653	\$0	\$2,305,653	\$0			
29	2031	\$85,257,615	100.00%	\$85,257,615	28.00	\$2,387,625	\$0	\$2,387,625	\$0			
30	2032	\$86,550,855	100.00%	\$86,550,855	28.56	\$2,472,319	\$0	\$2,472,319	\$0			
27 Year TIF Total		\$481,914,430		\$350,906,441		\$40,044,566	\$5,462,433	\$34,582,134	\$2,375,708			
Average Annual						\$1,483,132	\$202,312	\$1,280,820	\$87,989			

Exhibit A

**City of Portland TIF Tax Shifts for Bayside TIF
Original Area w 1st Expansion:
OAV a/o 3/31/2007:**

**62.18 Acres
\$44,066,380**

- Table Reflects:
- 1) Actual Percentages Captured Years 4 to 12
 - 2) Projected 100% Captured Years 13 to 30
 - 3) Actual Yearly Property Valuation Years 4 to 12
 - 4) Projected Increase Property Valuation of 1% Years 13 to 30
 - 5) Projected Increase of Mill Rate of 2% Years 13 to 30

Tax Shifts-Avoided Formula Impacts from Sheltering of Valuation: City of Portland- TIF Model		Avoided Formula Impacts from Sheltering of Valuation					
Actual Percent Sheltered From Bayside TIF Years 4 to 12 (FY07 to FY15); 100% Projected Capture TIF Years 13 to 30 (FY16 to FY33)		Avoided Formula Impacts from Sheltering of Valuation					
TIF Year	Tax Year- April 1	Total Added Valuation	Sheltered Valuation	Avoided Loss of State Aid to for Education	Avoided Loss of State Municipal Revenue Sharing	Avoided Increase in County Tax	Total Avoided Impacts
4	2006	\$11,052,960	\$3,094,829	\$25,068	\$2,016	\$1,638	\$28,722
5	2007	\$23,657,250	\$236,573	\$1,916	\$154	\$125	\$2,196
6	2008	\$49,496,900	\$49,496,900	\$400,925	\$32,240	\$26,169	\$459,333
7	2009	\$69,217,260	\$53,989,463	\$437,315	\$35,166	\$28,541	\$501,021
8	2010	\$68,355,920	\$48,532,703	\$398,115	\$31,612	\$25,660	\$450,386
9	2011	\$62,808,110	\$45,849,920	\$371,384	\$29,864	\$24,243	\$425,491
10	2012	\$66,477,790	\$51,244,561	\$253,081	\$20,351	\$16,527	\$289,959
11	2013	\$65,716,350	\$64,402,023	\$521,656	\$41,948	\$34,036	\$597,640
12	2014	\$65,131,890	\$54,059,459	\$437,882	\$35,212	\$28,577	\$501,671
13	2015	\$66,223,873	\$66,223,873	\$536,413	\$43,135	\$34,997	\$614,545
14	2016	\$67,326,775	\$67,326,775	\$545,347	\$43,853,22	\$35,579	\$624,779
15	2017	\$68,440,707	\$68,440,707	\$554,370	\$44,578,78	\$36,166	\$635,115
16	2018	\$69,565,778	\$69,565,778	\$563,483	\$45,311,60	\$36,760	\$645,554
17	2019	\$70,702,099	\$70,702,099	\$572,687	\$46,051,74	\$37,359	\$656,098
18	2020	\$71,849,784	\$71,849,784	\$581,983	\$46,799,28	\$37,964	\$666,747
19	2021	\$73,008,946	\$73,008,946	\$591,372	\$47,554,30	\$38,576	\$677,503
20	2022	\$74,179,699	\$74,179,699	\$600,856	\$48,316,87	\$39,193	\$688,366
21	2023	\$75,362,160	\$75,362,160	\$610,433	\$49,087,06	\$39,817	\$699,337
22	2024	\$76,556,445	\$76,556,445	\$620,107	\$49,864,96	\$40,447	\$710,419
23	2025	\$77,762,673	\$77,762,673	\$629,878	\$50,650,64	\$41,083	\$721,611
24	2026	\$78,980,964	\$78,980,964	\$639,746	\$51,444,17	\$41,725	\$732,915
25	2027	\$80,211,437	\$80,211,437	\$649,713	\$52,245,64	\$42,374	\$744,332
26	2028	\$81,454,215	\$81,454,215	\$659,779	\$53,055,12	\$43,029	\$755,863
27	2029	\$82,709,421	\$82,709,421	\$669,946	\$53,872,70	\$43,690	\$767,509
28	2030	\$83,977,179	\$83,977,179	\$680,215	\$54,698,45	\$44,359	\$779,272
29	2031	\$85,257,615	\$85,257,615	\$690,587	\$55,532,46	\$45,033	\$791,153
30	2032	\$86,550,855	\$86,550,855	\$701,062	\$56,375	\$45,715	\$803,152
27 Year TIF Total		\$1,852,035,056	\$1,721,027,067	\$13,940,319	\$1,120,989	\$909,379	\$15,970,688
Average Annual				\$516,308	\$41,518	\$33,681	\$591,507

Exhibit A

City of Portland - TIF Values - For Expanded Area Only of Bayside TIF for TIF remaining years of FY16 to FY33

2nd Expanded Area: 67 acres

OAV a/o 3/31/2014: \$78,251,800

Model Assumes:

- 1) 1% Yearly Increase in Valuation;
- 2) 2% Yearly Increased in Tax Rate; and,
- 3) 100% Yearly Capture Rate

City of Portland- Expanded Bayside TIF Projection Table - For Add'l 67 Acres; OAV \$78,251,800												
TIF Year	Tax Year- April 1	Increased Assessed Value Real Prop. At 1%/Yr.	% of Value Captured	Captured Valuation	Projected Mill Rate (inc. 2%/Yr)	Total Projected New Taxes Captured	Captured Revenue to Business Project Account	Captured Revenue to Municipal Project Account	City Non-Captured General Fund Revenues			
13	2015	\$782,518	100.00%	\$782,518	20.20	\$15,804	\$0	\$15,804	\$0			
14	2016	\$1,572,861	100.00%	\$1,572,861	20.60	\$32,401	\$0	\$32,401	\$0			
15	2017	\$2,371,108	100.00%	\$2,371,108	21.01	\$49,822	\$0	\$49,822	\$0			
16	2018	\$3,177,337	100.00%	\$3,177,337	21.43	\$68,097	\$0	\$68,097	\$0			
17	2019	\$3,991,628	100.00%	\$3,991,628	21.86	\$87,260	\$0	\$87,260	\$0			
18	2020	\$4,814,063	100.00%	\$4,814,063	22.30	\$107,344	\$0	\$107,344	\$0			
19	2021	\$5,644,721	100.00%	\$5,644,721	22.74	\$128,383	\$0	\$128,383	\$0			
20	2022	\$6,483,686	100.00%	\$6,483,686	23.20	\$150,414	\$0	\$150,414	\$0			
21	2023	\$7,331,041	100.00%	\$7,331,041	23.66	\$173,473	\$0	\$173,473	\$0			
22	2024	\$8,186,870	100.00%	\$8,186,870	24.14	\$197,599	\$0	\$197,599	\$0			
23	2025	\$9,051,256	100.00%	\$9,051,256	24.62	\$222,831	\$0	\$222,831	\$0			
24	2026	\$9,924,287	100.00%	\$9,924,287	25.11	\$249,211	\$0	\$249,211	\$0			
25	2027	\$10,806,048	100.00%	\$10,806,048	25.61	\$276,780	\$0	\$276,780	\$0			
26	2028	\$11,696,626	100.00%	\$11,696,626	26.13	\$305,582	\$0	\$305,582	\$0			
27	2029	\$12,596,111	100.00%	\$12,596,111	26.65	\$335,664	\$0	\$335,664	\$0			
28	2030	\$13,504,590	100.00%	\$13,504,590	27.18	\$367,070	\$0	\$367,070	\$0			
29	2031	\$14,422,154	100.00%	\$14,422,154	27.72	\$399,851	\$0	\$399,851	\$0			
30	2032	\$15,348,893	100.00%	\$15,348,893	28.28	\$434,056	\$0	\$434,056	\$0			
18 Year TIF Total		\$141,705,797		\$141,705,797		\$3,601,642	\$0	\$3,601,642	\$0			
18 Year Averages						\$200,091.20		\$200,091.20				

Exhibit A

City of Portland - TIF Tax Shifts For Expanded Area Only of Bayside TIF for TIF remaining years of FY16 to FY33

2nd Expanded Area: 67 acres
OAV a/o 3/31/2014: \$78,251,800

- Model Assumes:
- 1) 1% Yearly Increase in Valuation;
 - 2) 2% Yearly Increased in Tax Rate; and,
 - 3) 100% Yearly Capture Rate

		Tax Shifts-Avoided Formula Impacts from Sheltering of Valuation: City of Portland- Expanded Area Only of Bayside - TIF Projection Model					
TIF Year	Tax Year- April 1	Total Added Valuation	Sheltered Valuation	Avoided Formula Impacts from Sheltering of Valuation			Total Avoided Impacts
				Avoided Loss of State Aid to for Education	Avoided Loss of State Municipal Revenue Sharing	Avoided Increase in County Tax	
13	2015	\$782,518	\$782,518	\$6,338	\$510	\$414	\$7,262
14	2016	\$1,572,861	\$1,572,861	\$12,740	\$1,024	\$833	\$14,597
15	2017	\$2,371,108	\$2,371,108	\$19,206	\$1,544	\$1,255	\$22,006
16	2018	\$3,177,337	\$3,177,337	\$25,736	\$2,070	\$1,682	\$29,488
17	2019	\$3,991,628	\$3,991,628	\$32,332	\$2,600	\$2,113	\$37,045
18	2020	\$4,814,063	\$4,814,063	\$38,994	\$3,136	\$2,548	\$44,678
19	2021	\$5,644,721	\$5,644,721	\$45,722	\$3,677	\$2,988	\$52,387
20	2022	\$6,483,686	\$6,483,686	\$52,518	\$4,223	\$3,432	\$60,173
21	2023	\$7,331,041	\$7,331,041	\$59,381	\$4,775	\$3,880	\$68,037
22	2024	\$8,186,870	\$8,186,870	\$66,314	\$5,333	\$4,333	\$75,979
23	2025	\$9,051,256	\$9,051,256	\$73,315	\$5,896	\$4,790	\$84,001
24	2026	\$9,924,287	\$9,924,287	\$80,387	\$6,464	\$5,252	\$92,103
25	2027	\$10,806,048	\$10,806,048	\$87,529	\$7,039	\$5,719	\$100,286
26	2028	\$11,696,626	\$11,696,626	\$94,743	\$7,619	\$6,190	\$108,551
27	2029	\$12,596,111	\$12,596,111	\$102,028	\$8,204	\$6,666	\$116,899
28	2030	\$13,504,590	\$13,504,590	\$109,387	\$8,796	\$7,146	\$125,330
29	2031	\$14,422,154	\$14,422,154	\$116,819	\$9,394	\$7,632	\$133,845
30	2032	\$15,348,893	\$15,348,893	\$124,326	\$9,997	\$8,122	\$142,446
18 Year TIF Total		\$141,705,797	\$141,705,797	\$1,147,817	\$92,300	\$74,995	\$1,315,112
18 Year TIF Averages				\$63,767.61	\$5,127.77	\$4,166.37	\$73,061.75



EXHIBIT B

Imagery ©2014 Google, Map data ©2014 Google 2000 ft

EXHIBIT C

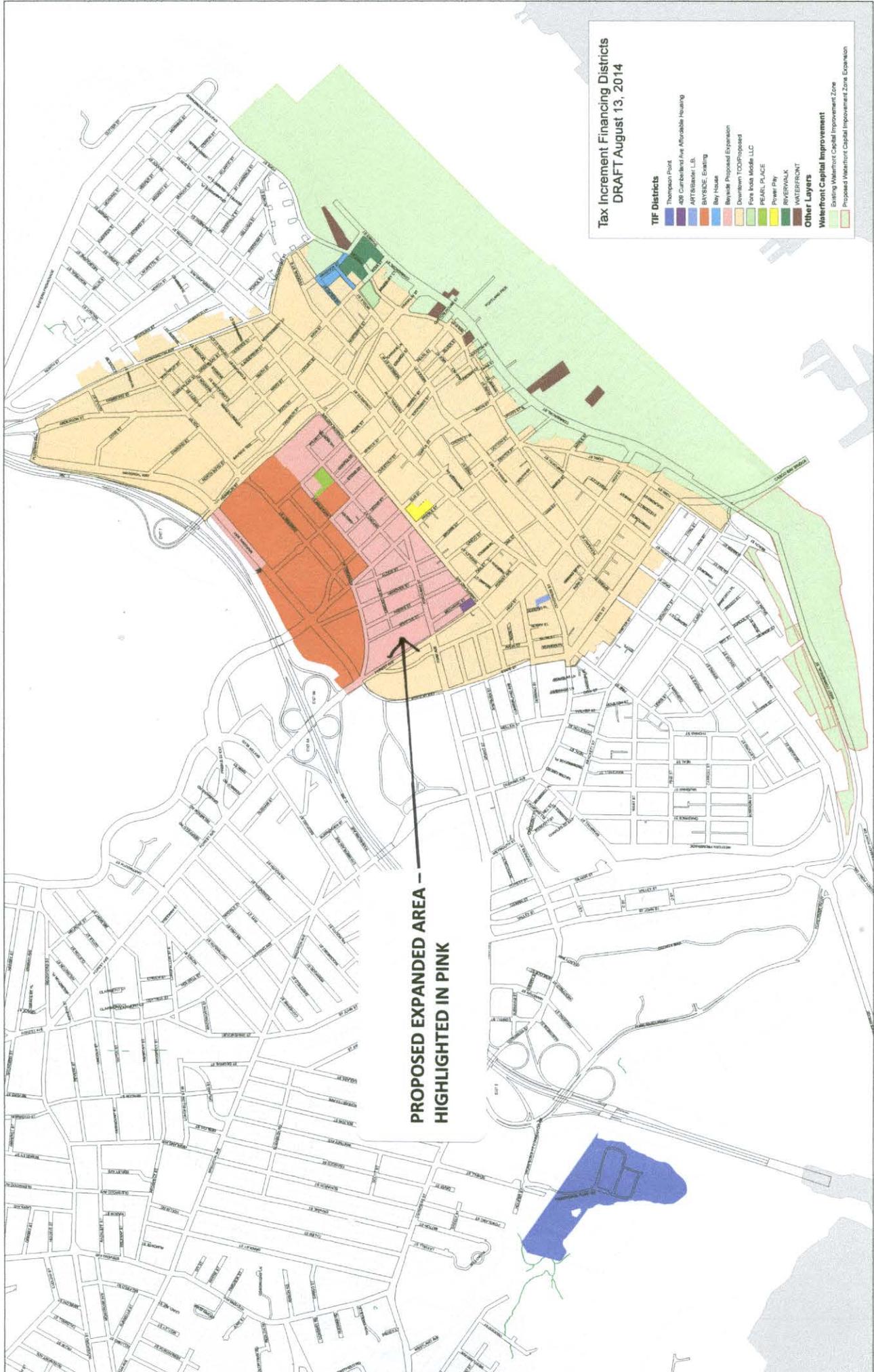


EXHIBIT D

Second Addendum to Credit Enhancement Agreement

This Second Addendum to the Credit Enhancement Agreement ("Second Addendum") is entered into by and between Atlantic Bayside Trust LLC (f/k/a Capital LLC) and the City of Portland on this 17th day of October, 2007.

WHEREAS, Capital LLC, now known as Atlantic Bayside Trust LLC, and the City entered into a Credit Enhancement Agreement dated January 30, 2007, for property located in the Bayside neighborhood in Portland, Maine, and the parties entered into an Addendum to said Credit Enhancement Agreement on February 7, 2007 (collectively, the "CEA");

WHEREAS, the Project, as defined in the CEA, has increased in size from 64,500 square feet to 110,000 square feet;

WHEREAS, the additional square footage and other design changes will increase the Project's cost by approximately \$6.9 million and will create an additional \$2,003,212 in tax revenue over the duration of the CEA;

WHEREAS, the improvements to Preble Street and Marginal Way (collectively the "Offsite Improvements") necessary to complete the Project are expected to cost no less than \$632,000;

WHEREAS, the Parties seek to amend the CEA to reflect the increase in scope.

NOW THEREFORE, for consideration of the mutual promises herein, and consideration of one dollar, the receipt and sufficiency of which is acknowledged, the Parties agree as follows:

1. The definition of Project in Section 1.1 of the CEA is deleted and a new definition inserted as follows:

"The 'Project' means the minimum 110,000 square foot office building and 504 car parking garage as approved by the Planning Board on March 23, 2007."

2. The table included at the end of Section 3.1 of the Credit Enhancement Agreement labeled "Table 1 – TIF Allocation Table" is deleted and the Table attached to this Second Addendum as Attachment A is inserted in its place, to reflect that the amount of the Project Revenue shall increase by \$25,000 per year over the 15 year term of the CEA.

3. Atlantic Bayside Trust shall provide documentation to support that the actual cost of the Offsite Improvements was equal to, or exceeded \$632,000. In the event that the Offsite Improvements cost less than \$632,000, the \$25,000 incremental payment shall be decreased by a pro rata amount. For example, if the actual cost is \$316,000 (50%), then these additional funds (\$25,000) would be adjusted by 50%, or \$12,500 per year.

4. In Section 7.1 of the Credit Enhancement Agreement, the term "2018" is deleted and the term "2023" is inserted in its place.

5. All terms and conditions of the CEA remain in full force and effect except as specifically amended by this Second Addendum.

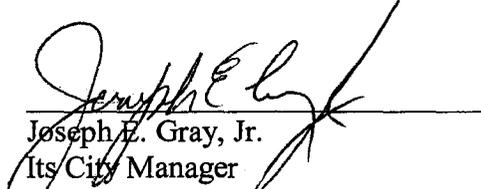
IN WITNESS WHEREOF, Capital LLC and the City have executed this Amendment as of the date above.

WITNESS

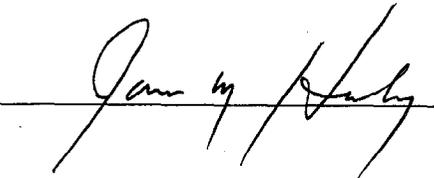


CITY OF PORTLAND

By:

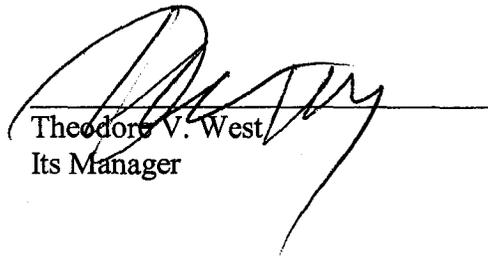

Joseph E. Gray, Jr.
Its City Manager

WITNESS



CAPITAL LLC

By:


Theodore V. West
Its Manager

Attachment A

Table 1 - TIF ALLOCATION TABLE

Tax Year	Estimated Increased Real Estate Value	Estimated Mil Rate (2% Inc.)	Estimated Incremental Tax Real Estate	Project Allocation	Project Revenue	Estimated City Revenue From Real Estate
FY08	\$2,000,000	16.71	\$33,415	0%	\$ -	\$33,415
FY09	\$26,332,177	17.04	\$448,700	79%	\$355,000	\$93,700
FY10	\$26,332,177	17.38	\$457,653	78%	\$355,000	\$102,653
FY11	\$26,332,177	17.73	\$466,869	76%	\$355,000	\$111,869
FY12	\$26,332,177	18.08	\$476,086	75%	\$355,000	\$121,086
FY13	\$26,332,177	18.45	\$485,829	73%	\$355,000	\$130,829
FY14	\$26,332,177	18.82	\$495,572	72%	\$355,000	\$140,572
FY15	\$26,332,177	19.19	\$505,314	70%	\$355,000	\$150,314
FY16	\$26,332,177	19.58	\$515,584	69%	\$355,000	\$160,584
FY17	\$26,332,177	19.97	\$525,854	68%	\$355,000	\$170,854
FY18	\$26,332,177	20.37	\$536,386	66%	\$355,000	\$181,386
FY19	\$26,332,177	20.77	\$546,919	59%	\$325,000	\$221,919
FY20	\$26,332,177	21.19	\$557,979	58%	\$325,000	\$232,979
FY21	\$26,332,177	21.61	\$569,038	57%	\$325,000	\$244,038
FY22	\$26,332,177	22.05	\$580,625	56%	\$325,000	\$255,625
FY23	\$26,332,177	22.49	\$592,211	55%	\$325,000	\$267,211
\$7,794,034					\$5,175,000	\$2,619,034

Addendum to Credit Enhancement Agreement

This Addendum to the Credit Enhancement Agreement (“Amendment”) is entered into by and between Capital LLC and the City of Portland on this 7th day of February, 2007

Whereas, the Credit Enhancement Agreement (“CEA”) did not contemplate that the Project would be partially constructed on April 1, 2008;

Whereas, Section 4.1(c) was intended to govern the amount of the credit enhancement payment if the Project scope was less than 64,500 square feet and 430 parking stalls;

Whereas, the Project as currently planned is 105,000 square feet and 460 to 500 parking stalls, resulting in approximately \$4 million more in assessed value than was contemplated;

Whereas, the Parties seek to clarify the calculation of the payment in Fiscal Year 2009 and to mitigate the unintended application of 4.1(c) to the partially completed Project.

Now therefore, for consideration of the mutual promises herein, and consideration of one dollar, the receipt and sufficiency of which is acknowledged, the Parties agree as follows:

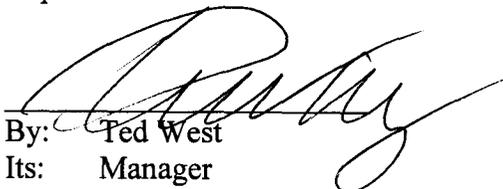
1. A new sentence shall be added to the end of Section 3.3(a) as follows:

Notwithstanding the foregoing, if the Project is under construction on April 1, 2008, and has a minimum assessed value of eight million dollars, the payment under this Section 3.3(a) to Company shall be the greater of 1) the amount calculated under Section 4.1(c), or 2) the Property Tax paid in fiscal year 2009, plus one half of the difference between the Property Tax paid and the payment called for in Table 1 of Section 3.1 (i.e. \$330,000).

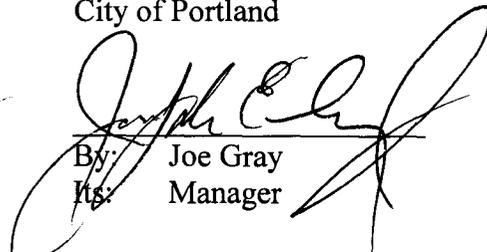
2. All other sections of the CEA shall be in full force and effect.

In witness whereof, the undersigned have executed this Amendment on the date that first appears above.

Capital LLC

By:  Ted West
Its: Manager

City of Portland

By:  Joe Gray
Its: Manager

CREDIT ENHANCEMENT AGREEMENT

between

CITY OF PORTLAND, MAINE

and

CAPITAL LLC

Dated as of January 30th, 2007

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THIS CREDIT ENHANCEMENT AGREEMENT dated as of January 30, 2007, between the City of Portland, Maine (the "City"), a municipal body corporate and politic and a political subdivision of the State of Maine, CAPITAL LLC, a limited liability company duly organized and existing under the laws of the State of Maine, with a place of business in Portland, Maine (the "Company").

WITNESSETH THAT

WHEREAS, the City designated the Bayside Redevelopment Municipal Development District and Tax Increment Financing District (the "District") pursuant to Chapter 206 of Title 30-A of the Maine Revised Statutes by action of the Portland City Council on March 3, 2003 (the "Vote"), and pursuant to the same Vote adopted a development program and financial plan for the District (the "Development Program"); and

WHEREAS, the City amended the Bayside Redevelopment Municipal Development District and Tax Increment Financing District (the "Amended District") pursuant to Chapter 206 of Title 30-A of the Maine Revised Statutes by action of the Portland City Council on July 6, 2005, and pursuant to such vote adopted an amended development program and financial plan for the Amended District (the "Amended Development Program"); and

WHEREAS, upon submission of an application to DECD, the City expects DECD to review and approve the Amended Development Program; and

WHEREAS, the City adopted the Amended Development Program and entered into this Agreement in order to induce the Company to build the Project by enabling the City to contribute toward the capital cost of the Project the amounts contemplated by the Amended Development Program and this Agreement; and

WHEREAS, in connection with the Amended Development Program, and as contemplated thereby, the City and the Company have agreed to execute and deliver this Agreement; and

WHEREAS, the City and the Company desire and intend that this Agreement be and constitute the credit enhancement agreement contemplated by and described in the Amended Development Program;

NOW, THEREFORE, in consideration of the foregoing and in consideration of the mutual promises and covenants set forth herein, the parties hereby agree as follows:

**ARTICLE I
DEFINITIONS**

Section 1.1. Definitions.

The terms defined in this Article I shall, for all purposes of this Agreement, have the meanings herein specified, unless the context clearly requires otherwise. All other capitalized terms not otherwise defined herein shall have the meaning given such terms in the Development Program.

“Account” shall mean the Project Cost Account, also known as the Bayside Redevelopment Program Fund.

“Act” means Chapter 206 of Title 30-A of the Maine Revised Statutes, as amended.

“Agreement” shall mean this Credit Enhancement Agreement dated as of the date set forth above between the City and the Company, as such may be amended by the parties from time to time.

“Amended District” shall have the meaning given such term in the recitals hereto.

“Captured Assessed Value” means the annual percentage of Increased Assessed Value attributable to the Project, retained in the District in each tax year during the term of the District, as specified in Section 3.1 hereof.

“Cash Flow Coverage Ratio” means net income after taxes plus depreciation plus amortization plus interest expense plus or minus non-recurring items divided by annual principal and interest on all Project debt. For purposes of computing the Cash Flow Coverage Ratio, annual property management fees shall be limited to five percent (5.0%) of annual gross revenue for the Project and annual contributions to reserve accounts (e.g., debt service, tenant improvement, capital repair and replacement) shall be limited to the greater of (i) those required by Project lenders or (ii) \$50,000.00. Project expenses, even if not included in the proforma expenses submitted to the City, shall be factored into the Cash Flow Coverage Ratio if such expenses are customary for projects similar to the Project or if such expenses are required by Project lenders. The Cash Flow Coverage Ratio shall be determined according to generally accepted accounting principles consistently applied and in a manner consistent with the calculation of debt service coverage ratios by Project lenders.

“City” shall have the meaning given such term in the recitals hereto.

“City Tax Increment Revenues” means in each year this Agreement is in effect, an amount of money equal to the Retained Tax Increment Revenues allocated to the City at the time and according to the schedule specified in Section 3.1 hereof.

“City TIF Account” means the account described in the Financial Plan section of the Development Program and established and maintained pursuant to the Development Program and Article II hereof.

“Company” shall have the meaning given such term in the first paragraph hereto, and shall also mean and include any assignee or successor thereof.

“Company TIF Account” means the account described in the Financial Plan section of the Development Program and established and maintained pursuant to the Development Program and Article II hereof.

“Company Tax Increment Revenues” means in each year this Agreement is in effect an amount of money equal to the Retained Tax Increment Revenues allocated to the Company at the times and according to the schedule specified in Section 3.1 hereof.

“Current Assessed Value” means the then current assessed value of the Property located within the District to be determined by the City’s Assessor as of April 1 of each year that this Agreement remains in effect.

“DECD” means the State of Maine Department of Economic and Community Development.

“Development Program” means the development program and financial plan for the District adopted by the City as described in the document entitled “ Bayside Redevelopment Tax Increment Financing District Application”, as amended, a copy of which is attached hereto as Appendix A.

“District” shall have the meaning given such term in the recitals hereto.

“Financial Plan” means the financial plan described in the “Financial Plan” section of the Development Program.

“Fiscal Year” means the time period from July 1 through June 30 (for example, the 2008 Fiscal Year is the period from July 1, 2007 to June 30, 2008).

“Increased Assessed Value” means the valuation amount by which the Current Assessed Value exceeds the Original Assessed Value. If the Current Assessed Value is less than or equal to the Original Assessed Value in any year, there is no Increased Assessed Value in that year.

“Original Assessed Value” means \$0, the assessed value of the Property located within the District as of March 31, 2006.

“Project” means the minimum 64,500 square foot office building and 430 car parking garage as depicted on a certain site plan dated March 13, 2006 prepared by Mitchell & Associates, or any subsequent revisions of that proposal as approved by City and as described in the Development Program, and located on a parcel of land depicted as the westerly portion of City tax map 34A, Block B, Lot 1.

“Project Cost Account” means the account in the Development Program Fund described in the Development Program and established and maintained pursuant to the Development Program and Article II hereof.

“Project Costs” means all costs incurred by the Company on the Project within the meaning set forth in 30-A M.R.S.A. §5222(14), as amended.

“Property” means all real property that is part of the Project, now or hereafter located within the District, whether or not the Company owns such Property or is otherwise liable for property taxes imposed and assessed thereon by the City.

“Property Taxes” means any and all ad valorem property taxes actually paid to the City with respect to the Property.

“Qualified Investments” shall mean any and all securities, obligations or accounts in which municipalities may invest their funds under applicable Maine law, and which are of the same type and tenor as the investments in which the City invests its own funds.

“Retained Tax Increment” means that portion of Property Taxes assessed and collected by the City on the Captured Assessed Value.

“SMSH CEA” means that certain Credit Enhancement Agreement by and between the City and Southern Maine Student Housing, LLC dated June 21, 2006

“SMSH TIF City Account” means the City Account, as defined in the SMSH CEA.

“Tax Payment Date” means the later of the date(s) on which Property Taxes assessed by the City with respect to the Property are due or are paid, or if any such day is not a business day, the next succeeding business day.

Section 1.2. Interpretation and Construction.

In this Agreement, unless the context otherwise requires:

a. The terms “hereby,” “hereof,” “hereto,” “herein,” “hereunder” and any similar terms, as used in this Agreement, refer to this Agreement, and the term “hereafter” means after, and the term “heretofore” means before, the date of delivery of this Agreement.

b. Words importing a particular gender mean and include correlative words of every other gender and words importing the singular number mean and include the plural number and vice versa.

c. Words importing persons mean and include firms, associations, partnerships (including limited partnerships), trusts, corporations and other legal entities, including public or governmental bodies, as well as any natural persons.

d. Any headings preceding the texts of the several Articles and Sections of this Agreement, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

e. All notices to be given hereunder shall be given in writing and, unless a certain number of days is specified, within a reasonable time.

f. If any clause, provision or Section of this Agreement shall be ruled invalid by any court of competent jurisdiction, the invalidity of such clause, provision or Section shall not affect any of the remaining provisions hereof except as expressly provided in Section 3.4.

**ARTICLE II
DEVELOPMENT PROGRAM FUND AND FUNDING REQUIREMENTS**

Section 2.1. Creation of Development Program Fund.

The City hereby confirms the creation and establishment of a segregated account in the name of the City designated as the “Bayside Redevelopment Program Fund” pursuant to, and in accordance with the terms and conditions of, the Development Program and 30-A M.R.S.A. §5227(3), as amended from time to time. The Account shall consist of a Project Cost Account that is pledged to and charged with the payment of project costs as outlined in the Financial Plan of the Development Program and as provided in 30-A M.R.S.A. §5227(3)(A)(1), as amended from time to time. The Project Cost Account shall include two subaccounts designated as the “Company TIF Account” and “City TIF Account”.

Section 2.2. Deposits into Account.

There shall be deposited into the Account contemporaneously with each payment of property tax by the Company an amount equal to that portion of the property tax payment constituting Retained Tax Increment for the period to which the payment relates. Any and all revenues, if any, resulting from investment of monies on deposit shall be retained by the City and withdrawn from the Account contemporaneously with payment to the Company TIF Account.

Section 2.3. Use of Monies in Account.

Monies deposited in the Account shall be used and applied exclusively to fund the City’s payment obligation described in Article III hereof. Monies deposited into the Account and any earnings thereunder shall be designated and appropriated by City Council annually in the municipal budget in accordance with Chapter 206 of Title 30-A, and in accordance with the Development Program.

Section 2.4. Monies Held in Trust.

All monies required to be paid into the Company TIF Account under the provisions hereof and the provisions of the Development Program, other than investment earnings thereon, shall be held by the City, in trust, for the benefit of the Company.

Section 2.5. Investments.

Any monies in the Account shall be invested and reinvested in Qualified Investments as determined by the City. The City shall have discretion regarding the investment of such monies, provided such monies are invested in Qualified Investments. As and when any amounts thus invested may be needed for disbursements, the City shall cause a sufficient amount of such investments to be sold or otherwise converted into cash to the credit of such account. The City shall have the sole and exclusive right to designate the investments to be sold and to otherwise direct the sale or conversion to cash of investments made with monies in the Account.

Section 2.6. Tax Payments.

The Company shall pay when due all Property Taxes assessed by the City on property, both real and personal, owned by the Company unless contested by the Company by appropriate proceedings pursuant to Maine law. No payments shall be made by the City under this Agreement unless the Company has paid in full all real or personal Property Taxes assessed by the City on the Company’s Property when due.

**ARTICLE III
PAYMENT OBLIGATIONS**

Section 3.1. Captured Assessed Value; Retained Tax Increment.

Annually, all (100%) of the Increased Assessed Value shall be retained as Captured Assessed Value and the Property Tax assessed on such Captured Assessed Value shall be retained as Retained Tax Increment each year starting with the 2008 Fiscal Year of the City and continuing for each of the next 16 Fiscal Years of the City, ending with the 2023 Fiscal Year. The company shall receive from the Company TIF Account an annual payment as calculated in Section 4.1(b), or the amount shown in the corresponding year's "Project Revenue" column as shown in Table No. 1 below, whichever is less. In the event that after the annual payment is made to the Company there remains funds in the Company TIF Account, said funds shall be transferred to the City TIF Account. For purposes of computing the amounts owed pursuant to this section, the amount of tax collected for reimbursement as Company Tax Increment Revenues shall be calculated on June 30th of each fiscal year.

Table 1 – TIF Allocation Table

Tax Year	Estimated Increased Real Estate Value	Estimated Mil Rate (2% Inc.)	Estimated Incremental Tax Real Estate	Project Allocation	Project Revenue	Estimated City Revenue From Real Estate
FY08	\$ 2,000,000	16.71	\$ 33,415	0%	\$ -	\$ 33,415
FY09	\$ 19,400,000	17.04	\$ 330,610	100%	\$ 330,000	\$ 610
FY10	\$ 19,400,000	17.38	\$ 337,222	98%	\$ 330,000	\$ 7,222
FY11	\$ 19,400,000	17.73	\$ 343,967	96%	\$ 330,000	\$ 13,967
FY12	\$ 19,400,000	18.08	\$ 350,846	94%	\$ 330,000	\$ 20,846
FY13	\$ 19,400,000	18.45	\$ 357,863	92%	\$ 330,000	\$ 27,863
FY14	\$ 19,400,000	18.82	\$ 365,020	90%	\$ 330,000	\$ 35,020
FY15	\$ 19,400,000	19.19	\$ 372,321	89%	\$ 330,000	\$ 42,321
FY16	\$ 19,400,000	19.58	\$ 379,767	87%	\$ 330,000	\$ 49,767
FY17	\$ 19,400,000	19.97	\$ 387,362	85%	\$ 330,000	\$ 57,362
FY18	\$ 19,400,000	20.37	\$ 395,110	84%	\$ 330,000	\$ 65,110
FY19	\$ 19,400,000	20.77	\$ 403,012	74%	\$ 300,000	\$ 103,012
FY20	\$ 19,400,000	21.19	\$ 411,072	73%	\$ 300,000	\$ 111,072
FY21	\$ 19,400,000	21.61	\$ 419,293	72%	\$ 300,000	\$ 119,293
FY22	\$ 19,400,000	22.05	\$ 427,679	70%	\$ 300,000	\$ 127,679
FY23	\$ 19,400,000	22.49	\$ 436,233	69%	\$ 300,000	\$ 136,233
			\$ 5,750,792		\$4,800,000	\$ 950,792

Section 3.2. Completion of Development Program.

Under this Agreement, the Company shall complete the Project as described in the Amended Development Program.

Section 3.3. Credit Enhancement Payments.

a. Subject to Section 3.3(b), the City shall pay on August 1 of each year of this Agreement to the Company all Company Tax Increment Revenues then on deposit in the Company TIF Account. If the funds on deposit in the Company TIF Account are insufficient to make the payments required by Section 3.1 above and funds have been deposited that year in the SMSH City Account pursuant to the SMSH CEA, the City shall pay the Company from the SMSH City TIF Account any deficiency in the payment required by Section 3.1 above. For example, if the Company TIF Account contained only \$300,000 and Section 3.1 required payment to the Company of \$330,000 that year and the SMSH City TIF Account contained \$50,000, the City would pay the Company \$30,000 from the SMSH City TIF Account that year. If the SMSH City TIF Account contains insufficient funds to pay the deficiency in payment required by Section 3.1, the deficiency shall be paid to the Company from the other District funds not payable to parties other than the City ("Bayside TIF Funds"). The obligation of the City to make such payment shall be limited obligation payable solely out of monies on deposit in the Company TIF Account, the SMSH City TIF Account and the City TIF Account and shall not constitute a general debt or obligation on the part of the City or a general obligation or charge against or pledge of the faith and credit or taxing power of the City, the State of Maine or any political subdivision thereof.

b. In the event that City is subject to a claim by a third party to pay the Company Tax Increment Revenues to such third party, City shall not pay such amount to Company pursuant to Section 3.3(a) nor to the third party, but shall deposit the Company Tax Increment Revenues in an amount equal to such amount so claimed (but only to the extent available) into an interest bearing escrow account and shall file an interpleader or other comparable action with a court of competent jurisdiction requesting a ruling to determine whether such Company Tax Increment Revenues should be paid to Company or to said third party.

Section 3.4. Failure to Make Payment.

In the event the City should fail to, or be unable to, make any of the payments to the Company required under the foregoing provisions of this Article III, the item or installment so unpaid shall continue as a limited obligation of the City, under the terms and conditions hereinafter set forth, until the amount unpaid shall have been fully paid from either the SMSH City TIF Account or the Bayside TIF Funds as provided above in Section 3.3(a). The Company shall have the right to initiate and maintain an action to specifically enforce the City's obligations hereunder, including without limitation, the City's obligation to establish and maintain the Company TIF Account and to deposit Company Tax Increment Revenues into the Company TIF Account and its obligation to make required payment to the Company.

Section 3.5. Manner of Payments.

The payments provided for in this Article III shall be paid directly to the Company in the manner provided hereinabove for its own use and benefit, which use and benefit shall be consistent with the Development Program and Chapter 206 of Title 30-A of the Maine Revised Statutes. The City shall make required payments in response to requests for payment submitted

by the Company setting forth the amount of the payment and containing a certification in the form attached hereto as Exhibit A.

Section 3.6. Obligations Unconditional.

Except as otherwise expressly provided in this Agreement, the obligations of the City to make the payments described in this Agreement in accordance with the terms hereof shall be absolute and unconditional irrespective of any defense or any rights of setoff, recoupment or counterclaim it might otherwise have against the Company. Notwithstanding the above, the City reserves the right to terminate this Agreement upon receipt of a final judgment by a court of competent jurisdiction to the effect that the Agreement or Development Program adopted in connection herewith or any payment made thereunder is or would be illegal or invalid. In such event, the termination shall relate back to the original date of the Agreement which shall be deemed void ab initio, and neither party shall have any obligations or liability hereunder, under the Development Program or in respect of any of the transactions contemplated thereby, and shall be left in whatever positions, financial or otherwise, they may be in as of the date of termination. Such termination shall not, however, affect the indemnifications set forth in Section 9.10, which obligations shall survive any such termination.

Section 3.7. Limited Obligation.

The City's obligations of payment hereunder shall be limited obligations of the City payable solely from Retained Tax Increment Revenues and any earnings thereon and the SMSH City TIF Account and the Bayside TIF Funds, pledged therefore under this Agreement. The City's obligations hereunder shall not constitute a general debt or a general obligation on the part of the City or a charge against or pledge of the faith and credit or taxing power of the City, but shall be payable solely from the Retained Tax Increment received by the City and the SMSH City TIF Account, and any earnings thereon. This Agreement shall not directly or indirectly or contingently obligate the City to levy or to pledge any form of taxation whatever therefore or to make any appropriation for their payment, excepting the City's obligation to assess property taxes upon the Project and the pledge of the Retained Tax Increment established under this Agreement.

Section 3.8 Administrative Fee.

The Company shall pay to the City an annual administrative fee to the City equal to 1% of the Retained Tax Increment. Such payment shall be deducted pursuant to Section 9.9 of this Agreement contemporaneously with the payment by the City to the Company.

**ARTICLE IV
COVENANTS OF THE COMPANY**

Section 4.1. Project Development

- a. The Company shall construct the Project.
- b. In each year this Agreement is in effect, the Company agrees to provide, by each April 30, audited financial statements, which shall be used to determine the Company Tax

Increment Revenues due to Company for the following August 1 payment by City pursuant to this Agreement. The audited financial statements shall be used by City to determine the Cash Flow Coverage Ratio and shall not be used for any other purpose or disclosed to any other party by the City. In each year of this Agreement, the City shall pay Company Tax Increment Revenues to the Company pursuant to this Agreement to the extent necessary for Company to achieve a 1.2 to 1 Cash Flow Coverage Ratio, provided however such payments to the Company shall not be greater than the amount shown in the corresponding year's "Project Revenue" column as shown in Table No. 1 above in Section 3.1.

c. If in any year that this Agreement is in effect the Increased Assessed Value is less than \$17,000,000, the obligation of the City to pay into the Company TIF Account per section 3.1 of this Agreement shall be calculated for that year as follows: the Increased Assessed Value divided by \$17,000,000 multiplied by the corresponding scheduled fiscal year Company Project Revenue payment amount on Table 1 in section 3.1.

ARTICLE V PLEDGE AND SECURITY INTEREST

Section 5.1. Pledge of Company TIF Account.

In consideration of this Agreement and other valuable consideration and for the purpose of securing payment of the amounts provided for hereunder to the Company by the City, according to the terms and conditions contained herein, and in order to secure the performance and observance of all of the City's covenants and agreements contained herein, the City does hereby grant a security interest in and pledge to the Company the Company TIF Account and all sums of money and other securities and investments therein.

Section 5.2. Further Instruments.

The City and the Company shall, from time to time execute and deliver such further instruments and take such further action as may be reasonable and as may be required to carry out the provisions of this Agreement, provided, however that no such instruments or agreements shall pledge the credit of the City.

Section 5.3. Liens.

Except as permitted hereunder, the City shall not sell, lease, pledge, assign or otherwise dispose, encumber or hypothecate any interest in the Company TIF Account and will promptly pay or cause to be discharged or make adequate provision to discharge any lien, charge or encumbrance on any part thereof not permitted hereby.

Section 5.4. Access to Books and Records.

All books, records and documents in the possession of the City relating to the District, the Development Program, this Agreement and the monies, revenues and receipts on deposit or required to be deposited into the Account shall at all reasonable times be open to inspection by the Company, its agents, lenders and employees.

**ARTICLE VI
DEFAULTS AND REMEDIES**

Section 6.1. Events of Default.

Each of the following events shall constitute and be referred to in this Agreement as an “Event of Default”:

- a. Any failure by the City to pay any amounts due to Company when the same shall become due and payable if such non-payment is not a result of a final determination by a court that this Agreement is illegal or invalid;
- b. Any failure by the City to make deposits into the Company TIF Account as and when due;
- c. Other than as provided in paragraph (a) and (b) above, any failure by the City or the Company to observe and perform in all material respects any respective covenant, condition, agreement or provision contained herein on the part of the City or the Company respectively to be observed or performed, including any failure of the Company to use payments made under this Agreement as required in Section 3.5 of this Agreement or to perform the covenant under Section 4.1(a) of this Agreement, which failure is not cured within thirty (30) days following written notice thereof or such additional time as is allowed by City to cure provided the defaulting party promptly commences and diligently pursues a cure within said thirty (30) day period; provided, however, that this subsection (c) shall not be construed to include the Company’s failure to pay Property Taxes on the Property in the District for any reason as an Event of Default hereunder; and
- d. If a decree or order of a court or agency or supervisory authority having jurisdiction in the premises shall appoint a conservator or receiver or liquidator for the City, or if any insolvency, readjustment of debt, marshaling of assets and liabilities or similar proceedings for the winding up or liquidation of the City's affairs shall have been entered against the City or if the City shall have consented to the appointment of a conservator or receiver or liquidator in any such proceedings of or relating to the City or of or relating to all or substantially all of its property, including without limitation the filing of a voluntary petition in bankruptcy by the City or the failure by the City to have a petition in bankruptcy dismissed within a period of 90 consecutive days following its filing or in the event an order for release has been entered under the Bankruptcy Code with respect to the City.
- e. Any failure of Company to pay taxes to City when due.
- f. Any failure of the Company or any agents, assigns or successors in interest to operate the Project and pay taxes on it during the term of this Agreement.

Section 6.2. Remedies on Default.

Whenever any Event of Default described in Section 6.1 hereof shall have occurred and be continuing, the non-defaulting party may take any one or more of the following remedial steps following any applicable cure period and shall have all rights and remedies available to it.

a. The non-defaulting party may take whatever action at law or in equity, including the rights and remedies available to a secured party under the laws of the State of Maine, and may take whatever action as may appear necessary or desirable to collect the amount then due and thereafter to become due, to specifically enforce the performance or observance of any obligations, agreements, or covenants benefiting the non-defaulting party under this Agreement and any documents, instruments, and agreements contemplated hereby or to enforce any rights or remedies available hereunder; and

b. In addition, in the event of a default under Section 6.1(c)(e) or (f) relating to Section 3.5 or 4.1(a), the City may suspend further payments until such default is cured. If there is any dispute as to either party's performance of any of its obligations under this Agreement, such dispute may, by agreement of the parties, be submitted to non-binding mediation and, following such mediation or in the absence of any such agreement to submit the dispute to mediation, shall be submitted to arbitration in accordance with the rules of the American Arbitration Association. Notwithstanding the foregoing, payments by the City shall not be suspended prior to a final determination in such proceeding in favor of the City.

Section 6.3. Remedies Cumulative.

No remedy herein conferred upon or reserved by any party is intended to be exclusive of any other available remedy or remedies but each and every such remedy shall be cumulative and shall be in addition to the remedy given under this Agreement or now or hereafter existing at law, in equity or by statute. Delay or omission to exercise any right or power accruing upon any Events of Default or to insist upon the strict performance of any of the covenants and agreements herein set forth or to exercise any rights or remedies upon the occurrence of an Event of Default shall not impair any such right or power or be considered or taken as a waiver or relinquishment for the future of the rights to insist upon and to enforce, from time to time and as often as may be deemed expedient, by injunction or other appropriate legal or equitable remedy, strict compliance by the parties hereto with all of the covenants and conditions hereof, or of the rights to exercise any such rights or remedies, if such Events of Default be continued or repeated.

Section 6.4. Enforcement Rights.

The City and the Company agree that each party hereto shall have the right to initiate a legal proceeding to enforce the specific performance of this Agreement, it being understood and agreed that this Agreement is a material inducement to the Company continuing its pursuit of the Project. The parties agree that in the event of any dispute or disagreement hereunder the Company and the City shall continue to make payment of all amounts due hereunder in the manner and at the times specified herein until final resolution of such dispute, whether by mutual agreement or final decision of a court, arbitrator or other dispute resolution mechanism.

ARTICLE VII EFFECTIVE DATE, TERM AND TERMINATION

Section 7.1. Effective Date and Term.

This Agreement shall become effective upon its execution and delivery by the parties hereto and shall remain in full force from the date hereof and shall expire on the later of the end of the 2018 fiscal year of the City or upon the performance of all obligations on the part of the City and the Company hereunder, unless sooner terminated under Section 3.6 or 9.2 hereof.

Section 7.2. Cancellation and Expiration of Term.

At the termination or other expiration of this Agreement in accordance with the provisions of this Agreement, the City and the Company shall each execute and deliver such documents and take or cause to be taken such actions as may be necessary to evidence the termination of this Agreement.

**ARTICLE VIII
ASSIGNMENT AND PLEDGE OF COMPANY'S INTEREST**

Section 8.1. Consent to Pledge, Collateral Assignment Or Grant of a Security Interest.

The City hereby acknowledges that the Company may pledge and assign its right, title and interest in, to and under this Agreement as collateral for financing for the Project, although no obligation is hereby imposed on the Company to make such assignment or pledge. Recognizing this possibility, the City does hereby consent and agree to the pledge and assignment of all the Company's right, title and interest in, to and under this Agreement and in, and to the payments to be made to Company hereunder, to third parties as collateral or security for indebtedness related to the Project, on one or more occasions during the term hereof. The City agrees to execute and deliver any assignments, pledge agreements, consents or other confirmations required by the prospective pledgee or assignee, including without limitation recognition of the pledgee or assignee as the holder of all right, title and interest herein and as the payee of amounts due and payable hereunder and any and all such other documentation as shall confirm to such pledgee or assignee the position of such assignee or pledgee and the irrevocable and binding nature of this Agreement and provide to the pledgee or assignee such rights and/or remedies as it may deem necessary for the establishing, perfection and protection of its interest herein.

Section 8.2. Assignment.

Except as provided in Section 8.1, this Agreement and the obligations of the City hereunder are personal to the Company and may not be assigned or transferred by the Company except to a successor in title to the Project, without the consent of the City which consent shall not be unreasonably withheld or delayed for any reason or for no reason. In the event of an assignment, Company shall pay all legal fees incurred by City in conjunction with the assignment.

ARTICLE IX MISCELLANEOUS

Section 9.1. Successors.

a. In the event the City or the Company are dissolved, merged into or consolidated with another entity, or undergo any form of corporate reorganization (other than with respect to any dissolution, merger, consolidation or corporate reorganization solely involving the Company and any other company related to or affiliated with the Company), the covenants, stipulations, promises and agreements set forth herein, by or on behalf of or for the benefit of such party shall bind or inure to the benefit of the successors and assigns thereof from time to time and any entity, officer, board, commission, agency or instrumentality to whom or to which any power or duty of such party shall be transferred, subject to approval of the City, which consent shall not be unreasonably withheld or delayed.

b. No consent from the City shall be required with respect to any dissolution, merger, consolidation or corporate reorganization solely involving the Company and any other company related to or affiliated with the Company. In such case, the covenants, stipulations, promises and agreements set forth herein, by or on behalf of or for the benefit of the Company shall bind or inure to the benefit of the successors and assigns thereof from time to time and any entity, officer, board, commission, agency or instrumentality to whom or to which any power or duty of such party shall be transferred.

Section 9.2. Parties in Interest.

Except as herein otherwise specifically provided, nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any person, firm or corporation other than the City and the Company any right, remedy or claim under or by reason of this Agreement, it being intended that this Agreement shall be for the sole and exclusive benefit of the City and the Company, and their successors and assigns as allowed under this Agreement; provided, however, that if the payment obligations of the City to the Company hereunder are held by a final and binding proceeding to be illegal or invalid, this Agreement shall terminate. In such event all obligations of the parties shall terminate, and no party shall have any further liability to the other hereunder.

Section 9.3. Severability.

Except as otherwise provided herein, in case any one or more of the provisions of this Agreement shall, for any reason, be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this Agreement and this Agreement shall be construed and enforced as if such illegal or invalid provision had not been contained herein.

Section 9.4. No Personal Liability.

a. No covenant, stipulation, obligation or agreement of the City contained herein shall be deemed to be a covenant, stipulation or obligation of any present or future elected or appointed official, officer, agent, servant or employee of the City in his or her individual capacity and neither the members of the City Council of the City, or any official, officer, agent, servant or employee of the City shall be liable personally with respect to this Agreement or be subject to any personal liability or accountability by reason hereof.

b. No covenant, stipulation, obligation or agreement of the Company contained herein shall be deemed to be a covenant, stipulation or obligation of any present or future director, member, manager, officer, agent, servant or employee of the Company in his or her individual capacity and neither the directors, members, managers, officers, agents, servants or employees of the Company shall be liable personally with respect to this Agreement or be subject to any personal liability or accountability by reason hereof.

Section 9.5. Counterparts.

This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts shall together constitute but one and the same Agreement.

Section 9.6. Governing Law.

The laws of the State of Maine shall govern the construction and enforcement of this Agreement in all respects.

Section 9.7. Notices.

All notices, certificates, requests, requisitions or other communications by the City or the Company pursuant to this Agreement shall be in writing and shall be sufficiently given and shall be deemed given when mailed by first class mail, postage prepaid, or, for any notice of an Event of Default, by registered or certified mail, return receipt requested, addressed as follows:

If to the City:

City of Portland
389 Congress Street
Portland, ME 04101
Attn: City Attorney

If to the Company:

Capital, LLC
50 Portland Pier, Suite 400
Portland, ME 04110

Either of the parties may, by notice given to the other, designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent hereunder.

Section 9.8. Amendments.

Neither this Agreement nor the Development Program may be amended without the express written consent of all of the parties hereto, which consent shall not be unreasonably withheld. Provided, however, the parties agree to amend this Agreement in order to fulfill such reasonable requirement that a lender may require in connection with financing of the Project. This Agreement may only be amended in compliance with the provisions of 30-A M.R.S.A. § 5221 et seq., as amended.

Section 9.9. Net Agreement.

It is understood that the City's payment obligations are to be satisfied solely from Retained Tax Increment Revenues actually paid in by the Company and received by the City, and earnings thereon and provided further that the City may deduct from any payment owed to the Company the administrative fee described in Section 3.8 hereof.

Section 9.10. Integration.

This Agreement completely and fully supersedes all other prior or contemporaneous understandings or agreements, both written and oral, between the City and the Company relating to the specific subject matter of this Agreement and the transactions contemplated hereby.

Section 9.11. Indemnification.

a. The Company agrees to defend, indemnify and hold harmless the City, its officers, agents and employees from any and all claims and expenses, including its attorney fees, arising out of or associated with the City's approval of the District and its preparation of and participation in this Agreement, including expenses arising from any default hereunder by the Company but excluding any such claims or expenses as may relate to actions or proceedings resulting from a default hereunder by the City. This indemnification obligation shall survive termination of this Agreement or a finding that this Agreement is void or invalid.

b. The City agrees to defend, indemnify and hold harmless the Company, its officers, members, managers, agents and employees from any and all claims and expenses, including its attorney fees, arising out of or associated with any default hereunder by the City. This indemnification obligation shall survive termination of this Agreement or a finding that this Agreement is void or invalid.

Section 9.12. Waiver of Recapture if Agreement Found Void.

In the event this Credit Enhancement Agreement is found void "ab initio" by a Court of law with final jurisdiction over this Agreement, City agrees to waive its rights to recapture all Company Tax Increment Revenues paid to Company pursuant to this Agreement.

IN WITNESS WHEREOF, the City and the Company have caused this Agreement to be executed in their respective corporate names and their respective corporate seals to be hereunto affixed and attested by the duly authorized officers or members, as the case may be, all as of the date first above written.

WITNESS

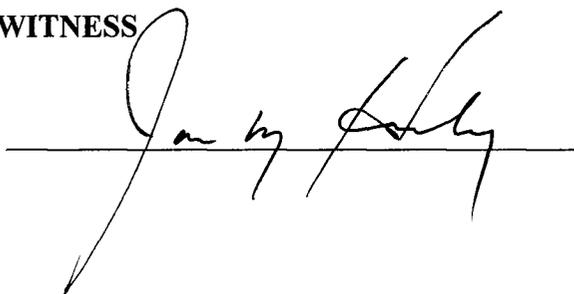


CITY OF PORTLAND, MAINE

By: 

Its City Manager

WITNESS



CAPITAL LLC

By: 

Its Authorized Manager

EXHIBIT A

Request for Payment

The undersigned does hereby request payment in the amount of \$_____ from the Company TIF Account of the Project Cost Account within the Bayside Redevelopment Program Fund and does hereby certify that the amount requested will be used to pay Project Costs as that term is defined in Chapter 206 of Title 30-A of the Maine Revised Statutes.

CAPITAL LLC

Date: _____

By: _____
Its

CONSENT TO ASSIGNMENT OF AGREEMENT

This Agreement is entered into by and between the **CITY OF PORTLAND**, a Maine municipal corporation (the "City") and **BLUE ATLANTIC PORTLAND, LLC**, a Delaware limited liability company ("Blue Atlantic").

WHEREAS, the City approved a Credit Enhancement Agreement (as amended, "CEA") with Southern Maine Student Housing, LLC, dated June 21, 2006, related to the development of housing on certain real property conveyed by the City to Bayside Village Student Housing, LLC (the "Project"); and

WHEREAS, Section VIII of the CEA allows assignment of the CEA to a successor in title to the Project, with consent of the City; and

WHEREAS, the Project was thereafter conveyed by Bayside Village Student Housing, LLC to Legacy Park Portland One, LLC ("Legacy Park"), by a deed dated December 23, 2010, recorded in the Cumberland County Registry of Deeds in Book 28408, Page 90; and

WHEREAS, in connection with Legacy Park's acquisition of the Project and with the consent of the City, Legacy Park assumed all of the rights and obligations of the CEA; and

WHEREAS, the Project has recently been conveyed by Legacy Park to Blue Atlantic, by a deed dated February 21, 2012, and recorded in said Registry in Book 29376, Page 71; and

WHEREAS, the CEA has recently been assigned by Legacy Park to Blue Atlantic by an Assignment and Assumption of Credit Enhancement Agreement dated February 21, 2012; and

WHEREAS, Blue Atlantic will continue to operate Bayside Student Village as student housing pursuant to the terms and conditions of the Development Program; and

WHEREAS, Blue Atlantic has mortgaged the Project to Texas Capital Bank, National Association ("Lender"), by a Mortgage and Security Agreement dated February 21, 2012, and recorded in said Registry in Book 29376, Page 83; and

WHEREAS, Blue Atlantic, as the successor in title to the Project to Legacy Park, has requested the consent, under Section VIII of the CEA, to the assignment of the CEA to it, and the consent to its collateral assignment of its interest in the CEA to Lender.

NOW, THEREFORE, the City and Blue Atlantic hereby agree as follows:

1. The City acknowledges and consents to the assignment of the CEA to Blue Atlantic Portland, LLC, who assumes all right, title, interest, duties, and obligations to the CEA as successor in title to the Project.
2. Blue Atlantic agrees to accept the assignment of all right, title, interest, duties, and obligations under, and agrees to be bound by, the terms and conditions set forth in the CEA.

3. Blue Atlantic and the City agree that the CEA and the Development Program for the Bayside Redevelopment Municipal Development Tax Increment Financing District remains in full force and effect notwithstanding this Agreement.

4. Each party agrees to execute and deliver such additional instruments and documents required to confirm and assure the rights and obligations provided for herein, and render effective the consummation of the transactions contemplated thereby.

5. The parties specifically acknowledge Article VIII of the CEA, which permits the beneficiary of the CEA to pledge and assign its right, title, and interest in, to, and under the CEA as collateral for financing for the Project, and further requires the City to execute and deliver any assignments, pledge agreements, consents or other confirmations required by the prospective pledgee or assignee.

6. Pursuant to Article VIII of the CEA, the City specifically consents to the assignment of Blue Atlantic's right to the CEA to Lender as collateral for a loan to Blue Atlantic to finance the Project, and agrees to provide any necessary consents or confirmations as required by Lender.

7. The City represents that the CEA is a valid, enforceable agreement and is not in default, and that Blue Atlantic is not otherwise in default under the CEA.

8. The City agrees that, in the event of a default by Blue Atlantic under any of the loan documents between Blue Atlantic and the Lender, the City shall, at the request of Lender, continue performance of the CEA on behalf of Lender in accordance with the terms thereof, provided that there is no subsequent default under the CEA, including any obligations to pay property taxes in accordance with the CEA.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have caused this instrument to be executed by their duly authorized members, officers or agents, as of this 8 day of ~~April~~^{May}, 2012.

WITNESS:

Sonia Bean

CITY OF PORTLAND:

By: Mark H. Rees
Mark H. Rees, City Manager, duly authorized

BLUE ATLANTIC PORTLAND, LLC,

a Delaware limited liability company
By: Blue Atlantic Pool I, LLC,
a Delaware limited liability company,
its sole Member

By: Blue Atlantic Investors, Inc.,
a Delaware corporation,
its sole Member

[Signature]

By: [Signature]
Name: Robert A. Ryan
Title: Authorized Signer

Approved as to form:

[Signature]

Corporation Counsel's Office

CREDIT ENHANCEMENT AGREEMENT

between

CITY OF PORTLAND, MAINE

and

SOUTHERN MAINE STUDENT HOUSING, LLC

Dated as of *June*²¹, 2006

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THIS CREDIT ENHANCEMENT AGREEMENT dated as of June, 2006, between the City of Portland, Maine (the "City"), a municipal body corporate and politic and a political subdivision of the State of Maine, SOUTHERN MAINE STUDENT HOUSING, LLC, a limited liability company duly organized and existing under the laws of the State of Maine, with a place of business in Portland, Maine (the "Company").

WITNESSETH THAT

WHEREAS, the City designated the Bayside Redevelopment Municipal Development District and Tax Increment Financing District (the "District") pursuant to Chapter 206 of Title 30-A of the Maine Revised Statutes by action of the Portland City Council on March 3, 2003 (the "Vote"), and pursuant to the same Vote adopted a development program and financial plan for the District (the "Development Program"); and

WHEREAS, the City amended the Bayside Redevelopment Municipal Development District and Tax Increment Financing District (the "Amended District") pursuant to Chapter 206 of Title 30-A of the Maine Revised Statutes by action of the Portland City Council on July 6, 2005, and pursuant to such vote adopted an amended development program and financial plan for the Amended District (the "Amended Development Program"); and

WHEREAS, upon submission of an application to DECD, the City expects DECD to review and approve the Amended Development Program; and

WHEREAS, the City adopted the Amended Development Program and entered into this Agreement in order to induce the Company to build the Project by enabling the City to contribute toward the capital cost of the Project the amounts contemplated by the Amended Development Program and this Agreement; and

WHEREAS, in connection with the Amended Development Program, and as contemplated thereby, the City and the Company have agreed to execute and deliver this Agreement; and

WHEREAS, the City and the Company desire and intend that this Agreement be and constitute the credit enhancement agreement contemplated by and described in the Amended Development Program;

NOW, THEREFORE, in consideration of the foregoing and in consideration of the mutual promises and covenants set forth herein, the parties hereby agree as follows:

**ARTICLE I
DEFINITIONS**

Section 1.1. Definitions.

The terms defined in this Article I shall, for all purposes of this Agreement, have the meanings herein specified, unless the context clearly requires otherwise. All other capitalized

terms not otherwise defined herein shall have the meaning given such terms in the Development Program.

"Account" shall mean the Project Cost Account, also known as the Bayside Redevelopment Program Fund.

"Act" means Chapter 206 of Title 30-A of the Maine Revised Statutes, as amended.

"Agreement" shall mean this Credit Enhancement Agreement dated as of the date set forth above between the City and the Company, as such may be amended by the parties from time to time.

"Amended District" shall have the meaning given such term in the recitals hereto.

"Captured Assessed Value" means the annual percentage of Increased Assessed Value attributable to the Project, retained in the District in each tax year during the term of the District, as specified in Section 3.1 hereof.

"Cash Flow Coverage Ratio" means net income after taxes plus depreciation plus amortization plus interest expense plus or minus non-recurring items divided by annual principal and interest on all Project debt. For purposes of computing the Cash Flow Coverage Ratio, annual property management fees shall be limited to six percent (6%) of annual gross revenue for the Project and annual contributions to reserve accounts (e.g., debt service, tenant improvement, capital repair and replacement) shall be limited to the greater of (i) those required by Project lenders or (ii) \$100,000.00. Project expenses, even if not included in the proforma expenses submitted to the City, shall be factored into the Cash Flow Coverage Ratio if such expenses are customary for projects similar to the Project or if such expenses are required by Project lenders. The Cash Flow Coverage Ratio shall be determined according to generally accepted accounting principles consistently applied and in a manner consistent with the calculation of debt service coverage ratios by Project lenders.

"City" shall have the meaning given such term in the recitals hereto.

"City Tax Increment Revenues" means in each year this Agreement is in effect, an amount of money equal to the Retained Tax Increment Revenues allocated to the City at the time and according to the schedule specified in Section 3.1 hereof.

"City TIF Account" means the account described in the Financial Plan section of the Development Program and established and maintained pursuant to the Development Program and Article II hereof.

"Company" shall have the meaning given such term in the first paragraph hereto, and shall also mean and include any assignee or successor thereof.

"Company TIF Account" means the account described in the Financial Plan section of the Development Program and established and maintained pursuant to the Development Program and Article II hereof.

"Company Tax Increment Revenues" means in each year this Agreement is in effect an amount of money equal to the Retained Tax Increment Revenues allocated to the Company at the times and according to the schedule specified in Section 3.1 hereof.

"Current Assessed Value" means the then current assessed value of the Property located within the District to be determined by the City's Assessor as of April 1 of each year that this Agreement remains in effect.

"DECD" means the State of Maine Department of Economic and Community Development.

"Development Program" means the development program and financial plan for the District adopted by the City as described in the document entitled "Bayside Redevelopment Tax Increment Financing District Application", as amended, a copy of which is attached hereto as Appendix A.

"District" shall have the meaning given such term in the recitals hereto.

"Financial Plan" means the financial plan described in the "Financial Plan" section of the Development Program.

"Fiscal Year" means the time period from July 1 through June 30 (for example, the 2008 Fiscal Year is the period from July 1, 2007 to June 30, 2008).

"Increased Assessed Value" means the valuation amount by which the Current Assessed Value exceeds the Original Assessed Value. If the Current Assessed Value is less than or equal to the Original Assessed Value in any year, there is no Increased Assessed Value in that year.

"Original Assessed Value" means \$0, the assessed value of the Property located within the District as of March 31, 2006.

"Project" means the minimum 100 unit or 400 bed student housing and 120 car parking garage as depicted on a certain site plan dated March 13, 2006 prepared by Mitchell & Associates, or any subsequent revisions of that proposal as approved by City and as described in the Development Program, and located on a parcel of land depicted as the easterly portion of City tax map 34A, Block B, Lot 1.

"Project Cost Account" means the account in the Development Program Fund described in the Development Program and established and maintained pursuant to the Development Program and Article II hereof.

"Project Costs" means all costs incurred by the Company on the Project within the meaning set forth in 30-A M.R.S.A. §5222(14), as amended.

"Property" means all real property that is part of the Project, now or hereafter located within the District, whether or not the Company owns such Property or is otherwise liable for property taxes imposed and assessed thereon by the City.

"Property Taxes" means any and all ad valorem property taxes actually paid to the City with respect to the Property.

"Qualified Investments" shall mean any and all securities, obligations or accounts in which municipalities may invest their funds under applicable Maine law, and which are of the same type and tenor as the investments in which the City invests its own funds.

"Retained Tax Increment" means that portion of Property Taxes assessed and collected by the City on the Captured Assessed Value.

"Tax Payment Date" means the later of the date(s) on which Property Taxes assessed by the City with respect to the Property are due or are paid, or if any such day is not a business day, the next succeeding business day.

Section 1.2. Interpretation and Construction.

In this Agreement, unless the context otherwise requires:

a. The terms "hereby," "hereof," "hereto," "herein," "hereunder" and any similar terms, as used in this Agreement, refer to this Agreement, and the term "hereafter" means after, and the term "heretofore" means before, the date of delivery of this Agreement.

b. Words importing a particular gender mean and include correlative words of every other gender and words importing the singular number mean and include the plural number and vice versa.

c. Words importing persons mean and include firms, associations, partnerships (including limited partnerships), trusts, corporations and other legal entities, including public or governmental bodies, as well as any natural persons.

d. Any headings preceding the texts of the several Articles and Sections of this Agreement, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

e. All notices to be given hereunder shall be given in writing and, unless a certain number of days is specified, within a reasonable time.

f. If any clause, provision or Section of this Agreement shall be ruled invalid by any court of competent jurisdiction, the invalidity of such clause, provision or Section shall not affect any of the remaining provisions hereof except as expressly provided in Section 3.4.

ARTICLE II

DEVELOPMENT PROGRAM FUND AND FUNDING REQUIREMENTS

Section 2.1. Creation of Development Program Fund.

The City hereby confirms the creation and establishment of a segregated account in the name of the City designated as the "Bayside Redevelopment Program Fund" pursuant to, and in accordance with the terms and conditions of, the Development Program and 30-A M.R.S.A. §5227(3), as amended from time to time. The Account shall consist of a Project Cost Account that is pledged to and charged with the payment of project costs as outlined in the Financial Plan of the Development Program and as provided in 30-A M.R.S.A. §5227(3)(A)(1), as amended from time to time. The Project Cost Account shall include two subaccounts designated as the "Company TIF Account" and "City TIF Account".

Section 2.2. Deposits into Account.

There shall be deposited into the Account contemporaneously with each payment of property tax by the Company an amount equal to that portion of the property tax payment constituting Retained Tax Increment for the period to which the payment relates. Any and all revenues, if any, resulting from investment of monies on deposit shall be retained by the City and withdrawn from the Account contemporaneously with payment to the Company TIF Account.

Section 2.3. Use of Monies in Account.

Monies deposited in the Account shall be used and applied exclusively to fund the City's payment obligation described in Article III hereof. Monies deposited into the Account and any earnings thereunder shall be designated and appropriated by City Council annually in the municipal budget in accordance with Chapter 206 of Title 30-A, and in accordance with the Development Program.

Section 2.4. Monies Held in Trust.

All monies required to be paid into the Company TIF Account under the provisions hereof and the provisions of the Development Program, other than investment earnings thereon, shall be held by the City, in trust, for the benefit of the Company.

Section 2.5. Investments.

Any monies in the Account shall be invested and reinvested in Qualified Investments as determined by the City. The City shall have discretion regarding the investment of such monies, provided such monies are invested in Qualified Investments. As and when any amounts thus invested may be needed for disbursements, the City shall cause a sufficient amount of such investments to be sold or otherwise converted into cash to the credit of such account. The City shall have the sole and exclusive right to designate the investments to be sold and to otherwise direct the sale or conversion to cash of investments made with monies in the Account.

Section 2.6. Tax Payments.

The Company shall pay when due all Property Taxes assessed by the City on property, both real and personal, owned by the Company unless contested by the Company by appropriate proceedings pursuant to Maine law. No payments shall be made by the City under this Agreement unless the Company has paid in full all real or personal Property Taxes assessed by the City on the Company's Property when due.

**ARTICLE III
PAYMENT OBLIGATIONS**

Section 3.1. Captured Assessed Value; Retained Tax Increment.

Annually, all (100%) of the Increased Assessed Value shall be retained as Captured Assessed Value and the Property Tax assessed on such Captured Assessed Value shall be retained as Retained Tax Increment each year starting with the 2008 Fiscal Year of the City and continuing for each of the next 11 Fiscal Years of the City, ending with the 2018 Fiscal Year. Table No. 1 below shows the foregoing allocation based on estimated figures. The company shall receive from the Company TIF Account an annual payment as calculated in Section 4.1(b), or the amount shown in the corresponding year's "Project Revenue" column as shown in Table No. 1 below, whichever is less. In the event that after the annual payment is made to the Company there remains funds in the Company TIF Account, said funds shall be transferred to the City TIF Account. For purposes of computing the amounts owed pursuant to this section, the amount of tax collected for reimbursement as Company Tax Increment Revenues shall be calculated on June 30th and December 31st of each fiscal year.

Table 1 –TIF Allocation Table

Tax Year	Estimated Increased Real Estate Value	Estimated Mill Rate (2% Ino.)	Estimated Incremental Tax Real Estate	Project Alloc.	Project Revenue	Estimated City Revenue From Real Estate
FY08	\$ 2,000,000	16.71	\$ 33,420	0%	\$ -	\$ 33,420
FY09	\$ 19,000,000	17.04	\$ 323,040	37%	\$ 120,000	\$ 203,040
FY10	\$ 19,000,000	17.39	\$ 330,317	36%	\$ 120,000	\$ 210,317
FY11	\$ 19,000,000	17.73	\$ 336,023	36%	\$ 120,000	\$ 216,023
FY12	\$ 19,000,000	18.09	\$ 343,681	35%	\$ 120,000	\$ 223,681
FY13	\$ 19,000,000	18.45	\$ 350,535	34%	\$ 120,000	\$ 230,535
FY14	\$ 19,000,000	18.82	\$ 357,545	34%	\$ 120,000	\$ 237,545
FY15	\$ 19,000,000	19.19	\$ 364,696	33%	\$ 120,000	\$ 244,696
FY16	\$ 19,000,000	19.56	\$ 371,990	32%	\$ 120,000	\$ 251,990
FY17	\$ 19,000,000	19.97	\$ 379,430	32%	\$ 120,000	\$ 259,430
FY18	\$ 19,000,000	20.37	\$ 387,019	31%	\$ 120,000	\$ 267,019
			\$ 3,579,376		\$ 1,200,000	\$ 2,379,376

Section 3.2. Completion of Development Program.

Under this Agreement, the Company shall complete the Project as described in the Amended Development Program.

Section 3.3. Credit Enhancement Payments.

a. Subject to Section 3.3(b), the City shall pay on August 1 of each year of this Agreement to the Company all Company Tax Increment Revenues then on deposit in the Company TIF Account. The obligation of the City to make such payment shall be limited

obligation payable solely out of monies on deposit in the Company TIF Account and shall not constitute a general debt or obligation on the part of the City or a general obligation or charge against or pledge of the faith and credit or taxing power of the City, the State of Maine or any political subdivision thereof.

b. In the event that City is subject to a claim by a third party to pay the Company Tax Increment Revenues to such third party, City shall not pay such amount to Company pursuant to Section 3.3(a) nor to the third party, but shall deposit the Company Tax Increment Revenues in an amount equal to such amount so claimed (but only to the extent available) into an interest bearing escrow account and shall file an interpleader or other comparable action with a court of competent jurisdiction requesting a ruling to determine whether such Company Tax Increment Revenues should be paid to Company or to said third party.

Section 3.4. Failure to Make Payment.

In the event the City should fail to, or be unable to, make any of the payments to the Company required under the foregoing provisions of this Article III, the item or installment so unpaid shall continue as a limited obligation of the City, under the terms and conditions hereinafter set forth, until the amount unpaid shall have been fully paid. The Company shall have the right to initiate and maintain an action to specifically enforce the City's obligations hereunder, including without limitation, the City's obligation to establish and maintain the Company TIF Account and to deposit Company Tax Increment Revenues into the Company TIF Account and its obligation to make required payment to the Company.

Section 3.5. Manner of Payments.

The payments provided for in this Article III shall be paid directly to the Company in the manner provided hereinabove for its own use and benefit, which use and benefit shall be consistent with the Development Program and Chapter 206 of Title 30-A of the Maine Revised Statutes. The City shall make required payments in response to requests for payment submitted by the Company setting forth the amount of the payment and containing a certification in the form attached hereto as Exhibit B.

Section 3.6. Obligations Unconditional.

Except as otherwise expressly provided in this Agreement, the obligations of the City to make the payments described in this Agreement in accordance with the terms hereof shall be absolute and unconditional irrespective of any defense or any rights of setoff, recoupment or counterclaim it might otherwise have against the Company. Notwithstanding the above, the City reserves the right to terminate this Agreement upon receipt of a final judgment by a court of competent jurisdiction to the effect that the Agreement or Development Program adopted in connection herewith or any payment made thereunder is or would be illegal or invalid. In such event, the termination shall relate back to the original date of the Agreement which shall be deemed void ab initio, and neither party shall have any obligations or liability hereunder, under the Development Program or in respect of any of the transactions contemplated thereby, and shall be left in whatever positions, financial or otherwise, they may be in as of the date of termination.

Such termination shall not, however, affect the indemnifications set forth in Section 9.10, which obligations shall survive any such termination.

Section 3.7. Limited Obligation.

The City's obligations of payment hereunder shall be limited obligations of the City payable solely from Retained Tax Increment Revenues and any earnings thereon, pledged therefore under this Agreement. The City's obligations hereunder shall not constitute a general debt or a general obligation on the part of the City or a charge against or pledge of the faith and credit or taxing power of the City, but shall be payable solely from the Retained Tax Increment received by the City, and any earnings thereon. This Agreement shall not directly or indirectly or contingently obligate the City to levy or to pledge any form of taxation whatever therefore or to make any appropriation for their payment, excepting the City's obligation to assess property taxes upon the Project and the pledge of the Retained Tax Increment established under this Agreement.

Section 3.8 Administrative Fee.

The Company shall pay to the City an annual administrative fee to the City equal to 1% of the Retained Tax Increment. Such payment shall be deducted pursuant to Section 9.9 of this Agreement contemporaneously with the payment by the City to the Company.

**ARTICLE IV
COVENANTS OF THE COMPANY**

Section 4.1. Project Development

- a. The Company shall construct the Project.
- b. In each year this Agreement is in effect, the Company agrees to provide, by each April 30, audited financial statements, which shall be used to determine the Company Tax Increment Revenues due to Company for the following August 1 payment by City pursuant to this Agreement. The audited financial statements shall be used by City to determine the Cash Flow Coverage Ratio and shall not be used for any other purpose or disclosed to any other party by the City. In each year of this Agreement, the City shall pay Company Tax Increment Revenues to the Company pursuant to this Agreement to the extent necessary for Company to achieve a 1.2 to 1 Cash Flow Coverage Ratio, provided however such payments to the Company shall not be greater than the amount shown in the corresponding year's "Project Revenue" column as shown in Table No. 1 in Section 3.1 above..
- c. If in any year that this Agreement is in effect the Increased Assessed Value is less than \$18,000,000, the obligation of the city to pay into the Company TIF Account per section 3.1 of the agreement shall be reduced. The reduction shall be calculated as follows: The increased assessed value divided by \$18,000,000 multiplied by the corresponding scheduled fiscal year Company Project Revenue payment amount on Table 1.

**ARTICLE V
PLEDGE AND SECURITY INTEREST**

Section 5.1. Pledge of Company TIF Account.

In consideration of this Agreement and other valuable consideration and for the purpose of securing payment of the amounts provided for hereunder to the Company by the City, according to the terms and conditions contained herein, and in order to secure the performance and observance of all of the City's covenants and agreements contained herein, the City does hereby grant a security interest in and pledge to the Company the Company TIF Account and all sums of money and other securities and investments therein.

Section 5.2. Further Instruments.

The City and the Company shall, from time to time execute and deliver such further instruments and take such further action as may be reasonable and as may be required to carry out the provisions of this Agreement, provided, however that no such instruments or agreements shall pledge the credit of the City.

Section 5.3. Liens.

Except as permitted hereunder, the City shall not sell, lease, pledge, assign or otherwise dispose, encumber or hypothecate any interest in the Company TIF Account and will promptly pay or cause to be discharged or make adequate provision to discharge any lien, charge or encumbrance on any part thereof not permitted hereby.

Section 5.4. Access to Books and Records.

All books, records and documents in the possession of the City relating to the District, the Development Program, this Agreement and the monies, revenues and receipts on deposit or required to be deposited into the Account shall at all reasonable times be open to inspection by the Company, its agents, lenders and employees.

**ARTICLE VI
DEFAULTS AND REMEDIES**

Section 6.1. Events of Default.

Each of the following events shall constitute and be referred to in this Agreement as an "Event of Default":

- a. Any failure by the City to pay any amounts due to Company when the same shall become due and payable if such non-payment is not a result of a final determination by a court that this Agreement is illegal or invalid;

b. Any failure by the City to make deposits into the Company TIF Account as and when due;

c. Other than as provided in paragraph (a) and (b) above, any failure by the City or the Company to observe and perform in all material respects any respective covenant, condition, agreement or provision contained herein on the part of the City or the Company respectively to be observed or performed, including any failure of the Company to use payments made under this Agreement as required in Section 3.5 of this Agreement or to perform the covenant under Section 4.1(a) of this Agreement, which failure is not cured within thirty (30) days following written notice thereof or such additional time as is allowed by City to cure provided the defaulting party promptly commences and diligently pursues a cure within said thirty (30) day period; provided, however, that this subsection (c) shall not be construed to include the Company's failure to pay Property Taxes on the Property in the District for any reason as an Event of Default hereunder; and

d. If a decree or order of a court or agency or supervisory authority having jurisdiction in the premises shall appoint a conservator or receiver or liquidator for the City, or if any insolvency, readjustment of debt, marshaling of assets and liabilities or similar proceedings for the winding up or liquidation of the City's affairs shall have been entered against the City or if the City shall have consented to the appointment of a conservator or receiver or liquidator in any such proceedings of or relating to the City or of or relating to all or substantially all of its property, including without limitation the filing of a voluntary petition in bankruptcy by the City or the failure by the City to have a petition in bankruptcy dismissed within a period of 90 consecutive days following its filing or in the event an order for release has been entered under the Bankruptcy Code with respect to the City.

e. Any failure of Company to pay taxes to City when due.

f. Any failure of the Company or any agents, assigns or successors in interest to operate the Project and pay taxes on it during the term of this Agreement.

Section 6.2. Remedies on Default.

Whenever any Event of Default described in Section 6.1 hereof shall have occurred and be continuing, the non-defaulting party may take any one or more of the following remedial steps following any applicable cure period, shall have all rights and remedies available to it.

a. The non-defaulting party may take whatever action at law or in equity, including the rights and remedies available to a secured party under the laws of the State of Maine, and may take whatever action as may appear necessary or desirable to collect the amount then due and thereafter to become due, to specifically enforce the performance or observance of any obligations, agreements, or covenants benefiting the non-defaulting party under this Agreement and any documents, instruments, and agreements contemplated hereby or to enforce any rights or remedies available hereunder; and

b. In addition, in the event of a default under Section 6.1(c)(e) or (f) relating to Section 3.5 or 4.1(a), the City may suspend further payments until such default is cured. If there is any dispute as to either party's performance of any of its obligations under this Agreement,

such dispute may, by agreement of the parties, be submitted to non-binding mediation and, following such mediation or in the absence of any such agreement to submit the dispute to mediation, shall be submitted to arbitration in accordance with the rules of the American Arbitration Association. Notwithstanding the foregoing, payments by the City shall not be suspended prior to a final determination in such proceeding in favor of the City.

Section 6.3. Remedies Cumulative.

No remedy herein conferred upon or reserved by any party is intended to be exclusive of any other available remedy or remedies but each and every such remedy shall be cumulative and shall be in addition to the remedy given under this Agreement or now or hereafter existing at law, in equity or by statute. Delay or omission to exercise any right or power accruing upon any Events of Default or to insist upon the strict performance of any of the covenants and agreements herein set forth or to exercise any rights or remedies upon the occurrence of an Event of Default shall not impair any such right or power or be considered or taken as a waiver or relinquishment for the future of the rights to insist upon and to enforce, from time to time and as often as may be deemed expedient, by injunction or other appropriate legal or equitable remedy, strict compliance by the parties hereto with all of the covenants and conditions hereof, or of the rights to exercise any such rights or remedies, if such Events of Default be continued or repeated.

Section 6.4. Enforcement Rights.

The City and the Company agree that each party hereto shall have the right to initiate a legal proceeding to enforce the specific performance of this Agreement, it being understood and agreed that this Agreement is a material inducement to the Company continuing its pursuit of the Project. The parties agree that in the event of any dispute or disagreement hereunder the Company and the City shall continue to make payment of all amounts due hereunder in the manner and at the times specified herein until final resolution of such dispute, whether by mutual agreement or final decision of a court, arbitrator or other dispute resolution mechanism.

**ARTICLE VII
EFFECTIVE DATE, TERM AND TERMINATION**

Section 7.1. Effective Date and Term.

This Agreement shall become effective upon its execution and delivery by the parties hereto and shall remain in full force from the date hereof and shall expire on the later of the end of the 2018 fiscal year of the City or upon the performance of all obligations on the part of the City and the Company hereunder, unless sooner terminated under Section 3.6 or 9.2 hereof.

Section 7.2. Cancellation and Expiration of Term.

At the termination or other expiration of this Agreement in accordance with the provisions of this Agreement, the City and the Company shall each execute and deliver such documents and take or cause to be taken such actions as may be necessary to evidence the termination of this Agreement.

**ARTICLE VIII
ASSIGNMENT AND PLEDGE OF COMPANY'S INTEREST**

Section 8.1. Consent to Pledge, Collateral Assignment Or Grant of a Security Interest.

The City hereby acknowledges that the Company may pledge and assign its right, title and interest in, to and under this Agreement as collateral for financing for the Project, although no obligation is hereby imposed on the Company to make such assignment or pledge. Recognizing this possibility, the City does hereby consent and agree to the pledge and assignment of all the Company's right, title and interest in, to and under this Agreement and in, and to the payments to be made to Company hereunder, to third parties as collateral or security for indebtedness related to the Project, on one or more occasions during the term hereof. The City agrees to execute and deliver any assignments, pledge agreements, consents or other confirmations required by the prospective pledgee or assignee, including without limitation recognition of the pledgee or assignee as the holder of all right, title and interest herein and as the payee of amounts due and payable hereunder and any and all such other documentation as shall confirm to such pledgee or assignee the position of such assignee or pledgee and the irrevocable and binding nature of this Agreement and provide to the pledgee or assignee such rights and/or remedies as it may deem necessary for the establishing, perfection and protection of its interest herein.

Section 8.2. Assignment.

Except as provided in Section 8.1, this Agreement and the obligations of the City hereunder are personal to the Company and may not be assigned or transferred by the Company except to a successor in title to the Project, without the consent of the City which consent shall not be unreasonably withheld or delayed for any reason or for no reason. In the event of an assignment, Company shall pay all legal fees incurred by City in conjunction with the assignment.

**ARTICLE IX
MISCELLANEOUS**

Section 9.1. Successors.

a. In the event the City or the Company are dissolved, merged into or consolidated with another entity, or undergo any form of corporate reorganization (other than with respect to any dissolution, merger, consolidation or corporate reorganization solely involving the Company and any other company related to or affiliated with the Company), the covenants, stipulations, promises and agreements set forth herein, by or on behalf of or for the benefit of such party shall bind or inure to the benefit of the successors and assigns thereof from time to time and any entity, officer, board, commission, agency or instrumentality to whom or to which any power or duty of

such party shall be transferred, subject to approval of the City, which consent shall not be unreasonably withheld or delayed.

b. No consent from the City shall be required with respect to any dissolution, merger, consolidation or corporate reorganization solely involving the Company and any other company related to or affiliated with the Company. In such case, the covenants, stipulations, promises and agreements set forth herein, by or on behalf of or for the benefit of the Company shall bind or inure to the benefit of the successors and assigns thereof from time to time and any entity, officer, board, commission, agency or instrumentality to whom or to which any power or duty of such party shall be transferred.

Section 9.2. Parties in Interest.

Except as herein otherwise specifically provided, nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any person, firm or corporation other than the City and the Company any right, remedy or claim under or by reason of this Agreement, it being intended that this Agreement shall be for the sole and exclusive benefit of the City and the Company, and their successors and assigns as allowed under this Agreement; provided, however, that if the payment obligations of the City to the Company hereunder are held by a final and binding proceeding to be illegal or invalid, this Agreement shall terminate. In such event all obligations of the parties shall terminate, and no party shall have any further liability to the other hereunder.

Section 9.3. Severability.

Except as otherwise provided herein, in case any one or more of the provisions of this Agreement shall, for any reason, be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this Agreement and this Agreement shall be construed and enforced as if such illegal or invalid provision had not been contained herein.

Section 9.4. No Personal Liability.

a. No covenant, stipulation, obligation or agreement of the City contained herein shall be deemed to be a covenant, stipulation or obligation of any present or future elected or appointed official, officer, agent, servant or employee of the City in his or her individual capacity and neither the members of the City Council of the City, or any official, officer, agent, servant or employee of the City shall be liable personally with respect to this Agreement or be subject to any personal liability or accountability by reason hereof.

b. No covenant, stipulation, obligation or agreement of the Company contained herein shall be deemed to be a covenant, stipulation or obligation of any present or future director, member, manager, officer, agent, servant or employee of the Company in his or her individual capacity and neither the directors, members, managers, officers, agents, servants or employees of the Company shall be liable personally with respect to this Agreement or be subject to any personal liability or accountability by reason hereof.

Section 9.5. Counterparts.

This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts shall together constitute but one and the same Agreement.

Section 9.6. Governing Law.

The laws of the State of Maine shall govern the construction and enforcement of this Agreement in all respects.

Section 9.7. Notices.

All notices, certificates, requests, requisitions or other communications by the City or the Company pursuant to this Agreement shall be in writing and shall be sufficiently given and shall be deemed given when mailed by first class mail, postage prepaid, or, for any notice of an Event of Default, by registered or certified mail, return receipt requested, addressed as follows:

If to the City:

City of Portland
389 Congress Street
Portland, ME 04101
Attn: City Attorney

If to the Company:

Southern Maine Student Housing, LLC
247 Commercial Street
Rockport, ME 04856

Either of the parties may, by notice given to the other, designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent hereunder.

Section 9.8. Amendments.

Neither this Agreement nor the Development Program may be amended without the express written consent of all of the parties hereto, which consent shall not be unreasonably withheld. Provided, however, the parties agree to amend this Agreement in order to fulfill such reasonable requirement that a lender may require in connection with financing of the Project. This Agreement may only be amended in compliance with the provisions of 30-A M.R.S.A. § 5221 et seq., as amended.

Section 9.9. Net Agreement.

It is understood that the City's payment obligations are to be satisfied solely from Retained Tax Increment Revenues actually paid in by the Company and received by the City, and earnings thereon and provided further that the City may deduct from any payment owed to the Company the administrative fee described in Section 3.8 hereof.

Section 9.10. Integration.

This Agreement completely and fully supersedes all other prior or contemporaneous understandings or agreements, both written and oral, between the City and the Company relating to the specific subject matter of this Agreement and the transactions contemplated hereby.

Section 9.11. Indemnification.

a. The Company agrees to defend, indemnify and hold harmless the City, its officers, agents and employees from any and all claims and expenses, including its attorney fees, arising out of or associated with the City's approval of the District and its preparation of and participation in this Agreement, including expenses arising from any default hereunder by the Company but excluding any such claims or expenses as may relate to actions or proceedings resulting from a default hereunder by the City. This indemnification obligation shall survive termination of this Agreement or a finding that this Agreement is void or invalid.

b. The City agrees to defend, indemnify and hold harmless the Company, its officers, members, managers, agents and employees from any and all claims and expenses, including its attorney fees, arising out of or associated with any default hereunder by the City. This indemnification obligation shall survive termination of this Agreement or a finding that this Agreement is void or invalid.

Section 9.12. Waiver of Recapture if Agreement Found Void.

In the event this Credit Enhancement Agreement is found void "ab initio" by a Court of law with final jurisdiction over this Agreement, City agrees to waive its rights to recapture all Company Tax Increment Revenues paid to Company pursuant to this Agreement.

IN WITNESS WHEREOF, the City and the Company have caused this Agreement to be executed in their respective corporate names and their respective corporate seals to be hereunto affixed and attested by the duly authorized officers or members, as the case may be, all as of the date first above written.

WITNESS

Sonia Boon

CITY OF PORTLAND, MAINE

By: *Joseph E. King*

Its City Manager

WITNESS

Ann M. Lewis

SOUTHERN MAINE STUDENT
HOUSING, LLC

By: *[Signature]*

Its Authorized Manager.

EXHIBIT B

Request for Payment

The undersigned does hereby request payment in the amount of \$_____ from the Company TIF Account of the Project Cost Account within the Bayside Redevelopment Program Fund and does hereby certify that the amount requested will be used to pay Project Costs as that term is defined in Chapter 206 of Title 30-A of the Maine Revised Statutes.

SOUTHERN MAINE STUDENT HOUSING, LLC

Date: 6-21-06

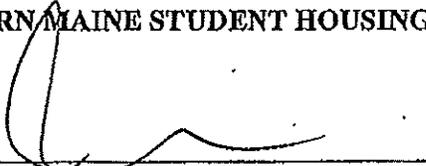
By: 
Its _____

EXHIBIT E
NOTICE OF PUBLIC HEARING
(TO BE PROVIDED WHEN IT IS
ADVERTISED ON 11/3/2014)

EXHIBIT F
CITY COUNCIL MINUTES -
TO BE PROVIDED AFTER CITY COUNCIL VOTE
- ANTICIPATED 11/17/2014

EXHIBIT G
CITY COUNCIL ORDER - TO BE PROVIDED
AFTER VOTE

EXHIBIT H(1)

THE CITY OF PORTLAND
TAX INCREMENT FINANCING DEVELOPMENT PROGRAM

EXHIBIT H

ASSESSOR'S CERTIFICATE

The undersigned Tax Assessor for the City of Portland, Maine, does hereby certify pursuant to the provisions of 30-A M.R.S.A. § 5254 that the assessed value of the Municipal Tax Increment Financing District as described in the Bayside Redevelopment Tax Increment Financing Program to which this certificate is included, was revised to \$44,066,380 as of March 31, 2007.

IN WITNESS WHEREOF, this certificate has been executed as of this 19th day of April 2007.

CITY ASSESSOR

By Richard W. Blackburn

Richard W. Blackburn

Attested true copy of the original

Mary P. Davis 4-24-07

Mary P. Davis, Notary Public
State of Maine
My Commission Expires 07/27/2010



TAX INCREMENT FINANCING DEVELOPMENT PROGRAM

EXHIBIT H(2)

**ASSESSOR'S CERTIFICATE/EXPANDED AREA
OF BAYSIDE TIF DISTRICT**

The undersigned Tax Assessor for the City of Portland, Maine, does hereby certify pursuant to the provisions of 30-A M.R.S.A. Section 5254 that the real property assessed value of the expanded area of the Bayside Tax Increment Financing District as described in the Bayside Redevelopment Tax Increment Financing Program to which this Certificate is included is \$78,251,800 as of March 31, 2014.

IN WITNESS WHEREOF, this Certificate has been executed as of this ____ day of November, 2014.

Witness:

City Assessor

Richard Blackburn