SACO CITY COUNCIL MEETING
MONDAY SEPTEMBER 16, 2019 – 6:30 PM
CITY HALL AUDITORIUM

I. CALL TO ORDER
II. RECOGNITION OF MEMBERS PRESENT
III. PLEDGE OF ALLEGIANCE
IV. GENERAL
   A. Recognition of Constitution Week
   B. Parks & Rec Resolution – Recreation Trail Development Grant
V. PUBLIC COMMENT
VI. CONSENT AGENDA
   A. Confirm Mayor’s Appointment of Brad Paul to Zoning Board of Appeals
   B. Confirm Mayor’s Appointment of Richard Parker to the Zoning Board of Appeals
   C. Confirm Mayor’s Appointment of Jack Cianchette as an Associate Member to the Historic Preservation Commission (HPC)
   D. Approval of Minutes from August 26th and September 3rd
VII. AGENDA
   A. Administrative Appeal on Electrical Code
   B. (First Reading) Credit Enhancement Agreement between the City of Saco, Maine and Foresite Realty, LLC for business operating as Biddeford Saco Dental Associates
   C. (First Reading) Credit Enhancement Agreement between the City of Saco, Maine and Baxter & Cutts, LLC (for business operating as Quince)
   D. (First Reading) Adoption of Chapter 175 – Senior Citizen Tax Relief Ordinance
   E. Set Dates for Zoning Ordinance Revision Meetings and Expectation for Draft #3
VIII. ADMINISTRATIVE UPDATE
IX. COUNCIL DISCUSSION AND COMMENT
X. ADJOURNMENT

Hearing Assistance Devices are available at the back of the Auditorium.
If you are interested in addressing the Mayor and Council in the public comment session, please add your name to the roster at the back of the room.
AGENDA ITEM: Confirm Mayor’s Appointments to the Zoning Board of Appeals – Bradley Paul

STAFF RESOURCE: Richard Lambert, Director of Code Enforcement

COUNCIL RESOURCE: Councilor Roger Gay

BACKGROUND: The Saco Zoning Board of Appeals was established to hear various type of appeals as outlined in Article X of the Saco Zoning Ordinance. The Board meets on the first Monday of each month if there are any appeals pending. Appeals heard by this Board include Administrative Appeals from any aggrieved party from a decision made by the Code Enforcement Officer regarding a zoning violation, a building permit or a certificate of occupancy and to hear appeals of decisions by the Planning Board on applications for conditional use permits and appeals of decisions made by the Historic Preservation Commission. The Board shall have authority to approve, approve with conditions, or deny applications for a variance from shoreland and natural resource standards and to hear variances to the space and bulk requirements of Table 412-1 of the Zoning Ordinance.

EXHIBITS: 1. Application for Bradley Paul.

RECOMMENDATION: Staff recommends the board appointment.

SUGGESTED ACTION: “Be it ordered that the City Council confirm the Mayor’s appointment of Bradley Paul to the Zoning Board of Appeals for a 5 year term to begin September 16, 2019 and to expire on September 16, 2024”.

“I move to approve the order.”
Zoning Board of Appeals = Zoning Board of Appeals
Length of residency = 37 years
Community1 =
Board1 =
Years1 =
Community2 =
Board2 =
Years2 =
Community3 =
Board3 =
Years3 =
Community4 =
Board4 =
Years4 =
Community5 =
Board5 =
Years5 =
Nominee qualifications = I am first and foremost a citizen and an involved community member. I have a solid record of receiving, assessing and acting upon information and situations in a fair and impartial manner. I have experience in mediating and ‘finding the middle ground’ when disputes arise.
Name = Bradley Paul
Street Address = 65 Hillview Avenue
Mailing Address = same
Nominee Home Telephone = none
Cell Telephone = 207.590.4027
E-mail = bpaul@maine.rr.com
Employer = York County Sheriff’s Office
Employer address = 1 Layman Way, Alfred, ME. 04002
Employer Telephone = 207.459.2500
Comments =
Client IP = 74.78.57.139
CONSENT AGENDA ITEM: B
September 16, 2019

MEETING ITEM COMMENTARY

AGENDA ITEM: Confirm Mayor’s Appointments to the Zoning Board of Appeals – Richard Parker

STAFF RESOURCE: Richard Lambert, Director of Code Enforcement

COUNCIL RESOURCE: Councilor Roger Gay

BACKGROUND: The Saco Zoning Board of Appeals was established to hear various type of appeals as outlined in Article X of the Saco Zoning Ordinance. The Board meets on the first Monday of each month if there are any appeals pending. Appeals heard by this Board include Administrative Appeals from any aggrieved party from a decision made by the Code Enforcement Officer regarding a zoning violation, a building permit or a certificate of occupancy and to hear appeals of decisions by the Planning Board on applications for conditional use permits and appeals of decisions made by the Historic Preservation Commission. The Board shall have authority to approve, approve with conditions, or deny applications for a variance from shoreland and natural resource standards and to hear variances to the space and bulk requirements of Table 412-1 of the Zoning Ordinance.


RECOMMENDATION: Staff recommends the board appointment.

SUGGESTED ACTION: “Be it ordered that the City Council confirm the Mayor’s appointment of Richard Parker to the Zoning Board of Appeals for a 5 year term to begin September 16, 2019 and to expire on September 16, 2024”.

“I move to approve the order.”
Home Government Boards & Committees Board Application

Join a City Board, Committee, or Commission

The Mayor is seeking residents interested in serving on a City Board or Committee. There may be a current vacancy as well as the need to add to a reserve list of candidates to fill future vacancies.

You may complete the form below and submit it electronically, or you may contact the City Clerk's office to get a printed copy and mail it to: City Clerk, 300 Main Street, Saco, Maine 04072.

Please select the Board, Committee, or Commission you are interested in serving on (check all that apply).

- ☐ Board of Assessment Review
- ☐ Coastal Waters Commission
- ☐ Conservation Commission
- ☐ Economic Development Commission
- ☐ Energy and Sustainability Committee
- ☐ Historic Preservation Commission
- ☐ Parks and Recreation Advisory Board
- ☐ Planning Board
- ☐ Shoreline Commission
- ☒ Zoning Board of Appeals
- ☐ Public Safety Building Ad Hoc Committee
- ☐ Solid Waste Advisory Committee
- ☐ City Administrator Selection Advisory Committee

How long have you been a resident of Saco?

Past board or committee appointment(s):

<table>
<thead>
<tr>
<th>Community Name</th>
<th>Name of Board or Committee</th>
<th>Years served</th>
</tr>
</thead>
<tbody>
<tr>
<td>Saco Zoning Board of Appeals</td>
<td>2002-2019</td>
<td></td>
</tr>
<tr>
<td>Saco Industrial Dev. Comm.</td>
<td>1982-1987</td>
<td></td>
</tr>
</tbody>
</table>

GET NOTIFIED
In 50 words or less, please explain why you are interested in serving and what you might contribute to a board or committee?

Would be willing to continue my work of the past seventeen years.

Name: Richard M. Parker
Street Address: 1 Norman Avenue, Saco, ME 04072

Name of employer: N/A
Employer address: N/A
Employer Telephone: N/A

Comments or suggestions:

I'm not a robot
MEETING ITEM COMMENTARY

AGENDA ITEM: Confirm Mayor’s Appointment of Jack Cianchette as an Associate Member to the Historic Preservation Commission (HPC)

COUNCIL RESOURCE: Councilor Roger Gay (HPC Council Liaison)

STAFF RESOURCE: Emily Cole-Prescott, City Planner

BACKGROUND: The Historic Preservation Commission shall be comprised of up to five regular members and five associate members to be appointed by the Mayor and approved by the City Council for three-year, staggered terms. Each Commission member shall be a resident of the City, serve without compensation, and shall meet the qualifications outlined in §230-413(c) of the Zoning Ordinance.

Mayor Lovell recommends that Jack Cianchette (Ward 4) be appointed as an associate member to the Historic Preservation Commission.

EXHIBITS: Application

RECOMMENDATION: The Mayor recommends confirmation of the appointment of Jack Cianchette as an associate member to the Historic Preservation Commission.

SUGGESTED MOTION: “Be it Ordered that the City Council confirm the Mayor’s appointment of Jack Cianchette as an associate member on the Historic Preservation Commission, for a three-year term to expire on June 30, 2022.

“I move to approve the Order”.

“Be it Ordered that the City Council confirm the Mayor’s appointment of Jack Cianchette as an associate member on the Historic Preservation Commission, for a three-year term to expire on June 30, 2022.

“I move to approve the Order”.

“Be it Ordered that the City Council confirm the Mayor’s appointment of Jack Cianchette as an associate member on the Historic Preservation Commission, for a three-year term to expire on June 30, 2022.

“I move to approve the Order”.

“Be it Ordered that the City Council confirm the Mayor’s appointment of Jack Cianchette as an associate member on the Historic Preservation Commission, for a three-year term to expire on June 30, 2022.

“I move to approve the Order”.
Good afternoon,

Below is Jack Cianchette’s board application for the HPC.

Michele

MICHELE L. HUGHES
City Clerk & Registrar
300 Main Street | Saco, ME 04072
t 207.284-4831
| sacomaine.org
Follow us: Facebook | Twitter | Instagram

Historic Preservation Commission = Historic Preservation Commission
Length of residency = 20 years
Community1 =
Board1 =
Years1 =
Community2 =
Board2 =
Years2 =
Community3 =
Board3 =
Years3 =
Community4 =
Board4 =
Years4 =
Community5 =
Board5 =
Years5 =
Nominee qualifications = I am a motivated young adult who cares about the history of Saco and its preservation.
Name = Jack Cianchette
Street Address = 33 Scrimshaw lane Saco Maine
Mailing Address = 33 scrimshaw lane Saco Maine
Nominee Home Telephone =
Cell Telephone =
E-mail =
Employer =
Employer address =
Employer Telephone =
Comments =
Client IP =
MEMORANDUM

TO: Mayor Lovell and City Council
FROM: Kevin L. Sutherland, City Administrator
DATE: September 9, 2019
RE: Administrative Appeal to Chapter 87 – Electrical Standards

On August 1st, the Saco School Department appealed a decision by Marcel Desrosiers (Saco’s City Electrician) to de-power the building at 5 Wiley Road (Toddle Inn Daycare).

The timing of the appeal met the requirements of the appeal allowed in Section 87-4. Appeals:

A. Any person aggrieved by the decision of the Electrical Inspector with regard to the enforcement of the Electrical Code may take an appeal to the Mayor and City Council.

B. An appeal may be taken within 30 days from the date of the decision appealed by filing with the City Council, through its Clerk, a notice of appeal specifying the grounds thereof, except that in the case of a building or structure which, in the opinion of the Electrical Inspector, is unsafe, dangerous and a threat to life safety, the Electrical Inspector may, in his/her order, limit the time for such an appeal to seven days. The Electrical Inspector shall forthwith transmit to the Mayor and City Council all the papers upon which the action appealed from was taken.

The appeal language does not provide for a process to be followed, but this Council has utilized similar steps for past appeals in other sections of the City Code.

Each party was given a chance to respond to the initial appeal before the Council is provided a copy of all documentation. All documentation provided will be the record for this appeal and a memo from Keith Jacques with Woodman Edmands Danylik Austin Smith & Jacques, P.A who will assist the Council in the administration of the appeal will be sent to you all tomorrow with the process that we will follow.

Follow this link to find several documents on this matter:
1. Appeal by School Department received August 1st.
2. Response from City Staff dated August 26th
3. Follow up with email and affidavit August 28th
4. Response from School Department dated September 6th
5. Additional information requested by School (if found) – under separate memo to be sent tomorrow the 10th.
MEETING ITEM COMMENTARY

AGENDA ITEM: First Reading: Credit Enhancement Agreement between the City of Saco, Maine and Foresite Realty, LLC (for business operating as Biddeford-Saco Dental Associates)

STAFF RESOURCE: Denise M. Clavette, Planning and Development Director

COUNCIL RESOURCE: Micah Smart, City Councilor, Ward 6

BACKGROUND: A Credit Enhancement Agreement (CEA) for Foresite Realty, LLC. (Company) is being presented for consideration. This application is for the CEA, that will be a part of the existing TIF #15 Downtown Omnibus Municipal Tax Increment Financing District. The Credit Enhancement Agreement will be for 14 years, with the following terms: in years one (1) through five (5), Foresite Realty, LLC. will receive 50% of the TIF revenues, and the City will receive 50% of TIF revenue. In years six (6) through ten (10) of the Credit Enhancement Agreement, the Company will receive 45% of the TIF revenue, and the City will receive 55%. In years eleven (11) and twelve (12), the Company will receive 25% and the City will receive 75%. In years thirteen (13) and fourteen (14), the City will receive 100%. For any remaining years of the District, the City will continue to receive 100% of the TIF revenue. The CEA will have a cap of TIF revenue going to Foresite Realty, LLC, in the amount of $396,000. The City will retain funds from TIF revenues to use for project costs outlined in the Development Program.

The CEA was reviewed by the Economic Development Commission at their September 9, 2019 meeting; recommended to go to the City Council for the first reading and public hearing. The CEA was also reviewed at the City Council Workshop held on September 9, 2019. The Council Order for this Credit Enhancement Agreement, which will be part of the First Reading, Public Hearing and Second and Final Reading will be as follows: “The City Administrator is hereby authorized and directed to enter into a credit enhancement agreement with Foresite Realty, LLC. in substantially the form as presented to the City Council.”

EXHIBITS:
1. Credit Enhancement Agreement between the City of Saco, Maine and Foresite Realty, LLC.
2. CEA Captured Assessed Value & TIF Projection Table

RECOMMENDATION: Staff supports this Credit Enhancement Agreement and recommends the City Council send this CEA to Public Hearing. Suggested motion below, will accompany the Order at the First Reading.

SUGGESTED MOTIONS: “I move to approve the First Reading and to schedule a public hearing on October 7, 2019, on the Order “The City Administrator is hereby authorized and directed to enter into a credit enhancement agreement with the Foresite Realty, LLC in substantially the form as presented to the City Council.”
CREDIT ENHANCEMENT AGREEMENT

between

CITY OF SACO, MAINE

and

FORESITE REALTY, LLC

DATED: October 21, 2019
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THIS CREDIT ENHANCEMENT AGREEMENT, made and entered into as of October 21, 2019 by and between the City of Saco (the “City”), a municipal corporation and political subdivision of the State of Maine located in York County, Maine, and Foresite Realty, LLC (the “Developer”), a Maine limited liability company with an address of 485 Main Street, Saco, Maine 04074;

WITNESSETH THAT

WHEREAS, the City designated the Saco Downtown Omnibus Municipal Development and Tax Increment Financing District Municipal (the “District”), pursuant to Chapter 206 of Title 30-A of the Maine Revised Statutes, and approved a municipal development program and financial plan for the District (the “Development Program”) on February 21, 2017. The District and Development Program were approved by the State of Maine Department of Economic and Community Development (the “Department”) on August 7, 2018; and

WHEREAS, on February 19, 2019, the City approved the First Amendment to the District (the “First Amendment”) and such First Amendment was submitted to the Department on February 26, 2019; and

WHEREAS, the First Amendment was approved by the Department on April 23, 2019; and

WHEREAS, the approved Development Program for the District provides that in the discretion of the City up to one hundred percent (100%) of the Tax Increment Revenues generated by new development within the District may be returned to the Developer during the remaining term of the District, pursuant to a credit enhancement agreement, for the purpose of defraying the Developer’s project costs; and

WHEREAS, the City and the Developer have agreed as to the portion of the Tax Increment Revenues associated with the Developer’s Project (as hereinafter defined) that will be returned to the Developer; and

WHEREAS, the City and the Developer desire and intend that this Credit Enhancement Agreement be and constitute the credit enhancement agreement contemplated by the Development Program; and

WHEREAS, as required by Section 3.05 of the Development Program and the Department approval, the City held a public hearing on October 7, 2019 at which the provisions of this Credit Enhancement Agreement were approved;

NOW, THEREFORE, in consideration of the foregoing recitals 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:

“Act” means chapter 206 of Title 30-A of the Maine Revised Statutes and regulations adopted thereunder, as amended from time to time.

“Agreement” shall mean this Credit Enhancement Agreement between the City and the Developer dated as set forth above, as it may be amended from time to time.

“Captured Assessed Value” means the amount, stated as a percentage, of Increased Assessed Value that is retained in each Tax Year during the term of the District, as specified in section 2.3 hereof.

“Commissioner” means the Commissioner of the Department of Economic and Community Development.

“Current Assessed Value” means the then-current assessed value of all taxable real property constituting Developer’s Project within the Developer Property as determined by the City’s Assessor as of April 1st of each Tax Year during the term of this Agreement.

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

“Developer” shall have the meaning given such term in the first paragraph hereto.

“Developer Project” means the health services facility and related site improvements to be constructed by Developer at Developer Property and originally consisting of a facility of approximately 15,000, square feet and any addition thereto during the Term.

“Developer Project Cost Subaccount” means the subaccount within the Development Program Fund in which the Developer Tax Increment Revenues shall be deposited.

“Developer Property” means the property identified as 485 Main Street (City Tax Map as Map 33, Lot 007).

“Developer Tax Increment Revenues” means that portion of all real property taxes assessed by and paid to the City in any Tax Year, in excess of any special assessment by City or any State or special district tax, upon the Captured Assessed Value, allocated and pledged to the Developer pursuant to Articles II and III of this Agreement, to support the Developer Project on the Developer Property.

“Development Program” shall have the meaning given such term in the recitals hereto.
“Development Program Fund” means the Municipal TIF Development Program Fund described in section IV(D) of the Development Program and established and maintained pursuant to Article II hereof and 30-A M.R.S.A. § 5227(3)(A). The Development Program Fund shall consist of a Project Cost Account with at least one subaccount: the Developer Project Cost Subaccount.

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

“Effective Date” shall mean the date of execution of this Agreement.

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

“Fiscal Year” means July 1st to June 30th of the subsequent calendar year or such other fiscal year as the City may from time to time establish.

“Increased Assessed Value” means, for each Fiscal Year during the term of this Agreement, the amount by which the Current Assessed Value for such year exceeds the Original Assessed Value. If the Current Assessed Value is less than or equal to the Original Assessed Value in any given Tax Year, there is no Increased Assessed Value in that Tax Year.

“Original Assessed Value” means zero dollars ($428,400), the taxable assessed value of the Developer Property as of March 31, 2020 (April 1, 2019), provided, however that in the event that a City revaluation occurs and results in an increase or decrease of any Developer Property that was included as a part of the initial Original Assessed Value as of April 1, 2018, the Original Assessed Value then in effect shall be increased or decreased by a like amount and such adjusted Original Assessed Value shall thereafter (subject to another City revaluation) be the Original Assessed Value for the purposes of this Agreement.

“Project Cost Account” means the project cost account described in the Financial Plan Section of the Development Program and established and maintained pursuant to Title 30-A M.R.S.A. § 5227(3)(A)(1) and Article II hereof.

“Property Tax” means any and all ad valorem property taxes levied, charged or assessed against real property located in the District by the City, or on its behalf.

“State” means the State of Maine.

“Tax Increment Revenue Cap” shall have the meaning given to such term in Section 2.3.

“Tax Payment Date” means the later of the date(s) on which Property Taxes levied by the City on real and personal property located in the District are (a) due and payable, or (b) are actually paid by or on behalf of the Developer to, and received by, the City.

“Tax Year” shall have the meaning given such term in 30-A M.R.S.A. § 5222(18), as amended, to wit: April 1st to March 31st.
“Term” shall mean all Tax Years in the period beginning from April 1, 2020-March 31, 2021 through April 1, 2033-March 31, 2034, but not beginning before the Effective Date.

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

**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 approvals, consents and acceptances required to be given or made by any signatory hereto shall not be withheld unreasonably.

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

(g) 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.

**ARTICLE II**

**DEVELOPMENT PROGRAM FUND AND FUNDING REQUIREMENTS**

**Section 2.1. Creation of Development Program Fund.**

The City has created and established a segregated fund in the name of the City designated as the “Saco Downtown Omnibus Municipal Development and Tax Increment Financing District Program Fund” (hereinafter the “Development Program Fund”) to be funded by tax payments actually made by properties located within the District, and in accordance with the terms and conditions of, the Development Program and 30-A M.R.S.A. § 5227(3)(A). The Development Program Fund 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), in the manner and priority provided in 30-A M.R.S.A. § 5227(3)(B), and as set forth in Section 3.1(b) below.

Section 2.2. Liens.

The City shall not create any liens, encumbrances or other interests of any nature whatsoever, nor shall it hypothecate the Development Program Fund described in section 2.1 hereof or any funds therein, other than the interest in favor of the Developer hereunder in and to the amounts on deposit; provided, however, that nothing herein shall prohibit the creation of property tax liens on property in the District in accordance with and entitled to priority pursuant to Maine law.

Section 2.3. Captured Assessed Value; Deposits into Development Program Fund; Cap on Tax Increment Revenues.

(a) For each Tax Year of the Term, the City shall retain in the District, for purposes of depositing Property Taxes associated therewith, the percentage of the Increased Assessed Value determined in accordance with the following table:

<table>
<thead>
<tr>
<th>Tax Year</th>
<th>Retained Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>2020</td>
<td>50%</td>
</tr>
<tr>
<td>2021</td>
<td>50%</td>
</tr>
<tr>
<td>2022</td>
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<td>2032</td>
<td>0%</td>
</tr>
<tr>
<td>2033</td>
<td>0%</td>
</tr>
</tbody>
</table>

(b) In each of said Tax Years, the City shall deposit into the Developer Project Cost Subaccount of the Development Program Fund, within five (5) business days of each Tax Payment Date, that portion of the tax payment made by Developer as represents Developer Tax Increment Revenues.

(c) Notwithstanding the foregoing provisions of this Section 2.3, no deposits shall be made to the Developer Project Cost Subaccount to the extent such deposits would cause the aggregate amount of deposits to such Fund to exceed the Tax Increment Revenue Cap (as
hereinafter defined). For purposes of this Agreement, the “Tax Increment Revenue Cap” means an amount initially equal to $396,000.

(d) Notwithstanding anything to the contrary contained herein, the City shall have the authority to decide to discontinue all or a portion of the City Project Cost Subaccount deposits and instead make those deposits to the City’s general fund without further action or consents required by the Developer.

**Section 2.4. Use of Monies in Development Program Fund.**

All monies in the Development Program Fund that are allocable to and/or deposited in the Developer Project Cost Subaccount shall in all cases be used and applied to fund fully the City's payment obligations to Developer described in Articles II and III hereof.

**Section 2.5. Monies Held in Segregated Account.**

All monies paid into the Developer Project Cost Subaccount under the provisions hereof and the provisions of the Development Program shall be held by the City for the benefit of the Developer in a segregated account. The City shall never be under any obligation to deposit into the Developer Project Cost Subaccount, any funds other than Developer Tax Increment Revenues received by the City from Developer, the City’s obligations under this Agreement extending only to funds that are Developer Tax Increment Revenues actually paid by Developer to the City. Interest earnings thereon shall be retained by the City for the City’s own use.

**ARTICLE III**

**PAYMENT OBLIGATIONS**

**Section 3.1. Developer Payments.**

(a) The City agrees to pay Developer, within thirty (30) days following each Tax Payment Date during the Term, all amounts then on deposit in the Developer Project Cost Subaccount; provided, however, the City shall have no obligation to make payment while any mechanics’ liens shall be encumbering the Developer Property for a period of more than thirty (30) days. Upon the discharge or other termination of any such mechanics’ liens, the City shall pay any amounts previously withheld on account thereof.

(b) Notwithstanding anything to the contrary contained herein, if, with respect to any Tax Payment Date, any portion of the Property Taxes assessed against real property within the Developer Property for the Tax Year concerned remains unpaid, because of a valuation dispute or otherwise, the Property Taxes actually paid with respect to that Tax Year shall be applied, first, to payment in full of taxes due in respect of the Original Assessed Value; and second, to the extent of funds remaining, to payment of the Developer Tax Increment Revenues for the Tax Year concerned.
Section 3.2. **Failure to Make Payment.**

If the City should fail or be unable to make any of the payments at the time and in the amount required under the foregoing provisions of this Article III; or if the amount deposited into the Developer Project Cost Subaccount is insufficient to reimburse the Developer for the full amount Developer has actually paid in taxes, the amount 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 Developer shall have the right to initiate and maintain an action to specifically enforce the City’s payment obligations hereunder.

Section 3.3. **Manner of Payments.**

The payments provided for in this Article III shall be paid directly to the Developer at the address specified in Section 8.7 hereof in the manner provided hereinabove, for the Developer’s own use and benefit so long as such use is consistent with the requirements of the Act, by check drawn by the City on the Developer Project Cost Subaccount of the Development Program Fund.

Section 3.4. **Obligations Unconditional.**

Subject to Developer’s compliance with the terms and conditions of 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, and the City shall not suspend or discontinue any payment hereunder or terminate this Agreement for any cause, other than by court order or by reason of a final judgment by a court of competent jurisdiction that the District is invalid or otherwise illegal.

Section 3.5. **Limited Obligation.**

The City’s obligations of payment hereunder shall be limited obligations of the City payable solely from Developer Tax Increment Revenues pledged therefor under this Agreement and actually received by the City from or on behalf of the Developer. The City’s obligations hereunder shall not constitute a general debt 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 of any municipality or political subdivision thereof, but shall be payable solely from that portion of Tax Increment Revenues actually deposited by City from taxes paid by Developer into the Developer Project Cost Subaccount of the Development Program Fund and payable to Developer hereunder. This Agreement shall not directly, indirectly or contingently obligate the City, the State of Maine, or any other City or political subdivision to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment, excepting the City’s obligation to levy property taxes upon the Developer Project and the pledge established under this Agreement of the Developer Tax Increment Revenues received by the City from Developer.
ARTICLE IV
PLEDGE

Section 4.1. Pledge of and Grant of Security Interest in Developer Project Cost Subaccount Development Program Fund.

In consideration of this Agreement and other valuable consideration and for the purpose of securing payment of the amounts provided for hereunder to the Developer 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, and subject to section 2.3(c) above, the City hereby grants a security interest in and pledges to the Developer the Developer Project Cost Subaccount as defined herein and addressed further in Section 2.1 hereof and all sums of money and other securities and investments therein.

Section 4.2. Perfection of Interest.

(a) To the extent reasonably necessary to satisfy the requirements of this Agreement, the City will at such time and from time to time as requested by Developer establish the Developer Project Cost Subaccount as defined herein and addressed further in Section 2.1 hereof as a segregated fund under the control of an escrow agent, trustee or other fiduciary selected by Developer so as to perfect Developer's interest therein. The cost of establishing and monitoring such a fund shall be borne exclusively by the Developer. In the event such a fund is established under the control of a trustee or fiduciary the City shall cooperate with the Developer in causing appropriate financing statements and continuation statements naming the Developer as pledgee of all such amounts from time to time on deposit in the fund to be duly filed and recorded in the appropriate State offices as required by and permitted under the provisions of the Maine Uniform Commercial Code or other similar law as adopted in the State of Maine and any other applicable jurisdiction, as from time to time amended, in order to perfect and maintain the security interests created hereunder.

(b) If the establishment of a segregated fund in accordance with this Section 4.2, becomes reasonably necessary to satisfy the requirements of this Agreement, the City’s responsibility shall be limited to delivering the amounts required by this Agreement to the escrow agent, trustee or other fiduciary designated by the Developer. The City shall have no liability for payment over of the funds concerned to the Developer by any such escrow agent, trustee or other fiduciary, or for any misappropriation, investment losses or other losses in the hands of such escrow agent, trustee or other fiduciary. Notwithstanding any change in the identity of the Developer’s designated escrow agent, trustee or other fiduciary, the City shall have no liability for misdelivery of funds if delivered in accordance with Developer’s most recent written designation or instructions actually received by the City.

Section 4.3. Further Instruments.

The City shall, upon the reasonable request of the Developer, 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 actions shall pledge the credit of the City, and provided further that the cost of
executing and delivering such further instruments (including the reasonable and related costs of
counsel to the Town with respect thereto) shall be borne exclusively by the Developer.

Section 4.4. No Disposition of Development Program Fund.

Except as permitted hereunder, the City shall not sell, lease, pledge, assign or otherwise
dispose, encumber or hypothecate any interest in the Development Program Fund 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 4.5. Access to Books and Records.

All non-confidential 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 Developer Project Cost Subaccount shall at all
reasonable times be open to inspection by the Developer, its agents and employees.

ARTICLE V
DEFAULTS AND REMEDIES

Section 5.1. 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 Developer when the same shall
become due and payable;

(b) Any failure by the City to deposit into the Developer Project Cost Subaccount of
the Development Program Fund on a timely basis, funds the City receives from the Developer
that the City is required under this Agreement to deposit into the Development Program Fund;

(c) Any failure by the City or the Developer to observe and perform in all material
respects any covenant, condition, agreement or provision contained herein on the part of the City
or Developer to be observed or performed, which failure is not cured within thirty (30) days
following written notice thereof;

(d) Any failure by the Developer to pay when due, any real or personal property taxes
lawfully assessed by the City to Developer; and

(e) If a decree or order of a court or agency or supervisory authority having
jurisdiction in the premises of the appointment of a conservator or receiver or liquidator of, any
insolvency, readjustment of debt, marshaling of assets and liabilities or similar proceedings, or
for the winding up or liquidation of the Developer’s affairs shall have been entered against the
Developer or the Developer shall have consented to the appointment of a conservator or receiver
or liquidator in any such proceedings or relating to the Developer 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 Developer or the failure by the Developer to have an involuntary petition in bankruptcy dismissed within a period of ninety (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 Developer;

(f) Developer’s failure to commence construction of Developer’s Project by July 1, 2020 or the termination of manufacturing activities at Developer Property after Developer’s Project is completed.

Section 5.2. Remedies on Default.

Subject to the provisions contained in Section 8.11 below concerning dispute resolution, whenever any Event of Default described in Section 5.1 hereof shall have occurred and be continuing, the nondefaulting party, following the expiration of any applicable cure period, shall have all rights and remedies available to it 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 be 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 of the nondefaulting party under this Agreement and any documents, instruments and agreements contemplated hereby or to enforce any rights or remedies available hereunder. Further, the nondefaulting party may elect to terminate this Agreement upon 30 days’ written notice to the defaulting party provided the Event of Default is not cured within such 30 day period.

Section 5.3. Remedies Cumulative.

Subject to the provisions of Section 8.11 below concerning dispute resolution, no remedy herein conferred upon or reserved to 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 every other remedy given under this Agreement or now or hereafter existing at law, in equity or by statute. Nothing in this Agreement shall be deemed to excuse any non-payment of municipal taxes by Developer, or to limit in any way, the City’s rights and remedies in that event. In the event the Developer pays some, but not all, taxes that are due, the portion paid will be allocated first to any delinquent taxes; second (to the extent of funds remaining) to taxes due on the original assessed value of the property; third (to the extent of funds remaining) to any delinquent taxes on increased assessed value from prior tax years; and last (to the extent of funds remaining) to payment of the Developer’s share of the tax increment revenues. Delay or omission to exercise any right or power accruing upon any Events of Default 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 right 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.
ARTICLE VI
EFFECTIVE DATE, TERM AND TERMINATION

Section 6.1. Effective Date and Term.

This Agreement shall remain in full force from the Effective Date hereof and shall expire upon the later of the expiration of the Term or the payment of all amounts due to the Developer hereunder as of expiration of the Term and the performance of all obligations on the part of the City hereunder, unless sooner terminated pursuant to Section 3.4 or any other applicable provision of this Agreement.

Section 6.2. Cancellation and Expiration of Term.

At the acceleration, termination or other expiration of this Agreement in accordance with the provisions of this Agreement, the City and the Developer 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 VII
ASSIGNMENT AND PLEDGE OF DEVELOPER'S INTEREST

Section 7.1. Consent to Pledge and/or Assignment.

The City hereby acknowledges that the Developer may assign its rights hereunder to a successor owner of the Developer Project and may also from time to time pledge and assign its right, title and interest in, to and under this Agreement as collateral for financing for the Developer Project, although no obligation is hereby imposed on the Developer to make such assignment or pledge. Recognizing this possibility, the City hereby consents and agrees to the pledge and assignment of all the Developer's right, title and interest in, to and under this Agreement and in, and to the payments to be made to Developer hereunder, to third parties as collateral or security for financing the Development Program, 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 such 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. The City agrees to execute and deliver any 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 such pledgee or assignee such rights and/or remedies as the Developer or such pledgee or assignee may reasonably deem necessary for the establishment, perfection and protection of its interest herein. Any obligation of the City under this section shall be conditioned upon pledgee or assignee’s or Developer’s satisfaction of Developer’s obligations under this Agreement. Notwithstanding the foregoing, the City shall not be obligated to make payment to any such assignee or pledgee so long as there is any uncured default on the part of Company hereunder. Developer agrees that any payment by the City made in good faith to an assignee or pledgee hereunder shall, to the extent of such payment so made, discharge the City’s obligation to Developer hereunder.
Section 7.2. **Pledge, Assignment or Security Interest.**

Except as provided in Section 7.1 hereof for the purpose of securing financing for the Developer Project or an assignment to a successor entity or an affiliate entity, the Developer shall not transfer or assign any portion of its rights in, to and under this Agreement without the prior written consent of the City, through its City Council, which consent shall not be unreasonably withheld.

**ARTICLE VIII**

**MISCELLANEOUS**

Section 8.1. **Successors.**

In the event of the dissolution, merger or consolidation of the City or the Developer, 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.

Section 8.2. **Parties-in-Interest; No Partnership or Joint Venture.**

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 Developer 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 Developer. This Agreement is not intended to create any form of partnership or joint venture between the City and the Developer.

Section 8.3. **Severability.**

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 8.4. **No Personal Liability of Officials of the City; No Waiver of Maine Tort Claims Act.**

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 City Councilors nor any official, officer, employee or agent of the City shall be liable personally with respect to this Agreement or be subject to any personal liability or accountability by reason hereof. Nothing contained herein is intended as a waiver of, and the City expressly reserves all protections and immunities under, the Maine Tort Claims Act, 14 M.R.S.A. § 8101 et seq. Developer agrees to indemnify and hold the City harmless from any loss, including court costs and reasonable attorney’s fees in the event of litigation, incurred by the City as the result of
the City’s participation in this Agreement or in the TIF Development Program that is the subject of this Agreement, other than costs and fees incurred in connection with a breach by City of its obligations hereunder.

Section 8.5. 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 8.6. Governing Law; Venue for Suits

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

Any suit to construe or enforce the provisions of this Agreement must be brought in the District or Superior Courts of York County, Maine; and otherwise shall be void. Developer expressly waives any claim to jurisdiction of the United States District Court over disputes arising under this Agreement, whether on account of diversity of citizenship or federal subject matter.

Section 8.7. Notices.

All notices, certificates, requests, requisitions or other communications by the City or the Developer pursuant to this Agreement shall be in writing and shall be sufficiently given and shall be deemed given on the third business day after mailing by registered or certified first class mail, postage prepaid, return receipt requested, addressed as follows:

If to the City:

City Administrator
City of Saco
300 Main St.
Saco, ME 04072

With a copy to:

Director of Planning and Development
City of Saco
300 Main St.
Saco, ME 04072

If to the Developer:

Foresite Realty, LLC
485 Main Street
Saco, ME 04072
With a copy to:

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 8.8. Amendments.**

This Agreement may be amended only with the concurring written consent of both of the parties hereto.

**Section 8.9. Benefit of Assignees or Pledgees.**

The City agrees that this Agreement is executed in part to induce assignees or pledgees to provide financing for the Developer Project and accordingly all covenants and agreements on the part of the City as to the amounts payable hereunder are hereby declared to be for the benefit of any such assignee or pledgee from time to time of the Developer's right, title and interest herein. No such assignment or pledge shall limit in any way, Developer’s obligations hereunder.

**Section 8.10. Integration.**

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

**Section 8.11. Dispute Resolution.**

In the event of a dispute regarding this Agreement or the transactions contemplated by it, the parties hereto will use all reasonable efforts to resolve the dispute on an amicable basis. If the dispute is not resolved on that basis within sixty (60) days after one party first brings the dispute to the attention of the other party, then either party may file an appropriate action for legal or equitable relief. If the Developer defaults in any of its obligations under this Agreement, the City shall be entitled to recover from Developer its reasonable attorneys’ fees incurred in enforcement of such obligations.

**Section 8.12. Tax Laws and Valuation Agreement.**

The parties acknowledge that all laws of the State now in effect or hereafter enacted with respect to taxation of property shall be applicable and that the City, by entering into this Agreement, is not excusing any non-payment of taxes by Developer. Without limiting the foregoing, the City and the Developer shall always be entitled to exercise all rights and remedies regarding assessment, collection and payment of taxes assessed on Developer's property. In addition, the Development Program makes certain assumptions and estimates regarding valuation, depreciation of assets, tax rates and estimated costs. The City and the Developer hereby covenant and agree that the assumptions, estimates, analysis and results set forth in the Development Program shall in no way (a) constitute a contractual obligation or binding representation of either party as to such assumptions, estimates, analysis or results; (b) prejudice
the rights of any party or be used, in any way, by any party in either presenting evidence or making argument in any dispute which may arise in connection with valuation of or abatement proceedings relating to Developer’s property for purposes of ad valorem property taxation or (c) vary the terms of this Agreement even if the actual results differ substantially from the estimates, assumptions or analysis.

IN WITNESS WHEREOF, the City and the Developer 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, all as of the date first above written.

CITY OF SACO

By: ________________________________
Name: ________________________________
Its: City of Saco City Manager
Duly Authorized by the City Council at its meeting on October 21, 2019

FORESITE REALTY, LLC

By: ________________________________
Name: ________________________________
Its: ________________________________
Duly Authorized
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Financials based on 50% of new revenues returned to developer in years 1-5; 45% in years 6-10; 25% in years 11 & 12; and 0% in years 13 & 14.
MEETING ITEM COMMENTARY

AGENDA ITEM: First Reading: Credit Enhancement Agreement between the City of Saco, Maine and Baxter & Cutts, LLC (for business operating as Quince)

STAFF RESOURCE: Denise M. Clavette, Planning and Development Director

COUNCIL RESOURCE: Nathan Johnston, City Councilor Ward 7

BACKGROUND: A Credit Enhancement Agreement (CEA) for Baxter & Cutts, LLC. (Company) is being presented for consideration. This application is for the CEA, that will be a part of the existing TIF #15 Downtown Omnibus Municipal Tax Increment Financing District. The Credit Enhancement Agreement will be for 20 years, with the following terms: in years one (1) through fifteen (15), Baxter & Cutts, LLC. will receive 60% of the TIF revenues, and the City will receive 40% of TIF revenue. In years sixteen (16) through twenty (20) of the Credit Enhancement Agreement, the City will receive 100% of the TIF revenue, and the Company will receive 0%. In any remaining years of the District, the City will continue to receive 100% of the TIF revenue. The CEA will have a cap of TIF revenue going to Baxter & Cutts, LLC, in the amount of $225,000. The City will retain funds from TIF revenues to use for project costs outlined in the Development Program.

The CEA was reviewed by the Economic Development Commission at their September 9, 2019 meeting; recommended to go to the City Council for first reading and public hearing. The CEA was also reviewed at the City Council Workshop held on September 9, 2019. The Council Order for this Credit Enhancement Agreement, which will be part of the First Reading, Public Hearing and Second and Final Reading will be as follows: “The City Administrator is hereby authorized and directed to enter into a credit enhancement agreement with the Baxter & Cutts, LLC. in substantially the form as presented to the City Council.”

EXHIBITS:
1. Credit Enhancement Agreement between the City of Saco, Maine and Baxter & Cutts, LLC.
2. CEA Captured Assessed Value & TIF Projection Table

RECOMMENDATION: Staff supports this Credit Enhancement Agreement and recommends the City Council send this CEA to Public Hearing. Suggested motion below, will accompany the Order at the First Reading.

SUGGESTED MOTIONS: “I move to approve the First Reading and to schedule a public hearing on October 7, 2019, on the Order “The City Administrator is hereby authorized and directed to enter into a credit enhancement agreement with the Baxter & Cutts, LLC in substantially the form as presented to the City Council.”
CREDIT ENHANCEMENT AGREEMENT

between

CITY OF SACO, MAINE

and

BAXTER & CUTTS, LLC

DATED: October 21, 2019
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THIS CREDIT ENHANCEMENT AGREEMENT, made and entered into as of October 21, 2019 by and between the City of Saco (the “City”), a municipal corporation and political subdivision of the State of Maine located in York County, Maine, and Baxter & Cutts, LLC (the “Developer”), a Maine limited liability company with an address of 22 Monument Square Suite 602 Portland, Maine 04101;

WITNESSETH THAT

WHEREAS, the City designated the Saco Downtown Omnibus Municipal Development and Tax Increment Financing District Municipal (the “District”), pursuant to Chapter 206 of Title 30-A of the Maine Revised Statutes, and approved a municipal development program and financial plan for the District (the “Development Program”) on February 21, 2017. The District and Development Program were approved by the State of Maine Department of Economic and Community Development (the “Department”) on August 7, 2018; and

WHEREAS, on February 19, 2019, the City approved the First Amendment to the District (the “First Amendment”) and such First Amendment was submitted to the Department on February 26, 2019; and

WHEREAS, the First Amendment was approved by the Department on April 23, 2019; and

WHEREAS, the approved Development Program for the District provides that in the discretion of the City up to one hundred percent (100%) of the Tax Increment Revenues generated by new development within the District may be returned to the Developer during the remaining term of the District, pursuant to a credit enhancement agreement, for the purpose of defraying the Developer’s project costs; and

WHEREAS, the City and the Developer have agreed as to the portion of the Tax Increment Revenues associated with the Developer’s Project (as hereinafter defined) that will be returned to the Developer; and

WHEREAS, the City and the Developer desire and intend that this Credit Enhancement Agreement be and constitute the credit enhancement agreement contemplated by the Development Program; and

WHEREAS, as required by Section 3.05 of the Development Program and the Department approval, the City held a public hearing on October 7, 2019 at which the provisions of this Credit Enhancement Agreement were approved;

NOW, THEREFORE, in consideration of the foregoing recitals 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:

“Act” means chapter 206 of Title 30-A of the Maine Revised Statutes and regulations adopted thereunder, as amended from time to time.

“Agreement” shall mean this Credit Enhancement Agreement between the City and the Developer dated as set forth above, as it may be amended from time to time.

“Captured Assessed Value” means the amount, stated as a percentage, of Increased Assessed Value that is retained in each Tax Year during the term of the District, as specified in section 2.3 hereof.

“Commissioner” means the Commissioner of the Department of Economic and Community Development.

“Current Assessed Value” means the then-current assessed value of all taxable real property constituting Developer’s Project within the Developer Property as determined by the City’s Assessor as of April 1st of each Tax Year during the term of this Agreement.

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

“Developer” shall have the meaning given such term in the first paragraph hereto.

“Developer Project” means the redevelopment of Cutts Mill Building 7 on Saco Island to be completed by Developer at Developer Property and originally consisting of a facility of approximately 9,440, square feet and any addition thereto during the Term.

“Developer Property” means the property identified as Cutts Mill Building 7 on Saco Island (City Tax Map as Map 037, Lot 001).

“Developer Tax Increment Revenues” means that portion of all real property taxes assessed by and paid to the City in any Tax Year, in excess of any special assessment by City or any State or special district tax, upon the Captured Assessed Value, allocated and pledged to the Developer pursuant to Articles II and III of this Agreement, to support the Developer Project on the Developer Property.

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

“Development Program Fund” means the Municipal TIF Development Program Fund described in section IV(D) of the Development Program and established and maintained pursuant to Article II hereof and 30-A M.R.S.A. § 5227(3)(A). The Development Program Fund shall
consist of a Project Cost Account with at least one subaccount: the Developer Project Cost Subaccount.

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

“Effective Date” shall mean the date of execution of this Agreement.

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

“Fiscal Year” means July 1st to June 30th of the subsequent calendar year or such other fiscal year as the City may from time to time establish.

“Increased Assessed Value” means, for each Fiscal Year during the term of this Agreement, the amount by which the Current Assessed Value for such year exceeds the Original Assessed Value. If the Current Assessed Value is less than or equal to the Original Assessed Value in any given Tax Year, there is no Increased Assessed Value in that Tax Year.

“Original Assessed Value” means zero dollars ($284,400), the taxable assessed value of the Developer Property as of March 31, 2020 (April 1, 2019), provided, however that in the event that a City revaluation occurs and results in an increase or decrease of any Developer Property that was included as a part of the initial Original Assessed Value as of April 1, 2019, the Original Assessed Value then in effect shall be increased or decreased by a like amount and such adjusted Original Assessed Value shall thereafter (subject to another City revaluation) be the Original Assessed Value for the purposes of this Agreement.

“Project Cost Account” means the project cost account described in the Financial Plan Section of the Development Program and established and maintained pursuant to Title 30-A M.R.S.A. § 5227(3)(A)(1) and Article II hereof.

“Property Tax” means any and all ad valorem property taxes levied, charged or assessed against real property located in the District by the City, or on its behalf.

“State” means the State of Maine.

“Tax Increment Revenue Cap” shall have the meaning given to such term in Section 2.3.

“Tax Payment Date” means the later of the date(s) on which Property Taxes levied by the City on real and personal property located in the District are (a) due and payable, or (b) are actually paid by or on behalf of the Developer to, and received by, the City.

“Tax Year” shall have the meaning given such term in 30-A M.R.S.A. § 5222(18), as amended, to wit: April 1st to March 31st.

“Term” shall mean all Tax Years in the period beginning from April 1, 2020-March 31, 2021 through April 1, 2039-March 31, 2040, but not beginning before the Effective Date.

“City” shall have the meaning given such term in the first paragraph hereto.
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 approvals, consents and acceptances required to be given or made by any signatory hereto shall not be withheld unreasonably.

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

(g) 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.

**ARTICLE II**

**DEVELOPMENT PROGRAM FUND AND FUNDING REQUIREMENTS**

Section 2.1. **Creation of Development Program Fund.**

The City has created and established a segregated fund in the name of the City designated as the “Saco Downtown Omnibus Municipal Development and Tax Increment Financing District Program Fund” (hereinafter the “Development Program Fund”) to be funded by tax payments actually made by properties located within the District, and in accordance with the terms and conditions of, the Development Program and 30-A M.R.S.A. § 5227(3)(A). The Development Program Fund 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), in the manner and priority provided in 30-A M.R.S.A. § 5227(3)(B), and as set forth in Section 3.1(b) below.
Section 2.2. Liens.

The City shall not create any liens, encumbrances or other interests of any nature whatsoever, nor shall it hypothecate the Development Program Fund described in section 2.1 hereof or any funds therein, other than the interest in favor of the Developer hereunder in and to the amounts on deposit; provided, however, that nothing herein shall prohibit the creation of property tax liens on property in the District in accordance with and entitled to priority pursuant to Maine law.

Section 2.3. Captured Assessed Value; Deposits into Development Program Fund; Cap on Tax Increment Revenues.

(a) For each Tax Year of the Term, the City shall retain in the District, for purposes of depositing Property Taxes associated therewith, the percentage of the Increased Assessed Value determined in accordance with the following table:

<table>
<thead>
<tr>
<th>Tax Year</th>
<th>Retained Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>2020</td>
<td>60%</td>
</tr>
<tr>
<td>2021</td>
<td>60%</td>
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<tr>
<td>2022</td>
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<td>2037</td>
<td>0%</td>
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<tr>
<td>2038</td>
<td>0%</td>
</tr>
<tr>
<td>2039</td>
<td>0%</td>
</tr>
</tbody>
</table>

(b) In each of said Tax Years, the City shall deposit into the Developer Project Cost Subaccount of the Development Program Fund, within five (5) business days of each Tax Payment Date, that portion of the tax payment made by Developer as represents Developer Tax Increment Revenues.

(c) Notwithstanding the foregoing provisions of this Section 2.3, no deposits shall be made to the Developer Project Cost Subaccount to the extent such deposits would cause the aggregate amount of deposits to such Fund to exceed the Tax Increment Revenue Cap (as
hereinafter defined). For purposes of this Agreement, the “Tax Increment Revenue Cap” means an amount initially equal to $225,000.

(d) Notwithstanding anything to the contrary contained herein, the City shall have the authority to decide to discontinue all or a portion of the City Project Cost Subaccount deposits and instead make those deposits to the City’s general fund without further action or consents required by the Developer.

Section 2.4. Use of Monies in Development Program Fund.

All monies in the Development Program Fund that are allocable to and/or deposited in the Developer Project Cost Subaccount shall in all cases be used and applied to fund fully the City's payment obligations to Developer described in Articles II and III hereof.

Section 2.5. Monies Held in Segregated Account.

All monies paid into the Developer Project Cost Subaccount under the provisions hereof and the provisions of the Development Program shall be held by the City for the benefit of the Developer in a segregated account. The City shall never be under any obligation to deposit into the Developer Project Cost Subaccount, any funds other than Developer Tax Increment Revenues received by the City from Developer, the City’s obligations under this Agreement extending only to funds that are Developer Tax Increment Revenues actually paid by Developer to the City. Interest earnings thereon shall be retained by the City for the City’s own use.

ARTICLE III
PAYMENT OBLIGATIONS

Section 3.1. Developer Payments.

(a) The City agrees to pay Developer, within thirty (30) days following each Tax Payment Date during the Term, all amounts then on deposit in the Developer Project Cost Subaccount; provided, however, the City shall have no obligation to make payment while any mechanics’ liens shall be encumbering the Developer Property for a period of more than thirty (30) days. Upon the discharge or other termination of any such mechanics’ liens, the City shall pay any amounts previously withheld on account thereof.

(b) Notwithstanding anything to the contrary contained herein, if, with respect to any Tax Payment Date, any portion of the Property Taxes assessed against real property within the Developer Property for the Tax Year concerned remains unpaid, because of a valuation dispute or otherwise, the Property Taxes actually paid with respect to that Tax Year shall be applied, first, to payment in full of taxes due in respect of the Original Assessed Value; and second, to the extent of funds remaining, to payment of the Developer Tax Increment Revenues for the Tax Year concerned.
Section 3.2. Failure to Make Payment.

If the City should fail or be unable to make any of the payments at the time and in the amount required under the foregoing provisions of this Article III; or if the amount deposited into the Developer Project Cost Subaccount is insufficient to reimburse the Developer for the full amount Developer has actually paid in taxes, the amount 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 Developer shall have the right to initiate and maintain an action to specifically enforce the City’s payment obligations hereunder.

Section 3.3. Manner of Payments.

The payments provided for in this Article III shall be paid directly to the Developer at the address specified in Section 8.7 hereof in the manner provided hereinafore, for the Developer’s own use and benefit so long as such use is consistent with the requirements of the Act, by check drawn by the City on the Developer Project Cost Subaccount of the Development Program Fund.

Section 3.4. Obligations Unconditional.

Subject to Developer’s compliance with the terms and conditions of 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, and the City shall not suspend or discontinue any payment hereunder or terminate this Agreement for any cause, other than by court order or by reason of a final judgment by a court of competent jurisdiction that the District is invalid or otherwise illegal.

Section 3.5. Limited Obligation.

The City’s obligations of payment hereunder shall be limited obligations of the City payable solely from Developer Tax Increment Revenues pledged therefor under this Agreement and actually received by the City from or on behalf of the Developer. The City’s obligations hereunder shall not constitute a general debt 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 of any municipality or political subdivision thereof; but shall be payable solely from that portion of Tax Increment Revenues actually deposited by City from taxes paid by Developer into the Developer Project Cost Subaccount of the Development Program Fund and payable to Developer hereunder. This Agreement shall not directly, indirectly or contingently obligate the City, the State of Maine, or any other City or political subdivision to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment, excepting the City’s obligation to levy property taxes upon the Developer Project and the pledge established under this Agreement of the Developer Tax Increment Revenues received by the City from Developer.
ARTICLE IV
PLEDGE

Section 4.1. Pledge of and Grant of Security Interest in Developer Project Cost Subaccount Development Program Fund.

In consideration of this Agreement and other valuable consideration and for the purpose of securing payment of the amounts provided for hereunder to the Developer 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, and subject to section 2.3(c) above, the City hereby grants a security interest in and pledges to the Developer the Developer Project Cost Subaccount as defined herein and addressed further in Section 2.1 hereof and all sums of money and other securities and investments therein.

Section 4.2. Perfection of Interest.

(a) To the extent reasonably necessary to satisfy the requirements of this Agreement, the City will at such time and from time to time as requested by Developer establish the Developer Project Cost Subaccount as defined herein and addressed further in Section 2.1 hereof as a segregated fund under the control of an escrow agent, trustee or other fiduciary selected by Developer so as to perfect Developer's interest therein. The cost of establishing and monitoring such a fund shall be borne exclusively by the Developer. In the event such a fund is established under the control of a trustee or fiduciary the City shall cooperate with the Developer in causing appropriate financing statements and continuation statements naming the Developer as pledgee of all such amounts from time to time on deposit in the fund to be duly filed and recorded in the appropriate State offices as required by and permitted under the provisions of the Maine Uniform Commercial Code or other similar law as adopted in the State of Maine and any other applicable jurisdiction, as from time to time amended, in order to perfect and maintain the security interests created hereunder.

(b) If the establishment of a segregated fund in accordance with this Section 4.2, becomes reasonably necessary to satisfy the requirements of this Agreement, the City’s responsibility shall be limited to delivering the amounts required by this Agreement to the escrow agent, trustee or other fiduciary designated by the Developer. The City shall have no liability for payment over of the funds concerned to the Developer by any such escrow agent, trustee or other fiduciary, or for any misappropriation, investment losses or other losses in the hands of such escrow agent, trustee or other fiduciary. Notwithstanding any change in the identity of the Developer’s designated escrow agent, trustee or other fiduciary, the City shall have no liability for misdelivery of funds if delivered in accordance with Developer’s most recent written designation or instructions actually received by the City.

Section 4.3. Further Instruments.

The City shall, upon the reasonable request of the Developer, 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 actions shall pledge the credit of the City, and provided further that the cost of
executing and delivering such further instruments (including the reasonable and related costs of
counsel to the Town with respect thereto) shall be borne exclusively by the Developer.

Section 4.4. No Disposition of Development Program Fund.

Except as permitted hereunder, the City shall not sell, lease, pledge, assign or otherwise
dispose, encumber or hypothecate any interest in the Development Program Fund 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 4.5. Access to Books and Records.

All non-confidential 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 Developer Project Cost Subaccount shall at all
reasonable times be open to inspection by the Developer, its agents and employees.

ARTICLE V
DEFAULTS AND REMEDIES

Section 5.1. 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 Developer when the same shall
become due and payable;

(b) Any failure by the City to deposit into the Developer Project Cost Subaccount of
the Development Program Fund on a timely basis, funds the City receives from the Developer
that the City is required under this Agreement to deposit into the Development Program Fund;

(c) Any failure by the City or the Developer to observe and perform in all material
respects any covenant, condition, agreement or provision contained herein on the part of the City
or Developer to be observed or performed, which failure is not cured within thirty (30) days
following written notice thereof;

(d) Any failure by the Developer to pay when due, any real or personal property taxes
lawfully assessed by the City to Developer; and

(e) If a decree or order of a court or agency or supervisory authority having
jurisdiction in the premises of the appointment of a conservator or receiver or liquidator of, any
insolvency, readjustment of debt, marshaling of assets and liabilities or similar proceedings, or
for the winding up or liquidation of the Developer’s affairs shall have been entered against the
Developer or the Developer shall have consented to the appointment of a conservator or receiver
or liquidator in any such proceedings of or relating to the Developer 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 Developer or the failure by the Developer to have an involuntary petition in bankruptcy dismissed within a period of ninety (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 Developer;

(f) Developer’s failure to commence construction of Developer’s Project by July 1, 2020 or the termination of manufacturing activities at Developer Property after Developer’s Project is completed.

Section 5.2. Remedies on Default.

Subject to the provisions contained in Section 8.11 below concerning dispute resolution, whenever any Event of Default described in Section 5.1 hereof shall have occurred and be continuing, the nondefaulting party, following the expiration of any applicable cure period, shall have all rights and remedies available to it 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 be 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 of the nondefaulting party under this Agreement and any documents, instruments and agreements contemplated hereby or to enforce any rights or remedies available hereunder. Further, the nondefaulting party may elect to terminate this Agreement upon 30 days’ written notice to the defaulting party provided the Event of Default is not cured within such 30 day period.

Section 5.3. Remedies Cumulative.

Subject to the provisions of Section 8.11 below concerning dispute resolution, no remedy herein conferred upon or reserved to 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 every other remedy given under this Agreement or now or hereafter existing at law, in equity or by statute. Nothing in this Agreement shall be deemed to excuse any non-payment of municipal taxes by Developer, or to limit in any way, the City’s rights and remedies in that event. In the event the Developer pays some, but not all, taxes that are due, the portion paid will be allocated first to any delinquent taxes; second (to the extent of funds remaining) to taxes due on the original assessed value of the property; third (to the extent of funds remaining) to any delinquent taxes on increased assessed value from prior tax years; and last (to the extent of funds remaining) to payment of the Developer’s share of the tax increment revenues. Delay or omission to exercise any right or power accruing upon any Events of Default 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 right 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.
ARTICLE VI
EFFECTIVE DATE, TERM AND TERMINATION

Section 6.1. Effective Date and Term.

This Agreement shall remain in full force from the Effective Date hereof and shall expire upon the later of the expiration of the Term or the payment of all amounts due to the Developer hereunder as of expiration of the Term and the performance of all obligations on the part of the City hereunder, unless sooner terminated pursuant to Section 3.4 or any other applicable provision of this Agreement.

Section 6.2. Cancellation and Expiration of Term.

At the acceleration, termination or other expiration of this Agreement in accordance with the provisions of this Agreement, the City and the Developer 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 VII
ASSIGNMENT AND PLEDGE OF DEVELOPER'S INTEREST

Section 7.1. Consent to Pledge and/or Assignment.

The City hereby acknowledges that the Developer may assign its rights hereunder to a successor owner of the Developer Project and may also from time to time pledge and assign its right, title and interest in, to and under this Agreement as collateral for financing for the Developer Project, although no obligation is hereby imposed on the Developer to make such assignment or pledge. Recognizing this possibility, the City hereby consents and agrees to the pledge and assignment of all the Developer's right, title and interest in, to and under this Agreement and in, and to the payments to be made to Developer hereunder, to third parties as collateral or security for financing the Development Program, 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 such 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. The City agrees to execute and deliver any 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 such pledgee or assignee such rights and/or remedies as the Developer or such pledgee or assignee may reasonably deem necessary for the establishment, perfection and protection of its interest herein. Any obligation of the City under this section shall be conditioned upon pledgee or assignee’s or Developer’s satisfaction of Developer’s obligations under this Agreement. Notwithstanding the foregoing, the City shall not be obligated to make payment to any such assignee or pledgee so long as there is any uncured default on the part of Company hereunder. Developer agrees that any payment by the City made in good faith to an assignee or pledgee hereunder shall, to the extent of such payment so made, discharge the City’s obligation to Developer hereunder.
Section 7.2. **Pledge, Assignment or Security Interest.**

Except as provided in Section 7.1 hereof for the purpose of securing financing for the Developer Project or an assignment to a successor entity or an affiliate entity, the Developer shall not transfer or assign any portion of its rights in, to and under this Agreement without the prior written consent of the City, through its City Council, which consent shall not be unreasonably withheld.

**ARTICLE VIII**

**MISCELLANEOUS**

Section 8.1. **Successors.**

In the event of the dissolution, merger or consolidation of the City or the Developer, 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.

Section 8.2. **Parties-in-Interest; No Partnership or Joint Venture.**

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 Developer 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 Developer. This Agreement is not intended to create any form of partnership or joint venture between the City and the Developer.

Section 8.3. **Severability.**

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 8.4. **No Personal Liability of Officials of the City; No Waiver of Maine Tort Claims Act.**

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 City Councilors nor any official, officer, employee or agent of the City shall be liable personally with respect to this Agreement or be subject to any personal liability or accountability by reason hereof. Nothing contained herein is intended as a waiver of, and the City expressly reserves all protections and immunities under, the Maine Tort Claims Act, 14 M.R.S.A. § 8101 et seq. Developer agrees to indemnify and hold the City harmless from any loss, including court costs and reasonable attorney’s fees in the event of litigation, incurred by the City as the result of
the City’s participation in this Agreement or in the TIF Development Program that is the subject 
of this Agreement, other than costs and fees incurred in connection with a breach by City of its 
obligations hereunder.

Section 8.5. 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 8.6. Governing Law; Venue for Suits

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

Any suit to construe or enforce the provisions of this Agreement must be brought in the 
District or Superior Courts of York County, Maine; and otherwise shall be void. Developer 
expressly waives any claim to jurisdiction of the United States District Court over disputes 
arising under this Agreement, whether on account of diversity of citizenship or federal subject 
matter.

Section 8.7. Notices.

All notices, certificates, requests, requisitions or other communications by the City or the 
Developer pursuant to this Agreement shall be in writing and shall be sufficiently given and shall 
be deemed given on the third business day after mailing by registered or certified first class mail, 
postage prepaid, return receipt requested, addressed as follows:

If to the City:

    City Administrator    
    City of Saco          
    300 Main St.          
    Saco, ME 04072

With a copy to:

    Director of Planning and Development    
    City of Saco                       
    300 Main St.                      
    Saco, ME 04072

If to the Developer:

    Baxter & Cutts, LLC   
    22 Monument Square Suite 602    
    Portland, ME 04101
With a copy to:
Ryan FitzGerald
51 Morning St. Apt. 4
Portland, ME 04101

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 8.8. Amendments.

This Agreement may be amended only with the concurring written consent of both of the parties hereto.

Section 8.9. Benefit of Assignees or Pledgees.

The City agrees that this Agreement is executed in part to induce assignees or pledgees to provide financing for the Developer Project and accordingly all covenants and agreements on the part of the City as to the amounts payable hereunder are hereby declared to be for the benefit of any such assignee or pledgee from time to time of the Developer’s right, title and interest herein. No such assignment or pledge shall limit in any way, Developer’s obligations hereunder.

Section 8.10. Integration.

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

Section 8.11. Dispute Resolution.

In the event of a dispute regarding this Agreement or the transactions contemplated by it, the parties hereto will use all reasonable efforts to resolve the dispute on an amicable basis. If the dispute is not resolved on that basis within sixty (60) days after one party first brings the dispute to the attention of the other party, then either party may file an appropriate action for legal or equitable relief. If the Developer defaults in any of its obligations under this Agreement, the City shall be entitled to recover from Developer its reasonable attorneys’ fees incurred in enforcement of such obligations.

Section 8.12. Tax Laws and Valuation Agreement.

The parties acknowledge that all laws of the State now in effect or hereafter enacted with respect to taxation of property shall be applicable and that the City, by entering into this Agreement, is not excusing any non-payment of taxes by Developer. Without limiting the foregoing, the City and the Developer shall always be entitled to exercise all rights and remedies regarding assessment, collection and payment of taxes assessed on Developer’s property. In addition, the Development Program makes certain assumptions and estimates regarding valuation, depreciation of assets, tax rates and estimated costs. The City and the Developer hereby covenant and agree that the assumptions, estimates, analysis and results set forth in the
Development Program shall in no way (a) constitute a contractual obligation or binding representation of either party as to such assumptions, estimates, analysis or results; (b) prejudice the rights of any party or be used, in any way, by any party in either presenting evidence or making argument in any dispute which may arise in connection with valuation of or abatement proceedings relating to Developer’s property for purposes of ad valorem property taxation or (c) vary the terms of this Agreement even if the actual results differ substantially from the estimates, assumptions or analysis.

IN WITNESS WHEREOF, the City and the Developer 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, all as of the date first above written.

CITY OF SACO

By: ________________________________
Name: ________________________________
Its: ________________________________
Duly Authorized by the City Council at its meeting on October 21, 2019

BAXTER & CUTTS, LLC

By: ________________________________
Name: ________________________________
Its: ________________________________
Duly Authorized
### Table: Captured Assessed Value & TIF Revenue Projection Table - City of Saco - Baxter & Cutts - TIF

<table>
<thead>
<tr>
<th>TIF Year</th>
<th>Tax Year - April 1</th>
<th>Increased Assessed Value Real Prop.</th>
<th>Captured Valuation @100% of Value Captured</th>
<th>Projected Mill Rate</th>
<th>Total Projected New Taxes Captured</th>
<th>Captured Revenue to Municipal Project Account</th>
<th>Captured Revenue to Developer Project Account</th>
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Percent of Total: 56% 44%


Financials based on 100% of value captured and 60% of incremental revenues returned to developer for 15 years and 0% in years 16-20.
MEETING ITEM COMMENTARY

AGENDA ITEM: (First Reading) Proposed Senior Citizen Tax Relief Ordinance
§175-1 -§175-10

COUNCIL RESOURCE: Councilor Alan Minthorn

STAFF RESOURCE: MaryLou Kadlik, Director of Human Resources
Mary Starr, Volunteer Coordinator

BACKGROUND:
The payment of property taxes is a significant challenge for senior citizens who are either retired or working less than regular hours. In order to assist seniors in need, property tax credits are available to qualifying seniors. Due to recent changes in the Senior Citizen Tax Work-Off Program and the addition of a new program (The Senior Tax Assistance Match Program), it was necessary to implement a new ordinance. The City proposes to repeal and replace existing Section 220 of the City Code governing Tax Relief Programs for its Senior Citizens.

This Ordinance would be cited as Chapter 175 – Senior Tax Relief. It will replace in its entirety existing Chapter 220 of the City Code.

EXHIBIT: Proposed Chapter 175

RECOMMENDATION: Staff recommends adoption of Chapter 175 and repeal of Chapter 220.

SUGGESTED MOTION

“The City of Saco hereby approves the first reading of proposed Chapter 175, Senior Tax Relief, and further moves to schedule a public hearing date of October 7, 2019.”

“The City of Saco hereby moves to repeal Chapter 220 of the City Ordinances as a part of the possible enactment of new Chapter 175 and moves to schedule a public hearing for consideration of the repeal of said Chapter 220 on October 7, 2019.”
Chapter 175

SENIOR TAX RELIEF

ARTICLE I

Senior Citizen Tax Work-Off Program

§175-1. Purpose.
§175-2. Definitions.
§175-4. Application and Credit Procedures.
§175-5. Tax Work-Off Program.

ARTICLE II

Senior Tax Assistance Match Program

§175-6. Purpose.
§175-7. Definitions.
§175-8. Qualifications.
§175-9. Application and Credit Procedures
§175-10. Senior Tax Assistance Match Program.

[HISTORY: Adopted by the City Council of the City of Saco on: __________. This ordinance replaces old ordinance Section 220 in its entirety, which was repealed with the enactment of this ordinance]

GENERAL REFERENCES

ARTICLE I

Senior Citizen Tax Work-Off Program

§175-1. Purpose.

The payment of real property taxes is a significant challenge for senior citizens who are either fully retired or working less than regular hours. The purpose of this ordinance is to establish a program pursuant to Chapter 907-A of Title 36 of the Maine Revised Statutes to provide property tax assistance to qualifying persons who are homeowners in the City of Saco. To reduce the burdens of these taxes on these senior citizens, the City establishes the program whereby participants can perform vital municipal services in exchange for a reduction and off set in their real property tax bills.

§ 175-2. Definitions.

For the purposes of this Article, the following terms shall have the following meaning and definition:
HOMESTEAD: For purposes of this Ordinance, “homestead” shall have the similar meaning as defined in 36 M.R.S.A. § 5219-KK (1) (C). Generally, a homestead is a dwelling owned, (not rented), by the person seeking tax assistance under this Ordinance or held in a revocable living trust for the benefit of that person. The dwelling must be a permanent residence, occupied by that person and that person’s dependents as a home.

QUALIFIED PROPERTY: Real property located in and taxable by the City of Saco owned by a qualifying and participating Senior Citizen as their Homestead.

QUALIFYING APPLICANT: A Qualifying Applicant is a person who is determined, after review of a complete application under Section 3 and 4 of this ordinance, to be eligible to participate in the Tax Work-Off program.

QUALIFYING SPOUSE: The legal spouse of a Senior Citizen who is qualified for and participates in the Tax Work-Off Program.

WORK-OFF HOURS: The service time that a participant and their Qualifying Spouse (if applicable) perform. A certain number of hours are required to receive a property tax credit for the participant’s real property tax bill for a Qualified Property.

§ 175-3. Criteria for Participation

In order to participate in the Senior Citizen Tax Work-Off Program, an applicant must demonstrate the following:

a. The Qualifying Applicant shall be at least 65 years of age at the time of application.

b. The Qualifying Applicant and their Qualifying Spouse (if applicable) shall own a Qualified Property in the City as their homestead at the time of application and for the past three years.

c. The Qualifying Applicant's household income cannot exceed the average Low-Income Limits (80%) for York County as published by the Federal Department of Housing and Urban Development.

d. The Qualifying Applicant shall meet the application and eligibility criteria set forth in § 175-4 of this article.

§ 175-4. Application and Credit procedures

Persons seeking to participate in the Tax Work-Off Program shall submit an application to the Program administrator no later than April 1. Applications are required for every year the applicant seeks to participate in this program. The application form for the program shall be made available upon request and shall include at minimum, the applicant’s name, homestead address, and contact information. Attached to all applications shall be proof of household income.

The City of Saco will establish the amount of property tax credit that will be provided to participants based on the number of service hours performed by the participant and their Qualifying Spouse (if applicable).
This will only be applied as a property tax credit against real property taxes for a Qualifying Property; no direct wages will be paid to any party. In no case shall the City’s Tax Work-Off property tax credit exceed the property taxes assessed on any participant. Only one Tax Work-Off property tax credit per household is allowed.

In no event will any party be able to exceed the maximum off-set credits established under the City’s existing policy then in effect; any additional service hours are not applied to this program and will not result in any additional tax credit.

Participants will receive an IRS Form 1099, and they are responsible for all federal and state tax reporting of property tax credit benefits that accrue to them from the program. Participants will receive a W-2 form from the city to assist with tax planning purposes.

§175-5. Tax Work-Off Program.

The City’s Tax Work-Off Program shall be administered by a designee of the Human Resources Director and shall be governed by the ordinance established by the City Council. These policies may be amended from time to time.

The City does not guarantee, assure or promise acceptance into the Tax Work-Off Program for any party, and acceptance is not a promise or guarantee of any minimum number of service hours, or of off-set credits that can be earned.

A participant in the City’s Senior Tax Assistance Match Program (Article II) may not apply for or participate in this Tax Work-Off Program.

On or about May 1, the City Council will re-evaluate the program and determine the funding to be drawn from the tax commitment overlay for the ensuing fiscal year.

ARTICLE II

Senior Tax Assistance Match Program

§175-6. Purpose.

The purpose of this ordinance is to establish a program pursuant to Chapter 907-A of Title 36 of the Maine Revised Statutes to provide property tax assistance to qualifying persons who are homeowners in the City of Saco. For those eligible, the State of Maine refunds to the citizen a portion of funds paid as local property tax. The City intends, by this Ordinance, to offer a partial matching credit to those individuals who qualify as homeowner beneficiaries of the State of Maine Residents Property Tax Fairness Credit pursuant to Chapter 822 of Title 36 of the Maine Revised Statutes, as may be amended from time to time and who meet the criteria established by this Ordinance.
§175-7. Definitions.

HOMESTEAD: For purposes of this Ordinance, “homestead” shall have the similar meaning as defined in 36 M.R.S. § 5219-KK (1)(C), i.e. a dwelling owned by the person seeking tax assistance under this Ordinance or held in a revocable living trust for the benefit of that person.

HOMESTEAD EXEMPTION: The State of Maine property tax exemption for all individuals who have owned a permanent residence in Maine for twelve (12) months as of April 1. Established by the State of Maine pursuant to 36 M.R.S.A. §683, as may be amended from time to time.

SENIOR TAX ASSISTANCE MATCH PROGRAM: The program established by the City of Saco under this Ordinance, also referred to as the “Senior Tax Match Program.”

SENIOR TAX ASSISTANCE MATCH FUND: The special revenue fund established by the City of Saco under this Ordinance, also referred to as the “Senior Tax Match Fund.”

QUALIFYING SENIOR CITIZEN: A resident of the City of Saco, age 70 or older, as of April 1 of the calendar year in which they first seek to participate in the Senior Tax Match Program.

STATE PROPERTY TAX FAIRNESS CREDIT PROGRAM: The program established by the State of Maine pursuant to 36 M.R.S.A. §5219-KK as may be amended from time to time.

§175-8. Qualifications.

To qualify for participation in the Senior Tax Assistance Match Program, an applicant must demonstrate all of the following:

a. The applicant must be the owner of record and reside, full time in the dwelling for the past 10 years continuously.

b. Applicant shall be 70 years or older on or before April 1 of the program year.

c. The applicant has applied for and received the Homestead Exemption for the year in which the rebate is requested.

d. The applicant has received a tax refund under the provisions of the State of Maine Residents Property Tax Fairness Credit Program (36 M.R.S.A. 5219-KK).

e. The applicant has paid property taxes in full for the year in which the refund is requested.


Applications are required every year to participate in the Senior Tax Match Program. The program administrator will provide an application form for the program, which shall include, at a minimum, the applicants name, homestead address, and contact information. As part of the application to the City, the applicant shall authorize the City to seek documentation from Maine Revenue Services of the proof and dollar amount of State Property Tax Fairness Credit received by applicant.

The program administrator determines if applicants are eligible to participate in the program and the administrator shall determine the total amount of such eligibility. Eligibility shall be the lesser of the following amounts, but in no case shall the City’s offered tax credit exceed the property taxes assessed and paid less the State Property Tax Fairness Credit:
a. The amount of credit qualified for under the State Property Tax Fairness Credit program.
b. A pro rata share of the available monies in the Matching Fund based on the amount of
   one’s State Property Tax Fairness Credit; or

c. A property tax credit of $500.

The Program Administrator shall report to the City Council each year the projected amount of
property tax credits and the number of Qualifying Senior Citizens requesting assistance from the
Tax Assistance Match Fund. The City Council shall annually determine the number of recipients
in the program.

§175-10. Senior Tax Assistance Match Program.

The City’s Senior Tax Assistance Match Program shall be administered by a designee of the
Human Resources Director and shall be governed by policies established by the City Council.
These policies may be amended from time to time.

If a Qualifying Senior Citizen applies and meets those conditions and requirements set out in the
Senior Tax Match Program’s policies, they are eligible to receive a tax credit applied by the City
as an off-set against their real property taxes.

A participant in the City’s Tax Work-Off Program (Article 1) may not participate in or apply for
the Senior Tax Assistance Match Program.

On or about May 1, the City Council will re-evaluate the program and determine the funding to be
drawn from the tax commitment overlay for the ensuing fiscal year.
MEETING ITEM COMMENTARY

AGENDA ITEM: Zoning, Site Plan, and Subdivision Ordinances Revisions – Project Completion Timeline

COUNCIL RESOURCE: Councilor Nathan Johnston (Liaison to the Zoning Ordinance Revision Steering Committee)
Councilor Roger Gay (Liaison to the Planning Board)

STAFF RESOURCE: Denise Clavette, Planning and Development Director
Emily Cole-Prescott, City Planner
Jessa Berna, Business Development Specialist

BACKGROUND: On February 20, 2018, the City Council voted to adopt the 2018 update of Saco’s Comprehensive Plan. The 2018 Comp. Plan update was the result of two years of review and discussion by an adhoc committee and City Staff. As a community, our next step is to update the Zoning Ordinances to align with the City of Saco’s land use vision: The most forward-thinking land use policies in the State of Maine that ensure financial stability, environmental sustainability, and provides opportunities and accessibility to all.

The City Council voted to establish a Zoning Ordinance Revision (ZOR) Steering Committee on October 15, 2018. After a competitive RFP Process, the City of Saco contracted with planning consultants TZM Planning and EF | Design & Planning, LLC (Consultants) to update Saco’s Zoning Ordinance (ZO) in the Fall of 2018. In January 2019, the City and the consultants initiated an online survey of Saco residents and property owners soliciting input on zoning-related topics that warranted further discussion by stakeholders. A total of 1,080 people participated in the survey. A public Charrette was held on February 7 at the PeoplesChoice Credit Union, and over 70 Saco residents participated.

Based on the public input and the feedback and direction from the Steering Committee, City Council, Planning Board, Historic Preservation Commission, Conservation Commission, other City boards and committees, and City Staff from all departments, Draft 2 of the land use ordinances were completed in and posted online here in late August.

The ZOR Steering Committee and the Planning Board have held individual work sessions, as well as a joint work session, to review these Draft 2 documents, and the City Council held a workshop on this topic on Monday September 9, 2019. The City also hosted two public forums on Tuesday, September 10th and Wednesday, September 11th. About a dozen residents attended each open-house
style meeting and provided valuable input to the process. Feedback from these forums and City boards and committees will be complied and integrated into a final draft, which will then go through a formal public hearing and adoption process with the Planning Board and City Council. The Project Completion Timeline, revised as of 9/11/19 (Exhibit 1), outlines the anticipated schedule for adoption of the ordinance revisions as well as other key dates in the process, including public hearing for the Planning Board and Historic Preservation Board on Tuesday, October 22nd, and the City Council Public Hearing on Monday, November 4th.

To help ensure extensive notification and participation for the final stages of this multi-year effort, staff intends to mail a letter to all property owners in the City providing project background and the dates and times of the three upcoming public hearings. This letter goes beyond state and local notification requirements, which is appropriate for such a significant project. In order to meet legal requirements and provide timely notice of these meetings to the public, staff is requesting the council approve this timeline tonight so City staff is can move forward with printing and mailing the letter, which will be sent by Tuesday, October 8th.

EXHIBITS:

1. ZOR Project Completion Timeline (revised as of 9/11/19)

RECOMMENDATION: Staff, the ZOR Steering Committee, and the Planning Board support this project completion timeline and recommend the City Council approve the Project Completion Timeline.

SUGGESTED MOTION: “I move to approve the Project Completion Timeline for this project, including the City Council First Reading on October 21, 2019; Public Hearings with the Historic Preservation Commission and Planning Board on October 22, 2019; City Council Public Hearing on November 4, 2019; and City Council Second and Final Reading and Vote on November 18, 2019.”
### Zoning Ordinance Revision – Project Completion Timeline

*(tentative – subject to Consultants’ availability and City Council meeting schedule)*

**July – November 2019 (as of 09.11.09)**

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<th>Date</th>
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<td>Zoning Ordinance Draft 1</td>
<td>Staff comments due</td>
<td>Emily Cole-Prescott</td>
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<td>Friday, July 26</td>
<td>Zoning Ordinance Draft 1</td>
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<td>Zoning Ordinance Draft 1</td>
<td>Planning Board, Cons. Com. comments due</td>
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<td>July 29 – August 2</td>
<td>Zoning Ordinance Draft 1</td>
<td>Consolidated review and recommendations</td>
<td>D. Clavette, E. Cole Prescott, J. Berna</td>
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<td>Tues., September 3</td>
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<td>Planning Board Workshop</td>
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<td>Mon., September 9</td>
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<td>City Council workshop 7:00 – 8:00 PM</td>
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<td>Mon., Oct. 7</td>
<td>Draft Ordinances</td>
<td>City Council Meeting/Council Refers Draft Zoning, Site Plan and Subdivision Ordinances to Planning Board &amp; HPC for Public Hearing and Report City Council Workshop (after CC Meeting) Update on changes</td>
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<td>Tues., Oct. 8</td>
<td>First Notice</td>
<td>Published notice of Planning Board &amp; HPC public hearings on Ordinances’ amendments with proposed new zoning map appears in newspaper of general circulation, and same notice is posted in City Hall and is mailed to all property owners.</td>
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<td>Tues., Oct. 15</td>
<td>Second Notice</td>
<td>Published notice of Planning Board &amp; HPC public hearings on Ordinances’ amendments with proposed new zoning map appears in newspaper of general circulation.</td>
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<td>City Council First Reading</td>
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<td></td>
<td>First Notice</td>
<td>Published notice of City Council public hearing on Draft Zoning, Site Plan and Subdivision Ordinances’ amendments with proposed new zoning map appears in newspaper of general circulation, and same notice is posted in City Hall and is mailed to all property owners.</td>
<td>D. Clavette, E. Cole-Prescott</td>
</tr>
<tr>
<td>Tuesday, Oct. 22</td>
<td>Ordinances</td>
<td>HPC Public Hearing</td>
<td>E. Cole-Prescott</td>
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<td>Planning Board Public Hearing</td>
<td>E. Cole-Prescott</td>
</tr>
<tr>
<td>Monday, Oct. 28</td>
<td>Second Notice</td>
<td>Published notice of City Council public hearing on Draft Zoning, Site Plan and Subdivision Ordinances’ amendments with proposed new zoning map appears in newspaper of general circulation.</td>
<td>D. Clavette, E. Cole-Prescott</td>
</tr>
<tr>
<td>Tuesday, Oct. 29</td>
<td>Ordinances</td>
<td>Planning Board &amp; HPC Adoption of Report To City Council on Draft Zoning, Site Plan and Subdivision Ordinances’ amendments</td>
<td>E. Cole-Prescott</td>
</tr>
<tr>
<td>Monday, Nov. 4</td>
<td>Ordinances</td>
<td>City Council Public Hearing/ Planning Board &amp; HPC Reports submitted City Council</td>
<td>L. Durfee, T. Morgan, D. Clavette, E. Cole-Prescott, J. Berna, N. Schuster</td>
</tr>
<tr>
<td>Monday, Nov. 18</td>
<td>Ordinances</td>
<td>City Council Second and Final reading/ Vote to Adopt Zoning, Site Plan and Subdivision Ordinances</td>
<td>L. Durfee, T. Morgan, D. Clavette, J. Berna, E. Cole-Prescott</td>
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