

Order 257-05/06

Given first reading on 5/15/06

Public Hearing and Passage: 6/5/06 5-2 (Leeman, Gorham opposed; Cohen abstaining; Geraghty gone)

JAMES I. COHEN (MAYOR)(5)

WILLIAM R. GORHAM (1)

KAREN A. GERAGHTY (2)

DONNA J. CARR (3)

CHERYL A. LEEMAN (4)

CITY OF PORTLAND

IN THE CITY COUNCIL

JAMES F. CLOUTIER (A/L)

JILL C. DUSON (A/L)

NICHOLAS M. MAVODONES (A/L)

EDWARD J. SUSLOVIC (A/L)

ORDER AUTHORIZING CREDIT ENHANCEMENT AGREEMENT WITH SOUTHERN MAINE STUDENT HOUSING, LLC RE: BAYSIDE REDEVELOPMENT TAX INCREMENT FINANCING DISTRICT

ORDERED, that the City Manager is hereby authorized to execute a Credit Enhancement Agreement with Southern Maine Student Housing, LLC related to a housing project in the Bayside Redevelopment Tax Increment Financing District.

CREDIT ENHANCEMENT AGREEMENT
between

CITY OF PORTLAND, MAINE

and

SOUTHERN MAINE STUDENT HOUSING, LLC

Dated as of _____, 2006

TABLE OF CONTENTS

ARTICLE I DEFINITIONS	3
Section 1.1. <u>Definitions</u>	3
Section 1.2. <u>Interpretation and Construction</u>	4
ARTICLE II DEVELOPMENT PROGRAM ACCOUNT AND FUNDING REQUIREMENTS.....	5
Section 2.1. <u>Creation of Development Program Fund</u>	5
Section 2.2. <u>Deposits into Account</u>	5
Section 2.3. <u>Use of Monies in Account</u>	5
Section 2.4. <u>Monies Held in Trust</u>	5
Section 2.5. <u>Investments</u>	5
Section 2.6. <u>Tax Payments</u>	6
ARTICLE III PAYMENT OBLIGATIONS.....	6
Section 3.1. <u>Captured Assessed Value; Retained Tax Increment</u>	6
Section 3.2. <u>Completion of Development Program</u>	7
Section 3.3. <u>Credit Enhancement Payments</u>	7
Section 3.4. <u>Failure to Make Payment</u>	7
Section 3.5. <u>Manner of Payments</u>	7
Section 3.6. <u>Obligations Unconditional</u>	7
Section 3.7. <u>Limited Obligation</u>	7
Section 3.8. <u>Administrative Fee</u>	10
ARTICLE IV COVENANTS OF THE COMPANY.....	8
Section 4.1. <u>Project Development</u>	8
ARTICLE V PLEDGE AND SECURITY INTEREST	9
Section 5.1. <u>Pledge of Company TIF Account</u>	9
Section 5.2. <u>Further Instruments</u>	9
Section 5.3. <u>Liens</u>	9
Section 5.4. <u>Access to Books and Records</u>	9
ARTICLE VI DEFAULTS AND REMEDIES.....	9
Section 6.1. <u>Events of Default</u>	9
Section 6.2. <u>Remedies on Default</u>	10
Section 6.3. <u>Remedies Cumulative</u>	10
Section 6.4. <u>Enforcement Rights</u>	10
ARTICLE VII EFFECTIVE DATE, TERM AND TERMINATION	11
Section 7.1. <u>Effective Date and Term</u>	11
Section 7.2. <u>Cancellation and Expiration of Term</u>	11
ARTICLE VIII ASSIGNMENT AND PLEDGE OF COMPANY'S INTEREST.....	11
Section 8.1. <u>Consent to Pledge, Collateral Assignment Or Grant of a Security Interest</u> .	11

Section 8.2. <u>Assignment</u>	11
ARTICLE IX MISCELLANEOUS.....	11
Section 9.1. <u>Successors</u>	11
Section 9.2. <u>Parties in Interest</u>	12
Section 9.3. <u>Severability</u>	12
Section 9.4. <u>No Personal Liability</u>	12
Section 9.5. <u>Counterparts</u>	12
Section 9.6. <u>Governing Law</u>	12
Section 9.7. <u>Notices</u>	13
Section 9.8. <u>Amendments</u>	13
Section 9.9. <u>Net Agreement</u>	16
Section 9.10. <u>Integration</u>	13
Section 9.11. <u>Indemnification</u>	13
Section 9.12. <u>Waiver of Recapture if Agreement Found Void</u>	14

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

WITNESSETH THAT

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

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

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

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

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

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

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

**ARTICLE I
DEFINITIONS**

Section 1.1. Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 1.2. Interpretation and Construction.

In this Agreement, unless the context otherwise requires:

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

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

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

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

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

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

ARTICLE II DEVELOPMENT PROGRAM FUND AND FUNDING REQUIREMENTS

Section 2.1. Creation of Development Program Fund.

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

Section 2.2. Deposits into Account.

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

Section 2.3. Use of Monies in Account.

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

Section 2.4. Monies Held in Trust.

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

Section 2.5. Investments.

Any monies in the Account shall be invested and reinvested in Qualified Investments as determined by the City. The City shall have discretion regarding the investment of such monies, provided such monies are invested in Qualified Investments. As and when any amounts thus invested may be needed for disbursements, the City shall

cause a sufficient amount of such investments to be sold or otherwise converted into cash to the credit of such account. The City shall have the sole and exclusive right to designate the investments to be sold and to otherwise direct the sale or conversion to cash of investments made with monies in the Account.

Section 2.6. Tax Payments.

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

**ARTICLE III
PAYMENT OBLIGATIONS**

Section 3.1. Captured Assessed Value; Retained Tax Increment.

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

Table 1 –TIF Allocation Table

Tax Year	Estimated Increased Real Estate Value	Estimated Mil Rate (2% Inc.)	Estimated Incremental Tax Real Estate	Project Alloc.	Project Revenue	Estimated City Revenue From Real Estate
FY08	\$ 2,000,000	16.71	\$ 33,420	0%	\$ -	\$ 33,420
FY09	\$ 19,000,000	17.04	\$ 323,840	37%	\$ 120,000	\$ 203,840
FY10	\$ 19,000,000	17.39	\$ 330,317	36%	\$ 120,000	\$ 210,317
FY11	\$ 19,000,000	17.73	\$ 336,923	36%	\$ 120,000	\$ 216,923
FY12	\$ 19,000,000	18.09	\$ 343,661	35%	\$ 120,000	\$ 223,661
FY13	\$ 19,000,000	18.45	\$ 350,535	34%	\$ 120,000	\$ 230,535
FY14	\$ 19,000,000	18.82	\$ 357,545	34%	\$ 120,000	\$ 237,545
FY15	\$ 19,000,000	19.19	\$ 364,696	33%	\$ 120,000	\$ 244,696
FY16	\$ 19,000,000	19.58	\$ 371,990	32%	\$ 120,000	\$ 251,990
FY17	\$ 19,000,000	19.97	\$ 379,430	32%	\$ 120,000	\$ 259,430
FY18	\$ 19,000,000	20.37	\$ 387,019	31%	\$ 120,000	\$ 267,019
			\$ 3,579,375		\$ 1,200,000	\$ 2,379,375

Section 3.2. Completion of Development Program.

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

Section 3.3. Credit Enhancement Payments.

a. Subject to Section 3.3(b), the City shall pay on August 1 of each year of this Agreement to the Company all Company Tax Increment Revenues then on deposit in the Company TIF Account. The obligation of the City to make such payment shall be limited obligation payable solely out of monies on deposit in the Company TIF Account and shall not constitute a general debt or obligation on the part of the City or a general obligation or charge against or pledge of the faith and credit or taxing power of the City, the State of Maine or any political subdivision thereof.

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

Section 3.4. Failure to Make Payment.

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

Section 3.5. Manner of Payments.

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

Section 3.6. Obligations Unconditional.

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

Section 3.7. Limited Obligation.

The City's obligations of payment hereunder shall be limited obligations of the City payable solely from Retained Tax Increment Revenues and any earnings thereon, pledged therefore under this Agreement. The City's obligations hereunder shall not constitute a general debt or a general obligation on the part of the City or a charge

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

Section 3.8 Administrative Fee.

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

ARTICLE IV
covenants of the company

Section 4.1. Project Development

a. The Company shall construct the Project.

b. In each year this Agreement is in effect, the Company agrees to provide, by each April 30, audited financial statements, which shall be used to determine the Company Tax Increment Revenues due to Company for the following August 1 payment by City pursuant to this Agreement. The audited financial statements shall be used by City to determine the Cash Flow Coverage Ratio and shall not be used for any other purpose or disclosed to any other party by the City. In each year of this Agreement, the City shall pay Company Tax Increment Revenues to the Company pursuant to this Agreement to the extent necessary for Company to achieve a 1.2 to 1 Cash Flow Coverage Ratio, provided however such payments to the Company shall not be greater than the amount shown in the corresponding year's "Project Revenue" column as shown in Table No. 1 in Section 3.1 above..

c. If in any year that this Agreement is in effect the Increased Assessed Value is less than \$18,000,000, the obligation of the city to pay into the Company TIF Account per section 3.1 of the agreement shall be reduced. The reduction shall be calculated as follows: The increased assessed value divided by \$18,000,000 multiplied by the corresponding scheduled fiscal year Company Project Revenue payment amount on Table 1.

ARTICLE V PLEDGE AND SECURITY INTEREST

Section 5.1. Pledge of Company TIF Account.

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

Section 5.2. Further Instruments.

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

Section 5.3. Liens.

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

Section 5.4. Access to Books and Records.

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

ARTICLE VI DEFAULTS AND REMEDIES

Section 6.1. Events of Default.

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

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

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

Section 6.2. Remedies on Default.

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

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

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

Section 6.3. Remedies Cumulative.

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

Section 6.4. Enforcement Rights.

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

ARTICLE VII
EFFECTIVE DATE, TERM AND TERMINATION

Section 7.1. Effective Date and Term.

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

Section 7.2. Cancellation and Expiration of Term.

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

ARTICLE VIII
ASSIGNMENT AND PLEDGE OF COMPANY'S INTEREST

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

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

Section 8.2. Assignment.

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

ARTICLE IX
MISCELLANEOUS

Section 9.1. Successors.

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

entity, officer, board, commission, agency or instrumentality to whom or to which any power or duty of such party shall be transferred, subject to approval of the City, which consent shall not be unreasonably withheld or delayed.

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

Section 9.2. Parties in Interest.

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

Section 9.3. Severability.

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

Section 9.4. No Personal Liability.

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

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

Section 9.5. Counterparts.

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

Section 9.6. Governing Law.

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

Section 9.7. Notices.

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

If to the City:

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

If to the Company:

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

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

Section 9.8. Amendments.

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

Section 9.9. Net Agreement.

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

Section 9.10. Integration.

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

Section 9.11. Indemnification.

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

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

Section 9.12. Waiver of Recapture if Agreement Found Void.

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

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

WITNESS

CITY OF PORTLAND, MAINE

By: _____
Its City Manager

WITNESS

**SOUTHERN MAINE STUDENT
HOUSING, LLC**

By: _____
Its Authorized Manager

**EXHIBIT B
Request for Payment**

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

SOUTHERN MAINE STUDENT HOUSING, LLC

Date: _____

By: _____
Its

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