

STATE OF MAINE

COUNTY OF YORK

CITY OF SACO

I. CALL TO ORDER – On Monday, October 7, 2019, at 6:30 p.m. a Council Meeting was held in the City Hall Auditorium.

II. RECOGNITION OF MEMBERS PRESENT – Mayor Marston Lovell recognized the members of the Council and determined that the Councilors present constituted a quorum. Councilors present: Marshall Archer, Roger Gay, William Doyle, Alan Minthorn, Micah Smart, and Nathan Johnston. Absent: Councilor Lynn Copeland was excused this evening. City Administrator Kevin Sutherland and City Clerk Michele Hughes were also present this evening.

III. PLEDGE OF ALLEGIANCE

IV. GENERAL

A. RECOGNITION OF BELLA COWAN

Mayor Lovell announced that this evening the city would be recognizing Bella Cowan's 100th birthday. Bella was sometimes known as the Mayor of Main Street. Whereas, Bella Cowan and her husband Harold relocated to Saco from Bangor in 1964. Bella fell in love with the small-town life that we don't enjoy much anymore because Saco has grown quite a bit.

Whereas, after returning to Saco Bella and Harold Cowan purchased Sam's Place and together, they developed their business into 5 specialty departments consisting of paint, wallpaper, unique window treatment, art supplies, and detailed custom framework, that which Harold became an expert.

Whereas, Bella and Harold Cowan moved Sam's Place from Biddeford to Main Street in Saco in 1968 and Sam's Place is located in the center of downtown, 240 Main Street and became a downtown gathering place. Causing Bella to be identified by some as the Mayor of Main Street in Saco.

Whereas, for over 40 years Bella and Harold looked out their storefront and said this is a perfect place for an art festival. Absolutely right. We look forward to that festival every year. The Saco Sidewalk Art Show was born. Added to the section artists paid \$5 each to display their art.

Whereas, Bella then worked full-time at Sam's Place until she retired at the age of 89 in 2008. Than means that Lenny still has a couple more years to go before they let him out of that office.

Whereas, she volunteered at the Dyer Library for over 25 years. I only spent a decade volunteering with you. Two nights each week and Bella was on the Adult circulation desk. She still goes to the library to catch up.

Whereas, Bella is a charter member of the Biddeford Saco Altrusa Club and for the last 10 years Bella has been teaching bridge to a group of women at the Community Center for their enjoyment and of course for hers. They have all become fast friends.

Therefore, I declare October 13th Bella Cowan Day. Happy Birthday to you Bella.

The council and mayor gathered to take a picture with Bella.

B. LIZ GOTHELF

Mayor Lovell recognized Liz Gothelf who works for the Journal Tribune. The Journal will not be publishing after Oct. 12th which is unfortunate. Liz does a fine job and we thank you for all of the work that you have done in covering the city council meetings. Thank you very much.

V. PUBLIC COMMENT

- Stephen Shiman, School Board Liaison – No report this evening.
- Barbara Colman, 386 Buxton Road, Saco – Mayor, I have given to councilor Minthorn and Doyle an e-mail that I received from Brenda Kielty which in in response from my query to Ms. Kielty who is the Assistant Attorney General for the Public Access Ombudsman about my concern about the Mayor's public meeting.

Though I commend Ms. Kielty for reaching out to our city administrator I don't believe this should be on the city administrator to be overseeing our Mayor and councilors who were in attendance at that meeting. I believe it is upon council and the mayor to observe what needs to be done. Based on this Mr. Sutherland will do his best to reign in the conversation. But I would find that very difficult myself since you are his superiors in this case. But, based on what I have read here there is an implied something wasn't quite right. Because it did say that if they continue to be concerns to please let them know. So, there is a response. I'm sorry Kevin. I think you do a good job, but it is really up to them to self-check themselves. 2) Mayor tonight I asked you for a list of the members who are on the committee pre-hiring who is doing the selection other than Mr. Gould. Mr. Gould is main representative you have hired for the purpose of gathering applications to bring forth to a council. Now, you listed the council as the current council. I'm sorry the statement should have been the council. Because you are not sure t hat is going to actually apply com the hiring date. Because the election is less than a month away. Now, unless you guys have allot of time between now and then to have meetings and to get someone hired than you are going to lose allot of campaigning time. Those that are not challenged will be able to attend meetings. For those that are being challenged they have to get out there and campaign. So, I think it would be a disservice to people running opposed not to have the time to do what they need to do which is being out there campaigning. Besides that, if you look at Chapter 13, Title 1 Public Records and Proceedings a committee is 3 or more individuals. I believe the pre-hiring committee is more than 3 individuals. Usually has been. That information should be public. What I cannot attain is information such as if the Fire Dept., Police Dept., Superintendent, City Administrator and all of them get together to talk about preparedness in case of a major event. That is not public. I don't need to know that information. We don't want that information shared. But this information about the individual selecting the individual to be presented to a council is important. I was looking for my facts and noticed that you are responsible or getting a financial statement. Why have we not seen one since June or even a preliminary one? I know you are going to stop me. Lastly, I'm going to say the volunteer work program as of tonight I have found out the individuals who were supposed to be paid less than \$25,000 has yet to be done. I give you the name of the contact that the council may call the person because I could not obtain it perhaps you can. His name is Scott Contior. He is the Dept of Labor director for the State of Maine. Hs number is 623-7900. If you cannot reach him ask for Bart who is the Chief Investigator for the Maine Dept. of Labor. I hope we resolve that before the election and chain of command by the end of the year. Thank you.

VI. CONSENT AGENDA

VII. AGENDA

A. CREDIT ENHANCEMENT AGREEMENT BETWEEN CITY OF SACO, MAINE AND FORESITE REALTY, LLC FOR BUSINESS OPERATING AS BIDDEFORD SACO DENTAL ASSOCIATES – (PUBLIC HEARING)

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."

Councilor Smart moved, Councilor Minthorn seconded to open the public hearing for the Credit Enhancement

Agreement between the City of Saco, ME and Foresite Realty, LLC. The motion passed with six (6) yeas.

There were no public comments.

Councilor Smart moved, Councilor Minthorn seconded to close the public hearing, and further move to schedule the final reading on the following Order: “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” for October 21, 2019. The motion passed with six (6) yeas.

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:

Tax Year	Retained Percentage
2020	50%
2021	50%
2022	50%
2023	50%
2024	50%
2025	45%
2026	45%
2027	45%
2028	45%
2029	45%
2030	25%
2031	25%
2032	0%
2033	0%

(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 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 non-defaulting 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 Pledges.

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

Captured Assessed Value & TIF Revenue Projection Table - City of Saco - Foresite Realty - TIF Model							
TIF Year	Tax Year- April 1	Increased Assessed Value Real Prop.	Captured Valuation @100% of Value Captured	Projected Mill Rate	Total Projected New Taxes Captured	Captured Revenue to Developer Project Account	Captured Revenue to Municipal Project Account
1	2020	\$3,650,000	\$3,650,000	0.01959	\$71,493	\$35,746	\$35,746
2	2021	\$3,650,000	\$3,650,000	0.01980	\$72,256	\$36,128	\$36,128
3	2022	\$3,650,000	\$3,650,000	0.02001	\$73,028	\$36,514	\$36,514
4	2023	\$3,650,000	\$3,650,000	0.02022	\$73,808	\$36,904	\$36,904
5	2024	\$3,650,000	\$3,650,000	0.02044	\$74,596	\$37,298	\$37,298
6	2025	\$3,650,000	\$3,650,000	0.02066	\$75,393	\$33,927	\$41,466
7	2026	\$3,650,000	\$3,650,000	0.02088	\$76,198	\$34,289	\$41,909
8	2027	\$3,650,000	\$3,650,000	0.02110	\$77,012	\$34,655	\$42,357
9	2028	\$3,650,000	\$3,650,000	0.02132	\$77,834	\$35,026	\$42,809
10	2029	\$3,650,000	\$3,650,000	0.02155	\$78,666	\$35,400	\$43,266
11	2030	\$3,650,000	\$3,650,000	0.02178	\$79,506	\$19,876	\$59,629
12	2031	\$3,650,000	\$3,650,000	0.02202	\$80,355	\$20,089	\$60,266
13	2032	\$3,650,000	\$3,650,000	0.02225	\$81,213	\$0	\$81,213
14	2033	\$3,650,000	\$3,650,000	0.02249	\$82,081	\$0	\$82,081
14-Year TIF Total		\$51,100,000	\$51,100,000		\$1,073,439	\$395,852	\$677,587
					Percent of Total	37%	63%

Prepared by Camoin Associates, www.camoinassociates.com
 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

B. CREDIT ENHANCEMENT AGREEMENT BETWEEN THE CITY OF SACO, MAINE AND BAXTER & CUTTS, LLC (FOR BUSINESS OPERATING AS QUINCE) – (PUBLIC HEARING)

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.”

Councilor Johnston moved, Councilor Smart seconded to open the public hearing for the Credit Enhancement Agreement between the City of Saco, ME and Baxter & Cutts LLC. The motion passed with six (6) yeas.

There were no public comments.

Councilor Johnston moved, Councilor Smart seconded to close the public hearing and further move to schedule the final reading on the following 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” for October 21, 2019. The motion passed with six (6) yeas.

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:

Tax Year	Retained Percentage
2020	60%
2021	60%
2022	60%
2023	60%
2024	60%
2025	60%
2026	60%
2027	60%
2028	60%
2029	60%
2030	60%
2031	60%
2032	60%
2033	60%
2034	60%
2035	0%
2036	0%
2037	0%
2038	0%
2039	0%

(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 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 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 non-defaulting 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 Pledges.

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

Captured Assessed Value & TIF Revenue Projection Table - City of Saco - Baxter & Cutts - TIF							
TIF Year	Tax Year - April 1	Increased Assessed Value Real Prop.	Captured Valuation @100% of Value Captured	Projected Mill Rate	Total Projected New Taxes Captured	Captured Revenue to Municipal Project Account	Captured Revenue to Developer Project Account
1	2020	\$1,000,000	\$1,000,000	0.01959	\$19,587	\$7,835	\$11,752
2	2021	\$1,000,000	\$1,000,000	0.01980	\$19,796	\$7,918	\$11,878
3	2022	\$1,000,000	\$1,000,000	0.02001	\$20,008	\$8,003	\$12,005
4	2023	\$1,000,000	\$1,000,000	0.02022	\$20,221	\$8,089	\$12,133
5	2024	\$1,000,000	\$1,000,000	0.02044	\$20,437	\$8,175	\$12,262
6	2025	\$1,000,000	\$1,000,000	0.02066	\$20,656	\$8,262	\$12,393
7	2026	\$1,000,000	\$1,000,000	0.02088	\$20,876	\$8,350	\$12,526
8	2027	\$1,000,000	\$1,000,000	0.02110	\$21,099	\$8,440	\$12,659
9	2028	\$1,000,000	\$1,000,000	0.02132	\$21,325	\$8,530	\$12,795
10	2029	\$1,000,000	\$1,000,000	0.02155	\$21,552	\$8,621	\$12,931
11	2030	\$1,000,000	\$1,000,000	0.02178	\$21,782	\$8,713	\$13,069
12	2031	\$1,000,000	\$1,000,000	0.02202	\$22,015	\$8,806	\$13,209
13	2032	\$1,000,000	\$1,000,000	0.02225	\$22,250	\$8,900	\$13,350
14	2033	\$1,000,000	\$1,000,000	0.02249	\$22,488	\$8,995	\$13,493
15	2034	\$1,000,000	\$1,000,000	0.02273	\$22,728	\$9,091	\$13,637
16	2035	\$1,000,000	\$1,000,000	0.02297	\$22,971	\$22,971	\$0
17	2036	\$1,000,000	\$1,000,000	0.02322	\$23,216	\$23,216	\$0
18	2037	\$1,000,000	\$1,000,000	0.02346	\$23,464	\$23,464	\$0
19	2038	\$1,000,000	\$1,000,000	0.02371	\$23,715	\$23,715	\$0
20	2039	\$1,000,000	\$1,000,000	0.02397	\$23,968	\$23,968	\$0
20-Year Total		\$20,000,000	\$20,000,000		\$434,155	\$244,062	\$190,093
					Percent of Total	56%	44%
Prepared by Camoin Associates, www.camoinassociates.com							
Financials based on 100% of value captured and 60% of incremental revenues returned to developer for 15 years and 0% in years 16-20.							

C. ADOPTION OF CHAPTER 175-SENIOR CITIZEN TAX RELIEF ORDINANCE – (PUBLIC HEARING)

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.

Councilor Minthorn moved, Councilor Doyle seconded to open the public hearing. The motion passed with six (6) yeas.

Barbara Colman, 386 Buxton Road, Saco – Council, I think it is time you take a little action tonight. How about you put an amendment to this document that this is not implemented until you have proof from the administrator that all past tax abatement issues have been resolved. Not that I don't want to implement it, because I do. But, I want to see the accountability that has been promised. Now, I have sat with the Mayor at Rosa Linda's, at Lucky Loggers, with the City Administrator and himself with his office hours. They have concurred, though Mr. Sutherland has not that this is a working program. The attorneys, not the attorneys. Our own audit firm agrees this is work program. The Mayor in his role as a commissioner realizes the role implications of not taking care of things. This is a payroll related issue. It can haunt. I told you this repeatedly and I asked for it to be resolved privately. So, if we do an amendment that this cannot be implemented until everything is resolved, we know that the other one hasn't disappeared yet. See we don't want the other one to go under the rug. Because if it goes away what do you have for backing? I want this one to stay in place until you can prove it but implement on a temporary basis, they are going to get the \$10, \$11 or \$12 per hour whatever it is so it can move forward. But you gotta stop the cycle. If you don't correct the issue now, how many years down the road is it going to be? Think of it this way. If we were the city and there was a tax bill owed and it was less than \$100, have we not seen property taken for that. Have we not seen things written off? Have we not seen costly things from attorneys and all of that? So, let's avoid the costly future and solve it tonight with a nice friendly amendment that says "we will implement as soon as this process is completed". This is your time to speak as council to get what has been asked and if you have reviewed the past 2 years. The mayor has instructed it to be solved. So, am I not speaking in English well enough to be heard? Have I not articulated well enough for everybody to understand including the public or am I really just bashing after somebody for the fun of it? I'm sorry there is roughly anywhere from 40-80 because there is roughly 40 per year. So, you could have 80 senior citizens being impacted in Saco. If that was your parent or grandparent how would you feel? Think about it. I know it is only \$150-\$250. Doesn't sound like allot but with 8-9% interest that we collect if we fail to pay our taxes on time, we start accumulating taxes. Well, I think they should be paid interest for that money that wasn't paid to them as well. They are entitled to it because the former mayor was aware of this the finance director who left during this term was aware of it and administration has been aware of it. I will just continue on until it does get resolved. I'm like a dog with a bone and I will keep at it and find a new bone until it gets done. Thank you.

Mary Pelkey, 35 McKenney Road –Mr. Mayor, City Councilors, and City Administrator. I would lie to thank you for your support to provide seniors in Saco including myself the new tax work-off program will be a blessing for we who struggle with paying for our taxes. What is even better is that we have this opportunity to work-off a portion of our taxes, so it is not a handout. I would also like to thank you Mayor Lovell for appointing me and others to serve on the ad hoc committee to work out the details of this program. It is an even better program than before thanks to Donna Bailey's work with the state legislature to increase the amount he can earn. It went from \$750 this past year to \$1,100 this year. Which is 100 hours times the minimum wage. Thank you all for voting to support this new program. I asked Susan Collins staff person to push legislation through congress and to work with IRS to have this type of credit to be non-taxable income. I have not heard any feedback from this as of yet. This would benefit so many as it would prevent losing \$50 out of their credit for taxes. Many of us do not have to file taxes so this is a hardship to get it back if we can. I would also like to thank the department heads who have agreed to let us work with them. I hope they know how much this means to all of us. Again, thank you very much.

Councilor Minthorn moved, Councilor Doyle seconded to close the public hearing and further move to schedule the final reading 'Repealing Chapter 220 of the City Ordinance as a part of the enactment of new Chapter 175' for October 21, 2019. The motion passed with six (6) yeas.

Chapter 175

SENIOR TAX RELIEF

ARTICLE I

Senior Citizen Tax Work-Off Program

- §175-1. Purpose.
- §175-2. Definitions.
- §175-3. Criteria for Participation.
- §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.

§175-9. Application and Credit Procedures.

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.

D. ZONING, SITE PLAN AND SUBDIVISION ORDINANCES: CITY COUNCIL REFERS THE DRAFT ZONING, SITE PLAN AND SUBDIVISION ORDINANCES TO THE PLANNING BOARD AND HISTORIC PRESERVATION COMMISSION FOR PUBLIC HEARING AND REPORT TO THE CITY COUNCIL

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 late August 2019.

The ZOR Steering Committee and the Planning Board then 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 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 were compiled and integrated into a final draft, that is scheduled to go through

a formal public hearing and adoption process with the Planning Board and City Council. The Project Completion Timeline, revised as of 10/2/2019 (Exhibit 1), outlines the 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 created an official legal public notification letter, that included the project background, dates and times of the three upcoming public hearings and the proposed Zoning Map. This Notice of Public Hearings and Project Background Letter along with the Zoning Map was printed last week and mailed to all property owners in Saco on Friday, October 4, 2019. This letter goes beyond state and local notification requirements, which is appropriate for such a significant project.

Draft 3 of the Zoning Ordinance, Site Plan Review Ordinance and Subdivision Ordinance is posted online [here](#). Links to the specific Ordinances are provided below:

[Zoning Ordinance \(Draft 3 - 10-2-19\)](#)

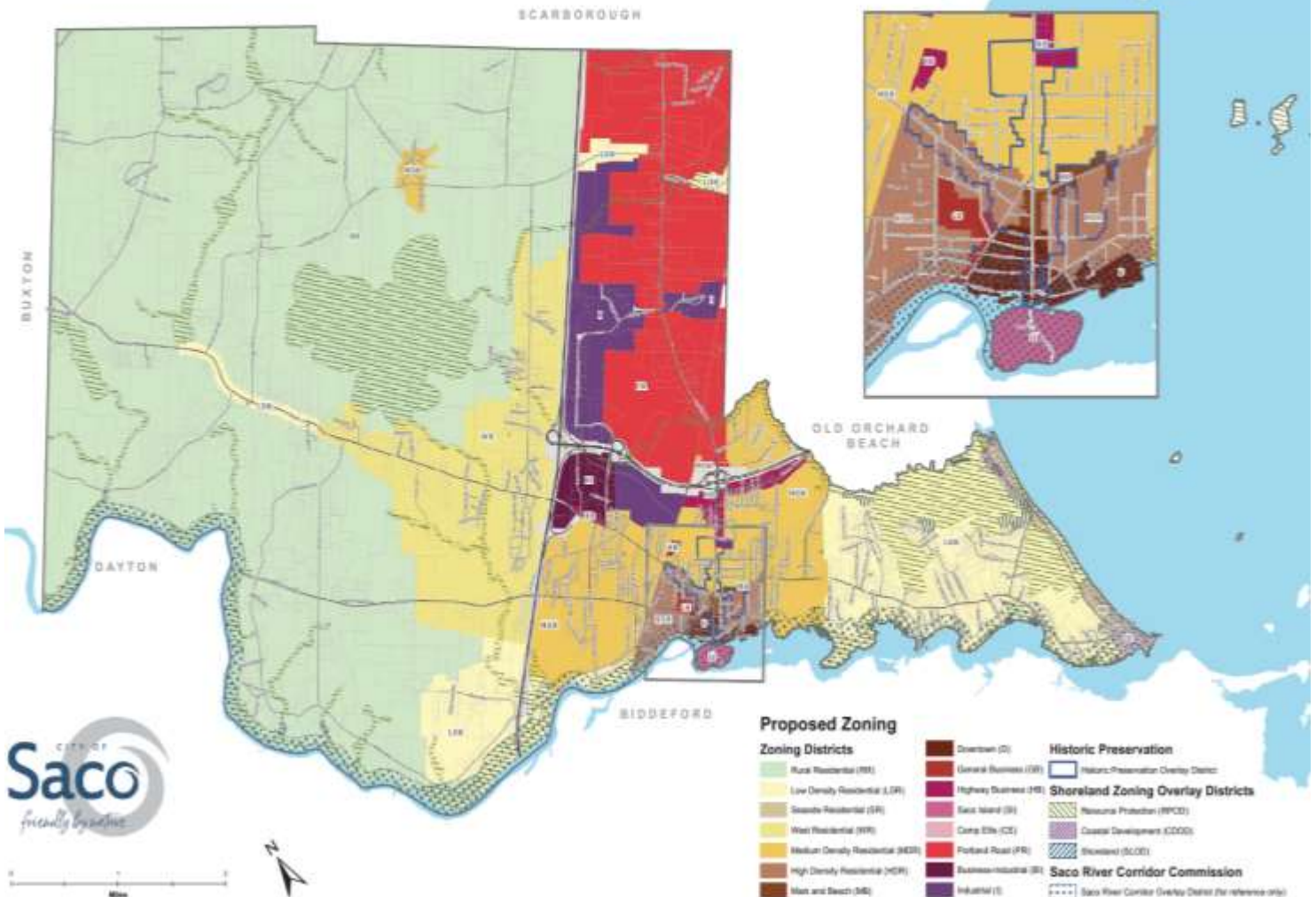
[Zoning Map \(Draft 3 - 10-2-19\)](#)

[Site Plan Review Ordinance \(Draft 3 - 10-2-19\)](#)

[Subdivision Ordinance \(Draft 3 - 10-2-19\)](#)

Councilor Johnston moved, Councilor Minthorn seconded to refer the Draft Zoning, Site Plan and Subdivision Ordinances to the Planning Board and Historic Preservation Commission for Public Hearing and Report to the City Council. The motion passed with six (6) yeas.

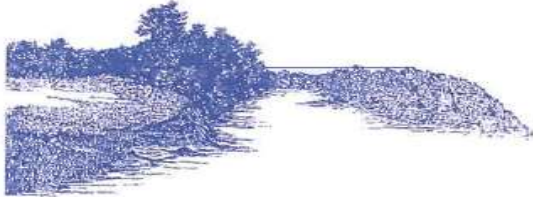
City of Saco Proposed Zoning Map



VIII. ADMINISTRATIVE UPDATE

City Administrator Kevin Sutherland provided the following updates:

➤ Saco Island East Parcel – Tree Planting – Back in August I mentioned the Saco Island East parcel and replanting of trees. I asked staff to take a look at the site ere is a has occurred and staff do not believe it was necessary to spend allot of those resources on tree planting. I asked the Saco River Corridor Commission (SRCC) to attend a site walk with staff and SRCC met and agreed to put the \$50,000 in escrow for revegetation purposes after the project is done. There is going to be no clearing of the area and replant trees because the area is already overgrown. There are no erosion issues at this time. I did forward on the letter I received from the SRCC supporting that. If you have questions or suggestions, please reach out to myself, or Dalyn.



Saco River Corridor Commission
"Communities Working Together To Protect Our Rivers"

September 30, 2019

Saco City Hall
300 Main Street
Saco, Maine, 04072

Dear Mr. Sutherland and Saco City Council Members:

On September 25, 2019 the Saco River Corridor Commission attended a site walk of Saco Island East, as known as Factory Island, to assess the current site conditions after the tree clearing violation that occurred in the fall of 2017 by J & B Partners, LLC. Mr. Richard Lambert and Mr. Ryan Sommers were also present for the site walk.

After the site walk we discussed the matter at our September Commission meeting that same evening. The commission agrees with the opinions of city staff members that the site has been stabilized due to the growth of invasive species on site. The commission agrees that the \$50,000 in escrow to revegetate the parcel can be set aside in the event there is to be a development project on the parcel in the near future. However, the commission wants to ensure that the funds set aside for the revegetation of the parcel will remain available only for that purpose. Further, the commission would like to suggest that the city work with the potential future developer to ensure the most effective revegetation of the parcel. Please feel free to contact us if you have any further questions, comments or concerns.

Sincerely,

Dalyn Houser

Executive Director

IX. COUNCIL DISCUSSION AND COMMENT

➤ Councilor Archer – I just wanted to bring it to the communities' attention that our chair for our York County Budget Committee, has passed away. Mr. Archer serves on the committee. He served York County for many years. He was also instrumental for the last couple of years of really controlling the tax rate of York County. It is a small portion of what we pay but under his leadership they were able to keep it in control. Mayor Lovell – Yes, thank you. He was a friend of mine and I was surprised later that morning when I heard that he had passed away because he handles allot of lumber. I thought he was in excellent condition, but I don't know what happened to him. He was really instrumental in bringing location government to the fore across the state. He had been president of the Maine Municipal Association, he formed a group of small towns among the 29 towns of York County called Twelve Town

Group that met monthly to discuss the problems of small town. He helped organize and was chair of the county budget committee for a long time. He will be missed.

X. EXECUTIVE SESSION

Councilor Minthorn moved, Councilor Smart seconded “Be it Ordered that the City Council enter into executive session, pursuant to [M.R.S.A. Title 1, Chapter 13, Subchapter 1, §405(6)]:

(C) Review CEA Financials

(E) Consultation with counsel regarding a pending matter

The motion passed with six (6) yeas. Time: 7:16 p.m.

XI. REPORT FROM EXECUTIVE SESSION

Mayor Lovell, Councilors: Archer, Gay, Doyle, Minthorn, and Johnston and the City Administrator were all present. Councilor Smart had a conflict and attended the 1st section the review of CEA Financials but did not attend the consultation with counsel regarding a pending matter.

Councilor Minthorn moved, Councilor Doyle seconded to come out of Executive Session. The motion passed with five (5) yeas. Time: 8:31 p.m.

Councilor Minthorn reported the city council pursuant to M.R.S.A. Title 1, Chapter 13, Subchapter 1, §405(6):

(C) Review CEA Financials – No Report

(E) Consultation with counsel regarding a pending matter – No report

XII. ADJOURNMENT

Councilor Minthorn moved, Councilor Gay seconded to adjourn the meeting. The motion passed with five (5) yeas. Time: 8:32 p.m.

Attest: _____
Michele L. Hughes, City Clerk