



**GARDINER CITY COUNCIL
AGENDA ITEM INFORMATION SHEET**



Meeting Date	05/26/2021	Department	Planning/Economic Dev
Agenda Item	4.d) Consideration of approving a Credit Enhancement Agreement between the City of Gardiner, Maine and AUG Commerce Distr. LLC.		
Est. Cost	n/a		

Background Information

AUG Commerce Distr. LLC purchased Lot 15 at Libby Hill Business Park on Friday, May 14, 2021 for the amount of \$59,950.00 for the purpose of building a new 50,000 sf warehouse to house a PODS company. This project will create 6 new jobs and is projected to expand to an additional 10-12 more employees within 24-36 months of opening.

The estimated project investment for building and site preparation is over \$8,000,000

The terms outlined in the proposed CEA are as follows:

10 year CEA

Years 1-3 (75% to developer)
 Years 4-6 (50% to developer)
 Years 7-10 (34% to developer)

Requested Action	" I move to approve a Credit Enhancement Agreement between the City of Gardiner, Maine and AUG Commerce Distr. LLC."
City Manager and/or Finance Review	Acting City manager approves the above motion.
Council Vote/ Action Taken	
Departmental Follow-Up	

City Clerk Use Only	1 st Reading _____	Advertised _____	EFFECTIVE DATE _____
	2 nd Reading _____	Advertised _____ w/in 15 Days	
	Final to Dept _____	Updated Book _____	Online _____

CREDIT ENHANCEMENT AGREEMENT

between

THE CITY OF GARDINER, MAINE,

and

AUG COMMERCE DISTR. LLC

DATED:

_____, 2021

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THIS CREDIT ENHANCEMENT AGREEMENT dated as of _____, between the City of Gardiner, Maine (the “City”), a municipal corporation and political subdivision of the State of Maine, and AUG Commerce Distr. LLC (the “Company”), a Maine limited liability company registered to do business under the laws of the State of

Maine.

WITNESSETH THAT

WHEREAS, pursuant to Chapter 206 of Title 30-A of the Maine Revised Statutes, as amended, by action of the City Council, the City designated the Area-Wide Libby Hill Municipal Development and Tax Increment Financing District (as amended, the “District”) and adopted a Development Program (as amended, the “Development Program”) therefor in 2009, and the Maine Department of Economic and Community Development (“DECD”) approved such action on March 31, 2009; and

WHEREAS, the City amended and restated the Development Program in 2012 in order to add the ability for the City to enter into future credit enhancement agreements to provide reimbursements to property owners or developers and to rename the District the Area-Wide Libby Hill (Omnibus) Municipal Development and Tax Increment Financing District, and DECD approved such action on August 1, 2012; and

WHEREAS, the City approved the Second Amendment to the District and Development Program by action of the City Council at a meeting held on November 18, 2020, and DECD approved such action on January 4, 2021; and

WHEREAS, the District is a so-called “omnibus” district which means that the City Council is permitted to enter into credit enhancement agreements with individual property owners in the District as it sees fit for up to the full term of the District for up to 100% of the captured assessed value so long as the City Council holds a public hearing prior to the approval of any such credit enhancement agreement; and

WHEREAS, this credit enhancement agreement is intended to provide reimbursement to the Company for a portion of property taxes paid on increased assessed value of the Company’s project for ten years; and

WHEREAS, at a meeting of the City Council held on May 26, 2021, the City Council held a public hearing and then voted to authorized this credit enhancement agreement with the Company in the name of and on behalf of the City; and

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

ARTICLE I DEFINITIONS

Section 1.1. Definitions.

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

“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 Company dated as of the date set forth above, as such may be amended from time to time.

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

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

“City Project Cost Subaccount” means that portion of the Project Cost Account of the Development Program Fund for the District set aside for the City as defined in the Financial Plan Section of the Development Program and established and maintained according to Article II hereof.

“Company Project Cost Subaccount” means that portion of the Project Cost Account of the Development Program Fund set aside for the Company as described in the Financial Plan Section of the Development Program and established and maintained pursuant to Article II hereof.

“Company Property” means the taxable real property including any real property buildings and real property improvements located thereon located in the District and taxable to AUG Commerce Distr. LLC, specifically located at Map/Lot 007-018-A-015. The Company Property expressly does not include any taxable real property now or later located within the District not taxable to AUG Commerce Distr. LLC. The Company Property also expressly does not include any area located in the District but outside of Map/Lot 007-018-A-015.

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

“Current Assessed Value” means the then-current assessed value of the Company Property located in the District as determined by the City Tax Assessor as of April 1 of each Tax Year during the term of this Agreement.

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

“Development Program Fund” means the Development Program Fund described in the Financial Plan section 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 Sinking Fund Account (as and if necessary) and a Project Cost Account with two subaccounts related to this Agreement: the City Project Cost Subaccount and the Company Project Cost Subaccount.

“District” shall have the meaning given such term in the first recital hereto, which is more specifically comprised of approximately 201.82 acres of real property.

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

“Fiscal Year” means July 1 to June 30 each 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 year.

“Original Assessed Value” means zero dollars (\$0), the taxable assessed value of the Company Property as of March 31, 2021 (April 1, 2020).

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

“Sinking Fund Account” means the development sinking fund 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)(2) and Article II hereof.

“State” means the State of Maine.

“Tax Increment Revenues” means that portion of all real property taxes assessed and paid to the City in any Tax Year, in excess of any state, or special district tax, upon the Captured Assessed Value.

“Tax Payment Date” means the later of the date(s) on which property taxes levied by the City are due and payable from owners of property located within the City or are actually paid to the City with respect to taxable property located within the District.

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

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, delayed (within the understanding that municipal government must abide by public meetings laws which often requires more time than private entities require to take action) or conditioned 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.

Within sixty (60) days after the execution of this Agreement, the City shall create and establish a segregated fund in the name of the City designated as the development program fund for the District (the “Development Program Fund”) pursuant to, and in accordance with the terms and conditions of, the Development Program and 30-A M.R.S.A. § 5227(3). The Development Program Fund shall consist of a Project Cost Account that is pledged to and charged with the payment of project costs as outlined in the Financial Plan of the Development Program and as provided in 30-A M.R.S.A. § 5227(3)(A)(1), and, if necessary, may also consist of a Sinking

Fund Account that is pledged to and charged with the payment of City indebtedness, if any, as outlined in the Financial Plan of the Development Program and as provided in 30-A M.R.S.A § 5227(3)(A)(2). The Project Cost Account shall also contain at least one subaccount designated as the “Company Project Cost Subaccount.” The Development Program Fund is pledged to and charged with the payment of costs 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 Company Project Cost Subaccount described in Section 2.1 hereof or any funds therein, other than the interest in favor of the Company 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.

(a) Each year during the term of this Agreement, commencing on July 1, 2022 and continuing thereafter for a total of ten (10) years (collectively the “CEA Years”), the City shall retain in the District with respect to Company Property at least the percent of the Increased Assessed Value as Captured Assessed Value identified in subsection (b) below as required to be deposited into the Company Project Cost Subaccount.

(b) For each of the CEA Years 1-3, the City shall deposit into the Company Project Cost Subaccount of the Development Program Fund contemporaneously with each payment of Property Taxes an amount equal to seventy-five percent (75%) of that portion of the property tax payment constituting Tax Increment Revenues. For each of the CEA Years 4-6, the City shall deposit into the Company Project Cost Subaccount of the Development Program Fund contemporaneously with each payment of Property Taxes an amount equal to fifty percent (50%) of that portion of the property tax payment constituting Tax Increment Revenues. For each of the CEA Years 7-10, the City shall deposit into the Company Project Cost Subaccount of the Development Program Fund contemporaneously with each payment of Property Taxes an amount equal to thirty-four percent (34%) of that portion of the property tax payment constituting Tax Increment Revenues. Notwithstanding the previous sentence, the very first deposit(s) into the Company Project Cost Subaccount will be reduced by the costs incurred by the City in designating the District and entering into this Agreement, up to a maximum of \$5,000. That amount shall be deposited instead into the City Project Cost Subaccount for approved municipal projects.

(c) 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 Company.

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 Company Project Cost Subaccount shall in all cases be used and applied to fund fully the City's payment obligations to the Company as described in Articles II and III hereof.

Section 2.5. Monies Held in Segregated Account.

All monies required to be deposited with or paid into the Company Project Cost Subaccount under the provisions hereof and the provisions of the Development Program, and any investment earnings thereon, shall be held by the City, in trust, for the benefit of the Company in accordance with the terms of this Agreement.

ARTICLE III PAYMENT OBLIGATIONS

Section 3.1. Company Payments.

(a) The City agrees to pay the Company, within thirty (30) days following the Tax Payment Date, all amounts then on deposit in the Company Project Cost Subaccount.

(b) Notwithstanding anything to the contrary contained herein, if, with respect to any Tax Payment Date, any portion of the property taxes assessed against the Company Property remain unpaid, the property taxes actually paid with respect to such Tax Payment Date shall, first, be applied to taxes due on account of Original Assessed Value; and second, shall constitute payment of Property Taxes with respect to Increased Assessed Value, to be applied first to payment in full of the amount to be deposited in the Development Program Fund for the City's use or to the general fund for the year concerned in accordance with Section 2.3 and the Development Program; and third, to payment of the Company's share of the Tax Increment Revenues for the year concerned, to be deposited into the Company Project Cost Subaccount. In any case where a portion of the property taxes assessed against the Company Property remain unpaid for any reason other than a bona fide valuation dispute, no payment of the Company's share of the Tax Increment Revenues for the year concerned will be deposited into the Company Project Cost Subaccount until such property taxes assessed against the Company Property are paid in full.

Section 3.2. Failure to Make Payment.

(a) In the event the City should fail to, 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 including in the event that the amount deposited into the Company Project Cost Subaccount is insufficient to reimburse the Company for the full amount due to the Company under this Agreement, 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 Company shall have the right to initiate and maintain an action to specifically enforce the City's obligations hereunder, including without limitation, the City's obligation to establish and maintain

the Company Project Cost Subaccount, its obligation to deposit Tax Increment Revenues to the Company Project Cost Subaccount and its obligation to make payment out of the Company Project Cost Subaccount to the Company.

(b) Any payment required to be made from the City to the Company not paid within thirty (30) days following the Tax Payment Date, as specified in Section 3.1 above, shall be subject to payment of interest by the City at the same rate applicable to refunds of abated property taxes. The provision in this section 3.2(b) of an interest rate on late payments by the City shall not limit the Company's right under section 5.2 below to collect or require immediate payment of past due City payments.

Section 3.3. Manner of Payments.

The payments provided for in this Article III shall be paid directly to the Company at the address specified in Section 8.7 hereof in the manner provided hereinabove for the Company's own use and benefit by check drawn on the City.

Section 3.4. Obligations Unconditional.

Subject to 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, irrespective of any defense or any rights of setoff (except as otherwise provided in this Agreement), recoupment or counterclaim it might otherwise have against the Company, 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. The City hereby acknowledges that the Company has the right to enforce the contractual obligations of the City under this Agreement and that the governmental immunity of the City does not apply to actions to enforce its contractual obligations; provided however, nothing herein shall, nor is intended to, waive any defense, immunity, or limitation of liability which may be available to the city or its respective officers, agents, and employees under the Maine Tort Claims Act or any other privileges and/or immunities provided by law.

Section 3.5. Limited Obligation.

The City's obligations of payment hereunder shall be limited obligations of the City payable solely from Tax Increment Revenues pledged therefor under this Agreement. 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 payable to the Company hereunder, whether or not actually deposited into the Company Project Cost Subaccount in the Development Program Fund. 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 pledge of the Tax Increment Revenues established under this Agreement.

ARTICLE IV PLEDGE AND SECURITY INTEREST

Section 4.1. Pledge of and Grant of Security Interest in the Company Project Cost Subaccount.

In consideration of this Agreement and other valuable consideration and for the purpose of securing payment of the amounts provided for hereunder to the Company by the City, according to the terms and conditions contained herein, and in order to secure the performance and observance of all of the City's covenants and agreements contained herein, the City does hereby grant a security interest in and pledge the Company Project Cost Subaccount described in Section 2.1 hereof and all sums of money and other securities and investments therein to the Company.

Section 4.2. Perfection of Interest.

(a) To the extent deemed necessary or desirable by the Company, the City will at such time and from time to time as reasonably requested by the Company establish the Company Project Cost Subaccount described in Section 2.1 hereof as a segregated fund under the control of an escrow agent, trustee or other fiduciary selected by the Company so as to perfect the Company's interest therein. The cost of establishing and monitoring such a fund (including the cost of counsel to the City with respect thereto) shall be borne exclusively by the Company. In the event such a fund is established under the control of a trustee or fiduciary, the City shall cooperate with the Company in causing appropriate financing statements and continuation statements naming the Company 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) In the event the Company requires the establishment of a segregated fund in accordance with this Section 4.2, the City's responsibility shall be expressly limited to delivering the amounts required by this Agreement to the escrow agent, trustee or other fiduciary designated by the Company. The City shall have no liability for payment over of the funds concerned to the Company 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 Company's designated escrow agent, trustee or other fiduciary, the City shall have no liability for misdelivery of funds if delivered in accordance with the Company'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 Company, 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 City with respect thereto) shall be borne exclusively by the Company.

Section 4.4. No Disposition of the Company Project Cost Subaccount.

Except as permitted hereunder, the City shall not sell, lease, pledge, assign or otherwise dispose, encumber or hypothecate any interest in the Company Project Cost Subaccount and will promptly pay, 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.

(a) 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 Company Project Cost Subaccount shall at all reasonable times and upon reasonable notice be open to inspection by the Company, its agents and employees.

(b) All non-confidential books, records, lease agreements, and documents in the possession of the Company relating to the District, the Development Program, this Agreement and the monies, revenues, and receipts used from the Development Program Fund shall at all reasonable times and upon reasonable notice be open to inspection by the City, its agents, and its employees. In addition, inspections of the Company Property as well as any appraisals related to the Company Property shall be made possible by the Company upon the reasonable request of the City for the purpose of assisting the City in the process of creating a Current Assessed Value.

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 the Company when the same shall become due and payable;

(b) Any failure by the City to make deposits into the Company Project Cost Subaccount as and when due;

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

(d) 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 City's affairs shall have been entered against the City or the City shall have consented to the appointment of a conservator or receiver or liquidator in any such proceedings of or relating to the City or of or relating to all or substantially all of its property, including without limitation the filing of a voluntary petition in bankruptcy by the City or the failure by the City to have 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 City.

(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 Company's affairs shall have been entered against the Company or the Company shall have consented to the appointment of a conservator or receiver or liquidator in any such proceedings of or relating to the Company 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 Company or the failure by the Company 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 Company .

Section 5.2. Remedies on Default.

Subject to the provisions contained in Section 8.13, 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.

Section 5.3. Remedies Cumulative.

Subject to the provisions of Section 8.13 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. 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.

Section 5.4. Agreement to Pay Attorneys' Fees and Expenses.

Subject to the provisions of Section 8.13 below concerning dispute resolution and the Commercial Arbitration Rules of the American Arbitration Association, in the event the City or the Company should default under any of the provisions of this Agreement, and the non-defaulting party shall require and employ attorneys or incur other expenses or costs for the collection of payments due or to become due or for the enforcement of performance or observance of any obligation or agreement on the part of the City or the Company herein contained, the defaulting party shall, on demand therefor, pay to the non-defaulting party the reasonable fees of such attorneys and such other reasonable costs and expenses so incurred by the non-defaulting party.

ARTICLE VI EFFECTIVE DATE, TERM AND TERMINATION

Section 6.1. Effective Date and Term.

Notwithstanding any other provision of this Agreement, this Agreement is effective upon its execution because receipt of the Commissioner's unconditional approval of the Development Program has already been received. Following execution and delivery of this Agreement, the Agreement is binding and enforceable, and shall expire upon the later of the expiration of the CEA Years or the payment of all amounts due to the Company hereunder 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 Company shall each execute and deliver such documents and take or cause to be taken such actions as may be necessary to evidence the termination of this Agreement.

ARTICLE VII ASSIGNMENT AND PLEDGE OF THE COMPANY'S INTEREST

Section 7.1. Consent to Pledge and/or Assignment.

The City hereby acknowledges that the Company may from time to time pledge and assign its right, title and interest in, to and under this Agreement as collateral for financing

improvements by or on behalf of the Company within the District, although no obligation is hereby imposed on the Company to make such assignment or pledge. Recognizing this possibility, the City does hereby consent and agree to the pledge and assignment of all the Company's right, title and interest in, to and under this Agreement and in, and to the payments to be made to the Company hereunder, to third parties as collateral or security for financing such development, 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 Company or such pledgee or assignee may reasonably deem necessary for the establishment, perfection and protection of its interest herein. the Company shall be responsible for the City's necessary and reasonable costs of counsel with respect to any such pledge or assignment.

Section 7.2. Pledge, Assignment or Security Interest.

Except as provided in Sections 7.1 hereof, and except for the purpose of securing financing for improvements by or on behalf of the Company within the District, the Company shall not transfer or assign any portion of its rights in, to and under this Agreement without the prior written consent of the City, which consent shall not be unreasonably withheld, delayed (within the understanding that municipal government must abide by public meetings laws which often requires more time than private entities require to take action) or conditioned.

ARTICLE VIII MISCELLANEOUS

Section 8.1. Successors.

In the event of the dissolution, merger or consolidation of the City or the Company, the covenants, stipulations, promises and agreements set forth herein, by or on behalf of or for the benefit of such party shall bind or inure to the benefit of the successors and assigns thereof from time to time and any entity, officer, board, commission, agency or instrumentality to whom or to which any power or duty of such party shall be transferred.

Section 8.2. Parties-in-Interest.

Except as herein otherwise specifically provided, nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any person, firm or corporation other than the City and the Company any right, remedy or claim under or by reason of this Agreement, it being intended that this Agreement shall be for the sole and exclusive benefit of the City and the Company.

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 and/or Employees or Officers of the Company.

(a) No covenant, stipulation, obligation or agreement of the City contained herein shall be deemed to be a covenant, stipulation or obligation of any present or future elected or appointed official, officer, agent, servant or employee of the City in his or her individual capacity, and neither the City Council 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.

(b) No covenant, stipulation, obligation or agreement of the Company contained herein shall be deemed to be a covenant, stipulation or obligation of any present or future officer, agent, servant or employee of the Company in his or her individual capacity, and no official, officer, employee or agent of the Company shall be liable personally with respect to this Agreement or be subject to any personal liability or accountability by reason hereof.

Section 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.

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

Section 8.7. Notices.

All notices, certificates, requests, requisitions or other communications by the City or the Company pursuant to this Agreement shall be in writing and shall be sufficiently given and shall be deemed given when mailed by first class mail, postage prepaid, addressed as follows:

If to the City:

City of Gardiner
6 Church Street
Gardiner, Maine 04345
Attention: City Manager

With a copy to:

Bernstein Shur
100 Middle Street
P.O. Box 9729
Portland, Maine 04104-5029
Attention: Shana Cook Mueller, Esq.

If to the Company:

AUG Commerce Distr. LLC
687 Old Willets Path, Suite C
Hauppauge, NY 11788-4118
Attn: Gary Krupnick

With a copy to:

Kurzman Eisenberg Corbin & Lever LLP
One North Broadway, 12 th Floor
White Plains, NY 10601
Attn: Christine Konefal, Esq.

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. Reserved.

Section 8.10. Benefit of Assignees or Pledges.

The City agrees that this Agreement is executed in part to induce assignees or pledgees to provide financing for improvements by or on behalf of the Company within the District 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 Company's right, title and interest herein.

Section 8.11. Integration.

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

Section 8.12 Indemnification and Exchange Exculpation.

(a) The Company shall at its own expense defend, indemnify, and hold harmless the City, its officers, agents, and employees from and against any and all liability, claims, damages, penalties, losses, expenses, or judgments relating in any manner to, or arising out of the this Agreement or the Development Program only as it relates to this Agreement, except to the extent that such liability, claims, damages, penalties, losses, expenses, or result from any negligent act or omission of the City, its officers, agents, employees or servants. The Company shall, at its own cost and expense, defend any and all suits or actions, just or unjust which may be brought against the City upon any such above-mentioned matter, claim or claims, including claims of contractors, employees, laborers, materialmen, and suppliers. In cases in which the City is a party, the City shall have the right to participate at its own discretion and at its own expense and no such suit or action shall be settled without prior written consent of the City. Notwithstanding any other provision of this Agreement, this section shall survive any termination of this Agreement. Nothing in this Agreement does, nor is intended to, waive any defense, immunity or limitation of liability which may be available to the City or its respective officers, agents and employees, under the Maine Tort Claims Act or any other privileges and/or immunities provided by law.

(b) Notwithstanding anything to the contrary contained herein, Legal 1031 EAT Holdings, LLC ("Legal 1031") is acting as an exchange accommodation titleholder in connection with a like-kind exchange under IRC Section 1031 and Revenue Procedure 2000-37. As an accommodation party, Legal 1031 shall have no personal or corporate liability for the obligations of the Company hereunder and the City agrees not to look to Legal 1031 or Legal 1031's directors, officers, and employees, with respect to the Agreement or any covenant, stipulation, promise, indemnity, agreement or obligation contained herein. The City will not seek a money judgment against Legal 1031 or Legal 1031's directors, officers and employees and will not institute any separate action against Legal 1031 by reason of any default that may occur in the performance of any of the terms and conditions of the Agreement between the City and the Company. This provision on the part of the City shall not be construed in any way so as to effect or impair the City's rights hereunder as provided by law or construed in any way so as to limit or

restrict any of the rights or remedies of the City in any proceedings or other enforcement of this Agreement.

Section 8.13. 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 refer the dispute for resolution by one arbitrator mutually agreed to by the parties, and judgment on the award rendered by the arbitrator may be entered in any Maine state court having jurisdiction. Any such arbitration will take place in Gardiner, Maine or such other location as mutually agreed by the parties. The parties acknowledge that arbitration shall be the sole mechanism for dispute resolution under this Agreement. Provided however, that in the event the parties are unable to agree, within a reasonable period, on the selection of an arbitrator, either party may file suit to resolve the dispute in any court having jurisdiction within the State of Maine. This arbitration clause shall not bar the City's assessment or collection of property taxes in accord with law, including by judicial proceedings, including tax lien thereof.

Section 8.14. 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 the Company. Without limiting the foregoing, the City and the Company shall always be entitled to exercise all rights and remedies regarding assessment, collection and payment of taxes assessed on the Company 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 Company hereby covenant and agree that the assumptions, estimates, analysis and results set forth in the Development Program shall in no way (a) 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 the Company Property for purposes of ad valorem property taxation or (b) vary the terms of this Agreement even if the actual results differ substantially from the estimates, assumptions or analysis.

signature page follows

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

CITY OF GARDINER

Witness

By: Anne Davis, Acting City Manager
Authorized by City Council Vote on
May 26, 2021

AUG COMMERCE DISTR. LLC

Witness

By:
Its: