



**GARDINER CITY COUNCIL
AGENDA ITEM INFORMATION SHEET**



Meeting Date	07/19/2023	Department	Planning/Economic Dev
Agenda Item	4n. Approval of a Credit Enhancement Agreement extension for Johnson Hall		
Est. Cost	n/a		

Background Information

Johnson Hall established a credit enhancement agreement with the City in July 2018. In October 2021 an amendment was made to extend the agreement.

Due to construction delays in completing the building renovation, Johnson Hall is requesting to extend the timeline of their CEA by one year.

Mike Miclon from Johnson Hall will be present to discuss the request.

Requested Action	
City Manager and/or Finance Review	
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 _____

FIRST AMENDMENT TO
CREDIT ENHANCEMENT AGREEMENT

This First Amendment to the Credit Enhancement Agreement (hereinafter "Amendment") is hereby made effective as of October 30 2021, by and between **Johnson Hall Redevelopment, LLC** ("Johnson Hall"), a Maine limited liability company, and the **City of Gardiner** ("City" or "Gardiner"), a municipal corporation and body politic, (collectively the "Parties").

WHEREAS, the Parties entered into a Credit Enhancement Agreement dated July 12, 2018, ("Original CEA"); and

WHEREAS, the Original CEA contemplated, *inter alia*, the allocation of Developer Tax Increment Revenues according to a schedule as set forth in Section 2.2; and

WHEREAS, Johnson Hall has requested a reimbursement percentage of 100% for fiscal years 2021-2022 and 2022-2023; and

WHEREAS, the City Council of the City of Gardiner has considered and voted to approve Johnson Hall's request; and

WHEREAS, the Parties desire to enter into this Amendment to reflect the change to the Original CEA.

NOW THEREFORE, in consideration of the mutual conditions and covenants contained herein, intending to be legally bound, the Parties hereby agree as follows:

1. The Parties agree that except as herein set forth, all terms and conditions set forth in the Original CEA shall remain in effect, unchanged by this Amendment.
2. The Parties agree that the attached Section 2.2 with an updated schedule identified as Exhibit A shall replace by complete substitution Section 2.2 in the Original CEA.
3. This Amendment may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument. For purposes of this Amendment, a facsimile signature shall be deemed an original.

[Signatures appear on following page]

IN WITNESS WHEREOF, the Parties hereto have signed and sealed this Amendment by their duly authorized, undersigned representatives on the dates written below.

CITY OF GARDINER

10/20/2021
Date

By: Anne Davis
Name: Anne Davis
Title: Acting City Manager
Duly Authorized

JOHNSON HALL, INC.

10/28/2021
Date

By: Michael Miller
Name: Michael Miller
Title: Executive Director
Duly Authorized

EXHIBIT A – REPLACEMENT SECTION 2.2 TO ORIGINAL CEA

Section 2.2 Captured Assessed Value – Johnson Hall Portion.

In each Fiscal Year of the Reimbursement Term, the City shall retain one hundred percent (100%) of the Increased Assessed Value – Johnson Hall Portion as Captured Assessed Value – Johnson Hall Portion.

In each Fiscal Year of the Reimbursement Term (8 years total), the City shall reimburse Developer Tax Increment Revenues to the Developer according to the following schedule:

Fiscal Year (FY)	Developer Tax Increment Revenues (Reimbursement of Tax Increment Revenues – Johnson Hall Portion located in the TIF District – Johnson Hall Portion)
FY 2018-2019	100%
FY 2019-2020	100%
FY 2020-2021	100%
FY 2021-2022	100%
FY 2022-2023	100%
FY 2023-2024	<p align="center">100% of Developer Tax Increment Revenues represented by the portion of the Total Tax Payment that exceeds \$19,000</p> <p><i>Example A: If Developer's Total Tax Payment = \$15,000, then Developer receives \$0.00 in Developer Tax Increment Revenues</i></p> <p><i>Example B: If Developer's Total Tax Payment = \$21,000, then Developer receives \$2,000 in Developer Tax Increment Revenues</i></p>
FY 2024-2025	<p align="center">100% of Developer Tax Increment Revenues represented by the portion of the Total Tax Payment that exceeds \$19,000</p> <p><i>Example A: If Developer's Total Tax Payment = \$15,000, then Developer receives \$0.00 in Developer Tax Increment Revenues</i></p> <p><i>Example B: If Developer's Total Tax Payment = \$21,000, then Developer receives \$2,000 in Developer Tax Increment Revenues</i></p>
FY 2025-2026	<p align="center">100% of Developer Tax Increment Revenues represented by the portion of the Total Tax Payment that exceeds \$19,000</p> <p><i>Example A: If Developer's Total Tax Payment = \$15,000, then Developer receives \$0.00 in Developer Tax Increment Revenues</i></p> <p><i>Example B: If Developer's Total Tax Payment = \$21,000, then Developer receives \$2,000 in Developer Tax Increment Revenues</i></p>

Developer Tax Increment Revenues as set forth in the Schedule above shall be deposited into the Johnson Hall Project Cost Subaccount as detailed below. The City shall deposit the remaining portion of the Tax Increment Revenues – Johnson Hall Portion for each year of the Reimbursement Term into the City Project Cost Subaccount.

This Agreement shall terminate when the Reimbursement Term has expired.

CREDIT ENHANCEMENT AGREEMENT

THIS CREDIT ENHANCEMENT AGREEMENT dated 7/12, 2018, is hereby entered by and between the **City of Gardiner, Maine** [the "City"], a municipal body corporate and politic and a political subdivision of the State of Maine, and **Johnson Hall Redevelopment, LLC**, a Maine limited liability company [the "Developer"].

WITNESSETH THAT

WHEREAS, the City designated the Gardiner Downtown Municipal Development and Tax Increment Financing District [the "TIF District"] pursuant to Chapter 206 of Title 30-A of the Maine Revised Statutes, as amended, by vote of the City Council at a meeting duly called, noticed, and held on March 20, 2003 [the "City Council Meeting"]; and

WHEREAS, the City also adopted a development program and financial plan for the TIF District [the "Development Program"] at the City Council Meeting; and

WHEREAS, the Maine Department of Economic and Community Development ["DECD"] reviewed and accepted the original District and the original Development Program along with subsequent revisions to the District and Development Program; and

WHEREAS, the Development Program contemplates the execution and delivery of a credit enhancement agreement between the City and the Developer to be finally executed and approved by the City Council, which would relate to the portion of the TIF District utilized by the Developer, identified more specifically as Tax Map 34, Lot 110 [collectively, the "TIF District – Johnson Hall Portion"].

WHEREAS, the City and the Developer desire and intend that this Credit Enhancement Agreement constitute the credit enhancement agreement contemplated and described in the Development Program.

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

ARTICLE I. DEFINITIONS

Section 1.1 Definitions.

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

"Agreement" shall mean this Credit Enhancement Agreement, as may be amended by the parties from time to time.

"Captured Assessed Value – Johnson Hall Portion" shall mean the amount of Increased Assessed Value – Johnson Hall Portion (hereinafter defined) retained in the TIF District – Johnson Hall Portion in each Fiscal Year (hereinafter defined) during the term of this Agreement, as determined in accordance with Section 2.2 hereof.

"City" shall have the meaning given such term in the recitals, together with its successors and assigns.

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

"City Project Cost Subaccount" shall mean a subaccount within the Project Cost Account associated with the Project (hereinafter defined), charged with funding or reimbursing the City portion of the Development Program, not including the Developer's Project (hereinafter defined).

"Current Assessed Value – Johnson Hall Portion" shall mean the then-current assessed value of the taxable real and personal property in the TIF District – Johnson Hall Portion as determined by the City's Assessor as of April 1 of each Tax Year (hereinafter defined) during the term of this Agreement.

"DECD" shall have the meaning given such term in the recitals, together with its successors and assigns.

"Developer" shall have the meaning given such term in the recitals, together with its successors and assigns.

"Developer Tax Increment Revenues" shall mean in each Fiscal Year the amount of Tax Increment Revenues – Johnson Hall Portion (hereinafter defined) due to Developer as provided in Section 2.2 hereof.

"Development Program" shall have the meaning given such term in the recitals.

"Development Program Fund" shall mean the account described in Article IV of the Development Program and established and maintained pursuant to the Development Program and Article II hereof.

"Financial Plan" shall mean the financial plan described in the Development Program.

"Fiscal Year" shall mean July 1 to June 30 or such other fiscal year as may be adopted by the City.

"Increased Assessed Value – Johnson Hall Portion" shall mean, for each Fiscal Year during the term of this Agreement, the amount by which the Current Assessed Value – Johnson Hall Portion for such year exceeds the Original Assessed Value – Johnson Hall Portion (hereinafter defined).

"Johnson Hall Project Cost Subaccount" shall mean a subaccount within the Project Cost Account (hereinafter defined) charged with funding or reimbursing a portion of the Developer's qualified Project Costs (hereinafter defined).

"Original Assessed Value", shall mean the assessed value stated in the City's Development Program or associated materials for the TIF District – Johnson Hall Portion.

"Project" shall mean the Developer's project to redevelop Johnson Hall contemplated under this Agreement.

"Project Cost Account" shall mean the Project Cost Account described in Title 30-A M.R.S. §5227(3), consistent with Article IV of the Development Program and established and maintained pursuant to Article II hereof.

"Project Costs" shall have the meaning given such term in Title 30-A M.R.S. Chapter 206 as applied to those Project Costs paid or incurred by the Developer for the Project.

"Reimbursement Term" shall mean an eight (8) year period commencing with the City's 2018-2019 Fiscal Year.

"Tax Increment Revenues – Johnson Hall Portion" shall mean that portion of property taxes (or estimated property taxes) paid by the Developer and attributable to Captured Assessed Value – Johnson Hall Portion which is to be allocated to the Developer and the City in accordance with the Development Program and this Agreement.

"Tax Payment Date" shall mean the date(s) on which any installment of property taxes assessed by the City are paid to the City in immediately available funds.

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

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

"TIF District – Johnson Hall Portion" shall have the meaning given such term in the recitals.

"Total Tax Payment" shall mean the total annual taxes due from the original assessed value and increased assessed value of the TIF District – Johnson Hall Portion.

Section 1.2 Interpretation and Construction.

In this Agreement, unless the context otherwise requires:

- (a) The terms "hereby," "hereof," "hereto," "herein," "hereunder" and any similar terms, as used in this Agreement, refer to this Agreement, and the term "hereafter" means after, and the term "heretofore" means before, the date of delivery of this Agreement.
- (b) Words importing a particular gender mean and include correlative words of every other gender and words importing the singular number mean and include the plural number and vice versa.
- (c) Words importing persons mean and include firms, associations, partnerships (including limited partnerships), trusts, corporations and other legal entities, including public or governmental bodies, as well as any natural persons.
- (d) Any headings preceding the texts of the several Articles and Sections of this Agreement, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.
- (e) All notices to be given hereunder shall be given in writing and, unless a certain number of days is specified, within a reasonable time.

ARTICLE II. DEVELOPMENT PROGRAM FUND AND FUNDING REQUIREMENTS

Section 2.1 Creation of Development Program Fund.

The City hereby confirms the creation and establishment of a fund in the name of the City pursuant to, and in accordance with the terms and conditions of, the Development Program, namely, the Development Program Fund. The Project Cost Account within the Development Program Fund shall be wholly dedicated to the City's approved projects or for reimbursement to the Developer as set forth in this Agreement for approved projects. Within the Project Cost Account, the City shall create the "Johnson Hall Project Cost Subaccount" and the "City Project Cost Subaccount."

Section 2.2 Captured Assessed Value – Johnson Hall Portion.

In each Fiscal Year of the Reimbursement Term, the City shall retain one hundred percent (100%) of the Increased Assessed Value – Johnson Hall Portion as Captured Assessed Value – Johnson Hall Portion.

In each Fiscal Year of the Reimbursement Term (8 years total), the City shall reimburse Developer Tax Increment Revenues to the Developer according to the following schedule:

Fiscal Year (FY)	Developer Tax Increment Revenues (Reimbursement of Tax Increment Revenues – Johnson Hall Portion located in the TIF District – Johnson Hall Portion)
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FY 2020-2021	100%
FY 2021-2022	100% of Developer Tax Increment Revenues represented by the portion of the Total Tax Payment that exceeds \$19,000 <i>Example A: If Developer's Total Tax Payment = \$15,000, then Developer receives \$0.00 in Developer Tax Increment Revenues</i> <i>Example B: If Developer's Total Tax Payment = \$21,000, then Developer receives \$2,000 in Developer Tax Increment Revenues</i>
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Developer Tax Increment Revenues as set forth in the Schedule above shall be deposited into the Johnson Hall Project Cost Subaccount as detailed below. The City shall deposit the remaining portion of the Tax Increment Revenues – Johnson Hall Portion for each year of the Reimbursement Term into the City Project Cost Subaccount.

This Agreement shall terminate when the Reimbursement Term has expired.

Section 2.3 Property Tax Estimate; Deposits into Project Cost Account.

(a) During the term of this Agreement, the City shall promptly deposit funds into the Johnson Hall Project Cost Subaccount upon receipt of property taxes or estimated property taxes (or each installment thereof, whether monthly or otherwise) paid to the City with respect to the Current Assessed Value – Johnson Hall Portion, and in no event more than fifteen (15) days following such payment by the Developer in immediately available funds, an amount equal to that portion of the payment that constitutes or will constitute Developer Tax Increment Revenues.

(b) The tax payments from the Developer to the City shall be paid by the Developer in immediately available funds directly to the City in the manner provided hereinabove.

(c) If, with respect to any Tax Payment Date, the Developer fails to pay any portion of the property taxes assessed on property in the TIF District – Johnson Hall Portion, because of a valuation dispute or otherwise, the property taxes actually paid shall, first, be applied to taxes due on account of Original Assessed Value – Johnson Hall Portion of the property located in the TIF District – Johnson Hall Portion, and, second, shall constitute payment of Property Taxes with respect to the Increased Assessed Value – Johnson Hall Portion reserved for the City Project Cost Subaccount, and, third and finally, shall constitute payment of Property Taxes with respect to the Captured Assessed Value – Johnson Hall Portion located in the TIF District - Johnson Hall Portion to be reimbursed to the Developer in accordance with this Agreement.

Section 2.4 Use of Certain Monies in Project Cost Account; Developer Subaccount.

Except as the parties may otherwise agree in a writing signed by both parties, monies deposited in the Johnson Hall Project Cost Subaccount shall be used and applied exclusively to fund the payment obligations to the Developer described in Article III hereof.

Section 2.5 Monies Held in Trust.

Except as the parties may otherwise agree in a writing signed by both parties, all monies actually paid into the Project Cost Account under the provisions hereof and the provisions of the Development Program shall be held by the City, in trust, for the benefit of the Developer in accordance with the terms and conditions of this Agreement.

ARTICLE III. PAYMENT OBLIGATIONS

Section 3.1 Credit Enhancement Payments.

Within thirty (30) business days following payment of taxes assessed against the taxable real and personal property in the TIF District – Johnson Hall Portion, the City shall pay to the Developer in immediately available funds all amounts then on deposit in the Johnson Hall Project Cost Subaccount.

All payments made by the City to the Developer hereunder shall be used to pay directly or to reimburse the Developer for payment of qualified Project Costs.

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, the item or installment so unpaid shall continue as a limited obligation of the City, under the terms and conditions hereinafter set forth, until the amount unpaid shall have been fully paid. The Developer 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 deposit Developer Tax Increment Revenues to the Project Cost Account and its obligation to make payment out of the Project Cost Account to the Developer.

Section 3.3 Manner of Payments.

The payments provided for in this Article III shall be paid in immediately available funds directly to the Developer in the manner provided hereinabove for its Project Costs.

Section 3.4 Obligations Unconditional.

Except as otherwise expressly provided in this Agreement or in another writing signed by both parties, the obligations of the City to make the payments described in this Agreement in accordance with the terms hereof shall be absolute and unconditional irrespective of any defense or any rights of setoff, recoupment or counterclaim it might otherwise have against the Developer. Except as otherwise expressly provided in this Agreement or in another writing signed by both parties, the City shall not suspend or discontinue any such payment or terminate this Agreement for any cause, including without limitation, any acts or circumstances that may constitute failure of consideration or frustration of purpose or any damage to or destruction of the Project or any change in the tax or other laws of the United States, the State of Maine or any political subdivision of either thereof, or any failure of the Developer to perform and observe any agreement or covenant, whether expressed or implied, or any duty, liability or obligation arising out of or connected with this Agreement.

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 and any earnings thereon, pledged there for under this Agreement. The City's obligations hereunder shall not constitute a general debt or a general obligation on the part of the City or a 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 the Developer Tax Increment Revenues received by the City, and any earnings thereon. This Agreement shall not directly or indirectly or contingently obligate the City, the State of Maine, or any other municipality or political subdivision to levy or to pledge any form of taxation whatever therefore or to make any appropriation for their payment, excepting the City's

obligation to assess property taxes upon the TIF District and to appropriate the Developer Tax Increment Revenues, and earnings thereon, pledged under this Agreement.

ARTICLE IV. PLEDGE AND SECURITY INTEREST

Section 4.1 Pledge of the 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 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, the City does hereby pledge to the Developer the Johnson Hall Project Cost Subaccount described in Section 2.1 hereof and all sums of money and other securities and investments therein.

Section 4.2 Perfection of Interest.

The City shall cooperate with the Developer and take such steps as may be necessary from time to time 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.

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, materially disadvantage the City, or materially change this Agreement; provided further that the Developer reimburse the City for any reasonable expenses and costs, including attorneys' fees, incurred in connection with the execution and delivery of such further instruments or taking such further action pursuant to this Section 4.3.

Section 4.4 Liens.

The City shall not create any liens, encumbrances or other interests of any nature whatsoever, nor shall it hypothecate the Project Cost Account or any funds therein or revenues resulting from investment of funds therein, other than those interests created in favor of the Developer hereunder; provided, however, nothing herein shall prohibit creation of real and personal property tax liens on the Developer's property in accordance with, and entitled to the priority provided under, Maine law.

Section 4.5 Access to Books and Records.

All books, records and documents in the possession of the City relating to the administration of the TIF District, the Development Program or the Agreement and the monies, revenues and receipts on deposit or required to be deposited into the Project Cost Account 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 make deposits into the Project Cost Account as and when due;
- (c) Any failure by the City or the Developer to observe and perform in all material respects any other respective covenant, condition, agreement or provision contained herein on the part of the City or the Developer respectively 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 shall appoint a conservator or receiver or liquidator for the City, or if any insolvency, readjustment of debt, marshaling of assets and liabilities or similar proceedings for the winding up or liquidation of the City's affairs shall have been entered against the City or if the City shall have consented to the appointment of a conservator or receiver or liquidator in any such proceedings of or relating to the City or of or relating to all or substantially all of its property, including without limitation the filing of a voluntary petition in bankruptcy by the City or the failure by the City to have a petition in bankruptcy dismissed within a period of ninety (90) consecutive days following its filing or in the event an order for release has been entered under the U.S. Bankruptcy Code, 11 U.S.C. § 101 et seq., with respect to the City.

Section 5.2 Remedies on Default.

Whenever any Event of Default referred to in Section 5.1 hereof shall have occurred and be continuing for a period of fifteen (15) days after the defaulting party's receipt from the non-defaulting party of written notice of such Event of Default, the non-defaulting party may (a) specifically enforce the performance or observance of any obligations, agreements or covenants of the defaulting party under this Agreement and any documents, instruments and agreements contemplated hereby or to enforce any rights or remedies available hereunder or (b) suspend its performance under this Agreement for so long as the Event of Default continues or remains uncured.

Section 5.3 Remedies Cumulative.

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

Notwithstanding the application of any other provision hereof, in the event the City or the Developer 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 Developer 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.

Section 5.5 Tax Laws.

The parties acknowledge that all laws of the State of Maine 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 shall always be entitled to exercise all rights and remedies regarding assessment, collection and payment of taxes assessed on Developer's property.

ARTICLE VI. TERM

Section 6.1 Term; Reimbursement Term.

The Developer is entitled to receive Developer Tax Increment Revenues for the Reimbursement Term, as defined in Section 1.1 herein.

Section 6.2 Expiration of Reimbursement Term.

Upon the expiration of the Reimbursement Term, or the earlier termination of this Agreement, and following full payment of all amounts due and owing to the Developer hereunder or provision for payment thereof, 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. No such expiration or termination shall affect any rights or obligations then outstanding.

ARTICLE VII. ASSIGNMENT AND PLEDGE OF DEVELOPER'S INTEREST

The City hereby acknowledges that the Developer may from time to time pledge and assign its right, title and interest in, to and under this Agreement as collateral for financing, although no obligation is hereby imposed on the Developer to make such assignment or pledge. Recognizing this possibility, the City does hereby consent and agree 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, 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.

Except as provided above, the Developer shall not transfer or assign any portion of its rights in, to and under this Agreement without the consent of the City, which consent shall not be unreasonably withheld.

ARTICLE VIII. MISCELLANEOUS

Section 8.1 Successors.

In the event of the dissolution of the City, 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.

In the event of the dissolution of 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.

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; provided, however, that if the payment obligations of the City to the Developer hereunder are held by a final and binding proceeding to be illegal or invalid, this Agreement shall terminate. In such event all obligations of the parties shall terminate, and no party shall have any further liability to the other hereunder.

Section 8.3 Severability.

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

Section 8.4 No Personal Liability of Officials of the City.

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

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 in all respects.

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 when mailed by first class mail, postage prepaid, addressed as follows:


If to the City:

City Manager
City of Gardiner
6 Church Street
Gardiner, Maine 04345
Telephone: (207) 582-4200
Facsimile: (207) 582-6895

With a copy, which shall not constitute notice, to:

Jonathan A. Pottle, Esq.
Eaton Peabody
80 Exchange Street
P. O. Box 1210
Bangor, Maine 04402-1210
Telephone: (207) 947-0111
Facsimile: (207) 942-3040

If to the Developer:



Johnson Hall Redevelopment, LLC

Telephone: 582-7144
Facsimile: _____

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.

Neither this Agreement nor the Development Program may be amended without the express written consent of all 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 pledges to provide financing for the 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.

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 Authority for Agreement and Development Program.

The Developer and the City waive any right which either may have to contest, and shall not take any action to challenge, the other's authority to enter into, perform or enforce the Agreement or to carry out the Development Program or the validity or enforceability of this Agreement, the TIF District or the Development Program. The City and the Developer shall each utilize their respective best efforts to uphold the TIF District, the Development Program, this Agreement and the City's authority to enter into this Agreement and the validity and enforceability of the TIF District, the Development Program and this Agreement, including without limitation opposing, to the extent permitted by law, any litigation or proceeding challenging such authority, validity or enforceability. The City and the Developer both covenant and agree that the assumptions, analyses and results set forth in this Agreement shall in no way prejudice the rights of either party or be used, in any way, by either party in either presenting evidence or making argument in any dispute which may arise in connection with valuation of the Project.

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.

WITNESS:

CITY OF GARDINER

Kelly J. Goodrup

By: *Anne Davis*
Anne Davis, Interim City Manager

WITNESS:

**JOHNSON HALL
REDEVELOPMENT, LLC**

Kelly J. Goodrup

By: *[Signature]*
Its: *Executive / Artistic Director*

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