

019-A-014001

India Fore street, Portland, Maine

Amendment to Plan - Riverwalk LLC.

Drew Swenson, Riverwalk, LLC

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

Section 9.8. Amendments.

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

Section 9.9. Net Agreement.

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

Section 9.10. Integration.

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

Section 9.11. Indemnification.

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

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

Section 9.12. Waiver of Recapture if Agreement Found Void.

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

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

WITNESS

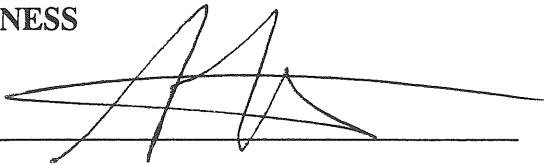


CITY OF PORTLAND, MAINE

By: 

Its City Manager

WITNESS



RIVERWALK, LLC

By: 

Its Authorized Officer /MANAGER

EXHIBIT B

Request for Payment

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

RIVERWALK, LLC

Date: _____

By: _____

Its

Contract/Credit Enhancement Agreement – Riverwalk (DMK first draft) 4-12-05



PORTLAND MAINE

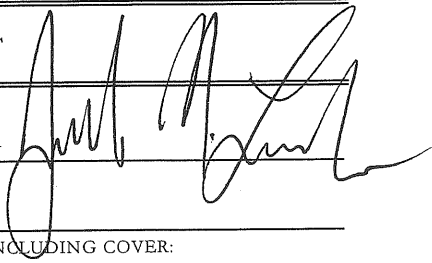
Strengthening a Remarkable City, Building a Community for Life • www.portlandmaine.gov

Planning and Development Department
Lee D. Urban, Director

Economic Development Division
John N. Lufkin, Director

FACSIMILE TRANSMITTAL SHEET

TO: Mr. Jim Nimon

FROM: John N. Lufkin 

COMPANY: DECD

DATE: 9/13/2005

FAX NUMBER: (207) 287-5701

TOTAL NO. OF PAGES INCLUDING COVER: 4

PHONE NUMBER: (207) 624-9800

SENDER'S PHONE NUMBER: 207-874-8945

RE: TIF Cover Page

YOUR REFERENCE NUMBER:

URGENT

FOR REVIEW

PLEASE COMMENT

PLEASE REPLY

PLEASE RECYCLE

NOTES/COMMENTS:

Here is the completed cover page. Feel free to call with questions.

Thanks,
Jack Lufkin.

MUNICIPAL TAX INCREMENT FINANCING

APPLICATION COVER SHEET

A. General Information

1. *Municipality Name:* City of Portland
2. *Address:* 389 Congress Street, Portland, ME 04101
3. *Telephone:* 207-874-8683 *Fax:* 207-756-8217 *Email:* jnl@portlandmaine.gov
4. *Project Contact Person:* Jack Lufkin *Date:* 9-13-05

5. *Business Name:* Riverwalk, LLC
6. *Address:* 2 Market Street, Suite 500, Portland ME 04101
7. *Telephone:* 207-775-2464 *Fax:* 207-775-2465
Email: Drew Swenson - dswenson@swensonandco.com
8. *Principal Place of Business:*
Offices: 2 Market Street, Suite 500, Portland ME 04101
Parking Structure: 155 Fore Street, Portland ME 04101
9. *Company Structure (e.g. corporation, sub-chapter S, etc.):*
Maine Limited Liability Company
10. *Place of Incorporation:*
Maine
11. *Names of Officers:*
Drew E. Swenson, Manager
12. *Principal Owner(s) Name and Address:*
Drew E. Swenson, 2 Market Street, Suite 500, Portland ME 04101
Fred M Forsley, 86 Newbury Street, Portland ME 04101
13. *Project Contact Person:* Drew E. Swenson – contact information per above

B. Disclosure (attach separate sheets if necessary)

14. Check the public purpose (any that apply) that will be served by the business through the use of the TIF incentive:
 job creation job retention capital investment training investment
 tax base improvement public facilities improvement other: Creation of a needed structured parking serves as a catalyst for further area job creation, capital investment, tax base improvement and public facilities improvement
15. Check the specific use (any that apply) to which the TIF revenues will be put:
 real estate purchase machinery & equipment purchase training costs
 debt reduction
 other: _____
16. List the company's goals for the number, type and wage levels of jobs to be created or retained as a result of the TIF revenues received (*please use next page*).

17. Does the business anticipate receiving more than \$10,000 in TIF revenues in any calendar year during the term of the TIF development program? Yes No (If so, please become familiar with annual reporting requirements).

EMPLOYMENT GOALS

Company Goals for Job Creation and Job Retention (from question 16, page 1)

<i>A. Job Creation Goals</i>			
<i>Occupational Cluster*</i>	<i>Full-time</i>	<i>Part-time</i>	<i>Wage Level</i>
1. Executive, Professional & Technical	10		\$50,000
2. Administrative Support, inc. Clerical	30	20	\$30,000
3. Sales & Service-Retail, Spa, Restaurant	40	40	\$29,000
4. Agriculture, Forestry & Fishing	0	0	\$
5. Maintenance, Construction , Production, & Transp. @100 per \$1MM (Temporary During Construction)	500	150	\$40,000
<i>B. Job Retention Goals</i>			
<i>Occupational Cluster*</i>	<i>Full-time</i>	<i>Part-time</i>	<i>Wage Level</i>
1. Executive, Professional & Technical			\$
2. Administrative Support, inc. Clerical			\$
3. Sales & Service			\$
4. Agriculture, Forestry & Fishing			\$
5. Maintenance, Construction, Production, & Transportation			\$
<i>*Please use the Occupational Cluster descriptions on the next page to complete this form.</i>			

INSTRUCTIONS

A. Job Creation Goals. Please list the number, type and wage level of jobs created as a result of the economic development incentive. NOTE: For this form, "full-time" employment means 30 hours or more; "part-time" employment means less than 30 hours. "Wage level" means the average annual wage paid for jobs created within an occupational cluster, e.g. either their annual salary, or their hourly wage times their annual hours. Also, "type" means "occupational cluster" which refers to the 5 categories defined on page 3, below. Please include the number of your employees (both full-time and part-time) working within the category that most closely reflects their job duties.

B. Job Retention Goals. Please list the number, type and wage level of jobs retained as a result of the economic development incentive. Part B should be completed using same definitions in Part A.

OCCUPATIONAL CLUSTERS

(for use in completing Parts A & B above)

1. EXECUTIVE, PROFESSIONAL & TECHNICAL

Executive, administrative and managerial. Workers in executive, administrative and managerial occupations establish policies, make plans, determine staffing requirements, and direct the activities of businesses and other organizations. Workers in management support occupations, such as accountant and auditor or underwriter, provide technical assistance to managers.

Professional specialty. This group includes engineers; architects and surveyors; computer, mathematical, and operations research occupations; life, physical, and social scientists; lawyers and judges; social, recreational, and religious workers; teachers, librarians, and counselors; health diagnosing, assessment, and treating occupations; and communications, visual arts, and performing arts occupations.

Technicians and related support. This group includes health technologists and technicians, engineering and science technicians, computer programmers, tool programmers, aircraft pilots, air traffic controllers, paralegals, broadcast technicians, and library technicians.

2. ADMINISTRATIVE SUPPORT, INCLUDING CLERICAL

Administrative support, including clerical. Workers in this group prepare and record memos, letters and reports; collect accounts; gather and distribute information; operate office machines; and handle other administrative tasks.

3. SALES AND SERVICE

Marketing and sales. Workers in this group sell goods and services, purchase commodities and property for resale, and stimulate consumer interest.

Service. This group includes a wide range of workers in protective, food and beverage preparation, health, personal, private household, and cleaning and building services.

4. AGRICULTURE, FORESTRY AND FISHING

Agriculture, forestry and fishing. Workers in these occupations cultivate plants, breed and raise animals, and catch fish.

5. MAINTENANCE, CONSTRUCTION, PRODUCTION AND TRANSPORTATION

Mechanics, installers, and repairers. Workers in this group adjust, maintain, and repair automobiles, industrial equipment, computers, and many other types of machinery.

Construction trades and extractive. Workers in this group construct, alter, and maintain buildings and other structures or operate drilling and mining equipment.

Production. These workers set up, adjust, operate, and tend machinery and/or use hand tools and hand-held power tools to make goods and assemble products.

Transportation and material moving. Workers in this group operate the equipment used to move people and materials. This group also includes handlers, equipment cleaners, helpers, and laborers who assist skilled workers and perform routine tasks.

City of Portland

Riverwalk Development Tax Increment Financing Program Application

Prepared by:

The City of Portland Economic Development Division
April 29, 2005

TABLE OF CONTENTS

SECTION	PAGE
I. Introduction	1
II. Development Program Narrative	2
A. The Project	2
B. The Development District	3
C. The Development Program	3
D. Municipal Use of TIF Revenues	3
E. Operational Components	4
1. Uses of Private Property	4
2. Environmental Controls	4
3. Plan of Operation	4
III. Physical Description	4
IV. Financial Plan	5
A. Costs and Sources of Revenues	5
B. Development Program Fund	6
C. Financing Plan	6
V. Financial Data	7
VI. Tax Shifts	7
VII. Municipal Approvals	8

“Riverwalk Development and Tax Increment Financing District”

**A PROPOSAL TO CREATE A MUNICIPAL DEVELOPMENT
TAX INCREMENT FINANCING DISTRICT**

I. Introduction

One extremely important component of the Eastern Waterfront Master Plan, which was called for in the Mayoral Taskforce report entitled “Investing in Our Working Waterfront – Final Report of the Mayor’s Waterfront Task Force on Economic Development”, dated October 2000, is the need to promote structured parking facilities as opposed to surface lots that waste valuable urban waterfront property.

In November of 2003, the City of Portland solicited development proposals for 1.06 acres of City land situated on what will be the corner of the extensions of Hancock and Commercial Streets. The RFP required the construction of a minimum 600 space parking facility so that additional development along the Eastern Waterfront could continue without burdening projects with the high cost of providing structured parking solutions. Since it was recognized that the 600 space minimum requirement exceeded market demand, the City understood that a financial subsidy would likely be requested in order to justify the large capital cost. In fact, all four development proposals received included a request for Tax Increment Financing.

After a thorough review process, the Community Development Committee of the Portland City Council selected the development proposal offered by Riverwalk, LLC, which owns property directly across from the subject City land. The project was selected due to a combination of factors including the size of the proposed facility, the fact that the garage was going to be situated on Riverwalk property that is further back from the valuable waterfront land, the aggressive development of both housing and commercial space on the City land, and the total projected financial return to the City.

Through a partnership with Riverwalk, LLC, the City of Portland has an opportunity to realize the following:

- \$68,000,000 in additional taxable value added to City
- Full build-out development of approximately
 - 33,000 sq. ft. of ground floor retail development;
 - as many as 110 densely developed condominiums units;
 - a 50 room luxury boutique hotel; and
 - 20,000 of new, class A office space
- Development of an approximately 750 space parking facility that will:
 - be a major catalyst for continued development of the Eastern Portland peninsula
 - ease an existing parking deficit for Portland’s island residents and waterfront business operations
 - provide parking for the Ocean Gateway passenger facility and the tenants of the Portland Ocean Terminal operations

- Remove the barrier of the high cost of the development of a parking facility for new buildings to be built along the eastern waterfront.
- Significant improvements to road infrastructure including the build-out of the City street grid envisioned in the Eastern Waterfront Master Plan
- Development of pedestrian friendly streets with full brick sidewalks, quality lighting, street trees and tree wells
- Extension of utilities throughout the area, thereby facilitating continued development
- A revenue stream that will fund the local share of the Ocean Gateway project, as well as a host of other related economic development improvements

II. Development Program

A. *The Project*

With the incorporation of the Eastern Waterfront Master Plan into the Portland Comprehensive Plan, the City Council formally recognized the unique characteristics of the waterfront, including the stewardship of scarce land. An element of that stewardship is managing the parking demands of development through structured parking solutions. The Waterfront Master Plan imagined the need for as many as five parking garages to be constructed on the eastern waterfront of the Portland peninsula, containing an estimated 3,000 spaces. By accommodating parking demands in this fashion, the finite peninsula land is not taken up by sprawling surface lots. Structured parking will allow land for commercial development where appropriate and will reserve land on the ocean's edge for the water dependant uses.

In order to facilitate the development of the eastern waterfront, Riverwalk, LLC proposes to construct the approximately 750 space Longfellow Garage. Due to the high cost of parking garage construction and operation in advance of conditions that would warrant its development from market forces alone, the City and Riverwalk, LLC seek to enter into an economic partnership through the creation of a Tax Increment Financing ("TIF") district to be known as the Riverwalk Development and Tax Increment Financing District (the "District" or "TIF District"), which will include a Credit Enhancement Agreement between the City and Riverwalk, LLC. The incremental value from the entire project will be captured and a portion of the incremental tax revenues generated will be allocated back to Riverwalk, LLC over a period of thirteen (13) years in order to subsidize the cost of the garage until market conditions alone can support its operation.

The City will allocate a portion of its incremental share of the tax revenues to infrastructure improvements in the area, including the construction of new City streets complete with brick sidewalks, granite curbing, street trees with tree wells and full service of underground utilities to facilitate additional growth while maintaining the enjoyable quality of a pedestrian friendly district. In addition, the City will also allocate revenue towards the local share of funding the Ocean gateway project, and will undertake other economic development activities that will improve this area for

future development opportunities. At the conclusion of the TIF and Credit Enhancement Agreement, the City of Portland will benefit from additional tax revenue, the provision of new housing in Portland and job creation opportunities from additional nearby growth and development made possible due to the increase in structured parking availability.

B. The Development District

The following properties comprise the TIF District designation and are the subject of this application. (See Exhibit B-2)

MAP	BLOCK	LOT
19	A	001
19	A	014
20	C	009*
20	C	023

* Only a portion of this property will be included in the TIF District. This property will be divided as a result of this project with the acquisition of the property needed for the extension of Hancock Street. It is anticipated that a new Map, Block and Lot identifier will be given to the new property within the TIF District.

The captured value will be calculated on only the new tax value generated within the TIF District and will not affect the current property tax base.

C. The Development Program

The City of Portland, by designating the Longfellow Garage TIF District, will capture on average over the life of the TIF, 100% of the new assessed value created within the District over the original assessed value, and retain from the district the new tax revenues generated from the captured assessed value. A portion of these revenues will be allocated based upon the terms of the Credit Enhancement Agreement with Riverwalk, LLC for the sole, express purpose of offsetting the costs associated with the construction and operation of the Longfellow Garage. (See Exhibit C)

D. Municipal Use of TIF Revenues

The City of Portland will utilize the remaining tax revenues generated from the TIF District, over and above what is allocated through the Credit Enhancement Agreement, for activities that will enhance economic development opportunities in the area. The Eastern Waterfront Master Plan delineated the development of a new street grid. The City will retain its share of the captured tax revenue to build out the streets envisioned in that plan, such as extensions of Hancock Street, Mountfort Street, Commercial Street and the construction of a new street to the east of Mountfort Street. Further improvements to Franklin Arterial are also contemplated as

a result of the increased development and a portion of the incremental revenues might be allocated as a match for the funding of those improvements as well.

In addition to the infrastructure improvements described above, the City will also allocate the incremental tax revenues generated from this District toward the local share of the costs of the Ocean Gateway project. With those costs escalating, the City will look to the new revenue generated from this development to fund its share so as to avoid burdening the taxpayers further through an increased municipal assessment.

To the extent that incremental revenues remain after satisfying the obligations above, those revenues would be added to the funds generated from the 2002 Waterfront Tax Increment Financing District in support of the activities approved as part of that Development Program. Approved uses include the capitalization of a marine focused loan fund, dredging along the wharves to create deep water commercial berthing opportunities, and to support pier repair projects. As is the case with the funds generated through the 2002 Waterfront TIF, the City would utilize the Waterfront Economic Development Advisory Committee to guide funding priority decisions among the approved uses described in that development program.

E. Operational Components

1. Uses of Private Property

The Credit Enhancement Agreement will allow for the development of Longfellow Garage on private property controlled by Riverwalk, LLC.

2. Environmental Controls

The Development Program proposes improvements that will comply with all federal, state and local rules and regulations and applicable land use requirements.

3. Plan of Operation

The Longfellow Garage will be owned by Riverwalk, LLC, its successors or assigns, who will be responsible for payment of all maintenance expenses, insurance and taxes on the project.

During the life of the Tax Increment Financing District, the City of Portland, City Council, or its designee, will be responsible for the administration of the District. Riverwalk, LLC will be solely responsible for completion of the project.

III. Physical Description

A. Total acreage of the municipality: 12,386 acres

B. Total acreage proposed for tax increment financing district: 3.68 acres

- C. Percent of line B of line A (line B divided by line A cannot exceed 2%): 0.03%
- D. Total acreage of all existing and proposed TIF Districts in the municipality: 88.9 acres
- E. Percent line D of line A (cannot exceed 5%): 0.717%
- F. Not less than 25%, by area, of the real property within a development district shall meet at least one of the following criteria:
 - 1. Blighted acres N/A. Line F1 divided by line B = _____.
 - 2. Acreage in need of rehabilitation, redevelopment or conservation N/A. Line F2 divided by line B = _____.
 - 3. Acreage suitable for commercial siting = 3.68. Line F3 divided by line B = 100%.
- G. Enclosed municipal maps:
 - 1. Area map showing site location of the TIF District in relation to geographic location of municipality (Exhibit B-1)
 - 2. Site map showing TIF District (Exhibit B-2)

IV. Financial Plan

A. *Costs and Sources of Revenues*

The TIF District comprises an area of approximately 3.68 acres of taxable real and personal property with an original assessed value of \$1,085,550 as of March 31, 2005. The development within the District is estimated to add an additional \$68,000,000 of new assessed real and personal property taxable value to the City.

The Development Program provides for the new tax revenues generated by the increase in assessed value of the District to be captured and designated as TIF Revenues. The City will allocate the retained revenues to the economic development activities described in the Development Program.

Activity	TIF Proceeds	Riverwalk, LLC	Total
Land Acquisition		\$1,350,000	\$1,350,000
Building Acquisition		\$1,250,000	\$1,250,000
Reloc. of Persons/Businesses		0	0
Clearance and Demolition		\$250,000	\$250,000
Street/Site Improvements	\$2,500,000	\$250,000	\$2,750,000
Water/Sewer Improvements	\$750,000	\$1,200,000	\$1,950,000
Building Construction	\$3,000,000	\$38,673,366	\$41,673,366
Building Renovation		0	0
Parking Facilities	\$5,007,633	\$8,000,000	\$13,007,633
Capital Equipment		0	0
Professional Fees		\$3,000,000	\$3,000,000
Administrative Costs		0	0
Discretionary Payments		0	0
Other Costs (inc. financing)	\$2,720,140	\$3,000,000	\$5,720,140
TOTAL	\$13,977,773	\$56,973,366	\$70,951,139

The attached Exhibit A details the projections based upon the anticipated assessed value increases within the District. Exhibit A is a projection based upon best available information and is included for demonstration purposes only. No assurances are provided as to the results reflected therein.

B. Development Program Fund

This Development Program requires establishment of the Riverwalk Development Program Fund pledged to, and charged with, the payment of the project costs in the manner outlined in 30-A M.R.S.A. § 5227(3).

The Riverwalk Development Program Fund is established consisting of a Project Cost Account, which includes two sub-accounts designated as the "Company TIF Account" and "City TIF Account" pledged to, and charged with, payment of eligible project costs.

C. Financing Plan

The TIF Districts comprise an area of approximately 3.68 acres of taxable real and personal property. The value of the real and personal property within the district as of March 31, 2005 is established as the original assessed value.

The developments within the described TIF District will add approximately \$68 million of new taxable real and personal property value in the City of Portland. TIF revenues will be allocated generally as described on Exhibit A to finance the costs of the Longfellow Garage. Actual payments to the Project Cost Account and the City

Cost Account will be determined based upon the actual incremental assessed value retained within the District and by the terms of the Credit Enhancement Agreement.

V. Financial Data

- A. Total 2005 value of equalized property in the municipality: \$4,798,647,310.
- B. Original assessed value of all properties in all existing and proposed TIF districts:

Existing	\$22,569,650
Proposed	<u>\$1,085,550</u>
Total	\$23,655,200

Line B divided by line A = 0.49% (cannot exceed 5%).

- C. Estimate of increased assessed value by year after implementation of the development program: See Exhibit A
- D. Percentage of increased assessed value to be applied to the development program fund: See Exhibit A
- E. Estimated annual tax increment: \$1,075,213 (Average)
- F. Total average annual value of development program fund: \$1,075,213 (Average)
- G. Annual principal and interest payment of bonded indebtedness: N/A
- H. Financial assumptions and safeguards: Under the Credit Enhancement Agreement, the City's payment obligation exists only insofar as new tax revenues are generated from new development within the TIF District. The City will pay an annual amount to Riverwalk, LLC only insofar as new tax revenues from the increase in valuation are generated within the TIF District over the base valuation of the District.
- I. Statement of impact of TIF on taxing jurisdictions within the county: See Exhibit A

VI. Tax Shifts

In accordance with Maine statutes governing the establishment of Tax Increment Financing Districts, the following tax shifts which result from the establishment of the District have been identified using a formula supplied by the Department of Economic and Community Development: See Exhibit A

Average Annual Amount:

General Purpose Aid to Education Tax Shift:	\$336,703
Municipal Revenue Sharing Tax Shift:	\$ 78,100
County Tax Shift:	\$ 62,260
Total Average Annual Savings:	\$477,063

VII. Municipal Approvals

A. Public Hearing Notice

The City of Portland did give proper Notice of Public Hearing in accordance with the requirements of 30-A M.R.S.A. § 5226(1). The notice was published on May 26, 2005 in a newspaper of general circulation (Portland Press Herald) as shown in Exhibit D.

B. Public Hearing

A Public Hearing at which the proposed municipal Tax Increment Financing District was discussed was held on June 6, 2005 in the Portland City Council Chambers. A copy of the minutes of that meeting is included as Exhibit E.

C. Authorizing Votes

An attested copy of the resolution of the Portland City Council designating the Riverwalk Development Tax Increment Financing District and the Credit Enhancement Agreement with Riverwalk, LLC is included as Exhibit F.

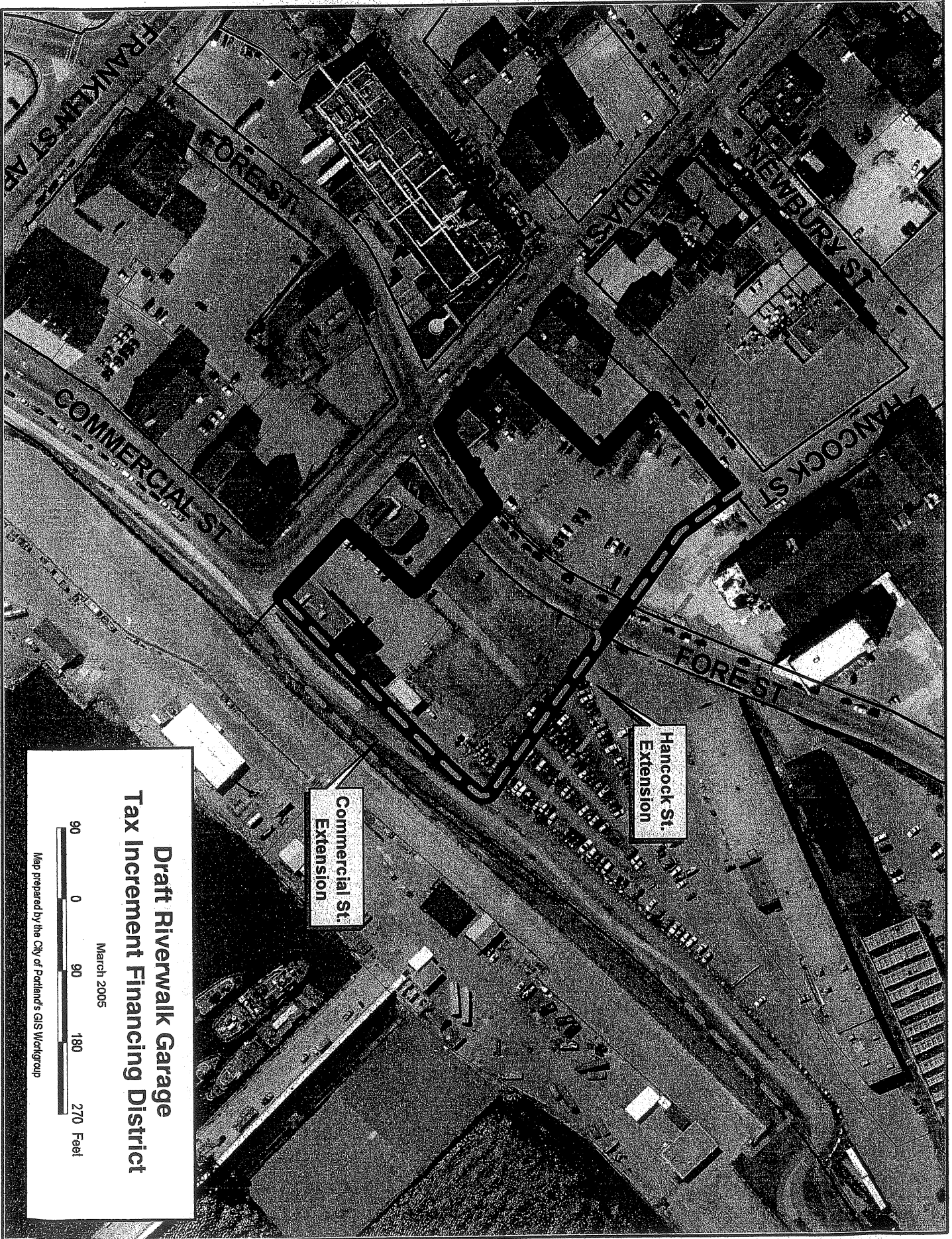
D. Assessors Certification

A letter from the Tax Assessor of the City of Portland certifying that the Original Assessed Value of the District as of March 31, 2005 is \$1,085,550 is included as Exhibit G.

Riverwalk Development TIF Program Allocation Schedule

TIF Allocation Table										Education Shift	County Tax Shift	Revenue Shift	** Total Tax Shift				
Tax Year	Estimated Increased Real Prop	Estimated Increased Pers. Prop.	Estimated Total Increase	Estimated Mill Rate (2% Inc.)	Estimated Incremental Tax Real Estate	Estimated Incremental Tax Pers. Prop.	Estimated Total Incremental Tax	Project Allocation	Project Revenue	Estimated City Revenue							
FY07	\$ 646,150	\$ -	\$ 646,150	15.75	\$ 10,177	\$ -	\$ 10,177	75%	\$ 7,635	\$ 2,544	\$ -	\$ -	\$ -	\$ -			
FY08	\$ 37,713,422	\$ -	\$ 37,713,422	16.07	\$ 605,986	\$ -	\$ 605,986	41%	\$ 250,000	\$ 355,986	\$ -	\$ -	\$ -	\$ -			
FY09	\$ 45,256,107	\$ -	\$ 45,256,107	16.39	\$ 741,580	\$ -	\$ 741,580	65%	\$ 500,000	\$ 241,580	\$ 3,657	\$ -	\$ -	\$ 103,753			
FY10	\$ 67,323,016	\$ -	\$ 67,323,016	16.71	\$ 1,125,239	\$ -	\$ 1,125,239	43%	\$ 500,000	\$ 625,239	\$ 213,458	\$ 47,979	\$ 80,075	\$ 341,512			
FY11	\$ 67,323,016	\$ -	\$ 67,323,016	17.05	\$ 1,147,743	\$ -	\$ 1,147,743	43%	\$ 500,000	\$ 647,743	\$ 264,640	\$ 50,378	\$ 80,075	\$ 395,093			
FY12	\$ 67,323,016	\$ -	\$ 67,323,016	17.39	\$ 1,170,698	\$ -	\$ 1,170,698	42%	\$ 500,000	\$ 670,698	\$ 399,538	\$ 52,897	\$ 80,075	\$ 522,510			
FY13	\$ 67,323,016	\$ -	\$ 67,323,016	17.74	\$ 1,194,112	\$ -	\$ 1,194,112	41%	\$ 500,000	\$ 694,112	\$ 389,538	\$ 55,542	\$ 80,075	\$ 527,932			
FY14	\$ 67,323,016	\$ -	\$ 67,323,016	18.09	\$ 1,217,994	\$ -	\$ 1,217,994	40%	\$ 500,000	\$ 717,994	\$ 389,538	\$ 58,319	\$ 80,075	\$ 530,848			
FY15	\$ 67,323,016	\$ -	\$ 67,323,016	18.45	\$ 1,242,354	\$ -	\$ 1,242,354	35%	\$ 450,000	\$ 792,354	\$ 389,538	\$ 61,235	\$ 80,075	\$ 533,910			
FY16	\$ 67,323,016	\$ -	\$ 67,323,016	18.82	\$ 1,267,201	\$ -	\$ 1,267,201	30%	\$ 400,000	\$ 867,201	\$ 389,538	\$ 64,296	\$ 80,075	\$ 537,125			
FY17	\$ 67,323,016	\$ -	\$ 67,323,016	19.20	\$ 1,292,545	\$ -	\$ 1,292,545	22%	\$ 300,000	\$ 992,545	\$ 389,538	\$ 70,887	\$ 80,075	\$ 540,500			
FY18	\$ 67,323,016	\$ -	\$ 67,323,016	19.58	\$ 1,318,396	\$ -	\$ 1,318,396	11%	\$ 150,000	\$ 1,168,396	\$ 389,538	\$ 74,431	\$ 80,075	\$ 544,044			
FY19	\$ 67,323,016	\$ -	\$ 67,323,016	19.97	\$ 1,344,764	\$ -	\$ 1,344,764		\$ 5,007,633	\$ 1,224,727	\$ 389,538	\$ 78,153	\$ 80,075	\$ 547,766			
										\$ 8,970,440	\$ 389,538	\$ 82,060	\$ 80,075	\$ 551,674			
										\$ 13,977,773	\$ 4,377,137	\$ 809,382	\$ 1,015,301	\$ 6,203,821			
TIF AVERAGES										\$ 1,075,213	35%	\$ 385,203	\$ 630,011	\$ 336,703	\$ 62,260	\$ 78,000	\$ 477,063
FY20	\$ 67,323,016	\$ 1,500,000	\$ 68,823,016	20.37	\$ 1,371,660	\$ 30,561	\$ 1,402,221	0%	\$ -	\$ 1,402,221	\$ -	\$ -	\$ -	\$ -			
FY21	\$ 67,323,016	\$ 1,500,000	\$ 68,823,016	20.78	\$ 1,399,093	\$ 31,773	\$ 1,430,866	0%	\$ -	\$ 1,430,866	\$ -	\$ -	\$ -	\$ -			
FY22	\$ 67,323,016	\$ 1,500,000	\$ 68,823,016	21.20	\$ 1,427,075	\$ 31,796	\$ 1,458,871	0%	\$ -	\$ 1,458,871	\$ -	\$ -	\$ -	\$ -			
FY23	\$ 67,323,016	\$ 1,500,000	\$ 68,823,016	21.62	\$ 1,455,616	\$ 32,432	\$ 1,488,048	0%	\$ -	\$ 1,488,048	\$ -	\$ -	\$ -	\$ -			
FY24	\$ 67,323,016	\$ 1,500,000	\$ 68,823,016	22.05	\$ 1,484,728	\$ 33,081	\$ 1,517,809	0%	\$ -	\$ 1,517,809	\$ -	\$ -	\$ -	\$ -			
FY25	\$ 67,323,016	\$ 1,500,000	\$ 68,823,016	22.49	\$ 1,514,423	\$ 33,742	\$ 1,548,165	0%	\$ -	\$ 1,548,165	\$ -	\$ -	\$ -	\$ -			
FY26	\$ 67,323,016	\$ 1,500,000	\$ 68,823,016	22.94	\$ 1,544,712	\$ 34,417	\$ 1,579,129	0%	\$ -	\$ 1,579,129	\$ -	\$ -	\$ -	\$ -			
20 YEAR TOTALS										\$ 24,402,282		\$ 5,007,633	\$ 19,394,649	\$ -	\$ -	\$ -	\$ -

** Tax Shifts are required calculations for TIF Districts in the State of Maine. The amount of Tax Shift is reflective of the net effect of the sheltering benefit created when property is included in a TIF District. Changes in the assessment formulas by the State will effect the shift value. The listed amounts reflect anticipated Tax Shifts assuming no change to the formula methodology.



Hancock St.
Extension

Commercial St.
Extension

**Draft Riverwalk Garage
Tax Increment Financing District**

March 2005

Map prepared by the City of Portland's GIS Workgroup

CREDIT ENHANCEMENT AGREEMENT

between

CITY OF PORTLAND, MAINE

and

RIVERWALK, LLC

Dated as of _____, 2005

April 25, 2005

TABLE OF CONTENTS

ARTICLE I DEFINITIONS	3
Section 1.1. <u>Definitions</u>	3
Section 1.2. <u>Interpretation and Construction</u>	5
ARTICLE II DEVELOPMENT PROGRAM ACCOUNT AND FUNDING REQUIREMENTS.....	6
Section 2.1. <u>Creation of Development Program Fund</u>	6
Section 2.2. <u>Deposits into Account</u>	6
Section 2.3. <u>Use of Monies in Account</u>	6
Section 2.4. <u>Monies Held in Trust</u>	7
Section 2.5. <u>Investments</u>	7
Section 2.6. <u>Tax Payments</u>	7
ARTICLE III PAYMENT OBLIGATIONS.....	7
Section 3.1. <u>Captured Assessed Value; Retained Tax Increment</u>	7
Section 3.2. <u>Completion of Development Program</u>	8
Section 3.3. <u>Credit Enhancement Payments</u>	8
Section 3.4. <u>Failure to Make Payment</u>	9
Section 3.5. <u>Manner of Payments</u>	9
Section 3.6. <u>Obligations Unconditional</u>	9
Section 3.7. <u>Limited Obligation</u>	9
Section 3.8. <u>Administrative Fee</u>	10
ARTICLE IV COVENANTS OF THE COMPANY.....	10
Section 4.1. <u>Project Development</u>	10
ARTICLE V PLEDGE AND SECURITY INTEREST	11
Section 5.1. <u>Pledge of Company TIF Account</u>	11
Section 5.2. <u>Further Instruments</u>	11
Section 5.3. <u>Liens</u>	11
Section 5.4. <u>Access to Books and Records</u>	11
ARTICLE VI DEFAULTS AND REMEDIES.....	11
Section 6.1. <u>Events of Default</u>	11
Section 6.2. <u>Remedies on Default</u>	12
Section 6.3. <u>Remedies Cumulative</u>	13
Section 6.4. <u>Enforcement Rights</u>	14
ARTICLE VII EFFECTIVE DATE, TERM AND TERMINATION	14
Section 7.1. <u>Effective Date and Term</u>	14
Section 7.2. <u>Cancellation and Expiration of Term</u>	14

ARTICLE VIII ASSIGNMENT AND PLEDGE OF COMPANY'S INTEREST	14
Section 8.1. <u>Consent to Pledge, Collateral Assignment Or Grant of a Security Interest</u> .	14
Section 8.2. <u>Assignment</u>	15
ARTICLE IX MISCELLANEOUS.....	15
Section 9.1. <u>Successors</u>	15
Section 9.2. <u>Parties in Interest</u>	15
Section 9.3. <u>Severability</u>	15
Section 9.4. <u>No Personal Liability</u>	16
Section 9.5. <u>Counterparts</u>	16
Section 9.6. <u>Governing Law</u>	16
Section 9.7. <u>Notices</u>	16
Section 9.8. <u>Amendments</u>	17
Section 9.9. <u>Net Agreement</u>	16
Section 9.10. <u>Integration</u>	17
Section 9.11. <u>Indemnification</u>	17
Section 9.12. <u>Waiver of Recapture if Agreement Found Void</u>	18

THIS CREDIT ENHANCEMENT AGREEMENT dated as of April ____, 2005, between the City of Portland, Maine (the "City"), a municipal body corporate and politic and a political subdivision of the State of Maine, Riverwalk, LLC, a limited liability company duly organized and existing under the laws of the State of Maine, with a place of business in Portland, Maine (the "Company").

WITNESSETH THAT

WHEREAS, the City designated the Riverwalk Municipal Development District and Tax Increment Financing District (the "District") pursuant to Chapter 206 of Title 30-A of the Maine Revised Statutes, as amended, by action of the Portland City Council on _____, 2005 (the "Vote"), and pursuant to the same Vote adopted a development program and financial plan for the District (the "Development Program"); and

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

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

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

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

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

**ARTICLE I
DEFINITIONS**

Section 1.1. Definitions.

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

"Account" shall mean the Project Cost Account, also known as the Riverwalk Development Program Fund.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Fiscal Year” means the time period from July 1 through June 30.

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

“Original Assessed Value” means \$1,085,550, the assessed value of the District as of March 31, 2005.

“Project” means the design and construction of the facilities described in the Riverwalk proposal dated September 8, 2004, or any subsequent revisions of that proposal as approved by City and as described in the Development Program.

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

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

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

“Property Taxes” means any and all ad valorem property taxes in excess of any county, state or special district taxes levied, charged or assessed against the Property by the City or on its behalf and actually paid to the City.

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

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

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

Section 1.2. Interpretation and Construction.

In this Agreement, unless the context otherwise requires:

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

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

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

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

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

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

ARTICLE II DEVELOPMENT PROGRAM FUND AND FUNDING REQUIREMENTS

Section 2.1. Creation of Development Program Fund.

The City hereby confirms the creation and establishment of a segregated account in the name of the City designated as the "Riverwalk 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), as amended from time to time. 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), as amended from time to time. The Project Cost Account shall include two subaccounts designated as the "Company TIF Account" and "City TIF Account".

Section 2.2. Deposits into Account.

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

Section 2.3. Use of Monies in Account.

Monies deposited in the Account shall be used and applied exclusively to fund the City's payment obligation described in Article III hereof. Monies deposited into the Account and any earnings thereunder will be designated and appropriated by City Council annually in the

municipal budget in accordance with Chapter 206 of Title 30-A, and in accordance with the Development Program.

Section 2.4. Monies Held in Trust.

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

Section 2.5. Investments.

Any monies in the Account shall be invested and reinvested in Qualified Investments as determined by the City. The City shall have discretion regarding the investment of such monies, provided such monies are invested in Qualified Investments. As and when any amounts thus invested may be needed for disbursements, the City shall cause a sufficient amount of such investments to be sold or otherwise converted into cash to the credit of such account. The City shall have the sole and exclusive right to designate the investments to be sold and to otherwise direct the sale or conversion to cash of investments made with monies in the Account.

Section 2.6. Tax Payments.

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

**ARTICLE III
PAYMENT OBLIGATIONS**

Section 3.1. Captured Assessed Value; Retained Tax Increment.

Annually, the following percentages of Increased Assessed Value shall be retained as Captured Assessed Value and the Property Tax assessed on such Captured Assessed Value shall be retained as Retained Tax Increment, which Retained Tax Increment shall be deposited when received by the City into the Company TIF Account and the City TIF Account pursuant to the following allocation table, in accordance with the provisions of Article II of this Agreement and the priorities established by 30-A M.R.S.A. §5227(3)(B), each year starting with the 2007 fiscal year of the City and continuing for each of the next 12 fiscal years of the City, ending with the 2019 fiscal year, all as indicated on Table No. 1 below. In no event shall any additional sums be allocated to the Company and deposited into the Company TIF Account over and above the allocation listed in the Project Revenue column of Table 1 below. The company shall receive in the Company TIF Account the annual payment listed in the Company Project Revenue column of Table 1 below, or 75% of the Retained Tax Increment, whichever is less. For purposes of computing the amounts owed pursuant to this section, the amount of tax collected for reimbursement as Project Revenue shall be calculated on June 30th of each fiscal year.

TABLE 1

Tax Year	Projected Increased Assessed Value	Percentage Captured	Projected Captured Assessed Value	Estimated Mil Rate	Estimated Retained Tax Increment	Maximum Company Project Revenue	Estimated City Project Revenue
FY07	\$ 646,150	100%	\$ 646,150	15.75	\$ 10,177	\$ 7,633	\$ 2,544
FY08	\$ 37,713,422	100%	\$ 37,713,422	16.07	\$ 605,866	\$ 250,000	\$ 355,866
FY09	\$ 46,756,107	100%	\$ 46,756,107	16.39	\$ 766,160	\$ 500,000	\$ 266,160
FY10	\$ 68,823,016	100%	\$ 68,823,016	16.71	\$ 1,150,310	\$ 500,000	\$ 650,310
FY11	\$ 68,823,016	100%	\$ 68,823,016	17.05	\$ 1,173,316	\$ 500,000	\$ 673,316
FY12	\$ 68,823,016	100%	\$ 68,823,016	17.39	\$ 1,196,782	\$ 500,000	\$ 696,782
FY13	\$ 68,823,016	100%	\$ 68,823,016	17.74	\$ 1,220,718	\$ 500,000	\$ 720,718
FY14	\$ 68,823,016	100%	\$ 68,823,016	18.09	\$ 1,245,132	\$ 500,000	\$ 745,132
FY15	\$ 68,823,016	100%	\$ 68,823,016	18.45	\$ 1,270,035	\$ 450,000	\$ 820,035
FY16	\$ 68,823,016	100%	\$ 68,823,016	18.82	\$ 1,295,436	\$ 450,000	\$ 845,436
FY17	\$ 68,823,016	100%	\$ 68,823,016	19.20	\$ 1,321,344	\$ 400,000	\$ 921,344
FY18	\$ 68,823,016	100%	\$ 68,823,016	19.58	\$ 1,347,771	\$ 300,000	\$ 1,047,771
FY19	\$ 68,823,016	100%	\$ 68,823,016	19.97	\$ 1,374,727	\$ 150,000	\$ 1,224,727
TOTALS					\$ 13,977,773	\$ 5,007,633	\$ 8,970,140

Table is for illustrative purposes only.

Section 3.2. Completion of Development Program.

Under this Agreement, the Company shall make a good faith effort to substantially complete the project as described in the Development Program.

Section 3.3. Credit Enhancement Payments.

a. Subject to Section 3.3(b), , the City shall pay on December 31 and June 30 of each year of this Agreement to the Company all Company Tax Increment Revenues then on deposit in the Company TIF Account. The obligation of the City to make such payment shall be limited obligation payable solely out of monies on deposit in the Company TIF Account and shall not constitute a general debt or obligation on the part of the City or a general obligation or charge against or pledge of the faith and credit or taxing power of the City, the State of Maine or any political subdivision thereof.

b. In the event that City is subject to a claim by a third party to pay Company Tax Increment Revenues to such third party, City shall not pay such amount to Company pursuant to Section 3.3(a) nor to the third party, but shall deposit then Company Tax Increment Revenues in an amount equal to such amount so claimed (but only to the extent available) into an interest bearing escrow account and shall file an interpleader or other comparable action with a court of competent jurisdiction requesting a ruling to determine whether such Company Tax Increment Revenues should be paid to Company or to said third party. The assessed value of the District will increase by the reason of a phased in revaluation in fiscal years 2006 and 2007. Such increase may lead to an adjustment to the amount of taxes deposited in the TIF account by

Company. Company's share of the retained tax increment payable to it by City pursuant to paragraph 3.1 of this Agreement shall not be adjusted as a result of said revaluation.

Section 3.4. Failure to Make Payment.

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

Section 3.5. Manner of Payments.

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

Section 3.6. Obligations Unconditional.

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

Section 3.7. Limited Obligation.

The City's obligations of payment hereunder shall be limited obligations of the City payable solely from Retained Tax Increment Revenues and any earnings thereon, pledged therefore under this Agreement. The City's obligations hereunder shall not constitute a general debt or a general obligation on the part of the City or a charge against or pledge of the faith and credit or taxing power of the City, but shall be payable solely from the Retained Tax Increment received by the City, and any earnings thereon. This Agreement shall not directly or indirectly or contingently obligate the City to levy or to pledge any form of taxation whatever therefore or to

make any appropriation for their payment, excepting the City's obligation to assess property taxes upon the Project and the pledge of the Retained Tax Increment established under this Agreement.

Section 3.8 Administrative Fee.

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

**ARTICLE IV
COVENANTS OF THE COMPANY**

Section 4.1. Project Development

a. The Company shall construct the project outlined in the September 8, 2004 proposal, as may be amended with the approval of the Portland City Council.

b. If in any year this Agreement is in effect the Increased Assessed Value is less than \$41,666,667, the obligation of the city to pay into the Company TIF Account per Section 3.1 of this agreement, shall be reduced. The reduction shall be calculated as follows: The increased assessed value divided by \$41,666,667 multiplied by the corresponding scheduled fiscal year Company Project Revenue payment amount on Table 1.

Notwithstanding the above in any fiscal year, the actual amount to be deposited into the Company TIF Account shall be the lesser of the Company Project Revenue, as adjusted pursuant to this Section if necessary, or 75% of the Retained Tax Increment.

Section 4.2. Job Requirement

All construction jobs related to the Project shall go to City and State of Maine citizens when possible, and all subcontractor work shall go to City and State union firms offering a sustainable, living wage, when possible.”

**ARTICLE V
PLEDGE AND SECURITY INTEREST**

Section 5.1. Pledge of Company TIF Account.

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

Section 5.2. Further Instruments.

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

Section 5.3. Liens.

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

Section 5.4. Access to Books and Records.

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

**ARTICLE VI
DEFAULTS AND REMEDIES**

Section 6.1. Events of Default.

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

- a. Any failure by the City to pay any amounts due to Company when the same shall become due and payable if such non-payment is not a result of a final determination by a court that this Agreement is illegal or invalid;
- b. Any failure by the City to make deposits into the Company TIF Account as and when due;

c. Other than as provided in paragraph (a) and (b) above, any failure by the City or the Company to observe and perform in all material respects any respective covenant, condition, agreement or provision contained herein on the part of the City or the Company respectively to be observed or performed, including any failure of the Company to use payments made under this Agreement as required in Section 3.5 of this Agreement or to perform the covenant under Section 4.1(a) of this Agreement, which failure is not cured within thirty (30) days following written notice thereof; provided, however, that this subsection (c) shall not be construed to include the Company's failure to pay Property Taxes on the Property in the District for any reason as an Event of Default hereunder; and

d. If a decree or order of a court or agency or supervisory authority having jurisdiction in the premises shall appoint a conservator or receiver or liquidator for the City, or if any insolvency, readjustment of debt, marshaling of assets and liabilities or similar proceedings for the winding up or liquidation of the City's affairs shall have been entered against the City or if the City shall have consented to the appointment of a conservator or receiver or liquidator in any such proceedings of or relating to the City or of or relating to all or substantially all of its property, including without limitation the filing of a voluntary petition in bankruptcy by the City or the failure by the City to have a petition in bankruptcy dismissed within a period of 90 consecutive days following its filing or in the event an order for release has been entered under the Bankruptcy Code with respect to the City.

e. Any failure of Company to pay taxes to City when due.

f. Any failure of the Company or any agents, assigns or successors in interest to operate the Garage as a garage and pay taxes on it during the term of this Agreement.

Section 6.2. Remedies on Default.

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

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

b. In addition, in the event of a default under Section 6.1 (c)(e) or (f) relating to Section 3.5 or 4.1(a), the City may suspend further payments until such default is cured. If there is any dispute as to either party's performance of any of its obligations under this Agreement, such dispute may, by agreement of the parties, be submitted to non-binding mediation and, following such mediation or in the absence of any such agreement to submit the dispute to mediation, shall be submitted to arbitration in accordance with the rules of the American

Arbitration Association. Payments by the City will not be suspended prior to a final determination in such proceeding in favor of the City.

Section 6.3. Remedies Cumulative.

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

Section 6.4. Enforcement Rights.

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

**ARTICLE VII
EFFECTIVE DATE, TERM AND TERMINATION**

Section 7.1. Effective Date and Term.

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

Section 7.2. Cancellation and Expiration of Term.

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

**ARTICLE VIII
ASSIGNMENT AND PLEDGE OF COMPANY'S INTEREST**

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

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

Agreement and provide to the pledgee or assignee such rights and/or remedies as it may deem necessary for the establishing, perfection and protection of its interest herein.

Section 8.2. Assignment.

Except as provided in Section 8.1, this Agreement and the obligations of the City hereunder are personal to the Company and may not be assigned or transferred by the Company without the consent of the City which consent shall not be unreasonably withheld or delayed for any reason or for no reason.

**ARTICLE IX
MISCELLANEOUS**

Section 9.1. Successors.

a. In the event the City or the Company are dissolved, merged into or consolidated with another entity, or undergo any form of corporate reorganization (other than with respect to any dissolution, merger, consolidation or corporate reorganization solely involving the Company and any other company related to or affiliated with the Company), the covenants, stipulations, promises and agreements set forth herein, by or on behalf of or for the benefit of such party shall bind or inure to the benefit of the successors and assigns thereof from time to time and any entity, officer, board, commission, agency or instrumentality to whom or to which any power or duty of such party shall be transferred, subject to approval of the City, which consent shall not be unreasonably withheld or delayed.

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

Section 9.2. Parties in Interest.

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

Section 9.3. Severability.

Except as otherwise provided herein, in case any one or more of the provisions of this Agreement shall, for any reason, be held to be illegal or invalid, such illegality or invalidity shall

not affect any other provision of this Agreement and this Agreement shall be construed and enforced as if such illegal or invalid provision had not been contained herein.

Section 9.4. No Personal Liability.

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

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

Section 9.5. Counterparts.

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

Section 9.6. Governing Law.

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

Section 9.7. Notices.

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

If to the City:

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

If to the Company:

Riverwalk, LLC
2 Market Street
Portland, ME 04101
Attn: Drew Swenson

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

Section 9.8. Amendments.

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

Section 9.9. Net Agreement.

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

Section 9.10. Integration.

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

Section 9.11. Indemnification.

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

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

Section 9.12. Waiver of Recapture if Agreement Found Void.

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

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

WITNESS

CITY OF PORTLAND, MAINE

By: _____
Its City Manager

WITNESS

RIVERWALK, LLC

By: _____
Its Authorized Officer

EXHIBIT B

Request for Payment

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

RIVERWALK, LLC

Date: _____

By: _____
Its

Contract/Credit Enhancement Agreement – Riverwalk (DMK first draft) 4-12-05

Notice of Public Hearing
Published in the Portland Press Herald
May 26, 2005

ie
re
se
ter
m
m-
nt
ne
will
AC
re
04

PUBLIC NOTICE
Notice of Public Hearing
Re: Tax Increment
Financing and Develop-
ment Program for the
Riverwalk Development
Tax Increment Finan-
cing Program.
A public hearing shall be
held, pursuant to 30-A
M.R.S.A. §§223 and
§5226, in City Council
Chambers, Portland City
Hall, 389 Congress
Street, at 7:00 P.M. on
June 6, 2005, on the fol-
lowing items:
1. Designation of a Tax
Increment Financing
District, namely City of
Portland Tax Map 019
Block A, Lots 001 and
014; City of Portland Tax
Map 020, Block C, Lots
023 and a portion of 009.
2. Adoption of proposed
development program
for Tax Increment
Financing Municipal
Development District.
Copies of the complete
proposal may be
reviewed at Room 208,
City Manager's Office,
Portland City Hall, 389
Congress Street, Port-
land, Maine.

1902060

5-26-05
PCH

Exhibit E

IN COUNCIL REGULAR MEETING JUNE 6, 2005 VOL. 121 PAGE 127

ROLL CALL: Mayor Duson called the meeting to order at 7:05 P.M. Councilor Carr arrived after the minutes were approved.

APPROVAL OF MINUTES OF PREVIOUS MEETING:

Motion was made by Councilor Gorham and seconded by Councilor Cloutier to approve the minutes of the 5/16/05 meeting. Passage 8-0.

PROCLAMATIONS:

- Proc 41-04/05 Honoring Deering High School Boys Swimming and Diving Team Class A State Champions – Sponsored by Jill C. Duson, Mayor.
- Proc 42-04/05 Declaring Commute Another Way Day – Sponsored by Jill C. Duson, Mayor.
- Proc 43-04/05 Commemorating the 350th Anniversary of the Jewish Community in America – Sponsored by Jill C. Duson, Mayor.
- Proc 44-04/05 Honoring Father John W. Keegan – Sponsored by Jill C. Duson, Mayor, Councilor James Cloutier and Councilor Peter O'Donnell.

APPOINTMENTS:

Order 273-04/05 Appointing Joseph K. Anderson to Landbank Commission for a term, which expires on June 30, 2008 – Sponsored by the Appointments Committee, Councilor Cheryl A. Leeman, Chair.

Motion was made by Councilor Mavodones and seconded by Councilor Gorham for passage. Passage 9-0.

CONSENT ITEMS:

Order 274-04/05 Authorizing Mayor to Appoint Substitute Directors for Meetings of the Board of Directors of Regional Waste Systems or ECO Maine - Sponsored by Joseph E. Gray, Jr., City Manager.

Order 275-04/05 Authorizing Grant of Stormwater Easement and Sewer Easement to Iris Network RE: 189 Park Avenue – Sponsored by Joseph E. Gray, Jr., City Manager.

Motion was made by Councilor Mavodones and seconded by Councilor Gorham for passage of the Consent Calendar. Passage 9-0.

IN COUNCIL REGULAR MEETING JUNE 6, 2005 VOL. 121 PAGE 128

LICENSES:

Order 276-04/05 Granting Municipal Officer's Approval of Lundco, Inc. d/b/a Headliner's, 27

Wharf Street, Application for renewal of Class A Lounge with Liquor and Entertainment with Dance License – Sponsored by Linda C. Cohen, City Clerk.

Motion was made by Councilor Gorham and seconded by Councilor Mavodones for passage. Failed 0-9.

Order 267-04/05 Granting Municipal Officer's Approval of Huong Le and Hoang Nguyen d/b/a Bottomz Up, 225 Congress Street. Application for renewal of Class A Lounge with Liquor and Entertainment with Dance License – Sponsored by Linda C. Cohen, City Clerk. Postponed on 5/16/05.

Motion was made by Councilor Cloutier and seconded by Councilor Cohen to postpone this item to 6/20/05. Passage 9-0.

Order 277-04/05 Granting Municipal Officer's Approval of Bull Durham Enterprises, Inc., d/b/a Natasha's, 82 Exchange Street. Application to add Entertainment Without Dance outside on the patio to existing Class I Restaurant with Liquor License – Sponsored by Linda C. Cohen, City Clerk.

Motion was made by Councilor Mavodones and seconded by Councilor Cloutier for passage.

Motion was made by Councilor Gorham and seconded by Councilor O'Donnell to amend the order to limit the hours of outside entertainment to start at 5:00 P.M. and to acoustic only and not to allow speakers.

It was agreed to divide the question.

5:00 P.M. start passage 7-2 (Duson, Geraghty)
 No outside live entertainment 7-2 (Duson, Geraghty)
 No speakers passage 3-6 (O'Donnell, Mavodones, Cohen, Cloutier, Leeman, Carr)

Passage, as amended, 6-3 (Duson, Geraghty, Gorham).

IN COUNCIL REGULAR MEETING JUNE 6, 2005 VOL. 121 PAGE 129

Order 278-04/05 Granting Municipal Officer's Approval of Bull Durham Enterprises, Inc., d/b/a Mim's, 205 Commercial Street. Application to add Entertainment Without Dance outside on the second level patio to the existing Class I Restaurant with Liquor License – Sponsored by Linda C. Cohen, City Clerk.

Motion was made by Councilor Leeman and seconded by Councilor Geraghty to postpone this item to the next meeting. Passage 5-4 (O'Donnell, Mavodones, Cohen, Cloutier).

Order 279-04/05 Granting Municipal Officer's Approval of Stonecoast Brewing Co., d/b/a The Pie Hole, at 865 Forest Avenue. Application to expand existing licensed area for a Class I Food Service Establishment with Liquor and Entertainment with Dance to include the parking lot on the following dates: June 10, 17, 24 and July 1, 2005, from 4:00 P.M. to 7:00 P.M. – Sponsored by Linda C. Cohen, City Clerk.

Motion was made by Councilor Gorham and seconded by Councilor Cloutier for passage. Passage 9-0.

Order 280-04/05 Granting Municipal Officer's Approval of Styxx, Inc. d/b/a Styxx, 3 Spring Street. Applying to extend current Class A Lounge and Entertainment with Dance License to include a Dance Hall License that will extend hours of entertainment from 1:00 A.M. to 3:00 A.M. – Sponsored by Linda C. Cohen, City Clerk.

Motion was made by Councilor O'Donnell and seconded by Councilor Geraghty for passage.

Motion was made by Councilor O'Donnell and seconded by Councilor Mavodones to amend the order to change this application to four dates only coordinated with the Police Department. Passage 5-4 (Duson, Geraghty, Leeman, Carr).

Motion was made by Councilor Gorham and seconded by Councilor O'Donnell to amend the license to specify that patrons must be 21 years old or older. Passage 9-0.

Passage, as amended, 5-4 (Duson, Geraghty, Leeman, Carr).

IN COUNCIL REGULAR MEETING JUNE 6, 2005 VOL. 121 PAGE 130

Order 281-04/05 Granting Municipal Officer's Approval of Maine Entertainment Company, d/b/a The State Theatre, 609 Congress Street. Application for an Auditorium with Liquor, Entertainment with Dance, and Dance Hall License. Change of Ownership of Existing Business – Sponsored by Linda C. Cohen, City Clerk.

Motion was made by Councilor Cloutier and seconded by Councilor Gorham for passage. Passage 9-0.

Motion was made by Councilor Cloutier and seconded by Councilor Carr to waive the second reading. Passage 9-0.

Order 291-04/05 Amendment to Zoning Map Re: Rezoning from R-6 Residential to B-1b Neighborhood Business Zone Vicinity of 73 Congress Street – Sponsored by the Planning Board, Lee Lowry, Chair. First reading. Emergency passage requested.

Motion was made by Councilor O'Donnell and seconded by Councilor Mavodones for emergency passage. Passage 9-0.

Order 282-04/05 Granting Municipal Officer's Approval of The Front Room, LLC, d/b/a The Front Room, 73 Congress Street. Application for Class I Restaurant with Liquor License. New City and State License – Sponsored by Linda C. Cohen, City Clerk.

Motion was made by Councilor Mavodones and seconded by Councilor Gorham for emergency passage. Passage 9-0.

BUDGET ITEMS:

COMMUNICATIONS:

Com 4-04/05 Receiving Police Citizen Review Subcommittee Third Annual Report 2004 – Sponsored by Joseph E. Gray, Jr., City Manager

Motion was made by Councilor O'Donnell and seconded by Councilor Gorham to receive the communication. Passage 9-0.

IN COUNCIL REGULAR MEETING JUNE 6, 2005 VOL. 121 PAGE 131

Com 5-04/05 Receiving Amendments to Rules of the Harbor Commission – Sponsored by Joseph E. Gray, Jr., City Manager.

Motion was made by Councilor Cloutier and seconded by Councilor Cohen to postpone this item to 6/20/05. Passage 9-0.

Order 270-04/05 Reallocating and Appropriating \$30,000 in Community Development Block Grant (HCD) Funds and Amending the FY2003/2004 Consolidated HCD Plan Re: Parkside Community Center – Sponsored by Councilor Karen A. Geraghty. Given first reading on 5/16/05.

Motion was made by Councilor Gorham and seconded by Councilor Geraghty for passage. Passage 9-0.

RESOLUTIONS:

Resolve 18-04/05 Supporting Restructuring of Regional Waste Systems – Sponsored by Joseph E. Gray, Jr., City Manager.

Motion was made by Councilor Cohen and seconded by Councilor O'Donnell for passage. Passage 9-0.

Order 283-04/05 Authorizing Formation of "Eco Maine" as a Non-Capital Stock Non-Profit Corporation – Sponsored by Joseph E. Gray, Jr., City Manager.

Motion was made by Councilor Cloutier and seconded by Councilor Cohen for passage. Passage 9-0.

Order 284-04/05 Authorizing ECO Maine Inter-Local Solid Waste Agreement and Waste Handling Agreement – Sponsored by Joseph E. Gray, Jr., City Manager.

Motion was made by Councilor Cloutier and seconded by Councilor Cohen for passage. Passage 9-0.

IN COUNCIL REGULAR MEETING JUNE 6, 2005 VOL. 121 PAGE 132

Order 285-04/05 Appointing Directors to the ECO Maine Board of Directors – Sponsored by Joseph E. Gray, Jr., City Manager.

Motion was made by Councilor Cohen and seconded by Councilor Gorham for passage.

Motion was made by Councilor O'Donnell and seconded by Councilor Cohen to amend the order to add the names of the Directors. Passage 9-0.

UNFINISHED BUSINESS:

Order 126-04/05 Adoption of Relocation Payments for Qualifying Displaced Tenants in the B-3 Zone – Sponsored by the Housing Committee, Councilor Karen A. Geraghty, Chair. Referred to Housing Committee on 12/20/04.

Motion was made by Councilor Geraghty and seconded by Councilor Carr for passage. Passage 9-0.

Order 193-04/05 Authorizing Agreements with Bedford Falls Associates, LLC Re: Miss Portland Diner – Sponsored by the Community Development Committee, Councilor James F. Cloutier, Chair. Postponed on 5/2/05.

Motion was made by Councilor Cloutier and seconded by Councilor Mavodones to refer this item to the Community Development Committee. Passage 9-0.

Order 258-04/05 Designating Riverwalk Development and Tax Increment Financing District and Adopting Municipal Development Program for the District – Sponsored by the Community Development Committee, Councilor James F. Cloutier, Chair. Given first reading on 5/2/05.

Motion was made by Councilor O'Donnell and seconded by Councilor Mavodones for passage.

Motion was made by Councilor Gorham and seconded by Councilor O'Donnell to amend Article 4 Section 4.2 to add that all construction jobs will go to City and State citizens when possible and all subcontractor work shall go to City and State union firms offering a sustainable living wage when possible. Passage 8-1 (Cohen).

Passage, as amended, 9-0.

IN COUNCIL REGULAR MEETING JUNE 6, 2005 VOL. 121 PAGE 133

Order 259-04/05 Authorizing City Manager to Execute Documents Re: Riverwalk Development Project – Sponsored by the Community Development Committee, Councilor James F. Cloutier, Chair. Given first reading on 5/2/05.

Motion was made by Councilor O'Donnell and seconded by Councilor Mavodones for passage. Passage 9-0.

Order 271-04/05 Accepting and Appropriating Grant for Bayside Garage Project – Sponsored by Joseph E. Gray, Jr., City Manager. Given first reading on 5/16/05.

Motion was made by Councilor Cohen and seconded by Councilor O'Donnell for passage. Passage 8-0 (O'Donnell gone).

PUBLIC HEARINGS:

ORDERS:

Order 286-04/05 Adopting Development Program for the Portland Downtown District for Fiscal Year 2005-2006 – Sponsored by Joseph E. Gray, Jr., City Manager.

Motion was made by Councilor Cloutier and seconded by Councilor Gorham for passage. Passage 8-0.

Order 287-04/05 Assessing Maintenance and Implementation Assessments in the Portland Downtown District for FY2005-2006 – Sponsored by Joseph E. Gray, Jr., City

Manager. First reading.

Order 288-04/05 Authorizing Master Agreement and Supplemental Services Agreement with Portland's Downtown District – Sponsored by Joseph E. Gray, Jr., City Manager. First reading.

AMENDMENTS:

Order 289-04/05 Amendment to Portland City Code, Section 13.6-24 and 13.6-25 (Domestic Partnerships) RE: Fees for Amended Registration and Certificates – Sponsored by Linda C. Cohen, City Clerk. First reading.

IN COUNCIL REGULAR MEETING JUNE 6, 2005 VOL. 121 PAGE 134

Order 290-04/05 Amendment to Zoning Map Re: Zoning from R-6 Residential to R-7 Compact Urban Residential Zone Vicinity of 44 East Oxford Street – Sponsored by the Planning Board Lee Lowry, Chair. First reading.

Order 292-04/05 Amendment to Portland City Code Article III. Fire Alarm Systems §2.5-25 through §2.5-32 – Sponsored by the Public Safety Committee, William Gorham, Chair. First reading.

Order 293-04/05 Amendment to Portland City Code Article VIII. Civil Emergency Preparedness §2-401 through §2-415 – Sponsored by the Public Safety Committee, William Gorham, Chair. First reading.

Order 294-04/05 Amendment to Portland City Code Transferring Jurisdiction Over Taxicabs and Liveries From the City Clerk to the Department of Waterfront & Transportation Facilities – Sponsored by the Transportation Committee, James I. Cohen, Chair. First reading.

Motion was made by Councilor Mavodones and seconded by Councilor Cohen to waive the second reading. Passage 7-1 (Geraghty).

Order 295-04/05 Amendment to Portland City Code Chapter 14 Land Use Article IV. Subdivisions Sec. 14-498 Technical and Design Standards – Sponsored by the Transportation Committee, James I. Cohen, Chair. First reading.

Motion was made by Councilor Gorham and seconded by Councilor Cohen for passage.

Motion was made by Councilor Cloutier and seconded by Councilor Cohen to postpone this item to 6/20/05. Passage 8-0.

Motion was made by Councilor Cohen and seconded by Mayor Duson to adjourn. Passage 8-0, 12:45 A.M., 6/7/05.

A TRUE COPY.

ATTEST

Linda C. Cohen, CMC, City Clerk

Exhibit F

Order 257-04/05
5/2/05

JILL C. DUSON (MAYOR)(A/L)
PETER O'DONNELL (A/L)
JAMES F. CLOUTIER(A/L)
NICHOLAS M. MAVODONES (A/L)

CITY OF PORTLAND
IN THE CITY COUNCIL

WILLIAM R. GORHAM (1)
KAREN A. GERAGHTY (2)
DONNA J. CARR (3)
CHERYL A. LEEMAN (4)
JAMES I. COHEN (5)

**ORDER SETTING PUBLIC HEARING ON DESIGNATION OF
RIVERWALK DEVELOPMENT AND TAX INCREMENT FINANCING DISTRICT
AND THE
MUNICIPAL DEVELOPMENT PROGRAM FOR THAT DISTRICT**

ORDERED, that the public hearing required by 30-A M.R.S.A. § 5253 for the designation of a Development District and the adoption of a Development Program is hereby set on the proposed designation of the Riverwalk Development and Tax Increment Financing District and on the proposed adoption of the Development Program for that District on:

Monday, June 6, 2005 at 7:00 p.m. in the City Council Chambers
Portland City Hall/389 Congress Street

A TRUE COPY
ATTEST: Linda C. Cohen
Linda G. Cohen, CMC, City Clerk
Portland, Maine
DATE 6/9/05

Passage: 5/2/05 8-0 (O'Donnell gone)

Order 258-04/05
Tab 33 5-2-a

JILL C. DUSON (MAYOR)(A/L)
PETER O'DONNELL (A/L)
JAMES F. CLOUTIER(A/L)
NICHOLAS M. MAVODONES (A/L)

CITY OF PORTLAND
IN THE CITY COUNCIL

WILLIAM R. GORHAM (1)
KAREN A. GERAGHTY (2)
DONNA J. CARR (3)
CHERYL A. LEE MAN (4)
JAMES I. COHEN (5)

**ORDER DESIGNATING RIVERWALK DEVELOPMENT
AND TAX INCREMENT FINANCING DISTRICT
AND ADOPTING MUNICIPAL DEVELOPMENT PROGRAM FOR THE DISTRICT**

WHEREAS, the City of Portland is authorized pursuant to Chapter 206 of Title 30-A of the Maine Revised Statutes, as amended, to designate specified areas within the City as a Municipal Development and Tax Increment Financing District, and to adopt a Development Program for such District; and

WHEREAS, Riverwalk, LLC intends to construct certain improvements within the proposed Municipal Development and Tax Increment Financing District (the "District"); and

WHEREAS, there is a need to provide continuing employment opportunities for the citizens of Portland and the surrounding region; to improve and broaden the tax base of the City of Portland; and to improve the general economy of the City of Portland, the surrounding region and the State of Maine; and


WHEREAS, the project will help to provide continued employment for the citizens of Portland and the surrounding region; improve and broaden the tax base in the City of Portland; and improve the economy of the City of Portland and the Sate of Maine; and

WHEREAS, there is a need to encourage the development, expansion and improvement of commercial, retail and light manufacturing facilities within the City through the establishment of Municipal Development and Tax Increment Financing Districts in accordance with the provisions of Chapter 206 of Title 30-A; and

WHEREAS, the City has held a public hearing on the question of establishing the District in accordance with the requirements of 30-A M.R.S.A. § 5223, upon at least ten (10) days prior notice published in a newspaper of general circulation within the City; and

WHEREAS, the City desires to designate the Riverwalk Development and Tax Increment Financing District and adopt a Development Program for such District; and

WHEREAS, it is expected that approval will be sought and obtained from the Maine Department of Economic and Community Development, approving the designation of the District and the adoption of the Municipal Development Program for the District;

A TRUE COPY
ATTEST: 
Linda C. Cohen, CMC, City Clerk
Portland, Maine

Given first reading 5/2/05 and PH set for 6/6/05
Public Hearing, Amended & Passage 6/6/05 9-0

DATE 6/9/05

NOW THEREFORE BE IT HEREBY ORDERED BY THE CITY COUNCIL AS FOLLOWS:

Section 1. The City hereby finds and determines that:

- (a) At least 25%, by area, of the real property within the District, as hereinafter designated, is acreage in need of rehabilitation, redevelopment or conservation as defined in 30-A M.R.S.A. § 5223; and
- (b) The total area of the District does not exceed 2% of the total acreage of the City, and the total area of all development districts within the City (including the District) does not exceed 5% of the total acreage of the City; and
- (c) The aggregate value of equalized taxable property of the District as of April 1, 2004 does not exceed 5% of the total value of equalized taxable property within the City as of April 1, 2004; and
- (d) The aggregate value of municipal indebtedness financed by the proceeds from tax increment financing districts within Cumberland County, including the proposed District, does not exceed \$50 million adjusted by a factor equal to the percentage change in the United States Bureau of Labor Statistics Consumer Price Index, United States City average, from January 1, 1996 to the date of calculation; and
- (e) The City expects that the acquisition, construction and installment of all real and personal property improvements, buildings, structures, fixtures and equipment within the district contemplated by the Municipal Development Program will be completed in accordance with State law; and
- (f) The designation of the District and pursuit of the Municipal Development Program will generate substantial economic benefits for the City and its residents, including employment opportunities, broadened and improved tax base and economic stimulus, and therefore constitutes a good and valid public purpose.

Section 2. Pursuant to Chapter 206 of Title 30-A of the Maine Revised Statutes, as amended, the City hereby designates the Riverwalk Development and Tax Increment Financing District, as more particularly set forth in the document entitled "RIVERWALK DEVELOPMENT AND TAX INCREMENT FINANCING DISTRICT AND APPLICATION" as presented to the City Council in the form attached hereto as Attachment 1 and that document is hereby incorporated by reference into this resolution and approved as the Municipal Development Program for the District (the "Development Program").

Section 3. Pursuant to the provisions of 30-A M.R.S.A. § 5224, the City hereby adopts the statement of the percentage of Assessed Value to be retained by the City set forth as Exhibit A in the Riverwalk Development and Tax Increment Financing Application for purposes of said Section 5224.

Section 4. The City Manager be, and hereby is, authorized, empowered and directed to submit the proposed designation of the District and the proposed Development Program for the District to the State of Maine Department of Economic and Community Development for review and approval pursuant to the requirements of 30-A M.R.S.A. § 5226(2).

Section 5. The City Manager be, and hereby is, authorized to execute and deliver a credit enhancement agreement substantially in the form described in the Development Program and attached as Attachment C to a memorandum dated April 27, 2005 from Economic Development Division Director John Lufkin.

Section 6. The foregoing designation of the District and the adoption of the Development Program for the District shall automatically become final and shall take full force and effect upon receipt by the City of approval of the designation of the District and adoption of the Development Program by the Department of Economic and Community Development, without requirements of further action by the City, the Council or any other party.

O:/Orders/Riverwalk TIF

Exhibit G

Assessor's Department



Richard W. Blackburn
Tax Assessor

CITY OF PORTLAND

March 15, 2005

John Lufkin
Economic Development Division Director

I Richard W. Blackburn as Tax Assessor of the City of Portland hereby certify that the original assessed value of the Longfellow Garage TIF District as of March 31, 2005 is \$1,085,550. The parcels are described as city tax map parcels 19-A-1, 19-A-14, 20-C-9 and 20-C-23. Those parcels consist of approximately 3.68 acres.

Richard W. Blackburn
Tax Assessor

1.1c

**FIRST AMENDMENT
TO
PURCHASE AND SALE AGREEMENT**

This First Amendment is made as of this 24th day of February, 2006, by and between the CITY OF PORTLAND, a body politic and corporate located in Cumberland County, Maine (hereinafter referred to as "CITY"), and RIVERWALK, LLC, a Maine limited liability company with a place of business at 2 Market Street, Suite 500, Portland in Cumberland County, Maine (hereinafter referred to as "BUYER"), and amends that certain Purchase and Sale Agreement dated September 2, 2005 ("the Effective Date") by and between the above two parties (hereinafter the "Agreement"). For one dollar and other good and valuable consideration including the covenants and agreements contained herein, the City and Buyer hereby agree as follows:

The Agreement is hereby amended to change the dates of several provisions in the Agreement as follows:

Section 7 of the Agreement is amended by deleting the first sentence thereof and replacing it with the following language: "The closing shall be held at Portland City Hall at a time and date mutually agreeable to the parties within thirty (30) days of the satisfaction or waiver of all conditions to closing described in Section 8 of this Agreement ("Closing Date"), unless extended herein; but in no event shall the Closing Date be any later than the date that is fifteen (15) months from the Effective Date hereof, unless the delay or extension is due to CITY's right to extend the closing date set forth elsewhere in this Agreement or due to the failure of the conditions set forth in Section 8 below.


Sections 8 (a) and (b) of the Agreement are amended to remove the reference to "hotel".

Section 9(d) of the Agreement is amended by deleting the date "April 1, 2006" and replacing it with the date "December 31, 2006."

Section 9(e) of the Agreement is amended by deleting the phrase "within ninety (90) days of the execution of this Agreement" and replacing it with the phrase "within ninety (90) days of the Portland Water District providing Buyer with reasonably complete construction specifications for the odor remediation project."

Section 9(g) of the Agreement is amended by deleting the date "May 30, 2007" wherever it appears in that section and replacing all such deletions with the date "October 31, 2007."

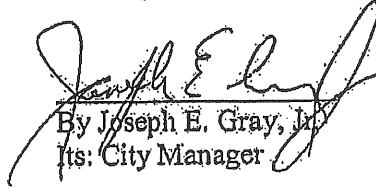
Section 9(h) of the Agreement is amended by deleting the date "April 1, 2007" and replacing it with the date "April 1, 2008."



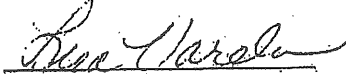
Any and all terms of the Agreement not herein amended remain in full force and effect.
IN WITNESS WHEREOF, the parties have hereto caused this First Amendment to
Purchase and Sale Agreement to be executed by their respective duly authorized officers
as of the day and year first above written.

WITNESS

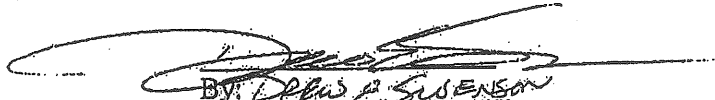
CITY OF PORTLAND


By Joseph E. Gray, Jr.
Its: City Manager


WITNESS



RIVERWALK, LLC

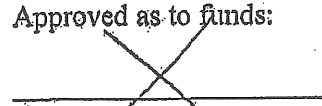

By: Philip P. Sorenson
Its: MANAGER

Approved as to form:



Corporation Counsel's Office

Approved as to funds:



Finance Department

PURCHASE AND SALE AGREEMENT

THIS AGREEMENT for the purchase and sale of real estate made as of the 2nd day of September, 2005 by and between the CITY OF PORTLAND, a body politic and corporate located in Cumberland County, Maine (hereinafter referred to as "CITY"), and RIVERWALK LLC, a Maine limited liability company with a place of business at 2 Market Street, Portland in Cumberland County, Maine (hereinafter referred to as "BUYER"). The Effective Date of this Agreement shall be deemed to be the date first set forth above in this Agreement, provided that if no date is filled in or if either of the signatures of the parties are dated later than the above, the Effective Date shall be the last date of the signature of the last to sign of BUYER or CITY. The parties agree to upon request confirm to the other party the Effective Date of this Agreement.

WITNESSETH:

WHEREAS, CITY is the owner of certain land located on the Eastern Waterfront, Portland, Maine, which property is also described on City of Portland Tax Assessors Maps effective April 1, 2005 as a portion of Map 19, Block A, Lot 14 and which is more particularly described in Exhibit A attached hereto and incorporated herein by reference, together with all improvements situated thereon and appurtenances thereto (hereinafter referred to as "the Property"); and

WHEREAS, the CITY sought proposals for development of the Property pursuant to a Request for Proposals entitled Eastern Waterfront Garage Proposal # 4504, and BUYER submitted a responsive proposal dated February 26, 2004, subsequently amended on September 8, 2004; and

WHEREAS, BUYER desires to acquire the Property from CITY, and CITY desires to sell same to BUYER on such terms as are set out herein;

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the parties intend to be legally bound as follows:

1. SALE.

CITY agrees to sell the Property as shown in Exhibit A attached hereto and incorporated herein, to BUYER, and BUYER agrees to purchase the Property in accordance with the provisions hereof. The description of the Property in Attachment A is understood to be subject to minor revisions based on BUYER's title review and/or survey.

2. CONSIDERATION.

The purchase price for the Property shall be Eight Hundred Fifty Thousand Dollars, (\$850,000.00), which amount shall be paid at the closing described in Paragraph 7 hereof.

3. CONVEYANCE; TITLE.

(a) CITY shall convey its interest in the Property to BUYER by a good and sufficient quitclaim deed without covenant (the "Deed"). The Deed shall convey insurable title to the Property and free of encumbrances except (i) zoning, environmental and subdivision laws, rules, regulations and restrictions; and (ii) any "Defects of Title" (as defined below) accepted or waived by BUYER pursuant to Section 3(b); and (iii) the deed of conveyance shall contain a restriction that in perpetuity a yearly payment shall be made in lieu of taxes equivalent to the property taxes that would otherwise be paid on the real and personal property situated on Property, which restriction shall also confirm that BUYER and its successors and assigns shall possess and be vested with all rights and privileges as to abatement and appeal of valuations, rates and the like as are accorded owners of real and personal property in Maine.

(b) On or before the date that is thirty (30) days after the Effective Date, BUYER shall notify CITY of any defects in title that would make CITY unable to give title to the Property as herein stipulated (any of which is called herein a "Defect of Title"). BUYER shall be deemed to have waived any objection to any Defect of Title that existed as of the Effective Date if BUYER fails to notify CITY of such Defect of Title on or before the end of such 30-day period. With respect to the existence of any Defect of Title that does not exist on the Effective Date, but which arises prior to the Closing Date, BUYER shall notify CITY of any such Defect of Title on or prior to the Closing Date. CITY shall have, at its option, a period of not more than ninety (90) days after receipt of notice(s) of such defect within which to remedy or cure any such Defect of Title. If CITY elects to remedy or cure such Defect of Title, then if the Closing Date shall fall within the said 90-day period, it shall be extended to the date that is ten (10) business days after the expiration of such 90-day period or after the date such Defect of Title is cured to BUYER's reasonable satisfaction (but in no event shall the Closing Date be earlier than is otherwise provided herein). BUYER shall have ten (10) business days after receipt of notification by CITY that the Defect of Title has been cured to advise CITY whether it is satisfied with the title defect cure. If such Defects of Title are not corrected or remedied within such 90-day period, then BUYER shall elect by written notice to the CITY on or before the Closing Date, as the same may be extended, either (i) to accept title to the Property subject to the uncured Defects of Title without reduction of the purchase price and without any right to damages and without any other liability on the part of CITY, or (ii) to terminate this Agreement, whereupon the Deposit shall be returned to BUYER and all obligations of the parties hereunder shall cease and neither party shall have any claim against the other by reason of this Agreement, except with respect to any provision hereof that expressly survives the termination of this

Agreement. For purposes of this subsection (b), CITY may elect to cure or remedy any Defect of Title by providing BUYER with a binding commitment from a title insurance company licensed to do business in Maine committing to issue an endorsement to BUYER's owner's title insurance policy providing affirmative coverage for such Defect of Title at no additional premium to BUYER beyond any premium required for such title policy without such endorsement and BUYER agrees to accept such affirmative coverage as a cure or remedy for such Defect of Title provided that the form and content of such affirmative coverage is satisfactory to BUYER and its advisors in their sole discretion.

4. POSSESSION.

Full possession of the Property will be given at the transfer of title. It is a condition on BUYER's obligation to close that the Property shall be on the Closing Date in the same condition as it is in as of the Effective Date of this Agreement, with the exception of any damage caused by BUYER as a result of inspection of the Premises and not repaired, normal wear and tear excepted, and subject to the Risk of Loss provision set out immediately below.

5. RISK OF LOSS.

(a) All risk of loss to the Property prior to the closing shall be borne by CITY. If prior to the Closing Date the Property is destroyed or damaged by any cause (with the exception of any damage caused by BUYER as a result of inspection of the Premises), BUYER shall have the option and right to terminate this Agreement and receive back its Deposit. Provided, however that in such event, CITY shall have, at its option, the right to notify BUYER of its desire to repair or restore, and it shall provide such notice in writing within ten (10) business days after notice to the CITY of such destruction or damage. Upon such election by the CITY, this Agreement may not be terminated by BUYER for a period of not more than 120 days after such occurrence within which time the CITY shall repair any such destruction or damage. If CITY elects to repair any such damage or destruction, the Closing Date shall be extended to the date that is the later of the Closing Date described below and ten (10) business days after the expiration of such 120-day period, or earlier if the parties mutually agree. If such destruction or damage is not corrected or remedied within such one hundred twenty (120) day period, or if CITY does not provide such notice of its election to repair or restore such destruction or damage, then BUYER may elect, by written notice to CITY on or before the Closing Date, as the same may be extended hereunder, to terminate this Agreement, in which case the Deposit shall be promptly returned to BUYER and neither party shall have any further obligations to the other hereunder, except with respect to any provision hereof that expressly survives the termination of this Agreement. If BUYER does not timely elect to terminate this Agreement as provided above, BUYER shall be deemed to have waived any right to terminate this Agreement as a result of such destruction or damage.

(b) If BUYER has elected to close notwithstanding such damage or destruction or is deemed to have waived its right to terminate as provided above, BUYER shall be obligated to complete this transaction without a reduction in the purchase price and receive all insurance proceeds recovered or recoverable by reason of such destruction or damage, less any amounts reasonably expended by CITY in collecting such amounts and less any amounts paid by CITY for any restoration, but without reduction of the purchase price and without any right to damages and without any other liability on the part of CITY.

6. INSPECTION OF PREMISES; RIGHT TO TERMINATE.

(a) BUYER and its agents, employees and independent contractors may, at their option and at their sole risk and expense, during the period of time from the Effective Date through the date that is sixty (60) days after the Effective Date upon at least two (2) business days prior written notice to CITY as to each inspection or survey, examine the Property and prepare surveys, mechanical, structural, environmental or physical reports of the Property. BUYER may make information obtained from such inspections or surveys available to its consultants, attorneys and lenders for purposes of completing and/or furthering its development plans for the Property. BUYER shall not otherwise make such surveys and reports public or otherwise disclose to third parties unless otherwise required by law. Copies of such surveys and reports shall be promptly given to the CITY if this Agreement is terminated for any reason. BUYER's access to the Property shall be only during normal business hours, unless otherwise expressly agreed to in writing by CITY. BUYER shall not cause any unrepaired damage to the Property and shall not unreasonably interfere with CITY's business. Any damage caused by inspection which impairs the use of the Property shall be repaired within two (2) business days. Testing shall be done in locations as agreed by CITY. Access to any space that is under lease shall only be permitted to the extent that CITY has a right of access pursuant to the terms of any of the leases. All such inspections shall be done by qualified inspectors chosen and paid for by BUYER. BUYER agrees to hold CITY harmless and indemnify CITY from any loss or liability resulting from the entrance by BUYER or its agents upon the Property for the purposes set forth herein or for any other purpose and this agreement to so indemnify and hold CITY harmless shall survive the Closing hereunder, or if the Closing does not occur, the termination of this Agreement.

(b) At any time on or prior to the date that is seventy five (75) days after the Effective Date, BUYER shall have the right to terminate this Agreement if BUYER determines, in its sole discretion, that it is not satisfied with any of its inspections, by giving written notice to CITY on or before the end of such 75-day period, together with a copy of the written results of all such inspections, if any. Subject to the qualification set forth in the last sentence of this subsection, if BUYER timely gives notice of such dissatisfaction, then this Agreement shall terminate, the Deposit shall be returned to BUYER and all obligations of the parties hereunder shall cease and neither party shall have any claim against the other by reason of this Agreement, except with respect to any provision hereof that expressly survives the termination of this Agreement. If BUYER fails to give such written notice on or before the end of such 75-day period, BUYER shall be deemed to have waived its right to terminate this Agreement pursuant to this Section.

(c) The parties agree to be co-applicants on any voluntary response action plan (VRAP) necessary for the site, if the site is remediated.

7. CLOSING.

The closing shall be held at Portland City Hall at a time and date mutually agreeable to the parties within thirty (30) days of the satisfaction or waiver of all conditions to closing described in Section 8 of this Agreement ("Closing Date"), unless extended as provided herein; but in no event shall the Closing Date be any later than the date that is twelve (12) months from the Effective Date hereof (i.e., the first anniversary of the Effective Date), unless the delay or

extension is due to CITY's right to extend the closing date set forth elsewhere in this Agreement or due to the failure of the conditions set forth in Section 8. below. If such conditions are not satisfied prior to Closing, BUYER shall have the right to terminate this Agreement by written notice to CITY, and this Agreement shall then terminate, the Deposit shall be returned to BUYER and all obligations of the parties hereunder shall cease and neither party shall have any claim against the other by reason of this Agreement, except with respect to any provision hereof that expressly survives the termination of this Agreement. All conditions to Buyer's obligation to close hereunder, including without limitation those contained in Section 8, shall be considered conditions of BUYER only and may be waived by BUYER in BUYER's sole discretion such that BUYER may close notwithstanding the satisfaction or failure of such condition.

At the closing, CITY and BUYER shall execute and deliver all customary documentation necessary to close this transaction and other documents specifically set forth below, the form and content of which shall be mutually satisfactory to each party, including without limit, CITY's execution and delivery to BUYER, against payment of the purchase price of the Deed, a quitclaim bill of sale for the Personal Property, all keys, access cards, security codes and similar items in Seller's possession, a "Seller's Affidavit" regarding mechanics liens and persons in possession in the customary form and reasonable evidence of Seller's authority to convey the Property and Personal Property.

8. CONDITIONS TO CLOSING.

BUYER's obligations to close hereunder are contingent upon the satisfaction of the following:

(a) Receipt by BUYER of all necessary permits and approvals, in final unappealable form, for its intended development of the Property and related parking garage and hotel (hereinafter "Project").

(b) Receipt by BUYER of a financial commitment for its intended development of the Property and related parking garage and hotel.

(c) Release of rights apparently held by Phineas Sprague, Sr., and/or his successors and assigns by virtue of instruments recorded in the Cumberland County Registry of Deeds in Book 336, Pages 338 and 341, respectively within sixty (60) days of the date of this Agreement.

(d) Receipt by BUYER of the full tax increment financing and credit enhancement as set forth in a certain Credit Enhancement Agreement to be executed by and between BUYER and SELLER.

Notwithstanding the foregoing, BUYER shall have the right to waive any or all of the above conditions, and close notwithstanding the fact that any or all of them has not been satisfied.

9. CONDITIONS SURVIVING CLOSING.

Conditions relating to the GARAGE shall be secured by a Declaration of Covenants, Conditions and Restrictions that shall be recorded in the Cumberland County Registry of Deeds.

(a) **BUYER** shall construct a seven hundred twenty (720) space parking garage hereinafter "**GARAGE**"), and a mixed use, multistory development as generally shown on Exhibit B, attached hereto and incorporated herein by reference. The **GARAGE** shall remain in operation as a public parking garage for a minimum of thirty years.

~~(b) **BUYER** shall submit for review and concept approval to the Community Development Committee of the City Council (hereinafter "**CDC**") the design and specifications of **GARAGE**, including but not limited to the type of materials to be used, the type and programmatic lay-out (including the location of stair and elevator towers) of structure as well as fenestration and external building materials. Review by the **CDC** shall in no way substitute for any land use, site plan, historic preservation or other review otherwise required by **CITY** ordinance.~~

(c) **BUYER** shall locate and construct a retail structure along the Fore Street side of the **GARAGE** as shown in Exhibit B either during or shortly after the construction of the **GARAGE** and no later than full leasing of all retail spaces on the Property. Both parties hereto agree that if the retail space is not constructed simultaneously with the **GARAGE**, that the **GARAGE** shall be built such that the retail structure may be accommodated without unreasonable delays or the addition of unreasonable costs, which shall include the stubbing in of utilities to facilitate near term retail development.

(d) **BUYER** shall operate the **GARAGE** such that its hours of operation are similar to the hours of operation in other public garages in the area. The **GARAGE** shall be available for snow ban parking at a maximum of 50% of the daily parking rate. The **GARAGE** shall also participate in the park and shop or similar program.

(d) **BUYER** shall substantially begin construction of **GARAGE** by April 1, 2006. **CITY** may grant an extension of this time period for delays that are not within the control of **BUYER**. In the event that **BUYER** fails to substantially begin construction as provided herein, **CITY** shall have the right but not the obligation to repurchase the Property by giving a ninety (90) day written notice of its intent to repurchase. The repurchase price shall be equal to the price paid by **BUYER** to **CITY** for the **CITY** Property.

(e) **BUYER** shall provide evidence of written preliminary approval by the Portland Water District ("**PWD**") of the redevelopment of **PWD** pump station property as described in **PROJECT** within ninety (90) days of the execution of this Agreement and shall provide final written approval upon the completion of all permitting, plans and approvals.

(f) **CITY** will enter into a parking lease in substantial form as that attached hereto as Exhibit C for spaces in **GARAGE**.

(g) **CITY** shall extend and construct Commercial Street and Hancock Street as shown on Exhibit D. The construction of Commercial Street and Hancock Street shall be completed by May 30, 2007, unless otherwise agreed to by parties, or unless the opening of the **GARAGE** is extended past May 30, 2007. In the event that the **GARAGE** opening is extended past May 30, 2007, **CITY** shall receive a corresponding extension of time for the completion of the streets.

(h) CITY shall contribute Four Hundred Thousand Dollars (\$400,000) from its sewer user fund for the installation of an odor control system related to operation of the Portland Water District pump station and beautification modifications to the pump station which is reasonably required by the Portland Water District in connection with the PROJECT and which odor remediation project BUYER is relying on to make its decision to enter into this Agreement. CITY shall work with Portland Water District in order to complete construction of such odor remediation project by April 1, 2007. Payment of said sum shall be made to the Portland Water District.

Notwithstanding anything in this section, BUYER shall construct and assume the remaining obligation for all costs of constructing an aesthetic and architecturally pleasing façade and other exterior improvements to the Portland Water District pump station consistent with PROJECT.

In the event BUYER builds the GARAGE and has not substantially completed the remainder of the PROJECT by April 1, 2008, CITY's obligation pursuant to this paragraph shall be limited to the installation of an odor control system related to the Portland Water District pump station.

(i) CITY shall relocate its recreational trail and the Maine Narrow Gauge Rail Line in order to accommodate the extension of Commercial Street and the development contemplated by this Agreement. The relocations shall be accomplished at no cost to BUYER.

(j) Upon issuance of a Certificate of Occupancy for GARAGE, CITY agrees to close its most easterly, 97± space Ocean Gateway surface parking lot to monthly parking customers, in accordance with the Planning Board condition of approval of the Ocean Gateway site plan.

10. DEFAULT.

(a) If BUYER fails to perform its obligation to close as set forth in this Agreement, and such failure is not due to CITY's default hereunder, CITY shall as its sole and exclusive remedy, in lieu of all other legal and equitable remedies, be entitled to retain the Deposit as liquidated damages as a result of such failure to perform and this Agreement shall be deemed terminated. BUYER and CITY acknowledge that CITY's damages because of BUYER's failure to perform are difficult to ascertain and agree that the amount of the Deposit represents a reasonable estimate of the amount of CITY's damages as a result thereof.

(b) If CITY fails to perform its obligations as set forth in this Agreement, and such failure is not due to BUYER's default hereunder, BUYER may elect as its sole remedies (i) to receive the Deposit. In such instance the reports shall become the property of CITY as provided in section 6 (a) of this Agreement, and this Agreement shall be deemed terminated and all obligations of the parties hereunder shall cease and neither party shall have any claim against the other by reason of this Agreement, except with respect to any provision hereof that expressly survives the termination of this Agreement, or (ii) to enforce this Agreement through legal action, including without limitation, an action seeking as its remedy specific performance of this Agreement.

11. BINDING EFFECT.

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, administrators, successors and assigns. BUYER's rights under the Agreement are not assignable (except to a wholly owned or commonly controlled subsidiary or affiliate) without the prior written consent of CITY, which consent shall not be unreasonably withheld. Any purported assignment in violation of this provision shall, at CITY's option, be null and void and shall confer no rights on the purported assignee and may, at CITY's option, be treated as a default by BUYER hereunder.

12. ENTIRE AGREEMENT.

This Agreement represents the entire and complete Agreement and understanding between the parties and supersedes any prior Agreement or understanding, written or oral, between the parties with respect to the acquisition or exchange of the Property.

13. HEADINGS AND CAPTIONS.

The headings and captions appearing herein are for the convenience of reference only and shall not in any way affect the substantive provisions hereof.

14. GOVERNING LAW.

This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Maine.

15. NOTICE.

Any notice required or permitted under this Agreement shall be deemed sufficient if in writing and if sent: (i) by first class mail, postage prepaid, registered or certified, return receipt requested; (ii) by hand delivery; or (iii) by FedEx, or similar reputable overnight express mail service to:

FOR THE CITY:

City of Portland
ATTN: CITY MANAGER
389 Congress Street
Portland, ME 04101

With a copy to:

Director of Planning and Development
AND Corporate Counsel

FOR THE BUYER:

Riverwalk, LLC
2 Market Street, Suite 500
c/o Swenson & Co.
Portland, Maine 04101

With a copy to:

Jaimie P. Schwartz, Esq.
Bernstein, Shur, Sawyer & Nelson
100 Middle Street
P.O. Box 9729
Portland, ME 04104-5029

16. DEPOSIT.

BUYER has paid to CITY the sum of Fifty Thousand Dollars (\$50,000.00) as an earnest money deposit ("Deposit") on the Property. This amount shall be credited toward the final purchase price.

17. ACCEPTANCE OF DEED.

The acceptance of the Deed by BUYER at the Closing shall be deemed to be the full performance and discharge of every agreement, obligation and representation made on the part of CITY, except as expressly set forth herein or in such Deed. No provisions, agreements or representations herein shall survive the Closing except as specifically stated herein. The Property is being sold and will be conveyed "as is" without any representation or warranties as to habitability, merchantability, fitness, condition or otherwise. Neither party is relying upon any statements or representations not embodied in this Agreement. BUYER has retained or shall retain the necessary professionals to determine the presence of hazardous substances, hazardous waste, asbestos, oil and petroleum waste, lead paint, urea formaldehyde foam insulation or other liability causing substances on the Property. If CITY has given or shall give to BUYER any environmental survey or assessment or any other report concerning the Property, BUYER agrees that it accepts and shall accept the same at BUYER's sole risk and that CITY has not made and shall not have made any representation or warranty to BUYER that any such survey, assessment or report is true and correct; and BUYER agrees that CITY shall have no liability or responsibility whatsoever to BUYER with respect thereto. BUYER represents and agrees that it has been given the opportunity under this Agreement to conduct a full inspection of the Property. The acceptance of the Deed by BUYER shall constitute a reaffirmation of BUYER at the time of such acceptance of the foregoing acknowledgments and agreements of BUYER, which acknowledgments and agreements by BUYER shall survive the Closing hereunder or if the Closing does not occur, the termination of this Agreement.

18. MISCELLANEOUS.

BUYER acknowledges that the CITY desires that development on the Property shall be conducted in such a way that it is at all times consistent with the Comprehensive Plan of the CITY, all applicable ordinances, laws and regulations and that its intended improvements and uses on the Property will to the extent required by such covenants, ordinances, laws and regulations preserve and enhance the Property's historic character and provide public access opportunities as required by said request for proposals #4504 and by the final approved site plan for the Property.

IN WITNESS WHEREOF, the parties have hereunto caused this Agreement to be executed by their respective duly authorized officers as of the day and year first above written.

CITY OF PORTLAND

Shirley Brown
WITNESS

By: Joseph E. Gray, Jr.
Joseph E. Gray, Jr.
Its City Manager

Date: 8-25-05

RIVERWALK, LLC

[Signature]
WITNESS

By: [Signature]

Printed name: DREW E SWENSON

Its: MANAGER

Date: 8/25/05



JOHN ELIAS BALDACCI
GOVERNOR

STATE OF MAINE
DEPARTMENT OF
ECONOMIC AND COMMUNITY DEVELOPMENT
59 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0059

SEP 14 2005



JACK CASHMAN
COMMISSIONER

Jack Cashman

September 15, 2005

Joseph Gray
City Manager
City of Portland
389 Congress Street
Portland, ME 04101

Dear Mr. Gray:

The Maine Department of Economic and Community Development ("the department") has reviewed and approved the City of Portland's designation of the Riverwalk Municipal Development Tax Increment Financing (TIF) District ("the district"), effective today. Approval is subject to the following provision: should Riverwalk LLC or any other business receive TIF payments from this district that exceed \$10,000 in a calendar year, they must submit an annual written report no later than August 1st of the following year, in accordance with 5 MRSA §13070-J(3).

The City of Portland is authorized to capture 100% of the increased assessed value of real and personal property in the district as set forth in the financial plan section of the application received initially by the department on June 20, 2005, and in final form on September 13, 2005. The tax increment arising from this captured value is to be used expressly for the project costs described in the Development Program, i.e. a credit enhancement agreement (CEA) to offset the costs associated with the construction and operation of the Longfellow Garage; infrastructure improvements to related streets, sidewalks, curbing, and utilities; local share toward related Ocean Gateway project; and eligible project costs in the related Waterfront TIF district.

Any changes to the approved Development Program require an amendment that is adopted in the same manner as the initial designation, and approved by the department.

Joseph Gray
September 15, 2005

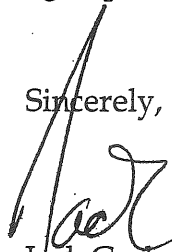
Page 2

Please note that all tax increment revenues derived from the district are to be deposited into Project Cost Accounts (for approved CEA costs and bona fide municipal economic development expenses) and available for the Development Program as authorized by the department. If any tax increment revenues from the district are instead deposited into the City's general fund for non-TIF purposes, the incremental property values generating those revenues must be included with the City's equalized assessed value and reported as such, since the value cannot be captured.

The district designation remains in effect for thirteen (13) years or until the authorized project costs are expended. If for any reason the City decides to forfeit this designation, it must promptly notify the department.

If you have questions regarding this approval, or the applicability of the economic development incentive reporting requirements, please do not hesitate to contact Jim Nimon at 624-9822.

Sincerely,



Jack Cashman
Commissioner

cc: Jerome Gerard, Acting State Tax Assessor
David Ledew, Acting Director of Property Tax
Jack Lufkin, City of Portland

CS

FILE
COPY + executed

CREDIT ENHANCEMENT AGREEMENT

between

CITY OF PORTLAND, MAINE

and

RIVERWALK, LLC

Dated as of September, 2005

April 25, 2005

TABLE OF CONTENTS

ARTICLE I DEFINITIONS	3
Section 1.1. <u>Definitions</u>	3
Section 1.2. <u>Interpretation and Construction</u>	5
ARTICLE II DEVELOPMENT PROGRAM ACCOUNT AND FUNDING REQUIREMENTS.....	6
Section 2.1. <u>Creation of Development Program Fund</u>	6
Section 2.2. <u>Deposits into Account</u>	6
Section 2.3. <u>Use of Monies in Account</u>	6
Section 2.4. <u>Monies Held in Trust</u>	7
Section 2.5. <u>Investments</u>	7
Section 2.6. <u>Tax Payments</u>	7
ARTICLE III PAYMENT OBLIGATIONS.....	7
Section 3.1. <u>Captured Assessed Value; Retained Tax Increment</u>	7
Section 3.2. <u>Completion of Development Program</u>	8
Section 3.3. <u>Credit Enhancement Payments</u>	8
Section 3.4. <u>Failure to Make Payment</u>	9
Section 3.5. <u>Manner of Payments</u>	9
Section 3.6. <u>Obligations Unconditional</u>	9
Section 3.7. <u>Limited Obligation</u>	9
Section 3.8. <u>Administrative Fee</u>	10
ARTICLE IV COVENANTS OF THE COMPANY.....	10
Section 4.1. <u>Project Development</u>	10
ARTICLE V PLEDGE AND SECURITY INTEREST	11
Section 5.1. <u>Pledge of Company TIF Account</u>	11
Section 5.2. <u>Further Instruments</u>	11
Section 5.3. <u>Liens</u>	11
Section 5.4. <u>Access to Books and Records</u>	11
ARTICLE VI DEFAULTS AND REMEDIES.....	11
Section 6.1. <u>Events of Default</u>	11
Section 6.2. <u>Remedies on Default</u>	12
Section 6.3. <u>Remedies Cumulative</u>	13
Section 6.4. <u>Enforcement Rights</u>	14
ARTICLE VII EFFECTIVE DATE, TERM AND TERMINATION.....	14
Section 7.1. <u>Effective Date and Term</u>	14
Section 7.2. <u>Cancellation and Expiration of Term</u>	14

ARTICLE VIII ASSIGNMENT AND PLEDGE OF COMPANY'S INTEREST14
 Section 8.1. Consent to Pledge, Collateral Assignment Or Grant of a Security Interest. .14
 Section 8.2. Assignment.15

ARTICLE IX MISCELLANEOUS.....15
 Section 9.1. Successors.15
 Section 9.2. Parties in Interest.....15
 Section 9.3. Severability.15
 Section 9.4. No Personal Liability.16
 Section 9.5. Counterparts.16
 Section 9.6. Governing Law.16
 Section 9.7. Notices.16
 Section 9.8. Amendments.17
 Section 9.9. Net Agreement.16
 Section 9.10. Integration.17
 Section 9.11. Indemnification.17
 Section 9.12. Waiver of Recapture if Agreement Found Void.18

THIS CREDIT ENHANCEMENT AGREEMENT dated as of ~~April~~ ^{September} 2, 2005, between the City of Portland, Maine (the "City"), a municipal body corporate and politic and a political subdivision of the State of Maine, Riverwalk, LLC, a limited liability company duly organized and existing under the laws of the State of Maine, with a place of business in Portland, Maine (the "Company").

WITNESSETH THAT

WHEREAS, the City designated the Riverwalk Municipal Development District and Tax Increment Financing District (the "District") pursuant to Chapter 206 of Title 30-A of the Maine Revised Statutes, as amended, by action of the Portland City Council on ~~September~~ ^{September} 2, 2005 (the "Vote"), and pursuant to the same Vote adopted a development program and financial plan for the District (the "Development Program"); and

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

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

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

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

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

**ARTICLE I
DEFINITIONS**

Section 1.1. Definitions.

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

"Account" shall mean the Project Cost Account, also known as the Riverwalk Development Program Fund.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Fiscal Year” means the time period from July 1 through June 30.

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

“Original Assessed Value” means \$1,085,550, the assessed value of the District as of March 31, 2005.

“Project” means the design and construction of the facilities described in the Riverwalk proposal dated September 8, 2004, or any subsequent revisions of that proposal as approved by City and as described in the Development Program.

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

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

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

“Property Taxes” means any and all ad valorem property taxes in excess of any county, state or special district taxes levied, charged or assessed against the Property by the City or on its behalf and actually paid to the City.

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

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

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

Section 1.2. Interpretation and Construction.

In this Agreement, unless the context otherwise requires:

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

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

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

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

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

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

ARTICLE II DEVELOPMENT PROGRAM FUND AND FUNDING REQUIREMENTS

Section 2.1. Creation of Development Program Fund.

The City hereby confirms the creation and establishment of a segregated account in the name of the City designated as the "Riverwalk 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), as amended from time to time. 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), as amended from time to time. The Project Cost Account shall include two subaccounts designated as the "Company TIF Account" and "City TIF Account".

Section 2.2. Deposits into Account.

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

Section 2.3. Use of Monies in Account.

Monies deposited in the Account shall be used and applied exclusively to fund the City's payment obligation described in Article III hereof. Monies deposited into the Account and any earnings thereunder will be designated and appropriated by City Council annually in the

municipal budget in accordance with Chapter 206 of Title 30-A, and in accordance with the Development Program.

Section 2.4. Monies Held in Trust.

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

Section 2.5. Investments.

Any monies in the Account shall be invested and reinvested in Qualified Investments as determined by the City. The City shall have discretion regarding the investment of such monies, provided such monies are invested in Qualified Investments. As and when any amounts thus invested may be needed for disbursements, the City shall cause a sufficient amount of such investments to be sold or otherwise converted into cash to the credit of such account. The City shall have the sole and exclusive right to designate the investments to be sold and to otherwise direct the sale or conversion to cash of investments made with monies in the Account.

Section 2.6. Tax Payments.

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

**ARTICLE III
PAYMENT OBLIGATIONS**

Section 3.1. Captured Assessed Value; Retained Tax Increment.

Annually, the following percentages of Increased Assessed Value shall be retained as Captured Assessed Value and the Property Tax assessed on such Captured Assessed Value shall be retained as Retained Tax Increment, which Retained Tax Increment shall be deposited when received by the City into the Company TIF Account and the City TIF Account pursuant to the following allocation table, in accordance with the provisions of Article II of this Agreement and the priorities established by 30-A M.R.S.A. §5227(3)(B), each year starting with the 2007 fiscal year of the City and continuing for each of the next 12 fiscal years of the City, ending with the 2019 fiscal year, all as indicated on Table No. 1 below. In no event shall any additional sums be allocated to the Company and deposited into the Company TIF Account over and above the allocation listed in the Project Revenue column of Table 1 below. The company shall receive in the Company TIF Account the annual payment listed in the Company Project Revenue column of Table 1 below, or 75% of the Retained Tax Increment, whichever is less. For purposes of computing the amounts owed pursuant to this section, the amount of tax collected for reimbursement as Project Revenue shall be calculated on June 30th of each fiscal year.

TABLE 1

Tax Year	Projected Increased Assessed Value	Percentage Captured	Projected Captured Assessed Value	Estimated Mil Rate	Estimated Retained Tax Increment	Maximum Company Project Revenue	Estimated City Project Revenue
EY07	\$ 68,823,016	100%	\$ 68,823,016	15.75	\$ 1,081,773	\$ 500,000	\$ 581,773
EY08	\$ 68,823,016	100%	\$ 68,823,016	16.07	\$ 1,104,896	\$ 500,000	\$ 604,896
EY09	\$ 68,823,016	100%	\$ 68,823,016	16.38	\$ 1,128,591	\$ 500,000	\$ 628,591
EY10	\$ 68,823,016	100%	\$ 68,823,016	16.71	\$ 1,152,810	\$ 500,000	\$ 652,810
EY11	\$ 68,823,016	100%	\$ 68,823,016	17.05	\$ 1,177,596	\$ 500,000	\$ 677,596
EY12	\$ 68,823,016	100%	\$ 68,823,016	17.39	\$ 1,202,942	\$ 500,000	\$ 702,942
EY13	\$ 68,823,016	100%	\$ 68,823,016	17.74	\$ 1,228,859	\$ 500,000	\$ 728,859
EY14	\$ 68,823,016	100%	\$ 68,823,016	18.09	\$ 1,255,347	\$ 500,000	\$ 755,347
EY15	\$ 68,823,016	100%	\$ 68,823,016	18.45	\$ 1,282,415	\$ 500,000	\$ 782,415
EY16	\$ 68,823,016	100%	\$ 68,823,016	18.82	\$ 1,310,064	\$ 500,000	\$ 810,064
EY17	\$ 68,823,016	100%	\$ 68,823,016	19.20	\$ 1,338,294	\$ 500,000	\$ 838,294
EY18	\$ 68,823,016	100%	\$ 68,823,016	19.58	\$ 1,367,104	\$ 500,000	\$ 867,104
EY19	\$ 68,823,016	100%	\$ 68,823,016	19.97	\$ 1,396,593	\$ 500,000	\$ 896,593
TOTALS					\$ 13,977,773	\$ 5,000,000	\$ 8,977,773

Table is for illustrative purposes only.

Section 3.2. Completion of Development Program.

Under this Agreement, the Company shall make a good faith effort to substantially complete the project as described in the Development Program.

Section 3.3. Credit Enhancement Payments.

a. Subject to Section 3.3(b), , the City shall pay on December 31 and June 30 of each year of this Agreement to the Company all Company Tax Increment Revenues then on deposit in the Company TIF Account. The obligation of the City to make such payment shall be limited obligation payable solely out of monies on deposit in the Company TIF Account and shall not constitute a general debt or obligation on the part of the City or a general obligation or charge against or pledge of the faith and credit or taxing power of the City, the State of Maine or any political subdivision thereof.

b. In the event that City is subject to a claim by a third party to pay Company Tax Increment Revenues to such third party, City shall not pay such amount to Company pursuant to Section 3.3(a) nor to the third party, but shall deposit then Company Tax Increment Revenues in an amount equal to such amount so claimed (but only to the extent available) into an interest bearing escrow account and shall file an interpleader or other comparable action with a court of competent jurisdiction requesting a ruling to determine whether such Company Tax Increment Revenues should be paid to Company or to said third party. The assessed value of the District will increase by the reason of a phased in revaluation in fiscal years 2006 and 2007. Such increase may lead to an adjustment to the amount of taxes deposited in the TIF account by

Company. Company's share of the retained tax increment payable to it by City pursuant to paragraph 3.1 of this Agreement shall not be adjusted as a result of said revaluation.

Section 3.4. Failure to Make Payment.

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

Section 3.5. Manner of Payments.

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

Section 3.6. Obligations Unconditional.

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

Section 3.7. Limited Obligation.

The City's obligations of payment hereunder shall be limited obligations of the City payable solely from Retained Tax Increment Revenues and any earnings thereon, pledged therefore under this Agreement. The City's obligations hereunder shall not constitute a general debt or a general obligation on the part of the City or a charge against or pledge of the faith and credit or taxing power of the City, but shall be payable solely from the Retained Tax Increment received by the City, and any earnings thereon. This Agreement shall not directly or indirectly or contingently obligate the City to levy or to pledge any form of taxation whatever therefore or to

make any appropriation for their payment, excepting the City's obligation to assess property taxes upon the Project and the pledge of the Retained Tax Increment established under this Agreement.

Section 3.8 Administrative Fee.

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

**ARTICLE IV
COVENANTS OF THE COMPANY**

Section 4.1. Project Development

a. The Company shall construct the project outlined in the September 8, 2004 proposal, as may be amended with the approval of the Portland City Council.

b. If in any year this Agreement is in effect the Increased Assessed Value is less than \$41,666,667, the obligation of the city to pay into the Company TIF Account per Section 3.1 of this agreement, shall be reduced. The reduction shall be calculated as follows: The increased assessed value divided by \$41,666,667 multiplied by the corresponding scheduled fiscal year Company Project Revenue payment amount on Table 1.

Notwithstanding the above in any fiscal year, the actual amount to be deposited into the Company TIF Account shall be the lesser of the Company Project Revenue, as adjusted pursuant to this Section if necessary, or 75% of the Retained Tax Increment.

Section 4.2. Job Requirement

All construction jobs related to the Project shall go to City and State of Maine citizens when possible, and all subcontractor work shall go to City and State union firms offering a sustainable, living wage, when possible.”

**ARTICLE V
PLEDGE AND SECURITY INTEREST**

Section 5.1. Pledge of Company TIF Account.

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

Section 5.2. Further Instruments.

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

Section 5.3. Liens.

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

Section 5.4. Access to Books and Records.

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

**ARTICLE VI
DEFAULTS AND REMEDIES**

Section 6.1. Events of Default.

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

- a. Any failure by the City to pay any amounts due to Company when the same shall become due and payable if such non-payment is not a result of a final determination by a court that this Agreement is illegal or invalid;
- b. Any failure by the City to make deposits into the Company TIF Account as and when due;

c. Other than as provided in paragraph (a) and (b) above, any failure by the City or the Company to observe and perform in all material respects any respective covenant, condition, agreement or provision contained herein on the part of the City or the Company respectively to be observed or performed, including any failure of the Company to use payments made under this Agreement as required in Section 3.5 of this Agreement or to perform the covenant under Section 4.1(a) of this Agreement, which failure is not cured within thirty (30) days following written notice thereof; provided, however, that this subsection (c) shall not be construed to include the Company's failure to pay Property Taxes on the Property in the District for any reason as an Event of Default hereunder; and

d. If a decree or order of a court or agency or supervisory authority having jurisdiction in the premises shall appoint a conservator or receiver or liquidator for the City, or if any insolvency, readjustment of debt, marshaling of assets and liabilities or similar proceedings for the winding up or liquidation of the City's affairs shall have been entered against the City or if the City shall have consented to the appointment of a conservator or receiver or liquidator in any such proceedings of or relating to the City or of or relating to all or substantially all of its property, including without limitation the filing of a voluntary petition in bankruptcy by the City or the failure by the City to have a petition in bankruptcy dismissed within a period of 90 consecutive days following its filing or in the event an order for release has been entered under the Bankruptcy Code with respect to the City.

e. Any failure of Company to pay taxes to City when due.

f. Any failure of the Company or any agents, assigns or successors in interest to operate the Garage as a garage and pay taxes on it during the term of this Agreement.

Section 6.2. Remedies on Default.

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

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

b. In addition, in the event of a default under Section 6.1 (c)(e) or (f) relating to Section 3.5 or 4.1(a), the City may suspend further payments until such default is cured. If there is any dispute as to either party's performance of any of its obligations under this Agreement, such dispute may, by agreement of the parties, be submitted to non-binding mediation and, following such mediation or in the absence of any such agreement to submit the dispute to mediation, shall be submitted to arbitration in accordance with the rules of the American

Arbitration Association. Payments by the City will not be suspended prior to a final determination in such proceeding in favor of the City.

Section 6.3. Remedies Cumulative.

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

Section 6.4. Enforcement Rights.

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

**ARTICLE VII
EFFECTIVE DATE, TERM AND TERMINATION**

Section 7.1. Effective Date and Term.

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

Section 7.2. Cancellation and Expiration of Term.

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

**ARTICLE VIII
ASSIGNMENT AND PLEDGE OF COMPANY'S INTEREST**

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

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

Agreement and provide to the pledgee or assignee such rights and/or remedies as it may deem necessary for the establishing, perfection and protection of its interest herein.

Section 8.2. Assignment.

Except as provided in Section 8.1, this Agreement and the obligations of the City hereunder are personal to the Company and may not be assigned or transferred by the Company without the consent of the City which consent shall not be unreasonably withheld or delayed for any reason or for no reason.

**ARTICLE IX
MISCELLANEOUS**

Section 9.1. Successors.

a. In the event the City or the Company are dissolved, merged into or consolidated with another entity, or undergo any form of corporate reorganization (other than with respect to any dissolution, merger, consolidation or corporate reorganization solely involving the Company and any other company related to or affiliated with the Company), the covenants, stipulations, promises and agreements set forth herein, by or on behalf of or for the benefit of such party shall bind or inure to the benefit of the successors and assigns thereof from time to time and any entity, officer, board, commission, agency or instrumentality to whom or to which any power or duty of such party shall be transferred, subject to approval of the City, which consent shall not be unreasonably withheld or delayed.

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

Section 9.2. Parties in Interest.

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

Section 9.3. Severability.

Except as otherwise provided herein, in case any one or more of the provisions of this Agreement shall, for any reason, be held to be illegal or invalid, such illegality or invalidity shall

not affect any other provision of this Agreement and this Agreement shall be construed and enforced as if such illegal or invalid provision had not been contained herein.

Section 9.4. No Personal Liability.

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

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

Section 9.5. Counterparts.

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

Section 9.6. Governing Law.

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

Section 9.7. Notices.

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

If to the City:

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

If to the Company:

Riverwalk, LLC
2 Market Street
Portland, ME 04101
Attn: Drew Swenson

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

Section 9.8. Amendments.

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

Section 9.9. Net Agreement.

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

Section 9.10. Integration.

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

Section 9.11. Indemnification.

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

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

Section 9.12. Waiver of Recapture if Agreement Found Void.

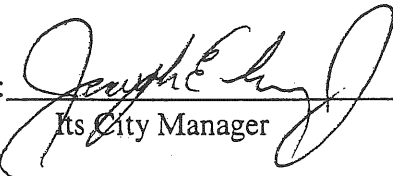
In the event this Credit Enhancement Agreement is found void "ab initio" by a Court of law with final jurisdiction over this Agreement, City agrees to waive its rights to recapture all TIF proceeds paid to Company pursuant to this Agreement.

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

WITNESS

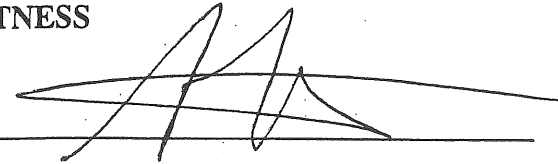


CITY OF PORTLAND, MAINE

By: 

Its City Manager

WITNESS



RIVERWALK, LLC

By: 

Its Authorized Officer / *MANAGER*

EXHIBIT B

Request for Payment

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

RIVERWALK, LLC

Date: _____

By: _____

Its

Contract/Credit Enhancement Agreement – Riverwalk (DMK first draft) 4-12-05



PORTLAND MAINE

Strengthening a Remarkable City, Building a Community for Life • www.portlandmaine.gov

Planning and Development Department
Lee D. Urban, Director

Economic Development Division
John N. Lufkin, Director

FACSIMILE TRANSMITTAL SHEET

TO: Mr. Jim Nimon

FROM: John N. Lufkin

COMPANY: DECD

DATE: 9/13/2005

FAX NUMBER: (207) 287-5701

TOTAL NO. OF PAGES INCLUDING COVER: 4

PHONE NUMBER: (207) 624-9800

SENDER'S PHONE NUMBER: 207-874-8945

RE: TIF Cover Page

YOUR REFERENCE NUMBER:

URGENT

FOR REVIEW

PLEASE COMMENT

PLEASE REPLY

PLEASE RECYCLE

NOTES/COMMENTS:

Here is the completed cover page. Feel free to call with questions.

Thanks,
Jack Lufkin.

MUNICIPAL TAX INCREMENT FINANCING

APPLICATION COVER SHEET

A. General Information

1. *Municipality Name:* City of Portland
 2. *Address:* 389 Congress Street, Portland, ME 04101
 3. *Telephone:* 207-874-8683 *Fax:* 207-756-8217 *Email:* jnl@portlandmaine.gov
 4. *Project Contact Person:* Jack Lufkin *Date:* 9-13-05
-
5. *Business Name:* Riverwalk, LLC
 6. *Address:* 2 Market Street, Suite 500, Portland ME 04101
 7. *Telephone:* 207-775-2464 *Fax:* 207-775-2465
Email: Drew Swenson - dswenson@swensonandco.com
 8. *Principal Place of Business:*
Offices: 2 Market Street, Suite 500, Portland ME 04101
Parking Structure: 155 Fore Street, Portland ME 04101
 9. *Company Structure (e.g. corporation, sub-chapter S, etc.):*
Maine Limited Liability Company
 10. *Place of Incorporation:*
Maine
 11. *Names of Officers:*
Drew E. Swenson, Manager
 12. *Principal Owner(s) Name and Address:*
Drew E. Swenson, 2 Market Street, Suite 500, Portland ME 04101
Fred M Forsley, 86 Newbury Street, Portland ME 04101
 13. *Project Contact Person:* Drew E. Swenson - contact information per above

B. Disclosure (attach separate sheets if necessary)

14. Check the public purpose (any that apply) that will be served by the business through the use of the TIF incentive:
 job creation job retention capital investment training investment
 tax base improvement public facilities improvement other: Creation of a needed structured parking serves as a catalyst for further area job creation, capital investment, tax base improvement and public facilities improvement
15. Check the specific use (any that apply) to which the TIF revenues will be put:
 real estate purchase machinery & equipment purchase training costs
 debt reduction
 other: _____
16. List the company's goals for the number, type and wage levels of jobs to be created or retained as a result of the TIF revenues received (*please use next page*).

17. Does the business anticipate receiving more than \$10,000 in TIF revenues in any calendar year during the term of the TIF development program? Yes No (If so, please become familiar with annual reporting requirements).

EMPLOYMENT GOALS

Company Goals for Job Creation and Job Retention (from question 16, page 1)

<i>A. Job Creation Goals</i>			
<i>Occupational Cluster*</i>	<i>Full-time</i>	<i>Part-time</i>	<i>Wage Level</i>
1. Executive, Professional & Technical	10		\$50,000
2. Administrative Support, inc. Clerical	30	20	\$30,000
3. Sales & Service-Retail, Spa, Restaurant	40	40	\$29,000
4. Agriculture, Forestry & Fishing	0	0	\$
5. Maintenance, Construction , Production, & Transp. @100 per \$1MM (Temporary During Construction)	500	150	\$40,000
<i>B. Job Retention Goals</i>			
<i>Occupational Cluster*</i>	<i>Full-time</i>	<i>Part-time</i>	<i>Wage Level</i>
1. Executive, Professional & Technical			\$
2. Administrative Support, inc. Clerical			\$
3. Sales & Service			\$
4. Agriculture, Forestry & Fishing			\$
5. Maintenance, Construction, Production, & Transportation			\$
<i>*Please use the Occupational Cluster descriptions on the next page to complete this form.</i>			

INSTRUCTIONS

A. Job Creation Goals. Please list the number, type and wage level of jobs created as a result of the economic development incentive. NOTE: For this form, "full-time" employment means 30 hours or more; "part-time" employment means less than 30 hours. "Wage level" means the average annual wage paid for jobs created within an occupational cluster, e.g. either their annual salary, or their hourly wage times their annual hours. Also, "type" means "occupational cluster" which refers to the 5 categories defined on page 3, below. Please include the number of your employees (both full-time and part-time) working within the category that most closely reflects their job duties.

B. Job Retention Goals. Please list the number, type and wage level of jobs retained as a result of the economic development incentive. Part B should be completed using same definitions in Part A.

OCCUPATIONAL CLUSTERS
(for use in completing Parts A & B above)

1. EXECUTIVE, PROFESSIONAL & TECHNICAL

Executive, administrative and managerial. Workers in executive, administrative and managerial occupations establish policies, make plans, determine staffing requirements, and direct the activities of businesses and other organizations. Workers in management support occupations, such as accountant and auditor or underwriter, provide technical assistance to managers.

Professional specialty. This group includes engineers; architects and surveyors; computer, mathematical, and operations research occupations; life, physical, and social scientists; lawyers and judges; social, recreational, and religious workers; teachers, librarians, and counselors; health diagnosing, assessment, and treating occupations; and communications, visual arts, and performing arts occupations.

Technicians and related support. This group includes health technologists and technicians, engineering and science technicians, computer programmers, tool programmers, aircraft pilots, air traffic controllers, paralegals, broadcast technicians, and library technicians.

2. ADMINISTRATIVE SUPPORT, INCLUDING CLERICAL

Administrative support, including clerical. Workers in this group prepare and record memos, letters and reports; collect accounts; gather and distribute information; operate office machines; and handle other administrative tasks.

3. SALES AND SERVICE

Marketing and sales. Workers in this group sell goods and services, purchase commodities and property for resale, and stimulate consumer interest.

Service. This group includes a wide range of workers in protective, food and beverage preparation, health, personal, private household, and cleaning and building services.

4. AGRICULTURE, FORESTRY AND FISHING

Agriculture, forestry and fishing. Workers in these occupations cultivate plants, breed and raise animals, and catch fish.

5. MAINTENANCE, CONSTRUCTION, PRODUCTION AND TRANSPORTATION

Mechanics, installers, and repairers. Workers in this group adjust, maintain, and repair automobiles, industrial equipment, computers, and many other types of machinery.

Construction trades and extractive. Workers in this group construct, alter, and maintain buildings and other structures or operate drilling and mining equipment.

Production. These workers set up, adjust, operate, and tend machinery and/or use hand tools and hand-held power tools to make goods and assemble products.

Transportation and material moving. Workers in this group operate the equipment used to move people and materials. This group also includes handlers, equipment cleaners, helpers, and laborers who assist skilled workers and perform routine tasks.

City of Portland

Riverwalk Development Tax Increment Financing Program Application

Prepared by:

**The City of Portland Economic Development Division
April 29, 2005**

TABLE OF CONTENTS

SECTION	PAGE
I. Introduction	1
II. Development Program Narrative	2
A. The Project	2
B. The Development District	3
C. The Development Program	3
D. Municipal Use of TIF Revenues	3
E. Operational Components	4
1. Uses of Private Property	4
2. Environmental Controls	4
3. Plan of Operation	4
III. Physical Description	4
IV. Financial Plan	5
A. Costs and Sources of Revenues	5
B. Development Program Fund	6
C. Financing Plan	6
V. Financial Data	7
VI. Tax Shifts	7
VII. Municipal Approvals	8

“Riverwalk Development and Tax Increment Financing District”

**A PROPOSAL TO CREATE A MUNICIPAL DEVELOPMENT
TAX INCREMENT FINANCING DISTRICT**

I. Introduction

One extremely important component of the Eastern Waterfront Master Plan, which was called for in the Mayoral Taskforce report entitled “Investing in Our Working Waterfront – Final Report of the Mayor’s Waterfront Task Force on Economic Development”, dated October 2000, is the need to promote structured parking facilities as opposed to surface lots that waste valuable urban waterfront property.

In November of 2003, the City of Portland solicited development proposals for 1.06 acres of City land situated on what will be the corner of the extensions of Hancock and Commercial Streets. The RFP required the construction of a minimum 600 space parking facility so that additional development along the Eastern Waterfront could continue without burdening projects with the high cost of providing structured parking solutions. Since it was recognized that the 600 space minimum requirement exceeded market demand, the City understood that a financial subsidy would likely be requested in order to justify the large capital cost. In fact, all four development proposals received included a request for Tax Increment Financing.

After a thorough review process, the Community Development Committee of the Portland City Council selected the development proposal offered by Riverwalk, LLC, which owns property directly across from the subject City land. The project was selected due to a combination of factors including the size of the proposed facility, the fact that the garage was going to be situated on Riverwalk property that is further back from the valuable waterfront land, the aggressive development of both housing and commercial space on the City land, and the total projected financial return to the City.

Through a partnership with Riverwalk, LLC, the City of Portland has an opportunity to realize the following:

- \$68,000,000 in additional taxable value added to City
- Full build-out development of approximately
 - 33,000 sq. ft. of ground floor retail development;
 - as many as 110 densely developed condominiums units;
 - a 50 room luxury boutique hotel; and
 - 20,000 of new, class A office space
- Development of an approximately 750 space parking facility that will:
 - be a major catalyst for continued development of the Eastern Portland peninsula
 - ease an existing parking deficit for Portland’s island residents and waterfront business operations
 - provide parking for the Ocean Gateway passenger facility and the tenants of the Portland Ocean Terminal operations

- Remove the barrier of the high cost of the development of a parking facility for new buildings to be built along the eastern waterfront.
- Significant improvements to road infrastructure including the build-out of the City street grid envisioned in the Eastern Waterfront Master Plan
- Development of pedestrian friendly streets with full brick sidewalks, quality lighting, street trees and tree wells
- Extension of utilities throughout the area, thereby facilitating continued development
- A revenue stream that will fund the local share of the Ocean Gateway project, as well as a host of other related economic development improvements

II. Development Program

A. *The Project*

With the incorporation of the Eastern Waterfront Master Plan into the Portland Comprehensive Plan, the City Council formally recognized the unique characteristics of the waterfront, including the stewardship of scarce land. An element of that stewardship is managing the parking demands of development through structured parking solutions. The Waterfront Master Plan imagined the need for as many as five parking garages to be constructed on the eastern waterfront of the Portland peninsula, containing an estimated 3,000 spaces. By accommodating parking demands in this fashion, the finite peninsula land is not taken up by sprawling surface lots. Structured parking will allow land for commercial development where appropriate and will reserve land on the ocean's edge for the water dependant uses.

In order to facilitate the development of the eastern waterfront, Riverwalk, LLC proposes to construct the approximately 750 space Longfellow Garage. Due to the high cost of parking garage construction and operation in advance of conditions that would warrant its development from market forces alone, the City and Riverwalk, LLC seek to enter into an economic partnership through the creation of a Tax Increment Financing ("TIF") district to be known as the Riverwalk Development and Tax Increment Financing District (the "District" or "TIF District"), which will include a Credit Enhancement Agreement between the City and Riverwalk, LLC. The incremental value from the entire project will be captured and a portion of the incremental tax revenues generated will be allocated back to Riverwalk, LLC over a period of thirteen (13) years in order to subsidize the cost of the garage until market conditions alone can support its operation.

The City will allocate a portion of its incremental share of the tax revenues to infrastructure improvements in the area, including the construction of new City streets complete with brick sidewalks, granite curbing, street trees with tree wells and full service of underground utilities to facilitate additional growth while maintaining the enjoyable quality of a pedestrian friendly district. In addition, the City will also allocate revenue towards the local share of funding the Ocean gateway project, and will undertake other economic development activities that will improve this area for

future development opportunities. At the conclusion of the TIF and Credit Enhancement Agreement, the City of Portland will benefit from additional tax revenue, the provision of new housing in Portland and job creation opportunities from additional nearby growth and development made possible due to the increase in structured parking availability.

B. The Development District

The following properties comprise the TIF District designation and are the subject of this application. (See Exhibit B-2)

MAP	BLOCK	LOT
19	A	001
19	A	014
20	C	009*
20	C	023

* Only a portion of this property will be included in the TIF District. This property will be divided as a result of this project with the acquisition of the property needed for the extension of Hancock Street. It is anticipated that a new Map, Block and Lot identifier will be given to the new property within the TIF District.

The captured value will be calculated on only the new tax value generated within the TIF District and will not affect the current property tax base.

C. The Development Program

The City of Portland, by designating the Longfellow Garage TIF District, will capture on average over the life of the TIF, 100% of the new assessed value created within the District over the original assessed value, and retain from the district the new tax revenues generated from the captured assessed value. A portion of these revenues will be allocated based upon the terms of the Credit Enhancement Agreement with Riverwalk, LLC for the sole, express purpose of offsetting the costs associated with the construction and operation of the Longfellow Garage. (See Exhibit C)

D. Municipal Use of TIF Revenues

The City of Portland will utilize the remaining tax revenues generated from the TIF District, over and above what is allocated through the Credit Enhancement Agreement, for activities that will enhance economic development opportunities in the area. The Eastern Waterfront Master Plan delineated the development of a new street grid. The City will retain its share of the captured tax revenue to build out the streets envisioned in that plan, such as extensions of Hancock Street, Mountfort Street, Commercial Street and the construction of a new street to the east of Mountfort Street. Further improvements to Franklin Arterial are also contemplated as

a result of the increased development and a portion of the incremental revenues might be allocated as a match for the funding of those improvements as well.

In addition to the infrastructure improvements described above, the City will also allocate the incremental tax revenues generated from this District toward the local share of the costs of the Ocean Gateway project. With those costs escalating, the City will look to the new revenue generated from this development to fund its share so as to avoid burdening the taxpayers further through an increased municipal assessment.

To the extent that incremental revenues remain after satisfying the obligations above, those revenues would be added to the funds generated from the 2002 Waterfront Tax Increment Financing District in support of the activities approved as part of that Development Program. Approved uses include the capitalization of a marine focused loan fund, dredging along the wharves to create deep water commercial berthing opportunities, and to support pier repair projects. As is the case with the funds generated through the 2002 Waterfront TIF, the City would utilize the Waterfront Economic Development Advisory Committee to guide funding priority decisions among the approved uses described in that development program.

E. Operational Components

1. Uses of Private Property

The Credit Enhancement Agreement will allow for the development of Longfellow Garage on private property controlled by Riverwalk, LLC.

2. Environmental Controls

The Development Program proposes improvements that will comply with all federal, state and local rules and regulations and applicable land use requirements.

3. Plan of Operation

The Longfellow Garage will be owned by Riverwalk, LLC, its successors or assigns, who will be responsible for payment of all maintenance expenses, insurance and taxes on the project.

During the life of the Tax Increment Financing District, the City of Portland, City Council, or its designee, will be responsible for the administration of the District. Riverwalk, LLC will be solely responsible for completion of the project.

III. Physical Description

A. Total acreage of the municipality: 12,386 acres

B. Total acreage proposed for tax increment financing district: 3.68 acres

4/29/2005

- C. Percent of line B of line A (line B divided by line A cannot exceed 2%): 0.03%
- D. Total acreage of all existing and proposed TIF Districts in the municipality: 88.9 acres
- E. Percent line D of line A (cannot exceed 5%): 0.717%
- F. Not less than 25%, by area, of the real property within a development district shall meet at least one of the following criteria:
 - 1. Blighted acres N/A. Line F1 divided by line B = _____.
 - 2. Acreage in need of rehabilitation, redevelopment or conservation N/A. Line F2 divided by line B = _____.
 - 3. Acreage suitable for commercial siting = 3.68. Line F3 divided by line B = 100%.
- G. Enclosed municipal maps:
 - 1. Area map showing site location of the TIF District in relation to geographic location of municipality (Exhibit B-1)
 - 2. Site map showing TIF District (Exhibit B-2)

IV. Financial Plan

A. *Costs and Sources of Revenues*

The TIF District comprises an area of approximately 3.68 acres of taxable real and personal property with an original assessed value of \$1,085,550 as of March 31, 2005. The development within the District is estimated to add an additional \$68,000,000 of new assessed real and personal property taxable value to the City.

The Development Program provides for the new tax revenues generated by the increase in assessed value of the District to be captured and designated as TIF Revenues. The City will allocate the retained revenues to the economic development activities described in the Development Program.

Activity	TIF Proceeds	Riverwalk, LLC	Total
Land Acquisition		\$1,350,000	\$1,350,000
Building Acquisition		\$1,250,000	\$1,250,000
Reloc. of Persons/Businesses		0	0
Clearance and Demolition		\$250,000	\$250,000
Street/Site Improvements	\$2,500,000	\$250,000	\$2,750,000
Water/Sewer Improvements	\$750,000	\$1,200,000	\$1,950,000
Building Construction	\$3,000,000	\$38,673,366	\$41,673,366
Building Renovation		0	0
Parking Facilities	\$5,007,633	\$8,000,000	\$13,007,633
Capital Equipment		0	0
Professional Fees		\$3,000,000	\$3,000,000
Administrative Costs		0	0
Discretionary Payments		0	0
Other Costs (inc. financing)	\$2,720,140	\$3,000,000	\$5,720,140
TOTAL	\$13,977,773	\$56,973,366	\$70,951,139

The attached Exhibit A details the projections based upon the anticipated assessed value increases within the District. Exhibit A is a projection based upon best available information and is included for demonstration purposes only. No assurances are provided as to the results reflected therein.

B. Development Program Fund

This Development Program requires establishment of the Riverwalk Development Program Fund pledged to, and charged with, the payment of the project costs in the manner outlined in 30-A M.R.S.A. § 5227(3).

The Riverwalk Development Program Fund is established consisting of a Project Cost Account, which includes two sub-accounts designated as the "Company TIF Account" and "City TIF Account" pledged to, and charged with, payment of eligible project costs.

C. Financing Plan

The TIF Districts comprise an area of approximately 3.68 acres of taxable real and personal property. The value of the real and personal property within the district as of March 31, 2005 is established as the original assessed value.

The developments within the described TIF District will add approximately \$68 million of new taxable real and personal property value in the City of Portland. TIF revenues will be allocated generally as described on Exhibit A to finance the costs of the Longfellow Garage. Actual payments to the Project Cost Account and the City

Cost Account will be determined based upon the actual incremental assessed value retained within the District and by the terms of the Credit Enhancement Agreement.

V. Financial Data

- A. Total 2005 value of equalized property in the municipality: \$4,798,647,310.
- B. Original assessed value of all properties in all existing and proposed TIF districts:

Existing	\$22,569,650
Proposed	<u>\$1,085,550</u>
Total	\$23,655,200

Line B divided by line A = 0.49% (cannot exceed 5%).

- C. Estimate of increased assessed value by year after implementation of the development program: See Exhibit A
- D. Percentage of increased assessed value to be applied to the development program fund: See Exhibit A
- E. Estimated annual tax increment: \$1,075,213 (Average)
- F. Total average annual value of development program fund: \$1,075,213 (Average)
- G. Annual principal and interest payment of bonded indebtedness: N/A
- H. Financial assumptions and safeguards: Under the Credit Enhancement Agreement, the City's payment obligation exists only insofar as new tax revenues are generated from new development within the TIF District. The City will pay an annual amount to Riverwalk, LLC only insofar as new tax revenues from the increase in valuation are generated within the TIF District over the base valuation of the District.
- I. Statement of impact of TIF on taxing jurisdictions within the county: See Exhibit A

VI. Tax Shifts

In accordance with Maine statutes governing the establishment of Tax Increment Financing Districts, the following tax shifts which result from the establishment of the District have been identified using a formula supplied by the Department of Economic and Community Development: See Exhibit A

Average Annual Amount:

General Purpose Aid to Education Tax Shift:	\$336,703
Municipal Revenue Sharing Tax Shift:	\$ 78,100
County Tax Shift:	\$ 62,260
Total Average Annual Savings:	\$477,063

VII. Municipal Approvals

A. Public Hearing Notice

The City of Portland did give proper Notice of Public Hearing in accordance with the requirements of 30-A M.R.S.A. § 5226(1). The notice was published on May 26, 2005 in a newspaper of general circulation (Portland Press Herald) as shown in Exhibit D.

B. Public Hearing

A Public Hearing at which the proposed municipal Tax Increment Financing District was discussed was held on June 6, 2005 in the Portland City Council Chambers. A copy of the minutes of that meeting is included as Exhibit E.

C. Authorizing Votes

An attested copy of the resolution of the Portland City Council designating the Riverwalk Development Tax Increment Financing District and the Credit Enhancement Agreement with Riverwalk, LLC is included as Exhibit F.

D. Assessors Certification

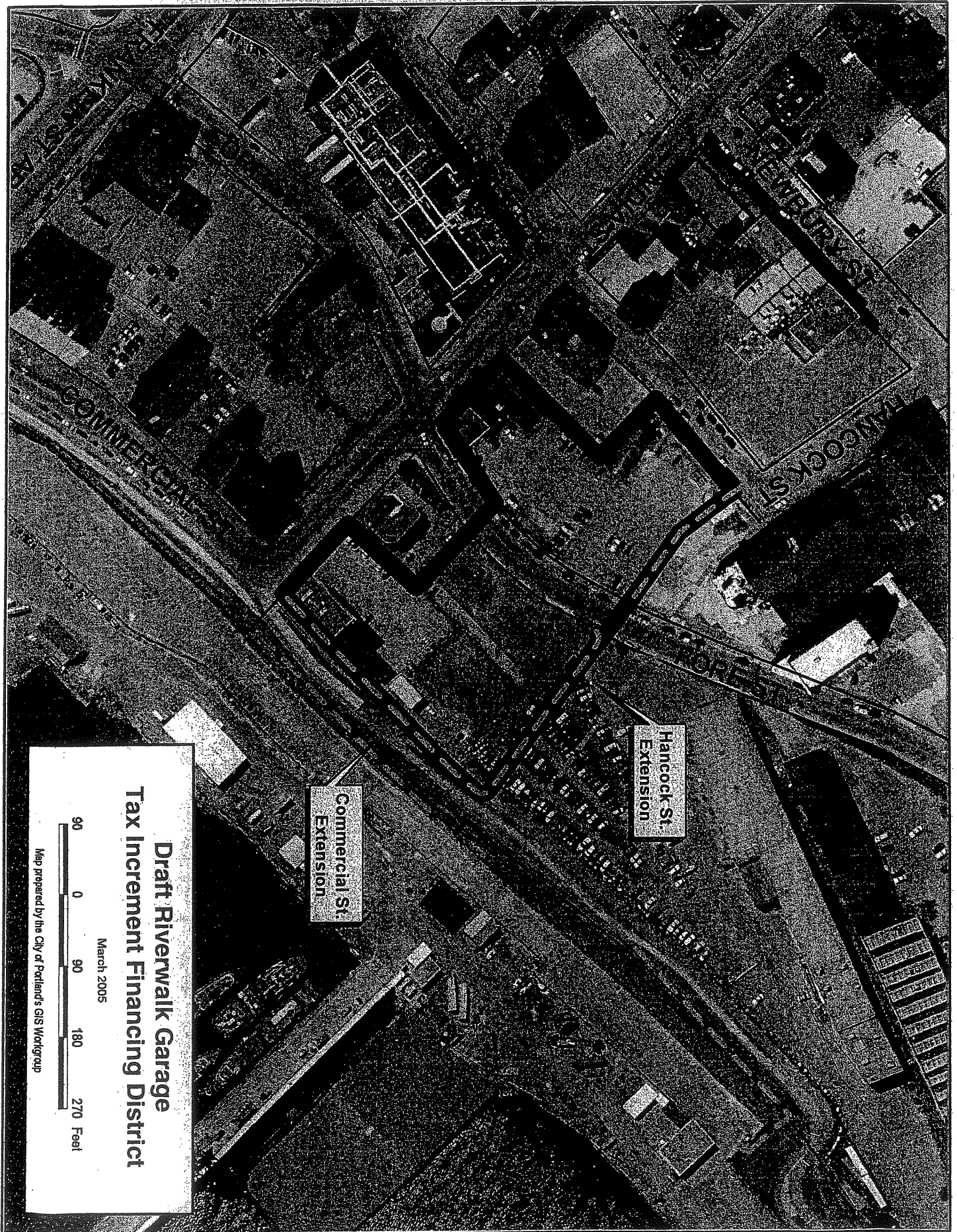
A letter from the Tax Assessor of the City of Portland certifying that the Original Assessed Value of the District as of March 31, 2005 is \$1,085,550 is included as Exhibit G.

Riverwalk Development TIF Program Allocation Schedule

TIF Allocation Table

Tax Year	Estimated Increased Real Prop	Estimated Increased Pers. Prop.	Estimated Total Increase	Estimated Mill Rate (2% Inc.)	Estimated Incremental Tax Real Estate	Estimated Incremental Tax Pers. Prop.	Estimated Total Incremental Tax	Project Allocation	Project Revenue	Estimated City Revenue	Education Shift	County Tax Shift	Revenue Shift	Total Tax Shift
FY08	\$ 646,150	\$ -	\$ 646,150	13.75	\$ 10,177	\$ -	\$ 10,177	75%	\$ 7,633	\$ 2,544	\$ -	\$ -	\$ -	\$ -
FY09	\$ 45,256,107	\$ -	\$ 45,256,107	16.07	\$ 605,866	\$ -	\$ 605,866	41%	\$ 250,000	\$ 355,866	\$ -	\$ -	\$ -	\$ -
FY10	\$ 67,323,016	\$ -	\$ 67,323,016	16.39	\$ 741,580	\$ -	\$ 741,580	65%	\$ 500,000	\$ 241,580	\$ 3,657	\$ 45,694	\$ 54,401	\$ 103,753
FY11	\$ 67,323,016	\$ -	\$ 67,323,016	16.71	\$ 1,125,239	\$ -	\$ 1,125,239	43%	\$ 500,000	\$ 625,239	\$ 213,458	\$ 47,979	\$ 80,075	\$ 341,512
FY12	\$ 67,323,016	\$ -	\$ 67,323,016	17.05	\$ 1,147,743	\$ -	\$ 1,147,743	43%	\$ 500,000	\$ 647,743	\$ 254,640	\$ 50,378	\$ 80,075	\$ 385,093
FY13	\$ 67,323,016	\$ -	\$ 67,323,016	17.39	\$ 1,170,698	\$ -	\$ 1,170,698	42%	\$ 500,000	\$ 670,698	\$ 389,538	\$ 52,897	\$ 80,075	\$ 522,510
FY14	\$ 67,323,016	\$ -	\$ 67,323,016	17.74	\$ 1,194,112	\$ -	\$ 1,194,112	41%	\$ 500,000	\$ 694,112	\$ 389,538	\$ 55,542	\$ 80,075	\$ 525,155
FY15	\$ 67,323,016	\$ -	\$ 67,323,016	18.09	\$ 1,217,994	\$ -	\$ 1,217,994	40%	\$ 500,000	\$ 717,994	\$ 389,538	\$ 58,319	\$ 80,075	\$ 527,932
FY16	\$ 67,323,016	\$ -	\$ 67,323,016	18.45	\$ 1,242,354	\$ -	\$ 1,242,354	35%	\$ 450,000	\$ 792,354	\$ 389,538	\$ 61,235	\$ 80,075	\$ 530,848
FY17	\$ 67,323,016	\$ -	\$ 67,323,016	18.82	\$ 1,267,201	\$ -	\$ 1,267,201	35%	\$ 450,000	\$ 817,201	\$ 389,538	\$ 64,286	\$ 80,075	\$ 533,900
FY18	\$ 67,323,016	\$ -	\$ 67,323,016	19.20	\$ 1,292,545	\$ -	\$ 1,292,545	30%	\$ 400,000	\$ 892,545	\$ 389,538	\$ 67,511	\$ 80,075	\$ 537,125
FY19	\$ 67,323,016	\$ -	\$ 67,323,016	19.58	\$ 1,318,396	\$ -	\$ 1,318,396	22%	\$ 300,000	\$ 1,018,396	\$ 389,538	\$ 70,887	\$ 80,075	\$ 540,500
FY20	\$ 67,323,016	\$ -	\$ 67,323,016	19.97	\$ 1,344,764	\$ -	\$ 1,344,764	11%	\$ 150,000	\$ 1,194,764	\$ 389,538	\$ 74,431	\$ 80,075	\$ 544,044
20-YEAR TOTALS														
TIF AVERAGES			\$ 59,488,147		\$ 1,075,713		\$ 1,075,713	36%	\$ 389,538	\$ 690,914	\$ 316,708	\$ 82,260	\$ 81,001	\$ 477,069

** Tax Shifts are required calculations for TIF Districts in the State of Maine. The amount of Tax Shift is reflective of the net effect of the sheltering benefit created when property is included in a TIF District. Changes in the assessment formulas by the State will affect the shift value. The listed amounts reflect anticipated Tax Shifts assuming no change to the formula methodology.



**Draft Riverwalk Garage
Tax Increment Financing District**

March 2005



Map prepared by the City of Portland's GIS Workgroup

CREDIT ENHANCEMENT AGREEMENT

between

CITY OF PORTLAND, MAINE

and

RIVERWALK, LLC

Dated as of _____, 2005

April 25, 2005

TABLE OF CONTENTS

ARTICLE I DEFINITIONS	3
Section 1.1. <u>Definitions</u>	3
Section 1.2. <u>Interpretation and Construction</u>	5
ARTICLE II DEVELOPMENT PROGRAM ACCOUNT AND FUNDING REQUIREMENTS.....	6
Section 2.1. <u>Creation of Development Program Fund</u>	6
Section 2.2. <u>Deposits into Account</u>	6
Section 2.3. <u>Use of Monies in Account</u>	6
Section 2.4. <u>Monies Held in Trust</u>	7
Section 2.5. <u>Investments</u>	7
Section 2.6. <u>Tax Payments</u>	7
ARTICLE III PAYMENT OBLIGATIONS	7
Section 3.1. <u>Captured Assessed Value; Retained Tax Increment</u>	7
Section 3.2. <u>Completion of Development Program</u>	8
Section 3.3. <u>Credit Enhancement Payments</u>	8
Section 3.4. <u>Failure to Make Payment</u>	9
Section 3.5. <u>Manner of Payments</u>	9
Section 3.6. <u>Obligations Unconditional</u>	9
Section 3.7. <u>Limited Obligation</u>	9
Section 3.8. <u>Administrative Fee</u>	10
ARTICLE IV COVENANTS OF THE COMPANY.....	10
Section 4.1. <u>Project Development</u>	10
ARTICLE V PLEDGE AND SECURITY INTEREST	11
Section 5.1. <u>Pledge of Company TIF Account</u>	11
Section 5.2. <u>Further Instruments</u>	11
Section 5.3. <u>Liens</u>	11
Section 5.4. <u>Access to Books and Records</u>	11
ARTICLE VI DEFAULTS AND REMEDIES.....	11
Section 6.1. <u>Events of Default</u>	11
Section 6.2. <u>Remedies on Default</u>	12
Section 6.3. <u>Remedies Cumulative</u>	13
Section 6.4. <u>Enforcement Rights</u>	14
ARTICLE VII EFFECTIVE DATE, TERM AND TERMINATION	14
Section 7.1. <u>Effective Date and Term</u>	14
Section 7.2. <u>Cancellation and Expiration of Term</u>	14

ARTICLE VIII ASSIGNMENT AND PLEDGE OF COMPANY'S INTEREST	14
Section 8.1. <u>Consent to Pledge, Collateral Assignment Or Grant of a Security Interest.</u> ..	14
Section 8.2. <u>Assignment.</u>	15
ARTICLE IX MISCELLANEOUS	15
Section 9.1. <u>Successors.</u>	15
Section 9.2. <u>Parties in Interest</u>	15
Section 9.3. <u>Severability.</u>	15
Section 9.4. <u>No Personal Liability.</u>	16
Section 9.5. <u>Counterparts.</u>	16
Section 9.6. <u>Governing Law.</u>	16
Section 9.7. <u>Notices.</u>	16
Section 9.8. <u>Amendments.</u>	17
Section 9.9. <u>Net Agreement.</u>	16
Section 9.10. <u>Integration.</u>	17
Section 9.11. <u>Indemnification.</u>	17
Section 9.12. <u>Waiver of Recapture if Agreement Found Void.</u>	18

THIS CREDIT ENHANCEMENT AGREEMENT dated as of April ____, 2005, between the City of Portland, Maine (the "City"), a municipal body corporate and politic and a political subdivision of the State of Maine, Riverwalk, LLC, a limited liability company duly organized and existing under the laws of the State of Maine, with a place of business in Portland, Maine (the "Company").

WITNESSETH THAT

WHEREAS, the City designated the Riverwalk Municipal Development District and Tax Increment Financing District (the "District") pursuant to Chapter 206 of Title 30-A of the Maine Revised Statutes, as amended, by action of the Portland City Council on _____, 2005 (the "Vote"), and pursuant to the same Vote adopted a development program and financial plan for the District (the "Development Program"); and

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

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

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

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

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

**ARTICLE I
DEFINITIONS**

Section 1.1. Definitions.

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

"Account" shall mean the Project Cost Account, also known as the Riverwalk Development Program Fund.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Fiscal Year” means the time period from July 1 through June 30.

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

“Original Assessed Value” means \$1,085,550, the assessed value of the District as of March 31, 2005.

“Project” means the design and construction of the facilities described in the Riverwalk proposal dated September 8, 2004, or any subsequent revisions of that proposal as approved by City and as described in the Development Program.

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

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

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

“Property Taxes” means any and all ad valorem property taxes in excess of any county, state or special district taxes levied, charged or assessed against the Property by the City or on its behalf and actually paid to the City.

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

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

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

Section 1.2. Interpretation and Construction.

In this Agreement, unless the context otherwise requires:

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

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

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

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

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

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

ARTICLE II DEVELOPMENT PROGRAM FUND AND FUNDING REQUIREMENTS

Section 2.1. Creation of Development Program Fund.

The City hereby confirms the creation and establishment of a segregated account in the name of the City designated as the "Riverwalk 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), as amended from time to time. 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), as amended from time to time. The Project Cost Account shall include two subaccounts designated as the "Company TIF Account" and "City TIF Account".

Section 2.2. Deposits into Account.

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

Section 2.3. Use of Monies in Account.

Monies deposited in the Account shall be used and applied exclusively to fund the City's payment obligation described in Article III hereof. Monies deposited into the Account and any earnings thereunder will be designated and appropriated by City Council annually in the

municipal budget in accordance with Chapter 206 of Title 30-A, and in accordance with the Development Program.

Section 2.4. Monies Held in Trust.

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

Section 2.5. Investments.

Any monies in the Account shall be invested and reinvested in Qualified Investments as determined by the City. The City shall have discretion regarding the investment of such monies, provided such monies are invested in Qualified Investments. As and when any amounts thus invested may be needed for disbursements, the City shall cause a sufficient amount of such investments to be sold or otherwise converted into cash to the credit of such account. The City shall have the sole and exclusive right to designate the investments to be sold and to otherwise direct the sale or conversion to cash of investments made with monies in the Account.

Section 2.6. Tax Payments.

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

**ARTICLE III
PAYMENT OBLIGATIONS**

Section 3.1. Captured Assessed Value; Retained Tax Increment.

Annually, the following percentages of Increased Assessed Value shall be retained as Captured Assessed Value and the Property Tax assessed on such Captured Assessed Value shall be retained as Retained Tax Increment, which Retained Tax Increment shall be deposited when received by the City into the Company TIF Account and the City TIF Account pursuant to the following allocation table, in accordance with the provisions of Article II of this Agreement and the priorities established by 30-A M.R.S.A. §5227(3)(B), each year starting with the 2007 fiscal year of the City and continuing for each of the next 12 fiscal years of the City, ending with the 2019 fiscal year, all as indicated on Table No. 1 below. In no event shall any additional sums be allocated to the Company and deposited into the Company TIF Account over and above the allocation listed in the Project Revenue column of Table 1 below. The company shall receive in the Company TIF Account the annual payment listed in the Company Project Revenue column of Table 1 below, or 75% of the Retained Tax Increment, whichever is less. For purposes of computing the amounts owed pursuant to this section, the amount of tax collected for reimbursement as Project Revenue shall be calculated on June 30th of each fiscal year.

TABLE 1

Tax Year	Projected Increased Assessed Value	Percentage Captured	Projected Captured Assessed Value	Estimated Mil Rate	Estimated Retained Tax Increment	Maximum Company Project Revenue	Estimated City Project Revenue
FY07	\$ 646,150	100%	\$ 646,150	15.75	\$ 10,177	\$ 7,633	\$ 2,544
FY08	\$ 37,713,422	100%	\$ 37,713,422	16.07	\$ 605,866	\$ 250,000	\$ 355,866
FY09	\$ 46,756,107	100%	\$ 46,756,107	16.39	\$ 766,160	\$ 500,000	\$ 266,160
FY10	\$ 68,823,016	100%	\$ 68,823,016	16.71	\$ 1,150,310	\$ 500,000	\$ 650,310
FY11	\$ 68,823,016	100%	\$ 68,823,016	17.05	\$ 1,173,316	\$ 500,000	\$ 673,316
FY12	\$ 68,823,016	100%	\$ 68,823,016	17.39	\$ 1,196,782	\$ 500,000	\$ 696,782
FY13	\$ 68,823,016	100%	\$ 68,823,016	17.74	\$ 1,220,718	\$ 500,000	\$ 720,718
FY14	\$ 68,823,016	100%	\$ 68,823,016	18.09	\$ 1,245,132	\$ 500,000	\$ 745,132
FY16	\$ 68,823,016	100%	\$ 68,823,016	18.45	\$ 1,270,035	\$ 450,000	\$ 820,035
FY16	\$ 68,823,016	100%	\$ 68,823,016	18.82	\$ 1,295,436	\$ 450,000	\$ 845,436
FY17	\$ 68,823,016	100%	\$ 68,823,016	19.20	\$ 1,321,344	\$ 400,000	\$ 921,344
FY18	\$ 68,823,016	100%	\$ 68,823,016	19.58	\$ 1,347,771	\$ 300,000	\$ 1,047,771
FY19	\$ 68,823,016	100%	\$ 68,823,016	19.97	\$ 1,374,727	\$ 150,000	\$ 1,224,727
TOTALS					\$ 13,977,773	\$ 5,007,633	\$ 8,970,140

Table is for illustrative purposes only.

Section 3.2. Completion of Development Program.

Under this Agreement, the Company shall make a good faith effort to substantially complete the project as described in the Development Program.

Section 3.3. Credit Enhancement Payments.

a. Subject to Section 3.3(b), , the City shall pay on December 31 and June 30 of each year of this Agreement to the Company all Company Tax Increment Revenues then on deposit in the Company TIF Account. The obligation of the City to make such payment shall be limited obligation payable solely out of monies on deposit in the Company TIF Account and shall not constitute a general debt or obligation on the part of the City or a general obligation or charge against or pledge of the faith and credit or taxing power of the City, the State of Maine or any political subdivision thereof.

b. In the event that City is subject to a claim by a third party to pay Company Tax Increment Revenues to such third party, City shall not pay such amount to Company pursuant to Section 3.3(a) nor to the third party, but shall deposit then Company Tax Increment Revenues in an amount equal to such amount so claimed (but only to the extent available) into an interest bearing escrow account and shall file an interpleader or other comparable action with a court of competent jurisdiction requesting a ruling to determine whether such Company Tax Increment Revenues should be paid to Company or to said third party. The assessed value of the District will increase by the reason of a phased in revaluation in fiscal years 2006 and 2007. Such increase may lead to an adjustment to the amount of taxes deposited in the TIF account by

Company. Company's share of the retained tax increment payable to it by City pursuant to paragraph 3.1 of this Agreement shall not be adjusted as a result of said revaluation.

Section 3.4. Failure to Make Payment.

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

Section 3.5. Manner of Payments.

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

Section 3.6. Obligations Unconditional.

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

Section 3.7. Limited Obligation.

The City's obligations of payment hereunder shall be limited obligations of the City payable solely from Retained Tax Increment Revenues and any earnings thereon, pledged therefore under this Agreement. The City's obligations hereunder shall not constitute a general debt or a general obligation on the part of the City or a charge against or pledge of the faith and credit or taxing power of the City, but shall be payable solely from the Retained Tax Increment received by the City, and any earnings thereon. This Agreement shall not directly or indirectly or contingently obligate the City to levy or to pledge any form of taxation whatever therefore or to

make any appropriation for their payment, excepting the City's obligation to assess property taxes upon the Project and the pledge of the Retained Tax Increment established under this Agreement.

Section 3.8 Administrative Fee.

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

**ARTICLE IV
COVENANTS OF THE COMPANY**

Section 4.1. Project Development

a. The Company shall construct the project outlined in the September 8, 2004 proposal, as may be amended with the approval of the Portland City Council.

b. If in any year this Agreement is in effect the Increased Assessed Value is less than \$41,666,667, the obligation of the city to pay into the Company TIF Account per Section 3.1 of this agreement, shall be reduced. The reduction shall be calculated as follows: The increased assessed value divided by \$41,666,667 multiplied by the corresponding scheduled fiscal year Company Project Revenue payment amount on Table 1.

Notwithstanding the above in any fiscal year, the actual amount to be deposited into the Company TIF Account shall be the lesser of the Company Project Revenue, as adjusted pursuant to this Section if necessary, or 75% of the Retained Tax Increment.

Section 4.2. Job Requirement

All construction jobs related to the Project shall go to City and State of Maine citizens when possible, and all subcontractor work shall go to City and State union firms offering a sustainable, living wage, when possible.”

**ARTICLE V
PLEDGE AND SECURITY INTEREST**

Section 5.1. Pledge of Company TIF Account.

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

Section 5.2. Further Instruments.

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

Section 5.3. Liens.

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

Section 5.4. Access to Books and Records.

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

**ARTICLE VI
DEFAULTS AND REMEDIES**

Section 6.1. Events of Default.

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

a. Any failure by the City to pay any amounts due to Company when the same shall become due and payable if such non-payment is not a result of a final determination by a court that this Agreement is illegal or invalid;

b. Any failure by the City to make deposits into the Company TIF Account as and when due;

c. Other than as provided in paragraph (a) and (b) above, any failure by the City or the Company to observe and perform in all material respects any respective covenant, condition, agreement or provision contained herein on the part of the City or the Company respectively to be observed or performed, including any failure of the Company to use payments made under this Agreement as required in Section 3.5 of this Agreement or to perform the covenant under Section 4.1(a) of this Agreement, which failure is not cured within thirty (30) days following written notice thereof; provided, however, that this subsection (c) shall not be construed to include the Company's failure to pay Property Taxes on the Property in the District for any reason as an Event of Default hereunder; and

d. If a decree or order of a court or agency or supervisory authority having jurisdiction in the premises shall appoint a conservator or receiver or liquidator for the City, or if any insolvency, readjustment of debt, marshaling of assets and liabilities or similar proceedings for the winding up or liquidation of the City's affairs shall have been entered against the City or if the City shall have consented to the appointment of a conservator or receiver or liquidator in any such proceedings of or relating to the City or of or relating to all or substantially all of its property, including without limitation the filing of a voluntary petition in bankruptcy by the City or the failure by the City to have a petition in bankruptcy dismissed within a period of 90 consecutive days following its filing or in the event an order for release has been entered under the Bankruptcy Code with respect to the City.

e. Any failure of Company to pay taxes to City when due.

f. Any failure of the Company or any agents, assigns or successors in interest to operate the Garage as a garage and pay taxes on it during the term of this Agreement.

Section 6.2. Remedies on Default.

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

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

b. In addition, in the event of a default under Section 6.1 (c)(e) or (f) relating to Section 3.5 or 4.1(a), the City may suspend further payments until such default is cured. If there is any dispute as to either party's performance of any of its obligations under this Agreement, such dispute may, by agreement of the parties, be submitted to non-binding mediation and, following such mediation or in the absence of any such agreement to submit the dispute to mediation, shall be submitted to arbitration in accordance with the rules of the American

Arbitration Association. Payments by the City will not be suspended prior to a final determination in such proceeding in favor of the City.

Section 6.3. Remedies Cumulative.

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

Section 6.4. Enforcement Rights.

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

**ARTICLE VII
EFFECTIVE DATE, TERM AND TERMINATION**

Section 7.1. Effective Date and Term.

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

Section 7.2. Cancellation and Expiration of Term.

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

**ARTICLE VIII
ASSIGNMENT AND PLEDGE OF COMPANY'S INTEREST**

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

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

Agreement and provide to the pledgee or assignee such rights and/or remedies as it may deem necessary for the establishing, perfection and protection of its interest herein.

Section 8.2. Assignment.

Except as provided in Section 8.1, this Agreement and the obligations of the City hereunder are personal to the Company and may not be assigned or transferred by the Company without the consent of the City which consent shall not be unreasonably withheld or delayed for any reason or for no reason.

**ARTICLE IX
MISCELLANEOUS**

Section 9.1. Successors.

a. In the event the City or the Company are dissolved, merged into or consolidated with another entity, or undergo any form of corporate reorganization (other than with respect to any dissolution, merger, consolidation or corporate reorganization solely involving the Company and any other company related to or affiliated with the Company), the covenants, stipulations, promises and agreements set forth herein, by or on behalf of or for the benefit of such party shall bind or inure to the benefit of the successors and assigns thereof from time to time and any entity, officer, board, commission, agency or instrumentality to whom or to which any power or duty of such party shall be transferred, subject to approval of the City, which consent shall not be unreasonably withheld or delayed.

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

Section 9.2. Parties in Interest.

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

Section 9.3. Severability.

Except as otherwise provided herein, in case any one or more of the provisions of this Agreement shall, for any reason, be held to be illegal or invalid, such illegality or invalidity shall

not affect any other provision of this Agreement and this Agreement shall be construed and enforced as if such illegal or invalid provision had not been contained herein.

Section 9.4. No Personal Liability.

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

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

Section 9.5. Counterparts.

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

Section 9.6. Governing Law.

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

Section 9.7. Notices.

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

If to the City:

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

If to the Company:

Riverwalk, LLC
2 Market Street
Portland, ME 04101
Attn: Drew Swenson

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

Section 9.8. Amendments.

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

Section 9.9. Net Agreement.

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

Section 9.10. Integration.

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

Section 9.11. Indemnification.

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

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

Section 9.12. Waiver of Recapture if Agreement Found Void.

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

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

WITNESS

CITY OF PORTLAND, MAINE

By: _____
Its City Manager

WITNESS

RIVERWALK, LLC

By: _____
Its Authorized Officer

EXHIBIT B

Request for Payment

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

RIVERWALK, LLC

Date: _____

By: _____
Its

Contract/Credit Enhancement Agreement – Riverwalk (DMK first draft) 4-12-05

Notice of Public Hearing
Published in the Portland Press Herald
May 26, 2005

PUBLIC NOTICE
Notice of Public Hearing
Re: Tax Increment
Financing and Develop-
ment Program for the
Riverwalk Development
Tax Increment Financi-
ng Program
A public hearing shall be
held pursuant to 30-A
M.R.S.A. §§223 and
§526 in City Council
chambers, Portland City
Hall, 389 Congress
Street, at 7:00 P.M. on
June 6, 2005 on the fol-
lowing items:
1. Designation of a Tax
Increment Financing
District, namely: City of
Portland, Tax Map 019
Block A, Lots 001 and
014; City of Portland Tax
Map 020, Block C, Lots
023 and a portion of 009.
2. Adoption of proposed
development program
for Tax Increment
Financing Municipal
Development District.
Copies of the complete
proposal may be
reviewed at Room 208,
City Manager's Office,
Portland City Hall, 389
Congress Street, Port-
land, Maine 04102.
1902060

5-26-05 PPH

Exhibit E

IN COUNCIL REGULAR MEETING JUNE 6, 2005 VOL. 121 PAGE 127

ROLL CALL: Mayor Duson called the meeting to order at 7:05 P.M. Councilor Carr arrived after the minutes were approved.

APPROVAL OF MINUTES OF PREVIOUS MEETING:

Motion was made by Councilor Gorham and seconded by Councilor Cloutier to approve the minutes of the 5/16/05 meeting. Passage 8-0.

PROCLAMATIONS:

- Proc 41-04/05 Honoring Deering High School Boys Swimming and Diving Team Class A State Champions – Sponsored by Jill C. Duson, Mayor.
- Proc 42-04/05 Declaring Commute Another Way Day – Sponsored by Jill C. Duson, Mayor.
- Proc 43-04/05 Commemorating the 350th Anniversary of the Jewish Community in America – Sponsored by Jill C. Duson, Mayor.
- Proc 44-04/05 Honoring Father John W. Keegan – Sponsored by Jill C. Duson, Mayor, Councilor James Cloutier and Councilor Peter O'Donnell.

APPOINTMENTS:

- Order 273-04/05 Appointing Joseph K. Anderson to Landbank Commission for a term, which expires on June 30, 2008 – Sponsored by the Appointments Committee, Councilor Cheryl A. Leeman, Chair.

Motion was made by Councilor Mavodones and seconded by Councilor Gorham for passage. Passage 9-0.

CONSENT ITEMS:

- Order 274-04/05 Authorizing Mayor to Appoint Substitute Directors for Meetings of the Board of Directors of Regional Waste Systems or ECO Maine - Sponsored by Joseph E. Gray, Jr., City Manager.
- Order 275-04/05 Authorizing Grant of Stormwater Easement and Sewer Easement to Iris Network RE: 189 Park Avenue – Sponsored by Joseph E. Gray, Jr., City Manager.

Motion was made by Councilor Mavodones and seconded by Councilor Gorham for passage of the Consent Calendar. Passage 9-0.

IN COUNCIL REGULAR MEETING JUNE 6, 2005 VOL. 121 PAGE 128

LICENSES:

- Order 276-04/05 Granting Municipal Officer's Approval of Lundco, Inc. d/b/a Headliner's, 27

Wharf Street, Application for renewal of Class A Lounge with Liquor and Entertainment with Dance License – Sponsored by Linda C. Cohen, City Clerk.

Motion was made by Councilor Gorham and seconded by Councilor Mavodones for passage. Failed 0-9.

Order 267-04/05 Granting Municipal Officer's Approval of Huong Le and Hoang Nguyen d/b/a Bottomz Up, 225 Congress Street. Application for renewal of Class A Lounge with Liquor and Entertainment with Dance License – Sponsored by Linda C. Cohen, City Clerk. Postponed on 5/16/05.

Motion was made by Councilor Cloutier and seconded by Councilor Cohen to postpone this item to 6/20/05. Passage 9-0.

Order 277-04/05 Granting Municipal Officer's Approval of Bull Durham Enterprises, Inc., d/b/a Natasha's, 82 Exchange Street. Application to add Entertainment Without Dance outside on the patio to existing Class I Restaurant with Liquor License – Sponsored by Linda C. Cohen, City Clerk.

Motion was made by Councilor Mavodones and seconded by Councilor Cloutier for passage.

Motion was made by Councilor Gorham and seconded by Councilor O'Donnell to amend the order to limit the hours of outside entertainment to start at 5:00 P.M. and to acoustic only and not to allow speakers.

It was agreed to divide the question.

5:00 P.M. start passage 7-2 (Duson, Geraghty)

No outside live entertainment 7-2 (Duson, Geraghty)

No speakers passage 3-6 (O'Donnell, Mavodones, Cohen, Cloutier, Leeman, Carr)

Passage, as amended, 6-3 (Duson, Geraghty, Gorham).

IN COUNCIL REGULAR MEETING JUNE 6, 2005 VOL. 121 PAGE 129

Order 278-04/05 Granting Municipal Officer's Approval of Bull Durham Enterprises, Inc., d/b/a Mim's, 205 Commercial Street. Application to add Entertainment Without Dance outside on the second level patio to the existing Class I Restaurant with Liquor License – Sponsored by Linda C. Cohen, City Clerk.

Motion was made by Councilor Leeman and seconded by Councilor Geraghty to postpone this item to the next meeting. Passage 5-4 (O'Donnell, Mavodones, Cohen, Cloutier).

Order 279-04/05

Granting Municipal Officer's Approval of Stonecoast Brewing Co., d/b/a The Pie Hole, at 865 Forest Avenue. Application to expand existing licensed area for a Class I Food Service Establishment with Liquor and Entertainment with Dance to include the parking lot on the following dates: June 10, 17, 24 and July 1, 2005, from 4:00 P.M. to 7:00 P.M. – Sponsored by Linda C. Cohen, City Clerk.

Motion was made by Councilor Gorham and seconded by Councilor Cloutier for passage. Passage 9-0.

Order 280-04/05

Granting Municipal Officer's Approval of Styxx, Inc. d/b/a Styxx, 3 Spring Street. Applying to extend current Class A Lounge and Entertainment with Dance License to include a Dance Hall License that will extend hours of entertainment from 1:00 A.M. to 3:00 A.M. – Sponsored by Linda C. Cohen, City Clerk.

Motion was made by Councilor O'Donnell and seconded by Councilor Geraghty for passage.

Motion was made by Councilor O'Donnell and seconded by Councilor Mavodones to amend the order to change this application to four dates only coordinated with the Police Department. Passage 5-4 (Duson, Geraghty, Leeman, Carr).

Motion was made by Councilor Gorham and seconded by Councilor O'Donnell to amend the license to specify that patrons must be 21 years old or older. Passage 9-0.

Passage, as amended, 5-4 (Duson, Geraghty, Leeman, Carr).

IN COUNCIL REGULAR MEETING JUNE 6, 2005 VOL. 121 PAGE 130

Order 281-04/05

Granting Municipal Officer's Approval of Maine Entertainment Company, d/b/a The State Theatre, 609 Congress Street. Application for an Auditorium with Liquor, Entertainment with Dance, and Dance Hall License. Change of Ownership of Existing Business – Sponsored by Linda C. Cohen, City Clerk.

Motion was made by Councilor Cloutier and seconded by Councilor Gorham for passage. Passage 9-0.

Motion was made by Councilor Cloutier and seconded by Councilor Carr to waive the second reading. Passage 9-0.

Order 291-04/05 Amendment to Zoning Map Re: Rezoning from R-6 Residential to B-1b Neighborhood Business Zone Vicinity of 73 Congress Street – Sponsored by the Planning Board, Lee Lowry, Chair. First reading. Emergency passage requested.

Motion was made by Councilor O'Donnell and seconded by Councilor Mavodones for emergency passage. Passage 9-0.

Order 282-04/05 Granting Municipal Officer's Approval of The Front Room, LLC, d/b/a The Front Room, 73 Congress Street. Application for Class I Restaurant with Liquor License. New City and State License – Sponsored by Linda C. Cohen, City Clerk.

Motion was made by Councilor Mavodones and seconded by Councilor Gorham for emergency passage. Passage 9-0.

BUDGET ITEMS:

COMMUNICATIONS:

Com 4-04/05 Receiving Police Citizen Review Subcommittee Third Annual Report 2004 – Sponsored by Joseph E. Gray, Jr., City Manager

Motion was made by Councilor O'Donnell and seconded by Councilor Gorham to receive the communication. Passage 9-0.

IN COUNCIL REGULAR MEETING JUNE 6, 2005 VOL. 121 PAGE 131

Com 5-04/05 Receiving Amendments to Rules of the Harbor Commission – Sponsored by Joseph E. Gray, Jr., City Manager.

Motion was made by Councilor Cloutier and seconded by Councilor Cohen to postpone this item to 6/20/05. Passage 9-0.

Order 270-04/05 Reallocating and Appropriating \$30,000 in Community Development Block Grant (HCD) Funds and Amending the FY2003/2004 Consolidated HCD Plan Re: Parkside Community Center – Sponsored by Councilor Karen A. Geraghty. Given first reading on 5/16/05.

Motion was made by Councilor Gorham and seconded by Councilor Geraghty for passage. Passage 9-0.

RESOLUTIONS:

Resolve 18-04/05 Supporting Restructuring of Regional Waste Systems – Sponsored by Joseph E. Gray, Jr., City Manager.

Motion was made by Councilor Cohen and seconded by Councilor O'Donnell for passage. Passage 9-0.

Order 283-04/05 Authorizing Formation of "Eco Maine" as a Non-Capital Stock Non-Profit Corporation – Sponsored by Joseph E. Gray, Jr., City Manager.

Motion was made by Councilor Cloutier and seconded by Councilor Cohen for passage. Passage 9-0.

Order 284-04/05 Authorizing ECO Maine Inter-Local Solid Waste Agreement and Waste Handling Agreement – Sponsored by Joseph E. Gray, Jr., City Manager.

Motion was made by Councilor Cloutier and seconded by Councilor Cohen for passage. Passage 9-0.

IN COUNCIL REGULAR MEETING JUNE 6, 2005 VOL. 121 PAGE 132

Order 285-04/05 Appointing Directors to the ECO Maine Board of Directors – Sponsored by Joseph E. Gray, Jr., City Manager.

Motion was made by Councilor Cohen and seconded by Councilor Gorham for passage.

Motion was made by Councilor O'Donnell and seconded by Councilor Cohen to amend the order to add the names of the Directors. Passage 9-0.

UNFINISHED BUSINESS:

Order 126-04/05 Adoption of Relocation Payments for Qualifying Displaced Tenants in the B-3 Zone – Sponsored by the Housing Committee, Councilor Karen A. Geraghty, Chair. Referred to Housing Committee on 12/20/04.

Motion was made by Councilor Geraghty and seconded by Councilor Carr for passage. Passage 9-0.

Order 193-04/05 Authorizing Agreements with Bedford Falls Associates, LLC Re: Miss Portland Diner – Sponsored by the Community Development Committee, Councilor James F. Cloutier, Chair. Postponed on 5/2/05.

Motion was made by Councilor Cloutier and seconded by Councilor Mavodones to refer this item to the Community Development Committee. Passage 9-0.

Order 258-04/05 Designating Riverwalk Development and Tax Increment Financing District and Adopting Municipal Development Program for the District – Sponsored by the Community Development Committee, Councilor James F. Cloutier, Chair. Given first reading on 5/2/05.

Motion was made by Councilor O'Donnell and seconded by Councilor Mavodones for passage.

Motion was made by Councilor Gorham and seconded by Councilor O'Donnell to amend Article 4 Section 4.2 to add that all construction jobs will go to City and State citizens when possible and all subcontractor work shall go to City and State union firms offering a sustainable living wage when possible. Passage 8-1 (Cohen).

Passage, as amended, 9-0.

IN COUNCIL REGULAR MEETING JUNE 6, 2005 VOL. 121 PAGE 133

Order 259-04/05 Authorizing City Manager to Execute Documents Re: Riverwalk Development Project – Sponsored by the Community Development Committee, Councilor James F. Cloutier, Chair. Given first reading on 5/2/05.

Motion was made by Councilor O'Donnell and seconded by Councilor Mavodones for passage. Passage 9-0.

Order 271-04/05 Accepting and Appropriating Grant for Bayside Garage Project – Sponsored by Joseph E. Gray, Jr., City Manager. Given first reading on 5/16/05.

Motion was made by Councilor Cohen and seconded by Councilor O'Donnell for passage. Passage 8-0 (O'Donnell gone).

PUBLIC HEARINGS:

ORDERS:

Order 286-04/05 Adopting Development Program for the Portland Downtown District for Fiscal Year 2005-2006 – Sponsored by Joseph E. Gray, Jr., City Manager.

Motion was made by Councilor Cloutier and seconded by Councilor Gorham for passage. Passage 8-0.

Order 287-04/05 Assessing Maintenance and Implementation Assessments in the Portland Downtown District for FY2005-2006 – Sponsored by Joseph E. Gray, Jr., City

Manager. First reading.

Order 288-04/05 Authorizing Master Agreement and Supplemental Services Agreement with Portland's Downtown District – Sponsored by Joseph E. Gray, Jr., City Manager. First reading.

AMENDMENTS:

Order 289-04/05 Amendment to Portland City Code, Section 13.6-24 and 13.6-25 (Domestic Partnerships) RE: Fees for Amended Registration and Certificates – Sponsored by Linda C. Cohen, City Clerk. First reading.

IN COUNCIL REGULAR MEETING JUNE 6, 2005 VOL. 121 PAGE 134

Order 290-04/05 Amendment to Zoning Map Re: Zoning from R-6 Residential to R-7 Compact Urban Residential Zone Vicinity of 44 East Oxford Street – Sponsored by the Planning Board Lee Lowry, Chair. First reading.

Order 292-04/05 Amendment to Portland City Code Article III. Fire Alarm Systems §2.5-25 through §2.5-32 – Sponsored by the Public Safety Committee, William Gorham, Chair. First reading.

Order 293-04/05 Amendment to Portland City Code Article VIII. Civil Emergency Preparedness §2-401 through §2-415 – Sponsored by the Public Safety Committee, William Gorham, Chair. First reading.

Order 294-04/05 Amendment to Portland City Code Transferring Jurisdiction Over Taxicabs and Liveries From the City Clerk to the Department of Waterfront & Transportation Facilities – Sponsored by the Transportation Committee, James I. Cohen, Chair. First reading.

Motion was made by Councilor Mavodones and seconded by Councilor Cohen to waive the second reading. Passage 7-1 (Geraghty).

Order 295-04/05 Amendment to Portland City Code Chapter 14 Land Use Article IV. Subdivisions Sec. 14-498 Technical and Design Standards – Sponsored by the Transportation Committee, James I. Cohen, Chair. First reading.

Motion was made by Councilor Gorham and seconded by Councilor Cohen for passage.

Motion was made by Councilor Cloutier and seconded by Councilor Cohen to postpone this item to 6/20/05. Passage 8-0.

Motion was made by Councilor Cohen and seconded by Mayor Duson to adjourn. Passage 8-0, 12:45 A.M., 6/7/05.

A TRUE COPY.

ATTEST

Linda C. Cohen, CMC, City Clerk

JILL C. DUSON (MAYOR)(A/L)
PETER O'DONNELL (A/L)
JAMES F. CLOUTIER(A/L)
NICHOLAS M. MAVODONES (A/L)

CITY OF PORTLAND
IN THE CITY COUNCIL

WILLIAM R. GORHAM (1)
KAREN A. GERAGHTY (2)
DOMINA J. CARR (3)
CHERYL A. LEEMAN (4)
JAMES I. COHEN (5)

Order 257-04/05
5/2/05

**ORDER SETTING PUBLIC HEARING ON DESIGNATION OF
RIVERWALK DEVELOPMENT AND TAX INCREMENT FINANCING DISTRICT
AND THE
MUNICIPAL DEVELOPMENT PROGRAM FOR THAT DISTRICT**

ORDERED, that the public hearing required by 30-A M.R.S.A. § 5253 for the designation of a Development District and the adoption of a Development Program is hereby set on the proposed designation of the Riverwalk Development and Tax Increment Financing District and on the proposed adoption of the Development Program for that District on:

Monday, June 6, 2005 at 7:00 p.m. in the City Council Chambers
Portland City Hall/389 Congress Street

A TRUE COPY
ATTEST: Linda C. Cohen
Linda C. Cohen, CMC, City Clerk
Portland, Maine
DATE 6/9/05

Passage: 5/2/05 8-0 (O'Donnell gone)

Order 258-0418
Tab 33 5-2-a

JILL C. DUSON (MAYOR)(A/L)
PETER O'DONNELL (A/L)
JAMES F. CLOUTIER(A/L)
NICHOLAS M. MAVODONES (A/L)

CITY OF PORTLAND
IN THE CITY COUNCIL

WILLIAM R. GORHAM (1)
KAREN A. GERAGHTY (2)
DONNA J. CARR (3)
CHERYL A. LEEMAN (4)
JAMES I. COHEN (5)

**ORDER DESIGNATING RIVERWALK DEVELOPMENT
AND TAX INCREMENT FINANCING DISTRICT
AND ADOPTING MUNICIPAL DEVELOPMENT PROGRAM FOR THE DISTRICT**

WHEREAS, the City of Portland is authorized pursuant to Chapter 206 of Title 30-A of the Maine Revised Statutes, as amended, to designate specified areas within the City as a Municipal Development and Tax Increment Financing District, and to adopt a Development Program for such District; and

WHEREAS, Riverwalk, LLC intends to construct certain improvements within the proposed Municipal Development and Tax Increment Financing District (the "District"); and

WHEREAS, there is a need to provide continuing employment opportunities for the citizens of Portland and the surrounding region; to improve and broaden the tax base of the City of Portland; and to improve the general economy of the City of Portland, the surrounding region and the State of Maine; and

WHEREAS, the project will help to provide continued employment for the citizens of Portland and the surrounding region; improve and broaden the tax base in the City of Portland; and improve the economy of the City of Portland and the Sate of Maine; and

WHEREAS, there is a need to encourage the development, expansion and improvement of commercial, retail and light manufacturing facilities within the City through the establishment of Municipal Development and Tax Increment Financing Districts in accordance with the provisions of Chapter 206 of Title 30-A; and

WHEREAS, the City has held a public hearing on the question of establishing the District in accordance with the requirements of 30-A M.R.S.A. § 5223, upon at least ten (10) days prior notice published in a newspaper of general circulation within the City; and

WHEREAS, the City desires to designate the Riverwalk Development and Tax Increment Financing District and adopt a Development Program for such District; and

WHEREAS, it is expected that approval will be sought and obtained from the Maine Department of Economic and Community Development, approving the designation of the District and the adoption of the Municipal Development Program for the District;

A TRUE COPY
ATTEST: Linda C. Cohen
Linda C. Cohen, CMC, City Clerk
Portland, Maine

DATE 6/9/05

Given first reading 5/2/05 and PH set for 6/6/05
Public Hearing, Amended & Passage 6/6/05 9-0

NOW THEREFORE BE IT HEREBY ORDERED BY THE CITY COUNCIL AS FOLLOWS:

Section 1. The City hereby finds and determines that:

- (a) At least 25%, by area, of the real property within the District, as hereinafter designated, is acreage in need of rehabilitation, redevelopment or conservation as defined in 30-A M.R.S.A. § 5223; and
- (b) The total area of the District does not exceed 2% of the total acreage of the City, and the total area of all development districts within the City (including the District) does not exceed 5% of the total acreage of the City; and
- (c) The aggregate value of equalized taxable property of the District as of April 1, 2004 does not exceed 5% of the total value of equalized taxable property within the City as of April 1, 2004; and
- (d) The aggregate value of municipal indebtedness financed by the proceeds from tax increment financing districts within Cumberland County, including the proposed District, does not exceed \$50 million adjusted by a factor equal to the percentage change in the United States Bureau of Labor Statistics Consumer Price Index, United States City average, from January 1, 1996 to the date of calculation; and
- (e) The City expects that the acquisition, construction and installment of all real and personal property improvements, buildings, structures, fixtures and equipment within the district contemplated by the Municipal Development Program will be completed in accordance with State law; and
- (f) The designation of the District and pursuit of the Municipal Development Program will generate substantial economic benefits for the City and its residents, including employment opportunities, broadened and improved tax base and economic stimulus, and therefore constitutes a good and valid public purpose.

Section 2. Pursuant to Chapter 206 of Title 30-A of the Maine Revised Statutes, as amended, the City hereby designates the Riverwalk Development and Tax Increment Financing District, as more particularly set forth in the document entitled "RIVERWALK DEVELOPMENT AND TAX INCREMENT FINANCING DISTRICT AND APPLICATION" as presented to the City Council in the form attached hereto as Attachment 1 and that document is hereby incorporated by reference into this resolution and approved as the Municipal Development Program for the District (the "Development Program").

Section 3. Pursuant to the provisions of 30-A M.R.S.A. § 5224, the City hereby adopts the statement of the percentage of Assessed Value to be retained by the City set forth as Exhibit A in the Riverwalk Development and Tax Increment Financing Application for purposes of said Section 5224.

Section 4. The City Manager be, and hereby is, authorized, empowered and directed to submit the proposed designation of the District and the proposed Development Program for the District to the State of Maine Department of Economic and Community Development for review and approval pursuant to the requirements of 30-A M.R.S.A. § 5226(2).

Section 5. The City Manager be, and hereby is, authorized to execute and deliver a credit enhancement agreement substantially in the form described in the Development Program and attached as Attachment C to a memorandum dated April 27, 2005 from Economic Development Division Director John Lufkin.

Section 6. The foregoing designation of the District and the adoption of the Development Program for the District shall automatically become final and shall take full force and effect upon receipt by the City of approval of the designation of the District and adoption of the Development Program by the Department of Economic and Community Development, without requirements of further action by the City, the Council or any other party.

O:/Orders/Riverwalk TIF

Exhibit G

Assessor's Department



Richard W. Blackburn
Tax Assessor

CITY OF PORTLAND

March 15, 2005

John Lufkin
Economic Development Division Director

I Richard W. Blackburn as Tax Assessor of the City of Portland hereby certify that the original assessed value of the Longfellow Garage TIF District as of March 31, 2005 is \$1,085,550. The parcels are described as city tax map parcels 19-A-1, 19-A-14, 20-C-9 and 20-C-23. Those parcels consist of approximately 3.68 acres.

A handwritten signature in cursive script that reads 'Richard W. Blackburn'.

Richard W. Blackburn
Tax Assessor

NATHAN H. SMITH (MAYOR)(3)
WILLIAM R. GORHAM (1)
KAREN A. GERAGHTY (2)
CHERYL A. LEEMAN (4)
JAMES I. COHEN (5)

CITY OF PORTLAND IN THE CITY COUNCIL

PETER E. O'DONNELL (A/L)
JAMES F. CLOUTIER(A/L)
JILL C. DUSON (A/L)
NICHOLAS M. MAVODONES (A/L)

AMENDMENT TO ZONING MAP RE: REZONING FROM WPD, WSU, B-5 and B-2b to B-6 (Waterfront Port Development, Waterfront Special Use, Business – 5 and B-2b to Business – 6) And FROM WSUZ to ROS And ADOPTION OF ZONING TEXT CHANGE VICINITY: EASTERN WATERFRONT

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND,
MAINE IN CITY COUNCIL ASSEMBLED AS FOLLOWS:

That the Zoning Map of the City of Portland, dated December 2000, as amended and on file in the Department of Planning and Urban Development, and incorporated by reference into the Zoning Ordinance by §14-49, be and hereby is amended by adopting the following map change:

ZONING	IMPACT BUSINESS
RESIDENTIAL	OFFICE PARK
RESIDENTIAL PROFESSIONAL	INDUSTRIAL - LOW IMPACT
NEIGHBORHOOD BUSINESS	INDUSTRIAL - MODERATE IMPACT
COMMUNITY BUSINESS	INDUSTRIAL - HIGH IMPACT
COMMERCIAL BUSINESS	WATERFRONT
COMMERCIAL CORRIDOR BUSINESS	RECREATION OPEN SPACE
URBAN COMMERCIAL BUSINESS	RESOURCE PROTECTION ZONE
OVERLAY ZONES	STREET
FLEXIBLE HOUSING	UNUSUAL STREET
RESIDENTIAL P.D.	PARCEL
SHORELAND ZONING	RAILROAD
STREAM PROTECTION DISTRICT	AIRPORT AIRWAY

Map produced by the City of Portland's Department of Planning and Urban Development on 02/14/04

BE IT FURTHER ORDERED, that Chapter 14, Division 16 of the Land Use Code be enacted to read as follows:

Sec. 14-268 Purpose.

The purpose of the B-6, Eastern Waterfront Mixed Zone is to establish a zoning district for the upland portion of the Eastern Waterfront area. The B-6 zone encourages this district to acquire a distinctly urban form through development that emphasizes a quality pedestrian experience, promotes public transit, and demonstrates exemplary urban design. The zone promotes a range of uses to achieve twenty-four hour urban vitality and shared use of parking infrastructure as recommended in the Eastern Waterfront Master Plan for Redevelopment.

The zone language established herein provides the regulatory framework to promote the mixed-use development pattern envisioned for urban land on Portland's peninsula. Specific development criteria, including building height overlays and design standards, may be established for this district to supplement the provisions of this section. District-specific Design Standards and Overlay Maps can be found at the City Planning and Development Office.

Sec. 14-269 Permitted uses:

The following uses are permitted in the B-6 Zone:

(a) *Commercial:*

1. Professional, business and general offices;
2. Restaurants and other eating and drinking establishments;
3. Hotels and inns limited to no more than 150 rooms;
4. Craft and specialty shops, including the on-premises production of handcrafted goods;
5. Retail and retail service establishments, excluding those with gas pumps;
6. Theaters;
7. Banking services, excluding vehicular drive-up services;

Editor's Note: Drive-up banking facilities located in the interior of parking structures are allowed as a conditional use subject to the criteria outlined below in the Conditional Use provisions of this section.

8. Cabinet and carpentry shops;
9. Personal services;
10. Business services;
11. Offices of business trades people;
12. Miscellaneous repair services, excluding all types of automotive repair except for automobile repair and service establishments.
13. Telecommunication and broadcast and receiving facilities, except as prohibited in section 14-xxx (prohibited uses);

In addition, building mounted telecommunications antennas, discs, transmitting and receiving equipment and the like shall adhere to the following criteria. Such roof-mounted equipment shall be:

- a. No taller than 15 feet above the highest structural steel of the building roof; and ,
- b. Set back no less than 15 feet from the building perimeter; and,
- c. Integrated into the architecture of the building in placement, form, color, and material so as to screen or camouflage such equipment from public view

14. Brew pubs and microbreweries without associated bottling facilities; and brewpubs and microbreweries with associated bottling facilities limited to 5,000 bottles per year output.
15. Electronic data storage;
16. Marine products wholesaling and retailing;
17. Harbor and marine supplies and services, chandlery and ship supply;
18. Bakeries, coffee roasters, and commercial kitchens with building footprints limited to fifteen thousand (15,000) square feet of contiguous building space.
19. Printing establishments

b) *Residential:*

1. Attached dwellings including row houses, two-family and multifamily dwellings;
2. Handicapped family units;

3. Combined living/working spaces, including but not limited to artist residences with studio space;
4. Mixed use residential and commercial structures.

(c) *Public:*

1. Utility substations, including sewage collection and pumping stations, water pumping stations, transformer stations, telephone electronic equipment enclosures and other similar structures;
2. Landscaped pedestrian parks, plazas and other similar outdoor pedestrian spaces;
3. Pedestrian and multi-use trails;

(d) *Other:*

1. Studios for artists, photographers and craftspeople including but not limited to, painters, sculptors, dancers, graphic artists and musicians;
2. Accessory uses customarily incidental and subordinate to the location, function and operation of permitted uses, except that parking lots shall not be considered a permitted accessory use and such parking is subject to the conditional use section of the B-6 zone.
3. Health clubs, martial arts and meditation facilities.
4. Intermodal transportation facilities.

Sec. 14-270 Conditional uses.

The following uses shall be permitted as conditional uses in the B-6 Zone as provided in section 14-474 (conditional uses), provided that, notwithstanding section 14-474(a) or any other provision of this Code, the planning board shall be substituted for the board of appeals as the reviewing authority:

(a) *Commercial:*

1. Meeting and exhibition facilities limited to a total of 20,000 gross square feet of interior floor area.
2. Wholesaling, providing that the wholesale operation is associated with an onsite retail establishment and that the wholesaling component of

the facility occupies a building footprint of less than 15,000 square feet.

3. Drive-up banking facilities located in the interior of parking structures, subject to the following criteria:
 - a. All drive-up features, such as automated teller machines and service windows, shall not extend nearer than twenty-five (25) feet to the street line;
 - b. The site must have adequate stacking capacity for vehicles waiting to use these service features without impeding vehicular or pedestrian circulation or creating hazards to vehicular or pedestrian circulation on adjoining streets;
 - c. Drive-up vehicle circulation shall not create an impediment for retail or mixed-use development for the first floor of the subject garages along any adjacent public streets.

(b). Parking

1. All surface parking lots shall meet the applicable conditions outlined below.

Editor's Note: These conditions promote parking development in a manner that creates an urban street form with streetscapes dominated by buildings, not surface parking. This code recognizes that many parcels will develop incrementally over time and a phased approach may be needed to fully achieve the goals of this provision.

- a. No surface parking lot shall be encumbered by lease or other use commitment exceeding a twenty-four month term.
 - b. Any such parking shall in its lease stipulate that developer/owner reserves the right to relocate said parking (to a parking structure) or convert surface parking to structured parking as long as the replacement parking is located a reasonable distance from the associated use.
 - c. Surface lots shall be laid out in a manner conducive to development of future buildings, and/or structured parking.
2. All structured parking, including multi-level parking garages shall meet the applicable conditions outlined below.

- a. Parking garages shall incorporate first floor retail space or other mixed use (an active use other than parking) along all street frontages unless the applicant requests from the Planning Board a waiver of this provision subject to the following criteria:
- b. Waivers: The Planning Board may waive the requirement for first floor mixed use upon demonstration that the project meets one or more of the criteria listed under provisions i, ii, and iii below.

Where the Board allows a waiver of first floor mixed use, garages shall display architecture that enhances the pedestrian experience and disguises the parking use to the extent possible.

Editors Note: Use of traditional storefront design concepts and traditional building materials is encouraged, Developers should look to the Eastern Waterfront Design Guidelines for additional direction in meeting these standards:

Standards for waiving first floor mixed use:

- i. That the applicant demonstrates that steepness of grade or the character of the adjacent street will not support retail or first-floor mixed use in the foreseeable future.
- ii. That the first floor of the garage is set back a minimum of 35 feet from the street right of way and its design does not provide an impediment for development of such space for mixed use in the future. Such space (between the garage and the street) shall, in the interim, not be used for surface parking.
- iii. Where the applicant can demonstrate to the satisfaction of the Planning Board that a market for first floor mixed uses currently does not exist, the Planning Board may grant a waiver of this condition, provided that the structure of the garage is designed to accommodate retail and or mixed uses in the future.

The Planning Board will need to find that on the street level deck of a proposed parking garage a minimum of twenty (20) feet horizontal distance of depth from the street and nine (9) feet finished floor to finished ceiling clearance could in future house retail and or mixed use. The applicant will further need to demonstrate that the

garage design anticipates the future development of utilities and circulation necessary for non-parking uses.

Where a parking garage fronts on more than one public street and where there is an existing change in grade elevation of over 5% across the footprint of the garage, the nine foot floor to ceiling requirement of this section only applies to the primary (higher traffic volume) street.

Sec. 14-271. Prohibited uses.

Uses, which are not enumerated as permitted or conditional uses in the B-6 zone are prohibited. Those uses that are prohibited shall include, without limitation:

- (a) Ground-mounted telecommunication towers, antennas, discs, transmitting and receiving equipment and the like;
- (b) Waste, scrap, and/or byproduct storage and processing facilities;
- (c) Major or minor auto service stations including all types of automotive repair;
- (d) Drive-up facilities, except banking drive-up services in the interior of parking structures, as allowed in the conditional use section 14-xxx.

Sec. 14-272 Dimensional Requirements.

In addition to the provisions of article III, division 25 of this Code, lots in the B-6 Eastern Waterfront Business Zone shall meet the following requirements:

- (a) *Minimum lot size:* None.
- (b) *Minimum frontage:* None.
- (c) *Yard dimensions:*
 - 1. Minimum yards in the B-6 zone:

Front setback: None required except as provided in 3. below:

Side setback: None required.

Rear setback: None required.

2. Maximum building setback from street line except for parking garages, public transportation facilities and provided in 3. below: 10 feet.
 - a. For lots fronting on more than one street, the setback can be increased more than ten (10) feet if all of the following conditions are met:
 - i. The increased setback occurs at the intersection of the streets;
 - ii. The increased setback area is the primary pedestrian entrance to the building;
 - iii. Seventy-five (75) percent of the total building wall length facing the abutting streets shall be setback no greater than ten (10) feet; and
 - iv. All building wall segments, which make up the increased setback shall be included in the calculation of the total building wall length noted in subsection iii above.

In addition, for any new construction on a lot abutting three or more streets, the maximum setback shall apply only to the two most major streets. (For purposes of this section, major street shall mean that street with the highest traffic volume or the greatest street width in comparison with the remaining streets).

3. View Corridors and Key Street Wall Development

Notwithstanding sections 1. and 2. above, new structures located in the blocks located south of Fore Street and north of Commercial Street and its extension, shall build to the key building envelopes shown on the *Eastern Waterfront Building Height Overlay Map*. Parking structures and the buildings for public transportation facilities may, however, set back beyond the key building envelopes (toward the interior of blocks), but may not occupy the land between the key building envelope and the street right of way.

- (d) *Minimum length of building wall required to be located along street frontage of lot.*
 - i. 70% of lot street frontage; or
 - ii. 25% of building perimeter,

- iii. For buildings fronting on two or more streets, the minimum building wall on one street may be decreased so long as the frontage is proportionally increased on other streets in so far that the building wall on the secondary street is not reduced to less than 25 feet.
- (e) *Maximum lot coverage:* One hundred (100) percent.
- (f) *Maximum building height:* 65 feet, or as otherwise governed by a Building Height Overlay map (for example, in the Eastern Waterfront). Building Height Overlay maps are found in the Planning and Development Department Office.
- (g) *Minimum building height:* No new construction of any building shall have less than three (3) floors of habitable space above the average adjacent grade within twenty five (25) feet of any public street.

This provision shall not apply to:

- i. Parking attendant booths,
- ii. Information kiosks and ticketing booths,
- iii. Parking garages,
- iv. Public transportation facilities,
- v. Additions to buildings existing as of (enactment date) provided that the cumulative additions since (enactment date) does not exceed 25% of the building footprint on (enactment date) except that such restriction shall not apply to those portions of the building addition that are constructed closer to the street line than the building footprint existing as of (enactment date),
- vi. Buildings or building additions of less than 2,000 square feet footprint, on lots or available building sites of less than 2,000 square feet,
- vii. Utility substations, including sewage collection and pumping stations, water pumping stations, transformer stations, telephone electronic equipment enclosures and other similar structures, and
- viii. Additions to and/or relocations of designated historic structures.

Sec. 14-273 Performance standards.

All new development in the B-6 Eastern Waterfront Business Zone shall comply with the following standards:

- (a) *Storage:* Any storage of new materials, finished products, or related equipment must be suitably screened from the public way and from abutting properties by a solid fence at least five (6) feet in height. All waste shall be stored in covered containers that do not leak or otherwise permit liquids or solids to escape from the container. All food processing waste shall be stored within a completely enclosed structure and if not refrigerated shall be removed from the site in an enclosed container within forty-eight (48) hours of its generation. All enclosed and exterior areas shall be cleaned and sanitized on a regular basis. Outdoor storage of refuse or debris shall be in an appropriate container or located within a designated, screened area.
- (b) *Noise:*
 1. *Definitions:*
 - a. Tonal sounds are defined as sound waves usually perceived as a hum or whine because their instantaneous sound pressure varies essentially as a simple sinusoidal function of time.
 - b. Impulse sounds are defined as sound events characterized by brief excursions of sound pressure, each with duration of less than one (1) second.
 2. *Measurement:* Sound levels shall be measured with a sound level meter with a frequency weighting network manufactured according to standards prescribed by the American National Standards Institute (ANSI) or its successor body. Measurements shall be made at all major lot lines of the site, at a height of at least four (4) feet above the ground surface. In measuring sound levels under this section, sounds with a continuous duration of less than sixty (60) seconds shall be measured by the maximum reading on a sound level meter set to the A weighted scale and the fast meter response (L maxfast). Sounds with a continuous duration of sixty (60) seconds or more shall be measured on the basis of the energy average sound level over a period of sixty (60) seconds (LEQ₁).
 3. *Maximum permissible sound levels:* The maximum permissible sound level of any continuous, regular or frequent source of sound produced by an activity shall be as follows:
 - a. Sixty (60) dBA between the hours of 7:00 a.m. and 10:00 p.m.

- b. Fifty (50) dBA between the hours of 10:00 p.m. and 7:00 a.m., as measured at or within the boundaries of any residential zone.

In addition to the sound level standards established above, all uses located within this zone shall employ best practicable sound abatement techniques to prevent tonal sounds and impulse sounds or, if such tonal and impulse sounds cannot be prevented, to minimize the impact of such sounds in residential zones.

4. *Exemptions:*

- a. Noises created by construction and maintenance activities between 7:00 a.m. and 10:00 p.m. are exempt from the maximum permissible sound levels set forth in subsection (a)3 of this section. Construction activities on a site abutting any residential use between the hours of 10:00 p.m. of one (1) day and 7:00 a.m. of the following day shall not exceed fifty (50) dBA.
- b. The following uses and activities shall also be exempt from the requirements of subsection (a)3 of this section:
 - i. The noises of safety signals, warning devices, emergency pressure relief valves, and any other emergency devices.
 - ii. Traffic noise on public roads or noise created by airplanes and railroads.
 - iii. Noise created by refuse and solid waste collection, provided that the activity is conducted between 6:00 a.m. and 7:00 p.m.
 - iv. Emergency construction or repair work by public utilities, at any hour.
 - v. Noise created by any recreational activities which are permitted by law and for which a license or permit has been granted by the city, including but not limited to parades, sporting events, and fireworks displays.

- (c) *Vibration:* Vibration inherently and recurrently generated shall be imperceptible without instruments at lot boundaries.

- (d) *Federal and state environmental regulations:* All uses shall comply with federal and state environmental statutes and regulations regarding emissions into the air, except where provisions of this Code are more stringent.
- (e) *Storage of vehicles:* Outdoor storage of any unregistered automotive vehicle on the premises for more than ten (10) days, and outdoor storage of any used automotive tires on the premises shall not be permitted.
- (f) *Off-street parking and loading:* Off street parking and loading, for all projects regardless of size, shall be governed by 14-526a(2)b in the Site Plan Standards of this article and Division 20 and Division 21 of this article shall not apply.
- (g) *Shoreland and flood plain management regulations:* Any lot or portion of a lot located in a shoreland zone as identified on the city shoreland zoning map or in a flood hazard zone shall be subject to the requirements of division 26 and/or division 26.5.
- (h) *Glare, radiation or fumes:* Glare, radiation or fumes shall not be emitted to an obnoxious or dangerous degree beyond lot boundaries.
- (i) *Enclosure of uses:* All uses shall be operated within a fully enclosed structure, except for those customarily operated in open air.
- (j) *Materials or wastes:* Any permitted outdoor storage of materials shall be done in such a manner as to prevent the breeding and harboring of insects or vermin, to prevent the transfer of such materials from the site by natural causes or forces and to contain fumes, dust, or other materials which constitute a fire hazard. This storage shall be accomplished within enclosed containers or by one (1) or more of the following methods: raising materials above ground, separating materials, preventing stagnant water, or by some other means. Any areas used for permitted outdoor storage of materials shall be screened from view of any adjoining properties and public rights-of-way. No outdoor storage shall be permitted between the front of any building on the site and the street.
- (k) *Odor:* Uses in the B-6 zone shall adhere to the odor regulations of the IL zone.
- (l) *Smoke:* Discharges of smoke shall not exceed opacity percentage of forty (40) percent or number 2 on the Ringelman chart.
- (m) *Discharge into sewers:* No discharge shall be permitted at any point into any private sewage disposal system, or surface drain, or into the ground, of any materials in such a way or of such nature or temperature as to contaminate any water supply, or the harbor, or otherwise cause the emission of dangerous or

objectionable elements, except in accordance with standards approved by the health authority or by the public works authority.

- (n) *Lighting:* All lighting shall be designed and installed with cut-off fixtures to direct illumination onto the site and to prevent illumination from such fixtures on neighboring properties and as otherwise governed by the Site Lighting Standards of the Technical Design Standards and Guidelines.

5-16-05

Riverwalk - Southern Building

50 hotel Rooms

76 condo units

Health Center

50 spaces parking

Restaurant →

Through circulation from for to Commercial St.

Issues

Set Backs

Permissibility

1st floor Retail

As Priority - Condon.

Need Parking, conversion to Hotel

Abundant for St. Workshop BIDD

725 space

5400 For 5% Retail - Phase one

25,000 office/Retail

30,000 Apt/Retail

Drew Swenson

Real Estate Development &
Financial Advisory Services

April 27, 2005

Community Development Committee
City of Portland
390 Congress Street
Portland ME 04101

Re: Riverwalk LLC Eastern Waterfront Redevelopment Proposal

Dear Councilors Cloutier, Cohen and Mavodones:

As requested by the City, Riverwalk LLC is pleased to provide this letter to more fully set forth our \$75,000,000+/- development plans for the Longfellow Garage and 6,000± sq. ft. retail space on the westerly Shipyard Brewery site, 50,000+/- sq. ft. mixed use retail and residential development along the Middle and Hancock Street corner of the Shipyard site, 25,000 +/- sq. ft. mixed-use retail and office development on the Breakaway Tavern site, plus 22,500 sq. ft. of retail space, 50-room luxury hotel and 76 residential condominiums on the One India Street and City's 1.06-acre parcel.

We have attached to this letter various renderings as requested by City staff that we believe provide the information requested. We have provided proformas at earlier meetings that are part of the TIF credit enhancement package. We will gladly schedule a team presentation and/or attend a meeting with the CDC or City staff at your earliest convenience to answer any questions you may have on these materials. Each component of the project still adheres to the vision and concerns of the City, its residents and the Munjoy Hill Neighborhood members to whom we have spoken. We look forward to further public dialog to better ensure our project becomes an appropriate and valued part of the City's fabric.

As we have done in our earlier correspondence, we want to emphasize that the totality of our development is entirely consistent with the City's Master Plan and peninsula traffic and parking study and will not adversely affect traffic on the peninsula or within the Munjoy Hill neighborhood.

We look forward to the public hearing next month and executing an agreement with the City on the financial structure for the garage and a purchase and sale agreement on the City's parcel. We are still targeting fall 2005 for groundbreaking and are anxious to start the permitting process.

Westerly Shipyard Parcel

With the above in mind, first let us reaffirm that we continue to embrace our proposed Longfellow garage development, designed as two bays running parallel to Fore Street rather than the original three. In return for a transfer of the City's parcel for \$850,000 and City participation in the \$5,000,000 TIF credit enhancement agreement, we will develop the two-bay, 750+/- space garage. The parking garage continues to have a 17 to 18-month development process from the date we sign agreements with the City for the 1.06 acre land purchase, master lease of garage parking spaces, TIF credit enhancement agreement and achieving a resolution of the Portland Company railroad rights issue sufficient for us to have insurable and financible title to the City parcel.

In order to develop the garage as proposed, we will acquire the Breakaway Tavern property to the west of our site. Although we originally did not anticipate buying this parcel, and did not budget for it, the loss of the Micucci's parcel made the acquisition critical to the development of the garage. The B-5b zone will allow us to develop a 25,000+/- sf mixed use ground floor retail with upper floor office development on the Breakaway Tavern site. Each floor plate will be roughly 50 x 100 feet. We have already received several letters of interest from commercial office tenants for this location and are optimistic that we can construct this building at the same time as the garage. This will also "wrap" this India Street portion of the garage and allow us to improve the sidewalks at the Fore and India Street intersection, which has been a pedestrian problem for years.

The garage will be developed with a setback of no less than ten feet from the rear wall of the 25,000 sf development building to enable us to create an appropriate ten-foot alley between the garage and the building for maintenance and fire safety purposes. It also allows us to create a viable, efficient garage with safe ramp slopes and level perimeter walls that best meets the needs of CBITD, the ferry terminal, marine, industrial and other users displaced by Ocean Gateway. The site plan will allow us and the City to create a minimum of 10-foot wide brick sidewalks on Fore, Middle and Hancock Streets, consistent with the 10-foot brick sidewalks of Ocean Gateway.

The garage will be set back from Fore Street by as much as 20 feet as set forth on the attached drawings. In Phase two of our project, as the rest of the retail is leased up in our development, we will develop the approximately 6,000+/- sq. ft. of retail space along and within the exterior wall of the Fore Street side of the garage. This wrap development will enable us to create an appropriately large enough floor plate for the retail space, although it will eliminate roughly 25 parking spaces within the ground floor of the garage. We will stub in the utility lines in phase one to allow rapid development of this retail space as tenant demand materializes.

We will build the ground floor parking with a 9-foot interior clear height to allow for future retail development therein. We can envision a potential expansion of the Fore Street retail store wrap into the grade of the garage to create a 15,000 to 30,000 square foot grocery or other store(s) at some point in the future as the eastern promenade is fully developed.

Please note that we have intentionally not placed any residential, commercial or retail floors above this wrap space because of the prohibitive costs thereof and the wholly incompatible deck and floor height alignments between the garage and any such second or third floor. It is our understanding that City staff has agreed that the first floor concept is acceptable.

In addition to the garage, we will also develop at the northeast corner of the Shipyard site at the intersection of Middle and Hancock Streets, in a second phase of this project, a 50,000+/- sq. ft. mixed use retail and residential development which will "wrap" the façade of one half of the garage along Middle Street. We will create a center courtyard residential building that will create upwards of 30 additional housing units with either first floor retail or aesthetic parking similar to that at 280 Fore Street. These will be designed as market rate apartments or condominiums in light of the location and limited water views.

The ground and first floor above grade of the garage along Fore, Hancock and Middle Streets will have a façade of gray granite and hand set brick. All decks above grade will have a façade of the ivy-clad, architectural "greenscreen" as set forth in our original proposal.

In response to feedback we have received from the City, we have also slightly revised the façade design of the core tower for the garage to more closely tie the focal point of the garage to both the glass-highlights of Ocean Gateway and the surrounding more historic hand set brick buildings. Each of the other buildings in the development will use similar façade and galzing materials that complement the City and the One India Street building. Please see the rendering enclosed herein for a better perspective on this.

Access to the garage will continue to be twofold. Primary ingress and egress will be on Middle Street as set forth in the original proposal, and will allow us to change the center lane thereof to either an ingress or egress lane for high volume events. Secondary ingress and egress will be at the southwest corner of the garage. The intent, design and signage for this secondary ingress and egress will only be for key card ingress and egress for the City parcel homeowners and disposable/recyclable key card egress for the customers of the Fore Street wrap retail space.

The Longfellow garage, stair and elevator towers will be built to the maximum zone height in phase one. There are no deck additions that can be made to the garage unless a contract zone change were to be made to increase the height therein. We have no plans to do so unless the City requests it of us.

Please note that we will sell some of the spaces in the garage to the residential condominium owners on the City parcel. We anticipate selling each such parking space for no less than a net cash amount of \$25,000. The proceeds from these sales will be used to reduce the garage financing required from the bank. The economics of the garage improve with more sales at that selling price by reducing the financing payments.

In short, the garage continues to be a viable development, even with substantial increases in steel, concrete and other costs this past year.

City Parcel

Our development of the City's parcel will be a \$62,000,000+/-, two-phased development of three buildings and the wrapping of the PWD pump station. Our development will combine 22,500+/- sq. ft. of ground floor retail and service area with 200,000+/- sq. ft. of upscale condominium residences, luxury hotel and spa. We have received quite a bit of interest in the condominiums and will commission a full market study for bank financing, pre-sale projections and absorption projection purposes as soon as we have negotiated a financial package and purchase and sale agreement with the City.

Having said that however, our preliminary market information leads us to conclude that we will be able to develop the first phase of the project (50 room hotel and spa, 11,250+/- sq. ft. of retail and service area, plus the hotel and 38 condominiums) at the same time as the Longfellow Garage. We want to build Phase one and the garage at the same time. It is in our best interest to do so because of the construction cost reductions inherent in concurrent projects. Moreover, we must do so because the property taxes on this total first phase of the project will provide the TIF funds needed to create the necessary credit enhancement for the garage.

As you will see from the renderings, the project concept envisions two buildings perpendicular to the waterfront roughly 70 feet wide and 200 feet long. The building lengths will be broken up to avoid any monolithic facades. The buildings will be set apart along Commercial Street by a landscaped cobbled plaza and vehicular entry area to allow cafes, retail fixtures, art, permeability, etc. There will be 50+/- parking spaces under the rear of the buildings and partially below grade to allow residents ease of access to their units. A portion of the buildings along the Fore and Hancock Street side will be designed with 2 foot deep storefront windows to allow for frequently changed window displays for local retailers, artists, etc. The balance of the ground floor will be active and dynamic retail and residential spaces. Above the parking will be a pedestrian way connecting Fore and Commercial Streets as well as an elegant plaza raised one level above the streets to create superior views of the waterfront.

The buildings will be partially connected along Fore Street by glass enclosed bridges to allow the building residents to more easily access the many amenities of the luxury hotel and spa. All units will have upscale finishes such as granite kitchen counters, tile and wood floors, cherry cabinetry etc. Each residence will have exterior, cantilevered terraces for superb views of the Portland Harbor and Skyline, Casco Bay and the Ocean, and all units will have luxury amenities consistent with the following waterfront developments:

http://www.hendersonspier.com/building_plans/, <http://www.batterywharf.com> and <http://www.mandarinresidences.com/content/vision/index.jsp>.

You will note in our renderings that brick and cobblestone walkways and plazas will create permeability and an appropriate size and scale. In addition, the two buildings will be separated from each other by a large semi-private cobbled and landscaped plaza for the hotel, guests and residents. All of these pedestrian areas will create inviting permeable, walkable and open-air retail space for kiosks, café's, etc.

In keeping with the Master Plan and numerous comments we have received relative to design, scale and aesthetic appeal, we have created a design, articulation and changes in façade materials of our buildings that is consistent with the concepts and approach of the Master Plan and design guidelines. Each building will have slightly different façade finishes, different windows and decks, as well as different hand set brick finishes. Each will clearly appear as a separate building unto itself consistent with the distinctive individuality of Portland's architecture. The goal of the development will be to create a high-density urban environment with a welcoming retail, hotel, residential and pedestrian environment for condominium residents, City residents, visitors, etc.

In addition to the above three buildings, we have been working with the appropriate municipal agencies to architecturally wrap and arcade the PWD pump station and also create a landscaped and cobbled plaza on the entire PWD pump station site as part of its odor remediation project. It is not our intent to acquire any of the PWD area, but rather to create a plaza and building that allows PWD and the general public to use the site safely and in harmony.

The combined plaza, wrap and arcade will create a pedestrian friendly Promenade Trail trailhead, information center, etc. that hearkens to the site's former Grand Trunk architectural design. This will be a key focal point to the vital, upscale pedestrian environment and arcades we will create for this area. As discussed in greater detail in our proposal, we envision a quality to the eastern waterfront pedestrian experience that will be consistent with that of the Old Port. We will work very closely with the City, Portland Trails, the State and others to integrate this site into the pedestrian fabric of Portland and the State's "Explore Maine" programs.

Easterly Shipyard Parcel

Third and finally, we will continue our discussions with the City and our neighbors about an appropriate blend of affordable and mixed income housing, parking and relocating/upgrading appropriate commercial and retail tenants from the abutting redeveloped eastern waterfront properties on the 1.5+/-acre easterly portion of the Shipyard Brewery site. We envision this build out of the balance of our underutilized land as a third and final phase of the development of our properties.

Our team is convinced that this combination of development phases provides a superior combination of mixed-use redevelopment consistent with the Eastern Waterfront Master Plan.

We have invested a tremendous amount of enthusiasm, money and time over the past year in this process. As much as the City, we have a vested interest in the near term redevelopment of the eastern waterfront and share the Community and City's vision for thoughtful redevelopment thereof. We believe the strategic benefits of the above mixed use and phasing create a win-win scenario for everyone.

We have endeavored to be as succinct as possible in this letter. We welcome the opportunity to provide additional information at your earliest convenience and are quite interested in providing

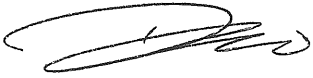
Riverwalk Proposal

April 27, 2005

Page 6

an oral presentation with questions and answers if you would like. Thank you again and we look forward to hearing from you in the very near future..

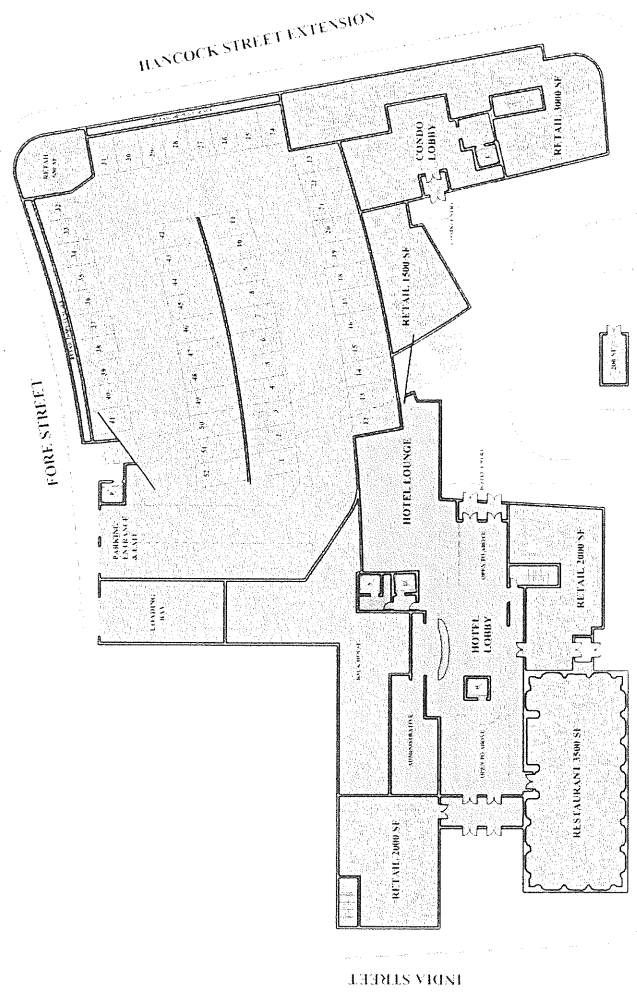
Sincerely,



Drew E. Swenson
Riverwalk, Principal



Fred M. Forsley
Riverwalk, Principal



FIRST FLOOR PLAN

SCALE: 1 INCH = 50 FEET

RIVERWALK
 Portland, Maine
April 27, 2005

Riverwalk, LLC
Developer

The Architectural Team, Inc
 Scott Simons Architects
Architects