



PORTLAND MAINE

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Planning & Urban Development Dept.
Gregory A. Mitchell, Acting Director

AGENDA ITEM #3

MEMORANDUM

TO: Chair and Members of the Housing and Community Development Committee

FROM: Greg Mitchell, Acting Director/Planning & Urban Development Dept.

DATE: June 7, 2012

SUBJECT: **Request for Tax Increment Financing from Fore India Middle, LLC
– Mixed Use Development to Complete Jordan's Meat Site Redevelopment**

I. SUMMARY OF ISSUE

Fore India Middle, LLC ("Developer") is requesting Tax Increment Financing (TIF) assistance for Phase II in the redevelopment of the former Jordan Meats site.

Phase I of the project has been completed with no City financial assistance. Phase I includes a 94,000 sq. ft. mixed use project consisting of the 122-room Hampton Inn, the Sebago Brewing Company restaurant, and 12 residential condominium units. This first phase used .66 acres of the 1.75 acre site, leaving 1.09 acres remaining to be developed.

Phase II calls for a five-story 180,000 sf. mixed-use project consisting of 12,600 sf. of retail space on Middle Street, 9,900 sf. of retail space on Fore Street, three levels of office space comprising 66,000 sf. on Middle Street, and 18 residential condominium units along Fore Street and India Street. In addition, there will be two "internal" parking garages behind the retail spaces (not visible from the street), one garage at the Fore Street level, and another garage one story above at the Middle Street Level. The Developer expects to have an urban grocery on Middle Street with a variety of produce, meats, food, and household items, with an emphasis on natural, organic and healthy items. The other retail users and the office users have not been identified yet.

The single impediment to the Phase II project is the cost of undergrounding overhead electric power and telecommunication services which is estimated to cost upwards of \$1,000,000. A tax increment financing credit enhancement agreement (TIF CEA) is proposed to reimburse the Project developers this cost through new property tax revenue associated with the new private sector investment.

II. REASON FOR SUBMISSION

This is being submitted to the Housing and Community Development Committee (HCDC) for its recommendation to the City Council, as all TIF Districts need the approval of the City Council.

III. INTENDED RESULT

The intended result from the establishment of this TIF District is to complete Phase II of this project by assisting with undergrounding overhead electric power and telecommunication services.

IV. FINANCIAL IMPACT

The proposed TIF partnership, if approved by the City Council, would reimburse the Project developer (through new property tax revenue) the higher than normal costs associated with undergrounding overhead electric power lines and telecommunication services located along the Middle Street side of the Project.

This TIF District is being proposed for a 5-year term and allocating:

Developer and City Percentages of New Property Tax Revenue

<u>Years</u>	<u>Developer</u>	<u>City Genl Fund</u>	<u>City TIF Project</u>
1	50%	40%	10%
2	50%	50%	
3-5	<u>45%</u>	—	—
Total	\$1,149,346	1,252,105	\$47,050

See attached spreadsheet showing the estimated new taxes to both Developer and City.

V. PUBLIC BENEFITS, STAFF ANALYSIS AND RECOMMENDATION

City staff has determined that the applicant’s request for TIF financial assistance is consistent with existing City TIF Policy (and proposed revisions) due to “ a need to offset public infrastructure or other regulated infrastructure costs unique to the site”. Based upon this determination, City staff recommends the HCDC forward the TIF application to the City Council for approval of the district and TIF credit enhancement agreement with the Developer to offset the cost of undergrounding electric power lines and telecommunication services to support this Project and beautify the India Street neighborhood.

Additionally, City staff proposes the City retaining 10% of the revenue for year one only to fund the cost of an engineering plan to determine the scope, costs, and to develop a financial plan to address undergrounding overhead electric and telecommunication services located along India Street.

The City's Green Building Code (GBC) requires projects receiving greater than \$200,000 of TIF financial assistance to demonstrate energy performance optimization standards above the State Energy Code as follows:

- 3% improvement for new construction;
- 25% improvement for existing buildings; and,
- 2% for historic buildings.

The Developer has indicated that it will seek a waiver from the GBC, but it will seek LEED certification for this project.

City of Portland

Fore India Middle, LLC
Project Site: Fore St., India St., and Middle St., Portland, Maine

*Application for Tax Increment Financing Development District
For Public Infrastructure Improvements*

Prepared by:

The City of Portland Economic Development Office
Draft of 6/8/2012

I. Introduction

In February 2010, Mark Woglom and Greg Kirsch (“Developer”) purchased the 1.75-acre former Jordan's Meats Site, consisting of nearly all the city block between Franklin, Fore, India and Middle Streets. . The Developer then demolished and recycled the existing meat processing plant -- made more difficult and costly by the fire that occurred in May 2010. The Developer implemented a Voluntary Remediation Action Plan to deal with petroleum residues from the Jordan's truck fleet, followed by obtaining permits to design and construct a 94,000 sf. mixed use project consisting of the 122-room Hampton Inn, the Sebago Brewing Company restaurant, and 12 residential condominium units. The abandoned meat factory had been a no-man's land dividing the Old Port from the neighborhoods to the east, and with this mixed use development completed, residents and tourists now move freely along Middle and Fore Streets to and from the eastern waterfront.

The Hampton Inn has created 35 full-time jobs and more seasonally, and 40 to 50 work at Sebago. In spite of the added rooms, hotels on the peninsula enjoyed strong growth over a year ago, and the additional guests are a stimulus to Portland's wide variety of restaurants, retailers, and service providers.

This first phase of development used only 0.66 acres of the 1.75-acre Jordan's property, leaving 1.09 acres of land remaining to be developed. The Developer holds title to the remaining land through the applicant Fore India Middle, LLC.

The Developer financed the first phase without partners and without any financial assistance from the city; this first phase was assisted by the federal economic recovery package that expanded the SBA 504 loan program. Public improvements that the Developer funded included sewer/stormwater separation from Hampshire Street to Fore Street, realignment of various underground utilities in the Franklin-Fore-Middle area, and installation of brick sidewalks, pedestrian-friendly back alleys and stairways, and street lighting and trees.

II. Development Program

A. Development Program - Developer

The Developer, through Fore India Middle, LLC, is now ready for Phase II redevelopment of the remaining 1.09 acres and due to the scope of public improvements expected to be required, is requesting City assistance through this TIF application to cover the cost of underground overhead electric power lines and telecommunication services along Middle Street.

Phase II calls for a five-story 180,000 sf. mixed-use project consisting consisting of 12,600 sf. of retail space on Middle Street, 9,900 sf. of retail space on Fore Street, three

levels of office space comprising 66,000 sf. on Middle Street, and 18 residential condominium units along Fore Street and India Street. In addition, there will be two "internal" parking garages behind the retail spaces (not visible from the street), one garage at the Fore Street level, and another garage one story above at the Middle Street Level. The Developer expects to have an urban grocery on Middle Street with a variety of produce, meats, food and household items, with an emphasis on natural, organic and healthy items. The other retail users and the office users have not been identified yet.

The building will utilize a variety of different facade materials, textures, and dimensions to create the visual appearance of several connected buildings, typical of other blocks in the Old Port.

Middle Street and India Street are riddled with power poles supporting many electric and telecommunications lines. These transmission lines feed a web of service lines strung across the streets to serve buildings on the opposite side. The Developer is currently working with Central Maine Power and the telecommunications providers that share CMP's poles to determine how and at what cost these poles can be replaced with underground lines. The work on Middle Street adjacent to the proposed development is relatively straightforward, with initial indications are that it will cost \$750,000 to \$850,000 to put utilities underground and reconnect the buildings on Middle Street. In addition, depending on Planning Board requirements, the Developer anticipates expenditures of \$50,000 to \$100,000 for sidewalks, street trees, street lights, pedestrian improvements, traffic improvements, and the like. Overall, a reasonable estimate of the public improvements including the Middle Street utility relocation is between \$850,000 to \$950,000.

The complexity and cost of relocating the utility poles on the India Street side of the project is far greater, in larger part because several major circuits are tied together at a single point at the corner of India and Middle Streets. Furthermore, it is not possible to remove only the two poles on the India Street side of the project; it will be necessary to remove numerous additional poles that will affect other properties and will require cooperation of other private landowners. Initial indications from CMP are that the minimum scope of utility relocation to remove the poles on the India Street side of the project will cost an additional \$1,250,000 to \$1,750,000. It will make sense to determine whether the scope of that work should be expanded to clean up more of India Street, which would be cost effective to do simultaneously. The Project Developer is not requesting TIF financial assistance to address undergrounding overhead electric and telecommunication services along India Street.

To make the project feasible, public assistance is being requested through this TIF application for public infrastructure described immediately above. The Developer will ask the Planning Board to approve the Phase II redevelopment with the Middle Street utility poles to be removed (subject to obtaining TIF assistance for the Middle Street component of the work described above) and with the India Street utility poles to remain in place. Without this assistance, the Developer will ask the Planning Board to approve

the project with all the utility poles (i.e, Middle and India Street poles) remaining in place -which can be done in compliance with codes and ordinances.

It is estimated that the project will create new assessed value of \$25 million, generating an estimated annual incremental tax revenue of over \$450,000. A Credit Enhancement Agreement for a five (5) year term at 50% for years 1 and 2 and 45% for years 3 to 5 is sufficient to fund the Middle Street component of the infrastructure investment over five years.

B. Development Program – City

The City is proposing to capture 10% of year 1 property tax proceeds to fund an engineering study to determine the scope, costs, and to develop a financial plan to address undergrounding overhead electric and telecommunication lines located along the India Street corridor.

C. The Development District Property

The property to be designated as a TIF District and is the subject of this application is shown in the attached map (Attachment 1), also known by the Assessor's Chart/Block/Lot number as: 29-L-3.

The TIF District will apply to only new value generated within the District and will not affect the current property tax base.

D. Municipal Use of TIF Revenues

The City of Portland seeks authorization to utilize the revenues generated from this TIF District to support the economic development activities called for in the Development Program, and specifically, the activities outlined in Section II-A and B of this Application.

E. Operational Components

1. Uses of Private Property

Subject to the approval of the City Council, the City will consider entering into a credit enhancement agreement in this TIF Development Program.

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

During the life of this TIF District, the City of Portland, City Council, or their designee, will be responsible for the administration of the Districts.

III. Development Program Physical Description

- A. Total acreage of the municipality: 12,386 (taxable acres)
- B. Total acreage of this TIF District: 1.218 acres
- C. Percent of line B of line A (line B divided by line A cannot exceed 2%): .01%
- D. Total acreage of all existing TIF Districts in the municipality: 138.87 acres
- E. Percent line D of line A (cannot exceed 5%): 1.12%
- 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 = N/A.
 - 2. Acreage in need of rehabilitation, redevelopment or conservation N/A. Line F2 divided by line B = N/A.
 - 3. Acreage suitable for commercial siting = 1.218 Line F3 divided by line B = 100%.
- G. Enclosed municipal maps:
 - 1. Area map showing site location of TIF District in relation to geographic location of municipality (Attachment 2).
 - 2. Site map showing tax map location TIF District (Attachment 1).

IV. Development Program Financial Plan

A. *Costs and Sources of Revenues*

This TIF District comprises an area of approximately 1.218 acres of taxable real and personal property with an original assessed value of \$1,188,900 as of March 31, 2012. The development within the TIF District is estimated to add an additional \$25 Million of new assessed value to the City over the 5 years.

The Development Program provides for the new tax revenues generated by the increase in assessed value of the TIF District to be captured and designated as TIF

Revenues. The City will apply the portion of retained revenues to the economic development activities described in the Development Program.

The City of Portland reserves the right to amend this Financial Plan, subject to DECD approval.

Attachment 3 details the projections and proposed TIF revenue allocation based upon the anticipated assessed value increases within the TIF District.

Attachment 3 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 Account

This Development Program requires establishment of a Development Program Account pledged to, and charged with, the payment of the project costs in the manner outlined in 30-A M.R.S.A. §5254 (3)(A)(2).

The Fore India Middle, LLC TIF Development Program Account is established consisting of a project cost account ("Project Cost Account") pledged to, and charged with, payment of project costs. The Project Cost Account shall consist of a City Cost Account (the "City Cost Account") pledged to, and charged with, payment to the City for the cost of approved economic development expenses and payment by the City under the credit enhancement agreement to be entered into with Fore India Middle, LLC.

C. Financing Plan

The development within this TIF District will add approximately \$25 million of new taxable value in the City of Portland over 5 years. TIF revenues will be allocated as described on Attachment 3 to finance the costs of this Development Program. Actual payments to the Project Cost Account will be adjusted based upon the applicable annual percentage retained and the actual annual assessed value within the Districts.

V. TIF Districts Financial Data

A. Total 2011 value of equalized property in the municipality: \$7,659,250,000.

B. Original assessed value of all properties in all existing and proposed Original TIF districts:

Existing	\$75,461,590
Proposed	\$1,188,900
Total	\$76,650,490

Line B divided by line A = 1.0 % (cannot exceed 5%).

- C. Estimate of increased assessed value by year after implementation of the Development Program: See Attachment 3
- D. Percentage of increased assessed value to be applied to the Development Program fund: See Attachment 3
- E. Estimated annual tax increment: \$239,279(Average)
- F. Total average annual value of Development Program fund: \$239,279 (Average)
- G. Annual principal and interest payment of bonded indebtedness: N/A
- H. Financial assumptions and safeguards: Under the Development Program, the City of Portland only seeks to implement the Fore India Middle, LLC Development Program and is under no obligation to repay any bonds that would involve a pledge of the City's full faith and credit. The City's participation in this Development Program is voluntary and notwithstanding any approvals from the appropriate state entity, can revoke its desire to implement the plan.
- I. Statement of impact of TIF on taxing jurisdictions within the county: See Attachment 4.

VI. Development Program Tax Shifts (See Attachment 4)

A. Average Annual Amount.

General Purpose Aid to Education Tax Shift: \$91,507
Municipal Revenue Sharing Tax Shift: \$12,613
County Tax Shift: \$5,759
Total Average Annual Savings: \$109,880

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. The notice was published on _____ in a newspaper of general circulation (see Attachment 5).

B. Public Hearing

A Public Hearing at which the proposed designation of this TIF District as a municipal development tax increment financing district and the proposed adoption of

the Development Program was held on _____ in the Portland City Council Chambers. A copy of the minutes of that meeting is included as Attachment 6.

C. *Authorizing Votes*

An attested copy of the resolution of the Portland City Council designating the TIF District as a municipal development tax increment financing district and adopting the Development Program is included as Attachment 7.

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ATTACHMENT 1

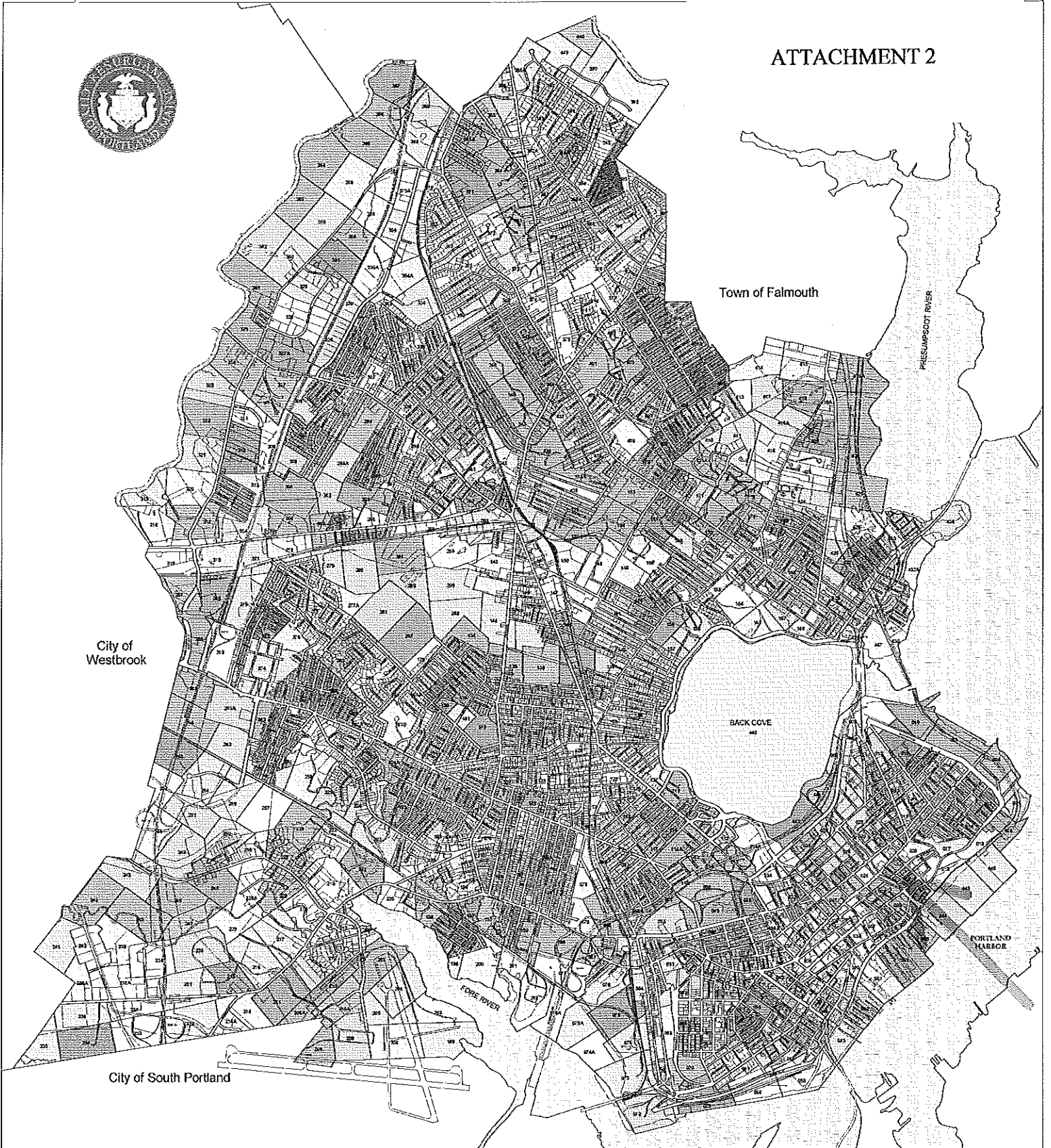


Assessor Chart - 029

Updated 04/01/08



ATTACHMENT 2

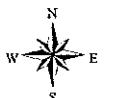


**City of Portland, Maine
Tax Map Index**

Scale: 1 Inch = 850 Feet



Map produced by the City of Portland's Assessor Office and the GIS Workgroup June 2004



Opechee (f/k/a Jordan Meats site) TIF Spreadsheet									
TIF Years - Starts with FY14	Estimated Increased Assessed Value (Cumulative)	Est. Tax Rate (plus 2% per year)	Est. Increased RE Taxes from Captured Value	TIF Revenue to Developer	Developer Share	Revenue to City	TIF Project Fund 1st Yr. Only	General Fund	City
1	25,000,000	0.01882	470,500	50%	235,250	50%	47,050	188,200	
2	25,000,000	0.01920	479,910	50%	239,955	50%		239,955	
3	25,000,000	0.01958	489,508	45%	220,279	55%		269,230	
4	25,000,000	0.01997	499,298	45%	224,684	55%		274,614	
5	25,000,000	0.02037	509,284	45%	229,178	55%		280,106	
TOTAL					1,149,346		47,050	1,252,105	
NPV@8%					993,098				
Footnotes:									
Original Assessed Value a/o of 3/31/12: \$1,188,900									
CBL Reference: 29-L-3									
NPV=Net Present Value									
Draft as of 6/7/2012									

Tax Shifts-Avoided Formula Impacts from Sheltering of Valuation: City of Portland/Fore India Middle LLC							
Various Percentage Sheltered over 5-Year Term							
TIF Year	Tax Year- April 1	Total Added Valuation	Sheltered Valuation	Avoided Formula Impacts from Sheltering of Valuation			
				Avoided Loss of State Aid to for Education	Avoided Loss of State Municipal Revenue Sharing	Avoided Increase in County Tax	Total Avoided Impacts
1	2012	\$25,000,000	\$15,000,000	\$112,050	\$15,445	\$7,052	\$134,546
2	2013	\$25,000,000	\$12,500,000	\$93,375	\$12,870	\$5,877	\$112,122
3	2014	\$25,000,000	\$11,250,000	\$84,038	\$11,583	\$5,289	\$100,910
4	2015	\$25,000,000	\$11,250,000	\$84,038	\$11,583	\$5,289	\$100,910
5	2016	\$25,000,000	\$11,250,000	\$84,038	\$11,583	\$5,289	\$100,910
5 Year TIF Total		\$125,000,000	\$61,250,000	\$457,538	\$63,065	\$28,797	\$549,400

This model is based various percentages of incremental valuation captured within the TIF District for 5 years.

CREDIT ENHANCEMENT AGREEMENT

by and between

CITY OF PORTLAND, MAINE

And

FORE INDIA MIDDLE, LLC

Dated as of _____

DRAFT

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THIS CREDIT ENHANCEMENT AGREEMENT dated as of _____, 2012, by and between the City of Portland, Maine (the "City"), a municipal body corporate and politic and a political subdivision of the State of Maine, a corporation duly organized and existing under the laws of the State of Maine, with a place of business in Portland, Maine, and Fore India Middle, LLC (the "Developer"), a Maine limited liability corporation, having an office at 11 Corporate Drive, Belmont, NH 03220.

WITNESSETH THAT

WHEREAS, the City designated the Fore India Middle Street 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 _____ (the "Vote"), and pursuant to 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 Development Program; and

WHEREAS, the City designated the District, adopted the Development Program and entered into this Agreement in order to induce the Developer to redevelop the site 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 Developer have agreed to execute and deliver this Agreement; and

WHEREAS, the City and the Developer 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 Developer TIF Account, also known as the Fore India Middle Street Program Account.

"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 Developer, as such may be amended by the parties from time to time.

"Captured Assessed Value" means the percentage of Increased Assessed Value retained in the District in each year during the term of the District as specified in Section 3.1 below.

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

"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.

"Developer 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.

"Developer 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 Developer pursuant to Section 3.1 hereof.

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

"Development Program" means the development program and financial plan for the Fore Middle India Street District adopted by the City and attached hereto as Exhibit A.

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

"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 \$1,188,900, the assessed value of the Property as of March 31, 2012 (April 1, 2011).

"Project" means the Phase II mixed use development at 209 Fore Street into approximately a five-story 180,000 sf. mixed use project consisting of 12,500 sf. of retail space on Middle Street, 9,500 sf. of retail space on Fore Street, three levels of office space comprising 64,000 sf. on Middle Street, and 18 residential condominium units along Fore Street and India Street. In addition, there will be two "internal" parking garages behind the retail spaces (not visible from the street), one garage at the Fore Street level, and another garage one story above at the Middle Street Level. The Developer expects to have an urban grocery on Middle Street with a variety of produce, meats, food and household items, with an emphasis on natural, organic and healthy items. The other retail users and the office users have not been identified yet. Project also to

include infrastructure improvements such as putting utilities underground, sidewalks, street trees, street lights, pedestrian improvements, and traffic improvements.

"Project Cost Account" means the account in the Development Program Fund described in Section II of the Development Program and established and maintained pursuant to the Development Program and Article II hereof,

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

"Property" means the Project, together with the land and all real property improvements located in the Fore India Middle Street District and taxable by the City.

"Property Taxes" means any and all ad valorem property taxes levied, charged or assessed against the Property by the City or on its behalf and actually paid to the City, but excluding any county, state or special district taxes that are separately levied, charged or assessed against the Property.

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

"Retained Tax Increment Revenues" means that portion of Property Taxes paid with respect to 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.

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 "Fore India Middle Street Development Program Account" pursuant to, and in accordance with the terms and conditions of, the Development Program.

Section 2.2. Deposits into Account.

There shall be deposited into the Account contemporaneously with each payment of Property Taxes an amount equal to that portion of the Property Taxes constituting Developer Tax Increment Revenues 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 Developer.

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.

Section 2.4. Monies Held in Trust.

All monies required to be paid into the 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 Developer.

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 at all times 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 Developer shall pay or cause to be paid when due all Property Taxes assessed by the City unless contested by the Developer by appropriate proceedings pursuant to Maine law. No

payments shall be made by the City under this Agreement at any time any such taxes or amounts are due and unpaid.

ARTICLE III PAYMENT OBLIGATIONS

Section 3.1. Captured Assessed Value; Retained Tax Increment.

During the term of the Development Program, the City shall annually retain the percentage of Increased Assessed Value indicated on Exhibit C attached hereto as Captured Assessed Value. The Property Taxes paid with respect to the Captured Assessed Value shall be retained as Retained Tax Increment Revenue. All (100%) of the Retained Tax Increment Revenue shall be deposited when received by the City into the Developer TIF Account as the Developer Tax Increment Revenue, in accordance with the provisions of Section 2.2 of this Agreement and the priorities established by 30-A M.R.S.A. § 5227(3)(B), starting with taxes assessed for the City's 2013-2014 fiscal year, based on the April 1, 2013 Current Assessed Value and continuing for each of the next 5 years, ending with taxes assessed for the City's 2018-2019 fiscal year, based on the April 1, 2011 Current Assessed Value.

Section 3.2. Completion of Development Program.

Prior to receiving the first payment under this Agreement, the Company shall provide evidence reasonably satisfactory to the City of the Developer's ability to complete the Project in accordance with State law. Reasonably satisfactory evidence shall include the Developer having closed on the financing for the Project.

Section 3.3. Credit Enhancement Payments.

Within thirty (30) days following the last Tax Payment Date in each fiscal year during the term of this Agreement, the City shall pay to the Developer all Developer Tax Increment Revenues due and owing pursuant to Section 3.1 and then on deposit in the Developer TIF Account.

Section 3.4. Failure to Make Payment.

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

Section 3.5. Manner of Payments.

a. The payments provided for in this Article III shall be paid in immediately available funds in the manner provided hereinabove for its own use and benefit. Notwithstanding the above, no payments shall be made unless used to satisfy debt service on indebtedness incurred to finance qualified "Project Costs" as that term is defined under Chapter 206 of Title 30-A of the

Maine Revised Statutes and as described as part of the Project in the Development Program or used to pay directly, or to reimburse the Developer for payment of such Project Costs.

b. The City shall make required payments in response to requests for annual payment submitted by the Developer 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 Developer. Notwithstanding the above, the City reserves the right to terminate this Agreement upon 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.

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 therefor 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 Revenues 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 therefor 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 Revenues established under this Agreement.

**ARTICLE IV
PLEDGE AND SECURITY INTEREST**

Section 4.1. Pledge of Developer TIF Account.

In consideration of this Agreement and other valuable consideration and for the purpose of securing the City's payment of the amounts provided for hereunder, 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 Developer the Developer TIF Account and all sums of money and other securities and investments therein.

Section 4.2. Further Instruments.

The parties hereto 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 4.3. Liens.

Except as permitted hereunder, the City shall not sell, lease, pledge, assign or otherwise dispose, encumber or hypothecate any interest in the 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 4.4. Access to Books and Records.

All books, records and documents in the possession of the City relating to the 209 Fore Street 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 Developer, its agents and employees.

**ARTICLE V
DEFAULTS AND REMEDIES**

Section 5.1. Events of Default.

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

- a. Any failure by the City to pay any amounts due under Section 3.3 above when the same shall become due and payable;
- b. Any failure by the City to make deposits into the Developer TIF Account as and when due;
- c. Other than as provided in paragraph (a) and (b) above, any failure by the City or the Developer 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 Developer respectively to be observed or performed, including any failure of the Developer to use payments made under this Agreement as required in Section 3.6 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 Developer's failure to pay Property Taxes on the Property in the 209 Fore Street 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.

Section 5.2. Remedies on Default.

Whenever any Event of Default referred to in Section 5.1 hereof shall have occurred and be continuing, the non-defaulting party may take any one or more of the following remedial steps:

- a. The non-defaulting party may take whatever action at law or at equity as may appear necessary or desirable to collect any 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. The Developer shall also have the right to exercise any rights and remedies available to a secured party under the laws of the State of Maine. No party has the right to terminate this Agreement.

Section 5.3. 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 5.4. Enforcement Rights.

The City and the Developer 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 Developer continuing its pursuit of the Project. The parties agree that in the event of any dispute or disagreement hereunder the Developer 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 VI
EFFECTIVE DATE, TERM AND TERMINATION**

Section 6.1. Effective Date and Term.

This Agreement shall become effective upon its execution and delivery by the parties hereto and shall remain in full force from the date hereof and shall expire on the later of the end of the 2018-2019 fiscal year of the City or upon the performance of all obligations on the part of the City and the Developer hereunder, including without limitation payment of all amounts to be paid to Developer.

Section 6.2. 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 Developer shall each execute and deliver such documents and take or cause to be taken such actions as may be necessary to evidence the termination of this Agreement.

ARTICLE VII ASSIGNMENT

Section 7.1. Assignment.

Except as provided in Section 8.1, this Agreement and the obligations of the Developer hereunder may not be assigned or transferred without the consent of the City which consent may be withheld for any reason or for no reason; provided, however, that the City will not unreasonably withhold, condition or delay its consent to a transfer of the rights of Developer hereunder to a subsequent owner of the Property.

**ARTICLE VIII
MISCELLANEOUS**

Section 8.1. Successors.

In the event the City or the Developer are dissolved, merged into or consolidated with another entity, or undergo any form of corporate reorganization, the covenants, stipulations, promises and agreements set forth herein, by or on behalf of or for the benefit of such party shall bind or inure to the benefit of the successors and assigns thereof from time to time and any entity, officer, board, commission, agency or instrumentality to whom or to which any power or duty of such party shall be transferred.

Section 8.2. Parties in Interest.

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

a final and binding proceeding to be illegal or invalid, this Agreement shall terminate. In such event all obligations of the parties shall terminate, and no party shall have any further liability to the other hereunder.

Section 8.3. Severability.

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

Section 8.4. No Personal Liability.

(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 Developer 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 Developer in his or her individual capacity and neither the directors, members, officers, agents, servants or employees of the Developer shall be liable personally with respect to this Agreement or be subject to any personal liability or accountability by reason hereof.

Section 8.5. Counterparts.

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

Section 8.6. Governing Law.

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

Section 8.7. Notices.

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

If to the City:

Corporation Counsel's Office
City of Portland
389 Congress Street
Portland, ME 04101

If to the Developer:

Gregory Kirsch
209 Fore Street LLC
c/o Opechee Construction Corporation
11 Corporate Drive
Belmont, NH 03220

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

Section 8.8. Amendments.

Neither this Agreement nor the Development Program may be amended without the express written consent of all of the parties hereto, 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. §5211 et seq., as amended.

Section 8.9. Net Agreement.

This Agreement shall be deemed and construed to be a "net agreement," and the City shall pay absolutely net during the term hereof all payments required hereunder, free of any deductions, and without abatement, or setoffs; provided, it is understood that the City's payment obligations are to be satisfied solely from Retained Tax Increment Revenues actually paid in by the Developer and received by the City.

Section 8.10. Integration.

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

Section 8.11. Project Responsibility.

The parties hereto agree, and the City hereby acknowledges that the Developer shall have no obligation to go forward with the Project referred to herein or in the Development Program. Such Project is subject to final approval by the Developer.

Section 8.12. Indemnification.

a. The Developer 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 209 Fore Street Sub-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 Developer, 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 8.13. Waiver of Recapture.

In order to induce Developer to construct the Project, in the event this Credit Enhancement Agreement, the Development Program or designation of the 209 Fore Street District is found or held void or invalid or if for any reason the payments made by the City hereunder are held contrary to law or improper by a Court of law with final jurisdiction over this Agreement City irrevocably waives its rights to reclaim, recapture or otherwise recover any TIF proceeds paid to the Developer or any assignee pursuant to this Agreement.

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

IN WITNESS WHEREOF, the City and the Developer have caused this Agreement to be executed in their respective corporate names 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: _____

**Mark H. Rees
Its City Manager**

WITNESS

FORE INDIA MIDDLE LLC

By: _____

**Gregory Kirsch
Its Principal**