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BELINDA S. RAY (1)  
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**CITY OF PORTLAND**  
**IN THE CITY COUNCIL**

KIMBERLY COOK (5)  
JILL C. DUSON (A/L)  
PIOUS ALI (A/L)  
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER APPROVING AND AUTHORIZING THE CITY MANAGER TO ENTER INTO  
THE CREDIT ENHANCEMENT AGREEMENT  
WITH WATSON RENEWAL GRANT LLC**

**ORDERED**, that the credit enhancement agreement between the City of Portland and Watson Renewal Grant LLC related to the 104 Grant Street Affordable Housing Tax Increment Financing District is hereby approved and the City Manager is authorized to sign the agreement in substantially the same form as attached hereto and any other related documents that are necessary or convenient to carry out the intent of said agreement.

**CREDIT ENHANCEMENT AGREEMENT**

**between**

**THE CITY OF PORTLAND, MAINE**

**and**

**WATSON RENEWAL GRANT LLC**

**DATED: \_\_\_\_\_, 2020**

# TABLE OF CONTENTS

## ARTICLE I

<b>DEFINITIONS .....</b>	<b>1</b>
Section 1.1. Definitions. ....	1
Section 1.2. Interpretation and Construction. ....	3

## ARTICLE II

### AFFORDABLE HOUSING DEVELOPMENT PROGRAM FUND AND FUNDING

<b>REQUIREMENTS.....</b>	<b>4</b>
Section 2.1. Creation of Development Program Fund.....	4
Section 2.2. Liens.....	4
Section 2.3. Captured Assessed Value; Deposits into Development Program Fund.....	5
Section 2.4. Use of Monies in Development Program Fund. ....	5
Section 2.5. Monies Held for Benefit of Developer.....	5

## ARTICLE III

<b>PAYMENT OBLIGATIONS.....</b>	<b>6</b>
Section 3.1. Developer Payments. ....	6
Section 3.2. Failure to Make Payment.....	6
Section 3.3. Manner of Payments. ....	6
Section 3.4. Obligations Unconditional.....	7
Section 3.5. Limited Obligation.....	7

## ARTICLE IV

<b>PLEDGE AND SECURITY INTEREST.....</b>	<b>7</b>
Section 4.1. Pledge of and Grant of Security Interest in Developer Project Cost Subaccount. ....	7
Section 4.2. Perfection of Interest.....	8
Section 4.3. Further Instruments.....	8
Section 4.4. No Disposition of Developer Project Cost Subaccount.....	8
Section 4.5. Access to Books and Records.....	8

## ARTICLE V

<b>DEFAULTS AND REMEDIES .....</b>	<b>8</b>
Section 5.1. Events of Default. ....	8
Section 5.2. Remedies on Default.....	9
Section 5.3. Remedies Cumulative.....	9

## ARTICLE VI

<b>EFFECTIVE DATE, TERM AND TERMINATION .....</b>	<b>10</b>
Section 6.1. Effective Date and Term.....	10
Section 6.2. Cancellation and Expiration of Term.....	10

**ARTICLE VII**

**ASSIGNMENT AND PLEDGE OF DEVELOPER'S INTEREST .....**

**10**

Section 7.1. Consent to Pledge, Collateral Assignment Or Grant of a Security Interest. . 10

Section 7.2. Transfer. .... 11

**ARTICLE VIII**

**MISCELLANEOUS ..... 11**

Section 8.1. Successors. .... 11

Section 8.2. Parties-in-Interest. .... 11

Section 8.3. Severability. .... 11

Section 8.4. No Personal Liability of Officials of the City. .... 11

Section 8.5. Counterparts. .... 12

Section 8.6. Governing Law. .... 12

Section 8.7. Notices. .... 12

Section 8.8. Amendments. .... 12

Section 8.9. Records. .... 13

Section 8.10. Reserved..... 13

Section 8.11. Integration. .... 13

Section 8.12. Reserved..... 13

Section 8.13. Dispute Resolution..... 13

Section 8.14. Tax Laws and Valuation Agreement. .... 14

**EXHIBITS**

Exhibit 1 Copy of District Map

**THIS CREDIT ENHANCEMENT AGREEMENT** dated as of [Enter Date, 2020], between the City of Portland, Maine, a municipal body corporate and politic and a political subdivision of the State of Maine (the “City”), and Watson Renewal Grant LLC, a Maine limited liability company (the “Developer”).

**WITNESSETH THAT**

**WHEREAS**, the City designated the *104 Grant Street Municipal Affordable Housing Development 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 City Council at a meeting of the City Council held on [Enter Date of Council Meeting, 2020], Order \_\_\_\_ - 19/20 (the “Vote”) and pursuant to the same Vote adopted an affordable housing development program, including a financial plan, for the District (the “Development Program”); and

**WHEREAS**, the City received the approval of the District and the Development Program by Maine State Housing Authority (“MSHA”) on [Enter Date of District Approval by Maine Housing] and anticipates the approval of the amended District and the Development Program by MSHA; and

**WHEREAS**, the Development Program contemplates the execution and delivery of a credit enhancement agreement between the City and the Developer, and the City approved the execution and delivery of a credit enhancement agreement as described in the Development Program pursuant to the Vote, and the City and the Developer desire and intend that this Credit Enhancement Agreement be and constitute the Credit Enhancement Agreement contemplated and described in the Development Program in the name of and on behalf of the City; and

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

**ARTICLE I  
DEFINITIONS**

***Section 1.1. Definitions.***

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

“Act” means chapter 206 of Title 30-A of the Maine Revised Statutes and regulations adopted thereunder, as amended from time to time.

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

“Authority” means the Maine State Housing Authority.

“Captured Assessed Value” means the amount, stated as a percentage, of the Increased Assessed Value of the District that is retained in each Tax Year during the term of the District, as specified in Section 2.3 hereof, to fund Project costs authorized in the Development Program.

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

“Current Assessed Value” means the then-current assessed real property value of the District as determined by the City Tax Assessor as of April 1 of each Tax Year that the District remains in effect.

“Developer Project Cost Subaccount” means that portion of the Project Cost Account of the Development Program Fund for the District set aside for the Developer established and maintained according to Article II hereof.

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

“Development Program Fund” means the Affordable Housing Development Program Fund described in the Development Program and established and maintained pursuant to Article II hereof and 30-A M.R.S.A. § 5250-A(3)(A) consisting of subaccounts further described herein.

“Director” means the Director of the Maine State Housing Authority.

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

“Effective Date of the Development Program” means the start date identified in Section 2.08 of the Development Program.

“Fiscal Year” means July 1 to June 30 each year or such other fiscal year as the City may from time to time establish.

“Increased Assessed Value” means, for each Fiscal Year during the term of this Agreement, the amount by which the Current Assessed Value for such year exceeds the Original Assessed Value. If the Current Assessed Value is less than or equal to the Original Assessed Value in any given Tax Year, there is no Increased Assessed Value in that year.

“Original Assessed Value” means Four Hundred and Nineteen Thousand dollars (\$419,600), the taxable assessed real property value of the District as of March 31, 2020.

“District” shall mean that portion of the District which is comprised of any real property portion of the District, or improvements thereon associated with the Project. A copy of the District map is attached hereto as Exhibit 1 as well as an informational map showing the Project in the District.

“Non-Captured Increased Assessed Value” means, for each Fiscal Year during the term of this Agreement, the difference between the Increased Assessed Value and the Captured Assessed Value.

“Project” means the planned twenty-three (23) unit mixed-income housing project to be named the Goodwin located in the District.

“Project Cost Account” means the project cost account associated with the Project as described in the Development Program and established and maintained pursuant to Title 30-A M.R.S.A. § 5250-A(3)(A)(1) and Article II hereof.

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

“Qualified Reimbursable Costs” means certain annual Project debt service, more specifically defined as principal, interest and any fees, except late fees or other penalties incurred due to a default of the Developer, and charged by the Developer’s affordable housing tax increment financing lender (“Developer’s AHTIF Lender”) that are actually incurred and paid by the Developer.

“State” means the State of Maine

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

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

“Tax Year” shall have the meaning given such term in 30-A M.R.S.A. § 5246(16), as amended, to wit: April 1 to March 31.

***Section 1.2. Interpretation and Construction.***

In this Agreement, unless the context otherwise requires:

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

**ARTICLE II**  
**AFFORDABLE HOUSING DEVELOPMENT PROGRAM FUND**  
**AND FUNDING REQUIREMENTS**

***Section 2.1. Creation of Development Program Fund.***

Within sixty (60) days after the Effective Date of the Development Program, the City shall create and establish a segregated fund in the name of the City designated as the “104 Grant Street Municipal Affordable Housing Development and Tax Increment Financing District Program Fund” (hereinafter the “Development Program Fund”) pursuant to, and in accordance with the terms and conditions of, the Development Program and 30-A M.R.S.A. § 5250-A(3). The Development Program Fund shall consist of the Developer Project Cost Subaccount, which is pledged to and charged with the payment of Project costs described in the Development Program, as provided in 30-A M.R.S.A. § 5250-A(3)(A)(1). The Developer Project Cost Subaccount is pledged to and charged with the payment of costs in the manner and priority provided in Section 3.1(b) below.

***Section 2.2. Liens.***

The City shall not create any liens, encumbrances or other interests of any nature whatsoever, nor shall it hypothecate the Developer Project Cost Subaccount described in Section 2.1 hereof or any funds therein, other than the interest in favor of Developer hereunder; provided, however, that nothing herein shall prohibit the creation of property tax, sewer or other liens on property in the District in accordance with and entitled to priority pursuant to Maine law.

***Section 2.3. Captured Assessed Value; Deposits into Development Program Fund.***

(a) Each Tax Year during the term of this Agreement, commencing with the April 1, 2020 Tax Year and continuing thereafter through the April 1, 2049 Tax Year (collectively the “CEA Years”), the City shall retain in the District seventy-five percent (75%) of the Increased Assessed Value as Captured Assessed Value. The remaining 25% of the Increased Assessed Value is referred to herein as the Non-Captured Increased Assessed Value.

In the event of a revaluation of taxable property within the City, the Captured Assessed Value of this District may be adjusted in proportion to the change in taxable assessed property valued within the District in the year of the revaluation resulting from such revaluation.

(b) For each of the CEA Years, the City shall deposit into the Development Program Fund contemporaneously with each payment of Property Taxes during the term of this Agreement an amount equal to seventy-five percent (75%) of that portion of the property tax payment constituting Tax Increment Revenues. The City shall allocate such 75% portion to the Developer Project Cost Subaccount. The remaining 25% portion of the property tax payment constituting Tax Increment Revenues shall be deposited into the City’s general fund.

(c) Notwithstanding anything herein to the contrary, if the District property becomes



exempt from the obligation to pay property taxes, after application by the owner of the District property to the City for such exemption, then upon the granting of such exemption, this Agreement shall terminate and no further deposit or payment obligations on the part of the City shall exist.

(d) Any and all revenues resulting from investment earnings on deposits in the Development Program Fund shall be retained in the Development Program Fund and applied for Development Program purposes relating to the Development Program Fund as prescribed by 30-A M.R.S.A Section 5250-A(3), subject to the payment obligations set forth in Article III below.

***Section 2.4. Use of Monies in Development Program Fund.***

All monies in the Development Program Fund that are allocable to and/or deposited in Developer Project Cost Subaccount shall in all cases be used and applied to fund fully the City's payment obligations to Developer as described in Articles II and III hereof. Developer shall be obligated to use such payments for operating costs of the Project and credit enhancement pursuant to the Development Program and Title 30-A M.R.S.A. § 5249.

***Section 2.5. Monies Held for Benefit of Developer.***

All monies required to be deposited with or paid into Developer Project Cost Subaccount under the provisions hereof and the provisions of the Development Program, exclusive of any investment earnings thereon, shall be held by the City for the benefit of Developer, subject to the payment obligations set forth in Article III below.

**ARTICLE III PAYMENT  
OBLIGATIONS**

***Section 3.1. Developer Payments.***

(a) On an annual basis, the City agrees to pay Developer, within thirty (30) days of the end of each Fiscal Year, an amount equal to the lesser of (1) the total amount of Developer's Qualified Reimbursable Costs for the prior Fiscal Year, or (2) all amounts then on deposit in the Developer Project Cost Subaccount. To the extent that the Qualified Reimbursable Costs in any given CEA Year exceed the amounts then on deposit in the Developer Project Cost Subaccount, then the Developer is eligible to receive payment for the unreimbursed portion of the previous year's Qualified Reimbursable Costs in a future year if and when the amounts on deposit in the Developer Project Cost Subaccount exceed the then current year Qualified Reimbursable Costs. In no event shall the total aggregate amount paid to Developer during the term of this Agreement exceed the lesser of (1) the cumulative amount of Qualified Reimbursable Costs paid to Developer's AHTIF Lender, or (2) Two Million Five Hundred Thousand Dollars (\$2,500,000.00). Any funds remaining in the Developer Project Cost Subaccount after Developer has received all allowable payments under this Agreement shall be returned to the City's general fund.

(b) Notwithstanding anything to the contrary contained herein, if, with respect to any Tax Payment Date, any portion of the property taxes assessed against real or personal property located in the District remain unpaid, because of a bona fide valuation dispute being pursued by Developer, the property taxes actually paid with respect to such Tax Payment Date shall, first, be applied to taxes due on account of Original Assessed Value and deposited into the City's general

fund; and second, shall constitute payment of Property Taxes with respect to Non-Captured Increased Assessed Value and deposited into the City's general fund; and third, shall constitute payment of Property Taxes with respect to Captured Assessed Value, to be applied to payment of Developer 's share of the Tax Increment Revenues for the year concerned and deposited into Developer Project Cost Subaccount.

Notwithstanding anything to the contrary contained herein, if, with respect to any Tax Payment Date, any portion of the property taxes assessed against real or personal property located in the District remain unpaid from successor owners of real or personal property within the District, the property taxes actually paid with respect to such Tax Payment Date shall, first, be applied to taxes due on account of Original Assessed Value and deposited into the City's general fund; and second, shall constitute payment of Property Taxes with respect to Non-Captured Increased Assessed Value and deposited into the City's general fund; and third, shall constitute payment of Property Taxes with respect to Captured Assessed Value, to be applied to payment of Developer 's share of the Tax Increment Revenues for the year concerned and deposited into Developer Project Cost Subaccount.

(c) Notwithstanding anything to the contrary contained herein, if, with respect to any Tax Payment Date, any portion of the property taxes assessed against real or personal property located in the District remain due to the City from and unpaid by Developer, for any reason other than a bona fide valuation dispute, or if any portion of any other fee or charge due to the City by Developer including but not limited to sewer fees, ambulance fees, or assessments, remain unpaid, no payment of Developer 's share of the Tax Increment Revenues for the year concerned will be deposited into the Developer Project Cost Subaccount until such property taxes assessed against real or personal property located in the District are paid in full.

(d) Annually, Developer will provide loan payment statements as back-up documentation of Project Costs for its TIF payments, which documentation will be kept confidential by the City.

(e) Prior to receiving the first payment under this Agreement, Developer 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 documentation that the Developer has closed on complete financing for the Project.

(f) On a bi-weekly basis during the course of construction of the Project, Developer must provide documentation in a form reasonably satisfactory to the City demonstrating that all firms employed in the construction phase of the Project have compensated their employees, at all relevant times, the current wage rates and fringe benefits as required under applicable state prevailing wage law, 26 M.R.S. §1306, or the City's minimum wage requirements set forth in Chapter 33, Sections 1-12 of the Portland City Code, whichever is greater.

(g) Developer must provide evidence reasonably satisfactory to the City demonstrating that the Project was designed, constructed and rehabilitated in accordance with the City's Green Building Code set forth in Chapter 6, Article VII, of the Portland City Code.

***Section 3.2. Failure to Make Payment.***

In the event the City should fail to, or be unable to, make any of the payments at the

time and in the amount required under the foregoing provisions of this Article III including in the event that the amount deposited into Developer Project Cost Subaccount is insufficient to reimburse Developer for the full amount due to Developer under this Agreement, the amount or installment so unpaid shall continue as a limited obligation of the City, under the terms and conditions hereinafter set forth, until the amount unpaid shall have been fully paid. Developer shall have the right to initiate and maintain an action to specifically enforce the City's obligations hereunder, including without limitation, the City's obligation to deposit Tax Increment Revenues to Developer Project Cost Subaccount and its obligation to make payment out of Developer Project Cost Subaccount to Developer.

***Section 3.3. Manner of Payments.***

The payments provided for in this Article III shall be paid directly to Developer at the address specified in Section 8.7 hereof in the manner provided hereinabove by check drawn on the City.

***Section 3.4. Obligations Unconditional.***

Subject to Developer's compliance with the terms and conditions of this Agreement, the obligations of the City to make the payments described in this Agreement in accordance with the terms hereof shall be absolute and unconditional, and the City shall not suspend or discontinue any payment hereunder or terminate this Agreement for any cause, other than pursuant to this Agreement or by court order or by reason of a final judgment by a court of competent jurisdiction that the District is invalid or otherwise illegal.

***Section 3.5. Limited Obligation.***

The City's obligations of payment hereunder shall be limited obligations of the City payable solely from Tax Increment Revenues pledged therefor under this Agreement. The City's obligations hereunder shall not constitute a general debt or a general obligation or charge against or pledge of the faith and credit or taxing power of the City, the State of Maine, or of any municipality or political subdivision thereof, but shall be payable solely from that portion of Tax Increment Revenues payable to Developer hereunder, whether or not actually deposited into Developer Project Cost Subaccount in the Development Program Fund. This Agreement shall not directly, indirectly or contingently obligate the City, the State of Maine, or any other City or political subdivision to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment, excepting the pledge of the Tax Increment Revenues established under this Agreement.

**ARTICLE IV  
PLEDGE AND SECURITY INTEREST**

***Section 4.1. Pledge of and Grant of Security Interest in Developer Project Cost Subaccount.***

In consideration of this Agreement and other valuable consideration and for the purpose of securing payment of the amounts provided for hereunder to Developer by the City, according to the terms and conditions contained herein, and in order to secure the performance and observance

of all of the City's covenants and agreements contained herein, the City does hereby grant a security interest in and pledge Developer Project Cost Subaccount described in Section 2.1 hereof and all sums of money and other securities and investments therein to Developer.

**Section 4.2. Perfection of Interest.**

(a) Upon written request by Developer, the City will establish the Developer Project Cost Subaccount described in Section 2.1 hereof as a segregated fund under the control of an escrow agent, trustee or other fiduciary selected by Developer so as to perfect Developer's interest therein. The cost of establishing and monitoring such a fund (including the cost of counsel to the City with respect thereto) shall be borne exclusively by Developer. In the event such a fund is established under the control of a trustee or fiduciary, the City shall cooperate with Developer in causing appropriate financing statements and continuation statements naming Developer, or its designee, as pledgee of all such amounts from time to time on deposit in the fund to be duly filed and recorded in the appropriate state offices as required by and permitted under the provisions of the Maine Uniform Commercial Code or other similar law as adopted in the State of Maine and any other applicable jurisdiction, as from time to time amended, in order to perfect and maintain the security interests created hereunder.

(b) In the event Developer requires the establishment of a segregated fund in accordance with this Section 4.2, the City's responsibility shall be expressly limited to delivering the amounts required by this Agreement to the escrow agent, trustee or other fiduciary designated by Developer. The City shall have no liability for payment over of the funds concerned to Developer by any such escrow agent, trustee or other fiduciary, or for any misappropriation, investment losses or other losses in the hands of such escrow agent, trustee or other fiduciary. Notwithstanding any change in the identity of Developer's designated escrow agent, trustee or other fiduciary, the City shall have no liability for misdelivery of funds if delivered in accordance with Developer's most recent written designation or instructions actually received by the City.

**Section 4.3. Further Instruments.**

The City shall, upon the reasonable request of Developer, from time to time execute and deliver such further instruments and take such further action as may be reasonable and as may be required to carry out the provisions of this Agreement; provided, however, that no such instruments or actions shall pledge the credit of the City; and provided further that the cost of executing and delivering such further instruments (including the reasonable and related costs of counsel to the City with respect thereto) shall be borne exclusively by Developer.

**Section 4.4. No Disposition of Developer Project Cost Subaccount.**

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

**Section 4.5. Access to Books and Records.**

All books, records and documents in the possession of either of the parties to this Agreement relating to the District, the Development Program, this Agreement and the monies, revenues and receipts on deposit or required to be deposited into the Developer Project Cost

Subaccount shall at all reasonable times and upon reasonable notice be open to inspection by both parties to this Agreement, and the agents and employees of the parties to this Agreement.

## **ARTICLE V DEFAULTS AND REMEDIES**

### ***Section 5.1. Events of Default.***

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

(a) Any failure by the City to pay any amounts due to Developer when the same shall become due and payable;

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

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

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

(e) If any secured lender of Developer accelerates the indebtedness owed to it;

(f) If any written representation or warranty given to the City by Developer is knowingly incorrect or incomplete in any material respect, other than statements made about or in agreements with the City that were later changed by mutual consent;

(g) If Developer fails to maintain adequate surety bonding during construction at the levels and terms as may be required from time to time by the Developer's secured lenders and/or Developer allows mechanics' liens to encumber the Project for a period of more than sixty (60) days.

(h) any discontinuance of the District property as “affordable housing,” pursuant to the definition contained in Title 30-A M.R.S.A. Section 5246.

### ***Section 5.2. Remedies on Default.***

Subject to the provisions contained in Section 8.13, whenever any Event of Default

described in Section 5.1 hereof shall have occurred and be continuing, the nondefaulting party, following the expiration of any applicable cure period, shall have all rights and remedies available to it at law or in equity, including the rights and remedies available to a secured party under the laws of the State of Maine, and may take whatever action as may be necessary or desirable to collect the amount then due and thereafter to become due, to specifically enforce the performance or observance of any obligations, agreements or covenants of the nondefaulting party under this Agreement and any documents, instruments and agreements contemplated hereby or to enforce any rights or remedies available hereunder. Further, the non-defaulting party may elect to terminate this Agreement upon 30 days' written notice to the defaulting party.

***Section 5.3. Remedies Cumulative.***

Subject to the provisions of Section 8.13 below concerning dispute resolution, no remedy herein conferred upon or reserved to any party is intended to be exclusive of any other available remedy or remedies but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law, in equity or by statute. Delay or omission to exercise any right or power accruing upon any Events of Default to insist upon the strict performance of any of the covenants and agreements herein set forth or to exercise any rights or remedies upon the occurrence of an Event of Default shall not impair any such right or power or be considered or taken as a waiver or relinquishment for the future of the right to insist upon and to enforce, from time to time and as often as may be deemed expedient, by injunction or other appropriate legal or equitable remedy, strict compliance by the parties hereto with all of the covenants and conditions hereof, or of the rights to exercise any such rights or remedies, if such Events of Default be continued or repeated.

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

***Section 6.1. Effective Date and Term.***

Notwithstanding any other provision of this Agreement, this Agreement is conditioned upon receipt of the Director's unconditional approval of the City's designation of the District and adoption of the Development Program. Following execution and delivery of this Agreement, the Agreement shall not be or become binding and enforceable until receipt of such unconditional approval. Upon receipt of such approval, this Agreement shall remain in full force from the Effective Date of the Development Program and shall expire March 31, 2050 or sooner upon the payment of all amounts due to Developer hereunder and the performance of all obligations on the part of the City hereunder, unless even sooner terminated pursuant to Section 3.4 or any other applicable provision of this Agreement.

The City may terminate this Agreement by delivering written notice of such termination to Developer in the event that Developer does not receive a certificate of occupancy for the Project by June 30, 2023.

Termination by City. Notwithstanding anything to the contrary in this Agreement, in the event that the Declaration, as that term is defined below, is terminated by foreclosure of a lien on the Project that has priority over the Declaration, the City shall have the right to terminate this Agreement by providing Developer with 30 days written notice prior to the effective date of termination. If the City elects to exercise its right to terminate this Agreement due to a foreclosure of the Declaration, the

Developer shall have the right to attempt to reinstate and enforce the Declaration. If the Developer elects to exercise its right to reinstate and enforce the Declaration, it shall provide written notice to the City within 30 days of receipt of the City's notice of its intent to terminate the Agreement. The Developer will then have one (1) year to reinstate the Declaration or cause the Declaration to be reinstated by the foreclosing party; provided, however, that the City shall have no obligation to make payments to Developer hereunder after it provides the termination notice unless and until the Declaration is reinstated and in full force and effect.

**Section 6.2. Cancellation and Expiration of Term.**

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

**ARTICLE VII  
ASSIGNMENT AND PLEDGE OF DEVELOPER'S  
INTEREST**

**Section 7.1. Consent to Pledge, Collateral Assignment Or Grant of a Security Interest.**

The City hereby acknowledges that Developer may pledge, assign and grant a security interest in its right, title and interest in, to and under this Agreement as collateral for financing by a bank, financial institution, Maine State Housing Authority, or other public and private lending institutions and organizations to Developer for the Project, although no obligation is hereby imposed on Developer to make such assignment or pledge. Recognizing this possibility, the City does hereby consent and agree to the pledge and assignment of and the grant of a security interest in all Developer's right, title and interest in, to and under this Agreement and in, and to the payments to be made to Developer hereunder, to third parties as collateral or security for indebtedness or otherwise, on one or more occasions during the term hereof. The City agrees upon request to execute and deliver any assignments, pledge agreements, consents or other confirmations required by the prospective pledgee or assignee or secured party, including without limitation recognition of the pledgee or assignee or secured party 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 or secured party the position of such assignee or pledgee or secured party and the irrevocable and binding nature of this Agreement, and provide to the pledgee or assignee such rights and/or remedies as the parties may reasonably deem necessary for establishing, perfection and protection of its interest herein. Developer shall be responsible for the City's necessary and reasonable costs of counsel with respect to any such pledge or assignment.

**Section 7.2. Transfer.**

Except as specified in Section 7.1 hereof, Developer shall not transfer or assign any portion of its rights in, to and under this Agreement without the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed.

## **ARTICLE VIII MISCELLANEOUS**

### ***Section 8.1. Successors.***

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

### ***Section 8.2. Parties-in-Interest.***

Except as herein otherwise specifically provided, nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any person, firm or corporation other than the City and 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 Developer.

### ***Section 8.3. Severability.***

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

### ***Section 8.4. No Personal Liability of Officials of the City.***

(a) No covenant, stipulation, obligation or agreement of the City contained herein shall be deemed to be a covenant, stipulation or obligation of any present or future elected or appointed official, officer, agent, servant or employee of the City in his or her individual capacity, and neither the City Council nor any official, officer, employee or agent of the City shall be liable personally with respect to this Agreement or be subject to any personal liability or accountability by reason hereof.

(b) No covenant, stipulation, obligation or agreement of Developer contained herein shall be deemed to be a covenant, stipulation or obligation of any present or future officer, agent, servant or employee of Developer in his or her individual capacity, and no official, officer, employee or agent of 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.

**Section 8.7. Notices.**

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

If to the City:

City of Portland  
Attn. Housing and Community Development Division  
389 Congress Street  
Portland, ME 04101

With a copy to:

Corporation Counsel's Office  
389 Congress Street  
Portland, Maine 04101

If to Developer:

Watson Renewal Grant LLC  
c/o Renewal Housing Associates LLC  
2 Union Street, 5<sup>th</sup> Floor  
Portland, Maine 04101

With a copy to:

Tom Federle  
Federle Law  
254 Commercial Street  
Portland, ME 04101

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

**Section 8.8. Amendments.**

This Agreement may be amended only with the concurring written consent of both of the parties hereto.

***Section 8.9. Records.***

The City shall maintain records which are adequate in all respects to make the calculation of Increased Assessed Value and Tax Increment Revenues required to calculate the deposits into the Development Program Fund hereunder, and shall provide to Developer, upon request by Developer, a summary of such calculations.

***Section 8.10. Reserved.***

***Section 8.11. Integration.***

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

***Section 8.12. Reserved.***

***Section 8.13. Dispute Resolution.***

In the event of a dispute regarding this Agreement or the transactions contemplated by it, the parties hereto will use all reasonable efforts to resolve the dispute on an amicable basis. If the dispute is not resolved on that basis within sixty (60) days after one party first brings the dispute to the attention of the other party, either party may file suit to resolve the dispute in the Superior Court located in Cumberland County, State of Maine, which the parties agree shall have exclusive jurisdiction for all actions, proceedings and litigation arising from or relating directly or indirectly to this Agreement or any of the obligations hereunder. This clause shall not bar the City's assessment or collection of property taxes in accord with law, including by judicial proceedings, including tax lien thereof.

***Section 8.14. Tax Laws and Valuation Agreement.***

The parties acknowledge that all laws of the State now in effect or hereafter enacted with respect to taxation of property shall be applicable and that the City, by entering into this Agreement, is not excusing any non-payment of taxes by Developer. Without limiting the foregoing, the City and Developer shall always be entitled to exercise all rights and remedies regarding assessment, collection and payment of taxes assessed on Developer's property. In addition, the Development Program makes certain assumptions and estimates regarding valuation, depreciation of assets, tax rates and estimated costs. The City and Developer hereby covenant and agree that the assumptions, estimates, analysis and results set forth in the Development Program shall in no way (a) prejudice the rights of any party or be used, in any way, by any party in either presenting evidence or making argument in any dispute which may arise in connection with valuation of or abatement proceedings relating to Developer's property for purposes of ad valorem property taxation or (b) vary the terms of this Agreement even if the actual results differ substantially from the estimates, assumptions or analysis.

***Section 8.15. Affordability Covenants.***

The Developer and the City shall, in order to assure the continued affordability of the units in the Project as required by the Development Program, Maine State Housing Authority and applicable laws, regulations and ordinances, execute a declaration (the "Declaration") which is substantially in the same form as the Declaration of Covenants, Conditions and Restrictions which is attached to the Development Program as Exhibit I.

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

WITNESS:

CITY OF PORTLAND, ME

\_\_\_\_\_

By: \_\_\_\_\_  
Name: Jon P. Jennings  
Its City Manager

WATSON RENEWAL GRANT, LLC

WITNESS:

\_\_\_\_\_

By: \_\_\_\_\_  
Name: Todd Alexander  
Its: Co-Manager

# EXHIBIT 1

EXHIBIT C: CITY OF PORTLAND TAX PARCEL MAP, AHTIF DISTRICT BOUNDARIES

