Agenda
Regular City Council Meeting
August 3, 2015

1. Regular City Council Meeting Agenda Only

   Documents: AGNREGONLY AUG03,152.PDF

2. Regular City Council Agenda Meeting & Packet

   Documents: AGENDA AUGUST 03, 2015.PDF

MICHAEL F. BRENNAN (MAYOR)	DAVID BRENERMAN (5)
KEVIN J. DONOGHUE (1)	JILL C. DUSON (A/L)
DAVID A. MARSHALL (2)	JON HINCK(A/L)
EDWARD J. SUSLOVIC (3)	NICHOLAS M. MAVODONES, JR. (A/L)
JUSTIN COSTA (4)	

AGENDA
REGULAR CITY COUNCIL MEETING
AUGUST 3, 2015

The Portland City Council will hold a regular City Council Meeting at 7:00 p.m. in City Council Chambers, City Hall. The Honorable Michael F. Brennan, Mayor, will preside.

PLEDGE OF ALLEGIANCE:

ROLL CALL:

ANNOUNCEMENTS:

RECOGNITIONS:

APPROVAL OF MINUTES OF PREVIOUS MEETING:

(Tab 15) July 20, 2015 Regular City Council Meeting Minutes

PROCLAMATIONS:

APPOINTMENTS:

CONSENT ITEMS:

LICENSES:

BUDGET ITEMS:

PUBLIC HEARINGS:

COMMUNICATIONS:

RESOLUTIONS:

UNFINISHED BUSINESS:

Order 35-15/16
(Tab 16)
Order Allocating $462,262 in HOME Investment Partnerships Program Funds to Developers Collaborative for a Senior Rental Housing Project at 605 Stevens Avenue – Sponsored by the Housing and Community Development Committee, Councilor Kevin J. Donoghue, Chair.

In response to a recent RFP for housing development proposals, the Developers Collaborative submitted a request for Home Investment Partnership Program (HOME) funds to help support the redevelopment of the historic Motherhouse building as part of a larger multi-phased development project. The Motherhouse will consist of 88 rental units for households 55 years or older with 66 of these units to be reserved as affordable to low-income seniors earning 50% - 60% of Area Mean Income (AMI). The remaining 22 units will be market rate at approximately $1,200 per month. The applicant also committed to offering a preference to homeless seniors and will be working with Opportunity Alliance to provide services.

The location of the Motherhouse project offers an opportunity to provide affordable housing for seniors in a relatively high income neighborhood with excellent access to amenities like public transportation, open space, and retail options. By creating greater economic diversity in the available housing stock, the project will help fulfill one of the many housing goals of the City.

The project is fairly far along in its approval and funding process. It is well positioned to be very competitive for 4% Low-Income Housing Tax Credit ("LIHTC") funding, as well as for state and federal historic tax credits. The project has been part of a larger community process for the redevelopment of the surrounding site.

The applicant has been working with local community members and city staff to modify the original proposal to ease concerns in the neighborhood related to density.

The developer received additional financing through an existing Tax Increment Financing District established in 2009. The terms of the McAuley Place district are noted below.

The TIF was created to assist in the renovation of the Motherhouse. The terms and boundaries of the district will not be adjusted.

Duration:	30-year term (FY10 through FY29)
Percentages:	60% to Recipient; 40% to City General Fund
Location:	605 Stevens Avenue

The Housing and Community Development Committee met on July 8, 2015, and voted 4-0 to forward this item to the City Council with a recommendation for passage.

This item must be read on two separate days. It was given a first reading July 20th. Five affirmative votes are required for passage after public comment.

Order 37-15/16 (Tab 17)	**Order Designating 17 Carleton Street Affordable Housing Development District and Tax Increment Financing District and Adopting the Municipal Development Program for the District – Sponsored by Housing and Community Development Committee, Councilor Kevin J. Donoghue, Chair.**

17 Carleton Street Affordable Housing TIF (AHTIF) Development District is being proposed for property located on Carleton Street. The development consists of 37 affordable units.

The proposal is for a 22-year TIF with 65% of the total projected new taxes captured, annual estimated average at $33,098 over the 22-year TIF, as a reimbursement to the Developer through a Credit Enhancement Agreement (CEA). The Developer's share of TIF revenue will be used to pay operating costs for the project.

The remaining TIF revenues will be allocated to the City's General Fund.

A recommendation of approval of an Affordable Housing Tax Increment Financing District (AHTIF) from the HCDC to the Council is not the same as approval of the overall project. After carefully weighing the potential benefits and impacts on the City and surrounding neighborhood against the standards in the Land Use Ordinance, the Planning Board will ultimately determine if a project meets those standards. Approval of an AHTIF will be contingent on the project's final approval by the Planning Board.

The Housing and Committee Development Committee met on June 10, 2015, and voted 4-0 to forward this item to the City Council with a recommendation for passage.

This item must be read on two separate days. It was given a first reading on July 20th. Five affirmative votes are required for passage after public comment.

Order 38-15/16 (Tab 18)	**Order Approving and Authorizing the City Manager to Enter into the 17 Carleton Street Credit Enhancement Agreement with Avesta Carlton LP – Sponsored by the Housing and Community Development Committee, Councilor Kevin J. Donoghue, Chair.**

This item is a companion Order to Order 37-15/16 above.

This item must be read on two separate days. It was given a first reading on July 20th. Five affirmative votes are required for passage after public comment.

ORDERS:

Orders 48-15/16 (Tab 19)

Order Setting Election Date on Citizen Initiative Amendment to Chapter 14 of the Portland City Code Re: Scenic Viewpoint Protection – Sponsored by Katherine L. Jones, City Clerk.

A petition was filed on July 6, 2015 in the City Clerk's office regarding an Amendment to Chapter 14 of the Portland City Code Re: Scenic Viewpoint Protection. The petition contains the signatures of fifteen hundred (1,500) voters of the City of Portland. The required number of signatures to put this question on the ballot is fifteen hundred (1,500); therefore, the City Clerk has deemed the petition sufficient.

Pursuant to section 9-39 of the Portland City Code, the Council has the ability to send the Ordinance to the voters for their approval or send the ordinance to the voters for their approval along with a proposed competing measure, as well as to enact the proposed Citizen Initiative Ordinance (see next two agenda items).

Chapter 9 of the City Code (section 9-26) requires that a public hearing be held by the City Council prior to its vote on submittal of the Citizen's Initiated Amendment to Chapter 33 to the voters. This public hearing is being held during consideration of this Order 49-15/16.

This order sends the proposed Citizen Initiative Ordinance to the voters on November 3, 2015, at the regularly scheduled election and it also authorizes the City Clerk to place a summary of the proposed ordinance on the ballot.

Five affirmative votes are required for passage after public comment.

Order 49-15/16 (Tab 20)

Order Enacting Citizen Initiative Amendment to Chapter 14 Portland City Code Re: Scenic Viewpoint Protection – Sponsored by Katherine L. Jones, City Clerk.

This is a companion order to Order 50-15/16 above and enacts the Citizen Initiative Amendment.

Five affirmative votes are required for passage after public comment.

Order 50-15/16 (Tab 21)

Order Setting Election Date on Amendment to Chapter 14 of the Portland City Code Re: Scenic Viewpoint Protection and Sending a Competing Measure to the Voters – Sponsored by Katherine L. Jones, City Clerk.

This order allows the City Council to offer both the Citizen Initiative Amendment and a competing measure to the Citizen Initiative referendum question and submits the measures to the voters of the City of Portland on November 3, 2015, at the regularly scheduled election. This order also authorizes the City Clerk to place summaries of the proposed ordinances on the ballot.

Five affirmative votes are required for passage after public comment.

AMENDMENTS:

LICENSE RENEWALS:

MICHAEL F. BRENNAN (MAYOR)
KEVIN J. DONOGHUE (1)
DAVID A. MARSHALL (2)
EDWARD J. SUSLOVIC (3)
JUSTIN COSTA (4)
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Five affirmative votes are required for passage after public comment.

Order 50-15/16 (Tab 21)

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Five affirmative votes are required for passage after public comment.

AMENDMENTS:

LICENSE RENEWALS:

ROLL CALL: Mayor Brennan called the meeting to order at 7:00 P.M. (Councilor Hinck, and Donoghue arrive during Proclamations).

ANNOUNCEMENTS:

RECOGNITIONS:

APPROVAL OF MINUTES OF PREVIOUS MEETING:

Motion was made by Councilor Costa and seconded by Councilor Suslovic for passage of the July 6, 2015, Regular City Council Meeting Minutes as amended. Passage 7-0.

PROCLAMATIONS:

Proc 1-15/16 **Proclamation Honoring Officer Mark Kezal as Police Officer of the Month for June 2015 – Sponsored by Mayor Michael F. Brennan.**

Proc 2-15/16 **Proclamation Honoring Officer Brent Abbott – Sponsored by Mayor Michael F. Brennan.**

APPOINTMENTS:

CONSENT ITEMS:

Order 16-15/16 **Amending Order Declaring New England Cannabis Farmers Market Festival – Sponsored by Jon P. Jennings, City Manager.**

Motion was made by Councilor Marshall and seconded by Councilor Donoghue for passage. Motion failed 4-5 (Duson, Mavodones, Brenerman, Hinck, Suslovic).

LICENSES:

Order 17-15/16 **Order Granting Municipal Officers' Approval of Poplar & Company LLC d/b/a Roustabout. Application for a Class XI Restaurant/Lounge License with Entertainment with Dance at 59 Washington Ave. – Sponsored by Katherine L. Jones, City Clerk.**

Motion was made by Councilor Duson and seconded by Councilor Donoghue for passage. Passage 9-0.

Order 18-15/16 **Order Granting Municipal Officers' Approval of Scales LLC d/b/a Scales. Application for a Class I FSE License at 68-70 Commercial St. - Sponsored by Katherine L. Jones, City Clerk.**

Motion was made by Councilor Donoghue and seconded by Councilor Duson to change the order to reflect address change from 68-70 Washington Avenue to 68-70 Commercial Street. Passage 9-0.

Motion was made by Councilor Duson and seconded by Councilor Donoghue for passage. Passage 9-0.

Order 19-15/16 **Order Granting Municipal Officers' Approval of Tomaso's Canteen, Inc. d/b/a Tomaso's Canteen. Application for a Class A Lounge License at 18 Hampshire St. – Sponsored by Katherine L. Jones, City Clerk.**

Motion was made by Councilor Donoghue and seconded by Councilor Duson for passage. Passage 9-0.

Order 20-15/16 **Order Granting Municipal Officers' Approval of Fizz LLC d/b/a Vena's Fizz House. Application to add Outdoor Dining on Public Property at 345 Fore St. – Sponsored by Katherine L. Jones, City Clerk.**

Motion was made by Councilor Duson and seconded by Councilor Costa for passage. Passage 9-0.

Order 21-15/16 **Order Granting Municipal Officers' Approval of RB Portland Master Subtenant LLC d/b/a Westin Portland Harborview. Application to add Outdoor Dining on Public Property at 157 High St. – Sponsored by Katherine L. Jones, City Clerk.**

Motion was made by Councilor Duson and seconded by Councilor Costa for passage. Passage 9-0

Order 22-15/16 **Order Granting Municipal Officers' Approval of Woodford F&B LLC d/b/a Woodford F&F. Application for a Class I FSE License at 660 Forest Avenue – Sponsored by Katherine L. Jones, City Clerk.**

Motion was made by Councilor Duson and seconded by Councilor Brenerman for passage. Passage 9-0.

RESOLUTIONS:

Resolve 1-14/15 **Resolution Approving the Master Plan of the Franklin Street Feasibility Study – Phase II from the Franklin Street Redesign Project Advisory Committee - Sponsored by the Transportation, Sustainability and Energy Committee, Councilor David A. Marshall, Chair.**

Motion was made by Councilor Brenerman and seconded by Councilor Suslovic to postpone Order 9 to September 9th, 2015 City Council meeting. Motion failed 4-5 (Hinck, Donoghue, Marshall, Costa, Brennan).

Motion was made by Councilor Marshall and seconded by Councilor Donoghue for passage. Passage 9-0.

UNFINISHED BUSINESS: Mayor Brennan took Orders 29 & 30 out of order.

Order 9-15/16 **Order Approving Purchase and Sale Agreement with Bottling Group, LLC for 250 Canco Road – Sponsored by the Finance Committee, Councilor Nicholas M. Mavodones, Jr., Chair, and the Housing and Community Development Committee, Councilor Kevin J. Donoghue, Chair. This item was given first reading on July 6, 2015.**

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

Order 10-15/16 **Order Authorizing General Obligation Bonds in an Amount not to Exceed $3,400,000 – Sponsored by the Finance Committee, Councilor Nicholas M. Mavodones, Jr., Chair, and the Housing and Community Development Committee, Councilor Kevin J. Donoghue, Chair. This item was given first reading on July 6, 2015.**

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

Order 11-15/16 **Order Appropriating $3,400,000 of Bond Proceeds – Sponsored by the Finance Committee, Councilor Nicholas M. Mavodones, Jr., Chair, and the Housing and Community Development Committee, Councilor Kevin J. Donoghue, Chair. This item was given first reading on July 6, 2015.**

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

Order 12-15/16 **Order Appropriating $930,000 of Land Sale Revenue - Sponsored by the Finance Committee, Councilor Nicholas M. Mavodones, Jr., Chair, and the Housing and Community Development Committee, Councilor Kevin J. Donoghue, Chair. This item was given first reading on July 6, 2015.**

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

Order 29-15/16 **Order Authorizing Land Swap with J.B. Brown & Sons and Fore River Warehousing & Storage Co. and the City of Portland Re: Canco Road Site for Department of Public Services Facility - Sponsored by the Housing and Community Development Committee, Councilor Kevin J. Donoghue, Chair.**

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

Order 30-15/16 **Order Granting Easement to J.B. Brown & Sons and Fore River Warehousing & Storage Co. for Vehicle and Pedestrian Access to Canco Road Site and Approving Construction of Roadway – Sponsored by the Housing and Community Development Committee, Councilor Kevin J. Donoghue, Chair.**

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

Order 13-15/16 **Order Amending Bayside Tax Increment Financing District - Sponsored by the Housing and Community Development Committee, Councilor Kevin J. Donoghue, Chair. This item was given first reading on July 6, 2015.**

Motion was made by Councilor Donoghue and seconded by Councilor Suslovic for passage. Passage 9-0.

Order 14-15/16 **Amendment to Zoning Map Re: 802 Ocean Avenue - Sponsored by the Planning Board, Stuart O'Brien, Chair. This item was given first reading on July 6, 2015.**

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

Order 15-15/16 **Order Repealing Conditional Zone Agreement Re: 802-828 Ocean Avenue – Sponsored by the Planning Board, Stuart O'Brien, Chair. This item was given first reading on July 6, 2015.**

Motion was made by Councilor Donoghue and seconded by Councilor Suslovic for passage. Passage 9-0.

ORDERS

Order 23-15/16 **Order Setting Election Date on Citizen Initiative Amendment to Chapter 33 Re: An Ordinance Toward a Living Wage – Sponsored by Katherine L. Jones, City Clerk.**

Motion was made by Councilor Donoghue and seconded by Councilor Marshall for passage. Passage 9-0.

Order 24-15/16 **Order Enacting Citizen Initiative Amendment to Portland City Code Chapter 33 Re: An Ordinance Toward a Living Wage – Sponsored by Katherine L. Jones, City Clerk.**

Motion was made by Councilor Suslovic and seconded by Councilor Donoghue to postpone indefinitely. Passage 9-0.

Order 25-15/16 **Order Setting Election Date on Amendment to Chapter 33 Re: Minimum Wage and Sending a Competing Measure to the Voters – Sponsored by Katherine L. Jones, City Clerk.**

Motion was made by Councilor Suslovic and seconded by Councilor Donoghue to accept the amendment to the Competing Measure by adding the summary prepared by Corporation Counsel. Passage 9-0.

Motion was made by Councilor Suslovic and seconded by Councilor Duson for passage. Motion failed 1-8 (Duson, Mavodones, Brenerman, Hinck, Donoghue, Marshall, Costa, Brennan).

Order 26-15/16 **Order Setting Public Hearing on Citizen Initiative Amendment to Chapter 14, Article III Re: Scenic Viewpoint Protection - by Katherine L. Jones, City Clerk.**

Motion was made by Councilor Suslovic and seconded by Councilor Donoghue to set the public hearing for August 3, 21015, at 7:00 P.M. Passage 9-0.

Order 27-15/16 **Order Granting Revocable License to Redfern Bayside, LLC – Sponsored by Jon P. Jennings, City Manager.**

Motion was made by Councilor Suslovic and seconded by Councilor Donoghue for passage. Passage 9-0.

Order 28-15/16 **Order Approving Temporary One-Way Traffic Flow on Portland Street between Preble and Alder Streets – Sponsored by the Transportation, Sustainability, and Energy Committee, Councilor David A. Marshall, Chair.**

Motion was made by Councilor Marshall and seconded by Councilor Donoghue for passage as an emergency. Passage 9-0.

Order 297-15/16 **Amendment to Portland City Code Chapter 33 (Minimum Wage) – Reconsideration – Sponsored by Councilor Jill C. Duson.**

Motion was made by Councilor Duson and seconded by Councilor Donoghue to reconsider Order 297. Passage 9-0.

Motion was made by Councilor Duson and seconded by Councilor Donoghue to postpone Order 297 to the September 9, 2015 City Council meeting. Passage 9-0.

Order 31-15/16 **Order Approving Addendum 1 to Purchase and Sale Agreement with Patrons Oxford Insurance Company for Sale of Unit 4 in**

Portland Technology Park – Sponsored by the Housing and Community Development Committee, Councilor Kevin J. Donoghue, Chair.

Motion was made by Councilor Donoghue and seconded by Councilor Breneman for passage. Passage 9-0.

Order 32-15/16 **Order Appropriating $150,000 of Revenue from the Sale of Portland Technology Park Unit 4 – Sponsored by the Housing and Community Development Committee, Councilor Kevin J. Donoghue, Chair.**

This is its first reading.

Order 33-15/16 **Order to Approve Maine Department of Transportation/City Agreement for Exit 6, Forest Avenue Interchange – Sponsored by Jon Jennings, City Manager.**

Motion was made by Councilor Suslovic and seconded by Councilor Costa to waive the second reading. Passage 7-0, (Hinck, Donoghue out).

Motion was made by Councilor Suslovic and seconded by Councilor Cost to for passage as an emergency. Passage 9-0.

Order 34-15/16 **Order Approving the Fiscal Year 2016 Sustainable Transportation Fund Appropriation Schedule - Sponsored by the Transportation, Sustainability, and Energy Committee, Councilor David A. Marshall, Chair.**

This is its first reading.

Order 35-15/16 **Order Allocating $462,262 in Home Investment Partnerships Program Funds to Developers Collaborative for a Senior Rental Housing Project at 605 Stevens Avenue – Sponsored by the Housing and Community Development Committee, Councilor Kevin J. Donoghue, Chair.**

This is its first reading.

Order 36-15/16 **Order Allocating $136,961 in Investment Partnerships Program Funds to Portland Housing Development Corporation for a Housing Project at 58 Boyd Street – Sponsored by the Housing and Community Development Committee, Councilor Kevin J. Donoghue, Chair.**

This is its first reading.

Order 37-15/16 **Order Designating 17 Carleton Street Affordable Housing Development District and Tax Increment Financing District and Adopting the Municipal Development Program for the District – Sponsored by**

Housing and Community Development Committee, Councilor Kevin J. Donoghue, Chair.

This is its first reading.

Order 38-15/16 **Order Approving and Authorizing the City Manager to Enter into the 17 Carleton Street Credit Enhancement Agreement with Avesta Carlton LP – Sponsored by the Housing and Community Development Committee, Councilor Kevin J. Donoghue, Chair.**

This is its first reading.

Motion was made by Councilor Duson and seconded by Councilor Donoghue to adjourn. Passage 8-0 (Costa out) , 11:00 P.M.

A TRUE COPY.

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Katherine L. Jones, City Clerk

Order 35-15/16
~~Tab 32~~ ~~7-20-15~~
Tab 16 8-3-15

MICHAEL F. BRENNAN (MAYOR)
KEVIN J. DONOGHUE (1)
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CITY OF PORTLAND
IN THE CITY COUNCIL

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ORDER ALLOCATING $462,262 IN HOME INVESTMENT PARTNERSHIPS PROGRAM FUNDS TO DEVELOPERS COLLABORATIVE FOR A SENIOR RENTAL HOUSING PROJECT AT 605 STEVENS AVENUE

ORDERED, that $462,262 in the HOME Investment Partnerships Program (HOME) Funds is hereby allocated to Developers Collaborative for an affordable senior rental housing project at 605 Stevens Avenue, contingent on the final approval of the Portland Planning Board for the project and on compliance with all HOME program regulations and requirements.

MEMORANDUM
City Council Agenda Item

TO: Mayor and City Council

FROM: Planning and Urban Development Department
Housing and Community Development Division

DATE: July 8, 2015

DISTRIBUTION: City Manager, Mayor, Sonia Bean, Danielle West-Chuhta, Nancy English, Julie Sullivan

SUBJECT: Order Authorizing Financial Assistance in HOME Program Funds to the Developers Collaborative: Senior Rental Housing Project at 605 Stevens Avenue, the Sisters of Mercy Motherhouse building (Motherhouse building).

SPONSOR: Kevin Donoghue, Chair
Housing and Community Development Committee
(Pending Committee approval from their July 8, 2015 meeting)

COUNCIL MEETING DATE ACTION IS REQUESTED:
1st reading July 20, 2015 **Final Action** August 3, 2015

Can action be taken at a later date: __X__ **Yes** _____ **No (If no why not?)**

PRESENTATION: (List the presenter(s), type and length of presentation)

Tyler Norod, Housing Planner of the Housing and Community Development Division will be available to provide information as requested.

I. SUMMARY OF ISSUE (Agenda Description)

In response to a recent RFP for housing development proposals, the Developers Collaborative submitted a request for HOME funds to help support the redevelopment of the historic Motherhouse building as part of a larger multi phased development project. The Motherhouse will consist of 88 rental units for households 55 years or older with 66 of these units to be reserved as affordable to low-income seniors earning 50% - 60% of Area Mean Income (AMI). The remaining 22 units will be market rate at approximately $1,200 per month. The applicant also committed to offering a preference to homeless seniors and will be working with Opportunity Alliance to provide services.

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Percentages: 60% to Recipient; 40% to City General Fund
Location: 605 Stevens Avenue

II. REASON FOR SUBMISSION (Summary of Issue/Background)

The City Council must authorize the use of HOME funds for housing development projects.

III. INTENDED RESULT

Investment of $462,262 of HOME Program funds to assist in the historic preservation of the Motherhouse building with the development of 88 rental units for households 55 years or older with 66 of these units to be reserved as affordable to low-income seniors earning 50% - 60% of AMI. The remaining 22 units will be rented at market rates.

IV. COUNCIL GOAL ADDRESSED

Promote housing production by removing regulatory barriers, providing or expanding financing programs and investigating the use of City owned land for housing purposes.

Portland's future development should enhance and balance the city's needs for adequate and affordable housing, a diversified tax base by promoting commercial and industrial development and being the home for a large array of educational, recreational, cultural and artistic institutions.

V. FINANCIAL IMPACT

HOME funds request: $426,262, 0% interest rate loan, deferred for 30 years or until the sale or transfer of the property.

City Investment/unit $16,225.25 City Investment/sq ft $12.47

VI. STAFF ANALYSIS

As part of the RFP process the City received two applications for housing projects. Both proposals are quality projects that are in line with the City's goals for housing. However, the Motherhouse received more points during the review process in part because the project was considered to be more ready to use the funds and the site would provide affordable housing in a relatively affluent neighborhood that lacks this type of housing stock. In order to remain feasible the Motherhouse project requires that their request be fulfilled without a significant reduction in funds. Because they scored best according to the City's criteria staff recommends awarding the Motherhouse project their full request at $426,262 of HOME funds.

As part of the Maine State Housing Authority's (MSHA) Qualified Allocation Plan (QAP) application due in October, the developers are requesting letters of commitment of support for their projects prior to the September QAP submission deadline. If the Committee agrees with the staff recommendation, this letter would be conditioned on the completion of all standard commitment requirements, and the following additional recommendations:

1. The commitment will be subject to compliance with all HOME Program regulations including, but not limited to, cost allocation, designation of HOME units and compliance with the new HOME Final Rule (effective August 23, 2013) and the Consolidated and Further Continuing Appropriations Acts of 2012 and 2013.

2. The commitment will include the requirement that the environmental review process be satisfactorily completed. The City's agreement to provide funds will be conditioned on the determination to proceed with, modify or cancel the project based on the results of the environmental review.

3. Commitment of funds to be stated as "an amount up to the funding request based on maximization of LIHTC equity raise", to ensure that the City's contribution is leveraged to the maximum extent possible.

4. Documentation acceptable to the City that the acquisition cost is reasonably related to market value. This is a HOME Program requirement.

5. Commitment should be subject to the projections and assumptions noted in the project budgets and pro-forma submitted and the City reserves the right to reconsider and adjust their commitment if any significant alterations occur in the budget. A final commitment will be subject to a final budget.

6. Any substantial changes to the composition of the project, or the financial investment required, will be brought back to the committee and the council for review and approval.

A recommendation for City HOME funding from HCDC to the Council is not the same as approval of the overall project. After carefully weighing the potential benefits and impacts on the City and surrounding neighborhood against the standards in the Land Use Ordinance, the Planning Board will ultimately determine if a project meets those standards. Any funding awarded will be contingent on the project's final approval by the Planning Board.

VII. RECOMMENDATION

Staff is recommending approval of this request.

It is requested that the City Council set the Public Hearing on this item for the City Council meeting scheduled on August 3, 2015 at 7:00 p.m.

VIII. LIST ATTACHMENTS

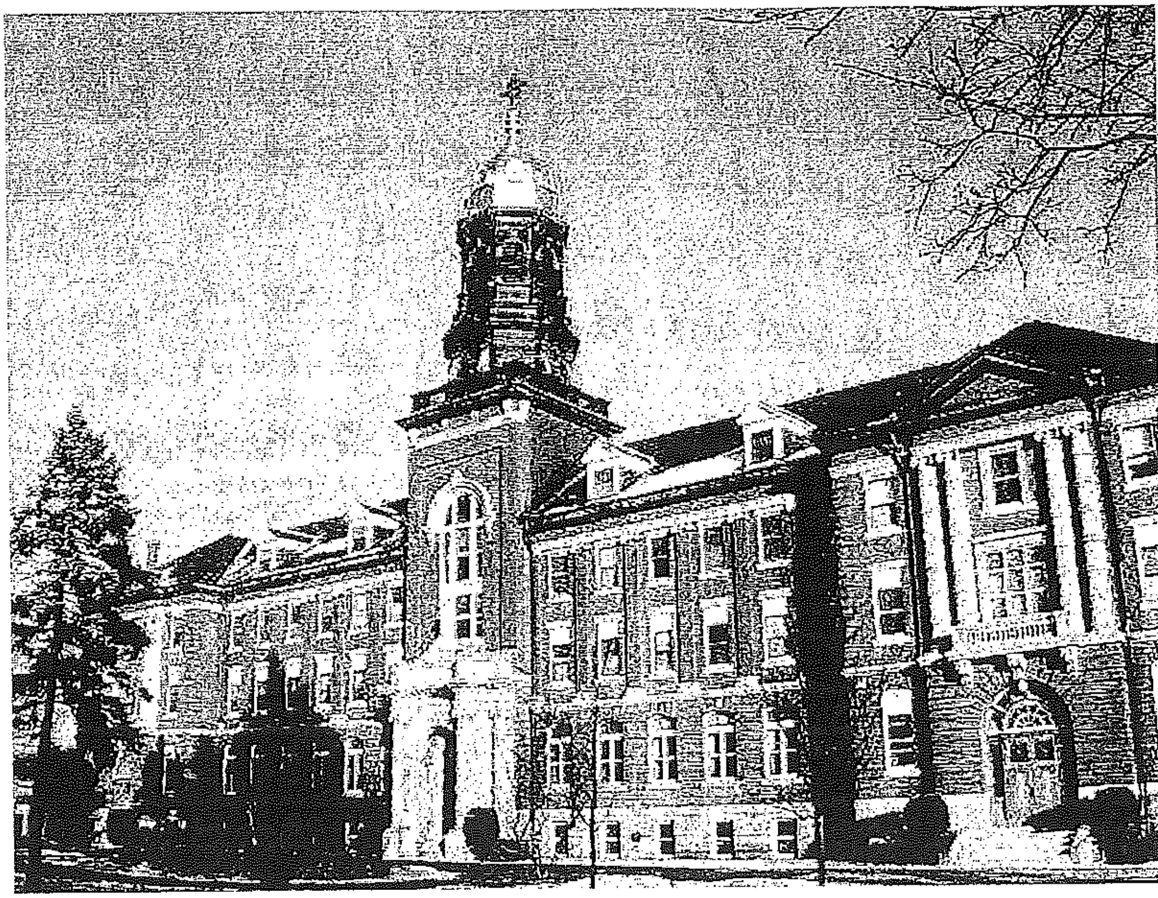
The attachment contains a summary of the Motherhouse HOME funds application and the McAuley Place TIF District Map.

Prepared by:

Tyler Norod, Housing Planner
Housing and Community Development Division

Date: July 8, 2015

Attachment - Developers Collaborative Proposal



City of Portland
Affordable Housing Development
HOME Funds Application
Motherhouse Associates LP
June 12, 2015

DEVELOPERS COLLABORATIVE

A. Project Summary

The Sisters of Mercy Motherhouse is located at 605 Stevens Ave just south of Morrill's Corner. It has been vacant for almost 10 years, and the sisters have been searching for a viable reuse plan for almost 20 years. The Motherhouse is part of the larger Sisters of Mercy campus, which has been in operation since the 1870s and includes the McAuley School.

John Wasileski of Sea Coast Management has been working with the Sisters for over a decade on redevelopment options, culminating in a contract to purchase all of the existing campus (except St. Catherine's, which will be retained), signed in early 2014. The total redevelopment plan is an active adult, mixed-income retirement community, with ancillary new construction buildings complementing the iconic Motherhouse. The land will be subdivided into up to 5 parcels and developed as market conditions dictate. However, without the Motherhouse redevelopment, the future disposition of the site will remain in question.

The Motherhouse is the first phase of the overall project. It will be an 88 unit 55+ development, with 66 units affordable to low income seniors at 50%-60% area median income (AMI), and with the remaining 22 units at a market-rate of approximately $1,200. The Motherhouse project is a partnership of John Wasileski and Kevin Bunker, two experienced developers who have formed a limited partnership to utilize low-income housing tax credits (LIHTC) as well as state and federal historic credits (HTCs).

The Motherhouse currently sits on a waitlist for the competitive 9% LIHTC credit. However, it is only one of three projects state-wide to be eligible for a special non-competitive walk-in round of 4 LIHTC credits. City HOME funds are necessary because dropping from a 9% competitive credit to a 4% automatic credit causes a funding gap of about $5,000,000, with only $2,500,000 in subsidy to make up the gap. The remainder of the gap must be filled by a variety of sources. We have worked hard to cut over $1,000,000 from the budget, which goes a long way toward filling the gap. Further, we are prepared to defer (forego) $461,002 in developer fee to contribute as a source. The majority of the additional estimated $613,000 is raised by lowering profit, reducing cash flow margins by taking on additional amortizing debt. This leaves a gap of $426,262 that can be filled by City of Portland HOME funds. More information on the sources of financing and the 4% funding round is found throughout, especially in Section 13.

This is a chance to leverage millions of dollars in additional funds for the benefit of Portland and the creation of additional affordable housing units. This is a tremendous opportunity for Portland, as many of the developers competing for the 9% credits are active in Portland; notably Avesta Housing, Community Housing of Maine, Szanton Companies, and Portland Housing Authority, among others. Removing the Motherhouse from the competitive round will not only greatly increase its chances for construction but also enable other Portland projects to move up in the scoring. The 4% offerings are irregular as they depend on other resources and circumstances, but when they come out, they are undeniably a "growing of the pie" of housing resources available to the state. As Portland competes for increasingly scarce state dollars in multiple arenas, in housing and beyond, it is a huge win to be able to capture such a significant chunk of these additional resources to meet its housing needs. In the event the project is not approved in the 4% round, the funds will still be very important in the fall 9% round as scoring increases based on the amount of outside, or "leveraged" funds, a project can bring in.

This project will also save one of Portland's most significant historic buildings and an anchor to the Deering Center Neighborhood and the Stevens Ave. streetscape. The Motherhouse, with its golden dome directly over an ornate chapel, features incredible architecture that goes far beyond even the impressive historic fabric of most of Portland's historic building stock. The current owner has made efforts, but at some point the deferred maintenance will begin to accelerate, creating a downward cycle that is difficult to reverse.

The project will provide much-needed senior housing. It is probably the case that any application for these funds will demonstrate great need; since all types of affordable housing continue to be desperately needed in the City. However, we propose to directly leverage 88 units with our request (and indirectly leverage more new development), which is a very efficient use of these funds on a per-unit basis. We are also serving multiple income bands with the project; we have units at 50% and 60% of AMI but are also serving a market rate segment with one quarter of the units. More information on this and the economic diversity to be created in this relatively high income part of Portland is found in section 16. Finally, we have already committed to offer a preference to homeless seniors and will be working with Opportunity Alliance to provide services. The Motherhouse will also be 100% smoke-free.

This will be a greener project than any new construction undertaking. It has been said that "the greenest buildings are the ones you don't have to build." It is true that technology has made quite a lot possible in the realm of green new construction. But preservation is an inherently green strategy because the building is already there, and it is well-located. The Motherhouse has an incredible amount of embodied energy latent in its structure, which will be re-used, saving a massive amount of materials that would otherwise be needed to house 88 units of seniors. The Motherhouse is also located on existing infrastructure with capacity, and near two major bus lines.

The Motherhouse site is ideal for redevelopment. There have been some neighbor concerns based on the density of the total project, but we have been working hard to work with those willing to listen that the impacts of senior housing are far less than standard housing units. Traffic for example, is over three times the impact during the peak hour for standard units as it is for seniors. This location is also rare among in-town sites in that is adjacent to two of the City's largest and most-loved open spaces, Baxter Woods and Evergreen Cemetery, which provide amenities for new residents as they help mitigate any impacts on existing ones. We have also worked hard to carefully design and scale buildings around the Motherhouse, making them complementary in size and placing taller buildings far back from the Motherhouse and not visible from the street. The Motherhouse itself will activate this part of Stevens Ave. from a pedestrian perspective, making it more walkable for all. Motherhouse residents will also support the variety of local businesses in the neighborhood and City-wide. Finally, additional density will support efforts to increase transit up major avenues such as Stevens and Forest.

The Motherhouse redevelopment is in tune with many strands of forward-thinking City policy. It is new affordable housing, and reasonable market rate housing, needs noted by the recent GPCOG study, and in a period of ever-increasing rents. It is historic preservation. it supports transit and furthers the goals of the City's Transforming Forest Avenue study, by increasing density and creating a pedestrian-friendly urban node of activity. It is additional density off-Peninsula, in a location that makes sense, which has been a long-held goal of the City. It is a project taken on by proven developers with a track record in the community, and have contributed significant additional resources alongside the City to help to close the funding gap. It is simply the right project, at the right time, and the right use of the City's HOME funds for this year.

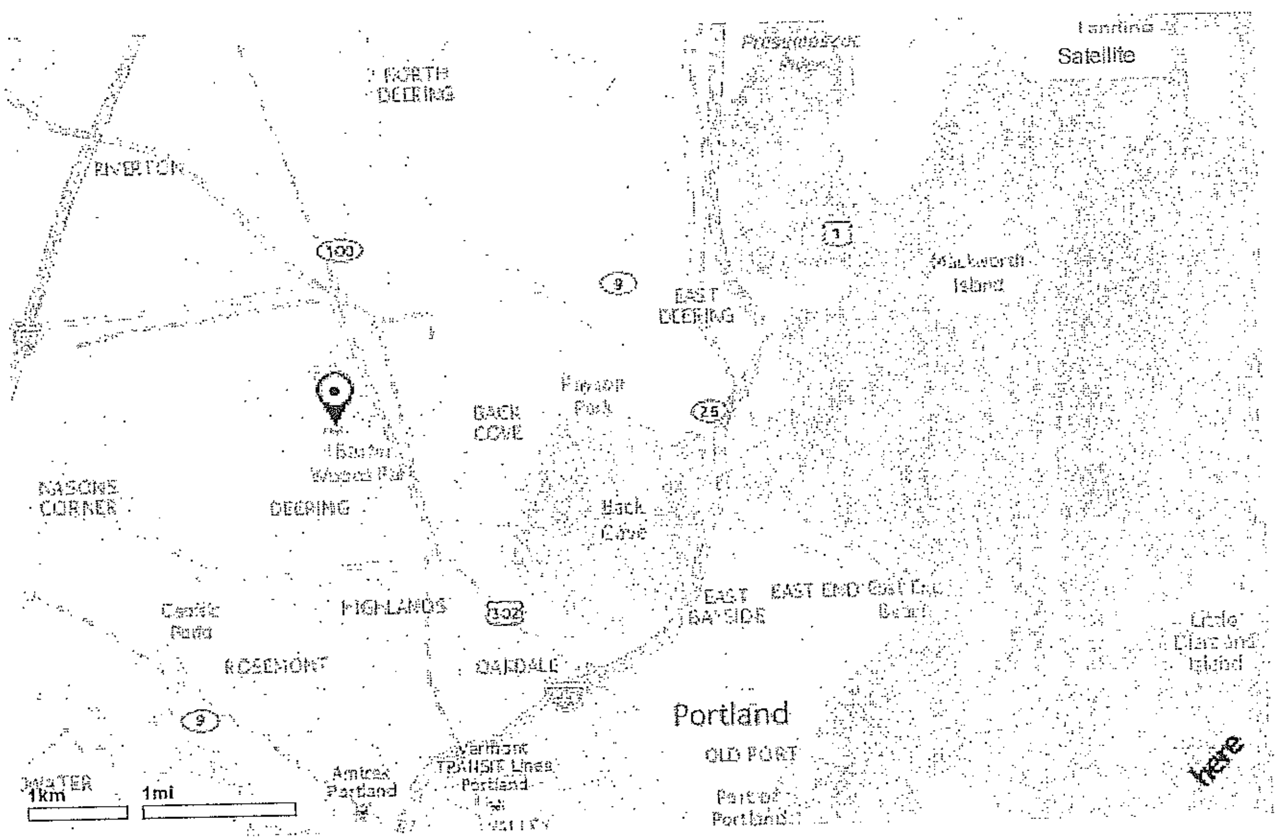
Print

YAHOO! MAPS

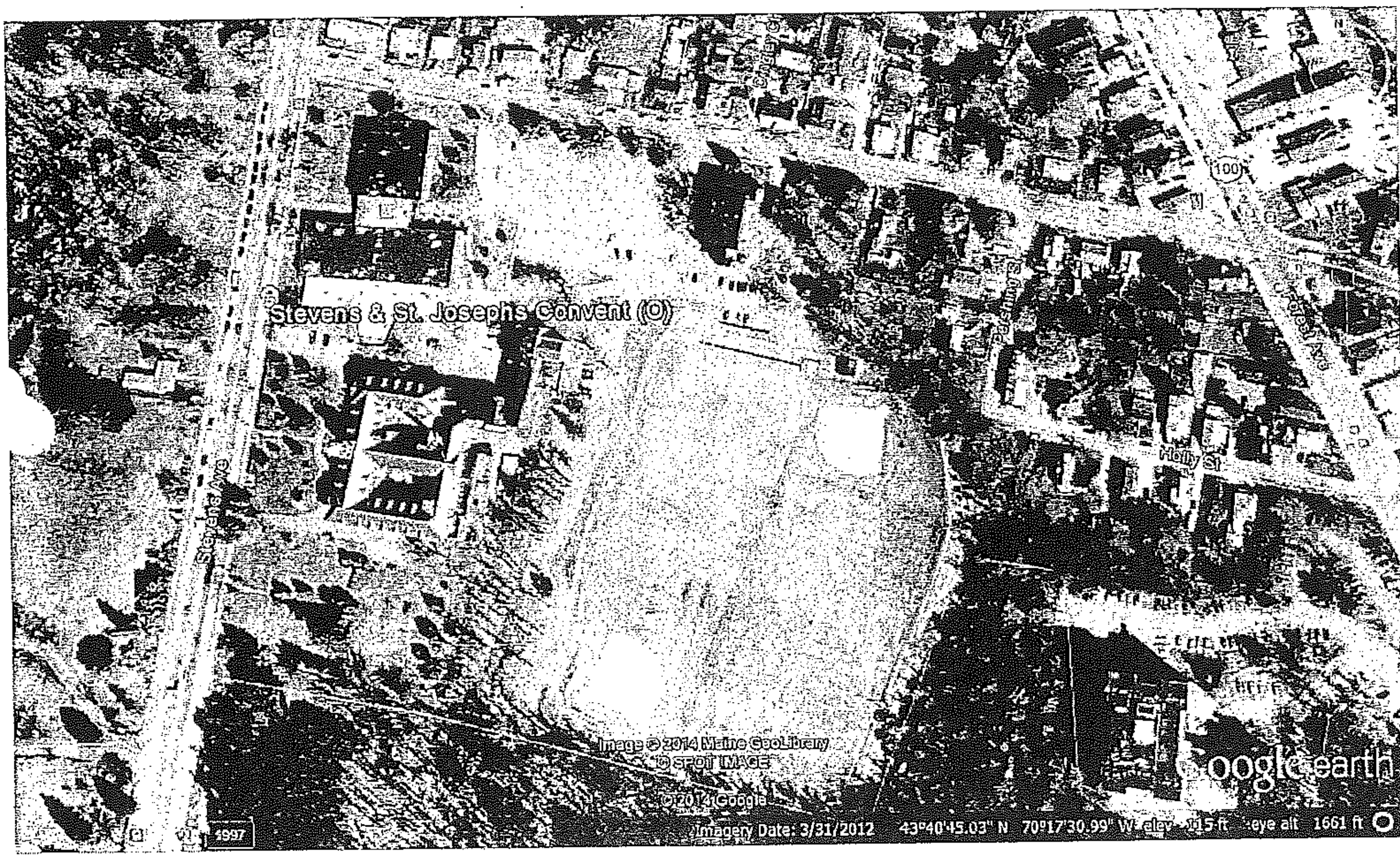
605 Stevens Ave, Portland, ME 04103-2661

Enter notes here

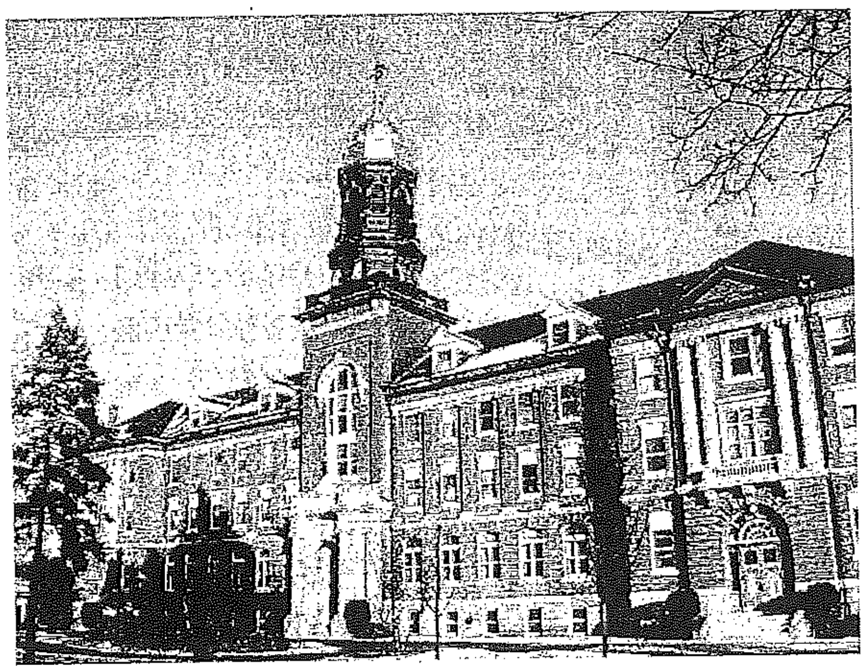
255



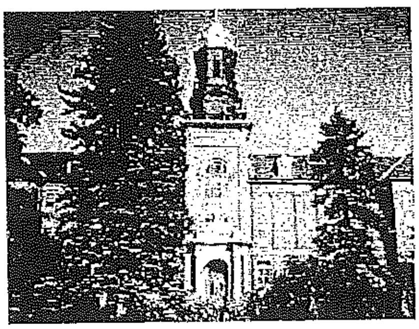
When using any driving directions or map, it is a good idea to double check and make sure the road still exists, watch out for construction, and follow all traffic safety precautions. This is only to be used as an aid in planning

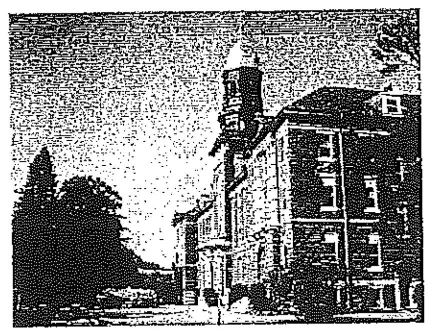

Stevens & St. Josephs Convent (O)
Holly St
100
Image © 2014 Maine GeoLibrary
© SPOT IMAGE
©2014 Google
Google earth
1997
Imagery Date: 3/31/2012 43°40'45.03" N 70°17'30.99" W elev 115 ft eye alt 1661 ft

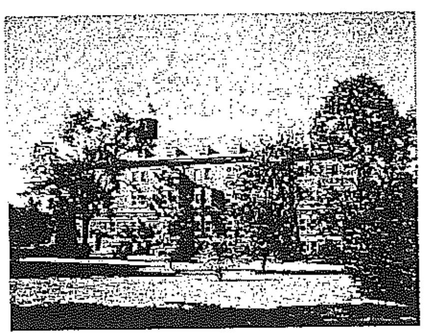
Sisters of Mercy -- St. Joseph's Convent

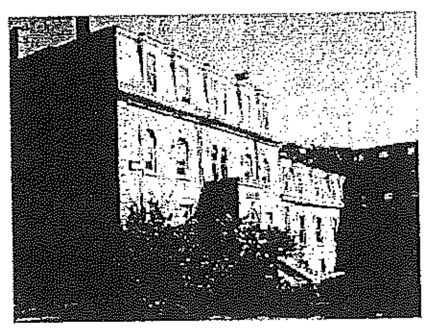


Exterior Views of Motherhouse

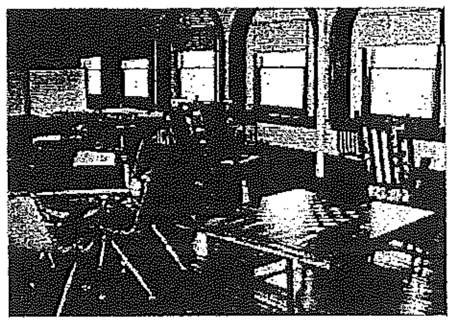


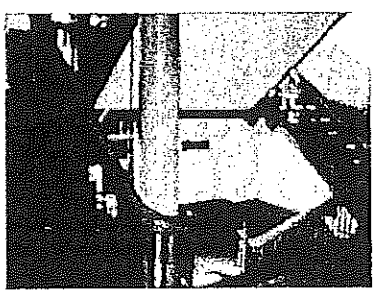


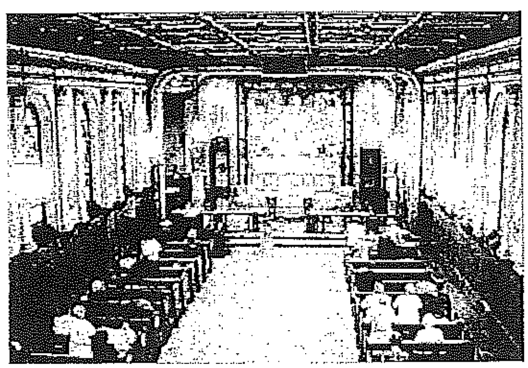


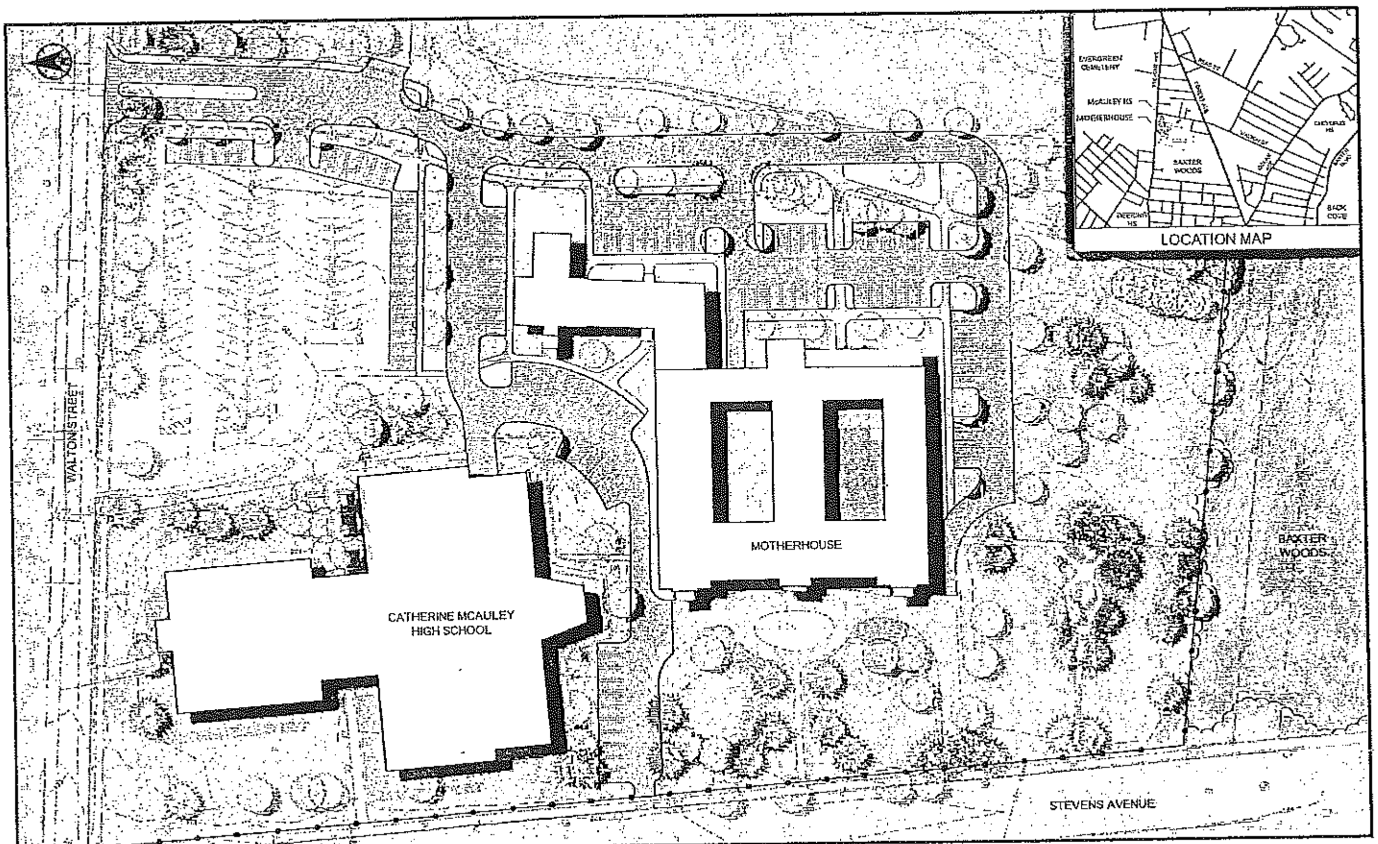


Interior Views of Motherhouse









MOTHERHOUSE SENIOR HOUSING

CONCEPTUAL SITE PLAN

SCALE: 1"=30'-0"

OWNER:

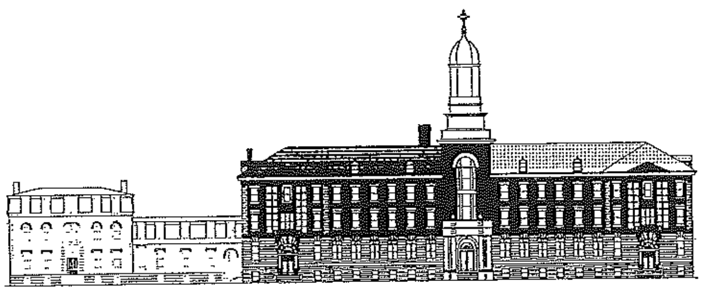
Motherhouse Associates LP
C/O Developers Collaborative
100 commercial St. Suite 414
Portland ME 02101

CARROLL ASSOCIATES
LANDSCAPE ARCHITECTS

SISTERS OF MERCY

605 STEVENS AVENUE
PORTLAND, ME

Maine Housing
Maine State Housing Authority



DRAWING LIST

CIVIL DRAWINGS
C-101 AMENDED SITE PLAN

ARCHITECTURAL DRAWINGS
A1.01 FIRST FLOOR PLAN
A1.02 SECOND FLOOR PLAN

A2.01 SOUTH ELEVATION

DATE OF ISSUE

PRE-APPLICATION DRAWINGS – 15 AUGUST 2014
APPLICATION DRAWINGS – OCTOBER 2014

ACCESSIBILITY CODE

[illegible]

SIGNATURES:

OWNER: ______________ DATE: ______

ARCHITECT: ______________ DATE: ______

CONTRACTOR: ______________ DATE: ______

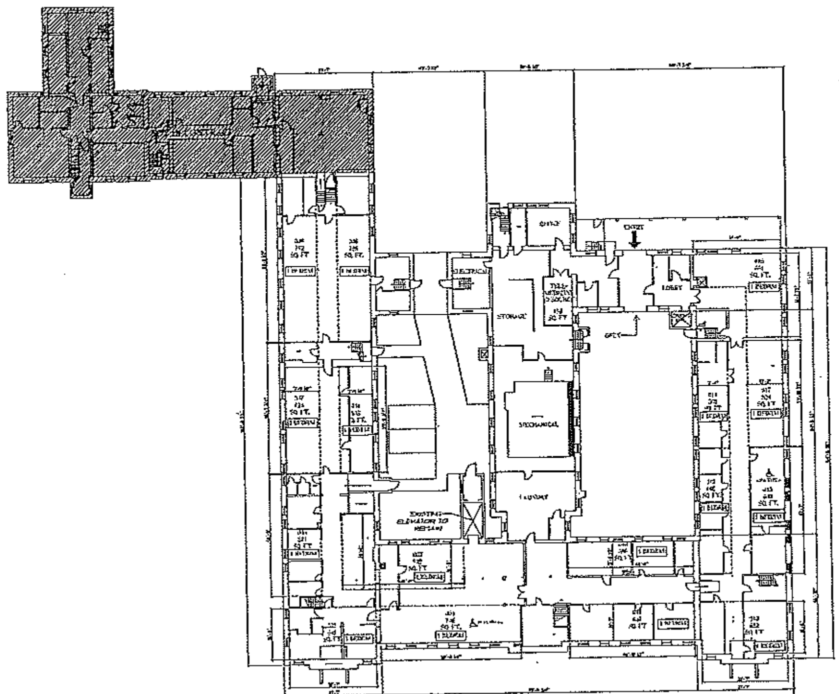
MAINE HOUSING: ______________ DATE: ______

CONSTRUCTION LENDER: ______________ DATE: ______

CONTACTS

Developer:
Developers Collaborative
100 Commercial Street
Portland, Maine 04101
(207) 854-6805

Architect:
Archetype Architects
48 Union Wharf
Portland, ME 04101
(207) 772-6022



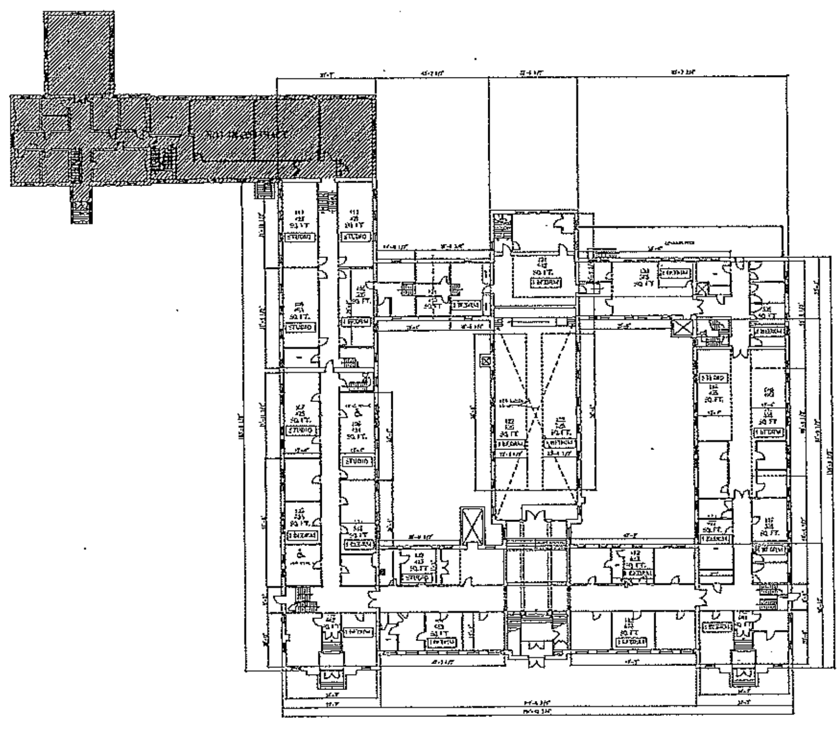
GROUND FLOOR PLAN

16 UNITS
16 1 BEDROOM UNITS
GROSS AREA = 24,065 SQ. FT
APARTMENTS NET AREA = 10,419 SQ. FT

PROJECT TOTALS

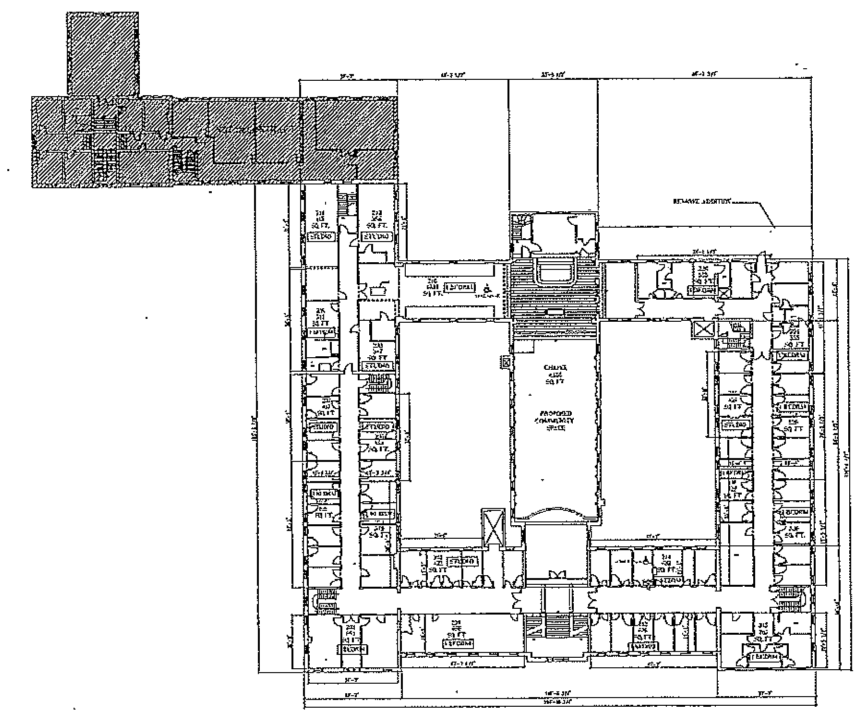
53 UNITS
20 STUDIO UNITS, 48 1 BEDROOM UNITS

Owner:
Developer:
Consulting Engineer:
Architect: ARCHETYPE architects
48 Union Wharf Portland, Maine 04101
(207) 772-6022 Fax (207) 772-4056
Project: SISTERS OF MERCY APARTMENTS
PORTLAND, MAINE
Revisions:
Date: 09 July 2012
Scale: 1/8" = 1'-0"
GROUND FLOOR PLAN
A1.01



FIRST FLOOR PLAN
24 UNITS
7 STUDIO UNITS, 17 1 BEDROOM UNITS
GROSS AREA = 24,212 SQ. FT
APARTMENTS NET AREA = 14,659 SQ. FT

Owner:
Developer:
Consulting Engineer:
Architect:
ARCHETYPE architects
Project: SISTERS OF MERCY APARTMENTS
PORTLAND, MAINE
Revisions:
Date: 09 July 2012
Scale: 1/16" = 1'-0"
FIRST FLOOR PLAN
A1.02



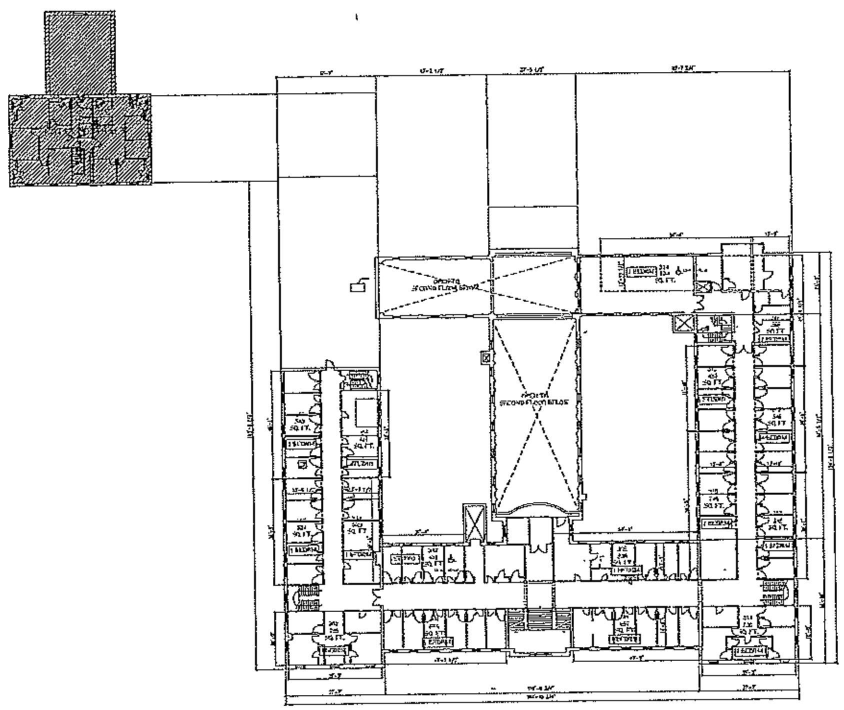
SECOND FLOOR PLAN

21 UNITS
7 STUDIO UNITS, 14 1 BEDROOM UNITS
GROSS AREA (INCL. CHAPEL) = 24,153 SQ. FT
GROSS AREA (NOT INCL. CHAPEL) = 18,353 SQ. FT
APARTMENTS NET AREA = 10,604 SQ. FT

Date: 09 July 2012
Scale: 1/8" = 1'-0"
Revisions:
Project: SISTERS OF MERCY APARTMENTS
PORTLAND, MAINE
Architect: ARCHETYPE Architects
48 Union Wharf Portland, Maine 04101
(207) 772-6022 Fax (207) 772-4056
Consulting Engineer:
Owner:
Developer:

SECOND FLOOR PLAN

A1.03



THIRD FLOOR PLAN

16 UNITS
3 STUDIO UNITS, 13 1 BEDROOM UNITS
GROSS AREA (INCL. CHAPEL) = 21,017 SQ. FT
GROSS AREA (NOT INCL. CHAPEL) = 16,518 SQ. FT
APARTMENTS NET AREA = 9,621 SQ. FT

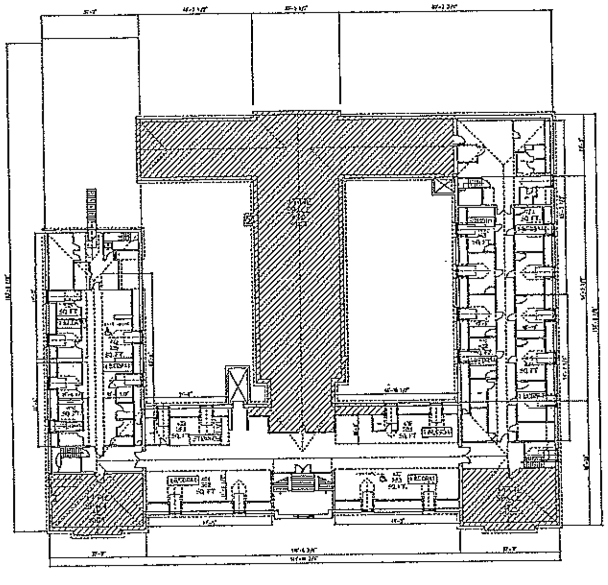
Project: SISTERS OF MERCY APARTMENTS
PORTLAND, MAINE

Architect: ARCHETYPE architects

Date: 09 July 2012
Scale: 1/16" = 1'-0"

THIRD FLOOR PLAN

A1.04



FOURTH FLOOR PLAN
11 UNITS
3 STUDIO UNITS, 8 1 BEDROOM UNITS
GROSS AREA (INCL. ATTIC) = 21,818 SQ. FT
GROSS AREA (NOT INCL. ATTIC) = 13,233 SQ. FT
APARTMENTS NET AREA = 6,340 SQ. FT

Owner:
Developer:

Consulting Engineer:

Architect:
ARCHETYPE architects

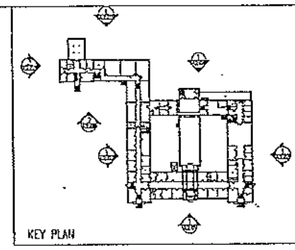
Project:
SISTERS OF MERCY APARTMENTS
PORTLAND, MAINE

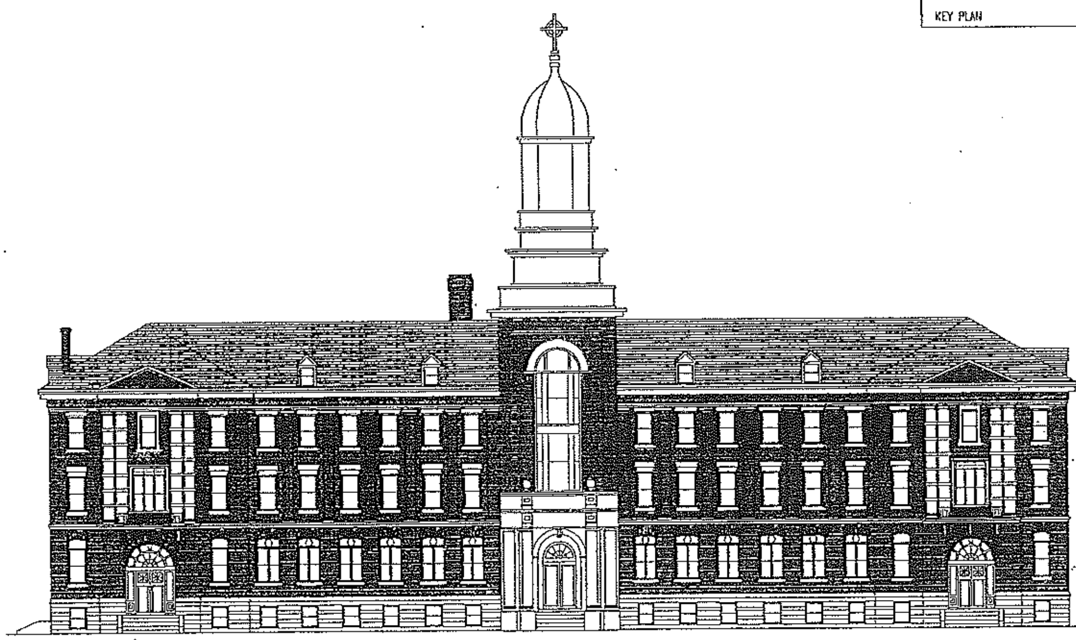
Revisions:

Date: 10 July 2012
Scale: 1/8" = 1'-0"

FOURTH FLOOR PLAN

A1.05





1 SOUTH ELEVATION

Owner:

Developer:

Consulting Engineer:

Architect:

ARCHETYPE architects

Project:

SISTERS OF MERCY APARTMENTS

PORTLAND, MAINE

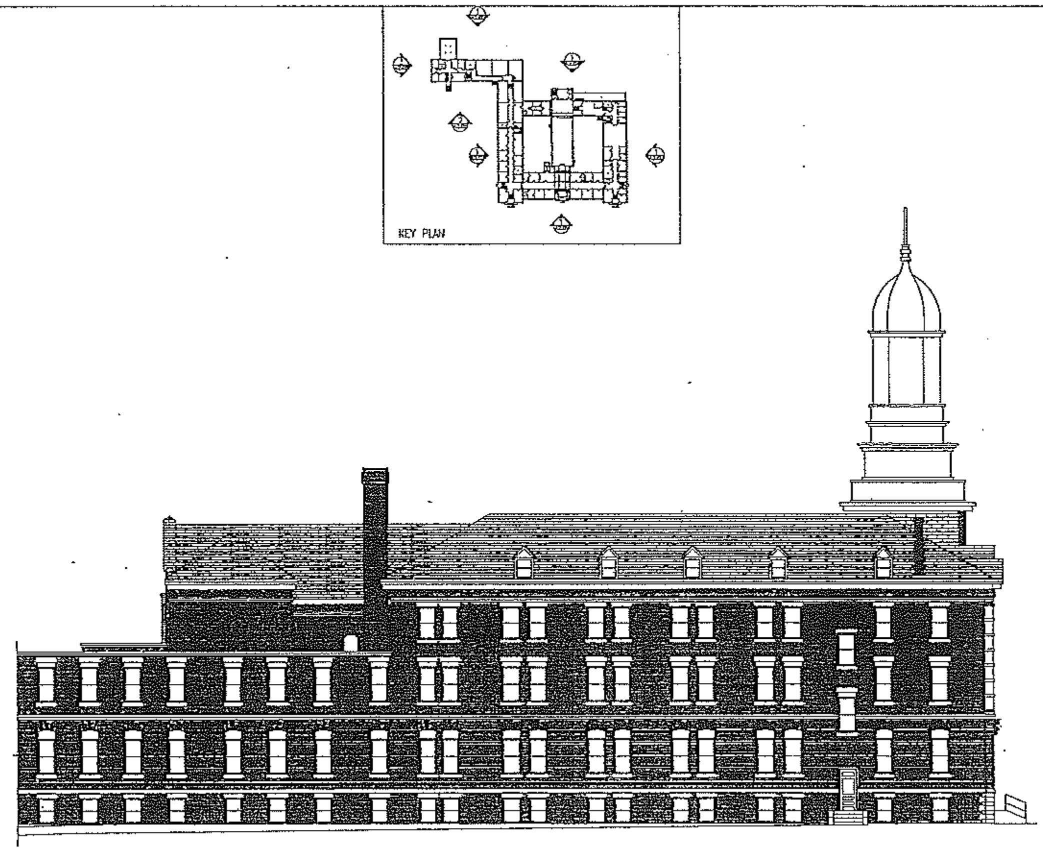
Revisions:

Date: 24 SEP 2014

Scale: 1/8" = 1'-0"

SOUTH ELEVATION

A2.01



1 WEST ELEVATION

Owner:

Developer:

Consulting Engineer:

Architect:

ARCHETYPE architects

48 Union Wharf Portland, Maine 04101
(207) 772-6022 Fax (207) 772-4056

Project:

SISTERS OF MERCY APARTMENTS

PORTLAND, MAINE

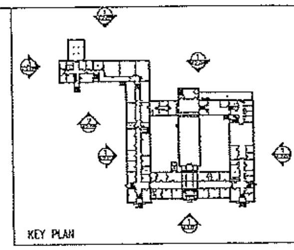
Revisions:

Date: 24 SEP 2014

Scale: 1/8" = 1'-0"

WEST ELEVATION

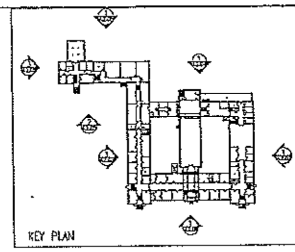
A2.02

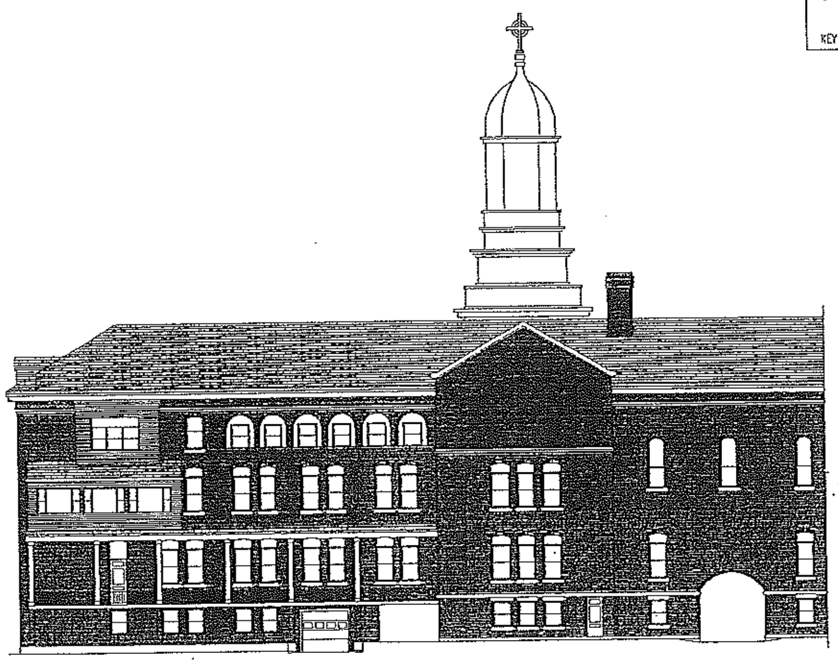


1 EAST ELEVATION

Owner:
Developer:
Consulting Engineer:
Architect:
ARCHETYPE architects
(207) 772-6022 Fax (207) 772-4056
Project:
SISTERS OF MERCY APARTMENTS
PORTLAND, MAINE
Revisions:
Date: 24 SEP 2014
Scale: 1/8" = 1'-0"
EAST ELEVATION

A2.03





1 NORTH ELEVATION 1

Owner:

Developer:

Consulting Engineer:

Architect:

ARCHETYPE architects

48 Union Wharf Portland, Maine 04101
(207) 772-6022 Fax (207) 772-4056

Project:

SISTERS OF MERCY APARTMENTS

PORTLAND, MAINE

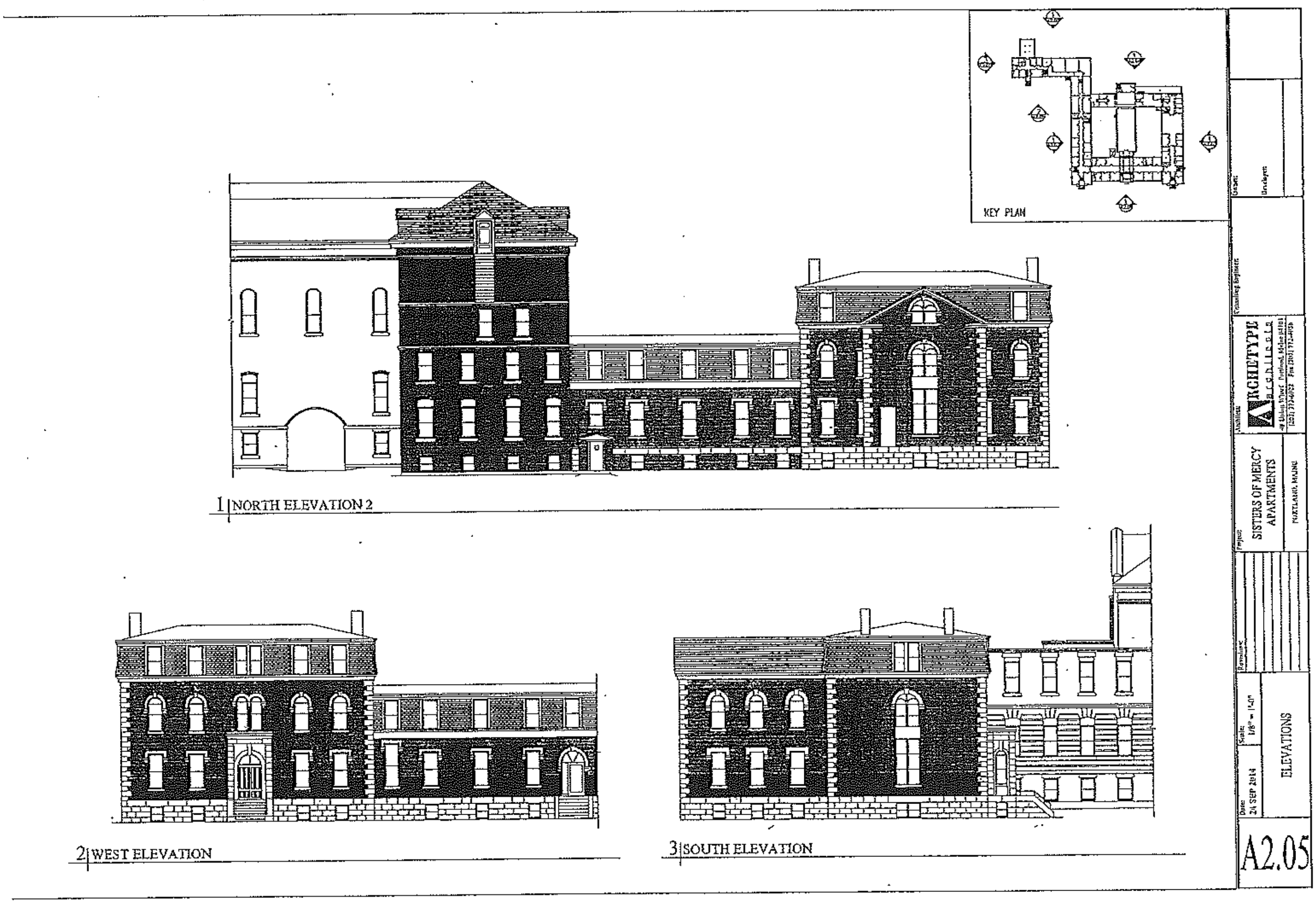
Revisions:

Date: 24 SEP 2014

Scale: 1/8" = 1'-0"

NORTH ELEVATION

A2.04



KEY PLAN
1 NORTH ELEVATION 2
2 WEST ELEVATION
3 SOUTH ELEVATION
ARCHETYPE
SISTERS OF MERCY APARTMENTS
PORTLAND, MAINE
24 SEP 2014
1/8" = 1'-0"
ELEVATIONS
A2.05

3) A project schedule showing critical path events and their timeframe for completion.

6/12/15 - Application for HOME funds

6/15/15 - Rezone approval

6/30/15 - Application for LIHTC/RLP (MaineHousing)

8/11/15 - Site Plan and Subdivision Approval

8/15/15 - Notice to Proceed from MaineHousing

11/15/15 - Part 2 HPCA submission

1/15/16 - Part 2 HPCA approval

2/15/15 - Construction Loan Closing

2/16/15 - Construction Start

2/16/16 - Construction Completion

8/16/16 - Full Occupancy

2/16/17 - Stabilized Occupancy

MOTHERHOUSE SENIOR HOUSING

SOURCES AND USES OF FUNDS

SOURCES OF FUNDS	Permanent	Construction Period	Terms/Comments		
			Rate	Term	Paymnt
Amortizing Debt					
MSHA RLP	3,500,000		5.50%	30	$192,500
Private Financing 15 year					
Credit Enhancement 15-year			5.00%	15	$0
Subtotal Amortizing Debt	3,500,000				$192,500
Soft Debt					
City FedHome	426,262	426,262	-	NPV	
MSHA RLP	2,500,000	1,250,000	0.0%	30	$0
MSHA Part E	-	-			
		-			
Subtotal Soft Debt	2,926,262	1,676,262			
Construction Loan		10,165,200			
Total Debt Financing	6,426,262	11,841,462			
Deferred Developer Fee	461,002				
LIHTC Syndication Proceeds	2,555,415	504,605			
Federal Historic Credit Proceeds	2,508,771	495,395		Total Fed	5,064,186
State Historic Credit Proceeds	3,597,469	719,494	2,877,976	Total Hist	6,106,241
TOTAL SOURCES	15,548,919	13,560,956			

USES OF FUNDS	Total	Construction Period
Acquisition/Demo	515,999	515,999
Construction	11,268,242	11,268,242
Soft Costs	845,010	845,010
Financing Fees	312,500	312,500
Other Soft Costs	177,205	177,205
Development Fee	1,831,002	442,000
Reserves	598,962	-
TOTAL USES	15,548,920	13,560,956
DEVELOPMENT CONTINGENCY (GAI	(0)	-

MOTHERHOUSE SENIOR HOUSING

~~DEVELOPMENT BUDGET AND LOW-INCOME HOUSING TAX CREDITS~~				Office % ~~0.000%~~	
Development Budget	**Total**	**4% Basis**	**9% Basis**	**Historic**	
ACQUISITION/DEMOLITION		-			
Land	103,200				
Buildings	412,799	412,799	-		
Demolition	-	-	-		
Subtotal Acquisition/Demo	515,999	412,799	-		
CONSTRUCTION					
Site Work	625,039	-	625,039	84,225	
Gen'l Requirements		-	-		
Structures	9,448,817		9,448,817	9,298,317	
OH & P			-		
Construction Contingency	1,024,386		1,024,386	870,728	
Bond			-	-	
Abatement	170,000		170,000	170,000	
	-		-	-	
				-	
Subtotal Construction	11,268,242	-	11,268,242	10,423,270	
SOFT COSTS					
Permits & fees	90,000		90,000	90,000	
Engineer/Survey	70,000	-	70,000	70,000	
Architect	430,000	-	430,000	430,000	
Real Estate Attorney	75,000		75,000	75,000	
Title Insurance & Recording	12,000		12,000	12,000	
Accounting/ Cost Certification	20,000	-	20,000	20,000	
Soft Cost Contingency	20,010		20,010	20,010	
TIF Consultant	8,000		8,000	8,000	
Const. Taxes & Insurance	120,000		60,000	60,000	
Subtotal Soft Costs	845,010	-	785,010	785,010	
FINANCING EXPENSES					
Constr. Loan Orig. Fee	127,000	-	127,000	127,000	
Construction Legal & Inspection	-		-	-	
Construction Interest	112,500	-	112,500	112,500	
Other Financing Expenses	-				
Perm. Loan Orig. Fee	73,000	-	-		
Subotal Financing	312,500	-	239,500	239,500	
OTHER SOFT COSTS					
Market Study	5,000		5,000	5,000	
Property Appraisals	10,000		10,000	10,000	
Environmental Report & Testing	20,000	-	20,000	20,000	
Construction Oversight	-		-	-	
Historic Consultant	25,000		25,000	25,000	
Tax Credit Fees	49,205		-	-	
FFE	60,000		60,000		
Organizational Legal	8,000			-	
Subtotal Other	177,205		120,000	60,000	
DEVELOPER'S FEES					
Developer's Ovhd. & Profit	1,831,002	-	1,831,002	1,831,002	
Consultant		-	-		
Subtotal development fees	1,831,002	-	1,831,002	1,831,002	
PROJECT RESERVES					
Rent Up & Marketing Reserve	50,000	-	-	-	
Operating Reserve	370,981	-	-	-	
Replacement Reserve	100,316	-	-	-	
Prepaid Taxes & Insurance	77,665	-	-	-	
Prepaid Monitoring	-	-		-	
Subtotal Reserves	598,962	-	-	-	
TOTAL PROJECT COST	15,548,920	412,799	14,243,754	13,338,782	
ELIGIBLE BASIS		412,799	14,243,754		
LESS FEDHOME			-	Fed Historic	State Historic
LIHTC ELIGIBLE BASIS			14,243,754	13,338,782	13,338,782
APPLICABLE FRACTION	75.00%		less fed HTC	20%	31%
QUALIFIED BASIS		309,599	11,575,997	2,667,756	4,135,022
QUALIFIED CT ADJUSTMENT	100%		8,681,998		
CREDIT PERCENTAGE		3.19%	3.19%		
ANNUAL LIHTC ELIGIBLE		9,876	276,956	95.00%	87.00%
			286,832		
ANNUAL LIHTC ALLOCATED			286,832		
NET PROCEEDS	90.00%	98.99%	2,555,415	2,508,771	3,597,469

Affordability Analysis & Rent Schedule

Affordable Rents

Unit Type	HHLD Size	Fed Home	LIHTC Rent	UA	Max. Net Rent
0 BR @ 50%	1		675	37	$638
1 BR @ 50%	1.5		723	45	$678
2 BR @ 50%	3		867	54	$813
3BR @ 50%					
4 BR@ 50%					
0 BR @ 60%	1		810	37	$773
1 BR @ 60%	1.5		867	45	$822
2 BR @ 60%	3		1,041	54	$987
3BR @ 60%					
0 BR Market	1		817	37	$780
1 BR Market	1.5		1,194	45	$1,149
2 BR Market	3		1,400	54	$1,346

Rent Schedule

Unit Type	# Units	Net Rent	Utility Allow.	Gross Rent	Afford. @ % Med. Inc.
0 BR @ 50%	9	$638	37	$675	
1 BR @ 50%	31	$678	45	$723	
2 BR @ 50%	0	$813	54	$867	
3 BR @ 50%					
0 BR @ 60%	5	$773	37	$810	
1 BR @ 60%	21	$822	45	$867	
2 BR @ 60%	0	$987	54	$1,041	
3 BR @ 60%					
0 BR Market	6	$780	37	$817	
1 BR Market	16	$1,149	45	$1,194	
2 BR Market	0	$1,346	54	$1,400	
TOTAL	88				
Bedroom Mix	0 BR	1 BR	2 BR		Total
	20	68	0		88
Income Mix		50%AMI	60%AMI	Market	Total
Number		40	26	22	88
Percent		45%	30%	25%	

MOTHERHOUSE SENIOR HOUSING

Operating Income & Expense			
Effective Gross Income		**Monthly**	**Annual**
Gross Potential Rental Income		70,951	851,412
Less Vacancy & Collection Loss	5.0%	(3,548)	(42,571)
TIF Income		4,173	50,078
Effective Gross Income		71,577	858,919

Annual Expenses	**Per Unit**	**Total**
ADMINISTRATIVE EXPENSES		
Management Fee	597	52,575
Legal	54	4,000
Audit	91	8,000
Marketing	100	8,800
Site Manager	244	21,500
Resident Services	352	31,000
Subtotal Administrative	1,430	125,875
OPERATING EXPENSES		
Water/Sewer	300	26,400
Electric	225	19,800
Heat/HW	725	63,800
Subtotal Operating	1,250	110,000
MAINTENANCE		
Building Maintenance	975	85,800
Janitorial	300	26,400
Supplies/Exterminating	180	15,840
Painting/Decorating	75	6,600
Grounds	325	28,600
Snow Removal	275	24,200
Trash Removal	175	15,400
Subtotal Maintenance	2,305	202,840
GENERAL EXPENSES		
Property taxes	948	83,463
Insurance	350	30,800
General Expenses	300	26,364
Subtotal General	1,598	140,627
REPLACEMENT RESERVE		
Housing	450	39,600
TOTAL RESERVES		39,600
TOTAL EXPENSES PLUS RESERVES	7,033	618,942

Net Income Calculation	**Annual**
Net Operating Income	239,978
Debt Service	$192,500
Cash Flow	47,478
Debt Service Coverage	1.25
Cash Flow as % of Expenses	7.7%
Cash Flow PUPA	540

Income/Expenses ratio
1.39

Developers Collaborative Predevelopment LLC
6/8/2015

MOTHERHOUSE SENIOR HOUSING

15-YEAR PROFORMA OPERATING INCOME AND EXPENSE STATEMENT

	Trend		2%	2%	2%	2%	2%	2.5%	2.5%	2.5%	2.5%	2.5%	3%	3%	3%	3%	3%
	Rate	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031
INCOME	2.00%																
Gross Rental Income	2.00%	425,706	851,412	868,440	885,809	903,525	921,596	944,636	968,252	992,458	1,017,269	1,042,701	1,073,982	1,106,201	1,139,388	1,173,569	1,208,776
Office	2.00%																
Vacancy & Collection Loss	5.00%	(21,285)	(42,571)	(43,422)	(44,290)	(45,176)	(46,080)	(47,232)	(48,413)	(49,623)	(50,863)	(52,135)	(53,699)	(55,310)	(56,969)	(58,678)	(60,439)
TIF Income	2.00%	-	50,078	51,079	52,101	53,143	54,206	55,290	56,396	57,524	58,674	59,849	61,045	62,265	63,511	64,781	66,077
EFFECTIVE INCOME		404,421	858,919	876,098	893,620	911,492	929,722	952,694	976,235	1,000,359	1,025,080	1,050,414	1,081,327	1,113,157	1,145,929	1,179,672	1,214,414
EXPENSES																	
Administrative	3.00%	88,112	125,875	129,651	133,540	137,547	141,673	145,923	150,301	154,810	159,454	164,238	169,165	174,240	179,467	184,851	190,397
Operating	3.00%	77,000	110,000	113,300	116,699	120,200	123,806	127,520	131,346	135,286	139,345	143,525	147,831	152,266	156,834	161,539	166,385
Maintenance	3.00%	141,988	202,840	208,925	215,193	221,649	228,298	235,147	242,202	249,468	256,952	264,660	272,600	280,778	289,201	297,877	306,814
General	3.00%	98,439	140,627	144,846	149,191	153,667	158,277	163,025	167,916	172,963	178,142	183,486	188,991	194,661	200,500	206,515	212,711
Replacement reserve	3.00%	27,720	39,600	40,788	42,012	43,272	44,570	45,907	47,284	48,703	50,164	51,669	53,219	54,816	56,460	58,154	59,899
TOTAL EXPENSES		433,259	618,942	637,510	656,635	676,334	696,624	717,523	739,049	761,220	784,057	807,579	831,806	856,760	882,463	908,937	936,205
NET OPERATING INCOME		(28,838)	239,978	238,588	236,984	235,158	233,097	235,171	237,186	239,138	241,023	242,836	249,522	256,397	263,466	270,735	278,209
DEBT SERVICE		96,250	192,500	192,500	192,500	192,500	192,500	192,500	192,500	192,500	192,500	192,500	192,500	192,500	192,500	192,500	192,500
CASH FLOW		(125,088)	47,478	46,088	44,484	42,658	40,597	42,671	44,686	46,638	48,523	50,335	57,022	63,897	70,966	78,235	85,709
			540	524	506	485	461	485	508	530	551	572	648	726	806	889	974

13) Evidence of financial commitments, or explanation of the ability and timing to secure those commitments. A statement describing the applicant's capacity for and experience in raising the type of capital needed to finance projects of this size and type.

Funding Sources Overview

MaineHousing has made complete, one-stop walk-in, non-competitive packages available for three specific projects, one of which is the Motherhouse. All housing-related sources are included in this package and are therefore committed when the application is accepted. Our application has been uploaded to MaineHousing and we can finalize it as soon as we are advised of the status of this HOME funds application. Upon Notice to Proceed from MaineHousing, we can then proceed directly to detailed design and land use approvals. The non-housing related sources include Historic Tax Credits (HTCs), and Deferred (Contributed) Developer Fee. The HTCs are automatically available as long as preservation guidelines are adhered to and the Deferred Developer Fee is hereby a commitment of the Applicant. City HOME funds are proposed to be loaned into the project on a 30 year deferred basis with a junior mortgage.

The following sources will comprise the capital stack for the Motherhouse redevelopment:

MaineHousing Amortizing Debt	3,500,000
City of Portland HOME Funds	426,262
MaineHousing Bond Funds	2,500,000
Deferred Developer Fee	461,002
LIHTC Equity	2,555,415
Federal HTC Equity	2,508,771
State HTC Equity	3,597,469
TOTAL	15,548,919

More information on the specific sources of financing are below.

Kevin Bunker of Developers Collaborative has great experience raising capital to finance projects of this type. As noted elsewhere, he is Maine's most experienced historic tax credit developer. He is also the second largest LIHTC developer, behind only Avesta Housing. Except for projects currently on the MaineHousing 9% waitlist, he has a 100% success rate financing 9% projects (8-for-8) and additionally has financed two 4% projects. All told, he has personally closed financing on 329 LIHTC affordable units, from Waterville to Biddeford.

1. Low Income Housing Tax Credits (LIHTC):

This is where the Motherhouse is far more ready to proceed than any other tax credit project. This is because it has been approved for a special non-competitive "walk-in" round at

MaineHousing, and if application for HOME funds is successful, will not have to be competitively scored against other projects.

The project was originally conceived a "9% competitive" LIHTC project, like many others with which you may be familiar. These projects are scored at the state level and are very competitive; it is not uncommon to fail 2 or 3 times before being funded, if funding is to be available at all. The project does currently sit on the 9% wait list, along with 7 other projects. Absent another funding source, it will have to compete again with these projects as well as all the new projects which will be submitted in the annual fall funding round. 9% credits are sharply limited by a state's population and only provide enough equity to build perhaps 5 projects per year, despite providing about 70% of the equity needed to build a typical project.

However, a special funding round was recently issued by MaineHousing which will enable the housing to be built now, without the uncertainty and time associated with a competition. This round is for "4% automatic" LIHTCs. These are a much weaker credit than the 9%s, providing perhaps 30% of the equity needed, but they are unlimited; MaineHousing may issue as many as they want. They are limited in practice by the need to pair them with significant additional subsidy resources. MaineHousing has issued an automatic walk-in RFP for these matching funds, and will commit up to $2,500,000 per project. There is a cap on the total subsidy offering of $5,000,000 but MaineHousing has stated that if demand runs past this cap, they will try to find the money to do all the projects.

Only three projects are eligible for this money: a project in Yarmouth, a project in Westbrook, and the Motherhouse. These projects were chosen off the waitlist specifically for their financial feasibility relative to the rest of the wait list; each has resources attached to it that make MaineHousing's limited resources leverage much more effectively. In the Motherhouse's case it is the availability of state and federal historic tax credits.

We have included a Letter of Intent from Northern New England Housing Investment Fund (NNEHIF) to purchase both the LIHTC and federal Historic credits in this section. The Limited Partner will purchase these credits and form 98.99% of the Limited Partnership that will own the project.

2. Federal Historic Tax Credits (FHTC):

The Motherhouse has been deemed eligible to be listed on the National Register of Historic Places, and therefore eligible for FHTCs. We have included a copy of this determination as well as the Letter of Intent from NNEHIF to purchase these credits.

3. State Historic Tax Credits (SHTC):

These credits "piggyback" on the FHTC in the sense that the physical requirements are the same: an eligible building, and compatible construction. However they structured differently from a financial perspective, using a Special Limited Partner (SLP) that will form 1.00% of the ownership entity. This entity will then receive a MaineHousing bridge loan that will serve as the SHTC equity component. More information on this arrangement is included in the Letter of Intent described above.

4. MaineHousing Tax-Exempt Bonds:

MaineHousing has made up to $2,500,000 per project in bond proceeds available to match the 4% LIHTCs and this money is available on a walk-in basis.

5. MaineHousing Amortizing Debt:

MaineHousing's standard underwriting guidelines dictate the amount of amortizing debt a given project can support. This debt is automatically available with the financing package of LIHTCs and Tax Exempt Bonds.

6. Deferred Developer Fee:

The project developers have committed to defer an amount of fee equal to the amount of HOME funds received and are thereby investing alongside the City. A letter evidencing this commitment is included in this application.

7. Construction Loan:

The loan will be administered by MaineHousing as well and is automatically available with the financing package of LIHTCs and Tax Exempt Bonds. It will be taken out at Permanent Loan Closing (PLC).

14) Projects serving special needs populations must provide evidence of commitments of support services, and a description of the service provider and funding cycle for those services.

The Motherhouse has committed to maintain a waitlist preference for seniors who are homeless. The service provider will be The Opportunity Alliance (OA), a local non-profit. A letter from OA is included in this Section. These services will be performed by existing OA staff and as such will be funded by OA out of their general operating budget.

The Motherhouse Project will serve low-income tenants, and as such, make resident services available to those tenants at no charge. Those services will be administered by Avesta Housing. More information on the Resident Services Plan, as well as the commitment, is found in this section. These services will be funded out of the operating budget for the project and can be found as such. The estimated annual cost is $31,000 per year.

16) An analysis and discussion of market demand justifying the need for the proposed project.

This project fully meets all the criteria in the scoring category "Proposed use of funds to achieve the City of Portland's goals and address demonstrated need". Information on the first two, market demand and economic diversity, is found here. Information on smoking prohibition is found in Section 15 (management).

There is overwhelming demand for affordable senior housing in the Portland market. Included in this section is a market study conducted last fall for the project. From the study:

> *In order to achieve full occupancy, the project must capture 0.6% to 4.6% of the total income-eligible senior rental market in the region (varies by bedroom size depending rent, target population, and subsidy arrangement).*
>
> *Because the project is new, and will have the latest appliances and design elements; because the site is ideal for senior housing, combining a rural-type setting with urban services; because existing capacity is full, and vacancy rates in senior projects is 1.2%; because it is serving a population group that is growing by 170 households a year in this decade; we project that the project will capture 25% of area movers in the appropriate income, age, and household size categories (for the tax credit units), and achieve full occupancy within 6 months.*

More information is included in the study, but generally speaking, the project will not even make much of a dent in the demand. This is consonant with the GPCOG's recent study performed on behalf of the City and entitled, "Portland: 2030 Workforce Housing Demand".

While this study did not specifically target 55+ housing, perhaps its key conclusion which has begun to drive policy in the City is that median income housing (100%-120% AMI) is in short supply and appears to be a gap in the market; only the upper and lower ends are really being served at all. The 22 market-rate units in the Motherhouse are targeted at this band, with projected rents of $1,149 per month. This is above the 100% AMI 2013 rent of $911 as found in the GPCOG study, but found to be the achievable rent in our market study. The achievable rent is strongly encouraged by MaineHousing as it supports a higher level of debt, and therefore requires less subsidy for the affordable units.

Recent senior housing developments in the area have garnered some attention but are not targeted at the same population. The new planned community on Ocean Ave is an entirely different market segment, and Park Danforth and Deering Pavilion, two sites recently upzoned to R-6A, serve different bands as well. Park Danforth is mixed income like the Motherhouse, but the affordable units serve a much deeper affordability (30% of income, no matter how low) and the market-rate units are currently listed at between $2,205 and $3,642 per month, much higher than the market-rate units in the Motherhouse. Deering Pavilion is a HUD Section 8 development, meaning it serves a much lower income band than the Motherhouse, much like the affordable units at Park Danforth. Therefore, despite the new proposals, nothing at all is being built for seniors from 50% AMI all the way up to 120% or so of AMI, and the Motherhouse is targeted directly at this segment, filling which has been identified as a high priority action item for the City.

This project also supports the economic diversity goals of the City. The Deering Center neighborhood is relatively affluent compared to the City as a whole. Census Tract 19, which boundaries do not exactly correspond with the neighborhood but roughly align with it, had a median household income of $54,958 in 2013, significantly (23.6%) higher than the City figure of $44,458.

Further, this census tract had the 5th lowest poverty rate (10%) of all of Portland's 20 tracts. 2 of the 4 tracts that had an even lower poverty rate than this tract were adjacent to it: Tract 18 (4% poverty, starts across the street from the project), and Tract 17 (8% poverty, starts at Woodford Street, just below the project). This is contrasted with Portland's Peninsula tracts which have poverty rates as high as 54% (Tract 5, East Bayside/India Street) and 47% (Tract 6, Bayside).

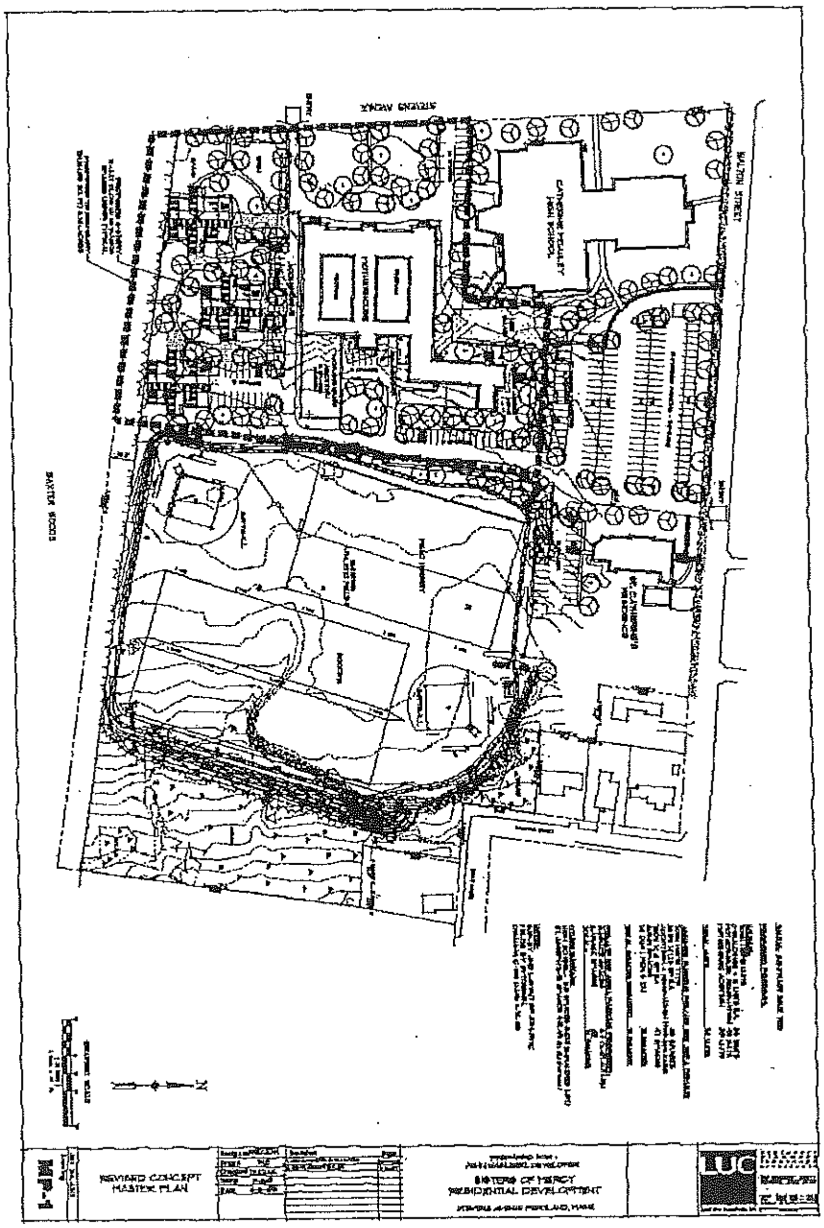
The City's economic diversity goals will also be served by locating affordable housing in an area with relatively high housing prices, and relatively high owner-occupied rates. Tract 19 has a higher median home price ($10,000 higher) and percentage of owner-occupied units (57% vs 45%) than the City as a whole.

Attachment - McAuley Place TIF District Map

EXHIBIT B

PROPERTY DESCRIPTION AND CONFIGURATION OF DISTRICT

The McAuley Place Municipal Development and Tax Increment Financing District is located in Portland, Maine and consists of the portion of the parcels (Tax Map 136-E-6, 143-F-4 and 144-B-1) shown on the Plan of the District, a copy of which is attached hereto. The District does not include the portion of such parcels that comprises St. Catherine's Residence, Catherine McAuley High School or the athletic fields.



Order 37-15/16
~~Tab 34 9-30-15~~
Tab 17 9-3-15

MICHAEL F. BRENNAN (MAYOR)
KEVIN J. DONOGHUE (1)
DAVID A. MARSHALL (2)
EDWARD J. SUSLOVIC (3)
JUSTIN COSTA (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

DAVID H. BRENERMAN (5)
JILL C. DUSON (A/L)
JON HINCK (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

ORDER DESIGNATING 17 CARLETON STREET AFFORDABLE HOUSING DEVELOPMENT DISTRICT AND TAX INCREMENT FINANCING DISTRICT AND ADOPTING THE MUNICIPAL DEVELOPMENT PROGRAM FOR THE DISTRICT

WHEREAS, the City of Portland is authorized pursuant to Chapter 206, Subchapter 3 of Title 30-A of the Maine Revised Statutes, as amended, to designate specified areas within the City as an Affordable Housing Development Tax Increment Financing District, and to adopt a Development Program for such District; and

WHEREAS, there is a need for affordable housing in the City of Portland and the surrounding region; and

WHEREAS, Avesta Carleton LP intends to construct certain improvements within the 17 Carleton Street Affordable Housing Development Tax Increment Financing ("TIF") District, including 37 units of affordable housing; and

WHEREAS, the City of Portland will utilize 35% of the tax revenues generated in the District in its General Fund; and

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

WHEREAS, the 17 Carleton Street Affordable Housing Development TIF District will help improve and broaden the tax base in the City of Portland; and improve the economy of the City of Portland and the State of Maine; and

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

WHEREAS, the City Council has considered the comments provided at the public hearing, both for and against the designation of the 17 Carleton Street Affordable Housing Development TIF District, if any; and

WHEREAS, it is expected that approval will be sought and obtained from the Maine State Housing Authority, approving the designation of the 17 Carleton Street Affordable Housing Development TIF District and Development Program for the District;

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

That, under and pursuant to the provisions of Title 30-A, Chapter 206, Subchapter 3 of the Maine Revised Statutes as amended, the development program and financial plan entitled "17 Carleton Street Affordable Housing Development District" as presented to this meeting and a copy of which is hereby incorporated herein by reference and as part of the minutes of this meeting, is hereby approved in substantially the form as presented as the Development Program for the District and for the reasons set forth therein, the City, after considering whether the District and the Development Program will contribute to the expansion of affordable housing opportunities within the City and to the betterment of the health, welfare or safety of the inhabitants of the City and whether any detriment to any existing property interest in the City, finds and determines that: designation of the District and pursuit of the Development Program will make a contribution to the expansion of affordable housing opportunities within the City and the betterment of the health, welfare or safety of its inhabitants, constituting good and valid public purposes and any adverse economic effect on or detriment to any existing property interests is outweighed by the contribution made by the District and the Development Program to the availability of affordable housing within the City and to the betterment of the health, welfare and safety of its inhabitants, and the City further makes the other findings and determinations as set forth in said Development Program and the Exhibits thereto; and

BE IT FURTHER ORDERED, that the area of the City of Portland entitled "17 Carleton Street Affordable Housing Development District" as more particularly described in said Development Program is hereby designated as an affordable housing development district and such designation shall automatically become final and shall take full force and effect upon receipt by the City of approval of the District by the Director of the Maine State Housing Authority, without the requirement of any further action by the City, the Municipal Officers or any party; and

BE IT FURTHER ORDERED, that the percentage of increased assessed value of said District to be retained as captured assessed value in accordance with the Development Program is hereby established as set forth in the Development Program and Financial Plan; and

BE IT FURTHER ORDERED, that the City Manager is hereby authorized and directed, on behalf of the City of Portland, Maine to execute and submit to Director of the Maine State Housing Authority for approval such applications and further documentation as may be necessary or appropriate for final approval and establishment of the "17 Carleton Street Affordable Housing Development District" and its Development Program and Financial Plan pursuant to 30-A M.R.S.A. chapter 206, Subchapter 3; and the City Manager be, and hereby is, authorized and empowered, at his discretion, from time to time, to make such technical revisions to the Development Program for the District as he or she deems reasonably necessary or convenient in order to facilitate the process for review and approval of the District by the Director of the Maine State Housing Authority, so long as such revisions are not inconsistent with this Order or the basic structure and intent of the Development Program; and

BE IT FURTHER ORDERED, that the City's Planning and Urban Development Director is authorized to submit annual reports on the status of the "17 Carleton Street Affordable Housing Development District" on behalf of the municipal legislative body; and

BE IT FURTHER ORDERED, that upon approval of the Director of the Maine State Housing Authority, the City Manager is hereby authorized and directed on behalf of the City of Portland to execute and deliver a Credit Enhancement Agreement substantially in the form attached to the Development Program hereby approved, with such changes thereto as deemed appropriate by the City Manager.

MEMORANDUM
City Council Agenda Item

TO: Members of the Portland City Council

FROM: Planning and Urban Development Department
Housing and Community Development Division

DATE: July 15, 2015

DISTRIBUTION: (City Manager, Mayor, Corporation Counsel, Sonia Bean, Nancy English)

SUBJECT: **(1) Order Designating 17 Carleton Street Affordable Housing Development District and Tax Increment Financing District and Adopting the Municipal Development Program for the District**

(2) Order Approving Credit Enhancement Agreement with Avesta Carleton LP

SPONSOR: Kevin Donoghue, Chair
Housing and Community Development Committee

COUNCIL MEETING DATE ACTION IS REQUESTED:
1st reading July 20 Final Action August 3

Can action be taken at a later date: _____ Yes _X_ No (If no why not?)

Due to public notice requirements, the City Council meeting for public hearing and vote has been advertised for August 3, 2015 at 7:00 p.m.

PRESENTATION: (List the presenter(s), type and length of presentation)

Mary Davis, Housing and Community Development Division Director will be available to provide information as requested.

I. SUMMARY OF ISSUE (Agenda Description)

17 Carleton Street Affordable Housing TIF (AHTIF) Development District is being proposed for property located on Carleton Street. The development consists of 37 affordable units.

The proposal is for a 22-year TIF with 65% of the total projected new taxes captured, annual estimated average at $33,098 over the 22-year TIF, as a reimbursement to the Developer through a CEA. The Developer's share of TIF revenue will be used to pay operating costs for the project.

The remaining TIF revenues will be allocated to the City's General Fund, average annual estimated at $18,441.

At its meeting on June 10, 2015, the Housing and Committee Development Committee voted 4-0 to recommend this AHTIF request to the City Council for approval.

A recommendation of approval of an Affordable Housing Tax Increment Financing District (AHTIF) from the HCDC to the Council is not the same as approval of the overall project. After carefully weighing the potential benefits and impacts on the City and surrounding neighborhood against the standards in the Land Use Ordinance, the Planning Board will ultimately determine if a project meets those standards. Approval of an AHTIF will be contingent on the project's final approval by the Planning Board.

II. REASON FOR SUBMISSION (Summary of Issue/Background)

The City Council must:
(1) authorize the creation of the AHTIF District; and
(2) approve the Credit Enhancement Agreement

III. INTENDED RESULT

The intended result from the establishment of this AHTIF District is the creation of 37 units of rental housing, 5 of which will be available to households at or below 40% of the area median income, 18 units will be available to households at or below 50% of the area median income and 14 units will be available to households at or below 60% of the area median income.

IV. COUNCIL GOAL ADDRESSED

Promote Housing Availability - Provide increased availability in all segments of the housing market while insuring that there is a suitable balance housing opportunities among those sectors.

V. FINANCIAL IMPACT

When completed, this project's new assessed value is estimated at $2.5 Million, which will yield approximately $2,238,340 in increased annual property assessed value over the course of the 22-year TIF District. 65% of the increased taxes will be captured and returned to the Developer through a Credit Enhancement Agreement. The remaining revenue will be returned to the City's General Fund.

Here is an overview of the TIF proposal related to the share of future estimated property taxes.

	Dev. Share	City General Fund Share
Years 1-22	$728,156 or 65%	$405,694

Total development costs are estimated at $6,541,371. At full build-out, the development is projected to pay approximately $51,539 annually in increased property taxes.

In addition, with the tax sheltering benefits of TIF Districts, overall savings to the City during the term of the district averages an estimated annual amount of $11,203+, or $246,484+ over the life of the district.

VI. STAFF ANALYSIS

Public Benefits In reviewing this TIF request, staff notes the public benefit associated with the TIF District of an additional 37 units of mixed income housing all of which will be available to households at or below 60% of the area median income.

VII. RECOMMENDATION

Staff recommends approval of this request and asks that the City Manager be authorized to sign and submit the documents, in substantially the form as enclosed, to Maine Housing for approval.

It is requested that the City Council set the Public Hearing for the 17 Carleton Street AHTIF District and approval of the Credit Enhancement Agreement for the City Council meeting on August 3, 2015 at 7:00 p.m.

VIII. LIST ATTACHMENTS

Maine State Housing Authority's Affordable Housing TIF Application
17 Carleton Street Affordable Housing Tax Increment Financing Development Program
Credit Enhancement Agreement.
Declaration of Covenants
TIF Projection Table
TIF District Map

Prepared by:

Mary P. Davis

Mary P. Davis, Director
Housing and Community Development Division

July 15, 2015
Date

MAINE STATE HOUSING AUTHORITY

APPLICATION

Affordable Housing Tax Increment Financing

The Municipal Affordable Housing Development Districts statute, 30-A M.R.S.A. §§5245 – 5250-G, referred to as the "TIF Statute" in this Application, applies to affordable housing tax increment financing in Maine. The TIF Statute provides that before a municipality's designation of an affordable housing development district and its adoption of the associated affordable housing development program for the district become effective, MaineHousing must review the proposed district and development program to ensure compliance with the TIF Statute.

All applications to MaineHousing for review of an affordable housing development district and its associated development program must be on this form and include all eight Attachments noted below.

Sections 1 and 2 below are in fillable PDF format and may be completed on-line. After you have completed Sections 1 and 2, please print the Application and sign where indicated in Section 1.

This Application, with Attachments 1 through 8, may be submitted to MaineHousing in one of two ways:
By e-mail to Anne Paré sent to apare@mainehousing.org, or
By mail to: Anne Paré, MaineHousing, 353 Water Street, Augusta, Maine 04330

In this Application "district" means an affordable housing development district and "development program" means an affordable housing development program.

SECTION 1 – APPLICANT INFORMATION

1-1 Name of applicant city or town: City of Portland, Maine

1-2 Municipal official submitting this Application:

Printed name Jon P. Jennings

Title City Manager

Mailing address 389 Congress Street, Portland, Maine 04101

Phone number 207-874-8689

E-mail address jpj@portlandmaine.gov

The municipal official named above certifies that he/she has the authority to submit this Application to MaineHousing and further certifies that to the best of his/her knowledge, the information contained in this Application and its Attachments is true.

Signature

Date

1-3 Municipal official with authority to submit annual reports to MaineHousing on the status of the district:

Printed name Jeff Levine

Title Director, Planning & Urban Development Department

Mailing address 389 Congress Street, 4th Floor, Portland, Maine 04101

Phone number 207 874-8430

E-mail addressjlevine@portlandmaine.gov

SECTION 2 – NOTICE AND HEARING

Before designating a district or adopting a development program, the municipal legislative body must

(a) hold at least one public hearing,

(b) publish notice of the hearing at least 10 days before the date of the hearing in a newspaper of general circulation in the municipality,

(c) at the hearing, consider

(i) whether the district and development program will contribute to the expansion of affordable housing or the betterment of the health, welfare or safety of the residents,

(ii) any claim by a party that the district or development program will be detrimental to that party's property interests for which substantial evidence is produced, and whether any adverse economic effect is outweighed by the availability of affordable housing or the betterment of resident health, welfare or safety.

2-1 Date of public notice: July 22, 2015

Attachment 1 – Newspaper Notice

Include as Attachment 1 *a copy of the newspaper page showing the public notice and the newspaper name and date.*

2-2 Date of public hearing: August 3, 2015

Attachment 2 – Public Hearing Record

Include as **Attachment 2** *the record of the meeting at which the public hearing was held, certified by the municipal clerk.*

Attachment 3 – Additional Documents

Include as **Attachment 3** *all documentation submitted to, or prepared by, the municipality relating to items (c)(i) and (c)(ii) above.*

SECTION 3 – MUNICIPAL APPROVAL

Conditions of municipal approval of district and development program

The TIF Statute sets out conditions for the designation of a district and adoption of a development program by a city or town. A municipality must designate a district and adopt a development program meeting these conditions.

To assist municipalities in ensuring that districts and development programs comply with the conditions of the TIF Statute, we have set out below a **Checklist in Appendix A** that can be used in designating a district and adopting a development program. The Checklist covers the conditions in the TIF Statute that need to be met in approving the district and development program. While MaineHousing does not require municipalities to fill in or follow the format of the Checklist, in reviewing a district and development program approved by a municipality, we will look for specific information in the Application materials (including the Attachments) the city or town submits to us showing compliance with all the conditions of the TIF Statute.

IMPORTANT NOTE: Because the TIF Statute defines a district as "a specified area within the corporate limits of a municipality that has been designated . . . to be developed" under a development program, a development program must, at a minimum, include new construction of affordable housing or rehabilitation of existing housing **inside** the district, or both. A municipality may not create a district for the sole purpose of capturing tax increment revenues that would result only from inflationary adjustments to property values with no development of new housing or rehabilitation of existing housing in the district.

Attachment 4 – Municipal Approval

Include as **Attachment 4** *a copy of the order or resolution and vote of the municipal legislative body approving the district and development program, certified by the municipal clerk.*

Attachment 5 – District Maps

Include as **Attachment 5** *a municipal map and tax map showing the district boundaries.*

Attachment 6 – Certification of Original Assessed Value of District

Include as **Attachment 6** *a dated certification signed by the municipal assessor showing the original assessed value of the district. "Original assessed value" means the taxable assessed value of the district as of the March 31st before municipal approval of the district.*

Attachment 7 – Development Program

Include as **Attachment 7** *a copy of the development program approved by the municipality's legislative body.*

Attachment 8 – Credit Enhancement or Other Agreement

Include as **Attachment 8** *a copy of the credit enhancement agreement or other tax increment revenue sharing agreement, whether or not executed.*

See Appendix A below for
Checklist for Approval of District and Development Program

Appendix A
Checklist for Approval of District and Development Program

The TIF Statute sets out conditions for the designation of a district and adoption of a development program by a city or town. A municipality must designate a district and adopt a development program meeting these conditions.

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SEE NARRATIVE ATTACHED.

NARRATIVE

DISTRICT AND DEVELOPMENT PROGRAM DESCRIPTION

17 CARLETON STREET AFFORDABLE HOUSING TIF DEVELOPMENT DISTRICT

District Description:

The 17 Carleton Street Affordable Housing TIF Development District is a .5722 acre site located on the east side of Carleton Street, between Pine and West Streets in the West End neighborhood of the City of Portland. The development will include the construction of a new building with thirty-seven (37) rental housing units with a thirty-one (31) space surface parking lot. The new building will be four stories along Carleton Street with the surface parking at the rear of the property. The site is located in the Residential R-6 zone and is in the West End Historic District. Permitted uses in the R-6 zone include single and multi-family dwellings. 100% of the district acreage is suitable for residential use. A municipal map and a tax map identifying the district are included as Attachment 5.

District Acreage:

The total district acreage of .5722 is .0000462% of the total municipal acreage of 12,386. The total acreage of all development districts is 4.84 of which there are two municipal development districts that are exempt for the acreage maximum. The exempt districts are a transit oriented district and a downtown/transit oriented district which have a combined acreage of 3.65%.

The original assessed value (OAV) of the district as of March 31, 2015 is $261,660. The OAV of all existing and proposed affordable housing development districts as a percentage of all taxable property value is .0002%. A Certification of Original Assessed Value is included as Attachment 6.

Development Program Dates:

First tax year of development program: July 1, 2015
Last tax year of development program: June 30, 2037
The municipal fiscal year is July 1 through June 30.

The Development Program Agreement is included as Attachment 7.

Does the development program meet an identified housing need in the City of Portland?:

The proposed development is consistent with the Housing Component of the City of Portland's Comprehensive Plan in that it helps to meet the goal of ensuring that "an adequate supply of housing is available to meet the needs, preferences and financial capabilities of all Portland households, now and in the future." The district will be a primarily residential development which will create thirty-seven (37) units of rental housing, of which 100% of the units will be available to households earning at or below 60% of the area median income. Recent market studies, including a recent analysis completed for the Avesta Washington Avenue project, substantiate the need for a diversity of affordable housing options and also highlight a significant need for affordable, efficiency apartments for the increasingly large number of single-person households in the Portland area.

Mechanism to ensure ongoing affordability:

The development within the district will remain affordable for 30 years. A Declaration of Covenants and Restrictions, requiring income affordability, as noted in the chart below, will be recorded in the Cumberland County Registry of Deeds.

	17 Carleton Street	
Efficiency Units (12)	at or below 40% area median income	5
	at or below 50% area median income	4
	at or below 60% area median income	3
1-Bedroom Units (23)	at or below 40% area median income	0
	at or below 50% area median income	14
	at or below 60% area median income	9
2-Bedroom Units (2)	at or below 40% area median income	0
	at or below 50% area median income	0
	at or below 60% area median income	2
Total Units		**37**

Operation of housing and facilities in the district:
TIF revenue will be used by the developer as an operating cost subsidy. The property will be operated and managed by Avesta Housing Management Corporation.

Specific uses of TIF revenue:
The operating costs of the development will be financed with a combination of rental income, income from on-site laundry facilities and TIF revenue in the estimated amount of $29,969 annually.

Financial plan for each year the development will be in effect:
Attachment 9 outlines the estimate of increased assessed value of the district and a calculation of estimated tax shifts showing the effect on the City of Portland's state revenue sharing, education subsidies and county taxes resulting from creation of the district and the capture of increased assessed value. The development will be financed with a combination of local, state and federal funding including low income housing tax credits. Approximately $5,167,534 will be funded through syndication of the tax credits and the remaining $1,373,836 will be financed through the state funding agency. An itemized development budget showing all sources and uses of funds for development is included in Attachment 9.

Estimated total tax increment revenues $728,156
Total annual revenue sharing tax shift $948
Total annual education subsidy tax shift $3,928
Total annual county tax shift $770

Allocation of total tax increment revenues from the district:
65% of the total tax increment revenues from the district will be allocated to the project owner.
0% of the total tax increment revenues from the district will allocated to the municipality. A copy of the Credit Enhancement Agreement is attached as Attachment 8.

Relocation plan for persons temporarily or permanently displaced by development activities:
Not applicable. Property to be developed is currently used as a surface parking lot.

Description of environmental controls to be applied:
The developer has submitted a Level III application for site plan and subdivision review that is currently under review by the local Planning Board and local Historic Preservation Board. The project is being reviewed subject to the Site Plan and Subdivision Ordinance of the Land Use Code. The project will also be reviewed by the local Historic Preservation Board for the design of the building and compatibility with the neighborhood. The proposed development has been reviewed by municipal staff for conformance with the relevant review standards of the local Subdivision Ordinance and applicable regulations. Staff comments will be submitted for review to the local Planning Board and local Historic Preservation Board.

Development program consistent with comprehensive planning:
Date of comprehensive plan final adoption November, 2015.
Is the proposed development consistent with the plan? Yes
Does the development program comply with Maine law limiting growth-related capital investments (30-A MRSA §4349-A): Yes
Is the district in conflict with the municipal charter? No

List of Attachments
Attachment 1 – Newspaper Notice
Attachment 2 – Public Hearing Record
Attachment 3 – Documentation of Municipal consideration of (i) whether the district and development program will contribute to the expansion of affordable housing or the betterment of the health, welfare or safety of the residents (ii) any claim by a party that the district or development is detrimental to that party's property interests for which substantial evidence is produced, and whether adverse economic effect is outweighed by the availability of affordable housing or the betterment of resident health, welfare or safety.
Attachment 4 – Municipal Approval
Attachment 5 – District Maps
Attachment 6 – Certification of Original Assessed Value of District
Attachment 7 – Development Program
Attachment 8 – Credit Enhancement Agreement
Attachment 9 – Financial Plans

CITY OF PORTLAND

17 CARLETON STREET AFFORDABLE HOUSING DEVELOPMENT DISTRICT

DEVELOPMENT PROGRAM

TABLE OF CONTENTS

17 Carleton Street Affordable Housing Development District Development Program

17 Carleton Street Affordable Housing Development District Development Program

Article I. Introduction and Summary of Benefits.

A. Affordable Housing Development District. This Development Program provides for the creation of an Affordable Housing Development District located at 17 Carleton Street in Portland. The area includes approximately .5722 acres. By providing for the reinvestment of a portion of the new or incremental tax revenues in the District, the District will provide an impetus for affordable housing development within the District and the development of affordable, livable housing and the containment of the costs of unplanned growth in the City.

B. Benefits of the District.

1. Affordable Housing. This Development Program will provide for the development of affordable housing in the City and the containment of the costs of unplanned growth.

2. No City Bonds or Risks. The District will not involve any borrowings by or the issuance bonds of the City to pay for any of the costs of the Development Program and will not affect existing tax revenues in any way.

3. Additional Tax Revenues. Creation of the District and Development Program will result in additional tax revenues for the City.

4. Shelter of New Tax Base Growth. The captured assessed value of the District will be sheltered from the otherwise negative impacts of new development that result in increased county taxes and loss of State aid to education and revenue sharing when new development occurs without the creation of a Affordable Housing Tax Increment Financing District. The sheltered portion of the tax increment revenues will be used to pay Project Costs.

Article II. Development Program Narrative and Designation of the District.

Section 2.01. Statement of Means and Objectives. The City of Portland ("the City"), like many other Maine municipalities, desires to provide affordable housing in the City and to contain costs of unplanned growth by providing the facilities described in this Development Program.

In order to fulfill these goals, certain property has been proposed as the 17 Carleton Street Affordable Housing Development District (the "District"). The Development Program described herein will serve the purpose of administering the District as an Affordable Housing Development District pursuant to Chapter 206, subchapter 3 of Title 30-A of the Maine Revised Statutes, as amended (the "Development Program"). Upon approval by the City of Portland designating the District and adoption of this Development Program by the City, the designation of the District and adoption of the Development Program will become final immediately, subject only to approval by the Director of the Maine State Housing Authority. The Development Program provides for affordable housing similar in some respects to the economic development incentives called municipal tax increment financing ("TIF") similar to that adopted by a number of other Maine municipalities including the City. An Affordable Housing Development District involves the creation of a geographically defined district in the City and the "capture" or reinvestment of some of the new increased or "incremental" tax revenues generated on the increased assessed value of property in the District to pay certain costs of the development.

The District is designed to stimulate development of affordable housing in the City by allocating certain tax revenues generated on the increased assessed value in the District to Project Costs, consisting of allowable operating costs per 30-A M.R.S.A. §5249 and described in Section 2.03 hereof by Avesta Carleton, LP, its successors and assigns (the "Developer"). Under the Development Program, the City will make portions of the tax increment revenues as set forth in Section 3.04 hereof and under the Credit Enhancement Agreement attached hereto as Exhibit E hereto from the District available to the Developer pursuant to such Credit Enhancement Agreement (the "Credit Enhancement Agreement"). These revenues will be used either to pay or reimburse the Developer for Project Costs per Section 2.03 directly. All additional Project Costs will be the responsibility of the Developer, its successors or assigns. All tax increment revenues following expiration of the term of the Credit Enhancement Agreement will go directly into the City's general fund.

The District will result in significant new tax revenues for the City.

The Development Program thus will provide significant public benefit to the City by providing for the development of affordable housing in the City and for new tax revenues. The means and objectives of the Development Program are to provide: financial assistance towards Project Costs, and the development of affordable housing in the City.

The City, by adopting this Development Program, finds that the Development Program described herein, including the Capital Project, will provide substantial affordable housing in the City, thereby accomplishing an important public purpose.

Section 2.02: Brief Discussion of Financial Plan. The following is a brief summary of the Financial Plan. The Financial Plan is set forth in greater detail in Article III of this Development Program. As described in Section 3.04 hereof and Exhibit A hereof, the property taxes assessed by the City upon the Increased Assessed Value of property in the District (the "Tax Increment") resulting from the investments by the Developer will be captured or used by the City under the Development Program to pay Project Costs described in Section 2.03 hereof. The development costs and sources and uses of funds associated with the Development Program within the District are described in Article III. The Project Costs and any continuing investment by Developer will be financed by Developer through equity of the Developer, its successors or assigns and the tax increment revenues from the District. As part of the Development Program, the City and Developer will enter into a Credit Enhancement Agreement pursuant to which the City will pay to Developer the percentage of Tax Increment Revenues from the Increased Assessed Value with respect to property in the District, described herein as the Tax Increment Revenues (Developer's Share) for the term of the District to pay Project Costs related thereto. All tax revenues from the District not payable to Developer under the Credit Enhancement Agreement will be paid to the General Fund of the City. Any tax revenues presently generated on existing property in the District will continue to be paid to the General Fund of the City. The Development Program costs will be paid only from the Tax Increment on assessed value produced by new development in the District occurring after the tax year ending on the March 31st prior to adoption of this Development Program.

Section 2.03: Project Costs Descriptions. A. Project General Description. The Capital Project at 17 Carleton Street involves the redevelopment of approximately .5722 acres, into an affordable housing neighborhood. The objective of the project is that 100% of the units in the District will be affordable housing, meaning a decent, safe and sanitary dwelling, apartment or other living accommodation for a household whose income does not exceed 60% of the median income for the area as defined by the United States Department of Housing and Urban Development. This project consists of 37 units of low income housing tax credit apartments, the targeting for those units will be 5 of the units at 40% Area Median Income, 18 of the units at 50% Area Median Income and 14 of the units at 60% of the Area

Median Income. The zoning for the project assures that this number of units and this affordability objective will be met.

The project includes the new construction of 37 efficiency apartments in one elevator building.

The 17 Carleton Street project is projected to have a total local increased assessed valuation at build out of approximately $2,500,000 based upon current real estate values and City assessment practices. Based upon the estimated tax rate upon completion, the project will pay approximately $29,969 in increased property taxes to the Developer at 65% capture in year 3 at full build out. A portion of this new revenue would be offset by increased county taxes and reduced state revenue sharing and education funding resulting from the increased state valuation, were it not included in a Development District.

"Project Costs" as defined in Title 30-A, Chapter 206, Section 5249 of the Maine Revised Statutes will include operating costs, including but not limited to property management and administration, utilities, routine repairs and maintenance, insurance, real estate taxes and funding of a projects capital reserve account.

B. Need for the Affordable Housing TIF. Over the 22-year TIF, the estimated average annual payment is $33,098 (as set forth in Exhibit A). Developer's Share of the Tax Increment Revenue is designated to pay operating costs for the project at 17 Carleton Street. The Tax Increment Revenue described in section 3.04 will help pay for operating costs over a period of twenty-two (22) years. Without the TIF and these other funding sources the project could not go forward.

The Municipal Affordable Housing Development District law enacted by the Maine Legislature in 2003 creates an opportunity to fill this gap in the project financing through the mechanism of the TIF program. The program operates essentially the same way that the traditional commercial TIF program has with a few exceptions. The Affordable Housing TIF program is administered by the Maine State Housing Authority.

Section 2.04: Relocation Plan. No businesses or persons will be displaced or relocated as a result of the development activities proposed in the District.

Section 2.05: Environmental Controls. All environmental controls required by law shall apply to development in the District, including any applicable requirements of the City of Portland Zoning Ordinance and all applicable State and Federal environmental laws and regulations.

Section 2.06: District Operation. The day-to-day operations of the District will require no substantial efforts by the City. The Developer, its successor or assigns, will operate the improvements constructed by Developer and pay all maintenance and operational expenses of its facilities. The City, however, will be responsible for maintenance and operation of any part of the District that may become a public road or other public facility

Section 2.07: Assurance of Compliance. The City hereby determines that the District and this Development Program complies with the provisions of 30-A M.R.S.A. § 4349-A (growth management). The proposed development in the District is consistent with the Comprehensive Plan for the City of Portland which includes the City's Housing Plan, which calls for additional affordable housing in the City.

Section 2.08: Program Duration. The duration of the District will be 22 years from the designation of the District and the effective date of the approval of the District by the Director of the Maine State Housing Authority.

Section 2.09: Approval Considerations and Characteristics of the District. A. Statutory Considerations for Approval. Before designating the District and before establishing this Development Program, the City has considered any evidence presented at such public hearing and has considered whether the District and Development Program will contribute to the expansion of affordable housing opportunities within the City and to the betterment of the health, welfare or safety of the inhabitants of the City. The City hereby determines and finds that the District created hereunder and this Development Program will make a contribution to the expansion of affordable housing opportunities within the City and the betterment of the health, welfare or safety of its inhabitants, constituting good and valid public purposes and that any adverse economic effect on or detriment to any existing property interests is outweighed by the contribution made by the District and the Development Program to the availability of affordable housing within the City and to the betterment of the health, welfare and safety of its inhabitants.

B. Statutory Conditions for Approval; Physical Characteristics. The City hereby finds and determines that the District satisfies the conditions imposed under Chapter 206, subchapter 3 of Title 30-A of the Maine Revised Statutes, as amended, as a prerequisite to designation of the District, including those relating to the physical description of the District and to certain financial and statistical information as follows:

(i) All of the land in the District is suitable for residential uses, is zoned for residential uses, and is in need of rehabilitation or redevelopment and therefore at least 25%, by area, of the real property within the District meets at least one of the following statutory criteria: (1) be suitable for residential use; (2) be a blighted area; or (3) be in need of rehabilitation or redevelopment;

(ii) The total area of the District is approximately .5722 acres and thus such area represents less than 2% of the total acreage of the City. The total area of the District and the total area of all development districts in the City (which combined total is 599.85 acres) is 4.84%, which includes 3.65% included in two exempt districts, a transit oriented district and a downtown/transit oriented district, of the total acreage of the City and thus does not exceed 5% of the total acreage of the City; the total area of all existing and proposed affordable housing development districts in the City is 0.0182% of the total acreage of the City and does not exceed 5% of the total acreage of the City;

(iii) The Original Assessed Value of the District is as set forth in Exhibit D hereto and the Original Assessed Value of all existing and proposed affordable housing development districts within the City is $1,533,510 and such amount of Original Assessed Value does not exceed 5% of the total value of taxable property within the City as of April 1st preceding the date of the designation of the District;

(iv) The aggregate value of municipal general obligation indebtedness financed by the proceeds from affordable housing development districts within Cumberland County does not exceed $50,000,000 adjusted by a factor equal to the percentage change in the United States Bureau of Labor Statistics Consumer Price Index, United States City Average from January 1, 2002 to the date of calculation; and

C. Community Housing Need. The City finds that this Capital Program will meet a community housing need identified in the City's Housing Plan and Comprehensive Plan. The Credit Enhancement Agreement provides a mechanism to ensure the ongoing affordability for a period of at least 30 years for rental units, which mechanism is the Declaration attached hereto as Exhibit I. The District is primarily a residential development on which 100% of the dwelling units will be affordable housing and that may be designed to be compact and walkable and to include internal open space, other common open space and one or more small-scale nonresidential uses of service to the residents of the development. The Developer and the City shall comply with any rules adopted by the Maine State Housing Authority and with any conditions of approval imposed by the Maine State Housing Authority following designation of the District. The City shall report annually to the Director of the Maine State Housing Authority regarding the status of the District, including the following matters as required by law: (a) certify that the public purpose of the District is being met; (b) account for any sales of property within the District; and (c) certify that rental units within the District remain affordable.

Section 2.10: Designation of the District. The City, by adoption of this Development Program, hereby designates the 17 Carleton Street Affordable Housing Development District as an Affordable Housing Development District and as an Affordable Housing Tax Increment Financing District. A plan depicting the District is attached hereto as Exhibit C and the District is further described therein.

Article III. Financial Plan.

Section 3.01: Cost Estimates for the Development Program. The estimated expenses of the Project Costs are set forth in Exhibit B.

Section 3.02: Amount of Indebtedness to be Incurred. The City will not incur any indebtedness in connection with the Development Program. The Development Program will be financed through a combination of funds of the Developer, its successors and assigns, various loans and the Tax Increment of the District.

Section 3.03: Sources of Anticipated Revenues. The source of the revenue to be used to pay the Project Costs of this Development Program is a portion of the Tax Increment on the Increased Assessed Value of the District. Tax Increment means all Property Taxes assessed by the City, in excess of any state, county or special district tax, upon the Increased Assessed Value of all property in the District. Increased Assessed Value means the valuation amount by which the Current Assessed Value of the District exceeds the Original Assessed Value of the District. Current Assessed Value means the assessed value of the District certified by the municipal assessor as of April 1st of each year that the District remains in effect. Property Taxes means any and all ad valorem property taxes levied, charged or assessed against property by the City or on its behalf.

Original Assessed Value means the assessed value of the District as of March 31, 2015. Attached hereto as Exhibit D is the anticipated form of certification of Original Assessed Value by the Assessor of the City of Portland in accordance with the requirements of Title 30-A § 5250-A of the Maine Revised Statutes. All Property Tax on the Original Assessed Value shall continue to be deposited in the general fund of the City.

The City will deposit the Tax Increment Revenues (Developer's Share) as described in Section 2.02 and Section 3.04 hereof and in Exhibit A into the Developer's Project Cost Account of the Affordable Housing Development Program Fund and pay such Tax Increment (Developer's Share) to Developer in accordance with the terms of the Credit Enhancement Agreement to be entered between the City and the Developer.

Section 3.04: Estimated Increased Assessed Value: Portion Applied to Development Program. The percentage of the Increased Assessed Value of the District to be retained as Captured Assessed Value in each year is 65%. Such Captured Tax Increment Revenues will be returned to the Developer each year in the manner described below.

The Tax Increment Revenues (Developer's Share) to be paid to the Developer each year during the term of this Development Program will be an amount which shall be captured and retained to reimburse the Developer for Project Costs pursuant to the Credit Enhancement Agreement. The Tax Increment Revenues (Developer's Share) shall be equal to the corresponding fiscal year's projected allocation percentage for each payment according to Exhibit A, but Developer's Share will be the entire amount of the 65% of captured revenue. The percentage determination of the Tax Increment Revenues (Developer's Share) as determined as described above shall apply regardless whether the actual Tax Increment Revenues are more or less than the estimated or projected Tax Increment Revenues set forth in Exhibit A.

"Tax Shift Formulas" mean the formulas utilized by the State of Maine in calculating: (a) the county tax payable in accordance with 30-A M.R.S.A. § 706 and 36 M.R.S.A. §§ 305(1), 381, as amended, and any successor provisions; (b) the municipal revenue sharing distribution of the Local Government Fund in accordance with 30-A M.R.S.A. §5681, as amended, and any successor provision, provided, however, that distribution of the Disproportionate Tax Burden Fund (the Revenue II fund), if any, shall not be taken into consideration in such calculation since taxes assessed on captured value within a tax increment financing district are included in the amounts of the property assessed in determining allocations of such Disproportionate Tax Burden Fund; and (c) State aid to education, including aid for total operating costs, total program cost allocation (taking into account the maximum local share or circuit breaker) and total debt service cost allocation (taking into account the maximum local share or circuit breaker), but not taking into account any hold harmless or hardship cushion that results in additional State aid to education to the prior years level even through the calculation would have resulted in a reduction, all as computed in accordance with Maine Department of Education Form ED 261 or any successor form.

The amount of Tax Increment from the total Increased Assessed Value that is to be paid each year to the Developer under Credit Enhancement Agreement to pay or reimburse Project Costs is hereinafter called the "Tax Increment Revenues (Developer's Share)."

The table attached hereto as Exhibit A also sets forth: (i) the annual estimates of the Increased Assessed Value of the District resulting from implementation of the Development Program; (ii) the estimated annual Tax Increment Revenues per year on the Increased Assessed Value following implementation of the Development Program, stated respectively as (a) a total, and (b) the estimated amount of the Tax Increment Revenues (Developer's Share)

Based on the manner in which Tax Increment Revenues (Developer's Shares) are defined, a share of the incremental property tax revenues derived from the increased valuation will be returned to the Developer to cover the Project Costs as described in Section 2.03 hereof.

To comply with the provisions of the State of Maine, the Credit Enhancement Agreement includes a provision for the recapture of certain amounts relating to any affordable rental housing units that are not maintained as affordable for a period of at least thirty years.

The amount of the Tax Increment Revenues on the Increased Assessed Value of all property in the District for each year during the term of the District to be allocated and paid to the Developer each year pursuant to the Credit Enhancement Agreement shall be equal to the product for each year during the term of the District of (a) the relevant Developers Percentage Allocation of the Tax Increment (Developer

Share) for each year as computed as described above, times (b) the actual amount of the Tax Increment for each year. Such percentage allocations shall apply regardless of whether the actual Tax Increment Revenues each year are more or less than the Tax Increment Revenues as estimated or projected in Exhibit A of this Development Program, provided that in no fiscal year will the Developer's Share be less than 65% of the captured revenue through the term of the District.

An Affordable Housing Development Program Fund shall be established by the City consisting of a Project Cost Account. The Project Cost Account shall consist of the Developer's Project Cost Account (the "Developer's Project Cost Account"). The Developer's Project Cost Account will be pledged to and charged with payment of amounts due to Developer under the Credit Enhancement Agreement. Upon receipt of each payment of property tax with respect to property in the District, the City shall deposit into the Developer's Project Cost Account according to the terms of the Credit Enhancement Agreement that portion of each payment constituting the percentage of total actual Tax Increment for such year equal to the Tax Increment Revenues (Developer's Share). The amounts in the Developer's Project Cost Account shall be used and applied solely to fund the payments to Developer under the Credit Enhancement Agreement.

Section 3.05: Description of Terms and Conditions of Agreements. A description of the terms and conditions of the agreements, contracts and obligations to be entered into by the City is set forth in the Credit Enhancement Agreement to be entered into by the City and the Developer which will be substantially in the form attached hereto as Exhibit E. The Credit Enhancement Agreement sets forth the obligations of the City to pay to Developer each year during the term of that Agreement Tax Increment Revenues (Developer's Share) from all Property Tax with respect to all property in the District, as provided in such Credit Enhancement Agreement.

Section 3.06: Calculation of Tax Shifts. In accordance with Maine statutes governing the establishment of affordable housing development districts, Exhibit F identifies the estimated tax shifts which will result during the term of the District from the establishment of the District, using formulas approved by the Director of the Maine State Housing Authority. Exhibit F also contains a summary of the methodology and calculations utilized in calculating such estimated tax shifts.

The 17 Carleton Street project will pay property taxes to the City based upon the local assessed valuation of the project and the City's annual tax rate. Exhibit A shows the estimated property taxes that will be paid by the project over the next 22 years based upon the estimated local assessed valuation and the estimated tax rate of $19.80/$1000 for the first year of the District. The amount of property taxes paid by owners of property in the District to City will be the same whether the project is included in a TIF district or not.

If the project is not part of a TIF, some of these new tax revenues will be offset by what are commonly called tax shifts. Since the City's total state valuation will be higher as a result of the project, its share of Cumberland County taxes will increase. The increased valuation and population will change the amount the City receives in State Revenue Sharing. The increased valuation and increased school enrollment will change the amount the City receives in state education aid.

Exhibit F thus shows the estimated amount of these tax shifts compared to what they would be if the new valuation is "sheltered' in a TIF and, therefore, does not get counted in the City's state valuation that is used in calculating county tax, revenue sharing and state education aid.

The actual extent and amount of the tax shifts can vary from this estimate since they are controlled by factors outside the City's control such as the rate of increase in the County budget, the amount of state sales and income tax collected, the amount of funding provided by the state for education aid, and the formula used to distribute that aid. So the extent and value of the shifts could be more or less than estimated.

Article IV. Municipal Approvals.

Section 4.01: Public Hearing. Before designating the District, the City legislative body of the City held a public hearing. Notice of the hearing was published on July 22, 2015, a date that was at least 10 days before the hearing, in The Portland Press Herald, a newspaper of general circulation within the City. Attached hereto as Exhibit G is a copy of the Notice of Public Hearing. The Public hearing was held in accordance with the requirements of 30-A M.R.S.A. § 5250 on August 3, 2015. At the public hearing, interested parties were given a reasonable opportunity to present testimony concerning the District and the Development Program.

Section 4.02: Authorizing Votes. Attached as Exhibit H is a copy of the Orders proposed for adoption by the City Council of the City of Portland at a meeting thereof duly called and held on August 3, 2015 designating the District and adopting the Development Plan.

The undersigned, being the City Manager of the City of Portland, certifies that all of the information contained herein is true and correct to the best of my knowledge.

Dated: August ___________, 2015

____
Jon P. Jennings, City Manager, City of Portland

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CREDIT ENHANCEMENT AGREEMENT

This Credit Enhancement Agreement, dated as of August ________, 2015, between the City of Portland, Maine, a municipal body corporate and politic and a political subdivision of the State of Maine (the "City"), and Avesta Carleton LP, a Maine limited partnership (the "Developer").

WITNESSETH THAT

WHEREAS, the City designated the 17 Carleton Street Affordable Housing Development District (the "District") pursuant to Chapter 206, subchapter 3 of Title 30-A of the Maine Revised Statutes, as amended, by vote of the City Council at a meeting held on August 3, 2015 and pursuant to the same City Council Meeting action adopted a development program and financial plan for the District (the "Development Program"), and

WHEREAS, the Director of the Maine State Housing Authority has reviewed and approved the District and the Development Program, 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 such City Council Meeting approval and a resolution of the Municipal Officers, adopted August 3, 2015 by vote of the City Council and the City and the Developer desire and intend that this Credit Enhancement 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:

"Affordable Housing Development Program Fund" means the Affordable Housing Development Program Fund described in Article III of the Development Program and established and maintained pursuant to Article II hereof.

"Agreement" means this Credit Enhancement Agreement between the City and the Developer.

"Captured Assessed Value" means the amount, stated as percentages or stated sums, of the Increased Assessed Value that is utilized from year to year to finance the Capital Program and Public Improvements described in the Development Program; the Captured Assessed Value of the District shall be 65% of the Increased Assessed Value.

"City" means the City of Portland, Maine, a municipality duly organized and existing under the laws of the State of Maine, its successors and assigns.

"Current Assessed Value" means the assessed value of the District certified by the municipal assessor as of April 1st of each year that the District remains in effect.

"Developer" means Avesta Carleton LP, its successors and assigns.

"Development Program" means the Development Program for the District as adopted by the City at a meeting of the City Council held on August 3, 2015.

"District" means the 17 Carleton Street Affordable Housing Development District designated by the City pursuant to Chapter 206, subchapter 3 of Title 30-A of the Maine Revised Statutes, as amended, by vote of its City Council at a meeting held on August 3, 2015.

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

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

"Increased Assessed Value" means the valuation amount by which the Current Assessed Value of the District exceeds the Original Assessed Value of the District. If the Current Assessed Value is equal to or less than the Original Assessed Value, there is no Increased Assessed Value.

"Original Assessed Value" means the assessed value of the District as of March 31, 2015, which amount was Two Hundred Sixty-One Thousand Six Hundred Sixty Dollars ($261,660).

"Project" means the design, planning, development, acquisition, construction, financing and installation of the Development Program as described in Section 2.03 of said Development Program.

"Project Costs" means any expenditures or monetary obligations incurred or expected to be incurred that are authorized by section 5249 of title 30-A of the Maine Revised Statutes and included in the Development Program.

"Project Cost Account" means the Developer's Project Cost Account described in Article III of the Development Program and established and maintained pursuant to Article II of this Agreement.

"Property Taxes" means any and all ad valorem property taxes levied, charged or assessed against real estate in the District by the City or on its behalf.

"Qualified Investments" means any and all securities, obligations or accounts in which municipalities may invest their funds under applicable Maine law.

"Tax Increment" means all Property Taxes assessed by the City, in excess of any state, county or special district tax, upon the Increased Assessed Value of all property in the District.

"Tax Increment Revenues (Developer's Share)" means that percentage of the Tax Increment with respect to real estate now or hereafter located in the District retained pursuant to the terms of the Development Program to pay Project Costs of the Capital Program, and which amount is to be deposited each year during the term of this Agreement in the Developer's Project Cost Account to fund payments to the Developer due pursuant to this Agreement. The Tax Increment Revenues (Developer's Share) is sixty-five percent (65%). The Tax Increment Revenues (Developer's Share) will be calculated each year as more particularly described herein and in Exhibit A of the Development Program and will be based on the Increased Assessed Value of the District which percentage or amount shall be captured and retained to pay to the Developer the costs of the Capital Program described in the Development Program.

"Tax Shift" means the sum of the following amounts as calculated under the Tax Shift Formulas, as hereafter defined: (a) the difference between (i) the county tax payable by the City if the Captured

Assessed Value that under the then existing Tax Shift Formulas is not included in the actual calculation of County Tax were included in the City's valuation in calculating the county tax, and (ii) the county tax payable by the City to the extent that the Captured Assessed Value is excluded from the City's valuation in calculating the county tax; plus (b) the difference between (i) the State aid to education that would be received by the City if the Captured Assessed Value that under the then existing Tax Shift Formulas is not included in the actual calculation of State aid to education were included in the City's valuation in calculating State aid to education, and (ii) the State aid to education that received by the City to the extent that the Captured Assessed Value is excluded from the City's valuation in calculating such amounts of State aid to education; plus (c) the difference between (i) the State revenue sharing that would be received by the City if the Captured Assessed Value that under the then existing Tax Shift Formulas is not included in the actual calculation of State revenue sharing were included in the City's valuation in calculating the amount of State revenue sharing, and (ii) the State revenue sharing received each year to the extent that the Captured Assessed Value is excluded in the City's valuation in calculating such amounts of revenue sharing. Examples of the calculation of the estimated Tax Shifts based on the current Tax Shift Formulas are attached as Exhibit F to the Development Program.

"Tax Shift Formulas" means the formulas utilized by the State of Maine in calculating (a) the county tax payable in accordance with 30-A M.R.S.A. § 706 and 36 M.R.S.A. §§ 305(1), 381, as amended, and any successor provisions; (b) the municipal revenue sharing distribution of the Local Government Fund in accordance with 30-A M.R.S.A. §5681, as amended, and any successor provision, provided, however, that distribution of the Disproportionate Tax Burden Fund (the Revenue II fund), if any, shall not be taken into consideration in such calculation since taxes assessed on captured value within a tax increment financing district are included in the amounts of the property assessed in determining allocations of such Disproportionate Tax Burden Fund; and (c) State aid to education, including aid for total operating costs, total program cost allocation (taking into account the maximum local share or circuit breaker) and total debt service cost allocation (taking into account the maximum local share or circuit breaker), but not taking into account any hold harmless or hardship cushion that results in additional State aid to education to the prior year's level even through the calculation would have resulted in a reduction, all as computed in accordance with Maine Department of Education Form ED 261 or any successor form.

"Tax Payment Date" means the date(s) on which Property Taxes levied by the City are due and payable from owners of property located within the City.

Section 1.2. <u>Interpretation and Construction</u>. 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), limited liability companies, 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 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. All approvals, consents and acceptances required to be given or made by any signatory hereto shall not be withheld unreasonably.

(f) If any clause, provision, Article or Section of this Agreement shall be ruled invalid by any court of competent jurisdiction, the invalidity of such clause, provision, Article or Section shall not affect any of the remaining provisions hereof.

ARTICLE II: DEVELOPER'S PROJECT COST ACCOUNT OF THE AFFORDABLE HOUSING DEVELOPMENT PROGRAM FUND AND FUNDING REQUIREMENTS

Section 2.1. Creation of Developer's Project Cost Account of the Affordable Housing Development Program Fund. The City hereby confirms the creation and establishment of (a) the 17 Carleton Street Affordable Housing Development District Affordable Housing Development Program Fund; and (b) a segregated fund in the name of the City designated as the "17 Carleton Street Affordable Housing Development District Developer's Project Cost Account of the Affordable Housing Development Program Fund" (the "Developer's Project Cost Account") pursuant to, and in accordance with the terms and conditions of the Development Program. The Affordable Housing Development Program Fund shall consist of the Developer's Project Cost Account as described in the Development Program.

Section 2.2. Deposits into Developer's' Project Cost Account of the Affordable Housing Development Program Fund. The City shall deposit into the Developer's Project Cost Account contemporaneously with each payment of Property Tax by owners of property in District during the term of the District an amount equal to that portion thereof constituting the Tax Increment Revenues (Developer's Share) for the period or year to which the payment relates and shall allocate the amount so deposited to fund fully and pay the payments due to Developer under Article III of this Agreement.

Section 2.3. Use of Monies in Developer's Project Cost Account of the Affordable Housing Development Program Fund. Monies deposited in the Developer's Project Cost 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 deposited with or paid into the Developer's Project Cost Account to fund payments of the Developer under the provisions hereof and the provisions of the Development Program, shall be held by the City in trust, for the benefit of the Developer.

Section 2.5. Investments. The monies in the Developer's Project Cost Account shall be invested and reinvested in Qualified Investments as determined by the City. The City shall have discretion regarding the investment of such monies, provided such monies are invested in Qualified Investments. As and when any amounts thus invested may be needed for disbursements, the City shall cause a sufficient amount of such investments to be sold or otherwise converted into cash to the credit of such account. The City shall have the sole and exclusive right to designate the investments to be sold and to otherwise direct the sale or conversion to cash of investments made with monies in the Developer's Project Cost Account.

Section 2.6. Liens. The City shall not hypothecate or grant or create any liens, security interests, encumbrances, or other interests of any nature whatsoever, with respect to the Developer's Project Cost Account or any funds therein, other than the interest granted to the Developer hereunder in and to the amounts on deposit therein.

ARTICLE III: PAYMENT OBLIGATIONS

Section 3.1. Credit Enhancement Payments. (a) The term of this Agreement shall be for twenty-two (22) years as described below. The City agrees to pay to the Developer within 30 days of the end of each fiscal year (ends June 30 each year) this Agreement is in effect payments equal to the Tax Increment Revenues (Developer's Share) beginning with the designation and approval of the District by the Director of the Maine State Housing Authority, that being the City Fiscal Year beginning July 1, 2015 and ending June 30, 2016 (FY16) and continuing with each Fiscal Year of the City thereafter through and including June 30, 2037 (FY37). The City shall make all such payments of the Tax Increment Revenues (Developer's Share) to the Developer, its successors and assigns according to Exhibit A of the Development Program, based upon the corresponding fiscal year's projected allocation percentage for each payment. The Developer's share will be 100% of the captured revenue (based on 65% of the value captured) as indicated on Exhibit A. The obligation of the City to make such payments shall be a limited obligation payable solely from that portion of the Tax Increment Revenues (Developer's Share) payable to the Developer hereunder, whether or not actually deposited into the Developer's Project Cost Account, and shall not constitute a general debt or obligation on the part of the City or a general obligation or charge against or pledge of the faith and credit or taxing power of the City, the State of Maine or any political subdivision thereof.

(b) If, with respect to any Tax Payment Date, the owner or owners of property in the District fail(s) to pay any portion of the Property Taxes assessed by the City, because of a valuation dispute or otherwise, the Property Taxes actually paid with respect to such Tax Payment Date shall first be applied to taxes due on account of the Original Assessed Value and second shall constitute Tax Increment Revenues.

(c) Annually, Developer will provide operating cash flow statements as back-up documentation of Projects Costs for its TIF payments, which documentation will be kept confidential by the City.

Section 3.2. Completion of Development Program. Prior to receiving the first payment under this Agreement, Developer shall provide evidence reasonably satisfactory to the City of the Company's ability to complete the Project in accordance with State law. Reasonably satisfactory evidence shall include the Company's having closed on the financing for the Project.

Section 3.3. Failure to Make Payment. In the event the City should fail to, or be unable to, make any of the payments required under Section 3.1 hereof, the item or installment so unpaid shall continue from year-to-year, as a limited obligation of the City, under the terms and conditions hereinafter set forth, until the amount unpaid shall have been fully paid and the City agrees to pay the same with interest thereon at the rate equal to the interest rate per annum payable by owners of property in the City on Property Taxes that are not paid when due, but only from Tax Increment Revenues (Developer's Share) paid to the City by the Developer from time to time, and any earnings thereon, whether or not deposited into the Developer's Project Cost Account of the Affordable Housing Development Program Fund. Payments shall be applied first against accrued interest and then against principal. The Developer shall have the right to initiate and maintain an action to specifically enforce the City's obligations hereunder, including without limitation, the City's obligation to deposit all Tax Increment Revenues (Developer's Share) to the Developer's Project Cost Account and its obligation to make payments to the Developer.

Section 3.4. Manner of Payments. The payments provided for in this Article III shall be paid in immediately available funds directly to the Developer in the manner provided hereinabove for its own use and benefit, for qualified Project Costs.

Section 3.5. Obligations Unconditional. 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. The City shall not suspend or discontinue any such payment or terminate this Agreement for any cause, including without limitation, any acts or circumstances that may constitute failure of consideration or frustration of purpose or any damage to or destruction of the Project or any change in the tax or other laws of the United States, the State of Maine or any political subdivision of either thereof.

Section 3.6. Limited Obligation. The City's obligations of payment hereunder shall be limited obligations of the City payable solely from monies on deposit in the Developer's Project Cost Account, and any earnings thereon, 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 the Tax Increment Revenues (Developer's Share) payable to the Developer hereunder, and any earnings thereon, whether or not actually deposited into the Developer's Project Cost Account. This Agreement shall not directly or indirectly or contingently obligate the City, the State of Maine, or any other municipality or political subdivision to levy or to pledge any form of taxation or to levy or to make any appropriation for their payment, excepting the City's obligation to levy Property Taxes upon the property in the District and the pledge of the Tax Increment Revenues (Developer's Share), and earnings thereon, established under this Agreement.

ARTICLE IV: PLEDGE AND SECURITY INTEREST

Section 4.1. Pledge of Developer's Project Cost Account. In consideration of this Agreement and other valuable consideration and for the purpose of securing payment of the amounts provided for hereunder to the 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 to the Developer the Developer's Project Cost Account to the extent of Developer's Rights under this Agreement to receive funds from the Developer's Project Cost Account and all sums of money and other securities and investments now or hereafter therein.

Section 4.2. Perfection of Interest. The City authorizes the Developer to file and, if necessary, shall cooperate with the Developer in causing appropriate financing statements and continuation statements naming the Developer as pledgee of all amounts from time to time on deposit in the Developer's Project Cost Account 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. To the extent deemed necessary by the Developer, the City will at such time and from time to time as requested by Developer establish the Developer's Project Cost Account as a segregated fund under the control of an escrow agent, trustee or other fiduciary so as to perfect Developer's interest therein.

Section 4.3. Further Instruments. The City shall, upon the reasonable request of the Developer, from time to time execute and deliver such further instruments and take such further action as may be reasonable and as may be required to carry out the provisions of this Agreement; provided, however, that no such instruments or actions shall pledge the credit of the City.

Section 4.4. No Disposition of Developer's Project Cost Account. Except as permitted hereunder, the City shall not sell, lease, pledge, grant a security interest in, assign or otherwise dispose, encumber or hypothecate any interest in the Developer's Project Cost Account and will promptly pay or cause to be discharged or make adequate provision to discharge any lien, charge or encumbrance on any part hereof not permitted hereby.

Section 4.5. Access to Books and Records. All books, records and documents in the possession of the City relating to the District, the Development Program, this Agreement and the monies, revenues and receipts on deposit or required to be deposited into the Developer's Project Cost Account shall at all reasonable times be open to inspection by the Developer, its agents, lenders, designees and employees.

ARTICLE V: DEFAULTS AND REMEDIES

Section 5.1. Events of Default. Each of the following events shall constitute and be referred to in this Agreement as an "Event of Default:"

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

(b) any failure by the City to make deposits into the Affordable Housing Development Program Fund or the Developer's Project Cost Account as and when due;

(c) any failure by the City or the Developer to observe and perform in all material respects any covenant, condition, agreement or provision contained herein on the part of the City or the Developer to be observed or performed, provided, however, that failure of Developer or any other owner of property in the District to pay Property Taxes when due shall not constitute an event of default hereunder; or

(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, marshalling of assets and liabilities or similar proceedings, or for the winding up or liquidation of the City's affairs shall have been entered against the City or the City shall have consented to the appointment of a conservator or receiver or liquidator in any such proceedings of or relating to the City or of or relating to all or substantially all of its property, including without limitation, the filing of a voluntary petition in bankruptcy by the City or the failure by the City to have a petition in bankruptcy dismissed within a period of ninety (90) consecutive days following its filing or in the event an order for release has been entered under the Bankruptcy Code with respect to the City.

Section 5.2. Remedies on Default. Whenever any Event of Default referred to in Section 6.1 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.

Section 5.3. Remedies Cumulative. 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 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 relinquishment for the future of the rights to insist upon and to enforce, from time to time and as often as may be deemed expedient, by injunction or other appropriate legal or equitable remedy, strict compliance by the City with all of the covenants and conditions hereof, or of the rights to exercise any such rights or remedies, if such Event of Default be continued or repeated.

Section 5.4. Agreement to Pay Attorneys' Fees and Expenses. Notwithstanding the application of any other provision hereof, in the event any party should default under any of the provisions of this Agreement and the non-defaulting party shall require and employ attorneys or incur other expenses or costs for the collection of payments due or to become due or for the enforcement of performance or observance of any obligation or agreement on the part of the City or the Developer herein contained, the defaulting party shall, on demand thereof pay to the non-defaulting party the reasonable attorneys fees, costs and expenses so incurred by the non-defaulting party.

Section 5.5. Disputes. The parties agree that in the event of any dispute or disagreement hereunder 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. The City hereby waives any right to withhold, suspend or setoff payments during the pendency of any such dispute, this waiver being limited and expressly intended to affect only those rights necessarily related to or arising directly under the terms of this Agreement.

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 for the entire term of this Agreement and shall expire upon the payment of all amounts due to the Developer hereunder and the performance of all obligations on the part of the City and the Developer hereunder.

Section 6.2. Cancellation and Expiration of Term. At the termination or other expiration of this Agreement and following full payment of all amounts due and owing to the Developer hereunder or provision for payment thereof and of all other fees and charges having been made in accordance with the provisions to 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 AND PLEDGE OF DEVELOPER'S INTEREST

Section 7.1. Consent to Pledge and/or Assignment. The City hereby acknowledges that it is the intent of the Developer to pledge and assign and to grant security interests in and to this Agreement and the amounts payable to Developer hereunder and Developer's right, title and interest in, to and under this Agreement as collateral for financing for the Project, although no obligation is hereby imposed on the Developer to make such assignment or pledge or to grant such security interests. Recognizing this intention, the City does hereby consent and agree to the grant of such security interests and to the pledge and assignment of all the Developer's right, title and interest in, to and under this Agreement and in and to the payments to be made to Developer hereunder, to third parties as collateral or security for indebtedness and other obligations or otherwise, on one or more occasions during the term hereof.

Section 7.2. Pledge, Assignment or Security Interest. The City hereby consents to the pledge, assignment or granting of a security interest by the Developer (or the pledge and assignment by any one Developer) of its right, title and interest in, to and under this Agreement. The City agrees to execute and deliver any assignments, pledge agreements, consents or other confirmations required by the prospective secured party, pledgee or assignee, including without limitation, recognition of the secured party, pledgee or assignee as the holder of all right, title and interest herein and as the payee of amounts due and payable hereunder and any and all such other documentation as shall confirm to such secured party, pledgee or assignee the position of such secured party, assignee or pledgee and the irrevocable and binding nature of this Agreement and provide to the secured party, pledgee or assignee such rights and/or remedies as it may deem necessary for the establishing, perfection and protection of its interest herein.

Section 7.3. Assignment. Except as provided in this Article VII, the Developer shall not have the right to transfer and assign to any person or entity all or any portion of its rights in, to and under this Agreement; provided however, that any transfer of the real property within the District shall carry with it the benefit of this Agreement so long as (i) the rental units within the District remain affordable after such transfer; (ii) the prospective owner establishes to the reasonable satisfaction of the City that the financial benefits provided by this Agreement are still necessary to maintain the viability of the Project and (iii) the City Council approves the transfer.

ARTICLE VIII: MISCELLANEOUS

Section 8.1. Successors. The covenants, stipulations, promises and agreements set forth herein shall bind and inure to the benefit of the respective successors and assigns of the parties hereto.

Section 8.2. 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 8.3. No Personal Liability of Officials of the City. No covenant, stipulation, obligation or agreement of the City contained herein shall be deemed to be a covenant, stipulation or obligation of any present or future elected or appointed official, officer, agent, servant or employee of the City in his individual capacity and neither the members of the City Council of the City nor any official, officer, employee or agent of the City shall be liable personally with respect to this Agreement or be subject to any personal liability or accountability by reason hereof.

Section 8.4. 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 8.5. Governing Law. The laws of the State of Maine shall govern the construction and enforcement of this Agreement.

Section 8.6. 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 hand delivered or mailed by first class mail, postage prepaid, addressed as follows:

If to the City: City Manager
City Portland
389 Congress Street
Portland, Maine 04101

If to the Developer: Avesta Carleton LP

c/o Avesta Housing Development Corporation
307 Cumberland Avenue
Portland, ME 04101

Any 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 8.7. Amendments. This Agreement may be amended only with the concurring written consent of the parties hereto.

Section 8.8. 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 any abatement, deductions or setoffs.

Section 8.9. Benefit of Assignees or Pledgees. The City agrees that this Agreement is executed in part to induce secured parties, assignees or pledgees to provide financing for the Project and accordingly all covenants and agreements on the part of the City as to the amounts payable hereunder are hereby declared to be for the benefit of any such secured parties, assignee or pledgee from time to time of the Developer's right, title and interest herein.

Section 8.10. MaineHousing Rules and Requirements. The Developer and the City shall comply with any rules adopted by the Maine State Housing Authority and with any conditions of approval imposed by the Maine State Housing Authority following designation of the District. The City shall report annually to the Director of the Maine State Housing Authority regarding the status of the District, including the following matters as required by law: (a) certify that the public purpose of the District is being met; (b) account for any sales of property within the District; and (c) certify that rental units within the District remain affordable. The parties shall comply with the rule provisions for recovery of public revenue if conditions for approval of the District are not maintained for the duration of the District, as provided by rules adopted by the Maine State Housing Authority in accordance with applicable law. The Developer agrees to provide all information as required by the City to satisfy its reporting obligations.

Section 8.11. Affordability Covenants. The Developer and the City shall, in order to assure the continued affordability of the rental units as required by the Development Program, Maine State Housing Authority and applicable laws, regulations and ordinances, execute a 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.

Section 8.12 Valuation Agreement. The Development Program makes certain assumptions and estimates regarding valuation, depreciation of assets, tax rates, estimated amounts of the Increased Assessed Value and the Tax Increment, estimated amounts of the Tax Increment Revenues (Developer's Share), estimated development costs and other estimates. The City and the 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 to be used, in any way, by any party in either presenting evidence or making argument in any dispute which may arise with respect to Developer's property for purposes of ad valorem property taxation or any tax abatement proceeding or (b) modify or change in any way the terms of this Agreement even if the actual results differ substantially from the estimates, assumptions or analysis.

Section 8.13. 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.

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

WITNESS | CITY OF PORTLAND

_______________________ By:_______________________
Jon P. Jennings, Its City Manager

AVESTA CARLETON LP
BY: Pinetree Housing Development I LLC, its General Partner

_______________________ By:_______________________
Dana Totman, Its President

DRAFT

O:\HCD\HCD Staff\Mary\AHTIF\Carleton Street\Council Packet\Revised Packet\Draft CEA Revised 7-15-15.docx

Declaration of Covenants, Conditions and Restrictions

This Declaration of Covenants, Conditions and Restrictions (the "Declaration") is entered into by and between the City of Portland, a public body corporate and politic with its principal place of business at 389 Congress Street, Portland, Maine, 04101 ("City") and Avesta Carleton LP ("Developer") with a mailing address of 307 Cumberland Avenue, Portland, Maine 04101.

WITNESSETH

WHEREAS, the Developer acknowledges that City is providing Affordable Housing Tax Increment Financing to the Developer (the "AHTIF") for project operating costs associated with the development of a total of thirty-seven (37) units of affordable rental housing located at 17 Carleton Street (the "Development"); and

WHEREAS the Developer acknowledges City's resulting beneficial interest in the Development, and Developer acknowledges that its ownership and operation of the Development are in furtherance of discharge of the public trust; and

WHEREAS, City has provided the AHTIF to Developer in consideration of the Developer's agreement to abide by the provisions of this Declaration.

NOW THEREFORE, City and the Developer agree as follows:

1. The covenants and restrictions of the Developer set forth herein are intended to be and shall be considered covenants which run with the real estate described in Exhibit A attached hereto and shall bind all subsequent owners of the real estate described in Exhibit A attached hereto, except to the extent provided herein.

2. The covenants of the Developer set forth herein are enforceable by City as a contract beneficiary whether or not the Developer is or remains indebted to City under the AHTIF, except to the extent provided herein.

3. The covenants of the Developer set forth herein shall survive a sale, transfer, or other disposition of the Development by the Developer, foreclosure or transfer of title in lieu of foreclosure, , except to the extent provided herein, but shall cease to apply to the Development in

the event of involuntary noncompliance caused by fire or other substantial destruction, seizure, requisition or other event that prevents City from enforcing the Developer's covenants contained herein.

4. The term "Qualified Project Period" as used herein shall mean the period beginning on the date of completion of the construction of the Development, as determined by City, and terminating on a date twenty-two (22) calendar years thereafter, except for the shorter period provided in subsection (f) below, for a portion of the Development.

5. The Developer agrees to comply with this Declaration throughout the Qualified Project Period.

6. The Developer hereby covenants and represents to City as follows:

a. The Development shall be located on the real estate described in Exhibit A attached hereto and shall consist of the facilities described in Developer's application to City.

b. The Development shall consist of the land described in Exhibit A together with a building or a portion of a building or structure or several proximate and interrelated buildings or structures and facilities functionally related and subordinated thereto:

i. each containing one or more similarly constructed units and facilities which are functionally related and subordinate to such units; and

ii. all of the thirty-seven residential units of which will, on a continuous basis, be rented or available on a non-transient basis for rental to members of the general public.

c. The total housing costs including rent and utilities of tenants occupying the rent restricted units in Development as of the date of this Declaration may not increase for twelve months beginning on the date of this Declaration.

d. The Developer shall maintain all of the units included in the Development rented or available for rental on a continuous basis to members of the general public throughout the Qualified Project Period.

e. The Developer acknowledges and represents to City that the Development consists of thirty-seven (37) residential rental units. Throughout the Qualified Project Period, the thirty-seven (37) residential units in the Development must be occupied by individuals or families with the following income requirements:

5 units occupied by households at or below 40% of area median income
18 units occupied by households at or below 50% of area median income
14 units occupied by households at or below 60% of area median income

In its operation of the Project, Grantor agrees to comply with all applicable federal, state and local laws and regulations.

i. Income and area median income shall be as determined by the United States Department of Housing and Urban Development and income limits shall be adjusted for family size.

ii. At least annually, City shall determine whether the income, based on the current income, of the tenants residing in the Development exceeds the applicable income limits as described in this Section 6 (the "Determination"). The Developer shall furnish to City such information as City shall require, including certification of occupancy and tenant income, in order to assure that the covenants set forth herein are being fully satisfied. Income certifications and related information submitted to and accepted by Maine State Housing Authority shall be acceptable to the City for purposes of this subsection.

iii. A unit occupied by a tenant who, at the commencement of occupancy, met the applicable income limitations shall continue to be treated as occupied by a qualified tenant even though the tenant's income may exceed the applicable income limitations at the time of the most recent Determination.

iv. After initial occupancy but upon again becoming vacant, a unit shall be treated as occupied by an individual or family meeting the applicable income limitations until occupied, at which time the character of the unit shall be redetermined in light of the new occupants income, other than occupancy by another tenant for a temporary period not to exceed thirty-one (31) days.

f. Developer shall not make any change in the nature, size, number or location of the units in the Development or the amount of commercial or non-residential space.

7. Developer agrees to furnish to City such information as City may require in form acceptable to City, including without limitation certifications and/or verification of occupancy and tenant income certifications (subject to Section 6(e)(ii) above), to determine Developer's compliance with the covenants set forth herein.

8. Developer shall maintain and keep current all books, documents, plans and records concerning the Development, including, but not limited to, books and records related to compliance with the covenants contained in this Declaration. Such books, records, documents and plans shall be kept for: (a) a minimum of six (6) years after the expiration of the Qualified Project Period for those books, records, documents and plans pertaining to the rent and occupancy requirements described in Section 6 of this Declaration and the rent roll for all units in the Development; and (b) for a minimum of six (6) years after the end of the fiscal year or calendar year, as applicable, for all other books, records, documents and plans pertaining to the Development. Upon reasonable notice, City may audit and examine these books, records, documents and plans, and may inspect the buildings, grounds, equipment offices of the Development.

9. Developer shall use tenant lease forms acceptable to City, or, if there are no written leases, written and signed certifications by tenants to determine whether tenants meet the applicable income limits. Such leases or certifications shall contain clauses wherein each tenant certifies as to the accuracy of statements made relating to income and agrees that family income and other eligibility requirements shall be deemed substantial and material obligations of the tenancy, that the tenant will comply with all requests for information with respect thereto from the Developer or City, and that failure to provide accurate information or refusal to comply with a request for information shall be deemed a violation of the tenancy. Lease forms which have been approved by Maine State Housing Authority shall be deemed approved by City.

10. Developer agrees that it shall pay real estate taxes, as assessed by City, on Development. In the event that ownership of the Development or a portion thereof becomes tax exempt, either by transfer, conversion or otherwise, an amount shall be paid annually to City, equal to the amount that would have been assessed as real estate taxes had the Development or a portion thereof remained taxable. Developer shall notify any party to whom it transfers any of its interest in the Development of this requirement.

11. Developer covenants and agrees to take such action as City deems necessary to comply with the covenants herein or to correct or cure any failure of the Developer to comply with the covenants herein, including, without limitation, the eviction of any tenant in accordance with applicable law. The Developer shall immediately notify City if the Developer anticipates that occupancy may fall below the limits set forth in Section 6(e) of this Declaration and agrees to take such action as City deems necessary to prevent non-compliance with such paragraph.

12. In the event the Developer fails to comply with the covenants set forth herein, and fails to cure such non-compliance within any applicable cure period, City shall be able to exercise any of its rights under the documents executed in connection with the AHTIF, maintain an action in law or in equity against the Developer to recover damages incurred by City from such failure, and to require the Developer (through injunctive relief or specific performance) to comply with the provisions and covenants set forth herein and to immediately cure any failure to comply with the covenants set forth herein by the Developer.

13. Developer shall indemnify and hold City and its agents harmless from and against any and all claims, demands, liability, loss, cost or expense (including, but not limited to

attorney's fees and other costs of litigation) which may be incurred by City arising out of or in any way related to the Developer's breach of any of its obligations under this Declaration as a result of such breach. The obligations survive the termination or expiration of this Declaration as necessary to effect its provisions.

14. This Declaration may be amended or modified in whole or in part only by written agreement of Developer and City clearly expressing the intent to modify this Declaration.

15. The validity of any clause, part or provision of this Declaration shall not effect the validity of the remaining portions of thereof.

16. This Declaration shall be binding upon Developer's respective heirs, personal representatives, executors, administrators, successors and assigns and shall inure to the benefit of and be enforceable by City, its successors, transferees and assigns.

17. This Declaration is created pursuant to, and shall be construed in accordance with and governed by the laws of the State of Maine, including but not limited to 33 M.R.S.A. § 121 et. seq.

IN WITNESS WHEREOF, this Declaration has been duly executed by the Developer and City effective ____________________, 2015.

CITY OF PORTLAND

Witness ______________________________

____
Jon P. Jennings
Its City Manager

AVESTA CARLETON LP

BY: Pinetree Housing Development I LLC
Its General Partner

By: Dana Totman
Its: President

[This Space Intentionally Left Blank]

STATE OF MAINE
COUNTY OF CUMBERLAND, ss. ___________, 2015

Personally appeared the above named Jon P. Jennings, City Manager to the City of Portland, and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said City of Portland.

Before me,

____
Notary Public/Attorney-at-Law

____
(Print or type name)

STATE OF MAINE
COUNTY OF CUMBERLAND, ss. ___________, 2015

Personally appeared the above named Dana Totman, President of Pinetree Housing Development I LLC, General Partner of Avesta Carleton L.P., a Maine limited partnership, and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said limited partnership and corporation.

Before me,

____
Notary Public/Attorney-at-Law

____
(Print or type name)

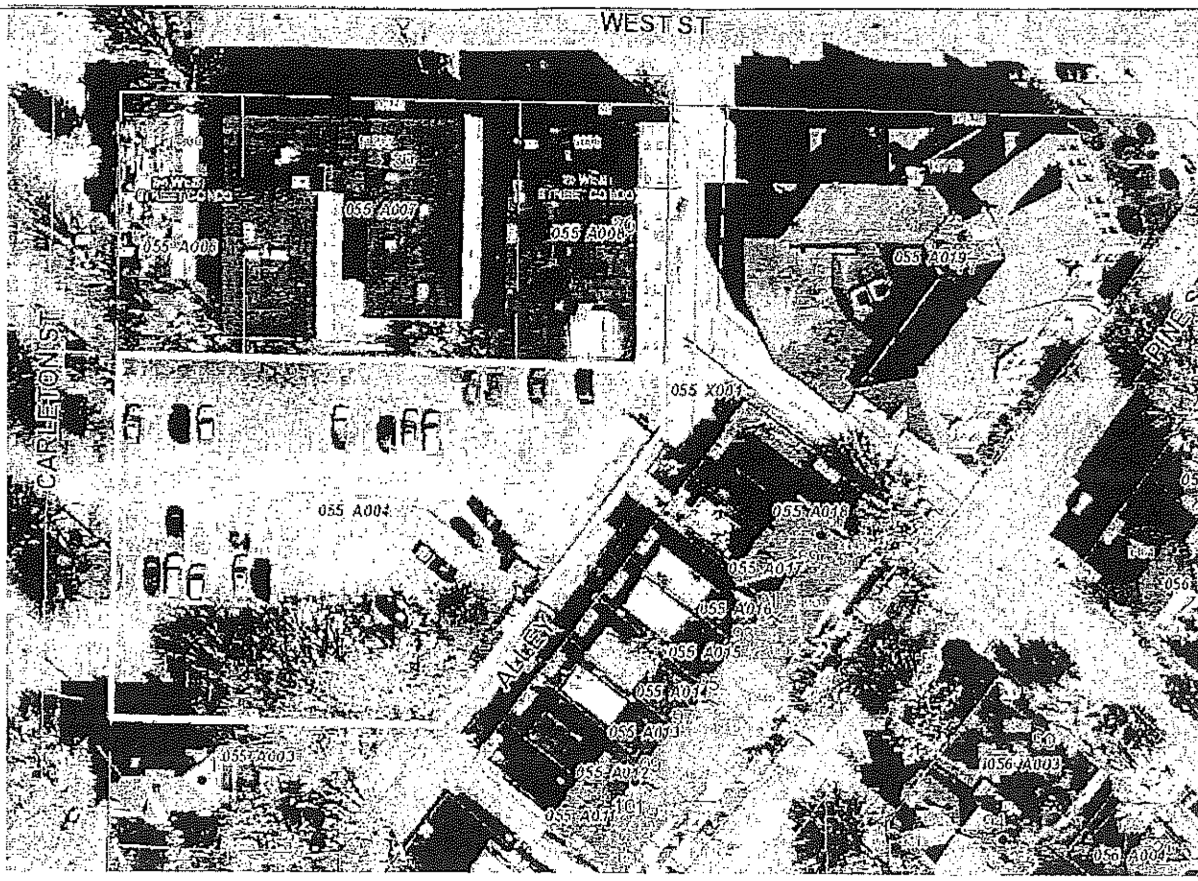
Exhibit A

Property Description
17 Carleton Street, Portland, Maine

Tax Shifts-Avoided Formula Impacts from Sheltering of Valuation: City of Portland- TIF Model for 17 Carleton Street AH TIF							
0% Sheltered - Years 1 and 2 with 100% to City General Fund; 65% to Developer Project Account Years 3 to 22, and 35% to City General Fund Years 3 to 22							
				Avoided Formula Impacts from Sheltering of Valuation			
TIF Year	Tax Year-April 1	Total Added Valuation	Sheltered 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	2015	$138,340	$0	$0	$0	$0	$0
2	2016	$538,340	$0	$0	$0	$0	$0
3	2017	$2,238,340	$1,454,921	$0	$948	$770	$1,718
4	2018	$2,238,340	$1,454,921	$3,928	$948	$770	$5,646
5	2019	$2,238,340	$1,454,921	$7,857	$948	$770	$9,574
6	2020	$2,238,340	$1,454,921	$11,785	$948	$770	$13,503
7	2021	$2,238,340	$1,454,921	$11,785	$948	$770	$13,503
8	2022	$2,238,340	$1,454,921	$11,785	$948	$770	$13,503
9	2023	$2,238,340	$1,454,921	$11,785	$948	$770	$13,503
10	2024	$2,238,340	$1,454,921	$11,785	$948	$770	$13,503
11	2025	$2,238,340	$1,454,921	$11,785	$948	$770	$13,503
12	2026	$2,238,340	$1,454,921	$11,785	$948	$770	$13,503
13	2027	$2,238,340	$1,454,921	$11,785	$948	$770	$13,503
14	2028	$2,238,340	$1,454,921	$11,785	$948	$770	$13,503
15	2029	$2,238,340	$1,454,921	$11,785	$948	$770	$13,503
16	2030	$2,238,340	$1,454,921	$11,785	$948	$770	$13,503
17	2031	$2,238,340	$1,454,921	$11,785	$948	$770	$13,503
18	2032	$2,238,340	$1,454,921	$11,785	$948	$770	$13,503
19	2033	$2,238,340	$1,454,921	$11,785	$948	$770	$13,503
20	2034	$2,238,340	$1,454,921	$11,785	$948	$770	$13,503
21	2035	$2,238,340	$1,454,921	$11,785	$948	$770	$13,503
22	2036	$2,238,340	$1,454,921	$11,785	$948	$770	$13,503
22 Year TIF Total		$45,443,480	$29,098,420	$212,127	$18,953	$15,403	$246,484
Annual Average:				$9,642	$862	$700	$11,204

AH TIF for 17 Carleton Street
OAV a/o 3/31/2015: $261,600

City of Portland- TIF Projection Table for 17 Carleton St AHTIF									
0% Sheltered - Years 1 and 2 with 100% to City General Fund; 65% to Developer Project Account Years 3 to 22, and 35% to City General Fund Years 3 to 22									
TIF Year	Tax Year-April 1	Increased Assessed Value Real Prop.	% of Value Captured	Captured Valuation	Projected Mill Rate	Total Projected New Taxes Captured	Captured Revenue to Business Project Account	Captured Revenue to Municipal Project Account	City Non-Captured General Fund Revenues
1	2015	$138,340	0.00%	$0	19.80	$0	$0	$0	$2,739
2	2016	$538,340	0.00%	$0	20.19	$0	$0	$0	$10,871
3	2017	$2,238,340	65.00%	$1,454,921	20.60	$29,969	$29,969	$0	$16,137
4	2018	$2,238,340	65.00%	$1,454,921	21.01	$30,568	$30,568	$0	$16,460
5	2019	$2,238,340	65.00%	$1,454,921	21.43	$31,179	$31,179	$0	$16,789
6	2020	$2,238,340	65.00%	$1,454,921	21.86	$31,803	$31,803	$0	$17,125
7	2021	$2,238,340	65.00%	$1,454,921	22.30	$32,439	$32,439	$0	$17,467
8	2022	$2,238,340	65.00%	$1,454,921	22.74	$33,088	$33,088	$0	$17,816
9	2023	$2,238,340	65.00%	$1,454,921	23.20	$33,749	$33,749	$0	$18,173
10	2024	$2,238,340	65.00%	$1,454,921	23.66	$34,424	$34,424	$0	$18,536
11	2025	$2,238,340	65.00%	$1,454,921	24.13	$35,113	$35,113	$0	$18,907
12	2026	$2,238,340	65.00%	$1,454,921	24.62	$35,815	$35,815	$0	$19,285
13	2027	$2,238,340	65.00%	$1,454,921	25.11	$36,531	$36,531	$0	$19,671
14	2028	$2,238,340	65.00%	$1,454,921	25.61	$37,262	$37,262	$0	$20,064
15	2029	$2,238,340	65.00%	$1,454,921	26.12	$38,007	$38,007	$0	$20,465
16	2030	$2,238,340	65.00%	$1,454,921	26.65	$38,767	$38,767	$0	$20,875
17	2031	$2,238,340	65.00%	$1,454,921	27.18	$39,543	$39,543	$0	$21,292
18	2032	$2,238,340	65.00%	$1,454,921	27.72	$40,334	$40,334	$0	$21,718
19	2033	$2,238,340	65.00%	$1,454,921	28.28	$41,140	$41,140	$0	$22,153
20	2034	$2,238,340	65.00%	$1,454,921	28.84	$41,963	$41,963	$0	$22,596
21	2035	$2,238,340	65.00%	$1,454,921	29.42	$42,802	$42,802	$0	$23,047
22	2036	$2,238,340	65.00%	$1,454,921	30.01	$43,658	$43,658	$0	$23,508
22 Year TIF Total		$45,443,480		$29,098,420		$728,156	$728,156	$0	$405,694
Annual Average							$33,098		$18,441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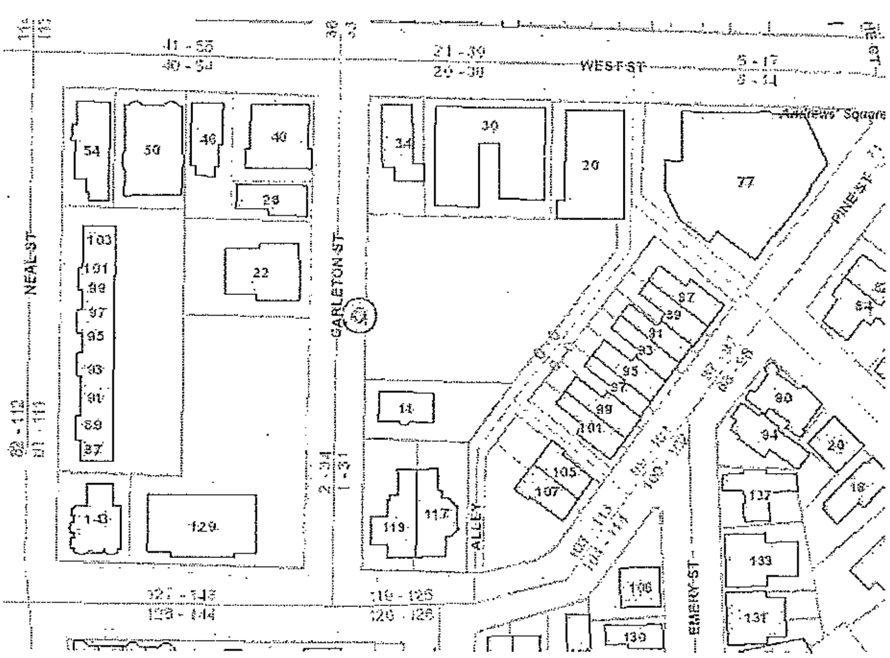
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Order 38-15/16
~~Tab 35 7-20-15~~
Tab 18 8-3-15

CITY OF PORTLAND
IN THE CITY COUNCIL

ORDER APPROVING AND AUTHORIZING THE CITY MANAGER TO ENTER INTO THE 17 CARLETON STREET CREDIT ENHANCEMENT AGREEMENT WITH AVESTA CARLETON LP

ORDERED, that the credit enhancement agreement between the City of Portland and Avesta Carleton LP related to the 17 Carleton 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.

Order 48-15/16 Tab 19 8-3-15

CITY OF PORTLAND
IN THE CITY COUNCIL

**ORDER SETTING ELECTION DATE ON
CITIZEN INITIATIVE AMENDMENT
TO CHAPTER 14 OF THE PORTLANT CITY CODE
RE: SCENIC VIEWPOINT PROTECTION**

ORDERED, that pursuant to Section 9-39 of the Portland City Code, the citizen initiative amendment to Chapter 14 of the Portland City Code Re: Scenic Viewpoint Protection, shall be submitted to the voters of the City on November 3, 2015 at the regularly scheduled election; and

BE IT FURTHER ORDERED, that the Portland City Clerk shall be authorized to provide a summary in substantially the form attached hereto of the proposed ordinance on the ballot.

SUMMARY

This proposed ordinance amends the current Land Use Ordinance to address views in three different ways.

NEW SCENIC VIEWPOINT PROTECTION ZONE: **First**, this ordinance creates a new zoning tool, called a "Scenic Viewpoint Protection Overlay Zone." This zone can be applied to multiple small areas throughout the City where the existing zoning is not adequate to protect distinctive or highly distinctive views. It is to be applied on top of an already existing use zone to provide an additional layer of protection. **Second**, this ordinance uses this tool to create the "Fore Street/Working Waterfront Overlay" to protect waterfront views from the public sidewalk on Fore Street between Waterville and Atlantic Streets, overlooking Portland Harbor. It regulates heights and massing, and sets other standards to protect the treasured public view. **Third**, this ordinance establishes a Scenic Viewpoint Task Force to identify Portland's remaining distinctive and highly distinctive views, to analyze them, and to make recommendations to the Planning Board, and ultimately to the City Council, as to whether additional areas should be designated as Scenic Viewpoint Protection Zones.

The proposed ordinance also strengthens the zone change submission requirements.

NEW ZONE CHANGE REQUEST SUBMISSION REQUIREMENTS: This proposed ordinance repeats the application form submission requirements in the ordinance, clarifies the level of detail required in the site plan (including that it be sufficiently detailed to allow assessment of the impact on a variety of elements including scenic or natural beauty and neighborhoods), and adds a provision allowing the City to require more detail from the applicant to ensure that the rezoning and subsequent development are consistent with the comprehensive plan, meet applicable land use regulations, and are compatible with the surrounding neighborhood.

Portland, Maine | Yes. Life's good here.

Office of the City Clerk
Katherine L. Jones, CCM

MEMORANDUM

TO:	Mayor Michael Brennan and the Portland City Council
DATE:	July 21, 2015
FROM:	Katherine L. Jones, City Clerk
RE:	Save the Soul of Portland

Mayor Brennan and Members of the Portland City Council, Save the Soul of Portland turned in their petition pages on July 6, 2015. The City Clerk's office deemed them sufficient.

The City Code, Chapter 9, section 9-39. Time of Election.

At the first regular council meeting held after the public hearing, the city council shall submit the question to the voters of the city at the next regular federal, state or municipal election which is not less than ninety (90) calendar days after such council meeting: provided however that such election shall not include a special municipal election on whether to adopt the municipal school budget. Notwithstanding the foregoing, if the time period before the next election would exceed ninety (90) calendar days in the case of an initiative or people's veto petition, the council may, in its discretion, schedule a special election on the issue.
In order for this item to appear on November ballot, the public hearing needs to be on August 3, 2015.

The City Code, Chapter 9, section 9-36 section (f) also states that a Notice of the hearing shall be published in a newspaper 10 calendar days prior to the hearing and shall contain the text of the petition. This will be posted in the Portland Press Herald on July 24, 2015.

The City Code, Chapter 9 section 9-41 Form of Ballot (b) Title and Summary only. At any point in the process after a petition has been certified as sufficient but no less than sixty (60) calendar days prior to the election, the City Clerk shall report to the City Council if he or she determines that it is not reasonably possible to reproduce the full text and summary of the proposed ordinance on the ballot. In such case, the summary provided with the petition shall accompany the title on the ballot in place of the full text.

389 Congress Street / www.portlandmaine.gov / tel. 207·874·8720 / tty. 207·874·8936 / fax. 207·756·8258

I am asking the City Council vote to allow me to print the summary only. With Ranked Choice Voting, City Council Candidates, School Board Candidates, Peaks Island Council, Casco Bay Line Directors we already have to have two ballots.

The Portland City Code Chapter 9 section 9-41 (3) In the event that the City Council adopts a competing measure to an initiated ordinance, the questions shall be presented to the voters substantially as follows: "Do you favor one (1) of the two (2) city ordinances set forth below: A: as proposed by citizen petitions; B: as enacted by the city council; or should both be rejected as provided in C". If the City Council is considering a competing measure the language will be provided by Corporation Counsel.

Order 59-15/16
Tab 20 8-3-15

MICHAEL F. BRENNAN (MAYOR)
KEVIN J. DONOGHUE (1)
DAVID A. MARSHALL (2)
EDWARD J. SUSLOVIC (3)
JUSTIN COSTA (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

DAVID H. BRENERMAN (5)
JILL C. DUSON (A/L)
JON HINCK (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER ENACTING CITIZEN INITIATIVE
AMENDMENT TO CHAPTER 14 PORTLAND CITY CODE
RE: SCENIC VIEWPOINT PROTECTION**

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

A. That Chapter 14 of the Portland City Code is hereby amended as follows:

DIVISION 19.9. SCENIC VIEWPOINT PROTECTION OVERLAY ZONE

14-330.18 Purpose

There are many treasured vistas of scenic beauty from public places which are assets of great value to the City, its people and its economy. This Division establishes the Scenic Viewpoint Protection Zone, an overlay zone, which is to be used for specific situations in which the underlying zoning is not adequate to protect the value and integrity of one or more mapped distinctive or highly distinctive scenic viewpoints within the City of Portland. The boundaries of the initial Scenic Viewpoint Protection Zone are defined in 14-330.19, below.

The Scenic Viewpoint Task Force shall analyze, inventory and make recommendations for City-wide implementation as specified in Chapter 2, Article III-B.

14-330.19 Location, Boundaries

The boundaries of the initial Scenic Viewpoint Protection Zone, called the Fore Street/Working Waterfront Overlay, are generally between Fore Street and Casco Bay, between the extensions of Waterville Street and Atlantic Street, more particularly described as follows: Commencing at the point on the southerly sideline of Fore Street where it intersects the line formed by an extension of the westerly sideline of Waterville Street, thence southerly perpendicular with Fore

Street to the seawall along Casco Bay as shown on the Land Title Survey & Subdivision Plan in Portland Maine recorded in the Cumberland County Registry of Deeds in Plan Book 193, Page 188; thence easterly by said seawall along Casco Bay to a point on said seawall which intersects with a line which is S 31° 18′ 30″ E of the southwesterly corner of land now or formerly of Timothy Haley, Trustee, as described in the Deed recorded in said Registry of Deeds in Book 24759, Pages 67 and 69; thence N 31° 18′ 30″ W to the southwesterly corner of land now or formerly of Haley; thence N 31° 18′ 30″ W along land of said Haley 110.28 feet to land now or formerly of Macgowan as described in the Deed recorded in Cumberland County Registry of Deeds in Book 15773, Page 153; thence S 61° 01′ 30″ W along land of said Macgowan 112.00 feet; thence N 31° 18′ 30″ W along land of said Macgowan 150.00 feet to the southerly sideline of said Fore Street; thence southwesterly along the southerly sideline of Fore Street to the point of beginning. The "designated scenic viewpoint" from which views are to be assessed and protected is the public sidewalk on the southerly side of Fore Street between Waterville and Atlantic Streets, at pedestrian heights, when viewed at any height between four (4) and six (6) feet above said sidewalk. The views of scenic resources to be protected by this overlay zone are: the views of the working waterfront, Portland Harbor (including its northern shoreline), historic maritime structures (including forts and aids to navigation), Casco Bay, the Casco Bay Islands, and the Atlantic Ocean.

Additional Scenic Viewpoints may receive protection by application of an overlay zone as set forth herein to additional sites through a rezoning process. Such rezoning requests may be initiated by the Scenic Viewpoint Task Force, by request of twenty members of the general public, or by the owner of an affected property.

14-330.19 Definitions

(a) **Scenic areas:** Scenic areas are natural landscapes with visual qualities that are significant to the residents of a community by setting it apart from other places, enhancing recreation and relaxation, contributing significantly to the quality of life, adding to the value of property, and enhancing the desirability and livability of the community. The City is required to maintain an inventory and analyze significant or critical natural resources, including but not limited to scenic areas, as part of its Comprehensive Plan.

(b) **Scenic resources:** Scenic resources include, but are not limited to, (1) property on or eligible for inclusion in the National Register of Historic Places pursuant to the National Historic Preservation Act of 1996, as amended; (2) national, state or local parks; and (3) public natural resources or public lands visited by the general public or viewed by the general public from a public place, in part for the use, observation, enjoyment and appreciation of natural or cultural visual qualities, including but not limited to the Fore River, Casco Bay, the Atlantic Ocean, mountains, and great ponds.

(c) **Scenic viewpoint:** A scenic viewpoint is discrete place or area from which the public may see a significant number of the scenic resources within a scenic area of regional, state or national significance. For purposes of this Division, the City shall identify "distinctive" and "highly distinctive" scenic viewpoints for evaluation for additional protection to mitigate impacts to existing scenic areas of regional, state or national significance from activities on, over or adjacent to a designated scenic resource. Viewpoints shall be identified and ranked using the general methodology outlined in Terry DeWan, Scenic Assessment Handbook, prepared for State Planning Office, Maine Coastal Program, October, 2008, specifically incorporating the Viewpoint Scoring Chart on page 49 thereof by reference. A viewpoint in Portland that is located within a scenic area of regional, statewide or national significance (score of 50 or more) and is deemed "distinctive" or "highly distinctive" shall be considered a scenic viewpoint which qualifies for the protections of this Division.

14-330.20 Dimensional and Performance Standards

(a) Notwithstanding any less restrictive requirements or provisions in any underlying zone to the contrary, to the extent they are more restrictive, the dimensional and performance standards of this overlay zone shall be controlling.

(b) For the Fore Street/Working Waterfront Overlay, as defined above, notwithstanding anything in the B-6 zone or any other underlying zone to the contrary:

(1) The maximum building heights and the limits on extension/tower heights and configurations within the overlay shall be as depicted on the 1 November 2004 Illustration 33 of the Eastern Waterfront Building Height Study, including the notes thereon except that the words "above the average grade" shall be omitted from Note 1, and

all building heights shall be measured from 2 feet above flood plain, not from average grade, as is further detailed in Note 2 of said 1 November 2004 Illustration 33, and with 3 stories equal to 35', 4 equal to 45', 5 equal to 55', 6 equal to 65' of height.

(2) Any portion of any building not in existence as of the date of enactment shall be sited and massed so as to avoid intrusion into the 50 foot "view corridors" at the ends of Atlantic, St. Lawrence and Waterville Streets, as said "view corridors" are depicted on the "B6 Building Height Overlay & Building Envelope" document dated Feb 20, 2015, and so as to enable pedestrians on the sidewalk on Fore Street within the "view corridor" to view the northerly shoreline of Portland Harbor.

(3) Without modifying or altering the specific height and other limitations set forth in (b)(1)-(3), all the provisions of (c)(2)-(6) shall also apply to the Fore Street/Working Waterfront Overlay.

(c) General Performance Standards: Except as expressly modified in performance standards pertaining to a specific Overlay area, the following performance standards apply to all Scenic Viewpoint Protection Zones:

(1) The height, mass and siting of all new buildings and structures shall be designed to avoid occupying, intruding into, or obstructing public views of the scenic resource from any designated public viewing spot or area in or immediately adjacent to the overlay district.

(2) No part of a new sign, tower, roof top equipment, elevator, other roof top appurtenance, fence, or landscaping shall be permitted to occupy, intrude into or obstruct public views of the scenic resource from any designated public viewing spot or area in or immediately adjacent to the overlay district; existing structures affecting the view of the scenic resource from the viewpoint that were legally erected are permitted to continue in existence, and may be modified, but only so long as they do not further encroach into the public view of the scenic resource.

(3) Any permitted signage shall be simple, concise and contextual, and shall be as small in size and low in height

as reasonably possible to reduce visual impact while still providing effective communication to the public.

(4) Outdoor lighting shall be designed so as to minimize light pollution that interferes with the visibility of the night sky, to minimize light intrusion into adjacent residential neighborhoods, and to not unnecessarily intrude into the public view of the scenic resource, while providing necessary lighting for safety of pedestrians and vehicular traffic.

(5) Any proposed grading of building sites shall preserve existing contours and ensure that future development is harmonious with existing topography. Except as provided in (b)(1) above, with regard to the Fore Street/Working Waterfront Overlay, or as otherwise provided for a specific Overlay area, building heights shall be measured from pre-development grade.

(6) Any proposed landscaping, including but not limited to walls, fences, hedges, grading and plantings, shall be designed so as to avoid occupying, intruding into, or obstructing public views of the scenic resource from any designated public viewing spot or area in or immediately adjacent to the overlay district, shall include an enforceable maintenance plan to keep vegetation from growing to negatively impact public views, and shall include a maintenance easement, to the satisfaction of Corporation Counsel, giving the City a right, but not an obligation, to enter onto the site to trim vegetation, remove obstructions, and otherwise keep the public view unobstructed.

14-330.21 Applicability.

Because of the significance of this Division to development activities within the defined scenic viewpoint areas and the potential for long-run harm which development inconsistent with this Division will have for all of the citizens of the City of Portland, the provisions hereof shall be applicable not only to all future applications, but also to proceedings, applications and requests for rezoning which were pending but had not yet been approved by the City Council as of May 26, 2015.

14-330.22 Amendment or Repeal.

This Division may not be amended in such a way as to lessen its protections for scenic viewpoints, nor may it be repealed, in whole or in part, without approval of a majority of the citizens of the City of Portland voting to do so in a duly held referendum. This Division may be freely amended to bring additional areas within the protection of the Scenic Viewpoints Overlay Zone, and to add dimensional and performance requirements specific to the additional scenic viewpoint(s).

...

Sec. 14-48. Establishment of zones.

In order to carry out the provisions of this article, the city is hereby divided into the following classes of zones:

. . .

(jj) Scenic Viewpoint Protection Overlay zone

...

Article III-B. SCENIC VIEWPOINT TASK FORCE

Sec. 2-45.1. Scenic Viewpoint Task Force

(a) Findings. The City Council and/or the people of the City of Portland hereby find that:

(1) Portland is a vibrant, small city located in a spectacular natural setting, with a large inventory of rehabilitated historic structures, a compelling maritime heritage, welcoming neighborhoods, strong independent local enterprises, a thriving creative economy, cultural diversity, easy access to recreational and open spaces, multiple scenic views of natural resources, and involved citizens;

(2) The residents of Portland embrace as a promising economic development strategy one that identifies the character-defining features that make Portland authentic, unique, and distinctive, and builds upon those strengths;

(3) A critical step in moving toward this smarter, greener, strengths-based economic development strategy is

to identify and evaluate for protection Portland's remaining distinctive and highly distinctive scenic viewpoints.

Therefore, in order to initiate the process to protect Portland's remaining unique scenic resources, the City hereby creates a task force composed of thirteen (13) members which shall be known as the "Scenic Viewpoint Task Force", hereinafter referred to as the "Task Force".

(b) **Composition.** The Task Force shall be appointed by the Mayor within sixty (60) days of the date of enactment, and shall consist of the following, all of whom shall be residents of the City of Portland: one (1) member of the city council; (1) member representing the Historic Preservation Board; one (1) member representing the Planning Board; one (1) member representing Portland Development Corporation; and one (1) member representing the Land Bank Task Force; and eight (8) members representing the public-at-large, with at least one (1) member being appointed from each Council District; these eight members should have a significant history of community involvement, and experience, training or expertise in one of the following disciplines is desirable: architecture, economics, landscape architecture, planning, community organization and/or advocacy, real estate or development, biology or natural sciences.

(c) **Duties.** The duties of the Task Force shall include:

(1) The Task Force may sponsor and/or encourage community programs, from time to time, to educate residents about the scenic viewpoint inventory methodology and to seek input on Portland's scenic resources.

(2) The Task Force shall inventory, or cause to be inventoried, significant scenic areas and viewpoints throughout the City of Portland, including the islands, within eighteen (18) months of the date of enactment. Once the inventory is complete, the Task Force shall present its findings to the Planning Board for recommendation, and to the City Council for action on its proposal to designate additional distinctive and/or highly distinctive viewpoints for protection through use of the Scenic Viewpoint Protection Overlay Zone. The Task Force may make such additional recommendations as it deems appropriate.

(3) The Task Force shall make report to the city council at least annually on an interim basis, and shall

issue its final report within three (3) years of the date of enactment.

. . .

Sec. 14-58 ~~Reserved.~~ Zoning Map and/or Zoning Text Change Submission Requirements

When an applicant files an application for a zoning map change, a zoning text change, or a combined zoning map and text change, the applicant shall submit a complete application in a form and with content as specified by the Department of Planning and Urban Development. Such submissions shall contain, at a minimum, the following elements:

(a) An identification of the applicant and proof of the applicant's right, title or interest in the property proposed to be affected by the change (hereinafter "subject parcel");

(b) A vicinity map showing the subject parcel and abutting parcels, labeled as to ownership and/or current use;

(c) A description of the existing use of the subject property;

(d) Identification of the current zoning designation(s);

(e) Statement of the proposed use of the subject property if the requested zone change is granted, including a description of any proposed physical changes to the subject property if construction or development is anticipated;

(f) A site plan of the subject property showing existing and proposed improvements should the zone change be granted, including such features as buildings, parking, driveways, walkways, landscape and property boundaries. This original submission need not be refined to the level of a final site plan, but should be a general representation of the elements the applicant would like to see developed on the subject property, including proposed land uses and buildings, and of the scale and intensity of that development should the zone change request be granted. The site plan should be sufficiently detailed and complete so as to allow an assessment of the relationship of the proposed development to City land use objectives; the impact on surrounding street systems, site access and circulation; the impact on public infrastructure including public transportation, utilities, municipal facilities, and public safety; impact on significant natural features, scenic or natural beauty and historic resources; and impact on adjacent property and neighborhoods.

(g) At all times if the subject property is one acre or greater in size, or at the discretion of the Planning Authority if it is less than one acre, applicants may be required to submit more detailed site plans and written materials that address proposed physical development and operation of the property to ensure that the rezoning and subsequent development are consistent with the comprehensive plan, meet applicable land use regulations, and are compatible with the surrounding neighborhood.

BE IT FURTHER ORDAINED, that these ordinances shall apply and have an effective date, notwithstanding the provisions of 1 M.R.S. § 302 and in accordance with section 9-42 hereof, as of May 26, 2015; and

BE IT FURTHER ORDAINED, that the provisions of these ordinances shall be deemed independent and severable. If any term, covenant, provision, phrase or other element contained herein of a new ordinance provision or of any amendment to an existing ordinance is held to be invalid or unenforceable for any reason whatsoever, such holdings shall not affect, alter, modify, or impair in any manner, any other ordinance provision or ordinance amendment contained herein.

Order 50-15/16
Tab 21 8-3-15

MICHAEL F. BRENNAN (MAYOR)
KEVIN J. DONOGHUE (1)
DAVID A. MARSHALL (2)
EDWARD J. SUSLOVIC (3)
JUSTIN COSTA (4)

CITY OF PORTLAND
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DAVID H. BRENERMAN (5)
JILL C. DUSON (A/L)
JON HINCK (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

ORDER SETTING ELECTION DATE ON AMENDMENT TO CHAPTER 14 OF THE PORTLAND CITY CODE RE: SCENIC VIEWPOINT PROTECTION AND SENDING A COMPETING MEASURE TO THE VOTERS

ORDERED, that pursuant to Section 9-39 of the Portland City Code, the amendment to Chapter 14 of the Portland City Code Re: Scenic Viewpoint Protection shall be submitted to the voters of the City in substantially the form attached hereto on November 3, 2015 at the regularly scheduled election; and

BE IT FURTHER ORDERED, that the attached competing measure shall also be submitted to the voters of the City on November 3, 2015 at the regularly scheduled election; and

BE IT FURTHER ORDERED, that the Portland City Clerk shall be authorized to provide a summary of the proposed ordinance and of the competing measure on the ballot.