

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 Email to Donald Guild, Esq. sent to dguild@mainehousing.org, *or*

By mail to: Donald Guild, MaineHousing, 26 Edison Drive, 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: Town of Old Orchard Beach, Maine

1-2 Municipal official submitting this Application:

<u>Larry Mead</u>	<u>Town Manager</u>
Printed name	Title
<u>1 Portland Avenue, Old Orchard Beach, Maine 04064</u>	
Mailing address	
<u>207-937-5628</u>	<u>lmead@oobmaine.com</u>
Phone number	E-mail address

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:

Larry Mead

Town Manager

Printed name

Title

1 Portland Avenue, Old Orchard Beach, Maine 04064

Mailing address

207-937-5628

lmead@oobmaine.com

Phone number

E-mail address

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: September 24, 2020

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: October 6, 2020

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.

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** 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.

- District description
 - _____ Physical description of district
 - _____ Municipal map showing district boundaries
 - _____ Tax map showing district boundaries

- At least 25% of district acreage is suitable for residential use, blighted, or in need of rehabilitation/redevelopment
 - _____ % acreage suitable for residential use
 - _____ % blighted
 - _____ % in need of rehabilitation/redevelopment
 - _____ Physical description of district to support above
 - _____ Zoning designation where district is located
 - _____ Allowed uses in that zone

- District acreage divided by total municipal acreage is not more than 2%
 - _____ Total district acreage
 - _____ Total municipal acreage
 - _____ District acreage as a percent of total acreage

- Total acreage of all existing and proposed development districts (affordable housing and DECD districts) in municipality divided by total municipal acreage is not more than 5%

_____ Total acreage of all development districts
_____ Total municipal acreage
_____ Total development district acreage as a percent of total acreage

- Original assessed value (OAV)* of district

_____ Dated certification signed by municipal assessor showing OAV amount and date

* OAV means the taxable assessed value of the district as of the March 31st before municipal approval of the district.

- OAV of all existing and proposed affordable housing development districts in the municipality divided by aggregate taxable property value as of the April 1st before MaineHousing approval is not more than 5%

_____ Aggregate OAV of existing and proposed districts
_____ Aggregate taxable property value as of the April 1st before MaineHousing approval
_____ Aggregate OAV as a percent of total taxable value

- Development program start and end dates

_____ First tax year (i.e., April 1 – March 31) of development program *

* May be any tax year specified in municipal approval. If none is specified, the development program will start during the tax year of approval.

_____ Last tax year of development program **

** Not more than 30 years after tax year of MaineHousing approval.

_____ Municipal fiscal year ***

*** Example: July 1 – June 30

- The development program meets an identified housing need in municipality

_____ Description of need
_____ Description of how development program meets need
_____ Number of new rental units to be constructed

- _____ Number of existing rental units to be rehabilitated
- _____ Number of new single-family homes, including condominiums, to be constructed
- _____ Number of existing single-family homes, including condominiums, to be rehabilitated

District must be a primarily residential * development

- _____ Description of residential and non-residential uses in district and acreage of each
- _____ Description of accessory uses relating to residential use

* A district is primarily residential if the overall character of the uses in the district is residential. Residential uses include both housing and uses related to residential uses, such as recreational facilities and child care facilities available to the residents of the district and small-scale nonresidential uses that are intended to provide services primarily to the residents of the district.

At least 33% of the housing units in the district must be affordable housing *

- _____ Number of affordable single-family owner-occupied homes, including condominiums, in district
- _____ Number of affordable rental units in district
- _____ Total number of housing units in district
- _____ Affordable housing units as a percent of total units

* Affordable housing is an owner-occupied single-family home or condominium or a rental unit for a household earning no more than 120% of area median income (AMI). The housing must be decent, safe and sanitary. Affordable housing does not include facilities such as emergency shelters, nursing homes, convalescent homes, hospitals, residential treatment facilities, correctional facilities, or student dormitories, regardless of income level. No purchase price limits on homes or rent restrictions on rental units are required to establish that a unit is affordable.

HUD updates AMI annually. The AMI for counties and other designated areas in Maine can be found at <https://www.huduser.gov/portal/datasets/il.html>. Select the tab for the most current Year for which data is available. Click the link under Individual Income Limits Areas (“FY ____ IL Documentation”). Scroll and select the State of Maine. Scroll and select the appropriate municipality. Click “View County Calculations”. Use the Median Family Income figure in the first column. Multiply that MFI figure by 120% to determine the maximum income level.

- Mechanism to ensure ongoing affordability of 33% of the housing units in district for required time

_____ Length of affordability period for owner-occupied single-family homes and condominiums *

* The minimum affordability period for single-family owner-occupied homes and condominiums is 10 years.

_____ Description of affordability mechanism for single-family owner-occupied homes and condominiums

_____ Length of affordability period for rental units **

** The minimum affordability period for rental units is 30 years.

_____ Description of affordability mechanism for rental units

A district may contain only homeownership units or only rental units or a combination of both, but a minimum of 33% of the total number of housing units in the district must be affordable for the required time, i.e., 10 or 30 years, depending on the housing type.

The affordable units can be fixed (particular units are subject to the affordability requirements and never change, i.e., those specific units must remain affordable during the applicable affordability period and other units cannot be substituted for them) or they can float (units initially designated as affordable may change over time and other affordable units can be substituted in their place) provided that at least 33% of the total number of housing units in the district are affordable housing at any given point in time.

Whether the units are rental or homeownership units, the affordability period begins to run when the units have been constructed or rehabilitated into decent, safe and sanitary housing and (i) are available for occupancy if the development is subject to a declaration of covenants and restrictions that requires the units to be affordable (i.e., restricted to households with income not exceeding 120% of AMI), or (ii) when the units are occupied by a household with income not exceeding 120% of AMI if the development is not subject to a declaration. The development program needs to include timing information on the development and availability for occupancy of the affordable units in the district. To comply with the TIF Statute's requirement that at least 33% of the housing units in the district be affordable housing, in a mixed-income development, the development program must provide for the construction/rehabilitation of the affordable units within a reasonable timeframe during the construction phase of the project and not leave them to the end of the project if the units will be made available for occupancy or sale as they are constructed or rehabilitated.

- Operation of housing and facilities in district

- _____ Description of how housing and facilities in the district will be operated after completion
- _____ Entity responsible for operation
- _____ Source of operating funds

Specific planned uses of tax increment revenues from the district *

* See §5249 of the TIF Statute for eligible uses of tax increment revenues from the district.

IMPORTANT NOTE: Municipalities are cautioned that a broad recitation in a development program of all or substantially all the authorized project costs listed in the TIF Statute will not be accepted by MaineHousing.

A non-residential use included in a development program may be funded with tax increment revenues from the district, provided that the non-residential use contributes to a specific, identified improvement of the health, welfare or safety of the residents of the municipality, including a specific, identified benefit to the residents of the district, or to the expansion of affordable housing within the municipality. The district and development program must otherwise comply with the requirements of the TIF Statute, including the requirement that the district be a primarily residential development. Tax increment revenues may not be used to construct new "pure" commercial facilities within a district or to rehabilitate those facilities.

- _____ Description of each improvement, facility, program, or other activity included in the development program that may or will be funded in whole or in part with tax increment revenues *

* Include all intended uses and potential alternative uses.

- _____ List which of these improvements, facilities, programs, or other activities are inside the district

- _____ List which of these improvements, facilities, programs, or other activities are outside the district **

** To be funded with tax increment revenues, costs outside the district must be ***directly related to or made necessary*** by the creation or operation of the district. Include any supporting studies, research, estimates, and assumptions.

- _____ Amount of tax increment revenues to be used for each improvement, facility, program or other activity inside and outside the district ***

*** Only the proportion of costs outside the district that are ***directly related to or made necessary*** by the creation or operation of the district may be paid with tax increment revenues.

- _____ Amount and source of other funding for the development program
- _____ Timing of each planned improvement, facility, program, or other activity

A municipality may use tax increment revenues from a district to establish a permanent housing development revolving loan fund or investment fund. *

- _____ A description of the fund, including type, purpose, operation, and provisions for repayment or return of fund proceeds to the fund
- _____ The timing of the establishment and use of the fund
- _____ The property to be purchased with investment fund proceeds and the housing to be developed with revolving loan fund proceeds and timing
- _____ The location of the property and the housing

* A permanent housing development revolving loan fund or investment fund must be used solely for the development of affordable housing as defined above.

Loans made from a revolving loan fund must be repaid to the municipality, and all loan repayments must be deposited into that loan fund and used for additional loans for the development of affordable housing. Loans may be made from the revolving loan fund for both new construction of affordable housing and the rehabilitation of existing housing.

Funds in an investment fund may be used only for the purchase of property by the municipality for the development of affordable housing by the municipality itself or by a developer to which the municipality sells or leases the property. All sales proceeds or rental revenues must be placed in the investment fund and used for additional purchases of property by the municipality for that purpose.

Creating a district around an existing residential area for the purpose of funding a revolving loan fund or investment fund still requires that there be some development of affordable housing *within* the district, whether new construction or the rehabilitation of existing housing, or both.

Because revolving loan funds and investment funds are capitalized with tax increment revenues resulting from the development of affordable housing in a district and proceeds disbursed from a loan or investment fund are required to be returned to the fund, it is not necessary for a municipality to make any further showing that costs of establishing a permanent housing development revolving loan fund or investment fund are directly related to or made necessary by the district.

A financial plan showing for each year the development program will be in effect

- _____ An estimate of increased assessed value * of the district (including assumptions)

* Increased assessed value is the amount, if any, by which the current assessed value as of the most recent April 1st exceeds OAV.

_____ Amount or percent or method or formula for determining amount or percent of increased assessed value to be retained as captured assessed value ** and applied to pay development program costs and resulting tax increment ***

** Captured assessed value is the portion of increased assessed value that is used from year to year to finance the project costs authorized under the development program.

*** Tax increment means the municipal real estate taxes assessed on the increased assessed value of the property in the district.

_____ Calculation of estimated tax shifts showing the effect on the municipality's state revenue sharing, education subsidies, and county taxes resulting from creation of district and the capture of increased assessed value. ****

**** Use the tax shift formulas in **Appendix B** to this Application to calculate tax shifts.

_____ Allocation of total tax increment revenues from the district

_____ Portion * to be allocated to project owner

_____ Portion * to be allocated to municipality

* May be stated as a percent or amount or by formula.

_____ Copy of credit enhancement or other tax increment revenue sharing agreement (whether or not executed)

Relocation plan for persons temporarily or permanently displaced by development activities

_____ Relocation plan description, or

_____ Statement that no relocation is necessary

Description of environmental controls to be applied

_____ Statement regarding environmental controls, such as permitting and licensing or use of environmental mitigation measures during development and operation of district

Development program consistent with comprehensive planning

_____ Date of comprehensive plan final adoption

_____ Statement of no conflict with comprehensive plan

_____ Statement indicating how development program complies with Maine law limiting growth-related capital investments (see 30-A M.R.S.A. §4349-A)

- District not in conflict with municipal charter

_____ Statement of no conflict with municipal charter

- For municipal debt financing only:** Amount of public debt with maximum 30-year maturity to be incurred to finance development program costs

_____ Principal amount, maturity and type of each municipal debt issuance

_____ List of improvements inside the district * to be financed with municipal debt

<p>* Under §5250-D of the TIF Statute, municipal debt may be issued to finance only development program costs <u>inside</u> the district.</p>

Appendix B Tax Shift Formulas

To calculate the state education subsidy tax shift: For each fiscal year, the state education subsidy formula is based on the average of the certified state valuations for the three (3) most recent years prior to the most recently certified state valuation. The education tax shift is computed by comparing Maine Department of Education Form ED 279 for the municipality with and without retained captured assessed value. The difference in the actual education subsidy and the adjusted education subsidy represents the projected state education subsidy tax shift for that year.

To calculate the state revenue sharing tax shift: The first step in determining the revenue sharing tax shift is to obtain the total municipal revenue sharing amount from the State Treasurer. The five steps outlined in the following formula are then applied ("CAV" below means projected captured assessed value):

Step 1:
$$\frac{\text{Municipal Population} \times \text{Local Property Tax Levied}}{\text{State Local Valuation}} = \text{Current Factor}$$

Step 2:
$$\frac{\text{Municipal Population} \times \text{Local Property Tax Levied}}{\text{State Local Valuation} + \text{CAV}} = \text{Adjusted Factor}$$

Step 3:
$$\frac{\text{Current Factor} = 1.X}{\text{Adjusted Factor}}$$

Step 4:
$$1.X - 1.0 = .X$$

Step 5:
$$.X (\text{total municipal revenue sharing amount}) = \text{Revenue sharing tax shift}$$

To calculate the county tax shift: The steps in determining the county tax shift are as follows ("CAV" below means projected captured assessed value):

Step 1: Obtain the most recent County State Valuation from Maine Revenue Services.

Step 2: Determine the average CAV for the District over the life of the District.

Step 3: Determine the municipality's current share of the county tax:

$$\frac{\text{Current State municipal valuation}}{\text{Current State county valuation}}$$

Step 4: Determine what the municipality's share of the county tax would be if the new value from the District were added to the municipal valuation without the creation of the District:

$$\frac{\text{Current State municipal valuation} + \text{average new value}}{\text{Current State county valuation} + \text{average new value}} = \% \text{ of county tax shift}$$

Step 5: Determine the estimated average annual county tax over the life of the District. To arrive at this number, determine the average change in county tax for the last five (5) years and the percentage increase projected to the middle of the District's life.

Step 6: Multiply the projected tax from Step 5 by the percent of county tax shift from Step 4 to determine the county tax shift.

Attachment 1

Notice of Public Hearing

NOTICE OF PUBLIC HEARING TOWN OF OLD ORCHARD BEACH NOTICE OF PUBLIC HEARING

Regarding

An Affordable Housing Development and Tax Increment Financing District
To Be Known As The “Milliken Heights Affordable Housing Development
and Tax Increment Financing District”

Notice is hereby given that the Town of Old Orchard Beach will hold a public hearing on **Tuesday, October 6, 2020** at the Town Hall Council Chambers, 1 Portland Ave., Old Orchard Beach, Maine, The Public Hearing will be at 6:30 p.m.

The purpose of the public hearing is to receive public comments on the designation of the affordable housing development and tax increment financing district to be known as the Milliken Heights Affordable Housing Development and Tax Increment Financing District (the “District”) and the adoption of a development program for the District pursuant to the provisions of Chapter 206 of Title 30-A of the Maine Revised Statutes, as amended.

The proposed District consists of approximately 4.76 acres of property located at 36 Portland Avenue in Old Orchard Beach. The proposed development within the District will include 55 units of senior housing, 76% of which will be affordable housing.

Copies of relevant materials will be on file at the Town offices during normal business hours in advance of the public hearing. The proposed Milliken Heights Affordable Housing Development Program will also be available at www.oobmaine.com and can also be obtained by calling 207.937.5626, Jennifer Hayes, during normal business hours and requesting that a copy be mailed to you. All interested persons are invited to participate in the public hearings and will be given an opportunity to be heard. Face coverings are required to enter Town Hall and required social distancing protocols will be observed.

Public comments will be taken at the hearings and written comments should be submitted to jhayes@oobmaine.com. Written comments will be accepted until the day before the public hearing. Written comments are due by **Monday, October 5th, 2020**.

Attachment 2

Meeting Minutes

Attachment 3

Additional Documents

Please refer to Attachment 4

Attachment 4

Municipal Approval

**TOWN OF OLD ORCHARD BEACH, MAINE
COUNCIL ORDER**

**AN ORDER DESIGNATING THE MILLIKEN HEIGHTS AFFORDABLE HOUSING
DEVELOPMENT AND TAX INCREMENT FINANCING DISTRICT AND ADOPTING
THE DEVELOPMENT PROGRAM FOR SUCH DISTRICT**

WHEREAS, the Town of Old Orchard Beach (the “Town”) is authorized pursuant to Chapter 206, Subchapter 3 of Title 30-A of the Maine Revised Statutes, as amended, to designate a specified area or areas within the Town as an affordable housing development district and adopt a development program for such district; and

WHEREAS, there is a need for the development of affordable, livable housing in the Town, in the surrounding region, and in the State of Maine; and

WHEREAS, the designation of the District and implementation of the Development Program will help to improve and broaden the tax base in the Town and improve the economy of the Town and the region by attracting business development to the Town; and

WHEREAS, the Town held a public hearing on the question of establishing the District on October 6, 2020, in accordance with the requirements of 30-A M.R.S.A. § 5250, upon at least ten (10) days prior notice published in a newspaper of general circulation within the Town; and

WHEREAS, the Town desires to designate the *Milliken Heights Affordable Housing Development and Tax Increment Financing District* (the “District”) and adopt a development program for the District (the “Development Program”); and

WHEREAS, it is expected that approval will be obtained from the Maine State Housing Authority (“MaineHousing”) approving the designation of the District and the adoption of the Development Program for the District;

NOW THEREFORE, BE IT ORDERED BY THE TOWN COUNCIL OF THE TOWN OF OLD ORCHARD BEACH, MAINE:

Section 1. The designation of the District and pursuit of the Development Program will contribute to the expansion of affordable housing opportunities in the Town of Old Orchard Beach and will contribute to the betterment of the health, welfare and safety of the inhabitants of the Town, and therefore constitutes a good and valid public purpose.

Section 2. Pursuant to Chapter 206, Subchapter 3 of Title 30-A of the Maine Revised Statutes, as amended, the Town hereby designates the *Milliken Heights Affordable Housing Development and Tax Increment Financing District* and hereby adopts the Development Program for the District described as more particularly set forth in the documents presented to the Town Council in conjunction with this Order.

Section 3. Pursuant to the provisions of 30-A M.R.S.A. § 5250-A, the percentage of captured assessed value to be retained in accordance with the Development program is hereby established as set forth in the Development Program.

Section 4. The Town Manager be, and hereby is, authorized, empowered and directed to submit the proposed designation of the District and the proposed Development Program for the District to MaineHousing for review and approval pursuant to the requirements of 30-A M.R.S.A. Chapter 206, Subchapter 3; and further is authorized and directed to execute a Credit Enhancement Agreement consistent with the provisions of the *Milliken Heights Affordable Housing Development and Tax Increment Financing District* Development Program in generally the form as presented and approved herein and to create the accounts and take all the actions described in such agreement consistent with the Development Program.

Section 5. The Town Manager be and hereby is authorized and empowered at his direction from time to time to make such revisions to the Development Program for the District as he deems reasonably necessary or convenient in order to facilitate the process of review and approval of the District by MaineHousing, or for any other reason, so long as such provisions are not inconsistent with these resolutions or the basic structure and intent of the Development Program. The Town Manager is also hereby authorized and directed to submit any reports to MaineHousing regarding the District and Development Program throughout the term of the District.

Section 6. The Town Manager be, and hereby is, authorized and directed to execute an agreement with the developer of the Milliken Heights affordable housing project regarding the District property owner's obligations if the project becomes entitled to pay less than 100% of the property tax obligation during the term of the District.

Section 7. The foregoing designation of the District and the adoption of the Development Program for the District shall automatically become final and shall take full force and effect upon receipt by the Town of approval of the proposed District by MaineHousing without requirements of further action by the Town, Town Council or any other party.

Section 8. The Town hereby finds and determines that:

a. At least twenty-five percent (25%), by area, of the real property within the District, as hereinafter designated, is suitable for residential use, blighted area or is in need of rehabilitation or redevelopment; and

b. The total area of the District does not exceed two percent (2%) of the total acreage of the Town, and the total area of all development districts within the Town, and the total area of all development districts within the Town does not exceed five percent (5%) of the total acreage of the Town; and

c. The original assessed value of the District plus the original assessed value of all existing affordable housing development districts within the Town does not exceed five percent (5%) of the total value of the Town.

d. The District and pursuit of the Development Program will contribute to the expansion of affordable housing opportunities within the municipality or to the betterment of the health, welfare or safety of the inhabitants of the Town. The Town has considered all evidence, if any, presented to it with regard to any substantial detriment to another party's existing property interests in the Town and has found and determined that such interested party's property interests in the Town are outweighed by the contribution made by the District or Development Program to the availability of affordable housing within the Town or to the betterment of the health, welfare or safety of the inhabitants of the Town.

Section 9. The Town Manager is authorized to file the yearly reports required by Title 30-A M.R.S.A. § 5250-E and otherwise to take all lawful actions required in the administration of the District and Development Program.

Dated: October 20, 2020


Attachment 5

District Maps



MILLIKEN HEIGHTS AFFORDABLE HOUSING DEVELOPMENT



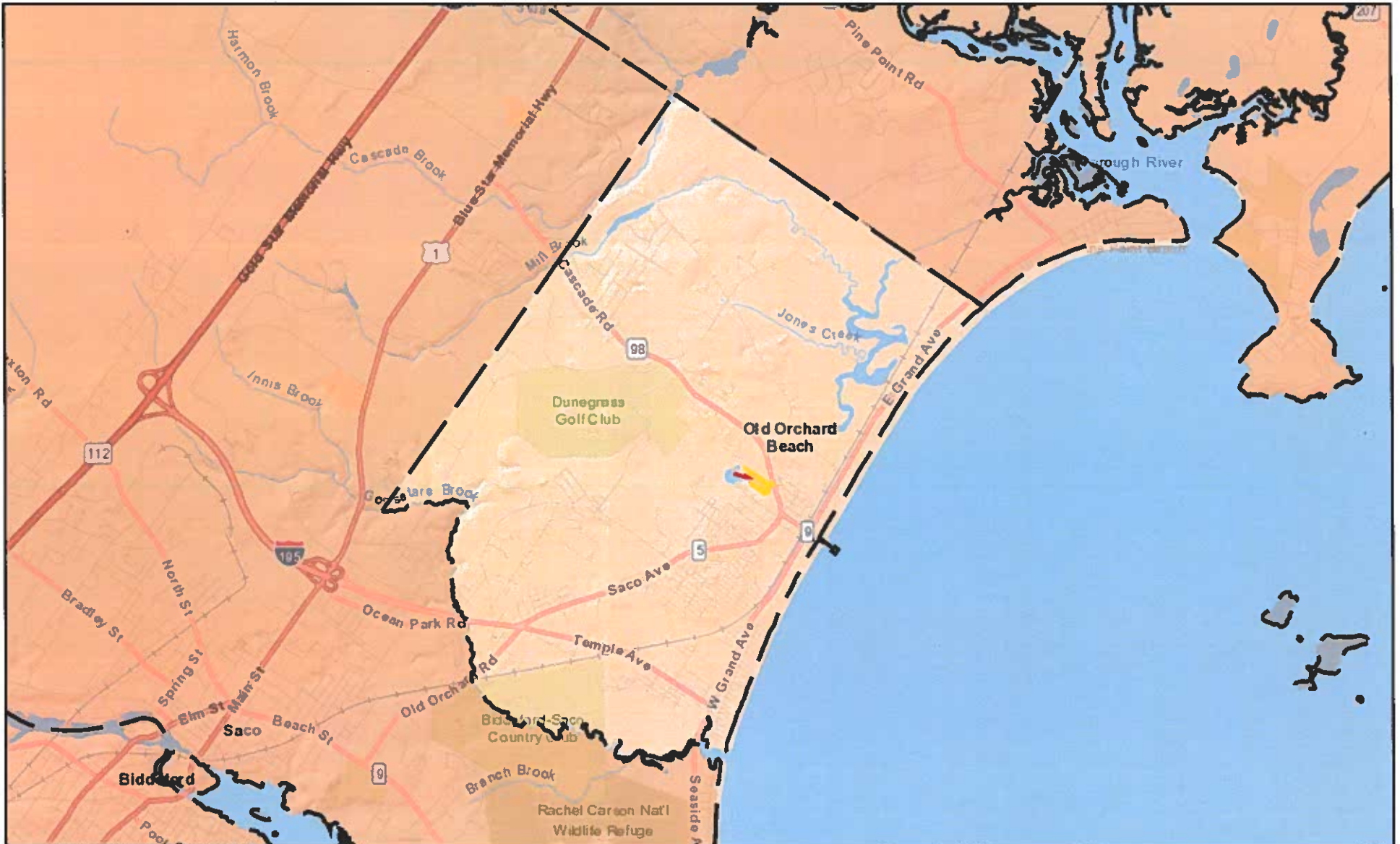
 Milliken Heights AHTIF District (4.76 acres)

Old Orchard_Beach, ME

1 inch = 4400 Feet

0 4400 8800 13200

September 15, 2020




Data shown on this map is provided for planning and informational purposes only. The municipality and CAI Technologies are not responsible for any use for other purposes or misuse or misrepresentation of this map.



MILLIKEN HEIGHTS AFFORDABLE HOUSING DEVELOPMENT



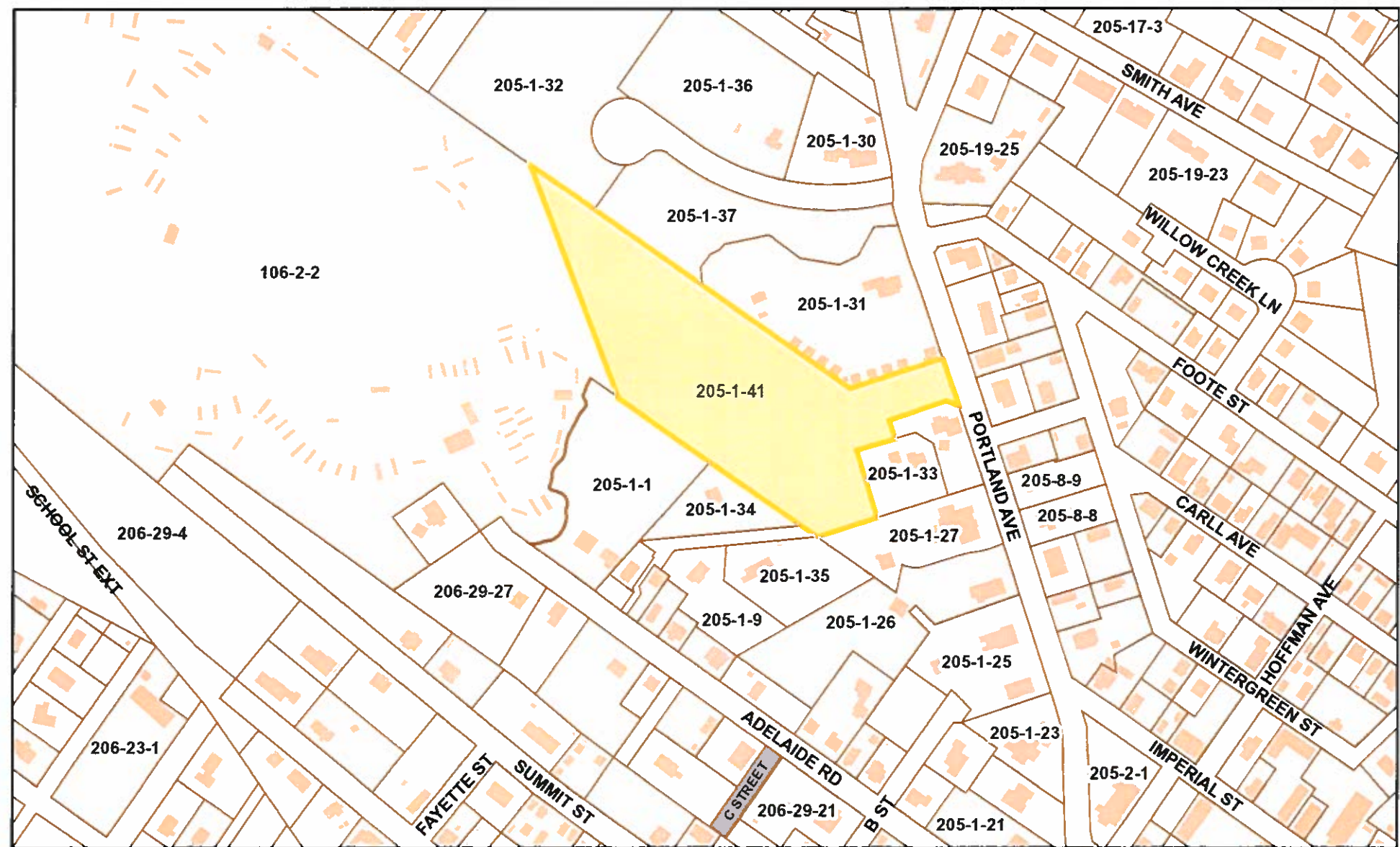
Old Orchard_Beach, ME

 Milliken Heights AHTIF District (4.76 acres)

1 inch = 273 Feet



September 14, 2020



Data shown on this map is provided for planning and informational purposes only. The municipality and CAI Technologies are not responsible for any use for other purposes or misuse or misrepresentation of this map.

Attachment 6

Assessor's Certificate

ATTACHMENT 6

**ASSESSOR'S CERTIFICATE
TOWN OF OLD ORCHARD BEACH**

The undersigned Assessor for the Town of Old Orchard Beach, Maine hereby certifies pursuant to the provisions of M.R.S.A Title 30-A § 5227(2) that:

The assessed value of taxable real property of the Milliken Heights Affordable Housing Development and Tax Increment Financing District as described in the Development Program to which the Certificate is included, was **\$23,800** as of March 31, 2020 (April 1, 2019).

In Witness Whereof, This Certificate has been executed as of this 14th day of September, 2020.

ASSESSOR



George Greene, Assessor, Town of Old Orchard Beach, Maine

Original Assessed Value for Individual Tax Map Lot

Tax Map and Lot Number	TIF Acres	Original Assessed Value as of March 31, 2020 (April 1, 2019)
205-1-29 ¹ (partial lot)	4.76	\$23,800 ²

¹ As of April 1, 2019, the acreage within the District was contained in a larger lot, identified on tax maps as 205-1-29. The acreage within the District is now contained in a separate lot, identified on tax maps as 205-1-41.

² The total acreage of lot 205-1-29 as of April 1, 2019 was 5.12 acres. The 4.76-acre portion of that lot that is now comprising the District was valued at \$23,800 as excess undeveloped land.

Attachment 7

Development Program

**MILLIKEN HEIGHTS SENIOR HOUSING AFFORDABLE HOUSING
DEVELOPMENT AND TAX INCREMENT FINANCING DISTRICT
DEVELOPMENT PROGRAM**

Summary:

Milliken Heights, LP, a Maine limited partnership (the “Partnership”), intends to acquire an approximately 4.76 acre-parcel located at 38 Portland Avenue in Old Orchard Beach, Maine. The Partnership intends to construct low income, rental, senior housing development consisting of approximately fifty-five (55) units on the site (the “Project”).

The Project has applied for subdivision approvals from the Town of Old Orchard Beach Planning Board. The proposed plans call for construction of a single, approximately 48,870 square foot, 4-storied building with an elevator and related site improvements. Each of the approximately fifty-five (55) apartments at the Project will be a one-bedroom unit of approximately 625 square feet. The Project will also provide residents with ancillary spaces such as a community room, trash and recycling, a manager’s office, and an on-site laundry room. Site improvements include a sixty (60) space landscaped parking area, a recreational open space, and storm water management infrastructure.

The approximately fifty-five (55) apartments at the Project will serve seniors with quality rental housing. Approximately forty-two (42) of the units will be leased at rental rates affordable to seniors with annual household income at or below 60% of the area median income (AMI). Residents of the Project will further benefit from the efficiency and predictability of having heat and hot water included in their monthly rents.

The Partnership is requesting a Tax Increment Financing arrangement pursuant to which 80% of the taxes paid on increased assessed value would be returned to it each year for a fifteen (15) year period following the completion of construction, all pursuant to the Affordable Housing Tax Increment Financing Program. The obligation to pay such tax increment revenues to the Partnership would be set forth in a Credit Enhancement Agreement between the Town and the Partnership, on usual and customary terms. A copy of the proposed Credit Enhancement Agreement is on file with the Town and available in these application materials as Attachment 8.

The following questions are responsive to the checklist for Approval of District and Development Program set forth in Appendix A to the Maine State Housing Authority Affordable Housing Tax Increment Financing Application.

1. Description of the Milliken Heights Senior Housing Affordable Housing Development and Tax Increment Financing District.

The Milliken Heights Senior Housing Affordable Housing Development and Tax Increment Financing District (the “District”) consists of an approximately 4.76 acre parcel of land located at 38 Portland Avenue, Old Orchard Beach, Maine, all as shown on Attachment 5 to these application materials.

2. Is at least 25% of district acreage is suitable for residential use, blighted, or in need of rehabilitation/redevelopment?

All of the acreage in the District is suitable, and will be used for, residential purposes.

3. Does the District acreage divided by total municipal acreage exceed 2%?

The acreage in the District is 4.76 acres and the total municipal acreage is 4,800 acres, yielding a District of 0.099% of the total municipal acreage.

4. Does the total acreage of all existing and proposed development districts (affordable housing and DECD districts) in municipality divided by total municipal acreage exceed 5%?

The total acreage of all existing and proposed development districts in Old Orchard Beach is 9.21 acres, and the total municipal acreage is 4,800 acres. The proposed Milliken Heights Senior Housing Affordable Housing Development and Tax Increment Financing District will be 4.76 acres. The total Town development district acreage (that is not exempt from the calculations) as a percentage of the Town’s total acreage is 0.019%.

5. Original assessed value of district

The original assessed value of the district is \$23,800 as of March 31, 2020 (April 1, 2019). Attached hereto as **Exhibit B** is a certification of such original assessed value from the Assessor of Old Orchard Beach.

6. Does the OAV of all existing and proposed affordable housing development districts in Old Orchard Beach divided by aggregate taxable property value as of April 1, 2019 exceed 5%?

No. The other existing and proposed TIFs in Old Orchard Beach are as follows:

The Pines at Ocean Park Affordable Housing TIF: \$0

The proposed Milliken Heights Senior Housing Affordable Housing Development and Tax Increment Financing District will have an original assessed value of \$23,800 as of March 31, 2020 (April 1, 2019). The total amount of taxable property in the Town as of the 2020 municipal valuation return is \$1,819,161,940. The total Town development district original assessed values (that are not exempt from the calculations) as a percentage of the Town's total taxable value is 0.0013%.

7. Development program start and end dates

The Development Program shall begin in the April 1, 2021-March 31, 2022 tax year upon the approval by the Director of Maine State Housing Authority (“MaineHousing”) of the Town’s application for tax increment financing, and continue for a seventeen (17) year period thereafter, ending on March 31, 2038. Notwithstanding the fact that the Development Program will have a seventeen (17) year term, the Credit Enhancement Agreement in any event would only have a maximum fifteen (15) year term, beginning with the tax year following the “Completion of the Project”, as defined in the Credit Enhancement Agreement. The Credit Enhancement Agreement shall expire upon (1) the end of a fifteen (15) year period or (2) the termination of the District, whichever occurs first.

8. What housing needs in Old Orchard Beach does the Development Program meet?

The partnership has commissioned a market study of the Old Orchard Beach housing market that was completed on May 5, 2020. The market study shows a strong need for senior rental housing in the Old Orchard Beach market. There is a pent-up demand for affordable rental units in the PMA as demonstrated by the very strong occupancy rate of 98% for LIHTC properties in the PMA with waitlists exceeding 100 households found during the market study survey of surrounding properties. Additionally, the average occupancy rate for market-rate units surveyed in the market rate study was 99%.

Old Orchard Beach’s Comprehensive Plan outlined a goal to “promote a wide variety of housing opportunities to meet the needs of various types of households and various income levels” and “with a specific focus on elderly housing”. Milliken Heights helps meet these goals by providing housing restricted to households whose head is aged 55+ and by providing a mixture of market rate and affordable rental housing. The 55 affordable rental units at the Project are a critical step toward meeting the very high and rapidly growing demand for quality affordable rental housing for seniors in Old Orchard Beach.

9. Is the District a primarily residential development?

The District will be used for exclusively residential purposes.

10. Are at least 33% of the housing units in the district affordable housing?

Yes. The Partnership proposes to develop a total of approximately fifty-five (55) apartments in the District, of which approximately forty-two (42) will be affordable and will be restricted to occupancy by households with income not exceeding 60% of area median income, meaning that approximately 76% of the units will be affordable housing.

11. What is the mechanism to ensure ongoing affordability of 33% of the housing units in District?

The property contained within District will be subject to a long-term restrictive covenant required by MaineHousing as a condition of receiving low income housing tax credits. The restrictive covenant will require that the affordable units in the project be restricted to families with low incomes (based on a percentage of area median income) and that the rent levels that can be charged will be limited as provided by MaineHousing and the low income housing tax credit program. The restrictive covenant will be the senior encumbrance on the property and will run for a 45-year period following the completion of construction.

12. How will the housing in the District be operated?

The project in the District will be owned by the Partnership. The Partnership will enter into a property management contract with Saco Falls Management, which manages a variety of affordable housing projects in central and southern Maine and is experienced and qualified to manage the project. Funding during operations will come from revenue generated by rental of the units in the project.

13. What are the specific planned uses of tax increment revenues from the District?

The tax increment revenues being returned to Milliken Heights Senior Housing Affordable Housing Development and Tax Increment Financing District shall be utilized by the Partnership to fund operating costs of the Project, including without limitation debt service, property management and administration, utilities, routine repairs and maintenance, insurance, real estate taxes, and the Project's replacement reserve account as operating subsidy.

14. Is Old Orchard Beach intending to use tax increment revenues from the District to establish a permanent housing development revolving loan fund or investment fund?

Old Orchard Beach does not intend to use the revenues in this manner.

15. A financial plan showing for each year the development program will be in effect.

The financial plan for specific uses of the tax increment revenues to be used by the Partnership in the District are set forth on Table 1 hereto.

Additionally, please see additional attached tables showing projections of tax increment revenues and tax shift benefits.

16. What are the relocation plans for persons temporarily or permanently displaced by development activities?

The property is unoccupied; no relocation is necessary.

17. Describe the environmental controls to be applied to the Project

The project will be subject to a permitting process in the Town of Old Orchard Beach and will be required to demonstrate compliance with applicable federal, state and local environmental and land use laws and regulations.

18. Is the development program consistent with Old Orchard Beach’s comprehensive planning?

Old Orchard Beach’s comprehensive plan was adopted in 1993. Based on information provided by Market Decisions, Inc. for the Town, the Development Program does not conflict with the Old Orchard Beach Comprehensive Plan.

The District and the Development Program conform to the requirements of 30-A M.R.S. Section 4349-A. The District and the Development Program comply with Maine law limiting growth-related capital investment.

19. Is the District in conflict with Old Orchard Beach’s municipal charter?

The Development District and Development Program are not in conflict with Old Orchard Beach’s municipal charter.

20. For municipal debt financing only: Amount of public debt with maximum 30-year maturity to be incurred to finance development program costs

Not applicable.

Captured Assessed Value & TIF Revenue Projections

Old Orchard Beach Milliken Heights Affordable Housing TIF District

Fiscal Year (April-March)	TIF Year	CEA Year	Original Assessed Value	Projected New Value	Projected Increased Assessed Value	Percent of Value Captured in TIF	Estimated Assessment Ratio	TIF District Projected Captured Assessed Value	Projected Mil Rate 2019: 15.42	Projected Total TIF Revenue	Projected TIF Revenue 80% CEA (100% TIF Rev.)	Projected Total General Fund Revenue to Town
2021-2022	1	-	\$0	\$0	\$0	0%	100%	\$0	15.42	\$0	\$0	\$0
2022-2023	2	1	\$23,800	\$5,670,000	\$5,646,200	80%	100%	\$4,516,960	15.42	\$69,652	\$69,652	\$17,413
2023-2024	3	2	\$23,800	\$5,670,000	\$5,646,200	80%	100%	\$4,516,960	15.42	\$69,652	\$69,652	\$17,413
2024-2025	4	3	\$23,800	\$5,670,000	\$5,646,200	80%	100%	\$4,516,960	15.42	\$69,652	\$69,652	\$17,413
2025-2026	5	4	\$23,800	\$5,670,000	\$5,646,200	80%	100%	\$4,516,960	15.42	\$69,652	\$69,652	\$17,413
2026-2027	6	5	\$23,800	\$5,670,000	\$5,646,200	80%	100%	\$4,516,960	15.42	\$69,652	\$69,652	\$17,413
2027-2028	7	6	\$23,800	\$5,670,000	\$5,646,200	80%	100%	\$4,516,960	15.42	\$69,652	\$69,652	\$17,413
2028-2029	8	7	\$23,800	\$5,670,000	\$5,646,200	80%	100%	\$4,516,960	15.42	\$69,652	\$69,652	\$17,413
2029-2030	9	8	\$23,800	\$5,670,000	\$5,646,200	80%	100%	\$4,516,960	15.42	\$69,652	\$69,652	\$17,413
2030-2031	10	9	\$23,800	\$5,670,000	\$5,646,200	80%	100%	\$4,516,960	15.42	\$69,652	\$69,652	\$17,413
2031-2032	11	10	\$23,800	\$5,670,000	\$5,646,200	80%	100%	\$4,516,960	15.42	\$69,652	\$69,652	\$17,413
2032-2033	12	11	\$23,800	\$5,670,000	\$5,646,200	80%	100%	\$4,516,960	15.42	\$69,652	\$69,652	\$17,413
2033-2034	13	12	\$23,800	\$5,670,000	\$5,646,200	80%	100%	\$4,516,960	15.42	\$69,652	\$69,652	\$17,413
2034-2035	14	13	\$23,800	\$5,670,000	\$5,646,200	80%	100%	\$4,516,960	15.42	\$69,652	\$69,652	\$17,413
2035-2036	15	14	\$23,800	\$5,670,000	\$5,646,200	80%	100%	\$4,516,960	15.42	\$69,652	\$69,652	\$17,413
2036-2037	16	15	\$23,800	\$5,670,000	\$5,646,200	80%	100%	\$4,516,960	15.42	\$69,652	\$69,652	\$17,413
2037-2038	17	-	\$23,800	\$5,670,000	\$5,646,200	0%	100%	\$0	15.42	\$0	\$0	\$87,064

17-year total:	\$1,044,773	\$1,044,773	\$348,258
17-year average:	\$69,652	\$69,652	\$17,413

Assumptions:

1. Projections show anticipated increased assessed values provided by Developer, captured assessed values, and TIF revenues.
2. Assumes a 15-year CEA term with a 17-year District term.
3. Projections assume a flat mil rate of 15.42.
4. Assumes 80% of the increased assessed value is captured in the District and is available to the Credit Enhancement Agreement with the Developer.
5. The preceding financial information contains projections and forward-looking statements that are subject to a number of risks and uncertainties, many of which are beyond the Developer's or the Town's control, that could cause the actual results, performance, or achievements of the project to differ materially from any future results, performances, or achievements expressed or implied by the financial information reported in this projection. The model is not, nor intended to be, an appraisal or guarantee of an assessed value, and there may be positive or negative variations in the actual assessment of the project due to variety of factors, including without limitation the employment of alternative methods of valuation.

Tax Shift Benefits

Old Orchard Beach Milliken Heights Affordable Housing TIF District

Fiscal Year	TIF Year	State Aid to Education Benefit	County Tax Benefit	State Revenue Sharing Benefit	Total Tax Shift Benefits
2021-2022	1	-	-	-	\$0
2022-2023	2	-	-	-	\$0
2023-2024	3	-	\$0	\$0	\$0
2024-2025	4	\$0	\$2,227	\$2,490	\$4,717
2025-2026	5	\$0	\$2,227	\$2,490	\$4,717
2026-2027	6	\$0	\$2,227	\$2,490	\$4,717
2027-2028	7	\$0	\$2,227	\$2,490	\$4,717
2028-2029	8	\$0	\$2,227	\$2,490	\$4,717
2029-2030	9	\$0	\$2,227	\$2,490	\$4,717
2030-2031	10	\$0	\$2,227	\$2,490	\$4,717
2031-2032	11	\$0	\$2,227	\$2,490	\$4,717
2032-2033	12	\$0	\$2,227	\$2,490	\$4,717
2033-2034	13	\$0	\$2,227	\$2,490	\$4,717
2034-2035	14	\$0	\$2,227	\$2,490	\$4,717
2035-2036	15	\$0	\$2,227	\$2,490	\$4,717
2036-2037	16	\$0	\$2,227	\$2,490	\$4,717
2037-2038	17	\$0	\$2,227	\$2,490	\$4,717
2038-2039	18	\$0	\$2,227	\$2,490	\$4,717
2039-2040	19	\$0	\$0	\$0	\$0
2040-2041	20	\$0	-	-	\$0
Totals:		\$0	\$33,402	\$37,347	\$70,750
Averages:		\$0	\$1,965	\$2,197	\$4,162

Assumptions:

1. Data sources include the 2020 mil rate reported by the Town, York County's FY2020 Tax Allocation, the State Treasurer's Office Municipal Revenue Sharing projections for FY 2021 07/01/20 - 06/30/21 Published 08/03/20, and the Maine Department of Education 07/22/20 2020-2021 ED 279 form for RSU 23 (which shows the Town was a so-called Minimum Receiver and the state valuation has no impact on the amount of General Purpose Aid that the Town received).
2. Tax shift losses are comprised of declining subsidies in revenue sharing and increasing obligations to pay county taxes. Tax shift losses occur a couple of years following the year in which the new assessed value is first recognized in the assessment. No tax shift losses occur when a TIF captures all of the new value.
3. These projections assume that the formulas and general inputs for state subsidies and county taxes do not change over time and they assume that all other values in other communities are static relative to one another except for the new value assessed. The projections are less likely to be accurate farther into the future.
4. Assumes the assessment ratio in the Town is 100% when new property value arrives, such that the market value of new property is used for assessment purposes.
5. The projections above assume that no tax increment financing district is put in place, thus the mil rate is reduced by the influx of new value in the Town. This analysis factors in tax shift impacts resulting from the project's new assessed value into future commitments and mil rate calculations to arrive at projected property tax payments.

Attachment 8

Credit Enhancement Agreement

CREDIT ENHANCEMENT AGREEMENT

between

THE TOWN OF OLD ORCHARD BEACH, MAINE

and

MILLIKEN HEIGHTS, LP

[DATE]

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DRAFT

THIS CREDIT ENHANCEMENT AGREEMENT dated as of _____, 2020, between the Town of Old Orchard Beach, a municipal corporation located in Old Orchard Beach, County of York and State of Maine (hereinafter the “Town”), and Milliken Heights, LP (the “Developer”), a Maine limited partnership.

WITNESSETH THAT

WHEREAS, the Town designated Milliken Heights Affordable Housing Development and Tax Increment Financing (“TIF”) District (the “District”) pursuant to Chapter 206 of Title 30-A of the Maine Revised Statutes, as amended (“M.R.S.”), by vote of the Town Council at the Town Council meeting duly called, noticed, and held on October 20, 2020 (the “Vote”) and pursuant to the Vote adopted a development program and financial plan for the District (the “Development Program”); and

WHEREAS, the Maine State Housing Authority (“MaineHousing”) has approved or is expected to approve the District and Development Program as required by law; and

WHEREAS, within the Development Program, and as contemplated thereby, the Town authorized the execution and delivery of the credit enhancement agreement by the Town Manager, in the name of and on behalf of the Town, if such credit enhancement agreement meets the requirements of the Development Program; and

WHEREAS, the Town and Developer desire and intend that this Credit Enhancement Agreement be and constitute such the credit enhancement agreement as contemplated by and described in the Development Program; and

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

**ARTICLE I
DEFINITIONS**

Section 1.1. Definitions.

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

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

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

“Captured Assessed Value” means the amount of Increased Assessed Value retained in the District in each Fiscal Year during the term of this Agreement, as specified in Section 2.2.

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

“Completion of the Project” means (i) the issuance of a certificate of occupancy for the Project by the Town or (ii) the date upon which the Town receives written notice from the Developer electing to commence the term of this Agreement if earlier than the date of the issuance of a certificate of occupancy for the Project by the Town.

“Current Assessed Value” means the then-current assessed value of taxable real property located in the District as determined by the Town Tax Assessor as of April 1 of each Tax Year during the term of this Agreement.

“Development Program” means the development program and financial plan for the District adopted by the Town.

“Development Program Fund” means the development program fund described in the Financial Plan of the Development Program into which the Tax Increment Revenues are to be deposited, established and maintained pursuant to the Development Programs and Article II hereof.

“District” means the Milliken Heights Affordable Housing Development and Tax Increment Financing District (4.76 acres) identified in the Development Program.

“Effective Date of the Development Program” means the date of final approval of the Development Program by MaineHousing pursuant to the Act.

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

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

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

“Original Assessed Value” means \$23,800, the real taxable assessed value of the District as of March 31, 2020 (April 1, 2019).

“Project” means the planned senior housing development to be located in the District, consisting of approximately 55 new units of housing, with approximately 76% affordable housing units and approximately 24% market rate housing units.

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

“State” means the State of Maine.

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

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

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

Section 1.2. Interpretation and Construction.

In this Agreement, unless the context otherwise requires:

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

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

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

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

(e) All approvals, consents, and acceptances required to be given or made by any signatory hereto shall not be withheld unreasonably.

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

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

ARTICLE II

DEVELOPMENT PROGRAM FUND AND FUNDING REQUIREMENTS

Section 2.1. Creation of Development Program Fund.

The Town hereby confirms the creation and establishment of a segregated fund in the name of the Town designated as the “Development Program Fund” pursuant to, and in accordance with the terms and conditions of, the Development Program and Title 30-A M.R.S. § 5250-A(3). The Development Program Fund shall include a project cost account (the “Project Cost Account”) within which the Town shall maintain a subaccount for Town project costs (the “Town Project Cost Subaccount”), if needed, and a subaccount for Developer project costs (the “Developer Project Cost Subaccount”). The Developer Project Cost Subaccount is pledged to and charged with the payment of costs in the manner and priority provided in Title 30-A M.R.S. § 5250-A(3)(A)(1) and as set forth in Section 3.1(b) below.

Section 2.2. Captured Assessed Value; Deposits into Development Program Fund.

(a) Each year during the term of this Agreement, commencing with the Tax Year following the year in which Completion of the Project occurs and continuing thereafter for the shorter of fifteen (15) years or until the District term ends (collectively, the “CEA Years”), the Town shall retain in the District eighty percent (80%) of the Increased Assessed Value as Captured Assessed Value.

(b) For each of the CEA Years, the Town shall deposit into the Development Program Fund contemporaneously with each payment of Property Taxes during the term of this Agreement an amount equal to one hundred percent (100%) of that portion of the property tax payment constituting Tax Increment Revenues. Contemporaneously therewith, in each CEA Year, the Town shall then allocate all one hundred percent (100%) of the Tax Increment Revenues so deposited in the Development Program Fund to the Developer Project Cost Subaccount of the Project Cost Account.

(c) Notwithstanding anything to the contrary contained herein, the City shall have the authority to decide to amend the District and Development Program and capture greater than the eighty percent (80%) of Increased Assessed Value contemplated hereunder in order to fund one or more municipal project costs. If the City determines to increase its Captured Assessed Value for this purpose at any time, deposits to the Developer Project Cost Subaccount will remain at amounts as if the City continued to capture only eighty percent (80%) of the Increased Assessed Value as Captured Assessed Value.

Section 2.3. Use of Monies in the Developer Project Cost Subaccount of the Development Program Fund.

All monies in the Developer Project Cost Subaccount of the Development Program Fund that are allocable to and/or deposited in the Developer Project Cost Subaccount of the Development Program Fund shall in all cases be used and applied to fund fully the Town’s

payment obligations to Developer, as described in Articles II and III hereof. Developer shall use the Tax Increment Revenues solely for the purpose set forth in the Development Program.

Section 2.4. Monies Held in Segregated Account.

All monies required to be deposited with or paid into the Development Program Fund under the provisions hereof and the provisions of the Development Program shall be held by the Town for the uses specified in the Development Program. Any and all revenues resulting from investment earnings on deposits in the Development Program Fund shall be retained in the Development Program Fund and applied for Development Program purposes relating to the Development Program Fund as prescribed by 30-A M.R.S.A § 5250-A(3).

Section 2.5. Liens.

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

Section 2.6. Reporting Obligations.

Developer covenants and agrees to provide the Town promptly upon request with all documentation reasonably required by the Town to satisfy its reporting required by MaineHousing in connection the Development Program and/or the Project.

**ARTICLE III
PAYMENT OBLIGATIONS**

Section 3.1. Developer Payments.

(a) Within thirty (30) days following the Tax Payment Date, the Town agrees to pay Developer in immediately available funds all amounts then on deposit in the Developer Project Cost Subaccount.

(b) Notwithstanding anything to the contrary contained herein, if, with respect to any Tax Payment Date, any portion of the property taxes assessed against the Developer Property remain unpaid, the property taxes actually paid with respect to such Tax Payment Date shall, first, be applied to taxes due on account of Original Assessed Value; and second, shall constitute payment of Property Taxes with respect to Increased Assessed Value, to be applied first to payment in full of the amount to be deposited in the general fund (or the Development Program Fund for the Town's use) for the year concerned in accordance with Section 2.2; and third, to payment of Developer's share of the Tax Increment Revenues for the year concerned, to be deposited into the Developer Project Cost Subaccount. Notwithstanding anything to the contrary contained herein, in any case where a portion of the property taxes assessed against the

Developer Property remain unpaid for any reason other than a bona fide valuation dispute, no payment of Developer's share of the Tax Increment Revenues for the year concerned will be deposited into the Developer Project Cost Subaccount until such property taxes assessed against the Developer Property are paid in full.

Section 3.2. Failure to Make Payment.

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

Section 3.3. Manner of Payments.

The payments provided for in this Article III shall be paid directly to Developer at the address specified in Section 8.11 hereof in the manner provided hereinabove by check drawn on the Town.

Section 3.4. Obligation Unconditional.

Except as otherwise expressly provided in this Agreement, the obligations of the Town 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 Developer. The Town hereby acknowledges that Developer has the right to enforce the contractual obligations of the Town under this Agreement and that the governmental immunity of the Town does not apply to actions to enforce its contractual obligations; provided however, that nothing herein shall constitute a waiver of the Town's tort immunity or any other governmental immunities.

Section 3.5. Limited Obligation.

The Town's obligations of payment hereunder shall be limited obligations of the Town payable solely from Tax Increment Revenues pledged therefor under this Agreement. The Town'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 Town, the State of Maine, or of any municipality or political subdivision thereof, but shall be payable solely from that portion of Tax Increment Revenues payable to Developer hereunder, whether or not actually deposited into the Developer Project Cost Subaccount in the Development Program Fund. This Agreement shall not directly, indirectly or contingently obligate the Town, the State of Maine, or any other Town or political subdivision to levy or to pledge any form of taxation whatever therefor or to make

any appropriation for their payment, excepting the pledge of the Tax Increment Revenues established under this Agreement.

ARTICLE IV PLEDGE AND SECURITY INTEREST

Section 4.1. Pledge of Developer Project Cost Subaccount.

In consideration of this Agreement and other valuable consideration and for the purpose of securing payment of the amounts provided for hereunder to Developer by the Town, according to the terms and conditions contained herein, and in order to secure the performance and observance of all of the Town's covenants and agreements contained herein, the Town does hereby grant a security interest in and pledge Developer Project Cost Subaccount described in Section 2.1 hereof and all sums of money and other securities and investments therein to Developer.

Section 4.2. Perfection of Interest.

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

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

Section 4.3. Further Instruments.

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

Section 4.4. No Disposition of Development Program Fund.

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

Section 4.5. Access to Books and Records.

(a) All non-confidential books, records, and documents in the possession of the Town relating to the District, the Development Program, this Agreement and the monies, revenues and receipts on deposit or required to be deposited into Development Program Fund shall at all reasonable times and upon reasonable notice be open to inspection by Developer, its agents, and its employees.

(b) All non-confidential books, records, lease agreements, and documents in the possession of Developer relating to the District, the Development Program, this Agreement and the monies, revenues, and receipts used from the Development Program Fund shall at all reasonable times and upon reasonable notice be open to inspection by the Town, its agents, and its employees. In addition, inspections of the Developer Property as well as any appraisals related to Developer property shall be made possible by Developer upon the reasonable request of the Town for the purpose of assisting the Town in the process of creating a Current Assessed Value.

**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 Town to make payments due when the same shall become due and payable;

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

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

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

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

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

(g) If Developer fails to maintain adequate surety bonding during construction at the levels and terms as may be required from time to time by Developer's secured lenders and/or Developer allows mechanics' liens to encumber the Developer's property in the District for a period of more than thirty (30) days;

(h) Any discontinuance of the District property as "affordable housing," pursuant to the definition contained in 30-A M.R.S. § 5246.

Section 5.2. Remedies on Default.

Subject to the provisions contained in Section 8.9, whenever any Event of Default described in Section 5.1 hereof shall have occurred and be continuing, the nondefaulting party, following the expiration of any applicable cure period, shall have all rights and remedies available to it at law or in equity, including the rights and remedies available to a secured party under the laws of the State of Maine, and may take whatever action as may be necessary or desirable to collect the amount then due and thereafter to become due, to specifically enforce the performance or observance of any obligations, agreements, or covenants of the nondefaulting party under this Agreement and any documents, instruments, and agreements contemplated hereby or to enforce any rights or remedies available hereunder. Further, the non-defaulting party may elect to terminate this Agreement upon 30 days' written notice to the defaulting party.

Section 5.3. Remedies Cumulative.

Subject to the provisions of Section 8.9 below concerning dispute resolution, no remedy herein conferred upon or reserved to any party is intended to be exclusive of any other available

remedy or remedies but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law, in equity or by statute. Delay or omission to exercise any right or power accruing upon any Events of Default to insist upon the strict performance of any of the covenants and agreements herein set forth or to exercise any rights or remedies upon the occurrence of an Event of Default shall not impair any such right or power or be considered or taken as a waiver or relinquishment for the future of the right to insist upon and to enforce, from time to time and as often as may be deemed expedient, by injunction or other appropriate legal or equitable remedy, strict compliance by the parties hereto with all of the covenants and conditions hereof, or of the rights to exercise any such rights or remedies, if such Events of Default be continued or repeated.

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 Town or the Developer herein contained, the defaulting party shall, on demand thereof, pay to the non-defaulting party the reasonable costs and expenses so incurred by the non-defaulting party.

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

Section 6.1. Effective Date and Term.

(a) Notwithstanding any other provision of this Agreement, this Agreement is conditioned upon receipt of MaineHousing's unconditional approval of the Town's designation of the District and adoption of the Development Program. Following execution and delivery of this Agreement, the Agreement shall not be or become binding and enforceable until receipt of such unconditional approval.

(b) From the date of execution and delivery of this Agreement, the Agreement shall remain in full force and effect until the completion of the CEA Years as herein defined, unless even sooner terminated pursuant to any applicable provision of this Agreement.

(c) The Town may terminate this Agreement by delivering written notice of such termination to the Developer in the event that the Completion of the Project does not occur before March 31, 2023.

Section 6.2. Cancellation and Expiration of Term.

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

ARTICLE VII ASSIGNMENT AND PLEDGE OF DEVELOPER'S INTEREST

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

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

Section 7.2. Assignment of Agreement.

This Section 7.2 does not apply to collateral assignments or pledges of Developer's rights hereunder as collateral for financing as described in Section 7.1, but rather applies to absolute assignments of this agreement to third party transferees in connection with the sale or conveyance of Developer's Project. The Town reserves the right to approve or deny permission for such assignments in its sole discretion. The Town agrees to, if and once consent has been provided by the Town Council, execute and deliver any reasonable consents or other confirmations or agreements required by the prospective assignee, including recognition of the 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 assignee the position of such assignee and the irrevocable and binding nature of this Agreement and provide to the pledge or assignee such rights and/or remedies as it may deem necessary for the establishing, perfection and protection of its interest herein. Any attorney's fees or other costs of the Town associated with reviewing, processing or otherwise representing the Town in activities relating to such assignment contemplated in Article VII hereof shall be paid by the Developer.

ARTICLE VIII MISCELLANEOUS

Section 8.1. Successors.

In the event of the dissolution, merger, or consolidation of the Town or Developer or a properly authorized transferee or assignee pursuant to Section 7.2, the covenants, stipulations, promises, and agreements set forth herein, by or on behalf of or for the benefit of such party shall bind or inure to the benefit of the successors and assigns thereof from time to time and any entity, officer, board, commission, agency, or instrumentality to whom or to which any power or duty of such party shall be transferred. Notwithstanding this Subsection 8.1, unless the Town affirmatively approves of such action, the Town shall have the unilateral right to terminate this Agreement upon the dissolution, merger, or consolidation of Developer, and if it exercises such right shall not be obligated to comply with this Agreement thereafter.

Section 8.2. Parties-in-Interest.

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

Section 8.3. Severability.

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

Section 8.4. No Personal Liability of Officials of the Town.

No covenant, stipulation, obligation, or agreement of the Town 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 Town in his or her individual capacity, and neither the Town Board of Selectmen nor any official, officer, employee, or agent of the Town shall be liable personally with respect to this Agreement or be subject to any personal liability or accountability by reason hereof.

Section 8.5. Counterparts.

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

Section 8.6. Governing Law.

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

Section 8.7. Amendments.

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

Section 8.8. Integration.

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

Section 8.9. Dispute Resolution.

In the event of a dispute regarding this Agreement or the transactions contemplated by it, the parties hereto will use all reasonable efforts to resolve the dispute on an amicable basis. If the dispute is not resolved on that basis within sixty (60) days after one party first brings the dispute to the attention of the other party, then either party may refer the dispute for resolution by one arbitrator mutually agreed to by the parties, and judgment on the award rendered by the arbitrator may be entered in any Maine state court having jurisdiction. Any such arbitration will take place in Old Orchard Beach, Maine or such other location as mutually agreed by the parties. The parties acknowledge that arbitration shall be the sole mechanism for dispute resolution under this Agreement. Provided however, that in the event the parties are unable to agree, within a reasonable period, on the selection of an arbitrator, either party may file suit to resolve the dispute in any court having jurisdiction within the State of Maine. This arbitration clause shall not bar the Town's assessment or collection of property taxes in accordance with law, including by judicial proceedings, including tax lien thereof.

Section 8.10. Tax Laws and Valuation Agreement.

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

Section 8.11. Notices.

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

If to the Town:

Town Manager
Town of Old Orchard Beach
1 Portland Avenue
Old Orchard Beach, Maine 04064

With a copy to:

Shana Cook Mueller, Esq.
Bernstein Shur
100 Middle Street
P.O. Box 9729
Portland, Maine 04104-5029

If to Developer:

Milliken Heights, LP
c/o The Szanton Company
Nathan S. Szanton, President
482 Congress Street, Suite 203
Portland, ME 04101

With a copy to:

John S. Kaminski, Esq.
Drummond Woodsum
84 Marginal Way
Suite 600
Portland, Maine 04101

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

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

WITNESS:

TOWN OF OLD ORCHARD BEACH

By: _____

Name: Larry Mead
Its Town Manager as Authorized by the Town Council on October 20, 2020

WITNESS:

MILLIKEN HEIGHTS, LP

By: _____

Name:
Title:

