

COPY

City of Auburn, Maine

Municipal Development and Tax Increment Financing District

Auburn Industrial Park

Development Agreement

TABLE OF CONTENTS

ARTICLE I DEFINITIONS	2
Section 1.1. Definitions.....	2
Section 1.2. Interpretation and Construction	3
 ARTICLE II DEVELOPMENT PROGRAM FUND AND FUNDING REQUIREMENTS	 4
Section 2.1. Creation of Development Program Fund	4
Section 2.2. Liens.....	4
Section 2.3. Deposits into Development Program Fund.....	5
Section 2.4. Use of Monies in Development Program Fund	5
Section 2.5. Investments	5
 ARTICLE III RESPONSIBILITIES OF THE PARTIES.....	 6
Section 3.1. Obligations of the Parties.....	6
Section 3.2. Obligations of Developer.....	6
Section 3.3. Obligations of City	6
 ARTICLE IV DEFAULTS AND REMEDIES.....	 6
Section 4.1. Events of Default	6
Section 4.2. Remedies on Default.....	7
Section 4.3. Remedies Cumulative	7
Section 4.4. Waiver of Governmental Immunity.....	7
Section 4.5. Tax Laws.....	8
 ARTICLE V EFFECTIVE DATE, TERM AND TERMINATION	 8
Section 5.1. Effective Date and Term.....	8
Section 5.2. Cancellation and Expiration of Term.....	8
 ARTICLE VI MISCELLANEOUS.....	 8
Section 6.1. Successors	8
Section 6.2. Parties in Interest	8
Section 6.3. Non-Severability.....	8
Section 6.4. No Personal Liability of Officials of the City.....	9
Section 6.5. Counterparts.....	9
Section 6.6. Governing Law	9
Section 6.7. Notices	9
Section 6.8. Amendments	10
Section 6.9. Integration.....	10
Section 6.10. Authority of City.....	10
 APPENDIX A DEVELOPMENT PROGRAM.....	 12

City of Auburn and Auburn Business Development Corporation

DEVELOPMENT AGREEMENT

This Agreement is made as of March 21, 200~~8~~⁵, by and between the City of Auburn, Maine (the "City"), a municipal body corporate and politic and a political subdivision of the State, and the Auburn Business Development Corporation or ABDC (the "Developer").

WITNESSETH THAT:

WHEREAS, industrial land suitable for development and served by air, rail and highway transportation is in short supply in Auburn. The City has been making efforts for more than 10 years to encourage and accomplish development of a new industrial park to serve that need. The Auburn Business Development Corporation and its nonprofit affiliate, Kittyhawk Development Corporation, in cooperation with the City, have succeeded in acquiring contiguous land suitable for industrial development adjacent to the Auburn Lewiston Municipal Airport and the St. Lawrence and Atlantic Railroad, and convenient to the Maine Turnpike. This land is known as the Auburn Industrial Park. The Lewiston Auburn Economic Growth Council has also secured approval by the Foreign Trade Zone Board of the United States Department of Commerce of an Auburn Foreign-Trade Zone which includes all of the Auburn Industrial Park. Once access roads, utilities and other necessary infrastructure are constructed in the Auburn Industrial Park, it will attract development of industries dependent on transportation and which will make long-term commitments to the community because of the capital intensive nature of their businesses. These industries will be substantial new taxpayers who will offer stable, quality employment in the City; and

WHEREAS, the City desires to attract and retain quality jobs and commercial development; create and maintain a healthy tax base; improve the economy of the City and provide for the construction of new public infrastructure and improvements to facilitate economic development; and

WHEREAS, to further the above goals, the City has designated a Municipal Development and Tax Increment Financing District (the "District") pursuant to Chapter 206 of Title 30-A of the Maine Revised Statutes, as amended, by action of the Auburn City Council on March 21, 2005 (the "Vote"), and pursuant to the same Vote adopted a Development Program and Financial Plan for the District (the "Development Program"), attached hereto as Appendix A; and

WHEREAS, the Development Program provides for the financing of costs associated with the construction of public infrastructure and improvements including but not limited to streets, access roadways, bridges, street lights, storm drains, intersections, sidewalks, landscaping, wetlands mitigation and utilities such as power, water, sewer, natural gas, communications and data transmission (the "Public District Improvements"); and

WHEREAS, the City has submitted the Development Program to the Maine Department of Economic and Community Development for the Department's review and approval of the District and the Development Program; and

WHEREAS, the Development Program designates ABDC to plan, implement, construct and expand public improvements for the Auburn Industrial Park including the District; and obligates ABDC to assume those responsibilities; and

WHEREAS, the execution and delivery of this Agreement serves to memorialize the understandings of the parties with respect to the above-referenced designation; and

WHEREAS, the Development Program was submitted to the Department for approval on January 20, 2006.

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" means this Development Agreement between the City and the Developer dated as of the date set forth above.

"City" means the City of Auburn, Maine.

"Commissioner" means the Commissioner of the Department.

"Department" means the Department of Economic and Community Development of the State, or DECD.

"Developer" means ABDC, its affiliates, successors and assigns.

"Development Program" means the Auburn Industrial Park Development and Tax Increment Financing Development Program, which was submitted for approval to the Department on January 20, 2006.

"Development Program Fund" means the development program fund described in the Financial Plan section of the Development Program and established and maintained pursuant to Article III hereof.

"District" means the Auburn Industrial Park Tax Increment Financing District more particularly described in the Development Program and designated by the City pursuant to Chapter 206 of Title 30-A of the Maine Revised Statutes, as amended, by vote of the City Council on March 21, 2005.

"Effective Date" means the date of approval by DECD, or February 2, 2006.

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

"Original Assessed Value" means \$334,200.00.

"Project" means the extension, expansion and addition of public improvements and modifications to existing facilities as contemplated and further defined in the Development Program.

"Property" means all real and personal property located within the District.

"Property Taxes" means any and all valorem property taxes assessed against the Property within 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 pursuant to 30-A M.R.S.A. §§5706 and 5712, as amended from time to time.

"Regulations" means the regulations enacted by the Department pursuant to the Act.

"Retained Tax Increment Revenue" means the percentage of the Tax Increment retained by the City pursuant to the Development Program to fund the repayment of Bond indebtedness in accordance with the provisions of Article II hereof, the Development Program and DECD approval.

"State" means the State of Maine.

"Tax Increment" has the meaning set forth in 30-A M.R.S.A. §5222(15).

"Tax Increment Revenues" means that portion of all real and personal property taxes assessed in any Tax Year by the City, in excess of any state, county or special district tax, upon the captured assessed value of property in the District.

"Tax Payment Date" means the date(s), as determined by the City from time to time, on which property taxes assessed by the City are due and payable without interest from owners of property located within the City.

"Tax Year" means the twelve-month period beginning July 1 and ending June 30 or any other tax year hereafter adopted by the City.

Section 1.2. Interpretation and Construction

In this Agreement, unless the context otherwise requires:

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

ARTICLE II

Development Program Fund and Funding Requirements

Section 2.1. Creation of Development Program Fund

Within thirty (30) days after the date first set out above, the City shall create and establish a segregated fund in the name of the City designated as the "Auburn Industrial Park Development and Tax Increment Financing District Development Program Fund" (the "Development Program Fund") pursuant to, and in accordance with the terms and conditions of, the Development Program, and within the Development Program Fund will establish segregated accounts designated as the Project Cost Account and the Sinking Fund Account (the "Accounts").

Section 2.2. Liens

Except as provided in this Agreement, the City shall not create any lien or encumbrance on, or create or transfer any other interest of any nature whatsoever in, nor shall it hypothecate, the Accounts or any funds therein or revenues resulting from investment of funds therein, provided, however, nothing herein shall prohibit creation of real and personal property tax liens on the Property in accordance with, and, entitled to the priority provided under, State law.

Section 2.3. Deposits into Development Program Fund.

Starting with the 2006-2007 tax year and for each of the next 30 years there shall be deposited into the Development Program Fund contemporaneously with each payment of property tax assessed against the Property 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 from within the District for the period to which the payment relates; provided, however that such deposits to the Development Program Fund shall be due and payable solely from such property tax payments and from proceeds of the sale of the City's general obligation bonds as described in the Development Program (the "Bonds"). Any and all revenues resulting from investment of monies on deposit in the Development Program Fund shall be expended as determined by the City.

Section 2.4. Use of Monies in Development Program Fund

a) Sinking Fund Account

Monies deposited in the Sinking Fund Account shall consist of the Retained Tax Revenues and be used and applied to fund repayment of the Bonds.

b) Project Cost Account

Monies deposited in the Project Cost Account shall consist of the Bond sale proceeds and any Tax Increment Revenues in excess of the Retained Tax Revenues and shall be used and applied to fund the Project Costs as defined in the Development Program which include but are not limited to expenses of planning, implementation, construction, expansion and administration of the District and the Auburn Industrial Park by ABDC. Payment of funds from the Project Cost Account shall be made by the City to ABDC with thirty (30) days of submission of detailed requisitions for Project Costs which have been incurred.

Section 2.5. Investments

The monies in the Development Program Fund and 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 the Development Program Fund as applicable. 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 Development Program Fund. The City shall not be liable on account of its investment decisions as long as such decisions are made in accordance with this section.

ARTICLE III

Responsibilities of the Parties

Section 3.1. Obligations of the Parties

Each Party shall cooperate fully with the other Party to enable such other Party to satisfy its obligations under this Agreement and the Development Program and shall keep the other Party informed as to the progress of that Party's responsibilities. ABDC authorizes the City to conduct such inspections of the Project as it deems advisable.

Section 3.2. Obligations of ABDC

ABDC shall use its best efforts in the planning, implementation, construction and expansion of public improvements for the District and of the Auburn Industrial Park, including but not limited to construction of public infrastructure and improvements including the Public District Improvements and in providing directly or obtaining administrative, organizational and professional services to ensure proper capital and financing as well as licensing, architectural, planning, engineering, inspection and legal services.

Section 3.3. Obligations of City

For its services as set forth in Section 3.2, City will pay to ABDC its costs and expenses. Payments by the City shall be made to ABDC from the Project Cost Account pursuant to Section 2.4(b).

ARTICLE IV

Defaults And Remedies

Section 4.1. 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 amount from the Project Cost Account when the same shall become due and payable;
- b. Any failure by the City to make deposits into the Development Program Fund as required;
- c. Any failure by a party hereto to observe and perform in all material respects any covenant, condition, agreement or provision contained herein on the part of the party to be observed or performed; and
- d. If a decree or order of a court or agency or supervisory authority having jurisdiction in the premises for 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 a party's affairs shall have been entered against the party or the party shall have consented to the appointment of a

conservator or receiver or liquidator in any such proceedings of or relating to the party 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 party or the failure by the party to have a petition in bankruptcy dismissed within a period of 90 consecutive days following its filing or in the event an order for release has been entered under the Bankruptcy Code with respect to the party.

Section 4.2. Remedies on Default

Whenever any Event of Default referred to in Section 4.1 hereof shall have occurred and be continuing for a period of fifteen (15) days after a party's receipt from the other party of written notice of an Event of Default by the party, the other party may (a) specifically enforce the performance or observance of any obligations, agreements or covenants of the defaulting party under this Agreement and any documents, instruments and agreements contemplated hereby or to enforce any rights or remedies available hereunder or (b) suspend its performance under this Agreement for so long as the Event of Default continues or remains uncured.

Section 4.3. Remedies Cumulative

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

Section 4.4. Waiver of Governmental Immunity

To the extent allowed by law, the City hereby waives its governmental immunity (but not any tort immunity) with respect to any action or suit undertaken by Developer, its successors or assigns, arising out of, resulting from or involving any alleged default by the City hereunder or failure by the City to observe or perform any of its obligations hereunder, it being understood and agreed that such waiver is a material inducement to the Developer entering into this Agreement and continuing its pursuit of the Project. 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. Except as expressly provided in this Agreement, the City hereby waives any right to withhold, suspend or setoff payments during the pendency of any such dispute; provided, however, that nothing herein shall be deemed a waiver of the City's tort immunity. The City agrees that it will not in any manner challenge or contest the validity of this Agreement, the Development Program or the proceedings for the adoption and approval of the same.

Section 4.5. Tax Laws

The parties acknowledge that all laws of the State now in effect or hereafter enacted with respect to taxation of property shall be applicable and that the City, by entering into this Agreement, is not excusing any non-payment of taxes by ABDC. Without limiting the foregoing, the City and ABDC shall always be entitled to exercise all rights and remedies regarding assessment, collection and payment of taxes assessed on ABDC's property.

ARTICLE V

Effective Date, Term and Termination

Section 5.1. Effective Date and Term

This Agreement shall remain in full force from the Effective Date for a period of thirty (30) years unless sooner terminated pursuant to any provision of this Agreement.

Section 5.2. Cancellation and Expiration of Term

At the termination or other expiration of this Agreement, the City and ABDC 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 VI

Miscellaneous

Section 6.1. Successors

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

Section 6.2. Parties in Interest

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

Section 6.3. Non-Severability

In case any one or more of the material provisions of this Agreement shall, for any reason, be held to be illegal or invalid, then this Agreement may, at the option of either party, be terminated as of the date on which such holding becomes final. To exercise such option, the terminating party shall send written notice of termination to the other party within sixty (60) days after the date on which such holding becomes final.

Section 6.4. No Personal Liability of Officials

No covenant, stipulation, obligation or agreement of either party 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 such party in his or her individual capacity and no official, officer, employee or agent of either party shall be liable personally with respect to this Agreement or be subject to any personal liability or accountability by reason hereof.

Section 6.5. 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 6.6. Governing Law.

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

Section 6.7. Notices

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

If to the City:

City Manager
City of Auburn
60 Court Street
Auburn, Maine 04210

With a copy to:

Jack Conway, Esq.
Linnell, Choate & Webber
83 Pleasant Street
Auburn, ME 04210

If to the Developer:

Lucien Gosselin, Executive Director
Auburn Business Development Corporation
95 Park Street
PO Box 1188
Lewiston, ME 04243-1188

With a copy to:

Peter M. Garcia, Esq.
Skelton, Taintor & Abbott
95 Main Street
PO Box 3200
Auburn, ME 04212-3200

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

Section 6.8. Amendments

Neither this Agreement nor the Development Program may be amended without the express written consent of the parties hereto and approval of the City Council where required.

Section 6.9. Integration

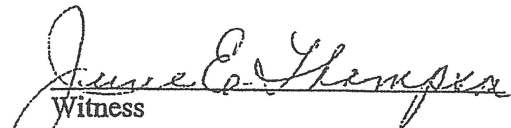
This Agreement completely and fully supersedes all other prior or contemporaneous understandings or agreements, both written and oral, between the City and the Developer relating to the specific subject matter of this Agreement and the transactions contemplated hereby.

Section 6.10. Authority of City

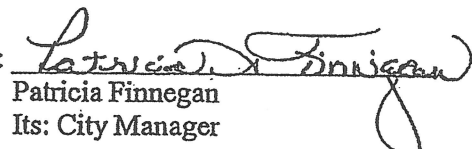
The Developer and the City waive any right which either may have to contest, and shall not take any action to challenge, the other's authority to enter into, perform or enforce the Agreement or to carry out the Development Program or the validity or enforceability of this Agreement, the District or the Development Program. The City and the Developer shall each utilize their respective best efforts to uphold the District, the Development Program, this Agreement and the City's authority to enter into this Agreement and the validity and enforceability of the District, the Development Program and this Agreement, including without limitation opposing, to the extent permitted by law, any litigation or proceeding challenging such authority, validity or enforceability.

IN WITNESS WHEREOF, the City and the Developer have caused this Agreement to be executed by their respective duly authorized representatives, all as of the date first above written.

CITY OF AUBURN


Witness

By:

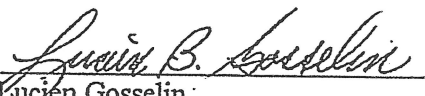

Patricia Finnegan
Its: City Manager

COPY

AUBURN BUSINESS DEVELOPMENT CORP.


Witness

By:


Lucien Gosselin

Its: EXECUTIVE DIRECTOR

COPY

AUBURN INDUSTRIAL PARK MUNICIPAL DEVELOPMENT AND
TAX INCREMENT FINANCING DISTRICT # 12 DEVELOPMENT
PROGRAM

EXHIBIT J

CERTIFICATE OF
CITY ASSESSOR
CITY OF AUBURN, MAINE

The undersigned City Assessor for the City of Auburn, Maine, does hereby certify pursuant to the provisions of 30-A M.R.S.A. Subsection 5254 that the assessed value of the Auburn Industrial Park Municipal Development Tax Increment Financing District #12, as described in the development program to which this certificate is included, was \$334,200 as of March 31, 2005.

IN WITNESS WHEREOF, the certificate has been executed as of this 21st day of March, 2005.

CITY ASSESSOR



Print Name: Cheryl A. Dubois

COPY