

Order 194-15/16

Passage: 8-0 (Thibodeau absent) on 3/21/2016

Effective 3/31/2016

ETHAN K. STRIMLING (MAYOR)  
BELINDA S. RAY (1)  
SPENCER R. THIBODEAU (2)  
EDWARD J. SUSLOVIC (3)  
JUSTIN COSTA (4)

**CITY OF PORTLAND  
IN THE CITY COUNCIL**

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

**ORDER APPROVING THE ASSUMPTION AND ASSIGNMENT OF CITY LOAN  
DOCUMENTS FROM BAYSIDE HOUSING ASSOCIATES LP  
TO MAPLE GROVE ELDERLY HOUSING CORPORATION  
AND THE MODIFICATION OF RELATED PROMISSORY NOTES**

**ORDERED**, that the assignment to and the assumption by Maple Grove Elderly Housing Corporation of Bayside Housing Associates Limited Partnership's rights and obligations under its November 15, 2000 loans from the City of Portland are hereby approved in substantially the form attached hereto; and

**BE IT FURTHER ORDERED**, that the modification of the promissory notes evidencing the November 15, 2000 loans is hereby approved in substantially the form attached hereto; and

**BE IT FURTHER ORDERED**, that the City Council hereby authorizes the City Manager or his or her designee to execute said documents in substantially the form attached hereto, and any other related documents necessary or convenient to carry out the intent and purpose of said documents.

## **ASSIGNMENT AND ASSUMPTION AGREEMENT**

This ASSIGNMENT AND ASSUMPTION AGREEMENT is dated as of March \_\_, 2016 (this "Agreement") by and among the CITY OF PORTLAND, a body politic and corporate having a principal place of business and mailing address at 389 Congress Street, Portland, Maine (the "City"), BAYSIDE HOUSING ASSOCIATES LP, a Maine limited partnership having a principal place of business and mailing address of 307 Cumberland Avenue, Portland, Maine 04101 ("Bayside") and MAPLE GROVE ELDERLY HOUSING CORPORATION, a Maine nonprofit corporation have a principal place of business c/o Avesta Housing, 307 Cumberland Avenue, Portland, Maine 04101 ("Maple").

### **WITNESSETH:**

WHEREAS, the City made three loans to Bayside in the amounts of \$158,500 (the "\$158,500 Loan"), \$100,000 (the "\$100,000 Loan"), and \$86,500 (the "\$86,500 Loan") respectively, in connection with the development of a rental housing project known as Unity Village, and located on Cumberland Avenue, Stone Street, Oxford Street and Chestnut Street, Portland, Maine (the "Property"); and

WHEREAS, the \$158,500 Loan is evidenced by, among other things, a Promissory Note in the amount of \$158,500 given by Bayside to the City dated November 15, 2000, as modified by two Promissory Note Modification Agreements dated June 29, 2001 and October 15, 2001 which increased the principal amount of the loan to \$210,136 (the "\$158,500 Note"); and

WHEREAS, the \$100,000 Loan is evidenced by, among other things, a Promissory Note in the amount of \$100,000 given by Bayside to the City dated November 15, 2000 (the "\$100,000 Note"); and

WHEREAS, the \$86,500 Loan is evidenced by, among other things, a Promissory Note in the amount of \$86,500 given by Bayside to the City dated November 15, 2000, as modified by a Promissory Note Modification Agreement dated October 15, 2001 (the "\$86,500 Note"); and

WHEREAS, the \$158,500 Note is secured by a CDBG Funds Declaration of Covenants, Conditions and Restrictions by and among the City and Bayside dated November 15, 2000 and recorded in the Cumberland County Registry of Deeds in Book 15850, Page 99, a Collateral Assignment of Leases and Rents from Bayside to the City dated November 15, 2000 and recorded in the Cumberland County Registry of Deeds in Book 15850, Page 125, and Mortgage Deed granted by Bayside to the City dated November 15, 2000 and recorded in Cumberland

County Registry of Deeds in Book 15850, Page 109 (collectively, the “CDBG Loan Documents”); and

WHEREAS, the \$100,000 Note is secured by a Mortgage Deed granted by Bayside to the City dated November 15, 2000 and recorded in the Cumberland County Registry of Deeds in Book 15850, Page 152 (collectively with the \$158,500 Note, the “CDBG Loan Documents”);

WHEREAS, the \$86,500 Note is also secured by a Junior Mortgage and Security Agreement (HOME Funds) from Bayside to the City dated November 15, 2000 and recorded in the Cumberland County Registry of Deeds in Book 15850, Page 83, a HOME Funds Declaration of Covenants, Conditions and Restrictions by and among the City and Bayside dated November 15, 2000 and recorded in the Cumberland County Registry of Deeds in Book 15850, Page 73 (collectively, the “HOME Loan Documents;” the HOME Loan Documents, the \$158,500 Note, \$86,500 Note, \$100,000 Note, CDBG Loan Documents and all other documents and instruments executed in connection therewith are hereby referred to collectively as the “City Documents”); and

WHEREAS, on even or near date herewith, Maple intends to acquire the Property; and

WHEREAS, in connection with such acquisition, Bayside wishes to assign to Maple all of its rights and obligations under the City Documents, and Maple wishes to assume all such rights and obligations;

NOW THEREFORE, in consideration of the foregoing mutual promises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Assignment. Bayside hereby assigns to Maple all of Bayside’s rights and obligations in and to the City Documents.
2. Assumption. Maple hereby accepts the foregoing assignments of the City Documents, assumes all of the obligations of Bayside set forth therein and hereby agrees to be bound by the terms thereof as if Maple were an original party thereto.
3. Consent and Release. The City hereby consents and agrees to the following: (i) the transfer of the Property to Maple; (ii) Bayside’s assignment to Maple of its rights and obligations in, to and under the City Documents, and the assumption by Maple of all obligations of Bayside under the City Documents. As of the date of this Agreement, the City, for itself and its respective agents, successors and assigns, hereby releases, discharges and exonerates Bayside and its Partners, officers, employees, successors and assigns from and against any and all liability, loss, costs, damages and claims arising from or in any way related to the City Documents and/or the Property, whether known or unknown, asserted or unasserted. As of the date of this Agreement, Bayside, for itself and its respective directors, officers, affiliates, successors and assigns, hereby release, discharge and exonerate the City and its respective partners, officers, employees, successors and assigns from and against any and all liability, loss, costs, damages and claims arising from or in any way related to the City Documents and/or the Property, whether known or unknown, asserted or unasserted.

4. Indemnification. Maple shall not be liable for any losses, liabilities, claims, demands, or actions resulting from the actions of Bayside, prior to the date of this Agreement, and Bayside hereby agrees to indemnify, defend and hold harmless Maple and its directors, officers or shareholders from any and all such liability. Bayside shall not be liable for any losses, liabilities, claims, demands, or actions resulting from the actions of Maple, after the date of this Agreement, and Maple hereby agrees to indemnify, defend and hold Bayside and its partners harmless with respect to any and all such liability. The mutual indemnities contained in this paragraph shall also cover all reasonable costs of collection and enforcement, including reasonable attorneys' fees.

5. Miscellaneous. This Agreement shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties. This Agreement may be executed in several counterparts, each of which shall be deemed to be an original copy, and all of which together shall constitute one agreement binding on all parties hereto, notwithstanding that all the parties shall not have signed the same counterpart. This Agreement shall be construed in accordance with the laws of the State of Maine.

IN WITNESS WHEREOF, the parties hereto have duly caused this Assignment and Assumption Agreement to be executed as of the day and year first above written.

BAYSIDE HOUSING ASSOCIATES LP

By: Pinetree Housing Development I LLC,  
its sole general partner

\_\_\_\_\_  
By: Dana Totman, its President

MAPLE GROVE ELDERLY HOUSING CORPORATION

\_\_\_\_\_  
By: Dana Totman, its President

STATE OF MAINE  
CUMBERLAND, SS

March \_\_\_\_, 2016

Personally appeared the above-named Dana Totman, President of Pinetree Housing Development I LLC, sole general partner of Bayside Housing Associates LP, and President of Maple Grove Elderly Housing Corporation, as aforesaid, and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said limited partnership, limited liability company and corporation.

Before me,

\_\_\_\_\_  
Notary Public / Attorney-at-Law  
Print Name: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

WITNESS:

CITY OF PORTLAND

\_\_\_\_\_

By: \_\_\_\_\_  
Jon P. Jennings, its City Manager

STATE OF MAINE  
CUMBERLAND, SS

March \_\_\_\_, 2016

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

Before me,

\_\_\_\_\_  
Notary Public / Attorney-at-Law  
Print Name: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

## ALLONGE AND NOTE MODIFICATION AGREEMENT

This Allonge and Note Modification Agreement (this "Agreement") made as of the \_\_\_\_ day of March, 2016, by and between the CITY OF PORTLAND, a body politic and corporate having a principal place of business and mailing address of 389 Congress Street, Portland, Maine 04101 ("Lender") and MAPLE GROVE ELDERLY HOUSING CORPORATION, a Maine nonprofit corporation having a principal place of business and mailing address of 307 Cumberland Avenue, Portland, Maine 04101 ("Borrower")

WITNESSETH:

WHEREAS, on November 15, 2000, Bayside Housing Associates LP, a Maine limited partnership ("Bayside") executed and delivered to the Lender a Promissory Note in the original principal amount of \$158,500, which was modified to increase the principal balance to \$208,863 pursuant to that certain Promissory Note Modification Agreement dated June 29, 2001 and further increased to \$210,136 by Second Promissory Note Modification Agreement dated October 15, 2001 (collectively, the "\$210,136 Note"); and

WHEREAS, contemporaneously therewith, on November 15, 2000, Bayside executed and delivered to the Lender a Promissory Note in the original principal amount of \$86,500, which was modified pursuant to that certain Promissory Note Modification Agreement dated October 15, 2001 (collectively, the "\$86,500 Note") (the \$210,136 Note and the \$86,500 Note are collectively referred to as the "Notes"); and

WHEREAS, the Notes were executed in connection with Bayside's development of a 33-unit rental housing complex located on Cumberland Avenue, Stone Street, Oxford Street and Chestnut Street (the "Project"); and

WHEREAS, pursuant to an Assignment and Assumption Agreement of even date, Borrower has assumed all of the obligations of Bayside under the Notes as of the date hereof and thereafter shall be solely liable under and responsible for repayment of the Notes; and

WHEREAS, the Notes set forth repayment provisions with respect to the obligations outstanding thereunder (the "Repayment Provisions"); and

WHEREAS, the Borrower and Lender wish to further modify the Notes to amend the Repayment Provisions as more fully set forth herein;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by all parties hereto, the parties hereby agree as follows:

1. As of the date of this Agreement, the Repayment Provisions in the Notes shall be, and hereby are, modified to provide that Borrower shall make annual payments of principal and accrued interest on the Notes from twenty percent (20%) of surplus cash (as the same shall be determined by the Maine State Housing Authority upon its receipt and review of audited

financial statements for the Project each fiscal year). Such annual payments shall be allocated as follows: (1) first, to accrued interest, and then outstanding principal, on the \$86,500 Note until all outstanding principal and accrued interest due on the \$86,500 Note have been paid in full, and then (2) first, to accrued interest, and then outstanding principal, on the \$210,136 Note.

(a) Each fiscal year, Borrower will provide Lender with a copy of the audited financial statements for the Project. Borrower will also provide Lender with the AFR Review Letter prepared by Maine State Housing Authority, along with the Clearance Letter if applicable.

2. The Borrower agrees that it is and shall remain liable for all amounts outstanding under and in connection with the Notes, which liability shall not be affected in any way by the modification agreed to herein by Lender.

3. Lender reserves and shall retain all of its rights as holder of the Notes.

4. As modified hereby, the Notes remain in full force and effect, and the Borrower ratifies and affirms all of the respective terms thereof, as modified hereby. Except as set forth in Section 1 above, no provision of the Notes is being amended hereby. This Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and assigns, and shall take effect as of the date set forth above. Borrower and Lender agree that the indebtedness evidenced by said Notes as amended by this Agreement is and shall remain the same indebtedness originally evidenced by the Notes, and that this Agreement represents a modification of the original indebtedness evidenced by the Notes. Borrower agrees that Lender's entering into this Amendment shall not be deemed to be a waiver of any of Lender's rights or remedies as provided in the Notes.

IN WITNESS WHEREOF, the parties hereto have executed this Allonge and Modification Agreement as of the date first above written.

WITNESS:

MAPLE GROVE ELDERLY HOUSING CORPORATION, Borrower

\_\_\_\_\_

By: \_\_\_\_\_  
Dana Totman, its President

CITY OF PORTLAND, Lender

\_\_\_\_\_

By: \_\_\_\_\_  
Jon P. Jennings, its City Manager