

## CREDIT ENHANCEMENT AGREEMENT

THIS CREDIT ENHANCEMENT AGREEMENT dated as of August 28, 2018, between the **City of Caribou**, a municipal body corporate and political subdivision of the State of Maine (hereinafter the "City") and Caribou Senior Housing, LLC, a corporation duly organized and existing under the laws of the State of Maine, with a place of business in Caribou, Maine (hereinafter the "Company").

### WITNESSETH THAT:

WHEREAS, the City is in the process of designating the Caribou Senior Housing, LLC Municipal Tax Increment Financing District (herein the "District") and associated Development Program pursuant to Title 30-A M.R.S.A. Chapter 206, and

WHEREAS, the District and related Development Program will be reviewed by Maine Department of Economic and Community Development; and

WHEREAS, the Development Program contemplates the execution and delivery of a Credit Enhancement Agreement between the City and the Company; and

WHEREAS, the City intends to negotiate, execute and deliver a credit enhancement agreement contemplated by and described in the Development Program by the City Council, in the name of and on behalf of the City, with such terms and provisions not inconsistent with the Development Program, as the City Council shall approve, such approval to be conclusively evidenced by its execution thereof; and

WHEREAS, the City and the Company desire and intend that this Credit Enhancement Agreement be and constitute the credit enhancement agreement contemplated by and described in the Development Program; and

WHEREAS, the City designated the District, adopted the Development Program and entered into this Agreement in order to induce the Company to complete the Project by enabling the City to contribute toward the capital cost of the Project the amounts contemplated by the Development Program and this Agreement;

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

### ARTICLE I DEFINITIONS

#### **Section 1.1. Definitions.**

As used in this Agreement, unless the context otherwise indicates, the following terms shall have the following meanings:

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

“Agreement” shall mean this Credit Enhancement Agreement between the City and the Company dated as of the date set forth above, or the recent effective date of any amendments properly authorized by the parties hereto from time to time.

“Captured Assessed Value” shall mean the amount of Increased Assessed Value that is utilized from year-to-year to finance the project costs contained within the Development District;

“Current Assessed Value” means the assessed value of the District certified by the municipal assessor as of April 1<sup>st</sup> of each year that the Development District remains in effect;

“DECD” means the Maine Department of Economic & Community Development;

“Development Program” means the Caribou Senior Housing, LLC Municipal Tax Increment Financing and Development Program;

“District” means the Caribou Senior Housing, LLC Municipal Tax Increment Financing District;

“Financial Plan” means the financial plan described in the “Financial Plan” section of the Development Program;

“Fiscal Year” means the City adopted fiscal year, which may change from time to time;

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

“Original Assessed Value” means the assessed value of the Development District as of April 1<sup>st</sup>, 2018;

“Project” means renovation of the old Hilltop elementary school, located at 19 Marshall Avenue in Caribou, for use as a senior citizens/assisted living facility to be developed in the District by the Company as more specifically described in the Development Program and TIF Application;

“Project Costs” means any expenditures incurred or for which obligation of funds have been executed and that are authorized by Title 30-A MRSA Section 5225 as set forth and included in the District;

“Property Taxes” means all real and personal property taxes assessed by the City of Caribou in its governmental capacity against real and personal property owned by Company, or its successor, located within the District.

“Tax Increment” means real and personal property taxes assessed by the City, in excess of any state, county or special district tax, upon the Increased Assessed Value of the property in the Development District;

“Tax Payment Date” means the date as may be determined by the City from time to time on which Property Taxes assessed by the City are due and payable without accrued interest. “Tax Year” means the period beginning on April 1<sup>st</sup> and ending on the succeeding March 31<sup>st</sup>.

“Tax Year” shall have the meaning given such term in 30-A M.R.S.A § 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 Project Cost Account.**

Within forty-five (45) days of the date the District is approved by DECD, the City agrees to create and establish a project cost account, the funds from which are pledged to and charged with payment of Project Costs in accordance with the terms and conditions of the Development

Program. The account shall be known as the Caribou Hilltop TIF Cost Account (hereinafter the "Project Cost Account"). The City shall be solely responsible for the administration of the Project Cost Account.

### **Section 2.2. Deposits Into the Project Cost Account**

(a) Each year during the term of this Agreement, commencing with the City's 2019 Tax Year and continuing thereafter for up to a maximum of thirty (30) tax years to and including the City's 2048 Tax Year, the City shall retain in the District one hundred percent (100%) of the Increased Assessed Value as may be allowed in the DECD approved Development Program.

(b) Within fifteen (15) days of each payment of Property Taxes by the Company, the City shall credit to the Project Cost Account the Property Taxes assessed during the thirty (30) year life of the District. It is the intention of the City that 100% of the Tax Increment revenues be designated as Captured Assessed Value. *It is understood and agreed that the credit to the Project Cost Account as specified above shall be due and payable solely from such Property Tax payments by Company.*

Notwithstanding any other provision of this Agreement, any and all revenues resulting from investment of monies allocated to the Project Cost Account after payment of all amounts then due to the Company hereunder shall be transferred to and become revenue available to the City for other purposes in accordance with the Development Program.

### **Section 2.3. Use of Monies Held By City in Project Cost Account**

All monies actually paid by the Company to the City pursuant to this Agreement and credited to the Project Cost Account under the provisions hereof and the provisions of the Development Program shall be held by the City for the sole purpose of completing the Development Program in accordance with the terms and conditions of this Agreement.

### **Section 2.5. Allocation of Partial Tax Payments**

If in any year during the term of this Agreement, the Company fails to pay any portion of the Property Taxes assessed by the City, the Property Taxes actually paid by the Company shall be applied: (a) first to the payment of Property Taxes due on the Original Assessed Value of property in the District and (b) second to the Project Cost Account.

## **ARTICLE III PAYMENT OBLIGATIONS**

### **Section 3.1. Credit Enhancement Payments**

Within forty-five (45) days following the payment of taxes by Company on property in the District, the City shall pay to the Company 95% of the amounts then credited to the Project Cost Account, exclusive of any deduction or withholding required by Federal or State law or as provided in this Agreement. Any amount in the Project Cost Account after making such payment

shall be transferred to the City of Caribou as other revenue regardless of remaining amount to be reimbursed for Project Costs.

All payments made to Company hereunder shall be used to reimburse the Company for payment of qualified "Project Costs" as that term is defined under Chapter 206 of Title 30-A of the Maine Revised Statutes, which are capitalized for federal income tax purposes.

*Company covenants, warrants and agrees that 100% of the funds received by Company pursuant to this Agreement have been applied by Company to pay for the abatement of asbestos materials and development improvements contemplated in the Development Program for the Project.*

### **Section 3.3 Company's Obligations**

To be eligible to receive payments under this Agreement, Company shall provide on an annual basis with their tax payments documentation of Project Costs

### **Section 3.5. City's Limited Obligation.**

The City's obligations of payment hereunder shall be limited obligations of the City payable solely from Tax Increment revenues and any earnings thereon, pledged under this Agreement. The City's obligations hereunder shall not constitute a general debt or a general obligation on the part of the City or a general obligation or charge against or pledge of the faith and credit or taxing power of the City, the State of Maine, or of any municipality or political subdivision thereof, but shall be payable solely from the Tax Increment Revenues received by the City, and any earnings thereon.

This Agreement shall not directly or indirectly or contingently obligate the City, the State of Maine, or any other municipality or political subdivision to levy or to pledge any form of taxation whatever therefore or to make any appropriation for payment due under this Agreement, excepting the City's obligation to assess property taxes upon the Project and to appropriate the Tax Increment Revenues, and earnings thereon, pledged under this Agreement.

Notwithstanding the above, in the event that the Company pays the taxes assessed against the District and the City fails to credit the funds to the Project Cost Account or fails to make the credit enhancement payments to the Company as set forth herein, the City shall be obligated to make such payments from general appropriations and taxation.

### **Section 3.2. No Suspension of Payments- No Right of Set Off**

Except as otherwise expressly provided in this Agreement, the City shall not suspend or discontinue any such payment or terminate this Agreement because of: (a) any acts or circumstances that may constitute failure of consideration or frustration of purpose or (b) any change in the tax or other laws of the United States, the State of Maine or any political subdivision of either thereof.

City agrees to make the payments from the Project Cost Account irrespective of any right of set off, recoupment or counterclaim it might have against the Company for unpaid taxes

assessed against other property owned by Company or otherwise.

**ARTICLE IV  
FURTHER INSTRUMENTS**

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

**ARTICLE V  
LIENS**

The City shall not create any liens, encumbrances or other interests of any nature whatsoever, nor shall it hypothecate the Project Cost Account or any funds therein or revenues resulting from investment of funds therein, other than those interests created in favor of the Company hereunder; provided, however, nothing herein shall prohibit creation of real and personal property tax liens on the Company's property in accordance with, and entitled to the priority provided under, Maine law.

**ARTICLE VI  
ACCESS TO BOOKS AND RECORDS.**

All books, records and documents in the possession of the City relating to the District, the Development Program, the Agreement and the monies, revenues and receipts on deposit or required to be deposited into the Project Cost Fund shall be open to inspection by the Company, its authorized agents and employees during normal business hours upon 48 hours notice.

**ARTICLE VII  
DEFAULTS AND REMEDIES**

**Section 7.1. Events of Default.**

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

- (a) Any failure by the City to pay any amounts due to Company when the same shall become due and payable;
- (b) Any failure by the City to credit to the Project Cost Account as and when due;
- (c) Any failure by the City or the Company to observe and perform in all material respects any respective covenant, condition, agreement or provision contained herein on the part of the City or the Company respectively to be observed or performed which failure is not cured within thirty (30) days following written notice thereof;

(d) If a receiver, conservator or liquidator is appointed for Company by any court of competent jurisdiction; or if the Company should file a voluntary petition in bankruptcy or fail to have a petition in bankruptcy dismissed within a period of 90 consecutive days following its filing; or if a court of competent jurisdiction orders the winding up or liquidation of Company.

### **Section 7.2. Remedies on Default.**

Whenever any Event of Default referred to in Section 7.1 hereof shall have occurred and be continuing for a period of thirty (30) 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 7.3. Remedies Cumulative.**

No remedy herein conferred upon or reserved to the Company or City 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 default or 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 a 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 either party with all of the covenants and conditions hereof, or of the rights to exercise any such rights or remedies, if such default be continued or repeated.

### **Section 7.4. Agreement to Pay Attorneys' Fees and Expenses.**

Notwithstanding the application of any other provision hereof, in the event a party should default under any of the provisions of this Agreement and the other 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 party herein contained, the prevailing party in any litigation to enforce the provisions of this Agreement shall be entitled to be reimbursed for reasonable attorneys fees from the party in default.

### **Section 7.5. 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 Company. Without limiting the foregoing, the City and the Company shall always be entitled to exercise all rights and remedies regarding assessment, collection and payment of taxes assessed on Company's property.

**Section 7.6. Failure of Company to timely pay property taxes.**

Should the Company fail to pay its assessed Property Taxes for two consecutive years the City is under no further obligation for payments to the Company and the District is dissolved, except in the case of a pending property tax valuation appeal. In the case of a pending property tax valuation appeal, the Company shall pay any uncontested amount by the Property Tax due date and the remainder immediately upon resolution of the appeal

**ARTICLE VIII  
TERM**

**Section 8.1. Effective Date**

This agreement shall be effective upon the execution thereof by all Parties indicated. Except as otherwise provided in this Agreement, this Agreement shall remain in full force and effect and shall expire 30 years from the date of execution or upon the payment of all amounts due to the Company hereunder and the performance of all obligations on the part of the City and Company hereunder (the "Term").

**Section 8.2. Expiration of Term.**

Upon the expiration of the Term, or the earlier termination of this Agreement, and following full payment of all amounts due and owing to the Company hereunder or provision for payment thereof, the City and the Company 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. No such expiration or termination shall affect any rights or obligations then outstanding.

**ARTICLE IX  
ASSIGNMENT AND PLEDGE OF COMPANY'S INTEREST**

**Section 9.1. Consent to Pledge and/or Assignment.**

The City hereby acknowledges that the Company may pledge and assign its right, title and interest in, to and under this Agreement as collateral for financing for the Project, although no obligation is hereby imposed on the Company to make such assignment or pledge. Recognizing this possibility, the City does hereby consent and agree to the pledge and assignment of all the Company's right, title and interest in, to and under this Agreement and in, and to the payments to be made to Company hereunder, to third parties as collateral or security for indebtedness or otherwise, on one or more occasions during the term hereof.

**Section 9.2. Pledge, Assignment or Security Interest.**

The City hereby consents to the pledge, assignment or granting of a security interest by the Company of its right, title and interest in, to and under this Agreement to any lender which is financing the Project in whole or part.

**Section 9.3. Assignment**

The Company shall have the unrestricted right to transfer and assign all or any portion of its rights in, to and under this Agreement, at any time, and from time to time, as Company may, in its sole discretion, deem appropriate.

**ARTICLE X  
NO ADDITIONAL DEVELOPMENT**

It is understood and agreed that any additional development within the District by Company not within the scope of the original Project or any additional development within the District by any person other than the Company shall be outside the scope of this Agreement. The City shall have no obligations to make any payments into the Development Program Fund from any increased revenues received by the City from assessments made against such additional development.

**ARTICLE XI  
MISCELLANEOUS**

**Section 11.1 Successors.**

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

**Section 11.2 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 Company or its assigns 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 Company; provided, however, that if the payment obligations of the City to the Company hereunder are held by a final and binding proceeding to be illegal or invalid, this Agreement shall terminate. In such event all obligations of the parties shall terminate, and no party shall have any further liability to the other hereunder.

**Section 11.3 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 11.4 No Personal Liability of Officials of the City.**

No covenant, stipulation, obligation or agreement of the City contained herein shall be deemed to be a covenant, stipulation or obligation of any present or future elected or appointed

official, officer, agent, servant or employee of the City in his or her individual capacity and neither the members of the City Council, City Council members nor any official, officer, employee or agent of the City shall be liable personally with respect to this Agreement or be subject to any personal liability or accountability by reason hereof.

**Section 11.5 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 11.6 Governing Law.**

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

**Section 11.7 Notices.**

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

If to the City:

City of Caribou  
Attn: City Manager  
25 High Street  
Caribou, Maine 04736

With copies, which shall not constitute notice, to:

Solman & Hunter, P.A.  
P.O. Box 665  
Caribou, Maine 04736

If to the Company:

CARIBOU Senior Housing LLC  
137 Bennett Drive, Suite 2  
CARIBOU, Maine 04736

With a copy, which shall not constitute notice, to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

**Section 11.8 Amendments.**

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

**Section 11.9 Benefit of Assignees or Pledges.**

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

**11.10 Integration.**

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

**Section 11.11 No Obligation to Build Project.**

The Company and the City agree, and the City hereby acknowledges that the Company shall have no obligation to go forward with the capital projects referred to herein or in the Development Program. All such projects are subject to final approval by the Company. Failure of Company to go forward with the capital projects referred to herein shall result in termination of this Agreement.

**Section 11.12 Authority of City.**

The Company 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 Company 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.

**Section 11.13 Indemnification.**

The Company shall at its own expense defend, indemnify, and hold harmless the City, its officers, agents, and employees from and against any and all liability, claims, damages, penalties, losses, expenses, or judgments relating in any manner to, or arising out of the Development Program or this Agreement, except to the extent that such liability, claims, damages, penalties, losses, or expenses, result in whole or in part from any negligent act or intentional omission of the City, its officers, agents, employees or servants. Company shall, at its own cost and expense,

defend any and all suits or actions, just or unjust which may be brought against City upon any such above-mentioned matter, claim or claims, including claims of contractors, employees, laborers, materialmen, and suppliers. In cases in which the City is a party, the City shall have the right to participate at its own discretion and at its own expense and no such suit or action shall be settled without prior written consent of the City. Notwithstanding any other provision of this Agreement, this section shall survive any termination of this Agreement. In the event of any litigation or proceeding challenging this Agreement or the authority of the parties to enter into or perform hereunder, the Company shall indemnify and hold harmless the City against all costs, including the cost of defense and legal fees resulting from such challenges. Provided, however, that if the Company assumes the defense of all challenges, the City agrees to let the Company's attorney represent both parties at Company's expense.

**SECTION XII  
CITY COSTS.**

The Company shall pay or reimburse the City for all reasonable fees, expenses and other charges of the City and its consultants, including the City's attorneys and the City's Consultant, in connection with the negotiation, execution and approval of this Agreement and the negotiation, review and approval of the Development Program. If this is not done, the City shall deduct such payment due from credit enhancement payments due the Company. Notwithstanding any other provision of this Agreement, this section shall survive any termination of this Agreement.

**IN WITNESS WHEREOF**, the City and the Company 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.

  
Attest

**CITY OF CARIBOU**

By   
Dennis L. Marker, City Manager  
Duly Authorized

  
Witness

**CARIBOU SENIOR HOUSING, LLC**  
By   
Name: CARL SODERBERG  
Its:  
Duly Authorized