

## CREDIT ENHANCEMENT AGREEMENT

THIS CREDIT ENHANCEMENT AGREEMENT (hereinafter "Credit Enhancement Agreement" or "Agreement") dated as of 3/29, 2018, is hereby made between the **City of Caribou**, a municipal body corporate and politic and a political subdivision of the State of Maine (hereinafter the "City"), and **Neal J. Griffeth**, with a place of business in Caribou, Maine (hereinafter the "Company").

### WITNESSETH THAT:

WHEREAS, the City has designated an Omnibus Downtown Tax Increment Financing District as amended (hereinafter the "District") pursuant to Title 30-A M.R.S.A. Chapter 206 by vote at a City Council Meeting duly noticed and held on September 9, 2013, (the "Vote"); and

WHEREAS, pursuant to the Vote the City adopted a Omnibus Development Program and Financial Plan for the District (herein the "Development Program"); and

WHEREAS, the District and the Development Program has been reviewed and approved by Maine Department of Economic and Community Development on March 7, 2014; and

WHEREAS, the Development Program authorizes the execution and delivery of a credit enhancement agreement between the City and the Company; and

WHEREAS, the City and Company desire to execute and deliver a credit enhancement agreement contemplated by and described in the Development Program, with such terms and provisions not inconsistent with the Development Program; and

WHEREAS, the City designated the District, adopted the Development Program, and now desires to enter 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.

"Captured Assessed Value" shall mean the amount, stated in a percentage, of Increased Assessed Value that is retained in the District with respect to each Tax Year as specified in this Agreement during the term of the District.

“Captured Assessed Value – NAPA Tract” shall mean the amount, stated in a percentage, of Increased Assessed Value that is retained in the District with respect to each Tax Year and which is attributable to the NAPA Tract as specified in this Agreement during the term of the District.

“City Cost Subaccount” means that portion of the Project Cost Account of the Development Program Fund for the District as defined in the Financial Plan Section of the Development Program and established and maintained according to Article II hereof.

“City Improvements” means the improvements described in the Development Program, as such may be approved by the City from time to time.

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

“Current Assessed Value – NAPA Tract” means the assessed value of the NAPA Tract certified by the municipal assessor as of April 1st of each year that the Development District remains in effect.

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

“Development Program Fund” means the Downtown Municipal Development and Tax Increment Financing District Program Fund described in the Financial Plan section of the Development Program and established and maintained pursuant to Article II hereof and 30-A M.R.S. § 5227(3)(A). The Development Program Fund shall consist of a Sinking Fund (as necessary) and a Project Cost Account with at least two subaccounts.

“District” means the Downtown Tax Increment Financing District.

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

“Fiscal Year” means January 1 to December 31 or such other fiscal year as the City may from time to time establish.

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

“NAPA Cost Subaccount” means the portion of the Project Cost Account of the Development Program Fund set aside for the Developer contemplated in this Agreement and as described in the Financial Plan section of the Development Program and established and maintained pursuant to Article II hereof.

“NAPA Tract” means that tract of property identified as Lot 3, Map 11.

“Original Assessed Value – NAPA Tract” means \$731,500 the taxable assessed value of the NAPA Tract as of March 31, 2017 [April 1, 2017]. This amount is used for purposes of this Agreement and does not alter the original assessed value indicated in the 2005 Development Program Fund adopted by the City.

“Project” means the development of a commercial building space and related site improvements as illustrated in Exhibit A, on the NAPA Tract.

“Project Costs” means any costs incurred or expected to be incurred that are authorized by Title 30-A MRSA Section 5225, as may be amended.

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

“Sinking Fund Account” means the development sinking fund account described in the Financial Plan Section of the Development Program and established and maintained pursuant to 30-A M.R.S.A. § 5227(3)(A)(2) and Article II hereof.

“Tax Increment” means all property taxes assessed and paid to the City in any given Tax Year, in excess of any state, county or special district tax, upon the Captured Assessed Value of the property in the District.

“Tax Increment – NAPA Tract” means all property taxes assessed and paid to the City in any given Tax Year, in excess of any state, county or special district tax, upon the Captured Assessed Value – NAPA Tract.

“Tax Payment Date” means the date 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” 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 Development Program Fund.**

The City has created and established a segregated fund in the name of the City designated as the “Downtown Tax Increment Financing District Program Fund” (hereinafter the “Development Program Fund”) pursuant to, and in accordance with the terms and conditions of, the Development Program and 30-A M.R.S.A. § 5227(3), as amended from time to time. The Development Program Fund consists of: (i) a Project Cost Account that is pledged to and charged with the payment of Project Costs as outlined in the Financial Plan of the Development Program and as provided in 30-A M.R.S.A. § 5227(3)(A)(1); and (ii) the Sinking Fund Account (as necessary) that is pledged to and charged with the payment of municipal indebtedness as outlined in the Financial Plan of the Development Program and as provided in 30-A M.R.S.A. § 5227(3)(A)(2). The Project Cost Account shall also contain two subaccounts designated as the “City Cost Subaccount” (the City’s Project Cost subaccount) and the “NAPA Cost Subaccount” (the Company’s Project Cost subaccount).

The NAPA Cost Subaccount referred to in this Agreement shall be specific to the NAPA project. Other developer project cost subaccounts may be established for other projects within the District that have qualified for tax increment financing assistance.

### **Section 2.2. Timing for Deposits into NAPA Cost Subaccount.**

The City shall deposit the Company Tax Increment Revenues in the NAPA Cost Subaccount within fifteen (15) days of each Tax Payment Date, or, if not a business day, on the next succeeding business day consistent with the terms of this Agreement.

### **Section 2.3. Captured Assessed Value; Deposits into Development Program Fund.**

(a) Each year during the term of this Agreement, commencing with the City’s 2018 Tax Year and continuing thereafter for up to a maximum of five (5) Tax Years to and including the City’s 2022 Tax Year, the City shall retain in the District one hundred percent (100%) of the Increased Assessed Value – NAPA Tract as Captured Assessed Value – NAPA Tract.

(b) Each year during this Agreement, the City 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 NAPA Operating Corporation’s Tax Increment Revenues. The Development Program Fund is pledged to and charged with the payment of costs in the manner and priority provided in 30-A M.R.S.A. § 5227(3)(B). Each year the Company must certify that as of April 1 of the given year Company employed at the Project site at least the number of employees shown in the table below:

**Number of Employees and Wages Required on Project Site**

<b>Occupation Cluster</b>	<b>Full-time</b>	<b>Part-time</b>	<b>Wage Level</b>
Executive, Professional & Technical	2	0	\$40,000 - \$75,000
Sales & Service	6	2	\$15,000 - \$37,500
Total Employees	8	2	

If during this time period Company is unable to certify the minimum required employees of the Company working at the Project Site, Company shall reimburse the City 10% for each Full Time Employee or equivalent below the above indicated employees, such reimbursement percentage to be applied to the Company Allocation actually provided in the following Tax Year which shall then be returned to the City.

*For example: if in Tax Year 2021 the Company can only certify 6 Full Time Employees at the Project site the Company shall repay 20% of the Company Allocation in Tax Year 2022.*

(c) The City shall allocate Company Tax Increment Revenues so deposited in the Development Program Fund between the NAPA Cost Subaccount of the Project Cost Account, and the City as set forth in the Table below:

**Allocation of Taxes on Incremental Assessed Value**

<b>Tax Year</b>	<b>Company Allocation</b>	<b>City Allocation</b>
<b>2018</b>	50% of Tax Increment – NAPA Tract	50% of Tax Increment – NAPA Tract
<b>2019</b>	40% of Tax Increment – NAPA Tract	60% of Tax Increment – NAPA Tract
<b>2020</b>	30% of Tax Increment – NAPA Tract	70% of Tax Increment – NAPA Tract
<b>2021</b>	20% of Tax Increment – NAPA Tract	80% of Tax Increment – NAPA Tract
<b>2022</b>	10% of Tax Increment – NAPA Tract	90% of Tax Increment – NAPA Tract

*It is understood and agreed that the credit to the Company Reimbursement Account as specified above shall be due and payable solely from such Property Tax payments by Company.*

The City shall retain one hundred percent of any City Tax Increment Revenues after Tax Year 2022 associated with the Increased Assessed Value – NAPA Tract; the Company is not entitled to reimbursement of any portion of these City Tax Increment Revenues.

**Section 2.3. Use of Monies in the Development Program Fund.**

Monies credited in the Development Program Fund contemplated in this Agreement that are allocable to and/or deposited in the NAPA Cost Subaccount shall be in all cases used and applied to fund fully the City’s payment obligations to Company in accordance with the terms of this Agreement.

**Section 2.4. Monies Held By City**

All monies actually paid by the Company to the City pursuant to this Agreement and credited to the City Cost Subaccount under the provisions hereof and the provisions of the Development Program shall be held by the City 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 Company property in the District for any and all outstanding Tax Years; (b) second to payment of Property Taxes with respect to Increased Assessed Value – NAPA Tract for the year or years concerned (including any delinquent taxes from prior Tax Years), and (c) third, to the extent of funds remaining, to payment of the Company's share of Tax Increment Revenues contemplated in this Agreement to the NAPA Cost Subaccount.

### **ARTICLE III PAYMENT OBLIGATIONS**

#### **Section 3.1. Company Payments**

Within fifteen (15) days following the payment of Property Taxes by Company on the NAPA Tract, or, if not a business day, on the next succeeding the Company all amounts then on deposit in the NAPA Cost Subaccount, exclusive of any deduction or withholding required by Federal or State law.

All payments made to Company contemplated in this Agreement shall be utilized consistent with this Agreement and the Act.

#### **Section 3.2. Manner of Payments.**

The payments provided for in this Article III shall be paid in immediately available funds directly to the Company in the manner provided hereinabove for its own use and benefit.

#### **Section 3.3. Obligations Unconditional.**

Subject to compliance with the terms and conditions of this Agreement, the Obligations of the City to make the payments described in this Agreement in accordance with the terms hereof shall be absolute and unconditional, and the City shall not suspend or discontinue any payment hereunder or terminate this Agreement for any cause, other than by court order or by reason of a final judgment by a court of competent jurisdiction that the District is invalid or otherwise illegal.

#### **Section 3.4. Limited Obligation.**

The City's obligations of payment hereunder shall be limited obligations of the City payable solely from Tax Increment Revenues attributable to the NAPA Tract 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.

**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 NAPA Cost Subaccount 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 Development Program Fund contemplated by this Agreement shall be open to inspection by the Company, its agents and employees during normal business hours upon 48 hours written 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 the Company when the same shall become due and payable;
- (b) Any failure by the City to credit to the NAPA Cost Subaccount 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 the 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 the 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 Attorney's 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 the NAPA Tract for two consecutive years the City is under no further obligation for payments to the Company, 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**

Except as otherwise provided in this Agreement, this Agreement shall remain in full force and effect and shall expire upon the end of Tax Year 2022 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

and

Eaton Peabody  
Attn: Jonathan A. Pottle, Esq.  
80 Exchange Street  
P.O. Box 1210  
Bangor, ME 04402-1210

If to the Company:

Neal J. Griffeths  
38 Superior Drive  
Caribou, ME 04736

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

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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 pledgees to provide financing for the Project and accordingly all covenants and agreements on the part of the City as to the amounts payable hereunder are hereby declared to be for the benefit of any such assignee or pledgee from time to time of the Company's right, title and interest herein.

**Section 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.

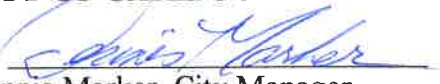
**SECTION XII  
CITY COSTS.**


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, approval and approval of the Development Program. The amount of these fees shall not exceed \$500. 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.

  
Witness

**CITY OF CARIBOU**

By   
Dennis Marker, City Manager  
Duly Authorized

  
Witness


**NEAL J. GRIFFETHS**  
By   
Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
Duly Authorized

Exhibit A: NAPA Commercial Site Design

