

**CREDIT ENHANCEMENT AGREEMENT**

**between**

**THE TOWN OF SCARBOROUGH, MAINE**

**and**

**CROSSROADS HOLDINGS LLC**

**DATED: December 12, 2018**

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**THIS CREDIT ENHANCEMENT AGREEMENT** dated as of December 12, 2018, between the Town of Scarborough, Maine (the “Town”), a municipal corporation and political subdivision of the State of Maine, and Crossroads Holdings LLC (the “Developer”), a Maine Limited Liability Company.

**WITNESSETH THAT**

**WHEREAS**, the Crossroads Zoning District mandates a mixed use development of commercial, residential and industrial; and

**WHEREAS**, this Agreement creates a partnership to embrace a mixed use development of the Crossroads Zoning District; and

**WHEREAS**, the Developer sought and received zoning amendments to further promote non-residential uses; and

**WHEREAS**, the Developer has submitted to the Scarborough Planning Board a Master Plan for the Light Industrial area within the Crossroads Zoning District; and

**WHEREAS**, the Developer has commenced construction of infrastructure consistent with the requirements to serve the needs of the Light Industrial area; and

**WHEREAS**, the Town designated the Scarborough Downtown Omnibus 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 Town Council at a meeting of the Town Council held on November 28, 2018 (the “Vote”) and pursuant to the same Vote adopted a development program and financial plan for the District (the “Development Program”); and

**WHEREAS**, the Town anticipates the approval of the District and the Development Program by the Maine Department of Economic and Community Development; and

**WHEREAS**, at the Vote, the Town Council also authorized execution of a credit enhancement agreement contemplated by the Development Program with the Developer in the name of and on behalf of the Town; and

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

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

**ARTICLE I  
DEFINITIONS**

**Section 1.1 Definitions.**

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

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

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

“Approved Master Plan” means the Crossroads Planned Development District Master Plan – Phase 1 approved by the Scarborough Planning Board on April 5, 2018, and as further amended by the Planning Board, including any and all additional phases of development on the Developer Property.

“Captured Assessed Value” means the amount, stated as a percentage, of the Increased Assessed Value that is retained in the Developer Property in each Tax Year during the term of the District, as specified in Section 2.3 hereof.

“Commissioner” means the Commissioner of the Department.

“Community Center” means a facility or building leased or owned and operated by the Town for the purpose of providing public meeting space and recreation opportunities.

“Current Assessed Value” means the then current assessed value of the Developer Property as determined by the Town Tax Assessor as of April 1 of each Tax Year during the term of this Agreement.

“Department” means the Maine Department of Economic and Community Development.

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

“Development Program” shall have the meaning given such term in the recitals hereto.

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

“Development Program Fund” means the Downtown Omnibus Development 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.A § 5227(3)(A). The Development

Program Fund shall consist of a Project Cost Account with two subaccounts: the Developer Project Cost Subaccount and the Town Project Cost Subaccount.

“Developer Property” means the portion of the District owned by the Developer and subject to this Agreement as depicted on Exhibit B hereto.

“District” shall have the meaning given such term in the first recital hereto, which is more specifically comprised of approximately 955.06 acres of real property and identified on Exhibit A to the Development Program and any future improvements to such real property.

“Downtown” means a central business district within the Developer Property that provides a core of commercial and mixed-use buildings, along with civic and residential buildings and public spaces that center along a main street and intersecting side streets to be incorporated into the Approved Master Plan.

“Effective Date” means the date of approval of the District and the Development Program by the Commissioner pursuant to the Act.

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

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

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

“Original Assessed Value” means \$7,265,700, the taxable assessed value of the Developer Property as of March 31, 2019 (April 1, 2018).

“Project Cost Account” means the project cost account described in the Financial Plan Section of the Development Program and established and maintained pursuant to Title 30-A M.R.S.A. § 5227(3)(A)(1) and Article II hereof.

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

“State” means the State of Maine.

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

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

“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.

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

“Town Project Cost Subaccount” means that portion of the Project Cost Subaccount 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.

**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 means 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.**

Within sixty (60) days after the Effective Date, the Town shall create and establish a segregated fund in the name of the Town designated as “Downtown Omnibus Development 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). The Development Program Fund shall consist of the 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). The Project Cost Account shall also contain two subaccounts designated as the “Developer Project Cost Subaccount” and the “Town Project Cost Subaccount.”

**Section 2.2 Liens.**

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

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

- (a) Each year during the term of this Agreement, commencing with the 2019-2020 Tax Year so long as the Effective Date has occurred by such time and continuing thereafter for the next thirty (30) years until the final year, the 2048-2049 Tax Year (CEA year 30) (collectively the “CEA Years”), the Town shall retain in the District a portion of the Increased Assessed Value as Captured Assessed Value as described below.
- (b) For each of the CEA Years, the Town shall deposit into the Development Program Fund contemporaneously with each payment of Property Tax associated with each CEA Year during the term of this Agreement an amount at least equal to the required portion of Tax Increment Revenues for the Developer Project Cost Subaccount as described in Section 2.3(b). 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). The Town shall deposit the Tax Increment Revenues in the Developer Project Cost Subaccount of the Development Program Fund as follows:
  - 1. CEA Years 1-10 (April 1, 2019 – March 31, 2029): Forty percent (40%) of Property Tax paid on the Increased Assessed Value to Developer Project Cost Subaccount.
  - 2. CEA Years 11-15 (April 1, 2029 – March 31, 2034): Twenty-five percent (25%) of Property Tax paid on the Increased Assessed Value of the Developer Property to



Developer Project Cost Subaccount, unless the Developer meets the following performance standards by the end of CEA Year 10 (March 31, 2029), in which case the percentage of Property Tax paid on the Increased Assessed Value to Developer Project Cost Subaccount shall be forty percent (40%) for CEA Years 11 – 15:

- a. **Non-residential Development Standard:** The Developer shall achieve a minimum of 500,000 square feet of non-residential space as classified by the assessor, either completed as evidenced by an occupancy permit, under construction as evidenced by a building permit, or under contract to be constructed as evidenced by a purchase and sale agreement. Notwithstanding the fact that a development is under construction as evidenced by having obtained a building permit or purchase and sale agreement, such square footage shall be subsequently removed from the count toward achieving the non-residential square footage performance measure if no occupancy permit has been obtained within eighteen months of obtaining the building permit or the purchase and sale agreement. If the performance measure was met as of the relevant performance date, but following the expiration of the eighteen-month period referenced above, the performance measure is not met, the qualification during the eighteen-month period shall stand, but for any years following the expiration of the eighteen-month period, the percentage reimbursement shall be reduced accordingly. The non-residential square footage performance measures shall include all development of the Developer within the Approved Master Plan, whether or not such square footage is located within the District. In addition, development that is exempt from paying Property Tax shall be counted toward the non-residential square footage performance measure up to ten percent (10%) of the performance measure (i.e., 50,000 square feet). The following types of developments shall fully qualify for purposes of calculating the performance measure apart from the ten percent (10%) rule: (1) Town-approved municipal uses (including schools), and (2) non-residential uses of property that are subject to a Payment In Lieu of Taxes (PILOT) agreement so long as the PILOT agreement is in effect; and
- b. **Infrastructure Standard:** All roads and related utilities, including public water and sewer, necessary to meet the development established in Section 2.3(b)(2)(a) must be completed, under construction or permitted; and
- c. **Roads/Utilities Standard:** Major arterial roads and related utilities necessary to meet the development established in Section 2.3(b)(2)(a) will be constructed in such a way to provide sufficient capacity for the connection and construction of additional infrastructure necessary to construct a Downtown when planned and approved.

Notwithstanding the description of performance standards in this Section 2.3(b)(2), in order to be eligible for 40% of the Property Taxes paid on Increased Assessed Value: (1) the Developer shall submit to the Town Manager a written certification no later than April 1, 2029 demonstrating how each of the performance standards has been met; and (2) the Town Manager shall review such written certification and make an objective determination in writing within thirty (30) days of its submission that either

the performance standards have been met or have not been met. The Town Manager may employ other Town staff or officials to inform his or her determination; and (3) the Developer shall have the right to appeal from a determination of the Town Manager to the Town Council by filing a written appeal with the Town Council within thirty (30) days of the Town Manager's determination date. The Town Council shall hear the appeal and make a determination about whether to affirm or reverse the Town Manager's determination within thirty (30) days of the filing of the written appeal, unless a longer period of time is agreed to by the parties.

3. CEA Years 16-20 (April 1, 2034 – March 31, 2039): Twenty-five percent (25%) of Property Tax paid on the Increased Assessed Value to Developer Project Cost Subaccount, unless the Developer meets the following performance standards by the end of CEA Year 15 (March 31, 2034), in which case the percentage of Property Tax paid on the Increased Assessed Value to Developer Project Cost Subaccount shall be forty percent (40%) for CEA Years 16 – 20:
  - a. Non-residential Development Standard: The Developer shall achieve a minimum of 900,000 square feet of non-residential space as classified by the assessor, either completed as evidenced by an occupancy permit, under construction as evidenced by a building permit, or under contract to be constructed as evidenced by a purchase and sale agreement. Notwithstanding the fact that a development is under construction as evidenced by having obtained a building permit or purchase and sale agreement, such square footage shall be subsequently removed from the count toward achieving the non-residential square footage performance measure if no occupancy permit has been obtained within eighteen months of obtaining the building permit or purchase and sale agreement. If the performance measure was met as of the relevant performance date, but following the expiration of the eighteen-month period, the performance measure is not met, the qualification during the eighteen-month period shall stand, but for any years following the expiration of the eighteen-month period, the percentage reimbursement shall be reduced accordingly. The nonresidential square footage performance measures shall include all development of the Developer within the Approved Master Plan, whether or not such square footage is located within the District. In addition, development that is exempt from paying Property Tax shall be counted toward the non-residential square footage performance measure up to ten percent (10%) of the performance measure (i.e., 90,000 square feet). The following types of developments shall fully qualify for purposes of calculating the performance measure apart from the ten percent (10%) rule: (1) Town-approved municipal uses (including schools), and (2) non-residential uses of property that are subject to a Payment In Lieu of Taxes (PILOT) agreement so long as the PILOT agreement is in effect; and
  - b. Infrastructure Standard: All roads and related utilities, including public water and sewer, necessary to meet the development established in Section 2.3(b)(3)(a) must be completed, under construction or permitted; and
  - c. Roads/Utilities Standard: Major arterial roads and related utilities necessary to meet the development established in Section 2.3(b)(3)(a) will be constructed

in such a way to provide sufficient capacity for the connection and construction of additional infrastructure necessary to construct a Downtown when planned and approved.

Notwithstanding the description of performance standards in this Section 2.3(b)(3), in order to be eligible for 40% of the Property Taxes paid on Increased Assessed Value: (1) the Developer shall submit to the Town Manager a written certification no later than April 1, 2034 demonstrating how each of the performance standards has been met; and (2) the Town Manager shall review such written certification and make an objective determination in writing within thirty (30) days of its submission that either the performance standards have been met or have not been met. The Town Manager may employ other Town staff or officials to inform his or her determination; and (3) the Developer shall have the right to appeal from a determination of the Town Manager to the Town Council by filing a written appeal with the Town Council within thirty (30) days of the Town Manager's determination date. The Town Council shall hear the appeal and make a determination about whether to affirm or reverse the Town Manager's determination within thirty (30) days of the filing of the written appeal, unless a longer period of time is agreed to by the parties.

4. Notwithstanding anything to the contrary contained herein, the deposits into the Developer Project Cost Subaccount pursuant to Sections 2.3(b)(1), (2), and (3) shall cease at such time as the cumulative amount of Tax Increment Revenues deposited in the Developer Project Cost Subaccount reaches the maximum developer reimbursement cap of fifty-five million dollars (\$55,000,000).

5. CEA Years 21-30 (April 1, 2039 – March 31, 2049): Ten percent (10%) of Property Tax paid on the Increased Assessed Value to Developer Project Cost Subaccount with a maximum annual deposit during such term per year of two million dollars (\$2,000,000) only if the Developer's project in the District has achieved the "Desired Development" as defined below by meeting all of the following by the end of Year 20 (March 31, 2039) or before:

- a. The Developer has reached the maximum Developer reimbursement cap of \$55 million identified in Section 2.3(b)(4); and
- b. The Developer has met the minimum assessed value creation of \$615 million of Increased Assessed Value within the Approved Master Plan if a Downtown and Community Center are constructed or are under construction as of the end of CEA Year 20 (March 31, 2039), or has met the minimum assessed value creation of \$500 million of Increased Assessed Value within the Approved Master Plan if a Downtown and Community Center are not constructed or under construction by the end of CEA Year 20 (March 31, 2039). The minimum assessed value creation standards in this section shall measure all development of the Developer within the Approved Master Plan, whether or not such assessed value is located within the District; however, such value shall only be counted if related to taxable Increased Assessed Value; and

- c. The Developer has met the minimum of 1.5 million square feet of non-residential space, as measured and described in above performance standards for 2.3(b)(2)(a) and (3)(a).

If the Developer achieves the Desired Development before the end of CEA Year 20, the annual deposit identified in this Section 2.3(b)(5) shall be made for any CEA year thereafter through the full term of CEA Years.

Notwithstanding the description of performance standards in this Section 2.3(b)(5), in order to be eligible for the benefits associated with achieving the Desired Development: (1) the Developer shall submit to the Town Manager a written certification no later than April 1, 2039 demonstrating how each of the performance standards has been met; and (2) the Town Manager shall review such written certification and make an objective determination in writing within thirty (30) days of its submission that either the performance standards have been met or have not been met. The Town Manager may employ other Town staff or officials to inform his or her determination; and (3) the Developer shall have the right to appeal from a determination of the Town Manager to the Town Council by filing a written appeal with the Town Council within thirty (30) days of the Town Manager's determination date. The Town Council shall hear the appeal and make a determination about whether to affirm or reverse the Town Manager's determination within thirty (30) days of the filing of the written appeal, unless a longer period of time is agreed to by the parties.

- (c) Notwithstanding anything to the contrary contained herein, if the Developer constructs more than 750 single-family detached dwelling units, the Town shall have no further deposit of payment obligations hereunder. For purposes of measuring such limitation, the Town's records regarding single-family detached dwelling units less any affordable or age-restricted single family dwelling units shall govern.
- (d) Notwithstanding anything to the contrary contained herein, the Town shall have the authority to decide to discontinue all or a portion of the Town Project Cost Subaccount deposits and instead make those deposits to the Town's general fund without further action or consents required by the Developer, provided that such decision shall not negatively impact the Developer Project Cost subaccount or the Town's ability to fulfill its obligations to the Developer hereunder.

**Section 2.4 Use of Monies in Development Program Fund.**

All monies in the Development Program Fund that are allocable to and/or deposited in the Developer Project Cost Subaccount shall in all cases be used and applied to fund fully the Town's payment obligations to Developer described in Articles II and III hereof.

**Section 2.5 Monies Held in Segregated Account**

All monies required to be deposited with or paid into the Developer Project Cost Subaccount under the provisions hereof and the provisions of the Development Program, and any investment earnings thereon, shall be held by the Town for the benefit of the Developer.

**ARTICLE III  
PAYMENTS OBLIGATIONS**

**Section 3.1 Developer Payments.**

- (a) The Town agrees to pay Developer, within thirty (30) days following the Tax Payment Date, all amounts then on deposit in the Developer Project Cost Subaccount.
- (b) Notwithstanding anything to the contrary contained herein, if, with respect to any Tax Payment Date, any portion of the property taxes assessed against Developer Property remain unpaid, because of a valuation dispute or otherwise, the property taxes actually paid with respect to such Tax Payment Date shall, first, be applied to taxes due on account of Original Assessed Value; and second, shall constitute payment of Property Tax with respect to Increased Assessed Value, to be applied first to payment in full of the applicable Town percent share for the year concerned; and third, to the extent of funds remaining, to payment of the Developer's share of the Tax Increment Revenues for the year concerned, to be deposited into the Developer Project Cost Subaccount.

**Section 3.2 Failure to Make Payment.**

- (a) In the event the Town should fail to, or be unable to, make any of the payments at the time and in the amount required under the foregoing provisions of this Article III including in the event that the amount deposited into the Developer Project Cost Subaccount is insufficient to reimburse the Developer for the full amount due to the Developer under this Agreement, the amount or installment so unpaid shall continue as a limited obligation of the Town, under the terms and conditions hereinafter set forth, until the amount unpaid shall have been fully paid. The Developer shall have the right to initiate and maintain an action to specifically enforce the Town's obligations hereunder, including without limitation, the Town's obligation to deposit Tax Increment Revenues to the Developer Project Cost Subaccount and its obligation to make payment out of the Developer Project Cost Subaccount to the Developer.
- (b) Any payment from the Town to the Developer not paid within thirty (30) days following the Tax Payment Date, as specified in Section 3.1 above, shall be subject to payment of interest by the Town at the same rate applicable to refunds of abated property taxes. The provision in this section 3.2(b) of an interest rate on late payments by the Town shall not limit Developer's right under section 5.2 below to collect or require immediate payment of past due Town payments.

**Section 3.3 Manner of Payments.**

The payments provided for in this Article III shall be paid directly to the Developer at the address specified in Section 8.7 hereof in the manner provided hereinabove for the Developer's own use and benefit by check drawn on the Town.

**Section 3.4 Obligations Unconditional.**

Subject to compliance with the terms and conditions of this Agreement, the obligations of the Town to make payments described in the Agreement in accordance with the terms hereof shall be absolute and unconditional, and the Town 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 judgement by a court of competent jurisdiction that the District is invalid or otherwise illegal.

**Section 3.5 Limited Obligation.**

The Town's obligations of payment hereunder shall be limited obligations of the Town payable solely from the Tax Increment Revenues pledged therefor under this Agreement. The Town's obligations hereunder shall not constitute a general debt or a general obligation or charge against or pledge of the faith and credit or taxing power of the Town, the State of Maine, or of any municipality or political subdivision thereof, but shall be payable solely from that portion of Tax Increment Revenues payable to Developer hereunder, whether or not actually deposited into the Developer Project Cost Subaccount in the Development Program Fund. This Agreement shall not directly, indirectly or contingently obligate the Town, the State of Maine, or any other Town or political subdivision to levy or to pledge any form of taxation whatever therefore, or to make any appropriation for their payment, excepting the pledge of the Tax Increment Revenues established under this Agreement.

**ARTICLE IV  
PLEDGE AND SECURITY INTEREST**

**Section 4.1 Pledge of and Grant of Security Interest in Developer Project Cost Subaccount.**

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

**Section 4.2 Perfection of Interest.**

- (a) To the extent deemed necessary or desirable by the Developer, the Town will at such time and from time to time as requested by Developer establish the Developer Project Cost Subaccount described in Section 2.1 hereof as a segregated fund under the control of an escrow agent, trustee or other fiduciary selected by Developer so as to Perfect Developer's interest therein. The cost of establishing and monitoring such a fund (including the cost of counsel to the Town with respect thereto) shall be borne exclusively by the Developer. In the event such a fund is established under the control of a trustee or fiduciary, the Town shall cooperate with the Developer in causing appropriate financing statements and continuation statements naming the Developer as pledgee of all such amounts from time to time on deposit in the fund to be duly filed and recorded in the appropriate state offices as required by and permitted under the provisions of the Maine Uniform Commercial Code or other similar law as adopted in the State of Maine and any other applicable jurisdiction, as from time to time amended, in order to perfect and maintain the security interests created hereunder.
  
- (b) In the event Developer requires the establishment of a segregated fund in accordance with this Section 4.2, the Town's responsibility shall be limited to delivering the amounts required by this Agreement to the escrow agent, trustee or other fiduciary designated by the Developer. The Town shall have no liability for payment over of the funds concerned to the Developer by any such escrow agent, trustee or other fiduciary, or for any misappropriation, investment losses or other losses in the hands of such escrow agent, trustee or other fiduciary. Notwithstanding any change in the identity of the Developer's designated escrow agent, trustee or other fiduciary, the Town shall have no liability for misdelivery of funds if delivered in accordance with Developer's most recent written designation or instructions actually received by the Town.

**Section 4.3 Further Instruments.**

The Town shall, upon the reasonable request of the Developer from time to time execute and deliver such further instruments and take such further action as may be reasonable and as may be required to carry out the provisions of the Agreement; provided, however, that the Developer shall pay the Town's costs of counsel related thereto and no such instruments or actions shall pledge the credit of the Town.

**Section 4.4 No Disposition of Developer Project Cost Subaccount.**

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

**Section 4.5 Access to Books and Records.**

All nonconfidential books, records and documents in the possession of the Town or the Developer relating to the District, the Development Program, this Agreement and the monies, revenues and receipts on deposit or required to be deposited into the Developer Project Cost Subaccount shall at all reasonable times be open to inspection by the Town and the Developer, their agents and employees.

**ARTICLE V  
DEFAULTS AND REMEDIES**

**Section 5.1 Events of Default.**

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

- (a) Any failure by the Town to pay any amounts due to Developer when the same shall become due and payable;
- (b) Any failure by the Town to make deposits into the Developer Project Cost Subaccount as and when due;
- (c) Any failure by the Town or the Developer to observe and perform in all material respects any covenant, condition, agreement or provision contained herein on the part of the Town or Developer to be observed or performed, which failure is not cured within thirty (30) days following written notice thereof;
- (d) If a decree or order of a court or agency or supervisory authority having jurisdiction in the premises of the appointment of a conservator or receiver or liquidator of, any insolvency, readjustment of debt, marshaling of assets and liabilities or similar proceedings, or for the winding up or liquidation of the Developer's affairs shall have been entered against the Developer or the Developer shall have consented to the appointment of a conservator or receiver or liquidator in any such proceedings of or relating to the Developer 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 Developer or the failure by the Developer to have an involuntary petition in bankruptcy dismissed within a period of ninety (90) consecutive days following its filing or in the event an order for release has been entered under the Bankruptcy Code with respect to the Developer.
- (e) If a decree or order of a court or agency or supervisory authority having jurisdiction in the premises of the appointment of a conservator or receiver or liquidator of, any insolvency, readjustment of debt, marshaling of assets and liabilities or similar proceedings, or for the winding up or liquidation of the Town's affairs shall have been entered against the Town or the Town shall have consented to the appointment of a



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

**Section 5.2 Remedies on Default.**

Subject to the provisions of Section 8.11, whenever any Event of Default described in Section 5.1 hereof shall have occurred and be below concerning dispute resolution continuing, the nondefaulting party, following the expiration of any applicable cure period, shall have all rights and remedies available to it at law or in equity, including the rights and remedies available to a secured party under the laws of the State of Maine, and may take whatever action as may be necessary or desirable to collect the amount then due and thereafter to become due, to specifically enforce the performance or observance of any obligations, agreements or covenants of the nondefaulting party under this Agreement and any documents, instruments and agreements contemplated hereby or to enforce any rights or remedies available hereunder.

**Section 5.3 Remedies Cumulative.**

Subject to the provisions of Section 8.11 below concerning dispute resolution, no remedy herein conferred upon or reserved to any party is intended to be exclusive of any other available remedy or remedies but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law, in equity or by statute. Delay or omission to exercise any right or power accruing upon any Events of Default to insist upon the strict performance of any of the covenants and agreements herein set forth or to exercise any rights or remedies upon the occurrence of an Event of Default shall not impair any such right or power or be considered or taken as a waiver or relinquishment for the future of the right to insist upon and to enforce, from time to time and as often as may be deemed expedient, by injunction or other appropriate legal or equitable remedy, strict compliance by the parties hereto with all of the covenants and conditions hereof, or of the rights to exercise any such rights or remedies, if such Events of Default be continued or repeated.

**Section 5.4 Agreement to Pay Attorneys' Fees and Expenses.**

Subject to the provisions of Section 8.11 below concerning dispute resolution, in the event the Town or the Developer should default under any of the provisions of this Agreement, and the nondefaulting party shall require and employ attorneys or incur other expenses or costs for the collection of payments due or to become due or for the enforcement of performance or observance of any obligation or agreement on the part of the Town or the Developer herein contained, the defaulting party shall, on demand therefor, pay to the nondefaulting party the reasonable fees of such attorneys and such other reasonable costs and expenses so incurred by the non-defaulting party.

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

**Section 6.1 Effective Date and Term.**

This Agreement shall remain in full force from the Effective Date hereof and shall expire upon the sooner of the completion of the CEA Years or the Town fully complies with all deposit and payment obligations herein, unless sooner terminated pursuant to Section 3.4 or any other applicable provision of this Agreement.

**Section 6.2 Cancellation and Expiration of Term.**

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

**ARTICLE VII  
ASSIGNMENT AND PLEDGE OF DEVELOPER'S INTEREST**

**Section 7.1 Consent to Pledge and/or Assignment.**

The Town hereby acknowledges that the Developer may from time to time pledge and assign its right, title and interest in, to and under this Agreement as collateral for financing improvements by or on behalf of the Developer within the District, although no obligation is hereby imposed on the Developer to make such assignment or pledge. Recognizing this possibility, the Town does hereby consent and agree to the pledge and assignment of all the Developer's right, title and interest in, to and under this Agreement and in, and to the payments to be made to Developer hereunder, to third parties as collateral or security for financing such development, on one or more occasions during the term hereof. The Town agrees to execute and deliver any assignments, pledge agreements, consents or other confirmations required by such prospective pledgee or assignee, including without limitation recognition of the pledgee or assignee as the holder of all right, title and interest herein and as the payee of amounts due and payable hereunder. The Town agrees to execute and deliver any other documentation as shall confirm to such pledgee or assignee the position of such assignee or pledgee and the irrevocable and binding nature of this Agreement and provide to such pledgee or assignee such rights and/or remedies as the Developer or such pledgee or assignee may reasonably deem necessary for the establishment, perfection and protection of its interest herein without the need for additional approval or action by the Town Council. The Developer shall pay the Town's costs of counsel with respect to any such pledge or assignment documentation.

**Section 7.2 Pledge, Assignment or Security Interest.**

Except as provided in Section 7.1 hereof, and except for the purpose of securing financing for improvements by or on behalf of the Developer within the District or for an assignment to a successor entity, an affiliate entity or any other entity controlled by the

Developer, the Developer shall not transfer or assign any portion of its rights in, to and under this Agreement without consent of the legislative body of the Town, which consent shall not be unreasonably withheld or delayed.

## **ARTICLE VIII MISCELLANEOUS**

### **Section 8.1 Successors.**

In the event of the dissolution, merger or consolidation of the Town or the Developer, or the sale of all or a portion of the assets or equity of the Developer, 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 if the Town consents, which consent shall not be unreasonably withheld.

### **Section 8.2 Parties-In-Interest.**

Except as herein otherwise specifically provided, nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any person, firm or corporation other than the Town and 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 Town and the Developer.

### **Section 8.3 Severability.**

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

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

No covenant, stipulation, obligation or agreement of the Town contained herein shall be deemed to be a covenant, stipulation or obligation of any present or future elected or appointed official, officer, agent, servant or employee of the Town in his or her individual capacity, and neither the Town nor any official, officer, employee or agent of the Town shall be liable personally with respect to this Agreement or be subject to any personal liability or accountability by reason hereof.

**Section 8.5 Counterparts.**

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

**Section 8.6 Governing Law.**

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

**Section 8.7 Notices.**

All notices, certificates, requests, requisitions or other communications by the Town 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 Town:

Town Manager  
Town of Scarborough  
P.O. Box 360  
Scarborough, Maine 04070-0360

If to the Developer:

Rocco Risbara, III  
Peter Michaud  
Crossroads Holdings LLC  
P.O. Box 485  
Scarborough, ME 04070

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 8.8 Amendments.**

This Agreement may be amended only with the concurring written consent of both the parties hereto. If there is a material change in circumstances that impacts either party's ability to perform under the Agreement terms or standards, including but not limited to legislative action of the Town by Town Council vote or referendum that results in a materially negative impact on the Developer's ability to achieve the performance standards set forth in Section 2.3 or achieve the development within the Approved Master Plan, the Town and the Developer agree to meet and negotiate in good faith whether an amendment is warranted.

**Section 8.9 Benefit of Assignees or Pledges.**

The Town agrees that this Agreement is executed in part to induce assignees or pledgees to provide financing for improvements by or on behalf of the Developer within the District and accordingly all covenants and agreements on the part of the Town 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 Developer's right, title and interest herein.

**Section 8.10 Integration.**

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

**Section 8.11 Dispute Resolution.**

The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association. In the event of a dispute regarding this Agreement or the transactions contemplated by it, the parties hereto will use all reasonable efforts to resolve the dispute on an amicable basis. If the dispute is not resolved on that basis within sixty (60) days after one party first brings the dispute to the attention of the other party, either party may make a request for mediation. The request shall be made in writing, delivered to the other party, and filed with the person or entity administering the mediation. Any such mediation will take place in Scarborough, Maine or such other location as mutually agreed by the parties. If the mediation is unsuccessful, any party may initiate a lawsuit in a court of competent jurisdiction.

**Section 8.12 Tax Laws and Valuation Agreement.**

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

**Section 8.13 Progress Updates.**

The Developer agrees to provide a written report and appear before the Town Council at a public meeting on annual basis before the end of CEA Years 1 through 4 for the purpose of providing an update regarding the status and progress of the Developer's project. Such report for each CEA Year must contain the following components:

- Percent completion toward next applicable performance measure(s);
- Complete assessment of infrastructure buildout;
- Outlook of work to be accomplished before the next update;
- Recitation of all conditions restricting non-residential development and initiatives being undertaken to promote non-residential development; and
- Recitation of all conditions restricting satisfactory progress towards fulfillment of the requirements set forth in Sections 2.3(b)(2), 2.3(b)(3) and 2.3(b)(5) herein, including any zoning restrictions.

As a part of the annual updates in CEA Years 1 to 5, the Town shall update the Developer on progress made pursuant to the public processes contemplated in Sections 8.14 and 8.15 below. The Town shall also participate in the preparation and presentation of the reports required under this Section to provide to the Developer and the Town Council all information available to it regarding assessment values, permits issued, zoning amendments, Town initiatives to promote non-residential development, and any other information traditionally within the custody of the Town that is relevant to the reports required hereunder.

Before the end of CEA Year 5 (on or before March 31, 2024) there shall be a more formal review of the Developer's project status. In addition to the reporting requirements above, this review will focus on the progress of non-residential build out, infrastructure and roads/utilities and also to evaluate the pace and mix of the residential build out. The evaluation will provide both parties with opportunity to validate and revise financial assumptions and modeling underlying this Agreement. It will include specific reporting on the key performance metrics enumerated in Section 2.3(b), provided that the Developer shall not be required to share proprietary information related to anticipated projects or other development as part of this reporting requirement. This review may be used for revisions to the Agreement as appropriate and mutually agreed, including current and future funding and payout formulas and timing.

For the remaining term of this Agreement the Developer agrees to provide updates, using the same reporting requirements as CEA Years 1- 4, on at least a biannual basis.

**Section 8.14 Downtown Project Process.**

The Town agrees to undertake a public process to define and refine the elements and costs of a Downtown, such process to be completed no later than the end of CEA Year 5 (March

31, 2024). It is the expectation of both parties that the Developer will be a prominent participant in such process. The Developer agrees to reserve land within the Developer Property for the inclusion of and suitable for a Downtown within the Approved Master Plan until March 31, 2024. This time period may be extended if the process is underway and the parties agree to a specified extension term in writing. Following the public process, the parties may decide to commit to a new or amended credit enhancement agreement.

**Section 8.15 Community Center Process.**

The Town agrees to undertake a public process to define and refine the elements and costs of a Community Center, such process to be completed no later than CEA Year 5 (March 31, 2024). It is the expectation of both parties that the Developer will be a prominent participant in such process. The Developer agrees to reserve land within the Developer Property for the inclusion of and suitable for a Community Center incorporated into the Downtown area and identified within the Approved Master Plan until March 31, 2024. Following the public process, the parties may decide to commit to a new or amended credit enhancement agreement.

**Section 8.16 School Building Process.**

The Town agrees to undertake a public process to define and refine the elements and costs of a school building project to be located on the Developer Property, such process to be completed no later than CEA Year 5 (March 31, 2024). It is the expectation of both parties that the Developer will be a prominent participant in such process. The Developer agrees to reserve land within the Developer Property for the inclusion of a site suitable for a school and associated supporting land within the Approved Master Plan. This time period may be extended if the process is underway and the parties agree to a specified extension term in writing. Following the process, the parties may decide to commit to a new or amended credit enhancement agreement.

Scarborough Downs Credit Enhancement Agreement  
Execution Copy

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

WITNESS:

TOWN OF SCARBOROUGH

Yolanda Justice

By: Thomas P. Hall  
Name: Thomas Hall

Its Town Manager, authorized pursuant to  
Town Council vote on November 28, 2018

WITNESS:

CROSSROADS HOLDINGS LLC

\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its \_\_\_\_\_



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

WITNESS:

TOWN OF SCARBOROUGH

\_\_\_\_\_

By: \_\_\_\_\_

Name: Thomas Hall

Its Town Manager, authorized pursuant to  
Town Council vote on November 28, 2018

WITNESS:

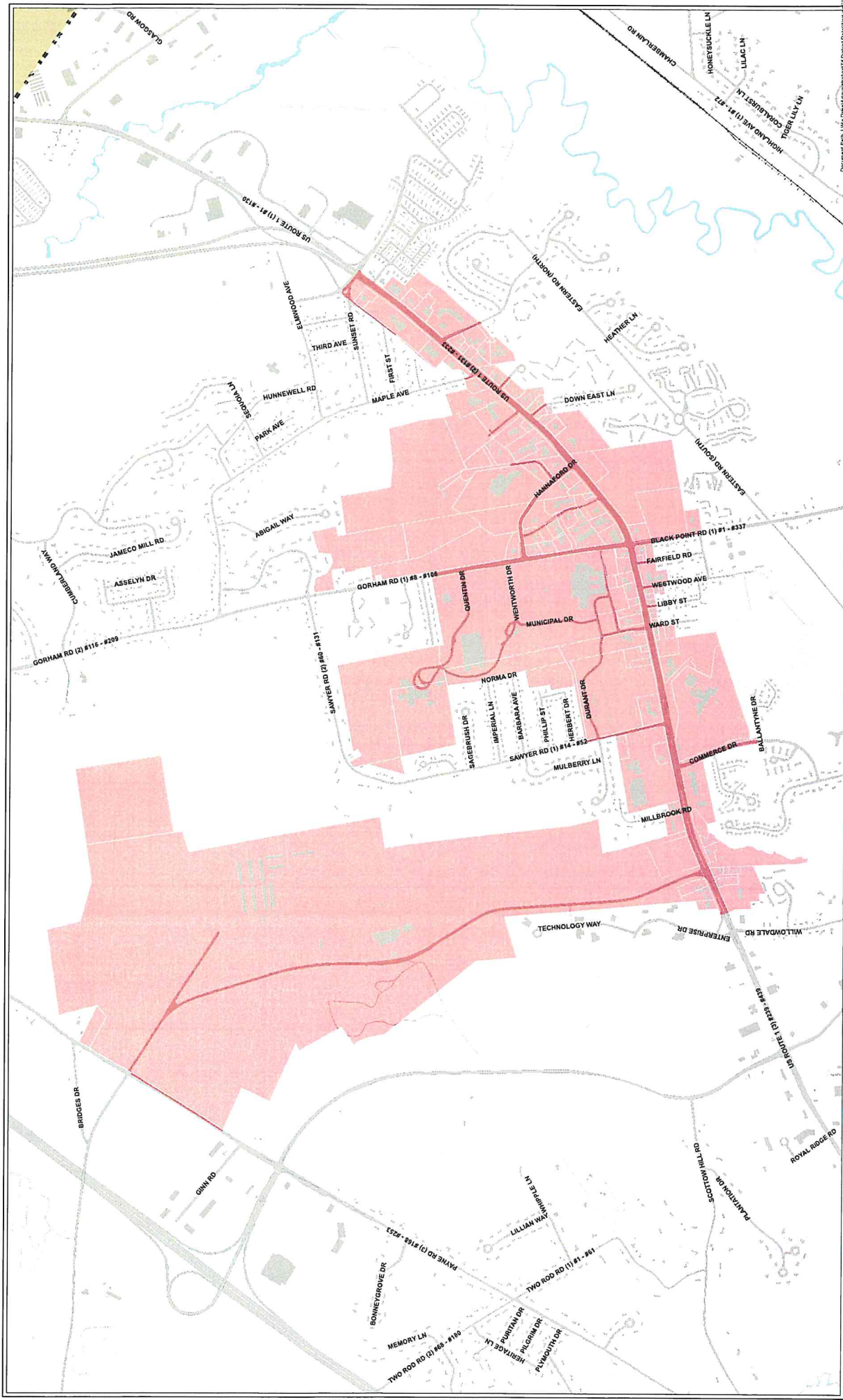
CROSSROADS HOLDINGS LLC

  
\_\_\_\_\_

By:   
\_\_\_\_\_

Name: Rocco C. Richardson III

Its manager



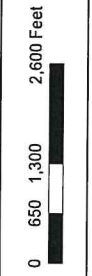
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# Exhibit A

## Scarborough Downtown Omnibus TIF District

Total of 955.06 Acres

Proposed TIF District  
Print Date: 10/25/2018



Disclaimer: The data employed within the Scarborough GIS is intended as a public resource of general information. The Town of Scarborough makes no warranty or representation as to the accuracy, completeness, or any other characteristics of the data. The data is provided as is and is not intended for use in any legal proceeding or for any other purpose. The Town of Scarborough is not responsible for any errors or omissions in the data. Any reliance on the data is at the user's own risk. The Town of Scarborough is not liable for any damages, including consequential damages, arising from the use of the data. The data is provided for informational purposes only and is not intended for use in any legal proceeding or for any other purpose. The Town of Scarborough is not responsible for any errors or omissions in the data. Any reliance on the data is at the user's own risk. The Town of Scarborough is not liable for any damages, including consequential damages, arising from the use of the data.

Town of  
**Scarborough**  
Maine  
<http://www.sccboroughmaine.org>





# Exhibit A Scarborough Downtown Omnibus TIF District

Proposed TIF District  
Print Date: 10/25/2018

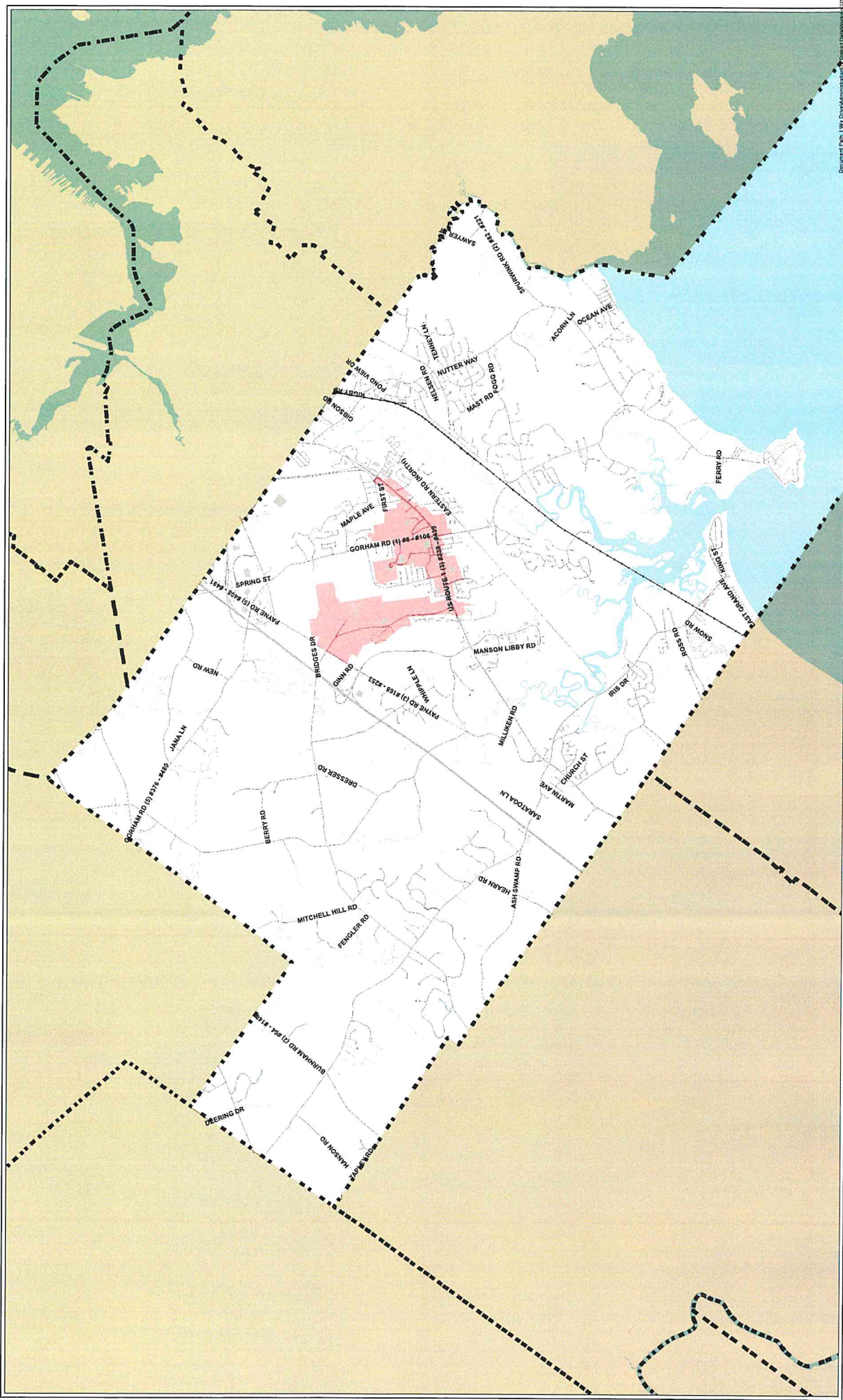


0 3,000 6,000 12,000 Feet



This map was prepared by the Town of Scarborough, Maine, using GIS data provided by the Maine State Office of Information Systems. The Town of Scarborough, Maine, is not responsible for the accuracy, completeness, or timeliness of any of the data, and shall assume no liability for the data of the data. Parcel data is intended for general information only and is not a guarantee of ownership, definition, or tax rate. Any service, utility information shown on the map is for informational purposes only. Data is current as of the date of the printout. All other information shown on the map is for informational purposes only. Contact the Office of Information Systems for more information.

**Town of Scarborough  
Maine**  
<http://www.scarboroughmaine.org>



# Exhibit B to the Credit Enhancement Agreement

Print Date: 12/6/2018



2,600 Feet

1,300

650

0

Disclaimer: The data displayed on this map was obtained from the GIS Department of the Town of Scarborough and is provided for informational purposes only. The Town of Scarborough makes no warranty or representation as to the accuracy, timeliness or completeness of any of the data, and shall assume no liability for the data of the data. Parcel data is intended for general reference only and is a general representative distribution of the data. Any service, utility, or other information shown is intended for general information only. GIS data is not intended to be used for legal purposes. For more information, contact the GIS Department.



**Town Of Scarborough**  
Maine  
<http://www.scarborough.me.us/cipw/>



Blue Line Represents the TIF District

Shaded area represents the Scarborough Downs Property, also known as Crossroads

SCARBOROUGH DOWNS  
PROPERTY  
R052004

