

## CREDIT ENHANCEMENT AGREEMENT

THIS CREDIT ENHANCEMENT AGREEMENT, dated as of August 20, 2007, between the Town of Scarborough, Maine, a municipal body corporate and politic and a political subdivision of the State of Maine (the "Town"), and Bessey Commons Corporation, a Maine limited partnership (the "Developer").

### WITNESSETH THAT

WHEREAS, the Town designated the Bessey School Affordable Housing Tax Increment Financing District (the "District") pursuant to Chapter 206, subchapter 3 of Title 30-A of the Maine Revised Statutes, as amended, by vote at a Town Council Meeting held November 30, 2006 (the "Vote") and pursuant to the same Vote adopted an affordable housing development program for the District (the "Development Program"), and

WHEREAS, the Maine State Housing Authority has reviewed and accepted the District and the Development Program, and

WHEREAS, the Development Program contemplates the execution and delivery of a credit enhancement agreement between the Town and the Developer; and

WHEREAS, the Town approved the execution and delivery of the credit enhancement agreement described in the Development Program pursuant to a resolution of the Town Council, adopted November 30, 2006; and

WHEREAS, the Town and the Developer desire and intend that this Credit Enhancement Agreement be and constitute a credit enhancement agreement contemplated 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:

"Agreement" shall mean this Credit Enhancement Agreement between the Town and the Developer.

"Captured Assessed Value" means the amount, as a percentage or stated sum, of Increased Assessed Value that is retained in the District for the purpose of funding

Development Program costs. It is the parties' intention that one hundred percent (100%) of the Increased Assessed Value shall be retained in the District in each year that this Agreement shall remain in effect.

"Town" means the Town of Scarborough, Maine, a municipality duly organized and existing under the laws of the State of Maine.

"Current Assessed Value" means the assessed value for municipal property tax purposes of all taxable real and personal property comprising or located within the District as of April 1<sup>st</sup> of each year that this Agreement shall remain in effect.

"Developer" means Bessey School LP, a Maine limited partnership; its respective heirs, successors and assigns.

"Development Program" means the development program for the District as adopted by the Town Council at a Town Council meeting held on November 30, 2006.

"Development Program Fund" means the development program fund described in the Financial Plan Section of the Development Program and established and maintained pursuant to Article II hereof. The Development Program Fund consists of a single Project Cost Account.

"District" means the Bessey School Affordable Housing Tax Increment Financing District designated by the Town pursuant to Chapter 206, subchapter 3 of Title 30-A of the Maine Revised Statutes, as amended, by vote of the Town Council at a meeting held November 30, 2006. The District consists of all personal property, including machinery and equipment now or hereafter located within the District, and all real estate described in Schedule A hereto and all buildings and improvements hereafter constructed thereon. Effective for the 2007-2008 fiscal year, the Town shall separately assess the portion of the land leased by Bessey Commons Corporaion, as described on Schedule B attached hereto, together with any buildings or improvements now or hereafter thereon, which constitutes all of the District other than that to be used in connection with the proposed new affordable housing development to be developed, owned and operated by Bessey School, LP as described in the Development Program so that the parties may more easily track and calculate the Tax Increment relating to the project. The land leased by Bessey Commons Corporation, together with any buildings or improvements now or hereafter thereon is referred to hereinafter as the "Project Property".

"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 establish from time to time.

"Increased Assessed Value" means the valuation amount by which the Current Assessed Value of the District in any year exceeds the Original Assessed Value of the

District. If the Current Assessed Value is equal to or less than the Original Assessed Value, there is no Increased Assessed Value.

“Original Assessed Value” means the assessed value for municipal property tax purposes of all taxable real and personal property comprising or located within the District as of March 31, 2006.

“Project” means the design, planning, development, acquisition, construction and installation of the Bessey School affordable housing program described in the Development Program.

“Project Cost Account” means the project cost account described in the Financial Plan Section of the Development Program and established and maintained pursuant to Article IV hereto.

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

“Qualified Investments” shall mean any and all securities, obligations or accounts in which municipalities may invest their funds under applicable Maine law.

“Retained Tax Increment Revenues” means that portion of the Tax Increment Revenues that is allocated by the Town pursuant to the Development Program to fund the costs of the Development Program. The parties agree that for each year this Agreement shall remain in effect, one hundred percent (100%) of the Tax Increment Revenues shall be designated as Retained Tax Increment Revenues and treated and paid out in accordance herewith.

"Tax Increment Revenues" or "Tax Increment" means all real and personal Property Taxes assessed by the Town, in excess of any state, county or special district tax, upon the Increased Assessed Value attributable to the Project Property.

“Tax Increment Revenues (Developer’s Share)” means one hundred percent (100%) of the Tax Increment Revenues to be deposited each year during the term of this Agreement in the Project Cost Account to fund payments to the Developer due pursuant to this Agreement. The Tax Increment Revenues (Developer’s Share) for each year of this Agreement shall be equal to the Retained Tax Increment Revenues for that year.

“Tax Payment Date” means the date(s) on which property taxes levied by the Town are due and payable from the Developer with respect to property located within the Town.

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), limited liability companies, 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 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 unreasonably withheld.

## **ARTICLE II**

### **DEVELOPMENT PROGRAM FUND AND FUNDING REQUIREMENTS**

Section 2.1. Creation of Development Program Fund. The Town hereby confirms the creation and establishment of a segregated fund in the name of the Town designated as the "Bessey School Affordable Housing Development District and Tax Increment Financing District Development Program Fund" (the "Development Program Fund") pursuant to and in accordance with the terms and conditions of the Development Program. The Development Program Fund shall consist of a single Project Cost Account.

Section 2.2. Liens. The Town shall not create any liens, encumbrances, or other interests of any nature whatsoever, nor shall it hypothecate the Development Program Fund or the Project Cost Account of the Development Program Fund or any funds therein, other than the interest granted to the Developer hereunder in and to the amounts on deposit therein.

Section 2.3. Deposits into Development Program Fund. The Town shall deposit into the Development Program Fund contemporaneously with each payment of Property Taxes by Developer during the term of this Agreement an amount equal to the Retained Tax Increment Revenues for the period to which the payment relates and shall pay the amount so deposited to the Project Cost Account to fund fully the payments due to Developer under Article III of this Credit Enhancement Agreement, both current and past due, if any.

Any and all revenues resulting from investment earnings on deposits in the Project Cost Account fund shall be retained in the Project Cost Account and applied for Development Program purposes.

Section 2.4. Use of Monies in Development Program Fund. Monies deposited in the Project Cost Account shall be used and applied first and solely to fund the Town's payment obligations to the Developer described in Article III hereof.

Section 2.5. Monies Held in Trust. All monies required to be deposited with or paid into the Developer's Project Cost Account of Development Program Fund to fund payments to the Developer under the provisions hereof and the provisions of the Development Program, and all investment earnings thereon shall be held by the Town in trust, for the benefit of the Developer in accordance with the provisions of this Agreement.

Section 2.6. Investments. Pending payment to the Developer, the monies in the Project Cost Account shall be invested and reinvested in Qualified Investments as determined by the Town. The Town shall have discretion regarding the investment of such monies, provided such monies are invested in Qualified Investments. As and when any amounts thus invested may be needed for disbursements, the Town shall cause a sufficient amount of such investments to be sold or otherwise converted into cash to the credit of such account. The Town shall have the sole and exclusive right to designate the investments to be sold and to otherwise direct the sale or conversion to cash of investments made with monies in the Development Program Fund.

### **ARTICLE III** **PAYMENT OBLIGATIONS**

Section 3.1. Credit Enhancement Payments. (a) The Town shall pay to the Developer within 30 days following each Tax Payment Date or the date payment is actually received by the Town from the Developer, whichever is later, payments equal to the Tax Increment Revenues (Developer's Share), for the District for each fiscal year of the Town beginning with the first full fiscal year following substantial completion of construction of the Project and continuing for a term of thirty (30) years. The Town shall make all such payments with respect to the District to Developer, its successors and assigns. The obligation of the Town to make such payments shall be a limited obligation payable solely out of monies actually on deposit in or available from Retained Tax Increment Revenues for deposit to the Development Program Fund and shall not constitute a general debt or obligation on the part of the Town 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 any political subdivision thereof.

(b) If, with respect to any Tax Payment Date, the Developer fails to pay any portion of the Property Taxes assessed by the Town, because of a valuation dispute or otherwise, the Property Taxes actually paid by the Developer with respect to such Tax

Payment Date shall first be applied to taxes due on account of the Original Assessed Value and second shall constitute Tax Increment Revenues.

Section 3.2. Failure to Make Payment. In the event the Town should fail to, or be unable to, make any of the payments required under Section 3.1 hereof, the item or installment so unpaid shall continue from year-to-year, as a obligation of the Town subject to the limitations set forth in Section 3.1 hereof, 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 establish and maintain the Development Program Fund and the Project Cost Account, to deposit all Tax Increment Revenues (Developer's Share) to the Project Cost Account of the Development Program Fund and its obligation to make the required payments to the Developer, and the Town acknowledges and agrees that Developer is entitled to specific performance of any provision of this Agreement due to the uniqueness of the terms hereof.

Section 3.3. Manner of Payments. The payments provided for in this Article III shall be paid directly to the Developer in the manner provided hereinabove for the Developer's own use and benefit by check drawn on the Town's account.

Section 3.4. Obligations Unconditional. Subject only to the provisions of Section 5.2(a) hereof, the obligations of the Town to make the payments described in this Agreement in accordance with the terms hereof shall be absolute and unconditional irrespective of any defense or any rights of setoff, recoupment or counterclaim it might otherwise have against the Developer. The Town shall not suspend or discontinue any such payment or terminate this Agreement for any cause, including without limitation, any acts or circumstances that may constitute failure of consideration or frustration of purpose or any damage to or destruction of the Project or any change in the tax or other laws of the United States, the State of Maine or any political subdivision of either thereof, or any failure of the Developer to perform and observe any agreement or covenant, whether expressed or implied, or any duty, liability or obligation arising out of or connected with this Agreement or the Development Program.

## **ARTICLE IV**

### **PLEDGE AND SECURITY INTEREST**

Section 4.1. Pledge of Development Program Fund. 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 hereby grants a security interest in and pledges to the Developer the Project Cost Account of the Development Program Fund to the extent of Developer's Rights under this Agreement to receive funds from such Project Cost Account and all sums of money and other securities and investments now or hereafter on deposit therein.

Section 4.2. Perfection of Interest. The Town shall cooperate with the Developer in causing appropriate financing statements and continuation statements naming the Developer as pledgee of all amounts from time to time on deposit in the Project Cost Account of the Development Program 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 or take any such other action as Developer determines is necessary to perfect such security interest. To the extent deemed reasonably necessary by the Developer, the Town will at such time and from time to time as requested by Developer establish the Project Cost Account of the Development Program Fund as a segregated fund under the control of an escrow agent, trustee or other fiduciary so as to perfect Developer's interest therein.

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 this Agreement; provided, however, that no such instruments or actions shall constitute a pledge the credit of the Town.

Section 4.4. No Disposition of Development Program Fund. Except as permitted hereunder, the Town shall not sell, lease, pledge, assign or otherwise dispose, encumber or hypothecate any interest in the Project Cost Account of the Development Program Fund 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 hereunder.

Section 4.5. Access to Books and Records. All books, records and documents in the possession of the Town relating to the District, the Development Program, this Agreement and the monies, revenues and receipts on deposit or required to be deposited into the Development Program Fund shall at all reasonable times be open to inspection by the Developer, its 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 Development Program Fund and/or the Project Cost Account 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 the Developer to be observed or performed, which failure is not cured within thirty (30) days following written notice thereof, provided, however, that failure of Developer to pay Property Taxes when due shall not constitute an event of default hereunder; or

(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, marshalling 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 a petition in banking 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. Whenever any Event of Default referred to in Section 5.1 hereof shall have occurred and be continuing, the non-defaulting party may take any one or more of the following remedial steps:

(a) The non-defaulting party may take whatever action at law or at equity as may appear necessary or desirable to collect any amount then due and thereafter to become due, to specifically enforce the performance or observance of any obligations, agreements or covenants of the non-defaulting party under this Agreement and any documents, instruments and agreements contemplated hereby or to enforce any rights or remedies available hereunder; and

(b) The Developer shall also have the right to exercise any rights and remedies available to a secured party under the laws of the State of Maine.

Section 5.3. Remedies Cumulative. 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 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 relinquishment for the future of the rights to insist upon and to enforce, from time to time and as often as may be deemed expedient, by



injunction or other appropriate legal or equitable remedy, strict compliance by the Town 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. Notwithstanding the application of any other provision hereof, in the event any party should default under any of the provisions of this Agreement and the non-defaulting 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 thereof, pay to the non-defaulting party the reasonable costs and expenses so incurred by the non-defaulting party.

Section 5.5. Disputes. The parties agree that in the event of any dispute or disagreement hereunder the Town shall continue to make payment of all amounts due hereunder in the manner and at the times specified herein until final resolution of such dispute, whether by mutual agreement or final decision of a court, arbitrator or other dispute resolution mechanism. The Town hereby waives any right to withhold, suspend or setoff payments during the pendency of any such dispute, this waiver being limited and expressly intended to affect only those rights necessarily related to or arising directly under the terms of this Agreement.

## **ARTICLE VI**

### **EFFECTIVE DATE, TERM AND TERMINATION**

Section 6.1. Effective Date and Term. This Agreement shall become effective upon its execution and delivery by the parties hereto and shall remain in full force from the date hereof and shall expire upon the performance of all obligations on the part of the Town and the Developer hereunder.

Section 6.2. Cancellation and Expiration of Term. At the acceleration, termination or other expiration of this Agreement in accordance with the provisions to 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 this Agreement.

## **ARTICLE VII**

### **ASSIGNMENT AND PLEDGE OF DEVELOPER'S INTEREST**

Section 7.1. Consent to Pledge and/or Assignment. The Town hereby acknowledges that it is the intent of the Developer to pledge and assign its right, title and interest in, to and under all or a portion of this Agreement as collateral for financing for the Project, although no obligation is hereby imposed on the Developer to make such assignment or pledge. Recognizing this intention, the Town hereby consents and agrees

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 indebtedness or otherwise, on one or more occasions during the term hereof.

Section 7.2. Pledge, Assignment or Security Interest. The Town hereby consents to the pledge, assignment or granting of a security interest by the Developer of all or a portion its right, title and interest in, to and under this Agreement. The Town agrees to execute and deliver any assignments, pledge agreements, consents or other confirmations or agreements required by the prospective pledge or assignee, including without limitation, recognition of the pledge or assignee as the holder of all right, title and interest herein and as the payee of amounts due and payable hereunder and any and all such other documentation as shall confirm to such pledge or assignee the position of such assignee or pledge and the irrevocable and binding nature of this Agreement and provide to the pledge or assignee such rights and/or remedies as it may deem necessary for the establishing, perfection and protection of its interest herein.

Section 7.3. Assignment. The Developer 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 Developer may, in its sole discretion, deem appropriate.

## ARTICLE VIII

### **MISCELLANEOUS**

Section 8.1. Successors. In the event of the dissolution of the Town or the Developer or the assignment of this Agreement, the covenants, stipulations, promises and agreements set forth herein shall bind and inure to the benefit of the respective successors and assigns of the parties hereto 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 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 and their respective successors and assigns.

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 members of the Town Council of 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  
                                  259 U.S. Route 1  
                                  Scarborough, Maine 04074

If to the Developer:   Bessey School LP  
                                  415 Congress Street  
                                  Portland, ME 04101  
                                  ATTN: Cynthia J. MillikenTaylor

With a copy to:

John S. Kaminski, Esq.  
Drummond, Woodsum & MacMahon  
245 Commercial Street  
P.O. Box 9781  
Portland, Maine 04104-5081

Any 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 the parties hereto.

Section 8.9. Net Agreement. Subject only to the provisions of Section 3.4 and 5.2 hereof, this Agreement shall be deemed and construed to be a "net agreement," and the Town shall pay absolutely net during the term hereof all payments required hereunder, free of any deductions, and without abatement, deductions or setoffs

Section 8.10. Benefit of Assignees or Pledgees. The Town 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 Town as to the amounts payable hereunder are hereby declared to be for the benefit of any such assignee or pledge from time to time of the Developer's right, title and interest herein.

Section 8.11. Valuation Agreement. 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 or 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 8.12. Integration. This Agreement completely and fully supersedes all other prior or contemporaneous understandings or agreements, both written or oral, between the Town and the Developer relating to the specific subject matter of this Agreement and the transactions contemplated hereby.

[The rest of this page is intentionally left blank.  
The next page is the signature page.]

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

WITNESS:

TOWN OF SCARBOROUGH

Laurel D. Madson

By: Ronald Owens  
Ronald Owens  
Its: Town Manager

BESSEY COMMONS  
CORPORATION

Laurel D. Madson

By: Cynthia J. Milliken Taylor  
Cynthia J. Milliken Taylor,  
Its: President

**SCHEDULE A**

[Legal description of entire District]

**SCHEDULE B**

[Legal description of portion of the District not currently being developed]

Description of the Portion of the District  
other than the Bessey School LP site