

**CREDIT ENHANCEMENT AGREEMENT**

**between**

**THE CITY OF AUBURN, MAINE**

**and**

**AMERICAN DEVELOPMENT GROUP, LLC**

**DATE: \_\_\_\_\_, 2023**

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**EXHIBITS**

Exhibit 1 Copy of Exhibit A-2 from Development Program – District Map



**THIS CREDIT ENHANCEMENT AGREEMENT** dated as of \_\_\_\_\_, 2023, between the City of Auburn, a municipal corporation located in the City of Auburn, County of Androscoggin and State of Maine, with offices at 60 Court Street, Auburn, Maine 04210 (hereinafter "the City"), and **American Development Group, LLC** (the "Developer"), a Maine limited liability company, with a principal place of business of **8 Belmont Court, Auburn, ME 04210**.

**WITNESSETH THAT**

**WHEREAS**, on March 20, 2023, and pursuant to the Act, the City Council of the City at a meeting duly called and held, adopted an order that designated a tax increment financing ("TIF") district: the TIF #27 Stable Ridge Municipal Development and Tax Increment Financing District (the "District"); and

**WHEREAS**, on March 20, 2023, the City of Auburn adopted a development program: the TIF #27 Stable Ridge Municipal Development and Tax Increment Financing District Development Program (the "Development Program"); and

**WHEREAS**, the Commissioner of the State of Maine Department of Economic and Community Development ("DECD") reviewed and approved the District and the Development Program pursuant to an approval letter dated April 24, 2023; and

**WHEREAS**, within the Development Program, and as contemplated thereby, the City contemplated executing a credit enhancement agreement with the Developer after holding a public hearing and Council approval; and

**WHEREAS**, the City 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; and

**WHEREAS**, the City Council held a public hearing and approved this Credit Enhancement Agreement on May 15, 2023; and

**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 City and Developer dated as of the date set forth above, as such may be amended from time to time.

“Captured Assessed Value” means the amount, stated as a percentage, of the Increased Assessed Value of the Property that is retained in the District in each Tax Year during the term of the District, as specified in Section 2.2 hereof.

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

“Current Assessed Value” means the then-current assessed value of the Property located in the District as determined by the City Tax Assessor as of April 1 of each Tax Year during the term of this Agreement.

“Development Program Fund” means the development program fund described in the Financial Plan of the Development Program into which the Tax Increment Revenues are to be deposited, established and maintained pursuant to the Development Program and Article II hereof.

“District” means the TIF #27 Stable Ridge Municipal Development and Tax Increment Financing District, designated by the City on March 20, 2023, a map of which is attached as Exhibit A-2 to the Development Program.

“Effective Date” means the date of final approval of 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 City 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 two hundred thirty-five thousand five hundred dollars (\$235,500), the assessed value of the Property as of March 31, 2022 (April 1, 2021).

“Project” means the development of 10 buildings with 24 apartments, a garage and recreational storage facility, located on the Property.

“Property” means the 13.19-acre parcel identified on City tax maps as Map 229/Lot 007 as of April 1, 2021, owned by the Developer within the District upon which the Project is located.

“Property Taxes” means any and all *ad valorem* real property taxes levied, charged or assessed against real property located in the District by the City, 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 City 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 real property taxes levied by the City are due and payable from owners of property located within the City, or are actually paid to the City with respect to taxable property located within the District.

“Tax Year” shall have the meaning given such term in 30-A M.R.S. § 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 hereby confirms the creation and establishment of a segregated fund in the name of the City designated as the “Development Program Fund” pursuant to, and in accordance with the terms and conditions of, the Development Program and 30-A M.R.S. § 5227(3). The Development Program Fund shall be used to fund payments to Developer. The Development Program Fund consists of two sub-accounts: one for the Developer reimbursement and one for the City programs and projects. Upon each payment in full as due of property taxes by the Developer, the City, based upon the allocations described above, will deposit into the Development Program Fund Developer’s sub-account. The Development Program Fund Developer’s sub-account is pledged to and charged with the payment of the project costs in the manner provided in 30-A M.R.S. § 5227(3). In each fiscal year, the City will disburse funds from the Development Program Fund sub-account to the Developer within thirty (30) business days following payment of the taxes on all captured assessed value. The City shall make payments into the Development Program Fund in the manner and priority provided in 30-A M.R.S. § 5227(3)(B), and as set forth in Section 3.1(b) below.

**Section 2.2. Captured Assessed Value; Deposits into Development Program Fund.**

(a) Each year during the term of this Agreement, for ten (10) years, commencing with the July 1, 2023 – June 30, 2024 fiscal year and continuing through and including the July 1, 2032 – June 30, 2033 fiscal year (the “CEA Years”), the City shall retain in the District one hundred percent (100%) of the Increased Assessed Value as Captured Assessed Value.

(b) For each of the CEA Years, 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 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. § 5227(3)(B). The City shall allocate the Tax Increment Revenues so deposited in the Development Program Fund between the Developer Project Cost Subaccount and the City Project Cost Subaccount as follows: the City shall deposit into the Developer Project Cost Subaccount fifty percent (50%) of the Tax Increment Revenues until the expiration of the CEA Years, or until the reimbursements to the Developer reach a cap of \$500,000 (the “Cap”), whichever occurs first. The amounts in the Developer Project Cost Subaccount shall be used and applied solely to fund the payments to the Developer pursuant to the Agreement. The City shall allocate the remaining fifty percent (50%) of Tax Increment Revenues during the CEA Years to the City Project Cost Subaccount. In the event that the Cap is reached prior to the end of the term of this Agreement, the City shall retain rest of the Tax Increment Revenues in the City Project Cost Subaccount for the remainder of the CEA Years.

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

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

**Section 2.4. Monies Held in Segregated Account.**

All monies paid into the Developer Project Cost Subaccount under the provisions hereof and the provisions of the Development Program shall be held by the City for the benefit of the Developer in a segregated account. The City shall never be under any obligation to deposit into the Developer Project Cost Subaccount any funds other than Developer Tax Increment Revenues received by the City from Developer, the City's obligations under this Agreement extending only to funds that are Developer Tax Increment Revenues actually paid by Developer to the City. Interest earnings thereon shall be retained by the City for the City's own use.

**ARTICLE III  
PAYMENT OBLIGATIONS**

**Section 3.1. Developer Payments.**

(a) The City agrees to pay Developer all amounts then on deposit in the Developer Project Cost Subaccount, on or before thirty (30) days following the Tax Payment Date.

(b) Notwithstanding anything to the contrary contained herein, if, with respect to any Tax Payment Date, any portion of the property taxes assessed against real property located in the District remain unpaid due to a bona fide valuation dispute, the City shall be under no obligation to pay Developer's share of the Tax Increment Revenues to Developer. In such a circumstance, 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 Taxes with respect to Increased Assessed Value, to be applied first to payment in full of the applicable Town percent share of the Tax Increment Revenues for the year concerned and deposited into the Town Subaccount in accordance with Article II hereof.

**Section 3.2. Failure to Make Payment.**

In the event the City 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 Development Program Fund is insufficient to reimburse Developer for the full amount due to Developer under this Agreement, the amount or installment so unpaid shall continue as a limited obligation of the City, under the terms and conditions hereinafter set forth, until the amount unpaid shall have been fully paid.

**Section 3.3. Limited Obligation.**

The City's obligations of payment hereunder shall be limited obligations of the City payable solely from Tax Increment Revenues pledged therefor under this Agreement. The City'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 City, 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 Development Program Fund. This Agreement shall not directly, indirectly or contingently obligate the City, the State of Maine, or any other City or political subdivision to levy or to pledge any form



of taxation whatever therefor or to make any appropriation for their payment, excepting the pledge of the Tax Increment Revenues established under this Agreement.

**Section 3.4. Obligations Unconditional.**

Except as otherwise provided in this Agreement or as required by applicable law, the obligations of the City to make the payments described in this Agreement shall be absolute and unconditional, and the City shall not suspend or discontinue any payment hereunder or terminate this Agreement for any cause, irrespective of any defense or any rights of setoff, recoupment or counterclaim it might otherwise have against the Developer, other than by reason of and to the extent provided in a final judgment by a court of competent jurisdiction or by reason of an order of Trustee Process or Attachment. The City hereby acknowledges that the Developer has the right to enforce the contractual obligations of the City under this Agreement and that the governmental immunity of the City does not apply to actions to enforce its contractual obligations; provided however, that nothing herein shall constitute a waiver of the City's tort immunity or any other governmental immunities

**ARTICLE IV  
FURTHER INSTRUMENTS AND BOOKS AND RECORDS**

**Section 4.1. Further Instruments and City Costs.**

The City shall, upon the reasonable request of 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 pledge the credit of the City; and provided further that the cost of executing and delivering such further instruments (including the reasonable and related costs of counsel to the City with respect thereto) shall be borne exclusively by Developer.

**Section 4.2. Access to Books and Records.**

(a) All non-confidential books, records and documents in the possession of the City relating to the District, the Development Program, this Agreement and the monies, revenues and receipts on deposit or required to be deposited into Development Program Fund shall at all reasonable times and upon reasonable notice be open to inspection by Developer, its agents and employees.

(b) All non-confidential books, records, lease agreements and documents in the possession of Developer relating to the District, the Development Program, this Agreement and the monies, revenues and receipts used from the Development Program Fund shall at all reasonable times and upon reasonable notice be open to inspection by City, 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 City to pay any amounts due to Developer when the same shall become due and payable;

(b) Any failure by the City to make deposits into Development Program Fund as and when due;

(c) Any failure by the City or Developer to observe and perform in all material respects any covenant, condition, agreement or provision contained herein on the part of the City 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 any secured lender of Developer accelerates the indebtedness owed to it;

(f) If any written representation or warranty given to the City by Developer is knowingly incorrect or incomplete in any material respect, other than statements made about or in agreements with the City that were later changed by mutual consent; and

(g) If Developer fails to maintain adequate surety bonding during construction at the levels and terms as may be required from time to time by the Developer’s secured lenders and/or Developer allows mechanics’ liens to encumber the Project for a period of more than sixty (60) days.

**Section 5.2. Remedies on Default.**

Subject to the provisions contained in Section 8.9, whenever any Event of Default described in Section 5.1 hereof shall have occurred and be 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 8.9 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.

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

**Section 6.1. Effective Date and Term.**

(a) Notwithstanding any other provision of this Agreement, this Agreement is conditioned upon receipt of the Department's unconditional approval of the City's designation of the District and adoption of the Development Program. Following execution and delivery of this Agreement, the Agreement shall not be or become binding and enforceable until receipt of such unconditional approval.

(b) From the date of execution and delivery of this Agreement, the Agreement shall remain in full force and effect until the completion of the CEA Years as herein defined, unless even sooner terminated pursuant to 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 City and 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. Pledge and/or Assignment.**

The City hereby acknowledges that Developer may pledge, assign and grant a security interest in its right, title and interest in, to and under this Agreement as collateral for financing by

a bank or financial institution to Developer for the Project, although no obligation is hereby imposed on Developer to make such assignment or pledge. Recognizing this possibility, the City does hereby consent and agree to the pledge and assignment of and the grant of a security interest in all 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. The City agrees upon request to execute and deliver any assignments, pledge agreements, consents or other confirmations required by the prospective pledgee or assignee or secured party, including without limitation recognition of the pledgee or assignee or secured party 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 pledgee or assignee or secured party the position of such assignee or pledgee or secured party and the irrevocable and binding nature of this Agreement, and provide to the pledgee or assignee such rights and/or remedies as the parties may reasonably deem necessary for establishing, perfection and protection of its interest herein. Developer shall be responsible for the City's necessary and reasonable costs of counsel with respect to any such pledge or assignment.

**Section 7.2. Transfer**

Except as specified in Section 7.1 hereof, Developer shall not transfer or assign any portion of its rights in, to and under this Agreement without the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed.

**ARTICLE VIII  
MISCELLANEOUS**

**Section 8.1. Successors.**

In the event of the dissolution, merger or consolidation of the City or 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. Notwithstanding this Subsection 8.1, unless the City affirmatively approves of such action, which approval shall not be unreasonably withheld so long as the action will not have the effect of markedly changing the use of the Property or the nature of the Project, the City shall have the right to terminate this Agreement upon the dissolution, merger, or consolidation of the Developer, and if it exercises such right shall not be obligated to comply with this Agreement thereafter.

**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 City and 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 City and 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 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 City Council 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 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. Amendments.**

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

**Section 8.8. Integration.**

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

**Section 8.9. Dispute Resolution.**

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, then either party may refer the dispute for resolution by one arbitrator mutually agreed to by the parties, and judgment on the award rendered by the arbitrator may be entered in any Maine state court having jurisdiction. Any such arbitration will take place in Auburn, Maine or such other location as mutually agreed by the parties. The parties acknowledge that arbitration shall be the sole mechanism for dispute resolution under this

Agreement. Provided however, that in the event the parties are unable to agree, within a reasonable period, on the selection of an arbitrator, either party may file suit to resolve the dispute in any court having jurisdiction within the State of Maine. This arbitration clause shall not bar the City's assessment or collection of property taxes in accordance with law, including by judicial proceedings, including tax lien thereof.

**Section 8.10. Reserved.**

**Section 8.11. Notices.**

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

City Manager  
City of Auburn  
60 Court Street  
Auburn, Maine 04210

With a copy to:

Philip Saucier, Esq.  
Bernstein Shur  
100 Middle Street  
P.O. Box 9729  
Portland, Maine 04104-5029

If to Developer:

American Development Group, LLC  
ATTN: Jessica Klimek  
8 Belmont Court  
Auburn, ME 04210

With a copy to:

[Developer's counsel name and address, if applicable]

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.

**IN WITNESS WHEREOF**, the City and 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:

CITY OF AUBURN

\_\_\_\_\_

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

Name: Phillip Crowell

Its City Manager Duly Authorized by the City  
Council on May 15, 2023

WITNESS:

AMERICAN DEVELOPMENT GROUP, LLC

\_\_\_\_\_

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

Name:

Its:



Exhibit 1: Map of District