

AGENDA
SCARBOROUGH TOWN COUNCIL
WEDNESDAY – FEBRUARY 6, 2019
WORKSHOP RE: PIPER SHORES CONTRACT ZONE AMENDMENT – 6:00 P.M.
REGULAR MEETING – 7:00 P.M.

NO NEW BUSINESS SHALL BE TAKEN UP AFTER 10:00 P.M.

- Item 1.** Call to Order.
- Item 2.** Pledge of Allegiance.
- Item 3.** Roll Call.
- Item 4.** General Public Comments.*
- Item 5.** Minutes: January 16, 2019 - Town Council Meeting.
- Item 6.** Adjustment to the Agenda.
- Item 7.** Items to be signed: a. Treasurer's Warrants.

***Procedure for Addressing Council** [Posted in Chambers.]

OLD BUSINESS:

Order No. 19-005. Act on the names posted to the Planning Board, as recommended by the Appointments/Negotiations Committee on January 16, 2019. *[Appointments/Negotiations Committee]*

NEW BUSINESS:

Order No. 19-006. First reading and schedule a public hearing on the proposed amendments to Chapter 901 – the Town of Scarborough Garbage and Recycling Collection & Disposal Ordinance, Article I, Section 1.02., Section 1.10. & Section 1.12. and Article III, Section 3.01. *[Ordinance Committee]*

Order No. 19-007. Act on the request from the Town Manager, to direct the annual funds from the Pine Point Parking Lease to be deposited into the Pine Point Waterfront Reserve Capital Improvement Account. *[Town Manager]*

Order No. 19-008. Act on the request that the Town Council expresses the intent to form two Ad-Hoc Committees [a Community Center Ad-Hoc Committee and a Downtown Ad-Hoc Committee] and direct the Town Manager to propose charges for each committee no later than September 4, 2019. *[Town Manager]*

- Item 8.** Non Action Items:
 - a. Discussion on the sale of the Pine Point Co-Op.
- Item 9.** Standing and Special Committee Reports and Liaison Reports.
- Item 10.** Town Manager Report.
- Item 11.** Council Member Comments.
- Item 12.** Adjournment.

AGENDA

SCARBOROUGH TOWN COUNCIL

WEDNESDAY – FEBRUARY 6, 2019

REGULAR MEETING – 7:00 P.M.

Order No. 19-005. Move approval on the names posted to the Planning Board, as recommended by the Appointments/Negotiations Committee on January 16, 2019, as follows: *[Appointments/Negotiations Committee]*

Re-appoint Robyn Saunders as a full voting member, with a term to expire in 2021 and appoint Jennifer Ladd as a full voting member with a term to expire in 2021 and appoint Rick Meinking as 2nd Alternate to fill a term to expire in 2019.

Appointments/Negotiations Committee

Ought to Pass

Sponsor

Recommendation

01/16/2019 Posted

First Reading/Vote

N/A

Public Hearing

02/06/2019 – Vote:

Second Reading/Final Approval/Vote

AGENDA

SCARBOROUGH TOWN COUNCIL WEDNESDAY – FEBRUARY 6, 2019 REGULAR MEETING – 7:00 P.M.

Order No. 19-006. Move approval of the first reading and schedule a public hearing on the proposed amendments to Chapter 901 – the Town of Scarborough Garbage and Recycling Collection & Disposal Ordinance, Article I, Section 1.02., Section 1.10. & Section 1.12. and Article III, Section 3.01, for Wednesday, February 20, 2019, as follows: *[Ordinance Committee]*

Ordinance Committee

Ought to Pass

Sponsor

Recommendation

02/06/2019 – Vote:

First Reading/Vote

02/20/2019

Public Hearing

03/06/2019 – Vote:

Second Reading/Final Approval/Vote

CHAPTER 901
TOWN OF SCARBOROUGH
Garbage and Recycling Collection and Disposal Ordinance

BE IT HEREBY ORDAINED by the Town Council of the Town of Scarborough, Maine, in Town Council assembled, that Chapter 901, the Garbage and Recycling Collection Ordinance of the Town of Scarborough is amended, as follows:

ARTICLE I. GENERAL PROVISIONS

Section 1.01 PURPOSE

The purpose of this Ordinance is to protect the health, safety and general well-being of the citizens of Scarborough: enhance and maintain the quality of the environment, conserve natural resources and prevent water and air pollution by providing for a comprehensive, rational and effective means of regulating the disposal of solid waste in the Town of Scarborough in accordance with the provisions of Title 38 M.R.S.A. §§ 1304-B and 1305, as amended.

Section 1.02 DEFINITIONS

1. CART:

”Cart” means a wheeled receptacle distributed by the Town of Scarborough to Scarborough residents for the purpose of facilitating the collection of garbage and recyclable materials at the curb.

2. CONSTRUCTION OR DEMOLITION DEBRIS:

”Construction or demolition debris” means solid waste resulting from construction, remodeling, repair, and demolition of structures. It includes but is not limited to: building materials, discarded furniture, asphalt, wall board, pipes, and metal conduits. It excludes: partially filled containers of glues, tars, solvents, resins, paints, or caulking compounds; friable asbestos; and other special wastes.

3. CONTAINERS:

”Containers” means items including glass bottles and jars, plastic bottles and jugs, and metal cans.

4. DISPOSAL:

”Disposal” means the discharge, deposit, dumping or placing of any solid waste into or on any land.

5. ECOMAINE DISPOSAL FACILITY

”**ecomaine** Disposal Facility” means any land or structure or combination of land area and structures, including dumps and transfer stations, owned or operated by **ecomaine**, or any

other site designated by **ecomaine**, used for storing, salvaging, reducing, incinerating or disposing of solid wastes.

6. GARBAGE:

"Garbage" means solid waste which the Town Public Works Director and/or his/her designee shall designate on a list of items that are acceptable for garbage collection posted on the Town web page.

7. HAZARDOUS WASTE:

"Hazardous waste" means a waste substance or material, in any physical state, designated as hazardous by the Board of Environmental Protection under 38 MRSA section 1319-O or by the terms of a certain Waste Handling Agreement between the Town and **ecomaine**. It does not include waste resulting from normal household or agricultural activities. The fact that a hazardous waste or a part or a constituent may have value or other use or may be sold or exchanged does not exclude it from this definition.

8. OVERFLOW:

"Overflow" means garbage set out for collection that exceeds the amount contained in the Town-provided collection cart; applies only to those solid wastes considered acceptable in the curbside collection program.

9. PERSON:

"Person" means any person, firm, partnership, corporation, association, company, or organization of any kind.

10. RECYCLABLE MATERIALS or RECYCLABLES:

"Recyclable Materials" or "Recyclables" means solid waste designated by the Town Manager or his/her designee as suitable for inclusion in the Town's recycling program. These items are as follows: newspapers, magazines, office paper, paperboard, cardboard, glass bottles, glass jars, #1-7 plastics, aluminum cans, aluminum foil, tin cans, steel cans and milk and juice cartons. These items are subject to change and are in reference to the materials accepted by **ecomaine**. [amended 11/01/17]

11. RECYCLING VEHICLE:

"Recycling vehicle" means a vehicle utilized by the Town of Scarborough or its designated agent to collect recyclable materials at the curb from all residential uses on a Town-maintained public way.

12. RESIDENTIAL USES:

"Residential uses" means, for the purpose of providing solid waste collection, single-family, duplex and multifamily dwellings (up to and including five units) on public ways. Residential uses may include home occupations as defined in the Town Zoning Ordinance, but not other mixed commercial and residential uses.

13. SOLID WASTE:

“Solid waste” shall mean useless, unwanted or discarded solid material with insufficient liquid content to be free flowing, including by way of example, and not by limitations, rubbish, garbage, scrap materials, junk, inert fill material and landscaping refuse, and including material that may have value or other use or may be sold or exchanged, but not including septage tank sludge nor agricultural or hazardous wastes.

14. SOLID WASTE DISPOSAL FACILITY or DISPOSAL FACILITY:

“Solid Waste Disposal Facility” or “Disposal Facility” means any land or structure or combination of land area and structures, including dumps and transfer stations and any other site used for storing, salvaging, reducing, incinerating or disposing of solid wastes, including the **ecomaine** disposal facility.

15. TOWN:

“Town” means the Town of Scarborough, Maine.

16. UNIVERSAL WASTE:

“Universal waste” means any waste listed in section 3.A(13)(b) of Chapter 850, the Maine Hazardous Waste Management Rules, including but not limited to cathode ray tubes; mercury-containing lamps; mercury-containing thermostats; and totally enclosed, non-leaking polychlorinated biphenyl (PCB) ballasts.

17. WOOD WASTES:

“Wood wastes” means brush, stumps, lumber, bark, wood chips, shavings, slabs, edgings, slash, sawdust and wood from production rejects, that are not mixed with other solid or liquid waste. For the purposes of this definition, “lumber” is entirely made of wood and is free from metal, plastics and coatings.

18. YARD WASTE:

“Yard waste” means earthen fill, soil, sand, grass clippings, leaves, and other vegetal matter other than wood wastes and land clearing debris.

Section 1.08 UNLAWFUL TO PLACE, DEPOSIT GARBAGE IN VIOLATION OF ORDINANCE

It shall be unlawful for any person to place, deposit or allow to be placed or deposited on his premises any garbage, except in the manner permitted by the provisions of this Ordinance.

Section 1.10 CARTS REQUIRED; HOURS FOR PLACEMENT AND REMOVAL; REPLACEMENT OR ADDITIONAL CARTS; OVERFLOW WASTE [Amended 10/18/17-Effective 04/18/18]

A. It shall be the responsibility of the Town to provide and make available suitable and sufficient carts as described by §1.09 to receive the accumulation of weekly household waste.

Each cart shall be placed as instructed by the Town or its designated garbage collector along the street, sidewalk or roadside for automated collection. Town-designated garbage carts may be set out for collection the evening or day before, but must be set out by 7:00A.M. the morning of collection, and ~~should~~ shall be removed from the Town's right of way the day of collection.

B. Should a Town-owned cart be damaged, defaced or lost by a household, the Town will make another such cart available for replacement at a fee.

C. Residents who have "overflow waste," defined as garbage set out for collection that exceeds the amount contained in the Town-provided collection cart, may take it to the Department of Public Works for disposal.

Section 1.12 UNLAWFUL TO ~~RAKE LEAVES~~ PUT ANY YARD WASTE OR WOOD WASTES INTO STREETS OR TOWN RIGHTS OF WAY

It shall be unlawful to ~~rake-leaves~~ put any yard waste or wood wastes into any paved street or the Town's ~~or~~ right of way.

ARTICLE III. COLLECTION AND REMOVAL

Section 3.01 ACCUMULATION OF GARBAGE PROHIBITED

1) Each household or business is responsible for preventing accumulation of garbage. On the designated day of pickup, all residential garbage must be set out in a Town designated cart for garbage collection. Each household unit should contain its waste in carts as described in § 1.10. Pursuant to § 1.10, each cart shall be placed as instructed by the garbage collector along the street, sidewalk or roadside for automated collection. Town-designated garbage carts may be set out for collection the evening or day before, and ~~should~~ shall be removed from the street or roadside ~~after~~ on the day of collection, in no event more than 24 hours thereafter. No person shall cause or permit any accumulation of garbage which, in the opinion of the Health Officer or Health Inspector, is unsanitary or hazardous to the health of the public or, in the judgment of the Fire Chief of the Fire Department, constitutes a fire hazard.

2) Dumping prohibited. No person shall throw or place any garbage; recyclable materials, including paper, glass, nails, wire, bottles, and cans; yard waste, including brush, branches, and earthen fill; construction or demolition debris; garbage carts; litter or other debris in any ditch, stream, river or retention basin that regularly or periodically carries surface water runoff. Any person who deposits any of the above shall remove it or cause it to be removed immediately. The Code Enforcement Officer, the Public Works Director or any one else designated by either shall be responsible for the enforcement of this provision.

AGENDA

SCARBOROUGH TOWN COUNCIL WEDNESDAY – FEBRUARY 6, 2019 REGULAR MEETING – 7:00 P.M.

Order No. 19-007. Move approval on the request from the Town Manager, to direct the annual funds from the Pine Point Parking Lease to be deposited into the Pine Point Waterfront Reserve Capital Improvement Account. *[Town Manager]*

Town Manager

Ought to Pass

Sponsor

Recommendation

02/06/2019

First Reading/Vote

N/A

Public Hearing

N/A

Second Reading/Final Approval/Vote

Pine Point Waterfront Reserve Capital Improvement Account
Approved 04-04-2012

Coastal Waters and Working Waterfront Reserve Account

WHEREAS, the Town authorized monies through the Capital Improvement Budget for the construction of a new pier at Pine Point; and,

WHEREAS, the project has been completed and \$53,189 remains unspent and the Town desires to reserve these funds to provide for the future repair and replacement of this waterfront infrastructure.

THEREFORE, BE IT ORDERED, That under and pursuant to the provisions of Title 30-A, Sections 5801 and 5802 of the Maine Revised Statutes, as amended and supplemented to date, that the new Coastal Waters and Working Waterfront Reserve Account is hereby established as town reserve fund for the purpose of funding capital repairs and replacement of waterfront infrastructure in the Pine Point area, including, but not limited to pier infrastructure, boat launch facilities and related parking areas; and,

BE IT FURTHER ORDERED, That \$23,360 of these reserve funds is authorized for the purchase of six (6) floats to replace the float system at Ferry Beach, leaving an initial balance of \$29,829 in the reserve fund, and that any unspent appropriations from the Clam Seed account be deposited in this reserve account on an annual basis.

Portion of April 4, 2012 Town Council Minutes

Order No. 12-36. Act on the request to establish a new Pine Point Reserve Account, pursuant to the provisions of Title 30-A, Sections 5801 and 5802 of the Maine Revised Statutes, as amended and supplemented to date.[Tabled from the March 21st Town Council meeting.] Councilor Holbrook, gave a brief overview on the proposed changes that were recommended by the Finance Committee.

Motion by Councilor Holbrook, seconded by Councilor Roy, to move approval on the request to establish a new Pine Point Reserve Account, pursuant to the provisions of Title 30-A, Sections 5801 and 5802 of the Maine Revised Statutes, as amended and supplemented to date.

Motion by Councilor Holbrook, seconded by Councilor Rancourt, to move approval to amend the main motion to change the name of the fund to the “Coastal Waters and Working Waterfront Reserve Account” [change where applicable within the body of the document and to the last paragraph add at “.... leaving an initial balance of \$29,829 in the reserve fund, and that any unspent appropriations from the Clam Seed account be deposited in this reserve account on an annual basis.]

Vote on amendment: 7 Yeas.

Main motion as amended:

Proposed Amendment as Recommended by the Finance Committee

Coastal Waters and Working Waterfront Reserve Account

WHEREAS, the Town authorized monies through the Capital Improvement Budget for the construction of a new pier at Pine Point; and,

WHEREAS, the project has been completed and \$53,189 remains unspent and the Town desires to reserve these funds to provide for the future repair and replacement of this waterfront infrastructure.

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Vote: 7 Yeas.

AGENDA

SCARBOROUGH TOWN COUNCIL WEDNESDAY – FEBRUARY 6, 2019 REGULAR MEETING – 7:00 P.M.

Order No. 19-008. Move approval on the request that the Town Council expresses the intent to form two Ad-Hoc Committees [a Community Center Ad-Hoc Committee and a Downtown Ad-Hoc Committee] and direct the Town Manager to propose charges for each committee no later than September 4, 2019. *[Town Manager]*

Town Manager

Ought to Pass

Sponsor

Recommendation

02/06/2019

First Reading/Vote

N/A

Public Hearing

N/A

Second Reading/Final Approval/Vote

Item 8. Non Action Items:

- a. Discussion on the sale of the Pine Point Co-Op.



**Bernstein, Shur,
Sawyer & Nelson, P.A.**
100 Middle Street
PO Box 9729
Portland, ME 04104-5029

T (207) 774 - 1200
F (207) 774 - 1127

Memorandum

To: Thomas Hall
From: Peter J. Van Hemel
Date: February 1, 2019
Re: Proposed consent to transfer of Pine Point Co-operative property

This memorandum summarizes the proposed transaction that is under review by the Town between the Pine Point Fisherman's Cooperative (under the guidance of Gary Johnson and Tim Staples) and 96 King, LLC which is understood to be an entity owned by Susan Bayley Clough and Vincent Clough.

The history of the site is significant and best organized by date.

1964

The context of the Town's role in this property dates back to at least 1964, when Town Selectmen minutes reference a "writ of mandamus" served upon the Town which (from the minutes) apparently required the Town to execute and deliver a deed to the property. The Cumberland County Registry of Deeds contains a deed (Book 2807, Page 87) dated March 4, 1964 from the Town to the Pine Point Cooperative Association granting that entity the ownership of the land corresponding to the location of the Town Landing marina, subject to a set of conditions. Those conditions are:

- 1) the Grantee may not sell, mortgage, or encumber the property without the Town's approval
- 2) If the Grantee ceases to exist as a corporation for 1 year, the land would revert to the Town
- 3) the buildings and improvements on site may only be enlarged on the side facing the Scarborough River.

We have contacted the Maine State Archives to locate a copy of the 1964 writ of mandamus to review its actual terms, but they have not responded to the request at this point. Those efforts will continue, as there does not appear to be anything in the Town, Court, or Registry records (at least nothing we have located to date) which would reliably explain the Writ nor which would modify or release it since it was issued. The Writ would presumably be a binding court order and the Town should be aware of any restrictions or conditions imposed by its terms to the extent possible. I note further that there are no public records available in the online State records concerning the organization or format of the Pine Point Cooperative Association although the 1964 deed recites that it was a Maine corporation.

A few months after the 1964 deed from the Town to the Pine Point Cooperative Association, there was a deed dated December 7, 1964 from the Association back to the Town (Book 2872, Page 189) granting the Town public easement rights to use the pier and landing for parking, fishing, and loading/unloading gear as a public landing “on terms equal to all.” The easement was made self-terminating in the event that the Town failed to operate the pier as a public landing on those terms. It is unclear whether this easement was required under the Writ or was the result of some other understanding, but the two deeds read together suggest that in 1964, the Town recognized a significant public interest in the preservation of the landing as a town and public resource and created a regime to perpetuate the Town’s oversight of the resource.

1976-1977

In December 1976, and March, 1977, the Town joined in two agreements to modify the original 1964 Deed covenants. The modifications by agreement allowed the transfer of the property from the Pine Point Cooperative Association to the Pine Point Fisherman’s Co-Operative [i.e., the current owner] which was an entity that had been recently organized and incorporated in September, 1976. The Town also allowed the new owner/buyer to finance the acquisition of the premises with up to \$125,000 of mortgage debt.

The Pine Point Fisherman’s Co-op is a “Fish Marketing Association” created under a specific law, encoded at Title 13 MRSA § 2001 *et seq.*, known as the “Fish Marketing Act.” The statute was on the books at the time the Co-op was created and its organizational documents specifically identify the law under which it is chartered. By law, such a Co-op is required to be a non-profit, non-capital stock corporation. The entire Act is contained in a subchapter of Maine’s corporate laws (Title 13, Part 2) entitled “Corporations Without Capital Stock” that includes other organizations such as cemetery corporations, fraternal organizations, religious societies, and educational organizations. These are all somewhat classically understood as “non-profits” from a governance and a tax perspective. While they may have members who hold a form of stock to evidence membership, the law under which these corporations act is designed to encourage activities recognized by the legislature as providing a civic or charitable benefit or (as in the case of marketing co-ops), to allow collective economic activity

while being exempt from anti-trust laws. Stockholders in a Fish Marketing Association may profit from the sale of fishery products. Title 13, Section 2004 states:

§2004. Nonprofit associations

Associations shall be deemed "nonprofit," inasmuch as they are not organized to make profit for themselves, as such, or for their members, as such, but only for their members as producers of fishery products.

The Pine Point Fisherman's Co-op appears to have had an initial membership of at least 7 people, with the possibility of 250 "shares" all of which were restricted to ownership/membership by persons engaged in the fishery business as required by statute. The Town consented to the transfer of ownership of the real estate on May 11, 1977 (by deed recorded in Book 4019, Page 120) into the Pine Point Fisherman's Co-op., subject again to the transfer restrictions in the original 1964 deed and subject to the Town's 1964 Easement rights.

1997

In 1997 the Town and the Co-op amended their terms once again by virtue of an Agreement dated February 5, 1997 recorded at the Registry in Book 12941, Page 106. This document increased the mortgage debt ceiling on the property to \$170,000. There is an Exhibit A attached to that document – but not referenced in it—which appears to be a print out of a ledger showing a "Closing" on 2/6/97 (the date after the Agreement with the Town was signed) where certain loans were repaid to seven or eight members (assumed) of the Co-Op including a column labeled "SALE OF STOCK" where seven of the individuals listed appear to have received \$4,900 each. The corporate records of the Co-Op on file with the State contain Articles of Amendment showing that on February 6, 1997 the eight shareholders of the corporation met and transferred all of their ownership to "GT Management Corporation, Inc." and appointed two individuals as directors, namely Gary Johnson and Tim Staples. The exact nature and circumstances of this transfer and the resulting state of compliance of the Co-op with the Fish Marketing Act are not fully understandable from the records. It is also not clear simply by reference to the 1997 Agreement why or when Exhibit A was attached to it, nor whether that Exhibit A or its content was presented to the Town for approval although my understanding is that some nature of disclosure was made to the Town at the time of the 1997 corporate re-organization of the Co-op and the transfer of its shares to GT Management Corporation, Inc. I also am advised and note from the recent correspondence that Mr. Staples and Mr. Johnson continue to act on behalf of the Co-op.

Parking Lease and Zoning

In addition to the Town's easement rights and the deed covenants that carry forward (with modifications to the mortgage ceiling) from 1964, the Town has leased 25 parking spaces at the Town Landing lot to the Co-op to allow the use of the Rising Tide restaurant which is located on the Co-op property. It appears to be the case that the parking spaces are integral to the restaurant use and permits. The Town's reasonable

consent is required to any request for an assignment of the parking lease to a new owner of what is now the Co-op property.

I am advised that the Co-op property is classified under state tax law and town zoning code as working waterfront property with restrictions imposed by the Town and State which govern such property and that those regulations generally restrict the use and operation of the property to its current configuration, although there is no requirement that the property remain in its current tax preferred status.

Pending request from 96 King, LLC, 1/18/19 letter and 1/31/19 email

The Town is in receipt of a letter dated January 18, 2019 from Attorney Julianne Ray on behalf of 96 King, LLC setting forth a summary of the title and deed issues and suggesting (on Page 2) that the 1964 Deed restrictions against transfer of the real estate would not necessarily apply to a transfer of the corporate ownership of the Co-Op (i.e., a transfer of its shares).

On January 31, 2019, Attorney Ray sent an email to counsel for the Town requesting the Town's consideration of an Agreement to approve the transfer of the property by deed to 96 King, LLC, to increase the debt ceiling on the property to \$900,000, and to request an assignment of the Town's parking lease to 96 King, LLC. The email attached a proposed Agreement reciting the historical deed restrictions, and noting that in connection with the request for the \$900,000 debt ceiling, the applicant proposed that any mortgage secured by the property would grant the Town a "first right of refusal" in the event of default and suggesting that the borrowers rights of redemption under a mortgage would be assigned to the Town. In order to evaluate these proposals fully it would be necessary to review the precise terms of any proposed financing, as the mechanism proposed is not entirely clear, enforceable, or predictable as drafted. In essence, the borrower appears to be willing to offer the Town a preferred position to purchase or assume the property in the event of a foreclosure, but the means by which that is accomplished are not provided in detail and consent to this arrangement is not recommended without further detail.

The email further enclosed a draft deed, which incorporated by reference the terms of the original 1964 Deed as modified by the intervening Town Agreements (1976, 1977, and 1997).

96 King, LLC is a Maine Limited Liability Company organized on 1/10/19, of which Attorney Ray is the Clerk/Registered Agent. It is not a statutory co-operative or non-profit entity.

AGREEMENT

THIS AGREEMENT is entered into as of the ____ day of _____, 2019, among **THE TOWN OF SCARBOROUGH**, a municipal corporation and body politic organized and existing under the laws of the State of Maine (the “Town”), **PINE POINT FISHERMAN’S CO-OPERATIVE** (“Pine Point”), a corporation organized and existing under the laws of the State of Maine, and **96 KING, LLC**, a limited liability company organized and existing under the laws of the State of Maine (“96 King”).

RECITALS

A. Pine Point owns certain real property and the building thereon known as 96 King Street, in the Town of Scarborough, County of Cumberland, and State of Maine, more particularly described in a deed from Pine Point Cooperative Association dated May 11, 1977, and recorded the Cumberland County Registry of Deeds in Book 4019, Page 120 (the “Property”).

B. The Town’s consent is required to sell, mortgage, or otherwise encumber the Property pursuant to restrictions contained in a deed from the Inhabitants of the Town of Scarborough to Pine Point Cooperative Association dated March 4, 1964, and recorded in said Registry in Book 2807, Page 87, as amended by Agreement between the Town of Scarborough and Pine Point Cooperative Association dated December 27, 1976, and recorded in Book 3956, Page 245, as amended by Agreement between the Town of Scarborough and Pine Point Cooperative Association dated March 2, 1977, and recorded in Book 3984, Page 313; and restrictions contained in a deed from Pine Point Cooperative Association to Pine Point Fisherman’s Co-operative dated May 11, 1977, and recorded in Book 4019, Page 120, as amended by Agreement between the Town of Scarborough and Pine Point Fisherman’s Co-operative dated February 5, 1997, and recorded in Book 12941, Page 106.

C. Pine Point desires to transfer the Property to 96 King, LLC and 96 King, LLC desires to obtain financing for the transfer and grant a Mortgage on the Property.

AGREEMENT

The parties hereby agree and covenant with each other, their successors and assigns, as follows:

1. The Town hereby approves Pine Point’s transfer of the Property to 96 King, LLC, subject to all existing restrictions of record affecting the Property, pursuant to a deed substantially in the form attached hereto as Exhibit A.

2. The Town hereby consents to 96 King, LLC granting a mortgage on the Property to a financial institution duly authorized and licensed to conduct business in Maine, to secure indebtedness in an original principal amount not to exceed \$900,000.00; provided, however, that the said mortgage financing gives the first right of refusal to the Town of Scarborough to purchase the Property in the event of a default and/or the rights of redemption of 96 King, LLC are assigned to the Town of Scarborough.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by them as of the date first set forth above.

TOWN OF SCARBOROUGH

Witness

By: _____
Thomas Hall
Its Town Manager

PINE POINT FISHERMAN'S
CO-OPERATIVE

Witness

By: _____
Printed Name:
Its:

96 KING, LLC

Witness

By: _____
Susan Bayley Clough
Its Manager

STATE OF MAINE
Cumberland, SS.

_____, 2019

Then personally appeared the above-named Thomas Hall, the Manager of the Town of Scarborough, and acknowledged the foregoing instrument to be his free act and deed in his said capacity, and the free act and deed of said Town of Scarborough.

Before me,

Notary Public/Maine Attorney-at-Law
Printed Name: _____
My Commission Expires: _____

STATE OF MAINE

Cumberland, SS.

_____, 2019

Then personally appeared the above-named _____, the _____ of Pine Point Fisherman's Co-operative, and acknowledged the foregoing instrument to be his free act and deed in his said capacity, and the free act and deed of said Pine Point Fisherman's Co-operative.

Before me,

Notary Public/Maine Attorney-at-Law

Printed Name: _____

My Commission Expires: _____

STATE OF MAINE

Cumberland, SS.

_____, 2019

Then personally appeared the above-named Susan Bayley Clough, the Manager of 96 King, LLC, and acknowledged the foregoing instrument to be her free act and deed in her said capacity, and the free act and deed of said 96 King, LLC.

Before me,

Notary Public/Maine Attorney-at-Law

Printed Name: _____

My Commission Expires: _____

EXHIBIT A

WARRANTY DEED

(Maine Statutory Short Form)

KNOW ALL BY THESE PRESENTS, that **PINE POINT FISHERMAN'S CO-OPERATIVE**, a corporation organized and existing under the laws of the State of Maine and having a place of business in Scarborough, County of Cumberland, and State of Maine, for consideration paid, GRANTS to **96 KING, LLC**, a limited liability company organized and existing under the laws of the State of Maine, the mailing address of which is P.O. Box 304, Scarborough, Maine 04070, with WARRANTY COVENANTS, certain real estate located in Scarborough, County of Cumberland, and State of Maine, which is more particularly described as follows:

Beginning at a point on the northwesterly side line of the Town Landing at Pine Point, so-called, which said point is located 85' northeasterly along said northwesterly sideline from an existing monument marking the easterly terminum of King Street Extension, so-called; thence south 60° 30' east 100 feet to a point; thence north 29° 30' east to the Scarborough River, so-called; thence northwesterly by said Scarborough River to the extension northeasterly of the northwesterly sideline of said Town Landing at Pine Point, so-called; thence south 29° 30' west to the point of beginning.

This conveyance is made subject to the restrictions as previously provided for in Quitclaim Deed from the Inhabitants of the Town of Scarborough to the Pine Point Cooperative Association dated March 4, 1964 and recorded in the Cumberland County Registry of Deeds in Book 2807, Page 87, as amended by Agreement between the Town of Scarborough and Pine Point Cooperative Association dated December 27, 1976, and recorded in Book 3956, Page 245, as amended by Agreement between the Town of Scarborough and Pine Point Cooperative Association dated March 2, 1977, and recorded in Book 3984, Page 313; and being the same premises conveyed by Pine Point Cooperative Association to Pine Point Fisherman's Co-operative by deed dated May 11, 1977, and recorded in Book 4019, Page 1201, as amended by Agreement between the Town of Scarborough and Pine Point Fisherman's Co-operative dated February 5, 1997, and recorded in Book 12941, Page 107, as amended by Agreement among the Town of Scarborough, Pine Point Fisherman's Association, and 96 King, LLC dated _____, 2019, and recorded in Book _____, Page _____.

This conveyance is made SUBJECT, HOWEVER, to real estate taxes which are not yet due and payable, which, by acceptance hereof, Grantee assumes and agrees to pay.

IN WITNESS WHEREOF, the said Pine Point Fisherman's Co-operative has caused this instrument to be executed on its behalf by its duly authorized undersigned representative as an instrument under seal, this ____ day of _____, 2019.

PINE POINT FISHERMAN'S CO-OPERATIVE

Witness

By: _____
Printed Name: _____
Its: _____

STATE OF MAINE
Cumberland, SS.

_____, 2019

Then personally appeared the above-named _____, the
_____ of Pine Point Fisherman's Co-operative, and acknowledged the
foregoing instrument to be his free act and deed in his said capacity, and the free act and deed of
said Pine Point Fisherman's Co-operative.

Before me,

Notary Public/Maine Attorney-at-Law
Printed Name: _____
My Commission Expires: _____