

**MINUTES
SCARBOROUGH TOWN COUNCIL
WEDNESDAY – JULY 16, 2025
HYBRID REGULAR MEETING – 6:00 P.M.**

Item 1. Call to Order. Council Chair Sither called the regular meeting of the Scarborough Town Council to order at 6:00 p.m.

Item 2. Pledge of Allegiance.

Item 3. Swearing-in of New Councilor Elect Larry Cain. Kristen M. Barth, Town Clerk, swore in Councilor Elect Lawrence (Larry) Cain into office.

Item 4. Roll Call. Roll was called by Kristen M. Barth, Town Clerk. Thomas J. Hall, Town Manager was also present. Those Councilors present:

Councilor Scott W. Doherty	Councilor William J. Donovan
Councilor Lawrence W. Cain	Councilor Cory R. Fellows
Councilor Karin B. Shupe	Councilor Jonathan E. Anderson
Council Chair April V. Sither	

Item 5. General Public Comments.

- Calista Cross of Cornish, thanked the Council for naming a Scarborough bridge after a Veteran and presented them with handmade flag board by Ed Comeau from Lincoln, ME. She also spoke in regards to Honor Flight Maine and naming another Scarborough bridge after the Honor Flight Maine.
- Richard Hayes of Martin Avenue, asked about a statement made at last night's Councilor Corner Live meeting in regards to South Portland Housing Authority and South Portland Development Corporation have the same address therefore, they are connected. He is seeking clarification on their connection.
- Paul Kirby of Granite Street, spoke in regards to the speeding on East Grand Avenue.

Item 6. Minutes: June 18, 2025 - Town Council Meeting. Motion by Councilor Anderson, seconded by Councilor Donovan, to move approval of the meeting minutes of June 18, 2025, as written.

Vote: 7 Yeas. Motion Passes.

Item 7. Adjustment to the Agenda. Motion by Councilor Anderson, seconded by Councilor Donovan to move approval to take Order No. 25-074, as the first item under new business.

Vote: 7 Yeas. Motion Passes

Item 8. Items to be signed: a. Treasurer's Warrants. Treasurer's Warrants were signed prior to the meeting.

Item 9. Town Manager Report. Thomas J. Hall, Town Manager, gave the following updates:

- **Eastern Trail- Close The Gap**
 - Construction Underway
 - Groundbreaking Ceremony - July 24 at 10:00 AM

- **Scottow Hill Road Closure**
 - Complete failure of culverts
 - Regulatory Agency consultation - work cannot occur until Nov. 2025
 - Repair Options being evaluated -
 - \$825K repair estimate
 - \$200K restoration estimate (grant opportunity)
 - Exploring feasibility of the permanent road closure- public outreach planned
- **4-Way Stop**
 - Intersection of Broadturn Road/Burnham Road
 - MDOT Initiative- High Crash Location
- **Traffic Calming Initiatives**
 - Purchase of Portable Speed Signs- deployed at various locations
 - School Warning Flashers Replacement- Blue Point & Pleasant Hill
- **Transit Update**
 - Met with Metro - Term Sheet
 - MDOT Funding
- **Summerfest 2025**
 - August 15, 2025
 - Town Council to have a table
- **July 2025- NRPA's Park and Recreation Month**
- **Quarterly Financial Report- period ending June 30,2025**
- **Basketball Courts- construction will start in July and go through September**
- **Rate of Growth Annual Report - Autumn Speer, Planning Director**

Item 10. Standing and Special Committee Reports and Liaison Reports.

- Councilor Anderson spoke in regards to last week's Finance Committee reviewing the TIF and the CEA. The Finance Committee will not be meeting in August.
- Councilor Donovan posted the following names for appointments on behalf of the Appointments/Negotiations Committee:
 - Conservation Commission
 Appoint Kate Borduas as a full voting member with a term to expire 2026, Crescencia Maurer as a full voting member with a term to expire 2027, appoint Christine Labaree as first alternate with a term to expire 2026 and Crayton Silsby as second alternate with a term to expire 2027.
 - Planning Board
 Appoint Tyler Davis as first alternate with a term to expire 2027 and William Sedlack as second alternate with a term to expire 2026.
 - Scarborough Housing Alliance
 Appoint Stephen Zamierowski as a full voting member with a term to expire 2025.
- Councilor Fellows spoke in regards to the last week's LRPC meeting which provided input and feedback on potential questions to be included in the community survey. They also had a discussion around revisiting the TVC zones. He also was able to participate in the annual safety inspections as liaison to the Firing Range Committee.

- Councilor Shupe spoke in regards to Ordinance Committee working on two big items at their last meeting, Animal Control Ordinance and Short-Term Rentals. Animal Control Ordinance was tabled indefinitely until more data and feedback is provided. The Short-Term Rental Ordinance was striped down to a registration process that will be brought back up in September. There will be no August meeting.
- Councilor Doherty spoke in regards to Coastal Waters and Harbor Advisory Committee's discussion on new floats for the Pine Point Pier.

Order No. 25-060, 7:00 p.m. Public hearing and action on the renewal request for a Special Amusement Permit from Jeff Gambardilla d/b/a Nonesuch River Brewing, located at 201 Gorham Road. This Order was tabled from the June 18, 2025 meeting. [Town Clerk's Office] Thomas J. Hall, Town Manager gave a brief update on this Order. Council Chair Sither opened the public hearing. There being no comments either for or against, the hearing was closed at 6:40p.m.

Motion by Councilor Anderson, seconded by Councilor Donovan, to move approval on the renewal request for a Special Amusement Permit from Jeff Gambardilla d/b/a Nonesuch River Brewing, located at 201 Gorham Road.

Vote: 6 Yeas and 1 Nay (Councilor Doherty). Motion Passes.

Order No. 25-065, 6:00 p.m. Public hearing and action on the new requests for a Mobile Food Vendor License from Scott Bodlovick d/b/a Great Scott's Mac Wagon, from Drew Gwyer d/b/a Giuseppe Roasters, located at 26 Ocean Avenue and Robert Finley, Sr. d/b/a Poppies Kettle Corn. [Town Clerk's Office] Kristen Barth, Town Clerk, gave a brief update on this Order. Council Chair Sither opened the public hearing. There being no comments either for or against, the hearing was closed at 6:42 p.m.

Motion by Councilor Anderson, seconded by Councilor Donovan, to move approval on the new requests for a Mobile Food Vendor License from Scott Bodlovick d/b/a Great Scott's Mac Wagon, from Drew Gwyer d/b/a Giuseppe Roasters, located at 26 Ocean Avenue and Robert Finley, Sr. d/b/a Poppies Kettle Corn.

Vote: 7 Yeas. Motion Passes.

Order No. 25-066, 6:00 p.m. Public hearing and action on the new request for an Innkeepers License from Scarborough Hotel Holdings, LLC d/b/a Scarborough LivAway, located at 83 Mussey Road. [Town Clerk's Office] Kristen Barth, Town Clerk gave a brief update on this Order and answered Councilor questions. Council Chair Sither opened the public hearing. There being no comments either for or against, the hearing was closed at 6:43 p.m.

Motion by Councilor Anderson, seconded by Councilor Donovan, to move approval on the new request for an Innkeepers License from Scarborough Hotel Holdings, LLC d/b/a Scarborough LivAway, located at 83 Mussey Road.

Vote: 7 Yeas. Motion Passes.

Order No. 25-067, 6:00 p.m. Public hearing and action on the new request for a Combined Massage Establishment/Massage Therapy License from Danielle Robin Crystal, d/b/a Crystal Stardust Healing, located at 418 Black Point Road. [Town Clerk's Office] Kristen Barth, Town Clerk gave a brief update on this Order. Council Chair Sither opened the public hearing. The following public comments were made:

- Samuel Cofone of Route One, asked if the applicant has a State of Maine Massage License.

Kristen Barth answered the question asked. As there was no additional comments either for or against, the hearing was closed at 6:44 p.m.

Motion by Councilor Anderson, seconded by Councilor Donovan, to move approval on the new request for a Combined Massage Establishment/Massage Therapy License from Danielle Robin Crystal, d/b/a Crystal Stardust Healing, located at 418 Black Point Road.

Vote: 7 Yeas. Motion Passes

Order No. 25-068, 6:00 p.m. Public hearing and action on the new request for a food handlers license from Adam Shapiro, d/b/a Bernie's Bagels, located at 491 Payne Road. [Town Clerk's Office] Council Chair Sither opened the public hearing. There being not comments either for or against, the hearing was closed at 6:45 p.m.

Motion by Councilor Anderson, seconded by Councilor Donovan, to move approval on the new request for a food handlers license from Adam Shapiro, d/b/a Bernie's Bagels, located at 491 Payne Road

Vote: 7 Yeas. Motion Passes.

Order No. 25-074. Act on the request from the Chief of Police, to accept a donation in the amount of \$3,900 from retired Scarborough Police Sergeant Mary Pearson for the purchase of a Police canine protective vest for KP Jak. This donation is dedicated in memory of James Pearson. [Chief of Police] Police Chief Holmquist gave a brief overview on this Order with former Police Sergeant Mary Pearson, Officer Robyn Stankevitz and K9 Jax.

Motion by Councilor Anderson, seconded by Councilor Donovan, to move approval to accept a donation in the amount of \$3,900 from retired Scarborough Police Sergeant Mary Pearson for the purchase of a Police canine protective vest for K9 Jak. This donation is dedicated in memory of James Pearson.

Vote: 7 Yeas. Motion Passes.

OLD BUSINESS: None at this time.

NEW BUSINESS:

Order No. 25-069. First reading and refer to the Planning Board, the proposed amendments to Chapter 405 – the Zoning Ordinance to allow Landscape Contractor in the RH Zone, Light Industrial and Industrial Districts. [Planning Director] Autumn Speer, Planning Director gave a brief overview on this Order and answered Councilor questions.

Motion by Councilor Anderson, seconded by Councilor Donovan, to move approval of the first reading and refer to the Planning Board, the proposed amendments to Chapter 405 – the Zoning Ordinance to allow Landscape Contractor in the RH Zone, Light Industrial and Industrial Districts. The public hearing and second reading will be scheduled upon receipt of Planning Board review:

CHAPTER 405 – ZONING ORDINANCE

BE IT HEREBY ORDAINED by the Town Council of the Town of Scarborough, Maine, in Town Council assembled, that the following amendments to Chapter 405- the Town of Scarborough Zoning Ordinance, be and hereby is amended, as follows (additions are underlined; deletions are struck through):

CHAPTER 405 SECTION VI. DEFINITIONS

Landscape Contractor:

Landscape Contractor means the business of designing, installing, planting, or maintaining lawns, gardens, hardscapes, water features, outdoor structures, decorative features, stormwater and drainage features, or other activities intended to enhance the appearance or usefulness of outdoor areas. Landscape Contractor also means providing snow removal services with vehicles, equipment, and supplies that are stored, parked, serviced, or loaded at the business location. Landscape Contractor includes tree installation, maintenance, or removal. Landscape Contractor includes buildings and structures used in the such as barns, storage buildings and facilities, greenhouses and temporary shelters. All structures shall be subject to site plan approval.

CHAPTER 405 SECTION IX PERFORMANCE STANDARDS

BB. PERFORMANCE STANDARDS – LANDSCAPE CONTRACTOR RUNNING HILL - GORHAM ROAD MIXED USE DISTRICT

1. The number of motor vehicles and trailers for equipment and supplies operated in connection with the landscape contractor business or parked on-site must be approved by the Planning Board to avoid an adverse impact on abutting uses.
2. Adequate parking must be provided on-site for the total number of vehicles and trailers permitted.
3. Sale of plant materials, garden supplies, or equipment is prohibited.
4. The Planning Board may regulate hours of operation and other on-site operations to avoid adverse impact on abutting uses.
5. No open storage of materials shall be permitted.
6. All burning of landscape related materials shall be prohibited.

SECTION XXA. RUNNING HILL – GORHAM ROAD MIXED USE DISTRICT, RH

D. SPECIAL EXCEPTIONS

The following uses are allowed as special exceptions in both conventional and planned developments:

1. Adjunct Uses, Place of Worship
2. Public utility facilities
3. Landscape Contractor subject to the performance standards of Section IX.(BB)
4. Residential and long-term care facilities for the ill, aged or disabled with no more than 20,000 square feet of floor area per unit of occupancy. If the facility includes dwelling units, then the regulations governing the particular type of dwelling shall apply.

CHAPTER 405 SECTION XXI.B. LIGHT INDUSTRIAL DISTRICT (LI)

C. PERMITTED USES

NOTE: The requirements of subsection G.1. of this district relating to sewage disposal may limit the type or scale of the uses that can occur in this district.

The following uses are permitted on any lot in the district subject to the requirements of Section G:

1. Personal service establishments.
2. Instructional and educational services.
3. Business and professional offices.
4. Business services.
5. Contractor's offices, shops and storage yards.
6. Landscape Contractor. (xx/xx/25)
7. Non-municipal government buildings and uses.
8. Motor vehicle repair and service facilities existing as of January 1, 2013 including auto body shops and facilities for the repair of recreational vehicles.
9. Accessory uses.
10. Accessory agricultural activities subject to the additional performance standards of Section IX.P. [Amended 03/19/2025]

The following uses are permitted only on lots that have vehicular access to the Holmes Road:

11. Manufacturing and assembly, subject to the additional performance standards of Section IX (M). [Amended 03/19/2025]
12. Research, development and light industrial, subject to the additional performance standards of Section IX (M.1). [Amended 03/19/2025]
13. High technology facilities, subject to the additional performance standards of Section IX (M). [Amended 03/19/2025]
14. Warehousing Facility, exclusive of mini-warehouse/storage facilities. [Amended 06/20/18]
15. Distribution, wholesale trade and transportation, including truck terminals.
16. Motor vehicle repair and service facilities including auto body shops, facilities for the repair of recreational vehicles, small engine repair facilities, and vehicle sales accessory to these uses.
17. Sale, rental and/or service of heavy equipment or specialized motor vehicles (other than passenger cars).
18. Retail sales or services if such sales or services are accessory to principal permitted uses.
19. Municipal buildings and uses.
20. Transmission towers subject to the additional performance standards of Section IX(F) of this Ordinance. [Amended 03/19/2025]
21. Recycling facilities, including only junkyards, automobile graveyards or automobile recycling businesses that are existing as of January 1, 2013, and subject to annual licensing by the Scarborough Town Council under Section IX(A)(18).
22. Fully enclosed places of assembly, amusement, culture and government existing as of January 1, 2013.
23. Telecommunication facilities.

24. Small-scale energy facilities, subject to the additional performance standards of Section IX(W). [Amended 03/19/2025]
25. Cannabis Testing Facility. [Adopted 01/08/2020; Amended 09/04/2024]
26. Utility-Scale Solar Energy Systems, subject to the performance standards of Section IX.(O.1.) of this Ordinance. [Adopted 11/03/21]

CHAPTER 405 SECTION XXI INDUSTRIAL DISTRICT (I)

B. PERMITTED USES

1. Manufacturing and assembly. [Amended 07/18/12]
2. Research, development and light industrial.
3. High technology facilities, subject to the performance standards of Section IX(M).
4. Food processing facilities.
5. Warehousing Facility. [Amended 06/20/18]
6. Distribution, wholesale trade and transportation, including trucking terminals. [3/19/75] [05/01/96]
7. Mini-Warehouse/Storage Facilities, subject to the performance standards of Section IX(H) of this Ordinance. [12/03/97]
8. Instructional and educational services.
9. Motor vehicle repair and service facilities including auto body shops, facilities for the repair of recreational vehicles, small engine repair facilities and vehicle sales accessory to these uses.
10. Sale, rental and/or service of heavy equipment or specialized motor vehicles (other than passenger cars). [05/01/96]
11. Restaurants, with less than 2,000 square feet of floor area and with no drive-up, drive-through or drive-in service. [05/06/98]
12. Lumber yards, fuel storage and distribution yards (excluding tank farms) and building material yards (building material yards may include storage of rock, sand and gravel provided no excavation occurs on site). [05/01/96][07/18/12]
13. Retail sales or services if such sales or services are accessory to principal permitted uses. [05/01/96]
14. Professional offices, including addiction treatment facilities subject to the Performance Standards of Section IX.L. with a maximum of 2,500 square feet of floor area per use. [11/16/2005][07/18/12]
15. Business services and business offices.
16. Contractor's offices, shops and storage yards. (05/01/96)
17. Landscape Contractor. (xx/xx/25)
18. Municipal buildings and uses, not including places of assembly.
19. Non-municipal government buildings and uses.
20. Health Clubs. [05/04/02]
21. Personal Services. [05/20/98][07/18/12]
22. Pet Care Facility. [09/04/02]

23. Transmission towers subject to the performance standards of Section IX(F) of this Ordinance. [5/17/95][07/18/12]

24. Recycling Facility, exclusive of junkyards, automobile graveyards or automobile recycling businesses subject to annual licensing by the Scarborough Town Council under section IX(A)(18). Notwithstanding this provision, all municipal solid waste incinerator ash processing facilities and all municipal solid waste incinerator ash recycling facilities shall be sited only within the confines of a secure, lined landfill approved by the Maine Department of Environmental Protection.[03/06/96][07/18/12]

25. Water dependent sports practice facilities. [07/18/12]

26. Accessory agricultural activities subject to the performance standards of Section IX.P. [Amended 05/05/10; 07/18/12]

27. Telecommunication facilities. [05/01/96]

28. Cannabis Manufacturing Facility [Adopted 01/08/2020]

29. Cannabis Testing Facility. [Adopted 01/08/2020]

30. Cannabis Cultivation Facility conducted within a fully enclosed structure. [Adopted 01/08/2020; 09/04/2024]

31. Utility-Scale Solar Energy Systems, subject to the performance standards of Section IX.(O.1.) of this Ordinance. [Adopted 11/03/21]

Vote: 6 Yeas and 1 Nay (Councilor Shupe). Motion Passes.

Order No. 25-070. First reading and schedule a public hearing for Wednesday, August 20, 2025 at 7:00 p.m. with regards to the establishment of a Dunstan Tax Increment Financing District. [Town Manager] Thomas J. Hall, Town Manager, gave a brief overview on this Order. The following individuals spoke on this Order:

- Allison Bristol of Bayview Avenue, thanked the Councilors who attended the Councilor Corner Live last night. She spoke in regards to this being proposed in 2013 and the changes that have happened since then, have not been taken into account.
- Richard Hayes of Martin Avenue spoke in regards to the Dunstan area already being busy and the infrastructure not being able to sustain it.
- Sue Hamill of Bay Street, spoke in regards to the amount of people at the Councilor Corner Live last night, the discussion being about there being too much growth, and residents wanting the growth to stop. She also spoke in regards to the changes that have happened since this TIF was first developed in 2013.
- Denise Hamilton of Two Rod Road, spoke in opposition of the TIF and CEA.
- Samuel Cofone of US Route One, spoke in opposition of all TIFs, not just this one.

Motion by Councilor Anderson, seconded by Councilor Donovan, to move approval of the first reading and schedule a public hearing for Wednesday, August 20, 2025 at 7:00 p.m. with regards to the establishment of a Dunstan Tax Increment Financing District, as follows:

(Town Council Order)
TOWN OF SCARBOROUGH, MAINE
AN ORDER DESIGNATING THE DUNSTAN OMNIBUS MUNICIPAL TAX INCREMENT
FINANCING DISTRICT AND DEVELOPMENT PROGRAM

WHEREAS, the Town of Scarborough (the “Town”) is authorized pursuant to Chapter 206 of Title 30-A of the Maine Revised Statutes, as amended, to designate specific areas within the Town as the Dunstan Omnibus Municipal Tax Increment Financing District (the "District") and to adopt a development program for the District (the "Development Program"); and

WHEREAS, there is a need to provide continuing affordable housing for the residents of the Town and the surrounding region; to improve and broaden the tax base of the Town, and to improve the general economy of the Town, the surrounding region and the State of Maine; and

WHEREAS, adopting and implementing the District and the Development Program will help to improve and broaden the tax base in the Town and improve the economy of the Town and the State of Maine; and

WHEREAS, the Town held a public hearing on August 20, 2025 on the question of establishing the District in accordance with the requirements of 30-A M.R.S. §5226, upon at least ten (10) days prior published notice in a newspaper of general circulation within the Town; and

WHEREAS, the Town desires to designate the District and to adopt the Development Program for the District; and

WHEREAS, it is expected that approval will be sought and obtained from the Maine Department of Economic and Community Development (“DECD”), approving the designation of the District and the adoption of the Development Program;

NOW THEREFORE, BE IT ORDERED BY THE TOWN COUNCIL OF THE TOWN OF SCARBOROUGH, MAINE:

Section 1. The Town hereby finds and determines that:

- (a) At least twenty-five percent (25%), by area, of the real property within the District, as hereinafter designated, is in need of rehabilitation, redevelopment or conservation or is suitable for commercial uses as defined in 30-A M.R.S. §5223(3); and
- (b) The total area of the District does not exceed two percent (2%) of the total acreage of the Town, and the total area of all development districts within the Town (including the District) does not exceed five percent (5%) of the total acreage of the Town; and
- (c) The aggregate original assessed value of the District plus the original assessed value of all other existing tax increment financing districts in the Town does not exceed five percent (5%) of the total value of taxable property within the Town as of April 1, 2025; and
- (d) The Town Council has considered all evidence presented to it with regard to any adverse economic effect on or detriment to any existing business and has found and determined that any such adverse economic effect on or detriment to any existing business is outweighed by the contribution expected to be made through the District and the adoption of the Program. The projects and improvements described in the Development Program will contribute to the economic growth and well-being of the Town and the surrounding region, and will contribute to the betterment of the health, welfare and safety of the inhabitants of the Town, including affordable housing, a broadened and improved tax base and economic stimulus, and therefore constitutes a good and valid public purpose.

Section 2. Pursuant to Chapter 206 of Title 30-A of the Maine Revised Statutes, as amended, the Town hereby designates the District and adopts the Development Program all as more particularly described in the Development Program presented to the Town Council and such Development Program is hereby incorporated by reference into this vote as the Development Program for the District.

Section 3. Pursuant to the provisions of 30-A M.R.S. §5227, the percentage of increased assessed value to be retained in the District as captured assessed value and the term for which it will be retained is hereby established as set forth in the Development Program.

Section 4. The Town Manager, or his duly appointed representative, is hereby authorized, empowered and directed to submit the designation of the District and the Development Program to DECD for review and approval pursuant to the requirements of 30-A M.R.S. §5226(2).

Section 5. The foregoing designation of the District and adoption of the Program shall automatically become final and shall take full force and effect upon receipt by the Town of approval of the designation of the District and adoption of the Development Program by DECD, without requirement of any further action by the Town, the Town Council, or any other party.

Section 6. The Town Manager, or his duly appointed representative, is hereby authorized and empowered, at his discretion, from time to time, to make such revisions and corrections to the Development Program or to the scope, cost or description of the public improvements to be financed with tax increment revenues generated by the District as described in the Development Program, and to the exhibits to the Development Program, as the Town Manager deems reasonably necessary or convenient, necessary in order to facilitate the process for review and approval of the District or the Development Program by DECD, or for any other reason so long as such revisions are not inconsistent with these resolutions or the basic structure and intent of the Development Program.

Section 7. The Town Manager, or his duly appointed representative, is hereby authorized and directed to enter into the specific credit enhancement agreements with the owners of the District property in substantially the form as presented to the Town Council and consistent with the terms of the credit enhancement agreements that are described in the Development Program.

Section 8. This Order shall take effect immediately upon adoption.

Approved September ____, 2025 by the Town Council, at a meeting duly convened and conducted in Scarborough, Maine.

Vote: 4 Yeas and 3 Nays (Councilor Doherty, Cain, and Shupe). Motion Passes.

Order No. 25-071. First reading and schedule a public hearing on Credit Enhancement Agreement between the Town of Scarborough and for the South Portland Housing Development Corporation for the development of multi-family housing located at 578 US Route One, Assessor's Map U034, Lot 1. (*Applicant, Planning Director*) Brooks More, Director of Development at South Portland Housing Authority gave a brief overview of this Order. At Councilor Sither's request, he explained the relationship between South Portland Housing Authority and the City of South Portland as there was confusion from herself and residents.

Jim Demesis, Senior Vice President of Camoine Associates and Scarborough resident, spoke in regards to the TIF and CEA for a parcel and not the full area.

Councilor Anderson gave an overview of Finance Committee's discussion.

The following individuals spoke on this Order:

- Allison Bristol of Bayview Avenue, spoke in regards to new state regulations that require this project to be for anyone, not just Scarborough residents, the effects on the Town expense budget and the 2021 Comprehensive Plan outing that Senior want to age in their homes.

- Richard Hayes of Martin Avenue, spoke in opposition of the CEA, the traffic in the area, and location of the mash to the project.
- Susan Hamill of Bay Street, spoke in regards tax impacts created by a TIF and in opposition of the CEA for a number of reasons.
- Stanis Moody-Roberts of County Road, spoke in regards to the rate in which Scarborough but is in support of this project due to being an aging State.
- Tim Lambert (via ZOOM) of Iris Drive, spoke in regards to the development in Saco/OOB and the traffic impacts it is having in Scarborough and what other options are available.
- Marvin Gates of Black Point Road, spoke in opposition of the CEA and the numerous reasons on why he is.
- Liam Erickson of Pine Point Road, spoke in regards to growing up in Scarborough but he does not believe the residents are feeling heard on what they want.

Motion by Councilor Anderson, seconded by Councilor Donovan, to move approval of the first reading on the Credit Enhancement Agreement between the Town of Scarborough and for the South Portland Housing Development Corporation for the development of multi-family housing located at 578 US Route One, Assessor's Map U034, Lot 1 and schedule a public hearing for Wednesday, August 20, 2025, as follows:

CREDIT ENHANCEMENT AGREEMENT
between
THE TOWN OF SCARBOROUGH, MAINE
and
578 RT 1, LP

THIS CREDIT ENHANCEMENT AGREEMENT dated as of [Month/date], 2025, between the Town of Scarborough, a municipal corporation located in Scarborough, County of Cumberland and State of Maine, with offices at 259 U.S. Route 1, Scarborough, Maine 04070 (hereinafter the "Town"), and 578 RT 1, LP, a Maine limited partnership, (hereinafter the "Developer") with principal place of business of 100 Waterman Drive, Suite 101, South Portland, Maine 04106.

WITNESSETH THAT

WHEREAS, the Town designated the Dunstan Omnibus Municipal Development and Tax Increment Financing District (the "District") pursuant to Chapter 206 of Title 30-A of the Maine Revised Statutes, as amended, by action of the Town Council at a meeting of the Town Council held on September 3, 2025 (the "Vote") and pursuant to the same Vote adopted a development program and financial plan for the District (the "Development Program"); and

WHEREAS, the Town received the approval of the District and the Development Program by the Maine Department of Economic and Community Development on [Month/date], 2025 and

WHEREAS, the District is a so-called "omnibus" district which means that the Town Council is permitted to enter into credit enhancement agreements with individual property owners in the District as it sees fit for up to the full term of the District for up to 100% of the captured assessed value so long as the Town Council holds a public hearing prior to the approval of any such credit enhancement agreement; and

WHEREAS, at a meeting of the Town Council held on [Month/date], 2025, the Town Council authorized a credit enhancement agreement with the Developer in the name of and on behalf of the Town; 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 Town and the 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 Developer Property that is retained in the District in each Tax Year during the term of the District, as discussed 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 Developer Property located in the District as determined by the Town Tax Assessor as of April 1 of each Tax Year during the term of this Agreement.

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

“Developer Property” means the 7.92-acres more specifically defined as Map U034-001 within the District owned by the Developer and subject to this Agreement as depicted on Exhibit B hereto.

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

“Development Program Fund” means the Dunstan Omnibus Development Program Fund described in the Financial Plan section of the Development Program and established and maintained pursuant to Article II hereof and 30-A M.R.S.A § 5227(3)(A). The Development Program Fund shall consist of a Project Cost Account with at least two subaccounts: the Marshview Terrace Project Cost Subaccount and the Town Project Cost Subaccount.

“District” shall have the meaning given such term in the first recital hereto, which is more specifically comprised of approximately 232.56 acres of real property and identified on Exhibit A hereto.

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

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

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

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

“Original Assessed Value” means one million three hundred thirty-nine thousand nine hundred dollars (\$1,339,900), the taxable assessed value of the Developer Property as of March 31, 2025 (April 1, 2024).

“Project” means the approximately 50-unit senior affordable housing development called Marshview Terrace to be developed by the Developer on the Developer Property.

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

“State” means the State of Maine.

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

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

“Tax Year” shall have the meaning given such term in 30-A M.R.S.A. § 5246, 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 Town hereby confirms the creation and establishment of a segregated fund in the name of the Town 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.A. § 5250-A. The Development Program Fund shall be used in part to fund payments as described in this Agreement. The Development Program Fund is pledged to and charged with the payment of costs in the manner and priority provided in 30-A M.R.S.A. § 5227 and as set forth in Section 3.1(b) below. The Development Program Fund shall include a project cost account (the “Project Cost Account”) which shall consist of a Town cost subaccount (the “Town Project Cost Subaccount”) pledged to and charged with payment of costs of the Town’s project costs, and a developer cost subaccount (the “Marshview Terrace Cost Subaccount”) pledged to and charged with payment of the costs of reimbursement consistent with this Agreement.

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

- (a) Beginning with the 2026-2027 Fiscal Year on July 1, 2026, the Town will capture fifty (50%) of the Increased Assessed Value as Captured Assessed Value until the end of the 2032-2033 Fiscal Year and, and one hundred percent (100%) of the Increased Assessed Value thereafter ending with the 2055-2056 Fiscal Year on June 30, 2056 (hereinafter “CEA Years”).

- (b) For each of the CEA Years, the Town shall deposit into the Development Program Fund contemporaneously with each payment of Property Taxes during the term of this Agreement an amount up to one hundred percent (100%) of that portion of the property tax payment on the Captured Assessed Value. Contemporaneously therewith, in each CEA Year, the Town shall deposit seventy-five percent (75%) of the Tax Increment Revenues into the Marshview Terrace Cost Subaccount of the Project Cost Account. At the time of execution of this Agreement, the Town intends to deposit twenty-five percent (25%) of the Tax Increment Revenues into the Town Project Cost Subaccount.

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 Marshview Terrace Cost Subaccount shall in all cases be used and applied to fund fully the Town's payment obligations to the Developer, as described in Articles II and III hereof, but in all cases the Developer must use such monies for approved project costs under the Act.

Section 2.4. Monies Held in Segregated Account.

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

Section 2.5. Liens.

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

**ARTICLE III
PAYMENT OBLIGATIONS**

Section 3.1. Company Payments.

(a) The Town agrees to pay the Developer up to all amounts then on deposit in the Marshview Terrace Project Cost Subaccount of the Development Program Fund, 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 the District remain unpaid, 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 amount to be deposited in the Development Program Fund for the Town's use or to the general fund for the year concerned in accordance with Section 2.3; and third, to the extent of funds remaining, to payment of the Developer's share of the Tax Increment Revenues for the year concerned, to be deposited into the Marshview Terrace Project Cost Subaccount. In any case where a portion of the property taxes assessed against the District remain unpaid for any reason other than a bona fide valuation dispute, no payment of the Developer's share of the Tax Increment Revenues for the year concerned will be deposited into the Marshview Terrace Project Cost Subaccount until such property taxes assessed against the District are paid in full.

(c) Notwithstanding anything to the contrary contained herein, the Town shall have no deposit or payment obligations hereunder for any CEA Year in which the Developer has not both (1) maintained Project compliance with the current definition of "Affordable Housing" in the Town of Scarborough Zoning Ordinance, Chapter 405 Section VI attached hereto for reference as Exhibit C, and (2) has implemented

and applied in accordance with applicable law and regulations a local preference for individuals living or working in Scarborough in its Tenant Selection Plan for the Project. The Developer shall provide to the town an annual certification of its compliance with this Section 3.1(c).

Section 3.2. Failure to Make Payment.

(a) In the event the Town should fail to, or be unable to, make any of the payments at the time and in the amount required under the foregoing provisions of this Article III including in the event that the amount deposited into the Marshview Terrace Project Cost Subaccount is insufficient to reimburse the Developer for the full amount due to the Developer under this Agreement, the amount or installment so unpaid shall continue as a limited obligation of the Town, under the terms and conditions hereinafter set forth, until the amount unpaid shall have been fully paid. The Developer shall have the right to initiate and maintain an action to specifically enforce the Town's obligations hereunder, including without limitation, the Town's obligation to deposit Tax Increment Revenues to the Marshview Terrace Project Cost Subaccount and its obligation to make payment out of the Marshview Terrace Project Cost Subaccount to the Developer.

(b) Any payment from the Town to the Developer not paid within thirty (30) days following the Tax Payment Date, as specified in Section 3.1 above, shall be subject to payment of interest by the Town at the same rate applicable to refunds of abated property taxes. The provision in this section 3.2(b) of an interest rate on late payments by the Town shall not limit Developer's right under section 5.2 below to collect or require immediate payment of past due Town payments.

Section 3.3. Obligations Unconditional.

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

Section 3.4. Limited Obligation.

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

**ARTICLE IV
PLEDGE AND SECURITY INTEREST**

Section 4.1 Pledge of and Grant of Security Interest in Marshview Terrace Project Cost Subaccount.

In consideration of this Agreement and other valuable consideration and for the purpose of securing payment of the amounts provided for hereunder to the Developer by the Town, according to the terms and conditions contained herein, and in order to secure the performance and observance of all of the Town's covenants and agreements contained herein, the Town does hereby grant a security interest in

and pledge the Marshview Terrace Project Cost Subaccount described in Section 2.1 hereof and all sums of money and other securities and investments therein to the Developer.

Section 4.2 Perfection of Interest.

(a) To the extent deemed necessary or desirable by the Developer, the Town will at such time and from time to time as requested by Developer establish the Developer Project Cost Subaccount described in Section 2.1 hereof as a segregated fund under the control of an escrow agent, trustee or other fiduciary selected by Developer so as to Perfect Developer's interest therein. The cost of establishing and monitoring such a fund (including the cost of counsel to the Town with respect thereto) shall be borne exclusively by the Developer. In the event such a fund is established under the control of a trustee or fiduciary, the Town shall cooperate with the Developer in causing appropriate financing statements and continuation statements naming the Developer as pledgee of all such amounts from time to time on deposit in the fund to be duly filed and recorded in the appropriate state offices as required by and permitted under the provisions of the Maine Uniform Commercial Code or other similar law as adopted in the State of Maine and any other applicable jurisdiction, as from time to time amended, in order to perfect and maintain the security interests created hereunder.

(b) In the event Developer requires the establishment of a segregated fund in accordance with this Section 4.2, the Town's responsibility shall be limited to delivering the amounts required by this Agreement to the escrow agent, trustee or other fiduciary designated by the Developer. The Town shall have no liability for payment over of the funds concerned to the Developer by any such escrow agent, trustee or other fiduciary, or for any misappropriation, investment losses or other losses in the hands of such escrow agent, trustee or other fiduciary. Notwithstanding any change in the identity of the Developer's designated escrow agent, trustee or other fiduciary, the Town shall have no liability for misdelivery of funds if delivered in accordance with Developer's most recent written designation or instructions actually received by the Town.

Section 4.3. Further Instruments.

The Town shall, upon the reasonable request of the Developer, from time to time execute and deliver such further instruments and take such further action as may be reasonable and as may be required to carry out the provisions of this Agreement; provided, however, that no such instruments or actions shall pledge the credit of the Town; and provided further that the cost of executing and delivering such further instruments (including the reasonable and related costs of counsel to the Town with respect thereto) shall be borne exclusively by the Developer.

Section 4.4 No Disposition of Developer Project Cost Subaccount.

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

Section 4.5. Access to Books and Records.

(a) All non-confidential 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 Development Program Fund shall at all reasonable times and upon reasonable notice be open to inspection by the Developer, its agents and employees.

(b) All non-confidential books, records, lease agreements and documents in the possession of the 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 Town, 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 the Developer when the same shall become due and payable;
- (b) Any failure by the Town to make deposits into Development Program Fund 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;
- (d) If a decree or order of a court or agency or supervisory authority having jurisdiction in the premises of the appointment of a conservator or receiver or liquidator of, any insolvency, readjustment of debt, marshaling of assets and liabilities or similar proceedings, or for the winding up or liquidation of the Developer’s affairs shall have been entered against the Developer or the Developer shall have consented to the appointment of a conservator or receiver or liquidator in any such proceedings of or relating to the Developer or of or relating to all or substantially all of its property, including without limitation the filing of a voluntary petition in bankruptcy by the Developer or the failure by the Developer to have an involuntary petition in bankruptcy dismissed within a period of ninety (90) consecutive days following its filing or in the event an order for release has been entered under the Bankruptcy Code with respect to the Developer;
- (e) If a decree or order of a court or agency or supervisory authority having jurisdiction in the premises of the appointment of a conservator or receiver or liquidator of, any insolvency, readjustment of debt, marshaling of assets and liabilities or similar proceedings, or for the winding up or liquidation of the Town’s affairs shall have been entered against the Town or the Town shall have consented to the appointment of a conservator or receiver or liquidator in any such proceedings of or relating to the Town or of or relating to all or substantially all of its property, including without limitation the filing of a voluntary petition in bankruptcy by the Town or the failure by the Town to have an involuntary petition in bankruptcy dismissed within a period of ninety (90) consecutive days following its filing or in the event an order for release has been entered under the Bankruptcy Code with respect to the Town
- (f) If any secured lender of the Developer other than the Town accelerates the indebtedness owed to it and commences foreclosure proceedings which are not dismissed within ninety (90) days following the commencement of the foreclosure proceedings;
- (g) If any written representation or warranty given to the Town by the Developer is knowingly incorrect or incomplete in any material respect, other than statements made about or in agreements with the Town that were later changed by mutual consent; and
- (h) If the Developer fails to maintain surety bonding during the initial construction period at the levels and terms as may be required from time to time by the Developer’s secured lenders.

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. Further, the non-defaulting party may elect to terminate this Agreement upon 30 days' written notice to the defaulting party.

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.

Section 5.4 Agreement to Pay Attorneys' Fees and Expenses.

Subject to the provisions of Section 8.9 below concerning dispute resolution, in the event the Town or the Developer should default under any of the provisions of this Agreement, and the nondefaulting party shall require and employ attorneys or incur other expenses or costs for the collection of payments due or to become due or for the enforcement of performance or observance of any obligation or agreement on the part of the Town or the Developer herein contained, the defaulting party shall, on demand therefor, pay to the nondefaulting party the reasonable fees of such attorneys and such other reasonable costs and expenses so incurred by the non-defaulting party.

ARTICLE VI

EFFECTIVE DATE, TERM AND TERMINATION

Section 6.1. Effective Date and Term.

Notwithstanding any other provision of this Agreement, this Agreement is effective upon its execution because receipt of the Commissioner's unconditional approval of the Development Program has already been received. Upon receipt of such approval, this Agreement shall remain in full force from the Effective Date of the Development Program and shall expire June 30, 2057 or sooner upon the payment of all amounts due to the Developer hereunder and the performance of all obligations on the part of the Town hereunder, unless even sooner terminated pursuant to any other applicable provision of this Agreement.

The Town may terminate this Agreement by delivering written notice of such termination to the Developer in the event that the Developer does not receive a certificate of occupancy for the project by December 31, 2028.

Section 6.2. Cancellation and Expiration of Term.

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

ARTICLE VII ASSIGNMENT AND PLEDGE OF INTEREST

Section 7.1. Pledge and/or Assignment.

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

Section 7.2. Transfer

Except as provided in Section 7.1 hereof, and except for the purpose of securing financing for improvements by or on behalf of the Developer within the District or for an assignment to a successor entity, an affiliate entity or any other entity controlled by the Developer, the Developer shall not transfer or assign any portion of its rights in, to and under this Agreement without consent of the legislative body of the Town which consent shall not be unreasonably withheld or delayed so long as the use of the Property remains affordable housing subject to an Extended Use Agreement.

ARTICLE VIII MISCELLANEOUS

Section 8.1. Successors.

In the event of the dissolution, merger or consolidation of the Town or the Developer, the covenants, stipulations, promises and agreements set forth herein, by or on behalf of or for the benefit of such party shall bind or inure to the benefit of the successors and assigns thereof from time to time and any entity, officer, board, commission, agency or instrumentality to whom or to which any power or duty of such party shall be transferred. Notwithstanding this Subsection 8.1, unless the Town affirmatively approves of such action, the Town shall have the unilateral 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 Town and the Developer any right, remedy or claim under or by reason of this Agreement, it being intended that this Agreement shall be for the sole and exclusive benefit of the Town and the Developer.

Section 8.3. Severability.

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

Section 8.4. No Personal Liability of Officials of the Town or Developer.

(a) No covenant, stipulation, obligation or agreement of the Town contained herein shall be deemed to be a covenant, stipulation or obligation of any present or future elected or appointed official, officer, agent, servant or employee of the Town in his or her individual capacity, and neither the Town Council 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.

(b) No covenant, stipulation, obligation or agreement the Developer contained herein shall be deemed to be a covenant, stipulation or obligation of any present or future officer, agent, servant or employee of the Developer in his or her individual capacity, and no official, officer, employee or agent of the Developer 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 Town and the 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 Scarborough, 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 Town'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 Town or the Developer pursuant to this Agreement shall be in writing and shall be sufficiently given and shall be deemed given when mailed by first class mail, postage prepaid, addressed as follows:

If to the Town:

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

With a copy to:

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

If to the Developer:

578 RT 1, LP
C/O South Portland Housing Development Corporation
100 Waterman Drive, Suite 101
South Portland, Maine 04106

With a copy to:

Rob Liscord, Esq
84 Marginal Way, Suite 600
Portland, ME 04101

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

WITNESS:

TOWN OF SCARBOROUGH

By:_____

Name: Thomas Hall

Its Town Manager Duly Authorized by the Town Council [Month/date], 2025

WITNESS: 578 RT 1, LP

BY:_____, its _____

By:_____

Name:

Its:

Exhibit A: Map of District

Exhibit B: Map of Developer Property

EXHIBIT C

Definition of “Affordable Housing” in Chapter 405, Section VI of Town of Scarborough Zoning Ordinance as of date of this Agreement

Affordable Housing:

[Adopted 11/03/2004] [Amended 05/03/2006][Amended 12/03/2014][Amended 12/19/18][Amended 07-17-19]

Affordable Housing means decent, safe and sanitary living accommodations that are affordable to households, in accordance with following provisions:

- A. An Owner-Occupied Affordable Housing Unit is a unit which (i) is occupied by its owner; (ii) is owned by Qualifying Household and (iii) has a maximum sales price that is reasonably anticipated to result in Annual Housing Costs that are less than or equal to 30% of the Imputed Income Limitation applicable to the unit.
 - (I) A Qualifying Household is one with a total household income that, at the time of purchase, is 80% or less than the most recently published Median Family Income for the Portland, Maine Metropolitan Statistical Area, adjusted for family size, as determined by the U.S. Department of Housing and Urban Development (the “MFI Standard”).
 - (II) Annual Housing Costs shall equal the sum of (i) the total annual payments of principal and mortgage interest, (ii) the total property insurance premium, (iii) the real estate taxes due (iv) any homeowners association or condominium fees that are due; and (v) a reasonable estimate of the annual cost of any additional water, sewer, heat, hot water and electricity in the home.
 - (III) The total annual payments of principal and mortgage interest referred to in A(I)(i) may, in the absence of other reasonable estimates, be estimated based on the assumed interest rate and loan term established by the U.S. Department of Housing and Urban Development for housing affordability limits. In the case of a unit which has one or fewer bedrooms, the Imputed Income Limitation referred to in A(iii) shall be 80% of the MFI Standard for a household of two (2) people. In the case of a unit which has more than one bedroom, the Imputed Income Limitation referred to in A(iii) shall be 80% of the MFI standard for a household of four (4) people.
- B. A Renter-Occupied Affordable Housing Unit is a unit which is leased A Renter-Occupied Affordable Housing Unit is a unit which is leased by a Qualifying Household at an Annual Gross Rent that is less than or equal to 30% of the Imputed Income Limitation applicable to the unit.
 - (I) A Qualifying Household is one with a total household income that, at the time of move-in, is 80% or less than the most recently published Median Family Income for the Portland, Maine, MSA, adjusted for family size, as determined by the U.S. Department of Housing and Urban Development (the “MFI Standard”). To remain a Qualifying Household, the household’s income must remain at or below 140% of the income limitation described in the preceding sentence.
 - (II) Annual Gross Rent shall equal twelve (12) times the sum of (i) monthly rent due to the landlord, (ii) any required monthly payments to the landlord for additional services or facilities and (iii) a reasonable estimate of the monthly utility costs (not including television, internet or telephone) that the household is responsible for paying. In the case of a unit which does not have a separate bedroom, the Imputed Income Limitation used to determine the maximum annual gross rent shall be 80% of the MFI Standard for a household of one (1) person. In the case of a unit which

has one or more bedrooms, the Imputed Income Limitation used to determine the maximum annual gross rent shall be 80% of the MFI standard for a household with a size equal to one and one half (1.50) people per bedroom.

Vote: 2 Yeas and 5 Nays (Councilors Doherty, Cain, Shupe, Sither, Anderson). Motion Fails.

Order No. 25-072. First reading and schedule a public hearing and second reading on the order authorizing issuance of up to \$129,850,000 in bonds of the town to fund the cost of building a new 8-Corners Primary School and renovate/expand Pleasant Hill, Blue Point, Wentworth and the Middle School to remove all portable classrooms and to place the following question on the November 4, 2025, Municipal Ballot: Shall the Order entitled “ORDER AUTHORIZING ISSUANCE OF UP TO \$129,850,000 IN GENERAL OBLIGATION BONDS OF THE TOWN OF SCARBOROUGH TO FUND COSTS FOR A NEW 8-CORNERS PRIMARY SCHOOL AND RENOVATE/EXPAND PLEASANT HILL, BLUE POINT, WENTWORTH AND THE MIDDLE SCHOOL TO REMOVE ALL PORTABLE CLASSROOMS” be approved? [Town Council] Council Chair Sither gave a brief overview on this Order and then opened the meeting to public comments.

The following individuals spoke on this Order:

- Matt Garrett of Marsh Rock Circle spoke in regards to the parents he has spoken to in the past month are all in favor of the consolidated school. He believes that there should be only one question and we need to plan for the future.

Motion by Councilor Anderson, seconded by Councilor Donovan, to move approval of the first reading on the order authorizing issuance of up to \$129,850,000 in bonds of the town to fund the cost of building a new 8-Corners Primary School and renovate/expand Pleasant Hill, Blue Point, Wentworth and the Middle School to remove all portable classrooms and to place the following question on the November 4, 2025, Municipal Ballot, and schedule a public hearing and second reading for Wednesday, August 20, 2025, as follows:

ORDER AUTHORIZING ISSUANCE OF UP TO \$129,850,000 IN GENERAL OBLIGATION BONDS OF THE TOWN OF SCARBOROUGH TO FUND COSTS FOR A NEW 8-CORNERS PRIMARY SCHOOL AND RENOVATE/EXPAND PLEASANT HILL, BLUE POINT, WENTWORTH AND THE MIDDLE SCHOOL TO REMOVE ALL PORTABLE CLASSROOMS

BE IT ORDERED by the Town Council by the Town of Scarborough, Maine, in Town Council assembled, as follows:

- (1) That under and pursuant to the provisions of Title 30-A, Sections 5722 and 5772, as amended and the Charter of the Town of Scarborough, Maine, approves a public school construction project consisting of the design, engineering, construction, and transaction costs, and other expenses reasonably related thereto, of building a new 8-Corners Primary School and renovate/expand Pleasant Hill, Blue Point, Wentworth and the Middle School to remove all portable classrooms; and,
- (2) That a sum not to exceed \$129,850,000, plus any additional premium, is hereby appropriated to provide for the costs of this Project; and,
- (3) That to fund said appropriation, the Treasurer and the Chairman of the Town Council are hereby authorized to issue, at one time or from time to time, general obligation securities of the Town of Scarborough, Maine, including temporary notes in anticipation of the sale thereof, in an aggregate

principal amount not to exceed \$129,850,000, plus any additional premium, and the discretion to fix the date(s), maturity(ies), denomination(s), interest rate(s), place(s) of payment, premium(s), call(s) for redemption, form(s), refunding(s) and other details of said securities, including execution and delivery of said securities against payment therefore, and to provide for the sale thereof, is hereby delegated to the Treasurer and the Chairman of the Town Council.

BE IT FURTHER ORDERED, that the following referendum question shall be submitted to the voters of the Town of Scarborough, Maine at the regular municipal election to be held Tuesday, November 4, 2025:

Referendum Question No. 1:

Shall the Order entitled “**ORDER AUTHORIZING ISSUANCE OF UP TO \$129,850,000 IN GENERAL OBLIGATION BONDS OF THE TOWN OF SCARBOROUGH TO FUND COSTS FOR A NEW 8-CORNERS PRIMARY SCHOOL AND RENOVATE/EXPAND PLEASANT HILL, BLUE POINT, WENTWORTH AND THE MIDDLE SCHOOL TO REMOVE ALL PORTABLE CLASSROOMS**” be approved?

EXPLANATION AND RECOMMENDATIONS.

FINANCIAL STATEMENT

1. Total Indebtedness as of July 3, 2025:

A Bonds outstanding and unpaid:	\$ 78,455,000
.	
B Bonds authorized and unissued:	\$ 2,882,225
.	
C Bonds to be issued if this Article is approved:	\$129,850,000
.	

2. Costs:

The estimate cost of this bond issue, based on an estimated interest rate of 3.75% for an estimated thirty (30) year maturity, issued in 3 installments commencing in 2026, is as follows:

Principal:	\$129,850,000
Interest:	<u>\$ 75,475,313</u>
Total Debt Service	\$205,325,313

A property currently valued at \$600k will be taxed an estimated \$11,580 over the term of the bonds, averaging \$386 per year.

3. Validity:

The validity of the bonds and of the voters’ ratification of the bonds may not be affected by any errors in the above estimates. If the actual amount of the total debt service for the bond issue varies from the estimate, the ratification by the electors is nevertheless conclusive and the validity of the bond issue is not affected by reason of the variance.

S/_____
Town Treasurer

Vote: 6 Yeas and 1 Nay (Councilor Doherty). Motion Passes.

Order No. 25-073. First reading and schedule a public hearing and second reading on the order authorizing issuance of up to \$10,000,000 in additional bonds of the town to fund the cost of the expansion to the Middle School to accommodate expected additional enrollment and to place the following question on the November 4, 2025, Municipal Ballot: Shall the Order entitled “ORDER AUTHORIZING ISSUANCE OF UP TO \$10,000,000 IN ADDITIONAL GENERAL OBLIGATION BONDS OF THE TOWN OF SCARBOROUGH TO FUND COSTS FOR EXPANDING THE MIDDLE SCHOOL TO ACCOMMODATE EXPECTED ADDITIONAL ENROLLMENT” be approved? [Town Council] Thomas J. Hall, Town Manager, gave a brief overview on this Order. The following individuals spoke on this Order:

- Alyson Bristol of Bayview Avenue, spoke in regards to the Town keeping its promise on the cost and letting the public decide.
- Marvin Gates of Black Point Road, spoke in regards to being a part of this process from the beginning and splitting the question.
- Matthew Keith of Pleasant Avenue, wanted to thank everyone for the compromises that were made and how everyone came together.
- Leroy Crockett of Imperial Lane, spoke in regards to being a committee member that came to this conclusion and followed what the public wanted.

Motion by Councilor Anderson, seconded by Councilor Donovan, to move approval of the first reading on the order authorizing issuance of up to \$10,000,000 in additional bonds of the town to fund the cost of the expansion to the Middle School to accommodate expected additional enrollment and to place the following question on the November 4, 2025, Municipal Ballot, and schedule a public hearing and second reading for Wednesday, August 20, 2025, as follows:

IN THE EVENT THAT REFERENDUM QUESTION NO. 1 RECEIVES A FAVORABLE VOTE, ORDER AUTHORIZING THE ISSUANCE OF UP \$10,000,000 IN GENERAL OBLIGATION BONDS OF THE TOWN OF SCARBOROUGH TO FUND COSTS FOR THE EXPANSION TO THE MIDDLE SCHOOL TO ACCOMMODATE EXPECTED ADDITIONAL ENROLLMENT

BE IT ORDERED by the Town Council by the Town of Scarborough, Maine, in Town Council assembled, as follows:

- (1) That under and pursuant to the provisions of Title 30-A, Sections 5722 and 5772, as amended and the Charter of the Town of Scarborough, Maine, approve a public school construction project consisting of the design, engineering, construction, and transaction costs, and other expenses reasonably related thereto, to construct an the expansion to the Middle School to accommodate expected additional enrollment; and,
- (2) That a sum not to exceed \$10,000,000, plus any additional premium, is hereby appropriated to provide for the costs of this Project; and,
- (3) That to fund said appropriation, the Treasurer and the Chairman of the Town Council are hereby authorized to issue, at one time or from time to time, general obligation securities of the Town of Scarborough, Maine, including temporary notes in anticipation of the sale thereof, in an aggregate principal amount not to exceed \$10,000,000, plus any additional premium, and the discretion to fix the date(s), maturity(ies), denomination(s), interest rate(s), place(s) of payment, premium(s), call(s) for redemption, form(s), refunding(s) and other details of said securities, including execution and delivery of said securities against payment therefore, and to provide for the sale thereof, is hereby delegated to the Treasurer and the Chairman of the Town Council.

BE IT FURTHER ORDERED, that the following referendum question shall be submitted to the voters of the Town of Scarborough, Maine at the regular municipal election to be held Tuesday, November 4, 2025:

Referendum Question No. 2:

Shall the Order entitled “**IN THE EVENT THAT REFERENDUM QUESTION NO. 1 RECEIVES A FAVORABLE VOTE, ORDER AUTHORIZING THE ISSUANCE OF UP \$10,000,000 IN GENERAL OBLIGATION BONDS OF THE TOWN OF SCARBOROUGH TO FUND COSTS FOR THE EXPANSION TO THE MIDDLE SCHOOL TO ACCOMMODATE EXPECTED ADDITIONAL ENROLLMENT**” be approved?

EXPLANATION AND RECOMMENDATIONS:

FINANCIAL STATEMENT

1. Total Indebtedness as of July 3, 2025:

A Bonds outstanding and unpaid:	\$78,455,000
B Bonds authorized and unissued:	\$ 2,882,225
C Bonds to be issued if this Article is approved:	\$10,000,000

2. Costs:

The estimate cost of this bond issue, based on an estimated interest rate of 3.75% for an estimated thirty (30) year maturity, issued in 2 installments commencing in 2027, is as follows:

Principal:	\$10,000,000
Interest:	<u>\$ 5,812,500</u>
Total Debt Service	\$15,812,500

A property currently valued at \$600k will be taxed an estimated \$900 over the term of the bonds, averaging \$30 per year.

3. Validity:

The validity of the bonds and of the voters’ ratification of the bonds may not be affected by any errors in the above estimates. If the actual amount of the total debt service for the bond issue varies from the estimate, the ratification by the electors is nevertheless conclusive and the validity of the bond issue is not affected by reason of the variance.

S/_____
Donna Rosacha
Town Treasurer

Vote: 6 Yeas and 1 Nay (Councilor Doherty). Motion Passes.

Order No. 25-075. Act on the request from the Transportation Committee to accept the Transportation Assessment, as presented on April 16, 2025. [Town Engineer/Transportation Committee] Angela Blanchette, Town Engineer, gave a brief overview on this Order.

Motion by Councilor Anderson, Seconded by Councilor Donovan to move the request from the Transportation Committee to accept the [Transportation Assessment](#), as presented on April 16, 2025.

Vote: 7 Yeas. Motion Passes.

Order No. 25-076. Act on the request from the Council Chair regarding Council Committee/Liaison Appointments. *[Council Chair Sither]* Council Chair Sither gave a brief overview on this Order.

Motion by Councilor Anderson, seconded by Councilor Donovan, to move approval on the Council Chair recommendations, as follows:

Larry Cain

Council Committees

- Communications and Community Engagement - Chair
- Finance
- Rules and Policy

Liaison Roles

- Board of Assessment Review
- Chamber of Commerce
- Community Services Advisory Board
- ecomaine

Cory Fellows

PACTS Policy Committee

Vote: 7 Yeas. Motion Passes.

Item 11. Non-Action Item. None at this time.

Item 12. Council Member Comments.

- Councilor Shupe spoke in regards to another 103 acers to add to 30 by 30 goals due to the Scarborough Land Trust closing on the Silver Brook Preserve.
- Councilor Anderson spoke in regards to his excitement to have Councilor Cain join the Town Council.
- Councilor Doherty spoke in regards to residents being able to park cars on their properties in the Beach committees due to ordinance limitations.

Item 13. Adjournment. Motion by Councilor Anderson, seconded by Councilor Donovan, to move approval to adjourn the regular meeting of the Scarborough Town Council.

Vote: 7 Yeas. Motion Passes.

Meeting Adjourned at 9:43 p.m.

Respectfully submitted,

Kristen M. Barth
Town Clerk