

**MINUTES
SCARBOROUGH TOWN COUNCIL
WEDNESDAY – MARCH 15, 2017
REGULAR MEETING – 7:00 P.M.**

Item 1. Call to Order. Chairman Babine called the regular meeting of the Scarborough Town Council to order at 7:00 p.m.

Item 2. Pledge of Allegiance.

Item 3. Roll Call. Roll was called by Thomas J. Hall, Town Manager.

William J. Donovan	Katherine A. St. Clair, Vice-Chair
Robert W. Rowan	Peter F. Hayes
Kathleen M. Foley	Christopher J. Caiazzo
Shawn A. Babine, Chairman	

Item 4. General Public Comments.

- Larry Hartwell of Puritan Drive spoke on the Council's goal at keeping the budget at 3% and asked that the Council try to keep the increase below 3%. He hoped that the Town Council would advise the school on what % of increase the Town is aiming for.

Item 5. Minutes: March 1, 2017 – Regular Meeting. Motion by Councilor Rowan, seconded by Councilor St. Clair, to move approval of the meeting minutes of the March 1, 2017, regular Town Council meeting.

Vote: 7 Yeas.

Item 6. Adjustment to the Agenda. None at this time.

Item 7. Items to be signed: a. Treasurer's Warrants. Treasurer's Warrants were signed during the meeting.

Order No. 17-025, 7:00 p.m. Public Hearing and action on the new requests for the following Food Handlers Licenses: [Town Clerk]

- a. Shannon M. Gorham, d/b/a Chowderhead's Seafood Restaurant, located at 29B Gorham Road**
- b. The Holy Donut, LLC, d/b/a The Holy Donut, located at 398 US Route One.**

Chairman Babine opened the public hearing. As there were no comments either for or against, the hearing was closed at 7:03 p.m.

Motion by Councilor St. Clair, seconded by Councilor Hayes, to move approval of Order No. 17-025, as presented.

Vote: 7 Yeas.

Order No. 17-26, 7:00 p.m. Public Hearing and action on the new request for the following Food Handlers License and a liquor license from Nonesuch River Brewing LLC, d/b/a Nonesuch River Brewing, located at 201 Gorham Road. [Town Clerk] Chairman Babine opened the public hearing. As there were no comments either for or against, the hearing was closed at 7:05 p.m.

Motion by Councilor St. Clair, seconded by Councilor Hayes, to move approval of Order No. 17-026, as presented.

Vote: 7 Yeas.

Order No. 16-082, 7:00 p.m. Public hearing on the Eighth Amendment to Contract Zone IX by The Residences at Gateway Commons – Devine Capital, LLC [formerly New England Expedition] pursuant to Chapter 405(II)(I)(5)(C) of the Scarborough Zoning Ordinance. [Planning Department] Prior to the public hearing, Thomas J. Hall, Town Manager, gave a brief history on this Order and how it came before the Town Council. He also went on to mention the affordable housing aspect of this order which the Town Council was concerned about. At this point Chairman Babine called upon the Developer to make their presentation.

Mr. Bill Fletcher, attorney for the applicant, gave a brief overview on what is being proposed this evening before the Town Council. He noted that this is the right project for this area off the Haigis Parkway. He noted that there are no affordable housing units, but there is an Affordable Housing in-lieu payment of \$700,000. He went on to mention changes that had been made. He urged the Town Council to support this recommendation.

Chairman Babine opened the public hearing. The following individuals spoke on this Order:

- Art Dillon of Black Point Road and representing Haven's Candy and Vice President of Chamber spoke in support of this Order.
- Cindy Taylor of Housing Initiative of Maine, felt this was a great opportunity for the Town of Scarborough. She runs the affordable housing units at Bessey Commons. This project is a very good way to structure development and the Haigis Parkway is a great place for it. She then spoke on affordable housing and the benefits that could come with the \$700,000 in-lieu off fee. She would like to work with the Town on what restrictions could be implemented on how this money is utilized.
- Jonathan Crasnick, a resident of Scarborough and a member of the SEDCO Board of Directors spoke in support of this Order and noted that a letter from the SEDCO Board of Directors had been handed out earlier. The Board is in support of this proposal and urges the Town Council to vote in support of it.
- Ben Howard of Windsor Pines Drive did not agree with this project. The buzz word that he keeps hearing is "millennial" and he did not feel they would come and live here and was confused as to what Haigis Parkway was becoming.
- Rick Shinay a resident, a counsel to New England Expedition and a member of SEDCO voiced his support for this development. He then commented on what the original vision had been for the Haigis Parkway. He felt that the Parkway is developing and with the Downs up for sale this is the right project at the right time. He hoped that the Town Council would also support it.
- Mike Scamman of Ingleside Drive and an abutter to the property, stated that he and his family support the recommendation and also felt that it would be a benefit to the town. He hoped that the Council would support this project.
- Susanne Foley-Ferguson of Black Point Road spoke on affordable housing – not section 8 housing, which is different. She questioned who would be able to afford to live here and felt that the developer of this project could build affordable units. She also felt that the in-lieu fee was too low.
- Phil Grondin of RJ Grondin and part owner of the land that is being proposed to be developed, noted that they had been looking diligently to find someone who would be interested in this parcel. They were approached by Ben Devine and they liked what they saw. Mr. Grondin hoped the Town Council would support this.
- Mary Davis of Barbara Avenue and Director of the Division of Housing and Community Development for the City of Portland, spoke on the updates that the City of Portland have implemented and are getting ready to implement related to affordable housing units.

- Larry Hartwell of Puritan Drive asked the Council to look at the affordability of taxes. He agreed with the in-lieu fee. He lives in the area and supports this proposal. This would be better than 275 single family homes and there is no impact on municipal services. This area is due to be developed.
- Glen Grant resident of Scarborough. He fully endorses this project and thanked the Town staff, the Town Council and the Planning Board for spending significant time on this project. He asked that this project move forward.
- Jean-Marie Caterina of Gorham Road stated that she had looked at this development and spoke with many individuals who support it. She would support this proposal and felt that it should be moved forward. It would be benefit to the town in many ways.

There being no further comments, the hearing was closed at 7:51 p.m.

OLD BUSINESS:

Order No. 16-082. Second reading on the Eighth Amendment to Contract Zone IX by The Residences at Gateway Commons – Devine Capital, LLC [formerly New England Expedition] pursuant to Chapter 405(II)(I)(5)(C) of the Scarborough Zoning Ordinance. [Planning Department] Kelly Nason of Sebago Technics and a Scarborough Resident, presented a brief power-point presentation showing the overall project and responded to questions from the Town Council.

Chairman Babine gave a brief overview on the process that would be followed. The Town Manager, Mr. Hall gave a brief overview on what was being proposed.

The following individuals spoke on this Order:

- Marg DiSanctis of Beech Ridge Road and Chair of the Affordable Housing Committee, made the following statement:

“Scarborough Housing Alliance March 15, 2017

I wish to first remind the Council that the SHA prefers that affordable housing units be integrated into the development project. However, should the Developer move to another location to avoid affordable housing, we would lose both the units themselves and the in-lieu fee. In the case of the Devine project, they are proposing luxury apartment home/units and may find the in-lieu fee more to their liking.

I also wanted to update the Council on an action that the SHA has taken. We prepared a letter to Developers requesting a meeting to engage in a conversation to better understand the challenges they face and to see if there is something we can do better. This letter was sent out by Town Manager, Tom Hall, on 2/21/17. Of the 12 developers that received the letter, 7 have responded and expressed an interest in meeting with the Alliance.

Should we secure the in-lieu fee from Devine we may be able to work with a developer that specializes in affordable housing. There is a possibility that we may actually be able to get more than the 29 units from Devine.

I will have this item on our 3/22/17 meeting agenda and will recommend we work towards a memorandum of understanding for the fall of this year to build more affordable housing with the in-lieu fees, should that occur.”

- Susan Foley-Ferguson of Black Point Road spoke on the affordable housing issue and that there are affordable housing developers who work with developers on projects like this one to incorporate affordable units.
- Cindy Taylor explained the process on leverage fees and how they would help the municipality.

Motion by Councilor Rowan, seconded by Councilor Hayes, to move approval of the second reading on the Eighth Amendment to Contract Zone IX by The Residences at Gateway Commons – Devine Capital, LLC [formerly New England Expedition] pursuant to Chapter 405(II)(I)(5)(C) of the Scarborough Zoning Ordinance.

Motion by Councilor Donovan, seconded by Councilor Rowan, to move approval to amend the main motion as follows:

**EIGHTH AMENDMENT TO CONTRACT ZONING AGREEMENT
AMONG THE TOWN OF SCARBOROUGH, EXIT 42 HAIGIS PARKWAY LLC, AND
DEVINE CAPITAL, LLC
THE GATEWAY AT SCARBOROUGH**

This Eighth Amendment to Contract Zoning Agreement (hereinafter, this "Eighth Amendment") is made as of the ____ day of _____, ~~2016~~2017 by and among the TOWN OF SCARBOROUGH, a body corporate and politic, located in the County of Cumberland and State of Maine (hereinafter, the "Town"), EXIT 42 HAIGIS PARKWAY LLC, a Maine limited liability company, with an office at 11 Bartlett Road, Gorham, Maine 04038 (hereinafter, "Exit 42 HP"), and DEVINE CAPITAL, LLC, a Massachusetts limited liability company with a mailing address of 2 Monument Square, Seventh Floor, Portland, Maine 04101 (hereinafter, "Devine Capital"), pursuant to the Contract Zoning provisions of Section II, Subsection I of the Zoning Ordinance of the Town of Scarborough (hereinafter, the "Zoning Ordinance").

WHEREAS, The New England Expedition – Scarborough, LLC, a Maine limited liability company with an office at 222 Newbury Street, 4th Floor, Boston Massachusetts 02116 (hereinafter, "New England Expedition"), entered into a Contract Zoning Agreement with the Town dated as of the 3rd day of January, 2007 (hereinafter, the "Agreement") creating Contract Zoning District Number 9 (hereinafter, the "District") as described in Section XXIII of the Zoning Ordinance, said Agreement having been recorded in the Cumberland County Registry of Deeds in Book 24730, Page 25; and

WHEREAS, the Agreement was amended pursuant to the terms and provisions of a First Amendment to Contract Zoning Agreement between the Town and New England Expedition dated as of the 5th day of September, 2007, and recorded in said Registry of Deeds in Book 25482, Page 201 (the "First Amendment"); and

WHEREAS, the Agreement was further amended pursuant to the terms and provisions of a Second Amendment to Contract Zoning Agreement between the Town and New England Expedition dated as of the 7th day of November, 2007, and recorded in said Registry of Deeds in Book 25610, Page 171 (the "Second Amendment"); and

WHEREAS, the Agreement was further amended pursuant to the terms and provisions of a Third Amendment to Contract Zoning Agreement between the Town and New England Expedition dated as of the 30th day of April, 2008, and recorded in said Registry of Deeds in Book 26060, Page 162 (the "Third Amendment"); and

WHEREAS, that portion of the Property comprising "The Gateway Square at Scarborough" was conveyed by New England Expedition to The New England Expedition – Scarborough II, LLC (hereinafter, "New England Expedition II") by Quitclaim Deed With Covenant dated September 18, 2009, and recorded in said Registry of Deeds in Book 27269, Page 212; and

WHEREAS, the Agreement was further amended pursuant to the terms and provisions of a Fourth Amendment to Contract Zoning Agreement by and among the Town, New England Expedition

and New England Expedition II dated as of the 3rd day of March, 2010, and recorded in said Registry of Deeds in Book 27642, Page 85 (the "Fourth Amendment"); and

WHEREAS, the Agreement was further amended pursuant to the terms and provisions of a Fifth Amendment to Contract Zoning Agreement by and among the Town, New England Expedition and New England Expedition II dated as of the 21st day of July, 2010, and recorded in said Registry of Deeds in Book 27960, Page 322 (the "Fifth Amendment"); and

WHEREAS, the Agreement was further amended pursuant to the terms and provisions of a Sixth Amendment to Contract Zoning Agreement by and among the Town, New England Expedition and New England Expedition II dated as of the 19th day of January, 2011, and recorded in said Registry of Deeds in Book 28464, Page 260 (the "Sixth Amendment"); and

WHEREAS, the Agreement was further amended pursuant to the terms and provisions of a Seventh Amendment to Contract Zoning Agreement by and among the Town, New England Expedition and New England Expedition II dated as of the 6th day of March, 2013, and recorded in said Registry of Deeds in Book 30462, Page 162 (the "Seventh Amendment"); and

WHEREAS, that portion of the Property comprising The Gateway Square at Scarborough was conveyed by Deed In Lieu of Foreclosure With Covenant from New England Expedition – Scarborough, LLC to GlennDonna, Inc. and to R.J. Grondin & Sons dated as of the 26th day of September, 2014, and recorded in said Registry of Deeds in Book 31987, Page 197; and was subsequently conveyed to Exit 42 HP by Quitclaim Deed With Covenant from GlennDonna, Inc. and R.J. Grondin & Sons dated November 13, 2014, and recorded in said Registry of Deeds in Book 31987, Page 206; and

WHEREAS, Devine Capital intends to purchase of The Gateway Square at Scarborough from Exit 42 HP;

WHEREAS, the Haigis Parkway District, HP (hereinafter, the "HP District"), the underlying Zoning District ~~under the Zoning Ordinance~~ in which The Gateway Square at Scarborough is located, as described in Section XVIII.B of the Zoning District, presently allows, as a permitted use, multi-family residential dwellings/units provided such dwellings/units are developed as part of a mixed-use building or mixed-use planned development;

WHEREAS, the HP District limits multi-family dwellings to a maximum building footprint of 12,500 square feet, a maximum of 5 dwelling units per acre of net lot area, and limits the floor area of all residential uses within a planned development to a maximum of 40% of the total floor area of all the building floor area within a planned development;

WHEREAS, the Town's Growth Management Ordinance, Chapter 413, requires the issuance of growth permits in order to obtain building permits to construct dwelling units and requires that growth permits be issued either from the annual allocation of growth permits or from a reserve pool of growth permits;

WHEREAS, Devine Capital desires to develop The Gateway Square at Scarborough as a multi-family residential development project;

WHEREAS, Devine Capital proposes to construct up to twelve (12) multi-family residential buildings, with up to twenty-four (24) dwelling units per building, consisting of up to 30,000 square feet of floor area for residential purposes, containing studio, 1, 2 and 3 bedroom units, with a maximum building footprint of 12,500 square feet per building the ("Project");

WHEREAS, the residential unit development mix of the Project will foster the commercial and mixed-use activities and amenities desired within the underlying HP District, consistent with the 2006 Update of the Comprehensive Plan of the Town of Scarborough adopted by the Scarborough Town Council on July 19, 2006 (the “Comprehensive Plan”);

WHEREAS, the 2006 Update of the Comprehensive Plan of the Town of Scarborough includes an objective that ten percent of new housing units in the community be affordable to low and moderate income households, and Section VII.C, Residential Density and Affordable Housing Provisions, of the Zoning Ordinance enables developments in certain districts to contain additional density by providing an affordable housing in-lieu fee and Devine Capital proposes to provide an in-lieu payment to the Town of Scarborough’s Affordable Housing Initiative Fund to enable the Town to make progress in meeting this objective;

WHEREAS, the Devine Capital project includes a variety of active and passive recreational amenities, including a clubhouse with a fitness center and pool and outdoor active and passive recreation space, that will serve the health and recreational needs of the development’s residents;

WHEREAS, the Devine Capital project will comply with Chapters 410, 415, 415A, and 415B consisting of the Town’s Development and Traffic-Related Impact Fees and will pay these fees to compensate for the project’s proportionate impact and demand on Town’s school facilities, intersections, and roadway corridors.

WHEREAS, Exit 42 HP and Devine Capital have requested that the Town approve this Eighth Amendment to the Agreement to permit the multi-family residential development project within The Gateway Square at Scarborough as described herein, including the allocation of necessary growth permits from the reserve pool to permit the issuance of building permits for the Project.

NOW THEREFORE, in consideration of the mutual promises made by the parties to each other, the parties covenant and agree as follows:

1. Notwithstanding the provisions of Section XVIII.B ~~Haigis Parkway~~HP District ~~zoning ordinance, in the Zoning Ordinance~~, as may be amended from time to time, Devine Capital, its successor and assigns, are hereby permitted to develop within The Gateway Square at Scarborough up to twelve (12) multi-family residential buildings, with up to twenty-four (24) dwelling units per building, resulting in a maximum number of residential units of two hundred eighty-eight (288) and consisting of up to 30,000 square feet of floor area for residential purposes per building, containing studio, 1, 2 and 3 bedroom units, with a maximum building footprint of 12,500 square feet per building, without regard to the requirement that any such dwelling units be part of a mixed-use building or part of a mixed-use planned development and without regard to any conflicting lot area, dimensional, and density requirements otherwise applicable within the HP District.
2. The Property shall be developed and used only in accordance with the site plan and subdivision plan as finally approved by the Scarborough Planning Board, and as said approved site plan and subdivision plan may be amended from time to time pursuant to the provisions of the Site Plan Review Ordinance of the Town of Scarborough (hereinafter, the “Site Plan Ordinance”) and the Subdivision Ordinance of the Town of Scarborough (hereinafter, the “Subdivision Ordinance”).

3. Pursuant to Section ~~7(G)(5)(a)~~ of the Town's Growth Management Ordinance, Chapter 413, the Town hereby authorizes the use of growth permits from the reserve pool for the Project and authorizes the Planning Board to so allocate from the reserve pool the appropriate number of growth permits to allow Devine Capital, its successor and assigns, to obtain the requisite building permits for the Project.
4. Devine Capital, its successor and assigns, shall pay a total of \$700,000 into the Town of Scarborough's Affordable Housing Initiative Fund for the two hundred eighty-eight (288) dwelling unit project. This affordable housing in-lieu fee requirement shall be paid to the Town proportionally by building at the time of building permit issuance with \$2,430.56 due per dwelling unit.
5. Given the active and passive recreational amenities provided within the development project, including the clubhouse with a fitness center and pool and outdoor active and passive recreation space, the Town determines that adequate recreational facilities have been provided for on-site and that a recreation contribution is not required.
6. The Agreement, as amended by this Eighth Amendment and as previously amended by the First Amendment, the Second Amendment, the Third Amendment, the Fourth Amendment, the Fifth Amendment, the Sixth Amendment, and the Seventh Amendment, remains consistent with the Comprehensive Plan and consistent and compatible with the existing and permitted uses within the existing zoning district classification.
- ~~5~~7. Except as specifically amended herein, all terms and conditions of the Agreement shall remain in full force and effect.
- ~~6~~8. The Town acknowledges and agrees that (a) any breach of the restrictions, provisions and conditions of the Agreement relating to The Gateway Square at Scarborough shall not be deemed a breach of the Agreement as it relates to The Gateway Shoppes at Scarborough, and (b) any breach of the restrictions, provisions and conditions of the Agreement relating to The Gateway Shoppes at Scarborough shall not be deemed a breach of the Agreement as it relates to The Gateway Square at Scarborough.
- ~~7~~9. This Eighth Amendment shall be recorded in the Cumberland County Registry of Deeds within thirty (30) days after its approval by the Scarborough Town Council.

~~{Signature Page Follows}~~

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the date first set forth above.

WITNESS:

TOWN OF SCARBOROUGH

By: _____
Thomas J. Hall, its Town Manager*
(* Duly authorized by vote of the Scarborough
Town Council on _____, 20162017)

STATE OF MAINE

COUNTY OF CUMBERLAND, ss.

_____, 20162017

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

Before me,

Notary Public/Attorney at Law
Print Name: _____

WITNESS:

DEVINE CAPITAL, LLC

By: _____
Bernard M. Devine, Jr., its Member

STATE OF MAINE

COUNTY OF CUMBERLAND, ss.

_____, 20162017

Personally appeared the above named Bernard M. Devine, Jr., Member of Devine Capital, LLC, and acknowledged the foregoing instrument to be his free act deed in his said capacity, the free act and deed of said Devine Capital, LLC.

Before me,

Notary Public/Attorney at Law
Print Name: _____

WITNESS:

EXIT 42 HAIGIS PARKWAY LLC

By: _____
Philip Grondin, Jr., its Manager

STATE OF MAINE

COUNTY OF CUMBERLAND, ss.

_____, 20162017

Personally appeared the above named Philip Grondin, Jr., Manager of Exit 42 Haigis Parkway LLC, and acknowledged the foregoing instrument to be his free act deed in his said capacity, the free act and deed of said Exit 42 Haigis Parkway LLC.

Before me,

Notary Public/Attorney at Law

Print Name: _____

Vote on Amendment: 5 Yeas. 2 nays [Councilors Foley and Hayes].

Motion by Councilor St. Clair, seconded by Councilor Donovan, to move approval to amend the main motion as amended to amend the 18th Whereas, as follows:

WHEREAS, the 2006 Update of the Comprehensive Plan of the Town of Scarborough includes an objective that ten percent of new housing units in the community be affordable to low and moderate income households, and Section VII.C, Residential Density and Affordable Housing Provisions, of the Zoning Ordinance enables developments in certain districts to contain additional density by providing an affordable housing in-lieu fee and Devine Capital proposes to provide an in-lieu payment to the Town of Scarborough’s Affordable Housing Initiative Fund ~~to enable the Town to make progress in meeting this objective;~~ and the Town Council will work with the Scarborough Housing Alliance to develop a plan by October 1, 2017, to establish priorities to utilize the Affordable Housing Fund to enable the Town to make progress in meeting this affordable housing objective.

Vote on Amendment: 7 Yeas.

Motion by Councilor Foley, seconded by Councilor St. Clair, to move approval to amend the main motion as amended, as follows:

WHEREAS, the key objective of the Haigis Parkway Zone is to create a mixed use development, specifically business and housing mixes; and,

WHEREAS, due to market conditions favoring multi-family housing, the developer of this project (Devine Capital) has proposed changes that will eliminate the “mix” of business and housing; and,

WHEREAS, the Town of Scarborough is in clearly in need of housing for members of our workforce such as Teachers, Firemen, Police Officers, and other working people, and,

WHEREAS, the “in lieu of” fee, provided for in our ordinance was envisioned to be used as a part of the density bonus requirements, not for large scale multi-family projects, and has not and yet resulted in affordable units; and,

NOW, THEREFORE BE IT ORDAINED that the Contract Zone shall be amended to include the following:

1. 10% of the total number of units approved shall be built as “affordable” units as defined in our Zoning Ordinance, and shall be hereinafter referred to as Workforce Housing Units.
2. Workforce Housing units shall be mixed within the project, within each building, and included in all phases of the development.
3. Workforce Housing Units in Phase 1 must be completed before the developer moves to Phase 2.

4. Workforce Housing units shall be built to the same standard as market rate units and the developer shall follow all other standards for “affordable” units included in our Zoning Ordinance except that no fee in lieu of developing the units may be paid.
5. Workforce Housing Units shall remain affordable for 99 years using housing covenants and as a part of the deeds.

Vote on Amendment: 2 Yeas.

5 Nays [Chairman Babine, Councilors Caiazzo, Donovan, Rowan and St. Clair].

Motion Fails.

Motion by Councilor Foley, seconded by Councilor Hayes, to move approval to amend the main motion as amended under NOW THEREFORE, to strike number 5, as follows:

5. Given the active and passive recreational amenities provided within the development project, including the clubhouse with fitness center and pool and outdoor active and passive recreation space, the Town determines that adequate recreational facilities have been provided for on-site and that a recreation contribution is not required.

Vote on Amendment: 3 Yeas. 4 Yeas [Chairman Babine, Councilors Caiazzo, Rowan and Donovan].

Motion fails.

Main Motion as Amended:

**EIGHTH AMENDMENT TO CONTRACT ZONING AGREEMENT
AMONG THE TOWN OF SCARBOROUGH, EXIT 42 HAIGIS PARKWAY LLC, AND
DEVINE CAPITAL, LLC
THE GATEWAY AT SCARBOROUGH**

This Eighth Amendment to Contract Zoning Agreement (hereinafter, this "Eighth Amendment") is made as of the ____ day of _____, 2017, by and among the TOWN OF SCARBOROUGH, a body corporate and politic, located in the County of Cumberland and State of Maine (hereinafter, the "Town"), EXIT 42 HAIGIS PARKWAY LLC, a Maine limited liability company, with an office at 11 Bartlett Road, Gorham, Maine 04038 (hereinafter, “Exit 42 HP”), and DEVINE CAPITAL, LLC, a Massachusetts limited liability company with a mailing address of 2 Monument Square, Seventh Floor, Portland, Maine 04101 (hereinafter, "Devine Capital"), pursuant to the Contract Zoning provisions of Section II, Subsection I of the Zoning Ordinance of the Town of Scarborough (hereinafter, the "Zoning Ordinance").

WHEREAS, The New England Expedition – Scarborough, LLC, a Maine limited liability company with an office at 222 Newbury Street, 4th Floor, Boston Massachusetts 02116 (hereinafter, "New England Expedition"), entered into a Contract Zoning Agreement with the Town dated as of the 3rd day of January, 2007 (hereinafter, the "Agreement") creating Contract Zoning District Number 9 (hereinafter, the "District") as described in Section XXIII of the Zoning Ordinance, said Agreement having been recorded in the Cumberland County Registry of Deeds in Book 24730, Page 25; and

WHEREAS, the Agreement was amended pursuant to the terms and provisions of a First Amendment to Contract Zoning Agreement between the Town and New England Expedition dated as of the 5th day of September, 2007, and recorded in said Registry of Deeds in Book 25482, Page 201 (the "First Amendment"); and

WHEREAS, the Agreement was further amended pursuant to the terms and provisions of a Second Amendment to Contract Zoning Agreement between the Town and New England Expedition dated as of the 7th day of November, 2007, and recorded in said Registry of Deeds in Book 25610, Page 171 (the "Second Amendment"); and

WHEREAS, the Agreement was further amended pursuant to the terms and provisions of a Third Amendment to Contract Zoning Agreement between the Town and New England Expedition dated as of the 30th day of April, 2008, and recorded in said Registry of Deeds in Book 26060, Page 162 (the "Third Amendment"); and

WHEREAS, that portion of the Property comprising "The Gateway Square at Scarborough" was conveyed by New England Expedition to The New England Expedition – Scarborough II, LLC (hereinafter, "New England Expedition II") by Quitclaim Deed With Covenant dated September 18, 2009, and recorded in said Registry of Deeds in Book 27269, Page 212; and

WHEREAS, the Agreement was further amended pursuant to the terms and provisions of a Fourth Amendment to Contract Zoning Agreement by and among the Town, New England Expedition and New England Expedition II dated as of the 3rd day of March, 2010, and recorded in said Registry of Deeds in Book 27642, Page 85 (the "Fourth Amendment"); and

WHEREAS, the Agreement was further amended pursuant to the terms and provisions of a Fifth Amendment to Contract Zoning Agreement by and among the Town, New England Expedition and New England Expedition II dated as of the 21st day of July, 2010, and recorded in said Registry of Deeds in Book 27960, Page 322 (the "Fifth Amendment"); and

WHEREAS, the Agreement was further amended pursuant to the terms and provisions of a Sixth Amendment to Contract Zoning Agreement by and among the Town, New England Expedition and New England Expedition II dated as of the 19th day of January, 2011, and recorded in said Registry of Deeds in Book 28464, Page 260 (the "Sixth Amendment"); and

WHEREAS, the Agreement was further amended pursuant to the terms and provisions of a Seventh Amendment to Contract Zoning Agreement by and among the Town, New England Expedition and New England Expedition II dated as of the 6th day of March, 2013, and recorded in said Registry of Deeds in Book 30462, Page 162 (the "Seventh Amendment"); and

WHEREAS, that portion of the Property comprising The Gateway Square at Scarborough was conveyed by Deed In Lieu of Foreclosure With Covenant from New England Expedition – Scarborough, LLC to GlennDonna, Inc. and to R.J. Grondin & Sons dated as of the 26th day of September, 2014, and recorded in said Registry of Deeds in Book 31987, Page 197; and was subsequently conveyed to Exit 42 HP by Quitclaim Deed With Covenant from GlennDonna, Inc. and R.J. Grondin & Sons dated November 13, 2014, and recorded in said Registry of Deeds in Book 31987, Page 206; and

WHEREAS, Devine Capital intends to purchase of The Gateway Square at Scarborough from Exit 42 HP;

WHEREAS, the Haigis Parkway District, HP (hereinafter, the "HP District"), the underlying Zoning District in which The Gateway Square at Scarborough is located, as described in Section XVII.B. of the Zoning District, presently allows, as a permitted use, multi-family residential dwellings/units provided such dwellings/units are developed as part of a mixed-use building or mixed-use planned development;

WHEREAS, the HP District limits multi-family dwellings to a maximum building footprint of 12,500 square feet, a maximum of 5 dwelling units per acre of net lot area, and limits the floor area of all residential uses within a planned development to a maximum of 40% of the total floor area of all the building floor area within a planned development;

WHEREAS, the Town's Growth Management Ordinance, Chapter 413, requires the issuance of growth permits in order to obtain building permits to construct dwelling units and requires that growth permits be issued either from the annual allocation of growth permits or from a reserve pool of growth permits;

WHEREAS, Devine Capital desires to develop The Gateway Square at Scarborough as a multi-family residential development project;

WHEREAS, Devine Capital proposes to construct up to twelve (12) multi-family residential buildings, with up to twenty-four (24) dwelling units per building, consisting of up to 30,000 square feet of floor area for residential purposes, containing studio, 1, 2 and 3 bedroom units, with a maximum building footprint of 12,500 square feet per building the ("Project");

WHEREAS, the residential unit development mix of the Project will foster the commercial and mixed-use activities and amenities desired within the underlying HP District, consistent with the 2006 Update of the Comprehensive Plan of the Town of Scarborough adopted by the Scarborough Town Council on July 19, 2006 (the "Comprehensive Plan");

WHEREAS, the 2006 Update of the Comprehensive Plan of the Town of Scarborough includes an objective that ten percent of the new housing units in the community be affordable to low and moderate income households, and Section VII.C, Residential Density and Affordable Housing Provisions of the Zoning Ordinance enables developments in certain districts to contain additional density by providing an affordable housing in-lieu fee and Devine Capital proposes to provide an in-lieu payment to the Town of Scarborough's Affordable Housing Initiative Fund and the Town Council will work with the Scarborough Housing Alliance to develop a plan by October 1, 2017, to establish priorities to utilize the Affordable Housing Fund to enable the Town to make progress in meeting this affordable housing objective,

WHEREAS, the Devine Capital project includes a variety of active and passive recreational amenities, including a clubhouse with a fitness center and pool and outdoor active and passive recreation space, that will serve the health and recreational needs of the development's residents;

WHEREAS, the Devine Capital project will comply with Chapters 410, 415, 415A and 415B, consisting of the Town's Development and Traffic-Related Impact Fees and will pay these fees to compensate for the project's proportionate impact and demand on Town's school facilities, intersections and roadway corridors.

WHEREAS, Exit 42 HP and Devine Capital have requested that the Town approve this Eighth Amendment to the Agreement to permit the multi-family residential development project within The Gateway Square at Scarborough as described herein, including the allocation of necessary growth permits from the reserve pool to permit the issuance of building permits for the Project.

NOW THEREFORE, in consideration of the mutual promises made by the parties to each other, the parties covenant and agree as follows:

1. Notwithstanding the provisions of Section XVIII.B HP District in the Zoning Ordinance, as may be amended from time to time, Devine Capital, its successor and assigns, are hereby permitted to develop within The Gateway Square at Scarborough up to twelve (12) multi-family residential buildings, with up to twenty-four (24) dwelling units per building, resulting in a maximum number of residential units of two hundred eighty-eight (288) and consisting of up to 30,000 square feet of floor area for residential purposes per building, containing studio, 1, 2 and 3 bedroom units, with a maximum building footprint of 12,500 square feet per building, without regard to the requirement that any such dwelling units be part of a mixed-use building or part of a mixed-use planned development and without regard to any conflicting lot area, dimensional, and density requirements otherwise applicable within the HP District.
2. The Property shall be developed and used only in accordance with the site plan and subdivision plan as finally approved by the Scarborough Planning Board, and as said approved site plan and subdivision plan may be amended from time to time pursuant to the provisions of the Site Plan Review Ordinance of the Town of Scarborough (hereinafter, the "Site Plan Ordinance") and the Subdivision Ordinance of the Town of Scarborough (hereinafter, the "Subdivision Ordinance").
3. Pursuant to Section 7(G)(5)(a) of the Town's Growth Management Ordinance, Chapter 413, the Town hereby authorizes the use of growth permits from the reserve pool for the Project and authorizes the Planning Board to so allocate from the reserve pool the appropriate number of growth permits to allow Devine Capital, its successor and assigns, to obtain the requisite building permits for the Project.
4. Devine Capital, its successor and assigns, shall pay a total of \$700,000 into the Town of Scarborough's Affordable Housing Initiative Fund for the two hundred eighty-eight (288) dwelling unit project. This affordable housing in-lieu fee requirement shall be paid to the Town proportionally by building at the time of building permit issuance with \$2,430.56 due per dwelling unit.
5. Given the active and passive recreational amenities provided within the development project, including the clubhouse with a fitness center and pool and outdoor active and passive recreation space, the Town determines that adequate recreational facilities have been provided for on-site and that a recreation contribution is not required.
6. The Agreement, as amended by this Eighth Amendment and as previously amended by the First Amendment, the Second Amendment, the Third Amendment, the Fourth Amendment, the Fifth Amendment, the Sixth Amendment, and the Seventh Amendment, remains consistent with the Comprehensive Plan and consistent and compatible with the existing and permitted uses within the existing zoning district classification
7. Except as specifically amended herein, all terms and conditions of the Agreement shall remain in full force and effect.
8. The Town acknowledges and agrees that (a) any breach of the restrictions, provisions and conditions of the Agreement relating to The Gateway Square at Scarborough shall not be deemed a breach of the Agreement as it relates to The Gateway Shoppes at Scarborough, and (b) any breach of the restrictions, provisions and conditions of the Agreement relating

to The Gateway Shoppes at Scarborough shall not be deemed a breach of the Agreement as it relates to The Gateway Square at Scarborough.

9.—This Eighth Amendment shall be recorded in the Cumberland County Registry of Deeds within thirty (30) days after its approval by the Scarborough Town Council.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the date first set forth above.

WITNESS:

TOWN OF SCARBOROUGH

By: _____
Thomas J. Hall, its Town Manager*
(*Duly authorized by vote of the Scarborough
Town Council on March 15, 2017.)

STATE OF MAINE

COUNTY OF CUMBERLAND, ss.

_____, 2017

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

Before me,

Notary Public/Attorney at Law
Print Name: _____

WITNESS:

DEVINE CAPITAL, LLC

By: _____
Bernard M. Devine, Jr., its Member

STATE OF MAINE

COUNTY OF CUMBERLAND, ss.

_____, 2017

Personally appeared the above named Bernard M. Devine, Jr., Member of Devine Capital, LLC, and acknowledged the foregoing instrument to be his free act deed in his said capacity, the free act and deed of said Devine Capital, LLC.

Before me,

Notary Public/Attorney at Law
Print Name: _____

WITNESS:

EXIT 42 HAIGIS PARKWAY LLC

By: _____
Philip Grondin, Jr., its Manager

STATE OF MAINE

COUNTY OF CUMBERLAND, ss.

_____, 2017

Personally appeared the above named Philip Grondin, Jr., Manager of Exit 42 Haigis Parkway LLC, and acknowledged the foregoing instrument to be his free act deed in his said capacity, the free act and deed of said Exit 42 Haigis Parkway LLC.

Before me,

Notary Public/Attorney at Law

Print Name: _____

Vote: 5 Yeas, 2 Nays [Chairman Babine, Councilors Caiazzo, St. Clair, Rowan and Donovan].

Chairman Babine called for a short recess. The meeting was reconvened at 9:13 p.m.

NEW BUSINESS:

Order No. 17-027. Act to approve the Resolve to accept donations for the Fuel Assistance Program. [Town Council] Motion by Chairman Babine, seconded by Councilor St. Clair, to move approval of the Resolve to accept donations for the Fuel Assistance Program, as follows:

TOWN OF SCARBOROUGH

IN TOWN COUNCIL ASSEMBLED

March 15, 2017

RESOLVE Accepting Donations for the Fuel Assistance Program.

BE IT HEREBY RESOLVED BY THE TOWN COUNCIL AS FOLLOWS:

THAT THE Town of Scarborough gratefully accepts the pledges and donations from the following businesses and/or persons, that have been collected to date, to be used for the Fuel Assistance Program:

Team Kyle

Fuel Rally Donors:

Blue Point Congregational Church
Chiropractic Family Wellness Center

Charlie Burnham
Classic Eyewear

Fielding's Oil
Higgins Beach Association
KCV Trailer Rental
Pine Point Ladies' Auxiliary
Project GRACE Board, Volunteers/Friends

Galley Hair Design
Jim Conroy & Conroy's Oil
Nellie's Tea & Gifts Book Group
Pit Stop
Rotary Club of Scarborough & Interact Club

Saco & Biddeford Savings Institution
Scarborough Lions Club
St. Maximilian-Kolbe Parishioners
West Scarborough United Methodist Church

Scarborough Firefighters Union
Scarborough School Custodians
Town of Scarborough Employees
Eddie Woodin & Woodin Co.

Plus the many, many individual and family and anonymous donors who gave so generously to the fuel fund.

AND, be it further Resolved that each business, organization and/or person be recognized for their generous donations as a token of the Town's appreciation.

Sponsor: Town Council
Originator: Town Council

Vote: 7 Yeas.

Item 8. Non Action Items. None at this time.

Item 9. Standing and Special Committee Reports and Liaison Reports.

- Councilor Donovan gave an update on the Pest Management Committee.
- Councilor Rowan gave an update on the Historic Implementation Preservation Committee.
- Councilor Foley gave updates on the Rules and Policies Committee; the Conservation Commission; the Eastern Trail Alliance; attended a presentation on composting and noted that Officer Tim Barker would be implementing a Youth Leadership Program.
- Councilor St. Clair gave an update on the Communications Committee.
- Councilor Hayes gave updates on the Joint Town/School Finance Committee; the Town Finance Committee; both the Shellfish Conservation Commission meeting and the Coastal Waters Committee were canceled due to the snow storm and on March 22nd Communications Round table here at Town Hall at 6:00 p.m.
- Chairman Babine noted that he sat in on the interviews for the Assessor and felt the process was very thoughtful and professional.
- Councilor St. Clair noted that she and other Councilors had attended the Community Dialogue along with the Assistant Town Manager.

Item 10. Town Manager Report. Thomas J. Hall, Town Manager, gave the following updates:

- Full budget mode – presentation will be made on Wednesday, April 5th. We have been working very closely with the school and so far so good.
- Updated the Council on the tax appeal cases, which date back to 2012 – the meetings have been scheduled for March 28, 29 and 30 starting at 6:00 p.m.
- Avenue 2 – update
- Dan Bacon Town Planner will be leaving us – working out details that will have him doing consulting working with us until a new Town Planner is hired. This is a very important position to fill. There has been an offer made for the Community Services position and should know something by the end of the week.

- He would like to engage the council regarding dispatch center and the time is now to discuss this issue with the proposal of a new building in the works.
- Thank you to the Public Works Department for a job well done.

After conferring with fellow Councilors regarding Councilor Caiazzo's testimony in Augusta regarding the By-pass, it was noted that Councilor Caiazzo could speak on behalf of the Town Council regarding this matter.

Item 11. Council Member Comments.

- Councilor Caiazzo noted that he would share his comments with the Council prior to giving testimony. He congratulated Dan Bacon and wished him well.
- Councilor Hayes sent a thank you to Public works for a great job. He too commented on the Community Dialogue that had been held by the School Department.
- Councilor St. Clair commented on the debate over the Devine Capital issue – she would be staying on the affordable housing issue.
- Councilor Donovan spoke on the Ordinance Committee and what had been discussed. He attended the Vision Committee meeting. He mentioned the eco-excellence Award Ceremony adding the Stu Axelrod was presented the Lifetime Achievement Award and Wild Birds Unlimited was presented the Esteemed 2017 eco-Excellence Award. He and Dan Bacon had been interview on Character Base Zoning for the MMA Townsman and the article will be in the May edition. He also attended the Kelly-Schofield meeting and did a presentation on composting.
- Councilor Rowan wished Dan Bacon the best of luck, He went on to thank the Boys to Men Group for their program they have implemented in the school system.
- Councilor Foley wish the very best to Dan Bacon. She thanked fellow councilors for a robust conversation. She went on to mention that Kerry Strout, the Beach Plover Monitor was looking for volunteer, anyone interested, please contact her at Town Hall. She too commented on the Community Dialogue.
- Chairman Babine reflected on the conversation this evening relating to the Contract Zone amendment and asked the Council to please reflect on what we did – we are not always going to be unanimous on issue. He thanked staff for all their work.

Item 12. Adjournment. Motion by Councilor Rowan, seconded by Councilor Foley, to move approval to adjourn the regular meeting of the Scarborough Town Council.

Vote: 7 Yeas.

Meeting adjourned at 9:58 p.m.

Respectfully submitted,

Yolande P. Justice
Town Clerk